

00-398-CO

WELLS FARGO BANK -vs- SAMUEL J. TONEY, JR.

ROBERT E. ANGST, ESQUIRE
Attorney I.D. #80042
PARK LAW ASSOCIATES, P.C.
25 East State Street
P.O. Box 1779
Doylestown, PA 18901
(215) 348-5200
ATTORNEY FOR PLAINTIFF

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

(1) WELLS FARGO BANK

Plaintiff

VS.

(2) SAMUEL J. TONEY, JR.

Defendant

FILED

APR 03 2000

William A. Shaw
Prothonotary

NO. 00-398-CO

NOTICE

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by an attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for other claims or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO, OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

David S. Meholic, Court Administrator
Clearfield County Courthouse
Clearfield, PA 16830
(814) 765-2641, Ext. 32

THIS IS AN ATTEMPT TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

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WELLS FARGO BANK : CLEARFIELD COUNTY
: COURT OF COMMON PLEAS
Plaintiff :
VS. :
SAMUEL J. TONEY, JR. :
Defendant : NO.

CIVIL ACTION - COMPLAINT

COUNT I

1. Plaintiff, Wells Fargo Bank is a national banking institution with an address of P.O. Box 29746, Phoenix, AZ 85038.
2. Defendant is an adult individual with an address of RD 8, Box 66, Dubois, PA 15801.
3. At the request of the Defendant, Plaintiff issued the Defendant a credit card subject to the terms of the Card Member Agreement. A true and correct copy of the Credit Application is attached hereto, made a part hereof and marked Exhibit "A".
4. Defendant has incurred charges for purchases, cash advances and/or finance charges in the amount of \$13,680.98 as of October 8, 1998.

5. Defendant's obligation is based on a subsisting debt was in writing and arises from a pre-existing account.
6. Defendant has not objected to Account Statements issued to the Defendant on a monthly basis.
7. Defendant is liable to Plaintiff on this Account as an Account Stated.
8. Defendant has failed to make payments as they became due under the terms of the Card Member Agreement. A true and correct copy of the Account Agreement is attached hereto, made a part hereof and marked as Exhibit "B".
9. Defendant is in default of the terms of the Card Member Agreement and is indebted to Plaintiff in the amount of \$13,680.98 plus interest at the rate of 6.75% per annum.
10. Pursuant to the terms of the Card Member Agreement, Plaintiff is entitled to a reasonable attorney's fee and Plaintiff will incur an attorney's fee in the sum of \$2,735.00.

WHEREFORE, Plaintiff demands Judgment against the Defendant in the sum of \$13,680.98 plus interest at the rate of 6.75% per annum from October 8, 1998, plus a reasonable attorney's fee of \$2,735.00 and Court costs.

COUNT II

11. Plaintiff realleges each and every allegation contained in paragraphs 1 through 10 of this Complaint and incorporates them herein by reference as if the same were set forth at length.
12. The Defendant received a monetary benefit of \$13,680.98 that was in fact appreciated by the Defendant.

13. By virtue of the circumstances surrounding the request for Plaintiff's credit card, the completion of the application and use of Plaintiff's credit facilities, the Defendant knowingly and voluntarily accepted the benefits bestowed.
14. It would be inequitable for this Court to allow the Defendant to retain the benefits of the funds or to be unjustly enriched at the expense of the Plaintiff.
15. In accordance with the law there is interest due at the rate of 6% per annum from October 8, 1998.

WHEREFORE, Plaintiff demands Judgment against the Defendant in the sum of \$13,680.98 plus interest from October 8, 1998 and costs of this action.

Respectfully submitted,

PARK LAW ASSOCIATES, P.C.



BY: ROBERT E. ANGST

40590791 / 242

OCT 08 1998

DEBTORS NAME: Samuel J. Toney Jr.
ADDRESS: Rr 8 Box 86
Dubois, Pa 15801

ACCOUNT NUMBER: 5282310130295356

AFFIDAVIT

The balance on the subject account as of OCT 08 1998,
is 13680.98.

This is to certify that the above account is within the knowledge of
said affiant just, true and correct, and that the same is due and
unpaid as of the above stated date. All lawful and just offsets,
payments and credits have been allowed, and a systematic record of
such account has been maintained by WELLS FARGO BANK and the below
stated collection representative is authorized to make this
affidavit.

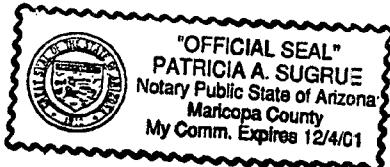
BY: Roger Williams (COLLECTION REPRESENTATIVE)
Roger Williams

Subscribed and sworn to me before this 13th day of the month of
OCTOBER, 1998.

State of Arizona
County of Maricopa

My commission expires: 12/4/01

Patricia A. Sugrue
Notary Public



LAW GOVERNING THIS AGREEMENT. The laws of the state of California and of the United States of America shall govern this Agreement.

IMPORTANT NOTICE TO CUSTOMERS WHO CONTACT BANK BY PHONE. To insure that Customer's inquiries are handled promptly, courteously and accurately, some of the telephone calls between Bank employees and Customers may be monitored, without notice to such Customer or Bank employees, by Bank's supervisory or management personnel.

Bank Address

- Send payments to: Wells Fargo N.A., P.O. Box 29479, Phoenix, AZ 85038-9479
- Send inquiries and correspondence to: Wells Fargo, Business Direct Operations, P.O. Box 219, San Leandro, CA 94577.

IF A MASTERCARD BUSINESSCARD IS LOST OR STOLEN. Customer agrees to notify Bank immediately if Customer suspects or knows that a MasterCard BusinessCard is lost or stolen by calling toll free 24-hours a day 1-800-642-4720. Customer agrees to follow up the telephone call with written notice of the suspected or actual loss or theft of a MasterCard BusinessCard at the correspondence address shown in the paragraph immediately above.

CHANGES OF ADDRESS, TELEPHONE NUMBER, OR NAME. Customer agrees to notify Bank in writing of any change of business or mailing address, telephone number, or business name.



WELLS FARGO

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BLD 009 (5/97)

WELLS FARGO

MasterCard BusinessCard®

CUSTOMER AGREEMENT

Effective May 1997

This Agreement governs the MasterCard BusinessCard account that Wells Fargo Bank, National Association ("Bank") is establishing for use by your **business organization ("Customer")** and your designated representatives. Customer will be bound by the terms and conditions of the Agreement from the time the account is opened. Use of a MasterCard BusinessCard, or a request for a transfer from the account by anyone authorized by the Customer, shall evidence the Customer's acceptance of the terms and conditions of this MasterCard BusinessCard Customer Agreement, including but not limited to the finance charge. The account will be used for business purposes only. Customer agrees to comply with each and every term and condition of this Agreement as set forth below.

PROMISE TO PAY. Customer agrees to pay Bank, when due, the total of all purchases and advances made on Customer's account. Customer also promises to pay the total of any Finance Charges and Other Charges due on an account, as stated in this Agreement, and all costs and expenses, including any attorney's fees, incurred in enforcing this Agreement.

CARD SERVICES. Customer will be issued one or more MasterCard BusinessCards, as requested by Customer. An account bearing a distinct account number and credit limit will be established for each MasterCard BusinessCard issued for use by the representative of Customer whose name is imprinted on the MasterCard BusinessCard ("Authorized User"). The following services are available, up to the amount of the Credit Limit on each individual account:

Purchases: A MasterCard BusinessCard can be used to purchase goods or services wherever MasterCard credit cards are accepted.

Cash Advances: Cash may be advanced (loaned) from an account by presenting the MasterCard BusinessCard at a financial institution or an Automated Teller Machine (ATM) that accepts MasterCard credit cards. You can also get Cash Advances and perform balance inquiries using your credit card with Secret Code at all Wells Fargo Express™, Cirrus®, or MasterCard ATMs.

OVERDRAFT PROTECTION ADVANCES. If Customer has established Overdraft Protection on a designated Wells Fargo Business Checking Account, its designated representatives authorized to write checks on that account can have an overdraft automatically covered by an advance from the MasterCard BusinessCard account. Bank will automatically transfer enough money to cover the overdraft unless the account is delinquent, closed or the advance would cause the account balance to go over the Credit limit.

EXHIBIT

"B"

tabbies®

CREDIT LIMIT. The Credit Limit of an account is shown on each of the monthly periodic (billing) statements issued for that account. Customer agrees not to use or permit the use of an account in any way that will cause an account to exceed its Credit Limit. If an account's Credit Limit is exceeded, Bank may, at its option, close that account or exercise any of its other remedies under this Agreement.

PAYMENT

Periodic Payments: Customer will receive a separate periodic statement every month for each account. The New Balance shown on the Statement is the total of all unpaid obligations which have been posted to an account as of the Closing Date. Customer may pay the Minimum Periodic Payment Due or any greater amount, but Bank must receive at least the Minimum Periodic Payment by the Date Payment Due shown on the statement.

The Minimum Periodic Payment shown on the statement is figured as follows:

If the New Balance is:	The Minimum Periodic Payment Is:
Less than \$20	The amount of the New Balance.
\$20 to \$1000	\$20 plus any amount of the previous Minimum Periodic Payment which is past due.
Over \$1000	2% of the New Balance, rounded to the next higher dollar, plus any amount of the previous Minimum Periodic Payment which is past due.

Payments made to an account will be applied in the following order: Annual Fee, Other Charges, Finance Charges, and then to the amount of principal. Bank may accept checks marked "Payment in Full" or with words of similar effect without losing any of its rights to collect the full balance of an account.

FINANCE CHARGE. The total Finance Charge is the sum of the Periodic Finance Charge plus the Transaction Finance Charge assessed on the account to which it pertains. The method used to determine the balance or balances upon which these are computed is as follows:

A. Finance Charge: The Periodic Finance Charge is figured on the periodic statement Closing Date by multiplying the Average Daily Balance of the account by the Monthly Periodic Rate.

Monthly Periodic Rate: The Monthly Periodic Rate will be either a fixed or variable rate. You will receive separate notification from the Bank regarding your rate.

- **Fixed Rate:** If your rate is a fixed rate, the Monthly Periodic Rate will be calculated by dividing your fixed rate by 12 (rounded to the nearest 1/1000th).
- **Variable Rate:** If your rate is a variable rate, the Monthly Periodic Rate is based upon the Prime Rate plus the Spread. The "Prime Rate" is the rate announced by the Bank as its "Prime Rate", in effect on the 15th of each month (Determination Date). If the Determination Date falls on a Saturday, Sunday or holiday, the Prime Rate announced on the next business day will be used as the Determination Date. The Monthly Periodic Rate will be calculated by taking the Prime Rate, as described above, adding a Spread and

dividing that sum by 12 (rounded to the nearest 1/1000th).

The Monthly Periodic Rate will change each month as the Prime Rate changes. Any increase or decrease in the Monthly Periodic Rate will be effective with billing periods beginning on or after the last of each month, based on the Prime Rate as of the Determination Date for the preceding month. If there is no increase or decrease in the Prime Rate for a given month, then there will be no change in the Monthly Periodic Rate until the next calculation. Any changes in the Monthly Periodic Rate will apply to both current and future balances on the account and the Monthly Periodic Rate will continue to vary even if the account is closed.

Calculation of Average Daily Balance: The Average Daily Balance is calculated by calculating the Daily Balance for each day in the billing period, adding all of the Daily Balances together, and then dividing that total amount by the number of days in the billing period. The Daily Balance is figured by starting with the beginning balance of the account each day and then:

- adding the amount of all new purchases and advances posted to the account as of that day; and
- subtracting the amount of any payments or credits which are credited to the account as of that day, any unpaid Finance Charge and any unpaid Other Charges.

The Average Daily Balance on which the Periodic Finance Charge is calculated will not include any part of the New Balance from the previous periodic statement or any new purchases posted to the account during the current billing period, if that New Balance is paid by the Date Payment Due shown on that previous statement, or if the New Balance was zero. In that case, the Average Daily Balance will be based only on the new Cash Advances and Overdraft Protection Advances during the current billing period.

B. Transaction Finance Charge: The Transaction Finance Charge is a one time charge made each time a new advance is posted to the account. The charge for each Overdraft Protection Advance is 2% of the amount of the advance with a minimum of \$3.00 and a maximum of \$7.50. The charge for each MasterCard BusinessCard Cash Advance obtained through an Express machine or any other Automated Teller Machine, whether the cash is withdrawn or transferred from your credit card account to another account, is 2% of the amount of the advance. The charge for each MasterCard BusinessCard Cash Advance obtained through any other source is the larger of \$5.00 or 2% of the amount of the advance.

WHEN FINANCE CHARGE BEGINS. The Periodic Finance Charge for purchases begins on the date the transaction was made, except that no Periodic Finance Charge will be imposed during the current billing period on new purchases posted to an account during the current billing period if Customer has paid in full the New Balance by the Date Payment Due shown on the previous periodic statement. If Bank receives payment in full of the New Balance by the Date Payment Due, no additional Finance Charge will be imposed on that New Balance. This 25 day period is referred to as the "grace" period. The Periodic Finance Charge for advances begins on the date the transaction is posted to an account.

OTHER CHARGES

The total of Other Charges is the sum of:

Annual Fees: Bank will assess \$55.00 as an Annual Fee for the first

year and each year thereafter for each MasterCard BusinessCard issued. If the Customer elects to participate in the BusinessMiles™ program, a \$50.00 enrollment fee will be billed annually to the primary account holder's Account.

Fees will not be refunded in whole or in part after assessment, even if the account is subsequently suspended, closed, or terminated for any reason.

Late Charge: If Bank does not receive at least the Minimum Periodic Payment by the Date Payment Due shown on the periodic statement, Bank may impose a late charge of **\$29.00**.

Overlimit Charge: Bank may impose an overlimit charge of **\$15.00** for each billing period the New Balance on your periodic statement exceeds your Credit Limit.

Returned Item Charge: If payment on an account is made with an item that is not honored for any reason, a **\$20.00** charge will be assessed against the account. If Customer pays more than one account with an item, a **\$20.00** charge will be assessed against each affected account.

Stop Payment Fee: If customer requests the Bank to place a "Stop Payment" on a SUPERCHECK™ drawn on their account, the Bank may impose a charge of **\$15.00** for each Stop Payment request.

Research Charge: If Customer requests the Bank to research an account, for example, to update Customer's business records, **\$5.00** will be charged for each sales slip copy Bank provides and **\$20.00** per hour for Bank research services, including locating and making copies of periodic statements. These fees will not be charged if Customer makes a good faith inquiry about a suspected error on a periodic statement.

DEFAULT. The following constitute defaults under this Agreement: (1) a payment is not made when it is due; (2) the terms of this Agreement are breached in any way; (3) Customer defaults under the terms of any other obligation to Bank; (4) a bankruptcy petition is filed by or against Customer or any guarantor of Customer's account; (5) a significant change occurs in the ownership or organizational structure of Customer or in the type or volume of Customer's business; (6) Customer becomes insolvent or is dissolved, or Bank otherwise believes in good faith that the prospect of payment and/or performance under this Agreement is impaired; (7) returned items for insufficient funds; (8) failure to submit required information the Bank deems necessary. Customer will be charged the applicable Periodic Finance Charge Rate after any default under this Agreement.

BANKER'S LIEN AND RIGHT OF SET-OFF. Bank has a general lien under California law on any of Customer's personal property in Bank's possession. In the event Customer does not make payment on an account as agreed, Bank may exercise its right of set-off against any obligation Bank owes to Customer, including a set-off against any deposit account(s) Customer has with Bank to the extent permitted by law.

REMEDIES. In the event of any default or failure to meet any condition under the preceding paragraphs, Bank may, at its option, and without prior notification:

- (1) close any or all accounts to all use;
- (2) accelerate payment of the full balance on any or all accounts and thereby require immediate payment of the full balance of such account(s) including, without limitation, any Finance Charge and

Other Charges; and/or

- (3) fix monthly account payments at a higher amount.

ARBITRATION PROGRAM

(a) Binding Arbitration. Upon the demand of any party, any Dispute shall be resolved by binding arbitration in accordance with the terms of this Arbitration Program. A "Dispute" shall include any action, dispute, claim, or controversy of any kind, whether in contract or in tort, legal or equitable, now existing or hereafter arising between the parties relating in any way to any agreement incorporating this Arbitration Program, or any related agreements (the "Documents"), and all past, present, or future loans, transactions, contracts, agreements, relationships, incidents or injuries of any kind whatsoever. Any party to this Arbitration Program may by summary proceedings bring any action in court to compel arbitration of any Dispute. Any party who fails to submit to binding arbitration following a lawful demand by the opposing party shall bear all costs and expenses incurred by the opposing party in compelling arbitration of any Dispute. The parties agree that by engaging in activities with or involving each other as described above, they are participating in transactions involving interstate commerce. THE PARTIES UNDERSTAND THAT BY THIS AGREEMENT THEY HAVE DECIDED THAT THEIR DISPUTES SHALL BE RESOLVED BY BINDING ARBITRATION RATHER THAN IN COURT, AND ONCE DECIDED BY ARBITRATION NO DISPUTE CAN LATER BE BROUGHT, FILED OR PURSUED IN COURT BEFORE A JUDGE OR JURY, except under the limited circumstances provided for herein.

(b) Governing Rules, Preservation of Remedies; Multiple Parties. All Disputes between the parties submitted to arbitration shall be resolved by binding arbitration administered by the American Arbitration Association (the "AAA" or "Administrator") in accordance with the Commercial Arbitration Rules of the AAA, the Federal Arbitration Act (Title 9 of the United States Code), and to the extent the foregoing are inapplicable, unenforceable or invalid, the applicable substantive law designated in the Documents relating to the Dispute. In the event of any inconsistency between this Arbitration Program and such rules and statutes, this Arbitration Program shall control. Judgment upon any award made hereunder may be entered in any court having jurisdiction. Any claim or dispute related to the exercise of any self-help, auxiliary or other rights under this paragraph shall be a Dispute hereunder. However, no provision of, nor the exercise of any rights under, this Arbitration Program shall limit the right of any party, during any Dispute, to seek, use, and employ ancillary or preliminary remedies, judicial or otherwise, for the purposes of (1) preserving, foreclosing, or obtaining possession of real or personal property, (2) exercising self-help remedies including setoff and repossession rights, or (3) obtaining provisional or ancillary remedies such as injunctive relief, sequestration, attachment, garnishment, or the appointment of a receiver from a court having jurisdiction. Such rights can be exercised at any time, unless contrary to a final award or decision in an arbitration proceeding, and shall not constitute a waiver of the arbitration rights of any party. Any party may proceed against all liable persons, jointly or severally, or against any one or more of them, and may release or settle with any of them, without impairing rights against other liable persons. Any arbitrator selected shall be a practicing attorney experienced and knowledgeable in the substantive laws applicable to the subject matter of the Dispute, or a retired member of the state or federal

JUDICIAL The determination of the arbitrator shall be binding on all parties and shall not be subject to further review or appeal except as otherwise allowed by applicable law. Notwithstanding contrary provisions, any Dispute shall be submitted to arbitration if the Dispute concerns indebtedness secured by real property and if arbitration of the Dispute would preclude enforcement of a mortgage, lien or security interest securing such indebtedness.

(c) Miscellaneous. To the maximum extent practicable, the A-A, the Arbitrator and the parties shall act to assure that any arbitration proceeding shall be concluded within 180 days of the filing of the Dispute with the AAA. Arbitration proceedings hereunder shall be conducted at a location mutually agreeable to the parties, or if they cannot agree, then in the state of the applicable substantive law designated in the Documents relating to the Dispute at a location selected by the Administrator. With respect to any Dispute, each party agrees that all discovery activities shall be expressly limited to matters directly relevant to the Dispute. Neither party nor the arbitrator may disclose the existence, content, or results of any arbitration hereunder, except for disclosures of information required in the ordinary course of business of the parties or by applicable law or regulation. This Arbitration Program shall be construed in accordance with the Federal Arbitration Act, other applicable Federal law, and applicable law of the State of California. This Arbitration Program constitutes the entire agreement of the parties with respect to its subject matter and supersedes all prior arrangements and other communications on dispute resolution, except with respect to Disputes relating to any transaction directly governed by a different arbitration program entered into by the parties after August 1, 1996. In the event more than one arbitration program entered into by the parties is potentially applicable to a Dispute, the arbitration program most directly related to the Documents or transaction that is the subject of the Dispute shall control. The provisions of this Arbitration Program shall survive any termination, amendment, or expiration of the Documents or the relationship. This Arbitration Program may be amended, changed, or modified only by a specific modification in writing agreed to by all affected parties. If any term, covenant, condition or provision of this Arbitration Program is found to be unlawful, invalid or unenforceable, such defect shall not affect the legality, validity or enforceability of the remaining parts of this Arbitration Program, and all such remaining parts hereof shall be valid and enforceable and have full force and effect as if the illegal, invalid or unenforceable part had not been included.

LIMITATION ON LAWSUITS. Customer agrees that any lawsuit based upon any cause of action which Customer may have against Bank must be filed within one year from the date that it arises or Customer will be barred from filing the lawsuit. This limitation is intended to include tort, contract, and all other causes of action for which Customer and Bank may lawfully contract to set limitations for bringing suit.

TRANSFERS. Customer authorizes Bank to make transfers, up to the available balance or credit limit, between designated accounts specified in writing, upon Bank's receipt of instructions from any of Customer's owners or principals. Bank will have no liability for any transfer made upon the written or verbal request of any person believed by Bank in good faith to be an authorized representative of Customer. Customer will indemnify and hold Bank harmless from and against any damages, liabilities, costs or expenses (including attorney's fees) arising out of any

claim by Customer or any third party against Bank in connection with Bank's performance of transfers as described above.

CREDIT REPORTS AND RE-EVALUATION OF CREDIT. Customer authorizes Bank to obtain business and personal credit bureau reports in the name of the Customer and guarantor(s) at any time. Customer agrees to submit current financial information in the name of the Customer and guarantor(s) to Bank at any time upon request. Such information shall be used for the purpose of evaluating or re-evaluating Customer's creditworthiness. Upon determination that Customer's creditworthiness has changed adversely or does not satisfy Bank's current credit standards, Bank may close or lower the Credit Limit on any or all accounts. Bank may report its credit experience with Customer and its account(s) to third parties. Customer agrees that Bank may release information about Customer or Customer's account to other Wells Fargo companies.

RIGHT TO TERMINATE AN ACCOUNT. Bank can terminate any or all of Customer's accounts at any time, or reduce the amount of Customer's Credit Limit on any or all of its accounts, without notice, subject to applicable law, even though Customer may not have defaulted on any account. If Bank terminates an account, Customer agrees to destroy any MasterCard BusinessCard(s) issued on that account. Customer will continue to be responsible for full payment of the balance on the closed account and all charges to the account, including, without limitation, Loan Advances, MasterCard BusinessCard Purchases and Cash Advances, and Overdraft Protection Advances that post after closure of the account and any Finance Charge and Other Charges. Any principal/owner of Customer can cancel the BusinessLine account at any time upon written notification to the Bank.

CHANGE IN TERMS OF AN ACCOUNT. Bank may change any of the terms of any of Customer's accounts (including payment terms and finance charges) at any time. Bank will provide Customer with such notice as is required by law, by mailing such notice to Customer at the latest address shown in Bank's records. Subject to applicable law and provided Bank does not notify Customer otherwise, any changes will apply to the current balance of its accounts as well as to future balances.

LIABILITY FOR UNAUTHORIZED USE. Bank may hold Customer liable for the unauthorized use of any MasterCard BusinessCard issued to Customer to a maximum of \$50.00. Customer will not be liable for any unauthorized use that occurs after Bank is notified orally or in writing of such unauthorized use. However, if Customer has been issued 10 or more MasterCard BusinessCards, at any time, Customer shall be liable for all unauthorized use in any amount at any time. Use of Customer's MasterCard BusinessCard by an Authorized User at any time, even if an Authorized User is no longer associated with or employed by Customer does not constitute unauthorized use, subject to applicable law. To report the unauthorized use of a MasterCard BusinessCard, Customer should contact Bank by telephone at the number shown on the back of its periodic statement and on the form in which the MasterCard BusinessCard was sent. Customer should notify Bank in writing at Wells Fargo, Consumer Credit Group, P.O. Box 272639, Concord, CA 94527-2639.

BILLING ERRORS. Customer agrees to notify Bank of any billing errors within 30 days after receipt of statement reflecting the error. If Bank is unable to resolve the error with the responsible merchant, Customer agrees to pay Bank the amount in question and further pursuit of the issue with the merchant will become Customer's responsibility.

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APR 03 2000
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Wilhem A. Shaw
Prothonotary
D 580.00

ICC Sheriff Service

ROBERT E. ANGST

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

WELLS FARGO BANK

VS

TONEY, SAMUEL J. JR.

00-398-CD

COMPLAINT

SHERIFF RETURNS

NOW APRIL 6, 2000 AT 11:45 AM DST SERVED THE WITHIN
COMPLAINT ON SAMUEL J. TONEY, JR., DEFENDANT AT RESIDENCE
RD# 8 BOX 86, DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA BY
HANDING TO SAMUEL J. TONEY, JR. A TRUE AND ATTESTED COPY OF
THE ORIGINAL COMPLAINT AND MADE KNOWN TO HIM THE CONTENTS
THEREOF.

SERVED BY: MCINTOSH/COUDRIET

38.09 SHFF. HAWKINS PAID BY: ATTY
10.00 SURCHARGE PAID BY: ATTY

SWORN TO BEFORE ME THIS

20th DAY OF April 2000
William A. Shaw

WILLIAM A. SHAW
Prothonotary
My Commission Expires
1st Monday in Jan. 2002
Clearfield Co., Clearfield, PA.

SO ANSWERS,

Chester A. Hawkins
by Marilyn Harr

CHESTER A. HAWKINS
SHERIFF

FILED

APR 20 2000
13:32 pm
William A. Shaw
Prothonotary *REB*

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

WELLS FARGO BANK, : No. 00-398-CD
Plaintiff, :
vs. : Type of Pleading: ANSWER and
: NEW MATTER
: Filed on Behalf of PLAINTIFF by:
: ANTHONY S. GUIDO, ESQ.
: Hanak, Guido & Taladay
: 498 Jeffers Street
: PO Box 487
: DuBois, PA 15801
: (814) 371 - 7768
: PA Atty. ID #05877

FILED

JUN 26 2000

William A. Shaw Shaw
Notary
Prothonotary

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

WELLS FARGO BANK,	:	
Plaintiff,	:	
	:	
vs.	:	No. 00 - 398 - CD
	:	
SAMUEL J. TONEY, JR.,	:	
Defendant.	:	

ANSWER and NEW MATTER

AND NOW, comes Defendant, SAMUEL J. TONEY, JR., by his attorneys, Hanak, Guido and Taladay, and files this Answer and New Matter to Complaint filed by Wells Fargo Bank in the above matter as follows:

**ANSWER
Count I**

1. Admitted.
2. Admitted.
3. Denied. Defendant did not request subject credit card. Further, Defendant denies that he entered into any agreement with WELLS FARGO BANK concerning the subject credit card. In further answer thereto, the allegations set forth in Defendant's New Matter are incorporated herein by reference thereto as though fully set forth herein.
4. Denied. In answer thereto, the answer to Paragraph No. 3 is incorporated by reference as though fully set forth herein.
5. Denied. In answer thereto, the answer to Paragraph No. 3 is incorporated by reference as though fully set forth herein.

6. Denied. When Defendant received notice of said account, he immediately telephoned Plaintiff and advised Plaintiff that the subject account was not his account.

7. Denied. In answer thereto, the answers to Paragraphs No. 3 and 6 is incorporated by reference as though fully set forth herein.

8. Denied. In answer thereto, the answers to Paragraphs No. 3 and 6 is incorporated by reference as though fully set forth herein.

9. Denied. In answer thereto, the answers to Paragraphs No. 3 and 6 is incorporated by reference as though fully set forth herein.

10. Denied. In answer thereto, the answers to Paragraphs No. 3 and 6 is incorporated by reference as though fully set forth herein.

WHEREFORE, Defendant demands that Plaintiff's Complaint, Count I, be dismissed.

**ANSWER
Count II**

11. Denied. In answer thereto, the answers to Paragraphs No. 3 and 6 is incorporated by reference as though fully set forth herein.

12. Denied. In answer thereto, the answers to Paragraphs No. 3 and 6 is incorporated by reference as though fully set forth herein. Further, Defendant did not receive any monetary benefit as a result of the \$13,680.98 due to reasons set forth in Defendant's New Matter, the allegations of which are incorporated herein by reference thereto.

13. Denied. In answer thereto, the answers to Paragraphs No. 3 and 6 is incorporated by reference as though fully set forth herein.

14. Denied. In answer thereto, the answers to Paragraphs No. 3 and 6 is incorporated by reference as though fully set forth herein.

15. Denied. In answer thereto, the answers to Paragraphs No. 3 and 6 is incorporated by reference as though fully set forth herein.

WHEREFORE, Defendant demands that Plaintiff's Complaint, Count II, be dismissed.

NEW MATTER

1. Defendant incorporates by reference Defendant's Answer to Plaintiff's Complaint, Counts I and II, Paragraphs 1 - 15 as though fully set forth herein.

2. The Defendant did not execute the WELLS FARGO Credit Card Member Agreement, copy of which is attached to Plaintiff's Complaint and marked Exhibit "A".

3. As a result, the signature on said document is a forgery and not the signature of the Defendant.

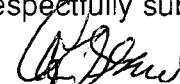
4. As a consequence, Defendant is not liable to the Plaintiff for the amounts claimed by the Plaintiff in its Complaint.

5. The Agreement which is attached to Plaintiff's Complaint and marked Exhibit "A" provides that all disputes shall be committed to binding arbitration rather than by legal action. As a consequence, Defendant requests that Plaintiff's Complaint be dismissed and Plaintiff ordered to submit the issues involved in this case to binding arbitration as provided for in said Agreement.

6. In addition, the Defendant believes and therefore avers this action was not filed by the Plaintiff within four (4) years from the date the subject credit card charges were incurred. As a consequence, Plaintiff's claim is barred by the applicable Statute of Limitations.

WHEREFORE, Defendant demands that Plaintiff's Complaint be dismissed.

Respectfully submitted,



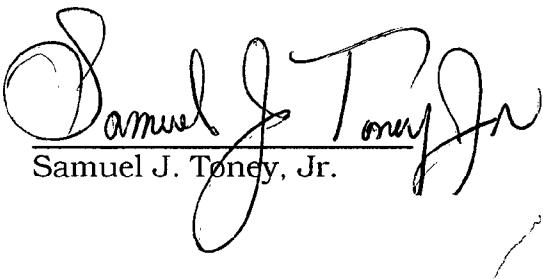
Anthony S. Guido, Esq.

VERIFICATION

I, SAMUEL J. TONEY, JR., do hereby verify that I have read the foregoing ANSWER and NEW MATTER. The statements therein are correct to the best of my personal knowledge or information and belief.

This statement and verification are made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn fabrication to authorities, which provides that if I make knowingly false averments I may be subject to criminal penalties.

Date: JUNE 22, 2000


Samuel J. Toney, Jr.

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of June, 2000, I forwarded a true copy of Answer and New Matter filed on behalf of Defendant, Samuel J. Toney, Jr., by regular mail, postage prepaid, to the following counsel:

Robert E. Angst, Esq.
Park Law Associates, PC
25 E. State Street
PO Box 1779
Doylestown, PA 18901



Anthony S. Guido, Esq.
Attorney for Defendant

FILED

OCT 04 2000

William A. Shaw
Prothonotary

ROBERT E. ANGST, ESQUIRE
Attorney I. D. # 80042
PARK LAW ASSOCIATES, P.C.
25 E. State Street
P. O. Box 1779
Doylestown, PA 18901
(215) 348-5200
ATTORNEY FOR PLAINTIFF

WELLS FARGO BANK	Plaintiff	:	CLEARFIELD COUNTY
		:	COURT OF COMMON PLEAS
VS.		:	
SAMUEL J. TONEY, JR.	Defendant	:	
		:	
		:	NO. 00-398-CD

PLAINTIFF'S RESPONSE TO NEW MATTER

1. Plaintiff incorporates paragraphs 1-15 of it's Civil Complaint as if the same were set forth here at length.
2. Denied. Specifically denied that Defendant did not execute the Wells Fargo Credit Card Member Agreement. On the contrary, the signature on the Card Member Agreement appears to be that of the Defendant.
3. Denied. Specifically denied that Defendant did not execute the Wells Fargo Credit Card Member Agreement. On the contrary, the signature on the Card Member Agreement appears to be that of the Defendant.
4. Denied. The allegations contained in this Paragraph are Conclusions of Law to which no response is required under the Rules of Civil Procedure.
5. Denied. The Agreement attached to Plaintiff's Complaint is a writing filed with the Court and thus speaks for itself.

6. Denied. The allegations contained in this Paragraph are Conclusions of Law to which no response is required under the Rules of Civil Procedure. By way of further answer, Plaintiff's Complaint was filed within the applicable four year statute of limitations.

WHEREFORE, Plaintiff respectfully requests that Judgment be entered in favor of Plaintiff and against Defendant in the amount requested in Plaintiff's Civil Complaint.

Respectfully Submitted,



BY: ROBERT E. ANGST, ESQUIRE

COMMONWEALTH OF PENNSYLVANIA :
:
COUNTY OF BUCKS :

Robert E. Angst, Esquire, being duly sworn according to law deposes and says that he is the attorney for the Plaintiff in the forgoing matter; that he is authorized to take this Affidavit on its behalf; and that the facts contained in the foregoing Petition are true and correct to the best of his knowledge, information and belief. Robert E. Angst, Esquire further understands that false statements made herein are subject to the penalties of 18 Pa.C.S., §4904, relating to unsworn falsification to authorities.


ROBERT E. ANGST, ESQ.

ROBERT E. ANGST, ESQUIRE
Attorney I.D. #80042
PARK LAW ASSOCIATES, P.C.
25 E. State Street
P. O. Box 1779
Doylestown, PA 18901
(215) 348-5200
ATTORNEY FOR PLAINTIFF

WELLS FARGO BANK	:	CLEARFIELD COUNTY
Plaintiff	:	COURT OF COMMON PLEAS
VS.	:	
SAMUEL J. TONEY	:	
Defendant	:	NO. 00-398-CD

CERTIFICATE OF SERVICE

Robert E. Angst, Esquire certifies that he is the attorney for the above named Plaintiff in the instant action and that on October 2, 2000, he served a true and correct copy of Plaintiff's Response to New Matter, by mailing the same by U. S. Mail, postage paid, to the persons and at the addresses set forth below:

Attorney for Defendant
Anthony S. Guido, Esq.
Hanak, Guido & Taladay
498 Jeffers Street
DuBois, PA 15801

PARK LAW ASSOCIATES, P.C.


BY: ROBERT E. ANGST, ESQ.

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FILED

OCT 04 2000
11:26 AM
William A. Shaw
Prothonotary
C
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OFFICE OF COURT ADMINISTRATOR
FORTY-SIXTH JUDICIAL DISTRICT OF PENNSYLVANIA

CLEARFIELD COUNTY COURTHOUSE
SUITE 228, 230 EAST MARKET STREET
CLEARFIELD, PENNSYLVANIA 16830

DAVID S. MEHOLICK
COURT ADMINISTRATOR

PHONE: (814) 765-2641
FAX: 1-814-765-7649

MARCY KELLEY
DEPUTY COURT ADMINISTRATOR

Notice of Proposed Termination of Court Case

November 10, 2005

FILED

NOV 10 2005

William A. Shaw
Prothonotary/Clerk of Courts

RE: 00-398-CD
Wells Fargo Bank
Vs.
Samuel J. Toney Jr.

Dear Plaintiff/Defendant:

Please be advised that the Court intends to terminate the above captioned case without notice, because the Court records show no activity in the case for a period of at least two years.

You may stop the Court terminating the case by filing a Statement of Intention to Proceed. The Statement of Intention to Proceed must be filed with the **Prothonotary** of Clearfield County, 230 East Market Street, Clearfield, Pennsylvania 16830. The Statement of Intention to Proceed must be filed on or before January 17, 2005.

If you fail to file the required statement of intention to proceed within the required time period, the case will be terminated.

By the Court,

A handwritten signature in black ink that appears to read "David S. Meholick".

David S. Meholick
Court Administrator



**OFFICE OF COURT ADMINISTRATOR
FORTY-SIXTH JUDICIAL DISTRICT OF PENNSYLVANIA**

CLEARFIELD COUNTY COURTHOUSE
SUITE 228, 230 EAST MARKET STREET
CLEARFIELD, PENNSYLVANIA 16830

DAVID S. MEHOLICK
COURT ADMINISTRATOR

PHONE: (814) 765-2641
FAX: 1-814-765-7649

MARCY KELLEY
DEPUTY COURT ADMINISTRATOR

Notice of Proposed Termination of Court Case

November 10, 2005

RE: 00-398-CD
Wells Fargo Bank
Vs.
Samuel J. Toney Jr.

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By the Court,

A handwritten signature in black ink, appearing to read "David S. Meholic".

David S. Meholic
Court Administrator

Court of Common Pleas of Clearfield County, Pennsylvania
Civil Division

Wells Fargo Bank

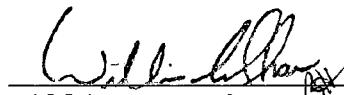
Vs.

00-398-CD

Samuel J. Toney Jr.

Termination of Inactive Case

This case is hereby terminated with prejudice
this 17th day of January, 2006, as per Rule 230.2.



William A. Shaw
Prothonotary

FILED

JAN 17 2006

William A. Shaw
Prothonotary/Clerk of Courts