



# Superior Court of California County of San Benito

## Tentative Decisions for June 6, 2025

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

**CL-23-00388 McGraw and Sons, Inc. v. Kaelin Ali and Gregory Higashi 6-6-25**

On Calendar for Plaintiff's Summary Judgment Motion pursuant to CCP §437C

Plaintiff: Tom Jeffrey (McGraw and Sons)

Defendants: Kaelin Ali, Gregory Higashi ( *The court notes that it has Defendant Ali's first name spelled as "Kaelen" ; and will require clarification of the correct spelling of Defendant Ali's given name.* )

Notice of summary Judgment motion filed 5-7-25 , served by post on 5-7-25, arguing that there are no triable issues of material fact in his case. The Plaintiff's evidence establishes the Defendants' liability for the debt, and the matters deemed admitted establishes that the Defendants have no defense in this matter. The Plaintiff thus seeks summary judgment and attorney's fees and costs.

10-4-23 Plaintiff filed complaint for common counts (open book, account stated), and for breach of contract for the failure to pay the sum of \$7,772.50 owed for the payment of services and supplies purchased from the Plaintiff. A default judgment was entered March 22, 2024, which was subsequently set aside on the stipulation of the parties on September 4, 2024. On 9-4-24 the Defendants each filed their answer to the complaint, issuing a general denial and asserting affirmative defenses.

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**\*Please contact Judicial Courtroom Assistant, Adriana Ramirez, at  
(831) 636-4057 or [aramirez@sanbenitocourt.org](mailto:aramirez@sanbenitocourt.org) with  
any objections or concerns**

Legal Authority: 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. 4<sup>th</sup> 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 mandatory<sup>1</sup>. 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. 4<sup>th</sup> 1188, 1207-1208.) The parties may waive this requirement by stipulation.

Analysis: This motion was served by mail with only 30 days' notice to the Defendant. There is no waiver of the statutory time for summary judgment in the file. As a result, the court does not reach the substantive issues in this motion, as the Plaintiff has failed to comply with the procedural requirements of CCP§437c with respect to providing the Defendants with statutorily adequate notice.

Proposed ruling: The Plaintiff's motion for summary judgment is DENIED without prejudice, as the court has not reached the merits of the motion and denies it based on the Plaintiff's failure to comply with the statutory notice requirements pursuant to CCP§437c(a)(2).

Matter is on calendar for Plaintiff's 4-29-25 Motion to deem Requests for Admission, set one, admitted. The motion is unopposed.

Plaintiff: David Bartley (Wells Fargo Bank)

Defendant: (Daniel Vega Diaz) Self Represented

Plaintiff filed their complaint on 1-2-25, seeking relief for breach of contract, and asking for damages of \$19,917.35. The Plaintiff avers that they issued Defendant a credit card, which he accepted and used for the purchase of goods and services, and /or cash advances. Defendant in exchange for the use of the card, agreed to repay the principal balance along with interest and other charges. On or about 1-3-24 the Defendant breached the agreement by failing to make payment. This suit follows.

2-18-25 Defendant filed his answer, admitting paragraphs 1 to 3, inclusive, and denying the allegations in paragraphs 4 through 10 on the basis of lack of sufficient knowledge to ascertain the truth or falsity of the same. He further asserts seven affirmative defenses and requests the Plaintiff's case be dismissed with prejudice.

4-29-25 Plaintiff files motion to Deem matters Admitted pursuant to CCP§2033.280, which provides that if a party to whom requests for admissions have been served fails to serve a timely response that party waives all objections. The statute further provides that the requesting party may move for an order that the truth of any facts specified in the requests be deemed admitted. The Plaintiff served the Defendant its first set of Requests for Admissions on 2-20-25, by mail. Responses were due 3-27-25. No responses were received. On 4-4-25, Plaintiff wrote to Defendant in an attempt to resolve the matter informally, though no meet and confer requirement is imposed by statute in this instance. They offered an extension of time to respond. (Bartley Dec, ex 2.) No responses were received. This motion follows.

Legal Standards: 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. 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.) 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: The Plaintiff has provided declaration attesting that the Request for Admissions was served on Defendant by mail on 2-20-25 . 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, including the request to affirm the genuineness of documents as specified.

Proposed Ruling: Plaintiff's motion is Granted.