



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 Case No. S-14740  
Trial Court No. 3AN-11-09196 CI

*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, )

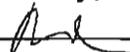
Respondents. )

Supreme Court Case No. S-14826  
Trial Court No. 3AN-11-12054 CI

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

**RESPONDENTS' EXCERPTS OF RECORD  
VOLUME 1 OF 2**

Filed in the Supreme Court of the  
State of Alaska, this 19<sup>th</sup> day of  
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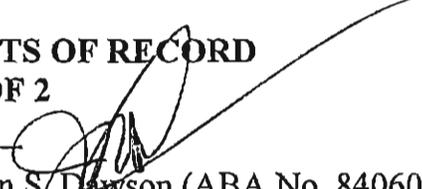
  
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IN THE DISTRICT COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT ANCHORAGE

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

Case No. 3AN-11-09196 CI

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

Defendant Citibank, N.A.<sup>1</sup> ("Citibank"), through its undersigned attorneys, hereby  
submits this Memorandum in support of its Motion to Compel Arbitration and to Stay  
Action.

**I. INTRODUCTION**

This Motion is made pursuant to the binding arbitration agreement (the  
"Arbitration Agreement") contained in the credit card agreement (the "Card Agreement")  
governing Plaintiff Janet Hudson's Citibank credit card account (the "Account"). As

<sup>1</sup> Effective July 1, 2011, Citibank (South Dakota), N.A. merged into Citibank, N.A.

Davis Wright Tremaine LLP  
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Suite 800 · 701 West 8<sup>th</sup> Avenue  
Anchorage, Alaska 99501

1 amply demonstrated below, the parties' Arbitration Agreement is a valid and enforceable  
2 agreement to arbitrate under both the Federal Arbitration Act, 9 U.S.C. §§ 1, et. seq.(the  
3 "FAA") and South Dakota law (which applies here pursuant to a choice-of-law provision  
4 in the Card Agreement) and completely encompasses Plaintiff's claims. The Arbitration  
5 Agreement expressly requires that Plaintiff's claims be arbitrated on an individual basis,  
6 and Plaintiff's claims are within the Arbitration Agreement's broad scope. Accordingly,  
7 the Motion should be granted and Plaintiff compelled to arbitration on an individual, non-  
8 class basis.  
9

10 On April 27, 2011, the United States Supreme Court issued its long-anticipated  
11 opinion in AT&T Mobility LLC v. Concepcion, \_\_ U.S. \_\_, 131 S. Ct. 1740, 1748, 179  
12 L. Ed. 2d 742 (Apr. 27, 2011), confirming a consistent line of Supreme Court authority  
13 holding that arbitration agreements governed by the FAA, like the Arbitration Agreement  
14 here, must be enforced according to their terms. AT&T Mobility establishes clear  
15 precedent that even arbitration agreements requiring arbitration on an individual, non-  
16 class basis must be enforced as written because the FAA prohibits states from  
17 "conditioning the enforceability of certain arbitration agreements on the availability of  
18 classwide arbitration procedures." AT&T Mobility, 131 S. Ct. at 1744. Indeed, the  
19 Central District of California recently granted motions to compel arbitration based on the  
20 very same Citibank Arbitration Agreement presented in this case. See Conroy v.  
21 Citibank, N.A., No. 10-CV-04930-SVW-AJW, slip op. at 5-6 (Jul. 22, 2011) ("Conroy")  
22  
23  
24

25 MEMORANDUM IN SUPPORT OF MOTION TO COMPEL ARBITRATION AND TO STAY ACTION  
*Hudson v. Citibank (South Dakota) NA, Case No. 3AN-11-09196 CI*  
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1 (Request for Judicial Notice (“RJN”), Ex. 1) (finding that under AT&T Mobility  
2 Citibank’s Arbitration Agreement must be enforced as written pursuant to the FAA);  
3 Yaqub v. Experian Information Solutions, Inc., et al., No. CV11-2190-VBF (FFMx), slip  
4 op. at 5-6 (C.D. Cal. Jun. 10, 2011) (Baker Fairbank, J.) (RJN Ex. 2) (enforcing  
5 Citibank’s Arbitration Agreement pursuant to the FAA). The result should be no  
6 different here. Accordingly, pursuant to the express terms of the binding Arbitration  
7 Agreement and settled authority, Citibank respectfully requests that the Court grant the  
8 Motion and compel Plaintiff to arbitrate her claims and stay this case pending conclusion  
9 of the arbitration.  
10

## 11 II. FACTUAL BACKGROUND

### 12 A. The Parties

13 Citibank, a national bank located in South Dakota, is the issuer of Plaintiff’s  
14 Account. (Affidavit of Cathleen A. Walters (“Walters Aff.”), ¶ 4.) Plaintiff allegedly is a  
15 resident of Kenai, Alaska. (First Amended Class Action Complaint (“Compl.”), ¶ 4.)  
16

### 17 B. Plaintiff’s Account, The Card Agreement And The Binding Arbitration 18 Agreement

19 Plaintiff’s Account is subject to written terms and conditions contained in the Card  
20 Agreement, as amended from time to time. (Walters Decl., ¶ 4; Ex. 1.) The Card  
21 Agreement provides that “[f]ederal law and the law of South Dakota, where we are  
22  
23  
24

located, govern the terms and enforcement of this Agreement.” (Id. Ex. 1 (p. 9).)<sup>2</sup> In addition, the Card Agreement expressly authorizes Citibank to change the terms of the Agreement, which changes are binding on the cardmembers. (Id. Ex. 1 (p. 8).)

As thoroughly detailed in the Walters Affidavit, in October 2001, Citibank mailed to cardmembers, including Plaintiff, a “Notice of Change in Terms Regarding Binding Arbitration to Your Citibank Card Agreement” (the “Arbitration Change-in-Terms”) with Plaintiff’s October 2001 periodic statement for the Account. (Id. ¶¶, Exs. 3-4.) The Arbitration Change-in-Terms added the Arbitration Agreement to the Card Agreement. (Id.) The Arbitration Agreement provides that either party can elect mandatory binding arbitration as follows:

#### 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***

---

<sup>2</sup> Cites to page numbers for Exhibits refer to the page number of the document being referenced – e.g., page 9 of the Card Agreement.

1 • **What Claims are subject to arbitration?** All Claims relating to your  
2 account, a prior related account, or our relationship are subject to  
3 arbitration, including Claims regarding the application, enforceability, or  
4 interpretation of this Agreement and this arbitration provision. All Claims  
5 are subject to arbitration, no matter what legal theory they are based on or  
6 what remedy (damages, or injunctive or declaratory relief) they seek. This  
7 includes Claims based on contract, tort (including intentional tort), fraud,  
8 agency, your or our negligence, statutory or regulatory provisions, or any  
9 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  
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.

10 • **Whose Claims are subject to arbitration?** Not only ours and yours,  
11 but also Claims made by or against anyone connected with us or you or  
12 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.

13 \* \* \*

14 • **Broadest Interpretation.** Any questions about whether Claims are  
15 subject to arbitration shall be resolved by interpreting this arbitration  
16 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").

17 \* \* \*

18 • **Who can be a party?** Claims must be brought in the name of an  
19 individual party or entity and must proceed on an individual (non-class,  
20 non-representative) basis. The arbitrator will not award relief for or against  
21 anyone who is not a party. If you or we require arbitration of a Claim,  
22 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. . . .

23 (Id., Ex. 2 (bolding in original, underlining added).)

1 As noted, and critically here, the Arbitration Agreement includes specific language  
2 (underlined above) that requires that any arbitration may resolve only individual claims.  
3 The Arbitration Agreement also includes terms: (i) excluding small claims court actions;  
4 (ii) allowing for the parties to choose between nationally recognized arbitration firms,  
5 including the American Arbitration Association; and (iii) allowing for the reimbursement  
6 and/or advancement of arbitration fees. (Id.)

7 When Citibank mailed the Arbitration Change-in-Terms, Citibank alerted Plaintiff  
8 to the Arbitration Agreement by including the following special message (in all capital  
9 letters) on Plaintiff's October 2001 billing statement for the Account:  
10

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

15 (Id., ¶ 6, Ex. 3.) Citibank followed up that message with another special message (again  
16 in all caps) printed on Plaintiff's November 2001 billing statement, again alerting her to  
17 the Arbitration Change-in-Terms:

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

24 (Id., ¶ 7, Ex. 5.) The Arbitration Change-in-Terms provided that the Arbitration  
25 Agreement would become effective on the day after the Statement/Closing date indicated

1 on Plaintiff's November 2001 billing statement. (Id., ¶ 11, Ex. 2.) The  
2 Statement/Closing date was November 28, 2001. (Id., ¶ 11, Ex. 5.) Thus, the Arbitration  
3 Agreement became effective on November 20, 2001. (Id.)

4           Importantly, the Arbitration Change-in-Terms gave Plaintiff – like all other  
5 recipients of the Arbitration Change-in-Terms – the opportunity to opt out of the  
6 Arbitration Agreement:

7           If you do not wish to accept the binding arbitration provision  
8 contained in this change in terms notice, you must notify us in  
9 writing within 26 days after the Statement/Closing date  
10 indicated on your November 2001 billing statement stating  
11 your non acceptance.... If you notify us by that time that you  
12 do not accept the binding arbitration provisions contained in  
13 this change in terms notice, you can continue to use your  
14 card(s) under your existing terms until the end of your current  
15 membership year or the expiration date on your card(s),  
16 whichever is later. At that time your account will be closed  
17 and you will be able to pay off your remaining balance under  
18 your existing terms.

19 (Id. ¶ 9, Ex. 2.) Plaintiff did not opt out of the Arbitration Agreement. (Id. ¶¶ 9-10, Ex.  
20 6.) Instead, Plaintiff continued to use her Account after the Arbitration Change-in-Terms  
21 became effective. (Id. ¶ 11.) In February 2005, Citibank mailed another change-in-terms  
22 notice, which further advised Plaintiff of additional amendments to the Arbitration  
23 Agreement, including the removal of one of the arbitration firms and revising the  
24 severability clause. (Id. ¶ 12, Ex. 7.) Plaintiff also had the opportunity to opt out of these  
25 changes, but did not do so. (Id., ¶ 12.) Instead, Plaintiff continued using the Account.

(Id.)

1 Finally, in June 2005, Citibank mailed Plaintiff a complete copy of the Card  
2 Agreement, which included the Arbitration Agreement. (Id., ¶ 13, Ex. 9.) The Card  
3 Agreement states: “This Agreement is binding on you unless you cancel your account  
4 within 30 days after receiving the card and you have not used or authorized use of your  
5 account.” (Id. Ex. 9 (at p. 1).) After receiving the complete Card Agreement, Plaintiff  
6 used the Account. (Id., ¶ 13, Ex. 10.)

### 7 C. The Complaint

8  
9 In the First Amended Class Action Complaint, Plaintiff alleges that “defendants”  
10 (i.e., Citibank, the Alaska Law Offices, Inc. and Clayton Walker) filed an action in Kenai  
11 District Court, State of Alaska, to recover \$24,170.20 Plaintiff allegedly owed Citibank  
12 on “an alleged credit card debt” (i.e., the Account). (Compl., ¶ 8.) Plaintiff did not  
13 respond to the action and “defendants” moved to enter her default. (Id., ¶ 9.) Plaintiff  
14 alleges that, in connection with the default, “defendants” sought, and were awarded,  
15 \$2,417.02 in attorneys’ fees. (Id., ¶¶ 9-11.) Plaintiff contends that “defendants”  
16 allegedly violated Alaska law by seeking such amount. (Id., ¶¶ 12-16.) Based on the  
17 foregoing, Plaintiff asserts claims for violation of Alaska’s Unfair Trade Practices and  
18 Consumer Protection Act (“UTPA”), AS 45.50.471, et seq., and for declaratory and  
19 injunctive relief. (Id., ¶¶ 21-26.) Plaintiff brings her claims on her own behalf and  
20 purportedly on behalf of a putative nationwide class of similarly situated persons. (Id., ¶¶  
21 17-18.) Plaintiff seeks certification of her proposed class, declaratory and injunctive  
22  
23  
24

1 relief, judgment awarding her and the putative class three times their actual damages  
2 and/or statutory damages, and an award of attorneys' fees and costs. (Id., Prayer for  
3 Relief, p.7.)

### 4 III. ARGUMENT

#### 5 A. Plaintiff's Claims Are Subject To Binding Arbitration Pursuant To The 6 Arbitration Agreement Governing The Account And Settled Authority.

##### 7 1. Under The FAA, This Court Must Compel Arbitration Pursuant To 8 The Express Terms Of The Arbitration Agreement.

9 Section 2 of the FAA mandates that binding arbitration agreements in contracts  
10 "evidencing a transaction involving [interstate] commerce . . . shall be valid, irrevocable,  
11 and enforceable, save upon such grounds as exist at law or in equity for the revocation of  
12 any contract." 9 U.S.C. § 2; see Buckeye Check Cashing, Inc. v. Cardegna, 546 U.S.  
13 440, 443, 126 S. Ct. 1204, 1207, 163 L. Ed. 2d 1038 (2006) ("Section 2 [of the FAA]  
14 embodies the national policy favoring arbitration and places arbitration agreements on  
15 equal footing with all other contracts."). The United States Supreme Court has made  
16 clear that the FAA is extremely broad and applies to any transaction directly or indirectly  
17 affecting interstate commerce. See, e.g., Allied-Bruce Terminix Cos. v. Dobson, 513  
18 U.S. 265, 277, 115 S. Ct. 834, 130 L. Ed. 2d 753 (1995); Prima Paint Corp. v. Flood &  
19 Conklin Mfg. Co., 388 U.S. 395, 401, 87 S. Ct. 1801, 18 L. Ed. 2d 1270 (1967).<sup>3</sup>

22  
23 <sup>3</sup> There is no question that the FAA applies to this dispute. Plaintiff, a resident of Alaska (see  
24 Compl., ¶ 4), alleges claims against Citibank, a national bank with its principal place of business  
in South Dakota. (Walters Decl., ¶ 1.) Indeed, the Arbitration Agreement explicitly states that

1 The FAA promotes a “liberal federal policy favoring arbitration agreements,” and  
2 “questions of arbitrability must be addressed with a healthy regard for the federal policy  
3 favoring arbitration.” Moses H. Cone Mem’l Hosp. v. Mercury Constr. Corp., 460 U.S.  
4 1, 24, 103 S. Ct. 927, 74 L. Ed. 2d 765 (1983); see also Perry v. Thomas, 482 U.S. 483,  
5 490-91, 107 S. Ct. 2520, 96 L. Ed. 2d 426 (1987) (stating that arbitration agreements  
6 falling within the scope of the FAA “must be ‘rigorously enforce[d]’” (citations  
7 omitted)). “[A]ny doubts concerning the scope of arbitrable issues should be resolved in  
8 favor of arbitration.” Moses H. Cone Mem’l Hosp., 460 U.S. at 24-25; see also Perry,  
9 482 U.S. at 490 (stating that arbitration agreements falling within the scope of the FAA  
10 “must be ‘rigorously enforce[d]’”) (citations omitted). Indeed, as recently confirmed by  
11 the Supreme Court, the “‘principal purpose’ of the FAA is to ‘ensur[e] that private  
12 arbitration agreements are enforced according to their terms.’” AT&T Mobility, 131 S.  
13 Ct. at 1748; accord Stolt-Nielsen S.A. v. AnimalFeeds Int’l Corp., 130 S. Ct. 1758, 1773,  
14 176 L. Ed. 2d 605 (April 27, 2010); Volt Info. Scis., Inc. v. Bd. of Trs. of Leland  
15 Stanford Junior Univ., 489 U.S. 468, 479, 109 S. Ct. 1248, 103 L. Ed. 2d 488 (1989);  
16 Mastrobuono v. Shearson Lehman Hutton, Inc., 514 U.S. 52, 53-54, 115 S. Ct. 1212, 131  
17 L. Ed. 2d 76 (1995).

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“[t]his arbitration provision is governed by the [FAA].” (See id., Ex. 2 (under the heading  
“Broadest Interpretation”); see also Ex. 9 (same).)

MEMORANDUM IN SUPPORT OF MOTION TO COMPEL ARBITRATION AND TO STAY ACTION  
*Hudson v. Citibank (South Dakota) NA, Case No. 3AN-11-09196 CI*  
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1 Quite simply, the “overarching purpose of the FAA, evident in the text of §§ 2, 3  
2 and 4, is to ensure the enforcement of arbitration agreements according to their terms so  
3 as to facilitate streamlined proceedings.” AT&T Mobility, 131 S. Ct. at 1748. By  
4 consenting to bilateral arbitration, the “parties forgo the procedural rigor and appellate  
5 review of the courts in order to realize the benefits of private dispute resolution: lower  
6 costs, greater efficiency and speed, and the ability to choose expert adjudicators to  
7 resolve specialized disputes.” Stolt-Nielsen, 130 S. Ct. at 1775 (citations omitted).

8  
9 “Underscoring the consensual nature of private dispute resolution . . . parties are  
10 ‘generally free to structure their arbitration agreements as they see fit.’” Stolt-Nielsen,  
11 130 S. Ct. at 1774 (citations omitted). Thus, “parties may agree to limit the issues subject  
12 to arbitration, to arbitrate according to specific rules, and to limit *with whom* a party will  
13 arbitrate its disputes.” AT&T Mobility, 131 S. Ct. at 1748-49 (emphasis added)  
14 (citations omitted). Indeed, the “point of affording parties discretion in designing  
15 arbitration processes is to allow for efficient, streamlined procedures tailored to the type  
16 of dispute . . . . And the informality of arbitral proceedings is itself desirable, reducing  
17 the cost and increasing the speed of dispute resolution.” Id. at 1749. Ultimately, “[i]t  
18 falls to courts and arbitrators to give effect to these contractual limitations, and when  
19 doing so, courts and arbitrators must not lose sight of the purpose of the exercise: to give  
20 effect to the intent of the parties.” Stolt-Nielsen, 130 S. Ct. at 1774-75; EEOC v. Waffle  
21 House, Inc., 534 U.S. 279, 289, 122 S. Ct. 754, 151 L. Ed. 2d 755 (2002).

1 Under the FAA, as consistently interpreted by the Supreme Court, arbitration must  
2 be compelled where, as here: (1) a valid, enforceable agreement to arbitrate exists; and  
3 (2) the claims at issue fall within the scope of that agreement. See Chiron Corp. v. Ortho  
4 Diagnostic Sys., Inc., 207 F.3d 1126, 1130 (9th Cir. 2000). An arbitration agreement  
5 governed by the FAA, like the Arbitration Agreement here, is presumed to be valid and  
6 enforceable.<sup>4</sup> It is well settled that the party resisting arbitration bears the burden of  
7 showing that the arbitration agreement is invalid or does not encompass the claims at  
8 issue. Green Tree Fin. Corp.-Ala. v. Randolph, 531 U.S. 79, 92, 121 S. Ct. 513, 148 L.  
9 Ed. 2d 373 (2000).

11 Recognizing these principles, numerous courts have enforced similar consumer  
12 arbitration agreements, including the same Citibank Card Agreement at issue here.<sup>5</sup> See,  
13 e.g., Conroy, No. 10-CV-04930-SVW-AJW, slip op. at 5-6 (enforcing Citibank's

15 <sup>4</sup> The FAA preempts any state law impediments to enforcing arbitration agreements according to  
16 their terms, even under the guise of generally applicable contract principles. See AT&T  
17 Mobility, 131 S. Ct. at 1752-53 (states may not superimpose judicial procedures on arbitration);  
18 id. at 1751 n.7, 1747 ("When state law prohibits outright the arbitration of a particular type of  
19 claim, the analysis is straightforward: The conflicting rule is displaced by the FAA.") (citing  
20 Preston v. Ferrer, 552 U.S. 346, 353, 128 S. Ct. 978, 169 L. Ed. 2d 917 (2008)); Stolt-Nielsen,  
21 130 S. Ct. at 1774 ("[P]arties are 'generally free to structure their arbitration agreements as they  
22 see fit.'"); see also Southland Corp. v. Keating, 465 U.S. 1, 16, 104 S. Ct. 852, 79 L. Ed. 2d 1  
23 (1984) (striking down California law that sought to insulate certain issues from arbitration).  
24 <sup>5</sup> See Cruz v. Cingular Wireless, LLC, \_\_\_ F. 3d \_\_\_, No. 08-16080, 2011 WL 3505016, at \*4-10  
(11th Cir. Aug. 11, 2011); Gay v. CreditInform, 511 F.3d 369, 383 (3d Cir. 2007); Johnson v.  
West Suburban Bank, 225 F.3d 366, 377-79 (3d Cir. 2000); Adkins v. Labor Ready, Inc., 303  
F.3d 496, 503 (4th Cir. 2002); Snowden v. CheckPoint Check Cashing, 290 F.3d 631, 638-39  
(4th Cir. 2002); In re Cotton Yarn Antitrust Litig., 505 F.3d 274, 284 n.6 (4th Cir. 2007); Carter  
v. Countrywide Credit Indus., Inc., 362 F.3d 294, 298 (5th Cir. 2004); Iberia Credit Bureau, Inc.  
v. Cingular Wireless LLC, 379 F.3d 159, 174-75 (5th Cir. 2004); Caudle v. Am. Arbitration  
Ass'n, 230 F.3d 920, 921 (7th Cir. 2000); Pleasants v. Am. Express Co., 541 F.3d 853, 858-59  
(8th Cir. 2008).

1 Arbitration Agreement) (RJN Ex. 1); Yaqub, No. CV11-2190-VBF (FFMx), slip op. at 5-  
2 6) (same); Hershler v. Citibank (South Dakota), N.A., No. 2:08-cv-06363-R-JWJ, slip  
3 op. at 3-8 (C.D. Cal. Dec. 19, 2008) (RJN Ex. 3) (same); Lowman v. Citibank (South  
4 Dakota), N.A., No. CV-05-8097 RGK, 2006 WL 6108680, at \*3-4 (C.D. Cal. Mar. 24,  
5 2006); Egerton v. Citibank, N.A., No. CV-036907DSF (PLAx), 2004 WL 1057739, at \*2  
6 (C.D. Cal. Feb. 18, 2004); Taylor v. Citibank USA, N.A., 292 F. Supp. 2d 1333 (M.D.  
7 Ala. 2003); Citibank USA v. Howard, No. 4:02CV64LN, slip. op. at 7, 2002 WL  
8 34573997 (S.D. Miss. Aug. 30, 2002); Ingram v. Citicorp Credit Servs., Inc. (USA), No.  
9 05-2095 B/An, slip op., 2005 WL 6518077 (W.D. Tenn. July 11, 2005), mag. recomm.  
10 adopted at 2005 WL 6518076 (W.D. Tenn. Aug. 25, 2005); Sesto v. Nat'l Fin. Sys., Inc.,  
11 Case No. 04 C 7768, 2005 WL 6519430 (N.D. Ill. Apr. 25, 2005); Barker v. Citibank  
12 (South Dakota), N.A., No. A:03CA-130JN, slip. op., 2003 WL 25943008 (W.D. Tex.  
13 May 30, 2003); Dumanis v. Citibank (South Dakota), N.A., No. 6:07-cv-6070 (CJS),  
14 2007 WL 3253975, at \*3 (W.D.N.Y. Nov. 2, 2007); Eaves-Leonos v. Assurant, Inc.,  
15 3:07-CV-18-S, 2008 WL 80173, at \*6-7 (W.D. Ky. Jan. 8, 2008).

2. The Arbitration Agreement Also Is Valid And Enforceable Under South Dakota Law.

As stated above, Plaintiff's Card Agreement, which contains the Arbitration Agreement, is expressly governed by South Dakota law.<sup>6</sup> (Walters Decl., Exs. 1, 2, 9.) While the FAA exclusively governs the enforceability of the Arbitration Agreement according to its terms, South Dakota law governs the determination of whether a valid agreement to arbitrate exists. See See Yaqub, No. CV11-2190-VBF (FFMx), slip. op. at 3-4 (holding that South Dakota law applied to Arbitration Agreement pursuant to choice of law provision in Card Agreement); Gay, 511 F.3d at 389 (citing numerous cases applying choice-of-law provisions to determine applicable law in evaluating enforceability of arbitration agreements); Dinsmore v. Piper Jaffray, Inc., 593 N.W.2d 41, 44 (S.D. 1999) (noting that, "the question of whether the parties entered into a valid agreement to arbitrate is a question for the court to determine applying state contract law principles"); accord First Options of Chicago, Inc. v. Kaplan, 514 U.S. 938, 944, 115 S. Ct. 1920, 131 L. Ed. 2d 985 (1995) ("When deciding whether the parties agreed to

<sup>6</sup> Alaska state courts apply Section 187(2) of the Restatement (Second) of Conflict of Laws to evaluate contractual choice of law provisions. See Peterson v. Ek, 93 P.3d 458, 465 n.11 (Alaska 2004) ("A choice of law clause in a contract will generally be given effect unless (1) the chosen state has no substantial relationship with the transaction or there is no other reasonable basis for the parties' choice, or (2) the application of the law of the chosen state would be contrary to a fundamental public policy of a state that has a materially greater interest in the issue and would otherwise provide the governing law.") (citing Restatement (Second) Of Conflict Of Laws § 187 (1971)). Here, the South Dakota choice-of-law provision is enforceable because: (i) South Dakota has a substantial relationship to the parties and the transaction (i.e., Citibank is located in South Dakota); and (ii) South Dakota law is not contrary to any fundamental public policy of Alaska. See Yaqub, No. CV11-2190-VBF (FFMx), slip. op. at 3-4 ("The South Dakota choice-of-law provision is enforceable . . ."); see also Hershler, No. 2:08-cv-06363-R-JWJ, slip. op. at 5-8 (applying Nedlloyd test to uphold South Dakota choice-of-law provision).

1 arbitrate a certain matter (including arbitrability), courts generally . . . should apply  
2 ordinary state-law principles that govern the formation of contracts.”).

3 At the time that Plaintiff was mailed the Arbitration Change-in-Terms, South  
4 Dakota law expressly allowed Citibank to change the terms of a credit card agreement by  
5 sending out a change-in-terms notice to the cardmember, as follows:

6 Upon written notice, a credit card issuer may change  
7 the terms of any credit card agreement, if such right of  
8 amendment has been reserved, including finance charges, fees  
9 and other costs, effective as to existing balances, so long as  
10 the card holder does not, within twenty-five days of the  
11 effective date of the change, furnish written notice to the  
12 issuer that he does not agree to abide by such changes. Upon  
13 receipt of such written notice by the issuer, the card holder  
14 shall have the remainder of the time under the existing terms  
15 in which to pay all sums owed to the issuer or creditor. Use  
16 of the card after the effective date of the change of terms,  
17 including a change in interest rates, is deemed to be an  
18 acceptance of the new terms, even though the twenty-five  
19 days have not expired.

20 See former S.D. Codified Laws § 54-11-10.<sup>7</sup> Indeed, the Attorney General of South  
21 Dakota issued an opinion expressly finding that the change-in-terms procedure under  
22 South Dakota law is a valid means to change a credit card agreement to include an  
23 arbitration provision. (See RJN Ex. 4 citing former S.D. Codified Laws § 54-11-10  
24 (Letter Opinion dated May 7, 2002 from Harold H. Deering, Jr., South Dakota Assistant  
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<sup>7</sup> The current S.D. Codified Laws § 54-11-10 still authorizes changing the terms of credit card agreements, including with respect to dispute resolution terms.

1 Attorney General, to Richard R. Duncan, South Dakota Director of Banking (the “South  
2 Dakota Attorney General Opinion”)).)

3 Here, consistent with the terms of the Card Agreement, Citibank notified Plaintiff  
4 in October 2001 that it was adding the Arbitration Agreement to her Card Agreement  
5 effective November 2001. (Walters Decl., ¶¶ 5-7, Exs. 2-5.) This method of adopting an  
6 arbitration agreement has been routinely upheld by the courts, including this Court. See,  
7 e.g., Lowman, 2006 WL 6108680, at \*3; Egerton, 2004 WL 1057739, at \*3; Hershler,  
8 No. 2:08-cv-06363-R-JWJ, slip. op. at 5; Eaves-Leonos, 2008 WL 80173, at \*2-6;  
9 Dumanis, 2007 WL 3253975, \*2-3 (same). Importantly, Plaintiff did not exercise her  
10 rights to reject the Arbitration Agreement; instead, she continued to use the Account.  
11 (Walters Decl., ¶¶ 9-10.) Thus, Plaintiff accepted the Arbitration Agreement as part of  
12 her contract with Citibank. See Yaqub, No. CV11-2190-VBF-(FFMx), slip op. at 3  
13 (“Applying South Dakota law, Plaintiff entered into the Arbitration Agreement when he  
14 used the credit card.”); Lowman, 2006 WL 6108680, at \*3; Hershler, No. 2:08-cv-06363-  
15 R-JWJ, slip. op. at 5 (stating that “Plaintiff had a meaningful choice to opt out of the  
16 Arbitration Agreement. He, however, chose not to do so, thus defeating any claim of  
17 procedural unconscionability.”).<sup>8</sup>

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22 <sup>8</sup> See also Boomer v. AT&T Corp., 309 F.3d 404, 415 (7th Cir. 2002) (customer accepted terms  
23 of contract by failing to follow the non-acceptance instructions in the contract and continuing to  
24 use the services); Hill v. Gateway 2000, Inc., 105 F.3d 1147 (7th Cir. 1997) (holding that a  
computer purchaser, by electing to keep the computer that he purchased rather than returning it  
within a specified time period, agreed to be bound by an arbitration provision sent to him by the

1 Furthermore, in June 2005, Plaintiff received a complete Card Agreement for the  
2 Account, which included the Arbitration Agreement. (Walters Decl., ¶ 13, Exs. 9-10.)  
3 Under the terms of the Card Agreement and South Dakota law, Plaintiff agreed to the  
4 terms of the Card Agreement, including the Arbitration Agreement, by using the Account  
5 following receipt of the Card Agreement. (Walters Decl., Ex 9 (at p. 1).) South Dakota  
6 law is consistent with the Card Agreement, providing that the “use of an accepted credit  
7 card or the issuance of a credit card agreement and the expiration of thirty days from the  
8 date of issuance without written notice from a card holder to cancel the account creates a  
9 binding contract between the card holder and the card issuer . . .” S.D. Codified Laws §  
10 54-11-9.  
11

12 Finally, South Dakota, like most states, strongly endorses arbitration.<sup>9</sup> “If there is  
13 doubt whether a case should be resolved by traditional judicial means or by arbitration,  
14 arbitration will prevail.” Rossi Fine Jewelers, Inc. v. Gunderson, 648 N.W.2d 812, 814  
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16  
17 seller); Herrington v. Union Planters Bank, N.A., 113 F. Supp. 2d 1026, 1032 (S.D. Miss. 2000)  
18 (“[T]he plaintiffs accepted the terms of the arbitration agreement by continuing to utilize their  
19 accounts.”); Marsh v. First USA Bank, N.A., 103 F. Supp. 2d 909, 919 (N.D. Tex. 2000)  
20 (“Plaintiffs continued to use their First USA credit cards after receipt of the amendments.  
21 Therefore, Plaintiffs . . . are contractually bound by the arbitration provision of their  
22 Cardmember Agreements.”); Stiles v. Home Cable Concepts, 994 F. Supp. 1410, 1416 (M.D.  
23 Ala. 1998) (enforcing an arbitration provision contained in amendment to a credit card  
24 agreement because the plaintiff maintained his account after the effective date of the arbitration  
25 clause); Grasso v. First USA Bank, 713 A.2d 304, 309 (Del. Super. Ct. 1998) (holding that the  
26 plaintiff “unequivocally manifested acceptance” of her cardholder agreement by making  
27 purchases and payments on her account).

28 <sup>9</sup> Alaska also strongly endorses arbitration. See Dep’t of Pub. Safety v. Pub. Safety Emp. Ass’n,  
29 732 P.2d 1090, 1093 (Alaska 1987) (“The common law and statutes of Alaska ‘evinced a strong  
30 public policy in favor of arbitration.’”) (citation omitted).

(S.D. 2002) (“We have consistently favored the resolution of disputes by arbitration. . . .

1 There is an overriding policy favoring arbitration when a contract provides for it.”);

2 Dinsmore, 593 N.W.2d at 44-45, 47 (enforcing arbitration agreement in preprinted

3 securities account agreement). This “overriding” public policy also is confirmed in the

4 South Dakota Attorney General Opinion, which is consistent with the recent decision in

5 AT&T Mobility:

6  
7 “The purpose of arbitration is to permit a relatively quick and inexpensive  
8 resolution of contractual disputes by avoiding the expense and delay of  
9 extended court proceedings.” Tjeerdsma v. Global Steel Bldgs., Inc., 466  
10 N.W.2d 643 (S.D. 1991), quoting L.R. Foy Constr. Co. v. Spearfish School  
11 District, 341 N.W.2d 383, 388 (S.D. 1983) (Henderson, J., specially  
12 concurring) (citations omitted). South Dakota law, like federal law and the  
13 law of most states, encourages private parties to resolve both existing and  
14 future disputes by extra-judicial means such as arbitration. “A strong  
15 policy exists favoring the arbitration of disputes where the parties have  
16 bargained for this procedure.” City of Hot Springs v. Gunderson’s, Inc.,  
17 322 N.W.2d 8 (S.D. 1982).

18 (South Dakota Attorney General Opinion at 2 (RJN Ex. 4).)

19 Accordingly, under both the FAA and governing South Dakota law, the Card  
20 Agreement, including the Arbitration Provision, is binding on Plaintiff and must be  
21 enforced.

22 **3. Plaintiff’s Claims Fall Squarely Within The Scope Of The Arbitration**  
23 **Agreement.**

24 Once it is determined that the parties have entered into a binding arbitration  
25 agreement, an “order to arbitrate the particular grievance should not be denied unless it

1 may be said with positive assurance that the arbitration clause is not susceptible of an  
2 interpretation that covers the asserted dispute.” AT&T Tech., Inc. v. Communications  
3 Workers of Am., 475 U.S. 643, 650, 106 S. Ct. 1415, 89 L. Ed. 2d 648 (1986); see also  
4 McDonnell Douglas Fin. Corp. v. Pennsylvania Power & Light Co., 858 F.2d 825, 832  
5 (2d Cir. 1988) (noting the distinction between “broad” clauses that purport to refer to  
6 arbitration all disputes arising out of a contract and “narrow” clauses that limit arbitration  
7 to specific types of disputes). Where the clause is broad, as is the case here, there is a  
8 heightened presumption of arbitrability such that “[in] the absence of any express  
9 provision excluding a particular grievance from arbitration, we think only the most  
10 forceful evidence of a purpose to exclude the claim from arbitration can prevail.”  
11 AT&T Tech., 475 U.S. at 650; accord Fleet Tire Serv. v. Oliver Rubber Co., 118 F.3d  
12 619, 621 (8th Cir. 1997); Collins & Aikman Products Co. v. Building Systems, Inc., 58  
13 F.3d 16, 20 (2d Cir. 1995) (holding that, where the clause is broad, “then there is a  
14 presumption that the claims are arbitrable”).

15  
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17 Plaintiff’s Arbitration Agreement extends to “[a]ll Claims relating to your account  
18 or a prior related account, or our relationship are subject to arbitration . . . .” (Walters  
19 Decl., Ex. 2 (under the heading “**What Claims are subject to arbitration?**”); see also  
20 id. Ex. 9 (same).) The instant dispute arises from Plaintiff’s challenges to Citibank’s  
21 attempt to collect the outstanding balance owed by Plaintiff on her Account. (Compl., ¶¶  
22 8-16.) Plaintiff’s claims clearly are tied to her Account and her relationship with  
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1 Citibank. Although baseless, these claims clearly “relate to” the Account and Plaintiff’s  
2 relationship with Citibank, and are therefore plainly within the Arbitration Agreement’s  
3 broad scope.

4 Similarly, Plaintiff’s legal theories fall within the scope of the Arbitration  
5 Agreement. Plaintiff’s statutory claim for violation of the UTPA, as well as for  
6 declaratory and injunctive relief, are explicitly covered by the Arbitration Agreement,  
7 which encompasses “[a]ll Claims . . . no matter what legal theory they are based on or  
8 what remedy (damages or injunctive or declaratory relief) they seek . . . [and] includes  
9 Claims based on contract . . . statutory or regulatory provisions, or any other sources of  
10 law . . .” (Walters Decl., Ex. 2; see also id. Ex. 9 (same).) “It is by now clear that  
11 statutory claims may be the subject of an arbitration.” Gilmer v. Interstate/Johnson Lane  
12 Corp., 500 U.S. 20, 26, 111 S. Ct. 1647, 114 L. Ed. 2d 26 (1991); Mitsubishi Motors  
13 Corp. v. Soler Chrysler-Plymouth, Inc., 473 U.S. 614, 628, 105 S. Ct. 3346, 87 L. Ed. 2d  
14 444 (1985) (noting that, in agreeing to arbitrate a statutory claim, a party “does not forgo  
15 the substantive rights afforded by the statute [but] submits to their resolution in an arbitral  
16 . . . forum”); see also Lozano v. AT&T Wireless Svcs., Inc., 504 F.3d 718, 725 (9th Cir.  
17 2007) (recognizing that the FAA “provides no basis for disfavoring agreements to  
18 arbitrate statutory claims by skewing the otherwise hospitable inquiry into arbitrability”)  
19 (citation omitted). Importantly, the “duty [of the courts] to enforce arbitration  
20 agreements is not diminished when a party bound by an agreement raises a claim founded  
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1 on statutory rights.” Shearson/Am. Express, Inc. v. McMahon, 482 U.S. 220, 226, 107 S.  
2 Ct. 2332, 96 L. Ed. 2d 185 (1987). Thus, pursuant to well-settled authority, Plaintiff’s  
3 statutory claims must be arbitrated.

4 Based on the foregoing, the Motion should be granted.

5 **B. Plaintiff’s Claims Must Proceed To Arbitration On An Individual Basis.**

6 As confirmed in AT&T Mobility, the Court must enforce the Arbitration  
7 Agreement as written, including its clear language requiring arbitration on an individual  
8 basis. The “‘principal purpose’ of the FAA is to ‘ensur[e] that private arbitration  
9 agreements are enforced according to their terms.’” AT&T Mobility, 131 S. Ct. at 1748  
10 (citations omitted). Thus, “parties may agree to limit the issues subject to arbitration, to  
11 arbitrate according to specific rules, and to limit *with whom* a party will arbitrate its  
12 disputes.” Id., 131 S. Ct. at 1748-49 (emphasis added) (citations omitted); Stolt-Nielsen,  
13 130 S. Ct. at 1774 (“Underscoring the consensual nature of private dispute resolution . . .  
14 parties are ‘generally free to structure their arbitration agreements as they see fit.’”) (citations omitted). “Arbitration is a matter of contract, and the FAA requires courts to  
15 honor parties’ expectations.” AT&T Mobility, 131 S. Ct. at 1752; Howsam v. Dean  
16 Witter Reynolds, Inc., 537 U.S. 79, 83, 123 S. Ct. 588, 154 L. Ed. 2d 491 (2002)  
17 (“[A]rbitration is a matter of contract and a party cannot be required to submit to  
18 arbitration any dispute which he has not agreed so to submit.”) (internal quotation marks  
19 and citation omitted); EEOC, 534 U.S. at 289 (“[N]othing in the [FAA] authorizes a court  
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1 to compel arbitration of any issues, or by any parties, that are not already covered in the  
2 agreement.”).

3 By using her Account, Plaintiff assented that: “Claims and remedies sought as  
4 part of a class action, private attorney general or other representative action are subject to  
5 arbitration on an individual (non-class, non-representative) basis, and the arbitrator may  
6 award relief only on an individual (non-class, non-representative) basis.” (Walters Decl.,  
7 Exs. 2, 9.) The Arbitration Agreement confers on the arbitrator only the authority to  
8 decide individual claims, and not to make any award, or consider any claims, by or  
9 relating to any other person. This language unequivocally demonstrates the parties’  
10 intent to arbitrate claims only on an individual basis and “the FAA requires courts to  
11 honor parties’ expectations.” AT&T Mobility, 131 S. Ct. at 1752 (emphasis added);  
12 Stolt-Nielsen, 130 S. Ct. at 1776 (holding that the FAA requires that class arbitration may  
13 only be ordered when the parties expressly agree to class arbitration).  
14  
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16 Furthermore, the FAA preempts state laws that attempt to regulate the terms of,  
17 and parties to, arbitration or otherwise challenge the arbitration process based on the  
18 terms under which the arbitration will take place. See AT&T Mobility, 131 S. Ct. at  
19 1753 (abrogating California law invalidating arbitration agreements that contain a class  
20 action waiver because the law “stands as an obstacle to the accomplishment and  
21 execution of the full purposes and objectives of Congress” in establishing the FAA)  
22 (internal quotations and citations omitted); Volt Info. Scis., 489 U.S. at 477; Keating, 465  
23  
24

25 MEMORANDUM IN SUPPORT OF MOTION TO COMPEL ARBITRATION AND TO STAY ACTION  
*Hudson v. Citibank (South Dakota) NA, Case No. 3AN-11-09196 CI*  
Page 22 of 26

1 U.S. at 16 (striking down California law that sought to insulate certain issues from  
2 arbitration).

3 Indeed, in the short time since AT&T Mobility, courts across the country have  
4 confirmed that, under the FAA, state law challenges to arbitration agreements that  
5 contain class action waivers are not viable. See, e.g., Cruz, \_\_ F. 3d \_\_, No. 08-16080,  
6 2011 WL 3505016, at \*1 (“hold[ing] that, in light of [AT&T Mobility], the class action  
7 waiver in the Plaintiffs’ arbitration agreements is enforceable under the FAA.”); Conroy,  
8 No. 10-CV-04930-SVW-AJW, slip op. 5-8 (enforcing Citibank’s Arbitration Agreement  
9 as written pursuant to the FAA and AT&T Mobility); Estrella v. Freedom Fin., No. C 09-  
10 03156, 2011 WL 2633643, at \*6 (N.D. Cal. Jul. 5, 2011) (granting motion and  
11 compelling arbitration of putative class claims); Hopkins v. World Acceptance Corp., \_\_  
12 F. Supp. 2d. \_\_, No. 10-CV-3429, 2011 WL 2837595, at \*7 (N.D. Ga. Jun. 29, 2011)  
13 (holding that, “under AT&T Mobility’s broad rule, the class action waiver is not  
14 unconscionable.”); In re Cal. Title Ins. Antitrust Litig., No. 08-01341 JSW, 2011 WL  
15 2566449, at \*2 (N.D. Cal. Jun. 27, 2011) (compelling arbitration and noting that post-  
16 AT&T Mobility “courts must compel arbitration even in the absence of the opportunity  
17 for plaintiffs to bring their claims as a class action”); Wolf v. Nissan Motor Acceptance  
18 Corp., No. 10-CV-3338, 2011 WL 2490939, at \* 7 (D.N.J. Jun. 22, 2011) (compelling  
19 arbitration and holding that, based on AT&T Mobility, “the Court cannot find that any  
20 public interest articulated in this case [including under New Jersey law] overrides the  
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1 clear, unambiguous, and binding class action waiver included in the parties' arbitration  
2 agreement."); Bernal v. Burnett, \_\_ F. Supp. 2d \_\_, 2011 WL 2182903, at \*6-8 (D. Colo.  
3 Jun. 6, 2011) (enforcing arbitration agreement under Colorado law based on AT&T  
4 Mobility); D'Antuono v. Serv. Rd. Corp., No. 3:11cv33, 2011 WL 2175932, at \*18 (D.  
5 Conn. May 25, 2011) (compelling arbitration and noting that AT & T Mobility "cast[s]  
6 significant doubt on virtually any 'device [or] formula' which might be a vehicle for  
7 'judicial hostility toward arbitration.'" (citing AT&T Mobility, 131 S. Ct. at 1747);  
8 Arellano v. T-Mobile USA, Inc., No. C-10-5663-WHA, 2011 WL 1842712, at \*2-3  
9 (N.D. Cal. May 16, 2011) (compelling arbitration of class UCL and CLRA claims under  
10 AT&T Mobility and the FAA); Zarandi v. Alliance Data Sys. Corp., No. CV-10-8309-  
11 DSF, 2011 WL 1827228, at \*2 (C.D. Cal. May 9, 2011) (compelling arbitration because  
12 AT&T Mobility confirms that "the FAA preempts state law to the extent it prohibits  
13 arbitration of a particular type of claim."); Day v. Persels & Assocs., LLC, No. 10-CV-  
14 2463-T-33TGW, 2011 WL 1770300, at \*5 (M.D. Fla. May 9, 2011) (holding that, under  
15 AT&T Mobility, arbitration agreement containing class action waiver is not substantively  
16 unconscionable under Florida law); Bellows v. Midland Credit Mgmt., Inc., No. 09-CV-  
17 1951-LAB, 2011 WL 1691323, at \*3 (S.D. Cal. May 4, 2011) (compelling arbitration  
18 because AT&T Mobility "mak[es] clear the agreement to arbitrate is not substantively  
19 unconscionable merely because it includes a class action waiver.").

C. This Action Must Be Stayed.

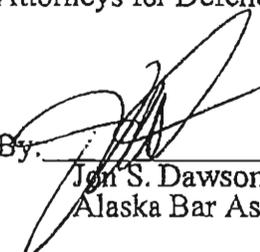
1 Section 3 of the FAA expressly provides that, where a valid arbitration agreement  
2 requires a dispute to be submitted to binding arbitration, the district court shall stay the  
3 action "until such arbitration has been had in accordance with the terms of the  
4 agreement." 9 U.S.C. § 3; see Collins v. Burlington N. R. Co., 867 F.2d 542, 545 (9th  
5 Cir. 1989) (remanding case where district court failed to consider whether a stay was  
6 appropriate as a result of binding arbitration agreement). Accordingly, Citibank requests  
7 that this Court stay the action pending completion of arbitration pursuant to the express  
8 terms of the Arbitration Agreement.  
9  
10

11 IV. CONCLUSION

12 For all of the foregoing reasons, Citibank respectfully requests that the Court grant  
13 this Motion and compel arbitration of Plaintiff's claims in accordance with the express  
14 terms of the valid and enforceable Arbitration Agreement governing Plaintiff's Account.  
15 In addition, this action should be stayed pending completion of arbitration proceedings.  
16

17 Dated: 8/24/11  
18

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

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

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. )

Case No. 3AN-11-09196-CI

**COPY**  
**Original Received**

AUG 24 2011

**Clerk of the Trial Courts**

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

determine 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.

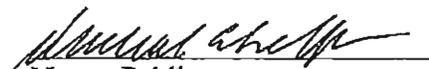
13. Citibank's records reflect that, in June 2005, a complete Card Agreement was sent to Ms. Hudson in connection with a pricing change on the Account. Attached hereto as Exhibit 9 is a copy of the form of Card Agreement sent to Ms. Hudson as a result of the pricing change. The Card Agreement contains 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 15<sup>th</sup> 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:

# EXHIBIT 1



## Citibank Card Agreement

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

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

### Using Your Account and Your Credit Lines:

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

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

### Additional Cards:

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

### Membership Fee:

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

## Billing:

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

## How We Determine the Balance:

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

## Annual Percentage Rate for Purchases:

Your annual percentage rate for purchases and the corresponding daily periodic rate appears on the label containing the card. A daily periodic rate is the applicable annual percentage rate divided by 365. Whether or not the annual percentage rate for purchases is based on the quarterly U.S. Prime Rate plus a margin is indicated on the label containing the card. Please see the section below entitled "Variable Annual Percentage Rates for Purchases and Cash Advances" for details relating to how this rate may change.

## Annual Percentage Rate for Cash Advances:

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

## Variable Annual Percentage Rates for Purchases and Cash Advances:

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

In addition, the annual percentage rate for purchases and cash advances may vary if your delinquent under any Citibank Card Agreement because you fail to make a payment to us or any other creditor within one, you exceed your credit limit, or you make a payment to us that is not honored by your bank. In such circumstances, we

may increase the ANNUAL PERCENTAGE RATE (including any promotional rate) on all balances to a higher variable rate of up to 12.5% plus the Prime Rate as determined above. Factors considered in determining the higher rate may include the length of time the account has been open, the balance, seriousness, and timing of Citibank Card Agreement defaults, and other indications of account usage and performance. This higher rate will not be lower than 19.99% unless we elect a lower rate. Your account may again become eligible for a lower annual percentage rate on future purchases, new cash advances, or when other you pay and the terms of all Citibank Card Agreements for 30 months. Your existing purchases and cash advance balances will remain subject to the higher rate until they are paid in full. Any increase or decrease in a variable annual percentage rate does not affect the first day of the billing period directly following the month in which we calculate the rate. The annual percentage rate in effect at any subsequent change to a rate will appear on the billing statement. An increase in the variable annual percentage rate means you will pay a higher finance charge and perhaps a higher minimum payment.

## Promotional Rate Offers:

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

## Finance Charges:

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

We will calculate finance charges as follows:

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

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

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

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

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

## Cash Advances and Transaction Fee:

You have obtained a cash advance if you obtain funds from an automated teller machine (ATM), through a Citibank check, through Home Banking or through a financial institution, make a loan payment, make a wire transfer, acquire a money order, travel's check, money order, check, or cash on hand, or similar item, or engage in another similar transaction. For each cash advance, we add an additional FINANCE CHARGE of 3.0% of the advance, but not less than \$5. This fee will be added to the cash advance balance. The amount of the cash advance may include a surcharge that the ATM owner imposes. The cash advance transaction fee may cause the annual percentage rate on the billing statement on which the cash advance first appears to exceed the minimum annual percentage rate.

## Minimum Finance Charge:

If finance charges based on periodic rates are being added to your account, but the total of such finance charges for purchases and cash advances is less than \$5.00, we assess a minimum FINANCE CHARGE based on periodic rates of \$5.00. We add the amount to either the purchase or cash advance balance at our discretion.

## Credit Balance:

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

## Security Interest for Secured Accounts:

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

## Transactions Made in Foreign Currencies:

If a transaction is made in a foreign currency, we and Visa International or MasterCard International, depending on which card is used, will convert the transaction into a U.S. dollar amount. Visa and MasterCard will act in accordance with their operating regulations or conversion procedures in effect at the time the transaction is processed. Currently, their regulations and procedures provide that the currency conversion rate they use is either (1) a wholesale market rate or (2) a government-mandated rate in effect one day prior to the processing date. Visa and MasterCard increases this conversion rate by one additional cent per dollar and MasterCard also increases the conversion rate by one cent per dollar. The currency conversion rate may increase. We discuss the conversion rate changes to us by Visa or MasterCard by two percent and keep this increase. The currency



### Collection Costs:

If a collection of your account is a check, we may be required to charge you a fee. If you do not pay your account by the date specified, we may be required to charge you a fee. If we are unable to collect and you wish, we will pay your reasonable legal and court costs.

### Customer Privacy:

We will always maintain confidentiality of your information. We will not share your information with any third party without your consent. We will not sell, rent, lease, or otherwise disclose your information to any third party. We will not use your information for any purpose other than to provide you with the services you have requested. We will not use your information for any other purpose without your consent. We will not use your information for any other purpose without your consent. We will not use your information for any other purpose without your consent.

We will always maintain confidentiality of your information. We will not share your information with any third party without your consent. We will not sell, rent, lease, or otherwise disclose your information to any third party. We will not use your information for any purpose other than to provide you with the services you have requested. We will not use your information for any other purpose without your consent. We will not use your information for any other purpose without your consent.

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### Sharing Customer Information Among Citibank Affiliates:

To allow you to speak with and provide you with products and services, we may share your information with our other Citibank affiliates. We will not share your information with any other Citibank affiliate without your consent.

Citibank affiliates are prohibited by law to share any information about their products and services with you. Other information you provide to us or that we obtain from third parties, for example, credit inquiries will not be shared with you. We will not share your information with any other Citibank affiliate without your consent. We will not share your information with any other Citibank affiliate without your consent.

If you have already told us that you do not want such other information shared, your information remains in effect. You do not need to notify us again.

If you are also a customer of other Citibank companies, such as Commercial Credit, Travelers Property Casualty, Travelers Life & Savings, Sunbank South America and Financial Services, we will receive a notice of your intent to share credit information about you with our affiliates. You will need to separately notify them if you do not want such information shared.

### Telephone Monitoring and Recording:

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

### Correcting Your Credit Report:

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

### Closing Your Account:

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

### Refusal of the Card:

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

### Changing this Agreement:

We can change this Agreement, including its fees and the annual percentage rate, at any time. However, if the change will cause a fee, rate or minimum payment to increase, we will notify you in writing at least 15 days before the beginning of the billing period in which the change becomes effective. If you do not agree to the change, you may notify us in writing within 25 days after the effective date of the change and pay us the balance shown in force at that time. The terms of the unchanged Agreement will apply. The change in the fee or the annual percentage rate will apply to the balance shown in force at that time. The 25 days does not expire.

### Enforcing this Agreement:

We can bring an action or suit to enforce any of our rights under this Agreement without losing them.

### Assignment:

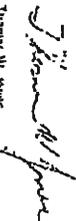
We reserve the right to assign any or all of our rights and obligations under this Agreement to a third party.

### Applicable Law:

The terms and enforcement of these agreements shall be governed by the laws of the State of South Dakota, where we are located.

### For Further Information:

Call us at the telephone number shown on the front of the billing statement. Our call centers can take the local directory assistance to get our telephone number.

  
Thomas W. Jones  
President & CEO  
1999 Citibank (South Dakota) N.A.  
Citibank, South Dakota, N.A.  
Box 6000  
Sioux Falls, SD 57117

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

Your Billing Rights. Keep This Notice For Future Use.

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

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

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

- In your letter, give us the following information:
  - The dollar amount of the suspected error.
  - Describe the error and explain why you believe there is an error.
  - Please sign your bill.

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

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

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

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

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

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

**Special Rule for Credit Card Purchases.**

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

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

**■** The purchase must have been more than \$50.

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

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# EXHIBIT 2

**NON-ACCEPTANCE INSTRUCTIONS:**

If you do not wish to accept the binding arbitration provision contained in this change of terms notice, you must notify us in writing within 30 days after the Statement/Closing Date indicated on your November 2001 billing statement stating your non-acceptance. Include your name, address, your account number and mail to Citicredit Services (Claims), P.O. Box 44129, Jacksonville, Florida 32233-4129. If you notify us by that time that you do not accept the binding arbitration provision contained in this change of terms notice, you can continue to use your Card(s) under your existing terms until the end of your current month(s) year or the expiration date of your Card(s) whichever is later. At that time your card will be deactivated and you will be able to pay all your outstanding 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-

including, but not limited to, 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 ours and yours, but also Claims made by or against anyone connected with us or you or claiming through us or you, such as an applicant or authorized user of your account, an employee, agent, representative, affiliated company, predecessor or successor, 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 arbitration must choose one of the following three arbitration firms and follow its rules and procedures for initiating and pursuing an arbitration: American Arbitration Association, JAMS, and National Arbitration Forum. Any arbitration hearing that you attend will be held at a location chosen by the arbitration firm in the same city as the U.S. 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 forms and instructions for initiating an arbitration by contacting them as follows:

American Arbitration Association - Web site: www.adr.org  
1635 Madison Avenue, Floor 10  
New York, NY 10017-1605

1920 Main Street, Suite 300  
Irvine, CA 92610

National Arbitration Forum - Web site: www.arbitration-forum.com  
P.O. 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 connection 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 arbitration 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 customer account information and other confidential information if requested to do so by you or us. The arbitrator will apply applicable 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 expense of that party's attorneys, experts, and witnesses 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 individual (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, including class claims, of two or more persons may not be joined or consolidated in the same arbitration. 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 changes 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 3



Account Number	Payment Due Date	Payment Due Amount	Minimum Payment Due	Current Amount Owed
9673	11/20/01	\$862.54	\$20.00	

00 A1 0499 1 WC 4

JANET HUDSON  
POPLAR BLUFF  
63901-4300000

MO

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

Citi<sup>®</sup> Driver's Edge<sup>™</sup>  
Platinum Select<sup>™</sup> Card-Options Rbts

For Customer Service, call or write  
1-800-950-5114

Account Number  
9673

PAYMENT MUST BE RECEIVED BY 5:00 PM LOCAL TIME ON 11/20/2001

To report billing errors, write  
to info@citibank.com or call  
and preserve your receipts.

80X 6000  
THE LAKES, NY  
89163-6000

Statement/Closing Date	Total Credit Line	Available Credit Line	Cash Advance Limit	Available Cash Line	New Balance
10/26/2001	\$4400	\$3537	\$200	\$200	\$862.54
		Amount Over Credit Line	Past Due	Payment/Minimum Due	Minimum Amount Due
		\$0.00 +	\$0.00 +	\$20.00 =	\$20.00

Statement Date	Post Date	Reference Number	Activity Since Last Statement	Amount
	10/15	13383208	PAYMENT THANK YOU	-200.00
	10/26		PURCHASES*FINANCE CHARGE*PERIODIC RATE	9.86
	10/26		PURCHASES*FINANCE CHARGE*PERIODIC RATE	
			CHARGE TO BALANCE 2	1.19

* CITI DRIVER'S EDGE CARD OPTIONS REBATES *		TOTAL
Last Month's Balance		24.67
Earned this Month		0.00
Redeemed/Expired		0.00
Current Balance		24.67

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

The Citigroup Relief Fund will provide scholarships for children of victims of the September 11th tragedy. Help make their future more secure with a tax-deductible contribution. Complete information is available at www.citigroup.com or 1-888-441-CITI.

Stay in touch with new features and benefits of your card the easy way. Just provide your email address on your payment stub or register at www.email.citicards.com

Get a \$5 statement credit for going paperless! Do away with paper statements and do it all online with Account Online's All Electronic option. Visit www.citicards.com today!

SEND PAYMENTS TO:



00 A1 0499 : MC 4

JANET HUDSON

Statement Date	Post Date	Reference Number	Activity Since Last Statement			Amount
<b>Account Summary</b>						
		<b>Previous Balance</b>	<b>(+) Purchases &amp; Advances</b>	<b>(-) Payments &amp; Credits</b>	<b>(+) FINANCE CHARGE</b>	<b>(=) New Balance</b>
PURCHASES		\$1,051.49	\$0.00	\$200.00	\$11.05	\$862.54
ADVANCES		\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
<b>TOTAL</b>		<b>\$1,051.49</b>	<b>\$0.00</b>	<b>\$200.00</b>	<b>\$11.05</b>	<b>\$862.54</b>
<b>Rate Summary</b>						
		<b>Balance Subject to Finance Charge</b>	<b>Periodic Rate</b>	<b>Nominal APR</b>	<b>ANNUAL PERCENTAGE RATE</b>	
PURCHASES		\$731.61	0.04493%(0)	16.400%	16.400%	
Standard Purch		\$245.33	0.01616%(0)	5.900%	5.900%	
Balance 2		\$0.00	0.05477%(0)	19.990%	19.990%	
ADVANCES						

IF YOU PAYMENTS TO: \_\_\_\_\_

# EXHIBIT 4