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### **Admission Avoids Penalty**

It's a common settlement term. Defendant will pay an agreed sum under an installment plan on specified dates. If defendant defaults, a larger sum is due as a stipulated judgment, to incentivize the payments. But if this term is not drafted correctly, California courts may deem the larger sum triggered by default to be an unenforceable "penalty and forfeiture" because the sum "bears no reasonable relationship" to actual damages suffered as a result of delay.

*Creditors Adjustment Bureau, Inc. v. Imani* (2022) 82 Cal.App.5th 131 offers guidance on drafting an enforceable stipulated judgment. Imani was a commercial tenant who failed to pay rent. The landlord assigned the lease to Creditors, which filed a lawsuit to collect past and future rent. Through mitigation efforts, the landlord reduced its damages to \$257,546.17. The parties settled before trial, which they documented in a hand-written stipulation for entry of judgment that was signed by all parties and recited in open court.

The stipulation for entry of judgment required Imani to pay \$30,000 in 24 consecutive monthly payments. An uncured default allowed Creditors to "declare the then entire balance due and payable" and meant "judgment shall be immediately entered in the sum of \$251,200.13" plus attorney's fees. Imani agreed that "he does not dispute the amount of the stipulated judgment" and acknowledged that "the amount of \$251,200.13 is due and owing, but has agreed to pay the amount of \$30,000.00 to fully and finally resolve all claims and all related claims."

Imani defaulted immediately. Judgment was entered against him for the stipulated amount of Creditors' actual damages, \$251,200.13. Six years later, Imani filed a motion to vacate the judgment, contending that the judgment is void because the stipulated judgment amount bears no reasonable relationship to the damages caused by his failure to pay Creditors \$30,000. The trial court denied the motion, concluding, Imani "failed to meet his burden [under Civil Code section 1671] to show that the stipulated judgment was unreasonable under the circumstances existing at the time the contract was made."

The Court of Appeal affirmed. The amount set as liquidated damages "must represent the result of a reasonable endeavor by the parties to estimate a fair average compensation for any loss that may be sustained." In contrast, the characteristic feature of a penalty is its lack of proportional relation to the damages which may actually flow from failure to perform under a contract. Here, "the \$251,200.13 damage provision in the stipulation for entry of judgment is not arbitrarily drawn from thin air. It is the actual and stipulated amount of damages. This is not a penalty or a liquidated damage provision." The stipulation was an agreement to forbear on the collection of a debt admittedly owed—not an agreement to settle or compromise a disputed claim.

**The Takeaway:** Stipulated judgments should indicate:

1. An express admission that defendant does not dispute the amount of the stipulated judgment for the underlying claims and the resulting amount of damages caused by defendant; and
2. The discounted sum, conditioned on timely installment payments, is part of the original debt that defendant admits it owes, resulting in an agreement to forbear on the immediate collection of the debt in full.