

## PROPOSED TENTATIVE

On February 5, 2024, plaintiff Credit Corp solutions, Inc., as assignee of original creditor Sallie Mae Bank (plaintiff), filed a complaint against defendant Tiffany Munkres (aka Tiffany J. Munkres) (defendant) for breach of contract for damages of \$20,750.72. According to the operative pleading, the debt involved a private education loan. Defendant has not filed an answer. On March 6, 2025, plaintiff filed, pursuant to California Rules of Court, rule 3.1385 (c)(1), an out-of-court “Notice of Conditional Settlement.” According to this notice, the “settlement agreement conditions dismissal of this matter on the satisfactory completion of specified terms that are not to be performed within 45 days of the date of the settlement. A request for dismissal will be filed no later than” February 11, 2029. All future court hearings were vacated, and no other hearings were set. (See, e.g., Cal. Rules of Court, rule 3.1385(c)(3)(A) [“on the filing of the notice of conditional settlement, the court must vacate].) No dismissal has been entered, meaning the court retains jurisdiction over the action.

On July 30, 2025, plaintiff filed a motion to vacate the “Notice of [Conditional] Settlement” pursuant to Code of Civil Procedure section 473, subdivision (b). Defendant was served with the motion. No opposition has been filed.<sup>1</sup>

Preliminarily, the court is reluctant to apply the discretionary procedures contemplated by Civil Procedure section 473, subdivision (b) in order to afford the relief desired. The court acknowledges that under the discretionary authority of this provision, a court may, upon any terms that are just, relieve a party of his or her legal representative from a “judgment, dismissal, order *or other proceeding*” taken against him or her through his or her mistake, inadvertence, surprise or excusable neglect. The court also acknowledges that while a “Notice of Conditional Settlement” is not a judgment, order, or dismissal, it arguably involves a “proceeding,” at least as that term is broadly defined in the case law. (*Lorenz v. Commercial Acceptance Ins. Co.* (1995) 40 Cal.App.4th 981, 989, citing *Zellerino v. Brown* (1991) 235 Cal.App.3d 1097, 1105.) In *Zellerino v. Brown*, *supra*, 235 Cal.App.3d 1105, for example, the court, relying on *Stonesifer v. Kilburn* (1892) 94 Cal. 33, 43, observed that the word “proceeding” is generally applicable to “any step by a suitor to obtain the interposition or action of court” – that is, “any step taken by a party in the progress of a civil action. Anything done from the commencement to the termination is a proceeding.” (*Zellerino*, *supra*, at p. 1105; see also *Burns v. Superior Court* (1903) 140 Cal.1, 5-6 [a “proceeding” includes any step taken in a case, whether by the court or by one of the parties thereto].)

But this is not the full story. When other provisions supplant application of Code of Civil Procedure section 473, subdivision (b), those other provisions should govern the appropriate

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<sup>1</sup> To be clear, plaintiff served defendant by mail on July 30, 2025, at the address she was originally served with the summons and complaint.

procedures to be followed (and the applicable standards to be applied). (*Zellerino, supra*, 235 Cal.App.3d at p. 1107 [while Code Civ. Proc., § 437(b) is commodious enough to govern discovery disputes, the discovery provisions themselves evidence an intent to supplant use of section 473(b); “Relief under section 473 is unavailable when the discovery act provides analogous, if more limited, relief”].) This appears to be the case here, under the advent and umbrella of California Rules of Court, rule 3.1385, which governs the imposition and impact of the “Notice of Conditional Settlement” procedures at play here.<sup>2</sup> “. . . [T]he Judicial Council formulated California Rules of Court, rule 3.1385 as a case management tool for delay reduction, designed specifically to ‘assist courts in identifying inactive cases from the active cases that may require judicial attention.’ [Citations omitted.] (*Irvine v. Regents of University of California* (2007) 149 Cal.App.4th 994, 1001.)

Pursuant to California Rules of Court, rule 3.1385(c)(1), plaintiff and defendant filed a settlement agreement that conditioned dismissal of the entire case on the satisfactory completion of specified terms, which could not be performed within 45 days of the settlement, including defendant’s installment payments. According to plaintiff’s proffer here, defendant has failed to provide the installment payments as required prior to dismissal. Plaintiff thus does not wish to – and essentially cannot – file a dismissal as contemplated under the “Notice of Condition Settlement.” California Rules of Court, rule 3.1385(c)(2) provides that if the plaintiff who is required to serve and file a request for dismissal “does not do so,” or in this case essentially cannot do so, “the court must dismiss the entire case unless good cause is shown why the case should not be dismissed.” The court at the California Rules of Court, rule 3.1385 hearing does not determine whether the settlement agreement is enforceable or not – it simply determines whether to dismiss the case or “to restore [the case] to the civil active list.” (*Irvine, supra*, at p. 1001.) This is the very relief plaintiff desires here. *Irvine* concluded that plaintiff had demonstrated “good cause to restore the case to the civil active list” “by alleging a dispute over whether the parties reached a binding settlement agreement.” (*Id.* at pp. 1001-1002.) If good cause can exist by alleging the

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<sup>2</sup> Put another way, the court is reluctant to import into this existing scheme the discretionary relief contemplated by Code of Civil Procedure section 473, subdivision (b), at least when other procedures exist and appear more tailored to the situation at hand, which is true for California Rules of Court, rule 3.1385. Plaintiff provides no authority in its briefing for the proposition that Code of Civil Procedure section 473, subdivision (b) should trump (or is even available as an alternative to) the procedures in California Rules of Court, rule 3.1385. The court bolsters this conclusion by observing that trial courts have “both the inherent authority and responsibility to fairly and efficiently administer all of the judicial proceedings that are pending before it, and ... one important element of a court’s inherent judicial authority in this regard is ‘the power ... to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.’ ” (*People v. Engram* (2010) 50 Cal.4th 1131, 1146; *Stephen Slesinger, Inc. v. Walt Disney Co.* (2007) 155 Cal.App.4th 736, 758, fn. omitted [“From their creation by article VI, section 1 of the California Constitution, California courts received broad inherent power ‘not confined by or dependent on statute.’ [Citations.] This inherent power includes ‘fundamental inherent equity, supervisory, and administrative powers, as well as inherent power to control litigation’ ”], disapproved on another ground by *City of Los Angeles v. PricewaterhouseCoopers, LLP* (2024) 17 Cal.5th 46, 73, fn. 5.) Code of Civil procedure section 473, subdivision (b), when all is said and done, seems redundant (and thus unnecessary) in light of this authority.

parties failed to reach a binding settlement agreement, it follows that good cause has been adequately alleged by claiming defendants have not meet the requirements of the conditional settlement (as a precondition for dismissal) by failing to make the required installment payments. The court thus will apply the standards contained in California Rules of Court, rule 3.1385; finds good cause to set aside the “Notice of Conditional Settlement”; and thus restores the case to the active civil list.

The court’s inquiry, however, is not entirely complete, as the court wants to be crystal clear about how this matter can proceed going forward. Both parties should be clear that the court is not vacating the settlement agreement in any way – it is setting aside the “Notice of the Conditional Settlement” only and restoring the matter to the active civil list – nothing more. This limitation is important, for a settlement agreement ordinarily concludes all matters put in issue by the original pleadings – that is, it bars questions that otherwise would have been resolved at trial based on the earlier pleadings. (*Folsom v. Butte County of Assn. of Governments* (1982) 32 Cal.3d 668, 677; see also *Doran v. North State Grocery, Inc.* (2006) 137 Cal.App.4th 484, 492 [a compromise settlement operates as a bar to reopening the original controversy as alleged in the original pleadings].) Of course, settlement agreements remain enforceable. “Once a settlement agreement is entered into by the parties, they may avail themselves of a quick and effective avenue for enforcement by making a motion to enter judgment on the agreement” pursuant to Code of Civil Procedure section 664.6 (if the parties agreed to it). (*In re Marriage of Woolsey* (2013) 220 Cal.App.4th 881, 898.) Additionally, settlement agreements may also be enforced by “a motion for summary judgment, by a separate suit in equity or by amendment of the pleadings in this action.” (*Levy v. Superior Court* (1995) 10 Cal.4th 578, 586, fn. 5. Emphasis added]; *Robertson v. Chen* (1996) 44 Cal.App.4th 1290, 1293; see *Gauss v. GAF Corp.* (2002) 103 Cal.App.4th 1110, 1122.) The parties will have to determine for themselves how best to proceed – the court is simply framing the boundaries in which they must work. Nothing here should be seen as favoring one procedure or course of action over any other.

### **Summary:**

The court designates the motion to vacate filed pursuant to Code of Civil Procedure section 473, subdivision (b) as a request under California Rules of Court, 3.1385(c)(2) to set aside the “Notice of Conditional Settlement” and to restore the case to the civil active list when good cause has been shown. The court finds good cause has been demonstrated, sets aside the “Notice of Conditional Settlement,” and restores the case to the active civil list. The court will sign the proposed order. The parties should come prepared to discuss any future CMC schedule, and should be prepared to address how they plan to proceed with the litigation in the future now that case has been restored to the active civil list.