

1.	PC20200596	MALONE v. WEAHUNT JR, ET AL
Motion for Attorney's Fees		

On March 15, 2024, the Court orally entered judgment. In the June 6, 2024 written ruling, the Court awarded Plaintiff damages, exclusive of costs and attorney's fees available on the slander of title claim. The ruling states: "The court finds it appropriate to award Plaintiff her attorney's fees and costs connected solely with the actions necessary to clear the title. Such fees and costs will be determined by noticed motion."

Plaintiff and Cross-Defendant Desiree Malone ("Plaintiff") brings this Motion for Attorney's Fees and Costs.

In general, the reasonableness of attorney fees is determined by evaluating the hourly rate charged and the time spent against the following factors; (1) the nature of the litigation; (2) its difficulty; (3) the amount involved; (4) the skill required in its handling; (5) the skill employed; (6) the attention given; (7) the success or failure; and (8) other circumstances in the case to ensure that the amount awarded represents reasonable attorneys' fees. (*Clarion Development Co. v. Falvev*) (1998) 206 Cal. App. 3d 438, 447. In determining the amount of fees to award the prevailing party, a "lodestar" figure typically is determined, i.e., the number of hours reasonably expended, multiplied by the reasonable hourly rate charged for the services rendered. The Court may rely on the declaration of counsel as to the rate and hours incurred without the necessity of producing detailed time records (*Steiney & Ci, v. Cal. Elec. Supply Co.* (2009) Cal.App.4th 285, 293.)

Plaintiff requests the full amount of her attorney's fees and costs, which is stated to be \$209,977.08, broken down as attorney's fees of \$182,945.00 and costs of \$27,907.08.¹ In her pleadings, Plaintiff refers to a declaration of counsel detailing the fees and costs. However, no such declaration is in the court file. The court continues the matter and directs counsel to re-file the declaration so the court can consider it in its tentative ruling.

TENTATIVE RULING #1:

HEARING IS CONTINUED TO NOVEMBER 22, 2024 AT 8:30 AM. PLAINTIFF IS ORDERED TO FILE A DECLARATION REGARDING FEES AND COSTS BY NOVEMBER 1, 2024. ANY RESPONSE BY DEFENDANTS SHALL BE FILED BY NO LATER THAN NOVEMBER 14, 2024.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL.

¹ The Memorandum of Points and Authorities references a declaration of Mr. Odell, however, upon review of all pleadings related to this Motion filed within the court's electronic system, there is no declaration.

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RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

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2.	23CV2083	EL DORADO SAVINGS BANK v. RUNNELS & TOWNSEND
Motion to Transfer		

Defendant Raphael Townsend (“Defendant Townsend”) requests a transfer of this case from the El Dorado Superior Court’s Cameron Park Branch to its South Lake Tahoe Branch. The declaration of Defendant Townsend indicates that at the August 16, 2024 status hearing that the Court accepted an oral motion to change the court branch and requested a declaration of facts supporting the change. Defendant Townsend now filed said declaration. Defendant Travis Wright Runnels consents to the requested transfer. (Notice of Consent)

Defendant Townsend alleges that the case was initially filed in the Cameron Park Branch, due to its proximity to the attorney’s office for Plaintiff-in-Interpleader, El Dorado Savings Bank – a party who has since been dismissed. The Decedent resided in South Lake Tahoe, the bank account at issue was established in South Lake Tahoe, the banker who set up the account works and resides in South Lake Tahoe, and the witnesses/deponents/documents are in South Lake Tahoe (including Decedent’s CPA, doctors, medical records, title office that managed escrow, Decedent’s friends).

TENTATIVE RULING #2:

MOTION GRANTED. CASE TRANSFERRED FROM DEPARTMENT NINE TO DEPARTMENT FOUR.

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3.	24CV2014	MATTER OF TAYLOR
Petition to Remove Dog		

El Dorado County Ordinance 6.12.050(J): Any dog determined to be potentially dangerous or vicious in the County will retain that designation for the remainder of its life. An owner may petition the court having jurisdiction over the matter after the initial 36-month period to submit evidence to support a change or modification of the condition.

El Dorado County Ordinance 6.12.050(E) Conditions for keeping potentially dangerous or vicious dogs. *In addition to any conditions ordered by the court*, any person who has possession of a dog that has been declared potentially dangerous or vicious at a hearing shall comply with the following conditions. (emphasis added)

1. All dogs determined after a hearing to be potentially dangerous or vicious dogs shall be properly licensed, micro chipped, and vaccinated at the owner's expense, prior to the release to the dog's owner or custodian or within 15 days if the dog is not in the custody of Animal Control. The licensing authority shall include the potentially dangerous designation in the registration records of the dog.
2. A potentially dangerous dog or vicious dog, while on the owner's property, shall, at all times, be kept indoors, or in a securely fenced area from which the dog cannot escape, and into which children cannot trespass. The area must be kept locked at all times with a substantial lock. The fencing and other components of the confinement shall be maintained in good order to prevent escape and to prevent children from trespassing.
3. A potentially dangerous dog or vicious dog may be off the owner's premises only if it is restrained by a substantial leash, not exceeding six feet in length, and if it is under the control of a responsible adult who is capable of restraining and controlling the dog.
4. The yard or enclosure must be inspected and approved in writing by Animal Control prior to release of the dog to its owner or custodian if the dog is in the custody of Animal Control.

El Dorado County Ordinance 6.12.050(G) Owners or custodians of potentially dangerous or vicious dogs are subject to the following legal duties:

1. The owner or custodian of the dog shall notify Animal Control immediately if the dog is at large or has bitten or attacked any person or animal.

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2. The dog must be spayed or neutered at the expense of the owner prior to the release of the dog to its owner or custodian or within 30 days of the hearing order if the dog is not in the custody of Animal Control.

3. A potentially dangerous or vicious dog shall be required to wear at all times a bright fluorescent collar visible at 50 feet in normal daylight, which will be provided by Animal Control at the owner's expense. The collar shall be maintained in such a manner that the color is visible and shall be worn in such a manner that it is clearly visible.

4. The owner or custodian of a potentially dangerous or vicious dog, which has been involved in injury to a human, shall be required to maintain general liability insurance or post bond covering property damage and bodily injury caused by a potentially dangerous or vicious dog, with a combined single limit of \$100,000.00 per occurrence, and will be required to show proof of such insurance 30 days after the court has made its determination.

5. The owner or custodian of a potentially dangerous or vicious dog must give written notice of the potentially dangerous or vicious dog determination to all of the following entities that apply: local law enforcement agency, Fire Department, United States Post Office (local branch), all utility companies which provide services to the premises where the dog is kept, veterinarian, grooming facility, homeowner's or renter's insurance carrier and landlord. The notice shall include all of the following: owner's name, address, telephone number, the actions of the dog that resulted in the declaration, the designation (potentially dangerous or vicious), description of dog, breed, color, markings, name, location on property that dog is kept. The owner or custodian shall provide a copy of such notice to Animal Control within 30 days after the court determination that the dog is a potentially dangerous or vicious dog.

6. The owner or custodian of a dog declared to be a potentially dangerous or a vicious dog after a hearing shall post one or more signs on the premises at a location or locations that would be visible to anyone entering the property at normal access points stating, "A dog which has been determined to be dangerous or vicious lives on this property." The signs shall be in both English and Spanish.

The Petition filed by the dog-owner, Helen Ann Brady-Taylor, states that she has complied with all conditions of El Dorado County ordinance section 6.12.050, and that the dog, Tucker, has not had any "adverse encounters." She states Tucker has been confined to her property as required by the order and has not been aggressive to any visitors.

Upon review of the petition and the notice of hearing, the court finds that the County has not been noticed regarding the October 25, 2024 hearing. Further, the court finds that it might need to receive evidence from the parties if the County is not in agreement with Petitioner's request. As such, the court continues the matter to November 18, 2024 at 1:30 p.m. in Department 9 and directs the clerk to provide notice to County Counsel of the upcoming hearing date. The November 18, 2024 hearing is set as an evidentiary hearing, so parties should be prepared to have witnesses and any other evidence they wish to present available at the hearing. The court acknowledges that either side may need additional time to prepare for the hearing and/or to meet and confer in hopes of resolving the issue before trial. Either party may submit a request for a continuance, with notice to the other side, if appropriate.

TENTATIVE RULING #3:

MATTER CONTINUED TO NOVEMBER 18, 2024 AT 1:30 P.M. FOR AN EVIDENTIARY HEARING REGARDING PETITIONER'S REQUEST. THE CLERK IS DIRECTED TO PROVIDE NOTICE TO COUNTY COUNSEL OF THIS HEARING.

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4.	PC20200482	TUNDAVIA v. DASGUPTA, BANK OF AMERICA
Motion to Compel, Motion to Deem Admitted, Sanctions, OSC		

This case has had ongoing issues with Defendant Ria Dasgupta failing to comply with discovery requests. The current Motion is for written discovery requests (Form Interrogatories, Set Two, Special Interrogatories, Set One, Request for Production of Documents, Set One, and Request for Admissions, Set Two) that were served on November 22, 2023. The responses were due on December 27, 2023. Counsel for Plaintiff attempted to meet and confer with defense counsel, and they agreed to an extension of January 23, 2024. No responses were received at that time, nor at the time of the Motion.

If a party to whom interrogatories, requests for admissions, or demand for inspection of documents fails to serve a timely response, the party propounding the interrogatories or request may move for an order compelling response to the interrogatories or requests. (Civ. Proc. §§ 2030. 290, 2031.300, and 2033. 280.)

The Declaration of Justin Berg filed herewith outlines the extreme efforts that Plaintiff's counsel has made to meet and confer about this issue even though there is no legal requirement before filing this motion when no responses are provided at all. (*St. Mary v. Superior Court* (2014) 223 Cal. App. 4th 762, 777-778.) Under California Rules of Court, Rule 3. 1345, a separate statement is not required when no response has been provided to the request for discovery. (Cal. Rule of 21 Ct., Rule 3. 145.)

"The requesting party may move for an order that the genuineness of any documents and the truth of any matters specified in the requests be deemed admitted." (Civ. Proc. § 2033. 280(b); see also *St. Mary v. Superior Court, supra* 223 Cal. App. 4th 762, 778 - "the court is required to grant the propounding party's deemed admitted motion 'unless it finds that the party to whom the requests for admission have been directed has served, before the hearing on the motion, a proposed response to the requests for admission that is in substantial compliance with Section 2033. 220.") Plaintiff requests that the Court order the truth of the matters specified in the requests is deemed admitted.

Prior sanctions were issued against Defendant Dasgupta in the amount of \$2,000 in related civil case 22CV0175, as well as \$5,000 in this case related to the Motion to Compel Deposition. Pursuant to counsel's declaration, the current Motion will cost Plaintiff \$4,172.50 in attorney's fees. Plaintiff requests \$25,000 in sanctions.

At the hearing on August 16, 2024, the Court ordered that Defendant Dasgupta appear for her deposition and pay \$5,000 in sanctions. Plaintiff now submits this Application for Order to Show Cause re Contempt, made pursuant to Code of Civil Procedure §§ 1211 and 1209(a)(5).

Defendant Dasgupta failed to appear for her deposition and failed to pay the ordered sanctions. (Decl. Berg) Plaintiff requests that the Court impose a fine of \$1,000 and consider all other penalties authorized under the law. (Code of Civil Procedure §1218)

Plaintiff further requests higher sanctions, since Defendant Dasgupta continues to impede discovery and ignore the Court's orders. Plaintiff requests \$25,000 in sanctions. As noted above, the Court has previously awarded sanctions of \$2,000 and \$5,000, and Defendant Dasgupta continues to not comply. Plaintiff again requests \$25,000 in sanctions.

TENTATIVE RULING #4:

- 1. RIA DASGUPTA IS ORDERED TO RESPOND TO FORM INTERROGATORIES (SET TWO), SPECIAL INTERROGATORIES (SET ONE), AND REQUEST FOR PRODUCTION OF DOCUMENTS (SET ONE) BY NOVEMBER 12, 2024.**
- 2. THE REQUEST TO DEEM MATTERS ADMITTED IS GRANTED.**
- 3. SANCTIONS IN THE AMOUNT OF \$7,500 ARE ORDERED AGAINST RIA DASGUPTA, PAYABLE BY NOVEMBER 12, 2024.**
- 4. APPEARANCES REQUIRED ON FRIDAY, OCTOBER 25, 2024, AT 8:30 AM IN DEPARTMENT NINE TO ADDRESS THE ORDER TO SHOW CAUSE RE CONTEMPT OF RIA DASGUPTA.**

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5.	22CV0175	DASGUPTA v. TUNDAVIA
Trial Setting		

TENTATIVE RULING #5:

APPEARANCES REQUIRED ON FRIDAY, OCTOBER 25, 2024, AT 8:30 AM IN DEPARTMENT NINE.

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6.	22CV1011	SHINGLE SPRINGS BANK OF MIWOK INDIANS v. FLINTCO PACIFIC INC.
Motion for Attorney's Fees		

Given the extent of billing statements that the court needs to review to adjudicate the request, the court continues the matter to December 20, 2024.

TENTATIVE RULING #6:

MATTER CONTINUED TO FRIDAY, DECEMBER 20, 2024, AT 8:30 AM IN DEPARTMENT NINE.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

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7.	24CV0163	WELLS FARGO BANK v. OSHAUGHNESSY
MSJ		

Plaintiff, Wells Fargo Bank, N.A. (“Plaintiff”) filed its Complaint against Beth J. Oshaughnessy (“Defendant”) for breach of written contract, breach of contract (implied in fact), money lent, money paid, open book account, and account stated. Defendant filed an Answer. Plaintiff served written discovery, consisting of Requests for Admissions and Defendant responded, admitting that she was issued the credit card in question, that she used the credit card for a period of several years, and failed to remit any further payment on the credit card since February 1, 2023, leaving an outstanding balance of \$20,307.50. Plaintiff argues therefore that there are no issues of material fact and summary judgment is appropriate.

Code Civ. Proc. § 437c(p)(1) sets forth plaintiff or cross-complainant's burden in moving for summary judgment:

A plaintiff or cross-complainant has met his or her burden of showing that there is no defense to a cause of action if that party has proved each element of the cause of action entitling the party to judgment on that cause of action. Once the plaintiff or cross-complainant has met that burden, the burden shifts to the defendant or cross-defendant to show that a triable issue of one or more material facts exists as to that cause of action or a defense thereto. The defendant or cross-defendant may not rely upon the mere allegations or denials of its pleadings to show that a triable issue of material fact exists but, instead, shall set forth the specific facts showing that a triable issue of material fact exists as to that cause of action or a defense thereto.

1. Breach of Written Contract

In order to establish a breach of contract claim, the plaintiff must show: 1) The execution of a valid contract; 2) Plaintiff’s performance or excuse for nonperformance; 3) Defendant’s breach; and 4) resulting damage to plaintiff. See *Reichert v. General Insurance Co.* (1968) 69 Cal.Rptr. 321, 325. Defendant applied for and was issued a Wells Fargo credit card (“Subject Account”) ending in 0158. (UF 1). Plaintiff sent Defendant the credit card along with the written Customer Agreement associated with the credit card. (UF 2). Pursuant to the terms, Defendant accepted the terms of the Customer Agreement when she used the Wells Fargo credit card. (UF 3). In accordance with the Customer Agreement, Plaintiff extended credit to Defendant whereby Defendant could charge on the credit line and in exchange, Defendant would repay the principal amount lend plus any applicable interest and finance charges. (UF 4-5). Defendant used the account, made payments, charges and incurred a balance. (UF 6).

Plaintiff sent Defendant monthly statements of the Subject Account each and every billing period, which reflected all charges, payments, minimum payment due, and any fees

and/or interest incurred. (UF 7-8). There is no record of any unresolved disputes on the account, or any active lawsuits against Wells Fargo for unresolved disputes. (UF 9-10). Defendant's last payment on the Subject Account was on February 1, 2023, and then no more payments were made, making Defendant in default. (UF 11-12). Defendant's statements show the balance due of \$20,307.50. (UF 13). As a result of Defendant's unpaid balance, Plaintiff was damaged in the amount of \$20,307.50. (UF 14). Defendant admitted all of the above facts in response to Plaintiff's Request for Admissions. (UF 15). All elements for breach of contract have been established and no facts are disputed.

2. Breach of Contract (Implied in Fact)

"As to the basic elements [of a contract cause of action], there is no difference between and express and implied contract... While an implied in fact contract may be inferred from the conduct, situation or mutual relation of the parties, the very heart of this kind of agreement is an intent to promise." See *Division of Labor Law Enforcement v. Transpacific Transportation Co.* (1977) 69 Cal.App.3d 268, 275; see also *Friedman v. Friedman* (1993) 20 Cal.App.4th 876, 888. The same analysis for the first cause of action therefore applies to the second cause of action.

3. Money Lent

To state a common count for money lent, the plaintiff need only allege that the defendant is indebted in a certain sum for money loaned by the plaintiff and that the defendant has not repaid the money. See *Pleasant v. Samuels* (1896) 114 Cal. 34, 36-38. In this case, Defendant was issued a credit card, used the credit card to make charges, and Defendant incurred a balance. (UF 16-19). Defendant made periodic payments to partial satisfaction of the credit card balance and Defendant still owes Plaintiff money, with the balance due being \$20,307.50. (UF 20-22). Defendant admitted these facts in response to Plaintiff's Request for Admissions. (UF 23). A claim for money lent has been established and no facts are in dispute.

4. Money Paid

The common count for money lent or paid alleges the indebtedness "for money lent by plaintiff to defendant," or "money paid" or "expended" to or for the defendant. See *Pleasant v. Samuels* (1986) 114 Cal. 34. The same analysis for the third cause of action applies to the fourth cause of action.

5. Open Book Account

To establish a claim for open book account, Plaintiff must prove (1) that Plaintiff and Defendant had a financial transaction; (2) that Plaintiff kept an account of the debits and credits involved in the transaction; (3) that Defendant owes Plaintiff money on the account; and (4) the amount of money that Defendant owes Plaintiff. CACI 372; see also *Interstate Group Administrators, Inc. v. Cravens, Dargan & Co.* (1985) 174 Cal.App.3d 700, 708. Defendant was issued a credit card, was permitted to make and incur charges, and was to repay the principal

along with interest and finance charges. (UF 31-33). Plaintiff kept a written account of the debits and credits, which were sent to Defendant as monthly account statements reflecting the total credit limit, available credit, charges, debits, credits, payments, the minimum payment due, the outstanding balance due, and the interest rate for that month. (UF 35). Defendant last made a payment on February 1, 2023, and the current balance due is \$20,307.50. (UF 38-39). Defendant admitted these facts in Plaintiff's Request for Admissions. (UF 40). Plaintiff established all elements of the claim for open book account and there are no facts in dispute.

6. Account Stated

"The essential elements of an account stated are: (1) previous transactions between the parties establishing the relationship of debtor and creditor; (2) an agreement between the parties, express or implied, on the amount due from the debtor to the creditor; and (3) a promise by the debtor, express or implied, to pay the amount due." *Zinn v. Fred R. Bright Co.* (1969) 271 Cal.App.2d 597, 600. The same analysis for the fifth cause of action applies to the sixth cause of action.

There is no opposition.

TENTATIVE RULING #7:

MOTION FOR SUMMARY JUDGMENT GRANTED.

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NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; EL DORADO COUNTY LOCAL RULE 8.05.07. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.

LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING.

IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM, PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

8.	24CV0421	WELLS FARGO BANK v. AGUILAR
MSJ		

Plaintiff, Wells Fargo Bank, N.A. (“Plaintiff”) filed its Complaint against Cecilia Aguilar (“Defendant”) for breach of written contract, breach of contract (implied in fact), money lent, money paid, open book account, and account stated. Defendant filed an Answer. Plaintiff served written discovery, consisting of Requests for Admissions and Defendant responded, admitting that she was issued the credit card in question, that she used the credit card for a period of several years, and failed to remit any further payment on the credit card since December 12, 2022, leaving an outstanding balance of \$14,257.24. Plaintiff argues therefore that there are no issues of material fact and summary judgment is appropriate.

Code Civ. Proc. § 437c(p)(1) sets forth plaintiff or cross-complainant's burden in moving for summary judgment:

A plaintiff or cross-complainant has met his or her burden of showing that there is no defense to a cause of action if that party has proved each element of the cause of action entitling the party to judgment on that cause of action. Once the plaintiff or cross-complainant has met that burden, the burden shifts to the defendant or cross-defendant to show that a triable issue of one or more material facts exists as to that cause of action or a defense thereto. The defendant or cross-defendant may not rely upon the mere allegations or denials of its pleadings to show that a triable issue of material fact exists but, instead, shall set forth the specific facts showing that a triable issue of material fact exists as to that cause of action or a defense thereto.

1. Breach of Written Contract

In order to establish a breach of contract claim, the plaintiff must show: 1) The execution of a valid contract; 2) Plaintiff’s performance or excuse for nonperformance; 3) Defendant’s breach; and 4) resulting damage to plaintiff. See *Reichert v. General Insurance Co.* (1968) 69 Cal.Rptr. 321, 325. Defendant applied for and was issued a Wells Fargo credit card (“Subject Account”) ending in 6619. (UF 1). Plaintiff sent Defendant the credit card along with the written Customer Agreement associated with the credit card. (UF 2). Pursuant to the terms, Defendant accepted the terms of the Customer Agreement when she used the Wells Fargo credit card. (UF 3). In accordance with the Customer Agreement, Plaintiff extended credit to Defendant whereby Defendant could charge on the credit line and in exchange, Defendant would repay the principal amount lend plus any applicable interest and finance charges. (UF 4-5). Defendant used the account, made payments, charges and incurred a balance. (UF 6).

Plaintiff sent Defendant monthly statements of the Subject Account each and every billing period, which reflected all charges, payments, minimum payment due, and any fees and/or interest incurred. (UF 7-8). There is no record of any unresolved disputes on the account,

or any active lawsuits against Wells Fargo for unresolved disputes. (UF 9-10). Defendant's last payment on the Subject Account was on December 12, 2022, and then no more payments were made, making Defendant in default. (UF 11-12). Defendant's statements show the balance due of \$14,257.24. (UF 13). As a result of Defendant's unpaid balance, Plaintiff was damaged in the amount of \$14,257.24. (UF 14). Defendant admitted all of the above facts in response to Plaintiff's Request for Admissions. (UF 15). All elements for breach of contract have been established and no facts are disputed.

2. Breach of Contract (Implied in Fact)

"As to the basic elements [of a contract cause of action], there is no difference between and express and implied contract... While an implied in fact contract may be inferred from the conduct, situation or mutual relation of the parties, the very heart of this kind of agreement is an intent to promise." See *Division of Labor Law Enforcement v. Transpacific Transportation Co.* (1977) 69 Cal.App.3d 268, 275; see also *Friedman v. Friedman* (1993) 20 Cal.App.4th 876, 888. The same analysis for the first cause of action therefore applies to the second cause of action.

3. Money Lent

To state a common count for money lent, the plaintiff need only allege that the defendant is indebted in a certain sum for money loaned by the plaintiff and that the defendant has not repaid the money. See *Pleasant v. Samuels* (1896) 114 Cal. 34, 36-38. In this case, Defendant was issued a credit card, used the credit card to make charges, and Defendant incurred a balance. (UF 16-19). Defendant made periodic payments to partial satisfaction of the credit card balance and Defendant still owes Plaintiff money, with the balance due being \$14,257.24. (UF 20-22). Defendant admitted these facts in response to Plaintiff's Request for Admissions. (UF 23). A claim for money lent has been established and no facts are in dispute.

4. Money Paid

The common count for money lent or paid alleges the indebtedness "for money lent by plaintiff to defendant," or "money paid" or "expended" to or for the defendant. See *Pleasant v. Samuels* (1986) 114 Cal. 34. The same analysis for the third cause of action applies to the fourth cause of action.

5. Open Book Account

To establish a claim for open book account, Plaintiff must prove (1) that Plaintiff and Defendant had a financial transaction; (2) that Plaintiff kept an account of the debits and credits involved in the transaction; (3) that Defendant owes Plaintiff money on the account; and (4) the amount of money that Defendant owes Plaintiff. CACI 372; see also *Interstate Group Administrators, Inc. v. Cravens, Dargan & Co.* (1985) 174 Cal.App.3d 700, 708. Defendant was issued a credit card, was permitted to make and incur charges, and was to repay the principal along with interest and finance charges. (UF 31-33). Plaintiff kept a written account of the debits

and credits, which were sent to Defendant as monthly account statements reflecting the total credit limit, available credit, charges, debits, credits, payments, the minimum payment due, the outstanding balance due, and the interest rate for that month. (UF 35). Defendant last made a payment on December 12, 2022, and the current balance due is \$14,257.24. (UF 38-39). Defendant admitted these facts in Plaintiff's Request for Admissions. (UF 40). Plaintiff established all elements of the claim for open book account and there are no facts in dispute.

6. Account Stated

"The essential elements of an account stated are: (1) previous transactions between the parties establishing the relationship of debtor and creditor; (2) an agreement between the parties, express or implied, on the amount due from the debtor to the creditor; and (3) a promise by the debtor, express or implied, to pay the amount due." *Zinn v. Fred R. Bright Co.* (1969) 271 Cal.App.2d 597, 600. The same analysis for the fifth cause of action applies to the sixth cause of action.

There is no opposition.

TENTATIVE RULING #8:

MOTION FOR SUMMARY JUDGMENT IS GRANTED.

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