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United States District Court  
For the Northern District of California

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

Trustees of the Local 393 Pension Fund and  
the U.A. Local 393 Health and Welfare  
Trust Fund,

NO. C 10-01908 JW

**ORDER VACATING JUDGMENT;  
GRANTING NOTICE OF DISMISSAL**

Plaintiff,

v.

Performance Air Service, Inc.,


Defendant.

Presently before the Court is Plaintiff's Notice of Dismissal with Prejudice filed on February 7, 2011. (See Docket Item No. 19.) On December 15, 2010, Plaintiff filed a Motion for Default Judgment against Defendant. (See Docket Item No. 11.) On February 2, 2011, Judge Lloyd issued a Report and Recommendation Re: Motion for Default Judgment recommending that the Motion be granted in favor of Plaintiff and the case was reassigned to this Court for disposition. (See Docket Item Nos. 17, 18.) On February 7, 2011, with the Report and Recommendation still pending, Plaintiff filed a Notice of Dismissal. (Docket Item No. 19 at 1.) Plaintiff's Notice made no mention of the pending Report and Recommendation, Motion for Default Judgment or of any potential settlement between the parties. (Id.) On February 15, 2011, the Court adopted Judge Lloyd's Report and Recommendation, granted Plaintiff's Motion for Default Judgment, and entered Judgment for Plaintiff. (See Docket Item Nos. 20, 21.) The same day, Plaintiff's counsel contacted the Court to clarify that Plaintiff intended to have the case dismissed pursuant to the Notice of Dismissal, as the parties had settled following Plaintiff's filing of the Motion for Default Judgment.

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Upon review and in light of Plaintiff's clarification, the Court finds good cause to VACATE the February 15 Order and Judgment and GRANT Plaintiff's Notice of Dismissal.

Dated: February 16, 2011

  
\_\_\_\_\_  
JAMES WARE  
United States District Chief Judge

1 **THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:**

2 Mark Stephen Renner mrenner@wmprlaw.com

3 **Dated: February 16, 2011**

**Richard W. Wieking, Clerk**

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5 **By:           /s/ JW Chambers**  
6 **Elizabeth Garcia**  
7 **Courtroom Deputy**

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