416.39 ACCOUNT STATED

(Claimant) **claims that** (defendant) **owes [him] [her] [it] money on an account stated. An account stated involves a transaction or series of transactions for which a specific amount of money is due. To establish this claim,** (claimant) **must prove all of the following:**

1. (Claimant) **and** (defendant**) had [a transaction] [transactions] between them;**

**2. [**(Claimant) **and** (defendant) **agreed upon the balance due] [or] [**(Claimant) **rendered a statement to** (defendant) **and** (defendant) **failed to object within a reasonable time to a statement of [his] [her] [its] account];**

**3.** (Defendant) **expressly or implicitly promised** **to pay** (claimant) **[this balance] [the amount set forth in the statement]; and**

**4.** (Defendant) **has not paid** (claimant) **[any] [all] of the amount owed under the account.**

**If the greater weight of the evidence does not support** (claimant’s) **claim on these issues, then your verdict should be for** (defendant). **However, if the greater weight of the evidence supports** (claimant’s) **claim on these issues, [then your verdict should be for** (claimant) **in the total amount of [his] [her] [its] damages] [then you shall consider the [defense] [defenses] raised by** (defendant)**].**

**SOURCES AND AUTHORITIES FOR 416.39**

1. There must be an agreement between the parties that a certain balance is correct and due and an express or implicit promise to pay this balance. *Merrill-Stevens Dry Dock Co. v. Corniche Exp.*, 400 So.2d 1286, 1286 (Fla. 3d DCA 1981).

2. The action for an account stated is an action for a sum certain, and where there is no such agreement between the parties, the plaintiff may not recover upon a theory of account stated. *Merrill-Stevens Dry Dock Co. v. Corniche Exp.*, 400 So.2d 1286, 1286-87 (Fla. 3d DCA 1981); *FDIC v. Brodie*, 602 So. 2d 1358, 1361 (Fla. 3d DCA 1992); *Carpenter Contractors of Am., Inc. v. Fastener Corp. of Am., Inc.*, 611 So.2d 564, 565 (Fla. 4th DCA 1992).

3. An account statement is not absolutely conclusive upon the parties as the presumption of the account’s accuracy and correctness may be overcome by proof of fraud, mistake, or error. *Farley v. Chase Bank*, U.S.A., N.A., 37 So.3d 936, 937 (Fla. 4th DCA 2010).

4. An agreement to a resulting balance may be established by the failure to object to the account statement. *Myrick v. St. Catherine Laboure Manor, Inc.*, 529 So.2d 369, 371 (Fla. 1st DCA 1988).

5. An objection to an account must be made within a reasonable time. *Robert C. Malt & Co. v. Kelly Tractor Co.*, 518 So.2d 991, 992 (Fla. 4th DCA 1988).

6. Fla. R. Civ. P. 1.933 (Form) (“A copy of the account showing items, time of accrual of each, and amount of each must be attached” to the Complaint).