

08-1329-CD
LVNV Funding vs Richard Walburn

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

FILED

M. J. OSAMICK 1111 AM
JUL 21 2008 1 COMPT. TO SHFF.

William A. Shaw
Prothonotary/Clerk of Courts
PAID 95.00

LVNV FUNDING LLC
SEARS GOLD MASTERCARD
15 South Main Street
Greenville, SC 29601

:
:
:
:
Plaintiff :

vs.

NO: 2008-1329-CD

Richard Walburn
215 NICHOLS ST APT 7
CLEARFIELD PA 16830-1505

:
:
:
:
Defendant :

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 to Defend 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.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ON AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT REDUCED FEE OR NO FEE.

MIDPENN LEGAL SERVICES
211 1/2 E LOCUST STREET
CLEARFIELD, PA 16830
814-765-9646

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

LVNV FUNDING LLC

SEARS GOLD MASTERCARD

15 South Main Street

Greenville, SC 29601

Plaintiff

vs.

Richard Walburn

215 NICHOLS ST APT 7 _

CLEARFIELD PA 16830-1505

Defendant

CIVIL ACTION

NO:

COMPLAINT

Plaintiff, LVNV FUNDING LLC SEARS GOLD MASTERCARD , by and through its attorneys, Edwin A. Abrahamsen & Associates, P.C., complains of the Defendant as follows:

1. Plaintiff, LVNV FUNDING LLC SEARS GOLD MASTERCARD , (hereinafter "Plaintiff") is a Delaware corporation with a principal place of business located at 15 South Main Street Greenville, SC 29601.

2. The Defendant Richard Walburn (hereinafter "Defendant") is an adult individual residing at 215 NICHOLS ST APT 7 _ CLEARFIELD PA 16830-1505.

3. At all relevant times herein, Plaintiff was engaged in the business of extending credit to potential clients.

4. Defendant applied for and received a credit card issued by Plaintiff with the account number 5121070120782483.

5. Use of the LVNV FUNDING credit card was subject to the terms and conditions of the Cardmember Agreement (hereinafter "Agreement"), a copy of which was sent along to the Defendant with the credit card. A copy of this document has been requested from LVNV FUNDING LLC, and will be provided upon receipt.

6. Defendant used the LVNV FUNDING LLC credit card with account number, 5121070120782483, for purchases, cash advances and/or balance transfers. Use of the card in this manner constituted acceptance of the terms and conditions and subjects the Defendant to the terms and conditions contained therein.

7. The Defendant was mailed monthly account statements relative to the Defendant's use of the subject credit card.

8. The Defendant defaulted under the terms of the Agreement by failing and refusing to make monthly payments on the account as they became due.

9. The account became delinquent on .

10. The principal amount was \$9,877.78 at the time of charge-off.

11. Pursuant to the account agreement, any unpaid balance accrues interest at the contract rate of 6%.

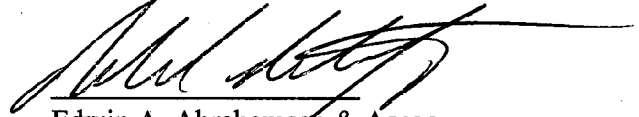
12. The principal amount was \$9,877.78 at the time it was received by Plaintiff.

13. The total amount due and owing the Plaintiff including interest, is \$11,095.59.

14. Pursuant to the terms of the Agreement, Defendant is liable for Plaintiff's court costs and reasonable attorney's fees.

WHEREFORE, Plaintiff requests judgment in its favor and against Defendant in the amount of \$11,095.59 plus costs of suit, reasonable attorneys' fees and any other relief as the Court deems just and appropriate.

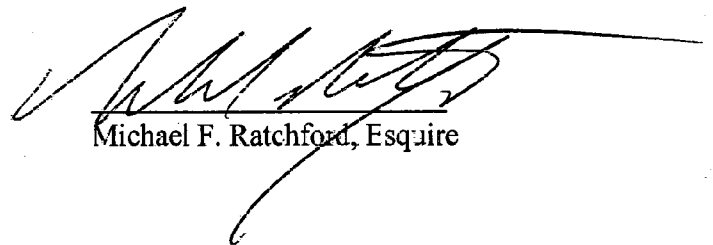
Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Edwin A. Abrahamsen', with a long horizontal flourish extending to the right.

Edwin A. Abrahamsen & Assoc.
Michael F. Ratchford, Esquire
Heather K. Woodruff, Esquire
Attorney I.D. Nos.: 86285/207805
1729 Pittston Avenue
Scranton, PA 18505
mratchford@eaa-law.com
hwoodruff@eaa-law.com

VERIFICATION

I, Michael F. Ratchford, attorney for Plaintiff, LVNV FUNDING LLC SEARS GOLD
MASTERCARD, am fully familiar with the facts set forth in the within Complaint and am
authorized to make this Verification on behalf of Plaintiff. I Verify that the facts set forth in the
within allegations are true and correct to the best of my knowledge, knowing that any false
statements are punishable by law pursuant to 18 C.S.A. 4904.



Michael F. Ratchford, Esquire

FILED

JUL 21 2008

**William A. Shaw
Prothonotary/Clerk of Courts**

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

NO: 08-1329-CD

LVNV FUNDING LLC
vs
RICHARD WALBURN

SERVICE # 1 OF 1

COMPLAINT

SERVE BY: 08/20/2008 HEARING: PAGE: 104435

DEFENDANT: RICHARD WALBURN
ADDRESS: 215 NICHOLS ST. APT 7
CLEARFIELD, PA 16830

ALTERNATE ADDRESS

SERVE AND LEAVE WITH: DEFENDANT/AAR

CIRCLE IF THIS HIGHLIGHTED ADDRESS IS: VACANT OCCUPIED

ATTEMPTS _____

SHERIFF'S RETURN

NOW, 7/31/08 AT 846 PM SERVED THE WITHIN

COMPLAINT ON RICHARD WALBURN, DEFENDANT

BY HANDING TO Richard Walburn, self

A TRUE AND ATTESTED COPY OF THE ORIGINAL DOCUMENT AND MADE KNOW TO HIM / HER THE CONTENTS THEREOF.

ADDRESS SERVED 215 Nichols St. Clearfield Pa

NOW _____ AT _____ AM / PM POSTED THE WITHIN

COMPLAINT FOR RICHARD WALBURN

AT (ADDRESS) _____

NOW _____ AT _____ AM / PM AFTER DILIGENT SEARCH IN MY BAILIWICK,

I MAKE RETURN OF **NOT FOUND** AS TO RICHARD WALBURN

REASON UNABLE TO LOCATE _____

SWORN TO BEFORE ME THIS

_____ DAY OF _____ 2008

So Answers: CHESTER A. HAWKINS, SHERIFF

BY: Deputy S. Hunter

Deputy Signature

Print Deputy Name

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

LVNV FUNDING LLC
SEARS GOLD MASTERCARD
Plaintiff

vs.

RICHARD WALBURN,
Defendant

Civil Action

No. 08-1329-CD

FILED

AUG 22 2008

01220/C
William A. Shaw
Prothonotary/Clerk of Courts

1 Clerk to Appear

CERTIFICATE OF SERVICE

I, Shana M. Pugh, Esquire, hereby certify that on the 22nd day of August, 2008, I served a copy of Defendant's Preliminary Objections to Plaintiff's Complaint filed in the above captioned matter to the following individual by first class mail, postage prepaid:

Michael F. Ratchford, Esquire
Edwin A. Abrahamson & Associates
1729 Pittston Avenue
Scranton, PA 18505

Date: 8-22-08

Shana M. Pugh / 100
Shana M. Pugh
Supreme Court ID No. 200952
MidPenn Legal Services, Inc.
230 Lincoln Way East, Suite A
Chambersburg, PA 17201
(717) 264-5354
Attorney for Defendant

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

LVNV FUNDING LLC
SEARS GOLD MASTERCARD,
Plaintiff

vs.

RICHARD WALBURN,
Defendant

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*
* NO.: 08-1329-CD
*
* Type of Case: Civil
*
* Type of Pleading: Preliminary
* Objections
*
*
* Filed on Behalf of: Defendant
*
* Counsel of Record for this Party:
* Shana M. Pugh, Esquire
*
* Supreme Court No.: 200952
*
* MidPenn Legal Services
* 230 Lincoln Way East, Suite A
* Chambersburg, PA
* (717) 264-5354

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

LVNV FUNDING LLC
SEARS GOLD MASTERCARD,
Plaintiff

vs.

RICHARD WALBURN,
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* Shana M. Pugh, Esquire
*
* Supreme Court No.: 200952
*
* MidPenn Legal Services
* 230 Lincoln Way East, Suite A
* Chambersburg, PA
* (717) 264-5354

FILED 

AUG 22 2008

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William A. Shaw
Prothonotary/Clerk of Courts

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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

LVNV FUNDING LLC	:	
SEARS GOLD MASTERCARD	:	
Plaintiff	:	Civil Action
	:	
vs.	:	No. 08-1329-CD
	:	
RICHARD WALBURN,	:	
Defendant	:	

**DEFENDANT'S PRELIMINARY OBJECTIONS
TO PLAINTIFF'S COMPLAINT**

Defendant, Richard Walburn, by and through his undersigned counsel, Shana M. Pugh, of MidPenn Legal Services, hereby files these Preliminary objections to Plaintiff's Complaint and avers the following in support thereof:

**I. MOTION TO STRIKE/FAILURE OF PLEADING TO CONFORM
TO Pa. R.C.P. No. 2002—PROSECUTION BY REAL PARTY IN INTEREST**

1. LVNV Funding, LLC Sears Gold Mastercard (hereinafter referred to as "Plaintiff") filed a Complaint in this Honorable Court against Richard Walburn (hereinafter referred to as "Defendant") on July 21, 2008 seeking damages in excess of eleven thousand ninety-five dollars and fifty-nine cents (\$11,095.59).
2. Pennsylvania Rule of Civil Procedure Number 2002 requires that "...all actions shall be prosecuted by and in the name of the real party in interest...".

3. Plaintiff LVNV Funding, LLC Sears Gold Mastercard is not a real party in interest because the entity does not exist, despite Plaintiff's contention in paragraph one (1) of the Complaint that Plaintiff is a Delaware corporation.
4. Therefore, Plaintiff cannot pursue this action.

WHEREFORE, Defendant Richard Walburn respectfully requests that this Honorable Court sustain her preliminary objections and dismiss Plaintiff's Complaint with prejudice.

II. MOTION TO STRIKE/FAILURE OF PLEADING TO CONFORM TO LAW OR RULE OF COURT – VERIFICATION

5. Pennsylvania Rule of Civil Procedure 1024(c) requires that a pleading be verified by a party, with two exceptions: (1) *all* of the parties lack sufficient knowledge or information or (2) *all* of the parties are outside of the jurisdiction of the court *and* the verification of none of them can be obtained within the time allowed for the filing of the pleading. (emphasis added).
6. Moreover, Pa. R.C.P. No. 1024(c) requires that in the event that one of the aforementioned exceptions is applicable, the person verifying the pleading must set forth the source of the person's information as to matters not stated upon his or her own knowledge *and* the reason why the verification is not made by a party. (emphasis added).

7. In the instant case, Plaintiff's counsel verified the Complaint. However, Plaintiff's counsel fails to set forth the exception to Pa. R.C.P. No.1024(c) upon which counsel bases his ability to verify the Complaint.
8. In addition, Plaintiff's counsel fails to state a reason why a party to the action was unable to verify the Complaint.
9. Thus, the verification of the Complaint by Plaintiff's counsel in this matter fails to conform to Pa. R.C.P. No. 1024(c) and preliminary objections are therefore appropriate. Pa. R.C.P. No.1028(a)(2).

WHEREFORE, Defendant Richard Walburn respectfully requests that this Honorable Court sustain his preliminary objections and dismiss Plaintiff's Complaint with prejudice.

III. MOTION TO STRIKE/FAILURE OF PLEADING TO CONFORM TO LAW OR RULE OF COURT – FAILURE TO ATTACH COPY OF WRITTEN AGREEMENT

10. Plaintiff avers in paragraph five (5) of the Complaint to have furnished a Cardmember Agreement to Defendant.
11. The Pennsylvania Rules of Civil Procedure state that when the claim or defense is based upon a writing, a copy of the writing shall be attached. Pa. R.C.P. 1019(i). The Rule goes on to state that "...if the writing is not accessible to the pleader, it is sufficient to so state, together with the reason, and to set forth the substance in writing."

12. Plaintiff simply states that they requested the agreement from themselves, but does not provide a reason for the absence of the alleged agreement or the substance contained therein.

13. Plaintiff alleges in paragraph six (6) of the Complaint that Defendant made use of the LVNV Funding LLC credit card, and such use "...constituted acceptance of the terms and conditions and subjects the Defendant to the terms and conditions contained therein." Not only does Plaintiff fail to specify where the terms and conditions were contained, Plaintiff fails to attach that vessel.

14. Plaintiff alleges a contract interest rate of six percent (6%), but fails to attach the contract that contains this rate and the agreement of Defendant to the rate.

15. Therefore, Plaintiff has failed to adhere to the requirements of Pa. R.C.P. No. 1019 (i), thereby requiring the filing of Defendant's Preliminary Objections pursuant to Pa. R.C.P. No. 1028(a)(2).

WHEREFORE, Defendant Richard Walburn respectfully requests that this Honorable Court sustain his preliminary objections and dismiss Plaintiff's Complaint with prejudice.

IV. MOTION TO STRIKE/INSUFFICIENT SPECIFICITY OF PLEADING

16. Pennsylvania Rule of Civil Procedure 1019(a) requires that the "material facts" upon which a cause of action is based be stated in a concise and summary form.

17. Plaintiff alleges in paragraph nine (9) of the Complaint that the account became delinquent, though Plaintiff failed to set forth the date upon which this alleged delinquency occurred.
18. Plaintiff alleges to have mailed Defendant monthly account statements though not one of these statements was attached to the Complaint.
19. Plaintiff fails to provide a breakdown of charges and payments to support the allegation that the principal amount owed is nine thousand eight hundred seventy-seven dollars and seventy-eight cents (\$9,877.78).
20. Plaintiff alleges a contract rate of six percent (6%) interest but fails to allege the frequency with which this rate is calculated.
21. Defendant is unable to prepare an answer to the Plaintiff's Complaint or properly defend the Complaint due to Plaintiff's failure to allege the material facts upon which the claim is based.
22. Therefore, Plaintiff has failed to adhere to the requirements of Pa. R.C.P. No. 1019(a) requiring the filing of Preliminary Objections pursuant to Pa. R.C.P. No. 1028(a)(2).

WHEREFORE, Defendant Richard Walburn respectfully requests that this Honorable Court sustain his preliminary objections and dismiss Plaintiff's Complaint with prejudice.

Respectfully submitted,

MidPenn Legal Services
Attorneys for Defendant

BY: Shana M. Pugh /s/ Do
Shana M. Pugh, Esquire
ID# 200952

Date

CA

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

LVNV FUNDING LLC
SEARS GOLD MASTERCARD,
Plaintiff

vs.

RICHARD WALBURN,
Defendant

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*
* NO.: 08-1329-CD
*
* Type of Case: Civil
*
* Type of Pleading: Petition to Schedule
* Oral Argument
*
*
* Filed on Behalf of: Defendant
*
* Counsel of Record for this Party:
* Shana M. Pugh, Esquire
*
* Supreme Court No.: 200952
*
* MidPenn Legal Services
* 230 Lincoln Way East, Suite A
* Chambersburg, PA
* (717) 264-5354

FILED⁶²
01:34 PM SEP 22 2008
Atty Pugh

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

LVNV FUNDING LLC
SEARS GOLD MASTERCARD
Plaintiff

vs.

RICHARD WALBURN,
Defendant

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:
: Civil Action
:
: No. 08-1329-CD
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:
:

**PETITION TO SCHEDULE ARGUMENT ON DEFENDANT'S PRELIMINARY
OBJECTIONS TO PLAINTIFF'S COMPLAINT**

Defendant, Richard Walburn, by and through her attorney, Shana M. Pugh, of MidPenn Legal Services, requests the Court to schedule the argument on Defendant's objections and alleges as follows:

1. Plaintiff filed a Complaint on July 21, 2008.
2. Defendant filed Preliminary Objections to Plaintiff's Complaint on August 22, 2008, a date within twenty days of service of the Complaint.
3. As of September 22, 2008, Plaintiff has not filed an Amended Complaint.

WHEREFORE, Defendant requests the Court to schedule argument on the Defendant's Preliminary Objections.

Shana M. Pugh / 100
Shana M. Pugh

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

LVNV FUNDING LLC
SEARS GOLD MASTERCARD

Plaintiff

vs.

RICHARD WALBURN,
Defendant

Civil Action

No. 08-1329-CD

FILED

SEP 23 2008

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William A. Shaw
Prothonotary/Clerk of Courts

(610)

2 Clerk to Art

ORDER

AND NOW, this 23rd day of September, 2008, upon
consideration of Defendant Richard Walburn's Preliminary Objections filed in the
above captioned matter, it is the Order of the Court that argument has been
scheduled for the 15th day of October, 2008 at
9:30 o'clock A.m. in Courtroom # 2, Clearfield County
Courthouse, Clearfield, Pennsylvania.

BY THE COURT,

Frederick J. Cunningham

DATE: 9-23-06

☒ You are responsible for serving all appropriate parties.

☒ The Prothonotary's office has provided service to the following parties:

☐ Plaintiff(s) ☐ Plaintiff(s) Attorney ☐ Other
☐ Defendant(s) ☐ Defendant(s) Attorney
☐ Special Instructions:

FILED

SEP 23 2008

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

LVNV FUNDING LLC
SEARS GOLD MASTERCARD
15 South Main Street
Greenville, SC 29601

Plaintiff

CIVIL ACTION

NO: 08-1329-CD

vs.

RICHARD WALBURN
315 Nichols Street Apt 7
Clearfield, PA 16830-1505

Defendant

FILED

SEP 24 2008

William A. Straw

Prothonotary/Clerk of Courts

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NOTICE TO DEFEND

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MIDPENN LEGAL SERVICES
211 1/2 E LOCUST STREET
CLEARFIELD, PA 16830
814-765-9646

LVNV FUNDING LLC
SEARS GOLD MASTERCARD
15 South Main Street
Greenville, SC 29601

Plaintiff

vs.

RICHARD WALBURN
315 Nichols Street Apt 7
Clearfield, PA 16830-1505

Defendant

Plaintiff, LVNV Funding LLC Sears Gold Mastercard, by and through its attorneys, Edwin

1. Plaintiff, LVNV Funding LLC Sears Gold Mastercard, (hereinafter "Plaintiff") is a Delaware corporation with a principal place of business located at 15 South Main Street, Greenville, SC 29601.

3. At all relevant times herein, Plaintiff was engaged in the business of extending credit to potential clients.

4. Defendant applied for and received a credit card issued by Plaintiff with the account number 5121070120782483.

5. Use of the Sears Gold credit card was subject to the terms and conditions of the Cardmember Agreement (hereinafter "Agreement"), a copy of which was sent along to the Defendant with the credit card. (*See, Cardmember Agreement, attached hereto as Exhibit "A".*)

6. Defendant used the Sears Gold credit card with account number, 5121070120782483, for purchases, cash advances and/or balance transfers. Use of the card in this manner constituted acceptance of the terms and conditions and subjects the Defendant to the terms and conditions contained therein.

7. The Defendant was mailed monthly account statements relative to the Defendant's use of the subject credit card.

8. The Defendant defaulted under the terms of the Agreement by failing and refusing to make monthly payments on the account as they became due.

9. The account became delinquent on June 29, 2006.

10. The amount due and owing was \$9,877.78 at the time of charge-off.

11. Pursuant to the account agreement, any unpaid balance accrues interest at the contract rate of 6%.

12. The principal amount was \$9,877.78 at the time it was received by Plaintiff.

13. The total amount due and owing the Plaintiff including interest, is \$11,392.89.

14. Pursuant to the terms of the Agreement, Defendant is liable for Plaintiff's court costs and reasonable attorney's fees.

WHEREFORE, Plaintiff requests judgment in its favor and against Defendant in the amount of \$11,392.89 plus costs of suit, reasonable attorneys' fees and any other relief as the Court deems just and appropriate.

Respectfully submitted,

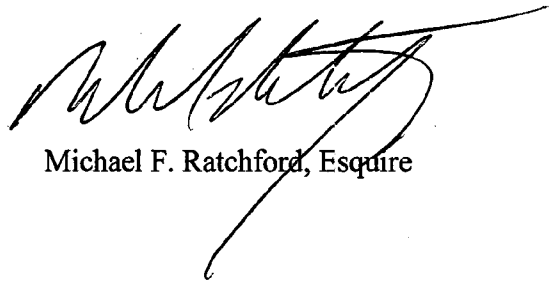
A handwritten signature in black ink, appearing to read "Michael F. Ratchford", with a stylized flourish at the end.

Edwin A. Abrahamsen & Assoc.
Michael F. Ratchford, Esquire
Attorney I.D. Nos.: 86285
1729 Pittston Avenue
Scranton, PA 18505
mratchford@eaa-law.com

VERIFICATION

I, Michael F. Ratchford, attorney for Plaintiff, LVNV Funding LLC Sears Gold

Mastercard, am fully familiar with the facts set forth in the within Amended Complaint and am authorized to make this Verification on behalf of Plaintiff. I Verify that the facts set forth in the within allegations are true and correct to the best of my knowledge, knowing that any false statements are punishable by law pursuant to 18 C.S.A. 4904.

A handwritten signature in black ink, appearing to read 'Michael F. Ratchford', with a long, sweeping horizontal line extending from the end of the signature.

Michael F. Ratchford, Esquire

Exhibit "A"

Sears Roebuck
(Sears Nat'l Bank)

(d) Periodic Rate Finance Charges

Sears Regular and External Regular Purchases:

For Sears regular and External regular purchases the daily periodic rate and the corresponding ANNUAL PERCENTAGE RATE may vary from month to month. The ANNUAL PERCENTAGE RATE will be determined by adding 6.99% to the U.S. Prime Rate as published in *The Wall Street Journal* on the first business day of each month. This rate will be applied in all billing cycles with a Billing Date in the following calendar month. The daily periodic rate Finance Charge will be determined by multiplying the ending balance of the day by the daily variable periodic rate. The daily periodic rate will be equal to 1/365th of the ANNUAL PERCENTAGE RATE.

Cash Access Transactions:

For Cash Access transactions the daily periodic rate and the corresponding ANNUAL PERCENTAGE RATE may vary from month to month. The ANNUAL PERCENTAGE RATE will be determined by adding 10.80% to the U.S. Prime Rate as published in *The Wall Street Journal* on the first business day of each month. This rate will be applied in all billing cycles with a Billing Date in the following calendar month. The daily periodic rate Finance Charge will be determined by multiplying the ending balance of the day by the daily variable periodic rate. The daily periodic rate will be equal to 1/365th of the ANNUAL PERCENTAGE RATE.

Variable Rates:

The U.S. Prime Rate was 4.75% as of February 1, 2002. Adding 6.99% to that U.S. Prime Rate on Sears regular and External regular purchases results in a corresponding ANNUAL PERCENTAGE RATE of 11.74% for all billing cycles with a Billing Date in March 2002. Adding 10.80% to that U.S. Prime Rate on Cash Access transactions results in a corresponding ANNUAL PERCENTAGE RATE of 15.55% for all billing cycles with a Billing Date in March 2002. At that time, the daily periodic rate was 0.0322% for Sears regular and External regular purchases and 0.0426% for Cash Access transactions. To determine the current U.S. Prime Rate, check the "Money Rates" section of *The Wall Street Journal* for the first business day of this month or call 1-800-669-8483.

All Balances:

If at any time we do not receive the Minimum Due by the time and in the manner specified in section 9(b) in order to be credited as of the Payment Due Date, for two consecutive billing cycles, the terms of any No Finance Charge Balances and/or Deferred Payment Balances may be cancelled and all balances will become subject to a higher ANNUAL PERCENTAGE RATE that may vary from month to month, beginning with the billing cycle after the billing cycle in which we do not receive the second Minimum Due by such time and in such manner. This ANNUAL PERCENTAGE RATE will be determined by adding 18.25% to the U.S. Prime Rate. As of February 1, 2002, the U.S. Prime Rate was 4.75%. Adding 18.25% to that U.S. Prime Rate would result in an ANNUAL PERCENTAGE RATE of 24.00% (daily periodic rate of 0.0658%) for all billing cycles with a Billing Date in March 2002. This rate will continue to be applied until we have received, by the time and in the manner specified in section 9(b) in order to be credited as of the Payment Due Date, the Minimum Due for six consecutive billing cycles. At that time, we may reduce the daily periodic rate to the rate then in effect for Sears regular purchases, External regular purchases and Cash Access transactions beginning with the following billing cycle. A higher ANNUAL PERCENTAGE RATE will result in a higher Finance Charge and perhaps a greater Minimum Due.

Exercising your privacy rights

If you do not want Sears Credit to share information related to your account, please complete the attached form and mail it to us in the enclosed envelope at the address provided. Please note that your request is subject to the limitations and restrictions described above.

IMPORTANT: Your request on the attached form is specific to this Sears Credit account.

If you have more than one account with Sears Credit and you do not want us to share information related to your other accounts, you must complete a separate request form for each of those accounts and return them to Sears Credit.

This notice has been sent only to the person who receives the monthly statement on this account (primary user). If more than one person is authorized to use this account, then the primary user's privacy request will apply to all other authorized users. If you are an authorized user of this account, but not the primary user, and you wish to make your own privacy request to us, please write to Sears Credit, P.O. Box 818014, Cleveland, OH 44181-8014. We will mail you a separate form to make your request.

Spanish/Español

You may request a Spanish language version of the Sears Credit Financial Information Privacy Notice by writing to us at P.O. Box 818014, Cleveland, OH 44181-8014.

Usted podrá solicitar una versión en español de la Notificación de Privacidad de la Información de Crédito financiera de Sears escribiéndonos al P.O. Box 818014, Cleveland, OH 44181-8014.

Use the attached form if you wish to exercise your rights to limit the information Sears Credit shares among the Sears family of businesses. Please be aware that exercising these rights may result in your removal from some mailing lists, which may prevent you from receiving communications from us about money-saving offers and/or valuable benefits.

If you choose to return the attached form, please mail to:
Sears Credit
P.O. Box 162392
Columbus, OH 43218
Please do NOT include any other correspondence.

GLBA/CRI Rev. 2/02

Financial Information Privacy Notice

From Sears National Bank
and Sears, Roebuck and Co. ("Sears"),
as its agent ("Sears Credit" or "We")

Note: This notice applies to the information you provide to Sears Credit and does not apply to customer information collected by the Sears family of businesses for retail and other non-financial purposes.

Our Privacy Promise to You

We value the trust you place in Sears Credit, Sears, and the companies Sears owns and operates ("affiliates"), and we want to return that trust by protecting your privacy. We have created this brochure to help you understand what information we gather about you, how we use it and how we protect it.

Sears Credit does not rent or sell your customer information to outside marketers. However, we may share your information within the Sears family of businesses, which includes all Sears affiliates, as well as other businesses with which Sears has a relationship and which have agreed to adhere to Sears standards of privacy, service and quality. If we were to sell all or part of one of our businesses, we may also share your information related to that business as part of the sale.

Sears Credit has developed security procedures designed to protect your information. Employee access to your information is restricted on a "need to know" basis, and our employees are educated about the importance of safeguarding your information and preventing unauthorized access, disclosure and use of that information.

Your Rights

Sears Credit gathers your information in an effort to provide you with exceptional service and offers that will be of interest to you. As you'll see in more detail below, you have the right to prevent us from sharing information related to your credit account with members of the Sears family of businesses that are not affiliates of Sears Credit or Sears. You also have the right to tell us not to share certain pieces of information with our affiliates.

It is important to note that if you choose to prevent us from sharing your information, you may no longer receive notification of money-saving offers and/or valuable benefits from the Sears family of businesses.

About the information we collect

To serve you better and communicate on a more personal level, we collect information from these sources (examples are for illustration purposes and are not a complete list of sources of information):

- Applications and other forms with your name and contact information.
- Computer "cookies," which tell us about your Internet service provider and browser.
- Your Sears Credit account, which includes information like your account balance, payment history and purchase details.
- Consumer reporting agencies, which tell us your credit history, for example.
- Third party sources, who, for example, may provide
 - demographic information (age, gender, household size, etc.)
 - information about your purchases from other businesses
 - mailing lists.

About the businesses with whom we share your information

TYPE OF BUSINESS	WHAT INFORMATION WE MAY SHARE
Outside Contractors and Service Providers These are companies such as printers or Sears Dealer stores that perform services on Sears Credit's and Sears behalf. This category also includes other financial institutions, such as insurance companies, with whom Sears Credit has joint marketing agreements.	We may share the following information with Outside Contractors and Service Providers: <ul style="list-style-type: none">• Your name, contact information and account number. Your account number will be encrypted if it is shared with companies offering marketing services.• Your purchase history and demographic data.• The account information necessary to process your account purchases or otherwise service your account.
Exempt Third Parties This includes companies that process our financial products and services, companies that maintain and safeguard our account information, debt collectors, certain companies connected with the sale of all or part of one of our businesses, and government agencies as necessary to respond to legal subpoenas and other legal processes.	We are permitted by law to share financial information about you with Exempt Third Parties as necessary.

TYPE OF BUSINESS	WHAT INFORMATION WE MAY SHARE
Affiliates These are businesses owned and operated by Sears. Examples include Sears department stores, Sears.com, Sears-owned, home improvement businesses, Sears insurance companies and Sears proprietary catalogs (including Wish Book and Craftsman Power and Hand Tool Catalog).	Credit Account Information: The law authorizes Sears Credit to share with our affiliates information about your account, such as the name and address listed on your account, your account balance and your payment history. Other Information: We may also share personal financial information gathered from your application, credit reporting agencies or third-party demographic information. You may direct Sears Credit not to share this Other Information with our affiliates by filling in the corresponding circle on the enclosed form and mailing it to Sears Credit.
Non-Affiliates Sears Branded (A) These are Sears franchises and licensees—companies that provide Sears-branded products and services but that are not owned or operated by Sears. Examples include: <ul style="list-style-type: none">• Sears Shop-At-Home catalogs, such as apparel, home fashions and health care catalogs.• Sears branded retail products and services, like Sears Portrait Studio, Sears Optical and Sears Flowers.• Sears branded home products and services such as kitchen and bath remodeling and patio enclosures.• Sears branded clubs and services like motor club. Sears Co-Branded (B) These are third party companies that offer co-branded products and services with Sears.	We may share the following types of information: <ul style="list-style-type: none">• Your name, address and telephone number.• Your purchase history and demographic data.• An encrypted version of your account number that may only be used to process purchases you make with you Sears Credit account. You may prevent Sears Credit from sharing your information with these non-affiliates by filling in the corresponding circles on the enclosed form and mailing it to Sears Credit.

Vermont residents: As required by state law, Sears Credit will not share your account information with Sears-branded or co-branded "Non-Affiliates" or your "Other Information" with our "Affiliates" without your permission.

**SEARS NATIONAL BANK
SEARS MASTERCARD® CARD ACCOUNT
OLDER ACCOUNT AND SECURITY AGREEMENT**

This Sears MasterCard Account Cardholder Account and Security Agreement ("Agreement") governs the use of your Sears MasterCard Account ("Account"). You should read and keep this Agreement for your records. You agree to use your Account only for personal, family or household purposes.

[illegible]

By keeping or signing the Card, or by using the Card or Account, you agree that the terms and conditions of this Agreement apply to your use of your Account. You also agree that the terms and conditions apply to you when you allow any other person to use your Account.

Section 2: LOANS AND LIABILITY

[illegible]

(b) You agree to pay all amounts owed on the Account whether incurred by you, any person from whom you receive a benefit, By keeping or signing the Card, or by using the Card or Account, anyone who uses the Card or Account assumes the same legal liability as if the Card or Account were issued to them. The terms of the Card and Account Agreement apply to the use of the Card and Account regardless of whether the Card or Account holder authorizes third parties to use the Card or Account. Court decisions for breach of separation do not alter liability for use of the Card or Account. You promise to use your Account only to repay the amount in full pursuant to the Agreement.

(c) **Joint Accounts.** If the Account is a Joint Account, each accountholder is bound by the terms of this Agreement and is jointly and individually liable for all amounts owed under this Agreement even when they do not use the Account themselves. The delivery of notices or Account Statements (see Section 3 of this Agreement) to any accountholder will constitute delivery to all accountholders. We may rely on instructions given by you and will not be liable to any accountholder or other person for honoring any such instructions. If any accountholder gives us notice disclaiming liability for amounts owed under this Agreement, we may close the Account.

Failure to Honor Card or Authorize Transaction. We are not responsible for the failure of any person or entity to honor a Card or the Account. We will not be liable if, for any reason and at any time, we do not authorize a transaction on the Account, even if you have sufficient available credit.

Section 3. ACCOUNT STATEMENT. We will send you an account statement ("Account Statement") for each billing cycle, where there is purchase activity on the Account, there is a balance of \$1.00 or more, or a Finance Charge is imposed on the Account. We deem your Account uncollectible or delinquent if the proceedings have been instituted against you. The Account Statement (including the reverse side) contains important information and should be carefully read and reviewed each time it is received.

[illegible]

You understand that we do not encourage the use of the Account by people who are not accountholders or Authorized Users. If you allow another person to use the Account but do not tell us, we will treat all charges made by that person as if the charges were made by an Authorized User. It is your responsibility to control or terminate the use of your Account by such persons, and you will remain liable for any and all use by such persons.

(b) **Unauthorized Use.** If you discover or believe that any change on the Account is unauthorized, you agree to call us immediately at the telephone number, or write to us at the address, indicated on your Account Statement and to cooperate with us in making a reasonable investigation of your claim. If you give us oral notice concerning loss or theft, we may ask you to confirm it in writing.

Liability for Unauthorized Use. You will not be liable for unauthorized use of your Account if: 1) you have exercised reasonable care in safeguarding the Card; 2) you have notified us of the loss, theft, or possible unauthorized use; 3) you have not reported two or more incidents of unauthorized use in the immediately preceding twelve (12) month period; and 4) your Account is in good standing. If you have not complied with any of these conditions you may be liable for unauthorized use of your Account for an amount not to exceed \$50.

Section 5. CREDIT LINE. If a "credit line," including a Cash Access Line ("Cash Access Line"), is not currently available to your Account we may assign one to you. If you do not wish to accept such an assignment, you must notify us in writing within 30 days of the date of our offer. If you do not notify us within the 30-day period, we may increase, decrease or terminate your Credit Access Line at any time without notice to you and without affecting your obligation to make payments (including payment) under this Agreement. Your entire Credit Line (including any Cash Access Line) may be disclosed in your Credit Statement as available for your Credit Line. If a Credit Line is assigned to the Account, the amount available for use is reduced by the amount of any promissory notes and transactions authorized but not yet paid. The amount of the Credit Line available for use is reduced by the amount of any outstanding Credit Line established by us. An overpayment or credit balance will be applied to the outstanding balance of the Credit Line. Any overpayment or credit balance for the Credit Line will be available for use by the Account. We agree to be responsible for all charges against the Credit Line and not for any excess you Credit Line.

Section 5. SECURITY INTEREST. Each account holder and each Authorized User (collectively, the "User") grants to the Uniform Commercial Code ("UCC") Secured Party a purchase money security interest under the Uniform Commercial Code in each item of merchandise purchased on the Account from Sears, to the extent permitted by law, to secure only the purchase price of the merchandise purchased on the Account from Sears, and the interest on the purchase price of such merchandise (including installation costs and sales tax until that amount is paid in full). In full We may, at our discretion, elect not to take a security interest in merchandise purchased from an entity, other than Sears, Roebuck and Co., its affiliates and licensees, that accepts the Sears Card.

However, no such restriction shall affect our right to take and enforce a security interest in any other item of merchandise, constitute a waiver of any of our rights, or be deemed to establish a custom or course of dealing or performance with respect to the merchandise. If you do not make payments as agreed, this security interest allows us to repossess. To the extent permitted by law, only the merchandise which has not been paid in full, if the merchandise is intended to be installed as a fixture, are subject to being sold or otherwise disposed of by us without delay in a separate sale.

operation of law or that gives rise to a right of rescission under the federal Truth In Lending Act. However, we do not waive any lien created, obtained or granted in a collection proceeding or by judgment or other court order. You understand and agree that you are responsible for any loss or damage to the merchandise until the purchase price is fully paid.

PAYMENTS

[illegible]

Section 6. MINIMUM PAYMENTS. The Minimum Due is based on the current Account Balance, as shown on your Account Statement, less any Delinquent Payments made by you prior to the date of the Account Statement. Your Payment Balance after No Finance Charge Balances (defined in Section 10 of the Agreement), the Minimum Due each billing cycle will reflect the cashed payment amount less any delinquent payments made by you prior to the date of the Account Statement. Accounts are less assessed that billing cycle and for past due amounts. Your Minimum Due each billing cycle will be the greatest of:

- (a) \$10.00; or
- (b) 1% of your Account Balance, minus any Delinquent Payment Balances (as defined in Section 10 of the Agreement); or
- (c) approximately 1/48th from rounded to the next higher whole dollar amount or (d) billed Finance Charges on your Account, rounded to the next whole dollar amount, plus \$1.00. However, if your Account Balance, less any Delinquent Payments and/or No Finance Charge Balances, is less than \$10.00, your Minimum Due shall be \$10.00.

Your Minimum Due may vary from time to time. See also "Your Payment Balance After No Finance Charge Balances."

Section 9. CREDITS AND PAYMENTS.

(a) **Refunds.** Cash refunds will not be made for goods or services purchased with the Account. Refunds will be made only by a credit to the Account.

Method of Payment. You agree to repay all amounts owed on the account and to make all payments in Proper Form. A payment is in Proper Form if it is made in U.S. dollars, is on a business day, is made by cash, check, money order, or credit card, and is made to the business address specified on your Account Statement, and (a) accompanied by the remittance portion of your Account Statement. Payments in Proper Form received by us by 1:00 p.m. local time, on a business day, will be credited to the account. If received payments in Proper Form received after that time will be credited to the account on the next business day. If you are not in receipt of this Account Statement, and will instead be considered to have been received as of the next business day. Our business days are Monday through Friday, excluding federal holidays. Credit to your Account may be delayed up to two (2) business days if the payment is not in Proper Form, including if it is made in a way that does not comply with the requirements of this Account Statement. Duplicating payments made at State Street.

In addition to any applicable Finance Charges, we may charge a late payment fee if any payment is not received or credited by the required time and date. Although we will credit your payments as described in this section, your available Credit Line, if one is assigned to the Account, may not be restored for several days after we receive your payment.

(c) **Conditional Payments.** Any conditional check, money order or any other instrument tendered with a restrictive endorsement or as full satisfaction of a disputed debt must be sent to our address for billing error notices, shown on each Account Statement, and must conspicuously state on the face of

that payment or in an accompanying letter that it is tendered for this purpose. If you make payment in any other way and we accept it, we will not have waived our right to collect any amount from you owing under this Agreement.

Individual transactions on your Account is determined by the timing and type of charge. Generally, payments received will be applied to the following order: Cash on Account, Protection Plan, Insurance, and Cash Account. Cash fees, billed in the month of the transaction, will be applied to the Cash Account first. Billed Finance Charges will be applied to the Finance Charge Account first. Then, No Finance Charge Balances in the order in which No Finance Charge Balances appear. Payments will be applied within prebilled and current balances in the following order: Sales promotions, interest, External Account Balances, Cash Account Balances, Cash Account Balances, External regular balances, External regular balances, fees, outstanding Cash Account fees, Cash Account fees and then Cash Account regular balances. Within each purchase type category, payments will be applied to charges in the order that they were made. If more than one charge in any purchase type category is applied to a payment, the payment will be applied first to the oldest charge. To be sure a category will be applied first to the lowest priced item(s) in that category. However, certain promotions that we may offer from time to time may provide a special method of allocating payments. Any such special allocation method will be explained in the materials relating to a particular promotion. If you make a payment to any of our accounts, we will apply your payment to the account described in the materials relating to that particular promotion.

(e) **Step a Payment.** Under the Step a Payment provision, when offered by us, you may elect not to make the Minimum Due for the designated billing cycle. However, Finance Charges will continue to accrue during the period of payment deferral and you still must pay any insurance charges due.

SPECIAL PROGRAMS

Section 10. SPECIAL PROMOTIONS. From time to time, we offer special promotions, including special rates, discounts, rebates, and other special promotions, under which purchases of goods or services, including Cash Advance transactions may be billed to your Account with special promotional terms. The Finance Charges, minimum payment, application of payments and other terms for special promotions may differ from the standard terms described in this Agreement and as may be shown on your Account Statement. These special promotions may be subject to any special restrictions, limitations, and conditions that may apply to any special promotion. These special promotions may be modified by changes in the standard promotional terms without notice. You agree to accept the special promotional, standard terms we continue to apply to any and all transactions that you agree to subject to the special promotion. If you elect a special promotion, you agree to be subject to the special promotional terms.

[illegible]

SECTION 11. REWARDS PROGRAMS From time to time, bonus plans, profit sharing plans, stock options, and other incentive programs may be offered by us or our affiliates in conjunction with the Account ("Rewards Programs"). These programs may be subject to the terms and conditions of the Rewards Program only and may not be subject to the terms and conditions of the Account. The terms of the transaction(s) specified, Rewards Programs participation may be conditioned if at any time you are in default under this Agreement. You also agree that the Rewards Programs may be terminated or modified at any time and may only be used as specified under the Rewards Programs. We may, at any time, choose to use the Rewards Programs for purposes other than the Rewards Programs as stated to approximate loss, change any term or condition, or add any term or condition to any Rewards Programs without notice to you. You understand and agree that the Rewards Programs are not a contract and you may not have any claim, demand, or any other claim against us or our affiliates for any Rewards Programs upon dissolution of the Account by you or us.

that payment or in an accompanying letter that it is tendered for this purpose. If you make payment in any other way and we accept it, we will not have waived our right to collect any amount from you owing under this Agreement.

- (c) **Application of Payments.** The order in which payments are applied to individual transactions on your Account is determined by the timing and type of charge. Generally, payments received will be applied in the following order: Sears Credit Protection Plan transactions or Sears AccountCare fees, billed Finance Charges, previous balances, current balances, Deferred Payment Balances in the order in which Deferred Payment Balances expire, and then No Finance Charge Balances in the order in which No Finance Charge Balances expire. Payments will be applied within previous and current balances in the following order: Sears promotional balances, External promotional balances, Cash promotional balances, Old Balances, Sears regular balances, External regular balances, fees excluding Cash Access fees, Cash Access fees and then Cash Access regular balances. Within each purchase type category, payments will be applied to charges in the order that they were made. If more than one charge in any purchase type category is made to your account on the same date, payments that are allocated to that category will be applied first to the lowest priced item(s) in that category. However, certain promotions that we may offer from time to time may provide a special method of allocating payments. Any such special allocation method will be explained in the materials relating to a particular promotion. If you take advantage of any such promotion, then we will apply payments in the manner described in the materials relating to that promotion.

- (d) **Skip a Payment.** Under the Skip a Payment promotion, when offered by us, you may elect not to make the Minimum Due for the designated billing cycle. However, Finance Charges will continue to accrue during the period of payment deferral and you still must pay any Insurance charges due.

SPECIAL PROGRAMS

Section 10. SPECIAL PROMOTIONS. From time to time, we may offer special promotions, under which purchases of goods or services, balance transfers or Cash Access transactions may be billed to your Account with special promotional terms. The Finance Charges, minimum payment, application of payments and other terms for special promotions may differ from the standard terms described in this Agreement and as may be shown on your Account Statement. The standard terms of this Agreement apply to any special promotion, except where changed by the special promotion. Except to the extent modified by the terms of the special promotion, standard terms will continue to apply to any and all transactions that are not subject to a special promotion. If you elect a special promotion, you agree to the terms of the promotion and understand that the terms of any special promotion may be cancelled if at any time you are in default under this Agreement (see Section 20). If you are in default under this Agreement, you may not be eligible for any special promotions. Special promotion balances on which payments are deferred are referred to as "Deferred Payment Balances" in this Agreement. Special promotion balances on which there are no Finance Charges assessed or payment required during the promotional period are referred to as "No Finance Charge Balances" in this Agreement.

Section 11. REWARDS PROGRAMS. From time to time, bonus point, rebate, merchandise certificate or other incentive programs may be offered by us or others in conjunction with the Account ("Rewards Programs"). These programs may include a participation fee. You agree that a Rewards Program only applies during the period specified by us for the particular program, and only for the transaction(s) specified. Rewards Programs participation may be canceled if at any time you are in default under this Agreement. You also agree that the Rewards Program points or credits may have no monetary value and may only be used as specified under the Rewards Program. We may, at any time and condition, to any Rewards Programs without notice to you. You understand and agree that any Rewards Program points or credits will be forfeited immediately upon closure of the Account by you or us.

FINANCE CHARGES AND OTHER CHARGES

Section 12. FINANCE CHARGES. See the enclosed explanation of periodic rate "Finance Charges" that will apply to your account.

Section 13. LATE PAYMENT FEE. If you fail to pay any Minimum Due in the time and manner specified in section 8(b) to be credited as of its Payment Due Date, we may charge, and you agree to pay, a late payment fee of \$29.00.

Section 14. RETURNED PAYMENT FEE. If you make a payment, including an electronic payment, that is not honored or is returned unpaid for any reason, we may charge, and you agree to pay, a returned payment fee of \$29.00. At our option, we may assess this charge the first time your payment is not honored or returned, even if it is paid upon resubmission.

Section 15. OVER CREDIT LINE. If you make charges to your Account that cause the balance to exceed your Credit Line, we may charge and you agree to pay an over credit line fee of \$29.00.

Section 16. OTHER FEES.

- (a) **Cash Access Transaction Fee.** If you utilize Cash Access or Balance Transfers, we may charge, and you agree to pay, a FINANCE CHARGE of 3% of the Cash Access or Balance Transfer transaction, but not less than \$5.00.
- (b) **Convenience Check Stop Payment Fee.** If a Convenience Check is stopped at your request, we may charge, and you agree to pay, a stop payment fee of \$29.00.
- (c) **Return Convenience Check Fee.** If we decline to honor a Convenience Check because the amount of the check would cause the balance to exceed your Cash Access line, you are in default (see Section 20), you did not comply with our instructions regarding the check, your Account has been closed or your Card has expired, we may charge, and you agree to pay, a return Convenience Check fee of \$29.00.
- (d) **Collection Fees.** If you are in default and fail to pay what you owe us, we may charge you reasonable attorney's fees, collection costs (including expenses incurred in realizing on a security interest) and court costs if permitted by applicable law. Reasonable attorney's fees will be considered to be 55% of the outstanding balance on your Account when it is referred to an attorney for collection. State law may limit what collection costs and fees we may charge.
- (e) **Service Fee.** We reserve the right to charge a service fee of \$3.00 per item, to the extent permitted by law, for requests that you make to us, such as asking for copies of sales slips or providing other documentation regarding your Account (other than in connection with billing errors).

PHONE CALLS, CREDIT INVESTIGATION REPORTING AND INFORMATION SHARING

Section 17. PHONE CALLS. We and our servicers or agents may contact you by telephone or electronic means regarding the Account, including the use of an automatic dialing-announcing device. We and our servicers or agents may listen to and record any phone conversations with you for training purposes or to evaluate the quality of service, or as otherwise permitted by law. You agree that we may contact you about your Account without advance notice from us.

Section 18. CREDIT INVESTIGATION AND DISCLOSURE OF INFORMATION. We have the right to investigate your credit, employment and income records, and to verify your credit references for the purposes of considering your application for the Account and, subsequently, in connection with any updates, renewals or extensions of credit or reviewing or collecting the Account. We also may report our transactions or experiences with you, including the way you pay the Account, and otherwise disclose information about you to credit reporting agencies and others, including our affiliates and Sears licensees. You understand we may obtain a consumer report prepared by a credit reporting agency when you apply for the Account and at any time thereafter. If you violate any of the terms of this Agreement, you understand and agree that a negative report may be submitted to credit reporting agencies and entered on your credit record. If you believe we have reported inaccurate

Como un servicio a nuestros clientes, le proporcionamos una copia de este Acuerdo en español si usted así lo solicita. Para obtener esta copia, puede escribirnos al: c/o P.O. Box 810002, Cleveland, OH 44181-0002, o llamarnos al 1-800-668-9488, y solicitar una versión en español de este Acuerdo.

section 25. **TERMINATION.** You may terminate this Account at any time by notifying us in writing. We may, at any time without prior notice to you, and with or without cause, terminate this Agreement or terminate your right to make future purchases or other transactions on the Account. If we terminate your Account, we will immediately stop using the Account and agree to destroy all Cards associated with the Account as required by law.

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**IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA**

LVNV FUNDING LLC
SEARS GOLD MASTERCARD
15 South Main Street
Greenville, SC 29601

Plaintiff

CIVIL ACTION

NO: 08-1329-CD

vs.

RICHARD WALBURN
315 Nichols Street Apt 7
Clearfield, PA 16830-1505

Defendant

CERTIFICATE OF SERVICE

I, Michael Ratchford, Esquire, hereby certify that I caused a true and correct copy of the Plaintiff's Amended Complaint to be served via first class U.S. mail, postage prepaid on the date indicated upon the following:

Shana M. Pugh, Esquire
MidPenn Legal Services
230 Lincoln Way East, Suite A
Chambersburg, PA 17201
Attorney for Defendant

Edwin A. Abrahamsen & Associates

Date: 9/18/2008

By: 

Michael F. Ratchford, Esquire
Attorney I.D. No.: 86285

JA

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

LVNV FUNDING LLC
SEARS GOLD MASTERCARD,
Plaintiff

vs.

RICHARD WALBURN,
Defendant

*
*
*
* NO.: 08-1329-CD
*
* Type of Case: Civil
*
* Type of Pleading: Preliminary
* Objections
*
*
* Filed on Behalf of: Defendant
*
* Counsel of Record for this Party:
* Shana M. Pugh, Esquire
*
* Supreme Court No.: 200952
*
* MidPenn Legal Services
* 230 Lincoln Way East, Suite A
* Chambersburg, PA
* (717) 264-5354

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OCT 08 2008 Atty Pugh
William A. Shaw
Prothonotary/Clerk of Courts 64

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

LVNV FUNDING LLC	:	
SEARS GOLD MASTERCARD	:	
Plaintiff	:	Civil Action
	:	
vs.	:	No. 08-1329-CD
	:	
RICHARD WALBURN,	:	
Defendant	:	

**DEFENDANT'S PRELIMINARY OBJECTIONS
TO PLAINTIFF'S AMENDED COMPLAINT**

Defendant, Richard Walburn, by and through his undersigned counsel, Shana M. Pugh, of MidPenn Legal Services, hereby files these Preliminary objections to Plaintiff's Amended Complaint and avers the following in support thereof:

**I. MOTION TO STRIKE/FAILURE OF PLEADING TO CONFORM
TO Pa. R.C.P. No. 2002—PROSECUTION BY REAL PARTY IN INTEREST**

1. LVNV Funding, LLC Sears Gold Mastercard (hereinafter referred to as "Plaintiff") filed a Amended Complaint in this Honorable Court on September 24, 2008 against Richard Walburn (hereinafter referred to as "Defendant") seeking damages in excess of eleven thousand ninety-five dollars and fifty-nine cents (\$11,095.59).

2. Pennsylvania Rule of Civil Procedure Number 2002 requires that "...all actions shall be prosecuted by and in the name of the real party in interest...".
3. Plaintiff LVNV Funding, LLC Sears Gold Mastercard is not a real party in interest because the entity does not exist, despite Plaintiff's contention in paragraph one (1) of the Amended Complaint that Plaintiff is a Delaware corporation.
4. Therefore, Plaintiff cannot pursue this action.

WHEREFORE, Defendant Richard Walburn respectfully requests that this Honorable Court sustain her preliminary objections and dismiss Plaintiff's Amended Complaint with prejudice.

II. MOTION TO STRIKE/FAILURE OF PLEADING TO CONFORM TO LAW OR RULE OF COURT – VERIFICATION

5. Pennsylvania Rule of Civil Procedure 1024(c) requires that a pleading be verified by a party, with two exceptions: (1) *all* of the parties lack sufficient knowledge or information or (2) *all* of the parties are outside of the jurisdiction of the court *and* the verification of none of them can be obtained within the time allowed for the filing of the pleading. (emphasis added).
6. Moreover, Pa. R.C.P. No. 1024(c) requires that in the event that one of the aforementioned exceptions is applicable, the person verifying the pleading must set forth the source of the person's information as to matters not

stated upon his or her own knowledge *and* the reason why the verification is not made by a party. (emphasis added).

7. In the instant case, Plaintiff's counsel verified the Amended Complaint. However, Plaintiff's counsel fails to set forth the exception to Pa. R.C.P. No.1024(c) upon which counsel bases his ability to verify the Amended Complaint.
8. In addition, Plaintiff's counsel fails to state a reason why a party to the action was unable to verify the Amended Complaint.
9. Thus, the verification of the Amended Complaint by Plaintiff's counsel in this matter fails to conform to Pa. R.C.P. No. 1024(c) and preliminary objections are therefore appropriate. Pa. R.C.P. No.1028(a)(2).

WHEREFORE, Defendant Richard Walburn respectfully requests that this Honorable Court sustain his preliminary objections and dismiss Plaintiff's Amended Complaint with prejudice.

III. MOTION TO STRIKE/FAILURE OF PLEADING TO CONFORM TO LAW OR RULE OF COURT – FAILURE TO ATTACH COPY OF WRITTEN AGREEMENT

10. The Pennsylvania Rules of Civil Procedure state that when the claim or defense is based upon a writing, a copy of the writing shall be attached. Pa. R.C.P. 1019(i).
11. Plaintiff attached Exhibit "A" to the Amended Complaint. One page is untitled and unrelated to the next two pages, both of which consist of the Financial Privacy Notice. The remaining pages proclaim to be the

Cardholder Account and Security Agreement. This document is not dated nor signed by Defendant.

12. The contents of the Exhibit are insufficient to satisfy the requirement of the Pa. R.C.P. No. 1019(i).

13. Plaintiff alleges a contract interest rate of six percent (6%), but fails to attach the contract that contains this rate and the agreement of Defendant to the rate.

14. Therefore, Plaintiff has failed to adhere to the requirements of Pa. R.C.P. No. 1019 (i), thereby requiring the filing of Defendant's Preliminary Objections pursuant to Pa. R.C.P. No. 1028(a)(2).

WHEREFORE, Defendant Richard Walburn respectfully requests that this Honorable Court sustain his preliminary objections and dismiss Plaintiff's Amended Complaint with prejudice.

IV. MOTION TO STRIKE/INSUFFICIENT SPECIFICITY OF PLEADING

15. Pennsylvania Rule of Civil Procedure 1019(a) requires that the "material facts" upon which a cause of action is based be stated in a concise and summary form.

16. Plaintiff alleges to have mailed Defendant monthly account statements though not one of these statements was attached to the Amended Complaint.

17. Plaintiff fails to provide a breakdown of charges and payments to support the allegation that the principal amount owed is nine thousand eight hundred seventy-seven dollars and seventy-eight cents (\$9,877.78).

18. Plaintiff fails to indicate when the account was charged-off, a material fact necessary to prepare any defenses or other response to Plaintiff's Amended Complaint.

19. Plaintiff fails to account for the method by which the amount due and owing was calculated, a material fact necessary for Plaintiff to prepare any defenses or other responses to Plaintiff's Amended Complaint.

20. Defendant is unable to prepare an answer to the Plaintiff's Amended Complaint or properly defend the Amended Complaint due to Plaintiff's failure to allege the material facts upon which the claim is based.

21. Therefore, Plaintiff has failed to adhere to the requirements of Pa. R.C.P. No. 1019(a) requiring the filing of Preliminary Objections pursuant to Pa. R.C.P. No. 1028(a)(2).

WHEREFORE, Defendant Richard Walburn respectfully requests that this Honorable Court sustain his preliminary objections and dismiss Plaintiff's Amended Complaint with prejudice.

Respectfully submitted,

MidPenn Legal Services
Attorneys for Defendant

BY: Shana M. Pugh /s/ 100
Shana M. Pugh, Esquire
ID# 200952

10-8-08
Date

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

LVNV FUNDING LLC
SEARS GOLD MASTERCARD,
Plaintiff

vs.

RICHARD WALBURN,
Defendant

*
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*
* NO.: 08-1329-CD
*
* Type of Case: Civil
*
* Type of Pleading: Certificate of Service
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*
* Filed on Behalf of: Defendant
*
* Counsel of Record for this Party:
* Shana M. Pugh, Esquire
*
* Supreme Court No.: 200952
*
* MidPenn Legal Services
* 230 Lincoln Way East, Suite A
* Chambersburg, PA
* (717) 264-5354

⁵ FILED ICC Atty
010:15LM Pugh
OCT 09 2008
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

LVNV FUNDING LLC
SEARS GOLD MASTERCARD
Plaintiff

vs.

RICHARD WALBURN,
Defendant

:
:
: Civil Action
:
: No. 08-1329-CD
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CERTIFICATE OF SERVICE

I, Shana M. Pugh, Esquire, hereby certify that on the 9th day of October,
2008, I served a copy of Defendant's Preliminary Objections to Plaintiff's
Amended Complaint filed in the above captioned matter to the following
individual by first class mail, postage prepaid:

Michael F. Ratchford, Esquire
Edwin A. Abrahamson & Associates
1729 Pittston Avenue
Scranton, PA 18505

Date: 10-9-08

Shana M. Pugh /s/
Shana M. Pugh
Supreme Court ID No. 200952
MidPenn Legal Services, Inc.
230 Lincoln Way East, Suite A
Chambersburg, PA 17201
(717) 264-5354
Attorney for Defendant

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

LVNV FUNDING LLC
SEARS GOLD MASTERCARD,
Plaintiff

vs.

RICHARD WALBURN,
Defendant

*

*

*

* NO.: 08-1329-CD

*

* Type of Case: Civil

*

* Type of Pleading: Petition to Schedule

* Oral Argument

*

*

* Filed on Behalf of: Defendant

*

* Counsel of Record for this Party:

* Shana M. Pugh, Esquire

*

* Supreme Court No.: 200952

*

* MidPenn Legal Services

* 230 Lincoln Way East, Suite A

* Chambersburg, PA

* (717) 264-5354

FILED

NOV 06 2008

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William A. Shaw
Prothonotary/Clerk of Courts

2 sent to App

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

LVNV FUNDING LLC
SEARS GOLD MASTERCARD
Plaintiff

vs.

RICHARD WALBURN,
Defendant

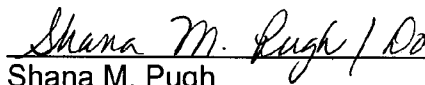
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: Civil Action
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: No. 08-1329-CD
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**PETITION TO SCHEDULE ARGUMENT ON DEFENDANT'S PRELIMINARY
OBJECTIONS TO PLAINTIFF'S COMPLAINT**

Defendant, Richard Walburn, by and through her attorney, Shana M. Pugh, of MidPenn Legal Services, requests the Court to schedule the argument on Defendant's objections and alleges as follows:

1. Plaintiff filed an Amended Complaint on September 22, 2008.
2. Defendant filed Preliminary Objections to Plaintiff's Amended Complaint on October 9, 2008, a date within twenty days of service of the Complaint.
3. As of November 6, 2008, Plaintiff has not filed a Second Amended Complaint.

WHEREFORE, Defendant requests the Court to schedule argument on the Defendant's Preliminary Objections.


Shana M. Pugh

FILED
NOV 06 2008
Prothonotary/Clerk of Courts
William A. Straw

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

LVNV FUNDING LLC
SEARS GOLD MASTERCARD
Plaintiff

vs.

RICHARD WALBURN,
Defendant

Civil Action

No. 08-1329-CD

ORDER

AND NOW, this 7th day of November, 2008, upon

consideration of Defendant Richard Walburn's Preliminary Objections to


Plaintiff's Amended Complaint filed in the above captioned matter, it is the Order

of the Court that argument has been scheduled for the 26th day of

November, 2008 at 11:30 o'clock a. .m. in

Courtroom # 1, Clearfield County Courthouse, Clearfield, Pennsylvania.

BY THE COURT,


J.

FILED ^{2ce}
014:00 PM
NOV 07 2008
Att'y Pugh
William A. Shaw
Prothonotary/Clerk of Courts

DATE: 11/7/08

☒ You are responsible for serving all appropriate parties.

☐ The Prothonotary's office has provided service to the following parties:

☐ Plaintiff(s) . ☐ Plaintiff(s) Attorney ☐ Other

☐ Defendant(s) ☒ Defendant(s) Attorney

☐ Special Instructions:

FILED

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William A. Shaw
Prothonotary/Clerk of Courts

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

LVNV FUNDING LLC
SEARS GOLD MASTERCARD,
Plaintiff

vs.

RICHARD WALBURN,
Defendant

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*
* NO.: 08-1329-CD
*
* Type of Case: Civil
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* Type of Pleading: Certificate of Service
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* Filed on Behalf of: Defendant
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* Counsel of Record for this Party:
* Shana M. Pugh, Esquire
*
* Supreme Court No.: 200952
*
* MidPenn Legal Services
* 230 Lincoln Way East, Suite A
* Chambersburg, PA
* (717) 264-5354

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NOV 13 2008
LW
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

LVNV FUNDING LLC
SEARS GOLD MASTERCARD
Plaintiff

vs.

RICHARD WALBURN,
Defendant

Civil Action

No. 08-1329-CD

CERTIFICATE OF SERVICE

I, Shana M. Pugh, Esquire, hereby certify that on the 13th day of November, 2008, I served a copy of the Petition to Schedule Argument on Defendant's Preliminary Objections to Plaintiff's Amended Complaint filed in the above captioned matter to the following individual by first class mail, postage prepaid:

Michael F. Ratchford, Esquire
Edwin A. Abrahamson & Associates
1729 Pittston Avenue
Scranton, PA 18505

Date: 11-13-08

Shana M. Pugh / Do
Shana M. Pugh
Supreme Court ID No. 200952
MidPenn Legal Services, Inc.
230 Lincoln Way East, Suite A
Chambersburg, PA 17201
(717) 264-5354
Attorney for Defendant

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

LVNV FUNDING LLC
SEARS GOLD MASTERCARD,
Plaintiff

vs.

RICHARD WALBURN,
Defendant

*
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*
* NO.: 08-1329-CD
*
* Type of Case: Civil
*
* Type of Pleading: Certificate of Service
*
*
* Filed on Behalf of: Defendant
*
* Counsel of Record for this Party:
* Shana M. Pugh, Esquire
*
* Supreme Court No.: 200952
*
* MidPenn Legal Services
* 230 Lincoln Way East, Suite A
* Chambersburg, PA
* (717) 264-5354

5 FILED 2 CC Atty
011:43cm Pugh
NOV 18 2008
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

LVNV FUNDING LLC
SEARS GOLD MASTERCARD
Plaintiff

vs.

RICHARD WALBURN,
Defendant

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: Civil Action
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: No. 08-1329-CD
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CERTIFICATE OF SERVICE

I, Shana M. Pugh, Esquire, hereby certify that on the 18th day of
November, 2008, I served a copy of the Order and Petition to Schedule Oral
Argument filed in the above captioned matter to the following individual by first
class mail, postage prepaid:

Michael F. Ratchford, Esquire
Edwin A. Abrahamson & Associates
1729 Pittston Avenue
Scranton, PA 18505

Date: 11-18-08

Shana M. Pugh/DO
Shana M. Pugh
Supreme Court ID No. 200952
MidPenn Legal Services, Inc.
230 Lincoln Way East, Suite A
Chambersburg, PA 17201
(717) 264-5354
Attorney for Defendant

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

VNV FUNDING, LLC
SEARS GOLD MASTERCARD
Plaintiff
vs.
RICHARD WALBURN,
Defendant


NO. 08-1329-CD

ORDER

NOW, this 26th day of November, 2008, it is the ORDER of this Court that Counts I, II and IV of the Defendant's Preliminary Objections to the Plaintiff's Amended Complaint be granted. The Plaintiff shall have no more than 45 days from this date to file a Second Amended Complaint which shall plead any assignment and contain a copy of the assignment document as well as a detailed statement of the account showing purchases made, the name the account was in and calculation of all interest charges, late fees, attorney's fees and any other costs or charges which are part of the demand for payment. A verification from an appropriate employee/officer of the Plaintiff shall be attached.

Count III of the Preliminary Objections is hereby DISMISSED.

BY THE COURT,


FREDRIC J. AMMERMAN
President Judge

FILED^{ICC}
DEC 01 2008

William A. Shaw
Prothonotary/Clerk of Courts

Arg: Ratchford
Pugh

(610)

FILED

DEC 01 2008

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 12/1/08

☐ You are responsible for serving all appropriate parties.

☒ The Prothonotary's office has provided service to the following parties:

☐ Plaintiff(s) ☒ Plaintiff(s) Attorney ☐ Other

☐ Defendant(s) ☒ Defendant(s) Attorney

☐ Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 104435
NO: 08-1329-CD
SERVICES 1
COMPLAINT

PLAINTIFF: LVNV FUNDING LLC
vs.
DEFENDANT: RICHARD WALBURN

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DEC 23 2008
William A. Shaw
Prothonotary/Clerk of Courts

SHERIFF RETURN

RETURN COSTS

Description	Paid By	CHECK #	AMOUNT
SURCHARGE	ABRAHAMSEN	012563	10.00
SHERIFF HAWKINS	ABRAHAMSEN	012563	20.00

Sworn to Before Me This

_____ Day of _____ 2008

So Answers,



Chester A. Hawkins
Sheriff

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

LVNV FUNDING LLC
SEARS GOLD MASTERCARD,
Plaintiff

vs.

RICHARD WALBURN,
Defendant

*
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*
* NO.: 08-1329-CD
*
* Type of Case: Civil
*
* Type of Pleading: Motion to Dismiss
*
*
* Filed on Behalf of: Defendant
*
* Counsel of Record for this Party:
* Shana M. Pugh, Esquire
*
* Supreme Court No.: 200952
*
* MidPenn Legal Services
* 230 Lincoln Way East, Suite A
* Chambersburg, PA
* (717) 264-5354

FILED

01/12/54
JAN 13 2009

William A. Shaw
Prothonotary/Clerk of Courts

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

LVNV FUNDING LLC
SEARS GOLD MASTERCARD
Plaintiff

vs.

RICHARD WALBURN,
Defendant

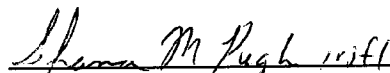
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: Civil Action
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: No. 08-1329-CD
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DEFENDANT'S MOTION TO DISMISS

Defendant, Richard Walburn, by and through his attorneys, MidPenn Legal Services and Shana M. Pugh, Esquire request the Court dismiss Plaintiff's complaint and allege as follows:

1. Following an oral argument on November 26, 2008 at which counsel for Defendant appeared and counsel for Plaintiff did not appear, the Court sustained two out of three of Defendant's Preliminary Objections.
2. On November 26, 2008 the Court issued an Order giving the Plaintiff forty-five (45) days to file a Second Amended Complaint.
3. That Order was sent to Plaintiff's counsel by the Prothonotary on December 1, 2008.
4. The Plaintiff has not filed a Second Amended Complaint.

Wherefore, defendant requests the court dismiss the Amended Complaint with prejudice.



Shana M. Pugh, PA ID # 200952
MidPenn Legal Services
230 Lincoln Way East, Suite A
Chambersburg, PA 17201
(717) 264-5354, ext. 2307

m

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

LVNV FUNDING LLC
SEARS GOLD MASTERCARD
Plaintiff

vs.

RICHARD WALBURN,
Defendant

Civil Action

No. 08-1329-CD

ORDER

AND NOW this 14th day of January 2009, upon consideration of Defendant's Preliminary Objections and Plaintiff's failure to file a Second Amended Complaint, Plaintiff's Amended Complaint is hereby dismissed with prejudice.

By the Court,



Fredric J. Ammerman, P.J.

FILED
01/12/2009
JAN 14 2009

30c

Atty Hugh
GK

William A. Shaw
Prothonotary/Clerk of Courts

FILED

JAN 14 2009

William A. Snow
Prothonotary

DATE: 1/14/09

☒ You are responsible for serving all appropriate parties.

☐ The Prothonotary's office has provided service to the following parties:

☐ Plaintiff(s) ☐ Plaintiff(s) Attorney ☐ Other

☐ Defendant(s) ☐ Defendant(s) Attorney

☐ Special Instructions.

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

LVNV FUNDING LLC
SEARS GOLD MASTERCARD,
Plaintiff

vs.

RICHARD WALBURN,
Defendant

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* NO.: 08-1329-CD
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* Type of Case: Civil
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* Type of Pleading: Certificate of Service
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* Filed on Behalf of: Defendant
*
* Counsel of Record for this Party:
* Shana M. Pugh, Esquire
*
* Supreme Court No.: 200952
*
* MidPenn Legal Services
* 230 Lincoln Way East, Suite A
* Chambersburg, PA
* (717) 264-5354

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JAN 15 2021
William A. Shaw
Prothonotary/Clerk of Courts
cc
Atty Pugh

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

LVNV FUNDING LLC
SEARS GOLD MASTERCARD
Plaintiff

vs.

RICHARD WALBURN,
Defendant

Civil Action

No. 08-1329-CD

CERTIFICATE OF SERVICE

I, Shana M. Pugh, Esquire, hereby certify that on the 14th day of January, 2009, I served a copy of Defendant's Preliminary Objections to Plaintiff's Amended Complaint filed in the above captioned matter to the following individual by first class mail, postage prepaid:

Michael F. Ratchford, Esquire
Edwin A. Abrahamson & Associates
1729 Pittston Avenue
Scranton, PA 18505

Date: 1-14-09

Shana M. Pugh /s/
Shana M. Pugh
Supreme Court ID No. 200952
MidPenn Legal Services, Inc.
230 Lincoln Way East, Suite A
Chambersburg, PA 17201
(717) 264-5354
Attorney for Defendant