



Comerica Incorporated

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Frank M. Peralno
Vice President and Senior Counsel

January 4, 2008

VIA U.S. MAIL

Michael S. Umansky, Esq.
Duane Morris LLP
101 West Broadway, Suite 900
San Diego, CA 92101-8285

Re: Linspire, Inc. – Wire Transfers Processed July 31, 2007

Dear Mr. Umansky:

On behalf of Comerica Bank (“Comerica”), this letter responds to the claims of your client, Linspire, Inc. (“Linspire”), concerning the following wire transfers, initiated and confirmed by Linspire officer, [REDACTED], on July 31, 2007:

<u>Amount</u>	<u>Beneficiary-Payee</u>	<u>Receiving/Beneficiary Bank and Acct. No.</u>
\$ 50,814.32	[REDACTED]	[REDACTED]
\$ 42,675.91	[REDACTED]	[REDACTED]
\$ 29,583.17	[REDACTED]	[REDACTED]
\$ 13,215.60	5960 Cornerstone Court	[REDACTED]

It is Comerica’s goal to provide excellent customer service while also complying with applicable state and federal bank regulations as well as internal policies and procedures. To that end, the following summarizes Comerica’s investigation of Linspire’s claims.

Apparently, at or about the time of the wire transfers in question, Linspire made the decision to close its operations and terminate its employees.

The wire transfer to Linspire’s landlord, 5960 Cornerstone Court (the “Cornerstone Wire”), was for the payment of Linspire’s August 2007 rent--a payment which clearly benefitted Linspire. The remaining three wire transfers (the “Employee Wires”) were made to payees then-employed by Linspire (collectively, the “Employees”) and each wire transfer request bore the notation “*Final check*,” suggesting that these Employee Wires constituted payment of compensation due and owing for services rendered, severance pay or otherwise.

Linspire initially notified Comerica that the July 31st wire transfers were not processed in accordance with Comerica’s Global Wire Transfer and Security Procedures (the “GFT Procedures”) because the person responsible for initiating and confirming the wire were the same person. At that

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time, Linspire did *not* assert that the Employee Wires or the Cornerstone Wire were unauthorized. It is reasonable to expect that a business would know immediately upon learning of such transfers whether they were authorized or not. Simply because a wire transfer was not allegedly processed in accordance with an internal bank policy or procedure, does not mean it was not authorized by or that it did not benefit Linspire.

On August 8, 2007, Linspire sent a memorandum via facsimile to Comerica's fraud investigator, Susan Bell, stating that *"Although none of the wire transfers were properly authorized, at the present time Linspire does not want to callback"* the Cornerstone Wire or the Employee Wires to [REDACTED] and [REDACTED]. Linspire requested only that the bank recall the Employee Wire to [REDACTED]. Obviously, if all the Employee Wires were allegedly unauthorized, recalling only one of the three wires is illogical and inconsistent with Linspire's claims.

On August 9th, Larry Kettler of Linspire attempted to rescind the August 8th instruction; instead stating in an e-mail to Ms. Bell: *"Notwithstanding our email correspondence yesterday, it will be necessary to recall [REDACTED] and [REDACTED] wire transfers. Please do so immediately."* Mr. Kettler then stated that Linspire expects the bank to *"take responsibility ... and deposit an amount equal"* to the Employee Wires to Linspire's account. Mr. Kettler further assured Ms. Bell: *"We will of course cooperate with the bank in its efforts to collect the funds from those who are responsible and/or who received the funds."*

In response to this request, Ms. Bell immediately sent an e-mail to Mr. Kettler, requesting that Linspire *"complete an affidavit for each wire transfer you are claiming is fraudulent in order to assist [the bank] with recovering these funds,"* attaching Comerica's form of affidavit of fraud (the "Form Fraud Affidavit") for Linspire to complete and return. She further requested that Mr. Kettler provide a case number and agency name of the police department where Linspire filed any complaint concerning the allegedly unauthorized wire transfers.

The next day, August 10, 2007, Mr. Kettler sent an e-mail to Comerica stating: *"We have hired an investigator and they are currently compiling information. Next week we plan on calling the police and District Attorney's office and providing them with all the information. If you would prefer, we can call the police now or wait until all the information is gathered."* Comerica did not ask Linspire to wait. Rather, Comerica repeatedly asked about the status of the police report and affidavit to no avail.

Notwithstanding its assurances, Linspire waited two months to provide Comerica with the requested Fraud Affidavits (wrongfully modified and inadequately completed) and to file a police report. More than two months after the alleged unauthorized wire transfers, you e-mailed to Comerica on behalf of Linspire, a purported "affidavit" of fraud, dated October 3, 2007 (the "Written Statement"). You also provided to Comerica a partially completed and undated San Diego Police Department ("SDPD") Financial Crime Report Form (the "Draft Police Report").

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Unfortunately, both the Written Statement and the Draft Police Report appear grossly deficient and, in fact, raise serious questions about Linspire's veracity. For instance, Linspire prepared the Written Statement, taking the liberty of revising the Form Fraud Affidavit without Comerica's consent. Specifically, Linspire intentionally omitted the following sections of the Form:

- The "*promise to testify or certify to the truth of all applicable statements in this affidavit before any competent judge, officer of the court, or other person, in any case now pending or which may occur regarding this affidavit.*"
- The provision to "*indemnify and hold harmless Comerica and/or the bank where the [wire] was negotiated or deposited from any liability arising out of; relating to or in any connection with such arrest in the event that the representations of fact made herein should prove to be untrue.*"
- Notarization or other oath of truth.

Most notably, the Written Statement did not assert that the Employees Wires were not authorized. The checkbox for such allegation in the Written Statement is conspicuously blank.

The intentional omission of the foregoing begs the question: Why does Linspire **not** want to declare under penalty of perjury that such payments were made illegally or without corporate authority? I think we both know the answer to that question.

Like the Written Statement, the Draft Police Report is also highly suspect. Among other things, only the first page of the Draft Police Report is signed and the remaining pages lack the requested "*Business/Reporting Party Information.*" In addition, the Draft Police Report lacked a police report number or filing date. After inquiry by Comerica, you asserted, on behalf of Linspire, that the Draft Police Report was filed on September 27, 2007, and that SDPD does not assign case numbers to financial crime reports. At your invitation, Comerica contacted Detective McCewen of the SDPD. Detective McCewen advised Comerica that no case number was assigned to the Draft Police Report because--as he said he informed you prior your delivery of the Statement and the Draft Police Report to Comerica--*the District Attorney determined that no crime was committed and that this was a civil dispute between Linspire and the Employees.* He pointed to the employment contracts provided by Linspire to the SDPD, which indicate that the respective amounts of the Employee Wires were less than the amounts legally owed by Linspire to the Employees for contractual severance. Not only does this undermine Linspire's credibility, it also undermines yours. The motivation underlying Linspire's decision to refrain from signing the Fraud Affidavit under oath is so obvious it strains credulity to suggest it is either accurate or legitimate. So much for Linspire's assertion that it would, "*of course cooperate with the bank in its efforts to collect.*"

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According to the Employees we interviewed, Linspire did authorize the Employee Wires; the Employee Wires represented compensation or severance pay legally due and owing to the Employees and Linspire agreed to pay or otherwise had an obligation to pay such amounts to the Employees upon termination of their respective employment. Robert Hicks, counsel for Mr. Carmony, informed Comerica that you personally advised him in August that Linspire was investigating the Employees for wrongful conduct in connection with the Employee Wires, then you advised him several weeks later that "*everything is fine.*" Your statement to Mr. Hicks again supports the conclusion that Linspire agreed or was otherwise obligated to pay the Employees and, consequently, authorized the Employee Wires.

Conclusion

The sum of Linspire's actions do not at all support its claims that the Employee Wires were unauthorized or that it did not receive a benefit from or intend to confer a benefit from the Wire Transfers. Instead, those actions evidence Linspire's obvious bad faith attempt to double collect from Comerica for Linspire's authorized payment of legally owed compensation to the Employees by asserting a technical alleged lack of compliance with internal bank procedures. First, upon initially contacting Comerica, Linspire merely asserted the Employee Wires were not processed in accordance with GFT Procedures--not that they were unauthorized. Second, Linspire vacillated in its decision to assert the Employee Wires were unauthorized and then unduly delayed requesting that Comerica recall all of the Employee Wires--more than one week after they were processed--making recovery of the Employee Wires by Comerica virtually impossible. Third, Linspire unduly delayed for two months in providing Comerica the requested documentation of fraud--and what was provided was grossly deficient. Fourth, Linspire, or its counsel, altered Comerica's Form Fraud Affidavit to eliminate any certification of truth and indemnification if the representations of fact made by Linspire proved untrue. Fifth, the Draft Police Report is inadequate and, perhaps most alarmingly, was submitted to Comerica along with the Statement with knowledge that the San Diego District Attorney determined that the Employee Wires were not fraudulent or otherwise criminal. Finally, the Employees steadfastly insist that the Employee Wires were authorized as contractually or legally owed compensation.

If Linspire authorized the Employee Wires, agreed to pay or otherwise was obligated to pay such amounts to the Employees, then Linspire remains liable for such amounts, regardless of the manner in which the Employee Wires were processed by Comerica. Furthermore, the Employee Wires were made under color of authority--██████████ was Corporate Controller of Linspire and prepared the Employee Wires at the direction of the President and CEO, Mr. Carmony. Finally, if, as Linspire alleges, multiple officers of Linspire were involved in this alleged conspiracy, then Linspire clearly did not have sufficient internal controls in place to prevent such fraud from occurring and its negligence clearly contributed to such unauthorized payments.

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Based on all of the foregoing, Comerica will not reimburse Linspire for the amount of the Wire Transfers. If Linspire attempts to compel reimbursement from Comerica and Linspire's claims prove untrue or misleading (as they clearly appear), **Comerica will pursue all available remedies against every person and entity that made false claims against Comerica**, including sanctions for asserting claims which are unwarranted by existing law, lack evidentiary support and are pursued for an improper purpose. See, 18 USC 1344 (federal crime to knowingly execute or attempt to execute scheme to obtain money of financial institution by means of false or fraudulent pretenses, representations, or promises). It behooves you and Linspire to appreciate the gravity of this situation, Comerica's resolve and our response should Linspire decide to pursue this clearly frivolous matter in any legal or administrative proceeding.

I can assure you this is no bluff and Comerica urges Linspire to govern itself accordingly.

Respectfully,



Frank M. Peraino
Vice President and Senior Counsel
Corporate Legal Department

cc: Susan B. Bell
Barbara E. DeBenedetto, Esq.
Elizabeth M. Khachigian, Esq.

FMP/vw

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