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**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

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12 **TCF INVENTORY FINANCE, INC.**

CASE NO. 2:17-cv-01768-JAM-DB

13 **Plaintiff,**14 **v.****ORDER GRANTING FINAL
DEFAULT JUDGMENT BY COURT
AGAINST DEFENDANTS
MARKER OIL COMPANY, INC.
AND BILLY LEON MARKER, JR.**15 **MARKER OIL COMPANY, INC.**16 **and**17 **BILLY LEON MARKER, JR.**18 **Defendants**

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This matter is before the Court on Plaintiff TCF Inventory Finance's Motion for Court's Entry of Final Default Judgment Against Defendants Marker Oil Company, Inc. and Billy Leon Marker (ECF No. 23) and Motion to Vacate Clerk's Entry of Non-Final Default Judgment and For Court's Entry of Final Default Judgment (ECF No. 26).

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On April 5, 2018, the magistrate judge filed findings and recommendations herein (ECF No. 46) which were served on the parties and which contained notice that any objections to the findings and recommendations were to be filed within fourteen days. Plaintiff filed its objections to the findings and recommendations on April 19, 2018 (ECF No.

1 54). Defendants filed their non-opposition to the findings and
2 recommendations on April 18, 2018 (ECF No. 53). Plaintiff filed a response
3 to Defendants' non-opposition on April 26, 2018 (ECF No. 57). Defendants
4 did not file a response to Plaintiff's objections. See E.D. Local Rule 304 (d).

5 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and
6 Local Rule 304, this Court has conducted a de novo review of these
7 motions. Having carefully reviewed the entire file, the Court finds that the
8 findings and recommendation to set aside the Clerk's Entry of Default (ECF
9 No. 22) are supported by the record and by proper analysis. The Court
10 further finds that the findings and recommendation to deny Plaintiff's Motion
11 for Default Judgment are not supported by the record and by proper
12 analysis.

13 Defendants, who have been represented by counsel since the outset
14 of the case, have failed to show good cause for setting aside their default as
15 required under Rule 55(c). Defendants have yet to present any specific
16 facts showing they have any meritorious defense to TCFIF's claims.
17 Further, Defendants have engaged in culpable misconduct. They have
18 repeatedly ignored deadlines imposed by the Federal Rules of Civil
19 Procedure and the Court for responding to TCFIF's complaint and its
20 motions for a temporary restraining order (TRO), preliminary injunction, and
21 writ of possession. As the Court recently found, Defendants knowingly
22 violated the Court's preliminary injunction and dissipated TCFIF's collateral.
23 Finally, TCFIF will be prejudiced if the default is set aside. This case has
24 been pending for nearly eight months. Setting aside the default would
25 significantly delay TCFIF's ability to obtain a final judgment establishing it as
26 the owner of the collateral and thereby subject TCFIF to the ongoing risk
27 that Defendants will continue to dissipate the collateral, as they have
28 previously done in violation of the Court's preliminary injunction. Moreover,

1 TCFIF has incurred attorney's fees and expenses to obtain the entry of
2 default and to pursue a final default judgment.

3 Accordingly, IT IS HEREBY ORDERED that:

4 1. The Clerk's Non-Final Default Judgment (ECF No. 22) is
5 vacated.

6 2. Judgment is entered in favor of Plaintiff TCF Inventory Finance,
7 Inc. and against Defendants Marker Oil Company, Inc. and Billy Leon
8 Marker, Jr., jointly and severally, in the amount of \$1,079,110.40.

9 3. Judgment is entered in favor of Plaintiff TCF Inventory Finance,
10 Inc. and against Defendant Marker Oil Company, Inc. requiring Marker Oil
11 Company, Inc. to deliver possession and awarding possession of all of the
12 following described property to TCF Inventory Finance, Inc.: (i) all inventory,
13 accounts, chattel paper, documents, instruments, promissory notes,
14 equipment, fixtures, contract rights, investment property, other goods,
15 general intangibles and payment intangibles (including without limitation and
16 whether or not included in the foregoing, seller credits, deposit accounts,
17 and certificates of deposit), (ii) any books and records (whether paper,
18 electronic, digitized or otherwise) which relate to the collateral, and any
19 computers, disks, tapes, media, websites, databases, electronic storage
20 devices and other devices upon which, or within which, such records may be
21 stored, (iii) all repossessions, returns, replacements, exchanges,
22 substitutions, parts, attachments, accessories and accessions to or of the
23 foregoing, and (iv) all products and proceeds in any form and wherever
24 located derived directly or indirectly from any dealing with any of the
25 foregoing including, without limitation, insurance proceeds and any other
26 payment representing indemnity or compensation for loss of or damage
27 thereto, all whether now or hereafter existing, owned, licensed, leased,
28 consigned, acquired or arising, and all proceeds of all the foregoing (the

1 “Collateral”), including specifically, the following inventory (the “Subject
 2 Property”):

3	Serial Number	Model	Invoice Number
4	3JBPEAR27GJ002169	0007FGA00	9013910519
5	3JBPDAR25GJ003307	0006UGA00	9013974315
6	YDV41356E616	00039GA00	9014362140
7	YDV02139F616	00033GA00	9014391072
8	YDV01853E616	00018GA00	9014506729
9	3JBUKAN27HK000001	0008FHE00	9014610472
10	3JBKKAP22HJ000367	0006EHA00	9014666054
11	3JBKBAP22HJ000014	0006HHA00	9014666054
12	3JBKKAN29HJ000191	0006DHB00	9014666054
13	3JBPEAR29HJ000229	0007FHA00	9014724724
14	YDV33206J617	00036HA00	9015010008
15	3JBLWAU26HJ000580	0004KHA00	9015212462
16	RFGUB2518HS022379	0003JHA00	9015212462
17	3JBLWAJ21HJ000300	0005EHA00	9015212462
18	3JBMWAX27HJ000457	0004FHC00	9015212462
19	3JBLKAJ21HJ000521	0002PHC00	9015212462
20	3JBRKAP28HJ000159	0001DHB00	9015212462
21	3JBVD AW29HK001406	0007SHF00	9015212461
22	3JBPDAR23HJ000178	0006UHC00	9015212461
23	3JBVGAW26HK000429	0007XHC00	9015212461
24	3JBLKAJ29HJ000640	0002PHE00	9015272016
25	3JBKKAP26HJ000842	0006BHC00	9015272017
26	3JBVD AW23HK001482	0007SHA00	9015272017
27	3JBKKAN24HJ000602	0006DHB00	9015332565
28	3JBUKAP28HK000036	0008CHG00	9015494390
	3JBKKAP20HJ001016	0006YHA00	9015494390
	3JBUGAR29HK001324	0008WHF00	9015598848
	3JBVD AW21HK002307	0007SHA00	9015598848
	3JBVGAW21HK000791	0007XHC00	9015598848
	3JBLGAR26HJ002948	0005AHA00	9015649641
	YDV06988J617	00044HA00	9015649639
	YDV09408A717	00026HA00	9015649639
	3JBKKAP24HJ001780	0006YHA00	9015649640
	3JBLGAR28HJ003115	0002WHA00	9015666835
	YDV70229B717	00064HB00	9015666834
	3JBUGAR25HK002194	0008WHJ00	9015775380

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Serial Number	Model	Invoice Number
5KTWS1314HF544146	000T5HD00	9015808516
5KTWS1316HF544147	000T5HD00	9015808516
5KTWS1418HF544150	000T5HT00	9015808516
5KTWS1310HF544158	000T7HD00	9015808516
5KTWS141XHF544151	000T5HT00	9015808516
3JBLKAJ28HJ001150	0002PHE00	9015822863
YDV73871C717	00065HA00	9015822862
YDV45570C717	00037HA00	9015822862
3JBUGAN27HK000050	0006WHC00	9015927599
3JBKGAN20HJ001070	0006THC00	9015927599
3JBUGAP22HK000017	0008BHE00	9015927599
3JBLGAT27HJ003373	0002THB00	9016254630
3JBLGAR23HJ005497	0005AHE00	9016254630
3JBLGAR27HJ004983	0005AHA00	9016254630
3JBLGAR20HJ005490	0005AHE00	9016254630
3JBLGAR27HJ004577	0005AHA00	9016254630
3JBVNAW21HK001168	0009NHD00	9016254631
3JBUGAR20HK002586	0008WHF00	9016254631
3JBUBAP25HK000012	0008LHE00	9016324767
4X4TSHT24HC003300	CSHT18SSMX	INV2534265
4X4TSHC2XHC003401	CSHT27FQGDX	INV2548904
4X4TSMY23HE021227	CSMT231BHXL	INV2573996
4X4TSMY27HE021229	CSMT231BHXL	INV2575371
4X4TSHW24HC003454	CSHT21FQMX	INV2566865
4X4TSMC26HC014114	CSMT27TDSS	INV2576040
4X4TSMW25HE021247	CSMT211SSXL	INV2579189
4X4TSMB28HE021331	CSMT261BHXL	INV2589631
4X4TSMC29HE021336	CSMT273QBXL	INV2589625
4X4TSMC20HE021337	CSMT273QBXL	INV2603423
4X4TSHZ20HC003530	CSHT24RQMX	INV2592601
4X4TSMZ20HE021507	CSMT241QBXL	INV2616757
4X4TSHW25HC003625	CSHT21RQMX	INV2619707
4X4TSHA22JC003885	CSHT25FQGMX	INV2653459
4X4TSMV27JE021824	CSMT202RDXL	INV2657459
4X4FSHD25JC003923	CSHF28FWGDX	INV2663408
4X4TSMU23JE021983	CSMT191SSXL	INV2664358
4X4TSMA20JE021976	CSMT254RLXL	INV2664357
4X4TSHD26JC003996	CSHT28KSGDX	INV2664335

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1 4. Any recovery of money from the recovery and sale of the
2 Collateral by TCF Inventory Finance, Inc. net of any expenses incurred shall
3 be credited toward the money judgment.

4 5. Defendant Marker Oil Company, Inc. and its officers, directors,
5 agents, representatives, and employees, Defendant Billy Leon Marker, Jr.,
6 and any others acting on their behalf, are hereby permanently enjoined from
7 doing the following:

8 A. Transferring any interest by sale, pledge, or grant of
9 security interest, or otherwise disposing of, transferring, or encumbering the
10 Subject Property;

11 B. Concealing, hiding, or otherwise removing the Subject
12 Property;

13 C. Impairing the value of any of the Subject Property; and

14 D. Removing the Subject Property from the principal place of
15 business of Borrower or otherwise outside of the jurisdiction of this Judicial
16 District; and

17 E. Disposing of the proceeds from the transfer of any interest
18 of the Subject Property that may have occurred prior to issuance of this
19 Order.

20 6. Defendant Marker Oil Company, Inc. and its officers, directors,
21 agents, representatives, and employees, Defendant Billy Leon Marker, Jr.,
22 and any others acting on their behalf, are required to do the following:

23 A. Return the Subject Property to the principal place of
24 business of Defendant Marker Oil Company, Inc. at 205 N. Main Street,
25 Alturas, California 96101 or such other location within the Judicial District
26 agreeable to the parties for delivery to TCFIF; and

27 B. Maintain the books and records of Defendants Marker Oil
28 Company, Inc. and provide TCFIF full access to such books and records.

1 Any bond(s) filed or posted by or on behalf of TCF Inventory Finance,
2 Inc. in connection with the prejudgment injunctive relief and prejudgment
3 order for possession in this case are hereby released.

4 Plaintiff's claim for attorneys fees and costs have not been included in
5 this final default judgment and will only be considered by this Court if
6 properly made in compliance with Local Rules 292 and 293 and the
7 applicable Federal Rules of Civil Procedure.

8 This Judgment of the Court resolves all matters before the Court in this
9 case and constitutes this Court's final judgment.

10 Dated: May 4, 2018

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13 JOHN A. MENDEZ,
14 UNITED STATES DISTRICT JUDGE
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