

EXHIBIT A

781091

- New Account
- Additional Location
- Ownership Change:
- RRT
- Rent
- Motor
- E-L Customer
- O/R
- SOA
- Split
- V/WEX
- Debit



MERCHANT BANKCARD APPLICATION AGREEMENT

MERCHANT NAME: **Nathan County**
 M.D.C. **CE21** M.U.D. **278**

WHEN COMPLETED DELIVER TO:
 P.O. BOX 8339
 The Woodlands, TX 77387-8339

MERCHANT APPROVED
 NOT APPROVED
 APPROVED BY: _____ DATE: _____
 APPROVED BY: _____ DATE: _____

SECTION 1: BUSINESS INFORMATION

Business Corporate Name (Owner Legal Name): **Laurette Company, Inc.**
 DBA (Doing Business As) Name: **TheBagAddiction.com**
 Location/Store Address: **3031 Stanford Ranch #2-148**
 City, State, Zip: **Rocklin CA 95765**
 E-mail: **admin@bagaddiction**
 Federal Tax ID Number: **20-5434529**
 Tax Number: **(916) 580-3474**
 Phone Number: **(866) 755-0356**
 Tax Status: Sole Proprietorship Partnership Corporation Non-Profit LLC

How long in business: **1** Year
 Number of locations: **1**
 Do you currently accept VISA/Master Card? Yes No
 (If Yes, attach copy of last 3 months merchant statements)
 Annual Sales: **50,000.00**
 Average Monthly Sales: **200.00**
 Inventory Value: **1600**
 Merchandise Return Rate: **epn**
 Days to Ship: **7**
 Payment Method: Cash Check Credit Card Debit Card

SECTION 2: OWNER INFORMATION (Must be at least 18 years of age and U.S. citizen)

Name (Last, First): **Pat Kirk**
 Title: **Owner**
 Residential Address: **REDACTED**
 City, State, Zip: **Rocklin CA 95765**
 Social Security Number: **REDACTED**
 Phone Number: **(916) 622-5565**
 Business Address: **admin@bagaddiction.com**
 Title: _____
 Residential Address: _____
 City, State, Zip: _____

SECTION 3: MERCHANT REFERENCES (Please provide at least 3 references)

Company	Contact	Address	City, State, Zip	Phone
Luxury Time, Inc.	Melissa Gampel	Po Box 1754	King Park, NY	(631) 338-8318
Volution Shopping Cart	Customer Service	1736 Erringer Rd	Simi Valley, CA 93065	(888) 646-3517
Bank of America	REDACTED	Woodcreek Blvd	Roseville, CA 95747	(916) 632-3910

SECTION 4: MERCHANT TYPE (Check all that apply)

Merchant Location: Store Front Office Building Warehouse Residence Other
 The Merchant: Franchise Licensed Business Other
 Identification Name: **Self**
 Merchant Signature: Yes No
 Printing: Commercial Individual Household
 Inventory consistent with business: Yes No
 Appears legitimate: Yes No

I certify that I have reviewed the business premises of the merchant identified in this Application.
 I certify that I have personally confirmed the identity of each person listed in the Business and Officers Information Sections of this Application.
 I certify that I have conducted my review of this merchant on the basis of my ability and that, to the best of my knowledge and belief, the information provided in this Application is true and correct.

Signed by (Print Name): _____ Signature: _____ Date: _____

PENGAD 800-631-6989
 11-10-06
 Quality
 EXHIBIT 35

White: Sales Office Yellow: Merchant

2814 2006 11 1600001

MUS 0603

781091

PAT. KIRK		101
REDACTED		11-26/12/10 2431
PAY TO THE ORDER OF		\$
Bank of America		dollars
Chickasaw Branch 5075 Woodbrook Circle Blvd Memphis TN 38119 916.622.2019		
for		
REDACTED		

BoFA
Rtg #
AIC #

REDACTED

781091

MERCHANT PROCESSING AGREEMENT (CONTINUED)

SECTION 1: COMPLETE THE FOLLOWING INFORMATION BASED ON SALES AND SERVICES GENERATED THROUGH OUR GATEWAY AND/OR INTERNET

1. Description of product sold: Designer Handbags
(If a merchant cannot list product information on this page, attach a separate page.)

2. Who owns product? Merchant Vendor (Days Sales Required)

3. List the name(s) and address of vendor from which the product is purchased: Sujian Liao Wholesale-Bags Company
Guangzhou City, China

4. How do you advertise? Catalog Direct Mail/Paper TV or Radio Internet (List Web Page Address) BadAddiction.com

5. How does the customer order the product? Mail Telephone Fax Internet

6. Name of Fulfillment House (if any): N/A

7. Are customers required to provide a deposit? Yes No

8. Delivery Time Frame: 0-7 Days 8-14 Days 15-30 Days More than 30 Days

9. Shipping Service Used: Fed Ex UPS Airline Express Mail By Merchant

10. What is your return or refund policy? 7 day exchange policy

11. When you receive an authorization, how long before the merchandise is shipped? 2-3 business days

12. In what geographic area will the product be marketed and sold? USA

13. Will you, MERCHANT, choose to handle all the business transactions that function processed in connection with the Merchant's/Internet sale of products/services to customers the parties hereto agree to the following:

A. MERCHANT agrees to use and retain proof of a trackable delivery system as means of shipment of product to customer.

B. MERCHANT agrees that transactions will not be processed until products are shipped to the Customer.

SECTION 2: FISCAL RESPONSIBILITY AND DISCOUNTS

<p>Retail <small>(15% - 20% discount applied to net sales)</small></p> <p>Qualified Retail Discount Rate*: <u>0.00 %</u></p> <p>Transaction Fee: <u>\$0.25</u></p> <p>* The "Qualified Retail Discount Rate" will be charged on all initial hardware transactions that are electronically authorized and closed in a daily batch. On VISA transactions only, all manually keyed hardware transactions that are closed in a daily batch, have AVS (Address Verification Service) on Order Number and reply to the printer will be "Exact Match", will be charged a "High Qualified Rate" which is 1.10% (\$1.10 per \$100.00) higher than the "Qualified Retail Discount Rate". All hardware transactions that do not meet the requirements stated above will be charged a "Non-Qualified Rate" which is 1.74% (\$1.74 per \$100.00) higher than the "Qualified Retail Discount Rate". Visa/MasterCard business card transactions and manually keyed foreign card transactions will always be charged the "Non-Qualified Rate".</p>	<p>MOTO/Internet <small>(30% - 35% discount applied to net sales)</small></p> <p>Qualified MOTO Discount Rate*: <u>3.75 %</u></p> <p>Transaction Fee: <u>\$0.30</u></p> <p>* On VISA transactions only, the "Qualified MOTO/Internet Discount Rate" will be charged on all manually keyed or Internet hardware transactions that are electronically authorized, closed in a daily batch, have AVS (Address Verification Service), an Order Number and reply to the printer with an "Exact Match". All hardware transactions that do not meet the requirements stated above will be charged a "Non-Qualified Rate" which is 1.74% (\$1.74 per \$100.00) higher than the "Qualified MOTO Discount Rate". Visa/MasterCard business card transactions and manually keyed foreign card transactions will always be charged the "Non-Qualified Rate".</p> <p>See Section 2.3 of our Terms and Conditions.</p>
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SECTION 3: OTHER FEES/FEES

Type of Transaction	\$2.00	Wireless		Merchant Club	
1st. Draft Capture Transaction	\$2.00	Set Up Fee	\$1.00	Check Card	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Address Verification Fee	\$0.03	Monthly Merchant Service Fee	\$1.00	Monthly Fee Per Mail	\$4.00
Monthly Service Fee	\$12.00	Wireless Transaction Fee	\$4.00	Cost of Value	
Monthly Debit Assess Fee	\$5.00	Transaction (1) postage (Sales \$2.00)	\$2.00		
Annual Customer Service Fee	\$29.00	Check Card	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
Monthly Merchant Statement Fee	\$25.00	eMerchantSupport			
NET Transactions	<u>\$0.00</u>	Monthly Online Account Access	\$9.99		
Un-closed Batch Transaction Fee	<u>\$0.00</u>	Check Card	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		

~~Apply For~~

Discover Discover Discover

Note: SPS Merchant Setup Fee Applies

American Express Billing Account: 1042281658

Discover Billing Account: 601101342581923

Chime Club Funding Account: _____

ICM Funding Account: _____

781091

MERCHANT PROCESSING AGREEMENT CONTINUED

I understand that the Terms and Conditions for both American Express Card Acquisitions and Discover Card Acquisitions (Terms and Conditions) will be sent to the business entity...

Each person signing below agrees to the terms and conditions stated in the front and back of this merchant processing agreement and certifies that all information provided in this application is true, correct and complete.

Each person signing below agrees to the terms and conditions stated in the front and back of this merchant processing agreement and certifies that all information provided in this application is true, correct and complete.

AGREED AND ACCEPTED BY: [Signature] 11-13-06 [Signature] FOR ALL CORPORATE OWNERS - Corporate Resolution

MONITOR. DO NOT RETURN THIS DOCUMENT IF UNAPPROVED. PLEASE APPEAR IN "RED" AND COMPLETELY FILLED IN IT.

PERSONS (S) SIGNING BELOW: The undersigned Guarantor(s) hereby, individually agree to the terms set forth in section 2.35 of this agreement. The undersigned Guarantor(s) hereby agrees to be held liable for all expenses (including attorney fees and court costs) paid or incurred by the BANK in collecting such obligations and in enforcing this Guaranty.

Customer #1 From Application (print name) Customer #2 From Application (print name)

APPLICATION TYPE: RETAIL DEBIT MOTORVEHICLE REST HOTEL S Corp (3740 only) QSR Rev PIP Dial Out Access (9) TIP CHECK IN/OUT

Check Service (Note: a separate download form is required) EZ CHECK OTHER: Check Service Acct#

VERIFONE/LINKPOINT:

Trace#	Device	Wireless	Receipt	Linkpoint
<input type="checkbox"/> 336	<input type="checkbox"/> 3200	<input type="checkbox"/> V4610	<input type="checkbox"/> Receipt	<input type="checkbox"/> 2800
<input type="checkbox"/> 386	<input type="checkbox"/> 3210			<input type="checkbox"/> 3000
<input type="checkbox"/> 420	<input type="checkbox"/> 3300			<input type="checkbox"/> 3220
<input type="checkbox"/> 440	<input type="checkbox"/> 3350			<input type="checkbox"/> 3229
<input type="checkbox"/> Serial	<input type="checkbox"/> 3730			Serial #
	<input type="checkbox"/> 3730LB			
	<input type="checkbox"/> 3740			
	<input type="checkbox"/> 3750			

Serial # Application# Download Speed QSR Option #

OTHER: Manufacturer: Model: Terminal ID#

BUILD DOWNLOAD Yes No Quick Shop Setup Yes No

MESSAGERS / SPECIAL REQUESTS:

EXHIBIT B

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

2	<p>1 A P P E A R A N C E S</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>
3	<p>1 I N D E X O F E X A M I N A T I O N</p> <p>2 P A G E</p> <p>3 BY MR. PARADISE..... 5, 118</p> <p>4 BY MS. HALTER..... 97</p> <p>5 (CONFIDENTIAL TESTIMONY PAGES 65-79.)</p> <p>6 I N D E X O F E X H I B I T S</p> <p>7 1 - screen shot for The Bag Addiction..... 18</p> <p>8 2 - e-mail 9-10-06 to Nathan Counley..... 38</p> <p>9 3 - e-mail 9-14-06 to Bag Addiction..... 42</p> <p>10 4 - (Confidential Exhibit)..... 46</p> <p>11 5 - Defendants' initial Disclosures..... 55</p> <p>12 6 - (Confidential Exhibit)..... 65</p> <p>13 7 - (Confidential Exhibit)..... 66</p> <p>14 8 - (Confidential Exhibit)..... 67</p> <p>15 9 - Final Order and Judgment on Consent..... 69</p> <p>16 10 - Declaration of Jennifer Kirk..... 83</p> <p>17 11 - e-mail chain..... 88</p> <p>18 12 - "Kirk Declaration"..... 90</p> <p>19 13 - screen shot for The Bag Addiction..... 98</p> <p>20 14 - screen shots for The Bag Addiction..... 99</p> <p>21 15 - Woodforest Merchant Bankcard Application..108</p> <p>22 16 - Woodforest Merchant Bankcard Application..108</p> <p>23 17 - Woodforest Merchant Bankcard Application..108</p> <p>24 18 - Woodforest Merchant Bankcard Application..115</p>
4	<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>
5	<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 Matthen 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 Matthen, what is that?</p> <p>24 A. Former married name.</p> <p>25 Q. Have you ever been deposed before,</p>

46	<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>	48	<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>
47	<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>	49	<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>

50	<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>	52	<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>
51	<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>	53	<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>

EXHIBIT C

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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GUCCI AMERICA, INC.,

Plaintiff,

09-CV-6925

-against-

FRONTLINE PROCESSING CORPORATION, WOODFOREST
NATIONAL BANK, DURANGO MERCHANT SERVICES, LLC.
D/B/A NATIONAL BANKCARD SYSTEMS OF DURANGO

Defendants.

----- x

DEPOSITION of the Defendant, DURANGO
MERCHANT SERVICES, LLC. by NATHAN COUNLEY, taken
by the Plaintiff, pursuant to Notice, held at the
offices of Gibson, Dunn & Crutcher, LLP., 200 Park
Avenue, New York, New York, on June 14, 2010, at
9:45 a.m., before a Notary Public of the State of
New York.

<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 style="text-align: right;">2</p> <p>A P P E A R A N C E S:</p> <p>GIBSON, DUNN & CRUTCHER, LLP. Attorneys for Plaintiff 200 Park Avenue New York, New York 10166</p> <p>BY: ROBERT WEIGEL, ESQ. -and- ANNE M. COYLE, ESQ. -and- JENNIFER COLGAN HALTER, ESQ.</p> <p>LAW OFFICE OF TODD WENGROVSKY, PLLC. Attorneys for Defendant DURANGO MERCHANT SERVICES 285 Southfield Road Box 585 Calverton, New York 11933</p> <p>BY: TODD WENGROVSKY, ESQ.</p> <p>LERNER, DAVID, LITTENBERG, KRUMHOLZ & MENTLIK, LLP. Attorneys for Defendant WOODFOREST NATIONAL BANK 600 South Avenue West Westfield, New Jersey 07090</p> <p>BY: CHARLES P. KENNEDY, ESQ.</p> <p style="text-align: center;">xxxxx</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 style="text-align: right;">4</p> <p>Counley</p> <p>NATHAN COUNLEY, Having been first duly sworn before a Notary Public of the State of New York, was examined and testified as follows:</p> <p>EXAMINATION BY MR. WEIGEL:</p> <p>Q State your name for the record, please?</p> <p>A Nathan Counley.</p> <p>Q Where do you live?</p> <p>A Madison, Wisconsin.</p> <p>Q Have you ever been deposed before in a lawsuit?</p> <p>A No.</p> <p>Q I don't want to know any details, but has your lawyer explained to you what was going to happen today?</p> <p>A For the most part, yes.</p> <p>Q I'm going to ask you questions. Do you understand that the oath you are under is the same oath you would be under if you were testifying before a judge and jury?</p> <p>A Yes.</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 style="text-align: right;">3</p> <p style="text-align: center;">S T I P U L A T I O N S</p> <p>IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for the respective parties herein, that filing, sealing and certification, and the same are, hereby waived.</p> <p>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.</p> <p>IT IS FURTHER STIPULATED AND AGREED that the within deposition may be signed and sworn to by an officer authorized to administer an oath, with the same force and effect as if signed and sworn to before the Court.</p> <p style="text-align: center;">xxxxx</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 style="text-align: right;">5</p> <p>Counley</p> <p>Q If at any point in time you don't understand any of my questions or you are confused by them, just let me know and I'll try to rephrase them. Is that understood?</p> <p>A Yes.</p> <p>Q If you need to take a break, just let me know. All I would ask is that you do it after you answer a question, not in the middle of a question if that's okay?</p> <p>A I understand.</p> <p>Q Can you give me your educational background just starting with high school?</p> <p>A High school, I went to Laramie, Wyoming. Beyond a high school degree, college was Fort Lewis in Durango, Colorado, a small liberal arts college, political science and minor in philosophy.</p> <p>Q When did you first become involved with Durango Merchants Services?</p> <p>A I started in January 2005.</p> <p>Q What position did you have?</p> <p>A Same thing today, sales manager.</p> <p>Q When did you graduate college?</p> <p>A I think it was 2005 -- 2004. I'm</p>

174	<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>	176	<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>
175	<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>	177	<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>

178	<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>	180	<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>
179	<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>	181	<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>

210	<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>	212	<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>
211	<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>	213	<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>

214	<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>	216	<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>
215	<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>	217	<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>

230	<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>	232	<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>
231	<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>	233	<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 MCCA is that of</p> <p>11 an independent contractor, not an employee or</p> <p>12 agent of MCCA"; 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 MCCA, 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 MCCA, 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>

238	<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>	240	<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>
239	<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>	241	<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>

242	<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>	244	<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>
243	<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>	245	<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>

EXHIBIT D

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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.

2	<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 ALSO PRESENT:</p> <p>18 Mr. Charles A. Vernon</p> <p>19 Woodforest General Counsel</p> <p>20 25231 Grogans Mill Road,</p> <p>21 Suite 100</p> <p>22 The Woodlands, Texas 77380</p> <p>23 832-375-2828 Fax: 832-375-3828</p> <p>24 Cvernon@woodforest.com</p> <p>25 Sean Morella, Videographer</p> <p>Marie Bulfinch, CSR, RMR, CRR</p>	4
3	<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>	5
2	<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>	4
3	<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>	5

14	<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>	16
15	<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>	17
	<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>	

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

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

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

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1	the analysts were required --	11:09:44
2	A. Yes.	11:09:44
3	Q. -- to do it because it was your job to	11:09:45
4	make sure --	11:09:47
5	A. Yes, sir.	11:09:47
6	Q. -- they did it, correct?	11:09:48
7	A. Yes, sir.	11:09:49
8	Q. And so in order to complete the	11:09:49
9	Internet review checklist, the analyst had to	11:09:51
10	go to the Web site; is that correct?	11:09:54
11	A. That is correct.	11:09:56
12	Q. Okay. And, again, it says, "If the	11:09:57
13	merchant is non-face-to-face, the analyst	11:10:01
14	looks at what is sold to ensure it makes	11:10:04
15	sense."	11:10:08
16	Do you see that?	11:10:08
17	A. Yes.	11:10:09
18	Q. What -- what did you understand the	11:10:13
19	analyst was required to do there to make sure	11:10:17
20	that it made sense?	11:10:19
21	A. Well, if I told you I was doing	11:10:24
22	facials, and you were on the Internet, I	11:10:26
23	couldn't very well do a facial. So it had to	11:10:28
24	make sense to us what they were selling.	11:10:33
25	Q. Okay.	11:10:35

35		
1	(BOYKIN Exhibit No. 2 marked.)	11:12:32
2	Q. (BY MR. WEIGEL) Exhibit 2 is an	11:12:32
3	e-mail from Marla Alcorn to the Risk	11:12:35
4	Department.	11:12:38
5	Do you see that?	11:12:38
6	A. Yes, sir.	11:12:40
7	Q. And she attaches an e-mail from Matt	11:12:40
8	Ivy dated June 15, 2006.	11:12:46
9	Do you see that?	11:12:49
10	A. Yes, sir.	11:12:50
11	Q. Okay. In June of 2006 was Mr. Ivy	11:12:51
12	was -- was still sort of your contemporary,	11:12:59
13	was at your level in the new applications	11:13:02
14	department; is that correct?	11:13:05
15	A. Yes.	11:13:05
16	Q. And did you and he work together?	11:13:07
17	A. Say -- say that another way.	11:13:13
18	Q. Sure. Did you -- did you each keep	11:13:15
19	your -- keep each other informed as to what	11:13:21
20	the other was doing?	11:13:23
21	A. No. We had different job duties. He	11:13:23
22	was more of the Internet kind of guru guy.	11:13:26
23	THE REPORTER: Internet what?	11:13:26
24	THE WITNESS: Gu- -- Guru.	11:13:26
25	THE REPORTER: Oh.	11:13:26

36		
1	THE WITNESS: Sorry.	11:13:33
2	Q. (BY MR. WEIGEL) So he handled more	11:13:33
3	the Internet merchants?	11:13:35
4	A. No. He handled the process of looking	11:13:37
5	on the Internet of what had been approved the	11:13:40
6	previous day to make sure that everything was	11:13:43
7	in place.	11:13:47
8	Q. Would he review the applications that	11:13:50
9	you had already approved?	11:13:53
10	A. No, sir.	11:13:54
11	Q. Would he -- he approve all the new	11:13:56
12	applications that dealt with Internet	11:14:02
13	merchants?	11:14:04
14	A. No -- no, sir.	11:14:05
15	Q. What did he do that was different from	11:14:06
16	what you did?	11:14:08
17	A. Okay. What I was doing was signing	11:14:09
18	off that I agree with what had been done.	11:14:15
19	What Matt was doing was taking the information	11:14:17
20	that had -- we had signed off on, Internet had	11:14:21
21	been entered in the computer, and he was	11:14:25
22	making sure that all the actions had been	11:14:27
23	taken in the appropriate box to -- to fill it	11:14:30
24	in to make sure it was processed correctly.	11:14:33
25	Q. Okay. Now, his e-mail to Marla says,	11:14:37

37		
1	"I discussed the Internet merchant checklist	11:14:54
2	with Earl."	11:14:58
3	And Earl was your boss, correct?	11:14:59
4	A. Yes, sir.	11:15:01
5	Q. And Mr. Ivy goes on, "We are having	11:15:02
6	our weekly meeting tomorrow. We will instruct	11:15:04
7	everyone to use the checklist for any merchant	11:15:07
8	who wants to process any percentage on the	11:15:10
9	Internet."	11:15:13
10	Do you see that?	11:15:14
11	A. Yes, sir.	11:15:14
12	Q. Do you remember that rule being put in	11:15:15
13	place that the Internet-merchant checklist	11:15:17
14	should be filled out for any merchant who	11:15:20
15	wants to process any percentage on the	11:15:22
16	Internet?	11:15:25
17	A. No, sir, I don't remember.	11:15:25
18	Q. Is -- is that, in fact, the practice	11:15:27
19	or was that, in fact, the practice when you	11:15:28
20	worked at the bank?	11:15:31
21	A. I don't remember that, sir.	11:15:33
22	Q. Okay. Where do you -- you remember	11:15:35
23	using the Internet --	11:15:39
24	A. Checklist.	11:15:41
25	Q. -- checklist only for high-risk	11:15:42

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

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1 do you remember or do you recollect having 12:31:32
 2 reviewed Exhibit 8? 12:31:34
 3 A. 8? 12:31:36
 4 Q. Yes. 12:31:38
 5 A. No, sir. 12:31:39
 6 Q. Well, Exhibit 8 is an application from 12:31:43
 7 the Laurette Company. 12:31:47
 8 Do you see that? 12:31:49
 9 A. Yes, sir. 12:31:50
 10 Q. And let me direct your attention to 12:31:51
 11 the fifth page in. I think the page before 12:32:05
 12 that, ma'am. 12:32:19
 13 A. Okay. 12:32:23
 14 Q. And do you recognize that page? 12:32:24
 15 A. I do. 12:32:30
 16 Q. And what is it? 12:32:31
 17 A. It's the page that was used when you 12:32:32
 18 were making comments for additional 12:32:37
 19 information that was needed and -- and say 12:32:40
 20 that it would be approved or declined. 12:32:42
 21 Q. And is this -- is this a printed form 12:32:46
 22 or was this on a computer screen? Do you 12:32:52
 23 remember? 12:32:55
 24 A. It was printed -- it was on the 12:32:55
 25 computer screen, and when you got an 12:32:57

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1 application, you printed it out of the 12:33:00
 2 computer screen. 12:33:03
 3 Q. Okay. Do you see your handwriting on 12:33:04
 4 that? 12:33:05
 5 A. I do. 12:33:05
 6 Q. And where is your handwriting? 12:33:06
 7 A. It's for in the top portion where it 12:33:07
 8 says, "Need to confirm shipping and who's 12:33:12
 9 signed for signature." And then it's also 12:33:13
 10 there again right below, "When you're in 12:33:17
 11 business." It was a high-risk Internet and 12:33:24
 12 guaranteed signatures. 12:33:31
 13 Q. Okay. And is that -- that's your 12:33:31
 14 signature underneath Mona? 12:33:34
 15 A. Yes, sir. 12:33:35
 16 Q. Okay. Let's go to the first comment. 12:33:36
 17 "Need to conform" -- is that what it says? 12:33:43
 18 A. It's confirm. 12:33:45
 19 Q. Confirm. What does that mean? 12:33:46
 20 A. When you -- you get your merchandise, 12:33:48
 21 if you're an Internet merchant, if it was 12:33:55
 22 something that we just needed to confirm that 12:33:58
 23 it was coming to you as a cardholder and not 12:34:01
 24 being shipped to an off site and then 12:34:06
 25 distributed to you. 12:34:10

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1 So we just needed to confirm that 12:34:11
 2 we had a confirmation of the signature of 12:34:13
 3 where it was sent. 12:34:16
 4 Q. So you were insisting that the 12:34:17
 5 merchant make sure that they got a signature 12:34:20
 6 when they shipped the goods? 12:34:24
 7 A. Uh-huh. As proof that they had 12:34:25
 8 received the merchandise. 12:34:28
 9 Q. And so how did you -- how did you -- 12:34:32
 10 did you convey that information to the 12:34:38
 11 merchant? 12:34:39
 12 A. No. I would have given that back to 12:34:40
 13 Alvin -- Alva, and she would have confirmed 12:34:43
 14 with the merchant that his procedure was in 12:34:45
 15 line with what we were looking for. 12:34:48
 16 Q. Okay. And then this other handwriting 12:34:50
 17 that you wrote, "One year in business," 12:34:55
 18 correct? 12:34:56
 19 A. Yes, sir. 12:34:57
 20 Q. Why is that important? 12:34:58
 21 A. The least amount of time that you have 12:35:00
 22 in business is -- is considered a risk factor. 12:35:06
 23 The longer that you are in business the better 12:35:10
 24 risk factor. 12:35:13
 25 Q. Okay. Then it says, "High-risk 12:35:15

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1 Internet." 12:35:17
 2 Do you see that? 12:35:17
 3 A. Yes, sir. 12:35:18
 4 Q. What does that mean? 12:35:19
 5 A. He had had 51 percent of his 12:35:21
 6 merchandise that was coming over the Internet 12:35:27
 7 or was all Internet. 12:35:30
 8 Q. And then the last item is "Guaranteed 12:35:36
 9 signature." 12:35:40
 10 Is that what it says? 12:35:40
 11 A. The -- the -- the merchant would have 12:35:43
 12 had totalled out of that he's going to 12:35:46
 13 guarantee that he gets the signature from the 12:35:49
 14 article that was shipped, so we got proof that 12:35:51
 15 something was received. 12:35:56
 16 Q. Okay. There's some other writing on 12:35:57
 17 this page. 12:36:01
 18 Do you see it? 12:36:02
 19 A. Yes, sir. 12:36:02
 20 Q. It says, "rollover"? 12:36:03
 21 A. Yes, sir. 12:36:04
 22 Q. And can you read the next word? 12:36:06
 23 A. I do see a word. 12:36:08
 24 Q. Would that be Patriot Act? 12:36:11
 25 A. It does look like it. 12:36:14

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1	objections are really inappropriate.	12:55:18	
2	MR. PARADISE: No. What's really	12:55:19	
3	inappropriate is you misleading this witness	12:55:20	
4	and trying to take advantage of her in this	12:55:22	
5	deposition.	12:55:24	
6	MR. WEIGEL: I'm truly not attempting	12:55:25	
7	to mislead this witness.	12:55:27	
8	MR. PARADISE: So you're refusing to	12:55:28	
9	qualify whether you're asking her today or	12:55:31	
10	asking her in 2006.	12:55:32	
11	MR. WEIGEL: Counsel, you can ask	12:55:34	
12	questions when it's your turn.	12:55:34	
13	MR. PARADISE: But you're refusing to	12:55:36	
14	clarify the question.	12:55:38	
15	MR. WEIGEL: Yes.	12:55:39	
16	MR. PARADISE: Fine.	12:55:39	
17	You can answer the question, if	12:55:40	
18	you understand it.	12:55:41	
19	A. Apparently, I don't understand it.	12:55:42	
20	Q. (BY MR. WEIGEL) Do you see here that	12:55:45	
21	there are several printouts of Rolex watches?	12:55:47	
22	A. Yes, sir.	12:55:51	
23	Q. And you understand now, as you sit	12:55:52	
24	here today, those watches were not -- were	12:55:53	
25	being made in China?	12:55:57	
87		89	
1	MR. PARADISE: Objection to form.	12:55:58	
2	A. I thought China was just strictly the	12:56:00	
3	place that they were being shipped from, sir.	12:56:03	
4	Q. (BY MR. WEIGEL) Okay. Did you know	12:56:06	
5	at the time you approved this account one way	12:56:13	
6	or another whether these were real Rolex	12:56:15	
7	watches and real Gucci handbags or not that	12:56:18	
8	this Web site was selling?	12:56:21	
9	A. As far as we knew, they were a product	12:56:25	
10	of -- of Gucci. And China was just their	12:56:28	
11	destination where they're coming from.	12:56:36	
12	Q. Now, it would be a cause for concern	12:56:38	
13	for the bank, would it not, if the Web site	12:56:49	
14	was selling fake Gucci products and not	12:56:52	
15	adequately disclosing that to its customers	12:56:57	
16	because that would result in a lot of	12:57:00	
17	chargebacks, wouldn't it?	12:57:02	
18	MR. PARADISE: Objection to form.	12:57:03	
19	A. For Delta Card it would have -- it	12:57:05	
20	would have to show that this product is the	12:57:07	
21	product that they are asking us to process	12:57:11	
22	as a -- as a merchant for them.	12:57:15	
23	I don't know how else to answer	12:57:28	
24	you.	12:57:30	
25	Q. (BY MR. WEIGEL) Let's -- let's go	12:57:30	
1	back a little bit. If somebody was selling	12:57:31	
2	fake Gucci products and passing them off to	12:57:37	
3	their customers as real Gucci products, that	12:57:43	
4	would be a concern for Delta Card Services and	12:57:46	
5	Woodforest because that could result in a lot	12:57:50	
6	of chargebacks; isn't that correct?	12:57:53	
7	MR. PARADISE: Objection to form.	12:57:55	
8	A. We would -- we would not have put	12:57:56	
9	anything on that was considered fake and so	12:57:59	
10	state -- stated the word fake.	12:58:02	
11	Q. (BY MR. WEIGEL) Would you -- suppose	12:58:09	
12	someone was selling a replica product, a	12:58:11	
13	product made to look like a Gucci product with	12:58:14	
14	the Gucci trademark on it and passing that off	12:58:17	
15	as a real Gucci product.	12:58:21	
16	Would that be a cause for concern	12:58:24	
17	for Woodforest and Delta Card Services --	12:58:26	
18	MR. PARADISE: Objection, form.	12:58:26	
19	Q. (BY MR. WEIGEL) -- that would have	12:58:30	
20	resulted in chargebacks?	12:58:30	
21	MR. PARADISE: Objection to form.	12:58:31	
22	A. Okay. Say it another way for me, if	12:58:36	
23	you don't mind.	12:58:43	
24	Q. (BY MR. WEIGEL) Certainly, ma'am. If	12:58:43	
25	somebody was selling -- an Internet merchant	12:58:46	

90	<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>	92	<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>
91	<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>	93	<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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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	13:23:58
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)

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

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		

EXHIBIT E

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SOUTHERN DISTRICT OF NEW YORK

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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 WOODFOREST
NATIONAL BANK, 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

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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
RHONDA LEMOS, 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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1 RHONDA LEMOS

2 You can answer.

3 A. Either a collection agency or
4 legal.

5 **Q. Do you keep reserve accounts for
6 merchants?**

7 A. Yes.

8 **Q. What exactly is a reserve account?**

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

11 **Q. What would be the typical
12 percentage for the reserve?**

13 MR. PARADISE: Objection to form.

14 A. It can range.

15 **Q. What would the range be?**

16 A. Normally 5 to 10 percent.

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

19 A. Depends on the account.

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

23 A. Merlin Solutions.

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

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1 RHONDA LEMOS

2 A. They are monitored through the risk
3 system.

4 **Q. What are the risks Delta Card
5 Services?**

6 MR. PARADISE: Objection to form.

7 **Q. Do you understand the question?**

8 A. One more time.

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

11 A. Correct.

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

14 A. Loss.

15 **Q. What forms of loss?**

16 A. Monetary loss.

17 **Q. Would that come primarily through
18 chargebacks?**

19 A. Could.

20 **Q. What other forms of loss might
21 there be?**

22 A. A merchant issuing returns.

23 **Q. Returns. How does that process
24 work?**

25 A. Like the sales process. Just now

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1 RHONDA LEMOS

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

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

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

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

13 MR. PARADISE: Objection to form.

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

19 **Q. Are there different categories of
20 risk for different merchants?**

21 A. Yes.

22 **Q. What are the categories?**

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

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1 RHONDA LEMOS

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

4 A. Yes.

5 **Q. Could you explain what that means?**

6 A. Any merchant that processes over
7 51 percent non face-to-face.

8 **Q. So that would include the Internet?**

9 A. Yes.

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

12 A. I am not sure I understand your
13 question.

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

18 A. No.

19 **Q. So high risk just means high risk?**

20 A. Correct.

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

23 A. There is -- yes.

24 **Q. What are the tiers?**

25 A. Low risk, medium risk, high risk.

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RHONDA LEMOS

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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1 **RHONDA LEMOS**
 2 **please?**
 3 A. "As a general rule of thumb we are
 4 no longer approving merchants that sell
 5 Replicas, Copies or Fake items. This is one
 6 of the few business types that MasterCard
 7 prohibits."
 8 **Q. So does that refresh your**
 9 **recollection as to when the policy changed?**
 10 A. The actual policy change was, I
 11 think, still in '08 or '09. But as a rule of
 12 thumb, based on this, we may not have been
 13 approving them.
 14 **Q. And that was in response to**
 15 **MasterCard rules?**
 16 A. No. That was due to the
 17 chargebacks for non-receipt of merchandise.
 18 **Q. Was there a high rate of**
 19 **chargebacks for replica product accounts?**
 20 A. Define high rate.
 21 **Q. Let's start out with what an**
 22 **acceptable rate would be.**
 23 A. Depends on the merchant type.
 24 **Q. For Internet merchants?**
 25 A. Depends on the merchant.

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1 **RHONDA LEMOS**
 2 **Q. What type of merchant would result**
 3 **in a low rate of chargebacks being acceptable?**
 4 A. Any type?
 5 **Q. Yes.**
 6 A. That's kind of a broad question.
 7 Can you be more specific?
 8 **Q. Well, we will take replica**
 9 **merchants. What would be an acceptable level**
 10 **of chargebacks?**
 11 A. Depends on the chargeback type.
 12 Depends on the merchant.
 13 **Q. What are the factors that are**
 14 **considered in determining what an acceptable**
 15 **chargeback rate is?**
 16 A. Any replica merchant?
 17 **Q. Replica merchant.**
 18 A. Type of chargeback, number of
 19 transactions, the return policy and time in
 20 business.
 21 **Q. What type of chargebacks would be**
 22 **likely to result in a lower threshold that**
 23 **would be acceptable as chargebacks?**
 24 A. Technical chargebacks.
 25 **Q. Which are what?**

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1 **RHONDA LEMOS**
 2 A. Authorization related.
 3 **Q. What about goods not described as**
 4 **described?**
 5 A. Depending on the type of
 6 chargeback; the reason for it.
 7 **Q. Isn't goods not described the**
 8 **reason or is there a different reason?**
 9 A. Well, not as described can be it
 10 was red, it was supposed to be blue.
 11 **Q. Sorry, didn't mean to interrupt.**
 12 A. That's it.
 13 **Q. What if the reason was it was fake?**
 14 A. Fake as in?
 15 **Q. A fake product. I thought it was**
 16 **an authentic product but it was fake.**
 17 MR. PARADISE: Objection to form.
 18 A. It would have to be a burden of
 19 proof.
 20 **Q. Is that type of -- is that a type**
 21 **of chargeback that you would be familiar with,**
 22 **that somebody had complained that they**
 23 **purchased a replica product and it was a fake,**
 24 **not an authentic product?**
 25 MR. PARADISE: Objection to form.

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1 **RHONDA LEMOS**
 2 A. If someone purchased a replica
 3 product, and they are saying that it is not a
 4 replica product?
 5 **Q. I am sorry. I will start over.**
 6 **If someone purchased what they**
 7 **believed to be a designer handbag and then**
 8 **complained that it was not an authentic**
 9 **designer product, is that a reason for a**
 10 **chargeback?**
 11 A. Yes.
 12 **Q. And have you ever encountered those**
 13 **types of chargebacks?**
 14 A. Encountered meaning?
 15 **Q. Are you familiar with them**
 16 **occurring?**
 17 A. I think I have seen one.
 18 **Q. Would that result in the threshold**
 19 **for acceptable number of chargebacks being**
 20 **higher?**
 21 MR. PARADISE: Objection to form.
 22 You can answer.
 23 A. It would depend if the merchants
 24 website said I am selling specifically what
 25 the complaint was. If it said I am selling a

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1 **RHONDA LEMOS**

2 **reversed?**

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

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

8 A. Right.

9 **Q. And the one over that, daily
10 discount?**

11 A. Discount paid.

12 **Q. What does that mean?**

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

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

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

21 **Q. And that would be paid to whom?**

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

25 **Q. And then is that amount -- does**

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1 **RHONDA LEMOS**

2 **that all go to Delta Card or further divided?**

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

5 **Q. What is paid to the card
6 associations?**

7 A. Correct.

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

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

13 **Q. Before the split between Delta Card
14 and whom?**

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

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

20 A. Correct.

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

23 A. The bank.

24 **Q. The bank meaning Woodforest?**

25 A. Correct.

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1 **RHONDA LEMOS**

2 **Q. What would Woodforest get out of
3 this transaction?**

4 A. My understanding, Woodforest makes
5 \$0.02 per transaction.

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

8 A. Correct.

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

11 A. Correct.

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

14 A. MCPS income.

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

17 A. Everything.

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

20 MS. COYLE: Exhibit 10.

21 (Whereupon, an E-mail dated March
22 30, 2006, WNB-03621-'622, was marked
23 as Exhibit Lemos-10 for identification
24 as of this date by the Reporter.)

25 **Q. This is an E-mail that you were**

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1 **RHONDA LEMOS**

2 **copied on?**

3 A. That's what it shows.

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

7 A. Um-hum.

8 **Q. What is this high risk
9 telemarketing registration program?**

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

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

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

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

19 A. No.

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

22 A. No, I do not.

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

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1 RHONDA LEMOS
2 that could call for attorney/client
3 privilege information. It doesn't
4 matter. She was designated on behalf
5 of the company.

6 MS. COYLE: I am not asking what
7 anybody told her. I am asking for the
8 identity of who asked her.

9 MR. PARADISE: I am instructing
10 her not to answer. I don't care if it
11 is relevant, and I think it is
12 improper and calls for attorney/client
13 privileged information.

14 **Q. Are you going to abide by your
15 counsel's instruction?**

16 A. Yes.

17 **Q. Is Chuck Vernon employed by
18 Woodforest?**

19 A. To the best of my knowledge, yes.

20 **Q. Do you report to him in any way?**

21 A. No.

22 **Q. Is there any contract between
23 Woodforest and Delta Card Services?**

24 A. I don't know that.

25 **Q. Who approves merchant applications,**

TSG Reporting - Worldwide 877-702-9580

1 RHONDA LEMOS
2 **Woodforest or Delta Card?**

3 A. Delta Card.

4 **Q. Does Woodforest have any role in
5 the approval process?**

6 A. No.

7 **Q. Do any Woodforest employees review
8 the applications?**

9 A. At time of approval, is that what
10 you are saying to me?

11 **Q. Prior to or at time of approval.**

12 A. No.

13 **Q. Are they submitted to Woodforest
14 after they have been approved?**

15 A. Not to my knowledge.

16 **Q. Is Woodforest kept informed of
17 Delta Card's business activities?**

18 MR. PARADISE: Objection to form.

19 A. Can you be a little bit more
20 specific?

21 **Q. Sure. Does Delta Card Services
22 report to Woodforest about business matters
23 such as its revenues, its risk programs,
24 things of that nature?**

25 A. I don't know.

TSG Reporting - Worldwide 877-702-9580

1 RHONDA LEMOS
2 **Q. Can Woodforest instruct you to
3 terminate a relationship with the merchant?**

4 A. I don't know.

5 **Q. I think earlier you testified that
6 Delta Card Services is a direct subsidiary of
7 Woodforest; is that correct?**

8 A. I don't recall saying that.

9 **Q. What's the corporate relationship
10 between the two?**

11 A. We are two separate companies.

12 **Q. Is Delta Card owned by Woodforest?**

13 A. No, they are not.

14 **Q. Who owns Delta Card?**

15 A. I am not sure of that answer.

16 **Q. So you don't know whether
17 Woodforest owns Delta Card or not?**

18 A. I know Woodforest doesn't.

19 **Q. Woodforest doesn't own Delta Card?**

20 A. Correct.

21 **Q. Earlier you testified that the IT
22 department collected documents in this matter?**

23 A. Correct.

24 **Q. Were you referring to Delta Card's
25 IT department?**

TSG Reporting - Worldwide 877-702-9580

1 RHONDA LEMOS

2 A. Yes.

3 **Q. Do Woodforest and Delta Card share
4 an IT department?**

5 A. No.

6 **Q. And you don't know who collected
7 Woodforest's documents?**

8 A. No, I do not.

9 MR. PARADISE: Just so the record
10 is clear, I can represent that
11 Woodforest documents were also
12 searched. However, there were very
13 few, if any, responsive documents that
14 were in the possession of Woodforest.

15 But I can definitely confirm that
16 a full search was done of both
17 Woodforest and both Delta Card for
18 electronic documents and paper
19 documents.

20 **Q. Can you tell me by whom?**

21 MR. PARADISE: It was at the
22 direction of in-house counsel at
23 Woodforest.

24 **Q. Can we go back to the processing of
25 the transaction. Can you just describe the**

TSG Reporting - Worldwide 877-702-9580

1 **RHONDA LEMOS**
 2 **process in a little bit greater detail as it**
 3 **applies to Woodforest and Delta Card, who does**
 4 **what?**
 5 A. In the processing of the
 6 transaction?
 7 **Q. Yes.**
 8 A. Woodforest does nothing.
 9 **Q. Woodforest does nothing?**
 10 A. Correct.
 11 **Q. Does Woodforest take on any risk as**
 12 **relating to the merchant?**
 13 A. If there is a loss, Delta Card
 14 takes it.
 15 **Q. And Woodforest never has any risk?**
 16 A. Not as far as I am aware of.
 17 **Q. The \$0.02 on every transaction**
 18 **earned by Woodforest is meant to compensate**
 19 **Woodforest for what?**
 20 A. They are our sponsor bank for the
 21 merchant processing and servicing.
 22 **Q. What is the sponsor bank's role**
 23 **exactly?**
 24 A. The associations require that your
 25 financial institution to be an acquirer. So
 TSG Reporting - Worldwide 877-702-9580

1 **RHONDA LEMOS**
 2 Woodforest is the acquirer because they are
 3 the member bank with the card association and
 4 we are their service provider for the
 5 processing.
 6 **Q. And are you aware of any**
 7 **regulations that require the acquiring bank to**
 8 **monitor the credit card processing service?**
 9 A. Define monitor.
 10 **Q. To be aware of your risk policies,**
 11 **for example?**
 12 A. Yes.
 13 **Q. And what are those regulations?**
 14 A. I don't know them off the top of my
 15 head.
 16 **Q. Would they be required to cease**
 17 **doing business with you, for example, if you**
 18 **were -- if Delta Card Services was violating**
 19 **regulations of Visa and MasterCard?**
 20 A. I don't know the extent of them.
 21 **Q. Does Woodforest have its own risk**
 22 **guidelines?**
 23 A. For the bank?
 24 **Q. Yes.**
 25 A. I don't know.
 TSG Reporting - Worldwide 877-702-9580

1 **RHONDA LEMOS**
 2 **Q. Have you ever had discussions with**
 3 **any employees of Woodforest about Delta Card's**
 4 **risk policies?**
 5 A. Yes.
 6 **Q. With whom?**
 7 A. Chuck Vernon.
 8 **Q. Anyone other than Chuck Vernon?**
 9 A. Yes.
 10 **Q. Who else?**
 11 A. Andy Power.
 12 **Q. Who is Andy Power?**
 13 A. He is another attorney at the bank,
 14 I believe.
 15 **Q. Is Woodforest aware of Delta Card's**
 16 **specific policies relating to high-risk**
 17 **merchants?**
 18 A. They have the underwriting policy
 19 for all merchants.
 20 **Q. Did they have any role in shaping**
 21 **the policy?**
 22 A. It was written by Delta Card.
 23 **Q. Did Woodforest have any input into**
 24 **the policy?**
 25 A. No.
 TSG Reporting - Worldwide 877-702-9580

1 **RHONDA LEMOS**
 2 **Q. Did they approve the policy?**
 3 A. You are asking me if Woodforest
 4 approved our policy?
 5 **Q. Yes.**
 6 A. Initially, currently?
 7 **Q. At any time.**
 8 A. I am aware of approval on changes.
 9 **Q. Changes to the?**
 10 A. To the current policy.
 11 **Q. To the underwriting guidelines?**
 12 A. To the current underwriting policy.
 13 **Q. And when was that?**
 14 A. I don't know the specific date.
 15 **Q. Was it this year?**
 16 A. No.
 17 **Q. Did they ask you to make any**
 18 **changes to your policy?**
 19 A. Not that I am aware of.
 20 **Q. Who at Delta Card would have**
 21 **communicated with Woodforest about the policy?**
 22 A. Depends.
 23 **Q. Would it be you?**
 24 A. Could be.
 25 **Q. Anyone else?**
 TSG Reporting - Worldwide 877-702-9580

EXHIBIT F
REDACTED PURSUANT TO
PROTECTIVE ORDER

EXHIBIT G

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; ABG
COMPANIES; and JOHN DOES,

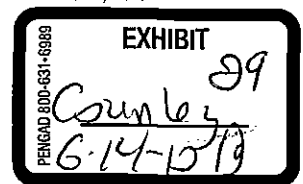
Defendants.
-----X

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 12, 2009
Rocklin, California



JENNIFER KIRK

EXHIBIT A

From: "Nathan Counley" <Nathan@Durango-Direct.com>
To: <hss@frontlineprocessing.com>; "Bag Addiction" <admin@thebagaddiction.com>
Cc: <ejr@frontlineprocessing.com>
Sent: Monday, February 25, 2008 4:20 PM
Attach: eFax from 14065857576 - 5 page(s), Caller-ID_ 406-624-0260.eml
Subject: RE: fax000000417.pdf - Adobe Acrobat Standard

Jen,

Hans is referring to the attached fax, please see where he's made notes on the .pdf, where it would be best to add in a truncated T&C's to help avoid these types of chargebacks.

Thank you,
Nathan Counley
National Bankcard Systems of Durango
(p) 608.467.6672
(f) 413.431.2720
www.Durango-Direct.com

The information transmitted is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged material. Any review, retransmission, dissemination or other use of, or taking of any action in reliance upon, this information by persons or entities other than the intended recipient is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message.

-----Original Message-----

From: Hans Strickler [mailto:hss@frontlineprocessing.com]
Sent: Monday, February 25, 2008 6:03 PM
To: 'Bag Addiction'; 'Nathan Counley'
Cc: ejr@frontlineprocessing.com
Subject: RE: fax000000417.pdf - Adobe Acrobat Standard

Shopping Addiction - 8788370010754
Case # 2802610081

Was this shown clearly in the CB rebuttal documents? Doesn't look like we have a screen-shot of the check-out page identifying this check-box and I did not see the (separate) Terms and conditions (unless it was the up-side down pages).

This is why I suggest having truncated T's & C's. Even a Check-Box can be argues as insufficient disclosure. Merchant should move the 'Disclosure Check Boxes' to be between the Card info screen and 'Place Order', with a link, at the absolute least. This way, we'd have a

Merchant should (for all rebuttals that apply) include 'Generic' shots for the rebuttals. Check your faxes... How well did the text come through? Should ink color be Black to show on Faxes better?

-Hans

Merchant needs to lay out their rebuttals

Hans Strickler - Frontline Processing

866*651*3068 (voice) 406*585*7576 (fax)

-----Original Message-----

From: Bag Addiction [mailto:admin@thebagaddiction.com]
Sent: Monday, February 25, 2008 4:12 PM
To: Nathan Counley
Cc: hss@frontlineprocessing.com; ejr@frontlineprocessing.com
Subject: Re: fax000000417.pdf - Adobe Acrobat Standard

Cardholder MUST click check mark IN Box at checkout or it will not allow you to check out that you agree to terms and agreement of site?

----- Original Message -----

From: "Nathan Counley" <Nathan@Durango-Direct.com>
To: "'Bag Addiction'" <admin@thebagaddiction.com>
Cc: <hss@frontlineprocessing.com>; <ejr@frontlineprocessing.com>
Sent: Monday, February 25, 2008 2:45 PM
Subject: FW: fax000000417.pdf - Adobe Acrobat Standard

Hans or Elisa,
What's the deal on this chargeback? Global says "Denied unless you can prove customer has to click TOS", which the merchant DOES require? So doesn't this mean she should win the chargeback?

Thank you,
Nathan Counley
National Bankcard Systems of Durango
(p) 608.467.6672
(f) 413.431.2720
www.Durango-Direct.com

The information transmitted is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged material. Any review, retransmission, dissemination or other use of, or

taking of any action in reliance upon, this information by persons or entities other than the intended recipient is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message.

-----Original Message-----

From: Bag Addiction [mailto:admin@thebagaddiction.com]
Sent: Monday, February 25, 2008 10:02 AM
To: Nathan Counley
Subject: Fw: fax000000417.pdf - Adobe Acrobat Standard

Hi Nathan,

I was denied this chargeback and not sure why?

Says cardholder must accept terms and agreement, which they have to check the box at checkout before submitting their order.

What can I do about this?

Thanks

Jennifer

----- Original Message -----

From: "fax_frontline" <frontline_fax@frontlineprocessing.com>
To: "Shopping_Addiction" <admin@thebagaddiction.com>
Sent: Monday, February 25, 2008 7:24 AM
Subject: fax000000417.pdf - Adobe Acrobat Standard

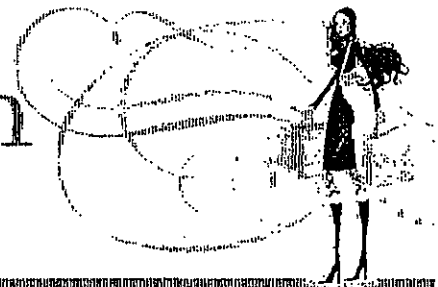
_____ NOD32 2901 (20080225) Information _____

This message was checked by NOD32 antivirus system.
<http://www.eset.com>

413-431-2720

view cart my account help

The Bag Addiction



about us | customer testimonials | contact us | facts | return policy | warranty | shipping | tracking | wholesale

(Your shopping cart contains 1 item priced at \$270.00) View My Cart

Search

YOUR CART 1 PAGE CHECKOUT RECEIPT



Please be aware that we monitor all IP addresses.

Any fraudulent activity and purchases will be reported to the proper authorities and prosecuted to the fullest extent of the law.

Please note:

You MUST use the correct billing address, the system will automatically decline if the correct billing address is not used. AND You must enter in the 3 digit security code off the back of your card, or the transaction will decline.

Please note as stated on our site all of our items are replicas.

By purchasing you are acknowledging the fact they are replicas and not to be presented as originals. You also agree to all terms and conditions on our site by submitting your order.



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- Anya Hindmarch
- Balenciaga
- Belts & Accessories
- Bottega Veneta
- Cartier
- Chloe
- Dior
- Dolce & Gabbana
- Fendi
- Gift Certificates
- Givenchy
- Goyard

billing information

First Name*:

Last Name*:

Company:

Address*:

City*:

Country*:

State/Province*:

Zip/Postal Code*:

Phone*:

Fax:

Email Address*:

shipping information

Ship To:

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- Gustto
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- Jewelry
- Jimmy Choo
- Kooba
- Lancel
- Marni
- Men's Collections
- Miu Miu
- Mulberry
- Other
- Prada
- Sunglasses
- Thomas Wylde
- Tods
- Valentino
- Versace
- YSL Yves Saint Laurent
- Zac Posen
- Wallets
- Watches



My Shopping Cart

Code	Name	Price	Qty	Total
GIV100A	Givenchy Medium Metallic Nightingale In Gold & Bronze-	\$270.00	1	\$270.00

- Need to make changes to this order?
- Edit items in cart
 - Apply a coupon
 - Apply a Gift Certificate
 - Sign Out

registration

Email Address: _____

Create a new password*: _____

Type it again*: _____

Benefits of Registering:

- Quick checkout on future orders
- Easy Order Tracking
- Special Offers

additional info

How did you find us:

I agree to the Terms & Conditions of this site

I understand these Items being Purchased are replicas, not originals

*ORDERS CAN NOT
BE SUBMITTED w/o
checking this box*

choose your shipping method

[show me shipping choices](#)

Subtotal: \$270.00
 Shipping & Handling: \$0.00
 Tax: \$0.00
 Total: \$270.00

payment information

Payment Method*: Credit Card

Credit Card Type:

Credit Card #: _____

Person's Name on Card: _____

Expiration Date: /

CVV2 Number: _____ (Required for Visa, MasterCard, AMEX & Discover)

[Click here for help](#)

Keep my payment method on file for easy checkout on future orders.

framed to the

place order

*Include
Full t's & c's
As well.*

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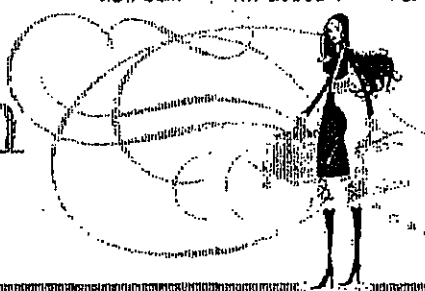
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The Bag Addiction



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(Your shopping cart contains 1 item priced at \$270.00) [View My Cart](#)

Search

You are here: [Home](#) > [Return Policy](#)



Returns & Exchanges

7 Day Exchange Only Policy:

We are absolutely confident that you will be happy with your purchase from us because each piece is inspected by hand for quality. We are flexible, understand that every client's needs are unique and wish to meet your particular needs. Client satisfaction in our products and services is our top priority. If for any reason, you are not content with your purchase please contact us immediately. We will then provide instruction on where to return your bag(s).

All of our items come with a 7-day EXCHANGE ONLY guarantee, from date of receipt. If for any reason you are unhappy with your item you may return the item for an exchange towards something else of equal value, more value or a lesser value.

In the event that your item arrives to you defective or damaged during shipment to you we can ONLY exchange your item for the EXACT same item you received, no exceptions!

ALL SALES ARE FINAL ON LUGGAGE, WALLET, SUNGLASSES AND KEEPALLS, NO EXCEPTIONS!

Overstock item are marked "all sales final"

We do not charge a restocking fee but in such cases, we have lost the cost of the initial shipping and so cannot pay for shipping both ways.

All exchanges are shipped at the expense of the customer. Any



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SUPER SALE!

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- Anna Corinna
- Anya Hindmarch
- Balenciaga
- Belts & Accessories
- Bottega Veneta
- Cartier
- Chloe
- Dior
- Dolce & Gabbana
- Fendi
- Gift Certificates
- Givenchy
- Goyard

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- Gucci
- Gustto
- Hermes
- Jean Paul Gaultier
- JPG
- Jewelry
- Jimmy Choo
- Kooba
- Lancel
- Marni
- Men's Collections
- Miu Miu
- Mulberry
- Other
- Prada
- Sunglasses
- Thomas Wyld
- Tods
- Valentino
- Versace
- YSL Yves Saint Laurent
- Zac Posen
- Wallets
- Watches



exchange received without proper payment or authorization will be marked Refused / Return to Sender.

Exchanged items must be new and unused, and in unworn condition. "New and Unused" means that there are no scratches, marks or blemishes on the item, lost or stolen parts (screws, clasps, stems), damage due to personal use, misuse or negligence.

We do not accept exchanges after 7 days from the official delivery confirmation date. We do not accept exchanges of any item with any indication that it has been used or damaged (No Exceptions). **THEY WILL BE MARKED RETURN TO SENDER.**

It is very important that you follow the return instruction email to ensure proper credit to your account and this will speed up the process!

HOW TO EXCHANGE PRODUCTS

For your convenience, we will exchange your item for any item on our website at its current sales price. No promotions apply. Please complete EXCHANGE form below and we will reply with an email with further instructions during normal business hours posted on our site.

Due to limited stock, we are unable to offer exchanges, you must return the item and reorder.

All product is subject to final inspection before your exchange is processed. Allow 1-2 week for the exchange to be processed or store credits to be submitted after your package arrives. The merchandise must be in its original unused condition with appropriate accessories. If cards or parts are missing, we will deduct 25% for each missing item. Used/handled merchandise, items with intentional damages or items not purchases from us, will be RETURNED TO SENDER without further claims. **Customers shipping fees are not refundable**

DEFECTIVE OR WRONG ITEM RECEIVED

In the unlikely event of receiving a wrong order or defect, please notify us upon receipt of item using the form below. We will replace the item with the exact item only. Item must be shipped back and the identical item will be shipped upon receipt of wrong or incorrect item.

REFUNDS NOT OFFERED

We offer no refunds for refused delivery, unable to deliver, moved, incorrect addresses, Post Office delivery errors, shipment picked up by an unauthorized party or order shipped back to an unauthorized address. If we receive a return item thru your fault of your own, we will

u/s

refund less shipping and a 25% handling fee, no exceptions.

NOTICE

Customer may not return an item without our Return Merchandise Number (RMA) or to an unauthorized address.

By ordering from our website, you agree you have read and understand all of our terms & policies, which may not be disputed at a later date, if you do not agree to any term or policy, please do not use our website to order.

By purchasing an item from www.thebagaddiction.com you are legally agreeing to, and shall abide by, the terms set forth in this return & exchange policy above.

**To process a return please fill out form below.
All information must be filled out in full or no authorization number will be given for a return!**

We do NOT accept return requests after 7 days from date you received your order by delivery!

Your Name	_____
Order Number:	_____
Order Date:	_____
Item Number:	_____
Date Received:	_____
Email Address :	_____

Please describe the problem with the product/item:

submit

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EXHIBIT H
REDACTED PURSUANT TO
PROTECTIVE ORDER

EXHIBIT I

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
GUCCI AMERICA, INC.
Plaintiff,

Civil Action No.
09-6925-HB

-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

July 8, 2010
9:30 a.m.

30(b)(6) Deposition of TERILYN NOVAK,
taken by attorneys for Defendants, pursuant
to Notice, held at the offices of Gibson Dunn
& Crutcher LLP, 200 Park Avenue, New York, New
York, before Roberta Caiola, a Shorthand
Reporter and Notary Public within and for the
State of New York.

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1 A P P E A R A N C E S :

2
3 GIBSON DUNN & CRUTCHER, LLP
Attorneys for Plaintiff
4 1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5306

5 BY: HOWARD S. HOGAN, ESQ.
6

7 LERNER DAVID LITTENBERG KRUMHOLZ
& MENTLIK LLP
8 Attorneys for Defendants
9 600 South Avenue West
Westfield, New Jersey 07090

10 BY: CHARLES P. KENNEDY, ESQ.
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1 Terilyn Novak, having been duly sworn by the
2 Notary Public, (Roberta Caiola), was examined
3 and testified as follows:

4 EXAMINATION BY MR. KENNEDY:

5 **Q. Good morning, Ms. Novak.**

6 A. Good morning.

7 **Q. My name is Charles Kennedy. I'm an**
8 **attorney for Woodforest National Bank in a**
9 **pending case brought by Gucci America. I will**
10 **be asking you questions at this deposition.**

11 **Have you been deposed before?**

12 A. I have.

13 **Q. You have. Okay. Good. Just to be**
14 **certain that we have the ground rules down. You**
15 **understand that you're under oath during the**
16 **course of this deposition and it's important**
17 **that you testify truthfully?**

18 A. I do.

19 **Q. If you have any questions about the**
20 **questions I ask, in other words, if they are**
21 **confusing to you or something, I would ask that**
22 **you point that out to me and I will make an**
23 **effort to rephrase them; is that acceptable?**

24 A. I will.

25 **Q. If you need to take a break during**

1 **the course of the deposition just let us know.**
2 **I would just ask that you don't attempt to take**
3 **a break while a question is pending, but that**
4 **you answer it and then we will take a break.**

5 A. Of course.

6 **Q. What is your present position?**

7 A. I am the eBusiness Director for
8 Gucci America.

9 **Q. Where is your business location?**

10 A. For Gucci.com, for the online
11 business.

12 **Q. Where do you work?**

13 A. At 685 Fifth Avenue.

14 **Q. What's your residence?**

15 A. My residence.

16 **Q. Yes. Where do you reside?**

17 A. Is in Connecticut.

18 **Q. What, just generally, do your job**
19 **responsibilities entail as the eBusiness**
20 **Director?**

21 A. I oversee all the sales operations,
22 merchandising, and some of the technology for
23 Gucci.com.

24 **Q. How long has Gucci had a Gucci.com**
25 **sales?**

1 A. 2002 we began.

2 **Q. You said that you had your**
3 **deposition taken before. Have you ever had your**
4 **deposition taken before in a case involving**
5 **allegations of trademark infringement?**

6 A. Yes.

7 **Q. Can you tell me what cases you've**
8 **had your deposition taken in? Just describe the**
9 **cases for me?**

10 A. In the Gucci versus Guess trademark
11 infringement I was deposed, and in the Jennifer
12 Gucci versus Gucci trial I testified.

13 **Q. Any other cases that you've been**
14 **deposed in?**

15 A. No.

16 **Q. Gucci versus Guess, is that a case**
17 **that's still pending?**

18 A. I don't know.

19 **Q. When was your deposition taken?**

20 A. A few months ago.

21 **Q. Jennifer Gucci versus Gucci, when**
22 **was your deposition taken in that case?**

23 A. Last year sometime. I was not
24 deposed, I testified.

25 **Q. Did that case end?**

1 A. I don't know.

2 **Q. Do you have any idea what the**
3 **decision was?**

4 **When you say you "testified" did**
5 **you testify at what you understood was a trial?**

6 A. Yes.

7 **Q. Where was that?**

8 A. Downtown in the courthouse.

9 **Q. In Manhattan?**

10 A. Yes.

11 **Q. Do you know what decision was**
12 **rendered by either the judge or the jury in that**
13 **case?**

14 A. I do not.

15 **Q. What is your formal education? Can**
16 **you tell me where you graduated from, what your**
17 **degrees are, that sort of thing?**

18 A. I went to college for three years
19 at the University of South Florida, studying
20 business.

21 **Q. What years did you take courses at**
22 **the University of South Florida?**

23 A. I believe '80 to '83.

24 **Q. Did you obtain a degree from there?**

25 A. No.

1 were getting a leather bag or not?
2 A. I can't say, I didn't speak to the
3 client.

4 Q. And that's pretty important, isn't
5 it?

6 MR. HOGAN: Objection, calls for a
7 legal conclusion.

8 Q. The one doesn't indicate any
9 confusion. The latter would not indicate any
10 confusion with whether or not it was a Gucci
11 product?

12 A. I think the fact remains that the
13 sites were selling counterfeit merchandise.
14 It's confusing to customers, potential customers
15 of ours, and damaging to the brand. And that
16 Woodforest knowingly did the credit card
17 processing for these sites.

18 Q. And you're not troubled by the fact
19 that you testified earlier that that letter said
20 Gucci --

21 MR. HOGAN: Objection, asked and
22 answered multiple times.

23 MR. KENNEDY: Excuse me, don't
24 interrupt my question, please.

25 Q. You're not troubled by the fact

1 many, if any, of those clients would actually
2 purchase a genuine product, correct?

3 A. Not to my knowledge.

4 Q. Do you recall any clients who you
5 spoke to who said that they had purchased a
6 product on one of these sites thinking it was a
7 genuine Gucci product, and then it turned out
8 that it was not?

9 MR. HOGAN: Objection to form.

10 A. No.

11 MR. KENNEDY: Let's mark that as
12 Novak Exhibit 2.

13 (Pages from TheBagAddiction website
14 with the date in the lower right 11/16/2006,
15 marked Novak Exhibit 2 for identification.)

16 Q. Ms. Novak, we've handed you what
17 has been marked as exhibit Novak 2. You may
18 want to take a minute to look at this. I will
19 state on the record that these are pages from
20 TheBagAddiction website, and they have the date
21 in the lower right 11/16/2006.

22 A. Okay.

23 Q. Have you seen exhibit Novak 2
24 before?

25 A. I believe so.

1 that you testified earlier that you thought that
2 letter said Gucci?

3 A. I'm testifying to the best of my
4 ability, in all truthfulness. I don't recall
5 the exact wording, as I said to you.

6 Q. Has Gucci done any studies as to
7 whether purchasers on the replica websites of
8 products say at \$100 would, if they weren't able
9 to get a replica of Gucci, go purchase the same
10 product at eight times the price from Gucci?

11 A. Not to my knowledge.

12 Q. Have you done any market research
13 at all on that subject?

14 MR. HOGAN: Objection to form.

15 A. Not to my knowledge, but just based
16 upon --

17 Q. Are you --

18 A. May I answer the question. Just
19 based upon my vast years of experience, I've
20 spoken to clients directly who get confused by
21 these sites, who are offended by these sites,
22 who purchase on these sites, that's why I'm
23 here.

24 Q. Back to my question. You haven't
25 commissioned any market research to find out how

1 Q. Do you understand this exhibit,
2 Novak 2, to reflect some of the portions of
3 TheBagAddiction website?

4 A. Yes.

5 Q. Let me ask you before we get into
6 this. What bank does the credit card processing
7 for Gucci.com?

8 A. Payment Tech does the credit card
9 processing for Gucci.com.

10 Q. Is that a bank?

11 A. It's a credit card processor
12 obviously. I don't know how you refer to them.

13 Q. Is it the same credit card
14 processor that's used for the Gucci retail
15 sales?

16 A. Yes.

17 MR. HOGAN: Objection. Outside the
18 scope of the 30(b)(6).

19 MR. KENNEDY: She's also been
20 noticed individually as well, Mr. Hogan.

21 Q. Was the Gucci.com --

22 MR. HOGAN: Maybe we can off the
23 record for a second to sort this out. I did not
24 understand this to notice her in her individual
25 capacity.

1 MR. KENNEDY: You need to read
2 exhibit Novak 1. If you would like to do that,
3 go ahead.

4 MR. HOGAN: I do not read Novak 1
5 to notice her in her individual capacity. It
6 specifically says that she is noticed to testify
7 on the below subjects upon oral examination.

8 MR. KENNEDY: It says this. First
9 of all, I don't know why this is a dispute,
10 because we have not objected when you've taken
11 30(b)(6) witnesses of our client, we have not
12 objected to you going outside the categories. I
13 know it's not you personally.

14 Secondly, the notice, Novak 1, says
15 we'll take the deposition of Terilyn Novak and
16 of plaintiff, Gucci America, Inc. under Rule
17 30(b)(6). You see that, don't you?

18 MR. HOGAN: Yes, on the below
19 subjects upon oral examination. I don't think
20 this is worth having a debate on the record,
21 which is why I asked to go off the record,
22 because I did not stop you from asking the
23 question.

24 MR. KENNEDY: I'll take it in
25 whatever knowledge she has about it.

1 A. Apparently.

2 **Q. And you understood when you looked
3 at TheBagAddiction website that indeed they were
4 selling these replicas at a significant, very
5 significant discount, correct?**

6 A. Yes.

7 **Q. In this case the discount looks
8 like 20 percent, actually less than 20 percent;
9 isn't that right?**

10 MR. HOGAN: Objection to form.

11 **Q. And I misspoke. The price is less
12 than 20 percent of what Gucci sells it for?**

13 A. It appears.

14 **Q. For the four replica bags that are
15 on this page 4 of exhibit Novak 2, is it correct
16 to say that none of those bags show a label with
17 the Gucci name on the bag itself?**

18 MR. HOGAN: Objection to what this
19 exhibit does or does not show, it speaks for
20 itself.

21 A. It's a black and white copy of a
22 screen graph. I can't see very clearly here.
23 I'm not sure what you're asking me.

24 **Q. I'm asking you whether you can see
25 the Gucci name on any of the products that are**

1 **Q. What I was going to ask you was
2 this. Has Gucci.com ever had its credit cards
3 processed by a separate bank or whatever
4 financial institution than it had the credit
5 card processing for the retail stores?**

6 MR. HOGAN: Objection to form.

7 A. Not to my knowledge.

8 **Q. Okay. We're back now to exhibit
9 Novak 2. If you would turn please to the fourth
10 page of exhibit Novak 2. Just to take an
11 example. On that page it shows a replica of the
12 Gucci Horsebit Hobo in black. Do you see that
13 one on the right side?**

14 MR. HOGAN: What page are you
15 referring to?

16 MR. KENNEDY: Page 4. It's the
17 fourth page of the document.

18 A. Yes, I see it.

19 **Q. The price at which that replica bag
20 would be sold on TheBagAddiction is \$180; is
21 that right?**

22 A. It appears.

23 **Q. But the price that Gucci would sell
24 the original of such bag is \$1,280; is that
25 right?**

1 **shown on this page, the four products?**

2 A. No. It's a poor quality copy, as I
3 said, that's in black and white, so it's very
4 difficult. I obviously see the word Gucci and
5 the word Guccissima, which is what we call our
6 leather fabric. I see something that looks like
7 our repeating diamond pattern there.

8 **Q. But as far as the Gucci name being
9 on any of these bags, is it fair to say that you
10 can't see it on any of the four bags?**

11 MR. HOGAN: Asked and answered.

12 A. I can barely see the fabric of the
13 bag at all in this copy.

14 **Q. Okay. So the answer to my question
15 is, and going with this copy, this is in the
16 record; you can't see the Gucci name on any of
17 the bags, is that right?**

18 A. Not on this page.

19 **Q. Then the question I was going to
20 ask you is, are you familiar with the original
21 of these four products that have replicas for
22 the Gucci bags?**

23 A. I am.

24 **Q. Does the Gucci name appear on the
25 outside of the bags for the original?**

1 A. These bags came in several
2 different fabrications, I can't be expected to
3 remember every fabrication, but obviously
4 there's almost always the repeating diamond
5 pattern with the Gs. I can't see these products
6 and what they look like, I don't have the
7 physical products in front of me. The originals
8 that you're asking about I'm sure came in a GG
9 fabric. Was the name Gucci written out?

10 **Q. That's my question. Was the name**
11 **Gucci on, for the original of these products, on**
12 **the outside of the bag?**

13 A. I don't recall.

14 **Q. When you're talking about the GG**
15 **pattern, it's some sort of pattern of Gs, right?**
16 **It doesn't have the name Gucci in it?**

17 A. No.

18 **Q. I'm sorry. Is that correct?**

19 A. That's correct.

20 **Q. Okay.**

21 A. When I was referring to the
22 repeating diamond pattern it doesn't say the
23 word Gucci, it has two Gs.

24 **Q. Thank you.**

25 MR. HOGAN: We've been at this for

1 about an hour, is this a good time for a break?

2 MR. KENNEDY: Let me do this. If I
3 can introduce one more exhibit I think then it
4 will help us along. No, this is a good time for
5 a break.

6 (Short recess taken.)

7 MR. KENNEDY: Could you mark this
8 as Exhibit 3.

9 (Five pages from TheBagAddiction
10 website printed out on 2/25/2008, marked Novak
11 Exhibit 3 for identification.)

12 **Q. Ms. Novak, we have now handed you**
13 **what has been marked as exhibit Novak 3, which**
14 **is some pages also from TheBagAddiction website.**
15 **These pages it indicates were printed out on**
16 **2/25/2008, there's five pages here. Would you**
17 **take a look at this exhibit and I'll have some**
18 **questions.**

19 A. Okay.

20 **Q. Have you seen exhibit Novak 3**
21 **before?**

22 A. I don't believe so.

23 **Q. Did you understand TheBagAddiction**
24 **website had a statement on there that the**
25 **products that they were selling were replicas**

1 **and not genuine?**

2 A. No. This is obviously a checkout
3 you're saying?

4 **Q. It is. It's a checkout from**
5 **TheBagAddiction by a purchaser. Let me point**
6 **you to page 1 of exhibit Novak 3. There within**
7 **the notice do you see the paragraph, probably**
8 **the fourth paragraph of the notice says "Please**
9 **note as stated on our site that all items are**
10 **replicas. By purchasing you are acknowledging**
11 **the fact that they are replicas and are not to**
12 **be presented as originals."**

13 **Do you see that statement?**

14 A. I do.

15 **Q. Did you understand that the**
16 **products that were sold as Gucci on**
17 **TheBagAddiction were represented to be replicas**
18 **and not original Gucci products?**

19 A. I see that it is.

20 **Q. Go to the second page now. Turn**
21 **the page, in the upper third of the page there**
22 **are these two check boxes. One says, "I agree**
23 **to the Terms & Conditions of this site." Then**
24 **under that, "I understand these items being**
25 **purchased are replicas, not originals." Do you**

1 **see that?**

2 A. I do.

3 **Q. Did you understand that in order**
4 **for a purchase to be completed the purchaser had**
5 **to check the box that says "I understand these**
6 **items being purchased are replicas, not**
7 **originals"?**

8 A. I see that now. There was nothing
9 next to the product though in terms of people
10 browsing the site that I saw from the past
11 exhibit, but I do see it here on this page.

12 **Q. Right. And that would be for**
13 **anyone purchasing the product would see that,**
14 **correct?**

15 A. Apparently.

16 **Q. And you don't know whether the**
17 **pages, even before you get to the purchasing**
18 **information, had a notification that the**
19 **products are replicas and not originals, right?**

20 A. As I recall, there was some
21 information in the Q and A section to that
22 point, but it was rather hidden on the site.

23 **Q. Would it be fair to say that in**
24 **terms of the purchasers who bought these**
25 **replicas on TheBagAddiction website at a**

1 studies, I don't know exactly which ones.

2 **Q. Does Exhibit 15 state anywhere in**
3 **it what the studies are from which these**
4 **recommendations are being made by Millward**
5 **Brown?**

6 A. I'm just looking through to see.

7 **Q. Go ahead, take your time.**

8 A. I don't see any specific reference
9 to which studies it's based upon.

10 **Q. Are you done reviewing it?**

11 A. No. I don't see any specific
12 reference.

13 **Q. Would you turn to page 20 of**
14 **exhibit Novak 15?**

15 A. Yes.

16 **Q. That page refers to "Gucci Top Ten**
17 **Website Purchase Drivers - Online Clients."**
18 **What was the source of the information provided**
19 **on that page?**

20 A. I believe it was based upon the
21 surveys and focus groups.

22 **Q. Were they earlier focus groups than**
23 **the ones set forth in exhibit Novak 12?**

24 A. They would have had to be.

25 **Q. Do you know if Gucci has a record**

1 **of the earlier focus groups that are set forth**
2 **in this page 20 of exhibit Novak 15?**

3 A. I don't know. I believe they would
4 have it or would be able to obtain it from
5 Millward Brown. It's also possible that there
6 were earlier focus groups that the information
7 was reused in this document for July 16. So
8 this could have only been possibly one time that
9 they did focus groups, I'm not sure. Again, I
10 wasn't in charge of the project.

11 **Q. Did you make any changes to the**
12 **website for Gucci.com, based on the**
13 **recommendations set forth in these various**
14 **Millward Brown reports that we've been through?**

15 A. We're utilizing the data as we
16 build our new website.

17 **Q. What specific changes are being**
18 **made?**

19 MR. HOGAN: Objection to the extent
20 this isn't under the 30(b)(6), but you can
21 answer.

22 A. I can take each specific one if you
23 like and speak to it.

24 **Q. What page are you on?**

25 A. Page 20 that you identified.

1 "Completing of purchase is easy and fast," so
2 we're looking to streamline the checkout on the
3 new website that will launch in the next month
4 or so. "Enhances my opinion of the brand,"
5 we've tried to make it a much more interesting
6 experience and focus on the craftsmanship of the
7 product and the heritage of the brand, including
8 much more care information and material
9 information and craftsmanship information.

10 Is an online experience that I
11 enjoy. We've tried to make it more
12 entertaining, yet more functional when people
13 want to make a purchase. "Keeps me updated on
14 the status of my order," we're looking into
15 providing order status more readily for clients,
16 more quickly for clients than we do now.

17 "Receiving orders from this website
18 is hassle free," as I mentioned before we're
19 looking to streamline the checkout. "Product
20 images provide enough detail to purchase," we've
21 enhanced our images, shopped them in a way that
22 we feel is easier to see the product. Did more
23 zoom shots, more alternative shots, more
24 internal shots of the product.

25 "It's easy to find what I'm looking

1 for," we've improved the search functionality of
2 the site. "Helps me decide what to purchase in
3 the store," we have continued with the printout
4 of the product pages and made it easier to get
5 in touch with customer service, made that more
6 visible on the site. So if you want to see if
7 it's available in the store you can call someone
8 or e-mail them.

9 "Is a website that is
10 entertaining," the communications portion of the
11 site has been enhanced with much more images and
12 much more text, again about heritage. "Provides
13 a great shopping experience," pretty much all of
14 the above that I've said.

15 So yes. In answer to your
16 question, we certainly have taken these things
17 into account as we build a new site.

18 **Q. Do you know whether Gucci has been**
19 **sent returns of any of the replica products**
20 **which were purchased on one of the replica**
21 **websites?**

22 A. Not to my knowledge.

23 **Q. What I'm asking for is whether**
24 **Gucci has received products from a purchaser**
25 **from the website who returned it to Gucci**

1 **thinking it was a genuine Gucci product?**
 2 A. I'm not aware of any.
 3 **Q. Are you aware of any letters sent**
 4 **to Gucci from persons who have purchased from**
 5 **one of the replica websites, saying that they**
 6 **thought that they had bought a genuine Gucci**
 7 **bag?**
 8 A. I believe I viewed a couple of
 9 letters to our customer service department
 10 inquiring about whether the websites, I believe
 11 one was TheBagAddiction, were valid websites.
 12 It was unclear to those clients it appeared. I
 13 don't remember the exact content of the letter
 14 but it was to Nealy Parsons, who is in our
 15 customer service department in Secaucus, New
 16 Jersey.
 17 MR. KENNEDY: I would like to take
 18 a five-minute break to look at my notes.
 19 (Short recess taken.)
 20 MR. KENNEDY: Thank you. I don't
 21 have any other questions. I think we're done.
 22 I would like to state on the record that I will
 23 keep the original exhibits, so if there's ever
 24 any question as to where they are, they're with
 25 me.

1 MR. HOGAN: Okay. Then can we
 2 request on the record that you image them with
 3 the exhibit number and send them to us?
 4 MR. KENNEDY: I'll do the first
 5 page and then you can use what you have
 6 otherwise. We'll do that off the record. Thank
 7 you.
 8 MR. HOGAN: The witness will read
 9 and sign.
 10 MR. KENNEDY: That is fine. We
 11 agree.
 12
 13 (Time noted: 1:10 p.m.)
 14
 15 -----
 16 TERILYN NOVAK
 17
 18 Subscribed and sworn to before me
 19 this day of , 2010.
 20
 21 -----
 22 Notary Public
 23
 24
 25

1 ERRATA
 2 I wish to make the following changes, for
 the following reasons:
 3
 4 PAGE LINE
 5 _____ CHANGE: _____
 6 REASON: _____
 7 _____ CHANGE: _____
 8 REASON: _____
 9 _____ CHANGE: _____
 10 REASON: _____
 11 _____ CHANGE: _____
 12 REASON: _____
 13 _____ CHANGE: _____
 14 REASON: _____
 15 _____ CHANGE: _____
 16 REASON: _____
 17 _____ CHANGE: _____
 18 REASON: _____
 19
 20 _____
 21 WITNESS' SIGNATURE DATE
 22
 23
 24
 25

1 CERTIFICATE
 2
 3 I, Roberta Caiola, a Shorthand
 4 Reporter and Notary Public within and
 5 for the State of New York, do hereby
 6 certify:
 7
 8 That the statements, colloquy
 9 and testimony contained herein is a
 10 true record of the proceedings in this
 11 matter.
 12
 13 I further certify that I am
 14 not related to any of the parties
 15 involved in this proceeding, and that
 16 I am in no way interested in the
 17 outcome of this matter.
 18
 19
 20 -----
 21 ROBERTA CAIOLA
 22
 23
 24
 25

EXHIBIT J

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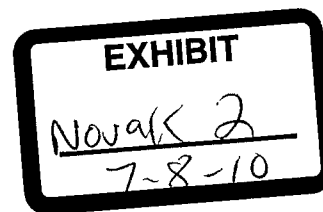


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Please allow 5-7 business days for delivery within the US and 10-14 days for international delivery, however, in most cases your order will arrive sooner. All orders are shipped with fully insured in transit.

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RETURNS & EXCHANGES: Our bags are top of the line. We inspect each bag before shipping. All of our items come with a 7-day EXCHANGE ONLY guarantee, from date of receipt. If for any reason you are unhappy with your item you may return the item for an exchange towards something else of equal value or lesser value.

All exchanges are shipped at the expense of the customer. In addition, any difference in price should also be included in the payment. Any exchange received without proper payment or authorization will be marked Refused / Return to Sender. Exchanged items must be new and unused, and in unworn condition. "New and Unused" means that there

Jean Paul Gaultier JPG

Jimmy Choo

Kooba

Loewe

Louis Vuitton

Marc Jacobs

Miu Miu

Other

Prada

Thomas Wyde

Versace

Wallets

Yves YSL

Watches

are no scratches, marks or blemishes on the item, lost or stolen parts (screws, clasps, stems), damage due to personal use, misuse or negligence.

We do not accept exchanges after 7 days from the official delivery confirmation date. We do not accept exchanges of any item with any indication that it has been used or damaged (No Exceptions). THEY WILL BE MARKED RETURN TO SENDER.

It is very important that you include a note with your name, address, valid e-mail address, phone number and your date of purchase, order/invoice number and form of payment should also be included. This will speed up the process!

HOW TO EXCHANGE PRODUCTS: Please email us for an exchange number within 3 days of arrival, include this number and a reason for a Return and ship it back to us with your merchandise.

Indicate what is wrong with the merchandise and what you are looking for. Also include your name/address along with your email, order number and approximate purchase date. Remember that shipping is at the expense of the customer.

Please email and tell us a package is coming back, provide us with a tracking number and carrier you used.

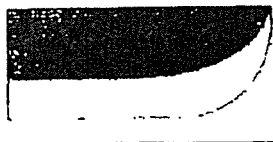
The product is subject to final inspection before your exchange is processed. Allow 1-2 week for the exchange to be processed.

THINGS TO REMEMBER: For Exchange, the Bag must be in the exact same condition you received it in. All accessories and tags must be included. * Please email or call us to tell us a package is coming back * All returns must be insured - we are not responsible for products damaged/lost in mail when you ship them back to us. * Lost packages require a mandatory 30-day waiting period before refund. This allows us to track and place a claim on package. * Please allow up to 1-2 weeks for a replacement to arrive. * If exchange is more than original purchase please enclose money order or how you would like to pay the price difference * If there are any other problems, we will make sure that everything will be negotiated to both parties satisfaction. The product must be returned unused and in the original condition you received it in, with all original packaging and no signs of wear. Sorry, used products cannot be exchanged for a new product. Note: All orders regardless of payment require up to 5 business days to process (test and check the product, clear check/money order orders, etc.). By purchasing an item from www.thebagaddiction.com you are legally agreeing to, and shall abide by, the terms set forth in this return & exchange policy above.

Thank you.

Sincerely,

The Bag Addiction



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Gucci Guccissima Medium Hobo White

List Price: \$1,050.00
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You Save \$875.00!

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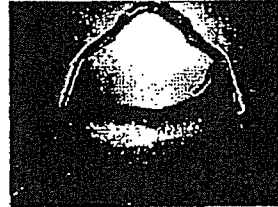


Gucci Guccissima Medium Hobo White

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Gucci Princy Large Tote in Signature

List Price: \$1,495.00
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Versace

Wallets

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Watches



Gucci Guccissima Large Hobo Rustic Brown

List Price:

\$1,495.00

Our Price:

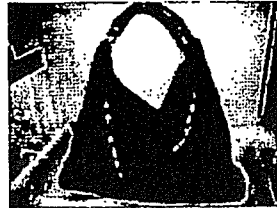
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\$1,450.00

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\$215.00

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Gucci Guccissima Large Hobo Rustic Brown

Gucci 85th Anniversary Bag

Gucci Signature Pigna Large Tote with Bamboo Brown

List Price:

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Our Price:

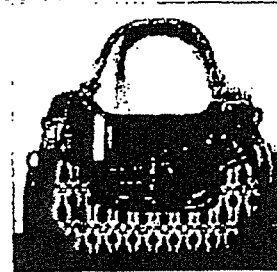
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Gucci Leather Handbag Black HOT

List Price:

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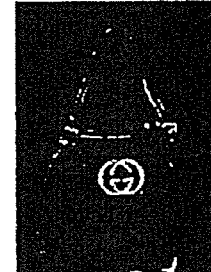
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Gucci Hobo Fabric

Gucci Large Travel Bag White

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\$1,750.00

Our Price:

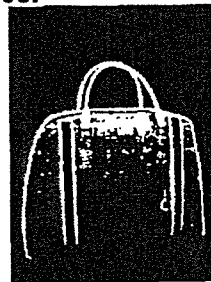
\$230.00

You Save

\$1,520.00!

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Gucci Signature Diaper Bag Beige

List Price:

\$1,450.00

Our Price:

\$190.00

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\$1,260.00!

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Gucci Large Travel Bag White

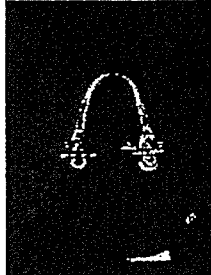
Gucci Diaper Bag

Gucci Hobo Black GG Fabric HOT

Gucci Horsebit Hobo in

List Price:
\$1,250.00
Our Price:
\$200.00
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\$1,050.00!

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Gucci Hobo Fabric

Beige/Blue Signature-SPRING '06
List Price:
\$1,280.00
Our Price:
\$180.00
You Save
\$1,100.00!

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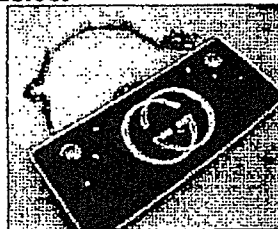


Gucci Horsebit Hobo in Beige/Blue Signature-SPRING '06

Gucci Bianca Evening Bag in Black

List Price:
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Our Price:
\$185.00
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\$1,415.00!

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Gucci Guccissima 85th Anniversary Limited Edition Large Tote Brown

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Gucci Tote

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Gucci Tote

Gucci Signature Large Shopper

Gucci Guccissima Hobo Cream

List Price:
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\$195.00
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Gucci Princy Large Top Handle

Brown

List Price:
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Tote Brown Python Stunning!

List Price:
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Gucci Signature Large Shopper Brown

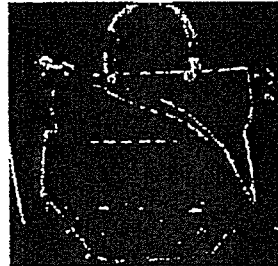
Gucci Princy Large Top Handle Tote

Gucci Signature Large Tote with Bamboo Beige

List Price:
\$1,690.00
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\$230.00
You Save
\$1,460.00!

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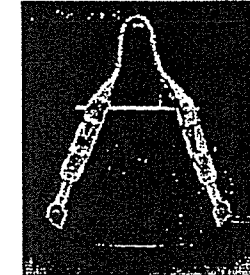
Gucci Signature Large Tote with Bamboo

Gucci Ivory Guccissima Brown Braided Strap bag

List Price:
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\$190.00
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Gucci Ivory Guccissima Brown Braided Strap bag

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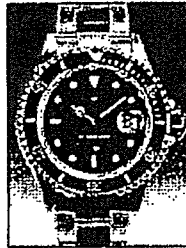
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Rolex Men's Submariner Gold - Blue Face
 List Price: \$5,600.00
 Our Price: \$250.00
 You Save \$5,350.00!

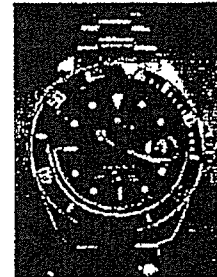
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Rolex Men's Submariner Gold - Blue Face

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Rolex Men's Submariner Silver Band Black Face

Rolex Men's Submariner Silver Band Black Face
 List Price: \$5,600.00
 Our Price: \$250.00
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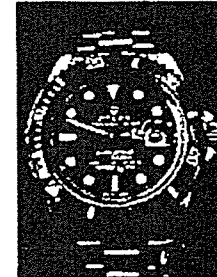
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Rolex Men's Submariner Silver Band Green Face

Rolex Men's Submariner Silver-Gold Band Blue Face

Rolex Men's Submariner Silver Gold Band Gray Face Diamonds

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- Kooba
- Loewe
- Louis Vuitton
- Marc Jacobs
- Miu Miu
- Other
- Prada
- Thomas Wyde
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- Yves YSL
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List Price:
\$5,600.00
Our Price:
\$250.00
You Save
\$5,350.00!

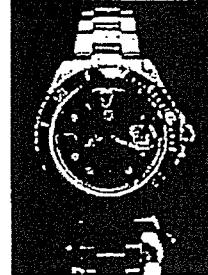
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Rolex Men's Submariner Silver-Gold Band Blue Face

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Our Price:
\$250.00
You Save
\$5,350.00!

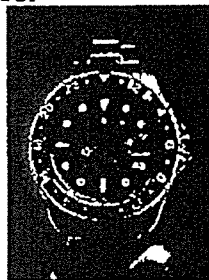
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Rolex Men's Submariner Silver Gold Band Gray Face Diamonds

Rolex Men's GMT Master II Silver Band Black/Red Face
List Price:
\$5,600.00
Our Price:
\$250.00
You Save
\$5,350.00!

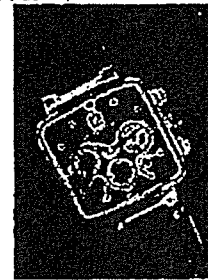
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Rolex Men's GMT Master II Silver Band Black/Red Face

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\$240.00
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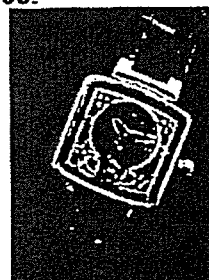


Louis Vuitton Speedy Automatic Chronograph Watch Stunning!



Louis Vuitton Elegant Tourbillon Watch
List Price:
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Our Price:
\$240.00
You Save
\$4,560.00!

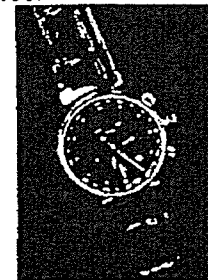
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Louis Vuitton Elegant Tourbillon Watch

Louis Vuitton Chronograph Alligator Strap Watch
List Price:
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You Save
\$5,360.00!

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Louis Vuitton Chronograph Alligator Strap Watch

Louis Vuitton Speedy Automatic

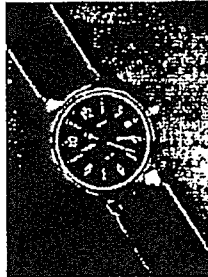
Louis Vuitton Speedy Automatic

Chronograph Watch Stunning!

List Price:
\$5,200.00
Our Price:
\$240.00
You Save
\$4,960.00!

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Louis Vuitton Speedy Automatic Chronograph Watch Stunning!

Chronograph Watch Stunning!

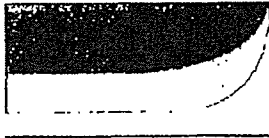
White
List Price:
\$5,200.00
Our Price:
\$240.00
You Save
\$4,960.00!

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Louis Vuitton Speedy Automatic Chronograph Watch Stunning!



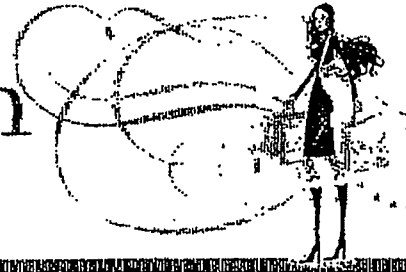
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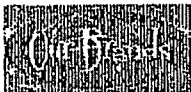
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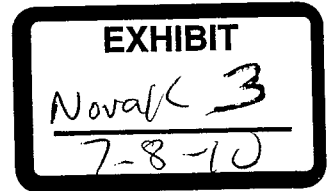
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 Shipping & Handling: \$0.00
 Tax: \$0.00
 Total: \$270.00

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 Credit Card Type:
 Credit Card #: _____
 Person's Name on Card: _____
 Expiration Date: /
 CVV2 Number: _____ (Required for Visa, MasterCard, AMEX & Discover)
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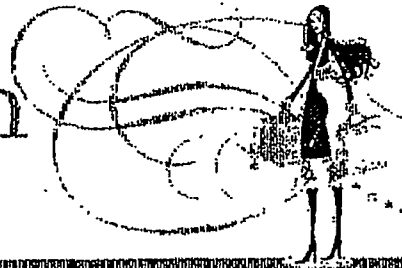
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Returns & Exchanges

7 Day Exchange Only Policy:

We are absolutely confident that you will be happy with your purchase from us because each piece is inspected by hand for quality. We are flexible, understand that every client's needs are unique and wish to meet your particular needs. Client satisfaction in our products and services is our top priority. If for any reason, you are not content with your purchase please contact us immediately. We will then provide instruction on where to return your bag(s).

All of our items come with a 7-day EXCHANGE ONLY guarantee, from date of receipt. If for any reason you are unhappy with your item you may return the item for an exchange towards something else of equal value, more value or a lesser value.

In the event that your item arrives to you defective or damaged during shipment to you we can ONLY exchange your item for the EXACT same item you received, no exceptions!

ALL SALES ARE FINAL ON LUGGAGE, WALLET, SUNGLASSES AND KEYPALLS, NO EXCEPTIONS!

Overstock item are marked "all sales final"

We do not charge a restocking fee but in such cases, we have lost the cost of the initial shipping and so cannot pay for shipping both ways.

All exchanges are shipped at the expense of the customer. Any



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- Thomas Wylde
- Tods
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- Wallets
- Watches

exchange received without proper payment or authorization will be marked Refused / Return to Sender.

Exchanged items must be new and unused, and in unworn condition. "New and Unused" means that there are no scratches, marks or blemishes on the item, lost or stolen parts (screws, clasps, stems), damage due to personal use, misuse or negligence.

We do not accept exchanges after 7 days from the official delivery confirmation date. We do not accept exchanges of any item with any indication that it has been used or damaged (No Exceptions). **THEY WILL BE MARKED RETURN TO SENDER.**

It is very important that you follow the return instruction email to ensure proper credit to your account and this will speed up the process!

HOW TO EXCHANGE PRODUCTS

For your convenience, we will exchange your item for any item on our website at its current sales price. No promotions apply. Please complete EXCHANGE form below and we will reply with an email with further instructions during normal business hours posted on our site.

Due to limited stock, we are unable to offer exchanges, you must return the item and reorder.

All product is subject to final inspection before your exchange is processed. Allow 1-2 week for the exchange to be processed or store credits to be submitted after your package arrives. The merchandise must be in its original unused condition with appropriate accessories. If cards or parts are missing, we will deduct 25% for each missing item. Used/handled merchandise, items with intentional damages or items not purchases from us, will be RETURNED TO SENDER without further claims. **Customers shipping fees are not refundable**

DEFECTIVE OR WRONG ITEM RECEIVED

In the unlikely event of receiving a wrong order or defect, please notify us upon receipt of item using the form below. We will replace the item with the exact item only. Item must be shipped back and the identical item will be shipped upon receipt of wrong or incorrect item.

REFUNDS NOT OFFERED

We offer no refunds for refused delivery, unable to deliver, moved, incorrect addresses, Post Office delivery errors, shipment picked up by an unauthorized party or order shipped back to an unauthorized address. If we receive a return item thru your fault or your own, we will



u/s

refund less shipping and a 25% handling fee, no exceptions.

NOTICE

Customer may not return an item without our Return Merchandise Number (RMA) or to an unauthorized address.

By ordering from our website, you agree you have read and understand all of our terms & policies, which may not be disputed at a later date, if you do not agree to any term or policy, please do not use our website to order.

By purchasing an item from www.thebagaddiction.com you are legally agreeing to, and shall abide by, the terms set forth in this return & exchange policy above.

To process a return please fill out form below.
All information must be filled out in full or no authorization number will be given for a return!

We do NOT accept return requests after 7 days from date you received your order by delivery!

Your Name:	_____
Order Number:	_____
Order Date:	_____
Item Number:	_____
Date Received:	_____
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SOUTHERN DISTRICT OF NEW YORK

-----x

GUCCI AMERICA, INC.
Civil Action No.
Plaintiff,
09-6925-HB

-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

30(b)(6) Deposition of SANDRO
RISI, taken by attorneys for Defendants,
pursuant to Notice, held at the offices of
GIBSON, DUNN & CRUTCHER, LLP, 200 Park Avenue,
New York, New York, before Douglas Winter, a
Shorthand Reporter and Notary Public, on
Wednesday, June 23, 2010, commencing at 9:36
a.m.

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I N D E X

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3

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S T I P U L A T I O N S

2

3 IT IS HEREBY STIPULATED AND
4 AGREED by and between counsel for the
5 respective parties hereto, that the
6 filing, sealing and certification of the
7 within deposition shall be and the same
8 are hereby waived;

9 IT IS FURTHER STIPULATED AND
10 AGREED that all objections, except as to
11 the form of the question, shall be
12 reserved to the time of the trial.

13 IT IS FURTHER STIPULATED AND
14 AGREED that the within deposition may be
15 signed and sworn to before any officer
16 authorized to administer an oath with
17 the same force and effect as if signed
18 and sworn to before the Court.

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25

1 Risi
 2
 3 SANDRO RISI
 4 after having been first duly
 5 sworn, was examined and testified as
 6 follows:
 7 BY MR. KENNEDY
 8 **Q. Good morning. Would you state**
 9 **your name for the record?**
 10 A. Sandro Risi.
 11 **Q. Mr. Risi, I am an attorney for**
 12 **Woodforest National Bank taking your deposition**
 13 **today.**
 14 **Let me just run through a few**
 15 **ground rules. But have you been deposed**
 16 **previously?**
 17 A. Yes, once.
 18 **Q. So these may be familiar to you,**
 19 **but I will ask you questions.**
 20 **You understand that you are under**
 21 **oath, and it's important that you tell the**
 22 **truth?**
 23 A. Yes.
 24 **Q. Okay. And do you understand that**
 25 **it's important because your testimony may be**

1 Risi
 2 carry over these -- over the U.S.A.
 3 **Q. Did -- I am sorry.**
 4 **And also another rule during the**
 5 **deposition, I won't intentionally cut you off,**
 6 **but if I do that accidentally, just point it**
 7 **out, and I will allow you to finish your answer.**
 8 **So if I did it in that case, did**
 9 **you have more to add?**
 10 A. Not really. Finance basically
 11 includes everything in the organization, which
 12 includes credit collection, accounts payable,
 13 dealing with banks, taxes.
 14 **Q. Do you have any responsibility for**
 15 **enforcement of trademarks?**
 16 A. I do have some responsibility in
 17 this respect as well.
 18 **Q. What is that responsibility?**
 19 A. The legal department report to me.
 20 And therefore, within the legal department, the
 21 activities related to IP basically are carried
 22 by them.
 23 **Q. Who in the legal department has**
 24 **principal responsibility for trademark**
 25 **enforcement?**

1 Risi
 2 **used as testimony in a court?**
 3 A. Yes.
 4 **Q. Okay. If you have any difficulty**
 5 **understanding the questions I ask, I would ask**
 6 **that you point that out to me. And I will make**
 7 **an effort to rephrase them. Is that fair?**
 8 A. Okay, I will.
 9 **Q. And if you need to take a break**
 10 **during the course of the deposition, just ask to**
 11 **do so, and we'll be happy to honor that request.**
 12 **But I would ask that you don't do that while a**
 13 **question is pending.**
 14 **You understand that?**
 15 A. Yes. I understand that.
 16 **Q. Very good.**
 17 **Can you tell me what your present**
 18 **job position is?**
 19 A. My present job position is a CFO
 20 for Gucci America Inc. Chief Financial Officer.
 21 **Q. What are your job**
 22 **responsibilities?**
 23 A. My responsibility is to look after
 24 a team of nearly 60 people, dealing with all the
 25 finance matters related to the business that we

1 Risi
 2 A. It's a shared decision, in a way,
 3 between the local legal counselor, and the legal
 4 department, which is based in Florence as well.
 5 **Q. Is Gucci America a U.S. company?**
 6 A. Gucci America Inc. is a U.S.
 7 company.
 8 **Q. Does it have its own legal**
 9 **department?**
 10 A. Yes, they have.
 11 **Q. Where is it located?**
 12 A. It's in New York.
 13 **Q. Okay. Within that legal**
 14 **department, is there -- can you tell me who the**
 15 **person would be who has principal responsibility**
 16 **for trademark enforcement?**
 17 A. We do have, in terms of function,
 18 general counsel, that tend to coordinate with
 19 our colleagues in Europe, because the brand is
 20 the same worldwide. And therefore, we need to
 21 make sure that the brand is protected in the
 22 most effective way on a worldwide.
 23 And within the legal department,
 24 we still have some other people, either
 25 internally or externally, that might assist us

1 Risi
2 **Q. Okay. Who did you work for prior**
3 **to joining?**

4 A. Before that I was working -- my
5 responsibility was CFO for Europe and Middle
6 East for the Gucci brand in Europe.

7 **Q. Okay. All right.**
8 **So let's -- I wanted to do this**
9 **quickly, but let me go back.**

10 **Let's start with: What's your**
11 **formal education?**

12 A. I graduated as an accountant and
13 economist, and I started then to work for
14 Coopers & Lybrand. This was in 1986.

15 **Q. Okay.**
16 A. And then I then had experience
17 abroad with Coopers & Lybrand. I was working
18 actually for Coopers & Lybrand in Italy. Then I
19 moved to England for two years, in '94, '95.

20 In 2000, I decided to join the
21 Gucci Group, and I was taking care about all the
22 retail activities within Europe and Middle East.

23 And in 2006, I moved here in U.S.
24 to take care about the business for our group on
25 this side of the world.

1 Risi
2 **Q. Where did you obtain your formal**
3 **degree, and what college was it from?**

4 A. The degree was in, in -- I was
5 living in the southern part of Italy, the
6 insurance -- the name of the institute is, is
7 the Istituto Tecnico Commerciale "Ezio Vanoni",
8 and the city was Nardo.

9 **Q. What year was that that you got**
10 **your degree?**

11 A. It was in 1985.

12 **Q. I see. And was your degree a**
13 **bachelor's degree?**

14 A. No. It was not.

15 **Q. Okay. It was -- was it a --**

16 A. It's high school. I don't know
17 what you call it.

18 **Q. Oh, high school?**

19 A. Yes.

20 **Q. Okay. Do you have any education**
21 **beyond high school?**

22 A. I spent nearly one year doing a
23 specialized training course on auditing. And it
24 was a full time, basically, training. I will
25 say training workshop, if you like.

1 Risi
2 And it was done through the
3 European community, and several audit firms were
4 part of it. And then I started work with them.

5 **Q. Okay. This one-year auditing**
6 **course --**

7 A. Was 1986.

8 **Q. Okay. And who was it done**
9 **through? Was it done through a college, or was**
10 **this some --**

11 A. Through the European community,
12 European community.

13 **Q. Did you receive a degree from**
14 **that?**

15 A. It's not a real degree, but it was
16 a -- it was a formal acknowledgment.

17 **Q. Okay. Very good.**

18 **When you joined Gucci America in**
19 **April 2006, did you -- or when thereafter did**
20 **you obtain the responsibility of having the**
21 **legal department report to you?**

22 A. It was during 2007, I would say.

23 **Q. Can you pinpoint that a little**
24 **more as to what month?**

25 A. No. I can't remember.

1 Risi
2 **Q. Okay. But prior to whatever date**
3 **it was in 2007, the legal department did not**
4 **report to you at Gucci America. Is that**
5 **correct?**

6 A. That's correct. It was reporting
7 directly to the president of the company.

8 **Q. Okay.**

9 A. But in order to streamline the
10 processes, since I had a direct involvement in
11 the daily legal operation, it was more effective
12 for me to take a direct responsibility for that
13 department.

14 **Q. Who was the president?**

15 A. The president name was Daniella
16 Vitale, V-I-T-A-L-E.

17 **Q. Is Daniella Vitale still with**
18 **Gucci America?**

19 A. No. As I mentioned, she left at
20 the beginning of the year -- no, two months ago.

21 **Q. Thank you. The beginning of 2010?**

22 A. 2010, yes.

23 **Q. Thank you. All right.**

24 **Now let me go back then. I was**
25 **asking you about your first becoming aware that**

1 **Risi**
2 **there were Internet companies advertising Gucci**
3 **replicas. You told me that was in 2007.**

4 **Was it as soon as you got the**
5 **responsibility of having the legal department**
6 **report to you that you became aware of that?**

7 A. It was part of the daily
8 discussion, if you like, that I was entertaining
9 with the legal department, as together with
10 other discussions in relation to the business
11 that we had the responsibility for.

12 **Q. Was it your understanding that**
13 **these Internet companies had existed prior to**
14 **the time in 2007 when you became aware of them,**
15 **but it was just that you -- you -- the legal**
16 **department wasn't reporting to you at that prior**
17 **time?**

18 MR. WEIGEL: I am going to object
19 to the question. It's compound, and
20 it's vague as to what you mean by "these
21 companies."

22 **Q. Can you answer the question?**

23 A. It's possible they were doing
24 something, but I am not really aware about it.

25 **Q. And you wouldn't have been aware**

1 **Risi**
2 **in 2006 because it wasn't your responsibility to**
3 **have the legal department report to you on such**
4 **matters. Is that accurate?**

5 A. Not really, because we -- as I
6 said, we had daily -- I was having already daily
7 contacts with them. So it is possible that I
8 was already aware of something going on.

9 **Q. When you became aware of such**
10 **Internet companies out there, in 2007, did you**
11 **put in place a procedure to investigate those**
12 **companies, and determine whether or not you**
13 **would take action against them?**

14 A. We -- generally, we tend to use --
15 when we get information about some sites that is
16 selling the fake products, or potentially good
17 products, but, you know, from different and
18 artificial channels, we try to use investigators
19 in order to see if the products are real or not.

20 **Q. All right. When you say "from**
21 **unofficial channels," what did you mean?**

22 A. It is possible that some products
23 has been bought, for instance, from our outlet,
24 and they are sold on line at a markup, higher
25 price from somebody else.

1 **Risi**
2 **Q. Are you aware of Internet sites**
3 **that have sold legitimate Gucci products, but**
4 **from -- they didn't come directly from Gucci but**
5 **came from an outlet?**

6 A. On top of my mind, no.

7 **Q. Okay. But you did say -- earlier,**
8 **you answered my question by saying that you are**
9 **investigating sites that were selling fake**
10 **products, or potentially good products from**
11 **different and -- from different or unauthorized**
12 **channels, and that's why I asked you about that.**

13 **Were you aware of that occurring?**

14 MR. WEIGEL: Asked and answered.

15 If you have something else you want to
16 add to your last answer, go ahead.

17 A. Only thing I want to say, you
18 can't say if it's real or fake until you buy it.
19 So, therefore, when I look at the website, it's
20 still possible that the merchandise is good.

21 **Q. Right. Well, how -- for any of**
22 **the websites that have been investigated, have**
23 **you -- I am not sure -- for any of the websites**
24 **that you have investigated, have you determined**
25 **that the goods that were sold over those**

1 **Risi**
2 **websites were legitimate Gucci goods?**

3 A. I --

4 MR. WEIGEL: Are you talking about
5 just any website at all?

6 MR. KENNEDY: Absolutely.

7 MR. WEIGEL: Not the ones we're
8 talking about in our lawsuit?

9 BY MR. KENNEDY

10 **Q. Any website.**

11 A. I don't know.

12 **Q. Sorry. Your answer is: You don't**
13 **know?**

14 A. In the sense that I can't pinpoint
15 any website in this moment for which we conduct
16 an investigation, which means we bought some
17 product.

18 And I cannot say if the result of
19 it was a real product or a fake, or if we had
20 cases where we were having real products.

21 **Q. Try to -- try to accurately finish**
22 **what you had said. That's what we're trying to**
23 **determine.**

24 MR. WEIGEL: Wait a second.

25 MR. KENNEDY: Wait.

1 Risi

2 **Q. Okay. And who would you ask to do**

3 **that?**

4 A. I would ask to the legal

5 department.

6 **Q. Anyone in particular in the legal**

7 **department?**

8 A. To Stacy Feldman.

9 **Q. Is Stacy Feldman the person who**

10 **produced this list?**

11 A. Yes, she's the one.

12 **Q. Okay. We're talking about this**

13 **list.**

14 MR. KENNEDY: Sorry, Bob. Do you

15 have additional copies? I'd like to

16 mark it.

17 MR. WEIGEL: Sure.

18 (Handing)

19 MR. KENNEDY: Thank you. And you

20 have a copy yourself?

21 MR. WEIGEL: I do.

22 MR. KENNEDY: Could you mark this

23 as Exhibit Risi 2?

24 (Exhibit Risi 2, List of cease and

25 desist letters, marked)

1 **Risi**

2 MR. KENNEDY: But if it is

3 available, I'd like to have it.

4 MR. WEIGEL: I will take the

5 request under advisement.

6 **Q. And I understand, Mr. Risi, that**

7 **request would be made of Miss Feldman. Is that**

8 **right?**

9 A. That's correct.

10 **Q. Okay. Who signs the cease and**

11 **desist letters? Are they signed by someone at**

12 **Gucci America, or are they signed by outside**

13 **counsel?**

14 A. I assume that they are signed by

15 Gucci America.

16 **Q. Okay. Now, am I correct,**

17 **Mr. Risi, that there is a procedure in place at**

18 **Gucci America of investigating websites that**

19 **sell replica Gucci products so that you can then**

20 **send out cease and desist letters and follow up**

21 **on those websites?**

22 A. I would say so.

23 **Q. Okay. And would you outline for**

24 **me what the steps are that are taken in that**

25 **procedure under normal course?**

1 Risi

2 MR. WEIGEL: By agreement, we'll

3 substitute in a Bates numbered copy of

4 this.

5 MR. KENNEDY: That's fine. We'll

6 substitute it into the transcript.

7 That's fine.

8 BY MR. KENNEDY

9 **Q. Mr. Risi, you have been shown**

10 **Exhibit Risi 2.**

11 **Is this the list that was provided**

12 **to you by Miss Feldman that you have been**

13 **testifying about?**

14 A. That's correct.

15 MR. KENNEDY: I am going to ask,

16 Bob, that we be given the dates when the

17 cease and desist letters went out for

18 each of these accounts, because

19 apparently it's available information.

20 MR. WEIGEL: I will take the

21 request --

22 A. As I said, I would assume it's

23 available. I don't know if the system is really

24 tracking all the information or not.

25 **Q. Yes. I understand that.**

1 **Risi**

2 **And let me start with this. How**

3 **do you find out as to what websites are out**

4 **there that are advertising Gucci products?**

5 MR. WEIGEL: There are about three

6 questions in there. Which one do you

7 want him to answer?

8 MR. KENNEDY: The last one I

9 asked.

10 A. Which was?

11 **Q. Okay. I will reread it. I will**

12 **just rephrase it.**

13 **How do you -- let's start: With**

14 **how do you find out what websites are out there**

15 **that are advertising Gucci products?**

16 A. It's easy. You can Google the

17 Gucci word, and you can see which site are

18 coming in the list, in the result of the search.

19 **Q. Even I am capable of that.**

20 **Whose responsibility is it to**

21 **check in that fashion, by doing Google searches?**

22 A. We do it internally. Everybody

23 within the company can do it. And if they

24 realize that there is something strange going

25 on, we basically highlight the issue, and then

1 Risi
2 we decide what kind of option we need to put in
3 place.

4 **Q. How regularly do you do it?**

5 A. I personally?

6 **Q. Yes.**

7 A. Not so regularly. I have some
8 other things to do.

9 **Q. Okay. Well, who has principal
10 responsibility for doing that. Is it Miss
11 Feldman?**

12 A. Is correct.

13 **Q. Okay. And do you know if
14 Miss Feldman does that procedure at least once a
15 month?**

16 A. Even more than that, I would say.

17 **Q. How long has Miss Feldman been
18 employed by Gucci America?**

19 A. If I remember well, she joined in
20 2008.

21 **Q. How about Jonathan Moss? Did he
22 have responsibility for monitoring these sort of
23 websites prior to when Miss Feldman had that
24 responsibility?**

25 A. This responsibility has been

1 Risi
2 always within the legal department.

3 **Q. Okay. When Jonathan Moss -- when
4 did Jonathan Moss join Gucci America? Do you
5 know?**

6 A. It was before me. When I arrived
7 in the company, it was already in the company,
8 so I would assume before 2006.

9 **Q. Okay. Now, just going back to the
10 procedure, when you do one of the -- when Gucci
11 America does one of these Google searches, and
12 you find names of some sites that are
13 advertising Gucci merchandise, what's the next
14 step that you take?**

15 A. As I said, we try to see if the
16 merchandise that is sold by website could be a
17 real Gucci merchandise, or it could be a fake or
18 replica.

19 **Q. And is -- I am sorry. How do you
20 do that? What are you looking at?**

21 A. First of all, you try to see for
22 the products. It's a new product or it's an old
23 product.

24 If it's a new product which is
25 sold for a fraction of the real value, of the

1 Risi
2 real price, highlights our attention.

3 If the price is a -- substantially
4 in line with the price that we have in our own
5 store, we might assume that this is real
6 products, and therefore we might eventually
7 decide to buy the products and to, let's say,
8 verify if it's a real one or not through our
9 quality control department.

10 **Q. Okay. For the websites where you
11 see that the products are being offered at
12 substantially less than what the Gucci products
13 sell for, does -- do you then proceed to a cease
14 and desist letter, or do you purchase products
15 before you do that?**

16 A. It's on a case by case. We might
17 just issue a cease and desist letter, or maybe
18 we might go with a full investigation that would
19 involve to buy products through some
20 investigators.

21 **Q. Okay. Now, do you know how many
22 of these websites that you send out cease and
23 desist letters on, on this Exhibit Risi 2,
24 actually responded to the cease and desist
25 letter?**

1 Risi

2 A. I know that we do some follow-up.
3 And sometime we reissue some cease and desist
4 letter, which let me believe that in most cases
5 the people stopped to do; you know, stopped
6 using the Gucci, the Gucci name or the Gucci
7 products in their website.

8 **Q. What's the next step that you take
9 for the websites where after your cease and
10 desist letter they don't stop?**

11 A. We need to take decision if we are
12 going to have a lawsuit or not against this
13 website.

14 **Q. All right. And if you decide to
15 have a lawsuit against the website, what do you
16 do?**

17 A. Not necessarily we do it, because
18 our budget is not unlimited.

19 **Q. Okay. But for those that you
20 decide to pursue them through lawsuits, because
21 you have done a cease and desist letter and the
22 website continues to advertise Gucci
23 merchandise, do you in those cases get an
24 investigator and hire outside counsel, file a
25 lawsuit?**

1 Risi
 2 MR. WEIGEL: Can I have just a
 3 minute with the witness?
 4 (Pause for witness and counsel to
 5 confer)
 6 A. Okay. I know which one is it now.
 7 MR. KENNEDY: Okay. Well, you
 8 know, I do object to you interjecting
 9 information to the witness. It may be
 10 helpful to the testimony, so I am going
 11 to ask him --
 12 MR. WEIGEL: You can't ask him
 13 what I said. But you can ask him --
 14 MR. KENNEDY: I -- still, this is
 15 my deposition, Mr. Weigel. I don't
 16 think it's proper to confer with the
 17 witness during the course of
 18 questioning.
 19 MR. WEIGEL: I was just trying to
 20 help out. The caption has one thing.
 21 This case ultimately turned into a
 22 battle with the Bank of China, which we
 23 were successful. That's why I mentioned
 24 it to the witness.
 25 MR. KENNEDY: Let me get testimony

1 Risi
 2 A. Because it was setting up a
 3 precedent in the industry.
 4 Q. And the precedent was? What was
 5 the precedent you were trying to set up in this
 6 case?
 7 A. Because not -- because a bank was
 8 involved in the outcome of it.
 9 Q. These were banks -- point out to
 10 me which were the banks involved in this matter.
 11 A. The bank was bank of --
 12 THE WITNESS: -- China?
 13 A. And -- yeah.
 14 Q. Is that bank any of the companies
 15 in the caption?
 16 A. No. It is not. But my lawyers
 17 allowed me to recollect or to, as I say, to link
 18 this website to the outcome of it.
 19 Q. Your lawyer mentioned to you that
 20 this had something to do with the Bank of China.
 21 Is that right?
 22 A. That's correct.
 23 Q. And you are saying -- your
 24 testimony is that this later became a hot topic
 25 when you assumed responsibility for these

1 Risi
 2 from the witness, not counsel.
 3 BY MR. KENNEDY
 4 Q. Mr. Risi, I know your counsel made
 5 a comment to you.
 6 A. Hum hum.
 7 Q. Does it help your recollection as
 8 to whether you knew about this matter, and the
 9 questions I have asked you about this matter
 10 represented by Risi 3?
 11 A. I do recollect something more, but
 12 the substance of it is still the same, which in
 13 a sense means that I do remember the name, I do
 14 remember the outcome of it, and I do remember
 15 that it was not yet within my area of
 16 responsibility.
 17 Q. Okay. Did this case later come
 18 into your area of responsibility after the
 19 initial temporary restraining order was
 20 obtained? Is that your recollection?
 21 A. I don't remember, to be honest.
 22 For sure, after, it was a hot
 23 topic, this one. And I remember that there were
 24 discussion regarding it.
 25 Q. Why was it a hot topic?

1 Risi
 2 matters because you were trying to set up a
 3 precedent to go after a bank. Is that right?
 4 A. No, it's not right.
 5 Q. What's not right about it?
 6 A. You are putting some different
 7 words in my mouth.
 8 What I said: It was a hot topic
 9 because it was in relation to going after a bank
 10 for -- indirectly, if you like.
 11 Q. For -- what do you mean by "for
 12 indirectly"?
 13 A. Because the website were not owned
 14 by the bank.
 15 Q. What was the bank doing, to your
 16 understanding, to facilitate the website?
 17 A. They were holding the money and
 18 collecting -- concentrating the money out of
 19 this, as a result of the sales made by this
 20 website.
 21 MR. WEIGEL: If you want to go off
 22 the record two seconds, I will explain
 23 it to you, might shorten it.
 24 MR. KENNEDY: No.
 25 MR. WEIGEL: It's all public

1 Risi
 2 record.
 3 MR. KENNEDY: It's all right.
 4 **Q. Is it fair to say, though, that**
 5 **this did not involve a bank or financial**
 6 **institution that was providing processing for**
 7 **credit cards for the website?**
 8 A. I don't know.
 9 **Q. Okay. Now, at the time that this**
 10 **temporary restraining order was entered against**
 11 **this MyReplicaHandbag dot-com, which would have**
 12 **been March of 2007, did Gucci have in place this**
 13 **procedure to at least check on what websites**
 14 **were out there by doing Google searches?**
 15 A. I would say so.
 16 **Q. Did you have responsibility for a**
 17 **lawsuit that Gucci America filed against**
 18 **Laurette Company?**
 19 A. It was within my area of
 20 responsibility, yes.
 21 **Q. Okay. And the Laurette Company**
 22 **was operating a website called The Bag**
 23 **Addiction. Is that correct?**
 24 A. That's correct.
 25 **Q. And they were selling Gucci**

1 Risi
 2 **department, would that have been Jonathan Moss?**
 3 A. Eventually, yes.
 4 **Q. Now, I am presuming that before**
 5 **Mr. Falsone was asked to investigate the Bag**
 6 **Addiction, I take it that Gucci America learned**
 7 **about the Bag Addiction somehow?**
 8 A. It is possible, like, as I said --
 9 as we said before, either it may be through a
 10 Google search, or maybe it's some other
 11 information that became available to us.
 12 **Q. Yes, one way or another, you had**
 13 **found out about the Bag Addiction and at least**
 14 **knew enough to ask a private investigator to**
 15 **investigate it, right?**
 16 A. That's correct.
 17 **Q. And you would presume that that**
 18 **would include the procedure of doing the Google**
 19 **search, correct?**
 20 A. Not necessarily.
 21 **Q. Well, do you know that the Bag**
 22 **Addiction could be found as simply doing a**
 23 **Google search for Gucci handbags?**
 24 A. I didn't do it, so -- I didn't
 25 make the search by myself, so I don't know.

1 Risi
 2 **replicas, correct?**
 3 A. Correct.
 4 **Q. Okay. Now, can you tell me what**
 5 **you determined in preparing for this deposition**
 6 **to have been the earliest date that Gucci became**
 7 **aware of the Bag Addiction?**
 8 A. What I am aware of is that in late
 9 2000 and seven, I would say, we asked
 10 Mr. Falsone to perform an investigation on the
 11 website, and we waited for the result of it.
 12 **Q. Okay. Before you asked Mr. --**
 13 **well, strike that.**
 14 **Mr. Falsone is a private**
 15 **investigator, correct?**
 16 A. Correct.
 17 **Q. Who asked Mr. Falsone to perform**
 18 **the investigation? Was it Gucci America or was**
 19 **it counsel?**
 20 A. I don't know.
 21 **Q. Okay. Did you ask Mr. Falsone?**
 22 A. I didn't. It is possible it was
 23 coming either from our internal legal department
 24 or from our external lawyers.
 25 **Q. If it came from the internal legal**

1 Risi
 2 **Q. Well, do you know that it could**
 3 **come up that easily?**
 4 A. Yes. Because in the Falsone
 5 declaration, I think I saw that the Bag
 6 Addiction was one of the sponsored on the site
 7 of the Google result.
 8 **Q. Do you know whether -- well,**
 9 **strike that.**
 10 **How -- now, how did Gucci America**
 11 **become aware of the Bag Addiction?**
 12 A. As I said, I don't know. It is
 13 possible through a result of Google search or
 14 through some other sources.
 15 **Q. Well, did you ask Stacy Feldman**
 16 **for this deposition?**
 17 A. Can you reword it, please?
 18 **Q. Yes. Did you ask Stacy Feldman**
 19 **how Gucci America became aware of the Bag**
 20 **Addiction for purposes of preparing for this**
 21 **deposition?**
 22 A. No. I didn't ask her.
 23 **Q. Did you ask anyone else at Gucci**
 24 **America that question?**
 25 A. In order to prepare for this

1 **Risi**
 2 A. Correct.
 3 **Q. Okay. Gucci has banks that**
 4 **provide credit card processing for its website,**
 5 **correct?**
 6 A. Correct.
 7 **Q. Okay. Do you know what rate the**
 8 **banks charge for the credit card processing?**
 9 A. To us?
 10 **Q. Yes.**
 11 A. In the region of 2 percent, I
 12 would say. It depends of the kind of credit
 13 cards that we are talking about.
 14 **Q. The 2 percent you are talking**
 15 **about, do you know how much you are charged by**
 16 **VISA and Mastercard?**
 17 A. Hum hum. Generally, out of the 2
 18 percent, more or less, all of it goes to VISA,
 19 Mastercard.
 20 Only a negligible commission would
 21 remain to our processor, which is in the region
 22 of tenths of a percentage.
 23 **Q. For the website, for the credit**
 24 **card processor, do you use the same processor**
 25 **that are used for Gucci retail sales, that are**

1 **Risi**
 2 **Q. Okay. You have seen this document**
 3 **before?**
 4 A. I saw it, yes.
 5 **Q. You saw this in your preparation**
 6 **for today's deposition. Is that correct?**
 7 A. Correct.
 8 **Q. Okay. Now, is this -- is it**
 9 **accurate to say that this declaration of Michael**
 10 **Falsone is a declaration by the private**
 11 **investigator who was hired, either by Gucci**
 12 **America or counsel, to investigate the Bag**
 13 **Addiction website?**
 14 A. That's correct.
 15 **Q. Now, is it fair to say, in your**
 16 **testimony on behalf of Gucci America, that you**
 17 **recognize that Gucci America itself would have**
 18 **at least seen the Bag Addiction website before**
 19 **it turned this matter over to Mr. Falsone to**
 20 **investigate?**
 21 A. Can you rephrase it, please?
 22 **Q. Yes. Gucci America would have at**
 23 **least seen or viewed the Bag Addiction website**
 24 **before it told Mr. Falsone to do an**
 25 **investigation of that website?**

1 **Risi**
 2 **credit card transactions?**
 3 A. We use different platform because
 4 in the Internet website, the way our website is
 5 built, require different -- a different setup.
 6 **Q. Do you use a different processor,**
 7 **though? I know you said you use a different**
 8 **platform, but does that require a different**
 9 **processor or not?**
 10 A. We have -- not necessarily, no.
 11 **Q. Do you -- can you tell me**
 12 **approximately what percentage of Gucci sales**
 13 **come by way of the Internet site versus retail?**
 14 A. They -- E commerce or -- the E
 15 Commerce Channel represent more or less 8 or
 16 9 percent of our total retail sales.
 17 (Exhibit Risi 4, Falsone
 18 Declaration, Gucci v. Laurette, Bates Gucci
 19 46043-306, marked)
 20 **Q. Mr. Risi, we have now handed you**
 21 **what's been marked as Exhibit Risi 4. It's a**
 22 **declaration of Michael F. Falsone, in the case**
 23 **of Gucci America versus Laurette Company. It**
 24 **has Bates Nos. Gucci 46043 through 46306.**
 25 A. Yes.

1 **Risi**
 2 A. I would assume so, yes.
 3 **Q. You would also assume that someone**
 4 **at Gucci America recognized that the Bag**
 5 **Addiction website had permitted credit card**
 6 **payments?**
 7 A. I would assume so.
 8 **Q. Okay. And likewise, one at Gucci**
 9 **America would know that there's a credit card**
 10 **processor that's being used by the Bag**
 11 **Addiction; namely, some bank?**
 12 A. I would assume so, yes.
 13 **Q. All right. I'd like you to turn**
 14 **to paragraph 2 of Mr. Falsone's declaration.**
 15 **It's on the second page.**
 16 **And Mr. Falsone says, "Therein**
 17 **2007, I was asked to supervise an investigation**
 18 **into sales over the Internet to customers in the**
 19 **United States of various goods that make use of**
 20 **the trademarks Gucci and Chloe."**
 21 **First, do you see that statement?**
 22 A. Yes, I see it.
 23 **Q. Okay. Now, I know that**
 24 **Mr. Falsone just talks about 2007 there.**
 25 **Based on whatever else you have**

1 **Risi**
2 **you would have considered that to be an**
3 **indication, in and of itself, that the goods**
4 **were not authorized?**

5 A. Upon I think somewhere in here, in
6 one of these documents, it's clearly read -- and
7 that -- that it's a replica.

8 **Q. I --**

9 A. I don't remember which of these
10 printouts of the website, but it was clearly
11 stated that we were talking about a replica --

12 **Q. All right.**

13 A. -- or mirror to mirror products.

14 **Q. All right. Let me ask you to move**
15 **on to, within Exhibit Risi 4, to page 46134.**

16 MR. WEIGEL: 46134.

17 **Q. Which I believe will be the next**
18 **page of what you have.**

19 **And there's Exhibit 4, within**
20 **Exhibit Risi 4.**

21 A. Yes.

22 **Q. It's Exhibit 4 to Mr. Falsone's**
23 **declaration. Okay.**

24 **Do you see there that, from the**
25 **next page, that Mr. Falsone has -- I am sorry.**

1 **Risi**
2 **I was going to ask you about that, but it**
3 **appears that Mr. Falsone has bought a Chloe bag.**
4 **Is that correct?**

5 A. I would say so.

6 **Q. Okay. Did the company Chloe have**
7 **any corporate relationship to Gucci?**

8 A. No, none.

9 MR. WEIGEL: Just so we don't
10 spend too much time going down this
11 path, Chloe was an additional client of
12 Gibson Dunn, and was a plaintiff in the
13 lawsuit.

14 MR. KENNEDY: That's okay. Again,
15 I still -- I know I think you are being
16 helpful, but I will just stick with the
17 witness' testimony. I didn't have any
18 other questions about that.

19 MR. WEIGEL: Okay.

20 BY MR. KENNEDY

21 **Q. Would you turn to page 46153,**
22 **which is Exhibit 8 within Mr. Falsone's**
23 **declaration which we marked as Risi Exhibit 4?**

24 A. Yes.

25 **Q. And there on the next page, do you**

1 **Risi**
2 **see that Mr. Falsone has purchased as of**
3 **November 2, 2007 a Gucci tote bag?**
4 A. Yes. I can see it.
5 **Q. All right. Now, do you recall**
6 **Mr. Falsone receiving Gucci products and**
7 **confirming or -- let me strike that. Let me**
8 **rephrase it.**

9 **Do you recall Mr. Falsone**
10 **receiving Gucci products before he -- or which**
11 **he addresses in his declaration?**

12 A. What do you mean from Gucci
13 products?

14 **Q. That was unclear. I am sorry.**

15 **Do you recall that Mr. Falsone**
16 **actually received the Gucci products that he**
17 **ordered from the Bag Addiction?**

18 MR. WEIGEL: When you say "the
19 Gucci products" --

20 **Q. Let me strike that. I am not**
21 **trying to confuse matters.**

22 **You see there that Mr. Falsone**
23 **purchased a Gucci handbag on November --**
24 **November 2, 2007, correct?**

25 A. No, no. What I can see here is

1 **Risi**
2 that there is the name Gucci. I am not saying
3 that he bought for sure a Gucci bag.

4 **Q. Sorry, I see where the**
5 **confusion -- the confusion is coming in.**

6 **Do you see where Mr. Falsone, on**
7 **November 2, 2007, ordered a Gucci replica from**
8 **the Bag Addiction?**

9 A. Okay, yes.

10 **Q. Okay. And do you understand he --**
11 **shortly thereafter he received the replica,**
12 **correct?**

13 A. I would assume so.

14 **Q. And then he was able to conclude**
15 **whether or not the merchandise being sold by the**
16 **Bag Addiction was fake Gucci, used Gucci's trade**
17 **marks because he would have had an actual**
18 **product, correct?**

19 A. I would assume so. But, as we
20 said, in the website it was clearly stated
21 already that they were sending replicas.

22 **Q. So you understood from the website**
23 **that they were not original Gucci products that**
24 **they were selling, correct?**

25 A. Correct.

1 Risi
 2 Q. Okay. That they actually -- the
 3 Bag Addiction actually said to its customers
 4 these are replicas and not original Guccis,
 5 correct?
 6 A. Correct.
 7 Q. Okay. You can close the -- that
 8 declaration, at least for the present time. Let
 9 me show you another document.
 10 (Exhibit Risi 5, Complaint, Gucci
 11 v. Laurette, 6/3/08, marked)
 12 Q. Mr. Risi, I have just handed you
 13 what's been marked as Exhibit Risi 5, and it's a
 14 copy of a complaint in the case of Gucci America
 15 versus Laurette Company.
 16 It indicates on the front page
 17 that it was received by the court June 3, 2008.
 18 A. Yes. I see it.
 19 Q. Okay. Do you recognize Exhibit
 20 Risi 5 to be the complaint that was filed
 21 against the Bag Addiction by Gucci America?
 22 A. I would say so.
 23 Q. Okay. Have you seen this
 24 complaint before?
 25 A. I think I saw it with my lawyers.

1 Risi
 2 Q. All right. Let's go back.
 3 If you would just flip to an
 4 exhibit. Here it is.
 5 Exhibit 3, which begins at page
 6 46124 of Exhibit Risi 4. 46124.
 7 A. Okay. Yes?
 8 Q. Do you -- just confirming again,
 9 do you see that Mr. Falsone had printed out the
 10 website for the Bag Addiction on October 9,
 11 2007?
 12 A. Correct.
 13 Q. Okay. And then on November 2,
 14 2007, he actually purchased a Gucci handbag from
 15 the website.
 16 And I am sorry. Let me rephrase
 17 that. I have done it again.
 18 He actually purchased what was
 19 advertised as a Gucci replica from the Bag
 20 Addiction on November 2, 2007, correct?
 21 A. Correct.
 22 Q. Okay.
 23 A. But if you go in the same
 24 declaration, you see that other purchases were
 25 carried on in the same --

1 Risi
 2 Q. Okay. This was a matter in which
 3 you had some responsibility, at least in terms
 4 of the legal department reporting to you,
 5 correct?
 6 A. Correct.
 7 Q. All right. Do you understand that
 8 the complaint alleges that the products sold by
 9 the Bag Addiction are counterfeit Gucci
 10 products?
 11 A. Sorry. Can you repeat?
 12 Q. Do you understand that this
 13 complaint by Gucci America against the Bag
 14 Addiction says that the products sold on the Bag
 15 Addiction are counterfeit Gucci products?
 16 A. Yes. I understand it.
 17 Q. And they infringe Gucci's
 18 trademarks? Do you understand?
 19 A. Correct, yes.
 20 Q. Now, Mr. Falsone, the private
 21 investigator, had printed out the Bag Addiction
 22 website, with all of its information, as of
 23 October -- we looked at that date -- I think it
 24 was October 9, 2007. Is that correct?
 25 A. It was November, I think.

1 Risi
 2 Q. Right.
 3 A. -- as well.
 4 Q. Well, he continued to do
 5 additional purchases, you are saying, in
 6 December --
 7 A. Yes.
 8 Q. -- correct?
 9 A. Yes.
 10 Q. But he already had at least one
 11 product that was counterfeit, correct, in
 12 November 2007? Is that right?
 13 A. Yes.
 14 Q. Okay. And then a lawsuit was not
 15 filed against the Laurette Company until June of
 16 2008, correct?
 17 A. Correct, yes.
 18 Q. Okay. And would it be fair to say
 19 that during that entire period of time, from
 20 October 2007 to June of 2008 that you
 21 understood -- Gucci America understood that the
 22 Bag Addiction was up and operating as a website?
 23 A. Correct.
 24 Q. Okay. And they were selling Gucci
 25 replicas that entire period of time?

1 Risi
 2 A. Correct.
 3 Q. And you also understood that they
 4 were taking credit card payments that entire
 5 period of time, correct?
 6 A. I would assume so, yes.
 7 Q. Okay. And that there was some
 8 bank processing those credit card payments?
 9 A. Yes.
 10 Q. How did Gucci America learn that
 11 Woodforest National Bank was a bank processing
 12 credit card payments for the Bag Addiction?
 13 A. Actually, we didn't know. We sent
 14 a letter to VISA Mastercard, and they replied to
 15 us by saying that the processor was the
 16 Woodforest National Bank -- the Woodforest Bank.
 17 Q. So you understand that you can
 18 inquire of a credit card processor as to who --
 19 who the company is, who the bank is that's
 20 processing credit cards for a particular
 21 account, correct?
 22 MR. WEIGEL: Object to the form.
 23 Vague what you mean "require." You mean
 24 sending them a subpoena or calling them
 25 up --

1 Risi
 2 would have the information as to which bank was
 3 doing the processing, correct?
 4 A. I would assume so.
 5 Q. Okay. And would it be fair to say
 6 that when you sent the letter to VISA requesting
 7 this information, that VISA gave you the
 8 information of Woodforest National Bank?
 9 A. Yes.
 10 Q. Now, in the present lawsuit, you
 11 understand that Gucci America has sued
 12 Woodforest National Bank and Frontline, which
 13 was another credit card processor, correct?
 14 A. Yes, correct.
 15 Q. Okay. Now, you are also aware,
 16 are you not, that for the credit card payments
 17 that were processed by the Bag Addiction that
 18 VISA made a profit on those, right?
 19 A. Yes. I would assume so.
 20 Q. Okay. You assumed that VISA gets
 21 2 percent?
 22 A. Yes.
 23 Q. Okay.
 24 A. But I don't know how much is their
 25 cost to do it.

1 Risi
 2 MR. KENNEDY: Please, now you are
 3 coaching. Objection to form is proper,
 4 and that's where you should stop.
 5 MR. WEIGEL: You are trying to
 6 mislead the witness. It isn't right.
 7 A. What we can say is that now we
 8 know if we ask to VISA, they can tell us who is
 9 the processor.
 10 Q. Okay. Because that's information
 11 that VISA has, correct, using them as an
 12 example?
 13 A. Sorry?
 14 Q. Using VISA as an example of a
 15 credit card company?
 16 A. Yes.
 17 Q. Okay. You understood even before
 18 this whole matter that VISA had some bank that
 19 was processing credit card payments. You knew
 20 that?
 21 A. Yes.
 22 Q. You didn't think it was VISA
 23 themselves, correct?
 24 A. Correct.
 25 Q. Okay. And you also knew that VISA

1 Risi
 2 Q. Okay. And you would assume that
 3 Mastercard gets 2 percent as well, correct?
 4 A. I would assume so.
 5 Q. Okay.
 6 MR. WEIGEL: You are not trying to
 7 mislead the witness about how that money
 8 might get shared with the other bank
 9 that issues the card, are you?
 10 MR. KENNEDY: No. That's not even
 11 relevant to my question.
 12 Q. Do you know what percentage charge
 13 American Express takes on credit card processing
 14 through American Express?
 15 A. It's generally higher than VISA,
 16 Mastercard.
 17 Q. It's higher than 2 percent?
 18 A. A little bit, yes. A little bit.
 19 Q. Okay. Now, Gucci America has not
 20 sued VISA or Mastercard or American Express for
 21 the profits and -- which they obtained from the
 22 credit card payments made through the Bag
 23 Addiction. Is that correct?
 24 A. That's correct.
 25 Q. Are you aware that Gucci America

1 Risi
 2 **Q. Jonathan Moss?**
 3 A. And from our colleagues in Europe
 4 as well.
 5 **Q. Okay. Now, if you would look at**
 6 **Exhibit Risi 6, with that background, do you**
 7 **understand that this is a copy of the Final**
 8 **Order and Judgment on Consent entered in the**
 9 **case of Gucci America versus the Laurette**
 10 **Company?**
 11 A. Yes.
 12 **Q. Were you involved at all in the**
 13 **negotiation of this final judgment?**
 14 A. As I said, no, because the
 15 former -- our former legal counselor had the
 16 full autonomy in dealing with these matters, and
 17 I didn't have anything contrary with the
 18 conclusion of the case.
 19 **Q. I am sorry. Were you required to**
 20 **at least sign off, though, on the -- on the**
 21 **agreement or settlement in the Laurette case?**
 22 A. I don't recall if I did sign
 23 anything formally or not.
 24 **Q. Okay. Whether you signed or not,**
 25 **though, my question was: Were you required to**

1 Risi
 2 **Q. -- in Florence. Who was that?**
 3 A. Intellectual property, was a
 4 manager.
 5 **Q. Do you know the name of the**
 6 **person?**
 7 A. The name is Vanni Volpi,
 8 V-A-N-N-I, V-O-L-P-I.
 9 **Q. V-O-L-P-I or D-I?**
 10 A. P-I.
 11 **Q. Volpi.**
 12 **Were you aware that a confidential**
 13 **settlement agreement was struck with the**
 14 **Laurette defendants that was not part of this**
 15 **consent judgment which is on Exhibit Risi 6?**
 16 A. I don't remember.
 17 **Q. Did you have any involvement in --**
 18 **well --**
 19 **(Exhibit Risi 7, Confidential**
 20 **Settlement Agreement, Gucci v. Laurette,**
 21 **marked)**
 22 **Q. We have handed you what's been**
 23 **marked as Exhibit Risi 7, and this is entitled**
 24 **"Confidential Settlement Agreement." It's**
 25 **between Gucci America and Chloe on the one hand;**

1 Risi
 2 **approve the -- whatever resolution was agreed to**
 3 **with the Laurette defendants? In other words,**
 4 **did you have to say: Oh, that's okay with Gucci**
 5 **America?**
 6 A. It was okay from my side, and I
 7 was not only one taking this decision.
 8 As I said, there was also the
 9 president, and there were also our colleague
 10 from intellectual property, defense department
 11 in Florence.
 12 **Q. Okay. The individuals that**
 13 **approved of the agreement with the -- in the**
 14 **conclusion, the consent judgment with the**
 15 **Laurette defendants, would have included**
 16 **yourself.**
 17 **And you are the CFO of Gucci**
 18 **America, correct?**
 19 A. Correct.
 20 **Q. Okay. You said the president.**
 21 **Who was that?**
 22 A. It was Daniella Vitale.
 23 **Q. And then you said someone over in**
 24 **Italy --**
 25 A. Florence.

1 Risi
 2 **and then on the other hand, Laurette Company,**
 3 **Jennifer Kirk and Patrick Kirk?**
 4 A. Yes.
 5 **Q. Have you seen this document**
 6 **before?**
 7 A. I don't -- I don't remember it.
 8 **Q. Did you know that Gucci America**
 9 **had actually entered into a confidential**
 10 **settlement agreement with the Kirks, which would**
 11 **have limited their liability to \$200,000, before**
 12 **submitting the consent judgment to the Court,**
 13 **which was marked as Exhibit Risi 6?**
 14 **(Witness reviews document)**
 15 A. I knew that there was -- I knew
 16 the content of it, and I knew that they were
 17 running behind with their obligation.
 18 **Q. When you say you knew the content**
 19 **of it, do you mean the content of this**
 20 **confidential settlement agreement that you are**
 21 **looking at now, Exhibit Risi 7?**
 22 A. Yes.
 23 **Q. And you knew that the total**
 24 **payments and the total liability from the**
 25 **Laurette Company had been limited to \$200,000,**

1 **Risi**
 2 **correct?**
 3 MR. WEIGEL: I am going to object
 4 to the form.
 5 **Q. Is that correct?**
 6 A. Yes.
 7 **Q. Okay. And that's actually under**
 8 **Paragraph 3 in this agreement at pages two to**
 9 **three, correct?**
 10 A. Yes.
 11 **Q. Now, to your understanding, did**
 12 **the president -- I think you said it was Miss**
 13 **Vitale?**
 14 A. Yes.
 15 **Q. Was she aware that this**
 16 **confidential settlement agreement had been**
 17 **entered into with the Kirks, and the Laurette**
 18 **Company?**
 19 A. I would assume so.
 20 **Q. Okay. And would you also assume**
 21 **that the IP manager, Vanni Volpi, was aware?**
 22 A. I would assume so as well.
 23 **Q. And I note that the actual**
 24 **signature on this confidential settlement**
 25 **agreement on behalf of Gucci America, at page 6,**

1 **Risi**
 2 **America, right?**
 3 A. Correct.
 4 (Exhibit Risi 8, E-mail with
 5 attached WWD article, Gobo/Vitale,
 6 8/10/09, marked)
 7 **Q. We have now handed you what's been**
 8 **marked as Exhibit Risi 8.**
 9 **I will state for the record that**
 10 **it is -- appears to be an E-mail from Alex Gobo**
 11 **to Daniella Vitale. It's dated August 10, 2009.**
 12 **And attached to it is a page from**
 13 **WWD of August 10, 2009, and that includes a**
 14 **short article on "Gucci Targets Counterfeiters'**
 15 **Finance Firms."**
 16 **So would you first take a look at**
 17 **this document? And then I will have some**
 18 **questions for you about it.**
 19 (Witness reviews document)
 20 A. Yes.
 21 **Q. Do you recognize this document?**
 22 A. I saw it, yes.
 23 **Q. Did you see it at the time?**
 24 MR. WEIGEL: Which document are
 25 you talking about?

1 **Risi**
 2 **is by Jonathan Moss, who was then counsel. Is**
 3 **that correct?**
 4 A. Correct.
 5 **Q. Okay. Did you understand,**
 6 **Mr. Risi, if you go back to Exhibit Risi 6, that**
 7 **the final order and judgment on consent signed**
 8 **by the Court, which is Exhibit Risi 6, in**
 9 **Paragraph 2, which is on the -- fifth page of**
 10 **this document, says that there -- that "the**
 11 **defendants shall pay a judgment in the amount of**
 12 **\$5.2 million."**
 13 **Do you see that?**
 14 A. Yes.
 15 **Q. Okay. And you understood that**
 16 **that's what the final judgment and judgment on**
 17 **consent was that was presented to the court,**
 18 **correct?**
 19 A. Correct.
 20 **Q. Okay. Would you assume that the**
 21 **president, Miss Vitale, also knew that, in terms**
 22 **of the consent judgment that was being submitted**
 23 **to the Court?**
 24 A. I would assume so.
 25 **Q. And she was the president of Gucci**

1 **Risi**
 2 MR. KENNEDY: Exhibit Risi 8.
 3 MR. WEIGEL: Are you talking about
 4 the E-mail or --
 5 MR. KENNEDY: Exhibit Risi 8.
 6 It's E-mail of --
 7 A. E-mail, no. I saw it now.
 8 **Q. You saw the second page, which was**
 9 **the add -- the ad, the small article that says,**
 10 **"Gucci Goes After Counterfeiters' Finance**
 11 **Firms," correct?**
 12 A. You need to rephrase your question
 13 because this is not an ad.
 14 **Q. Okay. You saw the second page,**
 15 **which is the -- a page from WWD, correct?**
 16 A. Correct.
 17 **Q. Okay. Who is Alex Gobo?**
 18 A. Alex Gobo worked for our company,
 19 and he's -- is -- was the assistant of our local
 20 communication director.
 21 **Q. Okay. Does Alex Gobo still work**
 22 **for Gucci America?**
 23 A. No. He left the company.
 24 **Q. Okay. Now, this E-mail that he**
 25 **sent on August 10, 2009, he sent it to Daniella**

1 **Risi**
 2 **article was done?**
 3 A. I don't think so. Because they
 4 wouldn't have been in the position to have any
 5 legal information regarding the case.
 6 **Q. Well, if you wanted to know the**
 7 **answer to that question, who would the -- who**
 8 **within communications or the PR department would**
 9 **you ask?**
 10 A. I would ask, for instance, who is
 11 responsible, which is Susan Chokachi right now.
 12 And also if I can, we do have
 13 alerts with WWD, which basically means every
 14 time that an article pops up in WWD, or in some
 15 other metro newspapers related to Gucci, will be
 16 alerted for us. And this is likely the result
 17 of it.
 18 In fact, the message is dated
 19 August 10, which is the same date of WWD. So
 20 this was not, for sure, something that was
 21 prepared beforehand.
 22 **Q. I am sorry. What was not**
 23 **something that was prepared beforehand?**
 24 A. The message was not preceding the
 25 publication. Actually, since the publication is

1 **Risi**
 2 issued early in the morning, and we made this
 3 message only later in the afternoon, led me
 4 believe that we waited before sending or
 5 circulating it within our company.
 6 **Q. You are saying you didn't have an**
 7 **advanced copy of the message, or at least this**
 8 **is not circulating an advance copy. It's**
 9 **circulating the copy that actually was published**
 10 **in WWD on August 10, 2009, correct?**
 11 A. Correct.
 12 **Q. Well, if --**
 13 A. And if we had the information
 14 regarding it, we would have informed,
 15 potentially, our president, who for the article
 16 was going out on the newspapers.
 17 **Q. Well, there's nothing in this**
 18 **message of Exhibit Risi 8 that suggests that**
 19 **this is a surprise, is there?**
 20 A. No.
 21 **Q. Okay.**
 22 A. I agree.
 23 **Q. And there's nothing in this**
 24 **message from Alex Gobo that suggests that Gucci**
 25 **is in any way displeased with the fact that this**

1 **Risi**
 2 **article is in WWD. Is that correct?**
 3 MR. WEIGEL: Object, argumentative
 4 and irrelevant.
 5 A. Correct.
 6 **Q. And is it also fair to say that**
 7 **you understood that you would be testifying on**
 8 **the topic of this article because that's what --**
 9 **and it's in front of you again -- Exhibit Risi**
 10 **1, Topic 12 is about, right?**
 11 A. Correct.
 12 **Q. Okay. And is it correct to say**
 13 **that you didn't ask anyone at Gucci America**
 14 **whether Gucci had provided any information or**
 15 **materials, or had made a suggestion to WWD that**
 16 **they would do the article placed in WWD?**
 17 A. Okay. I didn't ask. But I can
 18 see that it is not publicity from our side,
 19 because it's not Gucci's publicity for the
 20 Laurette judgment.
 21 The way it's written here, is not
 22 really publicity from our side.
 23 **Q. Yes. But this -- I see. Now you**
 24 **are reading Category 12. But you didn't**
 25 **continue to read where it says "including the**

1 **Risi**
 2 **article placed in WWD."**
 3 **You knew you were going to be**
 4 **asked about that article, right?**
 5 MR. WEIGEL: Counsel, your
 6 argument -- you are arguing with the
 7 witness.
 8 MR. KENNEDY: I don't believe I
 9 am.
 10 MR. WEIGEL: I do believe you are.
 11 There's really no point in it. The
 12 article wasn't placed in WWD. He's told
 13 you that repeatedly. So --
 14 MR. KENNEDY: It's an article in
 15 WWD. If someone wants to knit-pick
 16 these categories, we're going to have
 17 problems.
 18 Let me just find out from
 19 Mr. Risi --
 20 A. As I said, for sure --
 21 MR. WEIGEL: Let him ask a
 22 question.
 23 THE WITNESS: Okay.
 24 A. Yes, please? Can you rephrase it,
 25 or can you ask it --

1 Risi
 2 **Q. My question to you has been this,**
 3 **okay? You knew I was going to ask you about**
 4 **that article in WWD, right?**
 5 A. Yes. I knew.
 6 **Q. And you knew you were going to**
 7 **testify on behalf of Gucci America about that**
 8 **article, right?**
 9 A. Correct.
 10 **Q. I asked you whether you knew**
 11 **yourself if Gucci either gave information to WWD**
 12 **or made a suggestion that: Hey, this might be**
 13 **something that you would be interested in doing**
 14 **an article about? And you said personally, you**
 15 **don't know.**
 16 **Is that fair so far?**
 17 MR. WEIGEL: Object to the form.
 18 A. Partially.
 19 **Q. And you haven't checked with**
 20 **anyone else at Gucci to find out whether someone**
 21 **from the PR department, or the communication**
 22 **department, or someone else who has contact with**
 23 **WWD did in fact either provide the judgment or**
 24 **provide that information, correct?**
 25 A. It's wrong for one reason.

1 **Risi**
 2 **anyone within the PR communications. Is that**
 3 **correct?**
 4 MR. WEIGEL: I am going to object
 5 to the form.
 6 MR. KENNEDY: All right.
 7 MR. WEIGEL: You are making
 8 speeches.
 9 MR. KENNEDY: No. I am not. I am
 10 asking questions, Mr. Weigel. And I
 11 have to tell you the truth --
 12 MR. WEIGEL: Please don't
 13 interrupt me, counsel. I have not
 14 interrupted you.
 15 MR. KENNEDY: You did on just the
 16 question before that.
 17 MR. WEIGEL: Counsel, don't
 18 interrupt. We're wasting a lot of time
 19 here.
 20 You have asked the witness. He
 21 has told you. He gave you his
 22 testimony.
 23 You don't like the answers, and
 24 you are badgering him.
 25 If you want to ask the question

1 Risi
 2 Because I said at the beginning that if this
 3 article was feeded by us, there would have been
 4 a statement. There would have been a -- that
 5 would have been a statement from our side or
 6 from our lawyer's side. And I don't see any of
 7 them.
 8 **Q. I am not limiting myself to you**
 9 **actually writing the article and giving it to**
 10 **WWD. I --**
 11 A. I understand it. But that would
 12 be a good possibility from our side to say also
 13 our point of view of the case.
 14 And since there is nothing written
 15 from this point of view, I assume this was not
 16 really coming from us.
 17 **Q. Okay. I know what you are**
 18 **assuming, but that's not really my question.**
 19 **My question is whether anyone from**
 20 **Gucci America suggested that an article should**
 21 **be done about this subject, or provided any**
 22 **information, including the consent judgment, to**
 23 **WWD. That's my question.**
 24 **You don't know the answer to that,**
 25 **and you didn't ask others. You didn't ask**

1 Risi
 2 one more time, go ahead. Leave the
 3 speech off --
 4 MR. KENNEDY: Please.
 5 MR. WEIGEL: -- and let's move
 6 forward.
 7 MR. KENNEDY: I am going to ask to
 8 have the question that I did just ask
 9 reread, and then I am going to ask the
 10 witness please answer it.
 11 (Record read)
 12 MR. WEIGEL: I will allow him to
 13 answer either of the questions there.
 14 But I am going to instruct him not to
 15 answer that particular one, and you can
 16 ask it in two parts because there's at
 17 least two questions there.
 18 Ask however you want. I am not
 19 stopping you from asking it. But that
 20 particular question has at least two
 21 parts and a speech. So ask away.
 22 MR. KENNEDY: Mr. Weigel, your
 23 objections are improper. You know I am
 24 entitled to ask the questions the way I
 25 like to ask them. And the witness is

1 Risi
2 the course of this deposition you asked counsel
3 during a break?

4 A. No. It was before the deposition
5 of today.

6 Q. Back to my original question,
7 though, which is: If you go to Risi Exhibit 8,
8 it doesn't mention the settlement agreement at
9 all, correct?

10 A. Correct.

11 Q. Okay. And it doesn't mention the
12 payment terms of the settlement agreement, which
13 were limited to the \$200,000, if they make the
14 payments, correct?

15 A. Correct.

16 Q. Okay. The only number it uses
17 here is the \$5.2 million judgment from Laurette?

18 A. Correct. Also because it's a
19 confidentiality settlement agreement, and I
20 guess this document is not publicly available.

21 On the other hand, this other
22 document is public. Document -- this one, I --
23 document six is publicly available.

24 Q. Right. The consent judgment is
25 publicly available. That's what was signed by

1 Risi
2 (Exhibit Risi 9, Collection of
3 customer correspondence, Bates Gucci
4 83582-599, marked)

5 BY MR. KENNEDY

6 Q. Mr. Risi, we have shown you now
7 what's been marked as Exhibit Risi 9. And this
8 is a collection of communications which were
9 produced to us by your counsel, and they have
10 Bates Nos. Gucci 83582 through 83599.

11 A. I see it.

12 Q. Are you familiar with these
13 documents?

14 A. I saw them, yes.

15 Q. Did you have any involvement in
16 collecting these documents?

17 A. No.

18 Q. All right. Under what occasion
19 did you see these documents?

20 A. I saw these documents in relation
21 to the preparation for this deposition.

22 Q. Do you know who these documents --
23 who these particular communications went to at
24 Gucci America?

25 A. Yes. These documents, most of

1 Risi
2 the Court, right?

3 A. Yes. So, so far, this is the only
4 public information available to the public.

5 Q. Right. And the confidential
6 settlement agreement, which has the \$200,000
7 number, that was made unavailable to the public,
8 correct?

9 A. I would assume so.

10 Q. Okay. And are you aware that was
11 made unavailable to the public because Gucci
12 America wanted it to be kept confidential?

13 A. I don't know if it was from Gucci
14 America, or from any of the other party within
15 this agreement.

16 Q. That's what I am asking you. You
17 know, speaking on behalf of Gucci America, are
18 you aware if Gucci America wanted that to remain
19 confidential?

20 A. I am not aware about it.

21 MR. WEIGEL: It's 12:35. Would
22 this be a good time to break for lunch,
23 or are you planning on finishing up in a
24 bit?

25 (Discussion off the record)

1 Risi
2 them -- I don't know if all of them -- they went
3 to Stacy Feldman, which is the paralegal within
4 the legal department, which is, in a way, in
5 charge for issuing and preparing the cease and
6 desist letters.

7 Q. I see. Do you believe that these
8 documents that comprise Exhibit Risi 9 are all
9 of the communications received from customers
10 about websites offering Gucci replica materials
11 or products?

12 A. I don't know. I cannot say that.

13 Q. Did you have -- strike that.

14 Did you make the request to
15 Miss Feldman that she provide this information?

16 A. I think the requests arrived
17 through our lawyers.

18 Q. Now, did you note that none of
19 these requests relate to the products offered
20 over the Bag Addiction website?

21 A. Yes. I noticed that.

22 Q. Did any of the requests relate to
23 the website Lee Luxury Bags?

24 A. I am not so sure. I don't think
25 so.

1 Risi
 2 Q. Okay. Why don't you just take a
 3 minute and review it? And let me know if you
 4 see one that does.
 5 (Witness reviews document)
 6 A. No.
 7 Q. Do you know whether any of these
 8 communications relate to any of the websites
 9 that were set forth in Category 14, which were
 10 the websites that came up at the Counley
 11 deposition that you looked at?
 12 A. I don't think so.
 13 Q. All right. That's consistent with
 14 my review. I just wanted to make sure that you
 15 weren't aware of any that did when you reviewed
 16 them for the deposition.
 17 If you could confirm that, I would
 18 appreciate it.
 19 A. Yeah.
 20 Q. You need to look at Category 14?
 21 A. Yeah.
 22 Q. You already got it?
 23 A. Yes.
 24 Q. All right. Thank you.
 25 (Witness continues to review

1 Risi
 2 document).
 3 Q. I am sorry. I wasn't referring to
 4 the larger list. Just the list in 14.
 5 A. This one, yeah.
 6 Q. Have you confirmed that Exhibit 9
 7 contains no communications which relate to any
 8 of the websites that are mentioned in Category
 9 14 of Exhibit Risi 1?
 10 A. Correct.
 11 Q. Okay. Thank you.
 12 Let me go to another topic, which
 13 is what investigations have been done, that you
 14 are aware of, of Woodforest National Bank.
 15 A. I don't think we have done any
 16 investigation, as far as I am aware.
 17 What do you mean for
 18 investigation?
 19 Q. Well, prior to filing the lawsuit,
 20 present lawsuit, were you aware that Woodforest
 21 National Bank was a bank processing credit card
 22 transactions for the Bag Addiction?
 23 A. I think we have been aware as a
 24 result of the communication from VISA.
 25 Q. Okay. And did you do any -- did

1 Risi
 2 you have an investigator, or anyone do an
 3 investigation of the business of Woodforest
 4 National Bank beyond whatever information came
 5 to you from Woodforest itself about the credit
 6 card processing that they had done for the Bag
 7 Addiction?
 8 MR. WEIGEL: I don't want you -- I
 9 caution you that work done by counsel
 10 can be protected either by the
 11 attorney-client or the work product
 12 privilege.
 13 I would instruct you not to reveal
 14 communications you had with counsel
 15 about work that counsel did in preparing
 16 for this lawsuit. If you know anything
 17 else, please tell him.
 18 A. I don't think we used any
 19 investigator.
 20 MR. KENNEDY: Let me take about a
 21 five-minute break, sort out my notes,
 22 and make sure there isn't more.
 23 MR. WEIGEL: Okay.
 24 (Recess taken)
 25

1 Risi
 2 BY MR. KENNEDY
 3 Q. Mr. Risi, I neglected to ask you:
 4 Where are the offices of Gucci America?
 5 A. 685 Fifth Avenue.
 6 Q. Do you maintain an office there
 7 yourself?
 8 A. I do have an office there as well.
 9 Q. Okay.
 10 (Exhibit Risi 10, Printout,
 11 Bluefly.com website, 5 pages, marked)
 12 Q. Let us show you what's been marked
 13 as Exhibit Risi 10, which I will represent are
 14 five pages from the Bluefly dot-com website that
 15 promote Gucci products.
 16 A. Yes.
 17 Q. Do you see that exhibit?
 18 A. Yes.
 19 Q. Okay. Have you gone on this
 20 website to look at the Gucci products that they
 21 are offering?
 22 A. I am aware that there were some
 23 consideration to go after it.
 24 Q. Well, are you aware as to whether
 25 these are genuine Gucci products that are being

EXHIBIT M

Fresh new Kickz	12/4/07
Dress 4 envy	11/20/07
Simply Chic Purses	3/5/07
Carbon Copy Replicas	4/10/07
Hotshot watches	4/17/07
Charismatic style	6/29/07
Prime Time Enterprises	12/4/06
Lee Luxury Lines	12/3/06
The Purse Boutique	2/6/07
Fresh styles	1/18/07

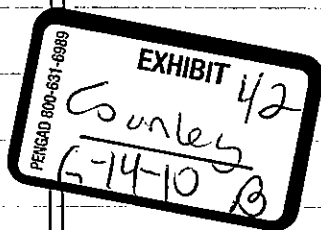


EXHIBIT N

Kennedy, Charles P

From: Coyle, Anne [ACoyle@gibsondunn.com]
Sent: Monday, July 19, 2010 5:21 PM
To: Kennedy, Charles P; Weigel, Robert L.
Cc: Halter, Jennifer Colgan; Paradise, Gregg A; Mentlik, William L
Subject: RE: Gucci v. Frontline

Charles,

We can confirm that no cease and desist letter was sent to TheBagAddiction website.

Regards,

Anne

From: Kennedy, Charles P [mailto:CKennedy@ldlkm.com]
Sent: Monday, July 19, 2010 5:08 PM
To: Coyle, Anne; Weigel, Robert L.
Cc: Halter, Jennifer Colgan; Paradise, Gregg A; Mentlik, William L
Subject: RE: Gucci v. Frontline

Anne:

Thank you. Please let us know whether Gucci has done a separate investigation to determine if it did or did not send such a letter to TheBagAddiction website. We need to know the answer and have production of any correspondence.

Sincerely,
Charles Kennedy

Charles P. Kennedy
Lerner, David, Littenberg, Krumholz & Mentlik, LLP
600 South Avenue West
Westfield, NJ 07090
Tel. (908) 654-5000; Direct (908) 518-6307
Fax (908) 654-7866
ckennedy@ldlkm.com

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From: Coyle, Anne [mailto:ACoyle@gibsondunn.com]
Sent: Monday, July 19, 2010 4:29 PM
To: Kennedy, Charles P; Weigel, Robert L.

7/29/2010

EXHIBIT O



676 Ferguson Avenue, Suite 5 Toll Free: 1-866-631-3663
 Bozeman, Montana 59718 Fax: 406-586-6238
 www.frontlineprocessing.com

Type of Account (Check one):
 Direct Account
 Agent Bank Account
 Bank Referral, new relationship

Control Number

Name of Bank: _____ Branch: _____

Business Information		Merchant Profile		Visa/MasterCard Information	
Merchant's DBA Name/Outlet Name: TheBagAddiction.com		Merchant's Legal Name: Lauretta Company, Inc.		Sales Profile (Must equal 100%)	
Physical Street Address (No P.O. Box): 3031 Stanford Ranch #2-148		Legal Address: 3031 Stanford Ranch #2-148		Card Swiped _____ %	
City, State, Zip: Rocklin CA 95765		City, State, Zip: Rocklin CA 95765		Manually Keyed with Imprint _____ %	
DBA Phone: 916-367-7558		Corp. Phone: 866-765-0356		Mail Order/Telephone/Internet 100 %	
E-mail: admin@thebagaddiction.com		E-mail: admin@thebagaddiction.com			
Customer Service Phone # (Required for MOTO and Internet merchants only): 866-765-0356		Website Address (Required for Internet merchants): www.thebagaddiction.com			
Type of Ownership: <input type="checkbox"/> Sole Proprietor <input type="checkbox"/> Partnership <input type="checkbox"/> Professional Assoc. <input checked="" type="checkbox"/> Corporation <input type="checkbox"/> Tax Exempt Org. (501C) <input type="checkbox"/> LLC <input type="checkbox"/> Other:		Market Types: <input type="checkbox"/> Retail <input type="checkbox"/> Supermarket <input type="checkbox"/> Restaurant <input type="checkbox"/> Emerging Mkt <input type="checkbox"/> Lodging <input type="checkbox"/> Public Sector <input type="checkbox"/> MOTO <input type="checkbox"/> Auto Rental <input type="checkbox"/> P-Card <input type="checkbox"/> Cash Adv. <input checked="" type="checkbox"/> E-Commerce <input type="checkbox"/> Other			
Type of Goods or Services Sold: Handbag & Accessories		SIC Code: 5834			
Years in Business under current ownership? 5		Federal Tax ID # 21054314529			
Do you currently accept Visa/MasterCard? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		Does merchant accept transactions before the customer receives product or service? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		% of total that is prepayment: _____	
How long does customer wait before product is received? _____		Does merchant offer warranties, dues, subscriptions, memberships or other extended services? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		Duration of extended service or benefit (in weeks): _____	
Annual Visa/MC Sales: \$ 300,000		Average Ticket: \$ 200		Total Visa/MC Sales (multiple locations only): \$ _____	
Member Bank (Acquirer) Information:		For Detail Sponsor Contact:			
HBBK Bank USA, National Association Merchant Support Group P. O. Box 4563 Buffalo, New York 14240 716-641-8300		Concord EFS National Bank 2825 Horizon Lake Drive Suite 120 Memphis, TN 38153 901-371-8000			
Important Member Bank Responsibilities:		Important Merchant Responsibilities:			
1. A Visa Member is the only entity approved to extend acceptance of Visa products directly to a merchant. 2. A Visa Member must be a principal (signer) to the Merchant Agreement. 3. The Visa Member is responsible for educating Merchants on pertinent Visa Operating Regulations with which Merchants must comply. 4. The Visa Member is responsible for and must provide settlement funds to the Merchant. 5. The Visa Member is responsible for all funds held in reserve that are derived from settlement.		1. Ensure compliance with cardholder data security and storage requirements. 2. Maintain fraud and chargebacks below threshold. 3. Review and understand the terms of the Merchant Agreement. 4. Comply with Visa Operating Regulations. The responsibilities listed above do not supersede terms of the Merchant Agreement and are provided to ensure the Merchant understands these specific responsibilities.			
Cardholder Data Storage Compliance:					
Is Cardholder Data Stored? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No					
If yes, where is Card Data Stored? <input type="checkbox"/> Merchant <input type="checkbox"/> CAP Only <input type="checkbox"/> Both Merchant & CAP <input type="checkbox"/> Unknown <input type="checkbox"/> GAA Export Only					
Name of Primary CAP/AR? _____					
Name of Secondary CAP/AR? _____					

For questions regarding Card Services, contact: Frontline Processing, 676 Ferguson Ave., Suite 5, Bozeman, MT 59718 or call 1-866-631-3663

Note: Billing disputes must be forwarded, in writing, to Customer Service within 90 days of the date of the statement and/or notice.

EXHIBIT
 37
 COLINEX
 6-14-10 DJ

Merchant Initials: *[Signature]*
 Rev. 06/05 - FP

Credit/Debit Card Services and Fee Schedule							
Plan Type	New	Existing	Existing Merch. No.	Discount Rate	Per Item	Additional Auth. Fees	
<input checked="" type="checkbox"/> VISA Credit	<input type="checkbox"/>	N/A	N/A	3.0% %	\$ 0.50	\$	
<input type="checkbox"/> Visa Bus. Card	<input type="checkbox"/>	N/A	N/A	%	\$	\$	
<input type="checkbox"/> VISA Check	<input type="checkbox"/>	N/A	N/A	%	\$	\$	
<input checked="" type="checkbox"/> MasterCard Credit	<input type="checkbox"/>	N/A	N/A	3.0% %	\$ 0.50	\$	
<input type="checkbox"/> MasterCard Bus. Card	<input type="checkbox"/>	N/A	N/A	%	\$	\$	
<input type="checkbox"/> Debit MasterCard	<input type="checkbox"/>	N/A	N/A	%	\$	\$	
<input checked="" type="checkbox"/> American Express	<input type="checkbox"/>	<input checked="" type="checkbox"/>	10228163	%	\$	\$	
<input checked="" type="checkbox"/> Discover	<input type="checkbox"/>	<input checked="" type="checkbox"/>	801181342581023	%	\$	\$	
<input type="checkbox"/> Others Club	<input type="checkbox"/>	<input type="checkbox"/>		%	\$	\$	
<input type="checkbox"/> JCB	<input type="checkbox"/>	<input type="checkbox"/>		%	\$	\$	
<input type="checkbox"/> Debit (other than Visa or MC)	<input type="checkbox"/>	<input type="checkbox"/>		%	\$	\$	
<input type="checkbox"/> EBT	<input type="checkbox"/>	<input type="checkbox"/>		%	\$	\$	

Merchant FTEE: Cash Benefits: YES NO Daily Discount: YES NO

* The foregoing fees are based upon Merchant's compliance with all processing requirements as established by the applicable governing authority of the payment type which qualifies Merchant for the most favorable interchange rates available for such payment type. See the Card Services Terms & Conditions for non-qualifying surcharges.

\$ 0.00 Non-Refundable Application Fee (one-time fixed fee)	\$30.00	Replacement Shipping Fee (per occurrence)	\$2.50	Help Desk Fee (monthly)	\$50.00
\$20.00 AMEX Application Fee	\$ 0.00	POS Equipment Warranty Fee - Per Piece/Sat (monthly)	\$50.00	Annual Service Fee	\$0.10
\$ 0.00 Discover Application Fee	Variable	POS Supplies	\$0.10	EDC AVS Fee (per occurrence)	\$1.25
\$ 0.00 Virtual Site Survey Fee	\$ 0.00	Non-Global Check Authorization Fee (per occurrence)	\$1.25	Voices AVS Fee (per occurrence)	\$0.60
\$ 0.00 Annual Membership Fee	\$ 0.00	Adjustment Fee (paper only - per occurrence)	\$0.60	Voice Authorization Fee (per occurrence)	\$0.20
\$ 10.00 Monthly Fee <input type="checkbox"/> Membership <input checked="" type="checkbox"/> Statement	\$ 0.00	Touchless Capture Set-up Fee (one-time fixed fee)	\$0.20	Internet Per Item Fee (per occurrence)	\$ 0.00
\$25.00 Minimum Monthly Discount	\$ 0.00	Global Access @Advantage Setup Fee	\$ 0.00	Internet Access Fee (monthly)	\$ 0.00
\$ 0.00 Training Fee - On-Site (one-time fixed fee)	\$ 0.00	Global Access @Advantage Monthly Fee	\$ 0.00	Internet Setup Fee (one-time fixed fee)	\$0.25
\$30.00 Chargeback Fees (per occurrence)	\$7.50	Retrieval Fee (per occurrence)	\$ 0.00	Batch/ACH Fee (per occurrence)	\$ 0.00
\$30.00 Non-Sufficient Funds (per occurrence)	\$ 0.00	Wireless Service Fee (monthly)	\$ 0.00	Minimum Monthly Debt	\$ 0.00
\$ 0.00 Installation/Programming Fee (one-time fixed fee)	\$ 0.00	Wireless Activation Fee (one-time fixed fee)	\$ 0.00	Other:	\$ 0.00
\$ 0.00 Re-programming Fee (one-time fixed fee)	\$ 0.00	Wireless Transaction Fee (per occurrence)	\$ 0.00	Additional Location Fee	\$ 0.00

American Express

By signing below, I/we represent that the information I/we have provided on this application is complete and accurate and I/we authorize American Express Travel Related Services Company, Inc. ("American Express") to verify the information on the application and to receive and exchange information about me, including requesting reports from consumer reporting agencies. If I/we ask American Express whether or not a consumer report was requested, American Express will tell me, and if American Express received a report, American Express will give me the name and address of the agency that furnished it. I/we understand that upon American Express' approval of the business entity indicated above to accept the American Express Card, the Terms and Conditions for American Express @ Card Acceptance ("Terms and Conditions") will be sent to such business entity along with a Welcome Letter. By accepting the American Express card for the purchase of goods and/or services, I/we agree to be bound by the Terms and Conditions.

Merchant's Signature: _____ Name (printed): _____ Title: _____ Date: _____

Acceptance of Merchant Application and Terms & Conditions / Merchant Authorization

Your Card Services Agreement is between Global Payments Direct, Inc. ("Global Direct"), the Merchant named above, the Member named below ("Member"), and, if applicable, the Debt Sponsor named below. Member is a member of Visa, USA, Inc. ("Visa") and MasterCard International, Inc. ("MasterCard"); Global Direct is a registered independent sales organization of Visa and a member service provider of MasterCard.

A copy of the Card Services Terms and Conditions, revision number **REV 06/05-FF**, has been provided to you. Please sign below to signify that you have received a copy of the Card Services Terms & Conditions and that you agree to all terms and conditions contained therein. If this Merchant Application is accepted for card services, Merchant agrees to comply with the Merchant Application and the Card Service Terms & Conditions as may be modified or amended in the future. If you disagree with any Card Services Terms & Conditions, do not accept service.

IF MERCHANT SUBMITS A TRANSACTION TO GLOBAL DIRECT IS REBUNDLED, MERCHANT WILL BE DEEMED TO HAVE ACCEPTED THE CARD SERVICES TERMS & CONDITIONS.

By your signature below on behalf of Merchant, you certify that all information provided in this Merchant Application is true and accurate and you authorize Global Direct, and Global Direct on Member's behalf, to: (a) initiate debit entries to Merchant's checking account(s) in accordance with the Card Services Terms and Conditions, (b) initiate debit entries to Merchant's checking account(s) for the application fees described herein prior to Global Direct's and Member's acceptance and execution of this Merchant Application, which application fees shall be retained by Global Direct and Member whether or not the Merchant Application is accepted and executed by Global Direct and Member, and (c) order a consumer credit report on the card(s) you.

Merchant's Signature: _____ Name (printed): **Pat Kirk** Title: **OWNER** Date: **9-15-06**

Signing for Global Payments Direct, Inc.: Name (printed): _____ Title: _____ Date: _____

Signing for Member: Name (printed): _____ Name of Member (printed): **HSC Bank USA, NA** Date: _____

Signing for Debt Sponsor: Name (printed): _____ Name of Debt Sponsor: _____ Date: **Concord EFS National Bank**

Personal Guaranty

I/we hereby guarantee to Global Direct, Member, and to Debt Sponsor, their successors and assigns, the full, prompt and complete performance of Merchant and all of Merchant's obligations under the Card Services Agreement, including but not limited to all monetary obligations arising out of Merchant's performance or non-performance under the Card Services Agreement, whether arising before or after termination of the Card Services Agreement. This guaranty shall not be discharged or otherwise affected by any waiver, indulgence, compromise, settlement, extension of credit, or variation of terms of the Card Services Agreement made by or agreed to by Global Direct, Member, Debt Sponsor, and/or Merchant.

I/we hereby give any notice of acceptance of this guaranty, notice of non-payment or non-performance of any provision of the Card Services Agreement by Merchant, and all other notices or demands regarding the Card Services Agreement, I/we agree to promptly provide to Global Direct, Member, and/or Debt Sponsor any information requested by any of them from time to time concerning Merchant's financial condition(s), business history, business relationships, and employment information. I/we have read, understand, and agree to be bound by the Card Services Terms & Conditions provided to Merchant and those same terms and conditions contained in this Merchant Application.

Signature of Merchant (please sign below): _____ Name (printed): **X Pat Kirk**

Signature of Witness (please sign below): _____ Name (printed): **X**

Owner/Officer Information					
Name:	Title:	Date of Birth:	Social Security #		Home Phone #
Pat Kirk	Owner	03/03/1974	REDACTED		
Home Address:	City:	State:	Zip Code:	Years There:	Own / Rent?
703 Chaparral Way	Rocklin	CA	95765	2	OWN
Former Address (if less than 1 year at current address)	City:	State:	Zip Code:	Years There:	Own / Rent?
Name:	Title:	Date of Birth:	Social Security #		Home Phone #
Home Address:	City:	State:	Zip Code:	Years There:	Own / Rent?
Former Address (if less than 1 year at current address)	City:	State:	Zip Code:	Years There:	Own / Rent?
Bank Information (Attach Voided Check or Bank Letter)					
Routing Number	DDA/Checking Account #		Deposit	Discount	Chargebacks
	REDACTED		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Bank 1			Equipment	Supplies	Misc. Fees
			<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Bank 2					
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Merchant Site Survey Report (To be Completed by Sales Representative)					
Merchant Location:	<input type="checkbox"/> Retail Location with Store Front		<input checked="" type="checkbox"/> Office Building		
Surrounding Area:	<input checked="" type="checkbox"/> Commercial		<input type="checkbox"/> Industrial <input type="checkbox"/> Residential		
Does the amount of inventory and merchandise on shelves and floor appear consistent with the type of business?			<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		
If no, explain:					
The Merchant	<input checked="" type="checkbox"/> Owns <input type="checkbox"/> Leases the business premises				
Further comments by inspector (must complete):					
I hereby verify that this application has been fully completed by merchant applicant and that I have physically inspected the business premises of the merchant at the address with the information stated above in true and correct to the best of my knowledge and belief.					
Verified and Inspected by (print name):					
Representative Name: X	Nathan Counley		Representative Signature: X	Date:	
Sales Rep Name:	Sales Rep Code:	Sales Rep Phone Number:	Sales Rep e-mail Address:		
Nathan Counley					

CARD SERVICES TERMS & CONDITIONS



1. GENERAL

The "Card Services Agreement" consists of these Card Services Terms & Conditions and the Merchant Application and is made by and among Merchant, Global Payments Direct, Inc. ("Global Direct"), Member (as defined below), and Data Sponsor (as defined in the Merchant Application). The provisions in the Card Services Agreement are applicable to Merchant if Merchant has signed the appropriate space in the Acceptance of Terms & Conditions/Merchant Authorization section of the Merchant Application. The bank identified in the Merchant Application ("Bank") is a member of Visa U.S.A. Inc. ("Visa") and MasterCard International, Inc. ("MasterCard"). Global Direct is a registered independent sales organization of Visa and a member service provider of MasterCard.

Under the terms of the Card Services Agreement, Merchant will be furnished with the services and products described herein used in the Merchant Application and selected by Merchant therein (collectively and individually, as applicable, the "Services"). During the term of the Card Services Agreement, Global Direct will be the sole and exclusive provider of all such Services to Merchant. Any Merchant accepted by Global Direct for card processing services agrees to be bound by the Card Services Agreement, including the terms of the Merchant Application and these Card Services Terms & Conditions as they may be modified or amended in the future. A MERCHANT'S SUBMISSION OF A TRANSACTION TO GLOBAL DIRECT SHALL BE DEEMED TO SIGNIFY MERCHANT'S ACCEPTANCE OF THE CARD SERVICES AGREEMENT, INCLUDING THE TERMS AND CONDITIONS HEREIN.

2. SERVICE DESCRIPTIONS.

Credit Card Processing Services: Global Direct's credit card processing services consist of authorization and electronic draft capture of credit card transactions; releasing of such transactions to the appropriate card associations and/or issuers (e.g., Visa, MasterCard, etc.); settlement; dispute resolution; with cardholders' banks; and transaction-related reporting, statements and products. From time to time under this Card Services Agreement, upon Merchant's request, Global Direct may facilitate the transmission of mobile payment card transactions ("Switched Transactions") to the respective card issuers, including but not limited to American Express, Discover Global and various bank, private label and commercial cards. Switched Transactions require Global Direct's prior written approval and are subject to applicable processing; Global Direct does not purchase the liabilities associated with Switched Transactions.

EBT Transaction Processing Services: Global Direct offers electronic transfers to Eligible Merchant/Treasurer ("EBT") networks for the processing of cash payments or credits to or for the benefit of benefit recipients ("Recipients"). Global Direct will provide settlement and switching services for various Point of Sale transactions initiated through Merchant for the authorization of the issuance of the United States Department of Agriculture, Food and Nutrition Services ("FNS") food stamp benefits ("FS Benefits") and Food Assistance ("FA Benefits") to Recipients through the use of a state-issued card ("EBT Card").

Provisioning reporting debit card services are set forth in Section 2B below.

With respect to Visa and MasterCard products, Merchant may elect to accept credit cards on debit/processed cards or both. Merchant shall not elect on the Merchant Application being completed containing merchant's business. Merchant agrees to pay and Merchant's account(s) will be charged pursuant to Section 5 of this Agreement for any additional fees incurred as a result of Merchant's subsequent acceptance of transactions with any Visa or MasterCard product that it has elected not to accept.

3. PROCEDURES.

Merchant will permit holders of valid cards bearing the symbols of the cards authorized by Merchant to charge purchases or (sales of goods and services and the debt resulting therefrom) shall be purchased hereunder, provided that the transaction complies with the terms of this Card Services Agreement. All indebtedness authorized by Merchant for purchase will be evidenced by an approved sales slip. Merchant will not present for payment any (including those that arise out of a transaction between a cardholder and Merchant, Merchant agrees to follow the Card Association's rules which is incorporated into and made part of this Card Services Agreement, and to be bound by the operating regulations and rules of Visa, MasterCard, and any other card association or network organization covered by this Card Services Agreement, as any of the above referenced documents may be modified and amended from time to time. Without limiting the generality of the foregoing, Merchant agrees to comply with and be bound by the rules and regulations of Visa, MasterCard and any other card association or network organization related to cardholder and transaction information security, including without limitation, Payment Card Industry (PCI) Data Security Standard, Visa's Cardholder Information Security Program and MasterCard's SRA Data Protection Program. Global Direct may, from time to time, issue written directions (via mail or internet) regarding procedures to follow and forms to use to carry out this Card Services Agreement. These directions and the terms of the forms are binding on Merchant as they are issued and shall form part of these Card Services Terms & Conditions. Such operating regulations and rules may be reviewed from time to time at Global Direct's sole and absolute discretion.

4. MARKETING.

Merchant shall adequately display the card issuer service marks and promotional materials supplied by Global Direct. Merchant shall cease to use or display such service marks immediately upon notice from Global Direct or upon termination of this Card Services Agreement.

5. PAYMENT AND FEES.

Fees and charges payable by Merchant shall be set forth in the Merchant Application. Merchant will be paid for indebtedness purchased under this Card Services Agreement by credit to Merchant's account(s). Merchant's account(s) will be credited for the gross amount of the indebtedness deposited less the amount of any credit vouchers deposited. Availability of any such funds shall be subject to the procedures of the applicable financial institution. Merchant's account(s) will be charged for the discount, fees, and other charges described in this Card Services Agreement. Merchant also agrees to pay and Merchant's account(s) will be debited for all fees, withdrawal fees, fines, penalties, etc. charged by the card associations or network organizations on account of Merchant's processing hereunder. If an error occurs, Merchant's account(s) may be debited or credited thereafter. Merchant represents and warrants that no one other than Merchant has any claim against such indebtedness except as authorized in writing by Merchant and Global Direct. Merchant hereby assigns to Member and Global Direct all of its right, title, and interest in and to all indebtedness submitted hereunder and agrees that Member and Global Direct have the sole right to receive payment on any indebtedness purchased hereunder.

6. EQUIPMENT AND SUPPLIES.

Any hardware, material, leased equipment including terminal, authorization terminal, or printer software, credit card authorizations, unexpired forms, and Merchant deposit plastic cards provided by Global Direct will not become Merchant's property. Merchant will protect them from loss, theft, damage or any legal encumbrance and will allow Global Direct and its designated representatives reasonable access to Merchant's premises for their repair, receipt, modification, installation and replacement. Merchant acknowledges that any equipment provided under this Card Services Agreement is embodied with proprietary technology ("Software"). Merchant shall not obtain, file, copyright or any other proprietary right to any Software. As all fees, Global Direct or its suppliers retain all rights to such Software, including but not limited to repair, maintenance and updates. Merchant shall not disclose such Software in any party, convey, copy, lease, sublicense, modify, translate, reverse engineer, decompile, disassemble, transfer with, or create any derivative work based on such Software. Merchant's use of such Software shall be limited to that expressly authorized by Global Direct. Global Direct's suppliers are licensed third party beneficiaries of this Card Services Agreement to the extent of any license herein pertaining to such suppliers' ownership rights; such suppliers have the right to sue and not directly enforce such terms against Merchant.

The operating instructions will instruct Merchant in the proper use of the terminal, and Merchant shall use and operate the terminal only in such manner. If Merchant has purchased the maintenance-only debt service hereunder for its terminal, Merchant will promptly notify Global Direct of any equipment malfunction, failure or other incident resulting in the loss of use of the equipment or need for repair or maintenance, whenever Global Direct will make the necessary arrangements to obtain required maintenance. Merchant is responsible for shipping costs. Merchant shall cooperate with Global Direct in its attempts to diagnose any problem with its terminal. In the event the Merchant's terminal requires additional Software, Merchant is obligated to cooperate and participate in a trial to download the load procedure. With respect to any item of equipment leased to Merchant by Global Direct, Merchant will not be liable for normal wear and tear, provided, however, that Merchant will be liable to Global Direct in the event that any leased item of equipment is lost, destroyed, stolen or rendered inoperative. Merchant will indemnify Global Direct against any loss arising out of damage to or destruction of any item of equipment provided hereunder for any cause whatsoever. Merchant also agrees to hold Merchant and indemnify Global Direct for any costs, expenses, and judgments Global Direct may incur, including reasonable attorney's fees, as a result of Merchant's use of the equipment provided hereunder. Any leased equipment in its original packaging purchased from Global Direct hereunder may be returned to Global Direct at Merchant's expense within 60 days of receipt. Merchant shall receive a refund of any money paid by Merchant to purchase the equipment to a non-refundable fee of an amount equal to 20 percent of the total purchase price for the returned equipment. No refunds shall be issued for any equipment returned after 60 days.

7. FINANCIAL INFORMATION.

Merchant agrees to furnish Global Direct and Member such financial statements and information concerning Merchant, its owners, principals, partners, proprietors or its affiliates as Global Direct may from time to time request. Global Direct, or its duly authorized representative, may examine the books and records of Merchant, including records of all indebtedness previously purchased or presented for purchase. Merchant agrees to retain copies of all paper and electronic sales slips and credit slips submitted to Global Direct for a period of two years from submission of such longer period of time as may be requested by the operating unit or organizations of the card associations or network organizations, by law, or by Global Direct as specifically requested in writing in individual cases.

8. CHANGE IN BUSINESS.

Merchant agrees to provide Global Direct and Member 60 days prior written notice of its intent to (a) transfer or sell any substantial part (10% or more) of its total stock, assets under its liquidation, or (b) change the basic nature of its business, or (c) acquire all or part of the business to sell order sales, telephone order sales, internet-based sales or in other sales where the card is not present and equipment through Merchant's terminal. Upon the occurrence of any such event, the terms of this Card Services Agreement may be modified to address issues arising therefrom, including but not limited to requirements of applicable card associations or network organizations.

9. TRANSFERABILITY.

This Card Services Agreement is not transferable by Merchant without the written consent of Global Direct and Member. Any attempt by Merchant to assign its rights or to delegate its obligations in violation of this paragraph shall be void. Merchant agrees that the rights and obligations of Global Direct hereunder may be transferred by Global Direct without notice to Merchant. Merchant acknowledges that the transferable rights of Global Direct and Member hereunder shall include, but shall not be limited to, the authority and right to debit the Merchant's account(s) as described herein.

Merchant Initials

10. WARRANTIES AND REPRESENTATIONS.

Merchant warrants and represents to Global Direct and Member: (a) that each sales transaction delivered hereunder will represent a bona fide sale to a cardholder by Merchant for the amount shown on the sales slip at the total sale and constitutes the binding obligation of the cardholder, free from any claim, demand, defense, setoff or other adverse claim whatsoever; (b) that each sales slip or other evidence of indebtedness will accurately describe the goods and services which have been sold and delivered to the cardholder or its assignee with his instructions; (c) that Merchant will comply fully with all Federal, state and local laws, rules and regulations applicable to the business; (d) that Merchant will fulfill completely all of its obligations to the cardholder and will resolve any customer dispute or complaint directly with the cardholder; (e) that the signature on the sales slip will be regular and authorized by cardholder and not forged or unauthorized; (f) that the sales transaction shall have been consummated and the sales slip prepared in full compliance with the provisions of the Card Acceptance Guide and the operating regulations and rules of the applicable card association or network organization, as amended from time to time; (g) that none of the sales transactions submitted hereunder represent sales by telephone, or mail, or Internet, or where the card is not physically present to the Merchant's location and swiped through Merchant's terminal, unless Merchant is specifically authorized in writing by Global Direct to submit such sales slips for permits; (h) that none of the sales transactions submitted hereunder for purchase, approval sales to any principal, partner, proprietor, or officer of Merchant; (i) that, without limiting the generality of the foregoing, each sales transaction submitted hereunder and the handling, retention, and storage of information related thereto, will comply with the rules and regulations of Visa, MasterCard, and any other card association or network organization related to cardholder and transaction information security, including without limitation Payment Card Industry (PCI) Data Security Standards, Visa's Cardholder Information Security Program and MasterCard's Site Data Protection Program; and (j) that all of the information contained in this Card Services Agreement (including the Merchant Application) is true and correct. In the event that any of the foregoing warranties or representations are breached, the affected sales slips or other indebtedness may be refused, or prior acceptance provided and charged back to the Merchant. Furthermore, if Merchant submits for purchase hereunder a sales transaction that is not the result of a sale of Merchant's goods or services offered to the general public or if Merchant submits any sales transaction the purchase hereunder which represents a sale to any principal, partner, proprietor, or officer of Merchant, such sales transaction may be refused or charged back, and Merchant hereby agrees to pay (and Merchant's account(s) will be debited (charged)) an additional fee of \$100 for each such transaction.

Merchant must notify Global Direct if Merchant elects to use the terminal services of American Express, Novus, or any other third-party provider. If Merchant elects to use a third-party terminal provider, that provider becomes Merchant's agent for the delivery of card transactions to Global Direct via the applicable card-processing network. Merchant agrees to assume full responsibility and liability for any failure of such agent to comply with the operating regulations and rules of the applicable card association or network organization, including without limitation any violation, which results in a chargeback to the Merchant. Merchant also agrees that the obligation hereunder to reimburse the Merchant for the value of the card transactions captured by an agent is limited to the value of the transactions (less applicable fees) received by the card-processing network from the agent.

NEITHER MERCHANT, NOR GLOBAL DIRECT, NOR ANY SUPPLIER MAKES ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO ANY TERMINAL, ANY EQUIPMENT FURNISHED IN CONNECTION THEREWITH, OR ANY OF THE SERVICES FURNISHED HEREUNDER.

11. INDEMNITY.

Merchant agrees to satisfy directly with the cardholder any claim or complaint arising in connection with the use of sales, regardless of whether such claim or complaint is brought by the cardholder, Global, or another party. Merchant agrees to indemnify and hold Global Direct and Member harmless from and against any and all liabilities, losses, claims, damages, disputes, offers, claims or counterclaims arising out of or relating to the card sale, including without limitation claims and complaints made by a cardholder or any other person or entity with regard to indebtedness sold by Merchant hereunder or any other Service provided hereunder.

12. LIMITATION OF LIABILITY.

Neither Merchant nor Global Direct shall be liable for failure to provide the services if such failure is due to any cause or condition beyond such party's reasonable control. Such causes or conditions shall include, but shall not be limited to, acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, shortages of labor or materials, freight embargoes, unusually severe weather, sabotage, operational failures, electrical power failures, communication failures, unavailable data, the direct or indirect failure of third party systems, or other similar events beyond such party's control.

The liability of Global Direct and Member for any loss arising out of or relating in any way to this Card Services Agreement, including but not limited to damages resulting out of any malfunction of the equipment or the failure of the equipment to operate, the unavailability or malfunction of the Service, personal injury, or property damage, shall, in the aggregate, be limited to actual direct and general money damages in an amount not to exceed one (1) month's average charge paid by Merchant hereunder (exclusive of interchange fees, administrative, and any other fees or points that are imposed by a third party in connection with Merchant's payment processing) for Services during the previous twelve (12) months or such lesser number of months as shall have elapsed subsequent to the effective date of this Card Services Agreement. This shall be the extent of Global Direct's and Member's liability arising out of or relating in any way to this Card Services Agreement, including alleged acts of negligence, breach of contract, or negligence and regardless of the form in which any legal or equitable action may be brought against Global Direct or Member, whether contract, tort, or otherwise, and the foregoing shall constitute Merchant's exclusive remedy. Under no circumstances shall Global Direct or Member be liable for any loss of profits, lost income, or any other consequential damages arising out of or relating in any way to this Card Services Agreement, including but not limited to, damages arising out of placement of a Merchant's name on any terminated merchant for any reason, even if Global Direct or Member has been advised of the possibility of such damages. Under no circumstances shall Global Direct or Member be liable for any settlement amounts pertaining to breached transactions; Merchant's recovery therefore shall be in the applicable card forum.

It is agreed that in no event will Global Direct or Member be liable for any claim, loss, billing error, damage, or expense arising out of or relating in any way to this Card Services Agreement which is not reported in writing to Global Direct by Merchant within 30 days of such failure to perform or, in the event of a billing error, within 60 days of the date of the invoice or applicable statement. Merchant expressly waives any such claim that is not brought within the time periods stated herein.

13. TERM AND TERMINATION.

This Agreement shall remain in full force and effect for an initial term of three (3) years and shall be automatically extended for successive one (1) year periods on the same terms and conditions expressed herein, or as they be amended, unless Merchant gives written notice of termination to the other Card Services Agreement on a particular date at least 60 days prior to the expiration of the initial term or any extension or renewal thereof. Notwithstanding anything to the contrary set forth herein, in the event Merchant terminates this Card Services Agreement in breach of this Section 13 or otherwise transfers equal to or greater than fifty percent (50%) of its then current processing volume to another payment processor, Merchant shall pay to Global Direct an early termination fee equal to the product of the average of monthly payments received by Global Direct hereunder during the term (3) full months immediately preceding the date of the subject termination and the number of months remaining in the current term of the agreement. The early termination fee shall be immediately due and payable to Global Direct, and Merchant hereby authorizes Global Direct to debit the total amount from Merchant's account referenced in Section 3, or to otherwise withhold the total amount from amounts due to Merchant from Global Direct, immediately on or after the effective date of termination or the impact of transfer. If the Merchant's account does not contain sufficient funds for the debit or the amount cannot be withheld by Global Direct from amounts due to Merchant, Merchant shall pay Global Direct the amount due within ten (10) days of the date of Global Direct's notice to debit. The payment of the early termination fee as described here is not a penalty, but rather is hereby agreed by the parties to be a reasonable estimate of liquidated damages to compensate Global Direct for the termination expense and all other damages under the circumstances in which such amount would be payable. Such amount shall not be in lieu of or in addition to any payment obligations for Services already provided hereunder (or that Global Direct may continue to provide), which shall be an additional cost, and any and all other damages to which Global Direct may be entitled hereunder.

Notwithstanding the foregoing, Global Direct may terminate this Card Services Agreement, or any portion thereof upon written notice to Merchant. Furthermore, Global Direct may terminate this Card Services Agreement at any time without notice upon Merchant's default in performing under any provision of this Card Services Agreement, upon an unauthorized encroachment of all or any part of Merchant's activity to mail order, telephone order, or any activity where the card is not physically present and swiped through the Merchant's terminal, upon any failure to follow the Card Acceptance Guide or any operating regulation or rule of a card association or network organization, upon any misrepresentation by Merchant, upon commencement of bankruptcy or insolvency proceedings by or against the Merchant, or in the event Global Direct reasonably deems itself insecure in continuing this Card Services Agreement. In the event that Global Direct and Member breach the terms and conditions hereof, the Merchant may, at its option, give written notice to Global Direct and Member of its intention to terminate this Card Services Agreement within such timely period as is provided within 30 days of such notice. Failure to timely give such a notice shall make this Card Services Agreement terminable, at the option of the Merchant, at the end of each 30 day period unless notification is withdrawn.

Any Merchant deposit of sales or credit slips that is accepted by Global Direct and Member or by a designated depository after the effective date of termination will be returned to Merchant and will not be credited (or debited) to merchant's account(s). If the deposit has already been posted to Merchant's account(s), said posting will be reversed and the deposit returned to Merchant. Termination of this Card Services Agreement shall not affect Merchant's obligations which have accrued prior to termination or which relate to any indebtedness provided hereunder prior to termination, including but not limited to chargebacks even if such chargebacks occur in other termination. In the event of termination, all equipment loaned from Global Direct (but not from any other leasing agent), including but not limited to terminals, terminals, and printers; all supplies; Card Acceptance Guides; and operating instructions must be returned immediately to Global Direct at Merchant's expense.

14. RETURNED ITEMS/CHARGEBACKS.

If a cardholder disputes any transaction, if a transaction is charged back for any reason by the card issuing institution, or if Global Direct or Member has any reason to believe an indebtedness previously provided to merchant is questionable, not genuine, or in otherwise uncollectible, the amount of such indebtedness may be charged back and deducted from any proceeds due to Merchant or may be charged against any of Merchant's accounts or the Reserve Account (as defined below). A list of some common reasons for chargebacks is contained in the Card Acceptance Guide provided, however, such list is not exhaustive and does not limit the generality of the foregoing. If such amount is uncollectible through withholding from any payments due hereunder or through charging Merchant's accounts or the Reserve Account, Merchant shall, upon demand by Global Direct, pay Global Direct the full amount of the chargeback. Merchant understands that obtaining an authorization for any sale shall not constitute a guarantee of payment, and such sales slips can be refused or charged back to Merchant for any other term hereunder.

15. RESERVE ACCOUNT

At any time, Global Direct and Member may, at their option, establish a reserve account to secure the performance of Merchant's obligations under this Card Services Agreement to such party ("Reserve Account"). The Reserve Account may be funded through any of the following: (a) Direct payments by Merchant - At the request of Global Direct and Member, Merchant will deposit funds in the Reserve Account; (b) The proceeds of indebtedness processed for purchase or (c) The transfer by Global Direct and Member into the Reserve Account of funds withdrawn from any of the accounts referred to in Section 3 or any other account, including withdrawal of deposit, maintained by Merchant or Merchant's guarantor, if any, with any designated depository or other financial institution. Merchant and Merchant's guarantor hereby grants Member a security interest in all said accounts and authorizes Global Direct (to the extent authorized

[Handwritten initials]

by Member) or Member to make such withdrawal at such times and in such amounts as it may deem necessary. However, Merchant and Merchant's guarantor hereby warrant and agree to indemnify and hold Merchant and Member harmless from any claims or losses they may suffer as a result of honoring withdrawal requests from Global Direct and Member.

Merchant hereby agrees that Global Direct and Member may deduct from the Reserve Account any amount owed or due to any party in accordance with this Card Services Agreement. Any funds in the Reserve Account may be held until the expiration of any potentially applicable chargeback rights in respect of purchased transactions under the rules and regulations of the card associations or network organizations, which holding period may extend beyond expiration of this Card Services Agreement. The Merchant will not receive any interest on funds being held in a Reserve Account. Without limiting the generality of the foregoing, Merchant shall, upon termination of this Card Services Agreement, maintain the unit of at least five percent (5%) of gross sales for the 90 day period prior to termination to be held in a Reserve Account. In accordance with the terms of this Card Services Agreement, Global may, at its discretion upon termination of this Agreement, require that the Merchant maintain more than the percent (5%) of gross sales for the 90 day period prior to termination in a Reserve Account.

16. DEFAULT/SECURITY INTEREST

Upon failure by Merchant to meet any of its obligations under this Card Services Agreement (including funding the Reserve Account), any of the proceeds related to its Section 5 or any other receipts belonging to Merchant or Merchant's guarantor held by any depository institution (or by any other financial institution) may be debited without notice to Merchant, and Merchant and Merchant's guarantor give Member and Global Direct a security interest in all such accounts for those purposes. The scope of the security interest, and Merchant's and Merchant's guarantor's instructions to its financial institutions to accept withdrawal requests from Global Direct and Member, and Merchant's agreement to hold such institutions harmless and to indemnify them are described above in Section 15(c).

Merchant also agrees that, in the event of a default by Merchant, Merchant has a right of setoff and may apply any of Merchant's balances or any other monies due to Merchant from Member towards the payment of amounts due from Merchant under the terms of this Card Services Agreement. The rights of Merchant herein are in addition to any other rights Global Direct and Member may have under applicable law.

17. CHOICE OF LAW/ATTORNEY'S FEES/VENUE

Should it be necessary for Global or Member to defend or enforce any of its rights under this Agreement in any arbitration or legal action, Merchant agrees to reimburse Global and/or Member, as applicable, for all costs and expenses, including reasonable attorney's fees, incurred by Global or Member in connection with such arbitration or legal action. Merchant waives the right to litigate any matter of law or fact with respect to any dispute arising out of or relating to this Card Services Agreement in any court or to bring any such dispute to arbitration. Merchant and Merchant's guarantor agree that all disputes arising out of or relating to this Card Services Agreement shall be brought in the courts of the State of Georgia sitting in Fulton County and irrevocably agree to the exclusive jurisdiction of such courts.

18. AMENDMENTS

This Card Services Agreement may be amended only in writing signed by Global Direct, Member, and Merchant, except that (a) the Card Association Guide, fee, charge, and/or discount may be changed immediately, or (b) Global Direct may mail Merchant a notice describing amendments to this Card Services Agreement or an entirely new agreement, which amendments or new agreement will be binding upon Merchant if it deposits a new or credit card after the effective date of such amendments or new agreement set forth in Global Direct's notice.

19. WAIVER

No provision of this Card Services Agreement shall be deemed waived by any party unless such waiver is in writing and signed by the party against whom enforcement is sought. No failure to exercise, and no delay in exercising, in the part of any party herein, any right, power or privilege under this Card Services Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege under this Card Services Agreement preclude any other or further exercise thereof or the exercise of any other right, power, or privilege.

20. EXCHANGE OF INFORMATION

Merchant authorizes Global Direct to order a credit report on Merchant or any owner, officer, shareholder, partner, proprietor, managing agent or governor of Merchant. Merchant hereby authorizes Member or any depository institution to release any financial information concerning Merchant or its accounts to Global Direct. Subsequent credit reports may be ordered in connection with updating, renewing or maintaining this Card Services Agreement. Upon the written request of any individual who is the subject of a consumer credit report, Global Direct will provide the name and address of the consumer credit reporting agency furnishing such report. If any Global Direct may exchange information about Merchant, Merchant's owners, principal, partner, proprietor, officer, shareholder, managing agent and guarantor with Member, other financial institutions and credit card associations, network organizations and any other party, Merchant hereby authorizes Global Direct to disclose information concerning Merchant's activity to any credit association, network organizations, or any of their member financial institutions, or any other party without any liability whatsoever to Merchant.

21. PRESS RELEASE

Upon execution of this Card Services Agreement, Global Direct shall have the right to publish a press release announcing the business relationship between Global Direct and Merchant formed by this Card Services Agreement provided, however, that Merchant shall be given the opportunity to review the language of such press release prior to its publication, and Global Direct will honor all requests by Merchant to correct such language that Global Direct, in its sole discretion, deems reasonable.

22. GENERAL

If any provision of this Card Services Agreement or portion thereof is held to be unenforceable, such a determination will not affect the remainder of this Card Services Agreement. Paragraph headings are included for convenience only and are not to be used in interpreting this Card Services Agreement.

23. NOTICES

All notices required by this Card Services Agreement shall be in writing and shall be sent by internet, by overnight carrier, or by regular or certified mail. All notices sent to Global Direct or Member shall be effective upon actual receipt by the Corporate Secretary of Global Payments Direct, Inc., 10 Columbia Parkway North Tower, Atlanta, Georgia 30328. Any notice sent to Merchant shall be effective upon the earlier of actual receipt or upon mailing such notice to the address provided by Merchant in the Merchant Application or in any other e-mail or physical address to which notices, statements and/or other communications are sent to the Merchant hereunder. The parties hereto may change the name and address of the person to whom notices or other documents required under this Card Services Agreement must be sent or may do so by giving written notice to the other party.

24. MERGER

This Card Services Agreement, including these Card Services Terms & Conditions and the Merchant Application, constitutes the entire agreement between Merchant, Global Direct, and Member and supersedes all prior understandings or agreements relating thereto, whether oral or in writing.

25. EFFECTIVE DATE

This Card Services Agreement shall become effective only upon acceptance by Global Direct and Member, or upon delivery of independence at such locations as designated by Global Direct for purchase, whichever event shall first occur.

26. DESIGNATION OF DEPOSITORY.

The financial institution set forth in the Merchant Application is designated by Merchant as a depository institution ("depository") for its credit card indebtedness. Such financial institution must be a member of an Automated Clearing House Association. Merchant authorizes payment for indebtedness purchased hereunder to be made by paying depository directly with interest to credit Merchant's account. Depository, Member, and Global Direct may charge any of Merchant's accounts at depository for any amount due under this Card Services Agreement. Global Direct must approve in writing any proposed change to the depository.

27. FINANCIAL ACCOMMODATION

The acquisition and processing of sales slips hereunder is a financial accommodation and, as such, in the event Merchant becomes a debtor in bankruptcy, this Card Services Agreement creates no secured or unsecured, and Global Direct and Member shall be deemed to be unsecured creditors.

28. DEBIT / ATM PROCESSING SERVICES; ADDITIONAL TERMS AND CONDITIONS

Debit Sponsor shall act as Merchant's sponsor with respect to the participation of point-of-sale terminals owned, controlled, and/or operated by Merchant (the "Covered Terminal") in each of the following debit card networks ("Networks"): ACH, AFTN, Axiata Online, CIP24, Instalink, MasterCard, NYCE, Pallas, Shomon, Star, and Tyro, which Networks may be changed from time to time by Debit Sponsor or Global Direct without notice. Merchant may also have access to the Networks of the Covered Terminal for the purpose of accepting debit card transactions from cards issued by the members of the respective Networks. Global Direct will provide connection to each Network, terminal applications, and services.

Merchant will comply with all federal, state, and local laws, rules, regulations, and ordinances ("Applicable Law") and with all by-laws, regulations, rules, and operating guidelines of the Networks ("Network Rules"). Merchant will execute and deliver any application, agreement, authorization, or order of any governmental agency or body required for the operation, delivery, and performance of the Card Services Agreement. Merchant agrees to utilize the debit card services in accordance with the Card Services Agreement, and Global Direct's instructions and specifications (including but not limited to the Card Management Guide which is incorporated into and made a part of this Card Services Agreement), and to provide Global Direct with the necessary data in the proper format to enable Global Direct to properly furnish the Services. Copies of the relevant agreements or operating regulations shall be made available to Merchant upon request.

Merchant will provide prompt written notice to Debit Sponsor and Global Direct in the event that Merchant is subject to any of the following:

- 1) Conviction for a felony offense or any other crime involving moral turpitude;
- 2) Receiving a civil, criminal, or judgment in any proceeding or lawsuit alleging fraud or deceptive practices on the part of Merchant;

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- (ii) Bankruptcy filing or petition;
- (iv) Federal or state tax lien;
- (v) Any material adverse change in the assets, operations, or condition, financial or otherwise, of Merchant;
- (vi) The threat or filing of any litigation against Merchant, the outcome of which reasonably could have a material adverse effect on the continuing operations of Merchant;
- (vii) Administrative or enforcement proceeding commenced by any state or federal regulatory agency, including any banking or securities agency or entity operating on EBT Network, that reasonably could have a material adverse effect on the continuing operations of Merchant; or
- (viii) Any disciplinary action taken by any Network against Merchant or any principal of Merchant.

Debit Sponsor or Global Direct may terminate or suspend, at Debit Sponsor's discretion, Debit Sponsor's sponsorship of Merchant in any Network or modify the provision of Services to Merchant:

- i) Immediately upon notice to Merchant of the occurrence of any of the conditions set forth in items (i) through (viii) in the immediately preceding paragraph or if Debit Sponsor's authority to participate in such Network or act as sponsor of Merchant in such Network is terminated by such Network;
- ii) Thirty (30) days after written notice by Debit Sponsor or Global Direct to Merchant of the occurrence of any of the conditions set forth in items (i), (ii), or (viii) in the immediately preceding paragraph or if Debit Sponsor terminates its sponsorship or participation in such Network;
- iii) Immediately upon notice to Merchant in the event any financial statement, representation, warranty, statement or certificate furnished is materially false or misleading; or
- iv) Immediately upon notice to Merchant of the occurrence of any other circumstance with respect to this Section that may reasonably be expected to have an adverse effect on Debit Sponsor or Global Direct.

The parties hereby acknowledge and agree that Global Direct shall pay Debit Sponsor any and all fees and charges related to or arising out of Debit Sponsor's sponsorship of Merchant in the Network; provided, however, that in the event that Global Direct fails to pay such amount, Debit Sponsor shall be entitled to recover all such amounts directly from Merchant and Merchant agrees to pay all such amounts.

Merchant shall not in any way indicate that Debit Sponsor endorses Merchant's activities, products, or services. Debit Sponsor and Merchant are and shall remain independent contractors of one another, and neither they, nor their respective individual employees, shall have or hold themselves out as having any power to bind the other to any third party. Nothing contained in this Section shall be construed to create or constitute a partnership, joint venture, employer-employee, or agency relationship between Debit Sponsor and Merchant.

Merchant shall indemnify and hold harmless Debit Sponsor and Global Direct, their affiliates (including parents and subsidiaries), and their respective officers, directors, employees, successors and assigns, from and against any and all direct or indirect losses, costs, claims, demands, and claims of action (including, without limitation, the cost of investigating the claim, the cost of litigation, and reasonable attorney's fees, whether or not legal proceedings are instituted) that may be incurred by or on behalf of Debit Sponsor or Global Direct as a result of Merchant's violation of any of the terms of this Section, Network Rules, or Applicable Law, or otherwise arising from or related to Debit Sponsor's sponsorship of Merchant in any Network. Debit Sponsor shall in no way be liable for any act or omission of Global Direct under the Card Services Agreement.

In the event that Debit Sponsor's sponsorship of Merchant in any Network is terminated prior to the termination of the Card Services Agreement, Global Direct may assign Debit Sponsor's rights and obligations hereunder to a third party. All provisions in this Section necessary to enforce the rights and obligations of the parties contained in this Section shall survive the termination of Debit Sponsor's debit sponsorship of Merchant under the Card Services Agreement. Debit Sponsor may assign this Agreement to any person, subsidiary, affiliate, or successor-in-interest.

29. MERCHANT ACCEPTANCE OF EBT TRANSACTIONS: ADDITIONAL TERMS AND CONDITIONS.

Merchant agrees to issue Benefits to Recipients in accordance with the procedures specified herein, and in all documentation and user guides provided to Merchant by Global Direct, on or around four times-a-year (including but not limited to the Card Association Guide which is incorporated into and forms a part of this Card Services Agreement) and pursuant to the Card Operating Rules (the "Rules"), as amended from time-to-time, issued by the National Automated Clearing House Association as approved by the Financial Management Services of the U.S. Treasury Department. Unless otherwise defined herein, all capitalized terms shall have the meanings ascribed to them in the Rules. Merchant will provide each recipient a receipt of each Benefit issuance. Merchant will be solely responsible for the Merchant's issuance of Benefits other than in accordance with such instructions. Merchant agrees to comply with all the requirements, laws, rules and regulations pertaining to the delivery of services to Beneficiaries and Recipients. If Merchant issues EB Benefits under this Card Services Agreement, Merchant agrees to issue and maintain at its own expense all necessary licenses, permits, registrations, or other authorizations required to lawfully collect the income and distribution of Benefits under this Card Services Agreement, including without limitation, any applicable franchise and non-franchise laws and non-governmental organization's activities, and agreements that Merchant will not issue Benefits at any time during which Merchant is not in compliance with the requirements of any applicable law. Merchant agrees to hold Global Direct harmless from any costs of compliance or failure to comply with any such obligation by Merchant. Global Direct may terminate or modify the provision of Services to Merchant if any of Global Direct's agreements with government NBT agencies are terminated for any reason or if any party threatens to terminate services to Global Direct due to some action or inaction on the part of Merchant. If any of these Card Services Terms & Conditions are found to conflict with Federal or State law, regulation or policy of the Rules, these Card Services Terms & Conditions are subject to reasonable amendment by Global Direct, the State or its NBT Service Provider to address such conflict upon ninety (90) days written notice to Merchant, provided that Merchant may, upon written notice, terminate the Card Services Agreement upon receipt of notice of such amendment. Nothing contained herein shall preclude the State from commencing appropriate administrative or legal action against Merchant or for seeking any remedy for such action to any appropriate Federal, State, or local agency. Any reference to "State" herein shall mean the State in which Merchant issues Benefits pursuant hereto. If Merchant issues Benefits in more than one State pursuant hereto, then the reference shall mean each such State severally, not jointly.

30. NON-QUALIFIED SURCHARGES.

Merchant pricing appears in the Card Services Fee Schedule of the Merchant Application. T&E surcharges (airline, car rental, cruise line, fine food, lodging, restaurant, travel agent, transportation) may have separate rates quoted for consumer and commercial (business) transactions. Transactions that do not clear as prepaid are subject to non-qualified surcharges (NQS) that are billed back to you on your monthly statement. The state predominant market sector and applicable non-qualified surcharge rate(s) appear below. Most non-qualified surcharges can be avoided by using a product that supports authorization and timely date requirements established by the card associations and that are subject to change from time to time. Some non-qualified surcharges apply on specific types of cards (including without limitation Visa Rewards Card, Visa Signature Card, Visa Infinite Card, MasterCard World Card, and "Foreign" cards issued outside the United States) and are avoidable based on the card association's requirement to accept all types of credit cards. If the merchant accepts credit cards, unless your Card Services Fee Schedule specifically addresses commercial cards (i.e., Business Card, Corporate Card, Fleet Card, GSA Card, Purchase Card), you will be billed back for the higher rate of acceptance of commercial cards; this is also avoidable based on the card association's requirement to accept all types of credit cards. If the merchant accepts credit cards, unless you are primarily a business-to-business supplier with no responding pricing listed on acceptance of commercial cards. The card associations require that information from the original authorization, including a unique identifier, be retained and returned with subsequent submissions and/or the actual transaction date. The card associations validate this information as part of the clearing and settlement process. If authorization data is not retained and returned as required, then the transaction will not clear as prepaid and will incur NQS. For more information concerning NQS and to view market data, you may wish to check the Global Direct website (www.globaldirect.com) for best practices information and to discuss Global Access (GAA) (N/A) for additional detail review.

NON-QUALIFIED SURCHARGES FOR PREDOMINANT MARKET SECTORS

Retail/Restaurant Electronic Merchant

If you are a Retail Merchant or a Restaurant Merchant with retail-only pricing (no Business Card Rate) and utilize a certified terminal product or electronic system for authorization and settlement through Global Direct, each consumer card transaction you submit which meets all of the following requirements will be priced at the rate quoted. Each transaction not processed as outlined, including without limitation retail commercial card transactions in addition to transactions using Visa Rewards Card, Visa Signature Card, Visa Infinite Card, MasterCard World Card, and all Commercial Cards, will be priced at the rate quoted plus up to 2%.

- Obtain a magnetic strip card (and swipe/electronic terminal) at the time of sale.
- Obtain a single electronic authorization and settle for authorized systems.
- Obtain a cardholder signature.
- Settle and transmit business same day via your terminal/electronic system.

Restaurant Electronic Merchant

If you are a Restaurant Merchant MCC 5812 or Fast Food Merchant MCC 5814 and utilize a certified terminal product or electronic system for authorization and settlement through Global Direct, each consumer card transaction you submit which meets all of the following requirements will be priced at the rate quoted. Each transaction not processed as outlined, in addition to transactions using Visa Rewards Card, Visa Signature Card, Visa Infinite Card, and MasterCard World Card, will be priced at the rate quoted plus up to 2%. Commercial Card transactions that meet these requirements will be subject to the Business Card rate quoted in the Fee Schedule. Commercial Card transactions not processed in accordance with these requirements will be subject to the Business Card rate quoted plus up to 2%.

- Obtain a magnetic strip card (and swipe/electronic terminal) at the time of sale.
- Obtain a single electronic authorization.
- Obtain a cardholder signature.
- Settle and transmit business same day via your terminal/electronic system.

Supermarket Electronic Merchant

If you are an approved (certified) supermarket merchant and utilize a terminal or electronic system for authorization and settlement through Global Direct, each transaction you submit which meets all of the following requirements will be priced at the rate(s) quoted for Supermarket Credit Card and Supermarket Check Card. Each transaction not processed as outlined, in addition to

Merchant Initials

EXHIBIT P
REDACTED PURSUANT TO
PROTECTIVE ORDER

EXHIBIT Q

From: Hans Strickler
To: "Bag Addiction"
Cc: "Nathan Counley"; "Shane "
Subject: RE: TheBagAddiction.com - 8788370010754
Date: Monday, October 08, 2007 2:38:00 PM

Limit increase approved to \$75,000. Account placed on 5% reserve, as before. Funding should resume, as normal, Tuesday due to the Bank Holiday today.

-Hans

Hans Strickler - Frontline Processing

866*651*3068 (voice) 406*585*7576 (fax)

From: Bag Addiction [mailto:admin@thebagaddiction.com]
Sent: Monday, October 08, 2007 9:12 AM
To: hss@frontlineprocessing.com
Cc: Nathan Counley
Subject: Re: TheBagAddiction.com - 8788370010754

Hi Hans,

We actually have another website we use and therefore have another bank, Wood Forrest that we process thru. When volume amounts got close we would occassionally switch over to Wood Forrest on TheBagAddiction.

If you want to increase our volume let's go ahead and do that for an additional \$25,000/per month. The holiday seasons are coming and I think we'll need that.

Let me know what you think and I'll shoot Nathan and email on this too. Thanks

Pat Kirk

----- Original Message -----

From: Hans Strickler
To: The Bag Addiction
Sent: Friday, October 05, 2007 3:27 PM
Subject: TheBagAddiction.com - 8788370010754

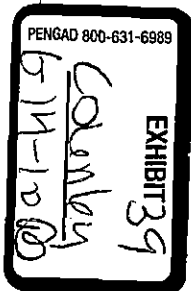
Pat,

We received a ChargeBack from you yesterday, showing that you are processing with another processor MCCS (Wood Forrest). The terms and conditions of your merchant agreement clearly state that frontline is to be your sole Processor.

How much volume do you need per month to move all processing over to Frontline?

-Hans

Hans Strickler
Frontline Processing - Risk Management
866*651*3068
406*585*7576 (fax)



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_____ NOD32 2577 (20071008) Information _____

This message was checked by NOD32 antivirus system.
<http://www.eset.com>

**EXHIBITS R – U
REDACTED PURSUANT TO
PROTECTIVE ORDER**