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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

TCF INVENTORY FINANCE, INC.,

Plaintiff,

v.

MARKER OIL COMPANY, INC. and  
BILLY LEON MARKER, JR.,

Defendants.

No. 2:17-cv-1768 JAM DB

ORDER

This action came before the court on November 17, 2017, for hearing of plaintiff’s motion to vacate the Clerks’ entry of default judgment and for entry of default judgment by the court. (ECF No. 26.) On behalf of the plaintiff, attorney Jeffrey Brown appeared in person and attorney William Bay appeared telephonically. Defendant Billy Leon Marker, Jr., appeared in person on his own behalf. No appearance was made on behalf of Marker Oil Company, Inc.

At the November 17, 2017 hearing, the parties stated that plaintiff’s counsel had been in communication with defendant Billy Marker, Jr., and with attorney Michael Sieving acting on behalf of defendant Billy Marker, Jr.<sup>1</sup> The most recent discussion occurred the prior day, on November 16, 2017, and the parties’ discussions included the satisfaction of at least some of

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<sup>1</sup> It is not clear if attorney Sieving was also acting on behalf of defendant Marker Oil Company, Inc. Attorney Sieving has not appeared in this action.

1 plaintiff's damages.

2 In this regard, it is unclear to the undersigned whether defendant Billy Marker Jr., having  
3 now appeared, intends to defend this action should the Clerk's entry of default judgment be  
4 vacated or reach a settlement with the plaintiff. See generally Wilson v. Moore & Associates,  
5 Inc., 564 F.2d 366, 368-69 (9th Cir. 1977) ("No party in default is entitled to 55(b)(2) notice  
6 unless he has 'appeared' in the action. The appearance need not necessarily be a formal one, i.e.,  
7 one involving a submission or presentation to the court. In limited situations, informal contacts  
8 between the parties have sufficed when the party in default has thereby demonstrated a clear  
9 purpose to defend the suit.").

10 Accordingly, upon consideration of the arguments on file and those made at the hearing,  
11 and for the reasons set forth on the record at that hearing, IT IS HEREBY ORDERED that:

12 1. Within twenty-one days of the November 17, 2017 hearing, defendant Billy Marker Jr.,  
13 shall file statement addressing whether he intends to defend this action if plaintiff's motion to  
14 vacate the Clerk's entry of default judgment is granted.<sup>2</sup>

15 2. Within twenty-eight days of the November 17, 2017 hearing, plaintiff shall file a  
16 statement addressing: (1) number and nature of the parties' communications since the November  
17 17, 2017 hearing; (2) whether plaintiff has received any compensation from either defendant  
18 since the filing of the motion for default judgment and, if so, the dates received and amount of the  
19 compensation; (3) whether plaintiff intends to proceed with the October 5, 2017 motion; (4) if  
20 plaintiff intends to proceed with the October 5, 2017 motion, does plaintiff need to vacate that  
21 motion and file a new motion reflecting any changed circumstances; and (5) under what authority  
22 is plaintiff's October 5, 2017 motion seeking prejudgment interest, attorney's fees, and costs.

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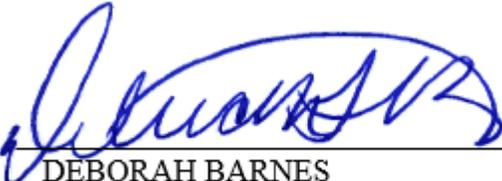
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28 <sup>2</sup> If defendant Billy Marker, Jr., is represented by counsel, counsel should file the response to this order.

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3. The Clerk of the Court shall enter the appearance of Billy Marker Jr., and serve a copy of this order on him at the following address, as provided by the defendant on the record:

205 N. Main Street  
Alturas, CA 96101  
(530) 233-4444  
(530) 933-8945

Dated: November 26, 2017



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DEBORAH BARNES  
UNITED STATES MAGISTRATE JUDGE

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