

# Superior Court of California County of San Benito



## Tentative Decisions for May 3, 2024

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

**CL-23-00294**

**Wells Fargo Bank, N.A. v. Jessica Rodriguez**

On for Plaintiff's 12-18-24 Motion for Summary Judgment. The motion is unopposed.

Plaintiff: Ashley Mulhorn

Defendant: Jenna S. Moreno-Cortez

Complaint filed 8-10-23 with causes of action for 1) Breach of Contract (Written); 2) Breach of Contract (implied in fact); 3) Money Lent; 4) Money Paid; 5) Open Book Account; 6) Account Stated. The case involves the collection of money owed pursuant to a written credit card agreement. 9-28-23 an unverified answer was filed with a general denial and numerous affirmative defenses.

Argument: Plaintiff asserts that the Plaintiff issued Defendant a credit card pursuant to written agreement on or about 9-16-2011. After using the card for a number of years, Plaintiff asserts that Defendant failed to make further payments after 7-31-2022, with an outstanding balance of \$12,999.10. As part of the litigation Plaintiff served Request of Admissions on Defendant. (Ex 1). Responses were served (Ex 2). Defendant has admitted that she was issued the subject credit card, that she did not dispute the accuracy of the billing statements (Ex 2.) Plaintiff was issued the credit card after she applied for it (UMF 1). Plaintiff sent Defendant the credit card and a written agreement associated with it. (UMF 2, Ex 1). Defendant's acceptance of the terms is evidenced by the use of the card. (UMF 3) The terms of the agreement were that the Plaintiff would extend credit to the Defendant to make purchases, etc., and the Defendant would repay the principal lent plus interest and finance charges. (UMF 4, 5) Defendant used the account in accord with that agreement and incurred a balance. (UMF 6.) Plaintiff sent monthly statements for each billing period, recounting all charges, interest, and finance charges; there are no unresolved disputes for the same. (UMF 7-9, inclusive.) Defendant ceased paying, and the account fell into default, leaving a balance due as noted above. (UMF 11-13.)

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**\*Please contact Judicial Courtroom Assistant, Christie Watson, at  
(831) 636-4057 x114 or [cwatson@sanbenitocourt.org](mailto:cwatson@sanbenitocourt.org) with  
any objections or concerns**

Undisputed Facts: There is no opposition to any of the items in the UMF.

Legal Standards: Summary Judgment should be granted only when all the papers submitted demonstrate that no triable issues of any material fact exist, and that the moving party is thus entitled to judgment as a matter of law. (Cal. Civ. §437c; see also *Jacobs v. Coldwell Banker Residential Brokerage Co.* (2017) 14 Cal. App. 5<sup>th</sup> 438, 443; *Alvarez v. State of California* (1999) 79 Cal. App. 4<sup>th</sup> 720,727.) It is a drastic remedy and is not one to be used as a substitute for existing means of determining issues of fact. Because it is drastic in nature, all doubts should be resolved in favor of the party opposing the motion. (*Powell v Standard Brands Paint Co.* (1985) 166 Cal. App. 3<sup>rd</sup> 357, 362. *Aguilar v. Atlantic Richfield Co.* 25 Cal. 4<sup>th</sup> 826. (The court must view all evidence and make inferences in the light most favorable to the opposing party). The burden of persuasion rests with the party seeking summary judgment to show that there is no triable issue of material fact and that they are entitled as a matter of law to judgment. (Id.) The court must determine whether a triable issue of material fact exists, where there are none, and the sole question is a matter of law, the court must determine the issue of law. (*Morales v. Fansler* (1989) 209 Cal. App. 3d 1581, 1584.) IN determining if any triable issue of material facts exists the court may exercise its discretion to give great weight to admissions made in discovery and disregard any self-serving or contradictory affidavits of the party. (*Benavidez v. San Jose Police Dep't.* (1999) 71 Cal. App. 4<sup>th</sup> 853,860.)

Analysis: The Plaintiff's motion remains unopposed as of the time of this writing. The material facts recited by the Plaintiff remain uncontroverted. For the Plaintiff to prevail on an action for breach of contract, they must show a valid, executed contract; plaintiff's performance (or excused non-performance); breach by the defendant; and resultant damage. (*Reichert v. Gen. Insurance Co.* (1968) 69 Cal. Rptr 321,325.) These elements are demonstrated in the undisputed statement of material facts presented with this motion. Further, considering the admissions made in response to discovery, which the court will give appropriate weight, there is an enforceable contract, there has been a breach of that contract, and the Plaintiff has thereby been damaged in the amount alleged. Further the Plaintiff has set out the appropriate undisputed material facts which support the common counts incorporated into the complaint, as referenced in the statement of undisputed material facts.

Proposed Tentative ruling: The court will grant the Plaintiff's summary judgment motion and holds that the Plaintiff has incurred damages of \$12,999.10. The court will also award the Plaintiff their court costs of \$945.00 as pled herein. The court will enter judgment in favor of the Plaintiff in the sum of \$13,944.10.

## END OF TENTATIVE RULING

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