

Exhibit 3

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GUCCI AMERICA, INC.,)
)
Plaintiff,)
)
vs.) No. 09-6925-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.)
)

Deposition of
JENNIFER KIRK
Thursday, July 8, 2010

Reported by: SHERYL DIRKS, CSR #3513

<p style="text-align: right;">2</p> <p>1 APPEARANCES</p> <p>2 --oOo--</p> <p>3 COUNSEL FOR GUCCI:</p> <p>4 GIBSON, DUNN & CRUTCHER LLP</p> <p>5 BY: JENNIFER COLGAN HALTER, Attorney at Law</p> <p>6 BY: ANNE M. COYLE, Attorney at Law</p> <p>7 200 Park Avenue</p> <p>8 New York, New York 10166-0193</p> <p>9 212-351-3927</p> <p>10 jhalter@gibsondunn.com</p> <p>11 acoyle@gibsondunn.com</p> <p>12</p> <p>13 COUNSEL FOR WOODFOREST NATIONAL BANK:</p> <p>14 LERNER, DAVID, LITTENBERG, KRUMHOLZ & MENTLIK</p> <p>15 LLP</p> <p>16 BY: GREGG A. PARADISE, Attorney at Law</p> <p>17 600 South Avenue West</p> <p>18 Westfield, New Jersey 07090</p> <p>19 903-654-5000</p> <p>20 gparadise@ldlkm.com</p> <p>21</p> <p>22 COUNSEL FOR JENNIFER AND PATRICK KIRK:</p> <p>23 DAVIS & LEONARD LLP</p> <p>24 BY: MARK R. LEONARD, Attorney at Law</p> <p>25 8880 Cal Center Drive, Suite 180</p> <p>Sacramento, California 95826</p> <p>916-362-9000</p> <p>mleonard@davisandleonard.com</p> <p>ALSO PRESENT: JOHN MACDONELL</p> <p>Sacramento Legal Video Center</p> <p>3028 U Street</p> <p>Sacramento, CA 95817</p> <p>(916) 451-7600</p> <p>--oOo--</p>	<p style="text-align: right;">4</p> <p>1 --oOo--</p> <p>2 BE IT REMEMBERED that on Thursday, the 8th day</p> <p>3 of July 2010, at the hour of 9:01 a.m. of</p> <p>4 said day, at the Offices of M.O.A. DEPOSITION</p> <p>5 REPORTERS, 1300 Ethan Way, Suite 200, Sacramento,</p> <p>6 California, before me, SHERYL DIRKS, a Certified</p> <p>7 Shorthand Reporter, personally appeared JENNIFER</p> <p>8 KIRK, who was examined as a witness in said cause.</p> <p>9 --oOo--</p> <p>10 THE VIDEOGRAPHER: We're on the record.</p> <p>11 It's 9:01 a.m. This is the deposition of Jennifer</p> <p>12 Kirk. We're here in the matter of Gucci America</p> <p>13 versus Frontline, et al. Today is Thursday,</p> <p>14 July 8th, 2010. We're located at 1300 Ethan Way,</p> <p>15 Suite 200 in Sacramento, California. I'm John</p> <p>16 Macdonell, videographer with Sacramento Legal Video.</p> <p>17 Before the reporter swears the witness,</p> <p>18 would counsel, please, identify themselves.</p> <p>19 MR. PARADISE: Gregg Paradise from Lerner,</p> <p>20 David, Littenberg, Krumholz and Mentlik on behalf of</p> <p>21 Defendant Woodforest National Bank.</p> <p>22 MR. LEONARD: Mark Leonard with Davis &</p> <p>23 Leonard, LLP for Jennifer and Patrick Kirk.</p> <p>24 MS. HALTER: Jennifer Halter and Anne Coyle</p> <p>25 from Gibson, Dunn & Crutcher on behalf of Plaintiff</p>
<p style="text-align: right;">3</p> <p>1</p> <p>2 INDEX OF EXAMINATION</p> <p>3 PAGE</p> <p>4 BY MR. PARADISE..... 5, 118</p> <p>5 BY MS. HALTER..... 97</p> <p>6 (CONFIDENTIAL TESTIMONY PAGES 65-79.)</p> <p>7 INDEX OF EXHIBITS</p> <p>8 1 - screen shot for The Bag Addiction..... 18</p> <p>9 2 - e-mail 9-10-06 to Nathan Counley..... 38</p> <p>10 3 - e-mail 9-14-06 to Bag Addiction..... 42</p> <p>11 4 - (Confidential Exhibit)..... 46</p> <p>12 5 - Defendants' initial Disclosures..... 55</p> <p>13 6 - (Confidential Exhibit)..... 65</p> <p>14 7 - (Confidential Exhibit)..... 66</p> <p>15 8 - (Confidential Exhibit)..... 67</p> <p>16 9 - Final Order and Judgment on Consent..... 69</p> <p>17 10 - Declaration of Jennifer Kirk..... 83</p> <p>18 11 - e-mail chain..... 88</p> <p>19 12 - "Kirk Declaration"..... 90</p> <p>20 13 - screen shot for The Bag Addiction..... 98</p> <p>21 14 - screen shots for The Bag Addiction..... 99</p> <p>22 15 - Woodforest Merchant Bankcard Application..108</p> <p>23 16 - Woodforest Merchant Bankcard Application..108</p> <p>24 17 - Woodforest Merchant Bankcard Application..108</p> <p>25 18 - Woodforest Merchant Bankcard Application..115</p>	<p style="text-align: right;">5</p> <p>1 Gucci America, Inc.</p> <p>2 JENNIFER KIRK,</p> <p>3 called as a witness herein, having been</p> <p>4 administered an oath in accordance with C.C.P.</p> <p>5 Section 2094, was examined and testified as follows:</p> <p>6 --oOo--</p> <p>7 EXAMINATION BY MR. PARADISE</p> <p>8 Q. Good morning, Miss Kirk. My name is Gregg</p> <p>9 Paradise. We introduced ourselves off the record.</p> <p>10 Just so you understand, I'm an attorney for one of</p> <p>11 the Defendants in this matter, Woodforest National</p> <p>12 Bank.</p> <p>13 Miss Kirk, would you state your full name</p> <p>14 for the record, please.</p> <p>15 A. Jennifer Marie Kirk.</p> <p>16 Q. Have you in the past gone by other names?</p> <p>17 A. Jennifer Mattchen and Jennifer Besson.</p> <p>18 Q. Could you explain, is one of those your</p> <p>19 maiden name?</p> <p>20 A. Yes.</p> <p>21 Q. Which one?</p> <p>22 A. Besson.</p> <p>23 Q. Jennifer Mattchen, what is that?</p> <p>24 A. Former married name.</p> <p>25 Q. Have you ever been deposed before,</p>

<p>6</p> <p>1 Miss Kirk?</p> <p>2 A. No.</p> <p>3 Q. Has anyone explained the general procedure</p> <p>4 for a deposition to you?</p> <p>5 A. Yes.</p> <p>6 Q. Basically just to briefly review, I will ask</p> <p>7 you a series of questions. All I ask is that you</p> <p>8 answer those questions. If you don't understand the</p> <p>9 question, please, just let me know and I'll try to</p> <p>10 work with you to take care of whatever</p> <p>11 misunderstanding or question there is and make sure</p> <p>12 you have a question you understand. If you don't</p> <p>13 ask for any clarification, I'm going to assume that</p> <p>14 you understood the question.</p> <p>15 Is that acceptable?</p> <p>16 A. Yes.</p> <p>17 Q. And we'll take breaks about every hour. I</p> <p>18 don't think this is going to go, you know, all that</p> <p>19 far into the day. But if you need to take a break</p> <p>20 shorter than that for any time, just let me know and</p> <p>21 I'll be happy to accommodate that. The only thing I</p> <p>22 ask is that you answer any pending question before</p> <p>23 we take a break.</p> <p>24 Could you describe your educational</p> <p>25 background after high school?</p>	<p>8</p> <p>1 Q. Yes. Specific jobs. I'm not looking for a</p> <p>2 lot of detail into them, but just trying to get a</p> <p>3 chronology.</p> <p>4 A. I worked in accounting, in accounting field.</p> <p>5 Q. Okay.</p> <p>6 A. Started off as a bookkeeper and moved my way</p> <p>7 up to controller.</p> <p>8 Q. Was that all for one company?</p> <p>9 A. No.</p> <p>10 Q. What companies did you work for?</p> <p>11 A. I don't know. I don't recall every single</p> <p>12 company. The last company I worked for was</p> <p>13 WebBenefits.com where I was a controller. That was</p> <p>14 the last company I work for.</p> <p>15 Q. What years did you work for Web Benefits?</p> <p>16 A. I think '98 through 2000. I'm guessing. It</p> <p>17 has been a long time.</p> <p>18 Q. Okay. In 2000 after you left Web Benefits,</p> <p>19 what did you do?</p> <p>20 A. I haven't worked since 2000. I haven't been</p> <p>21 employed as an employee.</p> <p>22 Q. Have you run your own business during that</p> <p>23 time?</p> <p>24 A. Yes.</p> <p>25 Q. How many businesses have you run during that</p>
<p>7</p> <p>1 A. College.</p> <p>2 Q. Where did you go to college?</p> <p>3 A. Sac State.</p> <p>4 Q. Did you receive a degree?</p> <p>5 A. No.</p> <p>6 Q. What years did you attend Sac State?</p> <p>7 A. '91 and '92, '93.</p> <p>8 Q. What was the focus of your studies?</p> <p>9 A. Accounting.</p> <p>10 Q. Besides Sac State, have you attended any</p> <p>11 other post-secondary education?</p> <p>12 A. Sierra College, Junior College.</p> <p>13 Q. When did you attend Sierra Junior College?</p> <p>14 A. '89 and '90.</p> <p>15 Q. Did you receive a degree?</p> <p>16 A. No. I transferred.</p> <p>17 Q. What was the focus of your studies at</p> <p>18 Sierra?</p> <p>19 A. Same.</p> <p>20 Q. Accounting?</p> <p>21 A. Uh-huh.</p> <p>22 Q. Just briefly starting in 1993 when you left</p> <p>23 Sac State, could you describe your employment</p> <p>24 history?</p> <p>25 A. Specific jobs? I don't understand.</p>	<p>9</p> <p>1 time?</p> <p>2 A. I worked -- I ran a business on eBay for</p> <p>3 about four years and then I opened my own web site.</p> <p>4 So I guess two.</p> <p>5 Q. Did the eBay -- excuse me.</p> <p>6 Did the eBay site have a name?</p> <p>7 A. No, it was just eBay. What do you mean?</p> <p>8 Q. I know sometimes on eBay frequent sellers</p> <p>9 will set up a store on eBay.</p> <p>10 A. Oh, yes. Yes, I had a store.</p> <p>11 Q. Did that store have a name?</p> <p>12 A. No.</p> <p>13 Q. Do you still run the store on eBay?</p> <p>14 A. No.</p> <p>15 Q. What did you sell on that eBay store?</p> <p>16 A. Kids clothing.</p> <p>17 Q. Anything else?</p> <p>18 A. No.</p> <p>19 Q. Then you said after that you had your own</p> <p>20 web site. What was the name of that web site?</p> <p>21 A. I started actually selling items through a</p> <p>22 web site similar to eBay called iOffer. And then I</p> <p>23 ended up opening a web site.</p> <p>24 Q. What did you sell on iOffer?</p> <p>25 A. Replica handbags.</p>

10	12
<p>1 Q. For how long did you sell replica handbags 2 on iOffer? 3 A. I'm guessing less than a year. 4 Q. I'm not as familiar with iOffer as I am with 5 eBay. Could you describe in a little more detail 6 what iOffer is? 7 A. It's not -- it's -- you don't bid on items. 8 You kind of just post things and people purchase. 9 They can make an offer. So you list an item, let's 10 say, for \$100 and someone can say, "I'll give you 11 75." You can accept or deny it. That's pretty much 12 it. 13 Q. Okay. Did your business that you ran on 14 iOffer go under any particular name? 15 A. I think it was just under my name. I don't 16 recall. 17 Q. I should have asked, when did you become 18 married and become Jennifer Kirk? 19 A. 2006. 20 Q. When did you start the sale of products on 21 iOffer? 22 A. 2005. 23 Q. Do you recall when in 2005? 24 A. Middle maybe summer. June. Something like 25 that.</p>	<p>1 A. 15 minutes, approximately. 2 Q. Was it in person or on the phone? 3 A. Phone. 4 Q. Have you spoken with anyone from Gucci in 5 preparation for the deposition today? 6 A. No. 7 Q. Have you spoken with any attorneys for Gucci 8 in preparation for the deposition today? 9 A. No. 10 Q. Did your attorney relay any information to 11 you that was provided to him by anyone from Gucci or 12 any attorneys for Gucci? 13 MR. LEONARD: Objection to the extent it 14 calls for -- 15 MS. HALTER: Objection. 16 MR. LEONARD: To the extent it calls for 17 confidential client communication. 18 BY MR. PARADISE: Q. To the extent that 19 your attorney just repeated what was told to him by 20 someone for Gucci or Gucci America, that's what I'm 21 just asking. If -- first you can answer that "yes" 22 or "no" whether your attorney did transmit any 23 information that he received from anyone from Gucci 24 or Gucci America -- or Gucci attorney? 25 MR. LEONARD: You can answer "yes" or "no."</p>
11	13
<p>1 Q. You said that went for less than one year? 2 A. Yeah. 3 Q. And then after that you opened your own web 4 site; is that correct? 5 A. Correct. 6 Q. What was the name of your own web site? 7 A. The Bag Addiction. 8 Q. Did this web site go by any other names? 9 A. No. 10 Q. What was the URL for this web site? 11 A. TheBagAddiction.com. 12 Q. Did this -- did you have any other URLs that 13 directed to The Bag Addiction? 14 A. No. 15 Q. Did you do anything to prepare for today's 16 deposition? 17 A. No. 18 Q. Did you have any conversations with anyone 19 in preparation for the deposition? 20 A. Yes. 21 Q. Who did you speak with? 22 A. My attorney. 23 Q. When did you speak with your attorney? 24 A. Yesterday. 25 Q. For about how long did you speak with him?</p>	<p>1 THE WITNESS: No. 2 BY MR. PARADISE: Q. Did you review any 3 documents in preparation for your deposition today? 4 A. Yes. 5 Q. What document did you review? 6 A. My original declaration on my previous case. 7 Q. When you say "previous case," what case is 8 that? 9 A. The case involving myself, my husband and 10 Gucci. 11 Q. When did you file the declaration in that 12 case? 13 A. I don't recall. 14 Q. What was the subject matter of that 15 declaration? 16 A. I think it was, just said Declaration of 17 Jennifer Kirk. I don't recall what the actual 18 subject was. 19 Q. Do you recall if it was in relation to a 20 motion in the case? 21 MS. HALTER: Objection. 22 MR. LEONARD: You can answer, if you know. 23 THE WITNESS: I don't know. 24 BY MR. PARADISE: Q. Do you recall any of 25 the subject matter of the declaration?</p>

<p style="text-align: right;">14</p> <p>1 A. No.</p> <p>2 Q. And by that I mean just what was written in</p> <p>3 it.</p> <p>4 A. It just was my declaration of events that</p> <p>5 transpired.</p> <p>6 Q. Turning back to The Bag Addiction web</p> <p>7 site -- hopefully this noise doesn't get too close</p> <p>8 to us, although I think it is.</p> <p>9 So turning back to the -- give him a minute</p> <p>10 to walk past.</p> <p>11 Turning back to The Bag Addiction web site,</p> <p>12 what was the formal corporate name that you operated</p> <p>13 under?</p> <p>14 A. Laurette Company, Incorporated.</p> <p>15 Q. Was The Bag Addiction your DBA?</p> <p>16 A. Yes.</p> <p>17 Q. Did you have any other DBAs?</p> <p>18 A. No, not that I recall.</p> <p>19 Q. Did you ever operate under the name Shopping</p> <p>20 Addiction?</p> <p>21 A. Oh, yes. Yes, I did.</p> <p>22 Q. What was The Shopping Addiction?</p> <p>23 A. It was actually part of The Bag Addiction.</p> <p>24 They just -- we used that as the DBA. If I'm not</p> <p>25 mistaken, The Bag Addiction was just the URL.</p>	<p style="text-align: right;">16</p> <p>1 Q. Now, as I believe you said before, Patrick</p> <p>2 was named as one of the Defendants in the case by</p> <p>3 Gucci; is that correct?</p> <p>4 A. Correct.</p> <p>5 Q. Do you have any understanding as to why</p> <p>6 Patrick was named as a Defendant if he had nothing</p> <p>7 to do with the business?</p> <p>8 A. Yes.</p> <p>9 MS. HALTER: Objection.</p> <p>10 BY MR. PARADISE: Q. What is that reason?</p> <p>11 A. Because Patrick's name is on the merchant</p> <p>12 accounts associated with the company.</p> <p>13 Q. Why is Patrick's name on the merchants</p> <p>14 accounts?</p> <p>15 A. My credit was not strong enough to open a</p> <p>16 merchant account.</p> <p>17 Q. Other than Patrick's name appearing on the</p> <p>18 merchant account information, he had no other role</p> <p>19 in the company?</p> <p>20 A. No.</p> <p>21 Q. What was the business of The Bag Addiction?</p> <p>22 A. Can you elaborate that question more?</p> <p>23 Q. What -- did The Bag Addiction sell products?</p> <p>24 A. Yes.</p> <p>25 Q. What products did The Bag Addiction sell?</p>
<p style="text-align: right;">15</p> <p>1 Q. Who were the officers of the Laurette</p> <p>2 Company?</p> <p>3 A. Just myself.</p> <p>4 Q. Who were the owners of the Laurette Company?</p> <p>5 A. Myself.</p> <p>6 Q. You had 100 percent ownership?</p> <p>7 A. Yes.</p> <p>8 Q. When did you start The Bag Addiction</p> <p>9 business?</p> <p>10 A. I think it was 2000, late 2005.</p> <p>11 Q. Was it before you discontinued the business</p> <p>12 on iOffer?</p> <p>13 A. It was at the same time.</p> <p>14 Q. When you started the Laurette Company, was</p> <p>15 it before or after your marriage to Patrick Kirk?</p> <p>16 A. Before, I believe. I don't recall.</p> <p>17 Q. At any time did Patrick have a role in the</p> <p>18 business?</p> <p>19 A. No.</p> <p>20 Q. Was Patrick at any time a part owner of the</p> <p>21 business?</p> <p>22 A. No.</p> <p>23 Q. At any time did Patrick participate in</p> <p>24 operation of the business?</p> <p>25 A. No.</p>	<p style="text-align: right;">17</p> <p>1 A. Handbags.</p> <p>2 Q. Any other products?</p> <p>3 A. Some accessories.</p> <p>4 Q. What kind of accessories?</p> <p>5 A. Scarves. I think that's about it.</p> <p>6 Q. Did The Bag Addiction sell any wallets?</p> <p>7 A. Yes.</p> <p>8 Q. What about watches?</p> <p>9 A. Yes.</p> <p>10 Q. Any other products that you can think of at</p> <p>11 this time?</p> <p>12 A. Not that I can think of.</p> <p>13 Q. Now you said before that on iOffer you sold</p> <p>14 replica handbags. Was The Bag Addiction the same,</p> <p>15 replica handbags?</p> <p>16 A. Yes.</p> <p>17 Q. What does the term "replica" mean to you?</p> <p>18 A. Copy of an original.</p> <p>19 Q. Did you inform your potential customers at</p> <p>20 The Bag Addiction that your products were replicas?</p> <p>21 A. Yes.</p> <p>22 Q. How did you do this?</p> <p>23 A. It was disclaimed on the web site and at</p> <p>24 checkout they had to check a box indicating they</p> <p>25 knew it was a replica handbag and not an original or</p>

<p style="text-align: right;">18</p> <p>1 they couldn't check out.</p> <p>2 Q. When you say "disclaimed on web site," could</p> <p>3 you elaborate on that?</p> <p>4 A. There was a link within the web site about</p> <p>5 the products that disclosed that they were not</p> <p>6 originals. They were replicas. I don't recall the</p> <p>7 exact terminology.</p> <p>8 (Kirk Exhibit 1 is marked.)</p> <p>9 BY MR. PARADISE: Q. Miss Kirk, I've</p> <p>10 handed you what the court reporter has marked as</p> <p>11 Exhibit Kirk 1. Do you recognize this document?</p> <p>12 A. Yes.</p> <p>13 Q. What is Exhibit 1?</p> <p>14 A. Looks like a screen shot of a checkout,</p> <p>15 shopping cart checkout on the web site.</p> <p>16 Q. This is your web site, The Bag Addiction?</p> <p>17 A. Correct.</p> <p>18 Q. If you look at the bottom of the first page,</p> <p>19 it seems to indicate it was printed on October 25,</p> <p>20 2007. Do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. Is it your belief that this is an accurate</p> <p>23 depiction of The Bag Addiction web site on that</p> <p>24 date?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">20</p> <p>1 Frontline line began processing credit card</p> <p>2 transactions for The Bag Addiction?</p> <p>3 A. I think it was shortly after.</p> <p>4 Q. Do you recall how long after?</p> <p>5 A. I don't.</p> <p>6 Q. Did anyone from Woodforest National Bank</p> <p>7 ever ask you to add that check box?</p> <p>8 A. No.</p> <p>9 Q. Did anyone from -- strike that.</p> <p>10 Are you familiar with a company called Delta</p> <p>11 Card?</p> <p>12 A. No.</p> <p>13 Q. Now you said earlier that The Bag</p> <p>14 Addiction's primary business was selling replica</p> <p>15 handbags; is that correct?</p> <p>16 A. Correct.</p> <p>17 Q. And those handbags were made to look similar</p> <p>18 to various brand-name bags; is that correct?</p> <p>19 A. Yes.</p> <p>20 Q. How many different brands of handbags did</p> <p>21 The Bag Addiction offer replicas of?</p> <p>22 A. You mean brands, company brand names?</p> <p>23 Q. Yes.</p> <p>24 A. I'm guessing. Maybe 20.</p> <p>25 Q. I apologize for -- in advance for the memory</p>
<p style="text-align: right;">19</p> <p>1 Q. If you'll turn to the page that's marked at</p> <p>2 the bottom with the Gucci numbers. These are</p> <p>3 production numbers added in this case. This was a</p> <p>4 document produced to us by Gucci. Gucci-46149.</p> <p>5 A. Uh-huh.</p> <p>6 Q. If you can turn to that page?</p> <p>7 A. I think that's where I'm at.</p> <p>8 Q. Great. Thank you.</p> <p>9 If you look down toward the bottom there is</p> <p>10 a space that says, "I understand these items being</p> <p>11 purchased are replicas, not originals."</p> <p>12 Is that the check box you were referring to</p> <p>13 before?</p> <p>14 A. Yes.</p> <p>15 Q. Was that check box always on The Bag</p> <p>16 Addiction web site?</p> <p>17 A. No.</p> <p>18 Q. When was it added?</p> <p>19 A. I don't recall.</p> <p>20 Q. Do you recall why it was added?</p> <p>21 A. The -- I don't know his actual title, Nathan</p> <p>22 Counley, the broker, bank, merchant account broker,</p> <p>23 requested that I add that per the other bank,</p> <p>24 Frontline's permission -- instructions.</p> <p>25 Q. Did you add it at or about the time when</p>	<p style="text-align: right;">21</p> <p>1 exercise, but could you identify as many of those as</p> <p>2 you can?</p> <p>3 A. I can read you what's on this list right</p> <p>4 here.</p> <p>5 Q. And the list you're referring to, Exhibit 1,</p> <p>6 are you looking at the second and third pages?</p> <p>7 A. Yes.</p> <p>8 Q. Then saving you the breath, is it correct</p> <p>9 that all of the -- that The Bag Addiction offered</p> <p>10 replica handbags that were intended to look similar</p> <p>11 to all of the brands listed on Pages 2 and 3 of</p> <p>12 Exhibit 1?</p> <p>13 A. Yes.</p> <p>14 Q. Was one of the brands that The Bag Addiction</p> <p>15 offered replica products that were intended to look</p> <p>16 similar to Gucci?</p> <p>17 A. Yes.</p> <p>18 Q. What percentage of The Bag Addiction sales</p> <p>19 were replica Gucci bags?</p> <p>20 A. I don't know.</p> <p>21 Q. Do you have any kind of a rough estimate of</p> <p>22 the percentage?</p> <p>23 THE WITNESS: Am I going to guess?</p> <p>24 MR. LEONARD: If you know. If you don't</p> <p>25 know, don't guess.</p>

<p style="text-align: right;">22</p> <p>1 THE WITNESS: I really don't know.</p> <p>2 BY MR. PARADISE: Q. Do you know if it was</p> <p>3 more than 10 percent of the total sales of The Bag</p> <p>4 Addiction?</p> <p>5 A. I'm guessing, yes.</p> <p>6 Q. Was it more than 20 percent?</p> <p>7 A. Probably.</p> <p>8 Q. More than 30 percent?</p> <p>9 A. I really don't know. I have no idea. This</p> <p>10 has been a long time since I have been dealing with</p> <p>11 the financial part of this so I have no idea.</p> <p>12 Q. Do you know -- would you be comfortable</p> <p>13 saying that it was definitely less than 50 percent</p> <p>14 of the business of The Bag Addiction was Gucci?</p> <p>15 A. I would be comfortable saying it was a</p> <p>16 majority of the business of what was sold. It was a</p> <p>17 big name.</p> <p>18 Q. For the bags advertised as being replicas of</p> <p>19 Gucci products, do you know if the Gucci name</p> <p>20 appeared on those bags?</p> <p>21 A. Yes, it did.</p> <p>22 Q. Did it appear on all of the bags?</p> <p>23 A. Yes.</p> <p>24 Q. Where did it appear on the bags?</p> <p>25 A. It depends on what kind of bag it was.</p>	<p style="text-align: right;">24</p> <p>1 name would come up.</p> <p>2 Q. And then those customers were directed to</p> <p>3 your BagAddiction.com web site; is that correct?</p> <p>4 A. Correct.</p> <p>5 Q. How did you display the products that were</p> <p>6 offered for sale on The Bag Addiction web site?</p> <p>7 A. There was photos of the bags. I don't know</p> <p>8 what you mean "display." There was pictures of the</p> <p>9 bag with a description of the bag.</p> <p>10 Q. That's what I was looking for. Yeah.</p> <p>11 A. Okay.</p> <p>12 Q. How many photos were presented for each bag?</p> <p>13 A. It varied on the bag. Could be anywhere</p> <p>14 from one to five.</p> <p>15 Q. Did you have any features where you could</p> <p>16 zoom in on the bags?</p> <p>17 A. I don't believe so.</p> <p>18 Q. If the Gucci name were printed on the inside</p> <p>19 of one of the bags offered on your web site, would</p> <p>20 customers be able to see that name when viewing your</p> <p>21 web site pictures?</p> <p>22 A. It depends on the pictures. There were some</p> <p>23 pictures of the inside of the bags, yes.</p> <p>24 Q. Could you describe how the web site was</p> <p>25 organized?</p>
<p style="text-align: right;">23</p> <p>1 Logos were placed sometimes on the outside,</p> <p>2 sometimes on the inside. It just depends on how --</p> <p>3 they were exact replicas of Gucci so however they</p> <p>4 were made.</p> <p>5 Q. So if the bag -- if the Gucci -- if the</p> <p>6 particular type of bag being sold by Gucci had the</p> <p>7 Gucci name on the bag, the replicas that The Bag</p> <p>8 Addiction offered would have the Gucci name on it in</p> <p>9 the same manner; is that correct?</p> <p>10 A. Yes.</p> <p>11 Q. Are you aware that certain Gucci bags do not</p> <p>12 have the Gucci name appearing anywhere on the bag?</p> <p>13 MS. HALTER: Objection.</p> <p>14 BY MR. PARADISE: Q. You can answer.</p> <p>15 A. No, I'm not aware of that.</p> <p>16 Q. How did The Bag Addiction advertise the</p> <p>17 replica handbags that it offered for sale?</p> <p>18 A. On Google.</p> <p>19 Q. Anywhere else?</p> <p>20 A. No.</p> <p>21 Q. And by "on Google," how was it advertised on</p> <p>22 Google?</p> <p>23 A. Google has an advertising pay per click and</p> <p>24 I had an account with Google and would advertise</p> <p>25 through them and when someone would search it, my</p>	<p style="text-align: right;">25</p> <p>1 A. Can you be more descriptive? I don't know</p> <p>2 what you mean.</p> <p>3 Q. Sure.</p> <p>4 Was the web site broken down by brand name</p> <p>5 designers?</p> <p>6 A. Yes.</p> <p>7 Q. So there would be a page for Gucci replica</p> <p>8 handbags and another one for, say, Chloe replica</p> <p>9 handbags?</p> <p>10 A. Yes.</p> <p>11 Q. Was the web site further divided by type of</p> <p>12 bag?</p> <p>13 A. Yes.</p> <p>14 Q. Could you describe if someone -- for</p> <p>15 example, if looking at Exhibit 1, if someone clicked</p> <p>16 on the Gucci link that's on the left side of Page 3,</p> <p>17 what would that web site user then see?</p> <p>18 A. I'm trying to recall, but I believe when you</p> <p>19 clicked on that, you would be brought to some</p> <p>20 subcategories by style of bags and/or like wallets.</p> <p>21 Maybe like hobo style or something. But, again, I</p> <p>22 don't recall exactly the styles.</p> <p>23 Q. So then the user could select one of those</p> <p>24 style categories?</p> <p>25 A. As a subcategory, yes.</p>

<p style="text-align: right;">26</p> <p>1 Q. And then they would be brought to another</p> <p>2 web page?</p> <p>3 A. Right.</p> <p>4 Q. What would be displayed on that web page?</p> <p>5 A. All the styles under that category,</p> <p>6 subcategory.</p> <p>7 Q. And like you said before, there would be an</p> <p>8 image and a description of the bag?</p> <p>9 A. Yes.</p> <p>10 Q. How large were the images on the -- these</p> <p>11 subcategory pages?</p> <p>12 A. I don't know the actual diameter of the</p> <p>13 picture, I have no idea. But you could click on a</p> <p>14 picture and it would make like -- it wouldn't zoom,</p> <p>15 but it would actually make the picture larger on</p> <p>16 your screen, on your browser.</p> <p>17 Q. How many products were displayed on one</p> <p>18 page?</p> <p>19 A. Maybe 30, and you'd have to click to go to</p> <p>20 the next page.</p> <p>21 Q. Were they arranged in rows?</p> <p>22 A. Yes.</p> <p>23 Q. How many images per row?</p> <p>24 A. Three, I believe.</p> <p>25 Q. If you were looking at the computer screen</p>	<p style="text-align: right;">28</p> <p>1 A. Yes.</p> <p>2 Q. Did you see all the products prior to you</p> <p>3 offering them for sale on your web site?</p> <p>4 A. Physically see them?</p> <p>5 Q. Yes.</p> <p>6 A. No.</p> <p>7 Q. Did you see any of them?</p> <p>8 A. On occasion.</p> <p>9 Q. For the -- just the Gucci replica handbags,</p> <p>10 how many vendors did you work with?</p> <p>11 A. Three to four. They all carry Gucci.</p> <p>12 Q. Did The Bag Addiction maintain an inventory</p> <p>13 of products for sale?</p> <p>14 A. No.</p> <p>15 Q. Could you describe the sale process for one</p> <p>16 of your replica handbags?</p> <p>17 MS. HALTER: Objection.</p> <p>18 MR. LEONARD: Vague and ambiguous.</p> <p>19 BY MR. PARADISE: Q. Do you understand what</p> <p>20 I'm asking?</p> <p>21 A. Yeah, I understand what you're asking.</p> <p>22 THE WITNESS: Do I need to answer that?</p> <p>23 MR. LEONARD: If you understand it, yes.</p> <p>24 THE WITNESS: Well, you're asking what the</p> <p>25 process is as a customer checks out. Is that what</p>
<p style="text-align: right;">27</p> <p>1 where it was three images per row, approximately how</p> <p>2 large were each of the images?</p> <p>3 A. Well, it all depends on what size monitor</p> <p>4 you have.</p> <p>5 Q. Fair enough.</p> <p>6 For each product was there only a single</p> <p>7 image on the main display page?</p> <p>8 A. Yes.</p> <p>9 Q. And then if you clicked further into -- to</p> <p>10 get details of a particular product, then there may</p> <p>11 be, in some cases, additional images?</p> <p>12 A. Yes.</p> <p>13 Q. Who took the pictures that appeared on The</p> <p>14 Bag Addiction web site?</p> <p>15 A. The manufacturer.</p> <p>16 Q. Who was the manufacturer?</p> <p>17 A. Factories in China. The vendors I worked</p> <p>18 with.</p> <p>19 Q. Was it more than one?</p> <p>20 A. Yes.</p> <p>21 Q. How many manufacturers did you work with?</p> <p>22 A. I believe three to four.</p> <p>23 Q. And each of those three to four</p> <p>24 manufacturers would supply you with pictures of the</p> <p>25 products?</p>	<p style="text-align: right;">29</p> <p>1 you're saying?</p> <p>2 BY MR. PARADISE: Q. Yes, I'm looking at</p> <p>3 the process of from when a customer comes to the web</p> <p>4 site --</p> <p>5 A. Uh-huh.</p> <p>6 Q. -- and says, "I want to buy this bag" to the</p> <p>7 customer receiving said bag.</p> <p>8 A. Uh-huh.</p> <p>9 Q. If you could just walk us through that</p> <p>10 process.</p> <p>11 A. They're on the web site, make the purchase,</p> <p>12 check out. I receive notification. I sent it to</p> <p>13 the vendor in China and he would ship the bag out</p> <p>14 for me and send me tracking.</p> <p>15 Q. So the bags were shipped directly from China</p> <p>16 to your customers?</p> <p>17 A. Correct.</p> <p>18 Q. Is this sometimes referred to as drop</p> <p>19 shipping?</p> <p>20 A. Yes.</p> <p>21 Q. Did you specify to the vendor what type of</p> <p>22 packaging the replica handbags would be sent in?</p> <p>23 A. No.</p> <p>24 Q. Are you familiar with the packaging that the</p> <p>25 replica handbags were sent to your customers in?</p>

<p style="text-align: right;">30</p> <p>1 A. I'm not sure I understand the question.</p> <p>2 What kind of packaging are you talking about?</p> <p>3 Q. Were there any -- if a person ordered a bag,</p> <p>4 did they receive anything else other than just the</p> <p>5 bag itself?</p> <p>6 A. They would receive typically what they call</p> <p>7 a dust cover for the bag. A bag, a cloth bag that</p> <p>8 the bag would go into.</p> <p>9 Q. Were images of these dust covers viewable on</p> <p>10 The Bag addiction web site?</p> <p>11 A. Sometimes.</p> <p>12 Q. When were they or were they not?</p> <p>13 A. Again, all my pictures come from my vendor</p> <p>14 so if they provided pictures for me, I would put</p> <p>15 them on there.</p> <p>16 Q. Now if you'll look back to Exhibit 1 on the</p> <p>17 first page under "Item Description," you'll see a</p> <p>18 small image and then it says "Gucci Signature Tote,</p> <p>19 Red and Green." Do you see that?</p> <p>20 A. Yes.</p> <p>21 Q. What was the purpose of using the name</p> <p>22 "Gucci" in the item description?</p> <p>23 A. So they knew what kind of bag it was.</p> <p>24 Q. Was it intended to represent the customers</p> <p>25 that this was an authentic Gucci bag?</p>	<p style="text-align: right;">32</p> <p>1 A. Not that I'm aware of.</p> <p>2 Q. How did customers pay for the products that</p> <p>3 they purchased on your web site?</p> <p>4 A. Credit cards.</p> <p>5 Q. Did The Bag Addiction accept any other forms</p> <p>6 of payment?</p> <p>7 A. No.</p> <p>8 Q. If someone wanted to send you a check, you</p> <p>9 would not accept that?</p> <p>10 A. No.</p> <p>11 Q. What if someone wanted to pay in cash?</p> <p>12 A. No.</p> <p>13 Q. Did you ever send shipments COD?</p> <p>14 A. No.</p> <p>15 Q. Are you aware of any other forms of payment</p> <p>16 other than credit cards that you could have used for</p> <p>17 The Bag Addiction?</p> <p>18 A. No.</p> <p>19 Q. Are you familiar with COD shipments?</p> <p>20 A. I know what they are.</p> <p>21 Q. Is there any reason that you could not have</p> <p>22 used COD shipments in your business?</p> <p>23 A. Yes.</p> <p>24 Q. Why?</p> <p>25 A. Because it was coming from -- the item was</p>
<p style="text-align: right;">31</p> <p>1 A. No.</p> <p>2 Q. What was it intended to represent then?</p> <p>3 A. The brand.</p> <p>4 Q. Could you elaborate on that?</p> <p>5 A. Well, it was similar to Gucci so that's why</p> <p>6 the name "Gucci" was used.</p> <p>7 Q. Do you believe that any of The Bag</p> <p>8 Addiction's customers thought that they were</p> <p>9 receiving authentic Gucci merchandise when they</p> <p>10 purchased one of your handbags?</p> <p>11 MR. LEONARD: Calls for speculation.</p> <p>12 MS. HALTER: Objection.</p> <p>13 BY MR. PARADISE: Q. You can answer if you</p> <p>14 know.</p> <p>15 MR. LEONARD: If you know.</p> <p>16 THE WITNESS: I don't know.</p> <p>17 BY MR. PARADISE: Q. Did you ever receive</p> <p>18 any communication from any of your customers stating</p> <p>19 that they thought that they were buying authentic</p> <p>20 Gucci handbags?</p> <p>21 A. Not that I'm aware of.</p> <p>22 Q. To your recollection are you aware of any</p> <p>23 instance where any person was confused as to whether</p> <p>24 they were buying authentic Gucci handbags or not on</p> <p>25 your web site?</p>	<p style="text-align: right;">33</p> <p>1 coming from China; they can't ship COD.</p> <p>2 Q. Did you ever look into whether a shipping</p> <p>3 company like UPS could collect COD payments on</p> <p>4 shipments from China?</p> <p>5 A. They don't ship UPS; they ship U.S. Mail.</p> <p>6 Q. Who is "they"?</p> <p>7 A. China.</p> <p>8 Q. By "China," are you referring just to the</p> <p>9 manufacturers that you dealt with?</p> <p>10 A. Yes.</p> <p>11 Q. Are you aware that UPS conducts shipments to</p> <p>12 and from China?</p> <p>13 A. Yes.</p> <p>14 Q. So is it just that the merchants that you</p> <p>15 were dealing with preferred to use U.S. Mail</p> <p>16 service?</p> <p>17 A. Yes.</p> <p>18 Q. But there is nothing that would have</p> <p>19 prevented them from using UPS?</p> <p>20 MS. HALTER: Objection.</p> <p>21 MR. LEONARD: Objection, calls for</p> <p>22 speculation.</p> <p>23 BY MR. PARADISE: Q. Are you aware of</p> <p>24 anything that would have prevented your merchants</p> <p>25 from using UPS?</p>

<p style="text-align: right;">34</p> <p>1 A. Yeah. Cost factor.</p> <p>2 Q. By "cost factor," you mean UPS would have</p> <p>3 been more expensive than the U.S. Mail method they</p> <p>4 were using?</p> <p>5 A. Yes.</p> <p>6 Q. Is there any reason that you could not have</p> <p>7 chosen to accept checks as a form of payment from</p> <p>8 your customers?</p> <p>9 MR. LEONARD: Can you rephrase? I'm going</p> <p>10 to object as calls for speculation.</p> <p>11 BY MR. PARADISE: Q. Are you aware of</p> <p>12 any -- or strike this.</p> <p>13 Why didn't you accept checks as a form of</p> <p>14 payment from your customers?</p> <p>15 A. I didn't want to have a return check issue,</p> <p>16 wait for checks to clear and so forth. And I also</p> <p>17 didn't want to have payments mailed to me.</p> <p>18 Q. Are you familiar with any other forms of</p> <p>19 payment that can be used by web sites other than</p> <p>20 credit cards, checks, cash or COD?</p> <p>21 A. Yes.</p> <p>22 Q. What are those?</p> <p>23 A. PayPal, wire transfers. That's all I can</p> <p>24 think of.</p> <p>25 Q. What is PayPal?</p>	<p style="text-align: right;">36</p> <p>1 offer wire transfers as a form of payment?</p> <p>2 A. Yes.</p> <p>3 Q. Why did you make that choice?</p> <p>4 A. I wasn't comfortable giving out bank account</p> <p>5 information.</p> <p>6 Q. Are you familiar with the payment process</p> <p>7 called electronic checks?</p> <p>8 A. Yes.</p> <p>9 Q. What are electronic checks?</p> <p>10 A. When you go through a web site or a company,</p> <p>11 you give them your routing and your accounting</p> <p>12 number and they take it out of your bank account</p> <p>13 versus using your credit card.</p> <p>14 Q. Did you ever utilize electronic checks --</p> <p>15 A. No.</p> <p>16 Q. -- in The Bag Addiction?</p> <p>17 Why not?</p> <p>18 A. I don't believe it was ever offered to me</p> <p>19 from my broker.</p> <p>20 Q. How did you become aware of the availability</p> <p>21 of electronic check processing?</p> <p>22 A. I don't recall.</p> <p>23 MR. PARADISE: Why don't we take a short</p> <p>24 break.</p> <p>25 THE VIDEOGRAPHER: We're off the record</p>
<p style="text-align: right;">35</p> <p>1 A. It's a third-party company that accepts</p> <p>2 payments for -- from your customers and pays you.</p> <p>3 Similar to a merchant account.</p> <p>4 Q. Do you know if credit cards are required to</p> <p>5 be used in connection with PayPal payments?</p> <p>6 A. Credit card or bank accounts.</p> <p>7 Q. Are you aware of any reason that your web</p> <p>8 site could not have utilized PayPal as a form of</p> <p>9 payment from your customers?</p> <p>10 A. Yes.</p> <p>11 Q. What is that?</p> <p>12 A. They wouldn't allow you to sell replica</p> <p>13 handbags. Which is a replica item.</p> <p>14 Q. How did you become aware of the PayPal</p> <p>15 policy against replica items?</p> <p>16 A. I had a PayPal account and they discontinued</p> <p>17 it because I was selling replicas.</p> <p>18 Q. Now, you also mentioned wire transfers.</p> <p>19 Could you have used the wire transfers as a form of</p> <p>20 payment for The Bag Addiction web site?</p> <p>21 A. Yeah.</p> <p>22 Q. Did you ever use wire transfers as a form of</p> <p>23 payment?</p> <p>24 A. No.</p> <p>25 Q. Was it just a choice on your part to not</p>	<p style="text-align: right;">37</p> <p>1 9:54.</p> <p>2 (Recess: 9:54 a.m. to 10:04 a.m.)</p> <p>3 THE VIDEOGRAPHER: We're back on the</p> <p>4 record. It's 10:04.</p> <p>5 BY MR. PARADISE: Q. Who originally</p> <p>6 performed credit card processing services for</p> <p>7 The Bag Addiction?</p> <p>8 A. What do you mean? What bank?</p> <p>9 Q. Yes.</p> <p>10 A. I think Frontline Bank was the first. I</p> <p>11 really don't recall which one was first. Nathan was</p> <p>12 the broker.</p> <p>13 Q. Was Nathan always the broker for the credit</p> <p>14 card processing for The Bag Addiction?</p> <p>15 A. Yes.</p> <p>16 I need to clarify something, too, on that</p> <p>17 when we were in here earlier regarding my</p> <p>18 declaration.</p> <p>19 Q. Okay.</p> <p>20 A. The declaration was actually in conjunction</p> <p>21 with this case, not my previous, not the other case</p> <p>22 with Gucci.</p> <p>23 Q. Okay.</p> <p>24 A. My declaration is this. Okay.</p> <p>25 Q. Okay. Thank you for clarifying that. And</p>

<p style="text-align: right;">38</p> <p>1 if at any time something comes to you, you know, 2 that was -- you think was misstated, please -- 3 A. Okay. 4 Q. -- you know, just let me know and you can 5 always clarify something. 6 A. Okay. 7 (Kirk Exhibit 2 is marked.) 8 BY MR. PARADISE: Q. I've handed you what 9 the court reporter has marked as Kirk Exhibit 2. If 10 you'll look at the bottom half of this document, do 11 you recognize this document? 12 A. No, it looks like -- no, I don't know what 13 it is. 14 Q. At some point -- how did you first get in 15 touch with Nathan Counley? 16 A. On line. I found his web site on line. 17 Q. Did you then submit a web page inquiry -- 18 A. Yes. 19 Q. -- to get more information? 20 A. Yes. 21 Q. Does the information that appears on the 22 bottom half of Exhibit 2 appear to be the 23 information that you provided when you contacted 24 Nathan Counley? 25 A. Yes.</p>	<p style="text-align: right;">40</p> <p>1 account? 2 A. I'm sorry, I don't. 3 Q. Was it from the inception of The Bag 4 Addiction business? 5 A. No. 6 Q. So when you began operations for The Bag 7 Addiction, you were only accepting payment via 8 PayPal? 9 A. Card Service. Card Service and PayPal. 10 Q. So just to clarify, so from the beginning of 11 the operation of The Bag Addiction web site, you 12 accepted payment both through PayPal and this Card 13 Service through your eBay account? 14 A. I believe so. I don't know the exact time 15 frame or when it transitioned from one to the other. 16 I really don't know. 17 Q. How does the Card Service work? 18 MS. HALTER: Objection. 19 THE WITNESS: I don't know what you mean. 20 How does it work? 21 BY MR. PARADISE: Q. Meaning what is 22 the -- is the process by which payments are settled 23 through Card Service any different than through a 24 standard credit card processor? 25 A. No. Card Service is a merchant account,</p>
<p style="text-align: right;">39</p> <p>1 Q. If you'll look at the middle of this 2 document, it says that the form here was submitted 3 on September 10th, 2006. Do you see that? 4 A. Uh-huh. 5 Q. Is it your recollection that you submitted 6 that information to Mr. Counley's web site on or 7 about that date? 8 A. It appears that way, yeah. 9 Q. Was this, to your recollection, the first 10 time you contacted Mr. Counley? 11 A. I believe so. 12 Q. Given that the date is in September of 2006, 13 does this refresh your recollection as to whether 14 there was -- you dealt with someone else for credit 15 card processing prior to Mr. Counley? 16 A. Yes. I had PayPal and they discontinued my 17 account. 18 Q. Prior to contacting Mr. Counley, did you 19 accept any payment for purchases on The Bag 20 Addiction web site other than through PayPal? 21 A. Looking at this, I remember I did have Card 22 Service. It was a -- it was associated with my eBay 23 account so I used them temporarily. 24 Q. Do you recall the approximate date range 25 that you used this Card Service with your eBay</p>	<p style="text-align: right;">41</p> <p>1 merchant company, just like Woodforest. 2 Q. And just like Frontline? 3 A. Correct. 4 Q. At some point did your -- did you 5 discontinue using your Card Service account? 6 A. Yes. 7 Q. When was that? 8 A. I don't recall. 9 Q. Do you recall why you stopped using the Card 10 Service account? 11 A. They canceled my account. 12 Q. Why did they cancel your account? 13 A. Because I was selling replicas. 14 Q. If you look back to Exhibit 2, most of the 15 way down there is a heading that says "Description 16 of Business." Do you see that? 17 A. Yes. 18 Q. Do you recall that you were asked to 19 identify or provide a description of your business 20 on this initial inquiry to Nathan Counley? 21 A. Yes. 22 Q. And what did you respond in response to that 23 inquiry? 24 A. When I was asking him? 25 Q. What did you -- when the web site form</p>

<p style="text-align: right;">42</p> <p>1 prompted you to put in a description of business, 2 what did you put in? 3 A. I put in replica handbags and accessories. 4 Q. Again, it's your belief that this was your 5 first contact with Mr. Counley? 6 A. Yes. 7 (Kirk Exhibit 3 is marked.) 8 BY MR. PARADISE: Q. The court reporter has 9 handed you what she has marked as Kirk Exhibit 3. 10 Could you take a look at this document, please, and 11 let me know if you've seen it before. 12 A. Yes. 13 Q. What is Exhibit 3? 14 A. Looks like an e-mail correspondence between 15 me and Nathan regarding a merchant account. 16 Q. If you'll turn to the fourth page of 17 Exhibit 3. The e-mail that starts on the bottom 18 from Nathan Counley to admin at TheBagAddiction.com. 19 Do you see that? 20 A. Yes. 21 Q. Was that an e-mail address that you utilized 22 at this time? 23 A. Yes. 24 Q. So it's your understanding that you received 25 this e-mail from Mr. Counley on or about</p>	<p style="text-align: right;">44</p> <p>1 Q. Take your time as much as you need to look 2 through the e-mail chain, if you need to. 3 A. Yeah. It looks like it was Card Service. 4 Q. If you'll turn to Page 2 and look at an 5 e-mail that actually starts at the bottom of Page 1 6 from Nathan Counley to you dated September 14, 2006. 7 Do you see that? 8 A. Yeah. 9 Q. Where he says "Jennifer, Good news. I just 10 found out our U.S. bank can do replica accounts 11 now." Do you see that? 12 A. Yes. 13 Q. Do you know what U.S. bank that was? 14 A. No. 15 Q. Did you shortly after this time submit an 16 application to a U.S. bank for credit card 17 processing services? 18 A. I don't know. I assume so from this 19 timeline; that's when it was submitted. 20 Q. You don't recall what U.S. bank it was? 21 A. No. 22 Q. Do you know if it was Frontline? 23 A. I don't know. I don't know which one was 24 first. 25 Q. When you say you don't know which one was</p>
<p style="text-align: right;">43</p> <p>1 September 11, 2006? 2 A. Yes. 3 Q. Was this the first communication that you 4 received from Mr. Counley? 5 A. I believe so. 6 Q. And then am I correct that you and 7 Mr. Counley had communications back and forth for a 8 number of days, at least through September 14th, 9 2006? 10 A. Yes. 11 Q. If you'll turn to Page 3 in the middle, 12 there is an e-mail from you to Mr. Counley from 13 September 11, 2006 at 4:37 p.m. Do you see that? 14 A. Yes. 15 Q. You stated, "Our processing history is fine. 16 We had to close because we were selling replicas." 17 Do you see that? 18 A. Yes. 19 Q. What did you have to close that you're 20 referring to in this e-mail? 21 A. The merchant account. 22 Q. Which merchant account was that? 23 A. In looking over this, it looks like it was 24 Card Service. I'd have to go through the whole 25 e-mail.</p>	<p style="text-align: right;">45</p> <p>1 first, which credit card processing banks is it 2 between in your mind as to which one was first or 3 second? 4 A. Frontline and Woodforest. 5 Q. So one of those came before the other one? 6 A. Correct. 7 Q. At this time period between September 11 and 8 September 14, 2006, did you have any credit card 9 processor in place at this time? 10 A. September 11th through September 14th, is 11 that what you just said? 12 Q. Yes. 13 A. I don't believe so. 14 Q. Was your business still in operation at this 15 time? 16 A. Yes. 17 Q. Were you accepting orders from customers 18 during this time period? 19 A. No. 20 Q. Do you recall how long it was that you were 21 not accepting orders from customers? 22 A. No, I don't. 23 Q. Do you know if it was a matter of days 24 versus weeks? 25 A. Maybe a couple weeks.</p>

<p style="text-align: right;">46</p> <p>1 Q. So you completely suspended sales for a few 2 weeks' period of time at this time? 3 A. Yes. 4 Q. How long after your first inquiry to Nathan 5 Counley did you acquire a new credit card processing 6 service? 7 A. Couple weeks. 8 (Kirk Exhibit 4 is marked.) 9 BY MR. PARADISE: Q. The court reporter has 10 handed you what has been marked as Kirk Exhibit 4. 11 Would you take a look at this document, please. 12 A. Okay. 13 Q. If you look at the top do you see that there 14 appear to be two fax lines, one dated November 15, 15 2006 and one dated November 14, 2006? Do you see 16 that? 17 A. Yes. 18 Q. Is Exhibit 4 an application that was 19 submitted for a credit card processing to Woodforest 20 National Bank? 21 A. Yes. 22 Q. Is it your recollection that this 23 application was submitted on or around November 15, 24 2006? 25 A. Looks like it.</p>	<p style="text-align: right;">48</p> <p>1 understood that you were selling replica products? 2 A. I don't know what Nathan told Frontline, 3 that's between them and Nathan. He represented to 4 me that they knew, but I don't know what was 5 transpired between their conversations. 6 Q. Fair enough. 7 Now if you'll turn back to Kirk Exhibit 4, 8 you said that this was an application for credit 9 card processing services that you submitted to 10 Woodforest National Bank. Right? 11 A. Right. 12 Q. At the time that this application was 13 submitted, were you currently processing credit 14 cards through Frontline? 15 A. I believe so. 16 Q. Why did you need a second credit card 17 processor for your business? 18 A. I had a monthly volume limit I was subjected 19 to through Frontline so I needed a second one 20 because the volume was so much. 21 Q. Were there any other reasons? 22 A. No. 23 Q. At the time you applied for credit card 24 processing services from Woodforest, were you 25 generally satisfied with the service you were</p>
<p style="text-align: right;">47</p> <p>1 Q. Turning back to Exhibits 2 and 3 and the 2 dates indicated in there, does that refresh your 3 recollection as to which bank you went to first for 4 credit card processing services? 5 A. It looks like Frontline was first. 6 Q. When you applied to Frontline for credit 7 card processing services, did Frontline know that 8 your business was selling replica products? 9 MR. LEONARD: Objection. Calls for 10 speculation. 11 THE WITNESS: I don't know. 12 BY MR. PARADISE: Q. Did you tell anyone 13 from Frontline -- did you speak with anyone from 14 Frontline during the application process? 15 A. No. 16 Q. Did you have any discussions with 17 Mr. Counley about the application process with 18 Frontline? 19 A. Yes. 20 Q. During any of those conversations did 21 Mr. Counley indicate that Frontline understood that 22 The Bag Addiction's business was selling replica 23 products? 24 A. Yes, he did. 25 Q. So then it's fair to assume that Frontline</p>	<p style="text-align: right;">49</p> <p>1 receiving from Frontline? 2 A. Yes. 3 Q. Now if you look at the application, 4 Exhibit 4 -- and I apologize for the quality of 5 this, but it's a copy of a fax of a fax, so it's 6 degraded over time. But if you look in the middle 7 on the left there is a statement that I believe 8 refers to the type of -- the nature of the business 9 and it says "designer handbags." Do you see that? 10 A. Yes. 11 Q. Did you supply that information? 12 A. You mean did I type that in there? 13 Q. Yes. 14 A. No. 15 Q. Who did? 16 A. Nathan. This was prefilled out. 17 Q. Is my understanding correct that you 18 provided information to Mr. Counley and then he 19 typed up the application and provided it to you for 20 signature? 21 A. Yes. 22 MS. HALTER: Objection. 23 BY MR. PARADISE: Q. Do you see above 24 "designer handbags" there is handwriting that says 25 "wholesale/retail"?</p>

<p style="text-align: right;">50</p> <p>1 A. Uh-huh.</p> <p>2 Q. Do you know whose handwriting that is?</p> <p>3 A. No.</p> <p>4 Q. So is it safe to assume you did not write</p> <p>5 that in?</p> <p>6 A. I did not write that.</p> <p>7 Q. Do you know if Patrick Kirk wrote that in?</p> <p>8 A. No.</p> <p>9 Q. Does that look like his handwriting?</p> <p>10 A. No.</p> <p>11 Q. If you'll turn to the third page of</p> <p>12 Exhibit 4 and, again, at the top it says</p> <p>13 "Description of product sold" and it says "Designer</p> <p>14 handbags." Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. Did you provide that, the information to go</p> <p>17 into that statement to Mr. Counley or did he choose</p> <p>18 the words to put there himself?</p> <p>19 A. I don't know. I think he chose those words.</p> <p>20 I was very up front with replica handbags so I don't</p> <p>21 know.</p> <p>22 Q. If you look on the next line where it says</p> <p>23 "Who owns product," and there is a check box "Vendor</p> <p>24 drop ship required." Do you see that?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">52</p> <p>1 Q. Is that the discount rate that you were</p> <p>2 charge by Woodforest during the time you processed</p> <p>3 credit cards with Woodforest?</p> <p>4 A. Yes.</p> <p>5 Q. Do you recall if this rate was higher or</p> <p>6 lower than Frontline's?</p> <p>7 A. Lower.</p> <p>8 Q. Do you recall if the transaction fees in</p> <p>9 addition to the discount rate that you were charged</p> <p>10 by Woodforest were higher or lower than Frontline?</p> <p>11 A. Woodforest was lower.</p> <p>12 Q. Do you recall what the discount rate was</p> <p>13 with Frontline?</p> <p>14 A. I believe it was in like the four-and-a-half</p> <p>15 percent with additional fees.</p> <p>16 Q. In submitting the application for credit</p> <p>17 card processing services to Woodforest, did you</p> <p>18 state anywhere that The Bag Addiction sold</p> <p>19 counterfeit products?</p> <p>20 A. Using the word "counterfeit"?</p> <p>21 Q. Yes.</p> <p>22 A. No.</p> <p>23 Q. In the application to Woodforest, did you</p> <p>24 state that The Bag Addiction sold illegal products?</p> <p>25 A. No.</p>
<p style="text-align: right;">51</p> <p>1 Q. That's what we were talking about before as</p> <p>2 to how orders were placed on your site --</p> <p>3 A. Right.</p> <p>4 Q. -- and how you fulfilled them?</p> <p>5 The next line asks for identity of the</p> <p>6 vendors. Who is the vendor listed here?</p> <p>7 A. That was one of my vendors in China, my</p> <p>8 primary vendor.</p> <p>9 Q. But as you said before there were</p> <p>10 additional --</p> <p>11 A. Uh-huh.</p> <p>12 Q. -- vendors so not all of the bags came from</p> <p>13 this entity?</p> <p>14 A. Correct.</p> <p>15 Q. If you look down in the middle on the right</p> <p>16 side there is a qualified MOTO discount rate. Do</p> <p>17 you see that?</p> <p>18 A. Uh-huh.</p> <p>19 Q. Do you understand that's the discount rate</p> <p>20 that you were to be charged for transactions</p> <p>21 processed by Woodforest?</p> <p>22 A. Yes.</p> <p>23 Q. It says here it was 3.75 percent; is that</p> <p>24 right?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">53</p> <p>1 Q. In the application to Woodforest did you</p> <p>2 state that The Bag Addiction sold products that</p> <p>3 violated any laws or rights of anyone?</p> <p>4 A. No.</p> <p>5 Q. Did you ever speak with anyone at Woodforest</p> <p>6 about your application?</p> <p>7 A. No.</p> <p>8 Q. Did you ever have any written communication</p> <p>9 with anyone from Woodforest about your application?</p> <p>10 A. Only Nathan.</p> <p>11 Q. Did anyone affiliated with The Bag Addiction</p> <p>12 ever speak with anyone at Woodforest about this</p> <p>13 application?</p> <p>14 A. No.</p> <p>15 Q. Do you know if Patrick ever had any</p> <p>16 discussions with anyone at Woodforest at any time?</p> <p>17 A. Not that I'm aware of.</p> <p>18 Q. Do you have an understanding as to whether</p> <p>19 Nathan Counley had discussions with Woodforest</p> <p>20 concerning your application?</p> <p>21 A. I don't know.</p> <p>22 Q. Did Nathan ever tell you that he had any</p> <p>23 discussions with Woodforest about your application?</p> <p>24 A. Just whether it was approved and the status.</p> <p>25 That's it.</p>

<p style="text-align: right;">54</p> <p>1 Q. Did you ever tell Nathan Counley that the</p> <p>2 products sold by The Bag Addiction were counterfeit?</p> <p>3 A. I said they were replicas.</p> <p>4 Q. So then the answer to the question is no,</p> <p>5 that you never told him that they were counterfeit?</p> <p>6 A. I never used the word "counterfeit," no.</p> <p>7 Q. Did you ever tell Nathan Counley that there</p> <p>8 was anything illegal about the products sold by The</p> <p>9 Bag Addiction?</p> <p>10 A. I never used the word "illegal," no.</p> <p>11 Q. Did you ever speak with anyone other than</p> <p>12 Nathan Counley from a company called Durango?</p> <p>13 A. Yes.</p> <p>14 Q. Who did you speak with at Durango?</p> <p>15 A. Actually, no. I'm mistaken. I was thinking</p> <p>16 of Frontline. No. I only spoke to Nathan.</p> <p>17 Q. Did you ever hear of a person called Joe</p> <p>18 Montella?</p> <p>19 A. Doesn't sound familiar.</p> <p>20 Q. Did you ever tell anyone from Frontline that</p> <p>21 the products that were being sold by The Bag</p> <p>22 Addiction were counterfeit?</p> <p>23 A. No.</p> <p>24 Q. At some point did the operations of The Bag</p> <p>25 Addiction come to an end?</p>	<p style="text-align: right;">56</p> <p>1 handed you what's been marked as Kirk Exhibit 5.</p> <p>2 Are you familiar with this document?</p> <p>3 A. Yeah.</p> <p>4 Q. What is Exhibit 5?</p> <p>5 A. Just looks like disclosing of potential</p> <p>6 witnesses, my statement. It looks like some vendors</p> <p>7 and documents that were disclosed regarding our</p> <p>8 lawsuit.</p> <p>9 Q. And this was in connection with the lawsuit</p> <p>10 brought against you and your company by Gucci and</p> <p>11 Chloe, correct?</p> <p>12 A. Yes.</p> <p>13 Q. Did you review this document prior to it</p> <p>14 being served?</p> <p>15 A. Yes.</p> <p>16 Q. Is it your belief that everything in this</p> <p>17 document is accurate?</p> <p>18 A. Yes.</p> <p>19 Q. If you look on Page 2 of the document under</p> <p>20 "Witnesses," it lists "Jennifer Kirk." We know who</p> <p>21 that is. The second one is Stephanie Walker. Who</p> <p>22 is Stephanie Walker?</p> <p>23 A. She was a friend of mine.</p> <p>24 Q. Was Miss Walker an employee of the Laurette</p> <p>25 company?</p>
<p style="text-align: right;">55</p> <p>1 A. When? Is that what you said?</p> <p>2 Q. I'm just asking first if they did.</p> <p>3 A. Oh, did they? Yeah.</p> <p>4 Q. When was that?</p> <p>5 A. I believe it was May of '08. May or June.</p> <p>6 I don't recall the exact date.</p> <p>7 Q. Why did you stop operating The Bag Addiction</p> <p>8 business?</p> <p>9 A. We were notified of a lawsuit.</p> <p>10 Q. Who was the plaintiff in that lawsuit?</p> <p>11 A. Gucci and Chloe.</p> <p>12 Q. Did you become aware of an order from a</p> <p>13 court ordering you to suspend sales of your</p> <p>14 products?</p> <p>15 A. Yes.</p> <p>16 Q. And upon receipt of that order, did you</p> <p>17 suspend sales of your products?</p> <p>18 A. Yes.</p> <p>19 Q. What was your understanding of the</p> <p>20 allegations made by Gucci in its lawsuit against</p> <p>21 your company?</p> <p>22 A. The allegations, my understanding was that I</p> <p>23 infringed on their trademark.</p> <p>24 (Kirk Exhibit 5 is marked.)</p> <p>25 BY MR. PARADISE: Q. The court reporter has</p>	<p style="text-align: right;">57</p> <p>1 A. Yeah.</p> <p>2 Q. What were -- what was Miss Walker's --</p> <p>3 strike that.</p> <p>4 What were Miss Walker's responsibilities as</p> <p>5 an employee of Laurette?</p> <p>6 A. She would add new products to the web site,</p> <p>7 correspond with the customers. That's about it.</p> <p>8 Q. How many employees did The Bag Addiction</p> <p>9 have?</p> <p>10 A. She -- I'm not sure I classify her as an</p> <p>11 employee. She got a 1099. So she was kind of a</p> <p>12 subcontractor. Other than her, that's it.</p> <p>13 Q. How did you learn of new products to be</p> <p>14 added to the web site?</p> <p>15 A. My vendor.</p> <p>16 Q. How would you learn about the product from</p> <p>17 the vendor?</p> <p>18 A. They would e-mail me new products or it</p> <p>19 would be on the web site that they had all the</p> <p>20 products on.</p> <p>21 Q. What information did they provide to you</p> <p>22 when they would send you these e-mails?</p> <p>23 A. The name of the item, the style maybe,</p> <p>24 description and pictures.</p> <p>25 Q. Did you ever take your own pictures of</p>

<p style="text-align: right;">58</p> <p>1 products to display on your web site?</p> <p>2 A. No.</p> <p>3 Q. The third name on here is Malky Goldblatt.</p> <p>4 Do you see that?</p> <p>5 A. Uh-huh.</p> <p>6 Q. Who is Malky Goldblatt?</p> <p>7 A. She was introduced to me through another</p> <p>8 friend that basically gave me all the information on</p> <p>9 selling replicas, the vendors and so forth. She had</p> <p>10 her own web site.</p> <p>11 Q. Did she sell replica products on her web</p> <p>12 site?</p> <p>13 A. Yes.</p> <p>14 Q. Did Miss Goldblatt -- strike that.</p> <p>15 So Miss Goldblatt gave you information on</p> <p>16 the various vendors that you used to obtain your</p> <p>17 products?</p> <p>18 A. Yes.</p> <p>19 THE VIDEOGRAPHER: This is the end of</p> <p>20 Videotape 1.</p> <p>21 (Recess: 10:42 a.m. to 10:43 a.m.)</p> <p>22 THE VIDEOGRAPHER: This is Videotape 2 of</p> <p>23 Jennifer Kirk's deposition. We're back on the</p> <p>24 record. It's 10:43.</p> <p>25 MR. PARADISE: Could you read back the last</p>	<p style="text-align: right;">60</p> <p>1 you?</p> <p>2 A. The representations regarding the products</p> <p>3 he sold, the replicas.</p> <p>4 Q. What specific representations did he make to</p> <p>5 you?</p> <p>6 A. That they were replicas.</p> <p>7 Q. Why did you believe it was important for</p> <p>8 Mr. Liao to testify as to that representation made</p> <p>9 to you?</p> <p>10 A. I don't know other than he was just -- he</p> <p>11 was aware of them being replicas; that they were not</p> <p>12 originals.</p> <p>13 Q. Did Mr. Liao ever represent to you that</p> <p>14 these products were not counterfeit?</p> <p>15 A. No.</p> <p>16 Q. Did Mr. Liao ever represent to you that</p> <p>17 these products did not infringe any rights of any</p> <p>18 party?</p> <p>19 A. No.</p> <p>20 Q. If you'll turn the page No. 5 is Cheng Yong</p> <p>21 Xie. Do you see that?</p> <p>22 A. Yeah.</p> <p>23 Q. Who is Mr. Xie?</p> <p>24 A. He's another vendor.</p> <p>25 Q. And do you recall the name of his company?</p>
<p style="text-align: right;">59</p> <p>1 question and answer, please.</p> <p>2 (Record read)</p> <p>3 BY MR. PARADISE: Q. What did you expect</p> <p>4 Miss Goldblatt to testify to concerning Laurette</p> <p>5 Company's suppliers?</p> <p>6 A. I don't know what she was going to testify</p> <p>7 to other than she knew who these suppliers were.</p> <p>8 Q. The next name is Suijian Liao. Did I</p> <p>9 pronounce that right?</p> <p>10 A. I believe so, yes.</p> <p>11 Q. Who is Mr. or Miss Liao?</p> <p>12 A. He is a vendor I purchased from.</p> <p>13 Q. Is Mr. Liao the owner of Suijian Liao</p> <p>14 Wholesale Bags Company that was identified in</p> <p>15 Exhibit 4?</p> <p>16 A. Yes.</p> <p>17 Q. I believe you stated before he was your</p> <p>18 primary vendor?</p> <p>19 A. Yes.</p> <p>20 Q. You stated in here that he was expected to</p> <p>21 testify about, quote, Representations made to</p> <p>22 Defendant Jennifer Kirk, end quote.</p> <p>23 Do you see that?</p> <p>24 A. Yes.</p> <p>25 Q. What representations did Mr. Liao make to</p>	<p style="text-align: right;">61</p> <p>1 A. EH Best Fashion shown there after his name.</p> <p>2 Q. Where is EH Best Fashion located?</p> <p>3 A. In China.</p> <p>4 Q. What products did you order from EH Best</p> <p>5 Fashion?</p> <p>6 A. Replica handbags and accessories.</p> <p>7 Q. Now, again, here it refers to</p> <p>8 representations made to Defendant Jennifer Kirk. Do</p> <p>9 you see that?</p> <p>10 A. Yes.</p> <p>11 Q. What representations did Mr. Xie make to</p> <p>12 you?</p> <p>13 A. That the items were replicas.</p> <p>14 Q. Did Mr. Xie make any other representations</p> <p>15 to you?</p> <p>16 A. No.</p> <p>17 Q. Did Mr. Xie ever represent that the products</p> <p>18 were not counterfeit?</p> <p>19 A. No.</p> <p>20 Q. Did you ever ask Mr. Xie whether the</p> <p>21 products were counterfeit?</p> <p>22 A. I didn't use that terminology. No.</p> <p>23 Q. Did you ever ask Mr. Liao whether the</p> <p>24 products were counterfeit?</p> <p>25 A. I didn't ask if they were counterfeit.</p>

<p style="text-align: right;">62</p> <p>1 Q. The next entry is for person Jacky, 2 J-A-C-K-Y. Who is Jacky? 3 A. Another vendor. 4 Q. What is the name of the company that Jacky 5 works for? 6 A. PFC. 7 Q. Where is PFC located? 8 A. China. 9 Q. What products did you purchase from PFC? 10 A. Replica items. 11 Q. Both handbags and accessories? 12 A. Yes. 13 Q. With Jacky you just say that "Jacky is 14 expected to testify about orders received from 15 Laurette Company." You did not state "and 16 representations made to Defendant Jennifer Kirk." 17 Why is that? 18 A. I think I didn't have much correspondence 19 with him so it was mainly just about any orders he 20 received from me and shipped out. 21 Q. I notice that Patrick Kirk is not listed in 22 the list of witnesses; is that correct? 23 A. Yes. 24 Q. Is there a reason that Mr. Kirk was left off 25 of the list of witnesses?</p>	<p style="text-align: right;">64</p> <p>1 short break. 2 THE VIDEOGRAPHER: Off the record. It's 3 10:52. 4 (Recess: 10:52 a.m. to 11:14 a.m.) 5 THE VIDEOGRAPHER: We're back on the 6 record. It's 11:14. 7 BY MR. PARADISE: Q. At some point in time 8 did you settle the lawsuit filed by Gucci against 9 you and your company? 10 A. Yes. 11 Q. What were the general terms of the 12 settlement agreement? 13 THE WITNESS: Do I answer it? 14 MR. LEONARD: If you know what they are. 15 THE WITNESS: Is it confidential? 16 MR. LEONARD: Off the record for a second. 17 THE VIDEOGRAPHER: We are off record, 18 11:15. 19 (Discussion off the record: 11:15 a.m. 20 to 11:21 a.m.) 21 THE VIDEOGRAPHER: It's 11:21. 22 MR. LEONARD: The parties have agreed to 23 designate this portion of the deposition transcript 24 confidential under the protective order in place in 25 this case. (CONFIDENTIAL TEXT FOLLOWS: 65-79.)</p>
<p style="text-align: right;">63</p> <p>1 A. He wasn't involved in the business. 2 Q. If you turn to the last page of Exhibit 5, 3 Page 4. This is a continuation of the list of 4 documents that you may use in this case. No. 7 5 talks about correspondence between Laurette Company 6 and its suppliers. Do you see that? 7 A. Yes. 8 Q. What correspondence were you referring to 9 here? 10 A. E-mails. 11 Q. What was the nature of the subject matter of 12 these e-mails? 13 A. Orders. 14 Q. Was anything stated in these e-mails other 15 than order information? 16 A. Could be new product information. Could be 17 various correspondence. It was pretty broad. 18 Q. Do you know whether all of this 19 correspondence was produced to Gucci in the 20 litigation? 21 A. Yeah. I believe it was all produced. 22 Q. Are you aware of any correspondence that was 23 not produced to Gucci in the litigation? 24 A. No. 25 MR. PARADISE: Why don't we take another</p>	<p style="text-align: right;">65</p> <p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>

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<p>78</p> <p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>80</p> <p>1 MR. LEONARD: We can end the confidential 2 portion now. The documents, Exhibits 6, 7 and 8, 3 along with that prior portion of the testimony will 4 be a separate transcript. 5 (Record read.) 6 BY MR. PARADISE: Q. I believe we spoke 7 earlier that you said you reviewed a declaration 8 that you had signed in connection with this case. 9 A. Right. 10 Q. Have you submitted more than one declaration 11 in connection with this case? 12 No. I don't -- I didn't -- I don't know 13 what the name of that declaration is. You said it 14 was motion to dismiss. I don't know what it was 15 actually called. 16 Q. Okay. I didn't mean to confuse things, I 17 apologize if I did. I understand that that 18 declaration was filed in connection with the 19 proceedings on the motion to dismiss. 20 A. Okay. 21 Q. I take it from your answers that you didn't 22 understand the context of it. You just -- 23 A. I signed a declaration, yes. I didn't know 24 if it was pertaining to a dismissal. 25 Q. Okay.</p>
<p>79</p> <p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>81</p> <p>1 A. If that's what you're saying. Okay. 2 Q. All right. Who asked you to prepare a 3 declaration? 4 A. My attorney. 5 Q. Did your attorney tell you who requested 6 that you prepare a declaration? 7 MR. LEONARD: Objection calls for 8 attorney-client communication. 9 THE WITNESS: I don't recall. 10 BY MR. PARADISE: Q. Could you describe 11 for me how the declaration was prepared? 12 A. I believe I spoke with my attorney, gave 13 them the information. He put it into legal format 14 and sent it to me for approval. 15 Q. What information did you give him for the 16 purpose of preparing the declaration? 17 MR. LEONARD: Objection to the extent it 18 calls for attorney-client-privileged communication. 19 THE WITNESS: The declaration just had, I 20 believe, my information that I was selling -- that 21 the banks knew I was selling replica handbags. 22 BY MR. PARADISE: Q. How did you decide 23 what information to give to your attorney for the 24 purpose of preparing this declaration? 25 MR. LEONARD: Can we go off the record for a</p>

<p style="text-align: right;">82</p> <p>1 second?</p> <p>2 THE VIDEOGRAPHER: Off the record</p> <p>3 11:51 a.m.</p> <p>4 (Discussion off the record: 11:51 a.m.</p> <p>5 to 11:53 a.m.)</p> <p>6 THE VIDEOGRAPHER: We're back on the</p> <p>7 record.</p> <p>8 THE WITNESS: Just from the conversation I</p> <p>9 had with my attorney. I don't recall the specifics.</p> <p>10 BY MR. PARADISE: Q. Is it correct -- is my</p> <p>11 understanding correct that you did not choose the</p> <p>12 topics that form the subject matter of your</p> <p>13 declaration?</p> <p>14 A. I don't recall.</p> <p>15 Q. Do you recall your attorney or anyone else</p> <p>16 telling you what the subject matter of the</p> <p>17 declaration should be?</p> <p>18 A. No.</p> <p>19 (Kirk Exhibit 10 is marked.)</p> <p>20 BY MR. PARADISE: Q. The court reporter</p> <p>21 has handed you what has been marked as Kirk</p> <p>22 Exhibit 10. Have you seen this document before?</p> <p>23 A. Yes.</p> <p>24 Q. Is this your declaration that we have been</p> <p>25 discussing for the last few minutes?</p>	<p style="text-align: right;">84</p> <p>1 interested in you preparing a declaration and</p> <p>2 including certain topics?</p> <p>3 A. No.</p> <p>4 Q. Do you have any recollection as to why you</p> <p>5 prepared this declaration?</p> <p>6 MS. HALTER: Objection.</p> <p>7 THE WITNESS: My role -- just my role with</p> <p>8 the banks and with -- with my company, with my web</p> <p>9 site.</p> <p>10 BY MR. PARADISE: Q. I'm just asking</p> <p>11 generally --</p> <p>12 A. Right.</p> <p>13 Q. -- why did you prepare a declaration?</p> <p>14 A. Well, I'm obviously in the middle of this</p> <p>15 lawsuit so I think my declaration is probably pretty</p> <p>16 important.</p> <p>17 Q. Do you have any role in this -- any strike</p> <p>18 that.</p> <p>19 Do you have any interest in this lawsuit?</p> <p>20 MR. LEONARD: Objection to the extent it</p> <p>21 calls for a legal conclusion.</p> <p>22 THE WITNESS: I don't know. Interest. If I</p> <p>23 wasn't in this, there would be no lawsuit.</p> <p>24 BY MR. PARADISE: Q. Right, but the</p> <p>25 lawsuit between Gucci and Frontline, Woodforest and</p>
<p style="text-align: right;">83</p> <p>1 A. Yes.</p> <p>2 Q. And is that your signature that appears at</p> <p>3 the bottom of Page 2?</p> <p>4 A. Yes.</p> <p>5 Q. And just to clarify, this is the document</p> <p>6 that you said you reviewed yesterday?</p> <p>7 A. Yes.</p> <p>8 Q. If you look at the first paragraph -- sorry.</p> <p>9 If you look at the first paragraph, do you</p> <p>10 have a recollection of why you included this</p> <p>11 information in your declaration?</p> <p>12 MS. HALTER: Objection.</p> <p>13 THE WITNESS: The bank was a huge role in my</p> <p>14 business.</p> <p>15 BY MR. PARADISE: Q. I'm asking -- well,</p> <p>16 what I'm trying to understand is, was it your</p> <p>17 decision to address this subject in the declaration,</p> <p>18 or did someone else ask you to address this subject</p> <p>19 in your declaration?</p> <p>20 A. I don't recall.</p> <p>21 Q. Do you have an understanding as to whether</p> <p>22 Gucci requested specific topics to be included in</p> <p>23 your declaration?</p> <p>24 A. I don't know.</p> <p>25 Q. Did anyone ever tell you that Gucci was</p>	<p style="text-align: right;">85</p> <p>1 Durango, do you have, for example, any financial</p> <p>2 interest in the outcome of this litigation?</p> <p>3 A. No, not at all.</p> <p>4 Q. Do you have any interest of any kind in the</p> <p>5 outcome of this litigation?</p> <p>6 A. No.</p> <p>7 Q. So what I'm trying to understand is why did</p> <p>8 you prepare a declaration?</p> <p>9 A. Because I ultimately was involved with the</p> <p>10 banks and this lawsuit. I'm a witness to this. I</p> <p>11 understood how the process worked.</p> <p>12 Q. Did someone request that you prepare this</p> <p>13 declaration?</p> <p>14 MS. HALTER: Objection. Asked and answered.</p> <p>15 MR. LEONARD: Same objection.</p> <p>16 BY MR. PARADISE: Q. You can answer.</p> <p>17 A. I think I answered the question.</p> <p>18 Q. I'm just trying to clarify what I think is</p> <p>19 pretty obvious that is it correct that this</p> <p>20 declaration was prepared at the request of Gucci</p> <p>21 pursuant to your obligations under the settlement</p> <p>22 agreement?</p> <p>23 MS. HALTER: Objection.</p> <p>24 THE WITNESS: No. I wasn't required to make</p> <p>25 this declaration.</p>

<p style="text-align: right;">86</p> <p>1 BY MR. PARADISE: Q. But you were required</p> <p>2 to provide assistance to Gucci in future litigation;</p> <p>3 is that correct?</p> <p>4 A. I wasn't required.</p> <p>5 Q. If you look back at Exhibit 6 on Page 4,</p> <p>6 Paragraph 6, isn't it true that as a condition of</p> <p>7 settlement you're obligated to provide cooperation?</p> <p>8 MR. LEONARD: Sorry. Can we back up? Since</p> <p>9 we're back into the settlement agreement, we need to</p> <p>10 designate just that portion as confidential. So to</p> <p>11 the -- how we going to do this?</p> <p>12 MR. PARADISE: Is this portion really</p> <p>13 critical to be confidential?</p> <p>14 MR. LEONARD: It's the whole document.</p> <p>15 Do you have an objection to just that</p> <p>16 portion of the --</p> <p>17 THE WITNESS: No, I just -- my answer to</p> <p>18 that was it doesn't say I'm required. Requirement</p> <p>19 to me is --</p> <p>20 MR. LEONARD: Actually, we're off -- off the</p> <p>21 record.</p> <p>22 THE VIDEOGRAPHER: We're off the record.</p> <p>23 It's 12:00 o'clock.</p> <p>24 (Discussion off the record: 12:00 p.m.</p> <p>25 to 12:04 p.m.)</p>	<p style="text-align: right;">88</p> <p>1 of their joint motion to dismiss."</p> <p>2 Do you see that?</p> <p>3 A. Uh-huh.</p> <p>4 Q. Do you recall now whether you ever saw a</p> <p>5 copy of those papers?</p> <p>6 A. I don't think I saw a copy of the papers. I</p> <p>7 don't recall.</p> <p>8 Q. If you turn back one page to the second page</p> <p>9 of this document, Gucci 47673, toward the bottom</p> <p>10 there is an e-mail from your attorney to Miss Halter</p> <p>11 saying, "Miss Kirk would be happy to provide</p> <p>12 whatever assistance she can. How far along are you</p> <p>13 on a draft affidavit?"</p> <p>14 Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. Is it your understanding that the plan was</p> <p>17 for Gucci's counsel to draft an affidavit for your</p> <p>18 signature?</p> <p>19 A. I don't recall.</p> <p>20 Q. If you look one e-mail above, it's an e-mail</p> <p>21 from Miss Halter to your attorney saying, "Great, we</p> <p>22 should be able to send you a preliminary list of</p> <p>23 topics/questions by tomorrow."</p> <p>24 Do you see that?</p> <p>25 A. Uh-huh.</p>
<p style="text-align: right;">87</p> <p>1 (Record read.)</p> <p>2 BY MR. PARADISE: Q. So I believe the</p> <p>3 question that I was asking was, isn't it true that</p> <p>4 pursuant to Paragraph 6 of the confidential</p> <p>5 settlement agreement that as a condition of</p> <p>6 settlement you are obligated to provide assistance</p> <p>7 to Gucci in connection with future actions it may</p> <p>8 bring?</p> <p>9 A. Yes.</p> <p>10 Q. So is it correct that you provided this</p> <p>11 declaration as part of your obligation under the</p> <p>12 settlement agreement with Gucci to provide such</p> <p>13 assistance?</p> <p>14 A. Yes.</p> <p>15 (Kirk Exhibit 11 is marked.)</p> <p>16 BY MR. PARADISE: Q. The court reporter has</p> <p>17 handed you what's been marked as Kirk Exhibit 11.</p> <p>18 If you take a look at this document, please. If</p> <p>19 you'll turn to the third page bearing production</p> <p>20 number Gucci 47674. Do you see that down at the</p> <p>21 bottom it says "Mark, as discussed," and this is an</p> <p>22 e-mail from Miss Halter, one of Gucci's attorneys,</p> <p>23 to Mr. Leonard, your attorney, saying, "Mark, as</p> <p>24 discussed, attached are copies of the papers that</p> <p>25 Woodforest, Frontline and Durango filed in support</p>	<p style="text-align: right;">89</p> <p>1 Q. Do you recall ever receiving a list of</p> <p>2 topics/questions?</p> <p>3 A. I don't recall.</p> <p>4 Q. Do you have any understanding as to whether</p> <p>5 Gucci ever provided your attorney with a list of</p> <p>6 topics/questions?</p> <p>7 A. I don't know.</p> <p>8 Q. Do you know if the list of topics/questions</p> <p>9 formed the basis of the information to be included</p> <p>10 in your declaration?</p> <p>11 A. I don't know.</p> <p>12 Q. If you turn back to your declaration,</p> <p>13 Exhibit 10. If you look at Paragraph 2. Why was</p> <p>14 Paragraph 2 included in the declaration?</p> <p>15 A. I don't know.</p> <p>16 Q. Did you draft -- personally draft the</p> <p>17 declaration that is Exhibit 10?</p> <p>18 A. No.</p> <p>19 Q. Who did?</p> <p>20 A. I believe my attorney did.</p> <p>21 (Kirk Exhibit 12 is marked.)</p> <p>22 BY MR. PARADISE: Q. You have been handed</p> <p>23 what's been marked as Kirk Exhibit 12. Have you</p> <p>24 ever seen this document before?</p> <p>25 A. Yeah.</p>

<p style="text-align: right;">90</p> <p>1 Q. What is Exhibit 12?</p> <p>2 A. I believe this is my personal declaration</p> <p>3 that was written up.</p> <p>4 Q. Who drafted this document?</p> <p>5 A. I did.</p> <p>6 Q. So you personally typed this up on a</p> <p>7 computer?</p> <p>8 A. Uh-huh.</p> <p>9 Q. Did you work from any sort of outline or</p> <p>10 notes in preparing this document?</p> <p>11 A. No.</p> <p>12 Q. So, how did you decide what topics to</p> <p>13 address in this document?</p> <p>14 MS. HALTER: Objection.</p> <p>15 MR. LEONARD: To the extent it calls for</p> <p>16 attorney-client communication. Again, this is</p> <p>17 getting into that distinction.</p> <p>18 Discussions we've had I'm going to object</p> <p>19 to, but you can answer as to information that was</p> <p>20 conveyed to you by me from Gucci.</p> <p>21 THE WITNESS: Okay. My declaration was to</p> <p>22 put in what -- what the bank's role was in my</p> <p>23 business.</p> <p>24 BY MR. PARADISE: Q. Now if you look at the</p> <p>25 second paragraph of Exhibit 12, which can we refer</p>	<p style="text-align: right;">92</p> <p>1 A. No.</p> <p>2 Q. Did you do any typing of the declaration</p> <p>3 after Exhibit 12 was prepared?</p> <p>4 A. You mean the legal, this part, the legal?</p> <p>5 Q. Exhibit 10, yeah.</p> <p>6 A. I didn't type it up, but I'm sure I wrote</p> <p>7 and crossed things out and so forth because it was</p> <p>8 from me. So I would do with any draft.</p> <p>9 Q. Do you recall doing that in this case,</p> <p>10 preparing mark-ups?</p> <p>11 A. Yes, I did in any of the declarations.</p> <p>12 Q. Who did you provide those mark-ups to?</p> <p>13 A. My attorney.</p> <p>14 Q. Do you know if anyone suggested that you add</p> <p>15 the line that appears at the second sentence of</p> <p>16 Paragraph 2?</p> <p>17 A. No. I don't recall.</p> <p>18 Q. If you look back at Exhibit 12, the draft,</p> <p>19 the third paragraph, it's a fairly lengthy</p> <p>20 paragraph. In my review it appears that all of that</p> <p>21 text does not appear in the final submitted</p> <p>22 declaration that's Exhibit 10. Is that correct?</p> <p>23 A. Correct.</p> <p>24 Q. Do you know why that paragraph was deleted?</p> <p>25 A. No, I don't.</p>
<p style="text-align: right;">91</p> <p>1 to this as your draft declaration?</p> <p>2 A. Yeah.</p> <p>3 Q. If you look at the second paragraph of</p> <p>4 Exhibit 12 and then you compare it to the submitted</p> <p>5 declaration, which is Exhibit 10, the second</p> <p>6 sentence of Paragraph 2 does not appear in</p> <p>7 Exhibit 12. Do you see that?</p> <p>8 A. Okay. Paragraph 2?</p> <p>9 Q. In Paragraph 2, yes.</p> <p>10 A. You're saying is not on my draft?</p> <p>11 Q. The line -- the second sentence, the part</p> <p>12 that said "If I did not receive an approval for a</p> <p>13 credit card charge," I would ship -- "I would not</p> <p>14 ship the customer's order"?</p> <p>15 A. Uh-huh.</p> <p>16 Q. That's not in your draft; is that correct?</p> <p>17 A. That's correct.</p> <p>18 Q. Do you know when that was added to the final</p> <p>19 document?</p> <p>20 A. Probably when I reviewed the final</p> <p>21 declaration before it was submitted.</p> <p>22 Q. Do you know who added that statement?</p> <p>23 A. I probably did.</p> <p>24 Q. Did you type up any additional drafts other</p> <p>25 than what's been marked as Exhibit 12?</p>	<p style="text-align: right;">93</p> <p>1 Q. Do you know why you included it originally?</p> <p>2 A. I thought it was important.</p> <p>3 Q. Do you know if someone else decided not to</p> <p>4 include it in your declaration?</p> <p>5 A. I do not.</p> <p>6 Q. You -- turn, again, in Exhibit 10, the final</p> <p>7 declaration. If you look at Paragraph 4, if you can</p> <p>8 just read that to yourself, please.</p> <p>9 A. Okay.</p> <p>10 Q. This is discussing the check box that you</p> <p>11 added on the web site; is that correct?</p> <p>12 A. Correct.</p> <p>13 Q. And I believe you testified earlier that it</p> <p>14 was only Frontline that required this check box; is</p> <p>15 that correct?</p> <p>16 A. Yes.</p> <p>17 Q. If you'll go down now to Paragraph 5 and</p> <p>18 compare this again to the -- happens to be the fifth</p> <p>19 paragraph in Exhibit 12. I think you'll find that</p> <p>20 there was a phrase added to the final declaration</p> <p>21 that was not -- does not appear in Exhibit 12 which</p> <p>22 is on the second line where it says "With a full</p> <p>23 description of products being sold." Do you see</p> <p>24 that?</p> <p>25 A. Yes.</p>

<p style="text-align: right;">94</p> <p>1 Q. Do you agree that that's not in the draft</p> <p>2 that is Exhibit 12?</p> <p>3 A. It is not.</p> <p>4 Q. Do you know why that was added?</p> <p>5 A. No.</p> <p>6 Q. Did you add it?</p> <p>7 A. Probably.</p> <p>8 Q. What was the -- in connection with</p> <p>9 chargebacks, what was the description of the product</p> <p>10 being sold that you provided in response to a</p> <p>11 chargeback?</p> <p>12 A. I provided an invoice that had the full</p> <p>13 description of the product.</p> <p>14 Q. Did you provide any information in addition</p> <p>15 to what was shown on the original invoice regarding</p> <p>16 the description of the product being sold?</p> <p>17 A. Well, that's all it says right here.</p> <p>18 Tracking number, invoice, IP address where the order</p> <p>19 originated from, and I would include their credit</p> <p>20 card receipt.</p> <p>21 Q. Okay. But just focusing on the description</p> <p>22 of the product sold, the only information that you</p> <p>23 would provide in response do a chargeback request</p> <p>24 was a description of the product as it appeared on</p> <p>25 the invoice?</p>	<p style="text-align: right;">96</p> <p>1 MS. HALTER: I probably have about an hour.</p> <p>2 So do you want to break for lunch?</p> <p>3 THE VIDEOGRAPHER: We're off the record.</p> <p>4 (Recess: 12:21 p.m. to 12:32 p.m.)</p> <p>5 THE VIDEOGRAPHER: This is Videotape 3 of</p> <p>6 Jennifer Kirk's deposition. We're back on the</p> <p>7 record it's 12:32.</p> <p>8 EXAMINATION BY MS. HALTER</p> <p>9 Q. Miss Kirk, my name is Jennifer Halter. As I</p> <p>10 mentioned at the beginning of the deposition, I</p> <p>11 represent Plaintiff, Gucci America, Inc. I just</p> <p>12 have a couple of questions to ask you. Some of it</p> <p>13 is follow-up to Mr. Paradise's questions. There may</p> <p>14 be a couple of new topics.</p> <p>15 The first thing I wanted to ask you --</p> <p>16 MR. PARADISE: Just for the record, I'm</p> <p>17 going to object to the extent you raise any new</p> <p>18 topics. You're only entitled to cross-examine this</p> <p>19 witness within the scope of the subjects of direct</p> <p>20 examination. You have not noticed this witness on</p> <p>21 your own.</p> <p>22 MS. HALTER: Well, we'll get to that if it</p> <p>23 happens.</p> <p>24 MR. PARADISE: Okay. I'm just giving you</p> <p>25 fair warning.</p>
<p style="text-align: right;">95</p> <p>1 A. Yes.</p> <p>2 Q. So, for example, if you turn back to</p> <p>3 Exhibit 1, which the item description where it says,</p> <p>4 "Gucci Signature Tote" --</p> <p>5 A. Uh-huh.</p> <p>6 Q. -- "Red and Green"?</p> <p>7 A. Yes.</p> <p>8 Q. Is that an example of the full description</p> <p>9 of the products being sold that you would provide?</p> <p>10 A. Yes.</p> <p>11 Q. When responding to a chargeback request, did</p> <p>12 you ever tell anyone that the product that had been</p> <p>13 sold was counterfeit?</p> <p>14 A. No.</p> <p>15 Q. Have you ever had any discussions directly</p> <p>16 with any attorney representing Gucci?</p> <p>17 A. No.</p> <p>18 Q. Have you ever had any discussions directly</p> <p>19 with anyone at Gucci?</p> <p>20 A. No.</p> <p>21 Q. Are you aware of anyone affiliated with The</p> <p>22 Bag Addiction ever having any discussions with any</p> <p>23 attorney or employee of Gucci?</p> <p>24 A. No.</p> <p>25 MR. PARADISE: I have no further questions.</p>	<p style="text-align: right;">97</p> <p>1 MS. HALTER: Fine.</p> <p>2 BY MS. HALTER: Q. First thing I wanted to</p> <p>3 ask you is you understand that your testimony here</p> <p>4 today is given under oath and it's the same oath</p> <p>5 that you would take if you were in front of a judge</p> <p>6 or a jury in a courtroom?</p> <p>7 A. Yes.</p> <p>8 Q. Earlier today you testified that you</p> <p>9 couldn't remember the exact language of the</p> <p>10 disclosures on your web site as to the fact that you</p> <p>11 were selling replica products.</p> <p>12 A. Uh-huh.</p> <p>13 Q. I have document I'd like to introduce as</p> <p>14 Exhibit 13 that may refresh your recollection on</p> <p>15 that topic.</p> <p>16 (Kirk Exhibit 13 is marked.)</p> <p>17 BY MS. HALTER: Q. Miss Kirk, I've handed</p> <p>18 you what's been marked as Exhibit 13. Does this</p> <p>19 appear to be an accurate screen shot from</p> <p>20 TheBagAddiction.com?</p> <p>21 A. Yes.</p> <p>22 Q. I'd like to direct your attention to the</p> <p>23 middle of the page where it says, "Are your handbags</p> <p>24 authentic," and the language there says, "No. All</p> <p>25 products sold are exact mirrors and are not being</p>

<p style="text-align: right;">98</p> <p>1 sold or represented as originals."</p> <p>2 Does that refresh your recollection as to</p> <p>3 the text of the disclosure on the web site?</p> <p>4 A. Yes.</p> <p>5 Q. It would -- this language would have</p> <p>6 appeared under the FAQ section of the web site. Is</p> <p>7 that your recollection?</p> <p>8 A. As what part of the web site?</p> <p>9 Q. I'm sorry. As part of the FAQ section?</p> <p>10 A. Oh, yes.</p> <p>11 Q. Okay. You also testified earlier that there</p> <p>12 was some additional disclosure in the form of a</p> <p>13 checked box. Before a customer checked out, they</p> <p>14 would have to say that they acknowledge that it was</p> <p>15 a replica product that they were purchasing?</p> <p>16 A. Yes.</p> <p>17 Q. You also testified earlier about various</p> <p>18 subcategories of handbags and accessories on the web</p> <p>19 site.</p> <p>20 A. Uh-huh.</p> <p>21 MS. HALTER: I just have a couple of</p> <p>22 documents that I think we can just put this whole</p> <p>23 thing in as Exhibit 14.</p> <p>24 (Kirk Exhibit 14 is marked.)</p> <p>25 BY MS. HALTER: Q. Miss Kirk, earlier</p>	<p style="text-align: right;">100</p> <p>1 Q. Is the satchel one of the subcategories of</p> <p>2 handbags that was sold on the web site?</p> <p>3 A. I don't recall what the categories were</p> <p>4 named.</p> <p>5 Q. Okay. Is a satchel a type of handbag that</p> <p>6 you're familiar with?</p> <p>7 A. Yes.</p> <p>8 Q. This was a product that was sold on the web</p> <p>9 site?</p> <p>10 A. Yes.</p> <p>11 Q. You had also testified that with these</p> <p>12 products that the customer would receive a dust</p> <p>13 cover bag?</p> <p>14 A. Correct.</p> <p>15 Q. In the description of this Gucci satchel in</p> <p>16 light gold, it also says that the item would come</p> <p>17 with an authenticity card and a care book. Are</p> <p>18 those two items typically included with the products</p> <p>19 that were sold on The Bag Addiction?</p> <p>20 A. Yes.</p> <p>21 Q. If you can flip to the next page. On this</p> <p>22 third page, can you tell me the item that is listed</p> <p>23 for sale?</p> <p>24 A. Gucci Indy Medium-Handle Bag.</p> <p>25 Q. And is a top-handle bag one of the types of</p>
<p style="text-align: right;">99</p> <p>1 during your deposition we were talking about --</p> <p>2 sorry, Mr. Paradise was asking you about the type of</p> <p>3 image that might appear if a customer was looking at</p> <p>4 a couple of different products on a page and what</p> <p>5 kind of picture would appear if they clicked on</p> <p>6 individual products. The document that I've marked</p> <p>7 as Exhibit 14, that first page would be "Gucci</p> <p>8 Signature Large Tote in Beige/Ebony." Is that the</p> <p>9 type of picture that would appear --</p> <p>10 A. Yes.</p> <p>11 Q. -- that the customer clicks?</p> <p>12 Okay. You said it appears underneath the</p> <p>13 single photograph on the page that there is an</p> <p>14 option to click for more photos?</p> <p>15 A. Correct.</p> <p>16 Q. And if we could just go through some of the</p> <p>17 types of subcategories of handbags and accessories</p> <p>18 that were sold on TheBagAddiction.com.</p> <p>19 This item appears to be a tote bag. Is a</p> <p>20 tote bag one of the items that was sold on</p> <p>21 TheBagAddiction.com?</p> <p>22 A. Yeah.</p> <p>23 Q. If you can flip to the second page. Can you</p> <p>24 tell me the item that appears on that second page?</p> <p>25 A. Gucci Satchel in gold.</p>	<p style="text-align: right;">101</p> <p>1 handbags that was sold on The Bag Addiction?</p> <p>2 A. Yes.</p> <p>3 Q. If you can flip to the next page. If you</p> <p>4 could tell me the item that's offered for sale on</p> <p>5 this page?</p> <p>6 A. Gucci Romy Medium Bag Black Patent.</p> <p>7 Q. And the item is described as a shoulder bag.</p> <p>8 Correct?</p> <p>9 A. Yeah. Sorry.</p> <p>10 Q. And is the shoulder bag one of the types of</p> <p>11 handbags that was offered for sale on The Bag</p> <p>12 Addiction?</p> <p>13 A. Yes.</p> <p>14 Q. If you could flip to the next page. Could</p> <p>15 you describe -- I'm sorry. Could you state what</p> <p>16 item is offered for sale on this page?</p> <p>17 A. Gucci Duchessa Medium Hobo in</p> <p>18 Beige/Ebony/Crystal, GG Fabric with Brown Leather</p> <p>19 Trim.</p> <p>20 Q. Is a hobo one of the styles of handbags that</p> <p>21 was offered for sale?</p> <p>22 A. Yes.</p> <p>23 Q. If you could flip to the next page as well.</p> <p>24 And what item is offered -- I'm sorry. What item is</p> <p>25 depicted in the screen shot?</p>

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<p>1 A. Gucci Crystal Clutch in Red Patent.</p> <p>2 Q. Is the clutch one of the types of handbags</p> <p>3 that was offered for sale?</p> <p>4 A. Yes.</p> <p>5 Q. If you could flip to the next page. What</p> <p>6 item is depicted in this screen shot?</p> <p>7 A. Gucci Papillon Evening Bag in Metallic Gold.</p> <p>8 Q. Is an evening bag one of the types of</p> <p>9 handbags that was offered for sale?</p> <p>10 A. Yes.</p> <p>11 Q. If you can flip to the next page and can you</p> <p>12 tell me what item is depicted in this screen shot?</p> <p>13 A. Gucci Indy Large Top-Handle Bag in Grey Mink</p> <p>14 with Grey Ostrich Leather Trim.</p> <p>15 Q. On TheBagAddiction.com was there a section</p> <p>16 for handbags that were called exotic handbags?</p> <p>17 A. I don't believe so.</p> <p>18 Q. And this is another example of a top-handle</p> <p>19 bag that would be another category of handbags</p> <p>20 offered for sale on The Bag Addiction?</p> <p>21 A. Yes.</p> <p>22 Q. If you could flip to the next page. Can you</p> <p>23 tell me what item is depicted in this screen shot?</p> <p>24 A. Gucci Small Princy Wrist Pouch in Sand/Ebony</p> <p>25 GG Fabric with Dark Gold Trim.</p>	<p>1 A. I believe so.</p> <p>2 Q. If you could flip to the next page. What</p> <p>3 item is depicted in this screen shot?</p> <p>4 A. Gucci Cardholder Black Patent Leather.</p> <p>5 Q. Did you offer cardholders for sale as one of</p> <p>6 the categories of accessories?</p> <p>7 A. Yes.</p> <p>8 Q. If you could flip to the next page. What</p> <p>9 item is depicted in this screen shot?</p> <p>10 A. Gucci Guccissima Belt with Gucci Script</p> <p>11 Buckle.</p> <p>12 Q. A belt is one of the categories of</p> <p>13 accessories?</p> <p>14 A. Yes.</p> <p>15 Q. And if you can flip to the next page.</p> <p>16 Describe the item that's depicted in the screen</p> <p>17 shot.</p> <p>18 A. Gucci Zipper Wallet Black Leather.</p> <p>19 Q. A wallet is one of the categories of</p> <p>20 accessories offered for sale at The Bag Addiction?</p> <p>21 A. Yes.</p> <p>22 Q. Go to the next page.</p> <p>23 A. Gucci Black Leather Wallet.</p> <p>24 Q. And was there a separate category of</p> <p>25 accessories for men accessories?</p>
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<p>1 Q. Would you describe this product as a</p> <p>2 wristlet?</p> <p>3 A. Yes.</p> <p>4 Q. Is that one of the categories of handbags</p> <p>5 that was offered for sale?</p> <p>6 A. I don't recall.</p> <p>7 Q. Flip to the next page. What item is</p> <p>8 depicted in this screen shot?</p> <p>9 A. Gucci Belt Bag in Beige/Ebony GG Fabric and</p> <p>10 Brown Leather Trim.</p> <p>11 Q. Did TheBagAddiction.com have a category for</p> <p>12 belt bags?</p> <p>13 A. I believe so.</p> <p>14 Q. If you can flip to the next page. And what</p> <p>15 item is depicted in this screen shot?</p> <p>16 A. Gucci Gold Women's Fashion Watch Pearl</p> <p>17 White.</p> <p>18 Q. Watches were one of the accessories that</p> <p>19 were offered for sale on The Bag Addiction?</p> <p>20 A. Yes.</p> <p>21 Q. If you could flip to the next page. What</p> <p>22 item is depicted in this screen shot?</p> <p>23 A. Gucci Passport Cover - Chocolate.</p> <p>24 Q. Was a passport cover one of the categories</p> <p>25 of accessories?</p>	<p>1 A. Yes.</p> <p>2 Q. This would be a men's wallet offered for</p> <p>3 sale?</p> <p>4 A. Yes.</p> <p>5 Q. If you could flip to the next page.</p> <p>6 A. Gucci Signature Diaper Bag Beige.</p> <p>7 Q. Was there a separate category for diaper</p> <p>8 bags as a type of handbag on The Bag Addiction?</p> <p>9 A. Yes.</p> <p>10 Q. And the next page?</p> <p>11 A. Gucci Brown Semi-Rimless Sunglasses.</p> <p>12 Q. And sunglasses, I think you testified</p> <p>13 earlier, were one of the types of categories of</p> <p>14 accessories offered for sale?</p> <p>15 A. Yes, I believe so.</p> <p>16 Q. And the next page?</p> <p>17 A. Gucci Duchessa Cosmetic Pouch MM in</p> <p>18 Beige/Ebony/Crystal GG Fabric with Brown Leather</p> <p>19 Trim.</p> <p>20 Q. Was a cosmetic pouch one of the categories</p> <p>21 of accessories or handbags offered for sale in The</p> <p>22 Bag Addiction?</p> <p>23 A. Yes.</p> <p>24 Q. And the last page?</p> <p>25 A. Gucci Medium Messenger Bag in Black.</p>

<p style="text-align: right;">106</p> <p>1 Q. Was the messenger bag one of the categories 2 of handbags offered for sale in TheBagAddiction.com? 3 A. Yes. 4 Q. If I can ask you to direct your attention 5 back to the e-mail that was marked as Exhibit 3 6 earlier today, and I'm looking at the bottom of the 7 first page which appears to be an e-mail from Bag 8 Addiction, September 14th, stating, "I have several 9 friends in this field I can refer over to you if 10 this goes through okay." 11 Do you see that? 12 A. Yes. 13 Q. Can you tell me what field you were 14 referring to in that e-mail? 15 A. Selling replicas. Web sites selling 16 replicas. 17 Q. Did you end up referring any friends over to 18 Nathan Counley? 19 A. Yes, I did. 20 Q. Do you recall who you referred over? 21 A. No. I referred several people. I don't 22 know who actually used him. I don't recall. 23 Q. Might one of the individuals that you 24 referred over have been Stephanie Walker? 25 A. Yes.</p>	<p style="text-align: right;">108</p> <p>1 MS. HALTER: And 17 should be an application 2 for Melissa Gampel. 3 THE WITNESS: Yes. 4 MR. PARADISE: Okay. You just reversed two 5 of the Counley exhibits numbers in that, but that's 6 fine. 7 MS. HALTER: I have Gampel as Exhibit 23. 8 MR. PARADISE: Uh-huh. 9 MS. HALTER: Strive Company as 17. 10 MR. PARADISE: Yep. 11 MS. HALTER: And Norlie as Exhibit 19. 12 MR. PARADISE: Great. Thank you. 13 MS. HALTER: No problem. 14 BY MS. HALTER: Q. Miss Kirk, if you can 15 look at what's been marked as Exhibit 15, and I'd 16 like to direct your attention to Section 3 of the 17 application. 18 A. Uh-huh. 19 Q. It's titled "Trade References." 20 A. Uh-huh. 21 Q. And do you see that Laurette Company is 22 listed as a trade reference? 23 A. Yes. 24 Q. Also listed as a trade reference is EH Best 25 Fashion?</p>
<p style="text-align: right;">107</p> <p>1 Q. Might another have been Melissa Gampel? 2 A. Yes. 3 Q. And what about Richard Norlie? 4 A. Yes. 5 MS. HALTER: I have three more I'll 6 introduce. If you could mark them as 15, 16 and 17. 7 (Kirk Exhibits marks 15 through 17 are 8 marked.) 9 BY MS. HALTER: Q. Miss Kirk, the court 10 reporter is handing you a document that has just 11 been marked as Exhibits 15, 16, and 17, and which 12 were previously marked as Counley Exhibits 17, 19 13 and 23. 14 MR. PARADISE: Counsel, just to make sure I 15 have this right because that wasn't the order I have 16 them in. Can we just confirm what's been marked as 17 15, 16 and 17, which ones? 18 MS. HALTER: I believe 15 should be a 19 Woodforest application with the business name Norlie 20 Enterprises International. 21 THE WITNESS: Yeah, that's what I have. 22 MS. HALTER: 16 should be an application for 23 Strive Company, Inc. 24 MR. PARADISE: Uh-huh. 25 THE WITNESS: Yes.</p>	<p style="text-align: right;">109</p> <p>1 A. Uh-huh. 2 Q. I believe you testified earlier that EH Best 3 Fashion was one of your suppliers? 4 A. Correct. 5 Q. And that EH Best Fashions supplied you with 6 replica products? 7 A. Yes. 8 Q. To your knowledge, did EH Best Fashion 9 supply anything other than those replica products? 10 A. No. 11 Q. If I can ask you to look at Exhibit 16, and 12 if I could direct your attention to the middle of 13 the page which is titled Owners and Officers 14 Information and the name "Stephanie Walker" appears 15 in that section. 16 A. Uh-huh. 17 Q. Is that the Stephanie Walker that we had 18 discussed earlier? 19 A. Yes. 20 Q. And in the trade references section Laurette 21 Company is listed as a trade reference? 22 A. Yes. 23 Q. And if I can ask you to turn to the second 24 page which is Bate-stamped WNB 00926. In the vendor 25 section appears the name "Suijian Liao"?</p>

<p style="text-align: right;">110</p> <p>1 A. Yes.</p> <p>2 Q. Is that the same supplier that you used for</p> <p>3 your replica products?</p> <p>4 A. Yes.</p> <p>5 Q. If you can look at Exhibit 17 and, again,</p> <p>6 I'll direct your attention to the section titled</p> <p>7 "Trade References." It's a little difficult to read</p> <p>8 it on this copy. You'll see that Laurette Company</p> <p>9 is listed as a trade reference?</p> <p>10 A. Yes.</p> <p>11 Q. And as is Red Carpet Bags?</p> <p>12 A. Uh-huh.</p> <p>13 Q. Do you know who the owner or operator of Red</p> <p>14 Carpet Bags is?</p> <p>15 A. Yeah. That's the person on the witness</p> <p>16 list, Malky.</p> <p>17 Q. I believe you testified earlier that a</p> <p>18 friend had introduced you to Malky Goldblatt?</p> <p>19 A. Yes.</p> <p>20 Q. Do you recall the name of that friend?</p> <p>21 A. Melissa Gampel.</p> <p>22 Q. If you could turn to the second page of this</p> <p>23 document -- I'm sorry. Actually it's the third</p> <p>24 page, WNB 00571.</p> <p>25 A. Uh-huh.</p>	<p style="text-align: right;">112</p> <p>1 Q. Uh-huh.</p> <p>2 And actually turning back to the document</p> <p>3 that was marked as Exhibit 3, if I can ask you to</p> <p>4 turn to the fourth page of that e-mail chain.</p> <p>5 Toward the bottom of the page Mr. Counley says in</p> <p>6 the second sentence there, "We have an offshore bank</p> <p>7 that is willing to accept startup for lower volume,</p> <p>8 less than \$100,000 a month replica merchants and</p> <p>9 with competitive rates."</p> <p>10 And then on the next page he goes on to say</p> <p>11 that the discount rate could be somewhere between</p> <p>12 6.95 and 7.95 percent.</p> <p>13 A. Uh-huh.</p> <p>14 Q. Based on your testimony it appears that you</p> <p>15 ultimately did not get processed through an offshore</p> <p>16 bank; is that right?</p> <p>17 A. Correct.</p> <p>18 Q. Were you more comfortable using -- I'm</p> <p>19 sorry, strike that.</p> <p>20 Did you have any concerns about the</p> <p>21 possibility of processing through an offshore bank?</p> <p>22 A. Yes.</p> <p>23 Q. What were those concerns?</p> <p>24 A. Delays in payments coming to me. And the</p> <p>25 risk that your money is not protected like by a</p>
<p style="text-align: right;">111</p> <p>1 Q. And in the vendor section it lists Laurette?</p> <p>2 A. I see that, but that's not correct.</p> <p>3 Q. So --</p> <p>4 A. I didn't supply her with anything.</p> <p>5 Q. Do you happen to know who her suppliers</p> <p>6 were?</p> <p>7 A. The same ones as me.</p> <p>8 Q. So she was using suppliers of replica</p> <p>9 products?</p> <p>10 A. Correct.</p> <p>11 Q. Do you recall why you referred these</p> <p>12 individuals to Nathan Counley?</p> <p>13 A. He was the only one we knew in the United</p> <p>14 States that did high-risk merchant accounts.</p> <p>15 Q. When you say "high-risk merchant accounts,"</p> <p>16 do you mean specifically for replica products</p> <p>17 merchants?</p> <p>18 A. Yes.</p> <p>19 MR. PARADISE: Objection to form.</p> <p>20 BY MS. HALTER: Q. You can answer.</p> <p>21 A. "High risk" meant -- and I didn't know this</p> <p>22 terminology till we got into it. "High risk" meant</p> <p>23 you had to go offshore to get funding and so forth</p> <p>24 for credit cards because you had a high risk -- you</p> <p>25 were selling a high-risk item.</p>	<p style="text-align: right;">113</p> <p>1 bank.</p> <p>2 Q. So in your mind, would you say that you were</p> <p>3 more comfortable with the fact that you had domestic</p> <p>4 U.S. processors?</p> <p>5 A. Yes.</p> <p>6 Q. And to your knowledge did the individuals</p> <p>7 that you had referred to Mr. Counley have any</p> <p>8 difficulty finding domestic U.S. processors?</p> <p>9 A. Yes. They all did.</p> <p>10 Q. Other than the three individuals that we</p> <p>11 just spoke about, do you recall anybody else that</p> <p>12 you may have referred to Mr. Counley?</p> <p>13 A. Not that I recall, no.</p> <p>14 MS. HALTER: I think we may end up talking a</p> <p>15 little bit about the confidential settlement</p> <p>16 agreement, so I'll let you know if we're getting</p> <p>17 into the specifics of that.</p> <p>18 MR. LEONARD: Okay.</p> <p>19 BY MS. HALTER: Q. Miss Kirk, if I can ask</p> <p>20 you to take a look back at the document that was</p> <p>21 marked as Exhibit 10, Declaration of Jennifer Kirk.</p> <p>22 A. Okay.</p> <p>23 Q. As you sit here today, are there any</p> <p>24 statements in this declaration that you believe to</p> <p>25 be untrue?</p>

<p style="text-align: right;">114</p> <p>1 A. No.</p> <p>2 MS. HALTER: And I would actually like to go</p> <p>3 back to the confidential settlement agreement. Can</p> <p>4 we go off the record for a minute?</p> <p>5 THE VIDEOGRAPHER: We're off the record.</p> <p>6 It's 12:53.</p> <p>7 (Discussion off the record: 12:53 p.m.</p> <p>8 to 12:53 p.m.)</p> <p>9 THE VIDEOGRAPHER: Back on the record.</p> <p>10 BY MS. HALTER: Q. Miss Kirk, if you could</p> <p>11 turn to Page 4 of the document marked Exhibit 10.</p> <p>12 A. Okay.</p> <p>13 Q. In Paragraph 6 of this document, The Named</p> <p>14 Defendant's Cooperation. Is it your understanding</p> <p>15 that anything in this paragraph would require you to</p> <p>16 make any kind of untrue testimony versus any false</p> <p>17 declarations?</p> <p>18 A. No.</p> <p>19 Q. Would you have submitted any false</p> <p>20 declarations as a result of this paragraph?</p> <p>21 A. No.</p> <p>22 MS. HALTER: I have three -- one more</p> <p>23 exhibit.</p> <p>24 MS. HALTER: Mark this Exhibit 18.</p> <p>25 (Kirk Exhibit 18 is marked.)</p>	<p style="text-align: right;">116</p> <p>1 "Further your clients failed to cure this</p> <p>2 breach within the 15-day period allotted under the</p> <p>3 agreement. However as a courtesy, we will allow</p> <p>4 your clients until Monday, May 11th, 2009 to remit</p> <p>5 the outstanding payment of \$15,000. If your clients</p> <p>6 failed to remit the outstanding payment in full by</p> <p>7 that date, the full \$5.2 million dollar consent</p> <p>8 judgment shall become immediately due and payable</p> <p>9 without further notice."</p> <p>10 Q. I believe you testified earlier that other</p> <p>11 than the initial payment under the confidential</p> <p>12 settlement agreement that no other payments have</p> <p>13 been made?</p> <p>14 A. That's correct.</p> <p>15 Q. And you had also testified that you haven't</p> <p>16 received any notice as to your being in breach of</p> <p>17 the agreement. Does this document refresh your</p> <p>18 recollection?</p> <p>19 A. Yes, it does refresh my recollection.</p> <p>20 Q. Did you, in fact, receive notice that you</p> <p>21 were in breach of the agreement?</p> <p>22 A. This is -- a copy of this? Yes.</p> <p>23 Q. Okay.</p> <p>24 A. Okay.</p> <p>25 MS. HALTER: If we can take a quick break, I</p>
<p style="text-align: right;">115</p> <p>1 BY MS. HALTER: Q. Miss Kirk, the court</p> <p>2 reporter has handed you a document that has been</p> <p>3 marked as Exhibit 18, which is a May 5th, 2009</p> <p>4 letter from Gucci's counsel to your attorney. And I</p> <p>5 would like to direct your attention to the second</p> <p>6 and third paragraphs of that letter which state that</p> <p>7 the bankruptcy court dismissed Mr. Kirk's case on</p> <p>8 April 9th, 2009, the paragraph beginning with that</p> <p>9 phrase. Do you see that.</p> <p>10 A. Yes.</p> <p>11 Q. And if you could read allowed the second</p> <p>12 paragraph and third paragraph.</p> <p>13 A. "The bankruptcy court dismissed Mr. Kirk's</p> <p>14 case on April 8th, 2009 which restored Plaintiff's</p> <p>15 right to collect settlement payments from Mr. Kirk.</p> <p>16 Pursuant to the terms of confidential settlement</p> <p>17 agreement, the agreement entered into between the</p> <p>18 parties in the above-referenced case, your clients</p> <p>19 were required to remit their second scheduled</p> <p>20 settlement payment on March 29th, 2009 in the amount</p> <p>21 of \$15,000. The obligation became immediately due</p> <p>22 upon the bankruptcy's court dismissal as to</p> <p>23 Mr. Kirk's case. To date your client has not</p> <p>24 remitted any portion of the \$15,000 payment and,</p> <p>25 therefore, are in breach of agreement.</p>	<p style="text-align: right;">117</p> <p>1 think I may be done.</p> <p>2 THE VIDEOGRAPHER: We're off the record.</p> <p>3 It's 12:57.</p> <p>4 (Recess: 12:57 p.m. to 1:00 p.m.)</p> <p>5 THE VIDEOGRAPHER: We're back on the</p> <p>6 record at 1:00 o'clock.</p> <p>7 BY MS. HALTER: Q. Miss Kirk, at two of the</p> <p>8 documents that we've looked at today are Exhibit 6,</p> <p>9 the Confidential Settlement Agreement, and Exhibit</p> <p>10 9, the Final Order and Judgment on Consent.</p> <p>11 Other than what's contained in those two</p> <p>12 documents, do you have any understanding or</p> <p>13 agreement with Gucci that's not reflected in these</p> <p>14 documents?</p> <p>15 A. No.</p> <p>16 MS. HALTER: I have no further questions.</p> <p>17 MR. PARADISE: I have two redirect. Why</p> <p>18 don't I just do it from here.</p> <p>19 MS. HALTER: Should I stay mic'd up?</p> <p>20 MR. PARADISE: You might as well. He'll</p> <p>21 pick it up on this.</p> <p>22 EXAMINATION BY MR. PARADISE</p> <p>23 Q. Miss Kirk, if I could ask you to just pull</p> <p>24 out Exhibits 13 and 14. Did you or anyone else on</p> <p>25 behalf of the Laurette Company provide any of the</p>

<p style="text-align: right;">118</p> <p>1 documents or any of the screen shots that appear in</p> <p>2 Exhibit 13 and 14 to Woodforest in connection with</p> <p>3 your application to process credit cards?</p> <p>4 A. I do not know. I don't know if I provided a</p> <p>5 screen shot. I do know that they had to verify my</p> <p>6 web site.</p> <p>7 Q. Do you recall you personally providing any</p> <p>8 web site screen shots to Woodforest in connection</p> <p>9 with your application?</p> <p>10 A. No.</p> <p>11 Q. Do you recall providing web site screen</p> <p>12 shots to Woodforest at any time?</p> <p>13 A. No.</p> <p>14 Q. Do you have any knowledge of anyone on</p> <p>15 behalf of the Laurette Company providing web site</p> <p>16 screen shots to Woodforest at any time?</p> <p>17 A. No. But it would have gone through Nathan.</p> <p>18 It wouldn't gone through -- I didn't communicate</p> <p>19 with Woodforest.</p> <p>20 Q. But you have no knowledge -- to your</p> <p>21 knowledge, you never provided any screen shots to</p> <p>22 Mr. Counley to provide to Woodforest?</p> <p>23 A. I did provide a screen shot at one time</p> <p>24 regarding the checkout. In the checkout box it</p> <p>25 said, "You understand these items are replicas."</p>	<p style="text-align: right;">120</p> <p>1 And I had to print that out and submit it</p> <p>2 with my application.</p> <p>3 Q. Do you have a recollection of printing out</p> <p>4 any screen shots showing products that were offered</p> <p>5 for sale on your web site to provide to Woodforest?</p> <p>6 A. No.</p> <p>7 MR. PARADISE: I have no further questions.</p> <p>8 THE VIDEOGRAPHER: We're finished. It's</p> <p>9 1:04.</p> <p>10 (Deposition concluded at 1:04 p.m.)</p>
<p style="text-align: right;">119</p> <p>1 Q. Was that in connection with your discussions</p> <p>2 with Frontline?</p> <p>3 A. Yes.</p> <p>4 Q. So again --</p> <p>5 A. I don't know what Mr. Counley did with that</p> <p>6 information. Whether he gave it to Woodforest or</p> <p>7 Frontline, I have no idea.</p> <p>8 Q. Okay. But sitting here today, you have no</p> <p>9 knowledge that that screen shot was given to</p> <p>10 Woodforest?</p> <p>11 A. Correct.</p> <p>12 Q. Or any other screen shot?</p> <p>13 A. Correct.</p> <p>14 Q. At any time in connection with the</p> <p>15 application process with Woodforest, did you provide</p> <p>16 any information to Woodforest other than what is</p> <p>17 contained in the application document that we looked</p> <p>18 at before as Kirk Exhibit 4?</p> <p>19 A. Yes, I did.</p> <p>20 Q. What did you provide?</p> <p>21 A. I had to provide my return policy and I</p> <p>22 believe the checkout process. And in seeing these,</p> <p>23 I see that that was done by other people that use</p> <p>24 Woodforest, too. You always had to show your return</p> <p>25 policy so the bank was aware of your policy.</p>	<p style="text-align: right;">121</p> <p>1 PENALTY OF PERJURY</p> <p>2</p> <p>3 I, the undersigned, hereby certify that I</p> <p>4 have read the foregoing deposition, that I know</p> <p>5 the contents thereof, and I declare under penalty</p> <p>6 of perjury that the foregoing is true and correct</p> <p>7 and that there are:</p> <p>8</p> <p>9 (check one) _____NO CORRECTIONS</p> <p>10 _____CORRECTIONS PER ATTACHED</p> <p>11</p> <p>12 Executed on this _____ day of</p> <p>13 _____, 2010, at _____,</p> <p>14 California.</p> <p>15</p> <p>16</p> <p>17 _____</p> <p>18 JENNIFER KIRK</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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<div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <p>1</p> <p>2 DEPONENT'S CHANGES OR CORRECTIONS</p> <p>3 Note: If you are adding to your testimony, print</p> <p>4 the exact words you want to add. If you are</p> <p>5 deleting from your testimony, print the exact</p> <p>6 words you want to delete. Specify with "Add" or</p> <p>7 "Delete" and sign this form. To change a word,</p> <p>8 indicate: Change "X" to "Y".</p> <p>9 DEPOSITION OF: JENNIFER KIRK</p> <p>10 NAME OF CASE: GUCCI AMERICA V. FRONTLINE, ET AL</p> <p>11 DATE OF DEPOSITION: JULY 8, 2010</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 10%;">PAGE</th> <th style="width: 10%;">LINE</th> <th style="width: 80%;">CHANGE/ADD/DELETE</th> </tr> </thead> <tbody> <tr><td>12</td><td>_____</td><td>_____</td></tr> <tr><td>13</td><td>_____</td><td>_____</td></tr> <tr><td>14</td><td>_____</td><td>_____</td></tr> <tr><td>15</td><td>_____</td><td>_____</td></tr> <tr><td>16</td><td>_____</td><td>_____</td></tr> <tr><td>17</td><td>_____</td><td>_____</td></tr> <tr><td>18</td><td>_____</td><td>_____</td></tr> <tr><td>19</td><td>_____</td><td>_____</td></tr> <tr><td>20</td><td>_____</td><td>_____</td></tr> <tr><td>21</td><td>_____</td><td>_____</td></tr> <tr><td>22</td><td>_____</td><td>_____</td></tr> <tr><td>23</td><td>_____</td><td>_____</td></tr> <tr><td>24</td><td>Signature: _____</td><td>Date: _____</td></tr> <tr><td>25</td><td></td><td></td></tr> </tbody> </table> </div> <div style="width: 5%; text-align: right;"> <p>1</p><p>2</p><p>3</p><p>4</p><p>5</p><p>6</p><p>7</p><p>8</p><p>9</p><p>10</p><p>11</p><p>12</p><p>13</p><p>14</p><p>15</p><p>16</p><p>17</p><p>18</p><p>19</p><p>20</p><p>21</p><p>22</p><p>23</p><p>24</p><p>25</p> </div> </div>	PAGE	LINE	CHANGE/ADD/DELETE	12	_____	_____	13	_____	_____	14	_____	_____	15	_____	_____	16	_____	_____	17	_____	_____	18	_____	_____	19	_____	_____	20	_____	_____	21	_____	_____	22	_____	_____	23	_____	_____	24	Signature: _____	Date: _____	25			<div style="text-align: right; padding-right: 10px;"> <p>M.O.A. DEPOSITION REPORTERS</p> <p>Certified Shorthand Reporters</p> <p>1300 Ethan Way, Suite 200</p> <p>Sacramento, California 95825</p> <p>Phone: (800) 300-3072</p> </div> <p>July 19, 2010</p> <p>Jennifer Kirk</p> <p>703 Chesterfield Way</p> <p>Rocklin, CA 95765</p> <p>Re: Your deposition taken July 8, 2010, in the</p> <p>case of GUCCI AMERICA V. FRONTLINE, ET AL.</p> <p>Dear Ms. Kirk:</p> <p>Your deposition transcript is now ready for</p> <p>your review. You have 30 days from the date of</p> <p>this letter to review and make changes or</p> <p>corrections to your deposition testimony. This is</p> <p>not a legal requirement; however, if no changes</p> <p>are made to your deposition testimony in this period</p> <p>of time, your testimony will be deemed correct as</p> <p>transcribed by the deposition officer.</p> <p>You may wish to discuss with your attorney</p> <p>whether he/she requires that it be read, corrected</p> <p>and signed before it is filed.</p> <p>If you wish to read your deposition</p> <p>transcript, please, call our office to schedule an</p> <p>appointment to read the original transcript, or you</p> <p>may read your attorney's copy and notify us of any</p> <p>changes.</p> <p>Very truly yours,</p> <p>M.O.A. DEPOSITION REPORTERS/sd</p> <p>cc: All counsel present</p>
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<div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <p>1 CERTIFICATE OF CERTIFIED SHORTHAND REPORTER</p> <p>2 I, SHERYL DIRKS, a Certified Shorthand</p> <p>3 Reporter, licensed by the State of California,</p> <p>4 being empowered to administer oaths and</p> <p>5 affirmations pursuant to Section 2093(b) of the</p> <p>6 Code of Civil Procedure, do hereby certify:</p> <p>7 That the witness named in the foregoing</p> <p>8 deposition was present at the time and place</p> <p>9 specified, and was by me administered an oath to</p> <p>10 testify as to the truth, the whole truth, and</p> <p>11 nothing but the truth; that the said proceeding</p> <p>12 was taken before me, in shorthand writing, and was</p> <p>13 thereafter transcribed, under my direction, by</p> <p>14 computer-assisted transcription;</p> <p>15 That the foregoing transcript constitutes a</p> <p>16 full, true and correct report of the proceedings</p> <p>17 which then and there took place; that I am a</p> <p>18 disinterested person to the said action.</p> <p>19 IN WITNESS WHEREOF, I have hereunto</p> <p>20 subscribed my signature on this _____ day of</p> <p>21 _____, 2010.</p> <p>22 _____</p> <p>23 _____</p> <p>24 SHERYL DIRKS, CSR</p> <p>25 Certified Shorthand Reporter</p> <p>California License #3513</p> </div> <div style="width: 5%; text-align: right;"> <p>1</p><p>2</p><p>3</p><p>4</p><p>5</p><p>6</p><p>7</p><p>8</p><p>9</p><p>10</p><p>11</p><p>12</p><p>13</p><p>14</p><p>15</p><p>16</p><p>17</p><p>18</p><p>19</p><p>20</p><p>21</p><p>22</p><p>23</p><p>24</p><p>25</p> </div> </div>																																														

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Exhibit 4

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
GUCCI AMERICA, INC. and CHLOÉ SAS,

Plaintiffs,

-against-

LAURETTE COMPANY, INC. and JENNIFER
MARIE MATTCHEM a/k/a JENNIFER MARIE
KIRK a/k/a JENNIFER BESSON d/b/a
THEBAGADDICTION.COM; PATRICK B. KIRK
d/b/a THEBAGADDICTION.COM; ABC
COMPANIES; and JOHN DOES,

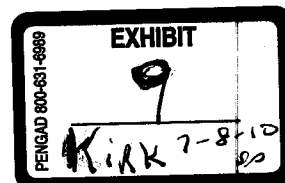
Defendants.
-----X

08 Civ. 5065 (LAK)

[PROPOSED]
**FINAL ORDER AND
JUDGMENT ON CONSENT**

WHEREAS, Plaintiffs Gucci America, Inc. and Chloé SAS (collectively, "Plaintiffs") commenced this action by the filing of a complaint on June 3, 2008 (the "Complaint") against Defendants Laurette Company, Inc. and Jennifer Marie Mattchen a/k/a Jennifer Marie Kirk a/k/a Jennifer Besson d/b/a TheBagAddiction.com, ABC Companies and John Does (collectively, "Defendants") alleging, *inter alia*, that Defendants are manufacturing, importing, exporting, distributing, marketing, advertising, offering for sale, and/or selling goods bearing counterfeit reproductions of Plaintiffs' federally registered trademarks, trade names, and/or logos; and

WHEREAS, this Court issued a Temporary Restraining Order and Order to Show Cause on June 3, 2008 applicable to all Defendants and setting forth certain specified injunctive relief, providing for expedited discovery, and setting forth a schedule for Plaintiffs' application to convert the Temporary Restraining Order into a preliminary injunction; and



WHEREAS, on June 6, 2008, Plaintiffs filed an amended complaint (the "First Amended Complaint") adding Patrick B. Kirk d/b/a TheBagAddiction.com as a Defendant; and

WHEREAS, on June 13, 2008, this Court entered an Order endorsing the Preliminary Injunction on Consent entered into between Defendants Laurette Company, Inc., Jennifer Marie Kirk and Patrick B. Kirk, all doing business as TheBagAddiction.com (collectively, "the Named Defendants") and Plaintiffs; and

WHEREAS, Plaintiffs have filed with the Clerk of the Court proofs of service of process; and

WHEREAS, the Named Defendants have not answered the Complaint or First Amended Complaint; and

WHEREAS, for the purposes of this Final Order and Judgment on Consent, "Plaintiffs' Marks" is defined to include all Plaintiffs' trademarks, trade names, logos, and other source-indicating indicia, as set forth in Plaintiffs' Complaint in this action; and

WHEREAS, for the purposes of this Final Order and Judgment on Consent, "Counterfeit Products" is defined to include all goods or services, including but not limited to totes, satchels, top handle bags, shoulder bags, hobos, clutches, evening bags, exotic bags, wristlets, belt bags, watches, passport covers, business card holders, belts, women's wallets, men's wallets, diaper bags, sunglasses, cosmetic pouches, and messenger bags, that: (a) are or were manufactured, exported, imported, distributed, marketed, advertised, offered for sale and/or sold by any of the Named Defendants or otherwise in connection with the website TheBagAddiction.com; and (b) make or made use of any of Plaintiffs' Marks; and

WHEREAS, the Named Defendants hereby agree that: (a) they will no longer operate the website TheBagAddiction.com, which has been rendered non-operational while this action

was pending; (b) the Named Defendants will not be involved in any additional sales of Counterfeit Products or any other goods or services that make use of Plaintiffs' Marks; (c) all banks and other Financial Institutions (as the term is defined below) that maintain accounts, letters of credit, or other assets for or payable to the Named Defendants, wherever in the world such Financial Institutions, accounts, letters of credit, or other assets are located, have the express permission of the Named Defendants to comply with this Court's orders and discovery powers; and (d) the Named Defendants will provide to Plaintiffs all information and documents in their possession, custody, control, or which they have the means to obtain through reasonable, good faith efforts concerning all sources of Counterfeit Products and the identities and activities of anyone who may have materially contributed to sales of Counterfeit Products whether through TheBagAddiction.com website or otherwise; and

WHEREAS, the Named Defendants have consented to the issuance of a Final Order and Judgment as set forth below:

IT IS HEREBY ORDERED, ADJUDGED and DECREED that

1. The Named Defendants are immediately PERMANENTLY ENJOINED AND RESTRAINED from:

- (a) manufacturing, distributing, delivering, shipping, importing, exporting, advertising, marketing, promoting, selling or otherwise offering for sale Counterfeit Products or any other products produced by Plaintiffs or confusingly similar to Plaintiffs' Products, or that otherwise bear, contain, display or utilize any of Plaintiffs' Marks, any derivation or colorable imitation thereof, or any mark confusingly similar thereto or likely to dilute or detract from the Plaintiffs' Marks; and

- (b) making or employing any other commercial use of Plaintiffs' Marks, any derivation or colorable imitation thereof, or any mark confusingly similar thereto or likely to dilute or detract from the Plaintiffs' Marks; and
- (c) using any other false designation of origin or false description or representation or any other thing calculated or likely to cause confusion or mistake in the mind of the trade or public or to deceive the trade or public into believing that the Named Defendants' products or activities are in any way sponsored, licensed or authorized by or affiliated or connected with Plaintiffs; and
- (d) doing any other acts or things calculated or likely to cause confusion or mistake in the mind of the public or to lead purchasers or consumers or investors into the belief that the products or services promoted, offered or sponsored by the Named Defendants come from Plaintiffs or their licensees, or are somehow licensed, sponsored, endorsed, or authorized by, or otherwise affiliated or connected with Plaintiffs; and
- (e) diluting and infringing all Plaintiffs' Marks and damaging Plaintiffs' goodwill; and
- (f) otherwise competing unfairly with Plaintiffs or any of their authorized licensees in any manner; and
- (g) moving, returning or otherwise disposing of, in any manner, any Counterfeit Products or any other products confusingly similar to Plaintiffs' Products, or that otherwise bear, contain, display or utilize

any of Plaintiffs' Marks, any derivation or colorable imitation thereof, or any mark confusingly similar thereto or likely to dilute or detract from the Plaintiffs' Marks; and

- (h) secreting, destroying, altering, removing, or otherwise dealing with the unauthorized products or any books or records which contain any information relating to the importing, manufacturing, producing, distributing, circulating, selling, marketing, offering for sale, advertising, promoting, renting or displaying of all unauthorized products which infringe Plaintiff's Trademarks; and
- (i) assisting, aiding, or abetting any other person or business entity in engaging in or performing any of the activities referred to in the above subparagraphs (a) through (h), or effecting any assignments or transfers, forming new entities or associations or utilizing any other device for the purpose of circumventing or otherwise avoiding the prohibitions set forth in subparagraphs (a) through (h).

2. IT IS FURTHER ORDERED that the Named Defendants shall pay Plaintiffs a judgment in the amount of \$5.2 million, calculated pursuant to Magistrate Judge Eaton's formula in *Gucci v. MyReplicaHandbag.com et al.*, 07 Civ. 2438 (JGK) (DFE) (*i.e.*, \$100,000 per registered mark infringed per type of good), in satisfaction of the claims made against them in this matter and as compensation for the injuries that their activities have caused to Plaintiffs.

3. IT IS FURTHER ORDERED that in accordance with 15 U.S.C. § 1116(a), this Court's inherent power to provide final equitable relief, and the express consent granted herein by the Named Defendants, the following financial institutions (collectively, "Financial

Institutions”) who receive actual notice of this order are, without prior approval of the Court, directed to liquidate and provide to Plaintiffs all assets due and owing to the Named Defendants or any other entities acting in concert or participation with the Named Defendants: (i) any and all Woodforest National Bank accounts that are associated with or utilized by any of Named Defendants; (ii) any and all Frontline Processing Corporation (“Frontline”) accounts that are associated with or utilized by any of Named Defendants, including any Merchant Reserve Account Funds maintained in connection with the Named Defendants’ merchant contract with Frontline; (iii) any and all Global Payments Direct, Inc. accounts that are associated with or utilized by any of the Named Defendants, including any Merchant Reserve Account Funds maintained in connection with the Named Defendants’ merchant contract with Frontline; and (iv) any and all HSBC Bank USA, N.A. accounts that are associated with or utilized by any of the Named Defendants, including any Merchant Reserve Account Funds maintained in connection with the Named Defendants’ merchant contract with Frontline.

4. IT IS FURTHER ORDERED that the Named Defendants shall provide to any Financial Institutions that may be located outside the United States or its territories such authorizations or other forms as such Financial Institutions may request in order to facilitate compliance with this Final Order and Judgment on Consent.

5. IT IS FURTHER ORDERED that the Clerk of the Court is directed to close this action, but Plaintiffs shall retain all rights to pursue claims related to this lawsuit in a separate action against any of the “John Doe” and “ABC Defendants” or any other person or entity other than the Named Defendants who may be liable for the sale of Counterfeit Products.

6. IT IS FURTHER ORDERED that this Court shall retain jurisdiction to enforce any violation of this Final Order and Judgment on Consent.

Dated: Nov. 26, 2008

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Dated: 12/9, 2008

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Jennifer Marie Mattchen a/k/a Jennifer Marie Kirk
a/k/a Jennifer Besson, and Patrick B. Kirk, all
doing business as TheBagAddiction.com*

SO ORDERED:

HONORABLE LEWIS A. KAPLAN
UNITED STATES DISTRICT JUDGE

Dated: _____, 2008

Exhibit 5

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
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.
-----X

09 Civ. 6925 (HB)

**DECLARATION OF
JENNIFER KIRK**

I, Jennifer Kirk, declare under penalty of perjury pursuant to 28 U.S.C. § 1746, that the following is true and correct:

1. The ability for my business, TheBagAddiction.com, to accept credit cards was very important because my customers felt protected using credit cards rather than other payment methods such as wire transfers. Approximately 99% of payments from my customers were made using credit cards.
2. Approvals for credit card charges were performed online and were received within a matter of seconds after submission. If I did not receive an approval for a credit card charge, I would not ship the customer's order.
3. Durango's role in my business was to set up the relationship with the banks that were processing credit cards and to act as a middle man for communications between my business and the banks.

4. There was a check box on TheBagAddiction.com that customers had to check before their order would be processed stating that "I understand these items being purchased are replicas, not originals." Mr. Counley told me that I had to include that language on the website in order to ensure that my credit card orders would be processed by the banks and to help eliminate chargebacks from the banks because at any time a customer could dispute the item and the bank may get stuck with the loss. Attached hereto as Exhibit A is a true and correct copy of an email chain between myself, Mr. Counley, and representatives from Frontline regarding the "terms and conditions" boxes that a customer was required to check before their order would be processed.

5. The documentation I would submit in connection with a response to a chargeback request consisted of copies of the original charge, including invoice, with a full description of product(s) being sold, IP address where it originated from, as well as the tracking information for a particular shipment that I would obtain from the U.S. Postal Service's website because signatures were required for all shipments.

Dated: November 13, 2009
Rocklin, California


JENNIFER KIRK

Exhibit 6

**UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK**

-----X
GUCCI AMERICA, INC.,

Plaintiff,

-against-

**DEFENDANT DURANGO
MERCHANT SERVICES'
DECLARATION IN
SUPPORT OF MOTION
TO DISMISS FOR LACK
OF PERSONAL
JURISDICTION**

FRONTLINE PROCESSING CORPORATION,
WOODFOREST NATIONAL BANK, DURANGO
MERCHANT SERVICES, LLC., d/b/a NATIONAL
BANKCARD SYSTEMS OF DURANGO,

Index No. 09-CV-6925

Defendants.
-----X

I, Shane Kairalla, hereby declare as follows:

1. I am competent to testify and I have firsthand knowledge of the matters set forth herein, as I am a principal of Defendant Durango Merchant Services, LLC.

2. I make this affidavit in support of Defendants' motion to dismiss for lack of personal jurisdiction.

3. Durango Merchant Services, LLC. is a limited liability company that was formed in the State of Wyoming.

4. Durango Merchant Services, LLC. was formed in February, 2004.

5. Durango has only five (5) employees.

6. Durango Merchant Services, LLC acts as a referral service, or broker, to bridge retailer / merchants with entities that offer credit card processing services.

7. Durango Merchant Services, LLC.'s only place of business is located at 2885 Main Avenue, Suite B-105, Durango, CO 81301.

8. All of Durango Merchant Services, LLC.'s records and documents, including records and documents relevant to the present action, are located either within the State of Colorado, or at the home office of Durango's account manager in the State of Wisconsin.

9. Durango Merchant Services, LLC.'s potential relevant witnesses are located either within the State of Colorado or the State of Wisconsin.

10. Durango Merchant Services, LLC. does not maintain any offices within the State of New York.

11. Less than 1% (one percent) of Durango Merchant Services' revenues is derived as a result of servicing merchants within the State of New York.

12. Durango Merchant Services, LLC. does not maintain any assets within the State of New York.

13. Durango Merchant Services, LLC. does not maintain any bank accounts within the State of New York.

14. Durango Merchant Services, LLC. does not maintain or possess any real property within the State of New York.

15. Durango Merchant Services, LLC. does not maintain employees, office space, or a telephone within the State of New York.

16. Durango Merchant Services, LLC. does not actively solicit business in New York.

17. Durango Merchant Services, LLC's website is not targeted to New York, nor specifically structured to facilitate the transaction of business in New York.

18. Durango Merchant Services, LLC. did not engage in any business or commercial dealings, or enter into any contractual relationships, if any, with Defendants Woodforest or Frontline in New York.

19. Durango Merchant Services, LLC. did not engage in any business or commercial dealings, or enter into any contractual relationships, if any, with Plaintiff Gucci in New York.

20. Durango Merchant Services, LLC. did not engage in any business or commercial dealings, or enter into any contractual relationships, with the Laurette Company, Inc., its principals, Jennifer Kirk, or Patrick Kirk, or anyone else associated with or doing business as TheBagAddiction.com (collectively the "Laurette Company"), in New York.

I declare under the penalty of perjury under the laws of the United States that the foregoing statements are true and correct.

Dated: Durango, Colorado
October 30, 2009


SHANE KAIRALLA,
Durango Merchant Services, LLC.

Sworn to before me this
30th day of October, 2009

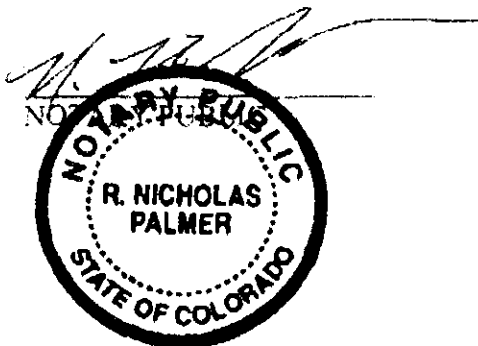


Exhibit 7

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

GUCCI AMERICA, INC.,)
VS.) NO. 09-CV-6925
FRONTLINE PROCESSING,)
CORPORATION WOODFOREST)
NATIONAL BANK, DURANGO)
MERCHANT SERVICES, LLC. D/B/A)
NATIONAL BANKCARD SYSTEMS OF)
DURANGO)

ORAL AND VIDEOTAPED DEPOSITION OF
MONA BOYKIN

JUNE 29, 2010

ORAL AND VIDEOTAPED DEPOSITION OF MONA BOYKIN,
produced as a witness at the instance of the
Plaintiff, and duly sworn, was taken in the
above-styled and numbered cause on the 29th
day of June, 2010, from 10:28 a.m. to 2:05
p.m., before Marie Bulfinch, CSR in and for
the State of Texas, reported by computerized
stenographic method, at the offices of Delta
Card Services, 25231 Grogans Mill Road, 6th
Floor, The Woodlands, Texas, pursuant to the
Federal Rules of Civil Procedure and the
provisions stated on the record or attached
hereto.

<p style="text-align: right;">2</p> <p>1 APPEARANCES</p> <p>2 FOR THE PLAINTIFF:</p> <p>3 Mr. Robert Weigel</p> <p>4 Gibson, Dunn & Crutcher</p> <p>5 200 Park Avenue</p> <p>6 New York, New York 10166</p> <p>7 212-351-4000</p> <p>8 rweigel@gibsondunn.com</p> <p>9 FOR THE DEFENDANTS:</p> <p>10 Mr. Gregg A. Paradise</p> <p>11 Lerner, David, Littenberg,</p> <p>12 Krumholz & Mentlik</p> <p>13 600 South Avenue West</p> <p>14 Westfield, New Jersey 07090</p> <p>15 908-654-5000 Fax: 908-654-7866</p> <p>16 gparadise@ldkm.com</p> <p>17</p> <p>18 ALSO PRESENT:</p> <p>19 Mr. Charles A. Vernon</p> <p>20 Woodforest General Counsel</p> <p>21 25231 Grogans Mill Road,</p> <p>22 Suite 100</p> <p>23 The Woodlands, Texas 77380</p> <p>24 832-375-2828 Fax: 832-375-3828</p> <p>25 Cvernon@woodforest.com</p> <p>Sean Morella, Videographer</p> <p>Marie Bulfinch, CSR, RMR, CRR</p>	<p style="text-align: right;">4</p> <p>1 BOYKIN EXHIBIT 10 101</p> <p>2 Merchant Bankcard Application Agreement</p> <p>3 BOYKIN EXHIBIT 11 102</p> <p>4 Merchant Bankcard Application Agreement</p> <p>5 BOYKIN EXHIBIT 12 102</p> <p>6 Application Report, Bates WNB 00886 -</p> <p>7 890</p> <p>8 BOYKIN EXHIBIT 13 105</p> <p>9 Merchant Bankcard Application Agreement</p> <p>10 BOYKIN EXHIBIT 14 108</p> <p>11 E-mail ending from Alva Keyser, Bates</p> <p>12 WNB 13694 - 13695</p> <p>13 BOYKIN EXHIBIT 15 111</p> <p>14 E-mail from Rhonda Lemos to Larry Jones</p> <p>15 Bates WNB 09043</p> <p>16 BOYKIN EXHIBIT 16 113</p> <p>17 E-mail from Francisco Rivera to</p> <p>18 Apps Department, Bates WNB 27334</p> <p>19 BOYKIN EXHIBIT 17 116</p> <p>20 Defendant's Responses to First Set of</p> <p>21 Interrogatories of Plaintiff</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">3</p> <p>1 EXAMINATION INDEX</p> <p>2 APPEARANCES 02</p> <p>3 EXAMINATION BY MR. WEIGEL 06</p> <p>4 EXAMINATION BY MR. PARADISE 124</p> <p>5 SIGNATURE/CORRECTION PAGE 130</p> <p>6 REPORTER'S CERTIFICATE 132</p> <p>7 EXHIBIT INDEX</p> <p>8 NO. PAGE</p> <p>9 BOYKIN EXHIBIT 1</p> <p>10 E-mail and MCCS Underwriting Guidelines 19</p> <p>11 BOYKIN EXHIBIT 2</p> <p>12 E-mails, ending from Marla Alcorn to 35</p> <p>13 Risk Department, dated 6/15/06</p> <p>14 BOYKIN EXHIBIT 3 38</p> <p>15 E-mails regarding high-risk merchant</p> <p>16 Program, ending from Jim Jenkins</p> <p>17 Dated 3/8/05</p> <p>18 BOYKIN EXHIBIT 4 40</p> <p>19 High Risk-Revenue Merchant Program</p> <p>20 (Slide show), Bates WNB 03629 - 03659</p> <p>21 BOYKIN EXHIBIT 5 50</p> <p>22 E-mails ending from Rhonda Lemos</p> <p>23 Bates WNB 03615 - 3616</p> <p>24 BOYKIN EXHIBIT 6 52</p> <p>25 E-mails ending from Earl Baxter to</p> <p>Ivy Matt, Bates WNB 03697</p> <p>BOYKIN EXHIBIT 7 52</p> <p>Level I (Prescreen), Bates WNB 3698 -</p> <p>36700</p> <p>BOYKIN EXHIBIT 8 65</p> <p>Merchant Bankcard Application Agreement</p> <p>BOYKIN EXHIBIT 9 95</p> <p>Merchant Bankcard Application Agreement</p>	<p style="text-align: right;">5</p> <p>1 THE VIDEOGRAPHER: My name is Sean 10:28:48</p> <p>2 Morella of Veritext. Today's date is Tuesday, 10:29:07</p> <p>3 June 29, 2010 and the time is approximately 10:29:10</p> <p>4 10:29 a.m. This deposition is being held at 10:29:15</p> <p>5 25231 Grogan's Mill in The Woodlands, Texas. 10:29:19</p> <p>6 The caption of this case is Gucci America, 10:29:25</p> <p>7 Incorporated, versus Frontline Processing 10:29:29</p> <p>8 Corporation, et al. The name of the witness 10:29:31</p> <p>9 is Mona Boykin. 10:29:34</p> <p>10 At this time will the attorneys 10:29:38</p> <p>11 identify themselves and the parties they 10:29:39</p> <p>12 represent after which the court reporter, 10:29:41</p> <p>13 Marie Bulfinch of Veritext, will swear in the 10:29:43</p> <p>14 witness, and we can proceed. 10:29:46</p> <p>15 MR. WEIGEL: Robert Weigel from 10:29:48</p> <p>16 Gibson, Dunn and Crutcher for Plaintiff, Gucci 10:29:50</p> <p>17 America, Inc. 10:29:53</p> <p>18 MR. PARADISE: Greg Paradise from 10:29:54</p> <p>19 Lerner, David, Littenberg, Krumholtz and 10:29:54</p> <p>20 Mentlik on behalf of Defendant, Woodforest 10:30:00</p> <p>21 National Bank, and on behalf of the witness. 10:30:02</p> <p>22 MR. VERNON: I'm Charles Vernon. I'm 10:30:05</p> <p>23 general counsel, in-house counsel, for 10:30:07</p> <p>24 Woodforest National Bank. 10:30:09</p> <p>25 MONA BOYKIN 10:30:09</p>

2 (Pages 2 to 5)

<p style="text-align: right;">6</p> <p>1 having been duly sworn, testified as follows: 10:30:18</p> <p>2 EXAMINATION 10:30:18</p> <p>3 BY MR. WEIGEL: 10:30:18</p> <p>4 Q. Could you state your name for the 10:30:22</p> <p>5 record, please. 10:30:24</p> <p>6 A. Mona Boykin. 10:30:24</p> <p>7 Q. Ms. Boykin, have you ever had the 10:30:27</p> <p>8 occasion to be deposed before? 10:30:30</p> <p>9 A. No, sir. 10:30:32</p> <p>10 Q. Has someone explained the process to 10:30:33</p> <p>11 you? 10:30:35</p> <p>12 A. Yes, sir. 10:30:35</p> <p>13 Q. Okay. I will ask you questions. If 10:30:36</p> <p>14 at any point in time you don't understand one 10:30:38</p> <p>15 of my questions, just let me know, and I'll 10:30:40</p> <p>16 try and rephrase it. 10:30:42</p> <p>17 If you need to take a break for 10:30:46</p> <p>18 any reason, just let me know, and, you know, 10:30:48</p> <p>19 you're -- you're obviously doing a lot of work 10:30:51</p> <p>20 here today so if you need a break, just let me 10:30:54</p> <p>21 know, and we'll -- we'll take a break. 10:30:56</p> <p>22 A. Okay. 10:30:58</p> <p>23 Q. I -- I would ask, if possible, that 10:30:58</p> <p>24 you wait until a question and answer are 10:31:00</p> <p>25 completed before you take a break, but if you 10:31:02</p>	<p style="text-align: right;">8</p> <p>1 for transactions, credit card charges. 10:32:01</p> <p>2 Q. For Woodforest Bank? 10:32:03</p> <p>3 A. Yes. 10:32:05</p> <p>4 Q. Okay. Would you just very briefly 10:32:06</p> <p>5 give me your employment history, I guess, 10:32:18</p> <p>6 starting when you -- when you started to work 10:32:22</p> <p>7 for Delta Card Services or Woodforest? 10:32:23</p> <p>8 A. Actually, I began with Delta Card 10:32:27</p> <p>9 Services in 1986. 10:32:31</p> <p>10 Q. Okay. 10:32:33</p> <p>11 A. I was one of their beginning 10:32:35</p> <p>12 employees. We did credit card processing 10:32:37</p> <p>13 response application. 10:32:43</p> <p>14 Q. Okay. And would you just tell me very 10:32:47</p> <p>15 briefly what you did before you went to work 10:32:51</p> <p>16 for Delta Card Services? 10:32:53</p> <p>17 A. Before I went to Delta Card? I was 10:32:55</p> <p>18 with Texas Independent Bank in the new 10:32:57</p> <p>19 accounts division as the manager. 10:33:02</p> <p>20 Q. And how long did you have that 10:33:08</p> <p>21 position? Just roughly. 10:33:12</p> <p>22 A. Best I can remember, six years. 10:33:17</p> <p>23 Q. Okay. 10:33:20</p> <p>24 A. Five years. 10:33:21</p> <p>25 Q. And what did you do before that? 10:33:22</p>
<p style="text-align: right;">7</p> <p>1 need to take one, go ahead. 10:31:04</p> <p>2 A. I understand. 10:31:06</p> <p>3 Q. That'll be all right. And do you 10:31:07</p> <p>4 understand that the oath you just took is the 10:31:08</p> <p>5 same oath that you would take if you were 10:31:10</p> <p>6 testifying in front of a judge or a jury up in 10:31:12</p> <p>7 New York? 10:31:15</p> <p>8 A. Yes, sir. 10:31:15</p> <p>9 Q. Okay. Now, Ms. Boykin, this building 10:31:19</p> <p>10 is the Woodforest -- did you work in this 10:31:25</p> <p>11 building here? 10:31:30</p> <p>12 A. Yes, I did. 10:31:30</p> <p>13 Q. What's the address of this building? 10:31:31</p> <p>14 A. I don't remember. 10:31:33</p> <p>15 Q. Okay. And who is housed in this 10:31:35</p> <p>16 building? 10:31:39</p> <p>17 A. Woodforest National Bank. 10:31:39</p> <p>18 Q. And who were you an employee of? 10:31:41</p> <p>19 A. At the time before I retired? 10:31:44</p> <p>20 Q. Yes, ma'am. 10:31:46</p> <p>21 A. I was with Delta Card Services. 10:31:47</p> <p>22 Q. Okay. And what was your understanding 10:31:50</p> <p>23 of the relationship between Delta Card 10:31:52</p> <p>24 Services and Woodforest National Bank? 10:31:55</p> <p>25 A. We were a processing unit to trans -- 10:31:57</p>	<p style="text-align: right;">9</p> <p>1 A. I was back over here at Delta Card 10:33:24</p> <p>2 doing new accounts as the manager. It's not 10:33:31</p> <p>3 this building, sir. It was another building. 10:33:37</p> <p>4 Q. I -- I think I've gotten it 10:33:40</p> <p>5 sufficiently muddled. Maybe I could just ask 10:33:44</p> <p>6 you to chronologically give me your employment 10:33:46</p> <p>7 history, just very briefly starting with high 10:33:49</p> <p>8 school or -- or whatever. 10:33:52</p> <p>9 A. Oh, my God. Okay. Just a moment. 10:33:54</p> <p>10 Okay. Other than the time that I was with 10:33:58</p> <p>11 Delta Card in 1986 when I first started 10:34:05</p> <p>12 working? 10:34:07</p> <p>13 Q. Uh-huh. 10:34:08</p> <p>14 A. All that time I was in credit card 10:34:09</p> <p>15 processing. It was called Moran Response, but 10:34:14</p> <p>16 later changed their name to Delta Card 10:34:20</p> <p>17 Services. 10:34:23</p> <p>18 Q. Okay. When did you first start 10:34:25</p> <p>19 working for Moran Response? 10:34:27</p> <p>20 A. In 1986. 10:34:29</p> <p>21 Q. Okay. And then did you work for Moran 10:34:32</p> <p>22 Response straight through until you retired? 10:34:38</p> <p>23 A. No, sir. There was a release of -- 10:34:41</p> <p>24 cut back of employees, and I was let go. And 10:34:50</p> <p>25 that's when I went to Texas Independent Bank. 10:34:54</p>

10			12		
1	Q. Okay. And do you remember roughly	10:34:57	1	the merchant. And they were not -- not	10:37:30
2	when that was?	10:35:00	2	outside their boundaries. They were just	10:37:34
3	A. No, sir.	10:35:02	3	following their application.	10:37:36
4	Q. Would it have been the 1990s sometime?	10:35:05	4	Q. Did you check up on accounts from time	10:37:45
5	A. Yes.	10:35:08	5	to time?	10:37:51
6	Q. Okay. And you worked at Texas	10:35:09	6	A. When I was in new accounts?	10:37:51
7	Independent Bank for about six years, and then	10:35:11	7	Q. When you were an -- an analyst in the	10:37:53
8	you rejoined Delta Card Services?	10:35:12	8	risk division.	10:37:56
9	A. Yes, sir.	10:35:14	9	A. No. The system gave you the accounts	10:37:58
10	Q. Before you worked for Moran Response,	10:35:16	10	that you were to review automatically for the	10:38:00
11	what sort of work were you in?	10:35:18	11	day.	10:38:02
12	A. Oh, my gosh. I was in finance. I was	10:35:21	12	Q. Okay.	10:38:03
13	in Dial Finance. We processed --	10:35:28	13	A. I didn't choose them.	10:38:05
14	THE REPORTER: Pardon?	10:35:28	14	Q. So you were given a list of accounts	10:38:06
15	THE WITNESS: Dial --	10:35:28	15	when you came in in the morning to look at?	10:38:11
16	THE REPORTER: Dial?	10:35:28	16	A. Yes, sir.	10:38:13
17	THE WITNESS: -- Finance.	10:35:28	17	Q. And that was generated by the system?	10:38:13
18	A. We processed loan applications.	10:35:35	18	A. The computer divvied them out.	10:38:17
19	Q. (BY MR. WEIGEL) And just roughly do	10:35:40	19	Q. Did the computer tell you what you	10:38:23
20	you remember how long you worked for Dial	10:35:42	20	were supposed to look for?	10:38:25
21	Finance?	10:35:44	21	A. No, sir.	10:38:26
22	A. No, sir.	10:35:44	22	Q. Were they ongoing accounts?	10:38:27
23	Q. Five years, 10 years? Two years? Any	10:35:47	23	A. Well, what -- what do you mean?	10:38:31
24	idea?	10:35:52	24	Q. In other words, these were accounts	10:38:34
25	A. I don't remember.	10:35:52	25	that had been opened for some time and you	10:38:35
11			13		
1	Q. Okay. When -- do you remember roughly	10:35:54	1	were checking up on them?	10:38:38
2	when you resumed working at Delta Card	10:36:02	2	A. Yes. They were active accounts, yes,	10:38:39
3	Services? When you got -- when you came back	10:36:06	3	sir.	10:38:41
4	from Texas Independent Bank?	10:36:08	4	Q. And then do you remember roughly when	10:38:41
5	A. 2000.	10:36:10	5	you were promoted -- there was a promotion to	10:38:45
6	Q. Okay. And then when did you retire?	10:36:12	6	go to supervisor; is that correct?	10:38:48
7	A. I retired three years ago.	10:36:19	7	A. To another department, yes.	10:38:49
8	Q. So in 2007?	10:36:24	8	Q. And -- and it was -- and you got a	10:38:51
9	A. Uh-huh. February 2007.	10:36:26	9	promotion?	10:38:53
10	Q. Okay. When you came back to Delta	10:36:35	10	A. Uh-huh.	10:38:54
11	Card Services in 2000, what was your position?	10:36:43	11	Q. You became a supervisor instead of an	10:38:54
12	A. I was in the risk division as an	10:36:45	12	analyst; is that correct?	10:38:58
13	analyst.	10:36:50	13	A. Yes, sir.	10:38:59
14	Q. And can you give me the next job you	10:36:55	14	Q. And do you remember, ma'am, when	10:38:59
15	held at Delta Card Services?	10:36:57	15	you -- when you got that promotion?	10:39:01
16	A. In the new accounts as supervisor.	10:36:59	16	A. No, I don't.	10:39:05
17	Q. And is that the position you retired	10:37:08	17	Q. Do you remember roughly how many years	10:39:07
18	from?	10:37:10	18	you had that job before you -- before you	10:39:08
19	A. Yes, sir.	10:37:11	19	retired?	10:39:12
20	Q. Okay. Can you just roughly tell me	10:37:12	20	A. I don't remember.	10:39:16
21	what your responsibilities were as an analyst	10:37:17	21	Q. Was it more than a year?	10:39:22
22	in the risk division?	10:37:19	22	A. Yes, sir.	10:39:24
23	A. We were to oversee the accounts to	10:37:20	23	Q. Okay. What were your responsibilities	10:39:25
24	make sure they complied with the aspects that	10:37:23	24	as a supervisor in the new accounts division?	10:39:31
25	they said that they were going to as far as	10:37:27	25	A. I was to oversee the applications that	10:39:35

14	16
<p>1 had been processed by an analyst to make sure 10:39:39</p> <p>2 that procedure had been followed. 10:39:45</p> <p>3 Q. And then would you have to sign off on 10:39:57</p> <p>4 certain applications? 10:39:59</p> <p>5 A. Uh-huh. Certain applications I would 10:40:00</p> <p>6 have to -- to review it and sign my name. 10:40:05</p> <p>7 Q. And do you remember what types of 10:40:08</p> <p>8 applications you had to sign off on? 10:40:11</p> <p>9 A. They were considered high-risk 10:40:12</p> <p>10 accounts. Level 2. 10:40:15</p> <p>11 Q. What made an account a high-risk 10:40:22</p> <p>12 account? 10:40:29</p> <p>13 A. Mostly it was Internet accounts of 51 10:40:29</p> <p>14 percent or greater processing. 10:40:35</p> <p>15 Q. So was a merchant automatically 10:40:45</p> <p>16 considered to be a high-risk account if he had 10:40:49</p> <p>17 more than 51 percent of his business over the 10:40:51</p> <p>18 Internet? 10:40:53</p> <p>19 A. Yes, sir. 10:40:54</p> <p>20 Q. You used the term Level 2. What does 10:40:55</p> <p>21 that mean? 10:41:03</p> <p>22 A. Level 1 was it was not considered a 10:41:05</p> <p>23 high risk. And Level 2 was it was considered 10:41:08</p> <p>24 a high risk. 10:41:11</p> <p>25 Q. Okay. Were there certain types of 10:41:13</p>	<p>1 A. Ietsa, Roberta and a couple more, but 10:43:06</p> <p>2 I don't remember their names. 10:43:13</p> <p>3 Q. (BY MR. WEIGEL) Okay. Is Alva's last 10:43:15</p> <p>4 name Keyser or Keyser (pronouncing), K-e-y -- 10:43:19</p> <p>5 A. Keyser, Alva Keyser. 10:43:22</p> <p>6 Q. Do you remember the last names of any 10:43:24</p> <p>7 of the other people? 10:43:26</p> <p>8 A. Not all of them, no, sir. 10:43:27</p> <p>9 Q. Okay. Well, I have some documents. 10:43:36</p> <p>10 Maybe -- maybe something will refresh your 10:43:39</p> <p>11 recollection. 10:43:40</p> <p>12 Can you walk me through the 10:43:45</p> <p>13 process by which a new application came in to 10:43:46</p> <p>14 your department and then what happened to it? 10:43:52</p> <p>15 A. It came in through the fax machine. 10:43:55</p> <p>16 It was logged. It was sent to the data-entry 10:43:59</p> <p>17 area. They feed the information into the 10:44:04</p> <p>18 system. From there, it went to an analyst to 10:44:10</p> <p>19 be worked. 10:44:18</p> <p>20 Q. And then what happened after it went 10:44:25</p> <p>21 to an analyst? 10:44:27</p> <p>22 A. The analyst would read -- begin to do 10:44:28</p> <p>23 the basics of checking them to make sure the 10:44:33</p> <p>24 information was complete, obtain the necessary 10:44:36</p> <p>25 credit information to make a decision and ask 10:44:42</p>
15	17
<p>1 high-risk accounts that had to be registered 10:41:16</p> <p>2 with MasterCard or Visa? 10:41:19</p> <p>3 A. Yes, sir, there were. 10:41:23</p> <p>4 Q. Were those characterized something 10:41:25</p> <p>5 other than Level 2 high-risk accounts? 10:41:27</p> <p>6 A. I don't remember. I just remember 10:41:30</p> <p>7 they had to be registered. 10:41:37</p> <p>8 Q. Okay. Who did you report to? Who was 10:41:41</p> <p>9 your boss? 10:41:55</p> <p>10 A. The last time? 10:41:59</p> <p>11 Q. The -- the last time. I'm sorry, 10:42:01</p> <p>12 ma'am, while you were -- while you were 10:42:03</p> <p>13 supervisor in new accounts. 10:42:04</p> <p>14 A. Okay. It was Earl Baxter. 10:42:06</p> <p>15 Q. And what was Mr. Baxter's title? 10:42:11</p> <p>16 A. Manager, new accounts. 10:42:14</p> <p>17 Q. And did you have people working under 10:42:16</p> <p>18 you as a supervisor? 10:42:26</p> <p>19 A. Yes, sir. 10:42:27</p> <p>20 Q. And -- and who did you supervise? 10:42:28</p> <p>21 A. All their names? 10:42:31</p> <p>22 Q. Well, any that you remember. 10:42:32</p> <p>23 A. Alva, Gerald -- 10:42:34</p> <p>24 THE REPORTER: Gerald? 10:42:34</p> <p>25 THE WITNESS: Yes, ma'am. 10:42:34</p>	<p>1 any additional information that was necessary 10:44:51</p> <p>2 to complete an application. 10:44:53</p> <p>3 Q. Was there a special checklist that 10:45:00</p> <p>4 applicants -- that the analysts had to fill 10:45:05</p> <p>5 out with regard to Internet merchants? 10:45:07</p> <p>6 MR. PARADISE: Objection to form. 10:45:09</p> <p>7 You can answer. 10:45:12</p> <p>8 A. Yes, sir. 10:45:13</p> <p>9 Q. (BY MR. WEIGEL) Do you know when that 10:45:14</p> <p>10 checklist was created? 10:45:21</p> <p>11 A. I'm sure I don't. 10:45:23</p> <p>12 Q. Okay. Was it your job to make sure 10:45:28</p> <p>13 that the analysts filled that form out every 10:45:33</p> <p>14 time they took in a new account that was a 10:45:36</p> <p>15 high-risk Internet merchant? 10:45:39</p> <p>16 A. Yes, sir. 10:45:41</p> <p>17 Q. And to the best of your ability, did 10:45:42</p> <p>18 you make sure that in all instances it was 10:45:45</p> <p>19 filled out? 10:45:45</p> <p>20 A. Yes, sir. 10:45:46</p> <p>21 Q. So what would happen after the analyst 10:45:47</p> <p>22 did what you just said they did? What -- what 10:45:55</p> <p>23 would happen next? 10:45:58</p> <p>24 A. It could go in two directions. Either 10:46:00</p> <p>25 approved or declined. 10:46:07</p>

5 (Pages 14 to 17)

18	20
1 Q. Uh-huh. 10:46:07	1 people. It goes to -- is that Andrea Balfour? 10:49:00
2 A. If it were approved, and it was not a 10:46:09	2 A. Yes, sir. 10:49:09
3 high-risk merchant, then it would just be 10:46:12	3 Q. Do you know who she is? 10:49:09
4 booked and given an account number, and the 10:46:15	4 A. She was in the sales area that made 10:49:11
5 salesman be notified. 10:46:20	5 communications with the salesmen. 10:49:18
6 If it was a high-risk merchant, 10:46:23	6 Q. Okay. And then the next person that 10:49:20
7 then it would be coming to me, and I would be 10:46:26	7 it was sent to was Mr. Baxter, and that was 10:49:22
8 reviewing it to make sure that what needed to 10:46:29	8 your boss, correct? 10:49:25
9 be done was completed. 10:46:33	9 A. Correct. 10:49:26
10 Q. And did you have to sign -- sign off 10:46:38	10 Q. Then it went to Rhonda Lemos. Do you 10:49:26
11 on all high-risk Internet merchants? 10:46:40	11 know who Ms. Lemos was or is? 10:49:30
12 A. Yes, sir. 10:46:43	12 A. The manager over the risk division. 10:49:31
13 Q. Were there any other supervisors in 10:46:44	13 Q. So she used to be your boss when you 10:49:34
14 the new accounts? 10:46:48	14 were an analyst -- 10:49:37
15 A. Earl Baxter. I mean -- other than 10:46:50	15 A. At one time, yes, sir. 10:49:38
16 myself -- 10:46:54	16 Q. Okay. 10:49:38
17 Q. Right. 10:46:54	17 MR. PARADISE: Just make sure you let 10:49:40
18 A. -- that could make a decision? 10:46:55	18 him finish his question. It gets difficult 10:49:42
19 Q. Yes. 10:46:57	19 for the court reporter, if you're trying to 10:49:46
20 A. Earl Baxter. 10:46:57	20 talk over each other. 10:49:48
21 Q. Okay. So there were the analysts at 10:46:58	21 THE WITNESS: I'm sorry. 10:49:49
22 the bottom, and then you were the supervisor, 10:47:01	22 MR. WEIGEL: There is an art to this, 10:49:49
23 and then Mr. Baxter was your boss? 10:47:02	23 but you're doing just fine. 10:49:51
24 A. Yes, sir. 10:47:04	24 MR. PARADISE: I agree. 10:49:53
25 Q. And either you or Mr. Baxter had to 10:47:05	25 Q. (BY MR. WEIGEL) Marla Alcorn. Do you 10:49:55
19	21
1 sign off on any Internet accounts? 10:47:07	1 know who she is? 10:49:59
2 A. That is correct. 10:47:09	2 A. The supervisor over the risk division. 10:49:59
3 Q. Okay. Were there guidelines that were 10:47:10	3 Q. Okay. And Larry Jones? Do you know 10:50:04
4 given to you about accepting merchants, MCCA 10:47:27	4 who he is? 10:50:12
5 guidelines? 10:47:37	5 A. Yes. He's over the salesmen. 10:50:13
6 A. Rephrase that, if you don't mind. 10:47:38	6 Q. And Matt Ivy? Do you know who he is? 10:50:19
7 Q. Let -- let me do it a simple way. 10:47:39	7 A. Matt was with us for a short period 10:50:22
8 (BOYKIN Exhibit No. 1 marked.) 10:47:42	8 before he moved to IT. He and I used to have 10:50:25
9 Q. (BY MR. WEIGEL) Let me hand you 10:47:42	9 the same job duties but not for very long. 10:50:29
10 what's been marked as Exhibit 1. 10:47:42	10 Q. So he was on the same level as you? 10:50:34
11 MR. PARADISE: Thanks. 10:47:42	11 A. (Nods head up and down.) 10:50:37
12 MR. WEIGEL: Thank you. 10:47:42	12 Q. But then he left the job and went 10:50:37
13 Q. (BY MR. WEIGEL) First off, can you 10:48:16	13 to -- 10:50:40
14 just state for the record what Exhibit 1 is? 10:48:17	14 A. Left the job -- 10:50:40
15 A. Exhibit 1 is an e-mail from Deana 10:48:24	15 Q. -- information IT? 10:50:41
16 Sellens asking to review some information that 10:48:30	16 A. Uh-huh. Yes. Right down here. 10:50:42
17 she has attached. 10:48:33	17 Q. And then, of course, the last person 10:50:44
18 Q. Who was Deana Sellers -- Sellens? 10:48:36	18 is Mona Boykin, and that's you? 10:50:47
19 A. She was over the risk division and the 10:48:39	19 A. Uh-huh. Correct. 10:50:51
20 new accounts division. She was like the third 10:48:44	20 Q. Please take a look at not only the 10:50:53
21 person above us. 10:48:49	21 e-mail but the attachment and tell me if you 10:50:57
22 Q. So she would have been Mr. Baxter's 10:48:51	22 recognize that document. 10:51:01
23 boss? 10:48:54	23 A. I don't remember much about this. 10:51:04
24 A. Yes. 10:48:55	24 Q. Do you have any recollection of 10:52:03
25 Q. Okay. And it goes to a number of 10:48:56	25 reviewing it and giving comments back to 10:52:05

22			24		
1	Ms. Sellens?	10:52:10	1	are inevitable, our objective is to minimize	10:55:11
2	A. No, sir.	10:52:11	2	the losses while maintaining an increasing	10:55:13
3	Q. Do you remember at any point in time	10:52:14	3	approval count."	10:55:16
4	in your career at Delta Card Services	10:52:33	4	Do you see that?	10:55:17
5	reviewing this credit policy and underwriting	10:52:38	5	A. Not yet. Oh.	10:55:18
6	guideline?	10:52:42	6	Q. I'm sorry.	10:55:28
7	A. Oftentimes when we were given	10:52:47	7	A. I'm on the first page now. Okay. I'm	10:55:30
8	guidelines, policies, we would all get to run	10:52:50	8	with you.	10:55:41
9	a little meeting and look at different	10:52:55	9	Q. Do you see that language, ma'am?	10:55:41
10	aspects, but that's all I remember about this.	10:52:59	10	A. Yes, I do.	10:55:43
11	Q. Okay. Now, you had said that one of	10:53:01	11	Q. First off, did you understand that	10:55:44
12	the basic things that the analysts would do	10:53:10	12	those two sentences were objectives at	10:55:51
13	before you got to see the application was to	10:53:14	13	Merchant Choice Card Services?	10:55:57
14	pull the credit information, correct?	10:53:18	14	MR. PARADISE: Objection to form.	10:55:59
15	A. Yes, sir.	10:53:20	15	A. I don't know.	10:56:03
16	Q. Why did you do that?	10:53:21	16	Q. (BY MR. WEIGEL) Well, did you	10:56:06
17	A. To determine the creditworthiness of	10:53:25	17	understand in -- in your position as	10:56:07
18	that owner, the -- the merchant himself.	10:53:28	18	supervisor that you were trying to minimize	10:56:09
19	Q. And why was that important or relevant	10:53:31	19	the losses that MCCS or Woodforest might	10:56:13
20	to you?	10:53:38	20	sustain by taking on a merchant?	10:56:21
21	A. Well, we looked at a person's	10:53:38	21	A. Yes.	10:56:23
22	creditworthiness to determine that if he said	10:53:41	22	MR. PARADISE: Objection to form.	10:56:23
23	that he had been in a certain place for 12	10:53:46	23	Q. (BY MR. WEIGEL) And did you also	10:56:27
24	years, that the credit information backs that	10:53:49	24	understand that you were attempting to	10:56:28
25	up to show that what he's saying is the truth.	10:53:51	25	maintain and increase approval accounts?	10:56:31
23			25		
1	Q. Okay. Did the -- well, first off,	10:53:59	1	A. Could you say that another way for me?	10:56:46
2	this -- this says, "MCCS." Is that the same	10:54:01	2	Q. Sure. Did you understand that your --	10:56:48
3	thing as Delta Card Services?	10:54:04	3	that part of your job was to try and minimize	10:56:58
4	A. As far as I know.	10:54:11	4	losses while at the same time approving as	10:57:02
5	Q. Okay. Do you have any reason why	10:54:12	5	many merchants as you could?	10:57:05
6	there are the two names?	10:54:15	6	A. That was part, yes, sir.	10:57:08
7	A. No, sir.	10:54:16	7	Q. Okay. And they go on to say that,	10:57:16
8	Q. Okay. So we can use the two	10:54:17	8	"This process is achieved through initial	10:57:18
9	interchangeably, MCCS and Delta Card Services,	10:54:25	9	underwriting and continued monitoring and	10:57:20
10	and we mean the same entity, correct?	10:54:30	10	financial review."	10:57:23
11	A. (Nods head up and down.)	10:54:32	11	Do you see that?	10:57:24
12	Q. Okay.	10:54:32	12	A. Yes, sir.	10:57:25
13	A. Yes, sir.	10:54:32	13	Q. Okay. Now, when you were supervisor,	10:57:26
14	Q. Okay. Can you turn to the	10:54:32	14	you were involved in the initial underwriting;	10:57:30
15	introduction of this document? It would be	10:54:43	15	is that correct?	10:57:33
16	page WNB 26452.	10:54:44	16	A. I was not involved in this.	10:57:33
17	A. Okay.	10:54:51	17	Q. Okay. Well, do you know what they	10:57:35
18	Q. It says that, "Merchant Choice Card	10:54:55	18	mean when they use the term "underwriting"?	10:57:38
19	Services has developed a credit policy in	10:54:59	19	A. Yes, sir.	10:57:41
20	order to manage risk involved in merchant	10:55:01	20	Q. Okay. And -- and roughly how do	10:57:42
21	processing accounts."	10:55:07	21	you -- what do you understand that term to be?	10:57:43
22	THE REPORTER: Merchant what?	10:55:07	22	A. The guidelines that you're using to	10:57:46
23	MR. WEIGEL: Proc- -- merchant	10:55:07	23	process the merchant application.	10:57:48
24	processing accounts.	10:55:07	24	Q. Okay. And where did the guidelines	10:57:52
25	Q. (BY MR. WEIGEL) "Though some losses	10:55:10	25	come from that you utilized in reviewing the	10:57:58

7 (Pages 22 to 25)

26	28
1 application? 10:58:01	1 down to the second to the last paragraph. Do 11:01:19
2 A. From Deana. This was written by 10:58:02	2 you see it says, "MCCS maintains an open 11:01:23
3 Deana. And that's what we received to go by. 10:58:08	3 credit policy and takes on many merchants when 11:01:26
4 Q. Okay. And did you understand that 10:58:14	4 other processors may not." 11:01:32
5 part of your job in reviewing the accounts was 10:58:16	5 Do you see that? 11:01:34
6 to -- reviewing the applications was to 10:58:23	6 A. Yes, sir. 11:01:35
7 attempt to minimize the bank's losses? 10:58:28	7 Q. Was that your understanding? 11:01:35
8 A. Yes, sir. 10:58:31	8 A. Yes, sir. 11:01:36
9 Q. What are the ways that a bank, that 10:58:33	9 Q. Do you know what sorts of merchants 11:01:37
10 Woodforest or -- or Delta Card Services could 10:58:41	10 that -- that MCCS took -- MCCS took on that 11:01:45
11 lose money on an account? 10:58:44	11 other processors might not take on? 11:01:50
12 MR. PARADISE: Objection to form. 10:58:45	12 A. Sir, I don't know because I don't know 11:01:55
13 A. There are -- are several ways. It 10:58:51	13 other processors' guidelines, so I couldn't 11:01:57
14 could be a -- a merchant that was not doing 10:58:58	14 tell you. 11:02:00
15 what he said he was going to be doing on the 10:59:02	15 Q. Okay. When you worked for the other 11:02:01
16 initial application. And we found out at a 10:59:05	16 bank, were you involved at all in credit card 11:02:03
17 later date that he was not -- not doing that. 10:59:09	17 processing? 11:02:06
18 And that would be considered a possible loss 10:59:14	18 A. Credit card. 11:02:06
19 for the bank. 10:59:20	19 Q. Texas Independent Bank? 11:02:08
20 Q. Would the bank -- how would that 10:59:22	20 A. Yes, sir. 11:02:10
21 result in a loss, as you understand it? 10:59:25	21 Q. Now, would Texas Independent Bank take 11:02:10
22 A. If you told me on your application you 10:59:28	22 on, for example, adult merchants? 11:02:14
23 were selling sunglasses, and it turned out you 10:59:31	23 A. Take on what? 11:02:17
24 were selling refrigerators, and the 10:59:34	24 Q. Adult merchants. 11:02:17
25 refrigerator broke, well, there's -- that's an 10:59:37	25 A. This was credit card processing. You 11:02:18
27	29
1 issue there. 10:59:41	1 applied for a Visa or a MasterCard credit 11:02:21
2 Q. Okay. Now, when you -- when you are a 10:59:43	2 card. 11:02:25
3 supervisor, were you involved in the 10:59:58	3 Q. I see. I understand. 11:02:25
4 monitoring of the accounts? 11:00:00	4 A. The merchant division was not 11:02:26
5 A. No, sir. 11:00:01	5 involved. The bank. 11:02:29
6 Q. Was that something you did when you 11:00:02	6 Q. I understand that. Thank you for 11:02:31
7 were in the Risk Department? 11:00:04	7 clarifying. Did you understand that it was 11:02:33
8 A. Yes, sir. 11:00:06	8 your job to try and improve -- approve as many 11:02:40
9 Q. Okay. Let's look on -- if you could 11:00:07	9 new accounts as was prudent? 11:02:45
10 just go down this page here. It says, 11:00:21	10 A. Yes, sir. 11:02:50
11 "Restricted or prohibited merchants." 11:00:31	11 Q. Okay. Did there come a time when you 11:02:51
12 Do you see that? 11:00:32	12 began to see more applications from high-risk 11:03:15
13 A. Yes, sir. 11:00:33	13 merchants? 11:03:22
14 Q. And under there it says, "MasterCard 11:00:34	14 A. No, sir. 11:03:22
15 and Visa will not allow their cards to be used 11:00:37	15 Q. So for the whole time that you worked 11:03:25
16 to process illegal transaction. Product 11:00:40	16 for Delta Card Services you -- there was no 11:03:27
17 services must be within all state and federal 11:00:43	17 change in whether you decided to take on more 11:03:32
18 laws." 11:00:46	18 or less high-risk merchants that you know of? 11:03:35
19 Do you see that? 11:00:48	19 A. No, sir. 11:03:38
20 A. Yes, sir. 11:00:48	20 Q. All right. I want you to turn, if you 11:03:39
21 Q. And did you understand that to be the 11:00:49	21 would, ma'am, to page 26454 which has at the 11:03:52
22 case throughout the time that you worked as a 11:00:53	22 head -- at the head, "Requirements for 11:03:57
23 supervisor in the application -- 11:00:56	23 submitting a merchants application." 11:03:59
24 A. Yes, sir. 11:00:57	24 Do you see that? 11:04:01
25 Q. -- department? I'd like to bring you 11:00:58	25 A. Yes, sir. 11:04:02

8 (Pages 26 to 29)

30	32
1 Q. Are those the requirements that you 11:04:02	1 first consideration? 11:07:16
2 understood had to be complied with when you 11:04:17	2 A. What is being sold. 11:07:17
3 were evaluating a -- a new application? 11:04:21	3 Q. Why is that important? 11:07:18
4 A. Yes, sir. 11:04:25	4 A. There are certain articles that we did 11:07:19
5 Q. It indicates that for Web sites -- it 11:04:35	5 not process. You know, we -- we couldn't 11:07:24
6 says, "Web sites associated with the merchant 11:04:42	6 allow you to buy a horse, so we had to make 11:07:27
7 will be reviewed for restricted contact" -- 11:04:44	7 sure that that was part of that, that that 11:07:30
8 sorry -- "restricted content, contact 11:04:47	8 wasn't -- he was a merchant. 11:07:32
9 information and must state the refund policy." 11:04:51	9 Q. Do you remember what things you 11:07:35
10 A. Yes. 11:04:56	10 wouldn't process? 11:07:39
11 Q. Okay. Did you require the analysts 11:04:56	11 A. No, sir. 11:07:42
12 who worked for you to actually go and look at 11:05:04	12 Q. There were certain types of 11:07:44
13 the Web sites of the merchants that were 11:05:07	13 pornography that you wouldn't do, correct? 11:07:46
14 applying, if they were an Internet merchant? 11:05:09	14 A. Children underage, yes, sir. Child 11:07:49
15 A. Yes, sir. 11:05:12	15 pornography. 11:07:54
16 Q. And did you expect that in all 11:05:12	16 Q. Were you ever told that you could not 11:07:55
17 instances they would do so? 11:05:14	17 process accounts for merchants who were 11:08:05
18 A. Yes, sir. 11:05:16	18 selling counterfeit merchandise? 11:08:08
19 Q. Could you turn the page to W6455. And 11:05:29	19 A. We didn't do counterfeit. It would -- 11:08:12
20 this is again just a continuation of the 11:05:34	20 it would not be allowed. 11:08:18
21 requirements for submitting a merchant 11:05:36	21 Q. So counterfeit products would not be 11:08:19
22 application, correct? 11:05:38	22 allowed. 11:08:22
23 A. Okay. 11:05:39	23 A. That's correct. 11:08:23
24 Q. The last boldface item says, 11:05:40	24 Q. Do you distinguish between replica 11:08:24
25 "Non-face-to-face environments must make 11:05:46	25 products and counterfeit products? 11:08:29
31	33
1 sense." 11:05:50	1 A. At the time, no, sir. 11:08:37
2 First off, what are you referring 11:05:51	2 Q. Let me direct your attention to the 11:08:50
3 to when you say "non-face-to-face 11:05:53	3 next page. It says, "If the merchant has a 11:08:58
4 environment"? 11:05:54	4 Web site, an Internet review checklist must be 11:09:08
5 A. It would be Internet, and you're not 11:05:55	5 completed." 11:09:11
6 at my counter making a sale. And I'm not 11:05:58	6 Do you see that? 11:09:12
7 giving you my credit card. 11:06:01	7 A. Yes, sir. 11:09:12
8 Q. Okay. And how would you determine if, 11:06:04	8 Q. And it was your job as the anal- -- as 11:09:13
9 for an Internet merchant, that the transaction 11:06:12	9 the supervisor of the analyst to make sure the 11:09:17
10 made sense? Would you review the Web site? 11:06:15	10 analyst completed the internet for new 11:09:17
11 A. Review the -- yes, sir. 11:06:19	11 checklists for each of the merchants; is that 11:09:22
12 Q. Okay. Now, the next page says, "Basic 11:06:21	12 correct? 11:09:23
13 underwriting." 11:06:38	13 A. Yes, sir. 11:09:23
14 Do you see that? 11:06:39	14 Q. And to complete that checklist, which 11:09:24
15 A. Yes, sir. 11:06:40	15 I'll get to in a minute, you actually had to 11:09:26
16 Q. And what did you understand basic 11:06:43	16 go to the Web site and look -- and look at 11:09:30
17 underwriting to mean? Just generally. 11:06:46	17 certain things, correct? 11:09:31
18 A. That you basically knew what you were 11:06:53	18 A. Say it again? 11:09:32
19 doing as an analyst. 11:06:56	19 Q. In order to complete the Internet 11:09:33
20 Q. Okay. And the purpose for the basic 11:06:58	20 review checklist, you had to go to the Web 11:09:35
21 underwriting is to ensure that the -- the 11:07:00	21 site and look for certain things; is that 11:09:38
22 bank's losses were kept to a minimum? 11:07:05	22 correct? 11:09:39
23 A. Yes, sir. 11:07:08	23 A. I didn't do it. The analyst actually 11:09:39
24 Q. They list five considerations up at 11:07:09	24 completed the process. 11:09:42
25 the top under basic underwriting. What's the 11:07:12	25 Q. I -- I understand. But you knew that 11:09:43

34			36		
1	the analysts were required --	11:09:44	1	THE WITNESS: Sorry.	11:13:33
2	A. Yes.	11:09:44	2	Q. (BY MR. WEIGEL) So he handled more	11:13:33
3	Q. -- to do it because it was your job to	11:09:45	3	the Internet merchants?	11:13:35
4	make sure --	11:09:47	4	A. No. He handled the process of looking	11:13:37
5	A. Yes, sir.	11:09:47	5	on the Internet of what had been approved the	11:13:40
6	Q. -- they did it, correct?	11:09:48	6	previous day to make sure that everything was	11:13:43
7	A. Yes, sir.	11:09:49	7	in place.	11:13:47
8	Q. And so in order to complete the	11:09:49	8	Q. Would he review the applications that	11:13:50
9	Internet review checklist, the analyst had to	11:09:51	9	you had already approved?	11:13:53
10	go to the Web site; is that correct?	11:09:54	10	A. No, sir.	11:13:54
11	A. That is correct.	11:09:56	11	Q. Would he -- he approve all the new	11:13:56
12	Q. Okay. And, again, it says, "If the	11:09:57	12	applications that dealt with Internet	11:14:02
13	merchant is non-face-to-face, the analyst	11:10:01	13	merchants?	11:14:04
14	looks at what is sold to ensure it makes	11:10:04	14	A. No -- no, sir.	11:14:05
15	sense."	11:10:08	15	Q. What did he do that was different from	11:14:06
16	Do you see that?	11:10:08	16	what you did?	11:14:08
17	A. Yes.	11:10:09	17	A. Okay. What I was doing was signing	11:14:09
18	Q. What -- what did you understand the	11:10:13	18	off that I agree with what had been done.	11:14:15
19	analyst was required to do there to make sure	11:10:17	19	What Matt was doing was taking the information	11:14:17
20	that it made sense?	11:10:19	20	that had -- we had signed off on, Internet had	11:14:21
21	A. Well, if I told you I was doing	11:10:24	21	been entered in the computer, and he was	11:14:25
22	facials, and you were on the Internet, I	11:10:26	22	making sure that all the actions had been	11:14:27
23	couldn't very well do a facial. So it had to	11:10:28	23	taken in the appropriate box to -- to fill it	11:14:30
24	make sense to us what they were selling.	11:10:33	24	in to make sure it was processed correctly.	11:14:33
25	Q. Okay.	11:10:35	25	Q. Okay. Now, his e-mail to Marla says,	11:14:37
35			37		
1	(BOYKIN Exhibit No. 2 marked.)	11:12:32	1	"I discussed the Internet merchant checklist	11:14:54
2	Q. (BY MR. WEIGEL) Exhibit 2 is an	11:12:32	2	with Earl."	11:14:58
3	e-mail from Marla Alcorn to the Risk	11:12:35	3	And Earl was your boss, correct?	11:14:59
4	Department.	11:12:38	4	A. Yes, sir.	11:15:01
5	Do you see that?	11:12:38	5	Q. And Mr. Ivy goes on, "We are having	11:15:02
6	A. Yes, sir.	11:12:40	6	our weekly meeting tomorrow. We will instruct	11:15:04
7	Q. And she attaches an e-mail from Matt	11:12:40	7	everyone to use the checklist for any merchant	11:15:07
8	Ivy dated June 15, 2006.	11:12:46	8	who wants to process any percentage on the	11:15:10
9	Do you see that?	11:12:49	9	Internet."	11:15:13
10	A. Yes, sir.	11:12:50	10	Do you see that?	11:15:14
11	Q. Okay. In June of 2006 was Mr. Ivy	11:12:51	11	A. Yes, sir.	11:15:14
12	was -- was still sort of your contemporary,	11:12:59	12	Q. Do you remember that rule being put in	11:15:15
13	was at your level in the new applications	11:13:02	13	place that the Internet-merchant checklist	11:15:17
14	department; is that correct?	11:13:05	14	should be filled out for any merchant who	11:15:20
15	A. Yes.	11:13:05	15	wants to process any percentage on the	11:15:22
16	Q. And did you and he work together?	11:13:07	16	Internet?	11:15:25
17	A. Say -- say that another way.	11:13:13	17	A. No, sir, I don't remember.	11:15:25
18	Q. Sure. Did you -- did you each keep	11:13:15	18	Q. Is -- is that, in fact, the practice	11:15:27
19	your -- keep each other informed as to what	11:13:21	19	or was that, in fact, the practice when you	11:15:28
20	the other was doing?	11:13:23	20	worked at the bank?	11:15:31
21	A. No. We had different job duties. He	11:13:23	21	A. I don't remember that, sir.	11:15:33
22	was more of the Internet kind of guru guy.	11:13:26	22	Q. Okay. Where do you -- you remember	11:15:35
23	THE REPORTER: Internet what?	11:13:26	23	using the Internet --	11:15:39
24	THE WITNESS: Gu- -- Guru.	11:13:26	24	A. Checklist.	11:15:41
25	THE REPORTER: Oh.	11:13:26	25	Q. -- checklist only for high-risk	11:15:42

10 (Pages 34 to 37)

38			40		
1	merchants?	11:15:45	1	developing a high-risk merchant program?	11:18:56
2	A. Yes, sir.	11:15:45	2	A. Sir, I only remember them talking	11:18:58
3	Q. Okay. It goes on to say, "Alva has	11:15:47	3	about it, but I wasn't involved that much in	11:19:01
4	been filing a checklist with the high-risk	11:15:50	4	it.	11:19:03
5	merchant forms."	11:15:53	5	Q. Okay. What do you remember them	11:19:04
6	Do you see that?	11:15:54	6	saying about it?	11:19:06
7	A. Yes, sir.	11:15:55	7	A. That they were just developing a	11:19:07
8	Q. And who is Alva, do you know?	11:15:56	8	program that was for a higher-risk merchant,	11:19:10
9	A. Alva Keyser.	11:15:59	9	more so than our Level 2 program that we were	11:19:14
10	Q. Okay. It says, "I will go through	11:16:07	10	doing currently.	11:19:18
11	them and send them to image."	11:16:08	11	Q. And was that ever implemented to the	11:19:20
12	What does that mean?	11:16:10	12	best of your knowledge?	11:19:24
13	A. He would go through them, make sure	11:16:11	13	A. I don't know, sir.	11:19:26
14	they had been listed and then send them off to	11:16:14	14	Q. Okay.	11:19:28
15	be filmed.	11:16:20	15	(BOYKIN Exhibit No. 4 marked.)	11:20:34
16	Q. Okay.	11:16:20	16	Q. (BY MR. WEIGEL) Now, you indicated	11:20:34
17	A. Imaged.	11:16:21	17	before, I think, that any Internet merchant	11:20:35
18	Q. Do you know if this was about the time	11:16:24	18	would be a Level 2 merchant?	11:20:38
19	that you first started using the	11:16:31	19	A. Yes, sir.	11:20:41
20	Internet-merchant checklist?	11:16:33	20	Q. And that would be if you sold more	11:20:42
21	A. I don't remember that, sir.	11:16:34	21	than 51 percent of your business on the	11:20:43
22	Q. Okay.	11:16:34	22	Internet; is that correct?	11:20:45
23	(BOYKIN Exhibit No. 3 marked.)	11:17:28	23	A. Correct.	11:20:47
24	Q. (BY MR. WEIGEL) Exhibit 3 is a memo	11:17:28	24	Q. What would be the kind of merchant	11:20:47
25	from Jim Jenkins -- or an e-mail from Jim	11:17:30	25	that would be above Level 2?	11:20:51
39			41		
1	Jenkins to Earl Baxter and Larry Jones.	11:17:34	1	A. That would have been something that	11:20:54
2	Do you see that?	11:17:36	2	they were working on at that time that I don't	11:20:56
3	A. Yes, sir.	11:17:37	3	know that much about, sir.	11:21:00
4	Q. And who is Mr. Jenkins?	11:17:39	4	Q. Okay. Exhibit 4 is an e-mail from	11:21:01
5	A. He would have been the accountant or	11:17:43	5	Chris Hartner to Larry Petru, Jim Jenkins,	11:21:07
6	the controller --	11:17:50	6	Larry Jones, Laurie Novacek and Earl Baxter.	11:21:18
7	Q. Okay.	11:17:51	7	Who is Mr. Hartner?	11:21:21
8	A. -- for Delta Card.	11:17:52	8	A. He is in the risk division over -- he	11:21:23
9	Q. And if you look down, Mr. Jenkins'	11:17:54	9	and Marla had the same position.	11:21:28
10	e-mail attached an e-mail from Earl Baxter to	11:18:03	10	Q. Okay. And who is Mr. Petru?	11:21:31
11	Mr. Jones and Mr. Jenkins.	11:18:07	11	A. He was the president of the operations	11:21:35
12	Do you see that?	11:18:09	12	at that time.	11:21:39
13	A. Okay. Yes, sir.	11:18:11	13	Q. He was the president of Delta Card	11:21:41
14	Q. The first sentence of that e-mail	11:18:13	14	Services?	11:21:44
15	says, "As you know, we have been in the	11:18:15	15	A. Yes, sir.	11:21:44
16	beginning phases of developing a high-risk	11:18:18	16	Q. And then I think we already discussed	11:21:45
17	merchant program. We've laid out the possible	11:18:22	17	Mr. Jenkins and Mr. Jones. Who is Laurie	11:21:47
18	types of accounts we would be willing to take,	11:18:26	18	Novacek?	11:21:51
19	what criteria those accounts must meet, the	11:18:28	19	A. She was over the entire division of	11:21:52
20	underwriting guidelines and possible	11:18:32	20	the risk customer service new accounts.	11:21:56
21	candidates for the new area."	11:18:34	21	Q. Okay. And you see the subject is	11:22:01
22	Do you see that?	11:18:36	22	"High-risk revenue merchant program slide	11:22:10
23	A. Yes, sir.	11:18:36	23	show."	11:22:13
24	Q. Were you aware in the spring of 2006	11:18:37	24	A. Yes, sir.	11:22:13
25	that Mr. Baxter was in the beginning phases of	11:18:50	25	Q. I'd like you to take a look through	11:22:18

11 (Pages 38 to 41)

42	44
1 this and tell me if you recollect ever seeing 11:22:27	1 Q. Okay. If you flip to the next page, 11:25:48
2 this previously. 11:22:30	2 it says, "We know what you're thinking." In 11:25:56
3 A. No, sir. 11:22:31	3 the second bullet the point is, "What will 11:26:03
4 Q. Do you remember anyone ever discussing 11:23:00	4 people think of us," and the first thing says, 11:26:05
5 instituting a high-risk revenue merchant 11:23:08	5 "The sales representatives will call us the 11:26:07
6 program? 11:23:13	6 porn kings." 11:26:12
7 MR. PARADISE: Objection to form. 11:23:14	7 Do you see that? 11:26:13
8 A. I don't -- I wasn't involved in it, 11:23:15	8 A. Yes, sir. 11:26:14
9 sir. 11:23:18	9 Q. Did that ever happen? 11:26:14
10 Q. (BY MR. WEIGEL) All right. I 11:23:18	10 A. I don't know. 11:26:15
11 understand that. But did anyone ever tell you 11:23:19	11 Q. Woodforest did process a lot of 11:26:22
12 that they were thinking about doing that? 11:23:21	12 accounts -- oh, I'm sorry. Delta Card 11:26:23
13 A. I don't -- I don't remember. 11:23:27	13 Services did approve a lot of accounts with 11:26:24
14 Q. Okay. Could you turn to the -- the 11:23:32	14 porn merchants; is that correct? 11:26:26
15 introductory slide? The first sentence says, 11:23:36	15 MR. PARADISE: Objection to form. 11:26:29
16 "The term "high risk" often inspires dread, 11:23:49	16 A. Say it another way for me. 11:26:30
17 doom and bad business. The risks are great 11:23:52	17 Q. (BY MR. WEIGEL) Yes. You -- or Delta 11:26:31
18 and the opportunity for loss is always 11:23:58	18 Card Services did approve a lot of porn 11:26:39
19 present." 11:24:00	19 merchants; is that correct? 11:26:44
20 Do you see that? 11:24:00	20 MR. PARADISE: Objection to form. 11:26:46
21 A. Yes, sir. 11:24:01	21 A. I don't know how many we approved, 11:26:47
22 Q. Do you agree with those statements? 11:24:02	22 sir. I -- I don't know. 11:26:49
23 A. Yes, sir. 11:24:04	23 Q. (BY MR. WEIGEL) You didn't reject a 11:26:50
24 Q. Then goes on to say, "Through more 11:24:15	24 merchant just simply because they were selling 11:26:53
25 stringent application approval processes, 11:24:19	25 pornography, correct? 11:26:55
43	45
1 upgraded monitoring and specialized analysts, 11:24:22	1 A. No, sir. 11:26:56
2 we believe we can not only manage this risk in 11:24:26	2 Q. It goes on to say, "The associations 11:26:58
3 an effective way but can create an environment 11:24:28	3 will target us more, if that is possible." 11:27:01
4 in which we can flourish in this high-income 11:24:28	4 Do you see that? 11:27:04
5 market." 11:24:28	5 A. Yes, sir. 11:27:05
6 Do you see that? 11:24:35	6 Q. Do you know what was -- who they were 11:27:05
7 A. Yes, sir. 11:24:35	7 referring to when they say, "the association"? 11:27:07
8 Q. Do you know what was -- what was meant 11:24:35	8 A. Visa, MasterCard. 11:27:09
9 by the term, "More stringent application 11:24:37	9 THE REPORTER: The what? 11:27:09
10 approval process"? 11:24:41	10 THE WITNESS: Visa, MasterCard. 11:27:18
11 A. I -- I don't. 11:24:45	11 Q. (BY MR. WEIGEL) And were the 11:27:18
12 Q. Okay. Did you, in fact, have a more 11:24:47	12 associations targeting Woodforest or Delta 11:27:21
13 stringent approval process for high-risk 11:25:01	13 Card Services? 11:27:26
14 merchants than you had for regular merchants? 11:25:05	14 A. I don't know that because I don't know 11:27:26
15 A. The Internet merchant would be your 11:25:07	15 if this was initiated. 11:27:29
16 high-risk merchant. Yes, sir, we would have 11:25:10	16 Q. Well, did you feel that they -- was 11:27:31
17 more stringent -- we had a stronger guideline. 11:25:13	17 there a feeling at Delta Card Services or 11:27:34
18 Q. Okay. Do you remember what the 11:25:17	18 Woodforest that you were being targeted by 11:27:37
19 additional guidelines were for higher-risk 11:25:21	19 MasterCard or Visa? 11:27:39
20 merchants? 11:25:25	20 MR. PARADISE: Objection to form. 11:27:41
21 A. We had the checklist and an 11:25:25	21 A. We just tried to follow the rules 11:27:43
22 investigation of his Internet site. 11:25:38	22 that -- the guidelines that they gave us. 11:27:46
23 Q. And who conducted that investigation? 11:25:43	23 That's all -- just wanted to make sure the T's 11:27:49
24 A. The analyst that worked on the 11:25:46	24 were crossed and the I's were dotted. 11:27:51
25 application. 11:25:48	25 Q. (BY MR. WEIGEL) Did you ever have an 11:27:55

46	48
<p>1 occasion where MasterCard or Visa came in and 11:27:56</p> <p>2 complained that you weren't dotting your I's 11:28:01</p> <p>3 or crossing your T's? 11:28:04</p> <p>4 A. Not to my knowledge. 11:28:06</p> <p>5 Q. Okay. Did you ever have any sort of 11:28:08</p> <p>6 an audit from MasterCard or Visa? 11:28:10</p> <p>7 A. I don't know that. 11:28:13</p> <p>8 Q. Okay. If you turn to the next page it 11:28:24</p> <p>9 says, "Objective." 11:28:26</p> <p>10 MR. PARADISE: Actually, two pages in. 11:28:28</p> <p>11 You skipped one. 11:28:31</p> <p>12 THE WITNESS: Right there. 11:28:31</p> <p>13 MR. WEIGEL: Yeah. 11:28:31</p> <p>14 THE WITNESS: Right there? 11:28:31</p> <p>15 Q. (BY MR. WEIGEL) It says, "Objective." 11:28:37</p> <p>16 It says, "To aggressively market and approve 11:28:38</p> <p>17 new accounts while maintaining high-level 11:28:42</p> <p>18 monitoring standards to ensure compliance and 11:28:44</p> <p>19 company growth." 11:28:47</p> <p>20 Do you see that? 11:28:48</p> <p>21 A. Yes, sir. 11:28:49</p> <p>22 Q. Okay. Was that your objective when 11:28:50</p> <p>23 you were an analyst -- I'm sorry -- or when 11:28:57</p> <p>24 you were the supervisor of the new 11:29:00</p> <p>25 applications department? 11:29:03</p>	<p>1 Do you see that? 11:30:21</p> <p>2 A. I do. 11:30:21</p> <p>3 Q. And it goes on to say, "Initially, we 11:30:25</p> <p>4 see this area starting with one individual 11:30:28</p> <p>5 from the risk and application department with 11:30:32</p> <p>6 Chris and Earl available for training and 11:30:34</p> <p>7 mentoring throughout the process." 11:30:34</p> <p>8 Do you see that? 11:30:37</p> <p>9 A. I do. 11:30:37</p> <p>10 Q. And the application department was 11:30:38</p> <p>11 your department when you were the supervisor, 11:30:40</p> <p>12 correct? 11:30:42</p> <p>13 A. Yes, sir. 11:30:42</p> <p>14 Q. And Earl was the -- 11:30:43</p> <p>15 A. Manager. 11:30:46</p> <p>16 Q. -- manager of the applications 11:30:47</p> <p>17 department, correct? 11:30:49</p> <p>18 A. Correct. 11:30:51</p> <p>19 Q. Okay. And it goes on to say, "This 11:30:51</p> <p>20 team combination would, in theory, give us a 11:30:53</p> <p>21 good mix between both worlds. Presently, we 11:30:55</p> <p>22 are considering Alva from the apps team and 11:30:59</p> <p>23 Deirdre from the Risk Department." 11:31:03</p> <p>24 Do you see that? 11:31:03</p> <p>25 A. I do. 11:31:04</p>
47	49
<p>1 MR. PARADISE: Objection to form. 11:29:04</p> <p>2 A. This was not -- this was not a part of 11:29:05</p> <p>3 my operation. 11:29:09</p> <p>4 Q. (BY MR. WEIGEL) Okay. You were not 11:29:10</p> <p>5 involved in the marketing of the accounts, 11:29:16</p> <p>6 correct? 11:29:18</p> <p>7 A. No, sir. 11:29:18</p> <p>8 Q. But you were involved in the approving 11:29:19</p> <p>9 of the accounts, correct? 11:29:20</p> <p>10 A. That is correct. 11:29:22</p> <p>11 Q. Did there come a time whenever any -- 11:29:23</p> <p>12 someone told you that you're -- that Delta or 11:29:25</p> <p>13 Woodforest was going to become more aggressive 11:29:30</p> <p>14 in approving high-risk accounts? 11:29:33</p> <p>15 MR. PARADISE: Objection to form. 11:29:36</p> <p>16 A. No one told me, sir. 11:29:39</p> <p>17 Q. (BY MR. WEIGEL) Okay. Would you turn 11:29:41</p> <p>18 to what's page 8 of this presentation. It's 11:30:00</p> <p>19 got the Bates number -- number at the bottom 11:30:03</p> <p>20 2 -- 3637? 11:30:05</p> <p>21 A. Yes, sir. 11:30:08</p> <p>22 Q. It says, "To successfully implement 11:30:11</p> <p>23 and develop a new team to ensure the 11:30:14</p> <p>24 above-stated policies and procedures are 11:30:17</p> <p>25 followed and applied." 11:30:19</p>	<p>1 Q. Did Alva -- which is Alva Keyser, 11:31:05</p> <p>2 correct? 11:31:10</p> <p>3 A. Yes, sir. 11:31:10</p> <p>4 Q. Did she ever join a -- a team in 11:31:11</p> <p>5 connection with high-risk merchants? 11:31:15</p> <p>6 A. I don't know that. 11:31:18</p> <p>7 Q. And she worked for you, correct? 11:31:20</p> <p>8 A. Yes, sir. 11:31:21</p> <p>9 Q. Was she assigned to specialize in 11:31:26</p> <p>10 high-risk merchants? 11:31:29</p> <p>11 A. What -- say it again. 11:31:32</p> <p>12 Q. Sure. How did you determine which 11:31:33</p> <p>13 analysts got which application? 11:31:38</p> <p>14 A. By our process of passing them out. 11:31:40</p> <p>15 Q. Okay. Did you make any effort to -- 11:31:47</p> <p>16 were you involved in passing them out? 11:31:51</p> <p>17 A. No, sir. 11:31:53</p> <p>18 Q. Okay. Who passed them out? 11:31:54</p> <p>19 A. Ietsa. 11:31:55</p> <p>20 Q. Okay. Do you know if Alva was given 11:31:58</p> <p>21 more of the high-risk merchants? 11:32:00</p> <p>22 A. No, sir. They were equally 11:32:03</p> <p>23 distributed. 11:32:05</p> <p>24 Q. Okay. 11:32:05</p> <p>25 A. All applications. 11:32:05</p>

13 (Pages 46 to 49)

50	52
1 Q. Okay. Did you -- did you see this 11:32:06	1 Q. Are you familiar with the concept of 11:47:17
2 document in preparation for today's 11:32:18	2 the match list? 11:47:19
3 deposition? 11:32:21	3 A. Are -- are you referring to that as 11:47:28
4 A. No, sir. 11:32:21	4 the terminated merchant list? 11:47:30
5 Q. Okay. Did you meet with anyone in 11:32:22	5 Q. Is there a -- a terminated merchant 11:47:35
6 preparation for today's deposition? 11:32:28	6 list? 11:47:38
7 A. The attorney. 11:32:31	7 A. Yes, sir. 11:47:38
8 Q. Which attorney? 11:32:33	8 Q. And -- and sometimes referred to as a 11:47:39
9 A. Doctor -- 11:32:34	9 match list? 11:47:44
10 MR. PARADISE: Not Doctor, Mister. 11:32:39	10 A. Once an account was approved, it would 11:47:45
11 A. Mr. Fletcher. 11:32:43	11 go through the next stage and make sure that 11:47:47
12 Q. (BY MR. WEIGEL) And when did you meet 11:32:43	12 no other processor had terminated him. 11:47:51
13 with him? 11:32:47	13 Q. Okay. All right. 11:47:54
14 A. Yesterday evening, afternoon. 11:32:47	14 (BOYKIN Exhibit No. 6 marked.) 11:47:54
15 MR. PARADISE: We're moving to a new 11:32:51	15 MR. WEIGEL: Actually, there's two 11:48:37
16 document. Is this a time for a short break? 11:32:53	16 separate documents, I think. If I could ask 11:48:39
17 MR. WEIGEL: Sure. 11:32:55	17 everyone to just rip off everything -- the 11:48:43
18 THE VIDEOGRAPHER: Go off the record. 11:32:56	18 blue sheet and everything behind it. The 11:48:47
19 The time is 11:33. 11:32:58	19 exhibit should be one page. And then I'm 11:48:49
20 (Brief Recess from 11:33 to 11:43.) 11:43:58	20 going to ask the reporter to mark this 11:49:01
21 THE VIDEOGRAPHER: Back on the record 11:44:02	21 (indicating) as the next exhibit to make it. 11:49:03
22 at 11:44. This is the beginning of Tape 2. 11:44:03	22 (BOYKIN Exhibit No. 7 marked.) 11:49:18
23 (BOYKIN Exhibit No. 5 marked.) 11:45:33	23 Q. (BY MR. WEIGEL) Let me just focus on 11:49:18
24 Q. (BY MR. WEIGEL) Ms. Boykin, Exhibit 5 11:45:33	24 Exhibit 6 for a minute. This is an e-mail 11:49:20
25 is an e-mail to you from Rhonda Lemos? 11:45:36	25 from Mr. Baxter to Mr. Ivy. 11:49:26
51	53
1 A. Yes, sir. 11:45:42	1 Do you see that? 11:49:29
2 Q. And it attaches an e-mail from Deana 11:45:43	2 A. Yes, sir. 11:49:30
3 Rich. 11:45:43	3 Q. And he says, "Not sure if Risk has 11:49:31
4 Do you see that? 11:45:50	4 seen it. I just happened to stumble come 11:49:41
5 A. I do. 11:45:51	5 across it. I'm not sure if it's happening, 11:49:43
6 Q. Who is Ms. Rich? 11:45:51	6 but you or Mona are supposed to be signing off 11:49:45
7 A. The same Deana we had before. 11:45:56	7 on just about everything they approve." 11:49:47
8 Q. If you look at -- if you look, she 11:46:04	8 Do you see that? 11:49:50
9 shows up on the very bottom of the e-mail as 11:46:05	9 A. Yes, sir. 11:49:50
10 Rich Consulting. 11:46:08	10 Q. Do you know what he's referring to 11:49:51
11 Do you see that? 11:46:09	11 there? 11:49:52
12 A. Yes, sir, but I don't know who it is. 11:46:11	12 A. No, sir. 11:49:53
13 Q. Was she engaged in some way in loss 11:46:22	13 Q. Were you supposed to be signing off on 11:49:54
14 prevention? 11:46:26	14 all the high-risk merchants? 11:49:58
15 A. Not to my knowledge. 11:46:28	15 MR. PARADISE: Objection to form. 11:50:00
16 Q. Did you, from time to time, get alerts 11:46:30	16 A. Level 2 merchants, high risk. 11:50:01
17 like this indicating that you shouldn't 11:46:35	17 Q. (BY MR. WEIGEL) You say Level 2. 11:50:05
18 approve a particular merchant? 11:46:38	18 That is a high-risk merchant, as you 11:50:07
19 A. We would get from Rhonda on occasion a 11:46:41	19 understand the term? 11:50:10
20 merchant that had been shopping around that 11:46:45	20 A. Yes, sir. 11:50:11
21 other people had investigated and proved not 11:46:47	21 Q. Okay. If you would turn to Exhibit 7. 11:50:12
22 to be creditworthy. 11:46:54	22 This was produced by Woodforest National Bank. 11:50:28
23 Q. Was there a list that merchants who 11:47:09	23 Do you recognize Exhibit 7? 11:50:32
24 weren't approved ultimately got put on? 11:47:12	24 A. Yes, sir. 11:50:35
25 A. Not to my knowledge. 11:47:15	25 Q. What is it? 11:50:36

54			56		
1	A. It divides it into Level 1 or Level 2	11:50:37	1	MR. WEIGEL: Keyed.	11:53:10
2	guidelines.	11:50:44	2	THE REPORTER: Keyed.	11:53:10
3	Q. And then there's also a Level 3.	11:50:55	3	Q. (BY MR. WEIGEL) And what do you --	11:53:10
4	Do you see that?	11:50:57	4	what do you mean by keyed transactions there?	11:53:11
5	A. Yes, sir.	11:50:58	5	A. There's no swiping of the credit card.	11:53:13
6	Q. Now, a Level 1 is a prescreen, and	11:51:02	6	Q. So that would be a situation where	11:53:17
7	it's merchants with less than 49 percent keyed	11:51:15	7	someone gave you a credit card over the	11:53:20
8	transactions, correct?	11:51:19	8	telephone or over the Internet?	11:53:22
9	A. Correct.	11:51:21	9	A. That's correct.	11:53:24
10	Q. So that would be -- merchants who	11:51:22	10	Q. Okay. And it says, "MO/TO."	11:53:25
11	primarily sold to a Web site would not be	11:51:24	11	Do you see that?	11:53:29
12	Level 1?	11:51:27	12	A. I do.	11:53:30
13	A. That's correct.	11:51:28	13	Q. What does that stand for?	11:53:30
14	Q. And it says, "Level 2 analysts would	11:51:29	14	A. I don't remember.	11:53:32
15	review the following merchant categories."	11:51:31	15	Q. Could that be mail order and telephone	11:53:36
16	And there is a bunch listed there.	11:51:34	16	order?	11:53:39
17	Do you see it?	11:51:37	17	A. Yes, it could be.	11:53:39
18	A. I do.	11:51:38	18	Q. Now that I said that, does that	11:53:41
19	Q. Okay. Were there certain analysts who	11:51:39	19	refresh your recollection?	11:53:43
20	were Level 2 analysts?	11:51:43	20	A. Yes, it does.	11:53:44
21	A. Yes, sir.	11:51:45	21	Q. And is it mail order and telephone	11:53:45
22	Q. And who were the Level 2 analysts?	11:51:46	22	order?	11:53:48
23	A. Alva and Gerald and Roberta.	11:51:49	23	A. Yes, sir.	11:53:49
24	Q. And how were they selected to be Level	11:52:00	24	Q. Next category are, "All retail	11:53:50
25	2 analysts?	11:52:06	25	merchants that cannot be approved in Level 1	11:53:52
55			57		
1	A. By the experience that they had from	11:52:06	1	analysis."	11:53:55
2	this job and previous jobs.	11:52:09	2	Do you see that?	11:53:56
3	Q. So they were more experienced than the	11:52:12	3	A. Yes, sir.	11:53:58
4	other analysts, and they were given a	11:52:14	4	Q. And so that would include any merchant	11:53:59
5	higher-risk account; is that correct?	11:52:16	5	that is on the Internet, correct, primarily?	11:54:05
6	A. Yes, sir.	11:52:19	6	A. Yes, sir.	11:54:08
7	Q. Okay. And the reason for that is	11:52:24	7	Q. It says, "All merchants must be	11:54:09
8	because these accounts had higher risks, you	11:52:26	8	checked against OFAC."	11:54:17
9	wanted the more experienced people working on	11:52:26	9	What does that mean?	11:54:19
10	the account --	11:52:26	10	A. I don't remember.	11:54:20
11	A. More than --	11:52:26	11	Q. Does that have to do with the Patriot	11:54:25
12	Q. -- is that correct?	11:52:28	12	Act?	11:54:30
13	A. Yes, sir.	11:52:28	13	A. I don't remember, sir.	11:54:31
14	Q. Then there's a description for Level	11:52:29	14	Q. Okay. Do you remember that there	11:54:33
15	2.	11:52:48	15	were -- that there were concerns that people	11:54:37
16	Do you see that?	11:52:48	16	might be using credit cards to support	11:54:41
17	A. I do.	11:52:49	17	terrorism, and, therefore, you had to check	11:54:43
18	Q. And what makes a merchant a Level 2	11:52:50	18	certain things?	11:54:47
19	merchant?	11:52:53	19	A. I do recall that period of time, yes.	11:54:48
20	A. The following reasons listed below.	11:52:54	20	Q. Okay. The next item says, "Reverse	11:54:50
21	Q. So merchants with 50 percent keyed	11:53:01	21	lookup need to be complete for all merchants."	11:54:57
22	transactions?	11:53:09	22	What does that mean?	11:55:00
23	Do you see that?	11:53:10	23	A. You take my merchant's name and my	11:55:01
24	A. Yes, sir.	11:53:10	24	merchant address, and you put it into a	11:55:04
25	THE REPORTER: Key -- which key?	11:53:10	25	verification system. And it will come back	11:55:07

15 (Pages 54 to 57)

58	60
<p>1 and tell you that that's where they show that 11:55:10</p> <p>2 address to be, and they show that person to be 11:55:13</p> <p>3 renting there. 11:55:17</p> <p>4 Q. Okay. The next sentence says, "When 11:55:26</p> <p>5 Internet accounts are approved with an 11:55:28</p> <p>6 exception, i.e., we make merchant remove 11:55:32</p> <p>7 something for approval, we must notify Risk 11:55:34</p> <p>8 and track changes as stated below." 11:55:37</p> <p>9 Do you see that? 11:55:39</p> <p>10 A. I do. 11:55:40</p> <p>11 Q. Now, were Internet accounts ever 11:55:41</p> <p>12 approved with an exception? 11:55:45</p> <p>13 A. No, sir. If it was something on there 11:55:47</p> <p>14 that we didn't feel needed to be there, we 11:55:50</p> <p>15 would ask them to remove it, and give Risk a 11:55:52</p> <p>16 notification that it was going to be approved, 11:55:56</p> <p>17 and it was up to them to follow up thereafter. 11:55:59</p> <p>18 Q. So if somebody had something on their 11:56:03</p> <p>19 Web site that they shouldn't be selling, you 11:56:06</p> <p>20 would say, "We'll approve you if you take it 11:56:08</p> <p>21 off," and you would tell the Risk Department 11:56:10</p> <p>22 to be on the lookout to make sure they did 11:56:13</p> <p>23 take it off -- 11:56:15</p> <p>24 A. That is correct. 11:56:15</p> <p>25 Q. -- correct? Okay. Did that happen 11:56:16</p>	<p>1 if it had been removed, then you would approve 11:57:08</p> <p>2 the account? 11:57:11</p> <p>3 A. Yes, sir. 11:57:12</p> <p>4 Q. Okay. And it goes on to talk about 11:57:13</p> <p>5 something called, "Track changes, Web 11:57:21</p> <p>6 Watcher." 11:57:21</p> <p>7 Do you see that? 11:57:25</p> <p>8 A. I do. 11:57:25</p> <p>9 Q. And it says, "Once an account is 11:57:26</p> <p>10 deemed to be risky and needs to be watched, it 11:57:27</p> <p>11 will need to be added to Web Watcher." 11:57:30</p> <p>12 A. Yes, sir. 11:57:32</p> <p>13 Q. Do you see that? 11:57:33</p> <p>14 A. I do. 11:57:34</p> <p>15 Q. Did you ever add accounts to Web 11:57:34</p> <p>16 Watcher? 11:57:39</p> <p>17 A. No, sir. That was the risk division 11:57:40</p> <p>18 responsibility. 11:57:44</p> <p>19 Q. But you would tell them an account -- 11:57:47</p> <p>20 how would the risk division know that an 11:57:47</p> <p>21 account was risky? 11:57:50</p> <p>22 A. To put on their watch list? 11:57:51</p> <p>23 Q. Yes. 11:57:53</p> <p>24 A. We would just send an e-mail to Marla 11:57:54</p> <p>25 or something to the effect of here's a copy of 11:57:57</p>
59	61
<p>1 often? 11:56:17</p> <p>2 MR. PARADISE: Objection to form. 11:56:17</p> <p>3 A. I have no idea how often. 11:56:19</p> <p>4 Q. (BY MR. WEIGEL) Do you remember it 11:56:21</p> <p>5 happening? 11:56:22</p> <p>6 A. It did happen. 11:56:22</p> <p>7 Q. Okay. How would you make the merchant 11:56:23</p> <p>8 remove something? 11:56:30</p> <p>9 A. You would ask them to get with their 11:56:31</p> <p>10 processing person and have it removed. It's 11:56:37</p> <p>11 an overnight process, and then we'd check it 11:56:40</p> <p>12 the next day. 11:56:43</p> <p>13 Q. So when you say the processing, you 11:56:45</p> <p>14 mean the -- 11:56:48</p> <p>15 A. Person -- 11:56:48</p> <p>16 Q. -- Internet guru who was able -- 11:56:49</p> <p>17 A. Yeah. 11:56:49</p> <p>18 Q. -- to do the computer magic -- 11:56:50</p> <p>19 A. That made his Web site. Whomever 11:56:53</p> <p>20 made -- whomever set up his Web site, designed 11:56:55</p> <p>21 his Web site, that would be the person that 11:56:57</p> <p>22 would help him to remove things that were not 11:57:00</p> <p>23 supposed to be there. 11:57:02</p> <p>24 Q. Okay. And then you would check the 11:57:04</p> <p>25 next day to make sure it had been removed, and 11:57:06</p>	<p>1 this application, put him on the web -- the 11:58:01</p> <p>2 watch list. 11:58:03</p> <p>3 Q. Okay. And you would do that whenever 11:58:03</p> <p>4 you -- I guess the first item says, "Whenever 11:58:06</p> <p>5 a request has been made to remove material 11:58:09</p> <p>6 from the Web site"? 11:58:11</p> <p>7 A. Yes, sir. 11:58:12</p> <p>8 Q. Okay. So if you told somebody to 11:58:14</p> <p>9 remove something from the Web site, they, 11:58:18</p> <p>10 then, talked to their computer guy, and it was 11:58:21</p> <p>11 removed from the Web site, you checked the 11:58:26</p> <p>12 next day to see that it was no longer there? 11:58:28</p> <p>13 A. The analyst would, yes, sir. 11:58:31</p> <p>14 Q. Then you would also tell the Risk 11:58:32</p> <p>15 Department that they should treat that account 11:58:35</p> <p>16 as risky and monitor it to make sure that it 11:58:38</p> <p>17 didn't show up again; is that correct? 11:58:41</p> <p>18 A. It would have been approved, and then 11:58:42</p> <p>19 we would have told the Risk that it had been 11:58:44</p> <p>20 approved, to monitor it. 11:58:46</p> <p>21 Q. Okay. The fourth item down refers to, 11:58:48</p> <p>22 "Borderline illegal material." 11:59:00</p> <p>23 Do you see that? 11:59:01</p> <p>24 A. I do. 11:59:01</p> <p>25 Q. What is that referring to? 11:59:03</p>

<p style="text-align: right;">62</p> <p>1 A. Something that we would not normally 11:59:06</p> <p>2 approve, and it -- it was like, just watch out 11:59:14</p> <p>3 in case he did something he wasn't supposed to 11:59:23</p> <p>4 do. I can't give you an example. 11:59:26</p> <p>5 Q. So if you approved somebody, but you 11:59:30</p> <p>6 had a bad feeling about it -- 11:59:32</p> <p>7 A. Uh-huh. 11:59:32</p> <p>8 Q. -- you would tell the Risk Department 11:59:34</p> <p>9 to keep an eye out? 11:59:36</p> <p>10 A. Just to make sure. 11:59:38</p> <p>11 Q. Okay. Now, there's a Level 3. 11:59:39</p> <p>12 Do you see that? 11:59:46</p> <p>13 A. I do. 11:59:47</p> <p>14 Q. What puts somebody in Level 3? 11:59:50</p> <p>15 A. I don't remember everything about it, 11:59:53</p> <p>16 sir. 12:00:02</p> <p>17 Q. Okay. Well, it indicates, for 12:00:03</p> <p>18 example, that "All adult web -- 12:00:08</p> <p>19 A. I see that. 12:00:11</p> <p>20 Q. -- are Level 3." 12:00:12</p> <p>21 Do you see that? 12:00:13</p> <p>22 A. I do. 12:00:14</p> <p>23 Q. Were there Level 3 analysts? 12:00:17</p> <p>24 A. No, sir. 12:00:20</p> <p>25 Q. Did the level -- do you remember there 12:00:23</p>	<p style="text-align: right;">64</p> <p>1 Q. Do you know if Exhibit 7 was attached 12:28:14</p> <p>2 to the e-mail sent from Mr. Baxter to Mr. Ivy? 12:28:17</p> <p>3 A. I do not know that, sir. 12:28:23</p> <p>4 Q. Okay. I think I asked you this. Do 12:28:25</p> <p>5 you remember -- do you remember having 12:28:34</p> <p>6 reviewed Exhibit 7, however? 12:28:39</p> <p>7 A. I reviewed what? 12:28:42</p> <p>8 Q. Exhibit 7. 12:28:42</p> <p>9 A. Yes, sir. 12:28:42</p> <p>10 Q. Okay. Now, I think before lunch we 12:28:43</p> <p>11 were looking at Level 3 which appears on the 12:28:48</p> <p>12 last page of Exhibit 7? 12:28:53</p> <p>13 A. Right. 12:28:55</p> <p>14 Q. And what makes a merchant a Level 3 12:28:56</p> <p>15 merchant? 12:29:11</p> <p>16 A. It would have been someone that had 12:29:15</p> <p>17 fallen into that category as listed below. 12:29:17</p> <p>18 Q. Bottom says, "Internet accounts." 12:29:21</p> <p>19 Do you know what that means? 12:29:23</p> <p>20 A. Any Internet account that was not 12:29:24</p> <p>21 considered to be one of the above. 12:29:31</p> <p>22 Q. So were all Internet accounts 12:29:36</p> <p>23 considered to be Level 3? 12:29:38</p> <p>24 A. I'm not familiar with Level 3, so if 12:29:42</p> <p>25 it's something that was initiated later, 12:29:47</p>
<p style="text-align: right;">63</p> <p>1 being Level 3 merchants? 12:00:25</p> <p>2 A. I don't. 12:00:28</p> <p>3 MR. PARADISE: Should we go off the 12:00:46</p> <p>4 record for one second? 12:00:48</p> <p>5 MR. WEIGEL: Sure. 12:00:49</p> <p>6 THE VIDEOGRAPHER: Off the record. 12:00:50</p> <p>7 The time is 12:01. 12:00:51</p> <p>8 (Brief Recess from 12:01 to 12:27.) 12:27:19</p> <p>9 THE VIDEOGRAPHER: Back on the record. 12:27:19</p> <p>10 The time is 12:27. 12:27:24</p> <p>11 Q. (BY MR. WEIGEL) I think before lunch 12:27:29</p> <p>12 we were looking at Exhibit 7 which -- do you 12:27:33</p> <p>13 have Exhibit 6 in front of you, too? 12:27:38</p> <p>14 A. Yes, sir. 12:27:41</p> <p>15 Q. Okay. I -- I notice that Exhibit 6 is 12:27:42</p> <p>16 an e-mail dated July 6, 2006, and it has an 12:27:48</p> <p>17 attachment called, "Credit Analyst Areas of 12:27:52</p> <p>18 Response." 12:27:55</p> <p>19 Do you see that? 12:27:57</p> <p>20 A. I do. 12:27:57</p> <p>21 Q. And if you'll see -- you'll look, 12:27:58</p> <p>22 you'll see the Bates numbers 3697, and they go 12:28:01</p> <p>23 consecutively with Exhibit 7 which then turns 12:28:04</p> <p>24 to 3698, 3699 and 3700. 12:28:07</p> <p>25 A. Okay. 12:28:13</p>	<p style="text-align: right;">65</p> <p>1 I'm -- I'm not familiar with it. 12:29:51</p> <p>2 Q. Well, this Exhibit 7 does say it was 12:29:54</p> <p>3 revised in January 2006. 12:29:57</p> <p>4 Do you see that on the front 12:29:59</p> <p>5 page? 12:30:01</p> <p>6 A. Yes. 12:30:02</p> <p>7 Q. So was that the one that was in place 12:30:07</p> <p>8 when you were -- when you were the supervisor? 12:30:09</p> <p>9 A. Yes, sir. 12:30:12</p> <p>10 Q. Okay. And what would you call Exhibit 12:30:14</p> <p>11 7? 12:30:17</p> <p>12 A. Processing guidelines. 12:30:21</p> <p>13 Q. Okay. So Exhibit 7 is the processing 12:30:22</p> <p>14 guidelines that were in effect starting in 12:30:30</p> <p>15 January 2006, correct? 12:30:32</p> <p>16 A. Correct. 12:30:33</p> <p>17 (BOYKIN Exhibit No. 8 marked.) 12:31:12</p> <p>18 MR. WEIGEL: Off the record for just a 12:31:12</p> <p>19 second. 12:31:12</p> <p>20 THE VIDEOGRAPHER: Off the record. 12:31:12</p> <p>21 The time is 12:31. 12:31:12</p> <p>22 (Discussion off the record.) 12:31:22</p> <p>23 THE VIDEOGRAPHER: Back on the record. 12:31:22</p> <p>24 The time is 12:31. 12:31:23</p> <p>25 Q. (BY MR. WEIGEL) Ms. Boykin, do you -- 12:31:29</p>

17 (Pages 62 to 65)

<p style="text-align: right;">66</p> <p>1 do you remember or do you recollect having 12:31:32</p> <p>2 reviewed Exhibit 8? 12:31:34</p> <p>3 A. 8? 12:31:36</p> <p>4 Q. Yes. 12:31:38</p> <p>5 A. No, sir. 12:31:39</p> <p>6 Q. Well, Exhibit 8 is an application from 12:31:43</p> <p>7 the Laurette Company. 12:31:47</p> <p>8 Do you see that? 12:31:49</p> <p>9 A. Yes, sir. 12:31:50</p> <p>10 Q. And let me direct your attention to 12:31:51</p> <p>11 the fifth page in. I think the page before 12:32:05</p> <p>12 that, ma'am. 12:32:19</p> <p>13 A. Okay. 12:32:23</p> <p>14 Q. And do you recognize that page? 12:32:24</p> <p>15 A. I do. 12:32:30</p> <p>16 Q. And what is it? 12:32:31</p> <p>17 A. It's the page that was used when you 12:32:32</p> <p>18 were making comments for additional 12:32:37</p> <p>19 information that was needed and -- and say 12:32:40</p> <p>20 that it would be approved or declined. 12:32:42</p> <p>21 Q. And is this -- is this a printed form 12:32:46</p> <p>22 or was this on a computer screen? Do you 12:32:52</p> <p>23 remember? 12:32:55</p> <p>24 A. It was printed -- it was on the 12:32:55</p> <p>25 computer screen, and when you got an 12:32:57</p>	<p style="text-align: right;">68</p> <p>1 So we just needed to confirm that 12:34:11</p> <p>2 we had a confirmation of the signature of 12:34:13</p> <p>3 where it was sent. 12:34:16</p> <p>4 Q. So you were insisting that the 12:34:17</p> <p>5 merchant make sure that they got a signature 12:34:20</p> <p>6 when they shipped the goods? 12:34:24</p> <p>7 A. Uh-huh. As proof that they had 12:34:25</p> <p>8 received the merchandise. 12:34:28</p> <p>9 Q. And so how did you -- how did you -- 12:34:32</p> <p>10 did you convey that information to the 12:34:38</p> <p>11 merchant? 12:34:39</p> <p>12 A. No. I would have given that back to 12:34:40</p> <p>13 Alvin -- Alva, and she would have confirmed 12:34:43</p> <p>14 with the merchant that his procedure was in 12:34:45</p> <p>15 line with what we were looking for. 12:34:48</p> <p>16 Q. Okay. And then this other handwriting 12:34:50</p> <p>17 that you wrote, "One year in business," 12:34:55</p> <p>18 correct? 12:34:56</p> <p>19 A. Yes, sir. 12:34:57</p> <p>20 Q. Why is that important? 12:34:58</p> <p>21 A. The least amount of time that you have 12:35:00</p> <p>22 in business is -- is considered a risk factor. 12:35:06</p> <p>23 The longer that you are in business the better 12:35:10</p> <p>24 risk factor. 12:35:13</p> <p>25 Q. Okay. Then it says, "High-risk 12:35:15</p>
<p style="text-align: right;">67</p> <p>1 application, you printed it out of the 12:33:00</p> <p>2 computer screen. 12:33:03</p> <p>3 Q. Okay. Do you see your handwriting on 12:33:04</p> <p>4 that? 12:33:05</p> <p>5 A. I do. 12:33:05</p> <p>6 Q. And where is your handwriting? 12:33:06</p> <p>7 A. It's for in the top portion where it 12:33:07</p> <p>8 says, "Need to confirm shipping and who's 12:33:12</p> <p>9 signed for signature." And then it's also 12:33:13</p> <p>10 there again right below, "When you're in 12:33:17</p> <p>11 business." It was a high-risk Internet and 12:33:24</p> <p>12 guaranteed signatures. 12:33:31</p> <p>13 Q. Okay. And is that -- that's your 12:33:31</p> <p>14 signature underneath Mona? 12:33:34</p> <p>15 A. Yes, sir. 12:33:35</p> <p>16 Q. Okay. Let's go to the first comment. 12:33:36</p> <p>17 "Need to conform" -- is that what it says? 12:33:43</p> <p>18 A. It's confirm. 12:33:45</p> <p>19 Q. Confirm. What does that mean? 12:33:46</p> <p>20 A. When you -- you get your merchandise, 12:33:48</p> <p>21 if you're an Internet merchant, if it was 12:33:55</p> <p>22 something that we just needed to confirm that 12:33:58</p> <p>23 it was coming to you as a cardholder and not 12:34:01</p> <p>24 being shipped to an off site and then 12:34:06</p> <p>25 distributed to you. 12:34:10</p>	<p style="text-align: right;">69</p> <p>1 Internet." 12:35:17</p> <p>2 Do you see that? 12:35:17</p> <p>3 A. Yes, sir. 12:35:18</p> <p>4 Q. What does that mean? 12:35:19</p> <p>5 A. He had had 51 percent of his 12:35:21</p> <p>6 merchandise that was coming over the Internet 12:35:27</p> <p>7 or was all Internet. 12:35:30</p> <p>8 Q. And then the last item is "Guaranteed 12:35:36</p> <p>9 signature." 12:35:40</p> <p>10 Is that what it says? 12:35:40</p> <p>11 A. The -- the -- the merchant would have 12:35:43</p> <p>12 had totalled out of that he's going to 12:35:46</p> <p>13 guarantee that he gets the signature from the 12:35:49</p> <p>14 article that was shipped, so we got proof that 12:35:51</p> <p>15 something was received. 12:35:56</p> <p>16 Q. Okay. There's some other writing on 12:35:57</p> <p>17 this page. 12:36:01</p> <p>18 Do you see it? 12:36:02</p> <p>19 A. Yes, sir. 12:36:02</p> <p>20 Q. It says, "rollover"? 12:36:03</p> <p>21 A. Yes, sir. 12:36:04</p> <p>22 Q. And can you read the next word? 12:36:06</p> <p>23 A. I do see a word. 12:36:08</p> <p>24 Q. Would that be Patriot Act? 12:36:11</p> <p>25 A. It does look like it. 12:36:14</p>

18 (Pages 66 to 69)

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1	Q. And is that the initials, "FDR," after	12:36:16	1	Q. And Alva reviewed it?	12:38:26
2	that?	12:36:20	2	A. As an analyst, yes.	12:38:28
3	A. Yes, sir.	12:36:22	3	Q. And then you signed off on it,	12:38:30
4	Q. Do you know what that stands for?	12:36:23	4	correct?	12:38:32
5	A. I do not.	12:36:25	5	A. Yes, sir.	12:38:32
6	Q. Do you know what Patriot Act stands	12:36:26	6	Q. And you don't know if -- do those	12:38:34
7	for?	12:36:31	7	initials strike you as somebody else's	12:38:40
8	A. The form that Alva would've completed.	12:36:31	8	sign-off?	12:38:42
9	Q. Do you recognize that as Alva's	12:36:36	9	A. Are you talking about the initials	12:38:43
10	handwriting?	12:36:39	10	over here (indicating), the JW?	12:38:45
11	A. Yes, sir.	12:36:40	11	Q. Yes.	12:38:46
12	Q. Okay. At the far right it says, "Good	12:36:40	12	A. I don't know where that came from. I	12:38:47
13	credit."	12:36:42	13	don't know who signed off on it.	12:38:49
14	Do you see that?	12:36:42	14	Q. Now, when you signed off on the	12:38:51
15	A. I do.	12:36:43	15	account, did anyone else above you review this	12:39:08
16	Q. Was that also Alva's?	12:36:44	16	account?	12:39:12
17	A. Yes, sir.	12:36:46	17	A. Not to my knowledge.	12:39:15
18	Q. There's a box in the middle that looks	12:36:47	18	Q. And in that instance when -- did you	12:39:17
19	like it's a stamp and it has 11/16 written on	12:36:51	19	have authority then to approve this account	12:39:22
20	it, and then there's some scribble after 11/16	12:36:54	20	for Delta Card Services and Woodforest?	12:39:24
21	and then another signature and then JW.	12:36:57	21	A. I approved it for Delta Card, yes,	12:39:27
22	Do you see that?	12:36:59	22	sir.	12:39:29
23	A. I do.	12:37:00	23	Q. And if Delta Card approved it, would	12:39:29
24	Q. Are those sign-offs by various people	12:37:00	24	Woodforest automatically approve it?	12:39:35
25	on this account?	12:37:03	25	MR. PARADISE: Objection to form.	12:39:38

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1	A. The first one would be letsa that she	12:37:04	1	A. I don't know the partnership there,	12:39:39
2	keyed it into the system.	12:37:09	2	sir.	12:39:41
3	Q. Okay.	12:37:11	3	Q. (BY MR. WEIGEL) Well, did you ever	12:39:42
4	A. And the second would be Alva.	12:37:11	4	have an occasion where you approved an	12:39:43
5	Q. And that's Alva's signature that she	12:37:15	5	account, and perhaps your boss approved the	12:39:45
6	had completed her review of it?	12:37:20	6	account, but Woodforest declined to accept?	12:39:50
7	A. Her initials, yes, sir.	12:37:22	7	A. No, sir.	12:39:58
8	Q. Do you know who JW is -- or TW?	12:37:24	8	Q. Was there any review process within	12:39:58
9	A. I don't.	12:37:26	9	Woodforest that took place after you approved	12:39:59
10	Q. There seems to be a "B" written above	12:37:27	10	the account, to the best of your knowledge?	12:40:02
11	that. Do you see that?	12:37:31	11	A. Not to my knowledge, sir.	12:40:04
12	A. Above the JW?	12:37:36	12	Q. Did you ever approve an account and	12:40:06
13	Q. No. Above the stamp.	12:37:37	13	hear that Woodforest wouldn't accept that type	12:40:21
14	A. Oh. I see that.	12:37:40	14	of merchant?	12:40:24
15	Q. Do you know what that signifies?	12:37:44	15	A. No, sir.	12:40:24
16	A. It's something that letsa wrote	12:37:46	16	Q. Okay. Now, turning to the first page	12:40:26
17	because she was using a felt pen, a BIC pen.	12:37:49	17	of Exhibit 8, did you review Exhibit 8 before	12:40:34
18	Q. Do you know what is -- what's to the	12:37:54	18	you gave your approval to it?	12:40:39
19	left of that?	12:37:55	19	A. By the time that I would have given an	12:40:41
20	A. It'd be something Alva wrote, sir. I	12:38:04	20	approval, all the pages I would have had to	12:40:46
21	don't know what it represents.	12:38:08	21	review for the check and to make sure the	12:40:48
22	Q. Okay. So this application came in.	12:38:10	22	blanks were completed properly, yes, sir.	12:40:52
23	letsa reviewed it?	12:38:21	23	Q. Okay. Did you look -- would you have	12:40:54
24	A. She took it from the fax machine and	12:38:22	24	looked to see that it was completed as to	12:41:08
25	keyed it to the system.	12:38:25	25	where the goods came from? On -- on the	12:41:12

19 (Pages 70 to 73)

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<p>1 second page, ma'am, I think at the top. 12:41:15</p> <p>2 A. This page? 12:41:18</p> <p>3 Q. No, I'm sorry, the third page. 12:41:21</p> <p>4 A. Okay. 12:41:23</p> <p>5 Q. It says at the top, it says, 12:41:25</p> <p>6 "Description product," it says, "Designer 12:41:27</p> <p>7 handbags." 12:41:30</p> <p>8 Do you see that? 12:41:30</p> <p>9 A. Yes, sir. 12:41:31</p> <p>10 Q. Do you know what that next question 12:41:33</p> <p>11 is, question 3? 12:41:35</p> <p>12 A. I can't -- I can't read it. I don't 12:41:36</p> <p>13 know. 12:41:42</p> <p>14 Q. I've seen a better copy, and I believe 12:41:43</p> <p>15 it says, list the names and addresses of 12:41:51</p> <p>16 vendors from which the products -- product is 12:41:54</p> <p>17 purchased. 12:41:59</p> <p>18 Do you see that? 12:41:59</p> <p>19 A. I do. 12:42:00</p> <p>20 Q. Now, this was -- this is a form that 12:42:01</p> <p>21 you saw regularly in accordance with your 12:42:03</p> <p>22 duties? 12:42:05</p> <p>23 A. Yes, sir. 12:42:05</p> <p>24 Q. Does that strike you that that's what 12:42:05</p> <p>25 that question 3 is? 12:42:08</p>	<p>1 A. Overall. 12:43:19</p> <p>2 Q. All right. And this -- the first box 12:43:20</p> <p>3 says, "All Internet merchants." 12:43:29</p> <p>4 Do you see that? 12:43:31</p> <p>5 A. I do. 12:43:32</p> <p>6 Q. And then there's a second box that 12:43:32</p> <p>7 says, "All high-risk merchants." 12:43:34</p> <p>8 Do you see that? 12:43:36</p> <p>9 A. Not yet. 12:43:37</p> <p>10 MR. PARADISE: I think you look down 12:43:37</p> <p>11 here. 12:43:37</p> <p>12 THE WITNESS: Okay. 12:43:54</p> <p>13 Q. (BY MR. WEIGEL) Do you see that now, 12:43:54</p> <p>14 ma'am? 12:43:56</p> <p>15 A. I do. 12:43:56</p> <p>16 Q. There's one box that says, "All 12:43:57</p> <p>17 Internet merchants," and there's a series of 12:43:59</p> <p>18 check boxes. 12:44:01</p> <p>19 A. Right. 12:44:02</p> <p>20 Q. And then there's a heading that says, 12:44:02</p> <p>21 "All high-risk merchants," and there's another 12:44:04</p> <p>22 series of check boxes. 12:44:08</p> <p>23 Do you see that? 12:44:08</p> <p>24 A. Yes, sir. 12:44:08</p> <p>25 Q. Do you know when you had to fill out 12:44:09</p>
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<p>1 A. Yes, sir. 12:42:08</p> <p>2 Q. Would you have reviewed that in your 12:42:09</p> <p>3 review to see where the goods came from? 12:42:12</p> <p>4 A. Yes, sir. 12:42:16</p> <p>5 Q. Okay. Now, at the back of this there 12:42:20</p> <p>6 are a series of screen shots. Do you know 12:42:26</p> <p>7 what a screen shot is? 12:42:30</p> <p>8 A. Are you talking like the Federal 12:42:32</p> <p>9 Reserve? 12:42:36</p> <p>10 Q. Yes. 12:42:37</p> <p>11 A. Yes, sir. 12:42:38</p> <p>12 Q. Right after -- can you find the 12:42:38</p> <p>13 Internet merchant review checklist in that 12:42:41</p> <p>14 packet? 12:42:44</p> <p>15 A. Yes, sir. 12:42:46</p> <p>16 Q. And this is the checklist that was 12:42:49</p> <p>17 filed -- was supposed to be filled out for 12:42:55</p> <p>18 every Internet merchant? 12:42:58</p> <p>19 A. That the high-risk Internet merchant. 12:43:00</p> <p>20 Q. And any -- any merchant -- that sold 12:43:05</p> <p>21 most of its goods over the Internet was a 12:43:09</p> <p>22 high-risk merchant in your -- in your view, 12:43:13</p> <p>23 correct? 12:43:15</p> <p>24 A. 51 percent or greater transaction. 12:43:15</p> <p>25 Q. Okay. 12:43:15</p>	<p>1 the boxes that say -- that are listed under, 12:44:15</p> <p>2 "All high-risk merchants"? 12:44:19</p> <p>3 A. I don't recall us utilizing that, so 12:44:24</p> <p>4 I'll have to say, no, I don't remember. 12:44:28</p> <p>5 Q. Did you ever see applications where 12:44:30</p> <p>6 those forms had been filled out -- or that -- 12:44:45</p> <p>7 that section of the form had been filled out? 12:44:47</p> <p>8 A. I don't recall. 12:44:57</p> <p>9 Q. Okay. Those are all items that you 12:44:59</p> <p>10 would not allow a Web site to contain; is that 12:45:03</p> <p>11 correct? 12:45:09</p> <p>12 A. It -- yes, sir. 12:45:09</p> <p>13 Q. Okay. Did you ever discuss with 12:45:10</p> <p>14 anyone or did anyone ever discuss with you the 12:45:22</p> <p>15 possibility of adding replica or counterfeit 12:45:24</p> <p>16 merchants into that list? 12:45:28</p> <p>17 A. No, sir. 12:45:29</p> <p>18 Q. Okay. For the box at the top of the 12:45:31</p> <p>19 page, "All Internet merchants," were each of 12:45:42</p> <p>20 those items supposed to be conducted for each 12:45:47</p> <p>21 merchant? 12:45:50</p> <p>22 A. I don't -- I don't recall. 12:45:56</p> <p>23 Q. Okay. Do you see the last one that 12:45:58</p> <p>24 says, "Print screen shots of the site for the 12:46:03</p> <p>25 file." 12:46:05</p>

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<p>1 Do you see that? 12:46:06</p> <p>2 A. Yes, sir. 12:46:07</p> <p>3 Q. And why was that to be done? 12:46:08</p> <p>4 A. It's something that we needed to have 12:46:17</p> <p>5 in our files to complete it to make sure this 12:46:19</p> <p>6 was the product that he was selling. 12:46:22</p> <p>7 Q. Was that one way to know if the 12:46:26</p> <p>8 merchant changed the type of business he was 12:46:29</p> <p>9 in after you approved him? 12:46:32</p> <p>10 A. Correct. 12:46:34</p> <p>11 Q. When you reviewed the application, did 12:46:35</p> <p>12 you make sure that the screen shots were in 12:46:38</p> <p>13 the approval package? 12:46:41</p> <p>14 A. I did not. 12:46:44</p> <p>15 Q. Was it your job to make sure that on a 12:46:47</p> <p>16 high-risk Internet merchant that this 12:46:50</p> <p>17 checklist had been filled out? 12:46:53</p> <p>18 A. Yes. 12:46:55</p> <p>19 Q. Okay. And is one of the items on this 12:46:56</p> <p>20 checklist, print screen shots of the site? 12:46:59</p> <p>21 A. I see that, yes. 12:47:01</p> <p>22 Q. All right. And there was a business 12:47:03</p> <p>23 purpose for doing that, namely, to make sure 12:47:05</p> <p>24 that the merchant didn't actually change the 12:47:08</p> <p>25 business he was in, correct? 12:47:10</p>	<p>1 out those screen shots? 12:48:11</p> <p>2 A. It was part of our procedure that we 12:48:12</p> <p>3 wanted to make sure that we were shipping from 12:48:14</p> <p>4 the merchant, and that they had a return 12:48:17</p> <p>5 policy because if you said you can't return 12:48:22</p> <p>6 this, you can't get your money back, that 12:48:25</p> <p>7 would be -- alarmed us that it would be high 12:48:27</p> <p>8 risk of chargeback. 12:48:31</p> <p>9 Q. And why are chargebacks bad? 12:48:33</p> <p>10 A. It's a loss for the bank. They're 12:48:36</p> <p>11 unable to collect their funds. 12:48:39</p> <p>12 Q. Okay. And did you also check the type 12:48:42</p> <p>13 of product that the account was selling, the 12:48:50</p> <p>14 merchant was selling? 12:48:52</p> <p>15 A. It would have to be the product that 12:48:53</p> <p>16 was listed on the original front of the 12:48:54</p> <p>17 application, yes, sir. 12:48:57</p> <p>18 Q. Okay. So if you look after you 12:48:58</p> <p>19 discussed the shipping, there are several 12:49:07</p> <p>20 pages of pictures of handbags. 12:49:10</p> <p>21 Do you see that? 12:49:15</p> <p>22 A. I do. 12:49:16</p> <p>23 Q. And do you see that they all list the 12:49:16</p> <p>24 name, "Gucci," for each of the handbags? 12:49:18</p> <p>25 A. I do. 12:49:21</p>
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<p>1 A. Yes, sir. 12:47:11</p> <p>2 Q. Did you approve them for a particular 12:47:12</p> <p>3 type of business, and you don't want him 12:47:16</p> <p>4 changing that business without coming back to 12:47:17</p> <p>5 you, correct? 12:47:19</p> <p>6 A. That is correct. 12:47:20</p> <p>7 Q. Do you believe that to the best of 12:47:21</p> <p>8 your ability you attempted to get -- make sure 12:47:25</p> <p>9 that screen shots were printed out for all of 12:47:27</p> <p>10 the applications you approved for high-risk 12:47:30</p> <p>11 Internet merchants? 12:47:32</p> <p>12 A. It would have came to me in that 12:47:34</p> <p>13 condition, yes, sir. 12:47:35</p> <p>14 Q. Okay. And if the screen shots weren't 12:47:36</p> <p>15 there, would you have -- 12:47:37</p> <p>16 A. Sent it back to them. 12:47:38</p> <p>17 Q. You would have sent it back? 12:47:39</p> <p>18 A. Yes, sir. 12:47:41</p> <p>19 Q. Now, if you look at the pages after 12:47:41</p> <p>20 the Internet review checklist, you see the 12:47:52</p> <p>21 first few pages deal with shipping and 12:48:01</p> <p>22 returns. 12:48:03</p> <p>23 Do you see that? 12:48:03</p> <p>24 A. I do. 12:48:04</p> <p>25 Q. Why would you -- why would you print 12:48:05</p>	<p>1 Q. Did you understand that these handbags 12:49:22</p> <p>2 that were being sold under the Gucci name were 12:49:33</p> <p>3 being manufactured in China? 12:49:35</p> <p>4 MR. PARADISE: Objection to form. 12:49:36</p> <p>5 A. I don't know that, sir. 12:49:40</p> <p>6 Q. (BY MR. WEIGEL) Okay. 12:49:40</p> <p>7 A. I -- I don't know that. 12:49:43</p> <p>8 Q. Okay. Did anyone ever tell you that 12:49:46</p> <p>9 you shouldn't accept replica merchants? 12:49:50</p> <p>10 A. We didn't deal with anything like 12:49:56</p> <p>11 that, sir. 12:49:58</p> <p>12 Q. Okay. And you didn't deal with that 12:49:59</p> <p>13 why? 12:50:01</p> <p>14 A. We just wanted the product to be what 12:50:03</p> <p>15 it was on the original thing. 12:50:06</p> <p>16 Q. So if somebody was selling replica 12:50:08</p> <p>17 Gucci products, you wouldn't deal with them? 12:50:10</p> <p>18 MR. PARADISE: Objection to form. 12:50:13</p> <p>19 A. Sir, we don't -- we did not mind as 12:50:15</p> <p>20 long as we knew up front what was going down. 12:50:18</p> <p>21 You know, if you told me that you were selling 12:50:21</p> <p>22 sunglasses that were Mona's and not Susie's or 12:50:24</p> <p>23 whatever, but it just could not be an original 12:50:29</p> <p>24 that you were trying to sell as Susie's. 12:50:34</p> <p>25 Q. (BY MR. WEIGEL) Okay. So if somebody 12:50:37</p>

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<p>1 was selling a Gucci product that wasn't a real 12:50:39</p> <p>2 Gucci product, you wanted to make sure that 12:50:42</p> <p>3 they said on the Web site that they weren't 12:50:45</p> <p>4 selling an original Gucci product? 12:50:48</p> <p>5 A. Yes, sir. 12:50:49</p> <p>6 Q. Okay. But if they said on the -- on 12:50:49</p> <p>7 the Web site that it was not an original and 12:50:51</p> <p>8 that it was a copy, that was okay? 12:50:53</p> <p>9 MR. PARADISE: Objection to form. 12:50:55</p> <p>10 A. We would have to know what -- what was 12:50:57</p> <p>11 on that and what portion of that they was 12:51:01</p> <p>12 going to sell and how they were going to sell 12:51:04</p> <p>13 it. 12:51:06</p> <p>14 I mean, if -- if you were set up 12:51:07</p> <p>15 as a merchant just to sell sunglasses and that 12:51:08</p> <p>16 all of your -- all of your product was just to 12:51:13</p> <p>17 sell that one type of sunglasses, then there's 12:51:15</p> <p>18 no issue. 12:51:20</p> <p>19 But if we didn't know what you 12:51:21</p> <p>20 were selling, whether this was some of it and 12:51:24</p> <p>21 that was some of it, it would be something 12:51:26</p> <p>22 that would have had to be questioned. 12:51:28</p> <p>23 Q. (BY MR. WEIGEL) Well, now, this 12:51:32</p> <p>24 merchant you knew was selling Gucci handbags, 12:51:33</p> <p>25 correct? 12:51:37</p>	<p>1 A. Gucci handbags, yes, ma'am. 12:52:53</p> <p>2 Q. (BY MR. WEIGEL) And you knew that 12:52:56</p> <p>3 because the Web site says -- 12:52:58</p> <p>4 A. Gucci -- 12:52:58</p> <p>5 Q. -- the screen shots say Gucci all over 12:52:59</p> <p>6 them, correct? 12:53:01</p> <p>7 A. Yes. 12:53:02</p> <p>8 MR. PARADISE: Objection, form. 12:53:03</p> <p>9 Q. (BY MR. WEIGEL) And the merchant told 12:53:12</p> <p>10 you that these handbags were being made in 12:53:14</p> <p>11 China; isn't that correct? 12:53:16</p> <p>12 A. I would say it would be a conversation 12:53:19</p> <p>13 that he and Alva had. 12:53:21</p> <p>14 Q. Yes. Of course, ma'am. The merchant 12:53:24</p> <p>15 said in the application that these bags were 12:53:28</p> <p>16 being made in China, correct? 12:53:30</p> <p>17 A. That looks to be like where the 12:53:33</p> <p>18 product was being shipped from. 12:53:35</p> <p>19 Q. And did you understand that these were 12:53:42</p> <p>20 not real Gucci handbags that were being sold 12:53:49</p> <p>21 by this merchant? 12:53:51</p> <p>22 MR. PARADISE: Can you read that 12:53:52</p> <p>23 question back please. 12:53:54</p> <p>24 (The testimony was read.) 12:54:01</p> <p>25 MR. PARADISE: Objection to form. 12:54:01</p>
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<p>1 MR. PARADISE: Objection to form. 12:51:37</p> <p>2 That's not what the document says. You're 12:51:39</p> <p>3 putting words into her mouth and you're 12:51:40</p> <p>4 mischaracterizing the documents. 12:51:43</p> <p>5 MR. WEIGEL: There is no reason for 12:51:47</p> <p>6 speaking objections. 12:51:49</p> <p>7 MR. PARADISE: It's an objection 12:51:50</p> <p>8 because you are trying to deceive this witness 12:51:51</p> <p>9 as to what this document says. You are not 12:51:53</p> <p>10 testifying here. Ask her questions about the 12:51:55</p> <p>11 document. Don't mischaracterize it. 12:51:58</p> <p>12 MR. WEIGEL: Counsel, speeches are 12:52:00</p> <p>13 inappropriate. 12:52:03</p> <p>14 Could you read the question, 12:52:13</p> <p>15 please. 12:52:13</p> <p>16 (The testimony was read.) 12:52:15</p> <p>17 MR. PARADISE: Objection, 12:52:15</p> <p>18 mischaracterizes the testimony, 12:52:16</p> <p>19 mischaracterizes the document. 12:52:18</p> <p>20 Q. (BY MR. WEIGEL) You can answer, 12:52:34</p> <p>21 ma'am. We lawyers argue back and forth, but 12:52:35</p> <p>22 you can answer the question. 12:52:37</p> <p>23 MR. WEIGEL: Perhaps the reporter can 12:52:39</p> <p>24 read it back one more time. 12:52:40</p> <p>25 (The testimony was read.) 12:52:53</p>	<p>1 You can answer. 12:54:02</p> <p>2 A. We knew that they were supposedly 12:54:04</p> <p>3 Gucci bags of some sort, but we did not know 12:54:11</p> <p>4 other than it was just Gucci, that it was some 12:54:17</p> <p>5 kind of bag that they were selling. 12:54:20</p> <p>6 Q. (BY MR. WEIGEL) Now, let's turn to 12:54:27</p> <p>7 the next few pages. You see they list a 12:54:35</p> <p>8 number of Rolex watches. 12:54:39</p> <p>9 Do you see that? 12:54:42</p> <p>10 A. Yes, sir. 12:54:43</p> <p>11 Q. And did you understand that the -- I 12:54:44</p> <p>12 guess some of them are Rolex and some are 12:54:49</p> <p>13 Louis Vuitton. Did you understand these Rolex 12:54:54</p> <p>14 and Louis Vuitton were being made in China? 12:54:57</p> <p>15 MR. PARADISE: Are you asking today or 12:54:59</p> <p>16 back in 2006 when the application was filed? 12:55:01</p> <p>17 MR. WEIGEL: You can ask whatever 12:55:04</p> <p>18 questions you would like to ask when we're -- 12:55:05</p> <p>19 when we're done. 12:55:07</p> <p>20 MR. PARADISE: The problem is you're 12:55:07</p> <p>21 not being specific in your question. I think 12:55:08</p> <p>22 you're misleading this witness because she 12:55:11</p> <p>23 already testified that she has no recollection 12:55:13</p> <p>24 of this application. 12:55:16</p> <p>25 MR. WEIGEL: Counsel, speaking 12:55:16</p>

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<p>1 objections are really inappropriate. 12:55:18</p> <p>2 MR. PARADISE: No. What's really 12:55:19</p> <p>3 inappropriate is you misleading this witness 12:55:20</p> <p>4 and trying to take advantage of her in this 12:55:22</p> <p>5 deposition. 12:55:24</p> <p>6 MR. WEIGEL: I'm truly not attempting 12:55:25</p> <p>7 to mislead this witness. 12:55:27</p> <p>8 MR. PARADISE: So you're refusing to 12:55:28</p> <p>9 qualify whether you're asking her today or 12:55:31</p> <p>10 asking her in 2006. 12:55:32</p> <p>11 MR. WEIGEL: Counsel, you can ask 12:55:34</p> <p>12 questions when it's your turn. 12:55:34</p> <p>13 MR. PARADISE: But you're refusing to 12:55:36</p> <p>14 clarify the question. 12:55:38</p> <p>15 MR. WEIGEL: Yes. 12:55:39</p> <p>16 MR. PARADISE: Fine. 12:55:39</p> <p>17 You can answer the question, if 12:55:40</p> <p>18 you understand it. 12:55:41</p> <p>19 A. Apparently, I don't understand it. 12:55:42</p> <p>20 Q. (BY MR. WEIGEL) Do you see here that 12:55:45</p> <p>21 there are several printouts of Rolex watches? 12:55:47</p> <p>22 A. Yes, sir. 12:55:51</p> <p>23 Q. And you understand now, as you sit 12:55:52</p> <p>24 here today, those watches were not -- were 12:55:53</p> <p>25 being made in China? 12:55:57</p>	<p>1 back a little bit. If somebody was selling 12:57:31</p> <p>2 fake Gucci products and passing them off to 12:57:37</p> <p>3 their customers as real Gucci products, that 12:57:43</p> <p>4 would be a concern for Delta Card Services and 12:57:46</p> <p>5 Woodforest because that could result in a lot 12:57:50</p> <p>6 of chargebacks; isn't that correct? 12:57:53</p> <p>7 MR. PARADISE: Objection to form. 12:57:55</p> <p>8 A. We would -- we would not have put 12:57:56</p> <p>9 anything on that was considered fake and so 12:57:59</p> <p>10 state -- stated the word fake. 12:58:02</p> <p>11 Q. (BY MR. WEIGEL) Would you -- suppose 12:58:09</p> <p>12 someone was selling a replica product, a 12:58:11</p> <p>13 product made to look like a Gucci product with 12:58:14</p> <p>14 the Gucci trademark on it and passing that off 12:58:17</p> <p>15 as a real Gucci product. 12:58:21</p> <p>16 Would that be a cause for concern 12:58:24</p> <p>17 for Woodforest and Delta Card Services -- 12:58:26</p> <p>18 MR. PARADISE: Objection, form. 12:58:26</p> <p>19 Q. (BY MR. WEIGEL) -- that would have 12:58:30</p> <p>20 resulted in chargebacks? 12:58:30</p> <p>21 MR. PARADISE: Objection to form. 12:58:31</p> <p>22 A. Okay. Say it another way for me, if 12:58:36</p> <p>23 you don't mind. 12:58:43</p> <p>24 Q. (BY MR. WEIGEL) Certainly, ma'am. If 12:58:43</p> <p>25 somebody was selling -- an Internet merchant 12:58:46</p>
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<p>1 MR. PARADISE: Objection to form. 12:55:58</p> <p>2 A. I thought China was just strictly the 12:56:00</p> <p>3 place that they were being shipped from, sir. 12:56:03</p> <p>4 Q. (BY MR. WEIGEL) Okay. Did you know 12:56:06</p> <p>5 at the time you approved this account one way 12:56:13</p> <p>6 or another whether these were real Rolex 12:56:15</p> <p>7 watches and real Gucci handbags or not that 12:56:18</p> <p>8 this Web site was selling? 12:56:21</p> <p>9 A. As far as we knew, they were a product 12:56:25</p> <p>10 of -- of Gucci. And China was just their 12:56:28</p> <p>11 destination where they're coming from. 12:56:36</p> <p>12 Q. Now, it would be a cause for concern 12:56:38</p> <p>13 for the bank, would it not, if the Web site 12:56:49</p> <p>14 was selling fake Gucci products and not 12:56:52</p> <p>15 adequately disclosing that to its customers 12:56:57</p> <p>16 because that would result in a lot of 12:57:00</p> <p>17 chargebacks, wouldn't it? 12:57:02</p> <p>18 MR. PARADISE: Objection to form. 12:57:03</p> <p>19 A. For Delta Card it would have -- it 12:57:05</p> <p>20 would have to show that this product is the 12:57:07</p> <p>21 product that they are asking us to process 12:57:11</p> <p>22 as a -- as a merchant for them. 12:57:15</p> <p>23 I don't know how else to answer 12:57:28</p> <p>24 you. 12:57:30</p> <p>25 Q. (BY MR. WEIGEL) Let's -- let's go 12:57:30</p>	<p>1 was selling replica Gucci products, products 12:58:49</p> <p>2 made to look like Gucci products with Gucci 12:58:53</p> <p>3 trademarks on them, and not telling their 12:58:56</p> <p>4 customers that they were not real products, 12:58:59</p> <p>5 that would be a cause for concern, wouldn't 12:59:03</p> <p>6 it, because it could result in many 12:59:06</p> <p>7 chargebacks when customers got the product and 12:59:08</p> <p>8 realized it wasn't an original? 12:59:11</p> <p>9 A. If would -- 12:59:12</p> <p>10 MR. PARADISE: Objection to form. 12:59:12</p> <p>11 A. It would have to so state that, that 12:59:14</p> <p>12 it was a replica. 12:59:16</p> <p>13 Q. (BY MR. WEIGEL) If it did state that 12:59:17</p> <p>14 it was a replica product, would that give you 12:59:19</p> <p>15 any cause for concern? 12:59:21</p> <p>16 A. It would require more investigation. 12:59:24</p> <p>17 Q. Why would it require more 12:59:26</p> <p>18 investigation? 12:59:28</p> <p>19 A. To get proper signatures to make sure 12:59:29</p> <p>20 it was coming to the right person, to make 12:59:31</p> <p>21 sure that the item that they were purchasing 12:59:34</p> <p>22 was what was on the -- the Web site. 12:59:36</p> <p>23 Q. Did anyone ever tell you that there 12:59:40</p> <p>24 was no difference between replica products and 12:59:43</p> <p>25 counterfeit products? 12:59:45</p>

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<p>1 A. We actually didn't talk about that 12:59:49</p> <p>2 stuff more than -- I don't know -- very 12:59:52</p> <p>3 rarely. 12:59:59</p> <p>4 Q. Well, on the rare occasions you did 13:00:00</p> <p>5 talk about it, what did you say? 13:00:02</p> <p>6 A. We didn't process fakes. If it was 13:00:03</p> <p>7 something so stated that it was a replica, and 13:00:07</p> <p>8 the cardholder understood what he was 13:00:13</p> <p>9 purchasing, that would be another process -- 13:00:15</p> <p>10 that would be another process that he would go 13:00:19</p> <p>11 through. 13:00:22</p> <p>12 Q. If the -- as far as you were 13:00:26</p> <p>13 concerned, if the Web site stated that they 13:00:31</p> <p>14 were selling replicas, and they weren't 13:00:33</p> <p>15 originals, then that was okay, and you could 13:00:36</p> <p>16 approve the account? 13:00:38</p> <p>17 A. If it was so stated. 13:00:39</p> <p>18 Q. Okay. Now, I think we looked at a lot 13:00:41</p> <p>19 of things -- strike that. 13:00:47</p> <p>20 I think the first item that we 13:00:50</p> <p>21 looked at under the underwriting standards was 13:00:53</p> <p>22 to know the product that they were selling; is 13:00:56</p> <p>23 that correct? 13:00:58</p> <p>24 A. That was the product that they were 13:00:58</p> <p>25 selling was what was listed on the original 13:01:01</p>	<p>1 replica products? 13:02:38</p> <p>2 A. If it were closed? 13:02:39</p> <p>3 Q. No, did the Web site state clearly on 13:02:41</p> <p>4 the Web site that they were selling replica 13:02:43</p> <p>5 products? 13:02:46</p> <p>6 A. I don't know that. 13:02:48</p> <p>7 Q. Would you expect that Alva would have 13:02:49</p> <p>8 reviewed the Web site to determine if, in 13:02:52</p> <p>9 fact, they adequately disclosed that they were 13:02:56</p> <p>10 selling replica products? 13:02:59</p> <p>11 MR. PARADISE: Objection to form. 13:03:00</p> <p>12 A. Yes, sir. 13:03:02</p> <p>13 Q. (BY MR. WEIGEL) And do you expect 13:03:02</p> <p>14 that Alva would not have approved the Web site 13:03:04</p> <p>15 if they were selling replica products, and 13:03:10</p> <p>16 they did not disclose it? 13:03:13</p> <p>17 A. She would not have, sir. 13:03:15</p> <p>18 Q. Okay. Do you know what these numbers 13:03:17</p> <p>19 are on the bottom of the Exhibit 8? 13:03:21</p> <p>20 A. That's a number that you go through 13:03:26</p> <p>21 once an account has been approved. As you go 13:03:30</p> <p>22 in on a prescreen and list all the 13:03:35</p> <p>23 information, it will tell you if this merchant 13:03:38</p> <p>24 has ever been terminated for being bad. 13:03:40</p> <p>25 Q. And is that an internal number for -- 13:03:50</p>
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<p>1 application. 13:01:04</p> <p>2 Q. And you expected that Alva reviewed 13:01:04</p> <p>3 the Web site to determine what products these 13:01:09</p> <p>4 folks were selling; correct? 13:01:12</p> <p>5 A. That is correct. 13:01:14</p> <p>6 Q. And you didn't believe that the 13:01:14</p> <p>7 handbags that they were selling for \$190 when 13:01:19</p> <p>8 the real handbag was selling for \$1500 was a 13:01:32</p> <p>9 real Gucci handbag, did you? 13:01:36</p> <p>10 MR. PARADISE: Objection to form. 13:01:38</p> <p>11 A. I'm not a Gucci girl. It just -- if 13:01:41</p> <p>12 it was stated as designer handbags, that was 13:01:51</p> <p>13 designer handbags. We would not know that it 13:01:54</p> <p>14 was 100 percent Gucci made and Gucci shipped 13:01:59</p> <p>15 and Gucci invoiced or whatever. We're just 13:02:01</p> <p>16 looking at it -- what little handbag was on 13:02:07</p> <p>17 sale here for \$195. 13:02:09</p> <p>18 Q. (BY MR. WEIGEL) Well, as a woman who 13:02:16</p> <p>19 carries a handbag, you know that you can't buy 13:02:19</p> <p>20 a real Gucci handbag for \$195, don't you? 13:02:23</p> <p>21 MR. PARADISE: Objection to form. 13:02:26</p> <p>22 A. I've never priced them, sir. I don't 13:02:27</p> <p>23 know. 13:02:31</p> <p>24 Q. (BY MR. WEIGEL) Do you know if this 13:02:34</p> <p>25 Web site disclosed that they were selling 13:02:36</p>	<p>1 A. The system -- 13:03:55</p> <p>2 Q. -- Delta Card Services? 13:03:57</p> <p>3 A. The system actually spits back that 13:03:58</p> <p>4 number to you once you've keyed the 13:04:01</p> <p>5 information into the system. 13:04:03</p> <p>6 Q. Okay. Did anyone ever tell you that 13:04:06</p> <p>7 the Bag Addiction Web site disclosed on its 13:04:29</p> <p>8 face that it was selling products that were 13:04:30</p> <p>9 not original Gucci products? 13:04:32</p> <p>10 A. No, sir, not to my knowledge. 13:04:33</p> <p>11 Q. Would you be surprised, as you sit 13:04:35</p> <p>12 here today, that they did say on the Web site 13:04:43</p> <p>13 that they sell -- that they did disclose on 13:04:45</p> <p>14 the Web site that they were selling replica 13:04:48</p> <p>15 products? 13:04:50</p> <p>16 MR. PARADISE: Objection to form. 13:04:50</p> <p>17 A. We would not have known if that came 13:04:55</p> <p>18 in later or whether the Risk Department had 13:04:57</p> <p>19 been checking on it, we -- we don't know that 13:05:01</p> <p>20 once we sign off on approvals. 13:05:03</p> <p>21 Q. (BY MR. WEIGEL) Okay. Now, turning 13:05:06</p> <p>22 to the page with the Rolex watches on it. 13:05:15</p> <p>23 A. Okay. 13:05:18</p> <p>24 Q. Do you see that they were selling a 13:05:19</p> <p>25 Rolex watch that was advertised as a list 13:05:28</p>

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<p>1 price for -- for \$5600 for \$250? 13:05:31</p> <p>2 A. Yes, sir. 13:05:36</p> <p>3 Q. Do you believe that they were selling 13:05:36</p> <p>4 real Rolex watches? 13:05:38</p> <p>5 MR. PARADISE: Objection to form. 13:05:40</p> <p>6 A. Sir, I don't know. 13:05:44</p> <p>7 Q. (BY MR. WEIGEL) Well, would the 13:05:47</p> <p>8 disparity in price have caused you to ask Alva 13:05:48</p> <p>9 to make sure that it was disclosed on the Web 13:05:52</p> <p>10 site whether or not they were selling real 13:05:55</p> <p>11 products? 13:05:56</p> <p>12 A. We would have talked about, did you 13:05:57</p> <p>13 read this, are you comfortable with -- that 13:06:00</p> <p>14 the product that -- that a cardholder is going 13:06:04</p> <p>15 to purchase is going to stand at face, and 13:06:07</p> <p>16 that the purchaser will be happy with it, we 13:06:11</p> <p>17 won't get a chargeback. 13:06:15</p> <p>18 So somewhere along the line, me, 13:06:17</p> <p>19 Alva, Earl, somebody would have had to have 13:06:21</p> <p>20 discussed that. 13:06:24</p> <p>21 Q. Okay. And if, in fact, the Web site 13:06:24</p> <p>22 said these are replica products and not 13:06:27</p> <p>23 originals, then that would have been okay, 13:06:29</p> <p>24 right? 13:06:31</p> <p>25 A. If it so described it. 13:06:32</p>	<p>1 us, please? 13:08:32</p> <p>2 MR. WEIGEL: Oh, I'm sorry. 13:08:32</p> <p>3 MR. PARADISE: Just so the witness 13:08:42</p> <p>4 understands this, you know, you said produced 13:08:43</p> <p>5 by the bank. It was produced by the 13:08:45</p> <p>6 Woodforest, but just so the witness 13:08:47</p> <p>7 understands, these documents came from Delta 13:08:49</p> <p>8 Card's files. 13:08:54</p> <p>9 Q. (BY MR. WEIGEL) The question I ask to 13:08:55</p> <p>10 you is Exhibit 9 is not the full package of 13:08:56</p> <p>11 materials that was given to you be- -- before 13:09:02</p> <p>12 you approved the Laurette Company account, is 13:09:04</p> <p>13 it? 13:09:10</p> <p>14 A. It's not the same pieces of paper in 13:09:10</p> <p>15 here. 13:09:13</p> <p>16 Q. It's missing the Internet review 13:09:13</p> <p>17 checklist and the screen shots, correct? 13:09:15</p> <p>18 A. Yes, sir. 13:09:20</p> <p>19 Q. In fact, where the Internet review 13:09:26</p> <p>20 checklist was is substituted Woodforest 13:09:29</p> <p>21 National Bank merchant payment card 13:09:32</p> <p>22 application. 13:09:34</p> <p>23 Do you see that? 13:09:34</p> <p>24 A. You mean page per page? 13:09:36</p> <p>25 Q. Yes. Actually, I guess, there are 13:09:42</p>
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<p>1 Q. And, in fact, this Web site was 13:06:34</p> <p>2 approved, correct? 13:06:37</p> <p>3 A. Yes, sir. 13:06:38</p> <p>4 Q. Okay. Is Exhibit 8 typical of the 13:06:39</p> <p>5 packet that would be presented to you when 13:06:55</p> <p>6 asking your approval for a high-risk Internet 13:07:00</p> <p>7 merchant? 13:07:03</p> <p>8 A. Yes, sir. All the activity would have 13:07:06</p> <p>9 had to have been complete prior to giving it 13:07:09</p> <p>10 to me. 13:07:12</p> <p>11 Q. And for the accounts that you approve, 13:07:16</p> <p>12 did you review them to make sure there were 13:07:23</p> <p>13 screen shots of the web sites in the -- in the 13:07:25</p> <p>14 application packet? 13:07:30</p> <p>15 A. Yes, sir, I would go through them. 13:07:31</p> <p>16 There was no checklist -- or double-check list 13:07:34</p> <p>17 for me to check off. 13:07:37</p> <p>18 (BOYKIN Exhibit No. 9 marked.) 13:08:10</p> <p>19 Q. (BY MR. WEIGEL) Okay. I've handed 13:08:10</p> <p>20 you what's been marked as Exhibit 9, ma'am, 13:08:10</p> <p>21 and it was produced this way by the bank, and 13:08:14</p> <p>22 it bears the Bates numbers WNB 80 through 91. 13:08:19</p> <p>23 Do you see that? 13:08:29</p> <p>24 A. Yes, sir. 13:08:30</p> <p>25 MR. PARADISE: Do you have a copy for 13:08:31</p>	<p>1 several things that are missing. 13:09:46</p> <p>2 A. Like 87 or 90? 13:09:56</p> <p>3 Q. I'm thinking of starting with page 84, 13:10:00</p> <p>4 ma'am. 13:10:03</p> <p>5 A. Okay. 84. I'm there. 13:10:04</p> <p>6 Q. That was in the package of materials 13:10:14</p> <p>7 that you approved, was it? 13:10:16</p> <p>8 MR. PARADISE: Objection to form. 13:10:17</p> <p>9 A. Not in the package that we first 13:10:27</p> <p>10 reviewed, sir. 13:10:32</p> <p>11 Q. (BY MR. WEIGEL) Okay. And, in fact, 13:10:34</p> <p>12 if you see at the bottom right, it says -- 13:10:34</p> <p>13 very bottom right of that it says, "MCCS 13:10:38</p> <p>14 02/08," indicating this wasn't even produced 13:10:44</p> <p>15 until February 2008. 13:10:46</p> <p>16 Do you see that? 13:10:47</p> <p>17 A. That should represent the revision 13:10:48</p> <p>18 date, sir. 13:10:50</p> <p>19 Q. Okay. And then if you go in a few 13:10:51</p> <p>20 more pages until you get to MCCS -- if you go 13:10:53</p> <p>21 to page 88, you can see that it's 10/08. 13:11:01</p> <p>22 Do you see that? 13:11:05</p> <p>23 A. Yes, sir. 13:11:06</p> <p>24 Q. And that was after you retired, 13:11:06</p> <p>25 correct? 13:11:08</p>

25 (Pages 94 to 97)

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1	A. I left in '07.	13:11:08	1	come to be.	13:13:14
2	Q. And then there are several more pages	13:11:11	2	MR. PARADISE: And I believe there	13:13:14
3	from October of '88 and then followed with	13:11:14	3	are -- there were other copies of this that	13:13:15
4	page 91.	13:11:17	4	were produced in this litigation that were --	13:13:17
5	Do you see that?	13:11:18	5	you know, just different versions of the same	13:13:23
6	A. Yes, sir.	13:11:19	6	file.	13:13:26
7	Q. Okay. Now page 91 is also after you	13:11:20	7	MR. WEIGEL: Okay.	13:13:26
8	retired, correct? You can see --	13:11:25	8	MR. PARADISE: In litigation, multiple	13:13:28
9	A. Yes, sir.	13:11:27	9	files are produced. It's just your -- your	13:13:29
10	Q. You can see it was printed out on	13:11:30	10	implication here to this witness is -- is	13:13:32
11	July of '07.	13:11:34	11	improper and mischaracterizes what you know is	13:13:34
12	A. Uh-huh.	13:11:36	12	the case to be in litigation.	13:13:36
13	Q. Now, as far as you know, did you	13:11:36	13	MR. WEIGEL: Counsel, you're -- we're	13:13:38
14	maintain files in the application department	13:11:40	14	paying for this by the word, and we're both	13:13:41
15	that contained all the information that was in	13:11:44	15	trying to get out for our flight. So if you	13:13:43
16	Exhibit 8?	13:11:46	16	keep the speaking objections to a minimum,	13:13:46
17	A. You always had the original file that	13:11:50	17	that would be appreciated.	13:13:48
18	came in. If additional information was	13:11:52	18	MR. PARADISE: Okay. If you ask	13:13:49
19	received thereafter, you could go in and file	13:11:55	19	questions --	13:13:51
20	it along with whatever you had for that	13:11:59	20	MR. WEIGEL: Please.	13:13:51
21	merchant.	13:12:05	21	MR. PARADISE: -- about production,	13:13:52
22	Q. Okay. But was there -- so was there a	13:12:05	22	ask me. Don't ask this witness that hasn't	13:13:54
23	policy to discard information that you got	13:12:09	23	worked here in three years. Let's move on.	13:13:56
24	from the merchant?	13:12:12	24	Q. (BY MR. WEIGEL) Do you have any	13:13:58
25	A. No, sir. We didn't discard	13:12:13	25	understanding as to why this document, Exhibit	13:13:59
99			101		
1	information.	13:12:15	1	9, that was produced to us, is missing the	13:14:04
2	Q. Okay. Do you have any understanding	13:12:16	2	screen shots and the other -- the Internet	13:14:07
3	as to why the documents we were produced by	13:12:19	3	merchant review?	13:14:09
4	the bank are different from the application	13:12:23	4	MR. PARADISE: Objection,	13:14:10
5	that you approved?	13:12:26	5	mischaracterizes.	13:14:11
6	MR. PARADISE: I'm going to object.	13:12:27	6	A. The only thing I can tell you is if	13:14:12
7	Both of these documents were produced by the	13:12:28	7	this original piece of paper was on file as	13:14:14
8	bank. So I think you're misleading the	13:12:31	8	the application, anything that would have come	13:14:18
9	witness into thinking there's something	13:12:33	9	in at any later date, the system would have	13:14:21
10	nefarious going on here. It's just different	13:12:35	10	automatically saw the application number, and	13:14:24
11	copies of different files.	13:12:38	11	said, "Oh, I belong in this bucket with this	13:14:27
12	You were produced all copies that	13:12:40	12	family."	13:14:30
13	were in existence. Exhibit 8 was produced by	13:12:41	13	Q. (BY MR. WEIGEL) Okay.	13:14:31
14	the bank, I believe, in response to the	13:12:45	14	A. And so that's how they become together	13:14:32
15	original subpoena.	13:12:46	15	but not really together as the original	13:14:35
16	So you know, I don't know what	13:12:48	16	package.	13:14:38
17	you're getting at here, but -- you can ask the	13:12:52	17	(BOYKIN Exhibit No. 10 marked.)	13:16:04
18	witness whatever questions, but --	13:12:56	18	Q. (BY MR. WEIGEL) Ma'am, I've handed	13:16:04
19	MR. WEIGEL: Counsel, there's really	13:12:57	19	you what's been marked as Exhibit 10. Is	13:16:05
20	no need for a speech. You can make an	13:12:58	20	that -- is that an application that you	13:16:09
21	objection. One was produced in 2008, and then	13:13:01	21	approved?	13:16:09
22	when we filed this lawsuit, we got this one	13:13:05	22	A. I don't remember seeing it.	13:16:12
23	that's missing a lot of the pages. I'm just	13:13:07	23	Q. Can you see here that this plainly	13:16:34
24	asking the witness if she understands -- if	13:13:09	24	states that they're selling replica goods?	13:16:36
25	she has any understanding as to how that would	13:13:11	25	A. That was on the application, yes, sir.	13:16:39

26 (Pages 98 to 101)

102			104		
1	Q. And can you tell here whether this	13:16:41	1	you approved this account?	13:21:27
2	application was approved or not?	13:16:45	2	A. That I remember, I -- (Shakes head	13:21:28
3	A. No, sir.	13:16:46	3	side to side.)	13:21:34
4	Q. Okay.	13:16:46	4	Q. If you did -- at this point in time,	13:21:34
5	(BOYKIN Exhibit No. 11 marked.)	13:18:05	5	would any Internet merchants have been	13:21:41
6	Q. (BY MR. WEIGEL) Can you identify	13:18:05	6	approved by you?	13:21:45
7	Exhibit 10, please?	13:18:06	7	A. In 2006?	13:21:48
8	MR. PARADISE: 10 or 11.	13:18:10	8	Q. Yes.	13:21:49
9	MR. WEIGEL: Are we on 11 already?	13:18:12	9	A. Yes, sir. That would've been a	13:21:50
10	MR. PARADISE: Yes.	13:18:14	10	sign-off on my part.	13:21:53
11	A. I've not seen the application before.	13:18:25	11	Q. Okay. Now, did any of your superiors	13:21:55
12	Q. (BY MR. WEIGEL) And this was at a	13:18:28	12	ever tell you that you should not approve	13:21:58
13	time when you were still working at the bank;	13:18:29	13	replica products?	13:22:01
14	is that correct?	13:18:36	14	A. We just never talked about that, sir.	13:22:04
15	A. That is --	13:18:36	15	Q. Okay. No one ever said you shouldn't	13:22:07
16	Q. And --	13:18:38	16	approve replica products?	13:22:09
17	A. -- correct.	13:18:38	17	A. No, sir.	13:22:10
18	Q. -- this merchant is advertising that	13:18:44	18	Q. Okay. Did you receive any training	13:22:11
19	it is selling replica bags.	13:18:45	19	from the bank regarding your job as	13:22:18
20	Do you see that?	13:18:47	20	supervisor?	13:22:24
21	A. I do see that.	13:18:48	21	A. For Delta Card?	13:22:25
22	Q. And can you tell whether this merchant	13:18:50	22	Q. Yes.	13:22:26
23	was approved or not?	13:19:11	23	A. You mean, from Delta Card?	13:22:27
24	A. No, sir.	13:19:12	24	Q. Yes.	13:22:29
25	(BOYKIN Exhibit No. 12 marked.)	13:20:02	25	A. Delta Card hired me on the myriad of	13:22:30
103			105		
1	Q. (BY MR. WEIGEL) I've handed you	13:20:02	1	my past experience through data processing. I	13:22:37
2	what's been marked as Exhibit 12. And that is	13:20:04	2	didn't receive special training, if that's	13:22:40
3	an application report for a sales	13:20:14	3	your question.	13:22:42
4	representative named Nathan Counley.	13:20:20	4	Q. Okay.	13:22:43
5	Have you ever seen reports like	13:20:25	5	(BOYKIN Exhibit No. 13 marked.)	13:23:23
6	this before?	13:20:27	6	Q. (BY MR. WEIGEL) I've handed you,	13:23:23
7	A. This must be something that the	13:20:27	7	ma'am, what's been marked as Exhibit 12.	13:23:25
8	salespeople get.	13:20:35	8	MR. PARADISE: I think 13 now.	13:23:27
9	Q. Okay. Well, if you would take a look	13:20:37	9	THE WITNESS: 13?	13:23:29
10	at the list, you'll see it's chronological.	13:20:50	10	MR. WEIGEL: Excuse me. Exhibit 13.	13:23:29
11	If you would go to December of 2006 --	13:20:53	11	Q. (BY MR. WEIGEL) And Exhibit 13 is an	13:23:31
12	A. Okay.	13:20:58	12	application from ThePurseBoutique.com.	13:23:34
13	Q. -- which is on page 888.	13:20:59	13	Do you see that?	13:23:37
14	Do you see that?	13:21:03	14	A. I do.	13:23:39
15	A. Okay.	13:21:03	15	Q. And this was submitted on February	13:23:41
16	Q. Do you see Lee Luxury Bags on December	13:21:04	16	6th, 2007. And you can see that this is a	13:23:52
17	5th, 2006?	13:21:08	17	more complete application than some of the	13:23:56
18	A. I do.	13:21:10	18	other ones we've looked at.	13:23:58
19	Q. And Lee Luxury Lines, the same date?	13:21:13	19	Do you see that?	13:24:00
20	A. I do.	13:21:16	20	A. Yes, sir.	13:24:01
21	Q. Now, does that refresh your	13:21:16	21	Q. Could you turn to page 573?	13:24:02
22	recollection in any way that you approved this	13:21:18	22	A. I'm there.	13:24:15
23	account?	13:21:20	23	Q. It -- this was around the time you	13:24:17
24	A. No, sir.	13:21:21	24	retired; is that correct?	13:24:19
25	Q. Do you have any reason to doubt that	13:21:25	25	A. Yes, sir.	13:24:20

27 (Pages 102 to 105)

106	108
<p>1 Q. Do you know if you approved this 13:24:21</p> <p>2 account or not? 13:24:23</p> <p>3 A. I don't know. I retired on my 13:24:24</p> <p>4 birthday on the first of February, as far as I 13:24:27</p> <p>5 can remember, sir. 13:24:29</p> <p>6 Q. Okay. Do you recognize the 13:24:30</p> <p>7 handwriting on this? 13:24:32</p> <p>8 A. Yes, sir. 13:24:33</p> <p>9 Q. Whose handwriting is it? 13:24:35</p> <p>10 A. That's Alva's. 13:24:36</p> <p>11 Q. Okay. Do you see the initials "FUR" 13:24:39</p> <p>12 there again or something like that? 13:24:42</p> <p>13 A. Yes, sir. 13:24:44</p> <p>14 Q. It says, "rollover" and then something 13:24:50</p> <p>15 like FDR? 13:24:51</p> <p>16 A. Uh-huh. 13:24:53</p> <p>17 Q. Do you have any recollection of what 13:24:54</p> <p>18 that stands for? 13:24:57</p> <p>19 A. I don't. I don't. 13:24:58</p> <p>20 MR. WEIGEL: Why don't we take a brief 13:25:08</p> <p>21 break right now? 13:25:10</p> <p>22 MR. PARADISE: Okay. Sure. 13:25:11</p> <p>23 THE VIDEOGRAPHER: Off the record. 13:25:12</p> <p>24 The time is 1:25. 13:25:13</p> <p>25 (Brief Recess from 1:25 to 1:34.) 13:34:14</p>	<p>1 A. No, sir. Lunch. 13:35:40</p> <p>2 Q. And it was a very nice lunch. 13:35:41</p> <p>3 MR. PARADISE: Mr. Weigel got that as 13:35:44</p> <p>4 well. 13:35:46</p> <p>5 THE WITNESS: Yes, he did. 13:35:47</p> <p>6 MR. WEIGEL: Mark this. 13:36:08</p> <p>7 MR. PARADISE: I guess we're trying to</p> <p>8 buy him now.</p> <p>9 MR. WEIGEL: What number are we?</p> <p>10 MR. PARADISE: 14.</p> <p>11 THE REPORTER: 14.</p> <p>12 MR. PARADISE: I don't think it</p> <p>13 worked.</p> <p>14 (BOYKIN Exhibit No. 14 marked.) 13:36:13</p> <p>15 Q. (BY MR. WEIGEL) And you may remember 13:36:13</p> <p>16 before we took the break we looked at a Web 13:36:14</p> <p>17 site called Discount Replicas. 13:36:18</p> <p>18 Do you see that? 13:36:20</p> <p>19 A. I don't remember. Which -- which 13:36:23</p> <p>20 number was it on? Yes, sir. It's here. 13:36:25</p> <p>21 Q. I think it might have been Exhibit 10. 13:36:32</p> <p>22 A. 10. Yes, sir. 13:36:34</p> <p>23 Q. And that was one that was submitted 13:36:37</p> <p>24 while you were still at Delta Card Services, 13:36:43</p> <p>25 correct? 13:36:45</p>
107	109
<p>1 THE VIDEOGRAPHER: Back on the record 13:34:15</p> <p>2 at 1:34. This is the beginning of Tape 3. 13:34:20</p> <p>3 Q. (BY MR. WEIGEL) Ma'am, do you know 13:34:27</p> <p>4 who replaced you when you retired? 13:34:31</p> <p>5 A. To my knowledge, no one. 13:34:34</p> <p>6 Q. Do you know what happened to your job? 13:34:38</p> <p>7 A. Earl Baxter took on the 13:34:40</p> <p>8 responsibility. 13:34:43</p> <p>9 Q. Did you ever speak to Mr. Baxter after 13:34:47</p> <p>10 you retired about things that were going on in 13:34:49</p> <p>11 the office? 13:34:52</p> <p>12 A. I would call him on his birthday to 13:34:54</p> <p>13 wish him happy birthday, but we didn't talk 13:34:58</p> <p>14 business. 13:35:01</p> <p>15 Q. Okay. Have you -- do you have any 13:35:01</p> <p>16 economic involvement with Delta Card Services 13:35:08</p> <p>17 at Woodforest since you've left? Do you 13:35:12</p> <p>18 receive a pension or something like that? 13:35:15</p> <p>19 A. No, sir. I had some 401. 13:35:17</p> <p>20 Q. That you took when you -- when you 13:35:21</p> <p>21 left? 13:35:23</p> <p>22 A. Yeah. 13:35:23</p> <p>23 Q. Okay. Is Woodforest or Delta Card 13:35:24</p> <p>24 Services compensating you in any way for the 13:35:37</p> <p>25 time you spent here today? 13:35:39</p>	<p>1 A. Yes. 13:36:46</p> <p>2 Q. Exhibit 14 is an e-mail from Alva 13:36:49</p> <p>3 Keyser to Joe Montella. 13:37:10</p> <p>4 Do you see that? 13:37:12</p> <p>5 A. I do. 13:37:13</p> <p>6 Q. And she is saying thanks to an e-mail 13:37:14</p> <p>7 that he sent to her. 13:37:17</p> <p>8 Do you see that? 13:37:18</p> <p>9 A. I do. 13:37:18</p> <p>10 Q. He says, "Alva, as you can see, he has 13:37:20</p> <p>11 placed descript for info on the checkout page 13:37:23</p> <p>12 before you put the CC info" -- or "inof," but 13:37:27</p> <p>13 I assume it meant info -- "also the phone 13:37:27</p> <p>14 number, and they should be answering Discount 13:37:33</p> <p>15 Replica. Let me know if you need anything 13:37:34</p> <p>16 else. Thanks, Joe Montella." 13:37:36</p> <p>17 Do you see that? 13:37:38</p> <p>18 A. I do. 13:37:39</p> <p>19 Q. Who is Joe Montella? 13:37:39</p> <p>20 A. He's one of the sales representatives. 13:37:41</p> <p>21 THE REPORTER: He's one of the what? 13:37:41</p> <p>22 THE WITNESS: Sales representatives. 13:37:47</p> <p>23 Q. (BY MR. WEIGEL) Do you know what he 13:37:47</p> <p>24 was doing when he said he places descript for 13:37:49</p> <p>25 info on the check out page? 13:37:52</p>

28 (Pages 106 to 109)

110		112	
1	A. I do not. 13:37:54	1	Q. Did you have any dealings with an 13:41:06
2	Q. Do you see that right before you check 13:37:59	2	organization known as G2? 13:41:10
3	out on this Web site it says, "Learn all about 13:38:05	3	A. No, sir. 13:41:12
4	our replica watches." If you turn to the 13:38:07	4	Q. Do you know if they were used by Delta 13:41:13
5	second page, do you see that on the left-hand 13:38:10	5	Card Services at the time you were employed by 13:41:20
6	side of the page there, under info center? 13:38:27	6	them? 13:41:22
7	A. I've seen info -- info box. 13:38:30	7	A. I don't know them. 13:41:22
8	Q. Do you see where it says, "Payment 13:38:39	8	Q. Okay. Do you see at the bottom it 13:41:24
9	method credit card"? 13:38:41	9	says -- well, at the top they talk about 13:41:32
10	A. Oh, yes, I do. 13:38:44	10	something called a BRAM violation, B-R-A-M? 13:41:36
11	Q. If you look right to the left of it, 13:38:46	11	A. I don't know what that is. 13:41:51
12	do you see it says, "Learn all about our 13:38:48	12	Q. You don't know what that is? 13:41:53
13	replica watches"? 13:38:50	13	A. No, sir. 13:41:54
14	A. I do now. 13:38:51	14	Q. At the bottom it says, "BRAM includes 13:41:55
15	Q. And, of course, the name of this 13:38:52	15	child pornography, illegal sales of 13:42:00
16	applicant was Discount Replicas, correct? 13:38:56	16	prescription drugs, tobacco products or both, 13:42:02
17	A. Yes. 13:38:59	17	sale of counterfeit merchandise or other 13:42:07
18	Q. And if you -- if you turn to Exhibit 13:39:14	18	violation of intellectual property rights and 13:42:08
19	12 now, which is the application report for 13:39:16	19	depiction of bestiality, rape, mutilation and 13:42:10
20	Mr. Counley? 13:39:22	20	the like." 13:42:14
21	A. Okay. 13:39:23	21	Do you see that? 13:42:15
22	Q. The one that was organized 13:39:24	22	A. I do. 13:42:15
23	chronologically. If you look at November of 13:39:27	23	Q. Does that refresh your recollection in 13:42:16
24	2006 -- 13:39:37	24	any way as to what BRAM is? 13:42:19
25	A. Okay. 13:39:38	25	A. Yes, sir. 13:42:20
111		113	
1	Q. -- you can see that Discount Replicas 13:39:38	1	Q. What is BRAM? 13:42:21
2	was, in fact, approved? 13:39:41	2	A. These are things that we normally 13:42:22
3	A. I do see it. 13:39:42	3	would not have approved for our merchant. 13:42:26
4	Q. Do you believe that you participated 13:39:44	4	Q. And were those rules in place when you 13:42:35
5	in that decision? 13:39:46	5	were employed by Delta Card Services? 13:42:39
6	A. I don't remember, sir. 13:39:48	6	A. Yeah, we didn't do the bestiality, 13:42:42
7	Q. Okay. Do you have any reason to doubt 13:39:50	7	rape and all that stuff. 13:42:46
8	that you would have to have been the one to 13:39:52	8	Q. Okay. How about sales of counterfeit 13:42:47
9	have approved that Web site? 13:39:53	9	merchandise or other violation of intellectual 13:42:49
10	A. I don't know. I mean it could have 13:39:55	10	property? 13:42:52
11	been one where I -- or Earl. I mean, I don't 13:39:59	11	A. We -- we wouldn't have done any of 13:42:53
12	know. 13:40:04	12	this, sir. 13:42:54
13	Q. Okay. 13:40:04	13	Q. Okay. 13:42:54
14	(BOYKIN Exhibit No. 15 marked.) 13:40:36	14	(BOYKIN Exhibit No. 16 marked.) 13:43:23
15	Q. (BY MR. WEIGEL) Ma'am, I'm handing 13:40:43	15	Q. (BY MR. WEIGEL) Exhibit 16 is an 13:43:23
16	you an exhibit which is an e-mail from Rhonda 13:40:45	16	e-mail that was sent in May of 2008 from 13:43:25
17	Lemos to Larry Jones and Larry -- 13:40:49	17	Mr. Rivera to the apps department. 13:43:30
18	A. Petru. 13:40:53	18	Do you see that? 13:43:33
19	Q. -- Petru. 13:40:53	19	A. Uh-huh. 13:43:34
20	Do you see that? 13:40:54	20	Q. This happened after you'd retired, 13:43:34
21	A. Yes, sir. 13:40:55	21	correct? 13:43:36
22	Q. It says, "I just received an update 13:40:58	22	A. That's correct. 13:43:36
23	from Kevin with G2." 13:41:01	23	Q. Okay. Did you ever work with 13:43:40
24	Do you see that? 13:41:05	24	Mr. Rivera? 13:43:41
25	A. I do. 13:41:06	25	A. No, sir. 13:43:42

29 (Pages 110 to 113)

114			116		
1	Q. Did he take over Earl Baxter's job?	13:43:47	1	break and let me review my notes, but I think	13:45:48
2	A. Yes, sir.	13:43:49	2	I'm done.	13:45:50
3	Q. Okay. Do you know when Mr. Baxter	13:43:51	3	MR. PARADISE: Okay.	13:45:51
4	retired and Mr. Rivera took over?	13:43:53	4	THE VIDEOGRAPHER: Off the record.	13:45:51
5	A. I don't know.	13:43:56	5	The time is 1:46.	13:45:53
6	Q. Do you keep in touch with Mr. Baxter?	13:43:58	6	(Brief Recess from 1:46 to 1:50.)	13:50:06
7	A. It's been quite awhile since he moved	13:44:02	7	THE VIDEOGRAPHER: Back on the record.	13:50:16
8	to Washington, D.C.	13:44:04	8	The time is 1:50.	13:50:17
9	Q. Do you have a -- a current address for	13:44:06	9	(BOYKIN Exhibit No. 17 marked.)	13:50:20
10	him?	13:44:09	10	Q. (BY MR. WEIGEL) Ma'am, I've handed	13:50:20
11	A. No, sir, I don't.	13:44:10	11	you what's been marked as the interrogatory	13:50:22
12	Q. Do you believe he moved to Washington	13:44:12	12	answers -- or has been marked as Exhibit 17.	13:50:25
13	D C?	13:44:14	13	They are the interrogatory answers of the	13:50:30
14	A. That's where he took a job, the last I	13:44:14	14	various defendants, Woodforest National Bank.	13:50:35
15	heard.	13:44:17	15	Let me direct your attention to	13:50:39
16	Q. Do you know who he took a job with?	13:44:17	16	Interrogatory 4. These are questions that we	13:50:46
17	A. No, sir, I don't.	13:44:19	17	ask the bank, and the answers are the bank's	13:50:49
18	Q. Okay. Do you believe that Mr. Baxter	13:44:24	18	answers to these questions.	13:50:54
19	is retired now?	13:44:29	19	And the first question was: "Who	13:50:56
20	A. No, sir, not to my knowledge. He's	13:44:31	20	reviewed or approved Laurette's application	13:51:01
21	not old enough to retire.	13:44:34	21	for a merchant account with Woodforest"?	13:51:04
22	Q. Do you know if Mr. Baxter left	13:44:44	22	And it lists Alva Keyser,	13:51:07
23	voluntarily or whether he was discharged?	13:44:48	23	yourself and Earl Baxter.	13:51:11
24	A. He gave his two weeks' notice and went	13:44:50	24	To the best of your knowledge, is	13:51:14
25	to another job.	13:44:53	25	that accurate?	13:51:15
115			117		
1	Q. Thank you.	13:44:54	1	A. Sir, I don't remember.	13:51:16
2	This e-mail states, "As a general	13:44:59	2	Q. Is there anybody else that you can	13:51:19
3	rule-of-thumb, we are no longer approving	13:45:01	3	think of who would've approved that	13:51:22
4	merchants that sell replicas, copies or fake	13:45:03	4	application?	13:51:23
5	items. This is one of the few business types	13:45:07	5	A. No, sir.	13:51:28
6	that MasterCard prohibits."	13:45:09	6	Q. If you look at Item C, it says -- the	13:51:28
7	Do you see that?	13:45:10	7	last sentence in the answer says, "The	13:51:46
8	A. I do.	13:45:11	8	following Delta Card employees or former	13:51:46
9	Q. Were you aware that MasterCard	13:45:12	9	employees have at times dealt in part with	13:51:48
10	prohibited those types of items?	13:45:16	10	merchants classified --	13:51:48
11	A. No, sir.	13:45:17	11	A. I'm sorry, what number did you say,	13:51:51
12	MR. PARADISE: Objection to form.	13:45:18	12	sir?	13:51:54
13	Foundation.	13:45:19	13	Q. On page 7, letter C.	13:51:54
14	Q. (BY MR. WEIGEL) Do you know if	13:45:20	14	A. I see.	13:52:00
15	MasterCard prohibited those types of items	13:45:21	15	Q. I'm just looking at the last sentence	13:52:01
16	when you were employed by Delta Card Services?	13:45:24	16	there where it talks about, "The following	13:52:03
17	A. No, sir, I don't -- I don't have any	13:45:27	17	Delta Card employees or former employees have	13:52:05
18	knowledge of that.	13:45:30	18	at times dealt in part with merchants	13:52:09
19	Q. Okay. Whose responsibility was it to	13:45:31	19	classified as high risks," and it lists	13:52:11
20	keep up on the rules that MasterCard and Visa	13:45:33	20	Ms. Keyser, Gerald Seamans, Mr. Rivera and	13:52:15
21	required?	13:45:37	21	Mary Shiflet.	13:52:19
22	A. Laurie Novacek.	13:45:38	22	A. Okay.	13:52:22
23	THE REPORTER: Pardon?	13:45:38	23	Q. Did you work with Mr. Seamans?	13:52:23
24	THE WITNESS: Laurie Novacek.	13:45:46	24	A. Gerald, yes, sir.	13:52:26
25	MR. WEIGEL: Why don't we take a short	13:45:46	25	Q. Is he the Level 2 analyst that we were	13:52:29

30 (Pages 114 to 117)

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<p>1 talking about before? 13:52:32</p> <p>2 A. Yes, sir. 13:52:33</p> <p>3 Q. So Ms. Keyser and Mr. Seamans are the 13:52:34</p> <p>4 two Level 2 analysts? 13:52:37</p> <p>5 A. Yes. 13:52:38</p> <p>6 Q. And then you were their supervisor, 13:52:39</p> <p>7 correct? 13:52:41</p> <p>8 A. Right. 13:52:41</p> <p>9 Q. Mr. Baxter was your boss? 13:52:42</p> <p>10 A. Right. 13:52:44</p> <p>11 Q. And Mr. Rivera took Mr. Baxter's job? 13:52:44</p> <p>12 A. Correct. 13:52:47</p> <p>13 Q. And he left to go somewhere else. Who 13:52:47</p> <p>14 is Ms. Shifflet? 13:52:51</p> <p>15 A. Mary is over Francisco. 13:52:52</p> <p>16 Q. Was she Mr. Baxter's boss when you 13:52:55</p> <p>17 worked there? 13:52:58</p> <p>18 A. Not to my knowledge. 13:52:59</p> <p>19 Q. But you said she is now the boss of 13:53:03</p> <p>20 Mr. Rivera? 13:53:06</p> <p>21 A. Right. I mean, I -- I don't know what 13:53:07</p> <p>22 kind of switching up they did after I left, 13:53:09</p> <p>23 but he didn't report directly to Mary, Earl 13:53:13</p> <p>24 didn't. 13:53:17</p> <p>25 Q. Earl did not? 13:53:18</p>	<p>1 the president; is that correct? 13:54:59</p> <p>2 A. Uh-huh. 13:55:00</p> <p>3 Q. What did you do with Mr. Petru? 13:55:01</p> <p>4 A. If there was something in question, 13:55:03</p> <p>5 and there was no one else here, I would let 13:55:05</p> <p>6 him be my second eyes and ears to make sure 13:55:09</p> <p>7 that I was on the same path that he wanted me 13:55:12</p> <p>8 to be on to say, yeah, I reviewed your 13:55:15</p> <p>9 decision. 13:55:20</p> <p>10 Q. So if you had a Web site that was 13:55:20</p> <p>11 questionable, you -- you might bring it to his 13:55:22</p> <p>12 attention? 13:55:24</p> <p>13 A. I could, yes. 13:55:24</p> <p>14 Q. Okay. Do you know if you approved any 13:55:26</p> <p>15 replica merchants before the Laurette Company? 13:55:33</p> <p>16 A. I don't remember. 13:55:41</p> <p>17 Q. Okay. Did you have any dealings with 13:55:42</p> <p>18 any of the other individuals listed under 13:55:45</p> <p>19 executives at Delta Card? 13:55:47</p> <p>20 A. Angela Board in accounting, but that 13:55:53</p> <p>21 was just accounting issues. 13:55:56</p> <p>22 MR. PARADISE: I think he's just 13:55:58</p> <p>23 asking about executives up at the top. 13:55:59</p> <p>24 THE WITNESS: Oh, I'm sorry. 13:56:01</p> <p>25 A. Rhonda Lemos. 13:56:04</p>
119	121
<p>1 A. No, sir. 13:53:19</p> <p>2 Q. But do you believe Mr. Rivera does? 13:53:19</p> <p>3 A. Yes, sir. 13:53:22</p> <p>4 Q. Did Mr. Rivera work at Delta Card 13:53:23</p> <p>5 Services when you were there? 13:53:27</p> <p>6 A. Uh-huh. 13:53:28</p> <p>7 Q. Okay. And what was his position when 13:53:29</p> <p>8 you were there? 13:53:31</p> <p>9 A. What do you call it? He was the 13:53:35</p> <p>10 person that would check out all the 13:53:37</p> <p>11 merchant -- the merchant's terminals to make 13:53:39</p> <p>12 sure they were programmed properly and ship 13:53:42</p> <p>13 them out to the merchants. 13:53:45</p> <p>14 Q. Okay. Let me direct your attention to 13:53:46</p> <p>15 the response to Interrogatory No. 13. 13:54:07</p> <p>16 A. Okay. 13:54:20</p> <p>17 Q. Looking at the listing of executives 13:54:33</p> <p>18 of Delta Card -- 13:54:35</p> <p>19 A. Okay. 13:54:36</p> <p>20 Q. -- did you interact with any of those 13:54:36</p> <p>21 individuals during the course of your duties 13:54:42</p> <p>22 as the supervisor of the applications 13:54:44</p> <p>23 department? 13:54:50</p> <p>24 A. Sometimes with Larry Petru. 13:54:50</p> <p>25 Q. What did you -- Larry -- Mr. Petru was 13:54:55</p>	<p>1 Q. When -- when did you come into contact 13:56:08</p> <p>2 with Ms. Lemos? 13:56:09</p> <p>3 A. If there was something questionable, 13:56:11</p> <p>4 and I would say, "Rhonda, is this something 13:56:14</p> <p>5 you have any new memos on that we should be 13:56:17</p> <p>6 looking at merchants like this," and she would 13:56:20</p> <p>7 say "Yay" or "Nay." 13:56:22</p> <p>8 Q. And she was in the Risk Department? 13:56:24</p> <p>9 A. Yes, sir. 13:56:26</p> <p>10 Q. Okay. Anyone else on that list of 13:56:28</p> <p>11 executives? 13:56:30</p> <p>12 A. That I came in contact with? 13:56:31</p> <p>13 Q. Yes. 13:56:33</p> <p>14 A. No, sir. 13:56:33</p> <p>15 Q. How about anybody in the list of 13:56:34</p> <p>16 managers? Did you come in contact with any of 13:56:36</p> <p>17 them, besides Mr. Baxter, of course? 13:56:39</p> <p>18 A. Just Angela Board. 13:56:42</p> <p>19 Q. For accounting issues? 13:56:44</p> <p>20 A. For accounting issues. 13:56:46</p> <p>21 Q. How about Mr. Rivera? 13:56:47</p> <p>22 A. No, sir. 13:56:49</p> <p>23 Q. Now at the bottom it says, 13:56:50</p> <p>24 "Additionally, Charles A. Vernon and 13:56:56</p> <p>25 Mr. Marling are executives of WNB who are 13:56:57</p>

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122			124		
1	involved in the business."	13:57:00	1	don't know.	13:59:03
2	A. Uh-huh.	13:57:01	2	Q. Okay. Well, what did they do here for	13:59:04
3	Q. Now, apart from preparation of the	13:57:03	3	the merchant side of things?	13:59:06
4	deposition today --	13:57:07	4	A. Just help process the transactions to	13:59:08
5	A. Uh-huh.	13:57:07	5	make sure that the machines were running	13:59:12
6	Q. -- and whatever contacts were	13:57:09	6	correctly and things of that nature.	13:59:14
7	necessary to arrange this, did you have any	13:57:11	7	Q. Did you have any interaction with the	13:59:18
8	contacts with Mr. Vernon when you were at	13:57:13	8	folks from Woodforest?	13:59:19
9	Delta Card Services?	13:57:16	9	A. No, sir.	13:59:21
10	A. Not unless it was a question I had	13:57:19	10	Q. Okay.	13:59:21
11	personally about something in my life or	13:57:21	11	MR. WEIGEL: I am done.	13:59:25
12	something like that. It wasn't -- I didn't go	13:57:24	12	MR. PARADISE: Okay. I have just a	13:59:25
13	to him for decision-making policy or anything	13:57:27	13	few questions, and I'll just awkwardly turn	13:59:25
14	like that.	13:57:30	14	towards you --	13:59:25
15	Q. And who was Mr. Marling?	13:57:31	15	THE WITNESS: All righty.	13:59:25
16	A. I never had any contact with him. He	13:57:38	16	MR. PARADISE: -- to do that.	13:59:28
17	was actually with Woodforest National Bank.	13:57:40	17	EXAMINATION	13:59:28
18	Q. You never had any contact with him?	13:57:44	18	BY MR. PARADISE:	13:59:35
19	A. No.	13:57:46	19	Q. Ms. Boykin, do you remember this	13:59:35
20	Q. Do you know what his position was?	13:57:46	20	morning you were asked a question about	13:59:38
21	A. I -- I do not.	13:57:48	21	whether you distinguished between replica	13:59:39
22	Q. Is the main office of Woodforest in	13:57:49	22	products and counterfeit products? Do you --	13:59:42
23	the same building as the main office of Delta	13:57:58	23	do you remember being asked that?	13:59:45
24	Card Services?	13:58:01	24	A. Yes, sir.	13:59:46
25	A. I don't believe so.	13:58:01	25	Q. Do you, in fact, distinguish between	13:59:48
123			125		
1	Q. Where is -- is this building that	13:58:03	1	replica and counterfeit products?	13:59:51
2	we're in now the main office of Delta Card	13:58:06	2	A. I do know the difference.	13:59:53
3	Services?	13:58:09	3	Q. And what is the difference?	13:59:55
4	A. No, sir.	13:58:09	4	A. A replica is like a -- a knockoff	13:59:58
5	Q. Where is the main offices for Delta	13:58:10	5	that's manufactured by that company. It's not	14:00:03
6	Card Services?	13:58:14	6	really a part of that name of that company. I	14:00:10
7	A. Over on Park Row.	13:58:14	7	guess like the Gucci purses.	14:00:20
8	Q. And where does -- where did you work	13:58:16	8	THE REPORTER: I guess what?	14:00:20
9	when you were at Delta Card Services?	13:58:21	9	THE WITNESS: Like the Gucci purses.	14:00:23
10	A. Okay. In the very beginning in '86	13:58:25	10	Q. (BY MR. PARADISE) Do you understand	14:00:23
11	over there on Park Row area.	13:58:29	11	that one or both of those are illegal or not?	14:00:25
12	Q. Okay. And did there come a time when	13:58:30	12	A. Are illegal?	14:00:32
13	you moved here?	13:58:33	13	Q. Let -- let me ask you this. In -- in	14:00:33
14	A. Yes, sir.	13:58:33	14	2006 did you have an understanding as to	14:00:36
15	Q. And when did you move here?	13:58:34	15	whether it was illegal to sell counterfeit	14:00:38
16	A. When Woodforest moved their	13:58:35	16	products?	14:00:40
17	processing -- merchant processing center to	13:58:41	17	A. No, sir.	14:00:41
18	this location. I don't remember what year it	13:58:44	18	Q. Did you have an understanding as to	14:00:41
19	was.	13:58:48	19	whether it was illegal to sell replica	14:00:43
20	Q. So what does -- what does Woodforest	13:58:49	20	products?	14:00:45
21	do here in this building? Or what did they do	13:58:51	21	A. No, sir.	14:00:46
22	when you were working here in 2006?	13:58:54	22	Q. If you can pull out Exhibit 8 real	14:00:50
23	A. I was only involved on the merchant	13:58:56	23	quick. This is the Laurette application.	14:00:54
24	side of it. So I -- I don't know if they do	13:58:58	24	A. Okay.	14:00:58
25	new accounts or checking accounts or -- I	13:59:01	25	Q. Sitting here today, do you have any	14:00:59

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126			128		
1	recollection of having reviewed this	14:01:07	1	program like described in this document had	14:03:14
2	application?	14:01:10	2	been implemented at any time while you were	14:03:18
3	A. Not today, no, sir.	14:01:11	3	working for Delta Card, do you believe that	14:03:21
4	Q. It's just your understanding that	14:01:13	4	you would have known about it?	14:03:24
5	based on your job position and your	14:01:15	5	A. I believe so.	14:03:26
6	handwriting on the document that --	14:01:18	6	Q. And why do you believe you would have	14:03:29
7	A. Yes, sir.	14:01:18	7	known about it?	14:03:32
8	Q. -- you would have reviewed it?	14:01:20	8	A. Because I was a part of the approval	14:03:32
9	A. Yes, sir.	14:01:21	9	process.	14:03:35
10	Q. But you have no --	14:01:21	10	Q. Is it your understanding that you were	14:03:37
11	MR. WEIGEL: Objection, leading.	14:01:21	11	generally aware of policies relating to	14:03:39
12	Q. (BY MR. PARADISE) But you have no	14:01:23	12	applications for merchant accounts at Delta	14:03:43
13	recollection today?	14:01:24	13	Card?	14:03:47
14	MR. WEIGEL: Leading. Objection.	14:01:25	14	MR. WEIGEL: Objection, leading.	14:03:47
15	A. No, sir.	14:01:27	15	A. I -- I knew -- I may not know all the	14:03:49
16	Q. (BY MR. PARADISE) Now, you said	14:01:27	16	things in a policy or procedure, but I could	14:03:53
17	earlier -- strike that.	14:01:29	17	go to it and pull it out if someone were to	14:03:56
18	In 2006 would you have approved	14:01:36	18	ask me: Look at this; what do you think, or	14:03:58
19	this application if you knew that this	14:01:40	19	something like that.	14:04:01
20	merchant was selling counterfeit products?	14:01:41	20	But as -- as far as the	14:04:02
21	A. No, sir.	14:01:44	21	day-to-day do I know all of this? No. Did I	14:04:04
22	Q. Would you have approved this	14:01:46	22	know all of that? No, I didn't.	14:04:07
23	application if you knew that they were selling	14:01:47	23	Q. (BY MR. PARADISE) Do you have any	14:04:11
24	illegal products?	14:01:50	24	knowledge of a high-risk revenue merchant	14:04:13
25	A. No, sir.	14:01:51	25	program ever being implemented by Delta Card?	14:04:16
127			129		
1	Q. At this time in -- in late 2006, did	14:01:52	1	A. No, sir. Not unless it was started	14:04:19
2	you think there was anything wrong with a	14:02:00	2	after I left. I don't remember.	14:04:22
3	merchant selling replica products if they	14:02:02	3	Q. Okay.	14:04:27
4	identified the products as being replicas?	14:02:05	4	MR. PARADISE: I have no further	14:04:27
5	A. As long as it was so described in	14:02:08	5	questions.	14:04:28
6	their Web site.	14:02:10	6	MR. WEIGEL: Thank you very much,	14:04:29
7	Q. Then it was okay?	14:02:11	7	ma'am.	14:04:30
8	A. Uh-huh.	14:02:12	8	THE WITNESS: You're welcome.	14:04:31
9	Q. Now, there's also some questions	14:02:13	9	THE VIDEOGRAPHER: Off the record.	14:04:32
10	earlier that whether you knew that Laurette	14:02:19	10	The time is 2:05.	14:04:33
11	was selling Gucci handbags.	14:02:24	11	(Deposition proceedings concluded at	14:04:36
12	Do you remember that -- those	14:02:27	12	2:05 p.m.)	
13	questions?	14:02:28	13		
14	A. Not really.	14:02:29	14		
15	Q. Do you, sitting here today, do you	14:02:32	15		
16	have any idea as to what Laurette was selling?	14:02:35	16		
17	A. Today I do by looking at this.	14:02:38	17		
18	Q. Do you have a recollection of what you	14:02:42	18		
19	knew in 2006 about this application?	14:02:47	19		
20	A. No, sir.	14:02:51	20		
21	Q. Let me ask you to pull out Exhibit 4,	14:02:59	21		
22	which is the slide presentation that you	14:03:04	22		
23	looked at earlier.	14:03:06	23		
24	A. Yes, sir.	14:03:08	24		
25	Q. If a high-risk revenue merchant	14:03:09	25		

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Exhibit 8

SOUTHERN DISTRICT OF NEW YORK

-----X

GUCCI AMERICA, INC.,

PLAINTIFF,

-against-

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

DEFENDANT.

-----X

DATE: June 25, 2010

TIME: 8:35 a.m.

EXAMINATION BEFORE TRIAL of DELTA
CARD SERVICES, by a 30(b)6 witness, RHONDA
LEMOS, taken by the Plaintiff, pursuant to a
Notice, held at the offices of LERNER, DAVID,
LITTENBERG, KRUMHOLZ & MENTLIK, LLP, 600
South Avenue West, Westfield, New Jersey
07090.

REPORTED BY: Rebecca Schaumloffel, RPR

JOB #: 31518

APPEARANCES:

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BY: GREGG A. PARADISE, ESQ.

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ALSO PRESENT:

Cedrick Frazier, Esq.

* * *

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FEDERAL STIPULATIONS

IT IS HEREBY STIPULATED AND AGREED

by and between the attorneys for the
respective parties herein, that filing and
sealing be and the same are hereby waived.

IT IS FURTHER STIPULATED AND AGREED

that all objections, except as to the form of
the question, shall be reserved to the time
of the trial.

IT IS FURTHER STIPULATED AND AGREED

that the within deposition may be sworn to
and signed before any officer authorized to
administer an oath, with the same force and
effect as if signed and sworn to before the
Court.

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RHONDA LEMOS

R H O N D A L E M O S, called as a
witness, having been first duly sworn by a
Notary Public of the State of New York, was
examined and testified as follows:

EXAMINATION BY

MS. COYLE:

**Q. Please state your name for the
record.**

A. Rhonda Lemos.

Q. Where do you reside?

A. 2307 Cranberry, Spring, Texas
77373.

**Q. Good morning. Would you please
state your name for the record?**

A. Rhonda Lemos.

**Q. Since the court reporter is
transcribing our conversation, I will ask you
to please give verbal answers. If you nod or
point, it won't be recorded. I am sure the
Court Reporter will also remind you. If you
don't hear my question, ask me to repeat the
question; and if you don't understand a
question, please let me know that you don't
understand the question.**

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RHONDA LEMOS

**Do you understand that your
testimony must be truthful and is subject to
the penalties of perjury?**

A. Yes.

**Q. Do you understand that when the
deposition is over, you will be provided a
copy to review, make any necessary corrections
and then sign?**

A. Yes.

**Q. Would you please state your address
for the record?**

A. 2307 Cranberry, Spring, Texas,
77373.

Q. Have you ever been deposed before?

A. Once.

Q. And in what matter was that?

A. It was business related in about
five minutes.

**Q. Did you look at any materials in
preparation for the deposition today?**

A. Yes.

**Q. Did you speak with anyone other
than your counsel in preparation?**

A. No.

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RHONDA LEMOS

Q. Would you give me a brief summary of your education after high school?

A. A couple of years of community college.

Q. Where was that?

A. Houston.

Q. And what was the school called?

A. Gordon County College and then H. Houston Community College.

Q. And then what did you do after you finished your education?

A. Start working.

Q. Professionally, where did you work?

A. A couple of places.

Q. And who is your employer now?

A. Delta Card Services.

Q. When did you begin working at Delta Card Services?

A. End of 1992.

Q. What was your first position there?

A. Customer service rep.

Q. Could you give me a brief summary of positions you have held since then?

A. Customer service representative,

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RHONDA LEMOS

chargeback analyst, chargeback supervisor, chargeback manager, risk manager and risk VP.

Q. When did you become a risk manager?

A. I don't remember what year.

Q. When did you become the risk managing VP?

A. In '07.

Q. Before that, were you a risk manager for more than a year?

A. Oh, yes.

Q. Several years?

A. Several years.

Q. Who do you report to now?

A. Stan Power.

Q. Who is that?

A. CEO of Delta Card Services.

Q. What are your job responsibilities?

A. Monitoring and supervising the risk department and the chargeback area.

Q. For Delta Card Services?

A. Correct.

Q. And can you give me an overview of the relationship between Delta Card Services and Woodforest National Bank?

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RHONDA LEMOS

A. Delta Card Services is merchant processing company for Woodforest National Bank.

Q. And can you give me a description of the relationship between Delta Card and MCCS?

A. MCCS is a d/b/a of Delta Card Services.

Q. Can you describe that a little bit further?

A. Basically, the same company.

Q. They are the same company, okay.

Can you explain how the profits from processing, from credit card processing, are divided between MCCS and Delta Card?

A. They are the same company.

Q. So there is no difference between the companies at all?

A. If you are asking me between Delta Card and MCCS, no.

Q. Okay. Can you explain, in general terms, what credit card processing is?

MR. PARADISE: Objection to form.

Q. You can answer.

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RHONDA LEMOS

A. That is when, as it relates to what we do?

Q. Yes. Just a general description of credit card processing transactions.

A. Okay. Normally, a business or merchant, as we refer to, will accept credit card for payments in exchange and for goods. So the customer will have the credit card if it is a face-to-face environment. They will swipe it. It goes through the authorization center, whoever is designated as an authorization center.

It is driven from the authorization center through whichever card brand the card is branded with Visa or MasterCard. From there, it is directed to the issuing card bank. The issuing bank will then authorize or decline the transaction, send it back through the same channels it came through and then the merchant will get the response; whether it is a declined or approved transaction, and then at the time the merchant chooses to close and submit a settlement batch, it goes back out through the authorization center to the

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RHONDA LEMOS

processing center and then the processing center will send the settlement out to Visa or MasterCard. That goes out from Visa and MasterCard out to the issuing bank and then the funds transfer back.

Q. So what is the relationship between the credit card processor and Visa or MasterCard?

A. The credit card processor is a service provider for the acquiring bank and then the acquiring bank is a member of the association of either Visa or MasterCard.

Q. So, here, Woodforest is the acquiring bank?

A. Correct.

Q. And Delta Card Services or MCCS is the processor?

A. The service provider.

Q. The service provider.

How does the credit card processor sign up merchants?

A. If you are asking processor, I can't answer.

Q. The service provider, sorry.

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RHONDA LEMOS

A. The Delta Card Services has independent sales contractors that we use that solicit merchant accounts and submit them for approval.

Q. Are those sometimes referred to as ISO?

A. Independent sales organizations.

Q. And have you heard the term MUD?

A. Yes.

Q. What does that stand for?

A. Marketing unit director.

Q. What exactly is that?

A. Marketing unit director is the actual office and the term that Delta Card Services uses for the independent sales contractors, they have agreements with, have applications submitted.

Q. How many of these ISOs would you estimate that Delta Card Services works with?

A. Estimation, over 200.

Q. Going back to the description of the credit card processing transactions, are the funds advancing from the acquiring bank to the merchant in this process?

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RHONDA LEMOS

A. No.

Q. Can you explain what a chargeback is?

A. It is a dispute initiated by the cardholder's bank either for that cardholder or by the cardholder bank to the acquiring bank.

Q. Who is responsible for the chargeback amounts?

A. I don't understand what you are asking me.

Q. If the customer never ultimately pays the disputed amount, who is responsible?

A. In Delta Card, Delta Card.

Q. Can you explain the process for investigating chargebacks?

A. Chargebacks come in, we have a company who works them. They send them to us. They come to the risk department, and then we work them based on our risk rules.

Q. Can you explain what you mean when you say that you work them?

A. We review the reason code that they have come in for. Any supporting

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RHONDA LEMOS

documentation. If they meet requirements from the card brands associations and then action is made.

Q. What are the reason codes?

A. There are hundreds.

Q. Would one of them be that the merchandise was not as described?

A. Yes.

Q. What would be the code for that?

A. Visa or MasterCard?

Q. Do you seek to collect the money that's disputed, the chargeback amount, from the merchant if it is resulted in the customer's favor?

A. Sorry, ask me again.

Q. If the customer doesn't ultimately pay the disputed amount, do you seek to collect this amount from the merchant?

A. Yes.

Q. And are you sometimes unsuccessful?

A. Yes.

Q. What do you do if you can't collect the money from the merchant?

MR. PARADISE: Objection to form.

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RHONDA LEMOS

You can answer.

A. Either a collection agency or legal.

Q. Do you keep reserve accounts for merchants?

A. Yes.

Q. What exactly is a reserve account?

A. Percentage of the processing volume that be put on reserve in case of a loss.

Q. What would be the typical percentage for the reserve?

MR. PARADISE: Objection to form.

A. It can range.

Q. What would the range be?

A. Normally 5 to 10 percent.

Q. Do you ask the merchant for that upfront when you begin servicing the account?

A. Depends on the account.

Q. What is the company that you said worked the chargebacks before they came to Delta Card Services?

A. Merlin Solutions.

Q. Do you monitor merchants more closely after they have had chargebacks?

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RHONDA LEMOS

A. They are monitored through the risk system.

Q. What are the risks Delta Card Services?

MR. PARADISE: Objection to form.

Q. Do you understand the question?

A. One more time.

Q. I will rephrase it. You have a risk management system, correct?

A. Correct.

Q. What are the risks that you are trying to protect against?

A. Loss.

Q. What forms of loss?

A. Monetary loss.

Q. Would that come primarily through chargebacks?

A. Could.

Q. What other forms of loss might there be?

A. A merchant issuing returns.

Q. Returns. How does that process work?

A. Like the sales process. Just now

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RHONDA LEMOS

that it is the reverse. If a customer is asked for a return.

Q. And why would Delta Card Services be liable for that?

A. If the merchant doesn't have the money to cover, pay back the cardholder, it is like a chargeback.

Q. Could you generally explain what your risk monitoring procedures are when you first setup a merchant account? Just walk me through the general process.

MR. PARADISE: Objection to form.

A. An account comes in, parameters are on the application. They are setup in our system. And then any exceptions to that, based on our rules, will pop out for us to review manually.

Q. Are there different categories of risk for different merchants?

A. Yes.

Q. What are the categories?

A. Keying percentages, swipe percentages, authorization violations, duplicate card, same dollar amounts.

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RHONDA LEMOS

Q. Do you use the term high-risk merchants?

A. Yes.

Q. Could you explain what that means?

A. Any merchant that processes over 51 percent non face-to-face.

Q. So that would include the Internet?

A. Yes.

Q. And are there different categories of high-risk merchants?

A. I am not sure I understand your question.

Q. Within the categories of merchants that would process 51 percent or more of non face-to-face, are there sub-categories of risk?

A. No.

Q. So high risk just means high risk?

A. Correct.

Q. Are there different tiers of risk, say, level one or level two?

A. There is -- yes.

Q. What are the tiers?

A. Low risk, medium risk, high risk.

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RHONDA LEMOS

Q. And what is the low risk mean?

A. Swipe-to-swipe, face-to-face, minimal risk.

Q. Sorry, let me back up. Within the high risk category, are there different tiers of risk; so would there be something called the high risk level one or high risk level two or high risk level three?

A. Not to my knowledge.

Q. When did Delta Card Services begin accepting high-risk merchants?

A. Rephrase it for me.

Q. Has Delta Card Services always accepted high-risk merchants?

A. Yes.

Q. What is a discount rate?

A. The fee charged to the merchant.

Q. Are there different discount rates depending on the level of risk?

A. Depending on level of the type of merchant.

Q. So a high-risk merchant that sells one type of good might have a different discount rate other than a high-risk merchant

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RHONDA LEMOS

that sells another type of goods?

A. Not to my knowledge.

MS. COYLE: Sorry, could you read back the previous answer and question?

(Whereupon, the aforementioned question and answer was read back by the Court Reporter.)

Q. So when you said, "the type of merchant," what did you mean?

A. Face-to-face or non face-to-face.

Q. Nothing to do with the type of goods?

A. Correct.

Q. What would be a typical discount rate for non face-to-face high-risk merchant?

MR. PARADISE: Objection to form.

A. I honestly don't know.

Q. What's the typical rate for a low risk merchant?

A. I don't know.

MR. PARADISE: Objection to form.

Q. Are you aware of the range of rates, discount rates for different types of merchants?

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RHONDA LEMOS

A. No, I do not.

Q. Do Visa and MasterCard impose specific regulations for high-risk merchant accounts?

A. Registered accounts.

Q. What does that mean?

A. It's an account that has to be registered with the associations for certain type of business.

Q. What type of businesses are those?

A. Memberships, dating services, adult entertainment.

Q. Are those the only ones?

A. No.

Q. Do they need to be registered if they are selling goods over the Internet?

A. Possibly.

Q. What types of products would a registered merchant be selling on the Internet?

Sorry, I will rephrase the question. Certain Internet merchants would be registered as high-risk merchants, correct, under the MasterCard or Visa registration

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RHONDA LEMOS

program?

A. They would be registered, yes.

Q. Can you tell me what types of products -- what products merchants selling would need to be high risk registered merchants?

MR. PARADISE: Objection to form.

A. I don't remember all the categories.

Q. Can you just tell me the ones you remember?

A. Adult entertainment, dating services, membership sites. Those are the main ones.

Q. Would tobacco be one?

A. I am not sure.

Q. Did there come a time when Delta Card Services -- sorry, Delta Card Services made a decision to expand their high-risk merchant business?

A. Can you be a little bit more clear on that question?

Q. Did there come a time when a decision was made that Delta Card Services

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could do more business with high-risk merchants than it was doing?

A. No.

Q. Did they begin seeking more relationships with high-risk merchants?

A. No.

Q. Did they begin seeking out ISOs or sales agents who were known for doing business with high-risk merchants?

A. No.

MS. COYLE: Let's mark this as Lemos Exhibit 1.

(Whereupon, a document,

WNB-03629-'03659, was marked as Exhibit Lemos-1 for identification as of this date by the Reporter.)

Q. Could you just read the subject line of the E-mail on the first page.

A. "High Risk-Revenue Merchant Program (Slide Show.)"

Q. Have you ever seen this E-mail before?

A. No.

Q. Who is Chris Hartner?

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RHONDA LEMOS

A. Previous employee.

Q. What was his position?

A. He had to -- he was at two different positions during this time.

Q. What were those?

A. Risk supervisor and a business analyst.

Q. Were you a risk supervisor in 2006?

A. No.

Q. What was your position there then?

A. Risk manager.

Q. Risk manager. And did you supervise Chris Hartner?

A. While he was supervisor.

Q. So he reported to you?

A. Yes.

Q. Who is Larry Petre?

A. Previous CEO.

Q. Jim Jones?

A. That's Jim Jenkins.

Q. Sorry, Jim Jenkins?

A. CFO, previous CFO.

Q. And Larry Jones?

A. VP of sales.

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RHONDA LEMOS

Q. Laurie Novacek?

A. VP of risk. Previous risk.

Q. That would be your position now?

A. Yes.

Q. And Earl Baxter?

A. Applications manager, previous applications manager.

Q. So you are the only -- sorry, you're not -- none of the people in this E-mail currently --

A. Larry Jones.

Q. Larry Jones is still there. Go ahead and turn to the first page after the blue sheet. What does that say?

A. "High Risk-Revenue Merchant Program."

Q. Do you know what that means?

MR. PARADISE: Objection to form.

A. High Risk-Revenue Merchant Program.

Q. What was the High Risk-Revenue Merchant Program?

MR. PARADISE: Objection to form. Foundation.

A. I don't know.

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RHONDA LEMOS

Q. You never heard of it?

A. Of this, no.

Q. Would you go ahead and take a look through the presentation. Would you take a look at page seven of the presentation which is Bates number '03636. Just read the headline.

A. Okay.

Q. Are you familiar with what the "high-risk merchant portfolio" is?

MR. PARADISE: Objection. No foundation.

Q. Would you read aloud that?

A. "Develop policies, procedures, reporting and expectations for monitoring and maintaining the high-risk merchant portfolio."

Q. Do you know what is meant by the "high-risk merchant portfolio"?

A. I don't know what he meant when he wrote it.

Q. Are you familiar with that phrase in your business?

A. No.

Q. You don't use the term "high-risk

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RHONDA LEMOS

merchant"?

A. We don't have a high-risk merchant portfolio.

Q. So you have never seen this presentation before?

A. No.

MS. COYLE: Can we take a short break.

(Whereupon, an off-the-record discussion was held.)

Q. Would you go back to the first page of Exhibit 1.

Other than the people copied on this E-mail and you, who else was in the risk department at this time?

A. At the time of the --

Q. Yes.

A. -- E-mail?

There should have been several.

Q. More than two?

A. Yes.

Q. How many people, about, were in the risk department?

A. In '06?

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RHONDA LEMOS

Q. Yes.

A. I really don't know.

Q. Were there more than ten?

A. I guess. I don't know.

Q. More than 15?

A. That may be close.

Q. You said that Chris Hartner reported to you at the time he sent this E-mail?

A. I don't know that. He had two positions.

Q. He had two positions at the time that he sent this E-mail?

A. I don't know that.

Q. So you don't know what his position was at the time of this E-mail?

A. At the time, correct.

Q. When you were his supervisor, what was your role in supervising him?

A. Making sure scheduling for the department, taking supervisory calls and, basically, monitoring the floor.

Q. Did you review his work?

A. Yes.

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RHONDA LEMOS

Q. Did you ever review any presentations that he drafted?

A. Not that I recall.

Q. Would you take a look at page 15 of the presentation which is Bates '03644.

MR. PARADISE: Just so you know, when she says Bates, that refers to the Bates numbers at the bottom corner.

Q. Would you just read the first bullet point aloud?

A. "We are consistently seeing discount rates in the range of 3.5%-10%."

Q. Is that consistent with your understanding of discount rates at the time?

A. I don't know.

MR. PARADISE: Objection to form.

Q. In your capacity as risk manager, were you familiar with discount rates that were charged to the merchants?

A. I am not sure I understand your question.

Q. Did you have a general idea of discount rates charged to merchants in your

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industry?

A. Some.

Q. Would you expect a merchant that had a higher risk to have a higher discount rate?

A. I don't know.

Q. So you had no sense of the relationship between a discount rate and the merchant's level of risk?

A. I didn't work with discount rates.

Q. Did you work with transaction fees?

A. No.

Q. Did you have any role on the fee side?

A. No.

Q. Could you turn to page eight which is Bates number '03637. Could you read aloud point one?

A. "Initially, we see this area starting with one individual from the risk and application department with Chris and Earl available for training and mentoring throughout the process. This team combination would in theory give us a good mix between

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both worlds. Presently, we are considering Alva from the apps team and Deirdre from the risk department. The training would consist mainly of direct interaction between the analyst and Manager or lead. This would include the registration process, the tools available to be used and how to effectively monitor these accounts with the given reporting."

Q. Would you be the manager referred to?

A. I don't know.

Q. Were there other people with the title of risk manager in 2006?

A. No.

Q. Did you ever have any conversations about this team, that is referred to, with anyone in your department?

A. No.

Q. When you were risk manager, were you involved in underwriting?

A. No.

Q. Were you involved in monitoring?

A. Can you be more specific?

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RHONDA LEMOS

Q. Monitoring merchant accounts.

A. More specific.

Q. Did part of your job include monitoring merchant accounts?

A. In risk?

Q. In risk.

A. Yes.

Q. Can you explain what that involved?

A. Transactions that are processed, settlement items, would come in through the risk system, exceptions would pop out, and then we would assign them to the different risk analysts. They would review them. And then we would take actions if needed.

Q. What are the exceptions you are referring to?

A. Excessive keying, not face-to-face swiping, repeat card, duplicate card, average ticket, deposit amount.

Q. Were you involved in developing merchant applications?

A. No.

Q. Any kind of merchant applications?

A. No.

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RHONDA LEMOS

Q. Were you involved in identifying potential agents or ISOs?

A. No.

Q. Did you ever visit any offices of merchants?

A. What timeframe?

Q. When you were risk manager.

A. Not that I recall.

Q. Since that time?

A. Currently?

Q. Yes.

A. Yes.

Q. Why would you visit a merchant?

A. If I happened to be in town, I would go pay a visit to a merchant as good will or part of a review.

Q. Would you visit a high-risk merchant as part of an investigation or monitoring?

MR. PARADISE: Objection to form.

A. A non face-to-face merchant, I guess it would depend.

Q. What would it depend on?

A. The type of business.

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RHONDA LEMOS

Q. Have you ever visited a high-risk merchant as part of a monitoring procedure?

A. Yes.

Q. And why did you visit them?

A. We review our adult entertainment merchants once a year, if it is over a certain dollar amount.

Q. What does the review consist of?

A. Visiting to ensure their location, meet their staff, see what their risk monitoring involves and normally a tour of the facility.

Q. Are there any other merchants that you visit routinely to tour their facility?

A. Can you be more specific?

Q. Other than adult merchants, do you visit any other merchants the same way that you just described doing?

A. Depends.

Q. What other high-risk merchants have you visited for that purpose?

A. None.

Q. So you have never visited any merchants other than adult merchants for the

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RHONDA LEMOS
purpose of touring their facility?
 A. No.
Q. Did anyone ever tell you that Delta Card Services was looking to service more high-risk merchants?

A. What timeframe?

Q. Ever.

A. Yes.

Q. When was that?

A. Recently.

Q. Can you be more specific?

A. Speaking with Chuck Vernon.

Q. More specific as to date, please.

A. During preparation.

Q. What did he tell you?

MR. PARADISE: I am going to object. Chuck Vernon is in-house counsel.

Also, could you -- I will instruct the witness not to answer that on grounds of attorney/client privilege. But could you read back a couple of questions ago, because I think there might be a misunderstanding here.

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RHONDA LEMOS
 (Whereupon, the aforementioned questions and answers were read back by the Court Reporter.)

MR. PARADISE: I just want to take a break to discuss the privilege issue with the client.

MS. COYLE: Sure.

(Whereupon, an off-the-record discussion was held.)

MR. PARADISE: Can you just, so the witness has, again, read back the first of those questions you read back before, the first couple of questions and answers because I think there was a misunderstanding.

(Whereupon, the aforementioned questions and answers were read back by the Court Reporter.)

MR. PARADISE: The witness wanted to --

A. Clarify the misunderstanding.

Q. Go ahead.

A. The question was more high risk. That was my misunderstanding. I took it as
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RHONDA LEMOS
 high risk. Wanting to book high risk accounts.
Q. Okay. So no one ever told you that Delta Card Services was looking to increase the percentage of business coming from high-risk merchants?

A. I was never told anything about -- no, I was not.

Q. Do you have any reason to believe that this presentation was never made to employees at Delta Card Services?

A. I never saw it.

Q. Do you have any reason to believe that the program it discusses was not implemented?

A. I have never seen this program implemented.

Q. And you have never heard anyone talk about reaching out to high-risk merchants?

A. No.

Q. And you never heard anyone talk about reaching out to agents that solicit high-risk merchants?

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RHONDA LEMOS
 A. No.
Q. What did you do to prepare yourself on the topic of high-risk merchants for today's deposition?

A. I don't understand the question.

Q. What did you do so that you would be able to answer our questions about high-risk merchants?

MR. PARADISE: Is there a specific topic you're talking about? Because that's pretty broad, and I think it is over generalizing the categories of the deposition.

So the witness understands, I think she does understand this, this witness has been designated to testify on behalf of Woodforest National Bank on all of the topics in the Rule 30(b)6 Notice of Deposition served by Gucci.

Perhaps it would be easier if you talked about, I know the witness has gone through the topics. So if you had a specific topic, that might make

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it a little clearer.

Q. Topic number four, "All systems, practices, processes or mechanisms by which to evaluate and enter into relationships with customers that you designated as high risk."

What did you do to prepare yourself on that topic?

A. Just my knowledge.

Q. All reasons -- sorry, topic number five, "all reasons and justifications concerning the fees and discount rates charged to high-risk merchants and other merchants who are not classified as high risk."

A. My knowledge.

Q. Going back to one of your earlier answers, didn't you say you had no dealings with discount rates?

MR. PARADISE: Objection to form.

Q. Do you have a general idea of what discount rates charged to merchants are?

A. No.

Q. So did you do anything to prepare yourself on topic five which concerns discount rates charged to high risk or not high-risk

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RHONDA LEMOS

merchants?

A. I reviewed documents.

Q. Did you review any documents that referred to the discount rates that were charged to high-risk merchants?

MR. PARADISE: Can you read that back, please.

(Whereupon, the aforementioned question was read back by the Court Reporter.)

A. I reviewed the documents that were part of this prep.

Q. Did any of those documents say anything about discount rates charged to high-risk merchants?

A. No.

Q. Do you have a stricter approval process for high-risk merchants?

A. We have a different policy for non face-to-face merchants.

Q. What does the approval process entail?

A. A review of the refund policy, contact information, the website, review for TSG Reporting - Worldwide 877-702-9580

RHONDA LEMOS

prohibited on the adult stuff. That's what I can recall.

Q. Do you review websites for prohibited content other than relating to adult sites?

A. Can you ask me that question again?

Q. You said that you reviewed adult websites for prohibited content.

Do you review other websites for prohibited content, or do you only review adult websites for prohibited content?

A. We review all websites and then there is prohibited adult content that we are looking for.

Q. When you review a website that's not adult, do you look for prohibited content?

A. Yes.

Q. And what types of content would that include?

A. Any content in the underwriting guidelines listed under the prohibited section.

Q. What are those?

A. Nutraceuticals, travel agencies

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RHONDA LEMOS

selling airfare, weapons, tobacco, and there are others, but I can't recall them.

Q. Do you verify that the website is not selling anything illegal?

A. The underwriters review it, yes.

Q. So you would not accept a website if it was selling illegal merchandise?

A. If it is identified as illegal, yes.

Q. After the initial account review of after you signed up the merchant, do you then review the website again to determine whether it is selling anything illegal?

A. If it comes under review.

Q. And what would cause it to come under review?

A. It is flagged in the risk system.

Q. What would be a flag?

A. Excessive keying, duplicate card, repeat dollar amount, excessive volume.

Q. What does excessive keying mean?

A. They are set to key or do face-to-face transactions and they are manually keying transactions.

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RHONDA LEMOS

Q. When you are reviewing a website to determine whether the merchant is offering any illegal goods, is it the reviewer who determines whether they are illegal or is it the merchant who says whether the goods are illegal?

A. The risk analyst reviews the website.

Q. And determines whether it is illegal, anything that is on the site?

A. Based on the review.

Q. Do you ever follow-up with merchants to ask them about the products they are offering, if you have concerns that something they are selling might be illegal?

A. Calling merchants is part of the review process.

Q. What do you ask them when you call them?

A. What are you selling, return policy, how long it takes them to ship stuff.

Q. Are you finished?

A. Um-hum.

Q. Did you say whether chargebacks

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would cause a flag in the system?

A. It would be a chargeback.

Q. Would that result in a red flag?

A. Depends.

Q. On the number of chargebacks?

A. Type of chargeback.

Q. What types would cause a red flag?

A. Services not rendered, non received merchandise, decline authorization, incorrect amount, not as described, defective merchandise, credit not processed.

Q. Are you finished?

A. I think so.

Q. If no red flag comes up in the system, do you ever review the merchants website again, or do you only review it when there is a flag?

A. We have a system, our company reviews changes on websites monthly.

Q. Do you review all websites or only certain websites?

A. All our websites in our database.

Q. What is the system for reviewing them on a monthly basis?

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RHONDA LEMOS

A. G-2.

Q. How does G-2 work?

A. They have a list of terms of service that they scan the websites for and brand violations that they scan the websites for. At the end of the month, they shoot a report that we review.

Q. What is brand?

A. MasterCard and Visa violations.

Q. What does it stand for?

A. Off the top of my head, I can't tell you.

Q. What are the violations?

A. Child porn, bestiality, tobacco sales. There are a lot of categories.

Q. Would it include illegal merchandise, for example, such as drugs; not prescription drugs?

A. I don't know.

Q. Would it be include counterfeit goods?

A. What timeframe?

Q. In 2006.

A. No.

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RHONDA LEMOS

Q. In 2007?

A. No.

Q. When would it have begun to include counterfeit goods when you are saying that it did?

A. I am not sure of the specific date.

Q. 2008?

A. No.

Q. Later?

A. Yes.

Q. 2009?

A. I believe.

Q. Does G-2 use certain keywords to search out brand?

A. Yes.

Q. Do you know if it uses the word replica?

A. I don't know.

Q. Or fake?

A. I don't know.

Q. Do you know why counterfeit goods were added to G-2 in 2009 or around then?

A. We asked them to add it.

Q. Why did you ask them to add it?

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RHONDA LEMOS

A. To ensure our portfolio was spoken correctly.

Q. Does BRAM brand stand for business risk and mitigation?

A. It might be.

Q. Was that at the request of -- let me start over.

Did Visa or MasterCard change their BRAM regulations in 2009?

A. I don't know.

Q. Did you ask G-2 to include counterfeit goods to be in compliance with Visa and MasterCard rules?

A. No.

Q. Then why did you ask them to do that?

A. To ensure we didn't have anything in our portfolio that shouldn't be.

Q. So because counterfeit goods were illegal?

MR. PARADISE: Objection to form.

A. Ask the question again, please.

Q. Were you concerned that counterfeit goods should not be in your portfolio because

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counterfeit goods were illegal?

A. I am not sure I understand what you are asking me.

Q. You said you wanted to ensure there was nothing in your portfolio that shouldn't be, correct?

A. Correct.

Q. By that do you mean because something was illegal?

A. Because we don't underwrite for that.

Q. And why not?

A. It is not a business that we choose to do business with.

Q. Is that because it is illegal?

A. Yes.

Q. Okay. Did MasterCard and Visa specifically prohibit the sale of the servicing of merchants who sold counterfeit goods?

A. What do you mean by specifically prohibit?

Q. Was it against their regulations to service merchants who sold counterfeit goods?

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RHONDA LEMOS

A. What timeframe?

Q. In 2006.

A. I can't speak for 2006.

Q. 2007?

A. I can't speak for 2007.

Q. Are you aware of a time period at which it would have violated the Visa or MasterCard rules to service merchants selling counterfeit goods?

A. I know the rules that are there now.

Q. What are the rules?

A. I can't quote those for you.

Q. But do you think that they prohibit servicing merchants that sell counterfeit goods?

A. Prohibitive selling merchandise, yes.

Q. Have MasterCard and Visa always prohibited servicing merchants who sell illegal products?

A. I would guess so.

Q. And under Visa and MasterCard regulations, was the acquiring bank

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RHONDA LEMOS

responsible to ensure that merchants were not selling any illegal products or services?

A. I would guess so.

Q. What is web crawler?

A. In relation to?

Q. Is that a program that Delta Card Services uses?

A. Currently, no.

Q. Did they used to use it?

A. I think we looked into it.

Q. But they didn't actually use it?

A. Not that I am aware of.

MS. COYLE: We will mark this as Lemos Exhibit 2.

(Whereupon, an E-mail dated May 24, 2007, WNB-09043, was marked as Exhibit Lemos-2 for identification as of this date by the Reporter.)

Q. Just take a minute to read the document.

Did you send this E-mail?

A. It has my name on it.

Q. What is the date?

A. Thursday, May 24, 2007.

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RHONDA LEMOS

Q. Would you read from the middle beginning, "I am going to send him the following list."

A. "I am going to send him the following list of restricted material (taken from the letter mailed to all merchants last year). Pornography depicting an individual being killed "Snuff", child pornography or the illusion of child pornography, bestiality, pornography depicting nonconsensual sex - this includes individuals appearing to be drugged, asleep, hypnotized, raped, etc., pornography depicting sadistic or masochistic abuse, pornography depicting urination, defecation, or menstruation, Live Webcam."

Q. Could you read the last line?

A. "BRAM includes, child pornography, illegal sales of prescription drugs, tobacco products or both, sale of counterfeit merchandise or other violation of intellectual property rights and depiction of bestiality, rape, mutilation and the like."

Q. So at the time that you wrote this E-mail, you were aware that the sale of

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counterfeit merchandise would fall under BRAM?

A. It's what it says.

Q. Why didn't you put that on the list of restricted material that you were going to send to Kevin from G-2?

A. This appears to be a memo on the terms of services that we added to what G-2 already describes.

Q. Didn't you earlier testify that G-2 did not begin describing for counterfeit goods until 2009?

A. That's right. When we added it to our terms of service.

Q. Why didn't you add it in 2007?

A. I don't know.

Q. At the application stage, if you determined that a merchant is offering prohibited content, will you automatically reject the merchant?

A. That's kind of a general question.

Q. Do you ever tell a merchant that you can't service them because they are offering prohibited content, but if they make a change in their site, then you would service

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RHONDA LEMOS

them?

A. Yes.

Q. If an adult merchant included one of the prohibited contents that you just read out, you might agree to service them if they would take that off the website?

A. Correct.

Q. And then would you go back and review the website to make sure they weren't offering it at some point in the future?

A. It would be reviewed before they approved it to ensure it was removed.

Q. After you approved it, would you monitor it --

A. It should be --

Q. -- going forward?

A. On the G-2.

Q. Other than the G-2, is there any other monitoring system in place?

A. Not unless it flags in risk.

Q. So if something isn't picked up by G-2, you don't have people, anyone at Card Services reviewing the websites periodically themselves other than when it is flagged?

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RHONDA LEMOS

A. No.

Q. If G-2 picks up a content violation what steps do you take?

A. We get the report, we review it and if we find that it is verified, it can close the account or contact the merchant and let them know what is going on and/or either have it removed or the account will be closed.

Q. So you will sometimes request that a merchant take the content off the site?

A. Correct.

Q. And if you see that there is prohibited content, do you do anything prior to contacting the merchant, for example, shutdown their processing capacity?

A. What I just said, we can close the account.

Q. But would you temporarily disable their ability to process until the content was removed?

A. If we close the account.

Q. If you didn't close the account, would you ever temporarily disable processing?

A. We would turn off the account.

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RHONDA LEMOS

Q. Temporarily or permanently?

A. Depending on the situation.

Q. So I will give you an example. If during the course of a review or a BRAM report you discovered that an adult site was depicting child pornography, would you immediately close the account?

A. Yes.

Q. Are there other circumstances under which you might only temporarily disable processing as opposed to immediately closing the account?

A. Yes.

Q. And what circumstances would those be?

A. It could be an adult video that states a title like hypnotized. We may say you have to close that video. We will turn your cards off until you close the video so you can continue processing.

Q. So you would turn the cards off before you actually spoke with the merchant?

A. Correct.

Q. And how do you turn the cards off?

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RHONDA LEMOS

A. It is a switch.

Q. So you can do that any time that you want?

A. Correct.

Q. If you have temporarily disabled an account, after you reach out to the merchant and ask them to take it off, if they take it off, will you turn it back on?

A. Yes. In most cases.

Q. And then will you continue to review that site for any further violations?

A. If G-2 reports it as a change.

Q. But you won't automatically review it for further prohibited content?

A. G-2 does that every month.

Q. Just G-2, not an actual individual?

A. Correct.

Q. What is your understanding of replica products?

A. Style like.

Q. Are there any other phrases used to refer to replica products?

A. Style copy.

Q. Copied on its own?

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RHONDA LEMOS

A. Style copy.

Q. What about fake?

A. No.

Q. Did Delta Card Services have a specific policy relating to merchant selling replica products?

MR. PARADISE: Objection to form.

A. As far as specific?

Q. Any policy.

A. What timeframe?

Q. In 2006.

A. For replica?

Q. Yes.

A. No.

Q. 2007?

A. I don't remember.

Q. 2008?

A. I honestly don't remember what date

--

Q. Is there a policy in place now?

A. Yes.

Q. What is the policy?

A. We are not underwriting for replica.

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RHONDA LEMOS

Q. And you don't recall when the policy was implemented?

A. Last year or so.

Q. So sometime in 2009?

A. Or late '08. I honestly don't remember the exact timeframe.

MS. COYLE: We will mark this as Lemos Exhibit 3.

(Whereupon, a May 5, 2009 E-mail, WNB-27334, was marked as Exhibit Lemos-3 for identification as of this date by the Reporter.)

Q. Just take a moment to review the E-mail. Who is Francisco Rivera?

A. He is the current applications manager.

Q. Do applications personnel work closely with the risk department?

A. Define closely.

Q. Do you interact typically during the day, do you send e-mails to each other during the day?

A. Yes.

Q. Would you read the E-mail aloud,

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RHONDA LEMOS

please?

A. "As a general rule of thumb we are no longer approving merchants that sell Replicas, Copies or Fake items. This is one of the few business types that MasterCard prohibits."

Q. So does that refresh your recollection as to when the policy changed?

A. The actual policy change was, I think, still in '08 or '09. But as a rule of thumb, based on this, we may not have been approving them.

Q. And that was in response to MasterCard rules?

A. No. That was due to the chargebacks for non-receipt of merchandise.

Q. Was there a high rate of chargebacks for replica product accounts?

A. Define high rate.

Q. Let's start out with what an acceptable rate would be.

A. Depends on the merchant type.

Q. For Internet merchants?

A. Depends on the merchant.

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RHONDA LEMOS

Q. What type of merchant would result in a low rate of chargebacks being acceptable?

A. Any type?

Q. Yes.

A. That's kind of a broad question. Can you be more specific?

Q. Well, we will take replica merchants. What would be an acceptable level of chargebacks?

A. Depends on the chargeback type. Depends on the merchant.

Q. What are the factors that are considered in determining what an acceptable chargeback rate is?

A. Any replica merchant?

Q. Replica merchant.

A. Type of chargeback, number of transactions, the return policy and time in business.

Q. What type of chargebacks would be likely to result in a lower threshold that would be acceptable as chargebacks?

A. Technical chargebacks.

Q. Which are what?

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RHONDA LEMOS

A. Authorization related.

Q. What about goods not described as described?

A. Depending on the type of chargeback; the reason for it.

Q. Isn't goods not described the reason or is there a different reason?

A. Well, not as described can be it was red, it was supposed to be blue.

Q. Sorry, didn't mean to interrupt.

A. That's it.

Q. What if the reason was it was fake?

A. Fake as in?

Q. A fake product. I thought it was an authentic product but it was fake.

MR. PARADISE: Objection to form.

A. It would have to be a burden of proof.

Q. Is that type of -- is that a type of chargeback that you would be familiar with, that somebody had complained that they purchased a replica product and it was a fake, not an authentic product?

MR. PARADISE: Objection to form.

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RHONDA LEMOS

A. If someone purchased a replica product, and they are saying that it is not a replica product?

Q. I am sorry. I will start over.

If someone purchased what they believed to be a designer handbag and then complained that it was not an authentic designer product, is that a reason for a chargeback?

A. Yes.

Q. And have you ever encountered those types of chargebacks?

A. Encountered meaning?

Q. Are you familiar with them occurring?

A. I think I have seen one.

Q. Would that result in the threshold for acceptable number of chargebacks being higher?

MR. PARADISE: Objection to form.

You can answer.

A. It would depend if the merchants website said I am selling specifically what the complaint was. If it said I am selling a

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1 RHONDA LEMOS
2 designer bag and they didn't get a designer
3 bag, that's an issue.

4 **Q. So was there any policy in place**
5 **that required merchants selling replica**
6 **products to disclaim that they were selling**
7 **authentic products?**

8 A. I didn't understand.

9 **Q. Was there any policy that would**
10 **require the merchant to make it clear to the**
11 **customer that it was offering replica products**
12 **as opposed to authentic designer products?**

13 MR. PARADISE: Objection to form.

14 You can answer.

15 A. The website would have to state
16 specifically what we are selling.

17 **Q. Did you require merchants to state**
18 **that they were selling replica products if**
19 **that's what they were selling?**

20 A. If their website says they were
21 selling it and that's what their application
22 said, then they should match.

23 **Q. Did you require any kind of a**
24 **disclaimer on the website?**

25 A. Can you be more specific?

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1 RHONDA LEMOS

2 **Q. Would you require the website to**
3 **state explicitly these are replica products,**
4 **they are not genuine or authentic products?**

5 MR. PARADISE: Objection to form.

6 A. Again, if it says on the
7 application replica, the website should match
8 replica. If it doesn't, the apps is not going
9 to be approved.

10 **Q. So the replica applications form**
11 **would always make clear they were replica**
12 **products?**

13 A. As far as I understand.

14 **Q. Did you ever see any applications**
15 **that said they were selling clothing or**
16 **handbags that then proved to be offering**
17 **replica products on the sites without noting**
18 **it in the application?**

19 A. Repeat that for me, please.

20 **Q. Did you ever see any applications**
21 **that didn't describe the goods sold as**
22 **replica; for instance, they just described**
23 **them as clothes or handbags, then during the**
24 **course of the review process, turned out that**
25 **the website was selling replica products?**

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1 RHONDA LEMOS

2 A. I want to repeat to make sure I did
3 understand.

4 Did we ever see an application that
5 would say like clothing or handbags and then
6 during the process of review, before approval,
7 it shows replica on the website?

8 **Q. Yes.**

9 A. Yes.

10 **Q. And did you have any concerns as to**
11 **whether the goods offered on the website were**
12 **being sold to customers as authentic goods?**

13 A. If it says replica, then they are
14 replica.

15 **Q. So the website would always say**
16 **that they were replica products?**

17 A. To my knowledge.

18 MR. PARADISE: Is this a good
19 point for a break?

20 MS. COYLE: Sure.

21 (Whereupon, an off-the-record
22 discussion was held.)

23 MR. PARADISE: Before we start,
24 just so everything is clear, I think
25 pretty much the entirety of your

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1 RHONDA LEMOS

2 questions this morning have been about
3 Delta Card and, as you know, Miss
4 Lemos is an employee of Delta Card and
5 is also here in her personal capacity,
6 and has been answering, you know, in
7 that respect.

8 I would just note that
9 Woodforest's knowledge of, you know,
10 being a separate company from Delta
11 Card maybe quite different and in most
12 cases, you know, much less than what
13 Miss Lemos has stated.

14 So, you know, I would just note
15 that if you want to know Woodforest's
16 knowledge on a topic noticed, that you
17 should ask Miss Lemos, you know, what
18 is Woodforest's knowledge of a certain
19 topic. You are free to ask whatever
20 questions. She will keep answering
21 questions to the best of her
22 knowledge. But, you know, that was
23 just -- I just wanted to clarify that
24 for the record since this is a joint
25 deposition.

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RHONDA LEMOS

MS. COYLE: Thank you.

Q. When we last left off, we were talking about replica products. Were there concerns specific to the sale of replica products relating to risk issues?

A. Can you be more specific?

Q. Sorry. Were there particular risk issues relating to the sale of replica products by merchants relating to either chargebacks or illegal goods being sold?

MR. PARADISE: Objection to form.

You can answer.

A. What timeframe are you talking about and, specifically, are you asking about chargebacks or --

Q. I am using chargebacks as one example since you asked me to be more specific. But if there were other concerns other than chargebacks, including whether the goods sold were illegal, then I would like to know the answer to that as well.

A. Any time frame or timeframe?

Q. Let's start with in 2006/2007.

A. 2006/2007, to my knowledge, there

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RHONDA LEMOS

was no concern with replicas and chargebacks at that time.

Q. Was there concern that replicas might be illegal?

A. That's two different terms.

Q. Was there any concern that replica products could be illegal?

A. A replica product is a replica product. So --

Q. What I am asking is whether anyone was concerned that any of the goods sold by replica products were illegal; for example, were counterfeit?

A. If I am understanding your question correctly, a replica is different than a counterfeit product. So I would have to say no.

Q. So it was your understanding that replicas were never counterfeit products; is that what you are saying?

A. A replica -- it is my understanding that a replica is a replica which is a style like. So to me -- sorry, to me, it sounds like you are asking me two different

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RHONDA LEMOS

questions.

Q. What I am asking is whether there was any concern that replica products might also be counterfeit products?

A. Not to my knowledge.

Q. Was there any other reason that Delta Card Services might have been concerned about merchants selling replica products?

MR. PARADISE: Objection to form.

A. My understanding, if the application came in as replica and the website says replica, they are saying they are selling replica and they are selling replica, there was no concern.

Q. Would they be a high-risk merchant?

A. If a merchant is selling 51 percent or more on the Internet, they are high risk.

Q. So an Internet merchant exclusively selling replica products over the Internet would be a high risk?

A. Any merchant selling any product 51 percent or more over the Internet is high risk.

Q. But the answer to my previous

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RHONDA LEMOS

question, specifically, a replica merchant selling products exclusively over the Internet would be a high-risk merchant?

A. Yes.

MS. COYLE: Let's mark 4.

(Whereupon, an E-mail chain, WNB-27341-'42, was marked as Exhibit Lemos-4 for identification as of this date by the Reporter.)

Q. Just take a minute to look at the E-mail.

A. Okay.

Q. Who is Nancy Nielsen?

A. I don't know.

Q. Do you know what International Merchant Solutions, Inc. is?

A. No.

Q. You never heard of them?

A. Nope.

Q. Do they appear to be an agent seeking to place a merchant with --

A. Based on reading the E-mail, it does read as if it is a sales office trying to find out about an application for a merchant.

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RHONDA LEMOS

Q. And do you know what they mean when they ask -- when they say the website "is selling replica shoes. If they put that on the website, can you place it?"

A. Well, it reads is they are asking if it is selling replica shoes, if they place it on the website, can you place it. It appears they are asking, if that's on the website, will you approve the application.

Q. And the response is from Matt Ivy. Is Matt Ivy a Delta Card Services employee?

A. Yes, he is.

Q. How do you interpret the response about making the statement that the shoes are replica?

A. It reads as if, in his review, it showed that it does state that the shoes are a replica so he is saying okay.

Q. And then the top of the chain from Earl Baxter saying, "This is not an account we are willing to approve now."

Do you know what the reason for that would be?

A. No.

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RHONDA LEMOS

Q. Do think it relates to the fact that it is a replica site?

A. In reading it, it reads, if the first sentence is okay, then someone reading it, "The merchant can bill the customer's card once the product has been shipped to the consumer. Is this the case? Ideally we would like for the merchant to have some inventory on hand" and that's behind it.

So if you are asking me to come to a conclusion, my conclusion would be that it was based on the second paragraph. It didn't have the okay beside it.

Q. Thanks.

MS. COYLE: We will mark Exhibit 5.

(Whereupon, a June 6, 2007 E-mail with attachments, WNB-27335-340, was marked as Exhibit Lemos-5 for identification as of this date by the Reporter.)

Q. Just take a look at the first page of the document after the E-mail. You don't have to read the whole thing.

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RHONDA LEMOS

A. Okay.

Q. What is Woodforest Bank's Potential Loss Summary form?

A. It is a form the risk department put together to notify, by the analyst. If they have a potential loss coming in on a merchant over a certain dollar amount, they will send it to the management team so we are aware they have identified a possible loss.

Q. And they send that to the management team at Woodforest?

A. Delta Card.

Q. Why does it say Woodforest Bank at the top?

A. Because it would be a Woodforest merchant.

Q. Can you explain what you mean by a Woodforest merchant.

A. When the form was originally created, we had more than one bank we processed. We did service providing for.

Q. And now that's not the case?

A. Correct.

Q. Can you read the second box under

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RHONDA LEMOS

the summary of the account activity dated January 17, 2007?

A. "1/17/2007, 12:30:55 Collins, Carol A(COLLINS,1272) merch. opened with us on 11/06... flagged for chargeback, ch 4863 for \$471.00 which was resolved on Jan. 16, 2007. Merch. sells replica goods on the Internet, which makes me uneasy... merch. being so new and already having 2 cb in less than three months (red flag)... MBL 15k, ATS 160.00, HTA 750.00... good credit, TRA 14%, no real estate, actually had hardly any credit to speak of... Diedrie call this merch. on 1/09/07, was asking for docs. The voice mail was full... the cell phone # we have is not accepting calls at this time... makes me very uneasy... I as well called merch. and the cell # said the customer you are calling is not accepting calls at this time... the other number supposed to be business # says the voice mail is full so I could not leave a message... I feel that this might be fraud issues..."

Q. Do you know who prepared this, it

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RHONDA LEMOS

says at the top --

A. "Meb."

Q. Do you know who that is?

A. Yes.

Q. Who is that?

A. Mimi Boyde and in the collection department.

Q. Does she still work at Delta Card?

A. Yes.

Q. Why do you think she noted that, "the merchant sells replica goods on the Internet which makes me uneasy"?

A. Who are we talking about?

Q. The person who prepared this report.

A. Mimi didn't do that.

Q. Who did that?

A. This would be Collins, Carol A.

Q. Under the investigator column?

A. Correct.

Q. And who is Collins, Carol?

A. A previous employee.

Q. In Delta Card Services?

A. Correct.

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RHONDA LEMOS

Q. Why do you think that the person noted that the fact that the replica goods were being sold on the Internet made them uneasy?

A. I can't answer for her.

Q. Did you ever talk to anyone at Delta Card Services about whether selling replica goods on the Internet would make somebody concerned about the merchant?

MR. PARADISE: Objection to form.

A. Specifically, I am -- not to my knowledge.

Q. Was whether a merchant was selling replica goods on the Internet taken into consideration in determining the discount rates that they would be charged?

A. Repeat that for me, please.

Q. Was whether replica goods were being sold on the Internet a factor in determining the merchant's discount rate?

A. I don't know because we don't set discount rates.

Q. Who sets the discount rates?

A. The salesperson.

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RHONDA LEMOS

Q. The agent or the ISO?

A. Correct.

Q. Does Delta Card Services approve the rate?

A. What do you mean by approve?

Q. If the rate is not what you would consider to be sufficient, would you go back to the sales agent and say it needs to be higher?

A. My understanding, if it is not where they are actually -- if we are losing money on the rate, they will send it back.

Q. So there is some analysis done at Delta Card as to what an appropriate rate would be?

A. The analysis is whether it is a cost effective account. Based on our expenses.

Q. Can you explain exactly how the finances breakdown, how Delta Card Services profits from these processing transactions?

A. If you can be more specific with financial.

Q. Just explain, you know, how much

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RHONDA LEMOS

money from each merchant goes to Delta Card?

A. It depends.

Q. Can you give me a for instance if a discount rate is 3%, how does that 3% breakdown?

A. It depends. There is an expense factors on what the card brands are charging for that transaction to go through -- to go through. The fee for the card type based on the association's charges. And then any expenses that would have taken place with the authorization, and then it is netted and then the net is where the difference comes in.

Q. Do you share the -- do you share some percentage beyond what the card associations take with the sales agent?

A. Depends on the sales relationship.

Q. Sticking with that exhibit, can you turn to the second page and do you see the entry for 1/17/07?

A. 1/17/07.

Q. About halfway down the page.

A. Okay.

Q. You see where it says risky MUD

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RHONDA LEMOS

278?

A. Um-hum. Yes.

Q. What would that mean?

A. A risky MUD, marketing unit director, is a representative -- well, independent sales contractor who primarily writes new businesses.

Q. And would the number indicate who the MUD is?

A. Yes.

Q. Do you happen to know what number 278 refers to?

A. Yes.

Q. Who is that?

A. Maltonish and Monatella's office.

Q. Is that Joe Monatella's office?

A. Yes.

Q. Then going down to 1/31/07, do you see where it says, "online merch. sells knockoff replicas"?

A. Yes.

Q. What is your understanding of the term knockoff?

A. My understanding of the term

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RHONDA LEMOS

knockoff is someone who is selling something like something else.

Q. Wouldn't that be what your understanding of replicas is?

A. Basically.

Q. So knockoff means the same thing as replicas, in your understanding?

A. In my understanding.

MS. COYLE: Let's mark this as Exhibit 6.

(Whereupon, a November 30, 2007 E-mail with attachment, WNB-13694-'95, was marked as Exhibit Lemos-6 for identification as of this date by the Reporter.)

Q. Who is Joe Monatella?

A. An independent sales office.

Q. Who is Alva Keyser?

A. A previous employee.

Q. And what was her position?

A. Underwriting analyst, I believe.

Q. Did you supervise her?

A. No, I did not.

Q. Can you look at the image attached

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RHONDA LEMOS

to the E-mail, and can you tell me what the descriptor information referred to in Joe Monatella's E-mail is in this image?

MR. PARADISE: Can you read back that question, please.

(Whereupon, the aforementioned question was read back by the Court Reporter.)

MR. PARADISE: Objection to form.

A. Sorry, what is your question?

Q. I would like to know what this descriptor info is supposed to mean, looking at the image?

A. I honestly don't know.

Q. Do you know why it says Nathan Counley in the box for cardholder's name?

A. No, I do not.

Q. Do you know who Nathan Counley is or Counley?

A. Yes.

Q. Who is he?

A. In the sales office.

Q. Somebody that you worked with?

A. No, I did not.

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RHONDA LEMOS

Q. Did you ever communicate with him?

A. No, I did not.

Q. Did you ever communicate with Joe Monatella?

A. Yes.

Q. And what did you communicate about with Joe Monatella?

A. What time period, when?

Q. Did you communicate with him often?

A. Currently?

Q. Back in 2006, 2007.

A. I don't know by often what you mean by often.

Q. Once a week?

A. Could be.

Q. Regularly?

A. Regularly.

Q. About merchant applications?

A. It would be risk issues, about risk issues.

Q. Would you ask Joe Monatella to follow-up with merchants about risk issues?

A. That's kind of a general question, but normally it is just if he has any contact

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1 RHONDA LEMOS

2 information.

3 **Q. So after he would bring you the**
 4 **merchant application, would he then be a**
 5 **go-between between you and the mirror; do you**
 6 **reach out to the merchant directly?**

7 A. Are you asking in risk?

8 **Q. Yes.**

9 A. It depends on the account.

10 MS. COYLE: Let's mark this as
 11 Exhibit 7.

12 (Whereupon, an E-mail dated
 13 February 5, 2008, WNB-21046-'47, was
 14 marked as Exhibit Lemos-7 for
 15 identification as of this date by the
 16 Reporter.)

17 **Q. Is that an E-mail that was sent to**
 18 **you?**

19 A. Yes.

20 **Q. What is the shopping addiction?**

21 A. Where do you see that?

22 **Q. The bottom part of the chain on the**
 23 **first page.**

24 A. It appears to be the merchant's
 25 name.

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1 RHONDA LEMOS

2 **Q. So did Joe Monatella act as a**
 3 **go-between between the shopping addiction and**
 4 **Delta Card?**

5 A. It appears he is asking us, yes.

6 **Q. Do you recall having any other**
 7 **communication with him about the shopping**
 8 **addiction?**

9 A. Not to my recollection,
 10 specifically.

11 **Q. Are you familiar with the**
 12 **bagaddiction.com?**

13 A. In what sense?

14 **Q. Have you heard of it?**

15 A. Yes.

16 **Q. What is it?**

17 A. It is a merchant.

18 **Q. One that was serviced by your**
 19 **company?**

20 A. They had a merchant account, yes.

21 MS. COYLE: This will be
 22 Exhibit 8.

23 (Whereupon, documents were marked
 24 as Exhibit Lemos-8 for identification
 25 as of this date by the Reporter.)

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1 RHONDA LEMOS

2 **Q. Have you seen this document before?**

3 A. Yes.

4 **Q. What is it?**

5 A. It is a merchant application.

6 **Q. For the Laurette Company?**

7 A. Correct.

8 **Q. And the merchant name is The Bag**
 9 **Addiction?**

10 A. D/b/a, correct.

11 **Q. It is a Woodforest National Bank**
 12 **application?**

13 A. It is a merchant bank card
 14 application, yes.

15 **Q. Did you see this application at the**
 16 **time it was submitted?**

17 A. Not to my knowledge.

18 MR. PARADISE: Just so the record
 19 is clear, I don't believe that the
 20 entirety of Exhibit 8 is the
 21 application. I don't know if the
 22 witness looked through all of the
 23 documents. There are a number of
 24 pages added on afterwards that I don't
 25 believe are actually part of what you

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1 RHONDA LEMOS

2 referred to as the application.

3 **Q. Was it the practice to include**
 4 **screen shots of merchant website with the**
 5 **application?**

6 MR. PARADISE: Objection to form.

7 A. If they have a checklist and it
 8 requires it on the checklist then, yes, it
 9 would be attached.

10 **Q. Do the pages attached to the back**
 11 **of the Internet merchant review checklist**
 12 **appear to be pages from the website for the**
 13 **application?**

14 A. Give me just one second. Based on
 15 how they read, yes.

16 **Q. Can you just walk me through the**
 17 **checklist and explain what each of these boxes**
 18 **is for?**

19 A. First one says request the user
 20 name and password to -- if it is a website and
 21 it's membership and you have to type in your
 22 user name or password to see what is on the
 23 site, they will check to see if it is like
 24 that.

25 **Q. So it is not checked because the**

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RHONDA LEMOS
site didn't require a membership?

A. Correct.

Q. And --

A. Then they would check, verify that the site was up and running; if it is checked. Review membership information if they take memberships. If they took them for longer than three months, it would be checked. They will check for review for pay-by-minute services because we don't take those. Complete description of goods or services offered. We reviewed it or he reviewed it, they would check it.

Q. Stop there for one moment. What does that mean, a complete description of the goods or services offered?

A. If the website shows what their understanding is, what they are selling, they are going to check off on it.

Q. So it is something that the website says itself?

A. Based on what the analyst understands they are going to be selling, correct.

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RHONDA LEMOS

Q. Okay. Go on.

A. The next one, toll-free telephone number. If it is on the website, they will check it. The customer service E-mail or phone number.

Q. Is that required?

A. Yes. You have to have contact info, clearly marked details on how the cardholder will be billed including what shows open on the cardholder statement and if it is there, they will check it. Refund policy, they will check it. If it is the transaction currency, they will check for U.S. currency. They will check it if it is a problem. Sorry, if it is not a problem. Legal restrictions on the website, they will check. Consumer data privacy, they will check. Security method for the transmission of data. You want me to go on to the next section?

Q. Are these unchecked because they are not applicable to the site?

A. Yes.

Q. Go ahead with the next section.

A. Google search for phone number and
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ensure that no restricted merchants are connected to the merchant.

Q. What does that mean?

A. Normally, that means that they are checking to make sure that it is not on the BBB or --

Q. What's the BBB?

A. Better Business Bureau complaint board for things of that sort.

Q. And why wouldn't that be checked on an application?

A. I can't answer for this one but normally it means they didn't find anything.

Q. It doesn't mean that they didn't look?

A. I can't answer whether they looked or not. Print screen shots for the file.

Q. What --

A. Sorry.

Q. What are payment gateways?

A. It is a company based on the type of equipment or software that the merchants is processing through, that they use to -- how do I describe it. To kind of connect to get the

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authorization and to transmit the transaction.

Q. We can skip the high-risk merchant.

A. Okay.

Q. Part. This application was from 2006. Are there additional boxes now on the current application or is it essentially the same?

A. I believe it's been changed.

Q. Does it include anything new?

A. I believe it might.

Q. What do you think it might include?

A. I believe there are keywords added and other changes, but I can't recall them all.

Q. Then under section two, where it says, "shop the merchant"?

A. Okay.

Q. Is this something that's supposed to be done for all Internet sites?

A. No.

Q. Which sites are they supposed to shop the merchant?

A. Registered merchants.

Q. And registered merchants are the

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areas that are registered under MasterCard or Visa programs?

A. Correct.

Q. So an Internet merchant that was selling exclusively products over the Internet would not be on MasterCard or Visa's registered merchant program?

A. Unless it was a registered type of account.

MS. COYLE: Exhibit 9.

(Whereupon, a document, WNB-00087, was marked as Exhibit Lemos-9 for identification as of this date by the Reporter.)

Q. Have you seen this document before?

A. Yes.

Q. Can you tell me what it is?

A. I can't tell you what it is called because I don't remember. But all these are blacked out. I can't see the headings. But it is a spreadsheet of activity for the Laurette Company.

Q. So it is their processing history?

A. Their transaction history, yes.

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Q. I realize they are hard to read. But let's try to go through the headings. In the far left column, it looks like that's the date, correct?

A. Yes.

Q. And then the column after that says sales?

A. I can't see it. But okay.

Q. And then the column after sales, I think it looks like it says number of sales. Can you see that?

A. Yes.

Q. And then returns.

A. Okay.

Q. And then the column after next is chargebacks received?

MR. PARADISE: Did you do number of returns?

MS. COYLE: No, I didn't do number of returns. So that's number of returns. I couldn't actually read what that said. I skipped that one.

Q. Chargebacks received is the one after number of returns?

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A. Okay.

Q. So according to this, it looks like there were chargebacks in December '06, January '07, February '07, February '03 and so on.

A. Okay.

Q. Do you agree?

A. Based on the data, yes.

Q. Would that be an unusually high number of chargebacks?

A. What's unusually high, what's your definition?

Q. That's what I am asking you. I am trying to get a sense of what is unusual or unacceptable level of chargebacks.

A. Depends on the type of account and the type of chargebacks.

Q. Well, this account being a high risk Internet merchant account, would it be considered acceptable to have chargebacks almost every month?

A. Again, it is going to be based on the type of chargebacks that are coming in for the merchant.

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Q. And then the next column for chargeback reversals, what does that mean?

A. I can't read. Sorry, what is the heading?

Q. Says chargeback reversals. I am pretty sure that's what it says.

MS. COYLE: Do you have a better copy of this?

MR. PARADISE: Yes. I mean, I think the original that was produced to you was clearer, but this looks like a copy that was made of a copy for the common deposition.

MS. COYLE: I think that's correct.

MR. PARADISE: I do have one. It is not the Bates version. It is clear so at least the witness can see.

A. The number of chargebacks slash reversals.

Q. What does that mean?

A. The number of chargeback account or reversals.

Q. What does it mean if they are

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reversed?

A. The chargeback was reversed, that means there was a rebuttal to it and sent back to the cardholder.

Q. The next column over that, I think, on my poor copy looks like month-end fees?

A. Right.

Q. And the one over that, daily discount?

A. Discount paid.

Q. What does that mean?

A. That would be the total on the discount rate payment based on the deposit.

Q. Can you try to explain that in a way that breaks it down a little bit?

A. Daily discount would be the discount rate times the volume for the day, daily. So the discount paid would be the percentage they paid on that.

Q. And that would be paid to whom?

A. To the merchant who was paying to Delta Card gross prior to any fees or expenses.

Q. And then is that amount -- does

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that all go to Delta Card or further divided?

A. That's the gross that comes in prior to all the expenses and revenues or --

Q. What is paid to the card associations?

A. Correct.

Q. Then the next column, net profits, that's what results for Delta Card after everything has been paid?

A. After. Well, that's the net of it before they split of what goes Delta Card.

Q. Before the split between Delta Card and whom?

A. Whomever it is. If it is Delta Card or the sales rep or whoever.

Q. So it would be after the card associations have taken their rate, but before the agent or someone else was being paid?

A. Correct.

Q. And who else might be paid other than the agent?

A. The bank.

Q. The bank meaning Woodforest?

A. Correct.

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Q. What would Woodforest get out of this transaction?

A. My understanding, Woodforest makes \$0.02 per transaction.

Q. No matter what the total value of the transaction is?

A. Correct.

Q. And the MUD residual is what goes to the agent?

A. Correct.

Q. And the last column, what does that say?

A. MCPS income.

Q. So that's the total that Delta Card or MCPS takes after --

A. Everything.

Q. -- Woodforest and banks and the card associations, I mean.

MS. COYLE: Exhibit 10.

(Whereupon, an E-mail dated March 30, 2006, WNB-03621-'622, was marked as Exhibit Lemos-10 for identification as of this date by the Reporter.)

Q. This is an E-mail that you were

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copied on?

A. That's what it shows.

Q. Take a look at the letter, it appears to be a letter from Visa referring to a high risk telemarketing registration.

A. Um-hum.

Q. What is this high risk telemarketing registration program?

A. This is part of those registration programs, the merchant has to be registered.

Q. And can you tell me, again, what categories of merchants fall under that?

A. Like I said, dating, ones with memberships, adult, and others that I couldn't recall.

Q. But it wouldn't include internet merchant selling replica products?

A. No.

Q. Do you know what percentage of your business is attributed to high-risk merchants?

A. No, I do not.

Q. Do you have an understanding of how much revenue is earned through high-risk merchant accounts, each merchant?

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A. Through Internet accounts, no, I do not.

MS. COYLE: Exhibit 11.

(Whereupon, a November 15, 2007

E-mail with attachments,

WNB-13554-'558, was marked as Exhibit

Lemos-11 for identification as of this

date by the Reporter.)

Q. Could you just walk me through this spreadsheet.

A. As soon as I get a chance to look at it.

Q. Sure.

A. Okay.

Q. So going back to the E-mail, it says it only refers to "High Risk sic codes." What is sic codes?

A. A standard -- I am not sure of the exact -- what it stands for but, basically, it is a standard industry code to describe a general description of what the merchant does.

Q. And these are all high-risk merchants, based on this E-mail?

A. I am not either party involved.

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But, normally, high risk codes could be sic codes that we designate high risk internally for our monitoring.

Q. It looks like those appear on the first page of the spreadsheet under the sic description?

A. Sorry, what page?

Q. The first page of -- the second page of the spreadsheet which is Bates 13556.

A. Okay, those would be merchants not face to face.

Q. So going back to the first page, can you just explain each of the columns, what they mean?

A. I can read what it states.

Q. But can you give me any context? Explain what the categories are for each column?

A. Sales strategization, appears to be volumes, number of merchants, the number of type of account. Percentage of total merchant. Appears to be the total percentage of that, those number of accounts in that volume range. Then the next column shows a

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volume and then the next percentage is the percentage of the sales volume.

Q. Percentage of the sales volume of the merchant or of something else?

A. I just can only tell what you is based on I am reading now. Sorry, I don't know.

Q. And the total, the percentage of total merchant column refers to?

A. It appears it refers to the percentage of that type merchant and that category.

Q. And then the volume is the amount of the merchants sales?

A. That's what it appears.

Q. Then going to the second page, in columns D & E, what do those refer to?

A. Well, that first half it says year-to-date volume summary, Visa MasterCard summary. VM summary. October is the next one.

Q. Is that the total volume for the year for each of these merchants?

A. Categories, that's what it appears

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to be. The second half is monthly limit, average ticket.

Q. What does the average ticket refer to?

A. The information on the application that states what their anticipated average ticket is for their business.

Q. What is the average ticket refer to specifically?

A. The average ticket that's on the application for that merchant stating what their business's average sale ticket amount is.

Q. So the average ticket is the transaction amount?

A. Not necessarily the transaction amount but what the ap says it is going to be.

MS. COYLE: Exhibit 12.

(Whereupon, documents,

WNB-27516-'529, were marked as Exhibit Lemos-12 for identification as of this date by the Reporter.)

Q. Have you seen this document before?

A. Yes.

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<p style="text-align: right;">Page 102</p> <p>1 RHONDA LEMOS</p> <p>2 Q. Can you tell me what it is?</p> <p>3 A. It's a spreadsheet breaking down</p> <p>4 the merchant, the ticket, the number of</p> <p>5 transactions, the volume, and Woodforest's</p> <p>6 gross profits from that merchant.</p> <p>7 Q. You said Woodforest gets \$0.02 for</p> <p>8 --</p> <p>9 A. Per transaction; correct.</p> <p>10 Q. Do you know who prepared this?</p> <p>11 A. I believe our IT department.</p> <p>12 Q. Why are the other sales reps, other</p> <p>13 than Nathan Counley, not included in the</p> <p>14 middle column?</p> <p>15 A. I don't know.</p> <p>16 Q. Do you know who other sales agents</p> <p>17 who referred these merchants are?</p> <p>18 A. No, I do not.</p> <p>19 MS. COYLE: We would like to</p> <p>20 request that information.</p> <p>21 MR. PARADISE: Okay. I can tell</p> <p>22 you that this document was prepared</p> <p>23 specifically in response to your</p> <p>24 request and correspondence that we had</p> <p>25 with your firm on this matter. I</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p style="text-align: right;">Page 103</p> <p>1 RHONDA LEMOS</p> <p>2 don't even believe you had asked for</p> <p>3 the sales rep. I think that was just</p> <p>4 added on because this came out of the</p> <p>5 context out of or a belief these were</p> <p>6 all Nathan Counley's accounts, and it</p> <p>7 actually turned out that actually not</p> <p>8 all of them was. That's why that was</p> <p>9 indicated. There is other</p> <p>10 information. I believe you have the</p> <p>11 applications and full files for each</p> <p>12 of these merchants which would</p> <p>13 indicate the sales rep on the</p> <p>14 application. So I believe you already</p> <p>15 have that information.</p> <p>16 MS. COYLE: All right. We will</p> <p>17 look that over.</p> <p>18 Exhibit 13.</p> <p>19 (Whereupon, documents,</p> <p>20 WNB-00933-'935, was marked as Exhibit</p> <p>21 Lemos-13 for identification as of this</p> <p>22 date by the Reporter.)</p> <p>23 Q. Have you seen this document before?</p> <p>24 A. Yes.</p> <p>25 Q. What is it?</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
<p style="text-align: right;">Page 104</p> <p>1 RHONDA LEMOS</p> <p>2 A. It is a merchant application.</p> <p>3 Q. And who is the merchant?</p> <p>4 A. Frank Adobily. Sorry, if I am</p> <p>5 pronouncing that wrong, d/b/a carbon copy</p> <p>6 replicas dot come.</p> <p>7 Q. What is the product for sale?</p> <p>8 A. Replica bags.</p> <p>9 Q. It says closed on 8, 17, 09 in the</p> <p>10 margin.</p> <p>11 A. Okay.</p> <p>12 Q. Does that mean the account was</p> <p>13 closed?</p> <p>14 A. That's what it would mean to me.</p> <p>15 Q. And can you tell by looking at the</p> <p>16 application why it was closed?</p> <p>17 A. I don't see any reference to why on</p> <p>18 the application.</p> <p>19 Q. What is the number 471?</p> <p>20 A. I don't know what that is.</p> <p>21 MS. COYLE: Exhibit 14.</p> <p>22 (Whereupon, a document,</p> <p>23 WNB-26981-'27003, was marked as</p> <p>24 Exhibit Lemos-14 for identification as</p> <p>25 of this date by the Reporter.)</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p style="text-align: right;">Page 105</p> <p>1 RHONDA LEMOS</p> <p>2 Q. Have you seen this document before?</p> <p>3 A. Yes.</p> <p>4 Q. What is it?</p> <p>5 A. It's an applications department</p> <p>6 training presentation.</p> <p>7 Q. Is the applications department</p> <p>8 trained by the risk department?</p> <p>9 A. No, they are not.</p> <p>10 Q. Do you know who prepared this</p> <p>11 application?</p> <p>12 A. Francisco Rivera.</p> <p>13 Q. Can you turn to page 11, which is</p> <p>14 Bates 26991, and, please, read the text.</p> <p>15 A. From the beginning?</p> <p>16 Q. Yes.</p> <p>17 A. "Restricted merchants do not accept</p> <p>18 restricted by the associations, online tobacco</p> <p>19 sales, cigarettes and tobacco, cigars</p> <p>20 excluded, ok, collection agency -- do not</p> <p>21 accept either owning or not owning the debt,</p> <p>22 certain adult content - listed on Internet</p> <p>23 checklist, online gaming, knockoffs, copies,</p> <p>24 replicas."</p> <p>25 Q. So since this document is from July</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

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2008, as of that time, the association has prohibited servicing merchants with knockoff copy or replica accounts?

A. Ask me one more time, please.

MS. COYLE: Do you want to read the question back?

(Whereupon, the aforementioned question was read back by the Court Reporter.)

A. I don't know that.

Q. Why would it say that in this presentation?

A. It was prepared by Francisco Rivera so I don't know that.

Q. Do you have any reason to believe he wouldn't accurately represent the association guidelines?

A. Yes.

Q. What would that be?

A. In order to take -- sometimes when we do not want to accept a certain type of account, we may tell our ISO offices it is against regulations in order to not have to defend our action of not accepting the

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account.

Q. On the next page, there is a separate box that says "Restricted Merchants, Restricted by MCCS"?

A. Okay.

Q. Do you want to go ahead and read that?

A. Restricted merchants do not accept restricted by MCCS. Live animals and non-face to face environments. No moto or Internet transactions, must be face-to-face, no shipping involved - cardholder to arrange for shipping, foreign cards in excess of 15% - prefer to be at 5-10%, multi-level marketing, pyramid schemes - airline related memberships or discount clubs, charter companies ok, day trips only, own hotel and transportations, subscriptions, memberships and calling card sales must get calling card - not just codes, low volume - 10K or less, small ticket, \$10 or less."

Q. If it was MCCS or Delta Card that didn't want to take merchant accounts selling replicas, why wouldn't that be included on

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this restricted by MCCS list?

A. I can't answer that question.

Q. Do you believe that Delta Card stopped accepting merchants selling replica products as of July 2008?

MR. PARADISE: Objection. Asked and answered. You can answer.

A. Can you read that back to me.

(Whereupon, the aforementioned question was read back by the Court Reporter.)

A. I don't know the specific date.

Q. Was there a time when you were advised to preserve all records relating to this litigation?

A. I don't understand.

Q. Were you advised that you should not destroy any records, documents or e-mails that might be relevant to the claims in this lawsuit?

A. Are you asking me directly or as in the company?

Q. Both.

A. I was not specifically told that.

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Q. And on behalf of the company, was there a time when all employees were asked not to destroy any documents relating to this lawsuit?

A. I don't recall.

Q. Do you know who collected the documents relating to this lawsuit?

A. Some.

Q. And who was that?

A. Me.

Q. Did you collect documents from employees of Woodforest?

A. Delta Card.

Q. Only Delta Card?

A. Correct.

Q. Do you know who collected documents from Woodforest, if anyone?

A. Not that I am aware of.

Q. You're not aware of documents being collected?

A. Oh, I don't know. I don't know.

MR. PARADISE: I can represent that documents were collected on behalf of Woodforest as well. She may

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<p style="text-align: right;">Page 110</p> <p>1 RHONDA LEMOS</p> <p>2 not have knowledge of that.</p> <p>3 MS. COYLE: That's fine. We did</p> <p>4 notice that as one of our topics.</p> <p>5 MR. PARADISE: Yes. That's why I</p> <p>6 am just representing on behalf of</p> <p>7 Woodforest that documents were</p> <p>8 searched for and collected on behalf</p> <p>9 of the entirety of Woodforest.</p> <p>10 Q. Were all -- strike that.</p> <p>11 Were documents collected from all</p> <p>12 Delta Card employees?</p> <p>13 A. What do you mean, as far as</p> <p>14 documents?</p> <p>15 Q. Any materials, whether e-mails,</p> <p>16 hard copy files.</p> <p>17 A. It is my understanding, yes.</p> <p>18 Q. And who instructed you to collect</p> <p>19 documents or any other materials?</p> <p>20 A. Chuck Vernon.</p> <p>21 Q. And when was that?</p> <p>22 A. I don't know the specific date.</p> <p>23 Q. Was it within the last six months?</p> <p>24 A. I think it's been longer than that.</p> <p>25 Q. The last year?</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p style="text-align: right;">Page 111</p> <p>1 RHONDA LEMOS</p> <p>2 A. I am not sure.</p> <p>3 Q. How did you go about collecting the</p> <p>4 documents?</p> <p>5 A. The documents he requested from me,</p> <p>6 I pulled off of our imaging system and sent to</p> <p>7 Chuck.</p> <p>8 Q. What is your imaging system?</p> <p>9 A. We image all our applications and</p> <p>10 all our chargeback docs electronically. So I</p> <p>11 have to pull it in order to give it to him.</p> <p>12 Q. Did you run searches on the server?</p> <p>13 A. Not me, no.</p> <p>14 Q. Did somebody?</p> <p>15 A. Yes.</p> <p>16 Q. And were searches run on employees'</p> <p>17 e-mails?</p> <p>18 A. Yes.</p> <p>19 Q. And were employees hard-copied</p> <p>20 files searched?</p> <p>21 A. As far as I am aware, we don't keep</p> <p>22 hard copy files at our desk.</p> <p>23 Q. Is there a file -- are there hard</p> <p>24 copies kept as a matter of recordkeeping</p> <p>25 anywhere?</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
<p style="text-align: right;">Page 112</p> <p>1 RHONDA LEMOS</p> <p>2 A. Not that I am aware of.</p> <p>3 Q. Are there employees of Delta Card</p> <p>4 who are also employees of Woodforest?</p> <p>5 A. No.</p> <p>6 Q. Does Delta Card have a board?</p> <p>7 A. Yes.</p> <p>8 Q. Who is on the board?</p> <p>9 A. That, I don't know.</p> <p>10 Q. Do you know who is on the board of</p> <p>11 Woodforest?</p> <p>12 A. No, I do not.</p> <p>13 MS. COYLE: Off the record.</p> <p>14 (Whereupon, an off-the-record</p> <p>15 discussion was held.)</p> <p>16 Q. Where is your office located?</p> <p>17 A. In Woodlands, Texas.</p> <p>18 Q. What is the address?</p> <p>19 A. I am drawing a blank. 25231</p> <p>20 Grogans Mill Road.</p> <p>21 Q. And where is Woodforest located?</p> <p>22 A. There are many offices.</p> <p>23 Q. Is there a Woodforest located in</p> <p>24 the Woodlands?</p> <p>25 A. Yes.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p style="text-align: right;">Page 113</p> <p>1 RHONDA LEMOS</p> <p>2 Q. Is there a Woodforest office in the</p> <p>3 same vicinity as Delta Card?</p> <p>4 A. Yes.</p> <p>5 Q. What is that address?</p> <p>6 A. There is certain sections in the</p> <p>7 building, same building.</p> <p>8 Q. You are in the same building?</p> <p>9 A. Some, yes.</p> <p>10 Q. Who do you report to?</p> <p>11 A. Stan Power.</p> <p>12 Q. And what is his title?</p> <p>13 A. CEO and president of Delta Card</p> <p>14 Services.</p> <p>15 Q. Do you know who the chairman of</p> <p>16 Delta Card Services is?</p> <p>17 A. I don't want to give you the wrong</p> <p>18 time.</p> <p>19 Q. You can say you don't know if you</p> <p>20 don't know.</p> <p>21 A. I don't know.</p> <p>22 Q. Who asked you to be Woodforest's</p> <p>23 30(b)6 witness?</p> <p>24 MR. PARADISE: Objection. I don't</p> <p>25 see the relevance of that, and I think</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

<p style="text-align: right;">Page 114</p> <p>1 RHONDA LEMOS</p> <p>2 that could call for attorney/client</p> <p>3 privilege information. It doesn't</p> <p>4 matter. She was designated on behalf</p> <p>5 of the company.</p> <p>6 MS. COYLE: I am not asking what</p> <p>7 anybody told her. I am asking for the</p> <p>8 identity of who asked her.</p> <p>9 MR. PARADISE: I am instructing</p> <p>10 her not to answer. I don't care if it</p> <p>11 is relevant, and I think it is</p> <p>12 improper and calls for attorney/client</p> <p>13 privileged information.</p> <p>14 Q. Are you going to abide by your</p> <p>15 counsel's instruction?</p> <p>16 A. Yes.</p> <p>17 Q. Is Chuck Vernon employed by</p> <p>18 Woodforest?</p> <p>19 A. To the best of my knowledge, yes.</p> <p>20 Q. Do you report to him in any way?</p> <p>21 A. No.</p> <p>22 Q. Is there any contract between</p> <p>23 Woodforest and Delta Card Services?</p> <p>24 A. I don't know that.</p> <p>25 Q. Who approves merchant applications,</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p style="text-align: right;">Page 115</p> <p>1 RHONDA LEMOS</p> <p>2 Woodforest or Delta Card?</p> <p>3 A. Delta Card.</p> <p>4 Q. Does Woodforest have any role in</p> <p>5 the approval process?</p> <p>6 A. No.</p> <p>7 Q. Do any Woodforest employees review</p> <p>8 the applications?</p> <p>9 A. At time of approval, is that what</p> <p>10 you are saying to me?</p> <p>11 Q. Prior to or at time of approval.</p> <p>12 A. No.</p> <p>13 Q. Are they submitted to Woodforest</p> <p>14 after they have been approved?</p> <p>15 A. Not to my knowledge.</p> <p>16 Q. Is Woodforest kept informed of</p> <p>17 Delta Card's business activities?</p> <p>18 MR. PARADISE: Objection to form.</p> <p>19 A. Can you be a little bit more</p> <p>20 specific?</p> <p>21 Q. Sure. Does Delta Card Services</p> <p>22 report to Woodforest about business matters</p> <p>23 such as its revenues, its risk programs,</p> <p>24 things of that nature?</p> <p>25 A. I don't know.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
<p style="text-align: right;">Page 116</p> <p>1 RHONDA LEMOS</p> <p>2 Q. Can Woodforest instruct you to</p> <p>3 terminate a relationship with the merchant?</p> <p>4 A. I don't know.</p> <p>5 Q. I think earlier you testified that</p> <p>6 Delta Card Services is a direct subsidiary of</p> <p>7 Woodforest; is that correct?</p> <p>8 A. I don't recall saying that.</p> <p>9 Q. What's the corporate relationship</p> <p>10 between the two?</p> <p>11 A. We are two separate companies.</p> <p>12 Q. Is Delta Card owned by Woodforest?</p> <p>13 A. No, they are not.</p> <p>14 Q. Who owns Delta Card?</p> <p>15 A. I am not sure of that answer.</p> <p>16 Q. So you don't know whether</p> <p>17 Woodforest owns Delta Card or not?</p> <p>18 A. I know Woodforest doesn't.</p> <p>19 Q. Woodforest doesn't own Delta Card?</p> <p>20 A. Correct.</p> <p>21 Q. Earlier you testified that the IT</p> <p>22 department collected documents in this matter?</p> <p>23 A. Correct.</p> <p>24 Q. Were you referring to Delta Card's</p> <p>25 IT department?</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p style="text-align: right;">Page 117</p> <p>1 RHONDA LEMOS</p> <p>2 A. Yes.</p> <p>3 Q. Do Woodforest and Delta Card share</p> <p>4 an IT department?</p> <p>5 A. No.</p> <p>6 Q. And you don't know who collected</p> <p>7 Woodforest's documents?</p> <p>8 A. No, I do not.</p> <p>9 MR. PARADISE: Just so the record</p> <p>10 is clear, I can represent that</p> <p>11 Woodforest documents were also</p> <p>12 searched. However, there were very</p> <p>13 few, if any, responsive documents that</p> <p>14 were in the possession of Woodforest.</p> <p>15 But I can definitely confirm that</p> <p>16 a full search was done of both</p> <p>17 Woodforest and both Delta Card for</p> <p>18 electronic documents and paper</p> <p>19 documents.</p> <p>20 Q. Can you tell me by whom?</p> <p>21 MR. PARADISE: It was at the</p> <p>22 direction of in-house counsel at</p> <p>23 Woodforest.</p> <p>24 Q. Can we go back to the processing of</p> <p>25 the transaction. Can you just describe the</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

RHONDA LEMOS

process in a little bit greater detail as it applies to Woodforest and Delta Card, who does what?

A. In the processing of the transaction?

Q. Yes.

A. Woodforest does nothing.

Q. Woodforest does nothing?

A. Correct.

Q. Does Woodforest take on any risk as relating to the merchant?

A. If there is a loss, Delta Card takes it.

Q. And Woodforest never has any risk?

A. Not as far as I am aware of.

Q. The \$0.02 on every transaction earned by Woodforest is meant to compensate Woodforest for what?

A. They are our sponsor bank for the merchant processing and servicing.

Q. What is the sponsor bank's role exactly?

A. The associations require that your financial institution to be an acquirer. So

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RHONDA LEMOS

Woodforest is the acquirer because they are the member bank with the card association and we are their service provider for the processing.

Q. And are you aware of any regulations that require the acquiring bank to monitor the credit card processing service?

A. Define monitor.

Q. To be aware of your risk policies, for example?

A. Yes.

Q. And what are those regulations?

A. I don't know them off the top of my head.

Q. Would they be required to cease doing business with you, for example, if you were -- if Delta Card Services was violating regulations of Visa and MasterCard?

A. I don't know the extent of them.

Q. Does Woodforest have its own risk guidelines?

A. For the bank?

Q. Yes.

A. I don't know.

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RHONDA LEMOS

Q. Have you ever had discussions with any employees of Woodforest about Delta Card's risk policies?

A. Yes.

Q. With whom?

A. Chuck Vernon.

Q. Anyone other than Chuck Vernon?

A. Yes.

Q. Who else?

A. Andy Power.

Q. Who is Andy Power?

A. He is another attorney at the bank, I believe.

Q. Is Woodforest aware of Delta Card's specific policies relating to high-risk merchants?

A. They have the underwriting policy for all merchants.

Q. Did they have any role in shaping the policy?

A. It was written by Delta Card.

Q. Did Woodforest have any input into the policy?

A. No.

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RHONDA LEMOS

Q. Did they approve the policy?

A. You are asking me if Woodforest approved our policy?

Q. Yes.

A. Initially, currently?

Q. At any time.

A. I am aware of approval on changes.

Q. Changes to the?

A. To the current policy.

Q. To the underwriting guidelines?

A. To the current underwriting policy.

Q. And when was that?

A. I don't know the specific date.

Q. Was it this year?

A. No.

Q. Did they ask you to make any changes to your policy?

A. Not that I am aware of.

Q. Who at Delta Card would have communicated with Woodforest about the policy?

A. Depends.

Q. Would it be you?

A. Could be.

Q. Anyone else?

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RHONDA LEMOS

A. Could be the underwriting VP.

Q. Did you ever discuss Delta Card's policy with anyone at Woodforest other than the two attorneys you mentioned?

A. Possibly.

Q. Do you remember anyone specifically?

A. It may have -- the auditors.

Q. Who are the auditors?

A. Sorry.

Q. Who are the auditors?

A. First name is Mike or Raina, I believe are the names.

Q. Are they independent auditors or work within Woodforest?

A. Woodforest employees.

Q. Do you remember what you talked about?

A. Not specifically.

Q. Did they ever make any suggestions about your policy?

A. I am trying to think. There was a time, I recall, for ensuring the guidelines covered the changes in the policy by the

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RHONDA LEMOS

associations and the regs for on-line gaming, OFAC, I believe, and there may have been others but I don't recall.

Q. Did you ever discuss -- withdrawn. I would like to go back to the chargeback process for a minute.

Earlier, you testified that Merlin Solutions place a role in that process?

A. Correct.

Q. What exactly do they do?

A. They receive all the incoming chargebacks, and they work them from a technical aspect.

Q. They receive those from the issuing bank?

A. From our processor.

Q. And who is that?

A. First Data Resources.

Q. Does Woodforest own First Data Resources?

A. No.

Q. Do you know who owns them?

A. No, I do not.

Q. Does Woodforest?

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RHONDA LEMOS

A. No, they do not.

Q. Does Woodforest own Merlin Solutions?

A. No.

Q. So when you say Merlin Solutions works it from a technical standpoint, what exactly does that mean?

A. The regulations from Visa and MasterCard require chargebacks within a certain time frame. Certain documentation has to be included. You have to supply the documentation within a certain time frame. And their work flows from that aspect. And make sure all of that is valid before they are accepted or sent back to that issuing banks.

Q. And then if they are not sent back to the issuing banks, they are sent to you?

A. They are debited to the merchant and the documents are imaged.

Q. And then after that, who investigates it further?

A. If it shows up as a chargeback alert, then the risk department will review it from the risk point of view.

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RHONDA LEMOS

Q. Who in the risk department group?

A. It could be anyone in the risk department.

Q. How many people currently work in risk?

A. Including management, 20.

Q. They are all employed by Delta Card Services?

A. Correct.

MS. COYLE: Off the record.

(Whereupon, an off-the-record discussion was held.)

Q. Earlier, when you were describing the transaction, the processing plan, you referred to the authorization center?

A. Um-hum.

Q. What exactly is the authorization center?

A. That's the processor and the terminal dials out. It goes to the processor who directs the transactions out to eventually get their authorization response.

Q. And the processor is First Data Resources?

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RHONDA LEMOS

A. Correct.

Q. Does Delta Card have in-house counsel?

A. We use Chuck Vernon.

Q. Do you consider him to be outside counsel or in-house counsel?

MR. PARADISE: I am going to object. That calls for a -- something of a legal conclusion I don't think this witness is qualified to give, but she can give it her understanding, if she has one.

A. My understanding is outside.

Q. Do you communicate regularly with Woodforest employees?

A. Can you define regularly?

Q. Once a week?

A. Not to my knowledge, no.

Q. So you don't regularly E-mail them?

A. No.

Q. Did Delta Card change any policies in response to this lawsuit?

A. Let me make sure I understand your question. Did they change our policies or any

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RHONDA LEMOS

policies in direct response of the lawsuit, this lawsuit?

Q. Yes.

A. No.

Q. Did you change any policies around the time that this lawsuit was filed?

MR. PARADISE: Can we, just for the witness's clarification, tell her the date the lawsuit was filed. I don't know that she knows that necessarily.

MS. COYLE: It was August 2009.

Q. Around the time of August 2009.

A. 2009, yes, I believe so.

Q. What policies did you change around that time?

A. Change to the underwriting policy.

Q. In what respect?

A. That, I don't recall.

Q. Did you change your policy regarding doing business with replica merchants?

MR. PARADISE: Again, you're talking in August of 2009?

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RHONDA LEMOS

MS. COYLE: Yes, or around that time.

A. I don't remember what changes we put in that last change of the underwriting policy.

Q. I think earlier you did testify that you changed the replica merchant policy sometime in 2009; is that correct?

A. I thought it was either end of '08 or sometime in '09.

MS. COYLE: Okay. That's all we have.

MR. PARADISE: I have a couple of questions just to follow-up on some.

EXAMINATION BY

MR. PARADISE:

Q. If you can take out Exhibit 1 that we looked at earlier. I will do this awkwardly from the side because it will take all of 30 seconds.

A. Okay.

Q. So do you recall this morning, if you turn to the next page, do you recall you looked at this Power Point presentation?

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RHONDA LEMOS

A. Yes.

Q. Is it your understanding that, in preparation for today's deposition, that Woodforest and Delta Card conducted an investigation into this program?

A. Yes.

Q. Are you aware of what was learned from that investigation?

A. It was never implemented.

Q. If this program had been implemented in 2006 -- actually, strike that. In 2006, you were the manager of the risk department; is that correct?

A. Correct.

(Continued on next page to include jurat.)

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RHONDA LEMOS
Q. If this program had been implemented at that time, would you have been aware of it?

A. Yes.

MR. PARADISE: I have no further questions.

(Whereupon, at 1:35 p.m., the Examination of this Witness was concluded.)

 RHONDA LEMOS

Subscribed and sworn to before me
 this ____ day of _____, 2010.

 NOTARY PUBLIC

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EXHIBITS

PLAINTIFF'S EXHIBITS:

EXHIBIT NUMBER	EXHIBIT DESCRIPTION	PAGE
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EXHIBIT 2	WNB-09043	49
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CERTIFICATE

STATE OF NEW YORK)

: SS.:

COUNTY OF NASSAU)

I, REBECCA SCHAUMLOFFEL, a Notary Public for and within the State of New York, do hereby certify:

That the witness whose examination is hereinbefore set forth was duly sworn and that such examination is a true record of the testimony given by that witness.

I further certify that I am not related to any of the parties to this action by blood or by marriage and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 29th day of June, 2010.

 REBECCA SCHAUMLOFFEL

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WITNESS ERRATA SHEET

Witness Name: Rhonda Lemos

Case Name: Gucci America v. Frontline

Date Taken: June 25, 2010

Page # _____ Line # _____

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Exhibit 9

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

GUCCI AMERICA, INC.

Plaintiff,

v.

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

Defendants.

:
: Civil Action No. 09-6925-HB
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: District Judge Harold Baer, Jr.
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**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. WNB is a bank, organized and existing under the laws of the United States, and having its principal place of business at 25231 Grogan's Mill Road, Suite 175, The Woodlands, Texas 77380.

3. WNB has never had an office or other business location in the State of New York.

4. WNB is not licensed to do business in the State of New York.

5. WNB has never had an employee, owner, officer or director in the State of New York.

6. WNB does not own, use or possess any real property in the State of New York.

7. WNB does not conduct business or actively solicit business in the State of New York.

8. The merchant service provider for WNB is Delta Card Services, Inc., a Texas corporation who has conducted business under the names Merchants' Choice Card Services, MCCS, Merchants' Choice Payment Solutions, and MCPS (hereafter collectively "MCCS"). MCCS has an office only in the State of Texas, and no office in the State of New York.

9. WNB, through MCCS, contracts for processing services for credit card transactions for over 35,000 clients. Merely 0.0463% of WNB's business is generated from clients located in New York.

10. There is a Web site that covers information about the personal and business services of WNB and about the personal and business services for a federal savings bank known as "Woodforest Bank," an entirely separate entity that is not involved in the allegations in this case. The portion of the Web site which relates to the services of WNB is not directed to persons or clients in New York because WNB has no branches in the state of New York. The portion of the Web site which relates to the services of Woodforest Bank does refer to New York because that entity does have branches in New York. But Woodforest Bank is not a party to any merchant bankcard agreements, such as the agreement entered into by TheBagAddiction.com, which is the subject of this case.

11. WNB has not engaged in any business or commercial dealings, or entered into any contractual relationships, with any of the other named defendants in the State of New York.

12. WNB has not engaged in any business or commercial dealings, or entered into any contractual relationships, with the Laurette Company, Inc., its principals Jennifer Kirk or Patrick Kirk, or anyone else associated with or doing business as TheBagAddiction.com in the State of

New York. I understood that the business conducted by the Laurette defendants under TheBagAddiction Web site were conducted in and from the State of California.

13. It is alleged in this case that WNB and its merchant service provider MCCS have contracted with other companies to settle the appropriate debits and credits for completed credit card transactions made by the Laurette defendants on TheBagAddiction Web site. To the extent that WNB was involved in the processing of credit and debits for such transactions, when the purchases were made, WNB was unaware of the location of the customers who had purchased by credit card transactions. In other words, at the time of the purchases, WNB had no knowledge of whether and to what extent the transactions from sales under TheBagAddiction Web site were with residents of the State of New York.

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

Executed on 30th day of October 2009

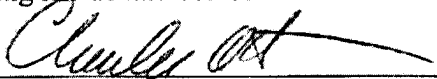
By: 
Charles A. Vernon

Exhibit 10



MCPS Corporate Office
P.O. Box 8339
The Woodlands, TX 77387-8339
1-800-327-0093

MCPS Solutions

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News and Events



- [November 9, 2009 - Merchants' Choice Payment Solutions Acquires Silverton Bank Portfolio of Agent Banks](#)
- [August 3, 2009 - Merchants' Choice Announces Corporate Rebranding Initiative](#)
- [June 30, 2009 - Merchants' Choice Markets Hypercom Optimum to 41,000+ Retailers](#)
- [March 25, 2009 - Stan Paur Named to Head Merchants' Choice](#)

MERCHANTS' CHOICE PAYMENT SOLUTIONS ACQUIRES SILVERTON BANK PORTFOLIO OF AGENT BANKS

The Woodlands, Texas - November 9, 2009 - Merchants' Choice Payment Solutions (MCPS), announced the acquisition of the portfolio of agent bank relationships from Silverton Bank in Atlanta, Georgia.

"We are excited to have the opportunity to serve Silverton's agent banks and their merchant customers," said Stan Paur, president and CEO of Merchants' Choice Payment Solutions. "We will be working with the Silverton staff to insure an efficient and seamless transition over the next few months. I believe the financial institutions and their merchants will be very pleased with the levels of support and the quality of service they receive from MCPS."

The acquisition brings Silverton's agent banks and merchant customers into an existing network that delivers premium payment processing behind the scenes while banks retain their business banking relationships. The move adds several hundred banking institutions and several thousand merchants to the MCPS agent bank program. MCPS offers a wide array of credit, debit, check, and other payment services across multiple industries. Paur added that the acquisition of the Silverton portfolio represents the first of a number of initiatives to expand the MCPS agent bank and merchant bank program.

The integration will continue through the end of the year as Merchants' Choice works to provide immediate value for their new merchant customers and agent bank partners.

MERCHANTS' CHOICE ANNOUNCES CORPORATE REBRANDING INITIATIVE

The Woodlands, Texas - August 3, 2009 - Merchants' Choice Card Services (MCCS), a top-ranked merchant services provider sponsored by Woodforest National Bank, announced that effective today it has changed its name to Merchants' Choice Payment Solutions (MCPS).

Stan Paur, MCPS' new President and CEO states, "Merchants' Choice Payment Solutions was chosen as our new name because it truly reflects the fact that our company has expanded beyond just credit card payment processing to the ability to provide an array of credit, debit and other payment services."

Robert E. Marling, Jr., Chairman of MCPS and CEO of Woodforest National Bank said, "This year MCPS is celebrating our 20th year in the payment processing industry and the fact that we have grown to be one of the premiere merchant acquirers. We feel this change in corporate identity demonstrates the breadth of our product and service offerings and our future strategic direction."

"We have a great company providing outstanding, high-value payment solutions and support services to tens of thousands of merchants across the United States. Our intent is to leverage the professional staff and our outstanding service to become the preferred provider for the merchant community," added Mr. Paur.

Our new business identity incorporates an expansion of products and services as well as a new corporate web address and email domain with mcpscorp.com. MCPS has nearly 100 employees and over 300 sales offices providing electronic payment solutions to merchants including but not limited to retailers, restaurants, physicians, dentists, gas stations and convenience stores, auto repair facilities, lodging, beauty/barber shops, medical services, and veterinarians.

MERCHANTS' CHOICE MARKETS HYPERCOM OPTIMUM TO 41,000+ RETAILERS

SCOTTSDALE, Ariz., June 30, 2009- Hypercom Corporation (NYSE: HYC) announced today that Merchants' Choice Card Services (MCCS), a top ranked merchant service provider also known as Deltacard Services, has Class A certified and will market Hypercom's high security Optimum T4200 countertop and M4230 mobile payment terminals to its more than 41,000 customers in the United States.

"Hypercom is a superb professional organization with sensible, secure and benchmark-setting products that deliver new levels of security, features and capabilities to the retail countertop," said Larry Jones, Vice President Sales and Marketing, Merchants' Choice Card Services.

"Merchants' Choice Card Services' selection, Class A certification and roll out of the Optimum

customers a broad range of options to serve any market need.

For further information on Hypercom's Optimum products please visit
<http://www.hypercom.com/products/>.

About Hypercom (www.hypercom.com)

Global payment technology leader Hypercom Corporation delivers a full suite of high security, end-to-end electronic payment products and services. The Company's solutions address the high security electronic transaction needs of banks and other financial institutions, processors, large scale retailers, smaller merchants, quick service restaurants, and users in the transportation, petroleum, healthcare, prepaid, unattended and many other markets. Hypercom solutions enable businesses in more than 100 countries to securely expand their revenues and profits. Hypercom is a founding member of the Secure POS Vendor Alliance (SPVA) and is the second largest provider of electronic payment solutions and services in Western Europe and third largest provider globally.

STAN PAUR NAMED TO HEAD MERCHANTS' CHOICE CARD SERVICES (MCCS)

The Woodlands, Texas – March 25, 2009 — Merchants' Choice Card Services (MCCS), also known as DeltaCard Services, a top-ranked merchant services provider, today announced the appointment of Stan Paur as President and CEO of the organization effective March 23, 2009.

From 2006 to 2009, Mr. Paur served as Chairman of PULSE EFT Association LP, one of the nation's leading ATM/debit networks. Prior to being named Chairman of PULSE, he served as President and CEO for over 23 years. He was Chairman of the MasterCard Maestro U.S.A. Board of Directors from 1991 to 1996. From 1986 to 1992, Mr. Paur served as Chairman of the Shared Networks Executive Association. He received his degree from Saint Louis University.

Currently, Stan Paur is an Industry Advisor to the Payments Card Center of the Philadelphia Federal Reserve Bank and is an Advisory Director to Woodforest National Bank. Also, since 1996, Mr. Paur has served as an Advisory Director to the Independent Bankers Association of Texas. Mr. Paur has served as a spokesman for the financial industry on several key developments affecting electronic payments.

In making the announcement of Mr. Paur's appointment, Robert Marling, Chairman of MCCS, said, "We are excited that Stan has elected to join our great company. His background understanding of the electronic payments industry will be a tremendous asset as we expand our business."

Exhibit 11

BANK CARD SERVICE AGREEMENT

Between Delta Card Services, Inc.
and **Woodforest National Bank**

This Bank Card **Service Agreement** ("Agreement") is entered into this 1st day of January, 1996, by and between **Woodforest National Bank** ("Bank") and Delta Card Services, Inc. ("DCS").

WHEREAS, Bank is engaged in providing retail merchants MasterCard and VISA processing services, and

WHEREAS, DCS is engaged in the business of providing various services required by licensees of VISA and/or MasterCard, and

WHEREAS, Bank desires to secure the business services of DCS for the purpose of serving retail merchant customers of Bank and DCS desires to provide to Bank services on the terms and conditions set forth below.

NOW, THEREFORE, in consideration of the provisions and covenants contained herein, the parties agree as follows.

1. Term. The initial term of this Agreement will be for twelve (12) years ("Initial Term"). This Agreement shall automatically renew for an additional two (2) year period ("Renewal Period") unless canceled by either party by written notice to the other party at least one hundred eighty (180) days prior to the expiration of the Initial Term. Thereafter, this Agreement shall continue to automatically renew for additional Renewal Periods of two (2) years each until canceled by either party by written notice to the other party at least one hundred eighty days (180) days prior to expiration of the current Renewal Period.

2. Services. During the term of this Agreement, Bank shall procure exclusively from DCS, and DCS shall provide or arrange to have provided, the services described in Attachment A of this document, and incorporated herein by reference. Additionally, DCS shall procure exclusively from the Bank, and the Bank shall provide, bank settlement services with respect to the merchant accounts which are jointly owned by DCS and the Bank. DCS shall keep itself apprised of, and provide its services in accordance with, all applicable laws, statutes, rules, regulations, by-laws and operating regulations of the U.S. government, applicable state governments, VISA, U.S.A. and MasterCard International. DCS shall provide its services to Bank in accordance with industry standards.

3. Accounts Generated by DCS. During the term of this Agreement, the Bank shall have a right of first refusal to the greater of (a) 200 merchant accounts, or (b) 90% of all merchant accounts, of less than \$20,000 in monthly volume which are generated by DCS during the term of this Agreement in its capacity as Independent Sales Organization (ISO). The Bank and DCS agree that accounts generated by DCS, as ISO, under contract with Bridgeview Bank & Trust and Voxcom are excluded from the foregoing calculation. DCS agrees not to take an ownership interest in the accounts generated by Bridgeview Bank & Trust without the Bank's prior written consent.

4. Compensation. With respect to the first \$5,000,000 in monthly volume, the Bank and DCS will share equally in any and all discount, transaction, service, statement, club, chargeback and other fees that may be generated from time to time by the merchant business (all of which are referred to

collectively as the "Transaction Fees") after the following deductions (all of which are referred to collectively as the "Deductions"):

- (i) Actual operating losses;
- (ii) Accruals for MasterCard and Visa Assessments;
- (iii) Agreed upon third party expenses, including but not limited to billings from First Data Resources, forms printing (applications, notices, etc.), merchant supplies not billed to the merchant, and Verifone costs; and
- (iv) ISO/MSP payments such as residuals.

Bank will be entitled to 30% and DCS will be entitled to 70% of the Transaction Fees generated on all monthly volume over \$5,000,000 and up to \$10,000,000, after giving effect to the Deductions, which shall be allocated 30% to the Bank and 70% to DCS. Bank will be entitled to 40% and DCS will be entitled to 60% of the Transaction Fees generated on all monthly volume over \$10,000,000, after giving effect to the Deductions, which shall be allocated 40% to the Bank and 60% to DCS. The Bank shall be entitled to 40% and DCS will be entitled to 60% of the application fees generated by the merchant business.

A reconciliation of the compensation due Bank and DCS under this Agreement, containing, at a minimum, the information set forth at Attachment B and computed in accordance with the illustration set forth at Attachment B, will be made each month by DCS, and sent to Bank and Bank agrees to pay said amount due DCS upon receipt but in no event later than ten (10) days from receipt. Any amounts not paid by the aforesaid ten (10) day period shall be deemed to be late payments and shall accrue interest at the highest rate allowable by Texas law.

5. Ownership of Accounts. Except as provided in Paragraph 8 of this Agreement, DCS owns 60% and the Bank owns 40% of the merchant accounts processed under this Agreement. Specific account ownership shall be determined by assigning accounts as equally as possible in accordance with the foregoing proportions to DCS and Bank based on volume, profits, time on file, geographical distribution, and SIC code. Notwithstanding the foregoing, however, in assigning specific account ownership, the Bank shall be entitled to ownership of merchant accounts located in the Bank's delineated market, as determined by the Bank's Community Reinvestment Act (CRA) delineated market. In the event of a termination or non-renewal of this Agreement, the Bank shall be entitled to purchase DCS's merchant accounts (including those accounts generated by the Bank as ISO pursuant to Paragraph 8) at fair market value. Fair market value shall be determined by taking the average of bids secured from three companies in the business of acquiring and/or processing merchant portfolios, one such company to be selected by DCS in its sole discretion, one selected by the Bank in its sole discretion, and the third to be mutually acceptable to DCS and the Bank.

6. Sale of Accounts to Third Party. Neither the Bank nor DCS may sell, transfer or assign any of its merchant accounts to a third party at any time during the term of this Agreement without the written consent of the other party and unless such selling party has first provided the other party with (i) written notice of the proposed sale, including the price at which such sale will occur (the "Sale Notice"), and (ii) an opportunity to buy said accounts at a price equal to or greater than the price offered in writing by the third party. The other party may elect to purchase the accounts by giving written notice to the selling party within ten (10) days of receipt of the Sale Notice. In the event that the other party elects to purchase the merchant accounts, such purchase must be closed within forty-five (45) days of receipt of the Sale Notice. In the event that the other party elects not to buy the merchant accounts, the selling party may sell such accounts upon the terms and conditions provided by the third party offer. In the event that the Bank sells, transfers or assigns its merchant accounts as provided herein, the Bank agrees to continue to service DCS's merchant accounts until such time as DCS sells or transfers said accounts.

In the event of a sale, transfer or assignment under this paragraph, by either party, the other party shall be entitled to its merchant accounts as provided in Paragraph 5 of this Agreement.

7. Sale of Accounts to Bank. Notwithstanding the provisions of Paragraph 6, DCS shall have the option, upon one hundred and twenty (120) days prior written notice to Bank, to sell to Bank merchant accounts having a fair market value of up to \$1,000,000. Fair market value shall be determined in the manner provided in Paragraph 5 of this Agreement. In the event that DCS exercises its option to sell the Bank merchant accounts as provided herein, DCS agrees that, at the Bank's option, it will continue to perform for the Bank the services provided for hereunder at a competitive rate.

8. Ability of Bank to Act as ISO. During the term of this Agreement, the Bank may develop and operate its own ISO, subject to the following: (i) the Bank must give DCS 120 days prior written notice of the Bank's intent to act as ISO; (ii) the terms offered by the Bank as ISO will be no more favorable than those offered by DCS; (iii) the Bank will not solicit any existing sales agent of DCS or any sales agent who has been employed by DCS within six (6) months of the date of employment by the Bank; and (iv) the Bank will be entitled to 60% and DCS will be entitled to 40% of the Transaction Fees and application fees generated on all merchant accounts generated by the Bank as ISO, after giving effect to the Deductions, which shall be allocated 60% to the Bank and 40% to DCS.

The Bank will own 60% and DCS will own 40% of the merchant accounts generated by the Bank as ISO pursuant to this Paragraph 8. Specific account ownership shall be determined in accordance with Paragraph 5 of this Agreement.

A reconciliation of the compensation due Bank and DCS under this Agreement, containing, at a minimum, the information set forth at Attachment C and computed in accordance with the illustration set forth at Attachment C, will be made each month by DCS, and sent to Bank and Bank agrees to pay said amount due DCS upon receipt but in no event later than ten (10) days from receipt.

9. Termination. Notwithstanding any contrary provision contained herein (except for the provisions of Paragraph 20), Bank may terminate this Agreement upon sixty (60) days written notice to DCS, if DCS defaults in the performance of any obligation hereunder and fails to cure such default within thirty (30) days after written notice thereof from Bank, or in the case of any default which cannot reasonably be cured within said thirty (30) day period, fails to commence curative action within said period and thereafter to pursue such curative action diligently until completed. In the event of a termination under this paragraph, DCS shall be entitled to its merchant accounts as provided in Paragraph 5 of this Agreement.

Notwithstanding any contrary provision contained herein (except for the provisions of Paragraph 20), DCS may terminate this Agreement upon sixty (60) days written notice to the Bank, if the Bank defaults in the performance of any obligation hereunder and fails to cure such default within thirty (30) days after written notice thereof from DCS, or in the case of any default which cannot reasonably be cured within said thirty (30) day period, fails to commence curative action within said period and thereafter to pursue such curative action diligently until completed. In the event of a termination under this paragraph, the Bank shall be entitled to its merchant accounts as provided in Paragraph 5 of this Agreement.

10. Maintenance of Account. During the term of this Agreement, DCS will maintain at the Bank an interest bearing account with a balance at least equal to ten basis points of the average gross monthly merchant sales volume for the prior three months (the "DCS Account"). To the extent that there is a net loss in any month during the term of this Agreement as calculated in accordance with Attachments B and C of this Agreement 60% of the losses calculated pursuant to Attachment B and 40% of the losses calculated pursuant to Attachment C shall be charged against the DCS Account.

11. Processor. All pricing under this Agreement is dependent upon the Bank utilizing First Data Resources ("FDR") as its third party processor. DCS reserves the right to adjust the pricing of this Agreement in the event of a change by Bank in processor. The Bank may change processors hereunder only with the consent of DCS, which consent shall not be unreasonably withheld.

12. Merchant Fees. The fees charged to merchants processed under this Agreement shall be mutually agreed upon by Bank and DCS from time to time. No changes in said fees shall be made without the consent of both parties.

13. Confidentiality. Each party shall maintain in confidence, and not use or disclose to any non-party to this Agreement, either during the term of this Agreement or thereafter, any confidential or proprietary information of the other party. Confidential information is information which relates to a party's research, development, trade secrets, credit criteria or business affairs of it or any of its customers or affiliates, but does not include information in the public domain, and does not include disclosure of such information to parties already in possession of such information. The provisions of this paragraph shall survive any termination of this Agreement.

14. Credit Reporting Agency. Bank authorizes DCS to obtain information from credit reporting agencies for the purpose of evaluating merchant credit worthiness under Bank's subscriber number or other identification number identifying, Bank as the user of the information.

15. Inspection. Information and records concerning Bank or a customer of Bank and in the possession of DCS shall be available for inspection and audit by representatives or agents of Bank and by applicable regulatory agencies by presentation of written authorization of Bank upon reasonable notice and during normal business hours.

Information and records concerning Bank or a customer of Bank to which services have been provided by DCS pursuant to this Agreement and which are in the possession of the Bank shall be available for inspection and audit by DCS or representatives of DCS upon reasonable notice and during normal business hours.

16. Limitation of Damages and Hold Harmless. In no event shall either party be liable for special, indirect or consequential damages arising hereunder. Neither party shall be responsible for delays or failure in performance resulting from acts beyond the control of such party. In no event shall either party's liability under this paragraph exceed the total merchant services fees received by the respective party hereunder in the twelve months immediately preceding the gross negligence or willful misconduct which created said liability.

Bank will indemnify and hold DCS harmless from any claim, action, or judgments, including reasonable attorneys fees, associated with the services provided by DCS pursuant to this Agreement unless such claim, action or judgment is as a result of gross negligence or willful misconduct of DCS. Similarly, DCS will indemnify and hold the Bank harmless from any claim, action, or judgments, including reasonable attorneys fees, associated with the services provided by the Bank pursuant to this Agreement unless such claim, action or judgment is a result of gross negligence or willful misconduct of the Bank.

17. Compliance. Bank shall be responsible for establishing and/or approving the merchant credit policy ("Credit Policy") to be used by DCS in connection with the services to be provided hereunder by DCS in compliance with all laws, rules and regulations applicable to all aspects of the operations of its VISA and/or MasterCard programs, including, without limitation, usury laws, the Truth-in-Lending, Fair Credit Billing, Fair Credit Reporting, Equal Credit Opportunity, and Electronic Funds Transfer Acts, and all rules and regulations promulgated hereunder, and all state laws and regulations.

Bank agrees to indemnify and hold DCS harmless from and against all liabilities, claims, damages, losses or expenses, including reasonable attorney's fees, which arise out of, in connection with, or as a result of the services provided by DCS in accordance with the Credit Policy. Similarly, DCS agrees to indemnify and hold the Bank harmless from and against all liabilities, claims, damages, losses or expenses, including reasonable attorney's fees, which arise out of, in connection with, or as a result of the services provided by DCS which were not in accordance with the Credit Policy.

18. Ownership/Disposal of Records. The Bank and DCS jointly own and have ownership rights to the information, data and records pertaining to the merchant accounts.

Information and records concerning the merchant accounts and in the possession of DCS shall be available for inspection and audit by representatives and agents of Bank and by applicable regulatory agencies by presentation of written authorization of Bank, upon reasonable notice and during normal business hours. All out-of-pocket costs associated with the preparation of reports associated with these inspections and audits will be paid by Bank.

19. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Texas.

20. Arbitration. The parties agree that any dispute arising under this Agreement shall be submitted to binding arbitration in accordance with the rules of the American Arbitration Association in Houston, Texas and in accordance with the corresponding laws concerning arbitration under Texas law, and judgment upon the award rendered may be entered and enforced in any court of competent jurisdiction. Without limiting the foregoing, any party submitting such dispute shall request the American Arbitration Association to;

(a) Appoint a single arbitrator who (i) is an attorney licensed to practice law within the State of Texas and for not less than ten (10) years; (ii) is knowledgeable in the field of industry relating to the subject matter of this Agreement; and (iii) who will follow substantive rules of law;

(b) Require all testimony to be transcribed; and

(c) Require any award or decision to be accompanied by findings of fact and a statement of reasons for such award or decision.

21. Entire Agreement. This Agreement represents and comprises the entire Agreement between DCS and Bank with respect to the subject matter hereof. Each party acknowledges that any representations, inducements, promises or agreements, oral or otherwise, which are made by any party and not embodied herein shall not be valid or binding. This Agreement supersedes all negotiations, conversations, discussions, correspondence, memoranda, and agreements between Bank and DCS covering such subject matter.

22. Modifications. This Agreement may not be changed, modified or altered except by written consent of both parties, which shall not be unreasonably withheld.

23. Assignment. This Agreement may not be assigned except by written consent of both parties, which consent shall not be unreasonably withheld.

24. Notice of Sale. In the event that either Bank or DCS enters into a letter of intent or other written agreement to sell all or substantially all of its assets or stock to a third party, such party agrees to promptly give the other party notice of such potential sale.

25. Notices. All written notices, requests or other communications under this Agreement shall be delivered in person, by national delivery service, by telecopy or sent by certified mail return receipt requested, and shall be deemed sufficiently delivered if sent to the parties as set forth below, or to such other address as may hereafter be specified by notice in writing.

If To DCS:

Delta Card Services, Inc.
E. Michael Gatewood, Chairman
16211 Park 10 Place
Houston, TX 77084

If To Bank:

Woodforest National Bank
Robert Marling, CEO
80 Uvalde
Houston, Texas 77015

All such notices, requests and other communications shall be deemed to have been sufficiently delivered for purposes hereunder on the earlier of actual receipt or three days after the date of mailing. In the event the date by which any notice must be given under this Agreement falls upon Saturday, Sunday or a holiday, such notice shall be deemed given on the first business day thereafter.

26. Waiver. No waiver shall be deemed to have been made by any party hereto of any rights hereunder unless such waiver is in writing and signed by the party making the waiver, and then such waiver shall be effected only with respect to the specific instance involved and shall in no way impair or affect any of the rights of any such party in any other respect or at any other time.

27. Severability. If any term of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement shall be valid and shall be enforced to the fullest extent of the law.

28. Effective Acceptance. This Agreement shall become effective upon execution by an authorized officer of Bank and by an authorized officer of DCS.

29. Heirs and Assigns - Survival of Rights and Obligations. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, heirs, legal representatives and assigns. Except as otherwise provided herein, the parties acknowledge and agree that the sale, seizure, or other transfer by Bank of its rights or interests in any credit card portfolio or other group of credit accounts for which DCS provides services under this Agreement, whether such sale, seizure, or other transfer is made in whole or in part, and for whatever reason, shall not terminate or change the rights and obligations of the parties under this Agreement.

30. Authority. Each party has full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each party has been properly authorized and empowered to enter into this Agreement and to bind the party on behalf of which he signs.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first hereinabove stated.

DELTA CARD SERVICES, INC.
HOUSTON, TEXAS

WOODFOREST NATIONAL BANK
HOUSTON, TEXAS

By: /s/ E. Michael Gatewood
Title: Chairman

By: /s/ Gerald D. Cobb
Title: Chairman of the Board

By: /s/ Randall Wilson
Title: Secretary/Treasurer

By: /s/ Robert E. Marling, Jr.
Title: Chief Executive Officer

ATTACHMENT A
SCHEDULE OF MERCHANT SERVICES

This Schedule provides a description of merchant services to be provided by Delta Card Services.

A. Merchant Services:

- Telephone Customer Service - includes toll free telephone service (800) for in-bound merchant calls, Monday - Friday (except for holidays) from 8:00 AM - 6:00 PM, CST.
- Mail Customer Service - includes handling and resolution of written inquiries, notices, retrieval requests, non-monetary changes and disputes.
- Merchant Monitoring - daily review of merchant activity to detect, research, and prevent unauthorized or fraudulent activity.
- Client Servicing - includes assistance directly to Bank in response to questions, inquiries, problems or special requests.
- Account Maintenance - includes data entry of new account information, non-monetary changes and monetary adjustments.
- Merchant Chargeback Processing - includes the receipt, review and processing of cardholder chargebacks.
- Exception Item Handling - research and resolution of exception items and unposted maintenance transactions entered at the service center.
- Service Center Management - includes management personnel with the ability and experience to administer service center functions according to the standards set forth in Bank Card Service Agreement.
- Settlement/Reconciliation Accounting - includes preparation, transmittal and accounting for settlement based on Processor's reporting and custom reporting developed by service center.

B. On-Line Application Processing:

- Review for completeness and input of merchant applications to processor system.
- Storage of documentation.

C. Audit/Review:

- Audit processor statements of charges for accuracy.
- Audit Visa/MasterCard quarterly assessment charges for accuracy.
- Review merchant accounts for profitability and report exceptions to Bank.

ATTACHMENT B
MONTHLY SETTLEMENT
WOODFOREST NATIONAL BANK / DELTA CARD SERVICES

Income (Transaction Fees):

Discount Fees/Transaction Fees
Statement Fees
Keyed Fee Surcharge
Minimum Discount Fees
Total Income

Expenses (Deductions):

Interchange Fees (MasterCard and Visa)
Actual Losses
Woodforest - Accruals
 1. MasterCard Assessments
 2. Visa Assessments
ISO/MSP Payments (Residuals)
FDR Charges
Other Third Party Expenses
Net income (Loss) before Application Fees

ILLUSTRATION OF DISTRIBUTION OF NET INCOME (LOSS)
BEFORE APPLICATION FEES

Monthly Sales Volume	\$15,000,000
Less: 50/50 Sales Volume	5,000,000
Less: 70/30 Sales Volume	5,000,000
	<hr/>
Equals: 60/40 Sales Volume	5,000,000

VOLUME	DCS VOLUME	BANK VOLUME
50/50 Sales Volume (\$5,000,000)	\$2,500,000	\$2,500,000
70/30 Sales Volume (\$5,000,000)	3,500,000	1,500,000
60/40 Sales Volume (\$5,000,000)	3,000,000	2,000,000
	<hr/>	<hr/>
Total Amount of Sales Volume	\$9,000,000	\$6,000,000
Percentage of Net Income (Loss)	60%	40%

DISTRIBUTION OF APPLICATION FEES

Bank: 40% of Application Fees
DCS: 60% of Application Fees

ATTACHMENT C
MONTHLY SETTLEMENT
WOODFOREST NATIONAL BANK / DELTA CARD SERVICES

Income:

Discount Fees/Transaction Fees
Statement Fees
Keyed Fee Surcharge
Minimum Discount Fees
Application Fees
Total Income

Expenses (Deductions):

Interchange Fees (MasterCard and Visa)
Actual Losses
Woodforest - Accruals
 1. MasterCard Assessments
 2. Visa Assessments
ISO/MSP Payments (Residuals)
FDR Charges
Other Third Party Expenses
Net income (Loss)

DISTRIBUTION OF NET INCOME (LOSS)

Bank: 60% of Net Income (Loss)
DCS: 40% of Net Income (Loss)

ADDENDUM TO BANK CARD SERVICE AGREEMENT

Between Delta Card Services, Inc.
and **Woodforest National Bank**

THIS ADDENDUM TO BANK CARD SERVICE AGREEMENT (this "Addendum") is made and entered into effective as of April 8, 1998, by and between **WOODFOREST NATIONAL BANK**, a national banking association (the "Bank") and DELTA CARD SERVICES, a Texas corporation ("DCS").

WHEREAS, Bank and DCS are parties to that certain Bank Card Service Agreement dated January 1, 1996 (the "Agreement") according to which DCS provides the Bank certain services incidental to the Bank's provision of MasterCard and VISA processing services to retail merchants, and

WHEREAS, pursuant to Section 3 of the Agreement, Bank has the right of first refusal on merchant accounts generated by DCS in its capacity as Independent Sales Organization ("ISO") subject to the certain exclusions, and

WHEREAS, Bank and DCS desire to also provide the Bank right of first refusal on these excluded accounts, under the terms and conditions of the Agreement, provided however, that Sections 3, 4, 5, 6 and 12 of the Agreement are specifically modified by this Addendum solely for said accounts;

NOW, THEREFORE, in consideration of the provisions and covenants contained herein, the parties agree to the specific modification of the sections (section numbers correspond to the Agreement sections being modified) as follows:

3. Accounts Generated by DCS. During the term of the Agreement, Bank shall have a right of first refusal on the accounts covered by this Addendum which are those accounts previously excluded in Section 3 of the Agreement. Those accounts include: (a) ten percent (10%) of all merchants with \$20,000 or less in monthly volume, after satisfying a 200 merchant minimum; (b) all merchants with monthly volume greater than \$20,000; and (c) accounts generated under contract with Bridgeview Bank & Trust and Voxcom.

4. Compensation. DCS will retain any and all discount, transaction, service, statement, club, chargeback and other fees that may be generated from time to time by the accounts processed under, and covered by, this Addendum. DCS will pay all expenses, including but not limited to (i) actual operating losses, (a) accruals for MasterCard and VISA assessments, (iii) agreed upon third expenses, including but not limited to billings from First Data Resources, forms printing (applications, notices, etc.), merchant supplies not billed to the merchant, and Verifone costs; and (iv) ISO/MSP payments such as residuals. Bank will be entitled to two cents (\$0.02) per retail transaction processed by the accounts covered by this Addendum.

ADDENDUM TO BANK CARD SERVICE AGREEMENT

Between Delta Card Services, Inc.
and **Woodforest National Bank**

5. Ownership of Accounts. DCS owns one hundred percent (100%) of the merchant accounts processed under, and covered by, this Addendum.

6. Sale of Accounts to Third Party. DCS may not sell, transfer or assign any of its merchant accounts covered by this Addendum to a third party at any time during the term of the Agreement without first providing Bank with (i) written notice of the proposed sale, including the price at which such sale will occur (the “Sale Notice”), and (ii) an opportunity to buy said accounts at a price equal to or greater than the price offered in writing by the third party. The Bank may elect to purchase the accounts by giving written notice to DCS within ten (10) days of receipt of the Sale Notice. In the event the Bank elects to purchase the merchant accounts, such purchase must be closed within forty-five (45) days of receipt of the Sale Notice. In the event the Bank elects not to buy the merchant accounts, DCS may sell such accounts upon the terms and conditions provided the third party offer.

12. Merchant Fees. The fees charged to merchants processed under, and covered by, this Addendum shall be set by DCS in its sole discretion.

13. **Conflict of Terms.** All other terms and conditions of the Agreement shall apply with respect to the accounts covered by this Addendum to the extent that such terms do not conflict with the terms of this Addendum or any other amendment or modification of the Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Addendum to be executed as of the date first hereinabove stated.

DELTA CARD SERVICES, INC.
HOUSTON, TEXAS

WOODFOREST NATIONAL BANK
HOUSTON, TEXAS

By: /s/ E. Michael Gatewood
Title: Chairman

By: /s/ Robert E. Marling, Jr.
Title: Chief Executive Officer

Exhibit 12

We accept high risk merchant accounts!

Merchant Login

Affiliate Login



NATIONAL BANKCARD SYSTEMS

"Service You Can Depend On and People You Can Trust"

Get Started Today!
1-866-415-2636
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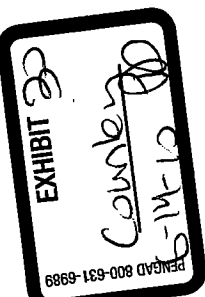




Exhibit 13

1
2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK

4 ----- x
5 GUCCI AMERICA, INC.,

6 Plaintiff,

09-CV-6925

7 -against-

8 FRONTLINE PROCESSING CORPORATION, WOODFOREST
9 NATIONAL BANK, DURANGO MERCHANT SERVICES, LLC.

D/B/A NATIONAL BANKCARD SYSTEMS OF DURANGO

10 Defendants.

11 ----- x

12
13 DEPOSITION of the Defendant, DURANGO
14 MERCHANT SERVICES, LLC. by NATHAN COUNLEY, taken
15 by the Plaintiff, pursuant to Notice, held at the
16 offices of Gibson, Dunn & Crutcher, LLP., 200 Park
17 Avenue, New York, New York, on June 14, 2010, at
18 9:45 a.m., before a Notary Public of the State of
19 New York.
20
21
22
23
24
25

<p style="text-align: right;">2</p> <p>1 2 A P P E A R A N C E S: 3 4 GIBSON, DUNN & CRUTCHER, LLP. 5 Attorneys for Plaintiff 6 200 Park Avenue 7 New York, New York 10166 8 9 BY: ROBERT WEIGEL, ESQ. 10 -and- 11 ANNE M. COYLE, ESQ. 12 -and- 13 JENNIFER COLGAN HALTER, ESQ. 14 15 16 17 LAW OFFICE OF TODD WENGROVSKY, PLLC. 18 Attorneys for Defendant 19 DURANGO MERCHANT SERVICES 20 285 Southfield Road 21 Box 585 22 Calverton, New York 11933 23 24 BY: TODD WENGROVSKY, ESQ. 25 26 27 28 29 LERNER, DAVID, LITTENBERG, KRUMHOLZ & 30 MENTLIK, LLP. 31 Attorneys for Defendant 32 WOODFOREST NATIONAL BANK 33 600 South Avenue West 34 Westfield, New Jersey 07090 35 36 BY: CHARLES P. KENNEDY, ESQ. 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100 XXXXX</p>	<p style="text-align: right;">4</p> <p>1 Counley 2 N A T H A N C O U N L E Y, 3 Having been first duly sworn before a Notary 4 Public of the State of New York, was examined 5 and testified as follows: 6 7 EXAMINATION BY 8 MR. WEIGEL: 9 Q State your name for the record, 10 please? 11 A Nathan Counley. 12 Q Where do you live? 13 A Madison, Wisconsin. 14 Q Have you ever been deposed before in a 15 lawsuit? 16 A No. 17 Q I don't want to know any details, but 18 has your lawyer explained to you what was 19 going to happen today? 20 A For the most part, yes. 21 Q I'm going to ask you questions. Do 22 you understand that the oath you are under is 23 the same oath you would be under if you were 24 testifying before a judge and jury? 25 A Yes.</p>
<p style="text-align: right;">3</p> <p>1 2 3 4 S T I P U L A T I O N S 5 6 IT IS HEREBY STIPULATED AND AGREED by 7 and between the attorneys for the respective 8 parties herein, that filing, sealing and 9 certification, and the same are, hereby waived. 10 11 IT IS FURTHER STIPULATED AND AGREED that 12 all objections except as to the form of the 13 question, shall be reserved to the time of the 14 trial. 15 16 IT IS FURTHER STIPULATED AND AGREED that 17 the within deposition may be signed and sworn to 18 by an officer authorized to administer an oath, 19 with the same force and effect as if signed and 20 sworn to before the Court. 21 22 23 24 25 XXXXX</p>	<p style="text-align: right;">5</p> <p>1 Counley 2 Q If at any point in time you don't 3 understand any of my questions or you are 4 confused by them, just let me know and I'll 5 try to rephrase them. Is that understood? 6 A Yes. 7 Q If you need to take a break, just let 8 me know. All I would ask is that you do it 9 after you answer a question, not in the 10 middle of a question if that's okay? 11 A I understand. 12 Q Can you give me your educational 13 background just starting with high school? 14 A High school, I went to Laramie, 15 Wyoming. Beyond a high school degree, 16 college was Fort Lewis in Durango, Colorado, 17 a small liberal arts college, political 18 science and minor in philosophy. 19 Q When did you first become involved 20 with Durango Merchants Services? 21 A I started in January 2005. 22 Q What position did you have? 23 A Same thing today, sales manager. 24 Q When did you graduate college? 25 A I think it was 2005 -- 2004. I'm</p>

2 (Pages 2 to 5)

<p style="text-align: right;">6</p> <p>1 Counley</p> <p>2 sorry.</p> <p>3 Q Having graduated college in 1978, you</p> <p>4 can't really not be sure of when you</p> <p>5 graduated college in 2004, 2005, but that's</p> <p>6 all right. Excuse me.</p> <p>7 Now, did you join Durango Merchant</p> <p>8 Services right after you graduated college?</p> <p>9 A No.</p> <p>10 Q What did you do in between?</p> <p>11 A Waited tables. I worked with adults</p> <p>12 with mental disabilities as well.</p> <p>13 Q How did you come to start working for</p> <p>14 Durango in 2005?</p> <p>15 A I used to ride dirt bikes with a buddy</p> <p>16 of mine who worked for Shane Kairalla. We</p> <p>17 all worked dirt bikes together and Shane said</p> <p>18 he was looking for someone. I said what do</p> <p>19 you do?</p> <p>20 Q At that point in time were you living</p> <p>21 in Durango?</p> <p>22 A Yes.</p> <p>23 Q When did you move to Madison?</p> <p>24 A Almost four years ago today. My wife</p> <p>25 at the time was a veterinary student.</p>	<p style="text-align: right;">8</p> <p>1 Counley</p> <p>2 owners of the business, Mr. Kairalla and I</p> <p>3 didn't get the other gentleman's name?</p> <p>4 A I guess technically Shane Kairalla is</p> <p>5 the only LLC member, but him and Bill are</p> <p>6 kind of partners in a sense I guess you could</p> <p>7 say. I don't know how it is. I don't think</p> <p>8 it's legally set up because Bill is in</p> <p>9 Canada, but --</p> <p>10 Q What Bill's last name?</p> <p>11 A Demopolis.</p> <p>12 Q Now, you said he's in Canada. Do you</p> <p>13 know where he lives?</p> <p>14 A Toronto.</p> <p>15 Q Now do you have a boss at Durango?</p> <p>16 A Shane.</p> <p>17 Q Is Mr. Demopolis also your boss?</p> <p>18 A Yes.</p> <p>19 Q Do you report to them in some regular</p> <p>20 fashion?</p> <p>21 A I mean if I'm rude to a customer and a</p> <p>22 customer calls in and complains, they will</p> <p>23 talk to them and Shane will reprimand me.</p> <p>24 Q Do you have an office in Madison that</p> <p>25 you work out of?</p>
<p style="text-align: right;">7</p> <p>1 Counley</p> <p>2 Q When you moved to Madison, you</p> <p>3 continued to work for Durango?</p> <p>4 A Yes.</p> <p>5 Q How many people work for Durango?</p> <p>6 A Now, I think we have six people. We</p> <p>7 just hired someone new a couple of months</p> <p>8 ago.</p> <p>9 Q When you started, how many people were</p> <p>10 there?</p> <p>11 A When I started, there was four.</p> <p>12 Q Can you give me the names of all the</p> <p>13 people that work there, starting with the</p> <p>14 four that worked there when you started?</p> <p>15 A Shane Kairalla is the president, Bill</p> <p>16 Demopolis is the second owner</p> <p>17 D-E-M-O-P-O-L-I-S, Brad Jess, J-E-S-S, and</p> <p>18 myself. I apologize there is actually seven</p> <p>19 people now. There is Audrey Berger</p> <p>20 B-E-R-G-E-R, Doug McLean, M-C-L-E-A-N. Doug</p> <p>21 started, I guess, halfway through '09 and</p> <p>22 then new Osha, O-S-H-A, Pauma, P-A-U-M-A, and</p> <p>23 he started just a few months ago.</p> <p>24 Q In terms of the corporate</p> <p>25 organization, you said that there are two</p>	<p style="text-align: right;">9</p> <p>1 Counley</p> <p>2 A Just a home office.</p> <p>3 Q What is the address of that?</p> <p>4 A 4321 Windflower, one word, Windflower</p> <p>5 Way, Madison, Wisconsin 53711.</p> <p>6 Q How are you compensated? Do you</p> <p>7 receive a salary or are you strictly on some</p> <p>8 sort of commission?</p> <p>9 A Commission.</p> <p>10 Q Can you tell me the general</p> <p>11 arrangement?</p> <p>12 A On any account, the residuals are</p> <p>13 processed, the agent gets 40 to 50 percent of</p> <p>14 the residuals and the remainder I get</p> <p>15 35 percent and then the other 65 percent</p> <p>16 after the agent is cut, Bill and Shane split</p> <p>17 60/40. Shane gets 60. Bill gets 40.</p> <p>18 Q First off, can you explain -- I think</p> <p>19 I understand it, but can you explain what the</p> <p>20 term residual means?</p> <p>21 A Residual is just a profit on an</p> <p>22 account. So if XYZ company makes \$100 in</p> <p>23 profit and the bank pays us 100, if the agent</p> <p>24 gets 40 to 50 percent, the agent gets \$40 to</p> <p>25 \$50 depending on the agreement for -- let's</p>

<p style="text-align: right;">10</p> <p>1 Counley</p> <p>2 say they get 50 percent meaning \$50, Nathan</p> <p>3 Counley gets 35 percent -- I'm trying to do</p> <p>4 the math -- and the remaining 65 percent Bill</p> <p>5 and Shane split. 60 percent to Shane and</p> <p>6 Bill 40 percent.</p> <p>7 Q When you say the agent gets 40 to</p> <p>8 50 percent, who is the agent?</p> <p>9 A Durango Merchant Services. We are</p> <p>10 broker for merchants' accounts and we have a</p> <p>11 wide range of agents that we market to and we</p> <p>12 say there are usually other ISOs who also do</p> <p>13 merchant account services and we tell them if</p> <p>14 you cannot get your accounts approved with</p> <p>15 your normal sales channel or your normal</p> <p>16 processing bank that you work with, send us</p> <p>17 your declines and if we can get them</p> <p>18 approved, we'll give you the 40 to</p> <p>19 50 percent.</p> <p>20 Q So now when you say they are an agent,</p> <p>21 are they an agent of Durango?</p> <p>22 A No. I think agent is a term we use in</p> <p>23 our industry, but it's not a legally binding</p> <p>24 kind of agent where they can speak on our</p> <p>25 behalf.</p>	<p style="text-align: right;">12</p> <p>1 Counley</p> <p>2 Q When you say send us their declines,</p> <p>3 what are you referring to?</p> <p>4 A If an account was declined because the</p> <p>5 merchant's credit is in poor shape and the</p> <p>6 bank didn't want to approve them, they will</p> <p>7 try to send them to us to see if we can get</p> <p>8 them approved.</p> <p>9 Q Besides Goerchant and Transaction</p> <p>10 Group, are there any other agents that you</p> <p>11 can remember sitting here?</p> <p>12 A Yes, MerchantExpress.com, CDG, Take</p> <p>13 Cards Today, CreditCardTransactions.com,</p> <p>14 Creditcardstrans.com, off the top of my head.</p> <p>15 Q You said that these are other ISOs or</p> <p>16 other brokers; is that correct?</p> <p>17 A Yes.</p> <p>18 Q What did you mean by ISO?</p> <p>19 A In our industry an ISO stands for</p> <p>20 independent sales office. MLS stands for --</p> <p>21 in fact, I can't remember what MLS stands</p> <p>22 for. I think it's something -- I apologize.</p> <p>23 I shouldn't have brought the phrase up.</p> <p>24 Something salesperson. Kind of an</p> <p>25 independent salesperson that's not an ISO.</p>
<p style="text-align: right;">11</p> <p>1 Counley</p> <p>2 Q Can you give me examples of the agents</p> <p>3 that Durango works with?</p> <p>4 A Yes, some. Goerchant.com is a web</p> <p>5 hosting and shopping cart service. They have</p> <p>6 a processor that they work with. The</p> <p>7 processor that they work with can't get an</p> <p>8 account approved, they will send it to us</p> <p>9 secondary. That's an example of an agent.</p> <p>10 Q Can you tell me all the agents that</p> <p>11 you work with?</p> <p>12 A No, probably three or 400 agents over</p> <p>13 the years. I think Shane sends out 60 checks</p> <p>14 a month, so we have a lot of agents, but not</p> <p>15 all in the same business.</p> <p>16 Q Did you ever work with a group called</p> <p>17 The Transaction Group?</p> <p>18 A Yes.</p> <p>19 Q Are they an agent?</p> <p>20 A Yes.</p> <p>21 Q They would send you merchants that</p> <p>22 they have had declined by other banks?</p> <p>23 A Correct or maybe not just declined,</p> <p>24 but maybe they know that they can't get it</p> <p>25 placed.</p>	<p style="text-align: right;">13</p> <p>1 Counley</p> <p>2 Q When you use the word, you said other</p> <p>3 ISOs or other brokers, are those terms</p> <p>4 synonymous in your mind?</p> <p>5 A Well, yes, pretty much.</p> <p>6 Q These other ISOs that you work with</p> <p>7 that send you the merchants they know that</p> <p>8 they can't get approved or that have been</p> <p>9 declined, what does Durango do that's</p> <p>10 different from these other ISOs that allows</p> <p>11 you to get these merchants approved?</p> <p>12 A We work with banks with more liberal</p> <p>13 underwriting policies or risk management</p> <p>14 policies. So, when we -- a lot of banks are</p> <p>15 very conservative on the credit criteria they</p> <p>16 will have and let's say they will not accept</p> <p>17 a merchant as a credit FICO underneath 600 or</p> <p>18 650 and that's kind of a common practice, but</p> <p>19 some banks that we work with will take on a</p> <p>20 merchant that has poor credit, but sometimes</p> <p>21 they will have mitigating, you know, controls</p> <p>22 where they will have a reserve on the account</p> <p>23 where they hold back a percentage of sales,</p> <p>24 kind of like escrow to safeguard the loss.</p> <p>25 Q Are there certain types of businesses</p>

<p style="text-align: right;">14</p> <p>1 Counley</p> <p>2 that certain banks just won't do?</p> <p>3 A Most banks, yes.</p> <p>4 Q Do you have banks that have more</p> <p>5 liberal underwriting standards with regard to</p> <p>6 types of businesses they will take on?</p> <p>7 A Some banks are -- yes.</p> <p>8 Q For example, you advise on your</p> <p>9 website that -- under the type of merchants I</p> <p>10 think you had adult oriented businesses. Are</p> <p>11 there certain banks that won't do adult</p> <p>12 oriented businesses?</p> <p>13 A Correct.</p> <p>14 Q Since you joined Durango in 2005, what</p> <p>15 banks have you personally placed accounts</p> <p>16 with?</p> <p>17 A I couldn't list them all off the top</p> <p>18 of my head, but primarily Humboldt,</p> <p>19 H-U-M-B-O-L-D-T and they recently changed</p> <p>20 their name M-O-N-E-R-I-S Moneris, Frontline,</p> <p>21 Woodforest, Pivotal, Merchants e-Solutions,</p> <p>22 that's e-Solutions, Optimal Payments, Voice</p> <p>23 Commerce V-O-I-C-E.</p> <p>24 That's the primary group. There might</p> <p>25 be some few accounts First Data or National</p>	<p style="text-align: right;">16</p> <p>1 Counley</p> <p>2 Q Do you have an understanding of the</p> <p>3 term replica merchant?</p> <p>4 A For us replica meant similar looking.</p> <p>5 Q Did you understand that there were</p> <p>6 certain banks that didn't do replica</p> <p>7 products?</p> <p>8 A Yes.</p> <p>9 Q Did you get referrals from the ISOs</p> <p>10 that you worked with or replica merchants</p> <p>11 that had been declined by other banks?</p> <p>12 A Yes.</p> <p>13 Q Which of the banks on the list were</p> <p>14 you able to place replica merchants with, the</p> <p>15 banks that you just gave me?</p> <p>16 A Woodforest and Frontline.</p> <p>17 Q Did you place replica merchants with</p> <p>18 Humboldt?</p> <p>19 A No.</p> <p>20 Q Would they accept replica merchants?</p> <p>21 A No.</p> <p>22 MR. WENGROVSKY: If you know,</p> <p>23 go ahead.</p> <p>24 A I don't think so.</p> <p>25 Q Did you place replica merchants with</p>
<p style="text-align: right;">15</p> <p>1 Counley</p> <p>2 Bank Card Systems, but that's it.</p> <p>3 Q Do you work with offshore banks as</p> <p>4 well?</p> <p>5 A Yes.</p> <p>6 Q Are any of the banks you just listed</p> <p>7 offshore banks?</p> <p>8 A Voice Commerce and Optimal. You have,</p> <p>9 I believe, our residual reports, so you have</p> <p>10 a list of all the bank names I think.</p> <p>11 Q I'll try to dig them out. Some of</p> <p>12 them came in late on Friday and I already had</p> <p>13 left the office, but we will try to get them</p> <p>14 out and see.</p> <p>15 Any other banks that you can remember</p> <p>16 as you sit here?</p> <p>17 A Not off the top of my head.</p> <p>18 Q Not all of these enterprises are</p> <p>19 banks; is that correct?</p> <p>20 A Yes. I mean I guess processors may be</p> <p>21 a better word to call it if we are going to</p> <p>22 be more specific.</p> <p>23 Q Do you understand what the term</p> <p>24 replica merchant means?</p> <p>25 A For us?</p>	<p style="text-align: right;">17</p> <p>1 Counley</p> <p>2 Pivotal?</p> <p>3 A No.</p> <p>4 Q Did you place them with Merchant</p> <p>5 e-Solutions?</p> <p>6 A I think there is one or two there.</p> <p>7 Q Do you remember the names of those</p> <p>8 enterprises?</p> <p>9 A Not off the top of my head.</p> <p>10 Q Are you still receiving residuals from</p> <p>11 them?</p> <p>12 A I don't believe any of the accounts</p> <p>13 are still active.</p> <p>14 Q What about Optimal Payments, did you</p> <p>15 place any replica merchants with them?</p> <p>16 A Not that I can remember.</p> <p>17 Q You didn't or you just can't remember</p> <p>18 as you sit here?</p> <p>19 A Not that I can remember, no.</p> <p>20 Q How about with Voice Commerce, did you</p> <p>21 place any replica merchants with them?</p> <p>22 A No.</p> <p>23 Q How about with First Data?</p> <p>24 A No.</p> <p>25 Q Would First Data accept replica</p>

5 (Pages 14 to 17)

<p style="text-align: right;">18</p> <p>1 Counley</p> <p>2 merchants?</p> <p>3 MR. WENGROVSKY: If you know.</p> <p>4 A I don't really use First Data very</p> <p>5 often.</p> <p>6 Q How about National Bank Card?</p> <p>7 A I only have two to three accounts with</p> <p>8 them. I don't really send many accounts, so</p> <p>9 I don't think I tried there. That doesn't</p> <p>10 mean they did or didn't.</p> <p>11 Q Did you ever have a replica merchant</p> <p>12 that you tried to place with a bank that was</p> <p>13 declined?</p> <p>14 A Probably.</p> <p>15 Q Did you ever try and place any with</p> <p>16 Pivotal?</p> <p>17 A Perhaps.</p> <p>18 Q Did they ever accept any?</p> <p>19 A I don't think so.</p> <p>20 Q Did you have any discussions with them</p> <p>21 about whether they would accept replica</p> <p>22 merchants?</p> <p>23 A It's not really a discussion. If we</p> <p>24 send an application and the processor</p> <p>25 approves it, then we keep sending similar</p>	<p style="text-align: right;">20</p> <p>1 Counley</p> <p>2 to Durango?</p> <p>3 A Correct, yes.</p> <p>4 Q If they place it themselves, they</p> <p>5 don't have to do that; isn't that correct?</p> <p>6 A Yes.</p> <p>7 Q So people only come to you with stuff</p> <p>8 that they can't handle themselves; isn't that</p> <p>9 fair?</p> <p>10 A Yes.</p> <p>11 MR. WEIGEL: Please mark this</p> <p>12 as Counley Exhibit 1.</p> <p>13 (Whereupon declaration of Shane</p> <p>14 Kairalla was marked Counley Exhibit 1</p> <p>15 for identification as of this date.)</p> <p>16 Q Mr. Counley, I put in front of you a</p> <p>17 declaration of Mr. Shane Kairalla. Do you</p> <p>18 see his signature on page 3?</p> <p>19 A Yes.</p> <p>20 Q Do you recognize that as his</p> <p>21 signature?</p> <p>22 A Yes.</p> <p>23 Q This is the Shane Kairalla who is the</p> <p>24 owner of Durango; is that correct?</p> <p>25 A Yes.</p>
<p style="text-align: right;">19</p> <p>1 Counley</p> <p>2 applications to the processor.</p> <p>3 Q Now, its your business to know which</p> <p>4 banks will accept which type of merchants;</p> <p>5 isn't that correct?</p> <p>6 A Yup, yes.</p> <p>7 Q You, in particular, in Durango, are</p> <p>8 experts in placing hard to place merchants;</p> <p>9 isn't that correct?</p> <p>10 A Yes.</p> <p>11 Q And that's why other ISOs come to you</p> <p>12 to try and place the merchants that they</p> <p>13 can't place themselves?</p> <p>14 A Usually most other ISOs only work with</p> <p>15 one processor so one or two processors and</p> <p>16 sometimes their shopping cart only works with</p> <p>17 one or two things, so they are kind of tight,</p> <p>18 but we are more of a broker format where we</p> <p>19 try to network and try to find different</p> <p>20 processors.</p> <p>21 Q But people come to you with merchants</p> <p>22 that they can't service themselves, correct?</p> <p>23 A Yes.</p> <p>24 Q Because if they come to you, they have</p> <p>25 to give a certain percentage of the residuals</p>	<p style="text-align: right;">21</p> <p>1 Counley</p> <p>2 Q You said there was an LLC. What's the</p> <p>3 name of the LLC?</p> <p>4 A Durango Merchant Services, LLC.</p> <p>5 Q Now, in paragraph 5, Mr. Kairalla says</p> <p>6 that Durango has only five employees; do you</p> <p>7 see that?</p> <p>8 A I do.</p> <p>9 Q At that time was that accurate?</p> <p>10 A To be honest so this was dated --</p> <p>11 MR. WENGROVSKY: October 30 of</p> <p>12 2009.</p> <p>13 A I don't know why I think for years we</p> <p>14 had five and that's why he said five, but</p> <p>15 Doug McLean had started working a few months</p> <p>16 prior.</p> <p>17 Q So you think there were six at this</p> <p>18 time?</p> <p>19 A I think that was an honest mistake.</p> <p>20 Q Do you ever have occasion to go to the</p> <p>21 office in Durango?</p> <p>22 A Yes.</p> <p>23 Q How often are you there?</p> <p>24 A Usually when I'm visiting family,</p> <p>25 maybe twice a year.</p>

6 (Pages 18 to 21)

<p style="text-align: right;">22</p> <p>1 Counley</p> <p>2 Q How many people actually work in the</p> <p>3 office in Durango?</p> <p>4 A Currently three.</p> <p>5 Q Who is that?</p> <p>6 A Shane Kairalla, Audrey Berger and Osha</p> <p>7 Pauma.</p> <p>8 Q When you communicate the rest of the</p> <p>9 year when you are not in Durango, do you do</p> <p>10 that by e-mail?</p> <p>11 A Yes.</p> <p>12 Q Do you have some sort of network set</p> <p>13 up between your computer and the office's</p> <p>14 computer?</p> <p>15 A We all use different computers. It's</p> <p>16 not a fancy operation.</p> <p>17 Q What kind of computer do you have?</p> <p>18 A Right now I have an Asus laptop.</p> <p>19 Q For how long have you had that?</p> <p>20 A Since November of '90.</p> <p>21 Q What kind of a computer did you have</p> <p>22 before that?</p> <p>23 A Toshiba laptop.</p> <p>24 Q What happened to that?</p> <p>25 A I gave it to my mom.</p>	<p style="text-align: right;">24</p> <p>1 Counley</p> <p>2 Q Did you have communications with him</p> <p>3 after the accounts were approved?</p> <p>4 A Yes.</p> <p>5 Q Anyone else at Frontline?</p> <p>6 A Invariably through the course of</p> <p>7 business, Chanae is another person in the</p> <p>8 risk department. If a merchant ID isn't</p> <p>9 working, I might speak to Steve or --</p> <p>10 Q What e-mail account do you typically</p> <p>11 use?</p> <p>12 A My e-mail account</p> <p>13 Nathan@Durango-Direct.com.</p> <p>14 Q Where is the service maintained for</p> <p>15 that?</p> <p>16 A We use an e-mail server Intermedia.</p> <p>17 Q Does that store a certain amount of</p> <p>18 e-mails?</p> <p>19 A Yes.</p> <p>20 Q Do you know if any effort was made to</p> <p>21 search those e-mails that were stored in</p> <p>22 Intermedia?</p> <p>23 A Yes.</p> <p>24 Q Were any e-mails uncovered?</p> <p>25 A We don't have e-mails from that far.</p>
<p style="text-align: right;">23</p> <p>1 Counley</p> <p>2 Q Did you download all of your files</p> <p>3 from that before you gave it to your mother?</p> <p>4 A I saved some files, but we don't save</p> <p>5 many files.</p> <p>6 Q Does your mother still have the</p> <p>7 computer?</p> <p>8 A Yes.</p> <p>9 Q If you asked for it, would she give it</p> <p>10 back to you for a little bit?</p> <p>11 A Probably.</p> <p>12 Q Now when you communicate with the</p> <p>13 banks that we just listed, you do that by</p> <p>14 e-mail as well?</p> <p>15 A Yes.</p> <p>16 Q Who do you communicate mostly with at</p> <p>17 Frontline?</p> <p>18 A Well, if I'm sending an application,</p> <p>19 then I send it to the underwriting</p> <p>20 department, who is these days Kim Smith and</p> <p>21 Christine Ross.</p> <p>22 Q You have sent e-mails to Hans</p> <p>23 Strickler of course?</p> <p>24 A That's after -- he's a risk manager.</p> <p>25 That's after the accounts are approved.</p>	<p style="text-align: right;">25</p> <p>1 Counley</p> <p>2 I think the e-mails you guys were looking for</p> <p>3 that you had shown us copies of were all</p> <p>4 e-mails that were beyond the date that we</p> <p>5 stored e-mails.</p> <p>6 Q Did you attempt to search the hard</p> <p>7 drive of your laptop for any of the e-mails?</p> <p>8 A Yes.</p> <p>9 Q Were you able to find any?</p> <p>10 A Not any more than we supplied.</p> <p>11 Q Did you make any effort to search the</p> <p>12 Toshiba laptop?</p> <p>13 A Yes.</p> <p>14 Q Were you able to find any e-mails</p> <p>15 there?</p> <p>16 A Nothing more than we supplied.</p> <p>17 Q So --</p> <p>18 A That being said, I did, over the</p> <p>19 weekend, find a backup of some Outlook file</p> <p>20 that I had made in my documents folder that I</p> <p>21 wasn't aware of and so it's mainly lead</p> <p>22 sheets that we had gotten, so I tried to get</p> <p>23 it done yesterday, but I was in airports, but</p> <p>24 I will be able to give you guys a better</p> <p>25 thorough search of the older leads than Shane</p>

<p style="text-align: right;">26</p> <p>1 Counley</p> <p>2 sent you yesterday from the customer service</p> <p>3 inbox.</p> <p>4 Q You rely on your income for residual</p> <p>5 payments, correct?</p> <p>6 A Yes.</p> <p>7 Q Do you have any records that evidence</p> <p>8 the fact that you are entitled to these</p> <p>9 residual payments for a particular merchant?</p> <p>10 A I don't really store those. I kind of</p> <p>11 trust Bill to make the payment and after</p> <p>12 that, I think Bill sent you the residual</p> <p>13 reports for the last several years, so he</p> <p>14 does have those records.</p> <p>15 Q What I want to know, when you send an</p> <p>16 account to a bank, do they send some</p> <p>17 confirmation that they have accepted the</p> <p>18 account?</p> <p>19 A I guess our system isn't as advanced</p> <p>20 as it should be. Probably should have</p> <p>21 something more thorough, a bookkeeper</p> <p>22 monitoring, but no, we really just rely on</p> <p>23 the residual reports.</p> <p>24 Q What I'm trying to figure out, do you</p> <p>25 just assume that the bank sends you the right</p>	<p style="text-align: right;">28</p> <p>1 Counley</p> <p>2 MR. WEIGEL: Read it back.</p> <p>3 (Whereupon the record was read</p> <p>4 back by the reporter.)</p> <p>5 A I do make a list at the end of each</p> <p>6 month of accounts that I send to Bill so that</p> <p>7 we can add them to the agents' reports, if</p> <p>8 that's what you mean, but no.</p> <p>9 Q Do you create that on your computer?</p> <p>10 A Yes.</p> <p>11 Q Now does every merchant that you do</p> <p>12 business with pay the same percentage of</p> <p>13 their fees?</p> <p>14 A No.</p> <p>15 Q To the bank or to Durango?</p> <p>16 A No, merchants vary in pricing.</p> <p>17 Q How do you determine the pricing?</p> <p>18 A It depends on a number of factors. If</p> <p>19 they have previous processing history and</p> <p>20 they are specifically shopping for better</p> <p>21 rates then we try to accommodate, otherwise</p> <p>22 we kind of go off of industry standards and</p> <p>23 what the merchant will pay.</p> <p>24 Q Does Woodforest set the rate or does</p> <p>25 Durango set the rate?</p>
<p style="text-align: right;">27</p> <p>1 Counley</p> <p>2 amount or do you make any effort to follow up</p> <p>3 and to check and to make sure that the bank</p> <p>4 hasn't made a good faith mistake even?</p> <p>5 A We should have a more advanced system,</p> <p>6 but we don't.</p> <p>7 Q So it's your testimony, as you sit</p> <p>8 here today that you maintain, you send the</p> <p>9 merchant off and you keep no records at all</p> <p>10 as to whether or not the account has been</p> <p>11 approved or how much you are owed in terms of</p> <p>12 residuals?</p> <p>13 MR. WENGROVSKY: I think the</p> <p>14 residual reports would be some form of</p> <p>15 evidence. I don't think I would word</p> <p>16 it that way.</p> <p>17 MR. WEIGEL: You can ask the</p> <p>18 question when it is your turn and you</p> <p>19 can word them as you wish. If you</p> <p>20 have an objection to mine, you can</p> <p>21 raise it. Otherwise, I would like an</p> <p>22 answer to my question.</p> <p>23 MR. WENGROVSKY: I just needed</p> <p>24 some clarification so we know what the</p> <p>25 question is.</p>	<p style="text-align: right;">29</p> <p>1 Counley</p> <p>2 A On all banks, except for Frontline,</p> <p>3 Durango sets the rates.</p> <p>4 Q Does Woodforest have a typical rate</p> <p>5 that they charge?</p> <p>6 A The industry is fairly standard, most</p> <p>7 E commerce merchants pay from 2.2 to 2.7</p> <p>8 percent.</p> <p>9 Q Of that 2.2 to 2.7, how much of that</p> <p>10 goes to Woodforest?</p> <p>11 A It's very complicated how Visa and</p> <p>12 MasterCard do their splits, but roughly from</p> <p>13 my understanding, and I'm sure there is more</p> <p>14 to this than my understanding, but interest,</p> <p>15 my understanding is roughly 2 percent of that</p> <p>16 goes to Visa, MasterCard and over that is</p> <p>17 usually profit for the bank, the processor.</p> <p>18 Q Of that 2.2 to 2.7, how much goes to</p> <p>19 Durango?</p> <p>20 A Each processor we have different</p> <p>21 agreements with, but anywhere from 35 percent</p> <p>22 to 60 percent.</p> <p>23 Q Of the two points?</p> <p>24 A Of the percentage above their cost,</p> <p>25 which is roughly 2 percent, so if a merchant</p>

<p style="text-align: right;">30</p> <p>1 Counley</p> <p>2 is getting charged 2.3 percent and their cost</p> <p>3 is 2 percent, if the processor's cost to</p> <p>4 Visa, MasterCard is 2 percent, the merchant</p> <p>5 is 2.3 percent and we have 30 basis points of</p> <p>6 cost and, you know, depending on our</p> <p>7 agreement with the bank to share profits,</p> <p>8 let's say it's 50 percent, to make math easy,</p> <p>9 15 basis points goes to Durango and 15 basis</p> <p>10 points goes to the processor.</p> <p>11 Q If you were able to charge someone</p> <p>12 3 percent, assuming you had the same 50/50</p> <p>13 split, you would get 4/10ths of a percent and</p> <p>14 Woodforest would get 4/10ths of a percent; is</p> <p>15 that the way it works?</p> <p>16 A Yes.</p> <p>17 Q The higher the rate you can charge the</p> <p>18 merchant, the more money that Durango gets</p> <p>19 and the more money Woodforest gets, correct?</p> <p>20 A And the more money we can pay our</p> <p>21 agents, correct.</p> <p>22 Q And Durango negotiates the rate with</p> <p>23 the merchant based upon what Durango thinks</p> <p>24 the merchant is willing to pay and the</p> <p>25 competition in the marketplace?</p>	<p style="text-align: right;">32</p> <p>1 Counley</p> <p>2 home office of Durango's account manager in</p> <p>3 the State of Wisconsin"; do you see that?</p> <p>4 A Yes.</p> <p>5 Q Is that an accurate statement?</p> <p>6 A Yes.</p> <p>7 Q What records do you maintain at your</p> <p>8 home office? Back up for a second.</p> <p>9 When it refers to the home office of</p> <p>10 Durango's account manager in the State of</p> <p>11 Wisconsin, that's referring to you, correct?</p> <p>12 A Correct.</p> <p>13 Q What records do you maintain in your</p> <p>14 home office?</p> <p>15 A We try not to save many records just</p> <p>16 for data security. Once the application is</p> <p>17 forwarded to the processor, we don't really</p> <p>18 have any need to store that any longer.</p> <p>19 Q Don't you need to know what rate the</p> <p>20 merchant is paying?</p> <p>21 A No.</p> <p>22 Q Aren't your residuals keyed off of</p> <p>23 that rate?</p> <p>24 A Yes.</p> <p>25 Q But you don't -- since the rate is not</p>
<p style="text-align: right;">31</p> <p>1 Counley</p> <p>2 A More or less, yes.</p> <p>3 Q How does Woodforest know the amount to</p> <p>4 charge the merchants?</p> <p>5 MR. KENNEDY: Objection. It</p> <p>6 calls for speculation.</p> <p>7 Q You can answer.</p> <p>8 A The contract that the merchant signs</p> <p>9 with Woodforest.</p> <p>10 Q And who prepares that contract?</p> <p>11 A The merchant signs the contract and</p> <p>12 sends it back to Durango and Durango forwards</p> <p>13 it to Woodforest.</p> <p>14 Q Do you typically help the merchant</p> <p>15 fill out the form?</p> <p>16 A Sometimes.</p> <p>17 Q I think we started off this whole line</p> <p>18 looking at Exhibit 1. Do you still have that</p> <p>19 in front of you?</p> <p>20 A Yes.</p> <p>21 Q Paragraph 8 says, "All of Durango</p> <p>22 Merchants Services, LLC records and</p> <p>23 documents, including records and documents</p> <p>24 relative to the present action, are located</p> <p>25 either within the State of Colorado or at the</p>	<p style="text-align: right;">33</p> <p>1 Counley</p> <p>2 constant, correct, it changes merchant to</p> <p>3 merchant?</p> <p>4 A I see where you are going and it might</p> <p>5 be handy to have something like that, but we</p> <p>6 don't.</p> <p>7 Q So you keep no record of the merchant</p> <p>8 you send off or what they are charged and you</p> <p>9 just count on the bank to get it, right?</p> <p>10 A Yes.</p> <p>11 Q Did you ever balance your checkbook?</p> <p>12 A No.</p> <p>13 Q Me neither. Does Woodforest give you</p> <p>14 any guidelines as to the rates you can charge</p> <p>15 merchants?</p> <p>16 A No. There is nothing written, but I</p> <p>17 think it's just common practice that the</p> <p>18 banks aren't doing this for free, so they</p> <p>19 would -- they don't want us -- it's always</p> <p>20 been my assumption, I guess, that banks don't</p> <p>21 want us to send an account at 2.02 percent</p> <p>22 where they make no profit and there may be,</p> <p>23 you know, risk on the account. It won't make</p> <p>24 sense. I doubt that they would want to keep</p> <p>25 accounts like that.</p>

<p style="text-align: right;">34</p> <p>1 Counley</p> <p>2 Q They are interested in you charging as</p> <p>3 much as you can to the merchants; is that</p> <p>4 correct?</p> <p>5 A I would assume so.</p> <p>6 Q Do you know the specific percentage</p> <p>7 that Durango shares with Woodforest?</p> <p>8 MR. WENGROVSKY: Objection.</p> <p>9 Can you clarify that?</p> <p>10 MR. WEIGEL: Sure.</p> <p>11 Q You said that pretty much you share</p> <p>12 with Woodforest everything you charge the</p> <p>13 merchant over 2 percent; is that correct?</p> <p>14 A Yes.</p> <p>15 Q What I want to know is, as you sit</p> <p>16 here today, do you know what the percentage</p> <p>17 is that Durango gets and the percentage that</p> <p>18 Woodforest gets of the amount that you charge</p> <p>19 the merchant over 2 percent?</p> <p>20 MR. KENNEDY: Is this for any</p> <p>21 particular account?</p> <p>22 MR. WENGROVSKY: That's the</p> <p>23 nature of the objection.</p> <p>24 Q I'm asking, I guess, does it vary by</p> <p>25 merchant?</p>	<p style="text-align: right;">36</p> <p>1 Counley</p> <p>2 Q Now, when you sent a merchant to</p> <p>3 Woodforest, did you send it directly to them?</p> <p>4 A Joe Montella.</p> <p>5 Q And then he would forward it on?</p> <p>6 A Correct.</p> <p>7 Q Did you ever send stuff directly to</p> <p>8 Woodforest?</p> <p>9 A No.</p> <p>10 MR. WEIGEL: Mark this as</p> <p>11 Counley Exhibit 2.</p> <p>12 (Whereupon e-mail was marked</p> <p>13 Counley Exhibit 2 for identification</p> <p>14 as of this date.)</p> <p>15 Q Mr. Counley, have you ever seen this</p> <p>16 document before?</p> <p>17 A Yes.</p> <p>18 Q When did you last see it?</p> <p>19 A When we provided it to you last</p> <p>20 August.</p> <p>21 Q Where was it located?</p> <p>22 A This one I had in my Outlook for some</p> <p>23 reason.</p> <p>24 Q So you happen to keep this e-mail, but</p> <p>25 not others?</p>
<p style="text-align: right;">35</p> <p>1 Counley</p> <p>2 A No, it's set.</p> <p>3 Q What is the percentage?</p> <p>4 A Durango doesn't -- we actually don't</p> <p>5 send accounts to Woodforest. We were sending</p> <p>6 them through another group and so that group</p> <p>7 got paid 40 percent of Woodforest profits and</p> <p>8 then that group gave us 75 percent of that 40</p> <p>9 percent, so overall 38 percent.</p> <p>10 Q You got 38 percent of Woodforest</p> <p>11 profits; is that correct?</p> <p>12 A No, 30.</p> <p>13 Q What is the group that you sent it to?</p> <p>14 A Joe Montella Merchant Services, U.S.A.</p> <p>15 Q Is that part of Merchant Credit</p> <p>16 Services or MCCS?</p> <p>17 A I don't think so, but I'm not</p> <p>18 100 percent sure, but I don't think so.</p> <p>19 Q Joseph Montella you said?</p> <p>20 A Correct, Joe.</p> <p>21 Q Do you know where he operates out of?</p> <p>22 A Arizona. Phoenix.</p> <p>23 Q Did you have a written agreement with</p> <p>24 him?</p> <p>25 A Yes.</p>	<p style="text-align: right;">37</p> <p>1 Counley</p> <p>2 A Yes, when I am working on an account,</p> <p>3 I will create a folder in my Outlook and I'll</p> <p>4 put relevant e-mails on there -- in there</p> <p>5 when I'm working on it, but for some reason</p> <p>6 this one was still in there when I did the</p> <p>7 search.</p> <p>8 Q Now, this is an e-mail to you from Mr.</p> <p>9 Kairalla, is that correct?</p> <p>10 A Correct.</p> <p>11 Q What was the purpose of this e-mail?</p> <p>12 A This is what? It's a lead.</p> <p>13 Q Where did this lead come from?</p> <p>14 A The referring agent was</p> <p>15 merchantmetro.com.</p> <p>16 Q Is merchantmetro.com an ISO?</p> <p>17 A I'm not -- they are an agent of ours.</p> <p>18 Whether or not they are an ISO, it could be</p> <p>19 a -- I don't know how specific you want me to</p> <p>20 get. An ISO is technically different than</p> <p>21 someone who is -- who just has a website up</p> <p>22 for the purpose of generating leads.</p> <p>23 Q Who runs the merchantmetro.com</p> <p>24 website?</p> <p>25 A I don't know the gentleman's name, the</p>

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<p style="text-align: right;">38</p> <p>1 Counley</p> <p>2 agent's name.</p> <p>3 Q Does this website -- at this time did</p> <p>4 it send you lead regularly?</p> <p>5 A They did for a short period, but it</p> <p>6 was not a long-lived relationship, no.</p> <p>7 Q Did they get compensated for providing</p> <p>8 you leads?</p> <p>9 A Yes.</p> <p>10 Q How were they compensated?</p> <p>11 A Same as we discussed previously. The</p> <p>12 percentage of the profits were shared with</p> <p>13 them.</p> <p>14 Q Can you walk me through the process of</p> <p>15 what happened in this case when you got this</p> <p>16 lead?</p> <p>17 A When a lead comes in, you call or</p> <p>18 e-mail the merchant. If they have previous</p> <p>19 processing statements, we ask for the</p> <p>20 statements. We prepare a quote for them. If</p> <p>21 they say yes, I would like to move forward</p> <p>22 with those rates, then we send them the</p> <p>23 application.</p> <p>24 Q Now, this lead indicated that the</p> <p>25 description of the business was replica</p>	<p style="text-align: right;">40</p> <p>1 Counley</p> <p>2 credit cards, et cetera, so that's more --</p> <p>3 chargebacks is more on that side.</p> <p>4 Q Well, isn't it true you also help with</p> <p>5 chargebacks and you make sure people who are</p> <p>6 buying from websites such as this one</p> <p>7 understand that they are not buying genuine</p> <p>8 goods?</p> <p>9 A Regarding your e-mails that you have</p> <p>10 copies with with Hans, we were informed by</p> <p>11 Frontline that the merchant needed to add</p> <p>12 this in.</p> <p>13 Q They had to add in language on the</p> <p>14 checkout page that indicated that the</p> <p>15 potential buyer understood that they were</p> <p>16 buying a replica product and not a genuine</p> <p>17 product; isn't that correct?</p> <p>18 A That they were buying a replica</p> <p>19 product, correct.</p> <p>20 Q And the reason that that was done was</p> <p>21 to reduce chargebacks?</p> <p>22 A Correct.</p> <p>23 Q How does that reduce chargebacks?</p> <p>24 A So that the customer does not believe</p> <p>25 that they are purchasing -- so the customer</p>
<p style="text-align: right;">39</p> <p>1 Counley</p> <p>2 handbags and accessories; do you see that?</p> <p>3 A Yes.</p> <p>4 Q So you understood that they were not</p> <p>5 selling genuine Gucci products?</p> <p>6 A I understood they were selling replica</p> <p>7 handbags.</p> <p>8 Q You understood that these were not</p> <p>9 Gucci handbags made by Gucci, correct?</p> <p>10 A I don't know if they were sending</p> <p>11 Gucci handbags or not.</p> <p>12 Q Well, did you make any effort to look</p> <p>13 at the websites?</p> <p>14 A Our job is not to look at websites.</p> <p>15 We do look at websites to make sure there is</p> <p>16 a live website. We try to make sure there is</p> <p>17 a refund policy and a contact us page online,</p> <p>18 but besides that, it's not our job to look</p> <p>19 through websites.</p> <p>20 Q It is your job to minimize</p> <p>21 chargebacks; isn't it?</p> <p>22 A It is our job to help merchants</p> <p>23 understand where chargebacks come from and</p> <p>24 try to, you know, work on -- most chargebacks</p> <p>25 are either fraud related, you know, stolen</p>	<p style="text-align: right;">41</p> <p>1 Counley</p> <p>2 is aware that they are buying a replica</p> <p>3 handbag.</p> <p>4 Q And not a genuine one, correct?</p> <p>5 A Correct.</p> <p>6 MR. WEIGEL: Mark this as</p> <p>7 Counley 3.</p> <p>8 (Whereupon series of e-mails</p> <p>9 was marked Counley Exhibit 3 for</p> <p>10 identification as of this date.)</p> <p>11 Q Going back to Exhibit 2 for a second</p> <p>12 while I still have that in front of you. I</p> <p>13 see at the top it says follow-up flag and</p> <p>14 then flag status?</p> <p>15 A Yes.</p> <p>16 Q What does that mean?</p> <p>17 A In Outlook you can put -- it says</p> <p>18 follow-up, so I get a lead in, we e-mail the</p> <p>19 merchant. Follow-up in two days if we</p> <p>20 haven't heard back.</p> <p>21 Q Now, when it says completed there, is</p> <p>22 that something you inserted?</p> <p>23 A I think that's just how Outlook works</p> <p>24 when the notice comes up and you hit done.</p> <p>25 Q That indicates that you followed up</p>

11 (Pages 38 to 41)

<p style="text-align: right;">42</p> <p>1 Counley</p> <p>2 with the merchant?</p> <p>3 A Yes.</p> <p>4 Q Going to Counley 3, it's a series of</p> <p>5 e-mails starting with one that you sent on</p> <p>6 September 11, 2006; do you see that?</p> <p>7 A Which one?</p> <p>8 MR. WENGROVSKY: Are you</p> <p>9 starting with the final page, Bob?</p> <p>10 MR. WEIGEL: Yes, I'm starting</p> <p>11 with the first e-mail to Mr. Counley.</p> <p>12 Q Do you see the September 11, 2006</p> <p>13 e-mail sent at 7:32 in the morning, the</p> <p>14 bottom one, the last page?</p> <p>15 MR. WENGROVSKY: My last page</p> <p>16 has a September 22nd.</p> <p>17 A We -- it's an e-mail from Hans</p> <p>18 Strickler on the last page.</p> <p>19 MR. WEIGEL: I would like this</p> <p>20 exhibit to be 48024 to 48028 and 48029</p> <p>21 is just a stray e-mail. So just let's</p> <p>22 start off again.</p> <p>23 Q Do you have 48024 going through 48028?</p> <p>24 A Yes.</p> <p>25 Q If you look at page 4 of 5 at the</p>	<p style="text-align: right;">44</p> <p>1 Counley</p> <p>2 off easier with them.</p> <p>3 Q You did, in fact, share the residuals</p> <p>4 with them, correct?</p> <p>5 A I'm pretty sure. Bill handles the</p> <p>6 residual reports, but I would assume so.</p> <p>7 Q But it would be Durango that would</p> <p>8 determine the rate that was charged to the</p> <p>9 client, correct?</p> <p>10 A With Woodforest accounts, yes.</p> <p>11 Q With Frontline, no?</p> <p>12 A No, not always.</p> <p>13 Q Now, you go on to say "We have an</p> <p>14 offshore bank that is willing to accept</p> <p>15 startup or lower volume replica merchants and</p> <p>16 with competitive rates"; do you see that?</p> <p>17 A Correct.</p> <p>18 Q You are proposing a discount rate of</p> <p>19 6.95 to 7.95 percent. Do you see that on the</p> <p>20 last page?</p> <p>21 A Yes.</p> <p>22 Q That is not really competitive with</p> <p>23 the 2.2 or the 2.75 rate that you mentioned</p> <p>24 earlier as being sort of standard, correct?</p> <p>25 A You are correct.</p>
<p style="text-align: right;">43</p> <p>1 Counley</p> <p>2 bottom, you see the first e-mail in a chain</p> <p>3 dated Monday, September 11, 2006 at 7:32 a.m.</p> <p>4 sent by you to admin at thebagaddiction.com?</p> <p>5 A Yes.</p> <p>6 Q That is your address at the bottom,</p> <p>7 isn't it?</p> <p>8 A Yes.</p> <p>9 Q And you recognize this as an e-mail</p> <p>10 that you sent?</p> <p>11 A Apparently, yes.</p> <p>12 Q You sent this in response to the lead</p> <p>13 that we just looked at that's Counley Exhibit</p> <p>14 2?</p> <p>15 A Correct.</p> <p>16 Q You thanked Jennifer for the</p> <p>17 application through our partners at Merchant</p> <p>18 Metro?</p> <p>19 A Yes.</p> <p>20 Q And when you say our partners, you</p> <p>21 were referring to the fact that Merchant</p> <p>22 Metro was an agent and you shared residuals</p> <p>23 with them?</p> <p>24 A For lack of a better word for the</p> <p>25 merchants, we say partners. It seems to come</p>	<p style="text-align: right;">45</p> <p>1 Counley</p> <p>2 Q How could it be that a 6.95 to 7.95</p> <p>3 rate would be competitive as you use the term</p> <p>4 here?</p> <p>5 A A lot of banks don't like startup</p> <p>6 accounts, so if the merchant is willing to</p> <p>7 pay than -- I mean there are banks out there</p> <p>8 that charge higher percentages.</p> <p>9 Q So, you thought that this was a</p> <p>10 competitive rate because they were a startup</p> <p>11 replica merchant?</p> <p>12 MR. WENGROVSKY: I believe the</p> <p>13 testimony was startup merchant</p> <p>14 relative to the last question, if you</p> <p>15 want to read that back.</p> <p>16 MR. WEIGEL: No, I don't</p> <p>17 actually -- if you have an objection,</p> <p>18 the rules in this district are that</p> <p>19 you object to the form. Speaking</p> <p>20 objections are not really appropriate.</p> <p>21 Can you read the question back?</p> <p>22 MR. WENGROVSKY: If there is a</p> <p>23 mischaracterization of the testimony</p> <p>24 in the question, I will bring it to</p> <p>25 your attention.</p>

12 (Pages 42 to 45)

<p style="text-align: right;">46</p> <p>1 Counley</p> <p>2 MR. WEIGEL: Read it back.</p> <p>3 MR. WENGROVSKY: It's not the</p> <p>4 effort that I question at all, I</p> <p>5 realize you are trying to -- if you</p> <p>6 misspeak and add a word into the</p> <p>7 response, we have a problem on the</p> <p>8 record.</p> <p>9 MR. WEIGEL: Read it back and</p> <p>10 the witness will listen carefully to</p> <p>11 the question and then he will answer</p> <p>12 it.</p> <p>13 (Whereupon the record was read</p> <p>14 back by the reporter.)</p> <p>15 A I believe my answer beforehand was a</p> <p>16 lot of banks do not like to accept startup</p> <p>17 merchant accounts is what Todd is referring</p> <p>18 to.</p> <p>19 Q I understand that. My question to you</p> <p>20 was this a competitive rate because they were</p> <p>21 a startup replica merchant?</p> <p>22 A No, any of the offshore processors</p> <p>23 don't -- doesn't really matter what you are</p> <p>24 selling. If you are a startup, you are a</p> <p>25 startup.</p>	<p style="text-align: right;">48</p> <p>1 Counley</p> <p>2 A They were out of Australia, but they</p> <p>3 are no longer in business.</p> <p>4 Q Did offshore banks typically have</p> <p>5 looser underwriting standards than U.S.</p> <p>6 domestic banks?</p> <p>7 A Yes.</p> <p>8 Q Did they typically charge higher rates</p> <p>9 as well?</p> <p>10 A Yes.</p> <p>11 Q Why do banks underwrite merchant</p> <p>12 accounts? Why do they care if it's a startup</p> <p>13 or not?</p> <p>14 A Banks have a liability when a merchant</p> <p>15 processes credit cards. Every credit card</p> <p>16 transaction has a six month chargeback</p> <p>17 window, so if the merchant is applying for</p> <p>18 processing 10,000 a month in sales at the end</p> <p>19 of six months, there is, for lack of a better</p> <p>20 word, 60,000-dollar liability, so, I guess, a</p> <p>21 provisional credit is a better way to say.</p> <p>22 Merchant processes a credit card</p> <p>23 transaction. Processor funds the money to</p> <p>24 the merchant, but customers can issue a</p> <p>25 chargeback for up to six months on a</p>
<p style="text-align: right;">47</p> <p>1 Counley</p> <p>2 Q Okay. Why did you propose sending her</p> <p>3 to an offshore bank?</p> <p>4 A At the time we didn't have a -- we</p> <p>5 didn't know banks in the U.S. that would</p> <p>6 accept her account.</p> <p>7 Q Why not? Were there not banks in the</p> <p>8 U.S. that would accept startup accounts?</p> <p>9 A We just had not one approved yet. We</p> <p>10 just had not submitted one and had one</p> <p>11 approved.</p> <p>12 Q You never had a startup account</p> <p>13 approved at a U.S. bank as of 2006?</p> <p>14 A Oh, I see what you mean. No,</p> <p>15 specifically, specifically related to</p> <p>16 replica.</p> <p>17 Q So the reason you couldn't find a U.S.</p> <p>18 bank and you were proposing an offshore bank</p> <p>19 was because it was a startup replica account?</p> <p>20 A You are correct.</p> <p>21 Q What was the offshore bank that you</p> <p>22 were proposing?</p> <p>23 A I believe at this time it was</p> <p>24 Intabill.</p> <p>25 Q Do you know where they were located?</p>	<p style="text-align: right;">49</p> <p>1 Counley</p> <p>2 transaction and if the merchant has gone out</p> <p>3 of business or they don't have enough funds</p> <p>4 in their checking account to cover the</p> <p>5 chargeback, then the bank, the processor has</p> <p>6 to pay it back to Visa or MasterCard.</p> <p>7 Q The processor is basically advancing</p> <p>8 credit to the merchant for six months' worth</p> <p>9 of transactions?</p> <p>10 A I don't think credit is the right</p> <p>11 word, but there is a chargeback liability.</p> <p>12 Q They are potentially at risk that they</p> <p>13 might have to cover six months' worth of</p> <p>14 charges; is that correct?</p> <p>15 A Yes.</p> <p>16 Q Jennifer responds "Hello, Nathan. We</p> <p>17 are looking at processing around \$40K per</p> <p>18 month, so we would fall under your guideline.</p> <p>19 Please send me the information to move</p> <p>20 forward. Is this a third-party processor"</p> <p>21 and then you respond to Jennifer "Yes, this</p> <p>22 is a third-party processor. It is very</p> <p>23 difficult to get a 'direct' account offshore</p> <p>24 unless you have processing history." What</p> <p>25 does that mean?</p>

<p style="text-align: right;">50</p> <p>1 Counley</p> <p>2 A A direct account is with optimal</p> <p>3 payments. If you get a merchant account in</p> <p>4 the EU, you have to set up a corporation in</p> <p>5 the EU and that you have a merchant account</p> <p>6 specifically issued to that European</p> <p>7 corporation, but with Intabill you did not</p> <p>8 have to have a corporation in Australia to</p> <p>9 get it, so --</p> <p>10 Q Why is that referred to as a</p> <p>11 third-party processor?</p> <p>12 A Third-party processor had higher rates</p> <p>13 so --</p> <p>14 Q Makes them a third party as opposed to</p> <p>15 a first party?</p> <p>16 A Sometimes the descriptor, the words</p> <p>17 that appear in a customer's credit card</p> <p>18 statement on a third-party account may be</p> <p>19 shared with a processor instead of having</p> <p>20 your own customer descriptor show up on the</p> <p>21 customer's credit card statement, which is</p> <p>22 what all direct merchant accounts do have.</p> <p>23 Q If it's a direct merchant account, if</p> <p>24 I were to buy something, it would show up</p> <p>25 with the name of the merchant on my monthly</p>	<p style="text-align: right;">52</p> <p>1 Counley</p> <p>2 A I do like to think I have good</p> <p>3 customer service.</p> <p>4 Q You say "No, offshore banks do not run</p> <p>5 credit, nor do they pull the 'TMF' list or</p> <p>6 'MATCH' list, so if you are on that, it is</p> <p>7 not a problem." Stop right there for a</p> <p>8 second. What is a TMF list?</p> <p>9 A Terminated match file and it's like a</p> <p>10 black list or blackball list. If the</p> <p>11 merchant gets an account terminated by a</p> <p>12 processor in the U.S., they will usually end</p> <p>13 up on that and it's very difficult for them</p> <p>14 to get another merchant account in the U.S.</p> <p>15 Q Okay.</p> <p>16 A So a lot of merchants end up at</p> <p>17 offshore banks for that reason. And that</p> <p>18 they also don't run personal credit, which is</p> <p>19 another issue in the U.S. of getting merchant</p> <p>20 accounts.</p> <p>21 Q Do the offshore banks have the same</p> <p>22 risk vis-a-vis the merchant as the U.S. banks</p> <p>23 do?</p> <p>24 A Yes, but that's why they are charging</p> <p>25 the higher rates.</p>
<p style="text-align: right;">51</p> <p>1 Counley</p> <p>2 statement; is that correct?</p> <p>3 A Yes.</p> <p>4 Q But if it's a third-party account, it</p> <p>5 might have the name of the processor instead</p> <p>6 of the name of the merchant?</p> <p>7 A Correct.</p> <p>8 Q Are third-party processors typically</p> <p>9 banks?</p> <p>10 A Again, the definition of bank and</p> <p>11 processors is used pretty liberally, probably</p> <p>12 not appropriately, in a lot of these e-mails.</p> <p>13 Q Now, in response to your e-mail,</p> <p>14 Jennifer sends you an e-mail with two</p> <p>15 questions, "We have a processing history with</p> <p>16 card service. Does that matter? Do they run</p> <p>17 credit at this bank? What is their criteria</p> <p>18 for acceptance? Thanks." Do you see that?</p> <p>19 A Yes.</p> <p>20 Q Do you remember responding to this?</p> <p>21 A Yes, I see it here.</p> <p>22 Q Okay and it says "Jennifer, very sorry</p> <p>23 for not getting back sooner." I guess you</p> <p>24 waited three hours to respond; is that</p> <p>25 correct?</p>	<p style="text-align: right;">53</p> <p>1 Counley</p> <p>2 Q So the offshore banks typically charge</p> <p>3 a higher rate for the higher risk that they</p> <p>4 are taking on; is that correct?</p> <p>5 A Correct.</p> <p>6 Q Is the match list the same as the TMF</p> <p>7 list?</p> <p>8 A Correct.</p> <p>9 Q Just different words for the same</p> <p>10 thing?</p> <p>11 A Terminated match file, so match,</p> <p>12 match.</p> <p>13 Q Got you.</p> <p>14 You go on to ask a question. "When</p> <p>15 you say you have processing history, was it</p> <p>16 good history, or did it end bad? If you do</p> <p>17 have clean processing statements (low</p> <p>18 chargebacks) then that will help."</p> <p>19 She responds "Our processing history</p> <p>20 is fine. We had to close because we were</p> <p>21 selling replicas". Do you see that?</p> <p>22 A Yes.</p> <p>23 Q What did you understand her to mean</p> <p>24 when she said we had to close because we were</p> <p>25 selling replicas?</p>

14 (Pages 50 to 53)

<p style="text-align: right;">54</p> <p>1 Counley</p> <p>2 A They were selling handbags that looked</p> <p>3 similar to other products.</p> <p>4 Q Why would that cause her to have to</p> <p>5 close?</p> <p>6 A Most banks in the U.S. are very</p> <p>7 conservative. I think in 2006 even a lot of</p> <p>8 banks still considered any commerce merchant</p> <p>9 account high risk. We are just into the</p> <p>10 e-Commerce era now. Even today we have</p> <p>11 banks, if it's an online merchant account,</p> <p>12 they are skittish about approving it.</p> <p>13 Q But she didn't say she had to close</p> <p>14 because she was online merchant?</p> <p>15 A Correct.</p> <p>16 Q She said because she was selling</p> <p>17 replicas?</p> <p>18 A Correct.</p> <p>19 Q Isn't also the case most U.S. banks</p> <p>20 won't do replicas?</p> <p>21 A I'm not aware -- I guess you can say I</p> <p>22 am aware of it and we sent all of our</p> <p>23 accounts to Woodforest and Frontline.</p> <p>24 Q Your response to her "Sounds good.</p> <p>25 Then please include the last three months of</p>	<p style="text-align: right;">56</p> <p>1 Counley</p> <p>2 A Yes.</p> <p>3 Q You respond to that "Good news. I</p> <p>4 just found out our U.S. bank can do replica</p> <p>5 accounts now. We can write you a</p> <p>6 3.95 percent; do you see that?</p> <p>7 A Yes.</p> <p>8 Q Now, what bank were you referring to</p> <p>9 there?</p> <p>10 A To be honest, I don't call recall from</p> <p>11 memory if it was Frontline or Woodforest.</p> <p>12 Q But it was one of the two of them?</p> <p>13 A Yes.</p> <p>14 Q Do you remember you opened an account</p> <p>15 first at Frontline for her and subsequently</p> <p>16 at Woodforest?</p> <p>17 A I believe that's how it is.</p> <p>18 Q I'll get you the documents. We can</p> <p>19 write you a 3.95 percent; do you see that?</p> <p>20 A Yes.</p> <p>21 Q Who determined that 3.95 percent?</p> <p>22 A I did.</p> <p>23 Q What were the factors that went into</p> <p>24 you deciding to charge 3.95 percent?</p> <p>25 A A lot of higher risk merchants would</p>
<p style="text-align: right;">55</p> <p>1 Counley</p> <p>2 processing from CSI then with your</p> <p>3 application or six months if you have it.</p> <p>4 This will help to possibly negotiate lower</p> <p>5 rates."</p> <p>6 Why would her processing history help</p> <p>7 to negotiate lower rates for her?</p> <p>8 A Because it shows again the risk is</p> <p>9 mainly with the chargeback liability, so if</p> <p>10 she has processing history with low</p> <p>11 chargebacks, it helps the processor feel more</p> <p>12 comfortable with the account.</p> <p>13 Q She sends you an e-mail that sends --</p> <p>14 same day, September 11, "Fax sent. Let me</p> <p>15 know if you receive. Thanks"?</p> <p>16 A Correct.</p> <p>17 Q And then you respond early the next</p> <p>18 morning, "Received the application, but not</p> <p>19 any of the supporting documents requested on</p> <p>20 the last page." Do you see that?</p> <p>21 A Yes.</p> <p>22 Q And then she says, "I've attached</p> <p>23 three months of statements to this e-mail and</p> <p>24 will fax remaining documents. Please let me</p> <p>25 know if they come through okay."</p>	<p style="text-align: right;">57</p> <p>1 Counley</p> <p>2 charge rates from 3 1/2 to 4 percent. I</p> <p>3 think many other merchants in other</p> <p>4 industries pay those types of rates, so I</p> <p>5 think that's just kind of a general tier.</p> <p>6 Q Now, she was not a startup company,</p> <p>7 right? She had a processing history at this</p> <p>8 point?</p> <p>9 A Apparently.</p> <p>10 Q So, the reason they were a higher risk</p> <p>11 merchant is because they were selling replica</p> <p>12 products?</p> <p>13 A It was an account -- correct.</p> <p>14 Q When you say setup fee is only 285; do</p> <p>15 you see that?</p> <p>16 A Correct.</p> <p>17 Q Where does that money go?</p> <p>18 A Same revenue share as with the</p> <p>19 residuals.</p> <p>20 Q So with regard to this one, let's</p> <p>21 pretend the 285 is 300 so we might be able to</p> <p>22 do the math in our heads.</p> <p>23 A Okay, actually, I retract my last</p> <p>24 statement. The setup fee we do not share it</p> <p>25 with the processors. We share it with the</p>

15 (Pages 54 to 57)

<p style="text-align: right;">58</p> <p>1 Counley</p> <p>2 agents.</p> <p>3 Q Okay, so you would share that with</p> <p>4 Merchant Metro?</p> <p>5 A Yes.</p> <p>6 Q So they would get 40 percent?</p> <p>7 A 40 to 50 percent and I get 35 percent,</p> <p>8 Bill and Shane --</p> <p>9 Q They split the rest?</p> <p>10 A Yes.</p> <p>11 Q And then Jennifer responds "Okay,</p> <p>12 sounds good. I just got your message.</p> <p>13 Sounds like a much better plan. I already</p> <p>14 have an authorize.net gateway too that I</p> <p>15 signed up for prior to getting card service,</p> <p>16 so we're good to go if I can secure a</p> <p>17 processor. Let me know what else you need</p> <p>18 from me." Do you see that?</p> <p>19 A Yes.</p> <p>20 Q What is an authorized.net gateway?</p> <p>21 A It's a gateway that sends transactions</p> <p>22 from the merchant's website to the processor.</p> <p>23 Q Do you typically set that up for the</p> <p>24 merchant or do they set that up themselves?</p> <p>25 A Sometimes we set them up. Sometimes</p>	<p style="text-align: right;">60</p> <p>1 Counley</p> <p>2 A Melissa Gampel, P-E-L or B-E-L.</p> <p>3 Q Anyone else you can think of?</p> <p>4 A Yes. I can't remember the lady's name</p> <p>5 though. There was another lady and another</p> <p>6 gentleman, Rich something, Catwalk Purses.</p> <p>7 Q Catwalk Purses?</p> <p>8 A Yes.</p> <p>9 Q Did she also sent you one, the Purse</p> <p>10 Scene?</p> <p>11 A I can't recall.</p> <p>12 Q The last e-mail in this chain</p> <p>13 "Jennifer, sounds good" and you send her the</p> <p>14 application; do you see that?</p> <p>15 A Yes.</p> <p>16 MR. WEIGEL: We have been going</p> <p>17 at this for a hour and a half. Why</p> <p>18 don't we take a short break?</p> <p>19 THE WITNESS: Why don't we?</p> <p>20 (Whereupon a discussion was</p> <p>21 held off the record.)</p> <p>22 MR. WEIGEL: Mark this as</p> <p>23 Exhibit 4.</p> <p>24 (Whereupon application to</p> <p>25 Woodforest was marked Counley Exhibit</p>
<p style="text-align: right;">59</p> <p>1 Counley</p> <p>2 they already have one. Sometimes they set</p> <p>3 them up.</p> <p>4 Q She goes on to say "I have several</p> <p>5 friends in this field I can refer to you if</p> <p>6 this goes through okay." Do you see that?</p> <p>7 A Yes.</p> <p>8 Q Did, in fact, Jennifer send you --</p> <p>9 this is Jennifer Kirk, correct?</p> <p>10 A Yes.</p> <p>11 Q Did you know her name at that point in</p> <p>12 time?</p> <p>13 A I'm not sure if I knew more than what</p> <p>14 is on here as the e-mail, but I knew it was</p> <p>15 Jennifer.</p> <p>16 Q Eventually they fill out an</p> <p>17 application?</p> <p>18 A Correct. When she returned the</p> <p>19 application.</p> <p>20 Q You knew who it was?</p> <p>21 A Yes.</p> <p>22 Q Did she subsequently send you other</p> <p>23 friends in the replica field?</p> <p>24 A Correct, yes.</p> <p>25 Q Who else did she send to you?</p>	<p style="text-align: right;">61</p> <p>1 Counley</p> <p>2 4 for identification as of this date.)</p> <p>3 Q Mr. Counley, do you recognize Exhibit</p> <p>4 4?</p> <p>5 A Yes.</p> <p>6 Q Did you help prepare this?</p> <p>7 A Yes.</p> <p>8 Q Which parts of this did you help</p> <p>9 prepare?</p> <p>10 A I probably typed in the company name,</p> <p>11 address, principal name.</p> <p>12 Q Do you have a template for this form</p> <p>13 on your computer or did you at the time?</p> <p>14 A I have the original application, but</p> <p>15 it's not typed in. I don't know what you</p> <p>16 mean by template.</p> <p>17 Q Do you have the ability to -- I'm not</p> <p>18 very sophisticated with computers, but can</p> <p>19 you pull this up on your computer screen and</p> <p>20 type in these things?</p> <p>21 A Yes.</p> <p>22 Q When you pull it up on your computer</p> <p>23 screen, it has this Woodforest National Bank</p> <p>24 and MCCS logo?</p> <p>25 A Yes.</p>

16 (Pages 58 to 61)

<p style="text-align: right;">62</p> <p>1 Counley</p> <p>2 Q You would then type it in</p> <p>3 electronically on your screen and then you</p> <p>4 would send it off to the client; is that how</p> <p>5 it works?</p> <p>6 A Correct.</p> <p>7 Q Where did you get the information</p> <p>8 here?</p> <p>9 A What's the date on this?</p> <p>10 Q If you look at the top left, there is</p> <p>11 a fax header November 15, 2006; do you see</p> <p>12 that?</p> <p>13 A Yes. Sometimes I'll have the merchant</p> <p>14 send me the voided check and driver's license</p> <p>15 first and then I grab the address and name</p> <p>16 and type it in. Saves the merchant a step</p> <p>17 and if the bank can get it and they can't</p> <p>18 read it, it makes things more complicated.</p> <p>19 Q Did you fill this out when you were</p> <p>20 talking to her on the telephone?</p> <p>21 A Not really. It's too time consuming.</p> <p>22 Q The way it works, you fill it out and</p> <p>23 you fax it to the merchant to be signed?</p> <p>24 A Or e-mail.</p> <p>25 Q Can you tell from the header, the fax</p>	<p style="text-align: right;">64</p> <p>1 Counley</p> <p>2 Q In there it indicates a handbag</p> <p>3 company in China; do you see that?</p> <p>4 A Yes.</p> <p>5 Q So, you knew at this point in time</p> <p>6 that these bags were not manufactured by</p> <p>7 Gucci, correct?</p> <p>8 MR. WENGROVSKY: Objection. Go</p> <p>9 ahead.</p> <p>10 A I don't know if they were Gucci bags,</p> <p>11 but I do see it says China is where the</p> <p>12 product is purchased.</p> <p>13 Q Did you ever look at the website?</p> <p>14 A For refund policy and contact</p> <p>15 information.</p> <p>16 Q Did you look at the website to confirm</p> <p>17 that they disclosed that they were selling</p> <p>18 replica products and not original products?</p> <p>19 A I believe this one we had already done</p> <p>20 that. This was after Frontline, Hans'</p> <p>21 e-mail.</p> <p>22 Q Well, actually I don't remember</p> <p>23 exactly.</p> <p>24 A Yes.</p> <p>25 Q But at the time you sent this, you had</p>
<p style="text-align: right;">63</p> <p>1 Counley</p> <p>2 heading on the top, was it faxed to you then</p> <p>3 with a signature; is that how it works?</p> <p>4 A Correct.</p> <p>5 Q So you filled it out and you sent it</p> <p>6 by e-mail and then it was printed out, signed</p> <p>7 and faxed back to you?</p> <p>8 A I mean I would partially fill it out.</p> <p>9 I usually don't have enough information to</p> <p>10 fill it out completely. Anyone can type in a</p> <p>11 PDF.</p> <p>12 Q If you look at the merchant processing</p> <p>13 agreement which would be the third page, the</p> <p>14 third page of this exhibit, it says</p> <p>15 description of product; do you see that?</p> <p>16 A Yes.</p> <p>17 Q It says designer handbags?</p> <p>18 A Correct.</p> <p>19 Q It's a little blurry on this copy.</p> <p>20 Can you read the third question?</p> <p>21 A No.</p> <p>22 Q Let me see if I can do this, list the</p> <p>23 names and addresses of vendors from something</p> <p>24 the product is purchased.</p> <p>25 A Sounding close enough.</p>	<p style="text-align: right;">65</p> <p>1 Counley</p> <p>2 confirmed they had disclosed that they were</p> <p>3 selling replica products; is that correct?</p> <p>4 A Correct.</p> <p>5 Q Because there would be more exposure</p> <p>6 to a bank if, in fact, they were selling</p> <p>7 replica products, but representing that they</p> <p>8 were real, correct?</p> <p>9 MR. KENNEDY: Objection. Calls</p> <p>10 for someone else's state of mind.</p> <p>11 A Again, we don't make policies. If a</p> <p>12 bank tells us a website needs to have such</p> <p>13 and such on it, then it makes sense for us</p> <p>14 when sending other applications to take that</p> <p>15 same advice and tell the merchant the bank is</p> <p>16 going to want them on there. Why don't you</p> <p>17 go ahead and do it now.</p> <p>18 Q Are there consequences to Durango if</p> <p>19 the merchant has too many chargebacks?</p> <p>20 A Yes. It depends on the agreement that</p> <p>21 we have with the bank. I mean, in general,</p> <p>22 we don't want the relationship with the bank</p> <p>23 where they think Durango sends them accounts</p> <p>24 that cause them losses. They wouldn't really</p> <p>25 appreciate our business and might impact</p>

<p style="text-align: right;">66</p> <p>1 Counley</p> <p>2 approvals or delay application times, put us</p> <p>3 at the bottom of the pile.</p> <p>4 Q So because of that, when you look at a</p> <p>5 website, you would at least make some effort</p> <p>6 to make sure that they make adequate</p> <p>7 disclosures so there will not be as many</p> <p>8 chargebacks?</p> <p>9 A It's not really our job to underwrite</p> <p>10 accounts, no.</p> <p>11 Q My question is not whether it's your</p> <p>12 job to underwrite accounts. Whether you make</p> <p>13 any effort at all when a merchant has lots of</p> <p>14 chargebacks?</p> <p>15 A I mean if they don't have proper</p> <p>16 refund policy, if the refund policy says no</p> <p>17 refunds, we might say that's not really going</p> <p>18 to get you very far because customers will</p> <p>19 just do a chargeback, you know, full contact</p> <p>20 information.</p> <p>21 Q Does the type of product that a</p> <p>22 merchant sells impact your pricing to that</p> <p>23 merchant?</p> <p>24 A No.</p> <p>25 Q So when determining what price to</p>	<p style="text-align: right;">68</p> <p>1 Counley</p> <p>2 normally would have paid 1.75.</p> <p>3 Q And the reason they paid more is</p> <p>4 because there were not so many banks doing</p> <p>5 that business?</p> <p>6 A Sure, supply and demand.</p> <p>7 Q With regard to replica merchants, you</p> <p>8 were able to charge a higher fee for replica</p> <p>9 merchants because there were not that many</p> <p>10 banks willing to do them, correct?</p> <p>11 A Correct.</p> <p>12 Q In fact, you charged the Laurette</p> <p>13 Company 3.95 percent, correct, the first one</p> <p>14 I believe?</p> <p>15 MR. KENNEDY: I object to the</p> <p>16 question. That was what was on the</p> <p>17 quote.</p> <p>18 Q What is the quote you gave them?</p> <p>19 A 3.75.</p> <p>20 Q Why did you choose a lower price here?</p> <p>21 A She may have requested lower pricing</p> <p>22 based on relationship. I'm not sure.</p> <p>23 Q Why is it that you charge the higher</p> <p>24 price for a replica handbag merchant than for</p> <p>25 your typical pricing for an escort merchant?</p>
<p style="text-align: right;">67</p> <p>1 Counley</p> <p>2 charge someone, you don't consider whether or</p> <p>3 not they have other alternatives that they</p> <p>4 can go to?</p> <p>5 A Are you saying is our pricing with the</p> <p>6 processor affected by product?</p> <p>7 Q No, to the merchant. You determine</p> <p>8 the price that the merchant pays for the</p> <p>9 processing services, correct?</p> <p>10 A Yes.</p> <p>11 Q Is that price determined in part by</p> <p>12 whether or not you think the merchant can get</p> <p>13 these credit card processing services from</p> <p>14 someone else?</p> <p>15 A Sure. Like travel accounts generally</p> <p>16 pay 3 percent.</p> <p>17 Q But escort merchants might pay a</p> <p>18 higher percentage, correct?</p> <p>19 A Right.</p> <p>20 Q What is the typical charge for an</p> <p>21 escort merchant?</p> <p>22 A I think we are doing -- mind you, we</p> <p>23 only had three escort accounts, but -- maybe</p> <p>24 more. I don't think many. I think we were</p> <p>25 doing retail accounts around 2.25 where they</p>	<p style="text-align: right;">69</p> <p>1 Counley</p> <p>2 A You are kind of talking about two</p> <p>3 different types of accounts. Retail they had</p> <p>4 a machine and retail accounts pay lower rates</p> <p>5 anyway, so 2.25 is higher than other retail</p> <p>6 merchants pay, 1.7, 1.75.</p> <p>7 Q Can you explain, when you were</p> <p>8 discussing the 3.75 rate on this form, it</p> <p>9 says MOTO Internet. What does that mean?</p> <p>10 A There are two different types of</p> <p>11 accounts, retail accounts which if you are on</p> <p>12 the left, retail means you are swiping the</p> <p>13 card through a terminal like at the store,</p> <p>14 that means the card is present and card</p> <p>15 present transactions have lower risk because</p> <p>16 the clerk is supposed to verify the ID or get</p> <p>17 a signature because they are delivered</p> <p>18 immediately. All e-Commerce accounts are</p> <p>19 higher risk. All e-Commerce pay higher rates</p> <p>20 than retail.</p> <p>21 Q What does MOTO stand for?</p> <p>22 A Mail order, telephone order.</p> <p>23 Q And the Internet means goods ordered</p> <p>24 over the internet?</p> <p>25 A Yes.</p>

<p style="text-align: right;">70</p> <p>1 Counley</p> <p>2 Q Does your signature appear on this</p> <p>3 form?</p> <p>4 A No, I don't think so.</p> <p>5 Q Do you see where it says for all</p> <p>6 corporations on the fourth page?</p> <p>7 A Yes.</p> <p>8 Q Do you know that signature?</p> <p>9 A It appears to match the signature on</p> <p>10 the left.</p> <p>11 Q That is Ms. Kirk's signature?</p> <p>12 A I assume.</p> <p>13 Q Can you tell me where the application</p> <p>14 stops?</p> <p>15 A The page with the signatures is the</p> <p>16 last page.</p> <p>17 Q The material that's after that, was</p> <p>18 that -- that was not material that you</p> <p>19 provided to Woodforest?</p> <p>20 A No. Only the three pages of the</p> <p>21 application and the voided check.</p> <p>22 Q You said you did check the return</p> <p>23 policy, is that correct, on the website?</p> <p>24 A Yes.</p> <p>25 Q Why do you do that?</p>	<p style="text-align: right;">72</p> <p>1 Counley</p> <p>2 for a bank to do adult merchant accounts like</p> <p>3 DVD's and I just searched on the internet and</p> <p>4 I think I found Merchant Services U.S.A.'s</p> <p>5 website and I called and spoke to who turned</p> <p>6 out to be Joe Montella and he said you can do</p> <p>7 the adult account, so I started sending those</p> <p>8 probably and at some point I'm pretty sure</p> <p>9 this is the first replica account I ever did,</p> <p>10 so we submitted these. The bank approved</p> <p>11 them and we said if they take these, we'll</p> <p>12 send them more.</p> <p>13 Q So you were actually the one within</p> <p>14 Durango who established the contact with</p> <p>15 Woodforest?</p> <p>16 A Yes.</p> <p>17 Q At the time you sent Woodforest this</p> <p>18 account, had you sent them other accounts?</p> <p>19 A Yes.</p> <p>20 Q Did you believe that they had a more</p> <p>21 liberal underwriting policy than most banks</p> <p>22 in the United States?</p> <p>23 MR. KENNEDY: Object to the</p> <p>24 form.</p> <p>25 A Yes. I mean that's why we started</p>
<p style="text-align: right;">71</p> <p>1 Counley</p> <p>2 A To make sure that they have one</p> <p>3 because they need to understand that</p> <p>4 customers have six months to do a chargeback,</p> <p>5 if they don't have a good refund policy.</p> <p>6 It's one of the main problems merchants have</p> <p>7 not being liberal enough in refunds.</p> <p>8 Q If you turn a few pages in to this,</p> <p>9 you will see some --</p> <p>10 A On the refund policy underwriting,</p> <p>11 every bank we work with, if it's an</p> <p>12 e-Commerce merchant, they wouldn't refund --</p> <p>13 so it's an underwriting requirement, it</p> <p>14 wouldn't make sense for us to send an</p> <p>15 application in. It's just going to get</p> <p>16 kicked out.</p> <p>17 Q Well, it's your job to know which</p> <p>18 banks will take which merchants, correct?</p> <p>19 A It's a learning process and it's</p> <p>20 always changing.</p> <p>21 Q How did you first come in contact with</p> <p>22 Woodforest?</p> <p>23 MR. WENGROVSKY: Objection. Go</p> <p>24 ahead.</p> <p>25 A I'm pretty sure that I was searching</p>	<p style="text-align: right;">73</p> <p>1 Counley</p> <p>2 sending them -- I'm pretty sure we started</p> <p>3 with the adult and DVD stuff.</p> <p>4 Q Is the fact that they are willing to</p> <p>5 take or were willing to take adult merchants</p> <p>6 make them more liberal than other banks in</p> <p>7 terms of their underwriting policy?</p> <p>8 A Yes. And as far as we are using the</p> <p>9 term liberal and whatnot.</p> <p>10 Q By liberal I mean more willing to take</p> <p>11 merchants that other people aren't willing to</p> <p>12 take?</p> <p>13 A Yes.</p> <p>14 Q Do you see the shipping return policy</p> <p>15 for The Bag Addiction? There is a screen</p> <p>16 shot about halfway through this exhibit?</p> <p>17 MR. WENGROVSKY: It's like the</p> <p>18 ninth page.</p> <p>19 A Shipping and returning, returns and</p> <p>20 exchanging?</p> <p>21 Q Yes. Is that what you reviewed before</p> <p>22 sending this on to Frontline and Woodforest?</p> <p>23 A I can't be certain if it's -- if it</p> <p>24 was that. It would appear so from the</p> <p>25 printout.</p>

19 (Pages 70 to 73)

<p style="text-align: right;">74</p> <p>1 Counley</p> <p>2 Q Okay. You don't remember, but this</p> <p>3 looks --</p> <p>4 A It looks like a typical return policy.</p> <p>5 Q You see it lists the Gucci brand over</p> <p>6 on the left on this page?</p> <p>7 A I do.</p> <p>8 Q If you turn in a few pages, you will</p> <p>9 start to see screen shots of Gucci</p> <p>10 pocketbooks?</p> <p>11 A Okay.</p> <p>12 Q The first one here is a Guccissima</p> <p>13 with a list price \$1,050 and our price is</p> <p>14 \$175. You save \$875?</p> <p>15 A Yes.</p> <p>16 Q When you were reviewing this website,</p> <p>17 did you happen to notice that they were</p> <p>18 selling Gucci pocketbooks?</p> <p>19 A I don't recall.</p> <p>20 Q Do you have reason to believe when you</p> <p>21 sent this account off to Frontline or</p> <p>22 Woodforest that, in fact, The Bag Addiction</p> <p>23 was selling Gucci pocketbooks?</p> <p>24 MR. KENNEDY: Objection.</p> <p>25 Q At the time you sent this over to</p>	<p style="text-align: right;">76</p> <p>1 Counley</p> <p>2 A (No response.)</p> <p>3 Q You can answer.</p> <p>4 A What's the whole objection thing mean?</p> <p>5 MR. WENGROVSKY: It's noted for</p> <p>6 the record and with certain more rare</p> <p>7 exceptions like an attorney-client</p> <p>8 privilege, you would still answer.</p> <p>9 THE WITNESS: All right.</p> <p>10 A Again we don't -- it's not our job to</p> <p>11 review the website for the products. If it</p> <p>12 has a specific name or whatnot, I'm not</p> <p>13 really there to do that. I just make sure</p> <p>14 the application is complete, send it to the</p> <p>15 processor. The processor reviews the</p> <p>16 website. Do I specifically remember seeing</p> <p>17 Gucci? No.</p> <p>18 Q Do you remember specifically not</p> <p>19 seeing Gucci?</p> <p>20 MR. WENGROVSKY: Objection.</p> <p>21 Q Do you, as you sit here today, have</p> <p>22 any recollection one way or another whether</p> <p>23 you noticed that the website was selling</p> <p>24 replica Gucci handbags?</p> <p>25 A I'm not much of a fashion connoisseur.</p>
<p style="text-align: right;">75</p> <p>1 Counley</p> <p>2 Frontline, are you aware that they were</p> <p>3 selling Gucci replicas?</p> <p>4 MR. KENNEDY: At the time you</p> <p>5 sent the application?</p> <p>6 Q Yes.</p> <p>7 MR. KENNEDY: And was it to</p> <p>8 Frontline.</p> <p>9 Q Frontline.</p> <p>10 A It's not my job to review websites for</p> <p>11 products. I don't spend time doing that.</p> <p>12 You are saying that the website changed from</p> <p>13 Frontline to this?</p> <p>14 Q I don't believe so.</p> <p>15 A I guess I'm not clear what you are</p> <p>16 asking.</p> <p>17 Q Is the return policy the first thing</p> <p>18 that pops up when you get to a website?</p> <p>19 A No, you usually start on the home</p> <p>20 page.</p> <p>21 Q In winding your way through to the</p> <p>22 return policy, is it really your testimony</p> <p>23 that you didn't notice that the website was</p> <p>24 selling replica Gucci purses?</p> <p>25 MR. WENGROVSKY: Objection.</p>	<p style="text-align: right;">77</p> <p>1 Counley</p> <p>2 I saw handbags.</p> <p>3 Q You did know that they were selling</p> <p>4 replicas of some type of handbags?</p> <p>5 A I know they were selling replica</p> <p>6 handbags. I didn't get into the names. I</p> <p>7 wouldn't know the difference between Dior and</p> <p>8 that --</p> <p>9 Q You knew that they were selling</p> <p>10 replicas of somebody's handbags?</p> <p>11 A Yes, I mean --</p> <p>12 MR. WEIGEL: Mark this as</p> <p>13 Exhibit 5.</p> <p>14 (Whereupon application to</p> <p>15 Frontline was marked Counley Exhibit 5</p> <p>16 for identification as of this date.)</p> <p>17 Q While we are back on Counley 4, do you</p> <p>18 know where you sent this application to?</p> <p>19 A Like I said, I usually e-mail the</p> <p>20 applications to the merchant.</p> <p>21 Q You e-mailed it to the merchant and</p> <p>22 then it came back signed to you?</p> <p>23 A Yes.</p> <p>24 Q What did you do with it?</p> <p>25 A Then I e-mailed it to the processor.</p>

20 (Pages 74 to 77)

<p style="text-align: right;">78</p> <p>1 Counley</p> <p>2 Q Looking under MCCS, Merchant Bank Card</p> <p>3 Agreement, I'm still on Counley 4.</p> <p>4 MR. WENGROVSKY: Top right.</p> <p>5 A All right.</p> <p>6 Q It says rep name?</p> <p>7 A It has my name.</p> <p>8 Q Right. So you were the rep for MCCS;</p> <p>9 is that correct?</p> <p>10 MR. WENGROVSKY: Objection.</p> <p>11 MR. KENNEDY: I object to the</p> <p>12 question as well.</p> <p>13 Q What do the initials REP stand for?</p> <p>14 A Rep is a good assumption.</p> <p>15 Q You were the rep on this account,</p> <p>16 correct?</p> <p>17 A Yes. Although, I mean, technically it</p> <p>18 goes through Joe Montella MS, U.S.A., but we</p> <p>19 put our name on it. We're the rep.</p> <p>20 Q Underneath there is a rep number. Do</p> <p>21 you see that?</p> <p>22 A Yes.</p> <p>23 Q CE21, what does that mean?</p> <p>24 A I'm assuming some rep code from</p> <p>25 Woodforest. Again, I'm pretty sure that was</p>	<p style="text-align: right;">80</p> <p>1 Counley</p> <p>2 A Durango Merchant Services.</p> <p>3 Q Including the home phone?</p> <p>4 A That's our office number. Still is.</p> <p>5 Q How about the fax number?</p> <p>6 A Same office fax number.</p> <p>7 Q Were you in Wisconsin at this point in</p> <p>8 time?</p> <p>9 A No.</p> <p>10 Q You were in Durango?</p> <p>11 A Yes.</p> <p>12 Q You were in Durango for about a year</p> <p>13 or so before you moved to Wisconsin while you</p> <p>14 were working -- you were in Durango working</p> <p>15 for Durango Merchants for a year before you</p> <p>16 moved to Wisconsin; is that correct?</p> <p>17 A I can't remember if it's one and a</p> <p>18 half years or two and a half years. I'm</p> <p>19 trying to put it together. I moved to</p> <p>20 Wisconsin in the summer of either '06 or '07.</p> <p>21 If my wife was here, she could give you</p> <p>22 better answers.</p> <p>23 Q And this says "Submitted by Marketing</p> <p>24 Unit 278"?</p> <p>25 A Yes.</p>
<p style="text-align: right;">79</p> <p>1 Counley</p> <p>2 issued.</p> <p>3 Q Let me see if I can clear that up. I</p> <p>4 didn't mean to make that a hard question.</p> <p>5 A I assume it's an agent ID from</p> <p>6 Woodforest and MUD number same thing, but I'm</p> <p>7 not sure what the difference is.</p> <p>8 MR. WEIGEL: Mark this as</p> <p>9 Exhibit 6.</p> <p>10 (Whereupon contract sales</p> <p>11 application was marked Counley Exhibit</p> <p>12 6 for identification as of this date.)</p> <p>13 Q Do you recognize Exhibit 6?</p> <p>14 A Yes, but I'm not sure. It's signed in</p> <p>15 my name instead of Durango -- I'm not sure</p> <p>16 why it's signed in my name.</p> <p>17 Q Now, at the bottom it says signature</p> <p>18 of applicant. Is that your signature?</p> <p>19 A It is.</p> <p>20 Q And the address given here, was that</p> <p>21 your address in 2005?</p> <p>22 A No, that's Durango Merchant Services'</p> <p>23 address in 2005.</p> <p>24 Q How about the cell phone numbers; what</p> <p>25 numbers are those?</p>	<p style="text-align: right;">81</p> <p>1 Counley</p> <p>2 Q What is marketing unit 278?</p> <p>3 A I have no idea.</p> <p>4 Q Sale rep number at CE21; do you see</p> <p>5 that?</p> <p>6 A Yes.</p> <p>7 Q When you wrote rep CE21 on Counley</p> <p>8 Exhibit 4, the application for the Laurette</p> <p>9 Company to Woodforest, that's referencing</p> <p>10 this sales number; is that correct?</p> <p>11 A Yes. Again, I don't -- the</p> <p>12 applications were usually sent to us when</p> <p>13 there is a new application. Joe says use</p> <p>14 this application now and the numbers would be</p> <p>15 in there, so I never really paid attention to</p> <p>16 this, but I think you are in line here. It</p> <p>17 looks like the agent ID.</p> <p>18 Q You had signed on for this contract in</p> <p>19 March of 2005; is that correct?</p> <p>20 A Yes.</p> <p>21 Q And I think we determined that you</p> <p>22 were submitting this application November of</p> <p>23 2006, correct?</p> <p>24 A Correct.</p> <p>25 Q Now, if you turn to the second page of</p>

21 (Pages 78 to 81)

<p style="text-align: right;">82</p> <p>1 Counley</p> <p>2 Counley 6, this is an agreement between</p> <p>3 Merchant Choice Card Services and Nathan</p> <p>4 Counley; do you see that?</p> <p>5 A I do.</p> <p>6 Q Do you have any reason to believe that</p> <p>7 you didn't sign this associate agreement?</p> <p>8 A No, it's my signature. I don't. I'm</p> <p>9 really unclear why it says Nathan Counley</p> <p>10 name instead of Durango Merchant Services. I</p> <p>11 think Shane just told me to put it in my name</p> <p>12 for some reason.</p> <p>13 Q But you shared the revenue you got on</p> <p>14 the Laurette account and the other account</p> <p>15 you sent to Woodforest with Durango?</p> <p>16 A The agreement is between Durango and</p> <p>17 whoever. This is the only thing that has my</p> <p>18 name on it that you will find and I don't</p> <p>19 know why it is like this. It shouldn't be.</p> <p>20 Q Do you believe there is a separate</p> <p>21 agreement between Durango and MCCS or Durango</p> <p>22 and Woodforest National Bank?</p> <p>23 A No.</p> <p>24 Q This is the agreement between them?</p> <p>25 A Yes.</p>	<p style="text-align: right;">84</p> <p>1 Counley</p> <p>2 A I did sign the agreement, but more</p> <p>3 just to send the account through.</p> <p>4 Q Let's take it one by one. The first</p> <p>5 thing they referred to is solicitation of</p> <p>6 merchants; did you do that?</p> <p>7 A Well, we don't really solicit. We</p> <p>8 have a website and we have agents, if that's</p> <p>9 what you mean by solicit.</p> <p>10 Q You do go out and find merchants in</p> <p>11 some way or another, correct?</p> <p>12 A Yes.</p> <p>13 Q Do you do a background investigation</p> <p>14 of merchants?</p> <p>15 A No.</p> <p>16 Q Do you do site inspections of the</p> <p>17 merchants' premises?</p> <p>18 A No.</p> <p>19 Q You don't sell equipment, do you?</p> <p>20 A Not usually, no.</p> <p>21 Q Does Durango have any business</p> <p>22 marketing terminals?</p> <p>23 A We have some probably five or six</p> <p>24 terminals in our office and I would say we --</p> <p>25 no, it's not the focus of ours.</p>
<p style="text-align: right;">83</p> <p>1 Counley</p> <p>2 Q The first whereas "Whereas MCCS is</p> <p>3 engaged in the activities marketing bankcard</p> <p>4 services to merchants, including but not</p> <p>5 limited to, solicitation of merchants,</p> <p>6 background investigation of merchants, site</p> <p>7 inspections of merchants' premises, sales of</p> <p>8 equipment for credit and/or debit card</p> <p>9 transaction processing, supplies and</p> <p>10 training." Do you see that?</p> <p>11 A Yes.</p> <p>12 Q And then the next one says "Whereas,</p> <p>13 the Associate desires to be a member of MCCS'</p> <p>14 sales force which is composed of a group of</p> <p>15 independent contractors who have entered into</p> <p>16 agreements with MCCS pursuant to which they</p> <p>17 are authorized to engage in the business as</p> <p>18 described above for MCCS". Do you see that?</p> <p>19 A Yes.</p> <p>20 Q You signed this agreement, correct?</p> <p>21 A Correct.</p> <p>22 Q Did you undertake to do the things</p> <p>23 that MCCS set forth in the first paragraph?</p> <p>24 MR. KENNEDY: I object to the</p> <p>25 question.</p>	<p style="text-align: right;">85</p> <p>1 Counley</p> <p>2 Q Did you ever provide any training for</p> <p>3 any merchants in connection with using credit</p> <p>4 cards?</p> <p>5 A Yes, training on helping prevent</p> <p>6 chargebacks and understanding the refund</p> <p>7 policies.</p> <p>8 Q If you look at item B under</p> <p>9 association with MCCS, "As a member of MCCS,</p> <p>10 the associate promises she will do the</p> <p>11 following." Do you see that?</p> <p>12 A Yes.</p> <p>13 Q Number 2, "Handle no other products or</p> <p>14 services which are competitive with the</p> <p>15 products and services offered by MCCS." In</p> <p>16 fact, you did handle competitive products,</p> <p>17 didn't you?</p> <p>18 A Yes.</p> <p>19 Q In fact, with this Laurette account,</p> <p>20 in particular, you went to Frontline first</p> <p>21 and then went to Woodforest; is that correct?</p> <p>22 A Yes.</p> <p>23 Q Item 4 says "Comply with all MCCS</p> <p>24 guidelines either now existing or as issued</p> <p>25 from time to time from MCCS"; do you see</p>

22 (Pages 82 to 85)

<p style="text-align: right;">86</p> <p>1 Counley</p> <p>2 that?</p> <p>3 A Yes.</p> <p>4 Q Were there any guidelines that MCCS</p> <p>5 gave you about the type of merchants that it</p> <p>6 was willing to take on?</p> <p>7 A No.</p> <p>8 Q Item 5 says "Participate in the</p> <p>9 training that will be provided by MCCS"; do</p> <p>10 you see that?</p> <p>11 A I received no training.</p> <p>12 Q That was my question. Did you ever</p> <p>13 receive any training from MCCS?</p> <p>14 A No.</p> <p>15 Q I was looking on this and I couldn't</p> <p>16 find the revenue sharing provisions here.</p> <p>17 Are they in this document or in some other</p> <p>18 document?</p> <p>19 A Yes, there was probably something done</p> <p>20 between Joe Montella and Durango which I</p> <p>21 could probably find for you.</p> <p>22 Q You think there is a separate</p> <p>23 agreement besides this one that defines a</p> <p>24 split of the --</p> <p>25 A Yes.</p>	<p style="text-align: right;">88</p> <p>1 Counley</p> <p>2 identification as of this date.)</p> <p>3 Q Do you recognize the Counley Exhibit</p> <p>4 7?</p> <p>5 A Yes.</p> <p>6 Q What is it?</p> <p>7 A It's the Frontline and Durango agent</p> <p>8 agreement. Agent is a -- I think different</p> <p>9 term in our industry than what you guys are</p> <p>10 used to using agent for.</p> <p>11 Q Who signed this?</p> <p>12 A Shane Kairalla.</p> <p>13 Q What do you understand the term agent</p> <p>14 to mean?</p> <p>15 A For us an agent is someone who sends</p> <p>16 accounts.</p> <p>17 Q Someone who goes out and finds</p> <p>18 accounts for the bank?</p> <p>19 A And does the footwork of filling in</p> <p>20 the application, helping the merchant get the</p> <p>21 completed application to the underwriter</p> <p>22 department.</p> <p>23 Q And you also get to determine pricing,</p> <p>24 correct?</p> <p>25 A Yes.</p>
<p style="text-align: right;">87</p> <p>1 Counley</p> <p>2 Q Of the residuals?</p> <p>3 A Yes. It's a small role in the</p> <p>4 processing. It's kind of just -- there is</p> <p>5 not -- it's informal, but yes, I'm sure we</p> <p>6 have something.</p> <p>7 Q Who negotiated the fee split?</p> <p>8 A Either myself or Shane.</p> <p>9 Q Do you remember when you negotiated</p> <p>10 it?</p> <p>11 A I would assume right around the time</p> <p>12 of the agreement.</p> <p>13 Q So in March of '05 give or take?</p> <p>14 A Yes.</p> <p>15 Q Now, let's go back to Counley Exhibit</p> <p>16 5. This is the agreement that you submitted</p> <p>17 to Frontline; is that correct?</p> <p>18 A No, it doesn't appear signed or</p> <p>19 completed, so I don't see how it could be.</p> <p>20 MR. WEIGEL: I will find that</p> <p>21 at lunch. I think there is another</p> <p>22 version of this.</p> <p>23 Mark this as Exhibit 7.</p> <p>24 (Whereupon agent agreement was</p> <p>25 marked Counley Exhibit 7 for</p>	<p style="text-align: right;">89</p> <p>1 Counley</p> <p>2 Q Let me hand you Counley Exhibit 8.</p> <p>3 (Whereupon fax with application</p> <p>4 to Frontline was marked Counley</p> <p>5 Exhibit 8 for identification as of</p> <p>6 this date.)</p> <p>7 Q Do you recognize Counley Exhibit 8?</p> <p>8 A I recognize the application. I do not</p> <p>9 recognize the first page FG000026.</p> <p>10 Q The very first page is faxed to</p> <p>11 Nathan?</p> <p>12 A Faxed to Nathan? No, this is not a</p> <p>13 fax -- I don't recognize this page.</p> <p>14 Q Do you recognize the fax number there,</p> <p>15 916?</p> <p>16 A No.</p> <p>17 Q This would be the fax to you of the</p> <p>18 application after it was signed by the Kirks?</p> <p>19 A No, I don't know.</p> <p>20 Q You see the fax to Nathan is page 1 of</p> <p>21 9; do you see that?</p> <p>22 A Okay and then someone inserted the</p> <p>23 second page.</p> <p>24 Q Apparently, and then the next page is</p> <p>25 page 2 of 9; do you see that?</p>

23 (Pages 86 to 89)

<p style="text-align: right;">90</p> <p>1 Counley</p> <p>2 A 2 of 9 and forward through 9 of 9 I</p> <p>3 recognize.</p> <p>4 Q Okay. And that's your name at the end</p> <p>5 of it?</p> <p>6 A At the end of?</p> <p>7 Q Page 9.</p> <p>8 A That's correct.</p> <p>9 Q In your e-mail to Jennifer Kirk you</p> <p>10 said "Good news. I just learned that our</p> <p>11 U.S. bank will accept replica accounts." Do</p> <p>12 you remember that?</p> <p>13 A Yes.</p> <p>14 Q Do you remember how you learned that</p> <p>15 U.S. Bank decided to accept replica accounts?</p> <p>16 A No. Either I called and spoke to an</p> <p>17 underwriter or I e-mailed them. Probably</p> <p>18 what I did was I probably sent them an e-mail</p> <p>19 or I called them and said would you look at</p> <p>20 this website? Is this something you would</p> <p>21 take a look at if we sent you the application</p> <p>22 and they either replied via e-mail or called</p> <p>23 me or said on the phone yes, send an</p> <p>24 application.</p> <p>25 Q Is that someone at Frontline that you</p>	<p style="text-align: right;">92</p> <p>1 Counley</p> <p>2 Q In terms of the size of your</p> <p>3 relationship in 2006, can you put those in</p> <p>4 any sort of order?</p> <p>5 A That would be difficult. I would be</p> <p>6 making a guess and I could be wrong.</p> <p>7 Q Does one of them stand out as having</p> <p>8 more business than the others?</p> <p>9 A They are probably fairly equal.</p> <p>10 Q I think I may have asked you this</p> <p>11 before, but would Humboldt or Pivotal do</p> <p>12 replica accounts?</p> <p>13 A No.</p> <p>14 Q Do you remember speaking with anybody</p> <p>15 at Humboldt or Pivotal about whether they</p> <p>16 were do replica accounts?</p> <p>17 A I don't remember it explicitly, but</p> <p>18 chances are good that I did ask them or else</p> <p>19 I would have submitted an application as</p> <p>20 well.</p> <p>21 Q So you believe at the time that you</p> <p>22 submitted this application to Frontline, that</p> <p>23 Humboldt and Pivotal won't do replica --</p> <p>24 MR. WENGROVSKY: Objection.</p> <p>25 A Yes, otherwise I would have submitted</p>
<p style="text-align: right;">91</p> <p>1 Counley</p> <p>2 spoke to?</p> <p>3 A Yes.</p> <p>4 Q Do you have any recollection whether</p> <p>5 it was a phone call or an e-mail?</p> <p>6 A I don't and I don't remember who I</p> <p>7 spoke to either.</p> <p>8 Q Was Frontline the only bank that you</p> <p>9 went to to see if you could find someone to</p> <p>10 process for Laurette?</p> <p>11 A Probably I asked other banks if they</p> <p>12 would do this. I mean that's kind of the</p> <p>13 typical scenario for us. We get a website</p> <p>14 and I'll call or e-mail different banks and</p> <p>15 if someone says they will take a look at it,</p> <p>16 then we send them that bank's application.</p> <p>17 Q Do you have any recollection what</p> <p>18 other banks you called?</p> <p>19 A No.</p> <p>20 Q Did you have other banks that you did</p> <p>21 more work with than Frontline at this time</p> <p>22 period, 2006?</p> <p>23 A I did a fair amount of work with --</p> <p>24 our main banks were Humboldt, Frontline,</p> <p>25 Woodforest and Pivotal.</p>	<p style="text-align: right;">93</p> <p>1 Counley</p> <p>2 an application to them and let them determine</p> <p>3 whether they would approve the account or</p> <p>4 not.</p> <p>5 Q Now you see this Frontline application</p> <p>6 was submitted in November of 2006 -- I'm</p> <p>7 sorry -- Frontline was submitted in</p> <p>8 September 2006 and Woodforest was submitted</p> <p>9 in November 2006; do you see that?</p> <p>10 A Yes.</p> <p>11 Q Why did you submit to Frontline first?</p> <p>12 A Perhaps I hadn't asked Woodforest.</p> <p>13 I'm not sure. I am going to speculate here</p> <p>14 perhaps. I did not ask Woodforest yet.</p> <p>15 Q Do you have any recollection?</p> <p>16 MR. KENNEDY: I object to the</p> <p>17 speculation.</p> <p>18 Q Do you have any recollection how it</p> <p>19 came to be that you then made a subsequent</p> <p>20 application on their behalf to Woodforest?</p> <p>21 A At some point in time I must have</p> <p>22 asked Joe is this something we could submit?</p> <p>23 Q Do you remember him saying yes?</p> <p>24 A Otherwise I wouldn't have submitted</p> <p>25 the application. What was your name again?</p>

24 (Pages 90 to 93)

<p style="text-align: right;">94</p> <p>1 Counley</p> <p>2 Q Weigel, W-E-I-G-E-L.</p> <p>3 A Okay.</p> <p>4 Q First name is Bob.</p> <p>5 A Thanks.</p> <p>6 MR. WEIGEL: Please mark this</p> <p>7 as Counley 9.</p> <p>8 (Whereupon Application Report</p> <p>9 was marked Counley Exhibit 9 for</p> <p>10 identification as of this date.)</p> <p>11 MR. WEIGEL: And please mark</p> <p>12 this as Counley 10.</p> <p>13 (Whereupon Application report</p> <p>14 was marked Counley Exhibit 10 for</p> <p>15 identification as of this date.)</p> <p>16 Q Looking at Counley 9, it has rep</p> <p>17 number CE21 and MUD number 277. Do you see</p> <p>18 that?</p> <p>19 A Yes.</p> <p>20 Q And then Counley 10 has the same rep</p> <p>21 number and a different MUD number?</p> <p>22 A Okay.</p> <p>23 Q Do you know why they have you down</p> <p>24 under two different MUD numbers?</p> <p>25 A I have no idea.</p>	<p style="text-align: right;">96</p> <p>1 Counley</p> <p>2 A Myself or someone in Durango.</p> <p>3 Q Okay. Did you receive residuals from</p> <p>4 all of these?</p> <p>5 A Durango did, yes.</p> <p>6 Q Did you personally receive a share of</p> <p>7 those residuals?</p> <p>8 A On the accounts that were mine.</p> <p>9 Q Let's go through the first two were</p> <p>10 declined. The next one says dress4envy.com.</p> <p>11 Was that one that you submitted?</p> <p>12 A Sounds familiar.</p> <p>13 Q You see the word yes after that?</p> <p>14 A I do.</p> <p>15 Q You didn't write that in, right?</p> <p>16 A No.</p> <p>17 Q Is Dress 4 Envy a replica merchant?</p> <p>18 A I can't tell you just by the name.</p> <p>19 Q Let's turn to the next one</p> <p>20 Freshnewkickz; is that one of your merchants?</p> <p>21 A I believe so.</p> <p>22 Q And then is that a replica merchant?</p> <p>23 A I'm assuming it has to do with shoes.</p> <p>24 Whether or not it's replica, I can't recall</p> <p>25 right now.</p>
<p style="text-align: right;">95</p> <p>1 Counley</p> <p>2 Q You don't have any understanding as to</p> <p>3 why you are down for two different MUD</p> <p>4 numbers?</p> <p>5 A No.</p> <p>6 Q MUD stands for?</p> <p>7 A I have no idea.</p> <p>8 Q No idea?</p> <p>9 A No idea.</p> <p>10 Q Could MUD stand for marketing unit?</p> <p>11 A It could.</p> <p>12 Q If you look at Counley Exhibit 6 when</p> <p>13 you signed on --</p> <p>14 A These numbers, that's not my</p> <p>15 handwriting. I don't know if those numbers</p> <p>16 were there before I signed it or not. All</p> <p>17 right, marketing unit, it might -- sorry for</p> <p>18 half sentences.</p> <p>19 Q These are two documents. Let's focus</p> <p>20 on Counley 9 for a second.</p> <p>21 Do you recognize the names of these</p> <p>22 websites or merchants?</p> <p>23 A Yes, for the most part, yes.</p> <p>24 Q And these are all merchants that you</p> <p>25 submitted to Woodforest?</p>	<p style="text-align: right;">97</p> <p>1 Counley</p> <p>2 Q The next one is Tracy Sales, Inc. and</p> <p>3 next to it says adult; do you see that?</p> <p>4 A Yes.</p> <p>5 Q Is that an adult business?</p> <p>6 A Apparently.</p> <p>7 Q Do you recognize the name of the</p> <p>8 enterprise?</p> <p>9 A Yes, I don't remember the specifics of</p> <p>10 the account, but a lot of adult merchants</p> <p>11 will have just the generic company name.</p> <p>12 Q The next one says costlesswatches.com?</p> <p>13 A Yes.</p> <p>14 Q Was that a replica merchant?</p> <p>15 A Just by looking at the name, I can see</p> <p>16 they sell watches, but I don't recall the</p> <p>17 account details specifically.</p> <p>18 Q Just going down the list, if you look</p> <p>19 at the descriptions on the right, are there</p> <p>20 any that strike you as being erroneous?</p> <p>21 MR. WENGROVSKY: You are</p> <p>22 talking about the handwritten ones?</p> <p>23 MR. WEIGEL: Right.</p> <p>24 A I guess the yes means that someone</p> <p>25 here thinks that they were something or --</p>

25 (Pages 94 to 97)

<p style="text-align: right;">98</p> <p>1 Counley</p> <p>2 everything else, I mean escort, adult, yes,</p> <p>3 that all looks about right.</p> <p>4 Q 3 Apples Media, it says mirror up</p> <p>5 above. So that's mirroring that it's adult?</p> <p>6 A Correct.</p> <p>7 Q About what SSS Enterprises Auto; can</p> <p>8 you tell me what their business is?</p> <p>9 A I'm having trouble reading the</p> <p>10 handwriting, but it looks like it says Mobil</p> <p>11 Auto Repair.</p> <p>12 Q Going down you have 3 Apples Media and</p> <p>13 then there is BVCcigarshop.com?</p> <p>14 A Yes.</p> <p>15 Q Why would a cigar retailer do business</p> <p>16 with you?</p> <p>17 MR. WENGROVSKY: Objection.</p> <p>18 A Same thing. It's an account type that</p> <p>19 a lot of banks would not approve because I</p> <p>20 don't know why, but --</p> <p>21 Q Are people concerned with the sale of</p> <p>22 tobacco to minors over the Internet?</p> <p>23 A It's probably a legitimate concern.</p> <p>24 Q Drillsandcutters.com; do you see that?</p> <p>25 A Yes.</p>	<p style="text-align: right;">100</p> <p>1 Counley</p> <p>2 A You have to remember --</p> <p>3 MR. WENGROVSKY: Objection to</p> <p>4 the question. Go ahead.</p> <p>5 MR. KENNEDY: Yes, I object it</p> <p>6 calls for speculation.</p> <p>7 A Not all accounts we do are high risk,</p> <p>8 so we do have -- I mean we do see low risk</p> <p>9 accounts. We have merchants that do have</p> <p>10 previous history that want better rates or</p> <p>11 oftentimes better customer service. There</p> <p>12 are a lot of shops out there that can't get</p> <p>13 someone on the phone and talk to and that's</p> <p>14 kind of our niche; you can pick up the phone</p> <p>15 and call us.</p> <p>16 Q Your niche is providing good customer</p> <p>17 service to your clients?</p> <p>18 A Yes.</p> <p>19 Q You understand their business needs</p> <p>20 and you try to meet them; is that correct?</p> <p>21 A If they have a question, we try to get</p> <p>22 them in touch with the right people.</p> <p>23 Q I have to ask, what is The Mob, Inc.?</p> <p>24 A I really don't know.</p> <p>25 Q You won't actually provide credit card</p>
<p style="text-align: right;">99</p> <p>1 Counley</p> <p>2 Q Do you know what they sell?</p> <p>3 A It says drills and if I remember that</p> <p>4 one, I think it was just random machinery</p> <p>5 stuff.</p> <p>6 Q The next one says</p> <p>7 Isopureprotein diet.com. That's protein</p> <p>8 products; is that right?</p> <p>9 A Yes.</p> <p>10 Q Why do merchants like that use</p> <p>11 Durango?</p> <p>12 A Herbal supplements is another thing</p> <p>13 that a lot of banks are not comfortable with</p> <p>14 because they don't want to get in the</p> <p>15 practice of trying to determine which</p> <p>16 products are allowed and which products</p> <p>17 aren't.</p> <p>18 Q Bodygenic.com you have down as</p> <p>19 vitamins?</p> <p>20 A Yes.</p> <p>21 Q The other one WI Home Bargains; can</p> <p>22 you tell what that is?</p> <p>23 A It looks like advertising.</p> <p>24 Q Why would an advertising operation use</p> <p>25 Woodforest?</p>	<p style="text-align: right;">101</p> <p>1 Counley</p> <p>2 services to the mafia?</p> <p>3 A No.</p> <p>4 Q So there are some businesses that you</p> <p>5 wouldn't be engaged in, correct?</p> <p>6 A Probably for fear of our families'</p> <p>7 lives and things like that.</p> <p>8 Q Is it fair to say, with the exception</p> <p>9 of drillsandcutters.com, that the other</p> <p>10 websites on this page that you sent to</p> <p>11 Woodforest were high risk merchants?</p> <p>12 A No, I don't know what Maximum Mojo is</p> <p>13 and Mob, Inc. and Plaza Stores, but besides</p> <p>14 those, yes.</p> <p>15 Q Do you recognize these as all websites</p> <p>16 that you sent to Woodforest at or about the</p> <p>17 times listed on the left?</p> <p>18 A I recognize -- I mean I've personally</p> <p>19 sent up 1,400 or 1,500 accounts in five and a</p> <p>20 half years, so they might look familiar.</p> <p>21 Q How many of those accounts still</p> <p>22 provide you with residuals?</p> <p>23 A I would say 500/600 max.</p> <p>24 Q Let's look at Counley Exhibit 10.</p> <p>25 A It might be higher than 500. I was</p>

26 (Pages 98 to 101)

<p style="text-align: right;">102</p> <p>1 Counley</p> <p>2 shooting from the hip.</p> <p>3 Q Okay. Can you tell me how much money</p> <p>4 you received in residuals, let's say, in</p> <p>5 2009?</p> <p>6 A Durango or myself?</p> <p>7 Q Let's start with you personally.</p> <p>8 A 214,000.</p> <p>9 Q How about Durango?</p> <p>10 A I think it was close to 2 million.</p> <p>11 Q Okay. Looking at Counley 10, on the</p> <p>12 first page do you recognize any of these</p> <p>13 websites as websites that you have sent to</p> <p>14 Woodforest?</p> <p>15 A I recognize a good number of them.</p> <p>16 Q Which ones do you recognize?</p> <p>17 A Rod Rock Hard Productions.</p> <p>18 Q What did they do?</p> <p>19 A That was an adult account.</p> <p>20 Q Which other ones?</p> <p>21 A VRE Internet was also adult.</p> <p>22 Q Okay.</p> <p>23 A Match Making Moms, I remember that.</p> <p>24 That was a dating website for moms to set</p> <p>25 their kids up with. It sounds like a good</p>	<p style="text-align: right;">104</p> <p>1 Counley</p> <p>2 Q I think you may have skipped the</p> <p>3 second page.</p> <p>4 A I'm sorry. Do you want me to go back</p> <p>5 to page 2?</p> <p>6 Q Yes. Let's just do this logically.</p> <p>7 Do you recognize any of these websites?</p> <p>8 A Again, they are all vaguely familiar.</p> <p>9 Q Any of the websites on this page, do</p> <p>10 you recollect whether they were replica</p> <p>11 websites, websites selling replica products?</p> <p>12 A Looking at the account names, it</p> <p>13 doesn't appear to be -- I mean we went</p> <p>14 through this just the other day. We went</p> <p>15 through our residual reports and tried to</p> <p>16 pick out bags, sunglasses, watches. That's</p> <p>17 kind of the same idea we are doing here,</p> <p>18 trying to figure out by the account name what</p> <p>19 they are selling.</p> <p>20 MR. WEIGEL: Off the record.</p> <p>21 (Whereupon a luncheon recess</p> <p>22 was taken.)</p> <p>23 BY MR. WEIGEL:</p> <p>24 Q Mr. Counley, starting with Counley</p> <p>25 Exhibit 10, I think we are on page 3 and this</p>
<p style="text-align: right;">103</p> <p>1 Counley</p> <p>2 idea. She said she was on Oprah, I think.</p> <p>3 Q Any other ones?</p> <p>4 A I can't remember. Again, they all</p> <p>5 seem vaguely familiar.</p> <p>6 Q Did anyone else at Durango submit</p> <p>7 merchants to Woodforest under your rep</p> <p>8 number?</p> <p>9 A Yes. Everybody used my rep number.</p> <p>10 Q Do you believe you were involved in</p> <p>11 some way or another with all the ones on this</p> <p>12 page?</p> <p>13 A I couldn't answer that.</p> <p>14 Q Do you recognize any of the ones on</p> <p>15 the second page?</p> <p>16 A Yes, most of these are going to be</p> <p>17 vaguely familiar if I look at them and try to</p> <p>18 think back.</p> <p>19 Q Do you know if any of the ones on this</p> <p>20 page were replica merchants?</p> <p>21 A Discount Replicas, that's the one that</p> <p>22 stands out for me.</p> <p>23 Q What page number are you looking at?</p> <p>24 MR. KENNEDY: I think he's on</p> <p>25 the third page.</p>	<p style="text-align: right;">105</p> <p>1 Counley</p> <p>2 is the application report issued by</p> <p>3 Woodforest. We were on the third page and I</p> <p>4 want to direct your attention to a couple of</p> <p>5 different merchants.</p> <p>6 One is called pinkcalyx.com. Do you</p> <p>7 remember that?</p> <p>8 A Yes.</p> <p>9 Q Do you remember that that entity is a</p> <p>10 replica merchant?</p> <p>11 A No.</p> <p>12 Q How about Shopping Addiction; do you</p> <p>13 know if they are a replica merchant?</p> <p>14 A That one I think was.</p> <p>15 Q I think you mentioned previously that</p> <p>16 Discount Replicas was a replica merchant?</p> <p>17 A I think that was in the list of</p> <p>18 accounts we sent over, a list of reports and</p> <p>19 it says replica.</p> <p>20 Q What about Liltrendybabies.com?</p> <p>21 A I don't remember that one being --</p> <p>22 Q How about Prime Time Enterprises?</p> <p>23 A No.</p> <p>24 Q Lee Luxury Bags?</p> <p>25 A We discussed this one. I discussed it</p>

27 (Pages 102 to 105)

<p style="text-align: right;">106</p> <p>1 Counley</p> <p>2 with Bill on the phone, but the application</p> <p>3 had my name on it, but -- it's just an</p> <p>4 application. It's an application PDF and</p> <p>5 sometimes Shane would do it. He's not that</p> <p>6 fancy with computers and he wouldn't change</p> <p>7 it.</p> <p>8 Q Do you remember them being a replica</p> <p>9 merchant?</p> <p>10 A Like I said Lee Luxury Merchants, I</p> <p>11 didn't work that account.</p> <p>12 Q Turning to the next page again, do you</p> <p>13 generally recognize these as accounts you set</p> <p>14 up?</p> <p>15 A Yes.</p> <p>16 Q Do you recognize any of these as</p> <p>17 replica merchants?</p> <p>18 A Fresh Styles I remember, but I don't</p> <p>19 remember if they were replica or if they were</p> <p>20 just fashion accessories.</p> <p>21 Q How about The Purse Boutique?</p> <p>22 A That one was replica.</p> <p>23 Q Excuse me?</p> <p>24 A Yes, that one was replica.</p> <p>25 Q How about Strive Handbags?</p>	<p style="text-align: right;">108</p> <p>1 Counley</p> <p>2 A No. Could have been.</p> <p>3 Q How about charismaticstyle.com; could</p> <p>4 you recognize that as a replica? On the left</p> <p>5 side.</p> <p>6 A Not directly, no.</p> <p>7 Q Do you see at the last page it has a</p> <p>8 summary. It says total applications 112,</p> <p>9 approved 98 and declined 14. Do you see</p> <p>10 that?</p> <p>11 A Yes.</p> <p>12 Q Does that comport with your general</p> <p>13 recollection as to how many merchants you</p> <p>14 sent to Woodforest?</p> <p>15 A Yes, that's pretty good.</p> <p>16 Q I note that Counley Exhibit 9 lists</p> <p>17 another 20 websites and says three of which</p> <p>18 were declined; do you see that?</p> <p>19 A Okay.</p> <p>20 Q Apparently you sent Woodforest</p> <p>21 something like 116 websites -- no, I guess</p> <p>22 132 websites?</p> <p>23 A 135 applications.</p> <p>24 Q Out of that 135 applications, 17 were</p> <p>25 declined?</p>
<p style="text-align: right;">107</p> <p>1 Counley</p> <p>2 A Yes.</p> <p>3 Q Worldof23.com?</p> <p>4 A I don't remember that account</p> <p>5 specifically, but I'm assuming it's shoe</p> <p>6 related and they have it circled here on the</p> <p>7 report.</p> <p>8 Q Why do you assume it's shoe related?</p> <p>9 A 23 for Michael Jordan. I know we're</p> <p>10 in New York.</p> <p>11 Q I'm sorry. I'm a very bad sportsman.</p> <p>12 I was trying to think of 23 as a European</p> <p>13 size for women's shoes.</p> <p>14 Carbon Copy Replicas, do you</p> <p>15 understand that is a replica merchant?</p> <p>16 A I would make that assumption.</p> <p>17 Q How about Kicksisland.com?</p> <p>18 A Again, I guess kicks is a reference to</p> <p>19 shoes. Whether or not it was replica or not,</p> <p>20 I can't say.</p> <p>21 Q How about timepiecewatches.com?</p> <p>22 A Whether or not they are replica</p> <p>23 watches or not --</p> <p>24 Q Do you recognize the name Michelle's</p> <p>25 Boutique as a replica website?</p>	<p style="text-align: right;">109</p> <p>1 Counley</p> <p>2 A That appears to be the number.</p> <p>3 Q Just so I have it clear on the record</p> <p>4 because I think I messed up the numbers. You</p> <p>5 submitted a total of 135 applications to</p> <p>6 Woodforest of which 17 were declined and the</p> <p>7 rest were approved?</p> <p>8 A That's what the sheet says. I can't</p> <p>9 verify that.</p> <p>10 Q Does that sound about right?</p> <p>11 A I would imagine, yes.</p> <p>12 Q Is Durango currently servicing any</p> <p>13 replica merchants?</p> <p>14 A I think they are all closed.</p> <p>15 Q You have indicated, I think, that</p> <p>16 Frontline and Woodforest were the domestic</p> <p>17 banks that you sent replica products to.</p> <p>18 Were there any overseas banks,</p> <p>19 offshore banks that you sent replica products</p> <p>20 to?</p> <p>21 A Yes, a processor called Intabill,</p> <p>22 which we referenced earlier.</p> <p>23 Q Any others?</p> <p>24 A I can't recall.</p> <p>25 Q Was Intabill the one you were</p>

28 (Pages 106 to 109)

<p style="text-align: right;">110</p> <p>1 Counley</p> <p>2 proposing to send Jennifer Kirk to?</p> <p>3 A Yes.</p> <p>4 Q Did you actually, in fact, send any</p> <p>5 websites to Intabill for replica products?</p> <p>6 A Probably.</p> <p>7 Q Did you receive residuals?</p> <p>8 A Yes.</p> <p>9 Q Do you remember what websites you sent</p> <p>10 to Intabill?</p> <p>11 A No.</p> <p>12 Q Are you familiar with a website</p> <p>13 highriskusmerchantaccount.com?</p> <p>14 A An agent of ours, most likely. I</p> <p>15 don't know. I would have to see what you are</p> <p>16 referencing. I don't know if this matters.</p> <p>17 There are agents of ours that have similar</p> <p>18 domain names. If it's the same one you are</p> <p>19 talking about, I don't know.</p> <p>20 MR. WEIGEL: Mark this Counley</p> <p>21 11.</p> <p>22 (Whereupon printout from High</p> <p>23 Risk Merchant Accounts website was</p> <p>24 marked Counley Exhibit 11 for</p> <p>25 identification as of this date.)</p>	<p style="text-align: right;">112</p> <p>1 Counley</p> <p>2 they are, we need to update the website</p> <p>3 because after we received the subpoena from</p> <p>4 Gucci, we stopped taking replica.</p> <p>5 Q When did you stop taking replica</p> <p>6 products?</p> <p>7 A When we received the subpoena from</p> <p>8 Gucci regarding this case.</p> <p>9 Q Before you were sued?</p> <p>10 A I think the subpoena and then we</p> <p>11 discussed it and that's when we made kind of</p> <p>12 a policy change not to do it any longer.</p> <p>13 Q Did you continue to accept residuals</p> <p>14 from the accounts you had set up?</p> <p>15 MR. WENGROVSKY: Objection. Go</p> <p>16 ahead.</p> <p>17 A Yes, I don't see why they would stop</p> <p>18 sending residuals.</p> <p>19 Q Okay.</p> <p>20 A No one notified us not to accept</p> <p>21 replica.</p> <p>22 Q And this -- when you said it has your</p> <p>23 Apply Now button, you are referring to the</p> <p>24 symbol on the sort of right-hand side of the</p> <p>25 page that says Apply Now 95 Percent Approval?</p>
<p style="text-align: right;">111</p> <p>1 Counley</p> <p>2 Q What I have handed you is Counley</p> <p>3 Exhibit 11 is a screen shot. I think the</p> <p>4 website is highriskusmerchantaccount.com. Do</p> <p>5 you have it in front of you?</p> <p>6 A Yes.</p> <p>7 Q Is this operation affiliated with</p> <p>8 Durango at all?</p> <p>9 A By the looks of it, it appears to be</p> <p>10 an agent of ours because it has our Apply Now</p> <p>11 button on the right-hand side, but it's not</p> <p>12 our website, no.</p> <p>13 Q Do you know who operates this website?</p> <p>14 A I would have to ask Bill.</p> <p>15 Q Are you familiar with an outfit</p> <p>16 referred to as HR Payment Processing in San</p> <p>17 Antonio, Texas?</p> <p>18 A No, but that doesn't mean that they</p> <p>19 are not part of Durango or affiliated with</p> <p>20 Durango.</p> <p>21 Q Do you know if Durango is currently</p> <p>22 accepting applications from this agent?</p> <p>23 A From where?</p> <p>24 Q From this website.</p> <p>25 A This one? I don't believe so. If</p>	<p style="text-align: right;">113</p> <p>1 Counley</p> <p>2 A Correct.</p> <p>3 Q If you click on that, where does it</p> <p>4 send you?</p> <p>5 A An application page on Durango's</p> <p>6 website.</p> <p>7 Q You see here that they do list replica</p> <p>8 products as one of the products that you</p> <p>9 accept?</p> <p>10 A Yes. Is this a current printout of</p> <p>11 their website?</p> <p>12 Q Yes. It was printed out on June 13.</p> <p>13 A I'll have to follow-up with them and</p> <p>14 tell them to update it.</p> <p>15 MR. WEIGEL: Mark this as</p> <p>16 Counley Exhibit 12.</p> <p>17 (Whereupon printout from</p> <p>18 Merchant Accounts website was marked</p> <p>19 Counley Exhibit 12 for identification</p> <p>20 as of this date.)</p> <p>21 Q I think you said earlier that you have</p> <p>22 done work with The Transaction Group?</p> <p>23 A Yes.</p> <p>24 Q Who is that?</p> <p>25 A Michael Rupkalvis, R-U-P-K-A-L-V-I-S.</p>

29 (Pages 110 to 113)

<p style="text-align: right;">114</p> <p>1 Counley</p> <p>2 Q Where is he located?</p> <p>3 A I'm not sure. In the U.S.</p> <p>4 Q Are they an agent that supplies</p> <p>5 applications to Durango?</p> <p>6 A Yes.</p> <p>7 Q Do they work exclusively with Durango?</p> <p>8 A No.</p> <p>9 Q Turn to page 2 of 5 and I am going to</p> <p>10 represent to you that this was printed off</p> <p>11 the website on June 13, 2010 under Internet</p> <p>12 High Risk Merchant Account Services; do you</p> <p>13 see that?</p> <p>14 A I do.</p> <p>15 Q It says, "The Transaction Group has</p> <p>16 partnered with National Bankcard Systems of</p> <p>17 Durango to offer internet high risk account</p> <p>18 services. Do you see that?</p> <p>19 A Yes.</p> <p>20 Q Is that accurate?</p> <p>21 A It's true.</p> <p>22 Q If you turn to the bottom of that page</p> <p>23 it says "Among the acceptable businesses</p> <p>24 which we can service are" and the last one</p> <p>25 says "Replica products, yes, U.S. accounts!"</p>	<p style="text-align: right;">116</p> <p>1 Counley</p> <p>2 the subpoena from Gucci for this Laurette</p> <p>3 case.</p> <p>4 Q If I were to represent to you that the</p> <p>5 subpoena was served on you in August 2008, is</p> <p>6 it your understanding from August 2008</p> <p>7 forward, you stopped accepting replica?</p> <p>8 A Can I ask you when you sued us instead</p> <p>9 of subpoena?</p> <p>10 Q We sued you in August 2009.</p> <p>11 A I would have to look and see when we</p> <p>12 made the change. I can't confirm that it was</p> <p>13 2008 instead of 2009.</p> <p>14 MR. WEIGEL: Mark these</p> <p>15 documents 13 and 14.</p> <p>16 (Whereupon e-mails was marked</p> <p>17 Counley Exhibit 13 and 14 for</p> <p>18 identification as of this date.)</p> <p>19 Q I'm going to ask you to ignore Checa</p> <p>20 Chong, Jana at the top. That's my associate,</p> <p>21 but everything below that line is what we got</p> <p>22 from Durango, I guess, over the weekend.</p> <p>23 Do you recognize Counley Exhibit 13?</p> <p>24 A It's a lead sheet, correct.</p> <p>25 Q Where did that come from?</p>
<p style="text-align: right;">115</p> <p>1 Counley</p> <p>2 Some with no reserve!" Do you see that?</p> <p>3 A I do.</p> <p>4 Q Now, does The Transaction Group, in</p> <p>5 partnership with National Bankcard Systems of</p> <p>6 Durango, still find replica products to be</p> <p>7 acceptable?</p> <p>8 A No. All this is is a web page and it</p> <p>9 clearly needs to be updated and again, not to</p> <p>10 keep saying this, we are a small company and</p> <p>11 we find ourselves wearing many hats trying to</p> <p>12 get the jobs done and apparently we need to</p> <p>13 go out to all of your agents and have them</p> <p>14 update any websites that we use, but we sent</p> <p>15 you -- today you'll have copies of a customer</p> <p>16 service inbox and you will see that for a</p> <p>17 while now any replica accounts we have, just</p> <p>18 been declining if we get a lead on them.</p> <p>19 I guess declining is not the correct</p> <p>20 term. Letting the merchant know we can no</p> <p>21 longer assist them. We do not make approval</p> <p>22 or decline decisions.</p> <p>23 Q When did you make the decision to stop</p> <p>24 accepting replica?</p> <p>25 A I'm pretty certain after we received</p>	<p style="text-align: right;">117</p> <p>1 Counley</p> <p>2 A Goemerchant.com.</p> <p>3 Q Are they an agent of Durango?</p> <p>4 A Correct.</p> <p>5 Q Do you see that under the description</p> <p>6 of the business they say knockoffs?</p> <p>7 A I do.</p> <p>8 Q Turning to Exhibit 14, do you see</p> <p>9 that's an e-mail from Brad Jess?</p> <p>10 A I do.</p> <p>11 Q Back to sales@mirellaflly.com?</p> <p>12 A Yes.</p> <p>13 Q You see he provides a quote for that</p> <p>14 business?</p> <p>15 A I do.</p> <p>16 Q That business was not rejected out of</p> <p>17 hand?</p> <p>18 A You are correct.</p> <p>19 Q At this point in time, Durango was</p> <p>20 still accepting applications from replica</p> <p>21 merchants?</p> <p>22 A Based on this, it's probably</p> <p>23 August 2009 that we made the change.</p> <p>24 Q As of August 2009, if you got a lead</p> <p>25 that indicated that the business was selling</p>

30 (Pages 114 to 117)

<p style="text-align: right;">118</p> <p>1 Counley</p> <p>2 replica products, you declined to process</p> <p>3 that application?</p> <p>4 A Yes. You will see that confirmed in</p> <p>5 the other customer service list.</p> <p>6 Q Why did you choose to do that?</p> <p>7 A It's not worth it. If we are paying</p> <p>8 for a bunch of lawyers and trips to get sued</p> <p>9 over, we are a small company. We don't have</p> <p>10 the resources to take on this kind of thing.</p> <p>11 Q You are certain that you are not now</p> <p>12 accepting replica merchants?</p> <p>13 A Unless they are lying to us on the</p> <p>14 applications.</p> <p>15 MR. WEIGEL: Please mark this</p> <p>16 as Counley Exhibit 15.</p> <p>17 (Whereupon application to</p> <p>18 Woodforest was marked Counley Exhibit</p> <p>19 15 for identification as of this</p> <p>20 date.)</p> <p>21 Q Mr. Counley, I've handed you</p> <p>22 Exhibit 15. Do you recognize this as an</p> <p>23 application that you helped to submit to</p> <p>24 Woodforest for a website entitled</p> <p>25 freshnewkickz.com?</p>	<p style="text-align: right;">120</p> <p>1 Counley</p> <p>2 A I do.</p> <p>3 Q You see that it's the Jie Mei Trade</p> <p>4 Company Limited in Fujian, China?</p> <p>5 A Yes.</p> <p>6 Q And you charged them a rate of 3.5?</p> <p>7 A Yes.</p> <p>8 Q Do you have any idea how that was</p> <p>9 determined?</p> <p>10 A Three and a half to 4 percent is</p> <p>11 general rate that a lot of high risk</p> <p>12 merchants pay.</p> <p>13 Q The last few pages of this exhibit are</p> <p>14 screen shots on the website?</p> <p>15 A Okay.</p> <p>16 Q Do you remember reviewing this</p> <p>17 website?</p> <p>18 A No.</p> <p>19 Q Do you believe you reviewed this</p> <p>20 website?</p> <p>21 A We probably did look for policy and</p> <p>22 contact information.</p> <p>23 Q Do you see under product it lists</p> <p>24 Gucci shoes and I guess the fifth or the</p> <p>25 sixth up from the bottom?</p>
<p style="text-align: right;">119</p> <p>1 Counley</p> <p>2 A Yes, I think so.</p> <p>3 Q Do you see a date on the top there?</p> <p>4 A December of '07, right.</p> <p>5 Q I see a December 4, 2007 date at the</p> <p>6 top. Do you see that?</p> <p>7 A Okay. It's hard for me to read.</p> <p>8 Q Do you see it on the upper left-hand</p> <p>9 side there?</p> <p>10 A Yes, sorry.</p> <p>11 Q Do you have any reason to doubt you</p> <p>12 submitted this application on behalf of Fresh</p> <p>13 New Kickz on or about December 4, 2007?</p> <p>14 A No.</p> <p>15 Q This application indicates that they</p> <p>16 are clearly selling replica products,</p> <p>17 correct?</p> <p>18 A Correct.</p> <p>19 Q And they indicate that the products</p> <p>20 are made in China; do you see that?</p> <p>21 A Okay.</p> <p>22 Q It says "List the name and addresses</p> <p>23 of vendors from whom the product is</p> <p>24 purchased" and it says "Vendors listed as</p> <p>25 trade references"?</p>	<p style="text-align: right;">121</p> <p>1 Counley</p> <p>2 A I do see that.</p> <p>3 Q Do you have any reason to doubt Fresh</p> <p>4 New Kickz was selling replica Gucci products?</p> <p>5 A I don't know Gucci has shoes, but they</p> <p>6 were selling replica products and Gucci is</p> <p>7 listed on their site. Whether or not they</p> <p>8 were selling replica Gucci shoes, I'm not</p> <p>9 sure.</p> <p>10 Q Today would you accept this account?</p> <p>11 A No, not that we have seen the trouble</p> <p>12 it's causing.</p> <p>13 MR. WEIGEL: Mark this as</p> <p>14 Exhibit 16.</p> <p>15 (Whereupon application to</p> <p>16 Woodforest was marked Counley Exhibit</p> <p>17 16 for identification as of this</p> <p>18 date.)</p> <p>19 Q Do you recognize as an application</p> <p>20 that you filed on behalf of dress4envy.com?</p> <p>21 A Yes, I remember his name.</p> <p>22 Q And that's your name there as the</p> <p>23 agent?</p> <p>24 A It is.</p> <p>25 Q I'm going to show you some other</p>

31 (Pages 118 to 121)

<p style="text-align: right;">122</p> <p>1 Counley</p> <p>2 applications, but for the time being I want</p> <p>3 you to assume some of them say 278 and some</p> <p>4 say 277 under the merchants -- the MUD</p> <p>5 number.</p> <p>6 A All right.</p> <p>7 Q Do you have any understanding as to</p> <p>8 when you use one versus the other?</p> <p>9 MR. WENGROVSKY: Objection.</p> <p>10 A I never made any changes to that area.</p> <p>11 Q Did you cross off 278 and write 277</p> <p>12 there?</p> <p>13 A I never made any changes to that area.</p> <p>14 Q This was just on the application when</p> <p>15 it came up on your computer screen?</p> <p>16 A Someone else, after I sent this in,</p> <p>17 made that change.</p> <p>18 Q You have on your computer --</p> <p>19 A 278 would appear on the screen.</p> <p>20 Q This application would come up on your</p> <p>21 screen and it would already have 278 on it?</p> <p>22 A Right.</p> <p>23 Q You can see Dress 4 Envy lists the</p> <p>24 product as replica products?</p> <p>25 A Yes.</p>	<p style="text-align: right;">124</p> <p>1 Counley</p> <p>2 Q So basically you also judge it based</p> <p>3 upon whether you think they have someplace</p> <p>4 else to go?</p> <p>5 A Yes. There are other processors doing</p> <p>6 replica accounts, so no one is going to pay</p> <p>7 18 percent.</p> <p>8 Q During this time period and I guess</p> <p>9 this one was sent in November of 2007; do you</p> <p>10 see that?</p> <p>11 A Yes.</p> <p>12 Q During this time period who were your</p> <p>13 other competitors in terms of finding banks</p> <p>14 to process credit cards for replica</p> <p>15 merchants?</p> <p>16 A There is still a lot -- I mean to this</p> <p>17 day, Durango gets contacted by processors</p> <p>18 trying to have us send them business and they</p> <p>19 say we accept replica products. To this day</p> <p>20 there are still processors out there or other</p> <p>21 brokerage firms, so, I couldn't give you a</p> <p>22 list of all of the people out there. I mean</p> <p>23 there is a lot of brokers like Durango.</p> <p>24 Q I'm asking you, sitting here today,</p> <p>25 whether you have any names that come to mind</p>
<p style="text-align: right;">123</p> <p>1 Counley</p> <p>2 Q Is that something you would have</p> <p>3 written in?</p> <p>4 A Yes. We did do that on some of these.</p> <p>5 Q Can you tell what you typed in and</p> <p>6 what the merchant typed in?</p> <p>7 A No, because anyone can type in with</p> <p>8 Adobe. I can't recall if I typed in</p> <p>9 information or they did.</p> <p>10 Q Where they say list the names and</p> <p>11 addresses of vendors from whom the product</p> <p>12 was purchased, it says See Trade Reference;</p> <p>13 do you see that?</p> <p>14 A Yes.</p> <p>15 Q It lists Popular Way?</p> <p>16 A Yes. I'm not sure who Popular Way is.</p> <p>17 Q Now, this merchant you charged 3.75.</p> <p>18 Do you know how you came upon that rate?</p> <p>19 A Again, I mean it's just a range and</p> <p>20 sometimes we -- this probably sounds bad, but</p> <p>21 sometimes if the merchant is more difficult</p> <p>22 to deal with, they call and they're pushy and</p> <p>23 hard to communicate. I'm sure you have a</p> <p>24 similar situation. If this guy is going to</p> <p>25 cost a little more of my time, you know.</p>	<p style="text-align: right;">125</p> <p>1 Counley</p> <p>2 that are competitors or were competitors of</p> <p>3 yours at this time for placing replica</p> <p>4 product merchants?</p> <p>5 A One off the top of my head is AVPS,</p> <p>6 AVP Solutions.</p> <p>7 Q Anyone else that you can think of?</p> <p>8 A Not off the top of my head, but I know</p> <p>9 there are others.</p> <p>10 Q Again, under Dress 4 Envy website, did</p> <p>11 you review that website before submitting the</p> <p>12 application?</p> <p>13 A It's the same as the last application,</p> <p>14 we do check for refund policy and contact</p> <p>15 information. I do see now on the printout it</p> <p>16 says Gucci on here.</p> <p>17 Q It lists a number of Gucci shoe</p> <p>18 products, right? There are pictures of Gucci</p> <p>19 shoes?</p> <p>20 A There are.</p> <p>21 Q And then in the men's category it says</p> <p>22 Gucci in terms of the brands they carry. Do</p> <p>23 you see that?</p> <p>24 A I see that.</p> <p>25 Q And also in the woman's category it</p>

<p style="text-align: right;">126</p> <p>1 Counley</p> <p>2 lists Gucci?</p> <p>3 A Yes.</p> <p>4 Q Now, did you attach these pages to the</p> <p>5 website -- to the application when you sent</p> <p>6 it in?</p> <p>7 A No, it's not our job to review</p> <p>8 websites or approve applications. We just</p> <p>9 help the merchant fill out the application</p> <p>10 and send it in.</p> <p>11 Q But you would check the refund policy,</p> <p>12 correct?</p> <p>13 A Yes.</p> <p>14 Q If you look at the last page of</p> <p>15 Exhibit 16 under Frequently Asked Questions</p> <p>16 it says "Can I get a refund?" Do you see</p> <p>17 that?</p> <p>18 A I do.</p> <p>19 Q Do you see here it says "Because of</p> <p>20 the price I am selling the goods for, most of</p> <p>21 the time, unless it is an incorrect product</p> <p>22 that was shipped, I cannot do refunds." Do</p> <p>23 you see that?</p> <p>24 A I do.</p> <p>25 Q Nevertheless you still submitted this</p>	<p style="text-align: right;">128</p> <p>1 Counley</p> <p>2 appropriate to split these.</p> <p>3 MR. WEIGEL: They were produced</p> <p>4 this way by your client. I assume</p> <p>5 your client -- we didn't assemble it.</p> <p>6 This is the way it was produced.</p> <p>7 MR. KENNEDY: They were</p> <p>8 produced as consecutive pages, but I</p> <p>9 don't know that they were stapled</p> <p>10 together. I can't speak to that.</p> <p>11 That's fine. I'll note on the</p> <p>12 record I object to Exhibit 15, 16 and</p> <p>13 I believe it's also Exhibit 4 that you</p> <p>14 put in earlier.</p> <p>15 Just a minute. I'll make</p> <p>16 sure -- yes, Exhibit 4.</p> <p>17 MR. WEIGEL: Please mark this</p> <p>18 as Counley Exhibit 17.</p> <p>19 (Whereupon application to</p> <p>20 Woodforest was marked Counley Exhibit</p> <p>21 17 for identification as of this</p> <p>22 date.)</p> <p>23 Q Do you recognize Exhibit 17 as an</p> <p>24 application you submitted on behalf of</p> <p>25 SimplyChicPurses.com?</p>
<p style="text-align: right;">127</p> <p>1 Counley</p> <p>2 application?</p> <p>3 A They have to have a refund policy</p> <p>4 listed online. They don't have to have a</p> <p>5 policy of refunds. We try to tell merchants</p> <p>6 they should do refunds because its cheaper</p> <p>7 than chargebacks. Whatever the refund policy</p> <p>8 is, it has to be listed online.</p> <p>9 Q So your job is to check to make sure</p> <p>10 there is a policy, not what it is?</p> <p>11 A Correct.</p> <p>12 Q You would advise merchants that it</p> <p>13 makes sense for them to do that because it is</p> <p>14 cheaper for them to have a refund policy than</p> <p>15 to get hit with a lot of chargebacks?</p> <p>16 A Because if you get a chargeback, the</p> <p>17 customer gets the money back anyways and the</p> <p>18 merchant gets a 25-dollar fee, and if they</p> <p>19 get too many chargebacks they get can get --</p> <p>20 MR. KENNEDY: I view of the</p> <p>21 testimony, I have to object to the</p> <p>22 exhibit. It comprises two documents.</p> <p>23 You may have done that</p> <p>24 unintentionally, I'm not suggesting</p> <p>25 otherwise. I think it would be</p>	<p style="text-align: right;">129</p> <p>1 Counley</p> <p>2 A Yes.</p> <p>3 Q Was this submitted by Ms. Stephanie</p> <p>4 Walker; do you see that?</p> <p>5 A Yes.</p> <p>6 Q Was she referred to you by Jennifer</p> <p>7 Kirk?</p> <p>8 A Yes.</p> <p>9 Q And she was selling replica handbags,</p> <p>10 correct?</p> <p>11 A Correct.</p> <p>12 Q When you look at the vendors, you can</p> <p>13 tell again her replica handbags also came</p> <p>14 from China, correct?</p> <p>15 A Correct.</p> <p>16 Q You were charging her a rate of</p> <p>17 3.75 percent?</p> <p>18 A Correct.</p> <p>19 MR. WEIGEL: Mark this as</p> <p>20 Counley Exhibit 18.</p> <p>21 (Whereupon application to</p> <p>22 Woodforest was marked Counley Exhibit</p> <p>23 18 for identification as of this</p> <p>24 date.)</p> <p>25 A This is the other gentleman that I was</p>

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<p style="text-align: right;">130</p> <p>1 Counley</p> <p>2 telling you Jennifer referred to us.</p> <p>3 Q By this we are talking about</p> <p>4 Exhibit 18?</p> <p>5 A Yes.</p> <p>6 Q And the gentleman's name is Frank</p> <p>7 Altobelli?</p> <p>8 A Yes.</p> <p>9 Q He was referred to you by Jennifer</p> <p>10 Kirk?</p> <p>11 A Correct.</p> <p>12 Q You submitted this application on</p> <p>13 behalf of his company or his website</p> <p>14 carboncopyreplica.com to Woodforest?</p> <p>15 A Yes.</p> <p>16 Q And again he sells replica handbags?</p> <p>17 A Correct.</p> <p>18 Q You had no doubt that this man was</p> <p>19 selling replica handbags when you filled this</p> <p>20 out this application; is that correct?</p> <p>21 A Nope.</p> <p>22 Q Looking at the fax header at the top,</p> <p>23 it was sent on April 10, 2007?</p> <p>24 A Okay.</p> <p>25 Q Do you see it?</p>	<p style="text-align: right;">132</p> <p>1 Counley</p> <p>2 what would you do with it when you got the</p> <p>3 fax back?</p> <p>4 A Yes, we use the efax.com, which is an</p> <p>5 E-fax server. The faxes come via e-mail and</p> <p>6 I just hit forward.</p> <p>7 Q Where would you send them?</p> <p>8 A Woodforest applications would get sent</p> <p>9 to Joe Montella.</p> <p>10 Q Was there ever a time when you would</p> <p>11 just send it directly to Woodforest?</p> <p>12 A No.</p> <p>13 Q Do you know if this was faxed to you</p> <p>14 or not from the merchant, the last page?</p> <p>15 A I don't see why a merchant would fax</p> <p>16 me a copy of any page of their website. It's</p> <p>17 possible, but it's not standard practice.</p> <p>18 Q In any event, you did review their</p> <p>19 returns policy, correct?</p> <p>20 A Fourteen day return policy.</p> <p>21 Q Right under that it says "This is our</p> <p>22 disclaimer about selling replicas." Do you</p> <p>23 see that?</p> <p>24 A I do, but I do not remember reviewing</p> <p>25 that.</p>
<p style="text-align: right;">131</p> <p>1 Counley</p> <p>2 A Yes.</p> <p>3 Q The last page here looks like it was</p> <p>4 faxed at the same time and it contains the</p> <p>5 returns policy; do you see that?</p> <p>6 A I do.</p> <p>7 Q Is this something that you sent with</p> <p>8 the application to Woodforest to give them so</p> <p>9 that they had the returns policy at the time?</p> <p>10 A No, I don't know whose faxing this,</p> <p>11 but we submitted the application via e-mail.</p> <p>12 I don't know where it came from.</p> <p>13 Q Just so I understand, you would</p> <p>14 prepare the application and send it by e-mail</p> <p>15 to the website, correct?</p> <p>16 A To the merchant.</p> <p>17 Q To the merchant?</p> <p>18 A Correct.</p> <p>19 Q And they would presumably print that</p> <p>20 out, sign it and fax it back to you?</p> <p>21 A Or they would get it, finish typing it</p> <p>22 in, print, sign and fax back or scan it and</p> <p>23 e-mail it back.</p> <p>24 Q Okay. When you got the fax, would you</p> <p>25 then e-mail that fax to Woodforest or to --</p>	<p style="text-align: right;">133</p> <p>1 Counley</p> <p>2 Q It says "We are not an authorized</p> <p>3 dealer or agent of any of the designers whose</p> <p>4 names are used here. All references to</p> <p>5 Fendi, Gucci, Louis Vuitton", and it goes on,</p> <p>6 "are for identification purposes only." Do</p> <p>7 you see that?</p> <p>8 A I do.</p> <p>9 Q So you don't know if you reviewed that</p> <p>10 when you reviewed the returns language which</p> <p>11 was directly above that?</p> <p>12 A It's possible, but I don't recall.</p> <p>13 MR. KENNEDY: Please read that</p> <p>14 back.</p> <p>15 (Whereupon the record was read</p> <p>16 back by the reporter.)</p> <p>17 (Whereupon application was</p> <p>18 marked Counley Exhibit 19 for</p> <p>19 identification as of this date.)</p> <p>20 Q Exhibit 19 is an application you</p> <p>21 prepared for a website entitled</p> <p>22 hotshotwatches.com; do you see that?</p> <p>23 A I do.</p> <p>24 Q Apparently from the bottom it looks</p> <p>25 like it was prepared on or about April 17,</p>

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<p style="text-align: right;">134</p> <p>1 Counley</p> <p>2 2007. Do you see that?</p> <p>3 A Yes.</p> <p>4 Q That indicates that they were selling</p> <p>5 replica watches?</p> <p>6 A It does.</p> <p>7 Q Was this another individual which was</p> <p>8 referred to you by Jennifer Kirk?</p> <p>9 A Yes. Now that I'm looking at it, I do</p> <p>10 remember the name and I see that Laurette</p> <p>11 Company is listed as a reference on the</p> <p>12 application.</p> <p>13 Q Did you ever check any of the</p> <p>14 references?</p> <p>15 A No, it's not our job to check</p> <p>16 references.</p> <p>17 Q Did you ever speak to Mr. Norlie?</p> <p>18 A A lot of merchants I deal with are</p> <p>19 primarily e-mail. I don't know if I spoke</p> <p>20 with him.</p> <p>21 Q Was this a website that was</p> <p>22 successful?</p> <p>23 MR. WENGROVSKY: Objection.</p> <p>24 Q Did you get residuals from this</p> <p>25 website?</p>	<p style="text-align: right;">136</p> <p>1 Counley</p> <p>2 Q Did you happen to see under men's</p> <p>3 watches that they carry Gucci products?</p> <p>4 A I see that now.</p> <p>5 Q Under women's watches they list Gucci</p> <p>6 products?</p> <p>7 A I do see that now.</p> <p>8 Q Do you see where it says "Are you</p> <p>9 watches authentic" and it says "All products</p> <p>10 sold are exact replicas and not being sold or</p> <p>11 represented as original." Do you see that?</p> <p>12 A I do. I do now.</p> <p>13 Q Do you have any reason to doubt that</p> <p>14 you knew that these -- this website</p> <p>15 hotshotwatches.com were selling replica Gucci</p> <p>16 watches at the time you submitted the</p> <p>17 account?</p> <p>18 MR. WENGROVSKY: Objection.</p> <p>19 A Read that back.</p> <p>20 (Whereupon the record was read</p> <p>21 back by the reporter.)</p> <p>22 A It's the same question. We knew they</p> <p>23 had replica watches. Whether or not they</p> <p>24 were selling replica Gucci products, I'm not</p> <p>25 sure.</p>
<p style="text-align: right;">135</p> <p>1 Counley</p> <p>2 A I would have to look at the residual</p> <p>3 reports.</p> <p>4 Q If you look at the description of</p> <p>5 products sold, it says selling replica</p> <p>6 watches?</p> <p>7 A Yes.</p> <p>8 Q It says the watches are coming from EH</p> <p>9 Best Fashion in Guangzhou, China?</p> <p>10 A Correct.</p> <p>11 Q If you flip to the next page under</p> <p>12 Frequently Asked Questions, these were</p> <p>13 printed out of the website. Can you see</p> <p>14 that?</p> <p>15 A I do.</p> <p>16 Q You reviewed the website to make sure</p> <p>17 they had a returns or exchange policy,</p> <p>18 correct?</p> <p>19 A Right.</p> <p>20 Q Did you review this page?</p> <p>21 A I must have clicked on this page and</p> <p>22 once I saw the return policy then my job is</p> <p>23 done.</p> <p>24 Q Okay?</p> <p>25 A I don't know -- well, go ahead.</p>	<p style="text-align: right;">137</p> <p>1 Counley</p> <p>2 Q Do you have any doubt that you could</p> <p>3 have determined what kind of products they</p> <p>4 were selling if you just looked through the</p> <p>5 website?</p> <p>6 MR. WENGROVSKY: Objection.</p> <p>7 A It's not our job to review for</p> <p>8 products or underwrite accounts.</p> <p>9 Q I understand, but do you have any</p> <p>10 doubt that if you wanted to find out what</p> <p>11 kind of products they were selling, you could</p> <p>12 have looked at the website and determined it?</p> <p>13 MR. WENGROVSKY: Repeat the</p> <p>14 objection.</p> <p>15 A If that was our role in the process,</p> <p>16 we could do that, but that's not our role.</p> <p>17 Q I understand you say it's not your</p> <p>18 role, but it wouldn't have been difficult for</p> <p>19 you to determine what products they were</p> <p>20 selling; is that correct?</p> <p>21 MR. WENGROVSKY: That's been</p> <p>22 asked and answered.</p> <p>23 Q You can answer until he tells you not</p> <p>24 to.</p> <p>25 A Okay, I suppose, but our duty isn't to</p>

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<p style="text-align: right;">138</p> <p>1 Counley</p> <p>2 be a police force where we review products</p> <p>3 and see if they are doing trademark</p> <p>4 infringement or not. I don't know what it</p> <p>5 takes to be able to tell if they are selling</p> <p>6 trademark products or not.</p> <p>7 I don't know what it would take, so</p> <p>8 would it be difficult or not? Would I have</p> <p>9 to be educated and know the market? I don't</p> <p>10 know. I can't answer that.</p> <p>11 MR. WEIGEL: Mark this as</p> <p>12 Counley Exhibit 20.</p> <p>13 (Whereupon application to</p> <p>14 Woodforest was marked Counley Exhibit</p> <p>15 20 for identification as of this</p> <p>16 date.)</p> <p>17 Q Going back to Exhibit 9 for a second.</p> <p>18 Would you accept and submit an application</p> <p>19 such as the one for Hot Shot Watches today?</p> <p>20 A No.</p> <p>21 Q Why not?</p> <p>22 A Same answer as before. Replica</p> <p>23 products are not a venture we are looking to</p> <p>24 get into given the legal complications.</p> <p>25 Q Turning your attention to Exhibit 20,</p>	<p style="text-align: right;">140</p> <p>1 Counley</p> <p>2 A Correct.</p> <p>3 Q These folks are only paying</p> <p>4 3.25 percent. Do you know how they managed</p> <p>5 to negotiate that rate?</p> <p>6 A No. I don't recall the specific</p> <p>7 circumstances that resulted in the lower</p> <p>8 rate.</p> <p>9 Q Looking at the fax header for a</p> <p>10 second, you see the first page of the</p> <p>11 application starts out 2 of 6 and there is 3</p> <p>12 of six and then for some reason it goes to 6</p> <p>13 of 6?</p> <p>14 A Correct.</p> <p>15 Q I don't know where the middle pages</p> <p>16 went. You see there is a "to" number at the</p> <p>17 top? It says "To: 18009711063"?</p> <p>18 A Yes.</p> <p>19 Q Is there your fax number?</p> <p>20 A No.</p> <p>21 Q Is that the fax number for Joe</p> <p>22 Montella in Arizona?</p> <p>23 A I didn't fax these to Joe, so I would</p> <p>24 say no, but I'm not really sure of the</p> <p>25 process once I sent them to Joe.</p>
<p style="text-align: right;">139</p> <p>1 Counley</p> <p>2 this is an application you submitted on</p> <p>3 behalf of charismatic.com; do you see that?</p> <p>4 A Yes.</p> <p>5 Q Do you know who referred this customer</p> <p>6 to you?</p> <p>7 A No, not off the top of my head.</p> <p>8 Q Okay. Again, they indicate plainly on</p> <p>9 the front of this application that they sell</p> <p>10 replica products?</p> <p>11 A That's true.</p> <p>12 Q Is that something that you typed in?</p> <p>13 A I think I must have. It seems to be a</p> <p>14 pattern, so I'm going to assume that I was</p> <p>15 the one putting that in there.</p> <p>16 Q Where it says description of products</p> <p>17 sold, it says replica products; do you see</p> <p>18 that?</p> <p>19 A Yes.</p> <p>20 Q And again it says see trade reference</p> <p>21 where it is asking who the vendors were it</p> <p>22 was purchasing from?</p> <p>23 A Correct.</p> <p>24 Q And that is an address in China, a</p> <p>25 company in China?</p>	<p style="text-align: right;">141</p> <p>1 Counley</p> <p>2 Q You don't know if you looked at the</p> <p>3 screen shots on the back of this or not?</p> <p>4 A The same answer as before. Once I</p> <p>5 have seen they have a refunds policy, we can</p> <p>6 submit the application.</p> <p>7 Q You can tell that this website is</p> <p>8 selling Gucci products; is that correct?</p> <p>9 MR. WENGROVSKY: Currently?</p> <p>10 MR. WEIGEL: At the time this</p> <p>11 website -- at the time the screen</p> <p>12 shots were made.</p> <p>13 MR. WENGROVSKY: What is the</p> <p>14 question?</p> <p>15 Q Can you today tell that they were</p> <p>16 selling Gucci products at the time this</p> <p>17 screen shot was made?</p> <p>18 A Yes.</p> <p>19 Q You see it says here</p> <p>20 "Charismaticstyle.com offers a range of</p> <p>21 replica bags so perfect that unless you let</p> <p>22 the cat out of the bag, no one will know that</p> <p>23 they are the original"? Do you see that?</p> <p>24 A I do.</p> <p>25 Q It says "We are not affiliated in any</p>

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<p style="text-align: right;">142</p> <p>1 Counley</p> <p>2 way with the designers whose items we offer</p> <p>3 in our online store." Do you see that, at</p> <p>4 the very bottom there?</p> <p>5 A I do.</p> <p>6 Q Was it important to you that a website</p> <p>7 such as charismaticstyle.com included a</p> <p>8 disclaimer to indicate to customers that it</p> <p>9 was selling replicas and not originals?</p> <p>10 MR. WENGROVSKY: Just a</p> <p>11 clarification. By you, do you mean</p> <p>12 Nathan individually or Durango</p> <p>13 Merchant Services?</p> <p>14 MR. WEIGEL: Either.</p> <p>15 MR. WENGROVSKY: Okay.</p> <p>16 A Yes, I think that was the general</p> <p>17 practice once Frontline, after Bag Addiction,</p> <p>18 told us that customers need to be aware that</p> <p>19 they are replicas, I'm pretty sure we told</p> <p>20 all the other merchants they had to follow</p> <p>21 suit, otherwise we would be wasting time.</p> <p>22 Q Do you remember who you had that</p> <p>23 conversation with at Frontline?</p> <p>24 MR. WENGROVSKY: Objection.</p> <p>25 A I have seen the e-mails from Hans</p>	<p style="text-align: right;">144</p> <p>1 Counley</p> <p>2 about this, we also had a phone conversation</p> <p>3 concerning the same topic of disclosing to</p> <p>4 customers.</p> <p>5 MR. WEIGEL: Mark this as</p> <p>6 Counley Exhibit 21.</p> <p>7 (Whereupon application to</p> <p>8 Woodforest was marked Counley Exhibit</p> <p>9 21 for identification as of this</p> <p>10 date.)</p> <p>11 Q Now again, Exhibit 21 is an</p> <p>12 application that you submitted on behalf of</p> <p>13 Prime Time Enterprises; do you see that?</p> <p>14 A Yes.</p> <p>15 Q Again, this was faxed to the same 800</p> <p>16 number, (800) 971-1063?</p> <p>17 A I think that's a Woodforest fax</p> <p>18 number.</p> <p>19 Q You think so?</p> <p>20 A It must be.</p> <p>21 Q Do you see that this gentleman</p> <p>22 receives his product from Huaren H-U-A-R-E-N</p> <p>23 Trading? Do you see that?</p> <p>24 A Yes.</p> <p>25 Q Did you understand that these were</p>
<p style="text-align: right;">143</p> <p>1 Counley</p> <p>2 Strickler.</p> <p>3 Q Did you ever have a conversation with</p> <p>4 Mr. Strickler or a face-to-face meeting?</p> <p>5 A Yes, I have had many phone calls with</p> <p>6 Hans Strickler.</p> <p>7 Q Did you ever discuss the need to</p> <p>8 disclose the fact that a replica merchant was</p> <p>9 selling replicas over the phone with him?</p> <p>10 MR. WENGROVSKY: Do you mind</p> <p>11 reading that back?</p> <p>12 (Whereupon the record was read</p> <p>13 back by the reporter.)</p> <p>14 MR. WEIGEL: That was a really</p> <p>15 bad question. Let me rephrase it.</p> <p>16 Q Did you ever discuss, over the</p> <p>17 telephone with Mr. Strickler, the need for a</p> <p>18 replica merchant to disclose that they were</p> <p>19 selling replica products on their website?</p> <p>20 MR. WENGROVSKY: Disclose to</p> <p>21 whom I think would be helpful.</p> <p>22 Q Disclose to their customers.</p> <p>23 A It's quite possible. I don't remember</p> <p>24 a specific conversation, but it's very likely</p> <p>25 that in addition to the e-mail Hans sent</p>	<p style="text-align: right;">145</p> <p>1 Counley</p> <p>2 replica products?</p> <p>3 A It's what the application states,</p> <p>4 correct.</p> <p>5 MR. KENNEDY: Can you point out</p> <p>6 where you are reading that?</p> <p>7 THE WITNESS: Top of page 2.</p> <p>8 Q It says replica and athletic wear. Is</p> <p>9 that what you are referring to?</p> <p>10 A Yes.</p> <p>11 Q If you look at the screen shots behind</p> <p>12 it, you will see they are selling a number of</p> <p>13 Gucci products?</p> <p>14 A Yes.</p> <p>15 Q I take it you don't remember whether</p> <p>16 you knew at the time that they were selling</p> <p>17 replica Gucci products or not; is that</p> <p>18 correct?</p> <p>19 A I don't even know that Gucci makes</p> <p>20 shoes so, no. I'm not trying to be smart.</p> <p>21 It says here Gucci -- dress it up or down</p> <p>22 when walking or jogging or even for every day</p> <p>23 use. No, I don't recall.</p> <p>24 Q They will be very disappointed to know</p> <p>25 that you don't know that they make shoes. In</p>

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<p style="text-align: right;">146</p> <p>1 Counley</p> <p>2 all seriousness, whether Gucci made shoes or</p> <p>3 not, did you know that this website was</p> <p>4 selling shoes that purported to be made by</p> <p>5 Gucci?</p> <p>6 MR. KENNEDY: Objection to the</p> <p>7 form of the question.</p> <p>8 A I knew the website sold products that</p> <p>9 are replicas. I did not know they were</p> <p>10 selling replica products that had Gucci's</p> <p>11 trademark.</p> <p>12 MR. WEIGEL: Mark this as</p> <p>13 Counley Exhibit 22.</p> <p>14 (Whereupon application to</p> <p>15 Woodforest was marked Counley Exhibit</p> <p>16 22 for identification as of this</p> <p>17 date.)</p> <p>18 Q Exhibit 22 is an application that you</p> <p>19 submitted to Woodforest on behalf of</p> <p>20 Leeluxurybags.com; do you see that?</p> <p>21 A Yes, but I don't recall this one.</p> <p>22 Q This has your name on it?</p> <p>23 A I realize -- I think everyone in</p> <p>24 Durango uses the same application and</p> <p>25 sometimes my name didn't get taken off. For</p>	<p style="text-align: right;">148</p> <p>1 Counley</p> <p>2 A This one was an agent Chris Ortega and</p> <p>3 I just remember him because he was a colorful</p> <p>4 person to work with.</p> <p>5 Q Can you see from the two screen shots</p> <p>6 that are attached here that they sell replica</p> <p>7 Gucci products?</p> <p>8 A I do see that on the screen shots. Or</p> <p>9 rather can I -- can I add to that? I see</p> <p>10 they have Gucci listed on the left-hand side,</p> <p>11 but I don't see any Gucci products.</p> <p>12 Q There are particular pages of the</p> <p>13 website attached to this that only refer to</p> <p>14 Chloe products?</p> <p>15 A Correct.</p> <p>16 Q But they do list Gucci as one of the</p> <p>17 brands they carry?</p> <p>18 A They do have Gucci listed on the</p> <p>19 left-hand side.</p> <p>20 MR. WEIGEL: Please mark this</p> <p>21 as Counley Exhibit 23.</p> <p>22 (Whereupon application to</p> <p>23 Woodforest was marked Counley Exhibit</p> <p>24 23 for identification as of this</p> <p>25 date.)</p>
<p style="text-align: right;">147</p> <p>1 Counley</p> <p>2 the purposes of your question, I'm not sure</p> <p>3 if it matters if I sent it in or if Shane</p> <p>4 sent it in, does it?</p> <p>5 Q So, you are confident that somebody at</p> <p>6 Durango sent it in; whether it was you or</p> <p>7 not, you don't know?</p> <p>8 A Correct.</p> <p>9 Q Do you think it might have been</p> <p>10 somebody else at Durango?</p> <p>11 A I think this one was because there is</p> <p>12 an -- on some communication we had from there</p> <p>13 is from Lee Luxury Lines and Lee Luxury Bags.</p> <p>14 I saw that, two Lee Luxury.</p> <p>15 Q If you see on the application you will</p> <p>16 see it has both.</p> <p>17 A Oh, okay.</p> <p>18 Q Does that refresh your recollection in</p> <p>19 any way?</p> <p>20 A Yes. I think this one was not sent in</p> <p>21 by me but someone at Durango.</p> <p>22 Q Do you know if this was referred to</p> <p>23 you by somebody?</p> <p>24 A Yes.</p> <p>25 Q Who referred this one to Durango?</p>	<p style="text-align: right;">149</p> <p>1 Counley</p> <p>2 Q Exhibit 23 is another application that</p> <p>3 you submitted to Woodforest on behalf of</p> <p>4 freshstyles.com; do you see that?</p> <p>5 A No.</p> <p>6 Q Exhibit 23 was submitted by you on</p> <p>7 behalf of thepurseboutique.com; do you see</p> <p>8 that?</p> <p>9 A Correct.</p> <p>10 Q And that was a merchant that was</p> <p>11 located in East Northport, New York; do you</p> <p>12 see that?</p> <p>13 A I do.</p> <p>14 Q And she was proposing that she was</p> <p>15 going to be doing \$25,000 per month; do you</p> <p>16 see that?</p> <p>17 A I do.</p> <p>18 Q Was this a merchant that was referred</p> <p>19 to you by Jennifer Kirk?</p> <p>20 A Yes.</p> <p>21 Q Did you have any trouble or any</p> <p>22 problem doing with a merchant in New York?</p> <p>23 MR. WENGROVSKY: Objection.</p> <p>24 A I'm not sure --</p> <p>25 MR. WENGROVSKY: Can you be</p>

<p style="text-align: right;">150</p> <p>1 Counley</p> <p>2 more specific?</p> <p>3 Q I'll ask a different question.</p> <p>4 Durango didn't have any policy against doing</p> <p>5 work with merchants in New York?</p> <p>6 A We don't target New York for business,</p> <p>7 but if someone from New York wants us to</p> <p>8 submit an application, we will.</p> <p>9 Q Do you know how many merchants you</p> <p>10 personally submitted applications for that</p> <p>11 came from New York?</p> <p>12 A Really I would have great difficulty</p> <p>13 finding that answer, but I would assume it's</p> <p>14 not a large percentage.</p> <p>15 Q Is there any reason that you would get</p> <p>16 less New Yorkers than any other state in the</p> <p>17 union?</p> <p>18 A I'm not sure. In my memory I don't</p> <p>19 recall doing business with a lot of New</p> <p>20 Yorkers. For some reason, it doesn't seem</p> <p>21 like a state that I got a lot of applications</p> <p>22 from, but there is nothing physically</p> <p>23 limiting New Yorkers from applying.</p> <p>24 Q Well, you said you didn't specifically</p> <p>25 target New York, but did you specifically</p>	<p style="text-align: right;">152</p> <p>1 Counley</p> <p>2 for New York and he had five or six people</p> <p>3 who were agents?</p> <p>4 A Correct.</p> <p>5 Q Do you remember the names of any of</p> <p>6 them?</p> <p>7 A I didn't ask.</p> <p>8 MR. WENGROVSKY: I can</p> <p>9 represent to you that that included</p> <p>10 past and/or current. I believe it was</p> <p>11 an all encompassing list from</p> <p>12 beginning of the company.</p> <p>13 THE WITNESS: Five or six and</p> <p>14 of those only two or three are active.</p> <p>15 I don't think some are even sending us</p> <p>16 accounts anymore.</p> <p>17 Q Do you have merchants in New York that</p> <p>18 you get residuals from?</p> <p>19 A Most likely, yes.</p> <p>20 Q Do you know how many?</p> <p>21 A I think we represented to you earlier</p> <p>22 that it was a small percentage.</p> <p>23 Q I'm just asking how many in all</p> <p>24 numbers?</p> <p>25 A No.</p>
<p style="text-align: right;">151</p> <p>1 Counley</p> <p>2 target any state?</p> <p>3 A No.</p> <p>4 Q So you were just as likely to get an</p> <p>5 application from New York as any other state?</p> <p>6 MR. WENGROVSKY: Objection.</p> <p>7 A We don't -- of the 300 to 400 agents</p> <p>8 we have that send us things, I think five max</p> <p>9 were ever from New York, so our agent base</p> <p>10 wasn't really New York focused.</p> <p>11 Q Who were your agents in New York?</p> <p>12 A I would have to get that from Bill for</p> <p>13 you.</p> <p>14 Q Is there a listing somewhere of all of</p> <p>15 your agents?</p> <p>16 A No, it would just be all of the --</p> <p>17 it's really informal. It's just Bill's</p> <p>18 contact --</p> <p>19 Q How do you know, as you are sitting</p> <p>20 here, that it was only five or six from New</p> <p>21 York?</p> <p>22 A I talked with him on the phone last</p> <p>23 week about it and he went through his contact</p> <p>24 list for New York.</p> <p>25 Q So he went through his contact list</p>	<p style="text-align: right;">153</p> <p>1 Counley</p> <p>2 Q Do you know how much money Durango</p> <p>3 receives every month in residuals from</p> <p>4 merchants based in New York?</p> <p>5 A I believe it represents a small</p> <p>6 percentage.</p> <p>7 Q I'm just asking you if you know.</p> <p>8 A No.</p> <p>9 Q Do you know if it's \$10,000 a month?</p> <p>10 A I would doubt it.</p> <p>11 Q Do you know if it's \$100,000 a month?</p> <p>12 A I'm pretty sure it's not.</p> <p>13 Q Are you aware that Melissa Gampel was</p> <p>14 in the same business as Jennifer Kirk?</p> <p>15 A Yes.</p> <p>16 Q And you know that Melissa Gampel was</p> <p>17 selling replica handbags; is that correct?</p> <p>18 A Yes.</p> <p>19 Q How did you come up with the 3.75</p> <p>20 percent rate for Melissa Gampel?</p> <p>21 A Standard rates that went out to almost</p> <p>22 all these merchants.</p> <p>23 Q If you flip toward the back of the</p> <p>24 exhibit, the second to the last page, it has</p> <p>25 a bad fax -- bad copy of a fax of Ms. Gampel</p>

<p style="text-align: right;">154</p> <p>1 Counley</p> <p>2 driver's license. Do you see that?</p> <p>3 A Yes.</p> <p>4 Q Was that something that was sent to</p> <p>5 you?</p> <p>6 A Yes, it had to have been. I don't</p> <p>7 know why it's in the middle of all of these</p> <p>8 pages. I didn't put them in this order and I</p> <p>9 didn't supply these other pages.</p> <p>10 Q Do you see screen shots describing the</p> <p>11 returns and exchanges policy?</p> <p>12 A You will have to give me a minute to</p> <p>13 find the page.</p> <p>14 Q Try WNB00580.</p> <p>15 A 58?</p> <p>16 Q 580?</p> <p>17 A 580. Yes.</p> <p>18 Q You see that?</p> <p>19 A Yes.</p> <p>20 Q Did you review this page before you</p> <p>21 submitted the application?</p> <p>22 A I reviewed the returns policy,</p> <p>23 correct.</p> <p>24 Q Do you see under hottest sellers it</p> <p>25 lists Gucci there on the left?</p>	<p style="text-align: right;">156</p> <p>1 Counley</p> <p>2 MR. WEIGEL: Please mark this</p> <p>3 as Exhibit 24.</p> <p>4 (Whereupon application to</p> <p>5 Woodforest was marked Counley Exhibit</p> <p>6 24 for identification as of this</p> <p>7 date.)</p> <p>8 Q Exhibit 24 is an application that you</p> <p>9 submitted on behalf of freshstyles.com. Do</p> <p>10 you see that?</p> <p>11 A Yes.</p> <p>12 Q And they are located in Brooklyn, New</p> <p>13 York. Do you see that?</p> <p>14 A Yes.</p> <p>15 Q They are selling replica clothing and</p> <p>16 watches?</p> <p>17 A Yes.</p> <p>18 Q Where it says description of products</p> <p>19 sold, it says replica clothing and watches;</p> <p>20 do you see that?</p> <p>21 A Yes.</p> <p>22 Q Is that something you typed in?</p> <p>23 A Seems consistent with the other</p> <p>24 applications, so I'm going to assume so.</p> <p>25 Q Now, on this one it looks like you</p>
<p style="text-align: right;">155</p> <p>1 Counley</p> <p>2 A I do see that on the screen print</p> <p>3 here.</p> <p>4 Q Did you make these screen shots and</p> <p>5 include them with the application?</p> <p>6 A No.</p> <p>7 Q So you reviewed the returns and</p> <p>8 exchanges policy, but you don't usually make</p> <p>9 a screen shot of it?</p> <p>10 A I scroll to the page. I see it and</p> <p>11 close the window.</p> <p>12 Q Ms. Gampel's driver's license was from</p> <p>13 New York?</p> <p>14 A I did notice that.</p> <p>15 Q Can you turn back to Exhibit 20 for a</p> <p>16 second? That's charismaticstyle.com; do you</p> <p>17 see that?</p> <p>18 A Correct.</p> <p>19 Q That business is also located in New</p> <p>20 York; is that correct?</p> <p>21 A That is correct.</p> <p>22 Q Do you know what referred this website</p> <p>23 to you?</p> <p>24 A No, I think you asked me that already.</p> <p>25 No.</p>	<p style="text-align: right;">157</p> <p>1 Counley</p> <p>2 typed in certain things and the rest was</p> <p>3 filled in by handwriting. Do you see that?</p> <p>4 A Correct.</p> <p>5 Q Do you think on this website that the</p> <p>6 typewritten portions are the things that you</p> <p>7 filled in?</p> <p>8 MR. WENGROVSKY: On this</p> <p>9 application. You said website.</p> <p>10 Q On this application, Exhibit 24, did</p> <p>11 you fill in the typewritten portions and the</p> <p>12 merchant filled in the handwritten portions?</p> <p>13 Is that your understanding?</p> <p>14 A I think that would be a fair</p> <p>15 assumption.</p> <p>16 Q You see on the last page of this</p> <p>17 exhibit which was faxed again to that same</p> <p>18 800 number; do you see that?</p> <p>19 A I do.</p> <p>20 Q "Freshstyle.com -The place to get the</p> <p>21 hottest gear --Home Jacob watch Gucci"; do</p> <p>22 you see that?</p> <p>23 A It does say Gucci. I don't remember</p> <p>24 what this guy was selling. I see it says</p> <p>25 belt buckles there and I vaguely remember</p>

<p style="text-align: right;">158</p> <p>1 Counley</p> <p>2 something about belt buckles.</p> <p>3 Q Do you know if they were selling Gucci</p> <p>4 products or not?</p> <p>5 A I don't.</p> <p>6 MR. WEIGEL: Would this be a</p> <p>7 good time to take a break?</p> <p>8 THE WITNESS: It would be a</p> <p>9 great time to take a break.</p> <p>10 (Brief recess taken.)</p> <p>11 MR. WEIGEL: Please mark this</p> <p>12 as Counley Exhibit 25.</p> <p>13 (Whereupon listing of residual</p> <p>14 reports was marked Counley Exhibit 25</p> <p>15 for identification as of this date.)</p> <p>16 Q Exhibit 25 is a single sheet. Can you</p> <p>17 identify Exhibit 25, please?</p> <p>18 A No. I can take a guess at it, but I</p> <p>19 have never seen this before.</p> <p>20 Q You have never seen this before?</p> <p>21 A No.</p> <p>22 Q Does this look like a listing of the</p> <p>23 sales for the Laurette Company?</p> <p>24 A It looks like a listing of the</p> <p>25 residual reports from the Laurette Company to</p>	<p style="text-align: right;">160</p> <p>1 Counley</p> <p>2 can get an account approved at Humboldt</p> <p>3 without having to pay 25 percent, yes, you</p> <p>4 are correct.</p> <p>5 Q But if Humboldt won't approve it</p> <p>6 because of the type of merchant, for example,</p> <p>7 then you are willing to submit it through</p> <p>8 Mr. Montella through Woodforest; is that</p> <p>9 correct?</p> <p>10 A Correct.</p> <p>11 Q It says charge-off at the bottom. Do</p> <p>12 you know what that refers to?</p> <p>13 A I do not.</p> <p>14 Q Now, under sales it lists a total of</p> <p>15 \$903,000 to Woodforest; do you see that?</p> <p>16 A I do.</p> <p>17 Q Is that consistent with your</p> <p>18 understanding as to how much business was</p> <p>19 submitted through Woodforest by Laurette?</p> <p>20 A It seems about right.</p> <p>21 Q How does that compare to the business</p> <p>22 that was submitted through Frontline?</p> <p>23 A I would say they are comparable.</p> <p>24 Q Then it says number of sales. I</p> <p>25 assume that's the number of different</p>
<p style="text-align: right;">159</p> <p>1 Counley</p> <p>2 Joe Montella.</p> <p>3 Q It says MUD278 Montella. Do you see</p> <p>4 that?</p> <p>5 A Yes. That's why I said that.</p> <p>6 Q Is that the same Joe Montella that you</p> <p>7 submit the applications to?</p> <p>8 A Correct.</p> <p>9 Q How much of the residuals do you have</p> <p>10 to give to Mr. Montella?</p> <p>11 A 25 percent.</p> <p>12 Q Do you have any banks that you deal</p> <p>13 with directly without an individual such as a</p> <p>14 Mr. Montella in the middle?</p> <p>15 A Most of them are direct.</p> <p>16 Q Are direct?</p> <p>17 A Yes.</p> <p>18 Q So for most of them you don't have to</p> <p>19 pay the 25 percent to somebody else?</p> <p>20 A Correct.</p> <p>21 Q So is it fair to say you only submit</p> <p>22 to Woodforest the accounts that you can't</p> <p>23 place somewhere else because you have to pay</p> <p>24 25 percent to Mr. Montella first?</p> <p>25 A It's a combination of factors. If we</p>	<p style="text-align: right;">161</p> <p>1 Counley</p> <p>2 purchases?</p> <p>3 A I'm not really sure what that means.</p> <p>4 Q How about returns; do you know what</p> <p>5 that column means?</p> <p>6 A Refunds.</p> <p>7 Q Is that different from chargebacks?</p> <p>8 A Yes.</p> <p>9 Q How do they differ?</p> <p>10 A Refund is when the merchant</p> <p>11 voluntarily issues the credit back.</p> <p>12 Chargeback is when the customer calls the</p> <p>13 card issuing bank and forces the money back.</p> <p>14 Q Are merchants penalized for the number</p> <p>15 of returns they have?</p> <p>16 A Not typically.</p> <p>17 Q Are they penalized for the number of</p> <p>18 chargebacks?</p> <p>19 A Well, depending on the bank. They get</p> <p>20 a 25 or 30-dollar fee per chargeback and</p> <p>21 typically the banks don't like them to have</p> <p>22 more than one percent chargeback ratio, but</p> <p>23 it's a loose --</p> <p>24 Q This indicates that they had</p> <p>25 chargebacks of -- 45 chargebacks in March of</p>

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<p style="text-align: right;">162</p> <p>1 Counley</p> <p>2 '08; do you see that?</p> <p>3 A I see that, but I'm not sure how it</p> <p>4 could be because it says chargeback dollars</p> <p>5 580. Those numbers don't match up.</p> <p>6 Q So you think perhaps it's a mistake?</p> <p>7 A I would have to guess it's a typo.</p> <p>8 Q What do you understand the next column</p> <p>9 to be; month-end fees?</p> <p>10 A Fees decide the discount rate paid</p> <p>11 so -- I guess the column to the right is</p> <p>12 daily discount and that's the qualified</p> <p>13 discount rate. Again, I'm speaking on this</p> <p>14 report which I'm not familiar with, so it</p> <p>15 could either mean the other additional fees,</p> <p>16 like transaction charges is 25 cents per</p> <p>17 transaction and the \$25 per chargeback fee.</p> <p>18 I'm not sure what else that would include.</p> <p>19 Q Do you get to share in those fees?</p> <p>20 A Yes.</p> <p>21 Q Do you know how the net profit figure</p> <p>22 is computed?</p> <p>23 A Not to the penny, but there is a, you</p> <p>24 know, there is the cost that Visa, MasterCard</p> <p>25 charges the bank processor on the discount</p>	<p style="text-align: right;">164</p> <p>1 Counley</p> <p>2 Q Is this the kind of report that you</p> <p>3 have seen previously?</p> <p>4 A Yes.</p> <p>5 Q Can you describe what the first five</p> <p>6 columns represent?</p> <p>7 A Yes. First column is the month of</p> <p>8 residual report. The second column is</p> <p>9 residuals earned from Frontline aligned with</p> <p>10 the columns from the first column aligned</p> <p>11 with the rows. Third column Merchant Express</p> <p>12 that was paid on this account, and then the</p> <p>13 remainder is what stayed in Durango and then</p> <p>14 you see the percentage and the fifth column</p> <p>15 paid to Nathan Counley and then in the sixth</p> <p>16 column you see residuals that were split</p> <p>17 between Shane and Bill.</p> <p>18 Q So you made about \$3,800 and Durango</p> <p>19 made about \$7,000 from Frontline's processing</p> <p>20 of The Bag Addiction?</p> <p>21 A Correct.</p> <p>22 Q And there is a separate series of</p> <p>23 columns starting with Woodforest. What do</p> <p>24 those columns represent?</p> <p>25 A Same columns as for Frontline,</p>
<p style="text-align: right;">163</p> <p>1 Counley</p> <p>2 rate and on the per transaction fee and then</p> <p>3 the markup or the profit above these discount</p> <p>4 rates and per transaction fees what tallies</p> <p>5 into the net profit.</p> <p>6 Q It says MUD residual and MCPS income</p> <p>7 and I think those two numbers add up to the</p> <p>8 net profit; do you see that?</p> <p>9 A Yes.</p> <p>10 Q Do you know what those two columns</p> <p>11 represent?</p> <p>12 A Again, having not seen it before, MUD</p> <p>13 residual I'm assuming means MUD number 278,</p> <p>14 Montella and that's what was paid to Joe</p> <p>15 Montella and MCPS is what Woodforest kept as</p> <p>16 profit.</p> <p>17 Q The last column is what Woodforest</p> <p>18 kept as profit?</p> <p>19 A Correct.</p> <p>20 MR. WEIGEL: Mark this as 26.</p> <p>21 (Whereupon report of residuals</p> <p>22 was marked Counley Exhibit 26 for</p> <p>23 identification as of this date.)</p> <p>24 A It's a Durango report of residuals</p> <p>25 earned on bagaddiction.com merchant account.</p>	<p style="text-align: right;">165</p> <p>1 Counley</p> <p>2 Woodforest total residual earned by month.</p> <p>3 Metro Merchant is the agent listed, but if</p> <p>4 you scroll down to the bottom of this page,</p> <p>5 you will see for some reason Metro Merchant</p> <p>6 was not paid past February '07 due to an</p> <p>7 agreement issue and Merchant Express was paid</p> <p>8 as the agent.</p> <p>9 I'm not sure if we received the lead</p> <p>10 the second time or what happened exactly</p> <p>11 there. So it looks like Metro Merchant was</p> <p>12 paid through December '06 and then after that</p> <p>13 only Merchant Express was paid as the agent</p> <p>14 and then the column across to the right, so</p> <p>15 we have Woodforest total residuals, Metro</p> <p>16 Merchant paid out, remaining residuals and</p> <p>17 then Durango and the percentage to Nathan</p> <p>18 Counley and the percentage to Shane and Bill.</p> <p>19 Q When you look at the total Woodforest</p> <p>20 residual of \$8,900 that compares to the MUD</p> <p>21 residual on Exhibit 25 of 11,446; do you see</p> <p>22 that?</p> <p>23 A Yes.</p> <p>24 Q The difference between those two is</p> <p>25 the amount that went to Mr. Montella?</p>

<p style="text-align: right;">166</p> <p>1 Counley</p> <p>2 A Should be.</p> <p>3 Q Did Durango receive its money directly</p> <p>4 from Woodforest or did it come from</p> <p>5 Mr. Montella?</p> <p>6 A Mr. Montella.</p> <p>7 Q Was Mr. Montella part of the MCCS</p> <p>8 companies?</p> <p>9 A I'm not really sure.</p> <p>10 Q We looked earlier -- you became an</p> <p>11 agent of MCCS, do you remember that?</p> <p>12 MR. WENGROVSKY: Objection.</p> <p>13 MR. WEIGEL: I can go back and</p> <p>14 find it.</p> <p>15 A Let me look at it real quick.</p> <p>16 Q Exhibit 6?</p> <p>17 A Yes, associate agreement.</p> <p>18 Q Is that the agreement by which you</p> <p>19 were working with Mr. Montella?</p> <p>20 A No, I think there is something else.</p> <p>21 I can get that to you this week.</p> <p>22 Q Do you know how Exhibit 26 came to be</p> <p>23 created?</p> <p>24 A The report was created by Bill</p> <p>25 Demopolis.</p>	<p style="text-align: right;">168</p> <p>1 Counley</p> <p>2 (Whereupon residual report was</p> <p>3 marked Counley Exhibit 28 for</p> <p>4 identification as of this date.)</p> <p>5 THE WITNESS: Were these given</p> <p>6 to you at the same time, both of these</p> <p>7 reports?</p> <p>8 MR. WEIGEL: I understand they</p> <p>9 were.</p> <p>10 A All right. They both appear to be</p> <p>11 residual reporting for all of the income</p> <p>12 earned on the accounts that we could identify</p> <p>13 as possible replica accounts when we went</p> <p>14 through our residual reports to show you the</p> <p>15 income we earned.</p> <p>16 Q Could you just explain to me what the</p> <p>17 columns mean?</p> <p>18 A On 27, column one is month. Column</p> <p>19 two is account name. Column three is total</p> <p>20 residual reported to us. Column four is</p> <p>21 percentage paid out to the agent. Column</p> <p>22 five is percentage paid out to Nathan</p> <p>23 Counley. Column six is the remainder split</p> <p>24 between Bill and Shane.</p> <p>25 Q Okay.</p>
<p style="text-align: right;">167</p> <p>1 Counley</p> <p>2 Q Is that something that was prepared in</p> <p>3 the ordinary course of business or did he do</p> <p>4 it just for this lawsuit?</p> <p>5 A I think this one was done specifically</p> <p>6 for this lawsuit.</p> <p>7 Q Do you typically see something like</p> <p>8 this on a monthly basis or any sort of</p> <p>9 periodic basis?</p> <p>10 A Yes, Bill puts together residual</p> <p>11 reports every month. I think I sent you the</p> <p>12 master residual reports. I'm not sure if you</p> <p>13 had time to review Friday or Saturday.</p> <p>14 MR. WEIGEL: Let me mark this</p> <p>15 as Exhibit 27.</p> <p>16 (Whereupon residual report was</p> <p>17 marked Counley Exhibit 27 for</p> <p>18 identification as of this date.)</p> <p>19 Q Can you identify Exhibit 27?</p> <p>20 A 27 is a residual reporting that Bill</p> <p>21 Demopolis prepared for Gucci to show residual</p> <p>22 income, all replica accounts that we were</p> <p>23 aware of.</p> <p>24 MR. WEIGEL: Let me mark</p> <p>25 Exhibit 28 at the same time.</p>	<p style="text-align: right;">169</p> <p>1 Counley</p> <p>2 A 28, column one is month. Column two</p> <p>3 is account name. Column three is profit</p> <p>4 reported to the processor to Durango. Column</p> <p>5 four is agent revenue share and I'm assuming</p> <p>6 that since there is nothing in here that</p> <p>7 these are accounts that did not have an agent</p> <p>8 listed on it and that's the difference</p> <p>9 between 27 and 28. Column five of</p> <p>10 Exhibit 28, percentage to Nathan Counley.</p> <p>11 Column six is remainder split between Bill</p> <p>12 and Shane.</p> <p>13 Q Do you know which credit card</p> <p>14 processors were paying the residuals for</p> <p>15 which account?</p> <p>16 A It's not marked, but we can go back</p> <p>17 and mark that in if you need.</p> <p>18 Q Do you have a database that would</p> <p>19 allow you to do that?</p> <p>20 A We sent you all of our residual</p> <p>21 reports. You will be able to go in and see</p> <p>22 every account.</p> <p>23 Q Every account that you think has been</p> <p>24 selling replica?</p> <p>25 A Every account period.</p>

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<p style="text-align: right;">170</p> <p>1 Counley</p> <p>2 Q Do you recognize any of these accounts</p> <p>3 as to where you placed them?</p> <p>4 A Well, just going over the ten</p> <p>5 Woodforest applications we went through</p> <p>6 earlier this afternoon, I can see several of</p> <p>7 these there that are Woodforest related.</p> <p>8 Q Do you know why certain things end up</p> <p>9 on Exhibit 27 versus Exhibit 28?</p> <p>10 A Yes, I think the difference was 28</p> <p>11 there is no agent on the account. They just</p> <p>12 applied directly through Durango or referred</p> <p>13 to us by someone.</p> <p>14 Q Now, was this a spreadsheet that</p> <p>15 someone prepared by going through the --</p> <p>16 manually going through the database?</p> <p>17 A Manually going through our master</p> <p>18 residual reports that Bill put together.</p> <p>19 Q Who did that?</p> <p>20 A Bill Demopolis.</p> <p>21 Q Do you know when he did that?</p> <p>22 A I think he prepared 27 and 28 for you</p> <p>23 last week or two weeks ago. When did you get</p> <p>24 these? Recently, correct?</p> <p>25 Q Yes. Recently. I don't remember</p>	<p style="text-align: right;">172</p> <p>1 Counley</p> <p>2 A It looks complete to me unless we are</p> <p>3 missing something. If you include Exhibit 26</p> <p>4 with Bag Addiction, 26, 27 and 28 appear</p> <p>5 complete.</p> <p>6 Q Did you help Mr. Demopolis come up</p> <p>7 with a list of websites that was potentially</p> <p>8 selling replica products?</p> <p>9 A No. He did this by going through and</p> <p>10 looking at the account names. He did ask me</p> <p>11 if I thought what Kicks meant and I explained</p> <p>12 it was shoes, so that's why he added them on.</p> <p>13</p> <p>14 Q You had indicated that you thought</p> <p>15 perhaps you had sent certain merchants to</p> <p>16 offshore banks that were replica merchants;</p> <p>17 do you remember that?</p> <p>18 A Yes.</p> <p>19 Q Do you remember which merchants those</p> <p>20 were?</p> <p>21 A That was again several years ago.</p> <p>22 Q Do you know if they are on this list?</p> <p>23 A No, I don't believe they are on the</p> <p>24 list.</p> <p>25 Q If you wanted to find out what those</p>
<p style="text-align: right;">171</p> <p>1 Counley</p> <p>2 exactly.</p> <p>3 MR. WENGROVSKY: I can</p> <p>4 represent to you that for our</p> <p>5 convenience Durango prepared 27 and</p> <p>6 28, again the difference being, as I</p> <p>7 explained in the cover e-mail to your</p> <p>8 office, 27 included merchant accounts</p> <p>9 that were possibly replicas that were</p> <p>10 referred to Durango from independent</p> <p>11 agents. 28 our possible merchant</p> <p>12 accounts that came directly to Durango</p> <p>13 without any agent involved.</p> <p>14 Thereafter, Durango produced the</p> <p>15 totality of residual reports for all</p> <p>16 merchants regardless whether they</p> <p>17 appeared to be replica related or not.</p> <p>18 This is just a subset for</p> <p>19 convenience for you to see the most</p> <p>20 relevant.</p> <p>21 Q Please take a minute and go through</p> <p>22 both of these. I want to know if you</p> <p>23 remember any websites selling replica</p> <p>24 products that you don't see listed here that</p> <p>25 you processed.</p>	<p style="text-align: right;">173</p> <p>1 Counley</p> <p>2 merchants were, how would you go about doing</p> <p>3 it?</p> <p>4 A Well, we would have to see if Bill had</p> <p>5 any old residual reports for Intabill.</p> <p>6 Q Are there residual reports for</p> <p>7 Intabill someplace?</p> <p>8 A I can't answer that.</p> <p>9 MR. WENGROVSKY: You may</p> <p>10 already have that in the recent</p> <p>11 production. If Durango maintained any</p> <p>12 records, we forwarded all residual</p> <p>13 reports for all merchant accounts to</p> <p>14 you.</p> <p>15 THE WITNESS: They have been</p> <p>16 out of business for years though.</p> <p>17 Q Did you ever use any offshore banks</p> <p>18 besides Intabill?</p> <p>19 A Not for replica related.</p> <p>20 Q Which ones did you use for non-replica</p> <p>21 related?</p> <p>22 A We used a processor called Bardo</p> <p>23 B-A-R-D-O for a few accounts.</p> <p>24 Q Did you ever use one for Valitor out</p> <p>25 of Iceland?</p>

<p style="text-align: right;">174</p> <p>1 Counley</p> <p>2 A Yes.</p> <p>3 Q What kind of accounts did you send to</p> <p>4 Valitor?</p> <p>5 A I believe we have an account there now</p> <p>6 that sells financial advice, software for</p> <p>7 trading markets. I don't think we have any</p> <p>8 other accounts there.</p> <p>9 Q Did you ever place any replica</p> <p>10 merchants with Valitor?</p> <p>11 A I don't believe so.</p> <p>12 Q Valitor is located in Iceland?</p> <p>13 A Yes.</p> <p>14 Q When you do business with them, how do</p> <p>15 you communicate?</p> <p>16 A We go through an agent of theirs. His</p> <p>17 name is R-E-A-V-I-S and the company is WTZI.</p> <p>18 Q Where are they located?</p> <p>19 A In the states.</p> <p>20 Q WTZI?</p> <p>21 A Yes.</p> <p>22 Q Do you know in which state?</p> <p>23 A No.</p> <p>24 (Whereupon Declaration of</p> <p>25 Jennifer Kirk was marked Counley</p>	<p style="text-align: right;">176</p> <p>1 Counley</p> <p>2 important?</p> <p>3 A Correct.</p> <p>4 Q Don't you advertise on your website</p> <p>5 that nine out of ten transactions done on the</p> <p>6 internet are done through credit cards?</p> <p>7 A I believe you are right.</p> <p>8 Q Nine out of ten people using credit</p> <p>9 cards, don't you think that's very important</p> <p>10 to your business?</p> <p>11 MR. WENGROVSKY: Objection.</p> <p>12 A Important, but to what degree, I guess</p> <p>13 I can't say.</p> <p>14 Q You represent to merchants on your</p> <p>15 website that if they gain the ability to</p> <p>16 process credit cards that that will improve</p> <p>17 their business, correct?</p> <p>18 A True.</p> <p>19 Q You say on your website "Accepting</p> <p>20 credit cards with a merchant account can</p> <p>21 increase your sales potential by 75 million</p> <p>22 customers in the U.S. alone with an</p> <p>23 exclamation point. Is that an accurate</p> <p>24 statement?</p> <p>25 A It is.</p>
<p style="text-align: right;">175</p> <p>1 Counley</p> <p>2 Exhibit 29 for identification as of</p> <p>3 this date.)</p> <p>4 Q Have you had an opportunity to review</p> <p>5 Exhibit 29 before?</p> <p>6 A Yes -- well, yes.</p> <p>7 Q When did you first see it?</p> <p>8 A I believe Todd forwarded this to us, I</p> <p>9 can't remember when, but I'm assuming the</p> <p>10 file date is --</p> <p>11 Q Did you ever have any discussions with</p> <p>12 Ms. Kirk about this lawsuit?</p> <p>13 A No.</p> <p>14 Q How about with her husband?</p> <p>15 A No.</p> <p>16 Q Did you ever discuss this lawsuit with</p> <p>17 any of your customers?</p> <p>18 A No.</p> <p>19 Q Is there anything in Ms. Kirk's</p> <p>20 declaration that you believe is untrue?</p> <p>21 A Number one, the ability to use credit</p> <p>22 cards, to accept payment via credit cards.</p> <p>23 It's helpful. I don't feel it's very</p> <p>24 important.</p> <p>25 Q You feel it's helpful, but not very</p>	<p style="text-align: right;">177</p> <p>1 Counley</p> <p>2 Q You go on to say on your website</p> <p>3 credit card processing analysts estimate nine</p> <p>4 out of ten people use credit cards for their</p> <p>5 online orders. Is that an accurate</p> <p>6 statement?</p> <p>7 A I'm not disagreeing with you.</p> <p>8 Q You are just disagreeing that nine out</p> <p>9 of ten is very important; is that correct?</p> <p>10 MR. WENGROVSKY: Objection.</p> <p>11 A I would say it's very helpful, but</p> <p>12 isn't very important.</p> <p>13 Q You would agree that the ability to</p> <p>14 process credit cards enables a merchant to</p> <p>15 have a much broader range of potential</p> <p>16 customers; is that correct?</p> <p>17 A You are correct.</p> <p>18 Q If a merchant is able to accept credit</p> <p>19 cards, it's likely to increase their sales?</p> <p>20 A You are correct.</p> <p>21 Q Attached to Exhibit 29 are a series of</p> <p>22 e-mails and a fax. Do you see those?</p> <p>23 A I do.</p> <p>24 Q Do you recognize this correspondence?</p> <p>25 A I do.</p>

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<p style="text-align: right;">178</p> <p>1 Counley</p> <p>2 Q Did you send the e-mails that are</p> <p>3 attached to Exhibit 29?</p> <p>4 A Yes.</p> <p>5 Q Hans Strickler that is here is from</p> <p>6 Frontline, correct?</p> <p>7 A Correct.</p> <p>8 Q And Mr. Strickler insisted that The</p> <p>9 Bag Addiction add a check box on its website,</p> <p>10 correct?</p> <p>11 A Correct.</p> <p>12 Q What did that check box say?</p> <p>13 A Two check boxes. I agree to the terms</p> <p>14 and conditions on the site. I understand</p> <p>15 these items being purchased are replicas, not</p> <p>16 originals.</p> <p>17 Q Why was that important to add to the</p> <p>18 site?</p> <p>19 A This is something that Frontline told</p> <p>20 us that the merchant should do, so I'd be</p> <p>21 speaking on behalf of Frontline.</p> <p>22 Q What did Frontline tell you the</p> <p>23 merchant should do?</p> <p>24 A If I'm reading it correctly, it</p> <p>25 appears Hans tells the merchant, if you don't</p>	<p style="text-align: right;">180</p> <p>1 Counley</p> <p>2 numbers at the top; one is a 413 and the</p> <p>3 other is a 416?</p> <p>4 A Yes.</p> <p>5 Q Is one of them yours?</p> <p>6 A 413.</p> <p>7 Q That's your fax number?</p> <p>8 A Yes.</p> <p>9 Q These screen shots were faxed to you</p> <p>10 and then you faxed them on to Ms. Kirk; is</p> <p>11 that correct?</p> <p>12 A I don't recall receiving this fax even</p> <p>13 though my fax number is listed there.</p> <p>14 Q Well, let's look.</p> <p>15 A Yes, it says "Jen, Hans is referring</p> <p>16 to the attached fax." So Hans must have</p> <p>17 faxed these five pages to me and "he's made</p> <p>18 notes on the PDF, where it would be best to</p> <p>19 add in the truncated terms and conditions to</p> <p>20 help avoid these type of chargebacks." So,</p> <p>21 yes, Frontline confirmed to us that these</p> <p>22 merchants should have a check box and we</p> <p>23 forwarded that communication to the merchant.</p> <p>24 Q Were those inserted into this PDF by</p> <p>25 Frontline as you understand it?</p>
<p style="text-align: right;">179</p> <p>1 Counley</p> <p>2 have the check box, you are going to lose</p> <p>3 chargebacks.</p> <p>4 Q Why is that?</p> <p>5 MR. WENGROVSKY: Objection.</p> <p>6 Q Why does having a check box help with</p> <p>7 chargebacks?</p> <p>8 MR. WENGROVSKY: Repeat the</p> <p>9 objection. Go ahead.</p> <p>10 A Because then the customer cannot claim</p> <p>11 that products were not as represented as in</p> <p>12 doing the chargeback.</p> <p>13 Q Because then the customer knows they</p> <p>14 are buying a product that is not genuine?</p> <p>15 A They know that they are buying a</p> <p>16 replica product.</p> <p>17 Q You see there is a fax attached to</p> <p>18 this e-mail chain?</p> <p>19 A Which page?</p> <p>20 Q You see the one that was Bag</p> <p>21 Addiction, the screen shot?</p> <p>22 A With 1 of 5 in the bottom right?</p> <p>23 Q Yes, and 1 of 5 in the top right too?</p> <p>24 A Yes.</p> <p>25 Q You see there are two telephone</p>	<p style="text-align: right;">181</p> <p>1 Counley</p> <p>2 A As I understand it.</p> <p>3 Q You can tell from looking at the</p> <p>4 left-hand side here that this website was</p> <p>5 selling replica Gucci products, can't you?</p> <p>6 A I can see that they have Gucci listed.</p> <p>7 I cannot see if they have replica Gucci</p> <p>8 products.</p> <p>9 Q In a number of places or I guess in</p> <p>10 two places, it lists the brands. Do you see</p> <p>11 it, where it says our brands on the first --</p> <p>12 on 1 of 5 and 3 of 5 on the left-hand side</p> <p>13 where it says Our Brands?</p> <p>14 A Yes.</p> <p>15 Q If you carry into the next page, in</p> <p>16 both instances Gucci is the first name at the</p> <p>17 top of the list?</p> <p>18 MR. WENGROVSKY: First name at</p> <p>19 the top of the next page.</p> <p>20 Q It says Our Brands and then in both</p> <p>21 instances on page 2 of 5 and page 4 of 5,</p> <p>22 Gucci is the brand that is listed at the top</p> <p>23 of the page on the left-hand side?</p> <p>24 MR. KENNEDY: Can you show me</p> <p>25 where you are pointing?</p>

<p style="text-align: right;">182</p> <p>1 Counley</p> <p>2 Q Let's try it again. Do you see Gucci</p> <p>3 on the top of the list that appears on the</p> <p>4 left-hand side of the page on page 2 of 5?</p> <p>5 MR. KENNEDY: When you say 2 of</p> <p>6 5, you are referring to the</p> <p>7 handwritten 2 of 5, not the</p> <p>8 typewritten, right? Am I on the right</p> <p>9 page?</p> <p>10 MR. WEIGEL: It says 2 of 5 of</p> <p>11 the fax that was sent to Mr. Counley.</p> <p>12 MR. KENNEDY: I see.</p> <p>13 A I do see.</p> <p>14 MR. WENGROVSKY: I would like</p> <p>15 to clarify for the record that Gucci</p> <p>16 is not the first or top listed under</p> <p>17 the our brand section, but is</p> <p>18 coincidentally the first listed on the</p> <p>19 second page because that's where it</p> <p>20 came back on alphabetically.</p> <p>21 Q Now that you totally forgot the</p> <p>22 question, do you see at the top of page 2 of</p> <p>23 5 on the fax sent to you the word Gucci in</p> <p>24 the column Our Brands?</p> <p>25 A Yes.</p>	<p style="text-align: right;">184</p> <p>1 Counley</p> <p>2 good objection, but the rest is all</p> <p>3 speaking and really inappropriate.</p> <p>4 A Do I need to answer?</p> <p>5 Q Yes, you do, but let me rephrase it.</p> <p>6 Do you have any reason to believe that</p> <p>7 you were unable to read those words when you</p> <p>8 received the fax on page 1 of 5 that is part</p> <p>9 of Exhibit 29?</p> <p>10 A I don't have any reason to believe I</p> <p>11 needed to read the fax that we were</p> <p>12 talking -- we were talking about terms of</p> <p>13 service check box.</p> <p>14 Q Did you read the language of the check</p> <p>15 box that was inserted?</p> <p>16 A I did.</p> <p>17 Q And you understood that everybody</p> <p>18 making a purchase on this website had to</p> <p>19 check that box; is that what Mr. Strickland</p> <p>20 was asking you to make sure about?</p> <p>21 A You are correct.</p> <p>22 Q As a result of that you have insisted</p> <p>23 in the future that other websites plainly</p> <p>24 indicate that they were selling replica</p> <p>25 products; is that correct?</p>
<p style="text-align: right;">183</p> <p>1 Counley</p> <p>2 Q Do you see Gucci listed on page 4 of 5</p> <p>3 in the column listed in Our Brands?</p> <p>4 A Yes.</p> <p>5 Q You know all the items, at least in</p> <p>6 this point of time, all the items being sold</p> <p>7 here are replicas?</p> <p>8 A No.</p> <p>9 Q Look at the front page of page 1 of 5</p> <p>10 where it says in the middle of the page,</p> <p>11 "Please note as stated on our site all of our</p> <p>12 items are replicas. By purchasing you are</p> <p>13 acknowledging the fact that they are replicas</p> <p>14 and not to be presented as originals." Do</p> <p>15 you see that?</p> <p>16 A I am seeing that now.</p> <p>17 Q Do you have any reason to believe that</p> <p>18 you were not able to read those words when</p> <p>19 you got the fax?</p> <p>20 MR. WENGROVSKY: Objection. I</p> <p>21 don't recall hearing whether this has</p> <p>22 been reviewed at that time or not or</p> <p>23 whether it was just forwarded.</p> <p>24 MR. WEIGEL: You can say</p> <p>25 foundation. That's fine. That's a</p>	<p style="text-align: right;">185</p> <p>1 Counley</p> <p>2 A You are correct.</p> <p>3 Q And that was done to avoid chargebacks</p> <p>4 which have all sorts of consequences that we</p> <p>5 discussed previously, correct?</p> <p>6 A Correct.</p> <p>7 Q Did you make any effort to search for</p> <p>8 any e-mails on your computer? I'm referring</p> <p>9 to the e-mails attached to Exhibit 29.</p> <p>10 A Yes.</p> <p>11 Q Were you able to find them?</p> <p>12 A No.</p> <p>13 Q What computer were you using at the</p> <p>14 time that these e-mails were sent?</p> <p>15 A The Toshiba.</p> <p>16 Q When did you give the Toshiba to your</p> <p>17 mother?</p> <p>18 A I've not given it to her yet. She's</p> <p>19 asked me to give it to her for months, but I</p> <p>20 have not yet.</p> <p>21 Q So it's still in your possession?</p> <p>22 A Yes.</p> <p>23 Q Did you make any effort to search the</p> <p>24 hard drive of that computer to locate e-mails</p> <p>25 that were called for by our document request?</p>

47 (Pages 182 to 185)

<p style="text-align: right;">186</p> <p>1 Counley</p> <p>2 A Yes.</p> <p>3 Q It's your position that you have not</p> <p>4 located any?</p> <p>5 A Like I said, I did find a backup</p> <p>6 Outlook file that had some old leads in it,</p> <p>7 but I don't have these e-mails.</p> <p>8 Q I may have asked you before, but where</p> <p>9 is the Durangodirect.com server located?</p> <p>10 A Intermedia.net.</p> <p>11 Q Did you make any effort to call</p> <p>12 Intermedia to see if they had any documents</p> <p>13 responsive to the subpoena that was served</p> <p>14 upon you?</p> <p>15 A They said they don't have anything</p> <p>16 that's been deleted off the server.</p> <p>17 Q Do you pay Intermedia to maintain the</p> <p>18 Durangodirect.com address?</p> <p>19 A Outlook e-mail.</p> <p>20 Q Do they maintain those files for any</p> <p>21 period of time?</p> <p>22 A I believe they told us after -- there</p> <p>23 is nothing maintained for seven days, so they</p> <p>24 told us they do have an archiving service</p> <p>25 which -- an archiving service if we had</p>	<p style="text-align: right;">188</p> <p>1 Counley</p> <p>2 e-mails on a regular basis?</p> <p>3 A Absolutely.</p> <p>4 Q Did you stop deleting e-mails relevant</p> <p>5 to this case when you first got the subpoena</p> <p>6 in 2008?</p> <p>7 MR. WENGROVSKY: I'm sorry,</p> <p>8 when you say this case, do you mean --</p> <p>9 MR. WEIGEL: Laurette.</p> <p>10 MR. WENGROVSKY: August of '09.</p> <p>11 MR. WEIGEL: No, when you first</p> <p>12 got the subpoena in LA.</p> <p>13 Q I'm asking first did you stop deleting</p> <p>14 e-mails when you received the subpoena</p> <p>15 relating to the Laurette Company in 2008?</p> <p>16 A I can see if I say no here, I would be</p> <p>17 probably in trouble, but we still didn't keep</p> <p>18 my sent folder longer than a couple of</p> <p>19 months. It's too big. I do 150, 200 e-mails</p> <p>20 a day and we have a storage limit in</p> <p>21 Intermedia and Outlook starts crashing if you</p> <p>22 keep more than a couple of gigabytes of data.</p> <p>23 Q Are you familiar with the concept of a</p> <p>24 litigation hold?</p> <p>25 A No.</p>
<p style="text-align: right;">187</p> <p>1 Counley</p> <p>2 signed up for it, everything would be</p> <p>3 archived, but they don't do it -- so if we</p> <p>4 were a law firm and required to archive all</p> <p>5 e-mails, they would have that.</p> <p>6 Q Do they maintain any backup tapes?</p> <p>7 A Not that I'm aware of.</p> <p>8 Q How much do you pay Intermedia for the</p> <p>9 service; do you know?</p> <p>10 A About 100, 125 bucks a month.</p> <p>11 Q And they don't store any e-mails for</p> <p>12 more than seven days?</p> <p>13 A That's what they told us.</p> <p>14 Q Who communicated with Intermedia?</p> <p>15 A I called them.</p> <p>16 Q Who did you speak to?</p> <p>17 A Customer service representative.</p> <p>18 Q They told you they had no e-mails for</p> <p>19 your account?</p> <p>20 A I asked them if an e-mail had been</p> <p>21 deleted, is it possible to retrieve it? We</p> <p>22 don't keep all e-mails that are that old. So</p> <p>23 if they said it was seven days and they are</p> <p>24 deleted two years ago.</p> <p>25 Q Well, do you go through and delete</p>	<p style="text-align: right;">189</p> <p>1 Counley</p> <p>2 Q Did the company institute any sort of</p> <p>3 a hold on its documents once it received a</p> <p>4 copy of the Complaint in this lawsuit?</p> <p>5 A Again, we are a small company.</p> <p>6 Nothing that we are familiar with, haven't</p> <p>7 been involved with anything like this in the</p> <p>8 past.</p> <p>9 Q So you continued to delete e-mails</p> <p>10 after you got the Complaint?</p> <p>11 MR. WENGROVSKY: Objection.</p> <p>12 I'm not sure we are talking about the</p> <p>13 same thing as far as relevance.</p> <p>14 MR. WEIGEL: Let me see what I</p> <p>15 can do here.</p> <p>16 MR. WENGROVSKY: Okay. Go</p> <p>17 ahead.</p> <p>18 Q Did you continue your usual practice</p> <p>19 of deleting e-mails after you received the</p> <p>20 Complaint in August of 2009?</p> <p>21 A Yes. The sent e-mails I continued to</p> <p>22 delete.</p> <p>23 Q Did any of the e-mails that you</p> <p>24 deleted refer to any of the replica merchants</p> <p>25 that we have been discussing today?</p>

<p style="text-align: right;">190</p> <p>1 Counley</p> <p>2 A I think they were mostly closed by</p> <p>3 this point in time.</p> <p>4 Q I think we just looked at one that was</p> <p>5 submitted in '09. Do you remember that?</p> <p>6 MR. WENGROVSKY: I believe that</p> <p>7 was early '09 prelitigation no?</p> <p>8 MR. WEIGEL: Yes, I agree.</p> <p>9 Q But do you remember that we looked at</p> <p>10 one that was just submitted in early '09?</p> <p>11 A (No response.)</p> <p>12 Q I can pull it out if you want?</p> <p>13 A For the benefit of doubt, yes. You</p> <p>14 don't need to pull it out. I trust you.</p> <p>15 Q Okay.</p> <p>16 A Yes.</p> <p>17 Q The question is do you have any basis</p> <p>18 of knowing whether the e-mails you deleted</p> <p>19 after August of 2009 related to any replica</p> <p>20 merchants or not?</p> <p>21 A It was not specifically deleted for</p> <p>22 those reasons, but it's just always deleted.</p> <p>23 Q So as you sit here today, you really</p> <p>24 don't know what you deleted after August of</p> <p>25 '09; is that fair?</p>	<p style="text-align: right;">192</p> <p>1 Counley</p> <p>2 A I ran it on the Toshiba and the Asus.</p> <p>3 Q Was it run on any other computers at</p> <p>4 Durango?</p> <p>5 A I believe Bill ran it on his.</p> <p>6 Otherwise I'm not sure.</p> <p>7 Q Are there various security options</p> <p>8 when running that software?</p> <p>9 A Like what?</p> <p>10 Q Like I've seen a computer -- one</p> <p>11 called Window Washer, one which has different</p> <p>12 settings. You can sort of wash it or wash it</p> <p>13 with bleach. Did it have different security</p> <p>14 settings?</p> <p>15 A I'm not really sure.</p> <p>16 Q Why did you run it on the Toshiba?</p> <p>17 A I used to use that computer. It had</p> <p>18 applications that had already been deleted,</p> <p>19 but since we read the article telling us that</p> <p>20 files weren't actually safe, then I figured</p> <p>21 we probably should run it in case it was</p> <p>22 stolen or before I give it to my mom and she</p> <p>23 is in custody of it.</p> <p>24 Q Did anyone ever tell you that you had</p> <p>25 an obligation to hold onto documents that</p>
<p style="text-align: right;">191</p> <p>1 Counley</p> <p>2 A Yes, I don't have reason to store all</p> <p>3 the e-mails.</p> <p>4 Q Did you ever run any file scrubbing</p> <p>5 program on your computer?</p> <p>6 A Yes.</p> <p>7 Q When did you last run that program?</p> <p>8 A We bought them -- I bought software --</p> <p>9 I think Bill bought -- we all bought it a</p> <p>10 couple of weeks ago. We read an article just</p> <p>11 deleting files is not really safe. If your</p> <p>12 computer was stolen, someone can still</p> <p>13 recreate the files. We have always deleted</p> <p>14 our applications because there is no need to</p> <p>15 keep them on our hard drives and if someone</p> <p>16 was to steal your laptops and get into the</p> <p>17 hard drive and recreate whatever, we would be</p> <p>18 liable and have to go through all the PCI</p> <p>19 industry and contact all of your customers</p> <p>20 and tell them that we have compromised their</p> <p>21 data for failing to safeguard it.</p> <p>22 Q What program did you purchase?</p> <p>23 A Lavasoft.</p> <p>24 Q What computers did you run that</p> <p>25 software on?</p>	<p style="text-align: right;">193</p> <p>1 Counley</p> <p>2 might be relevant to this lawsuit?</p> <p>3 MR. WENGROVSKY: Objection for</p> <p>4 the record. Go ahead.</p> <p>5 A No.</p> <p>6 MR. WEIGEL: Let's take a short</p> <p>7 break off the record.</p> <p>8 (Whereupon a discussion was</p> <p>9 held off the record.)</p> <p>10 MR. WEIGEL: Please mark this</p> <p>11 as Exhibit 30.</p> <p>12 (Whereupon screen shot of</p> <p>13 Durango website was marked Counley</p> <p>14 Exhibit 30 for identification as of</p> <p>15 this date.)</p> <p>16 Q Do you have Exhibit 30 in front of</p> <p>17 you?</p> <p>18 A I do.</p> <p>19 Q Is that a true copy of the screen shot</p> <p>20 of how your website looked back in 2008?</p> <p>21 A July 22, 2008, yes.</p> <p>22 Q When it said Our Merchants, it</p> <p>23 included -- you specifically reference</p> <p>24 replica products, do you see that?</p> <p>25 A Yes, we put a list on our website of</p>

<p style="text-align: right;">194</p> <p>1 Counley</p> <p>2 accounts that processors had approved. Our</p> <p>3 niches we tell agents to send us accounts</p> <p>4 that can get approved. We take applications.</p> <p>5 We submit them to processors. We run them up</p> <p>6 the flagpole. Whatever comes back approved,</p> <p>7 we keep sending the same apps to the same</p> <p>8 banks and we put it on our website that we</p> <p>9 got these approved by the processor.</p> <p>10 Q Is that what you mean when you say on</p> <p>11 the website we specialize in hard to acquire</p> <p>12 accounts?</p> <p>13 A Correct.</p> <p>14 Q When you say hard to acquire accounts,</p> <p>15 is that a reference to placing the account</p> <p>16 with the bank?</p> <p>17 A It's hard for the merchant to acquire</p> <p>18 a merchant account.</p> <p>19 Q Do you agree with the statement that</p> <p>20 you are a world leading consultant group for</p> <p>21 high risk and low risk merchants?</p> <p>22 A It may be a little self-placating.</p> <p>23 Q Self-grandizing perhaps?</p> <p>24 A Self-grandizing. I guess placating</p> <p>25 isn't the right word. Puffing our chests a</p>	<p style="text-align: right;">196</p> <p>1 Counley</p> <p>2 A I'm sure we got that quote from</p> <p>3 somewhere valid at some point in time.</p> <p>4 Q You don't have any reason to think</p> <p>5 it's not true?</p> <p>6 A If it's not true, it wouldn't be</p> <p>7 incorrect by a large amount. It's probably</p> <p>8 ballpark correct.</p> <p>9 Q Is that figure roughly the amount of</p> <p>10 Americans you believe have credit cards?</p> <p>11 A I don't know why I'm nitpicking this</p> <p>12 with you. I don't know where the quote came</p> <p>13 from. To me it seems about correct. It</p> <p>14 seems reasonable to say. I can't 100 percent</p> <p>15 verify for you if it's correct or not.</p> <p>16 MR. WEIGEL: Mark this as 31.</p> <p>17 (Whereupon screen shot from</p> <p>18 Durango website was marked Counley</p> <p>19 Exhibit 31 for identification as of</p> <p>20 this date.)</p> <p>21 Q Is Exhibit 31 a true copy of the</p> <p>22 frequently asked questions section of your</p> <p>23 website as of December 2009?</p> <p>24 A It appears to be, yes.</p> <p>25 Q Question 2, "Why is pricing for your</p>
<p style="text-align: right;">195</p> <p>1 Counley</p> <p>2 little bit maybe. That's kind of a long and</p> <p>3 complicated answer.</p> <p>4 Q Let me ask you this. Do you believe</p> <p>5 that you are among the best in the business</p> <p>6 for helping merchants acquiring hard to</p> <p>7 acquire accounts?</p> <p>8 A I don't know if we are the best in the</p> <p>9 business, but we do help merchants acquire</p> <p>10 high risk accounts and we like to think our</p> <p>11 customer service is good.</p> <p>12 Q Do you disagree with the statement</p> <p>13 that credit card processing analysts estimate</p> <p>14 nine out of ten people use a credit card for</p> <p>15 their online orders?</p> <p>16 A I don't know where that quote came</p> <p>17 from. I can't verify it but common sense</p> <p>18 wise it seems to make sense.</p> <p>19 Q You say "Accepting credit cards with a</p> <p>20 merchant account can increase your sales</p> <p>21 potential by 75 million customers in the U.S.</p> <p>22 alone"; do you see that?</p> <p>23 A I do.</p> <p>24 Q Do you believe that to be an accurate</p> <p>25 statement?</p>	<p style="text-align: right;">197</p> <p>1 Counley</p> <p>2 merchant account services not listed on your</p> <p>3 website"; do you see that?</p> <p>4 A Yes.</p> <p>5 Q It says "We work with 25 plus banks</p> <p>6 worldwide and pricing varies widely by</p> <p>7 country and between business models." What</p> <p>8 did you mean that it varies widely between</p> <p>9 business models?</p> <p>10 A A retail merchant swiping cards in</p> <p>11 person for T-shirts will pay 1.7 percent and</p> <p>12 an e-Commerce merchant swiping credit cards</p> <p>13 for T-shirts online will pay 2.3,</p> <p>14 2.5 percent.</p> <p>15 Q And a replica merchant can pay between</p> <p>16 3.5 and 4 percent?</p> <p>17 A Correct.</p> <p>18 Q Is there any listing within Durango of</p> <p>19 ranges or does everyone just know what the</p> <p>20 ranges are?</p> <p>21 A There is no official listing. It's a</p> <p>22 pretty small company. Me and Brad, we</p> <p>23 usually have some sort of agreement, not</p> <p>24 agreement but discussion, are these</p> <p>25 appropriate rates? Is this what you are</p>

50 (Pages 194 to 197)

<p style="text-align: right;">198</p> <p>1 Counley</p> <p>2 charging? For a while we weren't charging</p> <p>3 kind of ballpark, so we kind of agreed to</p> <p>4 keep it similar so they wouldn't see we were</p> <p>5 quoting different merchants different rates,</p> <p>6 but there is no --</p> <p>7 Q Each employee sets -- can set his own</p> <p>8 rate, but you agreed to keep it within the</p> <p>9 same ballpark; is that what you are saying?</p> <p>10 A That's fair.</p> <p>11 Q I think we covered this question 6,</p> <p>12 "Why is there 'underwriting' on a merchant</p> <p>13 account?" Do you agree that is generally an</p> <p>14 accurate description of why there is</p> <p>15 underwriting on a merchant account?</p> <p>16 A I think it's general. It's a good</p> <p>17 description of why underwriting is performed</p> <p>18 and kind of an overview on risk on merchant</p> <p>19 accounts. On reading it, I'm not sure if we</p> <p>20 should be characterizing it as a loan or</p> <p>21 provisional credit to the merchant for six</p> <p>22 months. I'm not sure that's the proper</p> <p>23 phrasing, but I think that's done just to</p> <p>24 kind of explain to the merchant about the</p> <p>25 chargeback liability.</p>	<p style="text-align: right;">200</p> <p>1 Counley</p> <p>2 (Whereupon screen shot from</p> <p>3 Durango website was marked Counley</p> <p>4 Exhibit 32 for identification as of</p> <p>5 this date.)</p> <p>6 Q Do you recognize Exhibit 32 as a</p> <p>7 screen shot from your website dated as of</p> <p>8 August 25, 2009?</p> <p>9 A It would appear so.</p> <p>10 Q Do you see under the Our Merchants</p> <p>11 category that you are still listing replica</p> <p>12 products as of August 25, 2009?</p> <p>13 A I'm not sure the time it took our web</p> <p>14 master to get those off, but around that time</p> <p>15 is when we asked him to remove it.</p> <p>16 Q At least at that point in time, did</p> <p>17 you have merchants who were engaged in all of</p> <p>18 those various activities?</p> <p>19 A Everything is -- everything on there,</p> <p>20 except for the replica products, which I'm</p> <p>21 not 100 percent sure when the accounts died</p> <p>22 off, but I think around here is when we</p> <p>23 discussed that we stopped.</p> <p>24 MR. WEIGEL: Please mark this</p> <p>25 as Exhibit 33.</p>
<p style="text-align: right;">199</p> <p>1 Counley</p> <p>2 Q It conveys a sense that the bank is</p> <p>3 exposed for the amount of the revenue for six</p> <p>4 months; is that correct?</p> <p>5 A Right.</p> <p>6 Q Just in your own words, what does the</p> <p>7 term underwriting mean?</p> <p>8 A I think every processor has different</p> <p>9 procedures that they do. I know all the U.S.</p> <p>10 banks do credit check. They pull someone's</p> <p>11 credit. They have different criteria that</p> <p>12 they base it on. Otherwise I'm not really</p> <p>13 privy to what they all do for underwriting.</p> <p>14 I know they have different things that they</p> <p>15 look at but.</p> <p>16 Q Is it important -- do the banks</p> <p>17 actually look at the websites and make sure</p> <p>18 there is a business there?</p> <p>19 A I would guess -- I'm pretty sure they</p> <p>20 would have to.</p> <p>21 Q They have to because if there is not a</p> <p>22 business there, they are exposed, correct?</p> <p>23 A Right.</p> <p>24 MR. WEIGEL: Mark this as</p> <p>25 Exhibit 32.</p>	<p style="text-align: right;">201</p> <p>1 Counley</p> <p>2 (Whereupon list of denied</p> <p>3 activities was marked Counley Exhibit</p> <p>4 33 for identification as of this</p> <p>5 date.)</p> <p>6 Q Do you recognize Exhibit 33 as a list</p> <p>7 of denied merchant activities that was pulled</p> <p>8 from your website on March 13, 2009?</p> <p>9 A It looks correct, yes.</p> <p>10 Q How did you come up with this list of</p> <p>11 merchant activities that you would not be</p> <p>12 involved with?</p> <p>13 A These are things that we had tried to</p> <p>14 run up the flagpole many times but -- I</p> <p>15 shouldn't say -- can I retract that?</p> <p>16 Q Yes.</p> <p>17 A We had never tried to do a child</p> <p>18 pornography account. That's just out the</p> <p>19 door. Airline ticket sales, charity through</p> <p>20 outbound telemarketing. These are things we</p> <p>21 tried to get approved otherwise and never had</p> <p>22 success and so we put them on our list that</p> <p>23 we can't do. Drug paraphernalia, like glass</p> <p>24 pipes, we can't get that approved.</p> <p>25 Q You know that from experience?</p>

51 (Pages 198 to 201)

<p style="text-align: right;">202</p> <p>1 Counley</p> <p>2 A We submitted applications. Everyone</p> <p>3 said no and we just decided not to keep --</p> <p>4 Q How about pyramid marketing?</p> <p>5 A Yes, same thing. A lot of -- some of</p> <p>6 our banks have a list of accounts that they</p> <p>7 will not accept, so some of these things are</p> <p>8 just -- let me see Humboldt, Pivotal, they</p> <p>9 see pyramid marketing. We try it at another</p> <p>10 bank and it says declined.</p> <p>11 Q Did you ever try to place any pyramid</p> <p>12 marketing merchants?</p> <p>13 A We have submitted merchants that said</p> <p>14 that they were MLM multi-level marketing, but</p> <p>15 the bank on review said no, this is pyramid</p> <p>16 marketing and they declined it.</p> <p>17 Q Okay.</p> <p>18 A But I don't think anyone applied to us</p> <p>19 and said this is a Ponzi scheme.</p> <p>20 Q How about programs on how to apply for</p> <p>21 low interest credit cards?</p> <p>22 A Again it's probably something we tried</p> <p>23 it in the past and weren't successful.</p> <p>24 Q How about products originally from</p> <p>25 Cuba, Lybia, Syria, Iraq, Iran, Nigeria, et</p>	<p style="text-align: right;">204</p> <p>1 Counley</p> <p>2 Q Definitely you tried?</p> <p>3 A No. They have put in a preapplication</p> <p>4 with us, but I don't think we tried to put</p> <p>5 them. Just with all the e-mail scams, it</p> <p>6 seems reasonable not to.</p> <p>7 Q So is it fair to say that you would at</p> <p>8 least examine the applications enough to</p> <p>9 determine if the respective merchant engaged</p> <p>10 in any of these prohibited activities?</p> <p>11 A You mean like child pornography?</p> <p>12 Q Yes.</p> <p>13 A Pulled up the website and went looking</p> <p>14 for refund policy and there is underage nude</p> <p>15 photos, then that's pretty obvious and it</p> <p>16 doesn't take a skilled eye to spot that.</p> <p>17 Q Same with drug paraphernalia?</p> <p>18 A It doesn't take a skilled eye for a</p> <p>19 glass pipe.</p> <p>20 Q So, in other words, you would, before</p> <p>21 you would submit an application to a</p> <p>22 Woodforest or Frontline, you would at least</p> <p>23 check to make sure it didn't meet any of the</p> <p>24 criteria that is listed on the list of denied</p> <p>25 merchant activities?</p>
<p style="text-align: right;">203</p> <p>1 Counley</p> <p>2 cetera?</p> <p>3 A It just seemed like a good idea -- I'm</p> <p>4 sorry. North Korea, Iraq, Iran, Afghanistan,</p> <p>5 these are areas known for high fraud and</p> <p>6 Nigeria all the e-mail scams.</p> <p>7 Q Did you exclude these because someone</p> <p>8 told you you should exclude them or did you</p> <p>9 exclude them because of experience?</p> <p>10 A The offshore banks we had worked with</p> <p>11 generally did not like to set startup</p> <p>12 accounts outside of the United States or</p> <p>13 Europe and especially if it was -- not that</p> <p>14 we ever saw many, but if it was a startup</p> <p>15 account from Iraq, no one is really excited</p> <p>16 about that.</p> <p>17 Q Did you ever have a startup account</p> <p>18 from Iraq?</p> <p>19 A A preapplication with us or --</p> <p>20 Q Preapplication from you?</p> <p>21 A Yes, probably.</p> <p>22 Q How about Iran?</p> <p>23 A I couldn't say.</p> <p>24 Q Nigeria?</p> <p>25 A Definitely.</p>	<p style="text-align: right;">205</p> <p>1 Counley</p> <p>2 A Either that or the merchant tells us</p> <p>3 in the preapplication what they are selling.</p> <p>4 Q Did you ever find in checking websites</p> <p>5 that, for example, there was child</p> <p>6 pornography and you chose not to do business</p> <p>7 with them?</p> <p>8 A Not that I can remember. It just</p> <p>9 seemed like a good thing to put on the</p> <p>10 website.</p> <p>11 Q Do you intend to put replica merchants</p> <p>12 on this list too?</p> <p>13 A I have no idea why it's not there</p> <p>14 already.</p> <p>15 Q So at some point in time you intend to</p> <p>16 put it there?</p> <p>17 A We wear a lot of hats in small</p> <p>18 business and updating websites is something</p> <p>19 that gets behind.</p> <p>20 Q When somebody gets around to it, you</p> <p>21 intend to put replica; is that correct?</p> <p>22 MR. WENGROVSKY: This is dated</p> <p>23 March of '09. I don't know what the</p> <p>24 current status is.</p> <p>25 A I don't think it's there yet.</p>

52 (Pages 202 to 205)

<p style="text-align: right;">206</p> <p>1 Counley</p> <p>2 Q You intend to have it put up there?</p> <p>3 A Absolutely, yes.</p> <p>4 Q And when you put it up there, you</p> <p>5 intend to enforce it, correct?</p> <p>6 A It's not an industry that we are</p> <p>7 looking to work with due to the high cost and</p> <p>8 the trouble that it's caused.</p> <p>9 Q Does Durango have any insurance that</p> <p>10 could potentially cover this lawsuit?</p> <p>11 A No.</p> <p>12 Q You said you read an article which led</p> <p>13 you to buy the file shredding program?</p> <p>14 A Yes.</p> <p>15 Q Do you remember where you saw that</p> <p>16 article?</p> <p>17 A No.</p> <p>18 Q Do you know where you bought the file</p> <p>19 shredding program from?</p> <p>20 A C.net or download.com. One of those</p> <p>21 sites.</p> <p>22 Q Did you buy it with a credit card?</p> <p>23 A Yes.</p> <p>24 Q Do you know the date in which you</p> <p>25 bought it?</p>	<p style="text-align: right;">208</p> <p>1 Counley</p> <p>2 that "I received an e-mail from Louis Vuitton</p> <p>3 for thepursescene.com. That is more than</p> <p>4 half my business"; do you see that?</p> <p>5 A I do.</p> <p>6 Q What do you understand that to mean?</p> <p>7 A I'm not really sure.</p> <p>8 Q Did you understand that Louis</p> <p>9 Vuitton --</p> <p>10 A Obviously knowing what I do now about</p> <p>11 these law cases, anyone reading this e-mail</p> <p>12 would think that's what I should have</p> <p>13 assumed.</p> <p>14 Q Did you, in fact, have this e-mail</p> <p>15 discussion with Stephanie Walker at the time?</p> <p>16 A I can't deny this. It's my e-mail</p> <p>17 Q Did you help her set up another -- add</p> <p>18 Celebrity Style Bags to her account?</p> <p>19 A Yes, but if I did, they should be able</p> <p>20 to confirm it at the merchant, the processor.</p> <p>21 Q Did you receive residuals from</p> <p>22 celebritystylebags.com?</p> <p>23 A Yes. Sometimes it's reported under a</p> <p>24 different DBA for the company name.</p> <p>25 Q Did I see possibly it was under the</p>
<p style="text-align: right;">207</p> <p>1 Counley</p> <p>2 A No, but I can get it.</p> <p>3 Q Do you know the date on which you ran</p> <p>4 the program?</p> <p>5 A I probably ran it several times.</p> <p>6 Q When did you last run it?</p> <p>7 A Yesterday or the day before.</p> <p>8 Q Why did you run it several times?</p> <p>9 A Why not? It's a safety procedure.</p> <p>10 MR. WEIGEL: Mark this as</p> <p>11 Exhibit 34.</p> <p>12 (Whereupon e-mail chain was</p> <p>13 marked Counley Exhibit 34 for</p> <p>14 identification as of this date.)</p> <p>15 Q This is a chain of e-mails started on</p> <p>16 May 30th, 2007 at 7:56 a.m.; do you see that?</p> <p>17 A Yes.</p> <p>18 Q And that is from Stephanie Walker.</p> <p>19 She is one of your clients; is that correct?</p> <p>20 A Yes.</p> <p>21 Q And she tells you that she wants to</p> <p>22 add a new domain name to her account; is that</p> <p>23 correct?</p> <p>24 A It appears so.</p> <p>25 Q And the reason for this she says is</p>	<p style="text-align: right;">209</p> <p>1 Counley</p> <p>2 name Strive Handbags?</p> <p>3 A Is that Strive Handbags?</p> <p>4 Q Yes, your response back to her says</p> <p>5 "Adding URL's to your account isn't a big</p> <p>6 problem, since your DBA is Strive Handbags."</p> <p>7 Do you see that?</p> <p>8 A Okay. So this is Strive Handbags.</p> <p>9 Q Was this placed with Frontline or with</p> <p>10 Woodforest or both?</p> <p>11 A Do you mind if I look at it?</p> <p>12 Q No, please. If there is something</p> <p>13 that helps your recollection, go ahead.</p> <p>14 MR. WENGROVSKY: I don't know</p> <p>15 if yours are still in order, but it</p> <p>16 looks like 17 was Stephanie Walker</p> <p>17 related, if that speeds you up.</p> <p>18 A 17 shows Stephanie Walker and Strive</p> <p>19 Handbags was at Woodforest. Whether or not</p> <p>20 she had a second account at Frontline.</p> <p>21 MR. WEIGEL: Mark this as</p> <p>22 Exhibit 35.</p> <p>23 (Whereupon application to</p> <p>24 Frontline was marked Counley Exhibit</p> <p>25 35 for identification as of this</p>

<p style="text-align: right;">210</p> <p>1 Counley</p> <p>2 date.)</p> <p>3 Q Does that help you refresh your</p> <p>4 recollection that Stephanie Walker also had</p> <p>5 an account with Frontline?</p> <p>6 A Yes.</p> <p>7 Q And did she have an account with</p> <p>8 Frontline?</p> <p>9 A Apparently, yes.</p> <p>10 Q Did you receive residuals from</p> <p>11 Frontline as well?</p> <p>12 A Yes. And you should have a copy of</p> <p>13 all of the residuals earned from Bill's</p> <p>14 master report.</p> <p>15 Q Are you familiar with a company named</p> <p>16 CRRD Operating Company, Inc. doing business</p> <p>17 as merchantaccountguy.com creditcards.com?</p> <p>18 A Creditcards.com?</p> <p>19 MR. WEIGEL: Let me see if I</p> <p>20 can refresh your recollection. Please</p> <p>21 mark this as Exhibit 36.</p> <p>22 (Whereupon Complaint was marked</p> <p>23 Counley Exhibit 36 for identification</p> <p>24 as of this date.)</p> <p>25 A Yes, I do remember this now.</p>	<p style="text-align: right;">212</p> <p>1 Counley</p> <p>2 break. I think I am done. Off the</p> <p>3 record.</p> <p>4 (Whereupon a discussion was</p> <p>5 held off the record.)</p> <p>6</p> <p>7 EXAMINATION BY</p> <p>8 MR. KENNEDY:</p> <p>9 Q Mr. Counley, I'm Charles Kennedy. I</p> <p>10 am the attorney for one of the Defendants</p> <p>11 Woodforest National Bank in this matter. I</p> <p>12 have some questions I'm going to ask you.</p> <p>13 The same instructions will apply as for the</p> <p>14 questions that you were asked by Mr. Weigel</p> <p>15 in this case.</p> <p>16 Mr. Counley, you understand that this</p> <p>17 case involves certain business that was done</p> <p>18 by banks on behalf of the Laurette companies?</p> <p>19 A Yes.</p> <p>20 Q And the Laurette companies operated a</p> <p>21 website called thebagaddiction.com; is that</p> <p>22 correct?</p> <p>23 A Correct.</p> <p>24 Q I would like you to take, if you</p> <p>25 would, Exhibit 2. It should be in front of</p>
<p style="text-align: right;">211</p> <p>1 Counley</p> <p>2 Q What business are these folks in?</p> <p>3 A I guess they are in a website</p> <p>4 marketing. They appear to advertise for</p> <p>5 merchants services and then are agents for</p> <p>6 other credit card processors.</p> <p>7 Q Are they an agent for Durango Merchant</p> <p>8 Services as well?</p> <p>9 A No.</p> <p>10 Q Have they ever placed any accounts</p> <p>11 with you?</p> <p>12 A No.</p> <p>13 Q These folks were using your trademark</p> <p>14 to sell their services?</p> <p>15 A And we asked them twice and they still</p> <p>16 continued to do it.</p> <p>17 Q Did you believe it was harming your</p> <p>18 business because they were using your</p> <p>19 trademark to market their products?</p> <p>20 A Especially because we asked them twice</p> <p>21 not to do it and they continued to do it.</p> <p>22 Q Do you remember when you first ran the</p> <p>23 file shredding program on your computer?</p> <p>24 A No.</p> <p>25 MR. WEIGEL: Let's take a</p>	<p style="text-align: right;">213</p> <p>1 Counley</p> <p>2 you.</p> <p>3 A All right.</p> <p>4 Q Is Exhibit 2 an e-mail that was sent</p> <p>5 to you?</p> <p>6 A Yes.</p> <p>7 Q What date was it sent?</p> <p>8 A September 10, '06.</p> <p>9 Q Was this the first time you had</p> <p>10 noticed that there was -- the Laurette</p> <p>11 Company was looking for credit card services?</p> <p>12 A Yes.</p> <p>13 Q At this time you were informed that</p> <p>14 the description of the business was replica</p> <p>15 handbags and accessories; is that correct?</p> <p>16 A Correct.</p> <p>17 Q If you take Exhibit 3?</p> <p>18 A All right.</p> <p>19 Q This is an e-mail exchange in</p> <p>20 September of 2006 between you and a Jennifer</p> <p>21 Mattchen; is that correct?</p> <p>22 A Correct.</p> <p>23 Q Who is Jennifer Mattchen?</p> <p>24 A Apparently the alternate name, I</p> <p>25 believe Jennifer Kirk is her real name.</p>

<p style="text-align: right;">214</p> <p>1 Counley</p> <p>2 Q Who was Jennifer Kirk? Was she the</p> <p>3 principle of the Laurette Company that you</p> <p>4 dealt with?</p> <p>5 A Correct.</p> <p>6 Q Is this the communication that you had</p> <p>7 with Jennifer Mattchen or Jennifer Kirk as</p> <p>8 you later came to know her by which you made</p> <p>9 an application to obtain credit card services</p> <p>10 for The Bag Addiction?</p> <p>11 A Yes.</p> <p>12 Q If you turn to the second page of this</p> <p>13 Exhibit 3, at the top there is the e-mail</p> <p>14 exchange you to Jennifer, September 14, 2006,</p> <p>15 where you say "Good news. I just found our</p> <p>16 U.S. bank can do replica accounts now." Do</p> <p>17 you see that?</p> <p>18 A Yes.</p> <p>19 Q Is that what you told her?</p> <p>20 A That is my e-mail to her, correct.</p> <p>21 Q I know Mr. Weigel asked you some</p> <p>22 questions about that and you were not certain</p> <p>23 at the time who the U.S. bank was. Are you</p> <p>24 now certain that that U.S. bank that you were</p> <p>25 referring to was Frontline?</p>	<p style="text-align: right;">216</p> <p>1 Counley</p> <p>2 The Bag Addiction and subsequently provide</p> <p>3 credit card services?</p> <p>4 A Yes.</p> <p>5 Q At this time Woodforest wasn't even in</p> <p>6 the picture with respect to The Bag</p> <p>7 Addiction.com; isn't that correct?</p> <p>8 A Correct.</p> <p>9 Q Did you actually set up credit card</p> <p>10 services through Frontline and The Bag</p> <p>11 Addiction became operational as of</p> <p>12 September 2006?</p> <p>13 A We didn't set it up, but Bag Addiction</p> <p>14 was approved and started processing by</p> <p>15 Frontline in 2006.</p> <p>16 Q It was advertising the replica</p> <p>17 handbags for that period of time and making</p> <p>18 sales and when the sales were processed</p> <p>19 through credit cards, it was all done by</p> <p>20 Frontline during that period of time; is that</p> <p>21 correct?</p> <p>22 A Correct.</p> <p>23 MR. KENNEDY: Mark this</p> <p>24 Exhibit 38.</p> <p>25 (Whereupon application to</p>
<p style="text-align: right;">215</p> <p>1 Counley</p> <p>2 A Yes.</p> <p>3 Q It was not Woodforest; is that</p> <p>4 correct?</p> <p>5 A Correct.</p> <p>6 MR. WEIGEL: I'm just going to</p> <p>7 have an objection.</p> <p>8 MR. KENNEDY: He's not my</p> <p>9 witness, but your objection is noted.</p> <p>10 Can you please mark this as</p> <p>11 Exhibit 37.</p> <p>12 (Whereupon application to</p> <p>13 Frontline was marked Counley Exhibit</p> <p>14 37 for identification as of this</p> <p>15 date.)</p> <p>16 Q Mr. Counley, Exhibit 37, can you</p> <p>17 identify that as being the application that</p> <p>18 you filed on behalf of the Laurette Company</p> <p>19 for The Bag Addiction with Frontline?</p> <p>20 A Yes.</p> <p>21 Q What was the date that you filed that</p> <p>22 application?</p> <p>23 A September 15, 2006 is when it's signed</p> <p>24 by the merchant.</p> <p>25 Q Did Frontline approve the account for</p>	<p style="text-align: right;">217</p> <p>1 Counley</p> <p>2 Woodforest was marked Counley Exhibit</p> <p>3 38 for identification as of this</p> <p>4 date.)</p> <p>5 Q Mr. Counley, you have just been handed</p> <p>6 Exhibit 38 and I'll state for the record that</p> <p>7 Exhibit 38 is -- it comprises the first four</p> <p>8 pages of what was marked previously as</p> <p>9 Exhibit 4 and I'm going to ask you whether</p> <p>10 Exhibit 38 is the entirety of the application</p> <p>11 you filed with Woodforest for the Laurette</p> <p>12 Company?</p> <p>13 A Well, there would have been a driver's</p> <p>14 license included. Is that what you mean? Or</p> <p>15 the agreement application?</p> <p>16 Q Well, in addition to -- let's start</p> <p>17 with that. Is Exhibit 38 the agreement</p> <p>18 application that you filed --</p> <p>19 A Yes.</p> <p>20 Q -- with Woodforest National Bank?</p> <p>21 A Yes.</p> <p>22 Q And that was for the Laurette Company,</p> <p>23 correct?</p> <p>24 A Correct.</p> <p>25 Q And at the time that you filed that,</p>

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<p style="text-align: right;">218</p> <p>1 Counley</p> <p>2 credit card services were already being</p> <p>3 provided for the Laurette Company by</p> <p>4 Frontline?</p> <p>5 A Correct.</p> <p>6 Q Now, what, in addition to Exhibit 38,</p> <p>7 would you have provided to Woodforest for</p> <p>8 purposes of this application?</p> <p>9 A Copy of driver's license, Articles of</p> <p>10 Incorporation and the processing statements</p> <p>11 from Frontline which they would have had two</p> <p>12 months' worth, September and October.</p> <p>13 Q Describe what the processing</p> <p>14 statements looked like.</p> <p>15 A It's just a monthly summary of her</p> <p>16 credit card sales through Frontline for each</p> <p>17 month.</p> <p>18 Q Did you provide Woodforest National</p> <p>19 Bank with any portion of the website for The</p> <p>20 Bag Addiction that was then in operation?</p> <p>21 A The website is listed on the</p> <p>22 application.</p> <p>23 Q Did you provide any screen shots from</p> <p>24 the website or anything else?</p> <p>25 A No.</p>	<p style="text-align: right;">220</p> <p>1 Counley</p> <p>2 processing volume.</p> <p>3 Q What was the volume limit that</p> <p>4 Frontline had?</p> <p>5 A I think at the time 50,000.</p> <p>6 Q Now, could you have gone to Frontline</p> <p>7 and asked to have the limit increased?</p> <p>8 A It is possible to ask that. Usually</p> <p>9 banks don't like to do that in the first</p> <p>10 three months. I'm not sure who did ask or</p> <p>11 not. Some merchants also liked to have two</p> <p>12 merchant accounts. Even if they could get</p> <p>13 additional volume at the first bank, they</p> <p>14 like to have two accounts so they don't have</p> <p>15 all their eggs in one basket.</p> <p>16 Q Did the Laurette Company or any of its</p> <p>17 principals ask you to get a second account or</p> <p>18 was that something that you suggested</p> <p>19 yourself?</p> <p>20 A A number of merchants have second</p> <p>21 accounts. I'm not sure if she asked us or we</p> <p>22 suggested it.</p> <p>23 Q And the reasoning behind getting the</p> <p>24 second account with Woodforest National Bank</p> <p>25 was it because of the limit, the \$50,000</p>
<p style="text-align: right;">219</p> <p>1 Counley</p> <p>2 Q Within the description on Exhibit 38</p> <p>3 of the products, which is about a third of</p> <p>4 the way down on the left side of this form,</p> <p>5 read how you described what the products were</p> <p>6 for this website.</p> <p>7 A Designer handbags.</p> <p>8 Q Above that -- it's written wholesale</p> <p>9 slash retail; do you see that?</p> <p>10 A Yes.</p> <p>11 Q Did you write that in?</p> <p>12 A No.</p> <p>13 Q Do you know who did?</p> <p>14 A I do not.</p> <p>15 Q Is it fair to say that the reason you</p> <p>16 decided to file an application with</p> <p>17 Woodforest, although Frontline was already</p> <p>18 providing the credit card services, is</p> <p>19 because you were concerned that The Bag</p> <p>20 Addiction might reach the limits of the</p> <p>21 Frontline agreement?</p> <p>22 A Which limits?</p> <p>23 Q The dollar limit as to how much</p> <p>24 processing they could do through Frontline?</p> <p>25 A Right. She needed additional</p>	<p style="text-align: right;">221</p> <p>1 Counley</p> <p>2 limit that Frontline had for its account?</p> <p>3 A I'm not sure if it was the limit or</p> <p>4 she wanted two accounts.</p> <p>5 MR. KENNEDY: Mark this as</p> <p>6 Exhibit 39.</p> <p>7 (Whereupon e-mail exchange was</p> <p>8 marked Counley Exhibit 39 for</p> <p>9 identification as of this date.)</p> <p>10 Q Mr. Counley, I've just handed you what</p> <p>11 has been marked as Exhibit 39. Would you</p> <p>12 take a minute to look at that, please?</p> <p>13 A All right.</p> <p>14 Q Do you recognize first the e-mail</p> <p>15 exchange that comprises Exhibit 39?</p> <p>16 A I don't remember it.</p> <p>17 Q Do you know notice that you are copied</p> <p>18 on this e-mail exchange?</p> <p>19 A I do.</p> <p>20 Q Having reviewed it, do you see this to</p> <p>21 be an exchange between Hans Strickler of</p> <p>22 Frontline and Pat Kirk of Laurette Company</p> <p>23 regarding the question as to why there is a</p> <p>24 second source?</p> <p>25 A I do.</p>

<p style="text-align: right;">222</p> <p>1 Counley</p> <p>2 Q Did you understand that, at least the</p> <p>3 reason stated by Pat Kirk to Frontline, as to</p> <p>4 why there was a second source, namely</p> <p>5 Woodforest, was because of the limit that</p> <p>6 Frontline had of \$50,000?</p> <p>7 A Correct.</p> <p>8 Q Did you understand, as a result of</p> <p>9 this exchange in October 2007, that the limit</p> <p>10 was increased to 75,000 for Frontline's</p> <p>11 business?</p> <p>12 A Correct.</p> <p>13 Q Look at the second e-mail on the first</p> <p>14 page of Exhibit 39 and this is the one dated</p> <p>15 October 8, 2007. It's from Pat Kirk to Hans</p> <p>16 Strickler and you've been copied on this. Do</p> <p>17 you see that?</p> <p>18 A I do.</p> <p>19 Q Pat Kirk says "We actually have</p> <p>20 another website we use and, therefore, have</p> <p>21 another bank, Woodforest, that we process</p> <p>22 through. When volume amounts got close, we</p> <p>23 would occasionally switch over to Woodforest</p> <p>24 on The Bag Addiction"; do you see that</p> <p>25 statement?</p>	<p style="text-align: right;">224</p> <p>1 Counley</p> <p>2 identification as of this date.)</p> <p>3 Q I've handed you a copy of Exhibit 40</p> <p>4 which is the production document we received</p> <p>5 from Gucci, GUCCI0047235.</p> <p>6 MR. WEIGEL: Off the record.</p> <p>7 (Whereupon a discussion was</p> <p>8 held off the record.)</p> <p>9 Q Have you had a chance to read Exhibit</p> <p>10 40, Mr. Counley?</p> <p>11 A Yes.</p> <p>12 Q Do you see the third paragraph? Did</p> <p>13 you have a chance to review that?</p> <p>14 A Yes.</p> <p>15 Q This is referring to at least a draft</p> <p>16 of a Kirk declaration and let me ask you, was</p> <p>17 the information set forth in the third</p> <p>18 paragraph correct?</p> <p>19 A I can't recall if that's what I told</p> <p>20 her, Kirk not to continue to use the other</p> <p>21 thing.</p> <p>22 Q Let me ask you this, was it correct,</p> <p>23 this statement, and I'm going to focus on it,</p> <p>24 next to the last sentence in that paragraph</p> <p>25 "Mr. Counley told me that was because</p>
<p style="text-align: right;">223</p> <p>1 Counley</p> <p>2 A I do.</p> <p>3 Q Do you have any reason to believe that</p> <p>4 what Mr. Kirk said was incorrect?</p> <p>5 A I don't know if they had another</p> <p>6 website, so I don't know that that was said.</p> <p>7 Q Do you understand that, at least from</p> <p>8 the point of view of The Bag Addiction, the</p> <p>9 reason they had a second account with</p> <p>10 Woodforest was simply to handle the situation</p> <p>11 where the volumes might get too high and they</p> <p>12 start approaching the limit with Frontline,</p> <p>13 they would, therefore, use the Woodforest</p> <p>14 account?</p> <p>15 MR. WEIGEL: Objection to form.</p> <p>16 A Yes.</p> <p>17 Q You understood that that was at least</p> <p>18 the thinking of the Kirks?</p> <p>19 A Right.</p> <p>20 MR. WEIGEL: Objection.</p> <p>21 Foundation.</p> <p>22 MR. KENNEDY: Can you mark this</p> <p>23 as Exhibit 40.</p> <p>24 (Whereupon GUCCI0047235 was</p> <p>25 marked Counley Exhibit 40 for</p>	<p style="text-align: right;">225</p> <p>1 Counley</p> <p>2 Frontline wanted all the fees associated with</p> <p>3 the credit card processing, but told me to</p> <p>4 continue using both banks."</p> <p>5 My question is did Frontline say that</p> <p>6 they wanted all the fees associated with</p> <p>7 credit card processing through The Bag</p> <p>8 Addiction?</p> <p>9 A Well, I honestly can't recall that</p> <p>10 conversation. Am I allowed to say that?</p> <p>11 Q You can if you didn't recall it.</p> <p>12 A All right.</p> <p>13 Q Let's go back as far as The Bag</p> <p>14 Addiction goes, that was set up as an</p> <p>15 operational business doing, as far as you</p> <p>16 know, what it did during the entire course of</p> <p>17 its business life, underfunding solely or</p> <p>18 under credit card processing solely by</p> <p>19 Frontline before you put in an application to</p> <p>20 Woodforest?</p> <p>21 A That's true.</p> <p>22 MR. WEIGEL: Can I have that</p> <p>23 question back.</p> <p>24 (Whereupon the record was read</p> <p>25 back by the reporter.)</p>

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<p style="text-align: right;">226</p> <p>1 Counley</p> <p>2 MR. WEIGEL: Objection.</p> <p>3 Q Would you take a look at Exhibit 26?</p> <p>4 That should be in front of you.</p> <p>5 A Okay.</p> <p>6 Q In terms of residuals that Durango got</p> <p>7 from the Frontline or from Woodforest for The</p> <p>8 Bag Addiction, did you have a different</p> <p>9 percentage that determined the residual you</p> <p>10 got?</p> <p>11 A (No response.)</p> <p>12 Q Let me try to rephrase the question.</p> <p>13 I see you are puzzled by it.</p> <p>14 If I understood your testimony earlier</p> <p>15 correctly, the residual you received was</p> <p>16 based on the profit that was made by either</p> <p>17 Woodforest or Frontline; is that correct?</p> <p>18 A Correct. I received a percentage of</p> <p>19 the profit no matter which processor</p> <p>20 issued --</p> <p>21 Q Was it the same percentage regardless</p> <p>22 of whether it was Woodforest or Frontline?</p> <p>23 A Yes.</p> <p>24 Q What was that percentage?</p> <p>25 A On any income 40 to 50 percent goes to</p>	<p style="text-align: right;">228</p> <p>1 Counley</p> <p>2 Q Is it correct for all of the</p> <p>3 processing that was done for The Bag</p> <p>4 Addiction, that the Frontline share, the</p> <p>5 Frontline residual was this number that's on</p> <p>6 the first column under Frontline, which is a</p> <p>7 little more than \$18,000?</p> <p>8 A Yes.</p> <p>9 Q If we wanted to determine what the</p> <p>10 total residual was for Woodforest, that's the</p> <p>11 sixth column on Exhibit 26 and that number is</p> <p>12 a little bit less than 9,000; is that</p> <p>13 correct?</p> <p>14 A That's actually the seventh column and</p> <p>15 that's a little bit less than 9,000.</p> <p>16 Q Wouldn't that indicate that Frontline</p> <p>17 did virtually twice the credit card</p> <p>18 processing for The Bag Addiction that</p> <p>19 Woodforest did?</p> <p>20 A Yes. Since the rates were fairly</p> <p>21 similar at both places for the merchant, then</p> <p>22 you could assume that.</p> <p>23 Q Mr. Weigel asked you, he pointed out</p> <p>24 from one of the documents that the Woodforest</p> <p>25 processing was some \$900,000 that Woodforest</p>
<p style="text-align: right;">227</p> <p>1 Counley</p> <p>2 the agent, 35 percent of the remainder goes</p> <p>3 to me and then the remainder of that is split</p> <p>4 60/40 to Shane and Bill.</p> <p>5 Q When you say 35 percent goes to you,</p> <p>6 were you speaking of that's what would go to</p> <p>7 Durango?</p> <p>8 A So if we have an account with \$100</p> <p>9 profit, 40 or 50 percent, \$40 or \$50 goes to</p> <p>10 the agent, the remaining.</p> <p>11 Q Who was the agent in that case, is</p> <p>12 that Woodforest or Frontline?</p> <p>13 A Here I'll try to do it more clearly.</p> <p>14 If we have \$100 profit from an account and if</p> <p>15 Merchant Express is the agent and let's say</p> <p>16 they are at 40 percent revenue sharing. They</p> <p>17 would receive \$40. Of the remaining \$60,</p> <p>18 35 percent of it is paid to Nathan Counley</p> <p>19 and then the remaining 65 percent of it is</p> <p>20 paid -- is split between Bill and Shane.</p> <p>21 Q When you started out with the \$100</p> <p>22 profit, is that the profit by the credit card</p> <p>23 processing entity such as Frontline or</p> <p>24 Woodforest?</p> <p>25 A Yes.</p>	<p style="text-align: right;">229</p> <p>1 Counley</p> <p>2 had processed?</p> <p>3 A Wait. I have to retract the last</p> <p>4 answer. If you remember, Joe Montella gets</p> <p>5 25 percent of the residuals before it gets to</p> <p>6 us, so this number is slightly less from</p> <p>7 Woodforest's total if Joe took 25 percent of</p> <p>8 it. So, if you want to derive numbers, I</p> <p>9 don't think we can use the residuals to get</p> <p>10 to the total sales --</p> <p>11 Q Isn't the difference greater than a</p> <p>12 25 percent difference? You are talking two</p> <p>13 to one between the residuals for Frontline</p> <p>14 and Woodforest as shown on Exhibit 26?</p> <p>15 A Yes, I'm not sure. Clearly Frontline</p> <p>16 did more sales for the merchant, yes. To</p> <p>17 what degree, what ratio exactly, it would be</p> <p>18 a little cumbersome to figure out from this.</p> <p>19 Q Do you have records that would</p> <p>20 indicate how much business in credit card</p> <p>21 processing Frontline did for The Bag</p> <p>22 Addiction?</p> <p>23 A If Frontline hasn't supplied it</p> <p>24 already to Gucci -- I would assume they did.</p> <p>25 If not, we may be able to get the information</p>

<p style="text-align: right;">230</p> <p>1 Counley</p> <p>2 from Bill on residuals.</p> <p>3 Q Did you submit anything to Gucci that</p> <p>4 would indicate how much Frontline did?</p> <p>5 A I don't believe so.</p> <p>6 Q Would you take Exhibit 25? It's the</p> <p>7 one page chart and I know Mr. Weigel had you</p> <p>8 go across the columns and tell us what the</p> <p>9 column meant. What is the column that would</p> <p>10 tell us what the net profit made by</p> <p>11 Woodforest National Bank for all of its</p> <p>12 credit card processing services for The Bag</p> <p>13 Addiction or for the Laurette Company was?</p> <p>14 A From my understanding, the far right</p> <p>15 column, MCPS income.</p> <p>16 Q Are you able to make out the number</p> <p>17 there which I will represent on the record</p> <p>18 and see if that appears to be it \$16,505.86?</p> <p>19 A Correct.</p> <p>20 Q That's the total profit, as far as you</p> <p>21 understand it, based on this record that you</p> <p>22 testified about that Woodforest National Bank</p> <p>23 made for all of its credit card processing</p> <p>24 for The Bag Addiction?</p> <p>25 A These are not my -- our reports, but</p>	<p style="text-align: right;">232</p> <p>1 Counley</p> <p>2 their name with Frontline change to The</p> <p>3 Shopping Addiction?</p> <p>4 A I do recall that.</p> <p>5 Q I have put a flag on a page. First,</p> <p>6 could you tell us what the Bates number is of</p> <p>7 that page within the exhibit?</p> <p>8 A Gucci-000-7232.</p> <p>9 Q And there is a total, a sales total</p> <p>10 there for the amount of credit card</p> <p>11 processing; is that correct?</p> <p>12 A Correct.</p> <p>13 Q Could you read what number there is?</p> <p>14 A \$1,152,553.69.</p> <p>15 Q Do you have a recollection one way or</p> <p>16 another if that is an approximate number</p> <p>17 volume of the credit card processing by</p> <p>18 Frontline?</p> <p>19 A I don't have any reason to believe it</p> <p>20 would be incorrect.</p> <p>21 Q Could you take out Exhibit 6, please?</p> <p>22 A All right.</p> <p>23 Q You recall Mr. Weigel was asking you</p> <p>24 whether you were an agent of -- I'm sorry --</p> <p>25 Woodforest at different points during your</p>
<p style="text-align: right;">231</p> <p>1 Counley</p> <p>2 if we are to believe the numbers here, that</p> <p>3 should be correct.</p> <p>4 MR. KENNEDY: Please mark this</p> <p>5 as Exhibit 41.</p> <p>6 (Whereupon Gucci 7211 through</p> <p>7 7246 was marked Counley Exhibit 41 for</p> <p>8 identification as of this date.)</p> <p>9 Q Mr. Counley, I'm showing you what has</p> <p>10 been marked as Exhibit 41 and if you would</p> <p>11 hand it to me for just one second, I want to</p> <p>12 read the numbers on the record just so we</p> <p>13 have that. It's production number Gucci 7211</p> <p>14 through 7246.</p> <p>15 My first question of you is whether</p> <p>16 you have seen this document before?</p> <p>17 A No.</p> <p>18 Q Do you have an understanding, just</p> <p>19 based on the format of the document, that it</p> <p>20 purports to show the sales processed by</p> <p>21 Frontline for The Bag Addiction?</p> <p>22 A Yes, sales history and it has the</p> <p>23 merchant name and the merchant ID number.</p> <p>24 Q Did there come a time when The Bag</p> <p>25 Addiction, the Laurette Company asked to have</p>	<p style="text-align: right;">233</p> <p>1 Counley</p> <p>2 examination?</p> <p>3 A Correct.</p> <p>4 Q This Exhibit 6 is indeed a contract</p> <p>5 that you had; is that correct?</p> <p>6 A Correct.</p> <p>7 Q Would you turn to the second page of</p> <p>8 Exhibit 6 and under paragraph capital C, I'll</p> <p>9 read the first sentence. It says "The sales</p> <p>10 associate's relationship with MCCS is that of</p> <p>11 an independent contractor, not an employee or</p> <p>12 agent of MCCS"; do you see that?</p> <p>13 A Yes.</p> <p>14 Q This is the agreement -- if you flip</p> <p>15 to the next page -- that you signed that</p> <p>16 documents your relationship with MCCS, is</p> <p>17 that right?</p> <p>18 A Correct.</p> <p>19 Q So, to the question whether or not you</p> <p>20 are an agent of MCCS, what would the answer</p> <p>21 to that be?</p> <p>22 A No.</p> <p>23 Q Likewise were you ever an agent of</p> <p>24 Woodforest National Bank?</p> <p>25 A No. Agent is a term we loosely use in</p>

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<p style="text-align: right;">234</p> <p>1 Counley</p> <p>2 our industry, but like I said earlier, it's</p> <p>3 probably not the correct term, an independent</p> <p>4 contractor --</p> <p>5 MR. WEIGEL: Objection. Calls</p> <p>6 for a legal conclusion.</p> <p>7 Q Exhibit 38 which I hope you have right</p> <p>8 in front of you?</p> <p>9 A Yes.</p> <p>10 Q That's the application that you</p> <p>11 submitted?</p> <p>12 A Correct.</p> <p>13 Q Would it be fair to say that in</p> <p>14 submitting that application, you didn't have</p> <p>15 the ability on behalf of Woodforest National</p> <p>16 Bank to approve the application that was</p> <p>17 being made by the Laurette Company, correct?</p> <p>18 A Certainly not.</p> <p>19 Q So you couldn't act on behalf of</p> <p>20 Woodforest National Bank; is that right?</p> <p>21 A We don't control the underwriting</p> <p>22 process at all.</p> <p>23 Q Have you ever had a direct</p> <p>24 conversation with a Woodforest National Bank</p> <p>25 employee to your recollection?</p>	<p style="text-align: right;">236</p> <p>1 Counley</p> <p>2 Woodforest National Bank, correct?</p> <p>3 A Yes.</p> <p>4 Q At the time that this application was</p> <p>5 made of Exhibit 38 to Woodforest National</p> <p>6 Bank, you were aware that the products of The</p> <p>7 Bag Addiction were replicas, correct?</p> <p>8 A Correct.</p> <p>9 Q But you didn't have any awareness as</p> <p>10 to whether or not they were counterfeits; is</p> <p>11 that fair?</p> <p>12 A No.</p> <p>13 MR. WEIGEL: Objection.</p> <p>14 Leading.</p> <p>15 Q You didn't advise Woodforest National</p> <p>16 Bank at any time that these products were</p> <p>17 counterfeit, correct?</p> <p>18 A No.</p> <p>19 Q To preface the questions I've raised,</p> <p>20 I'm not saying one way or another whether</p> <p>21 they were counterfeit, but as far as you</p> <p>22 knew, you didn't know one way or another</p> <p>23 whether the products on The Bag Addiction</p> <p>24 site were counterfeit; is that correct?</p> <p>25 MR. WEIGEL: Objection.</p>
<p style="text-align: right;">235</p> <p>1 Counley</p> <p>2 A No.</p> <p>3 Q Would you take Exhibit 29, please?</p> <p>4 A Okay.</p> <p>5 Q This is the exhibit where you</p> <p>6 testified about a recommendation being made</p> <p>7 to The Bag Addiction to have a box put on</p> <p>8 their website where a purchaser would have to</p> <p>9 check that they understood that the items</p> <p>10 being purchased are replicas and not</p> <p>11 originals; is that correct?</p> <p>12 A It's communication we forwarded on</p> <p>13 behalf of Frontline.</p> <p>14 Q Is it your testimony that that was a</p> <p>15 suggestion by Frontline?</p> <p>16 A Yes.</p> <p>17 Q Would it be correct to say Woodforest</p> <p>18 was not even in the loop on these e-mails</p> <p>19 between Hans Strickler and Jennifer Kirk?</p> <p>20 A That's correct.</p> <p>21 Q Just so we are clear there, are three</p> <p>22 pages of e-mails within this document that</p> <p>23 set forth the communications between you and</p> <p>24 Jennifer Kirk and Hans Strickler and none of</p> <p>25 this correspondence was even sent to</p>	<p style="text-align: right;">237</p> <p>1 Counley</p> <p>2 Leading.</p> <p>3 A No.</p> <p>4 Q Okay?</p> <p>5 A We are not underwriters. We are not</p> <p>6 risk managers. We don't police the accounts.</p> <p>7 We are not trademark experts. It said</p> <p>8 replicas which we assume meant look a like</p> <p>9 and if the banks approved it, then so be it.</p> <p>10 Q Just to be complete, you didn't</p> <p>11 communicate anything to Woodforest National</p> <p>12 Bank that would have alerted them to whether</p> <p>13 these products were replicas or counterfeits</p> <p>14 or anything of the sort; is that right?</p> <p>15 A That's not really my job. We had the</p> <p>16 merchant fill out the application and include</p> <p>17 their website. Then the processors handle</p> <p>18 the underwriting process from there.</p> <p>19 Q Was The Bag Addiction the first</p> <p>20 company that was a replica company that you</p> <p>21 applied to Woodforest with?</p> <p>22 A Correct.</p> <p>23 Q The date of that application was and I</p> <p>24 know we have been through this, that was the</p> <p>25 November 14, 2006, that's the one that's</p>

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<p style="text-align: right;">238</p> <p>1 Counley</p> <p>2 right there?</p> <p>3 A November 13 is when it was signed, but</p> <p>4 sometimes it takes a day or two to process.</p> <p>5 Q Now, Mr. Weigel went through Exhibits</p> <p>6 15 through 24, which were additional accounts</p> <p>7 that you testified about that you had</p> <p>8 submitted applications to Woodforest and I</p> <p>9 think he identified those or you identified</p> <p>10 those as being replicas. Do you recall that</p> <p>11 testimony?</p> <p>12 A Yes.</p> <p>13 Q Here's what I'm going to do to try to</p> <p>14 shorten things, which is, first I'll ask to</p> <p>15 have this marked as the next exhibit, 42.</p> <p>16 (Whereupon notes of websites</p> <p>17 and dates was marked Counley Exhibit</p> <p>18 42 for identification as of this</p> <p>19 date.)</p> <p>20 MR. KENNEDY: Bob, those are my</p> <p>21 notes of what the websites are as well</p> <p>22 as the date. I just want to get his</p> <p>23 confirmation.</p> <p>24 MR. WEIGEL: The dates are on</p> <p>25 the record, but you can show him if</p>	<p style="text-align: right;">240</p> <p>1 Counley</p> <p>2 just so we have confirmation that that's</p> <p>3 indeed the correct dates.</p> <p>4 MR. WENGROVSKY: 42 is the most</p> <p>5 recent exhibit.</p> <p>6 MR. WEIGEL: I'm going to</p> <p>7 object. The witness is testifying</p> <p>8 under oath. You need him to deface</p> <p>9 the exhibit.</p> <p>10 MR. KENNEDY: That's okay.</p> <p>11 I'll do without that.</p> <p>12 Q Your testimony is that the dates on</p> <p>13 Exhibit 42 are accurate; is that correct?</p> <p>14 A They do appear to be accurate.</p> <p>15 Q Mr. Counley, when did you first hear</p> <p>16 that Gucci was raising an issue as to</p> <p>17 trademark counterfeiting or trademark</p> <p>18 infringement with respect to merchandise on</p> <p>19 The Bag Addiction website?</p> <p>20 A I don't have confirmations in front of</p> <p>21 me, but apparently you guys served the</p> <p>22 subpoena in August of '08.</p> <p>23 Q Now, would it be correct to say that</p> <p>24 every one of those websites that you</p> <p>25 submitted to Woodforest National Bank came</p>
<p style="text-align: right;">239</p> <p>1 Counley</p> <p>2 you want.</p> <p>3 Q Mr. Counley, let me hand you what's</p> <p>4 been marked as Exhibit 42 and just ask you to</p> <p>5 confirm -- those go through these exhibits 15</p> <p>6 through 24 and they set forth the date of the</p> <p>7 application. I would just like to get your</p> <p>8 confirmation that those are indeed the dates</p> <p>9 of these applications?</p> <p>10 A You have to allow me a minute to</p> <p>11 confirm.</p> <p>12 Q Thank you.</p> <p>13 A I only see at this time on -- I only</p> <p>14 see the date on the fax header. The fax</p> <p>15 header says 4/17, but there is no signature</p> <p>16 or stamp.</p> <p>17 Q Okay. Is the fax header sufficient</p> <p>18 for you to say that's the date of the</p> <p>19 application?</p> <p>20 A Looks correct.</p> <p>21 Q Okay.</p> <p>22 A These dates all appear correct 2006</p> <p>23 and 2007.</p> <p>24 Q Can I ask you to sign and date</p> <p>25 Exhibit -- whatever number is on that exhibit</p>	<p style="text-align: right;">241</p> <p>1 Counley</p> <p>2 between -- they were after The Bag Addiction</p> <p>3 had been submitted and before you gained</p> <p>4 notice that there was any issue with alleged</p> <p>5 trademark infringement or counterfeiting?</p> <p>6 A Correct.</p> <p>7 MR. WEIGEL: Objection.</p> <p>8 Foundation. Leading.</p> <p>9 Q During this entire period of time is</p> <p>10 it accurate to say that you didn't -- you</p> <p>11 weren't aware of there being any issue with</p> <p>12 any of these replica websites?</p> <p>13 A That's correct.</p> <p>14 MR. WEIGEL: Again, leading.</p> <p>15 Q Mr. Weigel asked you about some matter</p> <p>16 dealing with Stephanie Walker and there was</p> <p>17 potentially some notice she may have</p> <p>18 received. My question is, did you</p> <p>19 communicate anything about that to Woodforest</p> <p>20 National Bank?</p> <p>21 A No, and you can see in my e-mails that</p> <p>22 I didn't comment on it with her. I mean you</p> <p>23 can assume that I didn't really know what</p> <p>24 that meant.</p> <p>25 Q You didn't know what it meant. You</p>

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<p style="text-align: right;">242</p> <p>1 Counley</p> <p>2 didn't think it was an issue and you didn't</p> <p>3 communicate it to Woodforest National Bank in</p> <p>4 any manner?</p> <p>5 A Correct.</p> <p>6 MR. WEIGEL: Objection.</p> <p>7 Leading.</p> <p>8 Q I do want to go back to Exhibit 26</p> <p>9 just for a minute.</p> <p>10 A All right.</p> <p>11 Q And we are dealing with the difference</p> <p>12 between the second column, is that -- that's</p> <p>13 the one that shows the Frontline residual</p> <p>14 amount, correct?</p> <p>15 A Right.</p> <p>16 Q And then I think you pointed out it</p> <p>17 was the seventh line, which is a Woodforest</p> <p>18 residual amount, correct?</p> <p>19 A Yes, correct.</p> <p>20 Q In order to have a comparison of</p> <p>21 apples to apples, would you add 25 percent to</p> <p>22 the Woodforest amount to take account for</p> <p>23 what went to Mr. Montella?</p> <p>24 A Well, there are two things. We would</p> <p>25 have to add 25 percent which went to</p>	<p style="text-align: right;">244</p> <p>1 Counley</p> <p>2 exhibit a listing of all of the accounts that</p> <p>3 your company Durango did with Woodforest?</p> <p>4 A Yes. I would have to compare it to</p> <p>5 our residual reports, but yes, it looks</p> <p>6 complete.</p> <p>7 Q Exhibit 10 appears to be -- appears to</p> <p>8 end as of September 2007 and then it looks</p> <p>9 like in Exhibit 9 you pick up with October of</p> <p>10 2007 and take it through to August of 2009;</p> <p>11 is that correct?</p> <p>12 A Yes.</p> <p>13 Q Now is it correct to say that there</p> <p>14 was no application that you submitted for a</p> <p>15 replica company to Woodforest after April of</p> <p>16 2008?</p> <p>17 A Correct.</p> <p>18 Q I'm going to inform you that</p> <p>19 Woodforest received a subpoena on June 10,</p> <p>20 2008 from the Laurette case, much like your</p> <p>21 company did, and would it be accurate to say</p> <p>22 that, as far as you know, Woodforest never</p> <p>23 approved of a replica account since the date</p> <p>24 that they received that subpoena in June of</p> <p>25 2008?</p>
<p style="text-align: right;">243</p> <p>1 Counley</p> <p>2 Mr. Montella and then Frontline -- they were</p> <p>3 paying out, I think, a higher percentage of</p> <p>4 their profits to Durango than Woodforest was</p> <p>5 paying to Joe.</p> <p>6 Q Do you know how much or what the</p> <p>7 difference was?</p> <p>8 A Frontline, like most banks, pay out 50</p> <p>9 percent of its profits to its contractors or</p> <p>10 agents, whatever you want to call it, but I</p> <p>11 believe, I'm not 100 percent sure on this, we</p> <p>12 have to look at the numbers, but I believe</p> <p>13 Woodforest pays out 40 percent to its</p> <p>14 contractors.</p> <p>15 Q And we would have to correct for those</p> <p>16 two variables to do a comparison; is that</p> <p>17 correct?</p> <p>18 A Right.</p> <p>19 MR. KENNEDY: Off the record.</p> <p>20 (Whereupon a discussion was</p> <p>21 held off the record.)</p> <p>22 Q Mr. Counley, would you please take</p> <p>23 Exhibits 9 and 10?</p> <p>24 A All right.</p> <p>25 Q Starting with Exhibit 10 is that</p>	<p style="text-align: right;">245</p> <p>1 Counley</p> <p>2 MR. WEIGEL: I object to</p> <p>3 foundation.</p> <p>4 A Yes, going by the approval list, that</p> <p>5 would be correct.</p> <p>6 MR. WEIGEL: Are you referring</p> <p>7 only to websites that Mr. Counley</p> <p>8 presented?</p> <p>9 MR. KENNEDY: Yes, as far as he</p> <p>10 knows, that all I can say, absolutely.</p> <p>11 Q You understood that question, didn't</p> <p>12 you? As far as you know, you are not aware</p> <p>13 of Woodforest ever approving, doing credit</p> <p>14 card funding for a replica website after June</p> <p>15 of 2008?</p> <p>16 A Correct.</p> <p>17 Q Did anyone from Woodforest provide you</p> <p>18 any information that they were not accepting</p> <p>19 replica websites or business for replica</p> <p>20 merchants at any time?</p> <p>21 A No, we don't receive communication</p> <p>22 from Woodforest anyway. Off the top of my</p> <p>23 head I think Joe Montella told us that you</p> <p>24 stopped accepting applications for replicas.</p> <p>25 Q Do you know approximately when that</p>

<p style="text-align: right;">246</p> <p>1 Counley</p> <p>2 occurred?</p> <p>3 A I don't. Going from this list I would</p> <p>4 assume about the time that you guys received</p> <p>5 the subpoena, there has been no more accounts</p> <p>6 since then.</p> <p>7 Q Did you ever receive a communication</p> <p>8 from anyone at Woodforest National Bank to</p> <p>9 the effect that they thought any of the</p> <p>10 merchandise being sold on The Bag Addiction</p> <p>11 was counterfeit merchandise?</p> <p>12 A No.</p> <p>13 Q Are you aware of Woodforest National</p> <p>14 Bank ever obtaining a handbag from The Bag</p> <p>15 Addiction?</p> <p>16 A No.</p> <p>17 Q Going back to that list as I marked as</p> <p>18 a recent exhibit --</p> <p>19 MR. WENGROVSKY: 42 is the</p> <p>20 handwritten list.</p> <p>21 Q Is it accurate to say that for all of</p> <p>22 these different replica merchants that</p> <p>23 Mr. Weigel took you through during that time</p> <p>24 period dating from December 2006 through to</p> <p>25 December 2007, during that time period, that</p>	<p style="text-align: right;">248</p> <p>1 Counley</p> <p>2 on it as an application number?</p> <p>3 A 781091 -- yes, it's the same.</p> <p>4 Q Do you have any understanding as to</p> <p>5 why they are listed as Shopping Addiction</p> <p>6 instead of The Bag Addiction?</p> <p>7 A I'm assuming they contacted the</p> <p>8 processor to change their DBA name.</p> <p>9 Q It is your testimony, as far as you</p> <p>10 know, the net profit made by Woodforest</p> <p>11 National Bank from this entire venture in</p> <p>12 processing credit card payments for The Bag</p> <p>13 Addiction is something a little greater than</p> <p>14 \$16,000?</p> <p>15 A Correct.</p> <p>16 MR. WEIGEL: Objection.</p> <p>17 Foundation. Leading.</p> <p>18 Q Have you done a computation as to what</p> <p>19 alleged profit Durango has made?</p> <p>20 A Yes, let me pull up the -- it's</p> <p>21 Exhibit 26, shows Durango profit.</p> <p>22 Q Okay. How much is it?</p> <p>23 A From Woodforest alone?</p> <p>24 Q Yes.</p> <p>25 A Woodforest residuals paid to Durango</p>
<p style="text-align: right;">247</p> <p>1 Counley</p> <p>2 as far as you're aware, none of the companies</p> <p>3 whose products were -- replicas were being</p> <p>4 sold ever had complained to the websites?</p> <p>5 A Had any of these companies received a</p> <p>6 subpoena or a notice from Gucci?</p> <p>7 Q Yes or from any of the companies whose</p> <p>8 products they said they were selling replicas</p> <p>9 of and I would include a subpoena, a</p> <p>10 Complaint, anything of that sort; were you</p> <p>11 aware of any of that?</p> <p>12 A Not that I'm aware of.</p> <p>13 Q We have been talking about The Bag</p> <p>14 Addiction, but if you go on Exhibit 10 to the</p> <p>15 third page -- I was trying to locate the one</p> <p>16 that would be The Bag Addiction for</p> <p>17 Woodforest National Bank. It's got the date</p> <p>18 November 16, 2006, client WF Woodforest</p> <p>19 application 781091 and it's listed as</p> <p>20 Shopping Addiction. Is that to your</p> <p>21 understanding The Bag Addiction?</p> <p>22 A Yes.</p> <p>23 Q And now just to make that consistent,</p> <p>24 would you look at Exhibit 38, which is the</p> <p>25 application? Does that have the same number</p>	<p style="text-align: right;">249</p> <p>1 Counley</p> <p>2 is 8,935; 533 paid out to Metro Merchant the</p> <p>3 agent, 2,941 paid to Nathan Counley and 5,462</p> <p>4 split with Shane and Bill.</p> <p>5 Q When Gucci asked Durango who were the</p> <p>6 companies that were processing the credit</p> <p>7 card payments, did Durango tell Gucci that it</p> <p>8 was Woodforest and Frontline?</p> <p>9 A At what point in time?</p> <p>10 Q When a subpoena was issued and you</p> <p>11 were requested to provide that information.</p> <p>12 A I cannot recall.</p> <p>13 Q Let me see if I can refresh memory.</p> <p>14 Mark this Exhibit 43.</p> <p>15 MR. WEIGEL: Lacks foundation.</p> <p>16 (Whereupon e-mail chain was</p> <p>17 marked Counley Exhibit 43 for</p> <p>18 identification as of this date.)</p> <p>19 Q Do you have Exhibit 43? Dealing with</p> <p>20 the first e-mail on Exhibit 43, do you see</p> <p>21 that Shane Kairalla has advised Gucci's</p> <p>22 counsel that Frontline and Woodforest are the</p> <p>23 two processors?</p> <p>24 A Yes.</p> <p>25 Q As far as you know, did Woodforest</p>

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19 (Continued on next page for
20 jurat.)

1 Counley
2 A Not that I'm aware of, no.
3 MR. WEIGEL: Thank you.
4 MR. KENNEDY: No further
5 questions.
6 (Time noted: 6:45 p.m.)
7
8
9 _____
10 NATHAN COUNLEY
11 Subscribed and sworn to before me
12 this _____ day of _____, 2010.

15 NOTARY PUBLIC

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<div style="text-align: right; font-weight: bold;">255</div> <div style="margin-top: 10px;"> <p>2 CERTIFICATE</p> <p>3 I, DEBBIE SALINE, hereby certify that</p> <p>4 the DEPOSITION of NATHAN COUNLEY was held before</p> <p>5 me on the 14th day of June, 2010; that said</p> <p>6 witness was duly sworn before the commencement of</p> <p>7 his testimony; that the testimony was taken</p> <p>8 stenographically by myself and then transcribed by</p> <p>9 myself; that the party was represented by counsel</p> <p>10 as appears herein;</p> <p>11 That the within transcript is a true</p> <p>12 record of the DEPOSITION of said witness;</p> <p>13 That I am not connected by blood or</p> <p>14 marriage with any of the parties; that I am not</p> <p>15 interested directly or indirectly in the outcome</p> <p>16 of this matter; that I am not in the employ of any</p> <p>17 of the counsel.</p> <p>18 IN WITNESS WHEREOF, I have hereunto set</p> <p>19 my hand this 17th day of June, 2010.</p> <p>20</p> <p>21</p> <p style="text-align: center;">DEBBIE SALINE</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> </div>																																																													

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Exhibit 14

From: "Nathan Counley" <nathan@durango-direct.com>
To: "Bag Addiction" <admin@thebagaddiction.com>
Sent: Thursday, September 14, 2006 4:50 PM
Attach: DMS-FLP_merch-app_retail.pdf
Subject: RE: Durango Merchant Services--GIR REP--Jennifer Mattchen

Jennifer,
Sounds good!

Please complete on the attached application (typed in Adobe, NOT hand-written please):

- Company info pg. 1
- Fed Tax ID pg. 1
- 2 signatures on page 2 (one for Guaranty, Merchant Acceptance) (name, title, date)
- Owner information on pg. 3 (including DOB, SS#, and previous address if less than 2 years)
- Enter in Amex/Disc MID
- Bank routing and acct # pg. 3
- Site Survey pg. 3 (own/lease & commercial/residential, etc)
- Initial every page, including Terms & conditions, and fax back (or email as .pdf/.jpg).

In addition, I will need the following sent in to us:

- Clear copy of principal's drivers license (scanned .jpg is best)
- Void check to confirm account for deposits (must be pre-printed w/ company name on them, otherwise need a bank reference letter stating your account name, number, and routing info)
- Articles of Incorporation
- I already have your processing statements

Please let me know if you have any questions.

Thank you,
Nathan Counley
nathan@durango-direct.com
(608) 467-6672
(413) 431-2720 (fax)
<http://durango-direct.com>

From: Bag Addiction [mailto:admin@thebagaddiction.com]
Sent: Thursday, September 14, 2006 6:25 PM
To: Nathan Counley
Subject: Re: Durango Merchant Services--GIR REP--Jennifer Mattchen

Ok, sounds good. I just got your message, sounds like a much better plan.
I already have an authorize.net gateway too that I signed up for prior to getting cardservice so we're good to go if I can secure a processor.
Let me know what else you need from me. I have several friends in this field I can refer over to you if this goes thru ok.

— Original Message —
From: Nathan Counley

LAU 00641

6/6/2008

GUCCI-0048024

To: 'Bag Addiction'
Sent: Thursday, September 14, 2006 4:15 PM
Subject: RE: Durango Merchant Services--GIR REP--Jennifer Mattchen

Jennifer,
Good news! I just found out our US bank can do replica accounts now! We can write you at 3.95%, setup fee is only \$285, let me know if this sounds good and I'll send over the application asap! We can have you Live in 24-48 hours, and you can use Authorize.net!

Thank you,
Nathan Counley
nathan@durango-direct.com
(608) 467-6672
(413) 431-2720 (fax)
<http://durango-direct.com>

From: Bag Addiction [mailto:admin@thebagaddiction.com]
Sent: Wednesday, September 13, 2006 2:20 PM
To: Nathan Counley
Subject: Re: Durango Merchant Services--GIR REP--Jennifer Mattchen

I have attached 3 months of statements for you to this email and will fax remaining documents.
Please let me know if they come thru ok?

— Original Message —

From: Nathan Counley
To: 'Bag Addiction'
Sent: Tuesday, September 12, 2006 7:01 AM
Subject: RE: Durango Merchant Services--GIR REP--Jennifer Mattchen

Jennifer,
Received the application, but, not any of the supporting documents requested on the last page:

- 6 months processing statements (minimum of 3 months)
- Utility bill for you
- Drivers license or passport
- Articles of Incorporation or Business License

Please let me know...

Thank you,
Nathan Counley
nathan@durango-direct.com
(608) 467-6672
(413) 431-2720 (fax)
<http://durango-direct.com>

From: Bag Addiction [mailto:admin@thebagaddiction.com]
Sent: Monday, September 11, 2006 8:42 PM
To: Nathan Counley
Subject: Re: Durango Merchant Services--GIR REP--Jennifer Mattchen

LAU 00642

6/6/2008

GUCCI-0048025

Fax sent let me know if you received, thanks

----- Original Message -----

From: Nathan Counley

To: 'Bag Addiction'

Sent: Monday, September 11, 2006 2:43 PM

Subject: RE: Durango Merchant Services--GIR REP--Jennifer Mattchen

Sounds good then. Please include the last 3 months of processing history from CSI then with your application (or 6 months if you have it). This will help to possibly negotiate lower rates for you.

Thank you,

Nathan Counley

nathan@durango-direct.com

(608) 467-6672

(413) 431-2720 (fax)

<http://durango-direct.com>

From: Bag Addiction [mailto:admin@thebagaddiction.com]

Sent: Monday, September 11, 2006 4:37 PM

To: Nathan Counley

Subject: Re: Durango Merchant Services--GIR REP--Jennifer Mattchen

Our processing history is fine. we had to close because we were selling replicas.

----- Original Message -----

From: Nathan Counley

To: 'Bag Addiction'

Sent: Monday, September 11, 2006 2:32 PM

Subject: RE: Durango Merchant Services--GIR REP--Jennifer Mattchen

Jennifer,

Very sorry for not getting back sooner.

No, offshore banks do not run credit; nor do they pull the "TMF" list or "MATCH" list, so if you are on that it is not a problem.

When you say you have processing history, was it good history, or did it end bad? If you do have clean processing statements (low chargebacks), then that will help.

Thank you,

Nathan Counley

nathan@durango-direct.com

(608) 467-6672

(413) 431-2720 (fax)

<http://durango-direct.com>

From: Bag Addiction [mailto:admin@thebagaddiction.com]

Sent: Monday, September 11, 2006 11:16 AM

To: Nathan Counley

Subject: Re: Durango Merchant Services--GIR REP--Jennifer Mattchen

LAU 00643

6/6/2008

GUCCI-0048026

We have a processing history with cardservice does that matter?
Do they run credit at this bank? what is their criteria for acceptance? Thanks

----- Original Message -----

From: Nathan Counley

To: 'Bag Addiction'

Sent: Monday, September 11, 2006 8:46 AM

Subject: RE: Durango Merchant Services--GIR REP--Jennifer Mattchen

Jennifer,

Yes, this is a 3rd party processor, it is very difficult to get a "direct" account offshore unless you have processing history...but we can work on that in the future once you have history w/ our bank if you would like.

I've attached the application that I will need completed. Please complete the application in Word, as the bank will not accept hand-written applications any longer. In addition, please fax or email, directly to me, the requested documents on the last page of the application.

Please let me know if you have any questions on the application. Once we have received the completed application and requested documents, we will work quickly to have your account approved, and the agreement sent to you for review.

Thank you,

Nathan Counley

nathan@durango-direct.com

(608) 467-6672

(413) 431-2720 (fax)

<http://durango-direct.com>

From: Bag Addiction [mailto:admin@thebagaddiction.com]

Sent: Monday, September 11, 2006 10:20 AM

To: Nathan Counley

Subject: Re: Durango Merchant Services--GIR REP--Jennifer Mattchen

Hello Nathan,

We are looking at processing around \$40k per month so we would fall under your guideline. Please send me the information to move forward. Is this a third party processor?

Thanks

----- Original Message -----

From: Nathan Counley

To: admin@thebagaddiction.com

Cc: 'Durango-Direct'

Sent: Monday, September 11, 2006 7:32 AM

Subject: Durango Merchant Services--GIR REP--Jennifer Mattchen

Jennifer,

Hello, and thank you for your application through our partners at MerchantMetro.com. We have a offshore bank that is willing to accept startup or lower volume (less than \$100,000/mo) replica merchants, and with competitive rates. Setup time is usually 3-4 business days. This bank only recently started accepting new businesses, or merchants with processing history of less than \$100,000/mo, so the rates might be a little higher than you were expecting, however, there are no

LAU 00644

6/6/2008

GUCCI-0048027

other direct banks that I work with that accept startup merchants. Once you have 3-4 months of processing history, we can work to negotiate lower rates with the bank, or possibly another bank.

Bank details:

- Discount rate: 6.95 -7.95%
- Transaction fee of \$.75
- Setup fee of \$495
- Monthly fee of \$49
- Payments are wired weekly, one week in arrears
- 10% 6 month rolling reserve

Please let me know if you have any questions at all, or if you would like for me to send you our application instructions.

Thank you,

Nathan Counley

970-259-8660 ext.2 (local)

877-367-2006 ext.2 (toll-free)

413-431-2720 (fax)

www.durangomERCHANTservices.com

LAU 00645

6/6/2008

GUCCI-0048028

From: "Hans Strickler" <hss@frontlineprocessing.com>
To: <admin@thebagaddiction.com>; "Agent-Durango" <nathan@durango-direct.com>
Sent: Friday, September 22, 2006 11:37 AM
Attach: TheBagAddict-com - Capture.xls
Subject: TheBagAddiction.com - 8788370010754

Pat,

My name is Hans Strickler and I am the Risk/Chargeback liaison here at Frontline. Could you please e-mail up the Delivery docs on these transactions so they may be tracked. What is the expected delivery times for this first batch? I see on the web-page that there are delays from Customs. Can you explain further, please?

Are sales just generated at/from the web-page? How do you generate traffic to the site. Banner-ads, Advertising, 'Spam', e-Bay, etc?

Avs is being used, but not all are getting a Full Match (Y). the logic for requiring a Yes (matches Address and Zip) is that when you ship to the AVS Verified address and get signed proof of delivery, you stand a much better chance of winning potential ChargeBacks. You ALSO turn away potential fraudulent sales. Saving you time, product and money. Explain @ Check-out that the 'Billing address' is where the customer gets their statements mailed to, not always their home address. You should only ship to the AVS verified Address and get signed proof of delivery.

CVV was used on some transactions, but is not being enforced. There are 2/3's of your Transactions are not enforcing CVV. ALL of the transactions you run should get a 'M' (for match). ESPECIALLY if you choose to send out of the US.

Your account is in the process of getting activated.

-Hans

Hans Strickler
Risk - ChargeBack Department
www.frontlineprocessing.com
hss@frontlineprocessing.com
676 Ferguson Ave. Suite 5
Bozeman, Mt. 59718
866*651*3068
406*585*7576 (Fax)

LAU 00646

6/6/2008

GUCCI-0048029