

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA  
CIVIL DIVISION

DISCOVER BANK

Plaintiff

v.

EVAN S GUTMAN

Defendant

CASE NUMBER:

50-2019-CA-013570-XXXX-MB

**MOTION FOR LEAVE TO ALLOW  
FILING OF COUNTERCLAIM  
INCLUDING PUNITIVE DAMAGES  
and SUBMISSION OF PROFFER  
OF PROOF and PROPOSED  
COUNTERCLAIM ATTACHED**

**(Fl. Stat. 768.72)**

**MOTION**

Pursuant to Fl. Stat. 768.72; and Florida Rules of Civil Procedure 1.170 and 1.190, Defendant, Evan Gutman, hereby MOVES the Court for Leave allowing Defendant to file a Counterclaim including, but not limited to claims for Punitive Damages. In support of this Motion, Defendant submits the attached Proffer of Proof and the proposed Counterclaim to be filed (**Exhibit C**).

Defendant additionally, in reliance upon the honor, integrity and fairness of this Court, **Waives his right to Jury Trial on all issues**, including but not limited to Punitive Damages, and relies upon the Court to render a fair Judgment on all issues.

Dated this 21st day of February, 2020.



\_\_\_\_\_  
Evan Gutman CPA, JD  
Member State Bar of Pennsylvania  
Member District of Columbia Bar  
Florida Certified Public Accountant  
1675 NW 4th Avenue, #511  
Boca Raton, FL 33432  
561-990-7440

**IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA  
CIVIL DIVISION**

DISCOVER BANK

Plaintiff

v.

EVAN S GUTMAN

Defendant

CASE NUMBER:

50-2019-CA-013570-XXXX-MB

**PROFFER OF PROOF IN SUPPORT  
OF COUNTERCLAIM INCLUDING  
PUNITIVE DAMAGES**

Defendant, Evan Gutman CPA, JD submits this Proffer of Proof in support of requesting this Honorable Court to grant leave to file a Counterclaim, which includes a Claim for Punitive Damages. The criteria for punitive damages is set forth in Fl. Stat. 768.72, which states in relevant part as follows (emphasis added):

**"768.72 Pleading in civil actions; claim for punitive damages -**

**(1) In any civil action, no claim for punitive damages shall be permitted unless there is a reasonable showing by evidence in the record or proffered by the claimant which would provide a reasonable basis for recovery of such damages. The claimant may move to amend her or his complaint to assert a claim for punitive damages as allowed by the rules of civil procedure. The rules of civil procedure shall be liberally construed so as to allow the claimant discovery of evidence which appears reasonably calculated to lead to admissible evidence on the issue of punitive damages. . . .**

**(2) A defendant may be held liable for punitive damages only if the trier of fact, based on clear and convincing evidence, finds that the defendant was personally guilty of intentional misconduct or gross negligence. As used in this section, the term:**

**(a) "Intentional misconduct"** means that the defendant had actual knowledge of the wrongfulness of the conduct and the high probability that injury or damage to the claimant would result and, despite that knowledge, intentionally pursued that course of conduct, resulting in injury or damage.

(b) "**Gross negligence**" means that the defendant's conduct was so reckless or wanting in care that it constituted a conscious disregard or indifference to the life, safety, or rights of persons exposed to such conduct.

I. **PROFFER OF PROOF - PLAINTIFF'S COMMISSION OF IDENTITY THEFT and FRAUD TO GAIN ADVANTAGE IN PENDING LITIGATION AFTER DEFENDANT'S ANSWER WAS FILED**

On October 21, 2019, Plaintiff Discover Bank (Defendant in Counterclaim) filed a Complaint against Defendant, Evan Gutman CPA, JD (Counterclaimant) alleging breach of contract pertaining to an alleged credit card debt. Plaintiff's Complaint presented as an exhibit an unsigned, undated document that it purported to be the applicable contract. Defendant accepted service of the Complaint on October 30, 2019 and within approximately 48 hours on November 1, 2019 filed his Answer. As shown by Exhibit A herein, on or about November 8, 2019, just seven days after Defendant filed his Answer, Plaintiff Discover Bank Intentionally and ILLEGALLY accessed Defendant's credit report for the specific purpose of gaining an Unfair Advantage in the pending litigation, which it arguably succeeded in accomplishing, if not for Defendant's proposed Counterclaim herein. Plaintiff's access of Defendant's credit report on or about November 8, 2019 was illegal because as shown by Exhibit A, on March 16, 2019 Defendant had sent three separate letters to three separate and distinct registered addresses of the Plaintiffs via Certified Mail. The letters specifically and precisely informed Plaintiff at each of their addresses in no uncertain express terms that:

**"Consent for you to access my credit report for any reason is hereby REVOKED."**

As also shown by Exhibit A herein, the U.S. Post Office has confirmed all three of the separate letters sent to the three different addresses of Plaintiff were all received by the Plaintiff. By Illegally accessing Defendant's Credit Report, Intentionally and willfully with wanton disregard for Defendant's rights and after Defendant filed his Answer, the Plaintiff now knows and has gained Illegal knowledge of everyone Defendant may owe amounts to. Plaintiff now knows who Defendant's creditors are. Plaintiff now knows the amounts owed to those creditors. Plaintiff now can contact those creditors and seek to develop alliances with them. Plaintiff additionally appears to now have information pertaining to the "Lifestyle" of Defendant and how Defendant spends his money, to the extent such may be reflected on the credit report. **This knowledge is all extremely valuable to Plaintiff, Discover Bank, and has all been obtained completely and totally ILLEGALLY by Discover Bank, immediately AFTER Defendant filed his Answer in this case.** Plaintiff's Intentional and Willful actions subsequent to the filing of Defendant's Answer, for the purpose of gaining an unfair advantage in this litigation, constituted Identity Theft, Fraud, Gross Negligence and violation of the Florida Consumer Collection Practices Act, each of which individually warrants an award of Punitive Damages as indicated below.

**A. IDENTIFY THEFT and FRAUD  
(Violation of Fl. Stat. 817.568)**

Florida's Identity Theft statute is set forth in Fl. Stat. 817.568 titled as "FRAUDULENT PRACTICES." **Thus, on its face, the statute expressly indicates that illegal commission of the provisions therein constitutes Fraud.** And Fraud, in

general may be the subject of a civil action. The statute states in relevant part as follows:

**817.568 Criminal use of personal identification information -**

(1) As used in this section, the term:

...

(f) "Personal identification information" means any name or number that may be used . . . to identify a specific person, including any:

1. Name, postal or electronic mail address, telephone number, social security number, date of birth, mother's maiden name . . . credit or debit card number . . . to permit authorized use of such card;

...

6. Other number or information that can be used to access a person's financial resources.

**(2)(a) Any person who willfully and without authorization fraudulently uses, or possesses with intent to fraudulently use, personal identification information concerning another person without first obtaining that person's consent, commits the offense of fraudulent use of personal identification information, which is a felony of the third degree. . . .**

...

(4) Any person who willfully and without authorization possesses, uses, or attempts to use personal identification information concerning a person without first obtaining that person's consent, and who does so for the purpose of harassing that person, commits the offense of harassment by use of personal identification information, which is a misdemeanor of the first degree. . . .

...

(9) Any person who willfully and fraudulently creates or uses, or possesses with intent to fraudulently use . . . personal identification information . . . **concerning a real person without first obtaining that real person's consent . . . commits the offense of fraudulent creation or use, or possession with intent to fraudulently use . . . personal identification information, a felony of the third degree. . . ."**

As indicated above by Fl. Stat. 817.568(2)(a) and 817.568(9) anyone who commits the acts stated therein has engaged in Fraud (which by definition incorporates "Intentional Misconduct.") Pursuant to Fl. Stat. 768.72(2)(a) and 768.72(2)(b) punitive damages are appropriate in instances of not only "Intentional Misconduct" but also with

respect to the somewhat lesser standard constituting "Gross Negligence." Plaintiffs actions in this instance constituted "Intentional Misconduct."

**B. VIOLATION OF FLORIDA CONSUMER COLLECTION PRACTICES ACT (Fl. Stat. 559.72 and 559.77(2) - Civil Remedies)**

Fl. Stat. 559.72 states in relevant part as follows (emphasis added):

**"559.72 Prohibited practices generally -**

. . .

**(9) Claim, attempt, or threaten to enforce a debt . . . or assert the existence of some other legal right when such person knows that the right does not exist."**

In this instance, for purposes of gaining illegal access to Defendant's credit report, Plaintiff Discover Bank falsely, intentionally and with reckless and wilful disregard for the rights of Defendant, asserted it had a legal right to access Defendant's credit report and acted upon that falsely asserted right, when in fact it presumptively knew no such right existed based upon its receipt of copies at three different addresses of Defendant's letter dated March 16, 2019. Fl. Stat. 559.77(2) titled as "Civil Remedies" provides in relevant part as follows (emphasis added):

**559.77 Civil remedies -**

**"(2) . . . The court may award punitive damages and may provide such equitable relief as it deems necessary and proper, including enjoining the defendant from further violations of this part."**

Based on the foregoing, pursuant to Fl. Stat. 559.77(2) Defendant, Evan Gutman CPA, JD may be awarded (in the discretion of the Court) punitive damages attributable to Plaintiff Discover Bank's violation of the Florida Consumer Collection Practices Act.

**II. PROFFER OF PROOF - PLAINTIFF'S GROSS NEGLIGENCE WARRANTS PUNITIVE DAMAGES**

As indicated in Defendant's Answer filed November 1, 2019, seven days prior to Plaintiffs gaining Illegal access to his credit report, Defendant asserted as Affirmative Defenses that Discover Bank's alleged contract agreement was an:

"unenforceable contract of adhesion containing multiple provisions VOID as against public policy, which are so numerous and seriously egregious they can not fairly be severed from the alleged contract as a whole."

Fl. Stat. 768.72(2) states in relevant part as follows (emphasis added):

"(2) A defendant **may be held liable for punitive damages** only if the trier of fact, based on clear and convincing evidence, find that the defendant was personally **guilty of intentional misconduct or gross negligence.**"

In this instance, the multiplicity and severity of the unenforceable contract provisions, which are VOID as against public policy, coupled with Plaintiff's gaining intentional Illegal access to Defendant's credit report, is so severe that at a bare minimum such constitutes Gross Negligence. Defendant (Counterclaimant) by reference herein, for purposes of this Proffer of Proof relies upon the expressly stated allegations within the proposed Counterclaim itself (Exhibit C herein), to establish Gross Negligence. Nevertheless, there is one unenforceable contractual provision particularly noteworthy of independent mention. It is mentioned independently because it not only constitutes GROSS NEGLIGENCE, or FRAUD for that matter, but in fact "**Shocks the Conscience**" to such an outrageous degree that it offends standards of **Humanity, Decency, and Life itself**, in an unfathomable manner. More specifically, Page 2 of the Contract attached to the Complaint states as follows in part:

**"Default You are in default if:**

- ...
- **you die . . ."**

Black's Law Dictionary defines the term "Default" as follows (emphasis added)

(Exhibit B):

**Default.** By its derivation, a **failure**. An omission of that which ought to be done. . . . Specifically, the omission or **failure to perform a legal or contractual duty.**"

Thus, by definition, Plaintiff, Discover Bank has adopted an apparent nationwide policy that by "Dying" and passing from the secular world to the non-secular world, a human being is guilty of "Fault." Discover Bank effectively asserts that even if a person throughout their entire life has been Charitable, Church-Going, Synagogue Going, Observing their Faith, Sympathetic to the Impoverished, Respectful to Others, Kind, Caring, Generous, Protecting the Innocent, Protecting the Defenseless, and totally up to date on their credit card payments; the moment that Saint-Like person passes to the next world, they are in DEFAULT of Discover Bank's purported contract agreement.

While Defendant for the most part relies upon the Proposed Counterclaim attached herein (Exhibit C) to set forth his case for Gross Negligence on the part of Discover Bank pertaining to the multiplicity and egregious nature of its unenforceable Contract provisions, Defendant concurrently emphasizes the foregoing described unenforceable Contract provision warrants maximum imposition of Punitive Damages upon Discover Card pursuant to Fl. Stat. 768.73(2)(c) in accordance with criteria set forth in Fl. Stat. 768.72.



For the foregoing reasons, based on this Proffer of Proof, which by reference also incorporates matters stated expressly within the proposed Counterclaim itself, Defendant Evan Gutman CPA, JD most humbly and respectfully requests that the Court issue an Order indicating that the proposed Counterclaim, attached hereto may be filed by Defendant, Evan Gutman CPA, JD.

Submitted Most Humbly and Respectfully this 21st day of February, 2020.



---

Evan Gutman CPA, JD  
Member State Bar of Pennsylvania  
Member District of Columbia Bar  
Admitted to Federal Sixth Circuit Court of Appeals  
Admitted to Federal Ninth Circuit Court of Appeals  
Florida Certified Public Accountant  
New Jersey Certified Public Accountant

1675 NW 4th Avenue, #511  
Boca Raton, FL 33432  
561-990-7440

**CERTIFICATE OF SERVICE**

I Evan Gutman, hereby CERTIFY that a true copy of the foregoing was mailed via U.S.

Certified Mail on this 21st day of February, 2020 addressed as follows to :

Zwicker & Associates, P.C.  
Attn: Zoran D. Jovanovich, Esq.  
700 W. Hillsboro Blvd.  
Building 2; Suite 201  
Deerfield Beach, FL 33441

DATED this 21st day of February, 2020.



Evan Gutman CPA, JD

Member State Bar of Pennsylvania  
Member District of Columbia Bar  
Admitted to Federal Sixth Circuit Court of Appeals  
Admitted to Federal Ninth Circuit Court of Appeals  
Florida Certified Public Accountant  
New Jersey Certified Public Accountant

1675 NW 4th Avenue, #511  
Boca Raton, FL 33432  
561-990-7440

# EXHIBIT A

NOT A CERTIFIED COPY

**Evan Gutman CPA, JD**  
1675 NW 4th Avenue, #511  
Boca Raton, FL 33432  
561-990-7440

November 9, 2019

Zwicker & Associates, P.C.  
Attn: Zoran D. Jovanovich, Esq.  
700 W. Hillsboro Blvd.  
Building 2; Suite 201  
Deerfield Beach, FL 33441

Re: Discover Bank v Evan S. Gutman  
Case #50-2019-CA-013570-XXXX-MB

Dear Mr. Jovanovich:

It has come to my attention that on November 8, 2019, your client Discover Bank **ILLEGALLY ACCESSED my credit report** (See attached). Also enclosed is a copy of my letter dated March 16, 2019 to your client, which expressly stated as follows:

"2. Consent for you to access my credit report for any reason is hereby REVOKED."

I think perhaps your client made a quite serious strategic error in judgment on November 8, 2019 with their commission of this additional Illegal Act.

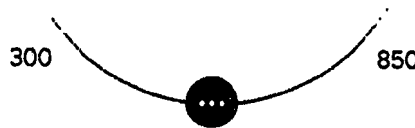
Very truly yours,

Evan Gutman CPA, JD

542  
Sep 22, 2019

560  
BELOW AVERAGE

+18  
Change



Updated Oct 20, 2019

[Home\(/summary\)](#) [Simulator\(/simulator\)](#) [Report \(/report/credit-summary\)](#) [Alerts\(/activity\)](#) [Activity \(/score-change\)](#)

## Credit & Identity Alerts <sup>?</sup>

View your alerts for credit report changes, use of your SSN with a different name or address, or dark web activity associated with your identity.

[Back to All Alerts](#)

Credit Alert  
New Inquiry

Reported By  
Discover Financial Ser

Reported On  
Nov 08, 2019



**What does this mean?**

A potential lender or creditor reported that they pulled a copy of your credit file because you applied for credit or services with them. A potential employer may also have pulled your report because you applied for a job with them.

[View Credit Report](#)

### How could this affect my score?

Having a few inquiries a year is normal but an inquiry may cause your score to dip temporarily. However, keep in mind that too many inquiries within a short period could negatively impact your score, because it could be an indicator that you're financially overextended.

### What can I do now?

Review the detailed information below. If you applied for credit or services with the company or lender who made the inquiry, then you don't need to do anything.

Discover Financial Ser  
12 Reads Way  
New Castle, DE 19720

If you think the information in this alert is wrong, click on "See something wrong" for recommendations on what to do next.

### Why am I getting this alert?


CreditWise provides credit report alerts from two of the major credit bureaus: Experian and TransUnion.

If a lender reports your account information to both Experian and TransUnion, then you may see two alerts reflecting the same update.

[Credit Alerts FAQs](#)

Was this alert helpful?

Yes No

 [See something wrong?](#)

**Evan Gutman**  
1675 NW 4th Avenue, #511  
Boca Raton, Florida 33432  
561-990-7440

March 16, 2019

Discover  
PO Box 30666  
Salt Lake City, Utah 84130

Discover  
PO Box 30943  
Salt Lake City, Utah 84130-0943

Discover  
PO Box 15316  
Wilmington, DE 19850-5316

Re: Discover Card Account Number Ending in 0936

To Whom It May Concern,

I am writing in reference to the above credit card account, and any other accounts you may have under my name. Please be advised at this time, **I am hereby revoking all Consents of any nature that I previously provided expressly or impliedly, in writing or verbally, at any time, and of any nature, with respect to all accounts.** This Revocation of all Consents previously provided includes, but is not limited to the following:

1. Consent to go paperless is hereby REVOKED.
2. Consent for you to access my credit report for any reason is hereby REVOKED.
3. Consent for you to access any financial or other information about me from any other organizations, institutions, agencies, affiliates, subsidiaries or legal entities of any nature is hereby REVOKED.

4. Consent for you to SHARE any of my information, including but not limited to financial information, with any other organizations, institutions, agencies, affiliates or subsidiaries or legal entities of any nature is hereby REVOKED.
5. Consent for you to contact me by telephone for any reason is hereby REVOKED.
6. All other Consents of any nature, pertaining to any and all issues, not listed above, are hereby REVOKED.

Additionally, you are hereby instructed to CLOSE the above referenced account.

Pursuant to all applicable Federal and State laws, including but not limited to the Fair Debt Collections Act, Fair Credit Reporting Act, Telephone Consumer Protection Act, and all other applicable Federal and State telephonic communications and/or State Harassment statutes, **you are hereby instructed to not contact me, or attempt to contact me, by telephone on either my landline or cellphone for any reason of any nature.**

Please direct all communications to me in writing only, and I may respond as deemed appropriate at the time. Thank you for your compliance and cooperation with the foregoing legal directives.

Very truly yours,

Evan Gutman

Sent Via Certified Mail



## Track Another Package +

Tracking Number: 70182290000068276914

Remove X

Expected Delivery on

**TUESDAY**

**19** MARCH 2019 ⓘ by **8:00pm** ⓘ

 **Delivered**

March 19, 2019 at 10:16 am  
Delivered  
SALT LAKE CITY, UT 84130

Get Updates ▾

Feedback

Text & Email Updates ▾

Tracking History ▾

Product Information ▾

See Less ^

### Can't find what you're looking for?

Go to our FAQs section to find answers to your tracking questions.

## Track Another Package +

Tracking Number: 70182290000068276907

Remove X

Expected Delivery on

**TUESDAY**

**19** MARCH 2019 ⓘ by **8:00pm** ⓘ

**Delivered**

March 19, 2019 at 10:16 am  
Delivered  
SALT LAKE CITY, UT 84130

Get Updates ▾

Feedback

Text & Email Updates ▾

Tracking History ▾

Product Information ▾

See Less ^

### Can't find what you're looking for?

Go to our FAQs section to find answers to your tracking questions.

## Track Another Package +

Tracking Number: 70182290000068276891

Remove X

Your item was delivered to an individual at the address at 8:15 am on March 20, 2019 in NEW CASTLE, DE 19720.

### Delivered

March 20, 2019 at 8:15 am  
Delivered, Left with Individual  
NEW CASTLE, DE 19720

Get Updates 

Feedback

Text & Email Updates 

Tracking History 

Product Information 

See Less 

## Can't find what you're looking for?

Go to our FAQs section to find answers to your tracking questions.

**FAQs** (<https://www.usps.com/faqs/uspstracking-faqs.htm>)

7018 2290 0000 6827 6914

**U.S. Postal Service**  
**CERTIFIED MAIL® RECEIPT**  
 Domestic Mail Only

For delivery information, visit our website at [www.usps.com](http://www.usps.com)

**SALT LAKE CITY, UT 84130**

Certified Mail Fee \$3.50

Extra Services & Fees (check box, add fee)

<input type="checkbox"/> Return Receipt (hardcopy)	\$0.00
<input type="checkbox"/> Return Receipt (electronic)	\$0.00
<input type="checkbox"/> Certified Mail Restricted Delivery	\$0.00
<input type="checkbox"/> Adult Signature Restricted Delivery	\$0.00

Postage \$0.55

Total Postage and Fees \$4.05

03/16/2019

Sent To **DISCOVER**  
 Street and Apt. No., or PO Box No. **PO BOX 30666**  
 City, State, ZIP+4® **SALT LAKE CITY UTAH 84130**

US Form 3800, April 2015 Edition PSN 7530-01-000-9001 See Reverse for Instructions

7018 2290 0000 6827 6907

**U.S. Postal Service**  
**CERTIFIED MAIL® RECEIPT**  
 Domestic Mail Only

For delivery information, visit our website at [www.usps.com](http://www.usps.com)

**SALT LAKE CITY, UT 84130**

Certified Mail Fee \$3.50

Extra Services & Fees (check box, add fee)

<input type="checkbox"/> Return Receipt (hardcopy)	\$0.00
<input type="checkbox"/> Return Receipt (electronic)	\$0.00
<input type="checkbox"/> Certified Mail Restricted Delivery	\$0.00
<input type="checkbox"/> Adult Signature Restricted Delivery	\$0.00

Postage \$0.55

Total Postage and Fees \$4.05

03/16/2019

Sent To **DISCOVER**  
 Street and Apt. No., or PO Box No. **PO BOX 30943**  
 City, State, ZIP+4® **SALT LAKE CITY UTAH 84130**

US Form 3800, April 2015 Edition PSN 7530-01-000-9001 See Reverse for Instructions

7018 2290 0000 6827 6891

**U.S. Postal Service**  
**CERTIFIED MAIL® RECEIPT**  
 Domestic Mail Only

For delivery information, visit our website at [www.usps.com](http://www.usps.com)

**WILMINGTON, DE 19850**

Certified Mail Fee \$3.50

Extra Services & Fees (check box, add fee)

<input type="checkbox"/> Return Receipt (hardcopy)	\$0.00
<input type="checkbox"/> Return Receipt (electronic)	\$0.00
<input type="checkbox"/> Certified Mail Restricted Delivery	\$0.00
<input type="checkbox"/> Adult Signature Restricted Delivery	\$0.00

Postage \$0.55

Total Postage and Fees \$4.05

03/16/2019

Sent To **DISCOVER**  
 Street and Apt. No., or PO Box No. **PO BOX 15316**  
 City, State, ZIP+4® **WILMINGTON DE 19750-5316**

US Form 3800, April 2015 Edition PSN 7530-01-000-9001 See Reverse for Instructions

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# EXHIBIT

# B

## DEFAULT-JUDGMENT

many circumstances when entity having power of eminent domain substantially deprives property owner of right to beneficial use and enjoyment of property as consequence of nonappropriate rather than appropriate act. In re Condemnation By Com., Dept. of Transp., 37 Pa.Cmwlth. 68, 506 A.2d 990, 993.

**Le faire échelle /də fér eyshél/.** In French law, a clause commonly inserted in policies of marine insurance equivalent to a license to touch and trade at intermediate ports.

**Defalcation /diyfolkéyshən/.** The act of a defaulter; act of embezzling; failure to meet an obligation; misappropriation of trust funds or money held in any fiduciary capacity; failure to properly account for such funds. Commonly spoken of officers of corporations or public officials.

For purposes of Bankruptcy Code section making non-dischargeable a debt resulting from fraud or defalcation by debtor while acting in fiduciary capacity, is failure to meet an obligation, misappropriation of trust funds or money held in any fiduciary capacity, and failure to properly account for such funds. In re Anderson, 707 F.2d 1111, 64 B.R. 331, 334.

**Set-off, recoupment or counterclaim.** The diminution of a debt or claim by deducting from it a smaller claim held by the debtor or payor. See Defalk.

**Defalk.** To set off one claim against another; to deduct a debt due to one from a debt which one owes. This term corresponds only to the second meaning of "defalcation" as given above; i.e. a public officer or trustee who misappropriates or embezzles funds in his hands is not said to "defalk."

**Le falso iudicio /diy fòlsow juwdishiyow/.** Writ of false judgment.

**Le falso moneta /diy fòlsow mənityə/.** Of false money. The title of the English statute 27 Edw. I, ordaining that persons importing certain coins, called "pollards," and "maccards," should forfeit their lives and goods, and everything they could forfeit.

**Defamabroadcast /dəféyməkəst/.** Defamation by broadcast. American Broadcasting-Paramount Theatres, Inc. v. American, 106 Ga.App. 230, 126 S.E.2d 873, 879.

**Defamation.** An intentional false communication, either published or publicly spoken, that injures another's reputation or good name. Holding up of a person to ridicule, scorn or contempt in a respectable and considerable part of the community; may be criminal as well as civil. Includes both libel and slander.

Defamation is that which tends to injure reputation; diminish the esteem, respect, goodwill or confidence in which the plaintiff is held, or to excite adverse, derogatory or unpleasant feelings or opinions against him. Statement which exposes person to contempt, ridicule or obloquy. McGowen v. Prentice, La. App. 341 So.2d 55, 57. The unprivileged publication of defamatory statements which naturally and proximately result in injury to another. Wolfson v. Kirk, Fla.App., 273 So.2d 774, 776.

To recover against a public official or public figure, plaintiff must prove that the defamatory statement was published with malice. Malice as used in this context means that it was published either knowing that it was false or with a reckless disregard as to whether it was true or false. New York Times Co. v. Sullivan, 376 U.S. 254, 84 S.Ct. 710, 11 L.Ed.2d 686.

A communication is defamatory if it tends so to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him. The meaning of a communication is that which the recipient correctly, or mistakenly but reasonably, understands that it was intended to express. Restatement, Second, Torts §§ 559, 563.

See also Actionable per quod; Actionable per se; Journalist's privilege; Libel; Slander.

**Defamatory.** Calumnious; containing defamation; injurious to reputation; libelous; slanderous. See Defamation.

**Defamatory libel.** Written, permanent form of defamation as contrasted with slander which is oral defamation. See Libel.

**Defamatory per quod /dəfəmətòriy pər kwód/.** In respect of words, those which require an allegation of facts, aside from the words contained in the publication, by way of innuendo, to show wherein the words used libel the plaintiff. See Actionable per quod.

**Defamatory per se /dəfəmətòriy pər sī/.** In respect of words, those which by themselves, and as such, without reference to extrinsic proof, injure the reputation of the person to whom they are applied. Conrad v. Allis-Chalmers Mfg. Co., 228 Mo.App. 817, 73 S.W.2d 438, 446. See Actionable per se.

**Defames /dəféymiyz/.** L. Fr. Infamous.

**Default.** By its derivation a failure. An omission of that which ought to be done. Town of Milton v. Bruso, 111 Vt. 82, 10 A.2d 203, 205. Specifically, the omission or failure to perform a legal or contractual duty, Easterwood v. Willingham, Tex.Civ.App., 47 S.W.2d 393, 395; to observe a promise or discharge an obligation (e.g. to pay interest or principal on a debt when due), Bradbury v. Thomas, 135 Cal.App. 435, 27 P.2d 402; or to perform an agreement, Eastman v. Morgan, D.C.N.Y., 43 F.Supp. 637, 641. The term also embraces the idea of dishonesty, and of wrongful act, Greco v. S. S. Kresge Co., 277 N.Y. 26, 12 N.E.2d 557, 562; or an act of omission discreditable to one's profession, Hilkert v. Canning, 58 Ariz. 290, 119 P.2d 233, 236.

Under the U.C.C. "default" is left undefined, §§ 9-501-507, though it is precisely what the parties agree that it is. Borochoff Properties, Inc. v. Howard Lumber Co., 115 Ga.App. 691, 155 S.E.2d 651.

**Default-judgment.** Judgment entered against a party who has failed to defend against a claim that has been brought by another party. Under Rules of Civil Procedure, when a party against whom a judgment for affirmative relief is sought has failed to plead (i.e. answer) or

# EXHIBIT

# C

NOT A CERTIFIED COPY

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA  
CIVIL DIVISION

DISCOVER BANK

Plaintiff

v.

EVAN S GUTMAN

Defendant

CASE NUMBER:

50-2019-CA-013570-XXXX-MB

**COUNTERCLAIM**

(Waiver of Jury Trial)

**COUNTERCLAIM**

I, Evan Gutman, hereby COUNTERCLAIM against Plaintiff as follows, and also hereby Waive a Jury Trial, requesting instead a fair and equitable Judgment by this Honorable Court:

**GENERAL ALLEGATIONS**

1. Plaintiff instituted suit against Defendant for alleged breach of contract. In support of their claim, Plaintiffs attached a document to their Complaint as "Exhibit A" therein, that purports to be an alleged "Contract" between Plaintiff and Defendant. That document is attached hereto as "Exhibit 1."
2. On or about November 8, 2019, seven days after Defendant filed his Answer to the Complaint, Plaintiffs and/or their Attorneys the law firm of Zwicker & Associates, P.C. **ILLEGALLY accessed Defendant's credit report**, for the apparent purpose of gaining an unfair and unethical advantage in this litigation. On March 16, 2019 Defendant had sent Plaintiffs a letter via Certified Mail stating unequivocally that Consent for Plaintiffs to access his credit report for any reason was revoked. Defendant sent the letter to three separate and distinct addresses maintained by Plaintiffs and the U.S. Post Office has provided documentation



indicating all three of the letters were received. Notwithstanding, Plaintiffs ignored the letter and Illegally accessed Defendant's credit report on or about November 8, 2019 (See Exhibit 2 herein).

3. Based upon allegations set forth in Paragraphs (4) - (20) below, Exhibit 1 herein, referenced in Paragraph (1) above, is an Unenforceable Contract of Adhesion containing multiple provisions that are Unconscionable; Void as against public policy; Shock the Conscience; are not in conformity societal norms or public norms of fairness and morality; for which no reasonable opportunity to negotiate is provided; lacks Mutuality and which are presented by Plaintiff **in such small, tiny font size** that no reasonable individual can be expected to be aware of the nature of the provisions or have provided assent to such provisions.
4. "Exhibit A" attached to the Complaint (Exhibit 1 herein) is an unenforceable contract of adhesion containing multiple provisions VOID as against public policy, which are so numerous and seriously egregious they can not fairly be severed from the alleged contract as a whole, for reasons including but not limited to the fact **the Font Size of the entire document is so small and tiny that a reasonable person would not fairly be expected to read or understand the document taken as a whole or the individual provisions therein.**
5. "Exhibit A" attached to the Complaint (Exhibit 1 herein) contains a provision stating that **"You are in default if: . . . you die. . . ."** The foregoing provision is VOID and unenforceable, for reasons including but not limited to the fact that the font size of the provision is so small and tiny that a reasonable person would not be aware of it; it **SHOCKS THE CONSCIENCE** by **penalizing a law-abiding person who has led an upstanding and virtuous life upon their death simply for the involuntary act of dying and Blessedly passing to Heaven** and also does not conform with public policy norms, is unconscionable, does not conform with societal norms of decency; fairness; humanity and morality; no

reasonable opportunity to negotiate the provision was available and it is contained within an unenforceable contract of adhesion.

6. "Exhibit A" attached to the Complaint (Exhibit 1 herein) contains a provision stating that **"You accept this Agreement if you do not cancel your Account within 30 days. . . ."** The foregoing provision is VOID and unenforceable for reasons including but not limited to the fact the font size of the provision is so small and tiny a reasonable person would not be aware of the provision, it does not conform with public policy norms, is unconscionable, no reasonable opportunity to negotiate the provision was available and it is contained within an unenforceable contract of adhesion. There was no meaningful bargaining with respect to the provision, it was provided on a take it or leave it basis, and it offends standards of decency and fairness. No reasonable person would knowingly grant a global agreement to a contract containing so many unenforceable and unconscionable provisions.
7. "Exhibit A" attached to the Complaint (Exhibit 1 herein) contains a provision stating that **"We may add or delete any term to this Agreement. . . ."** The foregoing provision is VOID and unenforceable for reasons including but not limited to the fact that the font size of the provision is so small and tiny a reasonable person would not be aware of the provision, it does not conform with public policy norms, is unconscionable, no reasonable opportunity to negotiate the provision was available and it is contained within an unenforceable contract of adhesion. There was no meaningful bargaining with respect to the provision, it was provided on a take it or leave it basis, and it offends standards of decency and fairness. No reasonable person would knowingly agree to provide an unfettered unilateral right to the other contracting party to change any terms of the agreement at will and at any time, without reasonable limitations.
8. "Exhibit A" attached to the Complaint (Exhibit 1 herein) contains a provision stating that **"We apply payments and credits at our discretion, including in a manner most favorable or convenient for us."** The foregoing provision is VOID and unenforceable for reasons including but not limited to the fact that the

font size of the provision is so small and tiny a reasonable person would not be aware of the provision, it does not conform with public policy norms, is unconscionable, no reasonable opportunity to negotiate the provision was available and it is contained within an unenforceable contract of adhesion. There was no meaningful bargaining with respect to the provision, it was provided on a take it or leave it basis, and it offends standards of decency and fairness. No reasonable person would knowingly agree to providing an unfettered unilateral right for the other contracting party to apply payments in any manner they please to their best advantage, without respect to morality and law.

9. "Exhibit A" attached to the Complaint (Exhibit 1 herein) contains a provision stating that **"You are in default if: . . . you fail to comply with the terms of this Agreement or any Agreement with us or an Affiliate."** The foregoing provision is VOID and unenforceable for reasons including but not limited to the fact that the font size of the provision is so small and tiny a reasonable person would not be aware of the provision, it does not conform with public policy norms, is unconscionable, no reasonable opportunity to negotiate the provision was available and it is contained within an unenforceable contract of adhesion. There was no meaningful bargaining with respect to the provision, it was provided on a take it or leave it basis, and it offends standards of decency and fairness. No reasonable person would knowingly agree to allow the other contracting party to add any other Unidentified persons or entities to the agreement on a unilateral basis.
10. "Exhibit A" attached to the Complaint (Exhibit 1 herein) contains a provision stating that **"If you are in default, we may declare the entire balance of your Account immediately due and payable without notice."** The foregoing provision is VOID and unenforceable for reasons including but not limited to the fact that the font size of the provision is so small and tiny a reasonable person would not be aware of the provision, it does not conform with public policy norms, is unconscionable, no reasonable opportunity to negotiate the provision was available and it is contained within an unenforceable contract of adhesion. There

was no meaningful bargaining with respect to the provision, it was provided on a take it or leave it basis, and it offends standards of decency and fairness. No reasonable person would agree to Discover Bank's use of the term "default" when the Bank includes within the definition of "default" virtuous people who involuntarily die, and who are fully up to date on payments on the date of death.

11. "Exhibit A" attached to the Complaint (Exhibit 1 herein) contains a provision stating that **"If we use an attorney to collect your Account, we may charge you our legal costs. . . ."** The foregoing provision is VOID and unenforceable for reasons including but not limited to the fact that the font size of the provision is so small and tiny a reasonable person would not be aware of the provision, it does not conform with public policy norms, is unconscionable, no reasonable opportunity to negotiate the provision was available and it is contained within an unenforceable contract of adhesion. There was no meaningful bargaining with respect to the provision, it was provided on a take it or leave it basis, and it offends standards of decency and fairness. No reasonable person would knowingly agree to a non-reciprocal right to pay the other side's legal costs in the event of a dispute, so the provision lacks Mutuality. It is also unconscionable because it is not limited to legal disputes in which Discover Bank prevails, and thus can absurdly be contended to require the customer to pay the Bank's legal fees even if the customer prevails.
12. "Exhibit A" attached to the Complaint (Exhibit 1 herein) contains a provision stating that **"We may from time to time review your . . . employment and income records."** The foregoing provision is VOID and unenforceable for reasons including but not limited to the fact that the font size of the provision is so small and tiny a reasonable person would not be aware of the provision, it does not conform with public policy norms, is unconscionable, no reasonable opportunity to negotiate the provision was available and it is contained within an unenforceable contract of adhesion. There was no meaningful bargaining with respect to the provision, it was provided on a take it or leave it basis, and it offends standards of decency and fairness. No reasonable person would

knowingly agree to provide an unlimited right to a Bank to review their "employment" records, without reasonable limitations. The provision is also unconscionable because it can be construed as providing consent for Discover Bank to review employment disciplinary records wholly unrelated to the credit card agreement.

13. **"Exhibit A" attached to the Complaint (Exhibit 1 herein) contains a provision stating that "You agree that we (and our affiliates, agents, and contractors) may monitor or record any calls between you and us. If we need to contact you to service your Account or to collect amounts you owe to us, you authorize us (and our affiliates, agents and contractors) to contact you at any number (i) you have provided to us, (ii) from which you called us, or (iii) which we obtained and believe we can reach you at. . . . We may contact you in any way, such as calling, texting, or email. We may contact you using an automated dialer or using pre-recorded voice messages. . . . We may contact you on a mobile, wireless, or similar device, even if you are charged for it by our provider."** The foregoing provision is VOID and unenforceable for reasons including but not limited to the fact that it Shocks the Conscience, does not conform with public policy norms, is unconscionable, no reasonable opportunity to negotiate the provision was available and it is contained within an unenforceable contract of adhesion. The font size of the provision is so small and tiny a reasonable person would not be aware of the provision. There was no meaningful bargaining with respect to the provision, it was provided on a take it or leave it basis, and it offends standards of decency and fairness. The provision utilized by the credit card industry as a whole has the impact of negating valid legal statutory enactments of the Florida State Legislature regarding recording of telephonic communications, thereby negating and overriding Legislative Intent in Florida. The Discover Bank provision additionally extends beyond the illegal industry standard of negating legislative intent, by incorporating not only its own actions, but also those of its unidentified "agents," "contractors," and "affiliates." Thus, for all practical purposes the customer is giving purported "consent" to have conversations recorded by people

or entities who they do not even know, and who are not even identified. Discover Bank then incredulously takes the matter even further by indicating they may call and record the customer at any number **"which we obtained and believe we can reach you at."** The egregious illegal impact of this is that people totally unrelated to either Discover Bank or the customer, may have conversations on their telephone lines recorded without their consent (i.e. such as employers, friends, etc.). One would be hard-pressed to find a contract provision more illegal and "Shocking the Conscience" than the foregoing.

14. "Exhibit A" attached to the Complaint (Exhibit 1 herein) contains a provision stating that **"This Agreement is governed by applicable federal law and by Delaware law. However, in the event you default and we file a lawsuit to recover funds loaned to you, the statute of limitations of the state where the lawsuit is filed will apply, without regard to that state's conflicts of laws principles or its "borrowing statute."** The foregoing provision is VOID and unenforceable for reasons including but not limited to the fact that the font size of the provision is so small and tiny that a reasonable person would not be aware of it, it does not conform with public policy norms, is unconscionable, no reasonable opportunity to negotiate the provision was available and it is contained within an unenforceable contract of adhesion. There was no meaningful bargaining with respect to the provision, it was provided on a take it or leave it basis, and it offends standards of decency and fairness. Additionally, the provision is unconscionable because it contains the phrase "without regard to that state's conflicts of laws principles." Ultimately, a State's conflict of laws principles are precisely how Courts in a State decide conflict of laws issues. Accordingly, the provision constitutes an illegal attempt to override judicial decision-making authority.

15. "Exhibit A" attached to the Complaint (Exhibit 1 herein) contains a provision stating that **"If any part of this Agreement is found to be invalid, the rest of it will still remain in effect."** The foregoing provision is VOID and unenforceable for reasons including but not limited to the fact that the font size of the provision

is so small and tiny that a reasonable person would not be aware of it, it does not conform with public policy norms, is unconscionable, no reasonable opportunity to negotiate the provision was available and it is contained within an unenforceable contract of adhesion. There was no meaningful bargaining with respect to the provision, it was provided on a take it or leave it basis, and it offends standards of decency and fairness. The provision is also unconscionable due to the fact there are so many unenforceable provisions in the Discover Bank contract, the Court would be required to rewrite the contract as whole if they were severed from the remainder.

16. "Exhibit A" attached to the Complaint (Exhibit 1 herein) contains a provision stating that **"We may delay enforcing or not enforce any of our rights under this Agreement without losing or waiving any of them."** The foregoing provision is VOID and unenforceable for reasons including but not limited to the fact that the font size of the provision is so small and tiny that a reasonable person would not be aware of it, it does not conform with public policy norms, is unconscionable, no reasonable opportunity to negotiate the provision was available and it is contained within an unenforceable contract of adhesion. There was no meaningful bargaining with respect to the provision, it was provided on a take it or leave it basis, and it offends standards of decency and fairness. The provision is also unconscionable because it lacks mutuality by providing a unilateral, unfettered right for Discover Bank to violate well-accepted legal principles including, but not limited to "laches."
17. "Exhibit A" attached to the Complaint (Exhibit 1 herein) contains a provision stating that **"We may sell, assign or transfer your Account or any portion of it without notice to you."** The foregoing provision is VOID and unenforceable for reasons including but not limited to the fact that the font size of the provision is so small and tiny that a reasonable person would not be aware of it, it does not conform with public policy norms, is unconscionable, no reasonable opportunity to negotiate the provision was available and it is contained within an unenforceable contract of adhesion. There was no meaningful bargaining with

respect to the provision, it was provided on a take it or leave it basis, and it offends standards of decency and fairness. The provision is also unconscionable because it provides an unreasonable right for Discover Bank to transfer only a "portion" of an account, rather than the entire account. No reasonable person would knowingly agree to pay percentage portions of balances regarding one single account to multiple different unidentified parties or entities, and without notice of any nature.

18. "Exhibit A" attached to the Complaint (Exhibit 1 herein) contains a Definition stating that **""Affiliate" means our parent corporations, subsidiaries and affiliates."** The foregoing Definition is VOID and unenforceable for reasons including but not limited to the fact that the font size of the Definition is so small and tiny that a reasonable person would not be aware of it, it does not conform with public policy norms, is unconscionable, no reasonable opportunity to negotiate the Definition was available and it is contained within an unenforceable contract of adhesion. There was no meaningful bargaining with respect to the provision, it was provided on a take it or leave it basis, and it offends standards of decency and fairness. The provision is additionally unconscionable because it results in the customer being illegally bound to other individuals or entities who the customer does not know, did not intend to contract with, and who are totally unidentified.
19. "Exhibit A" attached to the Complaint (Exhibit 1 herein) contains a Definition stating that **"Agreement to Arbitrate . . . either you or we may choose to resolve the Claim by binding arbitration, as described below, instead or in court. . . . THIS MEAN IF EITHER YOU OR WE CHOOSE ARBITRATION, NEITHER PARTY SHALL HAVE THE RIGHT TO LITIGATE SUCH CLAIM IN COURT OR TO HAVE A JURY TRIAL. ALSO DISCOVERY AND APPEAL RIGHTS ARE LIMITED IN ARBITRATION. Even if all parties have opted to litigate a Claim in court, you or we may elect arbitration with respect to any Claim made by a new party of any new Claims later asserted in that lawsuit."** The foregoing provision is VOID and unenforceable for reasons including but not limited to the



fact that the font size of the provision is so small and tiny that a reasonable person would not be aware of it, it does not conform with public policy norms, is unconscionable, no reasonable opportunity to negotiate the provision was available, **it encroaches upon a litigant's constitutional right of access to the Courts**, and it is contained within an unenforceable contract of adhesion. There was no meaningful bargaining with respect to the provision, it was provided on a take it or leave it basis, and it offends standards of decency and fairness.

20. "Exhibit A" attached to the Complaint (Exhibit 1 herein) contains a provision stating that **"Other Beneficiaries of this Provision. In addition to you and us, the rights and duties described in this arbitration agreement apply to: our Affiliates and our and their officers, directors, and employees, any third party co-defendant of a claim subject to this arbitration provision . . . ."** The foregoing provision is VOID and unenforceable for reasons including but not limited to the fact that the font size of the provision is so small and tiny that a reasonable person would not be aware of it, it does not conform with public policy norms, is unconscionable, no reasonable opportunity to negotiate the provision was available and it is contained within an unenforceable contract of adhesion. There was no meaningful bargaining with respect to the provision, it was provided on a take it or leave it basis, and it offends standards of decency and fairness. The provision is additionally unconscionable because it results in the customer being illegally bound to other individuals or entities who the customer does not know, did not intend to contract with, and who are totally unidentified.

**FIRST CAUSE OF ACTION  
(Violation of Federal Fair Credit Reporting Act)  
15 USC 1681**

1. Defendant realleges allegations set forth in Paragraph 2 herein.
2. On March 16, 2019 Defendant sent Plaintiffs a letter via Certified Mail stating unequivocally that Consent for Plaintiffs to access his credit report for any reason was revoked. Defendant sent the letter to three separate and distinct addresses

maintained by Plaintiffs and the U.S. Post Office has provided documentation indicating all three of the letters were received. (Exhibit 2 herein).

3. Notwithstanding (1) and (2) above, on or about November 8, 2019, Plaintiffs and/or their Attorneys the law firm of Zwicker & Associates, P.C. ILLEGALLY accessed Defendant's credit report.
4. Plaintiffs Illegal access of Defendant's Credit Report on or about November 8, 2019 for the purpose of gaining an unfair advantage in this litigation constituted a violation of the Fair Credit Reporting Act, 15 USC 1681(b), 15 USC 1681(d), 15 USC 1681(n) which prohibit gaining access to a credit report Illegally.
5. Wherefore, Defendant demands Judgment against Plaintiffs and prays for this Court to grant relief as set forth below.

**SECOND CAUSE OF ACTION  
(Identity Theft)  
Fl. Stat. 817.011 - 817.569)**

1. Defendant realleges allegations set forth in Paragraph 2 herein.
2. On March 16, 2019 Defendant sent Plaintiffs a letter via Certified Mail stating unequivocally that Consent for Plaintiffs to access his credit report for any reason was revoked. Defendant sent the letter to three separate and distinct addresses maintained by Plaintiffs and the U.S. Post Office has provided documentation indicating all three of the letters were received. (Exhibit 2 herein).
3. Notwithstanding (1) and (2) above, on or about November 8, 2019, Plaintiffs and/or their Attorneys directly and/or with their Attorneys providing advice or discussion on the illegal conduct (the law firm of Zwicker & Associates, P.C.) ILLEGALLY accessed Defendant's credit report.
4. Plaintiffs Illegal access of Defendant's Credit Report on or about November 8, 2019 for the purpose of gaining an unfair advantage in this litigation constituted Identity Theft pursuant to Fl. Stat. 817.568(2)(a) and Fl. Stat. 817.568(9). Both statute sections classify the Offense as fraudulent in nature.
5. Wherefore, Defendant demands Judgment against Plaintiffs and prays for this Court to grant relief as set forth below.

**THIRD CAUSE OF ACTION  
(Violation of Federal Fair Debt Collections Practices Act)  
15 USC 1692**

1. Defendant realleges allegations set forth in Paragraph 2 herein.
2. On March 16, 2019 Defendant sent Plaintiffs a letter via Certified Mail stating unequivocally that Consent for Plaintiffs to access his credit report for any reason was revoked. Defendant sent the letter to three separate and distinct addresses maintained by Plaintiffs and the U.S. Post Office has provided documentation indicating all three of the letters were received. (Exhibit 2 herein).
3. Notwithstanding (1) and (2) above, on or about November 8, 2019, Plaintiffs and/or their Attorneys the law firm debt collector agency of Zwicker & Associates, P.C. ILLEGALLY accessed Defendant's credit report.
4. Plaintiffs Illegal access of Defendant's Credit Report on or about November 8, 2019 for the purpose of gaining an unfair advantage in this litigation and collecting an alleged debt, along with any legal assistance or legal advice rendered by its Legal Counsel and "Debt Collector Agent" constituted a Violation of the Fair Debt Collections Practices Act. 15 USC 1692(e) and 15 USC 1692(f).
5. Wherefore, Defendant demands Judgment against Plaintiffs and prays for this Court to grant relief as set forth below.

**FOURTH CAUSE OF ACTION  
(Violation of Florida Consumer Collection Practices Act)  
Fl. Stat. 559.72 and Fl. Stat. 559.77**

1. Defendant realleges allegations set forth in Paragraph 2 herein.
2. On March 16, 2019 Defendant sent Plaintiffs a letter via Certified Mail stating unequivocally that Consent for Plaintiffs to access his credit report for any reason was revoked. Defendant sent the letter to three separate and distinct addresses maintained by Plaintiffs and the U.S. Post Office has provided documentation indicating all three of the letters were received. (Exhibit 2 herein).
3. Notwithstanding (1) and (2) above, on or about November 8, 2019, Plaintiffs and/or their Attorneys the law firm of Zwicker & Associates, P.C. ILLEGALLY accessed Defendant's credit report.
4. Plaintiffs Illegal access of Defendant's Credit Report on or about November 8, 2019 for the purpose of gaining an unfair advantage in this litigation and collecting an alleged debt, with any assistance or advice or Counsel provided by

its "Debt Collector Agent" constituted a Violation of the Florida Consumer Collection Practices Act, Fl. Stat. 559.72(9) and Fl. Stat. 559.72(10).

5. Wherefore, Defendant demands Judgment against Plaintiffs and prays for this Court to grant relief as set forth below.

**FIFTH CAUSE OF ACTION  
(Unfair and Deceptive Acts and Practices)  
Fl. Stat. 501.204**

1. Defendant realleges allegations set forth in Paragraphs (1) - (20) herein.
2. The actions of Plaintiff as set forth in Paragraphs (2) - (20) herein, constitute Unfair and Deceptive Acts and Practices.
3. Wherefore, Defendant demands Judgment against Plaintiffs and prays for this Court to grant relief as set forth below.

**SIXTH CAUSE OF ACTION  
(Breach of Contract, Good Faith and Fair Dealing)**

1. Defendant realleges allegations set forth in Paragraphs (1) - (20) herein.
2. The actions of Plaintiff as set forth in Paragraphs (2) - (20) herein, constitute Breach of Contract including but not limited Breach of Covenants of Good Faith and Fair Dealing.
3. Wherefore, Defendant demands Judgment against Plaintiffs and prays for this Court to grant relief as set forth below.

**SEVENTH CAUSE OF ACTION  
(Negligence)**

1. Defendant realleges allegations set forth in Paragraphs (1) - (20) herein.
2. The actions of Plaintiffs as set forth in Paragraphs (2) - (20) above, constitute Negligence.
3. Plaintiffs had duties to Defendant including but not limited to covenants of Good Faith and Fair Dealing, breached said duties, and Plaintiff's breach of duties was both the actual and proximate cause of damages to Defendant.

4. Plaintiff's conduct was so reckless or wanting in care that it constituted a conscious disregard for the rights of Defendant.
5. Wherefore, Defendant demands Judgment against Plaintiffs and prays for this Court to grant relief as set forth below.

**EIGHTH CAUSE OF ACTION  
(Gross Negligence)**

1. Defendant realleges allegations set forth in Paragraphs (1) - (20) herein.
2. The actions of Plaintiffs as set forth in Paragraphs (2) - (20) above, constitute Gross Negligence.
3. Plaintiffs had duties to Defendant including but not limited to covenants of good faith and fair dealing, not acting with malice, not acting with reckless disregard for the law, and breached said duties, and Plaintiff's breach of duties was both the actual and proximate cause of damages to Defendant.
4. Plaintiff's conduct was so reckless or wanting in care that it constituted a conscious disregard for the rights of Defendant.
5. Wherefore, Defendant demands Judgment against Plaintiffs and prays for this Court to grant relief as set forth below.

**NINTH CAUSE OF ACTION  
(Fraud)  
Fl. Stat. 817.011 - 817.569**

1. Defendant realleges allegations set forth in Paragraph 2 herein.
2. On March 16, 2019 Defendant sent Plaintiffs a letter via Certified Mail stating unequivocally that Consent for Plaintiffs to access his credit report for any reason was revoked. Defendant sent the letter to three separate and distinct addresses maintained by Plaintiffs and the U.S. Post Office has provided documentation indicating all three of the letters were received. (Exhibit 2 herein).
3. Notwithstanding (1) and (2) above, on or about November 8, 2019, Plaintiffs and/or their Attorneys directly and/or with their Attorneys providing advice or discussion on the illegal conduct (the law firm of Zwicker & Associates, P.C.) ILLEGALLY accessed Defendant's credit report.
4. Plaintiffs Illegal access of Defendant's Credit Report with any assistance or counsel provide by its' "Agent" debt collector law firm of Zwicker & Associates, P.C. on or about November 8, 2019 for the purpose of gaining an unfair

advantage in this litigation constituted Fraudulent Conduct pursuant to Fl. Stat. 817.568(2)(a) and Fl. Stat. 817.568(9). Both criminal statute sections classify the Offense as fraudulent, and such is substantially relevant in a civil action.

5. Wherefore, Defendant demands Judgment against Plaintiffs and prays for this Court to grant relief as set forth below.

### **DAMAGES AND RELIEF REQUESTED**

WHEREFORE, Defendant demands judgment against Plaintiffs and prays for this Court to grant relief as set forth below:

- (a) For Actual Damages pursuant to Fair Credit Reporting Act, 15 USC 1681(n)
- (b) For Statutory Damages pursuant to Fair Credit Reporting Act, 15 USC 1681(n)
- (c) For Punitive Damages pursuant to Fair Credit Reporting Act, 15 USC 1681(n)
- (d) For Actual Damages pursuant to Fair Debt Collections Practices Act, 15 USC 1692(k)
- (e) For Statutory Damages pursuant to Fair Debt Collections Practices Act, 15 USC 1692(k)
- (f) For Statutory Damages pursuant to Florida Consumer Collection Practices Act, Fl. Stat. 559.77 and Fl. Stat. 559.72
- (g) For Punitive Damages pursuant to Florida Consumer Collection Practices Act, Fl. Stat. 559.77 and Fl. Stat. 559.72
- (h). For Punitive Damages pursuant to Fl. Stat. 768.73 for commission of Fraud.
- (i) For Punitive Damages pursuant to Fl. Stat. 768.73 for commission of Gross Negligence.
- (j) For Punitive Damages pursuant to FL. Stat. 768.73 for commission of the offense of Identify Theft
- (k) For Actual Damages pursuant to Florida Deceptive and Unfair Trade Practices Statute 501.211.
- (j) Equitable relief including issuance of an Order finding that Plaintiffs committed each of the illegal acts delineated herein.
- (k) Equitable relief prohibiting Plaintiff from ever including in any Contract with Defendant those provisions delineated herein deemed to be Unenforceable and/or Void as against public policy and/or Unconscionable and/or which Shock the Conscience. Defendant notes while this is not a Class Action, for all practical purposes any contract provisions the Plaintiffs are prohibited from entering into

with Defendant may presumably also be illegal as regards all other members of the general public in this jurisdiction, as a Court's Judgment (in this case like most other cases) is of Precedential Value as persuasive authority, and societal importance.

- (l) Equitable relief consisting of a declaratory judgment pursuant to Fl. Stat. 501.211 holding that the acts and practices of Discover Bank constitute Deceptive and Unfair Trade Practice, and to the extent appropriate issuing an injunction regarding such.
- (m) For such other relief as the Court may deem equitable and just.

Defendant in reliance upon the honor, integrity and fairness of this Court, waives his right to Jury trial and relies upon the Court to render a fair Judgment.

Dated this **INSERT** day of **INSERT**, 2020.

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Evan Gutman CPA, JD  
Member State Bar of Pennsylvania  
Member District of Columbia Bar  
Admitted to Federal Sixth Circuit Court of Appeals  
Admitted to Federal Ninth Circuit Court of Appeals  
Florida Certified Public Accountant  
New Jersey Certified Public Accountant

1675 NW 4th Avenue, #511  
Boca Raton, FL 33432  
561-990-7440

# EXHIBIT 1

NOT A CERTIFIED COPY





# CARDMEMBER AGREEMENT

Thank you for choosing Discover® card. This Agreement explains the current terms and conditions of your Account. The enclosed Pricing Schedule is part of this Agreement. Please read this Agreement, including the Pricing Schedule, carefully. Keep them for your records. Contact us if you have any questions. We have included a "Definitions" section for your reference on page 3.

## ACCEPTANCE OF AGREEMENT

You accept this Agreement if you do not cancel your Account within 30 days after receiving a Card. You also accept this Agreement if you or an Authorized User use the Account. You may, however, reject the "Arbitration of Disputes" section as explained in that section.

## CHANGES TO YOUR AGREEMENT

The rates, fees and terms of this Agreement may change from time to time. We may add or delete any term to this Agreement. If required by law, we will give you advance written notice of the change(s) and a right to reject the change(s). We will not charge any fee or interest charge prohibited by law.

## USING YOUR ACCOUNT

<b>Permitted Uses</b>	You may use your Account for Purchases, Balance Transfers and Cash Advances. You may not use it for illegal transactions.	
<b>Authorized Users</b>	You may request additional Cards for Authorized Users. You must notify us if you wish to cancel the authority of an Authorized User to use your Account.	
<b>Joint Accounts</b>	If your Account is a Joint Account <ul style="list-style-type: none"> <li>• each of you agrees to be liable individually and jointly for the entire amount owed on the Account; and</li> <li>• any notice we mail to an address provided by either of you for the Account will serve as notice to both of you.</li> </ul>	
<b>Checks</b>	If we provide you with Checks, we will tell you whether we will treat the Check as a Purchase, Balance Transfer or Cash Advance. You may not use these Checks to pay any amount you owe us.	
<b>Credit Authorizations</b>	We may not authorize a transaction for security or other reasons. We will not be liable to you if we decline to authorize a transaction or if anyone refuses your Card, Check or Account number.	
<b>Credit Lines</b>	We will tell you what your Account credit line is. You must keep your Account balance below your Account credit line. If you do not, we may request immediate payment of the amount by which you exceed it. We may establish a lower credit line	for Cash Advances. We may increase or decrease your Account credit line or your Cash Advance credit line without notice. We may delay increasing your available credit by the amount of any payment that we receive for up to 10 business days.

## FEES (See your Pricing Schedule for Additional Fees)

<b>Late Fee</b>	If you do not pay the Minimum Payment Due by the Payment Due Date, we will charge you a Late Fee. The fee is \$27 if you were not charged a Late Fee during any of the prior six billing periods. Otherwise, the fee is \$37. This fee will never exceed	the Minimum Payment Due that was due immediately prior to the date on which the fee was assessed.
<b>Returned Payment Fee</b>	If you make a payment that is not honored by your financial institution, we will charge you a Returned Payment Fee even if the payment is honored after we re-submit it. The fee is \$27 if you were not charged a Returned Payment Fee during	any of the prior six billing periods. Otherwise, the fee is \$37. This fee will never exceed the Minimum Payment Due that was due immediately prior to the date on which the payment was returned to us.

## ANNUAL PERCENTAGE RATES ("APRs") (See your Pricing Schedule for the APRs that apply to your Account)

<b>Variable APRs</b>	Your Pricing Schedule may include variable APRs. These APRs are determined by adding the number of percentage points that we specify to the Prime Rate. Variable APRs will increase or decrease when the Prime Rate changes. The APR change	will take effect on the first day of the billing period that begins during the same calendar month that the Prime Rate changes. An increase in the APR will increase your interest charges and may increase your Minimum Payment Due.
<b>Penalty APR</b>	<p><b>When It Applies</b> Each time that you do not pay the Minimum Payment Due by the Payment Due Date we may:</p> <ul style="list-style-type: none"> <li>• terminate any promotional APRs on new transactions; and</li> <li>• increase your APRs for new transactions to Penalty APRs.</li> </ul> <p>We will not apply a Penalty APR to Cash Advances.</p> <p><b>How It Affects Your Account</b> To determine the variable Penalty APR for a new transaction:</p> <ul style="list-style-type: none"> <li>• We add up to 5 additional percentage points to the otherwise applicable APR.</li> <li>• We set your Penalty APR based on your creditworthiness and other factors. These factors include your current APRs and Account history.</li> <li>• When we first determine the Penalty APR, we use the Prime Rate that is in</li> </ul>	<p>effect for the billing period in which you did not pay the Minimum Payment Due by the Payment Due Date.</p> <p><b>We Will Notify You</b> We will notify you of the date a Penalty APR will take effect. The Penalty APR will only apply to new transactions with a Transaction Date more than 14 days after we provide the notice to you.</p> <p><b>We May Reduce It</b> We will review your Account from time to time as required by law to determine if any Penalty APR should be reduced.</p>

## MAKING PAYMENTS

<b>Payment Instructions</b>	<ul style="list-style-type: none"> <li>• You must pay in U.S. dollars. Please do not send cash. Sending cash is not allowed. All checks must be drawn on funds on deposit in the U.S.</li> <li>• You must pay us for all amounts due on your Account. This includes charges made by Authorized Users.</li> <li>• We may refuse to accept a payment in a foreign currency. If we do accept it, we will charge your Account our cost to convert it to U.S. dollars.</li> </ul>	<ul style="list-style-type: none"> <li>• We can accept late payments, partial payments or payments marked "payment in full" or with any other restrictive endorsement without losing any of our rights under this Agreement.</li> </ul>
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## MAKING PAYMENTS

### Payment Instructions

- We credit your payments in accordance with the terms contained on your billing statement.
- If you mail your payment to an address other than the address designated on your billing statement, there may be a delay in processing and crediting the payment to your Account.
- If a third party makes a payment on your Account and we return all or a part of such payment, then we may adjust your Account for any amount returned. We reserve the right to defend ourselves against any demand to return funds we have received, and may agree to a compromise of the demanded amount as part of a settlement.

### Minimum Payment Due

You may pay the entire New Balance shown on your billing statement at any time. Each billing period you must pay at least the Minimum Payment Due by the Payment Due Date shown on your billing statement. The Minimum Payment Due will be any amount past due plus the greater of:

- \$35; or
- 2% of the New Balance shown on your billing statement; or
- \$20, plus any of the following charges as shown on your billing statement: fees

for any debt protection product that you enrolled in on or after 2/1/2015; Interest Charges; and Late Fees.

The Minimum Payment Due may also include amounts by which you exceed your Account credit line. However, it will never exceed the New Balance. When we calculate the Minimum Payment Due, we may subtract from the New Balance certain fees added to your Account during the billing period. The Minimum Payment Due is rounded up to the nearest dollar.

### How We Apply Payments

We apply payments and credits at our discretion, including in a manner most favorable or convenient for us. In all cases, we will apply payments and credits as required by applicable law.

Each billing period, we will generally apply amounts you pay that exceed the Minimum Payment Due to balances with higher APRs before balances with lower APRs as of the date we credit your payment.

## INTEREST CHARGES

### How We Calculate Interest Charges—Daily Balance Method (including current transactions)

We calculate interest charges each billing period by first figuring the "daily balance" for each Transaction Category. Transaction Categories include standard Purchases, standard Cash Advances and different promotional balances, such as Balance Transfers.

#### How We Figure the Daily Balance for Each Transaction Category

- We start with the beginning balance for each day. The beginning balance for the first day of the billing period is your balance on the last day of your previous billing period.
- We add any interest charges accrued on the previous day's daily balance and any new transactions and fees. We add any new transactions or fees as of the later of the Transaction Date or the first day of the billing period in which the transaction or fee posted to your Account.
- We subtract any new credits and payments.

- We make other adjustments (including those adjustments required in the "Paying Interest" section).

#### How We Figure Your Total Interest Charges

- We multiply the daily balance for each Transaction Category by its daily periodic rate. We do this for each day in the billing period. This gives us the interest charges for each Transaction Category. To get a daily periodic rate, we divide the APR that applies to the Transaction Category by 365.
- We add up all the daily interest charges. The sum is the total interest charge for the billing period.

#### How We Include Fees

We add Balance Transfer Fees to the applicable Balance Transfer Transaction Category. We add Cash Advance Fees to the applicable Cash Advance Transaction Category. We add all other fees to the standard Purchase Transaction Category.

### Paying Interest

#### When Interest Charges Begin

We begin to impose interest charges on a transaction, fee or interest charge from the day we add it to the daily balance. We continue to impose interest charges until you pay the total amount you owe us. You can avoid paying interest on Purchases as described below. However, you cannot avoid paying interest on Balance Transfers or Cash Advances.

#### How to Avoid Paying Interest on Purchases ("Grace Period")

If you paid the New Balance on your previous billing statement by the Payment Due

Date shown on that billing statement, we will not impose interest charges on new Purchases, or any portion of a new Purchase, paid by the Payment Due Date on your current billing statement. New Purchases are Purchases that first appear on the current billing statement.

#### How We Apply Payments May Impact Your Grace Period

If you do not pay your New Balance in full each month, then, depending on the balance to which we apply your payment, you may not get a grace period on new Purchases.

## OTHER IMPORTANT INFORMATION

### Default

You are in default if:

- you file bankruptcy or another insolvency proceeding is filed by you or against you;
- we have a reasonable belief that you are unable or unwilling to repay your obligations to us;
- you die or are legally declared incompetent or incapacitated;

- you fail to comply with the terms of this Agreement or any Agreement with us or an Affiliate, including failing to make a required payment when due, exceeding your Account credit line or using your Card or Account for an illegal transaction.

If you are in default, we may declare the entire balance of your Account immediately due and payable without notice.

### Collection Costs

If we use an attorney to collect your Account, we may charge you our legal costs as permitted by law. These include reasonable attorneys' fees, court or other collection costs, and fees and costs of any appeal.

### Merchant Disputes

If you have a dispute with a merchant, you may request a credit to your Account. If we resolve the dispute in your favor, we will issue a credit to your Account. You assign to us your claim for the credited amount against the merchant and/or any third party. At our request, you agree to provide this assignment in writing.

### Automatic Account Information Updates

You may set up automatic billing or store your Account information with a merchant, wallet provider, or other third party. If your card information changes, which may include billing address, you authorize us to provide this updated information to any such merchant, wallet provider, or other third-party at our discretion. You must contact the merchant, wallet provider, or other third-party directly or remove your credit card information from the merchant site, wallet provider, or third-party if you wish to stop automatic billing or account updates.

### Our Privacy Policy

We send you our Privacy Policy when you open your Account and annually. Contact us or visit [Discover.com](http://Discover.com) if you would like a copy. Please read it carefully. It summarizes:

- the personal information we collect;

- how we safeguard its confidentiality and security;
- when it may be shared with others; and
- how you can limit our sharing of this information.

**Reporting to Credit Reporting Agencies**

We may from time to time review your credit, employment and income records. We may report the status and payment history of your Account to credit reporting agencies and other creditors. We normally report to credit reporting agencies each month.

If you believe that information we reported is inaccurate or incomplete, please write us at Discover, PO Box 15316, Wilmington, DE 19850-5316. Please include your name, address, home phone number and Account number.

**OTHER IMPORTANT INFORMATION**

**Our Communications with You**

You agree that we (and our affiliates, agents, and contractors) may monitor or record any calls between you and us. If we need to contact you to service your Account or to collect amounts you owe to us, you authorize us (and our affiliates, agents and contractors) to contact you at any number (i) you have provided to us, (ii) from which you called us, or (iii) which we obtained and believe we can reach you at. You must notify us if your number changes. We may contact you in any way,

such as calling, texting, or email. We may contact you using an automated dialer or using pre-recorded voice messages. Discover Bank, its affiliates and agents may call you, which includes text messages, about any current or future accounts or applications, regarding all products you have or may have with Discover Bank at any phone number you provide. We may contact you on a mobile, wireless, or similar device, even if you are charged for it by your provider.

**Unauthorized Use**

You must notify us immediately if:  
• your Card is lost or stolen; or  
• you believe someone is using your Account or a Card without your permission.

**Cancellation of Your Account**

• You may cancel your Account. You will remain responsible for any amount you owe us under this Agreement.  
• Any joint Account holder may cancel a joint Account. However, both of you will remain responsible for paying all amounts owed.  
• We may cancel, suspend or not renew your Account at any time without notice.

**Purchases and Cash Advances in Foreign Currencies**

If you make a Purchase or Cash Advance in a foreign currency, we will convert it to U.S. dollars using a rate we choose. This rate will either be a government-mandated rate, a government-published rate or the interbank exchange rate, depending on the country and currency in which the transaction is made. We use the rate in effect on the conversion date for the transaction. This rate may be different than the rate in effect on the Transaction Date for the transaction.

**Governing Law**

This Agreement is governed by applicable federal law and by Delaware law. However, in the event you default and we file a lawsuit to recover funds loaned to you, the statute of limitations of the state where the lawsuit is filed will apply, without regard to that state's conflicts of laws principles or its "borrowing statute."

**Severability**

If any part of this Agreement is found to be invalid, the rest of it will still remain in effect. However, if the Class Action Waiver in the "Arbitration of Disputes" section is invalidated in any proceeding in which you and we are involved, then the "Arbitration of Disputes" section will be void with respect to that proceeding.

**Enforcing this Agreement**

We may delay enforcing or not enforce any of our rights under this Agreement without losing or waiving any of them.

**Assignment of Account**

We may sell, assign or transfer your Account or any portion of it without notice to you. You may not sell, assign or transfer your Account without first obtaining our prior written consent.

**CONTACT US**

Unless we tell you otherwise, you can notify us: • by phone at 1-800 DISCOVER (1-800-347-2683) or • in writing to Discover, PO Box 30943, Salt Lake City, UT 84130-0943. When writing, please include your name, address, home phone number and Account number. You must contact us within 15 days after changing your e-mail address, mailing address or phone number.

**DEFINITIONS**

- "Account" means your Discover card account.
- "Affiliate" means our parent corporations, subsidiaries and affiliates.
- "Authorized User" means any person you authorize to use your Account or a Card, whether you notify us or not.
- "Balance Transfer" means a balance transferred from another creditor to your Account.
- "Card" means any one or more Discover cards issued to you or someone else with your authorization.
- "Cash Advance" means the use of your Account to:
  - obtain cash from participating automated teller machines, financial institutions or other locations;
  - purchase lottery tickets, money orders, casino chips, foreign currency or similar items.
- "Check" means any check we send to you to access your Account.
- "Pricing Schedule" means the document entitled, "Pricing Schedule", which lists the APRs that apply to your Account and other important information.
- "Prime Rate" means the highest rate of interest listed as the U.S. Prime rate in the Money Rates section of *The Wall Street Journal* on the last business day of the month.
- "Purchase" means the use of your Account to purchase or lease goods or services at participating merchants.
- "We," "us" and "our" refer to Discover Bank, the Issuer of your Card.
- "You," "your" or "yours" refer to you and any other person(s) who are also contractually liable under this Agreement.
- "Transaction Date" means the date shown on your billing statement for a transaction or fee.

**ARBITRATION**

**Agreement to Arbitrate.** In the event of a dispute between you and us arising out of or relating to this Account or the relationships resulting from this Account or any other dispute between you or us ("Claim"), either you or we may choose to resolve the Claim by binding arbitration, as described below, instead of in court. Any Claim (except for a claim challenging the validity or enforceability of this arbitration agreement, including the Class Action Waiver) may be resolved by binding arbitration if either side requests it. THIS MEANS IF EITHER YOU OR WE CHOOSE ARBITRATION, NEITHER PARTY SHALL HAVE THE RIGHT TO LITIGATE SUCH CLAIM IN COURT OR TO HAVE A JURY TRIAL. ALSO DISCOVERY AND APPEAL RIGHTS ARE LIMITED IN ARBITRATION.

Even if all parties have opted to litigate a Claim in court, you or we may elect arbitration with respect to any Claim made by a new party or any new Claims later asserted in that lawsuit.

**CLASS ACTION WAIVER. ARBITRATION MUST BE ON AN**

**INDIVIDUAL BASIS. THIS MEANS NEITHER YOU NOR WE MAY JOIN OR CONSOLIDATE CLAIMS IN ARBITRATION BY OR AGAINST OTHER CARDMEMBERS, OR LITIGATE IN COURT OR ARBITRATE ANY CLAIMS AS A REPRESENTATIVE OR MEMBER OF A CLASS OR IN A PRIVATE ATTORNEY GENERAL CAPACITY.**

The arbitrator may award injunctive relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party's individual claim. If a court decides that applicable law precludes enforcement of any of this paragraph's limitations as to a particular claim for relief, then after all appeals from that decision have been exhausted, that claim (and only that claim) must be severed from the arbitration and may be brought in court.

Only a court, and not an arbitrator, shall determine the validity, scope, and effect of the Class Action Waiver.

**Your Right to Go To Small Claims Court.** We will not choose to arbitrate any individual claim you bring in small claims court or your state's equivalent court. However, if such a claim is transferred, removed or appealed to a different court, we may then choose to arbitrate.

**Governing Law and Rules.** This arbitration agreement is governed by the Federal Arbitration Act (FAA). Arbitration must proceed only with the American Arbitration Association (AAA) or JAMS. The rules for the arbitration will be those in this arbitration agreement and the procedures of the chosen arbitration organization, but the rules in this arbitration agreement will be followed if there is disagreement between the agreement and the organization's procedures. If the organization's procedures change after the claim is filed, the procedures in effect when the claim was filed will apply. For a copy of each organization's procedures, to file a claim or for other information, please contact:

## ARBITRATION

- AAA at 1101 Laurel Oak Rd., Voorhees, NJ 08043, [www.adr.org](http://www.adr.org) (phone 1-877-495-4185) or
- JAMS at 620 Eighth Ave., Floor 34, New York, NY 10018, [www.jamsadr.com](http://www.jamsadr.com) (phone 1-800-352-5267).

If both AAA and JAMS are completely unavailable, and if you and we cannot agree on a substitute, then either you or we may request that a court with jurisdiction appoint a substitute.

**Fees and Costs.** If you wish to begin arbitration against us but you cannot afford to pay the organization's or arbitrator's costs, we will advance those costs if you ask us in writing. Any request like this should be sent to Discover, PO Box 30421, Salt Lake City, UT 84130-0421. If you lose the arbitration, the arbitrator will decide whether you must reimburse us for money we advanced for you for the arbitration. If you win the arbitration, we will not ask for reimbursement of money we advanced. Additionally, if you win the arbitration, the arbitrator may decide that you are entitled to be reimbursed your reasonable attorneys' fees and costs (if actually paid by you).

**Hearings and Decisions.** Arbitration hearings will take place in the federal judicial district where you live. A single arbitrator will be appointed.

The arbitrator must:

- Follow all applicable substantive law, except when contradicted by the FAA;
- Follow applicable statutes of limitations;
- Honor valid claims of privilege;
- Issue a written decision including the reasons for the award.

The arbitrator's decision will be final and binding except for any

review allowed by the FAA. However, if more than \$100,000 was genuinely in dispute, then either you or we may choose to appeal to a new panel of three arbitrators. The appellate panel is completely free to accept or reject the entire original award or any part of it. The appeal must be filed with the arbitration organization not later than 30 days after the original award issues. The appealing party pays all appellate costs unless the appellate panel determines otherwise as part of its award.

**Claim Notice and Special Payment.** If you have a Claim, before initiating an arbitration proceeding, you may give us written notice of the Claim ("Claim Notice") at least 30 days before initiating the arbitration proceeding. The Claim Notice must include your name, address, and account number and explain in reasonable detail the nature of the Claim and any supporting facts. Any Claim Notice shall be sent to us at Discover, P.O. Box 794, Deerfield, IL 60015 (or such other address as we shall subsequently provide to you). If, and only if, (1) you submit a Claim Notice in accordance with this agreement on your own behalf (and not on behalf of any other party); and (2) an arbitrator, after finding in your favor in any respect on the merits of your claim, issues you an award that (excluding any arbitration fees or attorneys' fees and costs awarded by the arbitrator) is greater than the value of Discover's last written settlement offer made before an arbitrator was selected, then you will be entitled to the amount of the award or \$7,500, whichever is greater. If you are entitled to the \$7,500, you will receive in addition any arbitration fees or attorneys' fees and costs awarded by the arbitrator.

Any arbitration award may be enforced (such as through a judgment) in any court with jurisdiction.

**Other Beneficiaries of this Provision.** In addition to you and us, the rights and duties described in this arbitration agreement apply to: our Affiliates and our and their officers, directors and employees; any third party co-defendant of a claim subject to this arbitration provision; and all Joint Accountholders and Authorized Users of your Account(s).

**Survival of this Provision.** This arbitration provision shall survive:

- closing of your Account;
- voluntary payment of your Account or any part of it;
- any legal proceedings to collect money you owe;
- any bankruptcy by you; and
- any sale by us of your Account.

**You Have the Right to Reject Arbitration for this Account.**

You may reject the arbitration agreement but only if we receive from you a written notice of rejection within 30 days of your receipt of the Card after your Account is opened. You must send the notice of rejection to: Discover, PO Box 30938, Salt Lake City, UT 84130-0938. Your rejection notice must include your name, address, phone number, Account number and personal signature. No one else may sign the rejection notice for you. Your rejection notice also must not be sent with any other correspondence. Rejection of arbitration will not affect your other rights or responsibilities under this Agreement. If you reject arbitration, neither you nor we will be subject to the arbitration provisions for this Account. Rejection of arbitration for this Account will not constitute rejection of any prior or future arbitration agreement between you and us.

### Your Billing Rights:

#### Keep This Document For Future Use

This notice tells you about your rights and our responsibilities under the Fair Credit Billing Act.

#### What To Do if You Find A Mistake On Your Statement

If you think there is an error on your statement, write to us at:

Discover

PO Box 30421

Salt Lake City, UT 84130-0421.

You may also contact us on the Web: <https://discover.com/billingerrormessage>

In your letter or on the Web, please give us the following information:

- **Account information:** Your name and account number.
- **Dollar amount:** The dollar amount of the suspected error.
- **Description of problem:** If you think there is an error on your bill, describe what you believe is wrong and why you believe it is a mistake.

You must contact us:

- Within 60 days after the error appeared on your statement.
- By 5:00 P.M. ET on the date an automated payment is scheduled, if you want to stop payment on the amount you think is wrong. You must notify us of any potential errors in writing or electronically. You may call us, but if you do we are not necessarily required to investigate any potential errors and you may have to pay the amount in question.

#### What Will Happen After We Receive Your Letter or Web Submission

When we receive your written or electronic notice, we must do two things:

1. Within 30 days of receiving your notice, we must tell you that we received it. We will also tell you if we have already corrected the error.
2. Within 90 days of receiving your notice, we must either correct the error or explain to you why we believe the bill is correct.

While we investigate whether or not there has been an error:

- We cannot try to collect the amount in question, or report you as delinquent on that amount.
- The charge in question may continue to appear on your statement.
- While you do not have to pay the amount in question, you are responsible for the remainder of your balance.
- We can apply any unpaid amount against your credit limit.

After we finish our investigation, one of two things will happen:

- **If we made a mistake:** You will not have to pay the amount in question or any interest or other fees related to that amount.
- **If we do not believe there was a mistake:** You will have to pay the amount in question, along with applicable interest and fees. We will send you a statement of the amount you owe and the date payment is due. We may then report you as delinquent if you do not pay the amount we think you owe.

If you receive our explanation but still believe your bill is wrong, you must write to us (or visit <https://discover.com/billingerrormessage>) within 10 days telling us that you still refuse to pay. If you do so, we cannot report you as delinquent without also reporting that you are questioning your bill. We must tell you the name of anyone to whom we reported you as delinquent, and we must let those organizations know when the matter has been settled between us.

If we do not follow all of the rules above, you do not have to pay the first \$50 of the amount you question even if your bill is correct.

#### Your Rights if You Are Dissatisfied With Your Credit Card Purchases

If you are dissatisfied with the goods or services that you have purchased with your credit card, and you have tried in good faith to correct the problem with the merchant, you may have the right not to pay the remaining amount due on the purchase.

To use this right, all of the following must be true:

1. The purchase must have been made in your home state or within 100 miles of your current mailing address, and the purchase price must have been more than \$50. (Note: Neither of these are necessary if your purchase was based on an advertisement we mailed to you, or if we own the company that sold you the goods or services.)
2. You must have used your credit card for the purchase. Purchases made with cash advances from an ATM or with a check that accesses your credit card account do not qualify.

If all of the criteria above are met and you are still dissatisfied with the purchase, contact us in writing or electronically at:

Discover  
PO Box 30945  
Salt Lake City, UT 84130-0945  
<https://discover.com/billingerrormessage>

While we investigate, the same rules apply to the disputed amount as discussed above. After we finish our investigation, we will tell you our decision. At that point, if we think you owe an amount and you do not pay, we may report you as delinquent.

# EXHIBIT 2

NOT A CERTIFIED COPY

**Evan Gutman CPA, JD**  
1675 NW 4th Avenue, #511  
Boca Raton, FL 33432  
561-990-7440

November 9, 2019

Zwicker & Associates, P.C.  
Attn: Zoran D. Jovanovich, Esq.  
700 W. Hillsboro Blvd.  
Building 2; Suite 201  
Deerfield Beach, FL 33441

Re: Discover Bank v Evan S. Gutman  
Case #50-2019-CA-013570-XXXX-MB

Dear Mr. Jovanovich:

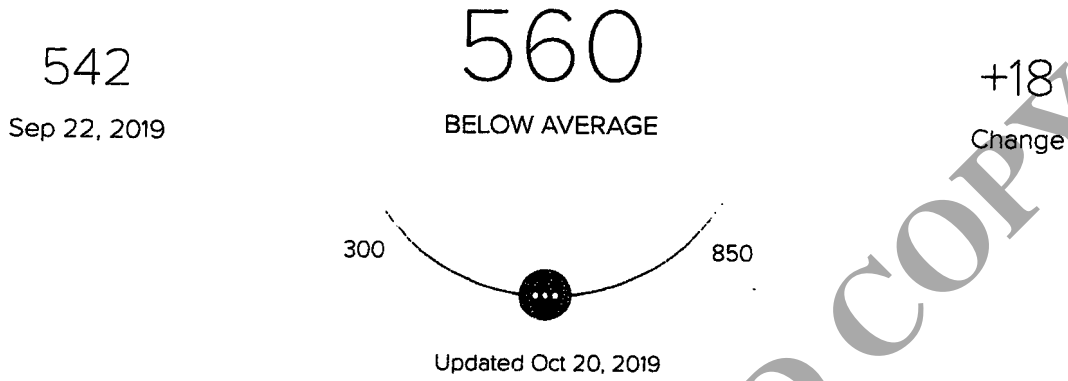
It has come to my attention that on November 8, 2019, your client Discover Bank **ILLEGALLY ACCESSED my credit report** (See attached). Also enclosed is a copy of my letter dated March 16, 2019 to your client, which expressly stated as follows:

"2. Consent for you to access my credit report for any reason is hereby REVOKED."

I think perhaps your client made a quite serious strategic error in judgment on November 8, 2019 with their commission of this additional Illegal Act.

Very truly yours,

Evan Gutman CPA, JD



- Home(/summary)
- Simulator(/simulator)
- Report (/report/credit-summary)
- Alerts(/activity) 3
- Activity (/score-change)

## Credit & Identity Alerts <sup>?</sup>

View your alerts for credit report changes, use of your SSN with a different name or address, or dark web activity associated with your identity.

[Back to All Alerts](#)

**Credit Alert**  
New Inquiry

Reported By  
Discover Financial Ser

Reported On  
Nov 08, 2019



**What does this mean?**

A potential lender or creditor reported that they pulled a copy of your credit file because you applied for credit or services with them. A potential employer may also have pulled your report because you applied for a job with them.

[View Credit Report](#)

### How could this affect my score?

Having a few inquiries a year is normal but an inquiry may cause your score to dip temporarily. However, keep in mind that too many inquiries within a short period could negatively impact your score, because it could be an indicator that you're financially overextended.

### What can I do now?

Review the detailed information below. If you applied for credit or services with the company or lender who made the inquiry, then you don't need to do anything.

Discover Financial Ser  
12 Reads Way  
New Castle, DE 19720

If you think the information in this alert is wrong, click on "See something wrong" for recommendations on what to do next.

### Why am I getting this alert?

CreditWise provides credit report alerts from two of the major credit bureaus: Experian and TransUnion.

If a lender reports your account information to both Experian and TransUnion, then you may see two alerts reflecting the same update.

[Credit Alerts FAQs](#)

Was this alert helpful?

Yes No

 [See something wrong?](#)



**Evan Gutman**  
1675 NW 4th Avenue, #511  
Boca Raton, Florida 33432  
561-990-7440

March 16, 2019

Discover  
PO Box 30666  
Salt Lake City, Utah 84130

Discover  
PO Box 30943  
Salt Lake City, Utah 84130-0943

Discover  
PO Box 15316  
Wilmington, DE 19850-5316

Re: Discover Card Account Number Ending in 0936

To Whom It May Concern,

I am writing in reference to the above credit card account, and any other accounts you may have under my name. Please be advised at this time, **I am hereby revoking all Consents of any nature that I previously provided expressly or impliedly, in writing or verbally, at any time, and of any nature, with respect to all accounts.** This Revocation of all Consents previously provided includes, but is not limited to the following:

1. Consent to go paperless is hereby REVOKED.
2. Consent for you to access my credit report for any reason is hereby REVOKED.
3. Consent for you to access any financial or other information about me from any other organizations, institutions, agencies, affiliates, subsidiaries or legal entities of any nature is hereby REVOKED.

4. Consent for you to SHARE any of my information, including but not limited to financial information, with any other organizations, institutions, agencies, affiliates or subsidiaries or legal entities of any nature is hereby REVOKED.
5. Consent for you to contact me by telephone for any reason is hereby REVOKED.
6. All other Consents of any nature, pertaining to any and all issues, not listed above, are hereby REVOKED.

Additionally, you are hereby instructed to CLOSE the above referenced account.

Pursuant to all applicable Federal and State laws, including but not limited to the Fair Debt Collections Act, Fair Credit Reporting Act, Telephone Consumer Protection Act, and all other applicable Federal and State telephonic communications and/or State Harassment statutes, **you are hereby instructed to not contact me, or attempt to contact me, by telephone on either my landline or cellphone for any reason of any nature.**

Please direct all communications to me in writing only, and I may respond as deemed appropriate at the time. Thank you for your compliance and cooperation with the foregoing legal directives.

Very truly yours,

Evan Gutman

Sent Via Certified Mail

## Track Another Package +

Tracking Number: 70182290000068276914

Remove X

Expected Delivery on

**TUESDAY**

**19** MARCH 2019 ⓘ by **8:00pm** ⓘ

**Delivered**

March 19, 2019 at 10:16 am  
Delivered  
SALT LAKE CITY, UT 84130

Get Updates ▾

Text & Email Updates ▾

Tracking History ▾

Product Information ▾

See Less ^

Feedback

### Can't find what you're looking for?

Go to our FAQs section to find answers to your tracking questions.

[https://tools.usps.com/go/TrackConfirmAction?tRef=fullpage&tLc=2&text28777=&fl\\_sahls=70182290000068276914%20](https://tools.usps.com/go/TrackConfirmAction?tRef=fullpage&tLc=2&text28777=&fl_sahls=70182290000068276914%20)

## Track Another Package +

Tracking Number: 70182290000068276907

Remove X

Expected Delivery on

**TUESDAY**

**19** MARCH 2019 ⓘ by **8:00pm** ⓘ

**Delivered**

March 19, 2019 at 10:16 am  
Delivered  
SALT LAKE CITY, UT 84130

Get Updates ▾

Text & Email Updates ▾

Tracking History ▾

Product Information ▾

See Less ^

Feedback

### Can't find what you're looking for?

Go to our FAQs section to find answers to your tracking questions.

[https://tools.usps.com/go/TrackConfirmAction?tRef=fullname&hl\\_c=2&text128777=&hl\\_ahels=70182290000068276907%20](https://tools.usps.com/go/TrackConfirmAction?tRef=fullname&hl_c=2&text128777=&hl_ahels=70182290000068276907%20)

## Track Another Package +

**Tracking Number:** 70182290000068276891

Remove X

Your item was delivered to an individual at the address at 8:15 am on March 20, 2019 in NEW CASTLE, DE 19720.

### **Delivered**

March 20, 2019 at 8:15 am  
Delivered, Left with Individual  
NEW CASTLE, DE 19720

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Feedback

Text & Email Updates 

Tracking History 

Product Information 

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## Can't find what you're looking for?

Go to our FAQs section to find answers to your tracking questions.

**FAQs** (<https://www.usps.com/faqs/uspstracking-faqs.htm>)

7018 2290 0000 6827 6914

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**SALT LAKE CITY, UT 84130**

Certified Mail Fee \$3.50

Extra Services & Fees (check box, add fee as appropriate)

<input type="checkbox"/> Return Receipt (hardcopy)	\$0.00
<input type="checkbox"/> Return Receipt (electronic)	\$0.00
<input type="checkbox"/> Certified Mail Restricted Delivery	\$0.00
<input type="checkbox"/> Adult Signature Required	\$0.00
<input type="checkbox"/> Adult Signature Restricted Delivery	\$0.00

Postage \$0.55

Total Postage and Fees \$4.05

03/16/2019

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Extra Services & Fees (check box, add fee as appropriate)

<input type="checkbox"/> Return Receipt (hardcopy)	\$0.00
<input type="checkbox"/> Return Receipt (electronic)	\$0.00
<input type="checkbox"/> Certified Mail Restricted Delivery	\$0.00
<input type="checkbox"/> Adult Signature Required	\$0.00
<input type="checkbox"/> Adult Signature Restricted Delivery	\$0.00

Postage \$0.55

Total Postage and Fees \$4.05

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Extra Services & Fees (check box, add fee as appropriate)

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<input type="checkbox"/> Return Receipt (electronic)	\$0.00
<input type="checkbox"/> Certified Mail Restricted Delivery	\$0.00
<input type="checkbox"/> Adult Signature Required	\$0.00
<input type="checkbox"/> Adult Signature Restricted Delivery	\$0.00

Postage \$0.55

Total Postage and Fees \$4.05

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