

IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

No.: 31054

WELLS FARGO BANK, N.A.,

Plaintiff/Appellant,

v.

MARY MYERS,

Defendant/Appellee.

APPEAL FROM THE CIRCUIT COURT
FOURTH JUDICIAL DISTRICT
LAWRENCE COUNTY, SOUTH DAKOTA

THE HONORABLE ERIC J. STRAWN
Circuit Court Judge

PLAINTIFF'S BRIEF

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TABLE OF CONTENTS

| | |
|---|----|
| TABLE OF CONTENTS | i |
| TABLE OF AUTHORITIES | ii |
| JURISDICTIONAL STATEMENT | 1 |
| STATEMENT OF LEGAL ISSUES AND AUTHORITIES | 1 |
| ASSIGNMENT OF ERRORS | 2 |
| STATEMENT OF CASE | 3 |
| STANDARD OF REVIEW | 5 |
| ARGUMENT | 6 |
| 1. RULE 11 SANCTIONS ARE LIMITED TO WHAT IS STATED IN THE PLEADINGS AND NOT ANY OUTSIDE CONDUCT AND IT IS AN ABUSE OF DISCRETION TO LOOK BEYOND THE PLEADINGS. | |
| 2. THE TRIAL COURT ERRED IN FINDING A PLEADING WHICH IS 100% CORRECT CAN VIOLATE RULE 11 AND BE SUBJECT SANCTIONS. | |
| 3. THE TRIAL COURT ERRED IN BASING SANCTIONS UPON PLAINTIFF FOR CONDUCT OUTSIDE OF THE PLEADINGS. SEE 15-6-11(c). | |
| 4. THE TRIAL COURT ERRED IN AWARDING SANCTION IN CONTRAVENE TO 15-6-11(c) (2). NATURE OF SANCTIONS, DEFERENCE. | |
| 5. THE TRIAL COURT ERRED IN FINDING PLAINTIFF VIOLATED SECTIONS SDCL 15-6-11(b) (3) and (4). | |
| 6. THE LOWER COURT ABUSED ITS DISCRETION AWARDING \$3662.93 TO MARY ANN MYERS AND BY FAILING TO AWARD ANY ATTORNEY FEES TO APPELLANT | |
| CONCLUSION | 31 |
| REQUEST FOR ORAL ARGUMENT | 32 |
| CERTIFICATE OF COMPLIANCE | 32 |
| CERTIFICATE OF SERVICE | 32 |

TABLE OF AUTHORITIES

| STATUTES CITED: | PAGE |
|---|------|
| S.D. CODIFIED LAWS §15-26A-3 | 1 |
| S.D. CODIFIED LAW §15-6-54(b) | 1 |
| SDCL 15-6-11(e) | 10 |
| SDCL 15-6-11(a) | 11 |
| SDCL 15-6-11(b) | 11 |
| SDCL 15-6-11(c) | 11 |
| SDCL 15-6-11(d) | 11 |
| FED. R. CIV. P. 11(b)(1) | 11 |
| FED. R. CIV. P. 11 | 11 |
| S.D. CODIFIED LAWS § 15-6-11(c) | 16 |
| SDCL 15-6-11(b)(3) | 19 |
| SDCL 15-6-11(b) | 24 |
| FDCPA U.S.C.A. 1692 et seq. | 26 |
| CASES CITED: | |
| <i>Hobart v. Ferebee</i> , 2009 S.D. 101, ¶ 10, 776 N.W.2d 67, 71. | 10 |
| <i>Smizer v. Drey</i> , 2016 S.D. 3, ¶ 14, 873 N.W.2d 697, 702 | 10 |
| <i>Cooter & Gell</i> , 496 U.S. at 405, 110 S.Ct. at 2461. | 11 |
| <i>Anderson v. Prod. Credit Ass'n</i> , 482 N.W.2d 642, 645 (S.D. 1992) | 11 |
| <i>In re Kunstler</i> , 914 F.2d 505, 525 (4th Cir. 1990). | 12 |
| <i>Kezhaya v. City of Belle Plaine, Minnesota</i> , 78 F.4th 1045, 1049 (8th Cir. 2023) | 12 |
| <i>Adduono v. World Hockey Ass'n</i> , 824 F.2d 617, 621 (8th Cir. 1987) | 12 |
| <i>Thomas v. Cap. Sec. Servs., Inc.</i> , 836 F.2d 866, 874 (5th Cir. 1988). | 21 |

| | |
|---|-------|
| <i>Antonious v. Spalding & Evenflo Companies, Inc.</i> , 275 F.3d 1066, 1074 (Fed. Cir. 2002) . . | 21,22 |
| <i>Anderson v. Prod. Credit Ass'n</i> , 482 N.W.2d 642, 645 (S.D. 1992) | 22 |
| <i>In re Discipline of Eicher</i> , 2003 S.D. 40, ¶ 41, 661 N.W.2d 354, 368 | 24 |
| <i>Smizer v. Drey</i> , 873 N.W.2d 697 (2016). | 24 |
| <i>Probasco v. Ford Motor Co.</i> , 182 F.Supp.2d 701, 705 (C.D.Ill.2002). | 25 |
| <i>Smizer v. Drey</i> , 2016 S.D. 3, ¶ 24, 873 N.W.2d 697, 705 | 25 |

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v.

MARY MYERS,

Defendant/Appellee.

JURISDICTIONAL STATEMENT

This is an appeal from a Finding of Fact and Conclusions of Law by the Circuit Court Fourth Judicial Circuit, County of Lawrence, State of South Dakota (the Honorable Eric J Strawn) dated April 4, 2025, and also an Order On Hearing by the Circuit Court Fourth Judicial Circuit, County of Lawrence, State of South Dakota (the Honorable Eric J Strawn) dated April 14, 2025. Appellant filed its notice of appeal and Appellant's Docketing Statement on April 16, 2025. The Orders from the Court disposed of all issues regarding Mary Ann Myers, and are final orders. This Court has Appellate jurisdiction pursuant to. S.D. Codified Laws §15-26A-3 and S.D. Codified Laws §15-6-54(b).

STATEMENT OF LEGAL ISSUES AND AUTHORITIES

1. The court had jurisdiction over the parties. The trial court found in the affirmative
2. Mary Ann Myers is not the Mary Myers plaintiff claims to be indebted to Plaintiff. The trial court found in the affirmative.
3. Mary Ann Myers was misjoined in Plaintiff's action by the county sheriff. The Trial court found in the affirmative.
4. A pleading or motion, even if 100% correct with the facts and the law can still violate Rule 11. The trial court found in the affirmative.
5. Can you dismiss the correct defendant with prejudice when a separate defendant is served incorrectly in the action. The trial court found in the negative.
6. Can attorney violate Rule 11, specifically 15-6-11(b) 3 and 4 when the original pleading conforms to the law but is served on a third party by mistake of a Sheriff deputy. The trial court found in the affirmative.
7. Are rule 11 sanctions in the amount of \$3,662.93 in attorney fees permitted not because of an improper pleading but improper service.

The trial court found in the affirmative

ASSIGNMENT OF ERRORS

1. RULE 11 SANCTIONS ARE LIMITED TO WHAT IS STATED IN THE PLEADINGS AND NOT ANY OUTSIDE CONDUCT AND IT IS AN ABUSE OF DISCRETION TO LOOK BEYOND THE PLEADINGS.

- Hobart v. Ferebee, 2009 S.D. 101, ¶ 10, 776 N.W.2d 67, 71
- *In re Kunstler*, 914 F.2d 505, 525 (4th Cir. 1990)

2. THE TRIAL COURT ERRED IN FINDING A PLEADING WHICH IS 100% CORRECT CAN VIOLATE RULE 11 AND BE SUBJECT SANCTIONS.

- *Anderson v. Prod. Credit Ass'n*, 482 N.W.2d 642, 645 (S.D. 1992)
- *In re Kunstler*, 914 F.2d 505, 525 (4th Cir. 1990)
- *Adduono v. World Hockey Ass'n*, 824 F.2d 617, 621 (8th Cir. 1987)

3. THE TRIAL COURT ERRED IN BASING SANCTIONS UPON PLAINTIFF FOR CONDUCT OUTSIDE OF THE PLEADINGS. SEE 15-6-11(c).

- *Adduono v. World Hockey Ass'n*, 824 F.2d 617, 621 (8th Cir. 1987)

4. THE TRIAL COURT ERRED IN AWARDING SANCTION IN CONTRAVENTION TO 15-6-11(c) (2). NATURE OF SANCTIONS, DEFERENCE.

- *Kezhaya v. City of Belle Plaine, Minnesota*, 78 F.4th 1045, 1049 (8th Cir. 2023)

5. THE TRIAL COURT ERRED IN FINDING PLAINTIFF VIOLATED SECTIONS SDCL 15-6-11(b) (3) and (4).

- *Thomas v. Cap. Sec. Servs., Inc.*, 836 F.2d 866, 874 (5th Cir. 1988)

- *Anderson v. Prod. Credit Ass'n*, 482 N.W.2d 642, 645 (S.D. 1992)

- *Antonious v. Spalding & Evenflo Companies, Inc.*, 275 F.3d 1066, 1074 (Fed. Cir. 2002)

6. THE LOWER COURT ABUSED ITS DISCRETION AWARDING
\$3662.93 TO MARY ANN MYERS AND BY FAILING TO
AWARD ANY ATTORNEY FEES TO APPELLANT

- *In re Discipline of Eicher*, 2003 S.D. 40, ¶ 41, 661 N.W.2d 354, 368

STATEMENT OF THE CASE

On December 3, 2024, Appellant, Wells Fargo Bank N.A., through counsel filed a lawsuit for a defaulted credit card against Mary Myers of Spearfish, SD. As the record reveals, all the information identifiers and otherwise provided at the time of filing were correct and accurate. After the pleading was filed and out of control of the Appellant and their counsel, a sheriff deputy ignored all the correct identifiers and served a Mary Ann Myers who also lives in Spearfish.

The Sheriff served the incorrect Mary Ann Myers on December 18, 2024. That day, Mr. Claggett counsel for Mary Ann Myers authored and sent a Rule 11 letter to Appellant's counsel. The letter received by Appellant's counsel on or about December 19, 2024. The clarity of the letter is in question but it clearly states Appellant sued the wrong person and the counsel provided separate social security number and birth date for his Mary Ann Myers. The birth date and social security number were different than those identified in the pleading. Mr. Claggett did not provide a different address to compare to the direction of service and the service return from

the sheriff did not get sent to Appellant's counsel until January 3, 2025.

On January 16, 2025, Mr. Claggett filed a motion for Rule 11 sanctions, a motion to dismiss for failure to state a claim and an answer and counter claim. Appellant responded with oppositions to the motions and filed a motion to Strike the improper service.

The Court on February 20, 2025 heard the parties and took the matter under advisement. The court found the correct Mary Myers is named in the action. The Court found a motion to dismiss the matter with prejudice against the correct Mary Myers would not be legally proper. The Court found Mary Ann Myers was misjoined by the sheriff. The court found Appellant violated Rule 11 because although the pleading was correct, the Rule 11 letter was clear and sufficient enough to alert counsel of the service issue and Appellant's counsel should of continued to monitor the matter. The Court, pursuant to Rule 11, awarded Mary Ann Myers \$3,266.93. Appellant is appealing the findings of the court.

FACTS

The uncontroverted record before the Court reflects all of Wells Fargo's, attorney Rule 11 representations as to the nature of the action and the intended Mary Myers, as follows:

1. COMPLAINT. The Complaint consists of 34 pages. The first two pages are the actual Complaint signed by attorney Karl von Oldenburg. In the Complaint Wells Fargo alleges defendant Mary Myers of opening and using a credit card issued by Wells Fargo. (Plaintiff's Complaint page 1 paragraph,3) Wells Fargo alleges Defendant breached her

agreement with Wells Fargo by failing to make payment and was in default in the amount of \$13,800.53. (Plaintiff's Complaint page 1 paragraphs, 4 & 6). Wells Fargo prayed to this Court for judgment against defendant, Mary Myers in the amount \$13,800.53 plus court costs. (Plaintiff's Complaint page 2)

2. Attached to the Complaint as supporting exhibits are 32 pages. For clarification they are broken down by page number as follows.
 - A. Wells Fargo Customer Credit Card Agreement, pages 3-19. These pages contain no direct reference to Defendant Mary Myers or any other Mary Myers.
 - B. Wells Fargo Credit Card Statement with account ending in 3931, pages 20-23.
Defendant Mary Myers is referenced on page 20 along with the address associated with the account 330 W Grant St Spearfish SD 57783-2335. Mary Myers is named as the recipient of the credit card statement.
 - C. Wells Fargo Credit Card Statement with account ending in 3931, pages 24-27.
Defendant Mary Myers is referenced on page 24 along with the address associated with the account 330 W Grant St Spearfish SD 57783-2335. Mary Myers is named as the recipient of the credit card statement.
 - D. Wells Fargo Credit Card Statement with account ending in 3931, pages 28-31.
Defendant Mary Myers is referenced on page 28 along with the address associated with the account 330 W Grant St Spearfish SD 57783-2335. Mary Myers is

named as the recipient of the credit card statement.

- E. The Regulation F letter required by the Consumer Financial Protection Bureau, page 32. Defendant Mary Myers is named. Defendant Myers was working with a debt settlement company through a Power of Attorney and therefore the letter was sent to the New York address.
- F. Military Scrub, pages 33-34. Defendant Mary Myers name, correct last of her SSN 6936 and correct the month and year of Defendant Mary Myers birth date, February 1957.
- G. CASE FILING STATEMENT. As required under South Dakota law Plaintiff Wells Fargo filed its information regarding the parties. As stated, defendant's information clearly lists the correct Mary Myers with an address of 330 W Grant St Spearfish SD 57783-2335. The document correctly states her complete birth date and complete SSN, ending in 6936.
- H. Direction For Service. After the Summons and Complaint were accepted by the Court and a case number assigned Plaintiff prepared Direction For Service for the Sheriff to serve our Defendant, Mary Myers. Based on all the representations made to the Court by the Plaintiff, service was directed at Mary Myers, of 330 W Grant St Spearfish SD 57783-2335.

- I. South Dakota Unified Judicial System e-Courts. The Court's Own Computer

Docket lists the Defendant as:

Mary Myers
Address: 330 W Grant St, Spearfish SD 57783
Date of Brith: 02/09/1957
Gender: Female
Race: White
Height: 5'7"
Eyes: Blue
Hair: Brown

Additional Facts

- K. Prior to approving the filing of the Complaint, Attorney Karl von Oldenburg, reviewed all Wells Fargo account information. Name of consumer, consumer address, Birth date, SSN, account open date, account close date, last payment date and charge off date. Karl von Oldenburg also reviewed over a year of credit card statement including the charge off statement. The file was reviewed for any disputes which would require verification, any missed payments and any possible settlement on the file.
- L. On December 19, 2024, Dave L Claggett sent an email, attention to Karl von Oldenburg stating we sued the wrong person and demanding terms. The email attached a Rule 11 letter reiterating that we sued the wrong person, demanded money and a dismissal with prejudice of the action filed by Wells Fargo.

- M. Based on Counsel's December 18, 2024, letter, I believed he was saying we had the wrong Mary Myers living at 330 W Grant Street. Besides reviewing all the pleadings, I reached out to Wells Fargo for more information regarding defendant Mary Myers and her connection to the Grant Street address. Wells Fargo confirmed the address, sent to my firm every single credit card statement associated with the account and a copy of her drivers license and social security card.
- N. Based on a review of all relevant information, in light of Counsel's letter it was determined that Wells Fargo and this firm filed its complaint against the correct Mary Myers at her correct address.

STANDARD OF REVIEW

Under SDCL 15–6–11(e), appeals pursuant to SDCL 15–6–11(a) through 15–6–11(d) is considered “without any presumption of the correctness of the trial court's findings of fact and conclusions of law.” Rather, an award of sanctions under these provisions is reviewed for abuse of discretion. “An abuse of discretion is a discretion exercised to an end or purpose not justified by, and clearly against, reason and evidence).Hobart v. Ferebee, 2009 S.D. 101, ¶ 10, 776 N.W.2d 67, 71, See also; Smizer v. Drey, 2016 S.D. 3, ¶ 14, 873 N.W.2d 697, 702. An abuse of discretion also occurs when the court bases “its ruling on an erroneous view of the law or on a

clearly erroneous assessment of the evidence.” *Cooter & Gell*, 496 U.S. at 405, 110 S.Ct. at 2461. (as cited in Smizer, supra).

ARGUMENT

1. RULE 11 SANCTIONS ARE LIMITED TO WHAT IS STATED IN THE PLEADINGS AND NOT ANY OUTSIDE CONDUCT.

SDCL 15-6-11(a) requires attorneys to sign all pleadings and papers they file, and such signature represents “that to the best of [attorney's] knowledge, information and belief formed after reasonable inquiry [the pleadings and papers are] well-grounded in fact and [are] warranted by existing law, ... and not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.” A trial court may award attorney fees pursuant to SDCL 15-6-11(b), which provides: If a pleading, motion or other paper is signed in violation of this rule [15-6-11(a)], the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction. which shall include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion or other paper, including a reasonable attorney's fee. Anderson v. Prod. Credit Ass'n, 482 N.W.2d 642, 645 (S.D. 1992).

Rule 11 sanctions may be warranted when a pleading is “presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation.” Fed. R. Civ. P. 11(b)(1). Rule 11 also authorizes sanctions if a pleading includes claims, defenses

and other legal contentions that are not warranted by existing law, a nonfrivolous argument for extending, modifying, or reversing existing law, or a nonfrivolous argument for establishing new law. *Id.* 11(b)(2). A sanction imposed under Rule 11 “must be limited to what suffices to deter repetition of the conduct or comparable conduct by others similarly situated.” *Id.* 11(c)(4).

Kezhaya v. City of Belle Plaine, Minnesota, 78 F.4th 1045, 1049 (8th Cir. 2023)

However, Rule 11 must be accorded its plain meaning. The text of the Rule clearly pertains only to a “pleading, motion, or other paper.” Rule 11 does not encompass all conduct within judicial proceedings. In re Kunstler, 914 F.2d 505, 525 (4th Cir. 1990) Rule 11, as amended, is intended to be vigorously applied by district courts to curb widely acknowledged abuse resulting from the filing of frivolous pleadings and other papers. However, Rule 11 is not a panacea intended to remedy all manner of attorney misconduct occurring before or during the trial of civil cases. Fed.R.Civ.P. 11 applies only when an attorney has signed a pleading, motion or other paper. Adduono v. World Hockey Ass'n, 824 F.2d 617, 621 (8th Cir. 1987) nor are Rule 11 proceedings intended to determine misrepresentation questions where the misrepresentation is not reflected in a pleading, motion or paper filed with the district court. *Id.*

Based on these basic tenets of Rule 11, Plaintiff argues the lower court abused its discretion in finding plaintiff and plaintiff counsel violated Rule 11. As agreed below.

2. A PLEADING WHICH IS 100% CORRECT AND ACCURATE CANNOT VIOLATE RULE 11 AND BE SUBJECT TO SANCTIONS.

Appellant argues, the present case aside, in any matter in which a pleading, motion or other filing is completely correct in the context of the legal action filed cannot violate Rule 11. Further under this scenario the pleading filed and certified to the court continues to remain correct and accurate at all relevant times. This argument is in line with South Dakota's and Federal Court's interpretation of the rule. As the law described above and below, Rule 11 is limited to the documents filed and certified to the court. For a court to take Rule 11 outside the pleadings and other documents filed with the court would create a new and undue burden upon all practicing attorneys in this state. Under Rule 11 Specifically, 15-6-11(b) representations, if the four corners of the complaint signed by an attorney (1) correctly identifies the correct party (defendant) and address, (2) was not filed for any improper purpose, (3) the allegations and factual contentions have evidentiary support, and (4) any denials are warranted by the evidence, you cannot have a rule 11 violation an award of sanctions.

Nowhere under 15-6-11(b) or in the entire Rule 11 section are additional statutory obligations placed on attorneys or their clients. The Federal rule 11 statutes contain no additional statutory obligations. State and Federal case law does vary if a continuing rule 11 obligation may exist if the facts and evidence against the originally identified party emerge that would warrant

amendment. HOWEVER, under this scenario the original complaint continues to be 100% correct.

So, under this scenario does Rule 11 impose a duty upon counsel or their client the obligation to follow the pleading after it has been filed and certified to the court? Under Rule 11 does an attorney have an obligation to ensure the clerk's office correctly inputs the document into the system? Does Rule 11 require the attorney of record to ride along with the sheriff during service or otherwise monitor the sheriff? These mistakes, although not often, happen. They create issues that need resolution. Sometimes the resolution can be simple, sometimes difficult. However, the issue is not in the pleading but the process. Therefore, whatever remedies may be available, Rule 11 sanctions are not the legal option.

It is uncontroverted that Appellant's matter before this court is the exact scenario described above. As the representations to the court, described above reveal, Appellant filed its complaint against the correct Mary Myers at her correct address. Further, Appellant had the correct social security number and birthdate for the correct Mary Myers as evidenced in the case filing statement and complaint. Just as important, Appellant's representations to the court do not include any mention of Mary Ann Myers, her address, her social security number or her birthdate.

The complaint filed against the correct Mary Myers was for breach of a credit card agreement. The complaint only seeks the charge off amount. Appellant is not seeking attorney

fees or prejudgment interest. Appellants did not even request any post judgment interest. The allegations and cause of action are warranted by existing law. The allegations and factual contentions are supported by the evidence. In fact, attached to the complaint are exhibits that support the factual allegations made. Based on the documents filed by Appellant no reasonable person could find that Appellant filed its action for any improper purpose. A fact the lower court acknowledged in paragraph 9 of the conclusions of law. The lower court's order also acknowledges "Mary Ann Myers is not the Mary Myers referred to in this action."

So, Appellant argues we have pleadings filed and certified to the court that are 100% correct and still are 100% against the correct Mary Myers. The only person Appellant has attempted to file a lawsuit against. After the correct pleadings were filed and out of the control of the Appellant, the summons and complaint served upon the wrong person. As the lower court found "Based on the information before the Court, the Deputy for Lawrence County Sheriff's office failed to apply correct identifiers and served Mary Ann Myers instead of Mary Myers who also lives in the same area but different address."

Based on the purpose of Rule 11 on both the Federal and State level, it is to punish abusive pleadings. Through the pleading a named party or their counsel may be the ultimate recipient of the sanction but under Rule 11 all trails must lead to allegations/words in the pleading. A plain reading of the statute makes clear of a party or counsel's pre-filing duty to conduct reasonable due diligence to make sure the allegations made are correct.

Appellant argues, based on the facts in this matter and the law the lower court's is counter to Rule 11. To expand Rule 11 outside the four corners of pleadings or motions filed would create a new and undue burden for all practicing attorneys. Just like in this matter an issue in a trial proceeding may arise out of no fault of either party or the pleadings but a twist of fate of a service processor. This cannot be the type of post filing action Rule 11 was contemplated to resolve. As such Appellant argues if this Court finds Appellant's representations made to the lower court were 100% correct and remained so even after the Sheriff's error in service then the analysis should end. This Court should find Rule 11 is legally inapplicable and the finding of Rule 11 sanctions against Appellant reversed.

3. THE LOWER COURT BASED ITS SANCTION UNDER RULE 11 ON CONDUCT OUTSIDE THE PLEADINGS.

Rule 11 requires abusive conduct to flow from the pleading filed with the court. When imposing sanctions, the court shall describe the conduct determined to constitute a **violation of this rule** and explain the basis for the sanction imposed. S.D. Codified Laws § 15-6-11(c). (Emphasis added). The lower court first found clearly that this was not a pleading issue, but a misjoinder action created by the sheriff deputy. Next the court in its own language states the exact conduct Appellant's counsel ran afoul of Rule 11. "In all candor, the issue with the action boils down to a failure to communication and failure of a plaintiff's attorney to conduct a due

diligence review of the defenses raised within opposing counsel's letter mailed and later attached to an email."

The lower court erred in this determination. First, as the record reflects, Appellant's counsel upon receipt of opposing counsel did review the Rule 11 allegations and found them without merit. The lower court agreed the complaint was against the correct Mary Myers. So, the conduct with regard to the Rule 11 allegations did not violate the law.

The lower court is correct that Appellant's counsel may have failed to understand clearly the rest of the opposing counsel letter on December 19, 2024, in this case a misjoinder. This fact even true does not raise to a Rule 11 sanction. As the Court stated, "instead of filing a motion for misjoinder or notifying the plaintiff of the misjoinder, Mary Ann's counsel notified Plaintiff's counsel of his obligation to dismiss the action against Mary Ann Myers in the *demand to Dismiss Action with Prejudice Rule 11(C) (1) (A)* letter." Appellee's choice of a Rule 11 letter on the day it was sent and received limited Appellant's review to the pleadings. On December 19, 2024 did Appellant file suit against the correct person and address? Yes. Does the filed complaint state a legal action supported by the facts and law? Yes. Further, no post filing conduct could never satisfy the Rule 11 request to dismiss a proper action against the correct person.

If the lower court or the opposing counsel wanted to sanction the Appellant or Appellant's counsel for behavior outside of the pleadings, they should have been raised properly to the lower court in another format. Of course, the lower court addressed this when it "concludes

Mary Ann Meyers was misjoined to this action.” In so finding the lower court also found attorney fees are not permitted under a misjoinder action. Therefore, attorney fees could only be awarded if the lower court found a Rule 11 violation, regardless of whether one existed. Appellant argues this is an abuse of discretion.

4. HOW CAN A COURT DETER UNSANCTIONABLE CONDUCT.

A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Subject to the limitations in subparagraphs (A) and (B), the sanction may consist of, or include, directives of a non-monetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorneys' fees and other expenses incurred as a direct result of the violations.”

Codified Laws § 15-6-11(c).

Another reason Appellant's scenario fails to satisfy Rule 11 is the nature of the sanction. The main goal of the sanction is to deter future repetitive conduct from the same or similar parties. Appellant argues you cannot deter, nor should you want to deter the filing of correct pleadings. Especially when the evidence shows proper pre-filing due diligence.

**5. THE LOWER COURT ERRED IN FINDING APPELLANT VIOLATED
SDCL 15-6-11(b)(3) and (4).**

The lower court for its part recognized for a court to order sanctions under Rule 11, a court should describe the conduct under 15-6-11(b) determined to constitute violation of Rule 11 and explain the basis for the sanction imposed. 15-6-11(c). Appellant argues that the conduct described by the lower court is factually and legally incorrect as such an abused its discretion. The relevant portions of the lower court's order are as follows:

7. Counsel for the misjoined party direct the Court to SDCL 15-6-11(c) as authority to sanction opposing Counsel. However, sanctions may only arise under 15-6-11(c) if the "attorney, law firms, or parties [] have violated §15-6-11(b)." Thus, before sanctions are considered, this Court must address any breaches within sub (b) first.

8. SDCL 15-6-11(b) provides the following:

By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

- (1) It is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
- (2) The claims, defenses, and other legal contentions therein are warranted by existing law or by a non-frivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
- (3) The allegations and other factual contentions have evidentiary support, or if specifically so identified, are likely to have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and
- (4) The denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

9. After a review of the information provided infra, this Court concludes Plaintiff hasn't violated sections 1 and 2. This Court concludes, Plaintiff failed to show the claims against Mary Ann Meyers, had evidentiary support after being properly informed that she was not Mary Meyers who has a SSN ending in 6936 and birth date of Feb-XX-1957. SDCL 15-6-11(b)(3) and (4).

How does a complaint Under Rule 11 which is factually accurate and 100% correct as the uncontroverted facts detail and the lower court found previously in his order transform into a rule

11 violation. It can't. Persuasively, the Fifth Circuit Court of Appeals summarizes Appellant's argument regarding obligations of an attorney under Rule 11.

Our interpretation of Rule 11 finds support in the fact that Rule 11 has as its primary focal point the certification made by an attorney that he has complied with the affirmative duties imposed by the rule at the moment he affixes his signature to a pleading, motion, or other paper in a lawsuit. The rule itself is titled "*Signing of Pleadings, Motions, and Other Papers; Sanctions.*" (Emphasis added). Furthermore, the express language of Rule 11 provides that "[t]he *signature* of an attorney or party constitutes a certificate by the signer that" he has complied with the obligations imposed by Rule 11. Fed.R.Civ.P. 11 (emphasis added) Thomas v. Cap. Sec. Servs., Inc., 836 F.2d 866, 874 (5th Cir. 1988)

Instead, we believe that a construction of Rule 11 which evaluates an attorney's conduct at the time a "pleading, motion, or other paper" is signed is consistent with the intent of the rule makers and the plain meaning of the language contained in the rule. Like a snapshot, Rule 11 review focuses upon the instant when the picture is taken—when the signature is placed on the document. Rule 11 was promulgated for a particular purpose—to check abuses in the signing of pleadings. Fed.R.Civ.P. 11 advisory committee notes. Thomas v. Cap. Sec. Servs., Inc., 836 F.2d 866, 874 (5th Cir. 1988)

Court's specifically reviewing attorney's obligation pursuant to Rule 11(b)(3) have found; An attorney's obligation under Rule 11(b)(3) to conduct a **proper prefiling** investigation applies not only to the complaint but also to "other paper[s]" filed in the case, Antonious v. Spalding &

Evenflo Companies, Inc., 275 F.3d 1066, 1074 (Fed. Cir. 2002). (emphasis added).

The South Dakota Supreme Court has similarly found the same standard. “It is an attorney's duty under SDCL 15–6–11(a) to conduct a “reasonable inquiry” into the facts and law prior to commencing any action. SDCL 15–6–11(a) clearly states that the attorney's signature represents that the signer has undertaken such an inquiry and believes the action is well grounded in law and fact.” Anderson v. Prod. Credit Ass'n, 482 N.W.2d 642, 645 (S.D. 1992)

Appellant filed its complaint against the correct Mary Myers on December 3, 2024. The uncontroverted facts above and recognized by lower court reveal the pleading to be correct and accurate as to Mary Myers named in action. Appellant satisfied the conditions required under Rule 11 and specifically 11(b)(3) on that date and with not only the complaint but the case filing statement and Direction For Service.

How does a complaint, not the named plaintiff or counsel, but the complaint go from true and correct pursuant to 11(b)(3) on December 3, 20024 to violation on December 18, 2024 in less than 15 days. The Complaint did not choose the sheriff deputy the morning of service. The Complaint did not coerce the sheriff deputy to the wrong address for service. Certainly, the complaint did not choose to get in the hands of counsel. The complaint remained true to itself. Stating the same information on December 18, 2024 as the day it was filed. Again, the error was not in the complaint but the process and conduct outside of the pleading.

For this transformation to happen the lower court had to find on December 18, 2024, when the complaint was served on Mary Ann Myers incorrectly by the sheriff deputy it became an action filed against her and related back to the original day filing December 3, 2024. Under this dystopia, of course Appellant Complaint had the incorrect social security number, birthdate, address. This is not the standard for Rule 11 specifically 11(b)(3). The law requires you to review the pleading for prefiling due diligence not post filing due diligence.

Appellant could not have violated SDCL 15-6-11(b)(4) for the same reasons above as well as Section 4 deals with denials not original complaints

**6. THE LOWER COURT ABUSED ITS DISCRETION AWARDING
\$3,662.93 TO MARY ANN MYERS AND BY FAILING TO AWARD ANY
ATTORNEY FEES TO APPELLANT.**

If the Court accepts Appellant's argument stated above, the pleadings in question do not violate Rule 11 in any manner consistent with the law. Therefore, if there was no violation of Rule 11 the lower court could not have awarded sanctions under the Rule. The order contains no other basis for sanctions or attorney fees.

Further, as should be repeated, "instead of filing a motion for misjoinder or notifying the plaintiff of the misjoinder, Mary Ann's counsel notified Plaintiff's counsel of his obligation to dismiss the action against Mary Ann Myers in the *demand to Dismiss Action with Prejudice*

Rule 11(C) (1) (A) letter.” Again, if May Ann Myers simply filed a misjoinder motion this matter as to her would already be over. However, besides Rule 11 letter not supported by the facts, opposing counsel filed an incorrect motion to dismiss for failure to a claim, a motion for sanctions, an answer and counterclaim which includes a claim of barratry. All Counsel actions were done without proper due diligence. All the counsel’s filings complicated a mistake by the sheriff and caused his client more time and money that was needed to resolve the issue.

The lower court abused its discretion by summarily rewarding all Mary Ann Myers requested amount under Rule 11 even though the motions were not correct. This is not consistent with this Court’s rulings and the statute. Appropriate sanctions are provided for a violation of this rule. SDCL 15–6–11(b). However, Rule 11 motions must never be used as a mere tactic to bolster a response—whether meritorious or not—to a motion or pleading. The same is true of threatened Rule 11 sanctions and barratry claims. “[i]t is the duty of an attorney and counselor at law not to encourage either the commencement or continuance of an action or proceeding from any motive of passion or interest.” In re Discipline of Eicher, 2003 S.D. 40, ¶ 41, 661 N.W.2d 354, 368.

A Rule 11 case which is helpful is Smizer v. Drey, 873 N.W.2d 697 (2016). In *Smizer* a plaintiff attorney kept filing false allegations to support a punitive damage claim. The Court found that their allegations had no basis in fact but more important the South Dakota Supreme Court found, The circuit court also did not abuse its discretion when it imposed sanctions

because it found that the Smizers brought their claim for an improper purpose. According to the court, “[i]t is clear” the Smizers used their claim to attempt to leverage a settlement and to harass Christina. *See Probasco v. Ford Motor Co.*, 182 F.Supp.2d 701, 705 (C.D.Ill.2002) (it is improper to use a claim for punitive damage as leverage). *Smizer v. Drey*, 2016 S.D. 3, ¶ 24, 873 N.W.2d 697, 705.

Appellee’s counsel actions were improperly filed to coerce payment. The initial Rule 11 does not request actions which can be reasonably done. The letter is not a request for correction but a demand for payment. When payment is not made, Appellee files a litany of pleadings that fail to relate to what actually is going on in the proceeding. Similar to *Smizer*, the lower court should of found Appellee’s actions improper and instead of awarding sanctions to Appellee should of awarded fees to Appellant.

7. APPELLANT'S PERSPECTIVE AND RESPONSE AS TO WHY

APPELLANT DID NOT IMMEDIATELY RESPOND.

Appellant agrees that if it understood the letter more clearly an attempt to reach out opposing counsel would have been courteous and maybe helpful. To explain the concerns Appellant in December of 2024 with opposing counsel’s Rule 11 letter one must start with understanding that Appellant’s counsel is considered a debt collector under the Fair Debt Collection Protection Act. (FDCPA U.S.C.A .1692 et seq). Appellant’s counsel was also and is subject to the Consumer Financial Protection Bureau. (CFPB). The FDCPA and CFPB place

stringent requirements on debt collectors similar but more expansive than general Rule 11. As a debt collector, Appellants counsel must conduct a meaningful attorney review (Rule 11, due diligence) prior to even the first pleading. In fact, clients such as Wells Fargo will not send files to a firm which does not have policies and procedures in place as well as computer safeguards. The record before this court shows counsel for Appellant prior to suit, conducted more than ample due diligence and meaningful review. The information reviewed by counsel was correct and remains correct.

What Appellant failed to argue adequately to the lower court was an obligation outside of Rule 11. The FDCPA limits who a debt collector can discuss a consumer debt other than the consumer themselves.

Except as provided in section 1692b of this title, without the prior consent of the consumer given directly to the debt collector, or the express permission of a court of competent jurisdiction, or as reasonably necessary to effectuate a post judgment judicial remedy, a debt collector may not communicate, in connection with the collection of any debt, with any person other than the consumer, his attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, or the attorney of the debt collector. 15 U.S.C.A. § 1692c (West)

So, on or about December 19, 2024, Appellant's counsel reviewed the Rule 11 letter. The letter clearly states counsel violated Rule 11 by suing the wrong Mary Myers. Gives no address but supplies Mary Ann Myers Social Security and birthdate. The issue is on or about December 19, 2024, Appellant's counsel reviewed the complaint and other pleadings to Mr. Claggett's

allegations under the objective Rule 11 standards, counsel objectively found his Rule 11 accusations did not fit what was filed. By Appellant. The appellant's counsel did place the file on hold internally and request more information from Wells Fargo to ensure the correct Mary Myers was being sued. As the record reflects, the appellant's counsel received confirmation from Wells Fargo in the form of a copy of the correct Mary Myers' license and application. The information matched the pleadings. Typically and as a matter of policy, Appellant's counsel would send out a validation of debt. This validation contains information of the original consumer. The FDCPA prohibits counsel from sharing that information when an attorney knows or should know it is not the consumer. This is why the first call was to the client.

As a mea culpa Appellant's counsel appears not to have fully comprehended the meaning of Mr. Claggett's Rule 11 letter, service rather than the content of the pleading. Further Appellant's counsel did not monitor for the return of service. The file was diarized for later review for service and further action. These actions may or may not be sanctionable for attorney fees but not under Rule 11.

CONCLUSION

Appellant prays to this Court for an order reversing the Circuit Court's order finding Appellant violated South Dakota's Rule 11. An order reversing the award of attorney fees and costs in the amount of \$3266.93 and finding no sanctions are warranted under Rule 11 against Appellant or its counsel. A finding that Mary Ann Myers remains dropped from the case and her answer and counterclaim are stricken from the record or otherwise dismissed. An order

remanding the matter to the circuit court for a motion on Appellant's motion for attorney fees against Mary Ann Myers.

REQUEST FOR ORAL HEARING

Appellant, Wells Fargo Bank N.A. request an oral argument.

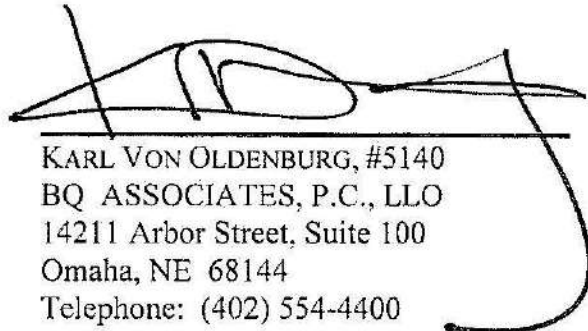
CERTIFICATE OF COMPLIANCE

The Appellant certifies that this brief complies with applicable page and word (6999) count requirements.

DATED this 22 day of September, 2025

WELLS FARGO BANK, N.A., Plaintiff

By:



KARL VON OLDENBURG, #5140
BQ ASSOCIATES, P.C., LLO
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Telephone: (402) 554-4400
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ATTORNEYS FOR PLAINTIFF/APPELLANT

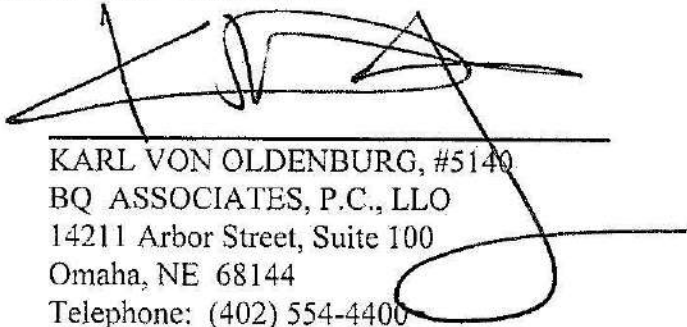
CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 22 day of September, 2025, a true and correct copy of the foregoing Notice of Appeal was sent by regular U.S. mail, postage prepaid to Mary Ann Myers' attorney:

Dave L. Claggett
Claggett & Dill Prof, LLC
212 E Colorado Blvd

Spearfish, SD 57783

by first class mail and electronically to davec@claggettanddill.com.



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sdbq@bqlaw.com
ATTORNEYS FOR PLAINTIFF/APPELLANT

TABLE OF CONTENTS FOR APPENDIX

| | | |
|------------|--|------|
| Appendix 1 | Findings of Fact and Conclusions of Law. | A-1 |
| | Honorable Eric J. Strawn | |
| Appendix 2 | Order on Hearing - Honorable Eric J. Strawn. | A-10 |
| Appendix 3 | Complaint with Exhibits. | A-12 |
| Appendix 4 | Case Filing Statement. | A-46 |
| Appendix 5 | Directions for Service. | A-47 |
| Appendix 6 | Rule 11 (C)(1)(A) Lettter. | A-48 |
| Appendix 7 | Affidavit of Karl von Oldenburg. | A-50 |

APPENDIX

1

STATE OF SOUTH DAKOTA)
)SS
COUNTY OF LAWRENCE)

IN CIRCUIT COURT
FOURTH JUDICIAL CIRCUIT

WELLS FARGO BANK, N.A.,)
Plaintiff,)
)
vs.)
)
MARY MYERS,)
Defendant.)

40CIV24-364

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

A Motions Hearing came on before the Court on February 20, 2025. Plaintiff Wells Fargo Bank, N.A., ("Wells Fargo") appeared by and through Karl Von Oldenburg, BQ & Associates, P.C., L.L.O., Omaha, Nebraska. Mary Ann Myers ("Mary Ann") appeared by and through Dave L. Claggett, Claggett & Dill, Prof. LLC, Spearfish, South Dakota. The Court having reviewed the file, and considered the arguments of counsel, and being duly advised, now, therefore, enters its:

FINDINGS OF FACT

1. On December 18, 2024, Plaintiff commenced an action against a one Mary Ann Meyers by personal service on her¹, as shown by the Sheriff's Return of Service on file. The pleadings denoted an action against "Mary Meyers".
2. The parties agree and the Court finds Mary Ann Myers is not the Mary Myers referred to in this action.
3. Mary Ann Myers' social security number is not xxx-xx-6936 nor is the date of her birth Feb-xx-1957. Based upon information before the Court, the Deputy for Lawrence County Sheriff's office failed to apply correct identifiers and served Mary Ann Meyers instead of Mary Myers who also lives in the same area but different address.

¹ 15-2-30. Commencement of action by service of summons-Summons on codefendant
An action is commenced as to each defendant when the summons is served on him, or on a codefendant who is a joint contractor or otherwise united in interest with him.

4. Mary Ann Myers has no contract for any services with the Plaintiff; but, most specifically she isn't the holder of the credit card now in default.
5. There is no legal connection between Mary Ann Myers and the Plaintiff. No credible evidence contrary to this fact is in the Complaint. Plaintiff's attorney acknowledges Mary Ann Meyers is not the intended defendant Mary Meyers.
6. Plaintiff's counsel was notified in writing (letter and email with attached letter) of his error. Mary Ann's counsel specifically brought this matter to the attention of Plaintiff's counsel by Mary Ann's *Demand to Dismiss Action with Prejudice Rule 11(C)(1)(A)*² letter dated December 18, 2024, and forwarded to Plaintiff's counsel by email on December 19, 2024. This letter is Exhibit "A" offered and accepted into evidence at the Hearing.

² 15-6-11(c). Sanctions

If, after notice and a reasonable opportunity to respond, the court determines that § 15-6-11(b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated § 15-6-11(b) or are responsible for the violation.

(1) How Initiated.

(A) By Motion. A motion for sanctions under this rule shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate § 15-6-11(b). It shall be served as provided in § 15-6-5, but shall not be filed with or presented to the court unless, within twenty-one days after service of the motion (or such other period as the court may prescribe), the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected. If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees.

(B) On Court's Initiative. On its own initiative, the court may enter an order describing the specific conduct that appears to violate § 15-6-11(b) and directing an attorney, law firm, or party to show cause why it has not violated § 15-6-11(b) with respect thereto.

(2) Nature of Sanctions; Limitations. A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Subject to the limitations in subparagraphs (A) and (B), the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation.

(A) Monetary sanctions may not be awarded against a represented party for a violation of § 15-6-11(b)(2).

(B) Monetary sanctions may not be awarded on the court's initiative unless the court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party which is, or whose attorneys are, to be sanctioned.

(3) Order. When imposing sanctions, the court shall describe the conduct determined to constitute a violation of this rule and explain the basis for the sanction imposed.

7. In following SDCL 15-6-11(c)(1)(A), Mary Ann's counsel noticed Plaintiff's counsel of the 21 day requirement to correct error after service of Mary Ann's *Demand to Dismiss Action with Prejudice Rule 11(C)(1)(A)* letter.
8. Plaintiff failed to reply to Mary Ann Myers during the said 21 day period.
9. Subsequently, on January 16, 2025, 28 days after service of Mary Ann's *Demand to Dismiss Action with Prejudice Rule 11(C)(1)(A)*, when no reply was made by Plaintiff's counsel, Mary Ann filed her Answer and Counterclaim, Motion to Dismiss, Motion for Sanctions, Affidavit of Attorney Fees, Affidavit of Dave L. Claggett, Brief in Support of Motion for Sanctions and Brief in Support of Motion to Dismiss.
10. Plaintiff filed a Motion to Strike Service on February 11, 2025, and responded to Mary Ann's motions.
11. Any Finding of Fact subsequently determined to be a Conclusion of Law is incorporated therein by reference.

Based on the foregoing Findings of Fact, the Court enters its:

CONCLUSIONS OF LAW

1. The Court has jurisdiction over the parties and subject matter of the action.
2. Mary Ann Myers is not the individual Plaintiff claims to be indebted to Plaintiff.
3. Courts have addressed the distinction between misnomer, misjoinder and misidentification. *Minnesota v. Goodleap, LLC.*, 2024 W.L. 4542229, U.S. Dist., D. Minn. Misnomer is where a plaintiff misnames a defendant but correctly serves the correct party. *Id.* Misidentification "arises when two separate legal entities actually exist and a plaintiff mistakenly sues the entity with a name similar to that of the correct entity." *Id.* In the instant case, the legal issue arises from misjoinder, where the an unrelated and improper person is served.

4. In actions where misjoinder occurs several means existed objecting to serving an incorrect person. In the early 1900's a party could file a demur and therefore object to the sufficiency of the pleadings and or service. However, demurs found disfavor with the legislature and were removed pursuant to SDCL 15-6-7(c).
5. The preferred method of addressing misjoinder interestingly enough is found within the same chapter, SDCL 15-6-21. There the Court may "drop" parties or add the same through order. However, misjoinder does not create a ground for dismissal. SDCL 15-6-21, see also *Botum v. Herr*, 162 NW2d 880, 882 (SD 1968). Upon motion, the Court simply enters an order directing a particular party to be "dropped" *Id.* Nowhere within that subsection does it address attorney's fees. Request for attorneys fees must be provided for within statute, rule or sanctions and made upon by specific motion for attorneys fees. SDCL 15-6-54(d)
6. This Court concludes, Mary Ann Meyers was misjoined to this action.
7. Counsel for the misjoined party directs the Court to SDCL 15-6-11(c) as authority to sanction opposing Counsel. However, sanctions may only arise under 15-6-11(c) if the "attorneys, law firms, or parties [] have violated §15-6-11(b)." Thus, before sanctions are considered, this Court must address any breaches within sub (b) first.
8. SDCL 15-6-11(b) provides the following:

By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

- (1) It is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
- (2) The claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
- (3) The allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

- (4) The denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.
9. After a review of the information provided infra, this Court concludes Plaintiff hasn't violated sections 1 and 2. This Court concludes, Plaintiff failed to show the claims against Mary Ann Meyers, had evidentiary support after being properly informed that she was not Mary Meyers who has a SSN ending in 6936 and birthdate of Feb-XX-1957. SDCL 15-6-11(b)(3) and (4).
10. Instead of filing a motion for misjoinder or notifying Plaintiff of the misjoinder, Mary Ann's counsel notified Plaintiff's counsel of his obligation to dismiss this action against Mary Ann Myers in the *Demand to Dismiss Action with Prejudice Rule 11(C)(1)(A)* letter.
11. Plaintiff's counsel didn't respond after receiving the email as provided for in Defendant's exhibit "A". In that email correspondence, Mary Ann Meyers' counsel not only indicated a letter was mailed the day earlier, fully explaining Plaintiff served the wrong person; but, in summary fashion explain to Plaintiff's counsel the name, birthdate and social security card were incorrect. Further, Mary Ann Meyers' counsel alleged she didn't even own a Wells Fargo credit card. Plaintiff's counsel failed to act in reaching out to Mary Ann Meyers' counsel to address the defenses. Again, Defendant urges this Court to consider Plaintiff failed to dismiss this action against Mary Ann Myers within the 21 day period allowed by law. Dismissal isn't a remedy under misjoinder; however, Plaintiff's attorney should have inquired with counsel for Mary Ann Meyers and requested an order "dropping" the misjoined person. Additionally, Plaintiff had all of the information before it addressing why it couldn't persist in its action against Mary Ann Meyers as she wasn't the actual card holder. SDCL 15-6-11(b)(3 and 4).
12. Mary Ann Meyers' counsel persists Plaintiff's attempt to strike service is not the same as dismissing Mary Ann Myers from this lawsuit. In all candor, the issue with the action boils down to a failure to communication and failure of a Plaintiff's attorney to conduct a due


diligence review of the defenses raised within opposing counsel's letter mailed and later attached to an email. The title of the letter alone would warrant prudent inspection of the allegations contained within the letter, i.e., "Rule 11(C)(1)(A) Letter". Counsel for Plaintiff would have known that Rule 11 arises from sanctionable actions. Even if Plaintiff's counsel received hundreds of responses from debtors or other circumstances arose which took precedence over investigating the defenses raised, or misunderstood the misjoinder issue, that the defenses were raised by an attorney should compel a review.

13. Plaintiff argues the proper motion to the Court would be insufficiency of process due to the Sheriff incorrectly serving the wrong person. This Court disagrees with insufficiency of process as this arises from misjoinder. The Court agrees dismissal would still not be warranted under such circumstances. Nonetheless, this matter is arises from misjoinder and an order should be drafted dropping Mary Ann Meyers with her identifiers from the action.
14. Dropping Mary Ann Meyers from the law suit doesn't correct the legal fees expended due to Plaintiff not addressing the circumstances creating the misjoinder in the first instance. Furthermore, even if insufficiency of process was an available remedy at the time, the circumstances were directly addressed with Mary Ann's counsel via letter and email, Plaintiff should have communicated with opposing counsel.
15. Plaintiff's failure to timely respond caused additional fees to be assessed against Mary Ann Meyers through her attorney in answering the complaint to prevent judgment against her.
16. Attorney's fees and costs are allowed under Rules 11(c)(1)(A) and 11(c)(2) if 15-6-11(b) has been violated.
17. An order "dropping" Mary Ann Myers is authorized as a non-monetary sanction under Rule 11(c)(1)(A).

18. The attorney for Mary Ann Myers has itemized the attorney's fees and costs incurred by Mary Ann in defense of this case. Defendant's Exhibits B and C.
19. The Court, in awarding attorney's fees and expenses, considers the factors utilized in South Dakota, including the character and importance of the litigation. *Tappe v. Circuit Court, Sixth Judicial Circuit*, 326 N.W.2d 892, at 895 (S.D. 1982)]. The factors as set forth in *City of Sioux Falls v. Kelley*, 513 N.W.2d 97, 111 (S.D. 1994) (quoting Model Rules of Professional Conduct, Rule 1.5), include:
- a. the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
 - b. the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
 - c. the fee customarily charged in the locality for similar legal services;
 - d. the amount involved and the results obtained;
 - e. the time limitations imposed by the client or by the circumstances;
 - f. the nature and length of the professional relationship with the client;
 - g. the experience, reputation, and ability of the lawyer or lawyers performing the services;
 - and
 - h. whether the fee is fixed or contingent.
20. Considering all relevant factors, the Court determines that the attorney's fees and costs of Mary Ann Myers are reasonable under the circumstances, and awards Mary Ann Myers \$3,662.93 in attorney's fees and costs.
21. Counsel for Plaintiff shall prepare a proposed order "dropping" Mary Ann Meyers with her edited identifiers from the action pursuant to SDCL 15-6-21. The proposed order shall be delivered upon opposing counsel for approval.

Dated this 17th day of March, 2025.

BY THE COURT:


Hon. Eric L. Strawn
Circuit Court Judge

Attest: CAROL LATUSECK, CLERK
Nicolussi, Bree
Deputy



CERTIFICATE OF SERVICE

The undersigned hereby certifies that she served a true and correct copy of the FINDINGD OF FACT AND CONCLUSIONS OF LAW in the case of WELLS FARGO BANK NA vs. MARY MYERS (40CIV24-000364) upon the persons herein next designated all on the date below shown, by emailing a copy thereof to the parties and receiving a delivery receipt for the same confirming the email was delivered to the recipients' mailboxes.

Mr. Karl Von Oldenburg
Attorney at Law
kvonoldenburg@bqlaw.com

Mr. David L Claggett
Attorney at Law
davec@claggettanddill.com

Dated this 17th day of March 2025.


Bree Nicolussi Deputy Clerk of Courts

APPENDIX

2

STATE OF SOUTH DAKOTA)
)SS
COUNTY OF LAWRENCE)

IN CIRCUIT COURT

FOURTH JUDICIAL CIRCUIT

WELLS FARGO BANK, N.A.,)
 Plaintiff,)
)
vs.)
)
MARY MYERS,)

 Defendant.)

40CIV24-364
ORDER ON HEARING

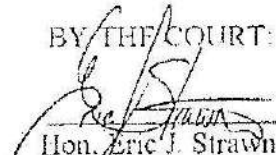
A Motions Hearing came on before the Court on February 20, 2025, the honorable Eric J. Strawn, Circuit Court Judge, presiding. Plaintiff Wells Fargo Bank, N.A., ("Wells Fargo") appeared by and through its counsel, Karl Von Oldenburg, BQ & Associates, P.C., L.L.O., Omaha, Nebraska. Mary Ann Myers ("Mary Ann") appeared by and through her counsel, Dave L. Claggett, Claggett & Dill, Prof. LLC, Spearfish, South Dakota. The Court having reviewed the file, and considered the arguments of counsel, and having entered its Findings of Fact and Conclusions of Law, which are incorporated herein by reference, and being duly advised, now, therefore:

IT IS HEREBY ORDERED AND ADJUDGED THAT:

1. Mary Ann Myers is hereby dropped from this action pursuant to SDCL 15-6-21 and as a non-monetary sanction under Rule 11(c)(1)(A).
2. Attorney's fees and costs are allowed under Rules SDCL 15-6-11(c)(1)(A) and 11(c)(2) as 15-6-11(b)(3) and (4) have been violated.
3. Sanctions shall be imposed upon Plaintiff's counsel, pursuant to SDCL 15-6-11(c)(1)(A), in the amount of \$3,662.93 for reasonable attorney's fees and costs.
4. This is considered a final Order regarding Mary Ann Myers.

4/15/2025 5:32:41 AM

BY THE COURT:


Hon. Eric J. Strawn
Circuit Court Judge

Attest: CAROL LATUSECK, CLERK
Nicolussi, Bree
Deputy



Page 2 of 2

APPENDIX

3

STATE OF SOUTH DAKOTA

IN CIRCUIT COURT

COUNTY OF LAWRENCE

FOURTH JUDICIAL CIRCUIT

Wells Fargo Bank, N.A.,

Plaintiff,

vs.

MARY MYERS,

Defendant.

CASE NO.

40CIV24-000364

COMPLAINT

COMES NOW the Plaintiff, Wells Fargo Bank, N.A, a National Banking Corporation, and for its Complaint against the Defendant, states and alleges:

1. Plaintiff is a National Banking Corporation, authorized to conduct business in the State of South Dakota.

2. Defendant is an individual residing in SPEARFISH, LAWRENCE County, South Dakota.

3. On or about February 26, 2018, the Defendant entered into a Consumer Credit Card Customer Agreement & Disclosure Agreement ("Agreement"), number *****3931 with Plaintiff. The Agreement has been accelerated and the total amount due is \$13,800.53. A true copy of the terms of the Agreement is attached hereto, marked as Exhibit "A" and by this reference made a part hereof.

4. Defendant has failed to make payments pursuant to the terms of the Agreement.

5. The Defendant is not a minor, a member of the military services of the United States, or its allies, incompetent or incarcerated.

6. The amount currently due and owing under the terms and conditions of the Agreement is the total accelerated sum of \$13,800.53.

7. Plaintiff has fully performed all obligations on its part to be performed. Defendant has defaulted upon his/her obligations under the Agreement.

8. The Agreement allows for expenses incurred by Plaintiff by reason of default and Plaintiff's court costs.



24122360

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Filed: 12/3/2024 5:35 PM CST Lawrence County, South Dakota 40CIV24-000364

WHEREFORE, Plaintiff prays for judgment against the Defendant on the Agreement in the total accelerated sum of \$13,800.53 until the date of the satisfaction, and Plaintiff's costs expended herein

Dated this 3 day of December, 2024

Wells Fargo Bank, N.A, Plaintiff,

By:



KARL VON OLDENBURG, SD BAR #5140
BQ & ASSOCIATES, P.C., L.L.O.
14211 ARBOR STREET, SUITE 100
OMAHA, NE 68144
TELEPHONE: (402) 554-4400
TELECOPIER: (402) 554-0339
SDBQ@BQLAW.COM
ATTORNEYS FOR PLAINTIFF

This is an attempt to collect a debt, and any information obtained will be used for that purpose.



24122360

psdcomwf.wpd

Filed: 12/3/2024 5:35 PM CST Lawrence County, South Dakota 40CIV24-000364



Consumer Credit Card Customer Agreement & Disclosure Statement Visa®

Thank you for opening a Wells Fargo Visa® Account.

Table of Contents

In this contract, "the Bank," "Wells Fargo," "we," "our," and "us" refer to Wells Fargo Bank, N.A. "You" and "your" mean each person who applied for and received a Wells Fargo Credit Card. "Credit Card" means any cards we issue to you or any devices we allow you to use for accessing your Account to obtain credit.

Part 1: Using Your Account

1. What is this contract?
2. How can you use this Account?
3. Can we limit your Account use?
4. What is your Credit Limit?
5. What happens if you use more than your available Credit Limit?
6. Can you add an authorized Credit Card user to your Account?
7. Can you end an authorized user's ability to use your Account?
8. Will you always receive a billing statement?
9. What can cause your Account to be in default?
10. What should you do if your Credit Card is lost or stolen or Account is compromised?
11. Who can close your Account?

Part 2: Making Transactions and Other Account Activity

1. How can you get Cash Advances?
2. How can you use SUPERCHECKS™ on your Account?
3. Can you use your Credit Card in a mobile app?
4. Can you use your Credit Card to pay any other Wells Fargo credit account?
5. Can we deny transactions on your Credit Card?
6. How do we manage temporary authorizations?
7. What happens if you misuse your Account in order to earn or use Rewards?
8. How does an international transaction in foreign currency convert to U.S. dollars?

Part 3: Understanding Fees and Interest

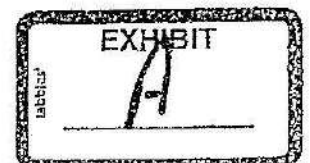
1. What are the Account's fees?
2. When do we charge interest to your Account?
3. Does your Account have a Minimum Interest Charge?
4. What interest charges will you owe us?
5. What is your daily periodic rate?
6. How do we calculate interest on your Account?
7. How can you avoid paying interest on your Account?
8. When do we apply specific transactions, fees, and credits to your Account?

Part 4: Making and Processing Payments

1. How much do you need to pay by the Payment Due Date?
2. How can you make a payment?
3. Can you use a personal loan to pay your Account?
4. What methods do we not accept for payments?
5. When do we process payments?
6. How do we apply your payments?
7. When do we post payments to your Account?

Part 5: Managing Contact Details and Your Information

1. How may we contact you?
2. Can we verify your credit information more than once?
3. What additional information can we gather for California residents?
4. Can we monitor phone calls you have with us?
5. What information can we report about you to consumer reporting agencies?



6. What should you do if your contact information changes?
7. When should you inform a merchant about changes to your Credit Card information?

Part 6: Knowing the Account's Legal Terms

1. Can we change this Agreement?
2. What happens if any part of this Agreement is unenforceable?
3. Can our Agreement rights change?
4. What is this Agreement's governing law?
5. Who can assign your Agreement to others?
6. Dispute Resolution Program: Arbitration Agreement
7. Your Billing Rights
8. Active Duty Military Servicemembers and Their Dependents
9. Interpreter Certification

Notice to California Cardholders

To our California customers who have discussed Credit Card terms and conditions with us in Spanish, Chinese, Korean, Vietnamese, or Tagalog:

Read Part 6 – Section 9 about interpreter certification before you confirm your credit card.

Lea la Parte 6, Sección 9, sobre la certificación del intérprete antes de confirmar su tarjeta de crédito.

請您在確認信用卡之前細讀第 6 部分第 9 節的「口譯員認證」。

귀하의 신용카드를 확인하시기 전에 통역사 인증에 관한 6장 9절을 읽으시기 바랍니다.

Hãy đọc Phần 6 – Phần 9 về xác nhận về thông dịch viên trước khi quý khách xác nhận thẻ tín dụng của mình.

Basahin ang Bahagi 6 – Seksyon 9 tungkol sa sertipikasyon ng tagapagsaling-wika bago mo kumpirmahin ang iyong credit card.

Part 1: Using Your Account

1. What is this contract?

This contract is for your Credit Card account (Account) and is between Wells Fargo Bank, N.A. and each Account holder.

The contract includes the following information:

- Credit Card Agreement (Agreement)
- Important Terms of Your Credit Card Account
- Future amendments to this contract

By using or confirming your Account, you and any joint Account holder accept this Agreement's terms. Please carefully read this Agreement and keep it for your records.

[back to the top](#)

2. How can you use this Account?

You agree to use your Account only for lawful personal, family, or household purposes that include:

| Transaction Type | Details |
|-------------------|--|
| Balance Transfers | When you transfer a credit balance from another financial institution's credit card to your Account, including using a check that accesses your Account. Your Account may not be eligible for Balance Transfers. |
| Cash Advances | When you use your Credit Card to get cash. These transactions include: <ul style="list-style-type: none"> • Credit Card use at: <ul style="list-style-type: none"> • ATM • Bank teller • Wells Fargo Online (Wellsfargo.com) or through the Wells Fargo mobile app • Cash-like transactions, such as: |

| | |
|-----------|--|
| | <ul style="list-style-type: none"> • Casino chips • Foreign currency • Lottery tickets • Money orders • Off-track wagers • Other wagers • Traveler checks • Wire transfers • Vouchers you can redeem for cash or similar items • Overdraft protection advances |
| Purchases | "Purchases" means when you use your Credit Card to buy or lease goods or services. Tax payments and associated fees are Purchases. Cash Advances and Balance Transfers are not Purchases. |
| Other | Any other transactions that we allow. |

We are not responsible for anyone who refuses to accept your Credit Card or any other Credit Access Device. Credit Access Device means a device other than your Credit Card that we allow you to use for accessing your Account to obtain credit, like SUPERCHECKSSM and mobile devices.

Knowing Your Responsibility to Pay

When you use your Account or let someone else use it, you promise to pay the total amount of the Purchases, Cash Advances, and Balance Transfers. You also promise to pay all interest, fees, and other amounts that you may owe us.

[back to the top](#)

3. Can we limit your Account use?

Yes. We may limit or close your Account. If we do so, the terms of this Agreement will apply until you pay your Account in full.

[back to the top](#)

4. What is your Credit Limit?

"Credit Limit" means the amount of credit that is available for you to use with your Account. We provide this amount to you with your Credit Card, and it shows on each of your billing statements. You promise to use your Account only to the limits.

We can adjust your Credit Limit at any time, including automatically increasing your Credit Limit if you qualify. Further, we may restrict the amount of your Credit Limit that you can use for Cash Advances.

[back to the top](#)

5. What happens if you use more than your available Credit Limit?

We may either allow the transaction without increasing your Credit Limit or deny the transaction. If we allow the transaction, we may require you to pay the over-limit amount along with your next statement's Minimum Payment. You will still be liable (responsible) for all credit you receive.

"Minimum Payment" means the minimum amount you must pay by the Payment Due Date. You can find this date on each billing statement for your Account.

"Payment Due Date" means the date when the Minimum Payment is due.

[back to the top](#)

6. Can you add an authorized Credit Card user to your Account?

Yes. To add an authorized user, contact us with the name of the person for whom you want us to issue a Credit Card. You can contact us any time at the number listed on the back of your Credit Card. We will then issue you a new Credit Card in their name. You are responsible for paying all charges that the authorized user makes and that you owe us, including any Purchases, Balance Transfers, or Cash Advances. This amount includes all related interest and fees.

Providing Personal Information about Authorized Users

You agree to give us certain personal information about each authorized user. They must give you permission to give us this information. The details you provide us may include:

- Name
- Address
- Social security number
- Individual Taxpayer Identification Number
- Date of birth
- Citizenship details

Managing Credit Card Responsibilities with Authorized Users

You are not required to have an authorized user on this Account. By adding one, this person is not liable for any Outstanding Balance or any other charges that you or any other authorized user makes. "Outstanding Balance" means the total of all unpaid amounts, including:

- Purchases
- Cash Advances
- Balance Transfers
- Interest
- Fees
- Any other amounts that you may owe us

Should all liable cardholders die, all authorized users' privileges automatically end. After that, any person who uses the Credit Card agrees to pay us all amounts they owe us. We can choose to pursue the person to pay any Outstanding Balance or other charges they allow.

You agree to inform each authorized user that all applicable sections of this Agreement also apply to them.

[back to the top](#)

7. Can you end an authorized user's ability to use your Account?

Yes. You can stop an authorized user from being able to use your Account. To do so, take these steps:

1. Recover that person's Credit Card.
2. Destroy the Credit Card.
3. Contact us with your request to remove them at the number on the back of your Credit Card or by mail at:
Wells Fargo Bank, N.A.
P.O. Box 10347
Des Moines, IA 50306-0347

Please note: If you do not recover and destroy their Credit Card, and the authorized user continues to use the Account, we have the right to cancel all Credit Cards and establish a new Account for you. However, until you contact us requesting to remove the authorized user, you continue to be liable for any charges the authorized user makes.

[back to the top](#)

8. Will you always receive a billing statement?

We will send you a billing statement when your Account has a balance.

[back to the top](#)

9. What can cause your Account to be in default?

Your Account is in default if any of the following happen:

- You do not make a Minimum Payment by the Payment Due Date.
- Your payment returns to Wells Fargo unpaid.
- You do not honor this Agreement's terms.
- Your application includes a false statement.
- You file for bankruptcy.

In any of these scenarios, we will require you to immediately pay your Account total. We also may:

- Not allow future transactions on your Account
- Close your Account
- Close your other Wells Fargo accounts

Paying Our Costs When Your Account Is in Default

You agree to pay collection costs, attorney's fees, and court costs that we have as a result of enforcing our rights under this Agreement.

Managing Defaults with Joint Accounts

We consider a default by one Account holder to be a default by all of them.

[back to the top](#)

10. What should you do if your Credit Card is lost or stolen, or Account is compromised?

Notify us immediately if:

- Your Credit Card or Account information is lost or stolen, or
- You believe someone is using it without your permission.

Contact us at:

| Contact Method | Details |
|----------------|---------|
|----------------|---------|

| | |
|----------|---|
| By Phone | 1-800-642-4720 |
| By Mail | Wells Fargo Bank, N.A. PO Box 10347 Des Moines, IA 50306-0347 |

Investigations and Liability for Unauthorized Use and Zero Liability Protection
You agree to assist us in our investigation of your claim. If we find that you are not responsible, then we will not hold you liable for your Account's unauthorized use.
[back to the top](#)

11. Who can close your Account?

| Entity | Details |
|------------------------|---|
| You | You may close your Account at any time. |
| Wells Fargo Bank, N.A. | We may close your Account for any reason at any time. |
| Joint Accounts | Any Account holder can cancel the Account. If we close the joint Account, then we may notify only one Account holder. |

When your Account closes, you must still pay the balance that you owe us according to this Agreement's terms.
[back to the top](#)

Part 2: Making Transactions and Other Account Activity

1. How can you get Cash Advances?

- **Cash Advances from ATMs**
You may have limits on how much and how frequently you can use your Credit Card for Cash Advances from ATMs. If you have a Cash Advance limit, it will be on your monthly statement. The ATM owner may also restrict how you can use it. Your Cash Advance amount will include any fees that the ATM owner charges you.
- **Cash Advances for Overdraft Protection**
You may choose to use your Credit Card to provide an automatic Cash Advance to cover an overdraft on a linked Wells Fargo checking account. To cover this overdraft, we will advance either your overdraft amount or \$25.00, whichever is greater. If your Credit Card's available credit is less than these amounts, then we will advance the amount of your available credit.
 - **Fees and Annual Percentage Rate (APR):** "APR" is a rate that we use to calculate interest on your Account's balance and shows as a percentage. You can find overdraft protection APR and fees in Important Terms of Your Credit Card Account, which is a summary of your Account's APRs, fees, and other important information.
Please note: Overdraft protection advances, interest, and fees may cause your Account balance to exceed your Credit Limit.
 - **More than one person on checking account:** If the checking account you link for overdraft protection lists more than one person (such as a joint checking account), then the following applies:
 - You are responsible for all overdraft protection advances. This responsibility is regardless of which person writes the check or does any other transaction that causes the overdraft, such as a debit card purchase.
 - You agree that we can disclose to any other person on your checking account that this Credit Card links to it for overdraft protection.

We can cancel, suspend, or change your overdraft protection service at any time and for any reason.
[back to the top](#)

2. How can you use SUPERCHECKS™ on your Account?

You can access your Account with SUPERCHECKS similar to how you write a check on a deposit account. SUPERCHECKS will post as a Balance Transfer. They will include transaction fees and interest.
The following restrictions apply to SUPERCHECKS

- **Payment on Other Wells Fargo Accounts:** You cannot use SUPERCHECKS to pay on any Wells Fargo account.
- **Allowed User:** Only the person whose name is printed on the check can use them.
- **Allowed Currency:** You can only write them in U.S. dollars.
- **Certified:** SUPERCHECKS cannot be certified.
- **Payment Disputes:** If you use SUPERCHECKS to pay a merchant for property or services and a dispute arises, you cannot file a claim against us as a result. We can put conditions on using SUPERCHECKS checks. We can also choose whether to reject, decline, and return unpaid any SUPERCHECKS checks or advances.

[back to the top](#)

3. Can you use your Credit Card in a mobile app?

Yes. We may allow you to load your Credit Card into an app on an electronic device, such as a mobile wallet. You can then use this app to make Purchases and transactions without presenting your Credit Card. Examples of electronic devices include smart phones, tablets, and other devices. Separate terms governing your use of your Credit Card through a mobile device and this Agreement cover those transactions. When you use your Credit Card with your mobile device for transactions, third parties (such as merchants and digital wallet operators) may use and receive information related to your mobile device and the Credit Card transactions.

- **Third-Party Fees**
Third parties may charge you fees for your transaction, such as mobile-carrier data or messaging charges.
- **Restrictions**
At any time, we may partially or fully restrict your ability to make credit transactions through a third party/mobile device.
- **Account Removal**
You agree to promptly notify us by calling the number on the back of your Credit Card if you remove or want to remove your Account information from any app on an electronic device.

Please note: We have no control over those devices and cannot guarantee how well they work. You also should protect the device's security the same as you would protect your Credit Card or other valuable information.

[back to the top](#)

4. Can you use your Credit Card to pay any other Wells Fargo credit account?

No. You cannot use your Credit Card to pay any other Wells Fargo credit account.

[back to the top](#)

5. Can we deny transactions on your Credit Card?

Yes. We may decline any transaction at any time for any reason, such as:

- Account default
- Suspected fraudulent or unlawful activity
- Internet gambling
- Any indication of a transaction's increased risk

We may also limit the number of authorizations we allow during a period of time. In addition, we can deny authorizations from merchants who may be engaging in the internet gambling business.

[back to the top](#)

6. How do we manage temporary authorizations?

We may allow temporary authorizations that are greater than your actual Purchase amount for transactions at some merchants, such as:

- Car rental companies
- Hotels
- Gas stations
- Restaurants

This temporary authorization may make less credit available on your Account for several days. This step usually happens until the date when the merchant provides the actual Purchase amount.

[back to the top](#)

7. What happens if you misuse your Account in order to earn or use Rewards?

If you abuse, misuse, or game your Account in order to earn or use Rewards, or try to do so, then we may close or restrict your Credit Card. This misuse means that you make multiple Purchases and payments during a Billing Cycle, which causes your total Purchases amount to substantially exceed your Credit Limit. Each billing

statement shows a statement closing date, which is your Billing Cycle's last day. "Billing Cycle" means the time period between billing statements.

[back to the top](#)

8. **How does an international transaction in foreign currency convert to U.S. dollars?**

When you use your Visa Credit Card to make a transaction in a currency other than U.S. dollars, Visa International (Visa) converts the charge into a U.S. dollar amount. Visa uses one of the following steps to determine the exchange rate between the transaction currency and the billing currency:

- Select a rate from the range available in wholesale currency markets for the applicable central processing date. This rate may vary from the rate Visa receives. Or,
- Use the government-mandated rate in effect for the applicable central processing date.

The processing date's currency conversion rate may differ from the rate in effect on the transaction date or the date when the transaction posts to your Account.

Using Merchant Conversions

Some merchants outside of the U.S. can give you an option for how to convert the Credit Card transaction into U.S. dollars. They can have you choose whether you want Visa or the merchant to make the conversion. If you choose for the merchant to do it, then they determine the conversion rate, not Visa. We then do not charge you a foreign currency conversion fee.

[back to the top](#)

Part 3: Understanding Fees and Interest

1. **What are the Account's fees?**

The following fees may apply to your Account, and you agree to pay them. If they do apply, you will find the amount in the document, Important Terms of Your Credit Card Account.

| Fee Type | When We Charge This Fee |
|---------------------------------|--|
| Annual Fee | We will add this fee to your monthly billing statement once a year, whether or not you use this Account. We add this fee to your Purchase balance, which may create interest charges. We will notify you before we charge the annual fee. To avoid future annual fees, you must close your Account before we charge you the annual fee. You may be eligible for a refund of the annual fee depending on when you close your Account. |
| Balance Transfer Fee | On a Balance Transfer transaction |
| Cash Advance Fee | On a Cash Advance from your Account |
| Foreign Currency Conversion Fee | If you make a transaction in a foreign currency and Visa converts it into a U.S. dollar amount |
| Late Fee | Each time we do not receive the required Minimum Payment by the Payment Due Date |
| Rush Plastic Fee | If you ask us to rush delivering your Credit Card to you |

We may charge additional fees if you and we agree to them. We add all fees to your Purchases balance, except Cash Advance fees. We add those fees to your Account's Cash Advance balance.

[back to the top](#)

2. **When do we charge interest to your Account?**

- For most transactions: We charge interest beginning on the date you make the transaction on your Account.
- For fees: We charge interest beginning on the Billing Cycle's first day after the previous Billing Cycle in which the fee posted to your Account.

[back to the top](#)

3. **Does your Account have a Minimum Interest Charge?**

Your Account may have a Minimum Interest Charge. "Minimum Interest Charge" means the lowest amount of interest we charge you if you owe any interest in a Billing Cycle.

For details of this charge, please see the document, Important Terms of Your Credit Card Account.

[back to the top](#)

4. What interest charges will you owe us?

The following details describe the interest you may owe each Billing Cycle. You can find details on the APRs that apply to different balances in the document, Important Terms of Your Credit Card Account.

- Introductory and Promotional Rates

Introductory Rates

Your Account may be eligible for introductory rates. The document, Important Terms of Your Credit Card Account, describes whether you qualify.

Promotional Rates

If we offer you a promotional rate after you open your Credit Card, then you will receive the terms at that time.

When any introductory and promotional rates expire, your remaining balances receive the applicable regular APR terms. You can find these details in the document, Important Terms of Your Credit Card Account.

- Standard Variable APR

A variable APR is an interest rate that varies with the market based on the U.S. Prime Rate. To calculate your variable APR for each Billing Cycle, we use the U.S. Prime Rate and add a margin. See the document Important Terms of Your Credit Card Account for the margin on Purchases, Balance Transfers, Cash Advances, and overdraft protection advances on your Account. You can also find details in that document about your Account's daily periodic rates.

How We Determine the U.S. Prime Rate

Each Billing Cycle, we use the U.S. Prime Rate that the Wall Street Journal publishes in its Money Rates section three business days before your billing statement's closing date. When more than one U.S. Prime Rates exist, we use an average. If the U.S. Prime Rate is not published or available (temporarily or permanently), we use a substitute index that we believe is similar to the U.S. Prime Rate. We do so at our sole discretion.

A change in the APR may increase or decrease the total amount of interest you pay and your Minimum Payment. If the U.S. Prime Rate changes and affects your APR, the new APR will apply to both existing and future balances on the first day of your Billing Cycle. The APR will continue to vary even if you or we close your Account.

- Fixed APRs

"Fixed APRs" means APRs that do not change with the market based on the U.S. Prime Rate. However, if one or more Fixed APRs apply to your Account, we may change the Fixed APR from time to time. We do so by following the terms that we describe in "Part 6 – Section 1: Can we change this Agreement?" of this document. You can find the APRs that apply to your Account in the document, Important Terms of Your Credit Card Account.

[back to the top](#)

5. What is your daily periodic rate?

The daily periodic rate is a daily interest rate. We calculate it by dividing each applicable APR by 365.

[back to the top](#)

6. How do we calculate interest on your Account?

We take the following steps to calculate your Account's interest:

- Step 1: Calculate the daily balance.

We calculate your daily balance separately for each transaction category. We take the following actions:

1. Start with the daily balance from the end of the previous day.
2. Add any new transactions and other charges, including interest that accrued on the previous day's balance (interest compounds daily).
3. We then subtract any payments or credits.

For example:

| Calculation | Amount |
|---|---------|
| Daily balance for Purchases from the previous day | \$1,000 |

| Calculation | Amount |
|--|----------|
| Add New Purchases | + \$500 |
| Add Fees and interest accrued on the previous day's transaction category balance | + \$50 |
| Subtract payments, credits, and adjustments that posted that day | - \$250 |
| = New daily balance for Purchases | = \$1300 |

• **Step 2: Calculate the Average Daily Balance (ADB).**

We add together all the daily balances for the Billing Cycle, starting with the beginning balance on the Billing Cycle's first day. This beginning balance includes any unpaid fees from the previous Billing Cycle and any late fees that we charged you during the current Billing Cycle. We treat any daily balance that has a credit as zero. We then divide this amount by the number of days in the Billing Cycle.

For example:

| Calculation | Amount |
|---|------------|
| Sum of daily balances | \$4,000 |
| Divide by number of days in the Billing Cycle | ÷ 30 |
| = ADB | = \$133.33 |

• **Step 3: Calculate the interest.**

We calculate the interest we will charge for each balance type by doing the following:

1. Multiply the daily periodic rate by the ADB.
2. Multiply the total from the previous bullet by the number of days in the Billing Cycle.

For example:

| Calculation | Amount |
|---|----------|
| Daily periodic rate | 0.05% |
| Multiply by the ADB | x 133.33 |
| Multiply by number of days in Billing Cycle | x 30 |
| = Charged interest | = \$2.00 |

[back to the top](#)

7. **How can you avoid paying interest on your Account?**

You can avoid paying interest on new Purchases by paying your entire New Balance by the Payment Due Date on each Billing Cycle's statement. However, you must always pay interest on Cash Advances and Balance Transfers.

"New Balance" means the total amount you owe by the statement's closing date. Your Payment Due Date is at least 25 days from the statement's closing date. You can find this detail on your billing statement.

[back to the top](#)

8. **When do we apply specific transactions, fees, and credits to your Account?**

Transactions

- **Purchases and Balance Transfers:** We add these amounts to the Purchase balance on the transaction date that your statement shows.
- **Cash Advance:** We add this amount to the Cash Advance balance on the transaction date that your statement shows.
- **Overdraft Protection Advance:** We add this amount to the Cash Advance balance on the transaction date that your statement shows.

Fees

- **Balance Transfer Fee:** We add this fee to your Purchase balance on the transaction date that your statement shows.

- **Cash Advance Fee:** We add this fee to your Cash Advance balance on the transaction date that your statement shows.

[back to the top](#)

Part 4: Making and Processing Payments

1. How much do you need to pay by the Payment Due Date?

Amount You Can Pay at Any Time

You can pay all or part of your Account balance at any time.

Amount You Must Pay By the Payment Due Date

You must pay your Minimum Payment by the Payment Due Date. You can find this amount and the date on your billing statement.

Your Minimum Payment includes any amount past due plus whichever of the following amounts are greater:

- 1% of the New Balance on your billing statement plus the total we bill you during the Billing Cycle for interest and any of these fees:

- Annual
- Late
- Rush plastic

We round your Minimum Payment amount up to the next highest whole dollar amount.

- \$25.00 or the Account's entire balance if the New Balance is less than \$25.00
- In addition, you must pay any amount that is over your Account's Credit Limit. However, we do not include this amount in your Minimum Payment.

[back to the top](#)

2. How can you make a payment?

You must pay in U.S. dollars with a personal check, money order, or cashier's check that a United States bank issues.

You can either mail your payment to us or pay electronically. If you mail your payment, send it to the address on your billing statement and use the enclosed envelope and payment coupon (if you receive printed statements).

Electronic Conversions

We may convert checks or other paper documents to an electronic transaction. To do so, we follow procedures that the National Automated Clearing House Association establishes. When this step happens, we keep a copy of the check or document you send us and not the original. You can request to receive this copy from us.

[back to the top](#)

3. Can you use a personal loan to pay your Account?

Yes. You can use a personal loan to make a payment to your Account.

[back to the top](#)

4. What methods do we not accept for payments?

You cannot use the following methods to pay this Account:

- A Wells Fargo Bank, N.A. credit or loan account, excluding personal loans
- Any Wells Fargo-affiliated company credit or loan account, excluding personal loans
- SUPERCHECKSSM

Please note: Do not mail cash. In addition, you cannot pay your Minimum Payment with credits, such as refunds for returned Purchases.

[back to the top](#)

5. When do we process payments?

| How You Make a Payment | When We Credit Payments to Your Account |
|---|---|
| Mailed payments we receive by 5:00 p.m. at the time zone where we receive it. | The day we receive the payment |
| Mailed payments we receive after 5:00 p.m. at the time zone where we receive it. | The day after we receive the payment |
| Electronic payments received through Wells Fargo Online Banking at Wellsfargo.com | The cutoff time that we share with you when you make your payment |

Making Payments that Do Not Follow Our Instructions

We may credit your payment up to five days after we receive it if you do not follow our instructions for how to make a payment.

Please note: We may choose to hold some of your available Credit Limit until we honor your payment.

[back to the top](#)

6 How do we apply your payments?

Minimum Payment

Generally, we process your Minimum Payment in the following order:

1. Lower APR balances (such as Purchases)
2. Higher APR balances (such as Cash Advances)

Amounts in Excess of the Minimum Payment

If you pay more than your required Minimum Payment, then we apply the excess first to the higher APR balances and then to lower ones. We do so based on the balances in your last billing statement.

Please note: If we accept payments that are less than the full amount you owe, we do not consider it as a full payment.

[back to the top](#)

7 When do we post payments to your Account?

We post payments within the Billing Cycle that we receive them from you.

[back to the top](#)

Part 5: Managing Contact Details and Your Information

1 How may we contact you?

You agree that we have your consent to contact you at any phone number, email address, or mailing address you provide for any Wells Fargo account or at any number that you call us from or at any number that we obtain by other means. If you provided a phone number(s), you agree that you are authorized to provide this phone number(s) and agree to receive calls and text messages from Wells Fargo at this number(s) for all your current and future Wells Fargo products and services. This does not give Wells Fargo permission to call or text you for marketing purposes. Message and data rates may apply. Message frequency varies. Automated systems, including prerecorded or artificial voice may be used.

[back to the top](#)

2 Can we verify your credit information more than once?

Yes. At any time, we can review any information you provided on your credit application.

This review may include:

- Requesting credit bureau reports
- Verifying your current credit standing
- Verifying your employment, assets, and income records

[back to the top](#)

3 What additional information can we gather for California residents?

At any time, we can obtain information about you from the California Department of Motor Vehicles. You agree to waive the address confidentiality requirements section of the California Vehicle Code (Section 1808.21).

[back to the top](#)

4 Can we monitor phone calls you have with us?

Yes. We may monitor and record any phone calls that you have with us.

In addition, we may use voice recognition technology to verify your identity when you call us. We may capture and store your voiceprint for this purpose.

[back to the top](#)

5 What information can we report about you to consumer reporting agencies?

We may report the following information about you and any additional authorized user to consumer reporting agencies:

- Account history
- Account performance
- Account status
- Account violations
- Agreement terms violations

Disputing Reported Information

- **By Mail**

You can dispute the accuracy of the information that we report to consumer reporting agencies by writing to us at:

Wells Fargo Bank, N.A.
P.O. Box 14517
Des Moines, IA 50306-0517

When contacting us, do the following:

- Describe in detail the information that you believe is not accurate.
- Provide any supporting documents with your dispute.
- Provide us with an identity theft report if you are disputing identity theft.

- **By Phone**

You can also contact us at the phone number that lists on the back of your card.

[back to the top](#)

6. What should you do if your contact information changes?

You must promptly contact us if you change any of the contact information you provided us. This information includes your:

- Name
- Mailing address
- Email addresses
- Phone numbers

If you have a joint Account, a notice to one of you serves as a notice to both of you.

[back to the top](#)

7. When should you inform a merchant about changes to your Credit Card information?

You may choose to give a merchant your Credit Card information to bill your account for recurring payments or to keep it on file for future Purchases or payments. If your Credit Card's number, expiration date, or security code changes, contact the merchant with your new Credit Card information.

Some card networks provide update services and receive updated Credit Card information from Wells Fargo. Merchants that participate in these services will receive updated Credit Card information from the network for credit cards that you have provided them. We cannot tell you which merchant will receive these updates. Some merchants do not subscribe to such network services, so you should always provide each merchant with your new Credit Card information.

[back to the top](#)

Part 6: Knowing the Account's Legal Terms

1. Can we change this Agreement?

Yes. We may change this Agreement at any time. These changes may apply to existing and future balances. We will notify you ahead of time in writing of any changes, and you will have a right to reject the changes, if the law requires. If you reject changes, we may require you to close your Account or take other actions.

[back to the top](#)

2. What happens if any part of this Agreement is unenforceable?

If any part of this Agreement is unenforceable, then all the Agreement's other provisions will remain in effect.

[back to the top](#)

3. Can our Agreement rights change?

No. We may waive or delay enforcing any of our rights without losing them. A court decree for divorce or separation or an out-of-court mutual agreement does not affect any of our rights to enforce this Agreement.

[back to the top](#)

4. What is this Agreement's governing law?

Federal law and South Dakota laws govern this Agreement and your Account.

[back to the top](#)

5. Who can assign your Agreement to others?

You may not assign your Account or any of your Agreement obligations.

We may assign your Account and any or all of this Agreement's rights and obligations to a third party.

[back to the top](#)

6. Dispute Resolution Program: Arbitration Agreement

- Binding Arbitration.** You and Wells Fargo Bank, N.A. (the "Bank") Agree that if a Dispute arises between you and the Bank, upon demand by either you or the Bank, the Dispute shall be resolved by the following arbitration process. The foregoing notwithstanding, the Bank shall not initiate an arbitration to collect

a consumer debt, but reserves the right to arbitrate all other disputes with its consumer customers. A "Dispute" is any unresolved disagreement between you and the Bank. It includes any disagreement relating in any way to the Card or related services, Accounts, or matters; to your use of any of the Bank's banking locations or facilities; or to any means you may use to access the Bank. It includes claims based on broken promises or contracts, torts, or other wrongful actions. It also includes statutory, common law, and equitable claims. A Dispute also includes any disagreements about the meaning or application of this Arbitration Agreement. This Arbitration Agreement shall survive the payment or closure of your Account. YOU UNDERSTAND AND AGREE THAT YOU AND THE BANK ARE WAIVING THE RIGHT TO A JURY TRIAL OR TRIAL BEFORE A JUDGE IN A PUBLIC COURT. As the sole exception to this Arbitration Agreement, you and the Bank retain the right to pursue in small claims court any Dispute that is within that court's jurisdiction. If either you or the Bank fails to submit to binding arbitration following lawful demand, the party so failing bears all costs and expenses incurred by the other in compelling arbitration.

- b. **Arbitration Procedure; Severability.** Either you or the Bank may submit a Dispute to binding arbitration at any time notwithstanding that a lawsuit or other proceeding has been previously commenced. NEITHER YOU NOR THE BANK SHALL BE ENTITLED TO JOIN OR CONSOLIDATE DISPUTES BY OR AGAINST OTHERS IN ANY ARBITRATION, OR TO INCLUDE IN ANY ARBITRATION ANY DISPUTE AS A REPRESENTATIVE OR MEMBER OF A CLASS, OR TO ACT IN ANY ARBITRATION IN THE INTEREST OF THE GENERAL PUBLIC OR IN A PRIVATE ATTORNEY GENERAL CAPACITY. Each arbitration, including the selection of the arbitrator(s), shall be administered by the American Arbitration Association (AAA), or such other administrator as you and the Bank may mutually agree to (the AAA or such other mutually agreeable administrator to be referred to hereinafter as the "Arbitration Administrator"), according to the Commercial Arbitration Rules and the Supplemental Procedures for Consumer Related Disputes ("AAA Rules"). To the extent that there is any variance between the AAA Rules and this Arbitration Agreement, this Arbitration Agreement shall control. Arbitrator(s) must be members of the state bar where the arbitration is held, with expertise in the substantive laws applicable to the subject matter of the Dispute. You and the Bank (the "Parties") agree that in this relationship: (1) The Parties are participating in transactions involving interstate commerce; and (2) This Arbitration Agreement and any resulting arbitration are governed by the provisions of the Federal Arbitration Act (Title 9 of the United States Code), and, to the extent any provision of that Act is inapplicable, unenforceable or invalid, the laws of the state of South Dakota. If any of the provisions of this Arbitration Agreement dealing with class action, class arbitration, private attorney general action, other representative action, joinder, or consolidation is found to be illegal or unenforceable, that invalid provision shall not be severable and this entire Arbitration Agreement shall be unenforceable.
- c. **Rights Preserved.** This Arbitration Agreement does not prohibit the Parties from exercising any lawful rights or using other available remedies to preserve, foreclose, or obtain possession of real or personal property; exercise self-help remedies, including setoff and repossession rights; or obtain provisional or ancillary remedies such as injunctive relief, attachment, garnishment, or the appointment of a receiver by a court of competent jurisdiction. Any statute of limitations applicable to any Dispute applies to any arbitration between the Parties. The provisions of this Arbitration Agreement shall survive termination, amendment, or expiration of the Card or any other relationship between you and the Bank.
- d. **Fees and Expenses of Arbitration.** Arbitration fees shall be determined by the rules or procedures of the Arbitration Administrator, unless limited by applicable law. Please check with the Arbitration Administrator to determine the fees applicable to any arbitration you may file. If the applicable law of the state in which you opened your Account limits the amount of fees and expenses to be paid by you, then no allocation of fees and expenses to you shall exceed this limitation. Bank will pay any costs that are required to be paid by it under the Arbitration Administrator's rules and procedures, and subject to applicable law. If the arbitrator rules in your favor on any claim presented, the Bank will reimburse you for arbitration filing fees you have paid up to \$700.00. Unless applicable law states otherwise, each party will pay their own attorney, expert, and witness fees. This rule applies no matter which party wins arbitration.

- a. Military Lending Act. The Arbitration Agreement may not apply to you if you are a covered borrower. Please see The Military Lending Act Notice in the Agreement for more information.

[back to the top](#)

7 Your Billing Rights

Keep This Notice 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:

Wells Fargo Bank, N.A.

P.O. Box 522

Des Moines, IA 50306-0522

In your letter, give us the following information:

- Your name and Account number;
- The date and dollar amount of the suspected error;
- 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 can also contact us at the phone number that lists on the back of your card.

You must contact us:

- Within 60 days after the error appeared on your statement.
- At least 3 business days before 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 at the address above. You may notify using other ways (including calling us at the telephone number listed on the front of your statement), but if you do we are not required to investigate any potential errors and you may have to pay the amount in question.

What Will Happen After We Receive Your Letter.

When we receive your letter, we must do two things:

1. Within 30 days of receiving your letter, we must tell you that we received your letter. We will also tell you if we have already corrected the error.
2. Within 90 days of receiving your letter, 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 remain on your statement, and we may continue to charge you interest on that amount.
- 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 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 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.

3. You must not yet have fully paid for the Purchase.

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

Wells Fargo Bank, N.A.

P.O. Box 522

Des Moines, IA 50306-0522

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 [back to the top](#)

9. Active Duty Military Servicemembers and Their Dependents

The Military Lending Act Notice: Federal Law provides important protections to members of the Armed Forces and their dependents relating to extensions of consumer credit. In general, the costs of consumer credit to a member of the Armed Forces and his or her dependent may not exceed an annual percentage rate of 36 percent. This rate must include, as applicable to the credit transaction or account: the cost associated with credit insurance premiums, fees for ancillary products sold in connection with the credit transaction, any application fee charged (other than certain application fees for specified credit transactions or accounts), and any participation fee charged (other than certain participation fees for a credit card account).

You may contact us at 1-844-309-0044 for information about the Military Annual Percentage Rate and a description of your payment obligation.

The Arbitration Agreement does not apply to you if you are covered by the Military Lending Act nor do any provisions that waive any right to legal recourse under any state or federal law to the extent required by the Military Lending Act.

[back to the top](#)

Interpreter Certification

Interpreter Certification. If you choose to discuss your credit card account with us in Spanish, Chinese, Korean, Vietnamese, or Tagalog, please read the following.

By signing, using or confirming the credit card issued to you, you certify to us that:

- You have discussed the Customer Agreement and Disclosure Statement with your interpreter and have been given the opportunity to discuss and negotiate with us the terms and conditions contained in these documents.
- Your interpreter is at least 18 years old and is fluent in both English and in the language in which you chose to discuss with us the terms and conditions of your credit card Account.
- You understand and agree to the terms and conditions contained in these enclosed documents.

Certificación de Intérprete

Certificación de Intérprete. Si usted opta por conversar sobre su cuenta de tarjeta de crédito con nosotros en español, chino, coreano, vietnamita o tagalo, lea lo siguiente.

Al firmar, utilizar o confirmar la tarjeta de crédito emitida a su nombre, usted certifica ante nosotros que:

- Usted ha analizado el Contrato del Cliente y Declaración de Divulgación con su intérprete, y que usted y su intérprete han tenido la oportunidad de analizar y negociar con nosotros los términos y condiciones contenidos en estos documentos.
- Su intérprete tiene por lo menos 18 años de edad y habla con fluidez tanto en inglés como en el idioma que usted haya elegido para conversar con nosotros sobre los términos y condiciones de su Cuenta de tarjeta de crédito.
- Usted entiende y está de acuerdo con los términos y condiciones contenidos en estos documentos adjuntos.

口譯員認證

口譯員認證。如果您選擇以西班牙語、中文、韓語、越南語或菲律賓語與我們討論信用卡帳戶相關事宜，請閱讀以下內容。

一旦您簽署、使用或確認核發給您的信用卡，即表示您向我們證明：

- 您已經與您的口譯員討論過《客戶協議》與《披露聲明》，並且有機會與我們討論和協商這些文件中的條款和條件。

- 您的口譯員至少年滿 18 歲，並具有流利的英語能力且深諳您所選與我們討論您的信用卡帳戶條款和條件的語言。
- 您理解並同意遵守所附這些文件中的條款和條件。

통역사 인증

통역사 인증. 통역사 인증. 귀하의 신용카드 계정에 관한 사항을 스페인어, 중국어, 한국어, 한국어, 베트남어 또는 타갈로그어로 저희와 논의하기로 하신 경우, 다음 사항을 읽어 주십시오

귀하에게 발급된 신용카드에 서명하거나 사용 또는 확인함으로써, 귀하는 저희에게 다음 사항을 증명하게 됩니다.

- 귀하는 귀하의 통역사와 함께 고객 동의서 및 공개 진술서에 관해 논의하였으며 이러한 문서에 포함된 약관을 저희와 논의하고 협상할 기회를 가졌습니다
- 귀하의 통역사는 18세 이상이며 영어뿐만 아니라 귀하가 신용카드 계좌 약관에 관해 저희와 논의할 때 사용하시기로 선택하신 언어에 모두 능통합니다
- 귀하는 첨부된 이러한 문서에 포함된 약관을 이해하였으며 이에 동의합니다

Xác Nhận Về Người Thông Dịch

Xác Nhận về Thông Dịch Viên. Nếu quý khách chọn thảo luận tương mục thẻ tín dụng của mình với chúng tôi bằng tiếng Tây Ban Nha, tiếng Trung, tiếng Hàn, tiếng Việt hoặc tiếng Tagalog, vui lòng đọc phần sau đây.

Bằng việc ký, sử dụng hoặc xác nhận thẻ tín dụng đã cấp cho quý vị, quý vị chúng nhận với chúng tôi rằng:

- Quý vị đã thảo luận với thông dịch viên của mình về Thỏa Thuận Khách Hàng và Tuyên Bố Tiết Lộ Thông Tin và đã có cơ hội trao đổi và thương lượng với chúng tôi về các điều khoản và điều kiện nêu trong những tài liệu này.
- Thông dịch viên của quý vị tối thiểu 18 tuổi và thông thạo cả tiếng Anh lẫn ngôn ngữ mà quý vị đã chọn sử dụng để thảo luận với chúng tôi về các điều khoản và điều kiện liên quan đến tương mục thẻ tín dụng của quý vị.
- Quý vị hiểu và đồng ý với các điều khoản và điều kiện được nêu trong những tài liệu đính kèm này.

Sertipikasyon ng Tagapagsaling-wika

Sertipikasyon ng Tagapagsaling-wika. Kung pipiliin mong tatakayin ang iyong credit card account sa amin sa wikang Spanish, Chinese, Korean, Vietnamese, o Tagalog, pakibasa ang sumusunod.

Sa pamamagitan ng paglagda, paggamit o pagkumpirma sa credit card na ibinigay sa iyo, pinaLototohanan mo sa amin na:

- Tinalakay mo ang Kasunduan ng Kostumer at ang Pahayag ng Pagsisiswalat sa iyong tagapagsaling-wika at nabigyan ka ng pagkakataong talakayin at makipagkasundo sa amin sa mga tuntunin at kundisyong nilalaman ng mga dokumentong ito.
- Ang iyong tagapagsaling-wika ay wala pang 18 taong gulang at lubos na marunong sa Ingles at sa wika na napili mo para talakayin sa amin ng mga tuntunin at kundisyon ng iyong credit card Account.
- Nauunawaan at sinasang-ayunan mo ang mga tuntunin at kundisyong nakasaad sa mga nakalakip na dokumentong ito.

[back to the top](#)

Wells Fargo Bank, N.A., P.O. Box 10347, Des
Moines, IA 50306-0347 • 1-800-642-4720
We accept all relay calls, including 711

M-138174
LS WF58



WELLS FARGO CASH WISE VISA SIGNATURE® CARD

Account ending in 3931

Statement Period 10/26/2023 to 11/26/2023



Page 1 of 2

Wells Fargo Online® wells Fargo.com
24-hour Customer Service 1-866-225-5533
We accept all relay calls, including T11
Outside the US call collect 1-920-625-7500

Send general inquiries to
Wells Fargo, PO Box 30347, Des Moines IA 50306-0347

Payment

| | |
|--|-------------|
| Payment Due Date | 12/21/2023 |
| Minimum Payment | \$3,787.00 |
| Includes Past Due Amount of \$3,440.00 | |
| Overlimit Amount | \$890.53 |
| Total Amount Due | \$4,677.53 |
| New Balance | \$13,890.53 |

Late Payment Warning: If we do not receive your Minimum Payment by 12/21/2023, you may have to pay a late fee up to \$40.

Minimum Payment Warning: If you make only the minimum payment each period, you will pay more in interest and it will take you longer to pay off your balance. For example:

| If you make no additional charges using this card and each month you pay ... | You will pay off the New Balance shown on this statement in about ... | And you will end up paying an estimated total of ... |
|--|---|--|
| Only the minimum payment | 14 years | \$13,890 |

If you would like information about credit counseling services, refer to

www.justice.gov/usfist-credit-counseling-agencies-approved-pursuant-11-use-111 or call 1-866-464-6322

Account Summary

| | | | |
|--|-------------|------------------------|----------|
| Previous Balance | \$13,890.53 | Total Credit Limit | \$13,000 |
| - Payments | \$0.00 | Total Available Credit | \$0 |
| - Other Credits | \$0.00 | | |
| + Cash Advances | \$0.00 | | |
| + Purchases, Balance Transfers & Other Charges | \$0.00 | | |
| + Fees Charged | \$0.00 | | |
| + Interest Charged | \$0.00 | | |
| = New Balance | \$13,890.53 | | |

Transactions

| Card Ending In | Trans Date | Post Date | Reference Number | Description | Credits | Charges |
|----------------|------------|-----------|------------------|-------------|---------|---------|
|----------------|------------|-----------|------------------|-------------|---------|---------|

Fees Charged

| | |
|------------------------------------|--------|
| TOTAL FEES CHARGED FOR THIS PERIOD | \$0.00 |
|------------------------------------|--------|

Interest Charged

| | |
|--|--------|
| INTEREST CHARGE ON PURCHASES | \$0.00 |
| INTEREST CHARGE ON CASH ADVANCES | \$0.00 |
| TOTAL INTEREST CHARGED FOR THIS PERIOD | \$0.00 |

2023 Totals Year-to-Date

| | |
|--------------------------------|------------|
| TOTAL FEES CHARGED IN 2023 | \$269.00 |
| TOTAL INTEREST CHARGED IN 2023 | \$2,077.56 |

NOTICE: SEE REVERSE SIDE FOR IMPORTANT INFORMATION ABOUT YOUR ACCOUNT

Continued

3594 3931 3 3 10 11/26/23 2 PAGE 1 OF 3 10 1023 8902 0832 010F5536

Detach and mail with check payable to Wells Fargo. For faster processing, include your account number on your check.



| | |
|--|-------------|
| Account Number | 3931 |
| Payment Due Date | 12/21/2023 |
| Minimum Payment | \$3,787.00 |
| Includes Past Due Amount of \$3,440.00 | |
| Overlimit Amount | \$890.53 |
| Total Amount Due | \$4,677.53 |
| New Balance | \$13,890.53 |

Amount
Enclosed

\$

MARY MYERS
330 W GRANT ST
SPEARFISH SD 57783-2338

WELLS FARGO CARD SERVICES
PO BOX 77053
MINNEAPOLIS MN 55403-7703

YKO
510

Important Information About Your Account

1. What are your billing rights?

Addressing Errors and Transaction Disputes

If you believe that your bill is wrong (error) or you need more information about a transaction on the statement, contact us as soon as possible. We must hear from you within 60 days after we sent you the first bill that your error appeared on.

In order to keep your billing rights, you must write to us. While you can call us at the phone number listed on your statement or contact us in another way, doing so will not preserve your billing rights.

Follow these steps when contacting us:

1. Write a letter ("Written Notice") about the error or transaction question you have. Include the following details:

| Written Notice Topic | Details to Include |
|-----------------------|--|
| Errors | <ul style="list-style-type: none"> Your name Your account number Dollar amount of the suspected error Description of the error and why you believe it is wrong |
| Transaction Questions | <ul style="list-style-type: none"> Your name Your account number Description of the transaction in question |

2. Mail your Written Notice to the following address:

Wells Fargo Bank, N.A.
P.O. Box 522
Des Moines, IA 50306-0522

Billing Payments During an Investigation

Suspected Error Amounts

While we are investigating your suspected error amount, you do not have to pay that amount. But you must still pay the rest of your bill that is not part of the error. We also cannot report you as late or take any action to collect your suspected error amount during our investigation.

Automatic Bill Payments

You can stop authorized automatic payments for your credit card bill on the amount you believe is an error. To do so, we must receive your Written Notice within three business days before the scheduled automatic payment happens.

Addressing Quality of Goods – Special Rule for Credit Card Purchases

If you purchased a good or service with your credit card and have a problem with the quality, you may not have to pay your remaining amount on the good or service. To qualify, you must have tried in good faith to correct the problem with the merchant. Have own or separate the merchant, or we mailed you an advertisement for the property or services, then we will cover all purchases. Otherwise, the following three details must apply in order to have this protection:

1. The purchase must cost more than \$50.
2. You must have made the purchase in your home state or within 100 miles of your mailing address.
3. You must have a balance left on the charge you are disputing. For example, the good cost \$1000, and you already paid \$700, leaving \$300 left to pay.

2. How do we use your credit information?

We may provide information about your account to consumer reporting agencies. You have the right to dispute the accuracy of information that we report. To do so, take these steps:

1. Write a letter to us that describes the specific information that is not correct or that you are disputing, as well as any supporting documents.

2. Mail your letter to us at the following address:

Wells Fargo Bank, N.A.
P.O. Box 14517
Des Moines, IA 50306-3517

If the information relates to identity theft, you will need to provide us with an identity theft report.

3. When do we process payments?

We process payments in different ways depending on whether you make Conforming- or Non-Conforming Payments.

Conforming Payments

- "Conforming Payments" are payments that you either:
 - Mail to us using the enclosed payment coupon to the payment address listed on your statement; or
 - Make via the "Transfer" tab or "Make a Payment" link on the Wells Fargo Online Banking credit card Account Activity tab at www.wellsfargo.com.

| When We Receive the Payment | When We Credit Your Account |
|--|---|
| In the mail by 5:00 p.m. local time | The date that we receive your payment |
| In the mail after 5:00 p.m. local time | The next day |
| Through our Website or Mobile App | We will disclose this detail when you make your transaction |

Non-Conforming Payments

"Non-Conforming Payments" are payments that you make in any other way, such as:

- Certified mail
- FedEx or UPS
- Envelopes with addresses that are not clear enough to read

Non-Conforming Payments may not receive credit for up to five days after the date that we receive it.

Payments Made on Last Day of Statement Cycle

When you make payments to your account on the last day of the statement cycle, we apply these payments on that day. However, these payments may not appear on your monthly billing statement or credit report until the next statement cycle.

4. What does a check payment authorize?

When you pay with a check, you authorize us to do either of the following:

- Use your check information to make a one-time electronic fund transfer from your account. In this scenario, we may withdraw the funds from your account as soon as the same day we receive your payment. You also will not get your check back from your financial institution.
- Process the payment as a check transaction.

5. How do you pay your Account with an amount less than you owe?

If you want to pay your account for less than the full amount you owe, mail your request to us at:
Wells Fargo Bank, N.A.
P.O. Box 10311
Des Moines, IA 50306-0311

Please note: These payments do not erase your full debt.

6. How do we calculate your balance?

We use a method called "average daily balance (including new purchases)." For more information, refer to your Credit Card Account Agreement or call our toll-free Customer Service number located on the front of this statement.

7. How can you avoid paying interest on purchases?

Your Payment Due Date is at least 25 days after each billing period closes. You must pay your entire balance each month to avoid interest charges. We begin charging interest on cash advances and balance transfers on the transaction date.

8. How can you manage your account?

To manage your account details — including card payments, alerts, and address changes — visit wellsfargo.com or call the customer service number that appears on your account statement.

9. Will customer service monitor your calls with us?

We may record or monitor any calls you have with customer service.



WELLS FARGO CASH WISE VISA SIGNATURE® CARD

Account ending in 3931

Statement Period 10/28/2023 to 11/26/2023

Page 2 of 3



Interest Charge Calculation

Your Annual Percentage Rate (APR) is the annual interest rate on your account.

| Type of Balance | Annual Percentage Rate (APR) | Balance Subject to Interest Rate | Days in Billing Cycle | Interest Charge | Balance as of 11/26/2023 |
|-----------------|------------------------------|----------------------------------|-----------------------|-----------------|--------------------------|
| PURCHASES | 0.00% | \$0.00 | 30 | \$0.00 | \$13,895.53 |
| CASH ADVANCES | 0.00% | \$0.00 | 30 | \$0.00 | \$0.00 |

Wells Fargo News

Do we have your correct mobile phone number?

Don't miss suspicious activity notifications, time-sensitive information, or critical account updates. Make sure we can reach you if we detect unusual activity on your account, or need to contact you to verify transactions. Sign in or log on to wellsfargo.com/online-banking and verify your mobile phone number on the Contact Information page.

Continued



WELLS FARGO CASH WISE VISA SIGNATURE[®] CARD

Account ending in 3931

Statement Period 10/28/2023 to 11/26/2023

Page 3 of 3



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WELLS FARGO CASH WISE VISA SIGNATURE® CARD

Account ending in 3931

Statement Period 09/27/2023 to 09/30/2023



Page 1 of 3

Wells Fargo Online®: wells Fargo.com
24-hour Customer Service: 1-866-229-0033
We accept all relay calls, including 711
Outside the US call collect 1-822-825-7500

Send general inquiries to:
Wells Fargo, PO Box 10347, Des Moines IA 50306-0347

Payment

Payment Due Date 10/21/2023
Minimum Payment \$0.00
New Balance \$0.00

Account Summary

| | | | |
|--|-------------|------------------------|----------|
| Previous Balance | \$13,890.53 | Total Credit Limit | \$13,000 |
| - Payments | \$0.00 | Total Available Credit | \$0 |
| + Other Credits | \$13,890.53 | | |
| + Cash Advances | \$0.00 | | |
| + Purchases, Balance Transfers & Other Charges | \$0.00 | | |
| + Fees Charged | \$0.00 | | |
| + Interest Charged | \$0.00 | | |
| = New Balance | \$0.00 | | |

Transactions

| Card Ending In | Trans Date | Post Date | Reference Number | Description | Credits | Charges |
|----------------|------------|-----------|------------------|-------------|---------|---------|
|----------------|------------|-----------|------------------|-------------|---------|---------|

Other Credits

| | | | | | | |
|-------------------------------------|-------|--|-------------------|--------------------------------------|-------------|--|
| 09/30 | 09/30 | | F3531008H00509990 | CHARGE OFF ACCOUNT-PRINCIPALS | 11,763.67 | |
| 09/30 | 09/30 | | F3531008H00509990 | CHARGE OFF ACCOUNT "FINANCE CHARGES" | 2,126.86 | |
| TOTAL OTHER CREDITS FOR THIS PERIOD | | | | | \$13,890.53 | |

Fees Charged

| | |
|------------------------------------|--------|
| TOTAL FEES CHARGED FOR THIS PERIOD | \$0.00 |
|------------------------------------|--------|

Interest Charged

| | |
|--|--------|
| INTEREST CHARGE ON PURCHASES | \$0.00 |
| INTEREST CHARGE ON CASH ADVANCES | \$0.00 |
| TOTAL INTEREST CHARGED FOR THIS PERIOD | \$0.00 |

2023 Totals Year-to-Date

| | |
|--------------------------------|------------|
| TOTAL FEES CHARGED IN 2023 | \$269.00 |
| TOTAL INTEREST CHARGED IN 2023 | \$2,077.56 |

NOTICE: SEE REVERSE SIDE FOR IMPORTANT INFORMATION ABOUT YOUR ACCOUNT

Continued

3216 YAG 1 3 18 230910 0 00X PAGE 1 of 3 10 1415 8600 011P 01DP5598



Account Number 133931
Payment Due Date 10/21/2023
Minimum Payment \$0.00
New Balance \$0.00

Amount Enclosed \$

MARY MYERS
330 W GRANT ST
SPEARFISH SD 57783-2035

WELLS FARGO CARD SERVICES YKG
PO BOX 77053 510
MINNEAPOLIS MN 55469-7753

Important Information About Your Account

1. What are your billing rights?

Addressing Errors and Transaction Disputes

If you believe that your bill is wrong ("error") or you need more information about a transaction on the statement, contact us as soon as possible. We must hear from you within 60 days after we sent you the first bill that your error appeared on.

In order to keep your billing rights, you must write to us. While you can call us at the phone number listed on your statement or contact us in another way, doing so will not preserve your billing rights.

Follow these steps when contacting us:

1. Write a letter ("Written Notice") about the error or transaction question you have. Include the following details:

| Written Notice Topic | Details to include |
|-----------------------|--|
| Errors | <ul style="list-style-type: none"> Your name Your account number Dollar amount of the suspected error Description of the error and why you believe it is wrong |
| Transaction Questions | <ul style="list-style-type: none"> Your name Your account number Description of the transaction in question |

2. Mail your Written Notice to the following address:

Wells Fargo Bank, N.A.
P.O. Box 522
Des Moines, IA 50306-0522

Bill Payments During an Investigation

Suspected Error Amounts

While we are investigating your suspected error amount, you do not have to pay that amount. But you must still pay the rest of your bill that is not part of the error. We also cannot report you as late or take any action to collect your suspected error amount during our investigation.

Automatic Bill Payments

You can stop authorized automatic payments for your credit card bill on the amount you believe is an error. To do so, we must receive your Written Notice within three business days before the scheduled automatic payment happens.

Addressing Quality of Goods – Special Rule for Credit Card Purchases

If you purchased a good or service with your credit card and have a problem with the quality, you may not have to pay your remaining amount on the good or service. To qualify, you must have tried in good faith to correct the problem with the merchant. If we own or operate the merchant, or we mailed you an advertisement for the property or services, then we will cover all purchases. Otherwise, the following three details must apply in order to have this protection:

- The purchase must cost more than \$50.
- You must have made the purchase in your home state or within 100 miles of your mailing address.
- You must have a balance left on the charge you are disputing. For example, the good cost \$1000, and you already paid \$700, leaving \$300 left to pay.

2. How do we use your credit information?

We may provide information about your account to consumer reporting agencies. You have the right to dispute the accuracy of information that we report. To do so, take these steps:

- Write a letter to us that describes the specific information that is not correct or that you are disputing, as well as any supporting documents.

- Mail your letter to us at the following address:

Wells Fargo Bank, N.A.
P.O. Box 14517
Des Moines, IA 50306-3517

If the information relates to identity theft, you will need to provide us with an identity theft report.

3. When do we process payments?

We process payments in different ways depending on whether you make Conforming- or Non-Conforming Payments.

Conforming Payments

"Conforming Payments" are payments that you either:

- Mail to us using the enclosed payment coupon to the payment address listed on your statement or
- Make via the "Transfer" tab or "Make a Payment" link on the Wells Fargo Online Banking credit card Account Activity tab at www.wellsfargo.com.

| When We Receive the Payment | When We Credit Your Account |
|--|--|
| In the mail by 5:00 p.m. local time | The date that we receive your payment |
| In the mail after 5:00 p.m. local time | The next day |
| Through our Website or Mobile App | We will deduce this date when you make your transaction. |

Non-Conforming Payments

"Non-Conforming Payments" are payments that you make in any other way, such as:

- Certified mail
- FedEx or UPS
- Envelopes with addresses that are not clear enough to read

Non-Conforming Payments may not receive credit for up to five days after the date that we receive it.

Payments Made on Last Day of Statement Cycle

When you make payments to your account on the last day of the statement cycle, we apply those payments on that day. However, those payments may not appear on your monthly billing statement or credit report until the next statement cycle.

4. What does a check payment authorize?

When you pay with a check, you authorize us to do either of the following:

- Use your check information to make a one-time electronic fund transfer from your account. In this scenario, we may withdraw the funds from your account as soon as the same day we receive your payment. You also will not get your check back from your financial institution.
- Process the payment as a check transaction.

5. How do you pay your Account with an amount less than you owe?

If you want to pay your Account for less than the full amount you owe, mail your request to us at:

Wells Fargo Bank, N.A.
P.O. Box 10311
Des Moines, IA 50306-0311

Please note: These payments do not erase your full debt.

6. How do we calculate your balance?

We use a method called "average daily balance (including new purchases)." For more information, refer to your Credit Card Account Agreement or call our toll-free Customer Service number located on the front of this statement.

7. How can you avoid paying interest on purchases?

Your Payment Due Date is at least 25 days after each billing period closes. You must pay your entire balance each month to avoid interest charges. We begin charging interest on cash advances and balance transfers on the transaction date.

8. How can you manage your account?

To manage your account details — including card payments, alerts, and address changes — visit wellsfargo.com or call the customer service number that appears on your account statement.

9. Will customer service monitor your calls with us?

We may record or monitor any calls you have with customer service.

01DP5556 - 14 - 06/14/2023

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WELLS FARGO CASH WISE VISA SIGNATURE® CARD

Account ending in 3931

Statement Period 09/27/2023 to 09/30/2023

Page 2 of 3



Interest Charge Calculation

Your Annual Percentage Rate (APR) is the annual interest rate on your account

| Type of Balance | Annual Percentage Rate (APR) | Balance Subject to Interest Rate | Days in Billing Cycle | Interest Charge | Balance as of 09/30/2023 |
|-----------------|------------------------------|----------------------------------|-----------------------|-----------------|--------------------------|
| PURCHASES | 22.24% variable | \$0.00 | 4 | \$0.00 | \$10,850.63 |
| CASH ADVANCES | 26.24% variable | \$0.00 | 4 | \$0.00 | \$0.00 |

Wells Fargo News

Do we have your correct mobile phone number?

Don't miss suspicious activity notifications, time-sensitive information, or critical account updates. Make sure we can reach you if we detect unusual activity on your account, or need to contact you to verify transactions. Sign in or log on to [wellsfargo.com/online-banking](https://www.wellsfargo.com/online-banking) and verify your mobile phone number on the Contact Information page.



WELLS FARGO CASH WISE VISA SIGNATURE® CARD

Account ending in 3931

Statement Period 09/27/2023 to 09/30/2023

Page 3 of 3



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WELLS FARGO CASH WISE VISA SIGNATURE® CARD

Account ending in 3931

Statement Period 04/27/2024 to 05/27/2024



Page 1 of 3

Wells Fargo Online®: wells Fargo.com
24-hour Customer Service: 1-866-225-6333
We accept all relay calls, including 711
Outside the US call collect: 1-920-825-7809

Send general inquiries to:
Wells Fargo, PO Box 10347, Des Moines IA 50305-0347

Payment

| | |
|--|-------------|
| Payment Due Date | 06/21/2024 |
| Minimum Payment | \$5,770.00 |
| Includes Past Due Amount of \$5,425.00 | |
| Overlimit Amount | \$800.53 |
| Total Amount Due | \$6,570.53 |
| New Balance | \$13,800.53 |

Late Payment Warning: If we do not receive your Minimum Payment by 06/21/2024, you may have to pay a late fee up to \$0.

Minimum Payment Warning: If you make only the minimum payment each period, you will pay more in interest and it will take you longer to pay off your balance. For example:

| If you make no additional charges using this card and each month you pay ... | You will pay off the New Balance shown on this statement in about ... | And you will end up paying an estimated total of ... |
|--|---|--|
| Only the minimum payment | 14 years | \$13,001 |

If you would like information about credit counseling services, refer to

www.justice.gov/us11st-credit-counseling-agencies-approved-pursuant-11-usc-111 or call 1-866-484-6322.

Account Summary

| | | | |
|--|-------------|------------------------|----------|
| Previous Balance | \$13,815.53 | Total Credit Limit | \$13,000 |
| - Payments | \$15.00 | Total Available Credit | \$0 |
| - Other Credits | \$0.00 | | |
| + Cash Advances | \$0.00 | | |
| + Purchases, Balance Transfers & Other Charges | \$0.00 | | |
| + Fees Charged | \$0.00 | | |
| + Interest Charged | \$0.00 | | |
| = New Balance | \$13,800.53 | | |

Transactions

| Card Ending In | Trans Date | Post Date | Reference Number | Description | Credits | Charges |
|----------------|------------|-----------|------------------|-------------|---------|---------|
|----------------|------------|-----------|------------------|-------------|---------|---------|

Payments

| | | | | | | |
|--------------------------------|-------|--------------------|-------------------|-----------|---------|--|
| 04/28 | 04/28 | 741471803625LP32QN | PAYMENT THANK YOU | THANK YOU | 15.00 | |
| TOTAL PAYMENTS FOR THIS PERIOD | | | | | \$10.00 | |

Fees Charged

| | |
|------------------------------------|--------|
| TOTAL FEES CHARGED FOR THIS PERIOD | \$0.00 |
|------------------------------------|--------|

NOTICE: SEE REVERSE SIDE FOR IMPORTANT INFORMATION ABOUT YOUR ACCOUNT

Continued

5295 110 1 3 16 240517 0 27 PAGE 1 OF 1 1-866-225-6333 CHAT 01675516

Detach and mail with check payable to Wells Fargo. For faster processing, include your account number on your check.



| | |
|--|-------------|
| Account Number | 13971 |
| Payment Due Date | 06/21/2024 |
| Minimum Payment | \$5,770.00 |
| Includes Past Due Amount of \$5,425.00 | |
| Overlimit Amount | \$800.53 |
| Total Amount Due | \$6,570.53 |
| New Balance | \$13,800.53 |

Amount Enclosed \$

MARY MYERS
330 W GRANT ST
SPEARFISH SD 57783-2338

WELLS FARGO CARD SERVICES
PO BOX 77053
MINNEAPOLIS MN 55480-7703

YKG
510

Important Information About Your Account

1. What are your billing rights?

Addressing Errors and Transaction Disputes

If you believe that your bill is wrong ("error") or you need more information about a transaction on the statement, contact us as soon as possible. We must hear from you within 60 days after we sent you the first bill that your error appeared on.

In order to keep your billing rights, you must write to us. While you can call us at the phone number listed on your statement or contact us in another way, doing so will not preserve your billing rights.

Follow these steps when contacting us:

1. Write a letter ("Written Notice") about the error or transaction question you have. Include the following details:

| Written Notice Topic | Details to Include |
|-----------------------|--|
| Errors | <ul style="list-style-type: none"> Your name Your account number Dollar amount of the suspected error Description of the error and why you believe it is wrong |
| Transaction Questions | <ul style="list-style-type: none"> Your name Your account number Description of the transaction in question |

2. Mail your Written Notice to the following address:

Wells Fargo Bank, N.A.
P.O. Box 522
Des Moines, IA 50306-0522

Bill Payments During an Investigation

* Suspected Error Amounts

While we are investigating your suspected error amount, you do not have to pay that amount. But you must still pay the rest of your bill that is not part of the error. We also cannot report you as late or take any action to collect your suspected error amount during our investigation.

* Automatic Bill Payments

You can stop authorized automatic payments for your credit card bill on the amount you believe is an error. To do so, we must receive your Written Notice within three business days before the scheduled automatic payment happens.

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If you purchased a good or service with your credit card and have a problem with the quality, you may not have to pay your remaining amount on the good or service. To qualify, you must have acted in good faith to correct the problem with the merchant. If we own or operate the merchant, or we mailed you an advertisement for the property or services, then we will cover all purchases. Otherwise, the following three details must apply in order to have this protection:

1. The purchase must cost more than \$50.
2. You must have made the purchase in your home state or within 100 miles of your mailing address.
3. You must have a balance left on the charge you are disputing. For example, the good cost \$1000, and you already paid \$700 leaving \$300 left to pay.

2. How do we use your credit information?

We may provide information about your account to consumer reporting agencies. You have the right to dispute the accuracy of information that we report. To do so, take these steps:

1. Write a letter to us that describes the specific information that is not correct or that you are disputing, as well as any supporting documents.

2. Mail your letter to us at the following address:

Wells Fargo Bank, N.A.
P.O. Box 393
Minneapolis, MN 55480-0393

If the information relates to identity theft, you will need to provide us with an identity theft report.

3. When do we process payments?

We process payments in different ways depending on whether you make Conforming- or Non-Conforming Payments.

* Conforming Payments

"Conforming Payments" are payments that you either:

- Mail to us using the enclosed payment coupon to the payment address listed on your statement; or
- Make via the "Transfer" tab or "Make a Payment" link on the Wells Fargo Online Banking credit card Account Activity tab at www.wellsfargo.com.

| When We Receive the Payment | When We Credit Your Account |
|--|---|
| In the mail by 5:00 p.m. local time | The date that we receive your payment |
| In the mail after 5:00 p.m. local time | The next day |
| Through our Website or Mobile App | We will disclose this detail when you make your transaction |

* Non-Conforming Payments

"Non-Conforming Payments" are payments that you make in any other way, such as:

- Certified mail
- FedEx or UPS
- Envelopes with addresses that are not clear enough to read

Non-Conforming Payments may not receive credit for up to five days after the date that we receive it.

Payments Made on Last Day of Statement Cycle

When you make payments to your account on the last day of the statement cycle, we apply those payments on that day. However, these payments may not appear on your monthly billing statement or credit report until the next statement cycle.

4. What does a check payment authorize?

When you pay with a check, you authorize us to do either of the following:

- Use your check information to make a one-time electronic fund transfer from your account. In this scenario, we may withdraw the funds from your account as soon as the same day we receive your payment. You also will not get your check back from your financial institution.

* Process the payment as a check transaction

5. How do you pay your Account with an amount less than you owe?

If you want to pay your account for less than the full amount you owe, mail your request to us at:

Wells Fargo Bank, N.A.
P.O. Box 10311
Des Moines, IA 50308-0311

Please note: These payments do not erase your full debt.

6. How do we calculate your balance?

We use a method called "average daily balance (including new purchases)." For more information, refer to your Credit Card Account Agreement or call our toll-free Customer Service number located on the front of this statement.

7. How can you avoid paying interest on purchases?

Your Payment Due Date is at least 25 days after each billing period closes. You must pay your entire balance each month to avoid interest charges. We begin charging interest on cash advances and balance transfers on the transaction date.

8. How can you manage your account?

To manage your account details — including card payments, alerts, and address changes — visit wellsfargo.com or call the customer service number that appears on your account statement.

9. Will customer service monitor your calls with us?

We may record or monitor any calls you have with customer service.

©DP5598 - 10/30/23

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WELLS FARGO CASH WISE VISA SIGNATURE® CARD

Account ending in 3931

Statement Period 04/27/2024 to 05/27/2024



Page 2 of 3

Transactions (continued from previous page)

| Card Ending in | Trans Date | Post Date | Reference Number | Description | Credits | Charges |
|----------------------|---------------|--------------|------------------|-------------|---------|---------|
|----------------------|---------------|--------------|------------------|-------------|---------|---------|

Interest Charged

| | |
|---|---------------|
| INTEREST CHARGE ON PURCHASES | 0.00 |
| INTEREST CHARGE ON CASH ADVANCES | 0.00 |
| TOTAL INTEREST CHARGED FOR THIS PERIOD | \$0.00 |

2024 Totals Year-to-Date

| | |
|--------------------------------|--------|
| TOTAL FEES CHARGED IN 2024 | \$0.00 |
| TOTAL INTEREST CHARGED IN 2024 | \$0.00 |

Interest Charge Calculation

Your Annual Percentage Rate (APR) is the annual interest rate on your account.

| Type of Balance | Annual Percentage Rate (APR) | Balance Subject to Interest Rate | Days in Billing Cycle | Interest Charge | Balance as of 06/27/2024 |
|-----------------|------------------------------------|-------------------------------------|-----------------------------|-----------------|-----------------------------|
| PURCHASES | 0.00% | \$0.00 | 31 | \$0.00 | \$13,600.53 |
| CASH ADVANCES | 0.03% | \$0.00 | 31 | \$0.00 | \$0.00 |

Wells Fargo News

Do we have your correct mobile phone number?

Don't miss suspicious activity notifications, time-sensitive information, or critical account updates. Make sure we can reach you if we detect unusual activity on your account, or need to contact you to verify transactions. Sign in or log on to wellsfargo.com/online-banking and verify your mobile phone number on the Contact Information page.

Continued

5576 513 4 2 15 245124 2 2 X PAGE 2 of 3 16 2521 B612 EN32 03EP559E



WELLS FARGO CASH WISE VISA SIGNATURE® CARD

Account ending in 3931

Statement Period 04/27/2024 to 05/27/2024

Page 3 of 3



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BQ & Associates, P.C., L.L.O.
14211 Arbor Street, Suite 100
Omaha, NE 68144
(800) 887-4747 from 8:00 AM to 5:00 PM (CST) Monday to Friday
www.bulaw.com

To: MARY MYERS
c/o NATIONAL DEBT RELIEF
PO BOX 2011
NEW YORK, NY 10272

October 14, 2024
Reference: 24122360

BQ & Associates, P.C., L.L.O. is a debt collector. We are trying to collect a debt that you owe to Wells Fargo Bank, N.A. We will use any information you give us to help collect the debt.

Our information shows:

You had an account with Wells Fargo Bank, N.A with account number *****3931.

As of September 30, 2023 you owed \$13,890.53

Between September 30, 2023 and today:

You were charged this amount in interest: + \$0.00

You were charged this amount in fees: + \$0.00

You paid or were credited this amount toward the debt: - \$90.00

Total amount of the debt now: \$13,800.53

How can you dispute the debt?

- Call or write to us by November 25, 2024, to dispute all or part of the debt. If you do not, we will assume our information is correct.
- If you write to us by November 25, 2024, we must stop collection on any amount you dispute until we send you information that shows you owe the debt. You may use the form below or write to us without the form. You may also include supporting documents.

What else can you do?

- Write to ask for the name and address of the original creditor, if different from the current creditor. If you write by November 25, 2024, we must stop collection until we send you that information. You may use the form below or write to us without the form.
- Go to www.cfpb.gov/debt-collection to learn more about your rights under federal law. For instance, you have the right to stop or limit how we contact you.
- Contact us about your payment options.

Mail this form to:
BQ & Associates, P.C., L.L.O.
14211 Arbor Street, Suite 100
Omaha, NE 68144

MARY MYERS
c/o NATIONAL DEBT RELIEF
PO BOX 2011
NEW YORK, NY 10272

How do you want to respond?

Check all that apply:

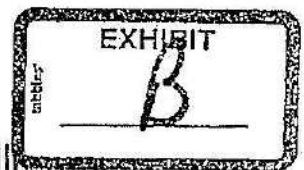
☐ I want to dispute the debt because I think:

☐ This is not my debt.

☐ The amount is wrong.

☐ Other (please describe on reverse or attach additional information).

☐ I want you to send me the name and address of the original creditor.





Status Report
Pursuant to Servicemembers Civil Relief Act

SSN: XXX-XX-6936
Birth Date: Feb-XX-1957
Last Name: MYERS
First Name: MARY
Middle Name:
Status As Of: Nov-26-2024
Certificate ID: X18ZPFT9PHN6JQZ

| On Active Duty (in Active Duty Status Date) | | | |
|---|----------------------|--------|-------------------|
| Active Duty Start Date | Active Duty End Date | Status | Service Component |
| NA | NA | No | NA |
| This response reflects the individual's active duty status based on the Active Duty Status Date | | | |

| Left Active Duty Within 367 Days of Active Duty Status Date | | | |
|---|----------------------|--------|-------------------|
| Active Duty Start Date | Active Duty End Date | Status | Service Component |
| NA | NA | No | NA |
| This response reflects where the individual left active duty status within 367 days preceding the Active Duty Status Date | | | |

| The Member or His/Her Unit Was Notified of a Future Call-Up to Active Duty on Active Duty Status Date | | | |
|---|-----------------------------|--------|-------------------|
| Order Notification Start Date | Order Notification End Date | Status | Service Component |
| NA | NA | No | NA |
| This response reflects whether the individual or his/her unit has received early notification to report for active duty | | | |

Upon searching the data banks of the Department of Defense Manpower Data Center, based on the information that you provided, the above is the status of the individual on the active duty status date as to all branches of the Uniformed Services (Army, Navy, Marine Corps, Air Force, Space Force, NOAA, Public Health, and Coast Guard). This status includes information on a Servicemember or his/her unit receiving notification of future orders to report for Active Duty.

Sam Youssefzadeh

Sam Youssefzadeh, Director
Department of Defense - Manpower Data Center
4800 Mark Center Drive, Suite 04E25
Alexandria, VA 22350



The Defense Manpower Data Center (DMDC) is an organization of the Department of Defense (DoD) that maintains the Defense Enrollment and Eligibility Reporting System (DEERS) database which is the official source of data on eligibility for military medical care and other eligibility systems.

The DoD strongly supports the enforcement of the Servicemembers Civil Relief Act (50 USC App. § 3901 et seq. as amended) (SCRA) (formerly known as the Soldiers' and Sailors' Civil Relief Act of 1940). DMDC has issued hundreds of thousands of "does not possess any information indicating that the individual is currently on active duty" responses, and has experienced only a small error rate. In the event the individual referenced above, or any family member, friend, or representative asserts in any manner that the individual was on active duty for the active duty status date, or is otherwise entitled to the protections of the SCRA, you are strongly encouraged to obtain further verification of the person's status by contacting that person's Service. Service contact information can be found on the SCRA website's FAQ page (Q35) via this URL: <https://scra.dmdc.osd.mil/scra/faqs>. If you have evidence the person was on active duty for the active duty status date and you fail to obtain this additional Service verification, punitive provisions of the SCRA may be invoked against you. See 50 USC App. § 3921(c).

This response reflects the following information: (1) The individual's Active Duty status on the Active Duty Status Date (2) Whether the individual left Active Duty status within 367 days preceding the Active Duty Status Date (3) Whether the individual or his/her unit received early notification to report for active duty on the Active Duty Status Date.

More information on "Active Duty Status"

Active duty status as reported in this certificate is defined in accordance with 10 USC § 101(d) (1). Prior to 2010 only some of the active duty periods less than 30 consecutive days in length were available. In the case of a member of the National Guard, this includes service under a call to active service authorized by the President or the Secretary of Defense under 32 USC § 502(f) for purposes of responding to a national emergency declared by the President and supported by Federal funds. All Active Guard Reserve (AGR) members must be assigned against an authorized mobilization position in the unit they support. This includes Navy Training and Administration of the Reserve (TARs), Marine Corps Active Reserve (ARs) and Coast Guard Reserve Program Administrator (RPAs). Active Duty status also applies to a Uniformed Service member who is an active duty commissioned officer of the U.S. Public Health Service or the National Oceanic and Atmospheric Administration (NOAA Commissioned Corps).

Coverage Under the SCRA is Broader in Some Cases

Coverage under the SCRA is broader in some cases and includes some categories of persons on active duty for purposes of the SCRA who would not be reported as on Active Duty under this certificate. SCRA protections are for Title 10 and Title 14 active duty records for all the Uniformed Services periods. Title 32 periods of Active Duty are not covered by SCRA, as defined in accordance with 10 USC § 101(d)(1).

Many times orders are amended to extend the period of active duty, which would extend SCRA protections. Persons seeking to rely on this website certification should check to make sure the orders on which SCRA protections are based have not been amended to extend the inclusive dates of service. Furthermore, some protections of the SCRA may extend to persons who have received orders to report for active duty or to be inducted, but who have not actually begun active duty or actually reported for induction. The Last Date on Active Duty entry is important because a number of protections of the SCRA extend beyond the last dates of active duty.

Those who could rely on this certificate are urged to seek qualified legal counsel to ensure that all rights guaranteed to Service members under the SCRA are protected.

WARNING: This certificate was provided based on a last name, SSN/date of birth, and active duty status date provided by the requester. Providing erroneous information will cause an erroneous certificate to be provided.

APPENDIX

4

CASE FILING STATEMENT - Informational Only; Not Retained in Case Records

Provide the Case File No. for the record you are filing into or the Case Type if initiating a new action:

* Available Case Type options can be found on the UJS internet website at <http://ujis.sd.gov/Information/Attorneys.aspx>.

Social Security Numbers (not Driver's License Numbers) must be provided for divorce, child support, & paternity cases, 12 USC 666(a)(13)(B). All filers are required to provide the SSN or DL# for each of their participants regardless of the case type.

INFORMATION FOR PLAINTIFF/PETITIONER/APPLICANT:

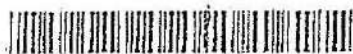
| | | | |
|---|---|--------------------------------------|--|
| <u>Wells Fargo Bank, N.A.</u> Last/Business Name | <u>First Name</u> | <u>Middle</u> | <u>Suffix</u> |
| <u>1 Home Avenue</u> Physical Address | <u>Des Moines</u> City | <u>IA</u> State | <u>50328</u> Zip |
| <input type="checkbox"/> Check if Same as Physical Mailing Address | <u>City</u> | <u>State</u> | <u>Zip</u> |
| Date of Birth: <u>mo / day / yr</u> | | | |
| Home: Work: Cell: | <u>***-**-6936</u> Social Security No. | <u>Driver's License</u> No. State | <u>42-1186565</u> Employer ID (if plf is a business) |
| Attorney: <u>VON OLDENBURG</u> Last Name | | <u>KARL</u> First | <u>602-364-1400</u> Phone No. <u>5140</u> State Bar ID # |
| <u>14211 Arbor St, Suite 100</u> Mailing Address | <u>Omaha</u> City | <u>NE</u> State | <u>68144</u> Zip |

INFORMATION FOR DEFENDANT/RESPONDENT:

| | | | |
|---|---|--------------------------------------|---|
| <u>MYERS</u> Last/Business Name | <u>MARY</u> First Name | <u>M.I.</u> | <u>Suffix</u> |
| <u>330 W GRANT ST</u> Physical Address | <u>SPEARFISH</u> City | <u>SD</u> State | <u>57283-2336</u> Zip |
| <input type="checkbox"/> Check if Same as Physical Mailing Address | <u>City</u> | <u>State</u> | <u>Zip</u> |
| Date of Birth: <u>February 11, 1957</u> mo / day / yr | | | |
| Home: Work: Cell: | <u>***-**-6936</u> Social Security No. | <u>Driver's License</u> No. State | <u>Employer ID (if def is a business)</u> |
| Attorney: <u>Last Name</u> | | <u>First</u> | <u>Phone No.</u> <u>State Bar ID #</u> |
| <u>Mailing Address</u> | <u>City</u> | <u>State</u> | <u>Zip</u> |

24122360

USJ-232 Rev. 04/12/2017



24122360

psdcasst.wpd

EXHIBIT C

Filed: 12/3/2024 5:35 PM CST Lawrence County, South Dakota 40CIV24-000364

Filed: 2/11/2025 5:52 PM CST Lawrence County, South Dakota 40CIV24-000364

APPENDIX

5

STATE OF SOUTH DAKOTA

IN CIRCUIT COURT

COUNTY OF LAWRENCE

FOURTH JUDICIAL CIRCUIT

Wells Fargo Bank, N.A.,

Plaintiff,

vs.

MARY MYERS,

Defendant.

CASE NO.

4001V24-000344

DIRECTIONS FOR SERVICE

TO: LAWRENCE COUNTY SHERIFF

Serve: MARY MYERS
At: 330 W GRANT ST
SPEARFISH SD 57783-2335

Please serve: Plaintiff's Complaint and Summons

Special Instructions or Information Relating to Service:
Personal OR Residential Service

Date: ^{December} November 5, 2024

NAME AND SIGNATURE OF ATTORNEY
OR OTHER ORIGINATOR



KARL VON OLDENBURG, SD BAR #5140
BQ & ASSOCIATES, P.C., L.L.O.
14211 ARBOR STREET, SUITE 100
OMAHA, NE 68144
TELEPHONE: (402) 554-4400
TELECOPIER: (402) 554-0339
SDBQ@BQLAW.COM
ATTORNEYS FOR PLAINTIFF



24122360

psddirsv.wpd

APPENDIX

6

Claggett & Dill Prof. LLC

Attorneys at Law

Dave L. Claggett, J.D.
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212 E. Colorado Blvd.
Spearfish, South Dakota 57783
(605) 642-7708 (605) 642-7709 (fax)

Jon W. Dill, J.D.
jond@claggettanddill.com

December 18, 2024

Karl Von Oldenburg
BQ & Associates, P.C., L.L.O.
14211 Arbor Street, Suite 100
Omaha, NE 68144

Emailed to Expedite
sdbq@bqlaw.com

RE: *Wells Fargo Bank, N.A. v. Mary Myers*; Case 40CIV-000364.

NOTICE OF APPEARANCE OF COUNSEL AND DEMAND TO DISMISS ACTION WITH PREJUDICE RULE 11 (C)(1)(A) LETTER

Dear Mr. Oldenburg:

This office represents Mary Ann Myers. This is a Rule 11 (c)(1)(A) letter. This is not a Rule 408 negotiation and is fully admissible in Court.

You have named our client as a defendant in this action, under the name of Mary Myers. Our client brought this matter to our attention, as today you served her your Summons and Complaint, and included some 31 pages of attachments to the Complaint.

Mary Ann has nothing to do with this case, which is easily proved by your Complaint Exhibits. For instance, your Complaint Exhibit "C" cites the defendant's social security number as xxx-xx-6936 and the date of birth as Feb-xx-1957. Neither is correct for Ms. Myers, SSN xxx-xx-6797, birthdate xxx-xx-1947. The month of birth is likewise wrong.

THIS IS A RULE 11 (C)(1)(A) LETTER to allow you to dismiss this action at once, and with prejudice. Any continued litigation against our client now that such error has been directed to your attention, we consider to be in violation of your duties under Rule 11, SDCL 16-18-19 and Rule 3.1 of the Appendix to SDCL Ch. 16-18. The claim is for a consumer financial product or service. You cited FDCPA language at the end of your Complaint. We believe that you are operating as a collection agent and that this action is a violation the FDCPA, entitling Mary Ann to damages under the FDCPA.

We have maintained collection practices for decades. We simply have not sued the wrong person in a collection action and find it difficult to believe it is happening to Mary Ann. The good news for you is that you can resolve this matter quickly and inexpensively. \$371.70. will cover our present fees in responding to this Complaint. We expect immediate payment of these fees in certified funds forwarded to our office, payable to Mary Ann Myers.

Further, you must dismiss this litigation against our client with prejudice and at once and provide proof of compliance to this firm within 21 days or such shorter time as the Court may prescribe. We reserve the right to proceed to Court for a shorter time period and terms.

Should you not dismiss this litigation against Mary Ann in that time frame, we will appear and demand terms under Rule 11(b)(1)-(3) and 11(c)¹. In such event, we anticipate our minimum

¹ 15-6-11(b) Representations to court

By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

- (1) It is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
- (2) The claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
- (3) The allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; ...

15-6-11(c) Sanctions

If, after notice and a reasonable opportunity to respond, the court determines that § 15-6-11(b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated § 15-6-11(b) or are responsible for the violation.

(1) How Initiated.

(A) By Motion. A motion for sanctions under this rule shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate § 15-6-11(b). It shall be served as provided in § 15-6-5, but shall not be filed with or presented to the court unless, within twenty-one days after service of the motion (or such other period as the court may prescribe), the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected. If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees.

(B) On Court's Initiative. On its own initiative, the court may enter an order describing the specific conduct that appears to violate § 15-6-11(b) and directing an attorney, law firm, or party to show cause why it has not violated § 15-6-11(b) with respect thereto.

(2) Nature of Sanctions; Limitations. A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Subject to the limitations in subparagraphs (A) and (B), the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation.

(A) Monetary sanctions may not be awarded against a represented party for a violation of § 15-6-11(b)(2).

APPENDIX

7

STATE OF SOUTH DAKOTA

IN CIRCUIT COURT

COUNTY OF LAWRENCE

FOURTH JUDICIAL CIRCUIT

WELLS FARGO BANK NA,

Plaintiff,

vs.

MARY MYERS

Defendant.

CASE NO. 40CIV24-000364

AFFIDAVIT OF KARL VON
OLDENBURG

STATE OF NEBRASKA }
COUNTY OF DOUGLAS } ss.

The Undersigned, being first duly sworn upon oath, deposes and states as follows:

1. I am the attorney for the Plaintiff and am authorized to make this Affidavit.
2. The Plaintiff is Wells Fargo Bank NA; the Plaintiff's corporate address is One Campus Drive, Des Moines, Iowa 50328.
3. At the request of Wells Fargo, I reviewed and prepared the above referenced matter for litigation.
4. The following documents were reviewed, signed or approved by myself:
 - a. Summons - attached as Exhibit "A";
 - b. Complaint - attached as Exhibit "B";
 - c. Case Filing Statement - attached as Exhibit "C"; and
 - d. Directions for Service - attached as Exhibit "D".
5. I personally pulled the docket sheet on the South Dakota Unified Judicial System for this case which is attached as Exhibit "E".
6. Prior to approving the filing of the Complaint, Attorney Karl von Oldenburg, reviewed all Wells Fargo account information. Name of consumer, consumer address, Birthdate, SSN, account open date, account close date, last payment date and charge off date. Karl von Oldenburg also reviewed over a year of credit card statements including the charge off statement. The file was reviewed for any disputes which would require verification, any missed payments and any possible settlement on the file.

7. On December 19, 2024, Dave L Claggett sent an email (attached as Exhibit "F"), attention to Karl von Oldenburg stating we sued the wrong person and demanding terms. The email Attached a Rule 11 letter reiterating that we sued the wrong person, demanded money and a dismissal with prejudice with prejudice of the action filed by Wells Fargo. A copy of the letter is attached as Exhibit "G)

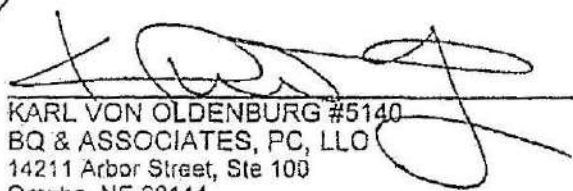
8. Between December 15, 2024 and January 16, 2025, Plaintiff did not receive any other communication from Claggett.

9. Based on Counsel's December 18, 2024 letter, Plaintiff believed the letter was saying Plaintiff had the wrong Mary Myers living at 330 W Grant Street. Besides reviewing all the pleadings, Attorney for Plaintiff reached out to Wells Fargo for more information regarding defendant Mary Myers and her connection to the Grant Street address. Wells Fargo confirmed the address, sent to my firm every single credit card statement associated with the account and a copy of her license and social security card.

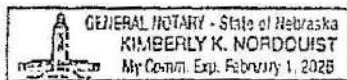
10. Based on a review of all relevant information, in light of Counsel's letter it was determined that Wells Fargo and this firm filed its complaint against the correct Mary Myers at her correct address.

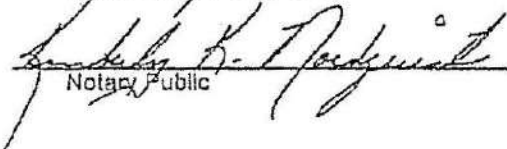
FURTHER AFFIANT SAYETH NAUGHT.

DATED this 11th day of February, 2025


KARL VON OLDENBURG #5140
BQ & ASSOCIATES, PC, LLO
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Omaha, NE 68144
E-Mail: sdbg@bqlaw.com
Ph: 402-554-4400 Fax: 402-554-0339

SUBSCRIBED and SWORN to before me on February 11, 2025




Notary Public

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

WELLS FARGO BANK, N.A.,
Appellant,

vs.

APPEAL NO. 31054

MARY MYERS,
Appellee.

APPEAL FROM THE CIRCUIT COURT
FOR THE FOURTH JUDICIAL CIRCUIT
LAWRENCE COUNTY, SOUTH DAKOTA

HONORABLE ERIC J. STRAWN
Circuit Court Judge

BRIEF OF APPELLEE MARY ANN MYERS

ATTORNEY FOR APPELLANT: Karl von Oldenburg
BQ & Associates, PC, LLO.
14211 Arbor Street, Suite 100
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sdbq@bqlaw.com
kvonoldenburg@bqlaw.com

ATTORNEY FOR APPELLEE: Dave L. Claggett
Claggett & Dill, Prof., LLC
212 E. Colorado Blvd.
Spearfish, SD 57783
davec@claggettanddill.com

NOTICE OF APPEAL FILED: April 16, 2025

TABLE OF CONTENTS

| | |
|---|--------|
| TABLE OF AUTHORITIES | iii-iv |
| PRELIMINARY STATEMENT..... | 1 |
| JURISDICTIONAL STATEMENT | 1 |
| STATEMENT OF ISSUES | 1,2 |
| I. WHETHER THE TRIAL COURT CORRECTLY MISJOINED MARY ANN MYERS FROM THE LAWSUIT?..... | 1 |
| II. WHETHER THE TRIAL COURT PROPERLY DETERMINED THAT THE DECEMBER 18, 2024, RULE 11(C)(1)(A) LETTER OF APPELLEE’S COUNSEL WAS A PROPER RULE 11 SANCTION LETTER WHICH PUT WELLS FARGO ON NOTICE REGARDING IMPROPER SERVICE?..... | 1 |
| III. WHETHER THE TRIAL COURT CORRECTLY FOUND THAT APPELLANT AND ITS COUNSEL VIOLATED SDCL 15-6-11(b)(3) AND (4)? | 2 |
| IV. WHETHER THE TRIAL COURT PROPERLY AWARDED APPELLEE ATTORNEY’S FEES AND COSTS?..... | 2 |
| STATEMENT OF THE CASE AND FACTS | 2-6 |
| ARGUMENT AND AUTHORITIES..... | 6-11 |
| I. THE TRIAL COURT PROPERLY DETERMINED THAT MARY ANN MYERS WAS MISJOINED FROM THE LAWSUIT..... | 6 |
| II. THE TRIAL COURT PROPERLY DETERMINED THAT THE DECEMBER 18, 2024, RULE 11(C)(1)(A) LETTER OF APPELLEE’S COUNSEL WAS A PROPER RULE 11 SANCTION LETTER WHICH PUT WELLS FARGO ON NOTICE REGARDING IMPROPER SERVICE..... | 7 |
| III. THE TRIAL COURT PROPERLY DETERMINED THAT APPELLANT AND ITS COUNSEL VIOLATED SDCL 15-6-11(b)(3) AND (4)..... | 8 |
| IV. THE TRIAL COURT PROPERLY AWARDED MARY ANN MYERS’ ATTORNEY’S FEES AND COSTS..... | 9 |

| | |
|-----------------|----|
| CONCLUSION..... | 12 |
|-----------------|----|

APPENDIX

APPENDIX TABLE OF CONTENTS

| | |
|---|-------|
| 1. Findings of Fact and Conclusions of Law..... | 1-9 |
| 2. Order on Hearing..... | 10,11 |

TABLE OF AUTHORITIES

Cases

| | |
|---|-----------|
| <i>Anderson v. Prod. Credit Ass'n</i> , 482 N.W.2d 642 (S.D. 1992)..... | 5 |
| <i>City of Sioux Falls v. Kelley</i> , 513 N.W.2d 97 (S.D. 1994)..... | 2,5,10 |
| <i>Cooter & Gell</i> , 496 U.S. 384, 110 S. Ct. 2447, 110 L.Ed.2d 359 (1990)..... | 6 |
| <i>Hahne v. Burr</i> , 2005 S.D. 108, 705 N.W.2d 867..... | 6,10 |
| <i>Halbersma v. Halbersma</i> , 2009 S.D. 98, 775 N.W.2d..... | 11 |
| <i>Hobart v. Ferebee</i> , 2009 S.D. 101, 776 N.W.2d 67..... | 6 |
| <i>In re Discipline of Eicher</i> , 2003 S.D., 661 N.W.2d 354..... | 11 |
| <i>In re Estate of Smid</i> , 2008 S.D. 82, 756 N.W.2d 1..... | 11 |
| <i>In re M.S.</i> , 2014 S.D. 17, 845 N.W.2d 366..... | 2,11 |
| <i>Osdoba v. Kelly-Osdoba</i> , 2018 S.D. 43, 913 N.W.2d 496..... | 11 |
| <i>Pioneer Bank & Tr. v. Reynick</i> , 2009 S.D. 3, 760 N.W.2d 139..... | 6 |
| <i>Prunty Constr., Inc. v. City of Canistota</i> , 2004 S.D. 78, 682 N.W.2d 749..... | 6 |
| <i>Smizer v. Drey</i> , 2016 S.D. 3, 873 N.W.2d 697..... | 5,11 |
| <i>State v. Abraham-Medved</i> , 2024 S.D. 14..... | 6 |
| <i>State v. Babcock</i> , 2020 S.D. 71, 952 N.W.2d 750..... | 6 |
| <i>State v. Delehoy</i> , 2019 S.D. 30, 929 N.W.2d 103..... | 6 |
| <i>State v. Reeves</i> , 2021 S.D. 64, 967 N.W.2d 144..... | 6 |
| <i>Stratmeyer v. Engberg</i> , 2002 S.D. 91, 649 N.W.2d 921..... | 6 |
| <i>Tappe v. Circuit Court, Sixth Judicial Circuit</i> , 326 N.W.2d 892 (S.D. 1982)..... | 2,5,10,11 |
| <i>Weber v. Weber</i> , 2023 S.D. 64..... | 11 |

Statutes

| | |
|---|------------|
| SDCL § 15-2-30..... | 2,9 |
| SDCL § 15-6-5..... | 3,10 |
| SDCL § 15-6-11(a)..... | 5 |
| SDCL § 15-6-11(b)..... | 1,3 |
| SDCL § 15-6-11(b)(2)..... | 2 |
| SDCL § 15-6-11(b)(3)..... | 2,8,9 |
| SDCL § 15-6-11(b)(4)..... | 2,8 |
| SDCL § 15-6-11(c)(1)(A)..... | 2,3,4,8,10 |
| SDCL § 15-6-11(c)(2)..... | 3 |
| SDCL § 15-6-11(d)..... | 5 |
| SDCL § 15-6-11(e)..... | 5 |
| SDCL § 15-6-21..... | 1,5,7 |
| SDCL § 15-26A-64..... | 2,11 |
| SDCL § 59-6-9..... | 9 |
| 15 U.S.C. 1692 et seq (Fair Debt Collection Practices Act)..... | 11 |

Other Authorities

| | |
|--|---|
| Model Rules of Professional Conduct, Rule 1.5..... | 5 |
|--|---|

PRELIMINARY STATEMENT

This is an appeal from an Order removing Mary Ann Myers from a lawsuit and imposing sanctions upon Appellant and its counsel. Appellant Wells Fargo Bank, N.A. shall be referred to as “Wells Fargo” and Appellee Mary Ann Myers shall be referred to as “Mary Ann.” References will be as follows: the Settled Record will be “SR”; the Complaint will be “C”; Exhibits to the Complaint will be “CE”; the Answer will be “A”; the transcript of the February 20, 2025, Motion Hearing will be “MT”; the trial court’s Order on Hearing will be “OH”; Findings of Fact will be “FF” and Conclusions of Law will be “CL”; Well Fargo’s opening brief will be “WFB.” References will include the appropriate page, paragraph or item number.

JURISDICTIONAL STATEMENT

The proceedings below commenced in circuit court of Lawrence County, Fourth Judicial Circuit of South Dakota, the Honorable Eric J. Strawn, Circuit Court Judge, presiding. The Order on Hearing was signed, filed and attested on April 16, 2025. (SR 247). The Notice of Entry of the Order on Hearing was signed, filed, attested and served on April 18, 2025. (SR 268). The Notice of Appeal was filed and served on April 16, 2025. (SR 249).

ISSUES

I. WHETHER THE TRIAL COURT CORRECTLY MISJOINED MARY ANN MYERS FROM THE LAWSUIT?

The trial court concluded that Mary Ann Myers was misjoined in Appellant’s lawsuit as Mary Ann Myers was never the proper defendant.

SDCL 15-6-11(b)

SDCL 15-6-21

II. WHETHER THE TRIAL COURT PROPERLY DETERMINED THAT THE DECEMBER 18, 2024, RULE 11(C)(1)(A) LETTER OF APPELLEE'S COUNSEL WAS A PROPER RULE 11 SANCTION LETTER WHICH PUT WELLS FARGO ON NOTICE REGARDING IMPROPER SERVICE?

The trial court determined that the letter was a proper Rule 11 letter.

SDCL § 15-6-11(C)(1)(A)

III. WHETHER THE TRIAL COURT CORRECTLY FOUND THAT APPELLANT AND ITS COUNSEL VIOLATED SDCL 15-6-11(b)(3) AND (4)?

The trial court found Appellant and its counsel violated SDCL 15-6-11(b)(3) and (4).

SDCL § 15-2-30

SDCL § 15-6-11(b)(3)

SDCL § 15-6-11(b)(4)

IV. WHETHER THE TRIAL COURT PROPERLY AWARDED APPELLEE ATTORNEY'S FEES AND COSTS?

The trial court awarded Mary Ann Myers \$3,662.93 in attorney fees and costs.

In re M.S., 2014 S.D. 17, 845 N.W.2d 366

City of Sioux Falls v. Kelley, 513 N.W.2d 97 (S.D. 1994)

Tappe v. Circuit Court, Sixth Judicial Circuit, 326 N.W.2d 892 (S.D. 1982)

SDCL § 15-6-11(C)(1)(A)

SDCL § 15-26A-64

STATEMENT OF FACTS AND CASE

Statement of the Case. On December 18, 2024, Wells Fargo commenced a collection action against Mary Ann by personal service on her. (SR 36: 1,2). The case is captioned Wells Fargo Bank, N.A., Mary Myers. The parties agree that Mary Ann Myers is not the Mary Myers referred to in this action. (SR 237, FF 2). Contrary to Wells Fargo's Complaint, Mary Ann Myers' social security number is not xxx-xx-6936 nor is

the date of her birth Feb-xx-1957. (SR 237, FF 3). Mary Ann Myers has no contract for any services with Wells Fargo. (SR 238, FF 4). There is no legal connection between Mary Ann Myers and Wells Fargo, and no credible evidence contrary to this fact was in the Complaint or presented at the hearing. (SR 238, FF 5).

Mary Ann's counsel specifically brought this matter to the attention of counsel for Wells Fargo by Mary Ann's *Demand to Dismiss Action with Prejudice Rule 11(C)(1)(A)*¹ letter dated December 18, 2024, and forwarded to Wells Fargo's counsel by email on December 19, 2024. This letter was Exhibit "A" offered and accepted into evidence at the Hearing. (SR 238, FF 6). Mary Ann further requested a minimal payment of \$371.70 to cover her cost of responding. At a minimum, Wells Fargo needed only remove Mary Ann from this lawsuit to resolve this matter.

¹ 15-6-11(c). Sanctions

If, after notice and a reasonable opportunity to respond, the court determines that § 15-6-11(b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated § 15-6-11(b) or are responsible for the violation.

...

(1) How Initiated.

(A) By Motion. A motion for sanctions under this rule shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate § 15-6-11(b). It shall be served as provided in § 15-6-5, but shall not be filed with or presented to the court unless, within twenty-one days after service of the motion (or such other period as the court may prescribe), the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected. If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees.

(B) On Court's Initiative. On its own initiative, the court may enter an order describing the specific conduct that appears to violate § 15-6-11(b) and directing an attorney, law firm, or party to show cause why it has not violated § 15-6-11(b) with respect thereto.

(2) Nature of Sanctions; Limitations. A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Subject to the limitations in subparagraphs (A) and (B), the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation.

(A) Monetary sanctions may not be awarded against a represented party for a violation of § 15-6-11(b)(2).

(B) Monetary sanctions may not be awarded on the court's initiative unless the court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party which is, or whose attorneys are, to be sanctioned.

(3) Order. When imposing sanctions, the court shall describe the conduct determined to constitute a violation of this rule and explain the basis for the sanction imposed.

In following SDCL 15-6-11(c)(1)(A), Mary Ann's counsel allowed Wells Fargo's counsel 21 days after service of Mary Ann's *Demand to Dismiss Action with Prejudice Rule 11(C)(1)(A)* letter for Wells Fargo's counsel to dismiss the action against Mary Ann Myers. Wells Fargo failed to reply to Mary Ann Myers in any way during the said 21 day period. (SR 239, FF 8).

On January 16, 2025, 28 days after service of Mary Ann's *Demand to Dismiss Action with Prejudice Rule 11(C)(1)(A)*, when no reply whatsoever was made by Wells Fargo's counsel and Mary Ann's Answer and Counterclaim were due, Mary Ann filed her Answer and Counterclaim, (SR 61), Motion to Dismiss, (SR 39), Motion for Sanctions, (SR 41), Affidavit of Attorney Fees, (SR 68), Affidavit of Dave L. Claggett, (SR 54), Brief in Support of Motion for Sanctions (SR 44), and Brief in Support of Motion to Dismiss. (SR 57; SR 239, FF 9). Wells Fargo filed a Motion to Strike Service on February 11, 2025, (SR 80), and responded to Mary Ann's motions, (SR 143), but did not remove Mary Ann from this litigation. (SR 239, FF 10). The Hearing was held on February 20, 2025. (SR 237). Counsel for both parties attended.

The trial court confirmed that Mary Ann Myers was not the individual Wells Fargo claimed was indebted to Wells Fargo, that she was entitled to be removed with prejudice from Appellant's action on the grounds of misjoinder, that Mary Ann's counsel properly followed SDCL 15-6-11(c)(1)(A) to notify Wells Fargo's counsel of his obligation to remove Mary Ann Myers from this action in the *Demand to Dismiss Action with Prejudice Rule 11(C)(1)(A)* letter and that Wells Fargo failed to remove Mary Ann from this litigation within the 21 day period allowed by law. (SR 239, 240; CL 2,11).

Further, Wells Fargo's attempt to strike service was not the same as dropping Mary Ann Myers from this lawsuit and attorney's fees and costs were allowed under Rules 11(c)(1)(A) and 11(c)(2). (SR 242; CL 13, 14, 16).

The trial court concluded that misjoinder of Mary Ann Myers under SDCL 15-6-21² was authorized as a non-monetary sanction under Rule 11(c)(1)(A). (SR 242; CL 17). It determined that Mary Ann Myers' counsel properly itemized the attorney's fees and costs incurred by Mary Ann in defense of this case. (SR 243; CL 18). In awarding \$3,662.93 for reasonable attorney's fees and expenses the trial court considered the factors utilized in South Dakota, including the character and importance of the litigation under *Tappe v. Circuit Court, Sixth Judicial Circuit*, 326 N.W.2d 892, at 895 (S.D. 1982) and "...the factors set forth in *City of Sioux Falls v. Kelley*, 513 N.W.2d 97, 111 (S.D. 1994) (quoting Model Rules of Professional Conduct, Rule 1.5)." (SR 243; CL 19, 20; OH 2,3). It also held that Mary Ann Myers was entitled to be dropped from the litigation and ordered such relief. (SR 243; CL 17, 18, 20; OH 1).

ARGUMENT AND AUTHORITIES

Standard of Review. The abuse of discretion standard of review was analyzed in *Smizer v. Drey*, 2016 S.D. 3:

[¶10] The Smizers claim that this Court's standard of review "appears inconsistent." On the one hand, SDCL 15-6-11(e) provides that "[t]he Supreme Court shall consider all appeals pursuant to §§ 15-6-11(a) through 15-6-11(d) without any presumption of the correctness of the trial court's findings of fact and conclusions of law." On the other hand, our case law specifically directs that an appeal under Rule 11 is reviewed for

² SDCL §15-6-21 provides:

Misjoinder of parties is not ground for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just. Any claim against a party may be severed and proceeded with separately.

an abuse of discretion. *Hobart v. Ferebee*, 2009 S.D. 101, ¶ 10, 776 N.W.2d 67, 71; *Pioneer Bank & Tr. v. Reynick*, 2009 S.D. 3, ¶ 13, 760 N.W.2d 139, 143; *Hahne v. Burr*, 2005 S.D. 108, ¶ 22, 705 N.W.2d 867, 874; *Prunty Constr., Inc. v. City of Canistota*, 2004 S.D. 78, ¶ 28, 682 N.W.2d 749, 761; *Anderson v. Prod. Credit Ass'n*, 482 N.W.2d 642, 645 (S.D. 1992). We take this opportunity to clarify our standard of review.

...

[¶14]... In light of these considerations and the language of SDCL 15-6-11, we continue to adhere to our abuse of discretion standard of review. "An abuse of discretion is a discretion exercised to an end or purpose not justified by, and clearly against, reason and evidence." *Pioneer Bank & Tr.*, 2009 S.D. 3, ¶ 13, 760 N.W.2d at 143. An abuse of discretion also occurs when the court bases "its ruling on an erroneous view of the law or on a clearly erroneous assessment of the evidence." *Cooter & Gell*, 496 U.S. at 405, 110 S. Ct. at 2461.

The Court reviews "...a trial court's ruling on the allowance or disallowance of costs and attorney fees under an abuse of discretion standard." *Stratmeyer v. Engberg*, 2002 S.D. 91, ¶ 12, 649 N.W.2d 921, 925. In *State v. Abraham-Medved*, 2024 S.D. 14, at ¶13, this Court recently clarified the abuse of discretion standard:

It is an abuse of discretion for a circuit court to make "a fundamental error of judgment, a choice outside the range of permissible choices, a decision, which, on full consideration, is arbitrary or unreasonable[.]" *id.* ¶ 22, 929 N.W.2d at 109, and it is an abuse of discretion for the court to exercise its discretion "to an end or purpose not justified by, and clearly against reason and evidence," *Reeves*, 2021 S.D. 64, ¶ 11, 967 N.W.2d at 147. These statements are essentially two different iterations of the same concept;...

(The Court was citing to *State v. Delehoj*, 2019 S.D. 30, ¶ 22, 929 N.W.2d 103, 109).

The appellant must also show prejudice before this Court will reverse. *State v. Babcock*, 2020 S.D. 71, ¶ 28, 952 N.W.2d 750, 758).

I. THE TRIAL COURT PROPERLY DETERMINED THAT MARY ANN MYERS WAS MISJOINED FROM THE LAWSUIT.

Appellant's brief is functionally devoid of citations to the record and is replete with extraneous information not contained in the record. Although it is difficult to ascertain from Appellant's brief, it appears that Wells Fargo is not appealing the determination that Mary Ann Myers is misjoined from the lawsuit. Appellant's seven numbered issues appear in actuality to object to the determination of a violation of Rule 11 and imposition of the sanction of attorney's fees and costs.

In any event, misjoinder and terms on the trial court's initiative were proper under SDCL §15-6-21, Misjoinder and nonjoinder of parties:

Misjoinder of parties is not ground for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just. Any claim against a party may be severed and proceeded with separately.

Mary Ann Myers' birthday and social security number are different from the Mary Myers named in this lawsuit and Mary Ann has no connection to Wells Fargo. (SR 237, FF 3; SR 238, FF 4, 5). Nothing in the brief of Wells Fargo suggests otherwise. Upon receipt of notice that Wells Fargo commenced its action against the wrong person, it should have immediately dropped Mary Ann from the lawsuit. Its failure to do so is unexplained and served only to harass Mary Ann, delay resolution and increase the cost of litigation. Contrary to the language of SDCL 15-6-11(b), counsel for Wells Fargo continued to advocate against Mary Ann after being promptly notified that the wrong Mary Ann Myers was sued, forcing Mary Ann to proceed to a hearing to get released from this litigation, when Wells Fargo could have, and was legally required to, remove Mary Ann upon notice.

II. THE TRIAL COURT PROPERLY DETERMINED THAT THE DECEMBER 18, 2024, RULE 11(C)(1)(A) LETTER OF APPELLEE'S COUNSEL WAS A

PROPER RULE 11 SANCTION LETTER WHICH PUT WELLS FARGO ON NOTICE REGARDING IMPROPER SERVICE.

There is no pattern letter for notice under SDCL § 15-6-11(C)(1)(A). The December 18, 2024, letter of Mary Ann's counsel clearly brought Wells Fargo's error to the attention of its counsel. Curing its error would have been easy and inexpensive. The record provides no explanation for the failure of Wells Fargo to act in response to the letter, either for 21 days after the letter was forwarded to it, the 28 days prior to Mary Ann filing and serving her January 16, 2025, motions upon Wells Fargo to the date of the February 20, 2025, hearing, and the hearing itself.

III. THE TRIAL COURT PROPERLY DETERMINED THAT APPELLANT AND ITS COUNSEL VIOLATED SDCL 15-6-11(b)(3) AND (4).

SDCL § 15-6-11(b) reads as follows:

15-6-11(b). Representations to court

By presenting to the court (whether by signing, filing, submitting, *or later advocating*) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

- (1) It is not being presented for any improper purpose, such as to harass or *to cause unnecessary delay or needless increase in the cost of litigation*;
- (2) The claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
- (3) The allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and
- (4) The denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief. (Emphasis added).

While the original Complaint named only a "Mary Myers" as the defendant, the advocacy obligation for Wells Fargo's counsel's conduct does not end there. By failing to acknowledge that Mary Ann Myers was wrongfully served, and removing her from

this lawsuit, Wells Fargo continued to advocate against Mary Ann, presenting her with no alternative but to incur significant attorney's fees to defend herself, bring this matter to the attention of the trial court, and litigate her improper joinder. Wells Fargo had 63 days from the December 19, 2024, service of Mary Ann's December 18, 2024, letter to the date of the February 20, 2025, hearing to drop Mary Ann from this lawsuit, but did nothing. Mary Ann, as an innocent party, should never have had to pay for Wells Fargo's mistake and failure to correct the same.

Under SDCL 15-2-30, this action was commenced against Mary Ann when the summons was served on her on December 18, 2025. (SR 36). Mary Ann brought the error to the attention of counsel for Wells Fargo immediately upon being served.(SR 209). Wells Fargo was on notice that its allegations and factual contentions against Mary Ann would never have evidentiary support and were not warranted against her. Under Wells Fargo's duty of investigation, due diligence and proper advocacy its action against Mary Ann was never warranted. As determined by the trial court, Wells Fargo's actions were in contravention of SDCL 15-6-11(b)(3) and (4).

Wells Fargo has never explained why it did not simply remove Mary Ann from this lawsuit when notified, although it had ample opportunity to do so. Rather, it argues that this Court's review should be limited to the four corners of the pleading, and that any liability should be imposed on its serving agent, the Lawrence County Sheriff's department. Wells Fargo is responsible for the actions of its agent. SDCL 59-6-9³.

³SDCL 59-6-9. Responsibility of principal for agent's negligence or omission. Unless required by or under authority of law to employ that particular agent, a principal is responsible to third persons for the negligence of his agent in the transaction of the business of the agency, including wrongful acts committed by such agent in and as part of the transaction of such business; and for his willful omission to fulfill the obligation of the principal.

It also had a continuing obligation of due diligence, but failed to do so by continuing to prosecute its action against Mary Ann Myers.

IV. THE TRIAL COURT PROPERLY AWARDED MARY ANN MYERS' ATTORNEY'S FEES AND COSTS.

The trial court awarded Mary Ann Myers \$3,662.93 in attorney fees and costs. It determined that Mary Ann Myers' counsel properly itemized the attorney's fees and costs incurred by Mary Ann in defense of this case. (SR 243; CL 18). In awarding \$3,662.93 for reasonable attorney's fees and expenses the trial court considered the factors utilized in South Dakota, including the character and importance of the litigation under *Tappe v. Circuit Court, Sixth Judicial Circuit*, 326 N.W.2d 892, at 895 (S.D. 1982) and "...the factors set forth in *Hahne* 513 N.W.2d 97, 111 (S.D. 1994) (quoting Model Rules of Professional Conduct, Rule 1.5)." (SR 243; CL 19, 20; OH 2,3).

Wells Fargo does not argue that attorney's fees were unreasonable. Further, the record is devoid of prejudice to Wells Fargo for imposition of sanctions.

An award of attorney's fees was authorized under SDCL 15-6-11(c)(1)(A):

If, after notice and a reasonable opportunity to respond, the court determines that § 15-6-11(b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated § 15-6-11(b) or are responsible for the violation.

(1) How Initiated.

(A) By Motion. A motion for sanctions under this rule shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate § 15-6-11(b). It shall be served as provided in § 15-6-5, but shall not be filed with or presented to the court unless, within twenty-one days after service of the motion (or such other period as the court may prescribe), the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected. If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held

jointly responsible for violations committed by its partners, associates, and employees.

Though difficult to comprehend, counsel for Wells Fargo appears to take offense to Mary Ann's *Demand to Dismiss Action with Prejudice Rule 11(C)(1)(A)* letter, citing *Smizer v. Drey*, 2016 S.D. 3, 873 N.A.2d 697 and *In re Discipline of Eicher*, 2003 S.D., 661 N.W.2d 354, neither of which are applicable to the undersigned's advocacy and, in fact, support Mary Ann's argument against the conduct of Wells Fargo. (WFB, pp. 23, 24, 25). Without reference to the record or evidence in the record⁴, Wells Fargo argues the Fair Debt Collection Practices Act (15 U.S.C. 1692 et seq) somehow justifies its actions. (WFB pp. 25-27). This has no application to the case, nor is it any legal justification. Additionally, Wells Fargo did not argue the FDCPA justified its actions to the trial court and has waived this argument.

A party's failure to argue an issue to the circuit court waives their ability to argue it on appeal. *Tappe*, 2014 S.D. 17, ¶ 17 n.4, 845 N.W.2d 366, 371 n.4 (quoting *In re Estate of Smid*, 2008 S.D. 82, ¶ 43 n.15, 756 N.W.2d 1, 15 n.15 (Konenkamp, J., dissenting)). Furthermore, "[i]t is well established that 'we will not review a matter on appeal unless proper objection was made before the circuit court.'" *Osdoba v. Kelly-Osdoba*, 2018 S.D. 43, ¶ 23, 913 N.W.2d 496, 503 (quoting *Halbersma*, 2009 S.D. 98, ¶ 29, 775 N.W.2d at 219). "An objection must be sufficiently specific to put the circuit court on notice of the alleged error so it has the opportunity to correct it." *Id.* (quoting *Halbersma*, 2009 S.D. 98, ¶ 29, 775 N.W.2d at 220). *Weber v. Weber*, 2023 S.D. 64, ¶24.

Further, these arguments, if they are to be considered at all, provide no defense to Mary Ann Myers' position... Wells Fargo commenced this action against the wrong person and persisted in advocating against her after notice when due diligence and proper

⁴ 15-26A-64. References in briefs to record

Whenever reference is made in the briefs to any part of the record it shall be made to the particular part of the record, suitably designated, and to the specific pages thereof.

advocacy required her removal from this action and would have resulted in a termination of harassment, delay and legal expenses she suffered.

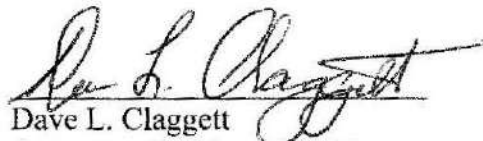
Wells Fargo has the burden to show that the trial court abused its discretion in determining a violation of Rule 11 occurred, and granting Mary Ann Myers' motion for attorney's fees and costs, and proving that Wells Fargo suffered prejudice. The record is devoid of evidence that would sustain Wells Fargo's burden of proof.

CONCLUSION

Mary Ann Myers is entitled to affirmation of the trial court's Order on Hearing, Findings of Fact and Conclusions of Law, to be misjoined from this action and to her attorney's fees, costs and expenses incurred at the trial level as well as on this appeal, and prays this Court for such relief.

Respectfully submitted this 16th day of October, 2025.

CLAGGETT & DILL, PROF. LLC.



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APPENDIX

APPENDIX TABLE OF CONTENTS

1. Findings of Fact and Conclusions of Law.....1-9
2. Order on Hearing.....10,11

STATE OF SOUTH DAKOTA)
)SS
COUNTY OF LAWRENCE)

IN CIRCUIT COURT

FOURTH JUDICIAL CIRCUIT

WELLS FARGO BANK, N.A.,)
 Plaintiff,)
)
vs.)
)
MARY MYERS,)
 Defendant.)

40CIV24-364

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

A Motions Hearing came on before the Court on February 20, 2025. Plaintiff Wells Fargo Bank, N.A., ("Wells Fargo") appeared by and through Karl Von Oldenburg, BQ & Associates, P.C., L.L.O., Omaha, Nebraska. Mary Ann Myers ("Mary Ann") appeared by and through Dave L. Claggett, Claggett & Dill, Prof. LLC, Spearfish, South Dakota. The Court having reviewed the file, and considered the arguments of counsel, and being duly advised, now, therefore, enters its:

FINDINGS OF FACT

1. On December 18, 2024, Plaintiff commenced an action against a one Mary Ann Meyers by personal service on her¹, as shown by the Sheriff's Return of Service on file. The pleadings denoted an action against "Mary Meyers".
2. The parties agree and the Court finds Mary Ann Myers is not the Mary Myers referred to in this action.
3. Mary Ann Myers' social security number is not xxx-xx-6936 nor is the date of her birth Feb-xx-1957. Based upon information before the Court, the Deputy for Lawrence County Sheriff's office failed to apply correct identifiers and served Mary Ann Meyers instead of Mary Myers who also lives in the same area but different address.

¹ 15-2-30. Commencement of action by service of summons-Summons on codefendant
An action is commenced as to each defendant when the summons is served on him, or on a codefendant who is a joint contractor or otherwise united in interest with him.

4. Mary Ann Myers has no contract for any services with the Plaintiff; but, most specifically she isn't the holder of the credit card now in default.
5. There is no legal connection between Mary Ann Myers and the Plaintiff. No credible evidence contrary to this fact is in the Complaint. Plaintiff's attorney acknowledges Mary Ann Meyers is not the intended defendant Mary Meyers.
6. Plaintiff's counsel was notified in writing (letter and email with attached letter) of his error. Mary Ann's counsel specifically brought this matter to the attention of Plaintiff's counsel by Mary Ann's *Demand to Dismiss Action with Prejudice Rule 11(C)(1)(A)*² letter dated December 18, 2024, and forwarded to Plaintiff's counsel by email on December 19, 2024. This letter is Exhibit "A" offered and accepted into evidence at the Hearing.

² 15-6-11(c). Sanctions

If, after notice and a reasonable opportunity to respond, the court determines that § 15-6-11(b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated § 15-6-11(b) or are responsible for the violation.

(1) How Initiated.

(A) By Motion. A motion for sanctions under this rule shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate § 15-6-11(b). It shall be served as provided in § 15-6-5, but shall not be filed with or presented to the court unless, within twenty-one days after service of the motion (or such other period as the court may prescribe), the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected. If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees.

(B) On Court's Initiative. On its own initiative, the court may enter an order describing the specific conduct that appears to violate § 15-6-11(b) and directing an attorney, law firm, or party to show cause why it has not violated § 15-6-11(b) with respect thereto.

(2) Nature of Sanctions; Limitations. A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Subject to the limitations in subparagraphs (A) and (B), the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation.

(A) Monetary sanctions may not be awarded against a represented party for a violation of § 15-6-11(b)(2).

(B) Monetary sanctions may not be awarded on the court's initiative unless the court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party which is, or whose attorneys are, to be sanctioned.

(3) Order. When imposing sanctions, the court shall describe the conduct determined to constitute a violation of this rule and explain the basis for the sanction imposed.

7. In following SDCL 15-6-11(c)(1)(A), Mary Ann's counsel noticed Plaintiff's counsel of the 21 day requirement to correct error after service of Mary Ann's *Demand to Dismiss Action with Prejudice Rule 11(C)(1)(A)* letter.
8. Plaintiff failed to reply to Mary Ann Myers during the said 21 day period.
9. Subsequently, on January 16, 2025, 28 days after service of Mary Ann's *Demand to Dismiss Action with Prejudice Rule 11(C)(1)(A)*, when no reply was made by Plaintiff's counsel, Mary Ann filed her Answer and Counterclaim, Motion to Dismiss, Motion for Sanctions, Affidavit of Attorney Fees, Affidavit of Dave L. Claggett, Brief in Support of Motion for Sanctions and Brief in Support of Motion to Dismiss.
10. Plaintiff filed a Motion to Strike Service on February 11, 2025, and responded to Mary Ann's motions.
11. Any Finding of Fact subsequently determined to be a Conclusion of Law is incorporated therein by reference.

Based on the foregoing Findings of Fact, the Court enters its:

CONCLUSIONS OF LAW

1. The Court has jurisdiction over the parties and subject matter of the action.
2. Mary Ann Myers is not the individual Plaintiff claims to be indebted to Plaintiff.
3. Courts have addressed the distinction between misnomer, misjoinder and misidentification. *Minnesota v. Goodleap, LLC.*, 2024 W.L. 4542229, U.S. Dist., D. Minn. Misnomer is where a plaintiff misnames a defendant but correctly serves the correct party. *Id.* Misidentification "arises when two separate legal entities actually exist and a plaintiff mistakenly sues the entity with a name similar to that of the correct entity." *Id.* In the instant case, the legal issue arises from misjoinder, where the an unrelated and improper person is served.

4. In actions where misjoinder occurs several means existed objecting to serving an incorrect person. In the early 1900's a party could file a demur and therefore object to the sufficiency of the pleadings and or service. However, demurs found disfavor with the legislature and were removed pursuant to SDCL 15-6-7(c).
5. The preferred method of addressing misjoinder interestingly enough is found within the same chapter, SDCL 15-6-21. There the Court may "drop" parties or add the same through order. However, misjoinder does not create a ground for dismissal. SDCL 15-6-21, see also *Bottum v. Herr*, 162 NW2d 880, 882 (SD 1968). Upon motion, the Court simply enters an order directing a particular party to be "dropped" *Id.* No where within that subsection does it address attorney's fees. Request for attorneys fees must be provided for within statute, rule or sanctions and made upon by specific motion for attorneys fees. SDCL 15-6-54(d)
6. This Court concludes, Mary Ann Meyers was misjoined to this action.
7. Counsel for the misjoined party directs the Court to SDCL 15-6-11(c) as authority to sanction opposing Counsel. However, sanctions may only arise under 15-6-11(c) if the "attorneys, law firms, or parties [] have violated §15-6-11(b)." Thus, before sanctions are considered, this Court must address any breaches within sub (b) first.
8. SDCL 15-6-11(b) provides the following:

By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

- (1) It is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
- (2) The claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
- (3) The allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

- (4) The denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.
9. After a review of the information provided *infra*, this Court concludes Plaintiff hasn't violated sections 1 and 2. This Court concludes, Plaintiff failed to show the claims against Mary Ann Meyers, had evidentiary support after being properly informed that she was not Mary Meyers who has a SSN ending in 6936 and birthdate of Feb-XX-1957. SDCL 15-6-11(b)(3) and (4).
10. Instead of filing a motion for misjoinder or notifying Plaintiff of the misjoinder, Mary Ann's counsel notified Plaintiff's counsel of his obligation to dismiss this action against Mary Ann Myers in the *Demand to Dismiss Action with Prejudice Rule 11(C)(1)(A)* letter.
11. Plaintiff's counsel didn't respond after receiving the email as provided for in Defendant's exhibit "A". In that email correspondence, Mary Ann Meyers' counsel not only indicated a letter was mailed the day earlier, fully explaining Plaintiff served the wrong person; but, in summary fashion explain to Plaintiff's counsel the name, birthdate and social security card were incorrect. Further, Mary Ann Meyers' counsel alleged she didn't even own a Wells Fargo credit card. Plaintiff's counsel failed to act in reaching out to Mary Ann Meyers' counsel to address the defenses. Again, Defendant urges this Court to consider Plaintiff failed to dismiss this action against Mary Ann Myers within the 21 day period allowed by law. Dismissal isn't a remedy under misjoinder; however, Plaintiff's attorney should have inquired with counsel for Mary Ann Meyers and requested an order "dropping" the misjoined person. Additionally, Plaintiff had all of the information before it addressing why it couldn't persist in its action against Mary Ann Meyers as she wasn't the actual card holder. SDCL 15-6-11(b)(3 and 4).
12. Mary Ann Meyers' counsel persists Plaintiff's attempt to strike service is not the same as dismissing Mary Ann Myers from this lawsuit. In all candor, the issue with the action boils down to a failure to communication and failure of a Plaintiff's attorney to conduct a due

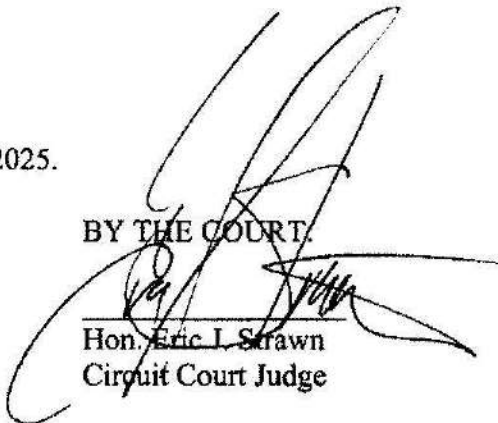
diligence review of the defenses raised within opposing counsel's letter mailed and later attached to an email. The title of the letter alone would warrant prudent inspection of the allegations contained within the letter, ie., "Rule 11(C)(1)(A) Letter". Counsel for Plaintiff would have known that Rule 11 arises from sanctionable actions. Even if Plaintiff's counsel received hundreds of responses from debtors or other circumstances arose which took precedence over investigating the defenses raised, or misunderstood the misjoinder issue, that the defenses were raised by an attorney should compel a review.

13. Plaintiff argues the proper motion to the Court would be insufficiency of process due to the Sheriff incorrectly serving the wrong person. This Court disagrees with insufficiency of process as this arises from misjoinder. The Court agrees dismissal would still not be warranted under such circumstances. Nonetheless, this matter is arises from misjoinder and an order should be drafted dropping Mary Ann Meyers with her identifiers from the action.
14. Dropping Mary Ann Meyers from the law suit doesn't correct the legal fees expended due to Plaintiff not addressing the circumstances creating the misjoinder in the first instance. Furthermore, even if insufficiency of process was an available remedy at the time, the circumstances were directly addressed with Mary Ann's counsel via letter and email, Plaintiff should have communicated with opposing counsel.
15. Plaintiff's failure to timely respond caused additional fees to be assessed against Mary Ann Meyers through her attorney in answering the complaint to prevent judgment against her.
16. Attorney's fees and costs are allowed under Rules 11(c)(1)(A) and 11(c)(2) if 15-6-11(b) has been violated.
17. An order "dropping" Mary Ann Myers is authorized as a non-monetary sanction under Rule 11(c)(1)(A).

18. The attorney for Mary Ann Myers has itemized the attorney's fees and costs incurred by Mary Ann in defense of this case. Defendant's Exhibits B and C.
19. The Court, in awarding attorney's fees and expenses, considers the factors utilized in South Dakota, including the character and importance of the litigation. *Tappe v. Circuit Court, Sixth Judicial Circuit*, 326 N.W.2d 892, at 895 (S.D. 1982)]. The factors as set forth in *City of Sioux Falls v. Kelley*, 513 N.W.2d 97, 111 (S.D. 1994) (quoting Model Rules of Professional Conduct, Rule 1.5), include:
- a. the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
 - b. the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
 - c. the fee customarily charged in the locality for similar legal services;
 - d. the amount involved and the results obtained;
 - e. the time limitations imposed by the client or by the circumstances;
 - f. the nature and length of the professional relationship with the client;
 - g. the experience, reputation, and ability of the lawyer or lawyers performing the services;
 - and
 - h. whether the fee is fixed or contingent.
20. Considering all relevant factors, the Court determines that the attorney's fees and costs of Mary Ann Myers are reasonable under the circumstances, and awards Mary Ann Myers \$3,662.93 in attorney's fees and costs.
21. Counsel for Plaintiff shall prepare a proposed order "dropping" Mary Ann Meyers with her edited identifiers from the action pursuant to SDCL 15-6-21. The proposed order shall be delivered upon opposing counsel for approval.

Dated this 17th day of March, 2025.

BY THE COURT.


Hon. Eric I. Strawn
Circuit Court Judge

Attest: CAROL LATUSECK, CLERK
Nicolussi, Bree
Deputy



CERTIFICATE OF SERVICE

The undersigned hereby certifies that she served a true and correct copy of the FINDINGD OF FACT AND CONCLUSIONS OF LAW in the case of WELLS FARGO BANK NA vs. MARY MYERS (40CIV24-000364) upon the persons herein next designated all on the date below shown, by emailing a copy thereof to the parties and receiving a delivery receipt for the same confirming the email was delivered to the recipients' mailboxes.

Mr. Karl Von Oldenburg
Attorney at Law
kvonoldenburg@bqlaw.com

Mr. David L Claggett
Attorney at Law
davec@claggettanddill.com

Dated this 17th day of March 2025.


Bree Nicolussi Deputy Clerk of Courts

STATE OF SOUTH DAKOTA)
)SS
COUNTY OF LAWRENCE)

IN CIRCUIT COURT

FOURTH JUDICIAL CIRCUIT

WELLS FARGO BANK, N.A.,)
 Plaintiff,)
)
vs.)
)
MARY MYERS,)
 Defendant.)

40CIV24-364
ORDER ON HEARING

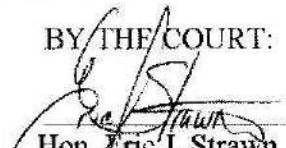
A Motions Hearing came on before the Court on February 20, 2025, the honorable Eric J. Strawn, Circuit Court Judge, presiding. Plaintiff Wells Fargo Bank, N.A., ("Wells Fargo") appeared by and through its counsel, Karl Von Oldenburg, BQ & Associates, P.C., L.L.O., Omaha, Nebraska. Mary Ann Myers ("Mary Ann") appeared by and through her counsel, Dave L. Claggett, Claggett & Dill, Prof. LLC, Spearfish, South Dakota. The Court having reviewed the file, and considered the arguments of counsel, and having entered its Findings of Fact and Conclusions of Law, which are incorporated herein by reference, and being duly advised, now, therefore:

IT IS HEREBY ORDERED AND ADJUDGED THAT:

1. Mary Ann Myers is hereby dropped from this action pursuant to SDCL 15-6-21 and as a non-monetary sanction under Rule 11(c)(1)(A).
2. Attorney's fees and costs are allowed under Rules SDCL 15-6-11(c)(1)(A) and 11(c)(2) as 15-6-11(b)(3) and (4) have been violated.
3. Sanctions shall be imposed upon Plaintiff's counsel, pursuant to SDCL 15-6-11(c)(1)(A), in the amount of \$3,662.93 for reasonable attorney's fees and costs.
4. This is considered a final Order regarding Mary Ann Myers.

4/15/2025 8:32:41 AM

BY THE COURT:


Hon. Eric J. Strawn
Circuit Court Judge

Attest: CAROL LATUSECK, CLERK

Nicolussi, Bree

Deputy

