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SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION - BERGEN COUNTY  
DOCKET NO. BER-L-004671-22

JUSTIN ZIMMERMAN<sup>1</sup>, ACTING )  
COMMISSIONER OF THE )  
NEW JERSEY DEPARTMENT OF )  
BANKING & INSURANCE, )

Plaintiff, )

v. )

JACK DANIELS AUDI OF UPPER, )  
SADDLE RIVER, INC. d/b/a JD )  
KIA, MARIA VALLEJO-CARDENAS )  
and JOHN SWEENEY, )  
JR., )

Defendants. )

Civil Action

ORDER OF FINAL JUDGEMNT  
BY DEFAULT AS TO JOHN  
SWEENEY, JR. and MARIA  
VALLEJO-CARDENAS

THIS MATTER HAVING BEEN opened to the Court on the  
application of Matthew J. Platkin, Attorney General of New Jersey,  
(by Anna M. Lascurain, Deputy Attorney General, appearing),  
attorney for Plaintiff, Justin Zimmerman, Acting Commissioner of

<sup>1</sup> Pursuant to R. 4:34-4, the caption has been revised to reflect the current  
Acting Commissioner of the Department.

the New Jersey Department of Banking and Insurance on a motion for final judgment by default; and

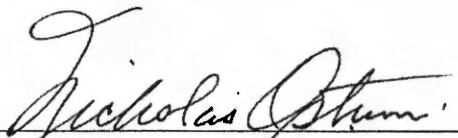
The Defendants, ~~John Sweeney, Jr.~~ ("Defendant Sweeney") and ~~Maria Vallejo-Cardenas~~ ("Defendant Vallejo") (~~collectively "Defendants"~~), having been duly served with a copy of the Summons and Complaint in the above-entitled action and having been defaulted for failure to appear, answer or otherwise defend;

This Court now finds that Defendants violated the New Jersey Insurance Fraud Prevention Act, N.J.S.A. 17:33A-1 to -30 ("Fraud Act") by knowingly submitting, conspiring to submit, or knowingly benefitting from the submission of material false and misleading statements to Government Employees Insurance Company (GEICO) on behalf of customers for the purpose of obtaining an automobile insurance policy, including but not limited to, false and misleading information concerning employment, education, driving history or marital status,

FINAL JUDGMENT is on this 11th day of October 2023, entered in the total amount of \$<sup>46,000</sup>~~182,000~~, which includes \$30,000 in attorneys' fees for which Defendants ~~are~~ jointly and severally liable pursuant to N.J.S.A. 17:33A-5(b), ~~\$135,000 in civil penalties for ten violations of the Fraud Act and \$1,000 surcharge for which Defendant Sweeney is individually liable pursuant to N.J.S.A. 17:33-5(b) and N.J.S.A. 17:33A-5.1 respectively, and \$15,000 in civil penalties for two violations of the Fraud Act and~~

\$1,000 surcharge for which Defendant Vallejo is individually liable pursuant to N.J.S.A. 17:33-5(b) and N.J.S.A. 17:33A-5.1 respectively.\*

IT IS FURTHER ORDERED that a copy of this Order be served upon all parties within 7 days of the date of receipt.

  
\_\_\_\_\_  
NICHOLAS OSTUNI, J.S.C.

This motion was:

      X       Opposed

                     Unopposed

\* Defendant Sweeney's cross-motion to vacate entry of default was granted by this Court. Therefore, plaintiff's motion for final default judgment against defendant Sweeney is moot. This motion for final default judgment is granted only against defendant Vallejo-Cardenas.

**CARIDE MARLENE v. JACK DANIELS AUDI, INC., MARIA VALLEJO-  
CARDENAS, and JOHN SWEENEY, JR.**

**DOCKET NO. BER-L-4671-22**

**RIDER TO ORDER DATED OCTOBER 11, 2023**

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Before this court is plaintiff's motion for final judgment by default, filed by Ms. Anna M. Lascurain, Esq. (representing plaintiff Justin Zimmerman, Acting Commissioner of the New Jersey Department of Banking and Insurance). Opposition to this motion was filed by Robert B. Spawn Jr., Esq. (representing Jack Daniels Audi, Inc., hereinafter "Jack Daniels"). Opposition to this motion and a cross-motion to vacate default and extend time to answer was filed by Mr. Louis D. Tambaro, Esq. (representing defendant John Sweeney, Jr., hereinafter "Sweeney").

**I. FACTUAL BACKGROUND**

This matter arises from allegedly false representations made by defendants to obtain insurance policies. The Commissioner of the New Jersey Department of Banking and Insurance filed this action on August 29, 2023, alleging violations of the New Jersey Fraud Act (hereinafter "Fraud Act"). Defendant Jack Daniels answered the complaint on November 23, 2022. Defendants Sweeney and Maria Vallejo-Cardenas (hereinafter, "Vaellejo-Cardenas") have not filed answers to date.

Defendant Sweeney filed a cross motion to vacate default and extend time to answer on September 28, 2023.

Discovery is scheduled to end on February 16, 2024.

## II. STANDARD OF REVIEW

### a. Final Judgment by Default

The Rules describe a two-step default process. A plaintiff must first file an entry of default pursuant to Rule 4:43-1, and then if granted, must file a final judgment by default under Rule 4:43-2. US Bank Nat. Ass'n v. Guillaume, 209 N.J. 449, 466-67 (2012).

A defendant is required to file an answer within thirty-five days after service of the complaint. Rule 4:6-1. "If a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules or court order, or if the answer has been stricken with prejudice, the clerk shall enter a default on the docket as to such party." R. 4:43-1. The request and affidavit for entry of default shall be within 6 months of the default, and the default shall not be entered notice of motion filed and served on the party in default. Id. Final judgment by default may be entered only after default has been entered, "but not simultaneously therewith." R. 4:43-2.

The Rules provide a court may adjudicate fewer than all claims as to all parties, in limited circumstances. R. 4:42-2(a). These include: “(1) upon a complete adjudication of a separate claim; or (2) upon complete adjudication of all the rights and liabilities asserted in the litigation as to any party; or (3) where a partial summary judgment or other order for payment of part of a claim is awarded.” Id.

b. Vacate Default Judgment

Rule 4:43-3 provides that:

A party’s motion for the vacation of an entry of default shall be accompanied by (1) either an answer to the complaint and Case Information Statement or a dispositive motion pursuant to Rule 4:6-2, and (2) the filing fee for an answer or dispositive motion, which shall be returned if the motion to vacate the entry of default is denied. For good cause shown, the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 4:50.

R. 4:43-3.

“A mere showing of good cause is required for setting aside an entry of default.” N.J. Mfrs. Ins. Co. v. Prestige Health, 406 N.J. Super. 354, 360 (App. Div. 2009). New Jersey caselaw has found this good cause standard to vacate an entry of default to require “the presence of a meritorious defense . . . and the absence of any contumacious conduct.” O’Connor v. Atlus, 67 N.J. 106, 129 (1975).

Motions to "vacate default[s] 'should be viewed with great liberality and every reasonable ground for indulgence is tolerated to the end that a just result is reached'" Hous. Auth. of Morristown v. Little, 135 N.J. 274, 283-84 (1994)N.J. Div. of Youth & Family Servs. v. P.W.R., 410 N.J. Super. 501, 508 (App. Div. 2009) (quoting Marder v. Realty Constr. Co., 84 N.J. Super. 313, 319 (App. Div. 1964)) and trial courts are vested with sound discretion to grant or deny such motions but should resolve all doubts in favor of a party seeking relief, Mancini v. EDS ex rel. N.J. Auto. Full Ins. Underwriting Ass'n, 132 N.J. 330, 334 (1993).

To obtain relief from a default judgment under Rule 4:50-1(a), a defendant must demonstrate both excusable neglect and a meritorious defense. Dynasty Bldg. Corp. v. Ackerman, 376 N.J. Super. 280, 285 (App. Div. 2005). "Excusable neglect' may be found when the default was 'attributable to an honest mistake that is compatible with due diligence or reasonable prudence.'" Mancini, 132 N.J. at 335. To determine if a defense is meritorious, courts "[m]ust examine defendant's proposed defense . . . ." Bank of N.J. v. Pulini, 194 N.J. Super. 163, 166 (App. Div. 1984).

c. Extend Time to Answer

Under Rule 4:22-1 and Rule 1:3-4 the court has the power to extend the time in which a party must answer requests for admission, and "that power should be exercised where the interests of justice require." Hungerford v. Greate Bay Casino

Corp., 213 N.J. Super. 398, 403 (App. Div. 1986). The court, in the interests of justice, may either extend the time of a party to respond, or may provide appropriate relief "by relaxing the rule in such manner as may appeal to the discretion of the trial court." Klimowich v. Klimowich, 86 N.J. Super. 449, 453 (App. Div. 1965). The Rules also permit the court to relax any rule if adherence would result in an injustice. R. 1:1-2.

### III. DECISION

#### a. Default Judgment Against Vallejo-Cardenas

Plaintiff argues final default judgment is proper against defendant Vallejo-Cardenas, as Vallejo-Cardenas failed to file an answer within the time required by Rule 4:6-1, and plaintiff has properly moved for final judgment by default under Rule 4:43-2. Defendant Jack Daniels argues default judgment is not proper against Vallejo-Cardenas, as adjudication of fewer than all claims is prohibited by Rule 4:42-2.

This Court finds plaintiff's argument with merit. Plaintiff received an entry of default against Vallejo-Cardenas on November 3, 2023, more than thirty-five days after plaintiff filed their complaint. Plaintiff then filed the instant motion on July 13, 2023, to which Vallejo-Cardenas has still not filed an answer, opposition to the motion, or any other form of correspondence.



A final judgment of default with respect to defendant Vallejo-Cardenas would also fall within the bounds of Rule 4:42-2. Under Rule 4:42-2, a trial court may direct the entry of final judgment upon fewer than all claims as to all parties upon a complete adjudication of a separate claim. Here, Vallejo-Cardenas failed to respond to the complaint, making default judgment warranted. With default judgment, all claims against Vallejo-Cardenas (and Vallejo-Cardenas only) are completely adjudicated. A default judgment is conclusive as an adjudication between the parties of whatever is essential to support the judgment. Texas Co. v. Di Gaetano, 71 N.J. Super. 413, 432-33 (App. Div. 1962). This complete adjudication allows this court to enter judgment on those claims, despite making up less than all of plaintiff's claims.

Therefore, plaintiff's motion for final default judgment against Vallejo-Cardenas is GRANTED.

b. Default Judgment Against Sweeney

Plaintiff argues final default judgment is proper against defendant Sweeney, as Sweeney failed to file an answer within the time required by Rule 4:6-1, and plaintiff has properly moved for default under Rule 4:43-1. Jack Daniels argued default judgment against Sweeney was improper, for the same reasons Jack Daniels argued it was improper for Vallejo-Cardenas. Sweeney filed a cross-motion to

vacate the entry of default, and has filed with this motion a certified copy of a proposed answer he plans to file. Plaintiff opposed this cross-motion, arguing Sweeney has provided no meritorious defense in his proposed answer.

This Court finds defendant Sweeney's argument to vacate the entry of default with merit, thus making plaintiff's motion for final default judgment against him moot. As final judgment by default has not been entered against Sweeney, this Court must apply the lighter standard of vacating an entry of default. As stated above, "a mere showing of good cause is required for setting aside an entry of default." Prestige Health, 406 N.J. Super. at 460. This Court finds the presence of a meritorious defense in examining Sweeney's proposed answer, as he has asserted nine affirmative defenses and did not admit any of the allegations against him. Further, this Court does not find evidence on the record of Sweeney engaging in "contumacious" behavior.

Therefore, defendant Sweeney's motion to vacate the entry of default is  
**GRANTED.**

Plaintiff's motion for entry of final judgment by default against Sweeney is  
moot.

c. Sweeney Cross-Motion to Extend Time to Answer

Plaintiff's motion to extend time to answer is GRANTED. Neither defendants nor plaintiff provided this Court any argument on the issue, but the Rules and caselaw provide this Court with broad discretion under Rule 4:22-1 and Rule 1:3-4 to grant such motions in the interest of justice. As this Court found it proper to vacate the entry of default against defendant Sweeney, this Court finds it proper, in the interest of justice, to permit Sweeney additional time to file his answer.

IV. CONCLUSION

For the reasons stated, plaintiff's motion to enter final judgment by default against defendant Vallejo-Cardenas is GRANTED.

Defendant Sweeney's motion to vacate entry of default against him and to extend time to answer is GRANTED.