

**SUPREME COURT OF THE UNITED STATES**

---

DELAWARE, *Plaintiff*,

v.

Nos. 220145 & 220146 (Consolidated)

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

---

**STATEMENT OF UNDISPUTED FACTS**

**Organizational Background**

1. MoneyGram Payment Systems, Inc. (“MoneyGram”) is a business incorporated in Delaware and has its principal place of business in Minnesota. MoneyGram is a wholly owned subsidiary of MoneyGram International, Inc., which is incorporated in Delaware and has its principal place of business in Texas. Affidavit of Cory J. Feinberg (“Feinberg Aff.”) ¶¶ 2-4.

2. MoneyGram is a “payment providing company” and its lines of business include “money orders, official checks and also money transfer.” Yingst 18:10-16 (Ex. A to Declaration of John David Taliaferro (“Taliaferro Decl.”)). Prior to 2005, the Official Check business at issue in this case was conducted by MoneyGram’s predecessor entity, Travelers Express Company, Inc (“Travelers Express”). Feinberg Aff.¶ 5. Travelers Express offered money orders and Official Checks, bank services, and other types of payment processing. Yingst 19:20-20:15 (Ex. A to Taliaferro Decl.); *see, e.g.*, 1981 Annual Report, Ex. B to Declaration of

Jonathan A. Massimino (“Massimino Decl.”) at 9, VIAD 65 (“While money orders are still the core of [Travelers Express], the company is now processing more credit union share drafts than any other processor in the nation and has developed a substantial volume of official check processing for a variety of financial institutions.”); 1993 Annual Report, Ex. I to Massimino Decl. at Part 1, VIAD 399 (“Travelers Express is the nation's leading issuer of money orders, issuing approximately 236 million money orders in 1993. . . . Travelers Express also provides processing services for more than 4,500 credit unions and other financial institutions which offer share drafts (the credit union industry's version of a personal check) or official checks (used by financial institutions in place of their own bank check or teller check)).”

3. Travelers Express became a subsidiary of The Greyhound Corporation in the mid-1960s. The Greyhound Corporation subsequently became known as Greyhound Dial Corporation, then The Dial Corp, and ultimately became known as Viad Corp. Massimino Decl. ¶¶ 2-3

4. In 1998, Viad Corp. acquired MoneyGram and made it a subsidiary of Travelers Express. 1998 Annual Report, Ex. J to Massimino Decl. at 2, VIAD 524. In 2005, Travelers Express and MoneyGram merged and the combined entity became an independent company. Feinberg Aff. ¶ 6.

5. MoneyGram's business lines are divided into "segments."

MoneyGram's Financial Paper Products segment provides Money Orders to consumers through its retail agents and financial institutions located throughout the U.S. and Puerto Rico and provides Official Check outsourcing services for financial institutions across the U.S. MoneyGram Official Checks are used by consumers where a payee requires a check drawn on a bank. Yingst Ex. 29 at 6 (Ex. M to Taliaferro Decl.); Yingst 327:3-13 (Ex. A to Taliaferro Decl.).

### **Overview of Instruments at Issue in This Case**

6. There are two types of MoneyGram Money Orders at issue in this case: MoneyGram Retail Money Orders and MoneyGram Agent Check Money Orders. These two types of MoneyGram Money Orders are discussed in more detail below. *See*, ¶¶ 21-44.

7. There are two types of Official Checks at issue in this case: MoneyGram Teller's Checks and MoneyGram Agent Checks. These two types of MoneyGram Official Checks are discussed in more detail below. *See*, ¶¶ 45-91.

### **Money Orders**

8. A money order is "[a] type of negotiable draft issued by banks, post offices, telegraph companies and express companies and used by the purchaser as a substitute for a check." *Money order*, *Black's Law Dictionary* (5th ed. 1979). "A money order is a form of credit instrument calling for the payment of money to the

named payee and providing a safe and convenient means of remitting funds by persons not having checking accounts. . . . [T]he distinction between a check and a money order is that the latter is frequently issued with the amount printed on its face by the drawee.” 1 *Brady on Bank Checks* ¶ 1.20 (rev. ed. 2009).

9. “Money order” is not a defined term under the Uniform Commercial Code. Instead, “[a]n instrument may be a check even though it is described on its face by another term, such as ‘money order.’” U.C.C. § 3-104(f).

10. In *Western Union Telegraph Co. v. Pennsylvania*, 368 U.S. 71, 72 (1961), the Court described a money order as follows:

A sender goes to a Western Union office, fills out an application and gives it to the company clerk who waits on him, together with the money to be sent and the charges for sending it. A receipt is given the sender and a telegraph message is transmitted to the company's office nearest to the payee directing that office to pay the money order to the payee. The payee is then notified and upon properly identifying himself is given a negotiable draft, which he can either endorse and cash at once or keep for use in the future.

11. As defined by Munn’s *Encyclopedia of Banking and Finance* around the time of the passing of the Federal Disposition of Abandoned Money Orders and Traveler’s Checks Act, 12 U.S.C. §§ 2501-2503, a money order is “[a] form of credit instrument calling for the payment of money to the named payee which provides a safe and convenient means of remitting funds by persons not having checking accounts.” F.L. Garcia, *Munn’s Encyclopedia of Banking and Finance*

458 (6th ed. 1962). *See also*, 120 Cong. Rec. 4529 (Feb. 27, 1974) (“We know that many low-income families use money orders instead of checking accounts to pay their bills, because they are readily available and because of their low cost.”)(Sparkman, J.).

12. Operationally, MoneyGram defines a Money Order as a paper instrument that has purchaser-payee and service charge language on the back. Yingst 42:6-20 (Ex. A to Taliaferro Decl.). It is issued by an agent for MoneyGram and is purchased at one of MoneyGram’s agent locations. *Id.*

### **Addresses are Collected on Some Money Order and Traveler’s Check Purchases**

13. The escheat of money orders has been before the Supreme Court on multiple occasions. *See*, ¶¶ 14-16.

14. In 1961, the Commonwealth of Pennsylvania sought to escheat the “amount of undisbursed money held by Western Union arising out of money orders bought in Pennsylvania offices to be transmitted to payees in Pennsylvania and other States.” *Western Union*, 368 U.S. at 73. Western Union objected to escheat of the funds to Pennsylvania because it had previously escheated the same funds to the State of New York. *Id.* at 74. The Supreme Court rejected Pennsylvania’s claim to the uncashed money orders, finding that “there can be no doubt that Western Union has been denied due process by the Pennsylvania

judgment here unless the Pennsylvania courts had power to protect Western Union from any other claim, including the claim of the State of New York.” *Id.* at 75.

15. Following the holding in *Western Union*, Pennsylvania filed an original action in the U.S. Supreme Court against New York. *Pennsylvania v. New York*, 407 U.S. 206 (1972). Pennsylvania asserted that, contrary to the holding in *Texas v. New Jersey*, 379 U.S. 674 (1965), “the State where the money order was purchased be permitted to take the funds. It claimed that the State where the money orders are bought should be presumed to be the State of the sender's residence.” *Pennsylvania*, 407 U.S. at 212.

16. One of Pennsylvania’s arguments in favor of ignoring Supreme Court precedent was that “Western Union's money order records do not identify anyone as a ‘creditor’ of the company and in many instances do not list an address for either the sender or payee.” *Id.* at 211-12. The Supreme Court rejected this factual argument, noting:

Furthermore, a substantial number of creditors' addresses may in fact be available in this case. Although Western Union has not kept ledger records of addresses, the parties stipulated, and the Special Master found, that money order applications have been retained in the company's records "as far back as 1930 in some instances and are generally available since 1941." Report 9. To the extent that creditor addresses are available from those forms, the "windfall" to New York will, of course, be diminished.

*Id.* at 215.

17. Contemporary business records produced by Western Union in this case demonstrate Western Union's practice of collecting addresses when it sold money orders. See, e.g., Gillette Ex. 136 at WU0000020 (Ex. V to Taliaferro Decl.), bottom right-hand corner (displayed below).

YOU CAN SEND  
A MESSAGE  
WITH YOUR  
MONEY  
*Only*  
A FEW CENTS  
MORE

# WESTERN UNION

## TELEGRAPHIC

# MONEY ORDER

WU 72A (R1-67)

THE FASTEST  
AND SAFEST  
WAY TO SEND  
OR RECEIVE  
MONEY

Send the following Money Order subject to conditions below and on back hereof, which are hereby agreed to:

ACCTG. INFM.	CHECK	OFFICE	DATE AND FILING TIME
H6	PD	RIVERHEAD	51568 2P EDST

	AMT.	250	00	
\$	CHGS.	4	00	
E	TOLLS	1	96	
	TAX		04	
	TOTAL	256	40	

DO NOT WRITE ABOVE THIS LINE

PAY AMOUNT: Two hundred and fifty /100 DOLLARS \$ (250)

TO: Mr. Herbert S. Levitt (PRINT NAME)

ADDRESS: 120 East 92 Street, New York City (STREET AND NUMBER) Ap. 2A (CITY AND STATE)

SENDER'S NAME: Hunter Levitt

DELIVER THE FOLLOWING MESSAGE WITH THE MONEY:  
This is the last time. Absolutely the last time.

Unless signed below the Telegraph Company is directed to pay this money order at my risk to such person as its paying agent believes to be the person named above, person's identification being required. Foreign money orders except.

Hunter G. Levitt (SENDER'S FULL NAME)  
226 Dune Road, Westhampton, N.Y. (SENDER'S ADDRESS) 516-288-3582 (TELEPHONE NUMBER)

Information for test question: \_\_\_\_\_

See also, Gillette Ex. 137 (Ex. W to Taliaferro Decl.).

18. Additionally, the following excerpts from the 1939 Western Union Money Order Service Rules, Gillette Ex. 138 (Ex. X to Taliaferro Decl.), indicate that senders' addresses were routinely collected and retained by Western Union.

- “35. Either given names or nicknames may be used as signature by the sender for transmission purposes. However, the sender’s full name, address and telephone number shall also be written on the application form for future reference. The sender’s address may be transmitted, if desired, and charged for at the additional-word rate as defined in paragraph 56.” P. 72
- “101. The sender’s name, address and telephone number, as given on the application, shall be entered in the lower left hand corner of the MOD message.” P. 76
- “203. When a refund is in order, a draft shall be prepared to the order of the sender for the principal of the order... This draft shall then be mailed to the sender...” P. 83
- Fig. 1 Money Order Application-Form 72-H “Address must be given in every case, but is not transmitted unless paid for.” P. 95
- Fig. 11 Notice to Sender of Undelivered Money Order-Form 4022 includes “Name and address of sender of money order” and agents are directed to “hold...in a pending file so it may be used as a follow-up with the sender in cases where a better address might be available.” P. 103
- Fig. 12 Notice to Accompany Refund Draft-Form 4022 includes name and address of sender. P. 104

19. Additionally, Travelers Cheque issuers such as American Express also collect addresses from the purchasers of travelers cheques. Gillette Ex. 139 (Ex. Y to Taliaferro Decl.); Gillette 78:4-80:21 (Ex. U to Taliaferro Decl.).

20. On the other hand, MoneyGram generally does not collect any personally identifiable information from the purchaser of a MoneyGram Money Order. Yingst 57:17-22 (Ex. A to Taliaferro Decl.). However, if a consumer purchases more than \$3,000 of Money Orders in a single day, that individual’s

information is collected and maintained for five years. Yingst 57:22-58:9 (Ex. A to Taliaferro Decl.).

### **MoneyGram Money Orders Specifically**

21. MoneyGram issues Money Orders through its network of approximately 17,500 agents and financial institution locations in the U.S. and Puerto Rico as well as through company operated retail locations. Consumers use MoneyGram Money Orders to make payments in lieu of cash or personal checks. Yingst Ex. 29 at 6 (Ex. M to Taliaferro Decl.); Yingst 48:24-49:3 (Ex. A to Taliaferro Decl.).

22. MoneyGram maintains an internet database if consumers want to locate a retail location to purchase a MoneyGram Retail Money Order. Yingst 305:22-306:2 (Ex. A to Taliaferro Decl.).

23. A purchaser of a MoneyGram Money Order can contact MoneyGram directly and complete a claim card if he or she wants to receive a refund on an uncashed Money Order. Yingst 320:13-322:11 (Ex. A to Taliaferro Decl.); Yingst Ex. 27 (Ex. K to Taliaferro Decl.).

24. A consumer would use a money order instead of a personal checking account because there is a segment of the population that does not use or does not want to use a personal checking account to make payments, so that person has a regular practice of using money orders to pay bills instead of personal checks.

Yingst 49:4-16 (Ex. A to Taliaferro Decl.); Yingst 199:2-15 (Ex. A to Taliaferro Decl.); Yingst Ex. 12 at MG 002711 (Ex. F to Taliaferro Decl.).

25. According to MoneyGram, the decision to purchase a money order is driven by a customer's banking habits. They either do not use banks or they do not want to use banks. Yingst 146:19-24 (Ex. A to Taliaferro Decl.).

26. MoneyGram's money transfer and Money Order products are a consumer facing product sold through its agent base, which consist of a "whole realm of nonfinancial institution businesses" such as "[r]etail agents, convenience stores, Walmart, CVS, [and] mom and pop stores." Yingst 29:4-10 (Ex. A to Taliaferro Decl.).

27. MoneyGram Money Orders are marketed as a more reliable substitute for a personal check. MoneyGram markets this service directly to the public through methods including digital and social media, point of sale materials and global branding to increase market awareness of MoneyGram. Yingst Ex. 29 at 6 (Ex. M to Taliaferro Decl.); Yingst Ex. 28 at 6 (Ex. L to Taliaferro Decl.); Yingst 329:17-330:20 (Ex. A to Taliaferro Decl.).

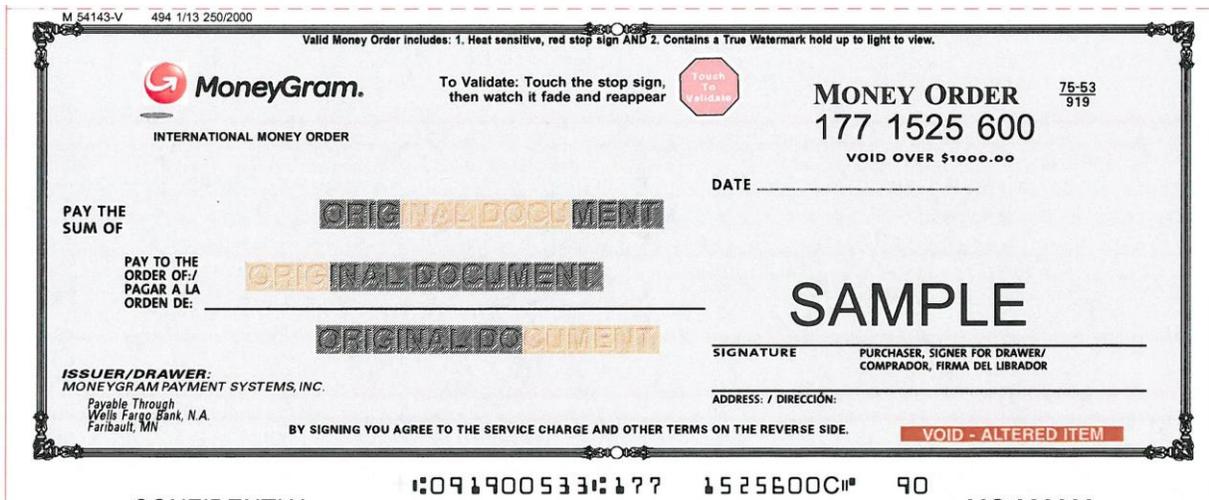
28. MoneyGram does not guarantee payment of a MoneyGram Money Order. Yingst 51:9-13 (Ex. A to Taliaferro Decl.). There are situations where MoneyGram is presented with the same Money Order multiple times, or a Money Order is stolen, or a Money Order appears to be altered, that would cause a

MoneyGram Money Order to be returned unpaid by MoneyGram when it is presented for payment. Yingst 52:8-53:8 (Ex. A to Taliaferro Decl.).

29. Marketing for MoneyGram Money Orders is “consumer facing,” which means that the marketing for MoneyGram services is directed at consumers who might use those services, and not to prospective agents who sell to customers. Yingst 46:17-47:4 (Ex. A to Taliaferro Decl.).

30. MoneyGram Money Order competitors include a small number of large money order providers and a large number of regional and niche money order providers. MoneyGram’s largest competitors in the money order industry are Western Union and the U.S. Postal Service. Yingst Ex. 29 at 6 (Ex. M to Taliaferro Decl.); Yingst 331:8-17 (Ex. A to Taliaferro Decl.).

31. MoneyGram Money Orders prominently display the words “Money Order” and MoneyGram’s name and logo. Ex. A to Affidavit of Jennifer Whitlock re: MoneyGram Money Orders (“Whitlock Money Order Aff.”) at MG 002690 (displayed below).



32. MoneyGram Money Orders contain “terms and conditions” on the face or the back of the Money Order. Yingst 310:16-311:19 (Ex. A to Taliaferro Decl.); Exhibit A to Whitlock Money Order Aff. at MG 002691 (displayed below).



33. All MoneyGram Money Orders are assessed a monthly service fee of \$1.50/month if the Money Order is uncashed after a certain period of time. Ex. A to Whitlock Money Order Aff. at MG 002691; Yingst 411:2-4 (Ex. A to Taliaferro Decl.); Petrick 243:7-11 (Ex. O to Taliaferro Decl.). In a State with a seven year

dormancy period, \$126 of a given Money Order's value is consumed by service charges before the item becomes dormant. Petrick 246:17-24 (Ex. O to Taliaferro Decl.). As a result, any MoneyGram Money Order with a value below \$126 is completely consumed by service charges before it would otherwise escheat to a State with a seven year dormancy period.

34. Currently, MoneyGram Money Orders generally remain outstanding for six days, which is a decrease from ten days in 2010. Yingst Ex. 29 at 6 (Ex. M to Taliaferro Decl.); Yingst Ex. 28 at 5 (Ex. L to Taliaferro Decl.); Yingst 327:19-328:7 (Ex. A to Taliaferro Decl.).

35. The drawer of a MoneyGram Money Order is MoneyGram. Yingst 68:22-69:1 (Ex. A to Taliaferro Decl.).

36. MoneyGram Money Orders are typically not issued in amounts exceeding \$1,000, although some individual agents could have their maximum permissible amount set at a lower level. Yingst 58:19-59:6 (Ex. A to Taliaferro Decl.).

37. Although all MoneyGram Money Orders contain the above-listed characteristics, MoneyGram processes its Money Orders through several different computer/IT systems. The first group, Delta, DeltaWorks, and DNET, are point of sale systems for MoneyGram Money Orders sold in retail establishments. Yingst 341:11-18 (Ex. A to Taliaferro Decl.). These systems are MoneyGram owned and

provided hardware. Yingst 341:19-24 (Ex. A to Taliaferro Decl.). Money Orders sold on these systems are called “Retail Money Orders.” According to MoneyGram’s Fed. R. Civ. P. 30(b)(6) witness, it has always been the case that agents that sell Retail Money Orders use MoneyGram’s money order dispensers. Yingst 386:4-8 (Ex. A to Taliaferro Decl.).

38. Retail Money Orders typically do not display the logo of the establishment where the Retail Money Order was purchased. Yingst 317:10-18 (Ex. A to Taliaferro Decl.).

39. MoneyGram usually directly debits the bank account of agents that sell Retail Money Orders in order to receive the proceeds of those sales. Yingst 339:9-21 (Ex. A to Taliaferro Decl.).

40. With the exception of one major retailer, agents that sell MoneyGram Retail Money Orders do not earn any interest on the outstanding balance of their uncashed MoneyGram Retail Money Orders. Yingst 364:18-365:6 (Ex. A to Taliaferro Decl.); Yingst Ex. 35 (Ex. N to Taliaferro Decl.).

41. A MoneyGram Money Order agent has no legal right to stop payment on a Money Order. Yingst 387:17-388:11 (Ex. A to Taliaferro Decl.).

42. MoneyGram’s financial institution clients “may have a desire to print these money orders from their teller system on their own printers instead of using MoneyGram printing equipment [as is the case with money orders sold by retail

establishments].” Yingst 83:5-12 (Ex. A to Taliaferro Decl.). In that case, those financial institution clients can use the MoneyGram Primelink Portal, which is a “servicing website that [MoneyGram’s] financial institution clients can use to get information about their checks.” Yingst 337:14-18 (Ex. A to Taliaferro Decl.). The Primelink Portal is also the website through which MoneyGram’s financial institution clients can transmit and obtain information about the MoneyGram Agent Checks and Teller’s Checks that they issue. Yingst Ex. 13 at MG0002281-2295 (Ex. G to Taliaferro Decl.). Although these MoneyGram money orders are sold from the financial institution’s teller system, and accessed on the Primelink system, they are “also a money order.” Yingst 82:13 11 (Ex. A to Taliaferro Decl.). Money Orders printed from a financial institution’s own teller system and accessed on the Primelink system are called “Agent Check Money Orders” and are the same product as MoneyGram’s other Money Order products. Yingst 85:12-22 11 (Ex. A to Taliaferro Decl.).

43. There is no legal distinction between an Agent Check Money Order and one purchased from one of MoneyGram’s retail agents. Yingst 175:3-11 (Ex. A to Taliaferro Decl.). The only identified differences between an Agent Check Money Order and one purchased from one of MoneyGram’s retail agents is that an Agent Check Money Order does not necessarily have a dollar amount restriction

and an Agent Check Money Order is issued through the financial institution's systems and hardware. Yingst 175:3-176:1 (Ex. A to Taliaferro Decl.).

44. MoneyGram produced a declaration in this case identifying the various templates on which MoneyGram Money Orders can be issued. *See*, Whitlock Money Order Aff.

### **MoneyGram Official Checks Specifically**

45. An Official Check is a prepaid, purchased financial institution branded instrument. Unlike Money Orders, Official Checks are not marketed to the public by MoneyGram but instead all MoneyGram marketing of Official Checks is to financial institutions so that the financial institutions may market Official Checks to their customers. Yingst Ex. 29 at 6 (Ex. M to Taliaferro Decl.); Yingst 330:21-331:7 (Ex. A to Taliaferro Decl.).

46. MoneyGram has done some Official Check marketing in magazines, such as ads in trade magazines directed to persons in the credit union industry. Most of MoneyGram's marketing of Official Checks is conducted by being involved in the industry, going to banking conferences, and getting involved in state banking organizations. Yingst 126:10-21 (Ex. A to Taliaferro Decl.).

47. As described by MoneyGram's Fed. R. Civ. P. 30(b)(6) witness, "a bank or a credit union . . . can elect to use MoneyGram to provide a realm of services around their official check program including providing inventory,

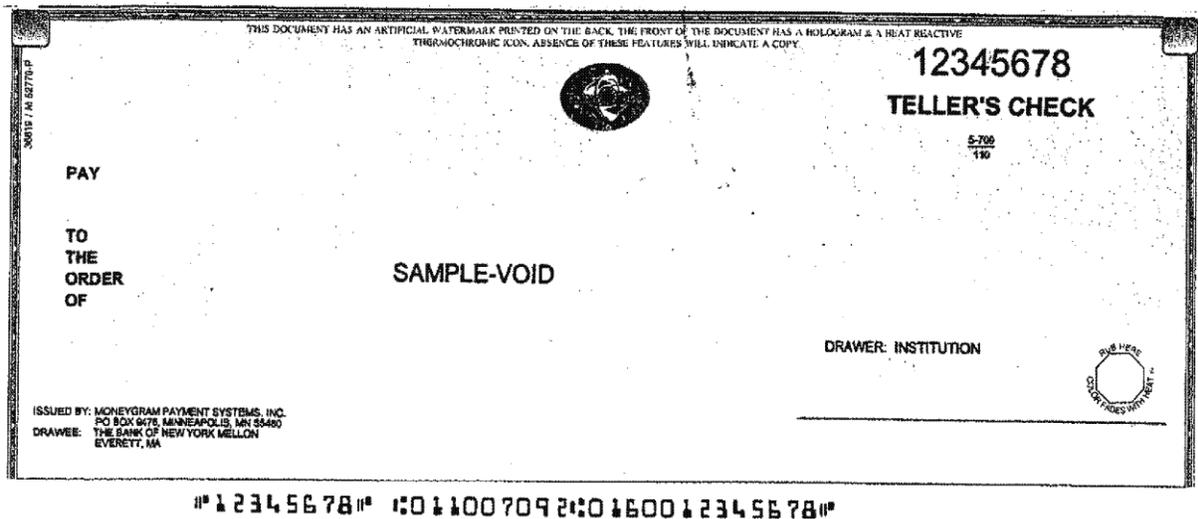
reconciliation, back office processing, exception research handling, et cetera, so it's an outsourcing of parts of [the financial institution's] official check program.” Yingst 28:11-19 (Ex. A to Taliaferro Decl.). *See also*, Yingst 32:11-23 (Ex. A to Taliaferro Decl.); Yingst Ex. 2 at MG-000394 (Ex. B to Taliaferro Decl.).

48. Only financial institutions can offer MoneyGram's Official Check processing services. Yingst 29:1-3 (Ex. A to Taliaferro Decl.).

49. Unlike Money Orders, there is no internet database if consumers want to locate a financial institution to purchase a MoneyGram Official Check. Yingst 305:22-306:6 (Ex. A to Taliaferro Decl.).

50. Unlike Money Orders, there are no terms and conditions on a MoneyGram Official Check. Yingst 317:20-318:8 (Ex. A to Taliaferro Decl.); *see, e.g.*, Ex. C to Affidavit of Jennifer Whitlock re: MoneyGram Official Checks (“Whitlock Official Check Aff.”) at MG0000008 (displayed below).

EXHIBIT C



51. Unlike Money Orders, there are no service charges imposed by MoneyGram on a MoneyGram Official Check. Yingst 314:21-315:8 (Ex. A to Taliaferro Decl.).

52. MoneyGram Official Checks typically display the logo of the selling financial institution. Yingst 317:5-9 (Ex. A to Taliaferro Decl.).

53. A purchaser of a MoneyGram Official Check cannot contact MoneyGram directly to request a refund of that Official Check. Instead, they must contact the bank that issued the Official Check. Yingst 324:11-325:2 (Ex. A to Taliaferro Decl.).

54. A financial institution that sells MoneyGram Official Checks typically transmits the proceeds of the sale of those Official Checks by wiring payment to MoneyGram. Yingst 340:5-15 (Ex. A to Taliaferro Decl.).

55. A financial institution that sells MoneyGram Official Checks has a number of operational rights that a seller of a MoneyGram Retail Money Order does not have. Yingst Ex. 13 (Ex. G to Taliaferro Decl.); Yingst Ex. 14 (Ex. H to Taliaferro Decl.); Yingst Ex. 15 (Ex. I to Taliaferro Decl.); Yingst Ex. 35 (Ex. N to Taliaferro Decl.); Yingst 352:5-358:23 (Ex. A to Taliaferro Decl.); Yingst 370:14-373:15 (Ex. A to Taliaferro Decl.).

56. A financial institution that sells MoneyGram Official Checks shares interest earnings on the balance of uncashed Official Checks that it has sold.

Yingst 362:20-364:16 (Ex. A to Taliaferro Decl.).

57. The history of MoneyGram Official Checks, as discussed in Annual Reports from Greyhound, Greyhound Dial, Dial, and Viad over the last 40 years, makes clear that MoneyGram Official Checks were created as a service for banks and credit unions and are substitutes for those financial institutions' own products.

*See, e.g.*, 1993 Annual Report, Ex. I to Massimino Decl. at Part 1, VIAD 399

(“Travelers Express also provides processing services for more than 4,500 credit unions and other financial institutions which offer share drafts (the credit union industry's version of a personal check) or official checks (used by financial institutions in place of their own bank check or teller check)).”

58. MoneyGram's predecessor company was named Travelers Express, and for much of its history it was a subsidiary of The Greyhound Corporation, which was subsequently renamed Greyhound Dial Corporation, then The Dial Corp., and then Viad Corp. Massimino Decl. ¶¶ 2-3

59. Annual Reports from Greyhound, Dial and Viad during the 1980s and 1990s demonstrate their development of the Travelers Express/MoneyGram Official Check product. *See, e.g.*, 1981 Annual Report, Ex. B to Massimino Decl. at 9, VIAD 65 (“While money orders are still the core of [Travelers Express], the

company . . . has developed a substantial volume of official check processing for a variety of financial institutions.”); 1998 Annual Report, Ex. J to Massimino Decl. at 2, VIAD 524 (“Travelers Express also provides processing services for approximately 5,000 banks, credit unions and other financial institutions which offer official checks (used by financial institutions in place of their own bank check or cashier's check) and share drafts (the credit union industry's version of a personal check.”)).

60. The first reference to “Official Checks” is contained in the Greyhound 1981 Annual Report, which states that Travelers Express “has developed a substantial volume of official check processing for a variety of financial institutions.” Ex. B to Massimino Decl. at 9, VIAD 65. This is consistent with testimony from MoneyGram’s Fed. R. Civ. P. 30(b)(6) witness, who testified that MoneyGram had offered official check outsourcing “[s]ince] around 1979.” Yingst 30:5-16 (Ex. A to Taliaferro Decl.).

61. Annual Reports of Greyhound through the mid-1980s described the growth in Travelers Express’s Official Check processing. For example, the 1986 Annual Report stated that “Travelers processed over 626 million money orders, share drafts and official checks during the year.” Ex. G to Massimino Decl. at 6, VIAD 308.

62. Annual Reports of Dial in the early 1990s made clear that these Official Check instruments were substitutes for bank checks and teller's checks. For example, the 1993 Dial Annual Report stated that Travelers Express "offers money orders, official checks, and negotiable instrument clearing services through a national network of approximately 43,000 retail agents, mid-size bank customers and over 4,500 credit unions . . . Travelers Express also provides processing services for more than 4,500 credit unions and other financial institutions which offer share drafts (the credit union industry's version of a personal check) or official checks (used by financial institutions in place of their own bank check or teller check)." Ex. I to Massimino Decl. at Part 1, VIAD 398-99.

63. Similarly, the 1998 Viad Annual Report explained that "Travelers Express also provides processing services for approximately 5,000 banks, credit unions and other financial institutions which offer official checks (used by financial institutions in place of their own bank check or cashier's check) and share drafts (the credit union industry's version of a personal check). . . . The Payment Services segment sells money orders through agents, performs official check and negotiable instrument clearing services for banks and credit unions." Ex. J to Massimino Decl., VIAD 524, 648.

64. The 2001 and 2002 Viad Annual Reports contain similar language, noting “Travelers Express also provides processing services for approximately 8,500 branch locations of banks, credit unions and other financial institutions which offer official checks (used by financial institutions in place of their own bank check or cashier’s check) and share drafts (the credit union industry’s version of a personal check).” Ex. M to Massimino Decl. at 1, VIAD 846; *see also*, Ex. N to Massimino Decl. at 1, VIAD 959.

65. Unlike Money Orders, MoneyGram does not sell Official Checks directly to customers. Official Checks are sold only by Federally Insured Depository Institutions. Yingst Ex. 29 at 6 (Ex. M to Taliaferro Decl.).

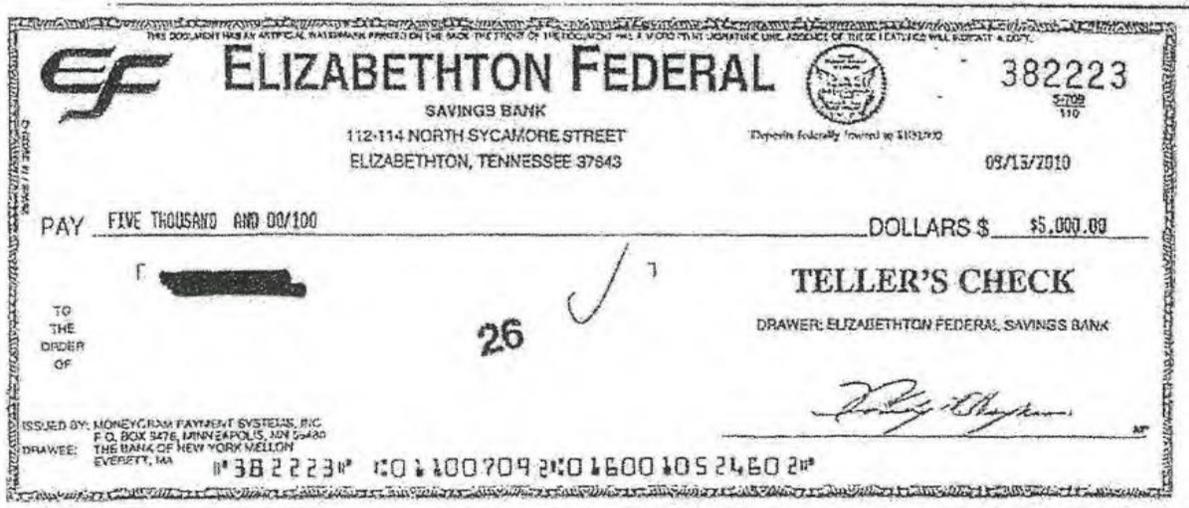
66. Approximately 800 financial institutions at 5,600 branch locations in the United States offer MoneyGram Official Checks. Yingst Ex. 29 at 6 (Ex. M to Taliaferro Decl.).

67. For its bank and credit union customers MoneyGram offers “Official check processing as well as money orders” and also offers money transfer services. Yingst 21:16-22 (Ex. A to Taliaferro Decl.).

68. Official Checks are used by consumers where a payee requires a check drawn on a bank. Yingst Ex. 29 at 6 (Ex. M to Taliaferro Decl.). Official Checks have no denominational limit and can be issued in any amount. Yingst 137:13-16 (Ex. A to Taliaferro Decl.).

69. Under Money Service Business Regulations issued by the U.S. Department of Treasury, financial institutions that sell MoneyGram Official Checks are not required to register as Money Service Businesses. 31 CFR §1010.100(ff)(3); 31 CFR §1010.100(d).

70. MoneyGram Official Checks prominently display the name and logo of the financial institution that sells them and are used by those financial institutions in place of their own bank check or teller check. Yingst 317:5-9 (Ex. A to Taliaferro Decl.); 1993 Annual Report, Ex. I to Massimino Decl. at Part 1, VIAD 399 (describing Official Checks as being “used by financial institutions in place of their own bank check or teller check.”); Yingst Ex. 6 (Ex. C to Taliaferro Decl.) (displayed below).



71. MoneyGram Official Checks generally remain outstanding for approximately four days. Yingst Ex. 29 at 6 (Ex. M to Taliaferro Decl.); Yingst Ex. 28 at 5 (Ex. L to Taliaferro Decl.); Yingst 328:8-21 (Ex. A to Taliaferro Decl.).

72. MoneyGram's Official Check competitors include financial institution solution providers, such as core data processors and corporate credit unions. MoneyGram's Official Check business also competes against a financial institution's desire to perform these processes in-house with support from these latter organizations. Yingst Ex. 29 at 6 (Ex. M to Taliaferro Decl.).

73. A customer typically acquires a MoneyGram Official Check when they need a "good funds check," such as to make a deposit on a car or place a down payment on the purchase of a home. Yingst 138:11-20 (Ex. A to Taliaferro Decl.). A check issued by a financial institution is typically accepted as a good funds check. Yingst 144:15-23 (Ex. A to Taliaferro Decl.).

74. A MoneyGram Teller's Check is used by a consumer that needs funds for a purpose for which a money order would not be accepted because money orders lack next day funds availability. Yingst 147:6-12 (Ex. A to Taliaferro Decl.). An Official Check is accepted as a form of payment in a wider range of circumstances than a money order. Yingst 148:21-23 (Ex. A to Taliaferro Decl.).

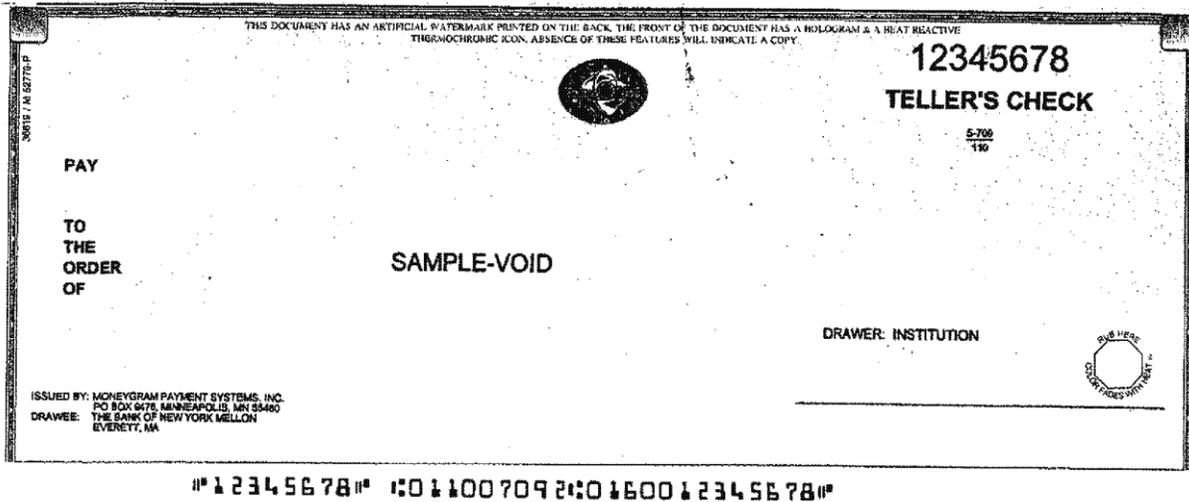
75. A bank customer in need of a bank-issued check does not ask for a specific type of bank-issued instrument. Instead, a customer typically asks for a bank-issued check and the bank, in response, then determines the type of check to issue. Yingst 169:17-170:8 (Ex. A to Taliaferro Decl.).

76. There are two types of MoneyGram Official Checks at issue in this case: a MoneyGram Teller's Check and a MoneyGram Agent Check. *See*, ¶¶ 78-91.

77. Some MoneyGram Teller's Checks and Agent Checks contain MoneyGram money order language on their back because they are printed on so-called "blank stock." Yingst at 412:5-413:14 (Ex. A to Taliaferro Decl.); Yingst Supplemental Dec. at ¶ 2. However, the money order language is not operative because, in accordance with the terms of the language, the MoneyGram Teller's Checks and Agent Checks that have this language are not "DESIGNATED ON ITS FACE AS A *MONEY ORDER*." Exs. A, B to Declaration of Eva Yingst.

### **Teller's Checks**

78. The first category of MoneyGram Official Checks at issue in this case, a MoneyGram Teller's Check, contains a specific product code – 016. This product code can be found in the Magnetic Ink Character Reader ("MICR") line at the bottom of the check. Petrick Ex. 41 at MG0002301 (Ex. P to Taliaferro Decl.); Ex. D to Whitlock Official Check Aff. at MG0000010; Ex. C to Whitlock Official Check Aff. at MG0000008 (displayed below)



79. All MoneyGram Teller's Checks share critical common characteristics. *See*, ¶¶ 80-84.

80. A MoneyGram Teller's Check is a type of MoneyGram Official Check issued by a financial institution. *Yingst* 136:4-7 (Ex. A to Taliaferro Decl.). All MoneyGram Teller's Checks indicate that the drawer of the instrument is the financial institution that sells the MoneyGram Teller's Checks. *Yingst* 136:8-13 (Ex. A to Taliaferro Decl.); Ex. D to Whitlock Official Check Aff. at MG0000010.

81. All MoneyGram Teller's Checks indicate that the drawee of the instrument is a different financial institution than the financial institution that sells the MoneyGram Teller's Checks. Ex. D to Whitlock Official Check Aff. at MG0000010. That drawee bank, also known as the "clearing bank," is a bank with which MoneyGram has a banking relationship for the purposes of receiving

Official Checks as they clear. Yingst 33:8-18 (Ex. A to Taliaferro Decl.); Yingst 35:10-11 (Ex. A to Taliaferro Decl.).

82. All MoneyGram Teller’s Checks are “good funds checks,” and are accepted by financial institutions as “good funds checks.” Yingst 142:9-13 (Ex. A to Taliaferro Decl.). MoneyGram operationally recognizes the difference between a MoneyGram Teller’s Check, which is a next day “good funds” item, and a MoneyGram Money Order, which is not. Yingst 143:10-17 (Ex. A to Taliaferro Decl.).

83. A MoneyGram Teller’s Check is subject to Regulation CC Next-Day Funds Availability and Regulation D Reserve Requirement. Yingst Ex. 16 at MG004615 (Ex. J to Taliaferro Decl.) (displayed below).



### Official Check & Money Order Types

	Cashier’s Checks	Teller’s Checks	Agent Checks	Financial Institution Money Orders
Issuer	Financial Institution	MoneyGram	MoneyGram	MoneyGram
Drawer	Financial Institution	Financial Institution	MoneyGram	MoneyGram
Drawee	Financial Institution	MoneyGram (clearing bank)	MoneyGram (clearing bank)	MoneyGram
Reg. CC/Next-Day Funds Availability	Yes	Yes	No	No
Reg. D/Reserve Requirement	Yes	Yes	No	No
Escheat	Financial Institution	MoneyGram	MoneyGram	MoneyGram
Document Type	Check	Check	Check	Draft
Dollar Amount	Unlimited	Unlimited	Unlimited	Limited

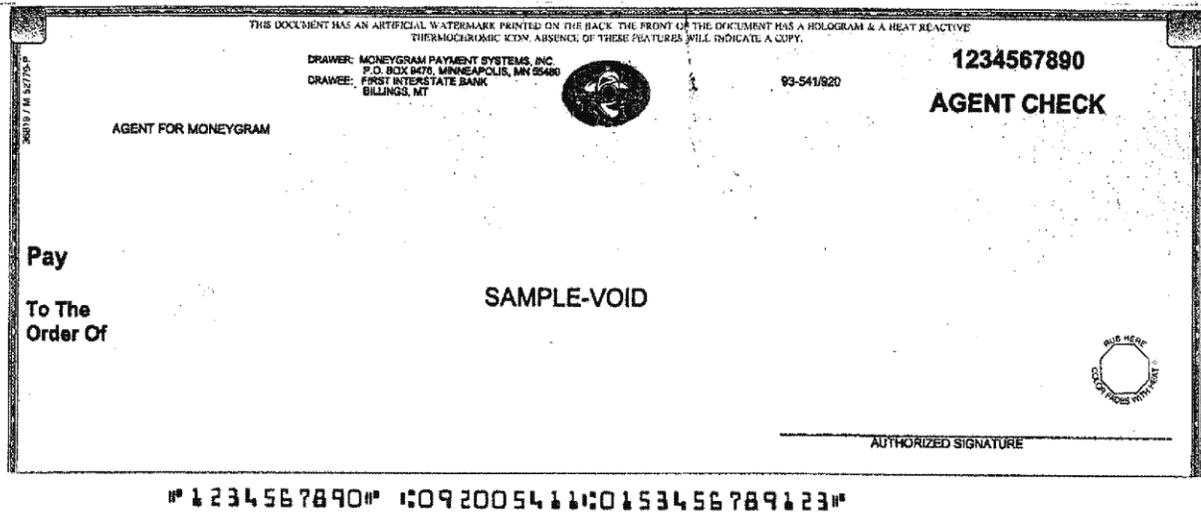
84. Under the Uniform Commercial Code, a teller's check is "a draft drawn by a bank (i) on another bank, or (ii) payable at or through a bank." U.C.C. § 3-104(h). The Expedited Funds Availability Act contains a nearly identical definition – a teller's check is "any check issued by a depository institution and drawn on another depository institution." 12 U.S.C. §4001(22).

### **Agent Checks**

85. The second category of MoneyGram Official Checks at issue in this case – an Agent Check, also contains a specific product code – 015. This product code can be found in the MICR line at the bottom of the check. Yingst 420:6-17 (Ex. A to Taliaferro Decl.); Petrick Ex. 41 at MG0002302 (Ex. P to Taliaferro Decl.).

86. Unlike the uniformity that exists among MoneyGram Teller's Checks, MoneyGram Agent Checks come in two varieties. *See*, ¶¶ 87-88.

87. One variety of MoneyGram Agent Check indicates that the drawer of the instrument is MoneyGram, and that the individual signing the check is signing as "Agent for MoneyGram." Ex. A to Whitlock Official Check Aff. at MG0000004 (displayed below).



88. A second variety of MoneyGram Agent Check lists the drawer of the instrument as MoneyGram, but simply lists the individual signing the check as “authorized signature.” In the absence of language indicating otherwise, “a signature in the lower right hand corner of an instrument indicates an intent to sign as the maker of a note or the drawer of a draft.” U.C.C. § 3-204, cmt. 1; Yingst 419:7-420:21 (Ex. A to Taliaferro Decl.); Yingst Ex. 10 (Ex. D to Taliaferro Decl.) (displayed below).

THIS DOCUMENT HAS AN ARTIFICIAL WATERMARK PRINTED ON THE BACK. THE FRONT OF THE DOCUMENT HAS A MICRO-FINISH SIGNATURE LINE. ABSENCE OF THESE FEATURES WILL INDICATE A COPY.

0724

**OFFICIAL CHECK**  
VOID AFTER 90 DAYS

 **Independent Bank**  
MEMBER FDIC

No. 1587035

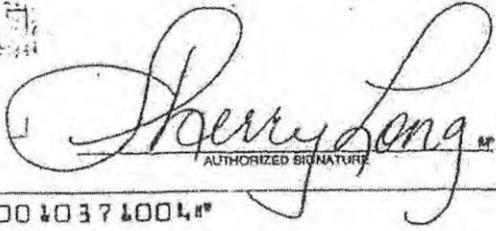
REMITTER  DATE August 04, 2010

84-905  
011

FIVE THOUSAND DOLLARS AND ZERO CENTS

PAY \_\_\_\_\_ \$ 5,000.00

TO THE ORDER OF 

  
AUTHORIZED SIGNATURE

DRAWER: MONEYGRAM PAYMENT SYSTEMS, INC.  
P.O. BOX 9476, MINNEAPOLIS, MN 55420  
DRAWEE: WACHOVIA BANK, N.A., BLUEFORD, GA

⑈ 1587035⑈ ⑆061103056⑆0150010371004⑈

89. All MoneyGram Agent Checks indicate that the drawee of the instrument is a different financial institution than the financial institution that sells the MoneyGram Agent Checks. That drawee financial institution has a contractual relationship with MoneyGram regarding the “clearing” of the instrument. Yingst 33:8-18 (Ex. A to Taliaferro Decl.).

90. Most MoneyGram Agent Checks are typically used by the financial institution to pay an obligation of the financial institution. MoneyGram Agent Checks are not typically sold to bank customers. Yingst 170:2-8 (Ex. A to Taliaferro Decl.).

91. A MoneyGram Agent Check is different from a MoneyGram Agent Check Money Order in several ways. MoneyGram treats them as distinct product categories. Yingst 161:6-13 (Ex. A to Taliaferro Decl.). A MoneyGram Agent Check Money Order says “money order” on the front and includes all of the

relevant legal language on the back related to the purchaser's agreement and the Money Order's service charges. Yingst 161:15-21 (Ex. A to Taliaferro Decl.). MoneyGram also places title restrictions on what an Agent Check Money Order can be called, including prohibitions on calling it a bank check or Official Check. Yingst 162:7-13 (Ex. A to Taliaferro Decl.); Yingst Ex. 11 at MG-000298 (Ex. E to Taliaferro Decl.). A MoneyGram Agent Check Money Order also contains a different product code – 017 – in the MICR line at the bottom of the Agent Check Money Order. Ex. E to the Whitlock Money Order Aff. At MG002704.

### **MoneyGram Escheatment Practices**

92. MoneyGram escheats unaddressed uncashed Money Orders to the State in which those uncashed Money Orders are sold. Petrick 30:22-23 (Ex. O to Taliaferro Decl.); Petrick 36:1-20 (Ex. O to Taliaferro Decl.).

93. MoneyGram escheats uncashed unaddressed MoneyGram Teller's Checks and Agent Checks to Delaware – its State of incorporation. Petrick 31:2-6 (Ex. O to Taliaferro Decl.); Petrick 35:12-24 (Ex. O to Taliaferro Decl.).

94. In 2005, following MoneyGram's reincorporation as a Delaware entity, MoneyGram determined that unaddressed MoneyGram Teller's Checks and Agent Checks should be escheated to its State of incorporation – Delaware – after it was instructed to do so by lawyers in the MoneyGram legal department in

consultation with management. Petrick 43:23-44:23 (Ex. O to Taliaferro Decl.); Petrick Ex. 42 (Ex. Q to Taliaferro Decl.).

95. Both MoneyGram lawyers and outside counsel were involved in the decision to escheat unaddressed MoneyGram Teller's Checks and Agent Checks to Delaware. Petrick 73:2-12 (Ex. O to Taliaferro Decl.). The determination was made "[b]ased on a careful review of unclaimed property laws and [MoneyGram's predecessor entity] TECI's obligations under those laws." Petrick Ex. 42 at MG 002833 (Ex. Q to Taliaferro Decl.); Petrick 134:17-135:11 (Ex. O to Taliaferro Decl.). Although she could not recall the specific details, MoneyGram's Fed. R. Civ. P. 30(b)(6) witness recalls seeing an opinion of outside counsel regarding the decision to escheat unaddressed MoneyGram Teller's Checks to its State of incorporation. Petrick 255:13-256:2 (Ex. O to Taliaferro Decl.).

96. After the decision to escheat to Delaware was made, MoneyGram lawyers informed MoneyGram personnel responsible for the escheat of MoneyGram's unclaimed property of the decision. Petrick:74:7-11 (Ex. O to Taliaferro Decl.); Petrick 75:17-24 (Ex. O to Taliaferro Decl.).

97. When filing its unclaimed property reports with various States, MoneyGram uses the National Association of Unclaimed Property Administrators ("NAUPA") format. Petrick 93:9-22 (Ex. O to Taliaferro Decl.); Petrick 95:21-96:1 (Ex. O to Taliaferro Decl.). NAUPA establishes Property Type Codes and a

filer must select an applicable property type code for property it escheats to a given State. Petrick 95:17-96:17 (Ex. O to Taliaferro Decl.) (“We select the code that matches our property types for a property that we are escheating”).

98. MoneyGram escheats its unclaimed unaddressed Official Checks under the NAUPA Code CK15 (Other Outstanding Official Checks). Petrick 98:9-99:5 (Ex. O to Taliaferro Decl.). The decision by MoneyGram to use NAUPA Code CK15 for its Official Checks was made at the direction of counsel. Petrick 101:11-14 (Ex. O to Taliaferro Decl.).

99. MoneyGram escheats its unclaimed Money Orders under NAUPA Code CK07 (Money Orders) although it previously escheated its Agent Check Money Orders under NAUPA Code CK77 (Non-Bank Money Orders). Petrick 182:13-184:21 (Ex. O to Taliaferro Decl.); Petrick 218:9-219:7 (Ex. O to Taliaferro Decl.); Petrick Ex. 55 (Ex. R to Taliaferro Decl.).

100. On a per item basis, there are more MoneyGram Money Orders escheated a year than there are MoneyGram Official Checks of both the Teller’s Check and Agent Check varieties combined, but on a dollar basis the value of MoneyGram Teller’s Checks and Agent Checks escheated in a year exceeds the dollar value of MoneyGram Money Orders. Petrick 251:2-16 (Ex. O to Taliaferro Decl.).

## Defendant States' Escheats Laws

101. The escheat laws of some of the Defendant States provide for the escheat to State of purchase of only unaddressed money orders and traveler's checks and not "similar written instruments." *See, e.g.*, Code of Ala. § 35-12-74 (Alabama), A.R.S. § 44-304 (Arizona), A.C.A. § 18-28-204 (Arkansas), Ind. Code Ann. 32-34-1-21 (Indiana), IA Code §556.2A (Iowa), K.S.A. 58-3936 (Kansas), LA Rev Stat § 9:156 (Louisiana), Mont. Code Ann. § 70-9-805 (Montana), Nev. Rev. Stat. Ann. §120A.530 (Nevada), Tex. Property Code Ann. § 72.102 (Texas), W. Va. Code § 36-8-4 (West Virginia).

Dated: February 1, 2019

Kathleen Jennings  
Attorney General  
of Delaware  
Allison E. Reardon  
State Solicitor  
Caroline Lee Cross  
Elizabeth R. McFarlan  
Delaware Department of Justice  
Department of Finance  
Carvel State Office Building  
820 North French Street  
Wilmington, DE 19801  
Ph: (302) 577-8842  
Eml: [Caroline.Cross@state.de.us](mailto:Caroline.Cross@state.de.us)

/s/ Steven S. Rosenthal  
Steven S. Rosenthal  
Tiffany R. Moseley  
J.D. Taliaferro  
LOEB & LOEB LLP  
901 New York Avenue NW  
Washington, D.C. 20001  
Ph: (202) 618-5000  
Fax: (202) 618-5001  
Eml: [srosenthal@loeb.com](mailto:srosenthal@loeb.com)  
[tmoseley@loeb.com](mailto:tmoseley@loeb.com)  
[jtaliaferro@loeb.com](mailto:jtaliaferro@loeb.com)

Marc S. Cohen  
LOEB & LOEB LLP  
10100 Santa Monica Boulevard, Suite  
2200  
Los Angeles, CA 90067  
Ph: (310) 282-2000  
Fax: (310) 282-2200

Eml: mscohen@loeb.com

*Counsel for Plaintiff State of Delaware*