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VIA FAX (973-656-3921) & REGULAR MAIL

MARCH 14, 2011

Honorable Robert J. Brennan, J.S.C.
Superior Court of New Jersey
Morris County Courthouse
Washington & Court Streets, P.O. Box 910
Morristown, NJ 07963-0910

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 Judge Brennan:

Please accept this letter brief as Plaintiff's sur-reply to "Defendant's Reply (Supplemental) on Summary Judgment Motion" dated March 8, 2011 in the above matter. Oral argument on Defendant's Summary Judgment motion is scheduled for this Friday, 3/18/11 at 8:45 a.m. before Your Honor.

Defendant's counsel has submitted a "Supplemental Reply" in blatant violation of R. 4:46-1. That Rule clearly states that the procedure and timing for opposing affidavits, certifications, briefs and/or cross motions in response to summary judgment motions shall be served and filed no later than 10 days before the return date of the motion; and that "answers or responses to such opposing papers or to cross-motions shall be served and filed not later than four days before the return date. **No other papers may be filed without leave of court.**" R. 4:46-1 (emphasis added). Defendant's "Supplemental Reply" is procedurally improper and should not even be considered by the Court.

In his "Supplemental Reply," Defendant's counsel cites a recent, unpublished Appellate Division case, Calvary Portfolio Services LLC v. U. Sharma. However, that case is not binding upon this Court and, at best, might constitute persuasive authority. Moreover, the critical distinguishing feature in Cavalry is that the Defendant there personally filed an affidavit in opposition to Plaintiff's summary judgment motion. Here, no affidavit or certification whatsoever from the Defendant himself has ever been submitted, neither with his initial summary judgment motion nor with either of his two replies. Therefore, Defendant David Shaler personally has never disputed Plaintiff's ownership of this debt or his liability for same, nor has he ever provided any proofs to support such claims.

Plaintiff, however, has provided Defendant with competent proof of ownership of Defendant's debt on the following dates:

1. On July 2, 2010 in its attachments to Defendant's Document Request;
2. On January 13, 2011 at the deposition taken by Defendant's counsel of Marko Galic, Plaintiff's Client Services Manager by both Mr. Galic's testimony and exhibits provided by Plaintiff; and
3. On February 14, 2011 by exhibits attached to Plaintiff's Certification in Opposition to Defendant's Motion for Summary Judgment.

Further, Mr. Stern's reliance on Calvary to support his claim that Plaintiff has not sufficiently proven that it owns Defendant's debt is misplaced. In fact, Plaintiff has repeatedly satisfied the very same requirements Defendant's counsel summarizes at the top of Page 2 of his 3/8/11 reply. Specifically, Plaintiff has proven by competent, admissible evidence "(1) the existence of the account; (2) the charges and payments under the account that resulted in the account balance claimed by the assignee; and (3) a valid assignment." Calvary Slip Op. at 5 (enumeration added). This evidence exists in the following documents provided by the seller to Plaintiff when it purchased this debt:

1. The Cardmember Agreement for this credit card account;
2. Billing statements that span from 9/20/05 through the "charge-off" statement dated 12/12/06. Those billing statements also included the last statement sent to David Shaler at 9 Coursen Way, Madison, NJ 07940 (annexed hereto as Exhibit A), dated 11/13/06 and which shows the principal balance due of \$17,931.32;
3. The chain of title for the sale of this debt to Plaintiff (annexed hereto as Exhibit B) consisting of Bills of Sale that included an Excel spreadsheet containing details pertaining to each and every debt conveyed in that sale. A printout of information from that Excel spreadsheet specifically relating to David Shaler's debt to Citibank is attached thereto, with the first 6 digits of Social Security numbers redacted for privacy reasons.

It is well-settled law that uncontroverted testimony without counter evidence, as in the instant case, is sufficient as a matter of law for a Court to determine ownership of a debt. Moran v. Joyce, 125 N.J.L. 558, 560 (1941), aff'd 27 N.J.L. 562 (E&A 1942). Just as the Moran Court ruled that an owner is competent to testify as to what he or she owns, Plaintiff's Client Services Manager, Marko Galic, has testified and may continue to competently testify as to Plaintiff's ownership of Defendant's debt.

For the foregoing reasons, Plaintiff respectfully asks that the Court deny Defendant's Motion for Summary Judgment.

Respectfully submitted,
PRESSLER & PRESSLER, LLP

/s/ Leslie L. Phiefer
LESLIE L. PHIEFER
LLP/LP

Attachments

CC: PHILIP D. STERN, ESQ.

PHILIP D. STERN & ASSOCIATES

697 VALLEY STREET SUITE 2-D

MAPLEWOOD, NJ 07040 (w/attachments) – VIA FAX (973-532-0866) & REGULAR MAIL

EXHIBIT A

11/13/06 \$17931.32 \$17931.32 SITE:KC-CL TM:CO-5000 ACID:ROB0776
 01/15/10 21:50:22

DAVID SHALER
 9 COURSEN WAY
 MADISON
 07940-2801000

NJ

CITI CARDS
 P.O. BOX 182564
 COLUMBUS, OH
 43218-2564

Citi® Platinum Select® Card



Account Number
 4128 0031 9756 8408

Customer Service:

1-800-950-5114	Total Credit Line	Available Credit Line	Cash Advance Limit	Available Cash Limit	New Balance
	\$15780	\$0	\$6600	\$0	\$17931.32
BOX 6500	Statement/ Closing Date	Amount Over Credit Line	Past Due	Purch/Adv Minimum Due	Minimum Amount Due
STOIX FALLS, SD 57117	10/20/2006	\$2151.32	\$3750.21	\$685.70	\$17931.32

Sett Date	Post Date	Reference Number	Activity Since Last Statement	Amount
	10/20		Standard Purch LATE FEE - SEP PAYMENT PAST DUE	39.00
	10/20		66 0000 PURCHASES*FINANCE CHARGE*PERIODIC RATE	70000000000 178.57
	10/20		84 0000 Standard Adv ADVANCES*FINANCE CHARGE*PERIODIC RATE	70000000000 289.13

Your late fee was based on your account balance as of the payment due date (10/16/06), which was \$17,424.62.

Help is available! Please call the toll-free number shown above to learn about our special payment options. Call Monday - Friday, 7 am to 9 pm, or Saturday, 8 am to 5 pm, Central Time. Please give us the opportunity to assist you.

Our records show home phone 973-822-0571 and business phone 800-000-0000. Please update coupon if incorrect.

Account Summary	Previous Balance	(+) Purchases & Advances	(-) Payments & Credits	(+) FINANCE CHARGE	(=) New Balance
PURCHASES	\$6,652.69	\$39.00	\$0.00	\$178.57	\$6,870.26
ADVANCES	\$10,771.93	\$0.00	\$0.00	\$289.13	\$11,061.06
TOTAL	\$17,424.62	\$39.00	\$0.00	\$467.70	\$17,931.32

Rate Summary	Balance Subject to Finance Charge	Periodic Rate	Days This Billing Period: 30	
			Nominal APR	ANNUAL PERCENTAGE RATE
PURCHASES Standard Purch	\$6,738.60	0.08833%(D)	32.240%	32.240%
ADVANCES Standard Adv	\$10,911.04	0.08833%(D)	32.240%	32.240%

EXHIBIT B

BILL OF SALE, ASSIGNMENT AND ASSUMPTION AGREEMENT

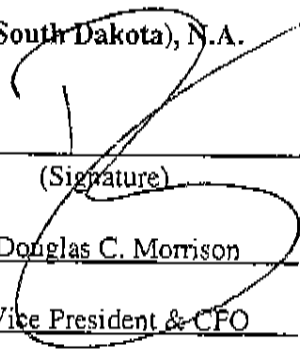
THIS BILL OF SALE, ASSIGNMENT AND ASSUMPTION AGREEMENT is dated as of June 26, 2007, between Citibank (South Dakota), National Association, a national banking association organized under the laws of the United States, located at 701 East 60th Street North, Sioux Falls, SD 57117 (the "Bank") and Sherman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

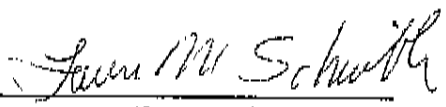
For value received and subject to the terms and conditions of the Purchase and Sale Agreement dated June 26, 2007, between Buyer and the Bank (the "Agreement"), the Bank does hereby transfer, sell, assign, convey, grant, bargain, set over and deliver to Buyer, and to Buyer's successors and assigns, the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

By: 
(Signature)

Name: Douglas C. Morrison

Name: Laura M. Schmitt

Title: Vice President & CFO

Title: Arthur J. Spatny

AFFIDAVIT AND ASSIGNMENT

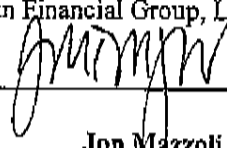
STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

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.

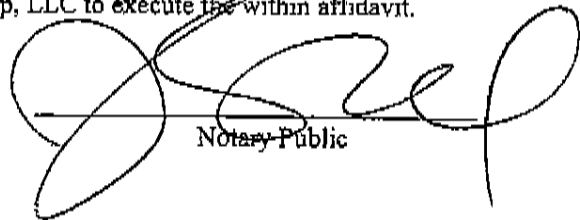
Sherman Financial Group, LLC

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

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.

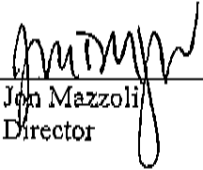
This Assignment is made without recourse or warranty except as otherwise provided in the Agreement executed by Assignor and Assignee with regard to the Charged-off Accounts and other rights, privileges and documentation referred to herein.

Dated this ^{5th} ~~4~~ day of ^{August} ~~July~~, 2009

WITNESS

SHERMAN ACQUISITION LLC


Erin Holaday
Associate

By: 
Jon Mazzoli
Director

AcctID	PortfolioID	Merchant	AccountNumber	SSN	DateOfBirth	Prefix	BrwrFirstName	BrwrLastName	Suffix
267578770	7952	Citibank	4128003197568408		576		David	Shaler	

BrwrAddr1	BrwrAddr2	City	State	Zip	Zip4	HomePhone	WorkPhone	WirelessPhone	OtherPhone	EmpName
9 COURSE WAY		MADISON	NJ	07940		9738220571				

EmpAddress	COSSN	CoDateOfBirth	CoPrefix	CoFirstName	CoLastName	CoSuffix	CoAddress	CoAddress2	CoCity	CoState
	411			Kaye	Shaler		9 COURSEWAY		MADISON	NJ

CoZip 07940	CoZip4	CoHomePhone	CoWorkPhone	CoWirelessPhone	CoOtherPhone	CoBrwrEmpName	CoBrwrEmpAddress
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OriginationDate	LastPmtDate	ChgOffDate	ChgOffBalance	PrincipalBalance	InterestBalance	OtherBalance	CurrBalance
09/01/1994	07/03/2006	11/17/2006		\$17,931.32	\$4,801.63	\$0.00	\$22,732.95