

1 **DIANE WEMPLE BAXA** State Bar No. 89805  
 2 **PETER M. HEBERT** State Bar No. 152506  
 3 OFFICE OF THE GENERAL COUNSEL  
 4 CITY NATIONAL BANK  
 5 555 S. FLOWER STREET  
 6 18TH FLOOR  
 7 LOS ANGELES, CA 90071  
 8 TELEPHONE: (213) 673-9509  
 9 FACSIMILE: (213) 673-9503

**FILED**  
 LOS ANGELES SUPERIOR COURT  
 OCT 02 2009  
 JOHN M. DENHAM, CLERK  
 By J. Denham Deputy

6 Attorneys for Plaintiff  
 7 CITY NATIONAL BANK, a national banking  
 8 association

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **COUNTY OF LOS ANGELES**

**Norman P. Tarte**

11 CITY NATIONAL BANK, a national  
 12 banking association,

CASE NO.

**SC105111**

13 Plaintiff,

**CITY NATIONAL BANK'S VERIFIED  
 COMPLAINT FOR:**

14 v.

- 1) Breach of Contract (Braxton)
- 2) Breach of Contract (Liberty Guaranty)
- 3) Breach of Contract (Dendiezel Guaranty)
- 4) Breach of Contract (Credit Card-Liberty Entertainment, Inc.)
- 5) Breach of Contract (Braxton Guaranty)
- 6) Money Had and Received; and
- 7) Unjust Enrichment

15 TONI BRAXTON, AKA EVA  
 16 WATERS an individual, LIBERTY  
 17 ENTERTAINMENT, INC., a  
 18 California Corporation, DENDIEZEL  
 19 ENTERTAINMENT, a California  
 20 Corporation, and DOES 1 through 50,  
 21 inclusive,

CASE MANAGEMENT CONFERENCE

22 Defendants. *Alvin*  
*9/21/10* *355*

JAN 21 2010

*830 am DEAT.F*

23 Plaintiff CITY NATIONAL BANK, a national banking association ("CNB") alleges:

24 1. At all times mentioned herein, CNB was and now is a national banking association  
 25 organized and existing by virtue of the laws of the United States of America with its principal  
 26 place of business in the County of Los Angeles, State of California, and authorized to do business  
 27 and doing business in the County of San Diego, State of California.

28 2. CNB is informed and believes and thereon alleges that defendant TONI  
 BRAXTON, also known as Eva Waters, ("BRAXTON") is, and at all times mentioned herein  
 was, an individual residing in the city of Henderson, State of Nevada. BRAXTON entered into  
 the contracts referenced herein in the County of Los Angeles and said contracts were performed

CITY NATIONAL BANK  
 ATTORNEYS AT LAW  
 LOS ANGELES

1 in said County. BRAXTON agreed to submit to the jurisdiction of the courts of Los Angeles  
2 County and further agreed venue was proper therein.

3 3. CNB is informed and believes and thereon alleges that defendant LIBERTY  
4 ENTERTAINMENT, INC. ("LIBERTY"), was and is a California Corporation, doing business in  
5 the County of Los Angeles.

6 4. CNB is informed and believes and thereon alleges that defendant DENDIEZEL  
7 ENTERTAINMENT, INC. ("DENDIEZEL") was and is a California Corporation, doing business  
8 in the County of Los Angeles.

9 5. CNB is ignorant of the true names and capacities of defendants sued herein as  
10 DOES 1 through 50, inclusive, and therefore sues these defendants by such fictitious names.  
11 CNB will amend this Complaint to allege their true names and capacities when ascertained.

12 6. CNB is informed and believes and based thereon alleges that each of the  
13 fictitiously named defendants is responsible in some manner for the occurrences herein alleged,  
14 and that CNB's damages as herein alleged were proximately caused by their conduct.

15 7. At all times mentioned herein, defendants DOES 1 through 50, inclusive, and each  
16 of them, were the agents, servants, joint venturers and employees of each of their co-defendants,  
17 and of each other, and were at all times mentioned herein acting within the course and scope of  
18 such agency and employment.

19 8. This action is an action for breach of contracts where the contracts were entered  
20 into and to be performed in the county of Los Angeles. The defendants sued herein contractually  
21 agreed that venue and jurisdiction shall be proper in the County where the underlying  
22 indebtedness as alleged below is payable, which County is Los Angeles. Venue is therefore  
23 proper in this Court, which has jurisdiction over the defendants for the acts and omissions alleged  
24 herein.

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CITY NATIONAL BANK  
AUTHORIZED BY LAW  
LOS ANGELES

**FIRST CAUSE OF ACTION  
FOR BREACH OF CONTRACT (PROMISSORY NOTE)  
AGAINST BRAXTON AND DOE DEFENDANTS 1-20**

9. CNB incorporates herein by reference all of the allegations contained in paragraphs 1 through 8 above.

10. On or about November 20, 2007, for value received, BRAXTON made, executed and delivered to CNB a Promissory Note ("Note"), in the original sum of \$900,000.00. Pursuant to the terms of the Note, said sum accrued interest thereon from the date of disbursement at a rate equal to 1.5% over the "Prime Rate" of CNB computed on the basis of a 365/365 simple interest basis. Interest was payable on the sixth day of each month, commencing December 6, 2007. Principal and any unpaid accrued interest were payable in full on February 6, 2008. Any principal or interest not paid when due accrued additional interest at an additional rate of five percent. The terms of the Note are more specifically stated in the Note. A true and correct copy of the Note is attached hereto as Exhibit "1" and incorporated herein by this reference.

11. The sums were not paid when they came due on February 6, 2008 and thereafter, on or about March 4, 2008, BRAXTON and CNB entered into a Change in Terms Agreement by which the parties agreed the Maturity date of the Note was extended to May 6, 2008. A true and correct copy of the Change in Terms Agreement is attached hereto as Exhibit "2" and incorporated herein by this reference.

12. The sums were not paid when they came due on May 6, 2008 and thereafter, on or about June 6, 2008, BRAXTON and CNB entered into a Change in Terms Agreement by which the parties agreed the Maturity date of the Note was extended to August 4, 2008. A true and correct copy of the Change in Terms Agreement is attached hereto as Exhibit "3" and incorporated herein by this reference.

13. The sums were not paid when they came due on August 4, 2008 and thereafter, on or about September 17, 2008, BRAXTON and CNB entered into a Change in Terms Agreement by which the parties agreed the Maturity date of the Note was extended to April 1, 2008. A true and correct copy of the Change in Terms Agreement is attached hereto as Exhibit "4" and

1 incorporated herein by this reference.

2 14. The sums were not paid when they came due on April 1, 2008 and thereafter, on or  
3 about December 3, 2008, for value received, BRAXTON made, executed and delivered to CNB a  
4 further Promissory Note ("Further Note"; collectively, with the Note, the "Notes"), in the original  
5 sum of \$687,139.94. Pursuant to the terms of the Note, said sum accrued interest thereon from  
6 the date of disbursement at a rate equal to 1.5% over the "Prime Rate" of CNB, with a minimum  
7 rate of 3.5%, computed on the basis of a 365/365 simple interest basis. Principal payments of  
8 \$10,000, plus accrued interest were due January 1, 2009 and each month thereafter. The balance  
9 of principal and any unpaid accrued interest was payable in full on April 1, 2009. Any principal  
10 or interest not paid when due accrued additional interest at an additional rate of five percent. The  
11 terms of the Further Note are more specifically stated in the Further Note. A true and correct  
12 copy of the Further Note is attached hereto as Exhibit "5" and incorporated herein by this  
13 reference.

14 15. The Notes and Change in Terms Agreements are collectively referred to as the  
15 "AGREEMENT".

16 16. CNB has fully performed all conditions and obligations to be performed on its part  
17 under the terms of the AGREEMENT.

18 17. On or about April 1, 2009, BRAXTON breached her obligations under the terms  
19 of the AGREEMENT by failing to pay the loan in full. All sums are now due and owing under  
20 the terms of the AGREEMENT.

21 18. Prior to the commencement of this action, CNB made demand on BRAXTON for  
22 payment of the balance due on the AGREEMENT in the amounts set forth above. Those amounts  
23 remain due. A true and correct copy of the letter of demand on BRAXTON is attached hereto as  
24 Exhibit "6" and incorporated herein by this reference.

25 19. Pursuant to the AGREEMENT, upon default, the interest rate increases by 5%.

26 20. Pursuant to the AGREEMENT, the outstanding balance on the AGREEMENT as  
27 of June 5, 2009, was \$657,567.54, consisting of \$657,139.94 principal, and \$427.60 accrued  
28 interest, plus \$85.52 per diem interest from and after June 5, 2009. A true and correct copy of an

1 accounting of the loan balance, including interest and fees is attached hereto as Exhibit "7" and  
2 incorporated herein by this reference.

3 21. By the terms of the AGREEMENT, BRAXTON agreed to pay reasonable  
4 attorneys' fees incurred by CNB in enforcement thereof. CNB herein has employed the Office of  
5 the General Counsel for the institution of this action. The law offices have earned and will  
6 continue to earn reasonable compensation in connection with services rendered and to be  
7 rendered.

8 **SECOND CAUSE OF ACTION FOR BREACH OF CONTRACT (CREDIT CARD)**  
9 **AGAINST LIBERTY ENTERTAINMENT, INC. AND DOES 21 THROUGH 35,**  
10 **INCLUSIVE**

11 22. CNB incorporates herein by reference all of the allegations contained in  
12 paragraphs 1 through 8, above.

13 23. On or about July 7, 1999, and further on or about February 27, 2006, for value  
14 received, Liberty made, executed and delivered to CNB a Business Credit Card Application,  
15 wherein Liberty agreed to be bound by the terms of CNB's Cardmember Agreement (the "Card  
16 Agreement"), with a maximum limit of \$100,000.00. Regular monthly payments of principal and  
17 interest on the unpaid principal balance at the rate of 15.96% per annum were due. A true and  
18 correct copy of the Card Agreement, including the Commercial Installment Credit Agreement:  
19 Cardmember Agreement, is attached hereto as Exhibit "8" and incorporated herein by this  
20 reference.

21 24. In reliance upon the Card Agreement and loan documents, CNB advanced funds  
22 and extended credit to Liberty in the sum of \$44,870.37 as of September 7, 2009. A true and  
23 correct copy of the statements reflecting said balance is attached hereto as Exhibit "9" and  
24 incorporated herein by this reference.

25 25. CNB has fully performed all conditions and obligations to be performed on its part  
26 under the terms of the Card Agreement.

27 26. All of the funds advanced to Liberty under the Agreement were used by, on behalf  
28 of and for the benefit of Liberty.

1           27. Included in the terms of the Agreement is the provision that CNB may terminate or  
2 suspend Liberty's credit privileges on the account, even if Liberty was not in default under the  
3 Agreement.

4           28. Liberty breached its obligations under the Agreement by failing to make the  
5 payments due August 29, 2009 and prior thereto. Although CNB has made demand for payment,  
6 Liberty has defaulted on its repayment obligations and there is now due, owing and unpaid the  
7 sums listed above under the Agreement. Consequently, CNB has terminated Liberty's privileges  
8 under the Agreement. There is now due, owing and unpaid under the Agreement the amount of  
9 \$44,870.37 as of September 7, 2009, plus additional interest according to proof.

10           **THIRD CAUSE OF ACTION FOR BREACH OF CONTRACT (LIBERTY GUARANTY)**  
11           **AGAINST LIBERTY ENTERTAINMENT, INC. AND DOES 21 THROUGH 35,**  
12           **INCLUSIVE**

13           29. CNB incorporates herein by reference all of the allegations contained in  
14 paragraphs 1 through 21, above.

15           30. On or about November 20, 2007, LIBERTY made, executed and delivered to CNB  
16 a Continuing Guaranty ("Liberty Continuing Guaranty) whereby LIBERTY, among other things,  
17 obligated itself to guarantee and promise to pay to CNB any and all indebtedness of BRAXTON  
18 then existing or thereafter made, up to the maximum principal amount of \$900,000.00. A true  
19 and correct copy of the Liberty Continuing Guaranty is attached hereto as Exhibit "10" and  
20 incorporated herein by this reference. Further on or about November 20, 2007, LIBERTY made,  
21 executed and delivered to CNB a Corporate Resolution to Grant Collateral/Guarantee ("Liberty  
22 Resolution"). A true and correct copy of the Liberty Resolution is attached hereto as Exhibit "11"  
23 and incorporated herein by this reference. The Liberty Continuing Guaranty and Liberty  
24 Resolution are collectively referred to as the "Liberty Guaranty".

25           31. In reliance upon the Liberty Guaranty, CNB advanced funds and extended credit to  
26 BRAXTON as set forth hereinabove. The Liberty Guaranty has not, to this date, been revoked by  
27 LIBERTY.

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1 32. CNB has fully performed all conditions and obligations to be performed on its part  
2 under the terms of the Liberty Guaranty.

3 33. Although CNB has made demand for payment, LIBERTY has defaulted on the  
4 Liberty Guaranty and there is now due and owing the debts listed above under the Note. A true  
5 and correct copy of the letter of demand to LIBERTY is attached hereto as Exhibit "12" and  
6 incorporated herein by this reference.

7 34. By the terms of the Liberty Guaranty, LIBERTY agreed to pay reasonable  
8 attorneys' fees incurred by CNB in enforcement thereof. CNB herein has employed the Office of  
9 the General Counsel for the institution of this action, which has earned and will continue to earn a  
10 reasonable compensation in connection with services rendered and to be rendered.

11 **FOURTH CAUSE OF ACTION FOR BREACH OF CONTRACT (DENDIEZEL**  
12 **GUARANTY) AGAINST DENDIEZEL ENTERTAINMENT, INC. AND DOES 36**  
13 **THROUGH 50, INCLUSIVE**

14 35. CNB incorporates herein by reference all of the allegations contained in  
15 paragraphs 1 through 21, above.

16 36. On or about November 20, 2007, DENDIEZEL made, executed and delivered to  
17 CNB a Continuing Guaranty ("Dendiezel Continuing Guaranty) whereby DENDIEZEL, among  
18 other things, obligated itself to guarantee and promised to pay to CNB any and all indebtedness of  
19 BRAXTON then existing or thereafter made, up to the maximum principal amount of  
20 \$900,000.00. A true and correct copy of the DenDiezel Continuing Guaranty is attached hereto  
21 as Exhibit "13" and incorporated herein by this reference. Further on or about November 20,  
22 2007, DENDIEZEL made, executed and delivered to CNB a Corporate Resolution to Grant  
23 Collateral/Guarantee (the "DenDiezel Resolution"). A true and correct copy of the DenDiezel  
24 Resolution is attached hereto as Exhibit "14" and incorporated herein by this reference. The  
25 DenDiezel Continuing Guaranty and DenDiezel Resolution are collectively referred to as the  
26 "DenDiezel Guaranty".

27 37. In reliance upon the DenDiezel Guaranty, CNB advanced funds and extended  
28 credit to BRAXTON as set forth hereinabove. The Dendiezel Guaranty has not, to this date, been

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1 revoked by DENDIEZEL.

2 38. CNB has fully performed all conditions and obligations to be performed on its part  
3 under the terms of the Dendiezel Guaranty.

4 39. Although CNB has made demand for payment, DENDIEZEL has defaulted on the  
5 Dendiezel Guaranty and there is now due and owing the debts listed above under the Note. A  
6 true and correct copy of the letter of demand to DENDIEZEL is attached hereto as Exhibit "15"  
7 and incorporated herein by this reference.

8 40. By the terms of the Dendiezel Guaranty, DENDIEZEL agreed to pay reasonable  
9 attorneys' fees incurred by CNB in enforcement thereof. CNB herein has employed the Office of  
10 the General Counsel for the institution of this action, which has earned and will continue to earn a  
11 reasonable compensation in connection with services rendered and to be rendered.

12 **FIFTH CAUSE OF ACTION FOR BREACH OF CONTRACT (BRAXTON GUARANTY)**

13 **AGAINST TONI BRAXTON AND DOES 1 THROUGH 20, INCLUSIVE**

14 41. CNB incorporates herein by reference all of the allegations contained in  
15 paragraphs 1 through 8 and 22 through 28, above.

16 42. On or about July 7, 1999 and February 27, 2006, BRAXTON made, executed and  
17 delivered to CNB a Continuing Guaranty ("Braxton Continuing Guaranty) whereby BRAXTON,  
18 among other things, obligated herself to guarantee and promised to pay to CNB any and all  
19 indebtedness of LIBERTY then existing or thereafter made, up to the maximum principal amount  
20 of \$100,000.00. A true and correct copy of the Braxton Continuing Guaranty is attached hereto  
21 as Exhibit "8" and incorporated herein by this reference.

22 43. In reliance upon the Braxton Guaranty, CNB advanced funds and extended credit  
23 to LIBERTY as set forth hereinabove. The Braxton Guaranty has not, to this date, been revoked  
24 by BRAXTON.

25 44. CNB has fully performed all conditions and obligations to be performed on its part  
26 under the terms of the Braxton Guaranty.

27 45. Although CNB has made demand for payment, BRAXTON has defaulted on the  
28 Braxton Guaranty and there is now due and owing the debts listed above under the Card

1 Agreement. A true and correct copy of the letter of demand to BRAXTON is attached hereto as  
 2 Exhibit "16" and incorporated herein by this reference.

3 46. By the terms of the Braxton Guaranty, BRAXTON agreed to pay reasonable  
 4 attorneys' fees incurred by CNB in enforcement thereof. CNB herein has employed the Office of  
 5 the General Counsel for the institution of this action, which has earned and will continue to earn a  
 6 reasonable compensation in connection with services rendered and to be rendered.

7 **FIFTH CAUSE OF ACTION**  
 8 **FOR MONEY HAD AND RECEIVED**  
 9 **AGAINST ALL DEFENDANTS**

10 47. CNB incorporates herein by reference all of the allegations contained in  
 11 paragraphs 1 through 46 above.

12 48. Defendants became indebted to CNB in the sum of \$657,139.94, or more  
 13 according to proof, plus interest thereon in accordance with proof, for money had and received for  
 14 the use and benefit of Defendants.

15 49. Although demand for payment has been made by CNB on all Defendants, no part  
 16 of that amount has been paid by them, and there is now due, owing and unpaid to CNB the sum of  
 17 at least \$657,139.94, plus interest thereon according to proof.

18 **SIXTH CAUSE OF ACTION**  
 19 **FOR UNJUST ENRICHMENT AGAINST ALL DEFENDANTS**

20 50. CNB incorporates herein by reference all of the allegations in paragraphs 1  
 21 through 32 above.

22 51. Defendants became unjustly enriched in the sum of \$657,139.94, or more  
 23 according to proof, for money converted from CNB to the use and benefit of Defendants.

24 52. Although demand for payment has been made, no part of the sum has been paid  
 25 and there is now due, owing and unpaid to CNB the sum of \$657,139.94 plus interest thereon in  
 26 accordance with proof.

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1 WHEREFORE, CNB prays for judgment as follows:

2 **On CNB's First Cause of Action for Breach of Contract against Defendant**  
3 **BRAXTON and Does 1 through 20:**

- 4 1. The principal sum of \$657,139.94;  
5 2. Interest, and other charges according to proof.

6 **On CNB's Second Cause of Action for Breach of Contract against Defendant**  
7 **LIBERTY and Does 21 through 35:**

- 8 3. The principal sum of \$44,870.37;  
9 4. Interest, and other charges according to proof.

10 **On CNB's Third Cause of Action for Breach of Contract (Liberty Guaranty) against**  
11 **Defendant LIBERTY ENTERTAINMENT, INC. and Does 21 through 35:**

- 12 5. The principal sum of \$657,139.94;  
13 6. Interest, and other charges according to proof.

14 **On CNB's Fourth Cause of Action for Breach of Contract against Defendant**  
15 **DENDIEZEL and Does 36 through 50:**

- 16 7. The principal sum of \$657,139.94;  
17 8. Interest, and other charges according to proof.

18 **On CNB's Fifth Cause of Action for Breach of Contract (Braxton Guaranty) against**  
19 **Defendant BRAXTON and Does 1 through 20:**

- 20 9. The principal sum of \$44,870.37;  
21 10. Interest, and other charges according to proof.

22 **On CNB's Sixth Cause of Action for Money Had and Received against All**  
23 **Defendants:**

- 24 11. The principal sum of \$657,139.94 or such greater sum as is proven;  
25 12. Interest and other charges according to proof.

26 **On CNB's Fifth Cause of Action for Unjust Enrichment against All Defendants:**

- 27 13. The principal sum of \$657,139.94 or such greater sum as is proven;  
28 14. Interest and other charges according to proof.


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**On All of CNB's Causes of Action against all defendants:**

- 15. For costs of suit;
- 16. For reasonable attorney's fees, costs and expenses; and
- 17. For such other and further relief as the Court may deem just and proper.

DATED: September 23, 2009

OFFICE OF THE GENERAL COUNSEL

By:   
 DIANE WEMPLE BAXA  
 Attorneys for Plaintiff CITY NATIONAL  
 BANK, a national banking association

CITY NATIONAL BANK  
ATTORNEYS AT LAW  
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**VERIFICATION**

I, Jane E. McKelvie, declare as follows:

I have read the foregoing CITY NATIONAL BANK'S VERIFIED COMPLAINT  
**FOR:**

- 1) Breach of Contract
- 2) Breach of Contract (Liberty Guaranty)
- 3) Breach of Contract (Dendiezel Guaranty)
- 4) Money Had and Received; and
- 5) Unjust Enrichment;

and know its contents.

- I am a party to this action. The matters stated in it are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.
- I am an officer of City National Bank, a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. I have read the foregoing document(s). I am informed and believe and on that ground allege that the matters stated in it are true.
- I am one of the attorneys of record for CITY NATIONAL BANK, a national banking association, a party to this action. Such party is absent from the county in which I have my office, and I make this verification for and on behalf of that party for that reason. I have read the foregoing document(s). I am informed and believe and on that ground allege that the matters stated in it are true.

Executed at Las Vegas, Nevada on this 23 day of September, 2009.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

  
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 Jane E. McKelvie

CITY NATIONAL BANK  
ATTORNEY AT LAW  
LAS VEGAS, NV

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## EXHIBIT LIST

- Exhibit 1 Promissory Note
- Exhibit 2 Change in Terms Agreement, dated March 4, 2008
- Exhibit 3 Change in Terms Agreement, dated June 6, 2008
- Exhibit 4 Change in Terms Agreement, dated September 17, 2008
- Exhibit 5 Promissory Note, dated December 3, 2008
- Exhibit 6 Demand Letter, dated June 1, 2009
- Exhibit 7 Accounting of the Loan balance (Loan History)
- Exhibit 8 Card Agreement, including Commercial Installment Credit Agreement:  
Cardmember Agreement and Guaranty
- Exhibit 9 Statements reflecting said balance
- Exhibit 10 Liberty Continuing Guaranty
- Exhibit 11 Liberty Corporate Resolution
- Exhibit 12 Demand Letter, dated June 1, 2009
- Exhibit 13 DenDiezel Continuing Guaranty
- Exhibit 14 DenDiezel Corporate Resolution
- Exhibit 15 Demand Letter to DenDiezel, dated June 1, 2009
- Exhibit 16 Demand Letter to Braxton, dated September 3, 2009

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