

[REDACTED]

FILED

San Francisco County Superior Court

DEC 21 2012

CLERK OF THE COURT

BY: [Signature] Deputy Clerk

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO**

CAPITAL ONE BANK (USA), N.A.,

Plaintiff,

v.

JOHNSON CHIU, *et al.*,

Defendants.

CASE NO. CGC-11-515719

*The Hon. Kay Tsenin
Dept. 804*

[Signature]
[REDACTED]

JUDGMENT

JOHNSON CHIU,

Cross-Complainant,

v.

CAPITAL ONE BANK (USA), N.A., a national
banking association, and ROES 1 through 10,
inclusive,

Cross-Defendants.

Complaint filed: November 7, 2011
Trial Date: November 13, 2012

1 **TO EACH PARTY AND ITS COUNSEL OF RECORD:**

2 This matter came on for a bench trial before the Honorable Kay Tsenin in Department 504 of
3 this Court on November 13, 2012 and concluded on November 14, 2012. Plaintiff and Cross-
4 Defendant Capital One Bank (USA), N.A. ("Capital One") appeared through its counsel of record,
5 Hunter R. Eley and Amy I. Borlund with the law firm of Doll Amir & Eley LLP. Defendant and Cross-
6 Complainant Johnson Chiu ("Chiu") appeared through his counsel of record, Raeon Roulston with the
7 Consumer Law Firm, Inc.

8 The Court, having heard and considered the testimony and evidence, and having read and
9 considered the parties' trial briefs and arguments relating thereto, and good cause appearing, rules in
10 favor of Plaintiff and Cross-Defendant Capital One Bank (USA), N.A. and against Defendant and
11 Cross-Complainant Johnson Chiu on both the Complaint and the Cross-Complaint. Specifically, the
12 Court finds that, with respect to the Complaint, Capital One demonstrated at trial that Chiu incurred a
13 debt of \$3,852.84 for which Chiu is liable to Capital One on common count theories. The Court also
14 finds that, with respect to the Cross-Complaint, Chiu did not demonstrate any violation of the Rosenthal
15 Fair Debt Collections Practices Act (Cal. Civ. Code § 1788 *et seq.*).

16 Specifically, the Court finds that Chiu applied for his Capital One credit card account
17 electronically on or about October 23, 2004 through an application requiring an electronic signature;
18 that Chiu used the credit card to make purchases; that Chiu made payments on the credit card account
19 for more than three years; that Chiu received monthly billing statements indicating transactions, fees
20 and payments; that Chiu's last transaction on the credit card occurred on March 1, 2008; that Capital
21 One sent a statement to Chiu in September 2008 that Chiu never paid; and that Chiu's credit card
22 account charged off on October 20, 2008. Capital One filed its Complaint seeking recovery on Chiu's
23 credit card account on November 7, 2011. Chiu contends that the Complaint was filed beyond the
24 three-year statute of limitations in Virginia for unwritten contracts. The Court, however, finds that the
25 agreement between Capital One and Chiu was in writing and, as such, rules that Capital One's filing of
26 the Complaint in this action was not barred by the statute of limitations.

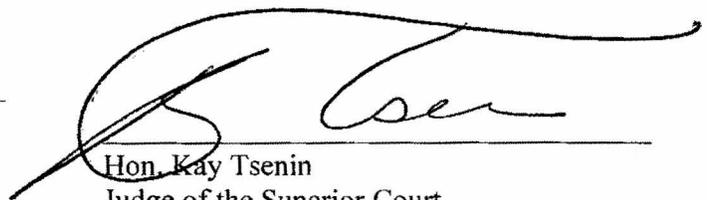
DOLL AMIR & ELELY LLP
1888 Century Park East, Suite 1850
Los Angeles, CA 90067
(310) 557-9100

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NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that:

1. Judgment is entered in favor of Plaintiff Capital One Bank (USA), N.A. and against Defendant Johnson Chiu on the Complaint in this action in the amount of \$3,852.84;
2. Judgment is entered in favor of Cross-Defendant Capital One Bank (USA), N.A. and against Cross-Complainant Johnson Chiu on the Cross-Complaint in this action, as Capital One's Complaint was not filed outside the applicable statute of limitations; and
3. As the prevailing party, and upon timely filing of a memorandum of costs, Plaintiff and Cross-Defendant Capital One Bank (USA), N.A. is entitled to an award of reasonable costs.

DATE: 12/20/2012



Hon. Kay Tsenin
Judge of the Superior Court



**Superior Court of California
County of San Francisco**

Capital One Bank (USA), N.A.

Plaintiff,

Versus

Johnson Chiu

Defendant,

Case Number: **CGC-11-515719**

CERTIFICATE OF MAILING
(CCP 1013a (4))

I, Kevin Lee, a Deputy Clerk of the Superior Court of the City and County of San Francisco, certify that I am not a party to the within action.

On **December 21, 2012** I served the attached **Judgment** by placing a copy thereof in a sealed envelope, addressed as follows:

Raeon R. Roulston, Attorney At Law
12 South First Street, Suite 1014
San Jose, Calif. 95113-2418

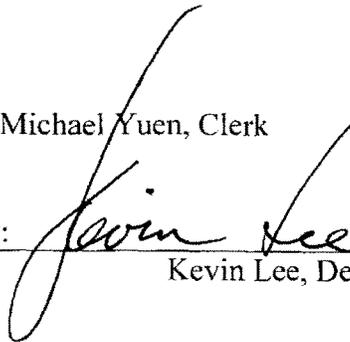
Hunter R. Eley, Attorney At Law
Amy Borlund, Attorney At Law
1888 Century Park East, Suite 1850
Los Angeles, Calif. 90067

and, I then placed the addressed, postage paid, sealed envelopes in the outgoing mail at 400 McAllister Street, San Francisco, CA 94102 on the date indicated above for collection, and mailing on that date following standard court practices.

Dated: **December 21, 2012**

T. Michael Yuen, Clerk

By:



Kevin Lee, Deputy Clerk