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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

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BMO HARRIS BANK N.A., a nation banking  
association,

Plaintiff,

v.

AMERICAN ROAD TRANSPORT LLC  
F/K/A JLOZANO TRUKING, LLC, a Utah  
limited liability company, and JENNY  
LOZANO, an individual resident and citizen  
of Utah,

Defendants.

**MEMORANDUM DECISION AND  
ORDER GRANTING MOTION FOR  
DEFAULT JUDGMENT AND FINDINGS  
AND CONCLUSIONS OF LAW**

Case No. 2:16-cv-1217-DN

District Judge David Nuffer

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Plaintiff BMO Harris Bank N.A. (BMO) filed the Motion for Default Judgment (Motion).<sup>1</sup> After reviewing the Motion and the accompanying affidavits this order GRANTS the Motion and makes the following findings:

1. On December 2, 2016, BMO filed the Verified Complaint.<sup>2</sup>
2. On December 6, 2016, the Complaint was served on all defendants.<sup>3</sup>
3. For failure to appear or otherwise defend within the time allowed by the law, a default certificate was entered.<sup>4</sup>
4. On May 12, 2017, BMO filed this Motion.<sup>5</sup>

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<sup>1</sup> [Docket no. 12](#), filed May 12, 2017.

<sup>2</sup> [Docket no. 2](#), filed December 2, 2016.

<sup>3</sup> Proof of Service under URCP 4, [docket no. 7](#) and [docket no. 8](#), entered December 9, 2016.

<sup>4</sup> Default Certificate, [docket no. 11](#), March 27, 2017.

<sup>5</sup> [Docket no. 12](#), filed May 12, 2017.

5. Upon default, the defendants are “taken to have conceded the truth of the factual allegations in the complaint as establishing the grounds for liability as to which damages will be calculated.”<sup>6</sup>

6. “If defendant does not contest the amount prayed for in the complaint by failing to answer and the claim is for a sum certain or a sum that can be made certain by computation, the judgment generally will be entered for that amount without any further hearing.”<sup>7</sup>

7. Defendant American Road Transport LLC f/k/a JLozano Trucking, LLC, entered into the Loan and Security Agreement<sup>8</sup> with GE Capital Commercial Inc., BMO’s predecessor-in-interest.<sup>9</sup>

8. Under the Loan and Security Agreement, American Road Transport agreed to pay GE Capital Commercial \$163,874.88, including interest.<sup>10</sup>

9. Defendant Jenny Lozano is the guarantor of the loan.<sup>11</sup>

10. Jenny Lozano “guaranteed the full and timely performance of [American Road Transport] under all of its present and future liabilities.”<sup>12</sup>

11. American Road Transport “failed to make the May 1, 2016 payment due under the Agreement. [American Road Transport’s] defaults under the [Loan and Security Agreement] are continuing.”<sup>13</sup>

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<sup>6</sup> *Ortiz-Gonzalez v. Fonovisa*, 277 F.3d 59, 62–63 (1st Cir. 2002).

<sup>7</sup> *U.S. v. Craighead*, 176 Fed. Appx. 922 (10th Cir. 2006) (unpublished).

<sup>8</sup> Exhibit A to Complaint, [docket no. 2-2](#), filed December 2, 2016.

<sup>9</sup> Complaint ¶¶ 9–14.

<sup>10</sup> *Id.* ¶ 9.

<sup>11</sup> *Id.* ¶ 3.

<sup>12</sup> *Id.* ¶ 11; *see also* Continuing Guaranty, Exhibit C to Complaint, [docket no. 2-4](#), filed December 2, 2016.

<sup>13</sup> *Id.* ¶ 16.

12. “[A]s of the date of the default, the principal amount due and owing after acceleration totals not less than \$84,345.65.”<sup>14</sup>

13. Under the Loan and Security Agreement, American Road Transport “is obligated to pay interest on all unpaid amounts at the default interest rate of eighteen percent (18%) per annum or the maximum rate not prohibited by applicable law.”<sup>15</sup> Between the date of default, May 1, 2017, and May 1, 2017, \$15,392.05 default interest has accrued.<sup>16</sup>

14. Under the Loan and Security Agreement, American Road Transport “is obligated to pay late charges and other fees due under the Agreement.”<sup>17</sup> According to BMO, “late fees of \$1,479.40 remain due and owing under” the Loan and Security Agreement.<sup>18</sup>

15. Under the Loan and Security Agreement, American Road Transport “is obligated to pay all expenses of retaking, holding, preparing for sale, and selling the Collateral.”<sup>19</sup>

16. Under the Loan and Security Agreement, American Road Transport “is obligated to pay the attorneys’ fees and costs incurred by [BMO] in the enforcement of its rights thereunder, including this lawsuit.”<sup>20</sup> “[A]s of May 1, 2017, [BMO] has incurred legal fees and costs in the amount of \$7,495.00.”<sup>21</sup>

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<sup>14</sup> *Id.* ¶ 19.

<sup>15</sup> *Id.* ¶ 20.

<sup>16</sup> Affidavit of Tonya Hinton in Support of Plaintiff’s Motion for Default Judgment (Hinton Affidavit) ¶ 16, [docket no. 12-1](#), filed May 12, 2017.

<sup>17</sup> Complaint ¶ 21.

<sup>18</sup> Hinton Affidavit ¶ 18.

<sup>19</sup> Complaint ¶ 22.

<sup>20</sup> *Id.* ¶ 23.

<sup>21</sup> Motion ¶ 8; *see also* Declaration of Aaron B. Chapin in Support of Plaintiff’s Motion for Default Judgment, [docket no. 12-2](#), filed May 12, 2017.

17. Lozano is obligated as Guarantor to pay BMO all amounts due to BMO under the Loan and Security Agreement.<sup>22</sup>

18. As of May 1, 2017, “the amount due and owing under the [Loan and Security Agreement], not including attorney’s fees and expenses or costs of collection, is \$101,217.10.”<sup>23</sup>

19. The attorneys’ fees are reasonable as defined by *Dixie State Bank v. Bracken*.<sup>24</sup>

**ORDER**

IT IS HEREBY ORDERED that the Motion for Default Judgment<sup>25</sup> is GRANTED.

Because the defendants do not contest the amount and because the amount can be made certain by computation, the judgment is entered in the following amount without further hearing:

Judgment is entered in favor of BMO and against Defendants in the amount of \$108,712.10, (consisting of the principal amount of \$84,345.65, accrued interest and fees in the amount of \$16,871.45 as of May 1, 2017, and attorneys’ fees and expenses in the amount of \$7,495.00), plus interest thereon at the *per diem* rate of \$42.17 commencing as of May 1, 2017.

This action is now CLOSED.

Signed May 22, 2017.

BY THE COURT



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District Judge David Nuffer

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<sup>22</sup> *Id.* ¶ 25.

<sup>23</sup> Hinton Affidavit ¶ 22.

<sup>24</sup> 764 P.2d 985, 989–90 (Utah 1988).

<sup>25</sup> [Docket no. 12](#), filed May 12, 2017.