

# Superior Court of California County of San Benito



## Tentative Decisions for February 28, 2025

**Courtroom #2: Judge Pro Tempore Page Galloway**

**CL-23-00388      McGraw and Sons, Inc. v. Kaelin Ali, Gregory Higashi      2-28-25**

Plaintiff's 1-30-25 Motion for order to Deem Matters in the Plaintiff's Request for Admissions, Set one, as admitted, and monetary Sanctions (Kaelin Ali); Plaintiff's 1-30-25 Motion for order to Deem Matters in the Plaintiff's Request for Admissions, Set one, as admitted, and monetary Sanctions (Gregory Higashi).

The motions are unopposed.

Plaintiff:      Tom Jeffrey

Defendant:      Self Represented (Kaelin Ali)

Defendant:      Self Represented (Gregory Higashi)

This case arises from the allegation that the Defendants, and each of them, are liable for an unpaid debt of \$7772.50 pursuant to a written contract. The Defendants have failed to pay the sums due. The Plaintiff asserts causes of action for 1) Open Book Account, 2) Account Stated, and 3) Breach of Contract.

The Plaintiff initially took the Defendants' default and entered default judgment against them. Subsequently, on 9-4-24 the parties signed a stipulation and order to vacate the Default and Set Aside the Default judgment.

Defendants filed individual Answers to the complaint on 9-5-24. Each Defendant in their respective answer made a general denial and asserted affirmative defenses.

1-30-25 Motion to Deem Admitted, Monetary Sanction (Ali) Plaintiff served Defendant Ali with a request for admissions on or about 10-1-24. No response was received. Plaintiff on 12-1-24 wrote to Defendant noting the responses were overdue and that a motion to compel would be filed in responses were not received by 12-20-24. No responses were received. Plaintiff moves pursuant

Page 1 of 5

**\*Please contact Judicial Courtroom Assistant, Wendy S. Guerrero, at  
(831) 636-4057 x129 or [wguerrero@sanbenitocourt.org](mailto:wguerrero@sanbenitocourt.org) with  
any objections or concerns**

to CCP§2033.280 (c) for an order establishing admissions, as required when no response has been received by the hearing date. The statute also states that sanctions for bringing this motion are mandatory. Plaintiff requests \$660.00 representing the time to prepare for and attend hearing, drafting, and for filing fees.

1-30-25 Motion to Deem Admitted, Monetary Sanction (Higashi) Plaintiff served Defendant Ali with a request for admissions on or about 10-1-24. No response was received. Plaintiff on 12-1-24 wrote to Defendant noting the responses were overdue and that a motion to compel would be filed in responses were not received by 12-20-24. No responses were received. Plaintiff moves pursuant to CCP§2033.280 (c) for an order establishing admissions, as required when no response has been received by the hearing date. The statute also states that sanctions for bringing this motion are mandatory. Plaintiff requests \$660.00 representing the time to prepare for and attend hearing, drafting, and for filing fees

Legal Authority: Statute requires that parties receive timely and effective notice of motions. This is documented properly by a proof of service. In order for there to be valid proof of service the motion must be served in one of the ways authorized by statute pursuant to the Code of Civil Procedure. (CCP§§1011, 1013, 1013a, 2015.5; California Rules of Court Rule 2.306.) Moreover, a party to an action may not serve the documents themselves; they must be served by a non-party to the action, who is over the age of eighteen. Finally, the proof of service of any document must be signed under the penalty of perjury by the server.

Analysis: The court does not reach the substantive issues of these motions. There is no proof of service in file for either of these motions that verify that the Defendants, and each of them, were served with these notices of motion, or any of the supporting documents. The only proof of service filed is the one verifying the Plaintiff's counsel's change of address. As such the Defendants have not received timely or proper notice of these proceedings. As such, the court must deny the motions.

Proposed ruling. The court denies the motion to deem admitted directed toward Defendant Ali. The court denies the motion to deem admitted directed toward Defendant Higashi.

**CL-24-00593                      Wells Fargo Bank, N.A. v. Kathleen M. Spano                      2-28-25**

Plaintiff's 2-4-25 Motion to Deem Admitted matters in Plaintiff's Request for Admissions, Set One.

The motion is unopposed.

Plaintiff:            Harlan Reese; Pearse Francis Early,

Defendant:        Sylvanna Uyen Le,

8-27-24 Plaintiff filed their complaint seeking damages for 1) Breach of Contract, for Defendant's alleged failure to make payments on a debt, in the amount of \$25,910.85.

10-16-24 Defendant filed her answer generally denying the allegations and making affirmative defenses.

Page 2 of 5

**\*Please contact Judicial Courtroom Assistant, Wendy S. Guerrero, at  
(831) 636-4057 x129 or [wguerrero@sanbenitocourt.org](mailto:wguerrero@sanbenitocourt.org) with  
any objections or concerns**

2-4-25 Plaintiff filed their motion to deem admitted matters in their Request for Admissions, set One. Plaintiff states that on 11-21-24 they served their Request for Admissions, Set One, on opposing counsel, by email. The responses were due thirty-two days after. No responses have been received. 1-3-25 The Plaintiff's counsel sent a meet and confer letter to opposing counsel to attempt to resolve these matters, and responses were then due by 1-17-25. No responses were ever served. Plaintiff moves pursuant to 2033.280 that the matters in the Request for admission be deemed admitted. The motion is timely served.

Legal Authority: 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. 5<sup>th</sup> 19, 30; *St. Mary v. Sup. Ct.* (2014) 2223 Cal. App. 4<sup>th</sup> 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.)

Analysis. The Plaintiff has provided a declaration attesting that the Request for Admissions was served on Defendant by e-mail on 11-21-24. No responses have been served on the Plaintiff. Therefore, the Plaintiff's motion to deem admitted all matters in the Request for Admissions is proper to grant.

Proposed Ruling: The Plaintiff's motion to deem admitted all matters in their request for Admissions, Set one, is Granted.

**CL-24-00166**

**Bank of America, N.A. v. Nicole Cobb**

**2-28-25**

On calendar for Plaintiff's 1-21-25 Motion to Deem Admitted matters in Plaintiff's Request for Admissions, Set one.

The motion is unopposed.

Plaintiff: Brian Langedyk; Ruonan Wang, Donald Sherrill

Defendant: Self Represented

This case arises from Plaintiffs' efforts to collect on a debt of \$22,365.32. Plaintiff asserts causes of action for 1) Common Counts, alleging that Defendant applied for a credit account administered by the Plaintiff. Defendant used or authorized the use of that account for goods, services, balance transfers, or cash advances in accord with the customer agreement governing

its use. Defendant breached that agreement by failing to make payments on that account, which was then charged off, with the entire balance on that account now due and owing.

10-14-24 Defendant filed her answer and issued a general and specific denial of the claims, and asserts affirmative defenses thereto.

1-21-25 Plaintiff files their motion to deem admitted items in their Request for Admissions served on the Defendant on or about 11-7-24. The time for response has passed, and there have been no responses to the request for admissions. The motion is timely served

Legal Authority: 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. 5<sup>th</sup> 19, 30; *St. Mary v. Sup. Ct.* (2014) 2223 Cal. App. 4<sup>th</sup> 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.)

Analysis. The Plaintiff has provided declaration attesting that the Request for Admissions was served on Defendant by mail on 11-7-24. No responses have been served on the Plaintiff. Therefore, the Plaintiff’s motion to deem admitted all matters in the Request for Admissions is proper to grant.

Proposed Ruling: The Plaintiff’s motion to deem admitted all matters in their request for Admissions, Set one, is Granted.

**CL-24-00864                      Barclays Bank Delaware v. Mayra Garcia                      2-28-25**

On calendar for Defendant’s 2-6-25 Motion to Quash Service of Summons

Plaintiff:            Hootan Atefyekta

Defendant:        Self Represented

12-4-24 Complaint filed asserting causes of action for damages for open book account and for account stated. Both causes of action relate to efforts to collect on an unpaid debt for Defendant’s alleged use of a credit account issued by Plaintiff of \$7893.22.

Defendant filed proof of service of summons and complaint 2-3-25 asserting substituted service was effected on 1-29-25 by leaving the documents at the home of the Defendant with a competent adult member of the household, then mailing the same documents to the Defendant.

Page 4 of 5

**\*Please contact Judicial Courtroom Assistant, Wendy S. Guerrero, at  
(831) 636-4057 x129 or [wguerrero@sanbenitocourt.org](mailto:wguerrero@sanbenitocourt.org) with  
any objections or concerns**

2-6-25 Defendant filed her motion to Quash Service of Summons and Complaint, alleging that service was improper in that she was not personally served with the documents, and that the Plaintiff must establish that service was proper, and that because the documents were effectively drop served with the adult member of the household, that they were in a place where they could readily be retrieved while still legible. It is her assertion that service is thus defective. There is no proof of service, only the Defendant's statement that the motion was served as required, signed by the Defendant, not under penalty of perjury.

Legal Authority: In order for there to be valid proof of service the motion must be served in one of the way authorized by statute pursuant to the Code of Civil Procedure. (CCP§§1011, 1013, 1013a, 2015.5; California Rules of Court Rule 2.306.) Moreover, a party to an action may not serve the documents themselves; they must be served by a non-party to the action, who is over the age of eighteen. Finally, the proof of service of any document must be signed under the penalty of perjury by the server.

Analysis: This motion has not been properly served upon the Plaintiff, as such the court does not reach the substantive arguments presented therein. There is no notice to the Plaintiff of this motion and it must be denied for lack of service.

Proposed ruling: Defendant's motion to quash service of summons is Denied.

### **END OF TENTATIVE RULING**