At an IAS Term, Part COMM2 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 19TH day of NOVEMBER, 2025.

P R E S E N T:
HON. CENCERIA P. EDWARDS, CPA,
Justice.

X

FLAGLER ADVANCE, LLC,

Plaintiff(s),

-against-

C LEE GROUP TRANSPORTATION INC, SOUTHERN DALLAS LINK INC, CORBINS TRANSPORTATION & LEASING INC, A DESIRED CHANCE, INC, BROOKY & DEE DEE TRUCKING INC, THE C. LEE GROUP, LLC, TEXAS ACE FUND, and CURTIS CORBINS,

Defendant(s).

---X

ORDER

Motion Calendar: 4/16/2025
Motion Cal. #(s): 8

Index #: 535556/2024
Mot. Seq. #(s): 1

The following e-filed papers read herein:	NYSCEF Doc. Nos.:
Notice of Motion, Affidavits (Affirmations) and Exhibits	9-17
Opposing Affidavits (Affirmations) and Exhibits	None
Reply Affidavits (Affirmations) and Exhibits	N/A

On December 30, 2024, this action was commenced in the Commercial Division Part for breach of contract against defendants C LEE GROUP TRANSPORTATION INC, SOUTHERN DALLAS LINK INC, CORBINS TRANSPORTATION & LEASING INC, A DESIRED CHANCE, INC, BROOKY & DEE DEE TRUCKING INC, THE C. LEE GROUP, LLC, TEXAS ACE FUND. (collectively, "the Company Defendants"), and against individual defendant CURTIS CORBINS as their guarantor.

Plaintiff now moves pursuant to CPLR § 3215 for leave to enter a default judgment against the defendants. Plaintiff served the defendants with the Summons and Complaint on December 30, 2024, and filed proof of service on January 30, 2025 (*see* NYSCEF Doc. #s 1-3).

It is alleged in the complaint that Plaintiff purchased a total of $312,450 of the company defendants' future receivables pursuant to two written Sale Agreements, under which the Company Defendants agreed to deposit sums daily into an agreed upon bank account from which Plaintiff was authorized to make regular ACH withdrawals until the contracted purchased amount was fully paid to Plaintiff (*see* NYSCEF Doc. #1 at ¶¶ 4-7).

The first agreement, dated August 29, 2024, provides for Plaintiff, referred to as "FA," to purchase $224,850 in future receivables from the Company Defendants, collectively referred to as "Merchant," for the price of $150,000, and lists "Curtis Corbins, Owner" as both the signer for the Merchant and as its Guarantor (*see* NYSCEF Doc. #2, at pp. 1-10).

The second agreement, dated November 4, 2024, provides for Plaintiff, referred to as "FA," to purchase $87,600 in future receivables from defendant C LEE GROUP TRANSPORTATION INC, referred to as "Merchant," for the price of $60,000, and lists "Curtis Corbins, Owner" as both the signer for the Merchant and as its Guarantor (*see id*. at pp. 11-18).

Plaintiff alleges that it fully performed under the Sale Agreements, but on or about December 13, 2024, the Company Defendants ceased making payments to Plaintiff, in that they intentionally impeded and prevented Plaintiff from making the ACH withdrawals from the bank account by failing to deposit its receivables (*see* NYSCEF Doc. #1 at ¶¶ 6, 8-10). Plaintiff seeks a judgment in the amount of $279,132.50, for the $233,306 balance owed under the Sale Agreements, plus $55,826.50 as a 25% default fee on that balance (*see id*.).

"On a motion for leave to enter a default judgment, an applicant must submit proof of service of the summons and complaint or summons and notice, proof of the facts constituting the cause of action, and proof of the defaulting defendant's failure to answer or appear" (*Banks v 110-18 198th St. Corp*., 205 AD3d 869, 869 [2d Dept 2022]; *see* CPLR § 3215 [f]). As explained below, the Court finds Plaintiff's proof to be lacking on all three criteria.

SERVICE

At the outset, the Court cannot ignore that Plaintiff's proof of service of process consists solely of an Affirmation of Service from its attorney, rather than the customary affidavit from a process server. Although CPLR 2106 previously permitted certain categories of professionals, including attorneys, to use an affirmation "in lieu of and with the same force and effect as an affidavit," and the oath therein did not have to take any particular form (*see Feinman v Mennan Oil Co.*, 248 AD2d 503, 504 [2d Dept 1998]), the statute has since been amended. Effective

January 1, 2024, an affirmation from "any person" can be utilized in lieu of an affidavit so long as it substantially tracks the statutory language which includes, *inter alia*, that the person affirms "under the penalties of perjury **under the laws of New York, which may include a fine or imprisonment**, that the foregoing is true, …" (CPLR 2106 [emphasis added]). It has since been held that an affirmation in which the affiant merely affirms that his/her/their statements are true under the penalties of perjury, but which "fails to acknowledge the laws of New York and the possibility of fines or imprisonment" is "not in admissible form and cannot be relied upon" (*Grandsard v Hutchison* , 2024 WL 1957086, *1 [N.Y. Sup Ct, New York County 2024], affd for reasons stated below, 227 AD3d 491 [1st Dept 2024] ["verification/affirmation" submitted with a petition, in which petitioners counsel "merely affirmed 'under the penalty of perjury,'" was rejected for failure to include additional language in CPLR 2106]).

In the proffered Affirmation of Service, filed more than a year after the current version of CPLR 2106 went into effect, Plaintiff's counsel merely identifies himself as an attorney who "affirms under penalty of perjury" (*see* NYSCEF Doc. #s 3, 11), but he does not include the additional statutory language now required. Since this affirmation cannot be used in lieu of an affidavit (*see Grandsard*, *supra*), Plaintiff has necessarily failed to submit competent proof of service. In any event, as explained below, even considering the substance of the affirmation, this Court finds Plaintiff's proof of service to be insufficient.

According to the Affirmation of Service, Plaintiff's attorney states that on December 30, 2024, he served the Summons and Complaint, "in accordance with the contract," on all the defendants via email to "cleetransportation1@gmail.com" (*see id.*). In the affirmation submitted in support of this motion, Plaintiff's attorney states, "The Agreement [*sic*] allows for service via e-mail '**IV.6 Service of Process by Mail and/or Email**.' Merchant hereby irrevocably waives personal service of any summons, complaint or other process and agrees that the service thereof may be made by email to the email address listed on page one (1) of this Agreement" (NYSCEF Doc. #10, ¶5 [emphasis in original]). Despite the inaccurate characterization of the August 29, 2024 and November 4, 2024 Sale Agreements as one document, the Court notes that this provision appears in both Sale Agreements, and the accompanying and contemporaneously dated Security Agreements both contain a "Guarantor Acknowledgement" stating that the Guarantor "specifically and irrevocably consents to the terms of" the afore-mentioned service provision (*see* NYSCEF Doc. #2 at pp. 5, 7, 15, and 17).

Page "1" of the August 29, 2024 Sale Agreement lists "cleetransportation1@gmail.com" as the Merchant's email, whereas page "1" of the November 4, 2024 agreement lists "Curtiscorbins@yahoo.com" as the Merchant's email (*see id*. at pp. 1, 11). Plaintiff's counsel's Affirmation of Service indicates that the Summons and Complaint were sent only to the gmail address provided in the August 29, 2024 Sale Agreement (*see* NYSCEF Doc. #s 3 and 11).

Since Plaintiff does not submit additional proof of service to the yahoo email address provided in the November 4, 2024 Sale Agreement, then at least with respect to those claims against defendants C LEE GROUP TRANSPORTATION INC and CURTIS CORBINS arising from this agreement, it is questionable if Plaintiff's proof of service is even applicable, regardless of whether it could be deemed sufficient under the governing standards. Relatedly, as explained in the following section of this decision, the record does not establish that the contractual waiver of service of process is binding and enforceable as against any of the defendants.

Plaintiff's proof of service also lacks the requisite specificity. "Proof of service **shall specify** the papers served, the person who was served and **the date, time, address, or, in the event there is no address, place and manner of service, and set forth facts showing that the service was made** by an authorized person and **in an authorized manner**" (CPLR § 306 [emphasis added]).

Here, Plaintiff's attorney affirmation merely states, in a conclusory manner, that the Summons and Complaint were emailed to "cleetransportation1@gmail.com," which, as discussed, is authorized under only one of the two Sale Agreements. The affirmation does not provide the time at which service was made and lacks any facts whatsoever regarding the manner of service. For example, Plaintiff did not include a copy of the email, nor any documentation confirming that the email was sent, that the necessary papers were included as attachments in a particular format, or that the email was received and did not bounce back. The Court finds this woefully inadequate not only for the failure to meet the statute's requirements, but also because the service utilized here raises due process concerns.

While a general affidavit or affirmation of service may suffice for traditional methods of service, electronic service via email necessitates more specific and verifiable proof. Acceptable email proofs of service include a copy of the actual email sent, showing: the recipient's email address, the full timestamp of when the email was sent, the subject line and body of the message, and any attachments relevant to service. Further, the affidavit or affirmation should aver/affirm

that: the email was not returned as undeliverable, no delivery failure notice or bounce-back was received, and that the sender had no reason to believe the email was not received.

This level of documentation is neither burdensome nor unreasonable. Unlike personal service, which typically involves logistical effort and potential human error, email service provides a digital record that can easily be preserved and attached. Given the ease with which the email itself can be printed or saved as a PDF, there is little justification for relying solely on a generic affidavit or affirmation without documentary support. Rather, the proofs demanded by this Court are, in sum and substance, merely the functional equivalent to the specificity required by CPLR § 306.

It is hornbook law that "due process requires that the method of service be 'reasonably calculated, under all the circumstances, to apprise' the defendant of the action" (*Contimortgage Corp. v Isler*, 48 AD3d 732, 734 [2d Dept 2008], quoting *Mullane v Cent. Hanover Bank & Trust Co*., 339 US 306, 314 [1950]). Courts aim to ensure the proponent seeking a default judgment has met its burden in satisfying due process and the opportunity to be heard. Requiring actual evidence of email transmission promotes transparency, reduces disputes, and maintains the integrity of the service process.

PROOF OF CLAIM

Plaintiff also failed to satisfy the second prong for a default judgment. "To demonstrate the facts constituting the cause of action, the plaintiff need only submit sufficient proof to enable a court to determine if the cause of action is viable, since defaulters are deemed to have admitted all factual allegations contained in the complaint and all reasonable inferences that flow from them" (*Banks*, 205 AD3d at 869-870 [internal quotation marks omitted]; *see also Lancer Ins. Co. v Fishkin*, 211 AD3d 719, 721 [2d Dept 2022]). "However, a court does not have a mandatory, ministerial duty to grant a motion for leave to enter a default judgment, and retains the discretionary obligation to determine whether the movant has met the burden of stating a viable cause of action" (*Barbetta v NY Auto Find, Inc*., 221 AD3d 851, 853 [2d Dept 2023], quoting *Paulus v Christopher Vacirca, Inc*., 128 AD3d 116, 126 [2d Dept 2015]). Hence, "where the allegations of a complaint or affidavit of facts fail to establish a prima facie case, 'the applicant is not entitled to the requested relief, even on default.'" (*Wynkoop v 622A President St. Owners Corp.*, 169 AD3d 1100, 1103 [2d Dept 2019], quoting *Dyno v Rose*, 260 AD2d 694, 698 [3d Dept 1999]).

In support of this motion, Plaintiff submits the complaint, which was verified by its manager, Simon Arocha, and an additional affirmation[1] from Arocha (*see* NYSCEF Doc. #s 1, 13, and 14). In the verified complaint, Plaintiff alleges that it "remitted the purchase price, less applicable fees, for the future receivables to Company Defendant [*sic*] as agreed" (*see* NYSCEF Doc. #1, ¶6) but it provides no details whatsoever about this. Nor do Plaintiff's moving papers include any documentation establishing that it paid the purchase prices set forth in either of the Sale Agreements, or that the Company Defendants failed to make the required payments.

Moreover, Arocha's affirmation contains no substantive factual details about the parties' respective performances under the August 29, 2024 and November 4, 2024 Sale Agreements, nor, specifically, the alleged breach of contract by the defendants. Rather, the sole focus of Arocha's testimony is that "[d]efendant CURTIS CORBINS is the one who signed the agreement,"' and Arocha knows this "because I caused the email containing the Agreement [*sic*] to be sent to Curtis Corbins and confirmed with Curtis Corbins that he signed the agreement" (*see* NYSCEF Doc. #14, ¶¶ 4-5 [capitalization in original]). The Court notes the precise language Arocha used – that he "caused the email … to be sent" – does not mean that he sent the email himself, and he doesn't attest to having witnessed someone else do it, thereby strongly suggesting that he lacks personal knowledge of same. More importantly, Arocha provides no factual details regarding the sending of the email and his purported confirmation that Corbins signed either of the Sale Agreements. Tellingly, Arocha speaks of only one Sale Agreement and causing only one email to be sent, but as noted above, there are two such documents, executed more than two months apart. Arocha fails to even acknowledge this discrepancy, and he also fails to provide relevant and expected details such as the dates and times at which either Sale Agreement was emailed and of his confirmation that Corbins signed either of them, including whether confirmation occurred in additional emails or other writings, or by oral conversations in person or via telephone, virtual conferences, or other forms of communication.

The Court also finds that Plaintiff has submitted insufficient proof that the defendants are even bound by any of the agreements they are alleged to have breached. First, although both Sale Agreements identify only C LEE GROUP TRANSPORTATION INC as the "Merchant" from whom

[1] Although Plaintiff's counsel and Arocha both refer to the latter's document as an "affidavit," it is not notarized and lacks a jurat. Rather, Arocha's document is actually an affirmation made pursuant to CPLR 2106. It is noted that both this affirmation and Arocha's verification of the Complaint satisfy the current version of the statute.

Plaintiff would purchase the future receivables, the August 29, 2024 agreement includes Exhibit "A," executed on the same date, which provides that the term "Merchant" includes the other Company Defendants listed in this case's caption (*see* NYSCEF Doc. #1 at pp. 9-10). In contrast, the November 4, 2024 Sale Agreement lacks any such additional document and, thus, C LEE GROUP TRANSPORTATION INC is the only defendant identified therein as "Merchant."

Second, and more importantly, there is no indication that the "Curtis Corbin" who was apparently expected to sign all of the subject agreements on behalf of the Company Defendants and himself, and who is the only named individual defendant, actually did so. The typewritten name "Curtis Corbins, Owner" appears under the signature lines for both "Merchant" and "Owner" on the execution pages for each Sale Agreement. The same typewritten name also appears next to the separate signature lines for both "Merchant" and "Guarantor(s)" on the execution pages for both contemporaneously executed Security Agreements. Similarly, the typewritten name on the execution page of Exhibit "A" within the August 29, 2024 Sale Agreement, as well as the "Appendix A" to both Sale Agreements, identify the signer as "Curtis Corbins" and separately lists his title as "Owner." However, on every execution page for all the aforementioned documents, the only signature appearing above each respective signature line is a docu-signed signature for a "Charles Jackson." (*See* NYSCEF Doc. #1 at pp. 1, 7-11, 17-18.) There is no explanation in either the Complaint or Plaintiff's moving papers for this significant discrepancy. Hence, on this record, the "Charles Jackson" who signed the subject documents on behalf of the Company Defendants presents as a stranger to these entities. Additionally, in the absence of a duly executed power-of-attorney form or another document authorizing this person to sign on behalf of Curtis Corbins, there is no evidentiary basis upon which to find this defendant liable as the Company Defendants' guarantor.

In any event, Plaintiff has not submitted any documentation showing that either "Curtis Corbins" or "Charles Jackson," is affiliated with or possesses the authority to bind any of the several Company Defendants by signing the Sale Agreements. Moreover, only "Charles Jackson" signed the included Security Agreements as the "Guarantor," but Plaintiff did not name him as a defendant in this action. Plaintiff has, thus, necessarily failed to submit adequate proof of the facts constituting its causes of action for breach of contract against the Company Defendants or as against individual defendant Curtis Corbins, as the purported guarantor.

FAILURE TO APPEAR OR ANSWER

In his affirmation in support of the instant motion, Plaintiff's counsel merely states: "The time [*sic*] Defendants to appear, answer, or raise an objection to the complaint in point of law has expired" (NYSCEF Doc. #10, ¶7). This conclusory statement is wholly inadequate, since it does not indicate when any of the defendants' answers were purportedly due. Nor can the Court easily ascertain same, since Plaintiff does not even specify the particular provision(s) of law governing the method of service utilized. Additionally, insofar as the above statement was purely factual, rather than legal argument, by asserting it within in an affirmation instead of an affidavit, counsel should have ensured that said document conformed to current version of CPLR 2106. Since this affirmation lacks the required language, this factual statement is not evidence and, thus, does not constitute proof of the defendants' purported failures to timely appear or answer the complaint.

For the foregoing reasons, the above-referenced motion by Plaintiff for, *inter alia*, leave to enter a default judgment against the defendants is **DENIED**.

The foregoing constitutes the Decision and Order of this Court.

E N T E R,

Dated: November 19, 2025

Hon. Cenceria P. Edwards, JSC, CPA