

STATE OF MICHIGAN
IN THE 41B DISTRICT COURT

CAPITAL ONE BANK (USA), N.A.

Plaintiff,

vs.

Case No.

Hon.

Defendant.

WEBER & OLCESE, P.L.C.
Jeffrey M. Weber (P49553)
Attorneys for Plaintiff
P.O. Box 3006
Birmingham, Michigan 48012
800/594-5239

COMPLAINT

There is no other pending or resolved civil action arising out the same transaction or occurrence as alleged in this complaint.

NOW COMES Plaintiff, CAPITAL ONE BANK (USA), N.A. ("Plaintiff"), by and through its attorneys, Weber & Olcese, P.L.C., and for its Complaint against Defendant(s), ("Defendant"), states as follows:

JURISDICTION

1. That Plaintiff's attorneys are debt collectors attempting to collect a debt and any information obtained will be used for that purpose.
2. That pursuant to MCR 2.113(C)(2), there is no other pending or resolved civil action arising out of the transactions or occurrences alleged in this Complaint.
3. That Plaintiff is doing business in the City of Richmond, VA 23238.
4. That upon information and belief, Defendant is domiciled in the City of HARRISON TOWNSHIP MI 48045-2569.
5. That the amount in controversy is \$4,385.83.

COUNT I

BREACH OF CONTRACT

6. That Plaintiff incorporates by reference Paragraphs 1 through 5.

7. That on or about August 27, 2012, Defendant entered into a contract with Plaintiff for goods sold and delivered and/or services rendered on open account, Account Number(s):

*****4011

8. That a copy of the contract is attached or, alternatively, the contract is in the possession of Defendant pursuant to MCR 2.113(F)(1)(b) (see attached Exhibits).

9. That the contract was entered into for valid consideration and lawful and proper purposes and is legally enforceable in all respects.

10. That Plaintiff has performed all of its obligations and fulfilled all of its conditions precedent under the terms of the contract.

11. That Defendant has, without excuse, defaulted upon and materially breached the contract.

12. That as a result of Defendant's breach, Plaintiff has suffered damages in the sum of \$4,385.83 (see attached Exhibits).

WHEREFORE, Plaintiff expressly disclaims any and all attorneys' fee and prays that Judgment be entered in its favor and against Defendant in the amount of \$4,385.83.

COUNT II

ACCOUNT STATED

13. That Plaintiff incorporates by reference Paragraphs 1 through 12.

14. That Plaintiff and Defendant have consented to a sum as the credit balance due from one another on the account.

15. That Defendant has received periodic billing statements from Plaintiff to which Defendant has made payment(s) towards and/or not objected to.

16. That Defendant's payments and/or failure to successfully question the state of the account within a reasonable amount of time constitutes an admission of correctness.

17. That Defendant has been given all set-offs, credits and/or allowances on the account and is indebted to Plaintiff in the amount of \$4,385.83(see attached Exhibits).

18. That a statement of the account and an affidavit verifying the account are attached to this Complaint and incorporated by reference (see attached Exhibits).

WHEREFORE, Plaintiff expressly disclaims any and all attorneys' fee and prays that Judgment be entered in its favor and against Defendant in the amount of \$4,385.83.

COUNT III

UNJUST ENRICHMENT

19. That Plaintiff incorporates by reference Paragraphs 1 through 18.

20. That, alternatively, Defendant has received a benefit from Plaintiff in the amount of \$4,385.83.

21. That Defendant has been unjustly enriched at the expense of Plaintiff.

22. That Defendant is required to make restitution to Plaintiff.

23. That it is inequitable for Defendant to retain the benefit.

WHEREFORE, Plaintiff expressly disclaims any and all attorneys' fee and prays that Judgment be entered in its favor and against Defendant in the amount of \$4,385.83.

Respectfully submitted,

WEBER & OLCESE, P.L.C.

By: _____

- Michael J. Olcese (P46247)
 - Jeffrey M. Weber (P49553)
 - Rose Abu-Farha (P82489)
 - Sazan Bardha (P65425)
 - Michael Kirschenheiter (P75722)
 - Geoffrey Werber (P67124)
- Attorneys for Plaintiff

Dated: May 24, 2021