

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

EXPERI-METAL, INC.,  
a Michigan corporation,

Plaintiff,

Case No. 2:09-CV-14890

v.

Hon. Patrick J. Duggan

COMERICA, INC.,  
a foreign corporation,

Defendant.

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**COMERICA'S FIRST SET OF INTERROGATORIES, REQUESTS FOR  
PRODUCTION OF DOCUMENTS, AND REQUESTS FOR ADMISSION**

Comerica Incorporated, by and through its attorneys, Miller, Canfield, Paddock and Stone, P.L.C., submits the following interrogatories, requests for production of documents, and requests for admission to Plaintiff Experi-Metal, Inc. to be answered pursuant to Fed. R. Civ. P. 33, 34, and 36. The answers and objections to the interrogatories, requests for documents, and requests for admission must be served upon the undersigned attorney in a form consistent with the requirements of the Federal Rules of Civil Procedure within 30 days of the date of service upon Experi-Metal. The interrogatories and document requests are continuing, and supplemental

answers and documents productions are required immediately if Experi-Metal directly or indirectly obtains further or different information from the time the answers are served upon Comerica Incorporated to the time of trial.

### INSTRUCTIONS AND DEFINITIONS

- A. As used herein, the following words have the following meanings:
1. “**employee**” means any employee, officer, director, owner, partner or agent of an entity;
  2. “**person**” means any individual, corporation, partnership, joint venture, firm, association, proprietorship, agency, board, authority, commission, or other such entity;
  3. “**document**” means any written, typewritten, handwritten, printed or recorded material, as well as all tapes, discs, non-duplicate copies and transcripts thereof, now or at any time in your possession, custody or control, including, without limitation, notes, correspondence, memoranda, business records, electronic mail, diaries, calendars, address and telephone records, photographs, tape recordings, financial statements and records. Without limitation of the term “**control**” as used in the preceding sentence, a document is deemed to be in your control if you have the right to secure the document or a copy thereof from any person or public or private entity having actual possession thereof. If a document is responsive to a request for identification or production and is in your control, but is not in your possession or custody, identify the person with possession or custody. If any document was, but is no longer, in your possession or subject to your control,

state what disposition was made of it, by whom, and the date or dates on which such disposition was made, and why;

4. **“identify”** means

i. as to a person: name, last known business and residence addresses and telephone numbers, occupation, job title, and dates so employed; and, if not an individual, state the type of entity and the last known address of its principal place of business;

ii. as to a document: the type of document (letter, memorandum, etc.), the identity of the author or originator, the date authored or originated, the identity of each person to whom the original or copy was addressed or delivered, the identity of such person known or reasonably believed by you to have present possession, custody, or control thereof, and a brief description of the subject matter thereof, all with sufficient particularity to request its production under the Federal Rules of Civil Procedure and Federal Rules of Evidence;

iii. as to any oral agreement or oral contract: the parties to the agreement, the date the agreement was entered into, the location at which the agreement was entered into, the subject matter of the agreement, and any witnesses to the agreement.

5. **“or”** shall be construed either conjunctively or disjunctively to bring within the scope of these interrogatories and request for production of documents any information and documents which might otherwise be construed to be outside their scope.

- B. The singular includes the plural number, and vice versa. The masculine includes the feminine and neuter genders. The past tense includes the present where the clear meaning is not distorted by change of tense.
- C. If you object to part of any request, answer the remainder completely.
- D. If you contend that any information sought in these Interrogatories and/or Document Requests is exempt from discovery because it falls within the attorney/client privilege, it was prepared in anticipation of litigation or preparation for trial, or is so exempted by any privilege or protection, you are to provide the following information in each such instance in lieu of setting forth the information sought:
1. The privilege or protection that you contend applies;
  2. The form in which the information is contained (i.e., document, or recollection of one or more persons);
  3. If the information is contained in a document, the author, the recipient, and the date of the document;
  4. If the information is not contained in a document, the persons involved in the communication and the date of the communication giving rise to the privilege or protection that you claim; and
  5. The subject matter of the information that you contend is privileged or protected from discovery.
- E. One of the purposes of these requests is to determine what you currently know, and what you currently do not know. Therefore, if there is any request (or any portion of a request) for which you do not currently know the answer, explain in detail why you do not currently know the answer to that request (or portion of a request). Further, if the reason you cannot currently answer a request (or portion of a request) is that you cannot answer without first reviewing a

document which is outside of your possession, custody or control: (A) identify that document; (B) state whether that document previously was in your possession, custody or control; (C) state whether you misplaced, discarded or destroyed that document, and when; and (D) identify each person whom you believe currently possesses the document, and set forth the bases for that belief.

### **REQUEST FOR PRODUCTION OF DOCUMENTS**

1. Produce all agreements Experi-Metal has with Comerica Bank with respect to wire transfers or internet/online banking or the Comerica Bank account(s) from which the funds at issue were taken.

2. Produce all agreements regarding internet/online banking or wire transfers that Experi-Metal entered with any other financial institution since closing its account with Comerica Bank.

3. Produce all notices and warnings Experi-Metal received regarding phishing schemes or fraudulent attempts to obtain account login credentials before January 22, 2009, including but not limited to notices or warnings received from Comerica Bank or other banking institutions.

4. Produce all emails or other documents Comerica Bank sent to Experi-Metal requiring Experi-Metal to follow a link and enter information in order to renew a digital certificate.

5. Produce all documents supporting the claim in paragraph 11 of the Complaint that “At the time Comerica switched Experi-Metal over to the secure token methodology Comerica knew or should have known that experts in the industry had already criticized the secure token methodology which uses a 2-factor authentication procedure.”

6. Produce all documents supporting the allegation in paragraph 12 of the Complaint that “Comerica knew or should have known that the technology of the 2-factor authentication procedure which it instituted in 2008 was known to be lacking in any reasonable fortification against ‘man in the middle’ phishing attacks on customer accounts and was in reality a downgrade as a security measure from the digital certificate technology that was previously used by Comerica.”

7. Produce all documents supporting the allegation in paragraph 13 of the Complaint that there was “widespread information and knowledge” and “significant warnings available” regarding secure token methodology or 2-factor authentication format.

8. Produce the January 22, 2009 phishing email identified in paragraph 15 of the Complaint and any subsequent phishing emails Experi-Metal has received.

9. Produce all documents regarding the website described in paragraph 16 of the Complaint, including but not limited to any electronic or print images of the website.

10. Produce the computer used to access the website described in paragraph 16 of the Complaint.

11. Produce all documents supporting the claim in paragraph 21 of the Complaint that “Comerica did not contact EMI until 10:50 am.”

12. Produce all documents supporting the claim in paragraph 23 of the Complaint that “Comerica failed to abide by EMI’s request.”

13. Produce all documents related to the allegation in paragraph 28 of the Complaint that “the security procedure used by Comerica was not a commercially reasonable method of providing security.”

14. Produce all documents related to the allegation in paragraph 29 of the Complaint that “Comerica did not accept the payment orders issued on January 22, 2009 in good faith.”

15. Produce all documents related to the allegation in paragraph 30 of the Complaint that “Comerica did not act in compliance with the written agreements between Comerica and EMI.”

16. Produce all correspondence Experi-Metal sent or received regarding the January 22, 2009 phishing attack, including, but not limited to, all emails within Experi-Metal, between Experi-Metal and any law enforcement or regulatory agency, or between Experi-Metal and Comerica Bank.

17. Produce all documents related to the investigation of the January 22, 2009 phishing attack, including but not limited to any law enforcement findings or internal findings.

18. Produce all documents related to training or instructing Experi-Metal personnel on handling wire transfers, online access to financial or bank accounts, data security information and protection of computer system login information.

19. Produce all Experi-Metal policies, procedures or other documents related to employee responses to email or other requests for data security information or computer or account login ids or passwords, wire transfers, online or internet banking and handling of confidential information.

20. Produce all documents related to all online banking security systems Experi-Metal has used since closing its account(s) with Comerica Bank, including but not limited to any emails or other correspondence regarding whether or not to transfer to the systems, and any brochures or other descriptions of the systems.

21. Produce documents sufficient to identify the current online banking system in use by Experi-Metal and the security system utilized by that system, including but not limited to any agreements, training materials, and disclosures.

22. Produce all documents related to any insurance claim Experi-Metal made for losses related to the phishing attack, including but not limited to any correspondence, insurance claim applications, and denials.

23. Produce Experi-Metal's phone records for January 22, 2009.

24. Produce all documents supporting Experi-Metal's claim for alleged damages, including any calculation of that amount.

25. Produce all exhibits and demonstratives that Experi-Metal intends to use and/or rely on at trial.

26. Produce all correspondence and other documents sent to or received from Lance James or any other third party related to the phishing attack on January 22, 2009 or Comerica Bank's online/internet banking services including, but not limited to, its wire transfer services.

### **INTERROGATORIES**

1. Identify the Experi-Metal employee referred to in paragraphs 16 and 17 of the Complaint by name, job title, job description, and duties.

2. State whether, before January 22, 2009, the particular Experi-Metal employee referred to in paragraphs 16 and 17 of the Complaint had ever received an email from Comerica Bank asking him or her to use Comerica Bank's website to update Experi-Metal's digital certificate.

3. State all of the information the Experi-Metal employee provided to the website mentioned in paragraph 17 of the Complaint.

4. List all measures Experi-Metal took to verify the website was a Comerica Bank website before providing the information.

5. Identify the Experi-Metal employee referred to in paragraph 22 of the Complaint by name, job title, job description, and duties.



6. Identify every bank Experi-Metal has used for online or internet banking since closing its account with Comerica Bank by name, address, and month/year of the beginning and end of the banking relationship.

7. Describe every security system or process Experi-Metal has used for online or internet banking since closing its account(s) with Comerica Bank.

8. Identify all persons involved in the decision to use the security systems or processes described in interrogatory 7.

9. State what, if any, actions Experi-Metal took or has taken to mitigate its alleged damages.

10. Describe by date, recipient, and subject any phishing emails Experi-Metal has received in the last three years, and Experi-Metal's response to same.

11. State whether the Experi-Metal employees referred to in paragraphs 16/17 and 22 of the Complaint are still with Experi-Metal, and if not, their current contact information including but not limited to their last known address.

12. Identify all of the criticisms of secure token methodology that you refer to in paragraph 11 of the Complaint by when and where each criticism was made, the name of the person who made it, what the criticism was, and, if applicable, where the criticism was published.

#### **REQUESTS TO ADMIT**

1. Admit that Experi-Metal choose to use Comerica Bank's online wire transfer system.

2. Admit that Experi-Metal signed agreements with Comerica Bank that provide the terms and conditions under which Experi-Metal agreed to use and Comerica Bank agreed to provide online banking and wire transfer services.

3. Admit that Experi-Metal agreed the authenticity of payment orders issued to Comerica Bank would be verified pursuant to the two factor authentication token technology used by Comerica Bank in January 2009.

4. Admit that Experi-Metal did not request, authorize or pay for any additional monitoring or data security than that provided by Comerica Bank through the use of two factor authentication with respect to the authentication of user credentials and access to Comerica Bank's wire transfer system.

5. Admit that the Experi-Metal employee identified in your response to interrogatory 1 was authorized to place payment orders for Experi-Metal.

6. Admit that the Experi-Metal employee identified in your response to interrogatory 1 was authorized to use Experi-Metal's online banking security credentials.

7. Admit that the Experi-Metal employee identified in your response to interrogatory 1 accessed an internet web site in response to receiving an email and then input his, her or Experi-Metal's Comerica Bank user credentials into an internet web site that requested the information.

8. Admit that the perpetrators of the phishing attack received the information they used to log in to Comerica Bank's online banking and wire transfer system from the Experi-Metal employee identified in your response to interrogatory 1.

9. Admit that Comerica Bank had advised Experi-Metal in 2008 that it would never request Experi-Metal's online banking security credentials by email.

10. Admit that prior to January 22, 2009, Comerica Bank told Experi-Metal it was no longer using digital certificates, and Experi-Metal did not object to the change in authentication system or process subsequently used by Comerica Bank.

11. Admit Comerica Bank notified Experi-Metal of the potential fraud on January 22, 2009.

MILLER, CANFIELD, PADDOCK AND STONE, PLC

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Dated: March 22, 2010

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