PROPOSED TENTATIVE

On April 5, 2024, plaintiff Capital One, N.A. (plaintiff), filed a limited complaint on standard Judicial Council forms against defendant Melissa Harwood (defendant) for damages of $4,734.27, plus interest, based on common count causes of action (with the last years an open book account for money due, an account stated in writing for debt incurred, for money lent at defendant's request, and for money paid/expended for defendant's benefit). Defendant answered on May 13, 2024. In the answer, defendant "generally denies each statement in the complaint or cross complaint." She also raised the following affirmative defenses: A) failure to state a claim upon which relief can be granted; B) laches (defendant alleges that plaintiff is barred from recovery in this action pursuant to the doctrine of laches); C) plaintiff's breach - defendant alleges that plaintiff has breached any agreement between the parties that recovery should be denied in whole or in part based upon said breach; D) arbitration – defendant is informs and believes that any agreement between the parties provides for the election of either party to submit any disputes to arbitration in lieu of litigation, and defendant reserves the right to elect and transfer; E) failure to mitigate – defendant alleges that plaintiff has failed to mitigate its damages, if any, and should therefore be denied recovery, either in whole or in part; and F) unjust enrichment (no further explanation is given).

Plaintiff has filed a motion for judgment on the pleadings, claiming 1) the operative complaint adequately pleads a common count cause of action; and 2) based on matters judicially noticed (i.e., defendant's requests for admissions deemed admitted), "defendant does not state facts sufficient to constitute a defense." (See, Code Civ. Proc., § 438, subd. (c)(1) [a motion for judgment on the pleadings can be made by plaintiff if the complaint states acts sufficient to constitute a cause of action and the "answer does not state facts sufficient to constitute a defense to the complaint"]; *Hearst v. Hart* (1900) 128 Cal. 327, 328 [a notice that specifies a motion for judgment on the pleadings is to be made on the pleadings, papers, files, and records in said action, and upon the ground that the answer on file herein constitutes no defense to the cause of action, or any portion thereof, is sufficient].) In association with this motion, plaintiff asks the court to take judicial notice of this court's previous discovery order, signed on September 12, 2024, deeming five requests for admission (RFAs) admitted as true against defendant, as follows: 1) defendant had a credit account issued by plaintiff; 2) defendant received periodic statements regarding the credit card account issued by defendant; 3) as of April 5, 2024, the balance owed by defendant on the credit account was $4,734.27; 4) no payments have been made on the credit account issued by defendant since April 5., 2024; and 5) the last payment on credit account number issued by defendant was made within the 3 years immediately prior to April 5, 2024.

The court agrees with plaintiff that it can and does take judicial notice of the 5 RFAs deemed admitted by plaintiff as evidenced in the court's discovery order, and can rely on that evidence in determining the merits of the motion for judgment on the pleadings, 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 admissions, 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].) Armed with this judicially noticed evidence, the court agrees that plaintiff has stated a cause of action for common count in the operative pleading.

But this is as far as this judicially noticed evidence can advance plaintiff's motion, for it is settled that a ***plaintiff*'s** motion for judgment on the pleadings is also the functional equivalent of a demurrer to the answer. (*Engine Manufacturers Association v. California Air Resources Board* (2014) 231 Cal.App.4th 1022, 1034.) And in this regard, Witkin, a seminal authority on California procedure, has made the following observations: "The common count is a general pleading that seeks recovery of money without specifying the nature of the claim . . . . ***Because of the uninformative character of the complaint, it has been held that the typical answer, a general denial, is sufficient to raise almost any kind of defense, including some that ordinarily require special pleading***." (See *Bridges & Hall v. Paige* (1859) 13 Cal. 640, 641 [*quantum valebant* for reasonable value of legal services; under denial defendant could raise issue of unskillfulness of services]; *DeSantis v. Miller Petroleum Co*. (1938) 29 C.A.2d 679, 683 [in action based on common count, defendant may, under general denial, plead any defense tending to show that plaintiff has no cause of action]; *Aetna Carpet Co. v. Penzner* (1951) 102 C.A.2d 859, 860, 228 P.2d 347 [same]; 5 Witkin, California Procedure (6th ed. 2024), Pleading, § 1115 [defenses to common count cause of action]; see also *Title Ins. Co. v. State Bd. of Equalization* (1992) 4 Cal.4th 715, 731 [citing Witkin favorably for the proposition that in the common count context, a general denial is sufficient to raise " almost any kind of defense"]; (*Interstate Group Administrators, Inc. v. Cravens, Dargan & Co.* (1985) 174 Cal.App.3d 700, 706 [same].)

Defendant in her answer advanced a general denial to the common count causes of action alleged by plaintiff in the operative pleading. Under the authority noted above (including California Supreme Court authority), this general denial ***alone and by itself*** is sufficient to raise "almost any kind of defense, including some that ordinarily require special pleading." This means that for the 5 RFAs deemed admitted as true against defendant (i.e., to be effective as judicially noticed evidence) they must on their face preclude any possible defense that is contemplated and authorized by defendant's general denial. They do not have that import or scope. Nothing on their face precludes defendant from advancing a possible defense, other than perhaps a defense based on any denial that a debt existed or that common count has not been pleaded. Of course other defenses are possible. And in order for the court to conclude the 5 RFAs preclude other defenses, the court would have to make evidentiary determinations about their impact – something it is precluded from doing, for it is settled that the hearing cannot turn into a contested evidentiary hearing through the guise of judicial notice. (*Del E. Webb Corp, supra*, 123 Cal.App.3d at p. 605 [the hearing on demurrer and thus a motion for judgment on the pleadings may not be turned into contested evidentiary hearing through the guise of having the court take judicial notice].)

A motion for judgment on the pleadings as filed by creditor plaintiff "must be denied if the defendant's pleadings raise a material issue or set up affirmative matter constituting a defense." (*MacIsaac v. Pozzo* (1945) 26 Cal.2d 809, 812–813.) The answer does so under the authority detailed above. Or stated differently, "[w]here the answer, fairly construed, suggests that the defendant may have a good defense, a motion for judgment on the pleadings should not be granted." (*Barasch v. Epstein* (1957) 147 Cal.App.2d 439, 443.) Defendant arguably may still advance a viable defense. In the end, and contrary to import of plaintiff's claim, the general denial to a common count cause of action is sufficient to raise a defense without special pleading and thus, by logic, is sufficient to withstand a pretrial challenge either be demurrer or a motion for judgment on the pleadings.[1] Nothing in the judicially noticed discovery order indicates defendant is or will be precluded from raising any possible defense to the common count causes of action that are otherwise encompassed and authorized by a general denial (i.e., even though not specifically pleaded). The court must therefore deny the motion for judgment on the pleading, obviating the need to address plaintiff's requests for costs or fees.

Plaintiff is not without other avenues to pursue. Instead of a motion for judgment on the pleadings, plaintiff should file a motion for summary judgment. As our high court has made clear in situations when a plaintiff files a summary judgment motion, plaintiff does not have to disprove any defense asserted by the defendant – plaintiff need only prove each element of the cause of action. Once that is accomplished, the burden shifts to defendant to show a triable issue of fact as to the cause of action or any defense. (*Aguilar v. Atlantic Richfield Co*. (2001) 25 Cal.4th 826, 853; *WRI Opportunity Loans II, LLC v. Cooper* (2007) 154 Cal.App.4th 525, 531-532.) This stands in stark contrast to a motion for judgment on the pleadings, as filed by plaintiff and explained above.

Summary:

The court grants plaintiff's request for judicial notice, but denies the motion for judgment on the pleadings. The judicially noticed evidence does not preclude defendant from raising a defense, as is authorized and contemplated by a general denial to a common count cause of action under existing California law. This obviates the need for the court to assess plaintiff's requests for costs or fees. Plaintiff should file a motion for summary judgment instead. Plaintiff will not appear at the hearing, pursuant to California Rules of Court, rule 3.1304(c). The clerk is directed to enter the tentative as a final order, and send the final order to the parties.

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[1] The flaw in plaintiff's motion seems to be equating a general denial in the answer to a common count cause of action with an answer that admits the debt and otherwise raises no defense at all (either as a general or specific denial, or an affirmative defense). The two are not similarly situated, as the authorities cited in the body of this order make clear. In the present context, the 5 RFA admissions would have to be far more comprehensive than they are – to the effect that defendant has not and cannot state any defense against the common count cause action despite the general denial in the answer. They of course do not have that import or impact – and could only do so with evidentiary interpretation, a point anathema to the limitations placed on a motion for judgment on the pleadings.