

Citibank (South Dakota) NA	PLNTR	Closed	<u>3AN-10-10556C</u>
Citibank (South Dakota) NA	PLNTR	Closed	<u>3AN-10-10558C</u>
Citibank (South Dakota) NA	PLNTR	Closed	<u>3AN-10-10559C</u>
Citibank (South Dakota) NA	PLNTR	Closed	<u>3AN-10-10568C</u>
Citibank (South Dakota) NA	PLNTR	Closed	<u>3AN-10-10976C</u>
Citibank (South Dakota) NA	PLNTR	Closed	<u>3AN-10-10978C</u>
Citibank (South Dakota) NA	PLNTR	Closed	<u>3AN-10-10979C</u>
Citibank (South Dakota) NA	PLNTR	Closed	<u>3AN-10-10980C</u>
Citibank (South Dakota) NA	PLNTR	Reopened	<u>3AN-10-10981C</u>
Citibank (South Dakota) NA	PLNTR	Closed	<u>3AN-10-11003C</u>
Citibank (South Dakota) NA	PLNTR	Closed	<u>3AN-10-11005C</u>
Citibank (South Dakota) NA	PLNTR	Closed	<u>3AN-10-11261C</u>
Citibank (South Dakota) NA	PLNTR	Closed	<u>3AN-10-12492C</u>
Citibank (South Dakota) NA	PLNTR	Open	<u>3AN-10-12493C</u>
Citibank (South Dakota) NA	PLNTR	Closed	<u>3AN-10-12494C</u>
Citibank (South Dakota) NA	PLNTR	Closed	<u>3AN-10-12496C</u>
Citibank (South Dakota) NA	PLNTR	Closed	<u>3AN-10-12497C</u>
Citibank (South Dakota) NA	PLNTR	Closed	<u>3AN-10-13005C</u>
Citibank (South Dakota) NA	PLNTR	Open	<u>3AN-10-13006C</u>
Citibank (South Dakota) NA	PLNTR	Closed	<u>3AN-10-13007C</u>
Citibank (South Dakota) NA	PLNTR	Closed	<u>3AN-10-13008C</u>
Citibank (South Dakota) NA	PLNTR	Closed	<u>3AN-10-13010C</u>
Citibank (South Dakota) NA	PLNTR	Closed	<u>3AN-10-13011C</u>
Citibank (South Dakota) NA	PLNTR	Open	<u>3AN-10-13012C</u>
Citibank (South Dakota) NA	PLNTR	Closed	<u>3AN-10-13013C</u>

Citibank (South Dakota) NA	PLNTE	Closed	<u>3AN-11-04646C</u>
Citibank (South Dakota) NA	PLNTE	Closed	<u>3AN-11-04648C</u>
Citibank (South Dakota) NA	PLNTE	Closed	<u>3AN-11-04649C</u>
Citibank (South Dakota) NA	PLNTE	Closed	<u>3AN-11-04651C</u>
Citibank (South Dakota) NA	PLNTE	Closed	<u>3AN-11-04653C</u>
Citibank (South Dakota) NA	PLNTE	Closed	<u>3AN-11-04654C</u>
Citibank (South Dakota) NA	PLNTE	Closed	<u>3AN-11-04656C</u>
Citibank (South Dakota) NA	PLNTE	Closed	<u>3AN-11-04707C</u>
Citibank (South Dakota) NA	PLNTE	Closed	<u>3AN-11-04708C</u>

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Alaska Trial Court Cases

Dockets entered with dates prior to conversion to CourtView contain limited information from the legacy system.

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New Search...

(11)

Docket Search

3AN-10-09528CI Citibank (South Dakota) NA vs. Santiago, Connie M

Search Criteria

Docket Desc.

Begin Date

End Date

Sort
 Ascending
 Descending

Search Results 21 Docket(s) found matching search criteria.

Docket Date	Docket Text	Amount	Amount Due	Images
03/14/2011	Writ of Execution Disbursement Connie M Santiago	106.35	0.00	
03/14/2011	Writ of Execution Disbursement Alaska Law Offices Inc	1,099.36	0.00	
03/01/2011	Order Granting Claim of Exemption in Part; \$1099.36 applied to the judgment - \$106.35 to be returned to the debtor Connie M Santiago (Defendant); Case Motion #1: Claim of Exemption	0.00	0.00	
02/23/2011	Response to Claim of Exemptions Clayton H Walker Jr (Attorney) on behalf of Citibank (South Dakota) NA (Plaintiff) Case Motion #1: Claim of Exemption	0.00	0.00	
02/18/2011	Notice to Creditor Re: Claim of Exemption Issued Notice/Response to Claim of Exemptions Sent on: 02/18/2011 12:49:10 Case Motion #1: Claim of Exemption	0.00	0.00	
02/17/2011	Claim of Exemption Attorney: Pro per (0100001) Connie M Santiago (Defendant);	0.00	0.00	

Filing Party: Santiago, Connie M Case
Motion #1

02/10/2011	Return of Service on Execution & Payment - 1/28/11 INQ \$35.00 Receipt: 659016 Date: 02/11/2011	1,205.71	0.00
01/31/2011	Notice of Compliance with A.S. 09.38.080.085 & A.S. 09.38.080.900 (14) Clayton H Walker Jr (Attorney) on behalf of Citibank (South Dakota) NA (Plaintiff)	0.00	0.00
01/31/2011	Creditor's Affidavit	0.00	0.00
01/20/2011	Writ of Execution (CTV-500) Issued	0.00	0.00
12/16/2010	Information for Writ of Execution	0.00	0.00
10/11/2010	Judgment Entered Default Judgment Amount: 14,052.42 Pre-Default Judgment Interest: 0.00 Attorney Fees: 1,405.24 Court Costs: 145.00 Other Fees: 0.00 Default Judgment Total: 15,602.66 Total Accrued Costs: 0.00 Total Accrued Interest: 0.00 Terms: Post Judgment Interest 3.5% Type: Default Judgment Judge: Wallace, David R Default Judgment Date: 10/11/2010 Default Judgment Time: 12:00PM Referee: Recommendation Date: Default Judgment Status: Judgment Entered Default Judgment For: Citibank (South Dakota) NA - Plaintiff Default Judgment Against: Santiago, Connie M - Defendant	0.00	0.00

Issuance
----- Writ
Type: Date Issued: Accrued Interest:
Satisfied Amount:
----- Return

Processed By: Received From: Accrued
Costs: Satisfied Amount: Date Returned:
Date Collected: Date Paid: Default
Judgment Satisfied Amount: 0.00 Default
Judgment Balance: 15,602.66 Case Total:
0.00 Case Satisfied Amount: 0.00 Case
Balance: 0.00

10/11/2010	Default Judgment for Plaintiff Granted by Clerk	0.00	0.00
10/11/2010	Entry of Default Granted Against: Connie M Santiago (Defendant);	0.00	0.00
09/13/2010	Application for Default Clayton H Walker Jr (Attorney) on behalf of Citibank (South Dakota) NA (Plaintiff)	0.00	0.00
08/05/2010	Return of Service - Summons Served On: Connie M Santiago (Defendant);	0.00	0.00
08/03/2010	Attorney Information Attorney Walker Jr, Clayton H representing Plaintiff Citibank (South Dakota) NA as of 08/03/2010	0.00	0.00

08/03/2010	Case Flagged for Civil Rule 4(j) Tracking (3AN)	0.00	0.00
08/03/2010	Summons and Notice to Both Parties of Judicial Assignment	0.00	0.00
08/03/2010	District Court Debt Complaint Receipt: 586827 Date: 08/03/2010	90.00	0.00
08/03/2010	Initial Judicial Assignment: Honorable David Wallace	0.00	0.00

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Alaska Trial Court Cases

CAUTION: This screen shows only that a case was filed. It does not show how the case ended. Do not assume that a defendant was convicted just because a criminal case was filed.

Search Criteria

Company Name: citibank;

Search Results

1606 record(s) found.

401-450 of 1606 [\[Prev\]](#) [\[Next\]](#) **Sort Results..** [\[Go\]](#)

Party	Aff	Party Type	D.O.B	Case Status	Case Number
Citibank (South Dakota) NA		PLNTF		Closed	3AN-11-04709CI
Citibank (South Dakota) NA		PLNTF		Closed	3AN-11-05018CI
Citibank (South Dakota) NA		PLNTF		Closed	3AN-11-05020CI
Citibank (South Dakota) NA		PLNTF		Closed	3AN-11-05021CI
Citibank (South Dakota) NA		PLNTF		Closed	3AN-11-05022CI
Citibank (South Dakota) NA		PLNTF		Closed	3AN-11-05023CI
Citibank (South Dakota) NA		PLNTF		Closed	3AN-11-05024CI
Citibank (South Dakota) NA		PLNTF		Closed	3AN-11-05025CI
Citibank (South Dakota) NA		PLNTF		Closed	3AN-11-05026CI
Citibank (South Dakota) NA		PLNTF		Closed	3AN-11-05204CI
Citibank (South Dakota) NA		PLNTF		Closed	3AN-11-05205CI
Citibank (South Dakota) NA		PLNTF		Closed	3AN-11-05206CI
Citibank (South Dakota) NA		PLNTF		Closed	3AN-11-05322CI
Citibank (South Dakota) NA		PLNTF		Closed	3AN-11-05323CI
Citibank (South Dakota) NA		PLNTF		Closed	3AN-11-05324CI
Citibank (South Dakota) NA		PLNTF		Closed	3AN-11-05435CI

Citibank (South Dakota) NA	PLNIF	Closed	<u>3AN-11-05436CI</u>
Citibank (South Dakota) NA	PLNIF	Closed	<u>3AN-11-05437CI</u>
Citibank (South Dakota) NA	PLNIF	Closed	<u>3AN-11-05438CI</u>
Citibank (South Dakota) NA	PLNIF	Closed	<u>3AN-11-05439CI</u>
Citibank (South Dakota) NA	PLNIF	Closed	<u>3AN-11-05440CI</u>
Citibank (South Dakota) NA	PLNIF	Closed	<u>3AN-11-05441CI</u>
Citibank (South Dakota) NA	PLNIF	Closed	<u>3AN-11-05601CI</u>
Citibank (South Dakota) NA	PLNIF	Closed	<u>3AN-11-05602CI</u>
Citibank (South Dakota) NA	PLNIF	Closed	<u>3AN-11-05604CI</u>
Citibank (South Dakota) NA	PLNIF	Closed	<u>3AN-11-05868CI</u>
Citibank (South Dakota) NA	PLNIF	Closed	<u>3AN-11-05869CI</u>
Citibank (South Dakota) NA	PLNIF	Closed	<u>3AN-11-05870CI</u>
Citibank (South Dakota) NA	PLNIF	Closed	<u>3AN-11-05871CI</u>
Citibank (South Dakota) NA	PLNIF	Closed	<u>3AN-11-05872CI</u>
Citibank (South Dakota) NA	PLNIF	Closed	<u>3AN-11-06174CI</u>
Citibank (South Dakota) NA	PLNIF	Closed	<u>3AN-11-06176CI</u>
Citibank (South Dakota) NA	PLNIF	Closed	<u>3AN-11-06700CI</u>
Citibank (South Dakota) NA	PLNIF	Closed	<u>3AN-11-06701CI</u>
Citibank (South Dakota) NA	PLNIF	Closed	<u>3AN-11-06702CI</u>
Citibank (South Dakota) NA	PLNIF	Closed	<u>3AN-11-06912CI</u>
Citibank (South Dakota) NA	PLNIF	Closed	<u>3AN-11-06913CI</u>
Citibank (South Dakota) NA	PLNIF	Closed	<u>3AN-11-06914CI</u>
Citibank (South Dakota) NA	PLNIF	Closed	<u>3AN-11-06915CI</u>
Citibank (South Dakota) NA	PLNIF	Closed	<u>3AN-11-06916CI</u>
Citibank (South Dakota) NA	PLNIF	Closed	<u>3AN-11-07005CI</u>

Citibank (South Dakota) NA	PLNIF	Reopened	<u>3AN-11-07006CI</u>
Citibank (South Dakota) NA	PLNIF	Open	<u>3AN-11-07007CI</u>
Citibank (South Dakota) NA	PLNIF	Open	<u>3AN-11-07008CI</u>
Citibank (South Dakota) NA	PLNIF	Open	<u>3AN-11-07009CI</u>
Citibank (South Dakota) NA	PLNIF	Closed	<u>3AN-11-07010CI</u>
Citibank (South Dakota) NA	PLNIF	Closed	<u>3AN-11-07012CI</u>
Citibank (South Dakota) NA	PLNIF	Open	<u>3AN-11-07013CI</u>
Citibank (South Dakota) NA	PLNIF	Closed	<u>3AN-11-07079CI</u>
Citibank (South Dakota) NA	PLNIF	Closed	<u>3AN-11-07080CI</u>

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Alaska Trial Court Cases

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New Search...

Docket Search

3AN-11-05438CI Citibank (South Dakota) NA vs. Clark, David B

Search Criteria

Docket Desc.

Begin Date
Sort

End Date
 Ascending
 Descending

Search Results 22 Docket(s) found matching search criteria.

Docket Date	Docket Text	Amount	Amount Due	Images
09/29/2011	Writ of Execution Disbursement Alaska Law Offices Inc	112.76	0.00	
09/22/2011	Order Granting Motion to Release Funds Citibank (South Dakota) NA Case Motion #1 Request and Order to release funds	0.00	0.00	
09/13/2011	Request and Order to release funds Attorney: Walker Jr, Clayton H (0001002) Citibank (South Dakota) NA (Plaintiff); Clayton H Walker Jr (Attorney) on behalf of Citibank (South Dakota) NA (Plaintiff) Filing Party: Citibank (South Dakota) NA Case Motion #1	0.00	0.00	
08/26/2011	Address Verification Letter (Local Court Use)	0.00	0.00	
08/17/2011	Affidavit of Attempted Service of Notice Clayton H Walker Jr (Attorney) on behalf of Citibank (South Dakota) NA (Plaintiff)	0.00	0.00	
07/13/2011	Return of Service on Execution & Payment - 6/30/11 INQ \$35.00 Receipt: 710109	112.76	0.00	

Date: 07/14/2011

07/08/2011	Notice of Compliance Clayton H Walker Jr (Attorney) on behalf of Citibank (South Dakota) NA (Plaintiff)	0.00	0.00
07/05/2011	Creditor's Affidavit Clayton H Walker Jr (Attorney) on behalf of Citibank (South Dakota) NA (Plaintiff)	0.00	0.00
07/05/2011	Notice of Compliance Clayton H Walker Jr (Attorney) on behalf of Citibank (South Dakota) NA (Plaintiff)	0.00	0.00
05/17/2011	Writ of Execution (CIV-500) Issued	0.00	0.00
05/13/2011	Creditor's Affidavit	0.00	0.00
05/13/2011	Information for Writ of Execution	0.00	0.00
05/09/2011	Judgment Entered Default Judgment Amount: 7,068.63 Pre-Default Judgment Interest: 0.00 Attorney Fees: 706.86 Court Costs: 145.00 Other Fees: 0.00 Default Judgment Total: 7,920.49 Total Accrued Costs: 0.00 Total Accrued Interest: 0.00 Terms: Post Judgment Interest 3.75% Type: Default Judgment Judge: Washington, Pamela Scott Default Judgment Date: 05/09/2011 Default Judgment Time: 12:00PM Referee: Recommendation Date: Default Judgment Status: Judgment Entered Default Judgment For: Citibank (South Dakota) NA - Plaintiff Default Judgment Against: Clark, David B - Defendant	0.00	0.00
<hr/>			
Issuance			
<hr/>			
Writ			
Type: Date Issued: Accrued Interest:			
Satisfied Amount:			
<hr/>			
Return			
<hr/>			
Processed By: Received From: Accrued Costs: Satisfied Amount: Date Returned: Date Collected: Date Paid: Default Judgment Satisfied Amount: 0.00 Default Judgment Balance: 7,920.49 Case Total: 0.00 Case Satisfied Amount: 0.00 Case Balance: 0.00			
05/05/2011	Default Judgment for Plaintiff Granted by Judge	0.00	0.00
05/05/2011	Entry of Default Granted Against: David B Clark (Defendant);	0.00	0.00
03/14/2011	Application for Default Clayton H Walker Jr (Attorney) on behalf of Citibank (South Dakota) NA (Plaintiff)	0.00	0.00
02/14/2011	Return of Service - Summons Served On: David B Clark (Defendant);	0.00	0.00

02/11/2011	Attorney Information Attorney Walker Jr, Clayton H representing Plaintiff Citibank (South Dakota) NA as of 02/11/2011	0.00	0.00
02/11/2011	Case Flagged for Civil Rule 4(j) Tracking (3AN) David B Clark (Defendant);	0.00	0.00
02/11/2011	Summons and Notice to Both Parties of Judicial Assignment	0.00	0.00
02/11/2011	District Court Debt Complaint Receipt: 659241 Date: 02/11/2011	90.00	0.00
02/11/2011	Initial Judicial Assignment: Honorable Pamela Washington	0.00	0.00

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Alaska Trial Court Cases

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Search Criteria

Company Name: citibank;

Search Results

1606 record(s) found.

451-500 of 1606 [\[Prev\]](#) [\[Next\]](#)

Sort Results.. [\[Go\]](#)

Party	Att	Party Type	D.O.B	Case Status	Case Number
Citibank (South Dakota) NA		PLNTF		Closed	3AN-11-07082C
Citibank (South Dakota) NA		PLNTF		Closed	3AN-11-07504C
Citibank (South Dakota) NA		PLNTF		Closed	3AN-11-07505C
Citibank (South Dakota) NA		PLNTF		Closed	3AN-11-07506C
Citibank (South Dakota) NA		PLNTF		Closed	3AN-11-07508C
Citibank (South Dakota) NA		PLNTF		Closed	3AN-11-07668C
Citibank (South Dakota) NA		PLNTF		Closed	3AN-11-07819C
Citibank (South Dakota) NA		PLNTF		Reopened	3AN-11-08047C
Citibank (South Dakota) NA		PLNTF		Closed	3AN-11-08048C
Citibank (South Dakota) NA		PLNTF		Open	3AN-11-08285C
Citibank (South Dakota) NA		PLNTF		Open	3AN-11-08286C
Citibank (South Dakota) NA		PLNTF		Closed	3AN-11-08287C
Citibank (South Dakota) NA		PLNTF		Open	3AN-11-08288C
Citibank (South Dakota) NA		PLNTF		Closed	3AN-11-08290C
Citibank (South Dakota) NA		PLNTF		Closed	3AN-11-08865C
Citibank (South Dakota) NA		PLNTF		Reopened	3AN-11-08866C

Citibank (South Dakota) NA	PLNTF	Closed	<u>3AN-11-08867CI</u>
Citibank (South Dakota) NA	PLNTF	Open	<u>3AN-11-11031CI</u>
Citibank (South Dakota) NA	PLNTF	Closed	<u>3HO-09-00156CI</u>
Citibank (South Dakota) NA	PLNTF	Closed	<u>3HO-09-00157CI</u>
Citibank (South Dakota) NA	PLNTF	Closed	<u>3HO-09-00158CI</u>
Citibank (South Dakota) NA	PLNTF	Closed	<u>3HO-09-00338CI</u>
Citibank (South Dakota) NA	PLNTF	Closed	<u>3HO-10-00059CI</u>
Citibank (South Dakota) NA	PLNTF	Closed	<u>3HO-10-00061CI</u>
Citibank (South Dakota) NA	PLNTF	Closed	<u>3KN-03-00263SC</u>
Citibank (South Dakota) NA	PLNTF	Closed	<u>3KN-05-00390SC</u>
Citibank (South Dakota) NA	PLNTF	Closed	<u>3KN-05-00405SC</u>
Citibank (South Dakota) NA	PLNTF	Closed	<u>3KN-06-00205SC</u>
Citibank (South Dakota) NA	PLNTF	Closed	<u>3KN-07-00187CI</u>
Citibank (South Dakota) NA	PLNTF	Closed	<u>3KN-07-00783CI</u>
Citibank (South Dakota) NA	PLNTF	Closed	<u>3KN-08-00148CI</u>
Citibank (South Dakota) NA	PLNTF	Closed	<u>3KN-08-00648CI</u>
Citibank (South Dakota) NA	PLNTF	Closed	<u>3KN-08-00836CI</u>
Citibank (South Dakota) NA	PLNTF	Closed	<u>3KN-08-00905CI</u>
Citibank (South Dakota) NA	PLNTF	Closed	<u>3KN-08-01070CI</u>
Citibank (South Dakota) NA	PLNTF	Closed	<u>3KN-08-01077CI</u>
Citibank (South Dakota) NA	PLNTF	Closed	<u>3KN-09-00273CI</u>
Citibank (South Dakota) NA	PLNTF	Closed	<u>3KN-09-00494CI</u>
Citibank (South Dakota) NA	PLNTF	Closed	<u>3KN-09-00691CI</u>
Citibank (South Dakota) NA	PLNTF	Closed	<u>3KN-09-00692CI</u>
Citibank (South Dakota) NA	PLNTF	Closed	<u>3KN-09-00744CI</u>

Citibank (South Dakota) NA	PLNTF	Closed	<u>3KN-09-00980C</u>
Citibank (South Dakota) NA	PLNTF	Closed	<u>3KN-09-00982C</u>
Citibank (South Dakota) NA	PLNTF	Closed	<u>3KN-09-01061C</u>
Citibank (South Dakota) NA	PLNTF	Closed	<u>3KN-10-00180C</u>
Citibank (South Dakota) NA	PLNTF	Closed	<u>3KN-10-00181C</u>
Citibank (South Dakota) NA	PLNTF	Closed	<u>3KN-10-00182C</u>
Citibank (South Dakota) NA	PLNTF	Closed	<u>3KN-10-00183C</u>
Citibank (South Dakota) NA	PLNTF	Closed	<u>3KN-10-00184C</u>
Citihank (South Dakota) NA	PLNTF	Closed	<u>3KN-10-00564C</u>

Alaska Trial Court Cases

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[New Search...](#)

Summary
 Parties
 Events
 Dockets
 Disposition
 Costs

Docket Search

3AN-11-08290CI Citibank (South Dakota) NA vs. Rivers, Linda

Search Criteria

Docket Desc.

Begin Date **Sort**

End Date Ascending

Descending

Search Results 23 Docket(s) found matching search criteria.

Docket Date	Docket Text	Amount	Amount Due Images
09/07/2011	Writ of Execution (CIV-500) Issued	0.00	0.00
08/22/2011	Information for Writ of Execution Attorney: Walker Jr, Clayton H (0001002) Citibank (South Dakota) NA (Plaintiff);	0.00	0.00
08/17/2011	Deficiency Notice - CIV 501 not signed - TCA - (Anchorage) Sent on: 08/17/2011 15:44:24	0.00	0.00
08/16/2011	Miscellaneous - Recorders Fee Clayton H Walker Jr (Attorney) on behalf of Citibank (South Dakota) NA (Plaintiff)	0.00	0.00
07/25/2011	Information for Writ of Execution	0.00	0.00
07/25/2011	Creditor's Affidavit	0.00	0.00
07/19/2011	Hearing Result: Hearing Vacated The following event: Pre-Trial Conference: District Court Civil scheduled for 08/01/2011 at 8:30 am has been resulted as follows: Result: Hearing Vacated Judge: Olson, Paul E Location: Courtroom 203, Nesbett Courthouse	0.00	0.00

07/18/2011	Judgment Entered Summary Judgment	0.00	0.00
	Amount: 3,094.75 Pre-Summary Judgment Interest: 50.55 Attorney Fees: 314.53 Court Costs: 145.00 Other Fees: 0.00 Summary Judgment Total: 3,604.83 Total Accrued Costs: 0.00 Total Accrued Interest: 0.00 Terms: Post Judgment Interest Rate 3.75% Type: Summary Judgment Judge: Olson, Paul E Summary Judgment Date: 07/18/2011 Summary Judgment Time: 12:00PM Referee: Recommendation Date: Summary Judgment Status: Judgment Entered Summary Judgment For: Citibank (South Dakota) NA - Plaintiff Summary Judgment Against: Rivers, Linda - Defendant		

	Issuance		
	-----	Writ	
	Type: Date Issued: Accrued Interest:		
	Satisfied Amount:		
	-----	Return	

	Processed By: Received From: Accrued Costs: Satisfied Amount: Date Returned: Date Collected: Date Paid: Summary Judgment Satisfied Amount: 0.00 Summary Judgment Balance: 3,604.83 Case Total: 0.00 Case Satisfied Amount: 0.00 Case Balance: 0.00		
07/18/2011	Judgment on the Pleadings for Plaintiff	0.00	0.00
07/18/2011	Judgment Granted Judge Olson, Paul E (7710149)	0.00	0.00
07/18/2011	Order Granting Judgment on the Pleadings Judge Olson, Paul E (7710149) Case Motion #1: Motion for Judgment on the Pleadings	0.00	0.00
07/05/2011	Report of Parties' Planning Meeting (and request for trial to be set) Attorney: Walker Jr, Clayton H (0001002) Filing Party: Citibank (South Dakota) NA Case Motion #2	0.00	0.00
06/22/2011	Motion for Judgment on the Pleadings Attorney: Walker Jr, Clayton H (0001002) Filing Party: Citibank (South Dakota) NA Case Motion #1	0.00	0.00
06/15/2011	Hearing Set: Event: Pre-Trial Conference: District Court Civil Date: 08/01/2011 Time: 8:30 am Judge: Olson, Paul E Location: Courtroom 203, Nesbett Courthouse Result: Hearing Vacated	0.00	0.00
06/15/2011	Peremptory Disqualification by Plaintiff/Petitioner, Case Transferred from Judge Swiderski to Judge Olson	0.00	0.00

06/14/2011 Non-Conforming Answer [Accepted for filing] Linda Rivers (Defendant);	0.00	0.00
06/14/2011 Return of Service - Summons Served On: Linda Rivers (Defendant);	0.00	0.00
06/14/2011 Notice of Change of Judge Swiderski (Peremptory Challenge) Clayton H Walker Jr (Attorney) on behalf of Citibank (South Dakota) NA (Plaintiff)	0.00	0.00
06/10/2011 Attorney Information Attorney Walker Jr, Clayton H representing Plaintiff Citibank (South Dakota) NA as of 06/10/2011	0.00	0.00
06/10/2011 Case Flagged for Civil Rule 4(j) Tracking (3AN) Linda Rivers (Defendant);	0.00	0.00
06/10/2011 Summons and Notice to Both Parties of Judicial Assignment	0.00	0.00
06/10/2011 District Court Debt Complaint Receipt: 697409 Date: 06/10/2011	90.00	0.00
06/10/2011 Initial Judicial Assignment: Honorable Alex Swiderski	0.00	0.00



CAUTION: This screen shows only that a case was filed. It does not show how the case ended. Do not assume that a defendant was convicted just because a criminal case was filed.

Search Criteria

Company Name: citibank;

Search Results

1606 record(s) found.

501-550 of 1606 [Prev](#) [Next](#) Sort Results.. [Go](#)

Party	Aff	Party Type	D.O.B	Case Status	Case Number
Citibank (South Dakota) NA		PLNTF		Closed	3KN-10-00664C
Citibank (South Dakota) NA		PLNTF		Closed	3KN-10-00718C
Citibank (South Dakota) NA		PLNTF		Closed	3KN-10-00974C
Citibank (South Dakota) NA		PLNTF		Closed	3KN-10-00976C
Citibank (South Dakota) NA		PLNTF		Closed	3KN-10-01138C
Citibank (South Dakota) NA		PLNTF		Closed	3KN-10-01139C
Citibank (South Dakota) NA		PLNTF		Closed	3KN-10-01168C
Citibank (South Dakota) NA		PLNTF		Closed	3KN-10-01214C
Citibank (South Dakota) NA		PLNTF		Closed	3KN-10-01215C
Citibank (South Dakota) NA		PLNTF		Closed	3KN-10-01216C
Citibank (South Dakota) NA		PLNTF		Closed	3KN-10-01246C
Citibank (South Dakota) NA		PLNTF		Closed	3KN-10-01247C
Citibank (South Dakota) NA		PLNTF		Closed	3KN-11-00003C
Citibank (South Dakota) NA		PLNTF		Open	3KN-11-00015C
Citibank (South Dakota) NA		PLNTF		Closed	3KN-11-00243C
Citibank (South Dakota) NA		PLNTF		Open	3KN-11-00299C

Citibank (South Dakota) NA	PLNIF	Closed	<u>3KN-11-00379C</u>
Citibank (South Dakota) NA	PLNIF	Closed	<u>3KN-11-00434C</u>
Citibank (South Dakota) NA	PLNIF	Open	<u>3KN-11-00463C</u>
Citibank (South Dakota) NA	PLNIF	Closed	<u>3KN-11-00464C</u>
Citibank (South Dakota) NA	PLNIF	Closed	<u>3KN-11-00609C</u>
Citibank (South Dakota) NA	PLNIF	Open	<u>3KN-11-00624C</u>
Citibank (South Dakota) NA	PLNIF	Open	<u>3KN-11-00686C</u>
Citibank (South Dakota) NA	PLNIF	Open	<u>3KN-11-01042C</u>
Citibank (South Dakota) NA	PLNIF	Closed	<u>3SW-10-00104C</u>
Citibank (South Dakota) NA	PLNIF	Closed	<u>4BE-10-00421C</u>
Citibank (South Dakota) NA	PLNIF	Open	<u>4BE-11-00089C</u>
Citibank (South Dakota) NA	PLNIF	Closed	<u>4FA-10-01849C</u>
Citibank (South Dakota) NA	PLNIF	Closed	<u>4NE-09-00010C</u>
Citibank (South Dakota) NA	PLNIF	Closed	<u>4TO-10-00028C</u>
Citibank (South Dakota) NA	PLNIF	Open	<u>4TC-11-00022C</u>
CITIBANK (SOUTH DAK)	PLNIF	Closed	<u>4FA-00-00369C</u>
CITIBANK (SOUTH DAK)	PLNIF	Closed	<u>4FA-01-00914C</u>
Citibank (South Dakatoa) NA	PLNIF	Closed	<u>3AN-10-04539C</u>
Citibank (South Dakatoa) NA	PLNIF	Open	<u>3PA-10-03122C</u>
Citibank (South Dakatoa) NA	PLNIF	Closed	<u>3PA-10-03124C</u>
Citibank (South Dakatoa) NA	PLNIF	Closed	<u>3PA-10-03126C</u>
Citibank (South Dakatoa) NA	PLNIF	Closed	<u>3PA-10-03127C</u>
Citibank (South Dakatoa) NA	PLNIF	Closed	<u>3PA-10-03128C</u>
Citibank (South Dakatoa) NA	PLNIF	Closed	<u>3PA-10-03129C</u>
Citibank (South Dako	PLNIF	Closed	<u>2UT-00-00001C</u>

CITIBANK (SOUTH DAKO	PLNIF	Closed	<u>4FA-02-01249CI</u>
CITIBANK (SOUTH DAKO	PLNIF	Closed	<u>4FA-03-00911SC</u>
CITIBANK (SOUTH DAKO	PLNIF	Closed	<u>4FA-03-01174CI</u>
CITIBANK (SOUTH DAKO	PLNIF	Closed	<u>4FA-03-01177CI</u>
CITIBANK (SOUTH DAKO	PLNIF	Closed	<u>4FA-03-02245CI</u>
CITIBANK (SOUTH DAKO	PLNIF	Closed	<u>4FA-04-00126SC</u>
CITIBANK (SOUTH DAKO	PLNIF	Closed	<u>4FA-04-00279SC</u>
CITIBANK (SOUTH DAKO	PLNIF	Closed	<u>4FA-04-00945SC</u>
CITIBANK (SOUTH DAKO	PLNIF	Closed	<u>4FA-04-00946SC</u>



Dockets entered with dates prior to conversion to CourtView contain limited information from the legacy system.

Not all dockets represent documents in the case. Some dockets are descriptions of events entered in CourtView. For example: if a hearing is scheduled in CourtView, a docket is automatically created to reflect the scheduled event even though there is no document for that event.

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 Summary Parties Events Dockets Disposition Costs

Docket Search

3PA-10-03129CI Citibank (South Dakatoa) NA vs. Coons, Kristine M

Search Criteria

Docket Desc.

Begin Date Sort

End Date Ascending

Descending

Search Results 19 Docket(s) found matching search criteria.

Docket Date	Docket Text	Amount	Amount Due	Images
07/21/2011	Notice of Forwarding SOJ Clayton H Walker Jr (Attorney) on behalf of Citibank (South Dakatoa) NA (Plaintiff)	0.00	0.00	
07/21/2011	Certificate of Service of SOJ Clayton H Walker Jr (Attorney) on behalf of Citibank (South Dakatoa) NA (Plaintiff)	0.00	0.00	
07/21/2011	Satisfaction of Judgment Clayton H Walker Jr (Attorney) on behalf of Citibank (South Dakatoa) NA (Plaintiff)	0.00	0.00	
07/21/2011	Full Return of Service on Writ of Execution / Original Writ Dated April 4, 2011 Returned	0.00	0.00	
04/13/2011	Recording Fee Filed Costs: \$22.00	0.00	0.00	
04/04/2011	Issue Date: 04/04/2011 Service: Writ of Execution (CIV-500) Method: Process Server - Mailed to Inquest Cost Per: \$ Coons, Kristine M Tracking No: S000052154	0.00	0.00	

04/04/2011	Writ of Execution (CIV-500) Issued Kristine M Coons (Defendant);	0.00	0.00
04/01/2011	Creditor's Affidavit Clayton H Walker Jr (Attorney) on behalf of Citibank (South Dakatoa) NA (Plaintiff)	0.00	0.00
04/01/2011	Information for Writ of Execution Clayton H Walker Jr (Attorney) on behalf of Citibank (South Dakatoa) NA (Plaintiff)	0.00	0.00
03/03/2011	Default Judgment for Plaintiff Granted by Clerk	0.00	0.00
03/03/2011	Judgment Entered Default Judgment Amount: 7,897.70 Pre-Default Judgment Interest: 0.00 Attorney Fees: 789.77 Court Costs: 145.00 Other Fees: 0.00 Default Judgment Total: 8,832.47 Total Accrued Costs: 0.00 Total Accrued Interest: 0.00 Terms: 3.75% Post Judgment Interest Type: Default Judgment Judge: Clerk, Palmer Court Default Judgment Date: 03/03/2011 Default Judgment Time: 4:30PM Referee: Recommendation Date: Default Judgment Status: Judgment Entered Default Judgment For: Citibank (South Dakatoa) NA - Plaintiff Default Judgment Against: Coons, Kristine M - Defendant	0.00	0.00
<hr/>			
Issuance			
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Type: Date Issued: Accrued Interest: Satisfied Amount:			
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Return			
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Processed By: Received From: Accrued Costs: Satisfied Amount: Date Returned: Date Collected: Date Paid: Default Judgment Satisfied Amount: 0.00 Default Judgment Balance: 8,832.47 Case Total: 0.00 Case Satisfied Amount: 0.00 Case Balance: 0.00			
03/03/2011	Entry of Default Granted Against: Kristine M Coons (Defendant);	0.00	0.00
01/04/2011	Application for Default Clayton H Walker Jr (Attorney) on behalf of Citibank (South Dakatoa) NA (Plaintiff)	0.00	0.00
12/08/2010	Civil Rule 4 Proof of Service Kristine M Coons (Defendant);	0.00	0.00
11/19/2010	Case Flagged for Civil Rule 4(j) Tracking (3PA) Kristine M Coons (Defendant);	0.00	0.00
11/19/2010	Summons and Notice to Both Parties of Judicial Assignment	0.00	0.00
11/19/2010	Initial Judicial Assignment - Judge William Estelle assigned	0.00	0.00

11/17/2010 Attorney Information Attorney Walker Jr, Clayton H representing Plaintiff(s) Citibank (South Dakatoa) NA as of 11/17/2010	0.00	0.00
11/17/2010 District Court Debt Complaint Receipt: 637162 Date: 11/19/2010	90.00	0.00

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STATE OF ALASKA
THIRD DISTRICT

2011 OCT 19 PM 3:03

CLERK TRIAL COURTS

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1 Jon S. Dawson
2 DAVIS WRIGHT TREMAINE LLP
3 701 W. 8th Avenue, Suite 800
4 Anchorage, Alaska 99501-3468
5 Telephone: (907) 257-5300
6 Facsimile: (907) 257-5399

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

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

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

13 Plaintiffs,

14 vs.

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

18 Defendants.

19 Case No. 3AN-11-09196 CI

20 - CONSOLIDATED REPLY IN SUPPORT OF MOTION TO COMPEL
21 ARBITRATION AND TO STAY ACTION AND OPPOSITION TO
22 PLAINTIFF'S CROSS-MOTION FOR PARTIAL SUMMARY JUDGMENT

23 I. INTRODUCTION

24 Plaintiff's Opposition to the Motion¹ is primarily based on the false contention that
25 arbitration would somehow require Plaintiff to forfeit her statutory rights and claims.
That is untrue. Plaintiff remains free to pursue all of her claims (however baseless) in
arbitration, but on an individual basis. That is the conclusion mandated by the United
States Supreme Court in AT&T Mobility LLC v. Concepcion, 131 S. Ct. 1740, 1748, 179

¹ Capitalized terms are used herein as defined in the Motion.

1 L. Ed. 2d 742 (Apr. 27, 2011) – arbitration agreements requiring arbitration on an
2 individual, non-class basis, like the Arbitration Agreement here, must be enforced as
3 written. Furthermore, the FAA – which Plaintiff does not dispute applies here – preempts
4 state law challenges to enforcing arbitration agreements that stand as an obstacle to
5 accomplishing the FAA’s primary purpose of enforcing arbitration agreements as written.
6 Plaintiff’s attempts to avoid the dispositive impact of AT&T Mobility, including by
7 arguing that the Supreme Court’s decision is somehow not binding on this Court, are
8 unavailing. AT&T Mobility is controlling and dispositive.

10 Plaintiff implausibly asks the court to ignore the completely dispositive and
11 controlling Supreme Court decision and, instead, follow the state law of nearly every
12 state in the union except for South Dakota – the state law the parties agreed would govern
13 their contract. Plaintiff’s attempt to rely solely on Alaska law, completely disregarding
14 the applicable South Dakota choice-of-law provision, is simply unavailing. Plaintiff
15 confuses the determination of what law should govern her substantive claims, with the
16 determination of what law should be applied in evaluating the parties’ *agreement*,
17 including the Arbitration Agreement. The latter is the only issue to be decided now. The
18 former (what law applies to Plaintiff’s claims) is to be decided by an arbitrator. Simply
19 put, Alaska law is irrelevant on the arbitration issue.

23 Finally, Plaintiff’s specious arguments challenging the validity of the Arbitration
24 Agreement have no basis in fact or law. Tellingly, Plaintiff does not dispute that she
25 received the Arbitration Agreement, and she fails to support her contentions with any

1 evidence whatsoever affecting the facts or analysis or inescapable conclusion that the
2 Arbitration Agreement is entirely enforceable.² Nor can she. The evidence submitted by
3 Citibank clearly establishes that Citibank mailed Plaintiff the Arbitration Agreement, and
4 that Plaintiff agreed to the terms of the Card Agreement, including the Arbitration
5 Agreement, by continuing to use her Account.
6

7 Accordingly, as detailed in the Motion and below, Citibank respectfully requests
8 that the Court grant the Motion, stay this action and order Plaintiff to arbitrate her claims
9 on an individual non-class basis, pursuant to the Arbitration Agreement and AT&T
10 Mobility. In addition, Plaintiff's Cross-Motion for Summary Judgment must be denied.
11

12 13 **II. ARGUMENT**

14 **A. AT&T Mobility Is Dispositive, And Plaintiff Must Arbitrate Her Claims On An** 15 **Individual Basis Pursuant To The Express Terms Of The Arbitration** 16 **Agreement.**

17 As the Supreme Court noted in AT&T Mobility, the FAA was designed to
18 overcome the "judicial hostility towards arbitration . . . [that] had manifested itself in 'a
19 great variety' of 'devices and formulas' declaring arbitration against public policy." 131
20 S. Ct. at 1747. Thus, "[w]hen state law prohibits outright the arbitration of a particular
21 type of claim, the analysis is *straightforward*: The conflicting rule is displaced by the
22 FAA." Id. at 1747 (italics added). Similarly, while Section 2 of the FAA preserves
23

24 ² The only evidence submitted by Plaintiff is her affidavit stating that she stopped using her
25 credit card in 2008 and that Plaintiff was not offered arbitration before the collection lawsuit was
commenced. Plaintiff's Affidavit, ¶¶ 1-2. These assertions have absolutely no effect on the
enforceability of the parties' Arbitration Agreement.

1 "generally applicable contract defenses" (like unconscionability), "nothing in it suggests
2 an intent to preserve state-law rules that stand as an obstacle to the accomplishment of the
3 FAA's objectives." Id. at 1748; see also id. at 1746 (construing Section 2 to "permit[]
4 agreements to arbitrate to be invalidated by generally applicable contract defenses . . . but
5 not by defenses that apply only to arbitration or that derive their meaning from the fact
6 that an agreement to arbitrate is at issue."). AT&T Mobility undoubtedly applies here --
7 as the Arbitration Agreement specifically is governed by the FAA, which Plaintiff does
8 not dispute -- and is dispositive.

9
10 Plaintiff's argument that AT&T Mobility does not apply in state court (Opp. at 23-
11 24) is unpersuasive and, taken to its logical conclusion, would render meaningless the
12 entire doctrine of stare decisis, which "is of fundamental importance to the rule of law."
13 Welch v. Texas Dep't of Highways & Pub. Transp., 483 U.S. 468, 494, 107 S. Ct. 2941,
14 97 L. Ed. 2d 389 (1987). Tellingly, Plaintiff cites no cases supporting the conclusion that
15 AT&T Mobility does not apply in state court. Nevertheless, Plaintiff would have this
16 Court simply ignore AT&T Mobility altogether based on speculation as to how Justice
17 Thomas *might* rule in a different case. Importantly, "American courts, state and federal,
18 owe obedience to the decisions of the Supreme Court of the United States on questions of
19 federal law, and a judgment of the Supreme Court provides the rule to be followed in all
20 such courts until the Supreme Court sees fit to reexamine it." McCaffery v. Green, 931
21 P.2d 407, 415 (Alaska 1997) (citation omitted). This case clearly involves a federal
22
23
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25

1 question—whether the Arbitration Agreement is valid and enforceable under the FAA.

2 The Court should reject Plaintiff’s invitation to simply ignore AT&T Mobility.

3 More importantly, regardless of Justice Thomas’s voting history, the fact is that in
4 AT&T Mobility he expressly *joined* the majority in abrogating Discover Bank. This is
5 not a divided or plurality decision. This is a *majority* decision, as Justice Thomas
6 specifically noted: “[I]t is important in interpreting statutes to give lower courts guidance
7 from a majority of the Court.” AT&T Mobility, 131 S. Ct. at 1754 (Thomas, J.
8 concurring) (citation omitted). There is no need to speculate now as to what Justice
9 Thomas may or may not do in the future. Until AT&T Mobility is overruled, it remains
10 the Supreme Court’s most current precedent on FAA preemption. See, e.g., Tenet v.
11 Doe, 544 U.S. 1, 10–11, 125 S. Ct. 1230, 161 L. Ed. 2d 82 (2005) (noting that the
12 Supreme Court retains the sole prerogative to overrule its own decisions). In short,
13 AT&T Mobility is the law and must be followed.
14
15
16

17 Notably, the holding of AT&T Mobility is not only limited to state laws that
18 prohibit outright the arbitration of particular claims, as Plaintiff contends (Opp. at 25).
19 AT&T Mobility makes clear that the FAA precludes state law impediments to enforcing
20 arbitration agreements according to their terms, whether under the guise of generally
21 applicable contract principles or state law specifically targeting arbitration. See 131 S.
22 Ct. at 1746-48. In abrogating the California law at issue in AT&T Mobility, the Supreme
23 Court held that “[b]ecause it [stood] as an obstacle to the accomplishment and execution
24 of the full purposes and objectives of Congress” – ensuring that arbitration agreements
25

1 are enforced as written – the law was preempted by the FAA. Id. at 1753. Thus, because
2 the “FAA requires courts to honor parties’ expectations,” plaintiffs were required to
3 arbitrate their claims on an individual (non-class, non-representative) basis, as required
4 by the parties’ contract. See id. at 1752. Similarly, here, the FAA and AT&T Mobility
5 require that Plaintiff arbitrate her claims on an individual basis pursuant to the express
6 terms of the Arbitration Agreement.
7

8 **B. South Dakota, Not Alaska, Law Determines The Validity Of The Arbitration**
9 **Agreement.**

10 As established in the Motion, pursuant to the express choice-of-law provision in
11 the Card Agreement, South Dakota law governs the determination of whether a valid and
12 enforceable agreement to arbitrate exists. See Hershler v. Citibank (South Dakota), N.A.,
13 No. 2:08-cv-06363-R-JWJ, slip. op. at 4 (C.D. Cal. Dec. 19, 2008) (RJN Ex. 3) (applying
14 Section 187(2) of the Restatement (Second) of Conflict of Laws and holding that South
15 Dakota law applied in determining validity of Citibank’s Arbitration Agreement). The
16 choice of law provision should be enforced because Plaintiff fails to undertake any
17 substantive choice-of-law analysis. See, e.g., Yaqub v. Experian Info. Solutions, Inc.,
18 No. CV11-2190-VBF (FFMx), slip op. at 5-6 (C.D. Cal. Jun. 10, 2011) (RJN Ex. 2)
19 (holding that South Dakota law applied to Arbitration Agreement pursuant to choice of
20 law where plaintiff failed to address choice of law analysis).
21
22

23
24 Plaintiff’s assertion that Alaska law applies because the Arbitration Agreement
25 allegedly is unconscionable under Alaska law (Opp. at 18-19, n.61) is not the proper

1 choice of law test. Alaska state courts apply Section 187(2) of the Restatement (Second)
2 of Conflict of Laws to evaluate contractual choice of law provisions. See Peterson v. Ek,
3 93 P.3d 458, 465 n.11 (Alaska 2004). A choice of law clause “will generally be given
4 effect unless (1) the chosen state [e.g., South Dakota] has no substantial relationship with
5 the transaction . . . or (2) the application of the law of the chosen state would be contrary
6 to a fundamental public policy of a state that has a materially greater interest in the issue
7 and would otherwise provide the governing law.” Id. Here, a proper choice-of-law
8 analysis demonstrates that South Dakota law, not Alaska law, applies in determining
9 whether the Arbitration Agreement is valid and enforceable.
10

11
12 First, it is indisputable that the first prong is met here because Citibank’s principal
13 place of business is in South Dakota. See Walters Aff., ¶ 1. Indeed, preemptive federal
14 law expressly authorizes Citibank, a national bank, to apply the law of its home state,
15 South Dakota, to the key price terms of the Card Agreement. See Marquette Nat’l Bank
16 of Minneapolis v. First Omaha Serv. Corp., 439 U.S. 299, 308 (1978); Smiley v. Citibank
17 (South Dakota), N.A., 11 Cal. 4th 138, 164 (1995), aff’d, 517 U.S. 735 (1996). Plaintiff
18 ignores this prong.
19

20
21 Second, application of South Dakota law here is not contrary to a fundamental
22 public policy of Alaska. The fact that South Dakota has codified the right to add an
23 arbitration agreement to a credit card agreement through a change-in-terms or
24 amendment notice (see Mtn. at 15-16), but Alaska has not, does not constitute a conflict
25 of fundamental public policy. Indeed, a mere *difference* between the application of two

1 states' laws does not rise to the level of a conflict of *fundamental* policy that defeats the
2 enforcement of a choice-of-law provision.³

3 Plaintiff's reliance on Gibson v. Nye Frontier Ford, Inc., 205 P.3d 1091 (Alaska
4 2009) is misplaced. In Gibson, the plaintiff challenged changes to an arbitration
5 agreement contained in an employment manual, arguing (based on non-Alaska cases) that
6 a change in terms provision contained in the manual rendered the arbitration agreement
7 unconscionable. 205 P.3d at 1096-97. While noting the non-Alaska cases cited by the
8 plaintiff, the Alaska Supreme Court passed on the question of whether the change in
9 terms provision rendered the arbitration agreement unconscionable as a matter of Alaska
10 law, holding instead that the arbitration agreement was not subject to the change in terms
11 provision. Id. at 1097. Thus, not only is Gibson unavailing, but it does not stand for the
12 proposition that an Alaska fundamental public policy is implicated here. The mere fact
13 that there may be a difference between South Dakota and Alaska law does not constitute
14 a conflict of fundamental public policy.

15
16
17
18 Finally, the choice-of-law provision also must be enforced because Alaska does
19 not have a materially greater interest than South Dakota in the transaction at issue. In the
20 Opposition, Plaintiff completely ignores this prong. Regardless, there is no dispute that
21

22
23 ³ See MediMatch, Inc. v. Lucent Tech., Inc., 120 F. Supp. 2d 842, 861-62 (N.D. Cal. 2000)
24 (“The mere fact that the chosen law provides greater or lesser protection than California law, or
25 that in a particular application the chosen law would not provide protection while California law
would, are not reasons for applying California law.”); see also Hambrecht & Quist Venture
Partners v. American Med. Int’l, Inc., 38 Cal. App. 4th 1532, 1536 (1995) (holding that
Delaware choice-of-law provision was enforceable even though Delaware’s statute of limitations
period was shorter than California’s statute of limitations).

1 South Dakota has a compelling interest in applying its law to businesses operating within
2 its borders, as well as protecting consumers in all 50 states. See Hershler, No. 2:08-cv-
3 06363-R-JWJ, at 6-7 (“South Dakota, where Citibank is located, has a compelling
4 interest in applying its laws to regulate businesses operating within its borders, while the
5 bank has an equally compelling need to ensure that its transactions are governed by a
6 common set of laws.”). Indeed, South Dakota law explicitly requires that “[a] revolving
7 loan account arrangement between a bank located in the state of South Dakota and a
8 debtor shall be governed by the laws of the state of South Dakota.” S.D. Codified Laws §
9 51A-12-12. Congress also has explicitly recognized that a national bank’s home state has
10 a unique, special interest in applying its own laws to its own banks, and not the law of the
11 states where its customers reside (see 12 C.F.R. § 7.4008 (setting forth preemption
12 standards for non-real estate lending activities)), and, as discussed, preemptive federal
13 law authorizes the application of South Dakota law to the key price terms of the Card
14 Agreement.⁴
15
16
17

18 Based on the foregoing, and Plaintiff’s failure to undertake a proper choice of law
19 analysis, South Dakota law must be applied here. See, e.g., Lowman v. Citibank (South
20 Dakota), N.A., No. CV-05-8097 RGK, 2006 WL 6108680, at *3-4 (C.D. Cal. Mar. 24,
21 2006) (applying South Dakota law to Citibank’s Arbitration Agreement); Egerton v.
22 Citibank, N.A., No. CV-036907DSF (PLAx), 2004 WL 1057739, at *2 (C.D. Cal. Feb.
23 18, 2004) (same).
24
25

⁴ See Marquette, 439 U.S. at 308; Smiley, 517 U.S. at 737-38.

1 **C. The Arbitration Agreement Must Be Enforced Under South Dakota Law.**

2 Plaintiff makes no effort to evaluate the enforceability of the Arbitration
3 Agreement under South Dakota law. Indeed, Plaintiff does not cite a single case
4 discussing South Dakota law. Instead, Plaintiff cites Alaska, California, Florida,
5 Mississippi and Virginia authority to argue that the Arbitration Agreement either is
6 unconscionable and/or invalid or, if it does exist, her claims are beyond the agreement's
7 scope. (Opp. at 8-22). As an initial matter, all the cases Plaintiff cites are inapplicable
8 based on the valid South Dakota choice-of-law provision as discussed above. More
9 importantly, the undisputed evidence confirms that the Arbitration Agreement is valid
10 and enforceable under South Dakota law (which Plaintiff completely ignores) and that all
11 of Plaintiff's claims are within its broad scope.
12

13
14 **1. South Dakota Has Codified The Right To Add An Arbitration Agreement
15 To A Credit Card Agreement, And Plaintiff Indisputably Agreed To The
16 Arbitration Agreement By Continuing To Use The Account After
17 Receiving The Arbitration Agreement.**

18 As demonstrated in the Motion, South Dakota has codified the right to add an
19 arbitration agreement to a credit card agreement through a change-in-terms or
20 amendment notice, as Citibank did here. (See Mtn. at 14-17.) Critically, Plaintiff does
21 not, because she cannot, dispute that: the Card Agreement she received when she opened
22 the Account included the right for Citibank to change the terms of the Card Agreement at
23 any time; Citibank mailed her the Arbitration Agreement in October 2001; Plaintiff had
24 the opportunity to, but did not, opt out of the Arbitration Agreement and, instead, she
25 continued to use the Account after receiving the Arbitration Agreement; and Citibank

1 mailed her a complete Card Agreement in June 2005, which included the Arbitration
2 Agreement, and she again continued using her Account after receiving the Card
3 Agreement in 2005. (Walters Aff., ¶¶ 4-13.) Plaintiff does not dispute that Citibank
4 provided her with the requisite amount of statutory notice prior to amending the Card
5 Agreement to add the Arbitration Agreement, including by providing her with the time
6 and opportunity to reject the proposed amendment required under the applicable South
7 Dakota statute. Furthermore, Plaintiff agreed to the terms of the Card Agreement,
8 including the Arbitration Agreement, as a matter of South Dakota law and under the
9 express terms of the Card Agreement, by continuing to use the Account after receiving
10 the Card Agreement. (See Mtn. at 16-17, n.8.) Based on the foregoing, there clearly is
11 valid agreement to arbitrate as a matter of fact and law.
12

14 Furthermore, Plaintiff's contention that the change-in-terms provision in the Card
15 Agreement somehow did not allow Citibank to add the Arbitration Agreement is contrary
16 to fact and law. The Arbitration Agreement expressly and broadly provides that Citibank
17 "can change this Agreement . . . at any time." (Walters Decl., Ex. 1 at 8.) This language
18 is not limited only to changing "fees and the financial terms" of the Account (Opp. at 19-
19 20), as Plaintiff suggests. Furthermore, the authorities cited in the Motion confirm that
20 this method of adopting an arbitration agreement has been routinely upheld by the courts.
21 (Mtn. at 16, n.8 (collecting cases).) Plaintiff's argument is belied by the fact that she
22 does not cite a single South Dakota case. Her heavy reliance on non-South Dakota cases
23 (Opp. at 19-20, n.62, 64-65) is a transparent ruse to divert attention from the operative
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1 law – none of the cases Plaintiff cites turn on the application of South Dakota law, and
2 are otherwise inapposite.⁵ Finally, the Attorney General of South Dakota has specifically
3 endorsed the South Dakota change-in-terms procedure as a valid means under South
4 Dakota law to add an arbitration provision to a credit card agreement (see RJN 4),
5 something else Plaintiff completely ignores.
6

7 Thus, Plaintiff's failure to refute the evidence submitted by Citibank, combined
8 with the clear application of South Dakota law to the parties' relationship, thoroughly
9 defeats any claim of "no agreement."
10

11 **2. The Arbitration Agreement Does Not Limit The Types Of Claims Or**
12 **Remedies Plaintiff May Pursue In Arbitration And She Is Free To Arbitrate**
13 **Her Statutory Claims And Pursue The Same Remedies In Arbitration As She**
14 **Could In Court, But On An Individual Basis.**

15 Plaintiff's assertion that enforcing the Arbitration Agreement "prohibits" her from
16 seeking injunctive relief on her UTPA claims (Opp. at 13-15) is wrong. It is absolutely
17 "clear that statutory claims may be the subject of an arbitration," as repeatedly confirmed

18 ⁵ See, e.g., Long v. Fidelity Water Sys., Inc., No. C-97-20118 RMW, 2000 WL 989914, at * 3-4
19 (C.D. Cal. May 26, 2000) (analyzing California law and noting that proposed arbitration
20 agreement was added after case was filed and after claims arose); Myers v. MBNA Am., No. CV
21 00-163-M-DWM, 2001 WL 965063, at *4-5 (D. Mont. Mar. 20, 2001) (applying Montana law
22 where dispute arose prior to addition of arbitration agreement); Sears Roebuck & Co. v. Avery,
23 163 N.C. App. 207, 214 (N.C. App. 2004) (applying Arizona law and distinguishing Arizona
24 from states with statutes that specifically authorize the addition of an arbitration agreement
25 through a change in terms notice/procedure); Badie v. Bank of Am., 67 Cal. App. 4th 779, 800
(1998) (applying California law where changes to the original agreement were limited to changes
regarding any "term, condition, service or feature."); Stone v. Golden Wexler & Sarnese, P.C.,
341 F. Supp. 2d 189, 193 (E.D.N.Y. 2004) (distinguishing Virginia law from "statutes that
specifically authorize credit card companies to make unilateral changes to the underlying credit
agreement."); Kortum-Managhan v. Herbergers NBGL, 349 Mont. 475, 485 (Mont. 2009)
(applying Montana law); Robertson v. J.C. Penny Co., 484 F. Supp. 2d 561, 566-68 (S.D. Miss.
2007) (applying Mississippi law and denying motion to compel arbitration because defendant did
not establish that plaintiff received arbitration agreement).

1 by the Supreme Court. Gilmer v. Interstate/Johnson Lane Corp., 500 U.S. 20, 26, 111 S.
2 Ct. 1647, 114 L. Ed. 2d 26 (1991). In agreeing to arbitrate a statutory claim, a party
3 “does not forgo the substantive rights afforded by the statute [but] submits to their
4 resolution in an arbitral . . . forum.” Mitsubishi Motors Corp. v. Soler Chrysler-
5 Plymouth, Inc., 473 U.S. 614, 628, 105 S. Ct. 3346, 87 L. Ed. 2d 444 (1985).
6
7 Importantly, “unless Congress itself has evinced an intention to preclude a waiver of
8 judicial remedies for the statutory rights at issue,” arbitration agreements embracing
9 statutory claims must be enforced. Gilmer, 500 U.S. at 26 (citation omitted). The
10 “burden is on the party opposing arbitration . . . to show that Congress intended to
11 preclude a waiver of judicial remedies for the statutory rights at issue.” Shearson/Am.
12 Express, Inc. v. McMahon, 482 U.S. 220, 227, 107 S. Ct. 2332, 96 L. Ed. 2d 185 (1987).
13

14 Here, the Arbitration Agreement expressly encompasses “[a]ll Claims . . . no
15 matter what legal theory they are based on or what remedy (damages or injunctive or
16 declaratory relief) they seek . . . [and] includes Claims based on contract . . . statutory or
17 regulatory provisions, or any other sources of law . . .” (Walters Aff., Ex. 2; see also id.
18 Ex. 9 (same).) Put simply, Plaintiff remains free to arbitrate her claims, including all her
19 statutory claims, and to pursue all the same remedies (including injunctive relief) she
20 would have in court – albeit on an individual basis.
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23 Plaintiff cites no authority whatsoever supporting the conclusion that UTPA
24 claims may not be arbitrated as a matter of expressed Congressional intent. Moreover,
25 her argument that claims for “public” injunctive relief under UTPA are categorically

1 exempt from arbitration as a matter of state law (Opp. at 13-15) is precisely the type of
2 state-law policy judgment the United States Supreme Court has specifically declared is
3 “displaced” by the FAA: “[W]hen state law prohibits outright the arbitration of a
4 particular type of claim, the analysis is *straightforward*: The conflicting rule is *displaced*
5 by the FAA.” AT&T Mobility, 131 S. Ct. at 1747 (italics added). This “straightforward”
6 language leaves no doubt that a court cannot adopt Plaintiff’s strained analysis to
7 invalidate an otherwise enforceable arbitration agreement. As the Supreme Court further
8 stated, “States cannot require a procedure that is inconsistent with the FAA, even if it is
9 desirable for unrelated reasons.” Id. at 1753.
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12 Finally, Plaintiff mistakenly relies on In Re DirecTV Early Cancellation Fee
13 Marketing & Sales Practices Litig., __ F. Supp. 2d __, 2011 WL 4090774 (C.D. Cal.
14 Sept. 6, 2011). There, the court applied California law (albeit erroneously), not South
15 Dakota law. Indeed, in quoting In re DirecTV for the proposition that “arbitration is not
16 the proper form for vindicating a broad public right” (Opp. at 15), Plaintiff conveniently
17 omits the first part of the quotation, which limits the reasoning to situations “when a
18 plaintiff [is] bringing a [California Consumer Legal Remedies Act] claim for injunctive
19 relief [and] is acting as a private attorney general” In re DirecTV, 2011 WL
20 4090774, at *9. Plaintiff does not assert claims under the California Consumer Legal
21 Remedies Act (CLRA), and that decision is of no import here. Moreover, In re DirecTV
22 is an outlier; nearly every court to consider this issue after AT&T Mobility agrees that the
23 “public interest” rationale (i.e., that claims for injunctive relief when pursued as a
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1 “private attorney general” under two specific California statutes – the CLRA and Unfair
2 Competition Law) on which In re DirecTV relies no longer applies.⁶

3 Ultimately, Plaintiff remains free to arbitrate her claims and pursue the same
4 remedies in arbitration that are available to her in court (albeit on an individual basis).
5 Accordingly, the Motion should be granted.
6

7 **3. Plaintiff’s Claims Are Within The Arbitration Agreement’s Broad Scope.**

8 As amply demonstrated in the Motion, where (as here) the arbitration provision at
9 issue is broad, there is a heightened presumption of arbitrability. (Mtn. at 18-19.)

10 Tellingly, Plaintiff does not even address the cases cited in the Motion. “It is well
11 established ‘that where the contract contains an arbitration clause, there is a presumption
12 of arbitrability.’” Comedy Club, Inc. v. Improv West Associates, 514 F.3d 833, 842 (9th
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16 ⁶ See Meyer v. T-Mobile USA, Inc., No. C 10-05858 CRB, 2011 WL 4434810, at *9 (N.D. Cal.
17 Sept. 23, 2011) (holding that “state court application of public policy to prohibit an entire
18 category of claims” and “such a prohibition does not survive [AT&T Mobility].”); Kaltwasser v.
19 AT & T Mobility LLC, __ F. Supp. 2d __, 2011 WL 4381748, at *6-7 (N.D. Cal. Sept. 20, 2011)
20 (holding that rationale for finding that CLRA claims are not arbitrable “even more patently than
21 Discover Bank, appl[ies] public policy contract principles to disfavor and indeed prohibit
22 arbitration of entire categories of claims.”); Nelson v. AT & T Mobility LLC, No. C10-4802
23 TEH, 2011 WL 3651153, *2-4 (N.D. Cal. Aug. 18, 2011) (the FAA preempts state policy
24 arguments that “prohibit[ing] outright the arbitration of a particular type of claim.”); In re
25 Gateway Computer Prods. Litig., No. SACV 10-1563-JST (JEMx), 2011 WL 3099862, at *3
(C.D. Cal. July 21, 2011) (same); In re Apple & AT&T iPad Unlimited Data Plan Litig., No.
C10-2553 RMW, 2011 WL 2886407, at *4 (N.D. Cal. July 19, 2011) (same); Quevedo v.
Macy’s, Inc., __ F. Supp. 2d __, 2011 WL 3135052, at *17 (C.D. Cal. June 16, 2011) (compelling
arbitration of claims under California’s Private Attorney General Act (“PAGA”)); Arellano v. T-
Mobile USA, Inc., No. C10-5663 WHA, 2011 WL 1842712, at *1-2 (N.D. Cal. May 16, 2011)
(same); Zarandi v. Alliance Data Sys. Corp., No. CV 10-8309 DSF (JCGx), 2011 WL 1827228,
at *2 (C.D. Cal. May 9, 2011) (same); but see Brown v. Ralphs Grocery Co., 197 Cal. App. 4th
489, 502 (2011) (applying “public injunction” rationale to claims under PAGA and holding that
PAGA claims are not arbitrable).

1 Cir. 2007) (quoting AT & T Techs., Inc. v. Comm'n Workers of Am., 475 U.S. 643, 650,
2 106 S.Ct. 1415, 89 L. Ed. 2d 648 (1986)). “[A]n order to arbitrate the particular
3 grievance should not be denied unless it may be said with positive assurance that the
4 arbitration clause is not susceptible of an interpretation that covers the asserted dispute.
5 Doubts should be resolved in favor of coverage.” Id.; see also Three Valleys Mun. Water
6 Dist. v. E.F. Hutton & Co., 925 F.2d 1136, 1139 (9th Cir.1991) (“Under the Federal
7 Arbitration Act ... any doubts concerning the scope of arbitrable issues should be resolved
8 in favor of arbitration” (internal quotation marks and citation omitted)). Thus, unless
9 claims are excepted from arbitration, it is presumed that parties intended to arbitrate all
10 disputes between them where there is an agreement to arbitrate.
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13 Here, by its express terms, the Arbitration Agreement extends to “[a]ll Claims
14 relating to your account or a prior related account, or our relationship are subject to
15 arbitration” (Walters Aff., Ex. 2 (under the heading “**What Claims are subject to**
16 **arbitration?**”); see also id. Ex. 9 (same).) Similarly, the Arbitration Agreement
17 expressly covers “Claims made by or against anyone connected with us or you,” as well
18 as “Claims arising in the past, present or future” (Id. (under the heading “**Whose**
19 **Claims are subject to arbitration**” and “**What time frame applies to Claims subject**
20 **to arbitration?**”). The express language of the Arbitration Agreement is clear and
21 unambiguous, and should be enforced. Plaintiff’s claims challenge Citibank’s attempt to
22 collect the outstanding balance owed by Plaintiff on her Account. (Comp., ¶¶8-16.)
23 Plaintiff specifically seeks to undo the judgment obtained by Citibank on the outstanding
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1 balance. (Id., ¶ 26.) Moreover, Plaintiff expressly admits that her claims pertain to “her
2 Card Agreement.” (Opp. at 12.) No claims are excepted from arbitration, and the
3 language chosen by the parties is broadly stated, and encompasses the claims in the
4 Complaint. See Chiron Corp. v. Ortho Diagnostic Systems, Inc., 207 F.3d 1126, 1131
5 (9th Cir. 2000) (emphasis added) (where claim would require Court to conduct an
6 “analysis of the specific provisions of the [a]greement” then the claims arose out of and
7 “related” to agreement; arbitration compelled). Moreover, the Arbitration Agreement
8 expressly provides that it survives termination of the Account or Plaintiff’s relationship
9 with Citibank. (Walters Aff., Ex. 2 (under the heading “Survival and Severability of
10 Terms”); Ex. 9 (same).)

13 Even if the Court were to give any credence to Plaintiff’s skewed interpretation as
14 to the scope of the Arbitration Agreement (i.e., that it does not extend to Plaintiff’s
15 alleged “unfair debt collection” claims), arbitration must still be compelled. For
16 example, in Comedy Club, Inc. v. Improv West Associates, 514 F.3d 833, 842 (9th Cir.
17 2007), the Ninth Circuit evaluated the scope of an arbitration agreement, which it found
18 to be ambiguous with respect to the arbitrability of the claims asserted. The Court
19 nonetheless compelled arbitration reasoning as follows:
20

22 We conclude that the arbitration agreement is ‘capable of
23 two different reasonable interpretations.’ Under the federal
24 presumption in favor of arbitration, because the arbitration
25 agreement is ambiguous, it should be interpreted as granting
arbitration coverage over ‘all disputes’ arising from the
[parties’] Agreement.

1 Id. at 843-44 (citation omitted). The same reasoning applies here, notwithstanding that
2 the Arbitration Agreement is clear and is not ambiguous.⁷

3 Accordingly, given the FAA's presumption in favor of arbitration, the Arbitration
4 Agreement should be enforced.

6 **4. Citibank Did Not Waive Its Right To Compel Arbitration In This Action.**

7 As an initial matter, the instant dispute is governed by federal law under the FAA
8 (and not Alaska law, which Plaintiff erroneously cites) in determining whether a waiver
9 has occurred. See Sovak v. Chugai Pharm. Co., 280 F.3d 1266, 1270 (9th Cir. 2002).
10 Under the FAA, "[a] dispute about a waiver of arbitration may properly be referred to the
11 arbitrator." ATSA of Cal., Inc. v. Continental Ins. Co., 702 F.2d 172, 175 (9th Cir.
12 1983). Accordingly, as an initial matter, any issue regarding waiver must be determined
13 in arbitration. However, even if this Court were authorized to determine the issue of
14 waiver, which it is not, Plaintiff cannot establish any waiver here.
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18 ⁷ Helenese v. Oracle Corp., No. 09-cv-351 (CFD), 2010 WL 670172, at *5-6 (D. Conn. Feb. 19,
19 2010), upon which Plaintiff relies, is unavailing. There, the court denied a motion to compel
20 arbitration because the claims at issue arose after the expiration of a prior employment
21 agreement, which contained the parties' arbitration agreement. The court determined that the
22 employment agreement "by its own terms, had a limited life span and was no longer effective"
23 at the time the claims arose, and the alleged "dispute does not involve facts and occurrences
24 arising" before expiration of the employment agreement. Id. Rather, the alleged grievances
25 arose when plaintiff was employed in a position that was not governed by the prior employment
agreement containing the arbitration provision. Id. Here, not only does the Arbitration
Agreement survive termination of the parties' relationship and the Account, but the alleged
dispute (i.e., claims of improper debt collection) clearly "aris[e] under, vested, or accrued under"
the Arbitration Agreement. Id. Indeed, even Helenese recognizes that the United States
Supreme Court "has articulated a presumption in favor of post-expiration arbitration of matters
and disputes 'arising out of the relation governed by the contract.'" Id. at *2 (citation omitted).

1 Under the FAA, arbitration waivers “are not favored.” Letizia v. Prudential Bache
2 Sec., Inc., 802 F.2d 1185, 1187 (9th Cir. 1986). Pursuant to federal law, to prove that a
3 waiver of arbitration exists, a party opposing arbitration “bears a heavy burden of proof”
4 and must demonstrate all of the following: “(1) knowledge of an existing right to compel
5 arbitration; (2) acts inconsistent with that existing right; and (3) prejudice to the party
6 opposing arbitration resulting from such inconsistent acts.” Id.; accord Sovak, 280 F.3d
7 at 1270. “Any doubts as to waiver are resolved in favor of arbitration.” Creative
8 Telecomm., Inc. v. Breeden, 120 F. Supp. 2d 1225, 1232 (D. Haw. 1999) (“If there is any
9 ambiguity as to the scope of the waiver, the court must resolve the issue in favor of
10 arbitration.”). It is the general rule that, absent a showing a prejudice, a party does not
11 per se waive the right to arbitrate by filing pleadings, including initially filing a lawsuit,
12 in Court. See, e.g., United Computer Sys., Inc. v. AT&T Corp., 298 F.3d 756, 765 (9th
13 Cir. 2002) (holding that party did not waive the right to arbitrate merely by initially filing
14 complaint in state court); ATSA of Cal., Inc., 702 F.2d at 175 (holding that party did not
15 waive right to arbitrate by filing pleadings in response to cross-claims asserted by other
16 party).
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21 Here, Plaintiff cannot demonstrate any prejudice – which is a required element for
22 waiver – arising out of Citibank’s election of arbitration Plaintiff’s claims filed in the
23 instant action. Tellingly, Plaintiff makes no argument whatsoever regarding prejudice,
24 notwithstanding that she “bears a heavy burden” of proving waiver. She does not argue
25 prejudice, because there is no prejudice. Unlike the cases cited by Plaintiff, Citibank is

1 not seeking to arbitrate its own pending collection claims against Plaintiff; indeed,
2 contrary to Plaintiff's suggestion, there is no "still-pending" debt collection case.⁸
3 Rather, until Plaintiff initiated this action – after the underlying collection case was
4 completed – purportedly challenging Citibank's attempts to collect on the Account,
5 Citibank had no knowledge of such claims, however frivolous they may be. The cases
6 cited by Plaintiff are inapposite and easily distinguishable because they pertain to
7 situations either where parties seek arbitration of claims in pending actions (not a
8 separate action, as here) initiated by the party seeking arbitration, or where parties seek to
9 arbitrate the same claims in subsequent actions that the party seeking arbitration has
10 already litigated.⁹ This is not a situation where Plaintiff filed a counter-claim in the
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14 ⁸ Attached hereto as Exhibit A is a copy of the print out of the docket for Case No. 3KN-10-
15 1139-CI reflecting that the case is closed.

16 ⁹ See, e.g., Louis Dreyfus Negoce S.A. v. Blystad Shipping & Trading, Inc., 252 F.3d 218, 229
17 (2d Cir. 2001) (finding no waiver); Leadertex, Inc. v. Morganton Dyeing & Finishing Corp., 67
18 F.3d 20, 26 (2d Cir. 1995) (finding waiver by defendant who delayed until the "eleventh hour,
19 with trial imminent" to seek arbitration in order to take advantage of discovery in federal action,
20 thereby causing prejudice to plaintiff); Otis Hous. Ass'n v. Ha., 201 P.3d 309, 312 (Wash. 2009)
21 (holding that plaintiff, in second action, waived right to arbitrate "by presenting the same issue-
22 whether it had successfully exercised the option to purchase" in prior action and "[h]aving lost
23 that issue, it may not later seek to relitigate the same issue in a different forum."); Nicholas v.
24 KRB, Inc., 565 F.3d 904, 908 (5th Cir. 2009) (finding waiver where plaintiff initiated action,
25 delayed seeking arbitration of her own claim for ten months until after discovery was largely
completed and court ruled that plaintiff's primary state-law claim was preempted); Cabinetree of
Wisconsin v. Kraftmaid Cabinetry, 50 F.3d 388, 390-91 (7th Cir. 1995) (finding defendant
waived right to arbitrate by removing action to federal court and delaying eleven months before
seeking arbitration without any explanation for delay); Worldsource Coil Coating v. McGraw
Constr., Co., 946 F.2d 473, 476-77 (6th Cir. 1991) (finding waiver where plaintiff sought to
arbitrate claims that were denied by state court in previous action by plaintiff); Med. Imaging
Network, Inc. v. Med. Resources, No. 04 MA 220, 2005 WL 1324746, at *6 (Ohio App. June 2,
2005) (applying Ohio state law, not the FAA, in finding waiver where plaintiff waited two years
to assert right to arbitrate "exact issue on which they brought the [previous] federal suit" which

1 pending collection action and several months later after the parties engaged in discovery,
2 for example, Citibank elected arbitration. Here, Plaintiff did not appear in the collection
3 action and simply waited until **after** it was completed to assert her (baseless) claims.
4 Accordingly, there is no prejudice to Plaintiff under the facts, and the Motion should be
5 granted.
6

7 **5. Plaintiff's Cross-Motion For Summary Judgment Must Be Denied.**

8 Plaintiff's Cross-Motion for Summary Judgment must be denied as a matter of fact
9 and law. Importantly, "[w]hen considering a motion to compel arbitration [under the
10 FAA], a court applies a standard similar to the summary judgment standard of Fed. R.
11 Civ. P. 56." Hadlock v. Norwegian Cruise Line, Ltd., No. SACV 10-0187 AG (ANx),
12 2010 WL 1641275, at *1 (C.D. Cal. Apr. 19, 2010) (citation omitted). As pertinent here,
13 Rule 56 of the Alaska Rules of Civil Procedure tracks Fed. R. Civ. Pr. 56 regarding when
14 summary judgment is warranted. Compare Ak. R. Civ. P. 56(c) (summary judgment
15 warranted based on a showing "that there is no genuine issue as to any material fact and
16 that any party is entitled to a judgment as a matter of law") with Fed. R. Civ. P. 56(a)
17 ("The court shall grant summary judgment if the movant shows that there is no genuine
18 dispute as to any material fact and the movant is entitled to judgment as a matter of
19 law.")
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24 was dismissed for lack of venue and jurisdiction); Grumhaus v. Comerica Secs., Inc., 223 F.3d
25 648, 651 (7th Cir. 2000) (finding waiver where plaintiffs delayed one year after filing suit, and
six months after suit was dismissed, to seek to arbitrate claims); Schonfeldt v. Blue Cross of Cal.,
2002 Cal. App. Unpub. LEXIS 5223 (Cal. App. Jan. 2, 2002) (applying California law).

1 Here, Plaintiff has not, because she cannot, meet her burden under Rule 56.
2 Critically, Plaintiff has submitted *no* evidence whatsoever opposing the Motion and, as
3 discussed above and demonstrated in the Walters Affidavit, the validity of the Arbitration
4 Agreement is clear and un rebutted. Plaintiff's complete lack of evidence opposing the
5 making of the Arbitration Agreement is critical because "it is not sufficient for the party
6 opposing arbitration to utter general denials of the facts on which the right to arbitration
7 depends." Grabowski v. Robinson, No. 10cv1658-WQH-MDD, 2011 WL 4353998, at
8 *6 (S.D. Cal. Sept. 19, 2011) (citation omitted). Rather, to create a genuine issue of fact,
9 "the party opposing [arbitration] may not rest on a denial but must submit evidentiary
10 facts showing that there is a dispute of fact to be tried." Oppenheimer & Co., Inc. v.
11 Neidhardt, 56 F.3d 352, 358 (2d Cir. 1995) (citations omitted); Bhatia v. Johnston, 818
12 F.2d 418, 421-22 (5th Cir. 1987) (stating that self-serving affidavits do not amount to the
13 type of evidence required to call the "making of the arbitration" agreement into question).
14 Further, and critically, the "mere denial of receipt of [an arbitration change-in-terms
15 notice] is insufficient to create a genuine issue of material fact to defeat summary
16 judgment." Daniel v. Chase Bank USA, N.A., 650 F. Supp. 2d 1275, 1290, 1289 (N.D.
17 Ga. 2009) (enforcing arbitration change-in-terms notice where defendant submitted
18 undisputed evidence that notices were mailed, plaintiff continued to use the account and
19 plaintiff "presented no evidence to contradict defendant's proof" but merely denied
20 receiving the notice).¹⁰

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¹⁰ See also Tinder v. Pinkerton Security, 305 F.3d 728, 735-36 (7th Cir. 2002) (holding

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1 Here, Plaintiff does not claim she did not receive the Arbitration Agreement. Her
2 silence in the face of Citibank's evidence effectively kills any attempt to argue that there
3 is genuine issue of fact regarding the making of the Arbitration Agreement that could
4 entitle her to summary judgment. As a matter of law and fact, Plaintiff cannot overcome
5 the showing made by Citibank by remaining silent. See, e.g., Tuers v. Chase Manhattan
6 Bank USA, No. 07-6120-TC, 2008 WL 5045946, at *2-3 (D.Or. Nov. 24, 2008) (finding
7 that declaration confirming that Chase's records showed that change-in-terms notice was
8 mailed and Chase did not receive either returned mail or an opt out was evidence of
9 proper mailing); Battels v. Sears Nat. Bank, 365 F. Supp. 2d 1205, 1213-14 (M.D. Ala.
10 2005) (court could presume the agreements were received based on defendant's
11 declaration "indicat[ing] that the cardmember agreements and change-of-term notices
12 were mailed . . . to the same address to which Plaintiffs' billing statements were sent, and
13 Plaintiffs' have made payments in response to the billing statements, thereby indicating
14 that the mail reached the intended recipients").

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18 In addition, to the extent Plaintiff argues that she is entitled to partial summary
19 judgment for the same reasons that the Motion should be denied, Plaintiff's request must

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21 summary judgment not overcome where plaintiff's only evidence was affidavit denying receipt
22 of change-in-terms notice); Walters v. Chase Manhattan Bank, No. CV-07-0037-FVS, 2008 WL
23 3200739, at *3 (E.D. Wash. Aug. 6, 2008) (holding that "self-serving declaration" denying
24 receipt of arbitration change-in-terms notice was insufficient to defeat summary judgment);
25 Sanders v. Comcast Cable Holdings, LLC, No. 3:07-cv-918-J33HTS, 2008 WL 150479, at *6
(M.D. Fla. Jan. 14, 2008) (holding that plaintiffs' affidavits denying receipt of arbitration notices
failed to create genuine issue of fact where notices were mailed in same envelope as account
bills, which were paid); Marsh v. First USA Bank, N.A., 103 F. Supp. 2d 909, 919 (N.D. Tex.
2000) (holding that it is "incumbent upon Plaintiffs to negate the presumption of receipt" and
affidavits "in which they simply deny receipt . . . are insufficient").

1 be denied for the reasons discussed above and in the Motion – the Arbitration Agreement
2 is valid and enforceable under South Dakota, as well as under the United States Supreme
3 Court’s controlling and dispositive decision in AT&T Mobility. Accordingly, the Motion
4 should be granted and Plaintiff’s Cross-Motion for Summary Judgment denied.
5

6 **III. CONCLUSION**

7 For all of the foregoing reasons, and the reasons in the Motion, Citibank
8 respectfully requests that the Court grant the Motion and compel arbitration of Plaintiff’s
9 claims in accordance with the express terms of the valid and enforceable Arbitration
10 Agreement governing Plaintiff’s Account. In addition, this action should be stayed
11 pending completion of arbitration proceedings.
12

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

15 Dated: 10/18/11

16 By: 

17 Jon S. Dawson
18 Alaska Bar No. 8406022

19 Certificate of Service

20 On the 18 day of October, 2011, a
21 true and correct copy of the foregoing
22 document was sent by courier to the
23 following parties:

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

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

By: Karina Chambers
Karina Chambers

FILED
STATE OF ALASKA
IN THE SUPERIOR COURT FOR THE STATE OF ALASKA DISTRICT

THIRD JUDICIAL DISTRICT AT ANCHORAGE NOV 21 PM 1:25

CLERK TRIAL COURTS

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.)

BY: _____
DEPUTY CLERK

Case No. 3AN-11-9196CI

**CONSOLIDATED REPLY MEMORANDUM IN SUPPORT OF
PLAINTIFF'S CROSS-MOTION FOR PARTIAL SUMMARY JUDGMENT**

Plaintiff Janet Hudson files this Consolidated Reply Memorandum in response to defendants' opposition briefs¹ and in support of her cross-motion for partial summary judgment.

I. PRELIMINARY STATEMENT

Defendants are asking this Court to commit legal error. For starters, this Court is duty-bound to follow *Gibson v. Nye Frontier Ford, Inc.*² This is true even if

¹ Both defendants filed briefs in opposition to plaintiff's cross-motion for summary judgment. ALO's brief, aside from arguing that it, too, is covered by the arbitration provision, mostly parrots Citi's brief. Thus, most of the argument below identifies and responds to the arguments raised in Citi's brief.

² 205 P.3d 1091 (Alaska 2009).

A

Northern Justice Project

A Private Civil Rights Firm
310 K Street, Suite 200
Anchorage, AK 99501

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

defendants do not like *Gibson* and even if defendants bury their discussion of this case in the middle of their briefs. As set forth below, *Gibson* is on point and holds that adhesion contracts that allow for unilateral changes are unenforceable (or at least the part that was unilaterally changed). Here, defendants' unilaterally changed their adhesion contract with plaintiff to add an arbitration agreement. Until and unless *Gibson* is overruled by the Alaska or United States Supreme Court, *Gibson* controls this Court's decision.

Second, defendants are engaging in Alice-in-Wonderland legal sophistry in their discussion of whether plaintiff can try her private attorney general UTPA claim in the arbitral forum. On-point case law from the Alaska Supreme Court holds that any arbitration clause that bars a party from pursuing her statutory rights in the arbitral forum is unenforceable. Plaintiff's private attorney general UTPA claim is *the* gravamen of her lawsuit; by it plaintiff seeks broad and fundamental injunctive relief on behalf of the public at large.³ But by its plain language, defendants' arbitration agreement expressly bars plaintiff from pursuing this broad and fundamental

³ See, e.g., First Amended Class Action Complaint at ¶¶15, 25-26. See also, *Hockley v. Hargitt* 510 P.2d 1123 (Wash. 1973); *In re Tobacco II Cases*, 207 P.3d 20, 30 (Cal. 2009) (“[R]epresentative [private attorney general] actions serve important roles in the enforcement of consumers’ rights. [They] make it economically feasible to sue when individual claims are too small to justify the expense of litigation, and thereby encourage attorneys to undertake private enforcement actions. Through the [private attorney general statute] a plaintiff may obtain restitution and/or injunctive relief against unfair or unlawful practices in order to protect the public and restore to the parties in interest money or property taken by means of unfair competition. These actions supplement the efforts of law enforcement and regulatory agencies. This court has repeatedly recognized the importance of these private enforcement efforts.”).

Northern Justice Project

A Private Civil Rights Firm
310 K Street, Suite 200
Anchorage, AK 99501

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

injunctive claim in the arbitral forum.⁴ Although defendants now tell this Court that the plaintiff *can*, in fact, freely litigate her UTPA claims in the arbitral forum,⁵ the actual arbitration agreement flatly contradicts defendants' assertions.⁶

Third, defendants have the issue of waiver wrong. One party cannot sue another party over a contract, litigate the case until judgment and then, when that party responds with a counterclaim or new, independent lawsuit, suddenly insist that all of the parties' disputes must be arbitrated. Caselaw and the actual language of defendants' arbitration agreement reveal the fallacy of defendants' argument.

⁴ See Citi's Affidavit of Cathleen A. Walters ("Walters Affidavit") at Exhibit 2, p.2 ("[R]emedies sought as ... private attorney general or other representative action are subject to arbitration on an individual (non-class, non-representative) basis").

⁵ See, e.g., Consolidated Reply in Support of Motion to Compel Arbitration and to Stay Action and Opposition to Plaintiff's Cross-Motion for Partial Summary Judgment ("Citi Reply") at p.12, lines 11- 12 ("The Arbitration Agreement Does Not Limit The Types Of Claims Or Remedies Plaintiff May Pursue In Arbitration ...").

⁶ For example, and as discussed in detail below at pages 16 - 18, defendants' arbitration agreement explicitly states that a consumer "cannot pursue the Claim in arbitration ... as a private attorney general." See Walters Affidavit at Exhibit 2. See also *Hockley v. Hargitt* 510 P.2d 1123 (Wash. 1973); *In re Tobacco II Cases*, 207 P.3d 20, 30 (Cal. 2009) ("representative [private attorney general] actions serve important roles in the enforcement of consumers' rights. [They] make it economically feasible to sue when individual claims are too small to justify the expense of litigation, and thereby encourage attorneys to undertake private enforcement actions. Through the [private attorney general statute] a plaintiff may obtain restitution and/or injunctive relief against unfair or unlawful practices in order to protect the public and restore to the parties in interest money or property taken by means of unfair competition. These actions supplement the efforts of law enforcement and regulatory agencies. This court has repeatedly recognized the importance of these private enforcement efforts.").