

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

BMO HARRIS BANK N.A.,

Plaintiff,

v.

No. 16-cv-0760 MV/SMV

**ALFREDO OROZCO and
ALFREDOS TRUCKING & BACKHOE SERVICE, INC.,**

Defendants.

**MAGISTRATE JUDGE'S
PROPOSED FINDINGS AND RECOMMENDED DISPOSITION**

THIS MATTER is before the Court on Plaintiff's Motion for Default Judgment and its Memorandum of Law and Affidavits in Support [Docs. 13–17], filed on October 4, 2017. The Honorable Martha Vázquez, United States District Judge, entered default judgment on January 24, 2016. [Doc. 18]. Further, Judge Vázquez referred to me Plaintiff's request for certain relief resulting from entry of default judgment. [Doc. 19].

After entry of default, it remains for the court to consider whether the unchallenged facts constitute a legitimate basis for the entry of a judgment. *Purzel Video GmbH v. Martinez*, 13 F. Supp. 3d 1140, 1148 (D. Colo. 2014). Based on the facts alleged in Plaintiff's Complaint and Motion for Default Judgment (including its supporting memorandum and affidavits [Docs. 1, 13–17], I find that:

This Court has subject matter and personal jurisdiction over this case and the parties.

Default and default judgment have been entered against Defendants. [Docs. 9, 18].

I recommend that:

(1) Judgment be entered in favor of Plaintiff and against Orozco in the amount of \$41,835.06, plus reasonable attorneys' fees and costs in the amount of \$2,034.59,¹ for a total of \$43,869.65, plus interest at the per diem rate of \$19.97 from February 16, 2016, through the date of entry of this Order.

(2) Judgment be entered in favor of Plaintiff and against Alfredo's Trucking in the amount of \$266,303.76, plus reasonable attorneys' fees and costs in the amount of \$8,138.35,² for a total of \$274,442.11, plus interest at the per diem rate of \$116.75 from March 10, 2016, through the date of entry of this Order.

(3) An Order of Possession should be entered against Alfredo's Trucking as follows:

A. Plaintiff is entitled to the immediate possession of the following:

<u>Year/Make/Model</u>	<u>Description</u>	<u>VIN</u>
2012 Galyean 130BBL	Trailer	1G9VT4023CH018137
2012 Galyean 130BBL	Trailer	1G9VT4025CH018141
2012 Industries Met Gri SA DE CV Vacuum Tank	Trailer	3A9SV4022CM216117

(collectively, the "Alfredo's Trucking Equipment").

B. Upon receipt of this order, Alfredo's Trucking and its agents and employees, including Orozco, must immediately: (i) disclose the location of the Alfredo's Trucking Equipment to Plaintiff, and (ii) deliver the Alfredo's Trucking Equipment to Plaintiff.

¹ This amount represents twenty percent (20%) of the total amount of attorneys' fees due.

² This amount represents eighty percent (80%) of the total amount of attorneys' fees due.

C. Except as specifically set forth herein, Alfredo's Trucking is hereby enjoined and restrained from taking any action concerning the Alfredo's Trucking Equipment, including, without limitation, the sale, transfer, or other disposition of the Alfredo's Trucking Equipment. In addition, Alfredo's Trucking is hereby enjoined and restrained from taking any action that would interfere in any way with Plaintiff's seizure of the Alfredo's Trucking Equipment.

(4) An Order of Possession be entered against Orozco as follows:

A. Plaintiff is entitled to the immediate possession of the following:


<u>Year/Make/Model</u>	<u>Description</u>	<u>VIN</u>
2012 Galyean 130BBL	Trailer	1G9VT4023CH018140
2012 Galyean 130BBL	Trailer	1G9VT4024CH018299

(collectively, the "Orozco Equipment").

B. Upon receipt of this order, Orozco and his agents and employees shall immediately: (i) disclose the location of the Orozco Equipment to Plaintiff, and (ii) deliver the Orozco Equipment to Plaintiff.

C. Except as specifically set forth herein, Orozco is hereby enjoined and restrained from taking any action concerning the Orozco Equipment, including, without limitation, the sale, transfer, or other disposition of the Orozco Equipment. In addition, Orozco is hereby enjoined and restrained from taking any action that would interfere in any way with Plaintiff's seizure of the Orozco Equipment.

THE PARTIES ARE FURTHER NOTIFIED THAT WITHIN FOURTEEN DAYS OF SERVICE of a copy of these Proposed Findings and Recommended Disposition, they may file written objections with the Clerk of the District Court pursuant to 28 U.S.C. § 636(b)(1). **A party must file any written objections with the Clerk of the District Court within the 14-day period if that party wants to have appellate review of the proposed findings and recommended disposition. See D.N.M.LR-Civ. 10.1. If no objections are filed, no appellate review will be allowed.**



STEPHAN M. VIDMAR
United States Magistrate Judge