

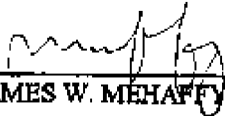
4. Plaintiff's objection to the affidavit of Dan Kincaly on the basis that he lacks personal knowledge of the following:
- a. Popular Leasing's relationship with Norvergence was governed by the Master Program Agreement and Amendment thereto is **sustained/denied**.
 - b. Norvergence and Popular Leasing were not business partners and were not "partners" in any legal sense is **sustained/denied**.
 - c. Popular Leasing did not control operate, provide input as to the operation of, and was not involved in Norvergence's day-to-day operations and any involvement with Norvergence occurred as a result and in compliance with the Master Program Agreement and Amendments thereto is **sustained/denied**.
 - d. Popular Leasing is a subsidiary of Banco Popular North America, a bank regulated by the Federal Deposit Insurance Corporation is **sustained/denied**.
 - e. Popular Leasing has not filed any documents...with any governmental agency claiming to be a "partner" with Norvergence is **sustained/denied**.
 - f. There is no listing by Norvergence of any alleged Partnership interest with or in Norvergence's bankruptcy schedules is **sustained/denied**.
 - g. The United States Bankruptcy Court of the District of New Jersey has also found that Norvergence has no interest in any of the

- equipment rental agreements assigned to or finance by Popular Leasing is **sustained/denied**.
- h. Popular Leasing is not a partner with Norvergence is **sustained/denied**.
- i. The Master Program Agreement and Amendments thereto set out the terms between Norvergence and Popular Leasing is **sustained/denied**.
- j. The Master Program Agreement and Amendments thereto used with Norvergence are common and used throughout the leasing industry is **sustained/denied**.
- k. Popular Leasing did not receive notice of any hearing by any state Attorney General purporting to take a default judgment declaring all of Popular Leasing's agreements unenforceable is **sustained/denied/denied as most**.
- l. Popular Leasing did not receive notice of a hearing regarding the State of Texas default judgment against Norvergence is **sustained/denied/denied as most**.
- m. Popular Leasing was not made a party to Cause No. 2004-65357, *State of Texas vs. Norvergence, Inc.* in the 270th Judicial District Court of Harris County, Texas and was not given an opportunity to participate as a party or cross-examine any witnesses in that case is **sustained/denied/denied as most**.

- n. Popular Leasing also was not served with any papers, motions, and/or petitions filed by the state of Texas in this matter, including the motion for Default Judgment is ~~sustained/denied/denied~~ as most.
- o. Because Popular Leasing was not a party to this proceeding or in privity with Norvergence at the time Cause No. 2004-55357 was filed, enforcing Norvergence Judgment would deny and eliminate Popular Leasing's property rights in the Equipment Rental Agreement without any procedural protections is ~~sustained/denied/denied~~ as most.
- p. That Popular Leasing and Norvergence, Inc. are two separate, unrelated entities. *Sustained*
5. Plaintiff's objection that Dan Kinealy's testimony is conclusory on the following:
- a. That Plaintiff defaulted under the terms of the rental agreement is ~~sustained/denied~~;
- b. That Popular Leasing and Norvergence are two separate, unrelated entities, is ~~sustained/denied~~;
- c. That Popular Leasing is not a partner of Norvergence, Inc. is ~~sustained/denied~~.
6. Plaintiff's objection to the exhibits listed below and attached to the Dan Kinealy Affidavit on the grounds that they constitute hearsay. (See para. 28, pp. 13 of Plaintiff's Reply).

- a. The objection to Exhibit B-1 (Equipment Rental Agreement) is ~~sustained/denied~~.
- b. The objection to Exhibit B-2 (Delivery and Acceptance Certificate) is ~~sustained/denied~~;
- c. The objection to Exhibit B-3 (Nov. 14, 2003 letter) is ~~sustained/denied~~;
- d. The objection to Exhibit B-5 (August 12, 2004 letter) is ~~sustained/denied~~;
- e. The objection to Exhibit B-6 (August 23, 2004 letter) is ~~sustained/denied~~;
- f. The objection to Exhibit B-7 (Invoice dated November 10, 2003) is ~~sustained/denied~~;
- g. The objection to Exhibit B-8 (Wire Transfer Request) is ~~sustained/denied~~;
- h. The objection to Exhibit B-9 (Amounts due worksheet) is ~~sustained/denied~~;
- i. The objection to Exhibit B-10 (The Master Program Agreement) is ~~sustained/denied~~.

Signed this 8th day of November 2006.


HON. JAMES W. MEHAHEY, 58TH DISTRICT COURT