

1.3 Subpoena Dues Tecum With Schedule

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

DOROTHY PARKER, on behalf of) Case No.
herself and all others similarly)
situated,) SUBPOENA DUCES TECUM

Plaintiff,)

v.)

DELTA FUNDING CORPORATION,)
et. al.,)
Defendants.)

)
)
)
)
_____)

TO: **One Stop Consulting**
[Address]

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition as to all matters relating to the preparation of the documents described below.

PLACE OF DEPOSITION	DATE AND TIME
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YOU ARE COMMANDED to produce and permit inspection and copying of the documents specified in Schedule A attached hereto, at the place, date, and time specified below.

PLACE: Law offices of Attorney for Plaintiffs, Address	DATE AND TIME:
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Issuing Officer Signature and Title (Indicate If Attorney for Plaintiff or Defendant)	DATE:
Attorney for Plaintiff	

Issuing Officer's Name, Address and Phone Number:

Attorney for Plaintiff

Address

Telephone Number

(See Rule 45, Federal Rules of Civil Procedure Parts C&D Reverse)

RULE 45, FEDERAL RULES CIVIL PROCEDURE PARTS C & D(c)
PROTECTION OF PERSON SUBJECT TO SUBPOENAS

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit an inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises if objections are made the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued if objection has been made the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it:

(i) fails to allow reasonable time for compliance,

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(iv) subjects a person to undue burden.

(B) if a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand;

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

SCHEDULE A

I. DEFINITIONS

1. The definitions set forth in New York Local Civil Rule 26.3 for the terms "*document(s)*," "*communication(s)*," "*identify*," "*parties*," "*person(s)*" and "*concerning*" shall be applicable herein.

2. "*All documents*" means every document and every non-identical copy known to you and every such document or writing which you can locate or discover by reasonably diligent efforts, including, but not limited to, documents now in the possession, custody or control of your company, any of its merged or acquired predecessors, or any of its former and present directors, officers, counsel, agents, employees and/or persons acting on any of their behalves.

3. "*You*" or "*Your*" means One Stop Consulting, as well as any of its officers, directors or employees, and any of its agents, including but not limited to any of its attorneys and accountants.

4. "*Defendants*" refers to one or more of the following defendants in the above captioned action--Delta Funding Corporation, Delta Financial Corporation, Delta Funding Home Equity Loan Trust, Bankers Trust Company of California, N.A., as trustee for the Delta Funding Home Equity Loan Trust, and All State Consultants, Inc. a/k/a City Mortgage Bankers -- and any of their subsidiaries, predecessors, parents, successors, affiliates, segments or divisions. The above term also refers to any present or former officers, directors, agents, and/or employees acting or purporting to act on any of the Defendants' behalves.

5. "*Bankers Trust Company of California, N.A.*" or "*Bankers Trust*" refers to the entity that is serving as the trustee of the Delta Funding Home Equity Loan Trust, as described in the First Amended Complaint, dated December 4, 1998, and filed in this action.

6. "*Reflecting*" or "*relating to*" or "*related to*" means referring to, in connection with, pertaining to, describing, discussing, analyzing, reflecting, summarizing, evidencing, relating to, embodying or constituting.

7. "*Employee*" or "*Employees*" mean any individual(s) currently in the employ of, or at any time employed by, you.

8. "*Policies*" or "*Procedures*" means any rule, procedure, practice, or course of conduct, whether formal or informal, written or unwritten, recorded or unrecorded, which was recognized or followed, explicitly or implicitly, by you.

9. "*Intervenor*" means any or all of the following individuals: Edna Ferber, Robert Benchley, or Alexander Woolcott.

10. "*Named Plaintiff*" means Dorothy Parker.

11. "*Complaint*" means the named plaintiff's First Amended Complaint, dated December 4, 1998.

12. "*Computer Systems*" means any computer hardware, or computer software programs, or electronic data stored on disks, created or maintained or operated by you.

13. "*HOEPA*" means the Home Owner Equity Protection Act, and any amendments thereto, and any regulations or official staff commentary interpreting HOEPA.

14. "*TILA*" means the Truth in Lending Act, and any amendments thereto, and any regulations or official staff commentary interpreting TILA.

15. "*Relationship*" or "*Affiliation*" means any business relationship established between you and any of the Defendants other than where you act entirely independently, without any preexisting written or oral understanding or agreement.

16. "*One Stop Consulting*" means you, or any subsidiaries, predecessors, parents, successors, affiliates, segments, or divisions, including any present or former officers, directors, agents and/or employees acting or purporting to act on your or their behalves.

17. "*Delta*" means Delta Funding Corporation, Delta Financial Corporation, or Delta Funding Home Equity Loan Trust, or any subsidiaries, predecessors, parents, successors, affiliates, segments, or divisions, including any present or former officers, directors, agents and/or employees acting or purporting to act on their behalves.

18. "*Things Of Value*" shall be defined as it is defined pursuant to 12 U.S.C. 2602(2), and shall include any payment, advance, funds, loans, service or other consideration.

II. RULES OF CONSTRUCTION

1. *All/Each* - The terms "all" and "each" shall be defined as they are defined in New York Local Rule 26.3(d).

2. *And/Or* - The connectives "and" and "or" shall be defined as they are defined in New York Local Rule 26.3(d).

3. The use of the singular form of any word shall include the plural and vice versa.

4. The masculine gender shall include the feminine.

III. INSTRUCTIONS

1. A document shall be deemed to be in your control if you have the right to secure the document or copy thereof from another person or public or private entity having possession or custody thereof. If any otherwise responsive document was, but is no longer, in existence or in your possession, custody or control, or has been lost, discarded or destroyed, said document shall be identified as completely as possible by providing the following information:

(a) the date, manner and reason for disposal or disposition from your possession, custody or control;

(b) the person authorizing disposal or disposition from your possession, custody or control;

(c) the document's current or last known custodian;

- (d) circumstances surrounding the document's disposition from your possession, custody or control;
- (e) the generic category of the document, e.g., memo, letter, computer print-out, etc.;
- (f) the type(s) of information contained in the document; and
- (g) the identity of all persons having knowledge or who had knowledge of the contents of the document.

2. Unless otherwise indicated, the documents to be produced include all documents prepared, sent, dated or received, or those which otherwise came into existence at anytime during the Relevant Period described herein.

3. Where an objection is made to any document request under Fed. R. Civ. P. 34, the objection shall state with specificity all grounds. Any ground not stated in an objection within the time provided by the Federal Rules of Civil Procedure, or any extensions thereof, shall be waived to the extent provided by statute and law.

4. Where a claim of privilege is asserted in objecting to any document demand, or sub-part thereof, and an answer is not provided on the basis of such assertion, New York Local Rule 26.2 shall be complied with in all respects.

5. Notwithstanding the assertion of any objection to production, any document to which an objection is raised containing non-objectional subject matter which is relevant and material to a request must be produced, but that portion of the document for which the objection is asserted may be withheld or redacted provided that the above-requested information is furnished.

6. This request is a continuing request. All documents coming into your possession, custody or control subsequent to an initial production, and which are responsive to this request, shall be produced forthwith in accordance with the Federal Rules of Civil Procedure.

7. Each document requested herein is requested to be produced in its entirety and without deletion or excisions, regardless of whether you consider the entire document to be relevant or responsive to these requests. If you redact any portion of a document, you should stamp the word "redacted" on each page of the document that has been redacted. Redactions should be included on the privilege log described in Instruction 4.

8. The fact that a document is produced by a third party or by the plaintiff or by any Defendants does not relieve you of the obligation to produce your copy of the same document, even if the two documents are identical in all respects.

9. In producing documents, you are requested to produce a copy of each document requested, together with all non-identical copies and drafts of that document.

10. All documents shall be produced in the file folder, envelope or other container in which the documents are kept or maintained. If, for any reason, the container cannot be produced, produce copies of all labels, other identifying marks or writing on the container.

11. Documents shall be produced in such fashion as to identify the department, branch or office in whose possession it was located and, where applicable, the natural person in whose possession it was found and the business address of each document's custodian(s).

12. Each document should be produced in the form and manner that it was found or maintained. Documents attached to each other should not be separated. Documents separated from each other should not be bound.

13. Documents not otherwise responsive to this discovery request shall be produced if such documents mention, discuss, refer to, or explain the documents which are called for by this discovery request, or if such documents are attached to documents called for by this discovery request and constitute routing slips, transmittal memoranda, or letters, comments, evaluations or similar materials.

14. With respect to any document request that seeks one copy of a document that represents an example of a specified form document, please identify in a cover letter accompanying your document production:

(a) each document, by bates number, that is responsive to such a request; and

(b) the specific document request, by paragraph and subparagraph, that the document is being produced in response to.

IV. RELEVANT PERIOD

The relevant period for these document requests, unless otherwise indicated, shall be from November 18, 1992, to the date of response, and shall include all documents and information which relate in whole or in part to such period, or to events or circumstances during such period, even though dated, prepared, generated or received prior or subsequent to that period.

V. DOCUMENTS REQUESTED

1. All documents concerning any oral or written agreements or contracts or understandings between you and Delta which relate to your submission of mortgage loan applications to Delta, or your brokering of loans for or on behalf of Delta.

2. All documents concerning any premiums or commissions or rebates or returns of money or payments made by Delta to you in connection with any mortgage loan transactions referred by you to Delta or brokered by you on behalf of Delta. Said documents should include documents related to amounts paid by Delta directly to you, and amounts paid by Delta indirectly to you,

including but not limited to amounts paid outside of closing, amounts paid by title closers in connection with closings for Delta, or amounts paid by any third party acting on Delta's behalf in connection with a mortgage loan transaction for Delta. Said documents should also include monies given to you by Delta in connection with individual loan transactions, as well as in connection with total or overall business brought to Delta by you.

3. All documents concerning any premiums or commissions or rebates or returns of money or payments made by you to Delta in connection with any mortgage loan transactions referred by you to Delta or brokered by you on behalf of Delta. Said documents should include monies given to Delta by you in connection with individual loan transactions, as well as in connection with total or overall business brought to Delta by you.

4. All documents concerning any transfers of Things Of Value between you and Delta.

5. With respect to all loans closed on or after November 18, 1995, which you referred to Delta or brokered for Delta or on Delta's behalf, produce the following documents in your possession, custody or control:

(a) any loan application;

(b) any financial statement, or document containing any financial information related to the borrower, including but not limited to a credit report, or income verification;

(c) any pre-closing or at-closing disclosure documents or notice documents provided to the borrower;

(d) any brokerage disclosure documents or notice documents or agreements; (e) any mortgage, mortgage rider or amendment, note, or note rider or amendment.

6. Documents sufficient to reflect the total number of mortgage loan transactions brokered by you for any bank or finance company during the last quarter of the year ended December 31, 1995, and during each of the years ended December 31, 1996, 1997, and 1998.

7. Documents sufficient to reflect the total number of mortgage loan transactions brokered by you for Delta during each of the time periods identified in Request No. 7 above.

8. Documents sufficient to represent all of the following standard form documents used by you (or Delta) in connection with any loan brokered for or on behalf of Delta, or referred to Delta, during the Relevant Period:

(a) mortgage;

(b) mortgage rider or amendment;

- (c) note;
- (d) note rider or amendment;
- (e) agreement and/or disclosure and/or statement and/or affidavit concerning brokerage fees or services;
- (f) agreement and/or disclosure and/or statement and/or affidavit concerning lawyer's fees or services or representation;
- (g) notice and/or disclosure documents provided to any borrowers pursuant to HOEPA, TILA or New York regulatory requirements set forth at 3 NYCRR Part 38.

If more than one standard form document was used by you (or Delta) during the Relevant Period with respect to any of the items (a)-(g) above, produce a copy of each standard form document used.

9. All documents related to any Relationship or Affiliation between (i) you and Delta, or (ii) you and any title insurance company, title abstractor, credit reporting company, attorney, law firm, appraiser, or settlement agent of any kind, used in connection with a mortgage loan transaction with Delta.

10. All documents related to any evaluation, or assessment, or analysis of fees being charged by you, by Delta, or by any third party, in connection with any mortgage loan transaction with Delta.

11. All training materials used by you or provided by Delta to train (a) any of your employees or affiliates, or (b) any independent contractors or third parties working on your behalf, in connection with mortgage loan transactions with Delta.

12. All manuals, guidebooks, guidelines, regulations, internal office memoranda or other documents setting forth your Policies or Procedures for brokering mortgage loans, or Delta's Policies or Procedures, for (a) any of your employees or affiliates, or (b) any independent contractors or third parties working on your behalf.

13. All documents concerning:

- (a) Yours and Delta's Policies and Procedures for originating loans for Delta;
- (b) Yours and Delta's Policies and Procedures concerning any loan-to-value ratio utilized to qualify a potential borrower to obtain a Delta loan;
- (c) Yours and Delta's Policies and Procedures concerning the credit standing necessary for a borrower to obtain a Delta loan;

- (d) Yours and Delta's Policies and Procedures concerning the verification of a borrowers' ability to meet monthly or yearly mortgage payments in order to obtain a Delta loan;
- (e) Yours and Delta's Policies and Procedures related to the amount of mortgage brokerage fees and/or points to be charged in connection with a closing of a mortgage loan transaction for Delta;
- (f) Yours and Delta's Policies and Procedures related to statements to be made to borrowers in connection with their obtaining lawyers for a closing of a mortgage loan transaction for Delta;
- (g) Yours and Delta's Policies and Procedures related to providing documents to borrowers prior to the closing of a mortgage loan transaction with Delta;
- (h) Yours and Delta's Policies and Procedures related to providing copies of executed documents to borrowers at the closing of a mortgage loan transaction with Delta;
- (i) Yours and Delta's Policies and Procedures related to providing certain required disclosures and notices to borrowers in compliance with the requirements of HOEPA, TILA, and 3 NYCRR Part 38.

14. All documents submitted to Delta concerning Delta's approval of you as a mortgage broker.

15. All documents concerning any requirements or conditions imposed upon you or suggested to you by Delta in connection with the submission of loan applicants to Delta.

16. All documents reflecting any complaints received by you in connection with any loan applications submitted to Delta by you.

17. All documents concerning foreclosures by Delta of any loans brokered by you.

18. All documents which reflect the average time (a) from submission of a loan application to Delta's approval of the loan application; or (b) from Delta's approval of a loan application to the loan closing; or (c) from submission of a loan application to the loan closing.

Dated: New York, New York
February 17, 1999

Attorneys for Plaintiffs