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**PARTIES/ATTORNEYS**

Plaintiff	Wells Fargo Bank	Collection At Law, Inc. Jon O. Blanda, Esq. Angela A. Velen, Esq. Ashley Mulhorn, Esq. David Bartley, Esq.
Defendant	Brian Loring	Twitchell & Rice Vince Martinez

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**TENTATIVE RULING**

For all the reasons discussed below, Wells Fargo Bank NA's motion for summary judgment is granted.

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This is a collection action for credit card debt. According to the allegations of the complaint, defendant Brian Loring entered into a credit card agreement with plaintiff Wells Fargo Bank, N.A. in May 2013 and he breached the contract by not paying the balance owed on the credit card. The balance due on the account is \$9,718.33. Wells Fargo filed its complaint on April 25, 2024 alleging causes of action for (1) breach of written contract; (2) breach of implied in fact contract; (3) money lent (common count); and (4) money paid for defendant at defendant's instance (common count). Loring answered with a general denial on August 13, 2024.

Wells Fargo moves for summary judgment. There is no alternative request for summary adjudication. The motion was timely served. There is no opposition.

1. Burden of Proof on Summary Judgment

The moving party bears the initial burden of production to make a prima facie showing that there are no triable issues of material fact—one sufficient to support the position of the party in question that no more is called for. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850-851.) Plaintiffs moving for summary judgment bear the burden of persuasion that each element of the cause of action in question has been proved, entitling the party to judgment. (Code Civ. Proc. § 437c, subd.(p)(1).) Plaintiffs, who bear the burden of proof at trial by preponderance of evidence, therefore “must present evidence that would require a reasonable trier of fact to find the underlying material fact more likely than not—otherwise he would not be entitled to judgment as a matter of law, but would have

to present his evidence to a trier of fact.” (*Aguilar, supra*, 25 Cal.4th at p.851.) “Once the plaintiff... has met that burden, the burden shifts to the defendant... to show that a triable issue of one or more material facts exists as to the cause of action or a defense thereto.” (*Thompson v. Ioane* (2017) 11 Cal.App.5th 1180, 1195, quoting Code Civ. Proc. § 437c, subd. (p)(1).)

Because the moving party must show that the undisputed facts, when applied to the issues framed by the pleadings, entitle the moving party to judgment, the court necessarily must examine the elements of the causes of action alleged. “A cause of action for damages for breach of contract is comprised of the following elements: (1) the contract, (2) plaintiff's performance or excuse for nonperformance, (3) defendant's breach, and (4) the resulting damages to plaintiff.” (*Rutherford Holdings, LLC v. Plaza Del Rey* (2014) 223 Cal.App.4th 221, 228.) “A common count... is a simplified form of pleading normally used to aver the existence of various forms of monetary indebtedness.” (*Professional Collection Consultants v. Lujan* (2018) 23 Cal.App.5th 685, 690.) A common count claim, such as those alleged here for money lent and money paid, broadly applies “wherever one person has received money which belongs to another, and which in ‘equity and good conscience,’ or in other words, in justice and right, should be returned.” (*Rubinstein v. Fakheri* (2020) 49 Cal.App.5th 797, 809.)

## 2. Analysis

In support of its motion, Wells Fargo presents the declaration of Jarrad Emamian, Loan Workout Specialist, responsible for monitoring the legal process for credit card accounts, investigation and resolution of customer disputes, research and review of Wells Fargo's business records, including researching specific account issues such as an account being opened, disputes with respects to the account, charges made and payments received and account delinquencies. (See Emamian Decl., ¶¶ 1-4.) Plaintiff presents documents prepared in the ordinary course of Wells Fargo's business that demonstrates that defendant applied for and was issued a Wells Fargo credit card account with the customer agreement for the credit card (“Customer Agreement”), which provided that: “This contract is for your Credit Card account (Account} and is between Wells Fargo Bank, N.A. and each Account holder. . . . By using or confirming your Account, you and any joint Account holder accept this Agreement's terms. Please carefully read this Agreement and keep it for your records.” (Emamian Decl., ¶12; Exh. 1, § 1.)

Defendant used the credit card, thereby accepting the terms of the Customer Agreement and the account was opened with Wells Fargo on May 26, 2023. (*Id.* at ¶ 13.) Defendant charged goods and services to the account with Wells Fargo, or authorized others to charge goods and services to the account, was issued monthly billing statements for those charges/purchases, and Defendant made payments of the principal and interest pursuant to the agreement through June 16, 2023. (*Id.* at

¶¶ 14-15, 21, 21, Exh. 2.) No further payments were made on the account after June 16, 2023, leaving a balance of \$9,718.33 on the account. (*Id.* at ¶ 22.) Pursuant to the Fair Credit Billing Act, California's Song-Beverly Credit Card Act of 1971 and the Billing Rights Summary included with every monthly statement provided to Defendant, Defendant had 60 days to notify Wells Fargo of any disputes on the activity of the account, and there is no record of any unresolved disputes on the account. (*Id.* at ¶¶ 18-20.) As a result, pursuant to the terms of the Customer Agreement, Defendant owes Wells Fargo the balance of \$9,718.33. (*Id.* at ¶ 22.)

Wells Fargo meets its initial burden to demonstrate that it is entitled to judgment on its complaint. Accordingly, the burden shifted to Defendant to show that a triable issue of one or more material facts exists. (See Code Civ. Proc. § 437c, subd. (p)(1).) Here, defendant has failed to submit an opposing separate statement of facts. When a moving party makes the required prima facie showing, the opposing party's failure to submit an opposing separate statement may, in the court's discretion, constitute a sufficient ground for granting the motion. (CCP § 437c(b)(3); see *Oldcastle Precast, Inc. v. Lumbermens Mut. Cas. Co.* (2009) 170 Cal.App.4th 554, 568; *Kojababian v. Genuine Home Loans, Inc.* (2009) 174 Cal.App.4th 408, 418.) Here, the court finds that defendant failed to provide any opposing separate statement and thus failed to demonstrate the existence of a triable issue of material fact.

As defendant failed to meet his burden to demonstrate the existence of a triable issue of material fact, Wells Fargo's motion for summary judgment is granted.

The parties are instructed to appear at the hearing for oral argument. Appearance by Zoom Videoconference is optional and does not require the filing of Judicial Council form RA-010, Notice of Remote Appearance. (See [Remote Appearance \(Zoom\) Information | Superior Court of California | County of Santa Barbara](#).)