



Superior Court of California County of San Benito

Tentative Decisions for July 10 , 2026

Courtroom #2: Judge Pro Tempore Page Galloway

CL-25-01055

Wells Fargo Bank, N.A. v. Luz Maria Berber

7-10-2026

On calendar for Plaintiff's 5-13-2026 Motion to Deem the Truth of Matters in Plaintiff's Request for Admissions as admitted.

Plaintiff: Edgar B. Lopez (Wells Fargo Bank, N.A.)

Defendant: Self Represented (Luz Maria Berber)

This matter arises from an attempt to collect consumer debt.

12-10-25 Plaintiff's Complaint seeks \$5014.10 for breach of written contract , or for Contract implied in fact. Plaintiff issued Defendant a credit card, which Defendant accepted. Defendant subsequently used the card to purchase goods or services and or for cash advances. In exchange for the use of the card, Defendant agreed to repay the principal along with interest and other charges. After 10-31-2024 Defendant has failed to make any further payments on the account, this suit follows.

3-3-2026 Defendant files a general denial, asserting that Plaintiff has failed to provide contract, accounting, or account agreements, nor proven the existence of a debt, nor of any breach. Defendant further states that Plaintiff has failed to show the breach occurred within the statute of limitations, failed to state material terms and privity thus failing to state a claim. She further asserts Plaintiff lacks standing and has not demonstrated ownership or assignment nor has mitigated damages by accepting a reasonable full settlement. Plaintiff has violated RFDCPA, failed to serve a debt validation notice and disclose a debt collection license number.

Argument:

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***Please contact Judicial Courtroom Assistant, Lesley Pace, at
(831) 636-4057 x127 or lpace@sanbenitocourt.org with
any objections or concerns**

5-13-2026 Plaintiff notes this is a simple collections matter. Plaintiff propounded discovery consisting of a request for admissions. Responses were due on or before 4-17-2026. Defendant has failed to respond. Plaintiff sent Defendant a meet and confer letter indicating the lack of responses and providing an extension of time to respond. As of the date of this motion, no responses have been received. (Ex 1 and 2 to Lopez Dec.) Pursuant to Code of Civil Procedure section 2033.250 the court should deem genuine any documents sought genuine and deem admitted those matters in the requests for admissions. Pursuant to section 2033.010 a party may request the other admit the genuineness of documents or truth of specified matters of fact, opinion related to fact, or application of law to fact. The responses to the same are due within 30 days of service. Untimely response waives any objections to the requests, including those based on attorney work product doctrine, or privilege (CCP§2033.280.) Where there has been failure to respond the requesting party may move the court and the court may grant orders regarding the genuineness of any documents and truth of any matters specified in the request for admissions. (CCP§2033.420 sub (a).)

Legal authority: Any party may obtain discovery by written request that any other party to the action admit the genuineness of specified documents, or the truth of specified matters of fact, opinion related to a fact, or application of law to a fact. (CCP§ 2033.010.) Similarly, a request for admissions may relate to a matter in controversy between the parties. (Id.) A party served with requests for admissions has 30 days to serve their response after being served with the requests. (CCP§2033.250.) If no response is received, the propounding party must bring a formal “deemed admitted motion” to have requests for admission which has received no timely response deemed admitted. (*Stover v. Bruntz* (2017) 12 Cal. App. 5th 19, 30; *St. Mary v. Sup. Ct.* (2014) 2223 Cal. App. 4th 76, 775-776.) Service of responses before the hearing defeats the motion, but imposing monetary sanctions remains mandatory. There is no meet and confer requirement for a motion to deem admitted under CCP§2033.280 as there is for a motion to compel further response. (*St. Mary v. Sup. Ct., supra*, at 777-778.) Unless the judge determines that a responding party has served, before the hearing on the motion, a proposed response to the requests for admission in substantial compliance with CCP§2033.220 the judge must order the requests for admission deemed admitted. Such an order establishes, by judicial fiat, that a non-responding party has responded to the requests by admitting the truth of the matters contained in the requests. (*St. Mary v. Sup. Ct., supra*, at 776.) Moreover, pursuant to CCP§2033.420(a), a party may also request the court order that the genuineness of any documents and the truth of any matters specified in the request for admission be admitted.

Analysis: Plaintiff has provided declarations supporting that the Plaintiff served the requests for admissions and request to establish the genuineness of documents on or about 3-13-2026. The time for responding to these requests has elapsed without any service of code compliant responses. As is required, the Plaintiff now moves the court to deem admitted the matters to be deemed admitted and deem genuine any such documents requested genuine; such motion is proper and provides the court the needed factual basis for the request.

Proposed Ruling: The motion is granted as prayed.

Capital One, NA Successor by Merger to Discover Bank
v. Mary Ellen Erickson

On calendar for Plaintiff's 3-13-2026 Summary Judgment Motion.

Plaintiff: Douglas Wallace (Capital One, N.A.)

Defendant: Self Represented (Mary Ellen Erickson)

Underlying matter is Plaintiff's complaint seeking to collect on consumer debt.

12-20-24 Plaintiff's Complaint: Plaintiff seeks damages of \$4146.26 for breach of written contract regarding the issuance of a credit account and Defendant's failure to pay sums owed pursuant to that agreement.

1-14-2025: Defendant's Answer is a general denial and the assertion that she has limited resources. She notes she is on SSI, Medicaid, and receives SNAP benefits.

7-2-2025: Plaintiff's application to change name based on merger and subsequent pleadings shall identify Plaintiff as Capital One, N.A. , successor by merger to Discover Bank.

3-13-2026 Plaintiff's motion on Summary Judgment: The matter is a simple collection case. Defendant applied to plaintiff for an account ending 9083 (UMF 1). Defendant agreed to be bound by the terms and conditions in the cardmember agreement when Defendant applied for, received, or used the credit account. The cardmember agreement specifies that use of the credit account card constitutes acceptance of the agreement. (UMF 2.) Defendant thus agreed to pay for all charges made on the account. Plaintiff has complied with all its obligations pursuant to the agreement. (UMF 3) Defendant received billing statements and Defendant has not objected to any portion of the billing statement. (UMF 4, 5.) Defendant defaulted by failing to make payments on the account. (UMF 6.) Pursuant to CCP§473c, authorizes summary judgment. The summary judgment procedure is appropriate where there are no material facts in dispute warranting trial and is intended to provide the court with a mechanism to cut through the pleadings and determine: whether, despite their allegations, trial is in fact necessary. . . ." (*Aguilar v. Atlantic Richfield* (2001) 25 Cal. 4th 826, 855.). The plaintiff has met the burden of the statute by proving each element of its cause of action. (CCP§437c sub (p)(1).) Pursuant to Civil Code §1747.02 sub (b)an accepted credit card is defined as any credit card the card holder has requested or applied for, and received, has signed , or has used, or has been authorized by another for use to obtain money, property, labor, or services on credit. The records reflect (UMF 1-3) that this is an accepted credit card. The elements of breach of contract are satisfied. Inability to pay is not a defense. (*AB Group v. Wertin* (1997) 59 Cal. App. 4th 1022, 1028.)

No objections to Plaintiff's UMF have been filed.

3-13-2026 Plaintiff requests judicial notice of 15 USC §1666; 12 CFR §202.12.

3-13-2026 Memorandum of Costs filed seeking \$297.61 for filing and motion fees, costs of service of process for the motion.

Legal Authorities: Summary Judgment pursuant to CCP§437c is a procedure by which a party may request pretrial entry of judgment on the ground that there is no dispute of material fact requiring trial. In California, it may be reduced to and justified by the following proposition: if a party moving for summary judgment would prevail at trial with submission of any issue of material fact to the trier of fact for determination, then that party should prevail on summary judgment. The summary judgment procedure is statutory (CCP§437c), and thus strict compliance with the statute is mandatory. Compliance is needed to ensure that there is no infringement on a party's right to trial. (*Bahl v. Bank of America* (2001) 89 Cal. App. 4th 389, 394-395.) The notice of the motion for summary judgment or summary adjudication and supporting papers must be served on all other parties to the action at least 81 days before the date of the hearing. (CCP§437c(a)(2).) This 81-day notice period is mandatory¹. The purpose of this lengthy notice period is to provide the responding party with adequate time to conduct discovery that may be needed to fully respond to the motion and to ensure that all evidence is before the judge prior to the judge ruling on the motion. (*Lackner v. North* (2006) 135 Cal. App. 4th 1188, 1207-1208.) The parties may waive this requirement by stipulation.

The rules governing review of an order granting summary judgment are well established. A motion for summary judgment "shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." ([Code Civ. Proc., § 437c, subd. \(c\)](#).) A defendant carries the initial burden of showing that a cause of action has no merit by demonstrating that one or more elements of the cause of action cannot be established or a complete defense to it exists. ([§ 437c, subd. \(p\)\(2\)](#).) Once the defendant has met that burden, the burden shifts to the plaintiff to show a triable issue exists. (*Ibid.*) The evidence in favor of the party opposing the motion must be liberally construed, and all doubts concerning the evidence must be resolved in favor of that party. (*Fisherman's Wharf Bay Cruise Corp. v. Superior Court* (2003) [114 Cal.App.4th 309, 320-321, 7 Cal.Rptr.3d 628](#).) Pursuant to the decision in *Montrose Chemical Corp. v. Sup. Ct* (1993) 6 Cal. 4th 287,301, the amendments in 1992 and 1993 to CCP§437c sub (o) clarify that the Plaintiff has no burden to negate any defenses in the Defendant's answer. That burden rests with the Defendants as part of the burden shifting discussed herein.

The motion before the court is, as of this writing, unopposed.

¹ As of 1-1-25 the time for notice has increased to 81 days, increased by five days if the place of address is within the state of California, 10 days if the place of address is outside the State of California but within the United States, and 20 days if the place of address is outside the United States. (CCP§437c(a)(2).)

The motion also requests that the court order attorney's fees, costs, and interest in this matter. Plaintiff asserts that pursuant to CCP§1033 costs shall be determined by the court in the exercise of its discretion when a prevailing plaintiff in a limited civil case and recovers less than the amount of the maximum jurisdiction of a small claims action. When the party could not have brought the action in small claims court, the cost and necessary disbursements shall be limited to the actual cost of the filing fee, the actual cost of service of process, and when otherwise specifically allowed by law, reasonable attorney's fees." (CCP§1033 sub (b)(2).)

Analysis: Herein, after reviewing the Plaintiff's statement of Undisputed Material Facts, supported by the Declarations of Tina Davies and Douglas Wallace, in support of the same, the court finds that the Plaintiffs are able to factually establish each necessary element of their claim for breach of contract. In the absence of any opposition to these facts as presented by the Plaintiffs, there is no dispute of material fact necessitating trial. The burden to refute this rests with the Defendant to assert a disputed issue of material fact. As such, pursuant to CCP§437c, the court finds that there are no triable issues of material fact warranting summary judgment in favor of the Plaintiff. The court further grants the request for court costs as requested in this motion.

Proposed ruling: The Court grants Plaintiff's motion for summary judgment for the principal balance owed of \$4146.26 and grants as request for filing fess of \$297.61 pursuant to their memorandum of costs, for a total judgment of \$4443.87.

END OF TENTATIVE RULING