69405-7

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IN THE COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

No. 69405-7-I

EGP INVESTMENTS, LLC,
a Washington Limited Liability Company,

Plaintiff/Respondent,

v.

MARIANNE JONES, individually, and the marital community comprised of MARIANNE JONES and PATRICK A.T. JONES, wife and husband,

Defendants/Appellants.

On Appeal from the Superior Court of King County
Hon. Sharon S. Armstrong
Superior Court Docket Number 11-2-35222-6

BRIEF OF RESPONDENT

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ORIGINAL

TABLE OF CONTENTS

I. INTRODUCTION 1

II. RESTATEMENT OF THE ISSUES PERTAINING TO ASSIGNMENT OF ERROR 2

III. STATEMENT OF THE CASE 3

IV. ARGUMENT 9

A. Ms. Jones Has Waived Her Right To Appeal EGP's Supplemental Judgment For Attorneys' Fees And Costs . 9

B. The Trial Court Did Not Err By Denying Ms. Jones's Cross Motion To Dismiss EGP's Complaint 10

1. EGP's Claims Accrued On Or About November 13, 2009 11

2. Ms. Jones And Her Marital Community Were Personally Served With EGP's Summons And Complaint 12

3. EGP Personally Served Ms. Jones And Her Marital Community With EGP's Summons And Complaint Within The Applicable Four Year Statute Of Limitations 13

C. The Trial Court Did Not Err By Granting EGP's Motion For Summary Judgment 16

D. The Court Should Award EGP Reasonable Attorneys' Fees And Costs Incurred On Appeal If EGP Prevails In This Forum 21

V. CONCLUSION 22

VI. APPENDICES

A. Transcript of telephonic phone application.....Appendix A

B. The Account's written terms and conditions….Appendix B

C. Account statement dated November 18, 2009....Appendix C

TABLE OF AUTHORITIES

CASES

Archer v. United Rentals, Inc., 195 Cal.App. 4th 807 , 126 Cal.Rptr.3d 118 (2011) ---------- 19

Bainbridge Citizens United v. Washington State Dept. of Natural Resources, 147 Wn. App. 365, 198 P.3d 1033 (2008) ---------- 17

Bloom v. Bender, 48 Cal.2d 793, 313 P.2d 568 (Cal. 1957)---------- 12

Consolidated Irrigation District v. Superior Court, 205 Cal.App.4th 697, 140 Cal.Rptr.3d 622 (2012)---------- 15

Cowiche Canyon Conservancy v. Bosley, 118 Wn.2d 801, 828 P.2d 549 (1992)---------- 10

Data Disc, Inc. v. Sys. Tech. Assoc., 557 F.2d 1280 (9th Cir. 1977)------- 11

Don Johnson Productions, Inc. v. Rysher Entertainment, 209 Cal.App.4th 919, 147 Cal.Rptr.3d 590, 594 (2012) ---------- 11

Farr & Stone Ins. Brokers, Inc. v. Lopez, 132 Cal.Rptr. 641, 61 Cal.App.3d 618 (1976)---------- 17

Jones v. Upland Housing Authority, 2013 WL 708540 (C.D.Cal. 2013)- 13

Lee v. Western Processing Co., 35 Wn. App. 466, 667 P.2d 638 (1983)- 12

Lewis v. Bours, 119 Wn.2d 667, 835 P.2d 221 (1992) ---------- 10

M & Y Management, Inc. v. Namvar, 2012 WL 1621137 (Cal.App. 2012) ---------- 17

McHugh v. Conner, 68 Wn. 229, 122 P. 1018 (1912)---------- 12

Oil Heat Co. of Port Angeles, Inc. v. Sweeney, 26 Wn. App. 351, 613 P.2d 169 (1980)---------- 13

Precision Lab. Plastics, Inc. v. Micro Test, Inc., 96 Wn. App. 721, 981 P.2d 454 (1999) ---------- 10

R.N.C. Inc. v. Tsegeletos, 283 Cal.Rptr. 48, 231 Cal.App. 3d 967 (1991) 12

Raboff v. Albertson, 122 Cal.App.2d 555, 265 P.2d 139 (Cal.App. 1954)17

Resurgence Financial, LLC v. Chambers, 173 Cal.App.4th Supp. 1, 92 Cal.Rptr.3d 844 (2009) ----------14, 16

Seattle First Nat. Bank v. Mitchell, 87 Wn. App. 448, 942 P.2d 1022 (1997)---------- 22

Smith v. King, 106 Wn.2d 443, 722 P.2d 796 (1986)---------- 10

State Bd. Of Equalization v. Balboa Ins. Co., 155 Cal.Rptr. 205, 89 Cal.App.3d 499 (1978)---------- 14, 15, 18

Townsend v. Walla Walla School Dist., 147 Wn. App. 620, 196 P.3d 748 (2008)---------- 16

STATUTES

Cal. Civ. Code § 1747---------- 19

Cal. Civ. Code § 1747.02(d) ---------- 20

Cal. Civ. Code § 2794---------- 17

Cal. Civ. Code § 2794(4) ---------- 21

Cal. Code Civ. Proc. § 337 ---------- 14, 15, 16

RCW 26.16.030 ---------- 12

RCW 4.28.080(15) ---------- 12

OTHER AUTHORITIES

14A K. Teglund, WASHINGTON PRACTICE: CIVIL PROCEDURE, § 37.6, at 549 (1st ed. 2003)---------- 22

RULES

CR 12(b)(2) and (5) ---------- 8, 16

RAP 18.1(a) ---------- 22

RAP 18.1(b) ---------- 22

I. INTRODUCTION

This is a commercial collection case that arises from a Wells Fargo Bank revolving charge account that Appellant / Defendant Marianne K. Jones ("**Ms. Jones**") procured by way of a telephonic phone application on behalf of Jones Law Group, PLLC, Ms. Jones's wholly-owned law firm. CP 186; CP 195-206. Ms. Jones is an attorney licensed to practice law in Washington. CP 154-56. In order to obtain the Wells Fargo revolving charge account for her law firm (the "**Account**"), Ms. Jones agreed to personally guaranty this obligation. CP 205. Ms. Jones is representing herself in this case *pro se*. CP 97-98.

Ms. Jones's law firm utilized the Account, the Account subsequently went into default, and the Appellee / Plaintiff, EGP Investments, LLC ("**EGP**") purchased the Account and filed suit against Ms. Jones on this obligation. CP 186. EGP moved for summary judgment, Ms. Jones filed a cross motion to dismiss EGP's complaint due to insufficient service of process and on statute of limitations grounds, and the parties proceeded to two different hearings before The Honorable Sharon Armstrong in the summer of 2012. *See* CP 97-98.

EGP and Ms. Jones agree that California law governs EGP's claim against Ms. Jones on the Account. Verbatim Report of Proceedings of August 22, 2012 hearing at 15, lines 2-4.

After hearing argument from counsel concerning the motions at hand at the second hearing held on August 22, 2012, the trial court took the matter under advisement. VRP of August 22, 2012 hearing at 26.

On September 4, 2012, the trial court entered a judgment and order granting EGP's motion for summary judgment and an order denying Ms. Jones's cross motion to dismiss EGP's complaint. CP 76-81. EGP then filed a motion for an award of costs and attorneys' fees, which the trial court granted on September 25, 2012. CP 94-6. Ms. Jones filed her notice of appeal concerning these three rulings on October 1, 2012. CP 97-108.

The trial court has not committed reversible error in this case. As such, EGP asks this Court to affirm the trial court's rulings. In the event that this Court does so and EGP prevails in this forum, EGP requests an award of its attorney's fees and costs incurred on appeal pursuant to its contract with Ms. Jones.

II. RESTATEMENT OF THE ISSUES PERTAINING TO ASSIGNMENT OF ERROR

1. Whether the trial court erred by denying Ms. Jones's cross motion to dismiss EGP's complaint for want of personal jurisdiction and insufficient service of process when (a) EGP's claim against Ms. Jones accrued on or about November 13, 2009; (b) EGP personally served its summons and complaint on Ms. Jones on January 31, 2012; and (c) the

California statute of limitations that governs EGP's claim against Ms. Jones is four years. (Ms. Jones's Assignment of Error No. 1)

2. Whether the trial court erred by entering summary judgment on the Account in favor of EGP against Ms. Jones when (a) it is undisputed that EGP owns the Account, and that the Account is in default; (b) Ms. Jones agreed to guaranty the Account; (c) Ms. Jones agreed to be bound by the Account's written terms and conditions; (d) Ms. Jones's phone application concerning the Account was recorded with her consent and transcribed; and (e) Ms. Jones agreed that her telephonic Account application could be used as evidence of her liability on the Account. (Ms. Jones's Assignment of Error No. 1)

III. STATEMENT OF THE CASE

Ms. Jones is an attorney licensed to practice law in Washington. CP 154-56. Ms. Jones is representing herself in this case *pro se*. CP 97-98.

On or about June 2, 2004, Ms. Jones, doing business as Jones Law Group, PLLC, opening a revolving charge account with Wells Fargo Bank, N.A. ("**Wells Fargo**") under Account Number xxxx-xxxx-xxxx-4151 (the "**Account**"). CP 186. Ms. Jones obtained the Account from Wells Fargo by way of a telephonic phone application. CP 186. A certified transcription of this telephonic phone application can be found at

CP 194-210. EGP obtained this certified transcription on or about June 8, 2012. CP 345. This transcription reads in relevant part as follows:

> WELLS FARGO REPRESENTATIVE: And this [application] is for Jones Law Group, LLC?
> MARIANNE JONES: PLLC. Yes. It's – it's – there's a "P" in front of the LLC.
>
> WELLS FARGO REPRESENTATIVE: Okay. And who am I speaking with, please?
> MARIANNE JONES: Marianne Jones.
>
> WELLS FARGO REPRESENTATIVE: Ms. Jones, because this is a paperless application I'll be tape-recording your application. Okay?
> MARIANNE JONES: Okay.
> …
> WELLS FARGO REPRESENTATIVE: And what percentage of the business [Jones Law Group, PLLC] do you own?
> MARIANNE JONES: 100 percent.
> …
> WELLS FARGO REPRESENTATIVE: Thank you. What is the gross annual revenue of your business, please?
> MARIANNE JONES: That's 450,000.
> …
> WELLS FARGO REPRESENTATIVE: And do you – I'm sorry. Can I have your average personal checking account balance, please?
> MARIANNE JONES: 200,000 dol – no. Actually, right now it's 190,000. About average.
> …
> WELLS FARGO REPRESENTATIVE: Thank you. May I have your estimated gross annual household income, keeping in mind that child support, alimony and separate income need not be included if you do not want it considered for your business line application?
> MARIANNE JONES: It's about $270,000 annually.
> …
> WELLS FARGO REPRESENTATIVE: Your application is now complete. I need to just take one final moment to read you some legal disclosures that's [*sic*] required for paperless application. For legal purposes all responses must either be the word "yes" or the word "no". This information will be sent to you in writing when your account is open.

Marianne Jones, by accepting this business line offer you have authorized Wells Fargo Bank to obtain your personal and business credit information and, if approved, ***you also agree on behalf of Jones Law Group, PLLC that Wells Fargo may use this tape-recording or any use of your business line by anyone authorized by Jones Law Group, PLLC as evidence that you agreed to the terms and conditions of the Customer Agreement that you will receive.***

If approved, your credit limit may be less than the amount for which your business has been pre-approved.

If you, the business owner, are married your spouse's consent is not required to apply for this account unless he or she is also an owner.

California law will apply to your oral agreement.

If you understand and agree, please respond now with a "yes". If you do not, please respond now with a "no". ***Do you understand and agree to these terms?***

MARIANNE JONES: ***Yes.***

…

Ms. Jones, as the personal guarantor you individually guaranty to pay Wells Fargo upon demand all that your business owes on the business line account. As the guarantor you authorize Wells Fargo without notice or prior consent to change any of the terms of the amounts of your business line account. In addition, you agree to pay attorneys fees and other expenses incurred in enforcing this guaranty. This guaranty benefits the Wells Fargo Bank and its successors and assigns.

Finally, you agree this audiotaped application may be used as evidence of your agreement to the terms of this guaranty.

If you understand and agree, please respond now with a "yes". If you do not, please respond now with a "no".

Do you understand and agree to these terms and conditions?

MARIANNE JONES: ***Yes.***

CP 195-206 (emphasis added).

Ms. Jones and/or Jones Law Group, PLLC borrowed money and/or purchased goods and services using the Account, and in doing so, became bound by the terms and conditions of the written Customer Agreement that was issued in connection with the Account (the "**Agreement**"). CP

119; CP 186. The Agreement contains a provision that provides for the payment of the Account holder's costs and attorneys' fees incurred in the event of a default on the Account. CP 186; CP 232.

On March 24, 2011, Wells Fargo sold the Account to Absolute Resolutions Corp. ("**Absolute**"). CP 186. On or about May 3, 2011, EGP purchased the Account from Absolute. CP 186. EGP is the owner and holder of the Account and the lawful successor in interest to Wells Fargo and Absolute insofar as the Account is concerned. CP 186.

EGP obtained bills of sale reflecting its ownership of the Account in connection with its purchase of the Account that reflect, among other things, the principal balance owing on the Account and EGP's ownership of the Account. CP 119. EGP also obtained copies of monthly statements that Wells Fargo sent to Ms. Jones regarding the Account and the Account statement dated November 18, 2009 reflects the Account was charged a $100.00 previous cycle late fee on November 5, 2009, a previous cycle overlimit fee on November 5, 2009, and that the last payment was made on the Account on November 13, 2009 in the amount of $4,036.20, after the Account went into default. CP 137. EGP therefore argued in the trial court that its claims on the Account accrued and the statute of limitations began to run on or about November 13, 2009. CP 380.

Wells Fargo charged off the Account on February 10, 2010. CP

345. The last payment that Wells Fargo received on the Account was dated November 13, 2009. CP 345. Ms. Jones and Jones Law Group, PLLC defaulted on the Account during this time period. CP 345.

EGP filed suit against Ms. Jones for judgment on the Account on October 11, 2011. CP 111. Jones Law Group, PLLC was not named as a Defendant in EGP's original complaint. *See* CP 111. The filed declaration of service dated February 7, 2012 from Registered Process Server Scott LaPeer states Ms. Jones and her husband Patrick A.T. Jones were each personally served with two copies of EGP's summons and complaint on January 31, 2012 at 7:38 p.m. CP 178; CP 337; CP 383.

Approximately one month after filing suit, on or about November 3, 2011, EGP received a copy of correspondence dated February 8, 2010 from Ms. Jones to Wells Fargo, in which Ms. Jones explained her then-current financial situation and offered a lump sum settlement offer concerning the Account. CP 186; CP 154-56.

As of July 13, 2012, the total amount of principal and interest owing on the Account was $108,374.58. CP 186. This sum is comprised of the principal sum of $84,170.40 as of February 18, 2010 and accrued interest on this sum from that date forward to July 13, 2012 at the statutory rate of 12.00%, which equates to $24,204.18. CP 186. The per diem interest on the Account is $27.67. CP 186. EGP has never received a

payment on the Account. *See* CP 120, lines 13-14.

EGP moved for summary judgment, and Ms. Jones opposed this motion and filed a cross motion to dismiss EGP's complaint under Civil Rule 12(b)(2) and (5) on July 2, 2012. CP 1, 12. In support of her cross motion to dismiss, Ms. Jones argued the trial court lacked jurisdiction over the person and insufficiency of process. CP 1, 12. Specifically, Ms. Jones argued that EGP failed to effectuate timely and proper service of process upon her within the applicable statute of limitations, and that the dismissal of EGP's complaint was therefore required under Civil Rule 12(b)(2) and (5). CP 13. EGP countered by arguing the statute of limitations had not run on EGP's claims and that Ms. Jones and her marital community were timely and properly served with EGP's summons and complaint. CP 334-337.

On July 13, 2012, The Honorable Sharon Armstrong presided over the hearing on EGP's motion for summary judgment and Ms. Jones's cross motion to dismiss. Verbatim Report of Proceedings ("**VRP**") of July 13, 2012 hearing at 1. The trial court continued the hearing on the motions for three weeks in order to allow EGP to provide further briefing on the issues of which state's substantive law governed EGP's claims, the applicable statute of limitations, and the question of whether the Jones marital community was liable to EGP based on Ms. Jones's guaranty of

the Account. VRP 27-28.

EGP subsequently retained new (and current) counsel, provided further briefing on the issues at hand (CP 378-84), and proceeded to court on August 22, 2012 for the continued hearing on EGP's motion for summary judgment and Ms. Jones's cross motion to dismiss. VRP of August 22, 2012 hearing at 1. During this hearing, Ms. Jones correctly noted that the parties agree EGP's claims are governed by California law. VRP of August 22, 2012 hearing at 15, lines 2-4. After hearing argument from counsel concerning the motions at hand, the trial court took the matter under advisement. VRP of August 22, 2012 hearing at 26.

On September 4, 2012, the trial court entered a judgment and order granting EGP's motion for summary judgment and an order denying Ms. Jones's cross motion to dismiss EGP's complaint. CP 76-81. EGP then filed a motion for an award of costs and attorneys' fees, which the trial court granted on September 25, 2012. CP 94-6. Ms. Jones filed her notice of appeal concerning these three rulings on October 1, 2012. CP 97-108.

IV. ARGUMENT

A. Ms. Jones Has Waived Her Right To Appeal EGP's Supplemental Judgment For Attorneys' Fees And Costs.

Ms. Jones's Notice of Appeal and her Brief of Appellant reflect she seeks review of the judgment and order granting EGP's motion for

summary judgment, the order denying Ms. Jones's motion to dismiss EGP's complaint, and the supplemental judgment and order granting EGP's motion for attorneys' fees and costs. However, Ms. Jones's Brief of Appellant contains no argument or legal authority concerning the trial court's ruling on EGP's motion for attorneys' fees and costs. As such, Ms. Jones has waived her right to argue that EGP's supplemental judgment for attorneys' fees and costs was improperly entered. *E.g., Smith v. King*, 106 Wn.2d 443, 451-52, 722 P.2d 796 (1986) (without argument or authority to support it, an assignment of error is waived). Should Ms. Jones attempt to remedy this error in a reply brief, such an effort would be too late to warrant this Court's consideration. *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992) (issue raised and argued for the first time in a reply brief is too late to warrant consideration).

B. <u>The Trial Court Did Not Err By Denying Ms. Jones's Cross Motion To Dismiss EGP's Complaint.</u>

A trial court's ruling on personal jurisdiction is a question of law reviewable de novo when the underlying facts are undisputed. *Lewis v. Bours*, 119 Wn.2d 667, 669, 835 P.2d 221 (1992). If the trial court's ruling is based on affidavits and discovery "only a prima facie showing of jurisdiction is required." *Precision Lab. Plastics, Inc. v. Micro Test, Inc.*,

96 Wn. App. 721, 725, 981 P.2d 454 (1999). The rationale is that "[a]ny greater burden such as proof by a preponderance of the evidence would permit a defendant to obtain a dismissal simply by controverting the facts established by a plaintiff through his own affidavits and supporting materials." *Data Disc, Inc. v. Sys. Tech. Assoc.*, 557 F.2d 1280, 1285 (9th Cir. 1977). Therefore, if the plaintiff's proof is limited to written materials, it is necessary only for these materials to demonstrate facts which support a finding of jurisdiction in order to avoid a motion to dismiss. *See id.*

1. EGP's Claims Accrued On Or About November 13, 2009.

Regarding the date that EGP's claims against Ms. Jones accrued, the Account statement dated November 18, 2009 reflects the Account was charged a $100.00 previous cycle late fee on November 5, 2009, a previous cycle overlimit fee on November 5, 2009, and that the last payment was made on the Account on November 13, 2009 in the amount of $4,036.20, after the Account went into default. CP 137; CP 380. As such, EGP's claims accrued and the statute of limitations began to run on or about November 13, 2009. *Cf. Don Johnson Productions, Inc. v. Rysher Entertainment*, 209 Cal.App.4th 919, 926, 147 Cal.Rptr.3d 590, 594 (2012) (noting statute of limitations on a promissory note should not

commence to run until the last payment is made); *R.N.C. Inc. v. Tsegeletos*, 283 Cal.Rptr. 48, 231 Cal.App. 3d 967 (1991) (liability of the surety, in the absence of a different contractual provision, accrues at the same time as that of the principal, or upon default of the principal, for limitations purposes); *Bloom v. Bender,* 48 Cal.2d 793, 313 P.2d 568 (Cal. 1957) (as a general rule, the liability of the guarantor accrues at the same time as that of the principal, or upon default of the principal).

2. Ms. Jones And Her Marital Community Were Personally Served With EGP's Summons And Complaint.

An affidavit of service that is regular in form and substance is presumptively correct. *Lee v. Western Processing Co.*, 35 Wn. App. 466, 469, 667 P.2d 638 (1983). The burden is upon the person attacking the service to show by *clear and convincing proof* that the service was improper. *McHugh v. Conner*, 68 Wn. 229, 231, 122 P. 1018 (1912) (emphasis added).

Service may be effectuated by serving the summons and complaint personally on the defendant, regardless of whether the defendant is at home at the time. RCW 4.28.080(15). In light of RCW 26.16.030, which permits either spouse to manage community property, service of process may be effectuated upon the marital community by serving either spouse; it is not necessary to serve both of the spouses in order to effectuate

service on the community. *E.g., Oil Heat Co. of Port Angeles, Inc. v. Sweeney*, 26 Wn. App. 351, 613 P.2d 169 (1980).

Here, there is no doubt that EGP effectuated service on Ms. Jones and the Jones marital community. The amended declaration of service from process server Scott LaPeer dated February 7, 2012 demonstrates both Ms. Jones and Mr. Jones were *each* personally served with two (2) copies of EGP's summons and complaint on January 31, 2012 at 7:38 p.m. Given that Ms. Jones was personally served with these pleadings, the trial court correctly determined that service of the summons and complaint was effectuated, and that service was good as to Ms. Jones and the Jones marital community. EGP's attempted service on Ms. Jones on September 8, 2011 was not relevant to the trial court's rulings in this case, nor is this occurrence relevant to this appeal. [1]

3. EGP Personally Served Ms. Jones And Her Marital Community With EGP's Summons And Complaint Within The Applicable Four Year Statute Of Limitations.

Under California law, a claim for breach of contract is subject to a four-year statute of limitations. *E.g., Jones v. Upland Housing Authority*, 2013 WL 708540 at *12 (C.D.Cal. 2013) (internal citations omitted). The statute of limitations on a credit card debt is four years under California

[1] Ms. Jones's Brief of Appellant at 14 references EGP's attempted service on September 8, 2011.

law. *E.g.,* http://www.creditcards.com/credit-card-news/credit-card-state-statute-limitations-1282.php (last visited on July 27, 2012); Cal. Civ. Proc. Code § 337 ("an action upon any contract, obligation or liability founded upon an instrument in writing…and [a]n action to recover … (3) a balance due upon a mutual, open and current account, the items of which are in writing" shall be brought within four years); *see also Resurgence Financial, LLC v. Chambers*, 173 Cal.App.4th Supp. 1, 8, 92 Cal.Rptr.3d 844 (2009) (citing Cal. Code Civ. Proc. § 337 and noting statute of limitations in credit card collection case is four years under California law).

Further, the statute of limitations on a credit card debt is four years under California law as to both the primary account holder *and* the guarantor of the account. *See, e.g., State Bd. Of Equalization v. Balboa Ins. Co.*, 155 Cal.Rptr. 205, 89 Cal.App.3d 499 (1978) (holding the running of the statute of limitations against a principal does not bar an action against the surety; the liability of the surety should at least remain as long as the obligation of the principal remains) (emphasis added).

Here, there is no real question that EGP's claims based on the revolving charge Account at issue are subject to a four year statute of limitations because the Account is "founded upon an instrument in writing," namely, (a) the written terms and conditions; (b) the recorded

telephonic phone application; and (c) the written transcript of the telephonic application. *Cf. Consolidated Irrigation District v. Superior Court*, 205 Cal.App.4th 697, 140 Cal.Rptr.3d 622 (2012) (holding audio recordings of agency hearings qualified as "other written materials" included in record of proceedings).

Moreover, EGP's action for money owed on the Account can also be characterized as the pursuit of "a balance due upon a mutual, open account, the items of which are in writing" under Cal. Civ. Proc. Code § 337 in light of the transcript of the telephonic phone application, the written terms and conditions, and the monthly Account statements that are part of the record.

Ms. Jones's claim that the two year statute of limitations applies here because EGP's guaranty claim is allegedly based on an oral contract [2] falls well short of the mark. Tellingly, Ms. Jones has failed to even try to explain how EGP's claims against her law firm or herself can fairly be characterized as oral in nature given the Account's written terms and conditions, the recording of Ms. Jones's telephonic phone application, and the transcript of this application. Ms. Jones has offered no legal authority whatsoever to rebut EGP's legal authority such as *State Bd. Of Equalization v. Balboa Ins. Co.*, 155 Cal.Rptr. 205, 89 Cal.App.3d 499,

[2] Brief of Appellant at 12.

which holds the statute of limitations is the same as to both the principal and the surety. Further, EGP finds it telling that Ms. Jones does not even try to explain why cases like *Resurgence Financial, LLC v. Chambers*, 173 Cal.App.4th Supp. 1, 8, 92 Cal.Rptr.3d 844 (citing Cal. Code Civ. Proc. § 337 and noting statute of limitations in credit card collection case is four years under California law), which EGP cited to the trial court, is not controlling here.

Regardless, in sum, there is no question that the applicable limitations period is four years. Thus, EGP's claims are not time barred because they accrued on or about November 13, 2009, and EGP filed suit and effectuated service on Ms. Jones and the Jones marital community on January 31, 2012, less than four years later. As such, the trial court did not err when it denied Ms. Jones's cross motion to dismiss EGP's complaint pursuant to CR 12(b)(2) and (5).

C. <u>The Trial Court Did Not Err By Granting EGP's Motion For Summary Judgment.</u>

When reviewing a summary judgment grant, an appellate court engages in the same inquiry as the trial court, viewing the facts and all reasonable inferences in the light most favorable to the nonmoving party. *Townsend v. Walla Walla School Dist.*, 147 Wn. App. 620, 196 P.3d 748 (2008). On an appeal from summary judgment, the Court of Appeals

engages in the same inquiry as the trial court, with the standard of review de novo. *Bainbridge Citizens United v. Washington State Dept. of Natural Resources*, 147 Wn. App. 365, 198 P.3d 1033 (2008).

California is an oral guaranty state. Under California law, a promise to answer for the obligation of another is deemed an original obligation of the promisor, and need not be in writing where the promise is upon a consideration beneficial to the promisor. Cal. Civ. Code § 2794. This consideration need not be pecuniary. *See, e.g., Farr & Stone Ins. Brokers, Inc. v. Lopez*, 132 Cal.Rptr. 641, 61 Cal.App.3d 618 (1976) (enforcing oral guaranty of corporation's CEO to pay corporation's insurance obligation); *see also M & Y Management, Inc. v. Namvar*, 2012 WL 1621137 at * 3 (Cal.App. 2012) ("Under … (*Farr & Stone*), and Civil Code sections 1624 and 2794, a guaranty need not be in writing if the purported guarantor's dominant leading purpose is to have the party seeking to enforce the guaranty take action."); *Raboff v. Albertson*, 122 Cal.App.2d 555, 265 P.2d 139 (Cal.App. 1954) (enforcing oral promise of wife to repay husband's loan).

Ms. Jones's guaranty of the Account is enforceable even if it is deemed to be oral in nature. As seen from the transcript of the telephonic phone application, Ms. Jones obviously received a valuable consideration from Wells Fargo in exchange for her oral promise to guaranty the Jones

Law Group's Account. It is likewise obvious from the transcript of the phone application that Ms. Jones's leading purpose was to have Wells Fargo "take action" by providing her wholly-owned law firm with a large line of credit. As such, there is no doubt that Ms. Jones is liable on the guaranty even if it is deemed to be oral in nature and the Court concludes the guaranty has not been reduced to "writing." In such an event, EGP's claims against Ms. Jones would still be timely because Ms. Jones's liability on the guaranty remains in effect as long as the obligation of her law firm remains in effect. A holding to the contrary would be contrary to *Balboa Ins. Co.* and other applicable California law. *Balboa Ins. Co.*, 155 Cal.Rptr. 205 (the liability of the surety should at least remain as long as the obligation of the principal remains).

Nevertheless, EGP maintains the recorded telephonic Wells Fargo Account application and the transcript of this application, in which Ms. Jones personally guaranteed her wholly-owned law firm's Account, and the Account's written terms and conditions, which Ms. Jones orally agreed to, each constitutes a "writing" under the California statutes cited above. As such, EGP submits there is no real question that the applicable statute of limitations on EGP's claim for breach of guaranty is four years, the same limitations period as for any other action for breach of a written contract under California law.

Ms. Jones's claim that due to a claimed "distinction between personal credit cards and business cards" under California law, the Account between EGP and Jones Law Group, PLLC "does not constitute a revolving charge account" is misplaced. [3] Tellingly, this charge is not supported by any citation to applicable law. [4] The *Archer v. United Rentals, Inc.* case that Ms. Jones cites in her Brief of Appellant does not hold or even state in dicta that a business credit card is not a revolving charge account. *Archer*, 195 Cal.App. 4th 807, 824, 126 Cal.Rptr.3d 118 (2011). Even Ms. Jones admits that the "specific holdings of *Archer* included that business credit cards are not included under the SBCCA's privacy protections, *which is not an issue in this case*..." [5] (Emphasis added).

As for the SBCCA, the "Song-Beverly Credit Card Act of 1971" [Cal. Civ. Code § 1747 *et seq.*] "in general regulates credit card issuers and merchants by: (1) establishing liability limits for unauthorized use of a credit card; (2) establishing correction procedures for card issuers and retail merchants for correction of billing errors; and (3) prohibiting discrimination in connection with the issuance of credit cards." 5 Cal. Transactions Forms – Bus. Transactions § 32:113, Overview. This Act is

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[3] Brief of Appellant at 8-9.
[4] *See id.* at 9.
[5] Brief of Appellant at 8.

inapplicable to this case.

As for Ms. Jones's claim that "EGP's complaint asserted only a claim against Marianne Jones and the marital community based upon a consumer credit card account," this claim is patently false and is not supported by the record. After all, EGP's complaint makes no mention at all of the words "consumer" or "consumer credit card account." CP 112. Further, EGP's complaint specifically states the "Defendants, doing business as JONES LAW GROUP, PLLC, opened an account with WELLS FARGO BANK BUSINESS[.]" CP 112. As such, the notion that EGP's complaint asserted a claim based on a consumer credit card account is misguided, and whatever reliance Ms. Jones places on Cal. Civ. Code § 1747.02(d) in her Brief of Appellant at page 10 is misplaced.

Ms. Jones's claim that "EGP's claim for breach of a written guaranty agreement fails because there is no allegation of separate consideration to Ms. Jones as the surety" also fails. [6] EGP alleged to the trial court that even if Ms. Jones's guaranty can be deemed to be oral, this guaranty is nevertheless enforceable because Ms. Jones received separate consideration for the guaranty, as her wholly-owned law firm received a large credit line from Wells Fargo as a result of this guaranty. CP 382.

Further, Ms. Jones's claim that because "EGP relied solely upon

[6] Brief of Appellant at 11.

Cal. Civ. Proc. § 2794(4) as authority for the guarantee … the guarantee must be in writing and signed by the guarantor[,]" [7] is patently false because it ignores the relevant part of the statute at issue. As seen from Ms. Jones's own brief, Cal. Civ. Code § 2794(4) provides that a promise to answer for the obligation of another need not be in writing where the promise is upon a consideration beneficial to the promisor. [8] Again, Ms. Jones received a consideration "beneficial to the promisor" when she agreed to guaranty the Account in exchange for the procurement of a large Wells Fargo credit line for her wholly-owned law firm. How Ms. Jones can credibly argue that this statute does not apply in this case on the grounds that "no separate consideration was necessary" [9] is a mystery to EGP.

EGP also takes issue with Ms. Jones's assertion that "the only guaranty that can be established between EGP and Jones is an oral guaranty" [10] in light of (a) the Account's written terms and conditions; (b) the recorded telephonic Account application; and (c) the written transcript of the recorded telephonic Account application.

D. <u>The Court Should Award EGP Reasonable Attorneys' Fees And Costs Incurred On Appeal If EGP Prevails In This Forum.</u>

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[7] Brief of Appellant at 12.
[8] Brief of Appellant at 11.
[9] Brief of Appellant at 12.
[10] Brief of Appellant at 12.

Attorney's fees and expenses incurred on appeal can be awarded if applicable law, a contract, or equity permits an award of such fees and expenses. RAP 18.1(a). The party requesting an award of fees and expenses must devote a section of its opening brief to the request for the fees or expenses. RAP 18.1(b).

Assuming that an applicable provision in a contract provides that attorney fees will be paid in a suit to enforce the instrument, the court has no authority to disregard it. 14A K. Teglund, WASHINGTON PRACTICE: CIVIL PROCEDURE, § 37.6, at 549 (1st ed. 2003) (citing several cases, including *Seattle First Nat. Bank v. Mitchell*, 87 Wn. App. 448, 942 P.2d 1022 (1997)).

EGP received an award of its costs and attorneys' fees below pursuant to contract. CP 107. In the event that EGP prevails in this forum, EGP requests an award of the attorneys' fees and costs it has incurred on appeal based on the telephonic Account application and the Account's written terms and conditions.

V. CONCLUSION

Based on the foregoing, EGP respectfully asks this Court to affirm the trial court's entry of summary judgment in favor of EGP against Ms. Jones, the order denying Ms. Jones's cross motion to dismiss EGP's complaint, and EGP's supplemental judgment for attorneys' fees and

costs. In the event that EGP prevails in this forum, EGP respectfully requests an award of its attorneys' fees and costs incurred on appeal pursuant to its contract with Ms. Jones.

RESPECTFULLY SUBMITTED this 12th day of April, 2013.

EISENHOWER CARLSON PLLC

By: _____
Alexander S. Kleinberg, WSBA # 34449
Attorneys for EGP Investments, LLC

DECLARATION OF SERVICE

I, Jennifer Fernando, am a legal assistant with the firm of Eisenhower Carlson PLLC, and am competent to be a witness herein. On April 12, 2013, at Tacoma, Washington, I caused a true and correct copy of EGP Investments, LLC's Brief of Respondent to be served upon the following in the manner indicated below:

Marianne K. Jones Jones Law Group PLLC 11819 NE 34th Street Bellevue, WA 98005	■ by Legal Messenger ■ by Electronic Mail

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 12th day of April, 2013, at Tacoma, Washington.

Jennifer Fernando

APPENDIX A

1

2 ----------

3 VERBATIM TRANSCRIPTION

4 OF

5 TELEPHONIC CREDIT CARD APPLICATION

6 ----------

7

8 Date of Application: June 2, 2004

9 Date of Transcription: April 10, 2012

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22 TRANSCRIBED BY: CHARLENE M. BECK, CCR, RPR
CCR # 2543

23 State and Nationally Certified
Court Reporter

24 Notary Public in and for the State
of Washington

25

1 WELLS FARGO REPRESENTATIVE: Thank you for calling
2 the Wells Fargo Application Center. My name is Nicole
3 Winters (phonetic).
4 To process your application, may I please have the
5 reservation number?
6 MARIANNE JONES: Yes. It's 231903905370/UUL.
7 WELLS FARGO REPRESENTATIVE: And this is for Jones
8 Law Group, LLC?
9 MARIANNE JONES: PLLC. Yes. It's -- it's --
10 there's a "P" in front of the LLC.
11 WELLS FARGO REPRESENTATIVE: Okay. And who am I
12 speaking with, please?
13 MARIANNE JONES: Marianne Jones.
14 WELLS FARGO REPRESENTATIVE: Ms. Jones, because
15 this is a paperless application I'll be tape-recording your
16 application. Okay?
17 MARIANNE JONES: Okay.
18 WELLS FARGO REPRESENTATIVE: Thank you. With your
19 permission I have begun taping.
20 Your recording reference is 231903905370. Today's date
21 is June 2nd, 2004, and it is 3:48 p.m. Central Time.
22 I'd like to confirm that the legal name of the business
23 is Jones Law Group, LL-- PLLC. Is that correct?
24 MARIANNE JONES: That's correct. "P" as in Paul
25 LLC.

1 WELLS FARGO REPRESENTATIVE: Okay. I have Jones,
2 J-O-N-E-S, Law, L-A-W, Group, G-R-O-U-P, PLLC. Is that
3 correct?
4 MARIANNE JONES: That's correct.
5 WELLS FARGO REPRESENTATIVE: Thank you.
6 Is Jones Law Group, PLLC a sole proprietorship,
7 partnership, limited liability partnership, corporation or a
8 limited liability corporation?
9 MARIANNE JONES: It's a professional limited
10 liability company.
11 WELLS FARGO REPRESENTATIVE: Okay. Just one
12 moment, please.
13 (One-minute four-second pause.)
14 WELLS FARGO REPRESENTATIVE: Ma'am, thank you for
15 holding, ma'am. It will be just one second.
16 MARIANNE JONES: Okay.
17 (50-second pause.)
18 WELLS FARGO REPRESENTATIVE: Yes. Thank you for
19 holding.
20 So that is a limited liability corporation; is that
21 correct?
22 MARIANNE JONES: Yes.
23 WELLS FARGO REPRESENTATIVE: And what percentage
24 of the business do you own?
25 MARIANNE JONES: 100 percent.

1 WELLS FARGO REPRESENTATIVE: And is your business
2 headquartered in the United States?
3 MARIANNE JONES: Yes.
4 WELLS FARGO REPRESENTATIVE: Thank you.
5 I show your business physical address as 11911 --
6 MARIANNE JONES: No. That's -- that's my home
7 address.
8 WELLS FARGO REPRESENTATIVE: Okay.
9 MARIANNE JONES: My business is right next door at
10 11819. Everything else is the same. I think the last four
11 digits of the zip code are different, though. 11819 is the
12 street number for my business.
13 WELLS FARGO REPRESENTATIVE: Okay. Just one
14 moment.
15 So I have the business physical address as 11819
16 Northeast 34th Street. That's Bellevue, Washington --
17 MARIANNE JONES: Uh-huh.
18 WELLS FARGO REPRESENTATIVE: -- 98005. Is that
19 correct?
20 MARIANNE JONES: That's correct.
21 WELLS FARGO REPRESENTATIVE: Okay. And is your
22 mailing address different than the address you just provided?
23 MARIANNE JONES: That's the mailing address for
24 the business. That's just fine.
25 WELLS FARGO REPRESENTATIVE: Okay. What is the

1 description of your business, please?
2 MARIANNE JONES: I'm a law firm.
3 WELLS FARGO REPRESENTATIVE: I have your business
4 phone number as (425) 576-8899. Is that correct?
5 MARIANNE JONES: That's correct.
6 WELLS FARGO REPRESENTATIVE: Thank you.
7 How long has Jones Law Group, PLLC been in business?
8 The year and month, please.
9 MARIANNE JONES: October 1st, 1997.
10 WELLS FARGO REPRESENTATIVE: Thank you.
11 What is your business fax number, please?
12 MARIANNE JONES: (425) 576-9898.
13 WELLS FARGO REPRESENTATIVE: I have (425)
14 576-9898. Is that correct?
15 MARIANNE JONES: That's correct.
16 WELLS FARGO REPRESENTATIVE: Thank you.
17 What is the gross annual revenue of your business,
18 please?
19 MARIANNE JONES: That's 450,000.
20 WELLS FARGO REPRESENTATIVE: Thank you.
21 I need some general information on Jones Law Group,
22 PLLC banking relationships.
23 And what bank do you have your business checking?
24 MARIANNE JONES: Cascade.
25 WELLS FARGO REPRESENTATIVE: And that's

1 C-A-S-C-A-D-E; is that correct?

2 MARIANNE JONES: Yes.

3 WELLS FARGO REPRESENTATIVE: Thank you.

4 And what bank do you have your business savings?

5 MARIANNE JONES: There is no business savings.

6 WELLS FARGO REPRESENTATIVE: Okay. So we'll leave

7 that field blank on the application.

8 And so the next question was your average balance on

9 savings, and we'll also leave that field blank.

10 What is your average balance on checking, please?

11 MARIANNE JONES: The average balance on checking

12 is probably about, um, $10,000.

13 WELLS FARGO REPRESENTATIVE: Thank you.

14 What is your Federal Tax ID Number, please?

15 MARIANNE JONES: [redacted]1938.

16 WELLS FARGO REPRESENTATIVE: Okay. Just to make

17 sure I have this correct, I have [redacted]1938. Is that

18 correct?

19 MARIANNE JONES: That's correct.

20 WELLS FARGO REPRESENTATIVE: Thank you.

21 That's all the business information I need, Ms. Jones.

22 Now I'll just need to verify some household information very

23 briefly.

24 And the correct spelling of your name is Marianne,

25 M-A-R-I-A-N-N-E, Jones, J-O-N-E-S; is that correct?

1 MARIANNE JONES: That's correct.
2 WELLS FARGO REPRESENTATIVE: Thank you.
3 Is the home address the same as the business address?
4 MARIANNE JONES: No. It's 11911.
5 WELLS FARGO REPRESENTATIVE: That's Northeast --
6 MARIANNE JONES: 34 Street, Bellevue, Washington,
7 98005.
8 WELLS FARGO REPRESENTATIVE: Okay. So just to
9 make sure I have this correct, I have 11911 Northeast, which
10 is abbreviated NE, 34th Street. Street is abbreviated S-t.
11 I have the city as Bellevue, B-E-L-L-E-V-U-E, Washington,
12 98005. Is that correct?
13 MARIANNE JONES: That's correct.
14 WELLS FARGO REPRESENTATIVE: Thank you.
15 And your home phone number, please?
16 MARIANNE JONES: (425) 453-0365.
17 WELLS FARGO REPRESENTATIVE: I have (425)
18 453-0365. Is that correct?
19 MARIANNE JONES: That -- yes.
20 WELLS FARGO REPRESENTATIVE: Thank you.
21 What is your primary e-mail address, please?
22 MARIANNE JONES: I don't want to give my e-mail
23 out.
24 WELLS FARGO REPRESENTATIVE: Okay. Well, we'll go
25 ahead and leave that field blank on the application.

1 What is your Social Security Number, please?

2 MARIANNE JONES: [redacted]-0751.

3 WELLS FARGO REPRESENTATIVE: Okay. I have

4 [redacted]-0751. Is that correct?

5 MARIANNE JONES: Yep.

6 WELLS FARGO REPRESENTATIVE: Thank you.

7 Do you have a personal checking?

8 MARIANNE JONES: Yes.

9 WELLS FARGO REPRESENTATIVE: And what bank,

10 please?

11 MARIANNE JONES: Washington Mutual.

12 WELLS FARGO REPRESENTATIVE: And do you --

13 I'm sorry.

14 Can I have your average personal checking account

15 balance, please?

16 MARIANNE JONES: 200,000 dol-- no. Actually,

17 right now it's 190,000. About average.

18 WELLS FARGO REPRESENTATIVE: Thank you.

19 Do you have a personal savings account?

20 MARIANNE JONES: A couple. And I really use my

21 checking as my savings. But there's three, four -- 4,500 in

22 savings.

23 WELLS FARGO REPRESENTATIVE: Okay. And what bank

24 is that?

25 MARIANNE JONES: Washington Mutual.

1 It's -- the -- the 200,000 is a -- is a -- or 190--
2 ninety thousand is a Platinum account, and so it acts as a --
3 it's a checking with interest, so it kind of acts like a
4 savings. But technically it's a -- a checking.
5 WELLS FARGO REPRESENTATIVE: Okay. So for the
6 personal savings account balance I have 4,500. Is that
7 correct?
8 MARIANNE JONES: Yes.
9 WELLS FARGO REPRESENTATIVE: Thank you.
10 May I have your estimated gross annual household
11 income, keeping in mind that child support, alimony and
12 separate income need not be included if you do not want it
13 considered for your business line application?
14 MARIANNE JONES: It's about $270,000 annually.
15 WELLS FARGO REPRESENTATIVE: Thank you.
16 For your convenience your business line account comes
17 with checks and a business line MasterCard at no extra cost.
18 How would you like your business name to appear? Keep in
19 mind we are limited to the number of positions.
20 MARIANNE JONES: Jones Law Group, PLLC.
21 WELLS FARGO REPRESENTATIVE: And what is the name
22 you wish to appear on your checks and your business card
23 MasterCard? First and last name, please.
24 MARIANNE JONES: Marianne Jones.
25 WELLS FARGO REPRESENTATIVE: We recognize that

1 good credit is vital to the success of your business, and now
2 you can protect your business by protecting your credit
3 through a special Credit Protection Program from Wells Fargo.
4 If you are disabled and unable to work, you won't have to
5 make payments on your business line account for up to 12
6 months. For your convenience the Credit Protection fee is
7 charged to your business line account monthly so there are no
8 extra payments to make. The cost is minimal; only 35 cents
9 per $100 of your average daily balance.
10 Shall I go ahead and sign you up for Credit Protection
11 today?
12 MARIANNE JONES: No, thank you.
13 WELLS FARGO REPRESENTATIVE: I understand your
14 hesitation, but many of our customers appreciate the security
15 and benefits offered by Credit Protection. There is no cost
16 to enroll, it's a low monthly fee, and you can cancel at any
17 time. Okay?
18 MARIANNE JONES: No, thank you.
19 WELLS FARGO REPRESENTATIVE: Okay. We'll put "no"
20 on the application.
21 We also offer a phone transfer feature on your business
22 checking account at any bank 24 hours a day seven days a
23 week.
24 Would you like to add the phone transfer feature?
25 MARIANNE JONES: No, thank you.

1 WELLS FARGO REPRESENTATIVE: Okay. That's fine,
2 Ms. Jones. You can add this feature at any time once your
3 account is open.
4 Your application is now complete. I need to just take
5 one final moment to read you some legal disclosures that's
6 required for paperless application. For legal purposes all
7 responses must either be the word "yes" or the word "no".
8 This information will be sent to you in writing when your
9 account is open.
10 Marianne Jones, by accepting this business line offer
11 you have authorized Wells Fargo Bank to obtain your personal
12 and business credit information and, if approved, you also
13 agree on behalf of Jones Law Group, PLLC that Wells Fargo may
14 use this tape-recording or any use of your business line by
15 anyone authorized by Jones Law Group, PLLC as evidence that
16 you agreed to the terms and conditions of the Customer
17 Agreement that you will receive.
18 If approved, your credit limit may be less than the
19 amount for which your business has been pre-approved.
20 If you, the business owner, are married your spouse's
21 consent is not required to apply for this account unless he
22 or she is also an owner.
23 California law will apply to your oral agreement.
24 If you understand and agree, please respond now with a
25 "yes". If you do not, please respond now with a "no".

1 Do you understand and agree to these terms?

2 MARIANNE JONES: Yes.

3 WELLS FARGO REPRESENTATIVE: In order to prevent

4 identity theft and to help the government fight the funding

5 of terrorism and -- terrorism and money laundering, United

6 States Federal law requires financial institutions to obtain,

7 verify and record information that identifies each person,

8 individuals and businesses, who opens an account.

9 What this means for you, when you open an account we

10 will ask your name, address, date of birth and other

11 information that will allow us to identify you. We may also

12 access your driver's license or other identifying documents.

13 Ms. Jones, as the personal guarantor you individually

14 guaranty to pay Wells Fargo upon demand all that your

15 business owes on the business line account. As the guarantor

16 you authorize Wells Fargo without notice or prior consent to

17 change any of the terms of the amounts of your business's

18 business line account. In addition, you agree to pay

19 attorneys fees and other expenses incurred in enforcing this

20 guaranty. This guaranty benefits the Wells Fargo Bank and

21 its successors and assigns.

22 Finally, you agree this audiotaped application may be

23 used as evidence of your agreement to the terms of this

24 guaranty.

25 If you understand and agree, please respond now with a

1 "yes". If you do not, please respond now with a "no".
2 Do you understand and agree to these terms and
3 conditions?
4 MARIANNE JONES: Yes.
5 WELLS FARGO REPRESENTATIVE: If approved your
6 interest rate will be Wells Fargo's prime rate plus a margin
7 ranging from 1.75 percent to 7.75 percent. There is no
8 opening fee. And, finally, your annual fee of $150 will not
9 be charged until the first anniversary date after your
10 account is established. Subject to final credit approval of
11 the business and its owners, you will receive notification
12 within ten business days stating your approved line amount
13 and interest rate. You will also receive your initial supply
14 of super checks and a business line MasterCard that you can
15 use to access your new line of credit.
16 South Dakota law will apply to this agreement.
17 If you understand and agree, please respond now with a
18 "yes". If you do not, please respond now with a "no".
19 Do you understand and agree to these terms, including
20 South Dakota law will apply to this agreement?
21 MARIANNE JONES: I have a question.
22 WELLS FARGO REPRESENTATIVE: Go right ahead.
23 MARIANNE JONES: No. I guess -- can you answer --
24 I understand that within ten days I'll get a response. But
25 don't I then decide whether or not I want to go forward?

1 WELLS FARGO REPRESENTATIVE: Well, yes. If you,
2 um --
3 MARIANNE JONES: I mean, I'm looking at an offer
4 saying that there's, you know, up to a certain amount with --
5 WELLS FARGO REPRESENTATIVE: And that's correct.
6 MARIANNE JONES: -- interest as low as 575 (sic).
7 If -- if you guys come back with a low amount and a high
8 interest rate, I may just say "No, I don't want to do it."
9 WELLS FARGO REPRESENTATIVE: Okay. And if for any
10 reason --
11 MARIANNE JONES: (Inaudible.)
12 WELLS FARGO REPRESENTATIVE: And if for any reason
13 you are concerned about the approved credit limit or APR, you
14 can contact our Customer Service and they will be able to go
15 over the decision and address any concerns that you may have.
16 And if Customer Service is not able to address your concerns
17 and you decide that this product will not add value to your
18 business, then, yes, you can cancel the account.
19 MARIANNE JONES: Without charge?
20 WELLS FARGO REPRESENTATIVE: There are no fees for
21 closing the account, such as a prepayment penalty fee.
22 However, the opening fee may still be charged if you use the
23 account before you close it or if you wait over a da-- over
24 30 days to close the account.
25 MARIANNE JONES: Okay. So within 30 days I can

1 close it or not accept it basically. Okay, I understand.
2 WELLS FARGO REPRESENTATIVE: Okay. And one more
3 time: If you understand and agree, please respond now with a
4 "yes". If you do not, please respond now with a "no".
5 Do you understand and agree to these terms, including
6 South Dakota law will apply to this agreement?
7 MARIANNE JONES: Yes.
8 WELLS FARGO REPRESENTATIVE: Here is the num--
9 MARIANNE JONES: Can you hold on for one second?
10 WELLS FARGO REPRESENTATIVE: Yes.
11 (28-second pause.)
12 MARIANNE JONES: Sorry about that. Go ahead.
13 WELLS FARGO REPRESENTATIVE: That's okay.
14 Here is the number to call in the rare circumstance
15 that you do not hear from us within ten business days.
16 MARIANNE JONES: Okay.
17 WELLS FARGO REPRESENTATIVE: Do you have a pen
18 handy?
19 MARIANNE JONES: Yes.
20 WELLS FARGO REPRESENTATIVE: It's (800) 932-5532.
21 MARIANNE JONES: Okay.
22 WELLS FARGO REPRESENTATIVE: Do you have any
23 questions at this time?
24 MARIANNE JONES: No.
25 WELLS FARGO REPRESENTATIVE: Thank you for your

time today and thank you for your business.

MARIANNE JONES: Okay. Thank you.

WELLS FARGO REPRESENTATIVE: You're welcome.

MARIANNE JONES: Bye-bye.

(End of recording.)

C E R T I F I C A T E

I, CHARLENE M. BECK, Certified Court Reporter and Notary Public in and for the State of Washington, do hereby certify:

That the foregoing verbatim transcript was transcribed by me from an audio file provided to me by Fair Resolutions, Inc.;

That the foregoing verbatim transcript was prepared by me to the best of my ability;

That I am not a relative or employee of any of the parties, nor am I financially interested in the action;

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this 10th day of April, 2012.

Charlene M. Beck

CHARLENE M. BECK, CCR, RPR
CCR # 2543
Notary Public in and for the State of Washington, residing at Wenatchee.

My commission expires on June 19, 2015.

APPENDIX B

BusinessLine®

Customer Agreement

Effective [redacted]

This Agreement governs the BusinessLine account that Wells Fargo Bank, National Association ("Bank") is establishing for use by your business organization ("Customer") and your designated representatives. Customer will be bound by the terms and conditions of the Agreement from the time the account is opened. Use of SUPERCHECKS™ or a BusinessLine MasterCard®, or a request for a transfer from the account by anyone authorized by the Customer, shall evidence the Customer's agreement to the terms and conditions of this BusinessLine Customer Agreement. The account will be used for business purposes only. Customer agrees to comply with each and every term and condition of this Agreement as set forth below:

[redacted]

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

Card Services. For a BusinessLine account, a single BusinessLine MasterCard will be issued to Customer. The following services are available, up to the amount of the Credit Limit of the account:

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

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

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

SupercheckS Advances. SUPERCHECKS are drafts designed for use with a BusinessLine account. The drafts can be used like normal bank checks. When the Bank receives a draft, the Bank will pay it by advancing (lending) the amount of the draft from the BusinessLine account unless the account is delinquent, closed or the draft would cause the balance to go over the Credit Limit of the account. You may not write SUPERCHECKS as payment for your Wells Fargo BusinessLine account. All SUPERCHECKS must be written in U.S. dollars. No fees are assessed when ordering SUPERCHECKS.

SUPERCHECKS Stop Payment: The Bank cannot guarantee the stop payment of a SUPERCHECKS check; however we will make every attempt to stop this item, provided all information given to us is accurate and complete, and the check has not already been cashed. The stop will remain on our system for six months, unless the stop is revoked or the item is stopped. After six months, if Customer decides to re-enter the stop payment, the Bank must be contacted at that time.

Credit Limit. The Credit Limit of an account is shown on each of the monthly periodic (billing) statements issued for that account. Customer agrees not to use or permit the use of an account in any way that will cause an account to exceed its Credit Limit. If an account's Credit Limit is exceeded, Bank may, at its option, close that account or exercise any of its other remedies under this Agreement. We can reduce the amount of your credit line without notice to you except in those situations where notice is required by law. At our discretion, we may place a hold on your available credit up to the amount of your payment whenever a payment is credited to your account.

Payment

Periodic Payments: Customer will receive a periodic statement every month for the account. The New Balance shown on the statement is the total of all unpaid obligations which have been posted to the account as of the Closing Date. Customer may pay the Minimum Periodic Payment Due or any greater amount, but Bank must receive at least the Minimum Periodic Payment, in immediately available U.S. funds drawn on a U.S. bank, by the Date shown on the statement. We may refuse to accept any payments by third party check or draft which have been endorsed to us or which have been drawn by anyone other than you.

The Minimum Periodic Payment shown on the statement is equal to the total of interest and fees ($10 minimum) plus any amount past due.

Payments made to the account will be applied in an order determined by us. Bank may accept checks marked "Payment In Full" or with words of similar effect without losing any of its rights to collect the full balance of an account.

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

A. Periodic Finance Charge: For each type of balance on your account (i.e. the Cash Advances balance, the Purchases balance or Other balance) the Periodic Finance Charge is calculated on the periodic statement by multiplying the Average Daily Balance (ADB) during the billing cycle by the number of days in the billing cycle and then multiplying this product by the applicable Daily Periodic Rate.

Daily Periodic Rate: The Daily Periodic Rate is calculated by dividing the applicable Annual Percentage Rate (APR) by 365. Your APR is determined by taking the Wells Fargo Prime Rate as of the Determination Date and adding a Spread. The Bank determines your Spread based on the evaluation of your credit risk. The Bank may change the Spread from time to time. Please refer to separate correspondence from the Bank regarding your Spread.

The Daily Periodic Rate will be subject to change monthly, based upon the Wells Fargo Prime Rate announced by the Bank as its "Prime Rate" in effect on the Determination Date. The Determination Date for changing your variable interest rate will be the last day of the previous month that is not a Saturday, Sunday or holiday. The Daily Periodic Rate on your statement will change each month following a change in the Wells Fargo Prime Rate. Any changes in the Daily Periodic Rate will apply to both current and future balances on the account and the Daily Periodic Rate will continue to vary even if the account is closed.

Calculation of Average Daily Balance: To calculate your ADB each month, we calculate the daily balance for each day in the billing period, add the daily balances together, and divide that total amount by the number of days in the billing period. ADBs for Cash Advances, Purchases, and Other categories are calculated separately.

For each category of balance (Cash Advances, Purchases, and Other) we calculate the daily balance by starting with the beginning balance related to that category plus any new activity (Cash Advances, Purchases, and Other) posted as of that day, plus any related unpaid Finance, Transaction, or Other charges and add a Finance Charge amount equal to the previous day's balance multiplied by the applicable Daily Periodic Rate. We subtract the amount of any payments or credits applied to that balance category.

B. Transaction Finance Charge: The transaction Finance Charge is a one-time charge made each time certain types of advances are posted to the account.

- The charge for each BusinessLine MasterCard Cash Advance obtained through an Automated Teller Machine is 2% of the amount of the advance with a $4 minimum and no maximum.
- The charge for each BusinessLine MasterCard Cash Advance obtained over the counter from a bank or financial institution is 2% of the amount of the advance with a $5 minimum and no maximum.
- The charge for each Overdraft Protection Advance is 2% of the amount of the advance with a $7.50 minimum and a $15 maximum.
- The charge for each casino gaming chip, wire transfer, other wager or lottery ticket is 4% of the amount of each such purchase with a minimum of $10 and no maximum.
- There are NO TRANSACTION CHARGES for using SUPERCHECKS™ to advance funds.
- There are NO TRANSACTION CHARGES for advancing funds by TELEPHONE TRANSFER or by using WELLS FARGO BUSINESS ONLINESM or WELLS FARGO BUSINESS GATEWAY® online banking to advance funds to your Wells Fargo business checking account.

When Finance Charge Begins. The Periodic Finance Charge for purchases and advances begins on the date the transaction was made.

Other Charges

The total of Other Charges is the sum of:

Opening and Annual Fees: Bank may assess an Opening Fee for the first year and an Annual Fee each year thereafter. Please refer to separate correspondence for pricing details.

The Annual Fee may not be refunded in whole or in part after assessment, even if the account is subsequently suspended, closed or terminated for any reason. Bank may assess an annual fee on each closed account for each year the account maintains a balance.

Late Charge: If Bank does not receive at least the Minimum Periodic Payment by the Date Payment Due shown on your periodic statement, Bank may impose a late charge of $35.00. For accounts that have been delinquent three times or more in the past 12 billing cycles, Bank may impose a late charge of $50.00.

Overlimit Charge: Bank may impose an overlimit charge that is 1.5% of the overlimit amount with a $29 minimum and a $75 maximum, any time your balance exceeds your Credit Limit.

Returned Item Charge: If payment on the account is made with an item that is not honored for any reason, a $29.00 charge will be assessed against the account. If Customer pays more than one account with an item, a $29.00 charge will be assessed against each affected account.

Stop Payment Fee: If Customer requests the Bank to place a "Stop Payment" on a SUPERCHECKS check drawn on their account, the Bank may impose a charge of $15.00 for each Stop Payment request.

Research Charge: If Customer requests the Bank to research the account, for example, to update Customer's business records, $5.00 will be charged for each sales slip copy Bank provides, $3.00 will be charged for each monthly statement Bank provides and $20.00 per hour for other Bank research services. These fees will not be charged if Customer makes a good faith inquiry about a suspected error on a periodic statement.

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

Banker's Lien and Right of Set-Off. Bank has a general lien under California law on any of Customer's personal property in Bank's possession. In the event Customer does not make payment on the account as agreed, Bank may exercise its right of set-off against any obligation Bank owes to Customer, including a set-off against any deposit account(s) Customer has with Bank to the extent permitted by law.

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

(1) -close any or all accounts to all use;

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

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

Arbitration Program

(a) Binding Arbitration. Upon the demand of any party, whether made before the institution of any judicial proceeding or not more than 60 days after service of a complaint, third party complaint, cross-claim, counterclaim or any answer thereto or any amendment to any of the above, any Dispute (as defined below) shall be resolved by binding arbitration in accordance with the terms of this Arbitration Program. A "Dispute" shall include any action, dispute, claim, or controversy of any kind, whether in contract or in tort, statutory or common law, legal or equitable, or otherwise, now existing or hereafter arising between the parties in any way arising out of, pertaining to or in connection with (1) any agreement, document or instrument to which this Arbitration Program is attached or in which it appears or is referenced, or any related agreements, documents, or instruments (collectively, the "Document" or "Documents"); (2) all past, present, or future loans, lines of credit, notes, instruments, drafts, credits, accounts, deposit accounts, safe deposit boxes, safekeeping agreements, guarantees, letters of credit, goods or services, or other transactions, contracts or agreements of any kind whatsoever; (3) any past, present or future incidents, omissions, acts, errors, practices, or occurrences causing injury to either party whereby the other party or its agents, employees or representatives may be liable, in whole or in part; or (4) any other aspect of the past, present or future relationships of the parties including any agency, independent contractor or employment relationship but excluding claims for workers' compensation and unemployment benefits ("Relationship"). Any party to this Arbitration Program may, by summary proceedings bring any action in court to compel arbitration of any Dispute. Any party who fails or refuses to submit to binding arbitration following a lawful demand by the opposing party shall bear all costs and expenses incurred by the opposing party in compelling arbitration of any Dispute. The parties agree that by engaging in activities with or involving each other as described above, they are participating in transactions involving interstate commerce or "commerce" as that term is used in the Federal Arbitration Act, Title 9 of the United States Code ("FAA"). The parties understand that by this agreement they have decided that their disputes shall be resolved by binding arbitration rather than in court, and once decided by arbitration no dispute can later be brought, filed or pursued in court before a judge or jury.

(b) Governing Rules. All Disputes between the parties submitted to arbitration shall be resolved by binding arbitration administered by the American Arbitration Association (the "AAA"), or some other administrator if mutually agreeable to the parties, in accordance with the Commercial Arbitration Rules of the AAA, the Federal Arbitration Act (Title 9 of the United States Code) and to the extent the foregoing are inapplicable, unenforceable or invalid, the applicable substantive law designated in the Documents relating to the Dispute. In the event of any inconsistency between this Arbitration Program and such rules and statutes, this Arbitration Program shall control. Judgment upon any award rendered hereunder may be entered in any court having jurisdiction; provided, however, that nothing contained herein shall be deemed to be a waiver by any party that is a bank of the protections afforded to it under 12 U.S.C. §91 or a similar state law which may be applicable, such as Texas Banking Code art. 342-609.

(c) No Waiver; Preservation of Remedies; Multiple Parties. No provision of, nor the exercise of any rights under, this Arbitration Program shall limit the right of any party, during any Dispute, to seek, use, and employ ancillary or preliminary remedies, judicial or otherwise, for the purposes of realizing upon, preserving, protecting, foreclosing or proceeding under forcible entry and detainer for possession of any real or personal property, and any such action shall not be deemed an election of remedies. Such rights shall include, without limitation, rights and remedies relating to (1) foreclosing against any real or personal property collateral or other security; (2) exercising self-help remedies including set-off rights; or (3) obtaining provisional or ancillary remedies such as injunctive relief, sequestration, attachment, garnishment, or the appointment of a receiver from a court having jurisdiction. Such rights can be exercised at any time except to the extent such action in is contrary to a final award or decision in any arbitration proceeding. The institution and maintenance of an action for judicial relief or pursuit of provisional or ancillary remedies or exercise of self-help remedies shall not constitute a waiver of the right of any party, including the plaintiff, to submit the Dispute to arbitration, nor render inapplicable the compulsory arbitration provisions hereof. In Disputes involving indebtedness or other monetary obligations, each party agrees that the other party may proceed against all liable persons, jointly or severally, or against one or more of them, less than all, without impairing rights against other liable persons. Nor shall a party be required to join the principal obligor or any other liable persons, such as sureties or guarantors, in any proceeding against a particular person. A party may release or settle with one or more liable persons without releasing or impairing rights to proceed against any persons not so released. This Arbitration Program shall not apply to a dispute concerning indebtedness secured by real estate if the single action rule statutes of California or Idaho would preclude enforcement of a mortgage, lien or security interest securing such indebtedness as a result of the arbitration of such dispute, unless the holder of such mortgage, lien or security interest specifically elects in writing to proceed with the arbitration.

(d) Arbitrator Powers and Qualifications; Awards. Arbitrators are empowered to resolve Disputes by summary rulings. Arbitrators shall resolve all Disputes in accordance with the applicable substantive law. Any arbitrator selected shall be required to be a practicing attorney and shall be required to be experienced and knowledgeable in the substantive laws applicable to the subject matter of the Dispute. All statutes of limitation applicable to any Dispute shall apply to any proceeding in accordance with this Arbitration Program. With respect to a Dispute in which the claims or amounts in controversy do not exceed $1,000,000, a single arbitrator shall be chosen and shall resolve the Dispute by rendering an award not to exceed $1,000,000, including all damages of any kind whatsoever, including costs, fees and expenses. Submission to a single arbitrator shall be a waiver of all Parties' claims to recover more than $1,000,000. A Dispute involving claims or an amount in controversy exceeding $1,000,000, shall be decided by a majority vote of a panel of three arbitrators (an "Arbitration Panel"), the determination of any two of the three arbitrators constituting the determination of the Arbitration Panel, provided, however, that all three Arbitrators on the Arbitration Panel must actively participate in all hearings and deliberations. Arbitrators, including any Arbitration Panel, may grant any remedy or relief deemed just and equitable and within the scope of this Arbitration Program and may also grant such ancillary relief as is necessary to make effective any award. Arbitrators, including any Arbitration Panel, shall have the power to award recovery of all costs and fees (including attorney's fees, administrative fees, and arbitrator's fees) to prevailing party. Arbitrators shall be empowered to impose sanctions and to take such other actions as they deem necessary to the same extent a judge could, pursuant to the Federal Rules of Civil Procedure, the applicable State Rules of Civil Procedure and applicable law. Arbitrator(s) shall be empowered, at the written request of any Party in any Dispute, 1) to consolidate in a single proceeding any multiple party claims that are substantially identical or based upon the same underlying transaction; 2) to consolidate any claims and Disputes between other Parties which arise out of or relate to the subject matter hereof, including all claims by or against borrowers, guarantors, sureties and/or owners of collateral; and 3) to administer multiple arbitration claims as class actions in accordance with Rule 23 of the Federal Rules of Civil Procedure. In any consolidated proceeding the first arbitrator(s) selected in any proceeding shall conduct the consolidated proceeding unless disqualified due to conflict of interest. Arbitrator(s) and Arbitration Panels shall be required to make specific, written findings of fact and conclusions of law. The determination of an Arbitrator or Arbitration Panel shall be binding on all parties and shall not be subject to further review or appeal except as otherwise allowed by applicable law.

(e) Miscellaneous. To the maximum extent practicable, the AAA, the Arbitrator (or Arbitration Panel, as appropriate) and the parties shall take any action necessary to require that an arbitration proceeding hereunder shall be concluded within 180 days of the filing of the Dispute with the AAA. Arbitration proceedings hereunder shall be conducted at a location mutually agreeable to the parties, or if they cannot agree, then in the state of the applicable substantive law designated in the Documents relating to the Dispute, at a location selected by the Arbitrator. With respect to any Dispute, each party agrees that all discovery activities shall be expressly limited to matters directly relevant to the Dispute and any Arbitrator, Arbitration Panel and the AAA shall be required to fully enforce this requirement. Each party agrees to keep all Disputes subject to arbitration proceedings strictly confidential, except for disclosures of information required in the ordinary course of business of the parties or by applicable law or regulation. This Arbitration Program shall be construed in accordance with the Federal Arbitration Act, other applicable Federal law, and applicable law of the state of California unless and except to the extent that another state's law is specifically designated for certain purposes herein. With respect to proceedings involving residents of Colorado, the provisions of CRS 13-22-201 et seq. and CRS 13-21-102(5) shall apply. With respect to proceedings involving residents of the State of Washington, the Arbitrator(s) shall not have the power to award punitive or exemplary damages except where such damages are specifically provided for by a Washington statute upon which the award could have been based if litigated in a Washington court. This Arbitration Program constitutes the entire agreement of the parties with respect to its subject matter and supersedes all prior arrangements and other communications on dispute resolution except with respect to Arbitration Programs governing disputes to which the Arbitration Program does not apply by virtue of paragraph (c) hereof. The provisions of this Arbitration Program shall survive any termination, amendment, or expiration of the Documents or the Relationship, unless the parties otherwise expressly agree in writing. This Arbitration Program may be amended, changed, or modified only by a specific modification in writing agreed to by all affected parties. If any term, covenant, condition or provision of this Arbitration Program is found to be unlawful, invalid or unenforceable, such defect shall not affect the legality, validity or enforceability of the remaining parts of this Arbitration Program, and all such remaining parts hereof shall be valid and enforceable and have full force and effect as if the illegal, invalid or unenforceable part had not been included.

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

Transfers. Customer authorizes Bank to make transfers, up to the available balance or credit limit, between designated accounts specified in writing, upon Bank's receipt of instructions from any of Customer's owners or principals. Ten days after a Customer applies for telephone transfer capabilities, the first telephone transfer request can be made. Each telephone transfer request will take three days for processing. Bank will have no liability for any transfer made upon the written or verbal request of any person believed by Bank in good faith to be an authorized representative of Customer. Customer will indemnify and hold Bank harmless from and against any damages, liabilities, costs or

expenses (including attorney's fees) arising out of any claim by Customer or any third party, against Bank in connection with Bank's performance of transfers as described above.

Foreign Transactions. You agree to pay us in U.S. dollars for charges you incur in any other currency. Foreign transactions are normally converted to U.S. dollars by a foreign financial institution, which may impose a fee for its services. Since conversion may occur after the date of a transaction, the conversion rate may be different from the rate in effect at the time of the transaction. You agree to pay us the transaction amount as converted by the foreign institution, as well as any conversion fees which are imposed by the other institution.

If you effect a transaction with your MasterCard® card in a currency other than U.S. Dollars, MasterCard International Incorporated will convert the charge into a U.S. dollar amount. MasterCard International will use its currency conversion procedure, which is disclosed to institutions that issue MasterCard cards. Currently, the currency conversion rate used by MasterCard International to determine the transaction amount in U.S. dollars for such transactions is generally either a government mandated rate or a wholesale rate determined by MasterCard International for the processing cycle in which the transaction is processed, increased by an adjustment factor established from time to time by MasterCard International. The currency conversion rate used by MasterCard International on the processing date may differ from the rate that would have been used on the purchase date or cardholder statement posting date. Similarly, if you engage in a transaction in a currency other than U.S. dollars using a Visa® card, then Visa International will convert the charge into a U.S. Dollar amount. Visa will use either a government mandated rate or a wholesale rate determined by Visa in effect one day prior to the processing date. The currency conversion rate on the processing date may differ from the rate that would have been used on the date of the transaction or the date the transaction is posted to your billing statement. Currently, MasterCard or Visa, as the case may be, increases the conversion rate by one percent (1%). For each purchase transaction in a foreign currency, we will add a two percent (2%) currency conversion fee to the amount provided to us by MasterCard or Visa.

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

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

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

Liability for unauthorized use. Bank may hold Customer liable for the unauthorized use of any BusinessLine MasterCard or Superchecks issued to Customer up to a maximum of $50.00. Customer will not be liable for any unauthorized use that occurs after Bank is notified orally or in writing of such unauthorized use. Use of Customer's BusinessLine MasterCard or SUPERCHECKS by an Authorized User at any time, even if an Authorized User is no longer associated with or employed by Customer does not constitute unauthorized use, subject to applicable law. To report the unauthorized use of a BusinessLine MasterCard or SUPERCHECKS, Customer should contact Bank by telephone at the number shown on the back of the periodic statement and notify Bank in writing at Wells Fargo Card Services, Inc., P.O. Box 272580, Concord, CA 94527-2580.

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

Laws governing this agreement. The laws of the state of California (excluding its conflict of law provisions) and of the United States of America shall govern this Agreement. This revolving line of credit shall not be subject to Chapter 15, Article 5069 V.T.C.S. (the Texas Credit Code). Under no circumstances (and notwithstanding any other provisions of this Agreement) shall the interest charged, collected, or contracted for under this Agreement exceed the maximum rate permitted by law. As used in this Agreement, the term maximum rate permitted by law means the maximum rate of interest permitted under federal or other law applicable to the indebtedness evidenced by this Agreement. If any part of this Agreement cannot be enforced, this fact will not affect the rest of this Agreement. In particular, Customer does not agree or intend to pay, and Bank does not agree or intend to contract for, charge, collect, take, reserve or receive any interest, fee or other charge that would cause Bank to charge or collect more for the indebtedness outstanding under this Agreement than the maximum Bank would be permitted to charge or collect under federal or applicable state law. Any such excess shall be applied to reduce the principal balance of the indebtedness outstanding under this Agreement, and when and if the principal has been paid in full, the balance shall be refunded to Customer. Bank may delay or forego enforcing any of its rights or remedies under this Agreement without losing them.

Important Notice to Customers who contact bank by phone. To insure that Customer's inquiries are handled promptly, courteously and accurately, some of the telephone calls between Bank employees and Customers may be monitored, without notice to such Customer or Bank employees, by Bank's supervisory or management personnel.

TTY/TDD Service. For TTY/TDD service, contact a telephone relay service provider.

Bank Address

- -Send payments to: Wells Fargo Bank N.A., P.O. Box 29706, Phoenix, AZ 85038-9706.
- -Send inquiries and correspondence to: Wells Fargo Bank, Business Operations Support, P.O. Box 219, San Leandro, CA_94577-0219.

If a Businessline MasterCard/SUPERCHECKS is/_are lost or stolen. Customer agrees to notify Bank immediately if Customer suspects or knows that a BusinessLine MasterCard/SupercheCks is lost or stolen by calling toll free 24-hours a day 1-800-CALLWELLS (1-800-225-5935). Customer agrees to follow up the telephone call with written notice of the suspected or actual loss or theft of a BusinessLine MasterCard or SupercheCks at the correspondence address shown in the paragraph immediately above.

Changes of address, telephone number, or name. Customer agrees to notify Bank in writing of any change of business or mailing address, telephone number, or business name.

[redacted]

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APPENDIX C

WELLS FARGO BUSINESSLINE

For 24-Hour Customer Service Call: 800-225-5935

Prepared For MARIANNE JONES
Account Number [redacted] 4151
Statement Closing Date 11/18/09

Send Inquiries To:
WF BUSINESS DIRECT P.O. BOX 348750 SACRAMENTO, CA 95834

Credit Line $76,000
Available Credit 0

Send Payments To:
PAYMENT REMITTANCE CENTER PO BOX 54349 LOS ANGELES, CA 90054-0349

Account Summary

Previous Balance	$77,228.20
- Credits	$0.00
- Payments	$4,036.20
+ Purchases & Other Charges	$1,701.30
+ Cash Advances	$0.00
+ FINANCE CHARGE	$1,077.09
= New Balance	$75,970.39

Payment Information

New Balance	$75,970.39
Current Payment Due	$1,107.00
Current Payment Due Date	12/14/09

Rate Information

IF YOU WISH TO PAYOFF YOUR BALANCE IN FULL;
THE BALANCE NOTED ON YOUR STATEMENT IS NOT THE PAYOFF AMOUNT.
PLEASE CALL 800-225-5935 FOR PAYOFF INFORMATION.
YOUR RATE MAY VARY ACCORDING TO THE TERMS OF YOUR AGREEMENT.

Type of Balance	ANNUAL INTEREST RATE	DAILY FINANCE CHARGE RATE	AVERAGE DAILY BALANCE	PERIODIC FINANCE CHARGES	TRANSACTION FINANCE CHARGES	TOTAL FINANCE CHARGES
PURCHASES	17.25%	.04726%	$5,024.92	$68.87	$0.00	$68.87
CASH ADVANCES	17.25%	.04726%	$73,563.77	$1,008.22	$0.00	$1,008.22
TOTAL				$1,077.09	$0.00	$1,077.09

Days in Billing Cycle 29

5596 0000 VWD 1 7 13 091118 F Page 1 of 2 1821 4000 LC02 01AB559600000000

Make checks payable to: Wells Fargo
Account Number [redacted] 4151
New Balance $75,970.39
Total Amount Due $1,107.00
Current Payment Due Date 12/14/09

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JONES LAW GROUP PLLC
MARIANNE JONES
11819 NE 34TH ST
BELLEVUE WA 98005-1235

PAYMENT REMITTANCE CENTER VWD
PO BOX 54349 9
LOS ANGELES, CA 90054-0349

Prepared For: MARIANNE JONES
Account Number [redacted] 4151
Statement Closing Date: 11/18/09

Transactions

Trans	Post	Reference Number	Description	Credits	Charges
11/05	11/05	F1821009M000RC309	ADJUSTMENT-PAYMENTS		1,564.00
11/05	11/05		*FINANCE CHARGE* PREV CYCLE CASH ADVANCE		3.90
11/05	11/05		*FINANCE CHARGE* PREV CYCLE PURCHASES		2.02
11/05	11/05		PREVIOUS CYCLE LATE FEE		100.00
11/05	11/05		PREVIOUS CYCLE OVERLIMIT FEE		2.38
11/13	11/13	85282309X223YZ5XA	Phone Payment YOM 1113 00295436	4,036.20	
11/17	11/17	F182100A1000Q6321	RETURNED PAYMENT FEE		29.00
	PERIODIC *FINANCE CHARGE* PURCHASES $68.87 CASH ADVANCE$1008.22				1,077.09

5596 0000 VWD 1 7 13 091118 F Page 2 of 2 1821 4000 LC02 01AB559600000000