IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Discover Bank,	:	
	:	Civil Action No. C2-3-686
Plaintiff,	:	
	:	Judge Gregory L. Frost
v.	:	
	:	Magistrate Judge Mark R. Abel
New Vision Financial, LLC,	:	
	:	
Defendant.	:	

DEFENDANT NEW VISION FINANCIAL, LLC'S ANSWER TO PLAINTIFF DISCOVER BANK'S COMPLAINT, AND COUNTERCLAIMS

New Vision Financial, LLC ("New Vision") hereby answers Discover Bank's ("Discover") Complaint. Any allegation not specifically admitted herein is denied.

THE PARTIES

1. In answering Paragraph 1 of Discover's Complaint, New Vision admits that Discover is a Delaware corporation. New Vision further admits that Discover Financial Services maintains offices in Hilliard, Ohio. New Vision is without sufficient knowledge or information regarding the remaining allegations contained in Paragraph 1 of Discover's Complaint and therefore denies the same.

2. In answering Paragraph 2 of Discover's Complaint, New Vision admits that it is a Georgia corporation, and denies all of the remaining allegations contained therein.

3. In answering Paragraph 3 of Discover's Complaint, New Vision admits that the parties are from different states and that the amount in controversy is greater than $75,000. New Vision denies that jurisdiction or venue over it are proper in this Court but acknowledges the Court's December 31, 2003 Order asserting jurisdiction and venue over it.

SUMMARY OF THE ACTION

4. In answering Paragraph 4 of Discover's Complaint, New Vision admits that it entered into a contract with Discover regarding the transfer of charged off credit card loans. New Vision affirmatively denies that it is owes Discover any damages. New Vision denies each and every remaining allegation contained in Paragraph 4.

5. In answering Paragraph 5 of Discover's Complaint, New Vision denies all of the allegations contained therein.

THE FACTS

A. The Agreement

6. In answering Paragraph 6 of Discover's Complaint, New Vision affirmatively alleges that the Agreement speaks for itself and denies each and every allegation contained therein.

7. In answering Paragraph 7 of Discover's Complaint, New Vision affirmatively alleges that the Agreement speaks for itself and denies each and every allegation contained therein.

8. In answering Paragraph 8 of Discover's Complaint, New Vision affirmatively alleges that the Agreement speaks for itself and denies each and every allegation contained therein.

9. In answering Paragraph 9 of Discover's Complaint, New Vision affirmatively alleges that the Agreement speaks for itself and denies each and every allegation contained therein.

10. In answering Paragraph 10 of Discover's Complaint, New Vision affirmatively alleges that the Agreement speaks for itself and denies each and every allegation contained

therein.

11. In answering Paragraph 11 of Discover Complaint, New Vision affirmatively alleges that the Agreement speaks for itself and denies each and every remaining allegation contained therein. New Vision further affirmatively alleges that Discover, through its agents and or representatives, made representations to New Vision concerning the accounts sold to New Vision.

12. In answering Paragraph 12 of Discover's Complaint, New Vision affirmatively alleges that the Agreement speaks for itself and denies each and every allegation contained therein. New Vision further affirmatively alleges that Discover, through its agents and or representatives made representations to New Vision concerning the accounts sold to New Vision.

B. <u>The Amendments to the Agreement</u>

13. In answering Paragraph 13 of Discover's Complaint, New Vision admits that two amendments to the Agreement were executed by Discover and New Vision. New Vision admits that an Amendment was entered on both October 1, 2001 and July 10, 2002. New Vision denies each and every other allegation contained in Paragraph 13 of Discover's Complaint.

14. In answering Paragraph 14 of Discover's Complaint, New Vision admits that it and Discover executed two amendments to the Agreement. One amendment became effective on October 1, 2001 and the second amendment became effective on July 10, 2002. New Vision further answers Paragraph 14 by affirmatively alleging that the Agreement and any amendments thereto speak for themselves. New Vision denies each and every other allegation contained in Paragraph 14.

15. In answering Paragraph 15 of Discover's Complaint, New Vision affirmatively

alleges that the Agreement and all amendments thereto speak for themselves and denies each and every allegation contained therein.

C. New Vision's Breach of the Agreement

16. New Vision admits that it did not purchase any accounts from Discover after October 25, 2002. New Vision denies each and every other allegation contained in Paragraph 16.

17. In answering Paragraph 17 of Discover's Complaint, New Vision affirmatively alleges that any correspondence between New Vision and Discover speaks for itself. New Vision denies each and every allegation contained in Paragraph 17.

18. In answering Paragraph 18 of Discover's Complaint, New Vision affirmatively alleges that any correspondence between Mr. Deter and Mr. Howard speaks for itself and denies each and every allegation contained in Paragraph 18.

19. In answering Paragraph 19 of Discover's Complaint, New Vision affirmatively alleges that any correspondence between Discover and New Vision speaks for itself and denies each and every allegation contained in Paragraph 19.

20. In answering Paragraph 20 of Discover's Complaint, New Vision affirmatively alleges that any correspondence between Discover Financial Services and New Vision speaks for itself and denies any allegations contained in Paragraph 20.

21. In answering Paragraph 21 of Discover's Complaint, New Vision affirmatively alleges that any correspondence between New Vision and Discover speaks for itself and denies any allegations contained in Paragraph 21.

D. Discover Bank's Mitigation Damages

22. In answering Paragraph 22 of Discover's Complaint, New Vision denies the

allegations contained therein.

23. In answering Paragraph 23 of Discover's Complaint, New Vision affirmatively alleges that the Agreement speaks for itself and denies any allegations contained in Paragraph 23 of Discover's Complaint.

E. <u>Discover Bank's Renewal Term Damages</u>

24. In answering Paragraph 24 of Discover's Complaint, New Vision affirmatively alleges that the July 10, 2002 amendment speaks for itself and denies the allegations contained therein.

25. In answering Paragraph 25 of Discover's Complaint, New Vision denies the allegations contained therein as to Discover Bank's "estimates" for lack of knowledge or information sufficient to form a belief as to their truth, and denies each and every remaining allegation therein.

F. <u>Discover Bank's Other Damages</u>

26. In answering Paragraph 26 of Discover's Complaint, New Vision affirmatively alleges that the Agreement speaks for itself and denies the allegations contained therein.

27. In answering Paragraph 27 of Discover's Complaint, New Vision affirmatively alleges that the Agreement speaks for itself and denies the allegations contained therein.

28. In answering Paragraph 28 of Discover's Complaint, New Vision denies the allegations contained therein.

<u>FIRST CLAIM FOR RELIEF</u>

29. In answering Paragraph 29 of Discover's Complaint, New Vision reasserts each and every of its answers to the foregoing allegations as though fully set forth herein.

30. In answering Paragraph 30 of Discover's Complaint, New Vision denies the allegations contained therein.

31. In answering Paragraph 31 of Discover's Complaint, New Vision denies the allegations contained therein.

32. In answering Paragraph 32, New Vision denies the allegations contained therein.

33. In answering Paragraph 33 of Discover's Complaint, New Vision denies the allegations therein. In furthering answering Paragraph 33 of Discover's Complaint, New Vision incorporates the allegations set forth in its Counterclaims below.

34. In answering Paragraph 34 of Discover's Complaint, New Vision denies the allegations contain therein.

35. In answering Paragraph 35 of Discover's Complaint, New Vision denies the allegations contained therein.

SECOND CLAIM FOR RELIEF

36. In answering Paragraph 36 of Discover's Complaint, New Vision incorporates and reasserts its answers to each of the foregoing paragraphs as though fully set forth herein.

37. In answering Paragraph 37 of Discover's Complaint, New Vision affirmatively alleges that the Agreement speaks for itself and denies that it is obligated to pay Discover Bank's attorneys' fees.

38. In answering Paragraph 38 of Discover's Complaint, New Vision denies the allegations contained therein.

AFFIRMATIVE DEFENSES

New Vision, for its affirmative defenses to Discover Bank's complaint affirmatively alleges the following:

39. New Vision affirmatively alleges, in order to avoid waiver, that it did not receive adequate consideration for the money it paid to Discover.

40. New Vision affirmatively alleges that Discover engaged in fraud.

41. New Vision affirmatively alleges, in order to avoid waiver, payment and release.

42. New Vision affirmatively alleges, in order to avoid waiver, that Discover waived any claims against it.

43. New Vision affirmatively alleges, in order to avoid waiver, that Discover is precluded from bringing claims against New Vision based upon res judicata and estoppel.

44. New Vision affirmatively alleges, in order to avoid waiver, that Discover is barred from bringing claims against New Vision based upon the doctrine of illegality.

45. New Vision affirmatively alleges, in order to avoid waiver, that Discover is barred from bringing claims against New Vision based upon the doctrine of laches.

46. New Vision affirmatively alleges, in order to avoid waiver, that Discover is barred from bringing claims against New Vision because it did not comply with the statute of frauds.

47. New Vision affirmatively alleges, in order to avoid waiver, that Discover is barred from bringing claims against New Vision because the contract at issue was executed under duress.

48. New Vision affirmatively alleges that Discover's damages, if any, were waived after April 1, 2003 because Discover terminated the Agreement.

49. New Vision affirmatively alleges, in order to avoid waiver, all of the affirmative defenses set forth in Rule 12, Federal Rules of Civil Procedure.

50. New Vision affirmatively alleges that Discover's claim for attorneys' fees is barred as unenforceable under Ohio public policy and common law.

WHEREFORE, defendant New Vision, having fully answered Discover Bank's Complaint prays for Judgment as follows:

a. that Discover's Complaint be dismissed in its entirety with prejudice;

b. that New Vision be awarded its reasonable attorneys' fees in an amount to be determined by the Court;

c. that New Vision be awarded its costs and fees associated with defending against the claims set forth herein; and

d. further relief as this Court deems just and proper.

NEW VISION'S COUNTERCLAIMS AGAINST DISCOVER BANK

Defendant New Vision Financial, LLC, for its counterclaims against Discover Bank and Discover Financial Services alleges as follows:

THE PARTIES, JURIDICTION AND VENUE

1. New Vision Financial is a Georgia company, with its principal place of business in Duluth, Georgia.

2. Discover Bank is a Delaware corporation with its principal place of business located in Wilmington, Delaware.

3. Discover Financial Services is an Illinois company with its principal place of business in Riverwoods, Illinois. Discover Financial Services has a facility in Hilliard, Ohio.

4. Jurisdiction and venue have been deemed to be proper in this Court though disputed by New Vision.

UNDERLYING FACTS SUPPORTING COUNTERCLAIMS

5. In the Fall of 2000, Enhanced Asset Management, on behalf of New Vision, and Discover engaged in conversations regarding a "forward flow" agreement pursuant to which Discover would sell New Vision charged off credit card accounts.

6. Prior to the execution of any agreement for sale of the credit card accounts, Enhanced Asset Management, on behalf of New Vision, requested and was provided with a sample file that Discover represented would be similar or substantially similar to the accounts New Vision would receive on a monthly basis if New Vision agreed to enter into the Agreement.

7. An electronic file was delivered to Enhanced Asset Management on behalf of New Vision in the Fall of 2000.

8. The electronic file included an approximately $20 million sample portfolio represented by Discover to be similar or substantially similar to portfolios that New Vision would receive from Discover on a monthly basis over the life of the Agreement.

9. The electronic file included personal data on each of the account holders in the sample file including addresses, phone numbers, balance, last payment date and other indicators that provided New Vision with an ability to predict the liquidity of the accounts it intended to purchase from Discover.

10. Enhanced Asset Management took the electronic file and put it through a stratification computer program that provided New Vision with crucial data to determine: (a) whether to enter into an Agreement with Discover; (b) a reasonable liquidation rate for similar portfolios; and (c) a price that New Vision could afford to pay for the portfolios.

11. The data included on the electronic file was crucial to New Vision in its efforts to properly and accurately value and bid on the charged off credit card accounts.

12. In an email dated January 21, 2001, Bob Deter, Discover's Placement Manager, represented to Kirk Moquin and John Schanck of Enhanced Asset Management that Discover would sell to New Vision fresh charged off credit card accounts without using a selection procedure and represented that Discover's method of selecting accounts to be sold would not result in adverse selection of accounts to New Vision.

13. Mr. Deter's representation was material and important to New Vision because selection procedures or adverse selection can destroy the value of a portfolio of credit card accounts.

14. Based upon the data included with the electronic file and Mr. Deter's representations, New Vision made a bid on the accounts. The bid price offered was based upon

New Vision and Enhanced Asset Management's knowledge and experience in the industry, the prevailing price for credit card accounts, the data provided by Discover on the electronic file, and Mr. Deter's representations regarding selection procedures and adverse selection.

15. The Credit Card Accounts Sale Agreement — the forward flow agreement (the "Agreement") — became effective January 5, 2001.

16. New Vision began purchasing accounts on a monthly basis from Discover in January 2001.

17. Each month between January and April 2001, New Vision purchased portfolios of charged off credit card accounts from Discover with a face amount between eleven and twenty million dollars.

18. The first three months of portfolios purchased by New Vision from Discover were similar or substantially similar to the sample file originally delivered to New Vision by Discover.

19. In April 2001, New Vision recognized that the characteristics of the portfolios delivered by Discover to New Vision were materially and substantially different than those delivered in the previous three months.

20. On April 30, 2001, Kirk Moquin of Enhanced Asset Management had a telephone conversation with representatives of Discover. The purpose of the telephone call was to discuss alarming changes to the characteristics of the portfolios sold to New Vision between January and April 2001.

21. Between January 2001 and April 2001, the average balance of an account sold by Discover to New Vision increased by 44.5%; the number of accounts with balances greater than $10,000 increased by 216%; and the face value of accounts with balances greater than $10,000 increased by 128%.

22. On May 14, 2001, Discover admitted to Moquin that in April 2001, New Vision received a larger percentage of accounts with balances greater than $10,000 than it should have or would have received in the absence of adverse selection.

23. Deter represented that the higher balances sold to New Vision was the result of a higher than normal percentage of platinum cards.

24. In doing so, Mr. Deter admitted that Discover had engaged in adverse selection as to New Vision in that Discover transferred a larger number of high balance accounts to New Vision than would have been transferred had the selection process been random.

25. High balance accounts, especially those with balances over $10,000, are more difficult to collect than accounts with lower balances.

26. Deter, on behalf of Discover, promised to include a breakdown of the number of platinum accounts included with each portfolio purchased by New Vision from Discover from that date forward.

27. Discover never provided any additional data reflecting the number of platinum cards included with the portfolios it sold to New Vision.

28. On July 31, 2001, Discover was again notified that the accounts it sold to New Vision were not liquidating at levels that accounts of the quality described by Discover should liquidate.

29. On August 21, 2001, Enhanced Asset Management on behalf of New Vision informed Discover that it would no longer purchase accounts from Discover at the current price.

30. On September 4, 2001, Mr. Howard had a telephone conference with Messrs. Deter and Daverio of Discover regarding the quality of the accounts that it was receiving from Discover. During the telephone conference, Howard expressed displeasure with the performance

of the accounts purchased from Discover in March or April 2001.

31. Mr. Deter responded to Mr. Howard that Discover's contingency agencies were doing well.

32. Mr. Howard, surprised by this revelation, told Mr. Deter that the only way this was possible was if New Vision was getting accounts that were not similar or substantially similar to the accounts that Discover was sending to its contingency agencies.

33. Deter denied that there were any significant differences between the accounts delivered to New Vision and the accounts delivered to Discover's contingency agencies.

34. Discover employed adverse selection procedures to insure that the higher quality accounts were delivered to its contingency agencies and that New Vision only received lower quality accounts Discover determined were not as valuable.

35. Deter again denied that Discover employed any selection procedures and assured New Vision that the accounts it received from Discover were randomly selected and that no selection procedures were employed.

36. Effective October 1, 2001, the Agreement was amended.

37. Based upon representations made by Mr. Deter during negotiations for the October 1, 2001 amendment, New Vision purchased almost $15 million worth of credit card accounts from Discover on November 16, 2001.

38. The terrorist attacks of September 11, 2001 made the collection of charged off credit card accounts difficult throughout the industry.

39. September, October and November 2001 provided challenges to New Vision on each of the portfolio of accounts that it purchased regardless of the issuer.

40. By December 2001, however, the state of the industry began to improve.

41. New Vision's collection on most of its portfolios improved dramatically. New Vision saw a strong spike in its collections on each of the portfolios of accounts it owned, except Discover portfolios.

42. Believing that the poor performance on the Discover accounts could be a function of the collectors employed, New Vision retained Collect America, the company that had enjoyed great success with Discover portfolios in the early part of 2001.

43. Upon information and belief, in a conversation during the latter part of 2001 or early part of 2002 between Fred Howard of New Vision and Ed Reiner of Collect America, Mr. Reiner indicated that the Discover accounts received by Collect America was not of equal quality as that received during the early part of 2001.

44. A report detailing the collection on each portfolio of accounts owned by New Vision was created each month.

45. The January and February 2002 reports indicated that fresh charge off Chase and MBNA portfolios of accounts purchased by New Vision were liquidating at rates far greater than Discover.

46. Concerned by the striking differences between seemingly similar accounts, Mr. Howard again confronted Deter about the quality of accounts that New Vision was receiving from Discover. Mr. Howard's complaints in January and February 2002 were similar or substantially similar to complaints made by him to Deter in prior months.

47. Deter again denied that Discover was employing any selection procedures. Deter represented to Mr. Howard again that Discover's contingency agencies continued to do well and that they were getting the same accounts as New Vision. Throughout the end of 2001 and early part of 2002, Mr. Deter blamed the low collections on Discover accounts on the events of 9/11 or

that New Vision's agencies were not doing a quality job in collecting on those accounts.

48. Mr. Deter also claimed that the pool of accounts New Vision received in the latter part of 2001 were the same as those received during the early part of 2001.

49. Upon information and belief, Mr. Deter's representations regarding the quality of accounts being transferred, the selection procedures being employed, the cause of poor performance on Discover portfolios of accounts, and the price paid by other issuers for similar paper were all false.

50. On February 22, March 28 and May 10, 2002, New Vision contacted Discover to inform it that New Vision would be unable to purchase accounts from Discover that month due to extenuating circumstances.

51. New Vision did not purchase any accounts from Discover in February 2002 through May 2002 because it was losing tremendous amounts of money on each portfolio of accounts purchased from Discover notwithstanding repeated and varied attempts by New Vision to improve the collection performance on these accounts, including but not limited to the use of various collection agencies and law firms.

52. Upon information and belief, New Vision's poor collection results on Discover accounts was caused by Discover's use of adverse selection procedures designed to discriminate against New Vision by transferring higher quality accounts to other debt purchasers or contingency agencies.

53. Discover's use of adverse selection procedures contradicted prior statements made by Discover to New Vision assuring New Vision that Discover did not and would not employ such selection procedures to the detriment of New Vision.

54. In the Spring of 2002, Deter contacted Mr. Howard to indicate that Discover

needed New Vision to begin buying accounts again.

55. Mr. Howard indicated that New Vision could not purchase accounts from Discover at the current price because it was losing money on each purchase.

56. Mr. Howard also indicated to Mr. Deter in the spring of 2002 that the portfolios New Vision purchased in the latter part of 2001 were nothing like the portfolios purchased in the early part of 2001.

57. On July 10, 2002, New Vision and Discover executed a second amendment to the Agreement.

58. After execution of the second amendment, New Vision, with expectations and reliance that the representations of Deter and Discover were true, again began purchasing accounts from Discover.

59. On September 24, 2002, New Vision purchased accounts from Discover with a face value of over $14,000,000.

60. Upon receiving the portfolio in September 2002, New Vision was shocked and dismayed to observe an additional data field on the disk containing all of the account level data.

61. The new field was entitled "Attorney Reference" and indicated whether or not an attorney had been retained on behalf of the debtor.

62. Information regarding whether an attorney was retained had never been provided to New Vision prior to September 2002.

63. The portfolios of accounts received from Discover by New Vision in the fall of 2002 included an unusually large number of accounts where the debtor had retained an attorney to represent a debtor's interests.

64. The fact that an attorney has been retained dramatically reduces the value of the

account because a collector cannot legally contact a debtor directly if that debtor has retained an attorney.

65. Mr. Howard, understandably upset about the large number of attorney accounts included with the Discover portfolio contacted Mr. Deter to find out (a) why the new field was included with the new portfolio; (b) why there was such a large number of attorney accounts in the portfolio; and (c) why that information had not been provided before.

66. Deter indicated that Discover had always had information regarding attorney reference accounts but chose not to provide such information with the data provided to the purchasers of Discover portfolios.

67. The fact that Discover had known yet failed to disclose to New Vision the material fact that debtor accountholders had retained counsel exposed New Vision to unlimited liability under the Fair Debt Collection Practices Act.

68. New Vision purchased its last portfolio of accounts from Discover on October 25, 2002.

69. Throughout the relationship between New Vision and Discover, New Vision received a much higher percentage of accounts originating from Texas and Florida than a random selection would have yielded.

70. Texas and Florida accounts are much more difficult to collect than other jurisdictions because local collection laws restrict the collection efforts that may be made upon a debtor within their jurisdictions.

71. The large volume of accounts from Texas and Florida is further evidence of Discover's selection procedures and or adverse selection.

CLAIMS

Count I—Fraud/ Intentional Misrepresentation

72. New Vision incorporates its allegations as set forth in Paragraph 1-71 as though fully set forth herein.

73. Discover made numerous misrepresentations to New Vision regarding the manner in which it selected accounts to be sold to New Vision, the characteristics of accounts that Discover was going to sell to New Vision for the agreed upon price, the selection procedures employed by Discover, and omitted important and relevant data that was material to New Vision.

74. The misrepresentations made by Discover were material to the transactions between it and New Vision.

75. Discover knew it was making false statements to New Vision and/or that it was omitting and failing to disclose material and important information to New Vision during the course of the business relationship between the parties as described above.

76. The misrepresentations and/or omissions described above were made with an intent to deceive New Vision and with the expectation that New Vision would rely upon the representations and/or omissions.

77. New Vision's reliance, under the circumstances described above, was justified.

78. New Vision suffered substantial damages as a result of Discover's misrepresentations and/or omissions.

Count II—Fraud In The Inducement

79. New Vision incorporates its allegations as set forth in Paragraphs 1-78 of its Counterclaims as though fully set forth herein.

80. Discover falsely represented the characteristics of accounts it intended to sell to New Vision, omitted material information regarding the accounts it intended to sell to New

Vision, and made material misrepresentations regarding its business practices and dealings with other purchasers of credit card accounts in order to induce New Vision to: (a) enter in the Agreement; (b) not terminate the Agreement; and (c) amend and extend the Agreement.

81. At the time of each misrepresentation or omission, Discover had knowledge that it was misrepresenting or omitting material information to New Vision or had an utter disregard for the truthfulness of its statements that knowledge must be inferred.

82. As detailed above, Discover's specific intent in making the misrepresentations and/or omitting material information was to induce New Vision to rely upon them.

83. New Vision suffered substantial financial injuries as a result of its reliance upon Discover's misrepresentations and/or omissions.

Count III—Fraud And Deceit

84. New Vision incorporates its allegations as set forth in Paragraphs 1-83 as though fully set forth herein.

85. Discover made actual or implied representations and/or concealed facts which were material to the transaction between it and New Vision.

86. The representations made by Discover were made falsely, with knowledge of its falsity, or with such utter disregard and recklessness as to whether it is true or false that knowledge may be inferred.

87. Discover made its misrepresentations and/or omissions as described above with the intent of misleading New Vision into relying upon it.

88. New Vision relied upon Discover's false statements to its detriment and was justified in relying upon Discover.

89. New Vision was substantially injured as a result and as the consequence of its

reliance.

Count IV— Negligent Misrepresentation

90. New Vision incorporates its allegations as set forth in Paragraphs 1-89 as though fully set forth herein.

91. Discover supplied false information to New Vision in regards to the Agreement between them and the characteristics of the accounts it would sell to New Vision.

92. Discover failed to exercise reasonable care or competence in compiling or communicating information to New Vision.

93. New Vision relied upon the information provided by Discover in its decision to enter into the Agreement, not terminate the Agreement, and/or amend and extend the Agreement.

94. New Vision's reliance upon the information provided by Discover was justified.

95. New Vision suffered damages as a result of its reliance upon Discover's representations.

Count V—Unjust Enrichment

96. New Vision incorporates its allegations as set forth in Paragraphs 1-95 of its Counterclaims as though fully set forth herein.

97. New Vision paid Discover for accounts that were described to New Vision by Discover as having certain characteristics making the accounts worth the price paid.

98. Discover knew that what it was transferring to New Vision was not what it originally described to New Vision yet kept the money that had been paid to it.

99. Discover did not refund money paid to it for accounts that it knew were not worth the price paid.

100. As such, Discover was unjustly enriched under Ohio law.

PRAYER FOR RELIEF

WHEREFORE, New Vision, having proved its claims against Discover Bank prays that Judgment be entered against Discover and in its favor as follows:

A. an award of plaintiffs' actual, consequential, and incidental damages

B. reasonable attorneys' fees and costs;

C. punitive damages in an amount to punish Discover for its wrongful conduct and to deter Discover from similar conduct in the future;

D. pre- and post-judgment interest; and

E. such other relief as the Court deems just and proper.

Respectfully submitted,

s/Rodney A. Holaday
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CERTIFICATE OF SERVICE

I hereby certify that on January 30, 2004, I electronically filed the forgoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to:

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