

08-08-CD

Nova Information vs James Davis

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

NOVA INFORMATION SYSTEMS

Plaintiff

No. 08-08-CD

vs.

COMPLAINT IN CIVIL ACTION

JAMES DAVIS D/B/A
DVS DIRECT

Defendant

FILED ON BEHALF OF
Plaintiff

COUNSEL OF RECORD OF
THIS PARTY:

James C. Warmbrodt, Esquire
Pa I.D. No. 42524
Weltman, Weinberg & Reis, Co., LLC
2718 Koppers Building
436 Seventh Avenue
Pittsburgh PA 15219
412-434-7955

WWR#5028479

FILED *Atty pd \$95.00*
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JAN 07 2008
W.A. Shaw
William A. Shaw
Prothonotary/Clerk of Courts
CLEARFIELD COUNTY SHERIFF'S OFFICE

IN THE COURT OF COMMON PLEAS CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

NOVA INFORMATION SYSTEMS

Plaintiff

vs.

Civil Action No.

JAMES DAVIS D/B/A
DVS DIRECT

Defendant

COMPLAINT IN CIVIL ACTION AND NOTICE TO DEFEND

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 any other claim 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

COURT ADMINISTRATOR
CLEARFIELD COUNTY COURTHOUSE
230 EAST MARKET ST., SUITE 228
CLEARFIELD, PA 16830
(814) 765-2641, ext. 1300-1301

COMPLAINT

1. Plaintiff is a corporation in the business of processing credit card transactions with offices located at 7300 CHAPMAN HIGHWAY, KNOXVILLE, TN 37920.
2. Defendant, JAMES DAVIS, is an adult individual with a last known address of 588 SOUTH ST, ROCKTON, PA 15856.
3. On or about MARCH 6, 1997, Defendant executed a Merchant Agreement and Personal Guaranty. True and correct copies of the Merchant Agreement ("Agreement") and Personal Guaranty ("Guaranty") are collectively marked Exhibit "1," attached hereto and made a part hereof.
4. Defendant accepted the terms of the Agreement, wherein Plaintiff provided certain services, more specifically described in the Merchant Agreement.
5. On or about JANUARY 20, 2005, a transaction, in the amount of \$5358.17, made by one of Defendant's customers was presented as a non-valid type of transaction and subsequently charged back to the Plaintiff on MARCH 12, 2005. A true and correct copy of the Statement of Account is marked Exhibit "2" attached hereto and made a part hereof.
6. The Plaintiff has made demand upon the Defendant, in the amount of \$5640.91, but the Defendant has failed or refused to pay.
7. Plaintiff claims interest at the legal rate of six (6%) percent per annum from JANUARY 27, 2006 on the unpaid amount.

8. Plaintiff avers that interest calculated at the aforesaid rate from JANUARY 27, 2006 to OCTOBER 8, 2007 amount to \$545.21.

9. Plaintiff avers that the Agreement between the parties provides that Defendant will pay Plaintiff's attorneys' fees.

10. Plaintiff avers that such attorneys' fees will amount to \$1000.00

11. Although repeatedly requested to do so by Plaintiff, Defendant has willfully failed and/or refused to pay the principal balance, interest, attorneys' fees or any part thereof to Plaintiff.

WHEREFORE, Plaintiff demands Judgment in its favor and against Defendant, JAMES DAVIS D/B/A DVS DIRECT individually, in the amount of \$6186.12 with continuing interest at the rate of 6% from OCTOBER 8, 2007, plus attorneys' fees of \$1000.00 and costs.

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

WELTMAN, WEINBERG & REIS, CO., L.P.A.

James C. Warmbrodt, Esquire
Pa I.D. No. 42524
Weltman, Weinberg & Reis, Co., LLC
2718 Koppers Building
436 Seventh Avenue
Pittsburgh PA 15219
412-434-7955

WWR#:5028479

Merchant Processing Agreement



THIS MERCHANT PROCESSING AGREEMENT (this "Agreement") is entered into, as of the date set forth below as accepted by Member (as hereinafter defined), by and among the undersigned merchant ("Merchant"), NOVA Information Systems, Inc., a Georgia corporation ("NOVA") and Regions Bank, a bank chartered under the laws of the State of Alabama and a principal member of VISA U.S.A., Inc. and MasterCard International Incorporated ("Member").

WHEREAS, Merchant desires to facilitate sales and/or leases of merchandise and/or services by honoring valid cards bearing the symbols of MasterCard International Incorporated ("MasterCard"), VISA U.S.A., Inc. ("VISA"), and Diners Club/Carte Blanche (hereinafter referred to individually as a "Card" and collectively as "Cards");

WHEREAS, NOVA and Member are willing to provide certain services to Merchant, as set forth herein, to enable Merchant to accept Cards as payment for goods and services sold by Merchant, all in accordance with the terms and conditions set forth in this Agreement;

NOW, THEREFORE, Merchant, NOVA and Member agree as follows:

1. **LAWS, RULES AND REGULATIONS.** MERCHANT AGREES TO COMPLY WITH ALL EXISTING AND FUTURE RULES AND OPERATING REGULATIONS ISSUED BY MASTERCARD, VISA, OR DINERS CLUB/CARTE BLANCHE, APPLICABLE TO THE ACCEPTANCE OF CARDS AND PROCESSING OF CARD TRANSACTIONS, AND ANY POLICIES AND PROCEDURES PROVIDED BY MEMBER OR NOVA. ALL OF SUCH RULES, OPERATING REGULATIONS, POLICIES AND PROCEDURES ARE EXPRESSLY INCORPORATED HEREIN BY REFERENCE AND MADE A PART OF THIS AGREEMENT AS IF THEY WERE SET FORTH IN FULL HEREIN. MERCHANT FURTHER AGREES TO COMPLY WITH ALL APPLICABLE STATE, FEDERAL AND LOCAL LAWS, RULES AND REGULATIONS AFFECTING ACCEPTANCE OF THE CARDS, PROCESSING OF CARD TRANSACTIONS, AND THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT.

2. **HONOR VALID CARDS.** Merchant agrees to honor, without discrimination, any valid Card properly tendered for use by a person possessing a valid Card and purporting to be the person in whose name the Card is issued ("Cardholder").

3. **CARDHOLDER IDENTIFICATION.** Merchant shall identify the Cardholder and check the expiration date and signature on each Card. Merchant shall not honor any Card if (i) the Card has expired, (ii) the signature on the sales draft does not correspond with the signature on the Card, or (iii) the account number embossed on the Card does not match the account number on the Card's magnetic stripe (as printed in electronic form). Unless permitted under applicable law and applicable operating regulations issued by MasterCard, VISA and Diners Club/Carte Blanche (collectively, the "Operating Rules and Regulations"), Merchant shall not require a Cardholder to provide personal information, such as a home or business telephone number, a home or business address, or a driver's license number as a condition for honoring a Card.

4. **PRIOR AUTHORIZATION.** MERCHANT SHALL OBTAIN A PRIOR AUTHORIZATION BY WAY OF ELECTRONIC TERMINAL, TELEPHONE OR SIMILAR DEVICE BEFORE COMPLETING ANY TRANSACTION. Merchant shall follow any instructions received during such authorization process. Upon receipt of authorization, Merchant may consummate only the transaction authorized and must note on the sales draft the authorization number. Such authorization is not a guarantee of acceptance or payment of the Card transaction and shall not constitute a waiver of any of the provisions of this Agreement (including without limitation Paragraph 19 hereof), or otherwise validate a transaction involving the use of an expired Card or a fraudulent transaction. Merchant shall remain fully liable for any chargeback related thereto. Where Merchant is authorizing and presenting Card transactions electronically and Merchant's terminal is unable to read the magnetic stripe on the Cardholder's Card, Merchant must obtain an imprint of the Card and obtain the Cardholder's signature thereon prior to presenting the transaction to Member and NOVA for processing and collection of credit.

5. **CARD RECOVERY.** Merchant shall use its best efforts to recover any Card: (i) if the account number thereon is listed on a Combined Warning Bulletin, (ii) if the printed four digits above the embossed account number do not match the first four digits of the embossed account number, (iii) if Merchant is advised by Member (or its designee), the issuer of the Card or the designated voice authorization center to retain it, or (iv) if Merchant has reasonable grounds to believe such Card is counterfeit, fraudulent or stolen. Merchant's efforts to recover a Card will at all times be reasonable under the circumstances.

6. **SALES DRAFT.** A sales draft or other memorandum on a form approved by Member and NOVA ("Sales Draft") shall be used by Merchant to document each Card transaction. Each such Sales Draft shall be LEGIBLY imprinted with: (i) Merchant's name and account number, (ii) the information embossed on the Card presented by the Cardholder (either electronically or manually), (iii) the date of the transaction, (iv) a brief description of the goods or services involved, (v) the transaction authorization number, and (vi) the total amount of the sale (including any applicable taxes) or credit transaction, and, shall be signed by the Cardholder. The requirement for the Cardholder's signature on the Sales Draft shall only be waived if the Card transaction is a valid mail/telephone order Card transaction which fully complies with the requirements set forth in this Agreement (including Section 8). Each Sales Draft used in connection with a manually processed Card transaction shall contain all of the foregoing information and shall be signed by the Cardholder. If the following information embossed on the Card and the Merchant's name is not legibly imprinted on the Sales Draft, Merchant shall legibly reproduce: (i) the Cardholder's name, (ii) account number, (iii) expiration date, and (iv) the Merchant's name and place of business. Additionally, for transactions involving MasterCard, Merchant must legibly reproduce the name or trade style of the Card issuer as it appears on the face of the Card. In any case, where authorization is obtained, Merchant shall be deemed to warrant the true identity of the customer as the Cardholder.

7. **DELIVERY AND RETENTION OF COPY OF SALES DRAFT, RETENTION AND ENTRY OF TRANSACTION.** Merchant shall deliver a true and complete copy of the Sales Draft or credit voucher to the Cardholder at the time of the transaction. Merchant shall retain the "merchant copy" of the Sales Draft or credit memorandum for at least three (3) years following the date of completion of the Card transaction (or such longer period as the Operating Rules and Regulations may require). If Merchant utilizes electronic authorization and/or data capture services, Merchant shall enter the data related to a sales or credit transaction into a computer terminal or magnetic stripe reading terminal no later than the close of business or the date of the completion of the transaction. Information regarding a sales or credit transaction entered by means of a computer terminal or magnetic stripe reading terminal shall be transmitted by Merchant to NOVA or its agent in such form as NOVA may from time to time specify or as may be required under any applicable law, rule or regulation. If Member or NOVA requests a copy of such Sales Draft, credit voucher or other transaction memorandum or evidence, Merchant will promptly provide Member or NOVA with the same, within three business days following such request.

8. **MAIL ORDER, TELEPHONE ORDER AND RECURRING TRANSACTIONS.** MERCHANT SHALL NOT ENGAGE IN SOLICITING OR ACCEPTING MAIL ORDERS OR TELEPHONE ORDERS OR ANY TRANSACTION IN WHICH THE CARDHOLDER AND CARD ARE NOT PRESENT (COLLECTIVELY REFERRED TO AS "MAIL/TELEPHONE ORDERS"), EXCEPT WITH PRIOR WRITTEN AUTHORIZATION OF MEMBER (OR NOVA AS AGENT OF MEMBER). Mail/telephone orders completed without prior written consent of Member (or NOVA as agent of Member) shall be deemed to be a breach of this Agreement and cause for immediate termination in addition to any other remedies as are applicable under state or federal law and the Operating Rules and Regulations as may be in effect from time to time. Merchant shall not utilize the services of any third party in soliciting or accepting mail/telephone orders. If prior written authorization is provided to Merchant for mail/telephone orders, then such mail/telephone order shall be placed directly between the Cardholder and Merchant. Merchant shall obtain the expiration date of the Card for a mail/telephone orders and submit the expiration date when obtaining prior authorization of the Card transaction. For any recurring transactions, Merchant must obtain a written request from the Cardholder for such goods and services to be charged to the Cardholder's account, the frequency of the recurring charge and the duration of time during which such charges may be made. Merchant shall not complete any recurring transaction after receiving: (a) a cancellation notice from the Cardholder, (b) notice from NOVA or Member, or (c) a response that the Card is not to be honored. For mail/telephone order Card transactions, the Merchant shall type or print legibly on the signature line of the Sales Draft the words or letters indicated to describe the Card transaction: telephone order or "TO", mail order or "MO", recurring transaction or "Recurring Transaction".

9. **MULTIPLE SALES DRAFTS AND PARTIAL COMPLETION.** Merchant shall include a description of and total amount of all items of goods and services purchased in a single sales transaction on a single Sales Draft, or transaction record, unless (a) partial payment is entered on the Sales Draft or transaction record and the balance of the transaction amount is paid in cash or by check at the time of transaction, or (b) Sales Draft represents an advance deposit in a Card transaction completed in accordance with this Agreement (including this Section 9) and the Operating Rules and Regulations. MERCHANT SHALL NOT ACCEPT FOR PAYMENT BY CARD ANY AMOUNT REPRESENTING A DEPOSIT OR PARTIAL PAYMENT FOR GOODS OR SERVICES TO BE DELIVERED OR PERFORMED IN THE FUTURE, EXCEPT WITH THE PRIOR WRITTEN AUTHORIZATION OF MEMBER (OR NOVA AS AGENT OF MEMBER). The acceptance of a Card as payment or partial payment of goods or services to be delivered or performed in the future shall be deemed to be a breach of this Agreement and cause for immediate termination, in addition to any other remedies as are available under state or federal law, rule or regulation of the Operating Rules and Regulations. Provided Merchant has obtained prior written authorization to accept cards for payment of goods or services to be delivered in the future, then Merchant shall complete such Card transactions in accordance with the terms set forth in this Agreement (including this Section 9), the Operating Rules and Regulations and all applicable laws, rules and regulations. For authorized Card transactions involving delayed delivery of merchandise or services, the Cardholder shall execute one Sales Draft upon making a deposit with a Card and a second Sales Draft upon paying the balance. Merchant shall note upon the Sales Draft the words "deposit" or "balance" as appropriate. Merchant further agrees that it will not deposit with the Member the Sales Draft labeled "balance" until the goods have been delivered to and accepted by Cardholder or the services have been fully performed by Merchant to Cardholder's satisfaction.

10. **NO ADDITIONAL CHARGE FOR USE OF CARD.** Merchant agrees that it will not add any amount to the posted or advertised price of property or services offered by Merchant as a condition of the use of a Card with respect to a transaction involving such property or services consistent with applicable laws, rules and regulations and the Operating Rules and Regulations. Nothing herein shall be deemed to prohibit Merchant from offering a discount to a person to induce such person to pay by cash, check or similar means rather than by use of a Card.

11. **MERCHANT ACCOUNT/AUTOMATIC FUNDS TRANSFER.** Merchant shall establish and maintain with Member (or with a depository institution acceptable to Member), one or more commercial checking account(s) to facilitate payment to Merchant for Card transactions ("Merchant's Account"). If Merchant's Account is maintained with Member, Member shall make deposits thereto pursuant to applicable provisions of this Agreement, and Merchant irrevocably authorizes Member, without prior notice, to charge from time to time against Merchant's Account any chargebacks, fees or other amounts payable by Merchant to Member or NOVA under the terms of this Agreement, to initiate such entries as may be necessary to reverse or adjust any entries made in error or by mistake and to initiate or suspend such entries as may be necessary to grant or effect conditional credit with respect to any entry or group of entries. If Merchant's Account is maintained at a depository institution approved by Member, Member shall make deposits thereto pursuant to applicable provisions of this Agreement and the Debit/Credit Authorization and Payment Agreement ("Authorization") executed in favor of Member or NOVA, such Authorization to be deemed to be incorporated by reference herein. Merchant must obtain prior written consent from Member and NOVA to change Merchant's Account. Merchant's failure to obtain the required consent shall be cause for immediate termination of this Agreement, and shall further be deemed authority for Member and NOVA to take such other actions as either of them may deem necessary or desirable including without limitation suspension of processing privileges or the creation or maintenance of a Reserve Account pursuant to Section 14 of this Agreement.

12. **MERCHANT EXPRESSLY ACKNOWLEDGES AND AGREES TO ANY CHARGES OR DEBITS MADE BY MEMBER AGAINST MERCHANT'S ACCOUNT AS A RESULT OF THE EXERCISE OF CHARGEBACK RIGHTS BY A CARDHOLDER.** CARD ISSUING MEMBER, VISA, MASTERCARD OR DINERS CLUB/CARTE BLANCHE, OR OTHER INTERMEDIARY PURSUANT TO THE OPERATING RULES AND REGULATIONS (AS THE SAME MAY BE IN EFFECT FROM TIME TO TIME) INCLUDING, BUT NOT LIMITED TO, ITEMS RELATED TO COMPLIANCE ISSUES OR OTHER ACTIVITIES WHICH RESULT IN FINES, PENALTIES, ASSESSMENTS, PAYMENTS AND/OR FILING FEES FOR MATTERS UNDERTAKEN BY MEMBER OR NOVA ON THE MERCHANT'S BEHALF. Merchant shall promptly and diligently examine and review all statements relating to Merchant's Account, and shall immediately give NOVA written notice of any asserted errors or discrepancies thereto. Said written notice shall include: (a) Merchant's name and account number, (b) the dollar amount of the asserted error or discrepancy, (c) a description of the asserted error or discrepancy, and (d) an explanation of why Merchant believes an error or discrepancy exists and the cause of such error or discrepancy. Merchant shall not have or make any claim against Member or NOVA for any loss, cost or expense incurred in connection with any asserted error or discrepancy unless said written notice is received by NOVA within thirty (30) days after Merchant received the periodic statement of account activity containing notice of notification of the asserted error or discrepancy, and Merchant shall not make any claim against Member or NOVA for any loss, cost or expense in connection with any asserted error or discrepancy for a period of sixty (60) days immediately following NOVA's receipt of said written notice. During such sixty (60) day period, NOVA will be entitled to investigate any asserted error or discrepancy, and Merchant shall not incur any cost or expense in connection therewith without the prior written consent of NOVA.

If Merchant's Account is not maintained with Member, it is understood and agreed that Member shall act as Merchant's agent for purposes of effecting collection of Card transaction amounts from Cardholder's issuing member on behalf of Merchant. As the collecting agent and Member, at its sole option and discretion, may grant Merchant provisional credit for transaction amounts in the process of collection, subject to receipt of final payment by Member and NOVA and further subject to all Chargebacks thereon made under the Operating Rules and Regulations.

Merchant hereby authorizes Member, now and in the future, to initiate debit/credit entries to its Merchant's Account, or any other account maintained by Merchant at any institution that is a receiving member of Automated Clearing House, all in accordance with this Agreement and the Authorization Agreement Regarding Automatic Funds Transfer (ACH Credits/Debits) included in the Merchant Bankcard Application (the "Debit/Credit Authorization"). In the event Merchant changes its Merchant's Account, Merchant shall enter into a new Debit/Credit Authorization.

13. **EXCESSIVE CHARGEBACKS AND/OR RETRIEVAL REQUESTS.** Merchant agrees that in the event NOVA is presented, during any monthly period, with Chargebacks and/or retrieval requests relating to Card transactions processed by Member and NOVA on behalf of Merchant, in excess of one percent (1%) of the average monthly dollar amount of such Card transactions, such Chargebacks and/or retrieval requests will conclusively be deemed to be excessive under this Agreement and the Operating Rules and Regulations. The occurrence of excessive chargebacks and/or retrieval requests shall be deemed to be a breach of this Agreement and cause for immediate termination of this Agreement, and shall constitute authority for Member and NOVA to take such other or additional actions as either of them may deem necessary or reasonable, including, but not limited to, suspension of processing privileges, creation or maintenance of a Reserve Account pursuant to Section 14, or such other actions as may be authorized herein or by the Operating Rules and Regulations.

14. **DEPOSIT AND CREDIT FOR SALES DRAFTS OR TRANSACTIONS.** Subject to Section 19 hereof, Member agrees to deposit to Merchant's Account all Sales Drafts (whether evidenced in writing or by electronic means) complying with the terms and conditions of this Agreement and the Operating Rules and Regulations and to provide to Merchant provisional credit for such Sales Drafts (less any credit(s), adjustments and Chargebacks). Provided, however, under no circumstance will Member or NOVA be responsible for processing credits or adjustments related to original sales transactions not processed by Member and NOVA. All Sales Drafts and deposits are subject to audit and final checking by Member and NOVA, and may be adjusted for inaccuracies. Merchant acknowledges that all credits provided to Merchant are provisional and subject to Chargebacks and adjustments in accordance with the Operating Rules and Regulations. MEMBER MAY ELECT TO GRANT CONDITIONAL CREDIT FOR SUCH SALES DRAFTS, AND SUCH ELECTON MAY BE EXERCISED EITHER GENERALLY OR WITH REGARD TO SPECIFIC SALES DRAFTS OR GROUPS THEREOF ON A CASE-BY-CASE BASIS, WITH FINAL CREDIT TO BE GRANTED AT SUCH TIME, AND UPON SUCH ADDITIONAL TERMS AND CONDITIONS, AS MEMBER MAY DEEM APPROPRIATE.

14. SECURITY INTERESTS, RESERVE ACCOUNT, RECOUPMENT AND SET-OFF.

(a) **Security interests.** This Agreement shall constitute a security agreement under the Uniform Commercial Code. Merchant hereby grants to Member and NOVA a security interest in and lien upon all funds at any time in the Merchant's Account, the "Reserve Account" (as hereinafter defined). In future Sales Drafts processed by Member and NOVA and in all Merchant's rights created by or relating to this Agreement including, without limitation, all Merchant's rights to receive any payments or credits under this Agreement (collectively, the "Secured Assets"). Upon request of Member or NOVA, Merchant agrees to execute one or more financing statement(s) or other document(s) to evidence the security interest granted herein. Merchant represents and warrants that no other party has a security interest in the Secured Assets. These security interests and liens shall secure all of Merchant's obligations under this Agreement and any Ancillary Agreements between Merchant including, but not limited to, Merchant's obligation to pay fees and any other amounts due and owing to Member or NOVA. With respect to such security interests and liens, Member and NOVA shall have all rights afforded under the Uniform Commercial Code, any other applicable law and in equity. Merchant shall obtain from Member and NOVA written consent prior to granting a security interest of any kind in the Secured Assets to a third party.

(b) **Reserve Account.** For the purpose of providing a deposit and a source of funds to pay Member and NOVA for any and all amounts owed by Merchant, Merchant shall deposit into an account maintained by Member, (or other approved depository institution) initially or at any time in the future as requested in good faith by Member or NOVA, sums sufficient to satisfy Merchant's current and/or future obligations as determined by Member or NOVA. Funds in the Reserve Account shall remain in the Reserve Account unless and until each of the following has occurred: (i) this Agreement has been terminated; and (ii) Merchant has paid in full any and all amounts owing or that could ever be owed under this Agreement, including, without limitation, any and all outstanding/uncollected amounts and potential Chargebacks. Member shall have sole control of the Reserve Account. Member may, at any time, require that the amount on deposit in the Reserve Account be increased. In no event shall Merchant be entitled to a return of any sums remaining in the Reserve Account before 270 days following the effective date of termination of this Agreement. Member may at any time, without notice, apply any amounts in the Reserve Account against any and all outstanding/uncollected amounts owing to Member or NOVA under this Agreement or any other agreement between Merchant and Member and/or NOVA in any way related to the services to be provided herein or related products or services ("Ancillary Agreements"). Merchant understands and agrees that it has an obligation under this Agreement to maintain at all times a balance in the Reserve Account sufficient to protect Member and NOVA against losses resulting from transactions initiated by Merchant. Merchant, agrees that at any time, Member shall have the right to debit the Merchant's Account in order to establish or maintain funds in the Reserve Account. Merchant further acknowledges and agrees Member shall be entitled to deposit into the Reserve Account funds Member would otherwise be obligated to pay to Merchant, for the purpose of establishing or maintaining the Reserve Account. If Member determines such action is reasonably necessary to protect the interests of Member or NOVA. Further, Member may exercise any and all rights and remedies under this Agreement to collect any amounts due and owing to Member or NOVA relating to any Reserve Account including, without limitation, its right of set-off and recoupment.

(c) **Recoupment and Set Off.** Merchant hereby acknowledges and agrees Member has and shall have the right of recoupment and set-off as such rights exist under common law, any statute, any other applicable law or in equity. Without limiting the foregoing in any way, Merchant hereby expressly acknowledges and agrees Member may at any time deduct, offset, recoup and withhold any outstanding/uncollected amounts owed to Member or NOVA from (i) any amounts Member would otherwise be obligated to deposit into Merchant's Account, and (ii) any other amounts Member or NOVA may owe to Merchant under this Agreement, any Ancillary Agreements or otherwise.

(d) **Remedies Cumulative.** This authority and rights conferred upon Member and NOVA in this Section 14 are not intended to be exclusive of each other or of any other rights and remedies of Member and NOVA conferred by this Agreement, at law or in equity. Rather, each and every right, power and remedy of Member and NOVA herein or now or hereafter existing at law or in equity shall be cumulative and concurrent and in addition to each and every other right, power and remedy.

15. **NO CLAIM AGAINST CARDHOLDER, NO ACCEPTANCE OF PAYMENTS.** Merchant agrees it will not have any claim against, or right to receive payment from a Cardholder or any other customer in any Card transaction unless Member or NOVA refuses to accept the Sales Draft or revokes its prior acceptance thereof (after receipt of a Chargeback or otherwise). Merchant shall not accept any payments from a Cardholder with respect to previous charges for merchandise or services included in a Sales Draft, and in the event of receipt of any such payments, Merchant promptly will remit such amounts to Member.

16. **LAUNDERING OR FACTORING.** MERCHANT SHALL NOT PRESENT FOR PROCESSING OR CREDIT, DIRECTLY OR INDIRECTLY, ANY TRANSACTION NOT ORIGINATED AS A RESULT OF A CARD TRANSACTION DIRECTLY BETWEEN THE CARDHOLDER AND THE MERCHANT. MERCHANT FURTHER AGREES TO IMMEDIATELY NOTIFY NOVA OF ANY ADDITIONAL LOCATION OR NEW BUSINESS, AND AGREES TO APPLY FOR A SEPARATE ACCOUNT FOR SAID LOCATION OR NEW BUSINESS.

17. **DISPUTES WITH CUSTOMER; INDEMNIFICATION OF MEMBER AND NOVA.** All disputes between Merchant and any Cardholder relating to any Card transaction shall be settled between Merchant and such Cardholder. Merchant agrees to indemnify and hold Member and NOVA harmless from claim, liability, loss or expenditure relating to any such transaction, and from Merchant's breach of any of its obligations under this Agreement.

18. **NO CASH DISBURSEMENTS; DISCLOSURE OF REFUND OR RETURN POLICY.** Merchant shall make no cash advances, disbursements or refunds on any Card transaction but will issue a credit memorandum therefor. Member will charge Merchant's Account with the total face amount of each credit memorandum submitted to NOVA with respect to a Sales Draft previously processed by NOVA and Member, but no credit memorandum shall exceed the amount of the Sales Draft. Merchant shall, within the time period specified by applicable law provide NOVA with a credit memorandum or credit statement for each and every return of goods or forgiveness of debt for services which were the subject of a Card transaction. Merchant shall make proper disclosure to the Cardholder, at the time of the Card transaction and in accordance with the Operating Rules and Regulations regarding any limitation on acceptance of returned merchandise or any policy to make price adjustments thereto.

19. **COMPLIANCE WITH RULES; REPORTS TO MEMBERS; NONDISCLOSURE AND CONFIDENTIALITY.** Merchant agrees: (i) to comply with and (ii) to cooperate with and assist Member and NOVA in complying in a complete and timely manner with all applicable laws, rules and regulations now or hereafter applicable to any Card transaction or this Agreement, and in connection therewith. Merchant agrees to execute and deliver to Member and NOVA all such instruments as Member or NOVA may from time to time reasonably deem necessary. Merchant shall not disclose to any third party other than Member or NOVA, or an agent of Merchant for the purpose of assisting Merchant in completing a Card transaction, or as specifically required by law, the Cardholder's account information or other personal information. Merchant shall destroy all material containing Cardholder's account number, Card Imprints, Sales Drafts, credit vouchers and carbons (except for the Sales Drafts maintained in accordance with this Agreement, applicable laws, and the Operating Rules and Regulations), and shall take all steps reasonably necessary to ensure Cardholder information is not disclosed or otherwise misused.

20. **REFUSAL OR REVOCATION OF CREDIT AND REPAYMENT BY MEMBER.** Member or NOVA may refuse to accept any Sales Draft or revoke its prior acceptance thereof, in the following circumstances: (a) the transaction giving rise to the Sales Draft was not made in compliance with all terms and conditions of this Agreement, and applicable laws, rules and regulations; (b) the Cardholder disputes his liability to Member for any reason, including but not limited to those chargeback rights enumerated in the Operating Rules and Regulations; or (c) the transaction giving rise to the Sales Draft was not directly between Merchant and Cardholder. Merchant agrees to pay Member or NOVA, as appropriate, any amount previously credited to Merchant with respect to a Sales Draft not accepted by Member or NOVA.

Notwithstanding any authorization or request from the Cardholder or customer, Merchant shall not reenter or reprocess any Card transaction which has been charged back.

21. **USE OF NOVA AND CREDIT CARD PROGRAM MARKS.** Merchant shall adequately display current and appropriate VISA, MasterCard or other cards' program marks, and signage at all of its locations and in all promotional materials, including those provided by NOVA, to inform the public of Merchant's acceptance of the Cards. All uses by Merchant of VISA, MasterCard or other cards' marks shall fully comply with specifications contained in the Operating Rules and Regulations. Use of VISA, MasterCard or other cards' promotional materials by Merchant shall not indicate, directly or indirectly, that VISA, MasterCard or other cards endorse any goods or services other than their own and Merchant may not refer to VISA, MasterCard or other cards in stating eligibility for its products, services or membership.

22. **FURNISHING FORMS AND PROMOTIONAL MATERIALS.** NOVA will furnish Merchant with Sales Drafts, credit memoranda and any other forms that may be required by Member, at rates established from time to time by NOVA. Merchant shall provide its own electronic terminal or similar device, if applicable, meeting the requirements for processing. All promotional materials, advertising displays, emblems, Sales Drafts, credit memoranda and other forms supplied to Merchant hereunder and not purchased by Merchant or consumed in use shall remain the property of NOVA and shall be immediately returned to NOVA upon termination of this Agreement. Merchant shall be fully liable for any and all loss, cost, and expense suffered or incurred by NOVA arising out of or resulting from any failure by Merchant to return such materials following termination.

23. **TERMINATION AND COMBINED TERMINATED MERCHANT FILE.** This Agreement may be terminated at any time by Member or NOVA with or without cause, and without prior notice. Additionally, this Agreement may be terminated by Merchant in the event of a material breach of the terms of this Agreement by Member or NOVA, provided Merchant provides Member and NOVA written notice of any alleged breach and such breach remains uncured for a period of thirty (30) days following receipt of written notice by the breaching party. Notice of termination may be given orally or in writing, but if given orally shall be confirmed in writing. Termination shall be effective on the date specified by the oral or written notice. MERCHANT EXPRESSLY ACKNOWLEDGES that a Combined Terminated Merchant File ("CTMF") is maintained by VISA and MasterCard containing the business name and the names and identification of principals of Merchant which have been terminated for one or more of the reasons specified in the Operating Rules and Regulations. Such reasons include, but are not limited to: fraud, counterfeit paper, unauthorized transactions, excessive chargebacks or highly suspect activity.

MERCHANTABILITY THAT MEMBER AND/OR NOVA IS REQUIRED TO REPORT THE BUSINESS NAME OF THE MERCHANT AND THE NAMES AND IDENTIFICATION OF ITS PRINCIPALS TO THE CTMF WHEN MERCHANT IS TERMINATED DUE TO ONE OR MORE OF THE FOREGOING REASONS. MERCHANT EXPRESSLY AGREES AND CONSENTS TO SUCH REPORTING BY THE MEMBER OR NOVA IN THE EVENT OF TERMINATION OF THIS AGREEMENT DUE TO ONE OR MORE OF SUCH REASONS.

All obligations of Merchant with respect to Sales Drafts accepted by Member and NOVA prior to the effective date of termination shall survive such termination. It is specifically agreed that Merchant shall maintain on deposit in an account with Member for a reasonable time, an amount of funds reasonably adequate to cover all Chargebacks, deposit charges, refunds and fees incurred by Merchant pursuant to this Agreement, or the Operating Rules and Regulations. Member shall be, and is hereby irrevocably authorized and entitled to charge such Account, or any other account maintained hereunder, for all such amounts without prior notice to or other authorization from Merchant. If no such account is established, or if the amount of funds on deposit in such an account is not adequate to cover the foregoing matters, Merchant shall pay Member and NOVA for all such amounts upon demand by Member or NOVA, together with all costs and expenses incurred by Member and NOVA to collect any such amounts, including reasonable attorneys' fees.

Within 14 business days of the date of termination, Merchant shall return any and all equipment which is the property of NOVA and immediately tender any and all amounts due to NOVA for equipment costs.

24. **ENTIRE AGREEMENT; GEORGIA LAW; JURISDICTION AND VENUE.** This Agreement, including the completed Merchant Bankcard Application and any amendment or supplement to this Agreement made in accordance with the procedures set forth in Section 35 below (collectively the "Agreement"), shall constitute the entire agreement between the parties, and all prior or other agreements or representations are merged in and superseded by this Agreement. This Agreement consists of Merchant's offer to agree as contained herein and applicable, the laws of the United States of America. The parties further agree that all performances due and transactions undertaken pursuant to this Agreement shall be deemed to be due or have occurred in Georgia and that the entry into and performance hereof by Merchant shall be conclusively deemed to be the transaction of business within the State of Georgia.

25. **ARBITRATION.** Any and all claims, demands, disputes or controversies of every kind or nature between the parties hereto arising out of or related to this Agreement, as to the existence, applicability, construction, validity, interpretation, performance or non-performance, enforcement, operation, or breach thereof, which is not otherwise settled by agreement of parties, shall be submitted to, determined and decided by arbitration, held in Atlanta, Georgia in accordance with the rules of the American Arbitration Association.

26. **FEES.** Merchant agrees to pay Member and NOVA fees for services rendered hereunder in accordance with the Schedule of Fees attached hereto or any other schedule to be promulgated by Member and furnished to Merchant from time to time. In addition, Merchant agrees to pay NOVA at its standard rates for any research requested by Merchant or required of Member or NOVA by legal process or applicable law. Merchant further agrees to pay NOVA for any equipment or other related services or products requested by Merchant from time to time hereunder.

27. **NOTICES.** Any written notice required or permitted hereunder shall be deemed given upon the earlier of (i) actual receipt or (ii) five days after being deposited in the United States mail, postage prepaid and addressed to the addressee thereof at the last address for such addressee as shown on the records of the sender.

28. **WARRANTY OF APPLICATION.** In accordance with this Agreement, Merchant has executed and delivered to Member and NOVA a document entitled "Merchant Bankcard Application" containing, among other things, certain information regarding the nature of Merchant's business, its form of business organization, and the individual principal owners of Merchant. Merchant represents and warrants to Member and NOVA that all information and all statements contained in such Merchant Bankcard Application are true, correct and complete as if set forth in this Agreement. MERCHANT FURTHER AGREES TO NOTIFY NOVA IN WRITING OF ANY AND ALL CHANGES WHICH MAY OCCUR FROM TIME TO TIME REGARDING ANY INFORMATION CONTAINED IN SUCH MERCHANT BANKCARD APPLICATION, INCLUDING BUT NOT LIMITED TO: THE IDENTITY OF PRINCIPALS AND/OR OWNERS, THE FORM OF BUSINESS ORGANIZATION (I.E., SOLE PROPRIETORSHIP, PARTNERSHIP, ETC.), TYPE OF GOODS AND SERVICES PROVIDED, AND HOW SALES ARE MADE. Merchant shall provide updated credit information on Merchant's business and Merchant further agrees to provide updated financial statements and other information within a reasonable period of time as NOVA may request. Merchant acknowledges that Member or NOVA may from time to time request updated credit information on Merchant's business and Merchant further agrees to provide updated financial statements and other information within a reasonable period of time as NOVA may request. Merchant shall be and remain fully liable to Member and NOVA for any and all losses, costs, claims, and expenses suffered or incurred by Member or NOVA, arising out of or resulting from Merchant's failure to report all such changes to NOVA in accordance herewith.

29. **PARAGRAPH HEADINGS.** All paragraph headings contained herein are for descriptive purposes only and the language of such paragraph shall control.

30. **ASSIGNABILITY/BANKRUPTCY.** This Agreement may be assigned by Member or NOVA, but may not be assigned by Merchant directly or by operation of law, without the prior written consent of Member and NOVA.

Merchant shall immediately notify Member and NOVA of any bankruptcy, receivership, insolvency or similar action or proceeding initiated by or against Merchant or any of its principals. Merchant shall include Member and NOVA on the list of creditors as filed with the Bankruptcy Court, whether or not a claim may exist at the time of filing and failure to do so shall cause for immediate termination or any other action available to NOVA under applicable rules or regulations. Merchant acknowledges that this Agreement constitutes an executory contract to make a loan, or extend other debt financing or financial accommodations to or for the benefit of Merchant, and, as such, cannot be assumed or assigned in the event of Merchant's bankruptcy, and that, in the event of such bankruptcy, Member and NOVA shall, in addition to all other rights and remedies, be entitled to suspend further performance under this Agreement immediately.

31. **ATTORNEYS' FEES AND COSTS.** Merchant shall be liable for and shall indemnify and reimburse Member and NOVA for any and all attorneys' fees and other costs and expenses paid or incurred by Member and NOVA in the enforcement hereof, or in collecting any amounts due from Merchant to Member or NOVA hereunder or resulting from any breach by Merchant of any of the terms or conditions of this Agreement.

32. **GUARANTORS/GUARANTY OF AFFILIATES.** The undersigned owners/officer ("Guarantors"), by their execution of the Application for Merchant Bank Card Services, hereby unconditionally and irrevocably personally guarantee the full and faithful performance or payment by Merchant of each and all of its duties and obligations herein set forth and contained, whether prior or subsequent to termination or expiration hereof.

Merchant and Guarantors, by their execution of this Agreement, unconditionally and irrevocably guarantee the full and faithful performance or payment of all duties and obligations owed to Member and NOVA under any Member or Merchant Processing Agreement "Affiliated" on the Application for Merchant Bank Card Services and, in addition, any person or entity which is owned or controlled, in whole or in part, by Merchant or any of Merchant's principals. Merchant and each Guarantor acknowledges and agrees that Member or NOVA may, from time to time, obtain updated credit information on Guarantors and may request additional security as the situation may warrant at the sole discretion of Member or NOVA.

33. **USE OF ELECTRONIC AUTHORIZATION AND DATA CAPTURE TERMINALS PROVIDED BY OTHERS.** Merchant agrees to notify NOVA immediately in the event Merchant desires to use electronic authorization or data capture terminals provided by any person or entity other than NOVA or its authorized designee ("third party terminals") in the processing of VISA, MasterCard or Diners Club/Carte Blanche transactions. In the event Merchant elects to use third party terminals for processing transactions, Merchant agrees (i) the third party Agent to comply with VISA, MasterCard or Diners Club/Carte Blanche rules and operating regulations, including any violation which results in a chargeback. Merchant further agrees that neither Member nor NOVA shall be responsible for any losses incurred by Merchant as a result of any error by a third party agent or any malfunction in any third party terminal.

34. **MEMBER AND NOVA CONTACT WITH CUSTOMERS.** Merchant expressly authorizes Member and NOVA to contact or communicate with any of Merchant's customers whose Sales Draft or other memorandum has been presented to Member and NOVA for credit or surrounding any Card transactions between Merchant and its customers. Merchant expressly agrees that Member and NOVA shall be permitted to inform itself with respect to any such terms, particulars or circumstances by any reasonable means it deems, in Member's or NOVA's sole discretion, to be appropriate.

35. **TRANSACTIONS FOR FUTURE DELIVERY.** Merchant expressly agrees not to submit or present any Sales Draft or other memorandum to Member or NOVA for credit or processing hereunder (whether by electronic means or otherwise) which was taken, received or submitted by Merchant in connection with the sale of goods or services for future delivery, except upon the prior, express, written authorization of Member (or NOVA as agent of Member). In the event Member has previously given its express written authorization for the sale or depend upon any proceeds or credit resulting therefrom to purchase, acquire, furnish or otherwise provide such goods or services. Merchant agrees, at all times, to maintain sufficient working capital to provide for the delivery of such goods or services at the agreed upon date, independent and without regard to any credit or proceeds resulting from such Sales Drafts or other memoranda taken in connection with future delivery transactions.

36. **TERM OF AGREEMENT.** The initial term of this Agreement shall be for a period of two (2) years beginning on the date of acceptance by Member (the "Initial Term"), and shall renew for additional successive two (2) year terms unless any party hereto provides the other written notice of its intent not to renew prior to the expiration of the then current term. Additionally, NOVA and Member shall have the right to terminate this Agreement at any time without cause. Upon termination by Merchant within one (1) year of the commencement of this Agreement, Merchant agrees to pay a termination fee of \$95.00 to Member or NOVA in addition to all other amounts owed by Merchant to Member or NOVA; provided, however, Merchant shall not be required to pay a termination fee if Merchant elects not to renew this Agreement upon the expiration of the then current term by providing written notice to the other parties in accordance with this Paragraph 36.

37. **AMENDMENTS.** Member shall have the right from time to time to propose amendments or additions to the terms or provisions of this Agreement, including the discount rates and fees set forth in the application for Merchant Bank Card Services. Member shall set forth and specify any such proposed amendment or addition in a periodic statement of account or activity or other written notification mailed or otherwise delivered to Merchant. Merchant shall conclusively be deemed to accept any such proposed changes to this Agreement by continuing to present Sales Drafts to Member and NOVA for processing hereunder. Notwithstanding the foregoing, however, any amendments or additions to the terms or provisions of this Agreement relating to increases in interchange or assessments of the Card Associations or pricing of third party telecommunication services will be effective upon notice to Merchant, unless a later effective date is provided.

38. **LIMITATION OF LIABILITY.** The liability, if any, of NOVA under this Agreement for any claims, costs, damages, losses and expenses for which they are or may be legally liable, whether arising in negligence or other tort, contract, or otherwise, will not exceed in the aggregate the amount of fees paid by Merchant. In no event will NOVA or its agents, servants, representatives or employees be liable for indirect, special, or consequential damages. NOVA will not be liable to Merchant for any failure or delay in its performance of this Agreement in accordance with its terms if such failure or delay arises out of causes beyond control and without the fault or negligence of NOVA.

39. **THIRD PARTY SERVICES.** Merchant may be using special services or software provided by a third party to assist Merchant in processing transactions, including authorizations and settlements, or accounting functions. Merchant is responsible for ensuring compliance with the requirements of any third party in using their products. This includes making sure the Merchant has and complies with any software updates. NOVA has no responsibility for any transaction until that point in time NOVA receives data about the transaction.

Item Description	Original Amount	Current Balance	Chargebacks (C/B)			Statement Date
			Card Number	Sale Date	C/B Date	
1 CHARGEBACK	\$5,263.17	\$5,263.17	XXXXXXXXXX019	1/20/2005	3/12/2005	Not As Described
2 CLOSURE FEE	\$95.00	\$95.00				
TOTALS:	\$5,358.17	\$5,358.17				

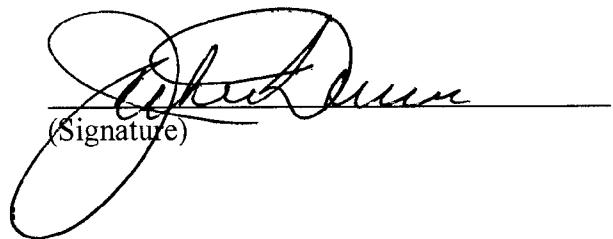
EXHIBIT

2

VERIFICATION

The undersigned does hereby verify subject to the penalties of 18 P.A.C.S. §4904 relating to unsworn falsifications to authorities, that he/she is JACKIE DAVIS
Director for Recovery _____ of NOVA INFORMATION SYSTEMS, INC. _____; plaintiff herein, that
(Title) (Name)
(Company)

he/she is duly authorized to make this Verification, and that the facts set forth in the foregoing Complaint in Civil Action are true and correct to the best of his/her knowledge, information and belief.



Jackie Davis
(Signature)

WWR#5028479

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

NOVA INFORMATION SYSTEM:

Plaintiff :
:
vs. : No. 08- 08 -CD
:
JAMES DAVIS, D/B/A : ANSWER TO COMPLAINT
DVS DIRECT, :
Defendant :
:

ANSWER TO COMPLAINT

NOW COMES the defendant James Davis, D/B/A DVS Direct , and files the following answer to the Plaintiff, Complaint :

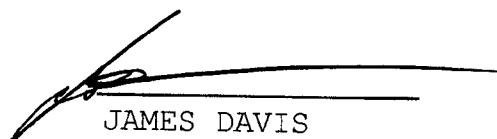
Defendant avers that the correct amount of the transaction on JANUARY 20, 2005 and charge back on MARCH 12, 2005 is \$5263.17 as shown in Plaintiff's Exhibit "1"

On or about MARCH 17, 2005, Plaintiff completed an electronic funds withdrawal from the defendant's bank account in the amount of \$5263.17 in settlement of the charge back Dated March 12, 2005. A true and correct copy of Defendant's bank statement is attached and marked as Defendant's Exhibit "1"

WHEREFORE, Defendant requests that the complaint be dismissed .

FILED _{cc}
0/12/16 cm deft
JAN 29 2008

William A. Shaw
Prothonotary/Clerk of Courts



JAMES DAVIS
Defendant
588 South St
Rockton PA 15856

Analysis Business Checking

For 24-hour account information, sign-on to Account Link
for Business on www.mybusiness.pncbank.com or call 1-877-BUS-BNKG

Analysis Business Checking Account number: 00-1028-6858 - continued

For the period 03/01/2005 to 03/31/2005
J & C REPAIR
Primary account number: 00-1028-6858

Page 2 of 2

Checks and Other Deductions**ACH Deductions**

Date posted	Amount	Transaction description	Reference number
03/02	425.72	Corporate ACH Merch Fee Merchant Service 980210253894	00020060003690073
03/17	5,263.17	Corporate ACH Merch Chbk Merchant Service 980210253894	00020060786390075
03/23	3,642.34	ACH Debit Bill Pay Chase Credit Card	00020030624627526

Service Charges and Fees

Date posted	Amount	Transaction description	Reference number
03/01	13.31	Service Charge Period Ending 02/28/2005	

Detail of Services Used During Current Period

Note: The total charge for the following services will be posted to your account on 04/01/2005 and will appear on your next statement as a single line item entitled Service Charge Period Ending 03/31/2005.

Earnings Credit Rate = 0.01000 Days In Statement Cycle = 031

Description	Volume	Amount	
Account Maintenance Charge	1	15.00	
Returning Checks Monthly Charge	1	.00	Included in Account
ACH Debits	3	.36	
Total For Services Used This Period		15.36	
Less Earnings Credit Amount		8.30	
Total Service Charge		7.06	

EXHIBIT
1

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 103624
NO: 08-08-CD
SERVICE # 1 OF 1
COMPLAINT

PLAINTIFF: NOVA INFORMATION SYSTEMS
vs.
DEFENDANT: JAMES DAVIS D/B/A DVS DIRECT

SHERIFF RETURN

NOW, January 11, 2008 AT 10:50 AM SERVED THE WITHIN COMPLAINT ON JAMES DAVIS d/b/a DVS DIRECT DEFENDANT AT 588 SOUTH ST., ROCKTON, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO JULIA DAVIS, DAUGHTER A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: COUDRIET /

FILED
01/15/08
MAY 07 2008
William A. Shaw
Prothonotary/Clerk of Courts

PURPOSE	VENDOR	CHECK #	AMOUNT
SURCHARGE	WELTMAN	8620241	10.00
SHERIFF HAWKINS	WELTMAN	8620241	31.13

Sworn to Before Me This

____ Day of _____ 2008

So Answers,

*Chester A. Hawkins
by Marilyn Harris*
Chester A. Hawkins
Sheriff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

NOVA INFORMATION SYSTEMS,

Plaintiff,

Case No.: 08-08-CD

vs.

MOTION FOR SUMMARY JUDGMENT

JAMES DAVIS d/b/a
DVS DIRECT,

Defendant.

FILED ON BEHALF OF:
Plaintiff

COUNSEL OF RECORD OF
THIS PARTY:

James P Valecko, Esquire
Pa. I.D.# 79596
Weltman, Weinberg & Reis, Co.
1400 Koppers Building
436 Seventh Avenue
Pittsburgh, PA 15219
(412) 434-7955

FILED
APR 01 2010
NO
cc
S
William A. Shaw
Prothonotary/Clerk of Courts
60

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

NOVA INFORMATION SYSTEMS,

Plaintiff,

Case No.: 08-08-CD

vs.

MOTION FOR SUMMARY JUDGMENT

JAMES DAVIS d/b/a
DVS DIRECT,
Defendant.

MOTION FOR SUMMARY JUDGMENT

AND NOW COMES, Plaintiff, by and through its counsel, Weltman, Weinberg & Reis, Co., L.P.A., and hereby files this Motion for Summary Judgment against the Defendant. In support thereof, Plaintiff avers as follows:

1. Plaintiff filed a Complaint against Defendant seeking judgment in the amount of \$6,186.12 with interest at the interest rate of 6.00% per annum from October 8 2007, Attorneys Fees of \$1000.00, and costs. A true and correct copy of the Complaint is attached hereto as Exhibit "A" and made a part hereof.

2. Attached to the Complaint was Verification from an authorized representative of Plaintiff verifying the accuracy of the amount sought. See Exhibit "A".

3. Defendant filed an Answer to Plaintiff's Complaint. A true and correct copy of the Answer is attached hereto as Exhibit "B" and made a part hereof.

4. On or around February 24 2010, Plaintiff served upon Defendant a set of requests for admissions and requests for production of documents. A true and correct copy of the same is attached hereto as Exhibit "C" and made a part hereof.

5. No response to the discovery demands has been received from the Defendant.

6. The requests for admissions are now deemed admitted under Pennsylvania Rule of Civil Procedure 4014(b). The following factual allegations are therefore deemed admitted:

- (a) Thus Defendant has admitted that he signed the application for Merchant Bank Card Services.
- (b) He is an individual doing business as DVS Direct.
- (c) By signing the application, Defendant agreed to the terms of the Merchant Processing Agreement.
- (d) On or about March 12 2005, a transaction in the amount of \$5,263.17, with Kara and Earl Anderson and Capture Productions was disputed by the customers who claimed that the equipment purchased from Plaintiff on January 20 2005, being an RXT 100 Xtreme Pro Workstation was defective.
- (e) On or about March 16 2005, Plaintiff debited the amount of \$5,263.17 from Defendants checking account pursuant to the Merchant Processing Agreement.
- (f) On or about March 31 2005, Defendant submitted a rebuttal to all its customers' charge dispute and Plaintiff credited the sum of \$5,263.17 to Defendant's checking account.
- (g) During the period of April 14 through April 21 2005, Defendant's customers, Kara and Earl Anderson and Capture Records continued to dispute the charges to their credit card in the amount of \$5,263.17.
- (f) Sometime prior to May 5 2005, Defendant closed its checking account in violation of the Merchant Processing Agreement.
- (h) The amount of \$5,263.17 is properly due and owing to Plaintiff.

7. By way of his Answer, the documents attached to this Motion, and the Requests for Admissions, deemed admitted under Pa.R.C.P. 4014(b), the Defendant has admitted all facts material to this matter and verified the amount owed.

8. There are no meritorious defenses against this action and Plaintiff is entitled to summary judgment as a matter of Law against defendant.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court grant summary judgment in favor of Plaintiff and against Defendant for \$6,186.12 with interest at the legal interest rate of 6.00% per annum from October 8 2007, Attorneys Fees of \$1000.00, and costs.

Respectfully Submitted:

By: 
James P. Valecko, Esquire
Pa. I.D.# 79696
Weltman, Weinberg & Reis, Co.
1400 Koppers Building
436 Seventh Avenue
Pittsburgh, PA 15219
(412) 434-7955

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

NOVA INFORMATION SYSTEMS

Plaintiff No.

vs. COMPLAINT IN CIVIL ACTION

JAMES DAVIS D/B/A
DVS DIRECT

Defendant FILED ON BEHALF OF
Plaintiff

COUNSEL OF RECORD OF
THIS PARTY:

James C. Warmbrodt, Esquire
Pa I.D. No. 42524
Weltman, Weinberg & Reis, Co., LLC
2718 Koppers Building
436 Seventh Avenue
Pittsburgh PA 15219
412-434-7955

WWR#5028479

WARMBRODT
A

IN THE COURT OF COMMON PLEAS CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

NOVA INFORMATION SYSTEMS

Plaintiff

vs.

Civil Action No.

JAMES DAVIS D/B/A
DVS DIRECT

Defendant

COMPLAINT IN CIVIL ACTION AND NOTICE TO DEFEND

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 any other claim 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

COURT ADMINISTRATOR
CLEARFIELD COUNTY COURTHOUSE
230 EAST MARKET ST., SUITE 228
CLEARFIELD, PA 16830
(814) 765-2641, ext. 1300-1301

COMPLAINT

1. Plaintiff is a corporation in the business of processing credit card transactions with offices located at 7300 CHAPMAN HIGHWAY, KNOXVILLE, TN 37920.

2. Defendant, JAMES DAVIS, is an adult individual with a last known address of 588 SOUTH ST, ROCKTON, PA 15856.

3. On or about MARCH 6, 1997, Defendant executed a Merchant Agreement and Personal Guaranty. True and correct copies of the Merchant Agreement ("Agreement") and Personal Guaranty ("Guaranty") are collectively marked Exhibit "1," attached hereto and made a part hereof.

4. Defendant accepted the terms of the Agreement, wherein Plaintiff provided certain services, more specifically described in the Merchant Agreement.

5. On or about JANUARY 20, 2005, a transaction, in the amount of \$5358.17, made by one of Defendant's customers was presented as a non-valid type of transaction and subsequently charged back to the Plaintiff on MARCH 12, 2005. A true and correct copy of the Statement of Account is marked Exhibit "2" attached hereto and made a part hereof.

6. The Plaintiff has made demand upon the Defendant, in the amount of \$5640.91, but the Defendant has failed or refused to pay.

7. Plaintiff claims interest at the legal rate of six (6%) percent per annum from JANUARY 27, 2006 on the unpaid amount.

8. Plaintiff avers that interest calculated at the aforesaid rate from JANUARY 27, 2006 to OCTOBER 8, 2007 amount to \$545.21.

9. Plaintiff avers that the Agreement between the parties provides that Defendant will pay Plaintiff's attorneys' fees.

10. Plaintiff avers that such attorneys' fees will amount to \$1000.00

11. Although repeatedly requested to do so by Plaintiff, Defendant has willfully failed and/or refused to pay the principal balance, interest, attorneys' fees or any part thereof to Plaintiff.

WHEREFORE, Plaintiff demands Judgment in its favor and against Defendant, JAMES DAVIS D/B/A DVS DIRECT individually, in the amount of \$6186.12 with continuing interest at the rate of 6% from OCTOBER 8, 2007, plus attorneys' fees of \$1000.00 and costs.

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

WELTMAN, WEINBERG & REIS, CO., L.P.A.

James C. Warmbrodt, Esquire
Pa I.D. No. 42524
Weltman, Weinberg & Reis, Co., LLC
2718 Koppers Building
436 Seventh Avenue
Pittsburgh PA 15219
412-434-7955

WWR#:5028479

Merchant Processing Agreement



THIS MERCHANT PROCESSING AGREEMENT (this "Agreement") is entered into, as of the date set forth below as accepted by Member (as hereinafter defined), by and among the undersigned merchant ("Merchant"), NOVA Information Systems, Inc., a Georgia corporation ("NOVA") and Regions Bank, a bank chartered under the laws of the State of Alabama and a principal member of VISA U.S.A., Inc. and MasterCard International Incorporated ("Member").

WHEREAS, Merchant desires to facilitate sales and/or leases of merchandise and/or services by honoring valid cards bearing the symbols of MasterCard International Incorporated ("MasterCard"), VISA U.S.A., Inc. ("VISA"), and Diners Club/Carte Blanche (hereinafter referred to individually as a "Card" and collectively as "Cards");

WHEREAS, NOVA and Member are willing to provide certain services to Merchant, as set forth herein, to enable Merchant to accept Cards as payment for goods and services sold by Merchant, all in accordance with the terms and conditions set forth in this Agreement;

NOW, THEREFORE, Merchant, NOVA and Member agree as follows:

1. **LAWS, RULES AND REGULATIONS.** MERCHANT AGREES TO COMPLY WITH ALL EXISTING AND FUTURE RULES AND OPERATING REGULATIONS ISSUED BY MASTERCARD, VISA, OR DINERS CLUB/CARTE BLANCHE, APPLICABLE TO THE ACCEPTANCE OF CARDS AND PROCESSING OF CARD TRANSACTIONS, AND ANY POLICIES AND PROCEDURES PROVIDED BY MEMBER OR NOVA. ALL OF SUCH RULES, OPERATING REGULATIONS, POLICIES AND PROCEDURES ARE EXPRESSLY INCORPORATED HEREIN BY REFERENCE AND MADE A PART OF THIS AGREEMENT AS IF THEY WERE SET FORTH IN FULL HEREIN. MERCHANT FURTHER AGREES TO COMPLY WITH ALL APPLICABLE STATE, FEDERAL AND LOCAL LAWS, RULES AND REGULATIONS AFFECTING ACCEPTANCE OF THE CARDS, PROCESSING OF CARD TRANSACTIONS, AND THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT.

2. **HONOR VALID CARDS.** Merchant agrees to honor, without discrimination, any valid Card properly tendered for use by a person possessing a valid Card and purporting to be the person in whose name the Card is issued ("Cardholder").

3. **CARDHOLDER IDENTIFICATION.** Merchant shall identify the Cardholder and check the expiration date and signature on each Card. Merchant shall not honor any Card if (i) the Card has expired, (ii) the signature on the sales draft does not correspond with the signature on the Card, or (iii) the account number embossed on the Card does not match the account number on the Card's magnetic stripe (as printed in electronic form). Unless permitted under applicable law and applicable operating regulations issued by MasterCard, VISA and Diners Club/Carte Blanche (collectively, the "Operating Rules and Regulations"), Merchant shall not require a Cardholder to provide personal information, such as a home or business telephone number, a home or business address, or a driver's license number as a condition for honoring a Card.

4. **PRIOR AUTHORIZATION.** MERCHANT SHALL OBTAIN A PRIOR AUTHORIZATION BY WAY OF ELECTRONIC TERMINAL, TELEPHONE OR SIMILAR DEVICE BEFORE COMPLETING ANY TRANSACTION. Merchant shall follow any instructions received during such authorization process. Upon receipt of authorization, Merchant may consummate only the transaction authorized and must note on the sales draft the authorization number. Such authorization is not a guarantee of acceptance or payment of the Card transaction and shall not constitute a waiver of any of the provisions of this Agreement (including without limitation Paragraph 19 hereof), or otherwise validate a transaction involving the use of an expired Card or a fraudulent transaction. Merchant shall remain fully liable for any chargeback related thereto. Where Merchant is authorizing and presenting Card transactions electronically and Merchant's terminal is unable to read the magnetic stripe on the Cardholder's Card, Merchant must obtain an imprint of the Card and obtain the Cardholder's signature thereon prior to presenting the transaction to Member and NOVA for processing and collection of credit.

5. **CARD RECOVERY.** Merchant shall use its best efforts to recover any Card: (i) if the account number thereon is listed on a Combined Warning Bulletin, (ii) if the printed four digits above the embossed account number do not match the first four digits of the embossed account number, (iii) if Merchant is advised by Member (or its designee), the issuer of the Card or the designated voice authorization center to retain it, or (iv) if Merchant has reasonable grounds to believe such Card is counterfeit, fraudulent or stolen. Merchant's efforts to recover a Card will at all times be reasonable under the circumstances.

6. **SALES DRAFT.** A sales draft or other memorandum on a form approved by Member and NOVA ("Sales Draft") shall be used by Merchant to document each Card transaction. Each such Sales Draft shall be LEGIBLY imprinted with: (i) Merchant's name and account number, (ii) the information embossed on the Card presented by the Cardholder (either electronically or manually), (iii) the date of the transaction, (iv) a brief description of the goods or services involved, (v) the transaction authorization number, and (vi) the total amount of the sale (including any applicable taxes) or credit transaction, and, shall be signed by the Cardholder. The requirement for the Cardholder's signature on the Sales Draft shall only be waived if the Card transaction is a valid mail/telephone order Card transaction which fully complies with the requirements set forth in this Agreement (including Section 8). Each Sales Draft used in connection with a manually processed card transaction shall contain all of the foregoing information and shall be signed by the Cardholder. If the following information embossed on the Card and the Merchant's name is not legibly imprinted on the Sales Draft, Merchant shall legibly reproduce: (i) the Cardholder's name, (ii) account number, (iii) expiration date, and (iv) the Merchant's name and place of business. Additionally, for transactions involving MasterCard, Merchant must legibly reproduce the name or trade style of the Card issuer as it appears on the face of the Card. In any case, where authorization is obtained, Merchant shall be deemed to warrant the true identity of the customer as the Cardholder.

7. **DELIVERY AND RETENTION OF COPY OF SALES DRAFT, RETENTION AND ENTRY OF TRANSACTION.** Merchant shall deliver a true and complete copy of the Sales Draft or credit voucher to the Cardholder at the time of the transaction. Merchant shall retain the "merchant copy" of the Sales Draft or credit memorandum for at least three (3) years following the date of completion of the Card transaction (or such longer period as the Operating Rules and Regulations may require). If Merchant utilizes electronic authorization and/or capture services, Merchant shall enter the data related to a sales or credit transaction into a computer terminal or magnetic stripe reading terminal no later than the close of business on the date of the completion of the transaction. Information regarding a sales or credit transaction entered by Merchant of a computer terminal or magnetic stripe reading terminal shall be transmitted by Merchant to NOVA or its agent in such form as NOVA may from time to time specify or as may be required under any applicable law, rule or regulation. If Member or NOVA requests a copy of such Sales Draft, credit voucher or other transaction memorandum or evidence, Merchant will promptly provide Member or NOVA with the same, within three business days following such request.

8. **MAIL ORDERS, TELEPHONE ORDERS AND RECURRING TRANSACTIONS.** MERCHANT SHALL NOT ENGAGE IN SOLICITING OR ACCEPTING MAIL ORDERS OR TELEPHONE ORDERS OR ANY TRANSACTION IN WHICH THE CARDHOLDER AND CARD ARE NOT PRESENT (collectively referred to as "mail/telephone orders"), except with prior written authorization of Member (or NOVA as agent of Member). Mail/telephone orders completed without prior written consent of Member (or NOVA as agent of Member) shall be deemed to be a breach of this Agreement and cause for immediate termination in addition to any other remedies as are applicable under state or federal law and the Operating Rules and Regulations as may be in effect from time to time. Merchant shall not utilize the services of any third party in soliciting or accepting mail/telephone orders. If prior written authorization is provided to Merchant for mail/telephone orders, then such mail/telephone order shall be placed directly between the Cardholder and Merchant. Merchant shall obtain the expiration date of the Card for a mail/telephone order and submit the expiration date when obtaining prior authorization of the Card transaction. For any recurring transactions, Merchant must obtain a written request from the Cardholder for such goods and services to be charged to the Cardholder's account, mail/telephone order and submit the expiration date when obtaining prior authorization of the Card transaction. For any recurring transactions, Merchant must obtain a written request from the Cardholder for such goods and services to be charged to the Cardholder's account, (a) a cancellation notice from the Cardholder, (b) notice from NOVA or Member, or (c) a response that the frequency of the recurring charge and the duration of time during which such charges may be made. Merchant shall not complete any recurring transaction after receiving: (a) a cancellation notice from the Cardholder, (b) notice from NOVA or Member, or (c) a response that the Card is not to be honored. For mail/telephone order Card transactions, the Merchant shall type or print legibly on the signature line of the Sales Draft the words or letters indicated to describe the Card transaction: telephone order or "TO"; mail order or "MO"; recurring transaction or "Recurring Transaction".

9. **MULTIPLE SALES DRAFTS AND PARTIAL COMPLETION.** Merchant shall include a description of and total amount of all items of goods and services purchased in a single sales transaction on a single Sales Draft or transaction record, unless (a) partial payment is entered on the Sales Draft or transaction record and the balance of the transaction amount is paid in cash or by check at the time of transaction, or (b) a Sales Draft represents an advance deposit in a Card transaction completed in accordance with this Agreement (including this Section 9) and the Operating Rules and Regulations. MERCHANT SHALL NOT ACCEPT FOR PAYMENT BY CARD ANY AMOUNT REPRESENTING A DEPOSIT OR PARTIAL PAYMENT FOR GOODS OR SERVICES TO BE DELIVERED OR PERFORMED IN THE FUTURE, EXCEPT WITH THE PRIOR WRITTEN AUTHORIZATION OF MEMBER (OR NOVA AS AGENT OF MEMBER). The acceptance of a Card for payment or partial payment of goods or services to be delivered or performed in the future shall be deemed to be a breach of this Agreement and cause for immediate termination, in addition to any other remedies as are available under state or federal law, rule or regulation or the Operating Rules and Regulations. Provided Merchant has obtained prior written authorization to accept cards for payment of goods or services to be delivered in the future, then Merchant shall complete such Card transactions in accordance with the terms set forth in this Agreement (including this Section 9), the Operating Rules and Regulations and all applicable laws, rules and regulations. For authorized Card transactions involving delayed delivery of merchandise or services, the Cardholder shall execute one Sales Draft upon making a deposit with a Card and a second Sales Draft upon paying the balance. Merchant shall note upon the Sales Draft the words "For authorized Card transactions involving delayed delivery of merchandise or services, the Cardholder shall execute one Sales Draft upon making a deposit with a Card and a second Sales Draft upon paying the balance. Merchant shall note upon the Sales Draft the words "deposit" or "balance" as appropriate. Merchant further agrees that it will not deposit with the Member the Sales Draft labeled "balance" until the goods have been delivered to and accepted by Cardholder or the services have been fully performed by Merchant to Cardholder's satisfaction.

10. **NO ADDITIONAL CHARGE FOR USE OF CARD.** Merchant agrees that it will not add any amount to the posted or advertised price of property or services offered by Merchant as a condition of the use of a Card with respect to a transaction involving such property or services consistent with applicable laws, rules and regulations and the Operating Rules and Regulations. Nothing herein shall be deemed to prohibit Merchant from offering a discount to a person to induce such person to pay by cash, check or similar means rather than by use of a Card.

11. **MERCHANT ACCOUNT/AUTOMATIC FUNDS TRANSFER.** Merchant shall establish and maintain with Member (or with a depository institution acceptable to Member), one or more commercial checking accounts to facilitate payment to Merchant for Card transactions ("Merchant's Account"). If Merchant's Account is maintained with Member, Member shall make deposits thereto pursuant to applicable provisions of this Agreement, and Merchant irrevocably authorizes Member, without prior notice, to charge from time to time against Merchant's Account any chargebacks, fees or other amounts payable by Merchant to Member or NOVA under the terms of this Agreement, to initiate such entries as may be necessary to reverse or adjust any entries made in error or by mistake and to initiate or suspend such entries as may be necessary to grant or effect conditional credit with respect to any entry or group of entries. If Merchant's Account is maintained at a depository institution approved by Member, Member shall make deposits thereto pursuant to applicable provisions of this Agreement and the Debit/Credit Authorization and Payment Agreement ("Authorization") executed in favor of Member or NOVA, such Authorization to be deemed to be incorporated by reference herein. Merchant must obtain prior written consent from Member and NOVA to change Merchant's Account. Merchant's failure to obtain the required consent shall be cause for immediate termination of this Agreement, and shall further be deemed authority for Member and NOVA to take such other actions as either of them may deem necessary or desirable, including without limitation suspension of processing privileges or the creation or maintenance of a Reserve Account pursuant to Section 14 of this Agreement.

12. **MERCHANT EXPRESSLY ACKNOWLEDGES AND AGREES TO ANY CHARGES OR DEBITS MADE BY MEMBER AGAINST MERCHANT'S ACCOUNT AS A RESULT OF THE EXERCISE OF CHARGEBACK RIGHTS BY A CARDHOLDER, CARD ISSUING MEMBER, VISA, MASTERCARD OR DINERS CLUB/CARTE BLANCHE, OR OTHER INTERMEDIARY PURSUANT TO THE OPERATING RULES AND REGULATIONS (AS THE SAME MAY BE IN EFFECT FROM TIME TO TIME) INCLUDING, BUT NOT LIMITED TO, ITEMS RELATED TO COMPLIANCE ISSUES OR OTHER ACTIVITIES WHICH RESULT IN FINES, PENALTIES, ASSESSMENTS, PAYMENTS AND/OR FILING FEES FOR MATTERS UNDERTAKEN BY MEMBER OR NOVA ON THE MERCHANT'S BEHALF. Merchant shall promptly and diligently examine and review all statements relating to Merchant's Account, and shall immediately give NOVA written notice of any asserted error or discrepancy therein. Said written notice shall include (a) Merchant's name and account number, (b) the dollar amount of the asserted error or discrepancy, (c) a description of the asserted error or discrepancy, and (d) an explanation of why Merchant believes an error or discrepancy exists and the cause of such error or discrepancy. Merchant shall not have or make any claim against Member or NOVA for any loss, cost or expense incurred in connection with any asserted error or discrepancy unless said written notice is received by NOVA within thirty (30) days after Merchant received the periodic statement of account activity containing notice of notification of Member or NOVA for any loss, cost or expense incurred in connection with any asserted error or discrepancy for a period of sixty (60) days immediately following NOVA's receipt of said written notice. During such sixty (60) day period, NOVA will be entitled to investigate any asserted error or discrepancy, and Merchant shall not incur any cost or expense in connection therewith without the prior written consent of NOVA.**

If Merchant's Account is not maintained with Member, it is understood and agreed that Merchant shall act as Merchant's agent for purposes of effecting collection of Card transaction amounts from Cardholder's issuing member on behalf of Merchant. As the collecting agent Member, at its sole option and discretion, may grant Merchant provisional credit for transaction amounts in the process of collection, subject to receipt of final payment by Member and NOVA and further subject to all Chargebacks thereon made under the Operating Rules and Regulations.

Merchant hereby authorizes Member, now and in the future, to initiate debit/credit entries to its Merchant's Account, or any other account maintained by Merchant at any institution that is a receiving member of Automated Clearing House, all in accordance with this Agreement and the Authorization Agreement Regarding Automatic Funds Transfer (ACH Credits/Debits) included in the Merchant Bankcard Application (the "Debit/Credit Authorization"). In the event Merchant changes its Merchant's Account, Merchant shall enter into a new Debit/Credit Authorization.

13. **EXCESSIVE CHARGEBACKS AND/OR RETRIEVAL REQUESTS.** Merchant agrees that in the event NOVA is presented, during any monthly period, with Chargebacks and/or retrieval requests relating to Card transactions processed by Member and NOVA on behalf of Merchant, in excess of one percent (1%) of the average monthly dollar amount of such Card transactions, such Chargebacks and/or retrieval requests will conclusively be deemed to be excessive under this Agreement and the Operating Rules and Regulations. The occurrence of excessive chargebacks and/or retrieval requests shall be deemed to be a breach of this Agreement and cause for immediate termination of this Agreement, and shall constitute authority for Member and NOVA to take such other or additional actions as either of them may deem necessary or reasonable, including, but not limited to, suspension of processing privileges, creation or maintenance of a Reserve Account pursuant to Section 14, or such other actions as may be authorized herein or by the Operating Rules and Regulations.

14. **DEPOSIT AND CREDIT FOR SALES DRAFTS OR TRANSACTIONS.** Subject to Section 19 hereof, Member agrees to deposit to Merchant's Account all Sales Drafts (whether evidenced in writing or by electronic means) complying with the terms and conditions of this Agreement and the Operating Rules and Regulations and to provide to Merchant provisional credit for such Sales Drafts (less any credit(s), adjustments and Chargebacks). Provided, however, under no circumstance will Member or NOVA be responsible for processing credits or adjustments related to original sales transactions not processed by Member and NOVA. All Sales Drafts and deposits are subject to audit and final checking by Member and NOVA, and may be adjusted for inaccuracies. Merchant acknowledges that all credits provided to Merchant are provisional and subject to Chargebacks and adjustments in accordance with the Operating Rules and Regulations. MEMBER MAY ELECT TO GRANT CONDITIONAL CREDIT FOR SUCH SALES DRAFTS, AND SUCH ELECTON MAY BE EXERCISED EITHER GENERALLY OR WITH REGARD TO SPECIFIC SALES DRAFTS OR GROUPS THEREOF ON A CASE-BY-CASE BASIS, WITH FINAL CREDIT TO BE GRANTED AT SUCH TIME, AND UPON SUCH ADDITIONAL TERMS AND CONDITIONS, AS MEMBER MAY DEEM APPROPRIATE.

15. **SECURITY INTERESTS, RESERVE ACCOUNT, RECOUPMENT AND SET-OFF.** This Agreement shall constitute a security agreement under the Uniform Commercial Code. Merchant hereby grants to Member and NOVA a security interest in and lien upon all funds at any time in the Merchant's Account, the "Reserve Account" (as hereinafter defined), in future Sales Drafts processed by Member and NOVA and in all Merchant's rights created by or relating to this Agreement including, without limitation, all Merchant's rights to receive any payments or credits under this Agreement (collectively, the "Secured Assets"). Upon request of Member or NOVA, Merchant agrees to execute one or more financing statement(s) or other document(s) to evidence the security interest granted herein. Merchant represents and warrants that no other party has a security interest in the Secured Assets. These security interests and liens shall secure all of Merchant's obligations under this Agreement and any Ancillary Agreements between Merchant including, but not limited to, Merchant's obligation to pay fees and any other amounts due and owing to Member or NOVA. With respect to such security interests and liens, Member and NOVA shall have all rights afforded under the Uniform Commercial Code, any other applicable law and in equity. Merchant shall obtain from Member and NOVA written consent prior to granting a security interest of any kind in the Secured Assets to a third party.

16. **Reserve Account.** For the purpose of providing a deposit and a source of funds to pay Member and NOVA for any and all amounts owed by Merchant, Merchant shall deposit into an account maintained by Member, (or other approved depository institution) initially or at any time in the future as requested in good faith by Member or NOVA, sums sufficient to satisfy Merchant's current and/or future obligations as determined by Member or NOVA. Funds in the Reserve Account shall remain in the Reserve Account unless and until each of the following has occurred: (i) this Agreement has been terminated; and (ii) Merchant has paid in full any and all amounts owing or that could ever be owed under this Agreement, including, without limitation, any and all outstanding/uncollected amounts and potential Chargebacks. Member shall have sole control of the Reserve Account. Member may, at any time, require that the amount on deposit in the Reserve Account be increased. In no event shall Merchant be entitled to a return of any sums remaining in the Reserve Account before 270 days following the effective date of termination of this Agreement. Merchant may at any time, without notice, apply any amounts in the Reserve Account against any and all outstanding/uncollected amounts owing to Member or NOVA under this Agreement or any other agreement between Merchant and Member and/or NOVA in any way related to the services to be provided herein or related products or services ("Ancillary Agreements"). Merchant understands and agrees that it has an obligation under this Agreement to maintain at all times a balance in the Reserve Account sufficient to protect Member and NOVA against losses resulting from transactions initiated by Merchant. Merchant agrees that at any time, Member shall have the right to debit the Merchant's Account in order to establish or maintain funds in the Reserve Account sufficient to protect the interests of Member or NOVA. Merchant further acknowledges and agrees Member shall be entitled to deposit into the Reserve Account funds Member would otherwise be obligated to pay to Merchant, for the purpose of establishing or maintaining the Reserve Account, if Member determines such action is reasonably necessary to protect the interests of Member or NOVA. Further, Member may exercise all rights and remedies under this Agreement to collect any amounts due and owing to Member or NOVA relating to any Reserve Account including, without limitation, its rights of set-off and recoupment.

17. **Recoupment and Set Off.** Merchant hereby acknowledges and agrees Member has and shall have the right of recoupment and set-off as such rights exist under common law, any statute, any other applicable law or in equity. Without limiting the foregoing in any way, Merchant hereby expressly acknowledges and agrees Member may at any time deduct, offset, recoup and withhold any outstanding/uncollected amounts owed to Member or NOVA from (i) any amounts Member would otherwise be obligated to deposit into Merchant's Account, and (ii) any other amounts Member or NOVA may owe to Merchant under this Agreement, any Ancillary Agreements or otherwise.

18. **Remedies Cumulative.** This authority and rights conferred upon Member and NOVA in this Section 14 are not intended to be exclusive of each other or of any other rights and remedies of Member or NOVA conferred by this Agreement, at law or in equity. Rather, each and every right, power and remedy of Member and NOVA herein or now or hereafter existing at law or in equity shall be cumulative and concurrent and in addition to each and every other right, power and remedy.

19. **NO CLAIM AGAINST CARDHOLDER, NO ACCEPTANCE OF PAYMENTS.** Merchant agrees it will not have any claim against, or right to receive payment from a Cardholder or any other customer in any Card transaction unless Member or NOVA refuses to accept the Sales Draft or revokes its prior acceptance thereof (after receipt of a Chargeback or otherwise). Merchant shall not accept any payments from a Cardholder with respect to previous charges for merchandise or services included in a Sales Draft, and in the event of receipt of any such payments, Merchant promptly will remit such amounts to Member.

20. **LAUNDERING OR FACTORING.** MERCHANT SHALL NOT PRESENT FOR PROCESSING OR CREDIT, DIRECTLY OR INDIRECTLY, ANY TRANSACTION NOT ORIGINATED AS A RESULT OF A CARD TRANSACTION DIRECTLY BETWEEN THE CARDHOLDER AND THE MERCHANT. MERCHANT FURTHER AGREES TO IMMEDIATELY NOTIFY NOVA OF ANY ADDITIONAL LOCATION OR NEW BUSINESS, AND AGREES TO APPLY FOR A SEPARATE ACCOUNT FOR SAID LOCATION OR NEW BUSINESS.

21. **DISPUTES WITH CUSTOMER; INDEMNIFICATION OF MEMBER AND NOVA.** All disputes between Merchant and any Cardholder relating to any Card transaction shall be settled between Merchant and such Cardholder. Merchant agrees to indemnify and hold Member and NOVA harmless from claim, liability, loss or expenditure relating to any such transaction, and from Merchant's breach of any of its obligations under this Agreement.

18. **NO CASH DISBURSEMENTS; DISCLOSURE OF REFUND OR RETURN POLICY.** Merchant shall make no cash advances, disbursements or refunds on any Card transaction but will issue a credit memorandum therefor. Member will charge Merchant's Account with the total face amount of each credit memorandum submitted to NOVA with respect to a Sales Draft previously processed by NOVA and Member, but no credit memorandum shall exceed the amount of the Sales Draft. Merchant shall, within the time period specified by applicable law and in accordance with the Operating Rules and Regulations regarding any limitation on acceptance of returned merchandise or any policy to make price adjustments thereto.

8. **COMPLIANCE WITH RULES, REPORTS TO MEMBERS; NONDISCLOSURE AND CONFIDENTIALITY.** Merchant agrees: (i) to comply with and (ii) to cooperate with and assist Member and NOVA in complying in a complete and timely manner with all applicable laws, rules and regulations now or hereafter applicable to any Card transaction or this Agreement, and in connection therewith. Merchant agrees to execute and deliver to Member and NOVA all such instruments as Member or NOVA may from time to time reasonably deem necessary. Merchant shall not disclose to any third party other than Member or NOVA, or an agent of Merchant for the purpose of assisting Merchant in completing a Card transaction, or as specifically required by law, the Cardholder's account information or other personal information. Merchant shall destroy all material containing Cardholder's account number, Card imprints, Sales Drafts, credit vouchers and carbons (except for the Sales Drafts maintained in accordance with this Agreement, applicable laws, and the Operating Rules and Regulations), and shall take all steps reasonably necessary to ensure Cardholder information is not disclosed or otherwise misused.

9. **REFUSAL OR REVOCATION OF CREDIT AND REPAYMENT BY MERCHANT.** Member or NOVA may refuse to accept any Sales Draft or revoke its prior acceptance thereof, in the following circumstances: (a) the transaction giving rise to the Sales Draft was not made in compliance with all terms and conditions of this Agreement, and applicable laws, rules and regulations; (b) the Cardholder disputes his liability to Member for any reason, including but not limited to those chargeback rights enumerated in the Operating Rules and Regulations; (c) the transaction giving rise to the Sales Draft was not directly between Merchant and Cardholder. Merchant agrees to pay Member or NOVA, as appropriate, any amount previously credited to Merchant with respect to a Sales Draft not accepted by Member or NOVA. Notwithstanding any authorization or request from the Cardholder or customer, Merchant shall not reenter or reprocess any Card transaction which has been charged back.

10. **USE OF NOVA AND CREDIT CARD PROGRAM MARKS.** Merchant shall adequately display current and appropriate VISA, MasterCard or other cards' program marks, and signage at all of its locations and in all promotional materials, including those provided by NOVA. Merchant shall not indicate, directly or indirectly, that VISA, MasterCard or other cards endorse any goods or services other than their own and Merchant may not refer to VISA, MasterCard or other cards in stating eligibility for its products, services or membership.

11. **FURNISHING FORMS AND PROMOTIONAL MATERIALS.** NOVA will furnish Merchant with Sales Drafts, credit memoranda and any other forms that may be required by Member, at rates established from time to time by NOVA. Merchant shall provide its own electronic terminal or similar device, if applicable, meeting the requirements for processing. All promotional materials, advertising displays, emblems, Sales Drafts, credit memoranda and other forms supplied to Merchant hereunder and not purchased by Merchant or consumed in use shall remain the property of NOVA and shall be immediately returned to NOVA upon termination of this Agreement. Merchant shall be fully liable for any and all loss, cost, and expense suffered or incurred by NOVA, arising out of or resulting from any failure by Merchant to return such materials following termination.

12. **TERMINATION AND COMBINED TERMINATED MERCHANT FILE.** This Agreement may be terminated at any time by Member or NOVA with or without cause, and without prior notice. Additionally, this Agreement may be terminated by Merchant in the event of a material breach of the terms of this Agreement by Member or NOVA, provided Merchant provides Member and NOVA written notice of any alleged breach and such breach remains uncured for a period of thirty (30) days following receipt of written notice by the breaching party. This Agreement is maintained by VISA and MasterCard containing the business name and the names and identification of principals of Merchant which have been terminated for one or more of the reasons specified in the Operating Rules and Regulations. Such reasons include, but not limited to: fraud, counterfeited papers, unauthorized transactions, excessive chargebacks or highly suspect activity.

13. **MERCHANT ACKNOWLEDGES THAT MEMBER AND/OR NOVA IS REQUIRED TO REPORT THE BUSINESS NAME OF THE MERCHANT AND THE NAMES AND IDENTIFICATION OF ITS PRINCIPALS TO THE CTMF WHEN MERCHANT IS TERMINATED DUE TO ONE OR MORE OF THE FOREGOING REASONS.** MERCHANT EXPRESSLY AGREES AND CONSENTS TO SUCH REPORTING BY THE MEMBER OR NOVA IN THE EVENT OF TERMINATION OF THIS AGREEMENT DUE TO ONE OR MORE OF SUCH REASONS.

14. **All obligations of Merchant with respect to Sales Drafts accepted by Member and NOVA prior to the effective date of termination shall survive such termination. It is specifically agreed that Merchant shall maintain on deposit in an account with Member for a reasonable amount of funds reasonably adequate to cover all Chargebacks, deposit charges, refunds and fees incurred by Merchant pursuant to this Agreement, or the Operating Rules and Regulations. Member shall be, and is hereby irrevocably authorized and entitled to charge such Account, or any other account maintained hereunder, for all such amounts without prior notice to or other authorization from Merchant. If no such account is established, or if the amount of funds on deposit in such an account is not adequate to cover the foregoing matters, Merchant shall pay Member and NOVA for all such amounts upon demand by Member or NOVA, together with all costs and expenses incurred by Member and NOVA to collect any such amounts, including reasonable attorneys' fees.**

15. **Within 14 business days of the date of termination, Merchant shall return any and all equipment which is the property of NOVA and immediately tender any and all amounts due to NOVA for equipment costs.**

16. **ENTIRE AGREEMENT; GEORGIA LAW; JURISDICTION AND VENUE.** This Agreement, including the completed Merchant Bankcard Application and any amendment or supplement to this Agreement made in accordance with the procedures set forth in Section 35 below, shall constitute the entire agreement between the parties, and all prior or other agreements or representations are merged in and superseded by this Agreement. This Agreement consists of Merchant's offer to agree as contained herein and the laws of the State of Georgia. The parties further agree that all performances due and transactions undertaken pursuant to this Agreement shall be deemed to be due or have occurred in Georgia and that the entry into and performance hereof by Merchant shall be conclusively deemed to be the transaction of business within the State of Georgia.

17. **ARBITRATION.** Any and all claims, demands, disputes or controversies of every kind or nature between the parties hereto arising out of or related to this Agreement, as to the existence, applicability, construction, validity, interpretation, performance or non-performance, enforcement, operation, or breach thereof, which is not otherwise settled by agreement of parties, shall be submitted to, determined and decided by arbitration, held in Atlanta, Georgia in accordance with the rules of the American Arbitration Association.

18. **FEES.** Merchant agrees to pay Member and NOVA fees for services rendered hereunder in accordance with the Schedule of Fees attached hereto or any other schedule to be promulgated by Member and furnished to Merchant from time to time. In addition, Merchant agrees to pay NOVA at its standard rates for any research requested by Merchant or required of Member or NOVA by legal process or applicable law. Merchant further agrees to pay NOVA for any equipment or other related services or products requested by Merchant from time to time.

19. **NOTICES.** Any written notice required or permitted hereunder shall be deemed given upon the earlier of (i) actual receipt; or (ii) five days after being deposited in the United States mail, postage prepaid and addressed to the addressee thereof at the last address for such notices as shown on the records of the sender.

20. **WARRANTY OF APPLICATION.** In accordance with this Agreement, Merchant has executed and delivered to Member and NOVA a document entitled "Merchant Bankcard Application" containing, among other things, certain information regarding the nature of Merchant's business, its form of business organization, and the individual principal owners of Merchant. Merchant represents and warrants to Member and NOVA that all information and all statements contained in such Merchant Bankcard Application are true, correct and complete as of the date of this Agreement. MERCHANT FURTHER AGREES TO NOTIFY NOVA IN WRITING OF ANY AND ALL CHANGES WHICH MAY OCCUR FROM TIME TO TIME REGARDING ANY INFORMATION CONTAINED IN SUCH MERCHANT BANKCARD APPLICATION, INCLUDING BUT NOT LIMITED TO: THE IDENTITY OF PRINCIPALS AND/OR OWNERS, THE FORM OF BUSINESS ORGANIZATION (I.E., SOLE PROPRIETORSHIP, PARTNERSHIP, ETC.), TYPE OF GOODS AND SERVICES PROVIDED, AND HOW SALES ARE MADE (I.E., BY TELEPHONE, MAIL, OR IN PERSON AT THE MERCHANT'S PLACE OF BUSINESS). Such notice must be received by NOVA within ten (10) business days of such occurrence. Merchant acknowledges that Member or NOVA may from time to time request updated credit information on Merchant's business and Merchant further agrees to provide updated financial statements and other information within a reasonable period of time as NOVA may request. Merchant shall be and remain fully liable to Member and NOVA for all losses, costs, claims, and expenses suffered or incurred by Member or NOVA, arising out of or resulting from Merchant's failure to report all such changes to NOVA in accordance herewith.

21. **PARAGRAPH HEADINGS.** All paragraph headings contained herein are for descriptive purposes only and the language of such paragraph shall control.

22. **ASSIGNABILITY/BANKRUPTCY.** This Agreement may be assigned by Member or NOVA, but may not be assigned by Merchant directly or by operation of law, without the prior written consent of Member and NOVA.

23. **Merchant shall immediately notify Member and NOVA of any bankruptcy, receivership, insolvency or similar action or proceeding initiated by or against Merchant or any of its principals. Merchant shall include Member and NOVA on the list of creditors as filed with the bankruptcy Court, whether or not a claim may exist at the time of filing and failure to do so shall be cause for immediate termination or any other action available to NOVA under applicable rules or regulations. Merchant acknowledges that this Agreement constitutes an executory contract to all other rights and remedies, be entitled to suspend further performance under this Agreement immediately.**

24. **ATTORNEYS' FEES AND COSTS.** Merchant shall be liable for and shall indemnify and reimburse Member and NOVA for any and all attorneys' fees and other costs and expenses paid or incurred by Member and NOVA in the enforcement hereof, or in collecting any amounts due from Merchant to Member or NOVA hereunder or resulting from any breach by Merchant of any of the terms or conditions of this Agreement.

25. **GUARANTORS/SECURITY OF AFFILIATES.** The undersigned owners/officer ("Guarantors"), by their execution of the Application for Merchant Bank Card Services, hereby unconditionally and irrevocably personally guarantees the full and faithful performance or payment of each and all of its duties and obligations herein set forth and contained, whether prior or subsequent to termination or expiration hereof.

26. **Merchant and Guarantors, by their execution of this Agreement, unconditionally and irrevocably guarantee the full and faithful performance or payment of all duties and obligations owed to Member and NOVA under any Member or Merchant Processing Agreement entered into by Merchant and the Member or NOVA, whether such Agreement was executed prior or subsequent to the execution of this Agreement. For purposes of this paragraph, the term "Merchant Affiliates" shall mean and include any entity or account designated on the Application for Merchant Bank Card Services and, in addition, any person or entity which is owned or controlled, in whole or in part, by Merchant or any of Merchant's principals. Merchant and each Guarantor acknowledges and agrees that Member or NOVA for time to time, obtain updated credit information on Guarantors and may request additional security if the situation may warrant at the sole discretion of Member or NOVA.**

27. **USE OF ELECTRONIC AUTHORIZATION AND DATA CAPTURE TERMINALS PROVIDED BY OTHERS.** Merchant agrees to notify NOVA immediately in the event Merchant desires to use electronic authorization or data capture terminals provided by any person or entity other than NOVA or its authorized designee ("third party terminals") in the processing of VISA, MasterCard or Diners Club/Carte Blanche transactions. In the event Merchant elects to use third party terminals for processing transactions, Merchant agrees (i) the third party agent to comply with VISA, MasterCard or Diners Club/Carte Blanche rules and operating regulations, including any violation which results in a chargeback. Merchant further agrees that neither Member nor NOVA shall be responsible for any losses incurred by Merchant resulting from any error by a third party agent or any malfunction in any third party terminal.

28. **MEMBER AND NOVA CONTACT WITH CUSTOMERS.** Merchant expressly authorizes Member and NOVA to contact or communicate with any of Merchant's customers whose Sales Draft or other memorandum has been presented to Member and NOVA for credit or funding any Card transaction between Merchant and its customers. Merchant expressly agrees that Member and NOVA shall be permitted to inform itself with respect to any such terms, particulars or circumstances by any reasonable means it deems, in Member's or its sole discretion, to be appropriate.

29. **TRANSACTIONS FOR FUTURE DELIVERY.** Merchant expressly agrees not to submit or present any Sales Draft or other memorandum to Member or NOVA for credit or processing hereunder (whether by electronic means or otherwise) which was taken, received or issued by Merchant in connection with the sale of goods or services for future delivery, except upon the prior, express, written authorization of Member (or NOVA as agent of Member). In the event Member has previously given its express written authorization for the dependent upon any proceeds resulting therefrom to purchase, acquire, furnish or otherwise provide such goods or services. Merchant agrees, at all times, to maintain sufficient working capital to provide for the delivery of such goods or services at the agreed upon date.

30. **TERM OF AGREEMENT.** The initial term of this Agreement shall be for a period of two (2) years beginning on the date of acceptance by Member (the "Initial Term"), and shall renew for additional successive two (2) year terms unless any party hereto provides the other notice of its intent not to renew prior to the expiration of the then current term. Additionally, NOVA and Member shall have the right to terminate this Agreement at any time without cause. Upon termination by Merchant within one (1) year of the commencement of this Agreement, Merchant agrees to pay Member or NOVA a termination fee of \$95.00. Member or NOVA in addition to all other amounts owed by Merchant to NOVA or Member; provided, however, Merchant shall not be required to pay a termination fee if Merchant elects not to renew this Agreement upon the termination of the then current term by providing written notice to the other parties in accordance with this Paragraph 36.

31. **AMENDMENTS.** Member shall have the right from time to time to add, delete, amend or otherwise make changes to the terms or provisions of this Agreement, including the discount rates and fees set forth in the application for Merchant Bank Card Services. Member shall set forth and specify any such proposed amendment or addition in a periodic manner and conclusively be deemed to accept and agree to any such amendment or addition hereto if Merchant continues to present Card transactions to Member and NOVA for processing hereunder after thirty (30) days following the mailing of the notice of such effective upon notice to Merchant, unless a later effective date is provided.

32. **LIMITATION OF LIABILITY.** The liability, if any, of NOVA under this Agreement for any costs, damages, losses and expenses for which they are or may be legally liable, whether arising in negligence or other tort, contract, or otherwise, will not exceed in the aggregate the amount of fees paid by Merchant. In no event will NOVA or its agents, servants, or employees be liable for indirect, special, or consequential damages. NOVA will not be liable to Merchant for any failure or delay in its performance of this Agreement in accordance with its terms if such failure or delay arises out of causes beyond control and the fault or negligence of NOVA.

33. **THIRD PARTY SERVICES.** Merchant may be using special services or software provided by a third party to assist Merchant in processing transactions, including authorizations and settlements, or accounting functions. Merchant is responsible for ensuring compliance with the requirements of any third party in using their products. This includes making sure the Merchant has and complies with any updates. NOVA has no responsibility for any transaction until that point in time NOVA receives data about the transaction.

Recovery Dept. Detail Spreadsheet for Items with a Remaining Balance

DVS DIRECT 960210253894

Item Description	Original Amount	Current Balance	Chargebacks (C/B)			Statement Date
			Card Number	Sale Date	C/B Date	
1 CHARGEBACK	\$5,263.17	\$5,263.17	XXXXXXXXXXXX0019	1/20/2005	3/12/2005	Not As Described
2 CLOSURE FEE	\$95.00	\$95.00				
TOTALS:	\$5,358.17	\$5,358.17				

EXHIBIT

2

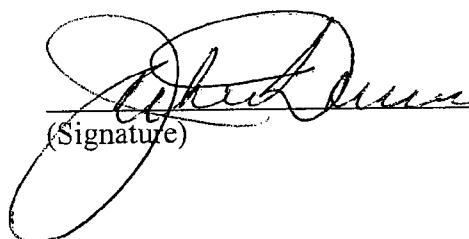
*Payment history detail on following page(s)

Updated on 1/17/2006 at 2:49 PM

VERIFICATION

The undersigned does hereby verify subject to the penalties of 18 P.A.C.S. §4904 relating to
unsworn falsifications to authorities, that he/she is JACKIE DAVIS
Director for Recovery of NOVA INFORMATION SYSTEMS, INC.; plaintiff herein, that
(Title) (Company)

he/she is duly authorized to make this Verification, and that the facts set forth in the foregoing Complaint
in Civil Action are true and correct to the best of his/her knowledge, information and belief.


(Signature)

WWR#5028479

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

NOVA INFORMATION SYSTEM:

Plaintiff :
:
vs. : No. 08- 08 -CD
:
JAMES DAVIS, D/B/A : ANSWER TO COMPLAINT
DVS DIRECT, :
Defendant :
:

ANSWER TO COMPLAINT

NOW COMES the defendant James Davis, D/B/A DVS Direct , and files the following answer to the Plaintiff, Complaint :

Defendant avers that the correct amount of the transaction on JANUARY 20, 2005 and charge back on MARCH 12, 2005 is \$5263.17 as shown in Plaintiff's Exhibit "1"

On or about MARCH 17, 2005, Plaintiff completed an electronic funds withdrawal from the defendant's bank account in the amount of \$5263.17 in settlement of the charge back Dated March 12, 2005. A true and correct copy of Defendant's bank statement is attached and marked as Defendant's Exhibit "1"

WHEREFORE, Defendant requests that the complaint be dismissed .

FILED
1/16/08
JAN 29 2008
William A. Shaw
Prothonotary/Clerk of Courts

JAMES DAVIS
Defendant
588 South St
Rockton PA 15856

B

5028479

Analysis Business Checking

For 24-hour account information, sign-on to Account Link
for Business on www.mybusinesses.pncbank.com or call 1-877-BUS-BNKG

For the period 03/01/2005 to 03/31/2005
J & C REPAIR
Primary account number: 00-1028-6858

Page 2 of 2

Checks and Other Deductions**ACH Deductions**

Date posted	Amount	Transaction description	Reference number
03/02	425.72	Corporate ACH Merch Fee	0002005080359073
03/17	5,263.17	Merchant Service 960210253894 Corporate ACH Merch Chbk	00020050786390875
03/23	3,642.34	Merchant Service 960210253894 ACH Debit Bill Pay Chase Credit Card	00020050824627525

Service Charges and Fees

Date posted	Amount	Transaction description	Reference number
03/01	13.31	Service Charge Period Ending 02/28/2005	

Detail of Services Used During Current Period

Note: The total charge for the following services will be posted to your account on 04/01/2005 and will appear on your next statement as a single line item entitled Service Charge Period Ending 03/31/2005.

Earnings Credit Rate = 0.01000 Days in Statement Cycle = 031

Description	Volume	Amount	
Account Maintenance Charge	1	15.00	
Returning Checks Monthly Charge	1	.00	Included in Account
ACH Debits	3	.36	
Total For Services Used This Period		15.36	
Less Earnings Credit Amount		8.30	
Total Service Charge		7.06	

EXHIBIT
1

IN THE COURT OF COMMON PLEAS CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

NOVA INFORMATION SYSTEMS,)
)
 Plaintiff,)
)
 v.)) CASE NO: 08-08-CD
)
 JAMES DAVIS d/b/a)
 DVS DIRECT,)
)
 Defendant.)

PLAINTIFF'S FIRST REQUEST FOR ADMISSIONS AND REQUEST FOR
PRODUCTION OF DOCUMENTS

Plaintiff demands that the defendants answer and respond to the following Request for Production of Documents under oath pursuant to the Pennsylvania Rules of Civil Procedure within 30 days from the date of service hereof.

Plaintiff also demands that defendants answer and respond to the following Request for Admissions pursuant to Pa. Rules of Civil Procedure 4014.

You are requested to admit the truth of each of the statements of fact hereinafter stated. You are instructed that:

1. These requests are made under Pennsylvania Rules of Civil Procedure 4001, et seq., and each of these matters of which an admission is requested shall be deemed admitted unless your sworn statement in compliance with such Rules is timely made.

2. If you do not admit each of such statements, you must specifically deny each one not admitted or set forth in detail the reasons why you cannot truthfully either admit or deny each such matter.

3. Your answer, signed and properly verified, must be delivered to the undersigned attorney of record for the Plaintiff within **thirty (30)** days after delivery hereof.

4. If you fail or refuse to admit the truth of any such statement of fact and the Plaintiff thereafter proves the truth thereof, you may be required to pay the reasonable expenses incurred in making such proof, including attorneys' fees, witness expenses, etc.

5. If, in response to any of the following statements of fact, it is your position that the statement is true in part or as to some items, but not true in full or as to all items, then answer separately as to each part or item.

6. If you have been sued in more than one capacity or if your answers would be different if answered in any different capacity, such as partner, agent, corporate officer or director or the like, then you are requested to answer separately in each such capacity. Failure to do so constitutes an admission in any such capacity.

7. In these Requests for Admissions:

A. The word "person(s)" means all entities, and, without limiting the generality of the foregoing, includes natural persons, joint owners, associations, companies, partnerships, joint ventures, trusts, and estates;

B. The word "document(s)" means all written, printed, recorded, graphic, or photographic matter, or, sound reproductions, however produced or reproduced, pertaining to any manner to the subject matter indicated;

C. The words "identity", "identify", "identification", when used with respect to a person(s) means to state the full name and present or last known address and business address of such person(s) and, if an actual person, his present or last known job title, and the name and address of his present or last known employers;

D. The words "identity", "identify" "identification", when used with respect to a date, subject matter, name(s) or person(s) that wrote, signed initialed, dictated or otherwise participated in the creation of the same, the name(s) of the addressee or addressees if any and the name(s) and address(es) of each person who have possession, custody, and control of said document(s). If any such document was, but is no longer in your possession, custody, or control, or in existence, state the date and manner of its disposition; and

E. The word "identify", when used with respect to an act (including an alleged offense), occurrence, statement, or conduct (hereinafter collectively called "act"), means to (1) describe the substance of the event or events constituting such an act, and to state the date when such act occurred; (2) identify each and every person(s) participating in such an act; (3) identify all other person(s) (if any) present when such act occurred; (4) state whether any minutes, notes, memoranda, or other record of such act was made; (5) state whether such record now exists; and (6) identify the person(s) presently having possession, custody or control of such record.

8. Unless otherwise indicated, all Requests herein relate to those certain events, persons, and period of time more fully described in the pleading in this case.

9. These requests are of a continuous nature.

These Requests for Production of Documents shall be deemed continuing so as to require supplemental answers and documents if any information of documents are acquired subsequent to the filing of responses hereto, which information or documents would have been included in the answers and documents produced had it been known or available at the time the answers and the documents provided pursuant hereto were produced. Defendants shall supply such information and documents by supplemental answers and production of documents as soon as such information becomes known or available and in all events, prior to trial of this action.

If objection is made to any requests for production of documents, it is demanded that the requests for which there is no objection be answered and furnished within the aforesaid period.

All documents identified in response hereto shall be organized and labeled to correspond with the request to which it pertains. For all documents produced, list the individual and his or her job title and department from whose files it was produced and the current custodian of said document.

If a document called for is believed to exist or is known to exist, but is in the possession, custody or control of another person or party, the existence of the document, the identity of the possessor, custodian and one in control of such documents shall be provided along with any applicable common description or citation utilized by the publisher, possessor, custodian or disseminator of such document.

If any document called for by this request is withheld on the basis of any claim of privilege or any similar claim, identify that document as follows: author; addressee; indicated or blind copies, date, subject matter; number of pages; attachments or appendices; all persons to whom distributed, shown or explained; present custodian; and nature of the privilege or similar claim asserted.

REQUEST FOR PRODUCTION OF DOCUMENTS 1:

Produce any and all documents you intend to introduce and/or provide testimony on as evidence at the time of trial.

REQUEST FOR ADMISSION NO. 1:

Defendant signed Application for Merchant Bank Card Services attached as Exhibit "A".

Admitted _____

Denied _____

If the answer to Request for Admissions No. 1 is "denied", then supply specific written documentation supporting the denial.

REQUEST FOR ADMISSION NO. 2:

Defendant, James Davis, is an individual doing business as DVS Direct.

Admitted _____

Denied _____

If the answer to Request for Admissions No. 2 is "denied", then supply specific written documentation supporting the denial.

REQUEST FOR ADMISSION NO.3:

By signing the application referenced in Admission number one, Defendant agreed to terms of the Merchant Processing Agreement attached as Exhibit "B".

Admitted _____

Denied _____

If the answer to Request for Admissions No. 3 is "denied", then supply specific written documentation supporting the denial.

REQUEST FOR ADMISSION NO. 4:

On or about March 12, 2005, a transaction in the amount of \$5,263.17 with Kara and Earl Anderson and Capture Productions was disputed by the customers who claimed that the equipment purchased from Plaintiff on January 20, 2005, being an RXT 100 Xtreme Pro Workstation, was defective.

Admitted _____

Denied _____

If the answer to Request for Admissions No. 4 is "denied", then supply specific written documentation supporting the denial.

REQUEST FOR ADMISSION NO. 5:

On or about March 16, 2005 Plaintiff debited the amount of \$5,263.17 from Defendant's checking account pursuant to the Merchant Processing Agreement.

Admitted _____

Denied _____

If the answer to Request for Admissions No. 5 is "denied", then supply specific written documentation supporting the denial.

REQUEST FOR ADMISSION NO. 6:

On or after March 31, 2005, Defendant submitted a rebuttal to its customers' charge dispute and Plaintiff credited the sum of \$5,263.17 to Defendant's checking account.

Admitted _____

Denied _____

If the answer to Request for Admissions No. 6 is "denied", then supply specific written documentation supporting the denial.

REQUEST FOR ADMISSION NO. 7:

During the period of April 14 through April 21, 2005, Defendant's customers, Kara and Earl Anderson and Capture Productions continued to dispute the charge to their credit card in the amount of \$5,263.17.

Admitted _____

Denied _____

If the answer to Request for Admissions No. 7 is "denied", then supply specific written documentation supporting the denial.

REQUEST FOR ADMISSION NO. 8:

On or about May 5, 2005 Plaintiff attempted to debit the account of Defendant in the amount of \$5,263.17.

Admitted _____

Denied _____

If the answer to Request for Admissions No. 8 is "denied", then supply specific written documentation supporting the denial.

REQUEST FOR ADMISSION NO. 9:

Sometime prior to May 5, 2005, Defendant closed its checking account in violation of the Merchant Processing Agreement.

Admitted _____

Denied _____

If the answer to Request for Admissions No. 9 is "denied", then supply specific written documentation supporting the denial.

REQUEST FOR ADMISSION NO. 10:

Defendant violated the terms of the Merchant Processing Agreement by closing his checking account.

Admitted _____

Denied _____

If the answer to Request for Admissions No. 10 is "denied", then supply specific written documentation supporting the denial.

REQUEST FOR ADMISSION NO. 11:

The amount of \$5,263.17 is properly due and owing to Plaintiff.

Admitted _____

Denied _____

If the answer to Request for Admissions No. 11 is "denied", then supply specific written documentation supporting the denial.



James P. Valecko, Esquire
Pa. I.D. #79596
Weltman, Weinberg & Reis Co., L.P.A.
1400 Koppers Bldg.
436 Seventh Avenue
Pittsburgh, PA 15219
(412) 434-7955
WWR 7696421

p. 02

DBA/Address Change _____
MID # 960210253894

APPLICATION FOR MERCHANT BANK CARD SERVICES
(Please print legibly)

EXHIBIT

A

EXHIBIT

B

Merchant Processing Agreement

NOVA
INFORMATION SYSTEMS, INC.

THIS MERCHANT PROCESSING AGREEMENT (this "Agreement") is entered into, as of the date set forth below as accepted by Member (as hereinafter defined), by and among the undersigned merchant ("Merchant"), NOVA Information Systems, Inc., a Georgia corporation ("NOVA") and Regions Bank, a bank chartered under the laws of the State of Alabama and a principal member of VISA U.S.A., Inc. and MasterCard International Incorporated ("Member").

WHEREAS, Merchant desires to facilitate sales and/or leases of merchandise and/or services by honoring valid cards bearing the symbols of MasterCard International Incorporated ("MasterCard"), VISA U.S.A., Inc. ("VISA"), and Diners Club/Carte Blanche (hereinafter referred to individually as a "Card" and collectively as "Cards");

WHEREAS, NOVA and Member are willing to provide certain services to Merchant, as set forth herein, to enable Merchant to accept Cards as payment for goods and services sold by Merchant, all in accordance with the terms and conditions set forth in this Agreement.

NOW, THEREFORE, Merchant, NOVA and Member agree as follows:

1. **LAWS, RULES AND REGULATIONS.** MERCHANT AGREES TO COMPLY WITH ALL EXISTING AND FUTURE RULES AND OPERATING REGULATIONS ISSUED BY MASTERCARD, VISA, OR DINERS CLUB/CARTE BLANCHE, APPLICABLE TO THE ACCEPTANCE OF CARDS AND PROCESSING OF CARD TRANSACTIONS, AND ANY POLICIES AND PROCEDURES PROVIDED BY MEMBER OR NOVA. ALL OF SUCH RULES, OPERATING REGULATIONS, POLICIES AND PROCEDURES ARE EXPRESSLY INCORPORATED HEREIN BY REFERENCE AND MADE A PART OF THIS AGREEMENT AS IF THEY WERE SET FORTH IN FULL HEREIN. MERCHANT FURTHER AGREES TO COMPLY WITH ALL APPLICABLE STATE, FEDERAL AND LOCAL LAWS, RULES AND REGULATIONS AFFECTING ACCEPTANCE OF THE CARDS, PROCESSING OF CARD TRANSACTIONS, AND THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT.

2. **HONOR VALID CARDS.** Merchant agrees to honor, without discrimination, any valid Card properly tendered for use by a person possessing a valid Card and purporting to be the person in whose name the Card is issued ("Cardholder").

3. **CARDHOLDER IDENTIFICATION.** Merchant shall identify the Cardholder and check the expiration date and signature on each Card. Merchant shall not honor any Card if (i) the Card has expired, (ii) the signature on the sales draft does not correspond with the signature on the Card, or (iii) the account number embossed on the Card does not match the account number on the Card's magnetic stripe (as printed in electronic form). Unless permitted under applicable law and applicable operating regulations issued by MasterCard, VISA and Diners Club/Carte Blanche (collectively, the "Operating Rules and Regulations"), Merchant shall not require a Cardholder to provide personal information, such as a home or business telephone number, a home or business address, or a driver's license number as a condition for honoring a Card.

4. **PRIOR AUTHORIZATION.** MERCHANT SHALL OBTAIN A PRIOR AUTHORIZATION BY WAY OF ELECTRONIC TERMINAL, TELEPHONE OR SIMILAR DEVICE BEFORE COMPLETING ANY TRANSACTION. Merchant shall follow any instructions received during such authorization process. Upon receipt of authorization, Merchant may consummate only the transaction authorized and must note on the sales draft the authorization number. Such authorization is not a guarantee of acceptance or payment of the Card transaction and shall not constitute a waiver of any of the provisions of this Agreement (including without limitation Paragraph 19 hereof), or otherwise validate a transaction involving the use of an expired Card or a fraudulent transaction. Merchant shall remain fully liable for any chargeback related thereto. Where Merchant is authorizing and presenting Card transactions electronically and Merchant's terminal is unable to read the magnetic stripe on the Cardholder's Card, Merchant must obtain an imprint of the Card and obtain the Cardholder's signature thereon prior to presenting the transaction to Member and NOVA for processing and collection of credit.

5. **CARD RECOVERY.** Merchant shall use its best efforts to recover any Card: (i) If the account number thereon is listed on a Combined Warning Bulletin, (ii) If the printed four digits above the embossed account number do not match the first four digits of the embossed account number, (iii) If Merchant is advised by Member (or its designee), the issuer of the Card or the designated voice authorization center to retain it, or (iv) If Merchant has reasonable grounds to believe such Card is counterfeit, fraudulent or stolen. Merchant's efforts to recover a Card will at all times be reasonable under the circumstances.

6. **SALES DRAFT.** A sales draft or other memorandum on a form approved by Member and NOVA ("Sales Draft") shall be used by Merchant to document each Card transaction. Each such Sales Draft shall be LEGIBLY imprinted with: (i) Merchant's name and account number, (ii) the information embossed on the Card presented by the Cardholder (either electronically or manually), (iii) the date of the transaction, (iv) a brief description of the goods or services involved, (v) the transaction authorization number, and (vi) the total amount of the sale (including any applicable taxes) or credit transaction, and, shall be signed by the Cardholder. The requirement for the Cardholder's signature on the Sales Draft shall only be waived if the Card transaction is a valid mail/telephone order Card transaction which fully complies with the requirements set forth in this Agreement (including Section 8). Each Sales Draft used in connection with a manually processed card transaction shall contain all of the foregoing information and shall be signed by the Cardholder. If the following information embossed on the Card and the Merchant's name is not legibly imprinted on the Sales Draft, Merchant shall legibly reproduce: (i) the Cardholder's name, (ii) account number, (iii) expiration date, and (iv) the Merchant's name and place of business. Additionally, for transactions involving MasterCard, Merchant must legibly reproduce the name or trade name of the Card issuer as it appears on the face of the Card. In any case, where authorization is obtained, Merchant shall be deemed to warrant the true identity of the customer as the Cardholder.

7. **DELIVERY AND RETENTION OF COPY OF SALES DRAFT, RETENTION AND ENTRY OF TRANSACTION.** Merchant shall deliver a true and complete copy of the Sales Draft or credit voucher to the Cardholder at the time of the transaction. Merchant shall retain the "Merchant copy" of the Sales Draft or credit memorandum for at least three (3) years following the date of completion of the Card transaction (or such longer period as the Operating Rules and Regulations may require). If Merchant utilizes electronic authorization and/or data capture services, Merchant shall enter the data related to a sales or credit transaction into a computer terminal or magnetic stripe reading terminal no later than the close of business on the date of the completion of the transaction. Information regarding a sales or credit transaction entered by means of a computer terminal or magnetic stripe reading terminal shall be transmitted by Merchant to NOVA or its agent in such form as NOVA may from time to time specify or as may be required under any applicable law, rule or regulation. If Member or NOVA requests a copy of such Sales Draft, credit voucher or other transaction memorandum or evidence, Merchant will promptly provide Member or NOVA with the same, within three business days following such request.

8. **MAIL ORDER, TELEPHONE ORDER AND RECURRING TRANSACTIONS.** MERCHANT SHALL NOT ENGAGE IN SOLICITING OR ACCEPTING MAIL ORDERS OR TELEPHONE ORDERS OR ANY TRANSACTION IN WHICH THE CARDHOLDER AND CARD ARE NOT PRESENT (collectively referred to as "mail/telephone orders"), except with prior written authorization of Member (or NOVA as agent of Member). Mail/telephone orders completed without prior written consent of Member (or NOVA as agent of Member) shall be deemed to be a breach of this Agreement and cause for immediate termination in addition to any other remedies as are applicable under state or federal law and the Operating Rules and Regulations as may be in effect from time to time. Merchant shall not utilize the services of any third party in soliciting or accepting mail/telephone orders. If prior written authorization is provided to Merchant for mail/telephone orders, then such mail/telephone order shall be placed directly between the Cardholder and Merchant. Merchant shall obtain the expiration date of the Card for a mail/telephone orders and submit the expiration date when obtaining prior authorization of the Card transaction. For any recurring transactions, Merchant must obtain a written request from the Cardholder for such goods and services to be charged to the Cardholder's account. The frequency of the recurring charge and the duration of time during which such charges may be made. Merchant shall not complete any recurring transaction after receiving: (a) a cancellation notice from the Cardholder, (b) notice from NOVA or Member, or (c) a response that the Card is not to be honored. For mail/telephone order Card transactions, the Merchant shall type or print legibly on the signature line of the Sales Draft the words or letters indicated to describe the Card transaction: telephone order or "TO", mail order or "MO", recurring transaction or "Recurring Transaction".

9. **MULTIPLE SALES DRAFTS AND PARTIAL COMPLETION.** Merchant shall include a description of and total amount of all items of goods and services purchased in a single sales transaction on a single Sales Draft or transaction record, unless (a) partial payment is entered on the Sales Draft or transaction record and the balance of the transaction amount is paid in cash at the time of transaction, or (b) a Sales Draft represents an advance deposit in a Card transaction completed in accordance with this Agreement (including this Section 9) and the Operating Rules and Regulations. MERCHANT SHALL NOT ACCEPT FOR PAYMENT BY CARD ANY AMOUNT REPRESENTING A DEPOSIT OR PARTIAL PAYMENT FOR GOODS OR SERVICES TO BE DELIVERED OR PERFORMED IN THE FUTURE, EXCEPT WITH THE PRIOR WRITTEN AUTHORIZATION OF MEMBER (OR NOVA AS AGENT OF MEMBER). The acceptance of a Card for payment or partial payment of goods or services to be delivered or performed in the future shall be deemed to be a breach of this Agreement and cause for immediate termination in addition to any other remedies as are available under state or federal law and the Operating Rules and Regulations. Provided Merchant has obtained prior written authorization to accept cards for this Agreement and cause for immediate termination, in addition to any other remedies as are available under state or federal law and the Operating Rules and Regulations. Provided Merchant has obtained prior written authorization to accept cards for this Agreement and cause for immediate termination, in addition to any other remedies as are available under state or federal law and the Operating Rules and Regulations. Merchant must obtain prior written consent from Member and NOVA to change Merchant's "deposit" or "balance" as appropriate. Merchant further agrees that it will not deposit with the Member the Sales Draft labeled "balance" until the goods have been delivered to and accepted by Cardholder or the services have been fully performed by Merchant to Cardholder's satisfaction.

10. **NO ADDITIONAL CHARGE FOR USE OF CARD.** Merchant agrees that it will not add any amount to the posted or advertised price of property or services offered by Merchant as a condition of the use of a Card with respect to a transaction involving such property or services consistent with applicable laws, rules and regulations and the Operating Rules and Regulations. Nothing herein shall be deemed to prohibit Merchant from offering a discount to a person to induce such person to pay by cash, check or similar means rather than by use of a Card.

11. **MERCHANT ACCOUNT/AUTOMATIC FUNDS TRANSFER.** Merchant shall establish and maintain with Member (or with a depository institution acceptable to Member), one or more commercial checking account(s) to facilitate payment to Merchant for Card transactions ("Merchant's Account"). If Merchant's Account is maintained with Member, Member shall make deposits thereto pursuant to applicable provisions of this Agreement, and Merchant irrevocably authorizes Member, without prior notice, to charge from time to time against Merchant's Account any chargebacks, fees or other amounts payable by Merchant to Member or NOVA under the terms of this Agreement, to initiate such entries as may be necessary to reverse or adjust any entries made in error or by mistake and to initiate or suspend such entries as may be necessary to grant or effect conditional credit with respect to any entry or group of entries. If Merchant's Account is maintained at a depository institution approved by Member, Member shall make deposits thereto pursuant to applicable provisions of this Agreement and the Debit/Credit Authorization and Payment Agreement ("Authorization") executed in favor of Member or NOVA, such Authorization to be deemed to be incorporated by reference hereof. Merchant must obtain prior written consent from Member and NOVA to change Merchant's Account. Merchant's failure to obtain the required consent shall be cause for immediate termination of this Agreement, and shall further be deemed authority for Member and NOVA to take such other actions as either of them may deem necessary or desirable, including without limitation suspension of processing privileges or the creation or maintenance of a Reserve Account pursuant to Section 14 of this Agreement.

12. **MERCHANT EXPRESSLY ACKNOWLEDGES AND AGREES TO ANY CHARGES OR DEBITS MADE BY MEMBER AGAINST MERCHANT'S ACCOUNT AS A RESULT OF THE EXERCISE OF CHARGEBACK RIGHTS BY A CARDHOLDER, CARD ISSUING MEMBER, VISA, MASTERCARD OR DINERS CLUB/CARTE BLANCHE, OR OTHER INTERMEDIARY PURSUANT TO THE OPERATING RULES AND REGULATIONS (AS THE SAME MAY BE IN EFFECT FROM TIME TO TIME) INCLUDING, BUT NOT LIMITED TO, ITEMS RELATED TO COMPLIANCE ISSUES OR OTHER ACTIVITIES WHICH RESULT IN FINES, PENALTIES, ASSESSMENTS, PAYMENTS AND/OR FILING FEES FOR MATTERS UNDERTAKEN BY MEMBER OR NOVA ON THE MERCHANT'S BEHALF.** Merchant shall promptly and diligently examine and review all statements relating to Merchant's Account, and shall immediately give NOVA written notice of any asserted error or discrepancy therein. Said written notice shall include: (a) Merchant's name and account number, (b) the dollar amount of the asserted error or discrepancy, (c) a description of the asserted error or discrepancy, and (d) an explanation why Merchant believes an error or discrepancy exists and the cause of such error or discrepancy. Merchant shall not have or make any claim against Member or NOVA for any loss, cost or expense incurred in connection with any asserted error or discrepancy unless said written notice is received by NOVA within thirty (30) days after Merchant received the periodic statement of account activity containing notice of notification of the asserted error or discrepancy, and Merchant shall not make any claim against Member or NOVA for any loss, cost or expense in connection with any asserted error or discrepancy for a period of sixty (60) days immediately following NOVA's receipt of said written notice. During such sixty (60) day period, NOVA will be entitled to investigate any asserted error or discrepancy, and Merchant shall not incur any cost or expense in connection therewith without the prior written consent of NOVA.

If Merchant's Account is not maintained with Member, it is understood and agreed that Merchant shall act as Merchant's agent for purposes of effecting collection of Card transaction amounts from Cardholder's issuing member on behalf of Merchant. As the collecting agent Member, at its sole option and discretion, may grant Merchant provisional credit for transaction amounts in the process of collection, subject to receipt of final payment by Member and NOVA and further subject to all Chargebacks theron made under the Operating Rules and Regulations.

Merchant hereby authorizes Member, now and in the future, to initiate debit/credit entries to its Merchant's Account, or any other account maintained by Merchant at any institution that is a receiving member of Automated Clearing House, all in accordance with this Agreement and the Authorization Agreement Regarding Automatic Funds Transfer (ACH Credits/Debits) included in the Merchant Bankcard Application (the "Debit/Credit Authorization"). In the event Merchant changes its Merchant's Account, Merchant shall enter into a new Debit/Credit Authorization.

13. **EXCESSIVE CHARGEBACKS AND/OR RETRIEVAL REQUESTS.** Merchant agrees that in the event NOVA is presented, during any monthly period, with Chargebacks and/or retrieval requests relating to Card transactions processed by Member and NOVA on behalf of Merchant, in excess of one percent (1%) of the average monthly dollar amount of such Card transactions, such Chargebacks and/or retrieval requests will conclusively be deemed to be excessive under this Agreement and the Operating Rules and Regulations. The occurrence of excessive chargebacks and/or retrieval requests shall be deemed to be a breach of this Agreement and cause for immediate termination of this Agreement, and shall constitute authority for Member and NOVA to take such other or additional actions as either of them may deem necessary or reasonable, including, but not limited to, suspension of processing privileges, creation or maintenance of a Reserve Account pursuant to Section 14, or such other actions as may be authorized herein or by the Operating Rules and Regulations.

14. **DEPOSIT AND CREDIT FOR SALES DRAFTS OR TRANSACTIONS.** Subject to Section 19 hereof, Member agrees to deposit to Merchant's Account all Sales Drafts (whether evidenced in writing or by electronic means) complying with the terms and conditions of this Agreement and the Operating Rules and Regulations and to provide to Merchant provisional credit for such Sales Drafts (less any credit(s), adjustments and Chargebacks). Provided, however, under no circumstance will Member or NOVA be responsible for processing credits or adjustments related to original sales transactions not processed by Member and NOVA. All Sales Drafts and deposits are subject to audit and final checking by Member and NOVA, and may be adjusted for inaccuracies. Merchant acknowledges that all credits provided to Merchant are provisional and subject to Chargebacks and adjustments in accordance with the Operating Rules and Regulations. MEMBER MAY ELECT TO GRANT CONDITIONAL CREDIT FOR SUCH SALES DRAFTS, AND SUCH ELECTON MAY BE EXERCISED EITHER GENERALLY OR WITH REGARD TO SPECIFIC SALES DRAFTS OR GROUPS THEREOF ON A CASE-BY-CASE BASIS, WITH FINAL CREDIT TO BE GRANTED AT SUCH TIME, AND UPON SUCH ADDITIONAL TERMS AND CONDITIONS, AS MEMBER MAY DEEM APPROPRIATE.

14. **SECURITY INTERESTS, RESERVE ACCOUNT, RECOUPMENT AND SET-OFF.**
(a) **Security Interests.** This Agreement shall constitute a security agreement under the Uniform Commercial Code. Merchant hereby grants to Member and NOVA a security interest in and fee upon all funds at any time in the Merchant's Account, the "Reserve Account" (as hereinafter defined), in future Sales Drafts processed by Member and NOVA and in all Merchant's rights created by or relating to this Agreement including, without limitation, all Merchant's rights to receive any payments or credits under this Agreement (collectively, the "Secured Assets"). Upon request of Member or NOVA, Merchant agrees to execute one or more financing statement(s) or other document(s) to evidence the security interest granted herein. Merchant represents and warrants that no other party has a security interest in the Secured Assets. These security interests and liens shall secure all of Merchant's obligations under this Agreement and any Ancillary Agreements between Merchant including, but not limited to, Merchant's obligation to pay fees and any other amounts due and owing to Member or NOVA. With respect to such security interests and liens, Member and NOVA shall have all rights afforded under the Uniform Commercial Code, any other applicable law and in equity. Merchant shall obtain from Member and NOVA written consent prior to granting a security interest of any kind in the Secured Assets to a third party.

(b) **Reserve Account.** For the purpose of providing a deposit and a source of funds to pay Member and NOVA for any and all amounts owed by Merchant, Merchant shall deposit into an account maintained by Member, (or other approved depository institution) initially or at any time in the future as requested in good faith by Member or NOVA, sums sufficient to satisfy Merchant's current and/or future obligations as determined by Member or NOVA. Funds in the Reserve Account shall remain in the Reserve Account unless and until each of the following has occurred: (i) this Agreement has been terminated; and (ii) Merchant has paid in full any and all amounts owing or that could ever be owed under this Agreement, including, without limitation, any and all outstanding/uncollected amounts and potential Chargebacks. Member shall have sole control of the Reserve Account. Member may, at any time, require that the amount on deposit in the Reserve Account be increased. In no event shall Merchant be entitled to a return of any sums remaining in the Reserve Account before 270 days following the effective date of termination of this Agreement. Member may at any time, without notice, apply any amounts in the Reserve Account against any and all outstanding/uncollected amounts owing to Member or NOVA under this Agreement or any other agreement between Merchant and Member and/or NOVA in any way related to the services to be provided herein or related products or services ("Ancillary Agreements"). Merchant understands and agrees that it has an obligation under this Agreement to maintain at all times a balance in the Reserve Account sufficient to protect Member and NOVA against losses resulting from transactions initiated by Merchant. Merchant agrees that at any time, Member shall have the right to debit the Merchant's Account in order to establish or maintain funds in the Reserve Account sufficient to protect Member and NOVA against losses resulting from transactions initiated by Merchant. Merchant further acknowledges and agrees Member shall be entitled to deposit into the Reserve Account funds Member would otherwise be obligated to pay to Merchant, for the purpose of establishing or maintaining the Reserve Account, if Member determines such action is reasonably necessary to protect the interests of Member or NOVA. Further, Member may exercise any and all rights and remedies under this Agreement to collect any amounts due and owing to Member or NOVA relating to any Reserve Account including, without limitation, its rights of set-off and recoupment.

(c) **Recoupment and Set-Off.** Merchant hereby acknowledges and agrees Member has and shall have the right of recoupment and set-off as such rights exist under common law, any statute, any other applicable law or in equity. Without limiting the foregoing in any way, Merchant hereby expressly acknowledges and agrees Member may at any time deduct, offset, recoup and withhold any outstanding/uncollected amounts owed to Member or NOVA from (i) any amounts Member would otherwise be obligated to deposit into Merchant's Account and (ii) any other amounts Member or NOVA may owe to Merchant under this Agreement, any Ancillary Agreements or otherwise.

(d) **Remedies Cumulative.** The authority and rights conferred upon Member and NOVA in this Section 14 are not intended to be exclusive of each other or of any other rights and remedies of Member and NOVA conferred by this Agreement, at law or in equity. Rather, each and every right, power and remedy of Member and NOVA hereof or now or hereafter existing at law or in equity shall be cumulative and concurrent and in addition to each and every other right, power and remedy.

15. **NO CLAIM AGAINST CARDHOLDER, NO ACCEPTANCE OF PAYMENTS.** Merchant agrees it will not have any claim against, or right to receive payment from a Cardholder or any other customer in any Card transaction unless Member or NOVA refuses to accept the Sales Draft or revokes its prior acceptance thereof (after receipt of a Chargeback or otherwise). Merchant shall not accept any payments from a Cardholder with respect to previous charges for merchandise or services included in a Sales Draft, and in the event of receipt of any such payments, Merchant promptly will remit such amounts to Member.

16. **LAUNDERING OR FACTORING.** MERCHANT SHALL NOT PRESENT FOR PROCESSING OR CREDIT, DIRECTLY OR INDIRECTLY, ANY TRANSACTION NOT ORIGINATED AS A RESULT OF A CARD TRANSACTION DIRECTLY BETWEEN THE CARDHOLDER AND THE MERCHANT. MERCHANT FURTHER AGREES TO IMMEDIATELY NOTIFY NOVA OF ANY ADDITIONAL LOCATION OR NEW BUSINESS, AND AGREES TO APPLY FOR A SEPARATE ACCOUNT FOR SAID LOCATION OR NEW BUSINESS.

17. **DISPUTES WITH CUSTOMER; INDEMNIFICATION OF MEMBER AND NOVA.** All disputes between Merchant and any Cardholder relating to any Card transaction shall be settled between Merchant and such Cardholder. Merchant agrees to indemnify and hold Member and NOVA harmless from claim, liability, loss or expenditure relating to any such transaction, and from Merchant's breach of any of its obligations under this Agreement.

18. NO CASH DISBURSEMENTS; DISCLOSURE OF REFUND OR RETURN POLICY. Merchant shall make no cash advances, disbursements or refunds on any Card transaction but will issue a credit memorandum therefor. Member will charge Merchant's Account with the total face amount of each credit memorandum submitted to NOVA with respect to a Sales Draft previously processed by NOVA and Member, but no credit memorandum shall exceed the amount of the Sales Draft. Merchant shall, within the time period specified by applicable law and in accordance with the Operating Rules and Regulations, regarding any limitation on acceptance of returned merchandise or any policy to make price adjustments therefor.

19. COMPLIANCE WITH RULES, REPORTS TO MEMBERS; NONDISCLOSURE AND CONFIDENTIALITY. Merchant agrees: (i) to comply with and (ii) to cooperate with and assist Member and NOVA in complying in a complete and timely manner with all applicable laws, rules and regulations, now or hereafter applicable to any Card transaction or this Agreement, and in connection therewith. Merchant agrees to execute and deliver to Member and NOVA all such instruments as Member or NOVA may from time to time reasonably deem necessary. Merchant shall not disclose to any third party other than Member or NOVA, or an agent of Merchant for the purpose of assisting Merchant in completing a Card transaction, or as specifically required by law, the Cardholder's account information or other personal information. Merchant shall destroy all material containing Cardholder's account number, Card Imprints, Sales Drafts, credit vouchers and carbons (except for the Sales Drafts maintained in accordance with this Agreement, applicable laws, and the Operating Rules and Regulations), and shall take all steps reasonably necessary to ensure Cardholder information is not disclosed or otherwise misused.

20. REFUSAL OR REVOCATION OF CREDIT AND REPAYMENT BY MERCHANT. Member or NOVA may refuse to accept any Sales Draft or revoke its prior acceptance thereof, in the following circumstances: (a) the transaction giving rise to the Sales Draft was not made in compliance with all terms and conditions of this Agreement, and applicable laws, rules and regulations; (b) the Cardholder disputes his liability to Member for any reason, including but not limited to those chargeback rights enumerated in the Operating Rules and Regulations; (c) the transaction giving rise to the Sales Draft was not directly between Merchant and Cardholder. Merchant agrees to pay Member or NOVA, as appropriate, any amount previously credited to Merchant with respect to a Sales Draft not accepted by Member or NOVA.

Notwithstanding any authorization or request from the Cardholder or customer, Merchant shall not reenter or rerequest any Card transaction which has been charged back.

21. USE OF NOVA AND CREDIT CARD PROGRAM MARKS. Merchant shall adequately display current and appropriate VISA, MasterCard or other cards' program marks, and signage at all of its locations and in all promotional materials, including those provided by NOVA. Merchant shall not indicate, directly or indirectly, that VISA, MasterCard or other cards endorse any goods or services other than their own and Merchant may not refer to VISA, MasterCard or other cards' promotional materials in the public's acceptance of the cards. All uses by Merchant of VISA, MasterCard or other cards' marks shall fully comply with specifications contained in the Operating Rules and Regulations. Use of VISA, MasterCard or other cards' promotional materials by Merchant shall not indicate, directly or indirectly, that VISA, MasterCard or other cards are in standing eligibility for its products, services or membership.

22. FURNISHING FORMS AND PROMOTIONAL MATERIALS. NOVA will furnish Merchant with Sales Drafts, credit memoranda and any other forms that may be required by Member, at rates established from time to time by NOVA. Merchant shall provide its own electronic mail or similar device, if applicable, meeting the requirements for processing. All promotional materials, advertising displays, emblems, Sales Drafts, credit memoranda and other forms supplied to Merchant hereunder and not purchased by Merchant or consumed in use shall remain the property of NOVA and shall be immediately returned to NOVA upon termination of this Agreement. Merchant shall be fully liable for any and all loss, cost, and expense suffered or incurred by NOVA, arising out of or resulting from any failure by Merchant to return such materials following termination.

23. TERMINATION AND COMBINED TERMINATED MERCHANT FILE. This Agreement may be terminated at any time by Member or NOVA with or without cause, and without prior notice. Additionally, the Agreement may be terminated by Merchant in the event of a material breach of the terms of this Agreement by Member or NOVA, provided Merchant provides Member and NOVA written notice of any alleged breach and such breach remains uncured for a period of thirty (30) days following receipt of written notice by the breaching party. Notice of termination may be given orally or in writing, but if given orally shall be confirmed in writing. Termination shall be effective on the date specified by the oral or written notice. MERCHANT EXPRESSLY ACKNOWLEDGES that a Combined Terminated Merchant File (CTMF) is maintained by VISA and MasterCard containing the business name and the names and identification of principles of Merchant which have been terminated for one or more of the reasons specified in the Operating Rules and Regulations. Such reasons include, but are not limited to: fraud, counterfeit paper, unauthorized transactions, excessive chargebacks or highly suspect activity.

MERCHANT ACKNOWLEDGES THAT MEMBER AND/OR NOVA IS REQUIRED TO REPORT THE BUSINESS NAME OF THE MERCHANT AND THE NAMES AND IDENTIFICATION OF ITS PRINCIPALS TO THE CTMF WHEN MERCHANT IS TERMINATED DUE TO ONE OR MORE OF THE FOREGOING REASONS. MERCHANT EXPRESSLY AGREES AND CONSENTS TO SUCH REPORTING BY THE MEMBER OR NOVA IN THE EVENT OF TERMINATION OF THIS AGREEMENT DUE TO ONE OR MORE OF SUCH REASONS.

All obligations of Merchant with respect to Sales Drafts accepted by Member and NOVA prior to the effective date of termination shall survive such termination. It is specifically agreed that Merchant shall maintain on deposit in an account with Member for a reasonable period of time, an amount of funds reasonably adequate to cover all Chargebacks, deposit charges, refunds and fees incurred by Merchant pursuant to this Agreement, or the Operating Rules and Regulations. Member shall be, and is hereby irrevocably authorized and entitled to charge such account, or any other account maintained hereunder, for all such amounts without prior notice to or other authorization from Merchant. If no such account is established, or if the amount of funds on deposit in such an account is not adequate to cover the foregoing matters, Merchant shall pay Member and NOVA for all such amounts, upon demand by Member or NOVA, together with all costs and expenses incurred by Member and NOVA to collect any such amounts, including reasonable attorneys' fees.

Within 14 business days of the date of termination, Merchant shall return any and all equipment which is the property of NOVA and immediately tender any and all amounts due to NOVA for equipment costs.

ENTIRE AGREEMENT; GEORGIA LAW; JURISDICTION AND VENUE. This Agreement, including the completed Merchant Bankcard Application and any amendment or supplement to this Agreement made in accordance with the procedures set forth in Section 35 below, together with the "Agreement", shall constitute the entire agreement between the parties, and all prior or other agreements or representations are merged in and superseded by this Agreement. This Agreement consists of Merchant's offer to agree as contained herein and the acceptance, the laws of the State of Georgia. The parties further agree that all performances due and transactions undertaken pursuant to this Agreement shall be deemed to be due or have occurred in Georgia and that the entry into and performance hereof by Merchant shall be conclusively deemed to be the transaction of business within the State of Georgia.

ARBITRATION. Any and all claims, demands, disputes or controversies of every kind or nature between the parties hereto arising out of or related to this Agreement, as to the existence, applicability, construction, validity, interpretation, performance or non-performance, enforcement, operation, or breach thereof, which is not otherwise settled by agreement of parties, shall be submitted to, determined and decided by arbitration, held in Atlanta, Georgia in accordance with the rules of the American Arbitration Association.

FEES. Merchant agrees to pay Member and NOVA fees for services rendered hereunder in accordance with the Schedule of Fees attached hereto or any other schedule to be promulgated by Member and furnished to Merchant from time to time. In addition, Merchant agrees to pay NOVA at its standard rates for any research requested by Merchant or required of Member or NOVA by legal process or applicable law. Merchant further agrees to pay NOVA for any equipment or other related services or products requested by Merchant from time to time hereunder.

NOTICES. Any written notice required or permitted hereunder shall be deemed given upon the earlier of (i) actual receipt or (ii) five days after being deposited in the United States mail, postage prepaid and addressed to the addressee thereof at the last address for such interests as known on the records of the sender.

WARRANTY OF APPLICATION. In accordance with this Agreement, Merchant has executed and delivered to Member and NOVA a document entitled "Merchant Bankcard Application" containing, among other things, certain information regarding the nature of Merchant's business, its form of business organization, and the individual principal owners of Merchant. Merchant represents and warrants to Member and NOVA that all information and all statements contained in such Merchant Bankcard Application are true, correct and complete as of the date of acceptance thereof, made and entered into at Georgia as of the date below indicated for acceptance by Member. This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia and, to the extent applicable, the laws of the United States of America. The parties further agree that all performances due and transactions undertaken pursuant to this Agreement shall be deemed to be due or have occurred in Georgia and that the entry into and performance hereof by Merchant shall be conclusively deemed to be the transaction of business within the State of Georgia.

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VERIFICATION

I, _____, (please print) under penalty of perjury and subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn falsification to authorities verify that the foregoing Responses are true and correct to the best of my knowledge, information and belief.

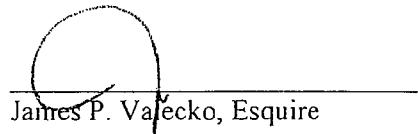
Date

Signature

CERTIFICATE OF SERVICE

A true and correct copy of Plaintiff's First Request for Production of Documents and Request for Admissions has been served by U.S. Mail, on the 24 day of February, 2010, upon the following:

James Davis d/b/a DVS Direct
588 South Street
Rockton, PA 15856



James P. Valecko, Esquire

CERTIFICATE OF SERVICE

A true and correct copy of the within Plaintiff's Motion for Summary Judgment has been served by U.S. Mail, Postage Pre-Paid, on 30th day of March, 2010 upon the following:

James Davis D/B/A DVS Direct
588 South St
Rockton Pa 15856

By: 

James P. Valecko, Esquire
Pa. I.D # 79596
Weltman, Weinberg & Reis, Co.
1400 Koppers Building
436 Seventh Avenue
Pittsburgh, PA 15219
(412) 434-7955

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

NOVA INFORMATION SYSTEMS,

Plaintiff,

Case No.: 08-08-CD

vs.

JAMES DAVIS d/b/a
DVS DIRECT,
Defendant.

ORDER OF COURT

AND NOW, to-wit, this ____ day of _____, 2010, upon Plaintiff's Motion for Summary Judgment, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said Motion is GRANTED and Judgment is entered in favor of Plaintiff for \$5,263.17 with interest at the rate of 6.00% per annum from October 8 2007, Attorneys Fees of \$1000.00, plus costs.

BY THE COURT

J.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

NOVA INFORMATION SYSTEMS,

Plaintiff,

Case No.: 08-08-CD

vs.

TYPE OF PLEADING:

PRAECIPE TO SCHEDULE

JAMES DAVIS d/b/a
DVS DIRECT

Defendant.

FILED ON BEHALF OF:
Plaintiff

COUNSEL OF RECORD OF
THIS PARTY:

James P Valecko, Esquire
PA I.D. #79596
WELTMAN, WEINBERG & REIS CO., L.P.A.
1400 Koppers Building
436 Seventh Avenue
Pittsburgh, PA 15219
(412) 434-7955

NO
m 11/25/04
11/1 2010
61
S
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

NOVA INFORMATION SYSTEMS,

Plaintiff,

Case No.: 08-08-CD

vs.

JAMES DAVIS d/b/a
DVS DIRECT,

Defendant.

PRAECIPE TO SCHEDULE

TO THE PROTHONOTARY:

Please schedule the Motion For Summary Judgment before a Judge for decision.

WELTMAN, WEINBERG & REIS, CO., L.P.A.

By: 
James P Valecko, Esquire

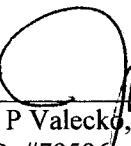
PA I.D. #79596

WELTMAN, WEINBERG & REIS CO., L.P.A.
1400 Koppers Building
436 Seventh Avenue
Pittsburgh, PA 15219
(412) 434-7955

CERTIFICATE OF SERVICE

A true and correct copy of the Praecipe to Schedule has been served by First Class Mail, postage pre-paid, on 30th day of March, 2010 upon the following:

James Davis D/B/A
DVS Direct
588 South St
Rockton Pa 15856

By: 
James P Valecko, Esquire
PA I.D. #79596
WELTMAN, WEINBERG & REIS CO., L.P.A.
1400 Koppers Building
436 Seventh Avenue
Pittsburgh, PA 15219
(412) 434-7955

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

NOVA INFORMATION SYSTEMS

Plaintiff

No. 08-08-CD

vs.

JAMES DAVIS d/b/a
DVS DIRECT
Defendant

ORDER OF COURT

AND NOW, to wit, this 5th day of April, 2010, upon consideration of the record,
it is HEREBY, ORDERED, ADJUDGED AND DECREED that the Motion For Summary Judgment on
the above captioned matter is scheduled for Wednesday, May 5, 2010 at
10:30 a.m. in courtroom #1.

BY THE COURT:


J.

5-1-10
3CC
01/9/30/11 Atty Valecko
1/11/08 2010
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

NOVA INFORMATION SYSTEMS

Plaintiff No. 08-08-CD

VS.

**AFFIDAVIT OF SERVICE OF
ORDER OF COURT**

JAMES DAVIS d/b/a
DVS DIRECT

Defendant

FILED ON BEHALF OF
Plaintiff

COUNSEL OF RECORD OF
THIS PARTY:

Benjamin R. Bibler, Esquire
PA. I.D.#93598
WELTMAN, WEINBERG & REIS CO., L.P.A.
1400 Koppers Building
436 Seventh Avenue
Pittsburgh, PA 15219
(412) 434-7955

WWR#05028479

FILED
MAY 14 2010
APR 19 2010
NO CC
William A. Shaw
Notary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

NOVA INFORMATION SYSTEMS

Plaintiff
vs.

No. 08-08-CD

JAMES DAVIS d/b/a
DVS DIRECT

Defendant

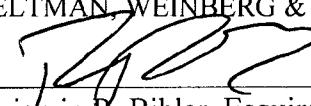
AFFIDAVIT OF SERVICE OF ORDER OF COURT

BEFORE ME, the undersigned authority, personally appeared Benjamin R. Bibler, Esquire, who according to law deposes and says that a copy of the Order of Court has been served on the following Defendant, James Davis D/B/A DVS Direct.

1. On or about April 09, 2010, Plaintiff received a signed Order of Court dated April 05, 2010, a Motion for Summary Judgment hearing is scheduled for May 05, 2010. Said Order of Court is attached as Exhibit "1".

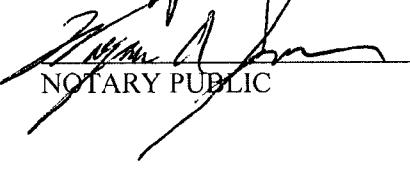
2. On or about April 12, 2010, Plaintiff mailed the Order of Court to 588 South Street, Rockton, PA. 15856.

WELTMAN, WEINBERG & REIS, CO., L.P.A.

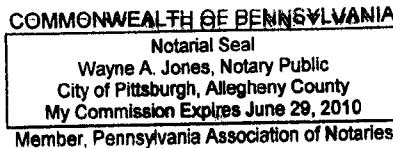


Benjamin R. Bibler, Esquire
PA I.D. #93598
WELTMAN, WEINBERG & REIS CO., L.P.A.
1400 Koppers Building
436 Seventh Avenue
Pittsburgh, PA 15219
(412) 434-7955
WWR#05028479

Sworn to and subscribed
before me this
day of Apr. 14, 2010.



NOTARY PUBLIC



CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

NOVA INFORMATION SYSTEMS

Plaintiff

No. 08-08-CD

vs.

JAMES DAVIS d/b/a
DVS DIRECT
Defendant

ORDER OF COURT

AND NOW, to wit, this 5th day of April, 2010, upon consideration of the record,
it is HEREBY, ORDERED, ADJUDGED AND DECREED that the Motion For Summary Judgment on
the above captioned matter is scheduled for Wednesday, May 5, 2010 at
10:30 a.m. p.m. in courtroom #1.

BY THE COURT:

Judge J. Kumerow
J.

100.00
and 250.00 filing fee
is being filed in this case.

APR 06 2010

Attest,

W. C. L. Brown
Prothonotary/
Clerk of Courts

EXHIBIT

"1"

FILED NO
MAY 03 2010
William A. Shaw
Prothonotary/Clerk of Courts
S (6)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

NOVA INFORMATION SYSTEMS

Plaintiff No. 08-08-CD

vs. PRAECIPE TO SETTLE, DISCONTINUE
AND END WITH PREJUDICE

JAMES DAVIS d/b/a,
DVS DIRECT

Defendant FILED ON BEHALF OF
Plaintiff

COUNSEL OF RECORD OF
THIS PARTY:

Benjamin R. Bibler, Esquire
PA ID# 93598
Weltman, Weinberg & Reis CO L.P.A.
1400 Koppers Building
436 Seventh Avenue
Pittsburgh, PA 15219

WWR#5028479

IN THE COURT OF COMMON PLEAS CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

NOVA INFORMATION SYSTEMS

Plaintiff

vs.

Civil Action No. 08-08-CD

JAMES DAVIS d/b/a,
DVS DIRECT

Defendant

PRAECIPE TO SETTLE AND DISCONTINUE

TO THE PROTHONOTARY OF CLEARFIELD COUNTY:

SIR:

Please kindly Settle and Discontinue the above-captioned matter upon the records of the Court and mark the cost paid.

WELTMAN, WEINBERG & REIS CO., L.P.A.

By: 
Benjamin R. Bibler, Esquire
PA ID# 93598
Weltman, Weinberg & Reis CO L.P.A.
1400 Koppers Building
436 Seventh Avenue
Pittsburgh, PA 15219
WWR#5028479

SWORN TO AND SUBSCRIBED

before me this 30 day

of April, 2010

Sheila G. Bibler
NOTARY PUBLIC

COMMONWEALTH OF PENNSYLVANIA	
Notarial Seal	
Sheila G. Bibler, Notary Public	
City of Clearfield, County of Clearfield	
My Commission Expires Nov. 13, 2010	

Member, Pennsylvania Association of Notaries

**CONFIDENTIAL
INFORMATION
FORM**



**APPELLATE/TRIAL COURT
CASE RECORDS**

Public Access Policy of the Unified Judicial System of Pennsylvania:

Case Records of the Appellate and Trial Courts

204 Pa. Code § 213.81

www.pacourts.us/public-records

COLLEEN GEPPERT

(Party name as displayed in case caption)

2008-29-CD

Docket/Case No.

Vs.

CHARLES P. GEPPERT

(Party name as displayed in case caption)

CLEARFIELD COUNTY

Court

This form is associated with the pleading titled SETTLEMENT AGREEMENT, dated 04/22/20.

Pursuant to the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts*, the Confidential Information Form shall accompany a filing where confidential information is **required by law, ordered by the court, or otherwise necessary to effect the disposition of a matter**. This form, and any additional pages, shall remain confidential, except that it shall be available to the parties, counsel of record, the court, and the custodian. This form, and any additional pages, must be served on all unrepresented parties and counsel of record.

This Information Pertains to:	Confidential Information:	References in Filing:
COLLEEN GEPPERT (full name of adult) OR This information pertains to a minor with the initials of _____ and the full name of _____ (full name of minor) and date of birth: _____	Social Security Number (SSN): Financial Account Number (FAN): Driver's License Number (DLN): State of Issuance: State Identification Number (SID):	Alternative Reference: SSN 1 Alternative Reference: FAN 1 Alternative Reference: DLN 1 Alternative Reference: SID 1
CHARLES P. GEPPERT (full name of adult) OR This information pertains to a minor with the initials of _____ and the full name of _____ (full name of minor) and date of birth: _____	Social Security Number (SSN): Financial Account Number (FAN): Driver's License Number (DLN): State of Issuance: State Identification Number (SID):	Alternative Reference: SSN 2 Alternative Reference: FAN 2 Alternative Reference: DLN 2 Alternative Reference: SID 2

**CONFIDENTIAL
INFORMATION
FORM**



**APPELLATE/TRIAL COURT
CASE RECORDS**

Additional page(s) attached. 7 total pages are attached to this filing.

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

A handwritten signature in black ink, appearing to read "Courtney L. Kubista".

Signature of Attorney or Unrepresented Party

Name: Courtney L. Kubista, Esq.

Address: 211 North 2nd St.
Clearfield, PA 16830

4/22/2020

Date

Attorney Number: (if applicable) 91244

Telephone: 814-765-6500

Email: nandklaw@outlook.com

NOTE: Parties and attorney of record in a case will have access to this Confidential Information Form. Confidentiality of this information must be maintained.

MARRIAGE SETTLEMENT AGREEMENT

THIS AGREEMENT made and entered into on this 14th day of September, 2019, by and between, COLLEEN GEPPERT, residing at 1494 Turnpike Avenue Extension, Clearfield, Clearfield County, Commonwealth of Pennsylvania; and CHARLES P. GEPPERT, residing at 415 Hamilton Street, Lancaster, Commonwealth of Pennsylvania.

WITNESSETH:

WHEREAS, the parties were married on October 20, 2001, in Clearfield, Clearfield County, Pennsylvania, and this marriage still subsists.

WHEREAS, there were three minor children born of this marriage.

WHEREAS, the parties by this Agreement desire to settle all questions relating to the disposition of their respective interests in assets accumulated by them, or either of them during the marriage, the payments of obligations, disposition and determination of all claims of the parties against each other in other related matters.

WHEREAS, the parties, by the execution of this Agreement, desire to live separate and apart without any interference from each other and be able to live their lives and conduct their financial affairs as if they were unmarried.

WHEREAS, the parties specifically agree that upon execution of this Agreement, Husband shall not harass Wife or interfere with her right to live her life and conduct her affairs as if unmarried, and Wife shall not harass Husband or interfere with his right to live his life and conduct his affairs as if unmarried.

NOW, THEREFORE, for and in consideration of the mutual covenants, promises, and undertakings herein set forth and of the acts to be performed by each party for the benefit of the other, the parties agree as follows:

S
14
FILED
04/20/2020 1:30 PM
APR 22 2020
3cc Atty Kubista
BRIAN K. SPENCER
PROTHONOTARY & CLERK OF COURTS

SUPPORT AND MAINTENANCE

1. Wife hereby relinquishes any and all claims to past, present and future alimony, maintenance or support for herself.
2. Husband hereby relinquishes any and all claims to past, present and future alimony, maintenance or support for himself.

LEGAL FEES AND COSTS

3. Husband and Wife shall each be responsible for their own legal expenses in the prosecution and settlement of this divorce action.

PERSONAL PROPERTY AND AUTOMOBILES

4. Husband and Wife have divided their personal property and contents of the marital home to the satisfaction of each of them. Each party shall maintain the property in their possession.

MARITAL RESIDENCE

5. Husband shall execute a special warranty deed transferring his interest in the real property located at 1494 Turnpike Avenue Extension, Clearfield, Clearfield County, Pennsylvania to Wife. Wife shall be responsible for all expenses associated therewith. Wife agrees to indemnify and hold Husband harmless from any debt encumbering the property. Wife shall be responsible for the preparation and recordation of said deed.

PAYMENT OF DEBTS

6. Except as otherwise herein expressly provided, Wife represents and warrants to Husband that she has not incurred any debts or obligations for which she or his estate may be liable, and Husband represents and warrants to Wife that he has not incurred any debts or obligations for which she or her estate may be liable. If either party has incurred such debts or obligations, he or she shall be solely responsible for them, and if the other party is called upon to make any payment or contribution toward the same, the responsible party shall indemnify and hold the other party harmless from any obligation thereon.

PENSION FUNDS AND BANK ACCOUNTS

7. Both Husband and Wife waive their interest in any pension funds, IRA accounts, 401K plans and any other pension or profit sharing plans in the other party's name. In addition thereto, each party waives all their right, title and interest in any bank accounts in the other party's name and each party shall maintain the savings and checking accounts which each possesses in their current name.

MISCELLANEOUS

8. Husband and Wife shall, from time to time, at the request of the other, execute, acknowledge, and deliver to the other party any and all further instruments which may be reasonably required to give full force and effect to the provisions of this Agreement.
9. Except as herein otherwise provided, each party may dispose of his or her property in any way, and each party hereby waives and relinquishes any and all rights he or she may now have or hereafter acquire under the present or future laws of any jurisdiction, to share in the property or the estate of the other as a result of the marital relationship, including without limitation, dower, courtesy, right to equitable distribution, statutory allowance, widow's allowance, homestead rights, right to take in intestacy, right to take against the will of the other, and right to act as administrator or executor of the other's estate, and each party will, at the request of the other, execute, acknowledge, and deliver any and all instruments that may be necessary or advisable to carry into effect this mutual waiver and relinquishment of all such interest, rights, and claims.
10. Except as expressly set forth in this Agreement, or as may arise out of the making of this Agreement, each of the parties hereby releases the other of and from any and all claims and demands for damages of any and every nature which either of the parties ever had, now has, or may hereafter have against the other, arising out of or in connection with any matter or thing whatsoever up to the date of this Agreement.
11. A modification or waiver of any of the provisions of this Agreement shall be effective only if made in writing and executed with the same formality as this Agreement. The failure of either party to insist on strict performance of any of the provisions of this Agreement shall not be construed as a waiver of any subsequent default of the same or similar nature.
12. This Agreement, containing the entire understanding of the parties, shall be binding on the parties, their heirs, executors, administrators, and assigns.
13. In the event of any dispute arising out of this Agreement or the performance thereof, Husband and Wife agree that all attempts should be made between them to settle the dispute by agreement before using the Courts for any determination.
14. This Agreement is entered into in the Commonwealth of Pennsylvania and shall be construed and interpreted under and in accordance with the Laws of the Commonwealth of Pennsylvania.
15. If any of the provisions of this Agreement are held to be invalid or unenforceable, all other provisions shall, nevertheless, continue in full force and effect.

16. It is specifically understood and agreed that this Agreement constitutes an equitable distribution of property, both real and personal, which was legally and beneficially acquired by Husband and Wife or either of them during the marriage as contemplated by the Laws of the Commonwealth of Pennsylvania.
17. The parties acknowledge that this is a fair Agreement and is not the result of any fraud, duress, or undue influence exercised by either party upon the other or by any other person or persons upon either and they further agree that this Agreement contains the entire understanding of the parties, that there are no representations, promises, warranties, covenants, or undertakings other than those expressly set forth herein.
18. **WIFE HAS BEEN REPRESENTED IN THE NEGOTIATIONS LEADING TO THIS PROPERTY SETTLEMENT AGREEMENT BY COURTNEY L. KUBISTA, ESQUIRE. HUSBAND HAS REPRESENTED HIMSELF IN THE NEGOTIATIONS LEADING TO THIS PROPERTY SETTLEMENT AGREEMENT. BOTH HUSBAND AND WIFE RECOGNIZE AND HEREBY AGREE THAT THIS AGREEMENT IS FAIR AND EQUITABLE AND THAT NEITHER PARTY NOR COURTNEY L. KUBISTA, ESQUIRE, HAS INFLUENCED THE OTHER IN THE EXECUTION OF THIS AGREEMENT.**

IN WITNESS WHEREOF, the parties have signed, sealed, delivered, and acknowledged this Agreement.

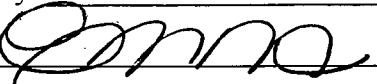
Colleen Geppert
Colleen Geppert

Charles P. Geppert
Charles P. Geppert

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by: Neiswender & Kubista

Signature: 

Name: Courtney L. Kubista, Esquire

Attorney No. (if applicable): 91244