

**SUPREME COURT OF THE UNITED STATES**

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DELAWARE, *Plaintiff*,

v.

Nos. 22O145 & 22O146 (Consolidated)

ARKANSAS, *et al.*, *Defendants*.

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**DEFENDANT STATES' RESPONSE  
TO DELAWARE'S STATEMENT OF UNDISPUTED FACTS**

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Per Southern District of New York Local Rule 56.1(b), all Defendant States (“Defendants”) submit the following responses and objections to Delaware’s Statement of Undisputed Facts. For reference, Defendants’ Statement of Material Facts are referred to as “Defs. SMF.” Delaware’s Statement is referred to as “Delaware SMF.”

1. Admitted.

2. Defendants deny the averments in this paragraph that MoneyGram and Travelers Express’ “official checks,” “Official Checks,” and “money orders” are separate and distinct instruments. By way of further response, MoneyGram uses the trade name “Official Checks” to describe four products, including Agent Check Money Orders. *See* Defs. SMF ¶¶ 38, 40. As Delaware admits “there is no legal distinction” between MoneyGram’s Official Check Agent Money Orders and Retail Money Orders products. *See* Delaware SMF ¶ 43. Delaware’s attempt here to differentiate “official checks” and “Official Checks” from “money orders,” therefore is misleading and confusing, and on that basis the averments in this paragraph are denied. Defendants admit the remaining averments in this paragraph.

3. Admitted.

4. Admitted.

5. Admitted (first and second sentences).

Denied (third sentence). Defendant States object to this averment because it is not supported by admissible evidence. *See* FRCP 56(c)(2). Ms. Yingst’s

testimony regarding why consumers use MoneyGram Official Checks is speculative and lacks foundation.

6. Denied to the extent this statement implies that Agent Check Money Orders are not a type of Official Check. *See* Defs. SMF ¶¶ 38, 40. Otherwise, admitted.

7. Denied to the extent this statement implies that Agent Check Money Orders are not a type of Official Check. *See* Defs. SMF ¶¶ 38, 40. Otherwise, admitted.

8. Denied as conclusions of law, which cannot be deemed “material facts” for purposes of compliance with Local Rule 56.1.

9. Defendants admit the first sentence of this paragraph. Defendants deny the second sentence of this paragraph as a conclusion of law, which cannot be deemed a “material fact” for purposes of compliance with Local Rule 56.1.

10. Denied as conclusions of law, which cannot be deemed “material facts” for purposes of compliance with Local Rule 56.1.

11. Denied as conclusions of law, which cannot be deemed “material facts” for purposes of compliance with Local Rule 56.1.

12. Admitted.

13. Admitted.

14. Denied as conclusions of law, which cannot be deemed “material facts” for purposes of compliance with Local Rule 56.1.

15. Denied as conclusions of law, which cannot be deemed “material facts” for purposes of compliance with Local Rule 56.1.

16. Denied as conclusions of law, which cannot be deemed “material facts” for purposes of compliance with Local Rule 56.1.

17. Denied. Defendant States object to this averment because it is not supported by admissible evidence. *See* FRCP 56(c)(2). The averments in this paragraph lack foundation and are hearsay.

18. Denied. Defendant States object to this averment because it is not supported by admissible evidence. *See* FRCP 56(c)(2). The averments in this paragraph lack foundation and are hearsay.

19. Denied. Defendants object to this averment because it is not supported by admissible evidence. *See* FRCP 56(c)(2). Whether *all* “Travelers Cheque issuers such as American Express collect addresses from purchasers of travelers cheques” cannot be gleaned by the single demonstrative evidence – a traveler’s check allegedly purchased by Delaware counsel’s associate – cited by Delaware. This assertion lacks foundation and is speculative.

20. Admitted to the extent “Money Order” in this paragraph refers to MoneyGram Retail Money Orders. Denied to the extent this paragraph refers to “Official Checks” of any kind (including Agent Check Money Orders), since the proffered evidence is limited to MoneyGram Retail Money Orders.

21. Admitted to the extent “Money Order” in this paragraph refers to MoneyGram Retail Money Orders. Denied to the extent this paragraph refers to “Official Checks” of any kind (including Agent Check Money Orders), since the proffered evidence is limited to MoneyGram Retail Money Orders.

22. Admitted.

23. Admitted to the extent “Money Order” in this paragraph refers to MoneyGram Retail Money Orders. Denied to the extent this paragraph refers to “Official Checks” of any kind (including Agent Check Money Orders), since the proffered evidence is limited to MoneyGram Retail Money Orders.

24. Denied. Defendant States object to this averment because it is not supported by admissible evidence. *See* FRCP 56(c)(2). The averments in this paragraph lack foundation and are speculative. This statement is also inconsistent with the testimony and documents presented by MoneyGram with respect to MoneyGram’s Retail Money Orders (which MoneyGram states are used for purposes other than identified in Delaware’s statement), and Agent Check Money Orders (which MoneyGram states are typically sold to customers with bank accounts). App. 1111, 1219–1220 (Yingst Dep. 90:5–22, 198:21–199:15); App. 64 (Dep. Ex. 12 at MG002712); App. 1256 (Yingst Dep. 272:1–21).

25. Admitted to the extent “Money Order” in this paragraph refers to MoneyGram Retail Money Orders. Denied to the extent this paragraph refers to “Official Checks” of any kind (including Agent Check Money Orders), since the proffered evidence is limited to MoneyGram Retail Money Orders.

26. Admitted to the extent “Money Order” in this paragraph refers to MoneyGram Retail Money Orders. Denied to the extent this paragraph refers to

“Official Checks” of any kind (including Agent Check Money Orders), since the proffered evidence is limited to MoneyGram Retail Money Orders.

27. Admitted to the extent “Money Order” in this paragraph refers to MoneyGram Retail Money Orders. Denied to the extent this paragraph refers to “Official Checks” of any kind (including Agent Check Money Orders), since the proffered evidence is limited to MoneyGram Retail Money Orders.

28. Admitted to the extent “Money Order” in this paragraph refers to MoneyGram Retail Money Orders. Denied to the extent this paragraph refers to “Official Checks” of any kind (including Agent Check Money Orders), since the proffered evidence is limited to MoneyGram Retail Money Orders.

29. Admitted to the extent “Money Order” in this paragraph refers to MoneyGram Retail Money Orders. Denied to the extent this paragraph refers to “Official Checks” of any kind (including Agent Check Money Orders), since the proffered evidence is limited to MoneyGram Retail Money Orders.

30. Denied as stated. Defendants admit only that MoneyGram’s largest competitors in the retail money order business are Western Union and the U.S. Postal Service. *See* Yingst Ex. 29 at 6 (Ex. M to Declaration of James David Taliaferro, dated Feb. 1, 2019 (the “Taliaferro Decl.”)); Yingst Dep. 331:8-17 (Ex. A. of Taliaferro Decl.). MoneyGram’s 30(b)(6) witness, Eva Yingst did not specifically testify as to competitors of MoneyGram’s Agent Check Money Orders. *See id.*

31. Admitted to the extent “Money Order” in this paragraph refers to MoneyGram Retail Money Orders. Denied to the extent this paragraph refers to “Official Checks” of any kind (including Agent Check Money Orders), since the proffered evidence is limited to MoneyGram Retail Money Orders.

32. Admitted in part; denied in part. To the extent “Money Order” in this paragraph refers to MoneyGram Retail Money Orders, Defendants admit that MoneyGram Retail Money Orders contain terms and conditions on the back of the instrument. By way of further response, Delaware admits that some MoneyGram Official Checks are printed using so-called “blank stock,” and those instruments carry “terms and conditions” on the back of the physical check. *See* Delaware SMF ¶ 77. Defendants deny that any MoneyGram instrument contains terms and conditions “on the face” of the instrument. *See* Yingst 310:16-311:19 (Ex. A to Taliaferro Decl.); Whitlock Money Order Aff. at ¶ 5 & Ex. A.

33. Denied (first sentence). The cited deposition testimony states that the “current” service charge is \$1.50 a month, not that “[a]ll MoneyGram Money Orders” contain such a service charge. Yingst 411:2-4 (Ex. A to Taliaferro Decl.); Petrick 243:7-11 (Ex. O to Taliaferro Decl.). This is also inaccurate as to MoneyGram Retail Money Orders sold in certain States with restrictions on such charges. Delaware SMF ¶ 32. Further, the service charges are and have been subject to change, even during the period between 2000 and 2017. App. 16–17 (Dep. Ex. 4 ¶ 5).

Denied (second sentence). Defendant States object to this averment because it is not supported by admissible evidence. *See* FRCP 56(c)(2). Ms. Petrick’s testimony about state laws is speculative and lacks foundation. Further, this allegation is denied, in particular, since at least one state—California—has a limit on the amount of value that can be taken from money orders. Whitlock Money Order Aff. at Ex. A (“State Service Charge Exceptions”).

Denied (third sentence). Defendant States object to this averment because it is not supported by any evidence. *See* Local Rule 56.1(d).

34. Denied as stated. The evidence supporting the statement of fact runs only through fiscal year 2017, and thus is not “current.” Further, with that caveat, Defendants also only admit to this paragraph to the extent that “Money Orders” refers to MoneyGram Retail Money Orders.

35. Admitted to the extent “Money Order” in this paragraph refers to MoneyGram Retail Money Orders.

36. Admitted to the extent “Money Order” in this paragraph refers to MoneyGram Retail Money Orders. By way of further answer, while MoneyGram Retail Money Orders have limits, those limits are set by MoneyGram policy and not by legal restriction. Yingst 63:16-64:13 (Ex. A to Taliaferro Decl.).

37. Admitted to the extent “Money Order” in this paragraph refers to MoneyGram Retail Money Orders.

38. Admitted.

39. Admitted.

40. Admitted.

41. Admitted to the extent “Money Order” in this paragraph refers to MoneyGram Retail Money Orders.

42. Admitted (first sentence).

Denied (second sentence). The Primelink system referenced in this sentence is used in connection with MoneyGram's Official Check products, which include Agent Check Money Orders but do not necessarily include MoneyGram Retail Money Orders. Yingst 337:5-18 (Ex. A to Taliaferro Decl.).

Admitted (third and fourth sentences).

Denied (fifth sentence) to the extent this statement suggests that Agent Check Money Orders are not one of the products sold under MoneyGram's Official Check program. *See* Defs. SMF ¶ 38, 40.

43. Admitted.

44. Admitted.

45. Defendant States admit only the first sentence in this paragraph. Defendant States deny the second sentence in this paragraph. MoneyGram uses the trade name "Official Checks" to describe four products, including Agent Check Money Orders. *See* Defs. SMF ¶ 38, 40. As Delaware admits "there is no legal distinction" between MoneyGram's Official Check Agent Money Orders and Retail Money Orders products. *See* Delaware SMF ¶ 43. Delaware's attempt here to differentiate "Official Checks" from "Money Orders", therefore is misleading and confusing, and on that basis these averments in this paragraph are denied.

46. Admitted.

47. Admitted.

48. Admitted.

49. Admitted.

50. Denied. Delaware readily admits that some MoneyGram Official Checks are printed using so-called "blank stock," and those instruments carry terms and conditions on the back of the physical check. *See* Delaware SMF ¶ 77. Further, MoneyGram uses the phrase "Official Check" to cover four products, including Agent Check Money Orders. *See* Defs. SMF ¶ 40. Agent Check Money Orders, which are Official Checks, carry terms and conditions on the back of the physical check. *See* Defs. SMF ¶ 45.

51. Denied. MoneyGram uses the phrase “Official Check” to cover four products, including Agent Check Money Orders. *See* Defs. SMF ¶ 40. Agent Check Money Orders, which are Official Checks, carry terms and conditions on the back of the physical check, which include the service charge language used with MoneyGram Retail Money Orders. *See* Defs. SMF ¶ 45; Delaware SMF ¶ 77. Delaware even states that “there is no legal distinction” between Official Check Agent Money Orders and Retail Money Orders. *See* Delaware SMF ¶ 43.

52. Admitted.

53. Admitted.

54. Admitted.

55. Admitted.

56. Admitted.

57. Admitted.

58. Admitted.

59. Admitted.

60. Admitted.

61. Admitted.

62. Admitted.

63. Admitted.

64. Admitted.

65. Denied (first sentence). MoneyGram uses the phrase “Official Check” to cover four products, including Agent Check Money Orders, *see* Defs. SMF ¶ 40, so Delaware’s comparison between “Money Orders” and “Official Checks” is confusing and misleading, since both categories include money orders.

Admitted (second sentence).

66. Admitted.

67. Admitted.

68. Admitted in part (first sentence). MoneyGram Official Check services are used where payees require a check drawn on a bank, but are also used by financial institutions to pay their own obligations. Yingst Ex. 29 at 6 (Ex. M to Taliaferro Decl.).

Admitted (second sentence). By way of further answer, while MoneyGram Retail Money Orders have limits, those limits are set by MoneyGram policy and not by legal restriction. Yingst 63:16-64:13 (Ex. A to Taliaferro Decl.).

69. Denied as conclusions of law, which cannot be deemed “material facts” for purposes of compliance with Local Rule 56.1.

70. Admitted.

71. Denied as stated. The evidence supporting the statement of fact runs only through fiscal year 2017, and thus is not “current.”

72. Admitted.

73. Admitted.

74. Denied (first sentence). Defendant States object to this averment because it is not supported by admissible evidence. *See* FRCP 56(c)(2). Ms. Yingst’s testimony regarding why consumers use MoneyGram Official Checks is speculative and lacks foundation.

Denied (second sentence). MoneyGram uses the phrase “Official Check” to cover four products, including Agent Check Money Orders, *see* Defs. SMF ¶ 40, so Delaware’s comparison between “Money Orders” and “Official Checks” is confusing and misleading, since both categories include money orders. Further, Ms. Yingst’s speculation about the acceptability of official checks versus money orders is not admissible in evidence. *See* FRCP 56(c)(2).

75. Denied. Defendant States object to this averment because it is not supported by admissible evidence. *See* FRCP 56(c)(2). Ms. Yingst’s testimony regarding the motives of bank customers and speculation about typical bank transactions is speculative and lacks foundation.

76. Admitted.

77. Denied that the italicized emphasis is present on the cited sample documents; otherwise admitted. Exs. A, B to Declaration of Eva Yingst.



78. Admitted.

79. Admitted.

80. Admitted.

81. Admitted.

82. Admitted.

83. Denied as conclusions of law, which cannot be deemed “material facts” for purposes of compliance with Local Rule 56.1.

84. Denied as conclusions of law, which cannot be deemed “material facts” for purposes of compliance with Local Rule 56.1.

85. Admitted.

86. Admitted, subject to the understanding that use of the phrase “Agent Check” by Delaware in this paragraph is intended to exclude “Agent Check Money Orders.”

87. Admitted, subject to the understanding that use of the phrase “Agent Check” by Delaware in this paragraph is intended to exclude “Agent Check Money Orders.”

88. Admitted (first sentence).

Denied (second sentence). Denied as conclusions of law, which cannot be deemed “material facts” for purposes of compliance with Local Rule 56.1.

89. Admitted, subject to the understanding that use of the phrase “Agent Check” by Delaware in this paragraph is intended to exclude “Agent Check Money Orders.”

90. Denied. Defendant States object to this averment because it is not supported by admissible evidence. *See* FRCP 56(c)(2). Ms. Yingst’s testimony regarding the “typical” MoneyGram Agent Check transaction is speculative and lacks foundation.

91. Denied to the extent the second sentence suggests that Agent Check Money Orders are not sold under MoneyGram’s Official Check program. *See* Defs. SMF ¶¶ 38, 40. Otherwise admitted.

92. Admitted.

93. Admitted.

94. Admitted. By way of further answer, Delaware itself later ratified MoneyGram's escheating decision when, after MoneyGram sought guidance from Delaware, Delaware advised MoneyGram that MoneyGram "has been properly reporting and delivering unclaimed property in accordance with the strict rules established by the Supreme Court of the United States[.]" App. 624; *see also* App. 624-632.

95. Admitted. By way of further answer, Delaware itself later ratified MoneyGram's escheating decision when, after MoneyGram sought guidance from Delaware, Delaware advised MoneyGram that MoneyGram "has been properly reporting and delivering unclaimed property in accordance with the strict rules established by the Supreme Court of the United States[.]" App. 624; *see also* App. 624-632.

96. Admitted. By way of further answer, Delaware itself later ratified MoneyGram's escheating decision when, after MoneyGram sought guidance from Delaware, Delaware advised MoneyGram that MoneyGram "has been properly reporting and delivering unclaimed property in accordance with the strict rules established by the Supreme Court of the United States[.]" App. 624; *see also* App. 624-632.

97. Admitted.

98. Admitted.

99. Admitted.

100. Admitted.

101. Denied. Denied as conclusions of law, which cannot be deemed "material facts" for purposes of compliance with Local Rule 56.1.

March 8, 2019

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## CERTIFICATE OF SERVICE

Counsel of record for Defendant States in Case Nos. 22O145 and 22O146 (consolidated) certifies that on March 8, 2019, this document was served, as required by Case Management Order No. 5, on the following counsel:

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