

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

Case No. 5:05-cv-362-OC-WTH-GRJ

NEIL J. GILLESPIE

Plaintiff,

vs.

HSBC NORTH AMERICA HOLDINGS
INC., HSBC BANK NEVADA, N.A., and
RISK MANAGEMENT ALTERNATIVES,
INC.,

Defendants.

**DEFENDANTS' MOTION TO DISMISS HSBC NORTH AMERICA HOLDINGS INC. AS
A PARTY DEFENDANT, TO DISMISS COUNTS I, II AND IV OF THE COMPLAINT,
AND TO STRIKE REQUESTS FOR ATTORNEY'S FEES AND PUNITIVE DAMAGES
AND MEMORANDUM OF LAW IN SUPPORT THEREOF**

Defendants HSBC North America Holdings Inc. and HSBC Bank Nevada, N.A., by and through their undersigned counsel and pursuant to Fed. R. Civ. P. 9 and 12 and M.D. Fla. L.R. 7.1, hereby move: a) to dismiss HSBC North America Holdings Inc. as a party defendant, as it was improperly named, b) to dismiss Counts I, II and IV of Plaintiff's Complaint and c) to strike Plaintiff's requests for attorney's fees and punitive damages, all for failure to state a claim upon which relief can be granted. In support thereof Defendants state:

BACKGROUND & FACTS

1. On or about February 27, 2003, Plaintiff opened a MasterCard credit card account issued by HSBC Nevada, N.A., f/k/a Household Bank (SB), N.A. ("HSBC Bank"). Cmpl't., ¶ 8,9.

2. Plaintiff's credit line increased to \$800.00, following his request over the telephone in September 2004, during which Plaintiff agreed to pay a \$50.00 Automated Credit Line Increase ("ACLI") fee.

3. The \$50.00 ACLI fee was assessed to Plaintiff's account on September 9, 2004, and, pursuant to his payment of \$50.00, is reflected as a credit on his monthly statement. Cmplt., Ex. 2.

4. Plaintiff nevertheless complains that he did not get a credit for the \$50.00 ACLI fee he paid. Cmplt., ¶ 50.

5. For the reasons stated below, Plaintiff's complaint should be dismissed.

MEMORANDUM OF LAW

As a threshold matter, Plaintiff's complaint begins by requesting that the Clerk of the Court mail a stamped copy of the complaint to "U.S. Senator Richard Shelby, Chairman, United States Senate Committee on Banking, Housing and Urban Affairs," and "John C. Dugan, Comptroller of the Currency, OCC." This allegation, if it even is one, is impertinent and scandalous, and pursuant to Fed. R. Civ. P. 12 (f), should be stricken.

1. *HSBC North America Holdings Inc. is Not a Proper Party Defendant*

Plaintiff's action against the issuer of his credit card, HSBC Bank, contains allegations, however faulty, against HSBC Bank. But as to HSBC North America Holdings Inc., the only mention made is that it is the parent company of defendant HSBC Bank. Cmplt. ¶ 4. HSBC Bank is an entity separate and distinct from HSBC North America Holdings Inc., and there are simply no allegations to support any claim against HSBC North America Holdings Inc. As such, HSBC North America Holdings Inc. must be dismissed as a party defendant in this matter.

2. Failure to Establish a Fraud Claim

Plaintiff's fraud claim should be dismissed with prejudice under Fed. R. Civ. P. 12(b) because, even taking all of the allegations as true, Plaintiff fails to state a claim upon which relief can be granted. Alternatively, Plaintiff's fraud claim should be dismissed because he has failed to plead with the level of particularity required by Fed. R. Civ. P. 9(a).

To adequately advance a claim for fraud under Florida law, a plaintiff must allege ultimate facts showing: (1) that there was a false statement concerning a specific material fact; (2) that the representor knew, or should have known, that the representation was false; (3) an intention that the representation induce another to act on it; and (4) a consequent injury to the party acting in justifiable reliance on the representation. See Haskin v. R.J. Reynolds Tobacco Company, 995 F. Supp. 1437, 1439 (M.D. Fla., 1998), *citing* Kingston Square Tenants Ass'n v. Tuskegee Gardens Ltd., 792 F. Supp. 1566, 1576 (S.D. Fla. 1992), (*citing* Joiner v. McCullers, 28 So. 2d 823, 824 (1947)); *accord* Dancey Co. v. Borg-Warner Corp., 799 F. 2d 717, 719 (11th Cir. 1986). See *also* Simon v. Celebration Co., 883 So. 2d 826 (Fla. 5th DCA 2004) (a plaintiff must plead ultimate facts to advance a fraud claim).

Here, Plaintiff's allegations establish neither a false statement, nor consequent injury. Plaintiff claims that HSBC Bank advised him that upon payment of the \$50 ACLI fee he would receive a credit line increase. Plaintiff paid the \$50, and received a credit line increase. Exhibit 2, attached to the Complaint, makes it clear that Plaintiff's account was credited for the \$50 ACLI fee, and there is no allegation that he did not receive a credit line increase.

Moreover, for the same reasons outlined above, and in view of Plaintiff's entire complaint, Plaintiff has failed to establish an injury attributable to HSBC Bank's allegedly fraudulent conduct. Although Plaintiff advances the unsupported conclusion that HSBC Bank committed a "sleight of hand theft" through the credit line increase transaction, Plaintiff's payment actually inured to his benefit vis-à-vis HSBC Bank's subsequent authorization of an increased credit line made available to Plaintiff. Simply put, Plaintiff received the benefit of the bargain.

Based on the foregoing, even treating all of Plaintiff's allegations as true, the fraud claim against HSBC should be dismissed for Plaintiff's failure to state a claim upon which relief can be granted.

3. Failure to Plead Fraud With Particularity

In addition, Plaintiff's fraud claim should be dismissed for his failure to comply with the requirements of Rule 9(b) of the Federal Rules of Civil Procedure. In part, the Rule provides that "in all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity." Fed. R. Civ. P. 9(b). This Court has instructed that "the rule may be satisfied by setting forth: (1) precisely what statements were made in what documents or oral representations or what omissions were made; (2) the time and place of each such statement and the person responsible for making (or, in the case of omissions, not making) same; (3) the content of such statements and the manner in which they misled the plaintiff; and (4) what the defendants obtained as a consequence of the fraud." Haskin v. R.J. Reynolds Tobacco Company, 995 F. Supp. 1437, 1439 (M.D. Fla. 1998).

Here, Plaintiff has failed to establish the manner in which HSBC Bank's statements misled him. Conversely, he has established that HSBC Bank's assurances of a credit line increase upon payment of the \$50 ACLI fee were in fact genuine and true.

Plaintiff has also failed to set forth any benefit obtained by HSBC Bank as a consequence of the alleged fraud. At the very least, the \$50 "bought" Plaintiff a two-hundred dollar credit line increase, and HSBC Bank, in not being repaid, suffered a one-hundred and fifty dollar loss in the form of an unpaid account as a consequence of its own allegedly fraudulent conduct.

Based on the foregoing, Plaintiff's fraud claim should be dismissed for failure to plead with the level of particularity required by Fed. R. Civ. P. 9(b).

4. *Failure to Establish a TILA claim*

Under count two of the complaint, Plaintiff purports to assert a wide assortment of claims arising under various provisions of the Truth In Lending Act ("TILA"), which rely in large part on an incomplete September 2004 billing statement attached to the Complaint as Exhibit 2. Because the billing statement is inconsistent with his allegations and actually undermines Plaintiff's TILA claim, the Court should dismiss Plaintiff's count two. In the alternative, the Court should require Plaintiff to attach to his Complaint the entire billing statement, allowing HSBC Bank time to prepare and submit a responsive pleading to count two of the Complaint after it has reviewed the billing statement in its entirety.

Moreover, the one page that is attached conflicts with Plaintiff's allegations. This Court has instructed that it:

will not accept as true allegations that are contradicted by facts that can be judicially noticed or by other allegations or exhibits attached to or incorporated in the pleading. On the other hand, the allegations of the pleading will be supplemented by any relevant matter that can be judicially noticed or by the contents of any exhibits attached to the pleading or any matter validly incorporated by reference.

Anderson v. U.S., 245 F. Supp. 2d 1217, 1221 (M.D. Fla. 2002) *citing* 5A Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1363 (2d ed. 1990).

Here, Plaintiff's TILA allegations are squarely contradicted by Exhibit 2 of the Complaint. For instance, Plaintiff claims that HSBC Bank violated 15 U.S.C. §1666c by not crediting his account after receipt of his \$50 money order for the ACLI fee. Cmplt., ¶ 60. That allegation is completely inconsistent with and undermined by an entry in the billing statement which indicates a credit for the credit line increase fee. Cmplt., Ex. 2.

Plaintiff's claim that HSBC Bank violated 15 U.S.C. § 1637(b)(3), (4), (7) and (8) by providing false account balance information on his September 2004 statement is also contradicted by Exhibit 2 of the Complaint. Plaintiff alleges that the statement did not accurately reflect: (i) the account balance at the end of the period; (ii) the total amount credited during the period; (iii) the finance charge or balance upon which the finance charge was based; or (iv) the crediting of "other charges." Cmplt., ¶¶61. However, in stark contrast to these allegations, even a cursory review of the September 2004 billing statement reveals its full and accurate disclosure of each of the foregoing items.

Another example of the discrepancy between Exhibit 2 and the allegations in the Complaint is found in Plaintiff's claim that HSBC Bank violated 15 U.S.C. § 1637(a), (c), and (d) by failing to properly disclose a \$29.00 overlimit or late fee on a closed or cancelled account. Cmplt., ¶¶ 64, 65 and 66. Strikingly, the very last item on the transaction summary of Exhibit 2 explicitly states a \$29.00 overlimit charge.

In view of the foregoing, because the September 2004 billing statement actually undermines and contradicts Plaintiff's TILA allegations, the Court should dismiss Plaintiff's TILA claims in count two. In the alternative, the Court should require that Plaintiff file the entire billing statement.

HSBC Bank cannot reasonably be required to frame a responsive pleading where the exhibit supporting Plaintiff's TILA claims is incomplete. Rule 106 of the Federal Rules of Evidence provides that when a writing or any part thereof is introduced by a party, an adverse party may require the introduction "at that time" of any other part of the writing which, in fairness, ought to be considered contemporaneously with the partial writing.

Here, Plaintiff has provided one side of the first page of a two-page, double-sided document.¹ To the extent that the Court is disinclined to dismiss the TILA claims, HSBC Bank respectfully requests that the Court require Plaintiff to timely file the full and complete billing statement upon which his TILA claims rely in order to enable HSBC Bank to frame a reasonably informed responsive pleading to count two of the Complaint.

5. *Failure to Establish a Usury Claim*

Plaintiff claims that HSBC Bank violated Florida usury law under §687(2),(3) and (4) Fla. Stat., by charging him "nominal interest rates of 18.9% [...] and 22.9% APR, and periodic interest rates as high as 224.00% APR." Cmpl't., ¶ 91. This conclusory allegation is made without any factual support for how the alleged interest rates are

¹ The "Payment Summary" portion of the statement instructs the reader to "[s]ee reverse side for an explanation of these amounts."

arrived at. Moreover, the Cardholder Agreement between the parties, attached hereto as Exhibit A, is a contract governed by Nevada law, which permits parties to agree to any rate of interest on money due under any written contract. See §99.050 NV. Stat.; Mapes v. Palo Alto Town and Country Village, Inc., 584 F. Supp. 508 (D. Nev. 1984).

The Eleventh Circuit has instructed that a defendant may attach a document pertinent to a motion to dismiss if the plaintiff did not attach it to the complaint, and such document is appropriately considered part of the pleadings if it is referred to in the complaint and is central to a claim asserted therein. See Hoffman-Pugh v. Ramsey, 312 F. 3d 1222, 1225 (11th Cir. 2002). Accord Barnum v. Millbrook Care Ltd. Partnership, 850 F. Supp. 1227, 1232 (S.D. N.Y. 1994)("[...] the court may consider [...] an instrument in ruling on a 12(b)(6) motion even if it is not attached to the complaint [...]"), *affirmed by* Barnum v. Millbrook Care Ltd. Partnership, 43 F. 3d 1458 (2nd Cir. 1994).

Here, Plaintiff refers to the Cardholder Agreement at paragraphs twelve, forty-six, seventy-two, and eighty-eight of the Complaint, notwithstanding denying receipt of the same. The agreement is integral to Plaintiff's usury claim, and, indeed, provides the controlling law regarding that claim.² Defendant is therefore entitled to place the agreement before the Court without converting the instant motion into one for summary judgment.

Accordingly, although HSBC Bank disputes the interest rates asserted by Plaintiff, even if they were accurate, the Cardholder Agreement undermines Plaintiff's

² Here, the law of Nevada.

reliance on Florida law and frustrates his ability to set forth a cognizable claim for usury. For these reasons, the Court should dismiss count four of the Complaint.

6. The Request for Punitive Damages Should be Stricken

Plaintiff requests punitive damages under the fraud claim in the complaint. If the Court decides not to dismiss the fraud claim in its entirety at this juncture, or if the Court dismisses the claim without prejudice, the request for punitive damages should nevertheless be stricken.

Defendants recognize that the pleading rule set out at Fed. R. Civ. P. 8(a)(3) preempts §768.72 of the Florida Statutes (which requires Plaintiff to obtain leave of court before including a prayer for punitive damages), but federal courts applying Florida law have nevertheless refused to uphold a prayer for punitive damages where such damages are based only on conclusory allegations in the complaint which lack a reasonable basis in fact. See Porter v. Ogden et al., 241 F. 3d 1334, 1340 (11th Cir. 2001). Because Plaintiff's request for punitive damages is, indeed, based on conclusory allegations in the absence of a reasonable basis in fact to support a claim for fraud, the prayer for punitive damages should be stricken.

7. Plaintiff's Request for Attorney's Fees Should be Stricken

Plaintiff's demands for attorney's fees under counts one, two and four of the complaint should be stricken because Plaintiff represents himself in this matter. See Kurz v. Chase Manhattan Bank, 260 F. Supp. 2d 638 (S.D. N.Y. 2003); White v Arlen Realty & Dev. Corp., 614 F. 2d 387 (4th Cir. 1980) *cert denied*, 447 US 923 (1980) (Even attorneys who are proceeding *pro se* in an action against an issuing bank for alleged violations of the Truth in Lending Act are not eligible to recover attorney fees,

notwithstanding the fact that they prevailed in the action.) See *a/so Dorn v. Commissioner of I.R.S.*, 2005 WL 1126653 (M.D. Fla. 2005). Moreover, with respect to the fraud and usury claims, Florida law only allows attorney's fees if there is a contractual or statutory basis for such fees. See *Washington Mutual Bank, F.A. v. Shelton*, 892 So. 2d 547, 549 (Fla. 2nd DCA 2005)("[...] attorney's fees will be awarded [...] so long as there is either a contractual or statutory basis for doing so and the request for fees has been properly pleaded.") As there is no contractual or statutory basis for an award of attorney's fees in this matter, Plaintiff's claims for those fees should be stricken.

CONCLUSION

For the foregoing reasons, Defendant HSBC Bank Nevada, N.A., respectfully requests that this Court: (1) dismiss HSBC North America Holdings Inc. as a party defendant; (2) dismiss Counts I, II, and IV of the Complaint; (3) strike Plaintiff's requests for punitive damages; (4) strike Plaintiff's request for attorney's fees; and (5) grant any further relief as this Court deems just and proper. In the event that the Court denies Defendants' motion to dismiss Count II of the Complaint, Defendants respectfully request that the Court require Plaintiff to timely submit the full and complete billing statement upon which his TILA claims rely and grant Defendants a twenty-day extension of time thereafter upon which to prepare, file, and serve a reasonably informed responsive pleading to count two of the Complaint.

Respectfully submitted,

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*Attorneys for Defendants HSBC North America
Holdings Inc., and HSBC Bank Nevada, N.A.*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing was served via U.S. Mail, this 17th day of October, 2005 to:

Neil J. Gillespie, *pro se*
8092 SW 115th Loop
Ocala, FL 34481

By: s/ David J. D'Agata
David J. D'Agata

Your name has changed. Your credit card, formerly issued by Household Bank (HB), N.A., is now issued by HSBC Bank, Nevada, N.A. Your account is serviced by our officers - Household Credit Services, Inc. and/or Household Credit Services (HCS), Inc., who have changed their names to HSBC Consumer Services Inc. and HSBC Card Services (CS), Inc., respectively. These changes were effective March 1, 2005. During the next few months of transition, you may receive correspondence with either name.

HSBC BANK NEVADA, N.A.
Privacy Statement

Our Commitment to You
HSBC Bank, Nevada, N.A., formerly known as Household Bank (HB), N.A. ("HSBC Bank Nevada"), is proud to be part of financial services organizations that have been providing superior products and services to its customers for more than a century. We proudly appreciate the trust that you and millions of other customers have placed in us, and we protect that trust by respecting your privacy even if our relationship with you ends.

This Privacy Statement describes our commitment to your privacy and explains our privacy practices so you can make an informed decision about when you allow us to share your information with us and others. We offer you additional products and services, although most customers enjoy receiving offers and information about additional products and services, if you prefer that we do not share your information for marketing purposes we will respect your choice. If you have suggested a credit insurance product, the privacy statement explained in that credit insurance product is set forth at the end of this Privacy Statement.

Types of Information We Collect

It is important for you to know that in order to ensure that our customers get the very best service and the highest quality products, HSBC Bank Nevada collects demographic information (such as your name and address) and credit information (such as information related to your accounts with us and others). This information comes either directly from you, for instance, from your application and transactions on your account, or, it may come from a outside source such as your credit bureau report. In addition, if you visit our Internet website, we may collect certain information about your Internet usage. Combining this information helps us to identify our customers and manage our customer relationships. It also assists us in the development of products and services to meet the continuing needs of our customers.

We Respect Your Privacy

Since some of the information we gather is not publicly available, we take great care to ensure that this information is kept safe from unauthorized access. Because HSBC Bank, Nevada respects your privacy and values your trust, the only employees or associates who can access your non-public personal information are those who use it to service your account or provide services to you or to us. HSBC Bank Nevada diligently maintains physical, electronic and procedural safeguards that comply with applicable federal standards to guard your non-public personal information and to assist us in preventing unauthorized access to that information.

HOUSEHOLD INSURANCE GROUP, INC.
ASSURANT SOLUTIONS
SOUTHERN COUNTY MUTUAL INSURANCE COMPANY
Privacy Statement for Customers with Credit Insurance

This statement applies only to customers who have selected credit insurance provided by Household Insurance Group, Inc. ("HIG"), Assurant Solutions ("Assurant"), or Southern County Mutual Insurance Company ("Southern County").

HIG, Assurant, and Southern County are very aware of the privacy concerns of our customers, and we understand your concerns and protect your privacy. We are providing this notice to explain how we treat customer information that is not public. This is customer information we obtain from you, like your name, credit address, or other sources, such as account information related to your HSBC accounts. HIG, Assurant, and Southern County want you to know that we respect your privacy, and we protect your information.

To administer the credit insurance you requested, HIG, Assurant, and Southern County collect and keep a variety of information contained within your application of the credit insurance. Either this information comes directly from you, for instance, from your application, or it may come from an HSBC lending affiliate.

HIG, Assurant, and Southern County take great care to protect the privacy of this information. For example, we do not sell or share with persons, companies, or organizations that are outside of HIG, Assurant, or Southern County Insurance Companies except as permitted by law. We require companies that provide services to our behalf or with whom we jointly market products to keep your information confidential. That the only employees or companies that can access such information are those who need it to provide services concerning your insurance.

Moreover, in compliance with federal and state standards, HIG, Assurant, and Southern County credit term physical, electronic and procedural safeguards to protect against unauthorized use or disclosure of that information. HIG, Assurant, and Southern County do not disclose information about you in their respective affiliates or in third parties, except as permitted by law.

NOTE: When your relationship with us ends, your information will be retained as outlined below.

1. Household Insurance Group, Inc. does not use the trade name of HSBC Insurance Services. Household Life Insurance Company (formerly known as American Heritage Life Insurance Company), West Insurance Company, Service General Insurance Company, First Central National Life Insurance Company of New York, Household Life Insurance of Delaware, SIC Insurance Agency of Nevada, HSBC Insurance Agency (USA), Inc., and such other companies Household Insurance Group, Inc. may subsequently acquire. Assurant Solutions includes American Heritage Insurance Company, American Heritage Insurance Company of Florida, American Heritage Life Insurance Company of Florida, Florida HomeLife, First Fidelity Life Insurance Company and Union Security Life Insurance Company.

EXHIBIT "A"

AGREEMENT TO TERMS AND DE

This Cardmember Agreement and Disclosure Statement or we collectively the "Agreement" that appears the great established for you (your Account, "You" and "your" refer to the Account. "We," "us," and "our" refer to HSBC. You means any credit cards issued under this Agreement. You Agreement from the Federal Reserve Bank of New York. This Agreement, including without limitation, this document to transaction, including, without limitation, this document to your Account. You may cancel your Account before the Annual Fee if you call us within 90 days of your Account Customer Service number on the back of your card.

You agree to use your Account only for personal, family, or business purposes. You agree not to use your Account to make any other purchases. You agree to advise your Account for all other purposes. You agree to use your Account for all other purposes. You agree to use your Account for all other purposes. You agree to use your Account for all other purposes.

PRORATE TO PAY

You agree to pay according to the terms of this Agreement. You agree to pay according to the terms of this Agreement. You agree to pay according to the terms of this Agreement. You agree to pay according to the terms of this Agreement. You agree to pay according to the terms of this Agreement.

USING YOUR ACCOUNT

You can access your Account using your Card or by other means. You agree to use your Account for all other purposes. You agree to use your Account for all other purposes. You agree to use your Account for all other purposes.

YOUR CREDIT LINE

We will advise you of the total Credit Line on your Account. You agree to use your Account for all other purposes. You agree to use your Account for all other purposes. You agree to use your Account for all other purposes.

CARDMEMBER AGREEMENT

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

If you fail to pay the amount we think you owe, we may report you as delinquent. However, if an explanation does not satisfy you, and you wish to us within ten days telling us you will reduce to pay, we must tell everyone we report you to that you have a question about your bill. And, we must tell you the name of anyone we reported you to. Upon settlement of the dispute, we must tell everyone we report you to that the matter has been settled.

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

SPECIAL RULE FOR CREDIT CARD PURCHASES

If you have a problem with the quality of property or services that you purchased with a credit card, and you have tried in good faith to correct the problem with the merchant, you may have the right not to pay the remaining amount due on the property or services. There are two limitations on this right: (a) You must have made the purchase in your home state or, if not within your home state, within 100 miles of your current mailing address; and (b) The purchase price must have been more than \$50.

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

HSBC Card Services Inc. and/or HSBC Card Services (U) Inc. provide processing services for HSBC Bank Nevada, N.A.

You may write to us at:
HSBC Bank Nevada, N.A.
1111 Bank Center Drive
Las Vegas, Nevada 89144

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MasterCard, Gold MasterCard and Premium MasterCard are registered marks of MasterCard International, Incorporated.

Website address: www.hsbcusabank.com

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Thomas A. Krulle
President Visa Merchant

AG2320 (3/05)

CARDMEMBER AGREEMENT

agreement is deemed invalid or unenforceable under any law or statute consistent with the FAA, it shall not invalidate the remaining portions of this arbitration agreement or this Agreement. In the event of a conflict or inconsistency between the rules and procedures of the arbitration administrator and this arbitration agreement, this arbitration agreement shall govern. No class actions or joinder or consolidation of any claim with the claim of any other person are permitted in arbitration without the written consent of you and us.

THE PARTIES ACKNOWLEDGE THAT THEY HAVE A RIGHT TO LITIGATE CLAIMS THROUGH A COURT BEFORE A JUDGE OR JURY, BUT WILL NOT HAVE THAT RIGHT IF EITHER PARTY ELECTS ARBITRATION. THE PARTIES HEREBY KNOWINGLY AND VOLUNTARILY WAIVE THEIR RIGHTS TO LITIGATE SUCH CLAIMS IN A COURT BEFORE A JUDGE OR JURY UPON SELECTION OF ARBITRATION BY EITHER PARTY.

You may contact, obtain the arbitration rules of, or file a claim with NAF or JAMS as follows:

NAFS
National Arbitration Forum
P.O. Box 50791
Minneapolis, MN 55405
www.nafdis.com
Code of Procedure
Arbitration Rules and Procedures.

YOUR BILLING RIGHTS

Keep this notice for future use. This notice contains important information about your rights and our responsibilities under the Fair Credit Billing Act.

Notify Us in Case of Errors or Questions About Your Bill. If you think your bill is wrong, or if you need more information about a transaction on your bill, write (on a separate sheet) to HSBC Card Services Inc., P.O. Box 88044, Salt Lake City, UT 84188. Write us as soon as possible. We must hear from you no later than 60 days after we sent you the first bill on which the error or problem appeared. You can telephone us, but doing so will not preserve your rights. Please include the following information in your letter:

- Your name, account number and signature;
- The dollar amount of the suspected error; and
- Describe the error and explain, if you can, why you believe there is an error.

If you need more information, describe the item you are not sure about. If you have authorized us to pay your Account bill automatically from your savings or checking account, you can stop the payment on any amount you think is wrong. To stop the payment, your letter must reach us three business days before the automatic payment is scheduled to occur.

Your Rights and Our Responsibilities After We Receive Your Written Notice. We must acknowledge your letter within 30 days, unless we have contacted the error by then. Within 90 days, we must either correct the error or explain why we believe the bill was correct.

After we receive your letter, we cannot try to collect any amount you question, or report you as delinquent. We can continue to bill you for the amount you question, including Finance Charges, and we can apply any unpaid amount against your Cash Line. You do not have to pay any questioned amount while we are investigating, but you are still obligated to pay the parts of your bill that we are not in question.

CARDMEMBER AGREEMENT

VERIFIABILITY
Any provision of this Agreement is hereby determined to be void or unenforceable for any law, rule or regulation, all other provisions of this Agreement will remain in full force and effect.

ARBITRATION

I agree any claim, dispute, or controversy (whether based upon contract, tort, or otherwise; constitutional, statutory, common law; or equity and whether existing, present or future), including third claims, counter-claims, cross-claims and third party claims, arising from or relating to this Agreement or the relationships that result from this Agreement, including the validity or enforceability of this arbitration clause, any part thereof or the entire Agreement ("Claim"), shall be referred, upon the election of you or us, by binding arbitration pursuant to this arbitration provision and the applicable rules or procedures of the arbitration administrator selected at the time the Claim is filed. The party initiating the arbitration proceeding shall have the right to select one of the following two arbitration administrators: the National Arbitration Forum ("NAF") or JAMS. The arbitrator shall be a lawyer with more than ten years experience as a retired or active judge. We agree not to invoke our right to arbitrate on individual Claim you are filing in small claims court or an equivalent court, if any, so long as the Claim is being filed in that court. The rules and terms of the NAF and JAMS may be obtained by writing to these organizations at the addresses listed below. Our address is: HSBC Card Services Inc., P.O. Box 3740, Las Vegas, NV 89103-8740.

By participating in arbitration hearing that you intend will take place in the city nearest to your residence where a federal district court is located or at such other location as agreed by the parties. On any Claim you file, you will pay the first \$50 of the filing fee. At your request we will pay the remainder of the filing fee and any arbitration fee or hearing fees charged by the arbitration administrator on any Claim initiated by you if arbitration is on a maximum of \$1,500. If you are required to pay any additional fees to the arbitration administrator, we shall not be obligated to pay or part of the additional fees; however, we shall not be obligated to pay any additional fees unless the arbitrator grants you an award. If the arbitrator rules on award in your favor, we will reimburse you for any additional fees paid or not by you to the arbitration administrator up to the amount of the fees that would have been charged if the original Claim had been for the amount of the award in your favor. The parties shall bear the expense of their respective attorney's fees, except as otherwise provided by law. If a statute gives you the right to recover any of these fees, or the fees paid to the arbitration administrator, these statutes shall apply in the arbitration notwithstanding anything to the contrary contained herein. If the arbitrator issues an award in our favor, you will be required to reimburse us for any fees we have previously paid to the arbitration administrator or for which we are responsible. This arbitration provision is made pursuant to a transaction involving interstate commerce, and shall be governed by the Federal Arbitration Act, 9 U.S.C. Sections 1-6 (the "FAA"). The arbitrator shall apply applicable substantive law consistent with the FAA and provide written reasoned findings of fact and conclusions of law. The arbitrator's award shall not be subject to appeal except as permitted by the FAA. The parties agree that the award shall be kept confidential. Judgment upon the award may be entered in any court having jurisdiction. This arbitration agreement shall survive termination of your Account as well as the employment of all amounts borrowed hereunder. If any portion of this arbitration

MEMBER AGREEMENT

MasterCard International on the processing date may differ from the rate that you have been used on the purchase date or cardholder statement posting date.

FOR USA ACCOUNTS

If you incur a charge in a foreign currency, or effect a transaction in U.S. dollars outside the U.S., this charge will be converted by Visa International into a U.S. dollar amount. A currency conversion will occur if the transaction is made in U.S. dollars. Visa International will use the procedures set forth in its Operating Regulations to effect of this rate. The transaction is processed. Currently, these Regulations provide that the currency conversion rate to be used is either (1) a wholesale dealer rate or (2) a government-mandated rate in effect one day prior to the processing date, increased by one percent in each case. Visa retains this one percent commission for performing the currency conversion service. The gateway commission is in effect on the processing date may differ from the rate in effect on the transaction date or the posting date.

APPLICABLE LAW

This Agreement and your Account will be governed by Federal law and the laws of the state of Nevada, whether or not you live in Nevada and whether or not your Account is used outside Nevada. This Agreement is entered into in Nevada and credit under this Agreement will be extended from Nevada.

ASSIGNMENT OF ACCOUNT

We may sell, assign or transfer your Agreement and Account or any portion thereof without notice to you. You may not sell, assign or transfer your Account.

CERTAIN AUTHORIZATION PRACTICES

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ACCOUNT CLOSURE

We may close your Account, suspend your credit privileges, or reduce your credit limit at any time and for any reason, subject to the requirements of applicable law. In any of these events, your Account balance will continue to accrue Finance Charges and fees until paid in full, and will remain subject to all the terms and conditions of this Agreement. If we close your Account, you agree to destroy your Cards and any unused credit card checks. If your Account has been closed, as your credit privileges are suspended, you may not use your Card or credit card checks.

CLOSING YOUR ACCOUNT

You may close your Account at any time by writing to us at P.O. Box 81622, Las Vegas, NV 89193. If you close your Account, you must immediately pay everything you owe us, including any amounts owed but not yet billed to you, in order to avoid the accrual of Finance Charges and other fees. If you do not pay us, your Account balance will continue to accrue Finance Charges and other fees, and will remain subject to all the terms and conditions of this Agreement. Upon closing your Account, you also agree to destroy your Cards and any unused credit card checks. If you close your Account you may not use your Card or credit card checks.

LIABILITY FOR UNAUTHORIZED USE

You should retain copies of all charge slips and you receive your statement at which time you should verify that the charges are true and the amounts indicated. You may be liable for the unauthorized use of your credit card. You will not be liable for unauthorized use of your card if you notify us of the loss, theft or possible unauthorized use of your card immediately upon notification of the loss, theft or possible unauthorized use of your card. See CA 99171622 or calling us at the telephone number listed on your billing statement. You will not be liable for any unauthorized use of your credit card Account when you notify us immediately of the phone number or address above. In any case, your liability for unauthorized use of your credit card will not exceed \$50.

SECURITY

We are extending you an unsecured line of credit. We therefore reserve any security interests that might arise under this Agreement due to language in other loan agreements you may have with us.

LOST OR STOLEN CREDIT CARD CHECKS

You agree to notify us immediately if any credit card checks are lost or stolen. You may notify us by calling (800) 395-4500.

CHANGE OF NAME, ADDRESS, TELEPHONE NUMBER OR EMPLOYMENT

You agree to give us prompt notice of any change in your name, mailing address, telephone number or place of employment.

FORFEIT TRANSACTIONS FOR MASTERCARD ACCOUNTS

If you effect a transaction with your MasterCard card in a currency other than U.S. dollars, an effect a transaction in U.S. dollars outside the U.S., MasterCard International Incorporated will convert the charge into a U.S. dollar amount. A currency conversion will occur if the transaction is made in U.S. dollars. MasterCard International will use its currency conversion procedures, which is disclosed to institutions that issue MasterCard cards. Generally, the currency conversion rate used by MasterCard International to determine the transaction amount in U.S. dollars for such transactions is generally either a government-mandated rate or a wholesale rate determined by MasterCard International for the processing cycle in which the transaction is processed, increased by an adjustment factor established from time to time by MasterCard International. The currency conversion rate used by

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You will be in default under this Agreement if: (a) you fail to make at least the Current Payment due in time to be credited to your Account by the Payment Due Date; (b) you violate any other provision of this Agreement; (c) you die; (d) you become subject to bankruptcy or insolvency proceedings; (e) you supply us with misleading, false, incomplete or incorrect information; (f) we receive information from third parties, including credit reporting agencies, which indicate a delinquency or charge-off with other creditors; (g) you move out of the U.S., provide us with a non-U.S. mailing address, or fail to provide us a personal address; (h) you exceed your credit line; (i) your payment is returned uncollected by your bank or other financial institution for any reason; or (j) any credit card check is returned unpaid by us. Upon default, we have the right to close your Account, to terminate or suspend your credit privileges under this Agreement, to change the terms of your Account and this Agreement, to require you to pay your entire Account balance including all accrued but unpaid charges immediately, and to sue you for what you owe.

IF YOU DO NOT PAY US, YOUR ACCOUNT BALANCE WILL CONTINUE TO ACCRUE FINANCE CHARGES AND FEES UNTIL PAID IN FULL AND WILL REMAIN SUBJECT TO ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF WE SUE YOU, OR IF WE HIRE A THIRD PARTY TO COLLECT YOUR ACCOUNT BALANCE, YOU WILL PAY OUR CREDIT COSTS, REASONABLE ATTORNEYS' FEES AND OTHER COLLECTION COSTS INCURRED TO THE EXTENT PERMITTED BY LAW IN THE STATE IN WHICH YOU RESIDE, AND WE WILL APPLY YOUR PAYMENTS FIRST TO ATTORNEYS' FEES AND OTHER COSTS THEN TO PRINCIPAL AND UNPAID FINANCE CHARGES.

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