

08-1359-CD  
National Credit vs Debra A. Oswalt

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA

National Credit Acceptance  
1731 Howe Ave # 254  
Sacramento CA 95825

Plaintiff

CIVIL ACTION

vs.

DEBRA A. OSWALT  
25329 SHAWVILLE FRENCHVILLE  
HWY.  
FRENCHVILLE PA 16836

Defendant

NO: 2008-1359-CD

**FILED**

M 3:02 P.M. GK 1 CC ATTY  
JUL 24 2008 1 COMP. SHFF

William A. Shaw  
Prothonotary/Clerk of Courts  
ATTY PAID  
95.00

**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 15830  
814-765-9646

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA

National Credit Acceptance  
1731 Howe Ave # 254  
Sacramento CA 95825

Plaintiff

CIVIL ACTION

vs.

DEBRA A. OSWALT  
25329 SHAWVILLE FRNCHVILLE  
HWY.  
FRENCHVILLE PA 16336

Defendant

NO:

---

**COMPLAINT**

Plaintiff, National Credit Acceptance, by and through its attorneys, Edwin A. Abrahamsen & Associates, P.C., complains of the Defendant as follows:

1. Plaintiff, National Credit Acceptance, (hereinafter "Plaintiff") is a corporation maintaining a business at 1731 Howe Avenue, #360, Sacramento, California, 95825.
2. The Defendant DEBRA A. OSWALT (hereinafter "Defendant") is an adult individual residing at 25329 SHAWVILLE FRNCHVILLE HWY. FRENCHVILLE PA 16336.
3. At all relevant times herein, Plaintiff was engaged in the business of debt purchase and collection.
4. Defendant applied for and received a credit card issued by MBNA with the account number 74973150379708.
5. The within account was sold by MBNA to National Credit Acceptance for valuable consideration and all rights under said accounts were assigned to National Credit Acceptance.

(See, Bill of Sale attached hereto as Exhibit "A.")

6. Plaintiff was assigned all rights to certain credit card accounts from National Credit Acceptance, including the account opened by Defendant with account number 74973150379708.

7. Use of the MBNA credit card was subject to the terms of the Cardmember Agreement, a copy of which was sent to the Defendant along with the credit card. (See, Copy of Cardmember Agreement, attached hereto and marked Exhibit "B.")

8. Defendant used the MBNA credit card account number 74973150379708, for purchases, cash advances and/or balance transfers.

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

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

11. The account became delinquent on November 30, 2004.

12. The principal amount was \$8,684.93 at the time it was received by Plaintiff.

13. Pursuant to the account agreement, any unpaid balance accrues interest at the rate of 27.98%.

14. The total amount due and owing the Plaintiff including interest, is \$8,957.89.

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

WHEREFORE, Plaintiff requests judgment in its favor and against Defendant in the amount of \$3,957.89 plus costs of suit, reasonable attorneys' fees and any other relief as the Court deems just and appropriate.

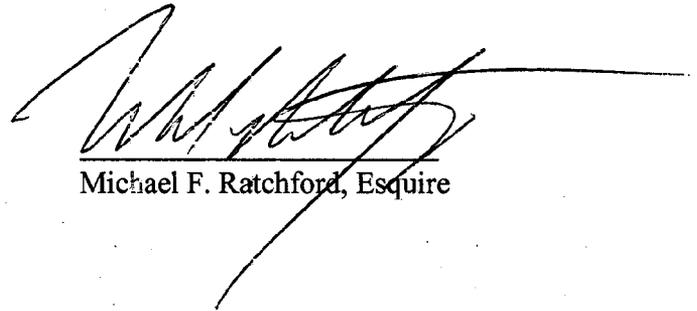
Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael F. Ratchford", written over a horizontal line.

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

**VERIFICATION**

I, Michael F. Ratchford, attorney for Plaintiff, National Credit Acceptance, 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



www.MBNA.com

Exhibit A

**BILL OF SALE AND ASSIGNMENT OF LOANS**

MBNA America Bank, N.A.

Wilmington, Delaware 19884

(302) 453-9930

The undersigned Assignor ("Assignor") hereby absolutely sells, transfers, assigns, sets-over, quitclaims and conveys to sell National Credit Acceptance, a corporation organized under the laws of California ("Assignee") without recourse and without representations or warranties of any type, kind, character or nature, express or implied, all of Assignor's right title and interest in and to each of the loans identified in the loan schedule ("Loan Schedule") attached hereto (the "Loans"), together with the right to collect all principal, interest or other proceeds of any kind with respect to the Loans remaining due and owing as of the Cut-off Date applicable to such Loans as set forth in the Loan Sale Agreement pursuant to which the Loans are being sold (including but not limited to proceeds derived from the conversion, voluntary or involuntary, of any of the Loans into case of other liquidated property).

DATED: 2/09/05

ASSIGNOR: MBNA AMERICA BANK, NA

\_\_\_\_\_  
Joe Plummer  
Senior Personal Banking Officer

SPE3MB1204

**Exhibit B**

**NATIONAL CREDIT ACCEPTANCE, INC.**

ACCOUNT NUMBER	NEW BALANCE	PAST DUE	MINIMUM PAYMENT DUE	PAYMENT DUE DATE	WRITE AMOUNT OF PAYMENT HERE
74973150379708	\$8,684.93	\$8,684.93	\$8,684.93	6/11/2008	

Please make check payable to National Credit Acceptance. National Credit Acceptance is the owner of this account. This has been sent by a debt collector. Send top portion of this statement with your payment.

DEBRA A OSWALT

25329 SHAWVILLE FRENCHVIL  
FRENCHVILLE, PA 16836

National Credit Acceptance, Inc.  
1731 Howe Ave #254  
Sacramento, CA 95825-2209

Address Change? Check here and complete on the reverse side.  
For Customer Service 24 hours a day call NCA at 1-800-258-6520

ACCOUNT NUMBER	TOTAL CREDIT LINE	CASH ADVANCE CREDIT LIME	AVAILABLE CREDIT	AVAILABLE PORTION FOR CASH	PAYMENT DUE DATE	CLOSING DATE
74973150379708	\$0.00	\$0.00	\$0.00	\$0.00	6/11/2008	6/1/2008

POST DATE	TRANSACTION DATE	REFERENCE NUMBER	TRANSACTION	CHARGE	CREDIT
6/1/2008	6/1/2008		FINANCE CHARGE	\$202.50	

**MINIMUM PAYMENT DUE**

**FINANCE CHARGE SCHEDULE**

**SUMMARY OF TRANSACTIONS**

PAST DUE	\$8,684.93	PERIODIC RATE	27.98%	PREVIOUS BALANCE	\$8,482.43
PAYMENT	\$0.00	ANNUAL RATE	27.98%	PAYMENTS / CREDITS	\$0.00
MINIMUM DUE	\$8,684.93	AVERAGE DAILY BALANCE	\$8,583.68	ADJUSTMENT / PURCHASES	\$0.00
				CASH ADVANCE	\$0.00

**AT YOUR SERVICE EVERY HOUR EVERY DAY**

To speak to one of our customer satisfaction representatives, call 1-800-258-6520

FOR THIS BILLING PERIOD ANNUAL PERCENTAGE RATE **27.98%**

PREVIOUS BALANCE	PAYMENT	CREDIT TOTAL	NEW PURCHASES AND ADVANCES	DEBIT ADJUSTMENTS	FINANCE CHARGE	OVERLINE AMOUNT	NEW BALANCE
\$8,482.43	\$0.00	\$0.00	\$0.00	\$0.00	\$202.50	\$0.00	\$8,684.93

This has been sent to you by a debt collector. This is an attempt to collect a debt. Any information provided will be used for that purpose.

THIS ACCOUNT WAS ORIGINATED BY: MBNA

SEND INQUIRIES TO - NATIONAL CREDIT ACCEPTANCE, 1731 HOWE AVE #254, SACRAMENTO, CA 95825-2209  
CUSTOMER SERVICE TELEPHONE NUMBER 1-800-258-6520

## Important Information About Your Financial Privacy

MBNA is the world's largest independent credit card issuer. Our financial products and services are endorsed by thousands of organizations and financial institutions. We back our financial products and services with top quality service. Collecting and sharing information about you helps us do this. This notice explains MBNA's information collection and sharing practices and lets you choose whether MBNA may share certain information about you.

This notice describes the privacy practices of MBNA Corporation and all its affiliates, including:

- MBNA America Bank, N.A.
- MBNA America (Delaware), N.A.
- MBNA Technology, Inc.
- MBNA Marketing Systems, Inc.
- MBNA Insurance Agency, Inc.

(We'll refer to these collectively as "MBNA"), for financial products and services governed by the laws of the United States of America.

### Our Security Procedures Protect Your Information

We work hard to keep information secure. For example, our information security policies:

- Govern retention of sensitive information;
- Restrict access to information systems; and
- Specify password requirements.

Our practices and procedures meet federal standards. Further, we share only the information we believe is needed to offer a product or service efficiently. Finally, we restrict the use of such information and require that it be kept secure.

### Information We Collect to Conduct Our Business

We collect information about you to conduct our business and deliver the top quality service you expect. Sources include:

- Information we receive from you.
- Information we receive from third parties, such as consumer reporting agencies, to verify statements you've made to us, or regarding your employment, credit, or other relationships.
- Information about your transactions with MBNA and with other companies.

### Information Shared Within MBNA

We may share all the information we collect within MBNA. For example, we may share:

- Identification information (such as name and address);
- Transaction and experience information (such as purchases and payments);
- Credit eligibility information (such as credit reports); and
- Other information.

You may tell us not to share credit eligibility information about you within MBNA, as explained below in the section captioned, "Information Sharing: It's Your Choice". Your choice will not affect the sharing of identification and transaction and experience information.

### Information Shared Outside of MBNA

We may share all the information we collect with the following types of companies outside of MBNA:

- Financial service companies (like banks, insurance companies, securities broker-dealers, and organizations with which we have joint marketing agreements);
- Non-financial companies (like retailers, direct marketers, communications companies, travel companies, and organizations endorsing MBNA);
- Companies performing marketing or other services for us (like data processing or direct mail services); and
- Other companies (like nonprofit organizations).

We may also share all of the information we collect with companies outside of MBNA as permitted by law.

You may tell us not to share information about you with companies outside of MBNA, as explained below in the section captioned, "Information Sharing: It's Your Choice". Your choice will not affect sharing with:

- Companies performing marketing or other services for us;
- Other financial institutions under joint marketing agreements;
- Government entities in response to subpoenas or regulatory requirements;
- Consumer reporting agencies; and
- As otherwise permitted by law.

## Information Sharing: It's Your Choice

We respect your choices related to privacy. You may tell us not to share credit eligibility information within MBNA and not to share information with companies outside of MBNA as described above. If you wish to opt out of such information sharing, please call our toll-free automated response line at 1-866-751-1255. We will ask you to verify your identity and the specific accounts to which your opt out applies. Please have your account, membership, or reference numbers available when you call. For deposit accounts, please have your Social Security number or Taxpayer Identification number available when you call.

MBNA applies opt outs at the account level, not by individual Customer. When any person listed on an account opts out, we opt out the entire account. This includes co-applicants, joint account holders, and authorized users. MBNA follows these privacy practices if an account is closed or becomes inactive.

Your opt out remains effective until revoked in writing. Federal law requires us to provide this notice on an annual basis, whether or not you previously opted out. Please remember that if you previously opted out an account, you do not need to opt out that account again.

### Important Information for Vermont Customers

This information sharing practices described above are in accordance with Federal law. Vermont law places additional limits on sharing information about Vermont residents so long as they remain residents of Vermont. In accordance with Vermont law, MBNA will not share information we collect about Vermont residents to companies outside of MBNA except:

- As permitted by law;
- To companies that perform marketing or other services on our behalf;
- Name, contact and transaction and experience information (such as your account balance and payment history) to other financial institutions with which we have joint marketing agreements; or
- With the authorization or consent of the Vermont resident.

MBNA will not share credit eligibility information about Vermont residents within MBNA except with the authorization or consent of the Vermont resident.

### Updates and Additional Information

This notice replaces any previous notices from MBNA about the privacy, security, and protection of information. For additional information regarding our Internet privacy practices, and to view the current version of this privacy notice, go to <http://www.mbna.com/privacy.html>. You may have other privacy protections under state laws. We may amend this privacy notice at any time. We will inform you of changes as required by law.

### Tips to Protect Your Information

MBNA works hard to keep your information secure. You can help by following these tips to protect your information:

- Store personal information in a safe place and tear up or shred old receipts and account statements before throwing them away.
- Protect your PINs and other passwords. Do not share them with anyone unless it's for a service or transaction you request and you are confident the other party will protect the information as you would.
- Carry only the minimum amount of identifying information you require.
- Pay attention to billing cycles and statements. Inquire if you do not receive a bill.
- Check account statements carefully to ensure all charges, checks, or withdrawals are authorized.
- Guard your mail from theft. Do not leave bill payment envelopes in your mailbox with the flag up. Instead, deposit them in a post office collection box or at the local post office. Promptly remove incoming mail.
- Order copies of your credit report from each of the three major credit bureaus once a year to ensure they are accurate. The law permits the credit bureaus to charge up to \$8.00 for a copy of the report (unless you live in a state that requires the credit

(continued)

bureaus to provide you with one free copy of your report annually).

If you believe you are a victim of identity theft take immediate action and keep records of your conversations and correspondence. While the steps you must take will vary with your individual circumstances, three basic actions are appropriate in almost every case:

- Contact the creditors for any accounts that have been tampered with or opened fraudulently.
- Contact the fraud departments of each of the three major credit bureaus:
  - Equifax: 1-800-525-6286 / P.O. Box 740241, Atlanta, GA 30374-0241
  - Experian: 1-888-897-3742 / P.O. Box 8532, Allen, Texas 75013
  - Trans Union: 1-800-680-7289 / P.O. Box 6790, Fullerton, CA 92834
- File a report with your local police or the police in the community where the identity theft took place and get a copy of the police report.

Although many consumers appreciate the convenience and customer service of direct marketing:

If you prefer not to receive pre-approved offers of credit, you can opt out of such offers by calling 1-888-5-OPT OUT.

- If you want to remove your name from many national direct mail lists, send your name and address to:

DMA Mail Preference Service  
P.O. Box 643  
Carmel, NY 10512

- If you want to reduce the number of telephone solicitations from many national marketers, send your name, address and telephone number to:

DMA Telephone Preference Service  
P.O. Box 643  
Carmel, NY 10512

From "ID Theft: When Bad Things Happen to Your Good Name", Federal Trade Commission, February 2002

### Terms of Your Account

**Periodic Rate Finance Charges:** We calculate Periodic Rate Finance Charges by multiplying each Balance Subject to Finance Charge by the applicable Daily Periodic Rate ("DPR") and that result by the number of days in the billing cycle. The current DPR for Categories A and B Advances is 0.024630% (corresponding Annual Percentage Rate of 8.99%). The current DPR for Category C Other Charges, based on the Variable-Rate Information disclosed below, is 0.024630% (corresponding Annual Percentage Rate ("APR") of 8.99%). The current DPR for Category D Other Balances, based on the Variable-Rate Information disclosed below, is 0.024630% (corresponding Annual Percentage Rate of 8.99%). The DPR is calculated by dividing the corresponding APR by 365. We reserve the right to increase or decrease your APR. A change in APR will increase or decrease the term of your loan, but will not change the minimum payment due each month.

**Variable-Rate Information:** The DPRs and the corresponding APRs are variable rates based on a formula. The APR formula is calculated by taking an index and adding a margin. The margin for Categories A and B Advances is 4.74 percentage points. The margin for Category C Other Charges is 4.74 percentage points. The margin for Category D Other Balances is 4.74 percentage points. The index is the highest U.S. Prime Rate as published in the "Money Rates" section of "The Wall Street Journal" on the 15th day of each March, June, September, and December, or the next business day if the 15th is not a business day. An increase or decrease in the index will increase or decrease your DPRs and corresponding APRs on the day after the Closing Date of your billing cycle that ends in April, July, October, and January. If "The Wall Street Journal" does not publish the Prime Rate, or if it changes the definition of the Prime Rate, we may, at our sole discretion, substitute another index.

An increase in the index means you will pay higher Periodic

Rate Finance Charges on Advances, Other Charges and Other Balances. Also, because we will not adjust your minimum monthly payment based solely on an increase in the APR, an increase in the index may cause the total number of payments to increase.

From time to time we may offer you different interest rates on certain categories of Advances or Other Charges. Categories A and B contain Advance transactions. Category C contains Other Charges. From time to time, Category D may contain Other Balances which may include Advances and/or Other Charges and/or any pre-existing Advance or Other Charge balances, all of which will be treated as previous Other Charges.

Your account includes a special feature to purchase goods or services from a merchant. All purchases from this merchant which are charged directly to your account through a direct settlement arrangement which we may have with that merchant, as well as account fees, are added to your account as Other Charges. All other advances made against your account, including any purchases from that merchant made with checks drawn on your account written by us or you, are added to your account as Advances.

The reposting of any payment that has been returned unpaid and related Periodic Rate Finance Charges will occur as an Advance in Category B. The transaction date for such a returned payment is the date that the corresponding payment posted to your account or such later date as we may determine.

**When Periodic Rate Finance Charges Begin To Accrue:** Each new Category A and Category B Advance begins to accrue Periodic Rate Finance Charges on its transaction date. Category A and Category B balances remaining from previous billing cycles accrue Periodic Rate Finance Charges from the first day of the billing cycle. The transaction date for Advances made by check is the date the check is first deposited or cashed. The transaction date for a returned payment (a Category B Advance) is the date that the corresponding payment posted to your account.

Each new Category C Other Charge begins to accrue Periodic Rate Finance Charges on its transaction date or the first day of the billing cycle, whichever date is later. Category C balances remaining from previous billing cycles accrue Periodic Rate Finance Charges from the first day of the billing cycle.

Each new Category D Other Balance begins to accrue Periodic Rate Finance Charges on its transaction date or the first day of the billing cycle, whichever date is later. Category D balances remaining from previous billing cycles accrue Periodic Rate Finance Charges from the first day of the billing cycle.

Periodic Rate Finance Charges accrue daily and compound daily on new balances, and balances remaining from previous billing cycles, in each category. Periodic Rate Finance Charges will continue to accrue even though you have paid the full amount of any related balances in a category because we include any accrued but unpaid finance charges in the calculation of the Balance Subject to Finance Charge.

Your Payment Due Date will be at least 25 days from your statement Closing Date.

**Grace Period:** "Grace Period" means the period of time when you will not accrue Periodic Rate Finance Charges on certain transactions or balances.

You do not have a Grace Period for balances in Categories A, B, C or D.

**Categories A and B - Average Balance Method (including new Advances):** We calculate separate Balances Subject to Finance Charge for Category A balances and Category B balances. We calculate the Balance Subject to Finance Charge for each of these categories by: (1) calculating a daily balance for each day in the current billing cycle; (2) calculating a daily balance for each day prior to the current billing cycle that had a "Pre-Cycle Advance" balance—a Pre-Cycle Advance is an Advance with a transaction date prior to the current billing cycle but with a posting date within the current billing cycle; (3) adding all the daily balances together; and (4) dividing the sum of the daily balances by the number of days in the current billing cycle.

To calculate the daily balance for each day in the current billing cycle, we take the beginning balance, add an amount

equal to the applicable Daily Periodic Rate multiplied by the previous day's daily balance, add new Advances and transaction fees, and subtract applicable payments and credits. If any daily balance is less than zero we treat it as zero.

To calculate a daily balance for each day prior to the current billing cycle that had a Pre-Cycle Advance balance, we take the beginning balance attributable solely to Pre-Cycle Advances (which will be zero on the transaction date of the first Pre-Cycle Advance), add an amount equal to the applicable Daily Periodic Rate multiplied by the previous day's daily balance, and add only the applicable Pre-Cycle Advances, and their related transaction fees. We exclude from this calculation all transactions posted in previous billing cycles.

**Categories C and D - Average Daily Balance Method (including new transactions):** We calculate separate Balances Subject to Finance Charge for Category C balances and Category D balances. We calculate the Balance Subject to Finance Charge for each of these categories by: (1) calculating a daily balance for each day in the current billing cycle; (2) adding all the daily balances together; and (3) dividing the sum of the daily balances by the number of days in the current billing cycle.

To calculate the daily balance for each day in the current billing cycle, we take the beginning balance, add an amount equal to the applicable Daily Periodic Rate multiplied by the previous day's daily balance, add new transactions, new account fees, and new transaction fees, and subtract applicable payments and credits. If any daily balance is less than zero we treat it as zero.

We include the costs for the MBNA Credit Protection plan or for credit insurance purchased through us in calculating the beginning balance for the first day of the billing cycle after the billing cycle in which such costs are billed.

**Transaction Fees:** We will assess the following transaction fees to your account in the same category to which the transaction is posted:

A transaction fee (FINANCE CHARGE) for all Advances, including access checks, balance transfers and direct deposits, equal to 5.00% of the U.S. Dollar amount of each Advance you obtain. (Fee: Min. \$5.00; Max. \$50.00). This fee will be treated as an Advance.

**Account Fees:** We will assess the following account fees to your account as Category C Other Charges in the billing cycle in which they accrue:

1. a late fee of \$29.00 each time you fail to make the required Minimum Payment shown on your statement by the statement Closing Date immediately following that payment's due date.
2. a returned payment fee of \$29.00 if a check submitted as payment on your account is returned for insufficient funds or for any other reason even if the check is later paid upon subsequent presentation.
3. a returned check fee of \$29.00 if we return an Advance check unpaid for any reason even if the check is later paid upon subsequent presentation.
4. a stop payment fee of \$15.00 if you request us to stop payment on an Advance check.
5. an overlimit fee of \$29.00 if your account is overlimit (even if Fees or Periodic Rate Finance Charges assessed by us cause your New Balance Total to exceed your credit limit) on the last day of the billing cycle that your account went overlimit.
6. in the event that you request copies of monthly billing statements on your account, we may charge you \$5.00 per copy; however, the six most recent monthly statements will be provided free of charge.
7. unless prohibited by applicable law, we will charge your account for any costs associated with complying with state abandoned property laws.

#### Your Billing Rights

**Keep This Notice For Future Use:** This notice contains important information about your rights and our responsibilities under the Fair Credit Billing Act.

**Notify Us In Case of Errors or Questions About Your Bill:** If you think your bill is wrong or if you need more information about a transaction on your bill, write us on a separate sheet at MBNA America Bank N.A., P.O. Box 15027, Wilmington, DE 19850. Do not send the notice on or with your payment.

Write to us as soon as possible. We must hear from you no later than 90 days after we sent you the first bill on which the error or problem appeared. You can telephone us but doing so will not preserve your rights. In your letter, please give us the following information:

- your name and account number
- the dollar amount of the suspected error
- a description of the error and an explanation, if you can, of why you believe there is an error. If you need more

information, describe the item you are not sure about.

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

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

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

If you fail to pay the amount that we think you owe, we may report you as delinquent. However, if our explanation does not satisfy you and you write us within twenty-five (25) days telling us that you still refuse to pay, we must tell anyone we report you to that you have a question about your bill, and we must tell you the name of anyone we reported you to. We must tell anyone we report you to that the matter has been settled between us when it finally is.

If we do not follow these rules, we cannot collect the first \$50 of the questioned amount, even if your bill was correct.

### Account Agreement

**General:** In this Agreement, the words "you" and "your" refer to each and all of the persons in whose names this account was issued and who obtain credit in any way provided for under this Agreement. The words "we," "us," "our," and "MBNA America" mean MBNA America Bank, N.A. The word "Advance" means any loan you obtain from us under this Agreement.

Our Agreement with you consists of this Agreement and the terms and conditions printed on the required federal disclosures section of the accompanying Terms of Your Account letter, which is incorporated herein and made a part hereof. Please keep these documents, and subsequent amendments, if any, together.

When you, or anyone whom you authorize or permit, use your account, you agree to the terms of this Agreement.

You consent to and authorize MBNA America, any of its affiliates, or its marketing associates to monitor and/or record any of your telephone conversations with our representatives or the representatives of any of those companies.

All capitalized terms not defined herein shall have the meaning as defined in the required federal disclosures section of your Terms of Your Account letter.

**Credit Reporting Agencies:** If you believe we have furnished inaccurate or incomplete information about you or your account to a credit reporting agency, write to us at: MBNA, Credit Reporting Agencies, P. O. Box 17054, Wilmington, DE 19884-7054. Please include your name, address, home phone number, and account number, and explain what you believe is inaccurate or incomplete.

**How To Use Your Account:** You may use your account to purchase or lease goods or services from persons who honor checks. You may obtain such credit under your account by requesting checks or drafts payable in U.S. Dollars that will be sent either directly to your designated payees or to you for forwarding to your designated payees. We may offer the direct deposit of Advances into your banking account or those of your creditors. Availability of funds sent through direct deposit depends upon the policies and procedures of the receiving bank. If this account includes a special feature to purchase goods or services from a merchant, we may send Advances directly to the merchant on your behalf. From time to time, we may issue you additional checks or offer other additional Advances in response to your request. You may not use any Advance solely to make a payment on this account or solely to make a payment on any other credit account with us.

If you permit any person to have access to your checks or account number with the authorization to make a charge,

(continued)

you may be liable for all Advances made by that person including Advances for which you may not have intended to be liable.

You agree not to use a postdated check to obtain credit under your account. If you do postdate a check by which you propose to obtain credit under your account, we may elect to honor it upon presentation or return it unpaid to the party which presented it for payment, without in either case awaiting the date shown on the check. We are not liable to you for any loss or expense incurred by you arising out of the action we elect to take.

You must return all checks to us on request.

**Credit Limit:** Your credit limit is shown on your Terms of Your Account letter and generally on each monthly statement. We may change your credit limit or limits from time to time, and we will notify you if we do. The total amount of credit outstanding at anytime must not be more than your credit limit. We may also establish a separate credit limit for certain balances. If we do, your outstanding balance on these types of items may not exceed this separate credit limit.

**Request for Credit Over Your Credit Limits:** If you request credit at any time which, if granted, would result in either your total outstanding balance or your separate outstanding balance, including authorized transactions not yet posted to your account, being more than your credit limit or your separate credit limit, if we have established one for you, (whether or not such balances before the request were more than the respective credit limit), we may:

1. Honor the request without permanently raising your credit limit;
2. Honor the request and treat the amount which is more than your credit limit as due immediately; or
3. Refuse to honor the request. We may advise the person who made the request that it has been refused. If we refuse to honor a check, we may do so by advising the person presenting the check that credit has been refused, that there are insufficient funds to pay the check, or in any other manner.

If we have previously honored requests for credit over your credit limit, it does not mean that we will honor further overlimit requests. If we decide to honor such a request, we may assess an overlimit fee as provided in this Agreement.

**Additional Advances:** You may obtain additional Advances from time to time provided that you continue to meet our income and credit standards without any significant adverse change. The approval of one request does not mean the approval of other requests. Additional Advances posted to your account cause the term of the loan to re-start, resulting in a revised minimum monthly payment and revised length of time to repay the loan. Additional Advances must be at least \$200.00.

**Term of Your Loan:** Your repayment term is disclosed in another document location. Your monthly payment amount will be disclosed as the Current Payment on your monthly statements. Certain events may result in your account balance not being paid off during the term. In this case, we do not change the minimum monthly payment amount. Instead, we extend the term to repay the balance. For example, the following events will extend the term: (i) a payment holiday which you take; (ii) an increase in the prime rate for any variable annual percentage rate account; (iii) all fees imposed on your account, such as check transaction fees, late fees, over the credit limit fees and insurance premiums; and (iv) payments received later than the payment due date.

Also, the minimum monthly payment does not take into account the effect of adding unpaid Periodic Rate Finance Charges assessed on Advances to the daily Advance balance. This will extend the term.

The following events will reduce the term (but will not change the minimum payment due each month): (i) a temporary reduction in the annual percentage rate, such as a promotional rate; (ii) a decrease in the prime rate for any variable annual percentage rate; and (iii) payments greater than the required minimum payment.

**Repayment:** You promise to pay us the amounts of all credit you obtain; this includes all Advances, any fees, charges, and insurance premiums we charge against your account; and Finance Charges.

You may pay the entire amount outstanding at any time without penalty. You must pay each month at least the minimum payment shown on your monthly statement. The minimum payment will be the total of (i) the current payment amount shown on your monthly statement; plus (ii) the amount of any past due payments. The current payment amount is based upon the amount outstanding, the term of your loan, and the annual percentage rate. If you overpay or if a credit balance is otherwise created in your account, we will not pay interest on such amounts. Payments greater than the required minimum payment will reduce the total amount of Finance Charges otherwise payable by you.

We will allocate your payments in the manner we determine. In most instances, we will allocate your payments to balances (including new transactions) with lower APRs before balances with higher APRs. This will result in new balances with lower APRs (for example, those with promotional APR offers) being paid before any other existing balances. All payments will be credited to your account for the billing cycle in which each payment is received. Minimum monthly payments cannot be made in advance and payments made in any billing cycle which are greater than the minimum payment due will not affect your obligation to make subsequent minimum payments each month. We can reject payments not denominated in U.S. dollars or not drawn on a U.S. Bank. No payment shall operate as an accord and satisfaction without the prior written approval of a senior officer of MBNA America.

All persons who initially or subsequently request, accept or use the account are individually responsible for any outstanding balance. If two or more persons are responsible to pay any outstanding balance, we may refuse to release any of them from liability until all of the checks outstanding under the account have been returned to us and the balance is paid in full.

**Payment Holidays and Reduced Payment Offers:** We may allow you, from time to time, to omit a monthly payment or make a reduced payment. We will notify you when these options are available. If you omit a payment or make a reduced payment, your term will be extended and finance charges, applicable fees, and other regular transactions, if any, will accrue on your account balances in accordance with this Agreement. The reduced payment amount may be less than your finance charges. You must make the reduced payment on time to avoid a late fee. You must resume making your regular Total Minimum Payment Due each month following a payment holiday or reduced payment offer.

**Billing Cycle:** A billing cycle begins on the day after the closing date shown on your account's preceding monthly statement and ends on the closing date that appears on your account's statement for the current month.

**Insurance:** Group credit insurance may be offered to you from time to time. Purchase of this insurance is strictly optional. If purchased, the insurance will protect us if an event occurs for which benefits are provided. We determine the cost of this insurance by multiplying the insurance rate then in effect by the average of your Advances and other charges outstanding during the billing cycle. The premium is charged to your account as an Other Charge.

**Benefits:** You may be offered certain benefits from time to time, which will be subject to the restrictions outlined by MBNA America in a brochure or otherwise. MBNA America reserves the right to adjust, add, or delete benefits and services at any time and without notice.

**Reasons for Requiring Immediate Payment:** You will be in default and we can require immediate payment of all amounts you owe if: (1) you fail to make any required payment by the Payment Due Date; (2) your New Balance Total exceeds your credit limit, or if we have established a separate credit limit for you, your separate outstanding balance exceeds your separate credit limit; or (3) you fail to abide by any other terms of this Agreement.

If you default, unless prohibited by applicable law, we can also require you to pay the collection and court costs we incur in any collection proceeding, and a reasonable attorney's fee if we refer your account for collection to an attorney who is not our salaried employee.

Our failure to exercise any of our rights when you default does not mean that we are unable to exercise those rights upon later default.

**Refusal to Honor Your Account:** We are not liable for any refusal to honor your account, including any form of Advance, or for any retention of your checks by us, any other bank, or any seller or lessor of goods or services.

**Termination:** We may suspend or terminate your rights to obtain credit at any time for any reason. Your obligations under this Agreement continue even after your rights to obtain credit have been suspended or terminated.

**Amendments:** We may amend this Agreement at any time by adding, deleting, or changing provisions in compliance with the applicable notification requirements of federal law and the laws of the State of Delaware. If an amendment gives you the opportunity to reject the change, and if you reject the change in the manner provided in such amendment, we may terminate your right to receive credit and may ask you to return all credit devices as a condition of your rejection. The amended Agreement (including any higher rate or other higher charges or fees) will apply to the entire unpaid balance, including the balance existing before the amendment became effective. We may replace your account with another account at any time.

**Assignments:** We may at any time, and without notice to you, assign your account, any sums due on your account, this Agreement or our rights or obligations under your account or this Agreement to any person or entity. The person or entity to whom we make any such assignment shall be entitled to all of our rights and/or obligations under this Agreement, to the extent assigned.

**Unauthorized Use of Your Account:** You must notify us immediately of the loss, theft, or possible unauthorized use of your account at 1-800-892-8349.

**Litigation:** The Arbitration provisions below apply to you unless you were given this opportunity to reject the Arbitration provisions and you did so reject them; in which case you agree that any litigation brought by you against us regarding this account or this Agreement shall be brought in a court located in the State of Delaware.

**Arbitration:** Any claim or dispute ("Claim") by either you or us against the other, or against the employees, agents or assigns of the other, arising from or relating in any way to this Agreement or any prior Agreement or your account (whether under a statute, in contract, tort, or otherwise and whether for money damages, penalties or declaratory or equitable relief), including Claims regarding the applicability of this Arbitration Section or the validity of the entire Agreement or any prior Agreement, shall be resolved by binding arbitration. "Claim" shall have the broadest meaning possible.

The arbitration shall be conducted by the National Arbitration Forum ("NAF"), under the Code of Procedure in effect at the time the claim is filed. Rules and forms of the National Arbitration Forum may be obtained and Claims may be filed at any National Arbitration Forum office, [www.naf-forum.com](http://www.naf-forum.com), or P.O. Box 50191, Minneapolis, Minnesota 55408, telephone 1-800-474-2871. If the NAF is unable or unwilling to act as arbitrator, we may substitute another nationally recognized, independent arbitration organization that uses a similar code of procedure. At your written request, we will advance any arbitration filing fee, administrative and hearing fees which you are required to pay to pursue a Claim in arbitration. The arbitrator will decide who will be ultimately responsible for paying those fees. In no event will you be required to reimburse us for any arbitration filing, administrative or hearing fees in an amount greater than what your court costs would have been if the claim had been resolved in a state court with jurisdiction. Any arbitration hearing at which you appear will take place within the federal judicial district that includes your billing address at the time the Claim is filed. This arbitration agreement is made pursuant to a transaction involving interstate commerce, and shall be governed by the Federal Arbitration Act, 9 U.S.C. 1-16 ("FAA"). Judgment upon any arbitration award may be entered in any court having jurisdiction. The arbitration shall follow existing substantive law to the extent consistent with the FAA and applicable statutes of limitations and shall honor any claims or privilege recognized by law. If any party requests, the arbitrator shall write an opinion containing the reasons for the award.

No claim submitted to arbitration is heard by a jury and no Claim may be brought as a class action or as a private attorney general. You do not have the right to act as a class representative or participate as a member of a class of claimants with respect to any Claim. This Arbitration Section applies to all Claims now in existence or that may arise in the future.

This Arbitration Section shall survive the termination of your account with us as well as any voluntary payment of the debt in full by you, any bankruptcy by you or sale of the debt by us.

For the purposes of this Arbitration Section, "we" and "us" means MBNA America Bank, N.A., its parent, subsidiaries, affiliates, licensees, predecessors, successors, assigns, and any purchaser of your account and all of their officers, directors, employees, agents and assigns or any and all of them. Additionally, "we" or "us" shall mean any third party providing benefits, services, or products in connection with the account (including but not limited to credit bureaus, merchants that accept any credit device issued under the account, reward or enrollment services, credit insurance companies, debt collectors and all of their officers, directors, employees and agents) if, and only if, such a third party is named by you as a co-defendant in any Claim you assert against us. Also, for the purposes of this Arbitration Section, "you" or "yours" shall mean any person or entity approved by us to use the account, including but not limited to all persons or entities contractually obligated on the account and all authorized users of the account.

If any part of this Arbitration Section is found to be invalid or unenforceable under any law or statute consistent with the FAA, the remainder of this Arbitration Section shall be enforceable without regard to such invalidity or unenforceability.

**THE RESULT OF THIS ARBITRATION AGREEMENT IS THAT, EXCEPT AS PROVIDED ABOVE, CLAIMS CANNOT BE LITIGATED IN COURT, INCLUDING SOME CLAIMS THAT COULD HAVE BEEN TRIED BEFORE A JURY, AS CLASS ACTIONS OR AS PRIVATE ATTORNEY GENERAL ACTIONS.**

**Governing Law:** This Agreement is made in Delaware. It is governed by the laws of the State of Delaware, without regard to its conflict of laws principles, and by any applicable federal laws.

If any part of this Agreement is found to be invalid, the rest remains effective. Our failure or delay in exercising any of our rights under this Agreement does not mean that we are unable to exercise those rights later.

MBNA America® is a federally registered service mark of MBNA America Bank, N.A.

© 2002 MBNA America Bank, N.A.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

NO: 08-1359-CD

NATIONAL CREDIT ACCEPTANCE  
vs  
DEBRA A. OSWALT

SERVICE # 1 OF 1

COMPLAINT

SERVE BY: 08/23/2008 HEARING: PAGE: 104453

DEFENDANT: DEBRA A. OSWALT  
ADDRESS: 25329 SHAWVILLE FRENCHVILLE HWY.  
FRENCHVILLE, PA 16836

FILED  
0/12:00pm  
JUL 30 2008

William A. Shaw  
Prothonotary/Clerk of Courts

ALTERNATE ADDRESS

SERVE AND LEAVE WITH: DEFENDANT/AAR

CIRCLE IF THIS HIGHLIGHTED ADDRESS IS: VACANT OCCUPIED

ATTEMPTS \_\_\_\_\_

**SHERIFF'S RETURN**

NOW, 7/30/08 AT 859 AM/PM **SERVED** THE WITHIN

COMPLAINT ON DEBRA A. OSWALT, DEFENDANT

BY HANDING TO Debra Oswalt, self

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

ADDRESS SERVED 25329 Shawville-Frenchville Hwy

NOW \_\_\_\_\_ AT \_\_\_\_\_ AM / PM **POSTED** THE WITHIN

COMPLAINT FOR DEBRA A. OSWALT

AT (ADDRESS) \_\_\_\_\_

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

I MAKE RETURN OF **NOT FOUND** AS TO DEBRA A. OSWALT

REASON UNABLE TO LOCATE \_\_\_\_\_

SWORN TO BEFORE ME THIS  
\_\_\_\_\_ DAY OF \_\_\_\_\_ 2008

So Answers: CHESTER A. HAWKINS, SHERIFF

BY: [Signature]  
Deputy Signature

S. Hunter  
Print Deputy Name

54

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

National Credit Acceptance	:	CIVIL ACTION
1731 Howe Ave #254	:	
Sacramento, CA 95825,	:	NO.: 2008 – 1359
Plaintiff	:	
	:	
vs.	:	
	:	
Debra A. Oswalt	:	
25329 Shawville Frenchville Hwy.	:	
Frenchville, PA 16836,	:	
Defendant	:	

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

Defendant Debra A. Oswalt, by and through her counsel, Nancy L. Datres of MidPenn Legal Services, hereby files these preliminary objections to Plaintiff’s Complaint and avers the following in support thereof:

1. National Credit Acceptance (hereinafter “Plaintiff”) filed a Complaint in this Court against Debra A. Oswalt, (hereinafter “Defendant”) on July 24, 2008, seeking \$8,957.89 for an alleged debt allegedly owed by Defendant to Plaintiff, and seeking an unspecified amount in costs and attorney fees.
2. Defendant was personally served with the complaint by sheriff on or about July 30, 2008.
3. Plaintiff is an entity engaged in the business of buying debts and attempting to collect on said debts.
4. Plaintiff does not disclose in its Complaint its state of incorporation, if any.

**FILED** <sup>icc</sup>  
012:21601 Atty Datres  
AUG 14 2008  
(GR)

William A. Shaw  
Prothonotary/Clerk of Courts

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

5. Defendant incorporates herein by reference paragraphs 1 through 4.
6. Pursuant to the Pennsylvania Rules of Civil Procedure (hereinafter “Rules”), whenever a claim is based upon an agreement, the pleading shall state specifically whether the agreement is written or oral. Pa. R.C.P. No. 1019 (h). Plaintiff fails to state whether the agreement, if any, between Plaintiff and Defendant is oral or written. Accordingly, the Complaint fails to comply with Pa. R.C.P. No. 1019 (h).
7. Whenever a claim is based upon a writing, the Rules state the pleader shall attach a copy of the writing or attach the material part thereof. Pa. R.C.P. No.1019 (i). Even though Plaintiff fails to state whether the alleged agreement, if any, was written or oral, the Complaint suggests the Plaintiff is alleging a written agreement. For example, paragraph 15 of the Complaint states: “Pursuant to the terms of the agreement ... .” Because Plaintiff states it is an assignee of an alleged debt, Plaintiff would not know the terms and conditions of any alleged agreement between Defendant and the alleged original creditor unless Plaintiff had a written copy of such agreement. No such writing or material part thereof is attached to the Complaint. Thus, unless Plaintiff is alleging the terms of the loan were agreed to orally, the Complaint fails to comply with Pa.R.C.P. No.1019 (i).
8. Plaintiff alleges in paragraph 7 of its Complaint that the “Cardmember Agreement” is attached to the Complaint as Exhibit “B”. However, a careful examination of the document marked Exhibit “B” shows that the Plaintiff is attempting to misrepresent to the Court as a Customer Agreement what is in fact a mere late notice allegedly sent to the Defendant by Plaintiff, the alleged assignee of the alleged debt.

The late notice does not constitute the required signed contract/agreement, if any, between the Defendant and the alleged original creditor. As such, Exhibit "B" fails to satisfy the requirement that Plaintiff attach to its complaint the writing that forms the basis of Plaintiff's claim. Pa. R.C.P. No.1019 (i).

9. Plaintiff alleges in paragraph 5 to be the assignee of an alleged MBNA credit card account with the account number 74973150379708. Plaintiff attaches to its Complaint as evidence of its legal position as "assignee" of the specific account, a broadly worded Bill of Sale marked as Exhibit "A". The Bill of Sale references a package of loans which apparently were identified individually on a Loan Schedule referenced by the Bill of Sale and likely were attached to the original Bill of Sale. Plaintiff, however, does not include with Exhibit "A" the Loan Schedule. Accordingly, Plaintiff fails to comply with the Rules in that Plaintiff fails to attach a written agreement showing the assignment from MBNA to Plaintiff (National Credit Acceptance) of the particular account that Plaintiff alleges was utilized by Defendant. Pa. R.C.P. No.1019 (i).
10. Plaintiff fails to attach to the Complaint any writing or any substantial part thereof evidencing contractual privity between Defendant and the alleged original creditor (MBNA). Thus, the Complaint fails to conform to Pa. R.C.P. No. 1019 (h) and (i).
11. Clearly, such writings are essential to Plaintiff's case. However, such writings are not attached to the Complaint, the absence thereof has not been explained, and the substance of said writings was not set forth in the Complaint, all of which are required pursuant to Pa.R.C.P. No. 1019 (h) and (i).

**WHEREFORE**, Defendant Debra A. Oswalt respectfully requests this Honorable Court to 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 – NOT A REAL PARTY IN INTEREST**

12. Defendant incorporates herein by reference paragraphs 1 through 11.
13. Pennsylvania Rules of Civil Procedure require all actions to be prosecuted by and in the name of the real party in interest. Pa. R.C.P. No. 2002(a).
14. Plaintiff alleges in paragraph 4 of its Complaint that Defendant applied for and received a credit card issued by MBNA, the alleged original creditor. Plaintiff, however, fails to attach to its Complaint a signed customer agreement between Defendant and MBNA, the alleged original creditor. As such, the Complaint fails to establish any contractual privity between Defendant and MBNA, the alleged original creditor.
15. Plaintiff alleges in paragraphs 5 and 6 of the Complaint that Plaintiff purchased accounts, including the specific account allegedly utilized by Defendant, from MBNA and thereby is an assignee with all the same rights as the original creditor. Plaintiff, however, fails to attach to its Complaint a signed agreement between MBNA and Plaintiff as to the specific account allegedly used by Defendant. As such, the Complaint fails to establish contractual privity between Plaintiff and MBNA.
16. Because the Complaint fails to show any contractual privity between Plaintiff and the alleged original creditor, Plaintiff is not a real party in interest as required by Pa. R.C.P. No. 2002(a) and is unable to prosecute this action.

**WHEREFORE**, Defendant Debra A. Oswalt respectfully requests this Honorable Court to sustain her preliminary objections and dismiss Plaintiff's Complaint with prejudice.

### **III. MOTION TO STRIKE/INSUFFICIENT SPECIFICITY OF PLEADING**

17. Defendant incorporates herein by reference paragraphs 1 through 16.
18. It is well-settled that Pennsylvania is a fact-pleading state. The Pennsylvania Rules of Civil Procedure further evidence that Pennsylvania is a fact-pleading state. Pursuant to the Rules, the "material facts" on which a cause of action is based shall be stated in a concise and summary form in all pleadings. Pa.R.C.P. No. 1019(a).
19. Plaintiff's Complaint fails to state the specific goods and or services allegedly purchased by Defendant; fails to provide the dates of any transactions and or payments; and fails to state the essential terms of the agreement upon which the alleged purchases were made. The Complaint alleges the account became delinquent on November 30, 2004. However, no copy of a signed written customer agreement is attached. Accordingly, it cannot be determined what would constitute a default or delinquent status of any such account.
20. The Complaint fails to provide any documentation to support Plaintiff's claim such as a detailed account statement showing a breakdown of charges, payments, interest, and fees.
21. Because Plaintiff's Complaint fails to set forth the requisite material facts of the alleged claim, Defendant cannot properly form a response, any affirmative defense, counterclaim or a Motion for Summary Judgment.
22. Because the Complaint is essentially devoid of material facts constituting sufficient specificity, the Complaint fails to satisfy Pennsylvania's fact-pleading requirement.

**WHEREFORE**, Defendant Debra A. Oswalt respectfully requests this Honorable Court to sustain her preliminary objections and dismiss Plaintiff's Complaint with prejudice.

Respectfully submitted,

8-14-08  
Date

BY: Nancy L. Datres /s/ oo  
Nancy L. Datres, Esquire  
Supreme Ct. ID 203226  
MIDPENN LEGAL SERVICES, INC.  
230 Lincoln Way East, Suite A  
Chambersburg, PA 17201  
(717) 264-5354 ext. 2303

*Attorney for Defendant*

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

Civil Division

National Credit Acceptance  
1731 Howe Ave, #254  
Sacramento, CA 95825,  
Plaintiff

vs.

Debra A. Oswalt  
25329 Shawville Frenchville Hwy.  
Frenchville, PA 16836,  
Defendant

\*  
\* No.: 2008-1359  
\*  
\*  
\* TYPE OF CASE: Civil  
\*  
\*  
\* TYPE OF PLEADING: Certificate of Service  
\*  
\*  
\*  
\* FILED ON BEHALF OF: Debra A. Oswalt  
\*  
\* COUNSEL OF RECORD FOR THIS PARTY:  
\* Nancy L. Datres, Esquire  
\*  
\* SUPREME COURT NO.: 203226  
\*  
\* MidPenn Legal Services  
\* 230 Lincoln Way East, Suite A  
\* Chambersburg, PA 17201  
\* (717) 264-5354 ext. 2303  
\*  
\*

FILED 100 Atty  
0/10:55 am Datres  
AUG 15 2008

William A. Shaw  
Prothonotary/Clerk of Courts

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

National Credit Acceptance	:	CIVIL ACTION
1731 Howe Ave #254	:	
Sacramento, CA 95825,	:	NO.: 2008 – 1359
Plaintiff	:	
vs.	:	
Debra A. Oswalt	:	
25329 Shawville Frenchville Hwy.	:	
Frenchville, PA 16836,	:	
Defendant	:	

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the below stated date, she served a true and correct copy of the within Preliminary Objections, by mailing same to the office of Plaintiff's attorney of record by regular first-class mail, postage pre-paid, addressed as follows, which service satisfies the requirements of Pa. R.C.P. No. 440:

Michael F. Ratchford, Esq.  
Edwin A. Abrahamsen & Associates  
1729 Pittston Avenue  
Scranton, PA 18505

8-14-08  
Date

BY: Nancy L. Datres / Dd  
Nancy L. Datres, Esquire  
Supreme Ct. ID 203226  
MidPenn Legal Services, Inc.  
230 Lincoln Way East, Suite A  
Chambersburg, PA 17201  
(717) 264-5354 ext. 2303

*Attorney for Defendant*

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

National Credit Acceptance :  
1731 Howe Ave # 254 : CIVIL ACTION  
Sacramento CA 95825 :  
Plaintiff :  
NO: 2008-1359  
vs. :  
Debra A. Oswalt :  
25329 Shawville Frenchville Hwy. :  
Frenchville PA 16836 :  
Defendant :

**FILED**

SEP 26 2008  
W/11:30/6  
William A. Shaw  
Prothonotary/Clerk of Courts  
I LEFT TO ATT

**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 Amended 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**

National Credit Acceptance	:	
1731 Howe Ave # 254	:	CIVIL ACTION
Sacramento CA 95825	:	
	:	
Plaintiff	:	
	:	NO: 2008-1359
vs.	:	
	:	
	:	
Debra A. Oswalt	:	
25329 Shawville Frenchville Hwy.	:	
Frenchville PA 16836	:	
	:	
Defendant	:	

---

**AMENDED COMPLAINT**

Plaintiff, National Credit Acceptance, by and through its attorneys, Edwin A. Abrahamsen & Associates, P.C., complains of the Defendant as follows:

1. Plaintiff, National Credit Acceptance, (hereinafter "Plaintiff") is a corporation maintaining a business at 1731 Howe Avenue, #360, Sacramento, California, 95825.
2. The Defendant DEBRA A. OSWALT (hereinafter "Defendant") is an adult individual residing at 25329 Shawville Frenchville Hwy, Frenchville PA 16836.
3. At all relevant times herein, Plaintiff was engaged in the business of debt purchase and collection.
4. Defendant applied for and received a credit card issued by MBNA with the account number 74973150379708.
5. The within account was sold by MBNA to National Credit Acceptance for valuable consideration and all rights under said accounts were assigned to National Credit Acceptance.  
(See, Bill of Sale attached hereto as Exhibit "A.")
6. Plaintiff was assigned all rights to certain credit card accounts from National Credit

Acceptance, including the account opened by Defendant with account number 74973150379708.

7. Use of the MBNA credit card was subject to the terms of a written Cardmember Agreement, a copy of which was sent to the Defendant along with the credit card. (See, Copy of Cardmember Agreement, attached hereto and marked Exhibit "B.")

8. Defendant used the MBNA credit card account number 74973150379708, for purchases, cash advances and/or balance transfers.

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

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

11. The account became delinquent on November 30, 2004.

12. The amount due and owing \$8,684.93 at the time it was received by Plaintiff.

13. Pursuant to the account agreement, any unpaid balance accrues interest at the rate of 27.98%.

14. The total amount due and owing the Plaintiff including interest, is \$9,565.66.

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

WHEREFORE, Plaintiff requests judgment in its favor and against Defendant in the amount of \$9,565.66 plus costs of suit, reasonable attorneys' fees and any other relief as the Court deems just and appropriate.

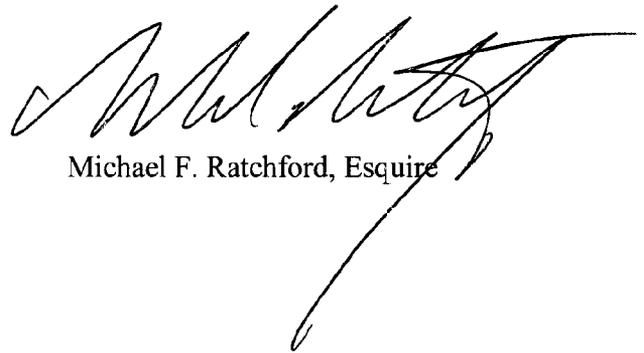
Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael F. Ratchford", written over the typed name below.

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, National Credit Acceptance, 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.

A handwritten signature in black ink, appearing to read "Michael F. Ratchford", with a long, sweeping flourish extending downwards and to the right.

Michael F. Ratchford, Esquire



www.MBNA.com

Exhibit A

BILL OF SALE AND ASSIGNMENT OF LOANS

MBNA America Bank, N.A.

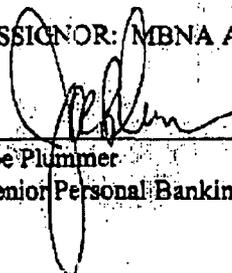
Wilmington, Delaware 19884

(302) 453-9930

The undersigned Assignor ("Assignor") hereby absolutely sells, transfers, assigns, sets-over, quitclaims and conveys to sell National Credit Acceptance, a corporation organized under the laws of California ("Assignee") without recourse and without representations or warranties of any type, kind, character or nature, express or implied, all of Assignor's right title and interest in and to each of the loans identified in the loan schedule ("Loan Schedule") attached hereto (the "Loans"), together with the right to collect all principal, interest or other proceeds of any kind with respect to the Loans remaining due and owing as of the Cut-off Date applicable to such Loans as set forth in the Loan Sale Agreement pursuant to which the Loans are being sold (including but not limited to proceeds derived from the conversion, voluntary or involuntary, of any of the Loans into case of other liquidated property).

DATED: 2/09/05

ASSIGNOR: MBNA AMERICA BANK, NA

  
\_\_\_\_\_  
Joe Plummer  
Senior Personal Banking Officer

SPB3MB1204

**Exhibit B**

**NATIONAL CREDIT  
ACCEPTANCE, INC.**

ACCOUNT NUMBER	NEW BALANCE	PAST DUE	MINIMUM PAYMENT DUE	PAYMENT DUE DATE	WRITE AMOUNT OF PAYMENT HERE
74973150379708	\$8,684.93	\$8,684.93	\$8,684.93	6/11/2008	

Please make check payable to National Credit Acceptance. National Credit Acceptance is the owner of this account. This has been sent by debt collector. Send top portion of this statement with your payment.

DEBRA A OSWALT

25329 SHAWVILLE FRENCHVIL  
FRENCHVILLE, PA 16836

National Credit Acceptance, Inc.  
1731 Howe Ave #254  
Sacramento, CA 95825-2209

Address Change? Check here and complete on the reverse side.  
For Customer Service 24 hours a day call NCA at 1-800-258-6520

ACCOUNT NUMBER	TOTAL CREDIT LINE	CASH ADVANCE CREDIT LINE	AVAILABLE CREDIT	AVAILABLE PORTION FOR CASH	PAYMENT DUE DATE	CLOSING DATE
74973150379708	\$0.00	\$0.00	\$0.00	\$0.00	6/11/2008	6/1/2008

POST DATE	TRANSACTION DATE	REFERENCE NUMBER	TRANSACTION	CHARGE	CREDIT
6/1/2008	6/1/2008		FINANCE CHARGE	\$202.50	

**MINIMUM PAYMENT DUE**

**FINANCE CHARGE SCHEDULE**

**SUMMARY OF TRANSACTIONS**

PAST DUE	\$8,684.93	PERIODIC RATE	27.98%	PREVIOUS BALANCE	\$8,482.43
PAYMENT	\$0.00	ANNUAL RATE	27.98%	PAYMENTS / CREDITS	\$0.00
MINIMUM DUE	\$8,684.93	AVERAGE DAILY BALANCE	\$8,583.68	ADJUSTMENT / PURCHASES	\$0.00
				CASH ADVANCE	\$0.00

**AT YOUR SERVICE EVERY HOUR EVERY DAY**

To speak to one of our customer satisfaction representatives, call 1-800-258-6520

FOR THIS BILLING PERIOD  
ANNUAL PERCENTAGE RATE

**27.98%**

PREVIOUS BALANCE	PAYMENT	CREDIT TOTAL	NEW PURCHASES AND ADVANCES	DEBIT ADJUSTMENTS	FINANCE CHARGE	OVERLINE AMOUNT	NEW BALANCE
\$8,482.43	\$0.00	\$0.00	\$0.00	\$0.00	\$202.50	\$0.00	\$8,684.93

This has been sent to you by a debt collector. This is an attempt to collect a debt. Any information provided will be used for that purpose.

THIS ACCOUNT WAS ORIGINATED BY: MBNA

SEND INQUIRIES TO - NATIONAL CREDIT ACCEPTANCE, 1731 HOWE AVE #254, SACRAMENTO, CA 95825-2209  
CUSTOMER SERVICE TELEPHONE NUMBER 1-800-258-6520

## Important Information About Your Financial Privacy

MBNA is the world's largest independent credit card issuer. Our financial products and services are endorsed by thousands of organizations and financial institutions. We back our financial products and services with top quality service. Collecting and sharing information about you helps us do this. This notice explains MBNA's information collection and sharing practices and lets you choose whether MBNA may share certain information about you.

This notice describes the privacy practices of MBNA Corporation and all its affiliates, including:

- MBNA America Bank, N.A.
- MBNA America (Delaware), N.A.
- MBNA Technology, Inc.
- MBNA Marketing Systems, Inc.
- MBNA Insurance Agency, Inc.

(We'll refer to these collectively as "MBNA"), for financial products and services governed by the laws of the United States of America.

### Our Security Procedures Protect Your Information

We work hard to keep information secure. For example, our information security policies:

- Govern retention of sensitive information;
- Restrict access to information systems; and
- Specify password requirements.

Our practices and procedures meet federal standards. Further, we share only the information we believe is needed to offer a product or service efficiently. Finally, we restrict the use of such information and require that it be kept secure.

### Information We Collect to Conduct Our Business

We collect information about you to conduct our business and deliver the top quality service you expect. Sources include:

- Information we receive from you.
- Information we receive from third parties, such as consumer reporting agencies, to verify statements you've made to us, or regarding your employment, credit, or other relationships.
- Information about your transactions with MBNA and with other companies.

### Information Shared Within MBNA

We may share all the information we collect within MBNA. For example, we may share:

- Identification information (such as name and address);
- Transaction and experience information (such as purchases and payments);
- Credit eligibility information (such as credit reports); and
- Other information.

You may tell us not to share credit eligibility information about you within MBNA, as explained below in the section captioned, "Information Sharing: It's Your Choice". Your choice will not affect the sharing of identification and transaction and experience information.

### Information Shared Outside of MBNA

We may share all the information we collect with the following types of companies outside of MBNA:

- Financial service companies (like banks, insurance companies, securities broker-dealers, and organizations with which we have joint marketing agreements);
- Non-financial companies (like retailers, direct marketers, communications companies, travel companies, and organizations endorsing MBNA);
- Companies performing marketing or other services for us (like data processing or direct mail services); and
- Other companies (like nonprofit organizations).

We may also share all of the information we collect with companies outside of MBNA as permitted by law.

You may tell us not to share information about you with companies outside of MBNA, as explained below in the section captioned, "Information Sharing: It's Your Choice". Your choice will not affect sharing with:

- Companies performing marketing or other services for us;
- Other financial institutions under joint marketing agreements;
- Government entities in response to subpoenas or regulatory requirements;
- Consumer reporting agencies; and
- As otherwise permitted by law.

## Information Sharing: It's Your Choice

We respect your choices related to privacy. You may tell us not to share credit eligibility information within MBNA and not to share information with companies outside of MBNA as described above. If you wish to opt out of such information sharing, please call our toll-free automated response line at 1-866-751-1255. We will ask you to verify your identity and the specific accounts to which your opt out applies. Please have your account, membership, or reference numbers available when you call. For deposit accounts, please have your Social Security number or Taxpayer Identification number available when you call.

MBNA applies opt outs at the account level, not by individual Customer. When any person listed on an account opts out, we opt out the entire account. This includes co-applicants, joint account holders, and authorized users. MBNA follows these privacy practices if an account is closed or becomes inactive.

Your opt out remains effective until revoked in writing. Federal law requires us to provide this notice on an annual basis, whether or not you previously opted out. Please remember that if you previously opted out of an account, you do not need to opt out that account again.

### Important Information For Vermont Customers

The information sharing practices described above are in accordance with Federal law. Vermont law places additional limits on sharing information about Vermont residents so long as they remain residents of Vermont. In accordance with Vermont law, MBNA will not share information we collect about Vermont residents to companies outside of MBNA except:

- As permitted by law;
- To companies that perform marketing or other services on our behalf;
- Name, contact and transaction and experience information (such as your account balance and payment history) to other financial institutions with which we have joint marketing agreements; or
- With the authorization or consent of the Vermont resident.

MBNA will not share credit eligibility information about Vermont residents within MBNA except with the authorization or consent of the Vermont resident.

### Updates and Additional Information

This notice replaces any previous notices from MBNA about the privacy, security, and protection of information. For additional information regarding our Internet privacy practices, and to view the current version of this privacy notice, go to <http://www.mbna.com/privacy.html>. You may have other privacy protections under state laws. We may amend this privacy notice at any time. We will inform you of changes as required by law.

### Tips to Protect Your Information

MBNA works hard to keep your information secure. You can help by following these tips to protect your information:

- Store personal information in a safe place and tear up or shred old receipts and account statements before throwing them away.
- Protect your PINs and other passwords. Do not share them with anyone unless it's for a service or transaction you request and you are confident the other party will protect the information as you would.
- Carry only the minimum amount of identifying information you require.
- Pay attention to billing cycles and statements. Inquire if you do not receive a bill.
- Check account statements carefully to ensure all charges, checks, or withdrawals are authorized.
- Guard your mail from theft. Do not leave bill payment envelopes in your mailbox with the flag up. Instead, deposit them in a post office collection box or at the local post office. Promptly remove incoming mail.
- Order copies of your credit report from each of the three major credit bureaus once a year to ensure they are accurate. The law permits the credit bureaus to charge up to \$8.00 for a copy of this report (unless you live in a state that requires the credit

(continued)

bureaus to provide you with one free copy of your report annually).

If you believe you are a victim of identity theft take immediate action and keep records of your conversations and correspondence. While the steps you must take will vary with your individual circumstances, three basic actions are appropriate in almost every case:

- Contact the creditors for any accounts that have been tampered with or opened fraudulently.
- Contact the fraud departments of each of the three major credit bureaus:
  - Equifax: 1-800-525-6285 / P.O. Box 740241, Atlanta, GA 30374-0241
  - Experian: 1-888-397-3742 / P.O. Box 9532, Allen, Texas 75013
  - Trans Union: 1-800-680-7289 / P.O. Box 6790, Fullerton, CA 92634
- File a report with your local police or the police in the community where the identity theft took place and get a copy of the police report.

Although many consumers appreciate the convenience and customer service of direct marketing:

If you prefer not to receive pre-approved offers of credit, you can opt out of such offers by calling 1-888-5-OPT OUT.

If you want to remove your name from many national direct mail lists, send your name and address to:

DMA Mail Preference Service  
P.O. Box 648  
Carmel, NY 10512

If you want to reduce the number of telephone solicitations from many national marketers, send your name, address and telephone number to:  
DMA Telephone Preference Service  
P.O. Box 648  
Carmel, NY 10512

From "ID Theft: When Bad Things Happen to Your Good Name", Federal Trade Commission, February 2002

### Terms of Your Account

**Periodic Rate Finance Charges:** We calculate Periodic Rate Finance Charges by multiplying each Balance Subject to Finance Charge by the applicable Daily Periodic Rate ("DPR") and that result by the number of days in the billing cycle. The current DPR for Categories A and B Advances is 0.0246304% (corresponding Annual Percentage Rate of 8.99%). The current DPR for Category C Other Charges based on the Variable-Rate Information disclosed below is 0.0246304% (corresponding Annual Percentage Rate ("APR") of 8.99%). The current DPR for Category D Other Balances based on the Variable-Rate Information disclosed below is 0.0246304% (corresponding Annual Percentage Rate of 8.99%). The DPR is calculated by dividing the corresponding APR by 365. We reserve the right to increase or decrease your APR. A change in APR will increase or decrease the term of your loan, but will not change the minimum payment due each month.

**Variable-Rate Information:** The DPRs and the corresponding APRs are variable rates based on a formula. The APR formula is calculated by taking an index and adding a margin. The margin for Categories A and B Advances is 3.74 percentage points. The margin for Category C Other Charges is 4.74 percentage points. The margin for Category D Other Balances is 4.74 percentage points. The index is the highest U.S. Prime Rate as published in the "Money Rates" section of "The Wall Street Journal" on the 15th day of each March, June, September, and December, or the next business day if the 15th is not a business day. An increase or decrease in the index will increase or decrease your DPRs and corresponding APRs on the day after the Closing Date of your billing cycle that ends in April, July, October, and January. If "The Wall Street Journal" does not publish the Prime Rate, or if it changes the definition of the Prime Rate, we may, at our sole discretion, substitute another index.

An increase in the index means you will pay higher Periodic

Rate Finance Charges on Advances, Other Charges and Other Balances. Also, because we will not adjust your minimum monthly payment based solely on an increase in the APR, an increase in the index may cause the total number of payments to increase.

From time to time we may offer you different interest rates on certain categories of Advances or Other Charges. Categories A and B contain Advance transactions, Category C contains Other Charges. From time to time, Category D may contain Other Balances which may include Advances and/or Other Charges and/or any pre-existing Advances or Other Charge balances, all of which will be treated as previous Other Charges.

Your account includes a special feature to purchase goods or services from a merchant. All purchases from this merchant which are charged directly to your account through a direct settlement arrangement which we may have with that merchant, as well as account fees, are added to your account as Other Charges. All other advances made against your account, including any purchases from that merchant made with checks drawn on your account written by us or you, are added to your account as Advances.

The reporting of any payment that has been returned unpaid and related Periodic Rate Finance Charges will occur as an Advance in Category B. The transaction date for such a returned payment is the date that the corresponding payment posted to your account or such later date as we may determine.

**When Periodic Rate Finance Charges Begin To Accrue:** Each new Category A and Category B Advance begins to accrue Periodic Rate Finance Charges on its transaction date. Category A and Category B balances remaining from previous billing cycles accrue Periodic Rate Finance Charges from the first day of the billing cycle. The transaction date for Advances made by check is the date the check is first deposited or cashed. The transaction date for a returned payment (a Category B Advance) is the date that the corresponding payment posted to your account.

Each new Category C Other Charge begins to accrue Periodic Rate Finance Charges on its transaction date or the first day of the billing cycle, whichever date is later. Category C balances remaining from previous billing cycles accrue Periodic Rate Finance Charges from the first day of the billing cycle.

Each new Category D Other Balance begins to accrue Periodic Rate Finance Charges on its transaction date or the first day of the billing cycle, whichever date is later. Category D balances remaining from previous billing cycles accrue Periodic Rate Finance Charges from the first day of the billing cycle.

Periodic Rate Finance Charges accrue daily and compound daily on new balances, and balances remaining from previous billing cycles, in each category. Periodic Rate Finance Charges will continue to accrue even though you have paid the full amount of any related balances in a category because we include any accrued but unpaid finance charges in the calculation of the Balance Subject to Finance Charge.

Your Payment Due Date will be at least 25 days from your statement Closing Date.

**Grace Period:** "Grace Period" means the period of time when you will not accrue Periodic Rate Finance Charges on certain transactions or balances.

You do not have a Grace Period for balances in Categories A, B, C or D.

**Categories A and B -- Average Balance Method (including new Advances):** We calculate separate Balances Subject to Finance Charge for Category A balances and Category B balances. We calculate the Balance Subject to Finance Charge for each of these categories by: (1) calculating a daily balance for each day in the current billing cycle; (2) calculating a daily balance for each day prior to the current billing cycle that had a "Pre-Cycle Advance" balance--a Pre-Cycle Advance is an Advance with a transaction date prior to the current billing cycle but with a posting date within the current billing cycle; (3) adding all the daily balances together; and (4) dividing the sum of the daily balances by the number of days in the current billing cycle.

To calculate the daily balance for each day in the current billing cycle, we take the beginning balance, add an amount

equal to the applicable Daily Periodic Rate multiplied by the previous day's daily balance, add new Advances and transaction fees, and subtract applicable payments and credits. If any daily balance is less than zero we treat it as zero.

To calculate a daily balance for each day prior to the current billing cycle that had a Pre-Cycle Advance balance, we take the beginning balance attributable solely to Pre-Cycle Advances (which will be zero on the transaction date of the first Pre-Cycle Advance), add an amount equal to the applicable Daily Periodic Rate multiplied by the previous day's daily balance, and add only the applicable Pre-Cycle Advances, and their related transaction fees. We exclude from this calculation all transactions posted in previous billing cycles.

**Categories C and D -- Average Daily Balance Method (including new transactions):** We calculate separate Balances Subject to Finance Charge for Category C balances and Category D balances. We calculate the Balance Subject to Finance Charge for each of these categories by: (1) calculating a daily balance for each day in the current billing cycle; (2) adding all the daily balances together; and (3) dividing the sum of the daily balances by the number of days in the current billing cycle.

To calculate the daily balance for each day in the current billing cycle, we take the beginning balance, add an amount equal to the applicable Daily Periodic Rate multiplied by the previous day's daily balance, add new transactions, new account fees, and new transaction fees, and subtract applicable payments and credits. If any daily balance is less than zero we treat it as zero.

We include the costs for the MBNA Credit Protection plan or for credit insurance purchased through us in calculating the beginning balance for the first day of the billing cycle after the billing cycle in which such costs are billed.

**Transaction Fees:** We will assess the following transaction fees to your account in the same category to which the transaction is posted:

A transaction fee (FINANCE CHARGE) for all Advances, including access checks, balance transfers and direct deposits, equal to 2.00% of the U.S. Dollar amount of each Advance you obtain. (Fee: Min. \$5.00; Max. \$50.00). This fee will be treated as an Advance.

**Account Fees:** We will assess the following account fees to your account as Category C Other Charges in the billing cycle in which they occur:

1. a late fee of \$29.00 each time you fail to make the required Minimum Payment shown on your statement by the statement Closing Date immediately following that payment's due date.
2. a returned payment fee of \$29.00 if a check submitted as payment on your account is returned for insufficient funds or for any other reason even if the check is later paid upon subsequent presentation.
3. a returned check fee of \$29.00 if we return an Advance check unpaid for any reason even if the check is later paid upon subsequent presentation.
4. a stop payment fee of \$15.00 if you request us to stop payment on an Advance check.
5. an overlimit fee of \$29.00 if your account is overlimit (even if Fees or Periodic Rate Finance Charges assessed by us cause your New Balance Total to exceed your credit limit) on the last day of the billing cycle that your account went overlimit.
6. in the event that you request copies of monthly billing statements on your account, we may charge you \$5.00 per copy; however, the six most recent monthly statements will be provided free of charge.
7. unless prohibited by applicable law, we will charge your account for any costs associated with complying with state abandoned property laws.

#### Your Billing Rights

**Keep This Notice For Future Use:** This notice contains important information about your rights and our responsibilities under the Fair Credit Billing Act.

**Notify Us In Case of Errors or Questions About Your Bill:** If you think your bill is wrong or if you need more information about a transaction on your bill, write us on a separate sheet at MBNA America Bank N.A., P.O. Box 18027, Wilmington, DE 19850. Do not send the notice on or with your payment.

Write to us as soon as possible. We must hear from you no later than 60 days after we sent you the first bill on which the error or problem appeared. You can telephone us but doing so will not preserve your rights. In your letter, please give us the following information:

- your name and account number
- the dollar amount of the suspected error
- a description of the error and an explanation, if you can,
- of why you believe there is an error. If you need more

information, describe the item you are not sure about.

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

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

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

If you fail to pay the amount that we think you owe, we may report you as delinquent. However, if our explanation does not satisfy you and you write us within twenty-five (25) days telling us that you still refuse to pay, we must tell anyone we report you to that you have a question about your bill, and we must tell you the name of anyone we reported you to. We must tell anyone we report you to that the matter has been settled between us when it finally is.

If we do not follow these rules, we cannot collect the first \$50 of the questioned amount, even if your bill was correct.

### Account Agreement

**General:** In this Agreement, the words "you" and "your" refer to each and all of the persons in whose names this account was issued and who obtain credit in any way provided for under this Agreement. The words "we," "us," "our," and "MBNA America" mean MBNA America Bank, N.A. The word "Advance" means any loan you obtain from us under this Agreement.

Our Agreement with you consists of this Agreement and the terms and conditions printed on the required federal disclosure section of the accompanying Terms of Your Account letter, which is incorporated herein and made a part hereof. Please keep these documents, and subsequent amendments, if any, together.

When you, or anyone whom you authorize or permit, use your account, you agree to the terms of this Agreement. You consent to and authorize MBNA America, any of its affiliates, or its marketing associates to monitor and/or record any of your telephone conversations with our representatives or the representatives of any of those companies.

All capitalized terms not defined herein shall have the meaning as defined in the required federal disclosure section of your Terms of Your Account letter.

**Credit Reporting Agencies:** If you believe we have furnished inaccurate or incomplete information about you or your account to a credit reporting agency, write to us at: MBNA, Credit Reporting Agencies, P. O. Box 17054, Wilmington, DE 19884-7054. Please include your name, address, home phone number, and account number, and explain what you believe is inaccurate or incomplete.

**How To Use Your Account:** You may use your account to purchase or lease goods or services from persons who honor checks. You may obtain such credit under your account by requesting checks or drafts payable in U.S. Dollars that will be sent either directly to your designated payee or to you for forwarding to your designated payee. We may offer the direct deposit of Advances into your banking account or those of your creditors. Availability of funds sent through direct deposit depends upon the policies and procedures of the receiving bank. If this account includes a special feature to purchase goods or services from a merchant, we may send Advances directly to the merchant on your behalf. From time to time, we may issue you additional checks or offer other additional Advances in response to your request. You may not use any Advance solely to make a payment on this account or solely to make a payment on any other credit account with us.

If you permit any person to have access to your checks or account number with the authorization to make a charge,

(continued)

you may be liable for all Advances made by that person including Advances for which you may not have intended to be liable.

You agree not to open a postdated check to obtain credit under your account. If you do postdate a check by which you propose to obtain credit under your account, we may elect to honor it upon presentation or return it unpaid to the party which presented it for payment, without in either case swaying the date shown on the check. We are not liable to you for any loss or expense incurred by you arising out of this action we elect to take.

You must return all checks to us on request.

**Credit Limit:** Your credit limit is shown on your Terms of Your Account letter and generally on each monthly statement. We may change your credit limit or limits from time to time, and we will notify you if we do. The total amount of credit outstanding at anytime must not be more than your credit limit. We may also establish a separate credit limit for certain balances. If we do, your outstanding balance on these types of items may not exceed this separate credit limit.

**Request for Credit Over Your Credit Limits:** If you request credit at any time which, if granted, would result in either your total outstanding balance or your separate outstanding balance, including authorized transactions not yet posted to your account, being more than your credit limit or your separate credit limit, if we have established one for you (whether or not such balance before the request were more than the respective credit limit), we may:

1. Honor the request without permanently raising your credit limit;
2. Honor the request and treat the amount which is more than your credit limit as due immediately; or
3. Refuse to honor the request. We may advise the person who made the request that it has been refused. If we refuse to honor a check, we may do so by advising the person presenting the check that credit has been refused, that there are insufficient funds to pay the check, or in any other manner.

If we have previously honored requests for credit over your credit limit, it does not mean that we will honor further overlimit requests. If we decide to honor such a request, we may assess an overlimit fee as provided in this Agreement.

**Additional Advances:** You may obtain additional Advances from time to time provided that you continue to meet our income and credit standards without any significant adverse change. The approval of one request does not mean the approval of other requests. Additional Advances posted to your account cause the term of the loan to re-start, resulting in a revised minimum monthly payment and revised length of time to repay the loan. Additional Advances must be at least \$200.00.

**Term of Your Loan:** Your repayment term is disclosed in another document location. Your monthly payment amount will be disclosed as the Current Payment on your monthly statements. Certain events may result in your account balance not being paid off during the term. In this case, we do not change the minimum monthly payment amount. Instead, we extend the term to repay the balance. For example, the following events will extend the term: (i) a payment holiday which you take; (ii) an increase in the prime rate for any variable annual percentage rate account; (iii) all fees imposed on your account, such as check transaction fees, late fees, over the credit limit fees and insurance premiums; and (iv) payments received later than the payment due date.

Also, the minimum monthly payment does not take into account the effect of adding unpaid Periodic Rate Finance Charges assessed on Advances to the daily Advance balance. This will extend the term.

The following events will reduce the term (but will not change the minimum payment due each month): (i) a temporary reduction in the annual percentage rate, such as a promotional rate; (ii) a decrease in the prime rate for any variable annual percentage rate; and (iii) payments greater than the required minimum payment.

**Repayment:** You promise to pay us the amounts of all credit you obtain; this includes all Advances, any fees, charges, and insurance premiums we charge against your account; and Finance Charges.

You may pay the entire amount outstanding at any time without penalty. You must pay each month at least the minimum payment shown on your monthly statement. The minimum payment will be the total of (i) the current payment amount shown on your monthly statement; plus (ii) the amount of any past due payments. The current payment amount is based upon the amount outstanding, the term of your loan, and the annual percentage rate. If you overpay or if a credit balance is otherwise created in your account, we will not pay interest on such amounts. Payments greater than the required minimum payment will reduce the total amount of Finance Charges otherwise payable by you.

We will allocate your payments in the manner we determines. In most instances, we will allocate your payments to balances (including new transactions) with lower APRs before balances with higher APRs. This will result in new balances with lower APRs (for example, those with promotional APR offers) being paid before any other existing balances. All payments will be credited to your account for the billing cycle in which each payment is received. Minimum monthly payments cannot be made in advance and payments made in any billing cycle which are greater than the minimum payment due will not affect our obligation to make subsequent minimum payments each month. We can reject payments not denominated in U.S. dollars or not drawn on a U.S. Bank. No payment shall operate as an accord and satisfaction without the prior written approval of a senior officer of MBNA America.

All persons who initially or subsequently request, accept or use the account are individually responsible for any outstanding balance. If two or more persons are responsible to pay any outstanding balance, we may refuse to release any of them from liability until all of the checks outstanding under the account have been returned to us and the balance is paid in full.

**Payment Holidays and Reduced Payment Offers:** We may allow you, from time to time, to omit a monthly payment or make a reduced payment. We will notify you when these options are available. If you omit a payment or make a reduced payment, your term will be extended and finance charges, applicable fees, and other regular transactions, if any, will accrue on your account balances in accordance with this Agreement. The reduced payment amount may be less than your finance charges. You must make the reduced payment on time to avoid a late fee. You must resume making your regular Total Minimum Payment Due each month following a payment holiday or reduced payment offer.

**Billing Cycle:** A billing cycle begins on the day after the closing date shown on your account's preceding monthly statement and ends on the closing date that appears on your account's statement for the current month.

**Insurance:** Group credit insurance may be offered to you from time to time. Purchase of this insurance is strictly optional. If purchased, the insurance will protect us if an event occurs for which benefits are provided. We determine the cost of this insurance by multiplying the insurance rate then in effect by the average of your Advances and other charges outstanding during the billing cycle. The premium is charged to your account as an Other Charge.

**Benefits:** You may be offered certain benefits from time to time, which will be subject to the restrictions outlined by MBNA America in a brochure or otherwise. MBNA America reserves the right to adjust, add, or delete benefits and services at any time and without notice.

**Reasons for Requiring Immediate Payment:** You will be in default and we can require immediate payment of all amounts you owe if: (1) you fail to make any required payment by the Payment Due Date; (2) your New Balance Total exceeds your credit limit; or (3) if we have established a separate credit limit for you, your separate outstanding balance exceeds your separate credit limit; or (4) you fail to abide by any other terms of this Agreement.

If you default, unless prohibited by applicable law, we can also require you to pay the collection and court costs we incur in any collection proceeding, and a reasonable attorney's fee if we refer your account for collection to an attorney who is not our salaried employee.

Our failure to exercise any of our rights when you default does not mean that we are unable to exercise those rights upon later default.

sheet 3 of 4

Change returned.  
Clerk: GLKNISLEY

Deputy Clerk

Date: 7/24/2008  
Time: 03:02 PM

Clearfield County Court of Common Pleas  
Receipt

NO. 1925106  
Page 1 of 1

Received of: Ratchford, Michael F., Esquire \$ 95.00

Ninety-Five and 00/100 Dollars

Case: 2008-01359-CD	Plaintiff: National Credit Acceptancevs.D	Amount
Civil Complaint		95.00
Total:		95.00

Check: 012772

Payment Method: Check  
Amount Tendered: 95.00  
Change Returned: 0.00  
Clerk: GLKNISLEY

William A. Shaw, Prothonotary/Clerk of Cou  
By: \_\_\_\_\_  
Deputy Clerk

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

National Credit Acceptance  
1731 Howe Ave # 254  
Sacramento CA 95825

Plaintiff

vs.

Debra A. Oswalt  
25329 Shawville Frenchville Hwy.  
Frenchville PA 16836

Defendant

CIVIL ACTION

NO: 2008-1359

---

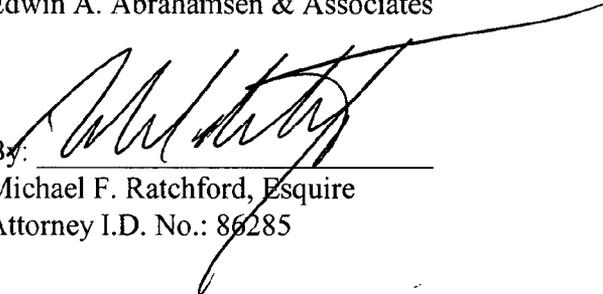
**CERTIFICATE OF SERVICE**

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:

Nancy L. Datres, Esquire  
MidPenn Legal Services  
230 Lincoln Way East, Suite A  
Chambersburg, PA 17201

Edwin A. Abrahamsen & Associates

Date: 9/22/08

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

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

NATIONAL CREDIT ACCEPTANCE,  
Plaintiff

vs.

DEBRA A. OSWALT,  
Defendant

- \*
  - \* NO.: 08-1359-CD
  - \*
    - \* Type of Case: Civil
    - \*
      - \* Type of Pleading: Preliminary Objections  
to Amended Complaint
      - \*
        - \* Filed on Behalf of: Defendant
        - \*
          - \* Counsel of Record for this Party:
          - \* Nancy L. Datres, Esquire
          - \*
            - \* Supreme Court No.: 203226
            - \*
              - \* MidPenn Legal Services
              - \* 230 Lincoln Way East, Suite A
              - \* Chambersburg, PA 17201
              - \* (717) 264-2420

**FILED**

013:35/BD  
OCT 14 2008

2cc  
Amy Datres

5

(66)

William A. Shaw  
Prothonotary/Clerk of Courts

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

National Credit Acceptance	:	CIVIL ACTION
1731 Howe Ave #254	:	
Sacramento, CA 95825,	:	NO.: 2008 – 1359
Plaintiff	:	
	:	
vs.	:	
	:	
Debra A. Oswalt	:	
25329 Shawville Frenchville Hwy.	:	
Frenchville, PA 16836,	:	
Defendant	:	

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

Defendant Debra A. Oswalt, by and through her counsel, Nancy L. Datres of MidPenn Legal Services, hereby files these preliminary objections to Plaintiff’s Amended Complaint and avers the following in support thereof:

1. National Credit Acceptance (hereinafter “Plaintiff”) filed an original Complaint in this Honorable Court against Debra A. Oswalt (hereinafter “Defendant”) on July 24, 2008, seeking \$8,957.89 for an alleged debt allegedly owed by Defendant to Plaintiff, and seeking an unspecified amount in costs and attorney fees.
2. Defendant was personally served with the original complaint by sheriff on or about July 30, 2008.
3. Defendant timely filed preliminary objections to the original complaint on August 14, 2008 on the basis that the complaint failed to conform to law and the rules of Court.

4. Plaintiff filed an Amended Complaint at some date after August 14, 2008. Because the copy of the Amended Complaint mailed to Defendant is not time-stamped, Defendant is without knowledge or information as to the date of the filing of the Amended Complaint.
5. The Amended Complaint, whether timely filed or not, suffers from the same deficiencies as the original complaint. The Amended Complaint, in fact, is identical to the original complaint except for the dollar amount alleged due and owing in paragraph 14. Even the Exhibits attached to the Amended Complaint are identical to the Exhibits attached to the original complaint.

**I. MOTION TO STRIKE/FAILURE OF AMENDED COMPLAINT TO CONFORM  
TO LAW OR RULE OF COURT – FAILURE TO ATTACH COPY  
OF WRITTEN AGREEMENT**

6. Defendant incorporates by reference paragraphs 1 through 5 as though set forth at length.
7. Pursuant to the Pennsylvania Rules of Civil Procedure, whenever a claim is based upon an agreement, the pleading shall state specifically whether the agreement is written or oral. Pa. R.C.P. No. 1019 (h). Plaintiff fails to state whether the alleged agreement between Plaintiff and Defendant is oral or written. Accordingly, the Amended Complaint, as is true of the identical original complaint, fails to comply with Pa. R.C.P. No. 1019 (h).
8. Whenever a claim is based upon a writing, Pa.R.C.P. No.1019 (i) requires a copy of the writing or the material part thereof to be attached to the complaint. As is true of the original complaint, no such writing or material part thereof is attached to the Amended

Complaint. Accordingly, unless Plaintiff is alleging an oral agreement, the Amended Complaint like its predecessor fails to comply with Pa. R.C.P. No. 1019(i).

9. Rule 1019 (i) requires the pleader to attach to the complaint a copy of the original signed and dated credit card agreement. As Plaintiff did in the original complaint, Plaintiff attached to the Amended Complaint the exact same monthly statement and boiler plate language that appears on the back of most if not all credit card monthly statements. Thus, as true of the original complaint, the Amended Complaint fails to comply with Pa. R.C.P. No. 1019 (i).
10. Further, when a written agreement is not available, the rules require the Pleader to state *the reason it is not available* and *to set forth the substance of the agreement* that is not available. Plaintiff fails to do either. Accordingly, the Amended Complaint, as true of the original complaint, fails to comply with Pa. R.C.P. No. 1019 (i).
11. Clearly, said writings are essential to Plaintiff's case. However, such writings are not attached to the Amended Complaint, the absence thereof has not been explained, and the substance of said writings is not set forth in the Amended Complaint, all of which are required under Pa.R.C.P. No. 1019 (h) and (i).

**WHEREFORE**, Defendant Debra A. Oswald respectfully requests this Honorable Court to sustain her preliminary objections and dismiss Plaintiff's Amended Complaint with prejudice due to Plaintiff's ongoing refusal to comply with the rules of court and, as a result, impose upon and waste precious court time and resources.

**II. MOTION TO STRIKE/FAILURE OF AMENDED COMPLAINT TO CONFORM TO LAW OR RULE OF COURT – VERIFICATION**

12. Defendant incorporates paragraphs 1 through 11 as though set forth at length.

13. Pennsylvania Rules of Civil Procedure require every pleading containing an averment of fact to be verified by one or more parties filing the pleading. Pa. R.C.P. No. 1024(c). Here, the Amended Complaint contains averments of fact and yet the accompanying Verification, as is true of the verification attached to the original complaint, is signed by counsel for the Plaintiff and not signed by a party. Accordingly, the Amended Complaint fails to comply with Pa. R.C.P. No. 1024 (c).

14. Rule No. 1024(c) does provide for an exception to the requirement that a party sign the Verification under specific circumstances: (1) if all parties are outside the jurisdiction of the court and the Verification of none of them can be obtained within the time allowed for the pleading; or, (2) if all parties lack sufficient knowledge or information. If either of the conditions applies, then the Verification must set forth the source of the information of the person signing the Verification and must state the reason that none of the parties have signed the Verification. Here, the Verification does neither.

**WHEREFORE**, Defendant Debra A. Oswalt respectfully requests this Honorable Court to sustain her preliminary objections and dismiss Plaintiff's Amended Complaint with prejudice due to Plaintiff's ongoing refusal to comply with the rules of court and, as a result, impose upon and waste precious court time and resources.

**III. MOTION TO STRIKE/FAILURE OF PLEADING TO CONFORM TO LAW OR  
RULE OF COURT – NOT A REAL PARTY IN INTEREST**

15. Defendant incorporates herein paragraphs 1 through 14 as though set forth at length.
16. Plaintiff alleges in paragraph 5 and paragraph 6 of the Amended Complaint, the exact same averments made in paragraphs 5 and 6 of the original complaint, that the credit card account allegedly issued to Defendant by MBNA was assigned by MBNA to Plaintiff.
17. As evidence of the alleged assignment, Plaintiff attaches the identical generic and broadly worded Bill of Sale to the Amended Complaint as was attached to the original complaint. Said Bill of Sale references a “Loan Schedule” as an attachment to the Bill of Sale. However, as true of the original complaint, the “Loan Schedule” is not included with the Bill of Sale e attached to Plaintiff’s Amended Complaint.
18. A generic Bill of Sale does not establish the requisite chain of title to the alleged debt. *See Worldwide Asset Purchasing, LLC v. Stern*, 153 P.L.J. 111 (2004) (J. Wettick).
19. Because the Amended Complaint, like the original complaint, fails to establish a chain of title to the alleged account issued to Defendant by MBNA and fails to establish the alleged assignment of the alleged debt from MBNA to Plaintiff, Plaintiff is not a real party in interest as required by Pa. R.C.P. No. 2002(a) and, accordingly, is unable to prosecute this action.

**WHEREFORE**, Defendant Debra A. Oswalt respectfully requests this Honorable Court to sustain her preliminary objections and dismiss Plaintiff’s Amended Complaint with prejudice due to Plaintiff’s ongoing refusal to comply with the rules of court and, as a result, impose upon and waste precious court time and resources.

#### IV. MOTION TO STRIKE/INSUFFICIENT SPECIFICITY OF PLEADING

20. Defendant incorporates paragraphs 1 through 19 as though set forth at length
21. It is well known that Pennsylvania is a fact-pleading state. Pa.R.C.P. No. 1019(a) requires that the "material facts" on which a cause of action is based shall be stated in a concise and summary form.
22. As is true of the original complaint, the Amended Complaint fails to state: (a) the date upon which the alleged default occurred; (b) the goods or services allegedly purchased by Defendant; (c) dates of the charges/transactions; (d) dates of and amounts of payments credited to the alleged account; (e) dates and amounts of interest charges; and (f) the terms and conditions of the agreement upon which the alleged purchases were made.
23. Because the Amended Complaint is devoid of material facts constituting sufficient specificity, the Amended Complaint, like the original complaint, fails to comply with Pa. R.C.P. No. 1019(a).

**WHEREFORE**, Defendant Debra A. Oswalt respectfully requests this Honorable Court to sustain her preliminary objections and dismiss Plaintiff's Amended Complaint with prejudice due to Plaintiff's ongoing refusal to comply with the rules of court and, as a result, impose upon and waste precious court time and resources.

Respectfully submitted,

10-14-08  
Date

BY: Nancy L. Datres / w  
Nancy L. Datres, Esquire/  
Supreme Ct. ID 203226  
MidPenn Legal Services, Inc.  
230 Lincoln Way East, Suite A  
Chambersburg, PA 17201  
(717) 264-5354 ext. 2303

*Attorney for Defendant*

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

NATIONAL CREDIT ACCEPTANCE,

Plaintiff

vs.

DEBRA A. OSWALT,

Defendant

\*  
\*  
\* NO.: 08-1359-CD  
\*  
\* Type of Case: Civil  
\*  
\* Type of Pleading: Certificate of Service  
\*  
\*  
\* Filed on Behalf of: Defendant  
\*  
\* Counsel of Record for this Party:  
\* Nancy L. Datres, Esquire  
\*  
\* Supreme Court No.: 203226  
\*  
\* MidPenn Legal Services  
\* 230 Lincoln Way East, Suite A  
\* Chambersburg, PA 17201  
\* (717) 264-2420

<sup>S</sup>  
**FILED** *icc*  
*09:03/01*  
OCT 15 2008  
*Att'y Datres*  
*(LCA)*  
William A. Shaw  
Prothonotary/Clerk of Courts

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

National Credit Acceptance	:	CIVIL ACTION
1731 Howe Ave #254	:	
Sacramento, CA 95825,	:	NO.: 2008 – 1359
Plaintiff	:	
	:	
vs.	:	
	:	
Debra A. Cswalt	:	
25329 Shawville Frenchville Hwy.	:	
Frenchville, PA 16836,	:	
Defendant	:	

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the below stated date, she served a true and correct copy of the within Preliminary Objections, by mailing same to the office of Plaintiff's attorney of record by regular first-class mail, postage pre-paid, addressed as follows, which service satisfies the requirements of Pa. R.C.P. No. 440:

Michael F. Ratchford, Esq.  
Edwin A. Abrahamsen & Associates  
1729 Pittston Avenue  
Scranton, PA 18505

10-15-08  
Date

BY: Nancy L. Datres /s/ Nancy L. Datres, Esquire  
Supreme Ct. ID 203226  
MidPenn Legal Services, Inc.  
230 Lincoln Way East, Suite A  
Chambersburg, PA 17201  
(717) 264-5354 ext. 2303

*Attorney for Defendant*

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

National Credit Acceptance	:	
1731 Howe Ave # 254	:	CIVIL ACTION
Sacramento CA 95825	:	
	:	
Plaintiff	:	
	:	NO: 2008-1359
vs.	:	
	:	
	:	
Debra A. Oswalt	:	
25329 Shawville Frenchville Hwy.	:	
Frenchville PA 16836	:	
	:	
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 Second Amended 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

**FILED** *NO CC*  
*M/11/11/08*  
NOV 06 2008 *(GD)*

5  
William A. Shaw  
Prothonotary/Clerk of Courts

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

National Credit Acceptance	:	
1731 Howe Ave # 254	:	CIVIL ACTION
Sacramento CA 95825	:	
	:	
Plaintiff	:	
	:	NO: 2008-1359
vs.	:	
	:	
Debra A. Oswalt	:	
25329 Shawville Frenchville Hwy.	:	
Frenchville PA 16836	:	
	:	
Defendant	:	

---

**SECOND AMENDED COMPLAINT**

Plaintiff, National Credit Acceptance, by and through its attorneys, Edwin A. Abrahamsen & Associates, P.C., complains of the Defendant as follows:

1. Plaintiff, National Credit Acceptance, (hereinafter "Plaintiff") is a corporation maintaining a business at 1731 Howe Avenue, #360, Sacramento, California, 95825.
2. The Defendant DEBRA A. OSWALT (hereinafter "Defendant") is an adult individual residing at 25329 Shawville Frenchville Hwy, Frenchville PA 16836.
3. At all relevant times herein, Plaintiff was engaged in the business of debt purchase and collection.
4. Defendant applied for and received a credit card issued by MBNA with the account number 74973150379708.
5. The within account was sold by MBNA to National Credit Acceptance for valuable consideration and all rights under said accounts were assigned to National Credit Acceptance.  
(See, Bill of Sale attached hereto as Exhibit "A.")
6. Plaintiff was assigned all rights to certain credit card accounts from National Credit

Acceptance, including the account opened by Defendant with account number 74973150379708.

7. Use of the MBNA credit card was subject to the terms of a written Cardmember Agreement, a copy of which was sent to the Defendant along with the credit card. (See, Copy of Cardmember Agreement, attached hereto and marked Exhibit "B.")

8. Defendant used the MBNA credit card account number 74973150379708, for purchases, cash advances and/or balance transfers.

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

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

11. The account became delinquent on November 30, 2004.

12. The amount due and owing \$8,684.93 at the time it was received by Plaintiff.

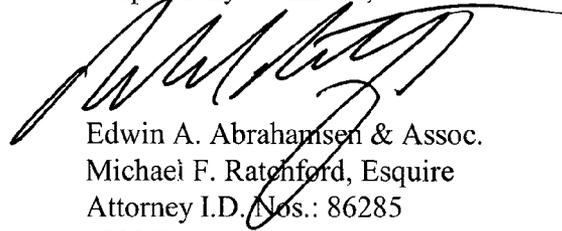
13. Pursuant to the account agreement, any unpaid balance accrues interest at the rate of 27.98%.

14. The total amount due and owing the Plaintiff including interest, is \$9,565.66.

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

WHEREFORE, Plaintiff requests judgment in its favor and against Defendant in the amount of \$9,565.66 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", is written over the typed name and extends to the right.

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



www.MBNA.com

Exhibit A

BILL OF SALE AND ASSIGNMENT OF LOANS

MBNA America Bank, N.A.

Wilmington, Delaware 19804

(302) 453-9930

The undersigned Assignor ("Assignor") hereby absolutely sells, transfers, assigns, sets over, quitclaims and conveys to sell National Credit Acceptance, a corporation organized under the laws of California ("Assignee") without recourse and without representations or warranties of any type, kind, character or nature, express or implied, all of Assignor's right title and interest in and to each of the loans identified in the loan schedule ("Loan Schedule") attached hereto (the "Loans"), together with the right to collect all principal, interest or other proceeds of any kind with respect to the Loans remaining due and owing as of the Cut-off Date applicable to such Loans as set forth in the Loan Sale Agreement pursuant to which the Loans are being sold (including but not limited to proceeds derived from the conversion, voluntary or involuntary, of any of the Loans into case of other liquidated property).

DATED: 2/09/05

ASSIGNOR: MBNA AMERICA BANK, NA

Joe Plummer  
Senior Personal Banking Officer

SPE3 MB 1204

Exhibit B

**NATIONAL CREDIT ACCEPTANCE, INC.**

ACCOUNT NUMBER	NEW BALANCE	PAST DUE	MINIMUM PAYMENT DUE	PAYMENT DUE DATE	WRITE AMOUNT OF PAYMENT HERE
74973150379708	\$8,684.93	\$8,684.93	\$8,684.93	6/11/2008	

Please make check payable to National Credit Acceptance. National Credit Acceptance is the owner of this account. This has been sent by a debt collector. Send top portion of this statement with your payment.

DEBRA A OSWALT  
 25329 SHAWVILLE FRENCHVIL  
 FRENCHVILLE, PA 16836

National Credit Acceptance, Inc.  
 1731 Howe Ave #254  
 Sacramento, CA 95825-2209

Address Change? Check here and complete on the reverse side.  
 For Customer Service 24 hours a day call NCA at 1-800-258-6520

ACCOUNT NUMBER	TOTAL CREDIT LINE	CASH ADVANCE CREDIT LINE	AVAILABLE CREDIT	AVAILABLE PORTION FOR CASH	PAYMENT DUE DATE	CLOSING DATE
74973150379708	\$0.00	\$0.00	\$0.00	\$0.00	6/11/2008	6/1/2008

POST DATE	TRANSACTION DATE	REFERENCE NUMBER	TRANSACTION	CHARGE	CREDIT
6/1/2008	6/1/2008		FINANCE CHARGE	\$202.50	

MINIMUM PAYMENT DUE		FINANCE CHARGE SCHEDULE		SUMMARY OF TRANSACTIONS	
PAST DUE	\$8,684.93	PERIODIC RATE	27.98%	PREVIOUS BALANCE	\$8,482.43
PAYMENT	\$0.00	ANNUAL RATE	27.98%	PAYMENTS / CREDITS	\$0.00
MINIMUM DUE	\$8,684.93	AVERAGE DAILY BALANCE	\$8,583.68	ADJUSTMENT / PURCHASES	\$0.00
				CASH ADVANCE	\$0.00

AT YOUR SERVICE EVERY HOUR EVERY DAY  
 To speak to one of our customer satisfaction representatives, call 1-800-258-6520

FOR THIS BILLING PERIOD ANNUAL PERCENTAGE RATE **27.98%**

PREVIOUS BALANCE	PAYMENT	CREDIT TOTAL	NEW PURCHASES AND ADVANCES	DEBIT ADJUSTMENTS	FINANCE CHARGE	OVERLINE AMOUNT	NEW BALANCE
\$8,482.43	\$0.00	\$0.00	\$0.00	\$0.00	\$202.50	\$0.00	\$8,684.93

This has been sent to you by a debt collector. This is an attempt to collect a debt. Any information provided will be used for that purpose.

THIS ACCOUNT WAS ORIGINATED BY: MBNA  
 SEND INQUIRIES TO - NATIONAL CREDIT ACCEPTANCE, 1731 HOWE AVE #254, SACRAMENTO, CA 95825-2209  
 CUSTOMER SERVICE TELEPHONE NUMBER 1-800-258-6520

# Exhibit B

Exhibit "A"

Page 1

## Important Information About Your Financial Privacy

MBNA is the world's largest independent credit card issuer. Our financial products and services are endorsed by thousands of organizations and financial institutions. We back our financial products and services with top quality service. Collecting and sharing information about you helps us do this. This notice explains MBNA's information collection and sharing practices and lets you choose whether MBNA may share certain information about you. This notice describes the privacy practices of MBNA Corporation and all its affiliates, including:

- MBNA America Bank, N.A.
- MBNA America (Delaware), N.A.
- MBNA Technology, Inc.
- MBNA Marketing Systems, Inc.
- MBNA Insurance Agency, Inc.

(We'll refer to these collectively as "MBNA"), for financial products and services governed by the laws of the United States of America.

### Our Security Procedures Protect Your Information

We work hard to keep information secure. For example, our information security policies:

- Govern retention of sensitive information;
- Restrict access to information systems; and
- Specify password requirements.

Our practices and procedures meet federal standards. Further, we share only the information we believe is needed to offer a product or service efficiently. Finally, we restrict the use of such information and require that it be kept secure.

### Information We Collect to Conduct Our Business

We collect information about you to conduct our business and deliver the top quality service you expect. Sources include:

- Information we receive from you.
- Information we receive from third parties, such as consumer reporting agencies, to verify statements you've made to us, or regarding your employment, credit, or other relationships.
- Information about your transactions with MBNA and with other companies.

### Information Shared Within MBNA

We may share all the information we collect within MBNA. For example, we may share:

- Identification information (such as name and address);
- Transaction and experience information (such as purchases and payments);
- Credit eligibility information (such as credit reports); and
- Other information.

You may tell us not to share credit eligibility information about you within MBNA, as explained below in the section captioned, "Information Sharing: It's Your Choice". Your choice will not affect the sharing of identification and transaction and experience information.

### Information Shared Outside of MBNA

We may share all the information we collect with the following types of companies outside of MBNA:

- Financial service companies (like banks, insurance companies, securities broker-dealers, and organizations with which we have joint marketing agreements);
- Non-financial companies (like retailers, direct marketers, communications companies, travel companies, and organizations endorsing MBNA);
- Companies performing marketing or other services for us (like data processing or direct mail services); and
- Other companies (like nonprofit organizations).

We may also share all of the information we collect with companies outside of MBNA as permitted by law.

You may tell us not to share information about you with companies outside of MBNA, as explained below in the section captioned, "Information Sharing: It's Your Choice".

Your choice will not affect sharing with:

- Companies performing marketing or other services for us;
- Other financial institutions under joint marketing agreements;
- Government entities in response to subpoenas or regulatory requirements;
- Consumer reporting agencies; and
- As otherwise permitted by law.

## Information Sharing: It's Your Choice

We respect your choices related to privacy. You may tell us not to share credit eligibility information within MBNA and not to share information with companies outside of MBNA, as described above. If you wish to opt out of such information sharing, please call our toll-free information sharing, please call our toll-free automated response line at 1-888-751-1855. We will ask you to verify your identity and the specific accounts to which your opt out applies. Please have your account membership, or reference numbers available when you call. For deposit accounts, please have your Social Security number or Taxpayer Identification number available when you call.

MBNA applies opt outs at the account level, not by individual Customer. When any person listed on an account opts out, we opt out the entire account. This includes co-applicants, joint account holders, and authorized users. MBNA follows these privacy practices if an account is closed or becomes inactive.

Your opt out remains effective until revoked in writing. Federal law requires us to provide this notice on an annual basis, whether or not you previously opted out. Please remember that if you previously opted out of an account, you do not need to opt out that account again.

### Important Information For Vermont Customers

The information sharing practices described above are in accordance with Federal law. Vermont law places additional limits on sharing information about Vermont residents so long as they remain residents of Vermont. In accordance with Vermont law, MBNA will not share information we collect about Vermont residents to companies outside of MBNA except:

- As permitted by law;
- To companies that perform marketing or other services on our behalf;
- Name, contact and transaction and experience information (such as your account balance and payment history) to other financial institutions with which we have joint marketing agreements; or
- With the authorization or consent of the Vermont resident.

MBNA will not share credit eligibility information about Vermont residents within MBNA except with the authorization or consent of the Vermont resident.

### Updates and Additional Information

This notice replaces any previous notices from MBNA about the privacy, security, and protection of information. For additional information regarding our Internet privacy practices, and to view the current version of this privacy notice, go to <http://www.mbna.com/privacy.html>. You may have other privacy protections under state laws. We may amend this privacy notice at any time. We will inform you of changes as required by law.

### Tips to Protect Your Information

MBNA works hard to keep your information secure. You can help by following these tips to protect your information:

- Store personal information in a safe place and tear up or shred old receipts and account statements before throwing them away.
- Protect your PINs and other passwords. Do not share them with anyone unless it's for a service or transaction you request and you are confident the other party will protect the information as you would.
- Carry only the minimum amount of identifying information you require.
- Pay attention to billing cycles and statements.
- Inquire if you do not receive a bill.
- Check account statements carefully to ensure all charges, checks, or withdrawals are authorized.
- Guard your mail from theft. Do not leave bill payment envelopes in your mailbox with the flag up. Instead, deposit them in a post office collection box or at the local post office. Promptly remove incoming mail.
- Order copies of your credit report from each of the three major credit bureaus once a year to ensure they are accurate. The law permits the credit bureaus to charge up to \$8.00 for a copy of the report (unless you live in a state that requires the credit

500-01

(continued)

bureaus to provide you with one free copy of your report annually. If you believe you are a victim of identity theft take immediate action and keep records of your conversations and correspondence. While the steps you must take will vary with your individual circumstances, three basic actions are appropriate in almost every case:

- Contact the creditors for any accounts that have been tampered with or opened fraudulently.
- Contact the fraud departments of each of the three major credit bureaus:
  - Equifax: 1-800-525-6285 / P.O. Box 760241, Atlanta, GA 30374-0241
  - Experian: 1-888-597-3743 / P.O. Box 9532, Allen, Texas 75013
  - Trans Union: 1-800-680-7289 / P.O. Box 6780, Fullerton, CA 92834
- File a report with your local police or the police in the community where the identity theft took place and get a copy of the police report.

Although many consumers appreciate the convenience and customer service of direct marketing:

If you prefer not to receive pre-approved offers of credit, you can opt out of such offers by calling 1-888-8-OPT OUT.

If you want to remove your name from many national direct mail lists, send your name and address to:

- DMA Mail Preference Service  
P.O. Box 64  
Carmel, NY 10512
- If you wish to reduce the number of telephone solicitations from many national marketers, send your name, address and telephone number to:  
• DMA Telephone Preference Service  
P.O. Box 923  
Carmel, NY 10512

From "ID Theft: When Bad Things Happen to Your Good Name", Federal Trade Commission, February 2002

Terms of Your Account

Periodic Rate Finance Charges: We calculate Periodic Rate Finance Charges by multiplying each Balance Subject to Finance Charge by the applicable Daily Periodic Rate ("DPR") and that result by the number of days in the billing cycle. The current DPR for Categories A and B Advances is 0.024630% (corresponding Annual Percentage Rate of 8.99%). The current DPR for Category C Other Charges, based on the Variable-Rate Information disclosed below, is 0.024630% (corresponding Annual Percentage Rate ("APR") of 8.99%). The current DPR for Category D Other Balances, based on the Variable-Rate Information disclosed below, is 0.024630% (corresponding Annual Percentage Rate of 8.99%). The DPR is calculated by dividing the corresponding APR by 365. We reserve the right to increase or decrease your APR. A change in APR will increase or decrease the term of your loan, but will not change the minimum payment due each month.

Variable-Rate Information: The DPRs and the corresponding APRs are variable rates based on a formula. The APR formula is calculated by taking an index and adding a margin. The margin for Categories A and B Advances is 4.74 percentage points. The margin for Category C Other Charges is 4.74 percentage points. The margin for Category D Other Balances is 4.74 percentage points. The index is the highest U.S. Prime Rate as published in the "Money Rates" section of "The Wall Street Journal" on the 15th day of each March, June, September, and December, or the next business day if the 15th is not a business day. An increase or decrease in the index will increase or decrease your DPRs and corresponding APRs on the day after the Closing Date of your billing cycle that ends in April, July, October, and January. If "The Wall Street Journal" does not publish the Prime Rate, or if it changes the definition of the Prime Rate, we may, at our sole discretion, substitute another index. An increase in the index means you will pay higher Periodic

Rate Finance Charges on Advances, Other Charges and Other Balances. Also, because we will not adjust your minimum monthly payment based solely on an increase in the APR, an increase in the index may cause the total number of payments to increase.

From time to time we may offer you different interest rates on certain categories of Advances or Other Charges. Categories A and B contain Advance transactions. Category C contains Other Charges. From time to time, Category D contains Other Balances which may include Advances and/or Other Charges and/or any pre-existing Advances or Other Charge balances, all of which will be treated as previous Other Charges.

Your account includes a special feature to purchase goods or services from a merchant. All purchases from this merchant which are charged directly to your account through a direct settlement arrangement which we may have with that merchant, as well as account fees, are added to your account as Other Charges. All other advances made against your account, including any purchases from that merchant made with checks drawn on your account written by us or you, are added to your account as Advances.

The reporting of any payment that has been returned unpaid and related Periodic Rate Finance Charges will occur as an Advance in Category B. The transaction date for such a returned payment is the date that the corresponding payment posted to your account or such later date as we may determine.

When Periodic Rate Finance Charges Begin To Accrue: Each new Category A and Category B Advance begins to accrue Periodic Rate Finance Charges on its transaction date. Category A and Category B balances remaining from previous billing cycles accrue Periodic Rate Finance Charges from the first day of the billing cycle. The transaction date for Advances made by check is the date the check is first deposited or cashed. The transaction date for a returned payment (a Category B Advance) is the date that the corresponding payment posted to your account.

Each new Category C Other Charge begins to accrue Periodic Rate Finance Charges on its transaction date or the first day of the billing cycle, whichever date is later. Category C balances remaining from previous billing cycles accrue Periodic Rate Finance Charges from the first day of the billing cycle.

Each new Category D Other Balance begins to accrue Periodic Rate Finance Charges on its transaction date or the first day of the billing cycle, whichever date is later. Category D balances remaining from previous billing cycles accrue Periodic Rate Finance Charges from the first day of the billing cycle.

Periodic Rate Finance Charges accrue daily and compound daily on new balances, and balances remaining from previous billing cycles, in each category. Periodic Rate Finance Charges will continue to accrue even though you have paid the full amount of any related balances in a category because we include any accrued but unpaid finance charges in the calculation of the Balance Subject to Finance Charge.

Your Payment Due Date will be at least 25 days from your statement Closing Date.

Grace Period: "Grace Period" means the period of time when you will not accrue Periodic Rate Finance Charges on certain transactions or balances.

You do not have a Grace Period for balances in Categories A, B, C or D.

Categories A and B -- Average Balance Method (including new Advances): We calculate separate Balances Subject to Finance Charge for Category A balances and Category B balances. We calculate the Balance Subject to Finance Charge for each of these categories by: (1) calculating a daily balance for each day in the current billing cycle; (2) calculating a daily balance for each day prior to the current billing cycle that had a "Pre-Cycle Advance" balance—a Pre-Cycle Advance is an Advance with a transaction date prior to the current billing cycle but with a posting date within the current billing cycle; (3) adding all the daily balances together; and (4) dividing the sum of the daily balances by the number of days in the current billing cycle.

To calculate the daily balance for each day in the current billing cycle, we take the beginning balance, add an amount

equal to the applicable Daily Periodic Rate multiplied by the previous day's daily balance, add new Advances and transaction fees, and subtract applicable payments and credits. If any daily balance is less than zero we treat it as zero.

To calculate a daily balance for each day prior to the current billing cycle that had a Pre-Cycle Advance balance, we take the beginning balance attributable solely to Pre-Cycle Advances (which will be zero on the transaction date of the first Pre-Cycle Advance), add an amount equal to the applicable Daily Periodic Rate multiplied by the previous day's daily balance, and add only the applicable Pre-Cycle Advances, and their related transaction fees. We exclude from this calculation all transactions posted in previous billing cycles.

**Categories C and D - Average Daily Balance Method (including new transactions):** We calculate separate Balances Subject to Finance Charge for Category C balances and Category D balances. We calculate the Balance Subject to Finance Charge for each of these categories by: (1) calculating a daily balance for each day in the current billing cycle; (2) adding all the daily balances together; and (3) dividing the sum of the daily balances by the number of days in the current billing cycle.

To calculate the daily balance for each day in the current billing cycle, we take the beginning balance, add an amount equal to the applicable Daily Periodic Rate multiplied by the previous day's daily balance, add new transactions, new account fees, and new transaction fees, and subtract applicable payments and credits. If any daily balance is less than zero we treat it as zero.

We include the costs for the MBNA Credit Protection plan or for credit insurance purchased through us in calculating the beginning balance for the first day of the billing cycle after the billing cycle in which such costs are billed.

**Transaction Fees:** We will assess the following transaction fees to your account in the same category to which the transaction is posted:

A transaction fee (FINANCE CHARGE) for all Advances, including access checks, balance transfers and direct deposits, equal to 5.00% of the U.S. Dollar amount of each Advance you obtain. (Fee: Min. \$5.00; Max. \$50.00). This fee will be treated as an Advance.

**Account Fees:** We will assess the following account fees to your account as Category C Other Charges in the billing cycle in which they occur:

1. a late fee of \$29.00 each time you fail to make the required Minimum Payment shown on your statement by the statement Closing Date immediately following that payment's due date.
2. a returned payment fee of \$29.00 if a check submitted as payment on your account is returned for insufficient funds or for any other reason even if the check is later paid upon subsequent presentation.
3. a returned check fee of \$29.00 if we return an Advance check unpaid for any reason even if the check is later paid upon subsequent presentation.
4. a stop payment fee of \$15.00 if you request us to stop payment on an Advance check.
5. an overnight fee of \$29.00 if your account is overlimit (even if Fees or Periodic Rate Finance Charges assessed by us cause your New Balance Total to exceed your credit limit) on the last day of the billing cycle that your account went overlimit.
6. in the event that you request copies of monthly billing statements on your account, we may charge you \$5.00 per copy; however, the six most recent monthly statements will be provided free of charge.
7. unless prohibited by applicable law, we will charge your account for any costs associated with complying with state abandoned property laws.

#### Your Billing Rights

**Keep This Notice For Future Use:** This notice contains important information about your rights and our responsibilities under the Fair Credit Billing Act.

**Notify Us In Case of Errors or Questions About Your Bill:** If you think your bill is wrong or if you need more information about a transaction on your bill, write us on a separate sheet at MBNA America Bank N.A., P.O. Box 15097, Wilmington, DE 19850. Do not send the notice on or with your payment.

Write to us as soon as possible. We must hear from you no later than 60 days after we sent you the first bill on which the error or problem appeared. You can telephone us but doing so will not preserve your rights. In your letter, please give us the following information:

- your name and account number
- the dollar amount of the suspected error
- a description of the error and an explanation, if you can, of why you believe there is an error. If you need more

information, describe the item you are not sure about.

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

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

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

If you fail to pay the amount that we think you owe, we may report you as delinquent. However, if our explanation does not satisfy you and you write us within twenty-five (25) days telling us that you still refuse to pay, we must tell anyone we report you to that you have a question about your bill, and we must tell anyone we report you to that the matter has been settled between us when it finally is.

If we do not follow these rules, we cannot collect the first \$50 of the questioned amount, even if your bill was correct.

#### Account Agreement

**General:** In this Agreement, the words "you" and "your" refer to each and all of the persons in whose names this account was issued and who obtain credit in any way provided for under this Agreement. The words "we," "us," "our," and "MBNA America" mean MBNA America Bank, N.A. The word "Advance" means any loan you obtain from us under this Agreement.

Our Agreement with you consists of this Agreement and the terms and conditions printed on the required federal disclosures section of the accompanying Terms of Your Account letter, which is incorporated herein and made a part hereof. Please keep these documents, and subsequent amendments, if any, together.

When you, or anyone whom you authorize or permit, use your account, you agree to the terms of this Agreement.

You consent to and authorize MBNA America, any of its affiliates, or its marketing associates to monitor and/or record any of your telephone conversations with our representatives or the representatives of any of these companies.

All capitalized terms not defined herein shall have the meaning as defined in the required federal disclosures section of your Terms of Your Account letter.

**Credit Reporting Agencies:** If you believe we have furnished inaccurate or incomplete information about you or your account to a credit reporting agency, write to us at: MBNA, Credit Reporting Agencies, P. O. Box 17054, Wilmington, DE 19884-7054. Please include your name, address, home phone number, and account number, and explain what you believe is inaccurate or incomplete.

**How To Use Your Account:** You may use your account to purchase or lease goods or services from persons who honor checks. You may obtain such credit under your account by requesting checks or drafts payable to U.S. Dollars that will be sent either directly to your designated payee or to you for forwarding to your designated payee. We may offer the direct deposit of Advances into your banking account or those of your creditors. Availability of funds sent through direct deposit depends upon the policies and procedures of the receiving bank. If this account includes a special feature to purchase goods or services from a merchant, we may send Advances directly to the merchant on your behalf. From time to time, we may issue you additional checks or offer other additional Advances in response to your request. You may not use any Advance solely to make a payment on this account or solely to make a payment on any other credit account with us.

If you permit any person to have access to your checks or account number with the authorization to make a charge,

(continued)

you may be liable for all Advances made by that person including Advances for which you may not have intended to be liable.

You agree not to use a postdated check to obtain credit under your account. If you do postdate a check by which you propose to obtain credit under your account, we may elect to honor it upon presentation or return it unpaid to the party which presented it for payment, without in either case awaiting the date shown on the check. We are not liable to you for any loss or expense incurred by you arising out of the action we elect to take.

You must return all checks to us on request.

**Credit Limits:** Your credit limit is shown on your Terms of Your Account letter and generally on each monthly statement. We may change your credit limit or limits from time to time, and we will notify you if we do. The total amount of credit outstanding at any time must not be more than your credit limit. We may also establish a separate credit limit for certain balances. If we do, your outstanding balance on these types of items may not exceed this separate credit limit.

**Request for Credit Over Your Credit Limit:** If you request credit at any time which, if granted, would result in either your total outstanding balance or your separate outstanding balance, including authorized transactions not yet posted to your account, being more than your credit limit or your separate credit limit, if we have established one for you, (whether or not such balances before the request were more than the respective credit limit), we may:

1. Honor the request without permanently raising your credit limit;
2. Honor the request and treat the amount which is more than your credit limit as immediately due; or
3. Refuse to honor the request. We may advise the person who made the request that it has been refused. If we refuse to honor a check, we may do so by advising the person presenting the check that credit has been refused, that there are insufficient funds to pay the check, or in any other manner.

If we have previously honored requests for credit over your credit limit, it does not mean that we will honor further overlimit requests. If we decide to honor such a request, we may assess an overlimit fee as provided in this Agreement.

**Additional Advances:** You may obtain additional Advances from time to time provided that you continue to meet our income and credit standards without any significant adverse change. The approval of one request does not mean the approval of other requests. Additional Advances posted to your account cause the term of the loan to re-start, resulting in a revised minimum monthly payment and revised length of time to repay the loan. Additional Advances must be at least \$200.00.

**Term of Your Loan:** Your repayment term is disclosed in another document location. Your monthly payment amount will be disclosed as the Current Payment on your monthly statements. Certain events may result in your account balance not being paid off during the term. In this case, we do not change the minimum monthly payment amount. Instead, we extend the term to repay the balance. For example, the following events will extend the term: (i) a payment holiday which you take; (ii) an increase in the prime rate for any variable annual percentage rate account; (iii) all fees imposed on your account, such as check transaction fees, late fees, over the credit limit fees and insurance premiums; and (iv) payments received later than the payment due date.

Also, the minimum monthly payment does not take into account the effect of adding unpaid Periodic Rate Finance Charges assessed on Advances to the daily Advance balance. This will extend the term.

The following events will reduce the term (but will not change the minimum payment due each month): (i) a temporary reduction in the annual percentage rate, such as a proportional rate; (ii) a decrease in the prime rate for any variable annual percentage rate; and (iii) payments greater than the required minimum payment.

**Repayment:** You promise to pay us the amounts of all credit you obtain; this includes all Advances, any fees, charges, and insurance premiums we charge against your account; and Finance Charges.

You may pay the entire amount outstanding at any time without penalty. You must pay each month at least the minimum payment shown on your monthly statement. The minimum payment will be the total of (i) the current payment amount shown on your monthly statement; plus (ii) the amount of any past due payments. The current payment amount is based upon the amount outstanding, the term of your loan, and the annual percentage rate. If you overpay or if a credit balance is otherwise created in your account, we will not pay interest on such amounts. Payments greater than the required minimum payment will reduce the total amount of Finance Charges otherwise payable by you.

We will allocate your payments in the manner we determines. In good instances, we will allocate your payments to balances (including new transactions) with lower APRs before balances with higher APRs. This will result in new balances with lower APRs (for example, those with promotional APR offers) being paid before any other existing balances. All payments will be credited to your account for the billing cycle in which each payment is received. Minimum monthly payments cannot be made in advance and payments made in any billing cycle which are greater than the minimum payment due will not affect our obligation to make subsequent minimum payments each month. We can reject payments not denominated in U.S. dollars or not drawn on a U.S. Bank. No payment shall operate as an accord and satisfaction without the prior written approval of a senior officer of MBNA America.

All persons who initially or subsequently request, accept or use the account are individually responsible for any outstanding balance. If two or more persons are responsible to pay any outstanding balance, we may refuse to release any of them from liability until all of the checks outstanding under the account have been returned to us and the balance is paid in full.

**Payment Holidays and Reduced Payment Offers:** We may allow you, from time to time, to omit a monthly payment or make a reduced payment. We will notify you when these options are available. If you omit a payment or make a reduced payment, your term will be extended and finance charges, applicable fees, and other regular transactions, if any, will accrue on your account balances in accordance with this Agreement. The reduced payment amount may be less than your finance charges. You must make the reduced payment on time to avoid a late fee. You must resume making your regular Total Minimum Payment due each month following a payment holiday or reduced payment offer.

**Billing Cycle:** A billing cycle begins on the day after the closing date shown on your account's preceding monthly statement and ends on the closing date that appears on your account's statement for the current month.

**Insurance:** Group credit insurance may be offered to you from time to time. Purchase of this insurance is strictly optional. If purchased, the insurance will protect us if an event occurs for which benefits are provided. We determine the cost of this insurance by multiplying the insurance rate then in effect by the average of your Advances and other charges outstanding during the billing cycle. The premium is charged to your account as an Other Charge.

**Benefits:** You may be offered certain benefits from time to time which will be subject to the restrictions outlined by MBNA America in a brochure or otherwise. MBNA America reserves the right to adjust, add, or delete benefits and services at any time and without notice.

**Reasons for Requiring Immediate Payment:** You will be in default and we can require immediate payment of all amounts you owe if: (1) you fail to make any required payment by the Payment Due Date; (2) your New Balance Total exceeds your credit limit, or if we have established a separate credit limit for you, your separate outstanding balance exceeds your separate credit limit; or (3) you fail to abide by any other terms of this Agreement.

If you default, unless prohibited by applicable law, we can also require you to pay the collection and court costs we incur in any collection proceeding, and a reasonable attorney's fee if we refer your account for collection to an attorney who is not our salaried employee.

Our failure to exercise any of our rights when you default does not mean that we are unable to exercise those rights upon later default.

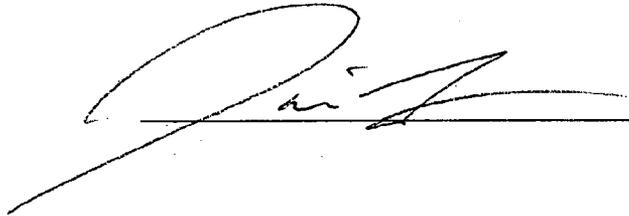
sheet 3 of 4

change received.  
Clerk: GLKNISLEY

Deputy Clerk

**VERIFICATION**

I, Jarvis Teat, of National Credit Acceptance, Inc., am fully familiar of the facts set forth in the Plaintiff's Amended Complaint and am authorized to make this verification on behalf of National Credit Acceptance. I verify that the facts set forth in the allegations of Plaintiff's Amended Complaint are true and correct to the best of my knowledge, knowing that false statements are punishable by law pursuant to 18 C.S.A. 4904.

A handwritten signature in black ink, appearing to read "Jarvis Teat", is written over a horizontal line. The signature is cursive and stylized.

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

National Credit Acceptance	:	
1731 Howe Ave # 254	:	CIVIL ACTION
Sacramento CA 95825	:	
	:	
Plaintiff	:	
	:	NO: 2008-1359
vs.	:	
	:	
Debra A. Oswalt	:	
25329 Shawville Frenchville Hwy.	:	
Frenchville PA 16836	:	
	:	
Defendant	:	

---

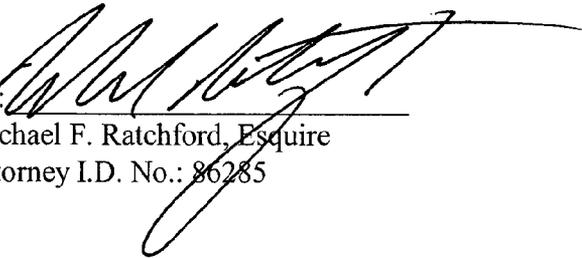
**CERTIFICATE OF SERVICE**

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

Nancy L. Datres, Esquire  
MidPenn Legal Services  
230 Lincoln Way East, Suite A  
Chambersburg, PA 17201

Edwin A. Abrahamsen & Associates

Date: 11/4/08

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

CM

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

NATIONAL CREDIT ACCEPTANCE,  
Plaintiff

vs.

DEBRA A. OSWALT,  
Defendant

- \*
  - \* NO.: 08-1359-CD
  - \*
    - \* Type of Case: Civil
    - \*
      - \* Type of Pleading: Preliminary Objections
      - \* to Second Amended Complaint
    - \*
      - \* Filed on Behalf of: Defendant
      - \*
        - \* Counsel of Record for this Party:
        - \* Nancy L. Datres, Esquire
      - \*
        - \* Supreme Court No.: 203226
        - \*
          - \* MidPenn Legal Services
          - \* 230 Lincoln Way East, Suite A
          - \* Chambersburg, PA 17201
          - \* (717) 264-2420

5

**FILED** *acc*  
*0/3:38*  
 NOV 20 2008 *Atty Datres* *GD*

William A. Shaw  
Prothonotary/Clerk of Courts

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

National Credit Acceptance	:	CIVIL ACTION
1731 Howe Ave #254	:	
Sacramento, CA 95825,	:	NO.: 2008 – 1359
Plaintiff	:	
	:	
vs.	:	
	:	
Debra A. Oswalt	:	
25329 Shawville Frenchville Hwy.	:	
Frenchville, PA 16836,	:	
Defendant	:	

**DEFENDANT’S PRELIMINARY OBJECTIONS  
TO PLAINTIFF’S SECOND AMENDED COMPLAINT**

Defendant Debra A. Oswalt, by and through her counsel, Nancy L. Datres of MidPenn Legal Services, hereby files these preliminary objections to Plaintiff’s Second Amended Complaint and avers the following in support thereof:

1. On July 24, 2008, National Credit Acceptance (hereinafter “Plaintiff”) filed an original Complaint in this Honorable Court against Debra A. Oswalt (hereinafter “Defendant”), seeking \$8,957.89 for a debt allegedly owed by Defendant to Plaintiff, and seeking an unspecified amount in costs and attorney fees.
2. On or about July 30, 2008, Defendant was personally served with the original complaint by sheriff.
3. On August 14, 2008, Defendant timely filed preliminary objections to the original complaint on the basis that the complaint failed to conform to law and the rules of Court.

4. On or about September 22, 2008, Plaintiff filed an amended complaint. Because the copy of the amended complaint mailed to Defendant is not time-stamped, Defendant is without knowledge or information as to the exact filing date of the amended complaint.
5. Whether timely filed or not, the amended complaint suffers the same deficiencies and defects as the original complaint. The amended complaint is identical to the original complaint except for the dollar amount alleged to be due. Even the exhibits attached to the amended complaint are identical to the exhibits attached to the original complaint.
6. On October 14, 2008, Defendant timely filed preliminary objections to the amended complaint on the same basis as the preliminary objections filed to original complaint.
7. On or about November 4, 2008, Plaintiff filed yet another amended complaint (hereinafter "Second Amended Complaint"). Because the copy of the Second Amended Complaint mailed to Defendant is not time-stamped, Defendant is without knowledge or information as to the exact date of the filing of the Second Amended Complaint.
8. The Second Amended Complaint is a verbatim duplicate of both the first amended complaint and of the original complaint.
9. The exhibits attached to the Second Amended Complaint are exact duplicates of the exhibits attached to both the first amended complaint and the original complaint.
10. Plaintiff has not set forth anything new in the body of his Second Amended Complaint nor in the exhibits attached to the Second Amended Complaint.
11. Pennsylvania has statutes designed to deter frivolous, bad faith, vexatious and or dilatory lawsuits. *See, e.g.,* Pa. R.C.P. No. 1231.1(c); 42 Pa. C.S. §8351 *et seq.*

**I. MOTION TO STRIKE/FAILURE OF AMENDED COMPLAINT TO CONFORM  
TO LAW OR RULE OF COURT – FAILURE TO ATTACH COPY  
OF WRITTEN AGREEMENT**

12. Defendant incorporates by reference paragraphs 1 through 11.
13. Pursuant to the Pennsylvania Rules of Civil Procedure, whenever a claim is based upon an agreement, the pleading shall state whether the agreement is written or oral. Pa. R.C.P. No. 1019 (h). Plaintiff fails to state whether the alleged agreement between Plaintiff and Defendant is oral or written. Accordingly, the Second Amended Complaint, as is true of the original and first amended complaint, fails to comply with Pa. R.C.P. No. 1019 (h).
14. Whenever a claim is based upon a writing, Pa.R.C.P. No.1019 (i) requires a copy of the writing or material part thereof to be attached to the complaint. As is true of the original and first amended complaint, no such writing or material part thereof is attached to the Second Amended Complaint. Accordingly, unless Plaintiff is alleging an oral agreement, the Second Amended Complaint fails to comply with Pa. R.C.P. No. 1019(i).
15. Rule 1019 (i) requires the pleader to attach to the complaint a copy of the signed and credit card agreement. *See also Worldwide Asset Purchasing, LLC v. Stern*, 153 P.L.J. 111 (2004) (J. Wettick).
16. As Plaintiff did in the original and first amended complaint, Plaintiff attached to the Second Amended Complaint the exact same boiler plate language that appears on the back of most if not all credit card monthly statements. Thus, as true of the original and first amended complaint, the Second Amended Complaint fails to comply with Pa. R.C.P. No. 1019 (i).

17. Clearly, said writings are essential to Plaintiff's case. However, such writings are not attached to the Amended Complaint, the absence thereof has not been explained, and the substance of said writings is not set forth in the Amended Complaint. Accordingly, the Second Amended Complaint fails to comply with Pa.R.C.P. No. 1019 (h) and (i).
18. Plaintiff has now filed with this Honorable Court three complaints in this case, each of which contain the exact same factual allegations and each of which lack even minimal evidentiary support of those factual allegations. Accordingly, it is reasonable under the circumstances to find that Plaintiff violates or comes dangerously close to violating Rule 1023.1(c).
19. This Court may, on its own initiative, enter an order directing an attorney, law firm or party to show cause why it has not violated Rule 1023.1(c). *See* Pa. R.C.P. No. 1023.3.
20. To permit Plaintiff to continue this pattern of filing a complaint followed by a series of "amended" complaints that are exact duplicates of the original complaint is to allow the Plaintiff to make a mockery of the courts of this Commonwealth.
21. To permit Plaintiff to continue this pattern of filing a complaint followed by a series of "amended" complaints that are exact duplicates of the original complaint is to allow the Plaintiff to waste precious court time and judicial resources.

**WHEREFORE**, the Defendant respectfully requests this Honorable Court to sustain her preliminary objections, dismiss Plaintiff's Second Amended Complaint with prejudice due to Plaintiff's ongoing failure to comply with the rules, and to issue an Order upon Plaintiff pursuant to Rule 1023.3 to show cause why there is no violation of Rule 1023.1(c).

**II. MOTION TO STRIKE/FAILURE OF AMENDED COMPLAINT TO CONFORM TO LAW OR RULE OF COURT – VERIFICATION**

22. Defendant incorporates herein by reference paragraphs 1 through 21.
23. Pennsylvania Rules of Civil Procedure require every pleading containing an averment of fact to be verified by one or more parties filing the pleading. Pa. R.C.P. No. 1024(c).  
The Second Amended Complaint contains averments of fact and yet the accompanying Verification, as is true of the verification attached to the original and first amended complaint, is signed by counsel for the Plaintiff. Accordingly, the Second Amended Complaint fails to comply with Pa. R.C.P. No. 1024 (c).

**WHEREFORE**, the Defendant respectfully requests this Honorable Court to sustain her preliminary objections and dismiss Plaintiff's Second Amended Complaint with prejudice due to Plaintiff's ongoing refusal to comply with the rules of court.

**III. MOTION TO STRIKE/FAILURE OF PLEADING TO CONFORM TO LAW OR RULE OF COURT – NOT A REAL PARTY IN INTEREST**

24. Defendant incorporates herein by reference paragraphs 1 through 23.
25. A legal claim must be filed by a real party in interest. Pa. R.C.P. No. 2002(a).
26. Plaintiff alleges in paragraph 5 and paragraph 6 of the Second Amended Complaint, the exact same averments in paragraphs 5 and 6 of the original and first amended complaint that the credit card account allegedly issued to Defendant by MBNA was assigned by MBNA to Plaintiff.
27. As evidence of the alleged assignment, Plaintiff attaches the identical generic and broadly worded Bill of Sale to the Second Amended Complaint as was attached to the original and first amended complaint. Said Bill of Sale references a "Loan Schedule" as

an attachment to the Bill of Sale. As true of the original and first amended complaint, the “Loan Schedule” is not included with the Bill of Sale attached to Plaintiff’s Second Amended Complaint.

28. A generic Bill of Sale does not establish the requisite chain of title to the alleged debt.

*See Worldwide Asset Purchasing, LLC v. Stern*, 153 P.L.J. 111 (2004) (J. Wettick).

29. Because the Amended Complaint, like the original and first amended complaint, fails to establish a chain of title to the alleged account issued to Defendant by MBNA and fails to establish the alleged assignment of the alleged debt from MBNA to Plaintiff, Plaintiff is not a real party in interest as required by Pa. R.C.P. No. 2002(a). Accordingly, Plaintiff is unable to prosecute this action.

**WHEREFORE**, the Defendant respectfully requests this Honorable Court to sustain her preliminary objections and dismiss Plaintiff’s Second Amended Complaint with prejudice due to Plaintiff’s ongoing refusal to comply with the rules.

#### **IV. MOTION TO STRIKE/INSUFFICIENT SPECIFICITY OF PLEADING**

30. Defendant incorporates herein by reference paragraphs 1 through 29.

31. It is well known that Pennsylvania is a fact-pleading state. Pa.R.C.P. No. 1019(a) requires that the “material facts” on which a cause of action is based shall be stated in a concise and summary form.

32. As is true of the original and first amended complaint, the Second Amended Complaint fails to state material facts such as but not limited to: (a) the date upon which the alleged default occurred; (b) the goods or services allegedly purchased by Defendant; (c) dates of the charges/transactions; (d) dates of and amounts of payments credited to the alleged

account; (e) dates and amounts of interest charges; and (f) the terms and conditions of the agreement upon which the alleged purchases were made.

33. Because the Second Amended Complaint is devoid of material facts constituting sufficient specificity, the Second Amended Complaint, like the original and first amended complaint, fails to comply with Pa. R.C.P. No. 1019(a).
34. Plaintiff has filed with this Court three pleadings, each of which lack the requisite material facts to support its claim and each of which lack even minimal evidentiary support of the few nonmaterial factual allegations contained within each. Accordingly, it is reasonable under the circumstances to find that Plaintiff violates or comes dangerously close to violating Rule 1023.1(c).
35. This Court may, on its own initiative, enter an order directing an attorney, law firm or party to show cause why it has not violated Rule 1023.1(c). *See* Pa. R.C.P. No. 1023.3.
36. To permit Plaintiff to continue this pattern of filing a complaint followed by a series of “amended” complaints that are exact duplicates of the original complaint, and each of which is devoid of material facts, is to allow the Plaintiff to make a mockery of the courts of this Commonwealth.
37. To permit Plaintiff to continue this pattern of filing a complaint followed by a series of “amended” complaints that are exact duplicates of the original complaint, and each of which is devoid of material facts, is to allow the Plaintiff to waste precious court time and judicial resources.

**WHEREFORE**, the Defendant respectfully requests this Honorable Court to sustain her preliminary objections, dismiss Plaintiff's Second Amended Complaint with prejudice due to Plaintiff's ongoing failure to comply with the rules, and to issue an Order upon Plaintiff pursuant to Rule 1023.3 to show cause why there is no violation of Rule 1023.1(c).

Respectfully submitted,

11-20-08  
Date

BY: Nancy L. Datres /DD  
Nancy L. Datres, Esquire  
Supreme Ct. ID 203226  
MidPenn Legal Services, Inc.  
230 Lincoln Way East, Suite A  
Chambersburg, PA 17201  
(717) 264-5354 ext. 2303

*Attorney for Defendant*

*DM*

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

NATIONAL CREDIT ACCEPTANCE,  
Plaintiff

vs.

DEBRA A. OSWALT,  
Defendant

- \*
- \*
- \* NO.: 08-1359-CD
- \*
- \* Type of Case: Civil
- \*
- \* Type of Pleading: Certificate of Service
- \*
- \*
- \* Filed on Behalf of: Defendant
- \*
- \* Counsel of Record for this Party:
- \* Nancy L. Datres, Esquire
- \*
- \* Supreme Court No.: 203226
- \*
- \* MidPenn Legal Services
- \* 230 Lincoln Way East, Suite A
- \* Chambersburg, PA 17201
- \* (717) 264-2420

*S*  
**FILED** *icc Atty*  
*of 1:55pm* *Datres*  
**NOV 21 2008**  
*LM*  
William A. Shaw  
Prothonotary/Clerk of Courts

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

National Credit Acceptance	:	CIVIL ACTION
1731 Howe Ave #254	:	
Sacramento, CA 95825,	:	NO.: 2008 – 1359
Plaintiff	:	
	:	
vs.	:	
	:	
Debra A. Oswalt	:	
25329 Shawville Frenchville Hwy.	:	
Frenchville, PA 16836,	:	
Defendant	:	

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the below stated date, she served a true and correct copy of the within Preliminary Objections, by mailing same to the office of Plaintiff's attorney of record by regular first-class mail, postage pre-paid, addressed as follows, which service satisfies the requirements of Pa. R.C.P. No. 440:

Michael F. Ratchford, Esq.  
Edwin A. Abrahamsen & Associates  
1729 Pittston Avenue  
Scranton, PA 18505

11-20-08  
Date

BY: Nancy L. Datres/ro  
Nancy L. Datres, Esquire  
Supreme Ct. ID 203226  
MidPenn Legal Services, Inc.  
230 Lincoln Way East, Suite A  
Chambersburg, PA 17201  
(717) 264-5354 ext. 2303

*Attorney for Defendant*

UP

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

NATIONAL CREDIT ACCEPTANCE,  
Plaintiff

vs.

DEBRA A. OSWALT,  
Defendant

- \*
  - \* NO.: 08-1359-CD
  - \* Type of Case: Civil
  - \* Type of Pleading: Petition to Schedule
  - \* Argument on Defendant's Preliminary
  - \* Objections to Plaintiff's Complaint
  - \*
    - \* Filed on Behalf of: Defendant
    - \* Counsel of Record for this Party:
    - \* Nancy L. Datres, Esquire
    - \* Supreme Court No.: 203226
    - \* MidPenn Legal Services
    - \* 230 Lincoln Way East, Suite A
    - \* Chambersburg, PA
    - \* (717) 264-5354

**FILED**

DEC 09 2008

07:30/c  
William A. Shaw  
Prothonotary/Clerk of Courts

3 cent to

ATTN  
@

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

National Credit Acceptance	:	CIVIL ACTION
1731 Howe Ave #254	:	
Sacramento, CA 95825,	:	NO.: 2008 – 1359
Plaintiff	:	
vs.	:	
Debra A. Oswald	:	
25329 Shawville Frenchville Hwy.	:	
Frenchville, PA 16836,	:	
Defendant	:	

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

Defendant, Debra A. Oswald, by and through her attorney, Nancy L. Datres, of MidPenn Legal Services, requests the Court to schedule the argument on Defendant's preliminary objections and avers in support thereof as follows:

1. On July 24, 2008, Plaintiff filed a Complaint against Defendant, said Complaint served on Defendant on or about July 30, 2008.
2. On August 14, 2008, Defendant timely filed Preliminary Objections.
3. On September 22, 2008, Plaintiff filed an Amended Complaint identical to the original complaint.
4. On October 14, 2008, Defendant timely filed Preliminary Objections to the Amended Complaint.
5. On November 4, 2008, Plaintiff filed a second Amended Complaint, again identical to the original complaint.
6. On November 20, 2008, Defendant timely filed Preliminary Objections to the second Amended Complaint.

7. As of the date of this Petition, Plaintiff has filed three complaints, each of which is identical to its predecessor, none of which cure the defects of the complaint.

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

Respectfully submitted,

12-9-08  
Date

BY: Nancy L. Datres/Do  
Nancy L. Datres, Esquire  
Supreme Ct. ID 203226  
MidPenn Legal Services, Inc.  
230 Lincoln Way East, Suite A  
Chambersburg, PA 17201  
(717) 264-5354 ext. 2303

*Attorney for Defendant*

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

National Credit Acceptance	:	CIVIL ACTION
1731 Howe Ave #254	:	
Sacramento, CA 95825,	:	NO.: 2008 - 1359
Plaintiff	:	
vs.	:	
Debra A. Oswalt	:	
25329 Shawville Frenchville Hwy.	:	
Frenchville, PA 16836,	:	
Defendant	:	

**ORDER**

AND NOW, this 15<sup>th</sup> day of December, 2008, upon consideration of Defendant Debra A. Oswalt's Preliminary Objections filed in the above-captioned matter, it is the Order of the Court that argument has been scheduled for the 22<sup>nd</sup> day of January, 2009 at 3:00 o'clock P.m. in Courtroom # 1, Clearfield County Courthouse, Clearfield, Pennsylvania.

BY THE COURT,

  
\_\_\_\_\_  
J.

**FILED**

DEC 15 2008

William A. Shaw  
Prothonotary/Clerk of Courts

300  
014:00:01  
Amy Satres  
(GW)

DATE: 12/5/08

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**

**DEC 15 2008**

William A. Shaw  
Prothonotary/Clerk of Courts

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

NATIONAL CREDIT ACCEPTANCE,  
Plaintiff

vs.

DEBRA A. OSWALT,  
Defendant

\*  
\*  
\* NO.: 08-1359-CD  
\*  
\* Type of Case: Civil  
\*  
\* Type of Pleading: Certificate of Service  
\*  
\*  
\* Filed on Behalf of: Defendant  
\*  
\* Counsel of Record for this Party:  
\* Nancy L. Datres, Esquire  
\*  
\* Supreme Court No.: 203226  
\*  
\* MidPenn Legal Services  
\* 230 Lincoln Way East, Suite A  
\* Chambersburg, PA 17201  
\* (717) 264-2420

FILED

DEC 16 2008

0/3:35/W

William A. Shaw

Prothonotary/Clerk of Courts

1 copy to 670

DATE

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

National Credit Acceptance	:	CIVIL ACTION
1731 Howe Ave #254	:	
Sacramento, CA 95825,	:	NO.: 2008 – 1359
Plaintiff	:	
	:	
vs.	:	
	:	
Debra A. Oswalt	:	
25329 Shawville Frenchville Hwy.	:	
Frenchville, PA 16836,	:	
Defendant	:	

**CERTIFICATE OF SERVICE**

I, Nancy L. Datres, Esquire, hereby certify that on the 16<sup>th</sup> day of December, 2008, I served a true and accurate copy of the Petition to Schedule Argument filed in the above-captioned matter to the following individual by first class mail, postage prepaid:

Michael F. Ratchford, Esq.  
Edwin A. Abrahamsen & Associates  
1729 Pittston Avenue  
Scranton, PA 18505

  
\_\_\_\_\_  
Nancy L. Datres, Esquire  
Supreme Ct. ID 203226  
MidPenn Legal Services, Inc.  
230 Lincoln Way East, Suite A  
Chambersburg, PA 17201  
(717) 264-5354 ext. 2303  
*Attorney for Defendant*

**FILED**  
DEC 16 2008  
William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 104453  
NO: 08-1359-CD  
SERVICES 1  
COMPLAINT

PLAINTIFF: NATIONAL CREDIT ACCEPTANCE  
VS.  
DEFENDANT: DEBRA A. OSWALT

<sup>5</sup>  
**FILED**  
DEC 24 2008

William A. Shaw  
Prothonotary/Clerk of Courts

SHERIFF RETURN

---

RETURN COSTS

Description	Paid By	CHECK #	AMOUNT
SURCHARGE	ABRAHAMSEN	012773	10.00
SHERIFF HAWKINS	ABRAHAMSEN	012773	36.72

**FILED**  
0110:43cm  
DEC 24 2008  
*(Signature)*  
William A. Shaw  
Prothonotary/Clerk of Courts

Sworn to Before Me This

\_\_\_\_\_ Day of \_\_\_\_\_ 2008  
\_\_\_\_\_

So Answers,

*(Signature)*

Chester A. Hawkins  
Sheriff

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

NATIONAL CREDIT ACCEPTANCE,  
Plaintiff

vs.

DEBRA A. OSWALT,  
Defendant

- \*
  - \* NO.: 08-1359-CD
  - \* Type of Case: Civil
  - \* Type of Pleading: Petition to Re-Schedule
  - \* Argument on Defendant's Preliminary
  - \* Objections to Plaintiff's Complaint
  - \* Filed on Behalf of: Defendant
  - \* Counsel of Record for this Party:
  - \* Robin Jean Foor, Esquire
  - \* Supreme Court No.: 41520
  - \* MidPenn Legal Services
  - \* 211 East Locust Street
  - \* Clearfield, PA
  - \* (814) 765-9646

FILED 4CC Atty  
0/1:50lm Foor  
JAN 23 2009

§ William A. Shaw  
Prothonotary/Clerk of Courts

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

National Credit Acceptance	:	CIVIL ACTION
1731 Howe Ave #254	:	
Sacramento, CA 95825,	:	NO.: 2008 - 1359
Plaintiff	:	
vs.	:	
Debra A. Oswalt	:	
25329 Shawville Frenchville Hwy.	:	
Frenchville, PA 16836,	:	
Defendant	:	

5  
**FILED**

JAN 26 2009  
0/3:40  
William A. Shaw  
Prothonotary/Clerk of Courts

4 clear to Att

**ORDER**

AND NOW, this 26<sup>th</sup> day of January, 2009, upon consideration of Defendant Debra A. Oswalt's Petition filed in the above- captioned matter, it is the Order of the Court that argument concerning Defendant's Preliminary Objections has been re-scheduled for the 19<sup>th</sup> day of February, 2009 at 3:00 o'clock p.m. in Courtroom # 1, Clearfield County Courthouse, Clearfield, Pennsylvania.

BY THE COURT,



J.

**FILED**

**JAN 26 2009**

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

DATE: 1-26-09

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:

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

National Credit Acceptance	:	CIVIL ACTION
1731 Howe Ave #254	:	
Sacramento, CA 95825,	:	NO.: 2008 – 1359
Plaintiff	:	
	:	
vs.	:	
	:	
Debra A. Oswalt	:	
25329 Shawville Frenchville Hwy.	:	
Frenchville, PA 16836,	:	
Defendant	:	

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

Defendant, Debra A. Oswalt, by and through her attorneys, Robin Jean Foor, Esquire, and MidPenn Legal Services, requests the Court to re-schedule the argument on Defendant's preliminary objections and avers in support thereof as follows:

1. On July 24, 2008, Plaintiff filed a Complaint against Defendant, said Complaint served on Defendant on or about July 30, 2008.
2. On August 14, 2008, Defendant timely filed Preliminary Objections.
3. On September 22, 2008, Plaintiff filed an Amended Complaint identical to the original complaint.
4. On October 14, 2008, Defendant timely filed Preliminary Objections to the Amended Complaint.
5. On November 4, 2008, Plaintiff filed a second Amended Complaint, again identical to the original complaint.
6. On November 20, 2008, Defendant timely filed Preliminary Objections to the

second Amended Complaint.

7. As of the date of this Petition, Plaintiff has filed three complaints, each of which is identical to its predecessor, none of which cure the defects of the complaint.

8. The Court scheduled argument on the Preliminary Objections for January 22, 2009.

9. Due to a miscommunication in Defendant's counsel's office, neither defendant nor her counsel appeared for the argument.

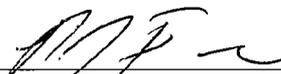
10. Nancy Datres, lead counsel in this case, has been out of the office due to illness for the last week.

11. Neither plaintiff nor its counsel appeared at the argument.

WHEREFORE, Defendant respectfully requests this Honorable Court to re-schedule argument on the Defendant's Preliminary Objections.

Respectfully submitted,

1-23-09  
Date

BY:   
Robin Jean Foor, Esquire  
Supreme Ct. ID 41520  
MidPenn Legal Services, Inc.  
211 East Locust Street  
Clearfield, PA 16830  
(814)765-9646

*Attorney for Defendant*

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

NATIONAL CREDIT ACCEPTANCE,  
Plaintiff

vs.

DEBRA A. OSWALT,  
Defendant

\*  
\*  
\* NO.: 08-1359-CD  
\*  
\* Type of Case: Civil  
\*  
\* Type of Pleading: Certificate of Service  
\*  
\*  
\* Filed on Behalf of: Defendant  
\*  
\* Counsel of Record for this Party:  
\* Nancy L. Datres, Esquire  
\*  
\* Supreme Court No.: 203226  
\*  
\* MidPenn Legal Services  
\* 230 Lincoln Way East, Suite A  
\* Chambersburg, PA 17201  
\* (717) 264-2420

FILED

JAN 27 2009  
0/11:05/ )  
William A. Shaw  
Prothonotary/Clerk of Courts

2 cert to

Att  
(610)

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

National Credit Acceptance	:	CIVIL ACTION
1731 Howe Ave #254	:	
Sacramento, CA 95825,	:	NO.: 2008 – 1359
Plaintiff	:	
vs.	:	
Debra A. Oswalt	:	
25329 Shawville Frenchville Hwy.	:	
Frenchville, PA 16836,	:	
Defendant	:	

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the below stated date, she served a true and correct copy of the within Petition to Re-Schedule Argument and the Order rescheduling Argument on the Defendant's Preliminary Objections, by mailing same to the office of Plaintiff's attorney of record by regular first-class mail, postage pre-paid, addressed as follows, which service satisfies the requirements of Pa. R.C.P. No. 440:

Michael F. Ratchford, Esq.  
Edwin A. Abrahamsen & Associates  
1729 Pittston Avenue  
Scranton, PA 18505

1-27-09  
Date

BY: Nancy L. Datres /RD  
Nancy L. Datres, Esquire  
Supreme Ct. ID 203226  
MidPenn Legal Services, Inc.  
230 Lincoln Way East, Suite A  
Chambersburg, PA 17201  
(717) 264-5354 ext. 2303

*Attorney for Defendant*

VP

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

NATIONAL CREDIT ACCEPTANCE,  
Plaintiff

vs.

DEBRA A. OSWALT,  
Defendant

\*  
\*  
\*  
\*  
\*  
\*  
\*

NO. 08-1359-CD

**FILED**

FEB 19 2009

12:15 PM

William A. Shaw  
Prothonotary/Clerk of Courts

Case no  
Att'y RATCHMAN  
DATE: 2  
for

ORDER

NOW, this 19<sup>th</sup> day of February, 2009, it is the ORDER of this Court that  
the argument on the Defendant's Preliminary Objections be and is hereby  
**rescheduled** from the 19<sup>th</sup> day of February, 2009, at 3:00 p.m. to the **27<sup>th</sup> day of  
March, 2009 at 11:00 a.m.** in Chambers of the Clearfield County Courthouse,  
Clearfield, Pennsylvania.

BY THE COURT,



FREDRIC J. AMMERMAN  
President Judge

DATE: 2-19-09

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:

DATTA, NANCY  
230 LINCOLN WAY  
E. STE. D  
CHAMBERSBURG, PA  
17201  
C/O  
ROBIN FOOL

**FILED**

FEB 19 2009

William A. Shaw  
Prothonotary/Clerk of Courts

6

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

NATIONAL CREDIT ACCEPTANCE )  
 )  
VS. ) NO. 08-1359-CD  
 )  
DEBRA A. OSWALT )

ORDER

NOW this 27th day of March, 2009, following argument on the Preliminary Objections to Second Amended Complaint, it is the ORDER of this Court that the said Preliminary Objections be and are hereby granted to the extent that the Plaintiff shall have no more than fifteen (15) days from this date to file a third Amended Complaint which will meet with all of the legal concerns set forth within the stated Preliminary Objections.

The Court has allowed a further amendment to the Complaint due to Plaintiff's counsel having appeared and represented to the Court that he is in possession of copies of all documents needed to meet with the concerns set forth within the Preliminary Objections.

BY THE COURT,

  
\_\_\_\_\_  
President Judge

**FILED**  
014100301  
MAR 30 2009

200 Days:  
Ratchford  
Datres/Foor

5 William A. Shaw  
Prothonotary/Clerk of Courts

60

**FILED**

**MAR 30 2009**

William A. Shaw  
Prothonotary/Clerk of Courts

DATE: 3/30/09

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

National Credit Acceptance  
1731 Howe Ave # 254  
Sacramento CA 95825

Plaintiff

vs.

Debra A. Oswalt  
25329 Shawville Frenchville Hwy.  
Frenchville PA 16836

Defendant

CIVIL ACTION

NO: 2008-1359

FILED *rec Atty*  
*m/12:15pm* *Ratnerford*  
APR 06 2009 *(CA)*

William A. Shaw  
Prothonotary/Clerk of Courts

**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 Third Amended 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**

National Credit Acceptance	:	
1731 Howe Ave # 254	:	CIVIL ACTION
Sacramento CA 95825	:	
	:	
Plaintiff	:	
	:	NO: 2008-1359
vs.	:	
	:	
Debra A. Oswalt	:	
25329 Shawville Frenchville Hwy.	:	
Frenchville PA 16836	:	
	:	
Defendant	:	

---

**THIRD AMENDED COMPLAINT**

Plaintiff, National Credit Acceptance, by and through its attorneys, Edwin A. Abrahamsen & Associates, P.C., complains of the Defendant as follows:

1. Plaintiff, National Credit Acceptance, (hereinafter "Plaintiff") is a corporation maintaining a business at 1731 Howe Avenue, #360, Sacramento, California, 95825.
2. The Defendant Debra A. Oswalt (hereinafter "Defendant") is an adult individual residing at 25329 Shawville Frenchville Hwy, Frenchville PA 16836.
3. At all relevant times herein, Plaintiff was engaged in the business of debt purchase and collection.
4. Defendant submitted an on-line application for and received a credit card issued by MBNA with the account number 74973150379708. (*See, On-line application, attached hereto as Exhibit "A."*)
5. Use of the MBNA credit card was subject to the terms of a written Cardmember Agreement, a copy of which was sent to the Defendant along with the credit card. (*See, Copy of Cardmember Agreement, attached hereto and marked Exhibit "B."*)

6. The within account was sold by MBNA to National Credit Acceptance for valuable consideration and all rights under said accounts were assigned to National Credit Acceptance.

*(See, Bill of Sale, attached hereto as Exhibit "C.")*

7. Defendant used the MBNA credit card account number 74973150379708, for purchases, cash advances and/or balance transfers.

8. The Defendant was mailed account statements relative to the Defendant's use of the subject credit card. *(See, Account Statements, attached hereto and marked Exhibit "D.")*

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

10. The account became delinquent on November 30, 2004.

11. The amount due and owing \$8,684.93 at the time it was received by Plaintiff.

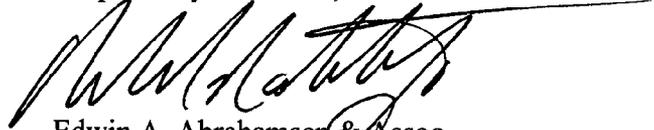
12. Pursuant to the account agreement, any unpaid balance accrues interest at the rate of 27.98%.

13. The total amount due and owing the Plaintiff including interest, is \$9,565.66.

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

WHEREFORE, Plaintiff requests judgment in its favor and against Defendant in the amount of \$9,565.66 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", written over a horizontal line.

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, Jarvis Teat, of National Credit Acceptance, Inc., am fully familiar of the facts set forth in the Plaintiff's Amended Complaint and am authorized to make this verification on behalf of National Credit Acceptance. I verify that the facts set forth in the allegations of Plaintiff's Amended Complaint are true and correct to the best of my knowledge, knowing that false statements are punishable by law pursuant to 18 C.S.A. 4904.

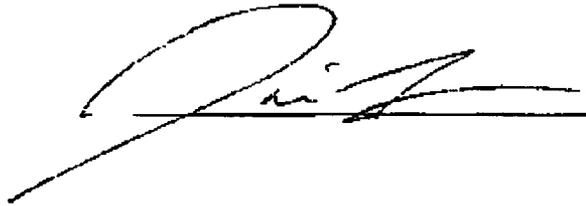
A handwritten signature in black ink, appearing to read "Jarvis Teat", is written over a horizontal line. The signature is stylized and cursive.

Exhibit "A"

#10#G142081275 10/31/2000 A10/31/2000OSWALT  
AcctNum74973150379708

NCA-0146

ASSOCIATE BANK: QV-150  
PRODUCT: Gold Option  
CARD TYPE: Gold Option  
SOURCE CODE: E22T  
PROD OFR CD: NB

PREAPPROVAL ID:  
MEMBER NUMBER:  
OLD CR LINE:  
NEW CR LINE:

DEBRA A. OSWALT

PREV ADDRESS:  
PRIV C/S/Z:  
YRS AT PREV:

RR 1 BOX 250  
FRENCHVILLE, PA 16836  
YEARS AT RESIDENCE:  
RENT/OWN/BUY: R  
MONTHLY PAYMENT:

BUREAU SSN:  
SOCIAL SECURITY: 194-52-7133  
PHONE NUMBER: (814)263-7123  
BIRTH DATE: 06/22/1958

CURR EMPLOYER: SUPER EIGHT MORTG OF CLCA  
CURR POSITION:  
PREV EMPLOYER:  
PREV POSITION:  
POSITION CODE: 79  
CURR ANNUAL SALARY: PREV ANNUAL SALARY: \$0  
WORK PHONE: (814)768-7580 PREV WORK PHONE:  
YEARS THERE: 0 PREV YEARS THERE:  
ADDITIONAL INCOME: SOURCE:  
TOTAL HOUSEHOLD INCOME: 8500

SCHOOL:  
FULL/PART: YEAR:  
NEAREST REL:

REFERENCE #1: [ TYPE ] [ NAME ]  
REFERENCE #2:  
REFERENCE #3:  
REFERENCE #4:  
PRIMARY BANK:

[ CO-APPLICANT ] SOCIAL SECURITY #:  
EMPLOYER:  
POSITION:  
ANNUAL SALARY:  
YEARS THERE:  
WORK PHONE:  
RELATIONSHIP:

AUTH USER:  
RELATIONSHIP:

MOTHER'S MAIDEN NAME: BUREAU SEQ NO:  
CLOSE & TRANSFER: / MBNA ACCOUNT:  
LOAN TERM: 36 ORIGINAL REFNO:  
LOAN PURPOSE:

DISCLOSURE: [ APPLICANT ] [ CO-APPLICANT ]  
VERBAL AUTHORIZATION:  
VERBAL AUTH REP:  
ID:

ORIG NAME:  
ORIG ADDR:

\*\*\*\* ONLINE DATA ENTRY APPLICATION SPECIFIC DATA \*\*\*\*

APPLICANT IS NOT A US CITIZEN OR PERMANENT RESIDENT

875805-005

APPROVAL RECORD

REFNO:0142081275  
SOURCE:E22T  
ACCT TYPE:QV  
ASSD BANK:150  
COMBO ASSO BANK:  
FINJT:D  
PRIM NAME:DEBRA A\*OSWALT  
SSN:194527133  
SEC NAME:  
RELATION:N  
ADDRESS 1:RR 1 BOX 250  
ADDRESS 2:  
CITY:FRENCHVILLE  
STATE:PA  
ZIP:16836  
PHONE:  
EMP NAME:  
OCCUP:79  
GRAD YR:  
SCHOOL CODE:  
WORK PHONE:8147687580  
MAIDEN NAME:  
CRED LINE:30  
LENDER ID:LL8  
ADV AMT:0  
OVR RSN:  
THIRD LINE:  
# CARDS:00  
BILL CYC:  
DUT FEE DATE:  
INSURANCE:  
BKD:00702  
RISK RATING:9  
EXP CODE:36  
CB IND:0  
CRITERIA LEVFL:  
FICO SCORE:702  
FRONT END SCORE:  
ACCT #:74973150379708  
SEC ACCT #:  
FM DATE:10/31/2000

Exhibit "B"

Important Information About Your Financial Privacy

MBNA is the world's largest independent credit card issuer. Our financial products and services are endorsed by thousands of associations and financial institutions. We both our financial products and services with top quality service. Collecting and sharing information about you helps us to do this. This notice explains MBNA's information collection and sharing practices and lets you choose whether MBNA may share certain information about you.

This notice describes the privacy practices of MBNA Corporation and all its affiliates, including:

- MBNA America Bank, N.A.
- MBNA America (Delaware), N.A.
- MBNA Technology, Inc.
- MBNA Marketing Systems, Inc.
- MBNA Insurance Agency, Inc.

(We'll refer to these collectively as "MBNA"), by financial products and services governed by the laws of the United States of America.

Our Security Procedures Protect Your Information

We work hard to keep information secure. For example, our information security policies:

- prevent release of sensitive information;
- restrict access to information systems; and
- specify password requirements.

Our practices and procedures meet federal standards. Further, we share only the information we believe is needed to offer a product or service efficiently. Finally, we restrict the use of such information and require that it be kept secure.

Information We Collect to Conduct Our Business

We collect information about you to conduct our business and deliver the top quality service you expect. Sources include:

- Information we receive from you.
- Information we receive from third parties such as consumer reporting agencies, to verify statements you've made to us, to support your employment, credit, or other transactions.
- Information about your transactions with MBNA and with other companies.

Information Shared Within MBNA

We may share all the information we collect within MBNA. For example, we may share:

- Identification information (such as name and address)
- Transaction and experience information (such as purchases and payments)
- Credit eligibility information (such as credit records); and
- Other information.

You may tell us not to share credit eligibility information about you within MBNA, as explained below in the section entitled, "Information Sharing: It's Your Choice." Your choice will not affect the sharing of identification and transaction and experience information.

Information Shared Outside of MBNA

We may share all the information we collect with the following types of companies outside of MBNA:

- Financial services companies (like banks, insurance companies, securities broker-dealers, and organizations with which we have joint marketing agreements);
- Non-financial companies (like retailers, direct marketers, communications companies, travel companies, and organizations endorsing MBNA);
- Companies performing marketing or other services for us (like data processing or direct mail services); and
- Other companies (like nonprofit organizations).

We may also share all of the information we collect with companies outside of MBNA as permitted by law.

You may tell us not to share information about you with companies outside of MBNA, as explained below in the section entitled, "Information Sharing: It's Your Choice." Your choice will not affect MBNA's work:

- Companies performing marketing or other services for us;
- Other financial institutions under joint marketing agreements;
- Government entities in response to subpoena or regulatory requirements;
- Consumer reporting agencies; and
- As otherwise permitted by law.

Information Sharing: It's Your Choice

We respect your choices related to privacy. You may tell us not to share credit eligibility information within MBNA and not to share information with companies outside of MBNA as described above. If you wish to opt out of such information sharing, please call our toll-free automated response line at 1-800-781-1855. We will ask you to verify your identity and the specific accounts to which your opt out applies. Please have your account membership or reference numbers available when you call. For deposit accounts, please have your Social Security number or Taxpayer Identification number available when you call.

MBNA applies opt outs at the account level, not by individual Customer. When any person listed on an account opts out, we opt out the entire account. This includes co-applicants, joint account holders, and authorized users. MBNA follows these privacy practices if an account is closed or becomes inactive.

Your opt out remains effective until revoked in writing. Federal law requires us to provide this notice on an annual basis, whether or not you previously opted out. Please remember that if you previously opted out an account, you do not need to opt out that account again.

Important Information for Vermont Customers

The information sharing practices described above are in accordance with Federal law. Vermont law places additional limits on sharing information about Vermont residents so long as they remain residents of Vermont. In accordance with Vermont law, MBNA will not share information we collect about Vermont residents to companies outside of MBNA:

- As permitted by law;
- To companies that perform marketing or other services on our behalf;
- Name, contact and transaction and experience information (such as your account balances and payment history) to other financial institutions with which we have joint marketing agreements; or
- With the authorization or consent of the Vermont resident.

MBNA will not share credit eligibility information about Vermont residents with MBNA except with the authorization or consent of the Vermont resident.

Updates and Additional Information

This notice replaces any previous notices from MBNA about the privacy security and protection of information. For additional information regarding our internal privacy practices, and to view the current version of this privacy notice, go to <http://www.mbnacorp.com/privacy.html>. We may have other privacy practices under state laws. We may amend this privacy notice at any time. We will inform you of changes as required by law.

Tips to Protect Your Information

MBNA works hard to keep your information secure. You can help by following these tips to protect your information:

- Store personal information in a safe place and tear up or shred old receipts and account statements before throwing them away.
- Protect your PINs and other passwords. Do not share them with anyone unless it's for a service or transaction you request and you are confident the other party will protect the information as you need.
- Carry only the minimum amount of identifying information you require.
- Pay attention to billing cycles and statements.
- Notify us if you do not receive a bill.
- Check account statements carefully to ensure all charges, checks, or withdrawals are authorized.
- Guard your mail from theft. Do not leave bill payment envelopes in your mailbox with the flag up. Instead, deposit them in a post office collection box or at the local post office. Promptly remove incoming mail.
- Order copies of your credit report from each of the three major credit bureaus once a year to ensure they are accurate. The law permits the credit bureaus to charge up to \$6.00 for a copy of this report (unless you live in a state that requires the credit



Continued

business to provide you with one free copy of your report annually. If you believe you are a victim of identity theft take immediate action and keep records of your conversations and correspondence. While the steps you must take will vary with your individual circumstances, three basic actions are appropriate in almost every case:

- Contact the creditors for any accounts that have been tampered with or opened fraudulently.
- Contact the fraud departments of each of the three major credit bureaus:
  - Equifax: 1-800-485-4286 / P.O. Box 74241, Atlanta, GA 30374-2411
  - Experian: 1-888-391-3143 P.O. Box 9822, Allen, Texas 75013
  - Trans Union: 1-800-680-7229 / P.O. Box 6790, Fullerton, CA 92634
- File a report with your local police or the police in the community where the identity theft took place and get a copy of the police report.

Although many consumers appreciate the convenience and customer service of direct marketing, if you prefer not to receive pre-approved offers or credit, you can opt out of each offer by calling 1-888-5-OPT-OUT.

- If you want to remove your name from many national direct mail lists, send your name and address to:
  - DMA Mail Preference Service
  - P.O. Box 644
  - Carroll, NY 10512
- If you want to reduce the number of telephone solicitations from many national marketers, send your name, address and telephone number to:
  - DMA Telephone Preference Service
  - P.O. Box 644
  - Carroll, NY 10512



Don't Think What Bad Things Happen to Your Good Name, Federal Trade Commission, February 2002

Terms of Your Account

**Periodic Rate Finance Charges:** We calculate Periodic Rate Finance Charges by multiplying each Balance Subject to Finance Charge by the applicable Daily Periodic Rate (DPR) and then multiplying by the number of days in the billing cycle. The current DPR for Category A and B Advances is 0.024630% (corresponding Annual Percentage Rate of 8.99%). The current DPR for Category C Other Charges, based on the Variable-Rate Information disclosed below, is 0.024407% (corresponding Annual Percentage Rate (APR) of 8.95%). The current DPR for Category D Other Balances, based on the Variable-Rate Information disclosed below, is 0.024407% (corresponding Annual Percentage Rate of 8.95%). The DPR is calculated by dividing the corresponding APR by 365. We reserve the right to increase or decrease your APR. A change in APR will increase or decrease the terms of your loan, but will not change the minimum payment due each month.

**Variable-Rate Information:** The DPRs and the corresponding APRs are variable rates based on a formula. The APR formula is calculated by taking an index and adding a margin. The margin for Categories A and B Advances is 1.74 percentage points. The margin for Category C Other Charges is 1.74 percentage points. The margin for Category D Other Balances is 1.74 percentage points. The index is the highest U.S. Prime Rate as published in the Money Rates section of The Wall Street Journal on the 15th day of each March, June, September, and December, or the next business day if the 15th is not a business day. An increase or decrease in the index will increase or decrease your DPRs and corresponding APRs on the day after the Closing Date of your billing cycle that ends in April, July, October, and January. If The Wall Street Journal does not publish the Prime Rate, or if it changes the definition of the Prime Rate, we may, at our sole discretion, substitute another index. An increase in the index means you will pay higher Periodic

Rate Finance Charges on Advances, Other Charges and Other Balances. Also, because we will not adjust your minimum monthly payment based solely on an increase in the APR, an increase in the index may cause the total number of payments to increase. From time to time we may offer you different interest rates on certain categories of Advances or Other Charges. Categories A and B Advances Advances transactions. Category C Advances Other Charges. From time to time, Category D Advances Other Balances which may include Advances or Other Charges and/or any pre-existing Advances or Other Charges balances, all of which will be treated as previous Other Charges. Your account includes a special feature to purchase goods or services from a merchant. All purchases from this merchant which are charged directly to your account through a direct settlement arrangement which we may have with that merchant, as well as account fees, are added to your account as Other Charges. All other advances made against your account, including any purchases from that merchant made with checks drawn on your account written by us or you, are added to your account as Advances.

The reporting of any payment that has been received toward any related Periodic Rate Finance Charge will occur as an Advance in Category B. The transaction date for such a subsequent payment is the date that the corresponding payment posted to your account or such later date as we may determine.

**When Periodic Rate Finance Charges Begin To Accrue:** Each new Category A and Category B Advance begins to accrue Periodic Rate Finance Charges on its transaction date. Category A and Category B balances remaining from previous billing cycles accrue Periodic Rate Finance Charges from the first day of the billing cycle. The transaction date for Advances made by check is the date the check is first deposited or cashed. The transaction date for a returned payment to Category B Advances is the date that the corresponding payment posted to your account.

Each new Category C Other Charge begins to accrue Periodic Rate Finance Charges on its transaction date or the first day of the billing cycle, whichever date is later. Category C balances remaining from previous billing cycles accrue Periodic Rate Finance Charges from the first day of the billing cycle.

Each new Category D Other Balance begins to accrue Periodic Rate Finance Charges on its transaction date or the first day of the billing cycle, whichever date is later. Category D balances remaining from previous billing cycles accrue Periodic Rate Finance Charges from the first day of the billing cycle.

Periodic Rate Finance Charges accrue daily and compound on new balances, and balances remaining from previous billing cycles, in each category. Periodic Rate Finance Charges will continue to accrue even though you have paid the full amount of any related balance in a category because we include any accrued but unpaid finance charges in the calculation of the Balance Subject to Finance Charge.

Your Payment Due Date will be at least 25 days from your Statement Closing Date.

**Grace Period:** "Grace Period" means the period of time when you will not accrue Periodic Rate Finance Charges on certain transactions or balances. You do not have a Grace Period for balances in Categories A, B, C or D.

**Categories A and B - Average Balance Method (Including pre-Advances):** We calculate separate Balances Subject to Finance Charge for Category A balances and Category B balances. We calculate the Balances Subject to Finance Charge for each of these categories by: (a) calculating a daily balance for each day in the current billing cycle; (b) daily balance for each day in the current billing cycle, or calculating a daily balance for each day prior to the current billing cycle and adding all the daily balances together; and (c) dividing the sum of the daily balances by the number of days in the current billing cycle. To calculate the daily balance for each day in the current billing cycle, we take the beginning balance, add an amount

equal to the applicable Daily Periodic Rate multiplied by the previous day's daily balance, add new Advances and transaction fees, and subtract applicable payments and credits. If any daily balance is less than zero we treat it as zero.

To calculate a daily balance for each day prior to the current billing cycle that had a Pre-Cycle Advance balance, we take the beginning balance attributable solely to Pre-Cycle Advances (which will be zero on the transaction date of the first Pre-Cycle Advance), add an amount equal to the applicable Daily Periodic Rate multiplied by the previous day's daily balance, and add only the applicable Pre-Cycle Advances and their related transaction fees. We exclude from this calculation all transactions posted in previous billing cycles.

Category C and D - Average Daily Balance Method (including new transactions): We calculate separate balances subject to Finance Charges for Category C balances and Category D balances. We calculate the balance subject to Finance Charges for each of these categories by: (A) calculating a daily balance for each day in the current billing cycle; (B) adding up the daily balances together; and (C) dividing the sum of the daily balances by the number of days in the current billing cycle.

To calculate the daily balance for each day in the current billing cycle, we take the beginning balance, add an amount equal to the applicable Daily Periodic Rate multiplied by the previous day's daily balance, add new transactions, new account fees, and new transaction fees, and subtract applicable payments and credits. If any daily balance is less than zero we treat it as zero.

We include the cost for the MERVA Credit Protection plan or for credit insurance purchased through us in calculating the beginning balance for the first day of the billing cycle after the billing cycle in which such costs are billed.

Transaction Fees: We will assess the following transaction fees to your account in the same category to which the transaction is posted:

A transaction fee (FINANCE CHARGE) for all Advances (including access transfers, billings transfers and direct deposits), equal to 5.0% of the U.S. Dollar amount of each Advance you obtain (Floor: Min. \$8.00; Max. \$50.00). This fee will be treated as an Advance.

Account Fees: We will assess the following account fees to your account as Category C Other Charges to the billing cycle in which they occur:

- 1. a late fee of \$25.00 each time you fail to make the required Minimum Payment shown on your statement by the statement Closing Date immediately following that payment's due date.
- 2. a returned payment fee of \$25.00 if a check submitted as payment on your account is returned for insufficient funds or for any other reason even if the check is later paid upon subsequent presentation.
- 3. a returned check fee of \$25.00 if we return an Advance Check unpaid for any reason even if the check is later paid upon subsequent presentation.
- 4. a stop payment fee of \$15.00 if you request us to stop payment on an Advance check.
- 5. an overdraft fee of \$25.00 if your account is overdrawn (even if Fees or Periodic Rate Finance Charges assessed by us cause your New Balance Total to exceed your credit limit) on the last day of the billing cycle that your account went overdrawn.
- 6. in the event that you request copies of monthly billing statements on your account, we may charge you \$5.00 per copy; however, the six most recent monthly statements will be provided free of charge.
- 7. unless prohibited by applicable law, we will charge your account for any claim associated with complying with state abandoned property laws.

**Your Billing Rights**

**Keep This Notice For Future Use:** This notice contains important information about your rights and our responsibilities under the Fair Credit Billing Act.

**Notify Us In Case of Errors or Questions About Your Bill:** If you think your bill is wrong or if you need more information about a transaction on your bill, write us on a separate sheet at MERVA America Bank N.A., P.O. Box 18037, Wilmington, DE 19880. Do not send the notice on or with your payment.

Write to us as soon as possible. We must hear from you no later than 60 days after we sent you the first bill on which the error or problem appeared. You can telephase us but doing so will not preserve your rights. In your letter, please give us the following information:

- your name and account number
- the dollar amount of the suspected error
- a description of the error and an explanation, if you can, of why you believe there is an error. If you need more

information, describe the item you are not sure about.

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

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

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

If you fail to pay the amount that we think you owe, we may report you as delinquent. However, if our explanation does not satisfy you and you write us within twenty-five (25) days telling us that you still refuse to pay, we must tell anyone we report you to that you have a question about your bill, and we must tell you the name of anyone we reported you to. We must tell anyone we report you to that the matter has been settled between us and it finally is.

If we do not follow these rules, we cannot collect the first 50% of the questioned amount, even if your bill was correct.

**Account Agreement**

**General:** In this Agreement, the words "you" and "your" refer to each and all of the persons in whose account this account was issued and who obtain credit in any way provided for under this Agreement. The words "we," "us," "our," and "MERVA America" mean MERVA America Bank, N.A. The word "Advance" means any loan you obtain from us under this Agreement.

Our Agreement with you consists of this Agreement and the terms and conditions printed on the required federal disclosure section of the accompanying Terms of Your Account letter, which is incorporated herein and made a part hereof. Please keep these documents, and subsequent amendments, if any, together.

When you, or anyone whom you authorize or permit, use your account, you agree to the terms of this Agreement.

You consent to and authorize MERVA America, any of its affiliates, or its marketing associates to monitor and/or record any of your telephone conversations with our representatives or the representatives of any of these companies.

All capitalized terms not defined herein shall have the meaning as defined in the required federal disclosure section of your Terms of Your Account letter.

**Credit Reporting Agencies:** If you believe we have furnished inaccurate or incomplete information about you or your account to a credit reporting agency, write to us at: MERVA Credit Reporting Agency, P. O. Box 27034, Wilmington, DE 19884-7034. Please include your name, address, phone phone number, and account number, and explain what you believe is inaccurate or incomplete.

**How To Use Your Account:** You may use your account to purchase or lease goods or services from persons who honor checks. You may obtain such credit under your account by requesting checks or drafts payable in U.S. Dollars that will be sent either directly to your designated payee or to you for forwarding to your designated payee. We may offer the direct deposit of Advances into your banking account or direct deposit of Advances into your checking account or direct deposit of Advances into your savings account through direct deposit deposits from the policies and procedures of the reporting bank. If this account includes a special feature to purchase goods or services from a merchant, we may send Advances directly to the merchant on your behalf. From time to time, we may issue you additional checks or other other additional Advances in response to your request. You may not use any Advance solely to make a payment on this account or solely to make a payment on any other credit account with us.

If you permit any person to have access to your checks or account number with the authorization to make a charge,

(continued)

You may be liable for all Advances made by this person including Advances for which you may not have intended to be liable.

You agree not to use a postdated check to obtain credit under your account. If you do postdate a check by which you propose to obtain credit under your account, we may elect to honor it upon presentation or return it unpaid to the party which presented it for payment, without in either case changing the date shown on the check. We are not liable to you for any loss or expense incurred by you relying on it at the option we elect to take.

You must return all checks to us on request.

Credit Limit: Your credit limit is shown on your Terms of Your Account letter and generally on each monthly statement. We may change your credit limit at any time in line, and we will notify you if we do. The total amount of credit outstanding at any time must not be more than your credit limit. We may also establish a separate credit limit for certain balances. If we do, your outstanding balance on those types of items may not exceed this separate credit limit.

Request for Credit Over Your Credit Limit: If you request credit in any form which, if granted, would result in either your total outstanding balance or your separate outstanding balance, including authorized transactions not yet posted to your account, being more than your credit limit or your separate credit limit, if we have established one for you, (whether or not such balance before the request was more than the respective credit limit), we may: 1. Deny the request without permanently raising your credit limit; 2. Honor the request and open the amount which is over your credit limit as an overdraft; or 3. Agree to honor the request. We may advise the person who made the request that it has been refused. If we refuse to honor a check, we may do so by advising the person presenting the check that credit had been refused, that there are insufficient funds to pay the check, or in any other manner.

If we have previously honored requests for credit over your credit limit, it does not mean that we will honor further overdraft requests. If we decide to honor such a request, we may assume an overdraft fee as provided in this Agreement.

Additional Advances: You may obtain additional Advances from time to time provided that you continue to meet our income and credit standards without any significant adverse change. The approval of one request does not mean the approval of other requests. Additional Advances posted to your account may be made on the basis of re-credit, resulting in a revised minimum monthly payment and revised length of time to repay the loan. Additional Advances must be at least \$200.00.

Terms of Your Loan: Your repayment term is disclosed in another document before you. Your monthly payment amount will be disclosed on the Current Payment or your monthly statement. Certain events may result in your account balance not being paid off during the term. In this case, we do not change the minimum monthly payment amount. Instead, we extend the term to repay the balance. For example, the following events will extend the term of a payment holiday which you take: (i) an increase in the prime rate for any variable annual percentage rate account; (ii) all fees levied on your account, such as check processing fees, late fees, over the credit limit fees and insurance premiums; and (iii) payments received later than the payment due date.

Also, the minimum monthly payment does not take into account the effect of adding unpaid Payments Made Payments Charges received on Advances to the daily Advances balance. This will extend the term.

The following events will reduce the term (and will also change the minimum payment due each month): (i) a temporary reduction in the annual percentage rate, such as a promotional rate; (ii) a decrease in the prime rate for any variable annual percentage rate; and (iii) payments greater than the required minimum payment.

Repayment: You promise to pay us the amount of all credit you obtain, this includes all Advances, any fees, charges, and insurance premiums we charge against your account, and Finance Charges.

You may pay the entire amount outstanding or pay that amount without penalty. You must pay each month at least the minimum payment shown on your monthly statement. The minimum payment will be the total of (a) the current payment shown above on your monthly statement; plus (b) the amount of any past due payments. The current payment amount is based upon the amount outstanding, the term of your loan, and the annual percentage rate. If you default or if a credit balance is otherwise created in your account, we will not pay interest on such amounts. Payments greater than the required minimum payment will reduce the total amount of Finance Charges otherwise payable to you.

We will advance your payments in the manner we determine. In most instances, we will advance your payments to balances (including your transactions) with lower APYs before balances with higher APYs. This will result in new balances with lower APYs for example, those with promotional APY offers being paid before any other existing balances. All payments will be credited to your account by the billing cycle in which each payment is received. Minimum monthly payments cannot be made in advance and payments made in any billing cycle which are obligated to make subsequent minimum payments each month. We may reject payments not denominated in U.S. dollars or not drawn on a U.S. Bank. No payment shall operate as an express and irrevocable assignment of the proceeds of a credit advance to MCBNA America. All persons who initially or subsequently request, accept or use the account are individually responsible for any outstanding balance. If one or more persons are responsible to pay any outstanding balance, we may refuse to release any of them from liability with all of the checks outstanding under the account have been returned to us and the balance is paid in full.

Payment Holidays and Reduced Payment Offers: We may allow you, from time to time, to omit a monthly payment or make a reduced payment. We will notify you when these options are available. If you omit a payment or make a reduced payment, your term will be extended and finance charges, applicable fees, and other regular transactions, if any, will increase on your account balance in accordance with this Agreement. The reduced payment amount may be less than your finance charges. You must make the reduced payment as they are owed to us for You must resume making your regular Total Minimum Payment Due each month following a payment holiday or reduced payment offer.

Billing Cycle: A billing cycle begins on the day after the closing date shown on your account's preceding monthly statement and ends on the closing date that appears on your account's statement for the current month.

Insurance Group credit insurance may be offered to you from time to time. Purchase of this insurance is entirely optional. If purchased, the insurance will protect us if an event occurs for which benefits are provided. We determine the cost of this insurance by multiplying the insurance rate then in effect by the amount of your Advances and other charges outstanding during the billing cycle. The premium is charged to your account as an Other Charge.

Benefits: You may be offered certain benefits from time to time, which will be subject to the restrictions outlined by MCBNA America in a brochure or otherwise. MCBNA America reserves the right to adjust, add, or delete benefits and services at any time and without notice.

Request for Requiring Immediate Payment: You will be in default and we will require immediate payment of all amounts you owe if (i) you fail to make any required payment by the Payment Due Date, (ii) your New Balance Total exceeds your credit limit, or (iii) we have established a separate credit limit for you, your separate outstanding balance exceeds your separate credit limit; or (iv) you fail to abide by any other terms of this Agreement.

If you default, unless prohibited by applicable law, we can also require you to pay the collection and court costs we incur in any collection proceeding and a reasonable attorney's fee if we refer your account for collection to an attorney who is not our related employee.

Our failure to exercise any of our rights when you default does not mean that we are unable to exercise those rights upon later default.

Clerk: GLKNISLEY

Deputy Clerk

Exhibit "C"



www.MBNA.com

Exhibit C

**BILL OF SALE AND ASSIGNMENT OF LOANS**

MBNA America Bank, N.A.

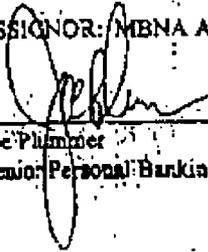
10000

10000

The undersigned Assignor ("Assignor") hereby absolutely sells, transfers, assigns, and over-  
quittances and conveys to sell National Credit Acceptance, a corporation organized under the  
laws of California ("Assignee") without recourse and without representations or warranties of any  
type, kind, character or nature, express or implied, all of Assignor's right title and interest in and  
to each of the loans identified in the loan schedule ("Loan Schedule") attached hereto (the  
"Loans"), together with the right to collect all principal, interest or other proceeds of any kind  
with respect to the Loans remaining due and owing as of the Cut-off Date applicable to such  
Loans as set forth in the Loan Sale Agreement pursuant to which the Loans are being sold  
(including but not limited to proceeds derived from the conversion, voluntary or involuntary, of  
any of the Loans into case of other liquidated property).

DATED: 2/09/05

ASSIGNOR: MBNA AMERICA BANK, NA



Joe Plummer  
Senior Personal Banking Officer

SPES MB1204

Exhibit "D"







# People PC

CUSTOMER SINCE 2000

Make check payable to:

MBNA AMERICA  
P.O. BOX 15028  
WILMINGTON, DE 19886-5028

10

DEBRA A OSWALT  
RR 1 BOX 250  
FRENCHVILLE PA 16836-950150

\$ 090023080000022145000000000000000000123147000041000000074973150379708  
\$ 000105762000096509000000000000000000123147000041000000074973150379708

ACCOUNT NUMBER 749 73150 379 708	
PAYMENT DUE DATE 05/08/01	NEW BALANCE TOTAL \$1,231.47
TOTAL MINIMUM PAYMENT DUE \$41.00	AMOUNT ENCLOSED

ACCOUNT NUMBER	CREDIT LINE	CASH OR CREDIT AVAILABLE	DAYS IN CYCLE	CLOSING DATE	TOTAL MINIMUM PAYMENT DUE	PAYMENT DUE DATE
749 73150 379 708	\$3,500		30	04/11/01	\$41.00	05/08/01

POSTING DATE	TRANS DATE	REFERENCE NUMBER	CARD TYPE	CAT	TRANSACTIONS	CHARGES	CREDITS (CR)
APRIL 2001 STATEMENT							
0327	0325	03270135307834			PAYMENTS AND CREDITS		
0409	0408	04080156327087			PAYMENT - THANK YOU		41.00 CR
					PAYMENT - THANK YOU		41.00 CR
					TOTAL FOR BILLING CYCLE FROM 3/13/2001 THROUGH 4/11/2001	\$ 0.00	\$82.00 CR

**IMPORTANT NEWS**

USE YOUR ACCESS CHECKS TO SPRING FORWARD INTO SOMETHING NEW AND EXCITING!

CONGRATULATIONS! YOUR CREDIT LINE HAS BEEN INCREASED TO THE AMOUNT SHOWN ABOVE! TO ACCESS YOUR CREDIT LINE, PLEASE CALL US AT 1-800-205-5749

NOW OPEN...PEOPLE SHOP! THE EXCLUSIVE STORE FOR PEOPLE PC MEMBERS. GET SET WITH PAPER, PRINTER CARTRIDGES, DIGITAL CAMERAS, BOOKS, SOFTWARE, AND MORE! EVERY ITEM AT PEOPLE SHOP IS HANDPICKED AND RECOMMENDED BY PEOPLE PC. FOR MORE INFORMATION, GO TO THE WEBSITE AT [HTTP://SHOP.FEOPLEPC.COM](http://SHOP.FEOPLEPC.COM)

SUMMARY OF TRANSACTIONS							TOTAL MINIMUM PAYMENT DUE	
Previous Balance	- Payments and Credits	+ Advances	+ Other Charges	+ Periodic Rate Finance Charges	+ Transaction Fee Finance Charges	= New Balance Total	Past Due Amount	\$0.00
\$1,288.47	\$87.00	\$0.00	\$0.00	\$25.05	\$0.00	\$1,231.47	Current Payment	\$41.00
							Total Min Payment Due	\$41.00

FINANCE CHARGE SCHEDULE Category	Periodic Rate	Corresponding Annual Percentage Rate	Balance Subject to Finance Charges
A. ADVANCES	.065726% DLY	23.99%	\$202.80
B. ADVANCES	.065726% DLY	23.99%	\$0.00
C. OTHER CHARGES	.065726% DLY	23.99%	\$1,067.76
D. OTHER BALANCES	.000000% DLY	00.00%	\$0.00

FOR THIS BILLING PERIOD  
**ANNUAL PERCENTAGE RATE . . . 23.99%**  
(Includes Periodic Rate and Transaction Fee Finance Charges)

**FOR YOUR SATISFACTION, EVERY HOUR, EVERY DAY**

- To speak to one of our Customer Satisfaction representatives, call the number on the back of your credit card
- For TDD (Telecommunications Device for the Deaf) assistance, call 1-800-346-3178
- Billing rights are preserved only by written inquiry. Mail billing inquiries to:

THIS DOCUMENT IS A COPY OF YOUR STATEMENT. IT IS FOR YOUR RECORDS ONLY. THIS COPY IS NOT AN EXACT DUPLICATE AND MAY NOT INCLUDE MESSAGES WHICH APPEAR IN THE IMPORTANT NEWS BLOCK ON YOUR ORIGINAL PERIODIC STATEMENT

BANKCARD SERVICES P.O. BOX 15028  
WILMINGTON, DE 19886-5028

























































































Bank of America



AS\_NCA\_FINANCIAL\_DEC\_11\_20  
DEBRA A OSWALT  
25329 SHWVLE FNCHVLE HWY  
FRENCHVILLE, PA 16836

DECEMBER 15, 2008

Dear AS\_NCA\_FINANCIAL\_DEC\_11\_20 and DEBRA A OSWALT

Please find enclosed copies of your monthly billing statement(s). Statement copies are provided upon customer request, or because the original monthly billing statement was damaged during our printing process. If you have any questions regarding your account, please contact one of our experienced representatives.

We value your business and look forward to serving you in the future.

Sincerely,

Customer Satisfaction Department

Enclosure(s)

827\_97687\_AS\_NCA\_FIN

AS\_NCA\_FINANCIAL\_DEC\_11\_20  
25329 SHWVLE FNCHVLE HWY  
FRENCHVILLE, PA 16836

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

National Credit Acceptance  
1731 Howe Ave # 254  
Sacramento CA 95825

Plaintiff

vs.

Debra A. Oswalt  
25329 Shawville Frenchville Hwy.  
Frenchville PA 16836

Defendant

CIVIL ACTION

NO: 2008-1359

**CERTIFICATE OF SERVICE**

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

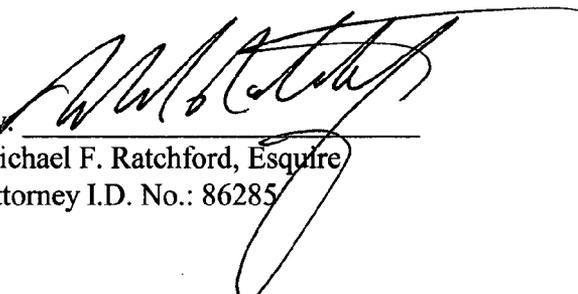
Nancy L. Datres, Esquire  
MidPenn Legal Services  
230 Lincoln Way East, Suite A  
Chambersburg, PA 17201

Edwin A. Abrahamsen & Associates

Date:

4/2/2009

By:

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

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

NATIONAL CREDIT ACCEPTANCE,  
Plaintiff

vs. .

DEBRA A. OSWALT,  
Defendant

\*  
\*  
\* NO.: 08-1359-CD  
\*  
\* Type of Case: Civil  
\*  
\* Type of Pleading: Petition to Dismiss  
\*  
\*  
\* Filed on Behalf of: Defendant  
\*  
\* Counsel of Record for this Party:  
\* Nancy L. Datres, Esquire  
\*  
\* Supreme Court No.: 203226  
\*  
\* MidPenn Legal Services  
\* 230 Lincoln Way East, Suite A  
\* Chambersburg, PA 17201  
\* (717) 264-2420

FILED 4cc  
010:316/1 Amy Datres  
APR 23 2009

William A. Shaw  
Prothonotary/Clerk of Courts

610

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

National Credit Acceptance	:	CIVIL ACTION
1731 Howe Ave #254	:	
Sacramento, CA 95825,	:	NO.: 2008 – 1359
Plaintiff	:	
	:	
vs.	:	
	:	
Debra A. Oswalt	:	
25329 Shawville Frenchville Hwy.	:	
Frenchville, PA 16836,	:	
Defendant	:	

**PETITION TO DISMISS PLAINTIFF’S AMENDED COMPLAINT  
FOR FAILURE TO COMPLY WITH COURT ORDER**

Defendant Debra A. Oswalt, by and through her attorneys, MidPenn Legal Services and Nancy L. Datres, Esquire, respectfully requests this Honorable Court to dismiss Plaintiff’s third Amended Complaint and avers in support thereof the following:

1. On March 27, 2009, this Honorable Court entered an Order after hearing oral arguments on preliminary objections filed by Defendant in response to Plaintiff’s prior amended complaint.
2. Pursuant to the Order, Plaintiff had no more than fifteen (15) days from the date of the Order to file an amended complaint that properly addressed the deficiencies raised in Defendant’s Preliminary Objections.
3. Plaintiff filed what is Plaintiff’s Third Amended Complaint in this matter on April 6, 2009, within the prescribed time period.
4. However, Plaintiff in its Third Amended Complaint fails to comply with material provisions of the Order.

5. The Order states that Plaintiff “will meet with all the legal concerns set forth within the stated Preliminary Objections.”
6. Plaintiff fails to satisfy the preliminary objection raised that goes to the very core of Plaintiff’s cause of action. Specifically, Plaintiff fails to attach to its Third Amended Complaint a copy of a signed written agreement that would form the very foundation upon which Plaintiff’s claim is based. Pa.R.C.P. No. 1019(i). *See also* Worldwide Asset Purchasing LLC v. Stern, P.L.J. 111 (2004) (J. Wettick).
7. Plaintiff attempts to circumvent the signed written agreement requirement by attaching to the Third Amended Complaint a computer-generated document that Plaintiff proffers as an “on-line application”. However, this document is devoid of any area designated for Defendant’s electronic signature, without which there is no showing of the manifestation of assent required to form a binding online contract. Also absent from said computer-generated document are terms and conditions sufficiently definite to be enforced and sufficiently definite to demonstrate that both parties manifested an intention to be bound by them. Said document fails to contain a link that would allow a prospective applicant to navigate to another online document to read and review the terms and conditions.
8. Plaintiff also fails to comply with the March 27, 2009 Order in that Plaintiff fails to address the objection as to the complaint’s lack of proper verification. The Third Amended Complaint’s verification is a photocopy and not a verification bearing an original signature. Pa. R.C.P. 1024 (c).

9. To date, Plaintiff has filed four complaints in this matter, the original and three amended complaints. Said pleadings span a time period of nine (9) months, the original complaint having been filed on July 24, 2008.
10. Despite a Court Order clearly spelling out the requirements that Plaintiff must meet in a third amended complaint, Plaintiff fails to comply with said Order.

**WHEREFORE**, Defendant/Petitioner respectfully requests this Honorable Court to dismiss Plaintiff's non-compliant amended complaint with prejudice. Should this Honorable Court deny Defendant's Petition, Defendant respectfully requests the Court allow Defendant twenty (20) days from the date of the Order to file an Answer.

Respectfully submitted,

4-23-09  
Date

BY: Nancy L. Datres/MS  
Nancy L. Datres, Esquire  
Supreme Ct. ID 203226  
MidPenn Legal Services, Inc.  
230 Lincoln Way East, Suite A  
Chambersburg, PA 17201  
(717) 264-5354 ext. 2303  
*Attorney for Defendant/Petitioner*

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

National Credit Acceptance	:	CIVIL ACTION
1731 Howe Ave #254	:	
Sacramento, CA 95825,	:	NO.: 2008 – 1359
Plaintiff	:	
	:	
vs.	:	
	:	
Debra A. Oswalt	:	
25329 Shawville Frenchville Hwy.	:	
Frenchville, PA 16836,	:	
Defendant	:	

**ORDER**

AND NOW this \_\_\_\_ day of \_\_\_\_\_, 2009, upon consideration of the foregoing petition, the Defendant's Petition to Dismiss Plaintiff's Third Amended Complaint is denied.

Defendant shall have twenty (20) days from the date of this order to file an Answer to Plaintiff's Third Amended Complaint.

BY THE COURT:

\_\_\_\_\_  
J.

COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA

National Credit Acceptance	:	CIVIL ACTION
1731 Howe Ave #254	:	
Sacramento, CA 95825,	:	NO.: 2008 - 1359
Plaintiff	:	
	:	
vs.	:	
	:	
Debra A. Oswalt	:	
25329 Shawville Frenchville Hwy.	:	
Frenchville, PA 16836,	:	
Defendant	:	

**ORDER**

AND NOW this 24 day of April, 2009, upon consideration of the foregoing Petition, it is hereby ordered that:

A rule is issued upon the Plaintiff/Respondent to show cause why the Petitioner is not entitled to the relief requested. Rule returnable on the <sup>th</sup> 11 day of JUNE, 2009 at 11:30 o'clock in am Courtroom # 2, Clearfield County Courthouse, Clearfield, PA

BY THE COURT:

  
J.

FILED 400  
13:42 6/1 Any Dates  
APR 24 2009  
EW

William A. Shaw  
Prothonotary/Clerk of Courts

**FILED**

**APR 24 2009**

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

DATE: 4/24/09

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

NATIONAL CREDIT ACCEPTANCE,  
Plaintiff

vs.

DEBRA A. OSWALT,  
Defendant

\*  
\*  
\* NO.: 08-1359-CD  
\*  
\* Type of Case: Civil  
\*  
\* Type of Pleading: Certificate of Service  
\*  
\*  
\* Filed on Behalf of: Defendant  
\*  
\* Counsel of Record for this Party:  
\* Nancy L. Datres, Esquire  
\*  
\* Supreme Court No.: 203226  
\*  
\* MidPenn Legal Services  
\* 230 Lincoln Way East, Suite A  
\* Chambersburg, PA 17201  
\* (717) 264-2420

<sup>S</sup>  
**FILED** <sup>icc</sup>  
010500  
APR 27 2009  
Nancy Datres  
William A. Shaw  
Prothonotary/Clerk of Courts

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

National Credit Acceptance	:	CIVIL ACTION
1731 Howe Ave #254	:	
Sacramento, CA 95825,	:	NO.: 2008 – 1359
Plaintiff	:	
vs.	:	
Debra A. Oswald	:	
25329 Shawville Frenchville Hwy.	:	
Frenchville, PA 16836,	:	
Defendant	:	

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the below stated date, she served a true and correct copy of the within Petition to Dismiss, by mailing same to the office of Plaintiff's attorney of record by regular first-class mail, postage pre-paid, addressed as follows, which service satisfies the requirements of Pa. R.C.P. No. 440:

Michael F. Ratchford, Esq.  
Edwin A. Abrahamsen & Associates  
1729 Pittston Avenue  
Scranton, PA 18505

4-27-09  
Date

BY: Nancy L. Datres  
Nancy L. Datres, Esquire  
Supreme Ct. ID 203226  
MidPenn Legal Services, Inc.  
230 Lincoln Way East, Suite A  
Chambersburg, PA 17201  
(717) 264-5354 ext. 2303

*Attorney for Defendant*

UP

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

NATIONAL CREDIT ACCEPTANCE  
Plaintiff

\*  
\*  
\*  
\*  
\*

NO. 08-1359-CD

VS

DEBRA A. OSWALT  
Defendant

FILED

JUN 15 2009

9 0/10:06 (60)

William A. Shaw  
Prothonotary/Clerk of Courts

SENT TO ATTY (RATCOURT)  
& ATTY DATES + FOO

ORDER

NOW, this 11th day of June, 2009, this being the date set by this Court's Order of April 24, 2009 for argument on the Defendant's Petition to Dismiss and the Court noting that the Defendant's representative failed to appear for said argument; it is the ORDER of this Court that the Petition to Dismiss be and is hereby DENIED. The Court believes that the Defendant should have filed preliminary objections to the Plaintiff's Third Amended Complaint, not a Petition to Dismiss.

BY THE COURT,



FREDRIC J. AMMERMAN  
President Judge

**FILED**

**JUN 15 2009**

William A. Shaw  
Prothonotary/Clerk of Courts

DATE: 6.15.09

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:

ATTY DATES 1/0 R. FEAR.

UP

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

NATIONAL CREDIT ACCEPTANCE,  
Plaintiff

vs.

DEBRA A. OSWALT,  
Defendant

- \*
  - \* NO.: 08-1359-CD
  - \* Type of Case: Civil
  - \* Type of Pleading: Preliminary Objections to Third Amended Complaint
  - \* Filed on Behalf of: Defendant
  - \* Counsel of Record for this Party: Nancy L. Datres, Esquire
  - \* Supreme Court No.: 203226
  - \* MidPenn Legal Services
  - \* 230 Lincoln Way East, Suite A
  - \* Chambersburg, PA 17201
  - \* (717) 264-2420

FILED

019:2730  
JUN 16 2009

4cc  
Atty Datres

William A. Shaw  
Prothonotary/Clerk of Courts

GW

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

National Credit Acceptance	:	CIVIL ACTION
1731 Howe Ave #254	:	
Sacramento, CA 95825,	:	NO.: 2008 – 1359
Plaintiff	:	
	:	
vs.	:	
	:	
Debra A. Oswalt	:	
25329 Shawville Frenchville Hwy.	:	
Frenchville, PA 16836,	:	
Defendant	:	

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

Defendant Debra A. Oswalt, by and through her counsel, Nancy L. Datres of MidPenn Legal Services, hereby files these preliminary objections to Plaintiff's Second Amended Complaint and avers the following in support thereof:

**I. MOTION TO STRIKE/FAILURE OF AMENDED COMPLAINT TO CONFORM  
TO LAW OR RULE OF COURT – FAILURE TO ATTACH COPY  
OF WRITTEN AGREEMENT**

1. Pursuant to the Pennsylvania Rules of Civil Procedure, whenever a claim is based upon a writing, Pa.R.C.P. No.1019 (i) requires a copy of the writing or material part thereof that forms the basis of the cause of action to be attached to the complaint.
2. Case law further expounds upon the requirements of Pa. R.C.P. No. 1019 (i) as that rule relates specifically to consumer debt collection lawsuits. *See Atlantic Credit and Finance, Inc. v. Giuliana*, 829 A.2d 340,345 (Pa.Super. 2003) (holding that the failure to attach the writing upon which the claim was based is fatal to the claim set forth in the complaint); *Unifund CCR Partners v. Vo*, No. 08-3966 (Pa.Com.Pl. Philadelphia, 2009) (holding that

a plaintiff must also attach to the complaint the interest rates and fees [Schumer Box] that the parties agreed to); FIA Card Services, N.A. v Kirasic, No. AR06-9360 (Pa. Com. Pl. Allegheny, Nov. 7, 2007) (holding that plaintiff must attach the original written terms as well as the amended terms and the dates the amended terms were applicable if plaintiff is seeking finance charges, late fees, and similar fees); Worldwide Asset Purchasing, LLC v. Stern, 153 P.L.J. 111 (2004) (holding that copy of the original terms and amended terms must be attached to complaint).

3. Plaintiff fails to attach to its Third Amended Complaint a signed written customer agreement or signed credit card application which forms the very foundation upon which Plaintiff's cause of action would rest.
4. Plaintiff attempts to satisfy the requirements of Rule 1019 (i) by attaching to its Third Amended Complaint a computer-generated document marked Exhibit A, which Plaintiff avers is an online credit card application completed by Defendant.
5. A careful review of Exhibit A shows that there is nothing on the document indicating Defendant's electronic signature, which is required for the formation of online contracts.
6. Clearly, said writings are essential to Plaintiff's case. However, such writings are not attached to the Third Amended Complaint, the absence thereof has not been explained, and the substance of said writings is not set forth in the Third Amended Complaint.
7. Because Plaintiff fails to attach to its Third Amended Complaint the requisite signed written customer agreement or a signed credit card application, the Third Amended Complaint fails to comply with Pa. R.C.P. No. 1019(i).

**WHEREFORE**, the Defendant respectfully requests this Honorable Court to sustain her preliminary objections and dismiss Plaintiff's Third Amended Complaint.

**II. MOTION TO STRIKE/FAILURE OF PLEADING TO CONFORM TO LAW OR  
RULE OF COURT – NOT A REAL PARTY IN INTEREST**

8. Defendant incorporates herein by reference all preceding paragraphs.
9. A legal claim must be filed by a real party in interest. Pa. R.C.P. No. 2002(a).
10. When suit is brought against a defendant, a defendant is entitled to proof that the plaintiff is the owner of the claim against him with the right to bring suit against the defendant. This protection must be afforded a defendant. Otherwise, the defendant might find himself subjected to multiple lawsuits filed by multiple parties as to the same claim. *See Produce Factors Corp. v. Brown, 179 A.2d 919 (Pa. Super. 1963); Brown v. Esposito, 42 A.2d 93 (Pa. Super. 1945).*
11. Plaintiff alleges in paragraph 6 of the Third Amended Complaint that the original creditor was MBNA and further alleges that MBNA assigned the account to Plaintiff.
12. As evidence of the alleged assignment, Plaintiff attaches as Exhibit B, a Bill of Sale. Said Bill of Sale references a “Loan Schedule”. The Loan Schedule is not included with the Bill of Sale and, as such, there is nothing on the face of the Bill of Sale relating the Bill of Sale to the specific account that Plaintiff alleges was used by Defendant.
13. A generic Bill of Sale does not establish the requisite chain of title to the alleged debt. *See Worldwide Asset Purchasing, LLC v. Stern, 153 P.L.J. 111 (2004) (J. Wettick).*
14. Because the Third Amended Complaint fails to establish a chain of title to the alleged account and fails to establish the alleged assignment of the alleged debt from MBNA to Plaintiff, Plaintiff is not a real party in interest as required by Pa. R.C.P. No. 2002(a).
15. Accordingly, Plaintiff is unable to prosecute this action.

**WHEREFORE**, the Defendant respectfully requests this Honorable Court to sustain her preliminary objections and dismiss Plaintiff’s Third Amended Complaint.

### III. MOTION TO STRIKE/INSUFFICIENT SPECIFICITY OF PLEADING

16. Defendant incorporates herein by reference all preceding paragraphs.
17. It is well known that Pennsylvania is a fact-pleading state. Pa.R.C.P. No. 1019(a) requires that the “material facts” on which a cause of action is based shall be stated in a concise and summary form.
18. A defendant is entitled to know the dates and amounts of specific transactions which support the Plaintiff’s claims, dates and amounts of all charges, dates and amounts of all payments received, and dates and amounts of interest and all fees such that defendant is able to determine how Plaintiff arrived at the amount Plaintiff is seeking. *See Atlantic Credit and Finance, Inc. v. Guiliana*, 829 A.2d 340, 345 (Pa.Super. 2003); *Unifund CCR Partners v. Vo*, No. 08-3966 (Pa.Com.Pl. Philadelphia, 2009); *FIA Card Services, N.A. v Kirasic*, No. AR06-9360 (Pa.Com.Pl. Allegheny, Nov. 7, 2007); and *Worldwide Asset Purchasing, LLC v. Stern*, 153 P.L.J. 111 (2004).
19. The Third Amended Complaint fails to state the requisite material facts that would allow Defendant to determine how Plaintiff arrived at the \$9,565.66 amount Plaintiff is seeking.
20. Plaintiff’s Exhibit D, a series of monthly billing statements, concludes with a billing statement dated January 26, 2005 which shows a balance of \$4,001.73.
21. Plaintiff, however, fails to set forth in its Third Amended Complaint the material facts that would explain the \$5,563.93 difference between the balance shown on the last billing statement and the \$9,565.66 that Plaintiff is seeking.
22. Without this information, Defendant cannot possibly form a meaningful response or defense and lacks the information necessary to dispute the amount Plaintiff is seeking.

23. Because the Third Amended Complaint fails to include the material facts that would permit Defendant to form a meaningful response and or defense, the Third Amended Complaint fails to comply with Pa. R.C.P. No. 1019(a).

**WHEREFORE**, the Defendant respectfully requests this Honorable Court to sustain her preliminary objections, dismiss Plaintiff's Third Amended Complaint.

Respectfully submitted,

6-16-09  
Date

BY: Nancy L. Datres  
Nancy L. Datres, Esquire  
Supreme Ct. ID 203226  
MidPenn Legal Services, Inc.  
230 Lincoln Way East, Suite A  
Chambersburg, PA 17201  
(717) 264-5354 ext. 2303

*Attorney for Defendant*

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

NATIONAL CREDIT ACCEPTANCE,  
Plaintiff

vs.

DEBRA A. OSWALT,  
Defendant

\*  
\*  
\* NO.: 08-1359-CD  
\*  
\* Type of Case: Civil  
\*  
\* Type of Pleading: Certificate of Service  
\*  
\*  
\* Filed on Behalf of: Defendant  
\*  
\* Counsel of Record for this Party:  
\* Nancy L. Datres, Esquire  
\*  
\* Supreme Court No.: 203226  
\*  
\* MidPenn Legal Services  
\* 230 Lincoln Way East, Suite A  
\* Chambersburg, PA 17201  
\* (717) 264-2420

<sup>5</sup> FILED 1cc  
019:2780 Atty Datres  
JUN 16 2009  
William A. Shaw  
Prothonotary/Clerk of Courts

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

National Credit Acceptance	:	CIVIL ACTION
1731 Howe Ave #254	:	
Sacramento, CA 95825,	:	NO.: 2008 – 1359
Plaintiff	:	
	:	
vs.	:	
	:	
Debra A. Oswalt	:	
25329 Shawville Frenchville Hwy.	:	
Frenchville, PA 16836,	:	
Defendant	:	

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the below stated date, she served a true and correct copy of the within Preliminary Objections, by mailing same to the office of Plaintiff's attorney of record by regular first-class mail, postage pre-paid, addressed as follows, which service satisfies the requirements of Pa. R.C.P. No. 440:

Michael F. Ratchford, Esq.  
Edwin A. Abrahamsen & Associates  
1729 Pittston Avenue  
Scranton, PA 18505

6-16-09  
Date

BY: Nancy L. Datres / 00  
Nancy L. Datres, Esquire  
Supreme Ct. ID 203226  
MidPenn Legal Services, Inc.  
230 Lincoln Way East, Suite A  
Chambersburg, PA 17201  
(717) 264-5354 ext. 2303

*Attorney for Defendant*

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

National Credit Acceptance,  
Plaintiff

vs.

Debra A. Oswalt,  
Defendant

\*  
\*  
\* NO.: 08-1359-CD  
\*  
\* Type of Case: Civil  
\*  
\* Type of Pleading: Petition  
\* to Schedule Argument  
\*  
\* Filed on Behalf of: Debra A. Oswalt  
\*  
\* Counsel of Record for this Party:  
\* Robin Jean Foor, Esquire  
\*  
\* Supreme Court No.: 41520  
\*  
\* MidPenn Legal Services  
\* 211 East Locust Street  
\* Clearfield, PA 16839  
\* (814)765-9646

5 FILED 4 CC 1144  
9/10:28  
SEP 16 2009 Foor  
William A. Shaw  
Prothonotary/Clerk of Courts

Handwritten marks in the top right corner.

**FILED**

**SEP 16 2009**

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

LA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

National Credit Acceptance,	:	
	:	
Plaintiff	:	Civil Action
	:	
vs.	:	No. 08-1359-CD
	:	
Debra A. Oswald,	:	
	:	
Defendant	:	

ORDER

AND NOW, this 17<sup>th</sup> day of September, 2009, upon consideration of Defendant Debra A. Oswald's Preliminary Objections to Amended Complaint filed in the above captioned matter, it is the Order of the Court that argument has been scheduled for the 9<sup>th</sup> day of October, 2009 at 9:30 o'clock A.m. in Courtroom # 1, Clearfield County Courthouse, Clearfield, Pennsylvania.

BY THE COURT,

*Justice J. Ammerman*  
 \_\_\_\_\_  
 J.

**FILED** 402  
 02:38 PM  
 SEP 18 2009  
 Amy Foor  
 William A. Shaw  
 Prothonotary/Clerk of Courts  
 (S) (C)

**FILED**

**SEP 18 2009**

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

DATE: 9/18/09

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

National Credit Acceptance,  
Plaintiff

vs.

Debra A. Oswalt,  
Defendant

\*  
\*  
\* NO.: 08-1359-CD  
\*  
\* Type of Case: Civil  
\*  
\* Type of Pleading: Certificate  
\* of Service  
\*  
\* Filed on Behalf of: Debra A. Oswalt  
\*  
\* Counsel of Record for this Party:  
\* Robin Jean Foor, Esquire  
\*  
\* Supreme Court No.: 41520  
\*  
\* MidPenn Legal Services  
\* 211 East Locust Street  
\* Clearfield, PA 16839  
\* (814)765-9646

FILED 100  
01:10:52 PM Atty  
SEP 22 2009  
Foor  
William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

National Credit Acceptance,	:
	:
Plaintiff	: Civil Action
	:
vs.	: No. 08-1359-CD
	:
Debra J. Oswalt,	:
	:
Defendant	:

**CERTIFICATE OF SERVICE**

I, Robin Jean Foor, Esquire, hereby certify that on the 18<sup>th</sup> day of September, 2009, I served a true and accurate copy of Petition to Schedule and Order Scheduling Argument filed in that above-captioned matter to the following individual by first class mail, postage prepaid:

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

  
\_\_\_\_\_  
Robin Jean Foor, Esquire  
Supreme Ct. ID 41520

**FILED**

**SEP 22 2009**

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

CA

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

NATIONAL CREDIT ACCEPTANCE  
Plaintiff

vs

DEBRA A. OSWALT  
Defendant

\*  
\*  
\*  
\*  
\*

NO. 08-1359-CD

**FILED**

OCT 19 2009

0/3:10/CW  
William A. Shaw

Prothonotary/Clerk of Courts

CRU TO ATTY RATCHFORD

DATES

ORDER

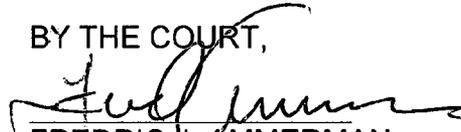
NOW, this 9<sup>th</sup> day of October, 2009, this being the date set for argument on the Defendant's Preliminary Objections to Plaintiff's Third Amended Complaint with the Court noting that no one has appeared on the part of the Plaintiff, and following argument by Defense counsel; it is the ORDER of this Court that the said Preliminary Objections are GRANTED as follows:

1. The Plaintiff shall have no more than 60 days from this date in which to file a Fourth Amended Complaint which will contain an Exhibit B, being the purported credit card agreement entered into between the parties, which shall be both legible and dated;
2. Statements as attached to the Third Amended Complaint indicate a bill each month since April of 2001 for credit protection. The Fourth Amended Complaint shall plead information indicating how this fee is calculated and what the provisions of the credit protection coverage provided to the Defendant were and why the same did not pay on the account;
3. The Fourth Amended Complaint will contain additional information concerning the assignment of the account to the Plaintiff. Exhibit C as attached to the Third Amended Complaint is general in nature and does not provide any documentation which identifies the Defendant's account as

being included in the bill of sale/assignment. The Fourth Amended Complaint shall contain this information.

4. The Fourth Amended Complaint shall contain and plead information showing how the Defendant's late charges and overlimit fees are calculated and the manner in which the finance charge was calculated.

BY THE COURT,



FREDRIC J. LAMMERMAN  
President Judge

DATE: 10-14-09

You are responsible for serving all appropriate parties.  
 The Probationary'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

National Credit Acceptance,  
Plaintiff

vs.

Debra A. Oswalt,  
Defendant

\*  
\*  
\* NO.: 08-1359-CD  
\*  
\* Type of Case: Civil  
\*  
\* Type of Pleading: Motion to  
\* Dismiss  
\*  
\* Filed on Behalf of: Debra A. Oswalt  
\*  
\* Counsel of Record for this Party:  
\* Robin Jean Foor, Esquire  
\*  
\* Supreme Court No.: 41520  
\*  
\* MidPenn Legal Services  
\* 211 East Locust Street  
\* Clearfield, PA 16839  
\* (814)765-9646

FILED  
OF 10:47:37  
DEC 23 2009

5  
William A. Shaw  
Prothonotary/Clerk of Courts

4cc Atty Foor

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

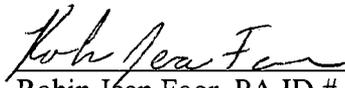
NATIONAL CREDIT ACCEPTANCE, :  
 :  
 Plaintiff : Civil Action  
 :  
 vs. : No. 08-1359-CD  
 :  
 DEBRA A. OSWALT, :  
 :  
 Defendant :

**DEFENDANT'S MOTION TO DISMISS**

Defendant, Debra A. Oswald, by and through her attorneys, MidPenn Legal Services and Robin Jean Foor, Esquire request the Court dismiss plaintiff's complaint and allege as follows:

1. Following an argument on October 9, 2009, the court sustained defendant's preliminary objections.
2. On October 9, 2009, the Court issued an order giving the plaintiff sixty days to file an amended complaint.
3. The plaintiff has not filed an amended complaint.

Wherefore, defendant requests the court dismiss the complaint.

  
\_\_\_\_\_  
Robin Jean Foor, PA ID # 41520  
MidPenn Legal Services  
211 East Locust Street  
Clearfield, PA 16830  
(814) 765-9646

CA

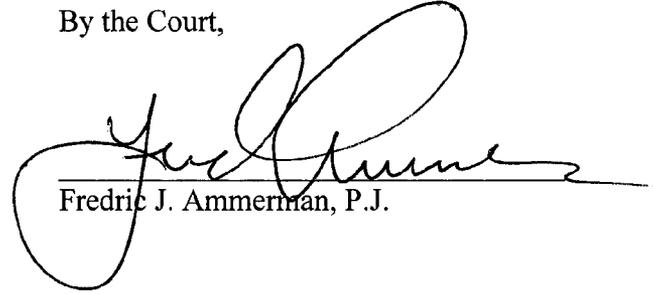
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

NATIONAL CREDIT ACCEPTANCE,	:
	:
Plaintiff	: Civil Action
	:
vs.	: No. 08-1359-CD
	:
DEBRA A. OSWALT,	:
	:
Defendant	:

ORDER

AND NOW this 4<sup>th</sup> day of January, ~~2009~~<sup>2010</sup>, upon consideration of defendant's preliminary objections and plaintiff's failure to file an amended complaint, plaintiff's complaint is dismissed.

By the Court,



Fredric J. Ammerman, P.J.

FILED 400  
 01/05/2010  
 JAN 05 2010 Amy F005  
 William A. Shaw  
 Prothonotary/Clerk of Courts (60)

FILED

JAN 05 2010

William A. Shaw  
Prothonotary/Clerk of Courts

DATE: 1/5/10

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: