

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

EXPERI-METAL INC.,
a Michigan corporation,

Plaintiff,

vs.

Case No. 2:09-cv-14890
Hon. Patrick J. Duggan

COMERICA BANK,

Defendant.

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**PLAINTIFF'S RESPONSES TO COMERICA'S
REQUESTS FOR PRODUCTION OF DOCUMENTS**

Plaintiff, Experi-Metal Inc, by its attorneys, Driggers, Schultz & Herbst, for its Responses to Comerica's Requests for Production of Documents, states as follows:

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.

RESPONSE: Experi-Metal has no agreement with Comerica Bank with respect to the TMC Web wire transfer system at issue in this case. Upon information and belief

Comerica is in possession of prior agreements with respect to prior wire transfer services and Comerica has produced those documents.

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.

RESPONSE: Plaintiff objects to the request in Paragraph 2 in the form and manner alleged for the reason that it requests information which is private and confidential and requests information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Without waiving its objection, Plaintiff has done its banking with The PrivateBank in Bloomfield Hills.

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.

RESPONSE: Upon information and belief, the email attached to Comerica's Motion is the only notice received before January 22, 2009.

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.

RESPONSE: Experi-Metal received periodic emails from 2001-2008 but has located only the attached emails.

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.”

RESPONSE: Plaintiff is not in possession of Documents responsive to Paragraph 5.

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.”

RESPONSE: Plaintiff is not in possession of Documents responsive to Paragraph 6.

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.

RESPONSE: Plaintiff is not in possession of Documents responsive to Paragraph 7.

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

RESPONSE: See attached.

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.

RESPONSE: See attached.

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

RESPONSE: The FBI took the computer Plaintiff objects to the request in Paragraph 10 for the reason that the computer contains confidential, trade secret and proprietary

information and further objects to the request for the reason that it requests information which is not relevant nor reasonably calculated to lead to the discovery of admissible evidence.

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

RESPONSE: Plaintiff is searching for any responsive documents.

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

RESPONSE: See attached list of fraudulent wires and transfers previously provided by Comerica Bank.

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.”

RESPONSE: Plaintiff’s expert will provide a written report in accordance with the Court rules with respect to the allegation after Comerica produces the documents which have been requested in Plaintiff’s First Requests for Production of Documents.

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.”

RESPONSE: Plaintiff’s expert will provide a written report in accordance with the Court rules with respect to the allegation after Comerica produces the documents which have been requested in Plaintiff’s First Requests for Production of Documents.

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.”

RESPONSE: See response to Request for Production No. 1 as there was no written agreement between the parties with respect to TMC Web wire transfer service.

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.

RESPONSE: Plaintiff objects based on the attorney/client privilege. Without waiving its objection, Plaintiff is still searching for responsive documents. As to correspondence between Experi-Metal and Comerica Bank, those documents are already in the possession of the Defendant.

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.

RESPONSE: See attached Victim Statement.

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

RESPONSE: Plaintiff has not located documents responsive to the request. The only individuals authorized to initiate wire transfers were Valiena A. Allison and Gerald King.

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.

RESPONSE: Plaintiff has not located documents responsive to this request as Plaintiff relied on Comerica in this regard.

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.

RESPONSE: Plaintiff objects to the request in that it requests information which is private, confidential and proprietary. Without waiving said objection, Plaintiff agrees to furnish responsive documents upon entry of an appropriate protective order.

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.

RESPONSE: Plaintiff objects to the request in that it requests information which is private, confidential and proprietary. Without waiving said objection, Plaintiff agrees to furnish responsive documents upon entry of an appropriate protective order.

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.

RESPONSE: Plaintiff objects to the request in Paragraph 22 for the reason that it requests information which is not relevant nor reasonably calculated to lead to the discovery of admissible evidence.

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

RESPONSE: Will be produced at a mutually convenient time and date.

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

RESPONSE: Based on Comerica's documents reflecting total unauthorized wire transfers. From the accounting less funds "recovered" by Comerica.

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

RESPONSE: Experi-Metal has not made any determination as to the exhibits or demonstratives it intends to rely upon 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.

RESPONSE: See attached.

Respectfully submitted,

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Dated: May 10, 2010