

Superior Court of California County of San Benito



Tentative Decisions for February 14, 2025

Courtroom #2: Judge Pro Tempore Page Galloway

CL-24-00107 Wells Fargo Bank, N.A. v. Barbara A. Lewis 2-14-25

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

Plaintiff: Jon O. Blanda, Angela A. Velen, Ashley Mulhorn

Defendant: Self-Represented

Notice of summary Judgment motion filed 1-10-25 (served by post 1-9-25) ; Amended motion filed 1-28-25 (Served 1-24-25)

2-21-24 Plaintiff filed complaint for breach of contract and common counts for defendant's failure to pay a debt in the amount of \$5569.29. The Defendant filed answer 5-10-24, denying the allegations. The answer is unsigned by the Defendant.

11-22-24 The court granted Plaintiff's motion to deem admitted matters specified in Plaintiff's request for admissions.

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. 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 75 days before the date of the hearing. (CCP§437c(a)(2).) This 75-day notice period (or 80 days when mail

Page 1 of 2

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service is used) 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.

Analysis: This motion was served by mail with only 36 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 Defendant 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).

END OF TENTATIVE RULING

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).)

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