

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA**

TRANSPORTATION ALLIANCE BANK, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
1. ARROW TRUCKING CO.,	)	
2. PIEL CORPORATION,	)	
3. MEGAN CORP.,	)	Case 10-CV-016-JHP-PJC
4. ARROW TRUCK REAL ESTATE CO.,	)	
5. CAROL PIELSTICKER,	)	
6. JAMES DOUGLAS PIELSTICKER,	)	
7. JONATHAN MOORE, and	)	
8. JOSEPH MOWRY,	)	
	)	
Defendants.	)	

**SEPARATE ANSWER AND COUNTERCLAIMS  
OF DEFENDANT CAROL PIELSTICKER**

Defendant Carol Pielsticker ("Carol") answers the Complaint of Transportation Alliance Bank, Inc. ("TAB") as follows:

**Parties, Jurisdiction and Venue**

1. Carol admits the allegations contained in Paragraph 1 of TAB's Complaint.
2. Carol admits the allegations contained in Paragraph 2 of TAB's Complaint.
3. Carol admits the allegations contained in Paragraph 3 of TAB's Complaint.
4. Carol admits the allegations contained in Paragraph 4 of TAB's Complaint.

5. Carol admits the allegations contained in Paragraph 5 of TAB's Complaint.

6. Carol admits the allegations contained in Paragraph 6 of TAB's Complaint.

7. Carol admits the allegations contained in Paragraph 7 of TAB's Complaint.

8. Carol admits the allegations contained in Paragraph 8 of TAB's Complaint.

9. Carol admits the allegations contained in Paragraph 9 of TAB's Complaint.

10. Carol is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 10 of TAB's Complaint and therefore denies the same.

11. Carol admits the allegations contained in Paragraph 11 of TAB's Complaint.

12. Carol admits the allegations contained in Paragraph 12 of TAB's Complaint.

**General Allegations**

13. Carol is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 13 of TAB's Complaint and therefore denies the same. In further response to the allegations contained in Paragraph 13 of TAB's Complaint, the referenced exhibits, to the extent they were duly executed, speak for themselves and are the best evidence of their contents.

14. Carol is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 14 of TAB's Complaint and therefore denies the same. In further response to the allegations contained in Paragraph 14 of TAB's Complaint, the referenced exhibits, to the extent they were duly executed, speak for themselves and are the best evidence of their contents.

15. Carol is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 15 of TAB's Complaint and therefore denies the same. In further response to the allegations contained in Paragraph 15 of TAB's Complaint, the referenced exhibits, to the extent they were duly executed, speak for themselves and are the best evidence of their contents.

16. Carol is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 16 of TAB's Complaint and therefore denies the same. In further response to the allegations contained in Paragraph 16 of TAB's Complaint, the referenced exhibits, to the extent they were duly executed, speak for themselves and are the best evidence of their contents.

17. Carol is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 17 of TAB's Complaint and therefore denies the same. In further response to the allegations contained in Paragraph 17 of TAB's Complaint, the referenced exhibits, to the extent they were duly executed, speak for themselves and are the best evidence of their contents.

18. Carol is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 18 of TAB's Complaint and therefore denies the same. In further response to the allegations contained in Paragraph 18 of

TAB's Complaint, the referenced exhibits, to the extent they were duly executed, speak for themselves and are the best evidence of their contents.

19. Carol is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 19 of TAB's Complaint and therefore denies the same. In further response to the allegations contained in Paragraph 19 of TAB's Complaint, the referenced exhibits, to the extent they were duly executed, speak for themselves and are the best evidence of their contents.

20. Carol is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 20 of TAB's Complaint and therefore denies the same. In further response to the allegations contained in Paragraph 20 of TAB's Complaint, the referenced exhibits, to the extent they were duly executed, speak for themselves and are the best evidence of their contents.

21. Carol is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 21 of TAB's Complaint and therefore denies the same.

22. Carol is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 22 of TAB's Complaint and therefore denies the same.

23. Carol admits the allegations contained in Paragraph 23 of TAB's Complaint insofar as the referenced Exhibit 3 purports to be executed by Piel Corp., but Carol denies that the transaction was approved by the directors of Piel Corp, thereby rendering Exhibit 3 unenforceable.

24. Subject to the defense stated in paragraph 23 above and without waiving said defense, Carol admits the allegations contained in Paragraph 24 of TAB's Complaint.

25. Subject to the defense stated in paragraph 23 above and without waiving said defense, Carol is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 25 of TAB's Complaint and therefore denies the same.

26. Subject to the defense stated in paragraph 23 above and without waiving said defense, Carol admits the allegations contained in Paragraph 26 of TAB's Complaint insofar as the Piel Guaranty purports to be executed by Doug Pielsticker as President of Piel Corporation.

27. Carol is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 27 of TAB's Complaint and therefore denies the same.

28. Carol is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 28 of TAB's Complaint and therefore denies the same.

29. Carol is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 29 of TAB's Complaint and therefore denies the same.

30. Carol is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 30 of TAB's Complaint and therefore denies the same.

31. Carol is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 31 of TAB's Complaint and therefore denies the same.

32. Carol is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 32 of TAB's Complaint and therefore denies the same.

33. Carol is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 33 of TAB's Complaint and therefore denies the same.

34. Carol is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 34 of TAB's Complaint and therefore denies the same.

35. Carol is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 35 of TAB's Complaint and therefore denies the same.

36. Carol is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 36 of TAB's Complaint and therefore denies the same.

37. Carol is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 37 of TAB's Complaint and therefore denies the same.

38. Carol admits the allegations contained in Paragraph 38 of TAB's Complaint insofar as from time to time in 2009 she did receive funds from Arrow

Trucking which were in partial repayment of money she had loaned to it. As for the remaining allegations contained in Paragraph 38 of TAB's Complaint, Carol is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations and therefore denies the same.

39. Carol is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 39 of TAB's Complaint and therefore denies the same.

40. Carol is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 40 of TAB's Complaint and therefore denies the same.

41. Carol is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 41 of TAB's Complaint and therefore denies the same.

42. Carol is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 42 of TAB's Complaint and therefore denies the same.

43. Carol is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 43 of TAB's Complaint and therefore denies the same.

44. Carol denies the allegations contained in the first sentence of Paragraph 44 of TAB's Complaint. In further response to the allegations contained in Paragraph 44 of TAB's Complaint, Carol denies executing Exhibits 7 and 8 to TAB's Complaint, and she denies that the Megan Corp. guaranty attached as Exhibit 8 to TAB's Complaint was

authorized by its board of directors, and alleges that both are unenforceable against her and Megan.

45. Carol is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 45 of TAB's Complaint and therefore denies the same. In further response to the allegations contained in Paragraph 45 of TAB's Complaint, Carol alleges that, prior to December 16, 2009, she never substantively communicated with any person known to her to be a representative of TAB.

46. Carol is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 46 of TAB's Complaint and therefore denies the same.

47. Carol is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 47 of TAB's Complaint and therefore denies the same.

48. Carol is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 48 of TAB's Complaint and therefore denies the same.

49. Carol is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 49 of TAB's Complaint and therefore denies the same.

50. Carol is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 50 of TAB's Complaint and therefore denies the same.

51. Carol is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 51 of TAB's Complaint and therefore denies the same.

52. Carol is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 52 of TAB's Complaint and therefore denies the same.

53. Carol is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 53 of TAB's Complaint and therefore denies the same.

54. Carol is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 54 of TAB's Complaint and therefore denies the same.

55. Carol is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 55 of TAB's Complaint and therefore denies the same.

56. Carol is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 56 of TAB's Complaint and therefore denies the same.

57. Carol is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 57 of TAB's Complaint and therefore denies the same.

58. Carol admits the allegations contained in the first sentence of Paragraph 58 of TAB's Complaint. As for the remaining allegations contained in Paragraph 58 of

TAB's Complaint, Carol is without knowledge or information sufficient to form a belief as to the truth of those allegations and therefore denies the same

59. Carol denies the allegations contained in the first sentence of Paragraph 59 of TAB's Complaint. As for the remaining allegations contained in Paragraph 59 of TAB's Complaint, Carol is without knowledge or information sufficient to form a belief as the truth of those allegations and therefore denies the same.

60. Carol is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 60 of TAB's Complaint and therefore denies the same.

61. Carol is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 61 of TAB's Complaint and therefore denies the same.

62. Carol is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 62 of TAB's Complaint and therefore denies the same.

63. Carol is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 63 of TAB's Complaint and therefore denies the same.

64. Carol admits the allegations contained in Paragraph 64 of TAB's Complaint insofar as from time to time she was paid funds from Arrow Trucking, substantially all of which were either compensation or in repayment of funds she had personally loaned to Arrow Trucking or Piel Corp. In 2008 and 2009 Carol loaned in excess of \$7 million to Arrow Trucking to be used to pay debts. During the same period

she was repaid in excess \$3 million for said loans. Arrow Trucking still owes Carol in excess of \$3 million for money loaned. A large portion of the funds Carol loaned were used by Arrow Trucking to pay TAB.

65. Carol is without sufficient knowledge or information to form a belief as the truth of the allegations contained in Paragraph 65 of TAB's Complaint and therefore denies the same.

66. Carol denies the allegations contained in Paragraph 66 of TAB's Complaint.

**First Claim for Relief Against Arrow Trucking  
(Breach of A/R Agreement and Addendum)**

67. Carol neither admits nor denies the allegations contained in Paragraph 67 of TAB's Complaint because they are legal conclusions to which no answer is required, but to the extent the allegations contained in Paragraph 67 of TAB's Complaint are not legal conclusions, Carol denies the same. In further response to the allegations contained in Paragraph 67 of TAB's Complaint, on January 8, 2010 Arrow Trucking filed its voluntary petition for relief under chapter 7 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Northern District of Oklahoma, Case No. 10-10041-R (Chapter 7). TAB's claim for relief against Arrow Trucking is automatically stayed. TAB had actual notice that Arrow Trucking intended to file for chapter 7 bankruptcy protection before it filed this action.

68. Carol neither admits nor denies the allegations contained in Paragraph 68 of TAB's Complaint because they are legal conclusions to which no answer is required, but to the extent the allegations contained in Paragraph 68 of TAB's Complaint are not legal conclusions, Carol denies the same.

69. Carol neither admits nor denies the allegations contained in Paragraph 69 of TAB's Complaint because they are legal conclusions to which no answer is required, but to the extent the allegations contained in Paragraph 69 of TAB's Complaint are not legal conclusions, Carol denies the same.

70. Carol neither admits nor denies the allegations contained in Paragraph 70 of TAB's Complaint because they are legal conclusions to which no answer is required, but to the extent the allegations contained in Paragraph 70 of TAB's Complaint are not legal conclusions, Carol denies the same.

**Second Claim for Relief Against Piel Corporation  
(Breach of Piel Guaranty Dated November 10, 2008)**

71. Carol denies the allegations contained in Paragraph 71 of TAB's Complaint as the alleged Piel Guaranty is unenforceable because it was not authorized by its board of directors.

72. Carol neither admits nor denies the allegations contained in Paragraph 72 of TAB's Complaint because they are legal conclusions to which no answer is required, but to the extent the allegations contained in Paragraph 72 of TAB's Complaint are not legal conclusions, Carol denies the same.

73. Carol neither admits nor denies the allegations contained in Paragraph 73 of TAB's Complaint because they are legal conclusions to which no answer is required, but to the extent the allegations contained in Paragraph 73 of TAB's Complaint are not legal conclusions, Carol denies the same.

74. Carol neither admits nor denies the allegations contained in Paragraph 74 of TAB's Complaint because they are legal conclusions to which no answer is required,

but to the extent the allegations contained in Paragraph 74 of TAB's Complaint are not legal conclusions, Carol denies the same.

75. Carol neither admits nor denies the allegations contained in Paragraph 75 of TAB's Complaint because they are legal conclusions to which no answer is required, but to the extent the allegations contained in Paragraph 75 of TAB's Complaint are not legal conclusions, Carol denies the same.

**Third Claim for Relief Against Doug Pielsticker  
(Breach of Guaranty Agreements Dated December 11, 2009 and December 18, 2009)**

76. Carol is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 76 of TAB's Complaint and therefore denies the same.

77. Carol is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 77 of TAB's Complaint and therefore denies the same.

78. Carol is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 78 of TAB's Complaint and therefore denies the same.

79. Carol is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 79 of TAB's Complaint and therefore denies the same.

80. Carol is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 80 of TAB's Complaint and therefore denies the same.

**Fourth Claim for Relief Against Carol Pielsticker**  
**(Breach of Carol Pielsticker Guaranty Agreement dated December 11, 2009)**

81. Carol denies the allegations contained in Paragraph 81 of TAB's Complaint. Carol did not sign Exhibit 7, nor did she authorize anyone to execute it on her behalf.

82. Carol is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 82 of TAB's Complaint and therefore denies the same.

83. Carol admits the allegations contained in Paragraph 83 of TAB's Complaint insofar as Arrow Trucking ceased operations which is directly attributable to TAB making it impossible for hundreds of Arrow Trucking's trucks to purchase fuel, and to deliver their loads, and that this occurred on December 22, 2009.

84. Carol denies the allegations contained in Paragraph 84 of TAB's Complaint.

85. Carol denies the allegations contained in Paragraph 85 of TAB's Complaint.

**Fifth Claim for Relief Against Megan Corp.**  
**(Breach of Megan Corp. Guaranty Agreement dated December 11, 2009)**

86. Carol denies the allegations contained in Paragraph 86 of TAB's Complaint. In further response to the allegations contained in Paragraph 86 of TAB's Complaint, Carol did not execute Exhibit 8, she denies that the Megan Corp. guaranty attached as Exhibit 8 to TAB's Complaint was authorized by its board of directors, and alleges that the Megan Corp. guaranty is therefore unenforceable.

87. Carol is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 87 of TAB's Complaint and therefore denies the same.

88. Carol admits the allegations contained in Paragraph 88 of TAB's Complaint insofar as Arrow Trucking ceased operations on or about December 22, 2009, but Carol denies the remaining allegations contained in Paragraph 88 of TAB's Complaint.

89. Carol denies the allegations contained in Paragraph 89 of TAB's Complaint.

90. Carol denies the allegations contained in Paragraph 90 of TAB's Complaint.

**Sixth Claim for Relief Against Arrow Trucking,  
Doug Pielsticker, Jonathan Moore and Joseph Mowry  
(Fraud)**

91. No answer required by Carol, and if one were required, Carol is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 91 of TAB's Complaint and therefore denies the same.

92. No answer required by Carol, and if one were required, Carol is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 92 of TAB's Complaint and therefore denies the same.

93. No answer required by Carol, and if one were required, Carol is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 93 of TAB's Complaint and therefore denies the same.

94. No answer required by Carol, and if one were required, Carol is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 94 of TAB's Complaint and therefore denies the same.

95. No answer required by Carol, and if one were required, Carol is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 95 of TAB's Complaint and therefore denies the same.

96. No answer required by Carol, and if one were required, Carol is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 96 of TAB's Complaint and therefore denies the same.

97. No answer required by Carol, and if one were required, Carol is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 97 of TAB's Complaint and therefore denies the same.

98. No answer required by Carol, and if one were required, Carol is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 98 of TAB's Complaint and therefore denies the same.

99. No answer required by Carol, and if one were required, Carol is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 99 of TAB's Complaint and therefore denies the same.

**Seventh Claim for Relief Against Arrow Trucking  
(Unjust Enrichment)**

100. No answer required by Carol, and if one were required, Carol is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 100 of TAB's Complaint and therefore denies the same.

101. No answer required by Carol, and if one were required, Carol is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 101 of TAB's Complaint and therefore denies the same.

102. No answer required by Carol, and if one were required, Carol is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 102 of TAB's Complaint and therefore denies the same.

**Eighth Claim for Relief Against Arrow Trucking,  
Doug Pielsticker, Jonathan Moore and Joseph Mowry  
(Civil Conspiracy)**

103. No answer required by Carol, and if one were required, Carol is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 103 of TAB's Complaint and therefore denies the same.

104. No answer required by Carol, and if one were required, Carol is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 104 of TAB's Complaint and therefore denies the same.

105. No answer required by Carol, and if one were required, Carol is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 105 of TAB's Complaint and therefore denies the same.

106. No answer required by Carol, and if one were required, Carol is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 106 of TAB's Complaint and therefore denies the same.

**Ninth Claim for Relief Against Arrow Trucking,  
Doug Pielsticker, Jonathan Moore and Joseph Mowry  
(Violation of the Federal Racketeer Influenced and Corrupt  
Organizations Act ("RICO"), 18 U.S.C. § 1962(c))**

107. No answer required by Carol, and if one were required, Carol is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 107 of TAB's Complaint and therefore denies the same.

108. No answer required by Carol, and if one were required, Carol is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 108 of TAB's Complaint and therefore denies the same.

109. No answer required by Carol, and if one were required, Carol is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 109 of TAB's Complaint and therefore denies the same.

110. No answer required by Carol, and if one were required, Carol is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 110 of TAB's Complaint and therefore denies the same.

111. No answer required by Carol, and if one were required, Carol is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 111 of TAB's Complaint and therefore denies the same.

112. No answer required by Carol, and if one were required, Carol is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 112 of TAB's Complaint and therefore denies the same.

113. No answer required by Carol, and if one were required, Carol is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 113 of TAB's Complaint and therefore denies the same.

114. No answer required by Carol, and if one were required, Carol is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 114 of TAB's Complaint and therefore denies the same.

115. No answer required by Carol, and if one were required, Carol is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 115 of TAB's Complaint and therefore denies the same.

**Tenth Claim for Relief Against Arrow Trucking,  
Doug Pielsticker, Jonathan Moore and Joseph Mowry  
(RICO Conspiracy, 18 U.S.C. § 1962(d))**

116. No answer required by Carol, and if one were required, Carol is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 116 of TAB's Complaint and therefore denies the same.

117. No answer required by Carol, and if one were required, Carol is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 117 of TAB's Complaint and therefore denies the same.

118. No answer required by Carol, and if one were required, Carol is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 118 of TAB's Complaint and therefore denies the same.

119. No answer required by Carol, and if one were required, Carol is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 119 of TAB's Complaint and therefore denies the same.

**Eleventh Claim for Relief Against Arrow Trucking,  
Doug Pielsticker, Jonathan Moore and Joseph Mowry  
(Utah Pattern of Unlawful Activity Act, Utah Code §§ 76-10-1601, *et seq.*)**

120. No answer required by Carol, and if one were required, Carol is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 120 of TAB's Complaint and therefore denies the same.

121. No answer required by Carol, and if one were required, Carol is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 121 of TAB's Complaint and therefore denies the same.

122. No answer required by Carol, and if one were required, Carol is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 122 of TAB's Complaint and therefore denies the same.

123. No answer required by Carol, and if one were required, Carol is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 123 of TAB's Complaint and therefore denies the same.

124. No answer required by Carol, and if one were required, Carol is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 124 of TAB's Complaint and therefore denies the same.

125. No answer required by Carol, and if one were required, Carol is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 125 of TAB's Complaint and therefore denies the same.

126. No answer required by Carol, and if one were required, Carol is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 126 of TAB's Complaint and therefore denies the same.

**Twelfth Claim for Relief Against Carol Pielsticker,  
Doug Pielsticker, Jonathan Moore, and Joseph Mowry  
(Breach of Fiduciary Duty and Good Faith)**

127. Carol admits that she, Doug Pielsticker and Jonathan Moore were officers or directors of Arrow Trucking during portions of 2009. If TAB meant to allege that Joseph Mowry, not Joseph Moore, was an officer and director of Arrow Trucking, she admits that to be true.

128. Carol admits the allegations contained in Paragraph 128 of TAB's Complaint.

129. Carol neither admits nor denies the allegations contained in Paragraph 129 of TAB's Complaint because they are legal conclusions to which no answer is required, but to the extent the allegations contained in Paragraph 129 of TAB's Complaint are not legal conclusions, Carol denies the same.

130. Carol neither admits nor denies the allegations contained in Paragraph 130 of TAB's Complaint because they are legal conclusions to which no answer is required, but to the extent the allegations contained in Paragraph 130 of TAB's Complaint are not legal conclusions, Carol denies the same.

131. Carol neither admits nor denies the allegations contained in Paragraph 131 of TAB's Complaint because they are legal conclusions to which no answer is required, but to the extent the allegations contained in Paragraph 131 of TAB's Complaint are not legal conclusions, Carol denies the same.

132. Carol denies the allegations contained in Paragraph 132 of TAB's Complaint.

**Thirteenth Claim for Relief Against Carol Pielsticker,  
Doug Pielsticker, Jonathan Moore, and Joseph Mowry  
(Breach of Fiduciary Duty to Arrow Trucking's Creditors)**

133. This claim for relief can only be brought by the chapter 7 trustee of Arrow Trucking's bankruptcy estate and is thus subject to the automatic stay imposed by 11 U.S.C. § 362(a). To the extent an answer is required, and if TAB intended to allege that Joseph Mowry (not Joseph Moore) was an officer or director of Arrow Trucking, Carol admits that during 2009 the allegations contained in Paragraph 133 of TAB's Complaint is correct.

134. Carol denies the allegations contained in Paragraph 134 of TAB's Complaint.

135. Carol denies the allegations contained in Paragraph 135 of TAB's Complaint.

136. Carol denies the allegations contained in Paragraph 136 of TAB's Complaint.

137. Carol denies the allegations contained in Paragraph 137 of TAB's Complaint.

138. Carol admits the allegations contained in Paragraph 138 of TAB's Complaint.

139. Carol neither admits nor denies the allegations contained in Paragraph 139 of TAB's Complaint because they are legal conclusions to which no answer is required, but to the extent the allegations contained in Paragraph 139 of TAB's Complaint are not legal conclusions, Carol denies the same.

140. Carol denies the allegations contained in Paragraph 140 of TAB's Complaint.

141. Carol denies the allegations contained in Paragraph 141 of TAB's Complaint.

**Fourteenth Claim for Relief Against Carol Pielsticker and Doug Pielsticker  
(Fraudulent Transfers)**

142. Carol admits the allegations contained in Paragraph 142 of TAB's Complaint insofar as during 2008 and 2009 Arrow Trucking made repayments to Carol in an amount in excess of \$3 million on loans she made to Arrow Trucking and affiliates in excess of \$7 million. Carol is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 142 of TAB's Complaint and therefore denies the same.

143. Carol denies the allegations contained in Paragraph 143 of TAB's Complaint.

144. Carol denies the allegations contained in Paragraph 144 of TAB's Complaint.

145. Carol denies the allegations contained in Paragraph 145 of TAB's Complaint.

146. Carol denies the allegations contained in Paragraph 146 of TAB's Complaint.

147. Carol denies the allegations contained in Paragraph 147 of TAB's Complaint.

**Fifteenth Claim for Relief Against Arrow Truck Real Estate Company  
(Quiet Title)**

148. Carol is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 148 of TAB's Complaint and therefore denies the same.

149. Carol is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 149 of TAB's Complaint and therefore denies the same.

150. Carol is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 150 of TAB's Complaint and therefore denies the same.

**Sixteenth Claim for Relief Against Carol Pielsticker and Doug Pielsticker  
(Recovery of Unlawful Dividends)**

151. Carol admits the allegations contained in Paragraph 151 of TAB's Complaint.

152. Carol admits the allegations contained in Paragraph 152 of TAB's Complaint.

153. Carol admits the allegations contained in Paragraph 153 of TAB's Complaint insofar as the referenced statutes apply to Oklahoma corporations and that Arrow Trucking is an Oklahoma corporation. In further response to the allegations contained in Paragraph 153 of TAB's Complaint, Carol denies that Arrow Trucking ever declared or paid a dividend.

154. Carol admits the allegations contained in Paragraph 154 of TAB's Complaint insofar as the referenced statutes apply to Oklahoma corporations and that Arrow Trucking is an Oklahoma corporation. In further response to the allegations contained in Paragraph 154 of TAB's Complaint, Carol denies that Arrow Trucking ever declared or paid a dividend.

155. Carol admits the allegations contained in Paragraph 155 of TAB's Complaint insofar as the referenced statutes apply to Oklahoma corporations and that

Arrow Trucking is an Oklahoma corporation. Carol denies the remaining allegations contained in Paragraph 155 of TAB's Complaint and further denies that Arrow Trucking ever declared or paid a dividend.

156. Carol is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 156 of TAB's Complaint and therefore denies the same.

157. Carol denies the allegations contained in Paragraph 157 of TAB's Complaint.

158. Carol denies the allegations contained in Paragraph 158 of TAB's Complaint.

**WHEREFORE**, having fully answered, Carol asks that the Court deny TAB all relief sought against her.

### **AFFIRMATIVE DEFENSES**

#### **First Defense – Failure to State Claim**

1. The Complaint fails to state a claim for which relief may be granted against Carol.

#### **Second Defense – No Privity of Contract**

2. Carol, in her individual capacity and in her capacity as a shareholder, officer or director of Arrow Trucking, Piel Corp., and Megan, never executed any documents in connection with any business transaction between herself and TAB or these companies and TAB, nor, to her best recollection, did she ever meet, talk to or otherwise communicate with any person known to her to be a representative of TAB prior to December 16, 2009.

### **Third Defense – Statute of Frauds**

3. The claims asserted against Carol in the Complaint are barred by the Statute of Frauds.

### **Fourth Defense – Constructive Fraud**

4. During at least the last half of 2009, TAB had a financial chokehold on Arrow Trucking. TAB personnel were monitoring Arrow Trucking closely both on site in Tulsa and from Utah. TAB knew or had reason to know, as early as the spring of 2009, that suspicious activity was taking place at Arrow Trucking but it did not then, nor did it ever, prior to December 16, 2009, inform Carol of such activity. To the contrary, rather than inform the sole owner of the stock of the defendant companies of what it had discovered, TAB elected to conceal these facts from her and to embark on a scheme to seek to lure her and Megan into personally guaranteeing the corporate obligations of Arrow Trucking to TAB. As alleged in paragraphs 81 and 86 herein, although Carol did not accept TAB's invitation to become personally liable on the corporate obligations, she did continue, with TAB's knowledge, to advance personal funds to Arrow Trucking after TAB discovered or had reason to know of the alleged fraudulent activity. To the extent that TAB, after discovering or having reason to know of the alleged fraud, remained silent, while at the same time attempting to obtain Carol's personal guarantees, and continuing to accept her personal funds in payment of Arrow Trucking's obligations, TAB perpetrated a constructive fraud upon Carol.

### **Fifth Defense – Failure to Mitigate Damages**

5. TAB is a sophisticated banking institution that holds itself out as a specialist in loaning to the trucking industry. It understands the nature of the industry and that its customers are common carriers who haul third party cargo for a charge. TAB is a

wholly owned subsidiary of Flying J, which owns and operates truck stops throughout the United States. TAB required Arrow Trucking to purchase its fuel exclusively from Flying J using credit cards provided by TAB. On December 21, 2009, TAB, without notice, abruptly shut down Arrow Trucking's ability to purchase fuel. By deciding to bring Arrow Trucking's 400 plus loaded trucks that were on the road all over the United States, and perhaps Canada and Mexico, to an immediate halt on or about December 21, 2009, without notice, TAB placed Arrow Trucking in a position where it would be subject to claims from third party shippers and their customers for failure to deliver cargo. TAB had an obligation to act reasonably to mitigate its damages and to consider Arrow Trucking's obligations as a common carrier to complete the delivery of the loaded cargo. At a minimum, TAB should have given reasonable notice to Arrow Trucking before stopping its ability to purchase fuel as a reasonable means to protect itself from damages it would incur from aggrieved customers who would no longer pay on accounts receivable purchased by TAB. TAB cannot recover, from anyone, amounts owed on invoices that would have been paid had TAB not shut down Arrow Trucking's access to fuel.

#### **Sixth Defense - Lack of Assent**

6. An enforceable contract requires the mutual assent of the contracting parties. Carol did not agree to nor did she sign the guaranty agreement attached to TAB's Complaint as Exhibit 7. As a result, the guaranty agreement is unenforceable as to Carol.

#### **Seventh Defense - Failure to Disclose Material Facts**

7. As a creditor seeking a guaranty from a surety, TAB had a duty to disclose facts that materially increased Carol's risk that Arrow Trucking would default on its obligation. TAB was aware of or had reason to know of facts, specifically fraud, that

materially increased the risk of default. Given the alleged dishonesty of the individuals involved, TAB had reason to believe Carol was not aware of these facts. TAB had adequate time and opportunity to disclose these facts to Carol but failed to do so. As a result, even if Carol had signed TAB's Exhibit 7, Carol would not be liable to TAB.

### **COUNTERCLAIMS**

Carol makes the following counterclaims against TAB:

#### **First Counterclaim – Constructive Fraud**

1. Carol incorporates the affirmative allegations in paragraphs 1-158 above and paragraphs 1-7 of her affirmative defenses.

2. By TAB concealing from Carol its actual notice of fraudulent or suspicious activity at Arrow Trucking while at the same time demanding that she pay or sign guaranties for Arrow Trucking's obligations, TAB adopted the fraud and it thereafter perpetrated a constructive fraud upon Carol.

3. TAB must account for and restore to Carol the funds it received directly or indirectly from her since the date in the summer of 2009 that TAB became aware of the fraud that it alleges.

#### **Second Counterclaim - Breach of the Covenant of Good Faith and Fair Dealing**

4. Carol incorporates the affirmative allegations in paragraphs 1-158 above and paragraphs 1-3 of her Counterclaim.

5. If TAB is allowed to enforce Exhibit 7 against Carol, Carol would be a guarantor of Arrow Trucking's obligations. As a guarantor in these circumstances, Carol can assert any claims Arrow Trucking has against TAB. TAB breached the covenant of good faith and fair dealing applicable in every contract when it, without notice, shut-off the fuel cards TAB required Arrow Trucking to use. TAB imposed the fuel card

requirement under the agreement so that TAB could monitor the collateral and Arrow's financial viability. The fuel card requirement was not intended to give TAB additional bargaining power or the power to effectively control or destroy Arrow Trucking's business. Arrow Trucking had a justified reasonable expectation that TAB would not, even if it declared a default on the contract, shut-off the fuel cards without notice because such an action would have the effect of completely destroying Arrow Trucking's business. Shutting off the fuel cards without prior notice, leaving all of the cargo transported by Arrow Trucking stranded, not to mention Arrow Trucking's drivers, was in breach of TAB's duty of good faith and fair dealing to act consistently with the agreed common purpose of the contract and Arrow Trucking's justified expectations. Arrow Trucking has a claim against TAB for damages arising from this breach along with various consequential damages. Any claim against Carol must be offset by these damages.

### **Third Counterclaim - Breach of Contract**

6. Carol incorporates the affirmative allegations in paragraphs 1-158 above and paragraphs 1-5 of her Counterclaim.

7. If TAB is allowed to enforce Exhibit 7 against Carol, Carol would be a guarantor of Arrow Trucking's obligations. As a guarantor in these circumstances, Carol can assert any claims Arrow Trucking has against TAB. The agreement between the parties required Arrow to use fuel cards issued by TAB, but did not set out any standards or terms to govern the use of the fuel cards. Given the contract's silence, use of the fuel cards is governed by reasonable terms. Given the importance of the fuel cards to Arrow Trucking's business and the required use of fuel cards provided by TAB, a reasonable

term requires, at a minimum, some advance notice before TAB can take the draconian step of shutting off Arrow Trucking's access to fuel. This requirement reasonably exists even when TAB declares a default because shutting off Arrow Trucking's access to fuel would effectively destroy the business. Arrow has a claim against TAB for damages arising from this breach along with various consequential damages. Any claim against Carol must be offset by these damages.

#### **Fourth Counterclaim –Aiding and Abetting Fraud**

8. Carol incorporates the affirmative allegations of paragraphs 1-158 above and paragraphs 1-7 of her Counterclaim.

9. In Paragraphs 27-43 of its complaint, TAB has alleged that various individuals were committing a fraud by inflating the amount owed on invoices that Arrow Trucking sold to TAB. If TAB's allegations are true, TAB provided substantial assistance to the perpetrator's of the alleged fraud by seeking guarantees of the loans from innocent, and unknowing, third parties and by failing to disclose the fraud to Carol. If TAB's allegations are true, TAB allowed the perpetrators to carry on their fraudulent scheme while continuing to make loans it hoped would be guaranteed by unknowing third parties. If TAB's allegations are true, TAB is liable to Carol for aiding and abetting the alleged fraud.

#### **Fifth Counterclaim – Attorneys Fees**

10. Carol incorporates the affirmative allegations of paragraphs 1-158 above and paragraphs 1-9 of her Counterclaim.

11. TAB has sued Carol to recover on guarantees of promissory notes which she did not sign. Pursuant to 12 Okla. Stat. § 936, Carol is entitled to recover her

attorneys fees incurred in defending this action should she be the prevailing party on those claims.

WHEREFORE, Carol demands judgment against TAB as follows:

A. That she is not liable to TAB on the Fourth Claim for Relief and that she recover reasonable attorneys fees for the defense of this claim.

B. That she is not liable to TAB on its Twelfth Claim for Relief.

C. That she is not liable to TAB on its Thirteenth Claim for Relief,

D. That she is not liable to TAB on its Fourteenth Claim for Relief.

E. For damages suffered by Carol because of the failure of TAB to timely disclose to her the facts TAB knew or had reason to know and which constitute constructive fraud.

F. For damages suffered by Carol due to TAB's aiding and abetting the fraud TAB alleges.

G. For an offset or deduction of damages, if any, awarded TAB for damages caused by TAB as a result of its untimely shutdown of Arrow Trucking's operations.

H. For her attorney's fees incurred in the defense of this action.

**DATED** this 16th day of February, 2010.

Respectfully submitted,

  
/s/ John D. Dale

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**CERTIFICATE OF MAILING**

I do hereby certify that on the 16th day of February, 2010, a true, correct and exact copy of the above and foregoing document was served by placing same in the United States mail, with proper postage thereon duly prepaid, and/or electronically through the CM/ECF filing system to those parties listed below:

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