

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

BMO Harris Bank N.A. v. Harjit Singh

BMO Harris Bank · No. 1:24-cv-01517-JLT-HBK · Decided June 13, 2025

SUMMARY

The document contains Findings and Recommendations by a United States magistrate judge recommending that BMO Bank N.A.’s motion for default judgment be granted against Harjit Singh. The recommendation addresses jurisdiction, service, the Eitel factors, breach of contract, monetary damages, attorney’s fees and costs, post-default interest, and possession of two commercial vehicles securing the loans. It recommends monetary damages of \$115,098.37, attorney’s fees of \$3,575.00, costs of \$805.18, contractual daily interest, and recovery of the vehicles, subject to a 14-day objection period.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Helena M. Barch-Kuchta
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	June 13, 2025
DOCKET	1:24-cv-01517-JLT-HBK
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff moved for default judgment under Federal Rule of Civil Procedure 55(b)(2) after Defendant failed to answer or otherwise appear and the clerk entered default. The magistrate judge issued findings and recommendations recommending that the district court grant default judgment, award damages, attorney's fees, costs, possession of collateral, and close the case.
STANDARD OF REVIEW	Entry of default judgment under Federal Rule of Civil Procedure 55(b)(2) is discretionary and requires consideration of the six Eitel factors. Proper service is a prerequisite, and well-pleaded factual allegations other than damages are accepted as true after default; damages must be proven.
PRECEDENTIAL VALUE	nonprecedential

TOPICS

default judgment

default

service of process

subject matter jurisdiction

breach of contract

PRACTICE AREAS

civil procedure

contracts

commercial litigation

remedies

QUESTIONS PRESENTED

1. Whether Defendant was properly served so that default judgment could be entered.
2. Whether the court had subject matter jurisdiction based on complete diversity and an amount in controversy exceeding \$75,000, and personal jurisdiction over Defendant.
3. Whether the six Eitel factors supported entry of default judgment.
4. Whether Plaintiff proved its breach of contract claim and the requested monetary and equitable relief.
5. What amount of contractual damages, post-default interest, attorney's fees, costs, and possession of collateral should be awarded.

HOLDINGS

1. Defendant was properly served under Federal Rule of Civil Procedure 4 and applicable California service law, permitting consideration of default judgment.
2. The court had diversity subject matter jurisdiction and personal jurisdiction over Singh.
3. All six Eitel factors favored entry of default judgment because Defendant was properly served, failed to appear, Plaintiff's well-pleaded contract claim was meritorious, the requested amount was supported by the agreements and evidence, no factual dispute was apparent, and excusable neglect was not shown.
4. Plaintiff should receive \$115,098.37 in contractual damages, contractual daily interest after April 22, 2025 until final judgment, \$3,575.00 in attorney's fees, \$805.18 in costs, and possession of the two unrecovered vehicles, with the judgment credited by net sale proceeds.

KEY QUOTATIONS

“After the clerk enters a default, the court shall accept “as true all factual allegations in the complaint, except those as to the amount of damages.”” (at 3)

“Cases should be decided upon their merits whenever reasonably possible.” (at 7)

FACTUAL BACKGROUND

BMO financed Singh's purchase of two commercial refrigerated vans under two loan and security agreements. The agreements granted BMO first-priority security interests, which BMO perfected by recording liens on the vehicle titles. Singh stopped making payments in July 2024, BMO accelerated the debt and demanded payment and surrender of the vehicles, but Singh neither paid nor surrendered them. The agreements authorized recovery of principal, interest, repossession and disposition expenses, attorney's fees, and costs.

PROCEDURAL HISTORY

BMO Harris Bank N.A. filed a diversity action on December 12, 2024, alleging that Harjit Singh breached two loan and security agreements. Singh was served on March 10, 2025, but did not respond, and the clerk entered default on April 18, 2025. Plaintiff moved for default judgment on May 9, 2025. The magistrate judge recommended granting the motion, subject to the parties' fourteen-day objection period and review by the assigned district judge.

DISPOSITION

other

CASES CITED

- Mason v. Genisco Tech. Corp., 960 F.2d 849, 851 (9th Cir. 1992)
- Eitel v. McCool, 782 F.2d 1470, 1471-72 (9th Cir. 1986)
- Yoon Chul Yoo v. Arnold, 615 F. App'x 868, 870 (9th Cir. 2015)
- Strojnik v. JW World Enterprises, Inc. Best W. Bakersfield N., 2021 WL 22137, at *1 (E.D. Cal. Jan. 4, 2021)
- Wecosign, Inc. v. IFG Holdings, Inc., 845 F. Supp. 2d 1072, 1078 (C.D. Cal. 2012)
- Aldabe v. Aldabe, 616 F.2d 1089, 1092 (9th Cir. 1980)
- Kokkonen v. Guardian Life Ins. Co. of Am., 511 U.S. 375, 377 (1994)
- Chavez v. JPMorgan Chase & Co., 888 F.3d 413, 414-16 (9th Cir. 2018)
- Arias v. Residence Inn by Marriott, 936 F.3d 920, 927 (9th Cir. 2019)
- Wachovia Bank v. Schmidt, 546 U.S. 303, 318 (2006)
- Rouse v. Wachovia Mortg., FSB, 747 F.3d 707, 709 (9th Cir. 2014)
- Okamoto v. Bank W. Corp., 115 F. App'x 410, 410 (9th Cir. 2004)
- Kanter v. Warner-Lambert Co., 265 F.3d 853, 857 (9th Cir. 2001)
- Goodyear Dunlop Tires Operations, S.A. v. Brown, 564 U.S. 915, 924 (2011)
- PepsiCo, Inc. v. Cal. Sec. Cans, 238 F. Supp. 2d 1172, 1177 (C.D. Cal. 2002)
- True Religion Apparel, Inc. v. Jet 2A, 2009 WL 10671791, at *3 (C.D. Cal. Feb. 11, 2009)
- Vogel v. Rite Aid Corp., 992 F. Supp. 2d 998, 1007 (C.D. Cal. 2014)
- Wells Fargo Equip. Fin., Inc. v. Virk Sys., Inc., 2021 WL 347408, at *2 (E.D. Cal. Feb. 2, 2021)
- Careau & Co. v. Sec. Pac. Bus. Credit, Inc., 222 Cal. App. 3d 1371, 1399 (1990)
- Christofferson v. All Pure Pool Serv. of Cent. California, Inc., 2020 WL 3249323, at *19 (E.D. Cal. June 16, 2020)
- United Specialty Insurance Co. v. Saleh, 2016 WL 4434479, at *2 (E.D. Cal. Aug. 22, 2016)
- USA Truck, Inc. v. Jugan Express Inc., 2020 WL 2128387, at *2 (E.D. Cal. May 5, 2020)
- Arroyo, 2019 WL 4877573, at *11 (E.D. Cal. Oct. 3, 2019)
- Kona Enters., Inc. v. Estate of Bishop, 229 F.3d 877, 883 (9th Cir. 2000)
- Gil v. Mansano, 121 Cal. App. 4th 739, 742-43 (2004)

- Hensley v. Eckerhart, 461 U.S. 424, 433 (1983)
- Blum v. Stenson, 465 U.S. 886, 895 (1984)
- Gonzalez v. City of Maywood, 729 F.3d 1196, 1205 (9th Cir. 2013)
- BMO Harris Bank, N.A. v. Chahal Roadlines, Inc., 2024 WL 5195924, at *2 (E.D. Cal. Dec. 23, 2024)
- Sayta v. Martin, 2018 WL 4373034, at *5
- Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014)

OPINION

BMO Bank N.A. v. Singh

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 11 BMO HARRIS BANK N.A., Case No. 1:24-cv-01517-JLT-HBK 12 Plaintiff, FINDINGS
AND RECOMMENDATIONS TO
GRANT PLAINTIFF’S MOTION FOR

13 v. DEFAULT JUDGMENT1

14 HARJIT SINGH, (Doc. No. 12)

15 Defendant. 14 DAY OBJECTION PERIOD

16 17 18 Pending before the Court is Plaintiff’s Motion for Default Judgment filed pursuant to 19
Federal Rule of Civil Procedure 55(b)(2) on May 9, 2025. (Doc. No. 12, “Motion”). Plaintiff 20
submits declarations with exhibits in support of its Motion. (Doc. Nos. 13, 14). Defendant has 21
not answered or responded to the Complaint, nor has Defendant filed any opposition or taken any
22 action in this case. Having considered the moving papers, declarations, attached exhibits, and
23 applicable law, the undersigned recommends that the district court grant Plaintiff’s Motion for
24 Default Judgment. 25 //// 26 27 1 This Motion was referred to the undersigned pursuant to 28
U.S.C. § 636(b)(1)(B) and Local Rule 302(c)(19) (E.D. Cal. 2019). The Court previously found
the Motion suitable for decision without 28 argument. (Doc. No. 16).

1 I. BACKGROUND

2 On December 12, 2024, Plaintiff BMO Bank, f/k/a BMO Harris Bank N.A. (“BMO”) 3 filed a
complaint against Defendant Harjit Singh, an individual resident and citizen of California. 4
 (“Singh”). (Doc. No. 1, “Complaint”). Plaintiff is a national association with its main office 5
located in Chicago, Illinois, and was in the business of providing financing to persons or entities 6
engaged in commercial trucking operations. (Id., ¶¶ 4,7). Defendant Singh operates his own 7
trucking company and is a citizen of California who resides in Fresno, California. (Id., ¶¶ 5, 6). 8
The Complaint alleges breach of contract claims against Singh, and seeks monetary damages, 9
specific performance, and injunctive relief. (Id. at 5-9). The Complaint alleges the following 10
facts. 11 Plaintiff and Defendant Singh entered into two Loan and Security Agreements 12

(collectively referred to as “Agreements”), whereby Plaintiff agreed to finance on behalf of Defendant the purchase vehicles (collectively referred to as “Vehicles”) for use in Defendant’s business. (Id. at 2-3). Copies of the Loan and Security Agreements are attached to and incorporated into the Complaint as Exhibit 1 and 2, respectively. (Id. at 11-22). As consideration, Defendant granted Plaintiff a first-priority security interest in the vehicle. (Id., ¶¶ 11, 12). Plaintiff perfected its security interest in the vehicle by recording its lien on the Certificates of Title. (Id., ¶13, Exhibit 3 at 24-25). 19 A. Loan Agreement and the Security Interests 20 1. Agreement 2001 21 Loan and Security Agreement 2001 (“Agreement 2001”) was executed on or about

22 August 6, 2021. (Id., ¶ 8). The Agreement provided for the purchase of a 2022 Utility 23 Refrigerated Vans 53’ With 2022 Thermo King S600, Vehicle ID No. 3UTVS253XN8706203 24 (the “2001 Vehicle”), in the amount of \$94,139.40, including interest, pursuant to specified terms 25 and conditions. (Id., ¶¶ 8, 11). A copy of Agreement 2001 is attached to the Complaint as 26 Exhibit 1. (Id. at 11-15).

27 2. Agreement 5001 28 Loan and Security Agreement 5001 (“Agreement 5001”) was executed on or about June 1 21, 2022. (Id., ¶ 9). The Agreement provided for the purchase of a 2023 Utility Refrigerated

2 Vans 53’ With 2022 Thermo King S600, Vehicle ID No. 1UYVS2532P2768318 (the “5001 3 Vehicle”), in the amount of \$126,148.80, including interest, pursuant to specified terms and 4 conditions. (Id., ¶¶ 9, 11). A copy of Agreement 5001 is attached to the Complaint as Exhibit 2. 5 (Id. at 17-22). 6 B. Default and Calculation of Judgment 7 Plaintiff alleges Defendant is in default on the Agreements for his failure to pay the 8 amounts due, beginning with the payments due under Agreement 2001 on July 1, 2024, the 9 payment due under Agreement 5001 on July 6, 2024, and all payments due thereafter. (Id., ¶ 15). 10 As a result of the default, Plaintiff has accelerated the amounts due consistent with the terms of 11 the Agreements. (Id., ¶ 16). 12 In its current Motion, Plaintiff asserts the following amounts on the Agreements are due, 13 which includes principal plus interest, repossession charges, and other fees: 14 1. Agreement 2001 15 1. Principal: \$38,553.66 16 2. Interest and Fees: \$4,905.65 (calculated through April 22, 2025), plus 17 \$19.28 per day thereafter 18 3. Total: \$43,459.31 19 2. Agreement 5001 20 1. Principal: \$62,732.59 21 2. Interest and Fees: \$8,906.47 (calculated through April 22, 2025), plus 22 \$31.37 per day thereafter 23 3. Total: \$71,639.06 24 (Doc. No. 12 at 7-8). 25 In support, Plaintiff points to the Agreements, which provide that Defendant must pay all 26 expenses resulting from retaking, holding, preparing for sale, and selling the Vehicle upon 27 default. (Doc. No. 1, ¶ 22). Additionally, Defendant is obligated to pay the attorney’s fees and 28 costs incurred by Plaintiff in the enforcement of its rights under the Agreement. (Id., ¶ 23). 1 Plaintiff noticed Defendant of his defaults and of Plaintiff’s election to accelerate the loans 2 evidenced by the Agreements by letter dated November 27, 2024. (Id., ¶ 24, Exhibit 4). Plaintiff 3 demanded Defendant pay the amounts due and surrender the subject Vehicle. (Id.). Defendant 4 did not pay the amounts due and owing under

the Agreements, and Plaintiff has been unable to 5 recover possession of the Vehicles. (Id., ¶¶ 25, 27). Upon repossession, Plaintiff intends to resell 6 the subject Vehicle in a commercially reasonable manner and the money judgment entered herein 7 will be credited with the net sales proceeds. (Doc. No. 12 at 12). 8 Plaintiff served Defendant Singh with Plaintiff's Complaint on March 10, 2025. (Doc.

9 No. 9). After Defendant failed to appear or answer, Plaintiff requested and obtained a clerk's 10 entry of default under Federal Rule of Civil Procedure 55(a) on April 18, 2025. (Doc. Nos. 10, 11 11). On May 9, 2025, Plaintiff moved for default judgment on its breach of contract claim in the 12 amount of \$120,453.55 which includes \$4,550.00 in attorneys' fees, \$805.18 in costs, and 13 immediate possession of the Vehicles. (Id. at 5-6). (Doc. No. 12 at 6).

14 II. APPLICABLE LAW

15 Federal Rule of Civil Procedure 55(b)(2) allows the court to enter judgment against a 16 party following the clerk of court's entry of default under 55(a). The court cannot enter default 17 judgment if the defendants were not properly served. *Mason v. Genisco Tech. Corp.*, 960 F.2d 18 849, 851 (9th Cir. 1992). If the court determines service was proper, the court must undertake an 19 analysis applying the "Eitel" factors enumerated in *Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th

20 Cir. 1986) before entering a default judgment. Specifically, the court considers the following 21 factors: (1) the potential prejudice to the plaintiff, (2) the underlying claim's merits and 22 sufficiency, (3) the amount of money at stake, (4) the possibility of a factual dispute, (5) whether 23 the default resulted from excusable neglect, and (6) the court's overriding preference to issue 24 decisions on the merits. (Id.). 25 After the clerk enters a default, the court shall accept "as true all factual allegations in the 26 complaint, except those as to the amount of damages." *Yoon Chul Yoo v. Arnold*, 615 F. App'x. 27 868, 870 (9th Cir. 2015); Fed. R. Civ. P. 8(b)(6). Allegations about "the amount of damages must 28 be proven." *Strojnuk v. JW World Enterprises, Inc.* Best W. Bakersfield N., 2021 WL 22137, at *1 1 (E.D. Cal. Jan. 4, 2021). The court also does not accept facts that are not well pled or statements 2 that constitute conclusions of law. *Wecosign, Inc. v. IFG Holdings, Inc.*, 845 F. Supp. 2d 1072, 3 1078 (C.D. Cal. 2012). Ultimately, the decision of whether to grant a default judgment lies 4 within the discretion of the court. *Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980).

5 III. ANALYSIS

6 A. Jurisdiction 7 The Complaint invoked this Court's jurisdiction under 28 U.S.C. § 1132(a). (Doc. No. 1, 8 ¶ 1). Federal courts are courts of limited jurisdiction. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 9 511 U.S. 375, 377 (1994). A district court has diversity jurisdiction "where the matter in 10 controversy exceeds the sum or value of \$75,000, . . . and is between citizens of different States . . . 11 ." 28 U.S.C. § 1332(a)(1). The amount in controversy "encompasses all relief a court may grant . 12 . . if the plaintiff is victorious." *Chavez v. JPMorgan Chase & Co.*, 888 F.3d 413, 414-15 (9th

13 Cir. 2018). Additionally, it represents “the maximum recovery the plaintiff could reasonably
14 recover.” *Arias v. Residence Inn by Marriott*, 936 F.3d 920, 927 (9th Cir. 2019). The amount in
15 controversy is calculated based on the well-pleaded allegations in the complaint. See *Chavez*,
888 16 F.3d at 416. Here, the amount in controversy is satisfied as the Complaint seeks monetary
17 damages of \$101,286.25 in principal alone. (Doc. No. 12 at 12). 18 Regarding the diversity
prong, national banking associations are “deemed citizens of the 19 States in which they are
respectively located.” 28 U.S.C. § 1348. For purposes of diversity, a 20 bank is “located” in the
state designated in its articles of association as its main office. See 21 *Wachovia Bank v. Schmidt*,
546 U.S. 303, 318 (2006). Under § 134, a national banking 22 association is a citizen only of the
state in which its main office is located. See *Rouse v. 23 Wachovia Mortg., FSB*, 747 F.3d 707,
709 (9th Cir. 2014). Plaintiff states its main office in the 24 articles of association is in Chicago,
Illinois. (Doc. No. 1, ¶ 4). Therefore, for purposes of 25 diversity jurisdiction, Plaintiff is located
in Illinois and is a citizen of Illinois. See *Wachovia 26 Bank*, 546 U.S. at 318. 27 Corporations are
deemed to be citizens of the state by which it has been incorporated and 28 of the State where it
has its principal place of business. *Okamoto v. Bank W. Corp.*, 115 F. App'x 1 410, 410 (9th Cir.
2004). Individuals are deemed to be citizens of the state in which they are 2 domiciled. See *Kanter*
v. Warner-Lambert Co., 265 F.3d 853, 857 (9th Cir. 2001). According to 3 the Complaint,
Defendant Singh “is a citizen of the state of California residing at 3661 W. Shields 4 Avenue #202,
Fresno, California 93722.” (Doc. No. 1, ¶ 5). 5 The Court finds Plaintiff has established that the
amount in controversy exceeds the 6 \$75,000 threshold as well as complete diversity between the
parties named in the lawsuit to 7 satisfy that this Court that has subject matter jurisdiction pursuant
to 28 U.S.C. § 1332. 8 Additionally, the Court has personal and general jurisdiction over
Defendant Singh as he 9 is domiciled in Fresno, California. *Goodyear Dunlop Tires Operations*,
S.A. v. Brown, 564 U.S. 10 915, 924 (2011) (“For an individual, the paradigm forum for the
exercise of general jurisdiction is 11 the individual’s domestic domicile[.]”). 12 B. Defendant Was
Properly Served with Process 13 Federal Rule of Civil Procedure 4 sets forth the requirements for
service within a judicial 14 district of the United States. Service is effectuated under Federal Rule
of Civil Procedure 4(e) by 15 “following state law for serving a summons . . . in the state where
the district court is located or 16 where service is made,” or by “delivering a copy of [the
summons and complaint] to an agent 17 authorized by appointment or by law to receive service of
process.” Fed. R. Civ. P. 4(e)(1)-(2). 18 Under California law, service of the summons and
complaint is permitted by either personal 19 service or by leaving the papers with a “competent
member of the household or a person 20 apparently in charge of his or her office [or] place of
business,” among other methods. Cal. Code 21 Civ. P. § 415.10-20. All methods require that the
service be handled by an individual who is not 22 a party to the action. (*Id.*). 23 Here, the record
reflects on March 10, 2025, a registered process server left the summons 24 and complaint at 3661
W. Shields Avenue #202, Fresno, California 93722 with a co-occupant 25 named Ajit Singh, at
least 18 years of age, who was informed of the contents thereof. (Doc. No. 26 9). On March 12,

2025, a copy of the summons and complaint were also mailed through the United States Postal Service via First-Class, postage prepaid to Defendant at the same address. 28 (Id. at 6). 1 Accordingly, the Court finds that Plaintiff have complied with Rule 4. After Defendant 2 failed to file a response to the Complaint, Plaintiff moved for and was granted a clerk's entry of 3 default on April 18, 2025 against Defendant. (Doc. No. 11). 4 C. Application of the Six Eitel Factors 5 1. Prejudice to Plaintiff 6 The Court first considers whether Plaintiff will suffer prejudice if a default judgment is 7 not entered. See *PepsiCo, Inc. v. Cal. Sec. Cans*, 238 F. Supp. 2d 1172, at 1177 (C.D. Cal. 2002). 8 When a defendant neglects to respond to a complaint, a plaintiff lacks means to recover beyond a 9 default judgment. *True Religion Apparel, Inc. v. Jet* 2A, 2009 WL 10671791, at *3 (C.D. Cal.

10 Feb. 11, 2009). Here, the Court finds Plaintiff would be prejudiced if default judgment was not 11 granted because, absent entry of a default judgment, Plaintiff will be without recourse against 12 Defendant, given his unwillingness to participate in the action or pay the amounts due on the 13 contract. (Doc. No. 12 at 8). The "[p]otential prejudice to the plaintiff militates in favor of 14 granting default judgment." See *Vogel v. Rite Aid Corp.*, 992 F. Supp. 2d 998, 1007 (C.D. Cal. 15 2014). The first Eitel factor therefore weighs in favor of default judgment. 16 2. The Underlying Claim's Merits and Sufficiency 17 The court next weighs the merits and sufficiency of Plaintiff's Complaint. Default 18 judgment will only be granted if Plaintiff's Complaint states a claim that supports the desired 19 relief. *Wells Fargo Equip. Fin., Inc. v. Virk Sys., Inc.*, 2021 WL 347408, at *2 (E.D. Cal. Feb. 2, 20 2021). Plaintiff asserts a breach of contract action as its claim for relief. (See generally Doc. No. 21 1). Under California law, to prevail on a breach of contract claim, a plaintiff must show: (1) the 22 existence of a contract; (2) performance by the plaintiff; (3) a breach by the defendant; and (4) 23 damages. See *Careau & Co. v. Sec. Pac. Bus. Credit, Inc.*, 222 Cal. App. 3d 1371, 1399 (1990). 24 The Court finds Plaintiff has established each of these elements. Plaintiff entered into 25 Loan and Security Agreements with Defendant Singh. (Doc. No. 1, ¶¶ 8, 9). Plaintiff fully 26 performed its obligations under the Agreements by financing Defendant's purchase of the subject 27 Vehicles. (Id., ¶ 29). Titles for each of the two vehicles are appended to the Complaint and 28 reflect the "Owner" as Defendant Singh and the "Lienholder" as Plaintiff. (Doc. No. 1 at 24-25,

1 Exhibit 3). Defendant breached the terms of the Agreements by defaulting on their payments. 2 (Id., ¶¶ 14, 15). Plaintiff's prayer for relief also sets forth its claim for contractual monetary 3 damages, including attorney's fees, interest, and costs. (Id., ¶¶ 55, 56). Thus, the second and 4 third Eitel factors support entry of default judgment. 5 3. The Amount of Money at Stake 6 Plaintiff seeks a default judgment of \$120,453.55, which includes \$4,550.00 in attorney's 7 fees and \$805.18 in costs. (Doc. No. 12 at 12). Default judgment is "is disfavored where large 8 amounts of money are involved." *Christofferson v. All Pure Pool Serv. Of Cent. California, Inc.*, 9 2020 WL 3249323, at *19 (E.D. Cal. June 16, 2020), report and recommendation adopted sub 10 nom; *Christofferson, v. All Pure Pool Serv. Of Cent. California, Inc.*, WL 3819413 (E.D. Cal. July

11 8, 2020). 12 The bulk of Plaintiff's contractual damages consists of the principal amounts due from the 13 purchase price of the Vehicles, \$101,286.25. (Doc. No. 12 at 12). As discussed more fully 14 below, Plaintiff submits evidence in support of its damages claim. The Court does not find this 15 amount to be excessive as it is based upon Defendant's obligations under the terms of the 16 Agreements. As such, the Court finds the fourth Eitel factor weighs in favor of granting default 17 judgment. 18 4. The Possibility of a Factual Dispute 19 The Clerk of Court's entry of default requires the Court to accept Plaintiff's well-pled 20 factual allegations as true. Despite being properly served, Defendant did not appear, answer, or 21 otherwise respond. Thus, the only facts before the court are those presented by Plaintiff in the 22 Complaint, which are well-pled and must be accepted as true. There is accordingly no factual 23 dispute. *United Specialty Insurance Co. v. Saleh*, 2016 WL 4434479, at *2 (E.D. Cal. Aug. 22, 24 2016). Thus, the fourth Eitel factor does not preclude entry of a default judgment. 25 5. Whether the Default Resulted from Excusable Neglect 26 Defendant was properly served yet has not appeared since service was effectuated. When 27 service is proper it suggests there was not excusable neglect. *USA Truck, Inc. v. Jugan Express* 28 Inc., 2020 WL 2128387, at *2 (E.D. Cal. May 5, 2020), report and recommendation adopted, 1 2020 WL 3451580 (E.D. Cal. June 24, 2020). The Court therefore finds this fifth Eitel factor 2 weighs in favor of default judgment. 3 6. The Court's Overriding Preference to Issue Decisions on the Merits 4 Eitel emphasizes the general rule is that "[c]ases should be decided upon their merits 5 whenever reasonably possible." 782 F.2d at 1472. However, the policy favoring decisions on the 6 merit does not preclude entering default judgment when a defendant fails to appear because a 7 decision on the merits is not possible. *Arroyo*, 2019 WL 4877573, at *11 (E.D. Cal. Oct. 3, 8 2019). Therefore, the Court finds the sixth Eitel factor does onto preclude entry of default 9 judgment. 10 In summary, the Court finds each of the above Eitel factors weigh in favor of default 11 judgment and recommends default judgment be entered in favor of Plaintiff. Having 12 recommended default, the Court now turns the appropriate measure of damages. 13 D. Relief Requested 14 1. Contractual Damages 15 The Agreements provide that in the event of default, all indebtedness becomes 16 immediately due and payable. (Doc. No. 13, Exhibit 1, ¶ 5.2, Exhibit 2, ¶ 5.2). Further, Plaintiff 17 is entitled to take possession of and dispose of the equipment and to have the debtor pay all 18 interest and expenses incurred, including reasonable attorney's fees associated with the 19 repossession and disposition. (*Id.*, ¶¶ 5.2, 5.3). According to the date of default under the 20 Agreements, the total principal amount due and owing after acceleration is \$101,286.25. (Doc.

21 No. 12 at 12). Calculated from the respective date of default, the total amount of accrued and 22 unpaid interest, late charges, and other fees due and owing under the Agreements is an amount 23 totaling not less than \$13,812.12. (*Id.*). Additionally, Plaintiff is entitled to daily interest under 24 the Agreements until the date when final judgment is entered. (*Id.* at 5-6). Finally, under the 25 Agreements, upon default, Defendant is obligated to pay all expense of retaking, holding, 26 preparing for sale, and selling the Vehicles. (*Id.* at 7, ¶ 15). Calculated as of April 22, 2025, the 27

amount due and owing under the Agreements, not including attorney's fees and costs for this 28 Motion, is an amount not less than \$115,098.37. (Id. at 8, ¶ 2). These requested amounts are 1 supported by declaration. (Doc. No. 13). The Agreements and declaration constitute sufficient 2 proof that Plaintiff has sustained damages for the breaches under the Agreements and Defendant 3 has not appeared to oppose the request. The undersigned accordingly recommends judgment in 4 the amount \$115,098.37, plus post-judgment interest against Defendant. 5 2. Attorney's Fees and Costs 6 Plaintiff also seeks \$4,550.00 in attorney's fees and \$805.18 in costs under the 7 Agreements for bringing this Motion. (Doc. No. 12 at 6-7). "A federal court sitting in diversity 8 applies the law of the forum state regarding an award of attorney's fees." *Kona Enters., Inc. v. Estate of Bishop*, 229 F.3d 877, 883 (9th Cir. 2000). California law recognizes contractual 10 provisions allowing the collection of reasonable attorney's fees. Cal. Civ. Proc. Code § 1021 11 ("Except as attorney's fees are specifically provided for by statute, the measure and mode of 12 compensation of attorneys and counselors at law is left to the agreement, express or implied, of 13 the parties; but parties to actions or proceedings are entitled to their costs, as hereinafter 14 provided."); *Gil v. Mansano*, 121 Cal. App. 4th 739, 742-43 (2004). Under the Agreements, 15 Defendant is obligated to pay the attorney's fees and costs incurred by Plaintiff in the 16 enforcement of its rights, including expenses of filing and prosecuting this action. (Doc. No. 12 17 at 8, ¶ 7; Doc. No. 13, Exhibit 1, ¶ 5.2). Thus, Plaintiff is therefore entitled to recovery of its 18 attorney's fees and costs. 19 To determine a reasonable attorney's fee, or "lodestar," the starting point is the number of 20 hours reasonably expended multiplied by a reasonable hourly rate. See *Hensley v. Eckerhart*, 461 21 U.S. 424, 433 (1983). The undersigned, in considering what constitutes a reasonable hourly rate, 22 looks to the prevailing market rate in the relevant community. *Blum v. Stenson*, 465 U.S. 886, 23 895 (1984). The "relevant community" for the purposes of the lodestar calculation is generally 24 the forum in which the district court sits. *Gonzalez v. City of Maywood*, 729 F.3d 1196, 1205 (9th 25 Cir. 2013).

26 The relevant community here is the Fresno Division of the Eastern District of California. 27 "In the Fresno Division of the Eastern District of California, across a variety of types of litigation 28 generally, attorneys with experience of twenty or more years of experience are awarded \$325.00 1 to \$400.00 per hour, attorneys with ten to twenty years of experience are awarded \$250.00 to 2 \$350.00 per hour, attorneys with five to ten years of experience are awarded \$225.00 to \$300.00 3 per hour, and less than \$200.00 per hour for attorneys with less than five years of experience." 4 *Beard v. Cty. of Stanislaus*, No. 1:21-cv-00841-ADA-SAB, 2023 WL 199200, at *13 (E.D. Cal. 5 Jan. 17, 2023) (collecting cases).

6 Plaintiff attaches the declaration of Attorney Ken I. Ito in support of their request for 7 attorney fees and costs. (Doc. No. 14). Attorney Ito is an associate at the law offices of Hemar, 8 Rousso & Heald, LLP ("HRH"), who is counsel of record for Plaintiff. (Id., ¶1). Attorney Ito has 9 more than 13 years of professional experience, specializes in creditor rights and business and 10 commercial

litigation, and has been admitted to practice in California since 2011. (Id., ¶ 9). 11 Based on Attorney Ito's experience, the Court finds a rate of \$325.00 per hour to be reasonable 12 for his services. 13 According to the declaration of Attorney Ito and the corresponding invoices for legal 14 services, Attorney Ito expended a total of 11 hours of work and billed the Plaintiff \$3,575.00 for 15 attorney fees in relation to this matter through April 24, 2025. (Doc. No. 14 at 5-10). The Court 16 finds the amount of time billed to be reasonable and not excessive. Further, the Court finds the 17 tasks billed by Attorney Ito as identified on the invoices to be tasks properly performed by an 18 attorney. 19 In addition to the hours billed, Attorney Ito declares that "to complete this Motion for 20 Default Judgement, assuming there will be no requirement to appear at the Motion for Default 21 Judgement, it is anticipated and expected that it will take at least 3 hours at a rate of \$325.00, for 22 a total of \$975.00." (Id., ¶ 7). However, there is no evidence to support this estimate; thus, as 23 previously explained by the Court, "[t]he Court declines to speculate as to time related to this 24 motion simply because Plaintiff elected not to submit billing records through the motion's filing 25 date []. Instead, the fee award is limited to the established and documented time." BMO Harris 26 Bank, N.A. v. Chahal Roadlines, Inc. et. al., 2024 WL 5195924, at *2 (E.D. Cal. Dec. 23, 2024); 27 see also Sayta v. Martin, 2018 WL 4373034, at *5 ("The court will not award attorney's fees 28 1 based on forward-looking estimates that may or may not have turned out to be accurate."). 2 2 Based on the foregoing, the undersigned finds the amount of \$3,575.00 for 11 hours of 3 work by Attorney Ito at a rate of \$325.00 per hour to be reasonable. In addition to attorney's fees, 4 Plaintiff seeks the recovery of court costs in the amount of \$805.18, which consists of the costs 5 for the Court filing fee and service of process. (Doc. No. 14, ¶ 10). The undersigned finds these 6 costs reasonable. 7 Accordingly, it is ORDERED: 8 1. Plaintiff shall mail a copy of these Findings and Recommendations to Defendant at 9 each of their last known addresses and file proof of service within fourteen (14) 10 business days of the date of these Findings and Recommendations. 11 It is further RECOMMENDED: 12 1. Plaintiff's motion for default judgment (Doc. No. 12) be GRANTED as set forth 13 herein: 14 a. Judgment be entered in favor of Plaintiff BMO Bank, N.A. against Defendant 15 Harjit Singh. 16 b. Plaintiff be awarded \$115,098.37 in monetary damages. 17 c. Plaintiff be awarded interest at the contracted rates of the Agreements: \$19.28 18 per day for each day after April 22, 2025 for Agreement 2001, and \$31.37 per 19 day for each day after April 22, 2025 for Agreement 5001, until the entry of 20 final judgment: 21 d. Plaintiff be awarded \$3,575.00 in attorney's fees and \$805.18 in costs. 22 2. Plaintiff be awarded possession of the following unrecovered Vehicles, and Defendant 23 be directed to return and/or permit Plaintiff to take possession of the subject Vehicles: 24 a 2022 Utility Refrigerated Vans 53' With 2022 Thermo King S600, Vehicle ID No. 25 3UTVS253XN8706203, and a 2023 Utility Refrigerated Vans 53' With 2022 Thermo 26 King S600, Vehicle ID No. 1UYVS2532P2768318. 27 2 To the extent Plaintiff seeks attorney fees in connection with the instant motion, Plaintiff must attach 28 billing records to reflect the amount time incurred in connection with the instant motion. 1 3. Upon sale of the above identified Vehicle

in a commercially reasonable manner, the 2 money judgment entered herein be credited with the net sales proceeds. 3 4. The Clerk be directed to CLOSE this case.

4 NOTICE TO PARTIES

5 These Findings and Recommendations will be submitted to the United States District 6 | Judge assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(). Within 14 days 7 | after being served with a copy of these Findings and Recommendations, a party may file written 8 | objections with the Court. /d.; Local Rule 304(b). The document should be captioned, 9 | “Objections to Magistrate Judge’s Findings and Recommendations” and shall not exceed fifteen 10 | (15) pages. The Court will not consider exhibits attached to the Objections. To the extent a party 11 | wishes to refer to any exhibit(s), the party should reference the exhibit in the record by its 12 | CM/ECF document and page number, when possible, or otherwise reference the exhibit with 13 || specificity. Any pages filed in excess of the fifteen (15) page limitation may be disregarded by 14 | the District Judge when reviewing these Findings and Recommendations under 28 U.S.C. § 15 | 636(b)d)(C). A party’s failure to file any objections within the specified time may result in the 16 | waiver of certain rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014). 17 | Dated: _ June 13, 2025 Mihaw. fares Zackte

19 HELENA M. BARCH-KUCHTA

UNITED STATES MAGISTRATE JUDGE

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