PROPOSED TENTATIVE

On July 15, 2025, plaintiff American Express National Bank (plaintiff) filed a limited civil complaint against defendant Christal Maraes (aka Christal Imares) (defendant), for breach of contract, following defendant's breach of a credit card agreement following default. The credit card agreement is attached to the operative pleading. Defendant allegedly owes $4,361.83. Defendant, in propria persona, filed an answer, advancing general and specific denials, as well as an affirmative defense based on plaintiff's lack of standing.

On February 6, 2026, plaintiff filed a motion for summary judgment, or in the alternative summary adjudication, along with a request for judicial notice, a separate statement, and a declaration from Raquel Hernandez, who is the "Assistant Custodian or Records" for plaintiff (including Exhibit A, which is the Cardmember Agreement; Exhibit B, which is the closing credit-card statement of account dated May 15, 2025; Exhibit C, which are the revolving credit-card account monthly billing records between May 15, 2025, and July 15, 2022; and Exhibit D, which is the last closing statement, indicting defendant's owes $4,361.25). Plaintiff contends that there are no triable issues of material fact as to any the elements of a breach of contract cause of action. It contends that evidence shows a contract was made between the parties, and the defendant breached the agreement by failing to pay, owing damages. Plaintiff has advanced nine (9) issues of undisputed fact in support, based on the declaration of Raquel Hernandez, all documents attached to her declaration, and documents associated with its request for judicial notice. Defendant was served with the motion by mail on March 10, 2026. No opposition has been filed.

Initially, the court grants defendant's unopposed request to take judicial notice of title 15 U.S.C. section 1666, involving consumer credit card cost disclosure and credit billing; and section 202.12 of Title 12 of Code of Federal Regulations (involving record retention of credit card billing accounts).

The law with regard to summary judgment and summary adjudication is settled when plaintiff files a motion. Where plaintiff seeks summary judgment, the burden is to produce admissible evidence on each element of a "cause of action" entitling plaintiff to judgment. This means that plaintiffs, who bear the burden or proof at trial by a preponderance of evidence, must produce evidence that would require a reasonable trier of fact to find any underlying material fact more likely than not. (*Aguilar v. Atlantic Richfield Co*. (2001) 25 Cal.4th 826, 851.) It is not plaintiff's burden to disprove affirmative defenses asserted by defendant. (*Oldcastle Precast, Inc. v. Lumbermens Mutual Case. Co.* (2009) 170 Cal.App.4th 554, 565.) Defendant has no evidentiary burden until plaintiff produces admissible and undisputed evidence on each element of a cause of action. (Code Civ. Proc., § 437c, subd. (p)(1).)

As noted, plaintiff advances a breach of contract cause of action involving breach of the written credit-card agreement between the parties, after defendant failed to pay the debt owed as agreed. The elements of a cause of action for breach of contract are well-established. A plaintiff must establish the existence of a contract, plaintiff's performance (or excuse for nonperformance), defendant's breach, and resulting damages. Defendant's use of the credit card constitutes acceptance of the terms of that credit card agreement. (*Professional Collection Consultants v. Lujan* (2018) 23 Cal.App.5th 685, 690.)

Plaintiff has met its prima-face burden to show undisputed issues of faction about all material issues associated with its breach of contract cause of action. In Issue Nos. 1 and 2 of plaintiff's separate statement, plaintiff has shown that plaintiff and defendant entered into a written credit agreement in April 2018, with defendant using the credit card issued for six years thereafter. The record shows that defendant is contractually obligated to pay his credit card bill (*Professional Collection Consultants v. Lauron* (2017) 8 Cal.App.5th 958, 971); defendant's use of the credit card constitutes acceptance of the terms of that credit-card agreement. (*Professional Collection Consultants v. Lujan, supra*, citing *Anastas v. American Savings Bank* (9th Cir. 1996) 94 F.3d 1280, 1285.) In Issue Nos. 3 and 4, plaintiff contends that it complied with all obligations under the credit-card agreement by maintaining an ongoing balance in the and paying vendors for charges as made by defendant, as reflected in Raquel Hernandez's declaration and attachments thereto. In Issue Nos. 5, 6, and 7 of its separate statement, plaintiff has demonstrated that defendant has breached the written credit-card agreement; specifically, plaintiff has shown that defendant's last payment applied to the account on or about April 21, 2025, when defendant made a payment of $141.61. Finally, plaintiff has demonstrated resulting damages in Issue No. 8 of its separate statement, to the effect that defendant currently owes $4,361.83 on the account. Plaintiff has satisfied its burden to show undisputed issues of material fact about all elements in the breach of contract cause of action. As plaintiff has no obligation to address any affirmative defenses, and as defendant has not filed opposition, the court will grant summary judgment/adjudication as to the breach of contract cause of action.

Plaintiff asks the court as part of the order and judgment to award costs as the prevailing party, pursuant to Code of Civil Procedure section 1032, et seq. It has filed a "Memorandum of Costs" asking for total costs of $297.61 (consisting of $72.61 for service of process and $225 for filing fees). As the prevailing party, plaintiff would be entitled to these costs, and they appear reasonable. While there is a settled procedure for requesting costs, via a ***post-judgment*** motion, per California Rules of Court, rules 3.1700 [costs], this court has routinely permitted a contemporaneous submission of the Memorandum of Costs where the opposing party has been properly served, as this is sufficient notice. The requested costs are reasonable and thus will be awarded.

The court grants summary judgment/adjudication, and will sign the proposed order, filed on February 6, 2025. The court will also sign the proposed judgment, directing plaintiff to recover the principal sum of $4,361.83, plus costs of $297.61, for a total judgment of $4,659.44. The clerk is directed to enter the order and judgment and sent to the parties. There is need to conduct the CMC as a result, which is vacated.