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February 3, 2011

Superior Court of New Jersey
Law Division – Morris County
Washington and Court Streets
P.O. Box 910
Morristown, NJ 07960

Re: *New Century Financial Services, Inc., vs. David Shaler*
Docket No. MRS-L-001265-10

Dear Sir or Madam,

I enclose an original and two copies of Defendant's Motion for Summary Judgment, including,

1. Notice of Motion;
2. Certification of Inna Ryu with Exhibits;
3. Brief with Material Statement of Facts and proof of service;
4. Proposed form of Order; and
5. Check for \$30 as the filing fee.

I also enclose two return envelopes – one for the filed Notice of Motion and one for the filed Order.

By copy of this letter, I am serving my adversary.

Very truly yours,



Inna Ryu
via Federal Express

cc: David Shaler

Leslie L. Phiefer, Esq., Pressler and Pressler, LLP, via Federal Express

Philip D. Stern & Associates, LLC
Attorneys at Law
697 Valley Street, Suite 2d
Maplewood, NJ 07040
(973) 379-7500
Attorneys for Defendant, David Shaler

SUPERIOR COURT OF NJ
CIVIL DIVISION
MORRIS COUNTY

2011 FEB -4 P 2:51

FILED
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NEW CENTURY FINANCIAL SERVICES,
INC.,
Plaintiff,

vs.

DAVID SHALER,
Defendant.

**Superior Court of New Jersey
Law Division - Morris County**

Civil Action
Docket No. MRS-L-001265-10

**NOTICE OF MOTION
FOR SUMMARY JUDGMENT
WITH PROOF OF SERVICE**

(ORAL ARGUMENT REQUESTED)

TO: Leslie L. Phiefer, Esq.
Pressler and Pressler, LLP
Attorneys for Plaintiff, New Century Financial Services, Inc.
7 Entin Road
Parsippany, NJ 07054-9944

RECEIVED & FILED
SUPERIOR COURT
2011 FEB 15 AM 10:49
CIVIL DIVISION

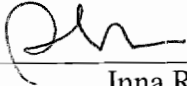
Please take notice that at 9:00 a.m. on March 4, 2011, or as soon afterwards as counsel may be heard, the undersigned, as attorneys for Defendant, David Shaler will move for summary judgment.

In support of this Motion, the undersigned will rely on the following which is submitted with this Motion:

1. Certification of Inna Ryu; and
2. Brief for Defendant, David Shaler.

In accordance with *R. 1:6-2(a)*, the discovery end date was: January 31, 2011. A proposed form of order is submitted with this Motion. ORAL ARGUMENT is requested if this Motion is contested.

Philip D. Stern & Associates, LLC
Attorneys for Defendant, David Shaler

By: 
_____ Inna Ryu

Dated: February 3, 2011

Certification of Service By Attorney Under R. 1:5-3(3)

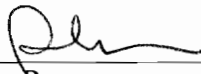
I, Inna Ryu, certify that I am the attorney for Defendant, David Shaler and that I served this Notice of Motion together with all supporting papers and the proposed form of Order on the following:

Leslie L. Phiefer, Esq.
Pressler and Pressler, LLP
7 Entin Road
Parsippany, NJ 07054-9944

Service was made by doing the following checked action on February 3, 2011:

- Mailing by ordinary mail.
- Mailing simultaneously by ordinary and certified mail.
- Hand delivery to the attorney's office.
- Causing Federal Express to receive the Motion papers.
Federal Express is a commercial courier whose regular business is delivery service who guarantees delivery by the end of the next business day following the courier's receipt from sender.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.

Dated: February 3, 2011 
_____ Inna Ryu

Philip D. Stern & Associates, LLC
Attorneys at Law
697 Valley Street, Suite 2d
Maplewood, NJ 07040
(973) 379-7500
Attorneys for Defendant, David Shaler

SUPERIOR COURT OF NJ
MORRIS COUNTY
FILED

2011 FEB 15 10 03 52

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SUPERIOR COURT

NEW CENTURY FINANCIAL SERVICES,
INC.,
Plaintiff,

vs.

DAVID SHALER,
Defendant.

Superior Court of New Jersey
Law Division - Morris County

Civil Action
Docket No. MRS-L-001265-10

CERTIFICATION OF INNA RYU

CIVIL DIVISION

2011 FEB 15 AM 10:49

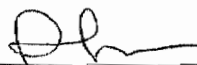
RECEIVED & FILED
SUPERIOR COURT

I, Inna Ryu, certify as follows:

1. I am a New Jersey attorney and represent Defendant in this matter. I make this Certification in support of Defendant's summary judgment motion to present certain discovery items.
2. As Exhibit 1, Plaintiff's responses to Defendant's Interrogatories, dated July 6, 2010.
3. As Exhibit 2, I attach Defendant's Notice to take the deposition of Plaintiff's authorized representative.
4. As Exhibit 3, I attach pages from the transcript of the deposition of Marko Galic which are cited in the Statement of Material Facts.
5. As Exhibit 4, I attach Plaintiff's response to Defendant's Document Request #2.
6. As Exhibit 5, I attach a copy of Defendant's response to Plaintiff's Supplemental Interrogatories.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.

Dated: February 3, 2011



Inna Ryu

MAURICE H. PRESSLER (1930-2002)
SHELDON H. PRESSLER

GERARD J. FELT
STEVEN P. McCABE
LAWRENCE J. McDERMOTT, JR.

MITCHELL L. WILLIAMSON
THOMAS M. BRIDGAN
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JOANNE L. DAURIZIO
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CHR STOPHER P. ODOGILI
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CRAIG S. STILLER*
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LESLIE L. PHIEFER

DARYL J. KIRNS
THOMAS M. KRICK
STEVEN A. LANG
DARREN H. TANAKA

* NY STATE LICENSE ONLY

OFFICE HOURS:

Monday-Thursday 8am-5pm

Friday 8am-1pm

Saturday 9am-2pm

JULY 09, 2010

PHILIP D STERN ESQUIRE
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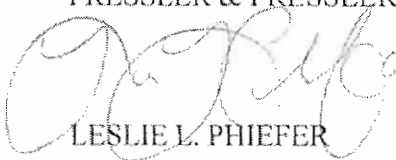
Re: NEW CENTURY FINANCIAL SERVICES, INC. vs DAVID SHALER
Superior Court of New Jersey: Law Division
MORRIS County - Docket No. L -001265-10
P&P File Number S236794A

Dear Mr. Stern:

Enclosed, please find Plaintiff's responses to Defendant's Interrogatories. Should you wish to amicably resolve the instant matter, please contact my office at (888) 312-8600 extension 5655.

Very truly yours,

PRESSLER & PRESSLER, LLP



LESLIE L. PHIEFER

LLP/NG

Encl.

Exhibit 1

PRESSLER AND PRESSLER, LLP

COUNSELLORS AT LAW

7 Entin Rd.

Parsippany, NJ 07054-5020

(973) 753-5100

Attorney for Plaintiff

NEW CENTURY FINANCIAL SERVICES, INC.

Plaintiff

vs.

DAVID SHALER

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MORRIS COUNTY

DOCKET NO. L -001265-10

Civil Action
PLAINTIFF'S RESPONSES TO DEFENDANT'S
INTERROGATORIES

Defendant

GENERAL RESERVATION

Plaintiff reserves the right to supplement and/or amend any or all responses provided herein. If Plaintiff obtains the requested documentation and/or information at a later time, Plaintiff will provide them to Defendant upon their receipt.

1. Describe all information concerning the Account provided to Plaintiff by the person who sold the Account to Plaintiff. Include in your response an identification of each writing. If data was provided in electronic form, describe the fields of data.

RESPONSE: Objection. This Interrogatory is improper insofar as it is overbroad, compound and calls for information protected by attorney-client privilege and/or the work-product doctrine.

2. Set forth the name of each individual you designate to be deposed on behalf of Plaintiff in response to the Deposition Notice above.

RESPONSE: Marko Galic.

3. For each person named in response to Interrogatory #2, state each position ever held by the person while employed by Plaintiff including the beginning and end dates for each position.

RESPONSE: Marko Galic was Collection Manager from 2003-2006 and Client Services Manager from 2006-Present.

4. On what date did Plaintiff become the owner of the Account.

RESPONSE: August 5, 2009.

5. Describe all information, data, records, documents and writings Plaintiff received from the Seller of the Account.

RESPONSE: Objection. This Interrogatory is improper insofar as it is overbroad, vague and compound as it calls for information that may be proprietary in nature.

6. State the date on which Plaintiff received each item described in the response to Interrogatory #5.

RESPONSE: See response to number 5.

7. Does Plaintiff have possession of the any Declaration from a representative of the Account's original creditor or servicer relating to the Account? For purposes of this Interrogatory and Interrogatory #8, "Declaration" means a written statement made under oath or penalty of perjury including, but not limited to, an affidavit, a certification made under R. 1:6-6, or a declaration made under 28 U.S.C. § 1746.

RESPONSE: Plaintiff is not in possession of any declaration. Should same come into possession, Plaintiff will forward.


8. If your response to Interrogatory #7 was in the affirmative, identify each Declaration.

RESPONSE: See response to number 7.

CERTIFICATION

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

I certify that the copies of the reports annexed hereto rendered by proposed expert witnesses are exact copies of the entire report and/or opinion rendered by them; that the existence of other reports or opinions of each of said experts, either written or oral, are unknown to me; and if such become later known or available, I shall serve them promptly upon the propounding party.



Dated: 7-6-10

PHILIP D. STERN & ASSOCIATES, LLC
697 Valley Street, Suite 2-D
Maplewood, NJ 07040
(973) 379-7500
Attorney of Record: Philip D. Stern
Attorneys for Defendants, David Shaler and
Kaye Shaler

NEW CENTURY FINANCIAL SERVICES,
INC.,
Plaintiff,
vs.
DAVID SHALER,
Defendant.

**SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - MORRIS COUNTY**

Docket No. MRS-L-001265-10

**DEFENDANT'S FIRST SET OF
DISCOVERY REQUESTS
INCLUDING:
DOCUMENT REQUESTS,
INTERROGATORIES, AND
DEPOSITION NOTICE**

Defendant, David Shaler, by and through his attorneys, makes the following requests for discovery from Plaintiff, New Century Financial Services, Inc. For purposes of these requests, "Account" means the account described in Paragraph 1 of the Complaint.

DEPOSITION NOTICE

Please take notice that Defendant will take the testimony of Plaintiff, NEW CENTURY FINANCIAL SERVICES, INC., through one or more persons designated by Plaintiff pursuant to R. 4:14-2. Such deposition will be held at the offices of the Plaintiff, 110 S. Jefferson Road, Suite 104, Whippany, New Jersey unless counsel for the parties agree on a different location. The deposition will be held on September 15, 2010 beginning at 9:15 A.M. Defendant designates the following matters on which examination is requested:

1. The opening of the Account.
2. The activities on the Account including all debits and credits, charges, fees and all other events impacting the balance claimed to be due.

Exhibit 2

3. The mailing of terms controlling the Account.
4. The mailing of notices regarding the Account.
5. The event or events which form the basis for the allegation that the Account is in default.
6. The events resulting in Plaintiff becoming the owner of the Account.
7. Plaintiff's efforts to collect prior to commencing this lawsuit.

DOCUMENT PRODUCTION

Plaintiff is requested to produce the following in accordance with R. 4:18:

1. The "contract" referred to in Paragraph 2 of the Complaint.
2. The purchase agreement under which Plaintiff purchased the accounts which included the account described in Paragraph 1 of the Complaint.
3. The bill of sale evidencing the sale of the accounts which included the account described in Paragraph 1 of the Complaint.
4. All correspondence sent by Plaintiff and Plaintiff's attorneys to Defendant.
5. All correspondence received by Plaintiff and Plaintiff's attorneys from Defendant or from someone acting on behalf of Defendant.
6. Each billing statement mailed to Defendant.
7. The initial terms and conditions governing the Account and each modification of those terms and conditions.
8. The account notes of written and telephone communications between Defendant and the Account's original creditor or servicer.
9. Plaintiff's account notes regarding the collection of this Account.
10. The list of the fields of information which the seller of the Account agreed to provide to Plaintiff.
11. The writings identified in your response to Interrogatory #5.
12. Each Declaration identified in your response to Interrogatory #8.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MORRIS COUNTY
DOCKET NO. MOR-L-1265-10

NEW CENTURY FINANCIAL	:	
SERVICES, INC.,	:	
	:	
Plaintiff,	:	DEPOSITION OF:
	:	
vs.	:	MARKO GALIC
	:	
DAVID SHALER,	:	
	:	
Defendant.	:	
	:	
	:	
	:	

T R A N S C R I P T of the testimony
as taken stenographically by and before ANN P.
CONLON, a Notary Public and Certified Court Reporter
of the State of New Jersey, at the offices of
Pressler & Pressler, 7 Entin Road, Parsippany, New
Jersey, on Thursday, January 13, 2011, commencing at
10:08 a.m.

ANN P. CONLON
Certified Court Reporter
12 Sneider Road
Warren, New Jersey 07059
(732) 748-8998
FAX (732) 748-8999



20

1 to Sherman. What they do and how they obtain the
 2 documents is confidential, and even if Marko knew, I
 3 would instruct him not to provide that information.
 4 Sherman is not a party to this action, NCF owns the
 5 debt. Sherman is not a party nor are they a fact
 6 witness at this time.
 7 MR. STERN: I understand your
 8 objection. I don't agree with it. I'm really not
 9 trying to argue with you, I just want to articulate
 10 why I think it's not a valid objection and if you
 11 still want to maintain your objection you're entitled
 12 to.
 13 MS. PHIEFER: Okay.
 14 MR. STERN: I think that the business
 15 record exception to the hearsay rule goes into the
 16 way in which documents are created and maintained.
 17 I'm assuming, from your case, that you would rely
 18 upon the statements in support of your case, and
 19 therefore, I think I'm entitled to know what you
 20 know, what your client knows about how these
 21 documents came into existence and why your client
 22 believes that they are accurate in terms of
 23 supporting your client's claim. And that's why I
 24 think that they're relevant and not confidential and
 25 not subject to not being disclosed.

21

1 That being said, I don't know if you
 2 want to withdraw your objection or you still want to
 3 maintain your objection.
 4 MS. PHIEFER: Well, I want to maintain
 5 it because the witness did provide testimony about
 6 how they obtained the statements and from whom they
 7 obtained them. And any interaction between them and
 8 Sherman, however, the people they got the statements
 9 from, however, prior to that, any interaction between
 10 Sherman and someone else is confidential and
 11 irrelevant. So I maintain my objection.
 12 Q. Do you know what an affidavit is?
 13 A. Yes.
 14 Q. Have you ever signed any affidavits?
 15 A. Yes.
 16 Q. Can you estimate how many you've
 17 signed in connection with your work at New Century?
 18 A. Thousands.
 19 Q. So you understand that when you sign
 20 an affidavit, that's a sworn statement as to certain
 21 facts?
 22 A. Yes.
 23 Q. Do you believe that you would have an
 24 understanding if you looked at a document, that you
 25 would understand whether it's an affidavit?

22

1 A. Yes.
 2 Q. To your knowledge, has New Century
 3 obtained any affidavits from either Sherman Financial
 4 or the original creditor which assert the accuracy of
 5 the statements in this case?
 6 A. No.
 7 Q. You've not seen any document like
 8 that?
 9 A. Not an affidavit, no.
 10 Q. Have you seen any other documents that
 11 would, in your mind, affirm the accuracy of those
 12 documents?
 13 A. The documents, they came along with
 14 the bills of sale, chain of title.
 15 MS. PHIEFER: May we show the witness
 16 the chain of title to refresh his recollection?
 17 MR. STERN: I'll get to it. I'm not
 18 trying to trick him.
 19 MS. PHIEFER: No, because we have
 20 thousands, as he said, of cases. So he's not sure
 21 what the chain of title looks like probably.
 22 MR. STERN: That's fine.
 23 Q. With respect to the statements, do you
 24 have any information as to whether those statements
 25 were actually mailed to Mr. Shaler?

23

1 A. I do not.
 2 Q. Do you have an understanding as to
 3 what information was obtained about the account here
 4 from Sherman at the time the account was purchased?
 5 A. Purchased by us?
 6 Q. Yes.
 7 MS. PHIEFER: Do you understand that?
 8 THE WITNESS: Yes, I understand it.
 9 MS. PHIEFER: You understand the
 10 question, okay.
 11 A. Yes, we have that information.
 12 Q. Do you have an understanding as to
 13 what happens to information obtained by New Century
 14 when it purchases debt?
 15 A. Yes.
 16 Q. What happens to that information?
 17 A. When New Century purchases the debt?
 18 Q. Yes.
 19 A. We get the debt --
 20 Q. Before you go on, I think you asked me
 21 a question to clarify my question. You said purchase
 22 the debt. To your knowledge, has New Century ever
 23 purchased a single debt?
 24 A. Not to my knowledge.
 25 Q. They're purchasing pools of debt.

28

1 **A. Yes.**
 2 **Q.** Can you start with D-2 and explain
 3 what D-2 is?
 4 **A. D-2 is a bill of sale and assignment**
 5 **from Sherman Acquisitions, LLC to New Century**
 6 **Financial Services, Inc.**
 7 **Q.** And what is D-3?
 8 **A. D-3 is a bill of sale, assignment from**
 9 **Citibank South Dakota to Sherman Originator, LLC.**
 10 **Q.** And what is D-4?
 11 **A. D-4 is an affidavit from a Sherman**
 12 **Director John Mazzoli that states Sherman**
 13 **Acquisitions, LLC, LVMB Funding, LLC, and Sherman**
 14 **Originator, LLC, are all subsidiaries under Sherman**
 15 **Financial Group, LLC.**
 16 **Q.** I'm going to represent to you that
 17 those three documents were included in documents
 18 produced by your counsel to my office. Can you tell
 19 me what function D-4 serves?
 20 **A. The function D-4 serves is to show**
 21 **that the entities are subsidiaries of Sherman**
 22 **Financial Group, because the bills of sale have**
 23 **different purchasing and sale entities on them.**
 24 **Q.** So it would be fair to say that in
 25 other words, the purchase from Citibank refers to a

29

1 Sherman entity called Sherman Originator, LLC,
 2 correct?
 3 **A. Yes.**
 4 **Q.** And the sale to New Century Financial
 5 was from Sherman Acquisition, LLC, a different name,
 6 correct?
 7 **A. Correct.**
 8 **Q.** So is it fair to say that D-4 is a
 9 document that allows New Century Financial to
 10 conclude that the purchaser of the accounts is
 11 sufficiently related to the seller of the accounts so
 12 that you know there's a proper chain of title?
 13 **A. Yes.**
 14 **Q.** In D-2, is there anything in that that
 15 identifies Mr. Shaler's account?
 16 **A. No.**
 17 **Q.** What information are you aware of that
 18 connects Mr. Shaler's account to the transaction
 19 that's described in D-2?
 20 MS. PHIEFER: I'm sorry, I'm objecting
 21 as to the form of the question because it is
 22 confusing. Would you rephrase it or break it down?
 23 It seems compound.
 24 **Q.** Did you understand the question?
 25 **A. No.**

30

1 **Q.** Does D-2 reflect a transaction in
 2 which New Century Financial purchased a pool of debts
 3 from Sherman Acquisition?
 4 **A. Yes.**
 5 **Q.** Was Mr. Shaler's account included in
 6 that pool?
 7 **A. It was.**
 8 **Q.** What information are you aware of that
 9 connects Mr. Shaler's account to the pool of debts
 10 that's reflected in D-2?
 11 **A. The list of accounts that came arrived**
 12 **along with this bill of sale.**
 13 **Q.** Is there a way to identify the
 14 particular list of accounts?
 15 **A. I'm sorry. Say it again?**
 16 **Q.** New Century Financial has purchased
 17 more than one pool of debts, correct?
 18 **A. Yes.**
 19 **Q.** In terms of just ball park, is it in
 20 excess of a thousand pools of debts that New Century
 21 has purchased since you've worked for them?
 22 **A. Yes.**
 23 **Q.** Okay. So how do you identify a list
 24 of accounts that represent a pool of debt?
 25 **A. With each purchase, there's a purchase**

31

1 **and sale agreement that is accompanied by these bills**
 2 **of sale from the issuer to whoever we purchased it**
 3 **from, from that entity to New Century Financial, and**
 4 **that's always accompanied by an electronic**
 5 **spreadsheet with a list of accounts.**
 6 **Q.** That electronic spreadsheet, does that
 7 then tie in to what we discussed before, that an IT
 8 person then takes that information and loads it into
 9 your system?
 10 **A. That's correct.**
 11 **Q.** Is there a unique identifier for each
 12 electronic spreadsheet?
 13 **A. Yes.**
 14 **Q.** Is there a way in which to connect
 15 that unique identifier to the transaction represented
 16 in D-2?
 17 **A. No.**
 18 **Q.** D-2, at the very top, says Exhibit 1.
 19 Do you see that?
 20 **A. Yes.**
 21 **Q.** Is it your understanding that D-2 is
 22 an exhibit to another document?
 23 **A. Yes.**
 24 **Q.** Do you know what the other document
 25 is?

32

1 **A. Yes.**

2 **Q.** What's that document?

3 **A. It's the purchase and sale agreement**

4 **between New Century Financial Services and Sherman**

5 **Acquisitions, LLC.**

6 **Q.** Is that purchase and sale agreement

7 described in D-2?

8 **A. I'm not sure how to answer that. I'm**

9 **not sure if it's exactly described.**

10 **Q.** Do you have the ability to, if you

11 went back to your office, to connect D-2 to a

12 specific purchase and sale agreement?

13 **A. Yes.**

14 **Q.** Who is responsible for maintaining the

15 purchase and sale agreement?

16 **A. I am.**

17 **Q.** Is the purchase and sale agreement

18 maintained in electronic form or in paper form?

19 **A. Both.**

20 **Q.** So is the purchase and sale agreement

21 maintained at New Century Financial's offices?

22 **A. Yes.**

23 **Q.** And you have access to that paper

24 agreement?

25 **A. Yes.**

33

1 **Q.** How would you go about connecting D-2

2 to the purchase and sale agreement?

3 **A. It's already in the purchase and sale**

4 **agreement. This is a copy pulled from it. It's**

5 **already in the files for this particular purchase**

6 **from Sherman.**

7 **Q.** Is --

8 **A. I'm sorry, the identifier you**

9 **mentioned before is not just for a bill of sale. We**

10 **have it for an overall purchase, so each purchase**

11 **from Sherman goes through one from I'm not sure which**

12 **one we're at now, and that's the way we pull it. If**

13 **this was Sherman 15, we would pull Sherman 15 and it**

14 **would include this bill of sale.**

15 **Q.** And Sherman 15 would also include the

16 purchase and sale agreement?

17 **A. Yes.**

18 **Q.** Would a purchase and sale agreement

19 encompass multiple pools of debt?

20 **A. No, just one pool.**

21 **Q.** So you don't know the actual

22 identifier that relates to the pool that Mr. Shaler's

23 debt was included in, correct? I mean, you don't

24 know that as you sit here today, do you?

25 **A. I can look it up right now.**

34

1 MS. PHIEFER: He doesn't know it.

2 THE WITNESS: I do know it.

3 MS. PHIEFER: What do you call it,

4 Marko? What is it called?

5 THE WITNESS: That's different. He's

6 asking -- do you have the screen printout of the

7 actual claim?

8 MS. PHIEFER: Oh, I can print it out,

9 but I only have this.

10 THE WITNESS: I thought you had one, a

11 screen printout.

12 MS. PHIEFER: I didn't print it, but I

13 can. I can do that.

14 **Q.** Before we do that, you're saying

15 there's -- you mentioned a screen printout a moment

16 ago.

17 **A. Yes.**

18 **Q.** What is that a screen printout of?

19 **A. It's a screen printout of the software**

20 **that we use.**

21 **Q.** And that software gives you access to

22 the data in the accounts, correct?

23 **A. Yes.**

24 **Q.** And if you access the account

25 information with regard to Mr. Shaler's debt, there

35

1 would be some information there that would contain

2 that identifier? Is that correct or no?

3 **A. Yes.**

4 **Q.** And with that identifier, you would

5 know which pool of debt it came from.

6 **A. Correct.**

7 **Q.** And then identifying which pool of

8 debt, you would be able to pull the specific sale and

9 purchase agreement for that pool.

10 **A. Yes.**

11 **Q.** And would you also be able to, with

12 that information, be able to identify the spreadsheet

13 that contained a list of accounts that were included

14 in that pool?

15 **A. Yes.**

16 **Q.** Is there any information that New

17 Century has with respect to Mr. Shaler's debt that

18 came from anyone other than the Sherman Financial

19 Group?

20 **A. No.**

21 **Q.** So let me flip it around the other

22 way, the same question, to make sure we have it

23 covered. All of the information that New Century

24 Financial has with respect to Mr. Shaler's account

25 came from the Sherman Financial Group, correct?

36

1 **A. Yes.**
 2 **Q.** Did you see in the complaint that
 3 there was a request as part of the claim for
 4 attorney's fees equal to 25 percent of the amount of
 5 the claim?
 6 **A. I did see that, yes.**
 7 MR. STERN: Let's mark this.
 8
 9 (Exhibit D-5, card agreement, is
 10 marked for identification by the reporter.)
 11
 12 **Q.** Do you know what D-5 is?
 13 **A. Yes.**
 14 **Q.** What is D-5?
 15 **A. It's a card agreement.**
 16 **Q.** Based on information available to you,
 17 is it your understanding that D-5 is the document
 18 which sets forth the terms of Mr. Shaler's account?
 19 **A. Yes.**
 20 **Q.** Have you ever read D-5?
 21 **A. Yes.**
 22 **Q.** Do you know whether D-5 contains a
 23 provision for recovery of attorneys' fees in the
 24 amount of 25 percent of the amount of the claim?
 25 **A. Not specifically 25 percent.**

37

1 **Q.** What's your understanding?
 2 **A. I believe it says reasonable**
 3 **attorneys' fees.**
 4 **Q.** I refer you back to D-1, paragraph
 5 two. Do you see that?
 6 **A. Yes.**
 7 **Q.** I'm going to read that. It says, "As
 8 provided by contract, the plaintiff is entitled to
 9 attorneys' fees of 25 percent of the amount due." Do
 10 you see that language?
 11 **A. Yes.**
 12 **Q.** Do you know what the basis for that
 13 allegation is?
 14 **A. You would have to ask my attorneys**
 15 **that.**
 16 **Q.** Okay. In the course of your work with
 17 New Century Financial, do you regularly look at
 18 credit card statements?
 19 **A. Yes.**
 20 **Q.** Would it be fair to say that you're
 21 pretty familiar with the format, you could identify a
 22 credit card statement by looking at it?
 23 **A. I can.**
 24 (Exhibit D-6, account statement, is
 25 marked for identification by the reporter.)

38

1 **Q.** Can you tell me what D-6 is?
 2 **A. Yes, it's a statement -- well, an**
 3 **account statement from City Platinum Collect Card,**
 4 **Citibank.**
 5 **Q.** And is it connected with the debt in
 6 this case?
 7 **A. It is.**
 8 **Q.** Do you know whether D-6 is a duplicate
 9 of what was actually mailed to Mr. Shaler?
 10 **A. Yes.**
 11 **Q.** Was it an exact duplicate?
 12 **A. That's what we were told.**
 13 **Q.** When you say that's what we were told,
 14 by whom would you have been told that?
 15 **A. By Sherman.**
 16 **Q.** Does any of the information at the top
 17 suggest to you that this may be a reprint of some of
 18 the information in the bill but not actually a
 19 duplicate of what was actually mailed?
 20 **A. This particular one is a duplicate of**
 21 **a statement. It has the attorney code on top, which**
 22 **just it wasn't mailed to the consumer. It stays**
 23 **within their office and they have a duplicate of it.**
 24 **It's what they call a charge-off statement.**
 25 **Q.** Have you reviewed all the statements

39

1 that you obtained from Sherman?
 2 **A. Yes.**
 3 **Q.** And did they all contain that same
 4 information at the top?
 5 **A. I believe not, just this one.**
 6 **Q.** I may need to identify them, but let's
 7 see if we can avoid cluttering up the record. Can
 8 you just take a look at these documents -- and again,
 9 if we need to identify them, we can -- and indicate,
 10 looking at these, does that change your answer?
 11 **A. What do you mean change my answer?**
 12 **Q.** All right, let's break this down.
 13 Let's go back to D-6.
 14 **A. Mm-hmm.**
 15 **Q.** You said there was an attorney code at
 16 the top?
 17 **A. Yes.**
 18 **Q.** Can you point to exactly what that
 19 attorney code is? Okay. So you're pointing to
 20 numbers that appear -- okay, now I see what you're
 21 talking about. Under it looks like it would be the
 22 address block for Mr. Shaler?
 23 **A. Correct.**
 24 **Q.** Underneath it, it says Attorney
 25 Account - Code and it says NGB5?

40

1 **A. Yes.**
 2 **Q.** Do you know what NGB5 stands for?
 3 **A. No.**
 4 **Q.** Now I know what you're specifically
 5 referring to.
 6 **A. Okay.**
 7 **Q.** Do you know what the information here
 8 is where it says Site: KC-CL, do you know what that
 9 means?
 10 **A. Site I would assume is Kansas City.**
 11 **Q.** And what does site refer to?
 12 **A. The site where this office for**
 13 **Citibank is located.**
 14 **Q.** And what about the next grouping, it
 15 says TM and a colon.
 16 **A. I'm not sure what that is.**
 17 **Q.** And the next grouping after that says
 18 ACID and a colon. Do you know what that refers to?
 19 **A. No.**
 20 **Q.** I want to refer you to Exhibit D-3.
 21 Do you know what D-3 is?
 22 **A. Yes.**
 23 **Q.** What is D-3?
 24 **A. It's a bill of sale assignment from**
 25 **Citibank to Sherman.**

41

1 **Q.** Was that a document that New Century
 2 Financial obtained in connection with the transaction
 3 reflected in D-2?
 4 **A. Yes.**
 5 **Q.** Is there anything in D-3 which
 6 identifies Mr. Shaler's account?
 7 **A. No.**
 8 **Q.** Is there any information available to
 9 you by which you could connect Mr. Shaler's account
 10 as one of the accounts being sold in the transaction
 11 reflected in D-3?
 12 **A. You have to repeat that question.**
 13 **Q.** Okay. D-3 reflects some information
 14 regarding the sale of a pool of accounts from
 15 Citibank to Sherman, correct?
 16 **A. Yes.**
 17 **Q.** And you have an understanding that Mr.
 18 Shaler's account was included in that pool, correct?
 19 **A. Yes.**
 20 **Q.** Are you aware of any information from
 21 which you could connect Mr. Shaler's account to the
 22 pool of debts that were sold as reflected in D-3?
 23 **A. Yes.**
 24 **Q.** What information do you have?
 25 **A. Well, where it says the account is**

42

1 **described in section 1.2 of the agreement. Those**
 2 **accounts are that spreadsheet.**
 3 **Q.** You say that spreadsheet. What
 4 spreadsheet?
 5 **A. The spreadsheet where Mr. Shaler's**
 6 **account is.**
 7 **Q.** Is that the same spreadsheet that
 8 contains the list of accounts that you identified
 9 with respect to D-2?
 10 **A. Yes -- no. Not the same, no. I**
 11 **wouldn't know. It's a different sale. They could**
 12 **have sold more or less, Citibank to Sherman.**
 13 **Q.** So there would have been some
 14 spreadsheet that would contain some way to identify
 15 each account being sold as part of the pool of
 16 accounts in the transaction reflected in D-3?
 17 **A. Yes.**
 18 **Q.** And there would be a separate
 19 spreadsheet that would identify each of the accounts
 20 including the pool of accounts which are part of the
 21 transaction reflected in D-2.
 22 **A. Correct.**
 23 **Q.** And those may not necessarily be the
 24 same accounts.
 25 **A. No.**

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1 **Q.** But it's your understanding that the
 2 accounts that were included in the spreadsheet
 3 reflected by D-2 were all included in the accounts
 4 that were reflected in the list of accounts for D-3,
 5 correct?
 6 **A. No.**
 7 **Q.** Okay. I guess what I'm asking is,
 8 were the accounts that were sold by Citibank to
 9 Sherman inclusive of all accounts sold from Sherman
 10 to New Century?
 11 **A. I wouldn't know that.**
 12 **Q.** Let me just -- I apologize if I'm
 13 repeating it, but let me ask it a different way.
 14 Were all the accounts purchased by New Century from
 15 Sherman included in the purchase that Sherman made
 16 from Citibank? I'll withdraw that question.
 17 Is New Century's pool of accounts a
 18 subset of the pool of accounts that Sherman purchased
 19 from Citibank?
 20 **A. Define subset.**
 21 **Q.** Less than but not more than the
 22 accounts that were included in the first grouping.
 23 **A. I do not know how many accounts were**
 24 **included in the first grouping.**
 25 **Q.** Let me go about this a different way.

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1 Were any of the accounts that Sherman sold -- I'll
 2 even back up because I think I've got to lay a little
 3 foundation first before we get there. I keep
 4 referring to the account represented in D-2 or D-3.
 5 I'm only limiting ourselves to the pools of accounts
 6 that are either reflected by D-2, which I'll refer to
 7 as New Century's purchase, and the ones that are
 8 reflected in D-3 as Sherman's purchase, okay?
 9 **A. Yes.**
 10 **Q.** Are any of the accounts included in
 11 the New Century purchase accounts which are not
 12 reflected in the Sherman purchase?
 13 **A. Again, I don't know what is in the**
 14 **Sherman purchase except for the account of Mr.**
 15 **Shaler.**
 16 **Q.** So it would be fair to say that D-3
 17 does not necessarily reflect Sherman's purchase of
 18 Mr. Shaler's account?
 19 **A. A specific document, no.**
 20 **Q.** Are you aware of any specific document
 21 which would reflect Sherman's purchase of Mr.
 22 Shaler's account?
 23 **A. No.**
 24 **Q.** I just want to go back. You talked
 25 about that there was a screen when pulling up Mr.

45

1 Shaler's account which includes the identifier from
 2 which you can connect the spreadsheet to the
 3 particular pool that was purchased, correct?
 4 **A. Yes.**
 5 **Q.** Who entered that identifier in New
 6 Century' system?
 7 **A. The programmer.**
 8 **Q.** Do you know where the programmer gets
 9 that identifier from?
 10 **A. He makes it up.**
 11 **Q.** Do you know what either procedures,
 12 policies, or practices are in terms of how to create
 13 those identifiers?
 14 **A. They go chronologically.**
 15 **Q.** Is it a code or is it words that is
 16 the identifier?
 17 **A. It's alphanumeric.**
 18 **Q.** I realize you don't know the specific
 19 one and we can take a break and get that, but you
 20 know what, maybe I'll hold off my question. Maybe
 21 we'll do that.
 22 You reviewed the answers to
 23 interrogatories that were in this case?
 24 **A. I looked at them, yes.**
 25 **Q.** Were you the individual who signed the

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1 answers to interrogatories on behalf of New Century?
 2 **A. Yes.**
 3 **Q.** And with respect to the
 4 interrogatories, you provided the answers to your
 5 counsel?
 6 **A. Excuse me?**
 7 **Q.** You provided or approved the answers
 8 that were provided to counsel?
 9 **A. I approved the answers, yes.**
 10 **Q.** And to the best of your knowledge,
 11 those answers were true and accurate?
 12 **A. Yes.**
 13 **Q.** And you reviewed those interrogatory
 14 answers in the last day or earlier today?
 15 **A. I reviewed them yesterday, yes.**
 16 **Q.** Okay.
 17 **A. And a week ago.**
 18 **Q.** And when you reviewed them yesterday,
 19 still true and accurate as of yesterday?
 20 **A. Yes.**
 21 **Q.** All right. I have nothing else other
 22 than we can talk about that screen shot.
 23 MS. PHIEFER: I just want to redirect
 24 the witness.
 25

47

1 EXAMINATION BY MS. PHIEFER:
 2 **Q.** Mr. Stern asked you about D-1, the
 3 complaint. Marko, would you mind reading into the
 4 record the wherefore clause, which is right there?
 5 **A. Yes. "Wherefore Plaintiff demands**
 6 **judgement for a sum of \$22,871.95 plus accruing**
 7 **interest to the date of the judgement plus costs."**
 8 **Q.** And what is encompassed within the
 9 \$22,871.95?
 10 **A. It would be the principal amount,**
 11 **interest --**
 12 **Q.** What was the principal amount?
 13 **A. \$17,931.32, interest in the sum of**
 14 **\$366.24, and attorney fees at \$4,574.39.**
 15 **Q.** And the interest that's mentioned
 16 here, how is that calculated and what is the
 17 percentage or how is it calculated?
 18 **A. Well, I believe the attorneys**
 19 **calculate the interest from the date of August 6th,**
 20 **2009, to April 15th, 2010, and whatever the standard**
 21 **rate of interest is.**
 22 **Q.** Yes, that's what I want to know. Do
 23 you know what rate of interest is used?
 24 **A. The court rate of interest.**
 25 **Q.** We talked about D-3 and D-2. D-3

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1 reflects a sale or assignment between whom and whom?
 2 **A. Between Citibank and Sherman.**
 3 **Q.** And this D-2 reflects the same between
 4 whom and whom?
 5 **A. From Sherman Acquisition to New**
 6 **Century Financial.**
 7 **Q.** And where does New Century Financial
 8 get the information, the specific information with
 9 regard to Mr. Shaler's account?
 10 **A. From the list of accounts, the**
 11 **spreadsheet.**
 12 **Q.** The spreadsheet, okay. Is the
 13 spreadsheet attached to this bill of sale?
 14 MR. STERN: D-3.
 15 **Q.** When do you get the spreadsheet?
 16 **A. This bill of sale is part of the**
 17 **purchase and sale agreement. The purchase and sale**
 18 **agreement contains the bill of sale and the**
 19 **spreadsheet.**
 20 MR. STERN: When you said this, you
 21 were referring to D-2?
 22 THE WITNESS: Yes, to D-2.
 23 **Q.** So when D-2 is attached as an exhibit
 24 to the purchase and sale agreement between Sherman
 25 Acquisition and NCF, it includes a spreadsheet of a

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1 pool of accounts?
 2 **A. Yes.**
 3 **Q.** With specific information about each
 4 debtor?
 5 **A. Correct.**
 6 **Q.** Was Mr. Shaler's account included
 7 within that spreadsheet?
 8 **A. It was, yes.**
 9 **Q.** And how do you get provided with that,
 10 with D-3?
 11 **A. This comes along with the sale for**
 12 **each account that we purchase. If Sherman purchased**
 13 **it from another entity, we get the full chain of**
 14 **title at the time of purchase.**
 15 **Q.** So what you're testifying to is that
 16 the reason you get this is to show Mr. Shaler's
 17 account went from Citibank to Sherman and then from
 18 Sherman to New Century.
 19 **A. Correct.**
 20 **Q.** Okay. Mr. Stern asked you about the
 21 IT guy at your office who inputs the information.
 22 Where does he get the specific information that he
 23 inputs? Where does he get it from?
 24 **A. I provide it to him.**
 25 **Q.** And where do you get it from?

50

1 **A. I get it from Sherman Acquisitions.**
 2 **Q.** In what form?
 3 **A. Mail, electronic form. We get it in**
 4 **both CD and electronically.**
 5 **Q.** And what is it that you're looking at
 6 that has that information?
 7 **A. The electronic spreadsheet.**
 8 **Q.** Do you know, I can print it out or if
 9 you don't mind, we can put this in as D-7, do you
 10 know what kind of personal information or what kind
 11 of information is included about Mr. Shaler and his
 12 debt among that spreadsheet?
 13 **A. Yes, whatever Citibank provided to**
 14 **Sherman. Account number, origination date, date of**
 15 **charge-off, the consumer Social Security number,**
 16 **address, any information they have.**
 17 MS. PHIEFER: I'd like to have this
 18 marked.
 19 (Exhibit P-1, spreadsheet, is marked
 20 for identification by the reporter.)
 21
 22 **Q.** Marko, do you see P-1? Would you take
 23 a look at it? I think it's about four or five pages.
 24 What is this? What is it called?
 25 **A. This is the electronic spreadsheet,**

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1 **what we call the placement information.**
 2 **Q.** And placement information on this
 3 account is listed on P-1?
 4 **A. Yes.**
 5 **Q.** From where did you get this personal
 6 information specifically about Mr. Shaler?
 7 **A. From Sherman.**
 8 **Q.** And what document was it on or what
 9 document did you get it from?
 10 **A. It came from the purchase and sale**
 11 **agreement that was on the CD.**
 12 **Q.** And the CD, what was that again?
 13 **A. The purchase and sale agreement.**
 14 **Q.** Okay. Which has attached to it what?
 15 **A. The bill of sale and the electronic**
 16 **spreadsheet.**
 17 **Q.** Okay, the electronic spreadsheet. So
 18 when you provide this information to your attorney,
 19 the only information you provide is the personal
 20 information with regard to this particular debt. Is
 21 that correct?
 22 **A. Yes.**
 23 **Q.** Provided to us on each case.
 24 **A. On each case, yes.**
 25 **Q.** Could you just tell me again what this

56

1 BY MS. PHIEFER:

2 **Q.** Marko, what is this P-3? First of

3 all, how many pages does it have?

4 **A.** **It looks like it has three pages.**

5 **Q.** And what is it called?

6 **A.** **It's called the debtor placement**

7 **information.**

8 **Q.** And what does it contain?

9 **A.** **It contains the consumer's information**

10 **taken from the spreadsheet provided to us at the time**

11 **of sale.**

12 **Q.** To be more specific, it gives you

13 information about the debtor and the debt?

14 **A.** **Yes.**

15 **Q.** Does it contain the same exact

16 information as is on P-1?

17 **A.** **Yes.**

18 MS. PHIEFER: Thank you, I'm done.

19

20 EXAMINATION BY MR. STERN:

21 **Q.** Does P-3 also include that identifier

22 that we talked about before?

23 **A.** **This particular screen does not.**

24 **Q.** So how would you go about finding that

25 identifier?

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1 **A.** **Just look at the actual account from**

2 **our collection screen.**

3 **Q.** And that's something you could do back

4 at your office?

5 **A.** **Yes. Well, I know what it is.**

6 **Q.** How do you know what it is? Because

7 you just looked at it during the break?

8 **A.** **I just made a phone call.**

9 **Q.** Okay.

10 **A.** **That's why I stepped out, just to**

11 **identify which one that was.**

12 **Q.** What's the identifier?

13 **A.** **Sherman 20, SHER20.**

14 **Q.** Dash?

15 **A.** **No, just SHER20.**

16 **Q.** Does that indicate that that would be

17 the 20th pool that New Century purchased from

18 Sherman?

19 **A.** **I believe probably 21st because I**

20 **think we started with 00.**

21 **Q.** Is there any information that's stored

22 by New Century Financial regarding Mr. Shaler's

23 account which would tie his account information to

24 SHER20?

25 **A.** **I'm sorry. Just repeat the question,**

58

1 **please?**

2 **Q.** Yes. Before I restate the question,

3 let me tell you what I'm looking for. I'm looking

4 for the ability to connect Mr. Shaler's account to

5 the SHER20 that you just gave me. What records or

6 information does New Century Financial maintain that

7 connects Mr. Shaler's account with SHER20?

8 **A.** **Under SHER20 is the purchase and sale**

9 **agreement that goes along with it, the bill of sales,**

10 **this electronic spreadsheet with the consumer's**

11 **information.**

12 **Q.** The electronic spreadsheet is a

13 computer file?

14 **A.** **Yes.**

15 **Q.** And the computer file has a name,

16 correct?

17 **A.** **Yes.**

18 **Q.** How does that name tie in with SHER20?

19 **A.** **Everything is named SHER20, so it**

20 **would be SHER20.xls, the spreadsheet.**

21 **Q.** So xls is a Microsoft Excel

22 spreadsheet?

23 **A.** **Correct.**

24 **Q.** Fine. So just to recap what you've

25 said, there is a Microsoft Excel spreadsheet in New

59

1 Century Financial's computers named SHER20.xls?

2 **A.** **That's correct.**

3 **Q.** And in that spreadsheet would be the

4 debtor placement information from Mr. Shaler's

5 account.

6 **A.** **Correct.**

7 **Q.** Okay. I got how that connects, thank

8 you. I just have a couple of follow-up questions.

9 The \$17,931.32 that you indicate is in

10 the complaint, and you referred to that as principal,

11 I take it that that's also the charge-off amount? Is

12 that what you said?

13 **A.** **Yes.**

14 **Q.** To your knowledge, does that represent

15 the principal balance you due on the Citibank

16 account?

17 **A.** **Yes.**

18 **Q.** I'm going to ask that again and add,

19 does that represent principal exclusive of interest

20 and fees charged by Citibank?

21 **A.** **There are interest and fees included**

22 **in that, but nothing post principal.**

23 **Q.** Post charge --

24 **A.** **Yes, post charge-off.**

25 **Q.** So the \$17,931.32 represents the

64

1 \$4,801.63?

2 **A. Correct.**

3 **Q.** Do you know what that number

4 represents?

5 **A. That number represents interest after**

6 **charge-off or what they call the charge-off date.**

7 **Q.** Is that a number that comes from

8 Citibank or is that a number that comes from Sherman?

9 **A. It comes from Citibank.**

10 **Q.** So Citibank is saying that that's

11 interest that accrued after they charged off?

12 **A. Correct.**

13 **Q.** And just to be absolutely sure, that

14 does not represent the interest that Citibank

15 charged, which is part of the 17,931, correct?

16 **A. No, it's not.**

17 **Q.** Your claim in this case does not

18 include that \$4,801.63, correct?

19 **A. It does not.**

20 **Q.** And then the next item says other

21 balance and zero, correct?

22 **A. Mm-hmm.**

23 **Q.** Verbal answer.

24 **A. Yes, I'm sorry.**

25 **Q.** And the next item, it's abbreviated,

65

1 but does that stand for current balance?

2 **A. Yes, it does.**

3 **Q.** And that says \$22,732.95, correct?

4 **A. Yes.**

5 **Q.** And does that represent the sum of the

6 principal balance and the interest balance?

7 **A. Yes, it does.**

8 (A discussion is held off the record.)

9 **Q.** You stopped me earlier on from asking

10 questions about what information Sherman obtained. I

11 submit to you, in light of that answer will you allow

12 me to go into questions that --

13 **MS. PHIEFER:** Sure, absolutely. But

14 that was specific, because the only way the witness

15 knows that Citibank provided it is because of the

16 chain of title, you know, and common sense. Seeing

17 that Citibank to Sherman, Sherman to New Century,

18 that's how he knows that the debt was included in the

19 sale. And as far as what else they provided, that's

20 privileged, if he even knows. In other words, as far

21 as what else Citibank provided to Sherman, if he

22 knows, it would be privileged, and I don't think he

23 even knows.

24 **MR. STERN:** All right, I think I

25 understand your objection. There's some questions I

66

1 want to ask about that that -- well, you'll decide

2 when I ask the question if it's objectionable.

3 **Q.** You're making an assumption based upon

4 looking at D-3 and D-2 that the information that

5 Sherman provided you was information that it obtained

6 from Citibank, correct?

7 **A. Yes.**

8 **Q.** Your knowledge about what information

9 Sherman obtained is just based on making that

10 assumption from the two documents, D-3 and D-2?

11 **A. Yes, and the fact that in our purchase**

12 **and sale agreement with Sherman Financial and any**

13 **purchase and sale agreement with Sherman that we've**

14 **had in the past, they represent all that information**

15 **transferred is accurate and true.**

16 **MR. STERN:** All right. I don't have

17 anything else.

18 **MS. PHIEFER:** I have nothing else.

19

20

21 (The deposition is concluded at 11:55 a.m.)

22

23 * * * * *

24

25

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1 CERTIFICATE OF OFFICER

2

3 I, ANN P. CONLON, a Notary Public and

4 Certified Court Reporter of the State of New Jersey,

5 do hereby certify that prior to the commencement of

6 the examination, the witness was duly sworn by me.

7

8 I DO FURTHER CERTIFY that the

9 foregoing is a true and accurate transcript of the

10 testimony as taken stenographically by and before me

11 at the time, place, and on the date hereinbefore set

12 forth.

13 I DO FURTHER CERTIFY that I am neither

14 a relative nor employee, nor attorney or counsel to

15 any of the parties involved, that I am neither

16 related to nor employed by such attorney or counsel,

17 and that I am not financially interested in the

18 outcome of the action.

19

20

21

22 _____

23 NOTARY PUBLIC OF THE STATE OF NEW JERSEY

24 My Commission Expires: 2/3/11

25 License No. 30XI000999

EXHIBIT 1
BILL OF SALE AND ASSIGNMENT

KNOW ALL MEN BY THESE PRESENTS, that the undersigned Sherman Acquisition LLC ("Assignor"), for good and valuable consideration, the receipt of which is hereby acknowledged, does by these presents, assign, sell, transfer, convey, and set over to New Century Financial Services, Inc. ("Assignee"), its successors and assigns, all rights, title and interest in and to certain charged-off receivables (the "Charged-off Accounts"), related documents evidencing a security interest in favor of Assignor, liens or other security instruments or encumbrances executed in favor of Assignor, filed and/or created in conjunction with collateral securing the Charged-off Accounts. Such Charged-off Accounts are described in the attached Appendix A and referred to as Charged-off Accounts in the Purchase and Sale Agreement between Assignor and Assignee and dated July 29, 2009.

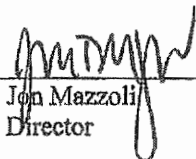
This Assignment is made without recourse or warranty except as otherwise provided in the Agreement executed by Assignor and Assignee with regard to the Charged-off Accounts and other rights, privileges and documentation referred to herein.

Dated this ^{5th} ~~31~~ day of ^{August} ~~July~~, 2009

WITNESS


Erin Holaday
Associate

SHERMAN ACQUISITION LLC

By: 
Jon Mazzoli
Director



BILL OF SALE, ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS BILL OF SALE, ASSIGNMENT AND ASSUMPTION AGREEMENT is dated as of June 26, 2007, between Citibank (South Dakota), National Association, a national banking association organized under the laws of the United States, located at 701 East 60th Street North, Sioux Falls, SD 57117 (the "Bank") and Sherman Originator, LLC, a Delaware corporation, located c/o Sherman Capital Markets LLC at 200 Meeting Street, Suite 206, Charleston, SC 29401 ("Buyer").

For value received and subject to the terms and conditions of the Purchase and Sale Agreement dated June 26, 2007, between Buyer and the Bank (the "Agreement"), the Bank does hereby transfer, sell, assign, convey, grant, bargain, set over and deliver to Buyer, and to Buyer's successors and assigns, the Accounts described in Section 1.2 of the Agreement.

This Bill of Sale, Assignment and Assumption Agreement is executed without recourse and without representations or warranties including, without limitation, warranties as to collectibility except as provided in the Agreement.

Citibank (South Dakota), N.A.

Sherman Originator LLC

By: [Signature]
(Signature)

By: [Signature]
(Signature)

Name: Douglas C. Morrison

Name: Carin M Schalk

Title: Vice President & CFO

Title: Attorney / Secretary



AFFIDAVIT AND ASSIGNMENT

STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

Jon Mazzoli, being duly sworn, deposes and says:

1. I am the **Director** for Sherman Financial Group, LLC, and am authorized to make this affidavit on behalf of Sherman Financial Group, LLC.
2. Sherman Acquisition, LLC, LVNV Funding, LLC and Sherman Originator, LLC are subsidiaries under Sherman Financial Group, LLC.

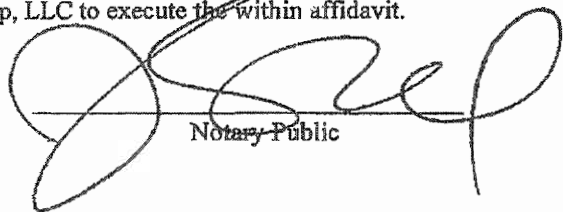
Sherman Financial Group, LLC

By: _____



Jon Mazzoli
Director

On April 24, 2008, before me personally appeared **Jon Mazzoli**, who, being sworn stated he/she was authorized on behalf of Sherman Financial Group, LLC to execute the within affidavit.



Notary Public

My Commission Expires
February 1, 2015



PRESSLER AND PRESSLER, LLP
COUNSELLORS AT LAW
7 Entin Rd.
Parsippany, NJ 07054-5020
(973) 753-5100

Attorney for Plaintiff

Exhibit 4

NEW CENTURY FINANCIAL SERVICES, INC.

Plaintiff

vs.
DAVID SHALER

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MORRIS COUNTY

DOCKET NO. L -001265-10

Civil Action
PLAINTIFF'S RESPONSES TO DEFENDANT'S
DOCUMENT REQUEST

Defendant

GENERAL RESERVATION

Plaintiff reserves the right to supplement and/or amend any or all responses provided herein. If Plaintiff obtains the requested documentation and/or information at a later time, Plaintiff will provide them to Defendant upon their receipt.

1. The "contract" referred to in Paragraph 2 of the Complaint.

RESPONSE: Annexed hereto is the cardmember agreement containing all terms and conditions governing the use of the subject account.

2. The purchase agreement under which Plaintiff purchased the accounts which included the account described in Paragraph 1 of the Complaint.

RESPONSE: Objection. This demand is improper it calls for irrelevant information not reasonably calculated to lead to the discovery of admissible evidence.

3. The bill of sale evidencing the sale of the accounts which included the account described in Paragraph 1 of the Complaint.

RESPONSE: Annexed hereto is the chain of title for the subject account documenting the bulk transfer of delinquent accounts to Plaintiff, which included Defendant's defaulted Citibank Visa account.

4. All correspondence sent by Plaintiff and Plaintiff's attorneys to Defendant.

RESPONSE: Annexed hereto is a letter dated August 10, 2009 that went to Defendant's current home address at 9 Coursen Way in Madison, NJ from Plaintiff's Counsel.

5. All correspondence received by Plaintiff and Plaintiff's attorneys from Defendant or from someone acting on behalf of Defendant.

PRESSLER AND PRESSLER, LLP
COUNSELLORS AT LAW
7 Entin Rd.
Parsippany, NJ 07054-5020
(973) 753-5100

Attorney for Plaintiff

Exhibit 5

NEW CENTURY FINANCIAL SERVICES, INC.

Plaintiff

vs.
DAVID SHALER

Defendant

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MORRIS COUNTY

DOCKET NO. L-001265-10

Civil Action
SUPPLEMENTAL INTERROGATORIES
DATED: SEPTEMBER 22, 2010

TO: PHILIP D. STERN, ESQ.
PHILIP D. STERN & ASSOCIATES, LLC
697 VALLEY STREET SUITE 2-D
MAPLEWOOD, NEW JERSEY 07040

DEMAND is hereby made of defendant for certified answers to the following Supplemental Interrogatories within the time prescribed by the rules of this Court.

Each question below requests an answer or information relating to CITIBANK VISA Account Number 4128-0031-9756-8408 purchased by New Century Financial Services, Inc. and your responses should be directed thereto.

1. With regard to Defendant's alleged memory loss, from which Defendant states he has suffered for several years causing him to have "no recollection" of the subject debt:

a) Has Defendant ever been medically evaluated for his said alleged memory loss?

ANS. **Yes.**

b) If so, by whom was Defendant medically evaluated?; and

ANS. Defendant was hospitalized for about 6 weeks after a fall in 2006. Upon discharge, he was sent to Pine Acres Rehabilitation Center, 51 Madison Avenue, Madison, NJ, Madison, for about 12 weeks. While there, he was diagnosed with Alzheimer's disease and placed on Aricept. More recently, Namenda was added. His treating physician is Anna M. Raska, M.D., 182 South Street, Suite 2, Morristown, NJ 07960.

c) If so, on what date(s) or in what year(s) did said evaluation(s) occur?

ANS. **See response to 1.b.**

d) Has a written report ever been rendered by a medical professional as a result of said evaluation(s)?

ANS. Defendant is unaware of any written report.

2. If the answer to Interrogatory No. 1 is yes, on what date(s) or in what year(s) did the onset of said alleged memory loss occur?

ANS. 2006.

3. Has there ever been a Guardian appointed for Defendant? If yes, provide:
No.

a) The name of said Guardian;

ANS. Not applicable.

b) The date of said Guardian's appointment;

ANS. Not applicable.

c) Copies of any and all Guardianship appointment Order(s) or document(s) relating to said Guardianship of Defendant.

ANS. Not applicable.

4. In the normal course of Defendant's financial affairs, who manages Defendant's finances at present?

ANS. His wife, Kaye Shaler.

Specifically:

a) Who reviews Defendant's incoming bills?

ANS. See above.

b) Who processes the payment of said bills?

ANS. See above.

c) Is said person, persons acting under a written Power of Attorney? If so,

attach hereto a copy of said Power of Attorney.

ANS. No.

- d) Provide the name(s), address(es), and relationship to Defendant of each person or entity.

ANS. See above.

5. For how long has said person(s) or entity been acting on behalf of Defendant to manage Defendant's finances?

ANS. The finances are generally joint with Kaye. She and Defendant have been handling household finances throughout their marriage which began on November 25, 1950, however Kaye has been handling them exclusively for about 4 years.

6. Under what arrangements, if any, were Defendant's utility bills and/or credit card bills being reviewed and/or processed during the period July 1994 through December 2006?

ANS. They were paid by Defendant or his wife.

7. Identify by name and address all person(s) who assisted Defendant or otherwise reviewed and/or processed Defendant's bills during the period of July 1994 through December 2006.

ANS. Objection to the extent the request calls for privileged attorney-client communications because, from time to time, Defendant and his wife have sought legal advice regarding their finances. Subject to objection, no one other than Defendant and his wife.

8. On what date (or in what year) during the period between July 1994 and December 2006 did Defendant stop paying his bills and/or require assistance of another person (s) or entity to review and/or process said bills for payment on Defendant's behalf.

ANS. There is no date known as to when this occurred. Defendant and his wife jointly took care of paying bills throughout their marriage however, beginning approx 4 years ago, kaye exclusively.

9. Set forth Defendant's involvement, if any, in the process of said reviewing and/or processing of Defendant's bills, i.e. reviewing bills, signing checks, and/or resolving disputes regarding said bills.

ANS. Currently, Kaye discusses the bills and their payments during those times when David is more lucid.

10. Set forth all facts supporting or intending to support Defendant's claim that either he or his counsel anticipate filing an action against Plaintiff's counsel in the United States District Court for the District of New Jersey, which action and/or anticipated action is referred to on Page 2 of Defendant's Answer to Plaintiff's Complaint.

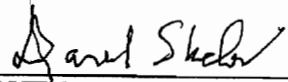
ANS. On advice of counsel, objection. The described action was not part of Defendant's Answer. Rather, disclosure of contemplated actions is required under R. 4:5-1 and, consequently, Defendant's counsel described a contemplated action. That contemplated action will not raise claims arising out of the transaction(s) which form the basis for the claims asserted here and, therefore, are not subject to the Entire Controversy Doctrine and are not relevant here.

CERTIFICATION

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

I certify that the copies of the reports annexed hereto rendered by proposed *expert witnesses* are exact copies of the entire report and/or opinion rendered by them; that the existence of other reports or opinions of each of said experts, either written or oral, are unknown to me; and if such become later known or available, I shall serve them promptly upon the propounding party.

Dated: 12 / 1 / 2010

By: 
DAVID SHALER

Philip D. Stern & Associates, LLC
Attorneys at Law
697 Valley Street, Suite 2d
Maplewood, NJ 07040
(973) 379-7500
Attorneys for Defendant, David Shaler

SUPERIOR COURT OF NJ
MORRIS COUNTY
CLERK OF COURT
2011 FEB -4 P 2 52
FINANCIAL SERVICES
RECEIVED & FILED

NEW CENTURY FINANCIAL SERVICES,
INC.,
Plaintiff,

vs.

DAVID SHALER,
Defendant.

Superior Court of New Jersey
Law Division - Morris County

Civil Action
Docket No. MRS-L-001266-10

CIVIL DIVISION

2011 FEB 15 AM 10:49

RECEIVED & FILED
SUPERIOR COURT

**DEFENDANT'S BRIEF IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT
INCLUDING
STATEMENT OF MATERIAL FACTS**

PROCEDURAL HISTORY

This matter involves a debt-buyer, New Century Financial Services, Inc., who has failed to secure any admissible proof of the debt it sues upon. The consumer, David Shaler, seeks summary judgment.

On April 19, 2010, a two-paragraph Complaint was filed and on June 3, 2010, an Answer was submitted.

Plaintiff and Defendant exchanged discovery which included interrogatories, and requests for production and for admissions, as well as the deposition of Plaintiff's authorized representative. Pursuant to Orders entered October 18, 2010 and December 17, 2010 discovery ended on January 31, 2011. Arbitration is scheduled for March 17, 2011.

STATEMENT OF MATERIAL FACTS

NOTE: Under *Brill v. Guardian Life Insurance Co.*, 142 N.J. 520 (1995), Plaintiff, who bears the burden of proof, must submit a record of admissible evidence to defeat Defendant's summary judgment motion. Defendant contends that Plaintiff's discovery responses demonstrate the lack of such evidence. Consequently, there is no evidential record to which Defendant can cite to negate the elements of Plaintiff's cause of action. Some discovery demonstrates the lack of evidence. Citations to the record refer to the Exhibits attached to the Certification of Inna Ryu which is submitted with this Motion.

1. There is no admissible evidence of the formation of a contract between Citibank, N.A. and David Shaler.
2. There is no admissible evidence that David Shaler breached any contract with Citibank, N.A.

3. There is no admissible evidence as to the debits and credits associated with the alleged account including all fees, charges and interest from which to determine the amount purportedly due.
4. There is no admissible evidence as to the purchase by Sherman Financial Group – Plaintiff’s alleged predecessor – of Mr. Shaler’s account from Citibank, N.A.
5. Based on Plaintiff’s Response to Interrogatory 2 (at Exhibit 1) and the Deposition Notice (at Exhibit 2), Marko Galic is the individual designated by Plaintiff to be deposed in response to a deposition notice regarding the following topics:
 - a. The opening of the Account.
 - b. The activities on the Account including all debits and credits, charges, fees and all other events impacting the balance claimed to be due.
 - c. The mailing of terms controlling the Account.
 - d. The mailing of notices regarding the Account.
 - e. The event or events which form the basis for the allegation that the Account is in default.
 - f. The events resulting in Plaintiff becoming the owner of the Account.
 - g. Plaintiff’s efforts to collect prior to commencing this lawsuit.
6. Plaintiff purchased a pool of accounts (“Sherman-NCF Pool”) from Sherman Financial Group. Deposition of Marko Galic (“Galic Dep.”) 30-1 (i.e., page 30 and beginning at line 1) (at Exhibit 3). [Note: *Plaintiff produced D-2 and D-3 (in Exhibit 3) as reflecting the sale of pools of accounts described in other documents (which have not been produced) – one for the purchase by “Sherman Originator, LLC” from Citibank, N.A. and the other for Plaintiff’s purchase from “Sherman Acquisition, LLC.” Plaintiff also*

produced an affidavit, D-4, from a director of “Sherman Financial Group, LLC” stating that Sherman Originator, LLC and Sherman Acquisition, LLC are subsidiaries of Sherman Financial Group, LLC. That affidavit was sufficient for Plaintiff to be satisfied as to chain of title without any proof of a transfer between Sherman Originator, LLC and Sherman Acquisition, LLC. Galic Dep. 29-8. For purposes of this Motion only, Defendant will treat all the Sherman entities as if they were one.]

7. When selling the Sherman-NCF Pool, Sherman produced documents reflecting its purchase of a pool of accounts (“Citibank-Sherman Pool”) from Citibank. Galic Dep. 49-9, D-3.
8. Plaintiff has no ability to determine whether any of the accounts in the Sherman-NCF Pool were included in the Citibank-Sherman Pool. Galic Dep. 44-10 to 44-23. Plaintiff cannot connect Mr. Shaler’s account to the Citibank-Sherman Pool. Galic Dep. 41-7. Consequently, Plaintiff cannot prove that its predecessor owned the account attributed to Mr. Shaler.
9. With the purchase of the Sherman-NCF Pool, Sherman gave Plaintiff a Microsoft Excel spreadsheet file named SHER20.XLS containing a list of the sold accounts. Galic Dep. 58-21.
10. Mr. Shaler’s account is included in SHER20.XLS file. Galic Dep. 30-5, 58-12.
11. *All* of the information Plaintiff has about Mr. Shaler’s account is whatever was supplied to Plaintiff by Sherman. Galic Dep. 35-16, 51-5 (examination by Plaintiff’s counsel). Plaintiff has not obtained any information about Mr. Shaler’s account from anyone other than Sherman. Galic Dep. 35-20.

12. Plaintiff assumes that Sherman obtained from Citibank the information which Plaintiff received from Sherman. Galic Dep. 66-7.
13. Plaintiff does not have personal knowledge as to how or from whom Sherman obtains information. Galic Dep. 19-5 to 19-16. Plaintiff's counsel refused to allow Mr. Galic to answer, "Do you know how Sherman Financial obtained the [billing] statements?" Galic Dep. 19-20 to 21-11.
14. Plaintiff has not obtained an affidavit from Sherman or the original creditor which asserts the accuracy of any billing statement. Galic Dep. 22-2, Plaintiff's Response to Interrogatory 7.
15. Instead, Plaintiff relies on Sherman's representation as to the accuracy of the information contained in a "purchase and sale agreement." Galic Dep. 66-11. Plaintiff, however, objected to producing that agreement. Plaintiff's Response to Document Request 2 (at Exhibit 4).
16. Plaintiff does not know whether any billing statements were mailed to Mr. Shaler. Galic Dep. 22-23.
17. Due to his Alzheimer's disease, Mr. Shaler has no information regarding Plaintiff's claims. Defendant's responses to Plaintiff's Supplemental Interrogatories (at Exhibit 5).

LEGAL ARGUMENTS

LACKING EVIDENCE TO PROVE ITS CASE, PLAINTIFF'S COMPLAINT SHOULD BE DISMISSED.

New Century's case consists of its claim to have purchased information contained in a Microsoft Excel spreadsheet from another debt buyer, Sherman Financial Group, who represented to New Century that the information was obtained from Citibank, N.A. On that information alone, New Century seeks a judgment against the aging Mr. Shaler. New Century

concedes that it has not obtained an affidavit from either Citibank or Sherman asserting the accuracy of any information. Furthermore, the Sherman representation as to accuracy is supposedly contained in a written contract which New Century refuses to produce on the basis that the contract is irrelevant.

New Century lacks admissible evidence to prove the elements of the alleged debt between Citibank and Mr. Shaler, as well as to establish that Sherman purchased the debt from Citibank.

To defeat Mr. Shaler's summary judgment motion, New Century would have had to submit materials which should have been produced prior to the end of discovery and which would be admissible at trial sufficient to carry its burden of persuasion. No such materials exist and, therefore, summary judgment should be granted dismissing the complaint with prejudice.

A. Plaintiff – Not Defendant – Must Submit Evidence of Its Claim

Brill v. Guardian Life Insurance Co., 142 N.J. 520, 530 (1995) “focus[ed] on how to determine when an alleged disputed issue of fact should be considered ‘genuine’ for purposes of R. 4:46-2 and when such an issue should be considered ‘of an insubstantial nature.’” Adopting the United States Supreme Court's *Liberty Lobby-Celotex* rule, the New Jersey Supreme Court concluded that the test for summary judgment is the same as for a directed verdict and for a judgment notwithstanding the verdict. Those tests avoid an invasion into the jury's fact-finding role and instead focus the analysis on whether genuinely disputed facts exist. *Brill* at 536. Consequently, while the motion court does not assess the credibility or weight of evidence, it does evaluate, analyze and sift through the evidence, *in light of the burden of proof*, to determine whether an alleged factual dispute is genuine or insubstantial. *Id.* at 533-4 and 538.

As a direct result of *Brill*, subsection “c” was added to R. 4:46-2, which expressly requires consideration of the burden of persuasion at trial. *See, Anderson v. Liberty Lobby*, 477 U.S. 242, 252 (1986) (“in ruling on a motion for summary judgment, the judge must view the evidence presented through the prism of the substantive evidentiary burden.”) Thus, a party who moves for summary judgment need not submit any evidence when the non-moving party bears the burden of proof.

Celotex Corp. v. Catrett, 477 U.S. 317 (1986), which was *Liberty Lobby*’s companion case, involved a defendant who moved for summary judgment but submitted no evidential materials. The Supreme Court upheld the trial court’s grant of summary judgment and expressly rejected the argument that the moving party must establish an evidential record; rather, summary judgment should be entered:

against a party who fails to make a showing sufficient to establish the existence of an element essential to that party’s case, and on which that party will bear the burden of proof at trial. ... The moving party is “entitled to judgment as a matter of law” because the nonmoving party has failed to make a sufficient showing on an essential element of her case with respect to which she has the burden of proof.

Id. at 322-3 (emphasis added).

Here, Shaler – like the moving party in *Celotex* – has no obligation to submit evidence negating the factual elements of Plaintiff’s cause of action. Rather, Plaintiff’s failure to demonstrate evidence sufficient to get to a jury mandates summary judgment.

B. Plaintiff’s Materials Must Be Admissible Evidence

As New Century bears the burden of proof, absent such proof, Shaler’s right to summary judgment must be recognized. Thus, that right can only be defeated by New Century’s submission of admissible evidence to establish its cause of action. *See James Talcott, Inc. v. Shulman*, 82 N.J. Super. 438, 443 (App. Div. 1964); *see also Robbins v. Jersey City*, 23 N.J. 229,

241 (1957). Plaintiff's evidence, in the form of certifications or affidavits, would not be sufficient unless they contain matters which, if the affiant were testifying at trial, would be admissible. *N.J. Mtge. and Inc. Corp. v. Calvetti*, 68 N.J. Super. 18, 32 (App. Div. 1961).

[M]ere sworn assertions of ultimate fact supposedly based on information and belief, without revelation of the source of the information or any material basis for the belief, and without any supporting affidavits of persons having actual knowledge of the facts, will not effectively blockade issuance of summary judgment.

James Talcott, Inc., 82 N.J. Super. at 443.

C. What Plaintiff Needed to Prove

The affidavits must relate to the issues raised by the pleadings, *Carlini v. Curtiss-Wright Corp.*, 71 N.J. Super. 101, 108 (App. Div. 1961), and, to ensure that the affiant is competent to testify and is not simply asserting hearsay, the affidavits should state the "nature and sources of the affiant's knowledge." *Ash v. Frazee*, 37 N.J. Super. 542, 547 (App. Div. 1955). Statements on "information and belief" will not suffice. *Id.* Plaintiff's failure to meet these burdens necessitates the entry of judgment for Defendant. *R. 4:42-2*.

New Century's case relies on records that are hearsay. *Evid. R. 801(c)*. Hearsay is presumptively inadmissible. *Evid. R. 802*. The so-called Business Record Exception, *Evid. R. 803(c)(6)*, permits the admission of a "statement contained in a writing or other record of acts [or] events... made at or near the time of observation by a person with actual knowledge or from information supplied by such person if" two conditions exist, namely, "the writing or other record was made in the regular course of business and it was the regular practice of that business to make it." In the absence of such a showing, there is no admissible evidence that any amount is due and owing on the account.

D. Plaintiff's Admitted Lack of Evidence

New Century admits that it has no sworn statements from Citibank. Plaintiff's Response to Interrogatory 7. Furthermore, the only information available to New Century comes from Sherman, who acquired the information *after* the account was in default. Galic Deposition Transcript, page 17, starting at line 25.

Mr. Shaler, who suffers from Alzheimer's disease, is in no position to confirm any information. Defendant's Response to Supplemental Interrogatories 1a, 1b, and 2. Therefore, New Century has no witness to satisfy the foundational requirements for admission of any records relevant to the Citibank account. Plaintiff cannot prove the formation of a contract, its breach or damages.

One component of Plaintiff's damages deserves specific discussion – attorney's fees. Paragraph 2 of New Century's Complaint alleged, "As provided by contract, the plaintiff is entitled to attorney's fees of 25.00%," and demanded attorney's fees of \$4,574.39. However, New Century provided no contract or other evidence that calls for attorney's fees to be calculated at 25.00%. In fact, Mr. Galic admitted that the purported account terms made no provision for recovery of attorney's fees at 25.00%, but instead, for "reasonable attorney's fees." Galic Dep. 36-2 to 37-15. This gap between the alleged formula to calculate attorney's fees and the terms of a document cited by Plaintiff's authorized agent further demonstrates the lack of evidence to support Plaintiff's claims. This evidentiary void justifies granting Mr. Shaler's summary judgment motion.

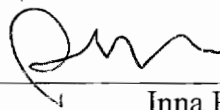
CONCLUSION

Based on the foregoing, Defendant David Shaler respectfully requests that the Court grant his Motion for Summary Judgment denying the Complaint with prejudice.

Philip D. Stern & Associates, LLC
Attorneys for Defendant, David Shaler

Dated: February 3, 2011

By:



Inna Ryu

Philip D. Stern & Associates, LLC
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Attorneys for Defendant, David Shaler

NEW CENTURY FINANCIAL SERVICES,
INC.,
Plaintiff,

vs.

DAVID SHALER,
Defendant.

**Superior Court of New Jersey
Law Division - Morris County**

Civil Action
Docket No. MRS-L-001265-10

**ORDER
FOR SUMMARY JUDGMENT**

This matter having come before the Court on Defendant's motion for summary judgment and it appearing that the motion was properly served on the Plaintiffs and that there are no genuine issues of material fact and that Defendant is entitled to judgment as a matter of law, and for good cause shown;

IT IS ON THIS DAY OF FEBRUARY, 2011, ORDERED AND ADJUDGED:

1. Defendant's Motion for Summary Judgment be and hereby is GRANTED.
2. Judgment is entered in favor of Defendant, David Shaler, and against Plaintiff, New Century Financial Services, Inc., dismissing the complaint with prejudice.
3. A true copy of this Order shall be served on Plaintiffs.

Hearing Dated: _____, J.S.C.

Opposed: ___ Yes ___ No

Appearances, if orally argued:

For Plaintiff:

For Defendants: