

EUREKA COUNTY, NV

2018-235501

Rec: \$35.00

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JOSEPH A GELLER ESQ

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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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Return to:

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6 **EUREKA COUNTY JUSTICE COURT
EUREKA, NEVADA**

7 Discover Bank,

Plaintiff,

8 vs.

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

Defendant(s).

) Case No.: 17CV000047d
) Dept.:
)
)
)

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

11
12 Plaintiff, Discover Bank's Motion for Summary Judgment having been considered and set
13 regularly for hearing before this Court on 01/03/2018 in the above-entitled Department of the
14 Eureka County Justice Court. The Defendant having filed no Opposition to Plaintiff, Discover
15 Bank's Motion for Summary Judgment and the time for opposing the same having lapsed, which
16 pursuant to JCRCP 8(d) may be construed as an admission that said Motion is meritorious and a
17 consent to granting the same.

18
19 Plaintiff's Motion was granted, and the Court having read the pleadings on file herein, and
20 good cause appearing, now therefore, the Court finds the following facts and also makes the
21 following conclusions of law and order:

22 **I.**

23 **FINDINGS OF FACT**

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

.O.

FILED

FEB 26 2018

EUREKA JUSTICE COURT

DEPT. Eureka

BY OG

JUN 15 2018

2. Defendant applied for credit with Plaintiff on or about 01/25/2016 and Plaintiff issued Defendant a credit card with the last four digits of XXXXXXXXXXXX6203, and Defendant used the credit card to purchase goods and services.

3. Plaintiff rendered monthly statements to Defendant requesting the amount stated, and Defendant has failed to produce any evidence that he objected to these charges.

4. The last payment made by Defendant was on 09/16/2016, and thereafter Defendant defaulted.

5. There have been no charges or payments on Defendant's account since the charge off date, and all payments made on the account have been credited.

6. Late charges and other fees stopped accruing on the account from the charge off date through the date of filing suit.

7. The balance due the Plaintiff is \$7130.23 plus accrued interest at the legal rate from the date of judgment.

8. Defendant has Failed to file a timely Opposition to Plaintiff's Motion for Summary Judgment.

II.

CONCLUSIONS OF LAW

9. A party is entitled to summary judgment when there are no disputed issues as to any material fact, and when the moving party is entitled to judgment as a matter of law. NRCp 56(c). The Court concludes there are no disputed issues as to any material fact.

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

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

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

ORDER AND JUDGMENT

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

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

DATED February 19, 2018.


JUDGE

Submitted by:


GUGLIELMO & ASSOCIATES

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Attorney for Plaintiff

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

