

**DEPARTMENT TWELVE  
JUDGE CHRISTINE CARRINGER  
707-207-7312  
TENTATIVE RULINGS SCHEDULED FOR  
THURSDAY, JULY 25, 2024**

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**WELLS FARGO BANK v. RICO**

**Case No. CL23-01969**

Motion for Summary Judgment

**TENTATIVE RULING**

Plaintiff's unopposed motion for summary judgment is granted.

Defendant has not served or filed a separate statement disputing Plaintiff's facts, which alone justifies granting the motion. (Code Civ. Proc. § 437c(b)(3).)

Moreover, Plaintiff has presented evidence sufficient to meet its burden of proving its breach of contract and common count causes of action. (Code Civ. Proc. § 437c(p)(1); *Aguilar v. Atl. Richfield Co.* (2001) 25 Cal.4th 826, 853; *Montrose Chem. Corp. v. Superior Court* (1993) 6 Cal.4th 287, 301, fn. 4.) It is undisputed that Defendant entered into a credit card account with Plaintiff, that Defendant used the credit card and incurred a balance, that Plaintiff sent Defendant monthly statements reflecting all charges, payments, minimum payments due, and fees and interest incurred, that

Defendant did not dispute any of the statements, that Defendant breached by failing to make any payments after July 8, 2022, and that Defendant currently owes an unpaid balance of \$5,766.30. (UMF 3, 6-9, 11-13.)

Consequently, the burden of establishing the existence of a triable issue of material fact shifted to Defendant. (Code Civ. Proc. § 437c(p)(1).) By neglecting to produce any evidence contesting these facts, Defendant has failed to carry her burden. “Summary judgment must be granted when the moving party’s evidence is sufficient to sustain a judgment in its favor and the opposing party does not present evidence raising a triable issue of material fact.” (*Turner v. Anheuser-Busch, Inc.* (1994) 7 Cal.4th 1238, 1252.)

Judgment shall be entered against Defendant and in favor of Plaintiff for the outstanding balance of \$5,766.30 and court costs of \$800 as identified in the memorandum of costs filed and served concurrently with Plaintiff’s motion for a total of \$6,566.30.

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**ALL BAY BUILDERS, INC. v. IAN and JENNIFER WELTER, et al.**  
**Case No. FCS058678**

Defendants/cross-complainants’ motions to deem matters admitted and for sanctions

**TENTATIVE RULING**

Defendants/Cross-Complainants Ian Welter and Jennifer Welter bring 3 motions to deem matters admitted as follows:

- 1) Motion to Deem Requests for Admission, Set One, Admitted as to Charles Littlefield individually and dba All Bay Builder [sic];
- 2) Motion to Deem Requests for Admission, Set One, Admitted against Plaintiffs/Cross-Defendants All Bay Builders, Inc. and
- 3) Motion to Deem Requests for Admission, Set Two, Admitted against Plaintiffs/Cross-Defendants All Bay Builders, Inc.

The Complaint in this matter was filed on August 22, 2022. On February 3, 2023, Defendants filed their Answer and Cross-Complaint. A Notice of Acknowledgment and Receipt was executed by Plaintiff Charles Littlefield individually and dba All Bay Builder counsel on March 27, 2023. No Proof of Service or Notice of Acknowledgment and Receipt is contained in the court file as to Plaintiff All Bay Builders, Inc.

On May 8, 2023 a Substitution of Attorneys was filed as to plaintiff/cross-defendant “All Bay Builders”. Plaintiff’s counsel Elizabeth Lawley substituted out of the case and All Bay Builders was named the successor legal representative. No new attorney has substituted into the case on behalf of any of the plaintiffs/cross-defendants. One of the cross-defendants is a corporation and must be represented by an attorney.

On June 21, 2023, counsel for Defendants/Cross-Complainants requested the entry of default as to All Bay Builders, Inc. and Charles Littlefield, individually and dba All Bay Builder [sic]. The defaults were entered as to Plaintiffs/Cross-Defendants.

On December 8, 2023 Defendants/Cross-Complainants served Requests for Admission, Set One on All Bay Builders, Inc. On February 6, 2024 Defendants/Cross-Complainants served Requests for Admission, Set Two on All Bay Builders, Inc. On February 6, 2024 Defendants/Cross-Complainants served Requests for Admission, Set One on Charles Littlefield individually and dba "All Bay Builder" on February 6, 2024. No responses have been received to any of the requests for admission.

On June 12, 2024 the instant motions were filed.

Counsel for the moving parties has not provided any authority upon which she relies for the principle that a defaulted party can be compelled to respond to discovery served more than 5 months after his or their defaults were taken. Once the clerk enters a default in the court record, that defendant is no longer able to file a response or otherwise participate in the case. It is unclear why discovery was not served on defendants while they were still represented or before their defaults were taken. It is equally unclear why defendants, after losing their rights to file pleadings or defend their position, should be forced to respond to discovery.

All three motions are denied. Sanctions are denied.

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