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DISTRICT COURT  
FIRST CIRCUIT  
CIVIL DIVISION

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Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FIRST CIRCUIT

HONOLULU DIVISION

STATE OF HAWAII

UNIFUND CCR PARTNERS, ) CIVIL NO. 1RC04-1-6258  
 ) (Assumpsit)  
Plaintiff, )  
 )  
vs. ) PLAINTIFF UNIFUND CCR PARTNERS'  
 ) MEMORANDUM IN OPPOSITION TO  
KEVIN KIM, ) DEFENDANT KEVIN KIM'S MOTION TO  
 ) SET ASIDE DISMISSAL; DECLARATION  
Defendant. ) OF MARVIN S.C. DANG; EXHIBIT "A";  
 ) DECLARATION OF JAMES SHIGEO  
 ) DIXON; DECLARATION OF JAE BONG  
 ) PARK; CERTIFICATE OF SERVICE  
 )  
 ) **HEARING:**  
 ) DATE: June 13, 2006  
 ) TIME: 8:30 a.m.  
 ) JUDGE: Presiding  
 )  
 )

**PLAINTIFF UNIFUND CCR PARTNERS' MEMORANDUM IN  
OPPOSITION TO DEFENDANT KEVIN KIM'S MOTION TO SET ASIDE DISMISSAL**

Plaintiff UNIFUND CCR PARTNERS ("Unifund") submits this Memorandum in opposition to Defendant Kevin Kim's ("Kim") Motion to Set Aside Dismissal filed on May 26, 2006. The Motion requests this case be reinstated, or in the alternative, dismissed with prejudice. For the

(060806/JSD/sm)

reasons stated below, Unifund opposes the Motion.

**Background of this court action.**

Unifund filed the Complaint on October 25, 2004 to collect on an unpaid credit card account of Kim for \$3,934.38. The credit card was originally issued by Citibank and was subsequently purchased by Unifund.

On January 10, 2005, Kim entered a general denial to the Complaint.

**Kim's defenses.**

In the course of this case, Kim asserted a number of defenses, some of which were inconsistent or could not be verified. For example, he claimed that the amounts owed on the credit card account should have been paid by Creditshield insurance due to his heart surgery sometime in late 2001/early 2002. But he also admitted he never filed a claim on the insurance policy.<sup>1</sup> See attached Declaration of James Shigeo Dixon. Further investigation indicated that Kim stopped paying the Creditshield insurance premiums prior to 2000. See Affidavit of Kevin Kim attached to "Defendant's Memorandum in Opposition to Plaintiff's Motion for Summary Judgment" filed on May 9, 2006 at para. 11.

Most recently, Kim claimed that his bank (American Savings Bank in Hawaii) could not produce records of bank statements. He apparently needed statements between April 1998 and June 2000. He said that he was "trying to get any missing gaps in my bank statements from American Savings, but, because of its merger with the former Bank of America branches in Hawaii, a change of computer systems that went with it, and Y2K, they claim that they cannot locate them at this time." See Declaration of Kevin Kim attached to "Defendant's Memorandum in Opposition to Plaintiff's Motion for Summary Judgment" filed on May 9, 2006 at paras. 32 and 34.

However, this Court should take judicial notice that American Savings Bank acquired the Bank of America Hawaii assets in late 1997 (which was before the issuance of April 1998 statements). Additionally, this Court should take judicial notice that Y2K involved the possibility

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<sup>1</sup> The Creditshield insurance was issued by a third party, Neither the original creditor (Citibank) nor Unifund are liable for any insurance claims made pursuant to the insurance policy.

of mass computer failure on January 1, 2000 and that American Savings Bank did not have any Y2K problems.

The above are just two examples of Kim's strained credibility.

**Unsuccessful settlement efforts.**

The first pretrial conference in this case took place on January 4, 2005. But after four pretrial conferences over fifteen (15) months, the parties were far apart on agreeing on a dollar amount to settle this case. Various dollar offers made by Kim and various dollar offers made by Unifund were rejected by the other. *See* attached Declaration of Jae B. Park. *See* attached Declaration of James Shigeo Dixon.

**Unifund's Motion for Summary Judgment.**

Since parties were far apart on agreeing on a dollar amount, Unifund then decided to file a Motion for Summary Judgment in order to have an adjudication of the dollar amount owed. Attached to the Motion for Summary Judgment filed on April 10, 2006 were various Citibank statements for 2000 and 2001, and a Citicard statement for June 4, 2002 showing a balance owed of \$2,656.79. *See* Exhibit "A" to Unifund's Motion for Summary Judgment filed on April 10, 2006.

Unifund's Motion for Summary Judgment was denied by the Court at a hearing on May 15, 2006.<sup>2</sup> At the hearing on the Motion, the Court did not decide whether or not Kim owed the debt.

At a fifth pretrial conference on the same day as the May 15, 2006 hearing, trial was set for less than 3 weeks later on June 2, 2006. During the trial setting, the parties were told by the Court that no further continuances would be granted.

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<sup>2</sup> Court minutes available on the Hawai'i State Judiciary Ho'ohiki public access website for the May 15, 2006 hearing on Plaintiff's Motion for Summary Judgment erroneously states (1) "James Dickson [sic] was not present" for Unifund (however attorney James Dixon did appear), (2) "Def't's Motion for Summary Judgment" was denied (however it was Plaintiff's Motion for Summary Judgment which was denied), and (3) Defendant was instructed to file a motion to dismiss (however Defendant's oral motion to dismiss was denied and the parties were instructed that the case should be settled or it will go to trial). *See* Declaration of James Shigeo Dixon.

### **Dismissal of Case.**

After the fifth pretrial conference on May 15, 2006, Kim offered to settle the claim for \$500.00. *See* Declaration of Jae B. Park. Mr. Park, who is one of Unifund's attorneys, told Kim that he would communicate the offer to Unifund.

Unifund decided to accept Kim's offer to settle the case for \$500.00 on the condition that both Kim and Unifund sign a mutual release of claims. Between May 16, 2006 and May 19, 2006 multiple calls were made to phone number specifically designated by Kim. Because he did not answer the phone, messages were left asking him to call back. *See* Declaration of James Shigeo Dixon. Kim did not call back until Friday, May 19, 2006. However, an attorney was not available to take his call.

On Monday, May 22, 2006, our law office received a May 19, 2006 letter from Kim to our office in which he stated that he does not owe Unifund any money. Kim also demanded a "withdrawal" of the Complaint. *See* attached Exhibit "A" to the Declaration of Marvin S.C. Dang.

On May 22, 2006, Unifund decided to accept Kim's request to dismiss the case. This seemed reasonable since Kim withdrew his settlement offer and because Unifund had not anticipated that trial would be scheduled on short notice for June 2, 2006. This date provided insufficient time to possibly conduct discovery and to have witness from the mainland be at the trial.

Unifund then filed a "Notice of Dismissal" without prejudice of the Complaint that same day, i.e. on Monday, May 22, 2006.

It should be noted that although Kim demanded in his May 19, 2006 letter that the Complaint be withdrawn (and it was dismissed on May 22, 2006), one week later Kim filed (1) an "Ex Parte Motion to Shorten Time to Hear Defendant's Motion to Set Aside Dismissal without Prejudice or in the Alternative to Dismissal to With Prejudice" ("Ex-Parte Motion")<sup>3</sup>, and (2) a "Motion to Set Aside the Notice of Dismissal" requesting that the Complaint be dismissed "with" prejudice.<sup>4</sup>

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<sup>3</sup> Although Kim's Ex-Parte Motion was filed on May 26, 2006, Kim signed a Certificate of Service stating that he had hand-delivered or placed it in the mail to our law office on May 23, 2006. However, no copy of the Ex-Parte Motion was ever received by our law office. Instead, our office was forced to purchase a copy of the Ex-Parte Motion from the District Court Clerk's office on June 1, 2006. *See* attached Declaration of James Shigeo Dixon.

<sup>4</sup> Although Kim's Motion to Set Aside Dismissal was filed on May 26, 2006, Kim signed the Certificate of Service stating that he had mailed the Motion to our office on May 22, 2006. However, a copy of the Motion with the District Court Clerk's filed stamp of May 26, 2006 was not received by our office until May 31, 2006. *See* attached

Prior to June 6, 2006, Kim appeared pro se in this case. But he was receiving legal assistance. For example, on May 5, 2006, Honolulu attorney Curtis Won (“Won”) contacted Unifund’s attorney, Marvin Dang. *See* Declaration of Marvin S.C. Dang. Won said he was helping his friend Kim and he wanted to speak about Kim’s case. Won was not the attorney of record nor did our law office receive authorization from Kim to discuss the case with Won. Accordingly, Mr. Dang declined to discuss the case with Won. *Id.*

On Saturday, May 13, 2006, Kim telephoned our law office with his agent Robert Paisola (“Paisola”). Paisola apparently assists private clients on a one-on-one basis. In that phone call, Kim told the legal assistant at our law office that Paisola was authorized to discuss Kim’s case and said that Won was Kim’s “legal counsel.” (No attorney was available to speak to either Kim or Paisola at that time.) Kim and Paisola, who was in Honolulu at the time, telephoned the office again on May 19, 2006, but the attorney in charge of the file was not available.

A review of “Defendant’s Memorandum in Opposition to Plaintiff’s Motion for Summary Judgment,” which was filed on May 9, 2006, Kim’s letter of May 19, 2006 (Exhibit “A” to the Declaration of Marvin S.C. Dang), and Kim’s “Ex Parte Motion to Shorten Time to Hear Defendant’s Motion to Set Aside Dismissal without Prejudice or in the Alternative to Dismissal to With Prejudice” filed on May 26, 2006 all show that Kim is not in fact an unsophisticated pro se litigant. He appears to have received legal assistance in this case.

**Dismissal of the Complaint was what Kim wanted.**

The Hawaii District Court Rules of Civil Procedure provide for dismissal of an action by stipulation between all the appearing parties or by a court order. A Notice of Dismissal can be filed under certain circumstances. The Notice of Dismissal that was filed in this case on May 22, 2006 was in response to and was consistent Kim’s demand that the Complaint be withdrawn.

Unifund took this action because of the urgency of the matter. At the time (May 22, 2006),

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Declaration of James Shigeo Dixon.

the trial date of June 2, 2006 was quickly approaching and recent efforts to get a response from Kim had been slow as detailed above. The Notice of Dismissal was the viewed as the most efficient means of dismissing the Complaint (rather than mailing out a stipulation to Kim, waiting for him to return it, and then filing it.)

If Kim's Motion is granted, Unifund gives notice that it will move orally for dismissal of the case without prejudice under HDCRCP Rule 41(a)(2). An order of dismissal without prejudice under that Rule may be granted by the Court upon such terms and conditions as deemed proper. We submit that this is such a case.

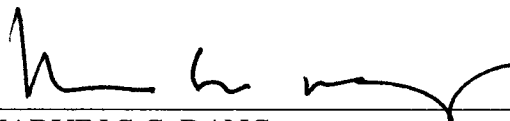
**Conclusion.**

Kim's objectives and rationales continue to shift as they always have in this case. In the span of eleven (11) days (from May 15, 2006 to May 26, 2006) Kim went from an offer to settle the case for \$500.00 on May 15, 2006 to a request that the Complaint be withdrawn on May 19, 2006 to the subject Motion to Set Aside the Dismissal filed on May 26, 2006. At the time the dismissal in this case was filed, Kim had demanded withdrawal of the Complaint, and was receiving assistance in the matter from both Won, and Paisola.

Unifund has acted in good faith. Kim has not.

Dismissal without prejudice in this case is appropriate. Accordingly, Kim's Motion should be denied.

DATED: Honolulu, Hawaii, 6/9/06



MARVIN S.C. DANG  
JAMES S. DIXON  
Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FIRST CIRCUIT

HONOLULU DIVISION

STATE OF HAWAII

UNIFUND CCR PARTNERS, ) CIVIL NO. 1RC04-1-6258  
 ) (Assumpsit)  
Plaintiff, )  
vs. ) DECLARATION OF MARVIN S.C. DANG;  
 ) EXHIBIT "A"  
KEVIN KIM, )  
 )  
Defendant. )  
 )

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**DECLARATION OF MARVIN S.C. DANG**

MARVIN S.C. DANG declares under penalty of law that the foregoing is true and correct:

1. I am an attorney with the Law Offices of Marvin S.C. Dang LLC, the attorney for Plaintiff UNIFUND CCR PARTNERS ("Unifund").

2. On May 5, 2006, Honolulu attorney Curtis Won ("Won") contacted me by telephone to discuss Defendant Kevin Kim's ("Kim") case. Mr. Won said he was helping his friend Kim and he wanted to speak about this Unifund case. Won was not the attorney of record nor did our law office receive authorization from Kim to discuss the case with Won. Accordingly, I declined to discuss the case with Won.

3. Attached as Exhibit "A" is a true and correct copy of the Friday, May 19, 2006 letter from Kim to our law office demanding that Unifund withdraw the Complaint. The letter was received by our law office on Monday May 22, 2006.

DATED: Honolulu, Hawaii, 6/9/06



MARVIN S.C. DANG

Kevin Kim  
2543 Date #102  
Honolulu, Hawaii 96826

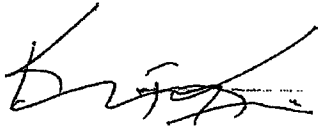
May 19, 2006

James Dixon  
and or Jae Park  
Law office of Marvin Dang  
P.O. Box 4109  
Honolulu, Hawaii 96812-4109

Dear Sir:

After doing much research and as I continue to do so, I am demanding for you to withdraw your complaint for my case (1RC04-1-6258). As per HRS-607-14.5, I believe your complaint is frivolous because I don't owe Unifund CCR Partners any money. I believe you and your client's complaint have broken various parts of the Fair Debt Collection Practices Act (FDCPA) and Hawaii Revised Statutes chapters 443, 480D, 478, and other possible violations in your attempt to collect a bogus debt. Due to a limited time, I am asking you to reply before May 26, 2006. I will accept a verbal or e-mail reply, only if it is followed by a written reply and received by me, before June 1, 2006. If I do not receive any reply in answer to this letter, I will assume you will not withdraw and wish to continue for our June 2<sup>nd</sup> 2006 court trial.

If you wish to speak with me and discuss about issues other than your reply to withdraw, you must first contact Mr. Robert Paisola (877-517-9555), you have my permission to discuss my case with him.



Kevin Kim  
e-mail: [kimphoto@gmail.com](mailto:kimphoto@gmail.com)  
c: 808.389.3925

cc: Robert Paisola

EXHIBIT "A"

RECEIVED MAY 23 2006

IN THE DISTRICT COURT OF THE FIRST CIRCUIT

HONOLULU DIVISION

STATE OF HAWAII

UNIFUND CCR PARTNERS,	)	CIVIL NO. 1RC04-1-6258
	)	(Assumpsit)
Plaintiff,	)	
vs.	)	DECLARATION OF JAMES SHIGEO
	)	DIXON
KEVIN KIM,	)	
	)	
Defendant.	)	
	)	

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**DECLARATION OF JAMES SHIGEO DIXON**

JAMES SHIGEO DIXON declares under penalty of law that the foregoing is true and correct:

1. I am an associate attorney with the Law Offices of Marvin S.C. Dang LLLC, the attorney for Plaintiff UNIFUND CCR PARTNERS (“Unifund”).

2. On January 3, 2006, I first met with the Defendant Kevin Kim (“Kim”) prior to a pretrial conference in the Honolulu District Court. At the time, I explained to Kim that the statements showed that there was no Creditshield insurance in place at the time of his surgery and that there was no record of any disability claims. Kim was unable to state how long he was disabled, and stated that he had “lost” the statements for the months after April 1998 which might show that there was Creditshield coverage and that a claim had been filed.

3. At the January 3, 2006 pretrial conference, we agreed to continue the pretrial conference in order to continue settlement negotiations.

4. Immediately after the January 3, 2006 pretrial conference, I told Kim of Unifund’s offer to settle the account for a certain dollar amount. Kim rejected the offer saying it was “too much”.

5. Between the January 3, 2006 pretrial conference and the April 10, 2006 pretrial conference, Kim made no counteroffer, and neither party initiated any further negotiations.

6. At the April 10, 2006 pretrial conference, I informed Kim that Unifund was planning to file a motion for summary judgment.

7. I appeared for Unifund at the May 15, 2006 hearing of Unifund's Motion for Summary Judgment. At the hearing the Judge denied the motion stating that there were triable issues of fact. He directed the parties to review the case and consider settling or the case would go to trial. Kim attempted to make an oral motion to dismiss the case but was told that because of the issues of fact the case would go to trial.

8. Between May 15, 2006 and May 19, 2006 multiple messages were left on Kim's telephone voicemail at his place of employment asking him to call back our office. He did not call back until May 19, 2006, at which time no attorney was available to take his call.

9. Although Defendant's Ex-Parte Motion to Shorten Time to Hear Defendant's Motion to Set Aside Dismissal without Prejudice, or in the Alternative Motion to Alter Dismissal to With Prejudice ("Ex Parte Motion") was filed on May 26, 2006, Kim signed a Certificate of Service stating that he had hand-delivered or placed it in the mail to Unifund's attorney on May 23, 2006, no copy of the Ex-Parte Motion was received by our office as of the date of this filing. Instead, I was forced to purchase a copy of the Ex-Parte Motion from the District Court Clerk's office on June 1, 2006.

10. Although Kim's Motion to Set Aside Dismissal was filed on May 26, 2006, Kim signed the Certificate of Service stating that he had mailed the Motion to Unifund's attorney on May 22, 2006, a copy of the Motion with May 26, 2006 District Court Clerk's file stamp was not received by our office until May 31, 2006.

DATED: Honolulu, Hawaii, June 9, 2006

  
\_\_\_\_\_  
JAMES SHIGEO DIXON

IN THE DISTRICT COURT OF THE FIRST CIRCUIT

HONOLULU DIVISION

STATE OF HAWAII

UNIFUND CCR PARTNERS, ) CIVIL NO. 1RC04-1-6258  
 ) (Assumpsit)  
Plaintiff, )  
 )  
vs. ) DECLARATION OF JAE BONG PARK  
 )  
 )  
KEVIN KIM, )  
 )  
Defendant. )  
 )

---

**DECLARATION OF JAE BONG PARK**

JAE BONG PARK declares under penalty of law that the foregoing is true and correct:

1. I am an associate attorney with the Law Offices of Marvin S.C. Dang LLC, the attorney for Plaintiff UNIFUND CCR PARTNERS (“Unifund”).
2. On or about June 27, 2005 I attended a Pre-Trial Conference (“PTC”) for the above-entitled matter. I met with Defendant Kevin Kim (“Kim”) who offered to settle the case for a certain dollar amount. I told him I would take his offer to Unifund for their consideration.
3. On or about May 15, 2006 I attended another PTC for the above-entitled matter.
4. Immediately after the PTC, I met with Kim. In that meeting, Kim stated that he would like to settle the matter for \$500.00. I informed Kim that I would take the offer to Unifund for their consideration and would give him a call regarding the outcome. Kim than freely gave his direct work number indicating that it would be the best way to reach him. Prior to that time, our office did not have Kim’s direct phone number.

DATED: Honolulu, Hawaii, 6/9/06

  
\_\_\_\_\_  
JAE BONG PARK

IN THE DISTRICT COURT OF THE FIRST CIRCUIT

HONOLULU DIVISION

STATE OF HAWAII

UNIFUND CCR PARTNERS, ) CIVIL NO. 1RC04-1-6258  
 ) (Assumpsit)  
Plaintiff, )  
 ) CERTIFICATE OF SERVICE  
vs. )  
 )  
KEVIN KIM, )  
 )  
Defendant. )  
 )  
\_\_\_\_\_ )

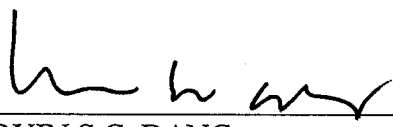
**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing will be duly served on the below-identified party, by hand delivery, on the following person at the following addresses on the date below upon receipt of the file-marked copy from the Court:

Norman K.K. Lau, Esq.  
820 Mililani St., Suite 701  
Honolulu, HI 96813

(Attorney for Defendant Kevin Kim)

DATED: Honolulu, Hawaii, 6/9/04

  
\_\_\_\_\_  
MARVIN S.C. DANG  
JAMES S. DIXON  
JAE B. PARK  
JASON M. OLIVER  
Attorneys for Plaintiff