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LISA HOEHNE, RECORDER

FINDINGS OF FACT AND CONCLUSIONS
OF LAW AND ORDER GRANTING PAINTIFF'S
MOTION FOR SUMMARY JUDGMENT
Type of Document

Recording requested by:

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.O. _____

FILED

FEB 26 2018

EUREKA JUSTICE COURT

DEPT. *Eureka*

BY *[Signature]*

ORIGINAL



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**EUREKA COUNTY JUSTICE COURT
EUREKA, NEVADA**

Discover Bank,

Plaintiff,

vs.

Steven D Barrack & John/Jane Doe Barrack (If
Married),

Defendant(s).

) Case No.: 17CV000047d
) Dept.:

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW AND ORDER
GRANTING PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

Plaintiff, Discover Bank's Motion for Summary Judgment having been considered and set regularly for hearing before this Court on 01/03/2018 in the above-entitled Department of the Eureka County Justice Court. The Defendant having filed no Opposition to Plaintiff, Discover Bank's Motion for Summary Judgment and the time for opposing the same having lapsed, which pursuant to JCRCP 8(d) may be construed as an admission that said Motion is meritorious and a consent to granting the same.

Plaintiff's Motion was granted, and the Court having read the pleadings on file herein, and good cause appearing, now therefore, the Court finds the following facts and also makes the following conclusions of law and order:

I.

FINDINGS OF FACT

1. This action is a debt collection matter arising from Defendants default a credit card.

JUN 15 2018

- 1 2. Defendant applied for credit with Plaintiff on or about 01/25/2016 and Plaintiff
- 2 issued Defendant a credit card with the last four digits ofXXXXXXXXXXXX6203,
- 3 and Defendant used the credit card to purchase goods and services.
- 4 3. Plaintiff rendered monthly statements to Defendant requesting the amount stated,
- 5 and Defendant has failed to produce any evidence that he objected to these charges.
- 6 4. The last payment made by Defendant was on 09/16/2016, and thereafter Defendant
- 7 defaulted.
- 8 5. There have been no charges or payments on Defendant's account since the charge
- 9 off date, and all payments made on the account have been credited.
- 10 6. Late charges and other fees stopped accruing on the account from the charge off
- 11 date through the date of filing suit.
- 12 7. The balance due the Plaintiff is \$7130.23 plus accrued interest at the legal rate
- 13 from the date of judgment.
- 14 8. Defendant has Failed to file a timely Opposition to Plaintiff's Motion for Summary
- 15 Judgment.
- 16
- 17

II.

CONCLUSIONS OF LAW

- 18
- 19
- 20 9. A party is entitled to summary judgment when there are no disputed issues as to
- 21 any material fact, and when the moving party is entitled to judgment as a matter of
- 22 law. NRCP 56(c). The Court concludes there are no disputed issues as to any
- 23 material fact.
- 24 10. While facts must be construed in light most favorable to the non-moving party in
- 25 opposition to a motion for summary judgment, the non-moving party must: "set

1 forth specific facts demonstrating the existence of a genuine issue for trial or have
2 summary judgment entered against [it]. *Bullman inc. v. Nevada Bail*, 108 Nev.
3 105, 110, 825 P.2d 588, 592 (1992). The Court concludes Steven D Barrack has
4 not offered any evidence in opposition to the instant motion, and even considering
5 the evidence in a light most favorable to it, Defendant has failed to demonstrate the
6 existence of a genuine issue for trial.

7
8 11. Upon service of motion, an opposing party has ten days to serve and file a written
9 opposition, or the failure to file an opposition may be construed as an admission
10 that the motion is meritorious and a consent to granting the same, pursuant to
11 JCRCP 8(d). The Court concludes Defendant's Failed to file an opposition to the
12 instant motion, which therefore is construed as an admission that the Motion is
13 meritorious, and that it is consenting to the granting of the Motion.

14 12. Under Nev. Rev. Stat. 97A.160(1)(a), a plaintiff must establish *liability* by
15 submitting a written application or evidence that the cardholder incurred charges
16 on the account and made payments thereon. Plaintiff has submitted credit card
17 statements evidencing charges and payments on the account.

18 13. Under Nev. Rev. Stat. 97A.160(1)(b) and 97A.160(2)(b) a plaintiff must establish
19 the *amount owed* by submitting photocopies of periodic billing statements. The
20 photocopies must be authenticated by an affidavit signed by the custodian of
21 records stating the records presented were made in the ordinary course of business
22 that the records presented are true and correct copies of the records retained by the
23 issuer. Plaintiff has submitted photocopies of the periodic billing statements along
24 with an affidavit properly authenticating the statements.
25

1 **ORDER AND JUDGMENT**

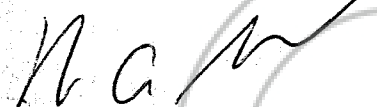
2 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Plaintiff,
3 Discover Bank's, Motion for Summary Judgment is GRANTED as to all actions; and

4 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that
5 Plaintiff, Discover Bank, shall have final judgment entered in its favor and against
6 Defendant, Steven D Barrack, in the amount of \$7130.23, together with legal interest from
7 the date of judgment, together with Plaintiff's costs and disbursements in the amount of
8 \$236.00.
9

10 DATED February 19, 2018.

11 
12 JUDGE

13 Submitted by:

14 
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16 Joseph A. Geller, Esq.
17 Nevada Bar No. 12378
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21 Attorney for Plaintiff

22 I HEREBY CERTIFY THAT THE FOREGOING IS A
23 TRUE AND CORRECT COPY OF THE ORIGINAL
24 DOCUMENT Finding of Fact and Conclusion of
Law and Order Granting Plaintiff's
Motion For Summary Judgment AS FILED IN EUREKA
25 JUSTICE COURT, NEVADA ON 2-24-18
DATED THIS 14th DAY OF June, 20 18
EUREKA JUSTICE COURT CLERK

