

**Plaintiff's Memorandum in Opposition to Defendants' Rule 56(F) Motions for Continuance**  
Relevant bank account statements for Brian J. Smart and Smart Assets, LLC

# EXHIBIT 1

**Account Statement**

November 18 through December 12, 2008  
 Account Number: [REDACTED] 2964  
 Page 1 of 2



I-2

BRIAN J SMART  
 KELLI R SMART  
 2166 ASPEN WOOD LOOP  
 LEHI UT 84043-4040

Thank you for banking with Wells Fargo. For assistance, call: 1-800-TO-WELLS (1-800-869-3557), TDD number (for the hearing impaired only): 1-800-877-4833. Or write: WELLS FARGO BANK, N.A., P.O. BOX 6995, PORTLAND, OR 97228-6995.

**Wells Fargo College Checking**

Brian J Smart  
 Kelli R Smart  
 Account Number: [REDACTED] 2964

**Activity summary**

Balance on 11/17	\$0.00
Deposits	0.00
Withdrawals	-0.00
.....	
Balance on 12/12	\$0.00

**Important Updates To Overdraft Protection Plans**

Effective February 14, 2009, an Overdraft Protection transfer fee of \$10 will be assessed to your checking account for transfers from an eligible Line of Credit. There is no charge for the transfer when a Line of Credit is linked to a PMA Checking Account.

In addition, if you link both an eligible savings account and eligible credit account for overdraft protection, unless you designate the account you want the Bank to access first, the Bank will access available funds in your savings account first, and then from your eligible credit account, subject to your available credit and pursuant to the terms of the credit agreement. Personal and Portfolio Lines of Credit that are not linked to a checking account by February 13, 2009 will not be available as a source for overdraft protection.

As a reminder, tracking all of your transactions and ensuring you have sufficient funds available prior to initiating a transaction is the best way to avoid an overdraft or returned item fee.

We encourage you to contact your local banker, call Wells Fargo Phone Bank at 1-800-TO-WELLS (1-800-869-3557) or visit us online at wells Fargo.com to sign up for overdraft protection.

**Daily balance summary**

Date	\$ Balance	Date	\$ Balance	Date	\$ Balance
.....					
11/17	0.00				

Thank you for banking with Wells Fargo.



WELLS FARGO BANK, N.A.  
 P.O. BOX 6995  
 PORTLAND, OR 97228-6995

PAGE 1 of 2

Account Number: [REDACTED] 9606  
 Statement End Date: 01/31/09

SMART ASSETS LLC  
 2166 ASPEN WOOD LOOP  
 LEHI UT 84043-4040

IF YOU HAVE ANY QUESTIONS ABOUT THIS STATEMENT OR YOUR ACCOUNTS,  
 CALL: 800-225-5935 (1-800-CALL-WELLS).

-----  
**YOUR ACCOUNTS AT A GLANCE**

ACCOUNT TYPE	ENDING BALANCE
LOW ACTIVITY BUSINESS CHECKING [REDACTED] 9606	12.02

-----  
**NEWS FROM WELLS FARGO**

-----  
**LOW ACTIVITY BUSINESS CHECKING [REDACTED] 9606**

SMART ASSETS LLC

DEC 31 BEGINNING BALANCE	20.02
TOTAL DEPOSITS/CREDITS	0.00
TOTAL WITHDRAWALS/DEBITS	- 8.00
JAN 31 ENDING BALANCE	12.02

-----  
**WITHDRAWALS AND DEBITS**

POSTED DATE	TRANSACTION DETAIL	AMOUNT
JAN 30	MONTHLY SERVICE FEE	- 8.00

-----  
**DAILY BALANCE SUMMARY**

DATE	BALANCE	DATE	BALANCE
DEC 31	20.02	JAN 30	12.02

-----  
 CONTINUED ON NEXT PAGE

SMART ASSETS LLC

PAGE 2 of 2

Account Number:

██████████9606

Statement End Date:

01/31/09

---

**FOR YOUR INTEREST**

Effective April 1, 2009, the following service fees are changing:

Foreign Drafts - \$20 per order

Foreign Draft Stop Payment - \$75 each

International Item Collection (\$250 or greater) - \$55 each

Coin Order - \$0.15

Currency Order - \$1.30/\$1000

Deposit Correction - \$5

Change Order Request - \$1.25

Fax Service - \$7

Coin Deposited Sorted (Full or Partial Bag) - \$4 per bag

Coin Deposited Mixed (Full or Partial Bag) - \$7.50 per bag

WellSTAX Access Code Monthly Base - \$3.00

WellSTAX Payment - \$2.75

WellSTAX Receipt - \$2.25

For questions, please contact your Wells Fargo banker or call 1-800-225-5935.

We appreciate your business and look forward to continuing to serve your financial needs.

---

THANK YOU FOR BANKING WITH WELLS FARGO.



H

**Your Bank of America  
MyAccess Checking  
Statement**

0967 E P  
E0-1

Statement Period:  
February 26 through March 27, 2009

Account Number: [REDACTED] 0154

⋮⋮⋮⋮⋮⋮⋮⋮⋮⋮⋮⋮⋮⋮⋮⋮⋮⋮⋮⋮  
BRIAN J SMART  
KELLI RAE SMART  
2166 W ASPEN WOOD LOOP  
LEHI UT 84043

At Your Service  
Call: 714.533.4470

Written Inquiries  
Bank of America  
Lincoln-Tustin Branch  
PO Box 37176  
San Francisco, CA 94137-0176

Customer since 1999  
Bank of America appreciates your  
business and we enjoy serving you.

Our free Online Banking service allows you to check balances, track account activity, pay bills and more. With Online Banking you can also view up to 18 months of this statement online and even turn off delivery of your paper statement. Enroll at [www.bankofamerica.com](http://www.bankofamerica.com).

Summary of Your MyAccess Checking Account

Beginning Balance on 02/26/09	\$781.55	Number of ATM withdrawals and transfers	0
Total Deposits	+ 258.54	Number of purchase transactions	0
Ending Balance	\$1,040.09	Number of 24 Hour Customer Service Calls	0
		Self-Service	0
		Assisted	0

Bank of America News

Please read Bank of America Privacy Policy for Consumers 2009 carefully for important information. If you have other accounts with Bank of America you may receive more than one 2009 privacy policy notification. For more information, visit [www.bankofamerica.com/privacy](http://www.bankofamerica.com/privacy).

Account Activity

Date Posted	Description	Reference Number	Amount
03/04	Deposits and Credits The Hartford DES:Nsc Lfcomm ID: [REDACTED] 784571 INDN:Smart,Brian Co ID: [REDACTED] 218 CCD Pmt Info: 02/28/09 Hartford Life Comm EFT Ref: [REDACTED] 0827165		\$258.54

Overdraft Protection Plan


BankAmericard Visa [REDACTED] 0471

Overdraft coverage available \$500.00



H

0967 E P  
E0-1

  
 BRIAN J SMART  
 KELLI RAE SMART  
 2166 W ASPEN WOOD LOOP  
 LEHI UT 84043

**Your Bank of America  
MyAccess Checking  
Statement**

Statement Period:  
March 28 through April 28, 2009

Account Number: [REDACTED] 0154

At Your Service  
Call: 714.533.4470

Written Inquiries  
Bank of America  
Lincoln-Tustin Branch  
PO Box 37176  
San Francisco, CA 94137-0176

Customer since 1999  
Bank of America appreciates your  
business and we enjoy serving you.

Our free Online Banking service allows you to check balances, track account activity, pay bills and more. With Online Banking you can also view up to 18 months of this statement online and even turn off delivery of your paper statement. Enroll at [www.bankofamerica.com](http://www.bankofamerica.com).

**Summary of Your MyAccess Checking Account**

Beginning Balance on 03/28/09	\$1,040.09	Number of ATM withdrawals and transfers	0
Total Deposits	+ 258.17	Number of purchase transactions	0
Ending Balance	\$1,298.26	Number of 24 Hour Customer Service Calls	
		Self-Service	0
		Assisted	0

**Important Information About Your Account**

Important Information: Please see the enclosed brochure for information about upcoming pricing changes to some deposit accounts. In addition, we've included information on how to help prevent or minimize deposit fees as well as details on improvements we've made to serve you better. If you would like more information, visit [bankofamerica.com/pricingchanges](http://bankofamerica.com/pricingchanges)

**Account Activity**

Date Posted	Description	Reference Number	Amount
04/01	<b>Deposits and Credits</b> The Hartford DES:Nsc Lfcomm ID: [REDACTED] 4571 INDN:Smart,Brian Co ID: [REDACTED] 0218 CCD Pmt Info: 03/29/09 Hartford Life Comm EFT Ref: [REDACTED] 847611		\$258.17

**Overdraft Protection Plan**

BankAmericard Visa [REDACTED] -0471 Overdraft coverage available \$500.00



H

**Your Bank of America  
MyAccess Checking  
Statement**

0967 E P  
E0-2

Statement Period:  
April 29 through May 27, 2009

Account Number: [REDACTED] 0154

|||||  
BRIAN J SMART  
KELLI RAE SMART  
2166 ASPEN WOOD LOOP  
LEHI UT 84043

At Your Service  
Call: 714.533.4470

Written Inquiries  
Bank of America  
Lincoln-Tustin Branch  
PO Box 37176  
San Francisco, CA 94137-0176

Customer since 1999  
Bank of America appreciates your  
business and we enjoy serving you.

Our free Online Banking service allows you to check balances, track account activity, pay bills and more. With Online Banking you can also view up to 18 months of this statement online and even turn off delivery of your paper statement. Enroll at [www.bankofamerica.com](http://www.bankofamerica.com).

Summary of Your MyAccess Checking Account

Beginning Balance on 04/29/09	\$1,298.26	Number of ATM withdrawals and transfers	0
Total Deposits	+ 223.91	Number of purchase transactions	0
Ending Balance	\$1,522.17	Number of 24 Hour Customer Service Calls	
		Self-Service	0
		Assisted	0

Important Information About Your Account

Recently we informed you that we were raising our Overdraft Item Fee and NSF: Returned Item Fee to \$39. After careful consideration of the many factors currently impacting the economy, our business and our customers, we have made a decision to leave our Overdraft Item Fee and NSF: Returned Item Fee at \$35 per item. Visit [bankofamerica.com/pricingchanges](http://bankofamerica.com/pricingchanges).

Bank of America News

Your Security Protection Partner: Bank of America works 24/7 to help protect your personal and financial information. You have peace of mind knowing you are backed by award winning information security services. For more information on our industry leading security, go to [www.bankofamerica.com/privacy](http://www.bankofamerica.com/privacy). Thanks for being a customer.

Account Activity

Date Posted	Description	Reference Number	Amount
04/29	Deposits and Credits The Hartford DES:Nsc Lfcomm ID: [REDACTED] 84571 INDN:Smart,Brian Co ID: [REDACTED] 60218 CCD Pmt Info: 04/26/09 Hartford Life Comm EFT Ref: [REDACTED] 066595		\$223.91

Continued on next page

California

BRIAN J SMART  
KELLI RAE SMART

Statement Period: April 29 through May 27, 2009  
Account Number: [REDACTED] 0154

---

**Overdraft Protection Plan**

BankAmericard Visa [REDACTED] 0471

Overdraft coverage available \$500.00



H

**Your Bank of America  
MyAccess Checking  
Statement**

0967 E P  
E0-2

Statement Period:  
May 28 through June 26, 2009

Account Number: [REDACTED] 0154



BRIAN J SMART  
KELLI RAE SMART  
2166 ASPEN WOOD LOOP  
LEHI UT 84043

At Your Service  
Call: 714.533.4470

Written Inquiries  
Bank of America  
Lincoln-Tustin Branch  
PO Box 37176  
San Francisco, CA 94137-0176

Customer since 1999  
Bank of America appreciates your  
business and we enjoy serving you.

Our free Online Banking service allows you to check balances, track account activity, pay bills and more. With Online Banking you can also view up to 18 months of this statement online and even turn off delivery of your paper statement. Enroll at [www.bankofamerica.com](http://www.bankofamerica.com).

Summary of Your MyAccess Checking Account

Beginning Balance on 05/28/09	\$1,522.17	Number of ATM withdrawals and transfers	0
Total Deposits	+ 279.66	Number of purchase transactions	0
Total Checks, Withdrawals, Transfers, Account Fees	- 1,800.00	Number of 24 Hour Customer Service Calls Self-Service	0
Ending Balance	\$1.83	Assisted	0

Bank of America News

Parents, want your teen to learn about finances? Ask them to visit our Web site, [bankofamerica.com/studentcode](http://bankofamerica.com/studentcode). It's a free and easy way to learn good money management skills, how to create a budget, etc. And by visiting a local banking center, your teen can sign up for our Student Package, featuring CampusEdge® Checking and award-winning Online Banking.

Account Activity

Date Posted	Description	Reference Number	Amount
06/03	<b>Deposits and Credits</b> The Hartford DES:Nsc Lfcomm ID: [REDACTED] 84571 INDN:Smart,Brian Co ID: [REDACTED] 0218 CCD Pmt Info: 05/31/09 Hartford Life Comm EFT Ref: [REDACTED] 12169		\$279.66
06/08	<b>Withdrawals, Transfers and Account Fees</b> Smart,Kelli DES:Ing Direct ID: [REDACTED] 1264 INDN:Smart,Kelli Co ID: [REDACTED] 94779 PPD Ref: [REDACTED] 550625		\$1,800.00

Continued on next page

California

BRIAN J SMART  
KELLI RAE SMART

Statement Period: May 28 through June 26, 2009  
Account Number: [REDACTED] 154

---

**Overdraft Protection Plan**

BankAmericard Visa [REDACTED]-0471

Overdraft coverage available \$500.00



H

**Your Bank of America  
MyAccess Checking  
Statement**

0967 E P  
E0-2

Statement Period:  
June 27 through July 29, 2009

Account Number: [REDACTED] 154

At Your Service  
Call: 714.533.4470

Written Inquiries  
Bank of America  
Lincoln-Tustin Branch  
PO Box 37176  
San Francisco, CA 94137-0176

Customer since 1999  
Bank of America appreciates your  
business and we enjoy serving you.



BRIAN J SMART  
KELLI RAE SMART  
2166 ASPEN WOOD LOOP  
LEHI UT 84043

Our free Online Banking service allows you to check balances, track account activity, pay bills and more. With Online Banking you can also view up to 18 months of this statement online and even turn off delivery of your paper statement. Enroll at [www.bankofamerica.com](http://www.bankofamerica.com).

Summary of Your MyAccess Checking Account

Beginning Balance on 06/27/09	\$1.83	Number of ATM withdrawals and transfers	0
Total Deposits	+ 271.28	Number of purchase transactions	0
Total Checks, Withdrawals, Transfers, Account Fees	- 273.11	Number of 24 Hour Customer Service Calls Self-Service	0
Ending Balance	\$0.00	Assisted	0

Bank of America News

Parents, want your teen to learn about finances? Ask them to visit our Web site, [bankofamerica.com/studentcode](http://bankofamerica.com/studentcode). It's a free and easy way to learn good money management skills, how to create a budget, etc. And by visiting a local banking center, your teen can sign up for our Student Package, featuring CampusEdge® Checking and award-winning Online Banking.

Account Activity

Date Posted	Description	Reference Number	Amount
07/01	<b>Deposits and Credits</b> The Hartford DES:Nsc Lfcomm ID: [REDACTED] 84571 INDN:Smart,Brian Co ID: [REDACTED] 0218 CCD Pmt Info: 06/28/09 Hartford Life Comm EFT Ref: [REDACTED] 692		\$271.28
07/06	<b>Withdrawals, Transfers and Account Fees</b> Smart,Kelli DES:Ing Direct ID: [REDACTED] 264 INDN:Smart,Kelli Co ID: [REDACTED] 4779 PPD Ref: [REDACTED] 26547		\$273.00
07/09	Legal Order, Lts L [REDACTED] 0956		.11
	<b>Total Withdrawals, Transfers and Account Fees</b>		<b>\$273.11</b>

Continued on next page

California

BRIAN J SMART  
KELLI RAE SMART

Statement Period: June 27 through July 29, 2009  
Account Number: [REDACTED] 0154

---

Overdraft Protection Plan

---

BankAmericard Visa [REDACTED]-0471

Overdraft coverage available \$500.00