

COMPLAINT (ASSUMPSIT-MONEY OWED);
DECLARATION; EXHIBIT(S); SUMMONS

Form #1DC07

#36

12/5/04
Jill/Kee

IN THE DISTRICT COURT OF THE FIRST CIRCUIT
Honolulu DIVISION
STATE OF HAWAII

DISTRICT COURT
FIRST CIRCUIT
CIVIL DIVISION
OCT 27 P 2:59
J. HIDANI
RECEIVED

Plaintiff(s)
UNIFUND CCR PARTNERS

Reserved for Court Use
Civil No. 1RC04-1-6258

Defendant(s)
KEVIN KIM

Plaintiff(s)/Plaintiff(s)' Attorney (Name, Attorney Number, Firm Name (if applicable), Address, Telephone and Facsimile Numbers)
MARVIN S.C. DANG #2221 LILA BARBARA KANAE #2857 JASON M. OLIVER #7621
P.O. BOX 4109
Honolulu, HI 96812-4109
Phone: 808-521-8521 Fax: 808-521-8522

Amount Claimed by Plaintiff:
\$3,934.98

Last Date of Indebtedness:
March 9, 2004

COMPLAINT

- This Court has jurisdiction over this matter and venue is proper.
- On or about March 9, 2004, Defendant(s) owed money to Plaintiff(s) as follows:

SEE ATTACHED
- A copy of the written instrument on which the debt is based is attached as Exhibit 1.
- Plaintiff(s) asks for judgment in the principal amount of \$ 3,934.98
In addition, the Court may award court costs, interest and reasonable attorney's fees.

Date: October 22, 2004
Signature of Plaintiff(s)/Plaintiff(s)' Attorney:
L. Barbara Kanae
Print/Type Name: LILA BARBARA KANAE

DECLARATION

I have read this Complaint, know the contents and verify that the statements are true to my personal knowledge and belief. I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF HAWAII THAT THE ABOVE IS TRUE AND CORRECT.

Date: October 22, 2004
Signature of Declarant:
Print/Type Name: SEE ATTACHED AFFIDAVIT

In accordance with the Americans with Disabilities Act, if you require an accommodation for your disability, please contact the District Court Administration Office at PHONE NO. 538-5121, FAX 538-5233, or TTY 539-4853 at least ten (10) working days in advance of your hearing or appointment date. For Civil related matters, please call 538-5151.

COMPA.X (Amended 4/18/97) v

I certify that this is a full, true, and correct copy of the original on file in this office.
[Signature]
Clerk, District Court of the above Circuit, State of Hawaii

ATTACHMENT TO COMPLAINT

1. Plaintiff is a legal entity.
2. Defendant(s) ("Defendant") is/are a resident(s) of the State of Hawaii.
3. Defendant was allowed to use a credit card account subject to the terms of a credit card account agreement ("Agreement"). A true and correct copy of the Agreement is attached as Exhibit "1".
4. Defendant was allowed to make purchases on credit and/or to obtain cash advances by using the credit card account. In return, Defendant was to repay those monies.
5. Defendant, as a cardholder, subsequently used the credit card account or permitted someone else to use the credit card account for purchases and/or cash advances.
6. Monies were loaned and/or advanced to Defendant when the credit card account was used.
7. Defendant is in default on the Agreement because Defendant failed to repay the monies loaned and/or advanced.
8. As a result, Defendant has been unjustly enriched.
9. In addition, an account was stated in writing. It was agreed that Defendant was indebted for the monies loaned and/or advanced to Defendant.
10. Plaintiff is the current holder/owner of and is the current creditor in the Agreement. ←
11. Plaintiff has performed all the conditions precedent that Plaintiff was to perform.
12. Plaintiff has declared the entire unpaid balance of the account (including finance charges/interest) due and payable.
13. There is now due and owing to Plaintiff the sum of \$2,656.79, interest of \$1,278.19 as of March 9, 2004, plus interest after that date (the last date of indebtedness), costs, and attorney's fees.
 ↙ wrong ↘ NA
14. Although demand has been made on Defendant for the amount due, Defendant has not paid it.
 when?
15. The Agreement and the maximum Annual Percentage Rate are governed by federal law and the applicable state laws.
16. Interest after the last date of indebtedness is 24.0000% per year, or \$1.7469 per day.
17. Diligent inquiry has been made to determine if Defendant is in the military service of the United States of America. To the best of Plaintiff's knowledge, Defendant is not in such military service and is not entitled to the rights and privileges provided under the Soldiers and Sailors Civil Relief Act of 1940, as amended.

FAIR DEBT COLLECTION PRACTICES ACT NOTICE: THIS COMMUNICATION IS FROM A DEBT COLLECTOR.

(MSCD/jst/chrgcard)

AFFIDAVIT OF INDEBTEDNESS

State of Ohio)
County of Hamilton) ss.

Jessica Bergholz being sworn, deposes and says that she is Media Supervisor of Unifund CCR Partners herein called assignee, which is doing business at 10625 Techwoods Circle, Cincinnati, Ohio 45242 and that she is authorized to make the statements and representations herein.

The defendant is not in any branch of the military.

There is due and payable from Kevin Kim, Account Number 4128003262968780, the amount of \$3934.98 (principal balance in the amount of \$2656.79 plus interest up through 03/09/2004 in the amount of \$1278.19). By the terms of the agreement between the defendant and the original creditor, interest is accruing from the aforesaid date at the rate of 24.99 percent per annum. This balance reflects any payments, credits or offsets made since the account was charged off.

➔ This account was originated with Citibank. Unifund CCR Partners purchased this account from Citibank. Said account has been assigned, transferred and set over unto, Law Offices of Marvin S.C. Dang with full power and authority to do and perform all acts necessary for the collection, settlement, adjustment, compromise or satisfaction of said claim, on behalf of Unifund CCR Partners.

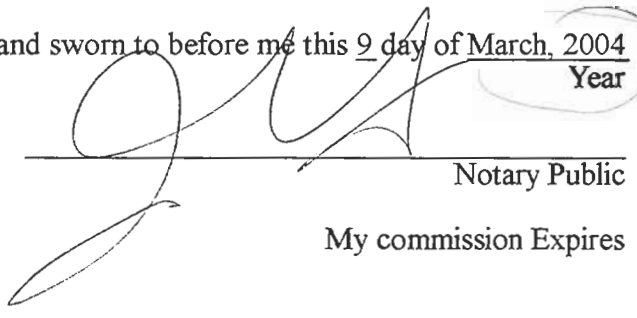
DATED this March 9, 2004

UNIFUND CCR PARTNERS

By: Jessica Bergholz
Media Supervisor

10625 Techwoods Circle Cincinnati, OH 45242
Address

Subscribed and sworn to before me this 9 day of March, 2004
Year



Notary Public

My commission Expires

Client # 434



JENNIFER A. DUNCAN
Notary Public
in and for the State of Ohio
My Commission Expires
July 5, 2007

MARVIN S.C. DANG #2221
 JAMES S. DIXON #7065
 JASON M. OLIVER #7621
 JAE B. PARK #8172
 Law Offices of Marvin S.C. Dang
 P.O. Box 4109
 Honolulu, Hawaii 96812-4109
 Telephone No.: (808) 521-8521

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,)	
	)	PLAINTIFF'S MOTION FOR SUMMARY
vs.	)	JUDGMENT; MEMORANDUM IN
	)	SUPPORT OF MOTION;
KEVIN KIM,	)	DECLARATION; EXHIBITS "1" -"2";
	)	NOTICE OF HEARING OF MOTION,
Defendant.	)	AND CERTIFICATE OF SERVICE
)	
	)	<u>HEARING</u>
	)	DATE: <u>MAY 15, 2006</u>
	)	TIME: <u>8:30 A.M.</u>
	)	JUDGE: <u>PRESIDING</u>

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Plaintiff moves this Court as follows:

1. a. That this Court enter, pursuant to Rule 56 of the District Court Rules of Civil Procedure, Summary Judgment in Plaintiff's favor for the relief demanded in Plaintiff's Complaint on the grounds that there is no genuine issue as to any material fact and that Plaintiff is entitled to a Judgment as a matter of law; or, in the alternative,
 - b. If Summary Judgment is not rendered in Plaintiff's favor on the whole case or for all the relief asked and a trial is necessary, that this Court at the hearing on this Motion, by examining the pleadings and the evidence before it and by interrogating counsel, ascertain what material facts are actually and in good faith controverted, and to make an order specifying the facts


that appear without substantial controversy and directing such further proceedings in this action as are just.

2. That this Court certify the Judgment entered in this case as a final judgment on the basis that there is no just reason for delay.

This Motion is made under Rules 56 and 54(b) of the District Court Rules of Civil Procedure, and is based on the pleadings and records of this case, and on the attached Memorandum and Declaration.

DATED: Honolulu, Hawaii,

APR 10 2006


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,)	
	)	MEMORANDUM IN SUPPORT OF
vs.	)	MOTION
)	
KEVIN KIM,)	
)	
Defendant.)	
)	

MEMORANDUM IN SUPPORT OF MOTION

I. INTRODUCTION

This is an action on a credit card account of Defendant. Plaintiff, is the current holder/owner of the credit card account. Defendant defaulted by failing to repay those monies.

II. STANDARD FOR GRANTING A MOTION FOR SUMMARY JUDGMENT

Hawaii District Court Rules of Civil Procedure (“HDCRCP”) Rule 56(c) allows for summary judgment when:

the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

At the hearing on a motion for summary judgment, HDCRCP Rule 56(d) allows this Court to determine which material facts exist without substantial controversy.

A motion for summary judgment should be granted when the record shows that there is no genuine issue of material fact and the moving party demonstrates that it is entitled to judgment as a matter of law. First Insurance Company of Hawaii, Inc. v. State, 66 Haw. 413, 416, 665 P.2d 648, 651 (1983); Hulsman v. Hemmeter Development Corp., 65 Haw. 58, 61, 647 P.2d 713, 716 (1982).

When a plaintiff moves for summary judgment, the plaintiff does not have the initial burden of disproving every affirmative defense asserted by the defendant. GECC Financial Corporation v. Jaffarian, 80 Haw. 118, 119, 905 P.2d 624, 625 (1995). A movant may discharge its burden for summary judgment by showing that if the case went to trial, there would be no

competent evidence to support a judgment for the movant's opponent. Hawaiian Bank v. Weeks, 70 Haw. 392, 396, 772 P.2d 1187, 1190 (1989).

III. ARGUMENT

A. Under Both Federal Statutes and the Common Law, Credit Card Charges Must be Disputed or They Will be Deemed Accepted.

Credit card accounts are subject to the Truth In Lending Act ("TILA"), 15 U.S.C. §1601 *et seq.* TILA is implemented by Regulation Z issued by the Board of Governors of the Federal Reserve System. *See* 12 C.F.R. §226.1 *et seq.* Regulation Z requires that the debtor must send a billing error notice to the creditor in order to dispute any alleged billing error. 12 C.F.R. §226.13(b)(1). The billing error notice is "a written notice from a consumer that: (1) is received by a creditor at the address disclosed under Sec. 226.7(k)¹ no later than 60 days after the creditor transmitted the first periodic statement that reflects the alleged billing error . . ." *Id.* (footnote added). If the debtor fails to object timely in writing, the right to dispute the balance due is waived. *See* 15 U.S.C. §1666; 12 C.F.R. §226.13(b)(1); Minskoff v. American Express, 98 F.3d 703 (2nd Cir. 1996).

Provided that the card issuer is in compliance with the billing statement disclosure requirements of 15 U.S.C. §1637², once a cardholder (debtor) has established a credit card account, the debtor is held to be in a superior position to determine whether the charges reflected on the debtor's regular billing statements are legitimate. *See* Transamerica Ins. Co. v. Standard Oil Co., 325 N.W.2d 210, 215 (N. Dakota 1982). A debtor's failure to examine credit card statements that would reveal fraudulent use of the card constitutes a negligent omission that creates apparent authority for charges that would otherwise be considered unauthorized under TILA. *See* *Id.*

The above sections of TILA codify the common law theory of "account stated." Under the theory of "account stated," a debtor receives statements for a period of time, does not object to the charges, and indicates a willingness to repay the debt. *See* Barwick Pacific Carpet Co. v. Kam Hawaii Construction, Inc., 630 P.2d 638, 640 (Haw. App. 1981) ("Given the business setting

¹Section 226.7(k) provides, in pertinent part, "[the creditor shall furnish the consumer with a periodic statement that discloses] . . . [t]he address to be used for notice of billing errors . . ."

²Section 1637(b) requires "[t]he creditor of any account under an open end consumer credit plan [to] transmit to the obligor, for each billing cycle at the end of which there is an outstanding balance in that account or with respect to which a finance charge is imposed, a statement setting forth," *inter alia*, the outstanding balance in the account at the beginning and end of the statement period, the amount and date of each extension of credit during the period, the amount of any finance charge added to the account, and the date by which payment must be made to avoid finance charges.

between the parties, [defendant] failed to object within a reasonable period of time. Consequently, it assented to the debt and created an account stated”).

B. Defendant’s Course of Performance Has Established Liability.

As set forth by Plaintiff’s Motion, the attached Declaration, and by the points of law discussed above, Plaintiff has proved its case under both the TILA/Regulation Z rule and under the theory of “account stated.”

Plaintiff is the current holder/owner of the Agreement and is the current creditor in the Agreement. Defendant was allowed to use a credit card account subject to the terms of the Agreement.

Defendant was allowed to make purchases on credit and/or to obtain cash advances by using the credit card account. In return, Defendant was to repay those monies.

Defendant subsequently used or permitted someone else to use the credit card account for purchases and/or cash advances.

Itemized periodic billing statements were mailed to Defendant. The Agreement placed on Defendant the duty of reviewing billing statements for any disputed charges. Even if Defendant disputed any charges on the statements, Defendant did not object in writing within sixty (60) days from the date of the first statements showing the alleged billing error. Defendant’s negligent omission to dispute any charges in a timely manner prevents Defendant from disputing the charges at this later time.

Defendant’s acceptance of the charges can be inferred from the fact that **Defendant continued to use the credit card, and Defendant never attempted to cancel the Agreement during the period after receiving the statements.** This course of performance of using the credit card account **and** making partial payments demonstrated a willingness to repay the obligation.

Defendant is in default under the Agreement because Defendant failed to repay the monies loaned and/or advanced.

Additionally, Defendant would be unjustly enriched if Defendant is permitted to retain the monies loaned and/or advanced by Plaintiff. Hawaii courts have held that “[a] person who has been unjustly enriched at the expense of another is required to make restitution to the other.” Small v. Badenhop, 67 Haw. 626, 636 (1985).

The Agreement and the maximum Annual Percentage Rate are governed by federal law and the applicable State laws. Plaintiff is entitled to assess interest as provided in the Agreement. See Marquette National Bank of Minneapolis v. FIRST of Omaha Service Corporation, 439 U.S. 299, 99 S. Ct. 540, 58 L.Ed.2d 534 (1978), Smiley v. Citibank (South Dakota), N.A., 116 S.Ct. 1730 (1996).

C. Plaintiff Has Met The Requisites For Summary Judgment.

Because all of the material allegations of the Verified Complaint have been established, there is no genuine issue as to any material fact, and the matters alleged in the Complaint clearly present an enforceable claim at law. Plaintiff is therefore entitled to a judgment against Defendant if Defendant cannot discharge its burden of showing an issue of material fact.

HDCRCP Rule 56(e) requires:

When a motion for summary judgment is made and supported as provided in [Rule 56], an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

Once the movant has satisfied the initial burden of showing that there is no genuine issue of material fact, the opposing party must come forward, through affidavit or other evidence, with specific facts showing that there is a genuine issue of material fact. Miller v. Manuel, 9 Haw. App. 56, 65, 828 P.2d 286, 292 (1991). The non-moving party may not rely on the allegations of its pleadings, but must respond by affidavit or otherwise setting forth specific facts showing a genuine issue of material fact. K.M. Young & Assoc. v. Cieslik, 4 Haw. App. 657, 664, 675 P.2d 793, 799 (1983); Hui Malama Aina O Ko'olau v. Pacarro, 4 Haw. App. 304, 313, 666 P.2d 177, 183 (1983). The "mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment. . . . [F]actual disputes that are irrelevant or unnecessary will not be counted." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-48 (1968).

The Court in Cordeiro v. Burns stated:

[A] party opposing the motion for summary judgment must be able to point to some facts which refute the proof of the movant in some material portion and "not merely recite the incantation, 'Credibility', and have a trial on the hope that a jury may disbelieve factually uncontested proof." The non-moving party must come forward with some evidentiary matters to support its position. By failing to present any specific evidence of discrepancies or contradiction among [the deponent's] statements, [the nonmoving party] has failed to raise any genuine issue of material fact.

7 Haw. App. 463, 470, 776 P.2d 411, 416-417 (1989).

The basic purpose of the summary judgment procedure is to avoid unnecessary expense to the parties and wasteful utilization of judicial resources. Barmag Barmer Maschinenfabrik AG v. Murata Machinery, Ltd., 731 F.2d 831, 835 (Fed. Cir. 1984). If the non-moving party cannot

muster sufficient evidence to sustain its allegations, a trial would be useless and summary judgment is warranted. First Hawaiian Bank v. Weeks, 70 Haw. at 397, 772 P.2d at 1190.

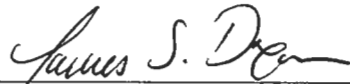
Defendant's general denial of liability is simply an allegation and as such is insufficient to defeat a motion for summary judgment.

IV. CONCLUSION

Accordingly, under HDCRCP Rule 56, Plaintiff is entitled to a Summary Judgment against Defendant in the amount in the Declaration, plus attorney's fees and court costs.

Additionally, under HDCRCP Rule 54(b), this Court should certify the judgment as a final judgment on the basis that there is no just reason for delay.

DATED: Honolulu, Hawaii, APR 10 2006.



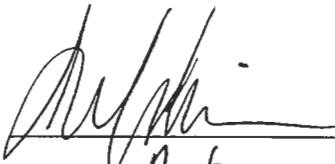
MARVIN S.C. DANG
JAMES S. DIXON
Attorneys for Plaintiff

- A. Plaintiff is a legal entity.
- B. Defendant is a resident of the State of Hawaii.
- C. Defendant applied for and was allowed to use a credit card account subject to the terms of a credit card account agreement (“Agreement”). A true and correct copy of the Agreement is attached as Exhibit “1”.
- D. Plaintiff is the current holder/owner of and is the creditor in the Agreement.
- E. Defendant was allowed to make purchases on credit and/or to obtain cash advances by using the credit card account. In return, Defendant was to repay those monies.
- F. The Agreement provides that the Agreement becomes effective upon Defendant’s use of the credit card account.
- G. Defendant, as cardholder, subsequently used the credit card account or permitted someone else to use the credit card account for purchases and/or cash advances.
- H. Monies were loaned and/or advanced to Defendant when the credit card account was used.
- I. Defendant was provided billing statements for the credit card account. True and correct copies of the billing statement(s) showing the amounts owed are attached as Exhibit “2”.
- J. Defendant is in default on the Agreement because Defendant failed to repay the monies loaned and/or advanced.
- K. The billing statements do not reflect that Defendant ever disputed in writing the amounts charged on the account.
- L. Because of Defendant’s default, Plaintiff has declared the entire unpaid balance of the account (including finance charges/interest) due and payable.
- M. There is now due and owing to the Plaintiff the sum of \$2,656.79, interest of \$1,278.19 as of March 9, 2004, plus interest after that date (the last date of indebtedness), costs, and attorney’s fees.
- N. The Agreement and the maximum Annual Percentage Rate are governed by federal law and the applicable state laws.
- O. Interest after the last date of indebtedness is 24.99% per year.

P. Although demand has been made on Defendant for the amounts due, Defendant has not paid it.

Q. Because Defendant failed to repay the monies loaned and/or advanced by Plaintiff to Defendant, Defendant has been unjustly enriched.

DATED: Cincinnati, Ohio, on this 24 day of January, 2006.

Signature: 
Type/Print Name: Autumn Hopkins

Citibank



CITIBANK CARD AGREEMENT

2007 2 1 701
DUNN

This Agreement and the folder containing the card are your Citibank Card Agreement. The folder contains important account information, including the annual percentage rate and the amount of any membership fee. Please read and keep the folder and this Agreement for your records.

To simplify the rest of this Agreement for you, the following definitions will apply. The words *you*, *your*, and *yours* mean the person responsible for this Agreement, to whom we direct the billing statement. The word *card* means one or more cards which we have issued with your account number. The words *we*, *us*, and *our* mean Citibank (South Dakota), N.A. The words *Citibank checks* mean one or more checks that we may provide to access your Citibank card account. This Agreement is binding on you unless you cancel your account within 30 days after receiving the card and you have not used or authorized use of your account.

Using Your Account and Your Credit Line:

The card must be signed to be used. Your initial credit line appears on the folder containing the card. A portion of your credit line, called the cash advance limit, is available for cash advances. At our discretion and at any time, we may change your credit line or cash advance limit. We will notify you if we do, either by mail or through a billing statement sent either before or after the change takes effect. You may request a change to your credit line or cash advance limit by contacting Customer Service by telephone or mail.

The full amount of your credit line is available to buy or lease goods or services wherever the card is honored. Your cash advance limit is available for cash through any bank or automated teller machine that accepts the card or by using Citibank checks. The total amount charged on your account, including purchases, balance transfers, cash advances, finance charges, fees, or other charges, must always remain below your credit line. However, if that total amount exceeds your credit line you must still pay us.

Additional Cards:

You may request additional cards on your account for yourself or others and you may permit another person to have access to the card or account number. However, if you do, you must pay us for all charges made by those persons, including charges for which you may not have intended to be responsible. You must notify us to revoke permission for any person you previously authorized to use your account. If you tell us to revoke another person's use of your account, we may close the account and issue a new card or cards with a different account number. You are responsible for the use of each card issued on your account according to the terms of this Agreement.

Membership Fee:

The folder containing the card indicates whether your account is subject to a membership fee. If it is, the fee is added to the purchase balance and is non-refundable unless you notify us to cancel your account within 30 days from the mailing date of the billing statement on which the fee is billed.

Billing:

Your billing statement shows the balance, any finance charges, fees, the minimum payment, and the payment due date. It also shows your current credit line and cash advance limit; an itemized list of current charges; Citibank checks, payments and credits; a summary showing separately the purchase and cash advance balances, and finance charges on each balance; and other important information. If you default under this Agreement, we may, in our sole discretion, stop sending you billing statements if we deem your account uncollectible or if we institute delinquency collection proceedings by sending it to an outside collection agency or attorney for collection.

You must notify us of a change in your address by contacting Customer Service by telephone or mail. We will mail or deliver the billing statement to only one mailing address.

How We Determine the Balance:

The total outstanding balance (the amount you owe us) appears as the "New Balance" on the billing statement. To determine the New Balance, we begin with the outstanding balance on your account at the beginning of each billing period, called the "Previous Balance" on the billing statement. We add any purchases and cash advances and subtract any payments and credits that we receive. We then add the appropriate finance charges and fees and make other applicable adjustments.

Annual Percentage Rate for Purchases:

Your annual percentage rate for purchases and the corresponding daily periodic rate appears on the folder containing the card. A daily periodic rate is the applicable annual percentage rate divided by 365. Whether or not the annual percentage rate for purchases is based on the quarterly U.S. Prime Rate plus a margin is indicated on the folder containing the card.

Annual Percentage Rate for Cash Advances:

Your ANNUAL PERCENTAGE RATE for cash advances is 19.99%, which corresponds to a daily periodic rate of 0.0548%. The daily periodic rate is the cash advance annual percentage rate divided by 365. Please see the next section for details relating to how this rate may change if you default under any Citibank Card Agreement.

Variable Annual Percentage Rates for Purchases and Cash Advances:

If the annual percentage rate for purchases is based on the quarterly U.S. Prime Rate plus a margin, we will calculate the rate by adding the margin that appears on the folder containing the card to the U.S. Prime Rate published in *The Wall Street Journal* on the third Tuesday of March, June, September, and December of each year. If the third Tuesday is a holiday, we will use the Prime Rate published the next day. If more than one Prime Rate is published, we may choose the highest rate. If *The Wall Street Journal* ceases publication or to publish the Prime Rate, we may use the Prime Rate published in any other newspaper of general circulation, or we may substitute a similar reference rate at our sole discretion. Each time the annual percentage rate changes, we will apply it to any existing balances, subject to any promotional rate that may apply.

In addition, the annual percentage rate for purchases and cash advances may vary if you default under any Citibank Card Agreement because you fail to make a payment to us or any other creditor when due, you exceed your credit line, or you make a payment to us that is not honored by your bank. In such circumstances, we may increase the ANNUAL PERCENTAGE RATE

(including any promotional rate) on all balances to a higher rate of up to 23.99%. Factors considered in determining this higher rate may include the length of time the account has been open, the existence, seriousness, and timing of Citibank Card Agreement defaults, and other indications of account usage and performance. Your account may again become eligible for a lower annual percentage rate on new purchases, new cash advances, or both after you have met the terms of all Citibank Card Agreements for six months. Your existing purchase and cash advance balances will remain subject to the higher rate until they are paid in full.

Any increase or decrease in a variable annual percentage rate takes effect on the first day of the billing period directly following the month in which we calculate the rate. The annual percentage rate in effect and any subsequent changes to it will appear on the billing statement. An increase in the variable annual percentage rate means you will pay a higher finance charge and perhaps a higher minimum payment.

Promotional Rate Offers:

At our discretion, we may offer you a promotional annual percentage rate for all or a part of the purchase and/or cash advance balances. The period of time for which the promotional rate applies may be limited. Any promotional rate, the corresponding periodic rates, and the period of time during which it is in effect will appear on the folder containing the card. We may also offer you a promotional annual percentage rate to encourage specific transactions, such as transferring balances from accounts you have with other credit card issuers. Any promotional rate offer will be subject to the terms of the offer and this Agreement.

Finance Charges:

Finance charges will begin to accrue from the date of the advance for cash advances and from the date of the transaction for purchases (including balances you transfer from any other credit card issuer) and continue to accrue until payment in full is credited to your account. However, if you paid the total New Balance listed on the last billing statement by the payment due date on that statement and you did not transfer a balance from any other credit card issuer during that billing period, you will have until the payment due date on your current statement to pay your total New Balance to avoid imposition of finance charges on purchases. In certain cases, this same grace period for purchases may apply even if you have transferred a balance during the billing period. If there is no such grace period for purchases, the balance transfer offer will so indicate.

We will calculate finance charges as follows:

■ We figure a portion of the finance charge on your account by multiplying the daily balance on purchases (which includes balances you transfer from any other credit card issuer) and the daily balance on cash advances by the applicable daily periodic rate and adding together any such finance charges for purchases and for cash advances for each day in the billing period.

■ For finance charge calculation purposes, the billing period begins on the day after the Statement/Closing Date of the previous billing period and varies with the number of days in the billing period. It includes the Statement/Closing Date of the current billing period.

■ To calculate the daily balances, we take the beginning balance for purchases and the beginning balance for cash advances each day, add any new transactions, and fees and any finance charge on the previous day's balance, subtract any payments or credits, and make other adjustments. Unless we elect to use a later date, we add a new purchase to the purchase balance as

balance on the date of the advance. A credit balance is treated as a balance of zero.

The "balances subject to finance charge" for purchases and for cash advances on the billing statement are each the average of the respective daily balances during the billing period. If you multiply these figures by the number of days in the billing period and by the applicable daily periodic rates, the results will be the finance charges assessed on purchases or cash advances, except for minor variations caused by rounding.

If the balance for purchases or cash advances is subject to more than one rate (for example, because of purchases or cash advances made during a promotional rate offer), we will separately calculate the balance subject to finance charge and the resulting finance charge in the same manner as described above.

Cash Advances and Transaction Fee:

You have obtained a cash advance if you obtain funds from an automated teller machine (ATM), through a Citibank check, through home banking, or through a financial institution; make a wire transfer; acquire a money order; traveler's check, money order, bill or casino chip, or similar item; or engage in another similar transaction. For each cash advance, we add an additional FINANCE CHARGE of 3.0% of the advance, but not less than \$. This fee will be added to the cash advance balance. (The amount of the cash advance may include a surcharge that the ATM owner imposes.) The cash advance transaction fee may cause the annual percentage rate on the billing statement on which the cash advance first appears to exceed the nominal annual percentage rate.

Minimum Finance Charge:

If finance charges based on periodic rates are being added to your account, but the total of such finance charges for purchases and cash advances is less than \$.50, we assess a minimum FINANCE CHARGE, based on periodic rates, of \$.50. We add the amount to either the purchase or cash advance balance at our discretion.

Credit Balance:

You may not maintain a credit balance on your account in excess of your assigned credit line. We will return to you any credit amount over \$1.00 if the amount has been on your account longer than three months. You may request a refund of a credit balance at any time. We may reduce the amount of any credit balance by the amount of new charges billed to your account.

Security Interest for Secured Accounts:

The folder containing the card indicates if your account is a secured account. If it is, you have given us a security interest in a certificate of deposit or a savings account to secure repayment of your account. If you withdraw your funds from the certificate of deposit or savings account, we will close your card account.

Transactions Made in Foreign Currencies:

If a transaction is made in a foreign currency, we and Visa International or MasterCard International, depending on which card is used, will convert the transaction into a U.S. dollar amount. Visa and MasterCard will act in accordance with their operating regulations or conversion procedures in effect at the time the transaction is processed. Currently, their regulations and procedures provide that the currency conversion rate they use is either

1. a wire transfer market rate or 2. a government-mandated rate in effect one day prior to the processing date. Visa increases this conversion rate by an international reimbursement rate and MasterCard increases this conversion rate by one percent. Both Visa and MasterCard keep this increase. We increase the conversion rate provided to us by Visa or MasterCard by two percent and keep this increase. The currency conversion rate calculated in this manner that is in effect on the processing date may differ from the rate in effect on the transaction date or the posting date.

Minimum Amount Due:

Each month you must pay a minimum amount that is the total of two figures. The first is any previous amount that is past due plus any amount in excess of your credit line. The second is the greater of the amount of your billed finance charges or one of the following:

- 1. The New Balance on the billing statement if it is less than \$20, or
- 2. \$20, if the New Balance is at least \$20 and not greater than \$960, or
- 3. If the New Balance exceeds \$960, 1/48 of the New Balance (rounded down to the nearest dollar).

You must pay at least the minimum amount by the payment due date, but you may pay more at any time without a penalty. We will allocate payments to amounts owed on your account at our discretion. This includes, but is not limited to, applying payments to promotional balances, such as balances you transfer from other credit card issuers, before we apply such payments to your purchase or cash advance balances. If you pay more than the minimum, we will allocate the excess amount to the purchase or cash advance balance at our discretion. The sooner you pay the New Balance, the less you will pay in finance charges. We may also allow you to skip a payment. If we do, we will notify you. If you choose to skip a payment when offered, we will continue to assess finance charges.

Payments:

We do not send cash payments. We can accept late or partial payments, as well as payments that reflect "paid in full" or other restrictive endorsements, without losing any of our rights under this Agreement. There may be a delay of up to five days in crediting a payment if it is received at an address other than the address provided on the billing statement. You agree to pay us in U.S. dollars drawn on funds on deposit in the United States using a payment check, similar instrument, or automatic debit that will be processed and honored by your bank. We reserve the right to accept payments made in foreign currency. If we do, we will select the currency conversion rate at our discretion.

Over-the-Credit-Line Fee:

We will add a \$29 fee to the purchase balance for each billing period that the New Balance exceeds your credit line.

Late Fee:

We will add a \$29 fee to the purchase balance for each billing period you fail to make the minimum payment by its due date.

Returned Payment Fee:

We will add a \$29 fee to the purchase balance when a payment check or similar instrument is not honored, when we must return it because it cannot be processed, or when an automatic debit is returned unpaid. At our option, we will assess this fee the first time your check or payment is not honored, even if it is honored upon resubmission.

Citibank Checks:

Citibank checks may be used to purchase goods and services or to obtain cash up to the amount of your available cash advance limit unless that amount will cause the balance to exceed your credit line. We will treat Citibank checks as a cash advance and charge them against your cash advance limit. Each Citibank check must be in the form we have issued and must be used according to any instructions we give you. Citibank checks may be used only by the person whose name is printed on them. Citibank checks may not be used to pay any amount owed to us under this or any other Citibank Card Agreement. We will not certify any Citibank checks, nor will we return paid Citibank checks.

Returned Citibank Check Fee:

We will add a \$29 fee to the cash advance balance if we decline to honor a Citibank check. We may decline to honor a Citibank check if, for example, the amount of the check would cause the balance to exceed your cash advance limit or credit line, if you default, if you did not comply with our instructions regarding the check, if your account has been closed, or if the card has expired.

Stop Payment Fee:

We will add a \$29 fee to the cash advance balance when payment of a Citibank check is stopped at your request. You may stop payment on a Citibank check by notifying us in writing at P.O. Box 6500, Sioux Falls, South Dakota 57117 or by calling us at the telephone number listed on the billing statement. If you call, you must confirm the call in writing within 14 days. A written stop payment order will remain in effect for six months unless renewed in writing.

Once a charge is made through the use of the card or account number we cannot "stop payment" on the charge. If there is a dispute involving a charge on your account, please refer to the section entitled "What To Do If There's An Error In Your Bill".

Lost or Stolen Cards, Account Numbers or Citibank Checks:

If any card, account number or Citibank check is lost or stolen or if you think someone used or may use them without your permission, notify us at once by calling the telephone number shown on the billing statement or the number obtained by calling toll-free or local Directory Assistance. We may require you to provide certain information in writing to help us find out what happened. Don't use the card or the Citibank checks after we've been notified, even if they are found or returned. You may be liable for unauthorized use of the card, but not for more than \$50. You won't be liable for unauthorized purchases or cash advances made after we've been notified of the loss or the theft; however, you must identify for us the charges on the billing statement that were not made by you, or someone authorized by you, and from which you received no benefit.

Default:

You default under this Agreement if you fail to pay the minimum payment listed on each billing statement when due, fail to make a payment to any other creditor when due, file for bankruptcy, exceed your credit line without permission, pay by a check or similar instrument that is not honored or that we must return because it cannot be processed, pay by automatic debit that is returned unpaid, or default on any other Citibank Card Agreement. If you default, we may close your account and demand immediate payment of the full balance. If you have given us a security interest in a certificate of deposit or a savings account, we may use the deposit amount to pay any amount you owe.

Preauthorized Charges:

If you default, if the card is lost or stolen, or we change your account or account number for any reason, we may suspend automatic charges on that account to third-party vendors for insurance premiums or other goods or services. If preauthorized charges are suspended, you must contact the third-party vendor to reinstate them. You are responsible for making direct payment for such charges until you reinstate automatic charges.

Collection Costs:

If we refer collection of your account to a lawyer who is not our salaried employee, you will have to pay our attorney's fee plus court costs or any other fees, to the extent permitted by law. If we sue to collect and you win, we will pay your reasonable legal fees and court costs.

Customer Privacy:

We will safeguard, according to strict standards of security and confidentiality, any information you share with us. We will limit the collection and use of any such information to the minimum we require in order to deliver you superior service, which includes advising you about our products, services, and other opportunities, and to administer our business. We will permit only authorized employees, who are trained in the proper handling of customer information, to have access to your information. Whenever we hire other organizations to provide support services, we will require them to conform to our privacy standards and to allow us to audit them for compliance.

We will always maintain control over the confidentiality of your information. We will, however, facilitate relevant marketing and promotional offers from reputable companies that meet your needs. These companies are not permitted to retain any of your information unless you have specifically expressed interest in their products or services. If you do not want to receive these offers, write or call us at the address or telephone number listed on the billing statement. Be sure to include your name, address, and account number. We will remind you at least once each year of your right to be excluded from these offers.

We may report your performance under this Agreement to credit reporting agencies, including your failure to make minimum payments on time. If you request additional cards on your account for others, you understand that we may report account information in your name as well as in the names of those other people. We may also obtain follow-up credit reports on you (for example, when we review your account for a credit line increase). If you wish to know the names of the agencies we have contacted, write us at the address listed on the billing statement. We will try to notify you by telephone or by mail of any legal process served on us in order to give you an opportunity to object to it, unless the law prohibits the notice.

Except as set forth in this Agreement and except for reports to credit reporting and collection agencies, information we are permitted to share with Citibank affiliates, and information we share in connection with collection of your account, no one else will be given information about your account without your knowledge, authorization or proper legal authority.

Sharing Customer Information Among Citibank Affiliates:

To alert you to special offers and provide you with products and services that are tailored specifically to you, Citibank affiliates share information about you on a confidential basis. Citibank affiliates are permitted by law to share any information about their

transactions or experiences with you. Other information you provide to us or that we obtain from third parties (for example, credit bureaus) will not be shared. If you notify us that you do not want such information shared among Citibank affiliates.

You may notify us in writing of your instruction at any time. Please send your name and address (as it appears on your account statement), along with your account type, account number and Social Security number to Citibank Processing Center at CN 3178, South Hackensack, NJ 07606. We ask that you mail your instruction in a stamped envelope that does not include any other correspondence. If you have already told us that you do not want such other information shared, it was effective immediately. You do not need to notify us again.

If you are also a customer of other Citigroup companies (such as Commercial Credit, Travelers Property Casualty, Travelers Life & Annuity, Salomon Smith Barney and Primerca Financial Services) and you receive a notice of their intent to share certain information about you with their affiliates, you will need to separately notify them if you do not want such information shared.

Telephone Monitoring and Recording:

From time to time we may monitor and record your telephone calls regarding your account with us to assure the quality of our service.

Correcting Your Credit Report:

If you think we reported erroneous information to a credit reporting agency, write us at the address listed on the billing statement. We will promptly investigate the matter and if our investigation shows you are right, we will contact each credit reporting agency to whom we reported and will request they correct the report. If we disagree with you after our investigation, we will tell you in writing or by telephone and instruct you how to submit a statement of your position to those agencies. Your statement will become a part of your credit record with them.

Closing Your Account:

You may close your account at any time by notifying us in writing. However, you remain responsible to pay the balance according to the terms of this Agreement. We may close your account or suspend your account privileges at any time without prior notice. We may also reissue a different card or account number at any time. You must return the card to us upon request.

Refusal of the Card:

We are not responsible if a purchase or cash advance on your account is not approved, either by us or by a third party, even if you have sufficient credit available. We may limit the number of purchases or cash advances which may be approved in one day. If we detect unusual or suspicious activity on your account, we may temporarily suspend your credit privileges until we can verify the activity. We may approve purchases or cash advances which cause the balance to exceed your credit line without waiving any of our rights under this Agreement.

Changing this Agreement:

We can change this Agreement, including all fees and the annual percentage rate, at any time. However, if the change will cause a fee, rate or minimum payment to increase, we will mail you written notice at least 15 days before the beginning of the billing period in which the change becomes effective. If you do not agree to the change, you must notify us in writing within 25 days after the effective date of the change and pay us the balance, either at once

or under the terms of the unchanged Agreement. Otherwise, the change in the notice is binding on you. Unless we notify you otherwise, use of the card after the effective date of the change shall be deemed acceptance of the new terms, even if the 25 days have not expired.

Enforcing this Agreement:

We can delay in enforcing or fail to enforce any of our rights under this Agreement without losing them.

Assignment:

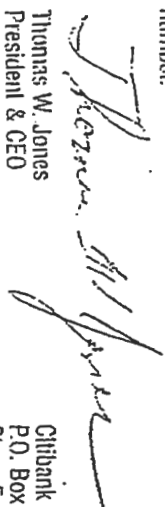
We reserve the right to assign any or all of our rights and obligations under this Agreement to a third party.

Applicable Law:

The terms and enforcement of this Agreement shall be governed by federal law and the law of South Dakota, where we are located.

For Further Information:

Call us at the telephone number shown on the front of the billing statement. You can also call toll-free or local Directory Assistance to get our telephone number.


Thomas W. Jones
President & CEO

Clitbank (South Dakota), N.A.
P.O. Box 6000
Sioux Falls, SD 57117

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What To Do If There's An Error In Your Bill.

Your Billing Rights. Keep This Notice For Future Use.

This notice contains important information about your rights and our responsibilities under the Fair Credit Billing Act.

Notify Us In Case of Errors or Questions About Your Bill.

If you think your billing statement is wrong, or if you need more information about a transaction on your billing statement, write to us (on a separate sheet) at the address shown on the front of your billing statement. Write to us as soon as possible. We must hear from you no later than 60 days after we sent you the first billing statement on which the error or problem appeared. You can telephone us, but doing so will not preserve your rights. In your letter, give us the following information:

- Your name and account number.
- The dollar amount of the suspected error.
- Describe the error and explain, if you can, why you believe there is an error. If you need more information, describe the item you are not sure about.

Please sign your letter.

If you have authorized us to pay your credit card bill automatically from your savings or checking account you can stop the payment on any amount you think is wrong. To stop the payment you must tell us at least three business days before the automatic payment is scheduled to occur.

Your Rights and Our Responsibilities After We Receive Your Written Notice.

We must acknowledge your letter within 30 days, unless we have corrected the error by then. Within 90 days, we must either correct the error or explain why we believe your billing statement was correct. After we receive your letter, we cannot try to collect any amount you question, or report your account as delinquent. We can continue to bill you for the amount you question, including finance charges, and we can apply any unpaid amount against your credit line. You do not have to pay any questioned amount while we are investigating, but you are still obligated to pay the parts of your balance that are not in question.

If we find that we made a mistake on your billing statement, you will not have to pay any finance charges related to any questioned amount. If we didn't make a mistake, you may have to pay finance charges, and you will have to make up any missed payments on the questioned amount. In either case, we will send you a statement of the amount you owe and the date it is due.

If you fail to pay the amount that we think you owe, we may report you as delinquent. However, if our explanation does not satisfy you and you write to us within 10 days telling us that you still refuse to pay, we must tell anyone we report you to that you have a question about your bill. And, we must tell you the name and address of anyone to whom we reported your account information. We must tell anyone we report you to that the matter has been settled between us when it is finally settled.

If we don't follow these rules, we can't collect the first \$50 of the questioned amount, even if your billing statement was correct.

Special Rule for Credit Card Purchases.

If you have a problem with the quality of property or services that you purchased with a credit card, and you have tried in good faith to correct the problem with the merchant, you may have the right not to pay the remaining amount due on the property or services. There are two limitations on this right:

You must have made the purchase in your home state or, if not within your home state, within 100 miles of your current address; and

The purchase price must have been more than \$50.

These limitations do not apply if we own or operate the merchant, or if we mailed you the advertisement for the property or services.

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