

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GUCCI AMERICA, INC.	:	
	:	Civil Action No. 09-6925-HB
Plaintiff,	:	
v.	:	District Judge Harold Baer, Jr.
	:	
FRONTLINE PROCESSING CORPORATION;	:	
WOODFOREST NATIONAL BANK;	:	
DURANGO MERCHANT SERVICES LLC d/b/a	:	
NATIONAL BANKCARD SYSTEMS OF	:	
DURANGO; ABC COMPANIES; and JOHN	:	
DOES,	:	
	:	
Defendants.	:	
	:	X

**REPLY DECLARATION OF CHARLES A. VERNON IN SUPPORT OF
DEFENDANTS' MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION**

I, CHARLES A. VERNON, declare and state as follows:

1. I am Senior Vice President and General Counsel of Woodforest National Bank ("WNB"), a defendant in the above-noted action. I have personal knowledge of the facts and matters discussed in this declaration, and if called as a witness, could and would testify to the matters set forth below.

2. In its brief, Plaintiff states on pages 3-4 that Woodforest has "regular and systematic contact with ... MasterCard and Visa in New York." I do not understand the basis for this statement. Visa's headquarters is in Foster City/San Francisco, California. While MasterCard is headquartered in Purchase, New York, it has 37 offices worldwide.

3. Plaintiff further states on page 14 of its brief that Laurette shipped products to New York, and that "Defendants authorized and processed" these sales. First, Woodforest generally has no knowledge of the destination of shipments with orders for which Woodforest is involved in the settlement of the transaction. (In transactions which garner the specific attention of the

Delta Card Risk Department due to something unusual, the destination could be learned but this would be after the sale has concluded.) Further, Woodforest does not "authorize" the transaction—the authorization is granted by the issuer of the credit card, not Woodforest. Such an authorization simply notifies the merchant that the credit card being presented is a valid card, that the card has not been reported as stolen, and that the amount of the sale is within the current dollar limit of that credit card. The authorization has nothing whatsoever to do with the destination of shipments.

4. Plaintiff states at page 17-18 that Woodforest processes its transactions "through MasterCard and Visa directly." This is incorrect. Woodforest processes its transactions through First Data Corporation.

5. Plaintiff makes several allegations in its brief concerning Merchant Choice Card Services ("MCCS"), starting on page 3 of its brief. Plaintiff is mistaken, however, as to this entity. MCCS (as well as "Merchants' Choice Card Services") is an assumed name for Delta Card Services, Inc. ("Delta Card"). Delta Card is a Texas corporation. Delta Card and Woodforest are completely separate entities. Plaintiff points out that the Chief Executive Officer of Woodforest is the Chairman of the Board of Delta Card. While this is true, the two entities are still independent from one another. They are separate legal entities with no common employees between Delta Card and Woodforest. Delta Card has approximately 84 employees, none of whom are employed by Woodforest. Delta Card is not a defendant in this legal action.

6. Delta Card has a contractual relationship with Woodforest and is the merchant service provider who handles all merchant processing matters for the merchants who enter into contracts with Woodforest. Delta Card has established contractual relationships with independently owned companies all over the country who refer merchant contract business. These contracts are

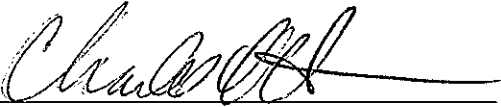
generally known as Marketing Unit Director Agreements ("MUD Agreements"). Woodforest is not a party to the MUD Agreements.

7. MCCS of NY, LLC ("MCCS of NY"), who Plaintiff has referred to in its brief, is one of those independently owned companies who refer the business. A lot of these companies use the "MCCS" moniker because it is known in the industry and because they primarily refer merchants to Delta Card. The relationship between Delta Card and MCCS of NY is contractual pursuant to a MUD Agreement (a copy of which is attached as Exhibit A). That contract dictates the manner in which MCCS of NY is paid for referring business, as well as other terms of the referral relationship. Woodforest National Bank, who is a defendant in this matter, has no contractual relationship with MCCS of NY.

8. No one at Woodforest National Bank or Delta Card has any ownership interest in, or control over, MCCS of NY, as it is a completely independent company.

I declare under penalty and perjury that the foregoing is true and correct.

Executed on 23rd day of November 2009

By: 
Charles A. Vernon