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Filing date: **05/21/2020**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91240520
Party	Plaintiff Omega Capital Management, LLC
Correspondence Address	PENINA MICHLIN CHIU FREDERIC DORWART LAWYERS PLLC OLD CITY HALL 124 EAST FOURTH STREET TULSA, OK 74103 UNITED STATES pchiu@fdlaw.com, pmichlin@fdlaw.com, jburden@fdlaw.com 918-583-9922
Submission	Other Motions/Papers
Filer's Name	Penina Michlin Chiu
Filer's email	pmichlin@fdlaw.com, jburden@fdlaw.com
Signature	/Penina Michlin Chiu/
Date	05/21/2020
Attachments	2020-05-21 - Motion to Test Sufficiency.pdf(621302 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

OMEGA CAPITAL	)	
MANAGEMENT, LLC, a	)	Opposition No.: 91240520
Delaware limited liability	)	
company,	)	IN THE MATTER OF
	)	
Opposer,	)	Application Serial No.:
v.	)	86/883,902 Filed: January 22,
	)	2016
	)	Mark: <b>OMEGA BANK</b>
F.N.B. CORPORATION, a	)	Class: 36
Florida corporation,	)	Published: February 6, 2018
Applicant.	)	
	)	

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**OPPOSER’S MOTION TO TEST THE SUFFICIENCY OF  
RESPONSES TO REQUESTS FOR ADMISSION**

Pursuant to Rule 37 of the Federal Rules of Civil Procedure and 37 C.F.R. § 2.120, Opposer Omega Capital Management, LLC hereby moves to test the sufficiency of Applicant F.N.B. Corporation’s responses to Opposer’s First Requests for Admission. In support, Opposer states:

1. On February 6, 2020, Opposer served its Requests for Admission on Applicant. A copy of the transmission email and the Discovery Requests are attached hereto as Exhibit A.
2. The Requests for Admission contain a set of definitions which includes the words “You” or “Your”, which are defined as Applicant F.N.B. Corporation, its predecessors-in-interest<sup>1</sup>, affiliates, or agents.
3. On March 9, 2020, Applicant responded to the Requests for Admission by objecting to 9 out of 12 Requests for Admission because the “terms ‘you’ and ‘your’ . . . fundamentally

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<sup>1</sup> Applicant claims rights in the trademark at issue in this case through a bank that Applicant purchased in 2008 even though the mark hasn’t been used since then.

alters [sic] the Request so as to render the same entirely objectionable.” A copy of the transmission email and Applicant’s Responses are attached hereto as Exhibit B.

4. In addition, Applicant admits that it caused a certain press release to be published in 2008, but finds it objectionable to confirm information within the press release. To wit, the press release states: “Omega Bank branches will continue to operate, as normal, but under the First National Bank of Pennsylvania name.” [See Ex. A, RFA 8.]. When asked to admit whether this is true, Applicant objects as follows:

Applicant objects to the Request as being vague, ambiguous, overly broad and further improper, as the “branches identified in Exhibit A” reveals no such identification of any branches and further requires the Applicant to speculate as to what specifically Opposer believes Opposer is identifying and denies the remainder of the allegations of this Request.

Ex. B.

5. On March 10, Opposer’s counsel emailed Applicant’s counsel and requested to meet and confer regarding Applicant’s objections and consequent failure to provide any meaningful discovery responses. [Email, attached as Exhibit C.]

6. Applicant’s counsel did not respond to Opposer’s request, but did send a separate email that same day about problems she was having accessing discovery sent by Opposer. Opposer’s counsel responded that the issue could be addressed when the parties meet and confer. [Email String, attached as Exhibit D.]

7. Over the past two months, Opposer’s counsel has diligently attempted to schedule a meet and confer regarding outstanding discovery issues, including by making several phone calls and sending multiple emails.

8. On March 20, Opposer’s counsel left a phone message at Applicant’s counsels office and sent her an email, both of which went unreturned. [Id.]

9. On April 8, Opposer's counsel made another call to Applicant's counsel. Although Applicant's counsel answered the phone, Opposer's counsel was informed that Applicant's counsel was busy and would return the call later that day. She never did on that day or any other day. [Id.]

10. On April 24, over six weeks after Opposer's counsel requested a meet and confer, Applicant's counsel requested an extension of deadlines "to enable the parties focus [sic] on resolution of the matter." Opposer's counsel responded, requesting that (i) Applicant finally respond to the settlement offer made by Opposer nine months previously and (ii) schedule a meet and confer to address outstanding discovery issues. [Email, Exhibit E.]

11. Opposer's counsel followed up on its requests of April 24 on May 12, 2020. To date, Applicant's counsel has not responded. [Id.]

12. "The Board expects parties (and their attorneys or other authorized representatives) to cooperate with one another in the discovery process, and looks with extreme disfavor on those who do not." TBMP § 408.1 (2019) (internal note omitted).

13. Pursuant to FRCP 37, 37 C.F.R. § 2.120, and TBMP § 524.1 (2019), if a propounding party is dissatisfied with a responding party's objections to requests for admission, it may seek a ruling on the sufficiency thereof with a motion to test their sufficiency.

14. Prior to filing a motion to compel disclosure or discovery, the moving party must make a good faith effort, by conference or correspondence, to resolve the discovery dispute prior to seeking Board intervention. TBMP § 524.02 (2019).

15. Opposer's counsel have diligently sought a date for a meet and confer regarding Opposer's objections, including through multiple phone calls and emails over the past two and a half months, only to have their phone calls and emails ignored. Accordingly, Opposer has made a

good faith effort to resolve the issues presented in this motion and has been unable to reach an agreement.

16. Opposer therefore seeks a ruling on Applicant's objections. Opposer would like to know (i) whether the terms "you" or "your" (which are defined in Opposer's Discovery Requests as Applicant F.N.B. Corporation and its affiliates) are so vague as to render 9 of the 12 Requests for Admission unanswerable and (ii) whether Applicant's objection to Request for Admission No. 8 is well taken.

WHEREFORE, Opposer respectfully requests that this Tribunal rule on the objections to Opposer's Requests for Admission and, if necessary, order Applicant to provide meaningful responses thereto. In the event this Tribunal finds Applicant's objections to be valid, Opposer would alternatively request an extension of deadlines in this matter to issue discovery in compliance with the Tribunal's order.

RESPECTFULLY SUBMITTED,

Dated: May 21, 2020

By: /Penina Michlin Chiu/  
Penina Michlin Chiu, Cal. Bar No. 239431  
pmichlin@fdlaw.com  
Jared Burden, OBA No. 30026  
jburden@fdlaw.com  
FREDERIC DORWART, LAWYERS PLLC  
124 East Fourth Street  
Tulsa, Oklahoma 74103  
918/583-9922 – Telephone  
918/583-8251 – Facsimile

**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing Motion to Test Sufficiency has been served on Jennifer L. Whitelaw by forwarding said copy on the 21st day of May, 2020 via email to: ttabmail@whitelawfirm.com.

/Penina Michlin Chiu/

# EXHIBIT A

## Burden, Jared

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**From:** Simms, Amber  
**Sent:** Thursday, February 6, 2020 1:06 PM  
**To:** ttabmail@whitelawfirm.com  
**Cc:** Burden, Jared  
**Subject:** Omega Capital v. FNB Corp. Opposition No. 91235147  
**Attachments:** 2020-01-14 RFPs (v4).pdf; 2020-01-14 - ROGs (v4).pdf; 2020-01-14 - RFAs (v4 exhibit).pdf

Dear Counsel,

Please see attached.

Kind Regards,

Amber Simms / Legal Assistant

Direct: 918-583-9952

Firm: 918-583-9922

Fax: 918-584-2728

[asimms@fdlaw.com](mailto:asimms@fdlaw.com)

**FREDERIC DORWART**

**LAWYERS, PLLC**

This email communication and any attachments hereto are confidential and may be attorney-client privileged. If you are not the intended recipient, please notify me immediately and destroy the original and all copies of this email communication and any attachments hereto. Any unauthorized distribution or copying of this email communication and any attachments hereto is strictly prohibited.

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

OMEGA CAPITAL MANAGEMENT, LLC,	)	
a Delaware limited liability company,	)	Opposition No.: 91235147
	)	
Opposers	)	IN THE MATTER OF
	)	
	)	Application Serial No.: 86/883,902
F.N.B. CORPORATION,	)	Filed: January 22, 2016
a Florida corporation,	)	Mark: <b>OMEGA BANK</b>
	)	Class: 36
Applicant.	)	Published: February 6, 2018

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**OPPOSER'S FIRST SET OF REQUESTS FOR ADMISSION**

Pursuant to Rules 26 and 36 of the Federal Rules of Civil Procedure and 37 C.F.R. § 2.120, Opposer Omega Capital Management, LLC hereby requests that Applicant F.N.B. Corporation serve upon the undersigned attorneys at pmichlin@fdlaw.com answers to each of the following requests for admission within thirty (30) days of service of these requests.

**DEFINITIONS**

1. "Opposer" means Omega Capital Management, LLC, the Opposer in the above-captioned proceeding.
2. "Applicant", "you", or "your" means Applicant F.N.B Corporation, its companies and any subsidiaries, divisions, predecessor and successor companies, affiliates, parents, any partnership or joint venture to which he may be a party, and/or each of the foregoing entities' employees, agents, officers, directors, representatives, consultants, accountants, and attorneys, including any person who served in any such capacity at any time during the relevant time period specified herein.

3. "Opposer's Mark" means the mark identified in Paragraph 3 and Exhibit A of the Notice of Opposition in this proceeding.

4. "Challenged Mark" means the mark for OMEGA BANK that is the subject of U.S. Trademark Application Serial No. 86/883,902 and this proceeding and includes the mark identified in Paragraph 1 of Applicant's First Amended Counterclaim.

5. "Communication" means the transmittal of information (in the form of facts, ideas, inquiries, or otherwise).

6. The term "mark" means any trademark, service mark, trade name, word, name, symbol, logo or device (including any key word or metatag) or any combination thereof.

7. The term "person" means any natural person or any legal entity, including, but not limited to, any business or governmental entity, organization, or association.

8. The terms "and" and "or" shall be construed either conjunctively or disjunctively as necessary to bring within the scope of the interrogatory all responses that might otherwise fall outside the scope of this interrogatory.

9. The use of singular form includes plural, and vice versa.

10. The use of present tense includes past tense, and vice versa.

11. The masculine form shall also be construed to include the feminine and vice versa.

## **INSTRUCTIONS**

1. Unless you properly object to a request, you must admit, specifically deny, or state in detail why you cannot truthfully admit or deny each of the following requests based on knowledge and information in your possession, custody, or control, or in the

possession, custody, or control of your representatives, agents, or attorneys. If you do not respond to each of these requests within thirty (30) days, the requests will be deemed admitted, as described in Federal Rule of Civil Procedure 36 and TBMP § 407.03.

2. You may not give lack of information or knowledge as a reason for failure to admit or deny a requested admission unless you in good faith state that you have made a reasonable inquiry and that the information known or readily obtainable by you is insufficient to enable you to admit or deny the requested admission.

3. If you object to any request or any portion of a request on the ground that the answer would reveal the substance of any privileged information, set forth in detail the basis for your claim of privilege and any other objection you may have. If your objection is on the ground that the answer would reveal the substance of a privileged communication, include an identification of:

- (a) the nature of the privilege or protection claimed;
- (b) the person who made the communication, whether oral or in writing;
- (c) if the communication was oral, all persons present while the communication was made;
- (d) if the communication was written, the author, addressees, and any other recipients;
- (e) the date and place of the communication; and
- (f) the general subject matter of the communication.

4. Unless otherwise stated herein, all requests apply to activities in or in connection with the United States.

5. These requests are continuing in nature. If you receive or otherwise become aware of information responsive to any request after you have served your

responses to these requests, you must promptly supplement your responses to these requests to provide such information, as required by Federal Rule of Civil Procedure 26(e) and TBMP § 408.03.

6. For the convenience of the Board and the parties, each request should be quoted in full immediately preceding your response.

### **REQUESTS FOR ADMISSION**

**REQUEST NO. 1:** Admit that Opposer's Mark was used in commerce prior to January 22, 2016.

**REQUEST NO. 2:** Admit that before January 22, 2016, you had knowledge of the use of Opposer's Mark.

**REQUEST NO. 3:** Admit that before January 22, 2016, you were aware of the registration of Opposer's Mark in connection with the management of private equity funds, private equity fund investment services, and providing venture capital, development capital, private equity and investment funding in Class 36.

**REQUEST NO. 4:** Admit that you are aware of no facts or evidence that contravenes Opposer's claim that it commenced use of Opposer's Mark on or about April 18, 2014.

**REQUEST NO. 5:** Admit that you are aware of no facts or evidence that contravenes Opposer's claim that it commenced use of Opposer's Mark before January 22, 2016.

**REQUEST NO. 6:** Admit that you are aware of no facts or evidence that contravenes Opposer's claim that it used Opposer's Mark continuously in commerce since before January 22, 2016 through the date the Notice of Opposition in this matter was filed.

**REQUEST NO. 7:** Admit that Applicant released or caused to be released the press release attached hereto as Exhibit A.

**REQUEST NO. 8:** Admit that the Omega Bank branches identified in Exhibit A have operated under the First National Bank of Pennsylvania name since April 1, 2008.

**REQUEST NO. 9:** Admit that you have not offered any services under the Challenged Mark since April 1, 2008.

**REQUEST NO. 10:** Admit that you have not advertised any services under the Challenged Mark since April 1, 2008.

**REQUEST NO. 11:** Admit that you have not advertised any services under the Challenged Mark since you notified customers of your merger with Omega Financial Corporation.

**REQUEST NO. 12:** Admit that you did not oppose the application for Opposer's Mark (U.S. Trademark Application Serial No. 86/159,761 filed January 7, 2014).

RESPECTFULLY SUBMITTED,

Dated: February 6, 2020

By: /Penina Michlin Chiu/  
Penina Michlin Chiu, Cal. Bar No. 239431  
FREDERIC DORWART, LAWYERS  
124 East Fourth Street  
Tulsa, Oklahoma 74103  
918/583-9922 – Telephone  
918/583-8251 – Facsimile  
pmichlin@fdlaw.com  
COUNSEL FOR OPPOSER,  
OMEGA CAPITAL MANAGEMENT, LLC

## **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served by electronic transmission on the 6<sup>th</sup> day of February, 2020 on counsel for Applicant at ttabmail@whitelawfirm.com.

/Penina Michlin Chiu/

Penina Michlin Chiu

## **F.N.B. Corporation Completes Merger with Omega Financial Corporation**

Hermitage, PA - April 1, 2008 - F.N.B. Corporation (NYSE: FNB), a diversified financial services corporation, today announced that it has completed its merger with Omega Financial Corporation. Shares of Omega Financial Corporation will no longer be listed on the NASDAQ stock exchange.

Omega Bank branches will continue to operate, as normal, but under the First National Bank of Pennsylvania name. First National Bank of Pennsylvania now has 220 offices serving commercial and consumer customers in 35 counties in Pennsylvania and Northeast Ohio.

Stephen J. Gurgovits, Chairman of F.N.B. Corporation commented, "We are delighted to welcome Omega shareholders as well as customers and employees. This transaction, which is consistent with our strategic long-term plan of partnering with quality organizations possessing a similar culture, will allow us to provide a strong suite of innovative financial service products to our new customers in Central and Northeast Pennsylvania markets and better serve our existing customers through a larger network of locations."

The Company is pleased to announce that in conjunction with the completion of the transaction Philip E. Gingerich, D. Stephen Martz and Stanton R. Sheetz have been elected to the Board of Directors of F.N.B. Corporation and Carl H. Baxter, Jodi L. Green, Robert A. Hormell and D. Stephen Martz have been elected to the Board of Directors of First National Bank of Pennsylvania.

About F.N.B. Corporation:

F.N.B. Corporation, headquartered in Hermitage, PA, is a diversified financial services Corporation with total assets of \$6.1 billion at December 31, 2007. F.N.B. Corporation is a leading provider of commercial and retail banking, wealth management, insurance and consumer finance services in Pennsylvania and Ohio, where it owns and operates First National Bank of Pennsylvania, First National Trust Corporation, First National Investment Services Corporation, LLC, F.N.B. Investment Advisors, Inc., First National Insurance Agency, LLC, F.N.B. Capital Corporation, LLC, and Regency Finance Corporation. It also operates consumer finance offices in Tennessee and loan production offices in Tennessee and Florida.

Mergent Inc., a leading provider of business and financial information about publicly traded companies, has recognized F.N.B. Corporation as a Dividend Achiever. This annual recognition is based on the Corporation's outstanding record of increased dividend performance. The Corporation has consistently increased dividend payments for 35 consecutive years.

The common stock of F.N.B. Corporation trades on the New York Stock Exchange under the symbol "FNB". Investor information is available on F.N.B. Corporation's Web site at [www.fnbcorporation.com](http://www.fnbcorporation.com).

###

Analyst/Institutional Investor Contact:  
Bartley Parker, CFA 203-682-8250  
[bartley.parker@icrinc.com](mailto:bartley.parker@icrinc.com)

Media Contact:  
Jennifer Reel 724-983-4856  
724-699-6389 (cell)

# EXHIBIT B

## Michlin, Penina

---

**From:** j@whitelawfirm.com  
**Sent:** Monday, March 9, 2020 8:34 PM  
**To:** Michlin, Penina  
**Cc:** Brenda Crain; Anita Russo  
**Subject:** Omega Capital Management, LLC v. F.N.B. Corporation, Opp. No. 91240520 / Applicant's discovery responses  
**Attachments:** Applicant's Objections and Responses to Opposer's First Set of Requests for Admission 3-9-2020.pdf; Applicant's General Objection to Opposer's First Set of Interrogatories 3-9-2020.pdf; Applicant's General Objection to Opposer's First Set of Requests for Production of Documents 3-9-2020.pdf

Dear Penina,

Please find attached Applicant's responses to Opposer's discovery requests, as follows:

- 1) Applicant's Objections and Responses to Opposer's First Set of Requests for Admission
- 2) Applicant's General Objection to Opposer's First Set of Interrogatories
- 3) Applicant's General Objection to Opposer's First Set of Requests for Production of Documents

Best regards,

Jennifer Whitelaw  
WHITELAW LEGAL GROUP  
Intellectual Property and Related Causes  
3838 Tamiami Trail North  
Third Floor  
Naples, Florida 34103  
+1-239-262-1001  
Facsimile: +1-239-261-0057  
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Web: [www.whitelawfirm.com](http://www.whitelawfirm.com)

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

<b>OMEGA CAPITAL MANAGEMENT, LLC</b>	)	
	)	
	)	
Opposer,	)	
	)	Opposition No. 91240520
v.	)	
	)	
<b>F.N.B. CORPORATION,</b>	)	
	)	
Applicant.	)	
<hr style="border: 0.5px solid black;"/>		

**APPLICANT’S OBJECTIONS AND RESPONSES TO OPPOSER’S  
FIRST SET OF REQUESTS FOR ADMISSION**

Applicant **F.N.B. CORPORATION** (hereinafter “Applicant”), by and through the undersigned counsel, sets forth the following objections and responses to Opposer’s First Set of Requests for Admission served upon Applicant by Opposer **OMEGA CAPITAL MANAGEMENT, LLC** (hereinafter “Opposer”), pursuant to the Federal Rules of Civil Procedure 26 and 36 and Rule 2.120 of the Trademark Rules of Practice.

Respectfully submitted,

/JENNIFER L. WHITE LAW/  
JENNIFER L. WHITE LAW  
WHITE LAW LEGAL GROUP  
Florida Bar No. 0938629  
ATTORNEY FOR APPLICANT  
**F.N.B. CORPORATION**  
3838 Tamiami Trail North  
Third Floor  
Naples, Florida 34103

Telephone: 239-262-1001  
Facsimile: 239-261-0057  
Email: [ttabmail@whitelawfirm.com](mailto:ttabmail@whitelawfirm.com)

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that the original of this **APPLICANT'S OBJECTIONS AND  
RESPONSES TO OPPOSER'S FIRST SET OF REQUESTS FOR ADMISSION**

is being provided to:

Penina Michlin Chiu  
Frederic Dorwart, Lawyers PLLC  
[pchiu@fdlaw.com](mailto:pchiu@fdlaw.com)

via electronically on the date of electronic transmission.

/JENNIFER L. WHITELAW/  
JENNIFER L. WHITELAW

## **PRELIMINARY STATEMENT**

Applicant's General Objections to Opposer's First Set of Requests for Admission are set forth below, and are incorporated into each and every response which follows hereafter, as if fully restated therein. Applicant's assertions of additional Specific Objections in its responses, stated hereinafter, shall be in addition to its General Objections and shall not in any manner be construed to constitute a waiver of any applicable General Objection.

Further, each and every objection and response herein is made with the right to present all applicable objections at trial and based upon additional evidence and/or contentions following further discovery and information or evidence obtained or evaluated at a later date.

In responding hereto, Applicant does not waive its right to fully rely upon the defenses and limitations of Rules 26 and 36, including but not limited to a full determination of the final disposition of all or some of these Requests for Admission as shall be made at final pre-trial or at a designated time prior to trial. Applicant further reserves the right to challenge the relevance, materiality, or admissibility of the information provided in these responses or to object to the use of any information or evidence at trial. Applicant's investigation and discovery efforts in this case are continuing. Accordingly, Applicant reserves the right to supplement or amend its responses to the full extent permitted by the Federal Rules of Civil Procedure and the Trademark Rules of Practice following the receipt of full and complete discovery responses from Opposer and prior to trial and as allowed by the applicable law, rules, and all orders of the Board, including those orders of a prospective nature.

All requests for admission served on the responding party herein, if not expressly admitted, are denied.

## GENERAL OBJECTIONS

1. Applicant objects to the extent that the information sought in the Requests is excessive, beyond the scope of Rules 26 and 36, is overly broad, unduly burdensome, and would require a search for information that is of little or no value with respect to the issues in this proceeding. Opposer's Requests are oppressive, designed to annoy and harass Applicant and seeks information without proper limitation as to subject matter and time, and seeks to impose obligations upon Applicant which exceed the obligations imposed by the applicable law and rules governing the issues in this proceeding.
2. Applicant objects to the extent that any part(s) of the Requests which seek information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.
3. Applicant objects to the extent that any part(s) of the words, terms, and phrases contained therein are not clearly defined, different from the ordinary meaning of the words at issue and are not capable of a reasonable definition or interpretation.
4. Applicant objects to the Request as being vague, ambiguous, overly broad and further improper, giving rise to a multiplicity of issues arising from Opposer's definition of the terms "You" and "Your", which fundamentally alters the request so as to render the same entirely objectionable.
5. Applicant objects to the extent that any part(s) of the prefatory statements, Instructions and Definitions and Requests set forth by Opposer in the Requests are improper, incorrect, overly broad, unduly burdensome, vague, ambiguous, duplicative and/or purport to impose obligations upon Applicant which are unreasonable and in excess of those obligations imposed by the applicable law and rules governing the issues in this

proceeding. In responding, Applicant will follow the applicable law and rules and will ignore the purported requests, definitions and instructions which exceed the requirements of the law and rules.

6. Applicant objects to the extent that any part(s) of the words, terms, and phrases contained therein are not clearly defined, different from the ordinary meaning of the words at issue and are not capable of a reasonable definition or interpretation.
7. Applicant objects to the extent that there is no logical nexus between the information sought to be admitted and the issues in controversy in this proceeding.
8. Applicant objects to the extent that the information sought in the Requests is or may be based upon erroneous and incorrect interpretations of the law governing the issues in this case.
9. Applicant objects to the extent that the information sought in the Requests is solely within the knowledge or possession of Opposer and/or which has not been disclosed by Opposer in discovery.
10. Applicant objects to the extent that the information sought in the Requests is vague and/or ambiguous, in that Applicant is not reasonably able to determine what information is sought to be admitted, all of which is misleading or may be likely to lead to incorrect, misleading, or confusing responses.
11. Applicant objects to the extent that the information sought in the Requests is protected by the attorney-client privilege, work-product doctrine, or other applicable privileges or immunities.

12. Applicant objects to the extent that the information sought in the Requests may lead to the disclosure of proprietary data, strategic marketing materials, trade secrets, or other confidential matters, all of which would lead to irreparable injury to Applicant.
13. Applicant objects to the extent that the information sought in the Requests is premature and should be more fully evaluated, determined, and resolved by the Board at a pretrial conference or otherwise at a time and place as allowed by Rule 36(a).

Subject to the foregoing and, incorporating all of the foregoing General Objections into each and every one of Opposer's Requests, and subject further to Applicant's right to object to the admissibility of all of these Admissions and at trial or at any other evidentiary proceeding, the following is set forth:

#### **OPPOSER'S REQUESTS FOR ADMISSION**

**REQUEST NO. 1: Admit that Opposer's Mark was used in commerce prior to January 22, 2016.**

Applicant states that it is without knowledge sufficient to either admit or deny this Request, and therefore denies same.

**REQUEST NO. 2: Admit that before January 22, 2016, you had knowledge of the use of Opposer's Mark.**

Applicant objects to the Request as being vague, ambiguous, overly broad and further improper, giving rise to a multiplicity of issues arising from Opposer's definition of the terms "You" and "Your", which fundamentally alters the Request so as to render the same entirely objectionable.

**REQUEST NO. 3: Admit that before January 22, 2016, you were aware of the registration of Opposer's Mark in connection with the management of private equity funds, private equity fund investment services, and providing venture capital, development capital, private equity and investment funding in Class 36.**

Applicant objects to the Request as being vague, ambiguous, overly broad and further improper, giving rise to a multiplicity of issues arising from Opposer's definition of the

terms “You” and “Your”, which fundamentally alters the Request so as to render the same entirely objectionable.

**REQUEST NO. 4: Admit that you are aware of no facts or evidence that contravenes Opposer’s claim that it commenced use of Opposer’s Mark on or about April 18, 2014.**

Applicant objects to the Request as being vague, ambiguous, overly broad and further improper, giving rise to a multiplicity of issues arising from Opposer’s definition of the terms “You” and “Your”, which fundamentally alters the Request so as to render the same entirely objectionable.

**REQUEST NO. 5: Admit that you are aware of no facts or evidence that contravenes Opposer’s claim that it commenced use of Opposer’s Mark before January 22, 2016.**

Applicant objects to the Request as being vague, ambiguous, overly broad and further improper, giving rise to a multiplicity of issues arising from Opposer’s definition of the terms “You” and “Your”, which fundamentally alters the Request so as to render the same entirely objectionable.

**REQUEST NO. 6: Admit that you are of aware of no facts or evidence that contravenes Opposer’s claim that it used Opposer’s Mark continuously in commerce since before January 22, 2016 through the date the Notice of Opposition in this matter was filed.**

Applicant objects to the Request as being vague, ambiguous, overly broad and further improper, giving rise to a multiplicity of issues arising from Opposer’s definition of the terms “You” and “Your”, which fundamentally alters the Request so as to render the same entirely objectionable.

**REQUEST NO. 7: Admit that Applicant released or caused to be released the press release attached hereto as Exhibit A.**

Admitted.

**REQUEST NO. 8: Admit that the Omega Bank branches identified in Exhibit A have operated under the First National Bank of Pennsylvania name since April 1, 2008.**

Applicant objects to the Request as being vague, ambiguous, overly broad and further improper, as the “branches identified in Exhibit A” reveals no such identification of any branches and further requires the Applicant to speculate as to what specifically Opposer believes Opposer is identifying and denies the remainder of the allegations of this Request.

**REQUEST NO. 9: Admit that you have not offered any services under the Challenged Mark since April 1, 2008.**

Applicant objects to the Request as being vague, ambiguous, overly broad and further improper, giving rise to a multiplicity of issues arising from Opposer's definition of the terms "You" and "Your", which fundamentally alters the Request so as to render the same entirely objectionable.

**REQUEST NO. 10: Admit that you have not advertised any services under the Challenged Mark since April 1, 2008.**

Applicant objects to the Request as being vague, ambiguous, overly broad and further improper, giving rise to a multiplicity of issues arising from Opposer's definition of the terms "You" and "Your", which fundamentally alters the Request so as to render the same entirely objectionable.

**REQUEST NO. 11: Admit that you have not advertised any services under the Challenged Mark since you notified customers of your merger with Omega Financial Corporation.**

Applicant objects to the Request as being vague, ambiguous, overly broad and further improper, giving rise to a multiplicity of issues arising from Opposer's definition of the terms "You" and "Your", which fundamentally alters the Request so as to render the same entirely objectionable.

**REQUEST NO. 12: Admit that you did not oppose the application for Opposer's Mark (U.S. Trademark Application Serial No. 86/159,761 filed January 7, 2014).**

Applicant objects to the Request as being vague, ambiguous, overly broad and further improper, giving rise to a multiplicity of issues arising from Opposer's definition of the terms "You" and "Your", which fundamentally alters the Request so as to render the same entirely objectionable.

# EXHIBIT C

## Burden, Jared

---

**From:** Burden, Jared  
**Sent:** Tuesday, March 10, 2020 1:10 PM  
**To:** 'j@whitelawfirm.com'  
**Cc:** Michlin, Penina; 'brendacrain@whitelawfirm.com'; 'anita@whitelawfirm.com'  
**Subject:** RE: Omega Capital Management, LLC v. F.N.B. Corporation, Opp. No. 91240520 / Applicant's discovery responses

Jennifer,

We received your objections and would like to set up a time to meet and confer soon given the upcoming discovery deadline. We are available this Thursday or Friday afternoon or next Tuesday afternoon. Please let us know a time that works for you and I'll send out call in information.

Thank you,

Jared M. Burden  
FREDERIC DORWART, LAWYERS  
Old City Hall  
124 East Fourth Street  
Tulsa, Oklahoma 74103  
(918) 583-9922 (Main)  
(918) 583-8251 (Fax)  
[jburden@fdlaw.com](mailto:jburden@fdlaw.com)

Begin forwarded message:

**From:** "j@whitelawfirm.com" <j@whitelawfirm.com>  
**Date:** March 9, 2020 at 6:34:31 PM PDT  
**To:** "Michlin, Penina" <PMichlin@fdlaw.com>  
**Cc:** Brenda Crain <brendacrain@whitelawfirm.com>, Anita Russo <anita@whitelawfirm.com>  
**Subject:** Omega Capital Management, LLC v. F.N.B. Corporation, Opp. No. 91240520 / Applicant's discovery responses

Dear Penina,

Please find attached Applicant's responses to Opposer's discovery requests, as follows:

- 1) Applicant's Objections and Responses to Opposer's First Set of Requests for Admission
- 2) Applicant's General Objection to Opposer's First Set of Interrogatories
- 3) Applicant's General Objection to Opposer's First Set of Requests for Production of Documents

Best regards,

Jennifer Whitelaw  
WHITELAW LEGAL GROUP  
Intellectual Property and Related Causes

3838 Tamiami Trail North  
Third Floor  
Naples, Florida 34103  
+1-239-262-1001  
Facsimile: +1-239-261-0057  
Email: [j@whitelawfirm.com](mailto:j@whitelawfirm.com)  
Web: [www.whitelawfirm.com](http://www.whitelawfirm.com)

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# EXHIBIT D

## Burden, Jared

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**From:** Burden, Jared  
**Sent:** Wednesday, April 8, 2020 5:09 PM  
**To:** j@whitelawfirm.com  
**Cc:** Michlin, Penina; Anita Russo  
**Subject:** Re: Omega Capital Management, LLC v. F.N.B. Corporation, Opp. No. 91240520

Jennifer,

When we talked earlier today, I'm afraid you may have taken my number down wrong as I never got a call back. It is 918-606-5553. Please let me know a good time to talk so we can meet and confer about discovery. Or you can call me anytime. If you or your client are having difficulty because of the coronavirus, please let us know as soon as possible so we can deal with it appropriately.

Thanks,

Jared Burden  
918-583-9952

On Mar 20, 2020, at 1:00 PM, Burden, Jared <JBurden@fdlaw.com> wrote:

Jennifer,

I called your office, but it appears you are working from home like the rest of us. Would you have time to discuss this case soon? This afternoon works. Or a time next week?

Thanks,

Jared Burden  
918-583-9952

On Mar 10, 2020, at 1:33 PM, Burden, Jared <JBurden@fdlaw.com> wrote:

Jennifer,

Let's discuss how best to handle when we meet and confer. Thanks,

Jared

---

**From:** j@whitelawfirm.com [mailto:j@whitelawfirm.com]  
**Sent:** Tuesday, March 10, 2020 1:31 PM  
**To:** Caywood, Candace <CCaywood@fdlaw.com>; Brenda Crain <brendacrain@whitelawfirm.com>  
**Cc:** Michlin, Penina <PMichlin@fdlaw.com>; Burden, Jared <JBurden@fdlaw.com>; Anita Russo <anita@whitelawfirm.com>  
**Subject:** RE: Omega Capital Management, LLC v. F.N.B. Corporation, Opp. No. 91240520

Dear All,

The zip file is flagging a security issue, thus we cannot proceed with that. Please deliver the files in something other than a zip file. If you do not understand how to do this, please have your IT team set up a time with us to go over.

Kind regards,

Jennifer

Jennifer Whitelaw  
WHITELAW LEGAL GROUP  
Intellectual Property and Related Causes  
3838 Tamiami Trail North  
Third Floor  
Naples, Florida 34103  
+1-239-262-1001  
Cell: +1-239-821-8268  
Facsimile: +1-239-261-0057  
Email: [j@whitelawfirm.com](mailto:j@whitelawfirm.com)  
Web: [www.whitelawfirm.com](http://www.whitelawfirm.com)

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**From:** Caywood, Candace <[CCaywood@fdlaw.com](mailto:CCaywood@fdlaw.com)>  
**Sent:** Tuesday, March 10, 2020 12:55 PM  
**To:** Brenda Crain <[brendacrain@whitelawfirm.com](mailto:brendacrain@whitelawfirm.com)>  
**Cc:** Michlin, Penina <[PMichlin@fdlaw.com](mailto:PMichlin@fdlaw.com)>; Burden, Jared <[JBurden@fdlaw.com](mailto:JBurden@fdlaw.com)>; [j@whitelawfirm.com](mailto:j@whitelawfirm.com); Anita Russo <[anita@whitelawfirm.com](mailto:anita@whitelawfirm.com)>  
**Subject:** RE: Omega Capital Management, LLC v. F.N.B. Corporation, Opp. No. 91240520

Hello Brenda:

The folder does not have a password, you should be able to just unzip the folder by doing the extract option. I can walk you through this if needed. Please let me know. We cannot send the folder unzipped through Hightail, it has to be compressed.

Candace Caywood, Legal Assistant

**FREDERIC DORWART, LAWYERS PLLC**

124 East Fourth Street  
Tulsa, OK 74103  
Main No. 918-583-9922  
Fax No. 918-584-2729

**FREDERIC DORWART**  
**LAWYERS PLLC**

---

**From:** Brenda Crain <[brendacrain@whitelawfirm.com](mailto:brendacrain@whitelawfirm.com)>  
**Sent:** Tuesday, March 10, 2020 11:44 AM  
**To:** Caywood, Candace <[CCaywood@fdlaw.com](mailto:CCaywood@fdlaw.com)>  
**Cc:** Michlin, Penina <[PMichlin@fdlaw.com](mailto:PMichlin@fdlaw.com)>; Burden, Jared <[JBurden@fdlaw.com](mailto:JBurden@fdlaw.com)>;  
[j@whitelawfirm.com](mailto:j@whitelawfirm.com); Anita Russo <[anita@whitelawfirm.com](mailto:anita@whitelawfirm.com)>  
**Subject:** Omega Capital Management, LLC v. F.N.B. Corporation, Opp. No. 91240520

Dear Candace,

We did receive an email from Frederic Dorwart Lawyers PLLC on March 9<sup>th</sup>, however it was a link to a zip file. The files are flagging as a security issue therefore it would be appreciated if you would send the document production in separate files, instead of a zip file.

Thank you.

Best regards,

Brenda K. Crain, Senior Litigation Paralegal  
WHITELAW LEGAL GROUP  
3838 Tamiami Trail North, Suite 310  
Naples, Florida 34103  
Telephone: +1-239-262-1001  
Facsimile: +1-239-261-0057  
E-mail: [brendacrain@whitelawfirm.com](mailto:brendacrain@whitelawfirm.com)  
Internet: [www.whitelawfirm.com](http://www.whitelawfirm.com)

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**From:** Caywood, Candace <[CCaywood@fdlaw.com](mailto:CCaywood@fdlaw.com)>  
**Sent:** Monday, March 9, 2020 6:02 PM

**To:** [ttabmail@whitelawfirm.com](mailto:ttabmail@whitelawfirm.com)

**Cc:** Michlin, Penina <[PMichlin@fdlaw.com](mailto:PMichlin@fdlaw.com)>; Burden, Jared <[JBurden@fdlaw.com](mailto:JBurden@fdlaw.com)>

**Subject:** Omega (6858-0004)

Ms. Whitelaw:

Attached please find Omega's Responses. You should receive Omega's document production via Hightail in an email from Frederic Dorwart. Please let me know if you have any issues downloading.

Candace Caywood, Legal Assistant  
**FREDERIC DORWART, LAWYERS PLLC**  
124 East Fourth Street  
Tulsa, OK 74103  
Main No. 918-583-9922  
Fax No. 918-584-2729

**FREDERIC DORWART**  
**LAWYERS PLLC**

# EXHIBIT E

## Burden, Jared

---

**From:** Burden, Jared  
**Sent:** Tuesday, May 12, 2020 8:39 AM  
**To:** j@whitelawfirm.com  
**Cc:** Michlin, Penina; Brenda Crain; Anita Russo  
**Subject:** Re: Omega Capital Management, LLC v. F.N.B. Corporation, Opp. No. 91240520

**Follow Up Flag:** Flag for follow up  
**Flag Status:** Flagged

Jennifer,

Do you have a counter proposal from your client, yet? Or is our original settlement offer acceptable? Also, please let us know a good time this week to discuss the discovery issues.

Thanks,

Jared Burden  
918-583-9952

On Apr 24, 2020, at 4:47 PM, Burden, Jared <JBurden@fdlaw.com> wrote:

Jennifer,

We are happy to further settlement discussion with you, and are awaiting your response to our proposal of July 25, 2019. I have attached our prior emails for your review. Since it has been almost 9 months since we proposed settlement terms and your client never responded, we request that you send us your client's proposal for resolution of this matter.

Also, as we have repeatedly communicated, we are happy to discuss your technical difficulties and have made multiple attempts by phone and email over the past month to set up a time to discuss discovery (see attached email strings). Please suggest a few alternative times you are available and we will be happy to work this through, along with our own request to discuss your blanket discovery objections.

Given your interest in renewing settlement negotiations, we will request an extension.

Thanks,

Jared  
[918-606-5553](tel:918-606-5553)

<mime-attachment>

<mime-attachment>

<mime-attachment>

<mime-attachment>

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**From:** j@whitelawfirm.com <j@whitelawfirm.com>  
**Sent:** Friday, April 24, 2020 3:34 PM  
**To:** Burden, Jared  
**Cc:** Michlin, Penina; Brenda Crain; Anita Russo  
**Subject:** RE: Omega Capital Management, LLC v. F.N.B. Corporation, Opp. No. 91240520

Hi Jared,

I do not believe we have received the requested production per my email below. Also, as we earlier discussed, we would consent to extension of dates in the proceeding so as to enable the parties focus on resolution of the matter.

Best regards,

Jennifer Whitelaw

WHITELAW LEGAL GROUP

Intellectual Property and Related Causes

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Third Floor

Naples, Florida 34103

+1-239-262-1001

Facsimile: +1-239-261-0057

Email: j@whitelawfirm.com

Web: www.whitelawfirm.com