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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE

6 Attorney for Plaintiff

BY _____
LIBPOT

8 SUPERIOR COURT OF CALIFORNIA, ORANGE COUNTY
9 HARBOR JUSTICE CENTER - LIMITED CIVIL

30-200

10 Capital One Bank (USA) N.A.,
11 Plaintiff,

) Case No.:

12 vs.

) COMPLAINT FOR MONEY

13 VI

-) 1. Breach of Written Contract
-) 2. Money Had and Received
-) 3. Account Stated

14 and Does 1 to 10

15 Defendant(s)

- Amount demanded does not exceed \$10,000
- Amount demanded exceeds \$10,000
- Amount demanded exceeds \$25,000

File By Fax

17
18 COMES NOW, Plaintiff, Capital One Bank (USA) N.A., (hereinafter "Plaintiff") for all causes
19 of action against all named Defendant(s), _____, (hereinafter "Defendant(s)"), and
20 each of them, and each other Defendant sued as a DOE defendant hereunder, and hereby complains
21 as follows upon information and belief:

22 **PARTIES**

23 1. Plaintiff is now and was at all times mentioned herein either a corporation, a
24 partnership, or a sole proprietor in good standing, and is the rightful Plaintiff authorized to collect the
25 debt which is the subject of this action.

26 2. Plaintiff is informed and believes, and on that basis alleges that at least one Defendant
27 is an individual who resides in the State of California.

28 3. Plaintiff is ignorant of the true names and capacities of the Defendants sued herein as
DOES 1 through 10 inclusive, and therefore sues these Defendants by such fictitious names. Plaintiff
will amend this Complaint to insert the true names and capacities of said Defendants when they are
ascertained. Plaintiff is informed and believes and thereon alleges that each of such fictitiously

1 named Defendants are indebted to Plaintiff as herein alleged, and that Plaintiff's rights against such
 2 fictitiously named Defendants arise from such indebtedness.

3 JURISDICTION

4 4. This is the proper venue, superior court and court location for this action because the
 5 action involves an offer or provision of goods, services and/or credit intended for commercial use to
 6 be sold to the public primarily for personal, family or household use and at least one Defendant
 7 resides in this court's jurisdiction.

8 5. The causes of action hereinafter stated is a money demand.

9 FACTUAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

10 6. Defendant(s) are over the age of 18 and indebted to plaintiff for credit received
 11 through purchases/cash advances and/or monies loaned and received and furnished to the
 12 defendant(s) by the plaintiff, Capital One Bank (USA) N.A., and all related finance charges and/or
 13 late fees incurred pursuant to the terms and conditions of the contract(s). This credit is identified by
 14 the plaintiff as account # 529 . (the "Account").

15 7. Defendant(s) agreed to pay these monies to the plaintiff as provided for in the
 16 agreement between the parties. The terms and conditions under which defendants agreed to repay the
 17 plaintiff for these monies are set forth in a written credit card and/or loan agreement between the
 18 parties. Defendant(s) indicated his/her/their/its consent to these terms either by an authorizing
 19 signature on the application and/or agreement or by defendant(s) use of the credit instrument and/or
 20 monies provided by the plaintiff.

21 8. Credit card transactions are federally regulated under the Truth in Lending Act (TILA)
 22 15 USC 1602. This Act is ratified under California Civil Code § 1747 et seq. Under TILA, a credit
 23 card plan means 'a plan under which the creditor reasonably contemplates repeated transactions,
 24 which prescribes the terms of such transactions, and which provides for a finance charges which
 25 may be computed from time to time.' 15 USC 1602 (i); emphasis added. An 'accepted credit card
 26 means any credit card which the cardholder has requested and received or has signed or has used.' 15
 27 USC 1602 (l). As such, under federal law, the defendant is bound by the terms of a credit agreement
 28 proscribed by the creditor upon use of said credit card plan. No signed application is required. 12
 C.F.R. § 226.5a (a)(1). This is reasonable given that the credit agreement itself must include certain
 disclosures and protections afforded to the defendant. 12 C.F.R. § 226.5a (a)(2); Cal. Civil Code §
 1748.11.

9. Plaintiff has duly performed all conditions on its part, except the conditions and

1 covenants it was excused or prevented from performing. Despite plaintiff's demand, defendant(s) have
2 not repaid plaintiff for the charges made and/or the monies loaned, in the amount of \$3368.56.

3 10. Billing statements were mailed to the defendant. Under Federal and California law
4 concerning credit cards, periodic statements are required to disclose the pertinent facts including
5 charges, fees, and finances charges. 15 USC 1602 (i) and (j); 12 C.F.R. § 226.7; Cal. Civil Code §
6 1748.13. Both Federal and California law also provides certain consumer rights to the debtor for
7 billing errors. 12 C.F.R. § 226.13. These rights require that the defendant dispute a billing error *in*
8 *writing within 60 days* of receipt of the billing notice. *Id* at § 226.13(b); emphasis added; Cal. Civil
9 Code § 1747.02(g). Plaintiff is unaware of any unresolved dispute received in response to a billing
statement.

10 11. Within the past four (4) years, on or about 06/10/2008, the Defendant(s) breached the
11 agreement by failing to pay the plaintiff.

12 12. Plaintiff has made a demand for payment of monies owed, but defendant(s) has either
13 failed, refused or neglected to pay plaintiff as agreed. Defendant(s) are, therefore, in default under
14 the terms of the party's agreement.

15 13. No part of the above balance owed has been paid to date and said balance is now due
16 and owing from Defendant(s), together with interest thereon at the contractual rate of 24.9000% from
17 the date of breach plus reasonable attorney's fees and costs where allowed by law and according to
18 proof.

19 **FIRST CAUSE OF ACTION**
20 **(Breach of Written Contract)**
21 **(As Against All Defendants)**

22 14. Plaintiff sets forth by reference as though fully set forth below each and every allegation
23 of paragraph 1-13 of this Complaint.

24 15. The Plaintiff and Defendant(s) entered into a written contract(s) wherein at the request of
25 Defendant(s), the Plaintiff extended credit and/or provided financing to the Defendant(s). In return,
26 Defendant(s) agreed to make monthly minimum payments in accordance with the terms and conditions
27 of the contract.

28 16. The plaintiff sent to Defendant(s) monthly bills reflecting, *inter alia*, all charges
incurred with the Account, the monthly payment due, and the total balance due. To the best of
Plaintiff's knowledge and belief Defendant(s) did not ever send any disputes of the monthly bills or
the charges reflected thereon. Where the debt at issue herein was a credit card, each monthly
statement informed Defendant(s) of the duty to submit any disputes of the charges set forth in such

1 statement, in writing, within sixty days from the date of the statement; and as such, Defendant(s)'
2 failure to submit such disputes constitutes an admission of the account balance.

3 17. Between the date of the aforementioned contract(s) to the present, Defendant(s) breached
4 said contract(s), by ceasing or failing to make the minimum payment due on the Account.

5 18. No part of the principal sum of \$3368.56 has been paid to date and said sum is now due
6 and owing by Defendant(s) to the Plaintiff.

7 19. As a direct and proximate result of Defendant(s) breach of said written contract, Plaintiff
8 has been damaged in the above stated sum with interest thereon at the contractual rate of 24.9000%
9 from the date of breach plus reasonable attorney's fees and costs where allowed by law and
10 according to proof..

11 **SECOND CAUSE OF ACTION**
12 **(Money Had and Received)**
13 **(As Against All Defendants)**

14 20. Plaintiff sets forth by reference as though fully set forth below each and every allegation
15 of paragraph 1-19 of this Complaint.

16 21. Defendant(s) received and used and/or authorized the use of the credit knowing that
17 the Plaintiff expected to be repaid for all charges incurred, together with interest thereon. With each
18 use of the credit, the plaintiff paid money on Defendant(s)' behalf to the merchant with whom the
19 credit was used. Defendant(s) are liable for repayment of such sums under the doctrine of money had
20 and received.

21 22. Plaintiff is entitled to recover from Defendant(s) the sum of \$3368.56, together with
22 interest thereon at the contractual rate of 24.9000% from the date of breach.

23 **THIRD CAUSE OF ACTION**
24 **(Account Stated)**
25 **(As Against All Defendants)**

26 23. Plaintiff sets forth by reference as though fully set forth below each and every allegation
27 of paragraph 1 through 22 of this Complaint.

28 24. The Account(s) was stated in writing by and between the Plaintiff and Defendant(s) and
29 on such statements a balance(s) of \$3368.56 was ultimately stated as due and owing. However,
30 Defendant(s) has not paid the amount owing as agreed.

31 25. There is now due, owing, and unpaid from Defendant(s) to Plaintiff the above stated
32 balance owed for purchases, cash advances and/or monies loaned, and finance charges and/or late fees
33 incurred pursuant to the terms and conditions of the contract(s).

1 26. Plaintiff alleges that there is an Account(s) stated by operation of law wherein the
2 Plaintiff billed Defendant(s) for the credit balance and received no objection to it.

3 27. No part of the above balance owed has been paid and said amount is now due and owing
4 from Defendant(s) to Plaintiff, together with interest thereon at the contractual rate of 24.9000% from
5 the date of breach.

6 WHEREFORE, Plaintiff prays for judgment against Defendant(s), and each of them, as follows:

- 7 1. For the balance owed in the amount of \$3368.56;
- 8 2. For interest at the contractual rate of 24.9000% from the date of breach;
- 9 3. For reasonable attorney's fees in accordance with the written agreement or as according
10 to proof, or in accordance with this court's default schedule if a default is obtained;
- 11 4. For costs of suit incurred herein; and
- 12 5. For such other and further relief as the court may deem proper.

13 Dated: 9

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15 Mark Walsh, Esq.
16 Attorney for Plaintiff

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File By Fax