

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
WESTERN DIVISION

In re:	)	Case No. 08-30250
	)	
OAKLAND L. GAERKE,	)	Hon. Judge Richard L. Speer
	)	
Debtor,	)	
_____	)	
	)	
OAKLAND L. GAERKE,	)	Adv. Pro. No. 08-03007-rls
	)	
Plaintiff/Debtor,	)	
	)	<b>ANSWER TO AMENDED COMPLAINT</b>
-vs-	)	<b>FOR DECLARATORY JUDGMENT</b>
	)	
ASHLEY GAERKE, ET AL,	)	
	)	
Defendants.	)	
	)	

Now comes Defendant Prosper Marketplace, Inc. (“Prosper”), by and through counsel, and answers the Amended Complaint for Declaratory Relief (“Complaint”) as follows:

**JURISDICTION, VENUE, PARTIES,**  
**BACKGROUND AND COMMON FACTS**

1. Admitted.
2. Admitted.
3. Denied. By way of further answer, Prosper is without information or knowledge sufficient to form a belief as to the allegations contained in paragraph of the Complaint and the allegations are therefore denied.
4. Denied. By way of further answer, Prosper is without information or knowledge sufficient to form a belief as to the allegations contained in paragraph of the Complaint and the

allegations are therefore denied.

**FIRST CLAIM FOR RELIEF**  
**DECLARATORY JUDGMENT AS TO**  
**DEFENDANT, AMERICAN EXPRESS**

5. Prosper repeats and re-alleges each of the responses contained in Paragraphs 1 through 4 of this answer, as if set forth herein below at length.

6. Denied. By way of further answer, Prosper is without information or knowledge sufficient to form a belief as to the allegations contained in paragraph of the Complaint and the allegations are therefore denied.

7. Denied. By way of further answer, Prosper is without information or knowledge sufficient to form a belief as to the allegations contained in paragraph of the Complaint and the allegations are therefore denied.

**SECOND CLAIM FOR RELIEF**  
**DECLARATORY JUDGMENT AS TO**  
**DEFENDANT, BANK OF AMERICA**

8. Prosper repeats and re-alleges each of the responses contained in Paragraphs 1 through 7 of this answer, as if set forth herein below at length.

9. Denied. By way of further answer, Prosper is without information or knowledge sufficient to form a belief as to the allegations contained in paragraph of the Complaint and the allegations are therefore denied.

10. Denied. By way of further answer, Prosper is without information or knowledge sufficient to form a belief as to the allegations contained in paragraph of the Complaint and the allegations are therefore denied.

11. Denied. By way of further answer, Prosper is without information or knowledge sufficient to form a belief as to the allegations contained in paragraph of the Complaint and the allegations are therefore denied.

12. Denied. By way of further answer, Prosper is without information or knowledge sufficient to form a belief as to the allegations contained in paragraph of the Complaint and the allegations are therefore denied.

13. Denied. By way of further answer, Prosper is without information or knowledge sufficient to form a belief as to the allegations contained in paragraph of the Complaint and the allegations are therefore denied.

14. Denied. By way of further answer, Prosper is without information or knowledge sufficient to form a belief as to the allegations contained in paragraph of the Complaint and the allegations are therefore denied.

15. Denied. By way of further answer, Prosper is without information or knowledge sufficient to form a belief as to the allegations contained in paragraph of the Complaint and the allegations are therefore denied.

**THIRD CLAIM FOR RELIEF**  
**DECLARATORY JUDGMENT AS TO**  
**DEFENDANT, JP MORGAN CHASE BANK**

16. Prosper repeats and re-alleges each of the responses contained in Paragraphs 1 through 15 of this answer, as if set forth herein below at length.

17. Denied. By way of further answer, Prosper is without information or knowledge sufficient to form a belief as to the allegations contained in paragraph of the Complaint and the allegations are therefore denied.

18. Denied. By way of further answer, Prosper is without information or knowledge sufficient to form a belief as to the allegations contained in paragraph of the Complaint and the allegations are therefore denied.

19. Denied. By way of further answer, Prosper is without information or knowledge sufficient to form a belief as to the allegations contained in paragraph of the Complaint and the

allegations are therefore denied.

20. Denied. By way of further answer, Prosper is without information or knowledge sufficient to form a belief as to the allegations contained in paragraph of the Complaint and the allegations are therefore denied.

**FOURTH CLAIM FOR RELIEF**  
**DECLARATORY JUDGMENT AS TO**  
**DEFENDANT, AAA FINANCIAL SERVICES**

21. Prosper repeats and re-alleges each of the responses contained in Paragraphs 1 through 20 of this answer, as if set forth herein below at length.

22. Denied. By way of further answer, Prosper is without information or knowledge sufficient to form a belief as to the allegations contained in paragraph of the Complaint and the allegations are therefore denied.

23. Denied. By way of further answer, Prosper is without information or knowledge sufficient to form a belief as to the allegations contained in paragraph of the Complaint and the allegations are therefore denied.

**FIFTH CLAIM FOR RELIEF**  
**DECLARATORY JUDGMENT AS TO**  
**DEFENDANT, US BANK**

24. Prosper repeats and re-alleges each of the responses contained in Paragraphs 1 through 23 of this answer, as if set forth herein below at length.

25. Denied. By way of further answer, Prosper is without information or knowledge sufficient to form a belief as to the allegations contained in paragraph of the Complaint and the allegations are therefore denied.

26. Denied. By way of further answer, Prosper is without information or knowledge sufficient to form a belief as to the allegations contained in paragraph of the Complaint and the allegations are therefore denied.

27. Denied. By way of further answer, Prosper is without information or knowledge sufficient to form a belief as to the allegations contained in paragraph of the Complaint and the allegations are therefore denied.

**SIXTH CLAIM FOR RELIEF**  
**DECLARATORY JUDGMENT AS TO**  
**DEFENDANT, PROSPER MARKETPLACE, INC.**

28. Prosper repeats and re-alleges each of the responses contained in Paragraphs 1 through 27 of this answer, as if set forth herein below at length.

29. Denied in part and admitted in part. Loans in a total amount of \$25,000.00 were extended to the Plaintiff by individual bidders using Prosper's website ("Lenders") and the funds were disbursed to the Plaintiff by Prosper through direct deposit to the joint checking account of Defendant, Ashley Gaerke, and the Plaintiff. Prosper acted as the Plaintiff's authorized agent to procure loans in the total amount of \$25,000.00 from various Lenders on behalf of the Plaintiff. By way of further answer, it is denied that Prosper loaned any money directly to the Plaintiff or Defendant, Ashley Gaerke.

30. Denied. By way of further answer, Prosper is without information or knowledge sufficient to form a belief as to the allegations contained in paragraph of the Complaint and the allegations are therefore denied.

31. Denied. By way of further answer, Prosper is without information or knowledge sufficient to form a belief as to the allegations contained in paragraph of the Complaint and the allegations are therefore denied.

32. Denied.

33. Denied. By way of further answer, Prosper is without information or knowledge sufficient to form a belief as to the allegations contained in paragraph of the Complaint and the allegations are therefore denied.

34. Denied. By way of further answer, this paragraph contains a conclusion of law to which no response is required and therefore denied.

35. Denied. By way of further answer, Prosper is without information or knowledge sufficient to form a belief as to the allegations contained in paragraph of the Complaint and the allegations are therefore denied. Moreover, this paragraph contains a conclusion of law to which no response is required and therefore denied.

**SEVENTH CLAIM FOR RELIEF**  
**DECLARATORY JUDGMENT AS TO**  
**DEFENDANT, CAPITAL ONE**

36. Prosper repeats and re-alleges each of the responses contained in Paragraphs 1 through 35 of this answer, as if set forth herein below at length.

37. Denied. By way of further answer, Prosper is without information or knowledge sufficient to form a belief as to the allegations contained in paragraph of the Complaint and the allegations are therefore denied.

38. Denied. By way of further answer, Prosper is without information or knowledge sufficient to form a belief as to the allegations contained in paragraph of the Complaint and the allegations are therefore denied.

39. Denied. By way of further answer, Prosper is without information or knowledge sufficient to form a belief as to the allegations contained in paragraph of the Complaint and the allegations are therefore denied.

**EIGHTH CLAIM FOR RELIEF**  
**DECLARATORY JUDGMENT AS TO**  
**DEFENDANT, CITI CARD**

40. Prosper repeats and re-alleges each of the responses contained in Paragraphs 1 through 39 of this answer, as if set forth herein below at length.

41. Denied. By way of further answer, Prosper is without information or knowledge

sufficient to form a belief as to the allegations contained in paragraph of the Complaint and the allegations are therefore denied.

42. Denied. By way of further answer, Prosper is without information or knowledge sufficient to form a belief as to the allegations contained in paragraph of the Complaint and the allegations are therefore denied.

**NINTH CLAIM FOR RELIEF**  
**JUDGMENT FOR DAMAGES BY**  
**FRAUD AND IDENTITY THEFT**

43. Prosper repeats and re-alleges each of the responses contained in Paragraphs 1 through 42 of this answer, as if set forth herein below at length.

44. Denied. By way of further answer, Prosper is without information or knowledge sufficient to form a belief as to the allegations contained in paragraph of the Complaint and the allegations are therefore denied.

45. Denied. By way of further answer, Prosper is without information or knowledge sufficient to form a belief as to the allegations contained in paragraph of the Complaint and the allegations are therefore denied.

46. Denied. By way of further answer, Prosper is without information or knowledge sufficient to form a belief as to the allegations contained in paragraph of the Complaint and the allegations are therefore denied.

**AFFIRMATIVE DEFENSES**

Now comes Prosper and sets for the following affirmative defenses:

**FIRST AFFIRMATIVE DEFENSE**

The Complaint should be dismissed, either in whole or in part, because it fails to state a claim upon which relief can be granted.

**SECOND AFFIRMATIVE DEFENSE**

The relief requested by the Plaintiff is barred by the doctrine of unclean hands.

**THIRD AFFIRMATIVE DEFENSE**

The relief requested by the Plaintiff is barred by the applicable statute of limitations.

**FOURTH AFFIRMATIVE DEFENSE**

The relief requested by the Plaintiff is barred in whole or in part by the doctrine of laches, estoppel and failure to mitigate damages.

**FIFTH AFFIRMATIVE DEFENSE**

The Plaintiff lost, destroyed and/or failed to maintain relevant evidence in a reasonable good faith manner. The relief requested by the Plaintiff is therefore barred by the doctrine of negligent and intentional spoliation of evidence.

**SIXTH AFFIRMATIVE DEFENSE**

The relief request by the Plaintiff is barred in whole or in part by the doctrine of ratification.

**SEVENTH AFFIRMATIVE DEFENSE**

The relief requested by the Plaintiff is barred by the doctrine of waiver.

**EIGHTH AFFIRMATIVE DEFENSE**

The relief requested by the Plaintiff is barred by virtue of Plaintiff's fraud, deceit, and misrepresentations.

**NINTH AFFIRMATIVE DEFENSE**

The relief requested by the Plaintiff is barred by the doctrine of setoff.



**TENTH AFFIRMATIVE DEFENSE**

The First Amended Complaint does not describe the claims against Defendants with sufficient particularity and certainty to enable Defendants to determine what defenses may exist. Defendants reserve the right to assert all defenses that may be pertinent to or arise from Plaintiff's claims against it when the precise nature of those claims has been ascertained.

**ELEVENTH AFFIRMATIVE DEFENSE**

Defendants presently have insufficient knowledge and information on which to form a belief as to whether they have additional affirmative defenses and Defendants reserve the right to assert additional affirmative defenses in the event discovery indicates such defenses would be appropriate.

**TWELFTH AFFIRMATIVE DEFENSE**

The relief requested by the Plaintiff is barred by the doctrine of recoupment.

WHEREFORE, Defendant respectfully requests that this Court (i) enter judgment in its favor and against Plaintiff, (ii) enter an Order dismissing the Complaint with prejudice, and (iii) granting such other and further relief as this Court deems is just and proper under the circumstances.

Respectfully submitted,

*/s/ Patricia B. Fugée*

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Patricia B. Fugée (0070698)

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*Local Counsel for Defendant, Prosper  
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*Counsel for and appearing pro hac vice on  
behalf of Defendant, Prosper Marketplace, Inc.*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and accurate copy of the foregoing has been served upon Steven L. Diller, Esq., 124 E. Main St., Van Wert, OH 45891, Email: dillerlaw@roadrunner.com, via the Court's electronic filing system, and via regular U.S. Mail, postage prepaid, upon the following parties on this 30<sup>th</sup> day of May, 2008:

AAA Financial Services  
PO Box 17220  
Baltimore, MD 21297

American Express  
PO Box 0001  
Los Angeles, CA 90096

Bank of America  
PO Box 15102  
Wilmington, DE 19886

Capital One  
PO Box 30285  
Salt Lake City, UT 84130

Chase Bank  
PO Box 15298  
Wilmington, DE 19850-5298

Citi Card  
PO Box 183064  
Columbus, OH 43218

Discover Card  
PO Box 15251  
Wilmington, DE 19886

Ashley Gaerke  
301 Lewis Dr  
MiddlePoint, OH 45863

US Bank  
PO Box 790408  
St. Louis, MO 63719

/s/ Patricia B. Fugée  
Patricia B. Fugée (0070698)