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### Stipulated Judgments 101

It's a common settlement. Defendant will pay an agreed sum under an installment plan, due on specified dates. However, if defendant defaults, a larger sum is due as a stipulated judgment (to incentivize the payments). The problem with this plan is that California courts have deemed the larger sum triggered by default as an unenforceable "penalty and forfeiture" because the sum bears "no reasonable relationship" to actual damages suffered as a result of delay. (*Greentree Financial Group, Inc. v. Execute Sports, Inc.* (2008) 163 Cal.App.4th 495; *Purcell v. Schweitzer* (2014) 224 Cal.App.4th 969).

So how does one structure the stipulated judgment to incentive payment without creating an unenforceable penalty under *Greentree*? The recent unpublished case, *Vitatech International, Inc. v. Sporn*, 2017 WL 4325342, offers guidance (with Justice Raymond J. Ikola from the *Greentree* case also concurring in *Vitatech*).

In *Greentree*, defendant disclaimed any admission of liability. In *Vitatech*, plaintiff argued that *Greentree* did not apply because defendants stipulated to entry of judgment against them "in the full prayer of the Complaint" (\$303,000) if they failed to pay the \$75,000 plaintiff agreed to accept "as full settlement of its claims" by the designated date. The appellate court disagreed: "This language does not constitute an admission of liability for breach of the underlying contract nor does it constitute an admission of the amount of damages that breach caused. Rather, this language is nothing more than an agreement to settle a disputed claim for less than the amount demanded and a penalty if [defendants] fail timely to pay the settlement amount." The discounted judgment for \$75,000 was enforced, not the \$303,000 sum.

The court distinguished these facts from *Jade Fashion & Co., Inc. v. Harkham Industries, Inc.* (2014) 229 Cal.App.4th 635, where the defendant acknowledged that it owed \$340,000 to the plaintiff and worked out a payment plan for that amount. Defendant could deduct \$17,500 from the final payment if it made all other payments. Thus, the agreement in *Jade Fashion* was not an agreement to settle or compromise a *disputed claim*. Rather, it was an agreement to forbear on the collection of a debt that was *admittedly owed* so long as timely installment payments were made. The \$17,500 discount was part of the original \$340,000 debt that the defendant expressly admitted it owed. Enforceability of the discount provision did not turn on its relationship to any anticipated damages.

**The takeaway:** To pass the *Greentree* test for stipulated judgments, it appears that the courts require:

1. An express admission of liability by defendant 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."