

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DOC #:
DATE FILED: 3/17/10

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GUCCI AMERICA, INC.

Plaintiff,

-against-

FRONTLINE PROCESSING CORPORATION;
WOODFOREST NATIONAL BANK; DURANGO
MERCHANT SERVICES LLC d/b/a NATIONAL
BANKCARD SYSTEMS OF DURANGO; ABC
COMPANIES; and JOHN DOES,

Defendants.
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09 Civ. 6925 (HB)

**STIPULATION AND AGREED
CONFIDENTIALITY ORDER**

IT IS HEREBY STIPULATED AND AGREED, by and among the parties hereto, through their respective undersigned counsel, that the following provisions of the Stipulated and Agreed Confidentiality Order ("Confidentiality Order") shall govern the use and disclosure of certain documents produced in this action as follows:

1. When used in this Confidentiality Order, the word "document" shall include, without limitation, all original, written, electronic or graphic materials, information or records, and all copies thereof (collectively, "Discovery Materials"). A party, person, or entity that produces Discovery Materials in connection with this action shall be referred to herein as the "Producing Party."

2. All Discovery Materials produced in this action which constitute either: (a) trade secret, proprietary information or other confidential research, development or commercial information under Federal Rule of Civil Procedure 24(c); or (b) confidential, non-public personal information concerning individuals, such as social security numbers, credit card numbers, home telephone numbers and addresses, or tax returns; or (c) other information barred from public disclosure by law, may be designated as "Confidential" by the Producing Party, but only after review of the documents by an attorney who has, in good faith, determined that the documents contain information protected from disclosure by statute, sensitive personal information, trade secrets, or confidential research, development or commercial information. Discovery Materials designated "Confidential" shall be referred to herein as "Confidential Discovery Materials."

3. The confidential designation set forth in Paragraph 2 above may be made by placing or affixing the phrases "Confidential Discovery Materials" or "Confidential" on each page of the Confidential Discovery Materials at the time of production.

4. Inadvertent failure to designate materials as Confidential Discovery Materials at the time of production, including documents produced prior to the effective date of this Confidentiality Order, may be remedied by supplemental written notice received no later than ninety-days before the date set for trial. If such notice is given, all documents so designated shall be subject to this Confidentiality Order as if they had been initially designated as Confidential Discovery Materials; provided, however, that the foregoing provision shall not apply to any documents that had already been introduced as deposition exhibits, filed with the Court or had otherwise become publicly available. Moreover, any use of the documents or information prior to any such subsequent designation shall not constitute a violation of the terms of this Confidentiality Order.

5. There shall be no waiver of any applicable privilege as a result of the inadvertent production of privileged Discovery Materials. The inadvertent production or disclosure of any information that is privileged, immune or otherwise protected from discovery ("Privileged Discovery Materials") shall not constitute a waiver of the Producing Party's right to claim that such information is subject to a claim of privilege. If a party discovers that it has inadvertently produced Privileged Discovery Materials for which it asserts a claim of privilege, such party shall promptly notify in writing all parties to whom such production was made. Any party wishing to contest a claim by the Producing Party that certain inadvertently produced information ("Inadvertently Produced Information") is Privileged Materials, shall attempt in good faith to resolve the dispute. If the parties cannot reach a resolution, then any party may make an appropriate motion with the Court. Once the producing person notifies the party in possession of Privileged Discovery Materials, the party in possession of the Privileged Discovery Materials must not use them for any other purpose, other than seeking a ruling by the Court as to whether the Discovery Materials are subject to a claim of privilege, until agreement by the parties or further order of this Court.

6. All Confidential Discovery Materials produced in this action shall be used solely and exclusively for purposes of this case and only in the manner specified by this Confidentiality Order; provided, however, that nothing in this Confidentiality Order shall restrict the use or disclosure by the parties of their own Confidential Discovery Materials or information they themselves have designated as confidential.

7. Unless prior, unqualified written consent is obtained, no Confidential Discovery Materials shall be disclosed, either directly or indirectly, to any person or entity other than:

- (a) the Court, court personnel, jurors and witnesses (whether at deposition or trial);
- (b) the parties in the above-captioned action;
- (c) the parties' attorneys and their affiliated law firms, and employees or agents of the parties or their attorneys;
- (d) court reporters transcribing depositions or testimony in this action;

- (e) persons who are or were authors or recipients of the Confidential Discovery Materials;
- (f) any expert or consultant retained or consulted by any party in connection with this action and those working under their direction or control; and
- (g) outside photocopying, graphic production services, litigation support services, or investigators employed by the parties or their attorneys to assist in this litigation.

8. Any person to whom Confidential Discovery Materials are disclosed pursuant to Paragraph 7(f) and (g) above shall, prior to viewing the Confidential Discovery Materials, read this Confidentiality Order and execute a certification, in the form attached hereto as Exhibit A, indicating s/he has read this Confidentiality Order and will strictly abide by its terms and conditions. The original certification signed by persons referenced or identified in Paragraph 7(f) and (g) above shall be retained by the parties' counsel of record as a permanent record, and counsel of record shall, upon request, provide the other parties' counsel with copies of all such sworn statements.

9. In the event that additional persons become parties to this action, such parties shall not have access to Confidential Discovery Materials produced by or obtained from any Producing Party until the newly joined parties and their counsel confirm in writing to all other parties that they have read this Confidentiality Order and agree to be bound by its terms.

10. Before any Confidential Discovery Materials are filed with the Court for any purpose, the party seeking to file such material shall seek permission of the Court to file said material under seal. The parties will follow and abide by applicable law and local rules with respect to filing documents under seal in this Court. All documents filed under seal shall be available to the Court and to counsel for the parties for viewing and copying. Filing under seal shall be without prejudice to any party's right to argue to the Court that such Discovery Materials are not confidential and need not be preserved under seal.

11. If at any time a party objects to the designation of Discovery Materials as confidential under this Confidentiality Order, the following procedures shall apply to any such objection.

- (a) The burden of proving the necessity of a "Confidential" designation remains with the party asserting confidentiality.
- (b) A party who contends that the Discovery Materials designated as confidential are not entitled to confidential treatment shall give written notice to the party who affixed the designation of the specific basis for the objection. The party who so designated the Discovery Materials as confidential shall have seven (7) days from service of the written notice to determine if the dispute can be

resolved without judicial intervention and, if not, to move for an Order confirming the confidential designation.

- (c) Notwithstanding any challenge to the designation of Discovery Materials as confidential, all Discovery Materials previously designated as Confidential Discovery Materials shall continue to be treated as subject to the full protections of this Confidentiality Order until one of the following occurs:
 - i. the party who claims that the Discovery Materials are confidential withdraws such designation in writing;
 - ii. the party who claims that the Discovery Materials are confidential fails to move timely for an Order designating the documents as confidential; or
 - iii. the Court rules that the Discovery Materials should no longer be designated as confidential.
- (d) Challenges to the confidentiality of Discovery Materials may be made at any time and are not waived by the failure to raise the challenge at the time of initial disclosure or designation.

12. The restrictions and obligations set forth in this Confidentiality Order shall not apply to any information that:

- (a) the parties agree should not be designated as Confidential Discovery Materials;
- (b) the parties agree, or the Court rules, is already public knowledge;
- (c) the parties agree, or the Court rules, has become public knowledge other than as a result of disclosure by the receiving party, its employees, or its agents in violation of this Stipulation and Order; or
- (d) has come or shall come into the receiving party's legitimate knowledge independently of the production by the designating party.

13. Upon written request, within thirty days after entry of an Order finally terminating this action, including all appeals, copies of all Confidential Discovery Materials shall either be destroyed or, at the option of the recipient, returned to the Producing Party, with no copies being retained by the person returning such materials. This Paragraph shall not apply to pleadings, motions, briefs, supporting declarations or affidavits, attorney notes, deposition transcripts or exhibits, or Court opinions or Orders.

14. This Confidentiality Order shall not prevent any party from applying to this Court for further or additional protective orders, for the modification of this Confidentiality Order, or from agreeing with the other parties to modify this Confidentiality Order, subject to the Court's approval.

15. Nothing herein shall be construed to prevent the disclosure of Confidential Discovery Materials if such disclosure is required by law or by court order.

16. This Order shall not be construed to affect in any way the admissibility of any documents, testimony or other evidence at trial or a hearing in this action.

17. This Order shall take effect when entered and shall be binding upon: (a) the undersigned counsel and their respective law firms; and (b) their respective clients.

18. Transmission by electronic means is acceptable for all notification purposes herein.

19. This Order is subject to modification by the Court.

SO STIPULATED AND AGREED.

Dated: February 26, 2010

CROWLEY ECKEL PLLP

By: 

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Attorneys for Defendant Frontline Processing Corporation

Dated: February 25, 2010

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By: 

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Attorneys for Plaintiff Gucci America, Inc.

Dated: February 25, 2010

LERNER, DAVID, LITTENBERG, KRUMHOLZ & MENTLIK, LLP

By: 
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Westfield, New Jersey 07090

Attorneys for Defendant Woodforest National Bank and Woodforest Bank.

Dated: February __, 2010

LAW OFFICES OF TODD WENGROVSKY, PLLC

By: _____
Todd Wengrovsky
285 Southfield Road, Box 585
Calverton, New York 11933

Attorneys for Defendant Durango Merchant Services LLC d/b/a National Bankcard Systems of Durango

SO ORDERED:

Honorable Harold Baer, Jr.
United States District Judge

Dated: _____, 2010

Dated: February __, 2010

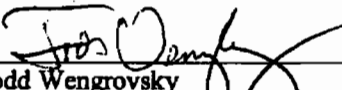
LERNER, DAVID, LITTENBERG, KRUMHOLZ & MENTLIK, LLP

By: _____
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600 South Avenue West
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Attorneys for Defendant Woodforest National Bank and Woodforest Bank.

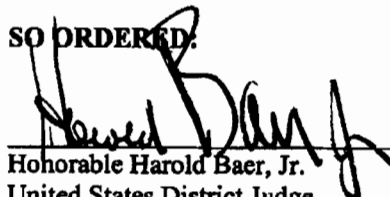
Dated: February 25, 2010

LAW OFFICES OF TODD WENGROVSKY, PLLC

By:  _____
Todd Wengrovsky
285 Southfield Road, Box 585
Calverton, New York 11933

Attorneys for Defendant Durango Merchant Services LLC d/b/a National Bankcard Systems of Durango

SO ORDERED:

 _____
Honorable Harold Baer, Jr.
United States District Judge

Dated: 3/17/10, 2010

"Sealed" and "Confidential" documents may be opened upon notice to the parties pursuant to further order of the court.

SO ORDERED:

 _____
Hon. Harold Baer, Jr., U.S.D.J.

Date: 3/17/10

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
GUCCI AMERICA, INC. :
 :
 Plaintiff, :
 :
 -against- : 09 Civ. 6925 (HB)
 :
 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

CERTIFICATION

I, _____ (name), am employed by
_____ (name of employer), with a business address of _____
_____ (address of employer)
as a/an _____ (job title or description).

I hereby certify my understanding that Confidential Discovery Materials are being provided or may be provided to me pursuant to the terms and restrictions set forth in the Stipulation and Agreed Confidentiality Order (“Confidentiality Order”), dated _____, 2010, in the above-captioned action. I have reviewed and read the Confidentiality Order, and I agree to be bound by its terms.

I also acknowledge that any violation of the Confidentiality Order by me or anyone acting under my direction may subject me to penalties for contempt of Court or other penalties or sanctions. I further agree to submit to the jurisdiction of this Court for the purposes of enforcement of the Confidentiality Order.

Dated: _____
Name _____