### **EXHIBIT 1**

### IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS TYLER DIVISION

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### DEFENDANTS FIRST FUNDS, LLC's, MERCHANT MONEY TREE, INC.'s, AND REACH FINANCIAL, LLC's REPLY IN SUPPORT OF THEIR MOTION FOR LEAVE TO AMEND PRELIMINARY INVALIDITY CONTENTIONS

Defendants First Funds, LLC, Merchant Money Tree, Inc., and Reach Financial, LLC ("Defendants") hereby file their Reply in Support of their Motion for Leave to Amend Preliminary Invalidity Contentions and, in support hereof, would respectfully show the Court as follows:

I.

### **BACKGROUND**

As described in Defendants' Motion for Leave to Amend Preliminary Invalidity Contentions ("Motion"), Defendants have gone to great lengths to diligently pursue and collect evidence supporting invalidating prior art in this matter, including undertaking the daunting task of convincing their direct competitors to cooperate and to search for documents over a decade old. *See* Timeline of Facts Relevant to Defendants' Motion to Amend Invalidity Contentions ("Timeline"), attached hereto as Ex. F; Motion at 2-4. As soon as evidence and documents were

located, Defendants have both (a) promptly provided the documents to Plaintiff AdvanceMe, Inc. ("AdvanceMe"), and (b) promptly incorporated the evidence and documents into, and served on AdvanceMe, invalidity charts identifying where each element of each claim may be found in the prior art systems. *Id.* Upon being told by AdvanceMe that it would object to the updated invalidity contentions, Defendants realized they had omitted to obtain leave and immediately filed the motion for leave to amend.

Rather than explain how Defendants could have possibly been more diligent in their efforts to discover and disclose the Litle & Company prior art systems and supporting documentation, AdvanceMe, in its Opposition to Defendants' Motion for Leave to Amend Invalidity Contentions ("Opposition"), disregards the documented timeline of relevant facts set forth in Defendants' Motion and instead responds with assertions regarding when it *thinks* Defendants may have gained knowledge of the Litle & Company prior art. Further, AdvanceMe makes specious claims of hypothetical prejudice, all of which are either wholly unsupported or inapplicable to the instant case, as described herein.

Having shown good cause for the proposed amendments of their Preliminary Invalidity Contentions ("Original Contentions"), Defendants respectfully request that the Court grant their Motion.<sup>1</sup>

II.

### **ARGUMENT**

### A. Defendants Have Shown Good Cause for the Proposed Amendments

As the parties agree, the Court may grant Defendants' Motion if Defendants show good cause for the proposed amendments. See STMicroelectronics, Inc. v. Motorola, Inc., 307 F.

 $<sup>^1</sup>$  As explained in their Motion, Defendants seek leave to amend their Original Contentions to include the Litle & Company prior art systems. See Ex. G, Proposed Litle & Company Invalidity Claim Chart.

Supp. 2d 845, 849 (E.D. Tex. 2004) (Davis, J.); Opposition at 9. Four considerations are relevant to the Court's determination: (1) Defendants' reasons for not including the proposed amendments by the scheduling order deadline; (2) the importance of the Litle & Company prior art systems; (3) potential prejudice in allowing the addition of the Litle & Company prior art systems; and (4) the availability of a continuance to cure such prejudice. See Alt v. Medtronic, 2006 U.S. Dist. LEXIS 4435 (E.D. Tex. Feb. 1, 2006) (Davis, J.). As explained in their Motion and below, each of these four factors weighs strongly in favor of permitting Defendants' requested amendments. AdvanceMe's only arguments in opposition are either contrary to the documented facts or unsupported assertions of prejudice.

### 1. <u>Defendants Received the Litle & Co. Information & Documents After Their Preliminary Invalidity Contentions Were Due</u>

As demonstrated in the Motion and reiterated herein, the first factor – the explanation for the delay – weighs heavily in favor of granting Defendants' proposed amendments. Defendants did not receive sufficient Litle & Co. information and documents to assert this prior art in good faith until July 14, 2006.<sup>2</sup> See Motion at 2-4; Ex. F. Defendants promptly provided the documents and their First Amended Preliminary Invalidity Contentions (including the initial Litle & Company disclosures) to AdvanceMe on July 20, 2006. Defendants brought this motion as soon as it was brought to Defendants' attention that such a motion for leave to amend was necessary to amend their Original Contentions. See Ex. H (Letter from Robert Matz to Hilary Preston dated September 1, 2006). AdvanceMe's attempt to attribute a lack of good faith or gamesmanship to the delay in bringing the motion is thus misplaced. Defendants have promptly provided all relevant information to AdvanceMe as it has become available to Defendants, as

<sup>&</sup>lt;sup>2</sup> As explained in Defendants' Motion, the proposed amendment further supplements the disclosures regarding Litle & Company made in Defendants' First Amended Invalidity Contentions served July 20, 2006. See Ex. G; Motion, Ex. C to Gray Decl.

described in their Motion and herein. *Id.* Upon receiving additional Litle & Company documents on July 25, 2006, Defendants promptly provided those documents to AdvanceMe on July 28, 2006 and provided AdvanceMe with their Second Amended Preliminary Invalidity Contentions (the amendments on which their Motion is based) on August 31, 2006. *See* Motion at 2-4; Ex. F. This documented timeline demonstrates that Defendants could not have reasonably met the scheduling order deadline of July 7, 2006 for the Litle & Company prior art systems and documents, despite their diligence. AdvanceMe's Opposition does nothing to undercut that demonstration. Instead, it responds by making bald and unsupported assertions about Defendants' knowledge, all of which are contradicted by the objective facts.

AdvanceMe argues that Defendants received "the Litle documents" in June, see Opposition at 11, although it fails to recognize that the only Litle documents received in June were fragments of a single postage advance agreement. See Ex. F; Ex. B to the Declaration of Joseph Gray in Support of Defendant's Motion ("Gray Declaration"). At that time, Defendants had not obtained enough information about Litle & Company (which was sold in 1995) to determine whether and to what extent Litle & Company practiced the claimed invention in the early 1990s. It was not until Defendants received additional information and additional documentation on July 14, 2006 that Defendants were able to assert in good faith that Litle & Company publicly and commercially practiced U.S. Patent No. 6,942,281's (the "281 Patent") claimed invention. See Ex. F; Ex. C to Gray Declaration. Seven days later, on July 21, 2006, Defendants served their First Amended Preliminary Invalidity Contentions, which included the Litle & Company prior art systems and citations to the relevant documents that Defendants had received as of that date. See Ex. F.

Relevant information has been difficult to obtain. Defendants had only limited access to Mr. Litle. Many relevant documents were in the possession of Paymentech (a multi-billion dollar processing company and competitor of Defendants, which evolved from First USA years after First USA bought Litle & Co. in 1995). Additionally, Mr. Litle is the CEO of a large processing company (also a competitor of Defendants') and has no immediate interest in the outcome of this litigation. *See* Ex. I. Defendants have painstakingly gained only limited access to Mr. Litle and have had an extremely difficult time convincing Paymentech to search for decade-old documents and provide them to Defendants.

Defendants have exerted incredible efforts in their search for documentation regarding the Litle & Company prior art and have provided to AdvanceMe all relevant information they have obtained every step of the way.<sup>3</sup> *See* Ex. F; Motion at 2-4. Indeed, Defendants now seek to supplement their contentions to include the Litle & Co. prior art systems and the documentary evidence that they received after July 7, 2006, and had promptly produced to AdvanceMe on July 21 and July 28, 2006. AdvanceMe's statement that "[t]he alleged prior that the Defendants now seek to add was known to the defendants weeks before they served their Preliminary Invalidity Contentions" Opposition at 1, is simply inaccurate, as it is directly contradicted by AmeriMerchant's documented correspondence with Tim Litle and Paymentech.

### 2. The Litle & Company Prior Art Systems Anticipate All Relevant Claims of the '281 Patent

As explained in Defendants' Motion, the Litle & Co. prior art systems and documents and the accompanying analyses in Defendants' proposed amendments, are critically important to

<sup>&</sup>lt;sup>3</sup> Defendants brought this motion as soon as it was brought to their attention that they had failed to file a motion for leave to amend their Original Contentions. *See* Ex. H (letter from Robert Matz). AdvanceMe's attempt to attribute a lack of good faith or gamesmanship to the delay in bringing the motion is thus misplaced. Defendants have promptly provided all relevant information to AdvanceMe as it has become available, as described in their Motion and herein.

their defense of AdvanceMe's claims, as they establish invalidity of all relevant asserted claims. See Motion at 7; Ex. G. AdvanceMe, in its Opposition, does not explain any basis for contending that Litle & Company does not constitute invalidating prior art, but rather states that Defendants "rely only on lawyer's argument." Opposition at 15. But Defendants do no such thing. The detailed facts demonstrating how Litle & Company's systems anticipated the relevant asserted claims are found in the July 21, 2006 amended Invalidity Contentions, as supplemented by the Litle & Company documents (produced to AdvanceMe on or before July 28, 2006) and in Defendants' further Amended Preliminary Invalidity Contentions (served August 30, 2006).

AdvanceMe fails to mention that Mr. Litle testified at his deposition on September 6, 2006, that Defendants' proposed Amended Invalidity Contentions accurately describe the manner in which the Litle & Company systems anticipate all relevant claims of the patent-insuit. *See* Ex. J, Tim Litle Deposition Transcript at 123-158. AdvanceMe also fails to mention that it cross-examined Mr. Litle for about three hours and was unable to raise even one single basis for contending that any relevant asserted claims could somehow avoid anticipation by the Litle & Co. systems. As this Court has agreed that an amendment to include invalidating prior art weighs in favor of permitting the amendment, Defendants have satisfied this second prong of the analysis. *See Alt*, 2006 U.S. Dist. LEXIS 4435, \*12-13.

### 3. <u>AdvanceMe Will Suffer No Relevant Prejudice if the Court Permits the</u> Amendment

As explained in Defendants' Motion and confirmed by AdvanceMe's Opposition, AdvanceMe will suffer no relevant prejudice if the Court permits the proposed amendments. Defendants included the initial framework for the Litle & Company prior art in their First

<sup>&</sup>lt;sup>4</sup> Defendants again note that their second proposed amendment is proposing to *supplement* their first amended Preliminary Invalidity Contentions of July 21, 2006 to include *further* support found in documents obtained *after* those Contentions were served.

Amended Preliminary Infringement Contentions, which were served on AdvanceMe on July 21, 2006. *See* Ex. F. AdvanceMe was thus on notice of this prior art system two weeks after the scheduling order deadline. On July 28, 2006, eight days after serving their First Amended Preliminary Infringement Contentions, Defendants produced the additional documentation to AdvanceMe on which the entirety of Defendants' proposed amendments are based. *See* Ex. F. Further, trial is set for March 26, 2007, and discovery does not close until February 15, 2007. Both parties thus have ample time to conduct all necessary discovery.

But, instead of addressing these facts directly, AdvanceMe ignores the precedent of this Court that permitted an amendment seven months after the original deadline for submission of preliminary invalidity contentions (and after the *Markman* hearing)<sup>5</sup> and proffers several stock claims of prejudice that are wholly disconnected from the facts of this case. AdvanceMe claims that Defendants' proposed amendments threaten "to throw the discovery process into chaos" because AdvanceMe has "prepared discovery requests, responded to discovery, conducted depositions, and prepared for claims construction on the assumption that the Defendants' original Preliminary Invalidity Contentions would govern Defendants' invalidity arguments in this case." Opposition at 17. AdvanceMe also inexplicably claims that it would have to propound "new requests for admission and new requests for production." *Id.* AdvanceMe's specious claims of prejudice may appear credible in a vacuum, but they are wholly inapplicable to this case.

First, as the parties in this action are to produce all documents relevant to any claim or defense without discovery requests, pursuant to the patent rules and Discovery Order, and as AdvanceMe has not served a single request for admission on Defendants, AdvanceMe's claim of prejudice based on propounding "new requests for admission and new requests for production"

<sup>&</sup>lt;sup>5</sup> See Alt v. Medtronic, Inc., 2006 U.S. Dist. LEXIS 4435, \*13-14 (E.D. Tex. Feb. 1, 2006).

are questionable at best. Regarding "respond[ing] to discovery," AdvanceMe has not produced a <u>single</u> non-publicly available document in this action,<sup>6</sup> but instead has only produced several thousand pages of publicly available prosecution histories, and the articles and patents cited therein. Nor has AdvanceMe responded to the single interrogatory propounded by any Defendant. AdvanceMe does not explain how its *lack* of discovery response has in any way been affected by the proposed amendments.

Second, AdvanceMe argues that it has "prepared for claims construction on the assumption that Defendants' Preliminary Invalidity Contentions would govern Defendants' arguments in this case." Opposition at 11. While it is clear from AdvanceMe's proposed constructions that it is attempting to exclude prior art through erroneous claim construction, as explained in Defendants' Responsive Claim Construction Brief at 5-12 and 16-21, invalidity contentions and prior art are *wholly irrelevant* to claim construction analysis and thus provide no basis for AdvanceMe's claims of prejudice. *See Phillips v. AWH Corp.*, 415 F.3d 1303, 1327 (Fed. Cir. 2005) (en banc).

Third, only two depositions have been taken in this case, both of which were noticed by Defendants: Mr. Litle and the alleged inventor, Barbara Johnson. At Mr. Litle's deposition on September 6, 2006, all parties examined Mr. Litle on the documents that AmeriMerchant received by July 25, 2006 and that Defendants produced to AdvanceMe on or before July 28, 2006. In other words, AdvanceMe received all Litle & Company documents on which Defendants' proposed amendments are based, and on which Defendants' questioning at Mr.

<sup>&</sup>lt;sup>6</sup> However, yesterday, Plaintiff, for the first time produced some discovery, in the form of excerpts from three depositions in another case, where Defendants had been requesting the entire deposition transcripts for some time

<sup>&</sup>lt;sup>7</sup> Barbara Johnson was deposed on June 28, 2006 at the location of AdvanceMe's choice, well before the July 20, 2006 scheduling order deadline for submitting preliminary invalidity contentions.

Litle's deposition was largely based, over a *month prior* to Mr. Litle's deposition, and AdvanceMe had the opportunity to question Mr. Litle based on all of those documents. Further, AdvanceMe served a subpoena requesting *additional* documents on Mr. Litle, and Mr. Litle produced all relevant documents pursuant to that subpoena in advance of the deposition. AdvanceMe thus had every opportunity to examine Mr. Litle based on all relevant documents at his deposition on September 6th, which it did for roughly three hours. AdvanceMe also fails to mention that upon receiving Defendant's updated invalidity contentions on August 31, 2006, AdvanceMe contacted Mr. Litle, asked him questions, and told him that his deposition would be taken on September 6, 2006. How can AdvanceMe now pretend it was not ready for the deposition on the date it chose for the deposition?

As shown above, AdvanceMe's stock claims of prejudice are untenable under the facts of this case. The reality is that, despite AdvanceMe's rhetoric of "enough [is] enough," Opposition at 2, the trial in this case is about six months away and discovery does not close for over four months, and AdvanceMe will suffer no actual prejudice from the Court's granting Defendants' Motion. This factor thus also weighs in favor of permitting Defendants' proposed amendments.

### 4. Availability of a Continuance

As explained in Defendants' Motion, any prejudice suffered by AdvanceMe could be cured by a continuance of the pre-trial deadlines. Motion at 9. AdvanceMe does not argue that such a continuance would not cure any prejudice suffered; instead, AdvanceMe claims that its "planning for [certain unrelated] discovery would have to be modified," including the claim construction hearing and 30(b)(6) depositions. Opposition at 17. AdvanceMe, however, fails to explain how its "planning" for this discovery would "have to be modified," or why a continuance would not resolve any such "planning" issues. This factor thus weighs heavily in favor of permitting Defendants' proposed amendments.

### B. The Court Should Deny AdvanceMe's Premature Request

In what appears to be AdvanceMe's true motivation in opposing Defendants' meritorious Motion, AdvanceMe argues that it would have been willing to agree to the amended Invalidity Contentions provided that this should "be the last set of amended contentions that Defendants are permitted to serve in this case." Opposition at 17. AdvanceMe's novel suggestion of a preemptive approach to *future* amendments, even if based on good cause, is not only unsupported, but contrary to the interests of justice. Indeed, such an argument reveals the lack of a credible argument in opposition to the *current* Motion. The Court should not permit AdvanceMe to cower behind stock claims of prejudice in an attempt to avoid introduction or development of invalidating prior art. Third party depositions to provide additional evidence to support the disclosed prior art are still being scheduled, and additional facts regarding prior art systems which were used commercially more than 10 years ago by various companies, many of whom no longer exist, are still being investigated on an urgent basis. Defendants thus respectfully request that AdvanceMe's request for an arbitrary, preemptive exclusion of any future proposed amendments to Defendants' Preliminary Invalidity Contentions be disregarded.

III.

### **CONCLUSION**

Defendants therefore respectfully request that the Court grant their motion for leave to amend, and that any future motions for leave to amend be considered on their own merits.

<sup>&</sup>lt;sup>8</sup> For example, the deposition of Lee Suckow (the CEO of Clever Ideas-LeCard, Inc., another invalidating prior art system) is scheduled for Wednesday, October 4, 2006.

October 3, 2006

### Respectfully submitted,

By: /s/ Willem G. Schuurman

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Counsel for Defendants First Funds, LLC, Merchant Money Tree, Inc., and Reach Financial, LLC

### IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS TYLER DIVISION

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### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that all counsel of record who have consented to electronic service are being served a copy of this document via the court's CM/ECF system per Local Rule CV-5(a)(3) on this the 3rd day of October, 2006. Any other counsel of record will be served by first class mail on this same date.

/s/ Willem G. Schuurman
Willem G. Schuurman

### **EXHIBIT F**

### **EXHIBIT F**

### Timeline of Facts Relevant to Defendants' Motion to Amend Invalidity Contentions

- <u>February 27, 2006</u>: AdvanceMe adds Defendants (the "*Rapidpay* Defendants") as defendants in the instant action and files an action against AmeriMerchant, LLC ("AmeriMerchant") (together with the *Rapidpay* Defendants, "Defendants") similarly claiming infringement of the '281 Patent.
- <u>April 20, 2006</u>: Defendants retain Vinson & Elkins L.L.P. ("V&E") as national counsel.
- April 26, 2006: David Goldin (of AmeriMerchant) sends an email to Tim Litle containing David Goldin's contact information. See Ex. A to Gray Declaration.
- June 19, 2006: Paymentech provides to AmeriMerchant (which, in turn, provides to the Rapidpay Defendants) fragments of supporting documentation for a Litle & Company "postage advance" agreement with a merchant. See Ex. B to Gray Declaration. This documentation, alone, does not provide the Defendants with sufficient information to include Litle & Company as a prior art reference in their Preliminary Invalidity Contentions. Defendants' efforts to discover additional documentation continue.
- <u>June 28, 2006</u>: Deposition of the alleged inventor, Barbara Johnson. Examination did not involve Litle & Company.
- <u>July 7, 2006</u>: The *Rapidpay* Defendants serve their Preliminary Invalidity Contentions.
- July 14, 2006: Paymentech provides to AmeriMerchant (which, in turn, provides to the Rapidpay Defendants) additional fragments of supporting documentation evidencing Litle & Company's public and commercial use of its "postage advance" product. See Motion, Ex. C to Gray Declaration. At this point, based on both sets of documents they have received and factual investigations to date, Defendants have a good faith basis for including Litle & Company as a prior art reference in their Preliminary Invalidity Contentions.
- July 20 and 21, 2006: AmeriMerchant serves its Preliminary Invalidity
   Contentions in the AmeriMerchant action; the Rapidpay Defendants serve their
   Amended Preliminary Invalidity Contentions (amended to include Litle &
   Company prior art reference); and Defendants provide to AdvanceMe all Litle &
   Company supporting documentation they have received to date.

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<sup>&</sup>lt;sup>1</sup> AmeriMerchant received these first fragments of documentation on June 19, 2006. The fax header accompanying the documents reveals this date, although the fax cover sheet improperly states "March 3, 2006." *See* Motion, Ex. B to Gray Declaration. These documents were first received by AmeriMerchant on June 19, 2006, as correctly revealed by the fax header.

- <u>July 25, 2006</u>: Defendants finally receive from Paymentech a *complete* "postage advance" agreement and additional supporting documentation regarding the systems and methods practiced by Litle & Company prior to the filing of the '281 Patent. *See* Motion, Ex. D to Gray Declaration.
- July 28, 2006: Defendants produce all Litle & Company documentation received since July 20, 2006 to AdvanceMe.
- August 30 and 31, 2006: Defendants served on AdvanceMe amended preliminary invalidity contentions in both actions reflecting the additional information in the documents that were produced by July 28, 2006. These amended preliminary invalidity contentions added no new prior art references; they simply further explained the Litle & Company systems and methods that were disclosed in AmeriMerchant's Preliminary Invalidity Contentions and the Rapidpay Defendants' First Amended Preliminary Invalidity Contentions, served July 20, 2006.
- <u>September 6, 2006</u>: Deposition of Tim Litle. All parties, including AdvanceMe, examined Tim Litle based on Litle & Company documents available to all parties over one month earlier.

### **EXHIBIT G**

# LITLE & CO. INVALIDITY CLAIM CHART UNITED STATES PATENT NO. 6,941,281

| 1. A method for automated payment, comprising: re re             | Litle & Co. ("Litle") utilized a method for automated payments to Litle as repayment of obligations owed by merchants either for postage or cash advances.  See, e.g., Litle & Co. Member Agreement, LI_00017-29 (hereafter "Member Agreement, LI_00017-29)  |
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|  | Agreement 1; see, e.g., Demand Promissory Note for Postage Advances between Museum Publications of America and Litle & Co., dated September 27, 1993, LI_00033-35 (hereafter "Promissory Note"); see, e.g., February 17, 1994 Letter from Robert George to Michael Duffy, LI_00030-31; see M. Kripalani, T. Pouschine, "People thought I was nuts", FURBLS, June 8, 1992, v.149, n12, p120(2), LI_00001-03 (hereafter "Forbes Article"). |
|  | The merchant, either directly or via its agent, would accept a customer identifier,  |
| accepting a customer identifier as payment from L. the customer. | c. 8., a card, as payment nom me customer. See intermed Agreement, LI_00017-29.  |
| r ä O  | "WHEREAS, LITLE and NPC are engaged in the business of processing paper-based and electronic data representing transactions conducted through the use of CHARGE CARDS, and   |
| <u>₩</u>   | WHEREAS, MEMBER desires to honor CHARGE CARDS in connection with the retail sale of PRODUCTS to MEMBER's customers, to submit SALES RECORDs and REFUNDs representing such transactions to LITLE for  |
| a C  | processing and to sell to FNBL the SALES RECORDs generated with BANK CARDs and the indebtednesses represented thereby."  |
| <u>Z</u>   | Member Agreement at LI_00018.  |
| <u> </u>   | "CHARGE CARD is the plastic BANK CARD or T&E CARD issued by a CARD ORGANIZATION to the CARDHOLDER and the charge account number designated on the card, either of which MEMBER accepts from customers as payment for their purchases from MEMBER." Id.   |

| CLAIMS   | SPECIFICATION REFERENCES  |
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|  | "BANK CARD means a valid and unexpired CHARGE CARD issued by an ISSUING MEMBER of MCI or VISA which contains the MasterCard service mark or Visa's Blue, White and Gold Bands Design service mark. A BANK CARD shall be deemed valid on and after the effective date, if shown, and through and including the expiration date embossed thereon." Id.  |
|  | "CARD ORGANIZATION is VISA, MCI or the issuer of a T&E CARD." Id.  "T&E CARD is a valid and unexpired Travel and Entertainment CHARGE CARD issued by American Express, Carte Blanche, Diner's Club or Discover. A T&E CARD shall be deemed valid on and after the effective date, if shown, and through and including the expiration date embossed thereon." Id. at LI_00019.   |
| and electronically forwarding information related to the payment to a computerized merchant processor. | The merchant, either directly or via its agent, electronically forwarded information related to the payment to Litle, the computerized merchant processor.  |
|  | "WHEREAS, LITLE and NPC are engaged in the business of processing paper-based and electronic data representing transactions conducted through the use of CHARGE CARDS, and WHEREAS, MEMBER desires to honor CHARGE CARDS in connection with the retail sale of PRODUCTS to MEMBER's customers, to submit SALES RECORDs and REFUNDs representing such transactions to LITLE for processing and to sell to FNBL the SALES RECORDs generated with BANK |
|  | Member Agreement at LI_00018 (showing that the merchant electronically forwarded information related to the payment to Litle, a computerized merchant processor).   |
|  | "SALES RECORD means all documents or data presented to LITLE as evidence of a CARD SALE." <i>Id.</i> at LI_00019 (showing that the merchant electronically accepts the customer identifier).  |

| CLAIMS  | SPECIFICATION REFERENCES   |
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|   | "c. MEMBER shall complete each SALES RECORD to include a notation in the space provided for the CARDHOLDERS's signature that the sale was initiated by mail order (MO), telephone order (TO) or pre-authorized order (PO) (except for sales made in person, for which the CARDHOLDER's signature shall be obtained)" Id. at LI_00019 (showing that the merchant electronically forwarded information related to the payment to Litle, a computerized merchant processor).  |
|   | "SALES RECORD means all documents or data presented to LITLE as evidence of a CARD SALE." <i>Id.</i> at LI_00019.  "Litle & Co. continues to be your credit card processor and will continue to work directly with you to provide a high level of customer and technical service." February 28, 1992 letter from Tim Litle to Robert George, LI_00016.   |
| at the computerized merchant processor, acquiring the information related to the payment  | "Litle & Co. continues to be your credit card processor and will continue to work directly with you to provide a high level of customer and technical service." February 28, 1992 letter from Tim Litle to Robert George, LI_00016.  |
| payment,  | "WHEREAS, LITLE and NPC are engaged in the business of processing paper-based and electronic data representing transactions conducted through the use of CHARGE CARDS" Member Agreement at LI_00018.   |
| and forwarding at least a portion of the payment to a computerized payment receiver as payment of at least a portion of an obligation made by the merchant; | "In consideration of Litle & Co. making advances for the account of [Museum Publications of America] to United States Postal Service, [Museum Publications of America] agrees to pay on demand the Principal Amount of Advance plus management fee to Litle & Co., or order. MEMBER further agrees that all CHARGE CARD transactions from all divisions and subsidiaries will be processed by Litle & Co. while any amount owed under this note is still outstanding. Notwithstanding that such amounts are otherwise payable on demand, MEMBER agrees that (ii) the Daily Repayments shall be deducted from daily NET PROCEEDS" |

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|        | Promissory Note at LI_00033 (showing that a portion of the card payments were forwarded to Litle, as a computerized payment receiver, as payment of at least a portion of an obligation that arose when Litle advanced postage costs ("Principal Amount of Advance") to merchant).  |
|        | "NET PROCEEDS is an amount equal to: The GROSS PROCEEDS, Less LITLE FEES, Less RELEASED CHARGEBACKS (if no RESERVE exists), Less any other amounts due from MEMBER to LITLE, Less any PREPAYMENTS." Member Agreement at LI_00018.   |
|        | "Litle agreed to finance [Exposures, Inc.'s ("Exposures")] postage by discounting his [Exposures'] credit card receivables." See Forbes Article at LI_00003 (describing how a portion of the payment from credit card companies was forwarded as payment on Exposures' obligation to Litle, as a computerized payment receiver, for financing postage costs, with the remainder, the discounted credit card receivables, being forwarded to Exposures).   |
|        | "As security for the obligations of Boston Publishing (the Borrower) under such financing agreements, Hanover Finance is being granted a security interest in our inventory, certain accounts and substantially all of the tangible and intangible personal property of Boston Publishing, including, without limitation, all rights of the Borrower to receive payments in respect of Card Sales from Litle & Co1. Upon written instruction from Hanover Finance or assignees of Hanover Finance, designated in writing by Hanover Finance, without further action by Boston Publishing, you will make all payments of Net Proceeds or any other credits, reserves, deposits, balances, refunds or other amounts now or hereafter due to Boston Publishing under the Member Agreement in respect of Card Sales directly by wire transfer, to such account or accounts as Hanover Finance may designate in writing (the "Accounts")." |
|        | February 17, 1994 Letter from Robert George to Michael Duffy at LI_00030-31 (showing that Litle forwarded a portion of the payment to the loan payment  |

| CLAIMS  | SPECIFICATION REFERENCES   |
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|   | receiver, $e.g.$ , Hanover Finance, as payment of at least a portion of an obligation made by the merchant, $e.g.$ , Boston Publishing).   |
| and at the computerized payment receiver,   | "In consideration of Litle & Co. making advances for the account of [Museum Publications of America] to United States Postal Service, [Museum Publications of America] agrees to pay on demand the Principal Amount of Advance plus  |
| receiving the portion of the payment forwarded by the computerized merchant processor and applying that portion to the outstanding obligation made by the merchant to reduce such obligation. | management fee to Litle & Co., or order. MEMBER further agrees that all CHARGE CARD transactions from all divisions and subsidiaries will be processed by Litle & Co. while any amount owed under this note is still outstanding. Notwithstanding that such amounts are otherwise payable on demand, MEMBER agrees that (ii) the Daily Repayments shall be deducted from daily NET PROCEEDS "                          |
|   | Promissory Note at LI_00033 (showing that a portion of the payment is received by Litle as repayment of an obligation that arose when Litle advanced postage costs ("Principal Amount of Advance") to merchant); see Promissory Note Repayment Schedule at LI_00035 (showing that Litle received and applied the forwarded portion of the payment to Museum Publication of America's outstanding obligation to Litle). |
|   | "NET PROCEEDS is an amount equal to: The GROSS PROCEEDS, Less LITLE FEES, Less RELEASED CHARGEBACKS (if no RESERVE exists), Less any other amounts due from MEMBER to LITLE, Less any PREPAYMENTS."  |
|   | Member Agreement at LI_00018.  |
| 2. The method of claim 1 wherein the accepting step comprises accepting a credit card number as the customer identifier.  | "WHEREAS, LITLE and NPC are engaged in the business of processing paper-based and electronic data representing transactions conducted through the use of CHARGE CARDS, and   |
|   | WHEREAS, MEMBER desires to honor CHARGE CARDS in connection with the retail sale of PRODUCTS to MEMBER's customers, to submit SALES RECORDs and REFUNDs representing such transactions to LITLE for processing and to sell to FNBL the SALES RECORDs generated with BANK   |

| CLAIMS  | SPECIFICATION REFERENCES   |
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|   | CARDs and the indebtednesses represented thereby."   |
|   | Member Agreement at LI_00018.  |
|   | "CHARGE CARD is the plastic BANK CARD or T&E CARD issued by a CARD ORGANIZATION to the CARDHOLDER and the charge account number designated on the card, either of which MEMBER accepts from customers as payment for their purchases from MEMBER." Id.   |
|   | "BANK CARD means a valid and unexpired CHARGE CARD issued by an ISSUING MEMBER of MCI or VISA which contains the MasterCard service mark or Visa's Blue, White and Gold Bands Design service mark. A BANK CARD shall be deemed valid on and after the effective date, if shown, and through and including the expiration date embossed thereon." <i>Id.</i>  |
|   | "CARD ORGANIZATION is VISA, MCI or the issuer of a T&E CARD." Id.  |
|   | "T&E CARD is a valid and unexpired Travel and Entertainment CHARGE CARD issued by American Express, Carte Blanche, Diner's Club or Discover. A T&E CARD shall be deemed valid on and after the effective date, if shown, and through and including the expiration date embossed thereon." <i>Id.</i> at LI_00019.  |
| 3. The method of claim 1 wherein the accepting step comprises accepting a debit card number as the customer identifier. | It would have been obvious to a person of ordinary skill in the art at the time of the alleged invention of Plaintiff's asserted claims to apply mechanisms and methods in use for one type of customer identifier to another type of customer identifier, e.g. for debit cards as well as credit cards. And the statements by the alleged inventor and by the examiner, and the language of the patent itself makes clear that a person of ordinary skill in the art would be motivated to make the method or system work in the same way for any customer identifier, including debit cards. |
|   | "WHEREAS, LITLE and NPC are engaged in the business of processing paper-based and electronic data representing transactions conducted through the use of   |

| CLAIMS  | SHECHELON REFERENCES   |
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|   | CHARGE CARDS, and WHEREAS, MEMBER desires to honor CHARGE CARDS in connection with the retail sale of PRODUCTS to MEMBER's customers, to submit SALES RECORDs and REFUNDs representing such transactions to LITLE for processing and to sell to FNBL the SALES RECORDs generated with BANK CARDs and the indebtednesses represented thereby."  |
|   | "CHARGE CARD is the plastic BANK CARD or T&E CARD issued by a CARD ORGANIZATION to the CARDHOLDER and the charge account number designated on the card, either of which MEMBER accepts from customers as payment for their purchases from MEMBER." Id.   |
|   | "BANK CARD means a valid and unexpired CHARGE CARD issued by an ISSUING MEMBER of MCI or VISA which contains the MasterCard service mark or Visa's Blue, White and Gold Bands Design service mark. A BANK CARD shall be deemed valid on and after the effective date, if shown, and through and including the expiration date embossed thereon." <i>Id.</i>  |
|   | "CARD ORGANIZATION is VISA, MCI or the issuer of a T&E CARD." Id.  |
|   | "T&E CARD is a valid and unexpired Travel and Entertainment CHARGE CARD issued by American Express, Carte Blanche, Diner's Club or Discover. A T&E CARD shall be deemed valid on and after the effective date, if shown, and through and including the expiration date embossed thereon." <i>Id.</i> at LI_00019.  |
| 4. The method of claim 1 wherein the accepting step comprises accepting a smart card number as the customer identifier. | It would have been obvious to a person of ordinary skill in the art at the time of the alleged invention of Plaintiff's asserted claims to apply mechanisms and methods in use for one type of customer identifier to another type of customer identifier, e.g. for smart cards as well as credit cards. And the statements by the alleged inventor and by the examiner, and the language of the patent itself makes clear that a person of ordinary skill in the art would be motivated to make the |

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| CLAIMS   | SPECIFICATION REFERENCES  |
|  | method or system work in the same way for any customer identifier, including smart cards.   |
|  | "WHEREAS, LITLE and NPC are engaged in the business of processing paper-based and electronic data representing transactions conducted through the use of CHARGE CARDS and   |
|  | WHEREAS, MEMBER desires to honor CHARGE CARDS in connection with the retail sale of PRODUCTS to MEMBER's customers, to submit SALES RECORDs and REFUNDs representing such transactions to LITLE for processing and to sell to FNBL the SALES RECORDs generated with BANK  |
|  | CANDS and the interpretations of represented thereby.  Member Agreement at LI_00018.  |
|  | "CHARGE CARD is the plastic BANK CARD or T&E CARD issued by a CARD ORGANIZATION to the CARDHOLDER and the charge account number designated on the card, either of which MEMBER accepts from customers as payment for their purchases from MEMBER." <i>Id.</i>   |
|  | "BANK CARD means a valid and unexpired CHARGE CARD issued by an ISSUING MEMBER of MCI or VISA which contains the MasterCard service mark or Visa's Blue, White and Gold Bands Design service mark. A BANK CARD shall be deemed valid on and after the effective date, if shown, and through and including the expiration date embossed thereon." <i>Id.</i> |
|  | "CARD ORGANIZATION is VISA, MCI or the issuer of a T&E CARD." Id.   |
|  | "T&E CARD is a valid and unexpired Travel and Entertainment CHARGE CARD issued by American Express, Carte Blanche, Diner's Club or Discover. A T&E CARD shall be deemed valid on and after the effective date, if shown, and through and including the expiration date embossed thereon." <i>Id.</i> at LI_00019.   |
| 5. The method of claim 1 wherein the accepting | "WHEREAS, LITLE and NPC are engaged in the business of processing paper-  |

| CLAIMS  | SPECIFICATION REFERENCES   |
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| step comprises accepting a charge card number as the customer identifier.   | based and electronic data representing transactions conducted through the use of CHARGE CARDS, and WHEREAS, MEMBER desires to honor CHARGE CARDS in connection with the retail sale of PRODUCTS to MEMBER's customers, to submit SALES RECORDs and REFUNDs representing such transactions to LITLE for processing and to sell to FNBL the SALES RECORDs generated with BANK CARDs and the indebtednesses represented thereby." |
|   | "CHARGE CARD is the plastic BANK CARD or T&E CARD issued by a CARD ORGANIZATION to the CARDHOLDER and the charge account number designated on the card, either of which MEMBER accepts from customers as payment for their purchases from MEMBER." Id.   |
|   | "BANK CARD means a valid and unexpired CHARGE CARD issued by an ISSUING MEMBER of MCI or VISA which contains the MasterCard service mark or Visa's Blue, White and Gold Bands Design service mark. A BANK CARD shall be deemed valid on and after the effective date, if shown, and through and including the expiration date embossed thereon." <i>Id.</i>  |
|   | "CARD ORGANIZATION is VISA, MCI or the issuer of a T&E CARD." Id.  |
|   | "T&E CARD is a valid and unexpired Travel and Entertainment CHARGE CARD issued by American Express, Carte Blanche, Diner's Club or Discover. A T&E CARD shall be deemed valid on and after the effective date, if shown, and through and including the expiration date embossed thereon." <i>Id.</i> at LI_00019.  |
| 6. The method of claim 1 wherein the accepting step comprises accepting the customer identifier at a merchant location. | "c. MEMBER shall complete each SALES RECORD to include a notation in the space provided for the CARDHOLDER's signature that the sale was initiated by mail order (MO), telephone order (TO) or pre-authorized order (PO) (except for sales made in person, for which the CARDHOLDER's signature shall be   |

| CLAIMS  | SPECIFICATION REFERENCES Obtained) " Mombor Agreement at 11 00010  |
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| 7. The method of claim 1 wherein the accepting step comprises electronically accepting the customer identifier.   | "c. MEMBER shall complete each SALES RECORD to include a notation in the space provided for the CARDHOLDER's signature that the sale was initiated by mail order (MO), telephone order (TO) or pre-authorized order (PO) (except for sales made in person, for which the CARDHOLDER's signature shall be obtained)" Member Agreement at LI_00019.                                |
|   | "WHEREAS, LITLE and NPC are engaged in the business of processing paper-based and electronic data representing transactions conducted through the use of CHARGE CARDS" Member Agreement at LI_00018 (showing that the merchant electronically accepts the customer identifier).  |
|   | "SALES RECORD means all documents or data presented to LITLE as evidence of a CARD SALE." <i>Id.</i> at LI_00019 (showing that the merchant electronically accepts the customer identifier).   |
| 8. The method of claim 1 wherein the steps performed at the merchant processor further comprise accumulating the payments until a predetermined amount is reached and then forwarding at least a portion of the accumulated payments to the payment receiver. | Litle would accumulate the payments until a predetermined amount was reached and then forward at least a portion of the accumulated payments to the payment receiver. See, e.g., Promissory Note Repayment Schedule at LI_00035 (outlining specified daily and weekly payment amount).   |
| 9. The method of claim 1 wherein the steps performed at the merchant processor comprise periodically forwarding at least a portion of the navment to the navment receiver   | Litle would periodically forward at least a portion of the payment to the payment receiver. See, e.g., Promissory Note Repayment Schedule at LI_00035 (outlining daily and weekly payment schedules).  |
|   | "In consideration of Litle & Co. making advances for the account of [Museum Publications of America] to United States Postal Service, [Museum Publications of America] agrees to pay on demand the Principal Amount of Advance plus management fee to Litle & Co., or order. MEMBER further agrees that all CHARGE CARD transactions from all divisions and subsidiaries will be |

| CLAIMS   | SPECIFICATION REFERENCES   |
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|  | processed by Litle & Co. while any amount owed under this note is still outstanding. Notwithstanding that such amounts are otherwise payable on demand, MEMBER agrees that (ii) the Daily Repayments shall be deducted from daily NET PROCEEDS" Promissory Note at LI_00033 (showing that payments were periodically forwarded).   |
| 10. A system for automated payment of an obligation made by a merchant, comprising:  | Litle utilized a system for automated payments to Litle as repayment of obligations owed by merchants either for postage or cash advances. See Member Agreement; Promissory Note; February 17, 1994 Letter from Robert George to Michael Duffy; Forbes Article.  |
| at a merchant, means for accepting a customer identifier as payment from the customer and  | The merchant, either directly or via its agent, would accept a customer identifier as payment from the customer. Means for accepting a customer identifier as payment existed, including, on information and belief, a magnetic card reader, keyboard input and/or telephone.  |
| for electronically forwarding information related to the payment to a computerized merchant processor,  wherein the merchant associated with the payment has an outstanding obligation to a third party: | "WHEREAS, LITLE and NPC are engaged in the business of processing paper-based and electronic data representing transactions conducted through the use of CHARGE CARDS, and WHEREAS, MEMBER desires to honor CHARGE CARDS in connection with the retail sale of PRODUCTS to MEMBER's customers, to submit SALES RECORDs and REFUNDs representing such transactions to LITLE for processing and to sell to FNBL the SALES RECORDs generated with BANK CARDs and the indebtednesses represented thereby."  Member Agreement at LI_00018 (showing that the merchant maintained a magnetic card reader and/or keyboard input and/or telephone for accepting a customer identifier and electronically forwarded information related to the navment to Litle, a computerized merchant processor). |
|  | "c. MEMBER shall complete each SALES RECORD to include a notation in the space provided for the CARDHOLDERS's signature that the sale was initiated by mail order (MO), telephone order (TO) or pre-authorized order (PO) (except for  |

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|   | sales made in person, for which the CARDHOLDER's signature shall be obtained) " Id. at LI_00019 (showing that the merchant maintained a magnetic card reader and/or keyboard input and/or telephone for accepting a customer identifier and electronically forwarded information related to the payment to Litle, a computerized merchant processor).   |
|   | "CHARGE CARD is the plastic BANK CARD or T&E CARD issued by a CARD ORGANIZATION to the CARDHOLDER and the charge account number designated on the card, either of which MEMBER accepts from customers as payment for their purchases from MEMBER." <i>Id.</i>   |
|   | "BANK CARD means a valid and unexpired CHARGE CARD issued by an ISSUING MEMBER of MCI or VISA which contains the MasterCard service mark or Visa's Blue, White and Gold Bands Design service mark. A BANK CARD shall be deemed valid on and after the effective date, if shown, and through and including the expiration date embossed thereon." <i>Id.</i> at LI_00018.  |
|   | "CARD ORGANIZATION is VISA, MCI or the issuer of a T&E CARD." Id.   |
|   | "T&E CARD is a valid and unexpired Travel and Entertainment CHARGE CARD issued by American Express, Carte Blanche, Diner's Club or Discover. A T&E CARD shall be deemed valid on and after the effective date, if shown, and through and including the expiration date embossed thereon." Id. at LI_00019.  |
|   | "In consideration of Litle & Co. making advances for the account of [Museum Publications of America] to United States Postal Service, [Museum Publications of America] agrees to pay on demand the Principal Amount of Advance plus management fee to Litle & Co., or order. MEMBER further agrees that all CHARGE CARD transactions from all divisions and subsidiaries will be processed by Litle & Co. while any amount owed under this note is still outstanding. Notwithstanding that such amounts are otherwise payable on demand, MEMBER agrees that (ii) the Daily Repayments shall be deducted |

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| CLAIMS  | STELLING NEFEKENCES   |
|   | from daily NET PROCEEDS"  Promissory Note at LI_00033 (showing that Litle acted as the merchant processor and that the merchant had an outstanding obligation that arose when Litle advanced postage costs ("Principal Amount of Advance") to merchant).  |
|   | "As security for the obligations of Boston Publishing (the Borrower) under such financing agreements, Hanover Finance is being granted a security interest in our inventory, certain accounts and substantially all of the tangible and intangible personal property of Boston Publishing, including, without limitation, all rights of the Borrower to receive payments in respect of Card Sales from Litle & Co1. Upon written instruction from Hanover Finance or assignees of Hanover Finance, designated in writing by Hanover Finance, without further action by Boston Publishing, you will make all payments of Net Proceeds or any other credits, reserves, deposits, balances, refunds or other amounts now or hereafter due to Boston Publishing under the Member Agreement in respect of Card Sales directly by wire transfer, to such account or accounts as Hanover Finance may designate in writing (the "Accounts")." |
|   | February 17, 1994 Letter from Robert George to Michael Duffy at LI_00030-31 (showing that the merchant, e.g., Boston Publishing, had an outstanding obligation to a third party, e.g., Hanover Finance).  |
| and at the computerized merchant processor, means for receiving the information related to the payment from the merchant, means for authorizing and settling the payment, | The language of the patent makes clear that a merchant processor acquires payment information and authorizes and settles the payment. On information and belief, the means for performing these functions and for forwarding a portion of the payment to the third party to reduce the obligation is a modem and computer running appropriate software.  "Litle & Co. continues to be your credit card processor and will continue to work directly with you to provide a high level of customer and technical service." February 28, 1992 letter from Tim Litle to Robert George at LI_00016.  |

| CLAIMS   | SPECIFICATION REFERENCES  |
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| and means for forwarding a portion of the payment to the third party to reduce the obligation. | "WHEREAS, LITLE and NPC are engaged in the business of processing paper-based and electronic data representing transactions conducted through the use of CHARGE CARDS, and WHEREAS, MEMBER desires to honor CHARGE CARDS in connection with the retail sale of PRODUCTS to MEMBER's customers, to submit SALES RECORDs and REFUNDs representing such transactions to LITLE for processing and to sell to FNBL the SALES RECORDs generated with BANK CARDs and the indebtednesses represented thereby."  |
|  | "In consideration of Litle & Co. making advances for the account of [Museum Publications of America] to United States Postal Service, [Museum Publications of America] agrees to pay on demand the Principal Amount of Advance plus management fee to Litle & Co., or order. MEMBER further agrees that all CHARGE CARD transactions from all divisions and subsidiaries will be processed by Litle & Co. while any amount owed under this note is still outstanding. Notwithstanding that such amounts are otherwise payable on demand, MEMBER agrees that (ii) the Daily Repayments shall be deducted from daily NET PROCEEDS Promissory Note at LI_00033 and Promissory Note Repayment Schedule at LI_00035 (showing that a portion of card payments are forwarded to Litle, as a computerized payment receiver, to reduce the obligation that arose when Litle advanced postage costs ("Principal Amount of Advance") to merchant). |
|  | "NET PROCEEDS is an amount equal to: The GROSS PROCEEDS, Less LITLE FEES, Less RELEASED CHARGEBACKS (if no RESERVE exists), Less any other amounts due from MEMBER to LITLE, Less any PREPAYMENTS."  Member Agreement at LI_00018.  |
|  | "As security for the obligations of Boston Publishing (the Borrower) under such financing agreements, Hanover Finance is being granted a security interest in our   |

| Claims  | SHECTELCA-TION REBERRACES  |
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|   | inventory, certain accounts and substantially all of the tangible and intangible personal property of Boston Publishing, including, without limitation, all rights of the Borrower to receive payments in respect of Card Sales from Litle & Co1. Upon written instruction from Hanover Finance or assignees of Hanover Finance, designated in writing by Hanover Finance, without further action by Boston Publishing, you will make all payments of Net Proceeds or any other credits, reserves, deposits, balances, refunds or other amounts now or hereafter due to Boston Publishing under the Member Agreement in respect of Card Sales directly by wire transfer, to such account or accounts as Hanover Finance may designate in writing (the "Accounts"). |
|   | February 17, 1994 Letter from Kobert George to Michael Durfy at Li_00030-31 (showing that Litle could forward a portion of the payment to the loan payment receiver, e.g., Hanover Finance, to reduce the merchant's, e.g., Boston Publishing, obligation).  |
| 11. The system of claim 10 wherein the accepting means comprises means for accepting a credit card number as the customer identifier. | The merchant, e.g., Museum Publications of America, accepted credit cards from customers for payment. Means for accepting a credit card number as the customer identifier included, on information and belief, a magnetic card reader, keyboard input and/or telephone.  |
|   | "WHEREAS, LITLE and NPC are engaged in the business of processing paper-based and electronic data representing transactions conducted through the use of CHARGE CARDS, and   |
|   | WHEREAS, MEMBER desires to honor CHARGE CARDS in connection with the retail sale of PRODUCTS to MEMBER's customers, to submit SALES RECORDs and REFUNDs representing such transactions to LITLE for processing and to sell to FNBL the SALES RECORDs generated with BANK CARDs and the indebtednesses represented thereby."  |
|   | Member Agreement at LI_00018.  |
|   | "CHARGE CARD is the plastic BANK CARD or T&E CARD issued by a  |

| CLAIMS   | SPECIFICATION REFERENCES   |
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|  | CARD ORGANIZATION to the CARDHOLDER and the charge account number designated on the card, either of which MEMBER accepts from customers as payment for their purchases from MEMBER." <i>Id.</i>  |
|  | "BANK CARD means a valid and unexpired CHARGE CARD issued by an ISSUING MEMBER of MCI or VISA which contains the MasterCard service mark or Visa's Blue, White and Gold Bands Design service mark. A BANK CARD shall be deemed valid on and after the effective date, if shown, and through and including the expiration date embossed thereon." <i>Id.</i>  |
|  | "CARD ORGANIZATION is VISA, MCI or the issuer of a T&E CARD." Id.  |
|  | "T&E CARD is a valid and unexpired Travel and Entertainment CHARGE CARD issued by American Express, Carte Blanche, Diner's Club or Discover. A T&E CARD shall be deemed valid on and after the effective date, if shown, and through and including the expiration date embossed thereon." Id. at LI_00019.   |
| 12. The system of claim 10 wherein the accepting means comprises means for accepting a debit card number as the customer identifier. | It would have been obvious to a person of ordinary skill in the art at the time of the alleged invention of Plaintiff's asserted claims to apply systems and means in use for one type of customer identifier to another type of customer identifier, e.g. for debit cards as well as credit cards. And the statements by the alleged inventor and by the examiner, and the language of the patent itself makes clear that a person of ordinary skill in the art would be motivated to make the method or system work in the same way for any customer identifier, including debit cards. Debit card numbers may be accepted, for example, using the merchant's magnetic card reader, keyboard input and/or telephone. |
|  | "WHEREAS, LITLE and NPC are engaged in the business of processing paper-based and electronic data representing transactions conducted through the use of CHARGE CARDS, and WHEREAS, MEMBER desires to honor CHARGE CARDS in connection with the retail sale of PRODUCTS to MEMBER's customers, to submit SALES   |

| CLAIMS   | SPECIFICATION REFERENCES  |
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|  | RECORDs and REFUNDs representing such transactions to LITLE for processing and to sell to FNBL the SALES RECORDs generated with BANK CARDs and the indebtednesses represented thereby."  Member Agreement at LI_00018.  |
|  | "CHARGE CARD is the plastic BANK CARD or T&E CARD issued by a CARD ORGANIZATION to the CARDHOLDER and the charge account number designated on the card, either of which MEMBER accepts from customers as payment for their purchases from MEMBER." <i>Id.</i>   |
|  | "BANK CARD means a valid and unexpired CHARGE CARD issued by an ISSUING MEMBER of MCI or VISA which contains the MasterCard service mark or Visa's Blue, White and Gold Bands Design service mark. A BANK CARD shall be deemed valid on and after the effective date, if shown, and through and including the expiration date embossed thereon." <i>Id.</i>   |
|  | "CARD ORGANIZATION is VISA, MCI or the issuer of a T&E CARD." Id.   |
|  | "T&E CARD is a valid and unexpired Travel and Entertainment CHARGE CARD issued by American Express, Carte Blanche, Diner's Club or Discover. A T&E CARD shall be deemed valid on and after the effective date, if shown, and through and including the expiration date embossed thereon." <i>Id.</i> at LI_00019.   |
| 13. The system of claim 10 wherein the accepting means comprises means for accepting a smart card number as the customer identifier. | It would have been obvious to a person of ordinary skill in the art at the time of the alleged invention of Plaintiff's asserted claims to apply systems and means in use for one type of customer identifier to another type of customer identifier, e.g. for smart cards as well as credit cards. And the statements by the alleged inventor and by the examiner, and the language of the patent itself makes clear that a person of ordinary skill in the art would be motivated to make the method or system work in the same way for any customer identifier, including smart cards. Smart card numbers may be accepted, for example, using the merchant's |

| CLAIMS   | SPECIFICATION REFERENCES  |
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|  | magnetic card reader, keyboard input and/or telephone.  |
|  | "WHEREAS, LITLE and NPC are engaged in the business of processing paper-based and electronic data representing transactions conducted through the use of CHARGE CARDS, and  |
|  | WHEREAS, MEMBER desires to honor CHARGE CARDS in connection with the retail sale of PRODUCTS to MEMBER's customers, to submit SALES RECORDs and REFUNDs representing such transactions to LITLE for processing and to sell to FNBL the SALES RECORDs generated with BANK CARDs and the indebtednesses represented thereby."                                 |
|  | Member Agreement at LI_00018.   |
|  | "CHARGE CARD is the plastic BANK CARD or T&E CARD issued by a CARD ORGANIZATION to the CARDHOLDER and the charge account number designated on the card, either of which MEMBER accepts from customers as payment for their purchases from MEMBER." Id.  |
|  | "BANK CARD means a valid and unexpired CHARGE CARD issued by an ISSUING MEMBER of MCI or VISA which contains the MasterCard service mark or Visa's Blue, White and Gold Bands Design service mark. A BANK CARD shall be deemed valid on and after the effective date, if shown, and through and including the expiration date embossed thereon." <i>Id.</i> |
|  | "CARD ORGANIZATION is VISA, MCI or the issuer of a T&E CARD." Id.   |
|  | "T&E CARD is a valid and unexpired Travel and Entertainment CHARGE CARD issued by American Express, Carte Blanche, Diner's Club or Discover. A T&E CARD shall be deemed valid on and after the effective date, if shown, and through and including the expiration date embossed thereon." <i>Id.</i> at LI_00019.   |
| 14. The system of claim 10 wherein the accepting means comprises means for accepting | The merchant, e.g., Museum Publications of America, accepted charge cards from customers for payment. Means for accepting a charge card number as the   |

| Specification References | customer identifier included, on information and belief, a magnetic card reader, keyboard input and/or telephone. | "WHEREAS, LITLE and NPC are engaged in the business of processing paper-based and electronic data representing transactions conducted through the use of CHARGE CARDS, and | the retail sale of PRODUCTS to MEMBER's customers, to submit SALES RECORDs and REFUNDs representing such transactions to LITLE for processing and to sell to FNBL the SALES RECORDs generated with BANK CARDs and the indebtednesses represented thereby." | Member Agreement at LI_00018. | "CHARGE CARD is the plastic BANK CARD or T&E CARD issued by a CARD ORGANIZATION to the CARDHOLDER and the charge account number designated on the card, either of which MEMBER accepts from customers as payment for their purchases from MEMBER." Id. | "BANK CARD means a valid and unexpired CHARGE CARD issued by an ISSUING MEMBER of MCI or VISA which contains the MasterCard service mark or Visa's Blue, White and Gold Bands Design service mark. A BANK CARD shall be deemed valid on and after the effective date, if shown, and through and including the expiration date embossed thereon." <i>Id.</i> | "CARD ORGANIZATION is VISA, MCI or the issuer of a T&E CARD." Id. | "T&E CARD is a valid and unexpired Travel and Entertainment CHARGE CARD issued by American Express, Carte Blanche, Diner's Club or Discover. A T&E CARD shall be deemed valid on and after the effective date, if shown, and through and including the expiration date embossed thereon." <i>Id.</i> at LI_00019. | wherein the On information and belief, means for accepting the customer identifier existed at |
|--------------------------|---|--|--|-------------------------------|--|---|---|---|---|
| CLAIMS                   | a charge card number as the customer identifier.  |  |  |                               |  |   |   |   | 15. The system of claim 10 wherein the  |

# UNITED STATES PATENT NO. 6,941,281

| CLAIMS   | SPECIFICATION REFERENCES  |
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| accepting means comprises means for accepting the customer identifier at a merchant location.  | a location of a merchant or merchant's agent, including, on information and belief, a magnetic card reader, keyboard input and/or telephone.  |
|  | "c. MEMBER shall complete each SALES RECORD to include a notation in the space provided for the CARDHOLDERS's signature that the sale was initiated by mail order (MO), telephone order (TO) or pre-authorized order (PO) (except for sales made in person, for which the CARDHOLDER's signature shall be obtained)" Member Agreement at LI_00019.  |
| 16. The system of claim 10 wherein the accepting means comprises means for electronically accepting the customer identifier.   | On information and belief, means for a merchant's electronically accepting a customer identifier existed in the Litle system, including, on information and belief, a magnetic card reader, keyboard and/or telephone.  |
|  | "c. MEMBER shall complete each SALES RECORD to include a notation in the space provided for the CARDHOLDERS's signature that the sale was initiated by mail order (MO), telephone order (TO) or pre-authorized order (PO) (except for sales made in person, for which the CARDHOLDER's signature shall be obtained) " Member Agreement at LI_00019. |
|  | "WHEREAS, LITLE and NPC are engaged in the business of processing paper-based and electronic data representing transactions conducted through the use of CHARGE CARDS Member Agreement at LI_00018 (showing that the merchant electronically accepts the customer identifier).  |
|  | "SALES RECORD means all documents or data presented to LITLE as evidence of a CARD SALE." <i>Id.</i> at LI_00019 (showing that the merchant electronically accepts the customer identifier).  |
| 17. The system of claim 10 wherein the means at the merchant processor further comprise means for accumulating the payments until a predetermined amount is reached and means for forwarding at least a portion of the accumulated | Litle would accumulate the payments until a predetermined amount was reached and then forward at least a portion of the accumulated payments. See Promissory Note Repayment Schedule at LI_00035 (outlining specified daily and weekly payment amount).   |

# UNITED STATES PATENT NO. 6,941,281

| CLAIMS  | SPECIFICATION REFERENCES   |
|---|--|
| payments to the third party.  | On information and belief, the means for accumulating the payments until a predetermined amount was reached and means for forwarding at least a portion of the accumulated payments was a modem and computer running appropriate software.   |
| 18. The system of claim 10 wherein the forwarding means at the merchant processor comprises means for periodically forwarding at least a portion of the payment to the third party.   | Litle would periodically forward at least a portion of the payment. See Promissory Note Repayment Schedule at LI_00035 (outlining daily and weekly payment schedules). On information and belief, the means for performing this function was a modem and computer running appropriate software.  |
|   | "In consideration of Litle & Co. making advances for the account of [Museum Publications of America] to United States Postal Service, [Museum Publications of America] agrees to pay on demand the Principal Amount of Advance plus management fee to Litle & Co., or order. MEMBER further agrees that all CHARGE CARD transactions from all divisions and subsidiaries will be processed by Litle & Co. while any amount owed under this note is still outstanding. Notwithstanding that such amounts are otherwise payable on demand, MEMBER agrees that (ii) the Daily Repayments shall be deducted from daily NET PROCEEDS" Promissory Note at LI_00033 (showing that payments were periodically forwarded).  |
| 19. The system of claim 10 wherein the forwarding means at the merchant processor comprises means for forwarding to the third party an amount that is a percentage of the obligation. | Litle forwarded an amount that is a percentage of the obligation. On information and belief, the means for performing this function was a computer running appropriate software.  "In consideration of Litle & Co. making advances for the account of [Museum Publications of America] to United States Postal Service, [Museum Publications of America] agrees to pay on demand the Principal Amount of Advance plus management fee to Litle & Co., or order. MEMBER further agrees that all CHARGE CARD transactions from all divisions and subsidiaries will be processed by Litle & Co. while any amount owed under this note is still outstanding. Notwithstanding that such amounts are otherwise payable on |

# UNITED STATES PATENT NO. 6,941,281

| CLAIMS | SPECIFICATION REFERENCES  |
|--------|---|
|        | demand, MEMBER agrees that (ii) the Daily Repayments shall be deducted  |
|        | Promissory Note at LI_00033 (showing that payments forwarded were in an amount that use a manage of the chieffen).                                    |
|        | Repayment Schedule at LL_00035 (outlining daily and weekly payment amount, all of which individually and collectively constituted a percentage of the |
|        | merchant's total obligation).   |

## **EXHIBIT H**

### Paul Hastings

ATTORNEYS

Paul, Hastings, Janotsky & Walter Lu-Flye Pally Alto Square • Sixth Flags • Falb Alia, CA 94806-2155 telephone 660 S20 1866 • tecsimile 659 S20 1930 • www.pauligavings.com

Atlanta Beijlag Brussels Jerry Kong Landon Los Angeles ns:W New York Grange County. Poin Alia Parts. San Diego San Francisco Shanghai Stainford fokyu: Washington, DC 650-320-1823 robertmatz@paulhastings.com

September 1, 2006

### <u>Via E-Mail</u>

Hilary Preston, Esq. Vinson & Elkins LLP 666 Fifth Avenue, 26th Floor New York, New York 19103

Re: AdvanceMe, Inc. v. RapidPay LLC, et al. (No. 6:05-ev-00424) (E.D. Tex.);
AdvanceMe, Inc. v. AmeriMerchans, LLC (No. 6:06 CV 82)(E.D. Tex.).

Defendants' Amended and Second Amended Invalidity Contentions

### Dear Hilary:

I write to inform you that Defendants in the above-referenced matters have violated the Patent Rules of the Eastern District of Texas by purporting to amend their Proliminary Invalidity Contentions without an order of the Court.

### P.R. 3-7 provides:

Amendment or modification of the....Preliminary or Final Invalidity Contentions, other than as expressly provided in P.R. 3-6, may be made only by order of the Court, which shall be entered only upon a showing of good cause.

In the RapidPay matter, Defendants have twice purported to amend their Preliminary Invalidity Contentions without an order of the Court. On July 21, 2006, Defendants attempted to amend their Preliminary Invalidity Contentions by adding a number of alleged prior publication references to their Prelimmary Infringement Contentions: (1) a credit card processing agreement among Electronic Data Systems Corporation, Reno Ait, and First USA Merchant Services, (2) an article from Forber magazine, and (3) a Promissory Note between Litle & Co. and Exposures, Inc.. On August 30, 2006, the RapidPay Defendants purported to amend their Preliminary Invalidity Contentious to archide additional prior publication references with respect to Litle & Co., including (1) a Litle & Co. Member Agreement, (2) a Demand Promissory Note for Postage Advances between Museum Publications of America and Litle & Co., (3) a February 17, 1994 Letter from Robert George to Michael Duffy. Since amendment of Defendants' Preliminary Invalidity Contentions can be made only by order of the Court, and since there is no order of the Court granting Defendants permission to amend their Preliminary Invalidity Contentions, these purported Amended and Second Amended Invalidity Contentions are of no legal effect.

Hilary Preston, Esq. September 1, 2006 Page 2

In the AmeriMarchani matter, on August 30, 2006, Defendant purported to amend its Preliminary Invalidity Contentions to include prior publication references with respect to Litle & Co., including (1) a Litle & Co. Member Agreement, (2) a Demand Promissory Note for Postage Advances between Museum Publications of America and Litle & Co., (3) a February 17, 1994 Letter from Robert George to Michael Duffy. Again, since attendment of Defendant's Preliminary Invalidity Contentions can be made only by order of the Court, and since there is no order of the Court granting Defendant permission to attend its Preliminary Invalidity Contentions, its Amended Preliminary Invalidity Contentions are of no legal effect.

In light of the foregoing, please be advised that AdvanceMe will only be considering those contentions set forth in Merchant Money Tree, Inc., First Funds LLC, and Reach Financial, FLC's Preliminary Invalidity Contentions, dated July 7, 2006, and AmeriMetghent, LLC's Preliminary Invalidity Contentions, dated July 20, 2006.

Robert C. Matz

Sincerely

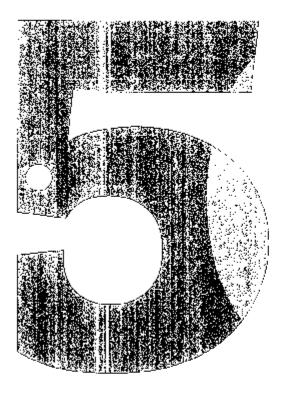
for PAUL, HASTINGS, JÁNOFSKY & WALKER LLP

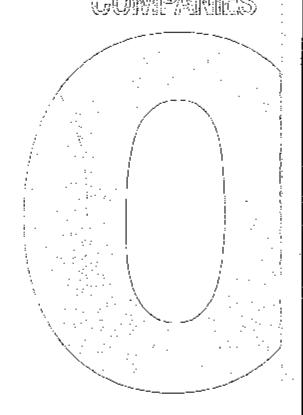
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## **EXHIBIT I**



## SPECIAL ISSUE SPECIAL ISSUE FASTEST GROWING PRIVATE PRIVATE CONTRIBUTE CONTRIBUTE





### **500 PROFILES OF SUCCESS**

INCLUDING

The new No. i company (5,629% three-year growth), the biggest job creator (6,591 employees), and the flat-out biggest company ever to appear on this list, with annual revenue of \$3.4 billion

PLUS What the CBOs think about compensation, benefits, politics, and cashing out





### How I Did It

## "To succeed we have to know four things"

Tin Laks

Chairman, Utle & Co. ಕೊಟ್ಟಾಟಿಕ ಸತ್ತಾರ್ಣಿಕ

More than 40 years of airect marketing and financial services history is packed into the genial, unassuming person of Tun Life. An engineer to the one. Life, 66, is responsible for some of the commercial world's least sexy immedians, including froze three-digit morthers on the backs of credit cards that discounage fraud, credit card rules that let consumers buy on itstallment plans, and the system by which mass mallers receive discounts from the U.S. Postal Service for pra-orting by carrier unite. Those idear and others have made or saved biliners of dollars for Life's clients, as well as thousands of direct marketers who have never heard his name. Life & Co. is No. 1 on this year's Inc. 500 list with \$34.8 million in 2005 revenue and three-year growth of 5,629.1 percent.

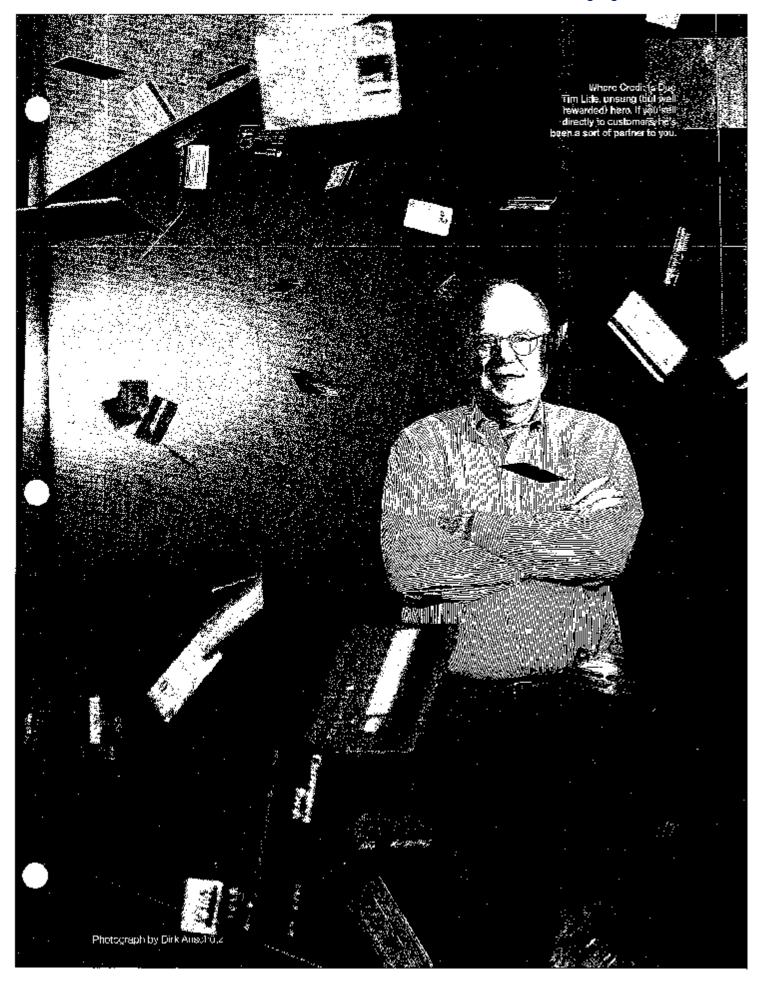
I grew up in Grosse Pointe, Michigan. My grandfither was toe chief engineer for Lincoln; my dad has the Detroit office for Time magazine. The engineering gene must have skipped a generation: I got It and went to Califfach. My freshman physics professor was Richard Beynman and my freshman chemistry professor was Linus Pauling.

At Harvard Business School I took all ille entrepreneurial counses I could. I wanted to be a fet initial entrepreneur, although at the time it wasn't clear what that meant. After business school I worked on cold-war intelligents; within longies at Litton Industries. I was there for less than a year when I got appendicities, and while I was having my appendix out someone stole my project from the lab. The Fols were all

over the place, I left hitton in 1965. That was the last time I worked for a company that wasn't name.

A politician friend wanted to be able to mass-mail loners to specific groups of voters. I thought we could use computers to create targeted letters based on information about groups of people. The politician and \$\mathbb{Z}\$ and two other gays started a company to do that for large marketers.

We got into list management, which means segmenting a marketer's meiting list according to demographics and buying patterns. We also saw a big opportunity in subscription fulfulment—making size the right people get the publications they subscribe to. One of our clients was 'The Christian'



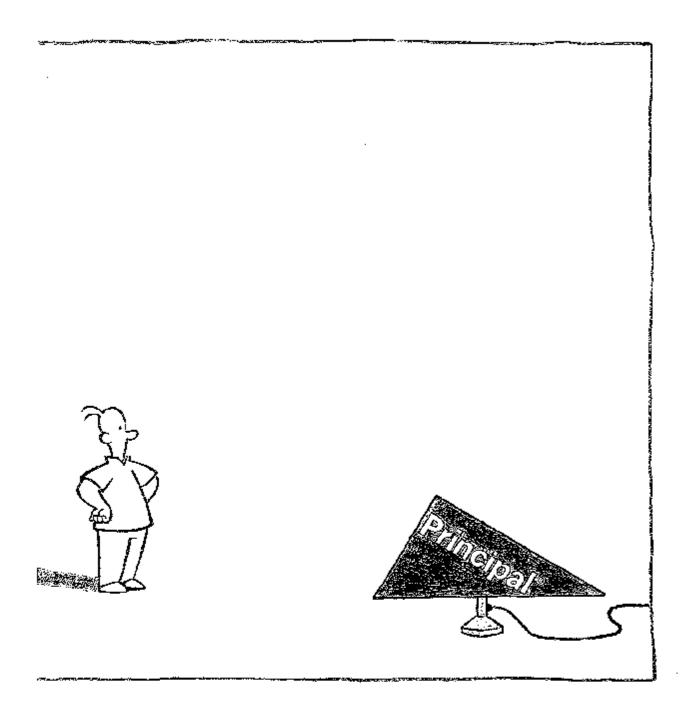


Think big.

EVEN A GROWING BUSINESS should feel like the most important company in its town, on helping businesses of all sizes, well, grow. Whether it's retirement planning solutions that fit your exact needs. And the needs of the company you'll be termorrow.

To learn more, contact your financial.

S2003 Principal Financial Snowbook on 1 the Principal, "Principal Chapter and the Edge Busing undregated to saving the research fit is it is to the precision of the Principal Principal Principal Snow on the Principal Dec Mohes, PA CCRRS interest color of unautities and not RTLC theared, not obligations of deposits of Principal Bank, untiglieranceed by Principal Renk, and surject to a vestment right



state, country, world. At least that's how we see it. For over 125 years, we've focused and investments, medical coverage or life insutance, we can easily customize Because no matter how big you are, truth is, we'd like to help you get bigger.



WE'LL CIVE YOU AN EDGE\*

Science Monitor, Only 79 percent of the nor add subscribers get it on the day they expected it. I went into one of the printing lants and watched people take the Monitors off the belt and stuff them in mail sacks. There was a thick manual about how to put stuff in the sack and the maximum weight and the minimum number of pieces. These were minimumwage people—a lot of them didn't speak. English. And they were writing out the tags that were on the mail sacks by band and then taking them to the post office. where more people would dump them on a fable and then put them in other sacks. We came up with a system to computerize that Tabels would be printed according to Zip codes and the newspapers would thea: he sorted based on their destinations. We got it working, and I'll be damined if they didritiget 92 percent on time delivery.

One of my business school friends was high up at the H.S. Postal Service, and they'd been studying the *Monito* thing. He said, "We save so much money with this, do you think you could get your buddles in the direct marketing business to do militize give them a discount?" It cost 9.6 cents in mail a catalog, so I said, "How about four losts?" Fight months later the post office automated its linst Carrier Route Present discount, and it was four cents. Now about half of all mail is delivered that way. I think they paid me \$500 for introducing the idea.

Around 1977, I had sold my company, and my wife, Joan, and I bought a catalog. company, it was called Clymer's of Books. County and it sold American handrorafts. We also began to handle warehousing and Sulfillment for other catalogs. All the catalogs were losing 3 persont of sales. because of idefliciencies in the paymentprocessing system—the networks were set up for retailers and not for situations Where the buyer isn't present to hand over his card. So in 1982 I put together a system to address the requirements of tatalogs and the card not present world. We eventually brought that 2 percent flown to about 1 percent

I started the first Little & Co. in 1986, with \$1.6 million of ensecured cred:

Ino.gom For a full archive of gast How / Old /t features, visit yww.inc.com/keyword/bidi.

from the bank. The total amount Joan and I put in was \$1,000. It was another payments-processing company for catalogers. We had customers like AOL, Lands' End, most of the guys on latenigh, television salling Chinese woks.

We did some significant things. We worked with Vise to introduce address verification, where a cataloger asks for the customer's billing address as a way to check his identity. With American Express we introduced the Identification number on creat ceres. Another thing

marketing or Internet conferences. Third, we have to know Visa and MasterCard regulations. And fourth, we have to know how to manage risk. We are the or as who make sure the card issuers get their modey from our customers' sales. So if one of our customers gues out of basiness we take it on the chin pretty hand.

This is the engineer in me talking but I want to build the perfect payment processing system. The software environment has changed a lot sincolary old company. There's not a whole lot of staff in

### "Like those other things, installment billing was a dumb idea of mine, then it was an interesting idea of mine, then it was Visa's idea."

we got through was installment billing. Visa and raths agains that because the interest would be paid to the seller and not the credit card issuer. We explained that companies like NordicTrenk don't want the interest; they want to increase their sales. We suggested a rule that would prohibit the seller from collecting interest on installment payments. Six weeks fatter, the rules changed, and Visa ended up selling installment payments as a feature. Like those other things it was a domb idea of mine, and then it was Visa's idea.

In 1995 I sold the company to First USA for about S80 million. I didn't sell them my name so they renamed it Paymentech.

In 2001 I started this company, It does the same thing as the first Little & Co., but it's a different entity. More than half of compliants are internet marketers.

To succeed, we have to know four things. First, we have to be good systems guys. Our competitors are very nonlecturical, whereas systems are our core competence. Second, we have to know our market. Our competitions are populated by bankers and go to hanking conferences, we go to circuit

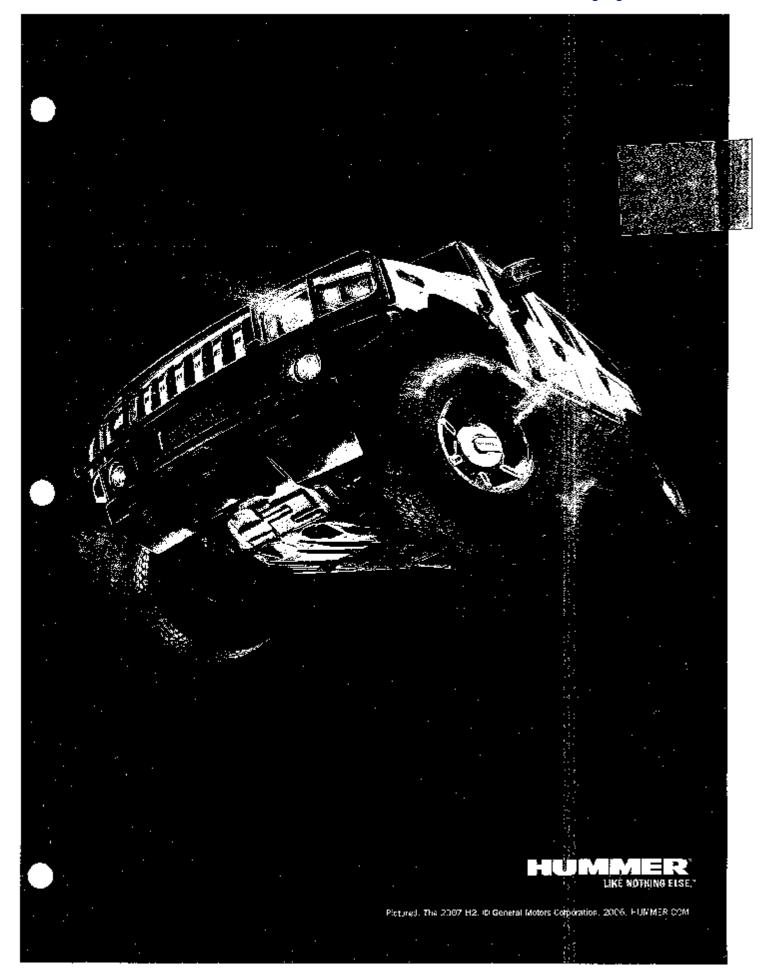
our computer room; 'the undepredated value of all our computer hardware is armins' \$500,000. There was probably \$20 million in the old Late & Co., and we had twice the number of employees.

My son Tom has an artification degree and a fine and degree. He also can a successful venture capital firm for six years. But he worked at my other companies during the '90s, and last year he joined this one as vice president of business development. Ile's done such a terrific job that the members of our executive committee have come to me individually and said, "It's time to make from ChO." So we did that.

One of my personal goals for this year is not to be in the critical path of anything going on at the company. I think I'm coing a good job at Slaying out of these guys' way. I'm in the meeting every month where we plan the next month's software. And I explain how to deal with Visa and Mastert and, and with our pariner bank, Wells Fargo. But I don't cell up any sleeves and do things like I used to.

People think I'm crazy, but I love this business.

As fold to Leigh Buckanan



## **EXHIBIT J**

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VOLUME: I
1
                         PAGES: 1 - 306
                         EXHIBITS: Per index
2
3
              UNITED STATES DISTRICT COURT
           FOR THE EASTERN DISTRICT OF TEXAS
4
                    TYLER DIVISION
5
                     C.A. No. 6:05-cv-424-LED-JDL
 6
                                       )
    ADVANCEME, INC.,
 7
                Plaintiff
 6
    YS.
 9
    RAPIDPAY LLC, BUSINESS CAPITAL
10
    CORPORATION, FIRST FUNDS LLC,
    MERCHANT MONEY TREE, INC.,
11
    REACH FINANCIAL, LLC and
    FAST TRANSACT, INC.
12
    d/b/a SIMPLE CASH,
                Defendants
13
14
                     C.A. No. 6:06-cv-82-LED
15
    ADVANCEME, INC.,
16
                Plaintiff
17
     VS.
18
     AMERIMERCHANT, LLC,
19
                Defendant.
20
21
                VIDEOTAPED DEPOSITION
22
                          OF
23
                THOMAS J. LITLE, IV
24
            WEDNESDAY, SEPTEMBER 6, 2006
25
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| 127 1 it, and the performance obligation was 2 something that the fulfillment company is 3 legally required to do anyway, and that is, 4 don't charge the customer until the goods 5 are shipped. 6 Q. What are the obligations of the catalog 6 company? 8 A. In what sense? 9 Q. In the three-party agreement, did the 1 merchant have any obligations to tre 1 merchant have any obligations to tre 1 fulfillment company? 1 A. The merchant had to pay the fulfillment 1 company for their services. 1 Q. And the obligations of Lible & Company? 2 A. What had to pay the fulfillment company on 1 behalf of the merchant and whad our normal 1 bubligations as - for routine payment 1 processing, as well. 1 Q. That were outlined in the Member Agreement? 2 A. Yes. 2 (One-page document entitled "LIS 2 Number 11 for Identification.) 2 Q. I'm handing you what has been marked Litle Exhibit 11, which are the claims of United  1 States Patent 6941281. It shows it's 2 just the last page of the Patent Column 7 3 and 8. 4 M. EDELMAN: I'll object to the extent that you're excepting a page from an an entire patent and also not show him the extent that you're excepting a page from an an entire patent and also not show him the extent that you're excepting a page from an an entire patent and also not show him the extent that you're excepting a page from an an entire patent and also not show him the extent that you're excepting a page from an an entire patent and also not show him the extent that you're excepting a page from an an entire patent and also not show him the extent that you're excepting a page from an an entire patent and also not show him the extent that you're excepting a page from an an entire patent and also not show him the extent that you're excepting a page from an an entire patent and also not show him the extent that you're excepting a page from an an entire patent, and also not show him the extent that you're excepting a page from an an entire patent, and also not show him the extent that you're excepting a page from an an entire |          |  |      |  |
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| it, and the performance obligation was something that the fulfillment company is legally required to do anyway, and that is, don't charge the customer until the goods are shipped.  6 Q. What are the obligations of the catalog company?  7 Company?  8 A. In what sense?  9 Q. In the three party agreement, did the merchant have any obligations to the fulfillment company for their services.  10 Q. And the obligations of Little & Company?  11 A. The merchant had to pay the fulfillment company for their services.  12 Q. And the obligations of Little & Company?  13 A. Yes.  14 Q. And the obligations of Little & Company?  15 A. Yes.  16 Q. On that were outlined in the Member Agreement?  17 Upon page document entitled "US 6,941,281 Bit" is marked Exhibit 11, which are the claims of United Exhibit 11, which are the claims of United Exhibit 11, which are the claims of the teams of the pattent, and also not shown him the arguments the parties have made with the file list of the pattent, and also not shown him the arguments the parties have made with the file list of the pattent, and also not shown him the arguments the parties have made with the file list of the pattent, and also not shown him the arguments the parties have made with the file list of the pattent, and also not shown him the arguments the parties have made with the file list of the pattent, and also not shown him the arguments the parties have made with the file list of the pattent, and also not shown him the arguments the parties have made with the file list of the pattent, and also not shown him the arguments the parties have made with the file list of the pattent, and also not shown him the arguments the parties have made with the file list of the pattent, and also not shown him the arguments the parties have made with the file list of the pattent, and also not shown him the arguments the parties have made with the file list of the pattent, and also not shown him the arguments the parties have made with the file list of the pattent, and also not shown him  |          | 177  |      | 124  |
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| 3 legally required to do anyway, and that is, don't charge the customer until the goods are shipped.  4 C. What are the obligations of the catalog company?  5 A. In what sense?  9 Q. In the three-party agreement, did the merchant have any obligations to the fulfilment company?  12 A. The merchant have any obligations to the fulfilment company?  13 A. We had to pay the fulfilment company for their services.  14 Q. And the obligations of Little & Company?  15 A. We had to pay the fulfilment company on behalf of the merchant and we had our normal obligations as — for routine payment processing, as well.  19 Q. That were outlined in the Member Agreement?  20 A. Yes.  19 Q. That were outlined in the Member Agreement?  21 Cone-page document entitled "US 6,941,281 B1" is marked Exhibit 11, which are the claims of United  12 States Patent 6941281. It shows it's bestiff the last page of the Patent Column 7 and 8.  19 M. EDELMAN: I'll object to the extent that you're excepting a page from an entire patent and also not show him the arguments the parties have made with the fife list of the patent.  10 Q. Okay, could you please read Claims 1 and 10? to yoursel?  11 M. SMITH: Just 1 and 10?  12 A. Al right.  13 A. Al right.  14 Q. Doy ou understand those two claims?  15 M. R. SMITH: Just 1 and 10?  16 A. Al right.  17 M. EDELMAN: Same objections.  18 A. I have a representation are a fact witness. He is not rendering a conclusion on patent validity. He is here simply to testify as a factua witness. I just wasted to make that clear before — MR. EDELMAN: And again, I want to object to the extent that this is oeing situation. If you want to dit, go ahead.  19 Q. Doyou understand those two claims?  10 M. EDELMAN: Same objections.  11 A. I have a representation and the fifth the proposed construction of the terms of the patent, and also not show him the arguments the parties have made with the fifth is the fifth the merchant and its not shown him the arguments the parties have made with the fifth is the fifth the merchant and its  |          |  |      | lists the deline of the nations which is the   |
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| 6 Q. What are the obligations of the catalog company? 7 company? 8 A. In what sense? 9 Q. In the three-party agreement, did the merchant have any obligations to the fulfillment company? 12 A. The merchant had to pay the fulfillment company? 13 A. We had to pay the fulfillment company? 14 Q. And the obligations of Litle & Company? 15 A. We had to pay the fulfillment company on behalf of the merchant and we had our normal obligations as — for routine payment processing, as well. 16 Q. An tree: 17 Q. That were outlined in the Member Agreement? 18 processing, as well. 19 Q. That were outlined in the Member Agreement? 20 A. Yes. 21 (One-page document entitled "US 22 (5-911,281 Bit" is marked Exhibit 22 (5-911,281 Bit" is marked Exhibit 23 (5-911,281 Bit" is marked Exhibit 24 (5-911,281 Bit" is marked Exhibit 25 (5-911,281 Bit" is marked Exhibit 26 (5-911,281 Bit" is marked Exhibit 27 (5-911,281 Bit" is marked Exhibit 27 (5-911,281 Bit" is marked Exhibit 28 (5-911,281 Bit" is marked Exhibit 29 (5-911,281 Bit" is marked Exhibit 20 (5-911,281 Bit" is marked Exhibit 29 (5-911, |          |  |      |  |
| 7 company? 8 A. In what sense? 9 Q. In the three-party agreement, did the merchant have any obligations to the fulfillment company? 12 A. The merchant had to pay the Fulfillment company for their services. 13 Company for their services. 14 Q. And the obligations of Little & Company? 15 A. We had to pay the fulfillment company? 16 behalf of the merchant and we had our normal oblehalf or the merchant and we had our normal oblehalf or the merchant and we had our normal oblehalf or the merchant and we had our normal oblehalf or the merchant and we had our normal oblehalf or the merchant and we had our normal oblehalf or the merchant and we had our normal oblehalf or the merchant had the terms of the Calman. The full declarat |          | • •  | _    |  |
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| 10 merchant have any obligations to the 11 fulfilment company? 12 A. The merchant had to pay the fulfilment company for their services. 13 Company for their services. 14 Q. And the obligations of Litle & Company? 15 A. We had to pay the fulfilment company on behalf of the merchant and we had our normal obligations as for routine payment processing, as well. 19 Q. That were outlined in the Member Agreement? 20 A. Yes. 21 (One-page document entitled "US" 22 6,941,281 Bit" is marked Exhibit Number 11 for Identification. I handing you what has been marked Litle Exhibit 11, which are the claims of United 123 1 States Patent 6941281. It shows it's just the last page of the Patent Column 7 and 8. 14 MR. EDELMAN: I'll object to the extent that you're excerpting a page from an entire patent and also not show him the arguments the patries have made with the file list of the patent. 10 Q. Key, could you please read Ozims 1 and 10? to yourself? 10 MR. EDELMAN: Same objections. 12 A. Alf right. 11 Q. Do you understand those two claims? 12 MR. EDELMAN: Same objections. 13 A. Al flight. 5 Cates Patent 4 No. 6,941,281" is  |          |  |      |  |
| 11 fulfilment company? 12 A. The merchant had to pay the fulfillment 13 company for their services. 14 Q. And the obligations of Litle & Company? 15 A. We had to pay the "ulfillment company on 16 behalf of the merchant and we had our normal 17 obligations as — for routine payment 18 processing, as well. 19 Q. That were outlined in the Member Agreement? 20 A. Yes. 21 (One-page document entitled "US 22 6,941,281 Bi" is marked Exhibit 23 Number 11 for Identification.) 24 Q. I'm handing you what has been marked Litle 25 Exhibit 11, which are the claims of United 26 Exhibit 11, which are the claims of United 27 In handing you what has been marked Litle 28 Extens Patent 6941281. If shows it's 29 Just the last page of the Patent Column 7 3 and 8. 4 M. EDELMAN: I'll object to the 29 extent that you're excerpting a page from an 6 entire patent and also not showing Mr. Litle 30 the patent, and also not show him the 6 arguments the parties have made with the 67 file list of the patent. 31   |          |  | _    |  |
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| behalf of the merchant and we had our normal obligations as — for routine payment processing, as well.  7  O. That were outlined in the Member Agreement? 20 A. Yes.  7  (One-page document entitled "IJS 21 (One-page document entitled "IJS 22 6,941,281 BJ" is marked Exhibit 22 MR. GRAY: Last week sometime.  7  Number 11 for Identification.) 22 MR. EDELMAN: Ckay.  8  Number 11 for Identification.) 23 MR. SMITH: I'd like to note, we're not going to object to the line of questioning, certainly, but Mr. Litle is 25 Just the last page of the Patent Column 7 and 8. 3 Just the last page of the Patent Column 7 and 8. 4 MR. EDELMAN: I'll object to the extent that you're excerpting a page from an entire patent and also not showing Mr. Litle 7 the propused construction of the terms of the patent, and also not show him the arguments the parties have made with the 12 for loyourself? MR. SMITH: Just 1 and 10? 14 Q. Just 1 and 10. 15 A. Alf right. 16 Q. Do you understand those two claims? MR. EDELMAN: Same objections. 17 MR. EDELMAN: Same objections. 18 A. I think so. (Document entitled "Little & Co., Invalidity Claim Chart, United 21 States Patert No. 6,941,281" is  |          |  | _    | you, and ask you to tell us it what we've  |
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| Number 11 for Identification.)  Number 12 for Identification.)  Number 12 for Identification.)  Number 13 for Identification.)  Number 14 for Identification.)  Number 15 for Identification.)  Number 16 Identification.)  Number 17 for Identification.)  Number 17 for Identification.)  Number 18 for Identification.)  Number 19 for Identification.)  Number 19 for Identification.)  Number 19 for Identification.)  Number 19 for Identification.)  Number 11 for Identification.)  Number 12 for Identification.)  Number 17 for Identification.)  Number 18 for Identification.)  Number 18 for Identification.)  Number 19 for Identification.)  Number 11 for Identification.)  Number 12 for Identifies In  | 21       |  |      |  |
| 24 Q. I'm handing you what has been marked Litle 25 Exhibit 11, which are the claims of United  26 Exhibit 11, which are the claims of United  27 It is states Patent 6941281. It shows it's 28 Just the last page of the Patent Column 7 29 and 8. If shows it's 30 and 8. If shows it's 40 MR. EDELMAN: I'll object to the extent that you're excerpting a page from an entire patent and also not showing Mr. title 41 the proposed construction of the terms of the patent, and also not show him the arguments the parties have made with the Rie list of the patent. 41 Q. Okay, could you please read Claims 1 and 10? 42 Q. Just 1 and 10. If you want to do it, go ahead. You testified that you understand the terms that are used in the patent; is that correct? 43 It here as a fact witness. He is not rendening a conclusion on patent validity. He is here simply to testify as a factuar witness. I just wanted to make that clear before. 44 Just wanted to make that clear before. 55 MR. EDELMAN: And again, I want to object to the extent that this is oeing shown to Mr. Litle without the discussion of what the terms are construction. It's misleading, putting the witness in an impossible situation. If you want to do it, go ahead. 46 You testify as a factuar witness. I just wanted to make that clear before. 47 MR. EDELMAN: And again, I want to object to the extent that this is oeing shown to Mr. Litle without the discussion of what the terms are construction. It's misleading, putting the witness in an impossible situation. If you want to do it, go ahead. 48 You testified that you understand the terms that are used in the patent; is that correct? 49 MR. EDELMAN: Same objections. 40 Just 1 and 10. 41 Condition on patent validity. He is here simply to testify as a factuar witness. I just wanted to make that clear before. 50 MR. EDELMAN: And again, I want to object to the extent that this is oeing shown to Mr. Litle without the discussion of what the terms are construction. It's misleading. 51 MR. EDELMAN: Same objections. 52 MR. EDELMAN: Same obj | 22       |  |      |  |
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| 2 just the last page of the Pafent Column 7 3 and 8.  4 MR. EDELMAN: I'll object to the 5 extent that you're excerpting a page from an entire patent and also not showing Mr. Little 7 the proposed construction of the terms of 8 the patent, and also not show him the 9 arguments the parties have made with the file list of the patent. 11 Q. Okay, could you please read Claims 1 and 10: 12 to yourself? 13 MR. SMITH: Just 1 and 10? 14 Q. Just 1 and 10. 15 A. All right. 16 Q. Do you understand those two claims? 17 MR. EDELMAN: Same objections. 18 A. I think so. 19 (Document entitled "Little & Co., Invalidity Claim Chart, United 21 States Patent No. 6,941,281" is   |          |  | Ι.   |  |
| and 8.  MR. EDELMAN: I'll object to the extent that you're excerpting a page from an entire patent and also not showing Mr. Little the proposed construction of the terms of the patent, and also not show him the arguments the parties have made with the file list of the patent.  Q. Okay, could you please read Claims 1 and 10? The polyouself?  MR. SMITH: Just 1 and 10? The patent is that are used in the patent; is that correct?  MR. EDELMAN: And again, I want to object to the extent that this is being shown to Mr. Little without the discussion of what the terms are construed to mean, or the parties' construction. It's misleading, putting the witness in an impossible situation. If you want to do it, go ahead.  Q. Just 1 and 10. The patent is that correct?  MR. EDELMAN: Same objections. The patent is that are used in the patent; is that correct?  MR. EDELMAN: Same objections. The patent is that are used in the patent; is that correct?  MR. EDELMAN: Same objections. The patent is that are used in the patent; is that correct?  MR. EDELMAN: Same objections. The patent is that are used in the patent; is that correct?  MR. EDELMAN: Same objections. The patent is the patent is the patent is the patent in the pat | _        |  |      |  |
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| 6 entire patent and also not showing Mr. Little 7 the proposed construction of the terms of 8 the patent, and also not show him the 9 arguments the parties have made with the 10 Gile list of the patent. 11 Q. Okay, could you please read Claims 1 and 10 12 to yourself? 13 MR. SMITH: Just 1 and 10? 14 Q. Just 1 and 10. 15 A. Ali right. 16 Q. Do you understand those two claims? 17 MR. EDELMAN: Same objections. 18 A. I think so. 19 (Document entitled "Little & Co., 20 Invalidity Claim Chart, United 21 States Patert No. 6,941,281" is   |          |  |      |  |
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| 19 (Document entitled "Little 8. Co., 19 12, in the first row, the claim recites, 20 Invalidity Claim Chart, United 21 States Pater t No. 6,941,281" (s 21 comprising."  |          |  |      |  |
| 20 Invalidity Claim Chart, United 20 "A method for automated payment, 21 States Patent No. 6,941,281" (s 21 comprising."   |          |  |      | 12 in the first row the claim register.  |
| 21 States Paterit No. 6,941,281" (s 21 comprising."  |          |  | 1    |  |
| and a state of the santones  |          |  | 1    | the state of the s |
|  | _        |  |      |  |
| T  |          | ·-   | 122  | O. No and what we've come and the ressort I  |
|  |          |  |      | had you read Claims 1 through 10 is because I  |
| DE La baston de la sinne   |          |  |      |  |
| 25 Exhibit 12, which is a chart that we have 25 we have broken down the claims   | J 25     | exhibit 12, which is a chart that we have      | 40   | ANG TRACE INFECTIONALL DIS COMPS   |

32 (Pages 122 to 125)

|  | 125  | 128  |
|--|--|--|
| 1  |  | 1 MR. EDELMAN: I can put my  |
|  | Q and if you would like to refer back to   | 2 objections on the record.  |
| 3  |  | 3 MR, SCHUURMAN: Well, make them   |
| 4  |  | 4 short.   |
| I -  | A. Okay.   | 5 MR, EDELMAN: I will make them as   |
| ı -  | • •  | 6 long as I want to make them.   |
| 6  |  | 7 Q. Based on your understanding after being in  |
| 7  |  |  |
| 8  | you've testified about today and stated  | 8 the card processing industry for about 25  |
| 9  |  | 9 years<br>10 A. More than that.   |
| 10   |  |  |
| 11   |  | 11 Q. I'm sorry? Longer than that?   |
| 12   |  | 12 MR. SMITH: 25-plus.   |
| 13   |  | 13 Q. 25-plus years.<br>14 MR, EDELMAN: Don't make him a   |
| 14   |  |  |
| 15   |  | 15 patent attorney.  |
| 16   |  | 16 Q. Duithe —<br>17 MR. GRAY: I'm sorty. Is that an   |
| 17   |  |  |
| I3 -   | Q. Was the fulfillment center operation that   | 18 objection?<br>19 MR. EDELMAN: Yes, It Is.   |
| 19   | ,  | 19 MR. EDELMAN: Yes, it is. 20 MR. GRAY: I didn't hear   |
| 20   |  |  |
|  | A. To the fulfillment center?  | 21 "objection."<br>22 MR. FOELMAN: Objection. It   |
|  | Q. Yes.  | 23 doesn't make him a patent attorney. Go  |
| IP ——  | A. Yes.  | 24 ahead.  |
|  | Q. What about for the wire fee you discussed?  | 25 MR. GRAY: Please limit your   |
| [ 43   | A. For the what?   | 25 (FIR. GRAT: FIEBSC III/IR YOU   |
|  |  |  |
| ll .   | 127  | 129  |
| ١,   | 0. For the wire fee: was that a method for   |  |
|  | Q. For the wire fee: was that a method for   | 129 1 objections to objections as to form. 2 MR. EDELMAN: It was a beautiful   |
| 2  | Q. For the wire fee: was that a method for<br>automated payment?   | 1 objections to objections as to form.   |
| 2<br>3   | <ul><li>Q. For the wire fee: was that a method for<br/>automated payment?</li><li>A. Yes.</li></ul>  | objections to objections as to form.     MR. EDELMAN: It was a beautiful     objection as to form.   |
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| 2<br>3<br>4<br>5<br>6  | <ul><li>Q. For the wire fee: was that a method for automated payment?</li><li>A. Yes.</li><li>Q. And was equipment — payments for equipment</li></ul>  | objections to objections as to form.  MR. EDELMAN: It was a beautiful  objection as to form.  Q. Okay. Does the right-hand column, does that recite ditations to the documents you've.   |
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| 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17<br>18<br>19<br>20<br>21<br>22<br>23       | <ul> <li>Q. For the wire fee: was that a method for automated payment?</li> <li>A. Yes.</li> <li>Q. And was equipment — payments for equipment rental and purchase, was that a method for automated payment?</li> <li>A. Yes.</li> <li>Q. Looking now at the second row of the first page of Litle 12, the claim says "At a merchant, accepting a customer identifier as payment from the customer." Can you look at the right-hand column and tell me whether or not those citations from the Litle documents show that a merchant accepted the customer identifier as payment from the customer?  MR. EDELMAN: Objection. Calls for daim construction, beyond the scope of the testimony, misleading, lack of foundation.</li> <li>Q. Labsolutely do not want you to try to construe the claims.  MR. EDELMAN: The has to construct the claim to answer the question.  MR. SCHUJRMAN: Why don't you ask him during your cross and stop interfering.</li> </ul> | objections to objections as to form.  MR. EDELMAN: It was a beautiful objection as to form.  Q. Okay. Does the right-hand column, does that recite citations to the documents you've testifled about today that show a merchant accepts a customer dentifier as payment from a customer?  MR. EDELMAN: Same objection.  Q. Please take as much time as you need.  A. And the question is, at that time, did we accept the customer identifier as a payment for transaction, and the answer is we did.  Q. The merchants did or Little & Company did?  A. The merchants accepted it.  Q. As described in the quotes in this chart that you're reading?  MR. EDELMAN: Same objection.  MR. EDELMAN: Same objection.  A. Right.  Q. Okay. Looking at the bottom row on Page 2 of Little Exhibit 12, the claim states and electronically forwarding information related to the payment to a computerized   |

33 (Pages 126 to 129)

13G 132 column illustrate that Litle & Company. 1 needed for our process, and then the 2 2 settlement information might have gone to electronically -- or that the merchant 3 3 NDC first and then through NPC, but it was electronically forwarded information related 4 4 part of our contract, and the settlement to the payment to Little & Company? 5 information sometimes then went directly to MR. EDELMAN: Objection. Calls for 5 us. Could go any one of those ways. 6 claim construction, beyond beyond the scope 6 7 Q. Whether the card was present or not present, 7 of the deposition, tack of foundation. was the information related to the payment, R 8 A. Yes. such as the card number and the payment 9 9 Q. And to clarify, you said that using --10 pursuant to the Member Agreement, which is 1D amount --11 A. Yes. 11 Little Exhibit 4, the merchant would accept 12 credit cards, debit cards, and charge cards, 12 Q. -- was that electronically forwarded? 13 A. Yes. In the card-not-present, it was always 13 such as an American Express card? directly forwarded to us. 14 14 A. That's correct. 15 Q. Electronically? 15 Q. And did you also testify that the merchant. 15 A. Yes. When it was card-not-present, it was 16 would accept those cards using a telephone. always forwarded electronically, but the 17 17 and inputting the credit card number into a 18 route that it took could vary, depending on 1₿ computer? 19 A. That's one way, yes. 19 the dircumstances. 20 Q. Okay. Thank you. On Page 3 of Little MR. EDELMAN: I just want to put an 20 objection on the record. It wasn't clear to 21 Exhibit 12, the next portion of the darm. 21 22 me vague and ambiguous as to which 22 states "at the computerized merchant." 23 processor, acquiring the information related. 23 merchants you're referring to. 24 Q. Which merchants would accept a credit card 24 to the payment from the merchant, 25 authorizing and settling the payment, and 25 via telephone? 133 13 L forwarding at least a portion of the payment A. That's how the card-not-present merchants 1 to a computerized payment receiver as received most of their transactions. When 2 payment of at least a portion of an 3 3 they didn't receive them by telephone was 4 obligation made by the merchant." 4 when they -- or by an order blank sent 5 through the mail. It was typically at a 5 A. Uh-huh. O. Could you please read the citations in the warehouse sale or something like that. Then Ь 7 they were operating just like a normal 7 right-hand column, and it flows over on to 8 Page 4 and 5, and tell me whether that В retailer operating. accurately recites the portions of the 9 9 Q. And was the process by which those merchants. 10 agreements you've testified to today. forwarded information, such as the card, 10 MR. EDELMAN: I'm sorry. Was your information and payment amount, to Little &11 11 question getting at whether it reflects the 12 Company in the authorization step in Litle 12 LD, was that process different for 13 language of the Claim 10? 13 card not-present or card-present 14 MR, GRAY: No. I asked whether it 14 15 transactions? 15 accurately reflects ---MR. EDELMAN: Reflects the 16 A. How they actually forwarded the Information 16 to us? Yeah. Actually, sometimes we got 17 agreements. 17 18 Q. Do you understand my question? 18 the settlement information -- well, the 19 A. Yeah. You are asking -- I'l read it back. 19 authorization process might not -- I can't

34 (Pages 130 to 133)

As I understand it, you're asking me to look

patent or not, you're asking whether those

at the citations and without trying to

citations are accurate. Is that true?

interpret whether they comply with the

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23 24

25 Q. Right.

remember. It depended on the situation.

we were responsible for it. It might have

information would have come to us through NDC, the authorization information, which we

gone directly to NDC, and then that

Might not have actually gone through us, but

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| 134   1 MR. EDELMAN: That's fine. 2 A. I have a question. In the first sentence, it says, at the end, "Management fee to Utile & Company, or order." I'm not sure that's either what it says. That's 10 Libe & Company. Or order." The object on that's either what it says. That's 10 Libe white? 7, I believe? 3 I Delleve that is what it says. That's 10 Libe white? 7, I believe? 4 MR. EDELMAN: I'm sorry. Where is the witness referring? 5 MR. GRAY: The bottom of Page 3, 1 Libe bottom paragraph in the right column, 13 the fourth line down. 13 Then, EDELMAN: Oh, I see it. Thanks. 14 MR. EDELMAN: Oh, I see it. Thanks. 15 Thanks. 16 A. Yesh, I think that was a typo and it should have probably said — it should have probably referred to what we were thinking of setting up or maybe had set up as a separate operation to do postage financing. 12 Q. Okay. Outside of Utile & Company? 2 A. Right. Well, it would have been owned by 10 roughly the same people, but it would have been a separate operation. 12 Q. That's in the Member Agreement? 2 A. Yeah. I'd like to look at the definition of 10 prepayments." 2 A. Yeah. I'd like to look at the definition of 10 prepayments." 2 A. Yeah. I'd like to look at the definition of 10 prepayments." 3 MR. EDELMAN: Same objections. 12 Q. And do you have arry questions about what that — do you understand what the claim language in the left-hand column requires? 3 MR. EDELMAN: Same objections. 14 A. As I understand k, yes. 15 Q. On a do you have arry questions about what that that — do you understand what the claim language is a big problem. 15 Q. The language is a big problem. 16 Q. Do all thread datains accurately reflect your understanding of the description in the left column is an intensity of the description in the left hand column, to you understand what the claim language is a big problem. 16 Q. Do all thread datains accurately reflect your understanding he cause is the problem. 17 Q. The language is  |   |  |
|--|---|--|
| 2 A. I have a question. In the first sentence, it says, at the end, "Management fee to that's either what it says or what it should have said.  7 Q. I believe that s what it says. That's buttle exhibit 7, I believe?  9 MR. EDELMAN: I'm sorry. Where is the witness referring?  10 MR. GRAY: The bottom of Page 3, I'le bottom paragraph in the right column, the fourth line down.  11 MR. EDELMAN: Oh, I see it.  12 Thanks.  13 I'le bottom paragraph in the right column, the fourth line down.  14 MR. EDELMAN: The bottom of Page 3, I'le bottom paragraph in the right column, the fourth line down.  15 MR. EDELMAN: Oh, I see it.  16 A. Yesl, I think that was a typo and it should have probably said — it should have probably said — it should have probably seriered to what we were thinking of setting up or maybe had set up as a separate operation to do postage financing.  16 Q. Oo, Outside of Litle & Company?  17 A. Yeal, I'd like to look at the definition of "prepayments."  18 Q. That's in the Member Agreement?  19 A. Yeah. I'd like to look at the definition of "prepayments."  10 That's in the Member Agreement?  11 citations in the right column?  2 A. Yeah. I'd like to look at the definition of "prepayments."  2 Q. And do you have any questions about what the lainuige in the left-hand column requires?  10 MR. EDELMAN: Same objections.  11 MR. EDELMAN: Same objections.  12 Q. And do you have any questions about what the daim language in the left-hand column is questions? Sorry, Let me sant vow, and the left-hand column and that — do you understand what the chaim language in the left-hand column is a reflect to the next row, and the left-hand column and the right hand column and the right have a representation?  18 A. A I understand the computer pa | 134   | 136  |
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| that's either what it says or what it should have said. Q. I believe that is what it says. That's illuse bithict 7, I believe? Hille Exhibit 7, I believe? MR. EDELMAN: I'm sorry. Where is the witness referring? MR. GRAY: The bottom of Page 3, like bottom paragraph in the right column, the fourth line down. MR. EDELMAN: Oh, I see it. Thanks. MR. EDELMAN: Oh, I see it. Thanks. MR. EDELMAN: Oh, I see it. Thanks. A Yeah, I think that was a typo and it should have probably said — it should have been a separate operation. Q. Okay. Outside of Utile & Company? A Right. Well, it would have been owned by roughly the same people, but it would have been a separate operation. Do you have any other questions about the definition of prepayments.  1 citations in the right column? A N. Chay. Yes, that's accurate. Q. Do you have any other questions about what that — do you understand what the claim language in the left-hand column is on those pages? MR. EDELMAN: Same objections. MR. SMITH: Do you understand that claim the claim language is misleading. He can talk about what the words say, but 'claim fanguage' is a blg problem.  Q. The language in the left-hand column is on those pages?  A A A a language in the right calons?  A A I would say I understanding that the claim accurate perfection of exactly that — it to do not make the word of the def |   | · -  |
| 6 have said. 7 Q. I believe that s what it says. That's 8 Uibe Exhibit 7, I believe? 9 MR. EDELMAN: I'm sorry. Where is 10 the witness referring? 11 MR, GRAY: The bottom of Page 3, 12 Uibe bottom paragraph in the right column, 13 the fourth line down. 14 MR. EDELMAN: Oh, I see it. 15 Thanks. 16 A. Yesh, I tilink that was a typo and it should have probably said — it should have probably referred to what we were thinking of setting up or maybe had set up as a separate operation to do postage financing. 12 Q. Okay. Outside of Lible 8. Company? 12 A. Right. Well, it would have been owned by roughly the same people, but it would have been owned by 23 roughly the same people, but it would have been owned by 24 been a separate operation. 25 Q. Do you have any other questions about the ditations in the right column? 2 A. Yeah. I'd like to look at the definition of 2 prepayments." 3 Q. And the language in the left column requires? 4 Q. That's in the Member Agreement? 5 A. Okay. Yes, that's accurate. 6 Q. Do all these citations on Pages 3 through 5 accurately reflect your understanding of what the language in the left column requires? 10 MR. EDELMAN: Same objections. 11 A. As I understand it, yes. 12 Q. And do you have any questions about what the the language in the left-hand column is on those pages? 13 MR. EDELMAN: Same objection. 14 MR. EDELMAN: Same objections. 15 pages? 16 MR. EDELMAN: Same objection. 17 MR. SMITH: Objection. I think that had been in the left-hand column, do the right-hand cattations accurately reflects the Little documents and — well, if it accurately reflect your understand what the daim language is a big problem. 18 'daim language' is a big problem. 19 Talk about what the words say, but 'claim fanguage' is a big problem. 20 The language that had the words say, but 'claim fanguage' is a big problem. 21 Q. That's printed in the left-hand column, do the right-hand cattations accurately reflect your understand what the claim language in the left column requires? 22 A. Balage is a big problem. 23 A.  |   | l  |
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| make the witness referring?  MR. GRAY: The bottom of Page 3, the bottom paragraph in the right column, as reflection of exactly that— MR. GRAY: The bottom of Page 3, the bottom paragraph in the right column, as reflection of exactly that— MR. EDELMANI: Oh, I see it. Thanks.  MR. EDELMANI: Oh, I see it. Thanks.  A. Yeal, I think that was a typo and it should have probably referred to what we were thinking of setting up or maybe had set up as a separate operation to do postage financing. Q. Okay. Outside of Litle & Company? A. Right, Well, it would have been owned by roughly the same people, but it would have been a separate operation. Q. Do you have any other questions about the  citations in the right column? A. Yes, It also the description in the left-hand column requires? A. Okay. Yes, that's accurate. Q. Do all these citations on Pages 3 through 5 accurately reflect your understanding of the description in the left-hand column requires? A. Okay. Yes, that's accurate. A. Okay. Yes, that's accurate. C. Do all these citations on Pages 3 through 5 accurately reflect your understanding of what the language in the left-column requires? A. As I anderstand it, yes. A. As I anderstand it, yes. A. Gray. Yes, that's accurate and your understanding of the description in the left-hand column requires? A. Okay. Yes, that's accurate. A. Yes, It inderstand the computer payment receiver as what I call the third party, and if that's the case, yes, it does accurately reflect tit. A. Yes. I understand the computer payment receiver as what I call the third party, and if that's the case, yes, it does accurately reflect tit. A. Yes. I understand the computer payment receiver as what I call the third party, and if that's the case, yes, it does accurately reflect title. A. Yes. I understand the computer payment receiver as what I call the third party, and if that's the case, yes, it does accurately reflect the Little accupied credit card numbers? Sorry. Let me spirited and numbers? Sorry. Let me spirited and numbers? Sorry. Let me s |   |  |
| the witness referring?  MR. GRAY: The bottom of Page 3, the fourth line down.  MR. EDELMAN: Oh, I see it. Thanks.  16 A. Yeeli, I think that was a typo and it should have probably referred to what we were thinking of setting up or maybe had set up as a separate operation to do postage financing. 22 Q. Okay. Outside of Utle & Company? 22 A. Right. Well, it would have been owned by roughly the same people, but it would have been a separate operation. 25 Q. Do you have any other questions about the felt-hand column? 26 Q. Do all these citations on Pages 3 through 5 accurately reflect your understanding of what the language in the left-column requires? 29 And do you have any questions about what that — do you understand what the claim language is the left-hand column is a reflection of exactly that — Q. Okay. 12 A. As I auderstand he pottoms about the fourth line down. 13 Q. And I'm going to be asking the same questions about the fish column? 14 A. The question is the right column? 15 A. Okay. 16 A. Nes. 16 A. Okay. 16 A. As I auderstand fix yes. 16 A. Okay. 16 A. As I auderstand knyes. 17 A. Okay. 17 A. Okay. 18 A. Do you understand what the claim language in the left-hand column is a reflection of exactly that — and the saking the same questions about the fish column. 18 A. The question is the right column? 18 A. The question is the same; is this an accurate prefect your understanding of the description in the left-hand column? 19 A. Yes. I understand the computer payment receiver as what I call the third party, and if that's the case, yes, it does accurately reflect tit. 5 Q. Looking at the next row, and the left-hand column begins with the Number 2 — A. Ves. I understand the computer payment receiver as what I call the third party, and if that's the case, yes, it does accurately reflect tit. 5 Q. Looking at the next row, and the left-hand column begins with the Number 2 — A. Ves. I understand the computer payment receiver as what I call the third party, and if that's the case, yes, it does accurately reflect ti |   |  |
| Ille bottom paragraph in the right column, the fourth line down.  MR. EDELMAN; Oh, I see it.  Thanks.  A Yeeli, I think that was a typo and it should have probably said — it should have probably referred to what we were thinking of setting up or maybe had set up as a separate operation to do postage financing.  Q Okay. Outside of Litle & Company?  A Rejath. Well, It would have been owned by roughly the same people, but it would have been a separate operation.  Do you have any other questions about the distributions in the right column?  A Yeah. I'd like to look at the definition of prepayments."  A Okay. Yes, that's accurate.  Do all these citations on Pages 3 through 5 accurately reflect your understanding of the left-hand column requires?  MR. EDELMAN: Same objections.  MR. FDELMAN: Same objections.  MR. FDELMAN: Same objection.  MR. SMITH: Objection. I think and data that — do you understand what the claim language" is misleading. He can talk about what the words say, but "daim language" is misleading. He can talk about what the words say, but "daim language" is a big problem.  MR. FDELMAN: Same objections.  MR. SMITH: Objection. I think column, do the right-hand column and column, do the right-hand dottions accurately reflect your understanding?  MR. FDELMAN: Same objection.  MR. FDELMAN: Same objections.  MR. FDELM |   |  |
| the bottom paragraph in the right column, the fourth line down.  MR. EDELMAN: Oh, I see it.  Thanks.  A Yeeli, I think that was a typo and it should have probably referred to what we were thinking of setting up or maybe had set up as a separate operation to do postage financing.  Regills. Well, it would have been owned by roughly the same people, but it would have been a separate operation.  Do you have any other questions about the citations in the right column?  A Yeah. I'd like to look at the definition of "prepayments."  A Okay. Yes, that's accurate.  Do all these citations on Hages 3 through 5 accurately reflect your understanding of what the language in the left-hand column requires?  MR. EDELMAN: Same objections.  A As I understand it, yes.  MR. EDELMAN: Same objections.  MR. SMITH: Objection. I think that was a typo and it should that be do you understanding. He can talk about what the words say, but "claim language" is misleading. He can talk about what the words say, but "claim language" is misleading. He can talk about what the words say, but "claim language" is misleading. He can talk about what the words say, but "claim language" is misleading. He can talk about what the words say, but "claim language" is misleading. He can talk about what the words say, but "claim language" is misleading. He can talk about what the words say, but "claim language" is a big problem.  MR. EDELMAN: Same objection.  MR. SMITH: Objection. I think required in the left-hand column, do the right-hand column and column, do the right-hand column and column, do the right-hand ordumners accurately reflects the lift accurately re |   |  |
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| MR. EDELMAN; Oh, I see it.  Thanks.  A. Yeal, I think that was a typo and it should have probably referred to what we were thinking of setting up or maybe had set up as a courate operation to do postage financing.  Q. Okay, Outside of Utile & Company?  A. Right. Well, it would have been comed by roughly the same people, but it would have been a separate operation.  Do you have any other questions about the citations in the right column?  A. Yeah. I'd like to look at the definition of "prepayments."  Q. Do all these citations on Pages 3 through 5 accurately reflect your understanding of what he language in the left-column requiters?  MR. FDELMAN: Same objections.  A. A. I understand it, yes.  MR. A. The question solute representation?  A. Yes, it is.  A. Ye |   |  |
| Thanks.  16 A. Yeali, I think that was a typo and it should have probably said — it should have probably referred to what we were thinking of setting up or maybe had set up as a separate operation to do postage financing.  27 Q. Okay. Outside of Litle & Company?  28 A. Right. Well, it would have been cowned by roughly the same people, but it would have been a separate operation.  29 Q. Do you have any other questions about the been a separate operation.  29 Q. Do you have any other questions about the first sin the right column?  20 Q. Tat's in the Member Agreement?  30 Prepayments."  40 Q. That's in the Member Agreement?  5 A. Okay. Yes, that's accurate.  6 Q. Do all these citations on Pages 3 through 5 accurately reflect your understanding of what the language in the left column requires?  10 A. As I understand it, yes.  11 A. As I understand it, yes.  12 Q. And do you have ary questions about what the language in the left-hand column is on those pages?  13 MR. EDELMAN: Same objections.  14 In this document. So beginning on Page 5, would you please read the citations in the right column?  24 A. The question is the same; is this an accurate representation?  25 Q. Do those citations accurately reflect your understanding of the description in the left-hand column?  26 A. Yes, it is.  27 Q. Do those citations accurately reflect your understand the computer payment receiver as what I call the third party, and if that's the case, yes, it does accurately reflect tit.  5 Q. Looking at the next row, and the left-hand column begins with the Number 2 receiver as what I call the third party, and if that's the case, yes, it does accurately reflect tit.  5 Q. Looking at the next row, and the left-hand column and tell me if that accurately reflect tit.  6 Q. And do you have ary questions about what the laim language in the left-hand column is on those pages?  18 MR. EDELMAN: Same objections.  19 The language in the left column requires?  10 MR. SMITH: Objection.  11 A. As I understand it, yes.  12 Q. The language in the lef |   |  |
| 16 A. Yeah, I think that was a typo and it should have probably said — it should have probably said — it should have probably said — it should have probably referred to what we were thinking of setting up or maybe had set up as a separate operation to do postage financing. 21 Q. Okay. Outside of Ultle & Company? 22 A. Right. Well, it would have been owned by roughly the same people, but it would have been a separate operation. 23 Q. Do you have any other questions about the left-hand column? 24 A. Yeah. I'd like to look at the definition of "prepayments." 35 A. Okay. Yes, that's accurate. 36 Q. Do all these citations on Pages 3 through 5 accurately reflect your understanding of what the language in the left column requires? 36 MR. EDELMAN: Same objections. 37 MR. EDELMAN: Same objection. 38 MR. EDELMAN: Same objection. 39 MR. EDELMAN: Same objection. 30 MR. SMITH: Objection. I think daim language is insleading. He can talk about what the words say, but "claim anguage" is a big problem. 39 A. As a layman's understanding because lawyers 30 As a curately reflect your understanding? 31 A. Yes. I understand the computer payment in the left-hand column and if that's the case, yes, it does accurately reflect it. 30 Colong at the next row, and the left-hand column begins with the Number 2 · credit card number as the customer identifier." Could you please look at what the daim language is misleading. He can talk about what the words say, but "claim anguage" is a big problem. 31 A. As a layman's understanding because lawyers 32 A. As a layman's understanding because lawyers 34 A. As a layman's understanding because lawyers   |   | · · · · · · · · · · · · · · · · · · ·  |
| have probably said — it should have probably referred to what we were thinking of setting up or maybe had set up as a separate operation to do postage financing.  20. Okay. Outside of Utile & Company?  21. A. Right. Well, it would have been owned by roughly the same people, but it would have been a separate operation.  22. Do you have any other questions about the distributions in the right column?  23. A. Yeah. I'd like to look at the definition of "prepayments."  24. A. Okay. Yes, that's accurate.  25. Q. Do all these citations on Pages 3 through 5 accurately reflect your understanding of the description in the left-hand column requires?  26. Q. Do all these citations on Pages 3 through 5 accurately reflect your understanding of what the language in the left column requires?  28. A. Okay. Yes, that's accurate.  29. Do bit discussions about what the daim language in the left column requires?  39. MR. FDELMAN: Same objections.  30. As I understand it, yes.  30. Okay. Do all these citations on Pages 3 through 5 accurately reflect your understanding of what the language in the left column requires?  30. Yes, it is.  31. A. Yes. I understand the computer payment receiver as whet I call the third party, and if that's the case, yes, it does accurately reflect it.  30. Looking at the next row, and the left-hand column begins with the Number 2 reflect it.  31. A. Yes. I understand the computer payment receiver as whet I call the third party, and if that's the case, yes, it does accurately reflect it.  31. A. Yes. I understand the computer payment receiver as whet I call the third party, and if that's the case, yes, it does accurately reflect it.  32. Looking at the next row, and the left-hand column begins with the Number 2 reflect it.  33. Carda do you have any questions about what the daim language in the left-hand column is on those pages?  34. As I understand the computer payment receiver as whet I call the first hand column and tell me if that accurately reflects the Little accepted credit card numbers? Sorry. Le |   |  |
| 18 probably referred to what we were thinking of setting up or maybe had set up as a separate operation to do postage financing. 21 Q. Okay. Outside of Little & Company? 22 A. Right. Well, it would have been owned by roughly the same people, but it would have been a separate operation. 25 Q. Do you have any other questions about the been a separate operation. 26 Q. Do you have any other questions about the citations in the right column? 27 A. Yeah. I'd like to look at the definition of prepayments." 28 Q. Trat's in the Member Agreement? 39 A. Okay. Yes, that's accurate. 30 Q. Do all these citations on Pages 3 through 5 accurately reflect your understanding of what the language in the left column requires? 30 MR. FDEI,MAN: Same objections. 31 A. As I understand it, yes. 31 A. Yes. I understand the computer payment receiver as what I call the third party, and if that's the case, yes, it does accurately reflect to. 31 C. Looking at the next row, and the left-hand column begins with the Number 2 receiver in the accepting step comprises accepting a credit card number as the customer identifier." Could you please look at what's clear in the right-hand column and tell me if that accurately reflects the Little accepted credit card numbers? Sorry. Let me start over. That the merchants who processed through Little accepted credit card numbers? Sorry. Let me start over. That the merchants who processed through Little accepted credit card numbers? Sorry. Let me start over. That the merchants who processed through Little accepted credit card numbers? Sorry. Could you look at the clations in the right-hand column and the left-hand c |   |  |
| of setting up or maybe had set up as a separate operation to do postage financing.  Q. Okay. Outside of Uttle & Company?  A. Right. Well, it would have been owned by roughly the same people, but it would have been a separate operation.  Do you have any other questions about the seen a separate operation.  Citations in the right column?  A. Yeah. I'd like to look at the definition of prepayments."  Q. That's in the Member Agreement?  A. Okay. Yes, that's accurate.  A. As I understanding of the description in the left-hand column requires?  MR. EDELMAN: Same objections.  MR. FDELMAN: Same objections.  MR. As I understand the computer payment receiver as whet I call the third party, and if that's the case, yes, it does accurately reflect your understanding of what the language in the left-hand column requires?  MR. FDELMAN: Same objections.  MR. As I understand the computer payment receiver as whet I call the third party, and if that's the case, yes, it does accurately reflect it.  Q. Looking at the next row, and the left-hand column begins with the Number 2 receiver as whet I call the third party, and if that's the case, yes, it does accurately reflect it.  Q. Looking at the next row, and the left-hand column begins with the Number 2 receiver as whet I call the third party, and if that's the case, yes, it does accurately reflect it.  Q. Looking at the next row, and the left-hand column begins with the Number 2 receiver as whet I call the third party, and if that's the case, yes, it does accurately reflect it.  Q. Looking at the next row, and the left-hand column begins with the Number 2 receiver as whet I call the third party, and if that's the case, yes, it does accurately reflect it.  Q. Looking at the next row, and the left-hand column and tell me if that accurately reflects the understanding the call in the left-hand column and tell me if that accurately reflects the left-hand column and tell me if the accepted cre |   | 1  |
| 20 Okay. Outside of Little & Company? 21 Q. Okay. Outside of Little & Company? 22 A. Right. Well, it would have been owned by roughly the same people, but it would have been a separate operation. 25 Q. Do you have any other questions about the left-hand column? 26 A. Yeah. I'd like to look at the definition of 3 "prepayments." 27 A. Yeah. I'd like to look at the definition of 3 "prepayments." 28 A. Okay. Yes, that's accurate. 39 A. Oxay. Yes, that's accurate. 40 Q. Do all these citations on Pages 3 through 5 accurately reflect your understanding of the case, yes, it does accurately receiver as what I call the third party, and if that's the case, yes, it does accurately reflect it. 30 Q. And do you have any questions about what that — do you understand what the claim language in the left-hand column is on those pages? 31 A. Yes, it is. 32 Q. Do those citations accurately reflect your understanding of the description in the left-hand column? 31 A. Yes, it is. 32 Q. Do those citations accurately reflect your understanding and reflect your understanding? 32 A. Yes, it is. 33 Yes, I understanding the description in the left-hand column? 34 Fight Many Same objections. 35 A. Yes, it is. 36 Q. Do those citations accurately reflect your understanding and the description in the left-hand column? 36 If A. Yes, I understand the computer payment receiver as what I call the third party, and if that's the case, yes, it does accurately reflect it. 36 Q. Do all these citations on Pages 3 through 5 accurately reflect your understanding a column begins with the Number 2 receiver as what I call the third party, and if that's the case, yes, it does accurately reflect it. 37 A. Uh-huh. 38 Q. — it says "The method of calm I wherein the accepting step comprises accepting a credit card number as the customer the accepting step comprises accepting a credit card number as the customer the accepting step comprises accepting a credit card number as the customer that accurately reflects the Little documents and — well, if it accurately refl |   |  |
| 21 Q. Okay. Outside of Litle & Company? 22 A. Right. Well, it would have been owned by roughly the same people, but it would have been a separate operation. 25 Q. Do you have any other questions about the definition of citations in the right column? 2 A. Yeah. I'd like to look at the definition of propeyments." 4 Q. That's in the Member Agreement? 5 A. Okay. Yes, that's accurate. 6 Q. Do all these citations on Pages 3 through 5 accurately reflect your understanding of the description in the left-hand column pequires? 10 MR. FDELMAN: Same objections. 11 A. As I understand it, yes. 12 Q. And do you have any questions about what that — do you understand what the claim that — do you understand what the daim language in the left-hand column is on those pages? 16 MR. EDELMAN: Same objection. 17 MR. SMITH: Objection. I think defail language is a big problem. 28 A. As a layman's understanding because lawyers 29 Do those citations accurately reflect your understanding of the description in the left-hand column? 20 That's in the demonstration of the description in the left-hand column? 21 A. Yes, It is. 22 Q. Do those citations accurately reflect your understanding of the description in the left-hand column? 21 A. Yes. I understand the computer payments. 21 A. Yes. I understand the computer payments. 22 The with the title description in the left-hand column? 23 In A. Yes, it is. 24 Q. Do those citations accurately reflect your understanding of the description in the left-hand column? 24 Left-hand column? 25 MR EDELMAN: Same objections. 26 Q. That's the case, yes, it does accurately reflect that hird party, and if that's the case, yes, it does accurately reflect that hird party, and if that's the case, yes, it does accurately reflect that hird party, and if that's the case, yes, it does accurately reflect that hird party, and if that's the case, yes, it does accurately reflect that hird party, and if that's the case, yes, it does accurately reflect that hird party, and if that's the case, yes, it does accurately reflect t | 19 of setting up or maybe had set up as a   | 19 accurate representation?  |
| 22 A. Right. Well, it would have been owned by roughly the same people, but it would have been a separate operation. 25 Q. Do you have any other questions about the been a separate operation. 26 Q. Do you have any other questions about the left-hand column? 27 A. Yeah. I'd like to look at the definition of "prepayments." 38 Q. That's in the Member Agreement? 39 A. Okay. Yes, that's accurate. 40 Q. Do all these citations on Pages 3 through 5 accurately reflect your understanding of what the language in the left column requires? 41 Q. As I understand it, yes. 42 Q. And do you have any questions about what that — do you understand what the claim language in the left-hand column is on those pages? 41 MR. EDELMAN: Same objection. 42 A. As I anderstand it, yes. 43 I understand the computer payment receiver as what I call the third party, and if that's the case, yes, it does accurately reflect it. 44 Q. Looking at the next row, and the left-hand column begins with the Number 2 or the accepting step comprises accepting a credit card number as the customer that the third party and if that's the accepting step comprises accepting a credit card number as the customer that accurately reflects the Little accurately reflects the Little accurately reflects that Little accepted credit card numbers? Sorry. Let me start over. That the menchants who processed through Little accepted credit card numbers? Sorry. Let me start over. That the menchants who processed through Little accepted credit card numbers. 40 MR. SMITH: Do you understand that question? 41 A. Yes. I understand the computer payment in the left-hand column and if that's the case, yes, it does accurately reflect it. 42 Q. Looking at the next row, and the left-hand column begins with the Number 2 or the customer the accepting step comprises accepting a credit card number as the customer that accurately reflects the Little accurately reflects the L | 20 separate operation to do postage financing.  | 20 Q. Yes.   |
| roughly the same people, but it would have been a separate operation.  23 Q. Do you have any other questions about the  135 1 citations in the right column?  2 A. Yeah. I'd like to look at the definition of "prepayments."  4 Q. That's in the Member Agreement?  5 A. Okay. Yes, that's accurate.  6 Q. Do all these citations on Pages 3 through 5 accurately reflect your understanding of what the language in the left column requires?  10 MR. EDELMAN: Same objections.  11 A. As I understand the computer payment receiver as what I call the third party, and if that's the case, yes, it does accurately reflect it.  5 Q. Looking at the next row, and the left-hand column begins with the Number 2.  7 A. Uh-huh.  8 Q  | 21 Q. Okay. Outside of Little & Company?  |  |
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| 138   | 140  |
|---|--|
| 1 illustrate that Litle & Company processed   | 1 computer chip on them that did something.  |
| 2 credit card transactions for merchants?   | There are cerds now that carry changing  |
| 3 MR, EDELMAN: Same objections.   | 3 passwords on it, sort of like an RSA   |
| 4 A. Yes. That was our service, processing  | 4 password. There are cards that you can   |
| 5 credit cards for merchants.   | 5 stick your thumb over and it can identify  |
| 6 Q. And on Page 6 of Little Exhibit 12, the  | 6 the fact that your thumb print is really   |
|   | 7 your thumb print and not somebody else's. A  |
| 7 bottom row begins with the number 3, could<br>B you please look at the right-hand column  | 8 Smart Card encompasses all kinds of stuff.   |
|   | 9 A Smart Card typically had to be used in   |
| 9 and, disregarding the first paragraph,  | 10 conjunction with some sort of terminal  |
| 10 please tell me whether those citations   | 11 device. So we didn't handle any Smart Cards   |
| 11 A. Disregarding the first paragraph?   | 12 that I know, except that it's also my   |
| 12 Q. Right, disregarding, and was your testimony<br>13 earlier that Litle would process debit cards  | 13 understanding that some Smart Cards had Visa  |
| l   | 14 or MasterCard identification numbers on   |
| 14 on behalf of merchants?  | 15 them, and if that case, if somebody gave  |
| 15 A. Yes, but they weren't necessarily identified  | 16 those Visa and MasterCard identification  |
| 16 as debit cards.  | 17 numbers over the telephone as a   |
| 17 Q. Right.  | 18 card-not-present card, we would handle it   |
| 18 A. In fact, they were necessarily by the 19 payment networks disguised as debit cards.   | 19 like we'd handle any other credit card,   |
| 19 payment networks disguised as debit cards. 20 O. Could you please read the citations to the  | 20 although we wouldn't necessarily know if was  |
| 1 • •   | 21 a Smart Card.   |
|   | 22 Q. Could you look at Page 9 of Little Exhibit   |
| 22 citations showed that Little accepted debit  | 23 12, the very bottom line, and Page 9, and   |
| 23 cards sorry that Little processed 24 transactions where debt cards were used at  | 24 tell me whether the citations to the Litte  |
| l   | 25 documents in the right-hand column  |
| 25 the merchant?  | 23 BOCHINGIO II BIO HORA COMMINI   |
|   |  |
| 139   | 141  |
| 139<br>1 MR EDELMAN: Same objections  | 141<br>1 illustrate that Litle processed charge card   |
| 1 MR. EDELMAN: Same objections.   | <ol> <li>illustrate that Little processed charge card</li> </ol>   |
| MR. EDELMAN: Same objections.     A. And the question again, is?  | illustrate that Little processed charge card     transactions for its merchants.   |
| MR. EDELMAN: Same objections.     A. And the question again, is?     Q. Whether these citations in the right-hand.  | <ol> <li>illustrate that Little processed charge card</li> <li>transactions for its merchants.</li> </ol>  |
| MR. EDELMAN: Same objections.     A. And the question again, is?     Q. Whether these citations in the right-hand     column illustrate that Little would process   | 1 illustrate that Litle processed charge card<br>2 transactions for its merchants.<br>3 MR. EDELMAN: Same objections as  |
| 1 MR. EDELMAN: Same objections. 2 A. And the question again, is? 3 Q. Whether these citations in the right-hand 4 column illustrate that Little would process 5 debit card transactions for merchants.  | illustrate that Litle processed charge card     transactions for its merchants.     MR. EDELMAN: Same objections as     before,     A. Yes,  |
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| 1 MR. EDELMAN: Same objections. 2 A. And the question again, is? 3 Q. Whether these citations in the right-hand 4 column illustrate that Little would process 5 debit cord transactions for merchants. 6 A. Yes. 7 Q. Do you know what a Smart Card is?   | illustrate that Little processed charge card transactions for its merchants.  MR. EDELMAN: Same objections as before, A. Yes, O. And on the row that's numbered 6, would you please read the citations in the right-hand column and tell me whether that accurately  |
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| MR. EDELMAN: Same objections.  A. And the question again, is?  Q. Whether these citations in the right-hand column illustrate that Litle would process debit card transactions for merchants.  A. Yes.  Q. Do you know what a Smart Card is?  A. Yes.  Q. What is a Smart Card?  A. It's typically a card with a chip on it that carries information about an individual. In those days, they were talking about Smart Cards carrying your medical history and all sinds of stuff on it, and so they would have represented a distributor database of a nundred million nodes, which was in my view ridiculous, and I said so on regular occasions in front of a bunch of credit card people. Now, it's really become a card that carries personal identification information. So a Smart Card is usually an identification device. Prepaid phone cards could be considered Smart Cards because they  | illustrate that Litle processed charge card transactions for its merchants.  MR. EDELMAN: Same objections as before. A. Yes. Q. And on the row that's numbered 6, would you please read the citations in the right-hand column and tell me whether that accurately illustrates that the merchants for whom Litle would process transactions would sometimes accept credit cards at their warehouse sales or otherwise at the merchant location?  MR. EDELMAN: Same objections. MR. EDELMAN: Same objections. MasterCard regulabons, the card-not-present, based on the Visa and MasterCard regulabons, the card-not-presents were accepted at the merchant location that was their office or the place where they were accepting orders, and that location, I think in those days, it changed, had to be identified, by city and state. So that was true with  |

36 (Pages 138 to 141)

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|--|---|--|----|--|
| 1  | 142   |  |    | 1 <del>41</del>  |
| 1  | the things that I actually get Visa and   | 1  |    | it religiously and somet:mes they didn't do  |
| Į ž  | MasterCard to do was to allow us, instead of  | 2  |    | so well, but   |
| 3  | putting the city and state as an identifier   | 3  | n  | . And you earlier cid you earlier testify  |
| 4  | for where the card-not-present transactions   | 4  | -  | that some of Little & Company's merchants  |
| 5  |   | 5  |    | would have credit card terminals or card   |
|  | came from, allowing them or now, it's a   | 6  |    | terminals at the merchant location?  |
| 6  | requirement to put the 800 number of the  | ι -  |    |  |
| ?  | customer service number on it. I don't  | 7  | A. | Yes, and we could always identify those  |
| В  | remember at this time whether the actual  | 8  |    | transactions, because we'd get a terminal  |
| 9  | city and state was still required, but this   | 9  |    | number and we knew which terminal it was   |
| 10   | was interestingly enough true for   | 10   |    | used, and so we'd always know that was a   |
| 11   | card-not-present, as well as card-present   | 11   |    | card-present transaction. We didn't  |
| 12   | transactions.   | 12   |    | necessarily always know that a   |
| 13   | Q. On Page 10, Row 7, would you please tell me  | 13   |    | card-not-present transaction was a telephone   |
| 14   | whether the right-hand column litustrates   | 14   |    | order or a mall order, and I frankly don't   |
| 15   | how merchants for whom Litle would process  | 15   |    | think Visa and MasterCard cared about that.  |
| 16   | transactions would electronically accept  | 16   |    | . How would you receive that information from  |
| 17   | cards?  | 17   |    | the terminal?  |
| 18   | MR, EDELMAN: Same objections.   | 18   | A. | Well, it could take several rootes, but  |
| 19   | MR, SMITH: It looks like, on some   | 19   |    | electronically, the path that it took:   |
| 20   | of this, there's some editorial, as well.   | 20   |    | would could take several different   |
| 21   | So within the quotes is what came from the  | 21   |    | routes. It could come right from the   |
| 22   | -   | 22   |    | terminal to us. It could go from the   |
| 23   | MR, GRAY: Right.  | 23   |    | terminal to NDC. It could go from the  |
| 24   | MR. SMITH: Are you asking him to  | 24   |    | terminal to NPC, and I don't really remember   |
| 25   | verify what is in the parentheses?  | 25   |    | all the ways, but we would change over   |
| ╙  |   | ┞  |    |  |
| 1  |   |  |    |  |
| III.   | 143   | l  |    | 145  |
| 1  |   | l .  |    |  |
|  | MR, GRAY: No.   |  |    | time, we would change the way we did that.   |
| 2  | MR. GRAY: No.<br>MR. SMITH: Okay. So just I   | 1 2 3  |    | time, we would change the way we did that.<br>For efficiency reasons, for cost reasons,  |
|  | MR. GRAY: No. MR. SMITH: Okay. So just I just want to be  | 2  |    | time, we would change the way we did that.   |
| 2<br>3<br>1  | MR. GRAY: No. MR. SMITH: Okay. So just I  just want to be MR. GRAY: Well, actually, yes.  | 2<br>3   |    | time, we would charge the way we did that.<br>For efficiency reasons, for cost reasons,<br>for whatever reasons, we would change that,<br>but we always received it electronically.  |
| 2  | MR. GRAY: No. MR. SMITH: Okay. So just I just want to be MR. GRAY: Well, actually, yes. Q. If we say it shows something, I'd like you   | 2<br>3<br>4  |    | time, we would charge the way we did that. For efficiency reasons, for cost reasons, for whatever reasons, we would change that, but we always received it electronically. We probably received some paper   |
| 2<br>3<br>1<br>5   | MR. GRAY: No. MR. SMITH: Okay. So just I  just want to be MR. GRAY: Well, actually, yes.  | 2<br>3<br>4<br>5   |    | time, we would charge the way we did that.<br>For efficiency reasons, for cost reasons,<br>for whatever reasons, we would change that,<br>but we always received it electronically.  |
| 2<br>3<br>1<br>5<br>6  | MR. GRAY: No. MR. SMITH: Okay. So just I just want to be MR. GRAY: Well, actually, yes. Q. If we say it shows something, I'd like you to verify that the quote actually does  | 2<br>3<br>4<br>5<br>6  |    | time, we would change the way we did that. For efficiency reasons, for cost reasons, for whatever reasons, we would change that, but we always received it electronically. We probably received some paper transactions, but I can't imagine, during the whole course of our company, we received more than a handful.   |
| 2<br>3<br>1<br>5<br>6<br>7   | MR. GRAY: No. MR. SMITH: Okay. So just I just want to be MR. GRAY: Well, actually, yes. Q. If we say it shows something, I'd like you to verify that the quote actually does show.  | 2<br>3<br>4<br>5<br>6<br>7   | Q. | time, we would change the way we did that. For efficiency reasons, for cost reasons, for whatever reasons, we would change that, but we always received it electronically. We probably received some paper transactions, but I can't imagine, during the whole course of our company, we received more than a handful.  Looking at Row 8 on Page 10 of Litte Exhibit   |
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37 (Pages 142 to 145)

149 146 gateway into the networks, and so we would 1 Q. You can disregard the text on the right-hand 1 2 settle with them multiple times. Maybe we'd 2 side. 3 MR. SMITH: Okay. Ignore what is 3 only settle with them once. I don't 4 on the paper. Can you read the question. 4 remember. I know when we were settling 5 back, please, 5 directly through Visa and MasterCard, we didsettle with them multiple times. 6 (The following question was read 6 Now, we didn't -- the part of when back by the court reporter: 7 8 we would electronically transmit the data to 8 "Looking at Row 8 on Page 10 of 9 the morchants or the third parties, that was 9 Little Exhibit 12, did Little & 10 Company ever instruct FNBL to 10 kind of independent of that. The dollar value would accumulate or the dollar value. accumulate payments until a certain 11 11 would show up in the First National Bank of amount is reached before forwarding. 12 12 Louisville account as a funds transfer in 13 13 payments?") bulk. They were just one big number that 14 A. I'll answer that in two parts. The first 14 came in from Visa, one number that came in 15 part is, we did accumulate transactions. 15 from MasterCard, and then we'd sort it out 16 16 Some of our customers would send us -according to our own accounting records. 17 17 they'd go through a cycle every day. Some Maybe I don't understand the question. 18 of them would go through a cycle every ten 18 19 Q. Was there a particular event that would 19 minutes, and based on the way transactions trigger an electronic forwarding of money 20 20 are settled, you know, they're all settled 21 from FNBL to a merchant or to a third 21 in a batch, that's all batch is today, even, and we would settle them through the Visa 22 22 oarty? and MasterCard network. Also, multiple A. Our instruction. 23 24 Q. And what was a typical instruction? 24 times during the day, but somebody like 25 A. It would be, at this point in time -- "On Micro Warehouse would send us batches every 25 149 this day, transfer this amount to that ten minutes, and we would accumulate those. 1 1 account, this ecosunt to that account," and 2 2 until it was convenient or until the next 3 it was just a fist of amounts and accounts. 3 time we settled it through the Visa and that we would transfer. 4 4 MasterCard networks. Now, that wasn't 5 D. Would it forward -- would it transfer those. 5 necessarily accumulating it until a pre-determined amount was reached. If was amounts daily, for example? 6 A. Yes. That cycle was done every day. 7 accumulating it until either we wanted to 7 Q. Okay. Looking at Line 9 on Page 10, the get them in under the day's fiscal cutoff or 8 8 9 quote that begins "In consideration of g for the next time we -- our next cycle we : Little & Company making advances,\* if you 10 10 had to settle through Visa and MasterCard. look at the second line from the hoftom of 11 1: We probably had three or four times a day, that quote on Page 11, it says, small Roman 12 12 we did that. Numeral II, "The daily repayments shall be 13 13 Q. Okay. deducted from daily net proceeds." 14 A. Now, as far as accumulating payments until a 14 15 A. Uh-huh. 15 pre-determined amount is reached, we really 16 Q. Does that show that FNBL would forward didn't do that, as far as I can tell. 16 payments to the merchant daily and deduct --17 Q. Looking at Row 9 on Page 10, you just 17 well, does that show that FNBL would forward. 18 described that Little & Company would often 18 19 payments, net proceeds, daily to the instruct FNBL to forward the payments -- or 19 20 membant? 20 to settle the payments and forward the 21 A. Based on our instruction, we would say 21 payments daily; is that correct?. \*Forward this amount of money, some amount 22 A. What we did is we settled the payments --22 of money, to the merchant." FNBL did not when I said go to the Visa/MasterCard 23 23

38 (Pages 146 to 149)

know what the components of that money was.

From our point of view, our instructions

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networks, that, in those days I think was

through FNBL. They were operating as our

152 Q. (Cont'd, By Mr. Gray) Mr. Little, I'd like 1 would say "Forward the daily net proceeds, you to look back at Litle Exhibit 11, and 2 less any of the other obligations of the again, read Claim 10 to yourself slowly. 3 3 merchant." The other obligations could be When the language - when the claim recites 4 4 for chargebacks that had actually already. 5 been withheld by the networks, it could be 5 "means" for something, that means it's reciting an apparatus or equipment that is 6 6 for our fees, it could be for payment of used for performing a particular function, postage advances, it could be for payment of 7 and what I'd like to ask you is, for each of 8 8 terminals, it could be to increase increase. those portions of a claim, and I'll begin g 9 the reserve account. It could be all kinds with "means for accepting a customer. TÔ. 10 of stuff -identifier as payment for the customer." 11 11 THE VIDEOGRAPHER: Five minutes. I'd like you to tell me whether there was :2 left on tape. 12 standard equipment used in the industry for 13 13 A. -- but when you say FNBL forwarded an :4 performing a particular function. Do you amount, they forwarded what we told them. 14 15 understand? 15 It was the sum of all those components. 16 Q. Would you instruct FNBL to forward those 16 A. I think so. MR. EDELMAN: I object. Also, it. 17 payments to the third party? 17 18 calls for daim construction. 1B A. Yes. 19 Q. Was there standard equipment used in the 19 Q. Dally? industry for accepting a customer identifier. 20 20 A. Yes. 21 as payment from the customer? 21 Q. For example --MR. EQELMAN: Same objections. 22 22 A. It depended. Actually, sometimes we did do 23 A. There were standards. There were several it weekly, so we would -- I guess we 23 types of equipment. The one we dealt with 24 would -- yeah, most of the time we did it 24 most was an order processing system that was 25 daily. Frankly, we tried to do everything 153 151 besically a terminal and an operator would daily. We tried to deal with interchange 1 key in the order. The software that managed daily. We tried to deal with all this stuff that computerized order entry system was 3 daily, because that was easiest for the 3 often sold to the direct marketers by a merchant if everything happened all at the 4 third party, and there are limited numbers. same time. We'd sort out the fact that Visa 5 5 Sometimes direct marketers wrote their own actually charge dollars us for interchange. 6 6 software. They used different equipment, 7 once a month. There were all kinds of в but it was all basically what one would different timing arrangements that were in 8 consider a relatively standard order entry there, and for a merchant to try and figure 9 that all out, it was difficult, so we tried LØ 10 11 Q. And to clarify, was that a computer keyboard to do everything dally for the merchant. . 11 where someone would input a number -12 12 Q. But if not daily, was it typically on some 13 A. Yes. other periodic basis? 13 14 Q. -- into a computer? 14 A. Yes. 15 A. Uh-huh. That was one way. 15 MR, GRAY: We can go ahead and 16 O. What was another way? 16 change the tape. 17 A. Another way was to actually use terminals THE VIDEOGRAPHER: The time is 17 and probably five years before the period of 2:08. This is the end of Cassette 2. We 18 18 time we're talking about, which I think is are off the record. 19 19 20 1992, that range, the computerized order MR. SMITH: We'll take five. 20 entry systems really didn't accept credit **Z**1 21 (Recess.) cards, so terminals were used in parallel 22 THE VIDEOGRAPHER: The time is 22 23 with the computerized order entry system, 2:17. This is the beginning of Cassette 23 but by 1992, it was generally order entry Number 3 in the deposition of Thomas Litle. 24 24 systems that were built to accept credit 25 25 We are on the record.

156 154 cards, to check the validity, the mechanical the --2 Q. Right. For example, computers, network and 2 validity. The Visa and MasterCard modem. transactions were 16 characters long and 3 3 4 A. Well, that's it. It was the way the started with a 4 and a 5 respectively, and transaction was captured, whether it was in 5 5 had a 10-check digit at the end, and that an order entry system or a terminal, the way. 6 kind of stuff, and that was most of the 7 it was transmitted, whether it was connected card-not-present transactions. 8 by modern or to a lease line — a modern to a 8 Q. And Little & Company processed -- did Little &. 9 dial-up line. It was actually moderns to a Company process card transactions for 9 frame relay line or connected to a ease merchants who accepted credit cards or cards 10 10 line at the merchant's end. Basically, the 11 via terminals or computer keyboard input? 11 reverse of that at our end to receive the 12 12 A. Yes. The terminals was -- we certainly information, and the information went back 23 did. That was a smaller part of our 13 and forth. When a merchant would send in a 14 14 business. settlement file, for example, then we had to :5 15 Q. What sort of hardware did merchants use to send back a confirmation that what they electronically forward information related 16 16 thought they sent us, we actually got, and 17 to the payment to Little? 17 that was the moment in time, when we sent 18 18 A. They used -- on their computers, they had back that confirmation, when we owned the connections to either -- in those days, they 19 19 20 transactions. had connections to either a frame relay 20 21 Q. And you testified earlier to this, but what 21 system, which was something supplied by the hardware was used -- sorry. Let me start telephone company, or a regular dial-up 22 22 over. How was the money forwarded from FNBL 23 telephone, and those transactions would get 23 to the third party in your diagram in 24 conveyed to us viz those kinds of **Z**4 25 Exhibit 10? 25 telephone-operated networks. 157 155 1 A. Either through a wire transfer, which was, Q. Okay. How would Little receive that a wire transfer system is operated by the information from the merchant? Fed -- It's the way banks typically transfer A. We would also be connected to either a plain money between each other -- or by the ACH -dial-up line, and the merchant would call an ACH system, which means automated 5 5 the number, our number, basically, make a clearinghouse, and I think that's operated telephone call, and we'd have a modern 6 by the Fed -- no. It's operated by an connected to that and we'd receive the 7 organization called NACHA, National merchant's data, or we'd be connected to the 8 Automated Clearinghouse Association, or other end of a frame relay circuit and 9 9 something like that, and which really did-10 accept the information from the merchant, or 10 the same thing as a wire did, except it took. 11 in some cases, we actually had a lease line. 11 a day longer. 12 between the merchant and us, and so it was 12 13 Q. In each of the examples that you've just like a -- the phone company provided 13 testified to here today, is the equipment 14 it, but it was like a wire between us and 14 that is used by each of the entities in 15 15 the merchant. Little Exhibit 10, is that - is it the same 16  $\,$  Q. What hardware was used for authorizing and 16 settling the payment at each of the entities 17 equipment? 17 18 A. Pretty much. Depending on the involved in the process? 18 circumstance. If it was the same 19 19 MR. EDELMAN: Objection. Calls for circumstance, it would be the same type of 20 20 claim construction. equipment. I mean, we would have ten people 21 21 A. The -- what hardware was -transmitting files at the same time, so 22 22 Q. -- was used by each entity in the process there were ten instances in the same 23 outlined in Little Exhibit 10, and I'm just. 23 equipment, but --24 24 asking generally. 25 Q. Okay. In other words, did the equipment MR, SMITH: You mean, each of 25

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160 we haven't really gotten to that aspect of change between the Hanover finance situation. what we - what we think our service will and the postage finance situation, for 2 2 be. I don't know if we'll ever perform 3 3 example? 4 A. It could because it just depended on how that. We may. We may not. 5 O. When you say "that," do you mean providing 5 Hanover would receive payments. Maybe they received an ACH. Maybe they received a payments to third parties? 6 6 wire. I don't remember how they did that. 7 A. Yes. 8 Q. Either way, It was an electronic transfer? 8 Q. Do you have an option that's advertised on . your website called Dynamic Settlement? 9 A. Yes. ٩ 10 A. It's not active. Dynamic Settlement, no, we 10 MR. GRAY: I'll pass the witness. don't -(Discussion off the record.) 11 11 12 Q. What is Dynamic Settlement? 12 CROSS-EXAMINATION 13 A. Huh? 13 by Mr. Edelman: 14 Q. What is Dynamic Settlement? 14 Q. Good afternoon. 15 A. Actually, I don't remember what Dynamic 15 A. Hi. 16 Q. I am Mike Edelman. I will be asking you 16 Settlement is. Q. Doesn't Dynamir: Settlement, as described on | 17 questions on behalf of Advanceme. Could you 18 your website, describe payments to third put Litle Exhibit 11 back in front of you? 18 19 Now, I believe you testified earlier that 19 parties? MR. SMTTH: Objection. Same 20 you thought, at least from your perspective, 20 instruction. You're here in a personal that you understood what Caims 1 and 10. 21 21 capacity; not as a representative of the new 22 22 encompassed? Little & Co. 23 23 A. Uh-huh. 24 A. Okay. Providing payments to third parties. 24 Q. Is that correct? We do that in the sense that we maintain 25 A. Not from a lawyer's point of view, but 161 159 reserves, we maintain -- we do some of the ı from -stuff we're talking about. We don't do 2 Q. From your point of view? 2 postage financing. A. -- from a layman's point of view, yeah. 3 Q. Do you believe that maintaining reserves for Q. All right. Does your company perform the third parties is not performing Claims 1 and 5 Inventions in Claims in 1 and 10? 5 б MR. SMITH: I'm going to object and MR. SMITH: Objection. 7 I'm going to instruct the witness not to B A. I think that's - I think that's an answer to the extent that the answer would interpretation of the patent and that's not reveal confidential proprietary information. 9 To the extent that it would not it, you may 10 why I'm here. 10 11 Q. You didn't seem to have any problem with the answer. He's here in his personal capacity; 11 other side's questions. not as a representative of the current Little. 12 12 MR. SMITH: Object to the 13 13 & Company. So with that caveat, the characterizations. 14 question again? 14 MR. GRAY: I never asked --15 15 A. 50 I'm going to get sued if I say yes; 16 Q. Mr. Little, is there any way to perform right? 16 Claims 1 and 10, other than postage. 17 17 Q. I'm asking ~ floancing? 18 18 A. No, we don't. 19 Q. You do not, and why do you not perform the 19 MR, SMITH: Objection. You're asking about his interpretation again. inventions in Claims 1 and 10 in your 20 20 21 Q. In your layman's perspective. 21 current business? 22 A. Is there any way to what? 22. A. Because our company is a relatively new 23 Q. Perform Claims 1 and 10, other than by company and the process by which we build 23

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24

25 A. Sure.

our system is building it up sequentially to

serve the needs of our early customers, and

24 25 postage financing.

306 1 COMMONWEALTH OF MASSACHUSETTS 2 MIDDLESEX, SS. 3 I, Denise M. Rae, a Certified 5 Shorthand Reporter and Notary Public duly 6 commissioned and qualified within and for 7 the Commonwealth of Massachusetts, do hereby 8 certify: 9 That THOMAS J. LITLE, IV, the 10 witness whose deposition is hereinbefore set forth, was duly sworn by me, and that such 11 12 deposition as a true record of the testimony given by the witness to the best of my 13 14 skill, knowledge, and ability. IN WITNESS WHEREOF, I have hereunto 15 set my hand and my affixed notarial seal 16 17 this 8th day of September, 2006. 18 Denie m. Rac\_ 19 20 Denise M. Rae 21 Notary Public 22 23 My commission expires: January 16, 2009 24 25