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APPELLATE COURTS

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CLERK, APPELLATE COURTS

BY: DEPUTY CLERK

IN THE SUPREME COURT OF THE STATE OF ALASKA

JANET HUDSON, ON BEHALF OF HERSELF AND
ALL OTHERS,)

Petitioners,)

v.)

CITIBANK (SOUTH DAKOTA) NA, ALASKA LAW
OFFICES, INC. AND CLAYTON WALKER,)

Respondents.)

Supreme Court No.
S-14740

Trial Court Case No.
3AN-11-09196CI

Consolidated with

CYNTHIA STEWART, ON BEHALF OF HERSELF AND
ALL OTHERS WHO ARE SIMILARLY SITUATED,)

Petitioners,)

v.)

MIDLAND FUNDING LLC, ALASKA LAW OFFICES,
INC. AND CLAYTON WALKER,)

Respondents.)

Supreme Court No.
S-14826

Trial Court Case No.
3AN-11-12054CI

ON PETITION FOR REVIEW FROM SUPERIOR COURT,
THIRD JUDICIAL DISTRICT AT ANCHORAGE,
THE HONORABLE FRANK A. PFIFFNER, PRESIDING

PETITIONERS' EXCERPT OF RECORD
VOLUME 1 OF 2

JAMES J. DAVIS, JR., AK Bar No. 9412149
GORIUNE DUDUKGIAN, AK Bar No. 0506051
NORTHERN JUSTICE PROJECT, LLC
310 K Street, Suite 200
Anchorage, AK 99501
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PUBLIC JUSTICE, P.C.
1825 K Street NW, Suite 200
Washington, DC 20006
(202) 797-8600

Attorneys for Petitioners

Filed in the Supreme Court
of the State of Alaska,
this 17th day of February 2013.
Marilyn May, Clerk

By: [Signature]
Deputy Clerk

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FILED
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THIRD DISTRICT
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CLERK TRIAL COURTS
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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

JANET HUDSON, on behalf of herself)
and all others similarly situated,)
)
Plaintiffs,)
)
v.)
)
CITIBANK (South Dakota) NA,)
ALASKA LAW OFFICES, INC. and)
CLAYTON WALKER,)
)
Defendants.)

Case No. 3AN-11-9196CI

Northern Justice Project, LLC
A Private Civil Rights Firm
310 K Street, Suite 200
Anchorage, AK 99501
Phone: (907) 264-6634 • Fax: (866) 813-8645

FIRST AMENDED CLASS ACTION COMPLAINT

COMES NOW Janet Hudson, by and through counsel, the Northern Justice Project, LLC, and as her First Amended Complaint against the defendants alleges and requests relief as follows:

INTRODUCTION

1. Defendants have a pattern and practice of seeking attorney's fees against defaulted consumers in debt collection cases that grossly exceed the amount allowed under the Alaska Rules of Civil Procedure. Defendants' practice violates Alaska's Unfair Trade Practices and Consumer Protection Act ("UTPA"), AS 45.50.471 *et seq.* This class action is brought to put an end to defendants' illegal practice.

0

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to AS 22.10.020.
3. Venue is proper under AS 22.10.030 and Civil Rule 3(c).

PARTIES

4. Plaintiff Janet Hudson is a resident of Kenai.
5. Defendant Citibank (South Dakota) NA ("Citi") issues credit cards to numerous Alaskan consumers.

6. Alaska Law Offices, Inc. ("ALO") is an Anchorage law firm which regularly engages in the collection of debts. ALO is a "debt collector" under the UTPA and the federal Fair Debt Collection Practices Act ("FDCPA"). ALO regularly represents Citi in debt collection cases filed in Alaska's courts.

7. Clayton Walker is a lawyer in Anchorage, the owner of ALO, and a "debt collector" under the UTPA and the FDCPA. Walker regularly engages in the collection of debts.

FACTS AND GENERAL ALLEGATIONS

8. Defendants sued plaintiff for an alleged credit card debt in February 2010 in Kenai District Court, Case No. 3KN-10-1139 CI. Defendants averred in their complaint that plaintiff owed Citi \$24,170.20.

9. Plaintiff did not respond to the complaint and, on February 3, 2011, defendants moved to default plaintiff. In moving to default plaintiff, defendants filed an Affidavit of Actual Attorney Fees (hereafter "Affidavit"). In their Affidavit,

FIRST AMENDED CLASS ACTION COMPLAINT

Janet Hudson, et al. v. Citibank (South Dakota) NA, et al., Case No. 3AN-11-9196 CI

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Northern Justice Project, LLC

A Private Civil Rights Firm

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defendants averred that their "actual attorney fees charged in this case are \$4,834.05." Defendants further averred that "\$4,834.05 exceed the Alaska Civil Rule 82 undisputed attorney's fees default rate of 10%. Accordingly, the attorney's fees under Alaska Rule 82 should be \$2417.02."

10. Plaintiff is informed and believes and thereupon alleges that the \$4,834.05 in "actual attorney fees" averred by the defendants in the Affidavit were based upon a 20% contingency fee agreement between ALO/Walker and Citi.

11. Based on defendants' Affidavit, the court awarded Citi \$2417.02 in attorney's fees against the plaintiff.

12. Under Alaska Civil Rule 82(b)(4), when judgment is entered by default, a plaintiff may recover "its reasonable actual fees which were necessarily incurred" or 10% of the judgment, *whichever is less*.

13. It is well settled under Alaska law that a contingency fee agreement is *not* a proper measure of the "reasonable actual fees" incurred by a party in a lawsuit. Rather, "reasonable actual fees" must be determined according to the number of hours actually worked on the case and the attorney's reasonable hourly rate.

14. Defendants' Affidavit injured plaintiff. By wrongfully basing its "actual attorney fees" of \$4,834.05 on a contingency fee agreement, as opposed to the number of hours typically spent by debt collecting lawyers in prosecuting a consumer default (i.e., less than 2 hours), defendants obtained a radically inflated judgment against

FIRST AMENDED CLASS ACTION COMPLAINT

Janet Hudson, et al. v. Citibank (South Dakota) NA, et al., Case No. 3AN-11-9196 CI

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plaintiff. That is, defendants obtained a fee award of \$2417.02 instead of approximately \$250.00.

15. Plaintiff is informed and believes that defendants have filed hundreds of similar affidavits in Alaska's courts over the past several years, injuring hundreds of other Alaskans in the same way that they injured plaintiff.

16. By seeking and collecting attorney's fees in excess of the amount permitted by law, defendants violated the UTPA.

CLASS ACTION ALLEGATIONS

17. Plaintiff brings this complaint on her own behalf and on behalf of all persons similarly situated, pursuant to Rule 23 of the Alaska Rules of Civil Procedure.

18. The class is defined as: All individuals against whom defendants obtained a default judgment including attorney's fees since July 15, 2009.

19. All requirements of Rule 23(a) are met in this case. Specifically,

a. The class is so numerous that joinder of all members is impracticable. The number of individuals in the above-defined class, although presently unknown, is believed to be in the hundreds.

b. There are questions of law or fact common to the class: Whether defendants violate the Alaska Rules of Civil Procedure and/or the UTPA by obtaining attorney fees against defaulted consumers in the aforesaid fashion.

c. The claims of the representative party are typical of those of the class.

d. The representative party will fairly and adequately represent the class. Neither the representative plaintiff nor her counsel have interests which might cause them not to vigorously pursue this action.

20. Certification of a class under Alaska Civil Rule 23(b)(3) is appropriate because:

a. The questions of law or fact common to the members of the class predominate over any questions affecting only individual class members; and

b. A class action is superior to other available methods for the fair and efficient adjudication of this controversy since: (1) the class is readily definable and should be easily identified by examination of defendants' records; (2) prosecution of this case as a class action will eliminate the possibility of repetitious litigation and will provide redress for claims which otherwise would be too small to support the expense of individual litigation against defendants; (3) undersigned counsel are aware of no other pending class actions regarding the subject matter in this case; (4) it is desirable to concentrate the litigation of these claims in Anchorage because, upon information and belief, the majority of class members are in Anchorage; and (5) there are no problems which will make this case difficult to manage as a class action.

COUNT I: VIOLATION OF UTPCPA

21. Plaintiff repeats and incorporates by reference the allegations in each of the preceding paragraphs.

FIRST AMENDED CLASS ACTION COMPLAINT

Jane Hudson, et al. v. Citibank (South Dakota) NA, et al., Case No. 3AN-11-9196 CI

Page 5 of 8

22. By seeking and collecting attorney's fees in excess of the amount permitted by law, defendants have violated the UTPA.

23. Plaintiff and the putative class members have been injured by defendants' unfair actions.

24. Plaintiff and the putative class members are entitled to actual and/or statutory damages.

25. Plaintiff and the putative class members also seek an injunction against defendants in accord with the UTPA whereby defendants are ordered to cease and desist from their illegal conduct; ordered to file corrected judgments; and ordered to disgorge to all class members any and all illegal fees that were obtained.

COUNT II: DECLARATORY RELIEF AND INJUNCTIVE RELIEF

25. Plaintiff repeats and incorporates by reference the allegations in each of the preceding paragraphs.

26. Plaintiff contends that defendants' practices violate the Alaska Civil Rules and the UTPA. Defendants deny the same. This Court should enter declaratory and injunctive relief on the parties' dispute and should order defendants to cease and desist from their illegal conduct; order defendants to file corrected judgments; and order defendants to disgorge to all class members any and all illegal fees that were obtained.

Northern Justice Project, LLC

A Private Civil Rights Firm

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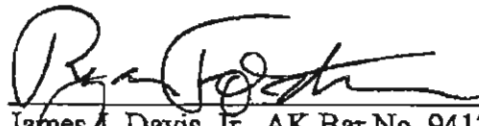
PRAAYER FOR RELIEF

WHEREFORE, plaintiff prays the Court to order a speedy hearing and advance this matter on the calendar, pursuant to Civil Rule 57(a), and award the following relief:

- (1) Certification of the proposed class;
- (2) Declaratory and injunctive relief as prayed for above;
- (3) A judgment awarding plaintiff and the class members three times their actual damages or statutory damages, whichever is greater;
- (4) An award to the plaintiff of her costs and expenses of litigation;
- (5) An award to plaintiff of her full attorney's fees; and
- (6) Any such other and further relief as this Court may deem just under the circumstances.

DATED: Aug. 2, 2011

NORTHERN JUSTICE PROJECT
Attorneys for Plaintiff



James J. Davis, Jr., AK Bar No. 9412140
Gorjune Dudukgian, AK Bar No. 0506051
Ryan Fortson, AK Bar 0211043

FIRST AMENDED CLASS ACTION COMPLAINT

Janet Hudson, et al. v. Citibank (South Dakota) NA, et al., Case No. 3AN-11-9196 CI

Page 7 of 8

Northern Justice Project, LLC

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Phone: (907) 264-6634 • Fax: (866) 813-8645

CERTIFICATE OF SERVICE

I hereby certify that on this date a true and correct copy of the foregoing was served via U.S. Mail on:

Alaska Law Offices Inc.
921 W. Sixth Avenue, Suite 200
Anchorage, AK 99501

Clayton Walker
921 W. Sixth Avenue, Suite 200
Anchorage, AK 99501

Vikram Pandit, CEO
CitiBank (South Dakota) NA
425 Park Avenue, 2nd Floor
New York, NY 110043


Signature _____ Date 6/12/11

FIRST AMENDED CLASS ACTION COMPLAINT

Janet Hudson, et al. v. Citibank (South Dakota) NA, et al., Case No. 3AN-11-9196 CI

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CERTIFICATE OF SERVICE

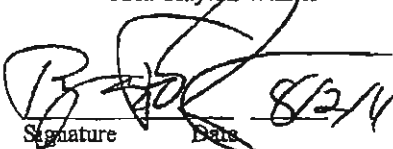
I hereby certify that on this date a true and correct copy of the foregoing was served via U.S. Mail on:

Jon S. Dawson
Davis Wright Tremaine, LLP
701 W. 8th Avenue, Suite 800
Anchorage, AK 99501

Attorney for Citibank, N.A.

Marc G. Wilhelm
Richmond & Quinn
360 K Street, Suite 200
Anchorage, AK 99501

Attorney for Alaska Law Offices, Inc.
And Clayton Walker


Signature _____ Date 8/2/11

FIRST AMENDED CLASS ACTION COMPLAINT

Janet Hudson, et al. v. Citibank (South Dakota) NA, et al., Case No. 3AN-11-9196 CI

Page 8 of 8

1 Jon S. Dawson
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5 Telephone: (907) 257-5300
6 Facsimile: (907) 257-5399

Filed in the Trial Courts
STATE OF ALASKA, THIRD DISTRICT

AUG 24 2011

Clark of the Trial Courts
By _____ Deputy

Attorneys for defendant Citibank, N.A.,
successor to Citibank (South Dakota), N.A.

7 IN THE DISTRICT COURT FOR THE STATE OF ALASKA
8 THIRD JUDICIAL DISTRICT AT ANCHORAGE

9 JANET HUDSON, on behalf of herself
10 and all others similarly situated,

11 Plaintiffs,

12 vs.

13 CITIBANK (South Dakota) NA,
14 ALASKA LAW OFFICES, INC. and
15 CLAYTON WALKER,

16 Defendants.

Case No. 3AN-11-09196 CI

17 **MOTION OF DEFENDANT CITIBANK, N.A., SUCCESSOR IN**
18 **INTEREST TO CITIBANK (SOUTH DAKOTA), N.A., TO COMPEL**
19 **ARBITRATION AND TO STAY ACTION**

20 Defendant Citibank, N.A.¹ ("Citibank"), through its undersigned attorneys, hereby
21 moves pursuant to Federal Arbitration Act, 9 U.S.C. §§ 1, et seq. (the "FAA"), and AS §
22 09.43.020 and 09.43.150, for an Order compelling plaintiff Janet Hudson ("Plaintiff") to
23 arbitrate her claims in this action on an individual (i.e., non-class, non-consolidated)
24 basis, and to stay the instant action pending the outcome of the arbitration proceedings,
25 pursuant to the valid, enforceable and irrevocable agreement to arbitrate between Plaintiff
and Citibank that encompasses all claims brought by Plaintiff. This motion is supported

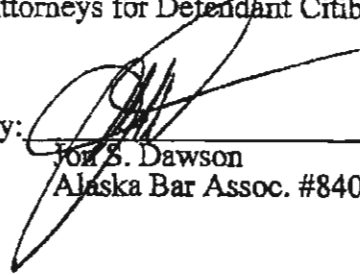
¹ Effective July 1, 2011, Citibank (South Dakota), N.A. merged into Citibank, N.A.

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by the Memorandum in Support, the Affidavit of Cathleen A. Walters and the Request for
Judicial Notice filed herewith, and by pleadings and record herein.

Date: 8/24/11

DAVIS WRIGHT TREMAINE LLP
Attorneys for Defendant Citibank, N.A.

By: 
Jon S. Dawson
Alaska Bar Assoc. #8406022

Certificate of Service

On the 24 day of August, 2011, a
true and correct copy of the foregoing
document was sent by courier to the
following parties:

James J. Davis, Jr.
Northern Justice Project
310 K Street, Suite 200
Anchorage, AK 99501

Marc Wilhelm
Richmond & Quinn PC
360 K Street, Suite 200
Anchorage, AK 99501

By: Karina Chambers
Karina Chambers

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

FILED
STATE OF ALASKA
THIRD DISTRICT

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BY: _____
DEPUTY CLERK

Case No. 3AN-11-09196-CI

JANET HUDSON, on behalf of herself and all)
others similarly situated,)

Plaintiffs,)

v.)

CITIBANK (SOUTH DAKOTA), N.A.,)
ALASKA LAW OFFICES, INC. and)
CLAYTON WALKER,)

Defendants.)

#2 AFFIDAVIT

STATE OF NEW YORK

COUNTY OF QUEENS

BEFORE ME, the undersigned authority personally appeared CATHLEEN A. WALTERS who being over the age of 21 and upon being first duly sworn, deposes and says:

1. My name is Cathleen A. Walters and I am over the age of 21, have never been convicted of a felony, and am competent to testify to the statements set forth in this affidavit. I am a Senior Vice President of Citicorp Credit Services, Inc., a servicing company for Citibank, N.A., successor to Citibank (South Dakota), N.A ("Citibank"), the issuer of Plaintiff Janet Hudson's ("Hudson") credit card account at issue in the above-referenced action. Citibank is a national banking association with its principal place of business in South Dakota. I have been employed by Citicorp Credit Services, Inc. or its predecessors for approximately 15 years. Since 2000, my responsibilities at CCSI have included creating, maintaining and distributing credit card agreements and change-in-terms notices to Citibank cardmembers.

2. In my capacity as Senior Vice President, I have knowledge and access to information in the normal course of business regarding the practices of Citibank and certain of its affiliates with respect to the channels by which notices are sent on behalf of Citibank to cardmembers. I also have knowledge of, and am generally familiar with, the ongoing credit card business operations and practices of Citibank. I have access to the business records relating to credit card accounts issued by Citibank, including the credit card account issued to Ms. Hudson.

3. The exhibits to this Affidavit are all true and correct business records created and maintained by Citibank, or its affiliates, in the course of regularly conducted business activity, and as part of the regular practice of Citibank to create and maintain such records, and also were made at the time of the act, transaction, occurrence or event or within a reasonable time thereafter. Certain information on the Exhibits has been redacted to protect Ms. Hudson's privacy. The statements set forth in this affidavit are true and correct to the best of my knowledge, information and belief. Except where based upon information provided by persons working under my direction and supervision, the statements contained herein are based on my personal knowledge or review of Citibank's records, including records pertaining to Citibank's records of a Citibank credit card account issued to Janet Hudson.

4. Citibank's records reflect that there is a Citi Driver's Edge Platinum Select Card - Options Rbts Account ending in 9673 issued in Ms. Hudson's name (the "Account"). Like any other credit card account, Ms. Hudson's Account is subject to written terms and conditions that are reflected in a Card Agreement, as amended from

time to time. Attached hereto as Exhibit 1 is a copy of the form of Card Agreement that was sent to Ms. Hudson when the Account was opened in April 1999.

5. In October 2001, Citibank caused to be mailed to Ms. Hudson a Notice of Change-in-Terms (the "Arbitration Change-in-Terms") with her October 2001 periodic statement for the Account. A true and correct copy of the Arbitration Change-in-Terms for the Account is attached hereto as Exhibit 2 to this Affidavit. The Arbitration Change-in-Terms changed the Card Agreement for the Account to provide that disputes regarding the Account would be resolved through arbitration if Ms. Hudson or Citibank so elected.

6. Based upon my review of Ms. Hudson's Account records, I have ascertained that Ms. Hudson received the Arbitration Change-in-Terms with her October 2001 statement. Pursuant to the Card Agreement, Citibank caused a statement for the Account to be printed each month (other than months in which no statement may have been required under applicable law), and mailed to Ms. Hudson's then current billing address in Poplar Bluff, Missouri. In October 2001, a monthly periodic statement for the Account, along with the enclosed Arbitration Change-in-Terms, was mailed to Ms. Hudson's address. A true and correct copy of the statement transaction detail sent to Ms. Hudson on her October 2001 statement for the Account is attached hereto as Exhibit 3 to this Affidavit (the "October 2001 Statement") (redacted for privacy). A special message was printed on the face of the October 2001 Statement, stating as follows:

PLEASE SEE THE ENCLOSED CHANGE IN TERMS NOTICE FOR
IMPORTANT INFORMATION ABOUT THE BINDING
ARBITRATION PROVISION WE ARE ADDING TO YOUR
CITIBANK CARD AGREEMENT.

Attached as Exhibit 4 to this Affidavit is a true and correct copy of a printout of the computer screen from the records for Ms. Hudson's Account that reflects that the Arbitration Change-in-Terms was sent to Ms. Hudson (redacted for privacy).

7. Furthermore, in November 2001, a monthly periodic statement for the Account was mailed to Ms. Hudson's address. A true and correct copy of Ms. Hudson's November 2001 statement transaction detail for the Account is attached as Exhibit 5 to this Affidavit (the "November 2001 Statement") (redacted for privacy). A special message was printed on the face of the November 2001 Statement, stating as follows:

WITHIN THE LAST 30 DAYS YOU SHOULD HAVE RECEIVED AN IMPORTANT NOTICE ABOUT ADDING BINDING ARBITRATION TO YOUR CITIBANK CARD AGREEMENT. IF YOU WOULD LIKE ANOTHER COPY PLEASE CALL THE CUSTOMER SERVICE NUMBER LISTED ABOVE.

8. It was, and is, Citibank's practice to include a note in customers' Account records when statements are returned by the post office. I have checked Citibank's records for the Account and there is no record that the post office returned Ms. Hudson's October or November 2001 Statements. In addition, if the mail for Ms. Hudson address had been returned for two consecutive months, Citibank would have discontinued mailing statements until a good address was obtained. Statements for November and December 2001, and January and February 2002 were mailed to Ms. Hudson. This further confirms that the October and November 2001 Statements for the Account were not returned by the post office.

9. Ms. Hudson, like other recipients of the Arbitration Change-in-Terms, was permitted, by taking certain steps as set forth in the Arbitration Change-in-Terms, to opt out of the arbitration provision. (See Exhibit 2, last paragraph entitled "Non-Acceptance Instructions"). Ms. Hudson did not opt out of the arbitration Change-in-Terms. I can

determines this because it was Citibank's practice to include a note in Account records of customers who chose to opt out. The records for the Account do not reflect any such note.

10. In addition, there is an indicator on the Account records to indicate if the Account is subject to arbitration. Attached hereto as Exhibit 6, to this Affidavit is a true and correct copy of the computer screen that shows the arbitration indicator (redacted for privacy). That indicator is marked "Y." This means the Account is subject to arbitration. The relevant field on Exhibit 6 has been marked. If Ms. Hudson had opted out of the Arbitration Change-in-Terms, this field would show an "N." The computer system was programmed to place an "N" in this field when an opt out was noted on the system during the opt out period for the Arbitration Change-in-Terms.

11. The Arbitration Change-in-Terms provided that the Arbitration Agreement would become effective on the day after the Statement/Closing date indicated on Ms. Hudson's November 2001 billing statement. See Ex. 2. The Statement/Closing date was November 28, 2001. See Ex. 5. Thus, the Arbitration Agreement became effective on November 29, 2001. Citibank's records reflect that Ms. Hudson continued using the Account after the Arbitration Change-in-Terms became effective.

12. In February 2005, Citibank caused to be mailed to Ms. Hudson a Notice of Change-in-Terms (the "February 2005 Change-in-Terms") for the Account. The February 2005 Change-in-Terms made certain amendments to the arbitration provision, removing JAMS as an arbitration provider and revising the severability clause. A copy of the form of February 2005 Change-in-Terms sent to Ms. Hudson is attached hereto as Exhibit 7. Attached as Exhibit 8 to this Affidavit is a copy of the February 2005

statement transaction detail for the Account advising Ms. Hudson of the February 2005 Change-in-Terms (redacted for privacy). As with the Arbitration Change-in-Terms, Ms. Hudson had the opportunity to opt out of the changes to the arbitration provision (not the arbitration provision itself), but did not do so. Instead, Ms. Hudson continued to use and make payments on the Account after receiving the February 2005 Change-in-Terms.

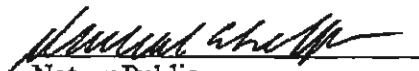
13. Citibank's records reflect that, in June 2005, a complete Card Agreement was sent to Ms. Hudson in connection with a pricing change on the Account. Attached hereto as Exhibit 9 is a copy of the form of Card Agreement sent to Ms. Hudson as a result of the pricing change. The Card Agreement contains the same arbitration agreement as provided in the Arbitration Change-in-Terms, as modified by the February 2005 Change-in-Terms. After receiving the complete Card Agreement, Ms. Hudson continued to use the Account as reflected in the statement transaction detail sent to Ms. Hudson in June and July 2005, copies of which are attached hereto as composite Exhibit 10 (redacted for privacy).

FURTHER AFFIANT SAYETH NAUGHT.


Cathleen A. Walters

STATE OF NEW YORK
COUNTY OF QUEENS

SWORN AND SUBSCRIBED before me, the undersigned Notary Public, on this 15th day of August, 2011, by Cathleen A. Walters, as Senior Vice President of Citicorp Credit Services Inc. who is personally known to me or who has provided identification.


Notary Public
My Commission Expires:

6
17

MICHAEL E. SCHIFFRES
Notary Public, State of New York
No. 02SC4967329
Qualified in Westchester County
Commission Expires May 29, 2012

EXHIBIT 2

NON-ACCEPTANCE INSTRUCTIONS:

If you do not wish to accept the binding arbitration provision contained in the Change in Terms, you must notify us in writing within 30 days after the Statement/Closing Date indicated on your November 2001 billing statement starting your non-acceptance. Include your name, address, and account number and mail to: Customer Service Center, P.O. Box 441271 Jacksonville, Florida 32211-4127. If you notify us by the time that you do not accept the binding arbitration provision contained in the change in terms, then you will continue to use your card(s) under your existing terms until the end of your current membership year or the expiration date of your credit agreement is later. At that time, you will not be able to pay off your existing balance under your existing terms.

Notice of Change in Terms Regarding Binding Arbitration to Your Citibank Card Agreement

Effective on the day after the Statement/Closing Date indicated on your November 2001 billing statement, we are amending your existing Citibank Card Agreement to include the following provision regarding binding arbitration. The binding arbitration provision does not apply to individual Claims of named parties in any lawsuit served on us before the effective date, or to Claims by unnamed members of a class in any certified class action if notice has been provided to the class by court direction before the effective date.

If you do not wish to accept the binding arbitration provision, please see the NON-ACCEPTANCE INSTRUCTIONS on panel 5 of this notice.

ARBITRATION:

PLEASE READ THIS PROVISION OF THE AGREEMENT CAREFULLY. IT PROVIDES THAT ANY DISPUTE MAY BE RESOLVED BY BINDING ARBITRATION. ARBITRATION REPLACES THE RIGHT TO GO TO COURT, INCLUDING THE RIGHT TO A JURY AND THE RIGHT TO PARTICIPATE IN A CLASS ACTION OR SIMILAR PROCEEDING. IN ARBITRATION, A DISPUTE IS RESOLVED BY AN ARBITRATOR INSTEAD OF A JUDGE OR JURY. ARBITRATION PROCEDURES ARE SIMPLER AND MORE LIMITED THAN COURT PROCEDURES.

Agreement to Arbitrate:

Either you or we may, without the other's consent, elect mandatory, binding arbitration for any claim, dispute, or controversy between you and us (called "Claims").

Claims Covered:

What Claims are subject to arbitration? All Claims relating to your account, a prior related account, or our relationship are subject to arbitration, including Claims regarding the application, enforceability, or interpretation of this Agreement and this arbitration provision. All Claims are subject to arbitration, no matter what legal theory they are based on or what remedy (damages, or injunctive or declaratory relief) they seek. This includes Claims based on contract, tort (including intentional tort), fraud, agency, your or our negligence, statutory or regula-

...with other claims, third-party claims, interpleaders or
cross-claims and Claims made independently or with other claims
A party who initiates a proceeding in court may elect arbitration
with respect to any Claim advanced in that proceeding by any
other party. Claims and remedies sought as part of a class action,
private attorney general or other representative action are subject
to arbitration (on an individual (non-class, non-representative)
basis, and the arbitrator may award relief only on an individual
(non-class, non-representative) basis.

• Whose Claims are subject to arbitration? Not only
yours and ours, but also Claims made by or against anyone
connected with us or you or claiming through us or you, such as
an co-applicant or authorized user of your account, an employee,
agent, representative, affiliated company, predecessor or suc-
cessor, heir, assignee, or trustee in bankruptcy.

**• What time frame applies to Claims subject to
arbitration?** Claims arising in the past, present, or future,
including Claims arising before the opening of your account, are
subject to arbitration.

• Broadest Interpretation. Any questions about whether
Claims are subject to arbitration shall be resolved by interpreting
this arbitration provision in the broadest way the law will allow it to
be enforced. This arbitration provision is governed by the Federal
Arbitration Act (the "FAA").

• What about Claims filed in Small Claims Court?
Claims filed in a small claims court are not subject to arbitration,
so long as the matter remains in such court and advances only an
individual (non-class, non-representative) Claim.

How Arbitration Works:

• How does a party initiate arbitration? The party filing
an arbitral demand chooses one of the following three arbitration
forums and follow its rules and procedures for initiating and pur-
suing an arbitration: American Arbitration Association, JAMS, and
National Arbitration Forum. Any arbitration hearing that you attend
will be held at a venue chosen by the arbitrator firm in the same
city as the US District Court closest to your then current billing
address, or at some other place to which you and we agree in
writing. You may obtain copies of the current rules of each of the
three arbitration firms and forums and instructions for initiating an
arbitration by contacting them as follows:

American Arbitration Association - Web site: www.adr.org
1635 Market Street, Floor 10
New York, NY 10017-1025

1020 Main Street, Suite 300
Irvine, CA 92610

National Arbitration Forum - Web site: www.arbitration-forum.com
PO Box 50191
Minneapolis, MN 55405

At any time you or we may ask an appropriate court to compel
arbitration of Claims, or to stay the litigation of Claims pending
arbitration, even if such Claims are part of a lawsuit, unless a trial
has begun or a final judgment has been entered. Even if a party
fails to exercise those rights at any particular time, or in con-
nection with any particular Claims, that party can still require
arbitration at a later time or in connection with any other Claims.

**• What procedures and law are applicable in
arbitration?** A single, neutral arbitrator will resolve Claims. The
arbitrator will be either a lawyer with at least ten years experience
or a retired or former judge, selected in accordance with the rules
of the arbitration firm. The arbitrator will follow procedures and
rules of the arbitration firm in effect on the date the arbitration
is filed unless those procedures and rules are inconsistent with
this Agreement, in which case this Agreement will prevail. Those
procedures and rules may limit the discovery available to you
or us. The arbitrator will take reasonable steps to protect cus-
tomer account information and other confidential information if
requested to do so by you or us. The arbitrator will apply applic-
able substantive law consistent with the FAA and applicable
statutes of limitations, will honor claims of privilege recognized
at law, and will have the power to award to a party any damages
or other relief provided for under applicable law. You or we may
choose to have a hearing and be represented by counsel. The
arbitrator will make any award in writing and, if requested by you
or us, will provide a brief statement of the reasons for the award.
An award in arbitration shall determine the rights and obligations
between the named parties only and only in respect of the
Claims in arbitration, and shall not have any bearing on the rights
and obligations of any other person, or on the resolution of any
other dispute.

• Who pays? Whoever files the arbitration pays the initial filing
fee. If we file, we pay, if you file, you pay, unless you get a fee
waiver under the applicable rules of the arbitration firm. If you
have paid the initial filing fee and you prevail, we will reimburse
you for that fee. If there is a hearing, we will pay any fees of the
arbitrator and arbitration firm for the first day of that hearing.
All other fees will be allocated as provided by the rules of the
arbitration firm and applicable law. However, we will advance or

there is good reason for requiring us to do so, or if you ask us
and we determine there is good reason for doing so. Each party
will bear the expenses of that party's attorneys, experts, and wit-
nesses and other expenses, regardless of which party prevails,
but a party may recover any or all expenses from another party
if the arbitrator, applying applicable law, so determines.

• Who can be a party? Claims must be brought in the name
of an individual person or entity and must proceed on an individ-
ual (non-class, non-representative) basis. The arbitrator will not
award relief for or against anyone who is not a party. If you or
we require arbitration of a Claim, neither you, we, nor any other
person may pursue the Claim in arbitration as a class action,
private attorney general action or other representative action, nor
may such Claim be pursued on your or our behalf in any litigation
in any court. Claims involving two or more Claims of two or more
persons may not be joined or consolidated in the same arbitra-
tion. However, applicants, co-applicants, authorized users on a
single account and/or related accounts, or corporate affiliates are
here considered as one person.

• When is an arbitration award final? The arbitrator's
award is final and binding on the parties unless a party appeals it
in writing to the arbitration firm within fifteen days of notice of the
award. The appeal must request a new arbitration before a panel
of three neutral arbitrators designated by the same arbitration
firm. The panel will consider all factual and legal issues anew,
follow the same rules that apply to a proceeding using a single
arbitrator, and make decisions based on the vote of the majority.
Costs will be allocated in the same way they are allocated for
arbitration before a single arbitrator. An award by a panel is final
and binding on the parties after fifteen days has passed. A final
and binding award is subject to judicial review and enforcement
as provided by the FAA or other applicable law.

Survival and Severability of Terms:

• This arbitration provision shall survive: (i) termination or
change in the Agreement, the account, and the relationship
between you and us concerning the account, (ii) the bankruptcy
of any party, and (iii) any transfer, sale or assignment of your
account or any amounts owed on your account, to any other
person or entity. If any portion of this arbitration provision is
deemed invalid or unenforceable, the remaining portions shall
nevertheless remain in force. Any different agreement regarding
arbitration must be agreed to in writing.

EXHIBIT 9

CARD AGREEMENT

000297

people. We may also include delinquent credit reports on you (for example, in our annual report) for credit purposes. (For credit purposes, we will use your name and the name of the company or business you own, if you own one.) We will try to verify your telephone or fax number and any card process number on file in order to give you an opportunity to object to it unless that number is the same.

If you make any request, we will respond to you as quickly as possible. We will generally respond to the matter and if our investigation shows you are right, we will correct such credit reporting information. We will generally respond to the matter and if our investigation shows you are right, we will correct such credit reporting information. We will generally respond to the matter and if our investigation shows you are right, we will correct such credit reporting information.

Telephone Monitoring and Recording: From time to time we may monitor and record your telephone calls regarding your account when it is shown to be in the best interest of our service.

Closing Your Account: You may close your account at any time by notifying us in writing. However, you remain responsible to pay the total balance according to the terms of this Agreement. We may close your account or suspend your account temporarily at any time for any reason without prior notice. We may also require a different card, account number, or other identification at any time. You must retain the card or cards in use until you notify us.

Refusal of Use Card: We are not responsible if a transaction on your account is not approved, either by us or by a third party, even if you have authorized credit use. We may limit the number of transactions that 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.

Changing This Agreement: We may amend this Agreement at any time. We will notify you by mail of any changes to this Agreement. If you do not agree to the changes, you may stop using the card. We will not be responsible for the balance of the billing period in which the change becomes effective. If you do not agree to the changes, you may stop using the card. We will not be responsible for the balance of the billing period in which the change becomes effective.

Enforcing This Agreement: We may delay in enforcing or fail to enforce any of our rights under this Agreement without being liable.

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 the laws and jurisdiction of the State of South Dakota, where we are located.

For Further Information: Call the Customer Service number shown on the billing statement. You can also call toll-free or local directory assistance to get our telephone number.

What To Do If There's An Error in Your Bill: Your billing might have an error. Please call us immediately if you find an error. We will investigate the error and if we find an error, we will correct it. We will not be responsible for the balance of the billing period in which the error is discovered.

What To Do If You're Not Sure of the Billing Information: If you have any questions about your bill, please call us. We will be happy to help you. We will not be responsible for the balance of the billing period in which the question is asked.

Your Rights and Our Responsibilities After We Receive Your Return Address: We must acknowledge your return within 30 days, unless we have contacted the return by mail. Please do not mail a return until we have contacted you. We will not be responsible for the balance of the billing period in which the return is received.

Special Rule for Credit Card Purchases: If you have a problem with the quality of a good or service that you purchased with a credit card, and you have tried to solve the problem with the merchant, you may have the right to cancel the purchase. We will not be responsible for the balance of the billing period in which the purchase is made.

Additional Information: We may have other information that we want to share with you. We will notify you of any changes to this information. We will not be responsible for the balance of the billing period in which the information is shared.

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Additional Information: We may have other information that we want to share with you. We will notify you of any changes to this information. We will not be responsible for the balance of the billing period in which the information is shared.

Additional Cards: You may request additional cards on your account for yourself or others. We will not be responsible for the balance of the billing period in which the card is issued.

Additional Information: We may have other information that we want to share with you. We will notify you of any changes to this information. We will not be responsible for the balance of the billing period in which the information is shared.

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Membership Fee:

The accompanying table indicates whether your account is subject to a membership fee. If it is, the fee is added to the current purchase balance and is not refundable unless you notify us to cancel your account within 30 days from the mailing or delivery date of the billing statement on which the fee is billed.

Billing?

Your billing statement shows the total balance, the finance charges, the minimum amount due, and the payment due date. It also shows your current credit line on each billing date, an annual list of current charges, current and past due payments, and a list of current delinquencies. You may request a copy of the current delinquency list, a list summary, and other important information, on request, by sending \$5 to our credit collection agency or attorney for collection, or may, by our own discretion, they will bill you billing statements. However, finance charges and late fees continue to accrue whether or not you send your billing statements. You must notify us of a change in your address by contacting Customer Service by telephone or mail. We will mail a notice. Use billing statement is only one address.

How the Debt/Income Ratio Balance?

The debt/income ratio (the amount you owe us) appears as the "Debt/Income Ratio" on the billing statement. We will not accept a new line of credit if the debt/income ratio is too high. The "Debt/Income Ratio" is the sum of all your current and past due balances, divided by your gross monthly income. We will not accept a new line of credit if the debt/income ratio is too high. We will not accept a new line of credit if the debt/income ratio is too high. We will not accept a new line of credit if the debt/income ratio is too high.

Annual Percentage Rates for Purchases and Cash Advances

Your annual percentage rates and the corresponding daily or monthly periodic rates appear on the accompanying table. (Only purchases rates are subject to seasonal percentage adjustments.) The applicable rate for a purchase or cash advance is the rate in effect on the date of the purchase or cash advance. If the rate changes during the billing period, the rate in effect on the date of the purchase or cash advance applies. Finance charges for purchases and cash advances are calculated on the outstanding balance of the purchase or cash advance. Finance charges for purchases and cash advances are calculated on the outstanding balance of the purchase or cash advance. Finance charges for purchases and cash advances are calculated on the outstanding balance of the purchase or cash advance.

Variable Annual Percentage Rates for Purchases and Cash Advances

If we adjust your rate, it is based on the U.S. Prime Rate plus a margin. We will calculate the rate by adding the applicable margin that appears in the accompanying table to the U.S. Prime Rate published in The Wall Street Journal. If more than one U.S. Prime Rate is published, we may choose the highest rate. If The Wall Street Journal ceases publication or to publish the U.S. Prime Rate, we may use the U.S. Prime Rate published in any other newspaper of general circulation, or we may establish a similar reference rate if our rate exceeds 12%.

Whether the U.S. Prime Rate is reviewed on a billing period, month end or quarterly basis is indicated on the accompanying table.

- If the U.S. Prime Rate is reviewed on a billing period basis, for each billing period we will use the U.S. Prime Rate published two business days prior to our Statement/Closing Date for that billing period. Any increase or decrease in a variable annual percentage rate due to a change in the U.S. Prime Rate takes effect on the first day of the billing period in which we calculate the variable annual percentage rate. - If the U.S. Prime Rate is reviewed on a month end basis, we will use the U.S. Prime Rate published on the last business day of the month. Any increase or decrease in a variable annual percentage rate due to a change in the U.S. Prime Rate takes effect on the first day of the billing period that begins in the month following the month in which the U.S. Prime Rate used to calculate your variable annual percentage rate is published.

- If the U.S. Prime Rate is reviewed on a quarterly basis, we will use the U.S. Prime Rate published on the third Wednesday of March, May, September, and December of each year. If the U.S. Prime Rate is reviewed on a quarterly basis, we will use the U.S. Prime Rate published on the first day of the billing period that begins in the month following the month in which the U.S. Prime Rate used to calculate your variable annual percentage rate is published.

- When a change in a variable annual percentage rate takes effect, we will apply it to any existing balances, subject to any payment made that may apply. - Your interest payments may vary. If you default under any Card Agreement that you have with us, we may increase your rate to make a payment to us that is not covered. In such circumstances, we may increase your annual percentage rate (including any promotional rates) at all balances to a variable default rate of up to the last business day of the corresponding daily variable monthly rate currently in effect. All the corresponding daily variable monthly rate currently in effect. All the corresponding daily variable monthly rate currently in effect. All the corresponding daily variable monthly rate currently in effect.

Promotional Rate Offers

At our discretion, we may offer you a promotional annual percentage rate for all or part of a balance. The period of time for which the promotional rate applies may be limited. Any applicable promotional rate, the corresponding periodic rates, and the period of time during which it is in effect will appear on the accompanying table. Any promotional rate offer will be subject to the terms of the offer and the Card Agreement.

which it is in effect will appear on the accompanying table. Any promotional rate offer will be subject to the terms of the offer and the Card Agreement.

Finance Charges

Finance charges are calculated on the outstanding balance of each balance subject to the applicable daily periodic rate and separately adding together. Finance charges are calculated on the outstanding balance of each balance subject to the applicable daily periodic rate and separately adding together. Finance charges are calculated on the outstanding balance of each balance subject to the applicable daily periodic rate and separately adding together. Finance charges are calculated on the outstanding balance of each balance subject to the applicable daily periodic rate and separately adding together.

- To get the daily balance, we take the beginning balance for each balance every day (which may include unpaid finance charges from previous billing periods) and any new transactions, any new fees, and any finance charges on the previous day's balance, and add them together to get the daily balance. - We will calculate finance charges on each balance as of the last business day of the billing period. - For finance charges calculated purposes, the billing period begins on the day after the Statement/Closing Date of the previous billing period and includes the Statement/Closing Date of the current billing period. The number of days in the billing period may vary.

- To get the daily balance, we take the beginning balance for each balance every day (which may include unpaid finance charges from previous billing periods) and any new transactions, any new fees, and any finance charges on the previous day's balance, and add them together to get the daily balance. - We will calculate finance charges on each balance as of the last business day of the billing period. - For finance charges calculated purposes, the billing period begins on the day after the Statement/Closing Date of the previous billing period and includes the Statement/Closing Date of the current billing period. The number of days in the billing period may vary.

Special Finance Charge Calculation Method for Certain Cardmembers

If you are a cardmember who is eligible for the Special Finance Charge Calculation Method, we will calculate finance charges on each balance as of the last business day of the billing period. For finance charges calculated purposes, the billing period begins on the day after the Statement/Closing Date of the previous billing period and includes the Statement/Closing Date of the current billing period. The number of days in the billing period may vary.

statement, or if the periodic rate in the Rate Summary Section of your billing statement is followed by "12%" (indicating a variable periodic rate) for purchases and an "APR" or an "APR" (indicating a daily periodic rate) for advances, we will use the variable rate. - We figure a portion of your finance charges on transactions subject to a monthly periodic rate by multiplying the monthly periodic rate by the balance subject to finance charges (including new transactions). - We figure a portion of your finance charges on advances by multiplying the daily periodic rate, if applicable, by the amount of your advance on the day you apply for the advance (including user charges). - To get the finance charges on each balance on each billing period, we take the beginning balance for each balance on each billing period and the finance charges for that period, and add them together to get the daily balance. - We will calculate finance charges on each balance as of the last business day of the billing period. - For finance charges calculated purposes, the billing period begins on the day after the Statement/Closing Date of the previous billing period and includes the Statement/Closing Date of the current billing period. The number of days in the billing period may vary.

- To get the finance charges on each balance on each billing period, we take the beginning balance for each balance on each billing period and the finance charges for that period, and add them together to get the daily balance. - We will calculate finance charges on each balance as of the last business day of the billing period. - For finance charges calculated purposes, the billing period begins on the day after the Statement/Closing Date of the previous billing period and includes the Statement/Closing Date of the current billing period. The number of days in the billing period may vary.

- To get the finance charges on each balance on each billing period, we take the beginning balance for each balance on each billing period and the finance charges for that period, and add them together to get the daily balance. - We will calculate finance charges on each balance as of the last business day of the billing period. - For finance charges calculated purposes, the billing period begins on the day after the Statement/Closing Date of the previous billing period and includes the Statement/Closing Date of the current billing period. The number of days in the billing period may vary.

Transaction Fee for Balance Transfers

You have obtained a balance transfer for which we assess a finance charge (purchase or cash advance) or you transfer a balance to us from another line of credit. We will assess a finance charge on the balance transferred to us. The finance charge is based on the amount of the balance transferred to us. The finance charge is based on the amount of the balance transferred to us. The finance charge is based on the amount of the balance transferred to us.

Transaction Fee for Purchases Made in a Foreign Currency

You have made a purchase in a foreign currency for which we assess a finance charge (purchase or cash advance) or you transfer a balance to us from another line of credit. We will assess a finance charge on the balance transferred to us. The finance charge is based on the amount of the balance transferred to us. The finance charge is based on the amount of the balance transferred to us.

EXHIBIT 10

07/21/05 \$11408.26 \$234.32 SITE:JX-CI TM:LG-B200 ACID:JALG040
 07/20/11 18:48:50

JANET HUDSON
 POPLAR BLUFF
 63901-4300000

MO

CITI CARDS
 PO BOX 688901
 DES MOINES, IA
 50368-8901

**Citi® Driver's Edge®
 Platinum Select® Card-Options Rbts**



Account Number 9673

Customer Service:
 1-800-967-8500

Total Credit Line	Available Credit Line	Cash Advance Limit	Available Cash Limit	New Balance
\$20600	\$9191	\$200	\$200	\$11408.26
Statement/ Closing Date	Amount Over Credit Line	Past Due	Purch/Adv Minimum Due	Minimum Amount Due
06/27/2005	\$0.00 +	\$0.00 +	\$234.32 =	\$234.32

Safe Date	Post Date	Reference Number	Activity Since Last Statement	Amount
	6/20	01193182	Payments, Credits & Adjustments PAYMENT THANK YOU 70 0000 0000	-300.00
6/07	6/07	3FYNBTO0	Standard Purch YAH*YAHOO SM BUS/MAIL 408-349-5151 CA 61 A4816US 2222	11.95
6/23	6/23	28ZLDZ9L	CHAUVIN COFFEE COMPANY SAINT LOUIS MO 61 A5999US 2222	747.01
	6/27		PURCHASES*FINANCE CHARGE*PERIODIC RATE 84 0000	113.73
	6/27		Balance Transfer - Charged In Offer 9 PURCHASES*FINANCE CHARGE*PERIODIC RATE 84 0000	6.59

DRIVER'S EDGE REBATES SUMMARY Activity This Period

Purchase Rebates Earned	8
Adjustments / Expired	-2
NEW DRIVER'S EDGE REBATES	6

Previous Balance 168

Purchase Rebates Earned 168

PREVIOUS DRIVER'S EDGE REBATES 168

Lifetime Activity

Total Rebates Earned	183
Total Rebates Expired	10
Total Rebates Redeemed	0
Total Rebates Available	174

Submitted Redeemable

Purchase Rebates	174
Drive Rebates	0
Bonus Rebates	0
TOTAL DRIVER'S EDGE REBATES	174

Bonus Rebates may take one to two billing cycles to appear on your statement. Please refer to the specific terms and conditions pertaining to the promotion for further details.

Congratulations on your recent credit line increase!
 Please note your new total credit line.

Important Information: Please see enclosed insert for discounts and offers from Hertz especially for Driver's Edge(R) Cardmembers.

JANET HUDSON

Statement Date	Post Date	Reference Number	Activity Since Last Statement	Amount
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Earn more everyday! Earn 3% rebates for purchases made at supermarkets, drugstores, and gas stations. To take advantage of these added rebates simply enroll at: www.citicards.com/ Select 'Manage My Account', then 'Special Offers'.

Save Time. Save Paper. Sign up for All Electronic. You'll have instant access to your statement online, without that pile of paper. Get an e-mail notice when your statement is ready. Register or sign-on to www.citicards.com and choose Manage My Account.

Account Summary	Previous Balance	(+) Purchases & Advances	(-) Payments & Credits	(+) FINANCE CHARGE	(=) New Balance
PURCHASES	\$10,828.98	\$758.96	\$300.00	\$120.32	\$11,408.26
ADVANCES	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
TOTAL	\$10,828.98	\$758.96	\$300.00	\$120.32	\$11,408.26

Rate Summary	Balance Subject to Finance Charge	Periodic Rate	Nominal APR	ANNUAL PERCENTAGE RATE
PURCHASES				
Standard Purch	\$9,681.22	0.03671%(D)	13.400%	13.400%
Offer 9	\$1,255.12	0.01641%(D)	5.990%	5.990%
ADVANCES				
Standard Adv	\$0.00	0.05751%(D)	20.990%	20.990%

SEND PAYMENTS TO:

114

08/22/05 \$11290.11 \$233.09 SITE: JX-CI TM: LG-8200 ACID: JALG040
 07/20/11 18:48:50

JANET HUDSON
 POPLAR BLUFF
 63901-4300000

MO

CITI CARDS
 PO BOX 688901
 DES MOINES, IA
 50368-8901

Citi Driver's EdgeSM
 Platinum SelectSM Card-Options Rbts



Account Number 9673

Customer Service
 1-800-967-8500
 BOX 6000
 THE LAKES, NY
 89163-6000

Total Credit Line	Available Credit Line	Cash Advance Limit	Available Cash Limit	New Balance
\$20600	\$9309	\$200	\$200	\$11290.11
Statement/ Closing Date	Annual Over Credit Line	Past Due	Purch/Adv Minimum Due	Minimum Amount Due
07/27/2005	\$0.00 +	\$0.00 +	\$233.09	\$233.09

Sett Date	Post Date	Reference Number	Activity Since Last Statement	Amount
	7/18	13707181	Payments, Credits & Adjustments PAYMENT THANK YOU 70 0000 0000	-300.00
7/08	7/08	FKX0D500	Standard Purch YAN*YAHOO SM BUS/MAIL 408-349-5151 CA	11.95
7/16	7/16	5D96CC24	61 A4816US 2222 WAL-MART #0684 SE2 LEXINGTON TN	55432865189 21.81
7/17	7/17	760KXHYL	61 B5411US 2222 CASEYS GNRL STRE 2234 KENNETT MO	05416015197 27.00
	7/27		61 D5542US 2222 PURCHASES*FINANCE CHARGE*PERIODIC RATE	05483075198 115.82
	7/27		84 0000 Balance Transfer - Charged To Offer 9 PURCHASES*FINANCE CHARGE*PERIODIC RATE	0000000000 5.27

DRIVER'S EDGE REBATES SUMMARY Activity This Period
 Purchase Rebates Earned 0.61
 Adjustments / Expired -9.62
 NEW DRIVER'S EDGE REBATES -9.01

Previous Balance
 Purchase Rebates Earned 173.53
 PREVIOUS DRIVER'S EDGE REBATES 173.53

Lifetime Activity
 Total Rebates Earned 183.64
 Total Rebates Expired 19.12
 Total Rebates Redeemed 0.00
 Total Rebates Available 164.52

	Submitted	Redeemable
Purchase Rebates		164.52
Drive Rebates	0.00	0.00
Bonus Rebates		0.00
TOTAL DRIVER'S EDGE REBATES		164.52

Bonus Rebates may take one to two billing cycles to appear on your statement. Please refer to the specific terms and conditions pertaining to the promotion for further details.

Citi Driver's Edge Card Options rebates expire 5 years after they are earned. Expired rebates will be deducted from your rebate account.
 0.23 rebates will expire on AUGUST 26, 2005

JANET HUDSON

Start Date	Post Date	Reference Number	Activity Since Last Statement	Amount
------------	-----------	------------------	-------------------------------	--------

Congratulations on your recent credit line increase!
Please note your new total credit line.

MasterCard has extended coverage for the following benefits: Purchase Assurance, Extended Warranty, Travel Assistance Services and MasterRent®. For further information regarding these benefits, please call Customer Service.

Earn more rebates!
With your City Drivers Edge Card now you can earn up to \$1000 in rebates each year.

Account Summary	Previous Balance	(+) Purchases & Advances	(-) Payments & Credits	(+) FINANCE CHARGE	(=) New Balance
PURCHASES	\$11,408.26	\$60.76	\$300.00	\$121.09	\$11,290.11
ADVANCES	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
TOTAL	\$11,408.26	\$60.76	\$300.00	\$121.09	\$11,290.11

Rate Summary	Balance Subject to Finance Charge	Periodic Rate	Nominal APR	ANNUAL PERCENTAGE RATE
PURCHASES				
Standard Purch	\$10,322.90	0.03740%(0)	13.650%	13.650%
Offer 9	\$1,070.54	0.01641%(0)	5.990%	5.990%
ADVANCES				
Standard Adv	\$0.00	0.05819%(0)	21.240%	21.240%

SEND PAYMENTS TO:

115

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
 THIRD JUDICIAL DISTRICT AT ANCHORAGE

FILED
 STATE OF ALASKA
 THIRD DISTRICT
 2011 SEP -6 PM 4:27
 CLERK TRIAL COURTS

JANET HUDSON, on behalf of herself and)
 all others similarly situated,)
)
 Plaintiff,)
)
 v.)
)
 CITIBANK (South Dakota) NA, ALASKA)
 LAW OFFICES, INC., and CLAYTON)
 WALKER,)
)
 Defendants.)

BY: _____
 DEPUTY CLERK

Case No. 3AN-11-9196 CI

ALASKA LAW OFFICES AND WALKER'S JOINDER IN MOTION TO
 COMPEL ARBITRATION

COME NOW defendants Alaska Law Offices, Inc., and Clayton Walker ("ALO defendants"), by and through counsel, RICHMOND & QUINN, and hereby join in the Motion of Defendant Citibank, N.A. ("Citibank"), Successor in Interest to Citibank (South Dakota), N.A., to Compel Arbitration and to Stay Action. Citibank's Motion to Compel Arbitration sets forth persuasive reasons why plaintiff must arbitrate her claims in this action on an individual basis, and to stay the instant action pending the outcome of the arbitration proceedings. Because there is a binding arbitration agreement in the credit card agreement governing plaintiff's credit card account, and because the arbitration agreement encompasses the dispute at issue in the current litigation, defendant Citibank's Motion to Compel Arbitration should be granted.

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I BACKGROUND

Plaintiff, Jennifer Hudson, on behalf of herself and a putative class, brings this current litigation against defendants alleging violations of the Alaska Unfair Trade Practices and Consumer Protection Act ("UTPA"), AS 45.50.471, et seq. Specifically, plaintiff alleges that defendants violated the UTPA by filing affidavits for default judgment requesting attorney's fees by determining "actual fees" under Civil Rule 82(b)(4) based on a contingency fee agreement. See Plaintiff's First Amended Complaint at 3. While ALO defendants dispute plaintiff's claims,¹ the merits of plaintiff's claim are not relevant to this motion. Plaintiff Hudson is barred from bringing this claim in the first instance because, under the Citibank Card Agreement, plaintiff's claim must be arbitrated. See Citibank Card Agreement and Notice of Change in Terms Regarding Binding Arbitration to Your Citibank Card Agreement, attached to Citibank's Motion Ex. 1 and Ex. 2.

II. DISCUSSION

The current dispute is governed by the Federal Arbitration Act ("FAA"), which applies to all written contracts involving interstate or foreign commerce and provides in relevant part that arbitration agreements contained within such contracts "shall be valid,

¹ See, e.g., Korean Air Lines Co., Ltd. v. State, 779 P.2d 333, 340 (Alaska 1989)(Where client's obligation to pay fees is based on contingency fee agreement, those contingency fees represent actual fees under Rule 82); Municipality of Anchorage v. Gentile, 922 P.2d 248, 263 (Alaska 1996)("Actual" fees are those the party agrees to pay its lawyer).

irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2. When an arbitration provision exists, the role of the court is limited to determining (1) whether the arbitration provision is valid and enforceable and, if so, (2) whether the provision encompasses the dispute at issue. Chiron Corp. v. Ortho Diagnostic Systems, Inc., 207 F.3d 1126, 1130 (9th Cir. 2000).

The arbitration agreement in the Citibank Card Agreement is governed by the FAA and presumed to be valid and enforceable. See Citibank's Motion to Compel Arbitration at 12. Moreover, the dispute at issue, i.e. whether defendants violated the UTPA while attempting to collect plaintiff's debt, is a dispute encompassed within the Arbitration Agreement.

A. Plaintiff's Claim is within the Scope of the Arbitration Agreement

Any claim arising out of defendants' efforts to collect plaintiff's debt owed under the Citibank Card Agreement is subject to arbitration. The Arbitration Agreement, which is incorporated in the Citibank Card Agreement that governs plaintiff Hudson's use of the credit card, states:

What Claims are subject to arbitration? All Claims relating to your account, a prior related account, or our relationship are subject to arbitration, including Claims regarding the application, enforceability, or interpretation of this Agreement and this arbitration provision. All Claims are subject to arbitration, no matter what legal theory they are based on or what remedy (damages, or injunctive or declaratory relief) they seek. This includes Claims based on contract, tort (including intentional tort), fraud, agency, your or our negligence, statutory or regulatory provisions, or any other sources of law; Claims made as counterclaims, cross-claims, third-party claims, interpleaders or otherwise; and Claims made independently or with other claims. A party who initiates a proceeding in court may elect

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arbitration with respect to any Claim advanced in that proceeding by any other party. Claims and remedies sought as part of a class action, private attorney general or other representative action are subject to arbitration on an individual (non-class, non-representative) basis, and the arbitrator may award relief only on an individual (non-class, non-representative) basis. See Citibank's Motion to Compel Ex. 2.

Plaintiff's claim clearly falls within the Arbitration Agreement as it relates to the account. The current claim alleges unlawful activity by the defendants while attempting to collect plaintiff's debt owed under the Citibank Card Agreement. The dispute regarding the collection of money owed under the cardholder agreement is a controversy relating to the account and the relationship between plaintiff and ALO defendants. See Koch v. Compucredit Corp., 543 F.3d 460 (8th Cir. 2008)(A dispute over the collection of a debt incurred under the credit agreement is a "controversy arising from or related to ... this Agreement."); Hodson v. Javitch, Block & Rathbone, LLP, 531 F. Supp. 2d 827, 831 (N.D. Ohio 2008)(finding all of Hodson's claims in this case subject to arbitration because they all related to JB & R's conduct in attempting to collect the amount Hodson owed under the Capital One cardholder agreements); Ventura v. 1st Fin. Bank USA, 2005 WL 2406029 (N.D. Cal. Sept. 29, 2005)(holding claims that collection practices violated the Fair Debt Collection Practices Act clearly fall within the arbitration provision in the parties' credit card agreement).

In the Eighth Circuit decision of Koch v. Compucredit Corp., 543 F.3d 460 (8th Cir. 2008), the plaintiff brought suit against her credit card company, its assignee and attorneys, alleging violations of the Fair Debt Collection Practices Act ("FDCPA") and

Arkansas Deceptive Trade Practices Act for attempting to collect on a debt that Koch had already paid. The defendants motioned the court to compel arbitration pursuant to the credit card agreement. The Koch Court found that the ability to compel arbitration is limited to “matters and disputes arising out of the relation governed by contract,” stating:

Even assuming that Koch's debt had been extinguished before the assignment, and that the collection attempts by the defendants were erroneous, the heart of the dispute—the occurrence and alleged payment of the debt—is one founded in the credit agreement... To be subject to arbitration, the dispute must also fall within the scope of the arbitration clause. *See Litton*, 501 U.S. at 205, 111 S.Ct. 2215; *Nolde Bros.*, 430 U.S. at 252–53, 97 S.Ct. 1067. The arbitration clause here is broad, covering “any claim, dispute, or controversy arising from or related to either this Agreement or the relationships that result from this Agreement.” A dispute over the collection of a debt incurred under the credit agreement is a “controversy arising from or related to ... this Agreement.”

Koch v. Compucredit Corp., 543 F.3d 460, 466-67 (8th Cir. 2008).

Plaintiff Hudson’s claim regarding the manner in which defendants attempted to collect the money due and owing under the Citibank Card Agreement similarly relates to that agreement. The Ninth Circuit has held that arbitration agreements which encompass all disputes arising in connection with an agreement must be construed liberally. *See Simula, Inc. v. Autoliv, Inc.*, 175 F.3d 716, 720 (9th Cir. 1999)(finding arbitration clause containing the phrase “any and all disputes arising under the arrangements contemplated hereunder,” or similar language, must be interpreted liberally). Additionally, the United States Supreme Court has found that statutory claims may be the subject of an arbitration agreement. *See Gilmer v. Interstate/Johnson Lane Corporation*, 500 U.S. 20, 26,

111 S.Ct. 1647, 114 L.Ed.2d 26 (1991)(finding neither the text of the Age Discrimination in Employment Act ("ADEA"), its legislative history, nor an examination of the ADEA's underlying purpose reveals any indication that Congress intended to preclude ADEA claimants from resolving their disputes in arbitration.). A statutory claim, such as the FDCPA, is thus subject to valid arbitration agreements.

Several federal jurisdictions have enforced arbitration agreements when violations of fair debt collection practices were alleged. Sherer v. Green Tree Servicing LLC, 548 F.3d 379, 380 (5th Cir. 2008)(enforcing arbitration agreement in FDCPA claim); Smith v. Steinkamp, 2002 WL 1364161 (S.D. Ind. May 22, 2002) aff'd., 318 F.3d 775 (7th Cir. 2003)(granting defendants' motion to compel arbitration of FDCPA claim, amongst other claims); Tickanen v. Harris & Harris, Ltd., 461 F. Supp. 2d 863, 870-71 (E.D. Wis. 2006)(finding arbitration required for FDCPA claims when a valid arbitration provision exists).

A liberal construction of the Citibank Card Agreement and accompanying Arbitration Agreement requires a finding that plaintiff Hudson's claim regarding the manner in which defendants attempted to collect a debt under the Citibank Card Agreement must be resolved in arbitration. Plaintiff's allegations against defendants relate to the Citibank Card agreement and are subject to the arbitration provision.

B. Alaska Law Offices, Inc. and Clayton Walker are Representatives of Citibank and Can Enforce the Arbitration Agreement.

Citibank hired Alaska Law Offices, Inc. ("ALO") and Clayton Walker to represent it in collecting the debt owed by plaintiff. ALO and Clayton Walker are authorized representatives of Citibank and thus subject to the arbitration agreement. The Arbitration Agreement states:

Whose Claims are subject to arbitration? Not only ours and yours, but also Claims made by or against anyone connected with us or you or claiming through us or you, such as a co-applicant, authorized user of your account, an employee, agent, representative, affiliated company, predecessor or successor, heir assignee, or trustee in bankruptcy. See Citibank's Motion to Compel Ex. 2.

Since Citibank hired ALO and Clayton Walker to pursue collection actions under the cardholder agreement Hudson signed with Citibank, ALO and Walker are "authorized representatives" within the meaning stated in the cardholder agreement. Hodson v. Javitch, Block & Rathbone, LLP, 531 F. Supp. 2d 827, 831 (N.D. Ohio 2008)(finding the law firm Capital One hired to collect debts under cardholder agreement is an authorized representative under the arbitration agreement.). As authorized representatives, claims against ALO and Walker fall within the scope of the arbitration clause.


III. CONCLUSION

The current litigation must be stayed pending completion of the arbitration proceedings. ALO defendants will refrain from restating all of the compelling arguments presented by defendant Citibank in its Motion to Compel Arbitration, but will join in

Citibank's motion and incorporate the arguments contained in the motion by reference. For the foregoing reasons, ALO defendants request the court grant the Motion to Compel Arbitration.

DATED this 6th day of September, 2011, at Anchorage, Alaska.

RICHMOND & QUINN
Attorneys for Defendants
Alaska Law Offices, Inc., and
Clayton Walker

By: 
Marc Wilhelm
Alaska Bar No. 8406054

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by mail this 6th day of September, 2011 on:

James J. Davis, Jr.
Goriune Dudukgian
Ryan H. Fortson
Northern Justice Project
310 K Street, Suite 200
Anchorage, AK 99501.

Jon S. Dawson
Davis Wright Tremaine, LLP
701 W. 8th Avenue, Suite 800
Anchorage, AK 99501
Attorney for Citibank



RICHMOND & QUINN
2331.002\PLD\Joinder Compel Arbitration

Joinder in Motion to Compel Arbitration
Hudson v. Citibank (South Dakota) NA, et al, Case No. 3AN-11-9196 CI
Page 8 of 8

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

JANET HUDSON, on behalf of herself)
and all others similarly situated,)

Plaintiffs,)

v.)

CITIBANK (South Dakota) NA,)
ALASKA LAW OFFICES, INC., and)
CLAYTON WALKER,)

Defendants.)

Filed in the Trial Courts
STATE OF ALASKA, THIRD DISTRICT

SEP 30 2011

By _____
Clerk of the Trial Courts
Deputy

Case No. 3AN-11-9196CI

**MEMORANDUM IN OPPOSITION TO DEFENDANTS' MOTIONS TO
COMPEL ARBITRATION AND IN SUPPORT OF PLAINTIFF'S CROSS-
MOTION FOR PARTIAL SUMMARY JUDGMENT**

I INTRODUCTION

Plaintiff Janet Hudson opposes defendant Citibank (South Dakota) NA's Motion to Compel Arbitration and defendant Alaska Law Offices, Inc.'s "Joinder" in that motion. Plaintiff also cross-moves for partial summary judgment, asking this Court to hold that Citibank's arbitration provision is unenforceable.

Defendants' motions should be denied for four primary reasons. First, on-point caselaw from the Alaska Supreme Court provides that where, as here, one party reserves the unilateral right to change an arbitration agreement, that agreement is void as against public policy.

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Second, on-point caselaw from the Alaska Supreme Court provides that where, as here, a plaintiff's statutory claims cannot be vindicated in the arbitral forum, arbitration is not required.

Third, caselaw from around the country teaches that where, as here, one party has sought judicial relief against the other, that party has waived its right to demand arbitration by the second party.

Finally, a review of the record before this Court and applicable caselaw shows that the Citi and plaintiff never agreed to arbitrate this dispute.

As detailed below, defendants pin their motions almost exclusively on the United States Supreme Court's decision in *AT&T Mobility, LLC v. Conception*.¹ But defendants are over-reading that case, as are many corporate defendants around the country. To be sure, *Conception* bars any and all state laws that target arbitration provision. And this is for good reason: it is well-settled that arbitration is strongly favored as a means of dispute resolution. However, state laws that do *not* target arbitration provisions but, instead, are generally applicable to all contracts, were not at issue in *Conception* and remain valid in its wake. Indeed, the United States Supreme Court recently reaffirmed this very principle. *Rent-A-Center, W., Inc. v. Jackson*, ___ U.S. ___, 130 S. Ct. 2772, 2776 (2010) ("The FAA thereby places arbitration agreements on an equal footing with other contracts, and requires courts to enforce them according to their terms. Like other contracts, however, they may be invalidated

¹ ___ U.S. ___, 131 S.Ct. 1740 (2011).

by 'generally applicable contract defenses, such as fraud, duress, or unconscionability.'" (citations and quotations omitted).

Partial summary judgment should be granted to plaintiff holding that the at-issue arbitration provision is not enforceable for any and all class members who: (1) had arbitration unilaterally imposed on them by Citibank; or (2) whose arbitration provision was unilaterally modified by Citibank; or (3) who were the subject of litigation over the same credit card by defendants.

II. RELEVANT BACKGROUND

In April 1999, Citibank ("Citi") and plaintiff entered into a contract for the issuance of a credit card (hereinafter "Card Agreement").² The contract that Citi and the plaintiff entered into did not contain any arbitration provision.³

In October 2001, Citi acted to unilaterally modify its contract with plaintiff by adding an arbitration provision.⁴ Citi attempted to effectuate this unilateral change by mailing to plaintiff a notice with her billing statement.⁵ Caselaw refers to this practice of attempting to change a contract with an inset to a billing statement as a "bill stuffer."⁶

² See Affidavit of Cathleen Walters, filed by Citi ("Walters Aff.").

³ *Id.* at Exhibit 1.

⁴ *Id.* at ¶6.

⁵ *Id.*

⁶ See *Badie v. Bank of America*, 67 Cal. App. 4th 779, 803 (Cal. App. 1998); *Kortum-Managhan v. Herbergers NBGL*, 204 P.3d 693, 695 (Mont. 2009).

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In February 2005, Citi acted to unilaterally modify the at-issue arbitration provision.⁷ Citi attempted to effectuate this unilateral change to its arbitration provision by mailing plaintiff another “bill stuffer.”⁸

Subsequently, plaintiff fell behind on her credit card payments. Citi retained a debt collector law firm, “Alaska Law Offices, Inc.” (“ALO”), to sue plaintiff.⁹ ALO and Citi sued plaintiff in the Alaska state district court in Kenai over the at-issue credit card.¹⁰ Defendants thereafter obtained a judgment against plaintiff in the Alaska state court concerning the at-issue credit card.¹¹ Defendants thereafter began using the Alaska state court to collect on the judgment they obtained against plaintiff concerning the at-issue credit card.¹² Defendants’ Alaska state court lawsuit against plaintiff over the at-issue credit card is still pending and active.¹³

The default judgment that defendants took against plaintiff contained grossly excessive and illegal attorney’s fees.¹⁴ This inflated fee award was based on defendants’ improper request for a contingency fee award, instead of the fees that are

⁷ Walters Aff. at ¶12.

⁸ *Id.*

⁹ Alaska Law Offices refers to itself as a “debt collector.” See Exhibit 1 to the Certificate of James J. Davis, Jr. (“Davis Cert.”) filed and served herewith.

¹⁰ *Id.*

¹¹ *Id.* at Exhibit 2.

¹² *Id.*

¹³ *Id.* at Exhibit 3.

¹⁴ *Id.* at Exhibit 4.

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mandated by the plain language of Civil Rule 82.¹⁵ The court system's records show that defendants have acted in this precise same way vis-à-vis hundreds of other Alaska consumers.¹⁶

Plaintiff filed suit against defendants on July 15, 2011. In her lawsuit plaintiff seeks an injunction as a "private attorney general" in accord with the express provisions of Alaska's Unfair Trade Practices and Consumer Protection Act ("UTPA"), AS 45.50.471 *et seq.*¹⁷ The UTPA's grant of broad injunctive power to

¹⁵ Defendants filed an Affidavit of Actual Attorney Fees (hereafter "Affidavit"). Davis Cert. at Exhibit 5. In their Affidavit, defendants averred that their "actual attorney fees charged in this case are \$4,834.05." Defendants further averred that "\$4,834.05 exceed the Alaska Civil Rule 82 undisputed attorney's fees default rate of 10%. Accordingly, the attorney's fees under Alaska Rule 82 should be \$2417.02."

Based on defendants' Affidavit, the court awarded defendants \$2,417.02 in attorney's fees against the plaintiff. Davis Cert. at Exhibit 4.

Under Alaska Civil Rule 82(b)(4), when judgment is entered by default, a plaintiff may recover "its reasonable actual fees which were necessarily incurred" or 10% of the judgment, whichever is less. It is well settled under Alaska law that a contingency fee agreement is not a proper measure of the "reasonable actual fees" incurred by a party in a lawsuit. Rather, "reasonable actual fees" must be determined according to the number of hours actually worked on the case and the attorney's reasonable hourly rate.

Defendants' Affidavit injured plaintiff. By wrongfully basing their "actual attorney fees" of \$4,834.05 on a contingency fee agreement, as opposed to the number of hours typically spent by debt collecting lawyers in prosecuting a consumer default (i.e., less than 2 hours), defendants obtained a radically inflated judgment against plaintiff. That is, defendants obtained a fee award of \$2,417.02 instead of approximately \$250.00 — an overcharge of over 950%.

¹⁶ Davis Cert. at Exhibit 6.

¹⁷ The UTPA's "private attorney general" provision, AS 45.50.535(a), provides private litigants with the right to seek injunctive relief regardless of whether that individual was harmed personally:

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private citizens, *qua* private attorney generals is not particularly unique. The term has been in use for over 60 years¹⁹ and thirty-three states authorize private injunctive actions under their consumer protection acts.²⁰ The private attorney general doctrine recognizes “that privately initiated lawsuits are often essential to the effectuation of the fundamental public policies embodied in constitutional or statutory provisions.”²¹ As the Washington Supreme Court stated in *Hockley v. Hargitt*,²²

[P]ublic policy is best served by permitting an injured individual to enjoin future violations of [Washington’s Consumer Protection Act] even if such violations would not directly affect the individual’s own private rights. If each consumer victim were limited to injunctive relief tailored to his own individual interest, the fraudulent practices might well continue unchecked while a multiplicity of suits developed. On the other hand, if a single litigant is allowed to represent the public and consumer fraud is proven, the multiplicity of suits is avoided and the illegal scheme brought to a halt. Both results are in the public interest and

Subject to (b) of this section and in addition to any right to bring an action under AS 45.50.531 or other law, any person who was the victim of the unlawful act, whether or not the person suffered actual damages, may bring an action to obtain an injunction prohibiting a seller or lessor from continuing to engage in an act or practice declared unlawful under AS 45.50.471.

¹⁹ The term was first used by the United States Supreme Court in *C.C. v. Nat’l Broad. Co., Inc.*, 319 U.S. 239, 265 n.1 (1943) (Douglas, J., dissenting) (quoting *Assoc. Indus. of New York v. Ickes*, 134 F.2d 694 (2d Cir. 1943)).

²⁰ See Dee Prigdon, CONSUMER PROTECTION & THE LAW § 6:9 (2005).

²¹ See Ann K. Wooster, Annotation, *Private Attorney General Doctrine — State Cases*, 106 A.L.R. 5th 523 (citing Cal. Civ. Proc. Code 1021.5; *People ex rel. Dep’t of Conservation v. El Dorado County*, 108 Cal. App. 4th 672 (3d Dist. 2003)).

²² 510 P.2d 1123 (Wash. 1973).

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consistent with the liberal construction of our Consumer Protection Act.²³

The availability of such relief reflects the important role that state consumer protection acts, including the UTPA, have in allowing a private attorney general to supplement the efforts of law enforcement and regulatory agencies in combating unfair business practices.²⁴

In her complaint, plaintiff seeks an injunction against defendants under the UTPA whereby defendants will be ordered to cease and desist from their illegal conduct, will be ordered to file corrected judgments vis-à-vis the hundreds of other injured Alaska consumers, and will be required to disgorge to these consumers any and all illegal attorney's fees.²⁵

Defendants now move to compel arbitration of plaintiff's lawsuit and argue that plaintiff should not be allowed to use the state court to address their own misuse of the

²³ *Id.* at 1133. *See also Consumers Union of United States, Inc. v. Fisher Dev.*, 208 Cal. App. 3d 1433, 1439 (Cal. App. 1989) ("The courts in California have consistently upheld the right of both individual persons and organizations under the unfair competition statute to sue on behalf of the public for injunctive relief as 'private [attorneys] general,' even if they have not themselves been personally harmed or aggrieved.").

²⁴ *See Smallwood v. Cent. Peninsula Gen. Hosp.*, 151 P.3d 319, 328 n.43 (Alaska 2006); *see also Kraus v. Trinity Management Serv.*, 23 Cal. 4th 116, 138 (Cal. 2000) (directing the trial court on remand to order landlord to "identify, locate, and repay to each former tenant charged liquidated damages the full amount of funds improperly acquired from that tenant") (emphasis added).

²⁵ *See First Amended Complaint* ¶23; *see also Davis Cert.* at Exhibit 7 (the cease and desist letter that plaintiff sent to defendants in accord with the UTPA).

state courts. Citi's arbitration provision explicitly prohibits plaintiff, and any consumer, from acting as a private attorney general.²⁶

Defendants have not acted to shift their pending state court case against plaintiff into arbitration. As noted above, that case remains active: on July 18, 2011, after plaintiff had filed this lawsuit, defendants received a disbursement from the Kenai district court after seizing money from defendant.²⁷

III. ARGUMENT AND AUTHORITIES

The parties share some common ground. They agree that this Court, and not any arbitrator, must decide whether arbitration is required.²⁸ Second, they agree that arbitration is generally preferred.²⁹

Aside from agreeing on these two issues, the parties disagree about most of the remaining legal issues.

A. In Alaska, the Unilateral Power to Change an Arbitration Provision Renders it Unconscionable.

Citi does not hide the fact that it had the unilateral power to add, and to change, its arbitration agreement with plaintiff. In fact, Citi touts its unilateral power.³⁰ The

²⁶ See Citi's Br. at 5, lines 7-9.

²⁷ Davis Cert. at Exhibit 3.

²⁸ See *Classified Emples. Ass'n v. Matanuska-Susitna Borough Sch. Dist.*, 204 P.3d 347, 353 (Alaska 2009) (holding that arbitrability is a threshold question for the court, not the arbitrator.).

²⁹ See *Gibson v. NYE Frontier Ford, Inc.*, 205 P.3d 1091, 1096 (Alaska 2009) ("The FAA evinces a strong policy in favor of the arbitration of disputes. Alaska's Uniform Arbitration Act and Revised Uniform Arbitration Act reflect the same policy at the state level.").