

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

DISCOVER BANK, :  
 :  
 Plaintiff, : Civil Action No. C2-3-686  
 :  
 -against- : Judge Gregory L. Frost  
 :  
 : Magistrate Judge Mark R. Abel  
 :  
 :  
 NEW VISION FINANCIAL, LLC., :  
 :  
 Defendant. :

STATE OF NEW YORK )  
 ) ss.:  
 COUNTY OF NEW YORK )

**AFFIDAVIT OF MARK H. MOORE IN SUPPORT OF PLAINTIFF'S  
MOTION TO DISMISS DEFENDANT'S AFFIRMATIVE DEFENSES  
AND COUNTERCLAIMS AND FOR PARTIAL JUDGMENT ON THE PLEADINGS**

MARK H. MOORE, being duly sworn, deposes and says:

1. I am counsel for plaintiff Discover Bank in the present action. I submit this affidavit in support of plaintiff Discover Bank's motion to dismiss the affirmative defenses and counterclaims of defendant New Vision Financial, LLC. ("New Vision") pursuant to Fed. R. Civ. P. 12(b)(6) and for partial judgment on the pleadings on the issue of liability pursuant to Fed. R. Civ. P. 12(c). I make this affidavit to present to the Court the parties' pleadings and certain documents referred to therein, which are also referred to in Discover Bank's motion.

2. Attached hereto as Exhibit 1 is a true and correct copy of the Complaint filed in this action, along with the following exhibits to the complaint.

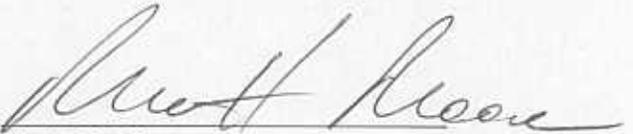
a) Exhibit A – Agreement dated as of January 5, 2001;

- b) Exhibit B – Amendments to the Agreement dated (i) July 10, 2002;  
(ii) February 8, 2002; and (iii) October 1, 2001.

3. Attached hereto as Exhibit 2 is a true and correct copy of the Answer filed in this action.

4. Attached hereto as Exhibit 3 are true and correct copies of letters from New Vision to Discover Bank dated November 20, 2002, January 23, 2003, February 20, 2003 and March 10, 2003, which are referenced in the pleadings.

5. Attached hereto as Exhibit 4 are true and correct copies of letters from Discover Bank to New Vision dated February 4, 2003 and March 10, 2003, which are referenced in the pleadings.

  
Mark H. Moore

Sworn to before me this  
10<sup>th</sup> day of March, 2004.

  
Notary Public

SUSAN E. FIORETTI  
Notary Public, State of New York  
No. 01FL4923004  
Qualified in Queens County  
Commission Expires March 14, 20 06