PROPOSED TENTATIVE

On January 23, 2025, plaintiff Wells Fargo Bank, N.A. (plaintiff), filed a verified limited civil complaint for breach of contract against defendant George Kozumplik, Jr. (defendant), requesting damages of $7,120.10. Defendant opened a credit card account and ultimately defaulted. Exhibit 1 attached to the complaint is a document entitled “Consumer Credit Card Customer Agreement and Disclosure Statement,” which reflects the agreement between the parties. Defendant submitted an answer on February 24, 2025, in which he did not advance a general or specific denial, and did not raise any affirmative defense. Defendant instead admitted the truth of all statements in the complaint and posed the following proposition: “I would like to make a settlement and come up with a payment plan.”

On February 26, 2026, plaintiff filed a motion for judgment on the pleadings. It notes that defendant has not raised any defenses in the answer. It also relies on its propounded discovery, consisting of Requests for Admission, which were served upon defendant, and when defendant failed to reply, the court, on August 8, 2025, deemed the Requests for Admission admitted as true.[1] Plaintiff asks the court to take judicial notice of the following documents: 1) the agreement attached to the complaint; 2) defendant’s answer; and 3) the 11 Requests for Admissions submitted to defendant and deemed admitted as true by the court in its August 8, 2025, order. Plaintiff has also submitted a declaration from attorney Anthony Lio, indicating compliance with all meet and confer requirements. Finally, plaintiff has filed a “Memorandum of Costs” – asking for costs of $1,285, which consists of the following: 1) $405 for filing and motion fees; $80 for service of process; and 3) $800 for attorney’s fees,[2] which is supported by a separately filed “Attorney Fee Declaration[,]”, in which plaintiff relies on some unidentified “default schedule” for support. No other evidence is offered to support the request for attorney’s fees. Plaintiff’s counsel indicates they will not appear at the hearing today, submitting on the moving papers as is permitted by California Rules of Court, rule 3.1304(c).

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[1] The 11 RFAs are as follows:1) admit that monthly Account statements were sent to You requesting minimum payments; 2) admit that as of January 23, 2025 there was a balance owing of a least $7,120.10 on the Account; 3) admit that you never notified Plaintiff of a dispute involving the balance of any Account statement; 4) admit that as of January 23, 2025, there was a balance owned of at least $7,120.10 on the Account; 5) admit that since January 23, 2025, You have not paid this propounding party $7,120.10 or any amount on the Account; 6) admit that you owe this pounding party at least $7,120.10 on the Account exclusive of any amounts incurred after January 23, 2025; 7) Admit the Consumer Credit Card Customer Agreement and Disclosure Statement Hotels.com Rewards Visa & Visa signature Credit Cards, applicable to the Account in this action is attached hereto as Exhibit A; 8) admit that “Exhibit A’ contains a provision entitled the prevailing party to attorney fees; 9) admit that You do not have a Credit Defense (for purposes of these requests, Credit Defense refers to any debt cancellation agreement between You and Plaintiff wherein Plaintiff has agreed to cancel any portion of a debt You owe on your Account); 10) If You have Credit Defense, admit that You do not qualify for its benefits; and 11) admit that affirmative defenses you have asserted in this matter lack merit and evidentiary support.

[2] The “Memorandum of Costs” was submitted on mandatory Judicial Council form MC-010, which provides in relevant part for attorney’s fees as follows: . . . “(enter here if contractual or statutory fees are fixed without the necessity of a court determination; otherwise, a noticed motion is required).”

A statutory motion for judgment on the pleadings (Code Civ. Proc., § 438) is an appropriate means of obtaining an adjudication of the rights of the parties when breach of contract is pleaded. A motion for judgment on the pleadings is the functional equivalent of a demurrer to an answer. (*Engine Manufacturers Assn. v. State Air Resources Bd.* (2014) 231 Cal.App.4th 1022, 1034.) The motion should be denied if the pleadings (the complaint and answer) raise a material issue or set up an affirmative matter constituting a defense. This is so because the determination "of the sufficiency of the answer requires an examination of the complaint because its adequacy is with reference to the complaint it purports to answer." (*South Shore Land Co. v. Petersen* (1964) 226 Cal.App.2d 725, 733; see *People ex rel. Becerra v. Superior Court* (2018) 29 Cal.App.5th 486, 499; accord, *Allstate v. Kim W.* (1984) 160 Cal.App.3d 326.)

The court grants plaintiff's request to take judicial notice of the answer and the credit agreement. The court also grants the request to take judicial notice of the 11 RFAs deemed admitted true as evidenced in the court's discovery order. The court can rely on this evidence to determine the merits of the motion, as their import cannot reasonably be disputed. (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604-605 [the court can take judicial notice of records such as requests for admission, when considering a demurrer or motion for judgment on the pleadings where the evidence contains statements of defendant which are inconsistent with the allegation in the answer]; see also *Tucker v. Pacific Bell Mobile Services* (2012) 208 Cal.App.4th 201, 218, fn. 11 [a court may take judicial notice of a party's admissions in cases where the admission cannot reasonably be controverted, such as requests for admission].)

The court finds the motion was timely filed. (Code Civ. Proc., § 438(e).) It also finds the motion was properly served on defendant (as evidenced by the proof of service). Finally, it determines that plaintiff has satisfied its meet and confer obligations. (Code Civ. Proc., § 439, subd. (a)).

On the merits, plaintiff has adequately pled a breach of contract cause of action. (*D'Arrigo Bros. of California v. United Farmworkers of America* (2014) 224 Cal.App.4th 790, 800 [establishing a breach of contract claim requires a showing of "(1) the existence of the contract, (2) plaintiff's performance or excuse for nonperformance, (3) defendant's breach, and (4) the resulting damages to the plaintiff"].) Plaintiff claims the contract was in writing, has attached a copy of it to the complaint, alleges it has performed all obligations thereunder, asserted defendant breached the agreement, and indicated damages were incurred. Indeed, in his Requests for Admission deemed admitted as true, defendant admitted he opened an account governed under the contact attached to the complaint, never objected to the amount owned, and admitted he owed $7,120.10. Defendant, despite service, has not filed an opposition. All elements of a breach of contract have been established based on the judicially noticed documents, and no defenses were articulated in the answer or can now be advanced given the

Requests for Admission admitted as true. (See, e.g., *Va. G. v. ABC Unified School Dist*. (1993) 15 Cal.App.4th 1848, 1852.) Accordingly, the court grants the motion for judgment on the pleadings without leave to amend, and awards plaintiff damages of $7,120.10.

This leaves the issue of costs and attorney's fees. While the court observes that costs are authorized via a post-judgment motion through California Rules of Court, rule 3.1700, plaintiff has submitted a "Memorandum of Costs" (which is prima facie evidence justifying the costs). The court acknowledges that courts routinely award costs without strict compliance of the Rules of Court if there is the functional equivalent of a motion under this rule, and there is. The court awards costs of $405 for filing and motion fees, and $80 for service of process fees, for a total of $485, as they appear reasonable.

The court, by contrast, cannot award the attorney's fees of $800 as requested, even if defendant is deemed to have admitted the presence of an attorney's fees provision in the binding contract. Plaintiff relies ***exclusively*** on some unidentified default schedule to support its request for attorney fees of $800. This is manifestly inappropriate, for the matter does not involve entry of default or default judgment (Calif. Rules of Court, rule 1.800), but a motion for judgment on the pleadings, which is governed by the standards contained in California Rules of Court, rule 3.1702, requiring a noticed motion. That is, because the attorney fees are not fixed, a moving party is required to file at least the functional equivalent of a noticed motion, of which plaintiff was expressly informed of in its "Memorandum of Costs." (See fn. 2, *ante*.)[3] Most significantly, the reasonableness of any attorney fee request, which is normally within the discretion of the trial court, is to be determined from consideration of factors such as the nature of the litigation, the complexity of the issues, the experience and expertise of counsel, and the amount of time involved. (*Wilkerson v. Sullivan* (2002) 99 Cal.App.4th 443, 448.) And it is settled that contractual attorney fee award calculation usually begins with the use of the lodestar method (the number of hours reasonably expended multiplied by the reasonably hourly rate). (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095 [California courts have consistently held that a computation of time spent on a case and the reasonable value of that time is "fundamental to a determination of an appropriate attorneys' fee award"].) Plaintiff's counsel offers ***no*** evidentiary basis to support attorney's fees of $800 under any of these standards. (See, e.g., *id*. at p. 1096, fn. 4 [fee requests are generally supported by evidence substantiating the amount sought by billing records or a declaration from counsel estimating hours spent].) The court, having been presented with ***no*** evidence, cannot award attorney's fees of any amount.

[3] The court in fact has no idea how plaintiff's counsel concluded that $800 was appropriate under a default schedule. ***This court's*** default schedule is located at Santa Barbara County Superior Court Local Rule 707, and it indicates that when the debt amount is between $5,000.01 to $10,000 following a default judgment, attorney's fees of $1,050 plus 15% of the excess over $5,000" are authorized. The $800 figure is never mentioned.

The court therefore will deny plaintiff's request for attorney's fees without prejudice. As the court will enter judgment on the debt owed and costs incurred, as detailed above, and enter judgment thereon, plaintiff may request attorney fees in compliance with California Rules of Court 3.1702, which contemplates a post-judgment motion, after notice of entry is sent.

In summary, the court grants plaintiff's request for judicial notice. It also grants plaintiff's motion for judgment on the pleadings, awarding plaintiff $7,120.10 on the principal debt and awarding reasonable costs of $485. It denies plaintiff's request for attorney's fees without prejudice, meaning plaintiff can file a post-judgment motion for attorney's fees pursuant to California Rules of Court, rule 3.1702 after judgment has been entered. The clerk is directed to enter judgment in the amount of $7,120.10 and $485 (for a total of judgment of $7,605.10) and send notice of entry of judgment to the parties.