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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Letitia H. Verdin, Circuit Court Judge

Case No. 2010-CP-23-5880
Appellate Case No.: 2015-000523

Overland, Inc., d/b/a Land Rover Greenville ..... Appellant,

Vs.

Lara Marie Nance, Charlie Andrew Nance, Roger Fields, Synovus Financial Corporation, d/b/a NBSC, Branch Banking And Trust Company, Bank of America Corporation, and SunTrust Banks, Inc. ..... Defendants,

Of which Bank of America Corporation, and SunTrust Banks, Inc. are the Respondents.

RECORD ON APPEAL
VOLUME II

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STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	)	IN THE COURT OF COMMON PLEAS
Overland, Inc., d/b/a Land Rover Greenville, Plaintiff, vs. Lara Marie Nance; Charlie Andrew Nance; Roger Fields; Synovus Financial Corporation d/b/a NBSC; Branch Banking and Trust Company; Bank of America Corporation; and Suntrust Banks, Inc., Defendants.	)	C.A. No.: 2010-CP-23-5880

BANK OF AMERICA'S BRIEF IN SUPPORT OF ITS RULE 12(C) MOTION AS TO SEVENTEENTH CAUSE OF ACTION AGAINST IT

In support of its Motion for Judgment on the Pleadings as to Seventeenth Cause of Action against Bank of America (B of A), B of A respectfully submits the following.[1]

I. Standard for Judgment on the Pleadings

"A judgment on the pleadings shall be granted 'where there is no issue of fact raised by the complaint that would entitle the plaintiff to judgment if resolved in plaintiff's favor.'" *Home Builders Ass'n of South Carolina v. School District No. 2 of Dorchester County*, 2013 WL 4835458, *1 (S.C. 2013) (citations omitted.). "All properly pleaded factual allegations are deemed admitted . . . " *Russell v. City of Columbia*, 305 S.C. 86, 89, 406 S.E.2d. 338, 339 (1991) (citations omitted.).

[1] Unless otherwise defined herein, all capitalized terms shall have the meanings ascribed to them in the Rule 12(c) Motion and the Answer of B of A to Third Amended Complaint.

"[A]ny inference of law or conclusions of fact that may properly arise therefrom are to be regarded as embraced in the averment." *Id.* Based on this law, a claim is to be dismissed under Rule 12(c), SCRCP, when a plaintiff is not legally entitled to the requested relief, notwithstanding all factual allegations, inferences and conclusions therefrom.

II. Plaintiff's Factual Allegations

"This action arises . . . on or about July 2007 . . . until in or around February 2010 . . ." (Third Amended Complaint, p.4, ¶ 14.) Plaintiff "maintained business accounts at NBSC and BB&T for its dealership." (*Id.*, p.9, ¶ 33.) Plaintiff did not have an account at B of A during this period. The embezzling employee of Plaintiff deposited the funds into "personal and business accounts . . . established at local bank branches of . . . BOA . . . using either her name, a legitimate company name to which she was not authorized to use, or a fictitious company name, *all under her control.*" (*Id.*, p.4, ¶15(c).) (Emphasis added.) Plaintiff has pleaded throughout the Third Amended Complaint that Nance's deposits into her B of A accounts of checks drawn on Plaintiff's accounts were unauthorized by Plaintiff. (*Id.*, pp. 37, ¶ 165).

There are no allegations in the Third Amended Complaint that Nance's accounts were opened in the name of Plaintiff or stated as for its benefit. Nor is there any suggestion in Plaintiff's pleading that B of A was aware Nance's accounts were held for Plaintiff. The Third Amended Complaint is premised entirely on Nance taking money from Plaintiff and spending it for her own benefit. (Third Amended Complaint, ¶¶ 15(a), (d) and (e), 19, 42, 55.) If she took money and spent it on Plaintiff, then Plaintiff has no injury in that it benefitted from her expenditures, i.e., the doctrine of ratification.

In the Seventeenth Cause of Action, Plaintiff has sued B of A under UCC §§ 3-404, 3-405 and 3-406 for negligence, gross negligence and recklessness in allowing Nance to open accounts at B of A, deposit into her B of A accounts checks forged on Plaintiff's accounts and then spend the proceeds on herself, her family and her friends. Incontrovertible from the factual allegations, inferences and conclusions in the Third Amended Complaint is that, as far as Plaintiff is concerned, Nance's taking money from it was unauthorized by it and did not inure to its benefit.

III. No Common Law Negligence Claim for Acceptance of Forged Checks

Under *Equitable Life Assur. Soc. of U.S. v. Okey*, 812 F.2d 906, 909 (4th Cir. 1987), "the coverage of § 36-3-419 [now 3-420] and its allocation of the burden of proof of the element of due care in a way that differs from that in common law negligence demonstrate an intended displacement of the negligence cause of action." The "overlapping nature of the claims combined with the conflicting burdens for proving the critical element of due care, further argues for displacement." *Id.* Displacement of the common law negligence cause of action is necessary because "when the Code and common law both provide a means of recovery, the Code should displace the common law, because variations in the common law among states destroy the uniformity in commercial transactions sought to be accomplished by the Uniform Commercial Code." *Id.*

Although *Okey* is the seminal decision on the absence of any common law duty, it is not by any stretch the only case under South Carolina law to this effect. *See also Flavor-Inn, Inc. v. NCNB Nat'l Bank of S.C.*, 309 S.C. 508, 511-512, 424 S.E.2d 534, 536 (36-3-419 displaces common law conversion/negligence claims for deposit of a check with a forged or unauthorized indorsement.); *Mauldin Furniture Galleries, Inc. v. Branch Banking & Trust Co.*, 2012 WL 3680426, *12 (D.S.C.

2012), *quoting Okey*, 812 F.2d at 909 ("Section 36-3-419 comprehensively covers the field of legal theories when a check is paid over an unauthorized payee indorsement. [] When the U.C.C. sets up particular standards of care or limitations on liability, the common law is annulled to the extent it modifies these standards or changes these limitations").

The Seventeenth Cause of Action is based legally upon common law tort duties. The common law tort claims are expressly prohibited by South Carolina law. The UCC displaces any common law tort duties. There can be no issues of fact raised by the Seventeenth Cause of Action that could support any tort cause of action against B of A. This is true whether the claims are factually based upon B of A's opening accounts for Nance, B of A's acceptance of forged checks deposited into her accounts, or her subsequent expenditure of the proceeds of her forgeries.

IV. No Duty to Plaintiff for Activities by Nance on her B of A Accounts

It is well-settled in South Carolina that the relationship between a bank and its customer is a creditor-debtor relationship, not a fiduciary one. *See Burwell v. South Carolina Nat. Bank*, 288 S.C. 34, 340 S.E.2d 786 (1986). The Supreme Court ruled earlier this month that while a customer may be able to show it was owed a duty by its bank, non-customers are not owed a similar duty. *See Kerr v. Branch Banking and Trust Co.*, 2014 WL 1386873, *3 (SC 2014) (Bank owed a duty to its corporate customer in accordance with the terms of a factoring agreement, not the investors of the corporation that were not customers of the bank.).

In reviewing a fact pattern very similar to the one presented by Plaintiff, the Fourth Circuit has also ruled that there is no duty by a bank to a non-customer. In *Eisenberg v. Wachovia Bank, N.A.*, 301 F.3d 220 (4th Cir. 2002), the Court upheld the dismissal of a non-customer's negligence

cause of action based on the bank's failure to verify whether its customer was authorized to open an account under a certain name. The Fourth Circuit quoted the Massachusetts Superior Court case of *McCallum v. Rizzo*, 1995 WL 1146812 (Mass. Super. Ct. Oct. 13, 1995), "[t]he mere fact that a bank account can be used in the course of perpetrating a fraud does not mean that banks have a duty to persons other than their own customers. To the contrary, the duty is owed exclusively to the customer, not to the persons with whom the customer has dealings." *Id.* at 226. Courts in numerous other jurisdictions have also found a bank does not owe a duty of care to a non-customer with whom the bank has no direct relationship.[2]

Plaintiff is not a customer of B of A. Nance was B of A's customer. Plaintiff has no legal interest in the opening of or activities on Nance's B of A accounts, including her expenditures of the proceeds of forged checks on Plaintiff's accounts. Plaintiff has no claim that B of A was negligent in opening Nance's accounts or negligent in allowing her to spend her forged check proceeds. B of A owes no duty to Plaintiff. B of A has no responsibility to protect the makers on checks deposited by B of A customers once the checks have cleared. Because B of A has no such duty, the Seventeenth Cause of Action against it for opening Nance's accounts and/or allowing her to spend her forged check proceeds should be dismissed.

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[2] *VIP Mortg. Corp. v. Bank of America, N.A.*, 769 F. Supp. 2d 20 (D. Mass. 2011) (The "vast majority of courts have held that banks are not liable to third parties at common law *because they do not owe a duty of care to non-customers.*") (Emphasis in original.); *Weil v. First Nat. Bank of Castle Rock*, 983 P.2d 812 (Colo. App. 1999) (Bank did not owe a duty to a non-customer to inquire into the legitimacy of the use of an unregistered trade name by customer of bank.); *Volpe v. Fleet Nat. Bank*, 710 A.2d 661 (R.I. 1998) ("[B]ank owes no duty of care to a noncustomer with whom it has no relationship."); *Software Design & Application, Ltd. v. Hoefer & Arnett, Inc.*, 49 Cal. App. 4th 472, 56 Cal. Rptr. 2d 759 (1996) (Bank owed no duty of care to a non-customer to investigate an entity opening an account and supervise and monitor account transactions such as withdrawals and transfers.).

V. UCC Sections Referenced by Plaintiff are Defenses, Not Affirmative Claims

Part 4 of Article 3 of the UCC outlines the liabilities of banks involved in presenting and processing checks for deposit. Those banks accused of wrongdoing in either of these areas have various defenses available to them that are described in §§ 3-404, -405 and -406. Under § 3-404 (the imposter/fictitious payee defense), if an imposter induces a maker to issue a check to that imposter by impersonating the real payee, the indorsement of the imposter is effective as the indorsement of the intended payee. S.C. Code Ann. § 36-3-404(a) (2008). The indorsement is also effective if the payee is a fictitious person or entity. S.C. Code Ann. § 36-3-404(b).

Under § 3-405(b) (the padded payroll defense), if an employer entrusts an employee with responsibility as to the issuance of checks and the employee makes a fraudulent indorsement on the check, that indorsement is effective. S.C. Code Ann. § 36-3-405(b), Official Comment 1 ("Section 3-405 adopts the principle that the risk of loss for fraudulent indorsements by employees who are entrusted with responsibility with respect to checks should fall on the employer rather than the bank that takes the check or pays it . . . Section 3-405 is based on the belief that the employer is in a far better position to avoid the loss by care in choosing employees, in supervising them, and in adopting other measures to prevent . . . fraud in the issuance of instruments in the name of the employer.").

Finally, under § 36-3-406, "a person whose failure to exercise ordinary care substantially contributes to the . . . making of a forged signature on an instrument is precluded from asserting the . . . forgery against a person who, in good faith, pays the instrument or takes it for value or for collection." S.C. Code Ann. § 36-3-406(a), South Carolina Reporter's Comment (A drawer that fails to exercise ordinary care, which failure substantially contributes to a forgery, is precluded from

asserting that forgery.).

The language of these three statutory provisions, coupled with the Official and South Carolina Reporter's Comments, make it clear these are defenses, not causes of action. When faced with claims from makers (also known as drawers) or payees, banks have the right to raise these defenses as a complete bar to any recovery by the claimant. As stated in the Motion, these are shields for defendants, not swords for use by plaintiffs. To the extent the Seventeenth Cause of Action against B of A is statutorily predicated on UCC 3-404, -405 and/or -406, the Cause of Action should be dismissed.

VI. Conclusion

B of A as the depository bank owed no duty to Plaintiff as drawer or maker under the common law or the UCC. Plaintiff is not legally entitled to the requested relief, assuming all factual allegations, inferences and conclusions in the Third Amended Complaint are construed in Plaintiff's favor. B of A is only seeking dismissal as to the Seventeenth Cause of Action, and is not taking any position at this time in the instant Rule 12(c) Motion supported by this Brief with respect to the SC UTPA claim against it.

WHEREFORE, for the foregoing reasons, B of A asks that the Motion be granted.

Charlotte, NC

Date: 4/22/14

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By: _____

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ATTORNEYS FOR B OF A

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE	)	C.A. No.: 2010-CP-23-5880
Overland, Inc., d/b/a Land Rover Greenville,	)	
Plaintiff,	)	
v.	)	PLAINTIFF'S MEMORANDUM IN OPPOSTION TO DEFENDANTS' BANK OF AMERICA and SUNTRUST BANKS MOTION TO DISMISS
Lara Marie Nance, Charlie Andrew Nance Roger Fields, Synovus Financial Corporation d/b/a NBSC, Branch Banking and Trust Company, Bank of America Corporation, and Suntrust Banks, Inc.	)	
Defendants.	)	

Plaintiff, Land Rover Greenville, hereby files its Reply Memorandum to Defendants Bank of America and Suntrust Banks' Rule 12(c) Motion for Judgment on the Pleadings as to the Seventeenth Cause of Action for negligence. Plaintiff relies upon this memorandum and arguments of counsel in respectfully requesting the Court to dismiss Defendants' motion. Alternatively, Plaintiff requests leave of court to amend the pleadings in the interest of justice.

BACKGROUND AND RELEVANT FACTS

This matter arises out of the thefts from Land Rover's commercial checking account by its dishonest employee, Lara Nance ("Nance"). Nance was employed by Land Rover as an accounting clerk from 2006 until her arrest in February, 2010. She never had any check writing authority, nor was she ever included on any of Land Rover's signature cards maintained at its banks, NBSC or BB&T (herein, the "Drawee Banks"). Nonetheless, from 2008 through February, 2010, Nance deposited approximately two hundred checks drawn on Land Rover's corporate accounts, totaling more than $1,00,000.00, into her personal checking accounts at

Defendants Bank of America and Suntrust Banks (herein, the "Depository Banks," "BOA" and "Suntrust"). Nance's embezzlement and money laundering scheme called for engaging in "double forgeries." A double forgery occurs when the negotiable instruments (checks) contain both a forged maker's signature *and* a forged indorsement. The scheme was carried out in this manner:

In the middle of the night, Nance would prepare the checks in the company computer system (using an illegally obtained user profile of which she pled guilty in federal court), and make the checks payable to known vendors of Land Rover (eg, Taylor Enterprises), to whom no money was actually owed. The checks were for dollar amounts consistent with legitimate checks to those vendors, and spread out over multiple Land Rover's accounts at their four dealerships. She would then forge the signature of Land Rover's owner, Jack Frasher, on the front of the check, and then forge the indorsement of the unintended payees (Land Rover's vendors) on the reverse side of the check. The unauthorized checks were drawn on Land Rover's bank accounts at NBSC and BB&T. Next, she deposited the funds into her personal bank accounts at Bank of America and Suntrust. Inexplicably, the Depository Banks (BOA and Suntrust) opened new corporate accounts for Nance **using names identical to Land Rover's known vendors, without any corporate documents, and using a fake social security number.**

Based upon the above allegations Land Rover asserts a negligence claim against BOA and Suntrust. The duties of care and standards for commercially reasonable banking practices in support of Plaintiff's negligence claim, as pled, can be found in the South Carolina's Commercial Code; particularly §§36-3-103(a)(9), 3-404, 3-405, and 3-406. With respect to liability and claims for recovery, Section 3-405(b), "Employer's responsibility for fraudulent indorsement by employee," provides in relevant part:

(b) For the purpose of determining the rights **and liabilities** of a person who, in good faith, pays an instrument or takes it for value or for collection, if an employer entrusted an employee with responsibility with respect to the instrument and the employee or a person acting in concert with the employee makes a fraudulent indorsement of the instrument, the indorsement is effective as the indorsement of the person to whom the instrument is payable if it is made in the name of that person. **If the person paying the instrument or taking it for value or for collection fails to exercise ordinary care in paying or taking the instrument and that failure substantially contributes to loss resulting from the fraud, the person bearing the loss may recover from the person failing to exercise ordinary care to the extent the failure to exercise ordinary care contributed to the loss.**

S.C. Code Ann. § 36-3-405 (emphasis added).

In essence, Land Rover contends that BOA's and Suntrust's actions in establishing the unauthorized accounts and in accepting the checks payable to various businesses for deposit into Nance's personal account were commercially unreasonable, contrary to external and internal rules and regulations, and exhibited a want of ordinary care.[1] In deciding the instant motion, the Court should look no further than the South Carolina Reporter's Comment ¶ 8, which states:

"The last sentence of Subsection (b) effects a substantial change from prior law, by affording an employer who bears the loss on a padded payroll check **a claim against a depositary bank** that failed to exercise ordinary care in taking the check. In doing so, Subsection (b) overrules *Stone Manufacturing Co. v. NCNB of South Carolina*, 308 S.C. 287, 417 S.E.2d 628 (S. C. App. 1992). **UNDER SUBSECTION (B), IF THE EMPLOYER CAN ESTABLISH THAT THE DEPOSITARY BANK FAILED TO EXERCISE ORDINARY CARE AND THAT THE FAILURE SUBSTANTIALLY CONTRIBUTED TO THE LOSS, THE EMPLOYER CAN RECOVER FROM THE DEPOSITARY BANK TO THE EXTENT THAT THE BANK'S FAILURE TO EXERCISE ORDINARY CARE CONTRIBUTED TO THE LOSS.**

S.C. Code Ann. § 36-3-405 (emphasis added).

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[1] "Ordinary care" is defined as the "observance of reasonable commercial standards, prevailing in the area in which the person is located, with respect to the business in which the person is engaged." See S.C. Code Ann. § 36-3-103; UCC §3-103(9)

STANDARD

" A judgment on the pleadings is a drastic procedure, and therefore, is not proper if there is an issue of fact raised by the complaint which, if resolved in favor of the plaintiff, would entitle her to judgment. Moreover, the pleadings must be liberally construed to ensure substantial justice between the parties." McCurry v. Keith, 312 S.C. 254, 255 (Ct. App. 1994). There exists no caselaw in the State of South Carolina that prohibits a cause of action by Drawers (like Land Rover) against depository banks for negligence, or that negligence causes of action have been displaced by the Commercial Code. So to the extent that this Court views the issue as a novel one or matter of first impression, then it should deny the instant motion. "Therefore, as a general rule, important questions of novel impression should not be decided on a motion to dismiss of judgment on the pleadings." Evans v. State, 344 S.C. 60, 68 (2001). Instead, a novel issue is best decided in light of testimony adduced at trial. It is only when the trier of fact determines that the underlying facts are not in dispute and that further development of the record will not aid in the resolution of the issue that it should decide novel issues at the this stage. *Id.*

DISCUSSION

1. The current UCC specifically adopted comparative negligence.

The U.C.C. was revised in 1990 in order to specifically adopted a comparative negligence approach to liability upon check fraud schemes. The 1990 revisions were a major change in the area of double forgeries similar to the Land Rover fact pattern. Prior to 1990, case law was uniform in treating a double forgery as only a forged drawer's signature, with the liability falling exclusively onto the Drawee Banks. However, the revisions changed this rule by shifting to a

comparative fault analysis. Under the revised Code, the loss in a double forgery case is allocated between the Depository and Drawee Banks based on the extent that each contributed to the loss. *See*, §3-405, Official Comment ¶¶ 3 - 4, Case #5 - 7. The official commentary notes that "the depository bank may have failed to exercise ordinary care when it allowed the employee to open an account in the name of 'Supplier Co.,' to deposit checks payable to 'Supplier Co.' in that account . . . ." *Id.* Land Rover's Third Amended Complaint alleges this specific situation occurred.

In addition, the South Carolina Reporter's Comment to §3-405, ¶4, makes it clear that,

> "[an] employer, however, is not without remedies. If the employer can establish that the bank paying the fraudulently indorsed check or taking it for value **or collection** failed to exercise ordinary care and that failure substantially contributed to the loss resulting from the fraud, the employer can recover from the bank failing to exercise ordinary care to the extent that the failure contributed to the loss." (emphasis added).

In other words, the Code explicitly states that Employer-Drawer now has the right to sue the depository bank directly based upon the bank's negligence.

Also, and most importantly, the Code is silent as to any requirement that Employer-Drawers must have a contractual relationship or customer status with the Depository Banks in order to avail themselves of a negligence claim. If the legislature or Code drafters intended for such a class distinction, then it could have provided one in the statute, but it did not. Accordingly, Defendant BOA's and Suntrust's motions to dismiss Plaintiff's negligence cause of action are misplaced and must be dismissed.

2. General principles of negligence apply as supplement the Code provisions.

The Defendants' motions are based upon the erroneous assertion that UCC Articles 3 and 4 completely displace the common law on check processing. That argument is incongruent with comparative negligence approach stated in §§36-3-404 through 406, and it would be

inconceivable that the Code drafters intended for drawer's to be limited to suing its own banks when it expressly permits such an action against depository banks. The phrases "affording an employer . . . a claim against a depository bank" and "the employer can recover from the depository bank" in section 3-405(b) are plain and unambiguous.

The displacement of the common law by the UCC is addressed in §36-1-103, entitled, "Supplementary general principles of law applicable," stating that "[u]nless displaced by the particular provisions of this act, the principles of law and equity, including the law merchant and the law relative to . . . principal and agent, estoppel, fraud, misrepresentation . . . or other validating or invalidating cause shall supplement its provisions. S.C. Code Ann. § 36-1-103. So, "[d]isplacement occurs when one or more particular provisions of the U.C.C. comprehensively address a particular subject." *Flavor–Inn, Inc. v. NCNB Nat'l Bank of S.C.*, 309 S.C. 508, 511, 424 S.E.2d 534, 536 (Ct.App.1992) (discussing *Equitable Life Assurance Soc'y of the U.S. v. Okey,* 812 F.2d 906, 908–911 (4th Cir.1987).

However, the above phrases used within §3-405(b) are not even close to being comprehensive enough to encompass or swallow up the entirety of the common law tort of negligence. Here, Land Rover (the employer) alleges that BOA/Suntrust (the depository banks) failed to use ordinary care which contributed to its loss. See Seventeenth Cause of Action to Plaintiff's Third Amended Complaint, ¶¶ 164 – 170, pgs. 36 – 38. Clearly, the Code drafters intended for the principles of negligence to supplement the Code provisions and enter into the universe of check processing by adopting comparative fault without. So, the common law remains relevant to the Code provisions because they do not conflict, and it would serve to fill the gaps or clarify the comparative fault analysis.

Defendants' argue incorrectly that there are only two scenarios under Articles 3 and 4 where forgery victims may sue banks – for conversion or for not properly payable. This argument is inapplicable to the case at bar because it only applies to victimized Payees (persons identified to receive the checks, i.e., Land Rover's vendors), not Drawers. This was the exact same point raised by the Defendants' in their motions to dismiss the conversion cause of action. Plaintiffs agreed that under the UCC, conversion lies in two instances: (1) Drawers vs. Drawee Banks; and (2) Payees vs. Depository Banks. But, the Defendants' argument overlooks or disregards an employer's right to sue the depository banks in negligence triggered by §§3-404, 405 and 3-406. It is doubtful that the Code intended for liability to be apportioned by comparative fault without providing for a cause of action to get the parties there.

Furthermore, it would appear that Defendants' displacement argument confuses the analysis from *Equitable Life Assurance Soc'y of the U.S. v. Okey,* 812 F.2d 906, 908–911 (4th Cir.1987), finding that meshing a common law of negligence claim into conversion action under §3-419 would "destroy the uniformity in commercial transactions sought to be accomplished by the UCC," because of the conflicting burdens of proof within those two actions. *Id.* A similar result to *Equitable Life* is not a concern here because §3-405 uses a comparative fault analysis similar to the common law. And, the Plaintiff is no longer pursuing a conversion action, so conflicting principles of UCC and the common law are no longer at issue.

3. Land Rover's status as a non-customer is irrelevant.

In its motion, the depository banks appear to draw a line the sand between customers and non-customers requiring protection. But, the distinction is meritless. Non-customer Payees (ie, person intended to receive a check) may sue depository banks in conversion under S.C. Code Ann. §36-3-420. *See* Comment 1. The Court of Appeals squarely confronted the issue of non-

customer suits against depository banks in Murrary v. Bank of America, N.A., 354 S.C. 337 (Ct. App. 2003). There, the *Murray* Court found that a special relationship and duty of care extended to a depository banks's non-customer whose lost driver's license was used by an imposter to open an account at Bank of America in her name. *Id.* It reasoned that banks have a duty of care towards non-customers to follow its own internal procedures in timely closing a fraudulently opened account upon notice of the fraud. *Id.*

Similarly, Land Rover's status as a non-customer of the Defendants' bank is immaterial. The Code does not require a customer relationship to exist. As stated previously, since the Code is silent to the necessary type of relationship that must exist in order to file suit, this Court should not attempt to rewrite the Code in this regard.

4. Duty.

"Duty is generally defined as a 'the obligation to conform to a particular standard of conduct towards another.'" Murray v. Bank of America, N.A., 354 S.C. 337, 343 (Ct. App. 2003) (quoting Shipes v. Piggy Wiggly St. Andrews, 269 S.C. 479, 483 (1997)). "Ordinarily, the common law imposes no duty on a person to act." Id. "An affirmative legal duty to act exists if created by statute, contract, relationship, status, property interest, or some other special circumstance." Id.

Plaintiff's Third Amended Complaint establishes that a special relationship exists between BOA/Suntrust and Land Rover with respect to the fraudulent checks. Land Rover is much more than a member of the public at large with a potential stake in the outcome of these transactions. These were Land Rover corporate checks bearing Land Rover's corporate information and containing Land Rover's (fraudulently induced) instructions for payment. The depository banks failures to monitor Nance's accounts, its disregard of protocol for opening

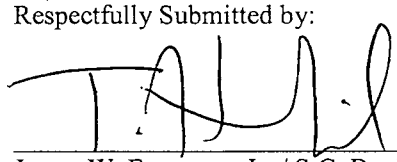
accounts, and its failure to investigate these transactions in light of Nance's highly unusual account activity all contributed directly to Land Rover's losses. The nexus between the two were so close that ultimate success of Nance's scheme was dependent upon the negligent or reckless acts of the depository banks. These facts implicate a duty that BOA and Suntrust owed to Land Rover.

Of course, the Code provides that all banks owe a duty of ordinary care when paying checks or taking checks for collections. S.C. Code Ann. §36-3-103 defines ordinary care as the "observance of reasonable commercial standards, prevailing in the area in which the person is located, with respect to the business in which the person is engaged."

CONCLUSION

For the reasons set forth above, this Court should find that Plaintiff's Third Amended Complaint sufficiently states facts in support of its cause of action for negligence, and therefore, Defendants' motion for judgment on the pleadings should be dismissed. Alternatively, Plaintiff respectfully requests leave of this Court to amend its pleadings.

Respectfully Submitted by:



April 22, 2014
Greenville, SC

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Attorneys for Plaintiff

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Letitia H. Verdin, Circuit Court Judge

Case No. 2010-CP-23-5880
Appellate Case No.: 2015-000523

Overland, Inc., d/b/a Land Rover Greenville,. . . . . Appellant,

vs.

Lara Marie Nance, Charlie Andrew Nance, Roger Fields,
Synovus Financial Corporation d/b/a NBSC, Branch Banking
and Trust Company, Bank of America Corporation,
and SunTrust Banks, Inc. . . . . Defendants,

Of whom Lara Marie Nance, Charlie Andrew Nance, Roger Fields, Bank of America Corporation, and SunTrust Banks, Inc. are the Respondents.

MOTION TO DISMISS APPEAL

Pursuant to Rules 240 and 260(a), SCACR, respondent Bank of America (B of A) hereby moves to dismiss this appeal (Motion).

Failure to Comply with the Requirements of the Rules

On December 17, 2014, Appellant received written notice of the entry of the order granting summary judgment (SJ Order) in favor of B of A and SunTrust Banks, Inc. (SunTrust). (Plaintiff's Motion to Alter / Amend or Reconsider Pursuant to Rule 59(e), SCRCP, p.1, first

paragraph). Rule 203(b), SCACR, provides the notice of appeal must be served within thirty days after receipt of written notice of entry of a summary judgment order unless a timely motion either pursuant to Rules 52 or 59 is made. Appellant had not later than ten days from December 17th within which to serve a motion to alter or amend under Rule 59(e), SCRCP. The last days of the ten day period include a Saturday and a Sunday, so the motion had to be served not later than December 29, 2014. Appellant did not serve the motion on or before December 29th.

On December 29th, counsel for Appellant asked, first, counsel for B of A and then the trial court by e-mail for an extension of the ten day period. Counsel for B of A responded that, based upon the language in Rules 6(b) and 59(e), SCRCP, the ten day period was mandatory and non-discretionary. The trial court, however, granted Appellant an additional ten days. On January 7, 2015, Appellant served its motion under Rule 59(e), SCRCP. Prior to January 7th, Appellant did not file anything under Rule 59(e), SCRCP.[1]

A timely motion under Rule 59(e), SCRCP, stays the time for appeal. The motion of Appellant was untimely. Rule 59(f), SCRCP. Hence, Appellant's notice of appeal was due to be served thirty days from December 17th, or by January 16, 2015. Instead, Appellant served its notice of appeal on March 4, 2015, as if the thirty days ran from receipt of written notice of entry of denial of the untimely motion under Rule 59(e), SCRCP.

Discussion

"The requirement of service of the notice of appeal is jurisdictional, *i.e.*, if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to 'rescue' the delinquent party by extending or ignoring the deadline for service of the notice." *Elam v. South Carolina Dept. of Transp.*, 361 S.C. 9, 14-15, 602 S.E.2d 772, 775

[1] Unlike *Camp v. Camp*, 386 S.C. 571, 689 S.E.2d 634 (2010), where the Rule 59(e) movant served a motion allegedly lacking particularity as required by Rule 7, SCRCP, here Appellant served nothing within the ten days.

(2004). "Accordingly, this court must dismiss an untimely appeal without considering its merits." *Lake Marion Regional Water Agency v. Goodwin*, 2013 WL 8482382, *1, 2013-UP-088 (Ct. App. 2013). "When a *timely* motion to alter or amend is made, however, 'the time for appeal for all parties shall be stayed and shall run from receipt of written notice of entry of the order granting or denying such motion.'" *Canal Ins. Co. v. Caldwell*, 338 S.C. 1, 6, 524 S.E.2d 416, 418 (Ct. App. 1999) (Emphasis in original.), *quoting* Rule 203(b)(1), SCACR. "To be timely, a post-trial motion to alter or amend must be served within ten days of receipt of written notice of the entry of the original order or judgment." *Id.* Rule 59(e) says "shall" and "not later than". Rule 6(b) says, "[t]he time for taking any action under [R]ule ... 59 may not be extended ..." except as set forth in Rule 59. The language in the applicable Rules is plainly mandatory and non-discretionary.

"This Rule 59 is substantially the Federal Rule." Notes, Rule 59, SCRCP. "This Rule 6(b) is the same as the Federal Rule ..." Notes, Rule 6, SCRCP. When the Fourth Circuit examined whether the time to file a Fed. R. Civ. P. 59(e) motion may be extended, the Court ruled the

> District court 'may not extend the time for taking any action under Rules ... 59(b), (d) and (e), except to the extent and under the conditions stated in them.' Rule 59(e), in turn, simply does not provide *any* mechanism for extending the prescribed ten-day filing deadline. Thus, the Federal Rules clearly prescribe that a motion under Rule 59(e) must be filed within ten days after entry of the judgment, and the Rules just as clearly provide the district court with no authority to extend the filing period.

Panhorst v. United States, 241 F.3d 367, 370 (4th Cir. 2001). "An untimely Rule 59 motion is never proper because the Rules expressly forbid an extension of time for such a motion." *Id.* at 372. A "party cannot reasonably rely on a district court's improper extension of time where the party requests relief that, as a plain reading of the Rules would show, is beyond the court's

authority." *Id.* at 373. "'Filing deadlines, like statutes of limitations, necessarily operate harshly and arbitrarily with respect to individuals who fall just on the other side of them, but if the concept of a filing deadline is to have any content, the deadline must be enforced." *Id.*, *quoting U.S. v. Locke*, 471 U.S. 84, 101, 105 S. Ct. 1785 (1985). Doing otherwise and asserting jurisdiction over an untimely appeal would "nullify the plain, mandatory filing requirements of the Federal Rules." *Id. See also Southern Holdings, Inc. v. Horry County*, 2007 WL 1960590, *3 (D.S.C. July 3, 2007) ("The 10 day deadline contained in Rule 59(e) is mandatory and cannot be extended pursuant to Rule 6(b).").

South Carolina courts have ruled in the same manner as the federal courts on this issue. Although an unpublished decision, *Gobbi v. People's Federal Bank*, 2006 WL 7285959, Op. No. 2006-UP-245 (S.C. App. May 16, 2006), makes abundantly clear this Court's view of an extension under Rule 59(e). This Court stated unequivocally "[t]his ten-day time limit may not be extended." *Id.* at *4. In *Ackerman v. 3-V Chemical, Inc.*, 349 S.C. 212, 562 S.E.2d 613 (2002), our Supreme Court ruled that a Rule 59(e) motion must be served within ten days after receipt of *written notice* of the entry of the order, not ten days after receipt of the written order itself. The Court stated, "[t]here is simply no language in the rule permitting the motion to be served 10 days after receipt of the written *order*; it states 10 days after receipt of *written notice of the entry of judgment*." *Ackerman*, 349 S.C. at 215, 562 S.E.2d at 615 (Emphasis in the original.). *See also Leviner v. Sonoco Products Co.*, 339 S.C. 492, 494, 530 S.E.2d 127, 128 (2000) (The "trial judge has only ten days from entry of judgment to alter or amend an earlier order on his own initiative absent a reservation of jurisdiction in the form order."). The federal and South Carolina courts both hold the ten day time period set forth in Rule 59(e), SCRCP, cannot be enlarged or extended by the trial court.

Appellant served an untimely Rule 59(e), SCRCP, motion. Although Appellant received written notice of entry of the SJ Order on December 17th, it did not serve its motion under Rule 59(e), SCRCP, by December 29th. Instead, the only motion by Appellant was served on January 7th, twenty-one days after receipt of written notice of the entry of the SJ Order. Because the motion was untimely, the time to file a notice of appeal was not stayed.

Under Rule 203(b), SCACR, the notice of appeal had to be served by January 16, 2015 (thirty days after receipt of written notice of entry of the SJ Order). The notice of appeal was served on March 4, 2015, seventy-seven days after receipt of written notice of entry of the SJ Order. This appeal, therefore, is untimely. As a result, this Court has no jurisdiction to hear the appeal. The appeal should be dismissed with prejudice.

WHEREFORE, respondent B of A respectfully requests this Court grant the Motion and dismiss the appeal with prejudice.

Respectfully submitted,

Date: 3/31/15

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Attorneys for Respondent Bank of America

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED
APR 10 2015
SC Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Letitia H. Verdin, Circuit Court Judge

Case No. 2010-CP-23-5880
Appellate Case No.: 2015-000523

Overland, Inc., d/b/a Land Rover Greenville ..... Appellant,

Vs.

Lara Marie Nance, Charlie Andrew Nance, Roger Fields, Synovus Financial Corporation, d/b/a NBSC, Branch Banking And Trust Company, Bank of America Corporation, and SunTrust Banks, Inc. ..... Defendants,

Of whom, Lara Marie Nance, Charlie Andrew Nance, Roger Fields, Bank of America Corporation, and SunTrust Banks, Inc. are the Respondents.

RESPONSE TO MOTION TO DISMISS APPEAL

This case involves the embezzlement of approximately $1,400,000 and the liability of the embezzler's banks, to wit Bank of America and Sun Trust. Exhibit A – Affidavit of Michael F. O'Shea. The case was given complex case status, and assigned to the Hon. Letitia H. Verdin "to hear and handle all pre-trial motions and all other matters pertaining to this case, including trial." Exhibit B – Consent Order Designating Case Complex.

By Order dated December 15, 2014, and received by Plaintiff's counsel on December 17, 2014, Judge Verdin granted summary judgment to the banks. Within 10 days,

plus the allowable holiday and weekend grace period, Plaintiff's counsel, T. Hunt Reid, sought and received from Judge Verdin an extension of time to file a motion for reconsideration. He was out of town for the Christmas holidays, and sick. Exhibit C – E-mail chain of December 29, 2014.

Relying on Judge Verdin's extension, Plaintiff's counsel then filed his motion. On February 5, 2015, Judge Verdin denied it. Within 30 days, on March 4, 2015, Plaintiff's counsel filed a notice of appeal.

Counsel for Bank of America has moved to dismiss the appeal. He argues that the motion for reconsideration was not timely presented, but has provided no South Carolina authority for that proposition. The sole South Carolina case cited is unpublished, which means that the appellate court was unwilling to make it the law. Additionally, the cases cited in that unpublished opinion do not stand for the proposition that the trial court may not extend the time to file a Rule 59(e) Motion when the request to file such a motion is made prior to the initial deadline to file the motion.

Judge Verdin had jurisdiction not only of the motion for summary judgment, but the entire case. She had this jurisdiction by court order and consent of the parties. The argument of counsel for Bank of America misconceives the nature of the trial court's jurisdiction and the 10-day window in Rule 59(e). The 10-day window was put into the rule not as a limitation of the court's jurisdiction, but rather as an extension of it. Historically, a traveling circuit judge was deprived of jurisdiction when she or he left the circuit. The 10-day window was inserted into the rule to allow greater - not lesser - flexibility. Cox v. Fleetwood Homes of Georgia, Inc., 334 S.C. 55, 512 S.E.2d 498 (1999), decided years after the adoption of Rule 59, provided further flexibility, and shows the unwillingness of the appellate courts to be hidebound on the handling of cases at the circuit level under the prior

restrictive practice. Judge Verdin did not need the 10-day window because she had continuing jurisdiction of the case. Because she had jurisdiction, she could grant the extension.

Moreover, by accepting and then ruling on the motion for reconsideration, Judge Verdin eliminated the argument by Bank of America's counsel about the 10-day window. A similar argument was rejected in Gallagher v. Evert, 353 S.C. 59, 577 S.E.2d 217 Ct. App. 2002). That case also involved a Rule 59(e) motion.

> "Because the circuit court found it appropriate to hear the matter, we find no error in the circuit court's decision to decide the motion despite Gallagher's failure to comply with Rule 59(g), SCRCP. The notes to Rule 59, SCRCP, indicate that subsection (g) was added 'to help insure the judge is promptly notified that the motion has been filed.' There is no indication that the failure to transmit a copy of the motion to the circuit court affects the tolling provision of Rule 203(b)(1), SCACR. Therefore, the time for filing the notice of appeal did not begin to run until after the circuit court denied the motion on December 27, 2000. After the circuit court denied the motion, only twenty days passed before Gallagher filed his notice of appeal on January 16, 2001, thus Gallagher complied with Rule 203(b), SCACR." (Hearn, C. J.)

The federal cases cited by counsel for Bank of America are beside the point. The South Carolina Supreme Court has made clear that its interpretation of the South Carolina Rules of Civil Procedure is not controlled by the federal courts. In Camp v. Camp, 386 S.C. 571, 689 S.E.2d 634 (2010), it reversed a South Carolina Court of Appeals decision construing Rule 7(b)(1), SCRCP, that had relied on an identical United States Court of Appeals case. The Supreme Court reasoned that as long as "neither party is prejudiced and the court is able to deal fairly with a motion for reconsideration", the motion is proper. Id. at 637. There is no prejudice to the Bank of America in this case, and its counsel has not argued it.

Bank of America is estopped from even bringing its motion because its counsel did not object to the enlargement of time, and in fact, expressed his willingness to be

accommodating, when the request for enlargement of time was made. Exhibit C – E-mail chain of December 29, 2014. While Mr. Sheedy raised the question whether the Judge could grant such an extension, neither he nor his client Bank of America objected to the extension. Therefore, any objection to the extension was waived on December 29, 2014 and Bank of America is estopped from bringing this motion.

Finally, and perhaps most importantly, the Due Process Clauses of the United States Constitution and the South Carolina Constitution, and simple fairness, require denial of the Bank of America's motion to dismiss. Here we have a young lawyer, sick and out-of-town during Christmas, doing what is expected of him. He contacts opposing counsel and the judge to ask for a brief extension of time. The judge grants the request and he files his motion. Of all things that one should be able to count on in the practice of law, it is the time given by the judge personally to file something with the court. In fairness, that reliance should not be undercut. Under Due Process, it cannot be. This is especially true in a case such as this one, where the South Carolina Supreme Court has not visited the issue and provided the lawyers and litigants of this State with notice whether the ten day timeframe in Rule 59(e) may or may not be enlarged upon a motion timely made before the ten day period has expired.

There is nothing remarkable about the request that the motion to dismiss be denied. This is a matter of fundamental rights. The South Carolina Supreme Court has held that in such a circumstance, "those rights take precedence over procedural rules otherwise limiting action by the court." *See* Galloway v. Galloway, 249 S.C. 157, 153 S.E.2d 326 (1967) (involving rights of minors) *cited by* Stefan v. Stefan, 320 S.C. 419, 465 S.E.2d 734 Ct.App. 1995) (involving failure to preserve issue of visitation by father). The Due Process right at

issue in this case is no less fundamental than those in Galloway and Stefan. It lies at the heart of our system of justice.

The motion to dismiss of Bank of America is misplaced. For technical reasons under Rule 59(e), estoppel, and for broader considerations of fundamental fairness and Due Process, it should be denied.

Respectfully submitted,

Date: April 8, 2015

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hunter@fayssouxlaw.com

Attorneys for Appellant

EXHIBIT "A"

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE	)	C.A. No.: 2010-CP-23-5880
Overland, Inc., d/b/a Land Rover Greenville, Plaintiff,	)	**AFFIDAVIT OF MICHAEL F. O'SHEA**
v.	)	
Lara Marie Nance, Charlie Andrew Nance Roger Fields, Synovus Financial Corporation d/b/a NBSC, Branch Banking and Trust Company, Bank of America Corporation, and Suntrust Banks, Inc.	)	
Defendants.	)	

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL D. WICKENSIMER
2014 OCT 27 PM 4 19

AFFIDAVIT ATTACHED

Affidavit

State of South Carolina

County of Greenville

I, Michael F. O'Shea, do herby swear under penalty that;

1. I am over 18 years of age and competent to testify as to my knowledge of the facts stated herein.

2. I am a forensic accountant and Director of Investigations at Forensic Research Group, Inc. a financial investigative and consulting firm specializing in forensic accounting reviews, damage analysis and litigation support. I have previously been admitted as an expert witness in forensic accounting in both Federal and State Court. A copy of my CV is attached to this affidavit.

3. I was initially retained, in February 2010, by Overland Inc. as a Forensic Accountant and investigator to review various books and records relating to an apparent employee embezzlement case.

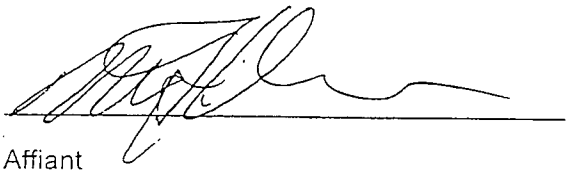
4. On 08 March 2010 I issued an Initial Report (copy attached) outlining my initial findings indicating, with a reasonable degree of accounting certainty, that the Company had sustained a loss of $1,008,911.78 due to embezzlement by Laura Nance.

5. Subsequent to this initial report I became aware of additional losses on review of documents provided by current and prior defendants in this matter as well as discussions with US Secret Service James Motley who investigated this matter as well.

6. Based on subsequent reviews I believe that, with a reasonable degree of accounting certainty, that the total loss exceeded $1,400,000.00.

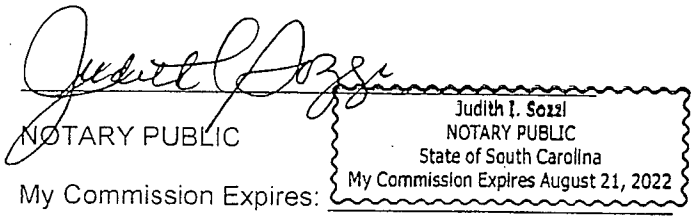
7. During my entire engagement I never expressed an opinion or made a statement that wasn't supported by the documentation available to me at the time.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on this 27th day of October 2014.



Affiant

Before me, the undersigned authority in and for Greenville County, South Carolina personally appeared Michael F. O'Shea who is known to me and who Sworn to and subscribed before me this 27th day of October 2014.



NOTARY PUBLIC

My Commission Expires:

EXHIBIT "B"

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
2013 SEP 23 P 3:08

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2010CP2305880

PLAINTIFF(S)		DEFENDANT(S)	
Overland Inc	Land Rover Greenville	Lara Marie Nance Roger Fields NBSC Bank Of America Corporation	Charlie Andrew Nance Synovus Financial Corporation Branch Banking And Trust Company Suntrust Banks Inc

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit);
☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j) SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award: ☐ Other: _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

9/23/2013

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 3/2013)

Circuit Court Judge | Judge Code | Date

For Clerk of Court Office Use Only

This judgment was entered on 23rd day of September, 2013, and a copy mailed first class or placed in the appropriate attorney's box on 23rd day of September, 2013, to attorneys of record or to parties (when appearing pro se) as follows:

James Walter Fayssoux Jr. 209 E. Washington St. Greenville, SC 29601

ATTORNEY(S) FOR THE PLAINTIFF(S)

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Bruce A. Byrholdt Chapman, Byrholdt & Yon, LLP P.O. Box 2506 Anderson, SC 29622
Elbert Stockman Dorn 1101 Johnson Ave., Ste. 300 Myrtle Beach, SC 29577
Andrew A. Mathias Nexsen Pruet, LLC P.O. Drawer 10648 Greenville, SC 296030648
Gregory Jacobs English Wyche, P.A. P.O. Box 728 Greenville, SC 296020728
Martin Mason Tomlinson PO Box 480 Ben Franklin Station Washington, DC 20044
Joshua L. Howard Haynsworth Sinkler Boyd, P.A. P.O. Box 2048 Greenville, SC 29602
Brent O. E. Clinkscale PO Box 10208 Greenville, SC 296030208

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Paul B. Wickensimer Greenville County Clerk Of Court - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 3/2013)

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B WICKENSHER
2013 SEP 23 P 3:08

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE

Case No. 2010-CP-23-5880

Overland, Inc., d/b/a Land Rover of Greenville,

Plaintiffs,

vs.

Lara Marie Nance; Charlie Andrew Nance; Roger Fields; Synovus Financial Corporation d/b/a NBSC; Branch Banking and Trust Company; Bank of America Corporation; and SunTrust Banks, Inc.,

Defendants.

CONSENT ORDER DESIGNATING CASE COMPLEX

This matter is before the Court on the Joint Motion of the Plaintiff and Defendants to have this case designated as complex and assigned to a single Circuit Court Judge to hear and handle all pre-trial motions and other matters, including any trial.

For good cause shown, the Parties' Motion is granted, this case is designated as a complex case and assigned to the Honorable LETITIA H. VERDIN, Circuit Judge, to hear and handle all pre-trial motions and all other matters pertaining to this case, including any trial. At this time, the Parties have not agreed on a proposed trial date. The Parties are to consult on this issue with Judge VERDIN who has discretion to determine the date after which this case will be called for trial.

[Signature Below]

ENTERED COMPUTER

IT IS SO ORDERED.

D. Garrison Hill
Chief Administrative Judge, Common Pleas
Thirteenth Judicial Circuit

Dated: 9.20, 2013
Greenville, South Carolina

EXHIBIT "C"

Hunter Reid

From: Verdin, Letitia H. Secretary (Angela G. Hyder)
Sent: Monday, December 29, 2014 3:21 PM
To: Jim Sheedy; hunter@fayssouxlaw.com; sdriscoll@driscollsheedy.com
Subject: RE: Overland's Rule 59(e) motion, request for extension

Hunter,
Judge Verdin grants a ten-day extension for you to file your Motion.

Thank you,
Angie Hyder
Administrative Specialist for
Letitia H. Verdin
Greenville County Courthouse
305 East North Street, Suite 318
Greenville, SC 29601-2120
(864)467-8448 Office
(864)467-8504 Fax

From: Jim Sheedy [mailto:jimsheedy@driscollsheedy.com]
Sent: Monday, December 29, 2014 2:47 PM
To: Verdin, Letitia H. Secretary (Angela G. Hyder)
Subject: Overland's Rule 59(e) motion, request for extension

Pls. see below (which bounced back).

From: Jim Sheedy
Sent: Monday, December 29, 2014 2:38 PM
To: lverdinsc@scourts.org
Cc: 'Hunter Reid'; Susan Driscoll; 'Verdin, Letitia H. Law Clerk (Virginia Rogers)'
Subject: Overland's Rule 59(e) motion, request for extension

Judge Verdin,

Actually, I said to Hunter it was my belief upon review of Rules 6(b) and 59(e) that I do not have the power to extend, and the ten (10) day time limit is non-discretionary, i.e., "not later than", "shall", nor am I aware of any cases allowing for extensions under Rule 59(e).

But I was also unaware of any Rule or decisional law prohibiting an amended Rule 59(e) so long as the amendment is not tantamount to a new motion (beyond the time limit).

While I am willing to be accommodating, I cannot do more than what the law allows me to do.

Jim

From: Hunter Reid [mailto:hunter@fayssouxlaw.com]
Sent: Monday, December 29, 2014 2:29 PM
To: lverdinsc@scourts.org

Cc: Jim Sheedy
Subject: FW: Overland's Rule 59(e) motion, request for extension

Judge Verdin,

Good afternoon. I am writing you to request an extension of time to file a Rule 59(e) Motion in the Overland v. Nance lawsuit. I was out of the state all of last week for Christmas holidays, and I have been sick as well. If your Honor believes it cannot grant me an extension until the end of this week under these circumstances, then would your Honor please also consider allowing me to submit an Amended Motion at a later date?

I have conferred with opposing counsel, Jim Sheedy, and he doesn't have any objections to this request.

Thank you,

Hunter Reid

T. Hunt "Hunter" Reid

209 EAST WASHINGTON STREET (29601)
POST OFFICE BOX 10207
GREENVILLE, SC 29603
864.233.0445
864.672.3706 FAX
WWW.FAYSSOUXLAW.COM

From: Jim Sheedy [mailto:jimsheedy@driscollsheedy.com]
Sent: Monday, December 29, 2014 2:16 PM
To: Hunter Reid
Cc: Susan Driscoll
Subject: Overland's Rule 59(e) motion, request for extension

Hunter, look at Rule 6(b) and Rule 59(e). I don't think we can consent or that Judge Verdin has the discretion to extend, i.e. "shall be served not later than 10 days ..." If you have a case that says I can do this, I'm happy to oblige, but I honestly don't think there is one under Rule 59(e). Rather, the time is mandatory, I believe.

From: Hunter Reid [mailto:hunter@fayssouxlaw.com]
Sent: Monday, December 29, 2014 2:08 PM
To: Jim Sheedy; Susan Driscoll
Subject: Overland's Rule 59(e) motion, request for extension

Guys,

Do you have any problem if I seek an extension of time to file my Rule 59e motion with Judge Verdin? I have been out of town for Christmas and sick the whole time. I would like more time to submit a motion.

Let me know as soon as you can.

Thanks,

Hunter

CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE	)	C.A. No.: 2010-CP-23-5880
	)	
Overland, Inc., d/b/a Land Rover Greenville,	)	**PLAINTIFF'S FIRST SET OF INTERROGATORIES AS TO SUNTRUST BANKS, INC.**
Plaintiff,	)	
	)	
v.	)	
	)	
Lara Marie Nance, Charlie Andrew Nance Roger Fields, Synovus Financial Corporation d/b/a NBSC, Branch Banking and Trust Company, Bank of America Corporation, and Suntrust Banks, Inc.	)	
	)	
Defendants.	)	

TO: DEFENDANT SUNTRUST BANKS, INC. BY AND THROUGH THEIR ATTORNEY

The Plaintiff, by and through counsel, James W. Fayssoux, Jr., Esquire and T. Hunt Reid, Esquire, does herein require the above-named Defendants to answer in writing and under oath the following interrogatories within 30 days after the service hereof, under the provisions of Rule 33 of the South Carolina Rules of Civil Procedure:

Definitions

1. "Document" shall mean any written, printed, typed, recorded or other graphic matter of any kind or nature, and all mechanical or electrical sound recordings and any transcripts thereof, and computer data files in your possession, custody and/or control or in the possession, custody and/or control of your servants, employees, agents and counsel, or known by you to exist; it shall also mean all copies of documents by whatever means made.

2. "Identify" or "identity" used with reference to an individual means to state his or her full name, current or last known address, current or last known position or business affiliation, and employer, title, and position at the time in question. If the person was your agent or employee, also state his job title and areas of responsibility.

3. "Identify" or "identity" used with reference to a writing means to state the date, author, type of document (e.g., letter, memorandum, telegram, chart, note, application, etc.) or other means of identification, and its current location or custodian. If any such document is no longer in your possession or subject to your control, state what disposition was made of it.

4. "Identify" or "identity" used with reference to an oral communication, conference or meeting means to state the date of the communication, conference or meeting, the identity of all parties to the communication, conference or meeting, and to state the subject matter of the communication, conference or meeting, and the general substance of what was said and/or transpired.

Instructions

1. These interrogatories are of an ongoing nature, and should you acquire additional information responsive to these interrogatories, the answers shall be updated to provide the additional information.

2. If a privilege not to answer is claimed, identify each matter as to which privilege is claimed, the nature of the privilege, and the legal and factual basis for each such claim.

3. If a refusal to answer an interrogatory is stated on the grounds of undue hardship, identify the number and nature of documents needed to be searched, the location of the documents, and the number of person hours and costs required to conduct the search.

4. Answer each interrogatory on the basis of your entire knowledge, including information in your possession and in the possession of your employees, consultants, representatives, agents and attorneys.

5. If any interrogatory cannot be answered in full, answer to the extent possible and specify reasons for inability to answer.

INTERROGATORIES

1. Give the names, current addresses and telephone numbers of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

2. Set forth a list of photographs, plats, sketches, or other prepared documents in possession of the party that relate to the matters complained of in Plaintiff's Complaint.

3. Set forth any insurance policy and/ or agreement under which any insurance business may be liable to satisfy part or all of the judgment that may be entered in this action, or to indemnify or reimburse for payments made to satisfy the judgment, by stating the name of the insurer and the amount of any liability insurance coverage.

4. List the names and addresses of any expert witnesses who the party proposes to use as a witness at the trial of the case and identify:

(a) The subject matter of each expert's testimony;

(b) The substance of the facts and opinions to which the expert is expected to testify; and

(c) A summary of the grounds for each opinion.

5. For each person known to the parties and counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from said witness.

6. List all insurance policies which provided any coverage to any party to this litigation at the time the incident that is the subject of this action occurred.

7. For each policy listed in response to interrogatory no. 6, please state:

(a) the party or parties covered under the policies;

(b) the type of coverage available; and

(c) the limits in coverage available under each policy.

8. Describe any correspondence, whether verbal, written, or otherwise, Defendant or any individual, employee or representative acting as an agent on its behalf has had with Plaintiff or any other individuals or entities concerning the facts, claims or defenses concerning this litigation and the events and circumstance related thereto or referenced therein.

9. List any and all physical exhibits or evidence Defendant or its counsel intend to use at trial or which relate, in any way, to the claim or defense in this case, including the current location of the exhibits or evidence and the name and address of the person(s) or entities who currently possess the exhibits or evidence.

10. Identify every document not produced in connection with Plaintiff's request to produce and state the specific reason for your refusal to produce it.

11. State the net worth of the Defendant.

12. Please state whether Defendant has ever been a named party to civil litigation, State or Federal, related to any legal action for fraud, misrepresentation, unfair trade practices, or violations of UCC §§3-404, 405, 406, and/or §1-203 (S.C. Code §§36-3-404, 405, 406 and §36-1-203) in the last ten years.

13. For all responses to Interrogatory No. 12, please state for each such legal action the following information:

(a) The names of all parties, both Plaintiff(s) and Defendant(s);

(b) The addresses of all parties, both Plaintiff(s) and Defendant(s);

(c) The date of the filing of the action and case number;

(d) The jurisdiction in which the action was filed;

(e) The substance of the facts as set out in the pleadings;

(f) Whether the action has been settled, adjudicated, or is pending;

(g) If resolved the result of any disposition of the action; and

(h) The name, address, and telephone numbers of the attorney(s) representing Plaintiff(s) in the action.

14. Please state whether Defendant has ever been the subject of or in any way referenced in any investigation or inquiry by any State or Federal regulatory or other entity or agency for any reason related to its business practices, including but not limited to, its professional or service conduct, hiring and supervision, business transactions

and/or dealings, trade practices, regulatory or fiscal reporting, governmental regulatory compliance.

15. For all responses to Interrogatory No. 14, please state for each such legal action the following information:

(a) The names of all State or Federal agencies or entities;

(b) The names and addresses of all individuals or agents involved in the investigations or inquiries;

(c) The date of the investigations or inquiries;

(d) The nature and scope of and reason and purpose for the investigations or inquiries;

(e) The substance of the facts as set out in the investigations or inquiries;

(f) Whether the investigations or inquiries led to any formal or informal reprimand, sanction, fine, or regulatory or other action.

16. List each and every account opened, maintained or used by LMN, CAN, or RF, at Defendant's bank by providing the account type, name, number, routing number, credit card number and expiration date(s) issued thereto, pins numbers associated therewith, open and close dates, and by identifying which local branch maintained each account.

17. List by banking or lending institution name the account number, check number, amount, and date of any and all checks presented or authorized by Defendant LMN to which Defendant transferred, paid and/or honored.

18. State with specificity Defendants' understanding, at all time relevant to this litigation, of Defendant LMN's status, responsibilities, and authorizations with

regard to her employment with Plaintiffs, including whether Defendant LMN ever provided Defendant with any verification of her employment and/or wage earnings.

19. List and provide current contact information for each and every employee of Defendant that handled any aspect of the accounts for LMN, CAN and/or RF. Please include when and by whom each accounts was initiated, the process by which each account was initiated, the name and address of any person who approved for access to each account.

20. Describe in detail all of Defendant's policies, procedures, protocols and practices for opening a personal checking/savings account, corporate account, or other business related account(s).

21. Describe in detail all policies, procedures, protocols and practices ever used by Defendant concerning maintaining and safeguarding checking accounts. This includes but not limited to the purpose and use of signature cards or electronic verifications of the authorized user(s) of accounts and credit cards as a means of comparing signatures or verifications on checks or other instruments to the signature/verification of authorized user(s) in order to prevent fraud and forgery.

22. List the total number and sum total of all deposits into, and withdrawals out of each account maintained, used or controlled by LMN, CAN or RF. This includes deposits by tangible instruments, electronically or by other authorized means.

23. Describe in detail any and all representations made by Defendant LMN to Plaintiff, its agents and/or employees of Plaintiff, or any Defendants or any agent or representative of said Defendants regarding Plaintiff's inventory, business accounts and

transactions, account authorizations, invoices, and/or company checks and how each and every representation was relied and/or acted upon.

24. State the closing, holding or seizing date for every account associated with LMN, CAN or RF, and explain in detail the reasons for closing the account, the name of Defendant's employee who authorized the closing, holding or seizing, and the disposition of any funds remaining therein.

25. State whether Defendant or its employees ever received notice that Defendant LMN was not a person entitled to demand or enforce payment upon Plaintiffs' checks or drafts or to otherwise receive payments from Plaintiffs' accounts. If so, state the date said defendant received notice, the method by which said defendant received notice and by whom the notice was provided the notice, and what actions, if any were taken by said Defendant as a result of said notice.

26. State whether Defendants were ever received and/or accepted from Defendant LMN a check that bore any altered numbers and/or words.

27. Describe the methods, procedures, protocols, standards and practices accepted, instituted, utilized, or otherwise engaged in by Defendants, at all relevant times relevant to this litigation, concerning management, administration, coordination, and protection of customer financial affairs, accounts and services, information transfer, and redress for errors.

28. List the names and provide current contact information for all employees of Defendant that accepted a check or draft from LMN, CAN or RF in exchange for certified funds or certified check.

29. Did Defendant initiate or receive contact to/from or otherwise communicate with any employees or agents of NBSC/Synovus, BB&T, the United States Secret Service or other federal governing bodies in regards to LMN, CAN, RF, or any of the subjects of this litigation? If so, please state in detail when the contact was established, a summary of the communications, and a list of all persons involved.

30. Did Defendant ever engage or perform in an investigation, examination or review, whether internally or externally, of the account activity of LMN, CAN, RF? If so, please state in detail when the review occurred, the reasons for such review, a summary of the review, conclusions, and responsive actions taken therefrom.

These interrogatories shall be deemed continuing so as to require supplemental answers if the party, any representative, or counsel obtains further information between the time the answers are served and the time of trial.

FAYSSOUX LAW FIRM, P.A.

James W. Fayssoux, Jr., SC Bar #16659
T. Hunt Reid / S.C. Bar #77538
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Attorneys for Plaintiff

December 16, 2013
Greenville, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE	)	C.A. No.: 2010-CP-23-5880
Overland, Inc., d/b/a Land Rover Greenville,	)	**PLAINTIFF'S FIRST REQUESTS FOR PRODUCTION AS TO SUNTRUST BANKS**
Plaintiff,	)	
v.	)	
Lara Marie Nance, Charlie Andrew Nance Roger Fields, Synovus Financial Corporation d/b/a NBSC, Branch Banking and Trust Company, Bank of America Corporation, and Suntrust Banks, Inc.	)	
Defendants.	)	

TO: DEFENDANT SUNTRUST BANKS, INC. BY AND THROUGH THEIR ATTORNEY.

The Plaintiff, by and through counsel, T. Hunter Reid, Esq., does herein require the above-named Defendants to answer in writing and under oath the following interrogatories within 30 days after the service hereof, under the provisions of Rule 34 of the South Carolina Rules of Civil Procedure:

DEFINITIONS AND INSTRUCTIONS

A. Definitions

1. Document. The term "document" is used in its broadest possible sense and includes, but is not limited to, e-mail, correspondence, diagrams, electronic and digitally stored data in all formats, video and audio recordings of all types, photographs, contracts, invoices, receipts, bills, orders, notes and all other written and recorded communications, together with all data compilations from which information can be obtained, or translated if necessary, by the respondent through detection devices, into reasonably usable form, and all other items identified as documents in Rule 34.

This request seeks production of original documents of all types plus all non-identical copies and drafts thereof in the possession, custody or control of the Plaintiff or its attorney, and the identification of all other documents of which the Plaintiff or its attorney has knowledge. As used herein, the term "document" means the original and any non-identical copy. All notations, comments or alterations on the copy render it non-identical and require Production.

In all cases where an original is unavailable, "document" also means a copy thereof.

The term "document" is further defined to include any attachments or other matters affixed.

2. Correspondence. The term "correspondence" is used in its broadest possible sense and includes, but is not limited to, physical writings of all types as well as electronic and digitally transmitted or stored communications in all formats, including e-mail and text messages.

3. As used herein, the terms "you" and "your" refer individually and collectively to Suntrust Banks, Inc., and to any past or present officers, employees, and agents of the same.

B, Instructions

1. Documents Withheld

If any document is withheld under a claim of privilege or other protection so as to aid the Court and the parties hereto to determine the validity of the claim of privilege or other protection, please provide the following information with respect to any such documents:

A. The identity of the person(s) who prepared the document, who signed it, and over whose name it was sent or issued;

B. The identity of each person(s) to whom the document was directed;

C. The nature and substance of the document with sufficient particularity to enable the Court and parties hereto to identify the document;

D. The identity of each person(s) who has custody of, or control over, the document and each copy thereof;

E. The date of the document;

F. The identity of each person to whom copies of the document were furnished;

G. The number of pages;

H. The basis on which any privilege or other protection is claimed; and

I. Whether any non-privileged or non-protected matter is included in the document.

2. Partial Production

Whenever you object to a particular request, or portion thereof, you must produce all documents called for which are not subject to that objection. Similarly, whenever a document is not produced in full, please state with particularity the reason or reasons it is not being produced in full, and describe, to the best of your knowledge, information and belief, and with as much particularity as possible, those portions of the document which are not produced.

3. Order of Response

Please Note that pursuant to Rule 34 (b), SCRCP a party who produces documents for inspection shall produce them as they are kept in the usual course of business or shall organize and label them to correspond to the categories in the request.

4. Construction of the Singular and Plural Forms

As used herein, the singular form shall include the plural and vice versa whenever such dual construction will serve to bring within the scope of this request any documents which would otherwise not be brought within its scope.

5. Documents no longer in your possession, custody or control

In the event that any document or thing sought in any of these requests has been transferred, destroyed, lost, discarded or otherwise disposed of, identify as completely as possible each such document or thing, and include without limitation, the following information: date of disposal, place and manner of disposal, reason for disposal, person authorizing the disposal, and all persons involved in disposing of the document or thing.

Request for Production

1. Copies of all statements given by the Defendant which are in the possession of Defendant or Defendant's attorneys whether written, recorded on a tape recorder, or otherwise, which relate to the matters complained of in Plaintiff's Complaint.

2. Copies of any and all statements given by either eyewitness(es) or other witness(es) to the incident and matters complained of in the Complaint herein which are in the possession of Defendant or Defendant's attorneys whether written, recorded on a tape recorder, or otherwise.

3. Copies of any and all written reports by any experts referred to in Defendant's Answers to Standard Interrogatories.

4. Copies of any and all statements, memoranda, reports of other materials which in any way might relate to Defendant's defense(s) herein which are within the possession of Defendant or Defendant's attorneys whether written, recorded on a tape recorder, or otherwise.

5. Copies of any and all photographs, digital images, plats, diagrams, sketches, videotapes or other prepared documents or materials which Defendant or Defendant's attorneys may have which relate to the matters alleged in Plaintiffs' Complaint and may be presented at trial or into evidence, by way of impeachment, or otherwise .

6. Copies of all policies, protocols, manuals, and/or procedures with respect the creation of or the opening up of customer accounts that were in effect at Suntrust Banks, Inc. during the relevant periods of this case.

7. Copies of each and every document provided to Suntrust Banks, Inc. by any person(s) in relation to the account(s) listed in your response to Plaintiff's Interrogatory No. 16.

8. Copies of each and every document provided by Suntrust Banks, Inc. to LMN, CAN, RF or any other persons associated with the account(s) listed in your response to Plaintiff's Interrogatory No. 16.

9. Copies of Suntrust Banks, Inc.'s entire file on LMN, CAN, RF, "TEBS," Taylor Enterprises, Atlantic British, Invision Industries, and all the account(s) associated these persons or entities, including, without limitation, the following: reports, memos,

financial statements, tax returns, correspondence, internal reviews, financial analysis, SARS reports, audits, corporate resolutions, secretary of state certificates or writings, operating agreements and/or articles of organization, checking and deposit account agreements, signature cards, customer identifications, EIN, SSN, driver's licenses, emails. If any of the above-referenced documents exist but not within Suntrust Banks, Inc.'s file, please produce the same, wherever they are located.

10. Copies of any and all bank statements and credit card statements associated or connected with the accounts listed in your response to Plaintiff's Interrogatory No. 16.

11. Copies of any and all deposit slips, check images, checks deposited, withdrawal receipts, ATM transactions, draw requests or other account transactions or request for transaction that are associated or connected with the accounts listed in your response to Plaintiff's Interrogatory No. 16.

12. Copies of all checks paid and/or transferred on the accounts listed in your response to Plaintiff's Interrogatory No. 16, including the front and back of each check, written or drawn on the account(s), and wiring information if funds were wired from the account(s).

13. An account history of all the accounts listed in your response to Plaintiff's Interrogatory No. 16, by date, showing the initial funding of the account, all deposits during the exists of the accounts, debits on the account, debit information including the payee names and account information where the funds were deposited and form of disbursement, withdrawal information including the form of disbursement such as cash, check or wire, as well as any other account information.

13. Copies of all correspondences, whether electronically or otherwise, including attachments thereto, between Suntrust Banks, Inc. and any other parties to this action that may relate in any way to the subjects of this action.

14. A complete copy of the most current curriculum vitae of each expert witness identified by the Plaintiff in response to Interrogatories propounded by this Defendant.

15. Any and all data and other information considered by any expert identified by the Plaintiff in response to Interrogatories propounded by this Defendant in connection with any opinion(s) formed, or in summary or support of any opinion(s) formed, by such expert(s).

16. Any and all exhibits to be used as a summary of or in support of the opinion(s) of any expert(s) identified by Plaintiff in response to Interrogatories propounded by this Defendant.

17. Copies of any and all treatises, texts or other authorities upon which each expert identified by the Plaintiff in response to Interrogatories propounded by this Defendant relies in whole or in part in forming or supporting any opinion to be expressed in this case.

18. Any and all documents identified in response to Interrogatories propounded by this Defendant.

19. Any and all statements taken from any witness in this case.

20. All policies, manuals, desk references, memos, procedures or writings associated with the administration and handling of the types of accounts similar to or actually used by LMN, CAN, or RF.

21. Copies of any documents used in formulating your response to Plaintiff's Interrogatory Nos. 20, 21, 27, and/or 30.

These requests for production of documents shall be deemed continuing so as to require supplemental answers if or production the party, any representative, or counsel obtains further information between the time the answers are served and the time of trial.

FAYSSOUX LAW FIRM, P.A.

James W. Fayssoux, Jr., SC Bar #16659
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wally@fayssouxlaw.com
hunter@fayssouxlaw.com

Attorneys for Plaintiff

Dated: December 16, 2013
Greenville, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE	)	C.A. No.: 2010-CP-23-5880
Overland, Inc., d/b/a Land Rover Greenville, Plaintiff,	)	**CERTIFICATE OF SERVICE**
v.	)	
Lara Marie Nance, Charlie Andrew Nance Roger Fields, Synovus Financial Corporation d/b/a NBSC, Branch Banking and Trust Company, Bank of America Corporation, and Suntrust Banks, Inc. Defendants.	)	

I, the undersigned employee of Fayssoux Law Firm, P.A., do hereby certify that I have caused the below documents to be served via electronic mail on this **16th day of December, 2013**, to all parties of record at the addresses shown below pursuant to the Scheduling Order dated October 22, 2013 in the above-captioned matter. In addition, the undersigned deposes and says that she served the below documents via U.S. Mail, postage prepaid, to attorney for Defendant Suntrust Banks, Inc., W. Howard Boyd, Jr., at the address shown below.

Document(s): *Plaintiffs First Set of Interrogatories as to Suntrust Banks, Inc. and Plaintiffs First Requests for Production as to Suntrust Banks, Inc..*

COUNSEL FOR PARTIES OF RECORD

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FAYSSOUX LAW FIRM, P.A.,

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Greenville, SC 29603
(864) 233-0445

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT C.A. No.: 2010-CP-23-5880
Overland, Inc., d/b/a Land Rover Greenville, Plaintiff, v. Lara Marie Nance, Charlie Andrew Nance Roger Fields, Synovus Financial Corporation d/b/a NBSC, Branch Banking and Trust Company, Bank of America Corporation, and Suntrust Banks, Inc. Defendants.	NOTICE OF MOTION AND MOTION TO COMPEL

YOU WILL PLEASE TAKE NOTICE, that ten (10) days after the service of this Notice upon you or as soon thereafter as counsel may be heard, the undersigned attorney for the Plaintiff, will move before the Presiding Judge of the Thirteenth Judicial Circuit, Greenville County Court of Common Pleas for an Order pursuant to Rule 37 of the South Carolina Rules of Civil Procedure requiring the Defendants to respond to its Interrogatories and Requests for Production, which are attached hereto as **Exhibit 1** (as to Bank of America) and **Exhibit 2** (as to NBSC). Plaintiff's first discovery demands were originally served on these two defendants on December 16, 2013 and February 21, 2014, respectively. And, in an effort to ensure compliance with Defendant Bank of America, Plaintiff delivered a lettered correspondence to said Defendant on July 7, 2014 detailing its inadequate responses and renewing its demand for a complete response, **Exhibit 3** attached.

Based upon the Defendant's deliberate refusal to respond to multiple requests for compliance, the Plaintiff specifically seeks reimbursement of reasonable costs and expenses, including attorney's fees, incurred in obtaining this Order and in the most basic discovery

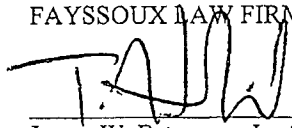
compliance.

Pursuant to Rule 11, the undersigned hereby affirms the Plaintiff's counsel has communicated with the Defense counsel repeatedly in an effort to resolve the matter contained in this Motion without success.

WHEREFORE, Plaintiff moves for the issuance of an order granting said motion and for such other relief as may be just and proper.

I SO MOVE.

FAYSSOUX LAW FIRM, P.A.,



September 22, 2014
Greenville, SC

James W. Fayssoux, Jr., SC Bar # 16659
T. Hunt Reid, SC Bar # 77538
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(864) 233-0445
(864) 672-3706
wally@fayssouxlaw.com
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Attorneys for Plaintiffs

EXHIBIT

1

JAMES W. FAYSSOUX, SR.
JAMES W. FAYSSOUX, JR.

FAYSSOUX
LAW FIRM P. A.

PAUL S. LANDIS
T. HUNT REID

December 16, 2013

James W. Sheedy, Esquire
DRISCOLL SHEEDY, P.A.
11520 N. Community House Rd.
Suite 200
Charlotte, NC 28277

RE: Overland Inc., d/b/a Land Rover of Greenville v. Lara Marie Nance, et. al.
C.A. No.: 2010-CP-23-5880

Jim:

Please find the enclosed for service upon you *Plaintiff's First Set of Interrogatories as to Defendant BOA* and *Plaintiff's First Requests for Production as to Defendant BOA*, together with a Certificate of Service for the same, all in connection with the above referenced matter.

All parties have been served copies electronically, but you will also receive a hard copy by this mailing.

With kind regards,

T. Hunt Reid

Enclosures (as stated)

Cc: Bruce A. Byrholdt, Esquire
Joshua Howard, Esquire
David L. Moore, Jr.
Brent O.E. Clinkscale, Esquire
W. Howard Boyd, Jr., Esquire

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE	)	C.A. No.: 2010-CP-23-5880
	)	
Overland, Inc., d/b/a Land Rover Greenville,	)	**CERTIFICATE OF SERVICE**
Plaintiff,	)	
	)	
v.	)	
	)	
Lara Marie Nance, Charlie Andrew Nance Roger Fields, Synovus Financial Corporation d/b/a NBSC, Branch Banking and Trust Company, Bank of America Corporation, and Suntrust Banks, Inc.	)	
	)	
Defendants.	)	

I, the undersigned employee of Fayssoux Law Firm, P.A., do hereby certify that I have caused the below documents to be served via electronic mail on this **16th day of December, 2013**, to all parties of record at the addresses shown below pursuant to the Scheduling Order dated October 22, 2013 in the above-captioned matter. In addition, the undersigned deposes and says that she served the below documents via U.S. Mail, postage prepaid, to attorney for Defendant Bank of America Corporation, James W. Sheedy, at the address shown below.

Document(s): *Plaintiffs First Set of Interrogatories as to Bank of America and Plaintiffs First Requests for Production as to Bank of America.*

COUNSEL FOR PARTIES OF RECORD

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE	)	C.A. No.: 2010-CP-23-5880
Overland, Inc., d/b/a Land Rover Greenville, Plaintiff,	)	**PLAINTIFF'S FIRST SET OF INTERROGATORIES AS TO BANK OF AMERICA**
v.	)	
Lara Marie Nance, Charlie Andrew Nance Roger Fields, Synovus Financial Corporation d/b/a NBSC, Branch Banking and Trust Company, Bank of America Corporation, and Suntrust Banks, Inc. Defendants.	)	

TO: DEFENDANT BANK OF AMERICA BY AND THROUGH THEIR ATTORNEY

The Plaintiff, by and through counsel, James W. Fayssoux, Jr., Esquire and T. Hunt Reid, Esquire, does herein require the above-named Defendants to answer in writing and under oath the following interrogatories within 30 days after the service hereof, under the provisions of Rule 33 of the South Carolina Rules of Civil Procedure:

Definitions

1. "Document" shall mean any written, printed, typed, recorded or other graphic matter of any kind or nature, and all mechanical or electrical sound recordings and any transcripts thereof, and computer data files in your possession, custody and/or control or in the possession, custody and/or control of your servants, employees, agents and counsel, or known by you to exist; it shall also mean all copies of documents by whatever means made.

2. "Identify" or "identity" used with reference to an individual means to state his or her full name, current or last known address, current or last known position or business affiliation, and employer, title, and position at the time in question. If the person was your agent or employee, also state his job title and areas of responsibility.

3. "Identify" or "identity" used with reference to a writing means to state the date, author, type of document (e.g., letter, memorandum, telegram, chart, note, application, etc.) or other means of identification, and its current location or custodian. If any such document is no longer in your possession or subject to your control, state what disposition was made of it.

4. "Identify" or "identity" used with reference to an oral communication, conference or meeting means to state the date of the communication, conference or meeting, the identity of all parties to the communication, conference or meeting, and to state the subject matter of the communication, conference or meeting, and the general substance of what was said and/or transpired.

Instructions

1. These interrogatories are of an ongoing nature, and should you acquire additional information responsive to these interrogatories, the answers shall be updated to provide the additional information.

2. If a privilege not to answer is claimed, identify each matter as to which privilege is claimed, the nature of the privilege, and the legal and factual basis for each such claim.

3. If a refusal to answer an interrogatory is stated on the grounds of undue hardship, identify the number and nature of documents needed to be searched, the location of the documents, and the number of person hours and costs required to conduct the search.

4. Answer each interrogatory on the basis of your entire knowledge, including information in your possession and in the possession of your employees, consultants, representatives, agents and attorneys.

5. If any interrogatory cannot be answered in full, answer to the extent possible and specify reasons for inability to answer.

INTERROGATORIES

1. Give the names, current addresses and telephone numbers of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

2. Set forth a list of photographs, plats, sketches, or other prepared documents in possession of the party that relate to the matters complained of in Plaintiff's Complaint.

3. Set forth any insurance policy and/ or agreement under which any insurance business may be liable to satisfy part or all of the judgment that may be entered in this action, or to indemnify or reimburse for payments made to satisfy the judgment, by stating the name of the insurer and the amount of any liability insurance coverage.

4. List the names and addresses of any expert witnesses who the party proposes to use as a witness at the trial of the case and identify:

(a) The subject matter of each expert's testimony;

(b) The substance of the facts and opinions to which the expert is expected to testify; and

(c) A summary of the grounds for each opinion.

5. For each person known to the parties and counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from said witness.

6. List all insurance policies which provided any coverage to any party to this litigation at the time the incident that is the subject of this action occurred.

7. For each policy listed in response to interrogatory no. 6, please state:

(a) the party or parties covered under the policies;

(b) the type of coverage available; and

(c) the limits in coverage available under each policy.

8. Describe any correspondence, whether verbal, written, or otherwise, Defendant or any individual, employee or representative acting as an agent on its behalf has had with Plaintiff or any other individuals or entities concerning the facts, claims or defenses concerning this litigation and the events and circumstance related thereto or referenced therein.

9. List any and all physical exhibits or evidence Defendant or its counsel intend to use at trial or which relate, in any way, to the claim or defense in this case, including the current location of the exhibits or evidence and the name and address of the person(s) or entities who currently possess the exhibits or evidence.

10. Identify every document not produced in connection with Plaintiff's request to produce and state the specific reason for your refusal to produce it.

11. State the net worth of the Defendant.

12. Please state whether Defendant has ever been a named party to civil litigation, State or Federal, related to any legal action for fraud, misrepresentation, unfair trade practices, or violations of UCC §§3-404, 405, 406, and/or §1-203 (S.C. Code §§36-3-404, 405, 406 and §36-1-203) in the last ten years.

13. For all responses to Interrogatory No. 12, please state for each such legal action the following information:

(a) The names of all parties, both Plaintiff(s) and Defendant(s);

(b) The addresses of all parties, both Plaintiff(s) and Defendant(s);

(c) The date of the filing of the action and case number;

(d) The jurisdiction in which the action was filed;

(e) The substance of the facts as set out in the pleadings;

(f) Whether the action has been settled, adjudicated, or is pending;

(g) If resolved the result of any disposition of the action; and

(h) The name, address, and telephone numbers of the attorney(s) representing Plaintiff(s) in the action.

14. Please state whether Defendant has ever been the subject of or in any way referenced in any investigation or inquiry by any State or Federal regulatory or other entity or agency for any reason related to its business practices, including but not limited to, its professional or service conduct, hiring and supervision, business transactions

and/or dealings, trade practices, regulatory or fiscal reporting, governmental regulatory compliance.

15. For all responses to Interrogatory No. 14, please state for each such legal action the following information:

(a) The names of all State or Federal agencies or entities;

(b) The names and addresses of all individuals or agents involved in the investigations or inquiries;

(c) The date of the investigations or inquiries;

(d) The nature and scope of and reason and purpose for the investigations or inquiries;

(e) The substance of the facts as set out in the investigations or inquiries;

(f) Whether the investigations or inquiries led to any formal or informal reprimand, sanction, fine, or regulatory or other action.

16. List each and every account opened, maintained or used by LMN, CAN, or RF, at Defendant's bank by providing the account type, name, number, routing number, credit card number and expiration date(s) issued thereto, pins numbers associated therewith, open and close dates, and by identifying which local branch maintained each account.

17. List by banking or lending institution name the account number, check number, amount, and date of any and all checks presented or authorized by Defendant LMN to which Defendant transferred, paid and/or honored.

18. State with specificity Defendants' understanding, at all time relevant to this litigation, of Defendant LMN's status, responsibilities, and authorizations with

regard to her employment with Plaintiffs, including whether Defendant LMN ever provided Defendant with any verification of her employment and/or wage earnings.

19. List and provide current contact information for each and every employee of Defendant that handled any aspect of the accounts for LMN, CAN and/or RF. Please include when and by whom each accounts was initiated, the process by which each account was initiated, the name and address of any person who approved for access to each account.

20. Describe in detail all of Defendant's policies, procedures, protocols and practices for opening a personal checking/savings account, corporate account, or other business related account(s).

21. Describe in detail all policies, procedures, protocols and practices ever used by Defendant concerning maintaining and safeguarding checking accounts. This includes but not limited to the purpose and use of signature cards or electronic verifications of the authorized user(s) of accounts and credit cards as a means of comparing signatures or verifications on checks or other instruments to the signature/verification of authorized user(s) in order to prevent fraud and forgery.

22. List the total number and sum total of all deposits into, and withdrawals out of each account maintained, used or controlled by LMN, CAN or RF. This includes deposits by tangible instruments, electronically or by other authorized means.

23. Describe in detail any and all representations made by Defendant LMN to Plaintiff, its agents and/or employees of Plaintiff, or any Defendants or any agent or representative of said Defendants regarding Plaintiff's inventory, business accounts and

transactions, account authorizations, invoices, and/or company checks and how each and every representation was relied and/or acted upon.

24. State the closing, holding or seizing date for every account associated with LMN, CAN or RF, and explain in detail the reasons for closing the account, the name of Defendant's employee who authorized the closing, holding or seizing, and the disposition of any funds remaining therein.

25. State whether Defendant or its employees ever received notice that Defendant LMN was not a person entitled to demand or enforce payment upon Plaintiffs' checks or drafts or to otherwise receive payments from Plaintiffs' accounts. If so, state the date said defendant received notice, the method by which said defendant received notice and by whom the notice was provided the notice, and what actions, if any were taken by said Defendant as a result of said notice.

26. State whether Defendants were ever received and/or accepted from Defendant LMN a check that bore any altered numbers and/or words.

27. Describe the methods, procedures, protocols, standards and practices accepted, instituted, utilized, or otherwise engaged in by Defendants, at all relevant times relevant to this litigation, concerning management, administration, coordination, and protection of customer financial affairs, accounts and services, information transfer, and redress for errors.

28. List the names and provide current contact information for all employees of Defendant that accepted a check or draft from LMN, CAN or RF in exchange for certified funds or certified check.

29. Did Defendant initiate or receive contact to/from or otherwise communicate with any employees or agents of NBSC/Synovus, BB&T, the United States Secret Service or other federal governing bodies in regards to LMN, CAN, RF, or any of the subjects of this litigation? If so, please state in detail when the contact was established, a summary of the communications, and a list of all persons involved.

30. Did Defendant ever engage or perform in an investigation, examination or review, whether internally or externally, of the account activity of LMN, CAN, RF? If so, please state in detail when the review occurred, the reasons for such review, a summary of the review, conclusions, and responsive actions taken therefrom.

These interrogatories shall be deemed continuing so as to require supplemental answers if the party, any representative, or counsel obtains further information between the time the answers are served and the time of trial.

FAYSSOUX LAW FIRM, P.A.

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Attorneys for Plaintiff

December 16, 2013
Greenville, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT C.A. No.: 2010-CP-23-5880
Overland, Inc., d/b/a Land Rover Greenville, Plaintiff, v. Lara Marie Nance, Charlie Andrew Nance Roger Fields, Synovus Financial Corporation d/b/a NBSC, Branch Banking and Trust Company, Bank of America Corporation, and Suntrust Banks, Inc. Defendants.	**PLAINTIFF'S FIRST REQUESTS FOR PRODUCTION AS TO BANK OF AMERICA**

TO: DEFENDANT BANK OF AMERICA BY AND THROUGH THEIR ATTORNEY.

The Plaintiff, by and through counsel, T. Hunter Reid, Esq., does herein require the above-named Defendants to answer in writing and under oath the following interrogatories within 30 days after the service hereof, under the provisions of Rule 33 of the South Carolina Rules of Civil Procedure:

DEFINITIONS AND INSTRUCTIONS

A. Definitions

1. Document. The term "document" is used in its broadest possible sense and includes, but is not limited to, e-mail, correspondence, diagrams, electronic and digitally stored data in all formats, video and audio recordings of all types, photographs, contracts, invoices, receipts, bills, orders, notes and all other written and recorded communications, together with all data compilations from which information can be obtained, or translated if necessary, by the respondent through detection devices, into reasonably usable form, and all other items identified as documents in Rule 34.

This request seeks production of original documents of all types plus all non-identical copies and drafts thereof in the possession, custody or control of the Plaintiff or its attorney, and the identification of all other documents of which the Plaintiff or its attorney has knowledge. As used herein, the term "document" means the original and any non-identical copy. All notations, comments or alterations on the copy render it non-identical and require Production.

In all cases where an original is unavailable, "document" also means a copy thereof.

The term "document" is further defined to include any attachments or other matters affixed.

2. Correspondence. The term "correspondence" is used in its broadest possible sense and includes, but is not limited to, physical writings of all types as well as electronic and digitally transmitted or stored communications in all formats, including e-mail and text messages.

3. As used herein, the terms "you" and "your" refer individually and collectively to Bank of America, and to any past or present officers, employees, and agents of the same.

B, Instructions

1. Documents Withheld

If any document is withheld under a claim of privilege or other protection so as to aid the Court and the parties hereto to determine the validity of the claim of privilege or other protection, please provide the following information with respect to any such documents:

A. The identity of the person(s) who prepared the document, who signed it, and over whose name it was sent or issued;

B. The identity of each person(s) to whom the document was directed;

C. The nature and substance of the document with sufficient particularity to enable the Court and parties hereto to identify the document;

D. The identity of each person(s) who has custody of, or control over, the document and each copy thereof;

E. The date of the document;

F. The identity of each person to whom copies of the document were furnished;

G. The number of pages;

H. The basis on which any privilege or other protection is claimed; and

I. Whether any non-privileged or non-protected matter is included in the document.

2. Partial Production

Whenever you object to a particular request, or portion thereof, you must produce all documents called for which are not subject to that objection. Similarly, whenever a document is not produced in full, please state with particularity the reason or reasons it is not being produced in full, and describe, to the best of your knowledge, information and belief, and with as much particularity as possible, those portions of the document which are not produced.

3. Order of Response

Please Note that pursuant to Rule 34 (b), SCRCP a party who produces documents for inspection shall produce them as they are kept in the usual course of business or shall organize and label them to correspond to the categories in the request.

4. Construction of the Singular and Plural Forms

As used herein, the singular form shall include the plural and vice versa whenever such dual construction will serve to bring within the scope of this request any documents which would otherwise not be brought within its scope.

5. Documents no longer in your possession, custody or control

In the event that any document or thing sought in any of these requests has been transferred, destroyed, lost, discarded or otherwise disposed of, identify as completely as possible each such document or thing, and include without limitation, the following information: date of disposal, place and manner of disposal, reason for disposal, person authorizing the disposal, and all persons involved in disposing of the document or thing.

Request for Production

1. Copies of all statements given by the Defendant which are in the possession of Defendant or Defendant's attorneys whether written, recorded on a tape recorder, or otherwise, which relate to the matters complained of in Plaintiff's Complaint.

2. Copies of any and all statements given by either eyewitness(es) or other witness(es) to the incident and matters complained of in the Complaint herein which are in the possession of Defendant or Defendant's attorneys whether written, recorded on a tape recorder, or otherwise.

3. Copies of any and all written reports by any experts referred to in Defendant's Answers to Standard Interrogatories.

4. Copies of any and all statements, memoranda, reports of other materials which in any way might relate to Defendant's defense(s) herein which are within the possession of Defendant or Defendant's attorneys whether written, recorded on a tape recorder, or otherwise.

5. Copies of any and all photographs, digital images, plats, diagrams, sketches, videotapes or other prepared documents or materials which Defendant or Defendant's attorneys may have which relate to the matters alleged in Plaintiffs' Complaint and may be presented at trial or into evidence, by way of impeachment, or otherwise .

6. Copies of all policies, protocols, manuals, and/or procedures with respect the creation of or the opening up of customer accounts that were in effect at Bank of America during the relevant periods of this case.

7. Copies of each and every document provided to Bank of America by any person(s) in relation to the account(s) listed in your response to Plaintiff's Interrogatory No. 16.

8. Copies of each and every document provided by Bank of America to LMN, CAN, RF or any other persons associated with the account(s) listed in your response to Plaintiff's Interrogatory No. 16.

9. Copies of Bank of America's entire file on LMN, CAN, RF, "TEBS," Taylor Enterprises, Atlantic British, Invision Industries, and all the account(s) associated these persons or entities, including, without limitation, the following: reports, memos,

financial statements, tax returns, correspondence, internal reviews, financial analysis, SARS reports, audits, corporate resolutions, secretary of state certificates or writings, operating agreements and/or articles of organization, checking and deposit account agreements, signature cards, customer identifications, EIN, SSN, driver's licenses, emails. If any of the above-referenced documents exist but not within Bank of America's file, please produce the same, wherever they are located.

10. Copies of any and all bank statements and credit card statements associated or connected with the accounts listed in your response to Plaintiff's Interrogatory No. 16.

11. Copies of any and all deposit slips, check images, checks deposited, withdrawal receipts, ATM transactions, draw requests or other account transactions or request for transaction that are associated or connected with the accounts listed in your response to Plaintiff's Interrogatory No. 16.

12. Copies of all checks paid and/or transferred on the accounts listed in your response to Plaintiff's Interrogatory No. 16, including the front and back of each check, written or drawn on the account(s), and wiring information if funds were wired from the account(s).

13. An account history of all the accounts listed in your response to Plaintiff's Interrogatory No. 16, by date, showing the initial funding of the account, all deposits during the exists of the accounts, debits on the account, debit information including the payee names and account information where the funds were deposited and form of disbursement, withdrawal information including the form of disbursement such as cash, check or wire, as well as any other account information.

13. Copies of all correspondences, whether electronically or otherwise, including attachments thereto, between Bank of America and any other parties to this action that may relate in any way to the subjects of this action.

14. A complete copy of the most current curriculum vitae of each expert witness identified by the Plaintiff in response to Interrogatories propounded by this Defendant.

15. Any and all data and other information considered by any expert identified by the Plaintiff in response to Interrogatories propounded by this Defendant in connection with any opinion(s) formed, or in summary or support of any opinion(s) formed, by such expert(s).

16. Any and all exhibits to be used as a summary of or in support of the opinion(s) of any expert(s) identified by Plaintiff in response to Interrogatories propounded by this Defendant.

17. Copies of any and all treatises, texts or other authorities upon which each expert identified by the Plaintiff in response to Interrogatories propounded by this Defendant relies in whole or in part in forming or supporting any opinion to be expressed in this case.

18. Any and all documents identified in response to Interrogatories propounded by this Defendant.

19. Any and all statements taken from any witness in this case.

20. All policies, manuals, desk references, memos, procedures or writings associated with the administration and handling of the types of accounts similar to or actually used by LMN, CAN, or RF.

21. Copies of any documents used in formulating your response to Plaintiff's Interrogatory Nos. 20, 21, 27, and/or 30.

These interrogatories and requests for production of documents shall be deemed continuing so as to require supplemental answers if the party, any representative, or counsel obtains further information between the time the answers are served and the time of trial.

FAYSSOUX LAW FIRM, P.A.

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hunter@fayssouxlaw.com

Attorneys for Plaintiff

Dated: December 16 2013
Greenville, South Carolina

EXHIBIT

2

JAMES W. FAYSSOUX, SR.
JAMES W. FAYSSOUX, JR.

FAYSSOUX
LAW FIRM P. A.

PAUL S. LANDIS
T. HUNT REID

February 21, 2014

Joshua Howard, Esq.
HAYNSWORTH SINKLER BOYD, P.A.
P.O. Box 2048
Greenville, SC 29602

RE: Overland Inc., d/b/a Land Rover of Greenville v. Lara Marie Nance, et. al.
C.A. No.: 2010-CP-23-5880

Dear Josh:

Please find the enclosed for service upon you, *Plaintiff's First Set of Interrogatories as to Synovus Financial Corporation, Plaintiff's First Request for Production as to Synovus Financial Corporation* along with a Certificate of Service for the same in connection with the above referenced matter.

With kind regards,

T. Hunt Reid

THR/lmf
Enclosures (as stated)
Cc:
Brent O. E. Clinkscale, Esquire
W. Howard Boyd, Jr., Esquire
Lauren T. Maxwell, Esquire
James W. Sheedy, Esquire
Bruce A. Byrholdt, Esquire
David L. Moore, Jr.
James H. Price, III

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE	)	C.A. No.: 2010-CP-23-5880
Overland, Inc., d/b/a Land Rover Greenville, Plaintiff,	)	**CERTIFICATE OF SERVICE**
v.	)	
Lara Marie Nance, Charlie Andrew Nance Roger Fields, Synovus Financial Corporation d/b/a NBSC, Branch Banking and Trust Company, Bank of America Corporation, and Suntrust Banks, Inc. Defendants.	)	

I, the undersigned employee of Fayssoux Law Firm, P.A., do hereby certify that I have caused the below documents to be served via electronic mail on this **21st** day of **February, 2014**, to all parties of record at the addresses shown below pursuant to the Scheduling Order dated October 22, 2013 in the above-captioned matter. In addition, the undersigned deposes and says that she served the below documents via U.S. Mail, postage prepaid, to the attorneys for Defendant Synovus Financial Corporation, W. Joshua Howard, Esquire, at the mailing address shown below.

Document(s) Served:

1. *Plaintiff First Set of Interrogatories As to Synovus Financial Corporation; and*
2. *Plaintiffs First Requests for Production As To Synovus Financial Corporation.*

COUNSEL FOR PARTIES OF RECORD

Via U.S. Mail and Electronic Mail

Joshua Howard, Esquire
HAYNSWORTH SINKLER BOYD, P.A.
P.O. Box 2048
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Via Electronic Mail Only

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE	)	C.A. No.: 2010-CP-23-5880
Overland, Inc., d/b/a Land Rover Greenville, Plaintiff,	)	**PLAINTIFF'S FIRST SET OF INTERROGATORIES AS TO SYNOVOUS FINANCIAL CORPORATION**
v.	)	
Lara Marie Nance, Charlie Andrew Nance Roger Fields, Synovus Financial Corporation d/b/a NBSC, Branch Banking and Trust Company, Bank of America Corporation, and Suntrust Banks, Inc.	)	
Defendants.	)	

TO: SYNOVUS FINANCIAL CORPORATION d/b/a NBSC BY AND THROUGH THEIR ATTORNEY JOSHUA HOWARD, ESQUIRE.

The Plaintiff, by and through counsel, James W. Fayssoux, Jr., Esquire and T. Hunt Reid, Esquire, does herein require the above-named Defendants to answer in writing and under oath the following interrogatories within 30 days after the service hereof, under the provisions of Rule 33 of the South Carolina Rules of Civil Procedure:

Definitions

1. "Document" shall mean any written, printed, typed, recorded or other graphic matter of any kind or nature, and all mechanical or electrical sound recordings and any transcripts thereof, and computer data files in your possession, custody and/or control or in the possession, custody and/or control of your servants, employees, agents and counsel, or known by you to exist; it shall also mean all copies of documents by whatever means made.

2. "Identify" or "identity" used with reference to an individual means to state his or her full name, current or last known address, current or last known position or business affiliation, and employer, title, and position at the time in question. If the person was your agent or employee, also state his job title and areas of responsibility.

3. "Identify" or "identity" used with reference to a writing means to state the date, author, type of document (e.g., letter, memorandum, telegram, chart, note, application, etc.) or other means of identification, and its current location or custodian. If any such document is no longer in your possession or subject to your control, state what disposition was made of it.

4. "Identify" or "identity" used with reference to an oral communication, conference or meeting means to state the date of the communication, conference or meeting, the identity of all parties to the communication, conference or meeting, and to state the subject matter of the communication, conference or meeting, and the general substance of what was said and/or transpired.

5. "Synovus" or "Synovus Financial Corporation" or "NBSC" or "Defendant" shall be used with reference to this named Defendant and any entity, agent, representative, employee or independent contractor thereof.

Instructions

1. These interrogatories are of an ongoing nature, and should you acquire additional information responsive to these interrogatories, the answers shall be updated to provide the additional information.

2. If a privilege not to answer is claimed, identify each matter as to which privilege is claimed, the nature of the privilege, and the legal and factual basis for each such claim.

3. If a refusal to answer an interrogatory is stated on the grounds of undue hardship, identify the number and nature of documents needed to be searched, the location of the documents, and the number of person hours and costs required to conduct the search.

4. Answer each interrogatory on the basis of your entire knowledge, including information in your possession and in the possession of your employees, consultants, representatives, agents and attorneys.

5. If any interrogatory cannot be answered in full, answer to the extent possible and specify reasons for inability to answer.

INTERROGATORIES

1. Give the names, current addresses and telephone numbers of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

2. Set forth a list of photographs, plats, sketches, or other prepared documents in possession of the party that relate to the matters complained of in Plaintiff's Complaint.

3. Set forth any insurance policy and/ or agreement under which any insurance business may be liable to satisfy part or all of the judgment that may be entered

in this action, or to indemnify or reimburse for payments made to satisfy the judgment, by stating the name of the insurer and the amount of any liability insurance coverage.

4. List the names and addresses of any expert witnesses who the party proposes to use as a witness at the trial of the case and identify:

(a) The subject matter of each expert's testimony;

(b) The substance of the facts and opinions to which the expert is expected to testify; and

(c) A summary of the grounds for each opinion.

5. For each person known to the parties and counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from said witness.

6. List all insurance policies which provided any coverage to any party to this litigation at the time the incident that is the subject of this action occurred.

7. For each policy listed in response to interrogatory no. 6, please state:

(a) the party or parties covered under the policies;

(b) the type of coverage available; and

(c) the limits in coverage available under each policy.

8. Describe any correspondence, whether verbal, written, or otherwise, Defendant or any individual, employee or representative acting as an agent on its behalf has had with Plaintiff or any other individuals or entities concerning the facts, claims or defenses concerning this litigation and the events and circumstance related thereto or referenced therein.

9. List any and all physical exhibits or evidence Defendant or its counsel intend to use at trial or which relate, in any way, to the claim or defense in this case, including the current location of the exhibits or evidence and the name and address of the person(s) or entities who currently possess the exhibits or evidence.

10. Identify every document not produced in connection with Plaintiff's request to produce and state the specific reason for your refusal to produce it.

11. State the net worth of the Defendant.

12. Please state whether Defendant has ever been a named party to civil litigation, State or Federal, related to any legal action for fraud, misrepresentation, unfair trade practices, or violations of UCC §§3-404, 405, 406, and/or §1-203 (S.C. Code §§36-3-404, 405, 406 and §36-1-203) in the last ten years.

13. For all responses to Interrogatory No. 12, please state for each such legal action the following information:

(a) The names of all parties, both Plaintiff(s) and Defendant(s);

(b) The addresses of all parties, both Plaintiff(s) and Defendant(s);

(c) The date of the filing of the action and case number;

(d) The jurisdiction in which the action was filed;

(e) The substance of the facts as set out in the pleadings;

(f) Whether the action has been settled, adjudicated, or is pending;

(g) If resolved the result of any disposition of the action; and

(h) The name, address, and telephone numbers of the attorney(s) representing Plaintiff(s) in the action.

14. Please state whether Defendant has ever been the subject of or in any way referenced in any investigation or inquiry by any State or Federal regulatory or other entity or agency for any reason related to its business practices, including but not limited to, its professional or service conduct, hiring and supervision, business transactions and/or dealings, trade practices, regulatory or fiscal reporting, governmental regulatory compliance.

15. For all responses to Interrogatory No. 14, please state for each such legal action the following information:

(a) The names of all State or Federal agencies or entities;

(b) The names and addresses of all individuals or agents involved in the investigations or inquiries;

(c) The date of the investigations or inquiries;

(d) The nature and scope of and reason and purpose for the investigations or inquiries;

(e) The substance of the facts as set out in the investigations or inquiries;

(f) Whether the investigations or inquiries led to any formal or informal reprimand, sanction, fine, or regulatory or other action.

16. State with specificity your understanding, at all time relevant to this litigation, of Defendant LMN's status, responsibilities, and authorizations with regard to her employment with Plaintiff.

17. State whether Defendant LMN ever provided NBSC with any verification of employment and/or wage earnings.

18. Describe in detail the nature, scope, and duration of any business, fiduciary, contractual, or other relationship Defendant NBSC has ever initiated, maintained, or otherwise engaged in with Plaintiff or its agents/representatives, and/or LMN, CAN, or RF.

19. Describe in detail any business accounts ever maintained by Plaintiff at NBSC for its dealership, including when and by who each accounts was initiated, the process by which each account was initiated, the name and address of any person who was ever approved for access to each account.

20. Describe in detail all policies, procedures, protocols and practices ever used by Defendant NBSC concerning maintaining and safeguarding checking accounts, including but not limited to the purpose and use of signature cards of the authorized user(s) of accounts as a means of comparing signatures on checks or other instruments to the signature of authorized user(s) to prevent forgery.

21. State whether Defendant LMN was ever granted access to Plaintiffs' NBSC accounts and/or was ever an authorized user or signor on the signature cards for Plaintiffs' NBSC.

22. Describe in detail any and all representations made by Defendant LMN to NBSC, its agents and/or employees of NBSC, or any co-Defendants or any agent or representative of said co-Defendants regarding Plaintiff, or its' inventory, business accounts and transactions, account authorizations, invoices, and/or company checks and how each and every representation was relied and/or acted upon.

23. State whether Defendant NBSC issued checks to Plaintiffs for its

account(s), and state the names of each and every persons ever authorized to endorse or otherwise sign checks or drafts on behalf of and for Plaintiffs.

24. State whether Defendant NBSC ever received notice that Defendant LMN was not a person entitled to demand or enforce payment upon Plaintiffs' checks or drafts or to otherwise receive payments from Plaintiffs' NBSC accounts. If so, state the date said defendant received notice, the method by which said defendant received notice and by whom the notice was provided the notice, and what actions, if any were taken by said Defendant as a result of said notice.

25. Describe the methods, procedures, protocols, standards and practices accepted, instituted, utilized, or otherwise engaged in by Defendants, at all relevant times relevant to this litigation, concerning management, administration, coordination, and protection of customer financial affairs, accounts and services, information transfer, and redress for errors.

These interrogatories shall be deemed continuing so as to require supplemental answers if the party, any representative, or counsel obtains further information between the time the answers are served and the time of trial.

FAYSSOUX LAW FIRM, P.A.,

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Attorneys for Plaintiff

Dated: February 21, 2014
Greenville, SC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE	)	C.A. No.: 2010-CP-23-5880
Overland, Inc., d/b/a Land Rover Greenville, Plaintiff,	)	**PLAINTIFF'S FIRST REQUESTS FOR PRODUCTION AS TO SYNOVOUS FINANCIAL CORPORATION**
v.	)	
Lara Marie Nance, Charlie Andrew Nance Roger Fields, Synovus Financial Corporation d/b/a NBSC, Branch Banking and Trust Company, Bank of America Corporation, and Suntrust Banks, Inc. Defendants.	)	

TO: SYNOVUS FINANCIAL CORPORATION d/b/a NBSC BY AND THROUGH THEIR ATTORNEY JOSHUA HOWARD, ESQUIRE.

The Plaintiff, by and through counsel, T. Hunter Reid, Esq., does herein require the above-named Defendants to answer in writing and under oath the following interrogatories within 30 days after the service hereof, under the provisions of Rule 34 of the South Carolina Rules of Civil Procedure:

DEFINITIONS AND INSTRUCTIONS

A. Definitions

1. Document. The term "document" is used in its broadest possible sense and includes, but is not limited to, e-mail, correspondence, diagrams, electronic and digitally stored data in all formats, video and audio recordings of all types, photographs, contracts, invoices, receipts, bills, orders, notes and all other written and recorded communications, together with all data compilations from which information can be obtained, or translated

if necessary, by the respondent through detection devices, into reasonably usable form, and all other items identified as documents in Rule 34.

This request seeks production of original documents of all types plus all non-identical copies and drafts thereof in the possession, custody or control of the Plaintiff or its attorney, and the identification of all other documents of which the Plaintiff or its attorney has knowledge. As used herein, the term "document" means the original and any non-identical copy. All notations, comments or alterations on the copy render it non-identical and require Production.

In all cases where an original is unavailable, "document" also means a copy thereof.

The term "document" is further defined to include any attachments or other matters affixed.

2. Correspondence. The term "correspondence" is used in its broadest possible sense and includes, but is not limited to, physical writings of all types as well as electronic and digitally transmitted or stored communications in all formats, including e-mail and text messages.

3. As used herein, the terms "you" and "your" refer individually and collectively to NBSC/Synovus, and to any past or present officers, employees, and agents of the same.

B, Instructions

1. Documents Withheld

If any document is withheld under a claim of privilege or other protection so as to aid the Court and the parties hereto to determine the validity of the claim of privilege or

other protection, please provide the following information with respect to any such documents:

A. The identity of the person(s) who prepared the document, who signed it, and over whose name it was sent or issued;

B. The identity of each person(s) to whom the document was directed;

C. The nature and substance of the document with sufficient particularity to enable the Court and parties hereto to identify the document;

D. The identity of each person(s) who has custody of, or control over, the document and each copy thereof;

E. The date of the document;

F. The identity of each person to whom copies of the document were furnished;

G. The number of pages;

H. The basis on which any privilege or other protection is claimed; and

I. Whether any non-privileged or non-protected matter is included in the document.

2. Partial Production

Whenever you object to a particular request, or portion thereof, you must produce all documents called for which are not subject to that objection. Similarly, whenever a document is not produced in full, please state with particularity the reason or reasons it is not being produced in full, and describe, to the best of your knowledge, information and

belief, and with as much particularity as possible, those portions of the document which are not produced.

3. Order of Response

Please Note that pursuant to Rule 34 (b), SCRCP a party who produces documents for inspection shall produce them as they are kept in the usual course of business or shall organize and label them to correspond to the categories in the request.

4. Construction of the Singular and Plural Forms

As used herein, the singular form shall include the plural and vice versa whenever such dual construction will serve to bring within the scope of this request any documents which would otherwise not be brought within its scope.

5. Documents no longer in your possession, custody or control

In the event that any document or thing sought in any of these requests has been transferred, destroyed, lost, discarded or otherwise disposed of, identify as completely as possible each such document or thing, and include without limitation, the following information: date of disposal, place and manner of disposal, reason for disposal, person authorizing the disposal, and all persons involved in disposing of the document or thing.

Request for Production

1. Copies of all statements given by the Defendant which are in the possession of Defendant or Defendant's attorneys whether written, recorded on a tape recorder, or otherwise, which relate to the matters complained of in Plaintiff's Complaint.

2. Copies of any and all statements given by either eyewitness(es) or other witness(es) to the incident and matters complained of in the Complaint herein which are

in the possession of Defendant or Defendant's attorneys whether written, recorded on a tape recorder, or otherwise.

3. Copies of any and all written reports by any experts referred to in Defendant's Answers to Standard Interrogatories.

4. Copies of any and all statements, memoranda, reports of other materials which in any way might relate to Defendant's defense(s) herein which are within the possession of Defendant or Defendant's attorneys whether written, recorded on a tape recorder, or otherwise.

5. Copies of any and all photographs, digital images, plats, diagrams, sketches, videotapes or other prepared documents or materials which Defendant or Defendant's attorneys may have which relate to the matters alleged in Plaintiffs' Complaint and may be presented at trial or into evidence, by way of impeachment, or otherwise .

6. Copies of all policies, protocols, manuals, and/or procedures with respect the creation of or the opening up of customer accounts that were in effect at NBSC/Synovus during the relevant periods of this case.

7. Copies of each and every document provided to NBSC/Synovus by any person(s) in relation to Plaintiff's account(s) that are the subjects of this action.

8. Copies of each and every document provided by NBSC/Synovus to LMN, CAN, RF or any other persons associated with Plaintiff's account(s).

9. Copies of NBSC/Synovus's entire file on Plaintiff, LMN, CAN, RF, "TEBS," Taylor Enterprises, Atlantic British, Invision Industries, or any account(s) associated these persons or entities, including, without limitation, the following: reports,

memos, financial statements, tax returns, correspondence, account histories, internal reviews, financial analysis, SARS reports, audits, corporate resolutions, secretary of state certificates or writings, operating agreements and/or articles of organization, checking and deposit account agreements, signature cards, customer identifications, EIN, SSN, driver's licenses, emails. If any of the above-referenced documents exist but not within NBSC/Synovus's file, please produce the same, wherever they are located.

10. Copies of any and all bank statements and credit card statements associated or connected with Plaintiff's accounts during the relevant periods of this action.

11. Copies of any and all deposit slips, check images, checks deposited, withdrawal receipts, ATM transactions, draw requests or other account transactions or request for transaction that are associated or connected with Plaintiff's accounts.

12. Copies of all checks paid and/or transferred on the accounts, including the front and back of each check, written or drawn on the account(s), and wiring information if funds were wired from the account(s).

13. Copies of all correspondences, whether electronically or otherwise, including attachments thereto, between NBSC/Synovus and any other parties to this action that may relate in any way to the subjects of this action.

14. A complete copy of the most current curriculum vitae of each expert witness identified by the Plaintiff in response to Interrogatories propounded by this Defendant.

15. Any and all data and other information considered by any expert identified by the Plaintiff in response to Interrogatories propounded by this Defendant in connection

with any opinion(s) formed, or in summary or support of any opinion(s) formed, by such expert(s).

16. Any and all exhibits to be used as a summary of or in support of the opinion(s) of any expert(s) identified by Plaintiff in response to Interrogatories propounded by this Defendant.

17. Copies of any and all treatises, texts or other authorities upon which each expert identified by the Plaintiff in response to Interrogatories propounded by this Defendant relies in whole or in part in forming or supporting any opinion to be expressed in this case.

18. Any and all documents identified in response to Interrogatories propounded by this Defendant.

19. Any and all statements taken from any witness in this case.

20. All policies, manuals, desk references, memos, procedures or writings associated with the administration and handling of the types of accounts similar to or actually used by LMN, CAN, or RF.

These requests for production of documents shall be deemed continuing so as to require supplemental answers if the party, any representative, or counsel obtains further information between the time the answers are served and the time of trial.

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wally@fayssouxlaw.com
hunter@fayssouxlaw.com
Attorneys for Plaintiff

Dated: February 24, 2014
Greenville, SC

EXHIBIT

3

James W. Fayssoux, Sr.
James W. Fayssoux, Jr.

FAYSSOUX
LAW FIRM P. A.

Paul S. Landis
T. Hunt Reid

July 7, 2014

James W. Sheedy, Esquire
Susan E. Driscoll, Esquire
DRISCOLL SHEEDY, P.A.
11520 N. Community House Rd.
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Charlotte, NC 28277

RE: ***Overland Inc., d/b/a Land Rover of Greenville v. Lara Marie Nance, et. al,***
C.A. No.: 2010-CP-23-5880
Request for supplemental discovery responses

Jim/Susan:

I have reviewed your discovery responses dated March 3, 2014, and I believe several of your written answers are inadequate and require supplementation. The purpose of this letter is to address my concerns with you in hopes that we can avoid court intervention and unnecessary delays in completing discovery.

As you will see below, I am addressing your responses to interrogatories and requests for production separately; although there is some considerable overlap between the two.

Interrogatory Answers

- **Answer 1**: You provide no names and no contact information concerning potential witnesses; however, two bank employees were identified in answering Plaintiff's Interrogatory No. 19, and another employee in No. 24. Please clarify. Notwithstanding, you also did not provide any reasonable contact information for these three employees.
- **Answer 2**: You cited SCRCP Rule 33(c), yet you did not provide sufficient detailed explanation regarding the location and identity of the business records as required under the rule. This is especially important in this case due to your numerous productions and the voluminous materials involved.
- **Answer 5**: Please supplement to the extent that you revise Answer 1 (discussed above).
- **Answer 8**: Your response may be deficient in at least these four manners –
    - You referenced the absence of "non-privileged" or discovery communications, but did not produce a privilege log. Please produce the log or revise your response accordingly.
    - Your answer did not include communications with Charlie Nance, Roger Fields, or any other co-Defendants. Both of these individuals have been customers of Bank of America at times relevant to this action; however, no communications were revealed, which is highly improbable given Bank of America's obligation to provide monthly statements to his customers.

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- In the same regard, I have produced to you three letters from Bank of America addressed to Lara Nance (September 23rd, October 1st and November 10th, 2009), yet these were not referenced. Please explain.
- Prior to the filing of this action, Bank of America representatives met with Agent James Motley of United States Secret Service. No details of these conversations or meetings have been provided. Please update Answer 29 as well, to the extent you supplement this answer.

- **Answer 10**: No privilege log. Also, please reference the specific federal laws upon which you rely in withholding information related to the SARs reports.
- **Answer 16**: Your response may be deficient in at least two manners:
  - Withholding information regarding co-Defendants Charlie Nance and Roger Fields. These individuals were customers of BOA and all parties in this case are subject to a Confidentiality Order.
  - Your response indicates that no debit cards or credit cards were issued for these accounts. Please see attached images of three separate cards and revise your response.
- **Answer 19**:
  - It has been over four months since you requested additional time to determine if Roger Fields and Charlie Nance were account holders/customers of BOA. As you know, account number ending -1589 was originally a joint account with Lara and Charlie Nance. Also, your production materials reveal that Roger Fields at least maintained the account number ending -7588 (See, e.g., *BOA000211*). Please supplement your response hereto, as well as for Answers 22 and 24 and 30, if the same applies.
  - Your response doesn't provide sufficient contact information for the employees identified therein.
  - Your response does not include identification of bank employees that handled Nance's ATM deposits. Even "automated" deposits require someone to retrieve the deposit slips and check deposits, then process the items along the banking channels. Please clarify your response.
  - Your response does not include details regarding cash withdrawals at the counter.
  - Your response does not include the identity of your bank employees that provided Piedmont/Apex Automotive with certified funds. For example, during Steve Albert's deposition, page 90, he recounts obtaining certified funds from Nance's account at a Bank of America branch. Please supplement your response hereto, as well as for Answer 28, if the same applies
- **Answers 20, 21 and 27**: Your responses hereto are wholly unacceptable. First, Overland's customer status is not a proper basis for objecting to this interrogatory. You have previously raised this exact objection in your motion to dismissed, which has been rejected by Judge Verdin. Two, Overland has specifically set forth allegations related to the manner in which your client opened the subject bank accounts. Third, your client's policies and procedures for opening accounts is, in fact, the main thrust of this entire case. This makes your client's policies, procedures and manuals especially relevant.
- **Answer 26**: For clarification purposes, please use the common usage of "altered" or "alteration," and not necessarily the UCC definition.

- **Answer 29**: No privilege log. Also, again, your Rule 33(c) option doesn't satisfy the requirement to direct Plaintiff towards which communications you are referring to in this answer.
- **Answer 30**: You mentioned that no investigations were ever performed on accounts ending with numbers -1589, -4759, or -6180; however, your answer does not provide any details of reviews and examinations as requested. This cannot accord with your responses to Interrogatory No. 24 (accounts closed and funds held by B of A's hold harmless department), as well as several deposit adjustments that were made by B of A for the above-referenced accounts. Please revise your response.

Production responses

Every one of your responses to Plaintiff's First Requests for Production mentions it will produce "discoverable, non-privileged documents," or objects upon the grounds that B of A "does not have any discoverable, non-privileged documents that are responsive" to Plaintiff's requests. However, you have not produced a privilege log. Without one, I am unable to determine if you have answered my request.

Furthermore, your responses do not contain any references to a corresponding Bates Number or other identifying feature. Your two CD productions contained 2,271 pages, which appear to be responsive to RFPs 10 and 11 only. Again, without some indication as to which documents are responsive to each request, I cannot determine if you have sufficiently responded. I realize that I am asking a lot of you to revise each response, but they are insufficient as it stands.

Third, I would respectfully request that you revise each response to Plaintiff's RFPs based upon the concerns addressed hereinabove relating to your answers to interrogatories. This is important for both of us so that discovery can remain organized.

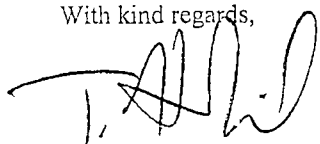
And, to be more specific, please review the following:

- **Responses 6 and 21**: Again, your objection here is not reasonable and I respectfully request that you produce these materials.
- **Response 9**: In using the word "file," I mean to convey the file-folder, box(es), or other document storage device (whether it be tangible, digital, electronic or otherwise) that may be used by B of A to designate any item or file related to Lara Nance or this matter. This should be rather self-explanatory, but I am glad to give a further description if needed. Also, I cannot agree that I have received copies of Nance's deposit/checking account agreements and signature cards for the subject accounts. Please reproduce using a Bates Number or other identifier.
- **Response 13**: Please clarify if such an account history exists.

Jim and Susan, I would be glad to work with you to resolve these matters, so please contact me if you have any questions regarding this letter.

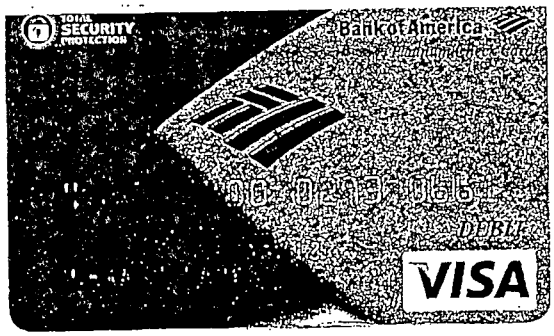
I look forward to your responses and supplemental materials.

With kind regards,



Hunter Reid

Enclosures (as stated)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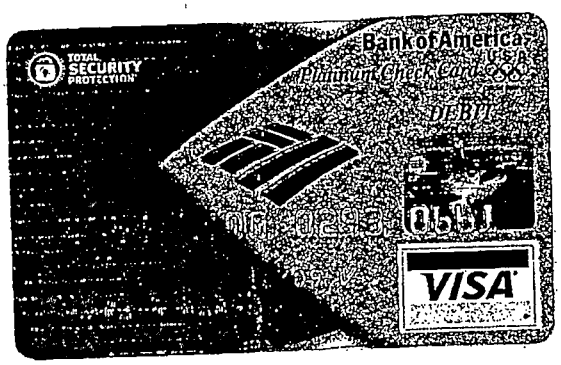
DEBIT
VISA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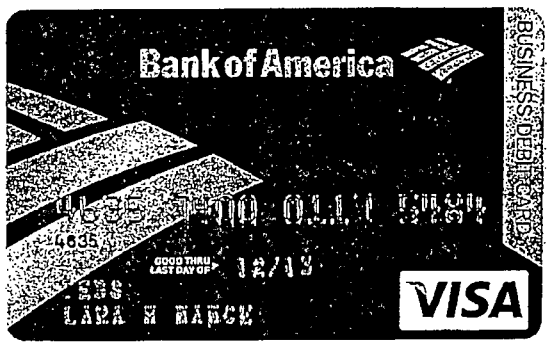
Bank of America
BUSINESS DEBIT CARD
4635
GOOD THRU LAST DAY OF
VISA

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
Overland, Inc. d/b/a Land Rover Greenville,	)	
	)	
Plaintiff,	)	
	)	**DEFENDANT SUNTRUST BANKS, INC.'S ANSWERS TO PLAINTIFF'S FIRST INTERROGATORIES**
vs.	)	
	)	
Lara Marie Nance, Charlie Andrew Nance Roger Fields, ADP Dealer Services Group, Piedmont Automotive of Anderson, Inc. d/b/a Piedmont Chrysler Jeep Dodge, Piedmont Automotive of Anderson South Carolina, LLC d/b/a Apex Automotive, Synovus Financial Corporation d/b/a NBSC, Branch Banking and Trust Company, Bank of America Corporation, and SunTrust Banks, Inc.,	)	C.A. No.: 2010-CP-23-5880
	)	
Defendants.	)	
	)	

TO: JAMES W. FAYSSOUX, JR. AND T. HUNT REID, ATTORNEYS FOR PLAINTIFF

Defendant, SunTrust Banks, Inc. (hereinafter "SunTrust"), by and through his undersigned counsel, hereby submits the following Answers to Plaintiff's First Set of Interrogatories pursuant to Rules 26 and 33 of the *South Carolina Rules of Civil Procedure*:

GENERAL OBJECTIONS

The following general objections are incorporated by reference into each of SunTrust's answers as set forth below:

1. SunTrust objects to these discovery requests, including the definitions and instructions, to the extent they seek to alter or expand upon the requirements and provisions of the *South Carolina Rules of Civil Procedure*. SunTrust will respond to these discovery requests in a manner consistent with Rule 33 of the *South Carolina Rules of Civil Procedure*.

2. SunTrust objects to these discovery requests to the extent they seek documents and information that are irrelevant to this action or not reasonably calculated to lead to the discovery of admissible evidence or which are overly broad and unduly burdensome.

3. SunTrust objects to these discovery requests to the extent they seek information in the possession of corporations, individuals, or entities other than SunTrust or otherwise outside of its possession, custody, and control.

4. SunTrust objects to these discovery requests to the extent they seek documents or information that contain or otherwise reveal any trade secrets or other confidential proprietary business or financial information absent the protection of a mutually acceptable confidentiality order.

5. SunTrust objects to these discovery requests to the extent they call for disclosure of documents and/or information protected by the attorney-client privilege, the work product doctrine, or any other applicable privilege, immunity or protection. All discovery requests are interpreted to exclude discovery of information or documents protected by the attorney-client privilege and/or work product doctrine, including documents generated after the filing of the complaint. Production of privileged or protected information by SunTrust during the litigation is inadvertent and should not be construed as a waiver of any such privilege or protection or of any other ground for objection with respect to such information.

6. SunTrust's answers to these discovery requests, and the production of responsive documents, are made without waiving any objections, in this or any other proceeding, to the use, competence, authenticity, relevance, materiality, or admissibility as evidence of any documents or other information produced.

7. SunTrust objects to these discovery requests to the extent that Plaintiff would contend that:

a. forensic-recovery methods must be undertaken or applications other than those used to create material in the ordinary course of business must be employed to confirm whether responsive materials exist;

b. the ordinary functioning of computers and similar systems must be suspended;

c. disaster-recovery media and other media and sources that are not reasonably accessible must be searched;

d. electronically stored material whose contents are not searchable must be reviewed; or

e. deleted, shadowed, echoed, fragmented, or residual data or file attributes, properties, and metadata separately must be searched or produced.

The bases for these objections are that the cost and burden of identifying, preserving, recreating, and/or reviewing (including reviewing and logging attorney-client communications, attorney work product, or other proper bases for nonproduction) any such material is unreasonable and that requiring such efforts is not reasonably calculated to lead to the discovery of additional admissible evidence.

8. SunTrust's answers to these discovery requests, and the production of responsive documents, are made without waiving any objections, in this or any other proceeding, to supplement, amend, or correct its responses thereto in light of the fact that SunTrust's investigation into this matter and the facts surrounding it is ongoing.

INTERROGATORIES

1. **Give the names, current addresses and telephone numbers of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.**

ANSWER:

SunTrust objects to this Interrogatory to the extent it seeks information protected by the work product doctrine. Subject to the foregoing and general objections, other than the witnesses identified by Plaintiff in its answers to SunTrust's interrogatories, SunTrust is not aware of any other witnesses concerning the facts of this case. SunTrust also incorporates by reference the persons identified by other parties to this lawsuit.

Other than the deposition transcripts of witnesses already deposed, copies of which are in the possession of Plaintiff, SunTrust does not possess and is not aware of any statements, but reserves the right to object to the production of any such statement should one exist and become known to SunTrust.

2. **Set forth a list of photographs, plats, sketches, or other prepared documents in possession of the party that relate to the matters complained of in Plaintiff's Complaint.**

ANSWER:

Subject to the general objections, SunTrust refers Plaintiff to the documents to be produced or made available in its Responses to Plaintiff's First Requests for Production.

3. **Set forth any insurance policy and/or agreement under which any insurance business may be liable to satisfy part or all of the judgment that may be entered in this action, or to indemnify or reimburse for payments made to satisfy the judgment, by stating the name of the insurer and the amount of any liability insurance coverage.**

ANSWER:

Not applicable.

4. **List the names and addresses of any expert witnesses who the party propos4es to use as a witness at the trial of the case and identify:**

(a) **The subject matter of each expert's testimony;**

(b) **The substance of the facts and opinions to which the expert is expected to testify; and**

(c) **A summary of the grounds for each opinion.**

ANSWER:

Subject to the general objections, SunTrust has yet to identify an expert witness to testify at trial to this case. SunTrust will supplement, amend, or correct this response in accordance with the Court's Scheduling Order.

5. **For each person known to the parties and counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from said witness.**

ANSWER:

Subject to the general objections, Plaintiff is already in possession of the deposition transcripts of witnesses already deposed in this matter. Other than the deposition transcripts, SunTrust has no written or recorded statements. Due to the fact the other witnesses in this action are listed by Plaintiff along with a summary of facts known or observed by them, Plaintiff – not SunTrust – has knowledge of the important facts known to or observed by such witnesses. SunTrust presumes the witnesses listed by Plaintiff will testify as to Plaintiff's authority given to Lara Marie Nance, her use of funds at least in part for business purposes, her intent as to non-business uses that the named payees not receive check proceeds, her status as an employee with access to accounts, lack of reconciliation of accounts with NBSC and BB&T, as well as a general

failure on the part of Plaintiff to remain current on payments to its vendors and maintain its accounts payable records. These topics are all in the pleadings joining the issues in this case.

6. **List all insurance policies which provided any coverage to any party to this litigation at the time the incident that is the subject of this action occurred.**

ANSWER:

Not applicable.

7. **For each policy listed in response to interrogatory no. 6, please state:**

(a) **the party or parties covered under the policies;**

(b) **the type of coverage available; and**

(c) **the limits in coverage available under each policy.**

ANSWER:

See Answer to Interrogatory Number 6.

8. **Describe any correspondence, whether verbal, written, or otherwise, Defendant or any individual, employee or representative acting as an agent on its behalf has had with Plaintiff or any other individuals or entities concerning the facts, claims or defenses concerning this litigation and the events and circumstance related thereto or referenced therein.**

ANSWER:

SunTrust objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege and/or work product doctrine. Subject to the foregoing and the general objections, SunTrust has had no correspondence with Plaintiff related to this matter.

9. **List any and all physical exhibits or evidence Defendant or its counsel intend to use at trial or which related, in any way, to the claim or defense in this case, including**

the current location of the exhibits or evidence and the name and address of the person(s) or entities who currently possess the exhibits or evidence.

ANSWER:

Subject to the general objections, SunTrust has not decided which exhibits or evidence it intends to use at trial, should this matter proceed to trial. In the event this matter does come to trial, SunTrust will supplement its Response to this Interrogatory in accordance with Rule 16(a) and 26(e) of the South Carolina Rules of Civil Procedure.

10. **Identify every document not produced in connection with Plaintiff's request to produce and state the specific reason for your refusal to produce it.**

ANSWER:

SunTrust objects to this Interrogatory to extent it seeks information protected by attorney-client privilege and work product doctrine. To the extent any documents are withheld from production based on privilege and/or work product doctrine asserted in accordance with Rule 26, SCRCP, SunTrust will submit a privilege log in accordance with Rule 26(b)(5)(A), SCRCP.

11. **State the net worth of the Defendant.**

ANSWER:

SunTrust objects to this Interrogatory on the grounds that it seeks information that is not relevant nor reasonably calculated to lead to the discovery of admissible evidence. Further, SunTrust is a publicly-traded company; therefore, Plaintiff's access to financial information regarding SunTrust is the same as any other member of the public.

12. **Please state whether Defendant has ever been a named party to civil litigation, State or Federal, related to any legal action for fraud, misrepresentation, unfair**

trade practices, or violations of UCC §§ 3-404, 405, 406, and/or §1-203 (S.C. Code §§36-3-404, 405, 406 and §36-1-203) in the last ten years.

ANSWER:

SunTrust objects to this Interrogatory on the grounds that it seeks information that is not relevant nor reasonably calculated to lead to the discovery of admissible evidence. SunTrust further objects to this Interrogatory on the grounds that it is overly broad and duly burdensome. SunTrust further objects to this Interrogatory on the grounds that it seeks and seeks information equally available to Plaintiff.

13. **For all responses to Interrogatories No. 12, please state for each such legal action the following information:**

(a) The names of all parties, both Plaintiff(s) and Defendant(s);

(b) The addresses of all parties, both Plaintiff(s) and Defendant(s);

(c) The date of the filing of the action and case number;

(d) The jurisdiction in which the action was filed;

(e) The substance of the facts as set out in this pleadings;

(f) Whether the action has been settled, adjudicated, or is pending;

(g) If resolved the result of any disposition of this action; and

(h) The name, address, and telephone numbers of the attorney(s) representing Plaintiff(s) in this action.

ANSWER:

SunTrust objects to this Interrogatory on the grounds that it seeks information that is not relevant nor reasonably calculated to lead to the discovery of admissible evidence. SunTrust further objects to this Interrogatory on the grounds that it is overly broad and duly burdensome.

SunTrust further objects to this Interrogatory on the grounds that it seeks and seeks information equally available to Plaintiff.

14. **Please state whether Defendant has ever been the subject of or in any way referenced in any investigation or inquiry by any State or Federal regulatory or other entity or agency for any reason related to its business practices, including but not limited to, it professional or service conduct, hiring and supervision, business transactions and/or dealings, trade practices, regulatory or fiscal reporting, governmental regulatory compliance.**

ANSWER:

SunTrust objects to this Interrogatory on the grounds that it seeks information that is not relevant nor reasonably calculated to lead to the discovery of admissible evidence. SunTrust further objects to this Interrogatory on the grounds that it is overly broad and duly burdensome. Subject to the foregoing and general objections, SunTrust has not been subject of or in any way referenced in any investigation or inquiry by any State or Federal regulatory or other entity or agency for any reason related to the facts of this case.

15. **For all responses to Interrogatory No. 14, please state for each such legal action the following information:**

(a) **The names of all State or Federal agencies or entities;**

(b) **The names and addresses of all individuals or agents involved in the investigations or inquiries;**

(c) **The date of the investigations or inquiries;**

(d) **The nature and scope of and reason and purpose for the investigations or inquiries;**

(e) **The substance of the facts as set out in the investigations or inquiries;**

(f) **Whether the investigations or inquiries led to any formal or informal reprimand, sanctions, fine, or regulatory or other action;**

ANSWER:

See answer to Interrogatory No. 14.

16. **List each and every account opened, maintained or used by LMN, CAN, or RF, at Defendant's bank by providing the account type, name, number, routing number, credit card number and expiration date(s) issued thereto, pins numbers associated therewith, open and close dates, and by identifying which local branch maintained each account.**

ANSWER:

Subject to the general objections, as Plaintiff is already aware, LMN maintained two accounts with SunTrust: business checking accounts ending in -80238 and -08600. Account -80238 was titled "Lara M. Nance d/b/a Taylor Enterprises", was opened on January 19, 2010, and closed on March 24, 2010. Account -08600 was titled "Lara M. Nance d/b/a Atlantic British", was opened on January 28, 2010, and closed on March 12, 2010. A debit card ending in -4361 was held in the name of LMN, was opened on February 1, 2010, and closed on February 22, 2010. A debit card ending in -4429 was held in the name of CAN, was opened on February 1, 2010, and closed on February 24, 2010. A debit card ending in -6736 was held in the name of Atlantic British, was opened on January 28, 2010, and closed on March 15, 2010.

SunTrust is unclear as to the meaning of "which local branch maintained each account." LMN, or any customer of SunTrust could visit any of SunTrust's branches to transact business on her accounts; the accounts are not maintained at branches. Account -80238 was opened at the branch located at 3898 Liberty Highway, Anderson, South Carolina. Account -08600 was

opened at branch located at 4396 Highway 24, Anderson, South Carolina; this branch has since closed.

LMN also maintained deposit accounts with SunTrust titled LMN or CAN. Account -8803, titled "Laura M. Nance or Charlie Andrew Nance", was opened on July 8, 2008, and closed on March 18, 2010. Account -10697, titled "Laura M. Nance or Charlie Andrew Nance", was opened on July 8, 2008 and closed on March 12, 2010. A debit card ending in -7627 was held in the name of LMN, was opened on July 8, 2008, and closed on February 22, 2010. SunTrust further refers Plaintiff to the documents to be produced or made available in Response to Plaintiff's Request for Production.

17. **List by banking or lending institution name the account number, check number, amount, and date of any and all checks presented or authorized by Defendant LMN to which Defendant transferred, paid and/or honored.**

ANSWER:

SunTrust objects to this Interrogatory on the grounds that it seeks information that is not relevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to the foregoing and general objections, SunTrust refers Plaintiff to the documents to be produced or made available in Response to Plaintiff's Request for Production.

18. **State with specificity Defendants' understanding, at all times relevant to this litigation, of Defendant LMN's status, responsibilities, and authorizations with regard to her employment with Plaintiffs, including whether Defendant LMN ever provided Defendant with any verification of her employment and/or wage earnings.**

ANSWER:

SunTrust had knowledge that LMN was employed by "Land Rover" but had no knowledge as to LMN's status, responsibilities and authorizations with regard to her employment with Plaintiff, nor did LMN ever provide SunTrust with any verification of her employment and/or wage earnings. However, since LMN has been deposed, her statements or opinions as to her status, responsibilities and authorizations are a matter of record in this case.

19. **List and provide current contact information for each and every employee of Defendant that handled any aspect of the accounts for LMN, CAN and/or RF. Please include when and by whom each accounts was initiated, the process by which each account was initiated, the name and address of any person who approved the access to each account.**

ANSWER:

SunTrust objects to this Interrogatory on the grounds that it seeks information that is not relevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to the foregoing and general objections, the branch associate who handled the opening of account - 80238 was Wendy Denise Dye. The branch associate who handled the opening of account - 08600 was Sherry L. Crawford. These individuals may be contacted through counsel for SunTrust.

Given the breadth of the interrogatory, i.e. any employee that "handled any aspect of the accounts," SunTrust is still in the process of determining whether any other employees handled anything related to LMN's two accounts with SunTrust. It is probably not possible to determine names of any one who may have deposited checks or honored personal withdrawals from her accounts. If there were other employees who can be reasonably so identified, SunTrust shall

supplement its answer in accordance with Rule 26(e), SCRCP, and provide the information requested.

20. **Describe in detail all of the Defendant's policies, procedures, protocols and practices for opening a personal checking/savings account, corporate account, or other business related account(s).**

ANSWER:

SunTrust objects to this Interrogatory on the grounds that Plaintiff is not a customer of SunTrust and no claims have been asserted against SunTrust by any customers in this matter regarding the opening of their account(s). SunTrust further objects to this Interrogatory on the grounds that any policies, procedures, protocols and practices used by SunTrust concerning the opening of a personal checking/savings account, corporate account, or other business related account(s) are not relevant, nor would they lead the discovery of admissible evidence related to the claims against SunTrust made by a non-customer third party.

Plaintiff did not have an account with SunTrust; therefore, it would have no ability to rely on or attempt to enforce SunTrust's policies, procedures, protocols and practices for opening a personal checking/savings account, corporate account, or other business related account(s). Those policies, procedures, protocols and practices are for the benefit and protection of SunTrust and its customers, not third parties, and as a result, have no bearing on the claims of Plaintiff in the above-referenced matter.

21. **Describe in detail all policies, procedures, protocols and practices ever used by Defendant concerning maintaining and safeguarding checking accounts. This includes but not limited to the purpose and use of signature cards or electronic verifications of the authorized user(s) of accounts and credit cards as a meaning of comparing signatures or**

verifications on checks or other instruments to the signature/verification of authorized user(s) in order to prevent fraud and forgery.

ANSWER:

SunTrust objects to this Interrogatory on the following grounds: Plaintiff is not a customer of SunTrust; no claims have been asserted against SunTrust by any customers in this matter regarding SunTrust's maintenance or safeguarding of their account; this Interrogatory ignores South Carolina common and statutory law that the file-sort method of check examination is not required; this Interrogatory ignores the statutory approval of automated check processing as a reasonable commercial practice; and this Interrogatory ignores customer consent in depository agreements to automated check processing of items drawn on or presented to an account. SunTrust further objects to this Interrogatory on the grounds that any policies, procedures, protocols and practices ever used by SunTrust concerning maintaining and safeguarding checking accounts are not relevant, nor would they lead the discovery of admissible evidence related to the claims against SunTrust made by a non-customer third party.

Furthermore, Plaintiff did not have an account with SunTrust; therefore, it would have no ability to rely on or attempt to enforce SunTrust's policies, procedures, protocols and practices concerning maintaining and safeguarding checking accounts. Those policies, procedures, protocols and practices are for the benefit and protection of SunTrust and its customers, and as a result, have no bearing on the claims of Plaintiff in this matter. Further, even if SunTrust knew of or had reason to question any suspicious account activity, disclosure of any information related thereto would be impermissible to any non-regulatory authority, and would not be relevant or admissible in any private right of action. Further answering Interrogatory No. 21, as

a depositary bank SunTrust had no obligation or ability to verify the maker signature of Plaintiff on any checks presented for deposit by LMN.

22. **List the total number and sum of all deposits into, and withdrawals out of each account maintained, used or controlled by LMN, CAN or RF. This includes deposits by tangible instruments, electronically or by other authorized means.**

ANSWER:

SunTrust objects to this Interrogatory on the grounds that it seeks information that is not relevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to the foregoing and general objections, there was one deposit into account -08600 in the amount of Five Thousand and 00/100 ($5,000.00) Dollars. There were a total of eighteen (18) checks deposited into account -80238, the sum of which is Fifty Four Thousand Six Hundred Seventy-One and 38/100 ($54,671.38) Dollars. However, due to the fact that several checks were deposited during a single transaction, there were only six (6) deposit transactions by LMN into her account. One withdrawal from account -80238 was a check for Five Thousand and 00/100 ($5,000.00) Dollars, which was deposited into account -08600. There was one deposit of a check from Plaintiff into account -8803 in the amount of Three Hundred Forty Seven and 36/100 ($347.36) Dollars. Other than monthly interest, there were only two small cash deposits into Account -10697. SunTrust further refers Plaintiff to the documents to be produced or made available in Response to Plaintiff's Request for Production.

23. **Describe in detail any and all representations made by Defendant LMN to Plaintiff, its agents and/or employees of Plaintiff, or any Defendants or any agent or representative of said Defendants regarding Plaintiff's inventory, business accounts and**

transactions, account authorizations, invoices, and/or company checks and how each and every representative was relied and/or acted upon.

ANSWER:

There were no such representations of which SunTrust is aware.

24. **State the closing, holding or seizing date for every account associated with LMN, CAN or RF, and explain in detail the reason for closing the account, the name of Defendant's employee who authorized the closing, holding or seizing, and the disposition of any funds remaining therein.**

ANSWER:

SunTrust objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege and/or work product doctrine. Subject to the foregoing and the general objections, *see* answer to Interrogatory No. 16. SunTrust further refers Plaintiff to the documents to be produced or made available in Response to Plaintiff's Request for Production.

25. **State whether Defendant or its employees ever received notice that Defendant LMN was not a person entitled to demand or enforce payment upon Plaintiffs' checks or drafts or to otherwise receive payments from Plaintiffs' accounts. If so, state the date said defendant received notice, the method by which said defendant received notice and by whom the notice was provided the notice [sic], and what actions, if any were taken by said Defendant as a result of said notice.**

ANSWER:

SunTrust objects to this Interrogatory as vague and confusing and to the extent it seeks information protected by the attorney-client privilege and/or work product doctrine. Subject to the foregoing and the general objections, even if SunTrust knew of or had reason to question any

suspicious account activity, disclosure of any information related thereto would be impermissible to any non-regulatory authority, and would not be relevant or admissible in any private right of action.

26. **State whether Defendants were ever received and/or accepted from Defendant LMN a check that bore any altered numbers and/or words.**

ANSWER:

SunTrust received no such check as the term "alteration" is used in the UCC.

27. **Describe the methods, procedures, protocols, standards and practices accepted, instituted, utilized, or otherwise engaged in by Defendants, at all relevant times relevant to this litigation, concerning management, administration, coordination, and protection of customer financial affairs, accounts and services, information transfer, and redress for errors.**

ANSWER:

SunTrust objects to this Interrogatory on the grounds that Plaintiff is not a customer of SunTrust and no claims have been asserted against SunTrust by any customers in this matter. Further, any methods, procedures, protocols, standards and practices used by SunTrust concerning management, administration, coordination, and protection of customer financial affairs, accounts and services, information transfer, and redress for errors are not relevant, nor would they lead to the discovery of admissible evidence related to claims against SunTrust made by a non-customer third party. Such matters are related to the relationship between SunTrust and its customers or regulators and have no bearing on Plaintiff's claims against SunTrust.

28. **List the names and provide current contact information for all employees of Defendant that accepted a check or draft from LMN, CAN or RF in exchange for certified funds or certified check.**

ANSWER:

SunTrust objects to this interrogatory on the grounds that it is overly broad because no time limitation and no identification of certified funds or certified checks are given.

29. **Did Defendant initiate or receive contact to/from or otherwise communicate with any employees or agents of NBSC/Synovus, BB&T, the United States Secret Service or other federal governing bodies in regards to LMN, CAN, RF, or any of the subjects of this litigation? If so, please state in detail when the contact was established, a summary of the communications, and a list of all persons involved.**

ANSWER:

SunTrust objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege and/or work product doctrine. Subject to the foregoing and the general objections, even if SunTrust knew of or had reason to question any suspicious account activity, disclosure of any information related thereto would be impermissible to any non-regulatory authority, and would not be relevant or admissible in any private right of action.

30. **Did Defendant ever engage or perform in any investigation, examination or review, whether internally or externally, of the account activity of LMN, CAN, RF? If so, please state in detail when the review occurred, the reasons for each review, a summary of the review, conclusions, and responsive actions taken therefrom.**

ANSWER:

SunTrust objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege and/or work product doctrine. Subject to the foregoing and the general objections, even if SunTrust knew of or had reason to question any suspicious account activity, disclosure of any information related thereto would be impermissible to any non-regulatory authority, and would not be relevant or admissible in any private right of action.

GALLIVAN WHITE & BOYD, P.A.

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Counsel for Defendant SunTrust Banks, Inc.

March 3, 2014
Greenville, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	)	IN THE COURT OF COMMON PLEAS
Overland, Inc. d/b/a Land Rover Greenville, Plaintiff, vs. Lara Marie Nance, Charlie Andrew Nance Roger Fields, ADP Dealer Services Group, Piedmont Automotive of Anderson, Inc. d/b/a Piedmont Chrysler Jeep Dodge, Piedmont Automotive of Anderson South Carolina, LLC d/b/a Apex Automotive, Synovus Financial Corporation d/b/a NBSC, Branch Banking and Trust Company, Bank of America Corporation, and SunTrust Banks, Inc., Defendants.	)	**DEFENDANT SUNTRUST BANKS, INC.'S RESPONSES TO PLAINTIFF'S FIRST REQUESTS FOR PRODUCTION** C.A. No.: 2010-CP-23-5880

TO: JAMES W. FAYSSOUX, JR. AND T. HUNT REID, ATTORNEYS FOR PLAINTIFF

Defendant, SunTrust Banks, Inc. (hereinafter "SunTrust"), by and through their undersigned counsel, hereby submits the following Responses to Plaintiff's First Set of Requests for Production pursuant to Rules 26 and 34 of the *South Carolina Rules of Civil Procedure*:

GENERAL OBJECTIONS

The following general objections are incorporated by reference into each of SunTrust's answers as set forth below:

1. SunTrust objects to these discovery requests, including the definitions and instructions, to the extent they seek to alter or expand upon the requirements and provisions of the *South Carolina Rules of Civil Procedure*. SunTrust will respond to these discovery requests in a manner consistent with Rule 34 of the *South Carolina Rules of Civil Procedure*.

2. SunTrust objects to these discovery requests to the extent they seek documents and information that are irrelevant to this action or not reasonably calculated to lead to the discovery of admissible evidence. SunTrust further objects to these discovery requests to the extent they are overly broad and unduly burdensome.

3. SunTrust objects to these discovery requests to the extent they seek information in the possession of corporations, individuals, or entities other than SunTrust or otherwise outside of its possession, custody, and control.

4. SunTrust objects to these discovery requests to the extent they seek documents or information that contain or otherwise reveal any trade secrets or other confidential proprietary business or financial information absent the protection of a mutually acceptable confidentiality order.

5. SunTrust objects to these discovery requests to the extent they call for disclosure of documents and/or information protected by the attorney-client privilege, the work product doctrine, or any other applicable privilege, immunity or protection. All discovery requests are interpreted to exclude discovery of information or documents protected by the attorney-client privilege and/or work product doctrine, including documents generated after the filing of the complaint. Production of privileged or protected information by SunTrust during the litigation is inadvertent and should not be construed as a waiver of any such privilege or protection or of any other ground for objection with respect to such information.

6. SunTrust's answers to these discovery requests, and the production of responsive documents, are made without waiving any objections, in this or any other proceeding, to the use, competence, authenticity, relevance, materiality, or admissibility as evidence of any documents or other information produced.

RESPONSE:

SunTrust objects to this Request to the extent it seeks information protected by the attorney-client privilege and/or work product doctrine. Subject to the foregoing and the general objections, SunTrust has no discoverable, non-privileged documents in its possession, custody or control that are responsive to this request.

2. **Copies of any and all statements given by either eyewitness(es) or other witness(es) to the incident and matters complained of in the Complaint herein which are in the possession of Defendant or Defendant's attorneys whether written, recorded on a tape recorder, or otherwise.**

RESPONSE:

SunTrust objects to this Request to the extent it seeks information protected by the attorney-client privilege and/or work product doctrine. Subject to the foregoing and the general objections, other than the transcripts of depositions already taken in this matter and in the possession of Plaintiff, SunTrust has no discoverable, non-privileged documents in its possession, custody or control that are responsive to this request.

3. **Copies of any and all written reports by any experts referred to in Defendant's Answers to Standard Interrogatories.**

RESPONSE:

SunTrust objects to this Request to the extent it seeks information protected by the attorney-client privilege and/or work product doctrine. Subject to the foregoing and the general objections, SunTrust has no discoverable, non-privileged documents in its possession, custody or control that are responsive to this request.

7. SunTrust objects to these discovery requests to the extent that Plaintiff would contend that:

a. forensic-recovery methods must be undertaken or applications other than those used to create material in the ordinary course of business must be employed to confirm whether responsive materials exist;

b. the ordinary functioning of computers and similar systems must be suspended;

c. disaster-recovery media and other media and sources that are not reasonably accessible must be searched;

d. electronically stored material whose contents are not searchable must be reviewed; or

e. deleted, shadowed, echoed, fragmented, or residual data or file attributes, properties, and metadata separately must be searched or produced.

The bases for these objections are that the cost and burden of identifying, preserving, recreating, and/or reviewing (including reviewing and logging attorney-client communications, attorney work product, or other proper bases for nonproduction) any such material is unreasonable and that requiring such efforts is not reasonably calculated to lead to the discovery of additional admissible evidence.

8. SunTrust's answers to these discovery requests, and the production of responsive documents, are made without waiving any objections, in this or any other proceeding, to supplement, amend, or correct its responses thereto in light of the fact that SunTrust's investigation into this matter and the facts surrounding it is ongoing.

SPECIFIC OBJECTIONS AND RESPONSES

1. **Copies of all statements given by the Defendant which are in the possession of Defendant or Defendant's attorneys whether written, recorded on a tape recorder, or otherwise, which relate to the matters complained of in Plaintiff's Complaint.**

4. **Copies of any and all statements, memoranda, reports of [sic] other materials which in any way might relate to Defendant's defense(s) herein which are within the possession of Defendant or Defendant's attorneys whether written, recorded on a tape recorder, or otherwise.**

RESPONSE:

SunTrust objects to this Request as vague and confusion and to the extent it seeks information protected by the attorney-client privilege and/or work product doctrine. Subject to the foregoing and the general objections, SunTrust has no discoverable, non-privileged documents in its possession, custody or control that are responsive to this request.

5. **Copies of any and all photographs, digital images, plats, diagrams, sketches, videotapes or other prepared documents or materials which Defendant or Defendant's attorneys may have which relate to the matters alleged in Plaintiffs' Complaint and may be presented at trial or into evidence, by way of impeachment, or otherwise.**

RESPONSE:

SunTrust objects to this Request to the extent it seeks information protected by the attorney-client privilege and/or work product doctrine. SunTrust further objects to this request to the extent it calls for information or documents used solely for purposes of impeachment. Subject to the foregoing and general objections, SunTrust will produce and make available for inspection and copying any responsive, non-privileged documents within its possession, custody, or control after conducting a reasonable search of records kept in the ordinary course of business.

6. **Copies of all policies, protocols, manuals, and/or procedures with respect to the creation of or the opening up of customer accounts that were in effect at SunTrust Banks, Inc. during the relevant periods of this case.**

RESPONSE:

SunTrust objects to this Request on the grounds that Plaintiff is not a customer of SunTrust and no claims have been asserted against SunTrust by any customers in this matter. SunTrust further objects to this Request on the grounds that any policies, procedures, protocols and practices used by SunTrust concerning the opening of a personal checking/savings account, corporate account, or other business related account(s) are not relevant, nor would they lead the discovery of admissible evidence related to the claims against SunTrust made by a non-customer third party. Such matters are related to the relationship between SunTrust and its customers, and have no bearing on Plaintiffs' claims against SunTrust.

7. **Copies of each and every document provided by SunTrust Banks, Inc. by any person(s) in relation to the account(s) listed in your response to Plaintiff's Interrogatory No. 16.**

RESPONSE:

SunTrust objects to this Request on the grounds that it seeks information that is not relevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to the foregoing and general objections, SunTrust will produce or make available for inspection and copying any responsive, non-privileged documents within its possession, custody, or control after conducting a reasonable search of records kept in the ordinary course of business that relate to the accounts maintained by SunTrust that were opened by LMN d/b/a a vendor of Plaintiff and/or wherein checks from Plaintiff were deposited.

8. **Copies of each and every document provided by SunTrust Banks, Inc. to LMN, CAN, RF or any other persons associated with the account(s) listed in your response to Plaintiff's Interrogatory No. 16.**

RESPONSE:

See response to Request No. 7.

9. **Copies of SunTrust Banks, Inc.'s entire file on LMN, CAN, RF, "TEBS," Taylor Enterprises, Atlantic British, Invision Industries, and all the account(s) associated with these persons or entities, including, without limitation, the following: reports, memos, financial statements, tax returns, correspondence, internal reviews, financial analysis, SARS reports, audits, corporate resolutions, secretary of state certificates or writings, operating agreements and/or articles of organization, checking and deposit account agreements, signature cards, customer identifications, EIN, SSN, driver's licenses, emails. If any of the above-referenced documents exist but not within SunTrust Banks, Inc.'s file, please produce the same, wherever they are located.**

RESPONSE:

SunTrust objects to this Request to the extent it seeks the production of SARS reports, which SunTrust is prohibited by federal law from furnishing. Due to the fact that LMN's accounts were not opened by a corporation or any type of partnership or limited liability company, SunTrust is not in possession or control of any corporate resolutions, secretary of state certificates or writings, operating agreements, or articles of organization. Further, SunTrust does not have in its possession or control any financial statements, tax returns, correspondence, internal reviews, financial analysis, or audits related to the two accounts maintained by LMN.

Other than the accounts set forth in SunTrust's answer to Interrogatory No. 16, neither "TEBS." Atlantic British, Taylor Enterprises, nor Invision Industries are account holders at SunTrust. Therefore, SunTrust does not have any discoverable, non-privileged documents related to either individual or entity that are responsive to this portion of the Request.

SunTrust objects to the portion of this Request related to RF on the grounds of financial privacy. SunTrust cannot turn over private financial information related to its customer's accounts without prior permission from the customer.

SunTrust further objects to this Request on the grounds that it seeks information that is not relevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to the foregoing and general objections, SunTrust will produce or make available for inspection and copying any responsive, non-privileged documents within its possession, custody, or control after conducting a reasonable search of records kept in the ordinary course of business that relate to the accounts maintained by SunTrust that were opened by LMN d/b/a a vendor of Plaintiff and/or wherein checks from Plaintiff were deposited.

10. **Copies of any and all bank statements and credit card statements associated or connected with the accounts listed in your response to Plaintiff's Interrogatory No. 16.**

RESPONSE:

Subject to the general objections, SunTrust will produce or make available for inspection and copying any responsive, non-privileged documents within its possession, custody, or control after conducting a reasonable search of records kept in the ordinary course of business.

11. **Copies of any and all deposit slips, check images, checks deposited, withdrawal receipts, ATM transactions, draw requests or other account transactions or request for transaction that are associated or connected with the accounts listed in your response to Plaintiff's Interrogatory No. 16.**

RESPONSE:

SunTrust objects to this Request on the grounds that it seeks information that is not relevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to the

foregoing and general objections, SunTrust will produce or make available for inspection and copying any responsive, non-privileged documents within its possession, custody, or control after conducting a reasonable search of records kept in the ordinary course of business that relate to the accounts maintained by SunTrust that were opened by LMN d/b/a a vendor of Plaintiff and/or wherein checks from Plaintiff were deposited.

12. **Copies of all checks paid and/or transferred on the accounts listed in your response to Plaintiff's Interrogatory No. 16, including the front and back of each check, written or drawn on the account(s), and wiring information if funds were wired from the account(s).**

RESPONSE:

Subject to the general objections, SunTrust will produce or make available for inspection and copying any responsive, non-privileged documents within its possession, custody, or control after conducting a reasonable search of records kept in the ordinary course of business.

13. **An account history of all the accounts listed in your response to Plaintiff's Interrogatory No. 16, by date, showing the initial funding of the account, all deposits during the exists of the accounts, debits on the account, debit information including the payee names and account information where the funds were deposited and form of disbursement, withdrawal information including the form of disbursement such as cash, check or wire, as well as any other account information.**

RESPONSE:

SunTrust objects to this Request on the grounds that SunTrust is not required under the South Carolina Rules of Civil Procedure to create documents that are not already in its possession, custody, and control. SunTrust also objects to any attempt on the part of Plaintiff to

force it to create or generate any of the documentation sought through this Request. SunTrust further objects to this Request on the grounds that it seeks information that is not relevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to the foregoing and general objections, SunTrust will produce or make available for inspection and copying any responsive, non-privileged documents within its possession, custody, or control after conducting a reasonable search of records kept in the ordinary course of business that relate to the accounts maintained by SunTrust that were opened by LMN d/b/a a vendor of Plaintiff and/or wherein checks from Plaintiff were deposited.

14. **Copies of all correspondences, whether electronically or otherwise, including attachments thereto, between SunTrust Banks, Inc. and any other parties to this action that may relate in any way to the subjects of this action.**

RESPONSE:

SunTrust objects to this Request (misnumbered as Request No. 13) to the extent that it seeks information protected by the attorney-client privilege and/or work product doctrine. Subject to the foregoing and general objections, SunTrust will produce or make available for inspection and copying any responsive, non-privileged documents within its possession, custody, or control after conducting a reasonable search of records kept in the ordinary course of business.

15. **A complete copy of the most current curriculum vitae of each expert witness identified by the Plaintiff in response to Interrogatories propounded by this Defendant.**

RESPONSE:

SunTrust objects to this Request (misnumbered as Request No. 14) to the extent it seeks information protected by the attorney-client privilege and/or work product doctrine. Subject to the foregoing and general objections, SunTrust has not yet retained any expert it expects to call

as a witness trial. In the event SunTrust retains any experts it expects to call as a witness at trial, SunTrust will produce the requested documents for any such witness it intends to call and will supplement this response as required under Rule 26(e), SCRCP.

16. **Any and all data and other information considered by any expert identified by the Plaintiff in response to Interrogatories propounded by this Defendant in connection with any opinion(s) formed, or in summary or support of any opinion(s) formed, by such expert(s).**

RESPONSE:

See response to Request No. 15 (misnumbered as Request No. 14).

17. **Any and all exhibits to be used as a summary of or in support of opinion(s) of any expert(s) identified by Plaintiff in response to Interrogatories propounded by this Defendant.**

RESPONSE:

See response to Request No. 15 (misnumbered as Request No. 14).

18. **Copies of any and all treatises, texts or other authorities upon which each expert identified by the Plaintiff in response to Interrogatories propounded by this Defendant relies in whole or in part in forming or supporting any opinion to be expressed in this case.**

RESPONSE:

See response to Request No. 15 (misnumbered as Request No. 14).

19. **Any and all documents identified in response to Interrogatories propounded by this Defendant.**

RESPONSE:

Subject to the general objections, to the extent this Request (misnumbered as Request No. 18) refers to the Interrogatories served upon SunTrust by Plaintiff, SunTrust will produce or make available for inspection and copying any responses, non-privileged documents within its possession, custody, or control after conducting a reasonable search of records kept in the ordinary course of business.

20. **Any and all statements taken from any witness in this case.**

RESPONSE:

Subject to the general objections, other than the transcripts of depositions already taken in this matter and in the possession of Plaintiff, SunTrust has no discoverable, non-privileged documents in its possession, custody or control that are responsive to this request (misnumbered as Request No. 19).

21. **All policies, manuals, desk references, memos, procedures or writings associated with the administration and handling of the types of accounts similar to or actually used by LMN, CAN, or RF.**

RESPONSE:

SunTrust objects to this Request (misnumbered as Request No. 20) on the grounds that Plaintiff is not a customer of SunTrust and no claims have been asserted against SunTrust by any customers in this matter. Further, any policies, manuals, desk references, memos, procedures or writings used by SunTrust associated with the administration and handling of accounts are not relevant, nor would they lead to the discovery of admissible evidence related to claims against SunTrust made by a non-customer third party. Plaintiff did not have an account with SunTrust; therefore, it would have no ability to rely on or attempt to enforce SunTrust's policies, manuals, desk references, memos, procedures or writings concerning the administration and handling of an

account. Those policies, manuals, desk references, memos, procedures or writings are for the benefit and protection of SunTrust, its regulators, and its customers – not third parties – and, as a result have no bearing on Plaintiff's claims in this matter.

22. **Copies of any documents used in formulating your response to Plaintiff's Interrogatories Nos. 20, 21, 27, and/or 30.**

RESPONSE:

Subject to the general objections, SunTrust will produce or make available for inspection and copying non-privileged documents within its possession, custody, or control after conducting a reasonable search of records kept in the ordinary course of business that are responsive to this request (misnumbered as Request No. 21).

GALLIVAN WHITE & BOYD, P.A.

W. Howard Boyd (S.C. Bar #826)
Lauren T. Maxwell (S.C. Bar #79846)
Gallivan, White & Boyd, P.A.
P.O. Box 10589
Greenville, South Carolina 29603
Telephone: (864) 271-9580
Facsimile: (864) 271-7502
Counsel for Defendant SunTrust Banks, Inc.

March 3, 2014
Greenville, South Carolina

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Report ID: Check Image Print

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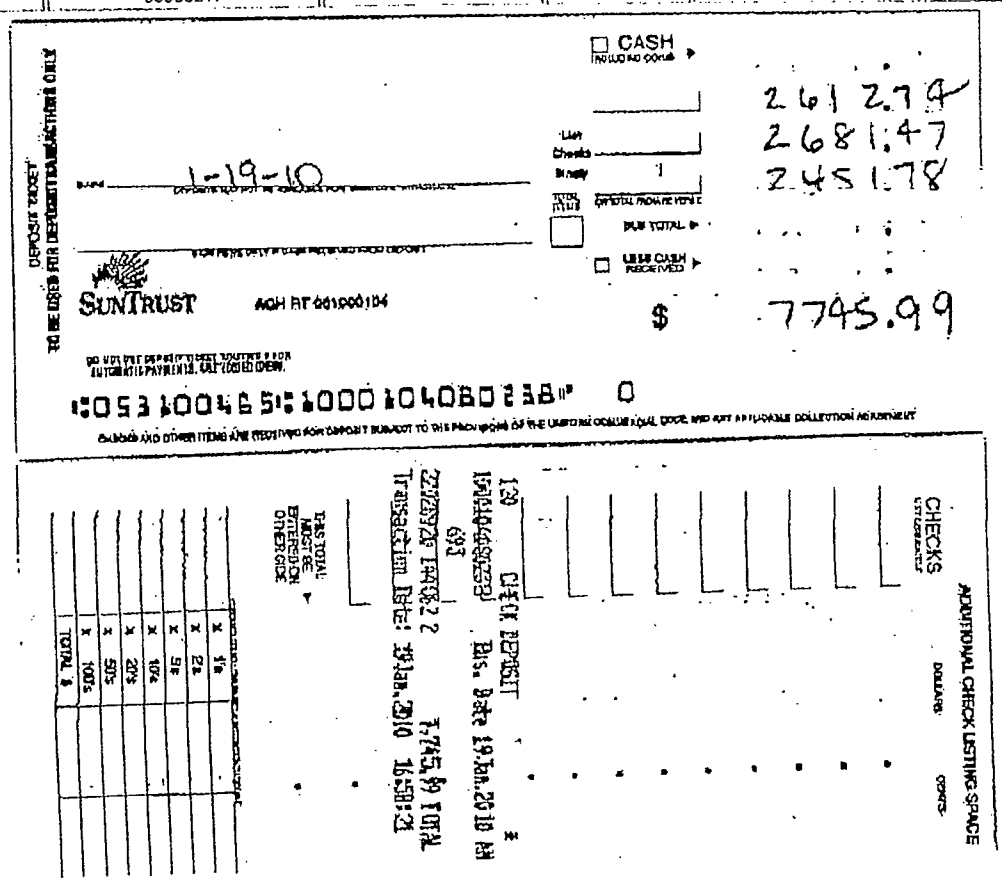

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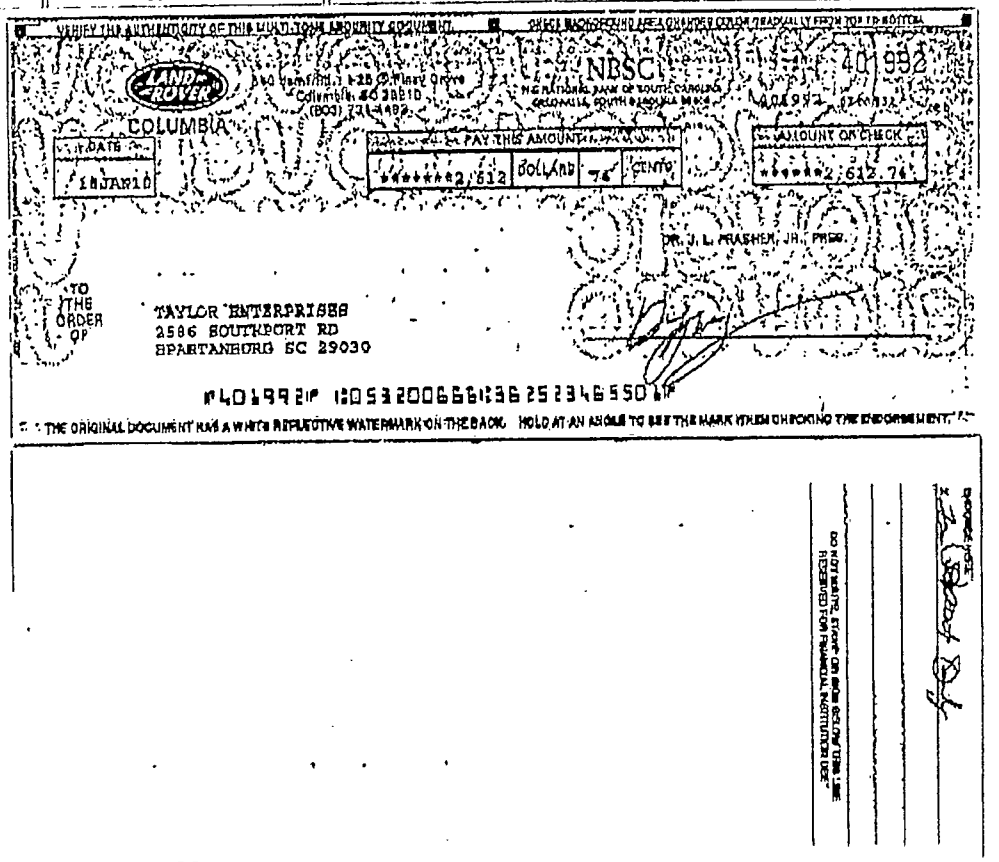

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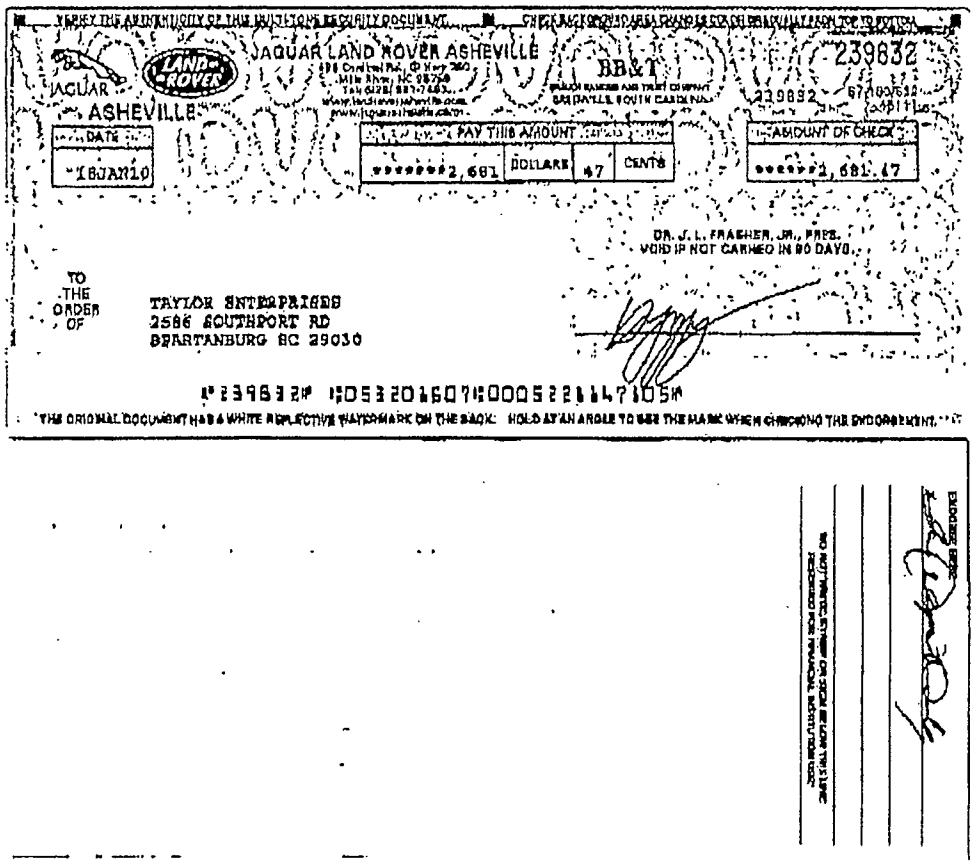

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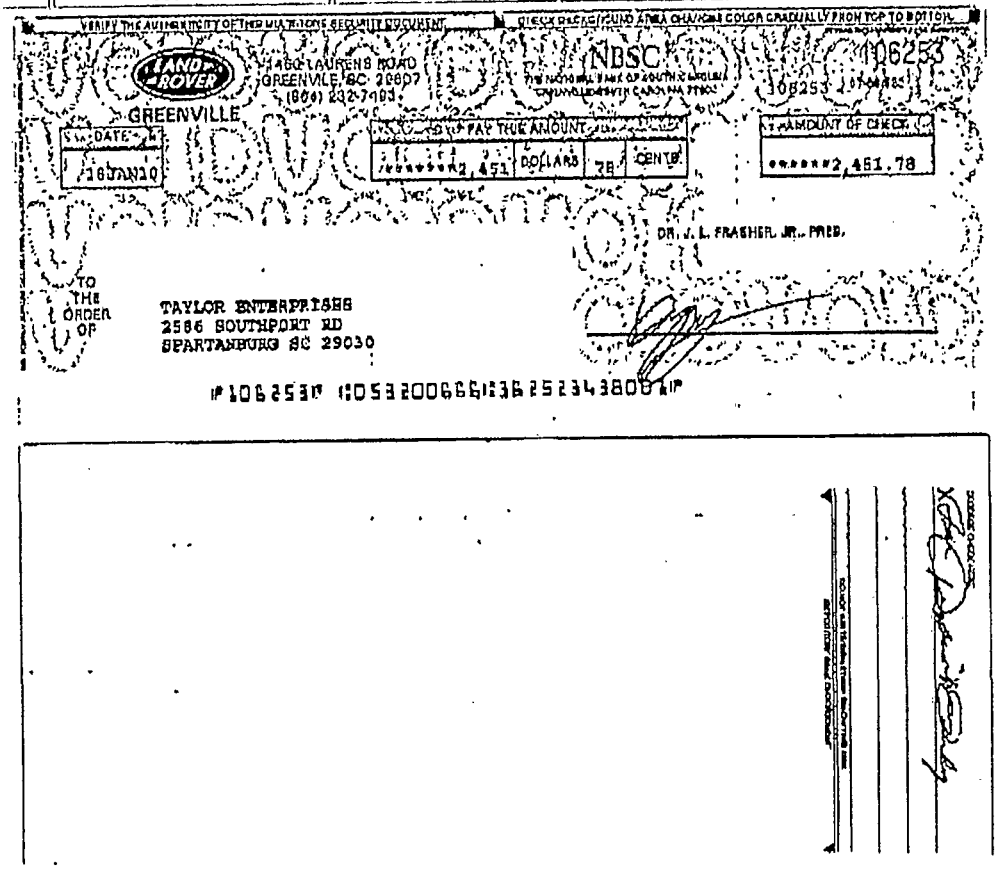

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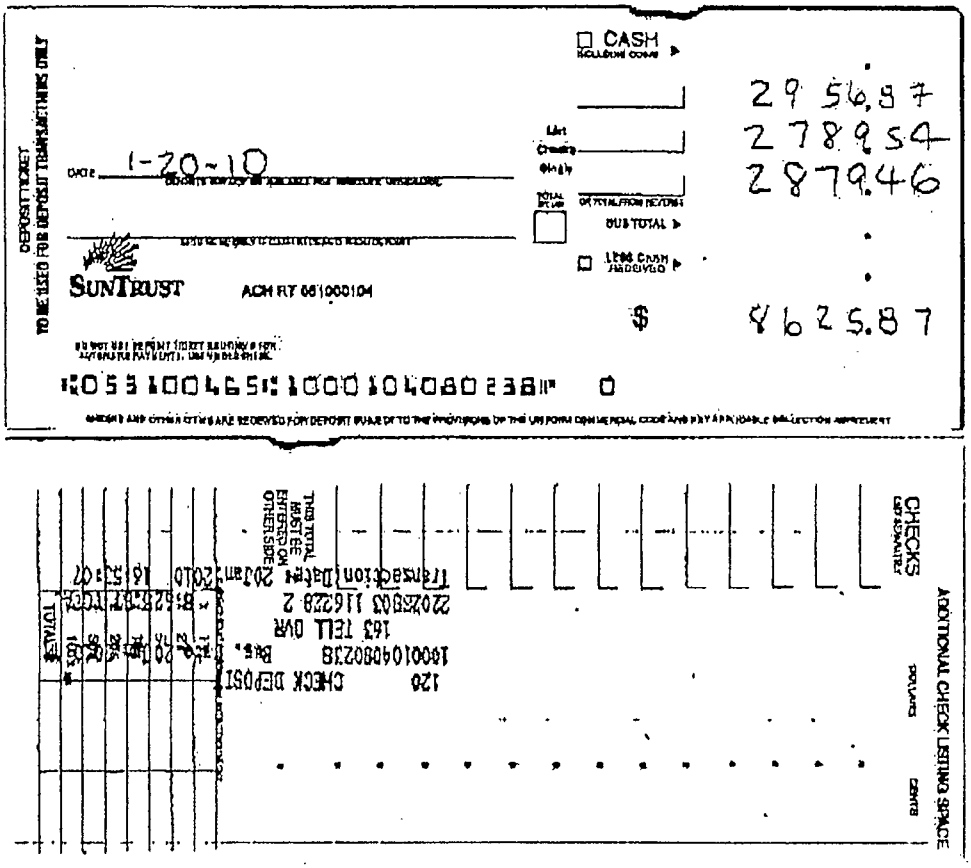

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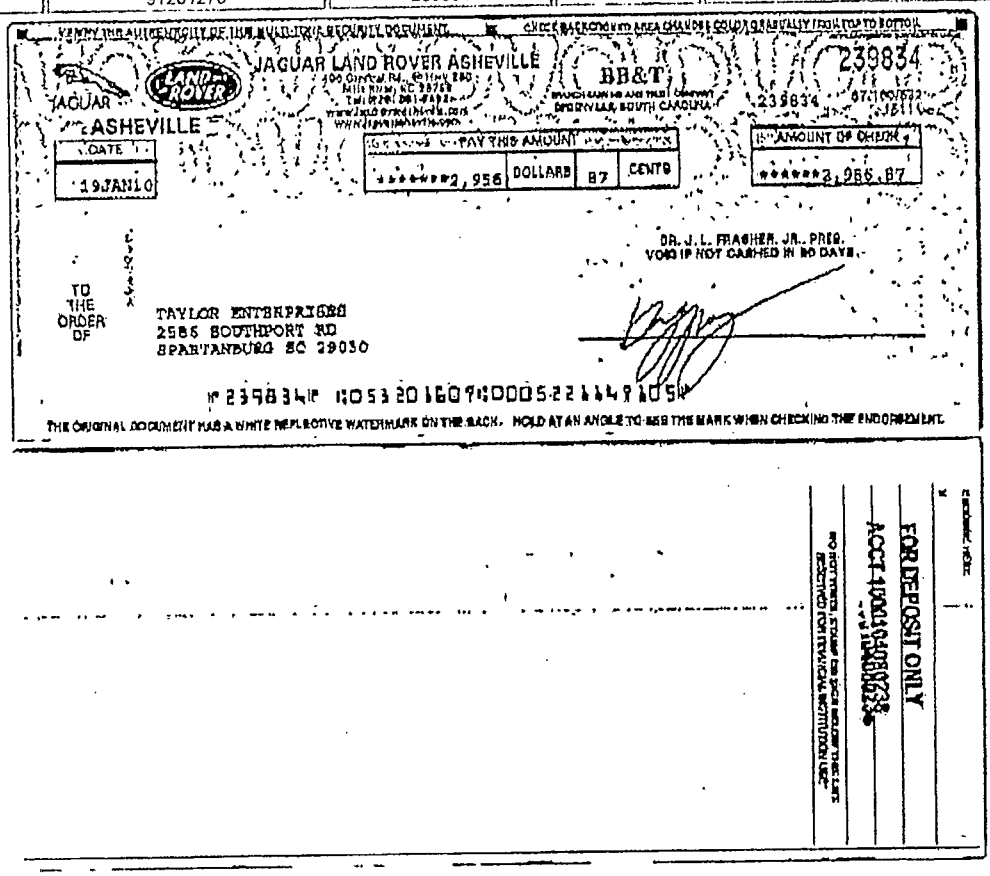

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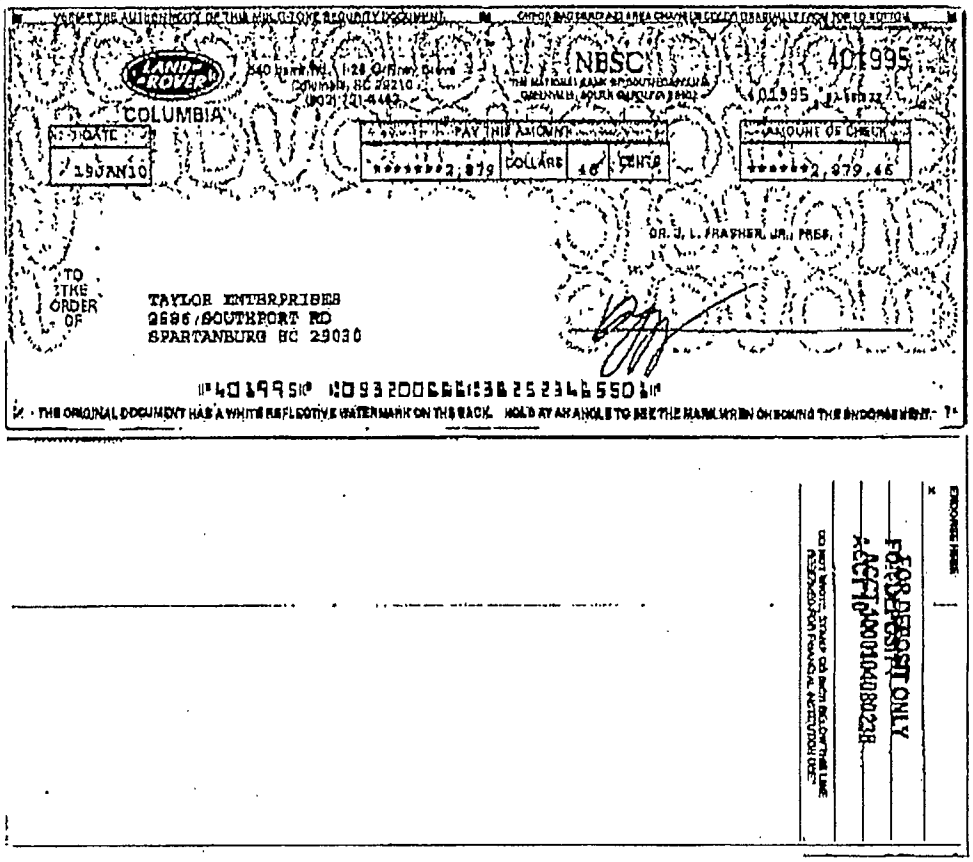

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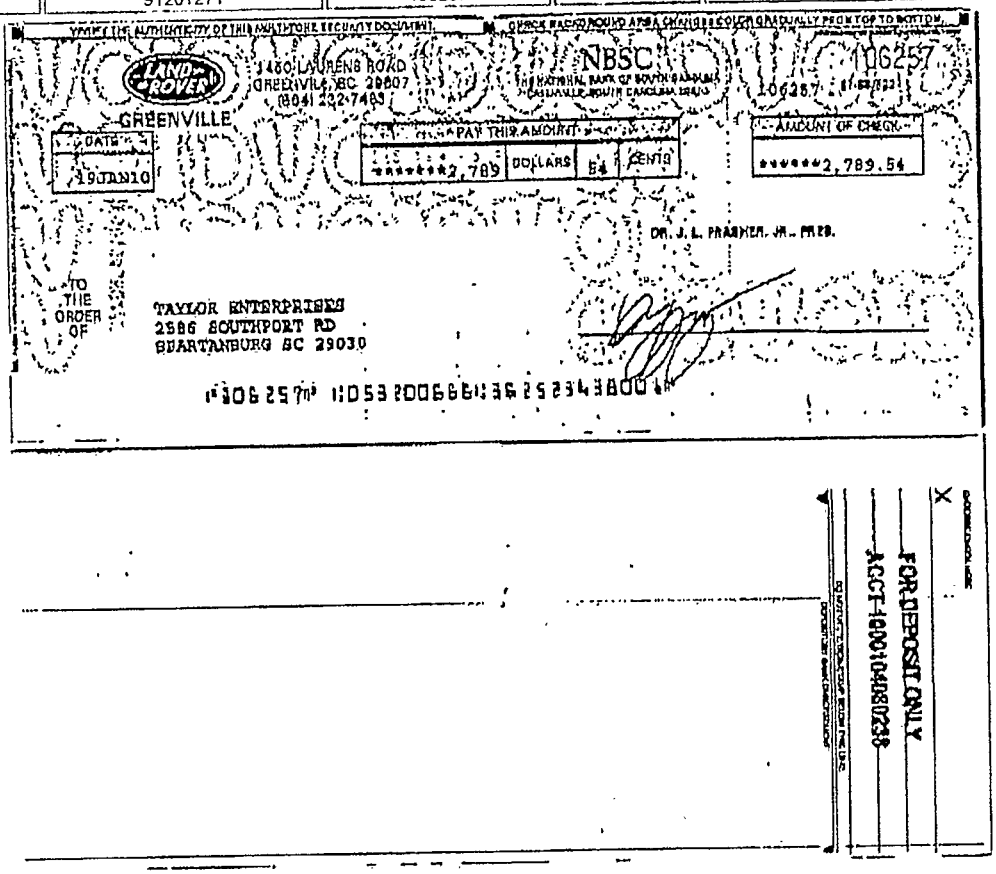

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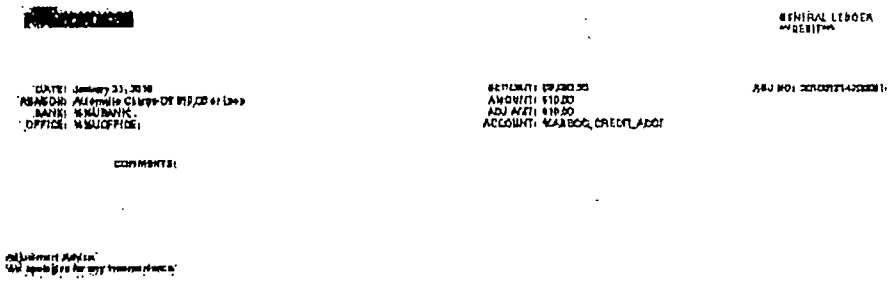

ADVICE NOTICE
GENERATED IMAGE

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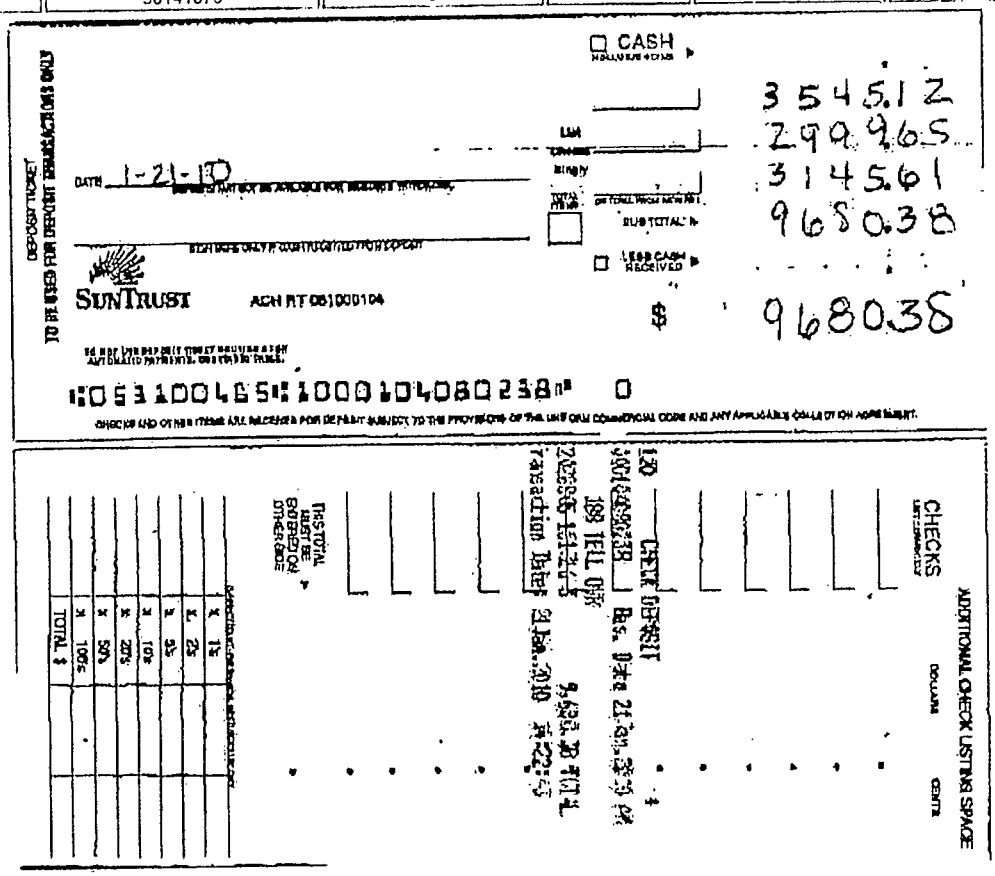

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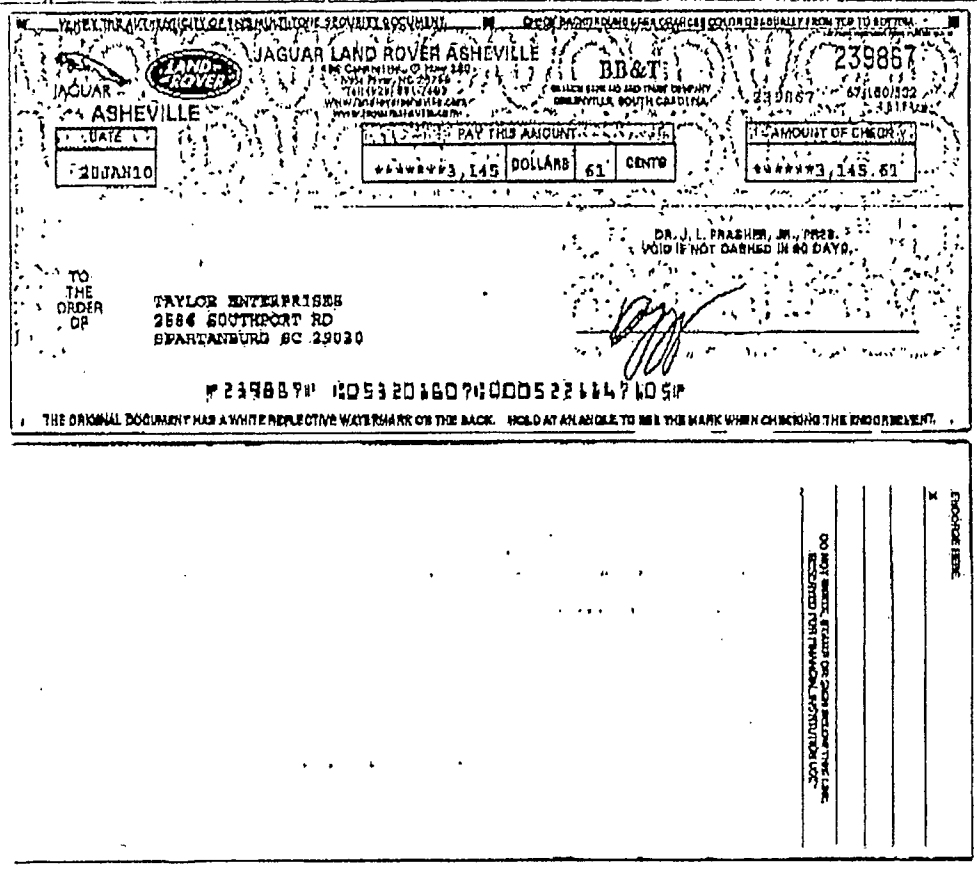

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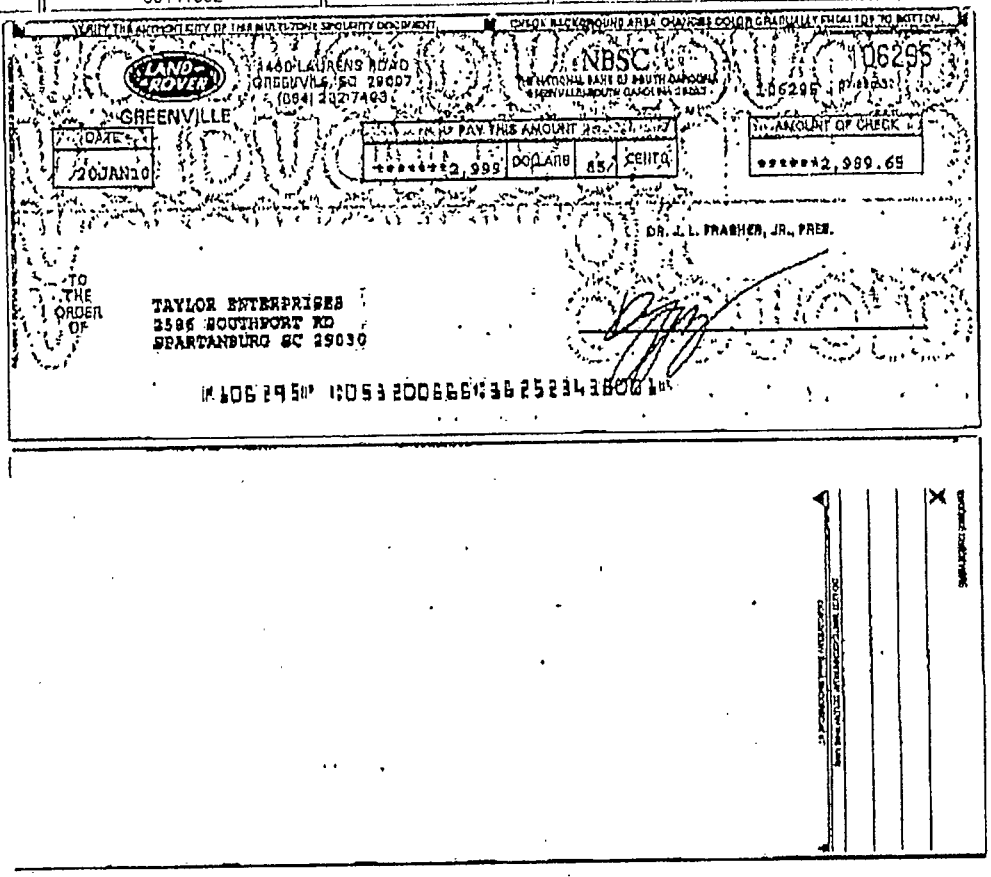

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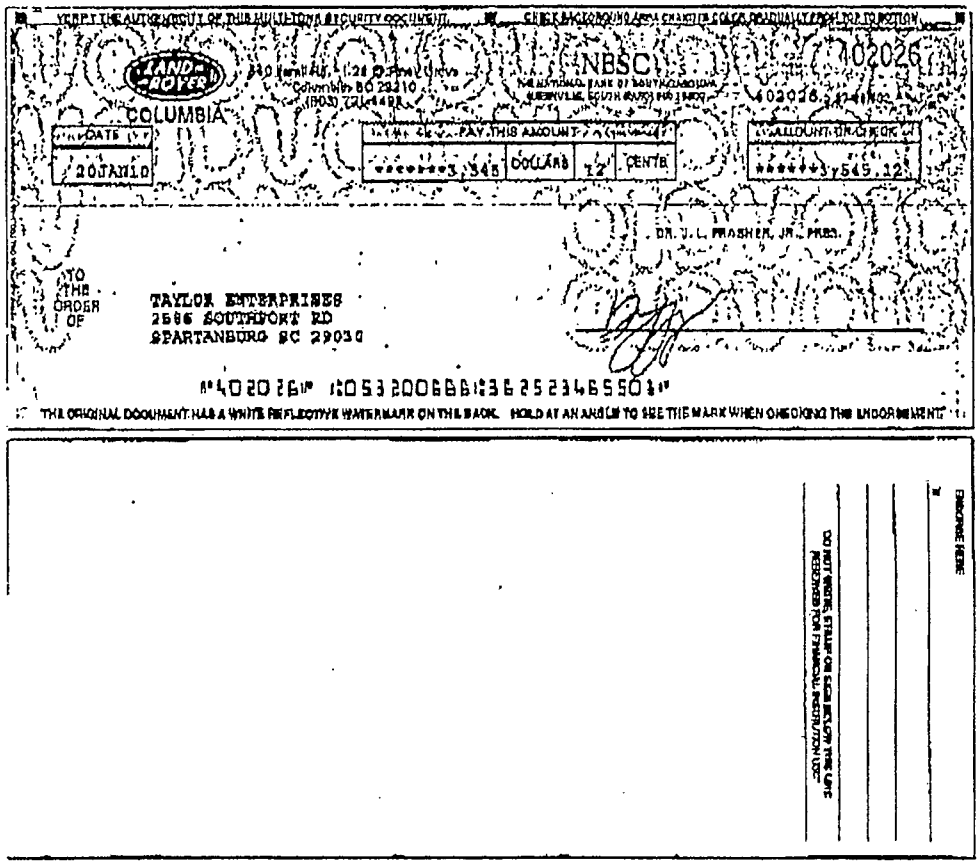

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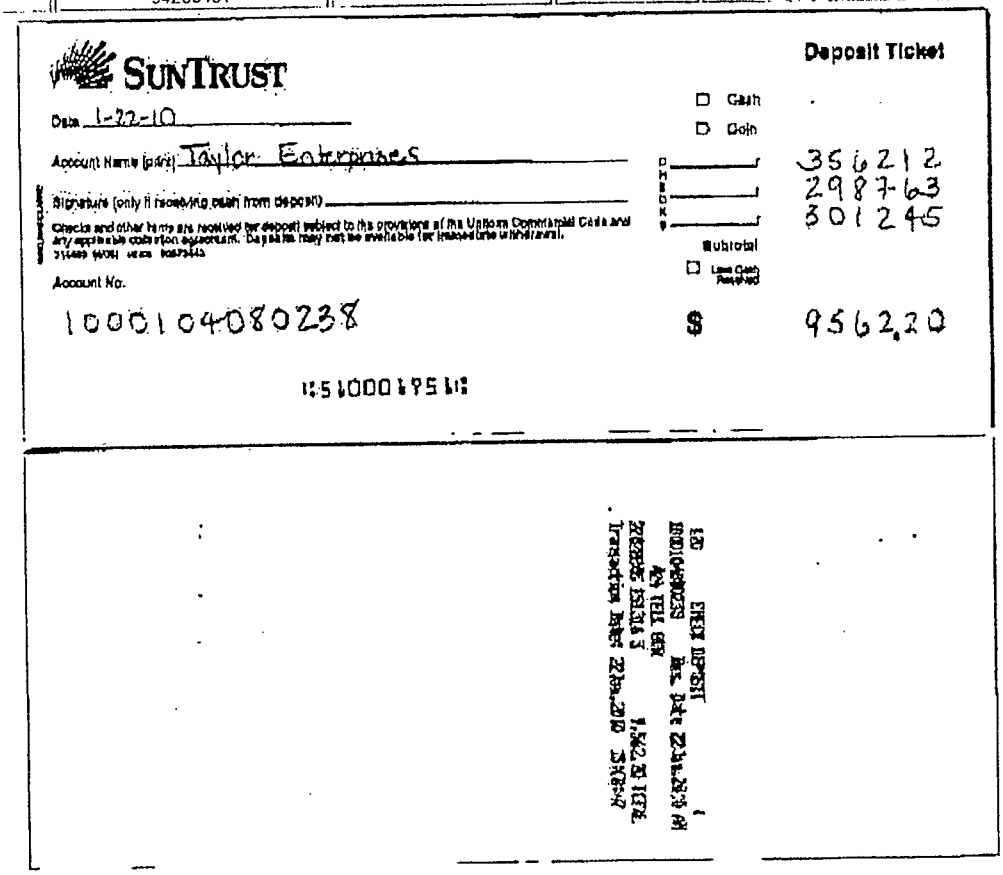

SUNTRUST

Deposit Ticket

Date 1-22-10

Account Name (print) Taylor Enterprises

Signature (only if receiving cash from deposit)

Checks and other items are received for deposit subject to the provisions of the Uniform Commercial Code and any applicable collection agreement. Deposits may not be available for immediate withdrawal.

Account No.

1000104080238

Cash
Coin
Checks
Subtotal
Less Cash Received

356212
298763
301245

$ 9562.20

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User ID: UVNL2
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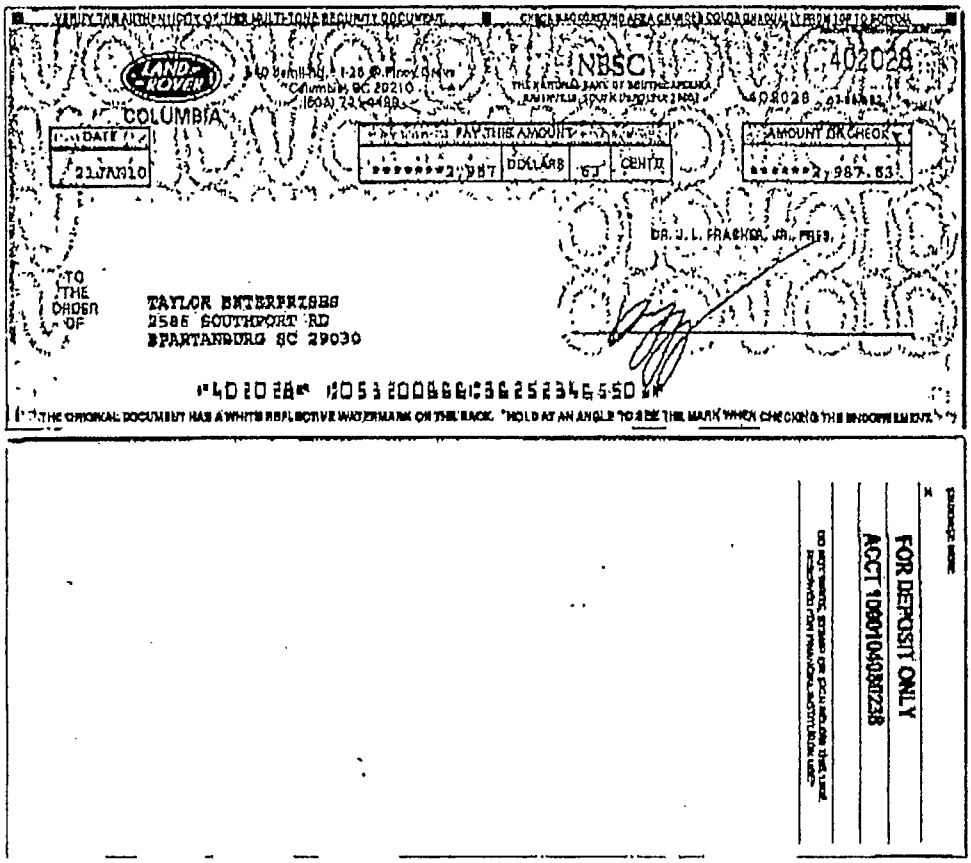

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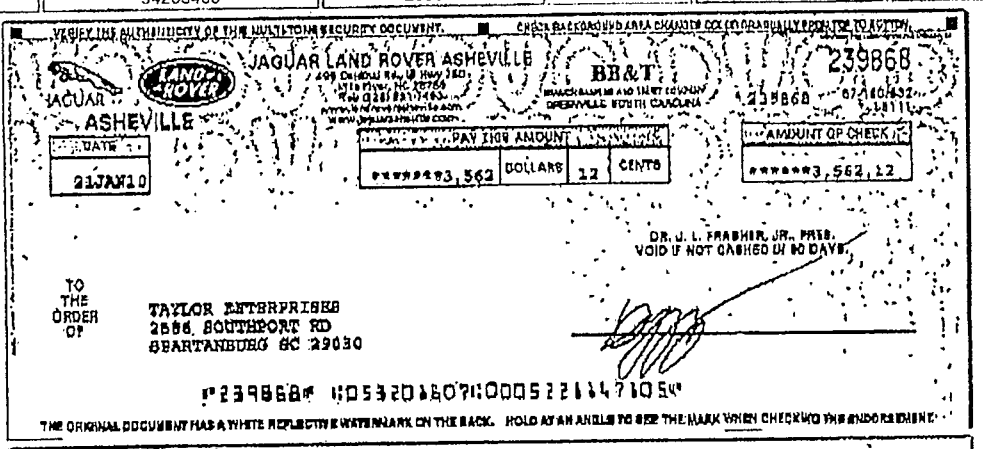

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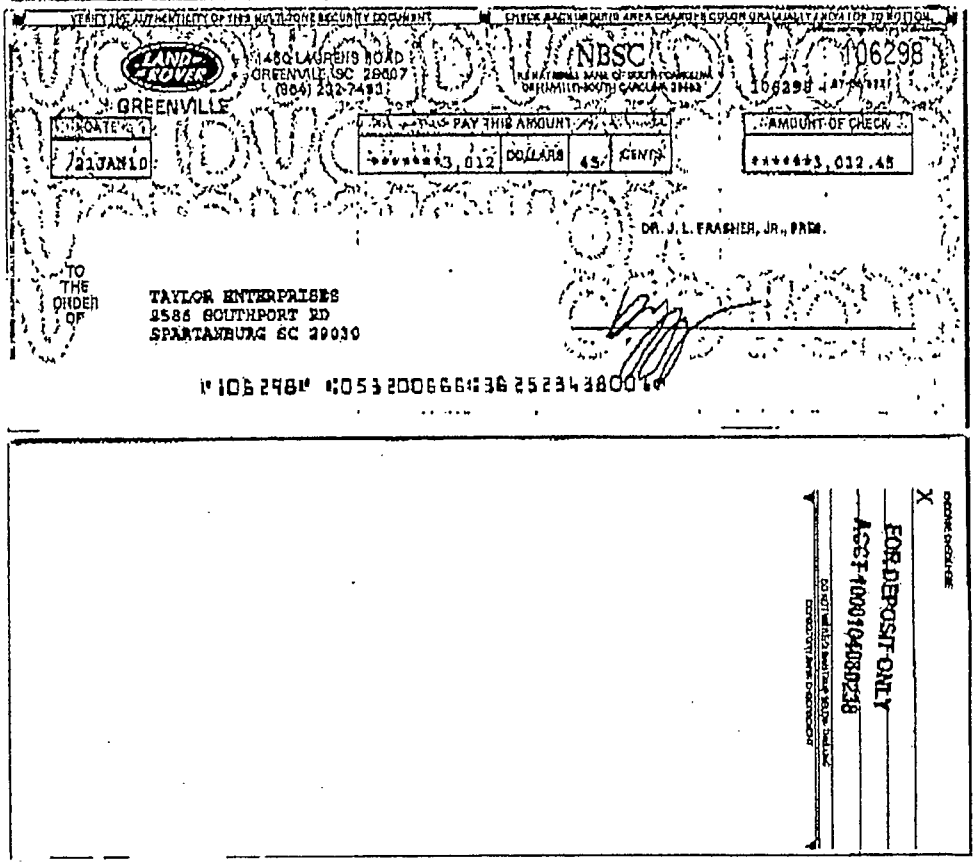

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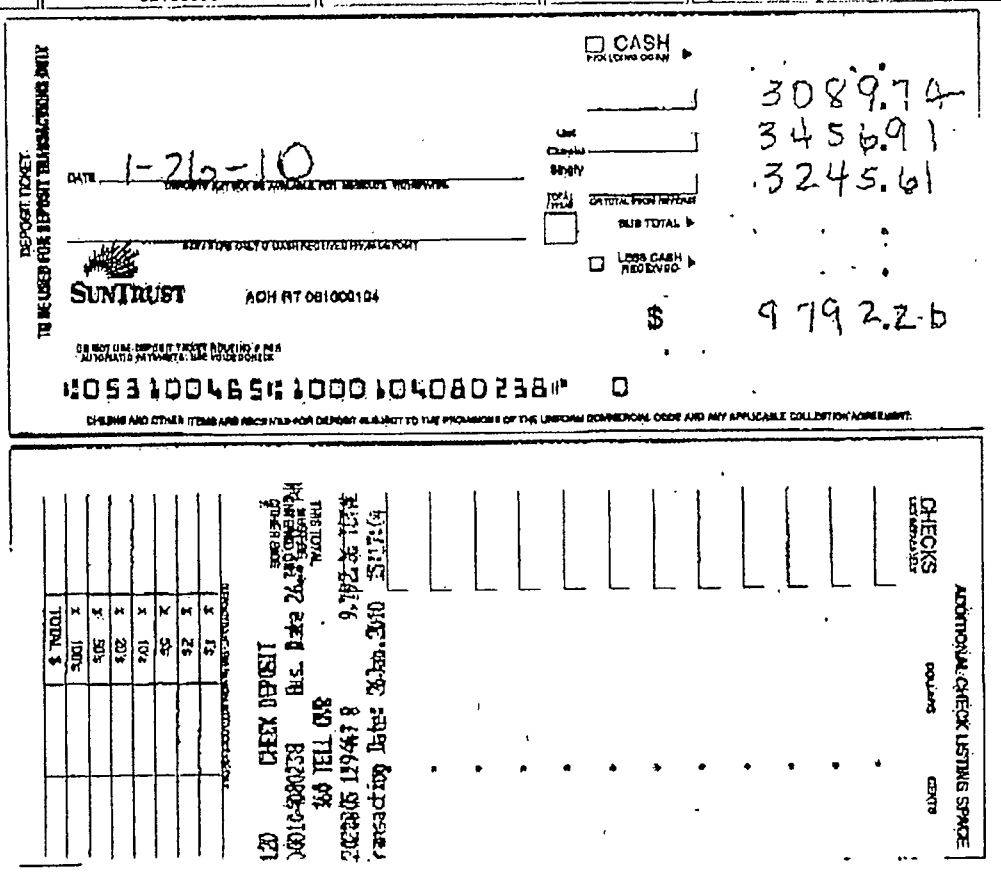

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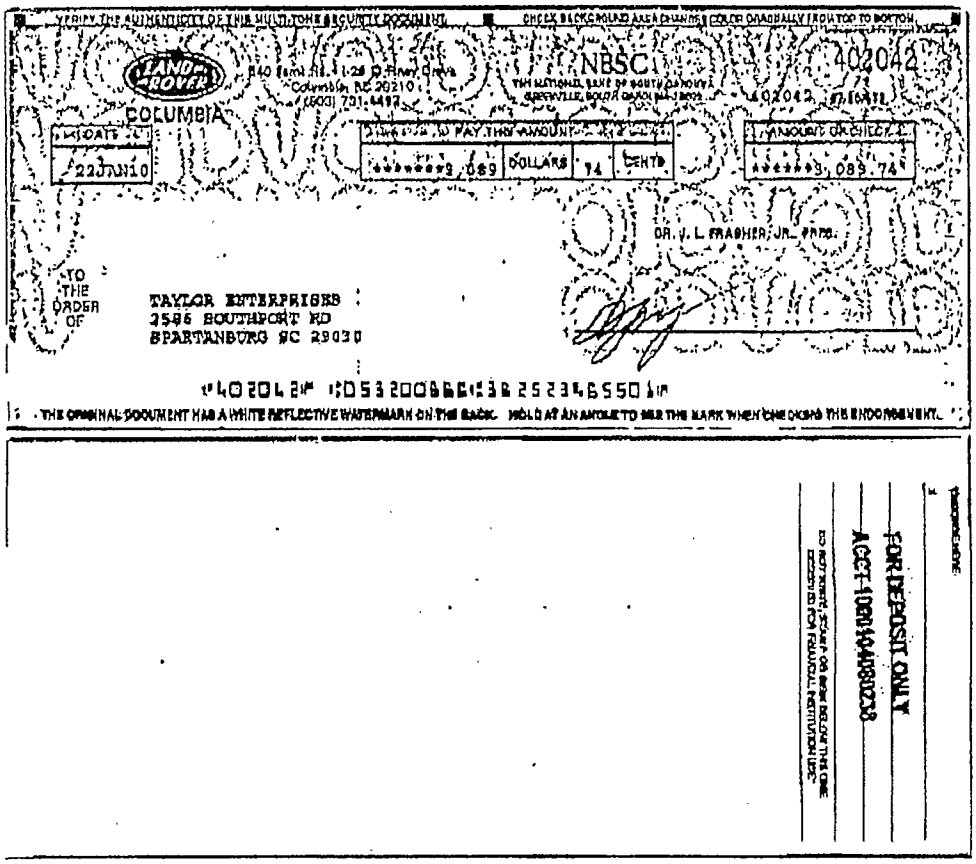

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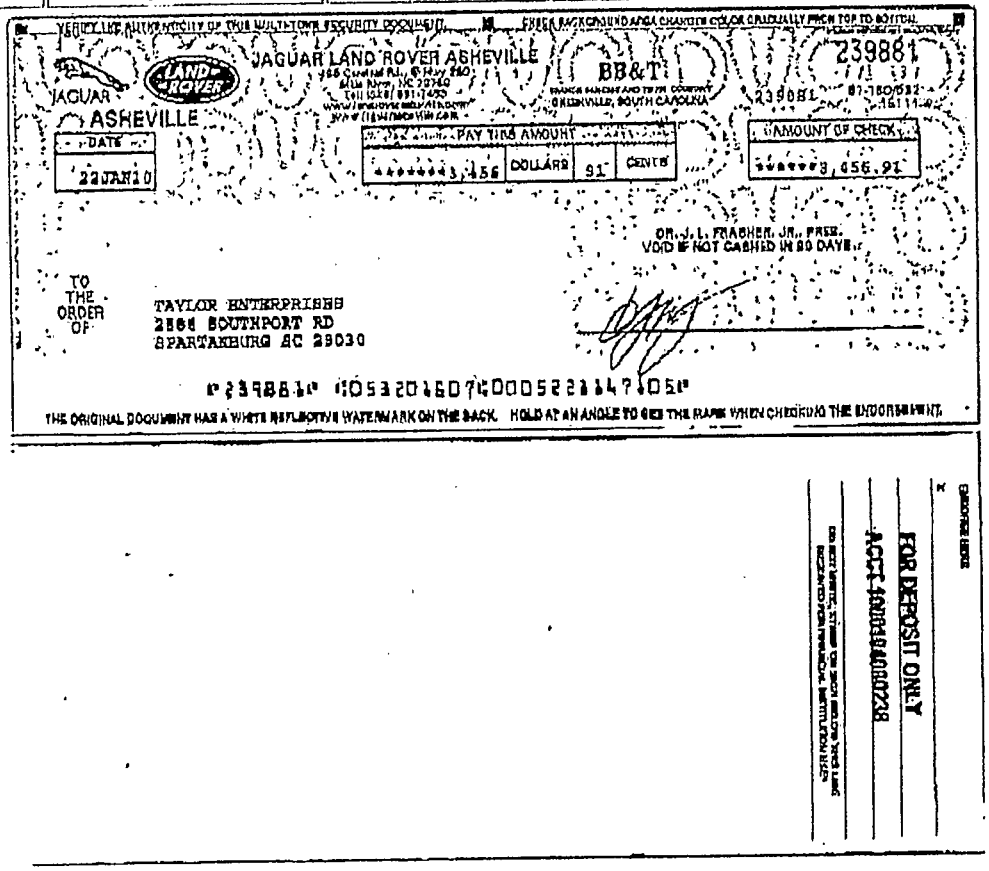

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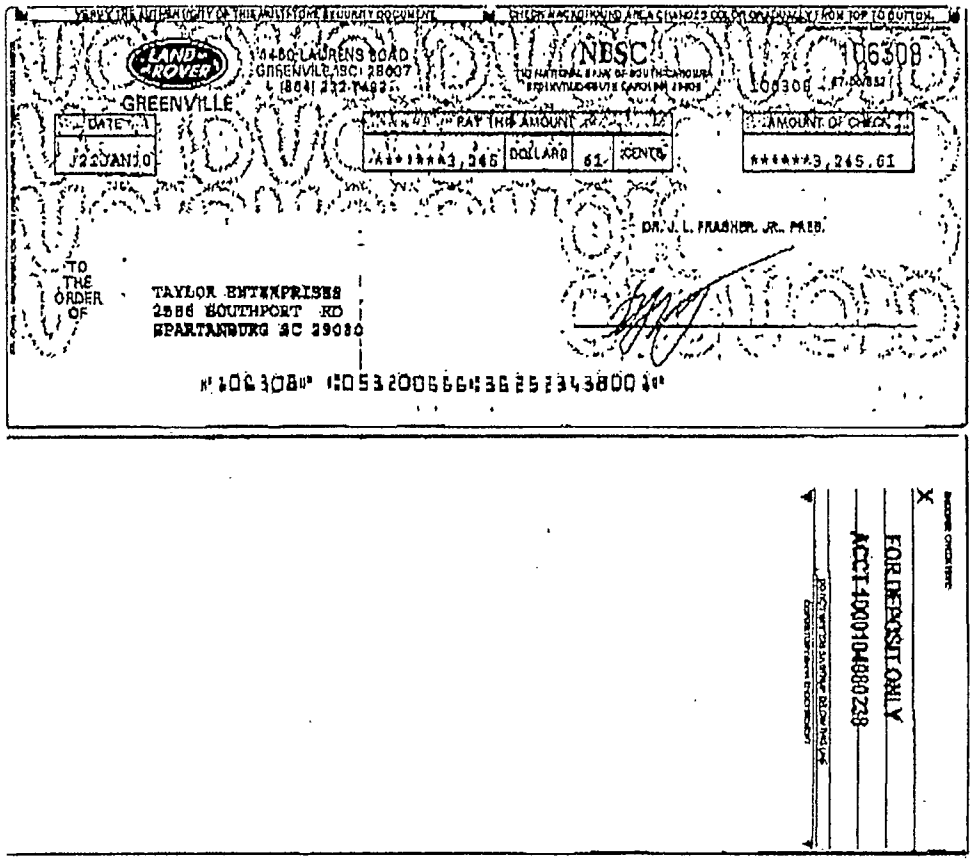

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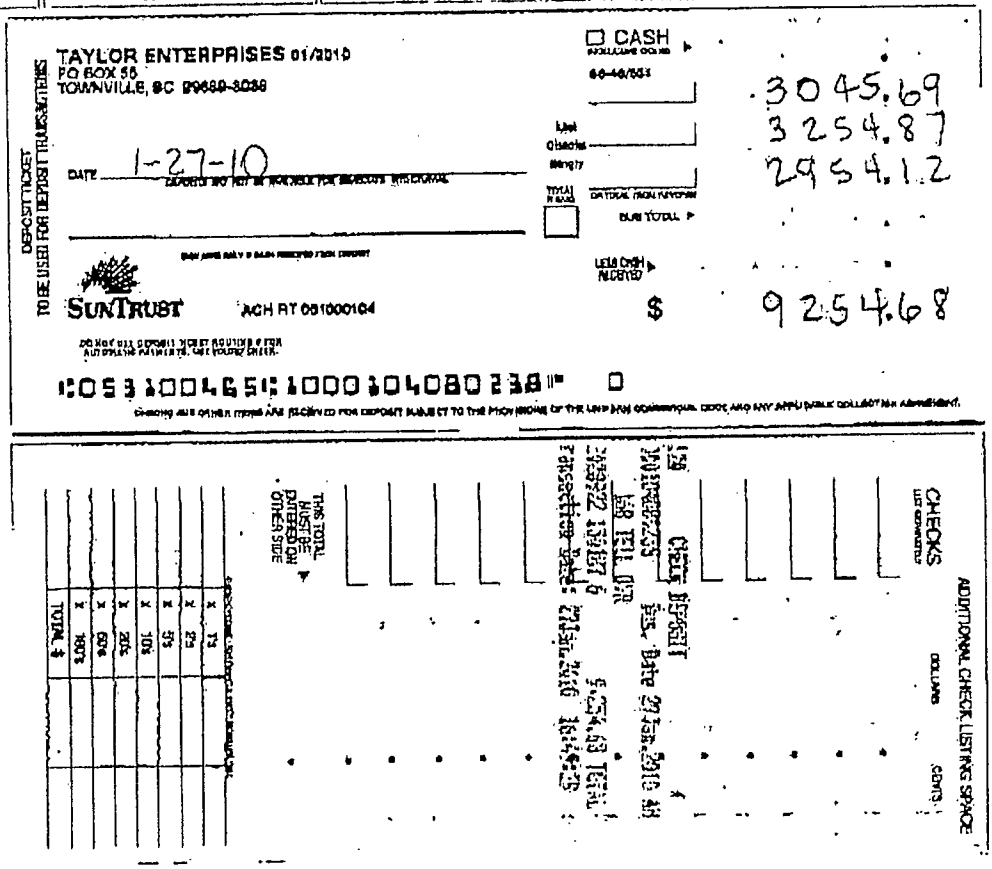

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Report ID: Check Image Print

Date: 08/15/2012
Time: 10:35:43

Capture Date	Sequence Number	Check Number	Amount	Posting Date	Posting Account
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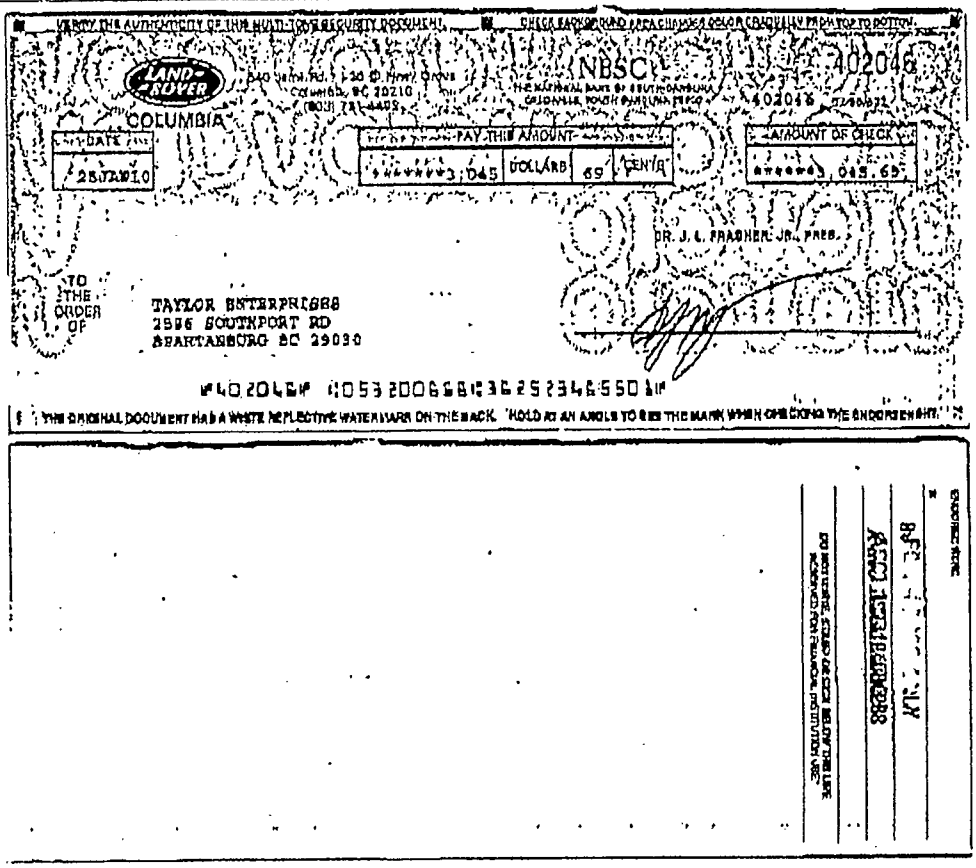

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Report ID: Check Image Print

Date: 08/15/2012
Time: 10:35:47

Capture Date	Sequence Number	Check Number	Amount	Posting Date	Posting Account
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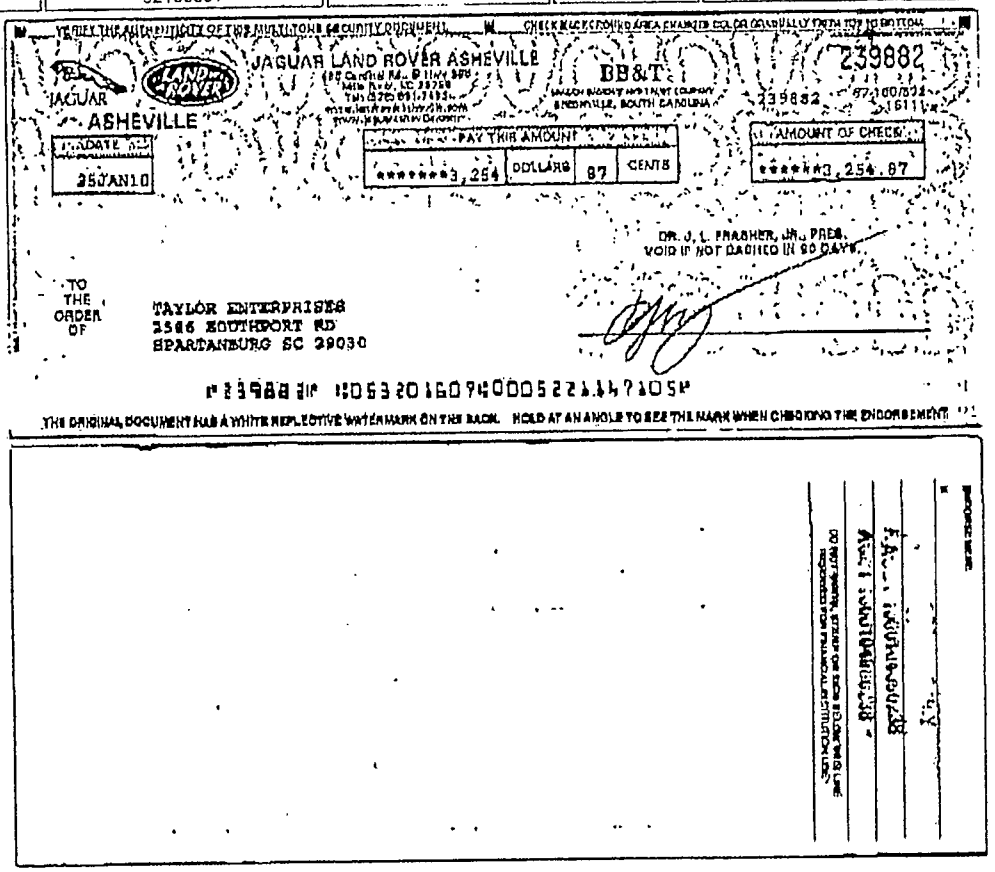

Check Image Print

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Report ID: Check Image Print

Date: 08/15/2012
Time: 10:35:52

Capture Date	Sequence Number	Check Number	Amount	Posting Date	Posting Account
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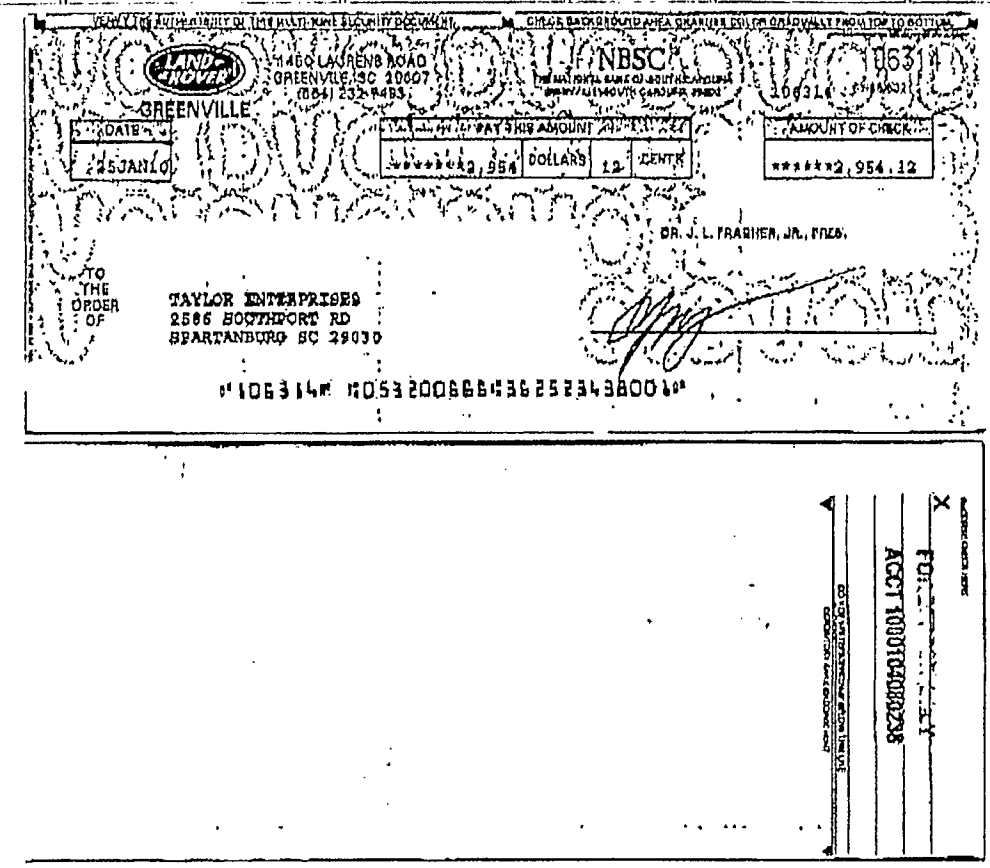

Check Image Print

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Report ID: Check Image Print

Date: 08/15/2012
Time: 10:55:34

Capture Date	Sequence Number	Check Number	Amount	Posting Date	Posting Account
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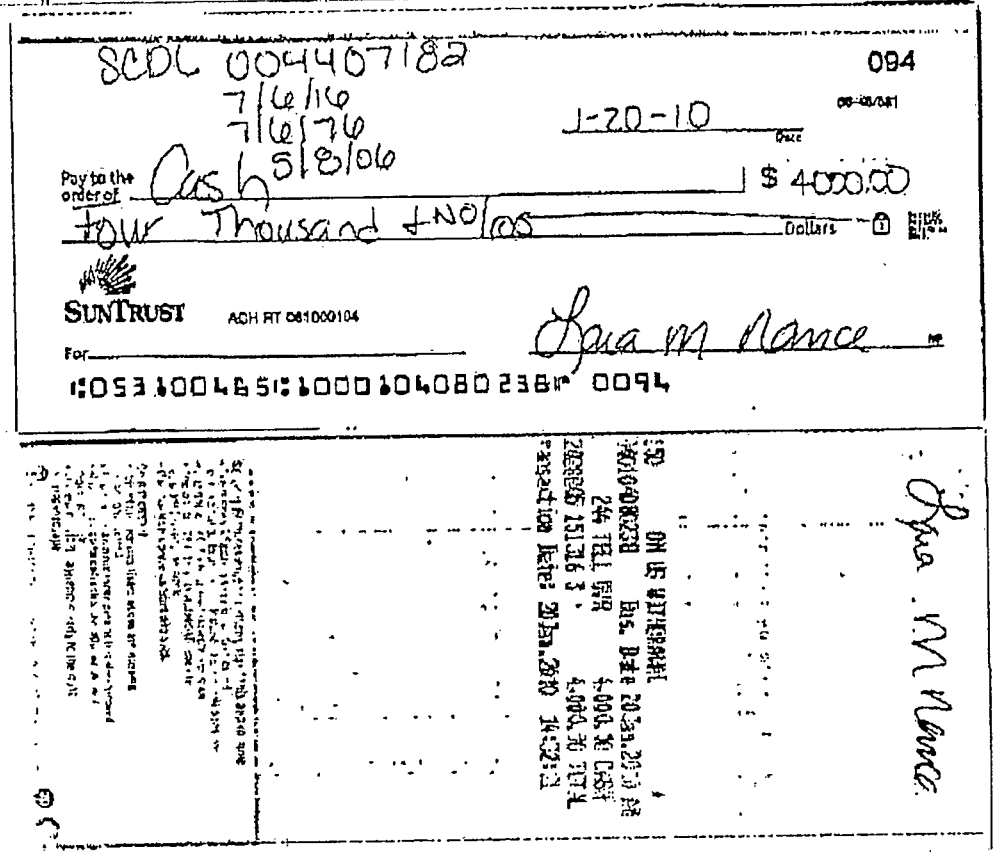


SCDC 00440782
7/6/16
7/6/76
5/8/06

094

J-20-10
Date

Pay to the order of Cash $ 4000.00

four Thousand +NO/cts Dollars

SUNTRUST ACH RT 061000104

For

Lora M Nance

⑆053100465⑆1000104080236⑈ 0094

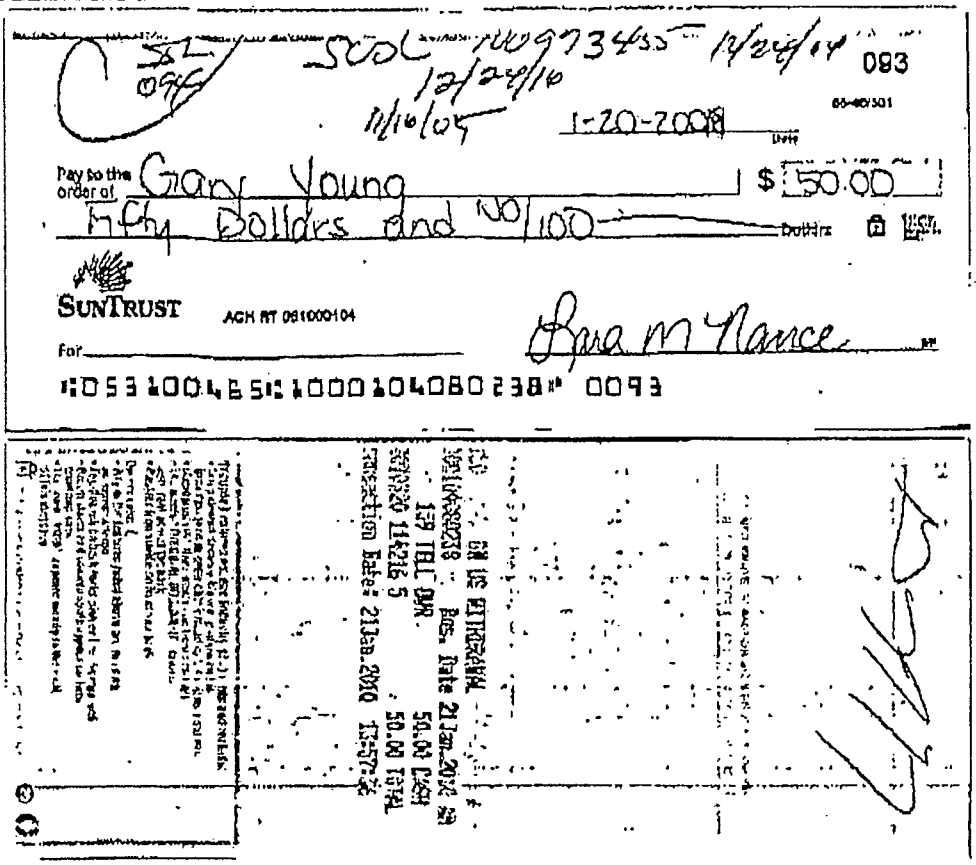
Lora M Nance

Check Image Print

User ID: UVNL2
Report ID: Check Image Print

Date: 08/15/2012
Time: 10:56:13

Capture Date	Sequence Number	Check Number	Amount	Posting Date	Posting Account
20100121	90147146	93	50.00	20100121	1000104080238



Check Image Print

User ID: UVNL2
Report ID: Check Image Print

Date: 08/15/2012
Time: 10:56:17

Capture Date	Sequence Number	Check Number	Amount	Posting Date	Posting Account
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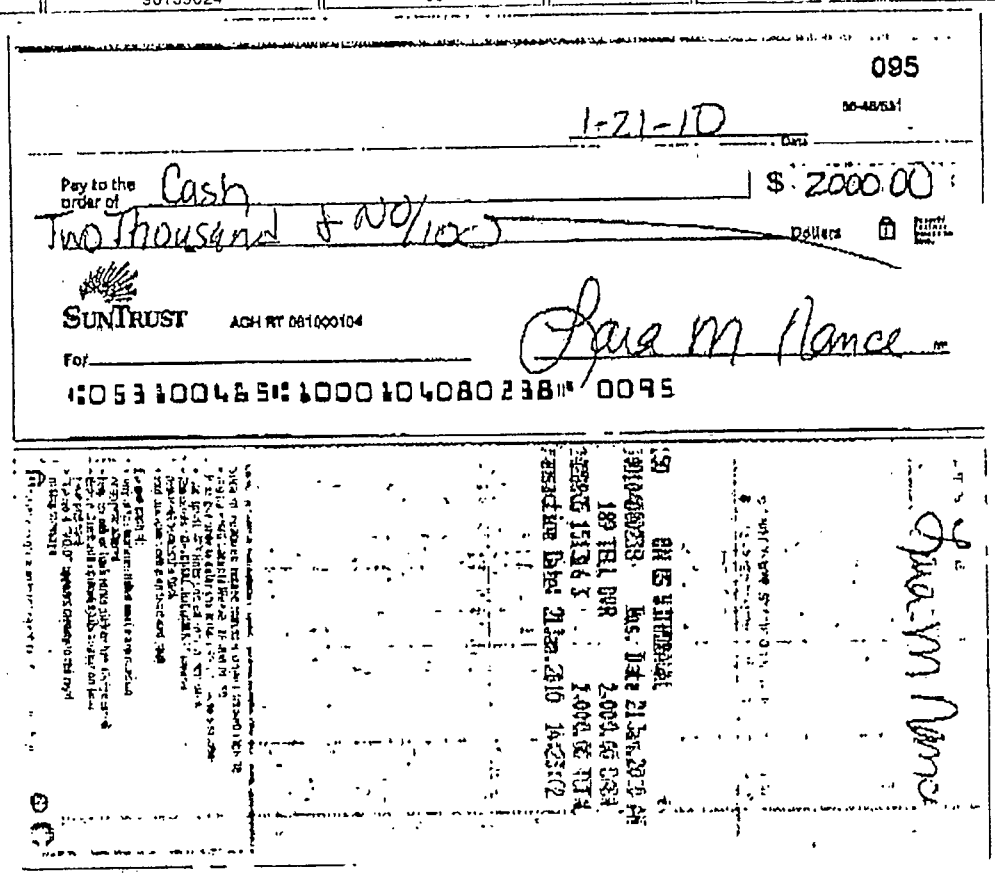
095

1-21-10

Pay to the order of Cash $ 2000.00

Two Thousand & 00/100 Dollars

SUNTRUST ACH RT 061000104

For

Lisa M Nance

⑆053100465⑆ 1000104080238⑈ 0095

Check Image Print

User ID: UVNL2
Report ID: Check Image Print

Date: 08/15/2012
Time: 10:56:21

Capture Date	Sequence Number	Check Number	Amount	Posting Date	Posting Account
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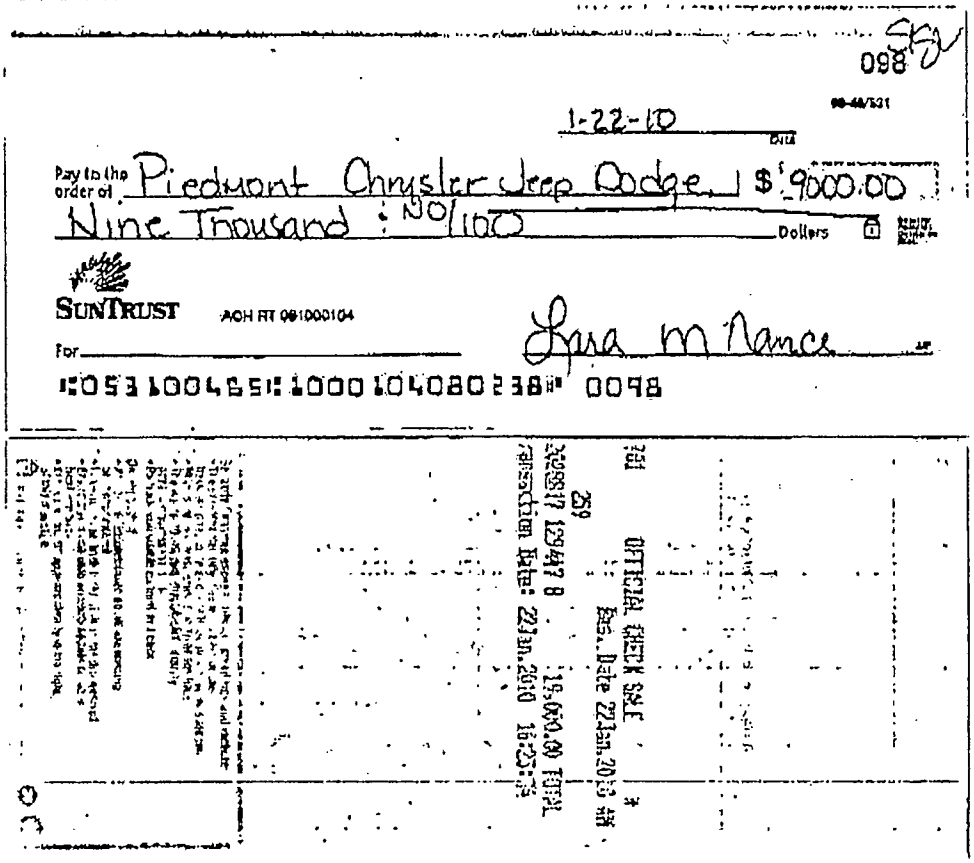

Check Image Print

User ID: UVNL2
Report ID: Check Image Print

Date: 08/15/2012
Time: 10:56:26

Capture Date	Sequence Number	Check Number	Amount	Posting Date	Posting Account
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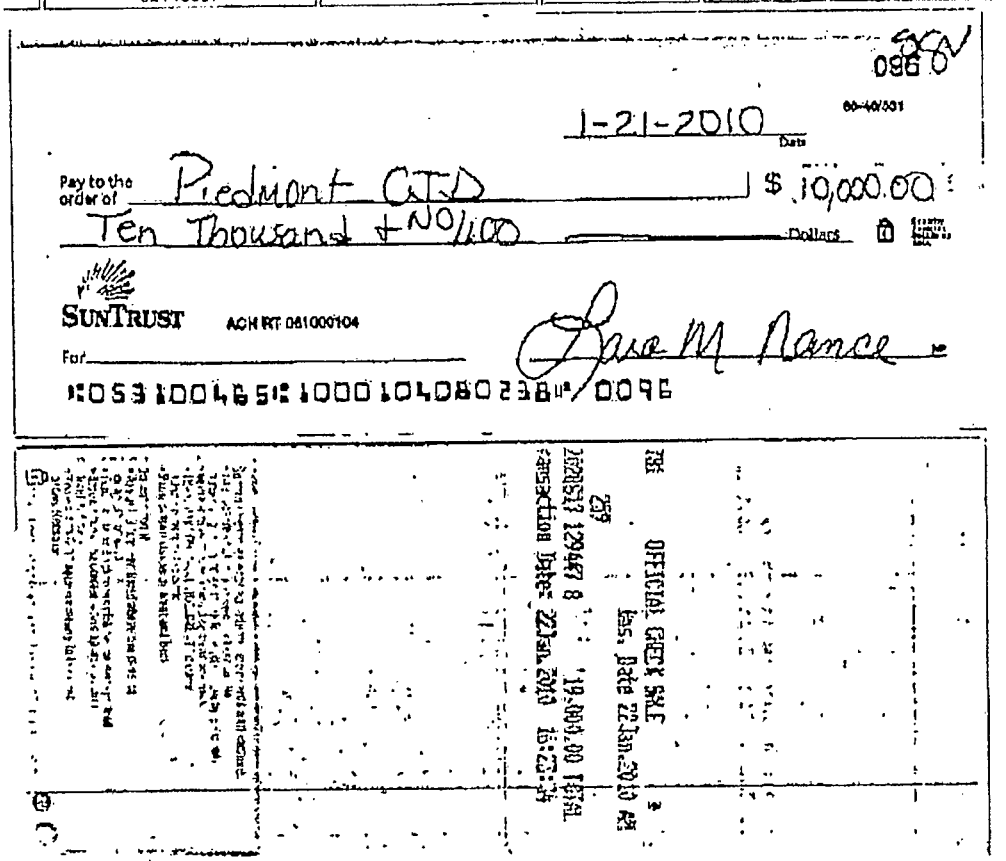

Check Image Print

User ID: UVNL2
Report ID: Check Image Print

Date: 08/15/2012
Time: 10:56:30

Capture Date	Sequence Number	Check Number	Amount	Posting Date	Posting Account
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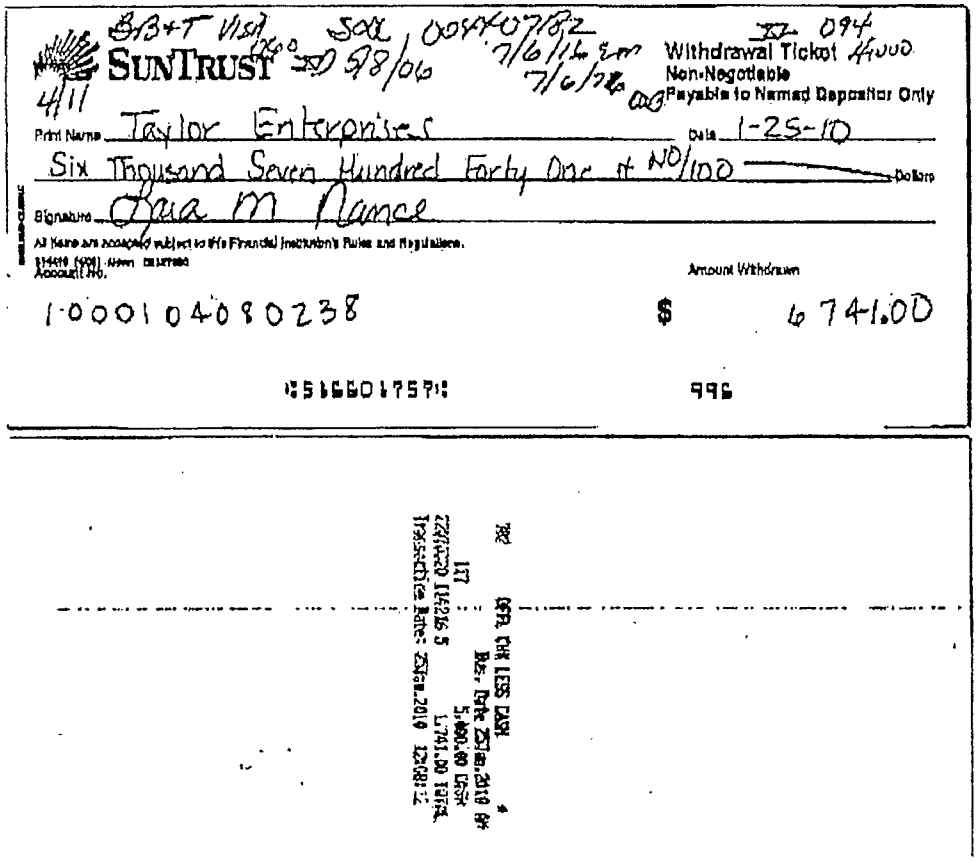
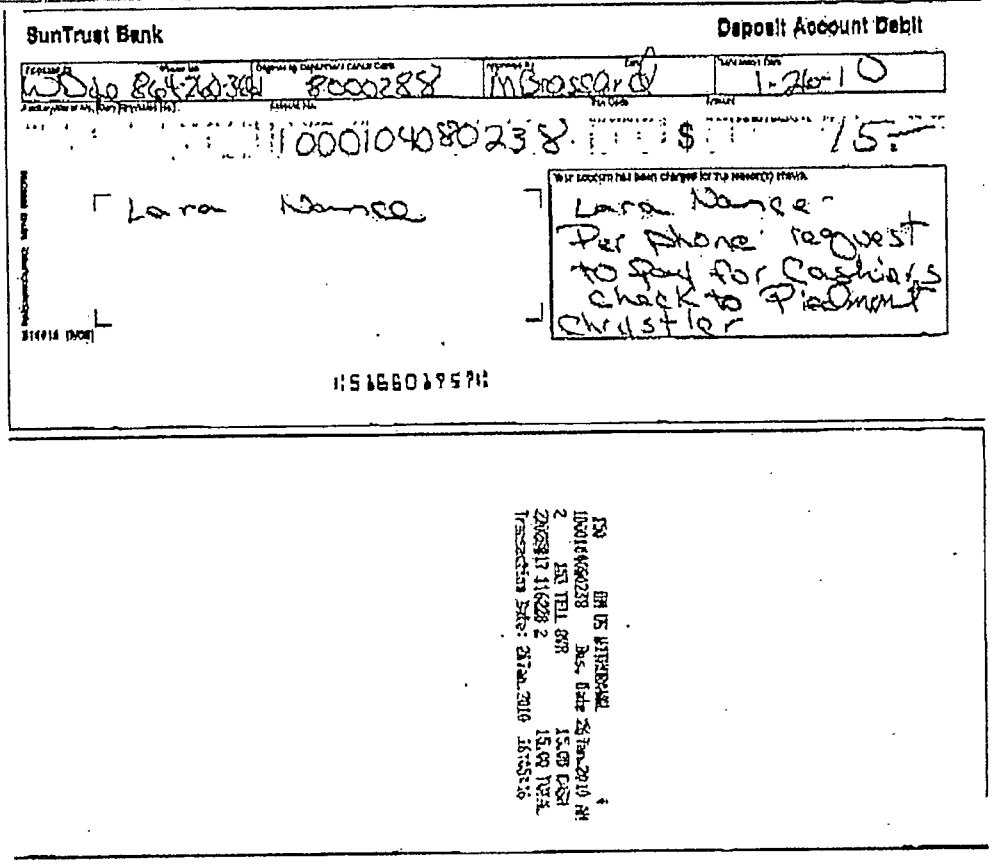


Check Image Print

User ID: UVNL2
Report ID: Check Image Print

Date: 08/15/2012
Time: 10:56:35

Capture Date	Sequence Number	Check Number	Amount	Posting Date	Posting Account
20100126	92144711	0	15.00	20100126	1000104080238



SunTrust Bank

Deposit Account Debit

1000104080238 $ 15.00

Lara Ramsey

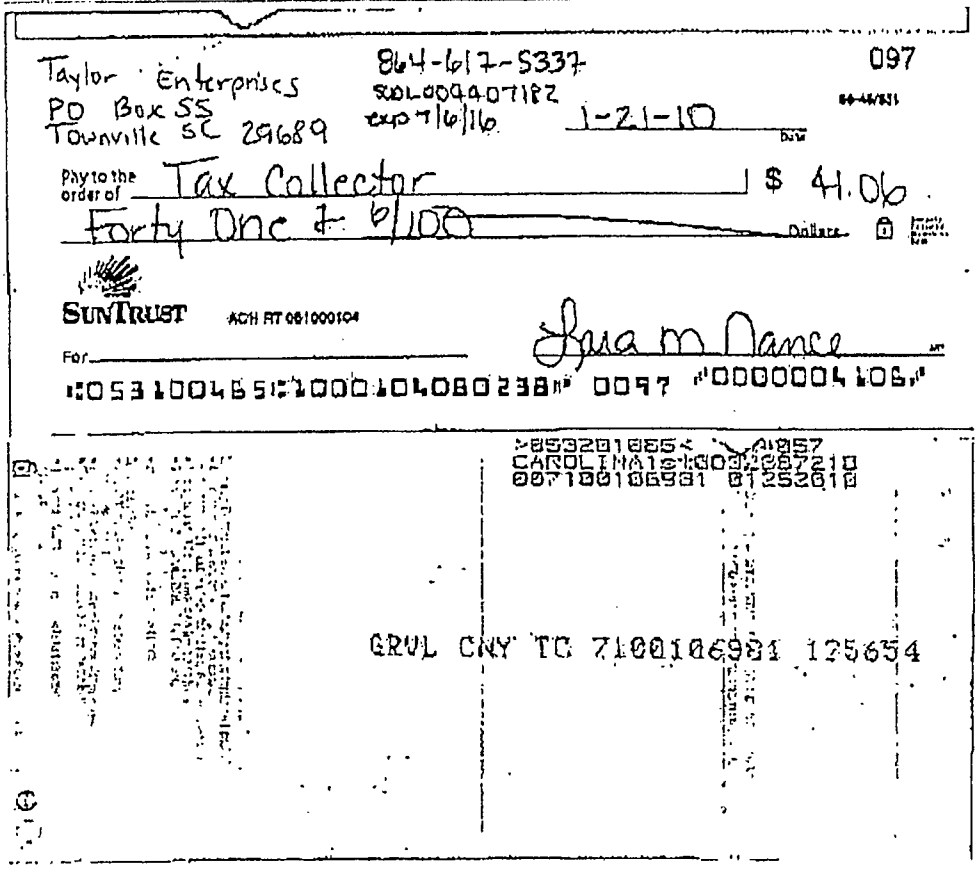
Lara Ramsey
Per phone request
to pay for Cashiers
check to Piedmont
Chrysler

Check Image Print

User ID: UVNL2
Report ID: Check Image Print

Date: 08/15/2012
Time: 10:56:39

Capture Date	Sequence Number	Check Number	Amount	Posting Date	Posting Account
20100126	97194803	97	41.06	20100126	1000104080238



Taylor Enterprises
PO Box 55
Townville SC 29689

864-617-5337
SDL009407182
exp 7/6/16

097

1-21-10
Date

Pay to the order of Tax Collector $ 41.06

Forty One & 6/100 Dollars

SUNTRUST ACH RT 061000104

For

Joan Nance

⑆053100465⑆ 1000104080238⑈ 0097 ⑈0000004106⑈

⑆053201885⑆ A1857
CAROLINA1st BANK 2887210
007100106981 01252614

GRUL CNY TC 7100106981 125654

Check Image Print

User ID: UVNL2
Report ID: Check Image Print

Date: 08/15/2012
Time: 10:56:44

Capture Date	Sequence Number	Check Number	Amount	Posting Date	Posting Account
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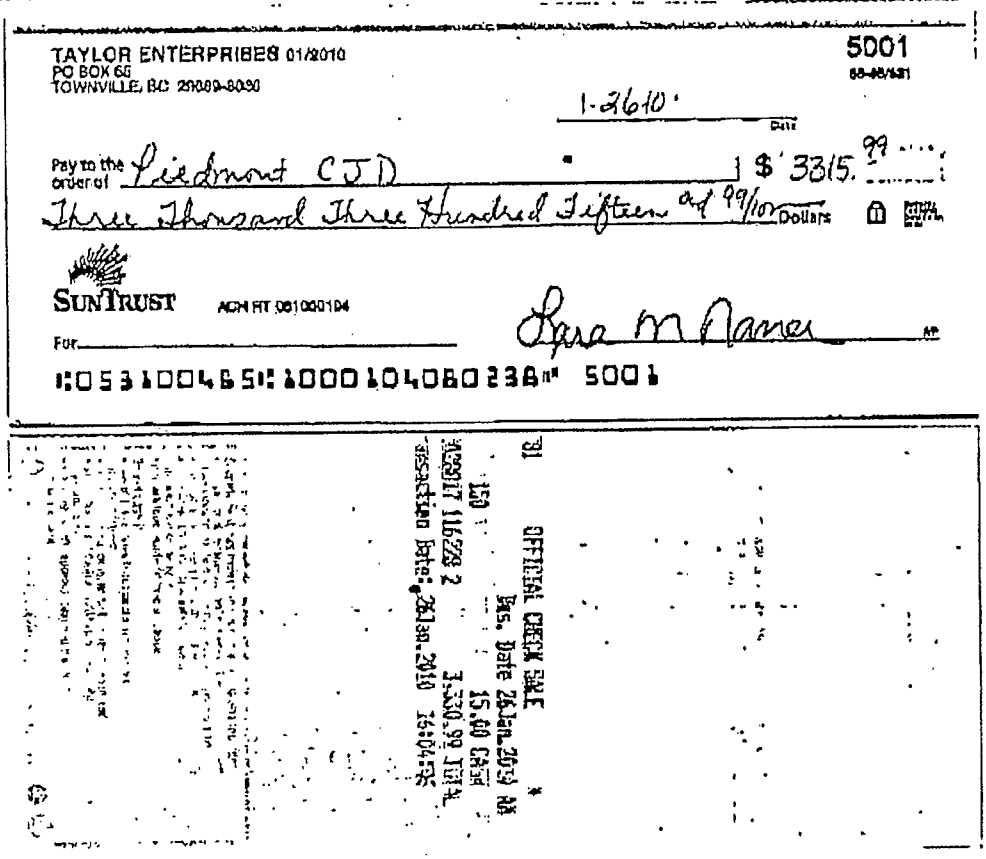

TAYLOR ENTERPRISES 01/2010
PO BOX 65
TOWNVILLE, SC 29689-8090

5001
55-65/531

1-26-10
Date

Pay to the order of Piedmont CJD $ 3315.99

Three Thousand Three Hundred Fifteen and 99/100 Dollars

SUNTRUST ACH RT 061000104

For

Lara M Ramer

⑆053100465⑆ 1000104080238⑈ 5001

31 OFFICIAL CHECK SALE *
Eff. Date 26-Jan-2010 MA
150
15.00 CASH
3,300.99 ITEM
Transaction Date: 26Jan2010 2604535
029917 116228 2

Check Image Print

User ID: UVNL2
Report ID: Check Image Print

Date: 08/15/2012
Time: 10:56:48

Capture Date	Sequence Number	Check Number	Amount	Posting Date	Posting Account
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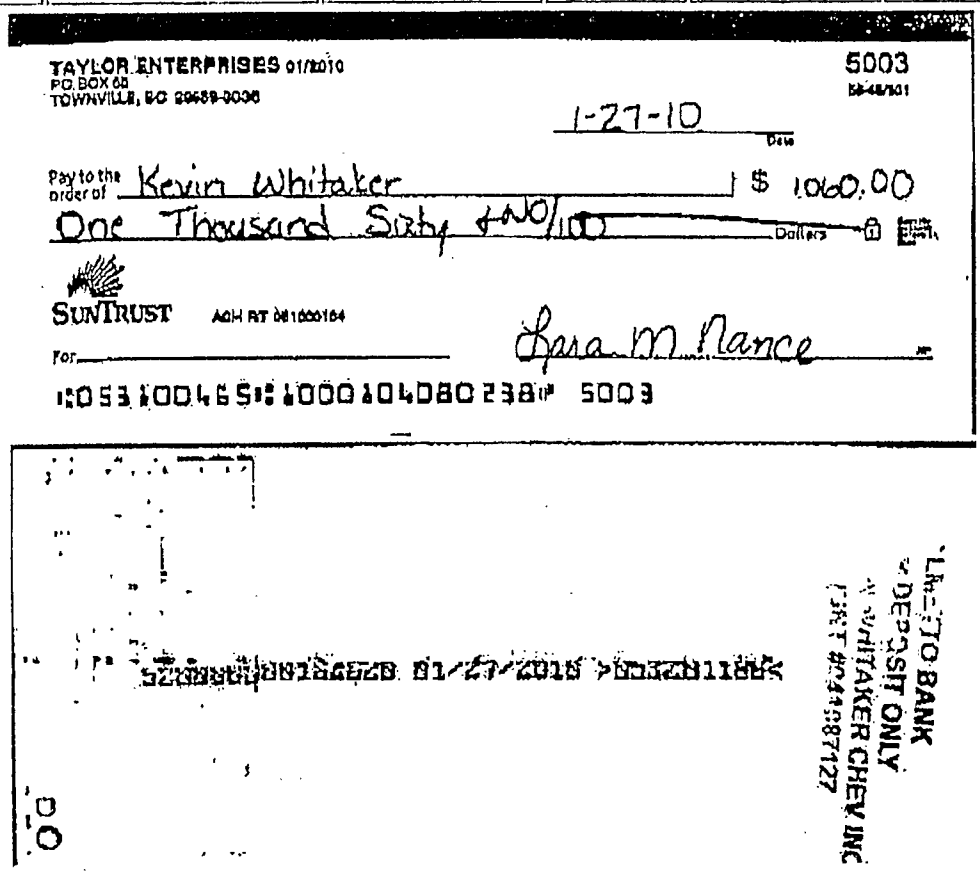


TAYLOR ENTERPRISES 01/2010
PO BOX 68
TOWNVILLE, SC 29689-0068

5003
53-48/531

1-27-10
Date

Pay to the order of Kevin Whitaker $ 1060.00

One Thousand Sixty and 00/100 Dollars

SUNTRUST ABA RT 061000104

For

Sara M Nance

⑆053100465⑆ 1000104080238⑈ 5003

DEPOSIT ONLY
WHITAKER CHEV INC
ACCT #0487127

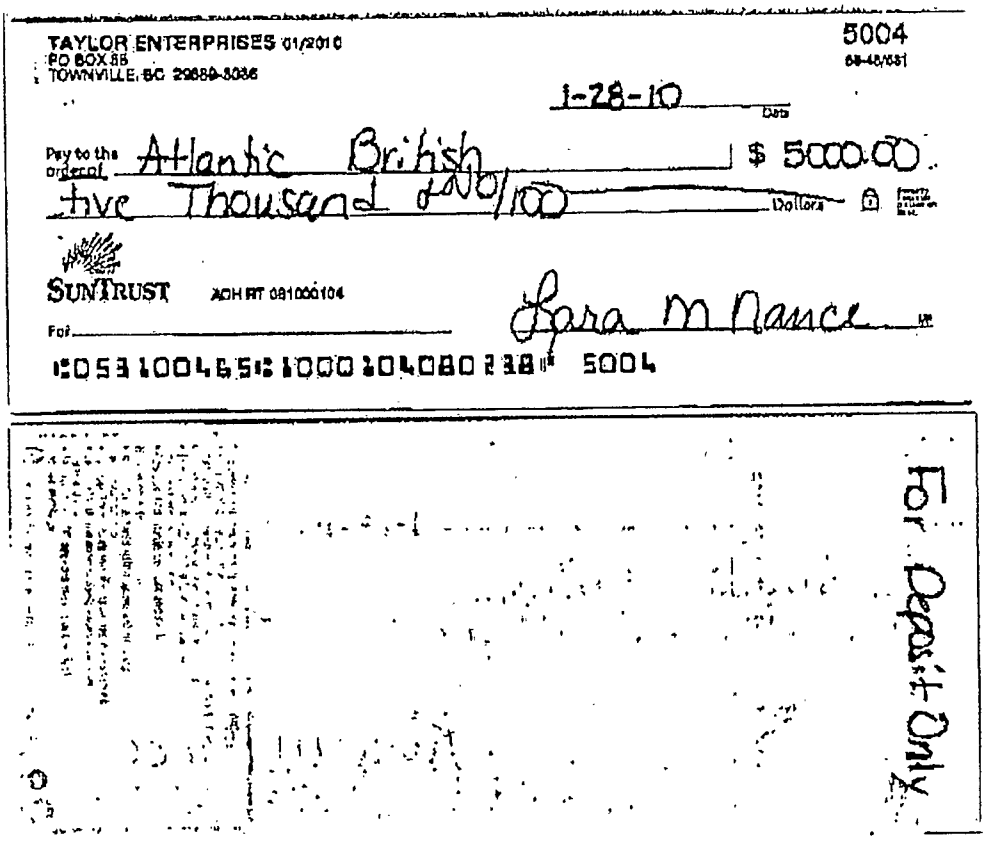
TO BANK

Check Image Print

User ID: UVNL2
Report ID: Check Image Print

Date: 08/15/2012
Time: 11:07:30

Capture Date	Sequence Number	Check Number	Amount	Posting Date	Posting Account
20100128	91107388	5004	5000.00	20100128	1000104080238



TAYLOR ENTERPRISES 01/2010
PO BOX 88
TOWNVILLE, SC 29689-3086

5004
68-46/651

1-28-10
Date

Pay to the order of Atlantic British $ 5000.00
five Thousand 00/100 Dollars

SUNTRUST ACH RT 061000104

For

Sara M Nance

⑆053100465⑆ 1000104080238⑈ 5004

For Deposit Only

Check Image Print

User ID: UVNL2
Report ID: Check Image Print

Date: 08/15/2012
Time: 11:08:30

Capture Date	Sequence Number	Check Number	Amount	Posting Date	Posting Account
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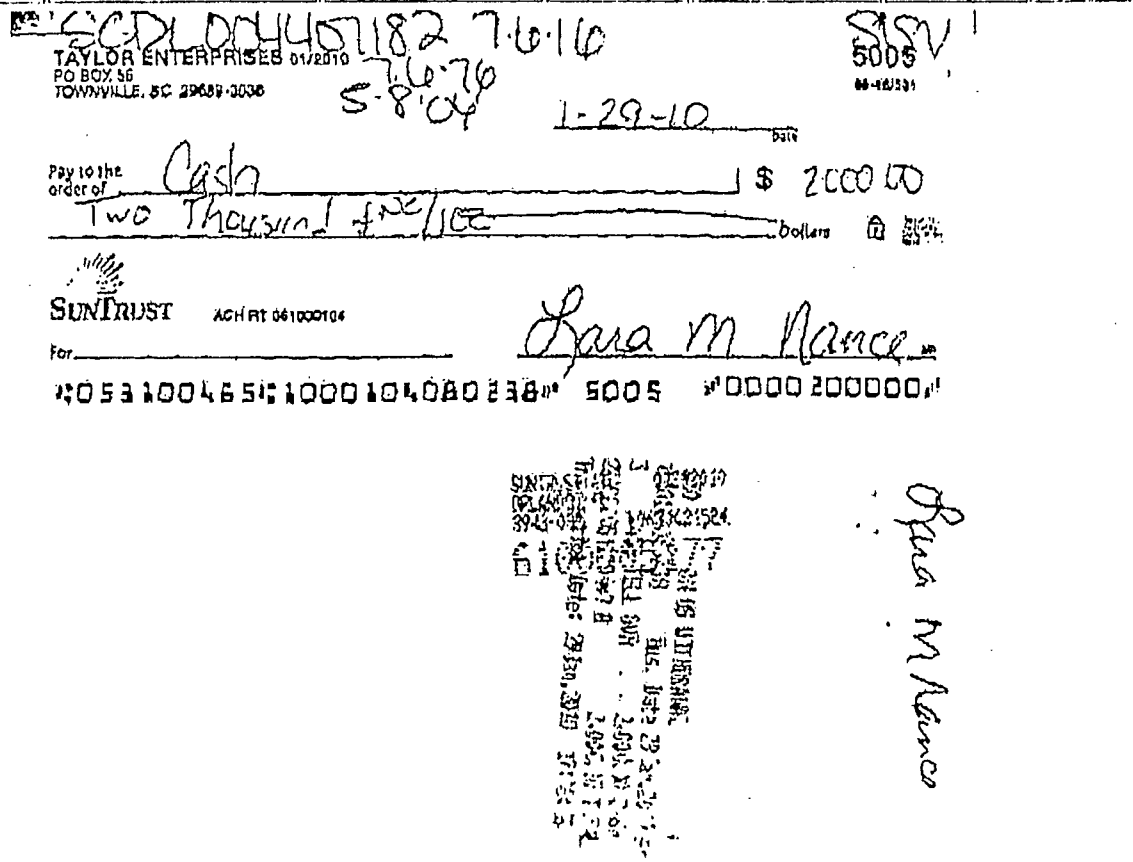

Check Image Print

User ID: UVNL2
Report ID: Check Image Print

Date: 08/15/2012
Time: 11:08:34

Capture Date	Sequence Number	Check Number	Amount	Posting Date	Posting Account
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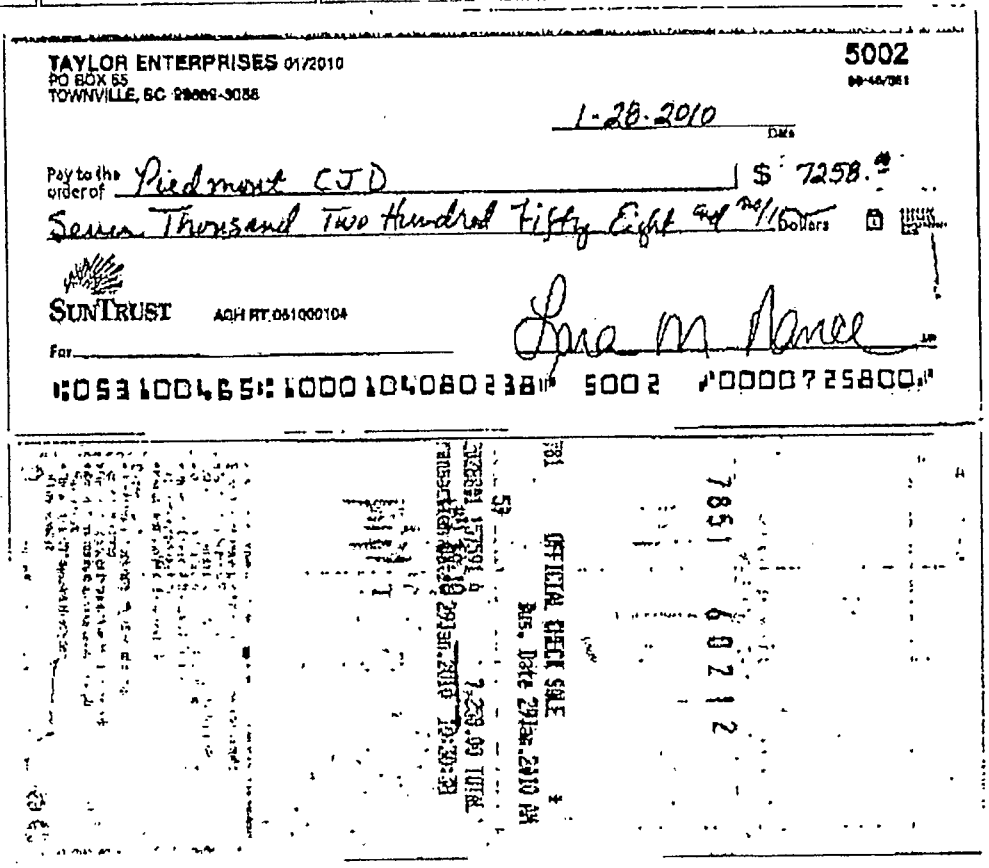


TAYLOR ENTERPRISES 01/2010
PO BOX 55
TOWNVILLE, SC 29689-3058

5002

1-28-2010
Date

Pay to the order of Piedmont CJD $ 7258.00

Seven Thousand Two Hundred Fifty Eight and 00/100 Dollars

SUNTRUST ABA RT 061000104

For

Lisa M Nance

⑆053100465⑆ 1000104080238⑈ 5002 ⑈000007258⑆00⑈

OFFICIAL CHECK SALE
Rec. Date 29Dec2010 AM
7851 0 0212

Check Image Print

User ID: UVNL2
Report ID: Check Image Print

Date: 08/15/2012
Time: 11:08:38

Capture Date	Sequence Number	Check Number	Amount	Posting Date	Posting Account
20100202	97316895	5006	3200.00	20100202	1000104080238

[redacted]

TAYLOR ENTERPRISES 01/2010
PO BOX 55
TOWNVILLE, SC 29689-5036

5006
56-44/531

1-30-10
Date

Pay to the order of Walter Peake $ 3200.00

Three Thousand Two Hundred +NO/100 Dollars

SUNTRUST ACH RT 061000104

For

Sara M. Dance

⑆053100465⑆ 1000104080238⑈ 5006

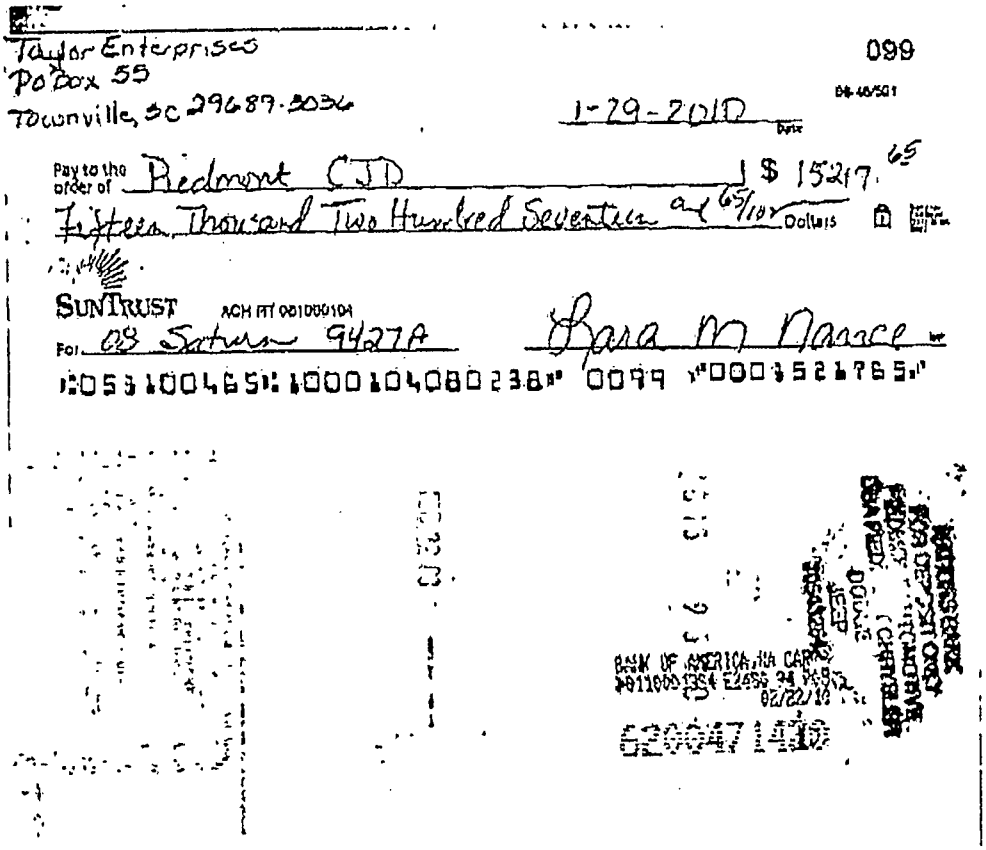
M53101214 B&T #4458
1251 AVENTINE DR PKTD03
CHARLOTTE, NC 28202010
7804169743

Check Image Print

User ID: UVNL2
Report ID: Check Image Print

Date: 08/15/2012
Time: 11:08:43

Capture Date	Sequence Number	Check Number	Amount	Posting Date	Posting Account
20100223	96357362	99	15217.65	20100223	1000104080238



Taylor Enterprises
PO Box 55
Townville, SC 29689-3036

099

1-29-2010

Pay to the order of Piedmont CJD $ 15217.65

Fifteen Thousand Two Hundred Seventeen and 65/100 Dollars

SUNTRUST ACH RT 061000104

For 08 Saturn 9427A

Barb M Nance

⑆053100465⑆ 1000104080238" 0099 "0001521765"

BANK OF AMERICA, NA CAR

620047 1410

Check Image Print

User ID: UVNL2
Report ID: Check Image Print

Date: 08/15/2012
Time: 11:08:47

Capture Date	Sequence Number	Check Number	Amount	Posting Date	Posting Account
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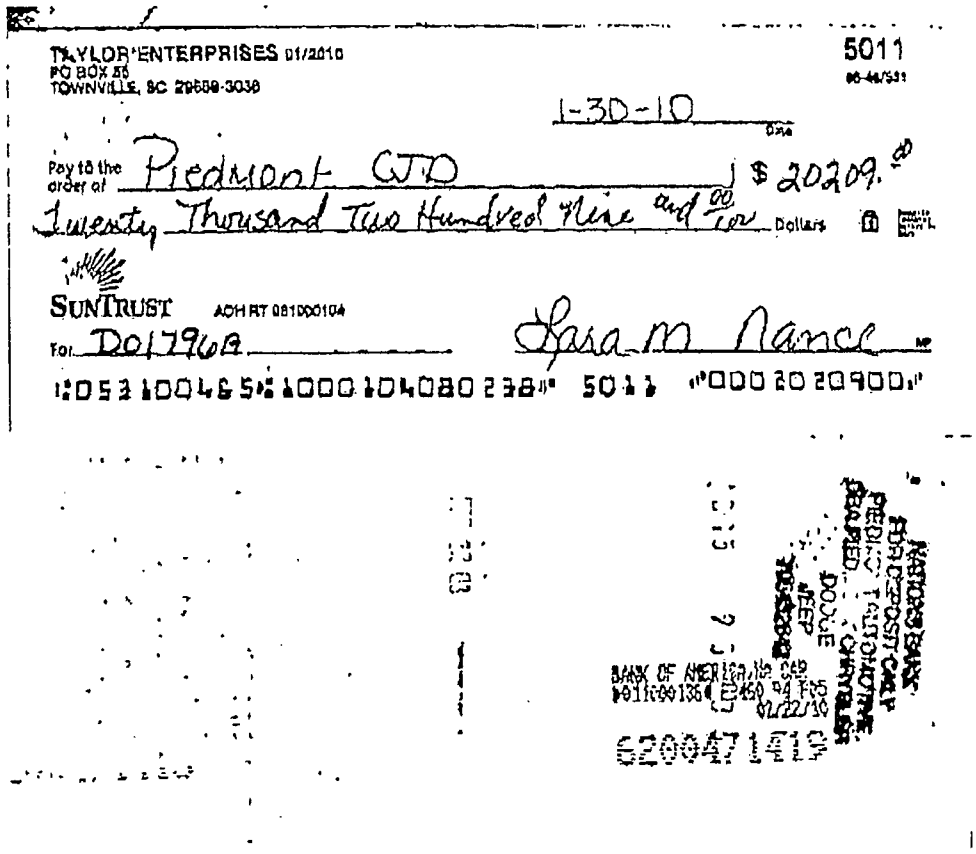

Check Image Print

User ID: UVNL2
Report ID: Check Image Print

Date: 08/15/2012
Time: 11:08:52

Capture Date	Sequence Number	Check Number	Amount	Posting Date	Posting Account
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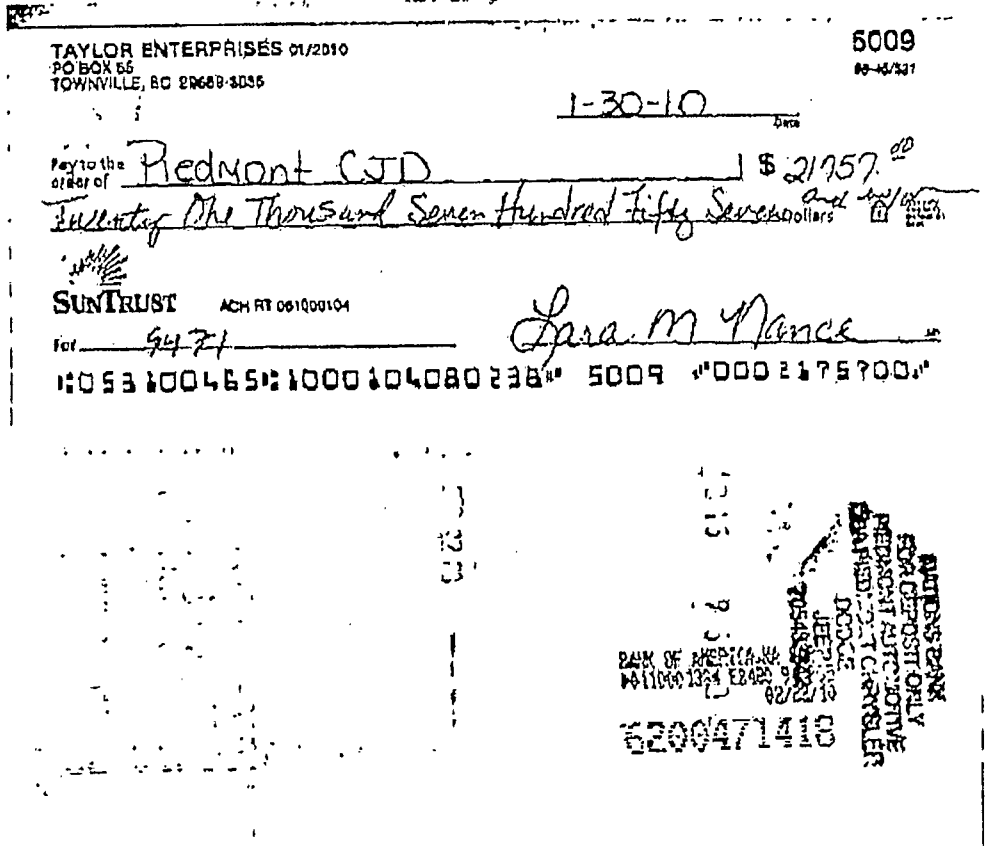

TAYLOR ENTERPRISES 01/2010
PO BOX 55
TOWNVILLE, SC 29689-3035

5009

1-30-10
Date

Pay to the order of Redmont CJD $ 21757.00

Twenty One Thousand Seven Hundred Fifty Seven and 00/100 dollars

SUNTRUST ACH RT 061000104

For 9471

Sara M Mance

⑆053100465⑆ 1000104080238" 5009 ⑈000217570⑈

BANK OF AMERICA

620047141 0

DEPOSIT ONLY
REDMONT AUTO DOTIVE
DOCCS

Check Image Print

User ID: UVNL2
Report ID: Check Image Print

Date: 08/15/2012
Time: 11:08:56

Capture Date	Sequence Number	Check Number	Amount	Posting Date	Posting Account
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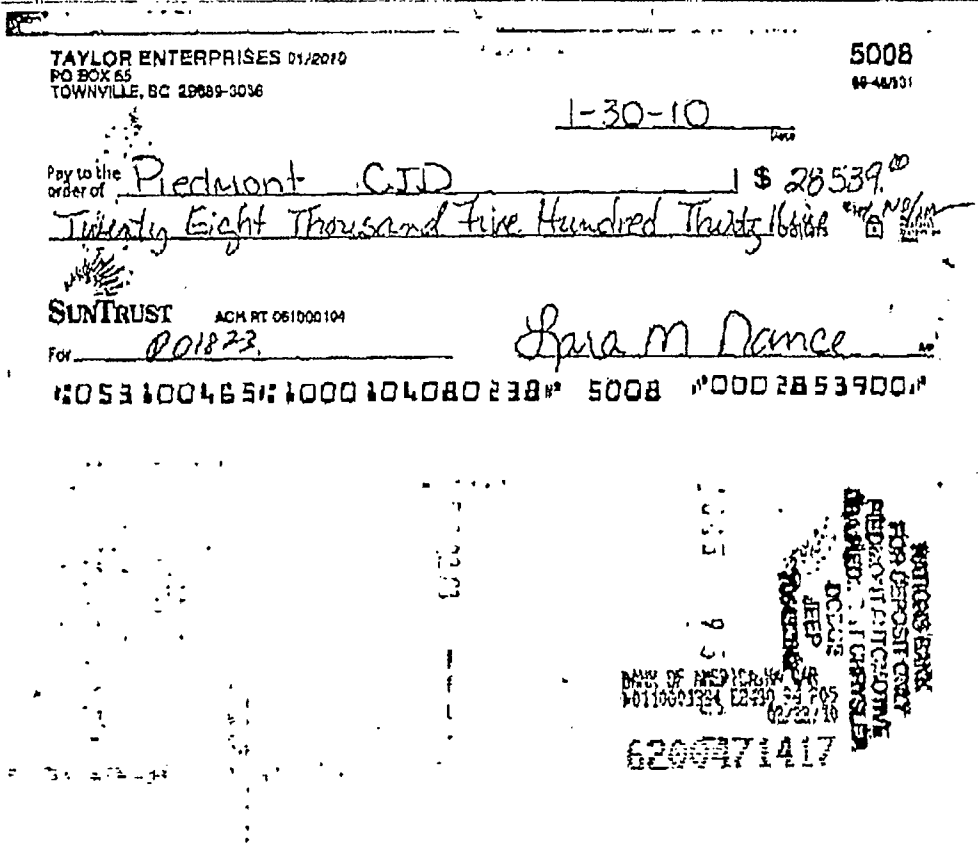

TAYLOR ENTERPRISES 01/2010
PO BOX 65
TOWNVILLE, SC 29689-3036

5008

1-30-10

Pay to the order of Piedmont CJD $ 28539.00

Twenty Eight Thousand Five Hundred Thirty Nine & 00/100 Dollars

SUNTRUST ACH RT 061000104

For P01823 Lara M Dance

⑆053100465⑆ 1000104080238" 5008 "000 28539 00⑈

620047417

Check Image Print

User ID: UVNL2
Report ID: Check Image Print

Date: 08/15/2012
Time: 11:18:40

Capture Date	Sequence Number	Check Number	Amount	Posting Date	Posting Account
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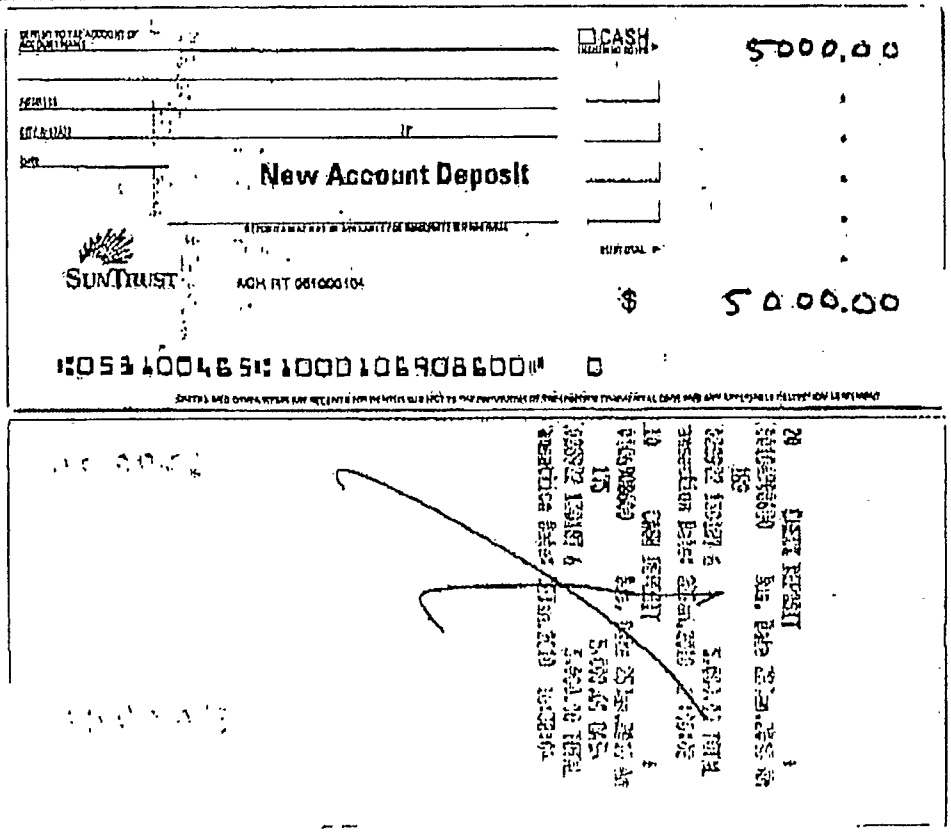

EXHIBIT
SunTrust 2

Check Image Print

User ID: UVNL2
Report ID: Check Image Print

Date: 08/16/2012
Time: 11:19:03

Capture Date	Sequence Number	Check Number	Amount	Posting Date	Posting Account
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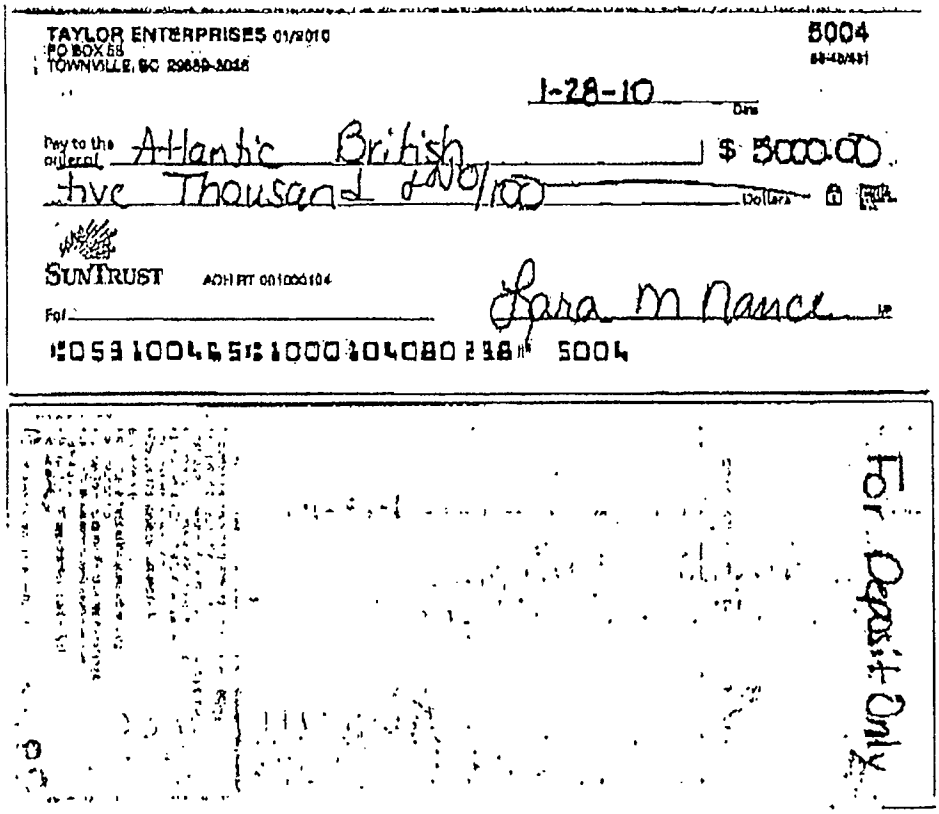


TAYLOR ENTERPRISES 01/2010
PO BOX 58
TOWNVILLE, SC 29689-2016

5004

1-28-10
Date

Pay to the order of Atlantic British $ 5000.00

five Thousand and no/100 Dollars

SUNTRUST ACH RT 061000104

For

Sara M Nance

⑆053100465⑆1000104080238⑈ 5004

For Deposit Only

Check Image Print

User ID: UVNL2
Report ID: Check Image Print

Date: 08/15/2012
Time: 11:13:59

Capture Date	Sequence Number	Check Number	Amount	Posting Date	Posting Account
20100312	64001063	4764856	384.83	20100312	1000106908600

SUNTRUST

Closing Withdrawal Ticket
Non-Negotiable
Payable to Named Depositor

Date 3/12/2010
Account Name (s)(s) LALA UNLV & DBA ATLANTIC BEACH
Address P.O. BOX 55 City, State, Zip Danville, SC 29689-0055
Disposition Of Funds 1000106908600 Identification ICHS 20100052215
Amount Three hundred eighty four and 83/100 Dollars
Signature

All items are accepted subject to your SunTrust Bank's Regulations.

Account No. 1000106908600 Amount $ 384.83

Items (not)

⑈0004764856⑈ ⑆263189257⑆ 1000106908600⑈ 902 ⑈00000384⑈83⑈

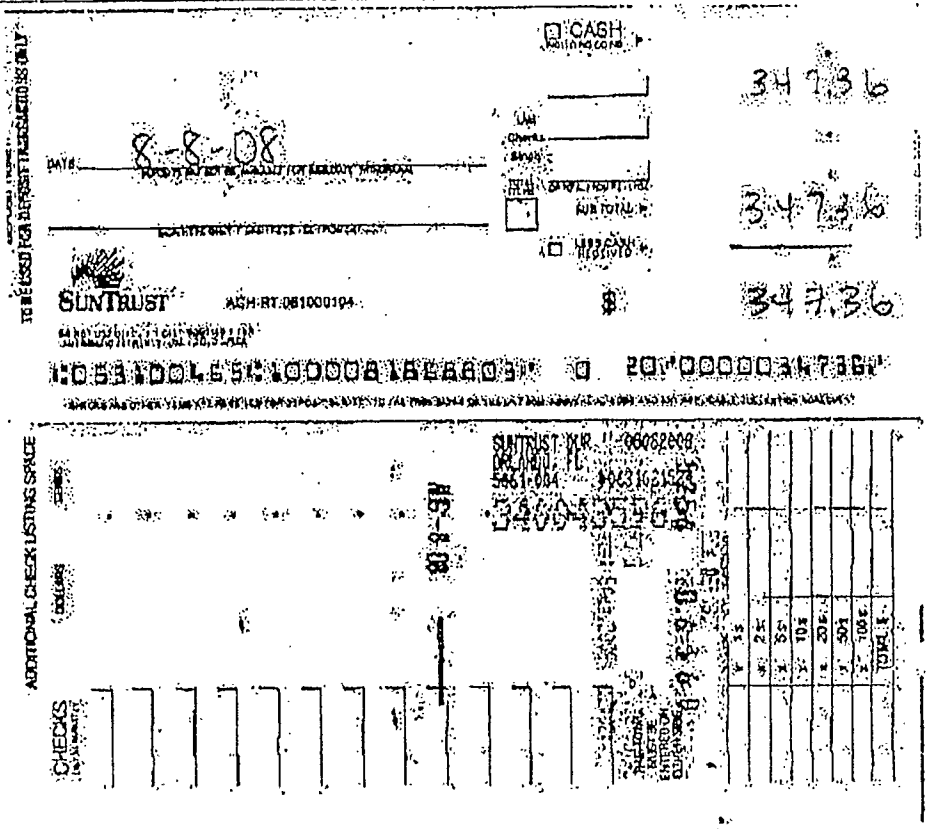
SUNTRUST ATL 061229110
ORLANDO, FL
5914-133
6400001063

Check Image Print

User ID: UVNL2
Report ID: Check Image Print

Date: 02/05/2014
Time: 12:36:08

Capture Date	Sequence Number	Check Number	Amount	Posting Date	Posting Account
20080808	34435963	0	347.36	20080808	1000081888803



Check Image Print

User ID: UVNL2
Report ID: Check Image Print

Date: 02/05/2014
Time: 12:40:58

Capture Date	Sequence Number	Check Number	Amount	Posting Date	Posting Account
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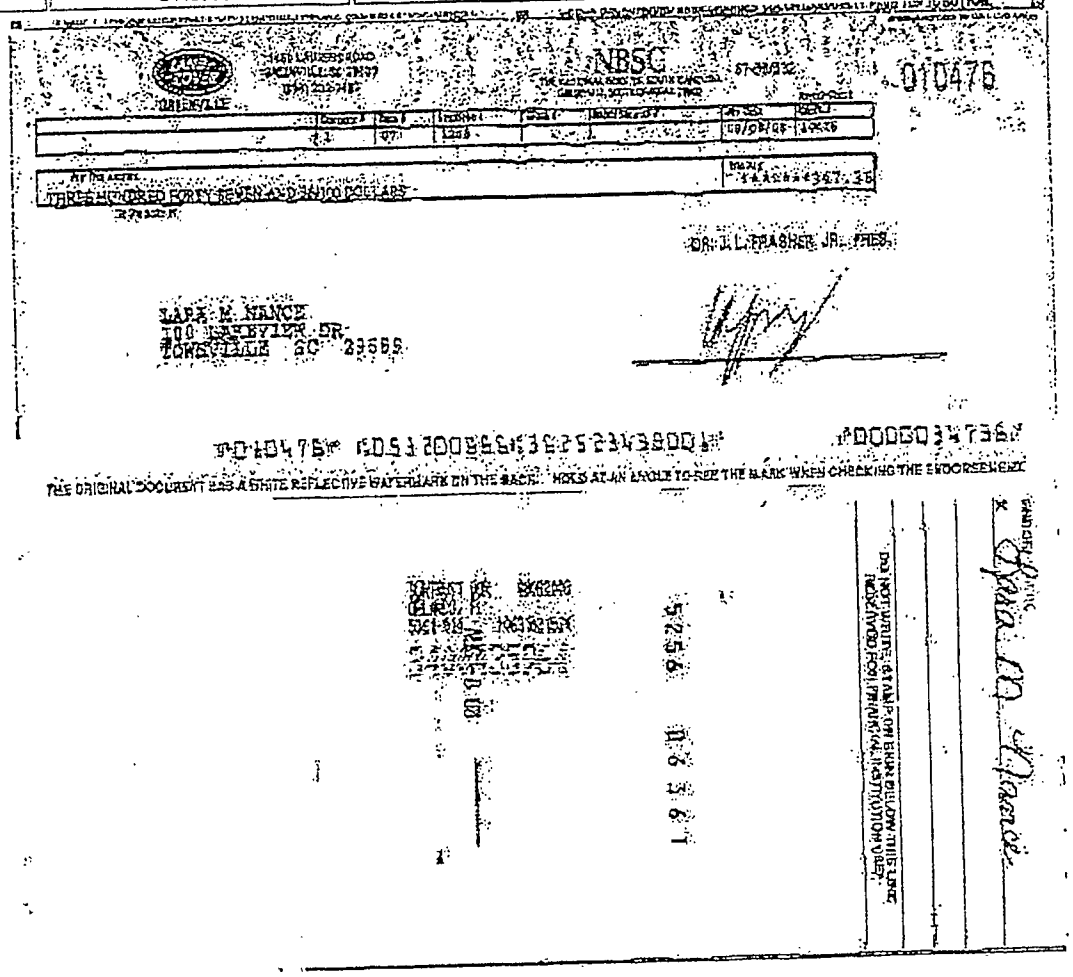


ST_00062

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE)

Overland, Inc., d/b/a Land Rover Greenville,) CASE NO.
☒ Plaintiff) 2010-CP -23-5880

v.) MOTION AND ORDER INFORMATION FORM AND COVER SHEET

Lara Marie Nance, Et Al.)
☐ Defendant.)

FILED, CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2014 SEP 22 PM 2 45

Plaintiff's Attorney:	Defendant's Attorney:
T. Hunt Reid , Bar No. 77538	James W. Sheedy, Bar No.
Address:	Address:
P.O. Box 10207 Greenville, SC 29603	11520 N. Community House Rd. Ste 200
phone: 864-233-0445 fax: 864-672-3706	phone: fax:
e-mail: hunter@fayssouxlaw.com other:	e-mail: other:

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Plaintiff's Notice of Motion and Motion to Compel
Estimated Time Needed:30min Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

☐ Written motion attached
☒ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

T. Hunt Reid — September 22, 2014
Signature of Attorney for ☒Plaintiff / ☐Defendant — Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: 25.00
☐ EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions.
Name of Court Reporter:
☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

_____
JUDGE

CODE: _____ Date: _____

CLERK'S VERIFICATION

Date Filed:

Collected by: _____

☐ MOTION FEE COLLECTED: _____
☐ CONTESTED – AMOUNT DUE: _____

SCCA/233 (11-03)

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE Overland, Inc., d/b/a Land Rover Greenville, Plaintiff, v. Lara Marie Nance, Charlie Andrew Nance Roger Fields, Synovus Financial Corporation d/b/a NBSC, Branch Banking and Trust Company, Bank of America Corporation, and Suntrust Banks, Inc. Defendants.	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT C.A. No.: 2010-CP-23-5880 NOTICE OF MOTION AND MOTION TO COMPEL

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2014 SEP 22 PM 2 45

YOU WILL PLEASE TAKE NOTICE, that ten (10) days after the service of this Notice upon you or as soon thereafter as counsel may be heard, the undersigned attorney for the Plaintiff, will move before the Presiding Judge of the Thirteenth Judicial Circuit, Greenville County Court of Common Pleas for an Order pursuant to Rule 37 of the South Carolina Rules of Civil Procedure requiring the Defendants to respond to its Interrogatories and Requests for Production, which are attached hereto as **Exhibit 1** (as to Bank of America) and **Exhibit 2** (as to NBSC). Plaintiff's first discovery demands were originally served on these two defendants on December 16, 2013 and February 21, 2014, respectively. And, in an effort to ensure compliance with Defendant Bank of America, Plaintiff delivered a lettered correspondence to said Defendant on July 7, 2014 detailing its inadequate responses and renewing its demand for a complete response, **Exhibit 3** attached.

Based upon the Defendant's deliberate refusal to respond to multiple requests for compliance, the Plaintiff specifically seeks reimbursement of reasonable costs and expenses, including attorney's fees, incurred in obtaining this Order and in the most basic discovery

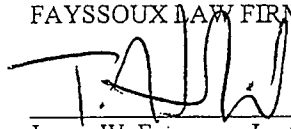
compliance.

Pursuant to Rule 11, the undersigned hereby affirms the Plaintiff's counsel has communicated with the Defense counsel repeatedly in an effort to resolve the matter contained in this Motion without success.

WHEREFORE, Plaintiff moves for the issuance of an order granting said motion and for such other relief as may be just and proper.

I SO MOVE.

FAYSSOUX LAW FIRM, P.A.,



September 22, 2014
Greenville, SC

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March 1, 2014

T. Hunter Reid, Esq.
Fayssoux Law Firm, P.A.
P.O. Box 10207
Greenville, S.C. 29603

Re: **Overland, Inc. v. Nance, *et al.***
C.A. No.: 10-CP-23-5880

Dear Hunter:

Enclosed please find copies of Bank of America's Answers to Plaintiff's First Set of Interrogatories, Response to Plaintiff's First Requests for Production and a Certificate of Service in the above referenced matter.

With kindest regards, I remain

Respectfully,

DRISCOLL SHEEDY, P.A.

James W. Sheedy

cc: Bruce A. Byrholdt, Esq.
James H. Price, III, Esq.
David L. Moore, Jr., Esq.
Joshua L Howard, Esq.
H. Sam Mabry, III, Esq.
Brent O.E. Clinkscale, Esq.
W. Howard Boyd, Jr., Esq.

00099837.1

STATE OF SOUTH CAROLINA) COUNTY OF GREENVILLE)	IN THE COURT OF COMMON PLEAS	
Overland, Inc., d/b/a Land Rover Greenville, Plaintiff, vs. Lara Marie Nance; Charlie Andrew Nance; Roger Fields; Synovus Financial Corporation d/b/a NBSC; Branch Banking and Trust Company; Bank of America Corporation; and SunTrust Banks, Inc., Defendants.		C.A. No.: 2010-CP-23-5880

BANK OF AMERICA CORPORATION'S ANSWERS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES

Objecting and answering, where appropriate, in accordance with Rules 26 and 33, SCRCP, in response to Plaintiff's First Set of Interrogatories (the "Interrogatories"), defendant Bank of America Corporation ("B of A") respectfully submits as follows.

General Objections

1. B of A objects to the preambulary language, instructions and definitions contained in the Interrogatories to the extent the language, instructions or definitions attempt to expand B of A's obligations beyond that required by the SCRCP.

2. B of A objects to the Interrogatories to the extent the Interrogatories require the disclosure of information protected by attorney-client, work product or other statutory and common law privileges.

3. B of A objects to furnishing answers to the Interrogatories within thirty (30) days.

B of A is allowed additional time for service by mail and as may be agreed among counsel.

4. B of A objects to the Interrogatories to the extent that any seek information that is not relevant or not reasonably calculated to lead to the discovery of admissible evidence.

5. B of A objects to the Interrogatories to the extent that any seek information outside the possession, custody or control of B of A.

6. B of A objects to the Interrogatories to the extent that any seek information that is maintained at diverse locations and/or information that is known by Plaintiff through this litigation and, thus, is obtainable from some other source that is more convenient, less burdensome and less expensive.

7. B of A objects to the Interrogatories to the extent that any are compound and consist of subparts and/or make reference to extraneous material and/or are not full and complete in and of themselves.

8. B of A objects to the Interrogatories to the extent that any seek information concerning claims, issues and/or non-parties that are not at issue in this litigation on the grounds that such interrogatory is overbroad and burdensome and seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

9. B of A objects to any Interrogatory that is overly broad, unduly burdensome, unreasonably expensive or would require an unreasonable investigation on the part of B of A.

10. B of A objects to the Interrogatories to the extent that any seek information that would violate confidentiality agreements or arrangements, the confidentiality of settlement discussions or agreements or court orders restricting the disclosure of information or that would result in the

disclosure of confidential commercial information, trade secrets or proprietary information.

11. B of A objects to any Interrogatory which is vague or ambiguous, fails to describe the information sought with reasonable particularity to allow for a meaningful response by B of A or contains undefined terms which are material to B of A's understanding of the Interrogatory.

12. B of A objects to any Interrogatory that seeks information the disclosure of which would result in a violation of federal or statutory law.

13. No answer provided herein shall be deemed to constitute any agreement or concession that the subject matter thereof is relevant to or admissible in this action, and all answers are provided without waiving or intending to waive any objection as to relevance, privilege or admissibility.

14. All of the foregoing General Objections are incorporated into and apply to each answer below to a specific interrogatory. Each answer to a specific interrogatory is made subject to and without waiving these General Objections, whether or not specifically reiterated in the answers themselves.

Answers

1. *Give the names, current addresses and telephone numbers of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.*

Answer: Other than the deposition transcripts of witnesses already deposed, copies of which are in the possession of Plaintiff, B of A has no written or recorded statements. Other than the witnesses already identified by Plaintiff in its answers to B of A's interrogatories, B of A is not aware of any other witnesses concerning the facts of the case.

2. *Set forth a list of photographs, plats, sketches, or other prepared documents in*

possession of the party that relate to the matters complained of in Plaintiff's Complaint.

Answer: B of A does not have any photographs, plats or sketches which relate to the matters alleged in the Third Amended Complaint. Rather than set forth a list of prepared documents, B of A hereby opts pursuant to Rule 33(c), SCRCP, to produce such discoverable, non-privileged documents which are in its care, custody or control.

3. *Set forth any insurance policy and/or agreement under which any insurance business may be liable to satisfy part or all of the judgment that may be entered in this action, or to indemnify or reimburse for payments made to satisfy the judgment, by stating the name of the insurer and the amount of any liability insurance coverage.*

Answer: B of A has no such policy or agreement.

4. *List the names and addressees of any expert witnesses who the party proposes to use as a witness at the trial of the case and identify:*

(a) The subject matter of each expert's testimony;

(b) The substance of the facts and opinions to which the expert is expected to testify; and

(c) A summary of the grounds for each opinion.

Answer: B of A has not yet decided whether to retain any expert witnesses to use at the trial of the case. In the event B of A does retain any experts and expects to call any of them as a witness at trial, B of A will provide the above requested information by way of supplementation hereto as required by Rule 26(e), SCRCP.

5. *For each person known to the parties and counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from said witness.*

Answer: As set forth above, Plaintiff is in possession of the deposition transcripts of witnesses already deposed in this matter. Other than the deposition transcripts, B of A has no written

or recorded statements. As the other witnesses in this action are listed by Plaintiff along with a summary of the facts known to or observed by them, Plaintiff, not B of A, has knowledge of the important facts known to or observed by such witnesses. B of A believes the witnesses listed by Plaintiff will testify as to Plaintiff's authority given to Lara Marie Nance, her use of funds at least in part for business purposes, her intent as to non-business uses that the named payees not receive check proceeds, her status as an employee with access to accounts, lack of reconciliation of Plaintiff's accounts with NBSC and BB&T, as well as a general failure on the part of Plaintiff to remain current on payments to its vendors and maintain its accounts payable records. These topics are all in their pleadings joining the issues in this case.

6. *List all insurance policies which provided any coverage to any party to this litigation at the time the incident that is the subject of this action occurred.*

Answer: As set forth above, B of A has no such policies.

7. *For each policy listed in response to interrogatory no. 6, please state:*

(a) the party or parties covered under the policies;

(b) the type of coverage available; and

(c) the limits in coverage available under each policy.

Answer: As set forth above, B of A has no such policies.

8. *Describe any correspondence, whether verbal or written, or otherwise, Defendant or any individual, employee or representative acting as an agent on its behalf has had with Plaintiff or any other individuals or entities concerning the facts, claims or defenses concerning this litigation and the events and circumstances related thereto or referenced therein.*

Answer: As Plaintiff is aware, B of A was served by Plaintiff with a subpoena duces tecum dated February 24, 2011 in response to which B of A provided documents on or before March

7, 2011. Other than the subpoena and documents produced in response thereto, B of A has had no correspondence with Plaintiff related to the above captioned matter. Nor has B of A had any discoverable, non-privileged correspondence with any other individuals or entities concerning the above captioned matter.

9. *List any and all physical exhibits or evidence Defendant or its counsel intend to use at trial or which relate, in any way, to the claim or defense in this case, including the current location of the exhibits or evidence and the name and address of the person(s) or entities who currently possess the exhibits or evidence.*

Answer: B of A does not yet know what exhibits or evidence it intends to use or present in the event the above captioned matter goes to trial. In the event this matter does come to trial, B of A will supplement its response to this Request in accordance with Rules 16(a) and 26(e), SCRCP.

10. *Identify every document not produced in connection with Plaintiff's request to produce and state the specific reason for your refusal to produce it.*

Answer: To the extent any documents are withheld from production based on a privilege asserted in accordance with Rule 26, SCRCP, B of A will submit a privilege log in accordance with Rule 26(b)(5)(A), SCRCP. Further answering Interrogatory No. 10, under federal law B of A cannot disclose or produce any suspicious activity reports (SARs) or any information that would reveal the existence of SARs.

11. *State the net worth of the Defendant.*

Answer: B of A objects to this interrogatory on the grounds it seeks information that is not relevant, nor is it reasonably calculated to lead to admissible evidence. B of A's net worth has no bearing on the causes of action set forth in the Third Amended Complaint. Furthermore, B of A is a publicly-traded company; thus, Plaintiff has access to financial information about B of A, the

same as any other member of the public.

12. *Please state whether Defendant has ever been named a party to civil litigation, State or Federal, related to any legal action for fraud, misrepresentation, unfair trade practices, or violations of UCC §§ 3-404, -405, -406, and/or § 1-203 (S.C. Code §§ 36-3-404, -405, -406 and § 36-1-203) in the last ten years.*

Answer: B of A will produce the requested information for South Carolina cases filed within the last five years involving employees forging maker signatures of their employer and/or forging checks made payable to third party vendors of the employer. A copy of this information is provided as a separate spreadsheet at **Tab A**. B of A objects to providing information related to any litigation outside the state of South Carolina on the grounds that is not relevant, nor is it reasonably calculated to lead to admissible evidence. B of A further objects on the grounds that it is a national bank with banking centers and offices throughout the United States and to require it to compile a list that encompasses the entire United States for the past ten years is unduly burdensome, nor is it relevant or calculated to lead to admissible evidence.

13. *For all responses to Interrogatory No. 12, please state for each such legal action the following information:*

(a) The names of all parties, both Plaintiff(s) and Defendant(s);

(b) The addresses of all parties, both Plaintiff(s) and Defendant(s);

(c) The date of the filing of the action and case number;

(d) The jurisdiction in which the action was filed;

(e) The substance of the facts as set out in the pleadings;

(f) Whether the action has been settled, adjudicated, or is pending;

(g) If resolved the result of any disposition of the action; and

(h) The name, address, and telephone numbers of the attorney(s) representing Plaintiff(s) in the action.

Answer: See answer to Interrogatory No. 12. Further answering Interrogatory No. 13, although B of A may inform Plaintiff as to the status of each case for which information is provided, B of A will not provide Plaintiff with any settlement amounts. Such information is protected by confidentiality agreements and will not be divulged. In addition, prior settlement amounts in other cases wholly unrelated to the above captioned matter are not relevant, nor will such lead to the discovery of admissible evidence. The terms by which B of A may have settled in an unrelated case have no bearing on this case.

14. *Please state whether Defendant has ever been the subject of or in any way referenced in any investigation or inquiry by any State or Federal regulatory or other entity or agency for any reason related to its business practices, including but not limited to, its professional or service conduct, hiring and supervision, business transactions and/or dealings, trade practices, regulatory or fiscal reporting, governmental regulatory compliance.*

Answer: B of A objects to this interrogatory on the grounds it seeks information that is not relevant, nor is it calculated to lead to the production of admissible evidence. In addition, the terms used in this interrogatory are broad and vague. The terms "trade practices" and "business transactions and/or dealings" could encompass countless aspects of B of A's business. It would be impossible for B of A to respond fully to this interrogatory given the terms used by Plaintiff even if the interrogatory were proper under the SCRCP.

15. *For all responses to Interrogatory No. 14, please state for each such legal action the following information:*

(a) The names of all State and Federal agencies or entities;

(b) The names and addresses of all individuals or agents involved in the investigations or inquiries;

(c) *The date of the investigations or inquiries;*

(d) *The nature and scope of and reason and purpose for the investigations or inquiries;*

(e) *The substance of the facts set out in the investigations or inquiries;*

(f) *Whether the investigations or inquiries led to any formal or informal reprimand, sanction, fine or regulatory or other action.*

Answer: See answer to Interrogatory No. 14.

16. *List each and every account opened, maintained or used by LMN, CAN, or RF, at Defendant's bank by providing the account type, name, number, routing number, credit card number and expiration date(s) issued thereto, pin numbers associated therewith, open and close dates, and by identifying which local branch maintained each account.*

Answer: B of A is in the process of determining whether CAN or RF were ever account holders at B of A. Given that these are two rather common names and B of A has a banking footprint that covers the majority of the United States and certain foreign countries, this investigation is taking some additional time. In the event B of A's internal review demonstrates that CAN or RF were account holders with B of A, B of A objects to the portion of this request related to CAN and RF on the grounds of financial privacy. B of A cannot turn over private financial information related to its customers' accounts without prior permission from its customers. If Plaintiff presents B of A with a written statement signed by its customers allowing the dissemination of this information, B of A will supplement its response in accordance with Rule 26(e), SCRCP and provide the information sought by Interrogatory No. 16.

As Plaintiff is already aware, LMN maintained two accounts with B of A: a personal checking account ending in -1589 and a sole proprietorship account ending in -4759. Account -1589 was opened on October 26, 2005 and closed on April 7, 2010. Account -4759 was opened on

December 21, 2009 and closed on April 7, 2010. LMN also had a regular savings account ending in -6180, which was opened on October 26, 2005 and closed on February 4, 2010. No debit cards were issued with any account.

It is unclear what Plaintiff means by "which local branch maintained each account". LMN, or any customer of B of A, could visit any of B of A's branches nationwide to transact business on her accounts. She could also take advantage of B of A's online and mobile banking applications to monitor her accounts from anywhere in the world. Accounts are not maintained at branches. Account -4759 was opened at the banking center located at 498 Pleasantburg Drive, Greenville, South Carolina. Account -1589 was opened at the banking center located at 3005 North Main Street, Anderson, South Carolina.

17. *List by banking or lending institution name the account number, check number, amount, and date of any and all checks presented or authorized by Defendant LMN to which Defendant transferred, paid and/or honored.*

Answer: Rather than set forth a list of responsive documents, B of A hereby opts pursuant to Rule 33(c), SCRCP, to produce such discoverable, non-privileged account documents which are in the care, custody or control of B of A.

18. *State with specificity Defendants' understanding, at all time relevant to this litigation, of Defendant LMN's status, responsibilities and authorizations with regard to her employment with Plaintiffs, including whether Defendant LMN ever provided Defendant with any verification of her employment and/or wage earnings.*

Answer: B of A had no knowledge as to LMN's status, responsibilities and authorizations with regard to her employment with Plaintiffs, nor did LMN ever provide B of A with any verification of her employment and/or wage earnings; but now that LMN has been deposed, her status, responsibilities and authorizations, in her opinion, are a matter of record in this case.

19. *List and provide current contact information for each and every employee of Defendant that handled any aspect of the accounts for LMN, CAN and/or RF. Please include when and by whom each account was initiated, the process by which each account was initiated, the name and address of any person who approved for access to each account.*

Answer: B of A is investigating whether CAN or RF were ever account holders with B of A. Given that these are two rather common names and B of A has a banking footprint that covers the majority of the United States and certain foreign countries, this investigation is taking some additional time. Upon a determination of whether CAN or RF were ever account holders with B of A, B of A shall supplement its answer in accordance with Rule 26(e), SCRCP.

As Plaintiff is aware from her deposition testimony, LMN held two accounts with B of A: a personal checking account ending in -1589 and a sole proprietorship account ending in -4759. As set forth above, LMN also had a savings account ending in -6180. Accounts -1589 and -6180 were opened on October 26, 2005. The banking center associate that handled the opening of the accounts was Nancy K. Smith. Account -4759 was opened on December 21, 2009. The banking center associate that handled the opening of the account was Anthony S. Persons.

B of A objects to the breadth of the interrogatory "every employee that handled any aspect of the accounts". None of the checks at issue in the above referenced matter that were deposited at B of A were deposited over the counter, but were all deposited through ATM transactions. B of A cannot provide this information for ATM deposits, because that would be an automated deposit process, rather than one handled by a teller.

20. *Describe in detail all of Defendant's policies, procedures, protocols and practices for opening a personal checking/savings account, corporate account, or other business related account(s).*

Answer: B of A objects to this interrogatory on the grounds that Plaintiff is not a

customer of B of A, nor have any claims been lodged against B of A by any customer in the above captioned matter related to the opening of their account. Any policies, procedures, protocols and practices for opening a personal checking/savings account, corporate account, or other business related account(s) are not relevant, nor would they lead to any discoverable evidence related to claims against B of A made by a non-customer third party.

Plaintiff did not have an account with B of A, so it would have no ability to rely on or attempt to enforce B of A's policies, procedures, protocols and practices for opening a personal checking/savings account, corporate account, or other business related account(s). Those policies, procedures, protocols and practices are for the benefit and protection of B of A and its customers, not third parties, and as a result, have no bearing on the claims of Plaintiff in the above referenced matter.

21. *Describe in detail all policies, procedures, protocols and practices ever used by Defendant concerning maintaining and safeguarding checking accounts. This includes but is not limited to the purpose and use of signature cards or electronic verifications of the authorized user(s) of accounts and credit cards as a means of comparing signatures or verifications on checks or other instruments to the signature/verification of authorized user(s) in order to prevent fraud and forgery.*

Answer: B of A objects to this interrogatory on the grounds that Plaintiff is not a customer of B of A; no claims have been lodged against B of A by any customer in the above captioned matter related to B of A's maintenance or safeguarding of their account; the interrogatory ignores South Carolina common and statutory law that the file-sort method of check examination is not required; the interrogatory ignores the statutory approval of automated check processing as a reasonable commercial practice; and the interrogatory ignores customer consent in depository agreements to automated check processing of items drawn on or presented to an account. Any

policies, procedures, protocols and practices ever used by B of A concerning maintaining and safeguarding checking accounts are not relevant, nor would they lead to any discoverable evidence related to claims against B of A made by a non-customer third party.

Plaintiff did not have an account with B of A, so it would have no ability to rely on or attempt to enforce B of A's policies, procedures, protocols and practices concerning maintaining and safeguarding checking accounts. Those policies, procedures, protocols and practices are for the benefit and protection of B of A and its customers, not third parties, and as a result, have no bearing on the claims of Plaintiff in the above referenced matter. Even if B of A knew or had reason to question for suspicious account activity, disclosure of that is impermissible to, as is any private right of action by, a non-regulator. Further answering Interrogatory No. 21, as a depositary bank B of A had no obligation or ability to verify the maker signature of Plaintiff on any checks presented for deposit by LMN.

22. *List the total number and sum total of all deposits into, and withdrawals out of each account maintained, used or controlled by LMN, CAN or RF. This includes deposits by tangible instruments, electronically or by other authorized means.*

Answer: B of A is investigating whether CAN or RF were ever account holders with B of A. Given that these are two rather common names and B of A has a banking footprint that covers the majority of the United States and certain foreign countries, this investigation is taking some additional time. Upon a determination of whether CAN or RF were ever account holders with B of A, B of A shall supplement its answer in accordance with Rule 26(e), SCRCP.

From December 21, 2009 through January 14, 2010, there were fourteen (14) deposits into account ending in -4759. A listing of those deposits by date and amount is included herewith at **Tab**

B. From December 31, 2009 through January 15, 2010, there were nine (9) debits from this account. A listing of those debits by date and amount is included herewith at **Tab B**.

Because B of A does not retain records beyond seven years, B of A only has information as to deposits made into account ending in -1589 from February 2, 2007 through February 2, 2010. From February 2, 2007 through February 2, 2010, there were five hundred twenty-six (526) deposits made into account ending in -1589. A listing of those deposits by date and amount is included herewith at **Tab B**. During the same period, three hundred ninety-two (392) debits were made from this account. A listing of those debits by date and amount is included herewith at **Tab B**.

From July 16, 2007 through May 27, 2009, there were eight (8) deposits made into the regular savings account ending in -6180. A listing of those deposits by date and amount is included herewith at **Tab B**. No deposits were made into account ending in -6180 after May 27, 2009. No withdrawals were made from this account.

23. *Describe in detail any and all representations made by Defendant LMN to Plaintiff, its agents and/or employees of Plaintiff, or any Defendants or any agent or representative of said Defendants regarding Plaintiff's inventory, business accounts and transactions, account authorizations, invoices, and/or company checks and how each and every representation was relied and/or acted upon.*

Answer: LMN made no such representations to B of A. B of A is without any knowledge, information or belief as to what representations may have been made by LMN to Plaintiff, its agents or employees or to any other defendant in this action.

24. *State the closing, holding or seizing date for every account associated with LMN, CAN, or RF, and explain in detail the reasons for closing the account, the name of Defendant's employee who authorized the closing, holding or seizing, and the disposition of any funds remaining therein.*

Answer: B of A is investigating whether CAN or RF were ever account holders with

B of A. Given that these are two rather common names and B of A has a banking footprint that covers the majority of the United States and certain foreign countries, this investigation is taking some additional time. Upon a determination of whether CAN or RF were ever account holders with B of A, B of A shall supplement its answer in accordance with Rule 26(e), SCRCP.

Both account numbers-4759 and 1589 were closed by B of A on April 7, 2010. Latonia Alexander handled the closing of both of these accounts. Account number -6180 was closed on February 4, 2010 by Wanda Hedd. At the time these accounts were closed, there were funds in the accounts in the total amount of $28,645.59. These funds have not been disposed and are being held by B of A's hold harmless department.

25. *State whether Defendant or its employees ever received notice that Defendant LMN was not a person entitled to demand or enforce payment upon Plaintiff's checks or drafts or to otherwise receive payments from Plaintiff's accounts. If so, state the date said defendant received notice, the method by which said defendant received notice and by whom the notice was provided; and what actions, if any were taken by said Defendant as a result of said notice.*

Answer: Prior to the filing of this lawsuit, B of A never received any such notice.

26. *State whether Defendants ever received and/or accepted from Defendant LMN a check that bore any altered numbers and/or words.*

Answer: B of A received no such check as the term "alteration" is used in the UCC.

27. *Describe the methods, procedures, protocols, standards and practices accepted, instituted, utilized, or otherwise engaged in by Defendants, at all relevant times to this litigation, concerning management, administration, coordination, and protection of customer financial affairs, accounts and services, information transfer, and redress for errors.*

Answer: B of A objects to this interrogatory on the grounds that Plaintiff is not a customer of B of A and no claims have been lodged against B of A by any customer in the above captioned matter. Any methods, procedures, protocols, standards and practices used by B of A

concerning management, administration, coordination, and protection of customer financial affairs, accounts and services, information transfer, and redress for errors are not relevant, nor would they lead to any discoverable evidence related to claims against B of A made by a non-customer third party. Such matters are related to the relationship between B of A and its customers or regulators, and have no bearing on Plaintiff's claims against B of A.

28. *List the names and provide current contact information for all employees of Defendant that accepted a check or draft from LMN, CAN or RF in exchange for certified funds or certified checks.*

Answer: B of A objects to this interrogatory on the grounds that it is overbroad, because no time limitation is given. Without more information as to the specific date or amount of the transaction, B of A cannot provide a response to Interrogatory No. 28.

29. *Did Defendant initiate or receive contact to/from or otherwise communicate with any employee or agents of NBSC/Synovous, BB&T, the United States Secret Service or other federal governing bodies in regards to LMN, CAN, RF, or any of the subjects of this litigation? If so, please state in detail when the contact was established, a summary of the communications, and a list of all persons involved.*

Answer: B of A has had no contact or communications with either the U.S. Secret Service or any other federal governing body in relation to the above captioned matter. Further answering Interrogatory No. 29, under federal law B of A cannot disclose or produce any SARs or any information that would reveal the existence of SARs. B of A has had communications with employees or agents of NBSC/Synovous and BB&T in regards to LMN, CAN and RF. Rather than identify the communications, B of A hereby opts pursuant to Rule 33(c), SCRCP, to produce such discoverable, non-privileged communications which are in its care, custody or control.

30. *Did Defendant ever engage in or perform an investigation, examination or review, whether internally or externally, of the account activity of LMN, CAN or RF? If so, please state in*

detail when the review occurred, the reasons for such review, a summary of the review, conclusions and responsive actions taken therefrom.

Answer: B of A is in the process of investigating whether or not defendants CAN or RF were ever account holders at B of A. Upon making that determination, B of A will supplement its answer to this interrogatory in accordance with Rule 26(e), SCRCP. No such investigation was ever performed on any B of A accounts held by LMN. Further answering Interrogatory No. 30, under federal law B of A cannot disclose or produce any SARs or any information that would reveal the existence of SARs.

Date: 3/28/14

DRISCOLL SHEEDY, P.A.

By: _____

James W. Sheedy
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11520 N. Community House Road
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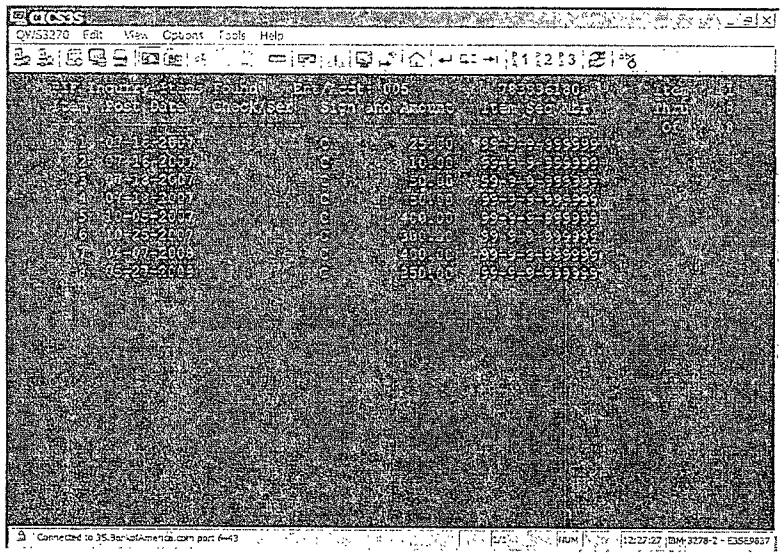
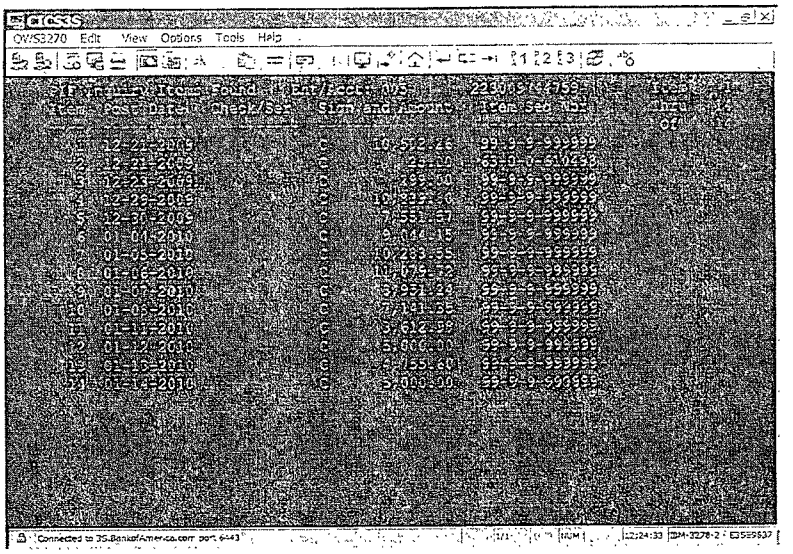
ATTORNEYS FOR B OF A

Tab A

Case Caption	Case Number	Jurisdiction	Filed	Invoked Primary OC Firm Name	Brief Descr	ULP #s
Southern Risk Insurance Company v. Bank of America, N. A., et al.	2012-CP-1-320	South Carolina	12/25/2013	McGuireWoods LLP	Plaintiff alleges that beginning in 2003 an independent contractor (co-defendant Wells) hired by the Plaintiff opened a personal bank account at B of A and Park Staffing Bank where she deposited checks made payable to Plaintiff and other insurance companies. Plaintiff alleges that these deposits were unauthorized and totaled over $100,000. Plaintiff asserts causes of action for common law conversion, negligence and violations of UCC 3-206 regarding restrictive endorsements, UCC 3-420, and SCUTPA.	Pending
Tim Barton HVAC, LLC, v. Bank of America, N.A. and Catherine Barton	2012CP0202245	South Carolina	9/17/2012	McGuireWoods LLP	Plaintiff alleges co-defendant Barton, a former employee, stole checks made out to the plaintiff and deposited them into her bank account at B of A through ATMs. The checks were missing indorsements. Plaintiff asserts causes of action for conversion, aiding and abetting breach of fiduciary duty and violation of the South Carolina Unfair Trade Practices Act.	Settled
Flagstar Bank, FSB v. Bank of America, NA, et al.	2012-CP 23-545	South Carolina	4/20/2012	McGuireWoods LLP	Plaintiff alleges B of A negligently honored a check missing an endorsement.	Dismissed
William L. Toomo and JW Kryss & Ass., LLC d/b/a Daniel Island Lawn Services and Wet Works Property Services v. Bank of America, N.A.	2012-CP-10-748	South Carolina	2/1/2012	McGuireWoods LLP	Plaintiffs allege that, based on a representation by a bank employee that B of A could issue employee check cards with specific limitations, Plaintiffs transferred their company's operating account to B of A. Plaintiffs allege that after specifically advising B of A of an employee they did not want to have access to their account, the Bank issued a debit card without limitations to the employee. It is alleged that the employee was able to withdraw $12K from the account, which was a "death sentence" to the plaintiff and led to the sale of their company.	Pending
The Trah Auto Sales V. Bank of America, N.A.	2011CV2210202819	South Carolina	12/21/2011	McGuireWoods LLP	Plaintiff alleges B of A allowed a check made payable to Plaintiff and Sandra Boyd to be cashed by Ms. Boyd without the endorsement of the Plaintiff. Seeks damages in the amount of $1,400.	Settled
Luis Reyes v. Bank of America, N.A.	2011CV2110106822	South Carolina	8/15/2011	Wilson, Elser, Moskowitz, Edelman & Dicker*	Plaintiff alleges that it had retained a debt collection firm, Goldman, Walker & Klein (not named as a defendant) to pursue plaintiff's customers who owed it money. It is further alleged that in January 2011 the firm received various checks totaling $21,350 from these debtors purportedly payable to plaintiff but allegedly deposited by the firm into its BofA account without plaintiff's endorsement or authority.	Settled
Dee Dee Hayes v. Bank of America, et al.	2010-CP-48-4015	South Carolina	7/2/2010	Driscoll Sheedy, P.A.*		
Jeff and Janet Kuntz v. Bank of America Corporation	2010-CP-42 5021	South Carolina	8/17/2010	Nelson Mullins Riley & Scarborough, L.L.P.*	$28,000 improper endorsement claim on multi-party insurance proceed check.	Settled
John L. McMahan v. Bank of America Corporation, et al.	2010-CP-42-00887	South Carolina	2/18/2010	Nelson Mullins Riley & Scarborough, L.L.P.*	Plaintiff alleges unspecified compensatory and punitive damages following the theft of account information and personal identification on August 12, 2010. Allege forged maker, unauthorized account access and mishandling of outstanding items subsequent to theft through approx. September 30, 2010.	Settled
Aaron Burns and Louise Burns v. Bank of America, N.A., et al.	2009-CP-10-5314	South Carolina	8/24/2009	Nelson Mullins Riley & Scarborough, L.L.P.*	$9,000 forged endorsement claim on insurance proceeds check where B of A is bank of first deposit. Plaintiff alleges former wife forged his signature.	RJ granted to B of A
Robert A. Hedrick, Esq. LLC, Robert A. Hedrick, individually vs. Bank of America, et al.	2009-CP-26-3278	South Carolina	3/31/2009	Driscoll Sheedy, P.A.*	Improper endorsement and conversion claim where B of A is bank of first deposit. Seeks unspecified compensatory and punitive damages for negligence, conversion, UTPA violations and emotional distress. Checks were issued to pay residential loan in foreclosure.	Settled
Terry Johnson, Sr. v. Bank of America, et al.	2009-CP-14-268	South Carolina	5/22/2009	Nelson Mullins Riley & Scarborough, L.L.P.*	Forged maker claim where B of A is bank of first deposit. Plaintiff alleges principals of Bella Terra forged his signature on checks drawn on Bella Terra and then deposited them at B of A. Damages estimated at $90,000. Alleges conversion. Seeks punitives.	SJ granted to B of A
The Ocean Courses of Fripp, Inc, d/b/a Fripp Island Club v. Bank of America Corporation	2009-CO-07-1359	South Carolina	3/20/2009	McGuireWoods LLP	Plaintiff alleges malicious prosecution and false arrest in the improper return as forged of his paycheck cashed at Manning Foods.	Dismissed
Etta L. Gray v. Bank of America, N.A., et al.	2008-CP-40-7343	South Carolina	10/13/2008	Parker, Poe, Adams & Bernstein L.L.P.*	$707,152 forged or improper endorsement claim involving checks intended for the plaintiff which were allegedly stolen by B of A customer, James Madigan, and deposited into The Fripp Island account. Plaintiff alleges that the Fripp Island account was not authorized and/or improperly opened by B of A.	Settled
Oconee Federal Savings and Loan Association v. Bank of America, N.A.	2008-CP-37-1068	South Carolina	8/10/2008	Parker, Poe, Adams & Bernstein L.L.P.*	Missing endorsement claim on $69,000 multi-party insurance claim check payable to Plaintiff and By-Way, LLC and deposited at Carolina First. Check issued by First Financial Insurance on its B of A account.	Pending
Edwin S. Pearkins, Jr. vs. Bank of America, et al.	2008-CP-10-497	South Carolina	1/25/2008	Parker, Poe, Adams & Bernstein L.L.P.*	Missing endorsement claim involving multi-party insurance proceeds check issued by Allstate and payable to Oconee and their borrower in Sep. 2004. Case is pled on breach of fiduciary duty and other grounds.	Settled
Inland Integrations, LLC, v Bank of America Corporation, et al.	2007-CP-10-1858	South Carolina	5/4/2007	Driscoll Sheedy, P.A.*	Plaintiff alleged $165,000 in forged maker checks were issued on B of A account beginning September 2005 by co-defendant McCarter. No allegations made against B of A. McCarter cross-claimed against B of A alleging conversion, negligence and wrongful dishonor when it froze her account in response to Plaintiff's fraud claim.	Settled
Iglesia Pentecostal El Tabernaculo de Santidad v. Bank of America Corporation	2008-CP-23-7825	South Carolina	12/5/2008	Nelson Mullins Riley & Scarborough, L.L.P.*	$30,699.73 ft. class employee claim where BOA is maker bank during Dec. 2005 – April 2006 and Bank of first deposit for Wachovia items afterwards. Alleges negligence and bad faith; seeks trebling to $91,589.19 under the SC Unfair Trade Practices Act.	Jury verdict for B of A directing
					Plaintiff alleges B of A allowed changes to authorized signers allowing improper maker to successfully negotiate $56,679.02 check.	Settled

Tab B

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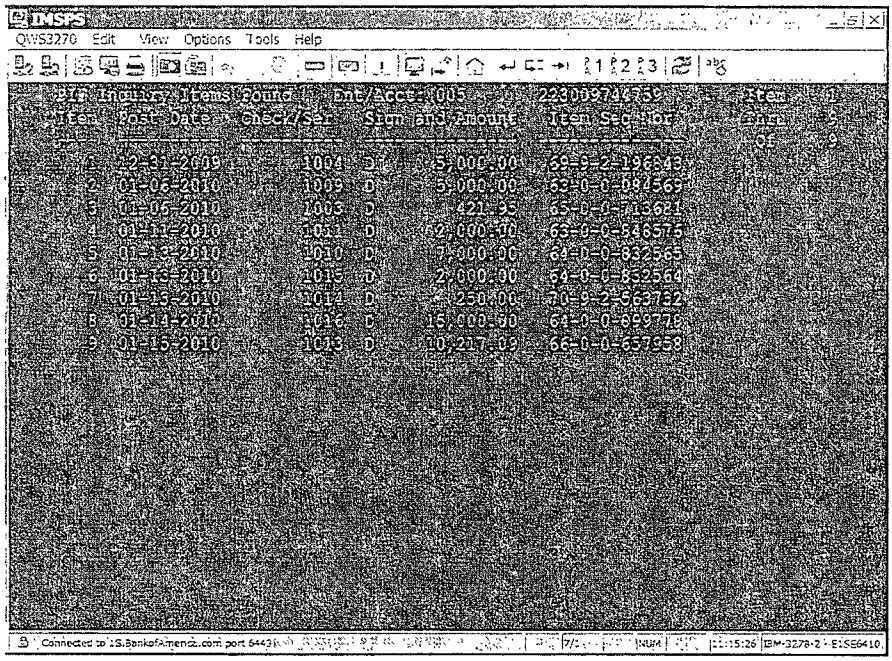
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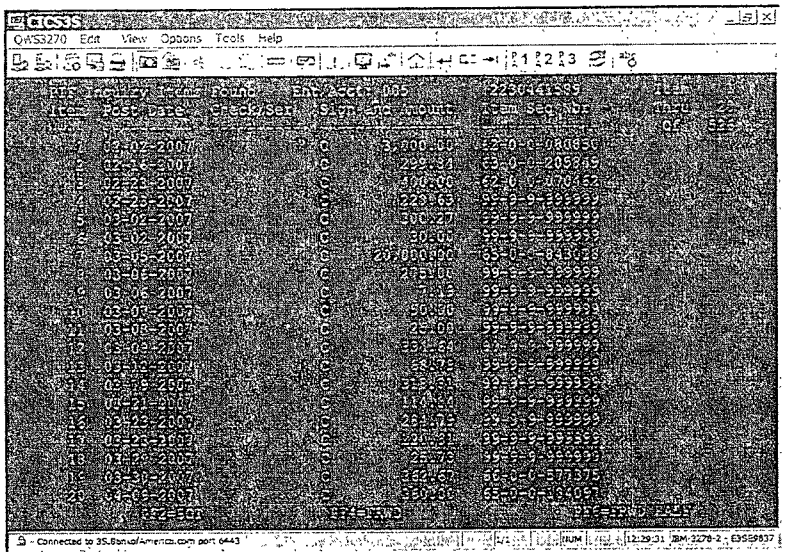

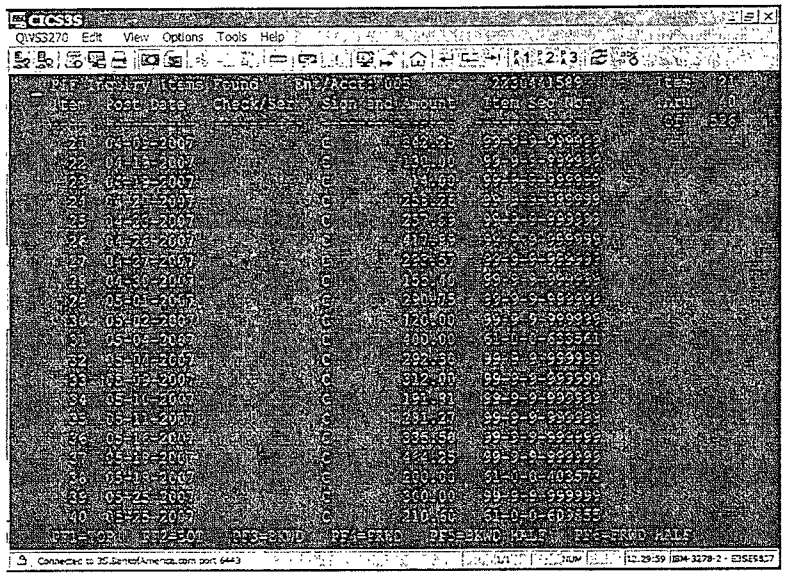

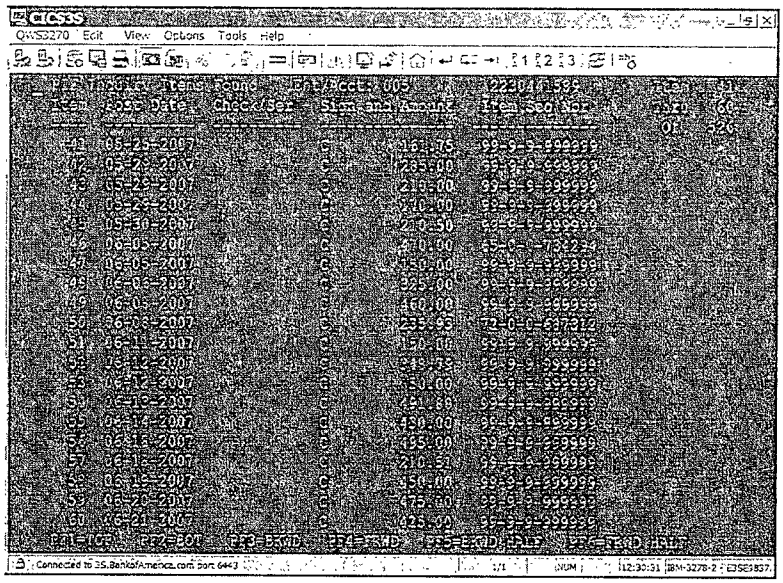

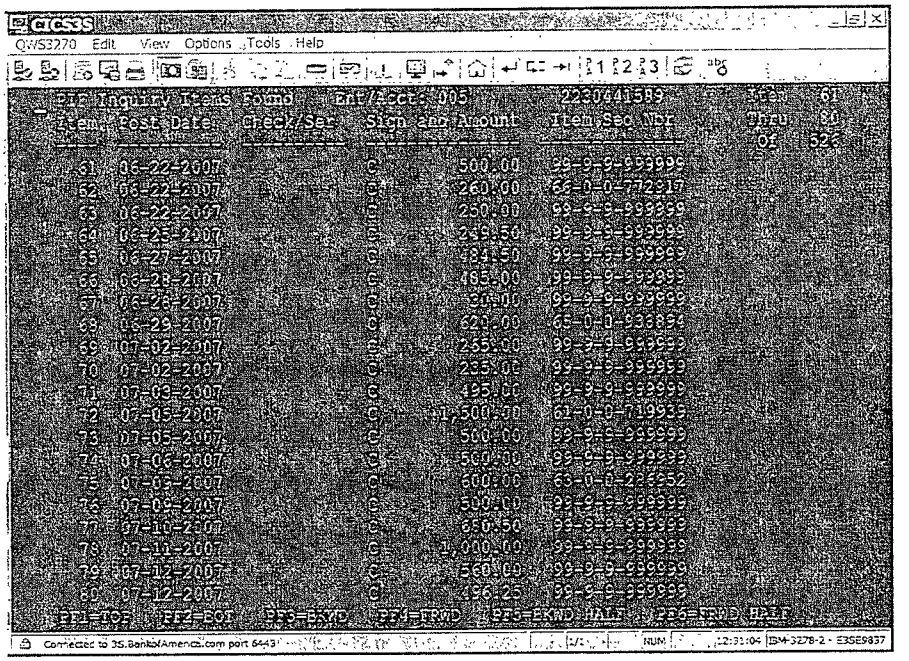
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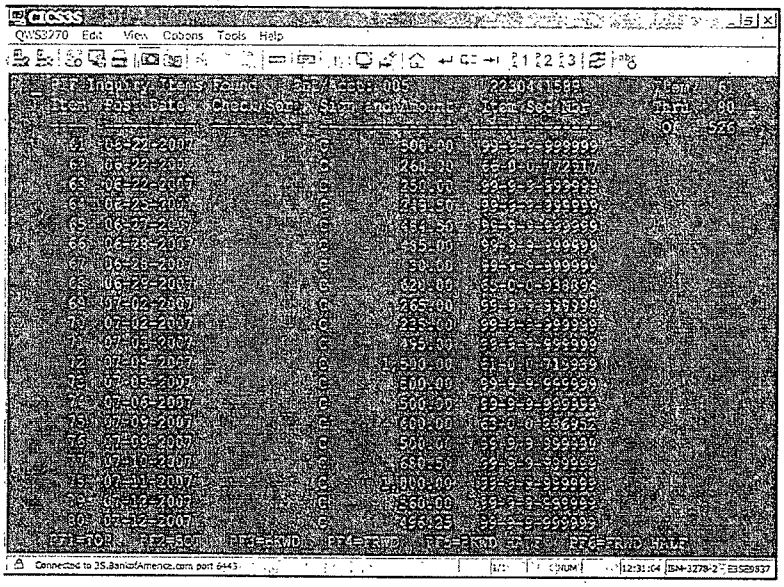
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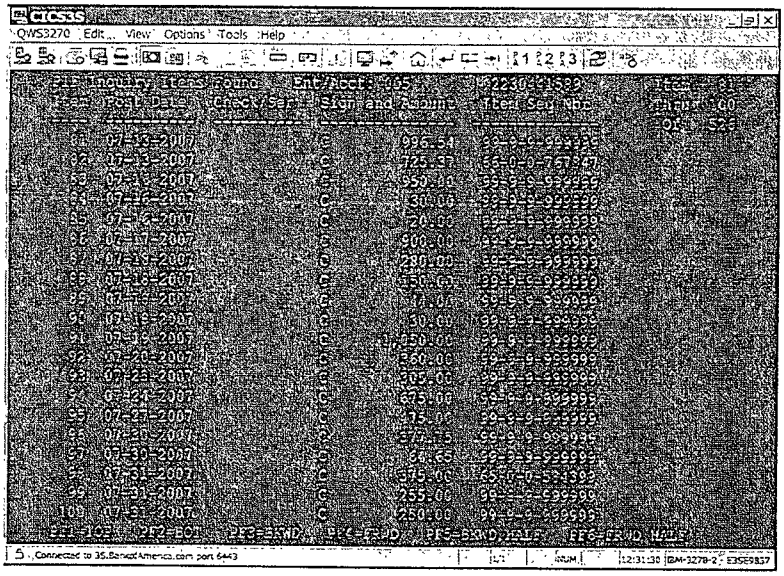
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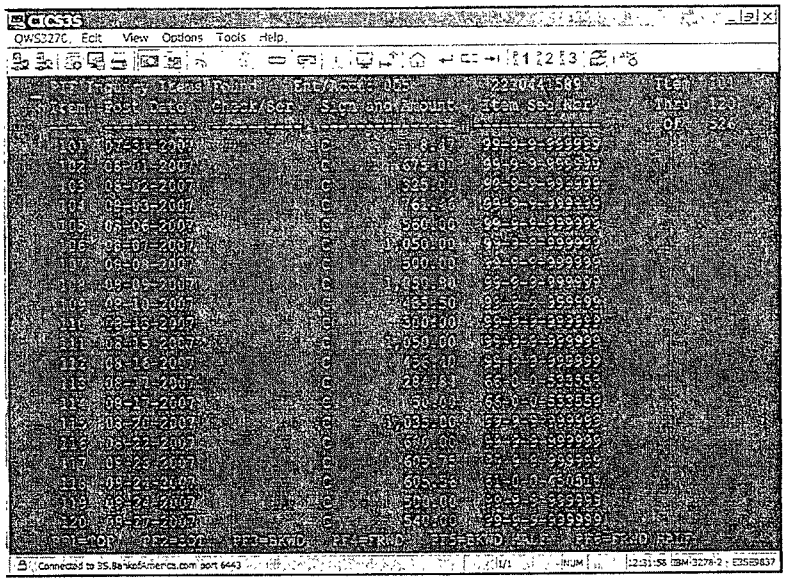
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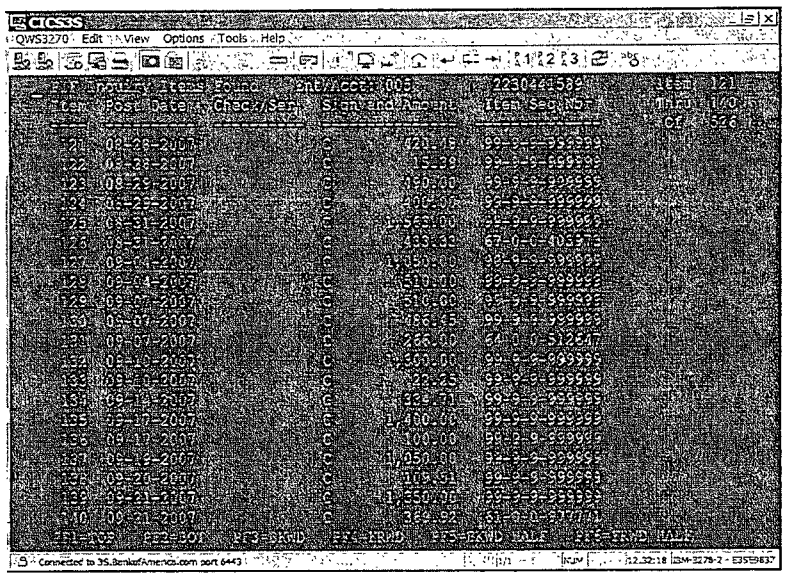
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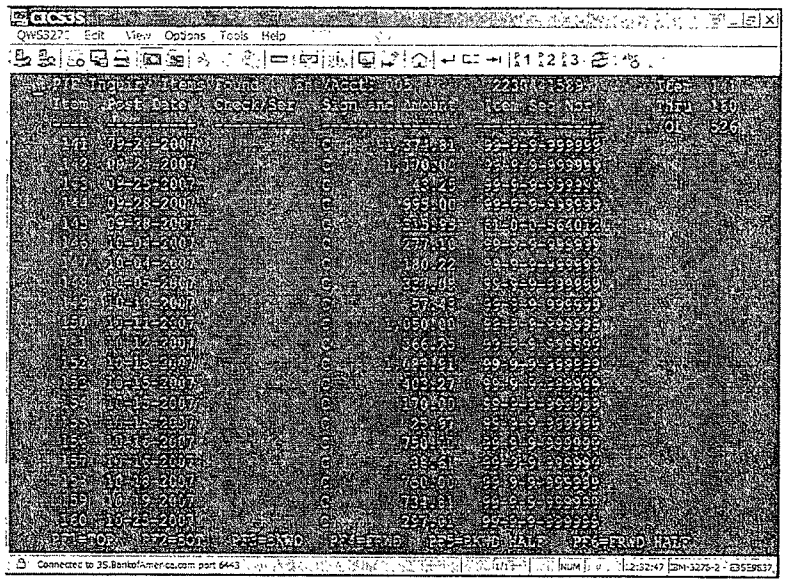
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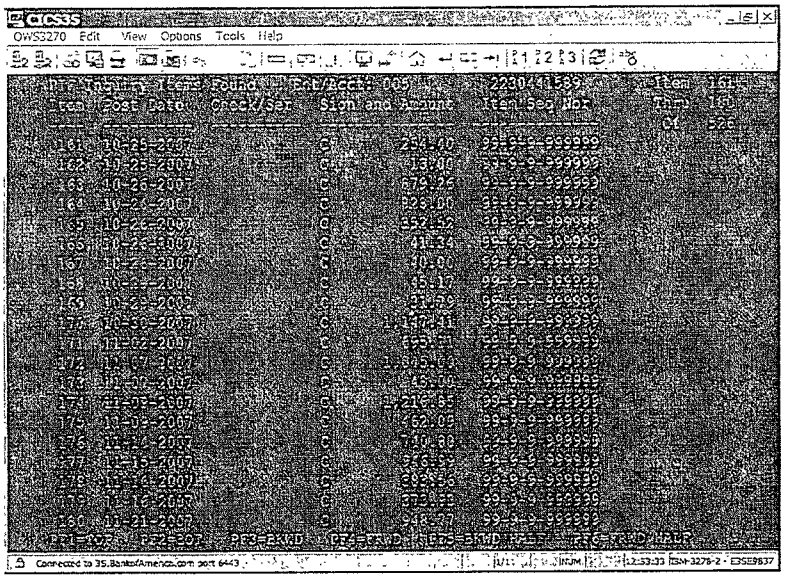

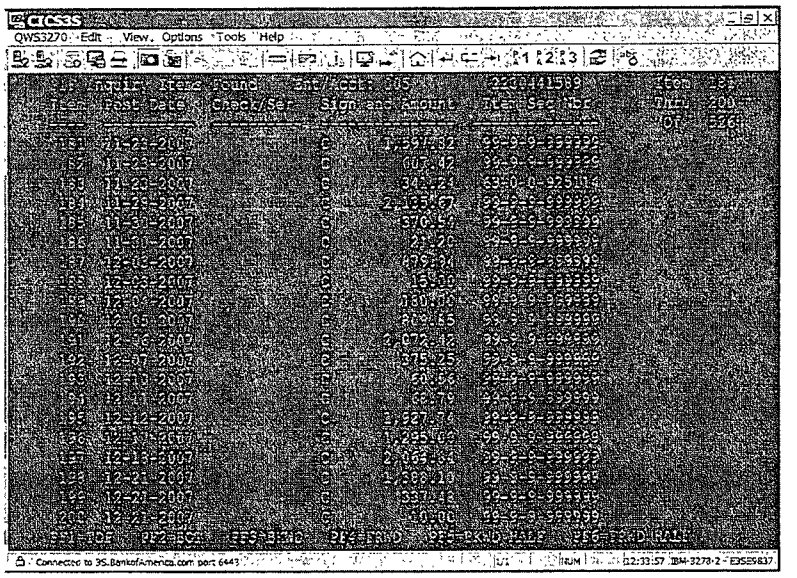

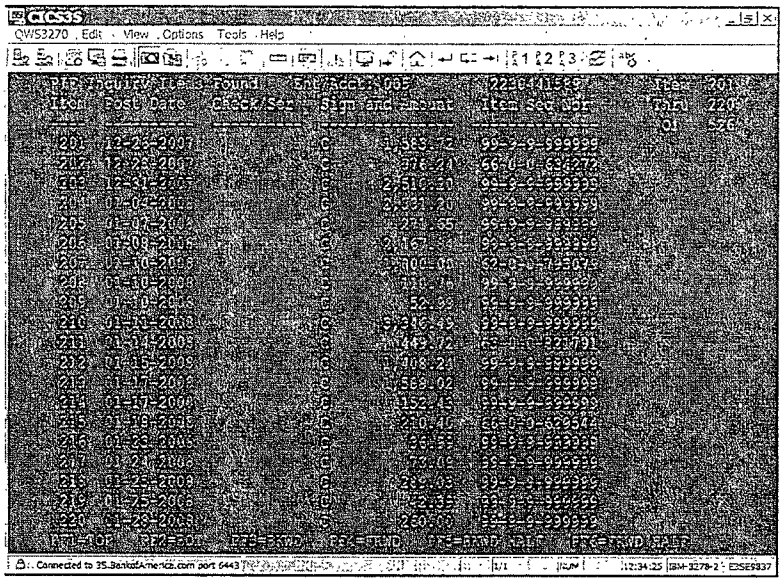

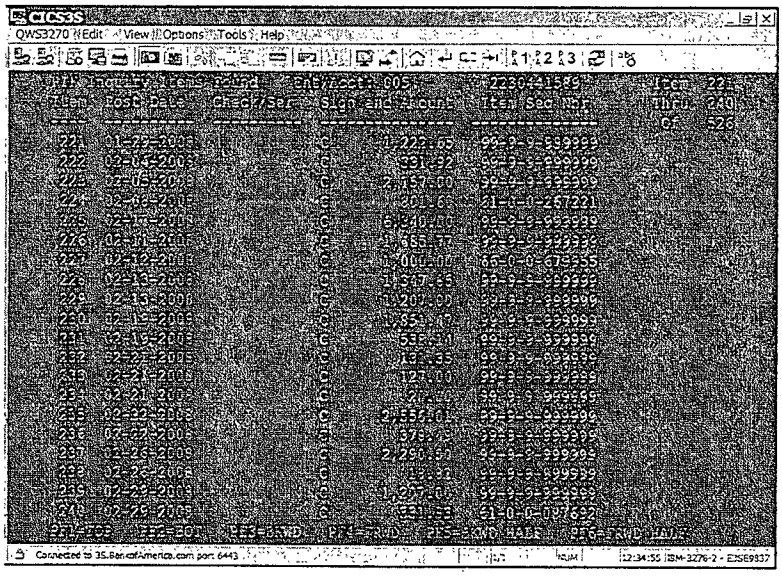

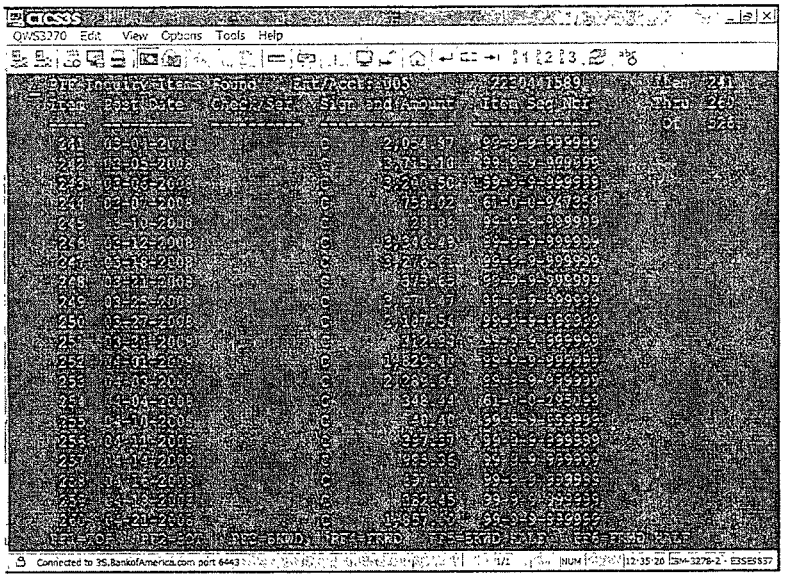

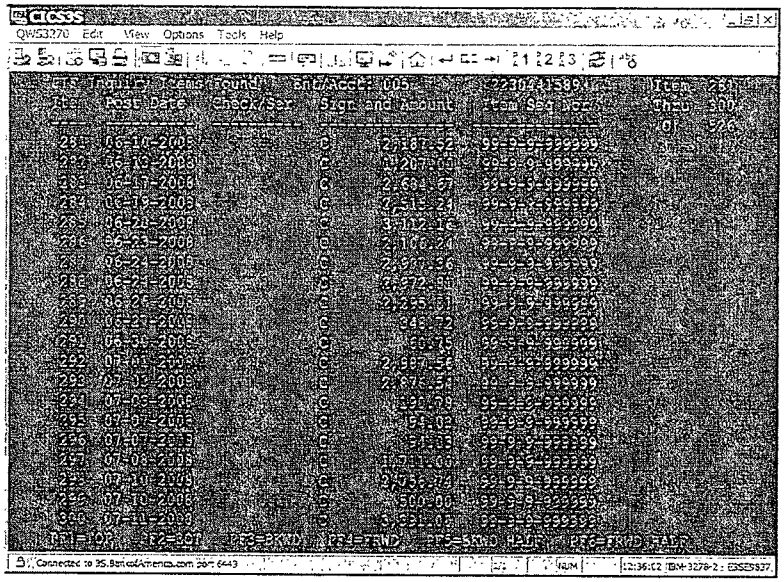

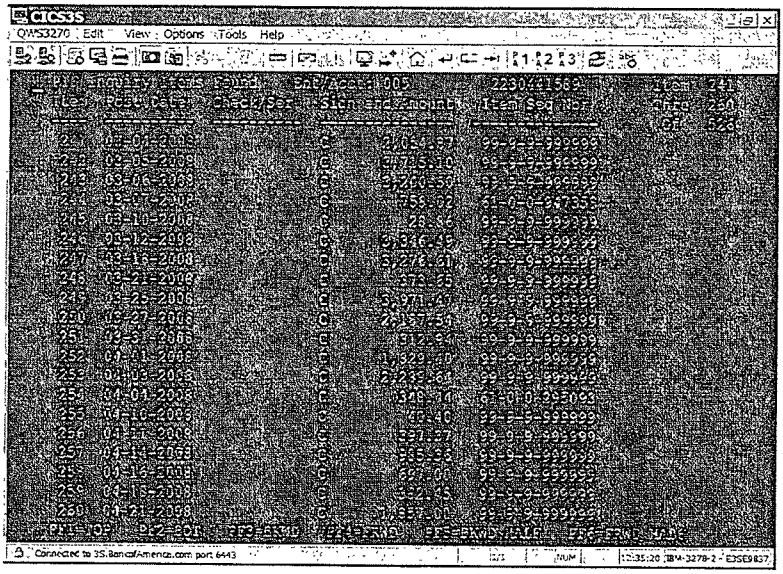

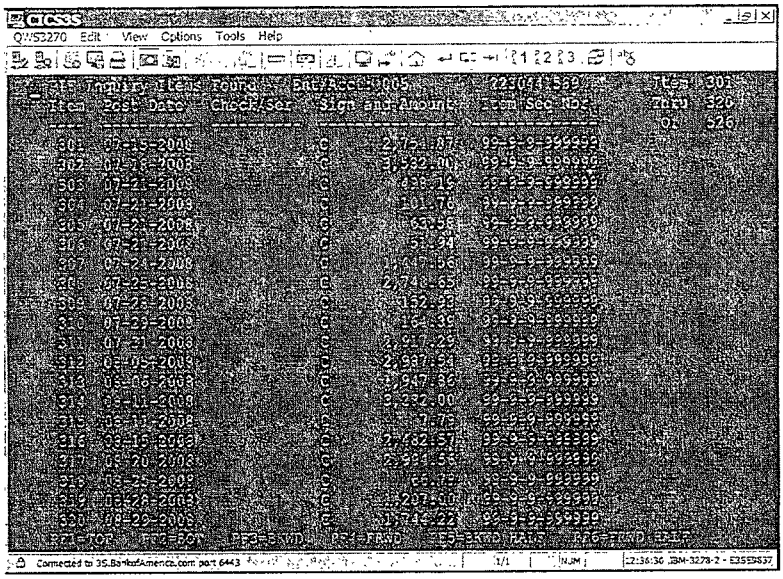
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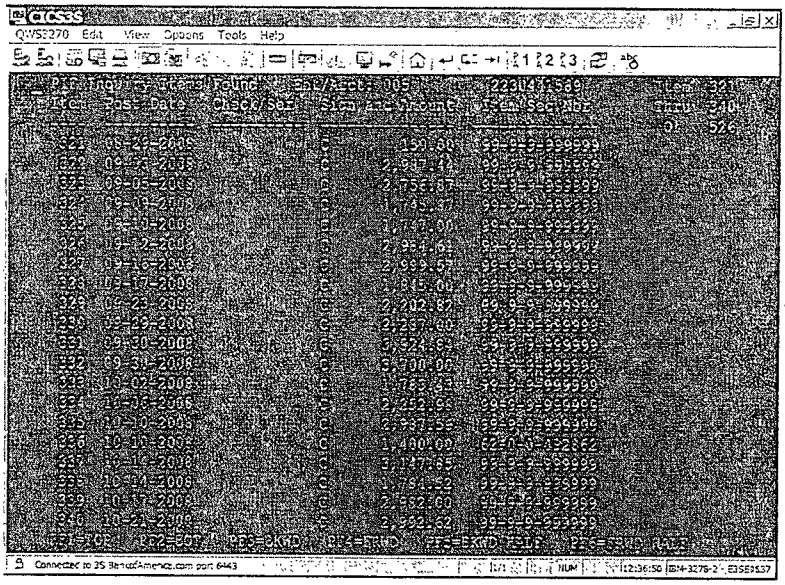

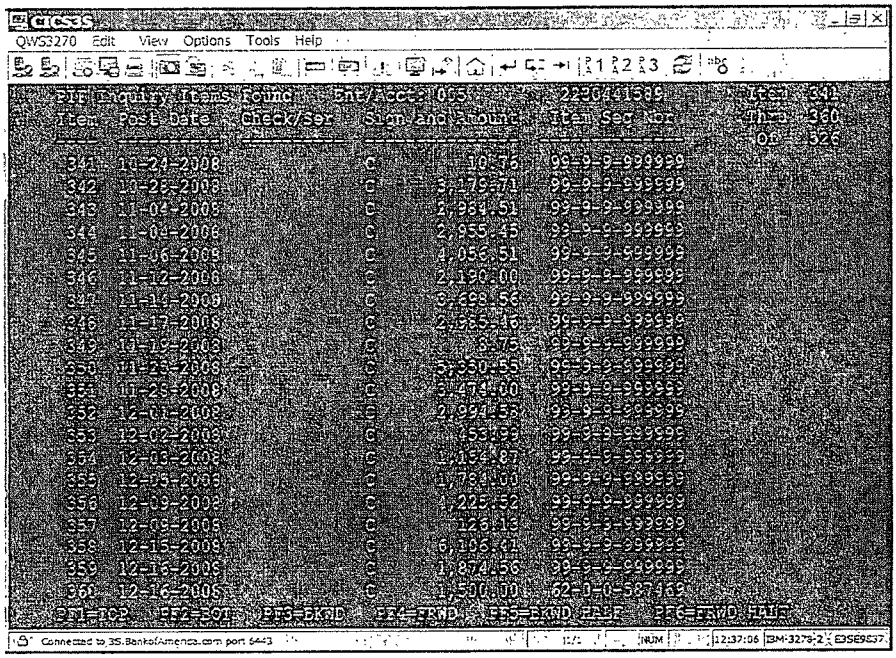
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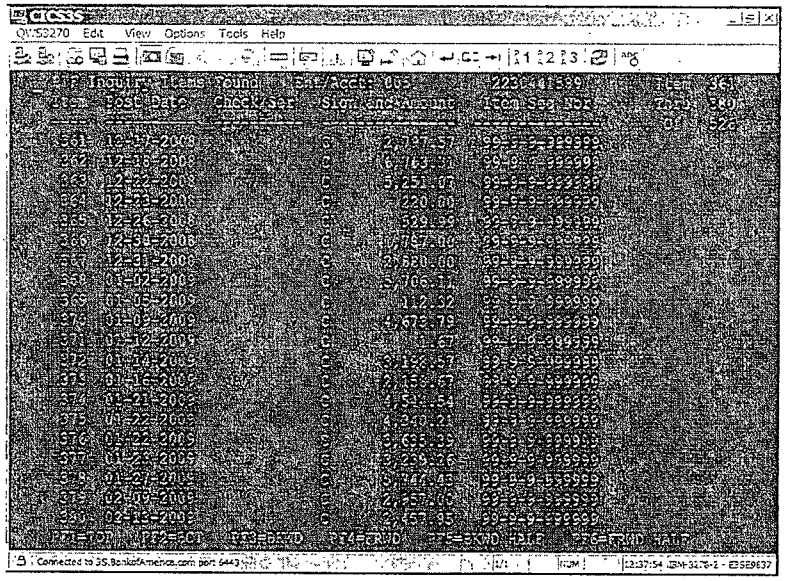
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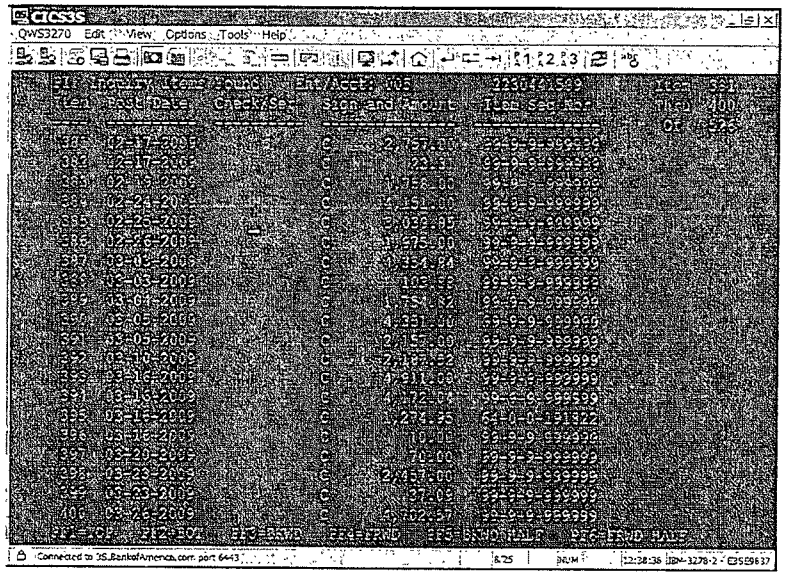
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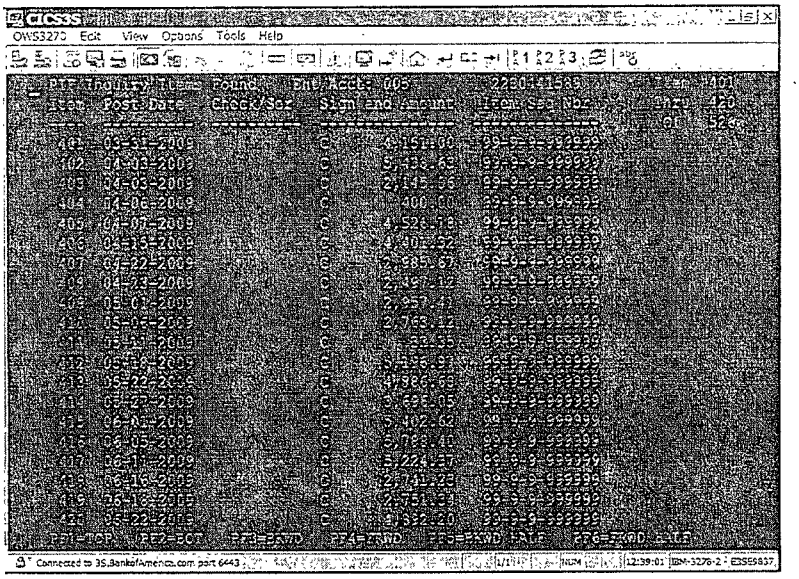

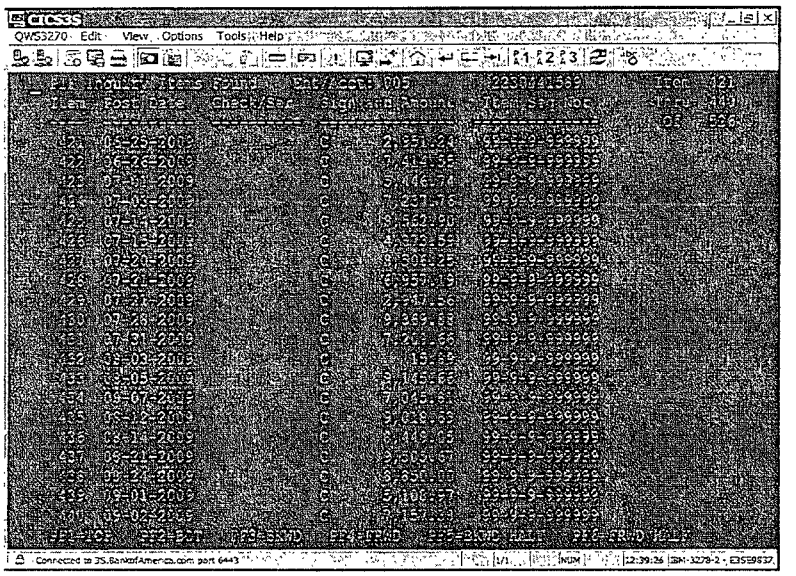

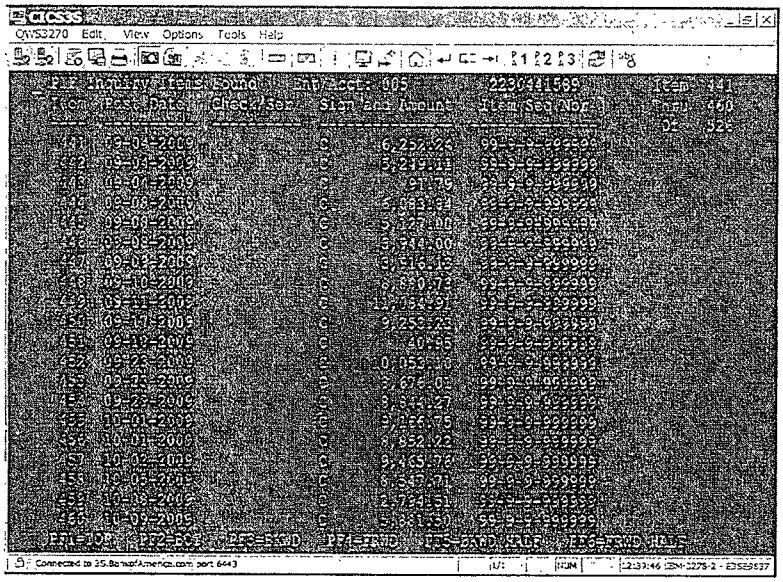

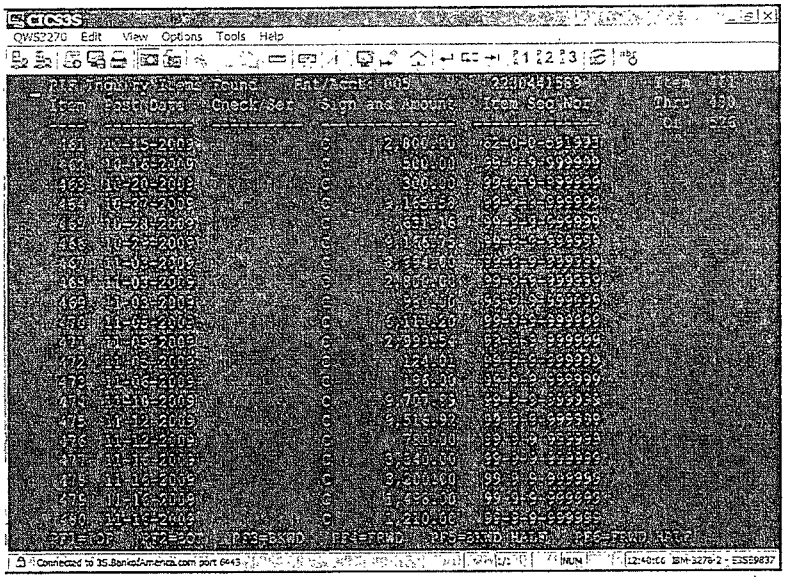

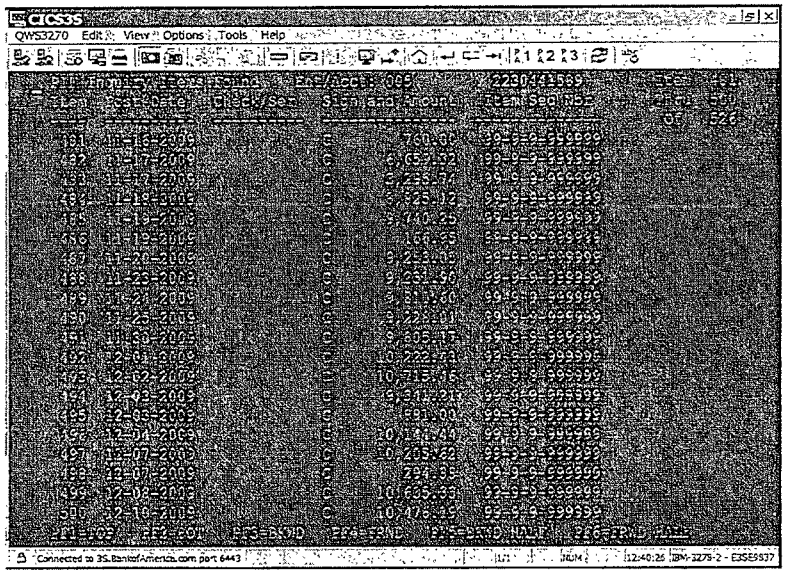

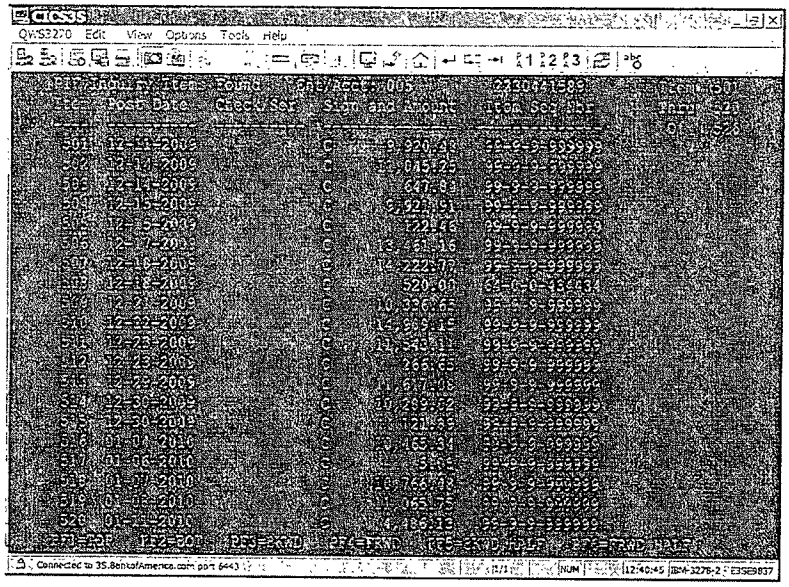

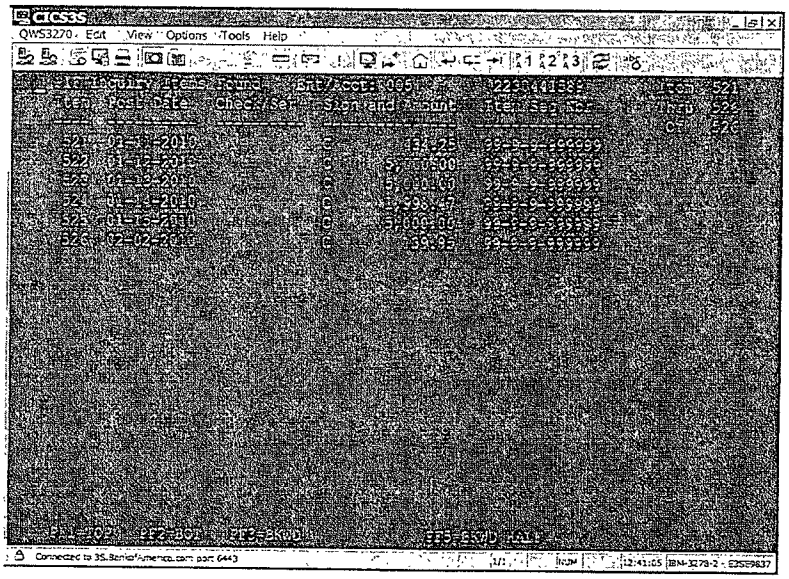

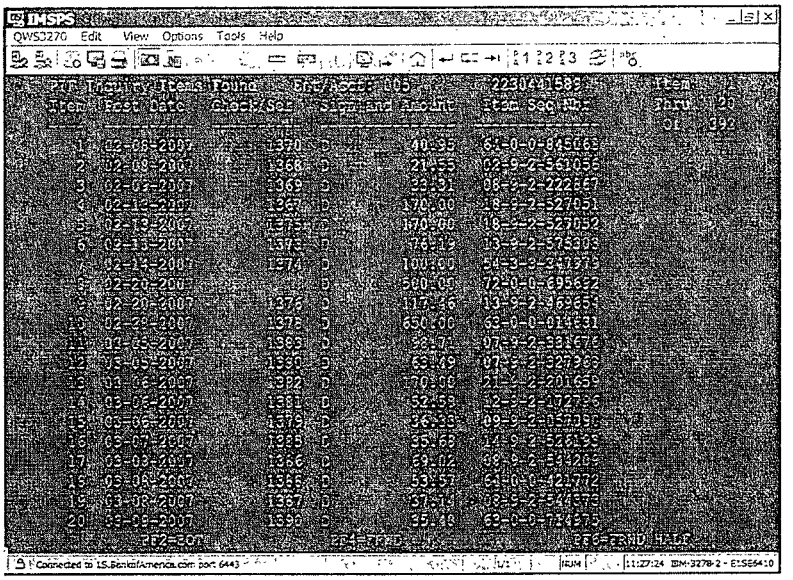
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5 02-12-2007 1375 D 170.00 10-0-2-527052
6 02-11-2007 1376 D 78.19 03-0-2-575305
7 02-11-2007 1374 D 100.00 54-0-0-347775
8 02-20-2007 1372 D 500.00 72-0-0-695892
9 02-20-2007 1376 D 117.46 03-0-2-762654
10 02-28-2007 1378 D 650.00 69-0-0-914531
11 03-05-2007 1389 D 98.17 07-0-2-881478
12 03-05-2007 1339 D 69.49 07-0-2-827963
13 03-06-2007 1392 D 70.00 21-0-2-201635
14 03-06-2007 1391 D 52.58 32-0-2-427763
15 03-06-2007 1379 D 36.38 09-0-2-139098
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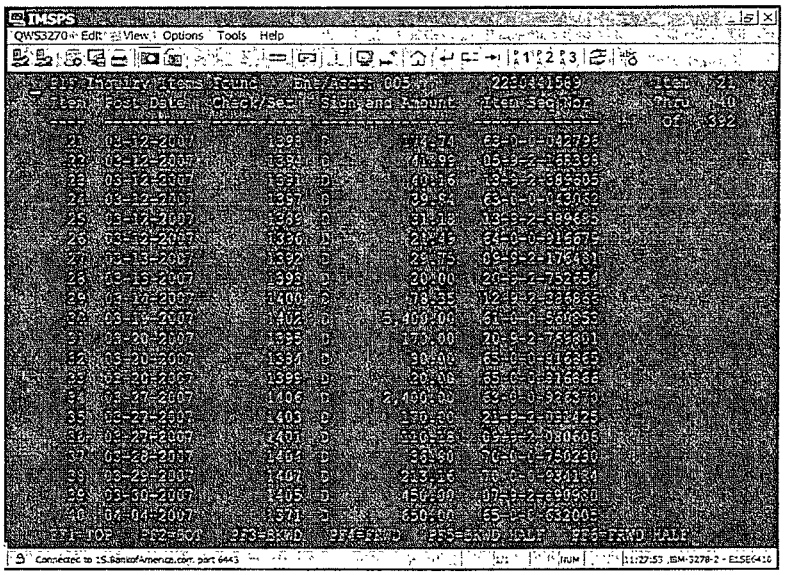
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25 03-12-2007 1389 D 81.18 08-0-2-389685
26 03-12-2007 1390 D 21.49 63-0-0-916079
27 03-13-2007 1392 D 29.75 08-0-2-177451
28 03-13-2007 1398 D 20.00 20-0-2-752650
29 03-12-2007 1400 D 78.35 02-0-2-836845
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31 03-20-2007 1395 D 170.00 20-0-2-753801
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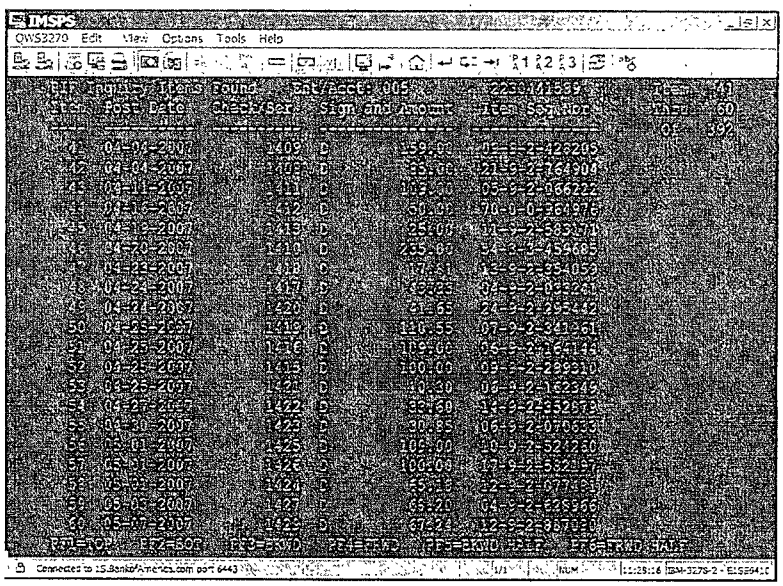
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Sign and Amount
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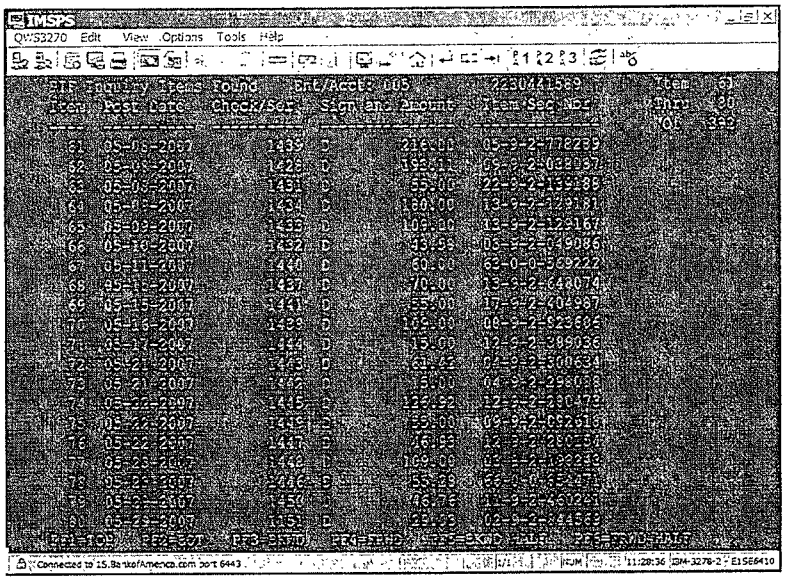
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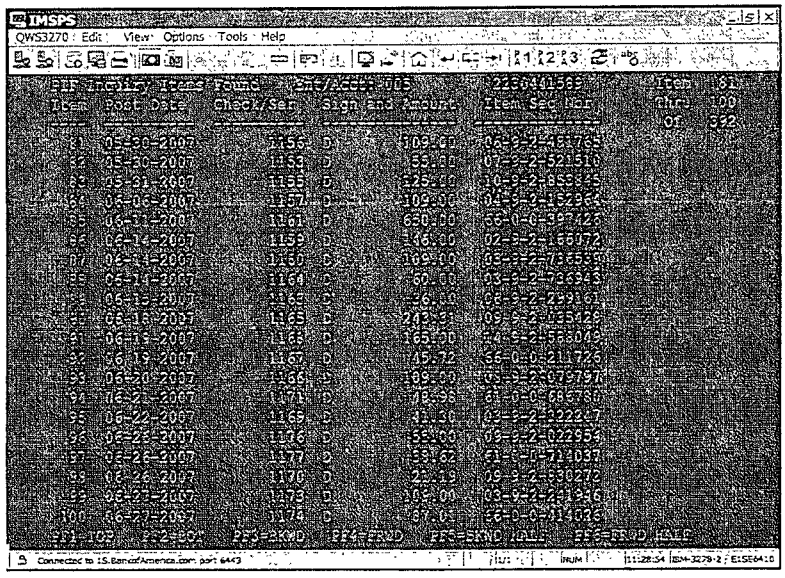
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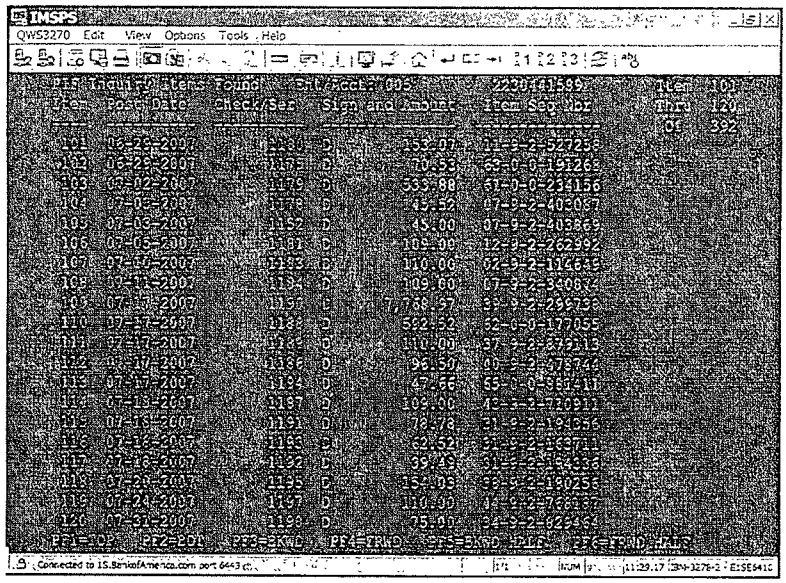
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104 07-06-2007 1196 D 45.60 07-9-2-402087
105 07-06-2007 1192 D 45.00 07-9-2-403869
106 08-06-2007 1197 D 108.00 12-9-2-762992
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111 07-17-2007 1196 D 110.00 07-9-2-375115
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113 07-17-2007 1194 D 47.66 55-0-0-561411
114 07-18-2007 1197 D 109.00 43-9-2-709911
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117 07-16-2007 1192 D 39.43 31-9-2-5154336
118 07-21-2007 1195 D 154.05 65-0-2-190256
119 07-24-2007 1197 D 110.00 44-9-2-766137
120 07-31-2007 1198 D 95.00 84-9-2-426434
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122 08-01-2007 1199 D 147.14 40-9-2-911239
123 08-01-2007 1198 D 183.60 40-9-2-839876
124 08-01-2007 1201 D 109.00 40-9-2-900157
125 08-02-2007 1202 D 151.58 65-1-0-115933
126 08-02-2007 1205 D 57.03 65-0-0-109340
127 08-03-2007 1204 D 163.17 87-9-2-081048
128 08-06-2007 1206 D 16.50 65-0-0-654571
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130 08-07-2007 1205 D 58.00 25-1-2-111155
131 08-08-2007 1207 D 109.00 36-9-2-091297
132 08-08-2007 1214 D 1,057.45 61-0-0-145729
133 08-09-2007 1215 D 39.55 65-0-0-783075
134 08-09-2007 1213 D 15.60 65-0-0-783074
135 08-10-2007 1212 D 56.00 30-9-2-394414
136 08-14-2007 1211 D 126.00 09-9-2-21910
137 08-15-2007 1216 D 555.43 72-0-0-251000
138 08-15-2007 1220 D 74.06 33-9-2-013442
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140 08-17-2007 1223 D 42.69 39-9-2-521623
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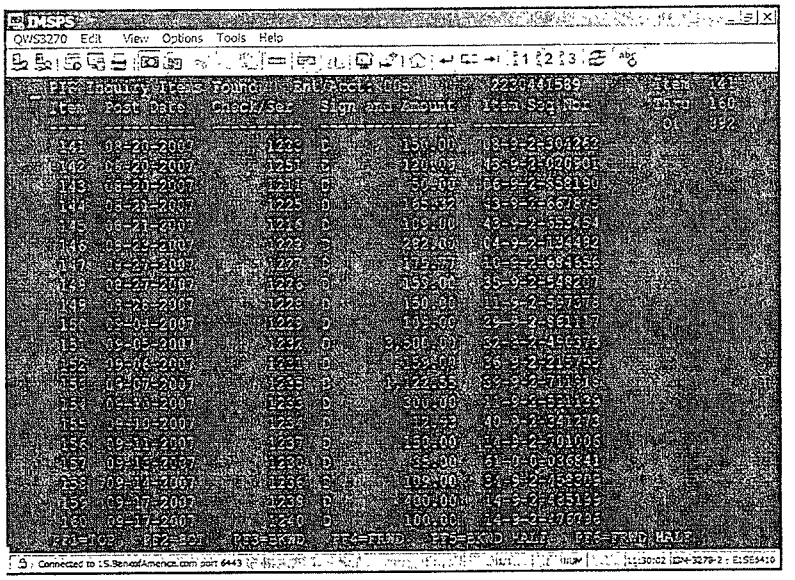
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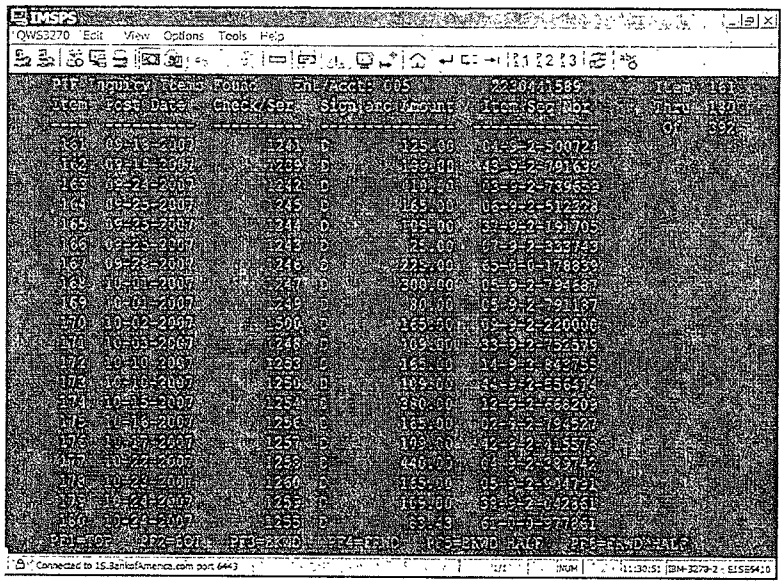
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162 09-21-2007 1239 D 169.00 48-9-2-701698
163 09-21-2007 1242 D 110.00 03-9-2-739553
164 09-25-2007 1245 D 165.00 06-9-2-512228
165 09-25-2007 1247 D 105.00 03-9-2-131705
166 09-25-2007 1243 D 25.00 07-9-2-333743
167 09-28-2007 1246 D 225.00 35-9-0-178830
168 10-01-2007 1237 D 200.00 05-9-2-791887
169 10-01-2007 1249 D 80.00 04-9-2-791167
170 10-02-2007 1500 D 165.00 05-9-2-220008
171 10-03-2007 1248 D 109.00 33-9-2-762575
172 10-10-2007 1250 D 165.00 11-9-2-913755
173 10-10-2007 1252 D 102.00 33-9-2-5541
174 10-15-2007 1254 D 360.00 12-9-2-558209
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177 10-22-2007 1253 D 440.00 04-9-2-987742
178 10-23-2007 1260 D 145.00 05-9-2-91791
179 10-24-2007 1261 D 165.00 33-9-2-702631
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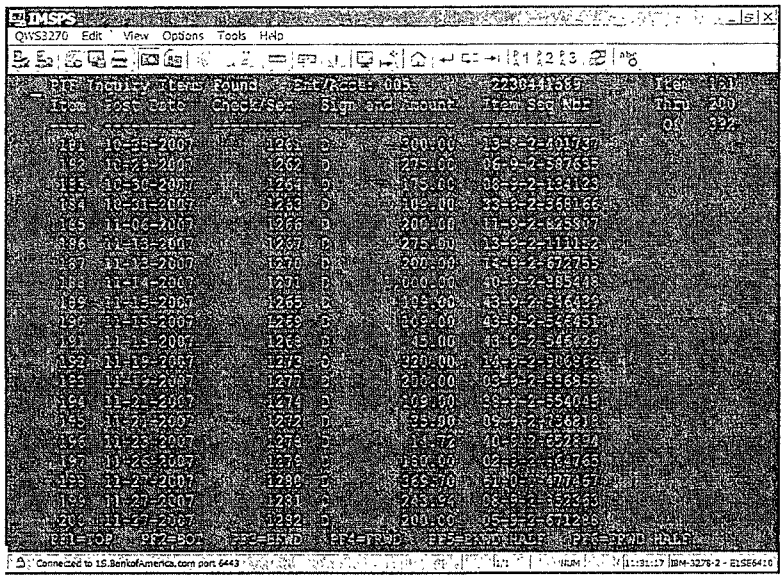
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193 10-30-2007 1264 D 175.00 03-9-2-194128
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195 11-06-2007 1266 D 200.00 11-9-2-125307
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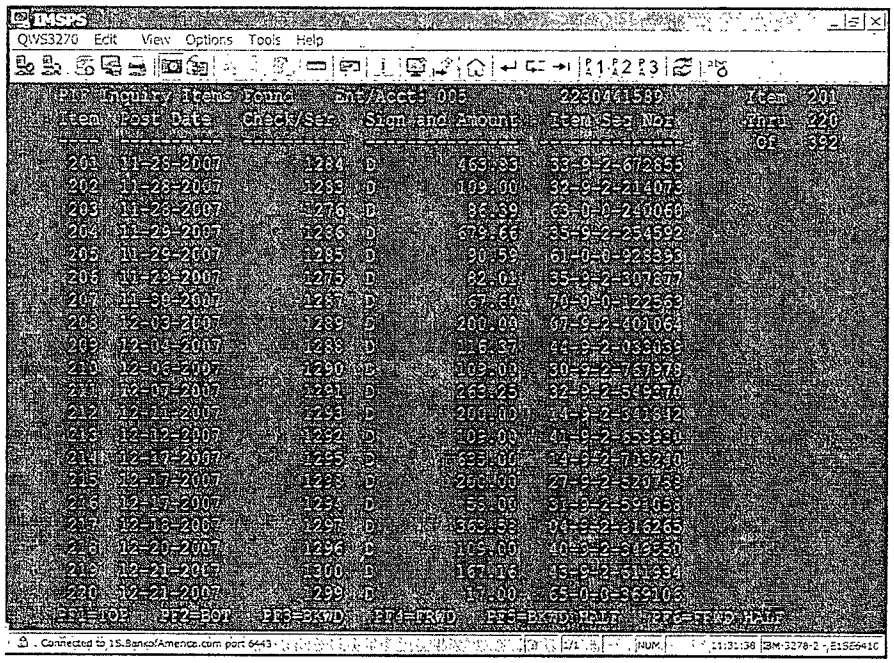
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203 11-26-2007 1276 D 86.39 63-0-0-241060
204 11-29-2007 1286 D 679.66 35-9-2-254592
205 11-29-2007 1285 D 90.59 61-0-0-928393
206 11-29-2007 1275 D 82.01 35-9-2-307877
207 11-30-2007 1287 D 67.60 70-9-0-122563
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209 12-04-2007 1288 D 16.37 44-9-2-033036
210 12-06-2007 1290 D 105.00 30-9-2-757976
211 12-07-2007 1291 D 268.25 32-9-2-519576
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215 12-17-2007 1294 D 200.00 27-9-2-520758
216 12-17-2007 1283 D 55.00 81-9-2-591063
217 12-18-2007 1297 D 368.58 94-9-2-816265
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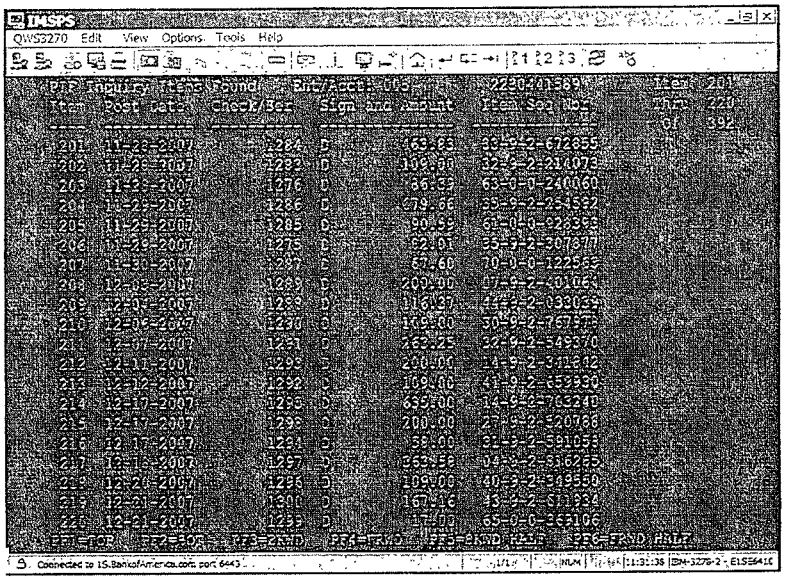
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204 11-23-2007 1286 D 479.06 69-9-2-254587
205 11-25-2007 1285 D 90.89 61-0-0-023333
206 11-23-2007 1275 D 52.01 55-9-2-507877
207 11-30-2007 1287 D 57.60 70-0-0-122555
208 12-03-2007 1288 D 200.00 07-9-2-401063
209 12-03-2007 1289 D 110.87 44-9-2-033055
210 12-06-2007 1290 D 109.00 50-9-2-757575
211 12-07-2007 1291 D 133.25 22-9-2-549370
212 12-10-2007 1295 D 200.00 14-9-2-331342
213 12-12-2007 1292 D 109.00 41-9-2-653530
214 12-17-2007 1293 D 635.00 14-9-2-763240
215 12-17-2007 1296 D 200.00 27-9-2-520766
216 12-17-2007 1294 D 38.00 81-9-2-591055
217 12-18-2007 1297 D 363.58 04-9-2-516765
218 12-20-2007 1298 D 109.00 40-9-2-549550
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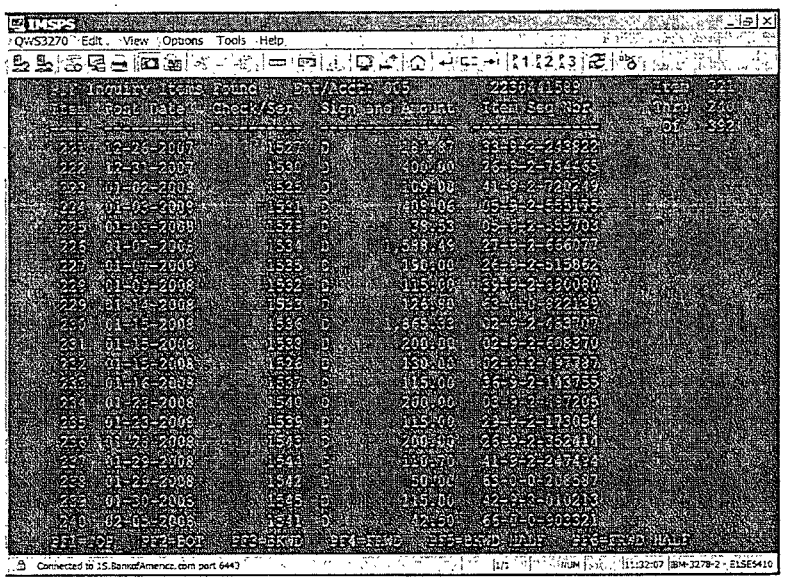
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222 12-31-2007 1530 D 200.00 26-9-2-734435
223 01-02-2008 1521 D 109.00 41-9-2-720212
224 01-03-2008 1531 D 109.00 05-9-2-551125
225 01-03-2008 1523 D 35.33 05-9-2-551703
226 01-07-2008 1534 D 1,548.40 27-9-2-656077
227 01-07-2008 1535 D 150.00 26-9-2-515862
228 01-07-2008 1532 D 115.00 33-9-2-330080
229 01-14-2008 1533 D 126.90 23-0-0-922136
230 01-15-2008 1536 D 1,369.33 02-9-2-463707
231 01-15-2008 1538 D 200.00 02-9-2-608370
232 01-15-2008 1528 D 130.00 02-9-2-497787
233 01-16-2008 1537 D 115.00 33-9-2-113755
234 01-22-2008 1540 D 200.00 03-9-2-197205
235 01-23-2008 1539 D 115.00 23-9-2-173054
236 01-25-2008 1545 D 200.00 26-9-2-552111
237 01-23-2008 1541 D 130.70 41-9-2-247494
238 01-23-2008 1542 D 50.00 63-0-0-216537
239 01-30-2008 1546 D 215.00 42-9-2-110213
240 02-0-2008 1531 D 42.80 66-0-0-503321
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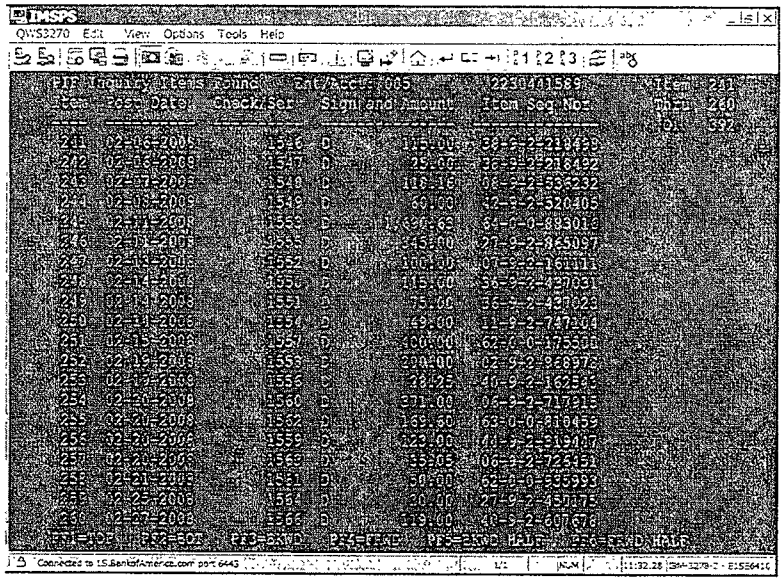
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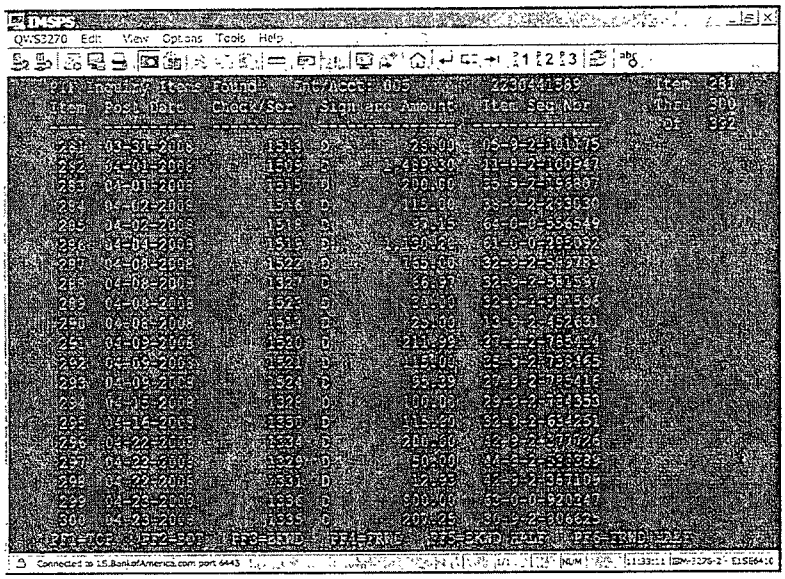

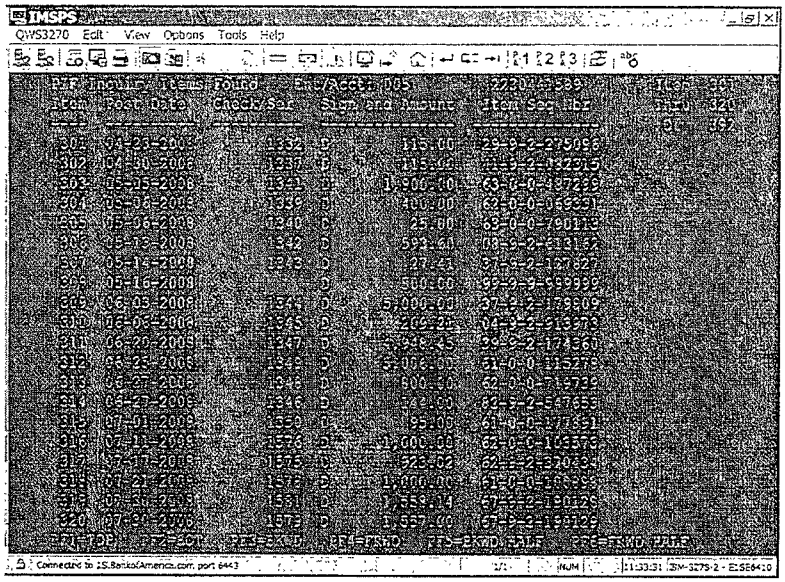
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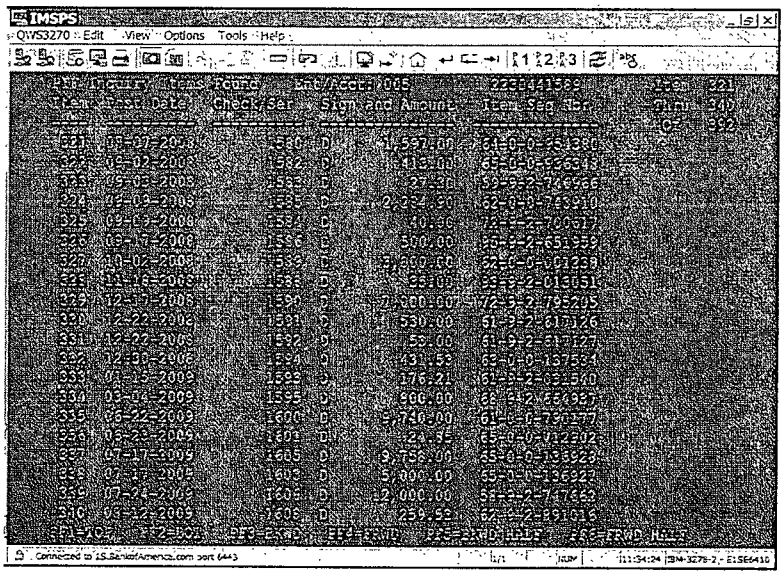
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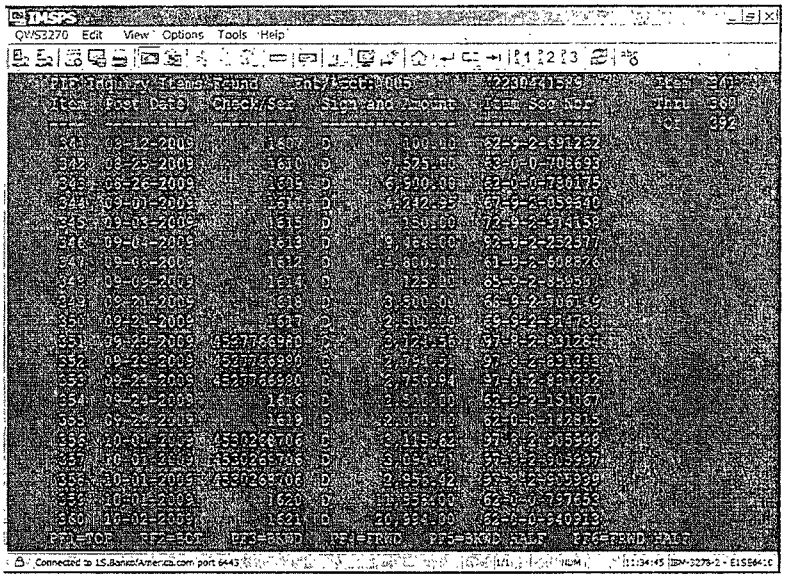
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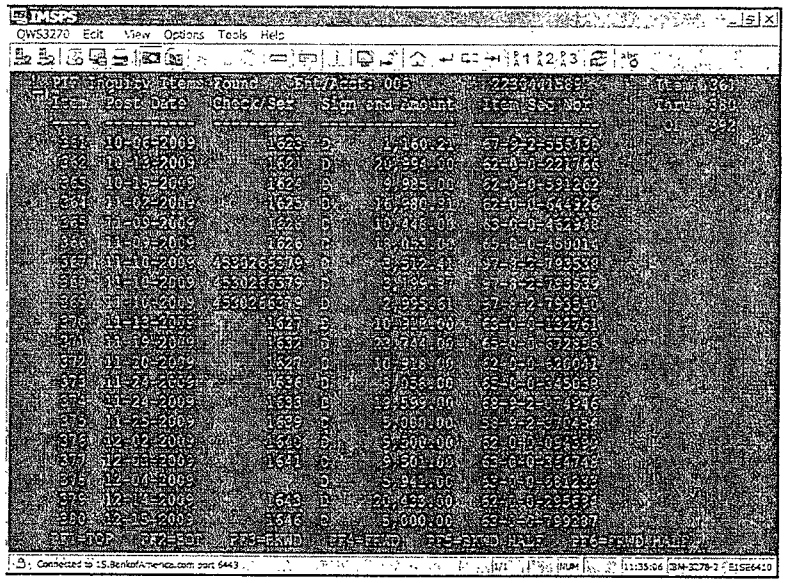
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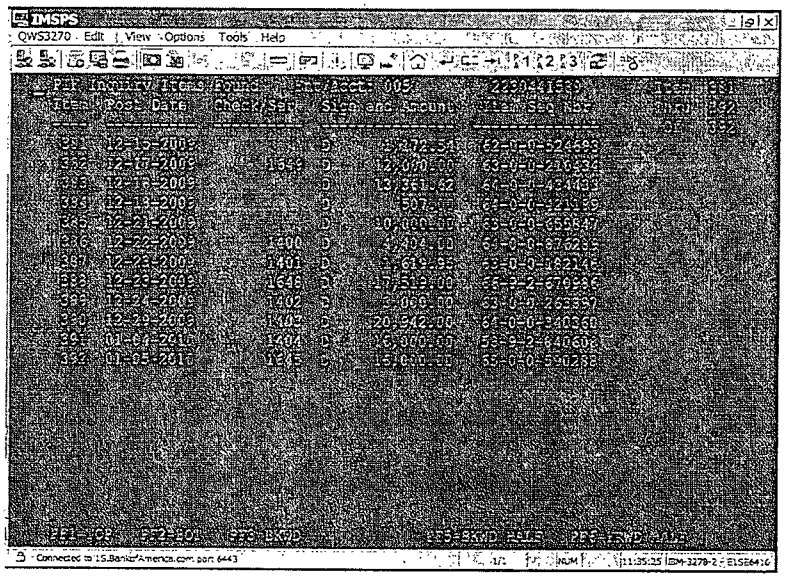
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12-23-2009
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01-04-2010
01-05-2010

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE) IN THE COURT OF COMMON PLEAS

Overland, Inc., d/b/a Land Rover Greenville,

Plaintiff,

vs.

Lara Marie Nance; Charlie Andrew Nance; Roger Fields; Synovus Financial Corporation d/b/a NBSC; Branch Banking and Trust Company; Bank of America Corporation; and SunTrust Banks, Inc.,

Defendants.

C.A. No.: 2010-CP-23-5880

DEFENDANT BANK OF AMERICA CORPORATION'S
RESPONSE TO PLAINTIFF'S FIRST REQUESTS FOR PRODUCTION

Objecting and responding, where appropriate, in accordance with Rules 26 and 34, SCRCP, to Plaintiff's First Requests for Production (the "requests"), Bank of America Corporation ("B of A") respectfully submits as follows.

General Objections

1. B of A objects to any preambulary language, instructions and/or definitions contained in the requests to the extent the language, instructions or definitions attempt to expand B of A's obligation to produce documents beyond that required by the SCRCP.

2. B of A objects to the requests to the extent the requests require the production of documents protected from disclosure by attorney-client, work product or other statutory and common law privileges.

3. B of A objects to furnishing a response to the requests within thirty (30) days. B of

A is allowed additional time for service by mail and as may be agreed among counsel.

4. B of A specifically reserves its rights to object to the relevance, competency, materiality or admissibility of any documents produced in response to any request.

5. B of A objects to the requests to the extent that any seek documents outside the possession, custody or control of B of A.

6. B of A objects to the requests to the extent that any seek documents that are maintained at diverse locations and/or documents that are known by Plaintiff through this litigation and, thus, are obtainable from some other source that is more convenient, less burdensome and less expensive.

7. B of A objects to the requests to the extent that any seek documents the production of which would result in a violation of federal or statutory law.

8. B of A objects to the requests to the extent that any seek information that would violate confidentiality agreements or arrangements, the confidentiality of settlement discussions or agreements or court orders restricting the disclosure of information or that would result in the disclosure of confidential commercial information, trade secrets or proprietary information.

9. B of A objects to any request which is vague or ambiguous, fails to describe the information sought with reasonable particularity to allow for a meaningful response by B of A or contains undefined terms which are material to B of A's understanding of the request.

10. No response provided herein shall be deemed to constitute any agreement or concession that the subject matter thereof is relevant to or admissible in this action, and all responses are provided without waiving or intending to waive any objection as to relevance, privilege or

admissibility.

11. All of the foregoing General Objections are incorporated into and apply to each response below to a specific request. Each response to a specific request is made subject to and without waiving these General Objections, whether or not specifically reiterated in the Responses themselves.

Responses

1. *Copies of all statements given by the Defendant which are in the possession of Defendant or Defendant's attorneys whether written, recorded on a tape recorder, or otherwise, which relate to the matters complained of in Plaintiff's Complaint.*

Response: B of A does not have any discoverable, non-privileged documents that are responsive to this request.

2. *Copies of any and all statements given by either eyewitness(es) or other witness(es) to the incident and matters complained of in the Complaint herein which are in the possession of Defendant or Defendant's attorneys, whether written, recorded on a tape recorder, or otherwise.*

Response: B of A does not have any discoverable, non-privileged documents that are responsive to this request.

3. *Copies of any and all written reports by any experts referred to in Defendant's Answers to Standard Interrogatories.*

Response: B of A has not been served by any party in the above captioned matter with any document titled "Standard Interrogatories". In response to the request for copies of written expert reports, B of A has not yet decided whether to retain any expert witnesses to use at the trial of the case. In the event B of A does retain any experts and expects to call any of them as a witness at trial, B of A will provide the above requested information by way of supplementation hereto as required by Rule 26(e), SCRCP.

4. *Copies of any and all statements, memoranda, reports or other materials which in any way might relate to Defendant's defense(s) herein which are within the possession of Defendant or Defendant's attorneys whether written, recorded on a tape recorder, or otherwise.*

Response: B of A has no "statements" that are responsive to Request No. 4. B of A will produce copies of the discoverable, non-privileged "memoranda, reports or other materials" in its care, custody and control that are responsive to Request No. 4.

5. *Copies of any and all photographs, digital images, plats, diagrams, sketches, videotapes or other prepared documents or materials which Defendant or Defendant's attorneys may have which relate to the matters alleged in Plaintiff's Complaint and may be presented at trial or into evidence, by way of impeachment, or otherwise.*

Response: B of A does not have any photographs, digital images, plats, diagrams, sketches or videotapes which relate to the matters alleged in Plaintiff's Third Amended Complaint (Complaint). B of A will produce copies of the discoverable, non-privileged prepared documents or materials in its care, custody and control that are responsive to Request No. 5 that are related to matters in the Complaint. B of A does not yet know what it may present at trial.

6. *Copies of all policies, protocols, manuals and/or procedures with respect to the creation of or the opening up of customer accounts that were in effect at Bank of America during the relevant periods of this case.*

Response: B of A objects to this interrogatory on the grounds that Plaintiff is not a customer of B of A and no claims have been lodged against B of A by any customer in the above captioned matter. Any policies, protocols, manuals and/or procedures with respect to the creation of or the opening up of customer accounts are not relevant, nor would they lead to any discoverable evidence related to claims against B of A made by a non-customer third party. Such matters are related to the relationship between B of A and its customers, and have no bearing on Plaintiff's claims against B of A.

7. *Copies of each and every document provided to Bank of America by any person(s) in relation to the account(s) listed in your response to Plaintiff's Interrogatory No. 16.*

Response: Subject to the objections set forth in B of A's answer to Interrogatory No. 16, B of A will produce copies of the discoverable, non-privileged documents in its care, custody and control that are responsive to Request No. 7.

8. *Copies of each and every document provided by Bank of America to LMN, CAN, RF or any other person associated with the account(s) listed in your response to Plaintiff's Interrogatory No. 16.*

Response: Subject to the objections set forth in B of A's answer to Interrogatory No. 16, B of A will produce copies of the discoverable, non-privileged documents in its care, custody and control that are responsive to Request No. 8.

9. *Copies of Bank of America's entire file on LMN, CAN, RF, "TEBS", Taylor Enterprises, Atlantic British, Invision Industries, and all the accounts associated with these persons or entities, including, without limitation, the following: reports, memos, financial statements, tax returns, correspondence, internal reviews, financial analysis, SARS reports, audits, corporate resolutions, secretary of state certificates or writings, operating agreements and/or articles of organization, checking and deposit account agreements, signature cards, customer identifications, EIN, SSN, driver's licenses, e-mails. If any of the above-referenced documents exists but not within Bank of America's file, please produce the same, wherever they are located.*

Response: B of A objects to Request No. 9 on the grounds that the word "file" is overbroad and vague. It is not immediately apparent what Plaintiff is seeking through the request for "files" on B of A's customers.

Further responding to Request No. 9, B of A has already provided Plaintiff with copies of the checking and deposit account agreements and signature cards related to the two accounts maintained by LMN with B of A. Plaintiff is also in possession of a copy of LMN's driver's license. As neither of LMN's accounts were opened by a corporation or any type of partnership or limited

liability company, B of A has no corporate resolutions, secretary of state certificates or writings, operating agreements, or articles of organization related to these accounts. Nor does B of A have in its care, custody or control any financial statements, tax returns, correspondence, internal reviews, financial analysis, or audits related to the two accounts maintained by LMN. Furthermore, as set forth in its Answers to Plaintiff's First Set of Interrogatories of even date with these Responses, B of A is prohibited by federal law from furnishing any SARs or any information related to the existence of SARs.

Atlantic British, Ltd. is not a current account holder at B of A, so B of A does not have any discoverable, non-privileged documents that are responsive to this request.

B of A objects to the portion of this request related to Taylor Enterprises, Invision Industries, Inc., or Atlantic British Parts, Ltd. on the grounds of financial privacy. B of A cannot turn over private financial information related to its customers' accounts without prior permission from its customers. If Plaintiff presents B of A with a written statement signed by its customer(s) allowing the dissemination of this information, B of A will supplement its response in accordance with Rule 26(e), SCRCP and provide copies of any of the specific documents (except for SARs or any information related thereto) listed in Request No. 9.

B of A is investigating whether CAN or RF were ever account holders with B of A. Given that these are two rather common names and B of A has a banking footprint that covers the majority of the United States and certain foreign countries, this investigation is taking some additional time. Upon a determination of whether CAN or RF were ever account holders with B of A, B of A shall supplement its response in accordance with Rule 26(e), SCRCP and provide copies of any of the

specific documents (except for SARs or any information related thereto) listed in Request No. 9.

10. *Copies of any and all bank statements and credit card statements associated with or connected with the accounts listed in your response to Plaintiff's Interrogatory No. 16.*

Response: Subject to the objections set forth in B of A's answer to Interrogatory No. 16, B of A will produce copies of the discoverable, non-privileged documents in its care, custody and control that are responsive to Request No. 10, except that B of A is not aware of any credit cards.

11. *Copies of any and all deposit slips, check images, checks deposited, withdrawal receipts, ATM transactions, draw requests or other account transactions or request for transaction that are associated or connected with the accounts listed in your response to Plaintiff's Interrogatory No. 16.*

Response: Subject to the objections set forth in B of A's answer to Interrogatory No. 16, B of A will produce copies of the discoverable, non-privileged documents in its care, custody and control that are responsive to Request No. 11.

12. *Copies of all checks paid and/or transferred on the accounts listed in your response to Plaintiff's Interrogatory No. 16, including the front and back of each check, written or drawn on the account(s) and wiring information if funds were wired from the account(s).*

Response: Subject to the objections set forth in B of A's answer to Interrogatory No. 16, to the extent not already produced in response to Request No. 11, B of A will produce copies of the discoverable, non-privileged documents in its care, custody and control that are responsive to Request No. 12.

13. *An account history of all the accounts listed in your response to Plaintiff's Interrogatory No. 16, by date, showing the initial funding of the account, all deposits during the existence of the accounts, debits on the accounts, debit information including the payee names and account information where the funds were deposited and form of disbursement, withdrawal information including the form of disbursement such as cash, check or wire, as well as any other account information.*

Response: B of A objects to this request on the grounds that B of A is not required under

the SCRCP to create documents that are not already in its care, custody and control. To the extent any of the requested documentation is not already in the care, custody and control of B of A, B of A objects to any attempt on the part of Plaintiff to force it to create or generate any of the documentation sought through Request No. 13. Subject to the objections set forth in B of A's answer to Interrogatory No. 16, if an account history with the requested information exists, B of A will furnish a copy of it in response to Request No. 13.

14. *Copies of all correspondence, whether electronically or otherwise, including attachments thereto, between Bank of America and any other parties to this action that may relate in any way to the subjects of this action.*

Response: B of A will produce copies of the discoverable, non-privileged documents in its care, custody and control that are responsive to Request No. 14 (misnumbered as Request No. 13).

15. *A complete copy of the most current curriculum vitae of each expert witness identified by the Plaintiff in response to Interrogatories propounded by this Defendant.*

Response: B of A does not have a copy of any curriculum vitae of any expert hired by Plaintiff. To the extent this request is seeking a curriculum vitae for any expert employed by B of A to testify at trial, B of A has not yet decided whether to retain any expert witnesses to use at the trial of the case. In the event B of A does retain any experts and expects to call any of them as a witness at trial, B of A will provide the above requested information by way of supplementation hereto as required by Rule 26(e), SCRCP.

16. *Any and all data and other information considered by any expert identified by the Plaintiff in response to Interrogatories propounded by this Defendant in connection with any opinion(s) formed, or in summary or support of any opinion(s) formed, by such expert(s).*

Response: See response to Request No. 15 (misnumbered as Request No. 14).

17. *Any and all exhibits to be used as a summary of or in support of the opinion(s) of any*

expert(s) identified by Plaintiff in response to Interrogatories propounded by this Defendant.

Response: See response to Request No. 15 (misnumbered as Request No. 14).

18. *Copies of any and all treatises, texts or other authorities upon which each expert identified by the Plaintiff in response to Interrogatories propounded by this Defendant relies in whole or in part in forming or supporting any opinion to be expressed in this case.*

Response: See response to Request No. 15 (misnumbered as Request No. 14).

19. *Any and all documents identified in response to Interrogatories propounded by this Defendant.*

Response: B of A's response to Request No. 19 (misnumbered as 18) is based upon the assumption that in Request No. 19, Plaintiff is referring to the interrogatories served by it upon B of A. If this assumption is correct, B of A will produce copies of the discoverable, non-privileged documents in its care, custody and control that are responsive to Request No. 19 (misnumbered as 18). If the assumption is incorrect, upon clarification from Plaintiff as to exactly what documents are being sought through the request, B of A will supplement its response in accordance with Rule 26(e), SCRCP.

20. *Any and all statements taken from any witnesses in this case.*

Response: Other than the transcripts of depositions already taken in this matter and in the possession of Plaintiff, B of A has no discoverable, non-privileged documents in its care, custody and control that are responsive to Request No. 20 (misnumbered as Request No. 19).

21. *All policies, manuals, desk references, memos, procedures or writings associated with the administration and handling of the types of accounts similar to or actually used by LMN, CAN or RF.*

Response: B of A objects to this request on the grounds that Plaintiff is not a customer of B of A and no claims have been lodged against B of A by any customer in the above captioned

matter related to B of A's administration and handling of an account. To the extent such policies, manuals, desk references, memos, procedures or writings may be or are used by B of A in the administration and handling of accounts, these documents are not relevant, nor would they lead to any admissible evidence related to claims against B of A made by a non-customer third party. Plaintiff did not have an account with B of A, so it would have no ability to rely on or attempt to enforce B of A's policies, manuals, desk references, memos, procedures or writings concerning the administration and handling of an account. Those policies, manuals, desk references, memos, procedures or writings that are in existence and utilized by B of A are for the benefit and protection of B of A, its regulators and its customers, not third parties, and as a result, have no bearing on the claims of Plaintiff in the above referenced matter.

22. *Copies of any documents used in formulating your response to Plaintiff's Interrogatory Nos. 20, 21, 27 and/or 30.*

Response: Subject to the objections set forth in B of A's answers to Interrogatory Nos. 20, 21, 27 and 30, and to the extent not already produced in response to Request No. 19, B of A will produce copies of the discoverable, non-privileged documents in its care, custody and control that are responsive to Request No. 22 (misnumbered as Request No. 21).

Date: 2/28/19

DRISCOLL SHEEDY, P.A.

By: _____

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ATTORNEYS FOR B OF A

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE) IN THE COURT OF COMMON PLEAS

Overland, Inc., d/b/a Land Rover Greenville,)
)
Plaintiff,)
)
vs.)
)
Lara Marie Nance; Charlie Andrew Nance;)
Roger Fields; ADP Dealer Services Group;)
Piedmont Automotive of Anderson, Inc.,)
d/b/a Piedmont Chrysler Jeep Dodge;)
Piedmont Automotive of Anderson South)
Carolina, LLC d/b/a Apex Automotive;)
Synovus Financial Corporation d/b/a NBSC;)
Branch Banking and Trust Company; Bank)
of America Corporation; and Suntrust)
Banks, Inc.,)
)
Defendants.)

CERTIFICATE OF SERVICE

C.A. No.: 2010-CP-23-5880

I certify that copies of Bank of America's Answers to Plaintiff's First Set of Interrogatories and Response to Plaintiff's First Requests for Production have been served on the following at the addresses shown below, via First Class, U.S. Mail, postage-paid on the date set forth below.

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Date: 3/3/14

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ATTORNEYS FOR B OF A

STATE OF SOUTH CAROLINA) COUNTY OF GREENVILLE)	IN THE COURT OF COMMON PLEAS	
Overland, Inc., d/b/a Land Rover Greenville,)) Plaintiff,)) vs.))		C.A. No.: 2010-CP-23-5880
Lara Marie Nance; Charlie Andrew Nance;) Roger Fields; Synovus Financial) Corporation d/b/a NBSC;) Branch Banking and Trust Company; Bank) of America Corporation; and Suntrust) Banks, Inc.,)) Defendants.)		

BANK OF AMERICA'S BRIEF IN SUPPORT OF ITS RULE 12(C) MOTION ON STATUTORY CONVERSION CLAIM AGAINST IT

In support of its Motion for Judgment on the Pleadings as to Eighteenth Cause of Action against Bank of America (B of A), Bank respectfully submits the following.[1]

I. Standard for Judgment on the Pleadings

"A judgment on the pleadings shall be granted 'where there is no issue of fact raised by the complaint that would entitle the plaintiff to judgment if resolved in plaintiff's favor.'" *Home Builders Ass'n of South Carolina v. School District No. 2 of Dorchester County*, 2013 WL 4835458, *1 (S.C. 2013) (citations omitted.). "All properly pleaded factual allegations are deemed admitted . . . " *Russell v. City of Columbia*, 305 S.C. 86, 89, 406 S.E.2d. 338, 339 (1991) (citations omitted.).

[1] Unless otherwise defined herein, all capitalized terms shall have the meanings ascribed to them in the Rule 12(c) Motion and the Answer of B of A to Third Amended Complaint.

"[A]ny inference of law or conclusions of fact that may properly arise therefrom are to be regarded as embraced in the averment." *Id.* Based on this law, a claim is to be dismissed under Rule 12(c), SCRCP, when a plaintiff is not legally entitled to the requested relief, notwithstanding all factual allegations, inferences and conclusions therefrom.

II. Plaintiff's Factual Allegations

"This action arises ... on or about July 2007 ... until in or around February 2010 ..." (Third Amended Complaint, p.4, ¶ 14.) Plaintiff "maintained business accounts at NBSC and BB&T for its dealership." (*Id.*, p.9, ¶ 33.) The employee of Plaintiff "embezzled ... from [Plaintiff's] NBSC and BB&T accounts between July 2007 and January 2010 by writing ... [checks with forged drawer endorsements]." (*Id.*, p.9, ¶ 37.) The embezzler "opened and maintain[ed] several business checking accounts at BOA ..." (*Id.*, pp. 9-10, ¶ 39.) The embezzler "would then forge the signature of [Plaintiff] on the front of the check, and then forge the indorsement of the unintended payee ... on the reverse side of the check." (*Id.*, p. 10, ¶ 41.) "The unauthorized checks were drawn on [Plaintiff's] bank accounts at NBSC. The [embezzler] then deposited the funds into her bank accounts at BOA ..." (*Id.*, p. 10, ¶ 42; p. 33, ¶ 137; p. 37, ¶¶ 166-168; p. 38, ¶¶ 173-174; p. 39, ¶ 179.) These allegations are incorporated by reference into the Eighteenth Cause of Action. (*Id.*, p. 38, ¶ 172).

B of A is in this case exclusively because it was a depository institution where the embezzler deposited some of her forged checks drawn on the accounts of Plaintiff at NBSC and BB&T. That is incontrovertible from the factual allegations, inferences and conclusions therefrom in the Third Amended Complaint. There is not even a scintilla in the Third Amended Complaint to suggest

Plaintiff ever had an account at B of A on which forged checks were drawn. Nor could there be such a suggestion made in an amended pleading. Plaintiff did not have an account at B of A between July 2007 and February 2010. Plaintiff cannot escape this fundamental truism. This one undisputed fact is dispositive of Plaintiff's statutory conversion claim against B of A.[2]

III. No Statutory Conversion against a Depository Bank

"An action for conversion of an instrument may not be brought by (i) the issuer . . . of the instrument . . . " S.C. Code Ann. § 36-3-420(a)(i) (2008). "Issuer" is defined as "a maker or drawer of an instrument." S.C. Code Ann. § 36-3-105(c)(2008). "'Drawer' is a person who signs or is identified in a draft as a person ordering payment." S.C. Code Ann. § 36-3-103(a)(5)(2008).[3] The embezzler did not sign her own name to the forged checks. (Third Amended Complaint, p. 9, ¶ 37). The embezzler forged the signatures of authorized account holders. (*Id.*) The forgeries were drawn on the accounts of Plaintiff. (*Id.*, p. 10, ¶ 42) Thus, the drawer here was Plaintiff through the forged signatures of its authorized account signatories, most notably "JF", Jack Frasier. (Third Amended Complaint, p. 9, ¶ 37; p. 10, ¶ 41).

"There is no reason why a drawer should have an action in conversion. The check represents

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[2] For purposes of statutory conversion, it does not matter whether the embezzler deposited $1 or $1 million in forgeries, so long as B of A was only a depository. The embezzler is not the drawer; if she were, then the forged checks would be authorized. It also does not matter when the deposits were made or whether other portions of this case are in discovery because, regardless, a drawee has a claim against its own bank, the drawer, and not against the depository. This is not a case where the plaintiff is a payee with claims against the drawee and depository. This is a case where Plaintiff has a contract with its own bank, the drawer. Time will not change any of this, including that B of A was exclusively a depository.

[3] *See Borg v. Chase Manhattan Bank USA*, N.A., 247 Fed. Appx. 627 (6th Cir. 2007) (person ordering payment is drawer even if she did not authorize payment); Old *Republic Nat. Title Ins. Co. v. Bank of East Asia, Ltd.*, 291 F. Supp. 2d 60 (D. Conn. 2003) ("the drawer - the person on whose account the check is drawn"); *Simmons v. Lennon*, 139 Md. App. 15, 28-29, 773 A.2d 1064, 1072-73 (2001).

an obligation of the drawer rather than property of the drawer. The drawer has an adequate remedy against the payor bank for recredit of the drawer's account for unauthorized payment of the check." Official Comment 1, *Id.* "[U]nder Subsection (a)(i) the issuer or acceptor of an instrument may not maintain an action for conversion. In practical terms, this means that the drawer of a check cannot recover from a depositary bank for conversion." South Carolina Reporter's Comment, ¶2, *Id.*[4] *See Read v. South Carolina Nat. Bank*, 286 S.C. 534, 542, 335 S.E.2d 359, 363 (1985) ("As to the checks which contained forged drawer's signatures there can be no cause of action for conversion. Payment by a bank of checks bearing forged signatures constitutes a breach of its agreement with its customer.")

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[4] The Comments are in line with the case law from other jurisdictions. *See Guardian Life Ins. Co. of America v. Weisman*, 223 F.3d 229, 238 (3rd Cir. 2000) (UCC § 3-420 "expressly disavows that a conversion action is available to drawers."); *Conder v. Union Planters Bank, N.A.*, 384 F.3d 397 (7th Cir. 2004) (No suit by drawer under the 1990 revised Code because they have adequate remedy by way of suit against their own banks.); *Old Republic Nat. Title Ins. Co.*, 291 F. Supp. 2d at 67 ("[I]t is the general rule in New York that, except [where a drawee bank has acted properly and the depository bank acted wrongfully], a drawer cannot maintain a direct cause of action under the Code against a depository bank for conversion or negligence."); *Koss Corp. v. American Exp. Co.*, 2013 WL 4601994 (Ariz. App. Div. 1 2013) ("The current version of U.C.C. § 3-420(a) adopts the prohibition of *Stone & Webster Engineering Corp. v. First National Bank & Trust Co.*, 345 Mass. 1, 184 N.E.2d 358, 361 (1962) (holding that drawer had no cause of action against collection bank that cashed stolen check, since only the payee or subsequent holder, not the drawer, could present the check to the drawee for payment."); *300 Broadway Healthcare Center, L.L.C. v. Wachovia Bank, N.A.*, 425 N.J. Super. 33, 38, 39 A.3d 248 (2012) ("[T]he issuer of a check may not assert a conversion claim for unauthorized payment of a check, including a conversion claim based on an unauthorized payment made on a forged maker's signature. The issuer's remedy is to have the payor bank recredit its account for any such payment."); *Young Soon Kim v. TD Ameritrade, Inc.*, 77 U.C.C. Rep. Serv. 2d 704 (N.D.Ill. 2012) (issuers cannot bring a conversion action); *Federal Ins. Co. v. Citizens Bank*, 2012 WL 1565238 (D.R.I. 2012) (drawers may not bring conversion action against depositary bank); *State, Div. of Admin., Office of Risk Management v. Chennel Lite Clark*, 67 U.C.C. Rep. Serv. 2d 727 (La. Ct. App. 1st Cir. 2008) (drawer of forged checks has no standing against bank under 3-420); *Mid-Continent Specialists, Inc. v. Capital Homes, L.C.*, 279 Kan. 178, 106 P.3d 483 (2005) (holding that the UCC precludes a maker of a check from bringing an action for conversion where maker's employee issued check as part of a scheme to embezzle the drawer's funds); *Halifax Corp. v. Wachovia Bank*, 268 Va. 641, 604 S.E.2d 403 (2004) (Maker of a check precluded from asserting a conversion claim against bank where check had forged maker's signature.); *Crick v. HSBC Bank USA*, 3 Misc. 3d 1032, 1035, 775 N.Y.S. 2d 497, 500 (2004) ("the drawer of a check cannot sue a depositary bank when the check is paid by the drawee/payor bank even though the check is not properly payable, as in the case of a check containing a forged indorsement"); *Simmons v. Lennon*, 139 Md. App. 15, 773 A.2d 1064, 1072 (2001) (concluding that under the UCC, a maker of a check may not maintain an action for conversion against payee of the check when maker's signature was forged.); White, Summers & Hillman, Uniform Commercial Code § 19:5 (6th ed.) (October 2013) (Drawer does not have an action in conversion.).

S.C. Code Ann. § 36-3-420(a)(i)(2008) does not prohibit an action for conversion of an instrument by the payee thereof. "Although South Carolina courts allowed payees to maintain conversion actions against depositary banks, see *Peoples Life Ins. Co. v. Community Bank*, 278 S.C. 70, 292 S.E.2d 188 (1982), the former statute [3-419] did not expressly grant that right. Under Subsection (a) [of 3-420], both a drawee-payor bank and a depositary bank can be statutorily liable for conversion of a check bearing a forged indorsement." South Carolina Reporter's Comment, ¶1.[5] Here, the payees on the forged checks are not suing B of A. Plaintiff as the drawer or issuer of the checks is suing B of A as depository. UCC 3-420 prevents specifically this type of suit. Drawers have no right of action against depositary banks for checks with forged drawer's signatures.

UCC 3-420 did not change the prior law, UCC 3-419, with respect to whether a drawer may sue the depository for conversion. The South Carolina Reporter's Comments to UCC 3-419 provided, "Section 3-419(1)(c) codifies the common law rule as expressed in the leading South Carolina case of *Charleston Paint Company v. Exchange Banking and Trust Company*, 129 S.C. 290, 123 S.E. 830 (1924), that where a drawee bank pays a check bearing a forged indorsement, the holder whose indorsement was forged may recover the face amount of the check in conversion as the owner." The Comments to UCC 3-420 confirm that the prior law, UCC 3-420, was not changed. UCC 3-420 clarified the existing law in South Carolina that a drawee only has a claim against its own bank, the drawer. South Carolina Reporter's Comment, ¶ 2. The drawer's claim against its bank (the drawee-payor bank) for forged issuer or maker signature is under UCC 4-401(a). "An item containing a forged drawer's signature or forged indorsement is not properly payable." Official

[5] *300 Broadway Healthcare*, 425 N.J. Super. at 40, 39 A.3d at 252, *citing Leeds v. Chase Manhattan Bank, N.A.*, 331 N.J. Super. 416, 752 A.2d 332 (App. Div. 2000).

Comment 1. Instruments with a forged drawer's signature are not properly payable under UCC 4-401(a). South Carolina Reporter's Comment, ¶ 2. *See Read*, 286 S.C. 534, 335 S.E.2d 359.[6]

IV. Conclusion

The law is clear that Plaintiff as issuer or drawer of the checks forged by the embezzler has no statutory conversion claim against B of A, the depository of some of the forged checks. Plaintiff is not legally entitled to the requested relief under UCC 3-420 or 3-419, notwithstanding all factual allegations, inferences and conclusions therefrom. B of A is only seeking dismissal as to one of the causes of action against it.

WHEREFORE, for the foregoing reason, B of A asks that the Motion be granted.

Charlotte, NC

Date: 10/21/13

DRISCOLL SHEEDY, P.A.

By: _____

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ATTORNEYS FOR B OF A

[6] *See General Sewer Service of Richmond County, Inc. v. SI Bank & Trust*, 21 Misc.3d 1111(A), 873 N.Y.S. 2d 511 (N.Y. Supp. 2008) ("A check with a forged signature is not properly payable and generally cannot be charged to the customer's account."); *Mount Vernon Properties, LLC v. Branch Banking and Trust Co.*, 170 Md. App. 457, 907 A.2d 373 (Md. App. 2006) ("An item containing a forged drawer's signature . . . is not properly payable."); James J. White & Robert S. Summers, *Uniform Commercial Code* § 18–3 (4th ed.1995) (a check containing a forged endorsement is not "properly payable" under U.C.C. § 4–401, and the drawer has a right to reimbursement from its bank for payment of a check bearing a forged endorsement.).

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE) IN THE COURT OF COMMON PLEAS

Overland, Inc., d/b/a Land Rover Greenville,

Plaintiff,

vs.

Lara Marie Nance; Charlie Andrew Nance; Roger Fields; ADP Dealer Services Group; Piedmont Automotive of Anderson South Carolina, LLC d/b/a Apex Automotive; Synovus Financial Corporation d/b/a NBSC; Branch Banking and Trust Company; Bank of America Corporation; and Suntrust Banks, Inc.,

Defendants.

C.A. No.: 2010-CP-23-5880

NOTICE OF AND MOTION FOR JUDGMENT ON THE PLEADINGS AS TO NINETEENTH CAUSE OF ACTION AGAINST BANK OF AMERICA

To: Plaintiff and its counsel, James W. Fayssoux, Jr. and T. Hunter Reid

PLEASE TAKE NOTICE that pursuant to Rule 12(c), SCRCP, defendant Bank of America Corporation (B of A), through its undersigned counsel, hereby moves, at such time and place as is convenient to the Court and counsel, for entry of an order dismissing with prejudice the Nineteenth Cause of Action to the extent this Cause of Action is against B of A.[1]

Plaintiff did not have an account at B of A between July 2007 and February 2010 when the alleged embezzlement by its employee occurred. (Third Amended Complaint, p.4, ¶ 14). B of A

[1] To the extent the Nineteenth Cause of Action is against defendant Suntrust Banks, Inc., B of A is obviously not seeking dismissal of the Cause of Action on behalf of Suntrust.

is sued in this action because the convicted embezzler defendant Nance had accounts at B of A into which she deposited checks that she forged on the accounts of Plaintiff. (*Id.*, p.4, ¶ 15c.). B of A is not a drawee for Plaintiff; B of A is a depository for Nance. B of A and Nance had a contract for banking services. No contract for banking services exists or has ever existed between B of A and Plaintiff for the period July 2007 to February 2010. This is indisputable from the factual allegations, interferences and conclusions therefrom in the Third Amended Complaint.

The Nineteenth Cause of Action against B of A is for an alleged violation of UCC § 1-203. Plaintiff alleges B of A "breached its obligations of good faith." (*Id.*, pp. 39-40, ¶ 180). The implied covenant of good faith may arise from a contract between parties. *Time Warner Cable v. Condo Services, Inc.*, 381 S.C. 275, 285, 672 S.E.2d 816, 820-821 (Ct. App. 2009), *citing to Maccaro v. Andrick Dev. Corp.*, 280 S.C. 96, 100, 311 S.E.2d 91, 94 (Ct. App.1984). Plaintiff and B of A had no contract between them. Contrary to the allegations of the Nineteenth Cause of Action, B of A did not owe Plaintiff any duty as to payee indorsements on deposits into or withdrawals from Nance's accounts at B of A. (*Id.*, p.39, ¶¶ 179-180). Consequently, there was no obligation on the part of B of A to Plaintiff for B of A to breach.

Because it is indisputable that B of A had no contract with Plaintiff nor did B of A owe any duty to Plaintiff, the Nineteenth Cause of Action against B of A under UCC § 1-203 should be dismissed

WHEREFORE, for the foregoing reason, the Motion should be granted.

Charlotte, NC

Date: 10/30/13

DRISCOLL SHEEDY, P.A.

By: _____

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ATTORNEYS FOR B OF A

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	)	IN THE COURT OF COMMON PLEAS
Overland, Inc. d/b/a Land Rover Greenville, Plaintiff, vs. Lara Marie Nance, Charlie Andrew Nance Roger Fields, ADP Dealer Services Group, Piedmont Automotive of Anderson, Inc. d/b/a Piedmont Chrysler Jeep Dodge, Piedmont Automotive of Anderson South Carolina, LLC d/b/a Apex Automotive, Synovus Financial Corporation d/b/a NBSC, Branch Banking and Trust Company, Bank of America Corporation, and SunTrust Banks, Inc., Defendants.	)	**NOTICE OF AND MOTION FOR JUDGMENT ON THE PLEADINGS AS TO THE EIGHTEENTH AND NINETEENTH CAUSES OF ACTION AGAINST DEFENDANT SUNTRUST BANKS, INC.** **C.A. No.: 2010-CP-23-5880** (JURY TRIAL DEMANDED)

TO: JAMES W. FAYSSOUX, ESQ. AND T. HUNTER REID, ESQ.

PLEASE TAKE NOTICE that Defendant SunTrust Banks, Inc., ("SunTrust"), by and through its undersigned counsel, will move will move before the Resident or Presiding Judge of the Greenville County Court of Common Pleas, for an order, pursuant to Rule 12(c), South Carolina Rules of Civil Procedure, dismissing with prejudice the Eighteenth (Conversion) and Nineteenth (Violation of UCC § 1-203) Causes of Action to the extent these Causes of Action are against SunTrust.

SunTrust and co-Defendant Bank of America ("B of A") are similarly situated in this case. Plaintiff did not have an account at SunTrust or B of A between July 2007 and February 2010 when the alleged embezzlement by its employee, Nance, occurred. (Third A. Compl. at 4, ¶14). Additionally, Plaintiff brought this action against both SunTrust and B of A because Nance had accounts at SunTrust and B of A into which she deposited checks that she forged on

Plaintiff's accounts (Id. at 4, ¶15(c)). Both SunTrust and B of A were not drawees, but rather were depository banks in the instant matter. Lastly, Plaintiff has asserted identical causes of action against SunTrust and B of A.

With regard to the Eighteenth Cause of Action, this Court already granted Defendant B of A's Motion for Judgment on the Pleadings pursuant to Rule 12(c). (Or. entered Oct. 22, 2013). B of A's Motion specifically states that an issuer, drawer or maker – Plaintiff in the instant matter – has no ability to bring an action for conversion. S.C. Code Ann. § 36-3-420(a)(1) (2008) ("An action for conversion of an instrument may not be brought by (i) the issuer . . . of the instrument . . ."). Based on the foregoing, Defendant SunTrust's Motion for Judgment on the Pleadings as to the Eighteenth Cause of Action should be granted and the Eighteenth Cause of Action against SunTrust should also be dismissed.

With regard to the Nineteenth Cause of Action, SunTrust joins B of A's Motion for Judgment on the Pleadings as to Nineteenth Cause of Action, previously filed with the Court. Like B of A, no contract for banking services exists or has ever existed between SunTrust and Plaintiff for the period of July 2007 to February 2010. Therefore, as stated in B of A's Motion, because there was no contract between Plaintiff and SunTrust, there were no "obligations of good faith" that SunTrust could have breached and, contrary to the allegations of the Third Amended Complaint, SunTrust did not owe Plaintiff any duty as to payee indorsements on deposits into or withdrawals from Nance's account at SunTrust. Therefore, because SunTrust had no contract with or owe any duties to Plaintiff, the Nineteenth Cause of Action against SunTrust under UCC § 1-203 should be dismissed.

SunTrust respectfully requests this motion be heard at the hearing on Defendant Bank of America's Motion for Judgment on the Pleadings as to Nineteenth Cause of Action, scheduled for December 20, 2013.

WHEREFORE, based on the foregoing reasons, Defendant SunTrust's Motion for Judgment on the Pleadings as to the Eighteenth and Nineteenth Causes of Action should be granted.

GALLIVAN, WHITE & BOYD, P.A.

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Greenville, SC

December 10, 2013

Attorneys for Defendant, SunTrust Banks, Inc.

STATE OF SOUTH CAROLINA) COUNTY OF GREENVILLE)		IN THE COURT OF COMMON PLEAS
Overland, Inc., d/b/a Land Rover Greenville, Plaintiff, vs. Lara Marie Nance; Charlie Andrew Nance; Roger Fields; Synovus Financial Corporation d/b/a NBSC; Branch Banking and Trust Company; Bank of America Corporation; and Suntrust Banks, Inc., Defendants.		C.A. No.: 2010-CP-23-5880

BANK OF AMERICA'S BRIEF IN SUPPORT OF ITS RULE 12(C) MOTION AS TO THE NINETEENTH CAUSE OF ACTION AGAINST IT

In support of its Motion for Judgment on the Pleadings as to Nineteenth Cause of Action against Bank of America (B of A), Bank respectfully submits the following.[1]

I. Standard for Judgment on the Pleadings

"A judgment on the pleadings shall be granted 'where there is no issue of fact raised by the complaint that would entitle the plaintiff to judgment if resolved in plaintiff's favor.'" *Home Builders Ass'n of South Carolina v. School District No. 2 of Dorchester County*, 2013 WL 4835458, *1 (S.C. 2013) (citations omitted.). "All properly pleaded factual allegations are deemed admitted . . . " *Russell v. City of Columbia*, 305 S.C. 86, 89, 406 S.E.2d. 338, 339 (1991) (citations omitted.).

[1] Unless otherwise defined herein, all capitalized terms shall have the meanings ascribed to them in this Rule 12(c) Motion and the Answer of B of A to Third Amended Complaint.

"[A]ny inference of law or conclusions of fact that may properly arise therefrom are to be regarded as embraced in the averment." *Id.* Based on this law, a claim is to be dismissed under Rule 12(c), SCRCP, when a plaintiff is not legally entitled to the requested relief, notwithstanding all factual allegations, inferences and conclusions therefrom.

II. Plaintiff's Factual Allegations

"This action arises . . . on or about July 2007 . . . until in or around February 2010 . . . " (Third Amended Complaint, p.4, ¶ 14.) Plaintiff "maintained business accounts at NBSC and BB&T for its dealership." (*Id.*, p.9, ¶ 33.) Plaintiff did not have an account at B of A during this period. The embezzling employee of Plaintiff deposited the funds into "personal and business accounts . . . established at local bank branches of . . . BOA . . . using either her name, a legitimate company name to which she was not authorized to use, or a fictitious company name, all under her control." (*Id.*, p.4, ¶15(c).) None of the accounts were opened in the name of Plaintiff.

B of A is in this civil case exclusively because it was a depository institution where the embezzler Nance deposited some of her forged checks drawn on the accounts of Plaintiff at NBSC and BB&T. That is incontrovertible from the factual allegations, inferences and conclusions therefrom in the Third Amended Complaint. There is not even a scintilla in the Third Amended Complaint to suggest Plaintiff ever had an account at B of A on which forged checks were drawn. Plaintiff had no banking relationship with B of A between July 2007 and February 2010. Nor could there be such a suggestion made in an amended pleading. Plaintiff has to attach itself to the embezzler Nance and claim through her activities at B of A in order to have ever had any nexus with B of A between July 2007 and February 2010.

III. No Breach of Duty of Good Faith

Plaintiff's Nineteenth Cause of Action against B of A is for the alleged breach of good faith under UCC § 1-203. There is nothing set forth in the Third Amended Complaint that, even if resolved in favor of Plaintiff, would entitle Plaintiff to a judgment against B of A on the Nineteenth Cause of Action.

a. No Contract between Plaintiff and B of A

A duty of good faith may arise from a contractual relationship between parties. *See Time Warner Cable v. Condo Services, Inc.*, 381 S.C. 275, 285, 672 S.E.2d 816, 820 (Ct. App. 2009), *citing Parker v. Byrd*, 309 S.C. 189, 193-94, 420 S.E.2d 850, 853 (1992) ("There exists in every contract an implied covenant of good faith and fair dealing."); *Butler Contracting, Inc. v. Court Street, LLC*, 369 S.C. 121, 631 S.E.2d 252 (2006).

There was no contractual relationship between B of A and Plaintiff. Plaintiff did not have an account at B of A, so there was no account agreement or other contract for banking services. Plaintiff is not asserting the embezzler Nance was acting as an agent for Plaintiff at B of A, in which event she would be cloaked with authority to have done what she did. Because there was no contract, there can be no contactually-based implied duty of good faith and fair dealing. Absent any contract and therefore any implied duty arising thereunder, there can be no basis for a claim of breach of contract. Plaintiff does not set forth any allegation of a contractual relationship between it and B of A, nor could it. It is an indisputable fact that no such relationship existed, nor did any such implied duty arising therefrom. Further, the absence of a contract between Plaintiff and B of A has already been litigated in B of A's prior Rule 12(c) motion on the Eighteenth Cause of Action

(statutory conversion), in response to which Plaintiff conceded that motion should be granted, which it was, because of the absence of any contract.

b. No Non-Contractual Duty to Plaintiff by B of A as Depository Bank

Under S.C. Code Ann. § 36-1-203 (1966), "[e]very contract or duty within this act imposes an obligation of good faith in its performance or enforcement." Again, there is no agreement or contract between Plaintiff and B of A. So the "every contract" portion of UCC § 1-203 is inapplicable to this case. Nor is there any non-contractual duty that runs from B of A as depository, to Plaintiff as drawer or account holder at NBSC and BB&T. Thus, B of A has no duty or obligation of good faith imposed on it which Plaintiff may enforce against B of A under UCC § 1-203.

Under *Equitable Life Assur. Soc. of U.S. v. Okey*, 812 F.2d 906 (4th Cir. 1987), and its progeny,[2] any common law non-contractual duty related to bank account activity was displaced by the adoption of the Uniform Commercial Code (UCC), Articles 3 and 4. Articles 3 and 4 establish the standard of care, limitation of liability and risk-shifting scheme among customers, payees, drawees, depository and collecting banks, pertaining to bank account activity. The common law is dislodged by Articles 3 and 4 such that the common law does not apply to any of the facts giving rise to Plaintiff's asserted claims against B of A. The reasoning behind this nullification is that "when the Code and common law both provide a means of recovery, the Code should displace the common law, because variations in the common law among states destroy the uniformity in commercial

[2] *Flavor-Inn, Inc. v. NCNB Nat'l Bank of S.C.*, 309 S.C. 508, 511-512, 424 S.E.2d 534, 536 (1992) (36-3-419 displaces common law conversion/negligence claims for deposit of a check with a forged or unauthorized indorsement.); *Mauldin Furniture Galleries, Inc. v. Branch Banking & Trust Co.*, 2012 WL 3680426, *12 (D.S.C. 2012), *quoting Okey*, 812 F.2d at 909 ("Section 36-3-419 comprehensively covers the field of legal theories when a check is paid over an unauthorized payee indorsement. [] When the U.C.C. sets up particular standards of care or limitations on liability, the common law is annulled to the extent it modifies these standards or changes these limitations").

transactions sought to be accomplished by the Uniform Commercial Code." *Okey*, 812 F.2d at 909. As a result of its displacement, no common law duty extends from depository B of A to drawer or maker Plaintiff that imposes an obligation of good faith on B of A that Plaintiff can enforce against B of A.

Under the relevant articles of the UCC (Articles 3 and 4), the only available remedy for a drawer or maker of a check is against its own drawee bank for charging this drawer's account with a check that is not properly payable under S.C. Code Ann. § 36-4-401. *See Read v. South Carolina Nat. Bank*, 286 S.C. 534, 538, 335 S.E.2d 359, 361 (1985) ("[U]nder the Code a bank breaches its agreement with its customer when it pays a check containing a forged or unauthorized signature of the drawer."). As noted above, Plaintiff is not a customer of B of A, so there can be no § 36-4-401 claim asserted against B of A.

Nor do the applicable warranty provisions under S.C. Code Ann. §§ 36-3-417 and 4-208 (2008) create any duty in favor of Plaintiff as drawer. Plaintiff is not the drawee bank, but the actual drawer or maker of the checks, so there is no presentment warranty under S.C. Code Ann. §§ 36-4-208(a) or 36-3-417(a). "There is no warranty made to the drawer under subsection (a) when presentment is made to the drawee." S.C. Code Ann. 36-3-417, Official Comment 2. *See, also, Mills v. U.S. Bank*, 166 Cal. App. 4th 871, 83 Cal. Rptr. 3d 146 (Cal. App. 4 Dist. 2008) (no cause of action against a depository bank by the drawer of a check for the depository's acceptance of checks missing proper endorsements.). Depository and drawee banks processing checks between them have these warranty claims against each other. Check payees and makers do not have warranty claims against banks processing checks, because those banks are not statutorily warranting anything

to payees and makers.

B of A as depository for Nance had no contractual or non-contractual duty to Plaintiff as drawer or maker of the checks under UCC § 1-203. Plaintiff was not a customer of B of A. Plaintiff did not become a *de facto* customer because of Nance. B of A owes no duty under UCC § 1-203 to Plaintiff as to payee indorsements on deposits into Nance's two accounts at B of A. *See Read,* 286 S.C. 534, 335 S.E.2d 359(1985). B of A did not have any duty to Plaintiff just because Plaintiff was a victim with respect to Nance's subsequent withdrawals from or any other activity on her two accounts at B of A. "The United States Supreme Court has recognized that a state, in exercising its police power, may apply forfeiture statutes to property used in violation of state law." *Myers v. Real Property at 1518 Holmes Street*, 306 S.C. 232, 235, 411 S.E.2d 209, 211 (1991). "[F]orfeiture is directed to the prevention of serious public harm, and is within the legitimate exercise of the police power." *Id.* But forfeiture belongs to the State, not to victims. The well-articulated, risk-shifting scheme carefully set forth in Articles 3 and 4 gives payees claims against depository and drawee banks but customer-drawers must look to their own banks for relief on forgeries on their account. Again, it is indisputable that absent a duty, there can be no imposition of an obligation of good faith that Plaintiff can enforce against B of A.

IV. Conclusion

B of A as the depository bank owed no duty to Plaintiff as drawer or maker under contract, the common law or the UCC, which is separately redressable under UCC § 1-203 from the causes of action already alleged (not to suggest those have any merit either). Plaintiff is not legally entitled to the requested relief under UCC § 1-203, assuming all factual allegations, inferences and

conclusions in the Third Amended Complaint are construed in Plaintiff's favor. B of A is only seeking dismissal as to one of the causes of action against it, the UCC § 1-203 claim, and is not taking any position at this time in the instant Rule 12(c) Motion supported by this Brief with respect to any of the other causes of action against it. Plaintiff cannot avail itself of UCC § 1-203 as a catchall to sweep up any duties that it did not otherwise plead against B of A.

WHEREFORE, for the foregoing reasons, B of A asks that the Motion be granted.

Charlotte, NC

Date: 12/16/13

DRISCOLL SHEEDY, P.A.

By: _____

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ATTORNEYS FOR B OF A

FILED-CLERK OF COURT
GREENVILLE CO S C
PAUL B. WICKENSIMER
2013 AUG 30 A 9:22

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE) IN THE COURT OF COMMON PLEAS

Overland, Inc., d/b/a Land Rover Greenville,)
)
Plaintiff,)
)
vs.)
) C.A. No.: 2010-CP-23-5880
Lara Marie Nance; Charlie Andrew Nance;)
Roger Fields; ADP Dealer Services Group;)
Piedmont Automotive of Anderson South)
Carolina, LLC d/b/a Apex Automotive;)
Synovus Financial Corporation d/b/a NBSC;)
Branch Banking and Trust Company; Bank)
of America Corporation; and Suntrust)
Banks, Inc.,)
)
Defendants.)

ENTERED COMPUTER

NOTICE OF AND MOTION FOR JUDGMENT ON THE PLEADINGS AS TO EIGHTEENTH CAUSE OF ACTION AGAINST BANK OF AMERICA

To: Plaintiff and its counsel, James W. Fayssoux, Jr. and T. Hunter Reid

PLEASE TAKE NOTICE that pursuant to Rule 12(c), SCRCP, defendant Bank of America Corporation (B of A), through its undersigned counsel, hereby moves, at such time and place as is convenient to the Court and counsel, for entry of an order dismissing with prejudice the Eighteenth Cause of Action to the extent this Cause of Action is against B of A.[1]

Plaintiff did not have an account at B of A between July 2007 and February 2010 when the alleged embezzlement by its employee occurred. (Third Amended Complaint, p.4, ¶ 14). B of A

[1] To the extent the Eighteenth Cause of Action is against defendant Suntrust Banks, Inc., B of A is obviously not seeking dismissal of the Cause of Action on behalf of Suntrust.

is sued in this action because the convicted embezzler defendant Nance had accounts at B of A into which she deposited checks that she forged on the accounts of Plaintiff. (*Id.*, p.4, ¶ 15c.). B of A is not a drawee; B of A is a depository in this case. Plaintiff is the issuer, drawer or maker on all of the forgeries by its former employee.

"An action for conversion of an instrument may not be brought by (i) the issuer ... of the instrument ..." S.C. Code Ann. § 36-3-420(a)(i) (2008).[2] "There is no reason why a drawer should have an action in conversion. The check represents an obligation of the drawer rather than property of the drawer. The drawer has an adequate remedy against the payor bank for recredit of the drawer's account for unauthorized payment of the check." Official Comment 1, *Id.* "[U]nder Subsection (a)(i) the issuer or acceptor of an instrument may not maintain an action for conversion. In practical terms, this means that the drawer of a check cannot recover from a depositary bank for conversion." South Carolina Reporter's Comment, ¶ 2, *Id.*

South Carolina law is clear that Plaintiff as issuer, drawer or maker has no statutory conversion claim against B of A, the depository for some of the forged checks.

WHEREFORE, for the foregoing reason, the Motion should be granted.

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[2] The Statute effective July 1, 2008 clarified the position in South Carolina. South Carolina Reporter's Comment, ¶ 2, *Id.* The Statute effective July 1, 2008 did not change existing law, i.e., S.C. Code Ann. § 36-3-419. Further, it appears that the checks pertaining to B of A in this case were deposited there after July 1, 2008, except for one check deposited on June 30th in the amount of $1,412.19.

Charlotte, NC

Date: 8/28/13

DRISCOLL SHEEDY, P.A.

By: J W Sheedy

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ATTORNEYS FOR BAC

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

ENTERED COMPUTER

APPEAL FROM GREENVLLE COUNTY
Court of Common Pleas

Letitia H. Verdin, Circuit Court Judge

Case No. 2010-CP-23-5880

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. MCKENSIMER
2015 MAR 19 PM 2 56

Overland, Inc., d/b/a Land Rover Greenville,.....Appellant

v.

Lara Marie Nance, Charlie Andrew Nance, Roger Fields, ADP Dealer Services Group, Piedmont Automotive of Anderson, Inc. d/b/a Piedmont Chrysler Jeep Dodge, Piedmont Automotive of Anderson South Carolina, LLC d/b/a Apex Automotive, Synovus Financial Corporation d/b/a NBSC, Branch Banking and Trust Company, Bank of America, N.A. and Suntrust Banks, Inc.,.....Respondents

NOTICE OF APPEAL

The Appellant, Overland, Inc., d/b/a Land Rover Greenville, appeals the decision of the Honorable Letitia H. Verdin, dated December 15, 2014 granting summary judgment to Defendants/Respondents Bank of America, N.A. and Suntrust Banks, Inc. Appellant received written notice of an order denying Appellant's Motion to Alter/Amend or Reconsider pursuant to Rule 59(e), SCRCP, on February 6, 2015.

By: _____

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Attorneys for the Appellant

Dated: March 4, 2015

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM GREENVLLE COUNTY
Court of Common Pleas

Letitia H. Verdin, Circuit Court Judge

Case No. 2010-CP-23-5880

Overland, Inc., d/b/a Land Rover Greenville,.....Appellant

v.

Lara Marie Nance, Charlie Andrew Nance, Roger Fields, ADP Dealer Services Group, Piedmont Automotive of Anderson, Inc. d/b/a Piedmont Chrysler Jeep Dodge, Piedmont Automotive of Anderson South Carolina, LLC d/b/a Apex Automotive, Synovus Financial Corporation d/b/a NBSC, Branch Banking and Trust Company, Bank of America, N.A. and Suntrust Banks, Inc.,.....Respondents

---

PROOF OF SERVICE

I certify that I have served the *Notice of Appeal* on Respondents by depositing a copy of it in the United States Mail, postage prepaid, on March 4, 2015, addressed to the below listed attorneys of record at the addresses indicated below:

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Dated: March 4, 2015

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2014 DEC 15 PM 4 04

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO: 2010CP2305880

Overland Inc *vs.* Lara Marie Nance

CHECK ONE:

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j) SCRCP; ☐ Bankruptcy:

☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other: _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☐ Statement of Judgment by the Court:

Dated at Greenville, South Carolina, this .

Court Reporter:

_____
PRESIDING JUDGE -

This judgment was entered on the 15th day of December, 2014, and a copy mailed first class this 15th day of December, 2014, to attorneys of record or to parties (when appearing pro se) as follows:

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SCCA SCRCP Form 4 Revised 06/2008

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ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court - Clerk of Court

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GREENVILLE CO. S.C.
PAUL D. WICKENSIMER
2014 DEC 15 PM 4 04

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE) THIRTEENTH JUDICIAL CIRCUIT
)
Overland, Inc., d/b/a Land Rover Greenville,) C.A. No. 2010-CP-23-5880
)
Plaintiff,)
)
v.) **ORDER**
)
Lara Marie Nance, Charlie Andrew Nance Roger Fields, Synovus Financial Corporation d/b/a NBSC, Branch Banking and Trust Company, Bank of America Corporation, and SunTrust Banks, Inc.,)
Defendants.)

This matter came before the Court on Plaintiff's Motion to Transfer Funds held by Defendant Bank of America; Plaintiff's Motion to Compel Discovery; Defendant Bank of America's Motion for Summary Judgment as to the 17th and the 20th Causes of Action; and Defendant SunTrust's Motion for Summary Judgment on All Claims and Defenses. A hearing on these motions was conducted on October 29, 2014 before this Court. During this hearing, Plaintiff voluntarily withdrew its 20th cause of action, which alleged a violation of the South Carolina Unfair Trade Practices Act, S.C. Code Ann. § 39-5-10 to -560 (2014).

Background

This case arises out of a check fraud scheme perpetuated by Plaintiff's former employee, Defendant Lara Marie Nance. Over a period of several years, Ms. Nance embezzled at least $1,282,000.00 from her employer, Plaintiff Overland, Inc. (Overland). (Third Am. Compl. 9, ¶ 37.) The undisputed facts are set forth below.

Ms. Nance was hired by Overland as an accounts payable clerk in 2006. (Nance Dep. 9:19-22, Jan. 15, 2014.) She eventually gained access to Overland's computerized accounting system, ADP, and began to generate checks bearing the forged signature of Overland's owner. (Third Am. Compl. 10, ¶¶ 40–41.) Each check was made payable to an actual vendor of Overland, including Taylor Enterprises, Atlantic British, and Invision Industries. (Id. at 9–10, ¶ 39.) Ms. Nance often duplicated the amount of an actual check paid to these companies that was already entered into the ADP system. (Id. at 10, ¶ 40.)

Ms. Nance opened various accounts with Defendants Bank of America and SunTrust in the names of these businesses for the purpose of depositing the forged checks. (Id.) Each check was drawn on Overland's business accounts, which it maintained with Defendants Synovus Financial Corporation d/b/a NBSC (NBSC) and Branch Banking and Trust (BB&T). (Id. at 10, ¶ 42.) Ms. Nance also opened and maintained personal checking accounts with Defendants Bank of America and SunTrust. (Id.) Ms. Nance's scheme lasted for two and one-half years before it was discovered. (Id. at 4, ¶ 14.)

Ms. Nance pled guilty to wire fraud in the United States District Court. United States v. Lara Marie Nance, No. 6:10cr634-1 (Feb. 14, 2011). As a portion of her federal sentence, Ms. Nance was ordered to pay restitution to Overland in the amount of $1,282,749.90. Judgment in a Criminal Case, United States v. Lara Marie Nance, No. 6:10cr634-1 (Aug. 24, 2011).

Discussion

I. Defendants' Motions for Summary Judgment

During the hearing on Defendants' Motions for Summary Judgment, both Bank of America and SunTrust raised similar legal arguments. For the purposes of this Order, the Court will jointly consider their motions.

A. Standard for Summary Judgment

Summary Judgment is warranted where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRCP. In determining whether any genuine issue of fact exists, the evidence and all inferences which can be reasonably drawn must be viewed in the light most favorable to the non-moving party. Bloom v. Ravoira, 399 S.C. 417, 421–22, 529 S.E.2d 710, 712 (2000). Where there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied. Koester v. Carolina Rental Ctr., Inc., 313 S.C. 490, 493, 443 S.E.2d 392, 394 (1994).

If the moving party demonstrates an absence of evidentiary support for the opponent's case, the non-moving party must present specific facts showing that there are genuine issues necessitating a trial. Rife v. Hitachi Constr. Mach. Co., 363 S.C. 209, 213, 609 S.E.2d 565, 568 (Ct. App. 2005). The purpose of summary judgment is to expedite the disposition of cases which do not require the services of a fact finder. Grant v. Mount Vernon Mills, Inc., 370 S.C. 138, 142, 634 S.E.2d 15, 17–18 (Ct. App. 2006). However, where "triable issues" exist, those issues should be presented to a jury. Rife, 363 S.C. at 213, 609 S.E.2d at 567.

B. Merits of the Motions for Summary Judgment

Overland asserts in its seventeenth cause of action that Bank of America and SunTrust were negligent, grossly negligent, and reckless in their handling of Ms. Nance's transactions. Particularly, Overland avers that the banks failed to exercise ordinary care in their practices for opening business checking accounts; depositing and transferring corporate checks; and employing commercially reasonable procedures for identifying forged signatures. In support of these contentions, Overland cites several portions of South Carolina's Uniform Commercial

Code (UCC): § 36-3-404, §3 6-3-405, and § 36-3-406. To the extent that Overland is attempting to assert a common law claim against the banks, this Court finds that the South Carolina UCC has displaced common law actions in this area. See Equitable Life Assur. Soc. Of U.S. v. Okey, 812 F.2d 906, 908–09 (4th Cir. 1987); Flavor Inn, Inc. v. NCNB Nat'l Bank of S.C., 309 S.C. 508, 511–12, 424 S.E.2d 534, 536 (1992).

It is well-established that banks owe a limited duty of care to their customers. Kerr v. Branch Banking & Trust Co., 408 S.C. 328, 333, 759 S.E.2d 724, 726 (April 9, 2014). This limited duty exists because the relationship between a bank and a customer is merely a lender-borrower (or creditor-debtor) relationship—it is generally not fiduciary in nature. See Burwell v. S.C. Nat'l Bank, 288 S.C. 34, 40, 340 S.E.2d 786, 790 (1986); Regions Bank v. Schmauch, 354 S.C. 648, 669–70, 582 S.E.2d 432, 443–44 (Ct. App. 2003). Consequently, South Carolina has refused to extend banks' duties to non-customers, where the non-customers' claims are premised upon contractual obligations between a bank and its customer, and where the non-customer is not an intended third-party beneficiary to that contract. Kerr, 408 S.C. at 333, 759 S.E.2d at 727. In short, absent fraud or misrepresentation a non-customer does not have the right to rely on the faithful execution of a bank's duties, particularly where the non-customer is in the best position to safeguard his interests against loss. Id.; cf. Florentine Corp. v. PEDA I, Inc., 287 S.C. 382, 386, 339 S.E.2d 112, 114 (1985) (finding that the plaintiff had not shown it had a right to rely on the defendant's representation).

Other courts have found that a bank does not owe a duty to a non-customer, even where the non-customer was defrauded by the bank's customer through the use of the bank's services. See Eisenberg v. Wachovia Bank, N.A., 301 F.3d 220, 225–26 (4th Cir. 2002). For example, in McCallum v. Rizzo the defendant solicited donations for a presidential campaign, deposited the

donations into a campaign account, and then converted the funds to his own use. No. 942878, 1995 WL 114812 (Mass. Super. Ct. Oct. 13, 1995). Though the defendant's bank may have considered the his activities suspicious, the bank did not investigate the activity. Id. at *1. The court determined that, in spite of its defendant's suspicious banking activities, the bank could not be found negligent because it did not owe a duty to the victims of the scheme. Id. at *2–3. Similarly, in Eisenberg v. Wachovia Bank, the plaintiff sued the bank that maintained the account in which fraudulently-obtained funds were deposited. 301 F.3d at 223. Though the plaintiff was the victim of the fraudulent scheme, he was unable to demonstrate that the bank owed him any duty, either in opening or maintenance of the account, because he was not the bank's customer. Id. Therefore, the non-customer plaintiff was not able to maintain a viable action against the bank. Id. at 225, 227.

The South Carolina UCC contemplates a possible cause of action by a drawee against a depository bank, where the depository bank taking a check might have detected the fraud and thus have prevented the loss by the exercise of ordinary care. See S.C. Code Ann. § 36-3-404, Comment 3. However, the law also states that where a bank processes checks by automated means, "reasonable commercial standards do not require the bank to examine the instrument if the failure to examine does not violate the bank's prescribed procedures and the bank's procedures do not vary unreasonably from general banking usage." S.C. Code Ann. § 36-3-103(a)(9). This effectively creates a presumption of reasonable care in automated check processing systems. Therefore, if the bank in question utilizes automated check processing, the sole avenue for demonstrating a lack of ordinary care must be based upon a different procedure or activity by the bank. There will be no liability on the instrument itself.

Read v. First National Bank of Habersham is factually similar to the case at bar. 286 S.C. 534, 335 S.E.2d 359 (1985). However, on the question of the existence of a duty or the creation of a direct cause of action, it is not instructive because it was a suit between a customer and his bank, Read at 353, 335 S.E.2d at 360, whereas Overland is a third party suing its former employee's bank.

In the present matter, Overland only maintained accounts with NBSC and BB&T. Ms. Nance opened each account at Bank of America and SunTrust. Additionally, Overland has not alleged that either Bank of America or SunTrust committed fraud or made a misrepresentation to it regarding these accounts. Therefore, Overland is unable to demonstrate that Bank of America or SunTrust owed it any duty regarding these matters.

Furthermore, Overland has not demonstrated that Bank of America or SunTrust failed to exercise ordinary care in their check-processing procedures. At the hearing on the summary judgment motions, the parties agreed that these two banks utilize automated check processing. Overland has failed to show that Defendant banks' procedures varied in any way from general banking usage. Further, Overland has not provided any evidence that Bank of America or SunTrust failed to exercise ordinary care in their maintenance of Ms. Nance's accounts.

Therefore, the Defendants' Motions for Summary Judgment as to the Seventeenth Cause of Action should be GRANTED.

II. Plaintiff's Motion to Transfer Funds

Overland additionally submits a Motion to Transfer Funds Held by Bank of America. The funds in question are those which still remain in Ms. Nance's personal checking account (ending in -6180). (Overland Mot. to Compel 1, ¶ 2.a.) The current balance of the account is $28,645.59. (Id. at 2, ¶ 2.b.) Bank of America has placed this account in a litigation freeze.

Overland asserts that it is entitled to these funds as part of Ms. Nance's restitution order imposed by the United States District Court. (Id. at 2, ¶ 2.c.) Overland also requests interest accrued upon this account beginning on February 4, 2010. (Id. at 2, ¶ 3.)

On November 11, 2014, the Court received communication from Ms. Nance's attorney regarding these funds. (Letter of James H. Price, III, Esquire, Nov. 11, 2014.) Ms. Nance stated that she desires the money in her Bank of America account be transferred to Overland and applied to the United States District Court's restitution order. (Id.)

This Court finds that the funds held in Ms. Nance's Bank of America account (ending in -6180) must be transferred immediately to Overland as partial satisfaction of its outstanding civil judgment. These funds are to be transferred with interest beginning on February 4, 2010.

III. Plaintiff's Motion to Compel Discovery

In light of this Court's decision to grant Defendants Bank of America and SunTrust summary judgment as to the seventeenth cause of action, the Court finds Overland's Motion to Compel Discovery moot.

Conclusion

For the foregoing reasons, this Court GRANTS Defendants' Motions for Summary Judgment as to Plaintiff's seventeenth cause of action and GRANTS Plaintiff's Motion to Transfer Funds. Additionally, Plaintiff's Motion to Compel Discovery is moot.

It is so ordered.

This 8 day of December, 2014.

Letitia H. Verdin
Circuit Judge
Thirteenth Judicial Circuit

Comp Verdict

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

FORM 4
JUDGMENT IN A CIVIL CASE

CASE NO. 2010 CP-23-5880

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2015 FEB 5 PM 12 23

OVERLAND, INC., D.B.A LAND ROVER GREENVILLE

vs.

LARA MARIE NANCE, CHARLIE ANDREW NANCE, ROGER FIELDS, SYNOVUS FINANCIAL CORPORATION D/B/A NBSC, BRANCH BANKING AND TRUST COMPANY, BANK OF AMERICA CORPORATION, AND SUNTRUST BANKS, INC.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for: ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

This matter came before the Court on Plaintiff's Motion to Alter or Amend Judgment, or in the alternative to Reconsider Pursuant to Rule 59(e), SCRCP. Defendants Bank of America Corporation and SunTrust Banks, Inc. submitted responses and memoranda in opposition to Plaintiff's Motion.

Plaintiff's Motion is respectfully DENIED.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		$
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge | 2162 Judge Code | 2/5/15 Date

For Clerk of Court Office Use Only

This judgment was entered on the 5th day of Feb 20 15 and a copy mailed first class or placed in the appropriate attorney's box on this 5th day of Feb 20 15 to attorneys of record or to parties (when appearing pro se) as follows:

James Walter Fayssoux

ATTORNEY(S) FOR THE PLAINTIFF(S)

James H. Price III
David L Moore Jr
Bruce A Byrholdt

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

Δ Allys
Elbert Stockman Dixn Sr
Andrew A Mathias
Martin Mason Tomlinson
Joshua L Howard
James W Sheedy
Susan Elizabeth Driscoll
Howard W Boyd, Jr
Ammon Tice Lesher
Sima Bhakta Patel
Lauren Thorne Maxwell

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	Case No(s).:2010CP2305880
	)	
Overland Inc. d/b/a Land Rover Greenville,	)	
	)	
Plaintiff,	)	
	)	
-VS-	)	TRANSCRIPT OF RECORD
	)	
Lara Marie Nance, Charlie Andre Nance, Roger Fields, ADP Dealer Services Group, Piedmont Automotive of Anderson South Carolina, LLC d/b/a Apex Automotive, Synovus Financial Corporation d/b/a NBSC, Branch Banking and Trust Company, Bank of America, N.A. and SunTrust Banks, Inc.,	)	
	)	
Defendants.	)	

October 29, 2013
Greenville, South Carolina

B E F O R E:

HONORABLE LETITIA H. VERDIN, Judge.

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

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Teresa B. Johnson, CVR
Circuit Court Reporter

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Received 5/12/15
Emily J. Faymore

EXHIBITS PAGE

NO.	DESCRIPTION	ID	EV

PLAINTIFF EXHIBITS

(No exhibits offered.)

DEFENSE EXHIBITS

(No exhibits offered.)

COURT EXHIBITS

(No exhibits offered.)

MR. BOYD: It -- it -- it is not a problem, Your Honor. I've been practicing for 37 and a half years. I'm -- I'm very used to that. No problem.

THE COURT: All right.

MR. BOYD: May it please the Court. Howard Boyd, along with Lauren Maxwell, on behalf of SunTrust Bank. The motion before the Court is SunTrust's motion for summary judgement as a matter of law. And while discovery is not complete, uh, we concede for purposes of our motion here today that through the remaining discovery, the plaintiff may be able to prove negligence on the part of SunTrust.

However, uh, we don't think that makes any difference as I hope to make clear during my argument. But the fact that discovery is not complete doesn't matter for purposes of the motion because we are conceding that Mr. Reid may be able to go forward and establish negligence on the part of the bank. And as we will relate, uh, we are still entitled to summary judgement as a matter of law.

The facts of the case, which I think the court's generally familiar with, this is an

whatever it was, a 1.2 million, 1.1 million, 900,000, whatever that amount lines up being. So obviously, this fraudulent scheme had continued for two and a half years.

Our position is SunTrust, whatever SunTrust did, even if SunTrust was negligent -- and Mr. Reid contends apparently that SunTrust negligently allowed Ms. Nance to open accounts doing business as vendors of the dealership, Taylor Enterprise is the one in question, the only account that involved the fraudulent scheme. But even if SunTrust was somehow negligent in that regard -- and of course, we deny that. But for purposes of the motion, we concede that today -- that could not possibly have been the proximate cause of this two-and-a-half-year fraudulent scheme that had been ongoing this entire time without SunTrust's involvement.

Even if it could be considered a proximate cause, it certainly can not be considered a substantial cause or substantial factor as the code sections in the UCC that Mr. Reid relies upon, uh, require. There is just simply no way as a matter of law a jury could find that. I

realize proximate cause is ordinarily a question for the jury. But there are rare cases, such as this, where the involvement of a defendant is so remote that it renders that defendant's conduct not a proximate cause. It certainly can not be said that SunTrust caused this fraudulent scheme to continue for two and a half years.

Now, the other problem the plaintiff has is even if the plaintiff can establish negligence and proximate cause, the comparative negligence of the dealership is enormous. Add up NBSC, add up Bank of America and SunTrust's little exposure, you might get 10 or 15 percent as a cause even if there was negligence or any kind of causal relationship.

I submit to the court that as a matter of loss, the dealership's failure to exercise even slight care, I would argue even their recklessness far outweighs the combined negligence of all three defendants. Therefore, the comparative negligence defense should operate as a matter of law here to bar the plaintiff's claim.

Now, to go back, SunTrust is identically

situated with Bank of America. We join Bank of America's motion that there is no negligence claim here. I won't take up the court's time this morning. Mr. Sheedy, I'm sure, will do a great job of arguing that. In the unlikely event he doesn't, I will reserve the right perhaps to make an additional argument later. But I'm sure he'll do a good job. I don't need to take the Court's time up right now arguing that. We certainly take the position there is no negligence cause of action under the UCC and join Bank of America in that.

But our argument in addition to that is, our argument is that our involvement can not be a proximate cause of the loss even if SunTrust was negligent in allowing her to open the accounts. And even if it was a proximate cause, it was not a substantial factor in the dealership's overwhelming comparative negligence and recklessness should bar the claim.

THE COURT: All right.

MR. BOYD: I'll be glad to answer any questions the Court may have. That, very simply, is our argument.

P R O C E E D I N G S

(WHEREUPON, the proceedings begin on the 29th day of October, 2014 at approximately 10:38 a.m.)

THE COURT: All right. So we've got four motions here today, the plaintiff's motion to transfer funds, plaintiff's motion to compel discovery and the Bank of America's motion for summary judgement and SunTrust motion for summary judgement. I guess Bank of America's summary judgement is limited to the 17th and 20th causes of action, but SunTrust as to all claims. Am I correct?

MR. BOYD: That's correct, Your Honor. And if it pleases the Court, by agreement of counsel, since I have a scheduling conflict, all of the other attorneys have graciously agreed that I could go first ---

THE COURT: Fantastic.

MR. BOYD: --- and argue SunTrust's motion. We actually agreed to a different order. But in view of the delay, I need to argue and then slip out.

THE COURT: I appreciate it. I will tell you that the delay was due to something for me and I really do apologize holding you here.

MR. BOYD: It -- it -- it is not a problem, Your Honor. I've been practicing for 37 and a half years. I'm -- I'm very used to that. No problem.

THE COURT: All right.

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The facts of the case, which I think the court's generally familiar with, this is an

embezzlement scheme. It went on for two and a half years. We have now established through discovery -- it's undisputed -- uh, that the dealership did not do a background check on Ms. Nance. Had they done a proper background check, they would have discovered that she had a prior conviction for check fraud and, as Dr. Frasher, the owner of the dealership conceded in his deposition, he wouldn't have hired her. She would have never been employed.

Once she was employed, and in an astonishing set of facts, the dealership did absolutely nothing to protect themselves against someone like Ms. Nance, who was employed in the accounting department to start with, of stealing money from them. They did not reconcile checks. They did not check documentation for the checks that she was writing.

They had two procedures that would have very easily allowed them to catch the fraud. Each regular check was supposed to be supported by backup documentation. When they got the reconciliation of the dealership's bank account, they never once, during this two-and-

a-half-year period, went back and checked to see if the checks that were clearing the account had adequate backup documentation. Had they done so, they would have caught Ms. Nance's fraud the first month it started. But they never did that for two and a half years.

The second type of check that Ms. Nance wrote was an On-Demand check where someone had to come in and provide an invoice or some documentation to support the writing of that check. Those were never checked or reconciled. All the dealership did was get the bank account and make sure that all the checks that cleared were written. But they didn't check any backup documentation. It is an astonishingly slack and, in our view, a failure to exercise any care to protect the dealership from this kind of fraud.

Now, SunTrust's involvement, uh, was very unfortunately timed. We came to the picture in the last week of this two-and-a-half-year period before the fraud was discovered. The only involvement SunTrust had was for one week, 18 checks were written for a total of $54,000, less than four percent the total amount of

whatever it was, a 1.2 million, 1.1 million, 900,000, whatever that amount lines up being. So obviously, this fraudulent scheme had continued for two and a half years.

Our position is SunTrust, whatever SunTrust did, even if SunTrust was negligent -- and Mr. Reid contends apparently that SunTrust negligently allowed Ms. Nance to open accounts doing business as vendors of the dealership, Taylor Enterprise is the one in question, the only account that involved the fraudulent scheme. But even if SunTrust was somehow negligent in that regard -- and of course, we deny that. But for purposes of the motion, we concede that today -- that could not possibly have been the proximate cause of this two-and-a-half-year fraudulent scheme that had been ongoing this entire time without SunTrust's involvement.

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realize proximate cause is ordinarily a question for the jury. But there are rare cases, such as this, where the involvement of a defendant is so remote that it renders that defendant's conduct not a proximate cause. It certainly can not be said that SunTrust caused this fraudulent scheme to continue for two and a half years.

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I submit to the court that as a matter of loss, the dealership's failure to exercise even slight care, I would argue even their recklessness far outweighs the combined negligence of all three defendants. Therefore, the comparative negligence defense should operate as a matter of law here to bar the plaintiff's claim.

Now, to go back, SunTrust is identically

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But our argument in addition to that is, our argument is that our involvement can not be a proximate cause of the loss even if SunTrust was negligent in allowing her to open the accounts. And even if it was a proximate cause, it was not a substantial factor in the dealership's overwhelming comparative negligence and recklessness should bar the claim.

THE COURT: All right.

MR. BOYD: I'll be glad to answer any questions the Court may have. That, very simply, is our argument.

THE COURT: And Mr. Reid, you want to respond, uh, just to those arguments that relate only to SunTrust?

MR. REID: I'll be glad to, Your Honor.

THE COURT: All right.

MR. REID: First and foremost, Mr. Boyd here has evaded the province of the jury to determine the percentage of fault. I don't know how he could stand up here today and say collectively all these banks are only 15 percent at fault. No analysis was given as to how he reached 15 percent. I think he grabbed that number out of the air. The trier of fact is the one that can determine the comparative negligence scheme and assign which percentage of fault is available or what should be allocated to each party in this case.

Your Honor, I want to talk about two specific things with respect to SunTrust. Some of this is going to apply to Bank of America as well. I don't want to rehash everything that is included within the affidavits from our bank experts that have been submitted to the court, which I know you've had a chance to review. But just to highlight, there are two specific

things that Overland is complaining of in its negligence cause of action as to SunTrust. One is their account opening process.

They allowed Lara Nance to open up a business account, a sole proprietorship without the first shred of documentation that she represents that business, which happens to be a legitimate supplier which Overland does do business with. In Nance's deposition, which has been cited in her memorandum, she admits to the fact that she does not -- on page 128, she admits the fact that she didn't show them one piece of documentation that says that she is -- does business as Taylor Enterprise. Furthermore, she admits in her deposition that she forged the signature of her husband who is a co-owner on that account.

Furthermore, she lists specifically in those -- the documents -- and this is included on -- if you will look on the affidavit of Peter Seitz on his exhibit -- let me pull it up. His Exhibit number C, this is SunTrust's account opening profile. It lists her address as being 803 Chantilly Lane in Anderson. It lists her employer as being Land Rover.

Your Honor, if you then look at Exhibit D, the checks that were deposited on behalf of Lara Nance, you will see that Land Rover logo and their telephone number is splashed across the top of the check. They were constructively aware that she was employed by Land Rover.

And this Taylor Enterprise address is a specific Pay To the Order Of. Pay to the order of Taylor Enterprise, 2586 South Port Road in Spartanburg, which is obviously not 803 Chantilly Lane as listed on the account. For that reason, we argue on the account opening process. There was no documentation. We have a cause of action there.

Second, as Peter Seitz points out, the manner in which she deposited these checks through the ATM, and it looks like she gave a For Deposit Only stamp, which somehow she was able to acquire less than one day after she opened the account. It was opened on the 19th of January. She deposited it with a stamp on the 20th. So the account opening conduct is one thing.

The second thing is the manner in which SunTrust processed these items for deposit.

These are checks payable. As pointed out in our affidavit from our expert Peter Seitz, it has a specific Pay To the Order Of clause, which does not match Lara Nance's. So we would argue that deposit item processing is the second level of negligence.

Your Honor, to the first point that Mr. Boyd makes about discovery not being complete, SunTrust did not produce, although requested -- and the motion is not to compel today, Your Honor. Just to point out the significance of why more discovery is needed and how their motion for summary judgement is not factually right for today is the fact that we have asked for their account opening procedures and their policies with respect to depositing of check items.

We need those -- we need those manuals and those policies so that we can compare whatever their internally prescribed procedures are for opening accounts and depositing checks. We need to compare them to what actually happened, what Nance did so that we can determine whether or not there's any liability. We also need to compare them to whatever is the accepted

general usage within the banking industry.

Your Honor, this all relates to the standard of care for negligence in this case which is found in UCC 103 subsection 9 which lays out the standard of care. Ordinary standard of care needs to be balanced against whatever the internal procedures are for a bank's practice and the industry standards. Until they produce these manuals so that we can determine exactly what happened and whether they followed their own procedures, we can't determine exactly the level of negligence. At that point, it may be if they disregarded it much more than 15 percent, I would submit would be totally negligent.

So again, the motion is not right today. The law is clear on what the standard of care is. They have not complied with discovery in producing these manuals that would allow the trier of fact to make the determination.

The next point made by Mr. Boyd was as to the plaintiff's own negligence. They cited in their brief and he just brought up the fact that he says that no check review or backup material was had or completed by Overland. Your

Honor, the reason why we can't review the backup materials is because Nance hid it. She stole it.

What's been developed in depositions is one of the ways Nance was able to accomplish this embezzlement while she was employed at Land Rover is that she sent some message to ADP, its payroll computerized process server. It sent a letter to ADP. ADP granted her authority as the system administrator over its entire computer processes at Land Rover.

By doing that, it allowed Lara Nance to create a phony or factitious account user profile within the accounts payable system at Land Rover. She had a dummy account of which all these checks were being processed through. There is no way for Land Rover to monitor that system. It was an ADP monitored system. It was also developed in testimony from deposition testimony that each and every single month, each and every single quarter and each and every single year, Land Rover did reconcile each of those bank statements, all the financial statements, didn't find anything out of order.

With respect to the On-Demand checks, those checks don't show up in the bank statement labeled On-Demand check. There is no way for, uh, Land Rover to have done anything further to prevent this type of fraud. It did do a sufficient background check. It did reconcile its bank statements. It did reconcile purchase orders. It did conduct audits. It monitored user names on ADP as best it could. And even if it did monitor her account activity on ADP, it wouldn't matter. She was using a dummy account and she was the system administrator.

They also cite in their brief that Land Rover failed to secure their blank checks. Your Honor, that is a red herring. That doesn't matter. The blank checks are just check papers. It's paper. It's got -- it doesn't resemble anything close to a check. It's just the stock of paper that would be fed into a machine that produces a check.

THE COURT: What about a background check on her?

MR. REID: We did do a background check, Your Honor. We sent her down to the LEC and asked her to get a profile -- for them to spit

out a profile. When they returned it, she was using her current married name. Uh, and, uh, it did not reveal any crimes. What was unbeknownst to Land Rover is when she went down to the Greenville County Sheriff's Department, they only conducted a search within Greenville county, which she was not guilty for any crimes within Greenville county. We were not aware of any prior conduct. They don't do a state check. We were relying when we sent her down there to grab her background and bring it, we felt that was sufficient to conduct a background check, Your Honor.

THE COURT: All right. Anything else?

MR. REID: Uh, --

THE COURT: In response to SunTrust?

MR. REID: Yes, they bring up their limited involvement. Nance's current fraudulent activity at SunTrust and the fact that it was $54,000 as compared to the millions of dollars that she parked over at Bank of America is irrelevant, Your Honor. That's a totally separate set of facts. It's a new negligence claim against that bank independently. Furthermore, Your Honor, $54,000 is a lot of

money. That is not an insignificant sum that needs to be ignored.

Just to sum up, Your Honor, we believe that the negligence cause of action is available to us. We'll address it in the Bank of America's motion that there is a duty of care that we were owed. They breached that duty of care. They are the proximate cause and they substantially contributed to our loss.

THE COURT: All right. Thank you.

Any response, Mr. Boyd?

MR. BOYD: Your Honor, of course, the plaintiff, at this stage, has the burden of coming forth with evidence, not argument by counsel. We have not been provided with any of this evidence. It doesn't exist in the record. For example, the background check, we questioned a number of witnesses for the dealership. If a background check had been done, it should have been in her personnel file. The person who would have done the background check said she didn't do one.

I'm not sure where Mr. Reid is getting the argument or the fact that a background check was done. But in any event, obviously, they

didn't do a proper background check or they would have caught the fact that Ms. Nance, a resident of Anderson county had check fraud convictions in Anderson county. So it doesn't matter what they did. They didn't do a proper background check.

In any event, to go back, I appreciate Mr. Reid's argument about the negligence of the bank, as I said to begin with. Discovery has not been complete. I had to concede, for purposes of our motions -- of the motion today, negligence on the part of the bank, the law as we cited in our brief is that there is no common law duty by a bank to a non-customer such as Overland. We would certainly stand on that argument as a matter of law regardless of what the evidence is.

But I'm just saying even if there is negligence and Mr. Reid can establish that negligence, it's not a proximate cause of the loss. It certainly is not a substantial factor in the loss. There are cases, as the court is aware, where the comparative negligence of the plaintiff is so obvious and so clear that the case is taken away from the jury. There is no

basis upon which a jury in this case could determine that the dealership, which did nothing to protect itself for two and a half years was not substantially more negligent than the combined negligence of these three defendants who were marginally involved.

Now, Mr. Reid argued that Ms. Nance hid backup material. She didn't hide backup material. There was no backup material for any of the checks she wrote. Even the slightest bit of care, had they audited it one time, they would have caught this two and a half years or two years before SunTrust was ever involved. That is the definition of a lack of proximate cause. They can't blame SunTrust for their being asleep at the switch for two and a half years and not catching this fraud.

Now, uh, Overland's expert, Mike O'Shea testified or indicated rather, that determining which checks were fraudulent was as simple as matching up the checks with their backup documentation. That's all they had to do. That simple care would have uncovered the fraud and would have stopped this at the outset, certainly before two and a half years lapsed.

The husband's signature is irrelevant. We conceded negligence for purposes of the motion. There is no evidence that the husband forged any checks. The only allegations that pertained to him involved the sale of cars with fraudulently obtained funds, which had nothing to do with SunTrust.

THE COURT: Okay.

MR. BOYD: Again, Your Honor, we're glad to answer any further questions. But to be clear, in summary, we don't believe there's any duty owed under the UCC, any negligence claim under the UCC. We don't believe there's a common law negligence claim. But even if there is and assuming negligence on SunTrust's part, we are entitled to judgement as a matter of law on the undisputed facts of the case as established by the record.

THE COURT: Thank you. What evidence do you have that she had a background check?

MR. REID: Your Honor, the deposition testimony of Dr. Frasher confirmed by Greg Babetz, as well as being confirmed by Sue Hunter -- well, actually, she wasn't there at the time -- Gwen Patton, the controller, that

background checks were mandatory in order to be employed. They all stated in their deposition -- I'll be glad to supplement the record with pinpoint accuracy of where they demanded that she go get a background check from the LEC and that she did, in fact, get something from the LEC saying that she had a clear record.

Your Honor, that brings a great point about background checks. In order to open a new account, this is why the opening account procedures is so relevant to this motion and this case, there is a -- under the Bank Secrecy Act, there is such a thing called Know Your Customer protocols or CPI customer information programs. These are systems that banks like SunTrust specifically employ so they can figure out who it is that is opening new accounts and whether or not they should expect any illicit activity or any terrorism. The check systems is the predominantly used program which does this. When Nance gives them her Social Security number to open these accounts, the same thing should be spitting out that she has some fraudulent activity for check fraud down in Lexington, South Carolina.

So we would submit, Your Honor, that that is a question for the jury to determine in terms of doing background checks and who should have been aware at the time they began engaging in any sort of relationship with Nance what they should have known about her past.

THE COURT: All right.

MR. REID: And then, Your Honor, just to address the substantive law where they are bringing up this stuff about there is this case law that contributory negligence would bar this type of action, Your Honor, they are talking specifically about UCC 4, uh, 3-406, not 404 or 405 which are the operative clauses that brings -- that give us -- give rise to the cause of action in this case. There -- we'll address that stuff when we get to Bank of America.

THE COURT: All right.

MR. BOYD: And we cited the Eisenberg versus Wachovia case in our brief, Your Honor. We would certainly rely upon the brief, obviously, for the additional arguments concerning the Unfair Trade Practices Act claim. We believe that preempted. But even so, proximate cause is a factor there as well in

the same argument holds true. In addition, this case just doesn't involve an Unfair Trade Practice, which is recognized under the law.

THE COURT: All right.

MR. REID: Your Honor, Eisenberg, these cases cited by SunTrust, these are investor cases. These are not employee theft cases. These are not cases that were pled under 404 and 405 nor do they even mention that. So we would submit those cases are irrelevant to the analysis and are totally distinguishable.

THE COURT: All right. All right.

Uh, Mr. Sheedy, are you ready to argue Bank of America's motions?

MR. SHEEDY: In whatever order suits the Court.

THE COURT: Thank you.

MR. BOYD: Thank you, Your Honor. I appreciate the indulgence. I'm going to have to slip out.

THE COURT: Always good to see you.

MR. SHEEDY: While I am reorganizing, we do have a couple of ministerial matters, if we can bring those to the attention of the court.

THE COURT: Sure.

MR. SHEEDY: It would perhaps be efficient with the momentary shuffle.

MS. DRISCOLL: Your Honor, Susan Driscoll on behalf of Bank of America. I handed up, uh, the original Order of Substitution to your law clerk. I have the signatures of both plaintiff's counsel and Bank of America. As I said in the email to the Court, it's a very simple motion taking Bank of America Corporation out and putting Bank of America N.A. in since Bank of America N.A. is the proper party who actually processed the checks.

THE COURT: All right. I appreciate it and I have signed that.

MS. DRISCOLL: Thank you, Your Honor.

THE COURT: Thank you.

Yes, sir.

MR. SHEEDY: Uh, of course, good morning, Your Honor.

THE COURT: Good morning.

MR. SHEEDY: For the record, Jim Sheedy appearing on behalf of Bank of America. Can the court hear me okay?

THE COURT: I certainly can.

MR. SHEEDY: Let me begin by making sure

that the Court has the relevant papers in front of her. There should be a motion from Bank of America.

THE COURT: Right.

MR. SHEEDY: A memorandum of brief in support.

THE COURT: Right.

MR. SHEEDY: The plaintiff's brief in opposition, the affidavit of Mike O'Shea and the affidavit of Peter Seitz.

THE COURT: All right.

MR. SHEEDY: To the best of my knowledge, those are the five documents which are germane to Bank of America's motion. Bank of America is seeking summary judgment on two causes of action. Your Honor reflected that a few minutes ago. The 17th cause of action is under 3-404, 3-405 and 3-406. The 20th cause of action is an Unfair Trade Practices Act claim that the depository banks systems of check processing and federal Clearinghouse functions constitute an unfair or deceptive act or practice and trade with commerce.

This 17th cause of action, at least to the years that I've been doing this, is an unusual

novel statutory tort claim essentially for indemnity, not contribution that the checks with the back accepted for deposit in toto should be reimbursed to the plaintiff under 3-404, 3-405 and 3-406. So we begin by looking at the complaint in this case so that there really is no confusion with respect to what is before the Court. I hope Your Honor has a copy of that third amended complaint.

THE COURT: I do.

MR. SHEEDY: Beginning at paragraph 165 on page 37 continuing through averment number 168 are the plaintiff's descriptions of the purported -- we've created confusion here in the arguments. It's really not negligence. It's lack of ordinary care. That's the phrase under 3-404, 3-405 and 3-406. But 165 through 168 represent the allegations of lack of ordinary care. 169 and 170 makes it clear the plaintiff is seeking for that lack of ordinary care. The entirety of its damages constituting all of the checks that were deposited by Bank of America in to the embezzler's two accounts.

I'm going to begin by trying to narrow this to make sure I understand exactly what is in

dispute here for purposes of this motion. In the plaintiff's brief in opposition, the plaintiff has said that 3-406, and I'm quoting, does not provide for new causes of action against depository banks. 3-406 only provides for defenses and counter-defenses.

If Your Honor has that brief before her, I'm looking at the first paragraph at the top of page 3. The only accurate statement of law offered by Defendant B of A is that 3-406 does not provide for new causes of action against depository banks. Although 3-406 also adopts the comparative fault approach -- I think that's an incorrect phrase. It's really a loss allocation -- it only provides for defenses and counter-defenses. I think that's correct. We asserted that. He agreed with it. I don't know that we need to talk about 3-406 as a basis for relief under the 17th cause of action. The parties don't appear to be in dispute over that.

THE COURT: Is that correct?

MR. REID: Not necessarily, Your Honor. Because if we get to the jury under 404 and 405, and they raise the defense -- which it

appears each of the banks are doing -- that our negligence contributed and therefore we should be procluded from recovering under these causes of action, we step in under 406 to say, wait a second, no, your own negligence procludes you from making that kind of defense. We have an even playing field when we go to loss allocation under comparative fault basis.

MR. SHEEDY: That's not responsive to the Court.

THE COURT: I -- and I understand.

I see where you're going with that, Mr. Reid.

But I understand what you're saying as well.

MR. SHEEDY: That's a defense, not an affirmative claim.

THE COURT: All right.

MR. SHEEDY: There is no affirmative claim. The briefing indicates there should be no dispute, that 3-406 is not an affirmative claim. Now, in the plaintiff's brief in opposition and both of these affidavits, there's no mention or suggestion that B of A's automated check processing or SunTrust for that

matter, linked with other banks through the Federal Reserve Clearinghouse is a violation of the UTPA.

I don't want to be imprecise or mislead with respect to what has been alleged. So again, I will return to the complaint in this case. On page 40 of the complaint at paragraph 184, here is the underlying liability averment. B of A and SunTrust have operated under system that manages its respective customers financial affairs through a comprehensive system of links between and among its deposited accounts but fails to properly coordinate information protections through these various linked accounts.

Thus the defendants willfully administered a system that lacked sufficient safeguards to protect payor banks and public-at-large from suffering a stream of damages and harm when defendant B of A and SunTrust failed to properly process and maintain information in its system. That's the allegation that serves as the basis for the unfair trade practices account.

In the brief in opposition of plaintiff, in

Peter Seitz and Mike O'Shea's affidavits, there's no mention or support whatsoever for this claim as alleged in the complaint. But we will assume for purposes of discussion that allegation is the basis for liability. And we will assume, although I'm not sure it will be the case that Mr. Reid, even though he hasn't briefed this, is going to argue that he's got an Unfair Trade Practices Act claim. The Unfair Trade Practices Act provided under section 40(a), and I have a copy of that section if Your Honor would like for me to hand it up.

THE COURT: All right.

MR. REID: Your Honor, can I -- I'd like to streamline this. The plaintiff is going to withdraw its unfair trade practice claims ---

THE COURT: All right.

MR. REID: --- against SunTrust and Bank of America at this time.

THE COURT: All right.

MR. REID: We don't believe there is sufficient evidence at this time to go forward on that cause of action. We'll see about later.

THE COURT: All right.

MR. SHEEDY: I'm not sure that I know what

he just said at the end. Are we dismissing this with prejudice? What -- what -- what are we --

THE COURT: He's saying he's withdrawing his claim. And if he has some evidence later on and he is still able to bring that claim, then he might --

MR. REID: I'd have to move to amend, Your Honor.

MR. SHEEDY: Thank you. That's what I wanted to be clear. In light of that, what remains before the Court then is not the 20th cause of action that's gone, is not the portion of the 17th cause of action under 3-406. We have now narrowed this to where we're just talking about this statutory tort claim for indemnity under 3-404 and 3-405. That would be 3-404(d) and 3-405(b). This is where the plaintiff is seeking to hold B of A entirely responsible for double forgeries. There's no debate here on double forgeries. The allegation is that the banker signatures were forged and the indorsements on the back of the check if not forged, were at least unauthorized.

Seeking to hold B of A entirely responsible for all the double forgeries that went into the

embezzler's two accounts at B of A, irrespective of any fault of the plaintiff and irrespective of anything to do with anything that the drawee or other banks may have thought is a make whole claim as pled. There's no motion before the court to amend that pleading. The plaintiff is the master of its own complaint.

In response to this, because the Court has B of A's brief. I think it speaks for itself. I'm not going to run through that brief in the interest of being a good steward of the court's time. I'm instead going to respond to the arguments that the plaintiff has set forth in its brief in opposition. Those arguments are essential three.

First, there can't be a summary judgment motion if a legal issue has been partially discussed by a prior Rule 12(c) motion. Second argument is the comments to 3-404 and 3-405 coupled with this Virginia case of Gina Chin allowing 3-404 and 3-405 direct claims against the depository to survive a Rule 12 motion -- because that's all Gina Chin says shows -- showed South Carolina will allow a direct

statutory claim for indemnity. So we've go the comments plus Gina Chin equals new cause of action. That's the second argument plaintiff makes.

And then third, plaintiff says because it thinks it can show B of A lack of ordinary care, it follows that the direct statutory claims for indemnity irrespective of plaintiff's fault must exist. Those are the three arguments. I'm going to respond to each one of those in that order.

THE COURT: All right.

MR. SHEEDY: First, as to the prior Rule 12(c) hearing, the double forgery rule in Read on whether 3-404 and 3-405 allowed for direct claims in light of Virginia's Gina Chin, they weren't briefed by B of A or by the plaintiff. I'm sure Your Honor's former law clerk will remember the plaintiff raised Gina Chin along with the Halifax case the night before the hearing.

Second, before Your Honor in that prior hearing were two separate arguments. David Moore interesting sat over with Hunter Reid. And David Moore and Hunter Reid both stood up

and said, wait a minute, you can't bring multiple 12(c) motions. Look at Rule 12(g). You've got to consolidate these motions. Then there were the arguments with respect to the 17th cause of action. Your Honor issued a Form 4 order. Of course, we've all read the Form 4 order. But it doesn't squarely say there's a cause of action under 3-404 and 3-405. I understand the plaintiff reads it that way. Regardless, this issue requires some clarity.

This is a little different from certain other cases where novel causes of action are pursued. Obviously, whether there are direct claims for lack of ordinary care under the 3-404 and 3-405 affect the scope of discovery. But perhaps less obviously it impacts on what we're going to do in the event this case ever goes to trial. I don't think it should go to trial. I'm not standing here making an argument saying that this case gets beyond today. But if this case, for some reason, gets beyond today, what does it look when we do our opening arguments? The statutes appear pretty plain to me, Your Honor, that you stand before the jury and you say, not employer negligence, but

preclusion under 3-404 and 3-405. If Ms. Nance was an imposter, if the payroll rule applies, the plaintiff gets nothing. Precluded from any recovery by operation of those two statutes. The case goes forward on the basis that. If the plaintiff can't prove lack of ordinary care, the statutes kick in and prevent anything. That's not the plaintiff's position. We need to understand what we're doing here in the event that we have to go forward which the bank doesn't believe that we should.

So on the first point that the plaintiff makes, of course, there could be a summary judgement motion if there's a prior Rule 12(c) motion. There's nothing in Rule 12(c) that says you can't. There's nothing in Rule 56 that says you can't. We are now arguing many, many different components of this that were not before the Court at this prior hearing. We're entitled to a complete presentation of this legal issue, as is the court, in order move parties in court to apprehend the substantive and procedural status of this cause of action going forward.

Second, let's look at plaintiff's argument

that comments to 3-404 and 3-405 plus Gina Chin equal a new South Carolina cause of action. First, official comments from South Carolina reported comments to the UCC may be persuasive interpreting the UCC but they don't take precedence over statutory language, decision law or legislative history.

Plaintiff is before this court today with no South Carolina decision law, no legislative history to support that it was the intent of the General Assembly when the amendments were done to 3-404 and 3-405 that there be a direct cause of action irrespective of an impostor or factitious payee under 3-404, irrespective of padded payroll under 3-405.

Rather, there is one decisional case. We talked a lot about that decisional law. That is our Supreme Court Read's case. In Read, South Carolina Supreme Court, due to the affective advocacy of Fourth Circuit Judge Henry McKellar and Stan McGuffin, adopted the Fifth Circuit Court of Appeals decision in Perini, which is the double forgery rule. Now, the briefing on this between the plaintiff and the defendant gets a little confusing. So I want to go right

to the case. In fact, -- does Your Honor have a copy of Read?

THE COURT: I don't think so.

MR. SHEEDY: Your Honor, I think I can do this without having my copy. So I'll hand up my copy where I have highlighted some of the language. And for Hunter's reference, I'm looking at 286 S.C. beginning with 542.

So let's get some context on Read. In Read, there was an employer with an employee that was embezzling. The employer ended up suing its own bank, the old South Carolina National. South Carolina National became Wachovia. First Union bought Wachovia. Wachovia became Wells. It's the old South Carolina National Bank. Plaintiff agrees with that characterization as set forth in the plaintiff's brief.

But there was an issue, which appears there on page 6 and I highlighted the language for the ease of reference for the court involving some checks called the Lawton Bluff checks that were drawn on South Carolina National, deposited into a C&S account and they had no indorsements on those checks. The Court then proceeded to analyze whether C&S would have any

responsibility for depositing these checks that had missing indorsements. That's when the court looks to Perini and says, now, wait a minute, we've got a problem with payee indorsements. We've got forged banker signatures. Under the double forgery rule, the loss falls on the drawee bank for the forged banker signatures. It does not fall with respect to the payee indorsements.

Now, there's some later language on that same page about incomplete instruments and depositing checks into incorrect accounts and how that lies with the depository. I agree with Mr. Reid's suggestion that that's dicta. In particular, it's confusing dicta because if the court was going to say that there was a responsibility on the part of C&S, they wouldn't have cited the double forgery rule and basically let C&S go on the Lawton checks.

So the rule is, sure, without there being double forgeries, you deposit checks into an incorrect account, the depository bank has some liability. But what Read says, you've got forged banker signatures, forged payee signatures, the loss falls under drawee bank

for the banker signatures.

Read hasn't been overruled. There's nothing in the legislative history, the comments that say that the person bearing the loss may recover, that's the language under 440(d). That's the language under 4 -- I'm sorry -- 3-404(d). That's the language under 3-404(d). May do that in instances where there's double forgery against the payee, as a result of the payee indorsements.

So first of all, the plaintiff is asking this court to overrule the Read case and adopt Gina Chin. And plaintiff is saying ignore some of the law in other jurisdictions, like Ohio and Pennsylvania and the 7th Circuit, which looking at the loss allocation language in 3-404(d) and 3-405(b) say those are defenses. They are not causes of action. I have cited those other cases in our brief. I think we've got copies of them with us.

THE COURT: I think we've already got a copy of those cases cited. I think I've got a copy of these.

MR. SHEEDY: Okay. We didn't provide them. I don't know that -- I mean, if Your Honor

thinks she has them, I won't fell another tree.

THE COURT: Thank you. (Pause.)

Oh, I'm sorry. We don't.

MR. SHEEDY: I didn't -- okay, good. So our first point is if the court is going to say that Read has somehow been overruled and the court is going to consider law of other jurisdictions on this language that the party bearing the loss may recover, Gina Chin is not necessarily majority view.

Let's turn now to the comments. Although 3-404(d) and 3-405(b) say the person bearing the loss may recover, that statutory context first the persons bearing the loss. In order to bear the loss, there must be some reason for you to be bearing the loss. If you are bearing the loss because you are under 3-404 and 3-405, you've got fictitious payee, you've got impostor, you've got padded payroll. You have some reason for being there under the statute in the first place.

Second, the right to recover requires that you have essentially conceded that you are an impostor or padded payroll, that you fit within one of those fact patterns. Now, I've got both

of those statutes along with the comments with me if that would help the court. Again, I don't want to hand up paper that you've already got.

THE COURT: We've got those.

MR. SHEEDY: Okay. So let me start with 3-404. 3-404(d) says with respect to an instrument to which subsection A or B applies. Subsection A is impostor. Subsection B is fictitious payee. You don't get to Subsection D unless A or B first applies. Those are the preclusions, plaintiff says in its brief employer negligence. Employer negligence is 3-406. You don't get to subsection D unless you have first been precluded because of fictitious payee or impostor or under the padded payroll rule of 3-405, an employee fact panel.

Then it goes on to say a person paying the instrument or taking it for value or for collection fails to exercise ordinary care. I think you heard earlier today Mr. Reid cite that the negligence standard is set forth in UCC 103(9). No, that's not a negligence standard. That's a definition of ordinary care. But yes, you do resort to 103(9) on guidance on what constitutes ordinary care.

Third -- and again, I'm assuming that the Court has these statutes before the Court. Third, the plain language in B is that the person bearing the loss may recover to the extent the failure to exercise ordinary care contributed to the loss. This is a contribution concept. It's a loss allocation or shifting of responsibility once these types of defenses are asserted in the case.

There's nothing in this plain language of D or B other than taking the word "recover" out of context and blowing it up and ignoring all of the other words that surround the word recover that would support direct statutory tort claim. Even then, it's still a loss allocation. It's not a complete recovery or indemnity from the banks that accepted the deposits. The language of the statute itself doesn't support what the plaintiff is pitching.

Essentially, what is supposed to happen under Articles 3 and 4 of the UCC is this. A customer has a contract claim under 4-401 against its own bank. That bank then comes back and says impostor, fictitious payee, padded payroll substantially contributed to the

making, which is 3-406. All of your defenses.

Plaintiff then pops up and says to the extent that what you did, my bank, was a failure to exercise ordinary care and contributed to the loss, then we get a loss allocation. The way that my type of bank depository on something of this case, of this fact pattern, the drawee bank, in this case represented by Mr. Howard, NBSC, comes back and says wait a minute, we're not responsible for these payee indorsements. That's your red wagon, poor depository bank. We are making warranty claims against you under 3-416 and 3-417, on presentment and regular warranty. When we get this check upstream from you asking us to take the money out of plaintiff Overland's account, we expect that that's a good indorsement because you are the party that was able to evaluate them.

That's the way that that's supposed to work. But that's not what we're doing in this instance. In that fact pattern that I just described under the UCC, Mr. Howard and I, on behalf of our respective banks, we get to talk to each other. We get to work through tender of

defense issues and we get to work through the apportionment of liability issues.

What Mr. Howard is doing is not consistent with the scheme under the UCC. He is gutting the double forgery rule. He's effectively eliminating, uh, -- which is consistent. The double forgery rule, by the way, doesn't eliminate the warranty claim and it leaves the drawee responsible for the forged signatures. Under Mr. Reid's construction of these statutes, the double forgery rule goes out the window. He's basically looking to blank shift banks for overlapping indemnity.

So B of A -- let's take a hypothetical check. We'll say it's a hypothetical check that Lara Nance forged for $5000. Wants my client to indemnify it. That's what the 17th cause of action says. He sued NBSC. He wants NBSC to pay for that check too. That's not even what these code sections provide under direct negligence claim. They talk about an allocation of the loss on a contributory basis to the extent of lack of ordinary care.

Next, he turns to the comments on these two statutes, 3-404 and 3-405. He says, ah, see

what these say. Let's start with 3-404. I am looking at page 4 of these comments. I think these comments are very clear. If you read these comments in context, they support what B of A is arguing to Your Honor this morning. On page 4 of these comments, check payable to an impostor, fictitious payee or payee not intended to have an interest that the check was paid.

The effect of these two subsections A and B has placed the loss on the drawer of the check, Overland. It places the loss on Overland rather than on the drawee or the depository. That would be rather than Mr. Howard's client, Ms. Maxwell's client or Bank of America that took the check for collection.

Now, but in some cases, the person taking the check might have detected the fraud and thus presented the loss by the exercise of ordinary care in most cases. If that person failed to exercise ordinary care, it's reasonable that that person bear the loss to the extent the failure contributed to the loss. That's completely consistent with the statutory language. It doesn't say we ignore impostor,

fictitious payee and padded payroll and we don't look at contribution loss allocation. We just roll into court and get 100 percent.

In those same comments, and I quote, in those cases, the drawer has a cause of action against the offending bank to recover a portion of the loss. Sure, if you just take the words "cause of action" and you forget about the rest of the sentence, it might support that you've got a cause of action. But it's saying to recover a portion of the loss. To recover a portion of the loss, you had to first sustain the loss. To sustain the loss, you've got to be under one of those code sections, an impostor, a fictitious payee or padded payroll. The amount of the loss to be allocated to each party is left to the trier of fact. That's what the comments say.

Now, under 3-405, the comments really go to the same effect, except at this time rather than looking just at the official comments, I'm going to look at the South Carolina reported comments too. On page 2 of the statute under the official comments, under paragraph 1, section 3-405 is based on the belief that the

employer is in far better position to avoid the loss by care in choosing employees, in supervising them and in adopting other measures to prevent forged indorsements on instruments payable to the employer of fraud in the issuance of instruments in the name of the employer. Mr. Boyd made several good points about that in his presentation this morning.

Then it goes on to say if the bank failed to exercise ordinary care, subsection B allows the employer to shift the loss so the preclusion under the statute goes back over to the extent of the bank's failure to exercise ordinary care. Now, this sentence, the provision applies regardless of whether the employer was negligent? Absolutely, because 3-405 is not a negligence statute. 3-406 is. 3-405 just says you can not be negligent Overland, but the loss is on you if it is impostor, fictitious payee, uh, or padded payroll.

When you switch over to the South Carolina Reporter's comments under the third paragraph which begins under the present statute, if the employee didn't trust the employee with the

responsibility with respect to the check, then the employee's indorsement in the name of the employer is effective and either the employee payer bank and the depository bank is liable. Okay. That's the preclusion.

But then it goes on to say the employer is not without remedies. Overland has got remedies under this fact pattern. If Overland could establish the bank paying the fraudulently indorsed check or taking it for value and collection failed to exercise ordinary care and that failure substantially contributed to the loss resulting from the fraud -- you may recall that was Mr. Boyd's argument earlier, substantial contribution -- it's not just a 3-406 argument as Mr. Reid suggested, it's a 3-405 argument. The employer can recover from the bank failing to exercise ordinary care to the extent that the failure again, the operative word, contributed to the loss. There is nothing in the comments to 3-404 and 3-405 that supports a direct statutory tort claim for indemnity for the entire loss irrespective of any fault of plaintiff or any other party.

Now, plaintiff is master of its own

complaint. We've looked at what that allegation is in the complaint. That's the allegation in the complaint. Plaintiff's reading contravenes the risk shifting loss allocation statutory scheme in Articles 3 and 4. It contravenes Read in the double forgery rule. It's not supported by the statutory language. It's not supported by the comments. Plaintiff is essentially rewriting Articles 3 and 4.

Yet, plaintiff seems to concede on page 4, paragraph 2 of its brief -- I know Your Honor has this. I'm sorry. I misstated. It's actually on page 4 of the plaintiff's brief.

THE COURT: All right.

MR. SHEEDY: 3-404 and 3-405 triggers principles of comparative thought which is completely contradictory to the causes of action that was pled in the complaint.

In sum, with respect to the response to this portion of the plaintiff's argument, the comments plus Gina Chin don't overrule Read and don't support this direct statutory tort claim that the depository banks are required to make whole the plaintiff for all the checks that were deposited into Lara Nance's accounts at

these depository banks. Plaintiff says it could show B of A lack of ordinary care. Because B of A, because plaintiff can show B of A lack of ordinary care, therefore, it must be a direct statutory tort claim for indemnity irrespective of the plaintiffs or anybody else's fault. Beyond its face, that is a non sequitur. It's irrelevant unless there's first a direct statutory tort claim for indemnity irrespective of anybody else's fault, which there isn't.

Plaintiff has to first fit under 3-404(d) and 3-405(b), that is concede impostor or fictitious payee or padded payroll or the subsections D and B, the loss allocation provisions aren't triggered. A potential future dispute affect over ordinary care doesn't elevate the plaintiff to a spot under these two statute. To come under these statutes, there has to be some concessions or admissions that the Plaintiff Overland is otherwise precluded unless it can show lack of ordinary care.

Plaintiff can't come under 3-404 and 3-405 both of which are defenses unless bank first asserts these defenses after plaintiff has a claim against bank under 4401. There is an

order to things in the UCC. There is a pattern with respect to how this is supposed to work. A future factual dispute over ordinary care, doesn't operate or have to rewrite all of these applicable UCC statutes.

Let me see if I can tie this up and provide summation with respect to Bank of America's summary judgment motions.

THE COURT: All right.

MR. SHEEDY: Plaintiff's arguments require this court to abandon the double forgery rule adopted in Read. That is the first step the court has to take. Second, plaintiff's arguments require that the court has to rewrite 3-404 and 3-405. Third, the court has got to create a direct statutory tort claim for indemnity regardless of any fault of the plaintiff or any other party. This court has got to navigate around multiple indemnity for a single loss. Remember my example with respect to a single check between the depositories and the drawee banks.

THE COURT: All right.

MR. SHEEDY: The court has to ignore the preclusive claim language in 3-404 and 3-405

that would bar any claim unless the plaintiff carries its burden of lack of ordinary care. The court would have to ignore the risk shifting and warranty provisions in Articles 3 and 4.

The plaintiff is basically asking this court to do too much without any statutory or decisional law to support the plaintiffs position. The 17th cause of action, because that is the only cause of action that is before us, not some hypothetical rewrite, should be dismissed as presented. Thank you, Your Honor.

THE COURT: Thank you.

Yes, sir. You have a response?

MR. REID: Yes, Your Honor. I will try to be a little bit more -- first of all, we would rely upon the arguments that we have addressed in our memorandum and affidavits. I do want to highlight a few things in response. First, the -- Mr. Sheedy, I appreciate his history of the UCC. However, I would like to point out that Read, Number 1, was decided in 1985. That was almost 20 years -- it was 20 years, maybe longer, until South Carolina updated it's code.

Within Read, the second cause of action to

dismiss was not a negligence cause of action. It was a conversion cause of action. Read is also an employer versus drawee case. This is the employer suing its own bank for conversion. This is not an employer suing the depository bank for negligence. It does not even approach the question of whether or not there is a 404 or 405 argument within the way those statutes were formally written.

It does however, like you pointed out and I pointed out in my memorandum, point out dicta that liability for accepting a check deposit into an incorrect account lies with the depository bank. We at least have the mold of the court looking towards whether or not you deposit a check in the wrong account. This was way before the code was revised. Whether or not that establishes some sort of liability. It feels like it does.

Next, Perini, the Fifth Circuit decision, the double forgery case -- Read does not stand to represent the double forgery rule within South Carolina. Okay. Your Honor, the double forgery rule operates like this, when you have a forged banker's signature on the front like

in this case and then you have forced indorsement on the back, when that check has been transferred and you determine liability amongst all the parties to the check, they determine that the indorsement is -- the double forgery rule says indorsement is effective. Therefore, you only concentrate the action on the forced banker signature which the laws only between the employer and the drawee bank. Okay. That was the decision that came out in Perini was this double forgery rule.

Your Honor, the code was revised specifically to adopt this comparative negligence approach and do away with the double forgery. The whole reason why the code was updated was to say we need to get all the parties together for this check and we allocate responsibility along the chain.

Uh, we are not asking the court to rewrite any legislature at all. I think the court should just look at the plain language of the statute. Number 1, there is no preclusionary language within the statute. They talk about 404 and 405, the operative subsections A and B, impostors, fictitious payees and padded

payrolls. Those are not preclusions. There is no preclusionary language within the new statute.

Instead, when you look at the commentary, as pointed out by Mr. Sheedy -- we're looking at official comment Number 3-404. In those cases, the cases were referring to scenarios in which the depository bank should have detected the fraud and prevented the loss by an exercise of ordinary care. The drawer, that's Overland, has a cause of action against the defendant bank. I don't know how the statute, the commentary could be any more clear or how it could be any more persuasive that there is a cause of action. 405 says the same thing.

In commentary 4, it was pointed out that -- excuse me -- in the South Carolina Reporter's comment as pointed out -- I am looking at the fourth paragraph in the reporter comment. The employer is not without remedy. Looking at the last comment, it says that subsection B to 405 affects a substantial change to prior law. It affords the employer who bears the loss a claim against the depository bank. There is no preclusionary language. There is no seeking of

contribution or indemnity language.

This case specifically, this statute in the commentary says that subsection B specifically overrules Stone Manufacture. Stone Manufacture attempted to assert a negligence claim under a padded payroll case. This was before the code had been revised. They said you can't bring that up. It is not provided within the statute.

405 specifically overruled Stone Manufacturing, Your Honor. It provides for causes of action. Again, we are not asking to ignore the preclusive language because it's not there. It was revised in 2008.

Looking at 404 and 405, I don't see the word preclusion appears once. I don't see -- there is no operative language that says that we are -- we cannot bring forward a cause of action because someone is an imposter or fictitious payee or has padded payroll scenario. In fact, that was the old language.

Your Honor, the new language just defines what is an impostor scenario and what is a fictitious payee scenario. That is all sections A and B do under 404 is just set forth

scenarios that we have imposters and scenarios that we have fictitious payee or someone is not intended as a person to have an interest in the check, which is this exact case.

The Gina Chin case is cited for the court's instruction on how the UCC was amended and revised and the effect that these new 404 and 405 statutes have. They looked at this question specifically. And they said -- uh, I'm looking at Gina Chin, 500 S.C. 2d 516. I'm looking for a specific citation. It's on the -- it's on the second page of this case under the heading Number 1.

It says while First Union correctly states the UCC provides a drawer a cause of action against a drawee bank, its conclusion that 404 and 405 cannot be utilized by a drawer against a depository bank in a double forgery situation is erroneous. It goes on to explain why it's so erroneous. It concludes that the concept of comparative negligence introduced in the revised sections of the code reflects a determination that all participants in the process had a duty to exercise care in drawing and handling instruments.

Your Honor, specifically there are explanations by bank experts on the failed duties of care or a failure to exercise ordinary care by Bank of America and how they open their account with Ms. Nance using a fake Social Security number and how she deposited the checks.

Your Honor, I just want to explain to you some factual history in this case to give you a better understanding of why we are bringing these causes of actions. Lara Nance was actually depositing checks made payable to Taylor Enterprises into her personal checking account. According to B of A, I think 526 fraudulent deposits into that B of A account. At least 450, probably 500 of those deposits were not into an account that she opened under the fictitious trade name Taylor Enterprise but under -- into her personal account. As explained by, uh, -- in the affidavit of Peter Seitz, these were third-party checks, checks made payable to Taylor Enterprise that was deposited into her personal account. Your Honor, it would be no different than if you walked up to the window at your bank and looked

into your household checking account and there was a check made payable to Coca-Cola and you said deposit this into my account please. Those are the facts that we are working with on the vast majority of all of these checks. She is endorsing the name of Taylor Enterprise on checks made out to Taylor Enterprise and putting them into her Lara Nance bank account.

There is a different set of facts which she did open an account called Taylor Enterprise and make deposits within them. Under the vast majority of the checks in this case, she was depositing them in her personal checking account. No special indorsements whatsoever.

Why this is significant -- and it's set forth in Peter Seitz affidavit -- is that Bank of America actually figure this out. They returned checks to her and said in a letter, Lara, you can't deposit a corporate check into a personal checking account. We're returning these checks back to you. You can't do that. There obviously is some sort of mechanism or a trigger at Bank of America where they pick up on the fact that a corporate check is deposited into a personal banking account. Lara then

takes the checks that she receives back the originals, takes them and re-deposits them and Bank of America accepts them.

Your Honor, in quick summation, I know a lot of points were bought up and we briefed these topics. I'll be glad to answer any questions the court may have. But just to sum up, we're not asking you to follow, uh, -- overrule Read. We are asking you to just recognize the fact that they are discussing conversion causes of action and 406, not that it's in support of it.

THE COURT: And while we're -- while I am sticking with you, you have got a motion for Bank of America to transfer funds?

MR. REID: Yes, Your Honor.

THE COURT: You said you had a motion to compel, but I think you said earlier that that was more for you to be able to argue the significance of what you wanted?

MR. REID: No.

THE COURT: Was I understanding what you were talking about?

MR. REID: No, Your Honor. The motion to compel -- and I'll be glad to speed this up and

move this along on the issues that we are here before the Court today. Jim Sheedy, Susan Driscoll and I have discussed our motion to compel discovery production. Just yesterday, I received an additional couple of hundred documents and some updated responses. There were only two significant portions.

Admittedly, it may not have been the clearest request. We're going to work through those issues. But one of the reasons that was filed, Your Honor, is this case does have some age on it. I know a scheduling order has been submitted. At the last status conference, we talked about perhaps a May or June trial.

THE COURT: Uh-huh.

MR. REID: And we have not been able to schedule depositions because we don't have a lot of the manuals and protocols that we have been requesting so that we can actually take a good factual deposition, Your Honor. It is more of just making sure we stay on task with some of the discovery.

THE COURT: I understand.

MR. REID: Would you like for me to go into the motion to transfer funds?

THE COURT: Sure.

MR. REID: Your Honor, I will set this forth pretty simply. Nance fraudulently deposited the checks to an account that was, the checks were not payable to her in an account at Bank of America. Bank of America helped to collect those funds. She pled guilty to this specific conduct. The US District Court of South Carolina has issued a restitution order, which I will be glad to hand up if you would like.

THE COURT: All right. (Pause.)

All right.

MR. REID: Your Honor, there is a restitution order that provides that Nance is to reimburse Overland Inc. $1.2 million. It goes into effect 90 days after she has been released. I'm not sure what day we are sitting on, but she has served her five years or whatever. The sentence originally was five years. Anyways, it goes into effect 90 days after she has been released. She has been released. It's coming in.

But Lara Nance's attorney is not here to weigh in on our motion. Uh, but perhaps we can

supplement on this motion with some sort of response from them. I don't know how they feel about this motion. But anyways, as we understand it, Bank of America is sitting -- has a hold harmless account and they have an account in which $28,645 of our money is sitting in their account.

We are asking you under Rule 64(a) to have that money returned to us, the rightful owner. Under 64A, it reads that during the course of an action all remedies providing for seizure of property, the purpose of securing satisfaction of judgment ultimately be entered or available under circumstances in the manner provided by law. There is a restitution order. Nance owes the money to us. She is a party defendant in this case. Her money -- our money is sitting over in their bank account. We're asking it to be returned.

We need that account. We are running a business. We have bills to pay. We have overhead. We have employees that we need to make payroll. We need to mitigate our damages. Your Honor, in the absence of $1.2 million, perhaps more than that, that we have lost in

the business as cause us to have a decreased revenue base. In discovery, -- excuse me, we learned in discovery that that could be to the tune of $60,000 or more per month that we are losing by not having $1.2 million. We need that money back. Your Honor, that is our money. There is a restitution order. We would like it back.

There is no justifiable basis for it to stay within Bank of America's accounts. In fact, it cannot gain interest. We can at least park it somewhere where it can gain interest if we are not allowed to use it specifically. But we're asking for full use of those funds and to credit it towards the restitution order.

THE COURT: All right.

MR. SHEEDY: Your Honor, if I could bring closure to the SJ motion with a couple of quick points.

THE COURT: Yeah. Quickly.

MR. SHEEDY: I promise to be quick. First of all, the amendments that allow for 404(d) and 3-405(b) were for the purpose of reducing the absolute bar that otherwise existed in these statues preventing the claimant from

going forward. When Mr. Reid says there is nothing in the statute about preclusion, actually, in the comments of 3-404, which I notice he didn't point out to the court, I quote, the drawer is precluded which explains again that --

MR. REID: Where is that?

MR. SHEEDY: I am looking at 3-404 note Number 3, the second sentence. The drawer is precluded. Okay. Uh, Ms. Driscoll will be arguing the motion to compel and motion to transfer funds on behalf of the bank.

THE COURT: All right. It sounds like y'all may have something worked out on the motion to compel?

MS. DRISCOLL: Your Honor, I believe that is correct. Mr. Reid is going to possibly revise the last remaining request to send those back to us and we will work with that upon receiving those.

Our position on the motion to transfer of funds is relatively simple, Your Honor. First, under Rule 64, that does allow for the seizure or freezing of funds, but it's not for the plaintiff to use those funds. It is to hold in

the event the plaintiff receives a judgment that will allow them to use those funds. Secondly, Your Honor, if the plaintiff can show that these are, in fact, funds of Overland in the account, Bank of America doesn't have a problem turning those funds over. However, the plaintiff has done nothing except make a self-serving statement that these are its funds.

This account was a personal account of Lara Marie Nance. She did make deposits into this account other than checks she embezzled from Overland. So it's quite possible that there are some funds in there that are the property of Lara Nance. If they are, then Bank of America itself has a lien on those funds in accordance with the terms of its deposit agreement. The lien on the funds that are the property of Lara Nance, not the property of Overland, is superior to any claim Overland has to those funds because the restitution order is after the deposit agreement. The deposit agreement was entered into in 2006. The restitution order was not entered until 2011.

Further, Your Honor, in order to actually become a judgment lien on funds of Ms. Nance,

federal law requires that this restitution order actually be entered and docketed in the county where the funds are being held which would be Greenville County. To my knowledge, that hasn't been done.

So just to put it simply, Your Honor, if Overland can show was through first-in, first-out methodology or some other accepted methodology that these funds are, in fact, a result from checks that she embezzled from Overland, then we don't dispute they have a right to those funds and they are not her money and we don't have a lien on it. If they cannot show that or there is a portion of those funds that are, in fact, in property of Lara Nance, then B of A has a superior right to those funds in accordance with its deposit agreement.

THE COURT: All right. Thank you, ma'am.

MR. REID: Your Honor, challenge accepted. I'm going to hand up to you -- let me just cite for everyone. I didn't bring copies of everything. This is Bank of America 383 Bates stamped 84, 85 which is Lara Nance's personal account. This is a statement of December 24th through January 22nd. Lara Nance's sole

proprietorship account doing business as Taylor Enterprises. This is her January 1st through January 31st account. That is the last couple of months on the account.

On the personal account, it's the account of which the time in which she was arrested. This is the last time she made deposits. We want to use the first-in, first-out method? Look at her deposits on that personal account, account Number 1589. There is $126,000 worth of deposits. Each and every one of those are fraudulent deposits. That's our money.

If you go to the business account, $78,000 worth of deposits, all of them being fraudulent checks made payable to what we thought were our own vendors which ended up at Bank of America. That's our money, Your Honor.

So -- and then two, I want to -- let's think in simple terms about the argument that Bank of America is making about its superior right to this money. It's saying that it has a contract with its customer that it may assert an attorney's fee lien in the event there's a dispute over what happens on their account. Your Honor, we have been victimized by Lara

Nance. She has held an account at Bank of America. They want to assert a attorney's fee lien over our funds that were embezzled from our company. They say that is superior to us, the victim. That makes absolutely no sense.

First of all, we are not a party to that contract if there is such a contract. Second, it is buried on Page 61 of a deposit agreement which Lara Nance did not have to sign. Just the idea that they are able to assert an attorney's fee lien over our money is reprehensible, Your Honor.

MS. DRISCOLL: Is that the -- Your Honor, that's not exactly our position. Our position is -- well, first, let me just respond to what Mr. Reid handed up to the court. I can't tell just by looking at deposits alone listed on a deposit agreement that -- her paycheck could be intervened with that. Other things can be intervened with those deposits. Some of them may be Overland checks. I just don't know.

I don't know that the $28,000 that we have in hold harmless account is, in fact, the property of Overland. If they can show us an itemization of checks that were deposited and

prove that the checks that were written out leave only Overland monies in those accounts, then we don't claim any right of setoffs as to Overland's money. The only right of set off we claim is that if there are indeed funds in that account that consist of monies other than what were embezzled from Overland, then we do have a contractual right of setoff in our deposit agreement that is superior to the judgment lien of Overland as to the funds of the property of Lara Nance, not to embezzled funds of Overland.

THE COURT: All right.

MR. REID: Your Honor, what is been produced to me so far from Bank of America are deposits into the account. Uh, there is maybe one payroll check. I haven't seen anything other than deposits from -- on checks made payable to Taylor Enterprises, Invision Industries, Atlantic British and I think early on in 2007 there might have been a couple other individual payees and vendors that weren't Taylor Enterprise. I think just one legitimate check in 2007. That's all I see. I'll be glad to supplement our argument with an analysis of that fact.

THE COURT: All right. Let me look at these things and see what I'm going to need on that. I will let you know. All right. Any other matters we need to take up?

MR. REID: Your Honor, I'm not entirely sure whether we discussed the scheduling order.

MR. SHEEDY: I think we did. I think we did with Your Honor's law clerk. My understanding is the scheduling order is before the court. Your Honor may remember from the prior status conference that we referenced that we would submit a scheduling order that called for a cut off in January. I think that is before the Court.

THE COURT: All right. All right. All right. I'll, uh, -- I'll look that over. It sounds like it is in accordance with what we have already discussed.

MR. REID: And Your Honor, Josh Howard has sat here so patiently. He and I have consented on a resolution for our motion to compel against his bank.

THE COURT: Okay. Yes Sir.

MR. HOWARD: Your Honor, we have a consent order. We just -- we had some changeover

internally. It is sort of slowed us down.

THE COURT: Okay. I'm glad y'all wee able to work it out.

MR. HOWARD: We were able to work it out.

THE COURT: All right then. I will take this matter under advisement -- these matters under advisement. I will take a look at things. I would anticipate that I will be issuing a decision within the next two to three weeks. Thank you.

MR. SHEEDY: Thank you, Your Honor.

MS. DRISCOLL: Thank you.

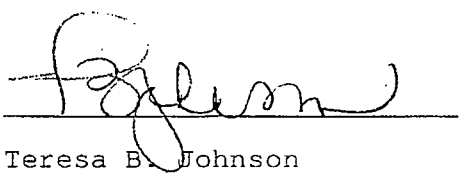
(WHEREUPON, the proceedings conclude at approximately 12:15 p.m.)

CERTIFICATE

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

I, the undersigned, Teresa B. Johnson, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Greenville, South Carolina, on this 14th day of April, 2015.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.



Teresa B. Johnson
Official Court Reporter

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. MCKENZIE
2014 OCT 30 PM 2 15

STATE OF SOUTH CAROLINA **JUDGMENT IN A CIVIL CASE**

COUNTY OF GREENVILLE **CASE NO: 2010CP2305880**

IN THE COURT OF COMMON PLEAS

Overland Inc *vs.* Lara Marie Nance

CHECK ONE:

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy:

☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other: _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☐ Statement of Judgment by the Court:

Dated at Greenville, South Carolina, this .

Court Reporter:

_____
PRESIDING JUDGE -

This judgment was entered on the 30th day of October, 2014, and a copy mailed first class this 30th day of October, 2014, to attorneys of record or to parties (when appearing pro se) as follows:

James Walter Fayssoux Jr. 209 E. Washington St.
Greenville, SC 29601

James H. Price III
David L. Moore Jr.
Bruce A. Byrholdt

CPFORM4M
SCCA SCRCP Form 4 Revised 06/2008

Elbert Stockman Dorn Sr.
Andrew A. Mathias
Joshua L. Howard
James W. Sheedy
Susan Elizabeth Driscoll
W. Howard Boyd Jr.
Ammon Tice Lesher
Sima Bhakta Patel
Lauren Thorne Maxwell

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court - Clerk of Court

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. MCKENZIE
2014 OCT 30 PM 2 15

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE Case No. 2010-CP-23-5880

Overland, Inc., d/b/a Land Rover of Greenville,

Plaintiffs,

vs.

Lara Marie Nance, Charlie Andrew Nance, Roger Fields, Synovus Financial Corporation d/b/a NBSC, Branch Banking and Trust Company, Bank of America Corporation, and SunTrust Banks, Inc.,

Defendants.

CONSENT SCHEDULING ORDER – SECOND AMENDED

This matter is before the Court, with the consent of all the Parties who have appeared in this matter, to set forth a Scheduling Order to facilitate the completion of discovery and other pre-trial matters. Pursuant to South Carolina Rule of Civil Procedure 40(e)(2), the following Scheduling Order is entered in this case:

1. Defendants shall identify experts following the deposition of Plaintiff's experts. Defendants shall make experts available for deposition at a time and place as agreed to among the Parties following production of the expert's report.

2. Any rebuttal experts shall be named by any Party within 15 days following deposition of Defendants' experts, and the Party naming such experts shall present them for depositions within 30 days from the date of identification if requested.

3. Discovery shall be completed by **January 12, 2015**. Discovery requests shall be served in such a manner and time so that the response is due on or before **January 12, 2015**. The Parties may extend this deadline by mutual, written agreement.

ENTERED COMPUTER

4. All Motions, except (a) those relating to the admissibility of evidence at trial and (b) those to compel discovery, shall be filed no later than **February 13, 2015**.

5. Mediation will be held on or before **March 13, 2014** before a mediator to be agreed upon by the Parties.

6. The date this case may be called for trial will be the later of the following dates: (1) **May 4, 2015**; or (2) **thirty (30) days after the Court has ruled on any dispositive motions** (except those relating to the admissibility of evidence at trial or to compel discovery) timely filed on or before the deadline set forth under Paragraph 4 above.

In addition to the schedule above, the Court orders as follows:

A. Service shall henceforth be by electronic means. Each Party shall promptly designate the persons and email addresses to be used by the other Parties for service of process, including any staff who should receive copies of any filings. Unless waived in writing, a courtesy copy of each document served by electronic means shall be sent by First Class mail, or hand delivered, the lead counsel for a Party within one day of electronic service. Notice of any hearings in the case shall be provided to all Parties through their respective counsel.

B. The Parties shall respond to all written discovery served as of the date of this Order within 45 days from the date of this Order. All subsequently served, non repetitive discovery shall be responded to in accordance with and in the time set forth in the South Carolina Rules of Civil Procedure.

C. Expert designations shall set forth the name of the expert, employer's name (if appropriate), complete contact information, and the subject matter upon which the expert is expected to testify.

D. Each expert shall be made available for deposition at a mutually convenient time within a reasonable time after service of the expert's disclosure.

E. The Parties shall cooperate on the scheduling of fact and expert depositions and make reasonable efforts to schedule depositions to minimize travel requirements.

F. The dates and provisions above may be modified by the Court, for good cause shown. The Parties may modify the dates by agreement, other than the dates for dispositive motions, and trial.

G. A representative of each Party authorized with full settlement authority shall personally attend any mediation conferences.

H. The Parties may, with the consent of all counsel, conduct discovery up to the time of trial, provided the other deadlines in this order are not affected.

AND IT IS SO ORDERED.

Honorable Letitia H. Verdin,
Thirteenth Judicial Circuit Court Judge

Dated: 10/29/14
Greenville, South Carolina

[Consent Below]

WE SO CONSENT:

FAYSSOUX LAW FIRM, P.A.

James W. Fayssoux, Jr.
T. Hunter Reid
209 E. Washington Street
Greenville, S.C. 29601
T: 864-558-7196
F: 864-233-4781
Attorneys for Plaintiff

HAYNSWORTH SINKLER BOYD, P.A.

Joshua L. Howard
Haynsworth Sinkler Boyd, P.A.
P. O. Box 2048
Greenville, SC 29602
T: 864-240-3200
F: 864-240-3300
Attorneys for Synovus Financial Corporation d/b/a NBSC

DRISCOLL SHEEDY, P.A

James W. Sheedy
Susan E. Driscoll.
11520 N. Community House, Suite 200
Charlotte, NC 28927
T: 704-341-2101
F: .704-341-2105
Attorneys for Bank of America Corporation

GALLIVAN, WHITE & BOYD, P.A.

Lauren T. Maxwell
55 Beattie Place, Suite 1200
Greenville, South Carolina 29601
Attorneys for SunTrust Banks, Inc.

BYRHOLDT DRAWDY, LLC

Bruce A Byrholdt

Bruce A. Byrholdt
Suite 117
2315 North Main Street
Anderson, S.C. 29621
T: 864-261-3977
F: 864-261-3978
Attorneys for Charlie Andrew Nance

2ND AMEND SCH. ORDER

NEXSEN PRUET, LLC

DLM thr/for

David L. Moore, Jr.
55 East Camperdown Way (29601)
Post Office Box 10648
Greensville, SC 29603-0648
T: 864-282-1173
F: 864-477-2635
Attorneys for Defendant Roger Fields

LAW OFFICES OF JAMES H. PRICE, III, P.A.

JHP thr/for

James H. Price, III, Esq.
644 E. Washington Street
Greenville, S.C. 29601
T: 864-271-3535
F: 864-242-6560
Attorneys for Defendant Lara Marie Nance

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE)

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2014 OCT 30 PM 2 15

Overland, Inc., d/b/a Land Rover Greenville,) CASE NO.
☒ Plaintiff) 2010-CP -23-5880
)
v.) MOTION AND ORDER INFORMATION
) FORM AND COVER SHEET
Lara Marie Nance, Et Al.)
☐ Defendant.)

Plaintiff's Attorney:	Defendant's Attorney:
T. Hunt Reid , Bar No. 77538	James W. Sheedy, Bar No.
Address:	Address:
P.O. Box 10207 Greenville, SC 29603	11520 N. Community House Rd. Ste 200
phone: 864-233-0445 fax: 864-672-3706	phone: fax:
e-mail: hunter@fayssouxlaw.com other:	e-mail: other:

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Consent Scheduling Order
Estimated Time Needed: Court Reporter Needed: ☐ YES / ☒ NO

SECTION II: Motion/Order Type

☐ Written motion attached
☒ Form Motion/Order
I hereby move for relief or action by the court as set forth in the attached proposed order.

T. Hunt Reid — October 16, 2014
Signature of Attorney for ☒Plaintiff / ☐Defendant — Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: 25.00
☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support
(check reason) ☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
☐ Other:

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order.	JUDGE
☐ Other:	CODE: Date:

CLERK'S VERIFICATION

Date Filed:
Collected by: D. Jones

☒ MOTION FEE COLLECTED: $25.00 5548 Fayssouy
☐ CONTESTED – AMOUNT DUE:

SCCA/233 (11-03)

Hunter Reid

From: Hunter Reid
Sent: Monday, December 16, 2013 3:54 PM
To: Hunter Reid; Jim Sheedy; Susan Driscoll; Lauren Maxwell; W. Howard Boyd, Jr.
Cc: Brent O.E. Clinkscale; Bruce A. Byrholdt; David L. Moore, Jr.; James H. Price, III; Wally Fayssoux; Howard, Joshua
Subject: RE: Overland Inc. v. Lara Marie Nance, et. al.; C.A. No.: 2010-CP-23-5880, Plaintiff's discovery demands to BOA and Suntrust
Attachments: Frasher. Suntrust Plaintiffs first set of interogatories.pdf; Frasher. BOA Plaintiffs first set of Interogatories.pdf

Jim and Howard,

Please see the attachments for service upon you in regards to the Overland case. I will also be sending hard copies to you.

By copy of this email I am serving all additional parties of record electronically only.

Regards,

Hunter

T. Hunt "Hunter" Reid
FAYSSOUX LAW FIRM, PA
864.233.0445
864.672.3706 FAX

From: Hunter Reid [mailto:hunter@fayssouxlaw.com]
Sent: Wednesday, December 11, 2013 5:28 PM
To: 'Jim Sheedy'; 'Susan Driscoll'
Cc: 'Brent O.E. Clinkscale'; 'Bruce A. Byrholdt'; 'David L. Moore, Jr.'; 'James H. Price, III'; Wally Fayssoux; 'Lauren Maxwell'; 'Michael S. Cashman'; 'W. Howard Boyd, Jr.'; 'Howard, Joshua'
Subject: RE: Overland Inc. v. Lara Marie Nance, et. al.; C.A. No.: 2010-CP-23-5880, P's supplmental responses to BOA's first discovery

Jim/Susan,

Please see attached discovery responses for service on you in connection with your demand for supplement interrogatory responses. All attorneys will receive a courtesy copy via US Mail.

Regards,

Hunter

T. Hunt "Hunter" Reid
FAYSSOUX LAW FIRM, PA
864.233.0445
864.672.3706 FAX

Hunter Reid

From: Jim Sheedy
Sent: Tuesday, January 21, 2014 3:56 PM
To: Hunter Reid
Subject: Overland Inc. v. Lara Marie Nance, et. al.; C.A. No.: 2010-CP-23-5880, Plaintiff's discovery demands to BOA and Suntrust

Hunter, I left you a vm that we're done but in-house wants more time to review, so may I have an extension?

From: Hunter Reid [mailto:hunter@fayssouxlaw.com]
Sent: Monday, December 16, 2013 3:54 PM
To: Hunter Reid; Jim Sheedy; Susan Driscoll; Lauren Maxwell; W. Howard Boyd, Jr.
Cc: Brent O.E. Clinkscale; Bruce A. Byrholdt; David L. Moore, Jr.; James H. Price, III; Wally Fayssoux; Howard, Joshua
Subject: RE: Overland Inc. v. Lara Marie Nance, et. al.; C.A. No.: 2010-CP-23-5880, Plaintiff's discovery demands to BOA and Suntrust

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Regards,

Hunter

Hunter Reid

From: Lauren Maxwell
Sent: Thursday, January 23, 2014 4:39 PM
To: Jim Sheedy; Hunter Reid
Cc: Howard Boyd
Subject: RE: Overland Inc. v. Lara Marie Nance, et. al.; C.A. No.: 2010-CP-23-5880, Plaintiff's discovery demands to BOA and Suntrust

Hunter,

I also left you a voicemail this morning requesting an extension on behalf of SunTrust. We need in-house to review our answers/responses. Please let me know if this is ok with you? We should have them out to you by the end of next week.

Thanks,
Lauren

Gallivan, White & Boyd, P.A.
ATTORNEYS AT LAW

Lauren T. Maxwell
Associate
lmaxwell@gwblawfirm.com

Gallivan, White & Boyd P.A.
Office 55 Beattie Place | Suite 1200 | Greenville SC 29601
864 241 7011 Direct | 864 271 9580 Main | 864 271 7502 Fax
Mailing Post Office Box 10589 | Greenville SC 29603

vCard | BioURL | Website

This message is from the law firm Gallivan, White & Boyd, PA and may be a confidential and privileged legal communication to the named recipient(s). If you receive this message in error or are not the named recipient(s), please notify the sender and delete this email. Thank you.

From: Jim Sheedy [mailto:JimSheedy@Driscollsheedy.com]
Sent: Tuesday, January 21, 2014 3:56 PM
To: Hunter Reid
Subject: Overland Inc. v. Lara Marie Nance, et. al.; C.A. No.: 2010-CP-23-5880, Plaintiff's discovery demands to BOA and Suntrust

Hunter, I left you a vm that we're done but in-house wants more time to review, so may I have an extension?

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Subject: RE: Overland Inc. v. Lara Marie Nance, et. al.; C.A. No.: 2010-CP-23-5880, Plaintiff's discovery demands to BOA and Suntrust

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By copy of this email I am serving all additional parties of record electronically only.

Regards,

Hunter

T. Hunt "Hunter" Reid

Fayssoux Law Firm, PA

864.233.0445

864.672.3706 Fax

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To: 'Jim Sheedy'; 'Susan Driscoll'
Cc: 'Brent O.E. Clinkscale'; 'Bruce A. Byrholdt'; 'David L. Moore, Jr.'; 'James H. Price, III'; Wally Fayssoux; 'Lauren Maxwell'; 'Michael S. Cashman'; 'W. Howard Boyd, Jr.'; 'Howard, Joshua'
Subject: RE: Overland Inc. v. Lara Marie Nance, et. al.; C.A. No.: 2010-CP-23-5880, P's supplmental responses to BOA's first discovery

Jim/Susan,

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Hunter Reid

From: Hunter Reid
Sent: Monday, February 17, 2014 2:37 PM
To: Jim Sheedy
Subject: RE: discovery?

Ok.
How about tomorrow afternoon, say 3:00?

From: Jim Sheedy [mailto:JimSheedy@Driscollsheedy.com]
Sent: Monday, February 17, 2014 2:37 PM
To: Hunter Reid
Cc: Susan Driscoll
Subject: discovery?

I know you mean "responses". I thought we'd push this to you last week but we didn't. It should happen this week (as soon as I get sign off).

I have two other topics to discuss with you. Call me sometime when you get a chance.

From: Hunter Reid [mailto:hunter@fayssouxlaw.com]
Sent: Monday, February 17, 2014 2:34 PM
To: Lauren Maxwell; Jim Sheedy
Subject: discovery?

Jim/Lauren:

Checking in with you on discovery production.

Thanks,

Hunter

Hunter Reid

From: Lauren Maxwell
Sent: Wednesday, February 19, 2014 12:06 PM
To: Hunter Reid
Subject: RE: discovery?

Hunter,

I have not forgotten about this. Am still finalizing and will send them your way ASAP. See you tonight for Scallywag's.

-Lauren

Gallivan, White & Boyd, P.A.
ATTORNEYS AT LAW

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lmaxwell@gwblawfirm.com

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From: Hunter Reid [mailto:hunter@fayssouxlaw.com]
Sent: Monday, February 17, 2014 2:34 PM
To: Lauren Maxwell; Jim Sheedy
Subject: discovery?

Jim/Lauren:

Checking in with you on discovery production.

Thanks,

Hunter

Hunter Reid

From: Hunter Reid
Sent: Monday, March 03, 2014 3:39 PM
To: Jim Sheedy; W. Howard Boyd, Jr.; Lauren Maxwell
Cc: Susan Driscoll; Bruce A. Byrholdt; David L. Moore, Jr.; Howard, Joshua; BClinkscale@wcsr.com; SGrant@wcsr.com; Wally Fayssoux
Subject: insufficient discovery responses
Attachments: Curtis v Time Warner Entertainment-AdvanceNewhouse Partnership.rtf

Guys,
I am disappointed in your discovery responses and lack of production. Looks like you answered two or three, maybe, in a sufficient manner.
Attached is a copy of Judge Anderson's order explaining his beliefs on discovery practices in South Carolina and the purpose of our rules. I am certain that Judge Verdin and our other state court judges feel the same way.
I would rather devote my time towards moving this case forward than pursuing discovery motions, but I will leave that decision up to you.

-Hunter

From: Jim Sheedy [mailto:JimSheedy@Driscollsheedy.com]
Sent: Saturday, March 01, 2014 12:22 PM
To: Hunter Reid
Cc: Susan Driscoll; Bruce A. Byrholdt; David L. Moore, Jr.; Howard, Joshua; BClinkscale@wcsr.com; SGrant@wcsr.com; lmaxwell@gwblawfirm.com; hboyd@gwblawfirm.com
Subject: BofA discovery responses // Overland Litg.

Hunter,

See attached.

Jim

From: Jim Sheedy
Sent: Monday, February 17, 2014 2:40 PM
To: 'Hunter Reid'
Subject: RE: discovery?

Fine. 704/341-2102 DD

From: Hunter Reid [mailto:hunter@fayssouxlaw.com]
Sent: Monday, February 17, 2014 2:37 PM
To: Jim Sheedy
Subject: RE: discovery?

Ok.
How about tomorrow afternoon, say 3:00?

From: Jim Sheedy [mailto:JimSheedy@Driscollsheedy.com]
Sent: Monday, February 17, 2014 2:37 PM

2013 WL 2099496
Only the Westlaw citation is currently available.
United States District Court,
D. South Carolina.

Keith CURTIS and Tyneshia Brooks, individually and on behalf of all others similarly situated,
Plaintiffs,
v.
TIME WARNER ENTERTAINMENT–ADVANCE/NEWHOUSE PARTNERSHIP, Defendant.

C/A No. 3:12–cv–2370–JFA. | May 14, 2013.

Attorneys and Law Firms

Graham Lee Newman, Michael David Scott, Richard A. Harpootlian, Christopher P. Kenney, Richard A. Harpootlian Law Office, Columbia, SC, James Mixon Griffin, Margaret Nicole Fox, Lewis Babcock and Griffin, Columbia, SC, Todd R. Ellis, Todd Ellis Law Office, Irmo, SC, for Plaintiffs.

Joseph Scott Carr, Joseph E. Ozmer, II, Michael D. Kabat, Paul G. Sherman, Wargo and French, Atlanta, GA, Ronald James Tryon, Lawrence Michael Hershon, Parker Poe Adams and Bernstein, Columbia, SC, for Defendant.

Opinion

ORDER ON MOTIONS TO COMPEL

JOSEPH F. ANDERSON, JR., District Judge.

*1 This matter is before the court upon two motions to compel discovery[1] filed by the plaintiffs. *See* ECF Nos. 39, 60. The court heard argument on the first motion on April 15, 2013, the same day the court heard argument from the parties on the plaintiffs' motion for conditional class certification. The second motion to compel was not fully briefed at the time of that hearing, although full briefs have now been received by the court. The court has determined that oral argument on the second motion will not aid in its decision process.

Before delving into the merits of the motions to compel, the court must address two procedural issues. As to the first motion, defendant contends that the motion is defective because plaintiffs have not complied with the requirements of Local Rule 7.02, D.S.C., which requires a moving party to first confer with the opposing party about the subject of its motion before filing the motion. The court has examined the affidavit and emails attached to the plaintiffs' reply memorandum and determines that the meet and confer requirements of Local Rule 7.02 have been met. Although there was no "meet and confer" session denominated as such, it is clear that the plaintiffs explored various options and alternatives prior to filing their motion and complied with Local Rule 7.02 in this case.

Next, plaintiffs challenge the fact that the defendant has renumbered some of its interrogatories so as to break out subparts and assign them separate numbers. Plaintiffs' concern in this regard is obviously occasioned by Rule 33, FED. R. CIV. P., which limits a party's interrogatories to no more than twenty-five, unless the court excuses this limitation. This issue may be easily resolved by the court's announcing its intention to exercise its discretion under Rule 33 to relax the limitation on the number of interrogatories a party may make. Because the court has gained some familiarity with the complexity of this litigation at the hearing on the motion for conditional class certification, the court hereby announces that each party will be allowed to propound a total of 100 interrogatories, including all discrete subparts, to the other side in this case. Neither party should attempt to circumvent the clear import of this rule by including subparts to an interrogatory that should count as a numbered interrogatory.

Turning to the merits, in their first motion, plaintiffs point out that the defendant's initial and supplemental responses violate the Federal Rules of Civil Procedure because they raise "generalized, boilerplate objections and fail to identify the information withheld pursuant to an objection or claim of privilege." ECF No. 40, at 4. Defendant then compounds the problem by also providing plaintiffs with *some* response, thus leaving plaintiffs unable to determine what information has been withheld and the specific justification for the withholding. In their second motion, plaintiffs point out that the defendant has employed the same basic tactics in responding to the discovery requests in subsequent interrogatories and requests for production.

*2 Rather than engage in a point-by-point discussion of each bit of information the plaintiffs seek, the court wishes to memorialize, by way of this order, its general philosophy on discovery responses and then provide the defendant an opportunity to submit new answers to all outstanding discovery. The court hastens to add that, by

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disposing of the motion in this fashion, the court is not at this time determining that the defendant has acted in bad faith or otherwise acted improperly under the Federal Rules of Civil Procedure or the Local Rules of this District. Rather, the defendant has responded to discovery requests in a fashion that is becoming all too common in cases on this court's docket, and the action taken on the present motions is consistent with what this court has directed in other cases.

In order to efficiently resolve discovery disputes, the parties are hereby notified that the following rules apply to discovery objections before this court:

1. *Nonspecific, Boilerplate Objections*
The parties shall not make nonspecific, boilerplate objections. Objections that state that the discovery request is "vague, overly broad, or unduly burdensome" are, standing alone, meaningless and will be found meritless by this court. A party objecting on these grounds must explain the specific and particular way in which a given request is vague, overly broad, or unduly burdensome. *See* Fed.R.Civ.P. 33(b)(4); *Josephs v. Harris Corp.*, 677 F.2d 985, 992 (3d Cir.1982) ("[T]he mere statement by a party that the interrogatory was 'overly broad, burdensome, oppressive and irrelevant' is not adequate to voice a successful objection to an interrogatory. On the contrary, the party resisting discovery 'must show specifically how ... each interrogatory is not relevant or how each question is overly broad, burdensome or oppressive.' " (citation omitted)). If a party believes that the request is vague, that party shall attempt to obtain clarification prior to objecting on this ground.

2. *Objections Based Upon Scope*
If there is an objection based upon an unduly broad scope, such as time frame or geographic location, discovery should be provided as to those matters within the scope which are not disputed. For example, if discovery is sought nationwide for a ten-year period, and the responding party objects on the ground that only a five-year period limited to activities in the State of South Carolina is appropriate, the responding party shall provide responsive discovery falling with the five-year period as to the State of South Carolina and then object to the overage.

3. *Irrelevant and Not Reasonably Calculated to Lead to Admissible Evidence*
An objection that a discovery request is irrelevant and not reasonably calculated to lead to admissible evidence must include a specific explanation describing why the request lacks relevance and why the information sought will not reasonably lead to admissible evidence. Parties are reminded that the federal rules allow for broad discovery that does not necessarily need to be admissible at trial. *See* Fed.R.Civ.P. 26(b)(1); *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351–52, 98 S.Ct. 2380, 57 L.Ed.2d 253 (1978).

4. *Formulaic Objections Followed by an Answer*
*3 The parties shall not recite a formulaic objection followed by an answer to the request. It has become common practice for a party to object on the basis of any of the above reasons and then state that, "notwithstanding the above," the party will respond to the discovery request, subject to or without waiving such objection. Such an objection and answer preserves nothing and serves only to waste the time and resources of both the parties and the court. Further, such practice leaves the requesting party uncertain as to whether the question has actually been fully answered or whether only a portion of the question has been answered. *See* Civil Discovery Standards, 2004 A.B.A. SEC. LIT. 18.

5. *Objections Based upon Privilege*
Generalized objections asserting the protection of the attorney-client privilege or the work product doctrine also do not comply with the Federal Rules of Civil Procedure. A party objecting on the grounds of privilege must state the specific nature of the privilege being asserted, as well as, *inter alia,* the nature and subject matter of the communication at issue and the sender and receiver of the communication and their relationship to each other. If a general objection of privilege is made without attaching a proper privilege log, the objection of privilege may be deemed waived.

With the foregoing principles in mind, the defendant is directed to submit new responses to outstanding discovery requests. If any disputes arise to the new responses, the parties must comply with the meet and confer requirements of Local Rule 7.02 prior to filing any such motion, and they should earnestly attempt to resolve discovery disputes prior to court involvement if at all possible.

IT IS SO ORDERED.

Footnotes

1 The first motion additionally seeks sanctions.

End of Document

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JAMES W. FAYSSOUX, SR.
JAMES W. FAYSSOUX, JR.

FAYSSOUX
LAW FIRM P.A.

PAUL S. LANDIS
T. HUNT REID

July 7, 2014

James W. Sheedy, Esquire
Susan E. Driscoll, Esquire
DRISCOLL SHEEDY, P.A.
11520 N. Community House Rd.
Suite 200
Charlotte, NC 28277

RE: ***Overland Inc., d/b/a Land Rover of Greenville v. Lara Marie Nance, et. al,***
C.A. No.: 2010-CP-23-5880
Request for supplemental discovery responses

Jim/Susan:

I have reviewed your discovery responses dated March 3, 2014, and I believe several of your written answers are inadequate and require supplementation. The purpose of this letter is to address my concerns with you in hopes that we can avoid court intervention and unnecessary delays in completing discovery.

As you will see below, I am addressing your responses to interrogatories and requests for production separately; although there is some considerable overlap between the two.

Interrogatory Answers

- **Answer 1**: You provide no names and no contact information concerning potential witnesses; however, two bank employees were identified in answering Plaintiff's Interrogatory No. 19, and another employee in No. 24. Please clarify. Notwithstanding, you also did not provide any reasonable contact information for these three employees.
- **Answer 2**: You cited SCRCP Rule 33(c), yet you did not provide sufficient detailed explanation regarding the location and identity of the business records as required under the rule. This is especially important in this case due to your numerous productions and the voluminous materials involved.
- **Answer 5**: Please supplement to the extent that you revise Answer 1 (discussed above).
- **Answer 8**: Your response may be deficient in at least these four manners –
    - You referenced the absence of "non-privileged" or discovery communications, but did not produce a privilege log. Please produce the log or revise your response accordingly.
    - Your answer did not include communications with Charlie Nance, Roger Fields, or any other co-Defendants. Both of these individuals have been customers of Bank of America at times relevant to this action; however, no communications were revealed, which is highly improbable given Bank of America's obligation to provide monthly statements to his customers.

POST OFFICE BOX 10207 • GREENVILLE, SC 29603
209 EAST WASHINGTON STREET • GREENVILLE, SC 29601
864.233.0445 • 864.233.4781 FAX • WWW.FAYSSOUXLAW.COM

- In the same regard, I have produced to you three letters from Bank of America addressed to Lara Nance (September 23rd, October 1st and November 10th, 2009), yet these were not referenced. Please explain.
- Prior to the filing of this action, Bank of America representatives met with Agent James Motley of United States Secret Service. No details of these conversations or meetings have been provided. Please update Answer 29 as well, to the extent you supplement this answer.

- **Answer 10**: No privilege log. Also, please reference the specific federal laws upon which you rely in withholding information related to the SARs reports.
- **Answer 16**: Your response may be deficient in at least two manners:
  - Withholding information regarding co-Defendants Charlie Nance and Roger Fields. These individuals were customers of BOA and all parties in this case are subject to a Confidentiality Order.
  - Your response indicates that no debit cards or credit cards were issued for these accounts. Please see attached images of three separate cards and revise your response.
- **Answer 19**:
  - It has been over four months since you requested additional time to determine if Roger Fields and Charlie Nance were account holders/customers of BOA. As you know, account number ending -1589 was originally a joint account with Lara and Charlie Nance. Also, your production materials reveal that Roger Fields at least maintained the account number ending -7588 (See, e.g., *BOA000211*). Please supplement your response hereto, as well as for Answers 22 and 24 and 30, if the same applies.
  - Your response doesn't provide sufficient contact information for the employees identified therein.
  - Your response does not include identification of bank employees that handled Nance's ATM deposits. Even "automated" deposits require someone to retrieve the deposit slips and check deposits, then process the items along the banking channels. Please clarify your response.
  - Your response does not include details regarding cash withdrawals at the counter.
  - Your response does not include the identity of your bank employees that provided Piedmont/Apex Automotive with certified funds. For example, during Steve Albert's deposition, page 90, he recounts obtaining certified funds from Nance's account at a Bank of America branch. Please supplement your response hereto, as well as for Answer 28, if the same applies
- **Answers 20, 21 and 27**: Your responses hereto are wholly unacceptable. First, Overland's customer status is not a proper basis for objecting to this interrogatory. You have previously raised this exact objection in your motion to dismissed, which has been rejected by Judge Verdin. Two, Overland has specifically set forth allegations related to the manner in which your client opened the subject bank accounts. Third, your client's policies and procedures for opening accounts is, in fact, the main thrust of this entire case. This makes your client's policies, procedures and manuals especially relevant.
- **Answer 26**: For clarification purposes, please use the common usage of "altered" or "alteration," and not necessarily the UCC definition.

- **Answer 29**: No privilege log. Also, again, your Rule 33(c) option doesn't satisfy the requirement to direct Plaintiff towards which communications you are referring to in this answer.
- **Answer 30**: You mentioned that no investigations were ever performed on accounts ending with numbers -1589, -4759, or -6180; however, your answer does not provide any details of reviews and examinations as requested. This cannot accord with your responses to Interrogatory No. 24 (accounts closed and funds held by B of A's hold harmless department), as well as several deposit adjustments that were made by B of A for the above-referenced accounts. Please revise your response.

Production responses

Every one of your responses to Plaintiff's First Requests for Production mentions it will produce "discoverable, non-privileged documents," or objects upon the grounds that B of A "does not have any discoverable, non-privileged documents that are responsive" to Plaintiff's requests. However, you have not produced a privilege log. Without one, I am unable to determine if you have answered my request.

Furthermore, your responses do not contain any references to a corresponding Bates Number or other identifying feature. Your two CD productions contained 2,271 pages, which appear to be responsive to RFPs 10 and 11 only. Again, without some indication as to which documents are responsive to each request, I cannot determine if you have sufficiently responded. I realize that I am asking a lot of you to revise each response, but they are insufficient as it stands.

Third, I would respectfully request that you revise each response to Plaintiff's RFPs based upon the concerns addressed hereinabove relating to your answers to interrogatories. This is important for both of us so that discovery can remain organized.

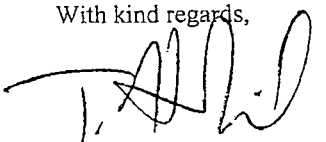
And, to be more specific, please review the following:

- **Responses 6 and 21**: Again, your objection here is not reasonable and I respectfully request that you produce these materials.
- **Response 9**: In using the word "file," I mean to convey the file-folder, box(es), or other document storage device (whether it be tangible, digital, electronic or otherwise) that may be used by B of A to designate any item or file related to Lara Nance or this matter. This should be rather self-explanatory, but I am glad to give a further description if needed. Also, I cannot agree that I have received copies of Nance's deposit/checking account agreements and signature cards for the subject accounts. Please reproduce using a Bates Number or other identifier.
- **Response 13**: Please clarify if such an account history exists.

Jim and Susan, I would be glad to work with you to resolve these matters, so please contact me if you have any questions regarding this letter.

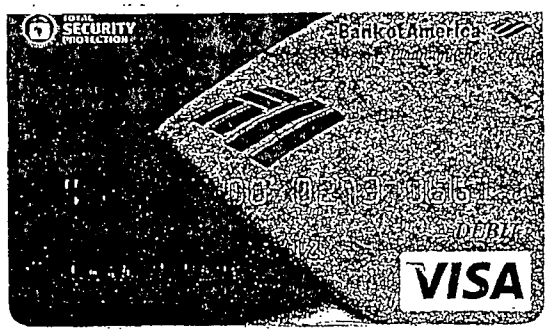
I look forward to your responses and supplemental materials.

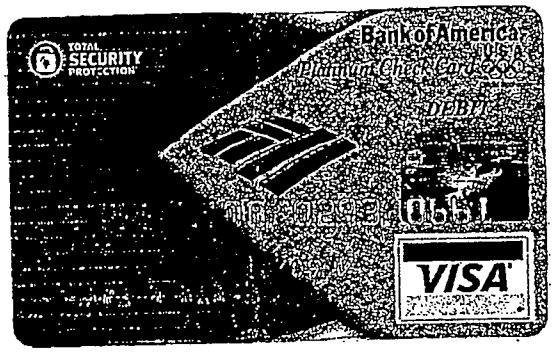
With kind regards,

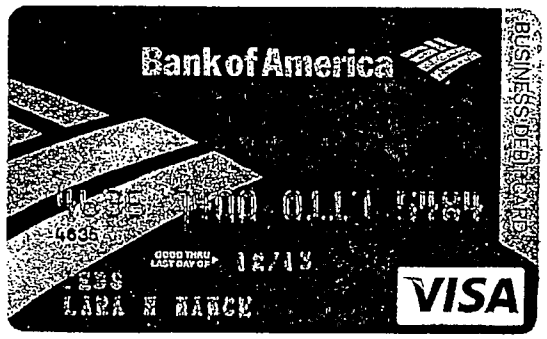


Hunter Reid

Enclosures (as stated)


TOTAL SECURITY PROTECTION
Bank of America
DEBIT
VISA


TOTAL SECURITY PROTECTION
Bank of America
Platinum Check Card
DEBIT
VISA


Bank of America
BUSINESS DEBIT CARD
4635
GOOD THRU LAST DAY OF
VISA

Hunter Reid

From: Lauren Maxwell
Sent: Friday, October 03, 2014 9:51 AM
To: Susan Driscoll; Howard, Joshua
Cc: dmoore@nexsenpruet.com; bruce@byrholdtdrawdy.com; Jim Sheedy; Howard Boyd; Hunter Reid
Subject: RE: Bank of America fact witnesses

Hunter,

As you and Howard discussed this morning, can we postpone these depositions until the court has ruled on the pending motions for summary judgment? Although Judge Verdin may decide those motions from the bench, it is more likely that she will take them under advisement and will not have issued an order by Nov. 4th, and SunTrust does not want to proceed with discovery while its motion is pending.

Thanks,
Lauren

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From: Susan Driscoll [mailto:sdriscoll@driscollsheedy.com]
Sent: Friday, October 03, 2014 9:44 AM
To: Howard, Joshua
Cc: Lauren Maxwell; dmoore@nexsenpruet.com; bruce@byrholdtdrawdy.com; Jim Sheedy; Howard Boyd; Hunter Reid
Subject: RE: Bank of America fact witnesses

Thanks!

From: Howard, Joshua [mailto:JHoward@hsblawfirm.com]
Sent: Friday, October 03, 2014 9:44 AM
To: Susan Driscoll
Cc: lmaxwell@gwblawfirm.com; dmoore@nexsenpruet.com; bruce@byrholdtdrawdy.com; Jim Sheedy;

Driscoll SHEEDY

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October 27, 2014

Via E-mail and U.S. Mail
T. Hunter Reid, Esq.
Fayssoux Law Firm, P.A.
P.O. Box 10207
Greenville, S.C. 29603

Re: Overland, Inc. d/b/a Land Rover of Greenville v. Lara Marie Nance, et al. / C.A. No.: 2010-CP-23-5880

Dear Hunter:

Based on our numerous conversations, you led me to believe that we were working through your letter of July 7, 2014. You understood that each time you furnished documents to me that you had failed to provide previously such production triggered further investigation at Bank of America (B of A) which takes time. I was therefore surprised by your motion to compel in which you misrepresented that, i) B of A failed to respond to discovery, which you knew to be untrue; and ii) the failure was a deliberate refusal. The motion to compel was unwarranted and excessive.

This response to your letter of July 7th is given under the assumption that you will not be furnishing any more documents after your October 16th e-mail that you have failed to provide previously. Should you do so, B of A will of course need additional time to investigate and supplement in accordance with Rule 26(e), SCRCP.

In your letter of July 7, 2014, you itemized your concerns over B of A's written discovery responses. Enclosed herewith please find B of A's Supplemental Answers to Plaintiff's First Set of Interrogatories and Supplemental Responses to Plaintiff's First Requests for Production, again, in accordance with Rule 26(e). This supplementation by B of A is not an indication that its answers and responses were incomplete when made. Rather, this supplementation is because of the obligation under the Rule that your discovery under Rules 33 and 34 continues from time of service to the time of trial.

Several of your requests seek information related to Charlie Nance and/or Roger Fields. B of A cannot respond to these requests absent disclosure of Mr. Nance's and Mr. Fields' social security numbers. B of A has asked for both of their SSNs, but has not received either. Once you provide these numbers, B of A will check its systems to see if there are any accounts held by either Mr. Nance or Mr. Fields. Despite your assertion that Mr. Fields has an account with B of A that ends in -7588, such an account does not exist at B of A, nor does BOA000211 indicate that account is held by B of A. The reference in BOA000211 is simply a reference to an account transfer from LMN's B of A account ending in -1589 to a bank account held by Roger Fields. It does not state that account is one held by B of A. In addition, should B of A receive the social security numbers, notwithstanding the protective order B of A requests that Mr. Nance and Mr. Fields consent to the production of their confidential financial information or that a court order be entered compelling B of A to disclose their financial information subject to the terms of the protective order.

You also requested a privilege log that would disclose any documents withheld on the grounds of an asserted Rule 26, SCRCP, privilege. Other than attorney-client communications with B of A that occurred after suit was filed, at this time B of A is not withholding any documents on the grounds of a Rule 26, SCRCP, privilege; therefore, there is no need for a privilege log.

B of A stands on its objections to Interrogatory Numbers 21 and 27 and Request No. 21. While B of A's account opening policies and procedures have been produced, B of A is not producing its policies and procedures related to maintaining and safeguarding its customers' bank accounts against fraud on those accounts. Plaintiff is not a customer of B of A, nor has any customer lodged a claim against B of A in this case. Fraud against Lara Nance is not even remotely an issue in this case. How B of A maintains and safeguards Lara Nance's money from third parties is beyond the permissible scope of discovery. These policies and procedures have no bearing on any claim brought in this case.

Respectfully,

DRISCOLL SHEEDY, P.A.

James W. Sheedy

cc: Josh Howard, Esq.
W. Howard Boyd, Jr., Esq.
Lauren Maxwell, Esq.

STATE OF SOUTH CAROLINA) COUNTY OF GREENVILLE)	IN THE COURT OF COMMON PLEAS	
Overland, Inc., d/b/a Land Rover Greenville,)) Plaintiff,)) vs.))	C.A. No.: 2010-CP-23-5880	
Lara Marie Nance; Charlie Andrew Nance;) Roger Fields; Synovus Financial) Corporation d/b/a NBSC; Bank of America,) N.A.; and SunTrust Banks, Inc.,)) Defendants.))		

BANK OF AMERICA, N.A.'s SUPPLEMENTAL
ANSWERS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES

In accordance with Rules 26(e) and 33, SCRCP, Bank of America Corporation (B of A) hereby supplements its answers to Plaintiffs' Interrogatories (the "interrogatories"). These supplemental answers are subject to the General Objections set forth in B of A's Answers to Plaintiff's First Set of Interrogatories served on Plaintiff on March 3, 2014.

Answers

1. *Give the names, current addresses and telephone numbers of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.*

Answer: Other than the deposition transcripts of witnesses already deposed, copies of which are in the possession of Plaintiff, B of A has no written or recorded statements.

Nancy K. Smith
Bank of America
Anderson Main Office
3005 N. Main Street
Anderson, S.C. 29621

Anthony S. Persons
Bank of America
Banking Center Manager
August Road Banking Center
1927 Augusta Street
Greenville, S.C. 29605

Wanda G. Head
Bank of America
Fraud Analyst II Back Office
6000 Feldwood Road
College Park, GA 30349-3652

Latonia Staples Alexander
Bank of America
Senior Fraud Analyst
6000 Feldwood Road
College Park, GA 30349-3652

Janis L. Greene
Bank of America
Senior Operations Consultant
11333 McCormick Road
Hunt Valley, MD 21031

All of the above witnesses may be contacted through counsel for Bank of America.

2. *Set forth a list of photographs, plats, sketches, or other prepared documents in possession of the party that relate to the matters complained of in Plaintiff's Complaint.*

Answer: Other than the spreadsheet already produced to Plaintiff as Tab A to B of A's Answers to Plaintiff's First Set of Interrogatories, B of A does not have any prepared documents.

5. *For each person known to the parties and counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts*

known to or observed by such witness, or provide a copy of any written or recorded statements taken from said witness.

Answer: Nancy Smith has knowledge of LMN opening accounts -1589 and -6180 with B of A. Anthony Persons has knowledge related to LMN opening account -4759 at B of A. Both Latonia Staples Alexander and Wanda G. Head have knowledge related to the mechanical action of closing LMN's accounts and the transfer of funds to the Hold Harmless department of B of A. Janis L. Greene may have knowledge of B of A's ATM deposit processing mechanisms and programs.

8. *Describe any correspondence, whether verbal or written, or otherwise, Defendant or any individual, employee or representative acting as an agent on its behalf has had with Plaintiff or any other individuals or entities concerning the facts, claims or defenses concerning this litigation and the events and circumstances related thereto or referenced therein.*

Answer: Other than communications that are protected from disclosure by the Joint Defense Agreement among counsel for SunTrust, BB&T, B of A and Synovous (which are outside the requirement of a privilege log), B of A has not had any communications with any other Defendant about this litigation or the events and circumstances relating to this litigation. B of A did provide LMN with automated letters dated September 23, October 1 and November 10, 2009, of which Plaintiff made B of A's counsel aware. In addition to these letters, B of A is producing correspondence between it and LMN related to items deposited into her account that were returned unpaid (BOA 002355 through BOA 002386). B of A has been unable to determine that there were any other communications with LMN about the events and circumstances related to this litigation.

10. *Identify every document not produced in connection with Plaintiff's request to produce and state the specific reason for your refusal to produce it.*

Answer: Although Plaintiff has requested a supplementation to B of A's prior answer to this interrogatory, B of A's prior answer was complete when given, nor has any new information been

uncovered that would warrant supplementation.

16. *List each and every account opened, maintained or used by LMN, CAN, or RF, at Defendant's bank by providing the account type, name, number, routing number, credit card number and expiration date(s) issued thereto, pin numbers associated therewith, open and close dates, and by identifying which local branch maintained each account.*

Answer: B of A has requested the social security numbers for CAN and RF, but has not received either number. Given that these are two rather common names and B of A has a banking footprint that covers the majority of the United States and certain foreign countries, absent these social security numbers B of A cannot confirm whether either CAN or RF has an account with B of A. If CAN and RF are customers, B of A will produce their confidential financial information with their consent or by court order, subject to the confidentiality order.

B of A has no information within its system related to any debit or credit cards issued to LMN.

19. *List and provide current contact information for each and every employee of Defendant that handled any aspect of the accounts for LMN, CAN and/or RF. Please include when and by whom each account was initiated, the process by which each account was initiated, the name and address of any person who approved for access to each account.*

Answer: See Supplemental Answer to Interrogatory No. 16 as to CAN and RF. See Supplemental Answer to Interrogatory No. 1 as to LMN. B of A branch employees did not handle any ATM deposits made by LMN. The checks deposited by LMN were collected by armored truck and transferred to a vault for electronic processing. No B of A branch employee had any involvement in that process. Janis Levine, Aimee Kasch, Gina O'Donnell, Britani Sons, Rachel Graus, Rosalia Giraldo, Allison Coker, Priti Tailor and April Owens each handled cash withdrawals for LMN.

20. *Describe in detail all of Defendant's policies, procedures, protocols and practices for opening a personal checking/savings account, corporate account, or other business related account(s).*

Answer: In accordance with Rule 33(c), SCRCP, rather than describe the requested policies, procedures, protocols and practices , B of A will produce copies of its policies, procedures, protocols and practices for opening a personal checking/savings account, corporate account, or other business related account(s).

28. *List the names and provide current contact information for all employees of Defendant that accepted a check or draft from LMN, CAN or RF in exchange for certified funds or certified checks.*

Answer: The following employees, each of whom can be contacted through counsel for B of A, accepted a check drawn on LMN's account -1589 in exchange for an official check: Pat Dunn, Kim Williams, Rosalia Giraldo, Allison Coker, Michelle Johnson, Priti Tailor, April Owens, Sara Kavanagh, Lucille Bonds and Rachel Buckner. Terri Williams, Aimee Kasch and Cecilia Riley also exchanged checks drawn on LMN's account -1589 in exchange for an official check; however, they no longer work for B of A and B of A has no contact information for them.

29. *Did Defendant initiate or receive contact to/from or otherwise communicate with any employee or agents of NBSC/Synovous, BB&T, the United States Secret Service or other federal governing bodies in regards to LMN, CAN, RF, or any of the subjects of this litigation? If so, please state in detail when the contact was established, a summary of the communications, and a list of all persons involved.*

Answer: B of A cooperated with the U.S. Secret Service in its investigation of LMN. B of A has no documentation of any kind related to any meetings with any agent of the U.S. Secret Service or any other federal governing body. Other than communications that are protected from disclosure by the Joint Defense Agreement among counsel for SunTrust, BB&T, B of A and

Synovous, B of A has not had any communications with any other Defendant.

30. *Did Defendant ever engage in or perform an investigation, examination or review, whether internally or externally, of the account activity of LMN, CAN or RF? If so, please state in detail when the review occurred, the reasons for such review, a summary of the review, conclusions and responsive actions taken therefrom.*

Answer: See Supplemental Answer to Interrogatory No. 16 as to CAN and RF. There was no "examination or review" performed by B of A of LMN's accounts. B of A made the decision to close LMN's accounts because of pending charge backs on account -1589 from checks that were deposited in January of 2010. Once the accounts were closed, B of A placed any funds on deposit therein into a hold harmless account. No further investigation, review or examination was performed by B of A.

Date: 10/27/14

DRISCOLL SHEEDY, P.A.

By: J. W. Sheedy

James W. Sheedy
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ATTORNEYS FOR B OF A

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE) IN THE COURT OF COMMON PLEAS

Overland, Inc., d/b/a Land Rover Greenville,)
)
Plaintiff,)
)
vs.)
) C.A. No.: 2010-CP-23-5880
Lara Marie Nance; Charlie Andrew Nance;)
Roger Fields; Synovus Financial)
Corporation d/b/a NBSC; Bank of America,)
N.A.; and SunTrust Banks, Inc.,)
)
Defendants.)
)

DEFENDANT BANK OF AMERICA, N.A.'s SUPPLEMENTAL RESPONSE TO PLAINTIFF'S FIRST REQUESTS FOR PRODUCTION

In accordance with Rules 26(e) and 34, SCRCP, Bank of America, N.A. (B of A) hereby supplements its responses to Plaintiff's requests for production (the "requests"). These supplemental responses are subject to the General Objections set forth in B of A's Responses to Plaintiff's First Requests for Production served on Plaintiff on March 3, 2014.

Responses

4. *Copies of any and all statements, memoranda, reports or other materials which in any way might relate to Defendant's defense(s) herein which are within the possession of Defendant or Defendant's attorneys whether written, recorded on a tape recorder, or otherwise.*

Response: B of A has no memoranda, reports or other materials in its care, custody and control that are responsive to Request No. 4.

5. *Copies of any and all photographs, digital images, plats, diagrams, sketches, videotapes or other prepared documents or materials which Defendant or Defendant's attorneys may have which relate to the matters alleged in Plaintiff's Complaint and may be presented at trial or into evidence, by way of impeachment, or otherwise.*

Response: Other than the spreadsheet produced to Plaintiff as Tab A to B of A's Answers to Plaintiff's First Set of Interrogatories and the deposit agreements governing the accounts of LMN with B of A, B of A does not have any prepared documents or materials.

6. *Copies of all policies, protocols, manuals and/or procedures with respect to the creation of or the opening up of customer accounts that were in effect at Bank of America during the relevant periods of this case.*

Response: The requested documents are stamped "Confidential" in accordance with the terms of the Consent Confidentiality Order and are Bates numbered BOA 002326 through BOA 002354 and BOA 002387 through BOA 002644.

7. *Copies of each and every document provided to Bank of America by any person(s) in relation to the account(s) listed in your response to Plaintiff's Interrogatory No. 16.*

Response: B of A did not receive copies of any documents when any of account nos. -1589, -6180 and -4759 were opened.

8. *Copies of each and every document provided by Bank of America to LMN, CAN, RF or any other person associated with the account(s) listed in your response to Plaintiff's Interrogatory No. 16.*

Response: Documents Bates numbered BOA 002272 through BOA 002325 are true and correct copies of the deposit agreement and signature cards that governed account nos. -1589, -6180 and -4759. B of A did not provide any other documents to LMN.

9. *Copies of Bank of America's entire file on LMN, CAN, RF, "TEBS", Taylor Enterprises, Atlantic British, Invision Industries, and all the accounts associated with these persons or entities, including, without limitation, the following: reports, memos, financial statements, tax returns, correspondence, internal reviews, financial analysis, SARS reports, audits, corporate resolutions, secretary of state certificates or writings, operating agreements and/or articles of organization, checking and deposit account agreements, signature cards, customer identifications, EIN, SSN, driver's licenses, e-mails. If any of the above-referenced documents exists but not within Bank of America's file, please produce the same, wherever they are located.*

Response: All of the documents produced to Plaintiff are a part of B of A's file, as defined by Plaintiff's letter dated July 7, 2014.

10. *Copies of any and all bank statements and credit card statements associated with or connected with the accounts listed in your response to Plaintiff's Interrogatory No. 16.*

Response: See documents BOA 000001 through BOA 000421.

11. *Copies of any and all deposit slips, check images, checks deposited, withdrawal receipts, ATM transactions, draw requests or other account transactions or request for transaction that are associated or connected with the accounts listed in your response to Plaintiff's Interrogatory No. 16.*

Response: See documents BOA 000422 through BOA 001491, BOA 002242, BOA 002243, BOA 002246, BOA 002247, BOA 002252 through BOA 002257.

12. *Copies of all checks paid and/or transferred on the accounts listed in your response to Plaintiff's Interrogatory No. 16, including the front and back of each check, written or drawn on the account(s) and wiring information if funds were wired from the account(s).*

Response: See documents BOA 001491 through BOA 002241, BOA 002244, BOA 002245, BOA 002248 through BOA 002251, BOA 002258 through BOA 002271.

13. *An account history of all the accounts listed in your response to Plaintiff's Interrogatory No. 16, by date, showing the initial funding of the account, all deposits during the existence of the accounts, debits on the accounts, debit information including the payee names and account information where the funds were deposited and form of disbursement, withdrawal information including the form of disbursement such as cash, check or wire, as well as any other account information.*

Response: B of A has provided to Plaintiff any and all documents in its care, custody and control (other than SARs) that relate to or display any and all account activity in account nos. -1589, -6180 and -4759.

14. *Copies of all correspondence, whether electronically or otherwise, including attachments thereto, between Bank of America and any other parties to this action that may relate in any way to the subjects of this action.*

Response: Other than the correspondence that is protected from disclosure by the Joint Defense Agreement among counsel for SunTrust, BB&T, B of A and Synovous, B of A does not have any correspondence that is responsive to Request No. 14.

22. *Copies of any documents used in formulating your response to Plaintiff's Interrogatory Nos. 20, 21, 27 and/or 30.*

Response: As to documents used to formulate the answer to Interrogatory No. 20, see documents Bates numbered BOA 002326 through BOA 002354 and BOA 002387 through BOA 002644. B of A hereby reiterates its objections to Interrogatory Nos. 21 and 27. B of A has no responsive documents as to Interrogatory No. 30.

Date: 10/24/14

DRISCOLL SHEEDY, P.A.

By: _____

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ATTORNEYS FOR B OF A

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE) IN THE COURT OF COMMON PLEAS

Overland, Inc., d/b/a Land Rover Greenville,

Plaintiff,

vs.

Lara Marie Nance; Charlie Andrew Nance; Roger Fields; Synovus Financial Corporation d/b/a NBSC; Bank of America, N.A.; and Suntrust Banks, Inc.,

Defendants.

CERTIFICATE OF SERVICE

C.A. No.: 2010-CP-23-5880

I certify that copies of the foregoing Bank of America, N.A.'s Supplemental Answers to Plaintiff's First Set of Interrogatories, Supplemental Response to Plaintiff's First Request for Production and a CD containing documents Bates Stamped BOA 002272 through BOA 002644 have been served on the following at the addresses shown below, via First Class, U.S. Mail, postage-paid on the date set forth below.

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James W. Fayssoux, Jr., Esq.
Fayssoux Law Firm, P.A.
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Greenville, S.C. 29603

Bruce A. Byrholdt, Esq.
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Anderson, S.C. 29621

David L. Moore, Jr., Esq.
Nexsen Pruet, LLC
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Greenville, S.C. 29603-0648

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Joshua L Howard, Esq.
H. Sam Mabry, III, Esq.
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James H. Price, III, Esq.
Law Offices of James H. Price, III, P.A.
644 East Washington Street
Greenville, S.C. 29601

Charlotte, NC

Date: 10/27/14

DRISCOLL SHEEDY, P.A.

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ATTORNEYS FOR B OF A

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

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UNITED STATES OF AMERICA	)	CR. NO. 6:10-634
	)	18 U.S.C. § 1343
	)	18 U.S.C. § 981(a)(1)(C)
vs.	)	28 U.S.C. § 2461(c)
	)	
	)	
LARA MARIE NANCE	)	SUPERSEDING INDICTMENT

THE GRAND JURY CHARGES:

1. That beginning in or about July 2007 and continuing until in or about January 2010, in the District of South Carolina, the Defendant, LARA MARIE NANCE, did knowingly devise a scheme and artifice to defraud and to obtain monies by means of false and fraudulent pretenses, representations, and promises, and during such period, in the course of executing said scheme and artifice, did knowingly transmit and cause to be transmitted in interstate commerce, by means of wire communications, certain electronic signals, such scheme and artifice and such wire communications being more fully set forth below.

THE SCHEME AND ARTIFICE

2. It was part of the scheme and artifice to defraud that LARA MARIE NANCE printed unauthorized business checks from her employer, Land Rover of Greenville, drawn on her employer's account at NBSC, and deposited these unauthorized checks into personal and business accounts she established at various banks and that were under her control.

3. It was part of the scheme and artifice to defraud that after depositing the unauthorized Land Rover of Greenville checks into various bank account that were under her

control, LARA MARIE NANCE purchased multiple automobiles from the Apex Automotive Group in Anderson, South Carolina. LARA MARIE NANCE then resold these automobiles to friends and family members. The moneys LARA MARIE NANCE received from the sales of these automobiles were then deposited into bank accounts under her control.

4. From in or about July 2007 and continuing through in or about January 2010, LARA MARIE NANCE knowingly and willfully did execute and attempt to execute the scheme and artifice to defraud outlined above in that she converted to her own use approximately $1,282,749.90 before Land Rover of Greenville discovered that LARA MARIE NANCE was creating unauthorized business checks and depositing the checks in bank accounts under her control.

THE USE OF AN INTERSTATE WIRE

5. On or about October 26, 2009, in the District of South Carolina, the Defendant, LARA MARIE NANCE, for the purpose of executing the aforesaid scheme and artifice to defraud, knowingly did transmit and caused to be transmitted in interstate commerce an electronic signal from Greenville, South Carolina, to Hoffman Estates, Illinois, that is, LARA MARIE NANCE faxed a letter, bearing the forged signature of J.F. to ADP Dealer Services, requesting that she have expanded access to her employer's computer system. Such access was critical to the scheme and artifice to defraud so that LARA MARIE NANCE could have access to the accounts payable system. LARA MARIE NANCE's access was otherwise scheduled to be reduced because of the hiring of a new employee.

In violation of Title 18, United States Code, Section 1343.

FORFEITURE

A. Upon conviction for one or more violations of 18 U.S.C. § 1343 (Wire Fraud) as charged in this Superseding Indictment, the Defendant, LARA MARIE NANCE, shall forfeit to the United States any property, real or personal, which constitutes or is derived from any proceeds the Defendant obtained, directly or indirectly, as the result of such violations and any property traceable to such property.

B. Pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c), the property which is subject to forfeiture upon conviction of the Defendant, LARA MARIE NANCE, for violations charged in the Superseding Indictment includes, but is not limited to, the following:

C. (1) Cash Proceeds/ Money Judgment:
A sum of money equal to all proceeds the defendant obtained directly or indirectly as the result of the offenses charged in the Superseding Indictment, or traceable to such property, that is a minimum of $1, 282, 750.00 in United States currency;

(2) Vehicles:
2002 Honda Civic EX
Vin# 1HGEM21992L099732
Owner: Karen Lanier

2007 KIA Sedona
Vin# KNDMB233276117583
Owner: John Yeomans

2007 Chrysler Town and Country
Vin# 2A4GP54L47R213653
Owner: John Yeomans

2006 Chrysler Town and Country
Vin# 2A8GP54L46R809133
Owner: Barbara Gordan

2007 Chrysler Town and Country
Vin# 2A4GP54L27R213442
Owner: Lisa Forrester

2000 Jeep Grand Cherokee
Vin# 1J4G248S2YC312878
Owner: Lara Nance

2008 Jeep Grand Cherokee
Vin# IJ8HR58228C157656
Owner: Lara Nance

2008 Honda Pilot
Vin# 5FNYF28298B009943
Owner: Robert Massey

2009 Dodge Ram 1500 Quad
Vin# 1D3HV18P29S794360
Owner: Andrew Nance

1999 Lexus RX 300
Vin# JT6GF10U3X0030536
Owner: Lissette Spivey

2009 Chrysler Town and Country
Vin# 2A8HR44E69R526733
Owner: Lara Nance

2010 Honda Accord
Vin# 1HGCP2F86AA005153
Owner: Derek Forrester

2009 Dodge Ram 1500 Quad
Vin# 1D3HB18P99S796129
Owner: Walter Peake

2003 Dodge Ram 2500
Vin# 3D7KU28C43G778668
Owner: Andrew Nance

2006 Jeep Grand Cherokee
Vin# 1J4HR48N26C266282
Owner: Patrica Cook

2002 Dodge Grand Caravan
Vin# 2B8GP74L62R729969

D. SUBSTITUTION OF ASSETS:

If any of the property described above as being subject to forfeiture, as a result of any act or omission of the Defendant –

A. cannot be located upon the exercise of due diligence;

B. has been transferred or sold to, or deposited with, a third person;

C. has been placed beyond the jurisdiction of the Court;

D. has been substantially diminished in value; or

E. has been commingled with other property which cannot be subdivided without difficulty;

it is the intent of the United States, pursuant to Title 18 U.S.C. § 982(b)(1), incorporating 21, U.S.C.§ 853(p), to seek forfeiture of any other property of the Defendant up to an amount equivalent to the value of the above-described forfeitable property;

Pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c).

A TRUE Bill

FOREPERSON

WILLIAM N. NETTLES (wjw)
UNITED STATES ATTORNEY

AFFIDAVIT IN SUPPORT OF SEIZURE WARRANTS

I, James B. Motley, Jr., after having been duly sworn, state as follows:

I am a Special Agent with the United States Secret Service ("USSS"), Department of Homeland Security, and have been so employed for over 10 years. I am currently assigned to the Greenville Resident Office of the Secret Service, and am responsible for investigating crimes that violate Federal laws.

I am familiar with the information contained in this affidavit based on: (I) direct knowledge of each of the following facts, or upon information provided to me by other law enforcement officers; (ii) interviews conducted with the defendant, Lara Marie Nance; and (iii) information received from third parties, such as witnesses and victims.

In conjunction with my official duties as a Special Agent with USSS, I became involved in an investigation regarding bank fraud and wire fraud. My investigation began on February 18, 2010, when I met with investigators from the Greenville County Sheriff's Office ("GCSO"). They informed me of two complainants, Dr. Jack Frasher (owner of Land Rover of Greenville ("Land Rover")), and Gregg Babetz (Manager for Land Rover). The complainants had provided information regarding a fraud scheme perpetrated by one of Land Rover's former employees, Lara Marie Nance ("Nance"). According to Frasher and Babetz, Nance had printed and cashed several hundred unauthorized Land Rover checks. The complainants had also discovered a forged letter on Nance's computer workstation, dated October 26, 2009, which Nance sent to ADP (the company Land Rover uses to control computer access privileges). The forged letter granted Nance full "system administrator" privileges over Land Rover's computer system. These privileges gave Nance access to Land Rover's "accounts payable" system.

The GCSO investigators provided me with copies of the complainant's statements, copies of checks, Nance's letter to ADP, and Nance's NCIC information. In addition, they provided me with a list from the South Carolina Department of Motor Vehicle system showing twenty-three (23) vehicles currently registered to Lara Marie Nance.

On February 19, 2010, I, along with other USSS agents, met with Dr. Jack Frasher, Gregg Babetz, Sue Unser (Land Rover's Comptroller), attorney Bill Foster, and Mike O'Shea, who is the Director of Investigations for the Forensic Research Group, Inc. Frasher, Babetz, and Unser provided me with copies of several Land Rover business checks drawn on their business account at the National Bank of South Carolina (NBSC), Greenville, South Carolina. The payees of the checks were Taylor Enterprises, Invision Industries, and British Atlantic, which are all legitimate vendors of Land Rover. In the ordinary course of Land Rover's business, payments to such vendors would have generated corresponding purchase orders. Unser stated that she has identified hundreds of Land Rover checks payable to these three vendors which were not associated with any purchase orders. Additionally, Unser stated that, according to the endorsements, these checks were deposited into accounts at various banks, including SunTrust Bank, Bank of America, and BB&T.

On February 22, 2010, I, along with other USSS agents, interviewed Jeff Searcy, Vice President/General Manager, APEX Piedmont Honda, Chrysler, Jeep, & Dodge ("Piedmont

Honda"), and Lynn Smith, Sales Manager at Piedmont Honda, in Anderson, South Carolina. Searcy stated he was familiar with Nance, saying that she had purchased between 20 and 30 vehicles from his dealerships. Searcy said that after Nance had purchased several vehicles, he became skeptical. He asked Smith to question Nance as to why she continued to purchase vehicles. Smith said that Nance told her that she (Nance) had been in an accident several years ago, and that she periodically received payments from the settlement. Nance told Smith that purchasing vehicles for family and friends was Nance's way of taking care them. Searcy explained all the vehicles purchased by Nance were "cash deals," and that Nance funded 100% of the vehicle purchase price with a cashier's check or personal check from either Bank of America or Suntrust Bank. Searcy stated Nance purchased all of these vehicles within the last 12 months.

On March 15, 2010, I interviewed Lara Marie Nance in the presence of her attorney, Chip Price. In a signed and sworn statement, Nance admitted the following:

Beginning in the fall of 2007, and continuing through January 2010, Nance used her Land Rover work computer to generate unauthorized Land Rover business checks totaling in excess of $500,000. These checks were made payable to Taylor Enterprises, Invision Industries, or Atlantic British (all legitimate vendors used by Land Rover). Nance would send these checks, via her work computer, to a batch printer located in a separate area of the Land Rover dealership, after which she would remove them. Nance opened bank accounts at SunTrust Bank ("SunTrust") and Bank of America ("BoA") using a fictitious company business name, "Taylor Enterprises Business Solutions," or "TEBS," which closely resembled the name of one of Land Rover's legitimate vendors, Taylor Enterprises. Nance then deposited the checks into her accounts with SunTrust and BoA.

Nance purchased 23 vehicles from Piedmont Honda. At the time of each purchase, Nance would put the title to most of the vehicles in the names of family and friends, as set forth in the chart below. Nance also titled a few vehicles in her own name, as shown below. According to Nance, she would collect small sums of money from each person, often near the time of purchase, in order to make the sales appear legitimate to the persons in whose name the vehicles were titled. In addition, Nance would tell her family and friends that, due to her contacts in the car industry, she was able to purchase repossessed vehicles through this particular dealership for back taxes and small administrative fees. Nance stated that the remainder of the money not used to buy cars was spent on gifts for employees at the Land Rover dealership to subsidize "business deals," or for meals and other personal items.

On March 17, 2010, I received subpoenaed documents from Piedmont Honda. These showed that Nance purchased 23 vehicles from the dealership, and funded the purchases with money from her "DBA TEBS" Bank of America account.

On March 30, 2010, I received the subpoena return from Bank of America. Bank records revealed deposits in accounts established and controlled by Nance of $1,262,524.77. Deposits were from unauthorized Land Rover business checks drawn on National Bank of South Carolina.

On October 12, 2010, based upon the above-described scheme, the Federal Grand Jury for the Greenville Division issued a Superseding Indictment charging Lara Nance with Mail Fraud, in violation of 18 U.S.C. § 1343. *See, United States v. Lara Marie Nance*, Case No. 6:10-634-HMH (Docket Entry 26). The Superseding Indictment also contains a Forfeiture Allegation which references all of the below-listed vehicles as being subject to criminal forfeiture.

Below is a list of 16 vehicles purchased by Nance that have not been traded or sold. Nance paid for all vehicles with money embezzled from Land Rover of Greenville, via personal or cashier's check(s). Nance filled out the SC DMV paperwork with the current owner's name and information (below) while at the dealership finalizing the purchase, so that the vehicles were titled as set forth below.

Vehicle Year	Vehicle Make	Vehicle Model	VIN #	Transaction Date	Owner
2002	HONDA	CIVIC EX	1HGEM21992L099732	8/22/2009	Karen Lanier
2007	KIA	SEDONA	KNDMB233276117583	9/23/2009	John Yeomans
2007	CHRYSLER	TOWN & COUNTRY	2A4GP54L47R213653	9/24/2009	John Yeomans
2006	CHRYSLER	TOWN & COUNTRY	2A8GP54L46R809133	10/27/2009	Barbara Gordon
2007	CHRYSLER	TOWN & COUNTRY	2A4GP54L27R213442	10/28/2009	Lisa Forrester
2000	JEEP	GRAND CHEROKEE	1J4G248S2YC312878	11/10/2009	Lara Nance
2008	JEEP	GRAND CHEROKEE	1J8HR58228C157656	1/15/2010	Lara Nance
2008	HONDA	PILOT	5FNYF28298B009943	11/10/2009	Robert Massey
2009	DODGE	RAM 1500 QUAD	1D3HV18P29S794360	11/10/2009	Andrew Nance
1999	LEXUS	RX 300	JT6GF10U3X0030536	11/24/2009	Lissette Spivey
2009	CHRYSLER	TOWN & COUNTRY	2A8HR44E69R526733	11/30/2009	Lara Nance
2010	HONDA	ACCORD	1HGCP2F86AA005153	12/12/2009	Derek Forrester
2009	DODGE	RAM 1500 QUAD	1D3HB18P99S796129	12/23/2009	Walter Peake
2003	DODGE	RAM 2500	3D7KU28C43G778668	12/31/2009	Andrew Nance
2006	JEEP	GRAND CHEROKEE	1J4HR48N26C266282	1/5/2010	Patrica Cook
2002	DODGE	GRAND CARAVAN	2B8GP74L62R729969	1/28/2010	Lara Nance

Based on the foregoing, I submit that there is probable cause to believe that the aforesaid property to be seized would, in the event of the conviction of Lara Marie Nance for wire fraud, be subject to forfeiture, pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c), and that the vehicles are subject to criminal seizure process, pursuant to 21 U.S.C. § 853(f), by 18 U.S.C. § 982(b)(1). I further submit that, because vehicles are mobile, and therefore subject to being easily hidden or disposed of, a restraining order pursuant to 21 U.S.C. § 853(e) would not be sufficient to assure the availability of the property for forfeiture.

James B. Motley Jr., Special Agent
United States Secret Service

This affidavit has been reviewed and approved by AUSA Stanley D. Ragsdale.

SWORN to before me this
19th day of October, 2010.

Kevin F. McDonald
United States Magistrate Judge

Bank of America

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12/21/09 19:23 *PLEASANTBURG
ISCD2706 GREENVILLE SC

XXXXXXXX5484 Deposit to PRIMARY Checking

Ser. No. 3829	Check Amount	$3,497.84
Ser. No. 3830	Check Amount	$3,412 97
Ser. No. 3831	Check Amount	$3,591 45
	Total Deposit	$10,502.26
	Chk Available Bal	$0 00

Hold Notice
A hold has been placed on your deposit.

Total Amt Delayed	$10,402.26
Funds Availability on 12/29/09 by 9 AM	$10,402.26

Reason: A hold was placed on your deposit because your account is less than 30 days old. New account funds availability rules apply during the first 30 days your account is open.

For more information see your Deposit Agreement at www.bankofamerica.com

Member FDIC

Bank of America

Customer Receipt

All items are credited subject to verification, collection, and conditions of the Rules and Regulations of this Bank and as otherwise provided by law. Payments are accepted when credit is applied to outstanding balances and not upon issuance of this receipt. Transactions received after the Bank's posted cut-off time or Saturday, Sunday, and Bank Holidays, are dated and considered received as of the next business day.

Please retain this receipt until you receive your account statement.

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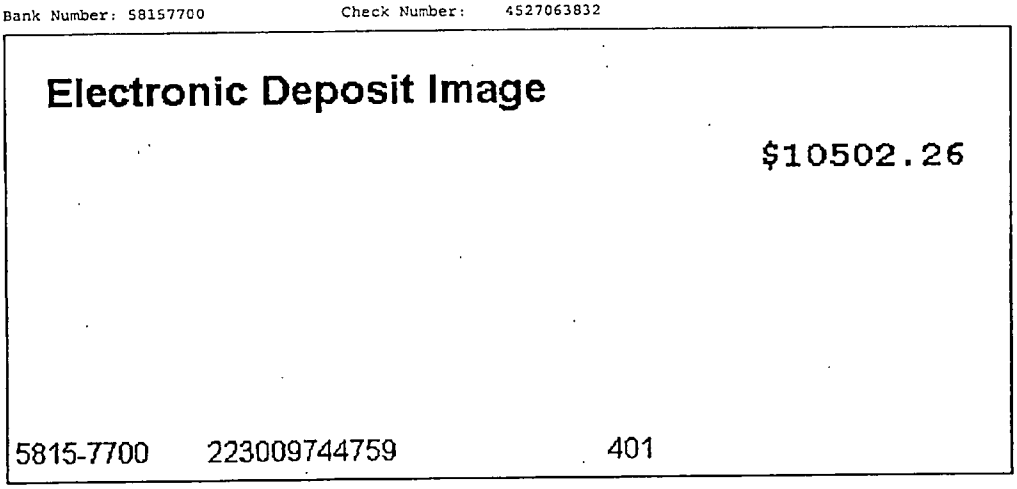
Tran 00012 12/21/2009 12:59
Gabby NSC CC 7320600 Tlr 00001
Account ********4759
R/T# 053073139
Deposit $25.00

Member FDIC
95-14-2005B 05-2009

Amount:	$10,502.26	Sequence Number:	2382173600
Account:	223009744759	Capture Date:	12/21/2009
Bank Number:	58157700	Check Number:	4527063832



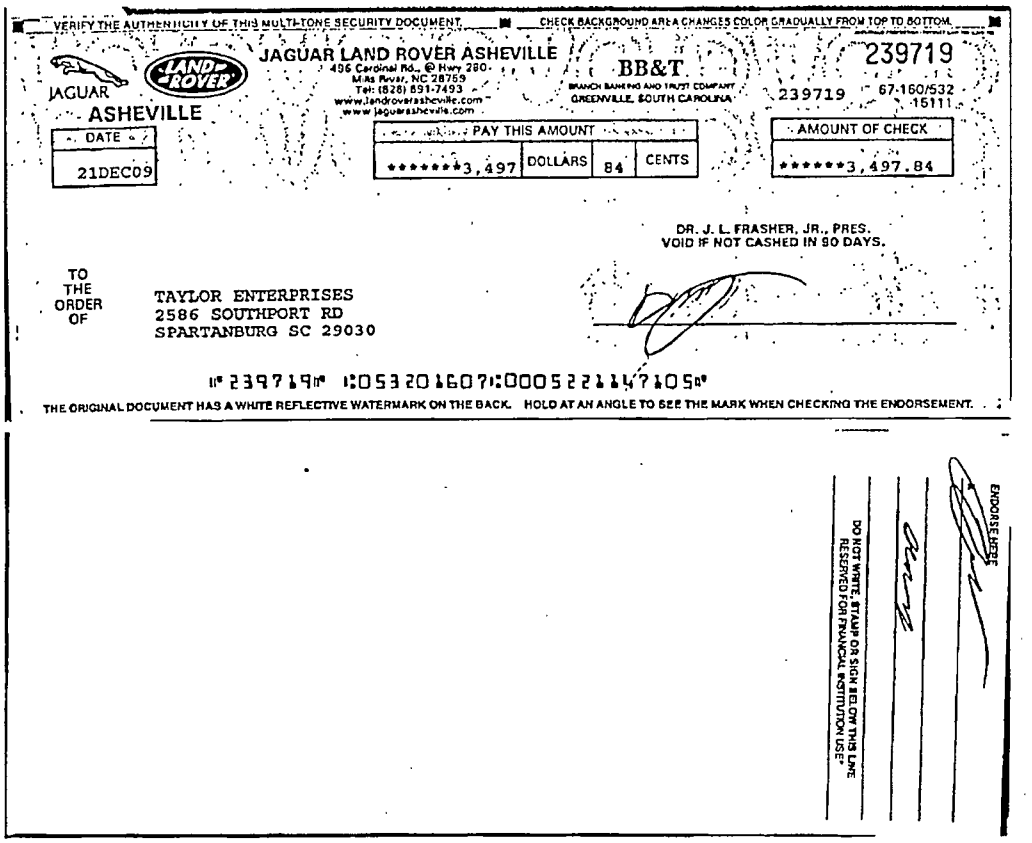
Electronic Endorsements:

Date	Sequence	Bank #	Endrs Type	TRN	RRC	Bank Name
12/21/2009	000002382173600	11000138	Rtn Loc/BOFD	Y		BANK OF AMERICA, NA

Amount: $3,497.84 Sequence Number: 2382173601

Account: 5221147105 Capture Date: 12/21/2009

Bank Number: 05320160 Check Number: 239719



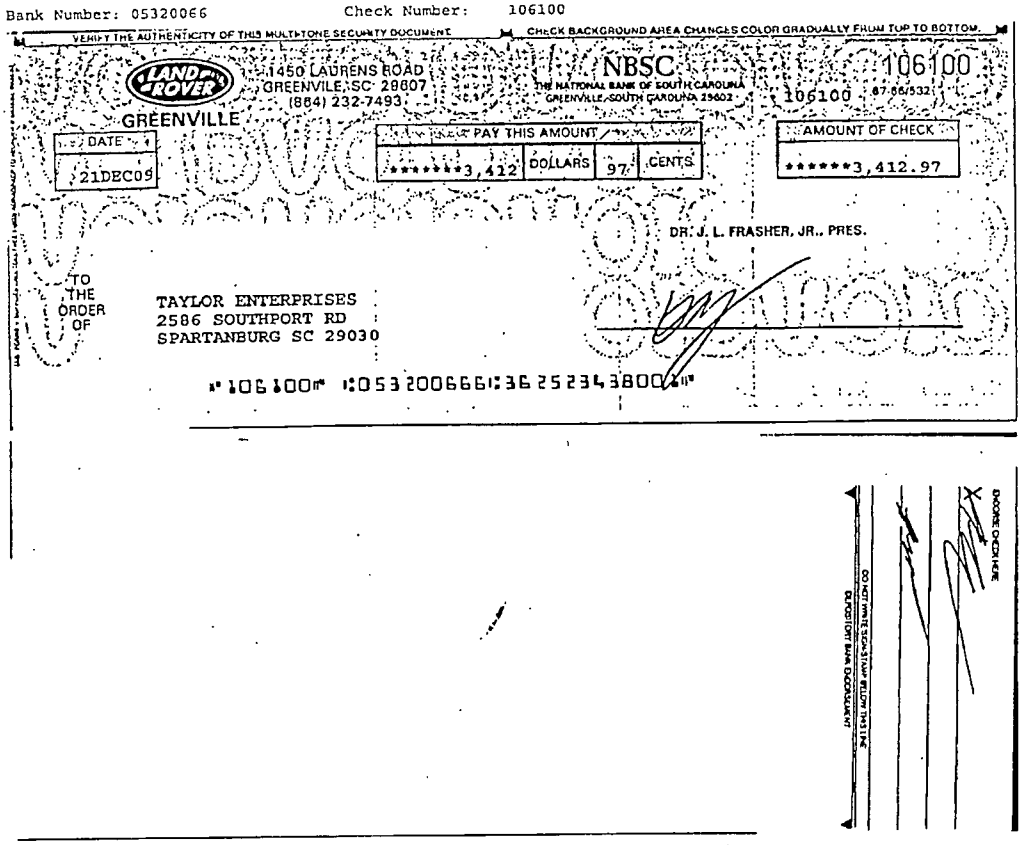
Electronic Endorsements:

Date	Sequence	Bank #	Endrs Type	TRN	RRC	Bank Name
12/21/2009	000002382173601	11000138	Rtn Loc/BOFD	Y		BANK OF AMERICA, NA

Amount: $3,412.97 Sequence Number: 2382173602

Account: 362523438001 Capture Date: 12/21/2009

Bank Number: 05320066 Check Number: 106100



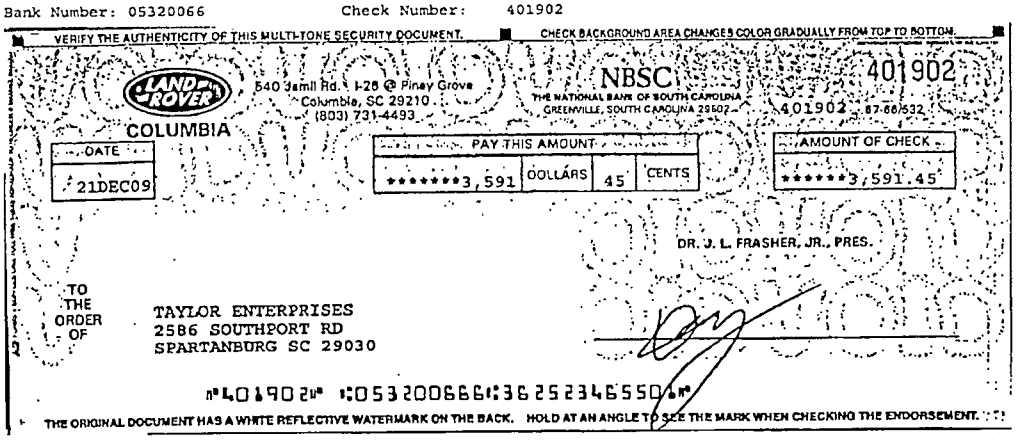
Electronic Endorsements:

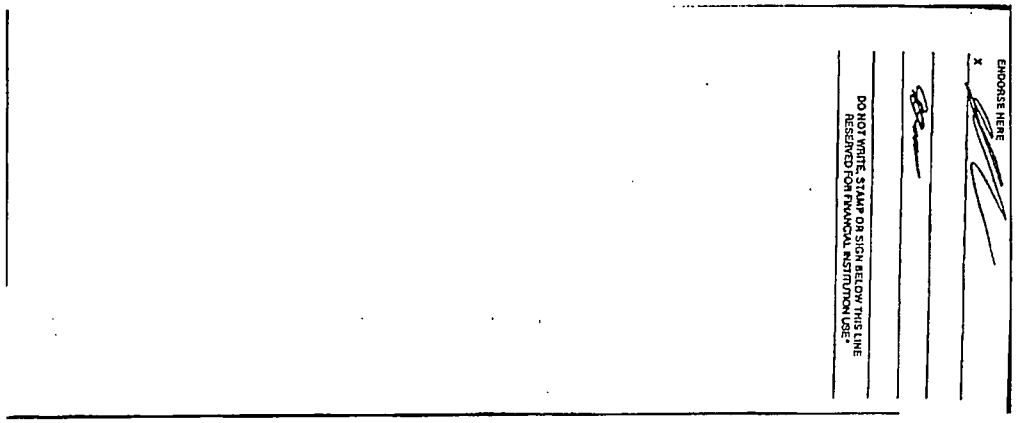
Date	Sequence	Bank #	Endrs Type	TRN	RRC	Bank Name
12/21/2009	000002382173602	11000138	Rtn Loc/BOFD	Y		BANK OF AMERICA, NA

Amount: $3,591.45 Sequence Number: 2382173603

Account: 362523465501 Capture Date: 12/21/2009

Bank Number: 05320066 Check Number: 401902





Electronic Endorsements:

Date	Sequence	Bank #	Endrs Type	TRN	RRC	Bank Name
12/21/2009	000002382173603	11000138	Rtn Loc/BOFD	Y		BANK OF AMERICA, NA

Printed 12/21/09 @ 12:43:07 PM

Bank of America Merlin

Customer Products Administration Help

TEBS - BUSINESS CUSTOMER PROFILE

Customer Information

Name TEBS

Address 100 LAKEVIEW DR

TOWNVILLE SC 29689-3036

Tax ID Number 24-7554671 Party ID/ CCI # 20086726745

Work Phone 864-617-5337

Customer Since 12/21/2009 Extension

Date of Last Address Change

CIP Verification Number VERIFIED

CIP Verification Date

Customer Options

○ Inquiry ◉ Services

- Access ID Change
- Access ID Setup
- Add/Delete Customer Messages
- Address Change
- Customer Info Change
- Tax ID Change

Go To...

Account Information Balances

Deposits	$	0.00
Loans/Credit Lines	$	0.00

Account Information

Type	Account	Balance	Ownership	State	
BUSINESS ECONOMY CHKG	2230 0974 4759	$0.00	OWNER	SC	NORMAL
BUSINESS CHECK CARD	4635 7400 0117 5484	$0.00	OWNER	SC	OPEN

Acct Profile | Details... | Cust Combine...

OK | Messages... | Offers/Opportunities | Help

ID - TEBS 4810 SL

PASSCODE - G 673124A

CAUSE NO. 2010-CP-23-5880

OVERLAND, INC., D/B/A LAND ROVER OF GREENVILLE	)	COURT OF COMMON PLEAS
PLAINTIFF,	)	
VS.	)	COUNTY OF GREENVILLE
LARA MARIE NANCE, ET AL	)	
DEFENDANTS.	)	STATE OF SOUTH CAROLINA

ORAL DEPOSITION OF

LARA NANCE

January 15, 2014

I, Julie I. Upton, Certified Shorthand Reporter in and for the State of Texas, hereby certify to the following:

That the witness, LARA NANCE, was duly sworn by the officer and that the transcript of the oral deposition is a true record of the testimony given by the witness;

That examination and signature of the witness to the deposition transcript was waived by the witness and agreement of the parties at the time of the deposition;

That the original deposition was delivered to Mr. Joshua Howard;

61293db8-29b1-4e19-bd15-75fbcb7c84a9

in October of 2005, right?

A. Like I said, date-wise I can't give you an answer.

Q. Okay. I'm going to show you what has been premarked as Deposition Exhibit 3. Is that your signature which appears on Deposition Exhibit 3?

A. That's correct.

Q. Okay. And the date that appears on the second page of Deposition Exhibit 3, do you see that date?

A. Yes, sir.

Q. Okay. What is that date?

A. 10-26-2005.

Q. Do you have any reason as we sit we here today to believe that that date was not the date that you opened this account?

A. No, sir.

Q. Okay. Now, this account, Lara, was set up as a deposit account into which you would deposit funds and from which you could withdraw funds, correct?

A. That's correct.

Q. And as I understand it, this was an individual account just Lara Nance, right?

A. Yes, sir. I don't know if this is the time, but I'm looking at this paper and that's not my Social Security number on the tax identification number.

was involved. I don't know if it was at that point in time or some other time. But SunTrust was involved at some point.

Q. Okay. And you maintained two accounts at SunTrust. Is that correct?

A. That's correct.

Q. The first account ends in 8023. If someone could hand you Exhibit 3. You opened this account January 19, 2010. Is that right?

A. Yes, ma'am.

Q. And you were an employee of Overland at this time?

A. Yes, ma'am.

Q. And prior to this account had you had any other accounts at SunTrust?

A. I believe there was a personal account, but I do not know that for sure.

Q. And would that have been at the same time or had that closed prior to opening this account?

A. I really can't answer that. I just -- I know that at some point SunTrust had entered my personal realm.

Q. At some point other than this account or the account on Exhibit 4?

A. At some time -- I want to say it was during my

A. No, ma'am.

Q. If you could turn to Exhibit 2. This is another account you have at SunTrust, correct? Maybe Exhibit 4 would be a more helpful reference.

MS. DRISCOLL: Do you want her to look at Exhibit 2 or Exhibit 4?

MS. MAXWELL: Both is fine.

Q. (BY MS. MAXWELL) Ms. Nance?

A. Sorry, I was looking.

Q. And this says on Exhibit 2 it's a new account deposit for $5,000?

A. Yes, ma'am.

Q. And on the second page, is that your signature on the check?

A. Yes, ma'am.

Q. And this check was drawn on your other account maintained at SunTrust, correct?

A. That's correct.

Q. And was this the only deposit made into this account?

A. I can't answer that question. It's been a long time, and without having bank records in front of me I can't answer that.

Q. You were the only one with the authority to make deposits into this account, correct?

Q. (BY MS. MAXWELL) This is the account where the checks I previously provided to you were deposited into, correct?

A. I don't really want to answer that because I don't -- there is a lot of accounts. And you-all are asking me questions about this account and that account. Without having backup via statements and stuff like that, I don't want to answer that question. I can't answer that question.

Q. Well, okay.

MS. MAXWELL: Can you hand her Exhibit 2, please?

MS. DRISCOLL: Okay.

Q. (BY MS. MAXWELL) And, Ms. Nance, if you can turn to the sixth page, Check Number 239834 --

MS. DRISCOLL: Wait a minute. What exhibit are you on?

MS. MAXWELL: Number 2.

MS. DRISCOLL: Exhibit 2 only has two pages.

MS. MAXWELL: I'll withdraw that.

Q. (BY MS. MAXWELL) Exhibit 3. Is that your signature on the line next to the word Signature 1?

A. Yes, ma'am.

Q. And whose signature is that below yours?

A. My ex-husband's. Well, I take that back. My ex-husband's name is there. He did not sign this.

Q. Who signed it?

A. I did.

Q. Okay. And next to signature it says Name/Title. Do you see that?

A. Yes, ma'am.

Q. It says Owner. What were you stating that you were the owner of?

A. The company listed above.

Q. Okay. And next to Charlie Andrew Nance below that it says Officer. What would he be the officer of?

A. He had nothing to do with this. His name was on there, but he wasn't anything in this whole mix. His name was put on the paperwork.

Q. And in the portion below where it starts, "It is agreed" --

A. Uh-huh.

Q. -- if you don't mind reading that. It mentions that this account shall be governed by the rules and regulations of this account.

MR. REID: Lauren, this is Hunter. What document are you on?

MS. MAXWELL: Exhibit 3.

MR. REID: All right. Thank you.

I've got.

MR. REID: Are we still on? Can we take about a 5- or 10-minute break so I can streamline my questions?

MR. HOWARD: That's fine. Probably appropriate.

MR. SHEEDY: I've got two quick questions. May I do that out of order just to be done?

MR. REID: Yes.

EXAMINATION

BY MR. SHEEDY:

Q. Ms. Nance, I asked you some questions earlier about the signature cards and you looked at these Social Security numbers and you said they were incorrect, do you remember that?

A. Yes, sir.

Q. Okay. And they're incorrect in that they should say 57 instead of 55, right?

A. That's correct.

Q. Otherwise they're correct?

A. Yes.

MR. SHEEDY: Okay. Thank you. That's it.

(Break taken from 12:19 p.m. to 12:40 p.m.)

The portion at the top above the check, that is not an invoice, is it?

A. No.

Q. That's part of the check, isn't it?

A. That's correct.

Q. And as I understand the accounts payable process, this is the part that an employer would keep for their records?

A. That's correct.

Q. You tear off the check and mail it to the payee and keep the part at the top?

A. Yes.

MR. SHEEDY: That's all I have. I appreciate your patience.

EXAMINATION

BY MS. MAXWELL:

Q. Lara, this is Lauren Maxwell. I represent SunTrust. I have a few follow-up questions.

A. Yes, ma'am.

Q. When you deposited your checks into SunTrust account in the name of Taylor Enterprises, you would do two or three checks at a time. You didn't go separately to SunTrust for each check, did you?

A. That's what I remember.

Q. And if that's what the records indicated, you

would have no reason to dispute that, correct?

A. Correct.

Q. And these checks were only over the course of -- over the scope of about one week, correct?

A. I don't recall.

MS. MAXWELL: If someone could hand her SunTrust 1.

A. Yes, ma'am.

Q. (BY MS. MAXWELL) The dates on the check only range from January 18 of 2010 to January 25, 2010, correct?

A. Yes, ma'am.

Q. And so if you were depositing these in groups, you would only go to SunTrust less than a handful of times probably to make those deposits, correct?

A. Correct.

MR. REID: Object to form.

Q. (BY MS. MAXWELL) And moving on to the other account that you have at SunTrust, the Atlantic British name, you had to show your Social Security number and driver's license when you opened that account, right?

A. I'm assuming so. I can't physically put myself back there. So I don't know that they actually -- that I pulled it out and showed them or that they took information off the first -- I can't answer that.

STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF GREENVILLE

OVERLAND, INC., D/B/A LAND ROVER OF GREENVILLE,

Plaintiff,

vs. CASE NO. 2010-CP-23-5880

LARA MARIE NANCE; CHARLIE ANDREW NANCE; ROGER FIELDS; ADP DEALER SERVICES GROUP; PIEDMONT AUTOMOTIVE OF ANDERSON, INC., D/B/A PIEDMONT CHRYSLER JEEP DODGE; PIEDMONT AUTOMOTIVE OF ANDERSON, SOUTH CAROLINA, LLC, D/B/A APEX AUTOMOTIVE; SYNOVUS FINANCIAL CORPORATION, D/B/A NBSC; BRANCH BANKING AND TRUST COMPANY; BANK OF AMERICA CORPORATION; AND SUNTRUST BANKS, INC.,

Defendants.

DEPOSITION OF: JACK L. FRASHER, JR.

DATE: May 22, 2014

A. WILLIAM ROBERTS, JR. & ASSOCIATES

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little greedy. Nope. Still three. Four. Five. Yeah. Seven.

Q. Okay. And that includes the account-opening deposit of cash, correct?

A. Correct.

Q. So there's only six deposits of checks.

A. Right.

Q. Okay. And what's the -- the date of that account opening is January 19th --

A. Okay.

Q. -- 2010, correct?

A. I'm sure it is. One more. Where is the date on that one, the second page or -- or here?

Q. I believe it's right there in that stamp --

A. Yeah. Okay.

Q. -- on the second page.

Okay. And the date on the last deposit is January 27th, 2010, correct? On Exhibit 24.

A. 27th.

Q. The 27th, correct?

A. Uh-huh.

Q. So just about a week of deposits, from the 19th to the 27th.

A. Yeah.

Q. Okay. And each of those deposits had three

checks, correct?

A. I believe that's right.

Q. All right. And each of those deposits included one from Greenville Overland, one from Columbia Overland, and one from Asheville, correct?

A. I had not noticed all of that, but...

Q. I'll give you a chance to review.

A. Seems like that's the case so far. They all seem that way.

Q. Okay.

A. Okay. I assume that's right. Yeah. It appears that way.

Q. Now, in order for SunTrust to suspect something unusual, there would have to be some sort of change in activity or in the routine activity, correct?

MR. REID: Object to the form.

A. I don't know enough about your business to say that.

BY MS. MAXWELL:

Q. Well, in your general business experience, what causes you to raise a red flag? It would be sort of a difference in the ordinary course, correct?

MR. REID: Object to the form.

A. Well, I'm just -- again, my only -- my only

surprise is I didn't know that someone could show up and open an account in a business name.

BY MS. MAXWELL:

Q. I'm not talking about that. I'm just asking in your experience, what would cause -- you know, something -- business as usual, and then something different happens, and that would cause you to raise a red flag, correct?

MR. REID: Object to the form.

A. I'm assuming that would be a reason to -- to question things.

BY MS. MAXWELL:

Q. And...

A. One of many, probably.

Q. And as we've, you know, seen through these documents, she opened the account on January 27th -- or excuse me -- January 19th.

A. Right.

Q. And then for almost six consecutive days, she deposited three checks each, one from each location, correct?

MR. REID: Object to the form.

A. I have to see the dates, but yeah. The 19th, she deposited three. The 20th, she deposited three. The 21st she deposited three. I'm not -- I

might be missing a date.
BY MS. MAXWELL:
Q. The 21st?
A. 22nd, I think she deposited three. Boy, she didn't miss a trick. Then she jumps to the next week, I guess, the 26th.
Q. Presumably a weekend. Who knows?
A. Yeah. And then the 27th. And then she -- I guess the 28th was the end of the road, so that...
Q. So in this week span, the same activity, each deposit, correct?
A. Other than the initial deposit with cash, right.
Q. So based on that limited period from start to finish, there was nothing out of the ordinary based on this activity, correct?
MR. REID: Object to the form.
A. I'm just curious, again, how you go in and show up with cash and open an account.
BY MS. MAXWELL:
Q. Well, based on -- from the 19th...
A. I mean, the whole thing looks unusual.
Q. Wait a minute. Let me finish my question.
From the 19th to the 27th, there was nothing -- they're all almost -- nearly identical

EXAMINATION

BY MR. SHEEDY:

Q. On the checks where you claim that there was an incomplete or missing payee endorsement, did those checks also contain a forged maker's signature of your name?

A. Not that I recall.

Q. So you are aware of checks that have genuine Jack Frasher signatures but improper payee endorsements? Remember your answer to Mr. Howard earlier.

A. Wait a minute. Wait a minute. Wait. Let me make sure I understand the question.

Q. Let me rephrase.

A. I'm not going to have inconsistencies, so just let me...

Q. Let me rephrase. Do you understand what a forged maker's signature is?

A. That's the signature on the check.

Q. That's your signature.

A. Right. If it's me. Right.

Q. Right. Are you aware of any checks that are included in your claim that do not have a forged maker's signature?

A. No.

Q. They all have forged maker's signatures, don't they?

A. As far as I know.

Q. Okay. So even if the payee endorsements had been complete or in accordance with the check, the checks still had forged maker endorsements, didn't they?

A. I hope I'm understanding what you're saying. You know the policy I've -- I instituted a long time ago about two people needed to sign if it wasn't me. If you're talking about my signature and -- and a forged -- my signature and a forgery...

Q. I want to make sure you understand my question.

A. I'm still not a hundred percent sure I'm getting it.

Q. When you just went through these checks with -- with Hunter a moment ago --

A. Right.

Q. -- and you said some of them had for deposit only, right?

A. Right.

Q. And you said some of them, the endorsement on the back wasn't the same as the payee on the front.

A. Right.

Q. Okay. Every single one of those instance involved a check that also had your name forged, too, didn't it?

A. Most likely.

Q. Okay.

A. Yeah.

MR. SHEEDY: Thank you.

MR. HOWARD: Done.

(The deposition concluded at 7:28 p.m.)

Deposition of Allison Autrey Malone

STATE OF SOUTH CAROLINA)
IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE)

Overland, Inc., D/B/A Land Rover Greenville,

Plaintiff,

-vs-

2010-CP-23-5880

Lara Marie Nance; Charlie Andrew Nance; Roger Fields; ADP Dealer Services Group; Piedmont Automotive of Anderson, Inc., d/b/a Piedmont Chrysler Jeep Dodge; Piedmont Automotive of Anderson South Carolina, LLC d/b/a Apex Automotive; Synovus Financial Corporation d/b/a NBSC; Branch Banking and Trust Company; Bank of America Corporation; and SunTrust Banks, Inc.,

Defendant.

DEPOSITION OF ALLISON AUTREY MALONE

GREENVILLE, SOUTH CAROLINA

SEPTEMBER 23, 2014

REPORTED BY: Cathy L. Young, CVR-M

Q. Okay. So at all times when you logged in, there was no Lara Nance around during the terminal login?
A. No, sir.
Q. Okay. And when she would come to this computer, when you were there as well, you were already logged in always?
A. Yes, sir.
Q. Okay. So there was never an opportunity for her to see, for example, your password in a block -- I mean your username in a block but not your password?
A. No, sir.
Q. Okay. And you've never seen anybody else's user name at Land Rover?
A. No, sir, -- yeah, not that I remember at all.
Q. Okay. Based upon prior testimony from various folks in this matter, Allison, you have been specially designated as the person who knows all about the discovery of Lara's investment scheme. How did you discover this?
A. I remember being asked about a check.
Q. Was this a catering check?
A. I believe so. I don't remember the specific vendor, but I believe that sounds correct, and I believe it was Greg that brought it to me. It looked like a duplicate payment.

Q. So let's stop for a moment. As I understand it, Greg brought to you a check drawn on a Land Rover account; is that right?
A. Yes, sir.
Q. Do you remember if it was on the NBSC or the BB&T account?
A. I do not remember.
Q. You understood that to be a check that represented payment of the debt owed to a caterer?
A. Yes, sir.
Q. Okay. And was in fact the caterer owed that money; to your knowledge?
A. To my knowledge, yes.
Q. If the caterer was owed the money, and if the check had been issued, why was Greg bringing the check to you?
A. I don't remember the specific circumstances. I -- and I -- as I remember us looking at it, me thinking that invoice had already been paid, and I'm not sure, it looked like there was a duplicate payment, and him asking me did we pay them twice, and then that's when my research began at that point.
Q. Now I'm confused. He brings you one check, right?
A. It was a copy of a check, I believe, is what he brought me, sir.

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Q. One copy of a check that evidences payment to the caterer; is that right?
A. Yes, sir.
Q. What was the reason for thinking that that was duplicate?
A. I do not recall. I remember -- because I remember odd things, I remember we would use a caterer for an event, and we were pretty on top of paying those vendors we would use for quarterly events pretty quickly, because we would have to turn in that payment to Land Rover for reimbursement. I was not part of that. I was just part of cutting that check. So I know I was pretty on top of, and I rephrase that, not reimbursement, it was for noting our expenses for that account, too, for the event. Basically to say we did the event is how I remember it. I would turn that over to the marketing department. But I remember that I would pay those vendors used for an event in a very timely fashion to make sure it was turned back in as credit for that Land Rover event.
Q. Do you know why Greg thought when he had the paper copy of that check that it represented a duplicate?
A. I do not remember why he brought it to me, no, sir.
Q. Okay. But at the time that he brought it to you and

working at Land Rover in the summer of 2009?
A. It was 2007.
Q. 2007.
A. Yes.
Q. And when did you first receive your login to the ADP system?
A. Upon employment.
Q. Okay. Allison, a question had been put to you about Greg presenting you with a caterer check and his belief that there's a double payment.
A. Uh-huh.
Q. Was that -- did that occur in January of 2010?
A. Yes. as I -- yeah, that's --
Q. Okay. And do you think that was late January 2010, was it February, early January; do you recall?
A. As I remember, it was late January.
Q. Okay. How about this? Do you remember when the White Collar folks -- Crime Investigation folks showed up at the dealership --
A. Yes.
Q. -- and when Nance was arrested? Would you say that was around late January or early February of 2010?
A. I believe that's right.
Q. So when -- in relation to that event, it would have been just maybe a week prior when Greg had presented

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Letitia H. Verdin, Circuit Court Judge

Case No. 2010-CP-23-5880
Appellate Case No.: 2015-000523

Overland, Inc., d/b/a Land Rover Greenville ..... Appellant,

Vs.

Lara Marie Nance, Charlie Andrew Nance, Roger Fields,
Synovus Financial Corporation, d/b/a NBSC, Branch Banking
And Trust Company, Bank of America Corporation, and
SunTrust Banks, Inc. ..... Defendants,

Of whom, Lara Marie Nance, Charlie Andrew Nance, Bank of America Corporation, and SunTrust Banks, Inc. are the Respondents.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

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