UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

HAYMOUNT URGENT CARE PC, AND ROBERT A. CLINTON, JR., INDIGO INSTALLATIONS, INC. AND CHRISTOPHER A. TURRENTINE, individually, and on behalf of all those similarly situated, Plaintiffs, v. GOFUND ADVANCE, LLC; FUNDING 123, LLC; MERCHANT CAPITAL LLC; ALPHA RECOVERY PARTNERS, LLC; YITZCHOK ("ISAAC") WOLF; JOSEF BREZEL; JOSEPH KROEN; AND YISROEL C. GETTER, Defendants.	Civ. A. No. 1:22-cv-01245-JSR

AMENDED CLASS ACTION COMPLAINT

Plaintiffs Haymount Urgent Care PC, Robert A. Clinton, Jr., MD., Indigo Installations, Inc. ("Indigo"), and Christopher A. Turrentine ("Turrentine") (collectively "Plaintiffs"), individually and on behalf of all those similarly situated, as and for their Complaint against GoFund Advance, LLC, ("GoFund"), Funding 123, LLC ("Funding 123"), Merchant Capital, LLC ("Merchant Capital"), Alpha Recovery Partners, LLC ("Alpha Recovery"); Yitzchok (a/k/a Isaac) Wolf ("Wolf"), Joseph Kroen ("Kroen") and Yisroel C. Getter ("Getter") (collectively "Defendants"), state as a follows:

NATURE OF THE ACTION

1. This is a class action against several related merchant cash advance ("MCA") companies that are controlled and manipulated by Defendants Wolf, Brezel, Kroen and Getter, to carry out a fraudulent scheme to collect upon unlawful debts and otherwise fraudulently obtain

funds from Plaintiffs and hundreds of other similarly situated victims through the use of their sham MCA agreements as further defined below ("MCA Agreements").

2. Unfortunately, the type of conduct by Defendants here is a ballooning national problem that has raised the attention of both state and federal regulators.

3. In November 2018, Bloomberg News and renowned journalist Bethany McLean (of Vanity Fair acclaim) published what would be the first in a series of groundbreaking news articles exposing the abuses of the MCA industry, and its use of confessions of judgments to seize out-of-state bank accounts.[1]

4. The New York Legislature quickly took action, banning the use of out-of-state confessions of judgment in September 2019. In support, the Legislature cited Bloomberg News.

5. More recently, on February 10, 2022, Bloomberg News exposed a new tactic being abused by the predatory MCA industry, and in particular, Defendants here. *See* Exs. 1-2.

6. Specifically, Defendants operate out of New York but abuse an apparent loophole under Connecticut procedural law to collect upon their unlawful debts. In doing so, Defendants freeze out-of-state bank accounts by simply serving legal papers (which have not been reviewed or scrutinized by any court) on a bank that has a branch located in Connecticut. As justification for their bank freezes, Defendants represent and attest under oath that their small business victims owe them a debt and that Defendants are unaware of any defenses to their claims.

7. According to Bloomberg News, this Connecticut loophole was used more than 180 times just last year. The result of this tactic is often catastrophic because Defendants can freeze out-of-state bank accounts without any notice whatsoever. Once frozen, Defendants can then

[1] *https://www.yahoo.com/entertainment/merchant-cash-advances-salvation-small-businesses-payday-lending-reincarnate-161835117.html ; https://www.bloomberg.com/confessions-of-judgment*

extort payment under duress due to their victims' need to save payroll or pay other necessary business expenses, such as insurance, taxes, rent and inventory.

8. This tactic is especially harsh because even when the small business victim capitulates to Defendant's extortionate demands, it is often too late because the release of those bank accounts may take days to unfreeze due to the processing delays and procedural constraints of individual banks and their levy departments.

9. In doing so, Defendants violated 42 U.S.C. § 1983 by violating their Fourteenth Amendment right to Due Process under the color of Connecticut state law. Among these intentional violations of due process, Defendants, like here, knowingly and purposely issue Prejudgment Writs of Attachment to third-party banks without first filing a complaint in state court, and without serving notice upon Defendants. Instead, Defendants require Plaintiffs to execute form contracts of adhesion waiving their rights to a hearing, while at the same time agreeing to the jurisdiction of three different states, Connecticut, New York, and Texas. Thus, the first notice received by Plaintiffs is when their bank accounts become frozen.

10. In addition to freezing bank accounts, Defendants also collect upon their unlawful debts by sending UCC Lien Notices to third parties, through Defendant Alpha Recovery, demanding the third party to pay Defendants and falsely representing that if the third party does not comply that it will result in the third-party "paying the obligation twice," and threatening the "time, expense and inconvenience which would inevitably accompany a formal legal proceeding." *See*, *e.g.*, Ex. 3.

11. In doing so, Defendants attempt to give the false impression that Alpha Recovery is an independent debt collector when, in fact, they are just an arm of the MCA companies.

12. And Defendants are not even good at their sham. On the cover letter, Alpha Recovery purports to have an address of 1247 49th Street, STE 197, Brooklyn, N.Y. and GoFund Advance purports to have an address of 5308 13th Ave. STE 324, Brooklyn, N.Y.

13. But the UCC filing they attach only further reveals the fraud. Under Section 3, the UCC lists the Secured Party's Name as "Go Fund," and the address listed is 1247 49th Street, STE 197, Brooklyn, NY—the very same address at Alpha Advance.

14. But the sham gets better. Just last month, Florence D. Zaboritsky, Esq. of Alpha Advance, filed a summons and complaint in Kings County, N.Y. representing to a New York court that GoFund Advance was a limited liability company organized under the laws of New York and that it had an address of 5308 13th Ave, STE 324, Brooklyn, N.Y. *See* Ex. 4.

15. That is quite curious. On January 24, 2022, the same Go Fund Advance LLC filed an annual report in the State of Connecticut representing that it was a Connecticut LLC and that its principal place of business was located at 500 West Putnam Ave. in Greenwich, Connecticut. The same filing lists Defendant Kroen as previous member of the company. *See* Ex. 5.

16. Apparently neither of the locations represented by counsel is accurate. Unless, of course, Defendants operate out of mailbox store. Below is the 5308 13th Ave location:

17. And below is the 1247 49th Street location:

18. As it turns out, Bloomberg News was spot on. Defendants do in fact operate a series of related predatory lending companies out of Brooklyn, N.Y., such as Merchant Capital, Matrix Advance, GoFund, and Bridge Funding Cap, as well as others identified herein, but fraudulently represent to governmental agencies that those companies operate out of Connecticut solely so that they can abuse the Connecticut loophole exposed by Bloomberg News. *See* Ex. 2.

19. To be sure, a simple search of the public docket from the State of Connecticut Superior Court confirms that Defendants have, in fact, filed numerous actions under these company names. *See* Ex. 6.

20. As further reported by Bloomberg News, Defendants purportedly act under the direction of a former drug trafficker who recently had his federal prison sentence commuted by President Trump without utilizing the safeguards and review process typically employed by U.S. Presidents. *See* Ex. 1. The individual defendants are purportedly all relatives of John Braun.

21. Bloomberg News is not alone in alleging that Braun is part of an unlawful loansharking scheme. The Federal Trade Commission and the New York State Attorney General

have each likewise accused Braun of loansharking, fraud, and other heinous collection tactics, including threats of physical violence. *See* Exs. 7-8.

22. Plaintiffs here are representatives of Defendants' unlawful lending practices.

23. Plaintiff Haymount is an urgent care center in North Carolina that desperately needed a cash infusion to help combat the recent Omicron surge.

24. From August 25, 2021 through February 17, 2022, Defendants advanced a total of $3,080,000 and collected $4,601,407. That is an effective interest rate exceeding 100%. The maximum interest rate permitted under the criminal usury laws of New York is 25%. That is four times the amount allowed under the criminal laws of this State.

25. The interest rate is even far worse than 100% due to Defendants' typical scheme of only advancing a portion of the amount promised, and then lending the merchant back its money, at a criminally usurious interest rate.

26. For example, in the last transactions involving Plaintiff Haymount, Defendant GoFund promised to advance $1,000,000 but only advanced $400,000, and only after Haymount had paid back nearly $800,000, did GoFund advance another $400,000.

27. In addition to shorting Plaintiff Haymount on the amounts advance, Defendants also over collected on prior transactions in the hundreds of thousands of dollars.

28. Apparently, Defendants' greed knows no bounds. After collecting more than $1.6 million in criminally usurious interest from Plaintiffs, Defendants had the temerity to send a UCC Lien Notice to Plaintiff Haymount's largest claim administer—demanding another $488,928.23.

29. Plaintiff Indigo is a contractor out of Texas and experienced similar treatment.

30. Originally, Defendant GoFund promised to advance $40,000 in exchange for a payback of $63,960 at $2,200 per day.

31. But that is not what happened. Instead, Defendant GoFund deposited $14,000 on February 2, 2022, and only after Plaintiff Indigo had already paid back $24,200 within 11 business days, did GoFund deposit another $14,000 on February 18, 2022.

32. The total payback? A whopping $127,920. That is correct. GoFund advanced a total of $28,000 and duped Plaintiff Indigo into executing two separate agreements requiring it to payback $127,920—at $2,200 per day.

33. And when Plaintiff Indigo finally realized it had been tricked by blocking further debits, Defendants responded by utilizing the Connecticut loophole exposed by Bloomberg News to freeze Plaintiff Indigo's bank account located in McKinney, Texas.

34. Defendants similarly sent a UCC Lien letter to one of Plaintiff Indigo's customers, demanding immediate payment of $31,360. *See* Ex. 9.

35. Immediately upon freezing Plaintiff Indigo's bank account, Defendants attempted to extort more money from Plaintiff Indigo.

36. On March 3, 2022, Defendants, through the same attorney identified by Bloomberg News, sent Plaintiff Indigo a bank release based on purported settlement that had been reached with Defendants. *See* Ex. 10.

37. No settlement had been reached. Instead, it was an extortion attempt to obtain $7,702 through the threat of financial duress in violation of the Hobbs Act, 18 U.S.C § 1951.

38. Like others similarly situated, Defendants ultimately extorted a settlement under duress by conditioning the release of their unlawful restraint on the PNC Bank account and UCC Lien Notices on additional payment and a release of the very claims at issue.

39. Plaintiffs now bring this action on behalf of Plaintiffs and those similarly situated, to permanently enjoin Defendants from their myriad unlawful practices.

THE PARTIES

40. Plaintiff Haymount Urgent Care, P.C., is a North Carolina professional corporation organized under the laws of the state of North Carolina, with its principal place of business located in North Carolina.

41. Plaintiff Robert A. Clinton Jr., MD is an individual and citizen of North Carolina.

42. Plaintiff Indigo Installations, Inc. is a corporation duly organized under the laws of Texas, with its principal place of business located in McKinney, Texas.

43. Plaintiff Christopher A. Turrentine in an individual and citizen of Texas.

44. Defendant GoFund Advance, LLC is a limited liability company organized under the laws of Connecticut with its principal place of business located somewhere in Brooklyn, N.Y.

45. Defendant Funding 123, LLC is a limited liability company organized under the laws of Connecticut with its principal place of business located somewhere in Brooklyn, N.Y.

46. Defendant Merchant Capital, LLC is a limited liability company organized under the laws of Connecticut with its principal place of business located somewhere in Brooklyn, N.Y.

47. Defendant Alpha Recovery Partners, LLC is a limited liability company organized under the laws of New York with its principal place of business somewhere in Brooklyn, N.Y.

48. Defendant Isaac Wolf is an individual and citizen of Brooklyn, New York.

49. Defendant Yisroel C. Getter is an individual and citizen of Brooklyn, New York.

50. Defendant Josef Brezel is an individual and citizen of Brooklyn, New York.

51. Defendant Joseph Kroen is an individual and citizen of Brooklyn, New York.

JURISDICTION

52. Each Defendant is subject to the personal jurisdiction of this Court because each Defendant regularly transacts business within the State of New York, has purposefully availed itself of the laws of New York for the specific transactions at issue, or has selected New York as the forum for all disputes related to the transactions.

53. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d)(2), because (i) at least one member of the Class is a citizen of a different state than Defendants, (ii) the amount in controversy exceeds $5,000,000 exclusive of interest and costs, and (iii) none of the exceptions under that subsection apply to this action.

54. This Court has subject-matter jurisdiction over this dispute pursuant to 28 U.S.C. § 1331 based on Plaintiffs' claims for violations of the Racketeer Influenced and Corruption Organizations Act, 18 U.S. C. §§ 1961–68 ("RICO").

55. The Court has subject-matter jurisdiction over Plaintiffs' state-law claims because they are so related to Plaintiffs' federal claims that they form part of the same case or controversy under Article III of the United States Constitution.

56. This Court has original jurisdiction based upon 28 U.S.C. § 1332(a) because no Plaintiff is a citizen of the same state as Defendant and the amount in controversy exceeds, exclusive of interest and costs, the sum of $75,000.

57. This Court also has jurisdiction under 28 U.S.C. § 2201 *et. seq.*

58. Venue is proper because each Defendant regularly conducts business within this judicial district.

COMMON FACTUAL ALLEGATIONS

A. The Predatory MCA Industry.

59. The MCA Industry spawned from the 2008 Financial Crisis. One of the earliest MCA companies, Yellowstone Capital LLC, was co-founded in 2009 by David Glass, an inspirational character for the movie "Boiler Room."[2] As Mr. Glass confessed to Bloomberg News, "it's a lot easier to persuade someone to take money than to spend it buying stock." Just like in the movie, MCA companies utilize high-pressure boiler room tactics, employing salespersons with absolutely no financial background whatsoever.

60. As Bloomberg previously reported, the MCA Industry is "essentially payday lending for businesses," and "interest rates can exceed 500 percent a year, or 50 to 100 times higher than a bank's."[3] The MCA Industry is a breeding ground for "brokers convicted of stock scams, insider trading, embezzlement, gambling, and dealing ecstasy." *Id.* As one of these brokers admitted, the "industry is absolutely crazy. … There's lots of people who've been banned from brokerage. There's no license you need to file for. It's pretty much unregulated." *Id.*

B. The Sham.

61. Many states, like New York, have laws prohibiting the predatory interest rates. In order to evade these criminal usury laws, MCA companies disguise their agreements as "purchases of future receivables." MCA companies promote a fiction that, rather than making loans to merchants, they are purchasing, at a discount, a fixed amount of the merchant's future receivables, usually to be repaid through a fixed daily or weekly payment that purportedly represents a percentage of the merchant's receipts. The form of the contract thus allows MCAs to represent to

[2] https://www.sec.gov/litigation/admin/2008/34-58574.pdf
[3] https://www.bloomberg.com/news/articles/2014-11-13/ondeck-ipo-shady-brokers-add-risk-in-high-interest-loans.

courts that they, not the merchants, assume the risk that the merchants will fail to generate receivables. But the picture they paint is contrary to reality. By operation of their agreements' default rights and remedies, the MCA companies exert complete control over the relationship and compel their merchants to make the fixed payments or suffer the consequences.

C. The Bloomberg Awakening.

62. For nearly a decade, MCAs operated under the radar of regulators, compiling over 25,000 confessions of judgment against small businesses and their individual owners. That all changed on November 20, 2018 when Bloomberg News and renowned journalist Bethany McLean published what would be the first in a series of groundbreaking news articles exposing the abuses of the predatory MCA industry.[4]

63. As a direct result of the light shined on these abuses, the New York Legislature quickly enacted legislation extinguishing their weapon of mass destruction, the confession of judgment, expressly citing the Bloomberg articles as its inspiration.

64. Congress also took notice. On June 26, 2019, the United States House of Representatives held a hearing titled: "Crushed by Confessions of Judgment: the Small Business Story." As explained by Professor Hosea Harvey, a contracts expert from Temple University, small businesses are just as susceptible to predatory lending as unsophisticated individuals.[6]

65. Regulators have also taken action. On July 31, 2020, the New York Attorney General brought suit against a group of MCA companies, as well as their principals, alleging that their MCA agreements constitute criminally usurious loans.[7]

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[4] *https://www.yahoo.com/entertainment/merchant-cash-advances-salvation-small-businesses-payday-lending-reincarnate-161835117.html*

[6] https://www.congress.gov/event/116th-congress/house-event/LC64251/text?s=1&r=60

[7] https://ag.ny.gov/press-release/2020/attorney-general-james-sues-predatory-lender-threatened-violence-and-kidnapping

66. On July 31, 2020, the Securities and Exchange Commission shut down an MCA company. In its complaint, the SEC alleged that Par Funding "made opportunistic loans, some of which charged more than 400% interest, to small businesses across America."[8] The FBI thereafter raided its offices, confiscating a cache of guns, millions of dollars in cash, and a private airplane.[9]

67. On June 10, 2020, the Federal Trade Commission filed a complaint against John Braun and his various companies alleging various fraudulent and deceptive practices in connection with MCAs. *See* Ex. 6.[10]

68. On August 3, 2020, the Federal Trade Commission filed a complaint against Yellowstone.[11] Notably, the FTC complained that Yellowstone "unlawfully withdrew millions of dollars in excess payments from their customers' accounts, and to the extent they provided refunds, sometimes took weeks or even months to provide them." *Id.*

69. On November 10, 2020, the California Commission of Financial Protection and Innovation entered into a Consent Order with Allup Financial LLC, finding that its MCA agreements were lending transactions subject to the California Finance Lenders Law, and barring the MCA company from doing business in California unless and until it complies with its laws.[12]

70. On December 8, 2020, the New Jersey Attorney General also filed suit against Yellowstone, alleging it cheated "financially-strapped small businesses and their owners out of millions of dollars nationwide by luring them into predatory loans disguised as cash advances on

[8] https://www.sec.gov/litigation/litreleases/2020/lr24860.htm
[9] https://www.inquirer.com/news/par-funding-better-financial-plan-joseph-laforte-dean-vagnozzi-20200731.html
[10] https://www.ftc.gov/system/files/documents/cases/192_3252_rcg_advances_-_complaint.pdf
[11] https://www.ftc.gov/news-events/press-releases/2020/08/ftc-alleges-merchant-cash-advance-provider-overcharged-small
[12] https://dfpi.ca.gov/wp-content/uploads/sites/337/2020/11/Consent-Order-Allup-Finance-LLC.pdf.

future receivables with interest rates far exceeding the interest rate caps in the State's usury laws."[13]

71. On December 23, 2020, New York signed into law the Small Business Truth in Lending Law, which is aimed at "protecting small business owners," and "requires key financial terms such as the amount financed, fees and annual percentage rate (APR) to be disclosed at the time a credit provider or broker makes an offer of financing of $500,000 or less."[14]

72. As Gretchen Morgensen of NBC News recently reported, however, the financial greed of predatory lenders, like Defendants, has only accelerated in the wake of Covid-19.[15]

D. The Sea Change in Law.

73. Prior to the Bloomberg Awakening, courts routinely rejected attempts by small business victims seeking to vacate the many thousands of confessions of judgments filed by MCA companies. Courts primarily denied those attempts on the procedural basis that a plenary action must be filed instead of merely seeking to vacate by motion. One court went so far as to sanction the attorney for even bringing the motion. *See, e.g., Yellowstone Capital LLC v. Central USA Wireless LLC*, 2018 N.Y. Misc. LEXIS 2516, *2 (N.Y. Sup. Ct., Erie Cty Jun. 25, 2018) (citing *Yellowstone Capital, LLC v. Jevin*, Index No. 802457/2017 (N.Y. Sup. Ct. Erie Co. Oct. 6, 2017)).

74. The tide has since turned in the wake of the Bloomberg articles. Most notable is the decision by Judge Nowak, a Commercial Division Justice out of Erie County—a favorite forum for MCAs given Upstate New York's more conservative political leanings. *See McNider Mar., LLC v Yellowstone Capital, LLC*, 2019 N.Y. Misc. LEXIS 6165 (N.Y. Sup. Ct., Erie Cty Nov. 19,

[13] https://www.njoag.gov/ag-grewal-files-suit-against-yellowstone-capital-llc-and-associated-companies-alleging-the-merchant-cash-advance-companies-targeted-small-businesses-with-predatory-lending-and-abusive-collection-pract/

[14] https://www.jdsupra.com/legalnews/gov-cuomo-signs-new-york-small-business-9450503/

[15] https://www.nbcnews.com/business/economy/feds-crack-down-lenders-targeting-small-businesses-high-interest-loans-n1236167, Aug. 11, 2020.

2019). Notably, Judge Nowak reversed his own prior decision in *Yellowstone Capital, LLC v. Jevin, supra*, where he previously held that the very same Yellowstone agreement was not a loan as a matter of law. This time, upon further reflection, Judge Nowak not only upheld the claims of usury, but also upheld the RICO claims. Numerous courts have followed suit. *See, e.g., Davis v. Richmond Capital Group*, 194 A.D.3d 516 (1st Dept. 2021); *NRO Boston LLC v. Yellowstone Capital LLC*, 2021 N.Y. Misc. LEXIS 1892 (Rockland Cty, April 9, 2021) (upholding RICO claims); *LG Funding LLC v. United Senior Properties of Olathe LLC*, 122 N.Y.S.3d 309 (2d Dep't. 2020);; *American Resources Corp. v. C6 Capital, LLC*, 2020 N.Y. Misc. LEXIS 10725, *6 (N.Y. Sup. Ct., Kings Cty. Dec. 16, 2020); *Funding Metrics LLC v. NRO Boston*, 2019 N.Y. Misc. LEXIS 4878 (N.Y. Sup. Westch. Cty. Aug. 28, 2019); *Funding Metrics, LLC v. D & V Hospitality*, 62 Misc.3d 966 (N.Y. Sup. Westch. Cty. Jan. 7, 2019), *rev'd on other grounds*.

75. Numerous federal courts have also joined the revolution. *See Fleetwood Servs., LLC v. Ram Capital Funding LLC*, 2021 U.S. Dist. LEXIS 94381 (S.D.N.Y. 2021) (upholding RICO claims under MCA agreement); *Fleetwood Servs., LLC v. Complete Bus. Sols. Grp.*, 374 F.Supp.3d 361 (E.D. Pa. 2019) (same); *NRO Boston v. Funding Metrics*, 2018 U.S. Dist. LEXIS 239152 (E.D. Pa. May 23, 2018) (same); *Davis v. Richmond Capital Group*, 194 A.D.3d 516 (1st Dept. 2021); *NRO Boston LLC v. Yellowstone Capital LLC*, 2021 N.Y. Misc. LEXIS 1892 (Rockland Cty, April 9, 2021) (upholding RICO claims).

76. So has New York's highest court. Most notably, a member of New York's highest court, just recently advised in *dicta* that MCA transactions, like here, more closely resemble loans subject to New York's usury laws rather than bona fide sales of receivables:

> Although the GTR and CMS agreements are described as 'factoring' agreements, they do not bear several of the hallmarks of traditional factoring arrangements, in that FutureNet did not sell any identifiable receivable to GTR or CMS; GTR and CMS did not collect any receivables; GTR and

> CMS received fixed daily withdrawals from FutureNet's bank account regardless of whether or how much FutureNet collected from or billed to its clients; and GTR and CMS did not bear the risk of nonpayment by any specific customer of FutureNet. The arrangements FutureNet entered with GTR and CMS appear less like factoring agreements and more like high-interest loans that might trigger usury concerns (*see Adar Bays, LLC v GeneSYS ID*, NE3d, 2021 NY Slip Op 05616 [2021]). Nevertheless, for the purpose of these certified questions, we are asked to assume the judgments rendered on those agreements are valid.

Plymouth Venture Partners, II, L.P. v. GTR Source, LLC, 2021 N.Y. LEXIS 2577, *45, 2021 NY Slip Op 07055, 11, 2021 WL 5926893 (N.Y. Dec. 16, 2021).

E. The MCA Agreements are Substantively And Procedurally Unconscionable.

77. The MCA Agreements are unconscionable contracts of adhesion that are not negotiated at arms-length.

78. Instead, the MCA Agreements contain one-sided terms that prey upon the desperation of the small business and their individual owners and help conceal the fact that each of the transactions, including those involving the Plaintiffs, are really loans.

79. Among these one-sided terms, the MCA Agreements include: (1) a provision giving the MCA company the irrevocable right to withdraw money directly from the merchant's bank accounts, including collecting checks and signing invoices in the merchant's name, (2) a provision preventing the merchant from transferring, (3) moving or selling the business or any assets without permission from the MCA company, (4) a one-sided attorneys' fees provision obligating the merchant to pay the MCA company's attorneys' fees but not the other way around, (5) a venue and choice-of-law provision requiring the merchant to litigate in a foreign jurisdiction under the laws of a foreign jurisdiction, (6) a personal guarantee, the revocation of which is an event of default, (7) a jury trial waiver, (8) a class action waiver, (9) a collateral and security agreement providing a UCC lien over all of the merchant's assets, (10) a prohibition of obtaining financing

from other sources, (11) the maintenance of business interruption insurance, (12) an assignment of lease of merchant's premises in favor of the MCA company, (13) the right to direct all credit card processing payments to the MCA company, (14) a power-of-attorney to settle all obligations due to the MCA Company and (15) a power of attorney authorizing the MCA company to "file any claims or taken any action or institute any proceeding…"

80. The MCA Agreements are also unconscionable because they contain numerous knowingly false statements. Among these knowingly false statements are that: (1) the transaction is not a loan, (2) the daily payment is a good-faith estimate of the merchant's receivables, (3) the fixed daily payment is for the merchant's convenience, (4) that the automated ACH program is labor intensive and is not an automated process, requiring the MCA company to charge an exorbitant ACH Program Fee or Origination Fee.

81. The MCA Agreements are also unconscionable because they are designed to fail. Among other things, the MCA Agreements are designed to result in a default in the event that the merchant's business suffers any downturn in sales by preventing the merchant from obtaining other financing and requiring the merchant to continuously represent and warrant that there has been no material adverse changes, financial or otherwise, in such condition, operation or ownership of Merchant.

82. The MCA Agreements also contain numerous improper penalties that violate New York's strong public policy. Among these improper penalties, the MCA Agreements (1) entitle the MCA company to attorneys' fees, (2) accelerate the entire debt upon an Event of Default, and (3) require the merchant to turn over 100% of all of its receivables if it misses just one fixed daily payment.

83. The Daily Payments under each of the MCA Agreements described below were

fixed and absolute and each of the agreements' reconciliation provisions were a sham.

84. Defendants did not maintain reconciliation departments and did not have any one trained or otherwise dedicated to performing any reconciliation of a merchant's accounts. Indeed, the MCA Agreements did not contain any functioning contact information whereby Plaintiffs could even request a reconciliation within the terms of that provision.

85. The terms of the reconciliation provisions further reveal the sham.

N. The Enterprise Intentionally Disguised the True Nature of the Transaction.

86. Despite the documented form, the Transaction is, in economic reality, loans that are absolutely repayable. Among other hallmarks of a loan:

(a) The Daily Payments were fixed and the so-called reconciliation provision was mere subterfuge to avoid this state's usury laws. Rather, just like any other loan, the Purchased Amount was to be repaid within a specified time;

(b) The default and remedy provisions purported to hold the merchants absolutely liable for repayment of the Purchased Amount. The loans sought to obligate the merchants to ensure sufficient funds were maintained in the Account to make the Daily/Weekly Payments and, after a certain number of instances of insufficient funds being maintained in the Account, the merchants were in default and, upon default, the outstanding balance of the Purchased Amount became immediately due and owing;

(c) While the agreements purport to "assign" all of the merchant's future account receivables to the Enterprise until the Purchased Amount was paid, the merchants retained all the indicia and benefits of ownership of the account receivables including the right to collect, possess and use the proceeds thereof. Indeed, rather than purchasing receivables, the Enterprise merely acquired a security interest in the merchant's accounts to secure payment of the Purchased Amount;

(d) The transaction was underwritten based upon an assessment of the merchant's credit worthiness; not the creditworthiness of any account debtor;

(e) The Purchased Amount was not calculated based upon the fair market value of the merchant's future receivables, but rather was unilaterally dictated by the Enterprise based upon the interest rate it wanted to be paid. Indeed, as part of the underwriting process, the Enterprise did not request any information concerning the merchant's account debtors upon which to make a fair market determination of their value;

(f) The amount of the Daily Payments was determined based upon when the Enterprise wanted to be paid, and not based upon any good-faith estimate of the merchant's future account receivables;

(g) The Enterprise assumed no risk of loss due to the merchant's failure to generate sufficient receivables because the failure to maintain sufficient funds in the Account constituted a default under the agreements;

(h) The Enterprise required that the merchants to undertake certain affirmative obligations and make certain representations and warranties that were aimed at ensuring the company would continue to operate and generate receivables and a breach of such obligations, representations and warranties constituted a default, which fully protected the Enterprise from any risk of loss resulting from the merchant's failure to generate and collect receivables.

(i) The Enterprise required that the merchant grant it a security interest in its receivables and other intangibles and, further that the individual owners personally guarantee the performance of the representations, warranties and covenants, which the Enterprise knew were breached from day one.

FACTS SPECIFIC TO PLAINTIFFS

A. Haymount Urgent Care, P.C.

87. Haymount provides medical services to the citizens of Fayetteville North Carolina and strives to keep the community healthy by offering not only urgent care services but also primary care to its community.

B. The Impact of COVID-19

88. Haymount offers special care to the community's veterans and is a VA-approved urgent care practice and certified to provide VA disability consultations.

89. Haymount employs over 100 employees and sees over 300 per day. The average payroll is in excess of $250,000 per month.

90. Haymount offers to pay up to 50% of its employee's health insurance, and provides $100,000 in life insurance (due to the risk of Covid-19). It also provides a matching 401k program and health benefits to its employees who are frontline workers.

91. As a direct result of the COVID-19 pandemic, Haymount's funds were greatly reduced due to the facilities choice to take precautionary expensive measures to protects its patients and its employees. The main expense is the cost to provide testing to patients – setup a full PCR lab, hire additional scientists and staff, pay for reagants and supplies.

92. With the surge in the pandemic due to various strains (Delta last summer/fall and Omicron recently), its testing numbers dramatically went up to 2,500 patients per day requiring Haymount to look for funds.

93. Haymount took on the added expenses to pay for personal protection equipment, cleaning supplies, overtime, as well as other necessary expenses to protect its patients and employees.

94. In addition to increased expenses, there was an increased need for medical care from individuals who could not afford it.

95. As a direct result, all of the Haymount's revenues were greatly reduced.

96. Haymount's revenues had been operating at approximately $60,000 per month. Expenses and revenues fluctuate with the pandemic surges. Expenses are paid two to three months prior to collecting payments on claims. With the added expense of these loans, profitability is severely diminished.

97. The issues related to aging receivables stem from a lack of collectability for patients with Medicare, TriCare for Life and slow payment of HRSA (CARES ACT payments for the uninsured) and private insurance companies.

98. Prior to COVID-19, the margins of Haymount Urgent Care were very thin.

99. As a direct result of COVID-19, cash flow has been problematic due to slow payment from HRSA for uninsured and zero payments from Medicare.

100. In addition to slowed payments, Haymount has incurred additional expenses as a result of purchasing equipment to protect against COVID-19.

101. As a direct result of these factors, Haymount was actively looking for long-term financing of approximately ($12,000,000) over as long of a period as possible so that it could stay afloat to help treat the community suffering during the deadly pandemic, whilst also ensuring the safety of its patients and staff.

102. Enter the MCAs.

C. The First Usurious Loan (GoFund)

103. Plaintiffs entered into their First MCA Agreement with Merchant Capital on August 25, 2021 ("First MCA").

104. The First MCA provided Plaintiffs an advance of $200,000.00 ("Purchase Price") in exchange for the purported purchase of all of Plaintiff's future receipts (the "Future Receipts") until such time as the amount of $275,000.00 (the "Purchased Amount") was repaid.

105. The Purchased Amount was to be repaid through daily ACH withdrawal in the amount of $7,299 (a "Daily Payment"), and the amount would be repaid in just 52 days which, on its face, translates to an annual interest rate of more than 263% per annum or more than 10 times the maximum 25% rate permitted under New York Penal Law.

106. The fixed daily payment was disguised as a good-faith estimate equal to 45% of Haymount's daily revenues. The estimated daily payment did not remotely reflect 45% of Haymount's daily revenues. Rather, the estimated daily amount was dictated by Defendants based on the length of the payment term of the loan.

107. Merchant Capital entered into the sham First MCA agreement with Plaintiffs wherein the Plaintiffs were forced to pay an unconscionable interest rate of 263%. Plaintiffs were forced to make daily payments that accounted for this unconscionable interest rate.

108. Even worse, Merchant Capital did not advance Plaintiff the full Purchased Amount. Instead, Merchant Capital deducted an "ACH Origination Fee" of 10% of the purchase price for origination and related expenses.

109. Merchant Capital also deducted an "Underwriting Fee" of 12% of the purchase price for underwriting and related expenses.

110. Merchant Capital also deducted an NSF Fee, Wire Fee, Risk Assessment Fee, UCC Fee, and a Management Fee.

111. While the ACH Origination Fee and Underwriting Fee purportedly related to the costs of due diligence and withdrawing the Daily Payments, Merchant Capital performed little or no due diligence and the actual costs of the ACH withdrawals were a fraction of the fee. Indeed, in reality, the ACH Origination Fee, Underwriting Fee, and other fees were merely additional disguised interest.

112. As a direct result of these sham fees, Haymount received a total of $160,000, despite having a face amount of $200,000.

113. Given the inability to sustain the unconscionable payments to Merchant Capital, Plaintiffs were forced to enter into another MCA in order to pay this First MCA.

D. GoFund: The Second Usurious loan.

114. Plaintiffs entered into their second MCA Agreement with GoFund on August 26, 2021 ("Second MCA").

115. The Second MCA provided Plaintiffs an advance of $250,000.00 ("Purchase Price") in exchange for the purported purchase of all of Plaintiff's future receipts (the "Future Receipts") until such time as the amount of $349,750.00 (the "Purchased Amount") was repaid.

116. The Purchased Amount was to be repaid through daily ACH withdrawal in the amount of $8,000 (a "Daily Payment"), and the amount would be repaid in just 60 days which, on its face, translates to an annual interest rate of more than 242% per annum or more than 9 times the maximum 25% rate permitted under New York Penal Law.

117. The fixed daily payment was disguised as a good-faith estimate equal to 25% of Haymount's daily revenues. The estimated daily payment did not remotely reflect 25% of Haymount's daily revenues. Rather, the estimated daily amount was dictated by Defendants based on the length of the payment term of the loan.

118. GoFund entered into the sham Second MCA agreement with Plaintiffs wherein the Plaintiffs were forced to pay an unconscionable interest rate of 242%. Plaintiffs were forced to make daily payments that accounted for this unconscionable interest rate.

119. Even worse, GoFund did not advance Plaintiff the full Purchased Amount.

120. Instead, GoFund deducted an "ACH Origination Fee" of 10% of the purchase price to cover cost of origination and ACH Setup.

121. GoFund also deducted an Underwriting Fee of 12% of the purchase price for underwriting and related expenses.

122. GoFund also deducted an NSF Fee, Wire Fee, Risk Assessment Fee, UCC Fee, and a Management Fee.

123. While the ACH Origination Fee and Underwriting Fee purportedly related to the costs of due diligence and withdrawing the Daily Payments, GoFund performed little or no due

diligence and the actual costs of the ACH withdrawals were a fraction of the fee. Indeed, in reality, the ACH Origination Fee, Underwriting Fee, and other fees were merely additional disguised interest.

124. As a direct result of these sham fees, Haymount received a total of $200,000, despite having a face amount of $250,000

125. Given the inability to sustain the unconscionable payments to GoFund, Plaintiffs were forced to enter into another MCA in order to pay the Second MCA.

E. GoFund: The Third Usurious loan.

126. Just one month later, on September 27, 2021, Plaintiffs entered into a Third MCA with GoFund ("Third MCA").

127. The Third MCA provided Plaintiffs an advance of $150,000 ("Purchase Price") in exchange for the purported purchase of all of Plaintiff's future receipts (the "Future Receipts") until such time as the amount of $224,850 (the "Purchased Amount") was repaid.

128. The Purchased Amount was to be repaid through daily ACH withdrawal in the amount of $7,500 (a "Daily Payment"), and the amount would be repaid in just 28 days which, on its face, translates to an annual interest rate of more than 650% per annum or more than 26 times the maximum 25% rate permitted under New York Penal Law.

129. The fixed daily payment was disguised as a good-faith estimate equal to 25% of Haymount's daily revenues. The estimated daily payment did not remotely reflect 25% of Haymount's daily revenues. Rather, the estimated daily amount was dictated by Defendants based on the length of the payment term of the loan.

130. GoFund entered into the sham Third MCA agreement with Plaintiffs wherein the Plaintiffs were forced to pay an unconscionable interest rate of 650%. Plaintiffs were forced to make daily payments that accounted for this unconscionable interest rate.

131. Even worse, GoFund did not advance Plaintiff the full Purchased Amount. Instead, GoFund deducted an "ACH Origination Fee" of 10% of the purchase price to cover cost of origination and ACH Setup.

132. GoFund also deducted an Underwriting Fee of 12% of the purchase price for underwriting and related expenses.

133. GoFund also deducted an NSF Fee, Wire Fee, Risk Assessment Fee, UCC Fee, and a Management Fee.

134. While the ACH Origination Fee and Underwriting Fee purportedly related to the costs of due diligence and withdrawing the Daily Payments, GoFund performed little or no due diligence and the actual costs of the ACH withdrawals were a fraction of the fee. Indeed, in reality, the ACH Origination Fee, Underwriting Fee, and other fees were merely additional disguised interest.

135. As a direct result of these sham fees, Haymount received a total of $120,000, despite having a face amount of $150,000

136. Given the inability to sustain the unconscionable interest rate of the Third MCA, the Plaintiffs were in dire need of additional funding.

F. GoFund: The Fourth Usurious loan.

137. On December 16, 2021, Plaintiffs entered into the Fourth MCA with GoFund Advance ("Fourth MCA").

138. The Fourth MCA provided Plaintiffs an advance of $1,000,000.00 ("Purchase Price") in exchange for the purported purchase of all of Plaintiff's future receipts (the "Future Receipts") until such time as the amount of $1,350,000.00 (the "Purchased Amount") was repaid.

139. The Purchased Amount was to be repaid through daily ACH withdrawal in the amount of $35,000 (a "Daily Payment"), and the amount would be repaid in just 39 days which, on its face, translates to an annual interest rate of more than 319% per annum or more than 13 times the maximum 25% rate permitted under New York Penal Law.

140. The fixed daily payment was disguised as a good-faith estimate equal to 45% of Haymount's daily revenues. The estimated daily payment did not remotely reflect 45% of Haymount's daily revenues. Rather, the estimated daily amount was dictated by Defendants based on the length of the payment term of the loan.

141. Notably, simple math demonstrates the sham. If 25% of Haymount's receivables equaled $7,500 (as alleged and represented in the Third MCA), then 45% should equal less than $15,000. Instead, Defendant's knowingly and intentionally falsely inflated the fixed daily payment amount based on the size of the loan amount ($1,000,000), as opposed to any spike in receivables.

142. GoFund entered into the sham Fourth MCA agreement with the Plaintiffs wherein the Plaintiffs were forced to pay an unconscionable interest rate of 319%. Plaintiffs were forced to make daily payments that accounted for this unconscionable interest rate.

143. GoFund did not advance Plaintiff the full Purchased Amount. Instead, GoFund deducted an "ACH Origination Fee" 10% of the purchase price to cover cost of Original and ACH Setup.

144. GoFund also deducted an Underwriting Fee of 12% of the purchase price for underwriting and related expenses.

145. GoFund also deducted an NSF Fee, Wire Fee, Risk Assessment Fee, UCC Fee, and a Management Fee.

146. While the ACH Origination Fee and Underwriting Fee purportedly related to the costs of due diligence and withdrawing the Daily Payments, GoFund performed little or no due diligence and the actual costs of the ACH withdrawals were a fraction of the fee. Indeed, in reality, the ACH Origination Fee, Underwriting Fee, and other fees were merely additional disguised interest.

147. As a direct result of these sham fees, Haymount received a total of $900,000, despite having a face amount of $1,000,000

148. As further evidence that the transaction was a loan based on the time value of the money advanced (as opposed to the value of the receipts purchased), an addendum to the Fourth MCA stated: “Merchant will only have to pay back $1,150,000.00 of the payback amount if paid within 2 weeks of funding and $1,210,000.00 if paid within 4 weeks of funding.

149. GoFund has not only charged Plaintiffs improper fees but GoFund has withdrawn daily payments in excess of the amount that was authorized by the Plaintiff to be withdrawn from Plaintiff’s bank account. GoFund has improperly taken thousands of dollars in unauthorized overpayments from the Plaintiff.

150. GoFund has extracted unauthorized overpayments from the Plaintiff’s bank account, above and beyond the Daily Payment being made by the Plaintiff without any notice or prior authorization, and well after Plaintiff had paid the loan in full.

151. In total, Plaintiff has overpaid in excess of $50,000 to GoFund in unauthorized overpayments related to the Fourth MCA, by way of the Defendant’s unlawful debiting from the Plaintiff’s bank account.

G. Funding 123: The Fifth Usurious loan.

152. On December 27, 2021, Plaintiffs entered into a Fifth MCA with Funding 123 ("Fifth MCA").

153. The Fifth MCA provided Plaintiffs an advance of $2,000,000.00 ("Purchase Price") in exchange for the purported purchase of all of Plaintiff's future receipts (the "Future Receipts") until such time as the amount of $2,998,000.00 (the "Purchased Amount") was repaid.

154. The Purchased Amount was to be repaid through daily ACH withdrawal in the amount of $80,000 (a "Daily Payment"), and the amount would be repaid in just 45 days which, on its face, translates to an annual interest rate of more than 405% per annum or more than 16 times the maximum 25% rate permitted under New York Penal Law. Plaintiffs were forced to make daily payments that accounted for this unconscionable interest rate.

155. Once again, the fixed daily payment was disguised as a good-faith estimate equal to 45% of Haymount's daily revenues. The estimated daily payment did not remotely reflect 45% of Haymount's daily revenues. Rather, the estimated daily amount was dictated by Defendants based on the length of the payment term of the loan.

156. Once again, Defendants did not advance Plaintiff the full Purchased Amount. Instead, Funding 123 deducted $100,000 in fees.

157. Funding 123 did not advance Plaintiff the full Purchased Amount. Instead, Funding 123 deducted an "ACH Origination Fee" 10% of the purchase price to cover cost of origination and ACH Setup.

158. Funding 123 deducted an Underwriting Fee of 12% of the purchase price for underwriting and related expenses.

159. Funding 123 also deducted an NSF Fee, Wire Fee, Risk Assessment Fee, UCC Fee, and a Management Fee.

160. While the ACH Origination Fee and Underwriting Fee purportedly related to the costs of due diligence and withdrawing the Daily Payments, Funding 123 performed little or no due diligence and the actual costs of the ACH withdrawals were a fraction of the fee. Indeed, in reality, the ACH Origination Fee, Underwriting Fee, and other fees were merely additional disguised interest.

161. As a direct result of these sham fees, Haymount received a total of $900,000, despite having a face amount of $1,000,000.

162. On its face, the Fifth MCA was structured as two disbursements wherein the second disbursement would not be triggered unless further confirmed by the borrowing Plaintiffs. When Haymount Urgent Care informed Funding 123 that it did not want the second part of the loan, Funding 123 ignored Haymount's request and began threatening the ultimate destruction of Haymount's business.

163. Even more disturbing, Funding 123 has withdrawn daily payments in excess of the amount that was authorized by the Plaintiff to be withdrawn from Plaintiff's bank account. Funding 123 has improperly taken thousands of dollars in unauthorized overpayments from the Plaintiff.

164. Funding 123 has extracted unauthorized overpayments from the Plaintiff's bank account, above and beyond the Daily Payment being made by the Plaintiff without any notice or prior authorization.

165. In total, Plaintiff has overpaid $170,000 to Funding 123 in unauthorized overpayments related to the Fifth MCA, by way of the Defendant's unlawful debiting from the Plaintiff's bank account.

H. GoFund: The Sixth Usurious loan.

166. On January 20, 2022, Plaintiffs entered into the Sixth MCA with GoFund ("Sixth MCA").

167. The Sixth MCA provided Plaintiffs an advance of $1,000,000.00 ("Purchase Price") in exchange for the purported purchase of all of Plaintiff's future receipts (the "Future Receipts") until such time as the amount of $1,499,000.00 (the "Purchased Amount") was repaid.

168. The Purchased Amount was to be repaid through daily ACH withdrawal in the amount of $60,000 (a "Daily Payment"), and the amount would be repaid in just 29 days which, on its face, translates to an annual interest rate of more than 612% per annum or more than 24 times the maximum 25% rate permitted under New York Penal Law. Plaintiffs were forced to make daily payments that accounted for this unconscionable interest rate.

169. Once again, the fixed daily payment was disguised as a good-faith estimate equal to 45% of Haymount's daily revenues. The estimated daily payment did not remotely reflect 45% of Haymount's daily revenues. Rather, the estimated daily amount was dictated by Defendants based on the length of the payment term of the loan.

170. No math is even needed to see the sham on this one. Just one month earlier, GoFundrepresented that 45% of Haymount's receivables equaled $30,000 (as alleged and represented in the Fourth MCA). Now it represents 45% is equal to $60,000. Revenues did not double in one month. Instead, Defendant's knowingly and intentionally falsely inflated the fixed

daily payment amount based on the size of the loan amount ($1,000,000), as opposed to any spike in receivables.

171. GoFund entered into the sham Sixth MCA agreement with the Plaintiffs wherein the Plaintiffs were forced to pay an unconscionable interest rate of at least 612%.

172. The interest rate is even worse than that because GoFund did not even advance Plaintiff the full Purchased Amount. Instead, GoFund deducted $100,000 as purported fees in connection with making the loan.

173. But it gets worse. GoFund did not even advance the full amount required on the face of the MCA Agreement. Although the face of the agreement provides for an advance of $1,000,000, GoFund only advanced $400,000 (after deducting $100,000 in fees).

174. Only after Haymount repaid over $785,000 in a span of just over two weeks, GoFund deposited another $400,000 after deducting another $100,000 in fees.

175. In other words, GoFund used Haymount's own money for the second portion of the advance, and then charged Haymount a staggering $385,000 for the privilege of borrowing Haymount's own money.

176. GoFund deducted an "ACH Origination Fee" 10% of the purchase price to cover cost of origination and ACH Setup.

177. GoFund also deducted an Underwriting Fee of 12% of the purchase price for underwriting and related expenses.

178. GoFund also deducted a NSF Fee, Wire Fee, Risk Assessment Fee, UCC Fee, and a Management Fee.

179. While the ACH Origination Fee and Underwriting Fee purportedly related to the costs of due diligence and withdrawing the Daily Payments, GoFund performed little or no due

diligence and the actual costs of the ACH withdrawals were a fraction of the fee. Indeed, in reality, the ACH Origination Fee, Underwriting Fee, and other fees were merely additional disguised interest.

180. GoFund has not only charged Plaintiff the above improper fees but GoFund has also withdrawn daily payments in excess of the amount that was authorized. GoFund has improperly taken thousands of dollars in unauthorized overpayments from the Plaintiff.

181. GoFund has extracted unauthorized overpayments from the Plaintiff's bank account, above and beyond the Daily Payment being made by the Plaintiff without any notice or prior authorization, and well after Plaintiff had paid the loan in full.

182. GoFund continues to attempt to fraudulently withdraw from Plaintiff's bank account.

183. Throughout February 2022, Go Fund intentionally attacked every one of the Plaintiff's bank accounts by fraudulently debiting $60,000.

184. Specifically, GoFund attacked the Plaintiff's Bank of America bank account on February 9, 2022, February 10, 2022, February 16, 2022, February 18, 2022, and February 23, 2022 by fraudulently attempting to debit $60,000.

185. As a direct result, Bank of America placed a fraud alert on Plaintiff's bank accounts and put a stop on all ACH transactions. However, this did not stop GoFund from continuing to commit wire fraud

186. On February 16, 2022, February 18," 2022 and February 23, 2022, GoFund attempted to bypass its block from debiting from Plaintiff's account by fraudulently debiting $60,000 from the Plaintiff's bank account under the name "GoFund b" as opposed to "GoFund.

I. Fraudulent Unauthorized Overpayments Scheme.

187. The First MCA, Second MCA, Third MCA, Fourth MCA, Fifth MCA, and Sixth MCA are individually a MCA Agreement and collectively the MCA Agreements.

188. The Defendants have improperly provided usurious loans by way of the MCA Agreements, and have also significantly overcharged the Plaintiff as outlined in each instance above.

189. Defendants have engaged in predatory and fraudulent conduct that allowed them to fraudulently extract even more monies from Plaintiff.

190. Among other things, Defendants charged Plaintiff hundreds of thousands of dollars in so-called "ACH origination fees" and "Underwriting Fees" to cover the costs of due diligence that they never performed and "ACH fees" to cover ACH operations they claimed were "labor intensive" but, in actuality, were fully automated and cost a mere fraction of the fees charged to Plaintiff.

191. Even worse, Defendants failed to properly account for Plaintiff's payments, falsely reported Plaintiff's account balances and forced Plaintiff to pay thousands of dollars in overpayments or excess collections under the MCA Agreements. Defendants have demonstrated a pattern of withdrawing unauthorized overpayments from the Plaintiff's bank accounts and committing wire fraud.

FACTS SPECIFIC TO INDIGO

192. Indigo is a restaurant equipment installer out of Texas. It is owned and operated by Christopher A. Turrentine.

193. Like just about every small business owner, Plaintiff Turrentine was bombarded with phone calls and emails offering his company short-term financing.

194. Regrettably, he answered one of those calls with Defendants on the other end.

195. Defendants, through GoFund, promised to advance Indigo $40,000 in exchange for a payback of $63,960 at $2,200 per day.

196. At the time, Indigo was about to begin a new project and could use the extra cash.

197. But just the opposite happened.

198. Instead of getting financing, Defendants devised a scheme where the tricked Indigo to pay Defendants tens of thousands of dollars to borrow Plaintiff's own money.

199. Rather than advance the full $40,000 as initially promised, GoFund backtracked on the day of funding, explaining that the $40,000 would be released in tranches.

200. In doing so, GoFund provided Indigo with a loan package that consisted of two agreements. One was dated February 1, 2022, and the second was dated February 18, 2022.

201. On its face, the First GoFund MCA agreement provided $20,000 ("Purchase Price") in exchange for the purported purchase of all of Plaintiff's future receipts (the "Future Receipts") until such time as the amount of $63,960 (the "Purchased Amount") was repaid.

202. The Purchased Amount was to be repaid through daily ACH withdrawal in the amount of $2,200 (a "Daily Payment"), and the amount would be repaid in just 29 days which, on its face, translates to an annual interest rate of more than 612% per annum or more than 24 times the maximum 25% rate permitted under New York Penal Law. Plaintiffs were forced to make daily payments that accounted for this unconscionable interest rate.

203. Like Haymount, the fixed daily payment was disguised as a good-faith estimate equal to 45% of Indigo's daily revenues. The estimated daily payment did not remotely reflect 45% of Indigo's daily revenues. Rather, the estimated daily amount was dictated by Defendants based on the length of the payment term of the loan.

204. The Second GoFund MCA Agreement with Indigo was identical to the first with the exception that it was dated February 18, 2022.

205. One day later, on February 2, 2022, Defendant GoFund deposited $14,000 into Indigo's bank account.

206. Between February 3 and February 17, GoFund debited $2,200 per business day for a total of $24,200.

207. On February 18, 2022, GoFund then lent Plaintiff Indigo its own money back by depositing $14,000.

208. It continued, however, to debit $2,200 each business day.

209. On February 22, 2022, stopped payment on the ACH withdrawals after GoFund refused to advance the remaining $12,000 Indigo had been promised.

210. In response, Defendants utilized the Connecticut loophole exposed by Bloomberg News to freeze Plaintiff Indigo's bank account located in McKinney, Texas.

211. Defendants similarly sent a UCC Lien letter to one of Plaintiff Indigo's customers, demanding immediate payment of $33,360. *See* Ex. 9.

212. Immediately upon freezing Plaintiff Indigo's bank account, Defendants attempted to extort more money from Plaintiff Indigo.

213. On March 3, 2022, Defendants, through the same attorney identified by Bloomberg News, sent Plaintiff Indigo a bank release based on purported settlement that had been reached with Defendants. *See* Ex. 10.

214. No settlement had been reached. Instead, it was an extortion attempt to obtain $7,702 through the threat of financial duress in violation of the Hobbs Act, 18 U.S.C § 1951.

215. Nevertheless, on March 8, 2022, Plaintiff Indigo ultimately was forced to capitulate to the demands of Defendants due to the extreme financial duress of the bank freeze, and thus, Defendants successfully extorted more money from Defendant Indigo, and extorted a release of their very extortionate conduct at the same time.

CLASS ALLEGATIONS

216. Plaintiffs and the putative Classes repeat and re-allege the allegations of each of the foregoing paragraphs as if fully alleged herein.

217. Plaintiffs bring this action pursuant to Fed. R. Civ. P. 23(b)(2) and 23(b)(3).

218. Plaintiffs bring this action individually and on behalf of classes of similarly situated persons defined as follows:

> All persons in the United States who, on or after February 11, 2018, paid money to a member of the Enterprise pursuant to an MCA Agreement with an effective interest rate exceeding twenty-five percent.

219. Plaintiff Indigo brings this action individually and on behalf of classes of similarly situated persons defined as follows:

> All persons in the United States who, on or after February 11, 2018, had their bank account frozen as a result of a writ of attachment issued by Defendants under the color of Connecticut law.
>
> All persons in the United States who, on or after February 11, 2018, had their bank account frozen as a result of a writ of attachment issued by Defendants under the color of Connecticut law, and who subsequently entered into a settlement agreement with Defendants.

The following people are excluded from the Classes: (1) any Judge or Magistrate presiding over this action and members of their families; (2) Defendants, Defendants' subsidiaries, parents, successors, predecessors, and any entity in which the Defendants or their parents have a controlling interest and its current or former employees, officers, and directors; (3) persons who properly execute and file a timely request for exclusion from the Class; (4) persons whose claims in this

matter have been finally adjudicated on the merits or otherwise released or waived; (5) Plaintiffs' and Defendants' counsel; and (6) the legal representatives, successors, and assigns of any such excluded persons.

220. **Numerosity**: The exact number of members of the Classes is unknown and is not available to Plaintiffs at this time, but individual joinder in this case is impracticable. Based on publicly available documents, each of the Classes likely numbers in the hundreds.

221. **Commonality and Predominance**: There are many questions of law and fact common to the claims of Plaintiffs and the other Class members, and those questions predominate over any questions that may affect individual members of the Class. Common questions for the Class but are not limited to the following:

a) Whether the MCA Agreements are loans;

b) Whether the MCA Agreements are usurious;

c) Whether the MCA Agreements are void;

d) Whether Plaintiffs and the Classes may recover any moneys or property paid to the Enterprise pursuant to the MCA agreements;

e) Whether Defendants violated the Due Process Clause by issuing writs of attachment on third-party banks without filing a complaint or serving Defendants;

f) Whether Defendants extorted settlements under duress through their unlawful conduct; and

g) Whether Defendants' conduct was willful or knowing.

222. **Typicality**: Plaintiffs' claims are typical of the claims of the other members of the Classes. Plaintiffs and members of the Classes sustained damages as a result of Defendants' uniform wrongful conduct during transactions with Plaintiffs and the Classes.

223. **Adequate Representation**: Plaintiffs have and will continue to fairly and adequately represent and protect the interests of the Classes, and have retained counsel competent and experienced in complex litigation and class actions. Plaintiffs have no interests antagonistic to those of the Classes, and Defendants have no defenses unique to Plaintiffs. Plaintiffs and their counsel are committed to vigorously prosecuting this action on behalf of the members of the Classes, and they have the resources to do so. Neither Plaintiffs nor their counsel have any interest adverse to those of the other members of the Classes

224. **Superiority**: This case is appropriate for certification because class proceedings are superior to all other available methods for the fair and efficient adjudication of this controversy. The injuries suffered by the individual members of the Classes are likely to have been relatively small compared to the burden and expense of individual prosecution of the litigation necessitated by Defendants' actions. Absent a class action, it would be difficult, if not impossible, for the individual members of the Classes to obtain effective relief from Defendants. Even if members of the Classes themselves could sustain such individual litigation, it would not be preferable to a class action because individual litigation would increase the delay and expense to all parties and the Court and require duplicative consideration of the legal and factual issues presented herein. By contrast, a class action presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single Court. Economies of time, effort, and expense will be fostered, and uniformity of decisions will be ensured.

FIRST CAUSE OF ACTION
(RICO: 18 U.S.C. § 1962)

225. Plaintiffs repeat and re-allege the allegations of each of the foregoing paragraphs.

A. The Unlawful Activity.

226. More than a dozen states, including New York, place limits on the amount of interest that can be charged in connection with providing a loan.

227. In 1965, the Legislature of New York commissioned an investigation into the illegal practice of loansharking, which, prior to 1965, was not illegal with respect to businesses.

228. As recognized by the New York Court of Appeals in *Hammelburger v. Foursome Inn Corp*., 54 N.Y.2d 580, 589 (1981), the Report by the New York State Commission on Investigation entitled An Investigation of the Loan-Shark Racket brought to the attention of the Governor and the public the need for change in both, as well as for change in the immunity statute, and for provisions making criminal the possession of loan-shark records and increasing the grade of assault with respect to the "roughing up tactics" used by usurious lenders to enforce payment."

229. As a result of this Report, a bill was proposed to allow corporations to interpose the defense of usury in actions to collect principal or interest on loans given at interest greater than twenty-five percent per annum.

230. This measure was deemed vital in curbing the loan-shark racket as a complement to the basic proposal creating the crime of criminal usury.

231. As noted above, loan-sharks with full knowledge of the prior law, made it a policy to loan to corporations.

232. The investigation also disclosed that individual borrowers were required to incorporate before being granted a usurious loan.

233. Like here, this was a purely artificial device used by the loanshark to evade the law—an evasion that the Legislature sought to prevent.

234. Among other things, the Report recognized that "it would be most inappropriate to permit a usurer to recover on a loan for which he could be prosecuted."

B. Culpable Persons.

235. Wolf, Kroen, Brezel and Getter are "persons" within the meaning of 18 U.S.C. § 1961(3) and 18 U.S.C. § 1962(c) in that each is an individual capable of holding a legal interest in property. They are the owners of GoFund, Funding 123, and Merchant Capital which, collectively, have less than ten (10) employees.

C. The Enterprise.

236. Defendants GoFund, Funding 123, Merchant Capital, Alpha Recovery Partners, Wolf, Brezel, Kroen and Getter constitute an Enterprise (the "Enterprise") within the meaning of 18 U.S.C. §§ 1961(4) and 1962(c).

237. The Enterprise is associated in fact through relations of ownerships for the common purpose of carrying on an ongoing unlawful enterprise. Specifically, the Enterprise has a common goal of soliciting, funding, servicing and collecting upon usurious loans that charge interest at more than twice the enforceable rate under the laws of New York and other states.

238. Since at least 2020 and continuing through the present, the members of the Enterprise have had ongoing relations with each other through common control/ownership, shared personnel and/or one or more contracts or agreements relating to and for the purpose of originating, underwriting, servicing and collecting upon unlawful debt issued by the Enterprise to small businesses throughout the United States.

239. The Enterprise consists of at least the following entities: Bridge Funding Cap, United Fund USA, Fundura Capital, Lifetime Funding, Go Fund, Matrix Advance, Alpha Recovery Partners, and Merchant Capital.

240. The debt, including such debt evidenced by the agreements, constitutes unlawful debt within the meaning of 18 U.S.C. § 1962(c) and (d) 18 U.S.C. § 1961(6) because (i) it violates applicable criminal usury statutes and (ii) the rates are more than twice the legal rate permitted under New York Penal Law §190.40.

241. Since at least 2020 and continuing through the present, the members of the Enterprise have had ongoing relations with each other through common control/ownership, shared personnel and/or one or more contracts or agreements relating to and for the purpose of collecting upon fraudulent fees through electronic wires.

242. The Enterprise's conduct constitutes "fraud by wire" within the meaning of 18 U.S.C. 1343, which is "racketeering activity" as defined by 18 U.S.C. 1961(1). Its repeated and continuous use of such conduct to participate in the affairs of the Enterprise constitutions a pattern of racketeering activity in violation of 18 U.S.C. 1962(c).

C. The Roles of the RICO Persons in Operating the Enterprise, and the roles of the individual companies within the Enterprise.

243. The RICO Persons have organized themselves and the Enterprise into a cohesive group with specific and assigned responsibilities and a command structure to operate as a unit in order to accomplish the common goals and purposes of collecting upon unlawful debts including as follows:

i. The Enterprise Principals: Wolf, Brezel, Getter and Kroen

244. Wolf, Brezel, Getter and Kroen are principals of the Enterprise ("the Principals"). Together they are responsible for the day-to-day operations of the Enterprise and have final say on

all business decisions of the Enterprise including, without limitation, which usurious loans the Enterprise will fund, how such loans will be funded, which of Investors will fund each loan and the ultimate payment terms, amount and period of each usurious loan.

245. In their capacity principals, Wolf, Brezel, Getter and Kroen are responsible for creating, approving and implementing the policies, practices and instrumentalities used by the Enterprise to accomplish its common goals and purposes including: (i) the form of merchant agreements used by the Enterprise to attempt to disguise the unlawful loans as receivable purchase agreements to avoid applicable usury laws and conceal the Enterprise's collection of an unlawful debt; (ii) the method of collecting the daily payments via ACH withdrawals; and (iii) form used by the Enterprise to collect upon the unlawful debt if the borrower defaults upon its obligations. All such forms were used to make and collect upon the unlawful loans including, without limitation, loans extended to Plaintiffs.

246. Wolf, Brezel, Getter and Kroen have taken actions and, directed other members of the Enterprise to take actions necessary to accomplish the overall goals and purposes of the Enterprise including directing the affairs of the Enterprise, funding the Enterprise, directing members of the Enterprise to collect upon the unlawful loans and executing legal documents in support of the Enterprise.

247. Wolf, Brezel, Getter and Kroen have ultimately benefited from the Enterprise's funneling of the usurious loan proceeds to the other Enterprise members.

ii. The Enterprise MCA Companies: GoFund, Funding 123, and Merchant Capital.

248. GoFund, Funding 123, and Merchant Capital maintain officers, books, records, and bank accounts independent of the other Enterprise members ("the Enterprise MCA Companies").

249. The Principals have operated the Enterprise MCA Companies as part of an unlawful enterprise to collect upon unlawful debt and commit wire fraud. Pursuant to its membership in the Enterprise, the Enterprise MCA Companies have: (i) entered into contracts with brokers to solicit borrowers for the Enterprise's usurious loans and participation agreements with Investors to fund the usurious loans; (ii) pooled the funds of Investors in order to fund each usurious loan; (iii) underwritten the usurious loans and determining the ultimate rate of usurious interest to be charged under each loan; (iv) entered into the so-called merchant agreements on behalf of the Enterprise; (v) serviced the usurious loans; (vi) set-up and implemented the ACH withdrawals used by the Enterprise to collect upon the unlawful debt; and (v) obtained judgments in its name to further collect upon the unlawful debt.

250. In this case, the Enterprise MCA Companies, through Defendants: (i) solicited borrowers; (ii) pooled funds from Investors to fund the agreements; (iii) underwrote the agreements; (iv) entered into the agreements; and (v) collected upon the unlawful debt evidenced by the agreements by effecting wire transfers from the bank accounts of Plaintiffs.

vi. The Enterprise Collection Arm: Alpha Recovery Partners.

251. Alpha Recovery maintains officers, books, records, and bank accounts independent of the other Enterprise members.

252. The Principals have operated Alpha Recovery as part of an unlawful enterprise to collect upon unlawful debt and commit wire fraud. Pursuant to its membership in the Enterprise, Alpha Recover has: (i) set-up and implemented the ACH withdrawals used by the Enterprise to collect upon the unlawful debt; (ii) obtained judgments to further collect upon the unlawful debt, and has issued UCC Lien Notices to collect upon the unlawful debt.

253. In this case, Alpha Recovery: (i) collected upon the unlawful debt evidenced by the agreements by effecting wire transfers from the bank accounts of Plaintiffs; (ii) filed a UCC Financing Statement on February 15, 2022; and (iii) sent a UCC Lien Notice to United Healthcare Services, Inc. on February 15, 2022 to collect upon the unlawful debt herein.

E. Interstate Commerce

254. The Enterprise is engaged in interstate commerce and uses instrumentalities of interstate commerce in its daily business activities.

255. Specifically, members of the Enterprise maintain offices in New York and use personnel in these offices to originate, underwrite, fund, service and collect upon the usurious loans made by the Enterprise to entities in New York, and throughout the United States via extensive use of interstate emails, mail, wire transfers and bank withdrawals processed through an automated clearing house.

256. In the present case, all communications between the members of the Enterprise, the Enterprise MCA Companies and Alpha Recovery were by interstate email and mail, wire transfers or ACH debits and other interstate wire communications. Specifically, the Enterprise used interstate emails to originate, underwrite, service and collect upon the agreements, fund the advances under each of the agreements and collect the payments via interstate electronic ACH debits.

257. In addition, at the direction of Defendants, each of the agreements was executed in states outside of New York, and original copies of the Agreements were sent from North Carolina to the Enterprise, through Defendants, at their offices in New York via electronic mail.

F. Injury and Causation.

258. Plaintiffs have and will continue to be injured in their business and property by reason of the Enterprise's violations of 18 U.S.C. § 1962(c), in an amount to be determined at trial.

259. The injuries to the Plaintiffs directly, proximately, and reasonably foreseeably resulting from or caused by these violations of 18 U.S.C. § 1962(d) include, but are not limited to, thousands of dollars in improperly collected criminally usurious loan payments. Plaintiffs were forced to make daily payments pursuant to the MCA Agreements that amounted to unconscionable interest rates.

260. Under controlling New York law, the MCA Agreements are void ab initio. *See Adar Bays, LLC v. GeneSYS ID, Inc.*, 2021 WL 4777289 (N.Y. Oct. 14, 2021).

261. Plaintiffs have also suffered damages by incurring attorneys' fees and costs associated with exposing and prosecuting Defendants' criminal activities.

262. Pursuant to 18 U.S.C. § 1964(c), Plaintiffs are entitled to treble damages, plus costs and attorneys' fees from Defendants.

SECOND CAUSE OF ACTION
(Conspiracy under 18 U.S.C. § 1962(d))

263. Plaintiffs repeat and re-allege the allegations of each of the foregoing paragraphs.

264. Defendants have unlawfully, knowingly, and willfully, combined, conspired, confederated, and agreed with members of the Enterprise to violate 18 U.S.C. § 1962(c) as describe above, in violation of 18 U.S.C. § 1962(d).

265. By and through each of the Enterprise Member's business relationships with one another, their close coordination with one another in the affairs of the Enterprise, and frequent email communications among the Defendant and the Enterprise Members concerning the underwriting, funding, servicing and collection of the unlawful loans, including the Agreements,

Defendant knew the nature of the Enterprise and Defendant knew that the Enterprise extended beyond each Enterprise Member's individual role. Moreover, through the same connections and coordination, Defendant knew that the other Enterprise Members were engaged in a conspiracy to collect upon unlawful debts in violation of 18 U.S.C. § 1962(c).

266. Defendants each agreed to facilitate, conduct, and participate in the conduct, management, or operation of the Enterprise's affairs in order to collect upon unlawful debts, including the Agreements, in violation of 18 U.S.C. § 1962(c). In particular, each Defendant was a knowing, willing, and active participant in the Enterprise and its affairs, and each of the Enterprise Members shared a common purpose, namely, the orchestration, planning, preparation, and execution of the scheme to solicit, underwrite, fund and collect upon unlawful debts, including the agreements.

267. Defendant agreed to facilitate, conduct, and participate in the conduct, management, or operation of the Enterprise's affairs in order to commit wire fraud through a pattern of racketeering activity in violation of 18 U.S.C. §1962(c).

268. The participation and agreement of Defendant and each Enterprise Member was necessary to allow the commission of this scheme.

269. Plaintiffs have been and will continue to be injured in their business and property by reason of the Defendants' violations of 18 U.S.C. § 1962(d), in an amount to be determined at the hearing.

270. The injuries to the Plaintiffs directly, proximately, and reasonably foreseeably resulting from or cause these violations of 18 U.S.C. § 1962(d) include, but are not limited to, improperly collected loan payments, lost customers, loss of goodwill, and lost profits. Plaintiffs

were forced to make daily payments pursuant to the MCA agreements that amounted to unconscionable interest rates.

271. Plaintiffs have also suffered damages by incurring attorneys' fees and costs associated with exposing and prosecuting Defendants' criminal activities.

272. Pursuant to 18 U.S.C. § 1964(c), Plaintiffs are entitled to treble damages, plus costs and attorneys' fees from the Defendants.

THIRD CAUSE OF ACTION
(Declaratory Relief)

273. Plaintiffs repeat and hereby incorporate each of the above allegation.

274. A declaratory judgment is required by this Court to determine the rights and obligations of the parties with respect to the MCA Agreements are void as a matter of law.

275. A declaratory judgment declaring that the Defendants have no right to enforce any security rights and that Defendants are barred from enforcing unconscionable and illegal interest rates on sham loans.

276. Under controlling New York law, the MCA Agreements are void ab initio. *See Adar Bays, LLC v. GeneSYS ID, Inc.*, 2021 LEXIS 2206, 2021 Slip Op. 05616, 2021 WL 4777289 (N.Y. Oct. 14, 2021).

277. A declaratory judgment is also required by this Court to determine the rights and obligations of the parties with respect to the settlement agreement that Defendants and Plaintiffs Indigo and Turrentine entered into on March 8, 2022.

278. The settlement agreement is void because Defendants and their counsel obtained the settlement by knowingly and intentionally circumventing Plaintiff Indigo's and Turrentine's New York counsel.

279. On March 4, 2022, counsel for Plaintiffs Indigo and Turrentine sent Defendant GoFund's counsel, Jared Alfin, an email informing him that he did not "release the bank accounts and dismiss your action, we will be seeking a TRO our pending SDNY class action on Monday." Ex. 11.

280. Twice, on the same day counsel for Plaintiffs Indigo and Turrentine also asked Mr. Alfin for a copy of the complaint (as required by Conn. Gen. Stat. § 52-278(f)), which was referenced in the settlement agreement he drafted and caused to be delivered to Plaintiffs Indigo and Turrentine. *See id.*

281. On March 7, 2022, counsel for Plaintiffs Indigo and Turrentine also asked Mr. Alfin to provide a copy of the affidavit required by Conn. Gen. Stat. § 52-278(f). *See id.*

282. On March 8, 2022, counsel for Plaintiffs Indigo and Turrentine again asked Mr. Alfin to provide the requested information.

283. As it turns out, while Defendants' counsel was ignoring the above repeated requests by Plaintiffs' counsel, Mr. Alfin was simultaneously drafting a settlement agreement with Plaintiffs Indigo and Turrentine without advising Plaintiffs' counsel.

284. Notably, in the settlement agreement drafted by Mr. Alfin, it purports to represent that all parties "have had the ability to adequately consult with their respective legal counsel in regards to this commercial Agreement and its meaning."

285. In consideration for entering into the settlement agreement, Defendants required Plaintiffs Indigo and Turrentine to pay $4,000 directly to Mr. Alfin's law firm out of the funds being held by PNC Bank.

286. Defendants also required Plaintiffs Indigo and Turrentine to retract their complaints to the United States Attorney's Office by forcing them to admit in the settlement agreement that

"INDIGO further acknowledges and agrees that all of its statements to GFA, PNC Bank, any state or federal law enforcement authority and/or its attorney's concerning the validity of the Contract and GFA's rights to take legal action against INDIGO for breaching the Agreement were not accurate and based upon a misapprehension of facts."

287. It further required INDIGO to release Defendants—and their attorneys from any and all claims or liability.

288. The settlement agreement is void and unenforceable because, among other reasons, it was obtained under the threat of financial duress in violation of the Hobbs Act, and Defendants' violation of 42 U.S.C. § 1983. But for the unlawful conduct and threats of financial duress, Plaintiffs Indigo and Turrentine would not have entered into the settlement agreement. Rather, Plaintiffs Indigo and Turrentine were forced into the settlement as a direct result of Defendants' unlawful conduct.

289. Plaintiffs Indigo and Turrentine therefore seek a declaration that the March 8, 2022 settlement agreement is void and unenforceable.

FOURTH CAUSE OF ACTION
(Fraud)

290. Plaintiffs repeat and re-allege each of the above allegations.

291. Each of the MCA agreements contained an appendix setting forth sham fees chargeable to Plaintiffs.

292. The Defendants improperly deducted an "ACH Origination Fee" 10% of the purchase price to cover cost of origination and ACH Setup. This fee was fraudulent as it was simply a ploy to extract additional funds from the Plaintiffs and did not actually comprise of related expenses pertaining to origination. None of these fees had any relationship to any services actually rendered and instead were disguised interest charges.

293. The Defendants also deducted an Underwriting Fee of 12% of the purchase price for underwriting and related expense. This fee was fraudulent as this was simply a sham to extract more funds from the Plaintiffs. None of these fees had any relationship to any services actually rendered and instead were disguised interest charges.

294. Defendants also deducted an NSF Fee, Wire Fee, Risk Assessment Fee, UCC Fee, and a Management Fee which were similarly a fraudulent ploy to extract funds from the Plaintiffs by using a sham misnomer characterization of fees.

295. The MCA agreements represented that these fees were for services or costs purportedly provided by or incurred by the Enterprise MCA Companies in connection with their respective agreements, but, in reality, these services or costs were never provided or incurred or were otherwise provided or incurred for amounts far below those stated in the MCA agreements and the so-called "fees" were nothing more than additional profits reaped by the Enterprise MCA Companies under the MCA agreements.

296. For example, each of the MCA agreements provided for an "Underwriting Fee" in order "to cover Underwriting and related expenses." However, the Enterprise MCA Companies performed little or no due diligence and conducted very little underwriting when entertaining into the MCA agreements.

297. Initially, the Enterprise MCA Companies would require little more than the completion of an online application and three months bank statements and would approve advances to Plaintiffs in a matter of hours.

298. The Enterprise MCA Companies would thereafter "refinance" their initial agreements just weeks and sometimes days after entering into the original agreements without

requiring any additional documentation or information from Plaintiffs and yet, the Enterprise MCA Companies would charge the same or even a greater "Origination Fee."

299. In each MCA agreement, the Enterprise MCA Companies told Plaintiffs they would deduct an "ACH Program Fee" because managing Plaintiff's Daily Payments was "labor intensive and . . . not an automated process," but, in fact, the process is entirely automated and inexpensive.

300. The Enterprise MCA Companies knew that their representations concerning the nature and purpose of the ACH Origination Fee, Underwriting Fee and other fees were false and misleading at the time they entered into the MCA Agreements.

301. These false representations were made in order to induce Plaintiffs into believing that the fees charged to Plaintiffs and deducted from the Purchased Amount of the MCA Agreements were legitimate fees charged to offset the costs of services provided by the Enterprise MCA Companies under the MCA Agreements.

302. Plaintiffs reasonably relied upon these representations in entering into the MCA Agreements and, ultimately paying, the fees through either the Daily Payments or "refinancing" their payment obligations with additional advances by the Enterprise MCA Companies.

303. Defendants further engaged in predatory and fraudulent conduct that allowed them to fraudulently extract even more monies from Plaintiff by taking unauthorized overpayments from the Plaintiff's bank accounts.

304. In addition to the hundreds of thousands of dollars in so called "ACH Origination fees" and "Underwriting Fees" to cover the costs of due diligence that they never performed and "ACH fees" to cover ACH operations they claimed were "labor intensive" but, in actuality, were fully automated and cost a mere fraction of the fees charged to Plaintiff, Defendants extracted unauthorized payments from the Plaintiffs.

305. Even worse, Defendants failed to properly account for Plaintiff's payments, falsely reported Plaintiff's account balances and forced Plaintiff to pay thousands of dollars in overpayments or excess collections under the MCA Agreements.

306. Defendants have intentionally committed wire fraud by extracting unauthorized debits from the Plaintiff's bank accounts. Defendants go as far as changing their name once their unauthorized debits are flagged as fraud by Plaintiff's bank in a further attempt to extract unauthorized debits from the Plaintiff's bank accounts.

307. Defendants have demonstrated a fraudulent scheme of withdrawing unauthorized overpayments from the Plaintiff's bank accounts and committing persistent wire fraud. By reason of the foregoing, Plaintiffs are entitled to a judgment against each of Defendants in the amount of fees charged to Plaintiffs by each Enterprise MCA Company.

FIFTH CAUSE OF ACTION
(In the alternative, Breach of Contract)

308. Plaintiffs repeat and re-allege each of the above allegations.

309. Under each of the MCA agreements, Defendants promised to advance certain amounts as identified in each of the MCA agreements.

310. Defendants did not advance the amounts as promised.

311. Under each of the MCA agreements, Defendants were entitled to debit through ACH withdrawals certain amounts as identified in each of the MCA agreements.

312. As described in detail above, Defendants debited more than they were entitled to debit under each of the MCA agreements.

313. As a direct and proximate result of Defendants' breach of each of the MCA agreements, Plaintiffs have been damaged in the amounts described in detail above.

314. In the event that the Court finds that each of the MCA agreements are valid and enforceable and not void *ab initio* as a matter of law, then Plaintiffs are entitled to direct and consequential damages caused by Defendants' breach of each of the MCA agreements.

SIXTH CAUSE OF ACTION
(42 U.S.C. § 1983)

315. Plaintiffs repeat and re-allege each of the above allegations.

316. In response to New York's prohibition against using its confession of judgment statute and related judgment collection procedures against out-of-state residents, Defendants knowingly and purposely devised a scheme to deprive out-of-state residents from their constitutional right to due process under the Fourteenth Amendment of the United States Constitution by abusing the state laws of Connecticut.

317. In particular, Defendants, who are located in and reside in Brooklyn, New York, devised a scheme where they would fraudulently register a series of related companies as Connecticut limited liability companies with a Connecticut address in order to avail themselves of Connecticut's prejudgment attachment statute.

318. The statute, Conn. Gen. Stat. § 52-278(f), is unconstitutional as used by Defendants.

319. In their form, contracts of adhesion, Defendants require merchants, such as here, to consent to the jurisdiction of three different states, Connecticut, New York, and Texas—even though neither Connecticut nor Texas has anything to do with the transaction or parties.

320. In addition, Defendants include a form "Prejudgment Remedy Waiver," requiring merchants to waive "all rights to notice and prior court hearing or court order in connection with any and all prejudgment remedies…"

321. Then, when the merchant fails to pay for any reason at all, even in the event of a good-faith dispute, such as here, Defendants employ the prejudgment attachment mechanism of §

52-278(f) by serving a Writ of Attachment on the merchant's bank account ***before the filing of a complaint and before serving the merchant.***

322. In order to utilize its prejudgment attachment remedies, § 52-278(f) provides: "(1) ***the complaint shall set forth a copy of the waiver***; (2) ***the plaintiff shall file an affidavit*** sworn to by the plaintiff or any competent affiant setting forth a statement of facts sufficient to show that there is probable cause that a judgment in the amount of the prejudgment remedy sought, or in an amount greater than the amount of the prejudgment remedy sought, taking into account any known defenses, counterclaims or set-offs, will be rendered in the matter in favor of the plaintiff; and (3) the ***plaintiff shall include in the process served on the defendant a notice satisfying the requirements of subsections (b) and (c) of section 52-278e***."

323. These requirements are also plainly spelled out on the court's practice guide:

II. PJR When Defendant In Commercial Transaction Has Waived Notice And Hearing (Section 52-278f of the Connecticut General Statutes) - Documents Required

Note: These documents must be served on the Defendant. After service on the Defendant, these documents must be returned electronically to the Court in accordance with the E-Services Procedures and Technical Standards.

A. A *Notice of Ex Parte Prejudgment Remedy/Claim for Hearing to Dissolve or Modify* (form JD-CV 55) may be used to meet the requirement of notice in **Section 52-278f of the Connecticut General Statutes**.
B. Signed complaint that includes a copy of the waiver
C. Affidavit by the plaintiff or another person who know the facts personally containing a statement of facts that show probable cause that a judgment in the amount of the prejudgment remedy being asked for, or in an amount greater than the amount of the prejudgment remedy being asked for after considering any known defenses, counterclaims or set-offs, will be rendered in the matter for the plaintiff.

324. Instead of complying with the letter and spirit of the protections afforded by § 52-278(f), Defendants instead, like here, fire first and ask questions later.

325. Specifically, Defendants ***do not*** (1) draft and serve a complaint providing notice to the merchant of its claims; (2) rely upon an affidavit setting forth the facts sufficient to show

probably cause; or (3) provide notice to the merchants satisfying subsections (b) and (c) of section 52-278e."

326. Rather than comply with the dictates of § 52-278(f), Defendants first freeze the merchant's bank accounts by serving writs of attachment on the bank only, and then immediately demand a settlement under duress and the threat of financial ruin.

327. By abusing § 52-278(f), Defendants knowingly and intentionally deprive their merchants of their constitutional due process rights by freezing bank accounts and not even knowing how the bank account was frozen or where to go to seek protection.

328. For example, here, Defendants froze Plaintiff Indigo's Texas bank account by serving a writ of attachment on a Connecticut branch of PNC Bank on or about February 24, 2022.

329. No notice was provided by Defendants before, during or after PNC Bank froze the account. Instead, Plaintiff Indigo had to obtain the legal documents from PNC Bank itself. The papers served on PNC Bank did not include a copy of a complaint identifying the grounds for the claims asserted by Defendants. In fact, to this day, Defendants have not provided a copy of the complaint or the supporting affidavit required under § 52-278(f), despite numerous requests by Indigo's counsel.

330. Plaintiffs did not voluntarily and intelligently waive their due process rights. *See D.H. Overmyer Co., Inc. v. Frick Co.*, 405 U.S. 174, 31 L. Ed. 2d 124, 92 S. Ct. 775 (1972).

331. Rather, Plaintiffs Indigo, Turrentine, and those similarly situated, (1) were not represented by legal counsel; (2) are unsophisticated business persons; (3) did not have any prior pending actions against them by Defendants; (4) did not have a fair balance of bargaining power; (5) did not negotiate the terms at arms-length; and (6) were knowingly and intentionally taken advantage of by Defendants due to their financial duress.

332. Defendants knowingly and intentionally deprived Plaintiffs of their due process rights and had no good-faith basis to believe their actions were lawful under the color of state law. *See Jordan v. Fox, Rothschild, O'Brien & Frankel*, 20 F.3d 1250 (3d Cir. 1994).

333. As a direct and proximate cause of Defendants' knowing and intentional violation of 42 U.S.C. § 1983, Plaintiffs suffered damages by, among other things, not being able to pay necessary expenses such as insurance premiums, customer refunds due, materials and supplies.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand judgment in their favor against Defendants, jointly and severally, and seek an order from the Court:

a) Certifying this case as a class action on behalf of the Classes defined above, appointing Plaintiffs as Class representatives, and appointing their attorneys as class counsel;

b) Declaring that the Agreements entered into between Class Members and Defendants constitute a loan transaction, and thus, are void because each intended to charge and receive a criminally usurious interest rate in excess of 25%;

c) Declaring that the settlement agreements entered into between Class Members and Defendants are void because they were obtained in violation of the Hobbs Act, 42 U.S.C. § 1983, and under threats of financial duress;

d) Ordering Defendants to repay all principal and interest previously paid to Defendants in connection with the criminally usurious loans, including prejudgment interest;

e) Granting an injunction against Defendants permanently enjoining them from enforcing any of their rights under the criminally usurious loans;

f) Awarding the Plaintiffs and Class Members direct and consequential damages;

g) Awarding Plaintiffs and the Class Members treble damages;

h) Awarding Plaintiffs and the Class Members their attorney's fees and costs incurred in this action; and

i) Granting such other and further relief as this Court deems just and proper.

DATED: New York, New York
March 10, 2022

WHITE AND WILLIAMS LLP

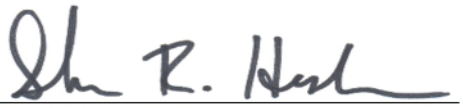
By: 

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EXHIBIT 1

Businessweek
The Big Take

The Loan Shark Trump Freed From Prison Is Lending Money Again

Jonathan Braun went to jail on drug charges after a successful career as a predatory lender. Thanks to a good word from Alan Dershowitz and commutation from Donald Trump, he's back in business.

By

Zeke Faux
February 10, 2022, 12:01 AM EST

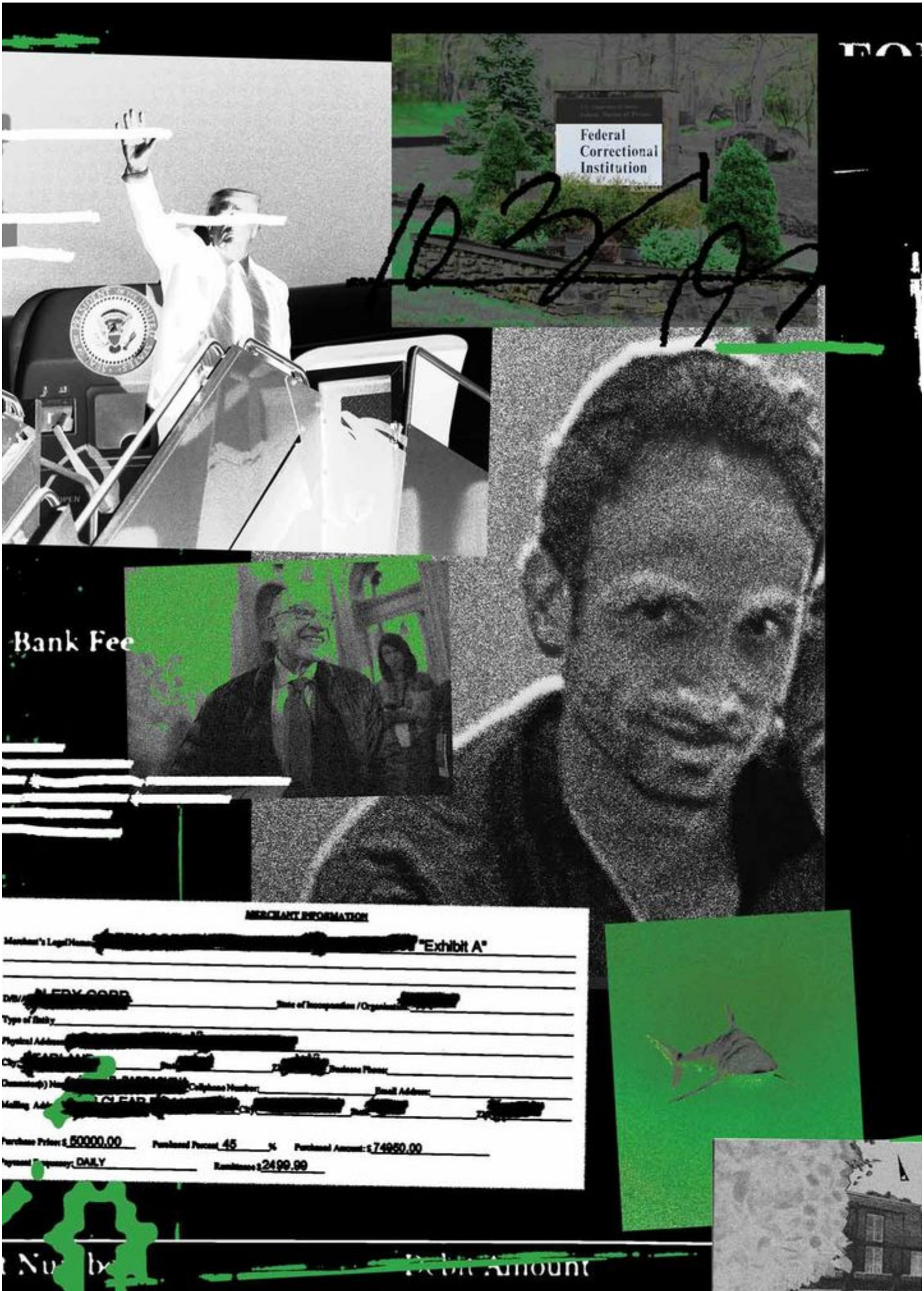
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Illustration: Chris Burnett for Bloomberg Businessweek

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Before he went to prison, and before he was released on orders from President Donald Trump, Jonathan Braun was a prolific predatory lender. In eight years he advanced almost $80 million to small-business owners across the U.S. He targeted those desperate enough to accept extreme interest rates—often higher than 1,000% a year—and when they inevitably fell behind, he squeezed them for more money. He bullied some and menaced others. “You suck, you’re dead, you’re a piece of shit, you should drop f---ing dead,” Braun told one of his clients in an exchange caught on video. Often he would use dubious legal tactics to drain their bank accounts.

Even as borrowers complained in court that they’d been frightened by his threats and ruined by his ripoffs, Braun faced no punishment. It wasn’t that the authorities were unaware of him. In fact he’d been operating as a loan shark while out on bail after a 2010 arrest on unrelated federal drug-trafficking charges, wearing an electronic ankle bracelet monitored by the U.S. Department of Justice. His trial was delayed for years without explanation.

Listen to this story

Braun’s improbable career as a government-supervised predatory lender seemed to come to an end in 2020, when he was finally sent to a prison north of New York City to serve a 10-year sentence for the drug charges. While he was there, New York’s attorney general sued him for usury, fraud, and harassment related to his lending. But then, in January 2021, he secured a last-minute grant of clemency from Trump. His sentence was commuted, and he was released. “Pardon Frees a Drug Smuggler Known for Violence and Threats,” as the New York Times put it in a front-page story.


NEW
The Judaica Mall
EICHLER'S
EICHLER'S

Braun works in a second-floor office above a bakery and a Judaica shop in Brooklyn's Borough Park.
Photographer: Philip Montgomery for Bloomberg Businessweek

Trump didn't explain why Braun had been freed. A statement put out by the White House misspelled Braun's first name, exaggerated the amount of time he'd spent in prison, and didn't mention the attorney general's ongoing lawsuit. "Upon his release, Mr. Braun will seek employment to support his wife and children," it said. According to someone with knowledge of the arrangement, Braun told his probation officer he'd be working for the president of a cleaning service.

But among Braun's associates and rivals, there were murmurs that he'd gone right back to lending money to very desperate people. A few months ago, tipsters began sending me the names of companies they said he'd started running. A search of court records revealed a network of at least a dozen entities that advance money at high rates and frequently sue borrowers. Tallying the debts in the cases showed the companies had loaned at least $17 million since Braun's release, and that's just the loans that ended up in court. Braun's name wasn't on any of the legal papers, but the tipsters told me he was in charge of the whole operation. They pointed me to an address in Borough Park, an Orthodox Jewish neighborhood in central Brooklyn.

Read More: Sign This Agreement and Your Bank Account Might Be Frozen

One source said Braun had been arriving there each day around 10 a.m. in a white Bentley Bentayga SUV. And so, on a Thursday morning in November, I waited across the street from a two-story brick building with a bakery and a Judaica shop on the ground floor.

At 10:47 a.m., I spotted him: a thin, balding man of 38, with a reddish tan. He was wearing a blue track jacket and driving a white Bentley just like they said. He steered the SUV toward the building, stopping to honk 10 or so times at someone blocking the ramp to an underground garage. When he looked up, his close-set eyes were unmistakable. Braun was back.

"Either he's crazy, or he knows he's covered"

The Justice Department has a backlog of 18,292 requests for presidential pardons or commutations. Government lawyers vet the applications—looking for nonviolent offenders who are serving unfairly long sentences, prisoners suffering from critical illness

or old age, and people who've shown that they've changed their ways—then pass them along to the White House.

Braun was an unlikely candidate. Prosecutors had accused him of being a high-volume drug trafficker who'd coordinated with the Hells Angels and other organized crime groups to move $6 million of marijuana a week across the Canadian border into the U.S. At times, the prosecutors said, he'd resorted to violence. He also was still facing the lawsuit from New York Attorney General Letitia James, who'd called him a "modern-day loan shark." While he was in prison, he was sued by someone who said Braun had cheated him on illegal sports bets. Braun denies all the allegations.

Luckily for Braun, Trump's approach to clemency was as erratic as the rest of his presidency. Although administration loyalists dispute this, Trump seems mostly to have ignored the formal process. Instead he gave out pardons and commutations to whomever he felt like, including personal friends and those who'd paid large fees to associates of his. According to the Federal Sentencing Reporter, a legal journal, only about 25 of Trump's 238 pardons and commutations went through official review. To pick one particularly egregious corruption allegation stemming from this approach: John Kiriakou, a former CIA officer convicted of leaking secrets to reporters, told me an associate of Rudy Giuliani's offered to sell him a pardon for $2 million. Giuliani denied this; a Trump spokeswoman didn't return calls.

Braun's family seemed eager to curry Trump's favor. They turned to Alan Dershowitz, the TV jurist and Harvard Law School professor who represented Trump in his first impeachment trial. Dershowitz was helping several others seeking commutations, including real estate fraudsters and a death row inmate. He told me Braun's father regularly called him on Fridays before sundown, appealing to their common Jewish faith.

Dershowitz (right) lobbied Trump for Braun's release.
Photographer: Ken Cedeno/UPI/Alamy

Associates of Braun's say he's bragged about paying millions of dollars to various Trump-connected intermediaries to secure clemency. But Dershowitz told me he'd taken on Braun's case for free, as he did for many other convicts. "No lawyer in American history has ever done a higher percentage of pro bono cases in his career than me," Dershowitz said. "Not John Adams, not Abraham Lincoln, not Thurgood Marshall." Later in the conversation he acknowledged that he may have received a small fee from a Jewish organization to cover his expenses. He said he couldn't remember who paid him or exactly how much it was.

Braun's release surprised many in his field, which is euphemistically called the merchant cash-advance business. It's an industry of fast-talking salespeople who frequently operate from modest offices in Manhattan's financial district and the outer reaches of Brooklyn, dangling offers of quick money to desperate small-business owners. Among those working in the lower rungs of the business are stock scammers, mortgage fraudsters, and gangsters. Their interest rates are higher than what Mafia loan sharks once charged, but

they get around usury laws by saying they're not lending at all—they're buying the money that businesses will make in the future, at a discount. Courts generally accept this reasoning.

I'd been hearing about Braun since 2014, when I started writing about his industry. Even rivals who defended the ethics of charging 1,000% interest rates described his tactics as unconscionable. These lenders complained that Braun would find and cheat their customers before they could collect on their own loans. But they were afraid of him and would clam up if I asked them to speak on the record. It seemed his drug-trafficking background worked to his advantage—anyone with Google could see that he stood accused of whipping an associate with a belt and that one of his co-defendants had been found dead of a gunshot wound in a torched car in Los Angeles. (They'd also see that Braun had been dubbed a "mama's boy drug dealer" by the New York Post, because he'd been living with his parents.)

Some suspected that Braun was an informant and that he must have at least the tacit support of law enforcement. "He's fearless," one cash-advance executive told me in 2018. "Either he's crazy, or he knows he's covered."

Pot Kingpin Sued by New York for 1000% Predatory Loans

An undated video, obtained by Bloomberg at the time of the New York lawsuit, seemed to show Braun berating a borrower.

When I looked into Braun's lending operation, I learned that he was one of the most frequent users of an arcane legal instrument called a confession of judgment, which used the New York state court system to grab money from borrowers' bank accounts. Before getting a loan, his customers would have to sign a statement giving up their right to defend themselves in court. Armed with one of these confessions, Braun could accuse the borrowers of not paying, even without proof, then legally seize their assets before they knew what had happened. Many of his customers told me he'd abused this power by taking more than he was owed.

Braun's aggressiveness also made him terrifying to those in hock to him. Some said he would threaten to beat them or harm their families. "You don't know who you're f---king dealing with. We can get you wherever we want," he told one borrower, who started carrying a gun, court papers say. "We know where you live," he said to another. "We'll go after your family."

Back then, with Braun ignoring my calls and emails, I stopped by his 12th-floor office in a shabby tower in downtown Manhattan. He berated me in front of about a dozen employees. "What are you, Inspector F---ing Gadget?" he yelled, spittle flying.

Then he told me he needed a cigarette and asked me to follow him to the roof. I suggested street level instead. Once we got downstairs, and he'd been calmed by one Newport after another, Braun turned plaintive. It seemed that his gangster talk was mostly an act, or at least that he could turn it off when it suited him. In a conversation that lasted almost two hours, he denied he'd ever cheated or threatened anyone. He suggested I wanted to hurt his family and said I was harassing him. Then he said I should come work with him.

In December 2018, I published my story about Braun, part of a series I wrote with Zachary Mider about abuses in the cash-advance industry. The series began with a Bloomberg Businessweek cover story and spurred an uproar among New York state lawmakers, who sharply limited confessions of judgment. A few months later, the delays in Braun's drug-trafficking case finally ended. The timing may have been a coincidence, but Braun didn't seem to think so. On May 28, 2019, his sentencing hearing was held at a federal courthouse in Brooklyn. He stared at me as he walked in.

"Zeke Faux," he said, slowly.

Braun was facing a potential decades-long sentence, but he didn't look worried. Two drug traffickers had told me by then, in letters sent from prison, that Braun was an informant, and a person who'd spoken extensively with him had said he expected to be let off with time served because of the information he'd provided. Braun's lawyer told the court he'd put his past behind him and was now a "successful businessperson" and a responsible husband and father.

"Your Honor, I just wanted to let you know and the court know that I'm really sorry for my wrongdoings in the past, and I've changed a whole lot since then, and I have many, many reasons to continue to do good in the future in my current lifestyle," Braun said.

But the judge, Kiyo Matsumoto, said she'd received anonymous letters alerting her to civil lawsuits against Braun. In one, a man claimed that Braun had pushed him off a deck; in another, a borrower said Braun had threatened him with violence. She asked the prosecutor, Craig Heeren, if Braun had done anything during his years out on bail that might warrant a longer sentence. Heeren said he didn't think so.

"I believe there was a fairly thorough investigation of that done," Heeren said. "We've met with Mr. Braun as well and spoken to him directly about the conduct, and he's obviously denied it."

The judge was unconvinced. She sentenced Braun to 10 years. Braun's friends and family members looked shocked. Matsumoto told Braun he could take a few months to get his affairs in order before reporting to prison. As everyone walked out of the courtroom, Braun confronted me again. "This guy's a c---sucker!" he yelled. "F--- you! You know what you do!"

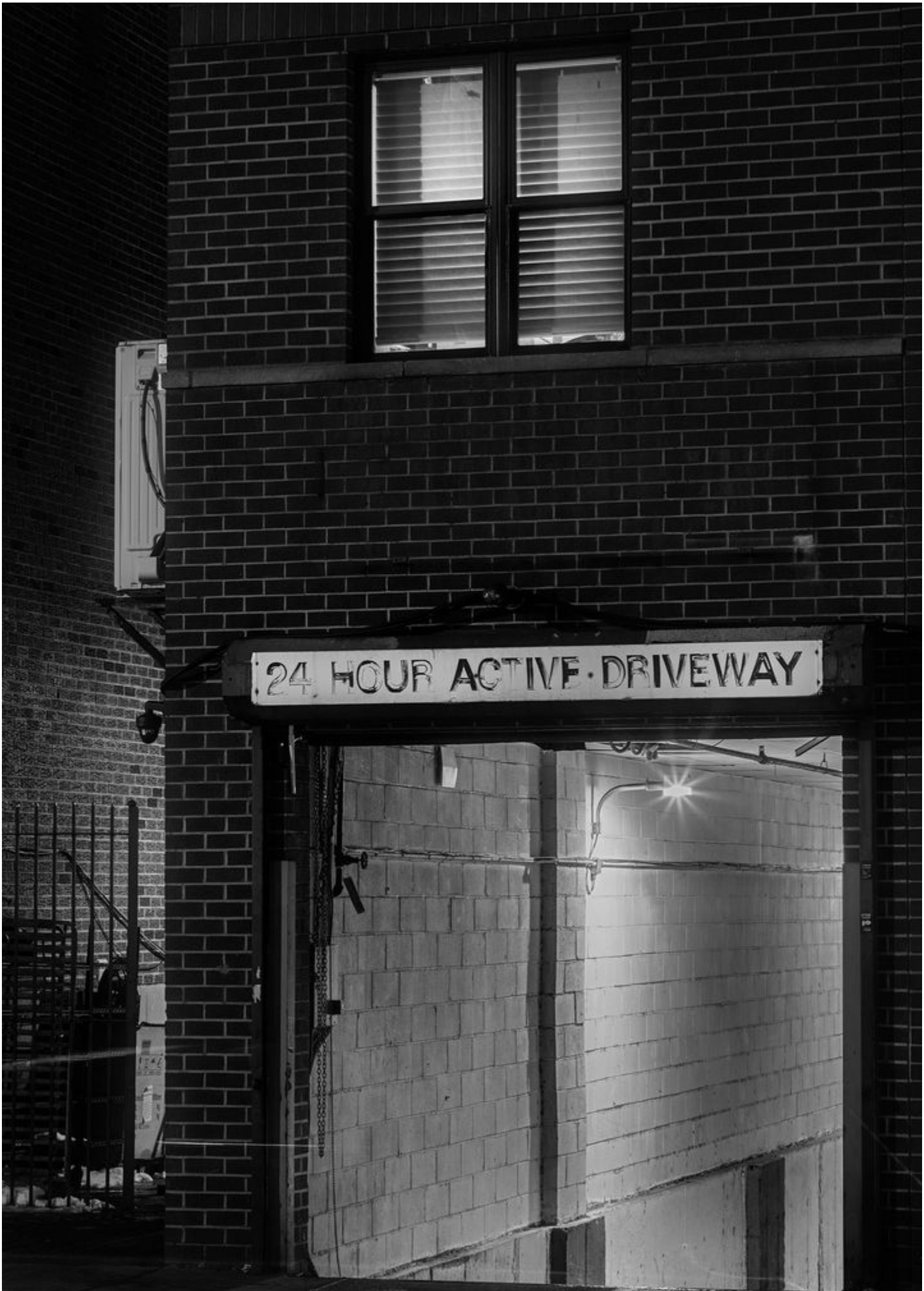
"From what I've heard, he's a legend"

The minimum-security prison in Otisville, N.Y., where Braun served his one-year stint, has long been a favored destination for Jewish white-collar criminals unlucky enough to wind up behind bars. An Orthodox rabbi holds services in a chapel lined with Hebrew texts. Lawrence Dressler, a lawyer who served time for mortgage fraud and now blogs about goings-on at Otisville under his prison nickname, Larry Noodles, recalled celebrating holidays with meals that included challah, freshly made hummus, and gefilte fish. Among Braun's fellow inmates were former Trump lawyer Michael Cohen and state Assembly Speaker Sheldon Silver. Braun, who attended services at Young Israel of Staten Island on the outside, seems to have coped well enough. Two men who were there at the time said that his visitors came in Bentleys, clad in Gucci, and that he had another inmate cook him meals with contraband vegetables.

On Jan. 20, 2021, the day of Joe Biden's inauguration, Braun walked out of Otisville. He told a friend that he planned to stop for a mani-pedi on his way back to Brooklyn. His family sent out last-minute invitations for a "Freedom Bash." That night, at an event space in Borough Park, Avi Perets, a popular Israeli singer, performed as merchant cash-advance salesmen buttonholed Braun and asked him for advice.

Within a few months, the tips about him started coming to me, in direct messages, texts, and late-night calls. "Let me know if you need any info on Jon Braun," one wrote. "You're not even at the tip of the iceberg," another texted. I started calling around to anyone in Braun's circles, and eventually eight of his current and former business partners and friends shared details of Braun's new operation in Borough Park. Most asked for anonymity, because they're afraid of him.

They told me that on the second floor of that brick building on Brooklyn's 13th Avenue about two dozen men work the phones. Some sweet-talk potential borrowers; others browbeat those who've fallen behind. Most use aliases when speaking with clients, and some don't even know each other's real names. Braun sits in a windowless room off the main bullpen—sometimes puffing on a vape pen, sometimes Newports—and reviews borrowers' bank statements.


24 HOUR ACTIVE DRIVEWAY

A parking garage in the building where Braun works in Borough Park.
Photographer: Philip Montgomery for Bloomberg Businessweek

He doesn't talk to customers on the phone much anymore, according to the current and former business partners, and he's careful not to sign his name to any documents. Two of his cousins serve as his top lieutenants. But it's Braun, the sources said, who decides who gets a loan, how much they're charged, and how to collect the debts.

The customers are truckers, contractors, cleaners, and butchers, in big cities and small towns from Texas to New York. In interviews, the borrowers said they'd known they were taking on costly debt. But some said salespeople tricked them by promising they'd get a second, cheaper loan once they paid back the first one or ripped them off by holding back as much as a third of the loan proceeds for hidden fees. The better loans never materialized. It sounded a lot like Braun's old lending business.

"These guys prey on people like me—people who've put so much money in their business that it's affected their credit," said Brian Massey, a mechanic in Memphis. He said he was promised a $20,000 loan on good terms and ended up with $7,000 at an annualized interest rate of 3,424%. In January, overwhelmed by the payments on that debt and other cash advances, he closed his shop and took a job as a security guard, he said.

Others also recounted having to lay off employees, borrow money from others, or close their doors. One, an executive recruiter, took his own life in May, leaving a note citing financial distress, according to an investigator's report, though the recruiter's friends told me his main concern had been a larger debt he owed to a Mafia-connected loan shark in Florida.

Braun rarely uses confessions of judgment to collect his debts now that the tactic is heavily restricted in New York. But he's found a similar maneuver in a neighboring state. In more than 100 cases in a Connecticut court, companies associated with Braun—including Matrix Advance, Bridge Funding Cap, and Gofund Advance—have used a legal procedure called prejudgment attachment. It relies on a clause deep in the fine print of the documents that borrowers must sign to get a loan, which allows a lawyer to go into their bank accounts and make their deposits inaccessible. With Braun essentially holding their money hostage, the borrower will usually agree to a settlement on his terms.

That's what happened to Marvin Jackson, a trucker in Round Rock, Texas, who'd named his company Amazing Grace Carrier Inc., after his grandmother's favorite song in church. He agreed to borrow $15,000 from Fundura Capital in June and pay back $799 a day. After fees, Jackson received only $11,000, and three weeks later, after he'd missed

payments, Fundura used prejudgment attachment to have his bank account locked. It sued him for $25,495—more than twice what he'd received. Jackson quickly agreed to a settlement. "I'm a small business trying to get off the ground. They were trying to bury me," he said.

Sruly Getter, a former electrician who's now one of Braun's top salesmen according to the sources familiar with the business, signed one of the court documents in Jackson's case. But when I called him, he denied any connection to Braun. "I have no idea who's Jonathan Braun," Getter said. This was less than convincing, because based on a description from one of the tipsters, I was pretty sure I'd seen him arriving at the Borough Park building in his own Bentley. Pressed, he admitted only to knowing of Braun. "From what I've heard, he's a legend," he said.

Other salesmen's stories weren't much more credible. Joseph Kroen, a former car salesman who's signed court papers for some of the companies in the network, acknowledged that he'd worked with Braun, but he said Braun was only a consultant who advised him on how to best deal with people. "He knows what people want, he knows how to read people, he knows how to make people live in peace," Kroen said. A third salesman said having Braun as a consultant was like getting stock tips from Warren Buffett. "You would be stupid not to take his advice," he said.

One of my tipsters gave me Braun's new phone number, and in November I called. First he hung up on me. When we talked later, he said he knew all about my recent reporting. He said that he'd heard recordings of me asking questions based on what he said was false information and that he knew who my sources were. He even texted over a photo of me sitting in the office of his brother-in-law, who also runs a merchant cash-advance company. Someone had snapped it surreptitiously. "You went to my drug-addicted, alcoholic brother-in-law, and I don't know what his issue is with me, but he made up a whole bunch of stuff," Braun said. The brother-in-law denied the substance-abuse claims but said he didn't want to say more, because his mother would be mad.

Braun did acknowledge working for a business that does consulting for cash-advance companies, but he wouldn't say which ones. He said he didn't file prejudgment attachment cases in Connecticut, and he denied cheating anyone, ever. "I definitely do not break the law whatsoever," Braun said. "I go out of my way to not be involved in any shenanigans at all."

Despite the devastation Braun's borrowers allege he's caused them, the court system rarely holds him back. More often, it helps him collect his debts. The contracts the borrowers sign are filled with so much punitive fine print that they allow him to do pretty

much anything he wants. Even in a 2018 case, in which a judge ruled that Braun's company had defrauded a plumber, the penalty was simply to pay the money back.

The federal prosecutors in Brooklyn who handled Braun's drug-trafficking case declined to comment on whether they've looked into his loans. A criminal investigation by the New York City Police Department before Braun's prison sentence went nowhere. A detective, Joseph Nicolosi, interviewed others in the cash-advance industry about Braun, even stopping a private jet on the tarmac at a New Jersey airport to talk with his associates, according to some of the people involved. In August 2020, a lawyer, who was representing a different group of Braun's associates, said at a court hearing in a civil case that a federal prosecutor in Manhattan was planning to file criminal charges based on Nicolosi's findings. But a year and a half later, no criminal case has materialized, and no one I talked to said they'd heard from authorities since Braun had gotten out of prison. Nicolosi and the Manhattan prosecutor, Louis Pellegrino, declined to comment.

While Braun was in prison, the Federal Trade Commission sued him over his lending practices. He denied any wrongdoing in the case, which is pending. He's missed deadlines to respond to the New York attorney general's lawsuit against him, and the state is now seeking a $77 million default judgment. But it might be hard to collect that money from someone who knows all the ins and outs of debt-collection law, especially because the AG can't resort to the kinds of legal tricks Braun uses. Braun's associates say he keeps no assets in his name, anyway. If he's assessed a penalty, he can plead poverty and avoid paying it.

That doesn't mean he's broke. He was photographed recently wearing Gucci slippers and what looked to be a Patek Philippe Aquanaut watch, worth about $120,000. He's building a 20,000-square-foot mansion in Lawrence, N.Y., on Long Island's south shore. On paper, his wife owns it, but he's bragged about it to friends. One Otisville inmate remembers Braun spreading out the blueprints on a table in a common room and ostentatiously reviewing the details. Plans filed with the village's buildings department show that it will have 10 bedrooms, 14 bathrooms, and two elevators, one of them for cars. A rendering depicts a Bentley parked outside.

In July, Braun traveled to Miami for a relative's wedding. Another guest says they heard him bragging about the money he was making from cash advances. During the toasts, Braun smirked as the best man joked about his time in prison. "I see Itzik from Israel, Mr. Krys from Mexico, Camilo is here from Colombia, but most amazingly, Jon Braun is here all the way from Otisville!" the best man said. "Thank you, President Donald J. Trump." —With Zachary R. Mider

EXHIBIT 2

Businessweek
Feature

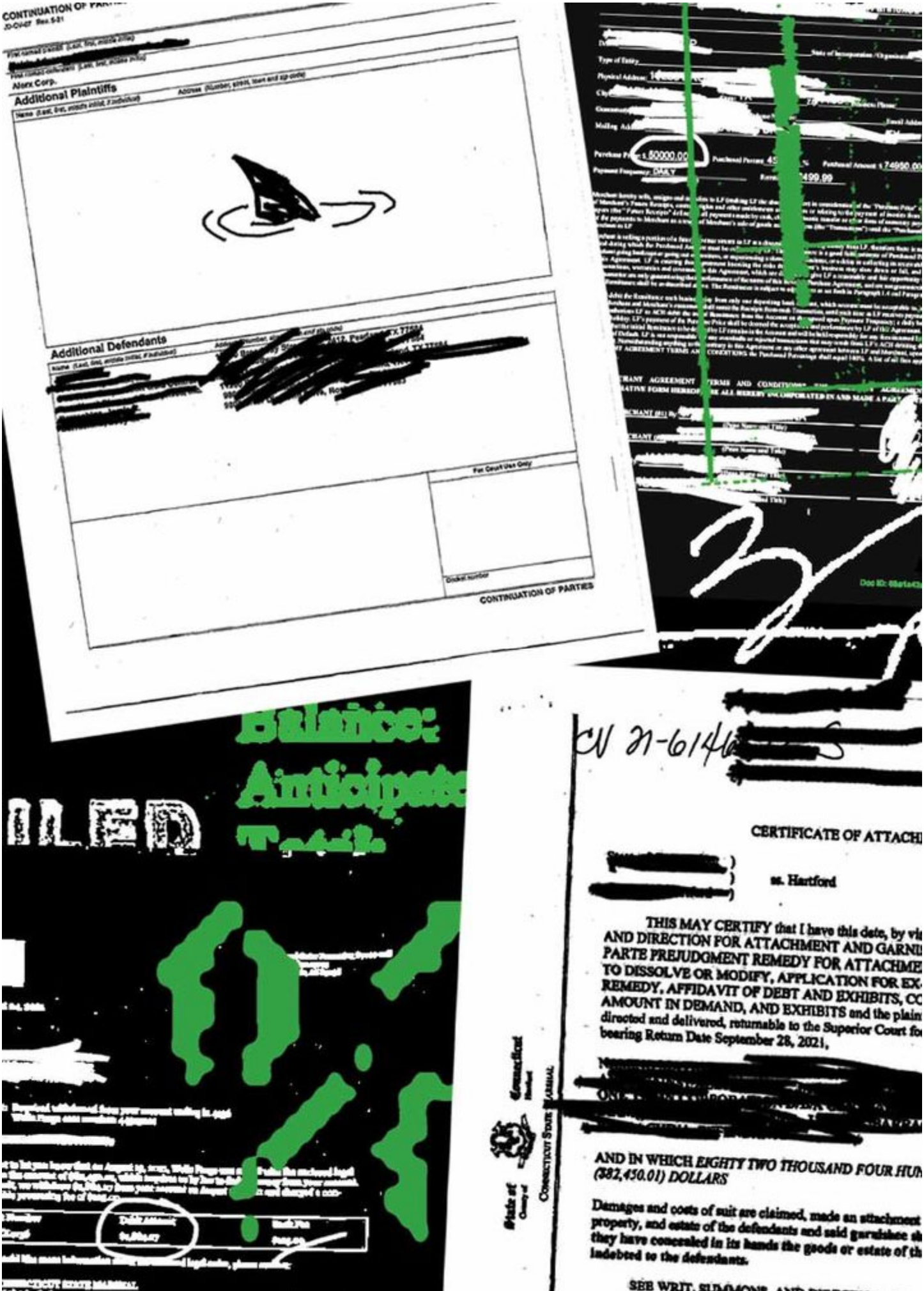
Sign This Agreement and Your Bank Account Might Be Frozen

Predatory lenders are turning to Connecticut to help collect their debts, using a legal trick to bypass judicial review.

By

Zachary Mider
and Zeke Faux

February 10, 2022, 12:01 AM EST


CONTINUATION OF PARTIES
Alexx Corp.
Additional Plaintiffs
Additional Defendants
For Court Use Only
CONTINUATION OF PARTIES
CV 21-6144
CERTIFICATE OF ATTACH
ss. Hartford
THIS MAY CERTIFY that I have this date, by vi
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Damages and costs of suit are claimed, made an attachment
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SEE WRIT, SUMMONS AND

Illustration: Chris Burnett for Bloomberg Businessweek
Share this article

Jared Alfin has powers that many of his fellow debt collectors can only dream of.

Alfin, a lawyer in Simsbury, Conn., can order someone's bank account frozen without warning. He doesn't need a judge's say-so. He simply drafts some boilerplate legal papers and has them dropped off at the bank.

His clients are so-called merchant cash-advance companies that make costly, short-term loans to small businesses. Alfin gets involved when one of these loans goes sour. The borrower could be a restaurateur in San Diego or a self-employed trucker in Nashville. They might need that cash for employee paychecks or to pay the fuel bill. No matter. Until Alfin relents or a judge intervenes, the money is untouchable—no withdrawals, no checks, no transfers. Last year, court records show, he pursued more than 180 small-business owners this way.

Alfin's power flows from a feature of Connecticut law that plays normal court procedure in reverse. Typically, if you sue someone for money, a court has to rule in your favor before a defendant must hand over assets. Alfin uses what's known as a prejudgment attachment to lock up people's money first, before he's won his case—in fact, before defendants even know they're being sued.

His biggest client for these services is a group of a half-dozen related companies that use names such as Matrix Advance, Gofund Advance, and Bridge Funding Cap, court records show. These companies are managed from an office in the Borough Park neighborhood of Brooklyn, overseen by Jonathan Braun, according to people with knowledge of the matter. Braun is notorious in the world of high-interest lending. New York's attorney general has called him a "modern-day loan shark" and is suing him for ripping off customers and threatening violence at his previous cash-advance company. Released from prison last year after President Donald Trump commuted an unrelated drug-trafficking sentence, Braun denies any wrongdoing in his cash-advance dealings and says he isn't involved in the Borough Park operation.

Read More: The Loan Shark Trump Freed From Prison Is Lending Money Again

Alfin, a partner at Hassett & George PC, wouldn't discuss specific clients or say whether he's had any contact with Braun, but he says cash-advance collections represent only part of his practice. And he says prejudgment attachment is a normal and appropriate part of commercial litigation. "I just simply file papers for different clients," he says. "I don't think I am doing anything improper."

Last summer, Alfin locked up about $14,600 in two bank accounts belonging to Lucy Barrachina, who employs four people at a pharmacy in Dickinson, Texas, a city near Houston, court records show. Barrachina had missed payments on a loan from Matrix, and a representative there demanded immediate cash to have the funds released. "I told

him, 'But we have payroll, we have to pay our employees, we cannot do that,' " Barrachina says. Instead, she agreed to add an extra $10,000 onto a loan balance that was already costing her more than 700% annualized. Her bank account was unfrozen, but she was in debt even deeper than before. "I regret it so much that we got in touch with them," she says.

Not long ago, cash-advance companies often relied on a different legal instrument to raid customers' bank accounts, a confession of judgment filed in a New York court. A 2018 Bloomberg News series highlighted abuses of that tactic, finding that confessions were sometimes forged, altered, or deployed against borrowers who hadn't missed payments and that they helped destroy thousands of small businesses nationwide. Braun was one of the most aggressive users.

After New York lawmakers curtailed the use of confessions in 2019, the industry, concentrated in Manhattan and Brooklyn, explored alternatives. Some lenders turned to courts in Utah or Texas, where confessions or similar instruments can still be used. Some tried their own arbitration schemes in which hand-picked arbitrators quickly ruled in favor of lenders.

Others turned to Connecticut, where long-standing state law allows courts to restrain a defendant's property at the start of a case to prevent that person from moving assets out of reach. Ordinarily, that kind of restraint is granted by a judge after a hearing attended by both parties, and the plaintiff must demonstrate he's likely to prevail. But Alfin—the only lawyer in the state routinely seeking prejudgment attachments on behalf of the cash-advance industry, according to a review of court records—doesn't need to bother with pretrial hearings. Buried in the fine print of his clients' loan agreements is a clause that specifically waives the borrowers' right to such a hearing. That means that whenever a client wants, Alfin can freeze a borrower's property, as long as he obtains a written affidavit from the client stating that money is owed.

Cash-Advance Prejudgment Attachments Filed in Connecticut

Data: Bloomberg analysis of Connecticut Superior Court cases

Alfin says this type of waiver is common in commercial lending in Connecticut and isn't as onerous as the New York tactic that came under criticism from lawmakers there. By itself, a Connecticut prejudgment attachment cannot be used to drain bank accounts, only freeze them temporarily, and defendants can demand a hearing to free them up. That would, of course, require a small-business owner in Texas or Minnesota to swiftly hire a lawyer in Connecticut while lacking access to a bank account. Asked if any of his cash-advance cases had resulted in such a hearing, Alfin says he can't recall one.

The Borough Park crew operates out of a second-story office on 13th Avenue. Braun, 38, joined up not long after Trump let him out of prison last year, people with knowledge of

the matter say. They say that although his name doesn't appear on paperwork, he's the boss.

The group began using the Connecticut tactic shortly before Braun's release from prison and has sought more than $10 million from more than 100 small businesses this way, court records show. The typical deal involves interest amounting to more than 500% annualized. To get access to the state's legal system, the group's companies claim a "place of business" at a rented mailbox in a strip mall in Avon, Conn. Alfin said in an email that Braun "is not a member or employee" of any of these companies. "I am also not aware of any instances where Mr. Braun spoke to a merchant that one of my clients sued" in the state, he added.

In Barrachina's case, court records show she agreed to borrow $50,000 from Matrix in August, though she said she actually received far less after fees were deducted. She agreed to pay back $2,500 a day, starting immediately, until she'd paid $74,950.

Barrachina says she had trouble keeping up and asked her contact at Matrix for a lower daily payment, but the company refused. Within days of the first missed payment, Alfin drafted some legal papers and sent them to a Connecticut marshal, a state-appointed officer who serves legal documents and is compensated by the lawyers who hire her. The marshal, Elizabeth Ostrowski, in turn delivered copies to local branches or agents of two banks that Barrachina used. Soon, accounts at both banks were frozen. Ostrowski declined to comment.

Barrachina says she learned what was going on only when she discovered she didn't have access to her bank accounts. She says she was left with no other option and agreed to take on more debt to have her accounts unfrozen. But her trouble didn't end there. About $1,900 remained frozen for months after she settled. Alfin attributes that to a mix-up by one of the banks. After inquiries from Bloomberg Businessweek, he took further steps to get the money released, and Barrachina received a check on Feb. 1.

The industry is using Connecticut law in a way that was never intended by the legislature, says Shane Heskin, a Philadelphia-based lawyer with White & Williams LLP who represents small-business owners. Cash-advance companies are using it to strong-arm people into a settlement, regardless of the merits of their cases, he says. "It effectively makes them negotiate with a gun to their head."

Alfin disagrees. "The purpose of the prejudgment remedy is to secure assets so that the assets are not dissipated," he says. That's exactly what happens in his cases, he says.

Connecticut law trusts private lenders to do the right thing, letting them freeze bank accounts without anyone checking beforehand to see if they doctored contracts, inflated

the size of debts, or fabricated defaults—the kind of abuses cash-advance customers have complained about for years. Some of those complaints have involved Braun. In 2018, a New York judge found that Braun's previous lending operation, Richmond Capital Group LLC, ripped off a plumber and then lied about it when seeking a court judgment against him. "The record is replete with evidence that [Richmond] made false statements and misrepresentations to the court," the judge wrote, and "essentially made the court an unwilling participant in its fraud." Later, both the Federal Trade Commission and the New York attorney general's office filed lawsuits alleging that Braun and Richmond systematically abused the New York courts. Braun and his then-business partners "file false affidavits in which they misrepresent to courts the nature of their loans and often the amounts paid and still due," an assistant attorney general wrote. Braun has denied the allegations in court, and the cases are pending.

So far, the cash-advance industry's use of Connecticut law hasn't attracted notice from officials there. The office of the state's chief court administrator referred questions to the attorney general's office, which said it hadn't received any complaints about the matter. In an email, Steve Stafstrom, chairman of the state House Judiciary Committee, said he hadn't heard anything either. "It may be something we should look into," he wrote.

EXHIBIT 3

ALPHA
RECOVERY PARTNERS
1274 49th ST STE 197
Brooklyn NY 11219

Tel: (929) 605-4137

February 15, 2022

Re: Haymount Urgent Care, P.C. and Robert A. Clinton, Jr.

Dear Sirs/Madams,

Please see the enclosed letter and supporting documents, requesting that a hold be placed on the following merchant's accounts receivable:

Haymount Urgent Care, P.C. and Robert A. Clinton, Jr.
420 Owen Dr., Fayetteville, NC 28304

The original documents will follow via mail.

Very Truly Yours,

Florence Zabokritsky Esq. as Counsel,
Alpha Recovery Partners
1274 49th ST STE 197
Brooklyn NY 11219
Info@AlphaRecoveryPartners.com

ALPHA
RECOVERY PARTNERS
1274 49th ST STE 197
Brooklyn NY 11219

Tel: (929) 605-4137

VIA FACSIMILE & FED EX
UNITED HEALTHCARE SERVICES, INC.
c/o CT Corporation System
28 Liberty St Floor 42,
New York, NY 10005

UCC LIEN NOTICE AND NOTICE OF POWER OF ATTORNEY ("POA") GRANTED BY MERCHANT TO GOFUND ADVANCE GIVING GOFUND ADVANCE ("POA") OVER ACCOUNT RECEIVABLES OF MERCHANT

Re: Haymount Urgent Care, P.C. and Robert A. Clinton, Jr.

EIN: 20-4859026

Balance due to GoFund Advance: $488,928.23

Attn Legal Department:

I represent GoFund Advance ("GoFund Advance") in the above matter. This notice is being sent pursuant to §9-406 of the Uniform Commercial Code (UCC) as it has come to our attention that you may have a balance owed to Haymount Urgent Care, P.C. and Robert A. Clinton, Jr. (the "Merchant"), located at 420 Owen Dr., Fayetteville, NC 28304.

Please be advised that the Merchant has defaulted on a secured merchant agreement entered into by and between the Merchant and GoFund Advance, a copy of which is enclosed for your reference ("Agreement"). The balance currently due and owing to GoFund Advance pursuant to the Agreement is $488,928.23.

Pursuant to the enclosed Agreement, GoFund Advance purchased $1,499,990.00 of the Merchant's future accounts. The Agreement was structured so that GoFund Advance was to receive 45% of all the Merchant's deposits. In accordance with the Agreement, GoFund Advance filed a UCC-1 financing statement with the appropriate Secretary of State of North Carolina, thereby obtaining a perfected security interest in the Merchant's assets, including without limitation, the Merchant's accounts receivables. A copy of the UCC-1 is also enclosed for your reference.

The Merchant has breached the Agreement due to non-payment of the receivables and therefore is currently in default. Pursuant to Section 9-406 of the UCC, you are directed to forward all receipts due the Merchant to GoFund Advance as same become due. Please direct all funds owed by you on behalf of the Merchant, or collected by you on behalf of the Merchant to this firm until the amount $488928.23.00 accrues.

The UCC-1 puts all parties on notice of GoFund Advance's rights to the Merchant's assets as a secured party. This notice is to inform you that not forwarding said funds to GoFund Advance is a violation of the UCC-1 filing and security interest, and hereby interfering with the Agreement entered into by and between the Merchant and GoFund Advance.

Please understand that no representative of the Merchant has any authority to collect or receive your payment. Payments made to the Merchant will not discharge your obligation as described above and will result in you paying the obligation twice as UCC §9-406 directs that once an account debtor has been notified of the assignment of an account, the account debtor may not discharge the account obligation by paying the assignor (here, the Merchant). Thus, remitting payment to anyone other than GoFund Advance will result in your having to pay GoFund Advance.

Please direct all funds owed by you on behalf of the Merchant, or collected by you on behalf of the Merchant to this firm until the amount $488928.23.00 accrues. The UCC-1 puts all parties on notice of GoFund Advance's rights to the Merchant's assets as a secured party.

We trust that you share GoFund Advance's desire to avoid time, expense and inconvenience which would inevitably accompany a formal legal proceeding and will, therefore, promptly forward full payment in order to amicably resolve this situation. If necessary, GoFund Advance will indemnify **United** Healthcare Services, Inc. for all actions taken with respect to this matter.

Please contact me with any questions.

Very Truly Yours,

GoFund Advance
5308 13TH AVE SUITE 324 BROOKLYN
NY 11219

Florence Zabokritsky Esq. as Counsel,
Alpha Recovery Partners.
1274 49th ST STE 197
Brooklyn NY 11219
Info@AlphaRecoveryPartners.com

iLien Cover Page

Date Printed: 02/15/2022

Debtor:
Haymount Urgent Care, PC
420 OWEN DR
FAYETTEVILLE, NC 28304

Bill code:
Customer ID:
REF3:
REF4:
REF5:
REF6:
REF7:
Law Firm Bill Code:

iLien File #: 80321599
Order Confirmation #: 82195701

UserID: 306925
UserName: AMEL HARVEY
Number of Collateral Pages Attached: 0

Transaction Type: Original
Jurisdiction: NC, Secretary of State

[redacted]

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS

A. NAME & PHONE OF CONTACT AT FILER (optional)
Name: Wolters Kluwer Lien Solutions Phone: 800-331-3282 Fax: 818-662-4141

B. E-MAIL CONTACT AT FILER (optional)
uccfilingreturn@wolterskluwer.com

C. SEND ACKNOWLEDGMENT TO: (Name and Address) 52002 - Tailored Fund

Lien Solutions
P.O. Box 29071
Glendale, CA 91209-9071

82195701
NCNC

File with: Secretary of State, NC

Lien Solutions
Representation of filing

This filing is Completed
File Number : 20210117809B
File Date : 30-Aug-2021

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S NAME: Provide only one Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 1b, leave all of item 1 blank, check here ☐ and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

1a. ORGANIZATION'S NAME: Haymount Urgent Care, PC					
OR 1b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX	
1c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY	
420 OWEN DR	FAYETTEVILLE	NC	28304	USA	

2. DEBTOR'S NAME: Provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 2b, leave all of item 2 blank, check here ☐ and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

2a. ORGANIZATION'S NAME					
OR 2b. INDIVIDUAL'S SURNAME: CLINTON	FIRST PERSONAL NAME: ROBERT	ADDITIONAL NAME(S)/INITIAL(S): A		SUFFIX: JR	
2c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY	
222 GLENWOOD AVEAPT 304	RALEIGH	NC	27603	USA	

3. SECURED PARTY'S NAME (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY): Provide only one Secured Party name (3a or 3b)

3a. ORGANIZATION'S NAME: GO FUND					
OR 3b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX	
3c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY	
1274 49TH ST SUITE 197	BROOKLYN	NY	11219	USA	

4. COLLATERAL: This financing statement covers the following collateral:
All accounts receivable, receipts, instruments, contract rights and other rights to receive the payment of money, patents chattel paper, licenses, leases and general intangibles,
whether now owned acquired or arising, and all of debtor's books and records relating to any of the foregoing.

5. Check only if applicable and check only one box: Collateral is ☐ held in a Trust (see UCC1Ad, item 17 and Instructions) ☐ being administered by a Decedent's Personal Representative

6a. Check only if applicable and check only one box:
☐ Public-Finance Transaction ☐ Manufactured-Home Transaction ☐ A Debtor is a Transmitting Utility

6b. Check only if applicable and check only one box:
☐ Agricultural Lien ☐ Non-UCC Filing

7. ALTERNATIVE DESIGNATION (if applicable): ☐ Lessee/Lessor ☐ Consignee/Consignor ☐ Seller/Buyer ☐ Bailee/Bailor ☐ Licensee/Licensor

8. OPTIONAL FILER REFERENCE DATA:
82195701

FILING OFFICE COPY — UCC FINANCING STATEMENT (Form UCC1) (Rev. 04/20/11)

Prepared by Lien Solutions, P.O. Box 29071, Glendale, CA 91209-9071 Tel (800) 331-3282

gofund ADVANCE

CONGRATULATIONS!

You have been approved by Gofund Advance in the amount of: 1,000,000.00

CONTRACT CHECKLIST:

To ensure a quick and smooth funding process, please review the important items in checklist

below:

1. Please verify that your name on the documents is the exact same spelling as your name on your driver's license.
2. Please verify that the legal name and address of your business is correct on the documents.
3. Please ensure that your signatures and initials are filled in on all pages of the documents.

gofund ADVANCE

PURCHASE AND SALE OF FUTURE RECEIVABLES

Agreement Dated: 01/20/2022 between GOFUND ADVANCE ("GFA") and the Merchant listed below ("MERCHANT")

MERCHANT INFORMATION

Merchant's Legal Name: HAYMOUNT URGENT CARE, P.C.

D/B/A: HAYMOUNT URGENT CARE, P.C. State of Incorporation / Organization: NC

Type of Entity

Physical Address: 420 OWEN DR.

City: FAYETTEVILLE State: NC Zip: 28304 Business Phone:

Contact Name: ROBERT A. CLINTON, JR. Cellphone Number: Email Address:

Mailing Address: 222 GLENWOOD AVE. APT 304 City: RALEIGH State: NC Zip: 27603

PURCHASE AND SALE OF FUTURE RECEIVABLES

Merchant hereby sells, assigns and transfers to GFA (making GFA the absolute owner) in consideration of the "Purchase Price" specified above, the Purchased Percentage of all of Merchant's Future Receipts, contract rights and other entitlements arising from or relating to the payment of monies from Merchant's customers' and/or other third party payors (the " Future Receipts" defined as all payments made by cash, check, electronic transfer or other form of monetary payment deposited into Merchants Bank Account), for the payments to Merchant as a result of Merchant's sale of goods and/or services (the "Transactions") until the "Purchased Amount has been delivered by or on behalf of Merchant to GFA

Merchant is selling a portion of a future revenue stream to GFA at a discount, not borrowing money from GFA, therefore there is no interest rate or payment schedule and no time period during which the Purchased Amount must be collected by GFA. The Remittance is a good faith estimate of Purchased Percentage multiplied by revenues of Merchant. Merchant going bankrupt or going out of business, or experiencing a slowdown in business, or a delay in collecting its receivables, in and of itself, does not constitute a breach of this Agreement. GFA is entering this Agreement knowing the risks that Merchant's business may slow down or fail, and GFA assumes these risks based on Merchant's representations, warranties and covenants in this Agreement, which are designed to give GFA a reasonable and fair opportunity to receive the benefit of its bargain. Merchant and Guarantor are only guaranteeing their performance of the terms of this Revenue Purchase Agreement, and are not guaranteeing the payment of the Purchased Amount. The initial Remittance shall be as described above. The Remittance is subject to adjustment as set forth in Paragraph 1.4 and Paragraph 1.5.

GFA will debit the Remittance each business day from only one depositing bank account, which account must be acceptable to, and pre-approved by, GFA (the "Account") into which Merchant and Merchant's customers shall remit the Receipts from each Transaction, until such time as GFA receives payment in full of the Purchased Amount. Merchant hereby authorizes GFA to ACH debit the initial Remittance from the Account on the agreed upon Payment Frequency; a daily basis means any day that is not a United States banking holiday. GFA's payment of the Purchase Price shall be deemed the acceptance and performance by GFA of this Agreement. Merchant understands that it is responsible for ensuring that the initial Remittance to be debited by GFA remains in the Account and will be held responsible for any fees incurred by GFA resulting from a rejected ACH attempt or an Event of Default. GFA is not responsible for any overdrafts or rejected transactions that may result from GFA's ACH debiting the Agreed Remittance under the terms of this Agreement. Notwithstanding anything to the contrary in this Agreement or any other agreement between GFA and Merchant, upon the occurrence of an Event of Default of the MERCHANT AGREEMENT TERMS AND CONDITIONS the Purchased Percentage shall equal 100%. A list of all fees applicable under this Agreement is contained in Appendix A.

Purchase Price: $ 1,000,000.00 Purchased Percent: 45 % Purchased Amount: $ 1,499,990.00

Payment Frequency: DAILY Remittance: $ 60,000.00

THE MERCHANT AGREEMENT "TERMS AND CONDITIONS", THE "SECURITY AGREEMENT AND GUARANTY" AND THE "ADMINISTRATIVE FORM HEREOF, ARE ALL HEREBY INCORPORATED IN AND MADE A PART OF THIS MERCHANT AGREEMENT.

FOR THE MERCHANT (#1) By: ROBERT A. CLINTON, JR. (Print Name and Title) (Signature) DocuSigned by: ROBERT A. CLINTON, JR. F7DED5BC64C74EF...

FOR THE MERCHANT (#2) By: (Print Name and Title) (Signature)

BY OWNER (#1) By: ROBERT A. CLINTON, JR. (Print Name and Title) (Signature) DocuSigned by: ROBERT A. CLINTON, JR. F7DED5BC64C74EF...

BY OWNER (#2) By: (Print Name and Title) (Signature)

Initial: DS RAC

MERCHANT AGREEMENT TERMS AND CONDITIONS

1 TERMS OF ENROLLMENT IN PROGRAM

1.1 **Merchant Deposit Agreement and Processor.** Merchant shall (A) execute an agreement acceptable to GFA with a Bank acceptable to GFA to obtain electronic fund transfer services for the Account, and (B) if applicable, execute an agreement acceptable to GFA with a credit and debit card processor (the "Processor") instructing the Processor to deposit all Receipts into the Account. Merchant shall provide GFA and/or its authorized agent(s) with all of the information, authorizations and passwords necessary for verifying Merchant's receivables, receipts, deposits and withdrawals into and from the Account. Merchant hereby authorizes GFA and/or its agent(s) to withdraw from the Account via ACH debit the amounts owed to GFA for the receipts as specified herein and to pay such amounts to GFA. These authorizations apply not only to the approved Account but also to any subsequent or alternate account used by the Merchant for these deposits, whether pre- approved by GFA or not. This additional authorization is not a waiver of GFA's entitlement to declare this Agreement breached by Merchant as a result of its usage of an account which GFA did not first pre-approve in writing prior to Merchant's usage thereof. The aforementioned authorizations shall be irrevocable without the written consent of GFA.

1.2 **Term of Agreement.** This Agreement shall remain in full force and effect until the entire Purchased Amount and any other amounts due are received by GFA as per the terms of this Agreement.

1.3 **Future Purchase of Increments.** Subject to the terms of this Agreement, GFA offers to purchase additional Receipts in the "Increments" stated in on Page 1 of this Agreement, if any. GFA reserves the right to delay or rescind the offer to purchase any Increment or any additional Receipts, in its sole and absolute discretion.

1.4 **Reconciliation.** As long as an Event of Default, or breach of this Agreement, has not occurred, once per calendar month Merchant may request a retroactive reconciliation of the total Remittance Amount(for the purposes of this Agreement "total Remittance Amount" shall be defined as all payments made by Merchant to GFA after GFA remitted the Purchase Price to Merchant). All requests hereunder must be in writing to eric@gofundadvance.com within five (5) business days of the close of the calendar month. Said request must include copies of all of Merchant's bank account statements, credit card processing statements, and accounts receivable report if applicable, for the requested month. GFA retains the right the request additional documentation such as bank login or DecisionLogic access to view Merchant's accounts, refusal to provide access shall be a breach of this Agreement and GFA shall have no obligation to reconcile. Such reconciliation, if applicable, shall be performed by GFA within five (5) Business Days following its receipt of Merchant's request for reconciliation by either crediting or debiting the difference back to, or from, Merchants Bank Account so that the total amount debited by GFA shall equal the Specific Percentage of the Future Receipts that Merchant Collected from the date of this Agreement up to and including the date of the Reconciliation request. Nothing set forth in this section shall be deemed to provide Merchant with the right to interfere with GFA's right and ability to debit Merchant's Account while the Request is pending or to unilaterally modify the initial Remittance amount, in any method other than the ones listed in this Agreement.

1.5 **Adjustments to the Remittance.** As long an Event of Default, or breach of this Agreement, has not occurred and should the Merchant experience a decrease in its' Future Receipts, Merchant may give notice to GFA to request a decrease in the Remittance. All requests hereunder must be in writing to eric@gofundadvance.com and must include copies of all of Merchant's bank account statements, credit card processing statements, and accounts receivable reports for the requested period. GFA retains the right the request additional documentation such as bank login or DecisionLogic access to view Merchant's accounts, refusal to provide access shall be a breach of this Agreement and GFA shall have no obligation to reconcile. The Remittance shall be modified to more closely reflect the Merchant's actual receipts by multiplying the Merchant's actual receipts by the Purchased Percentage divided by the number of business days in the previous (2) calendar weeks or by other means that can more accurately estimate the Merchant's Future Receipts. Merchant shall provide GFA with viewing access to their bank account as well as all information reasonably requested by GFA to properly calculate the Merchant's Remittance. At the end of the two (2) calendar weeks the Merchant may request another adjustment pursuant to this paragraph or it is agreed that the Merchant's Remittance shall return to the Remittance as agreed upon on Page 1 of this Agreement.

1.6 **Financial Condition.** Merchant and Guarantor(s) (as hereinafter defined and limited) authorize GFA and its agents to investigate their financial responsibility and history, and will provide to GFA any authorizations, bank or financial statements, tax returns, etc., as GFA deems necessary in its sole and absolute discretion prior to or at any time after execution of this Agreement. A photocopy of this authorization will be deemed as acceptable as an authorization for release of financial and credit information. GFA is authorized to update such information and financial and credit profiles from time to time as it deems appropriate.

1.7 **Transactional History.** Merchant authorizes all of its banks, brokers and processor to provide GFA with Merchant's banking, brokerage and/or processing history to determine qualification or continuation in this program and for collections purposes. Merchant shall provide GFA with copies of any documents related to Merchant's card processing activity or financial and banking affairs within five days after a request from GFA.

1.8 **Indemnification.** Merchant and Guarantor(s) jointly and severally indemnify and hold harmless Processor, its officers, directors and shareholders against all losses, damages, claims, liabilities and expenses (including reasonable attorney's fees) incurred by Processor resulting from (a) claims asserted by GFA for monies owed to GFA from Merchant and (b) actions taken by Processor in reliance upon any fraudulent, misleading or deceptive information or instructions provided by GFA.

1.9 **No Liability.** In no event will GFA be liable for any claims asserted by Merchant or Guarantors under any legal theory for lost profits, lost revenues, lost business opportunities, exemplary, punitive, special, incidental, indirect or consequential damages, each of which is waived by both Merchant and Guarantor(s). In the event these claims are nonetheless raised, Merchant and Guarantors will be jointly liable for all of GFA's attorney's fees and expenses resulting therefrom.

1.10 **Reliance on Terms.** Section 1.1, 1.6, 1.7, 1.8 and 2.5 of this Agreement are agreed to for the benefit of Merchant, GFA, Processor, and Merchant's bank and notwithstanding the fact that Processor and the bank is not a party of this Agreement, Processor and the bank may rely upon their terms and raise them as a defense in any action.

1.11 **Sale of Receipts.** Merchant and GFA agree that the Purchase Price under this Agreement is in exchange for the Purchased Amount, and that such Purchase Price is not intended to be, nor shall it be construed as a loan from GFA to Merchant. Merchant agrees that the Purchase Price is in exchange for the Receipts pursuant to this Agreement, and that it equals the fair market value of such Receipts. GFA has purchased and shall own all the Receipts described in this Agreement up to the full Purchased Amount as the Receipts are created. Payments made to GFA in respect to the full amount of the Receipts shall be conditioned upon Merchant's sale of products and services, and the payment therefore by Merchant's customers. In no event shall the aggregate of all amounts or any portion thereof be deemed as interest hereunder, and in the event it is found to be interest despite the parties hereto specifically representing that it is NOT interest, it shall be found that no sum charged or collected hereunder shall exceed the highest rate permissible at law. In the event that a court nonetheless determines that GFA has charged or received interest hereunder in excess of the highest applicable rate, the rate in effect hereunder shall automatically be reduced to the maximum rate permitted by applicable law and GFA shall promptly refund to Merchant any interest received by GFA in excess of the maximum lawful rate, it being intended that Merchant not pay or contract to pay, and that GFA not receive or contract to receive, directly or indirectly in any manner whatsoever, interest in excess of that which may be paid by Merchant under applicable law. As a result thereof, Merchant knowingly and willingly waives the defense of Usury in any action or proceeding.

1.12 **Power of Attorney.** Merchant irrevocably appoints GFA as its agent and attorney-in-fact with full authority to take any action or execute any instrument or document to settle all obligations due to GFA from Processor, or in the case of a violation by Merchant of Section 1or the occurrence of an Event of Default under Section 3 hereof, including without limitation (i) to obtain and adjust insurance; (ii) to collect monies due or to become due under or in respect of any of the Collateral; (iii) to receive, endorse and collect any checks, notes, drafts, instruments, documents or chattel paper in connection with clause (i) or clause (ii) above; (iv) to sign Merchant's name on any invoice, bill of lading, or assignment directing customers or account debtors to make payment directly to GFA; and (v) to contact Merchant's banks and financial institutions using Merchant and

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Guarantor(s) personal information to verify the existence of an account and obtain account balances (vi) to file any claims or take any action or institute any proceeding which GFA may deem necessary for the collection of any of the unpaid Purchased Amount from the Collateral, or otherwise to enforce its rights with respect to payment of the Purchased Amount. In connection therewith, all costs, expenses and fees, including legal fees, shall be payable by merchant.

1.13 **Protections Against Default.** The following Protections 1 through 8 may be invoked by GFA immediately and without notice to Merchant in the event: (a) Merchant takes any action to discourage the use of electronic check processing that are settled through Processor, or permits any event to occur that could have an adverse effect on the use, acceptance, or authorization of checks or other payments or deposits for the purchase of Merchant's services and products including but not limited to direct deposit of any checks into a bank account without scanning into the GFA electronic check processor; (b) Merchant changes its arrangements with Processor or the Bank in any way that is adverse or unacceptable to GFA; (c) Merchant changes the electronic check processor through which the Receipts are settled from Processor to another electronic check processor, or permits any event to occur that could cause diversion of any of Merchant's check or deposit transactions to another processor; (d) Merchant intentionally interrupts the operation of this business transfers, moves, sells, disposes, or otherwise conveys its business and/or assets without (i) the express prior written consent of GFA, and (ii) the written agreement of any GFA or transferee to the assumption of all of Merchant's obligations under this Agreement pursuant to documentation satisfactory to GFA; (e) Merchant takes any action, fails to take any action, or offers any incentive—economic or otherwise—the result of which will be to induce any customer or customers to pay for Merchant's services with any means other than payments, checks or deposits that are settled through Processor; (f) Merchant fails to provide GFA with copies of any documents related to Merchant's card processing activity of financial and banking affairs within five days after a request from GFA, or (g) Merchant breaches any terms of this Agreement, including but not limited any of the Events of Default contained in Section 3.1 herein. These protections are in addition to any other remedies available to GFA at law, in equity or otherwise pursuant to this Agreement.

Protection 1. The full uncollected Purchased Amount plus all fees (including reasonable attorney's fees) due under this Agreement and the attached Security Agreement become due and payable in full immediately.
Protection 2. GFA may enforce the provisions of the Limited Personal Guaranty of Performance against the Guarantor(s).
Protection 3. Merchant hereby authorizes GFA to execute in the name of the Merchant a Confession of Judgment in favor of GFA in the amount of Purchased Amount stated in the Agreement. Upon an Event of Default, GFA may enter that Confession of Judgment as a Judgment with the Clerk of any Court and execute thereon.
Protection 4. GFA may enforce its security interest in the Collateral.
Protection 5. The entire Purchased Amount and all fee (including reasonable attorney's fees) shall become immediately payable to GFA from Merchant.
Protection 6. GFA may proceed to protect and enforce its right and remedies by lawsuit. In any such lawsuit, if GFA recovers a Judgment against Merchant, Merchant shall be liable for all of GFA's costs of the lawsuit, including but not limited to all reasonable attorneys' fees and court costs. **Protection 7.** This Agreement shall be deemed Merchant's Assignment of Merchant's Lease of Merchant's business premises to GFA. Upon breach of any provision in this Agreement, GFA may exercise its rights under this Assignment of Lease without prior Notice to Merchant. Protection 8. GFA may debit Merchant's depository accounts wherever situated by means of ACH debit or facsimile signature on a computer-generated check drawn on Merchant's bank account or otherwise for all sums due to GFA.

1.14 **Protection of Information.** Merchant and each person signing this Agreement on behalf of Merchant and/or as Owner or Guarantor, in respect of himself or herself personally, authorizes GFA to disclose information concerning Merchant's and each Owner's and each Guarantor's credit standing (including credit bureau reports that GFA obtains) and business conduct only to agents, affiliates, subsidiaries, and credit reporting bureaus. Merchant and each Owner and each Guarantor hereby and each waives to the maximum extent permitted by law any claim for damages against GFA or any of its affiliates relating to any (i)investigation undertaken by or on behalf of GFA as permitted by this Agreement or (ii) disclosure of information as permitted by this Agreement.

1.15 **Confidentiality.** Merchant understands and agrees that the terms and conditions of the products and services offered by GFA, including this Agreement and any other GFA documents (collectively, "Confidential Information") are proprietary and confidential information of GFA. Accordingly, unless disclosure is required by law or court order, Merchant shall not disclose Confidential Information of GFA to any person other than an attorney, accountant, financial advisor or employee of Merchant who needs to know such information for the purpose of advising Merchant ("Advisor"), provided such Advisor uses such information solely for the purpose of advising Merchant and first agrees in writing to be bound by the terms of this section. A breach hereof entitles GFA to not only damages and reasonable attorney's fees but also to both a Temporary Restraining Order and a Preliminary Injunction without Bond or Security.

1.16 **Publicity.** Merchant and each of Merchant's Owners and all Guarantors hereto all hereby authorizes GFA to use its, his or her name in listings of clients and in advertising and marketing materials.

1.17 **D/B/A's.** Merchant hereby acknowledges and agrees that GFA may be using "doing business as" or "d/b/a" names in connection with various matters relating to the transaction between GFA and Merchant, including the filing of UCC-1 financing statements and other notices or filings.

2 REPRESENTATIONS, WARRANTIES AND COVENANTS

Merchant represents warrants and covenants that, as of this date and during the term of this Agreement:

2.1 **Financial Condition and Financial Information.** Merchant's and Guarantors' bank and financial statements, copies of which have been furnished to GFA, and future statements which will be furnished hereafter at the discretion of GFA, fairly represent the financial condition of Merchant at such dates, and since those dates there has been no material adverse changes, financial or otherwise, in such condition, operation or ownership of Merchant. Merchant and Guarantors have a continuing, affirmative obligation to advise GFA of any material adverse change in their financial condition, operation or ownership. GFA may request statements at any time during the performance of this Agreement and the Merchant and Guarantors shall provide them to GFA within five business days after request from GFA. Merchant's or Guarantors' failure to do so is a material breach of this Agreement.

2.2 **Governmental Approvals.** Merchant is in compliance and shall comply with all laws and has valid permits, authorizations and licenses to own, operate and lease its properties and to conduct the business in which it is presently engaged and/or will engage in hereafter.

2.3 **Authorization.** Merchant, and the person(s) signing this Agreement on behalf of Merchant, have full power and authority to incur and perform the obligations under this Agreement, all of which have been duly authorized.

2.4 **Use of Funds.** Merchant agrees that it shall use the Purchase Price for business purposes and not for personal, family, or household purposes.

2.5 **Electronic Check Processing Agreement.** Merchant will not change its Processor, add terminals, change its financial institution or bank account(s)or take any other action that could have any adverse effect upon Merchant's obligations under this Agreement, without GFA's prior written consent. Any such changes shall be a material breach of this Agreement.

2.6 **Change of Name or Location.** Merchant will not conduct Merchant's businesses under any name other than as disclosed to the Processor and GFA, nor shall Merchant change any of its places of business without prior written consent by GFA.

2.7 **Daily Batch Out.** Merchant will batch out receipts with the Processor on a daily basis if applicable.

2.8 **Estoppel Certificate.** Merchant will at every and all times, and from time to time, upon at least one (1) day's prior notice from GFA to Merchant, execute, acknowledge and deliver to GFA and/or to any other person, firm or corporation specified by GFA, a statement certifying that this Agreement is unmodified and in full force and effect (or, if there have been modifications, that the same is in full force and effect as modified and stating the modifications) and stating the dates which the Purchased Amount or any portion thereof has been repaid.

2.9 **No Bankruptcy.** As of the date of this Agreement, Merchant is not insolvent and does not contemplate filing for bankruptcy in the next six months and has not consulted with a bankruptcy attorney or filed any petition for bankruptcy protection under Title 11 of the United States Code

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and there has been no involuntary petition brought or pending against Merchant. Merchant further warrants that it does not anticipate filing any such bankruptcy petition and it does not anticipate that an involuntary petition will be filed against it.

2.10 **Unencumbered Receipts**. Merchant has good, complete, unencumbered and marketable title to all Receipts, free and clear of any and all liabilities, liens, claims, changes, restrictions, conditions, options, rights, mortgages, security interests, equities, pledges and encumbrances of any kind or nature whatsoever or any other rights or interests that may be inconsistent with the transactions contemplated with, or adverse to the interests of GFA.

2.11 **Business Purpose.** Merchant is a valid business in good standing under the laws of the jurisdictions in which it is organized and/or operates, and Merchant is entering into this Agreement for business purposes and not as a consumer for personal, family or household purposes.

2.12 **Defaults under Other Contracts.** Merchant's execution of, and/or performance under this Agreement, will not cause or create an event of default by Merchant under any contract with another person or entity.

2.13 **Good Faith.** Merchant and Guarantors hereby affirm that Merchant is receiving the Purchase Price and selling GFA the Purchased Amount in good faith and will use the Purchase Price funds to maintain and grow Merchant's business.

3 EVENTS OF DEFAULT AND REMEDIES

3.1 **Events of Default.** The occurrence of any of the following events shall constitute an "Event of Default" hereunder:

(a) Merchant or Guarantor shall violate any term or covenant in this Agreement;

(b) Any representation or warranty by Merchant in this Agreement shall prove to have been incorrect, false or misleading in any material respect when made;

(c) the sending of notice of termination by Merchant or verbally notifying GFA of its intent to breach this Agreement;

(d) the Merchant fails to give GFA 24 hours advance notice that there will be insufficient funds in the account such that the ACH of the Remittance amount will not be honored by Merchant's bank, and the Merchant fails to supply all requested documentation and allow for daily and/or real time monitoring of its bank account;

(f) Merchant shall transfer or sell all or substantially all of its assets;

(g) Merchant shall make or send notice of any intended bulk sale or transfer by Merchant;

(h) Merchant shall use multiple depository accounts without the prior written consent of GFA

(i) Merchant shall enter into any financing agreements with any other party including but not limited to: Loans, Merchant Cash Advances, Receivables financing, or any other agreement that will increase the total debt owed by Merchant to any other party.

(j) Merchant shall change its depositing account without the prior written consent of GFA; or

(k) Merchant shall close its depositing account used for ACH debits without the prior written consent of GFA

(l) Merchant's bank returns a code other than NSF cutting GFA from its collections

(m) Merchant shall default under any of the terms, covenants and conditions of any other agreement with GFA.

3.2 **Limited Personal Guaranty** In the Event of a Default, GFA will enforce its rights against the Guarantors of this transaction. Said Guarantors will be jointly and severally liable to GFA for all of GFA's losses and damages, in additional to all costs and expenses and legal fees associated with such enforcement.

3.3 **Remedies.** In case any Event of Default occurs and is not waived pursuant to Section 4.4. hereof, GFA may proceed to protect and enforce its rights or remedies by suit in equity or by action at law, or both, whether for the specific performance of any covenant, agreement or other provision contained herein, or to enforce the discharge of Merchant's obligations hereunder (including the Guaranty) or any other legal or equitable right or remedy, including but not limited to filing the Confession of Judgment and executing thereon, and enforcing the Security Agreement contained herein. All rights, powers and remedies of GFA in connection with this Agreement may be exercised at any time by GFA after the occurrence of an Event of Default, are cumulative and not exclusive, and shall be in addition to any other rights, powers or remedies provided by law or equity.

3.4 **Costs.** Merchant shall pay to GFA all reasonable costs associated with (a) an Event or Default, (b) breach by Merchant of the Covenants in this Agreement and the enforcement thereof, and(c) the enforcement of GFA's remedies set forth in this Agreement, including but not limited to court costs and attorneys' fees.

3.5 **Required Notifications.** Merchant is required to give GFA written notice within 24 hours of any filing under Title 11 of the United States Code. Merchant is required to give GFA seven days' written notice prior to the closing of any sale of all or substantially all of the Merchant's assets or stock.

4 MISCELLANEOUS

4.1 **Modifications; Agreements.** No modification, amendment, waiver or consent of any provision of this Agreement shall be effective unless the same shall be in writing and signed by GFA.

4.2 **Assignment.** GFA may assign, transfer or sell its rights to receive the Purchased Amount or delegate its duties hereunder, either in whole or in part.

4.3 **Notices.** All notices, requests, consents, demands and other communications hereunder shall be delivered by certified mail, return receipt requested, to the respective parties to this Agreement at the addresses set forth in this Agreement. Notices to GFA shall become effective only upon receipt by GFA. Notices to Merchant shall become effective three days after mailing.

4.4 **Waiver Remedies.** No failure on the part of GFA to exercise, and no delay in exercising any right under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right under this Agreement preclude any other or further exercise thereof or the exercise of any other right. The remedies provided hereunder are cumulative and not exclusive of any remedies provided by law or equity.

4.5 **Binding Effect;** Governing Law, Venue and Jurisdiction. This Agreement shall be governed by and construed exclusively in accordance with the laws of the State of New York, without regards to any applicable principles of conflicts of law. Any lawsuit, action or proceeding arising out of or in connection with this Agreement shall be instituted in any court sitting in New York, Texas or Connecticut, and shall be the sole and exclusive venues for any lawsuit, action or proceeding (the "Acceptable Forums"). The parties agree that the said sole and exclusive Acceptable Forums are convenient and submit to the jurisdiction of the Acceptable Forums and waive any and all objections to inconvenience of the jurisdiction or venue. Should a proceeding be initiated in any other forum, each of the parties to this Agreement irrevocably waives any right to oppose any motion or application made by any other party to transfer such proceeding to an Acceptable Forum. **Merchant and Guarantor hereby agree that the mailing of any Summons and Complaint in any proceeding commenced by GFA by certified or registered mail, return receipt requested to the Mailing Address listed on this Agreement, or via email to the Email Address listed on this Agreement, or any other process required by any such court will constitute valid and lawful service of process against them without the necessity for service by any other means provided by statute or rule of court, but without invalidating service performed in accordance with such other provisions.**

4.6 **Survival of Representation**, etc. All representations, warranties and covenants herein shall survive the execution and delivery of this Agreement and shall continue in full force until all obligations under this Agreement shall have been satisfied in full and this Agreement shall have terminated.

4.7 **Interpretation.** All Parties hereto have reviewed this Agreement with attorney of their own choosing and have relied only on their own attorneys' guidance and advice. No construction determinations shall be made against either Party hereto as drafter.

4.8 **Severability.** In case any of the provisions in this Agreement is found to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of any other provision contained herein shall not in any way be affected or impaired.

4.9 **Entire Agreement.** Any provision hereof prohibited by law shall be ineffective only to the extent of such prohibition without invalidating the remaining provisions hereof. This Agreement and the Security Agreement and Guaranty hereto embody the entire agreement between Merchant and GFA and supersede all prior agreements and understandings relating to the subject matter hereof.

4.10 **JURY TRIAL WAIVER.** THE PARTIES HERETO WAIVE TRIAL BY JURY IN ANY COURT IN ANY SUIT, ACTION OR PROCEEDING ON ANY

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MATTER ARISING INCONNECTION WITH OR IN ANY WAY RELATED TO THE TRANSACTIONS OR THEENFORCEMENT HEREOF. THE PARTIES HERETO ACKNOWLEDGE THAT EACH MAKES THIS WAIVER KNOWINGLY, WILLINGLY AND VOLUNTARILY AND WITHOUT DURESS, AND ONLY AFTER EXTENSIVE CONSIDERATION OF THE RAMIFICATIONS OF THIS WAIVER WITH THEIR ATTORNEYS.

4.11 **CLASS ACTION WAIVER.** THE PARTIES HERETO WAIVE ANY RIGHT TO ASSERT ANY CLAIMS AGAINST THE OTHER PARTY AS A REPRESENTATIVE OR MEMBER IN ANY CLASS OR REPRESENTATIVE ACTION, EXCEPT WHERE SUCH WAIVER IS PROHIBITED BY LAW AS AGAINST PUBLIC POLICY. TO THE EXTENT EITHER PARTY IS PERMITTED BY LAW OR COURT OF LAW TO PROCEED WITH A CLASS OR REPRESENTATIVE ACTION AGAINST THE OTHER, THE PARTIES HEREBY AGREE THAT: (1) THE PREVAILING PARTY SHALL NOT BE ENTITLED TO RECOVER ATTORNEYS' FEES OR COSTS ASSOCIATED WITH PURSUING THE CLASS OR REPRESENTATIVE ACTION (NOT WITHSTANDING ANY OTHER PROVISION IN THIS AGREEMENT); AND (2) THE PARTY WHO INITIATES OR PARTICIPATES AS A MEMBER OF THE CLASS WILL NOT SUBMIT A CLAIM OR OTHERWISE PARTICIPATE IN ANY RECOVERY SECURED THROUGH THE CLASS OR REPRESENTATIVE ACTION.

4.12 **Facsimile & Digital Acceptance.** Facsimile signatures and digital signatures hereon shall be deemed acceptable for all purposes.

4.13 **Prejudgment Remedy Waiver.** EACH AND EVERY MERCHANT, ENDORSER, GUARANTOR AND SURETY OF THIS AGREEMENT, AND EACH OTHER PERSON OR ENTITY WHO MAY BECOME LIABLE FOR ALL OR ANY PART OF THIS OBLIGATION, HEREBY ACKNOWLEDGE THAT THE TRANSACTION OF WHICH THIS AGREEMENT IS A PART IS A COMMERCIAL TRANSACTION, AND TO THE EXTENT ALLOWED UNDER CONNECTICUT GENERAL STATUTES SECTIONS 52-278a TO 52-278m, INCLUSIVE, OR BY OTHER APPLICABLE LAW EACH AND EVERY MERCHANT, ENDORSER AND GUARANTOR OF THIS AGREEMENT HEREBY WAIVE (A) ALL RIGHTS TO NOTICE AND PRIOR COURT HEARING OR COURT ORDER IN CONNECTION WITH ANY AND ALL PREJUDGMENT REMEDIES TO WHICH FCG HEREOF MAY BECOME ENTITLED BY VIRTUE OF ANY DEFAULT OR PROVISION OF THIS AGREEMENT OR SECURITY AGREEMENT SECURING THIS AGREEMENTAND (B) ALL RIGHTS TO REQUEST THAT FCG HEREOF POST A BOND, WITH OR WITHOUT SURETY, TO PROTECT SAID MERCHANTS, ENDORSER OR GUARANTOR AGAINST DAMAGES THAT MAY BE CAUSED BY ANY PREJUDGMENT REMEDY SOUGHT OR OBTAINED BY THE HOLDER HEREOF BY VIRTUE OF ANY DEFAULT OR PROVISION OF THIS AGREEMENT OR SECURITY AGREEMENT SECURING THIS AGREEMENT.

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SECURITY AGREEMENT AND GUARANTY

Merchant's Legal Name: HAYMOUNT URGENT CARE, P.C.

D/B/A: HAYMOUNT URGENT CARE, P.C. Federal ID#:

Physical Address: 420 OWEN DR. City: FAYETTEVILLE State: NC Zip: 28304

Additional Guarantor(s).

SECURITY AGREEMENT

Security Interest. This Agreement will constitute a security agreement under the Uniform Commercial Code. Merchant and Guarantor(s) grants to GFA a security interest in and lien upon all of their present and future: (a) accounts (the "Accounts Collateral"), chattel paper, documents, equipment, general intangibles, instruments, and inventory, as those terms are each defined in Article 9 of the Uniform Commercial Code (the "UCC"), now or hereafter owned or acquired by Merchant and/or Guarantor(s), (b) all proceeds, as that term is defined in Article 9 of the UCC (c) funds at any time in the Merchant's and/or Guarantor(s) Account, regardless of the source of such funds, (d) present and future Electronic Check Transactions, and (e) any amount which may be due to GFA under this Agreement, including but not limited to all rights to receive any payments or credits under this Agreement (collectively, the "Collateral "). Merchant agrees to provide other security to GFA upon request to secure Merchant's obligations under this Agreement. Merchant agrees that, if at any time there are insufficient funds in Merchant's Account to cover GFA's entitlements under this Agreement, GFA is granted a further security interest in all of Merchant's assets of any kind whatsoever, and such assets shall then become Collateral. These security interests and liens will secure all of GFA's entitlements under this Agreement and any other agreements now existing or later entered into between Merchant, GFA or an affiliate of GFA. GFA is authorized to file any and all notices or filings it deems necessary or appropriate to enforce its entitlements hereunder.

This security interest may be exercised by GFA without notice or demand of any kind by making an immediate withdrawal or freezing the Collateral. GFA shall have the right to notify account debtors at any time. Pursuant to Article 9 of the Uniform Commercial Code, as amended from time to time, GFA has control over and may direct the disposition of the Collateral, without further consent of Merchant. Merchant hereby represents and warrants that no other person or entity has a security interest in the Collateral.

With respect to such security interests and liens, GFA will have all rights afforded under the Uniform Commercial Code, any other applicable law and in equity. Merchant will obtain from GFA written consent prior to granting a security interest of any kind in the Collateral to a third party. Merchant and Guarantor (s) agree(s) that this is a contract of recoupment and GFA is not required to file a motion for relief from a bankruptcy action automatic stay to realize on any of the Collateral. Nevertheless, Merchant and Guarantor(s) agree(s) not to contest or object to any motion for relief from the automatic stay filed by GFA. Merchant and Guarantor(s) agree(s) to execute and deliver to GFA such instruments and documents GFA may reasonably request to perfect and confirm the lien, security interest and right of setoff set forth in this Agreement. GFA is authorized to execute all such instruments and documents in Merchant's and Guarantor(s) name.

Merchant and Guarantor(s) each acknowledge and agree that any security interest granted to GFA under any other agreement between Merchant or Guarantor(s) and GFA (the "Cross-Collateral") will secure the obligations hereunder and under the Merchant Agreement. Merchant and Guarantor(s) each agrees to execute any documents or take any action in connection with this Agreement as GFA deems necessary to perfect or maintain GFA's first priority security interest in the Collateral and the Additional Collateral, including the execution of any account control agreements. Merchant and Guarantor(s) each hereby authorizes GFA to file any financing statements deemed necessary by GFA to perfect or maintain GFA's security interest. Merchant and Guarantor(s) shall be liable for, and GFA may charge and collect, all costs and expenses, including but not limited to attorney's fees, which may be incurred by GFA in protecting, preserving and enforcing GFA's security interest and rights.

Negative Pledge. Merchant and Guarantor(s) each agrees not to create, incur, assume, or permit to exist, directly or indirectly, any lien on or with respect to any of the Collateral or the Additional Collateral, as applicable.

Consent to Enter Premises and Assign Lease. GFA shall have the right to cure Merchant's default in the payment of rent on the following terms. In the event Merchant is served with papers in an action against Merchant for nonpayment of rent or for summary eviction, GFA may execute its rights and remedies under the Assignment of Lease. Merchant also agrees that GFA may enter into an agreement with Merchant's landlord giving GFA the right: (a) to enter Merchant's premises and to take possession of the fixtures and equipment therein for the purpose of protecting and preserving same; and/or (b) to assign Merchant's lease to another qualified business capable of operating a business comparable to Merchant's at such premises.

Remedies. Upon any Event of Default, GFA may pursue any remedy available at law (including those available under the provisions of the UCC), or in equity to collect, enforce, or satisfy any obligations then owing to GFA, whether by acceleration or otherwise.

GUARANTY OF PERFORMANCE

THE TERMS, DEFINITIONS, CONDITIONS AND INFORMATION SET FORTH IN THE "MERCHANT AGREEMENT", INCLUDING THE "TERMS AND CONDITIONS", ARE HEREBY INCORPORATED IN AND MADE A PART OF THIS SECURITY AGREEMENT AND GUARANTY. CAPITALIZED TERMS NOT DEFINED IN THIS SECURITY AGREEMENT AND GUARANTY, SHALL HAVE THE MEANING SET FORTH IN THE MERCHANT AGREEMENT, INCLUDING THE TERMS AND CONDITIONS. GFA As an additional inducement for GFA to enter into this Agreement, the undersigned Guarantor(s) hereby provides GFA with this Guaranty. Guarantor(s) will not be personally liable for any amount due under this Agreement unless Merchant commits an Event of Default pursuant to Paragraph 3.1 of this Agreement. Each Guarantor shall be jointly and severally liable for all amounts owed to GFA in the Event of Default. Guarantor(s) guarantee Merchant's good faith, truthfulness and performance of all of the representations, warranties, covenants made by Merchant in this Agreement as each may be renewed, amended, extended or otherwise modified (the "Guaranteed Obligations").Guarantor's obligations are due at the time of any breach by Merchant of any representation, warranty, or covenant made by Merchant in the Agreement.

Guarantor Waivers. In the event of a breach of the above, GFA may seek recovery from Guarantors for all of GFA's losses and damages by enforcement of GFA's rights under this Agreement without first seeking to obtain payment from Merchant, any other guarantor, or any Collateral or Additional Collateral GFA may hold pursuant to this Agreement or any other guaranty. DS

GFA does not have to notify Guarantor of any of the following events and

Initial: RAC

Guarantor will not be released from its obligations under this Agreement if it is not notified of:
(i) Merchant's failure to pay timely any amount required under the Merchant Agreement; (ii) any adverse change in Merchant's financial condition or business; (iii) any sale or other disposition of any collateral securing the Guaranteed Obligations or any other guaranty of the Guaranteed Obligations; (iv) GFA's acceptance of this Agreement; and (v) any renewal, extension or other modification of the Merchant Agreement or Merchant's other obligations to GFA. In addition, GFA may take any of the following actions without releasing Guarantor from any of its obligations under this Agreement: (i) renew, extend or otherwise modify the Merchant Agreement or Merchant's other obligations to GFA; (ii) release Merchant from its obligations to GFA; (iii) sell, release, impair, waive or otherwise fail to realize upon any collateral securing the Guaranteed Obligations or any other guaranty of the Guaranteed Obligations; and (iv) foreclose on any collateral securing the Guaranteed Obligations or any other guaranty of the Guaranteed Obligations in a manner that impairs or precludes the right of Guarantor to obtain reimbursement for payment under this Agreement. Until the Purchased Amount and Merchant's other obligations to GFA under the Merchant Agreement and this Agreement are paid in full, Guarantor shall not seek reimbursement from Merchant or any other guarantor for any amounts paid by it under this Agreement. Guarantor permanently waives and shall not seek to exercise any of the following rights that it may have against Merchant, any other guarantor, or any collateral provided by Merchant or any other guarantor, for any amounts paid by it, or acts performed by it, under this Agreement: (i) subrogation; (ii) reimbursement; (iii) performance; (iv) indemnification; or (v) contribution. In the event that GFA must return any amount paid by Merchant or any other guarantor of the Guaranteed Obligations because that person has become subject to a proceeding under the United States Bankruptcy Code or any similar law, Guarantor's obligations under this Agreement shall include that amount.
Guarantor Acknowledgement. Guarantor acknowledges that: (i) He/She is bound by the Class Action Waiver provision in the Merchant Agreement Terms and Conditions; (ii) He/She understands the seriousness of the provisions of this Agreement; (ii) He/She has had a full opportunity to consult with counsel of his/her choice; and (iv) He/She has consulted with counsel of its choice or has decided not to avail himself/herself of that opportunity.

FOR THE MERCHANT (#1) By: ROBERT A. CLINTON, JR. (Print Name and Title) DocuSigned by: ROBERT A. CLINTON, JR. F7DED58C64C74EF... (Signature)

SSN# _____ Driver's License Number _____

FOR THE MERCHANT (#2) By: _____ (Print Name and Title) _____ (Signature)

SSN# _____ Driver's License Number _____

BY OWNER (#1) By: ROBERT A. CLINTON, JR. (Print Name and Title) DocuSigned by: ROBERT A. CLINTON, JR. (Signature)

SSN# _____ Driver's License Number _____

BY OWNER (#2) By: _____ (Print Name and Title) _____ (Signature)

SSN# _____ Driver's License Number _____

FOR THE GUARANTOR(S) By: ROBERT A. CLINTON, JR. (Print Name and Title) DocuSigned by: ROBERT A. CLINTON, JR. (Signature)

SSN# _____ Driver's License Number _____

FOR THE GUARANTOR(S) By: _____ (Print Name and Title) _____ (Signature)

SSN# _____ Driver's License Number _____

Initial: DS RAC

APPENDIX A - THE FEE STRUCTURE:

A. **Underwriting Fee**: Minimum of $500.00 or up to 12% of the purchase price for underwriting and related expenses.

B. **ACH Origination Fee**: Minimum of $500.00 or up to 10% of the purchase price to cover cost of Origination and ACH Setup

C. **NSF Fee (Standard)**: $50.00 each

D. **Rejected ACH/Blocked ACH/Default Fee**: $5,000.00 When Merchant BLOCKS Account from our Debit ACH, or when Merchant directs the bank to reject our Debit ACH, which places them in default (per contract). When Merchant changes bank Account cutting us off from our collections.

E. **Bank Charge Fee**: $50.00 When Merchant requires a change of Bank Account to be Debited, requiring us to adjust our system.

F. **Wire Fee:** - Each Merchant shall receive their funding electronically to their designated bank account and will be charged $50.00 for a Fed Wire or $0.00 for a bank ACH.

G. **Attorney's Fee**: $10,000. When merchant breaches any term of this Agreement and GFA is required to retain counsel to enforce, defend or collect any term of this Agreement.

H. **Unauthorized Account Fee**: $5,000.00 (if a merchant blocks GFA'S ACH debit of the Account, bounces more than 2 debits of the Account, or simultaneously uses multiple bank accounts or credit- card processors to process its receipts).

I. **Default Fee**: $5,000.00 or up to 20% of the funded amount (if a merchant changes bank accounts or switches to another credit card processor without GFA' s consent, or commits another default pursuant to the Agreement) or bounces more than 2 debits of the Account.

J. **Stacking Fee**: If the Merchant takes any further financing from any other finance /factoring company a fee of 20% of the purchased amount will be added to the Merchants current balance.

K. **Risk Assessment Fee**: $249.00

L. **UCC Fee**: $195.00

M. **Management Fee**: $249.00 monthly funding fee for duration of agreement terms or until balance paid.

FOR THE MERCHANT (#1) By: ROBERT A. CLINTON, JR. — DocuSigned by: ROBERT A. CLINTON, JR. F7DED5B0640674EF...

(Print Name and Title) (Signature)

FOR THE MERCHANT (#2) By: _____ _____

(Print Name and Title) (Signature)

Initial: DS RAC

AUTHORIZATION AGREEMENT FOR DIRECT DEPOSIT (ACH CREDIT) AND DIRECT PAYMENTS (ACH DEBITS)

Merchant: HAYMOUNT URGENT CARE, P.C. **Tax ID:** _____

(Merchant's Legal Name)

Merchant Agreement: Merchant Agreement between GoFund Advance LLC, and Merchant, dated as of: 01/20/2022

Designated Checking Account:

Bank Name: BANK OF AMERICA **Routing:** _____

Bank Name: WELLS FARGO **Routing:** _____

Bank Name: _____ **Routing:** _____ **Account:** _____

Bank Name: _____ **Routing:** _____ **Account:** _____

Bank Name: _____ **Routing:** _____ **Account:** _____

Bank Name: _____ **Routing:** _____ **Account:** _____

Bank Name: _____ **Routing:** _____ **Account:** _____

Bank Name: _____ **Routing:** _____ **Account:** _____

Capitalized terms used in this Authorization Agreement without definition shall have the meanings set forth in the Merchant Agreement.

By signing below, Merchant attests that the Designated Checking Account was established for business purposes and not primarily for personal, family or household purposes. **This Authorization Agreement for Direct Deposit (ACH Credit) and Direct Payments (ACH Debits) is part of (and incorporated by reference into) the Merchant Agreement. Merchant should keep a copy of this important legal document for Merchant's records.**

DISBURSEMENT OF ADVANCE PROCEEDS. By signing below, Merchant authorizes GoFund Advance LLC, to disburse the Advance proceeds less the amount of any applicable fees upon Advance approval by initiating ACH credits to the Designated Checking Account, in the amounts and at the times specified in the Merchant Agreement. **By signing below, Merchant also authorizes GoFund Advance LLC to collect amounts due from Merchant under the Merchant Agreement by initiating ACH debits to the Designated Checking Account, as follows:**

In the amount of: $ 60,000.00 (Or) Percentage of each Banking Deposit: 45 %

On the Following Days: MONDAY - FRIDAY.

If any payment date falls on a weekend or holiday, I understand and agree that the payment may be executed on the next business day. If a payment is rejected by Merchant's financial institution for any reason, including without limitation insufficient funds, Merchant understands that GoFund Advance LLC, may, at its discretion, attempt to process the payment again as permitted under applicable ACH rules. Merchant also authorizes GoFund Advance LLC, to initiate ACH entries to correct any erroneous payment transaction.

MISCELLANEOUS. GoFund Advance LLC, is not responsible for any fees charged by Merchant's bank as the result of credits or debits initiated under this Authorization Agreement. The origination of ACH debits and credits to the Designated Checking Account must comply with applicable provisions of state and federal law, and the rules and operating guidelines of NACHA (formerly known as the National Automated Clearing House Association). Merchant agrees to be bound by the ACH Rules as set forth by NACHA. This Authorization Agreement is to remain in full force and effect until GoFund Advance LLC, has received written notification from Merchant at the address set forth below at least 5 banking days prior of its termination to afford GoFund Advance LLC, a reasonable opportunity to act on it. The individual signing below on behalf of Merchant certifies that he/she is an authorized signer on the Designated Checking Account. Merchant will not dispute any ACH transaction initiated pursuant to this Authorization Agreement, provided the transaction corresponds to the terms of this Authorization Agreement. Merchant requests the financial institution that holds the Designated Checking Account to honor all ACH entries initiated in accordance with this Authorization Agreement.

Merchant: HAYMOUNT URGENT CARE, P.C. Date: 01/20/2022

(Merchant's Legal Name) (Month) (Day) (Year)

Title: _____

DocuSigned by:

X ROBERT A. CLINTON, JR.

(Signature) F7DED5BC64C74EF...

Print Name: ROBERT A. CLINTON, JR.

Initial: RAC DS

Bank Login Information

Dear Merchant,

Thank you for accepting this offer from GoFund Advance LLC. We look forward to being your funding partner for as long as you need.

Daily ACH Program:

GoFund Advance LLC, will require viewing access s to your bank account, each business day, in order to verify the amount of your daily payment. Please be assured that we carefully safeguard your confidential information, and only essential personnel will have access to it.

GoFund Advance LLC, will also require viewing access to your bank account, prior to funding, as part of our underwriting process.

Please fill out the form below with the information necessary to access your account.

* Be sure to indicate capital or lower-case letters.

Name of Bank: ___

Bank portal website: Userna

Password:

Security Question / Answer 1: na

Security Question / Answer 2: na

Security Question / Answer 3: na

Any other information necessary to access your account: na

DocuSigned by:
ROBERT A. CLINTON, JR.
F7DED5BC84C74EF...
Merchant / Owner Signature

01/20/2022
Dated

Initial: DS RAC

EXHIBIT 4

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

GOFUND ADVANCE Plaintiff, -against- CLEMMERS LANDSCAPE, INC. and MICHAEL G. CLEMMER Defendants	Index No.: Date Purchased: **SUMMONS** Plaintiff address is 5308 13TH AVE SUITE 324 BROOKLYN NY 11219

TO THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to serve upon Plaintiff attorney, at the address stated below, an answer to the attached complaint. If this summons was personally delivered upon you in the State of New York, the answer must be served within twenty days after such service of the summons, excluding the date of service. If the summons was not personally delivered to you within the State of New York, the answer must be served within thirty days after service of the summons is complete as provided by law.

If you do not serve an answer to the attached complaint within the applicable time limitation stated above, a judgment may be entered against you, by default, for the relief demanded in the complaint, without further notice to you.

The basis for venue is pursuant to the Contract entered between the parties.

Dated: Queens, New York
February 25, 2022

By: _____
Florence D. Zabokritsky, Esq.
69-06 Myrtle Ave
Ridgewood, NY 11385
(718) 366-2301
Attorneys for Plaintiff

Defendants to be served:

Clemmers Landscape, Inc.
1402 Mirror Lake Rd., Lincolnton, NC 28092

Michael G. Clemmer
1402 Mirror Lake Rd, Lincolnton, NC 28092

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

GOFUND ADVANCE Plaintiff, -against- CLEMMERS LANDSCAPE, INC. and MICHAEL G. CLEMMER Defendants	Index No.: **VERIFIED COMPLAINT**

Plaintiff GoFund Advance ("Plaintiff"), by its attorney, Florence D. Zabokritsky Esq., for its complaint herein against Clemmers Landscape, Inc. ("Company Defendant") and Michael G. Clemmer ("Guarantor") (Company Defendant and Guarantor collectively "Defendants"), alleges as follows:

The Parties

1. At all relevant times, Plaintiff was and is a Limited Liability Company organized and existing under the laws of the State of New York.

2. Upon information and belief, at all relevant times, Company Defendant was and is a company organized and existing under the laws of the State of North Carolina.

3. Upon information and belief, at all relevant times, Guarantor was and IS an individual residing in the State of North Carolina with an address at 1402 Mirror Lake Rd, Lincolnton, NC 28092

Venue

4. Venue is proper in this breach of contract claim, pursuant to the subject contract which contains a clause specifying that New York is the exclusive jurisdiction for all disputes arising under the contract.

The Facts

5. On or about 1/31/2022, Plaintiff and Defendants entered into an agreement (the "Agreement") whereby Plaintiff agreed to purchase all rights to Company Defendant's future receivables having an agreed upon value of $74,950.00. A copy of the agreement is annexed hereto as Exhibit A.

6. Pursuant to the Agreement, Company Defendant agreed to have one bank account approved by Plaintiff (the "Bank Account") from which Company Defendant authorized Plaintiff to make daily ACH withdrawals until $74,950.00 was fully paid to Plaintiff.

7. In addition, Defendant Guarantor personally guaranteed any and all amounts owed to Plaintiff from Company Defendant upon a breach in performance by Company Defendant.

8. Plaintiff remitted the purchase price for the future receivables to Company Defendant as agreed. Initially, Company Defendant met its obligations under the Agreements.

9. Company Defendant stopped making its payments to Plaintiff and otherwise breached the Agreements by intentionally impeding and preventing Plaintiff from making the agreed upon ACH withdrawals from the Bank Account while conducting regular business operations.

10. Company Defendant made payments totaling $36,400.00 leaving a balance of $38,550.00.

11. Despite due demand, Company Defendant has failed to pay the amounts due and owing by Company Defendant to Plaintiff under the Agreement.

12. Additionally, Guarantor is responsible for all amounts incurred as a result of any default of the Company Defendant.

13. There remains a balance due and owing to Plaintiff on the Agreement in the amount of $38,805.00 plus interest, costs, disbursements and attorney's fees.

AS AND FOR THE FIRST CAUSE OF ACTION
(Breach of Contract)

14. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 12 of this complaint as though fully set forth at length herein.

15. Plaintiff gave fair consideration to Company Defendant which was tendered for the right to receive the aforementioned receivables. Accordingly, Plaintiff fully performed under the Agreements.

16. Upon information and belief, Company Defendant is still conducting regular business operations and still collecting receivables.

17. Company Defendant has materially breached the Agreements by failing to make the specified payment amount to Plaintiff as required under the Agreements and otherwise intentionally impeding and preventing Plaintiff from receiving the proceeds of the receivables purchased by them.

18. Upon information and belief, Company Defendant has also materially breached the Agreements by using more than one depositing bank (account which has not been approved by Plaintiff.

19. By reason of the foregoing, Plaintiff has suffered damages in the amount of $388050, plus interest, costs, disbursements and attorney's fees.

AS AND FOR A SECOND CAUSE OF ACTION
(Personal Guarantee)

20. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 18 of this complaint as though fully set forth at length herein.

21. Pursuant to the Agreements, Guarantor personally guaranteed that Company Defendant would perform its obligations thereunder and that he or she would be personally liable for any loss suffered by Plaintiff as a result of a breach by Company Defendant.

22. Company Defendant has breached the Agreements as detailed above.

23. By reason of the foregoing, Plaintiff is entitled to judgment against Guarantor based on his or her personal guarantee in the sum of $38,805.00 plus interest, costs, disbursements and attorney's fees.

AS AND FOR A THIRD CAUSE OF ACTION
(Unjust Enrichment)

24. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 22 of this complaint as though fully set forth at length herein.

25. Defendants have been unjustly enriched in that they have received the purchase price for the future receivables, yet have failed to pay the sum of $74,950.00 pursuant to the Agreement.

26. By reason of the foregoing, Plaintiff is entitled to judgment against the Defendants for unjust enrichment in an amount to be determined by the court, plus interest, costs, disbursements and attorney's fees.

WHEREFORE, plaintiff GoFund Advance requests judgment against defendants Michael G. Clemmer and Clemmers Landscape, Inc. as follows:

(i) On the first cause of action of the complaint, Plaintiff requests judgment against Company Defendant in the amount of $38,805.00, plus interest, costs, disbursements and attorney's fees;

(ii) On the second cause of action of the complaint, Plaintiffs request judgment against Guarantor in the amount of $38,805.00, plus interest, costs, disbursements and attorney's fees;

(iii) On the third cause of action of the complaint, Plaintiff requests judgment against Company Defendant and Guarantor in an amount of $38,805.00,

plus interest, costs, disbursements and attorney's fees;

(iv) For such other and further relief as this Court deems just and proper.

Dated: Queens, New York
February 25, 2022

By: _____

Florence D. Zabokritsky Esq.
69-06 Myrtle Ave
Ridgewood, NY 11385
(718) 366-2301
Attorneys for Plaintiff

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

GoFund Advance Plaintiff, -against- CLEMMERS LANDSCAPE, INC. and MICHAEL G. CLEMMER Defendants	Index No.:

NOTICE OF COMMENCEMENT OF ACTION
SUBJECT TO MANDATORY ELECTRONIC FILING

PLEASE TAKE NOTICE that the matter captioned above, which has been commenced by filing of the accompanying documents with the County Clerk, is subject to mandatory electronic filing pursuant to Section 202.5-bb of the Uniform Rules for the Trial Courts. This notice is being served as required by Subdivision (b) (3) of that Section.

The New York State Courts Electronic Filing System ("NYSCEF") is designed for the electronic filing of documents with the County Clerk and the court and for the electronic service of those documents, court documents, and court notices upon counsel and self-represented parties. Counsel and/or parties who do not notify the court of a claimed exemption (see below) as required by Section 202.5-bb(e) must immediately record their representation within the e-filed matter on the Consent page in NYSCEF. Failure to do so may result in an inability to receive electronic notice of document filings.

Exemptions from mandatory e-filing are limited to: 1) attorneys who certify in good faith that they lack the computer equipment and (along with all employees) the requisite knowledge to comply; and 2) self-represented parties who choose not to participate in e-filing. For additional information about electronic filing, including access to Section 202.5-bb, consult the NYSCEF website at www.nycourts.gov/efile or contact the NYSCEF Resource Center at 646-386-3033 or efile@courts.state.ny.us.

Dated:

By: _____
Florence D. Zabokritsky, Esq.
69-06 Myrtle Avenue
Ridgewood, NY 11385
(718) 366-2301
Attorneys for Plaintiff

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

GoFund Advance Plaintiff, -against- CLEMMERS LANDSCAPE, INC. and MICHAEL G. CLEMMER Defendants	Index No.:

STATE OF NEW YORK :
: SS:
COUNTY OF NEW YORK :

Renee Aryeh , being duly sworn, hereby deposes and says as follows, under penalties of perjury:

I am the Authorized Officer for Plaintiff in the within action. I have read the foregoing Verified Complaint and know the contents thereof; The same is true to my knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe them to be true.

The foregoing statements are true under penalties of perjury.

Sworn to before me this
25 day of Feb , 2022

BY:

Notary Public

MITCHELL BARAKS
STATE OF NEW YORK
NOTARY PUBLIC
Qualified in Richmond County
01BA6358218
MY COMMISSION EXPIRES 05-08-2025

EXHIBIT 5

Secretary of the State of Connecticut
Annual Report

Filing Details

Filing Number:	0010264688	Report Year Due Date:	03/31/2022
Filing Fee:	$80.00	Filed On:	1/24/2022 3:08:04 PM

Primary Details

Business Type:	Domestic
Legal Structure:	LLC
Business Name:	Go Fund Advance LLC
Business ALEI:	US-CT.BER:2277060

	Existing Information	***Updated Information***
Business Email Address:	jk@funduracap.com	No update
NAICS Information:	Miscellaneous Financial Investment Activities (523999)	No update

Business Location

	Existing Information	***Updated Information***
Principal Office Address:	500 West Putnam Ave, Suite 4000 Greenwich, CT 06830 United States	No update
Mailing Address:	500 West Putnam Ave, Suite 4000 Greenwich, CT 06830 United States	No update

Agent Information

Type:	Business

Secretary of the State of Connecticut
Annual Report

Agent's Name:	HASSETT & GEORGE, P.C.
Agent's ALEI:	US-CT.BER:0282091

	Existing Addresses	*Updated Addresses*
Business Address:	945 HOPMEADOW STREET SIMSBURY, CT 06070 United States	No update
Mailing Address:	945 HOPMEADOW STREET SIMSBURY, CT 06070 United States	No update

New Principal Information

Name	*Title*	*Business Address*	*Residence Address*
Hartford Receivables LLC	Member	500 West Putnam Ave, Suite 4000 Greenwich, CT 06830 United States	None

Removed Principal Information

Name	*Title*	*Business Address*	*Residence Address*
Joseph Kroen	Member	304 West Main St, Suite 2 Avon, CT 06001 United States	1757 58th St Brooklyn, NY 11204-2236 United States

Acknowledgement

I hereby certify and state under penalties of false statement that all the information set forth on this document is true.

Secretary of the State of Connecticut
Annual Report

I hereby electronically sign this document on behalf of:
Name of Authorizer: Yisroel Getter

Filer Name: Crystal Phelps
Filer Signature: Crystal Phelps
Execution Date: 01/24/2022
This signature has been executed electronically

Go Fund Advance LLC ACTIVE

500 West Putnam Ave, Suite 4000, Greenwich, CT, 06830, United States

BUSINESS DETAILS

Business Details

General Information

Business Name
Go Fund Advance LLC

Business status
ACTIVE

Citizenship/place of formation
Domestic/Connecticut

Business address
500 West Putnam Ave, Suite 4000, Greenwich, CT, 06830, United States

Annual report due
3/31/2023

NAICS code
Miscellaneous Financial Investment Activities (523999)

Business ALEI
2277060

Date formed
6/21/2021

Business type
LLC

Mailing address
500 West Putnam Ave, Suite 4000, Greenwich, CT, 06830, United States

Last report filed
2022

NAICS sub code

Principal Details

Principal Name
Hartford Receivables LLC

Principal Title
Member

Principal Business address
500 West Putnam Ave, Suite 4000, Greenwich, CT, 06830, United States

Principal Name

Hartford Receivables LLC

Principal Title
Member

Principal Business address
500 West Putnam Ave, Suite 4000, Greenwich, CT, 06830, United States

Agent details

Agent name
HASSETT & GEORGE, P.C.

Agent Business address
945 HOPMEADOW STREET, SIMSBURY, CT, 06070, United States

Agent Mailing address
945 HOPMEADOW STREET, SIMSBURY, CT, 06070, United States

Filing History

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Name History

None

Shares

None

Secretary of the State of Connecticut
Annual Report

Filing Details

Filing Number:	0010366633	Report Year Due Date:	03/31/2022
Filing Fee:	$80.00	Filed On:	1/24/2022 3:26:08 PM

Primary Details

Business Type:	Domestic
Legal Structure:	LLC
Business Name:	Merchant Capital LLC
Business ALEI:	US-CT.BER:2281148

	Existing Information	***Updated Information***
Business Email Address:	jk@funduracap.com	No update
NAICS Information:	Miscellaneous Financial Investment Activities (523999)	No update

Business Location

	Existing Information	***Updated Information***
Principal Office Address:	500 West Putnam Ave, `Suite 4000 Greenwich, CT 06830 United States	No update
Mailing Address:	500 West Putnam Ave, `Suite 4000 Greenwich, CT 06830 United States	No update

Agent Information

Type:	Business

Secretary of the State of Connecticut
Annual Report

Agent's Name:	HASSETT & GEORGE, P.C.
Agent's ALEI:	US-CT.BER:0282091

	Existing Addresses	*Updated Addresses*
Business Address:	945 HOPMEADOW STREET SIMSBURY, CT 06070 United States	No update
Mailing Address:	945 HOPMEADOW STREET SIMSBURY, CT 06070 United States	No update

New Principal Information

Name	*Title*	*Business Address*	*Residence Address*
Hartford Receivables LLC	Member	500 West Putnam Ave, `Suite 4000 Greenwich, CT 06830 United States	None

Removed Principal Information

Name	*Title*	*Business Address*	*Residence Address*
Joseph Kroen	Member	304 West Main St, Suite 2 Avon, CT 06001 United States	1757 58th St Brooklyn, NY 11204-2236 United States

Acknowledgement

I hereby certify and state under penalties of false statement that all the information set forth on this document is true.

Secretary of the State of Connecticut
Annual Report

I hereby electronically sign this document on behalf of:
Name of Authorizer: Yisroel Getter

Filer Name: Crystal Phelps
Filer Signature: Crystal Phelps
Execution Date: 01/24/2022
This signature has been executed electronically

Secretary of the State of Connecticut
Annual Report

Filing Details

Filing Number:	0010291403	Report Year Due Date:	03/31/2022
Filing Fee:	$80.00	Filed On:	1/24/2022 3:22:49 PM

Primary Details

Business Type:	Domestic
Legal Structure:	LLC
Business Name:	Funding123 LLC
Business ALEI:	US-CT.BER:2364615

	Existing Information	***Updated Information***
Business Email Address:	jk@funduracap.com	No update
NAICS Information:	None	Miscellaneous Financial Investment Activities (523999)

Business Location

	Existing Information	***Updated Information***
Principal Office Address:	304 West Main St, Suite 2 Avon, CT 06001 United States	500 W Putnam Ave, Suite 4000 Greenwich, CT 06830-6086 United States
Mailing Address:	1757 58th St Brooklyn, NY 11204-2236 United States	500 W Putnam Ave, Suite 4000 Greenwich, CT 06830-6086 United States

Agent Information

Type:	Business

Secretary of the State of Connecticut
Annual Report

Agent's Name:	HASSETT & GEORGE, P.C.
Agent's ALEI:	US-CT.BER:0282091

	Existing Addresses	*Updated Addresses*
Business Address:	945 HOPMEADOW STREET SIMSBURY, CT 06070 United States	No update
Mailing Address:	945 HOPMEADOW STREET SIMSBURY, CT 06070 United States	No update

New Principal Information

Name	*Title*	*Business Address*	*Residence Address*
Hartford Receivables LLC	Member	500 W Putnam Ave, Suite 4000 Greenwich, CT 06830-6086 United States	None

Removed Principal Information

Name	*Title*	*Business Address*	*Residence Address*
Joseph Kroen	Member	None	1757 58th St Brooklyn, NY 11204-2236 United States

Acknowledgement

I hereby certify and state under penalties of false statement that all the information set forth on this document is true.

I hereby electronically sign this document on behalf of:

Secretary of the State of Connecticut
Annual Report

Name of Authorizer: Yisroel Getter

Filer Name: Crystal Phelps
Filer Signature: Crystal Phelps
Execution Date: 01/24/2022
This signature has been executed electronically

EXHIBIT 6

State of Connecticut Judicial Branch
Superior Court Case Look-up

Superior Court Case Look-up
Civil/Family
Housing
Small Claims

Attorney/Firm Juris Number Look-up

Case Look-up
By Party Name
By Docket Number
By Attorney/Firm Juris Number
By Property Address

Short Calendar Look-up
By Court Location
By Attorney/Firm Juris Number
Motion to Seal or Close
Calendar Notices

Court Events Look-up
By Date
By Docket Number
By Attorney/Firm Juris Number

Legal Notices

Pending Foreclosure Sales

Understanding
Display of Case Information

Contact Us

Comments

Attorney/Firm Case List Results

New Search

Records: 1-200 of 411

Case List for HASSETT & GEORGE PC (407894) as of 8/9/2021

1 2 3

Category	Docket No.	Case Name	Location	Activity
CV	HHD-CV-14-6051072-S	21ST CENTURY NORTH AMERICA INSURANCE COMPANY v. PEREZ, GLENDA	Hartford JD	
CV	HHD-CV-21-6141892-S	22 CAPITAL, INC. v. THE FALU CORPORATION	Hartford JD	
CV	HHD-CV-20-6131715-S	24 CAPITAL, LLC v. 2RAYWALL SOLUTIONS, INC.	Hartford JD	
CV	HHD-CV-20-6135655-S	24 CAPITAL, LLC v. AR MOTORWERKZ LIMITED PARTNERSHIP	Hartford JD	
CV	HHD-CV-20-6135036-S	24 CAPITAL, LLC v. CLEARING CONCEPTS, LLC	Hartford JD	NEW
CV	HHD-CV-21-6142896-S	24 CAPITAL, LLC v. FRUCTUOSO, ERICK BETZALEEL GAMA, DBA GAMAS TIRES	Hartford JD	NEW
CV	HHD-CV-20-6128601-S	24 CAPITAL, LLC v. GAD LAUNDRY, INC.	Hartford JD	
CV	HHD-CV-20-6130840-S	24 CAPITAL, LLC v. GEDZCHICAGO, INC.	Hartford JD	
CV	HHD-CV-21-6141368-S	24 CAPITAL, LLC v. GREAT AMERICAN GOLD, INC.	Hartford JD	NEW
CV	HHD-CV-19-6117723-S	24 CAPITAL, LLC v. JETSET INTERIORS, LLC	Hartford JD	
CV	HHD-CV-20-6130838-S	24 CAPITAL, LLC v. LITCUSTOM, INC.	Hartford JD	
CV	HHD-CV-21-6145370-S	24 CAPITAL, LLC v. NATIONAL SENIORS INSURANCE, INC.	Hartford JD	NEW
CV	HHD-CV-21-6140219-S	24 CAPITAL, LLC v. RIVERAS SUPERMARKET LLC	Hartford JD	NEW
CV	HHD-CV-20-6128491-S	24 CAPITAL, LLC v. SOTO REALTY TRUSTS, LLC	Hartford JD	
CV	HHD-CV-20-6130233-S	24 CAPITAL, LLC v. TEEFOR 2, INC.	Hartford JD	
CV	HHD-CV-20-6130469-S	24 CAPITAL, LLC v. TEEFOR 2, INC.	Hartford JD	
CV	HHD-CV-20-6125928-S	24 CAPITAL, LLC v. TRAN FARM, LLC	Hartford JD	NEW
CV	HHD-CV-20-6125344-S	24 CAPITAL, LLC v. UNIVERSAL SCRAP MOTORS, INC.	Hartford JD	
CV	HHD-CV-20-6130842-S	60 DAY CAPITAL, LLC v. PACIFICO NATIONAL, INC.	Hartford JD	
CV	HHD-CV-20-6132276-S	60 DAY CAPITAL, LLC v. PACIFICO NATIONAL, INC.	Hartford JD	
CV	HHD-CV-20-6135521-S	60 DAY CAPITAL, LLC v. SUNROOMS AMERICA INC.	Hartford JD	

CV	HHD-CV-20-6133701-S	60 DAY CAPITAL, LLC v. URSICH, TREY R	Hartford JD	
CV	HHD-CV-18-5056842-S	62-64 KENYON STREET, HARTFORD, LLC v. CITY OF HARTFORD	Hartford JD	
CV	HHD-CV-19-5057602-S	62-64 KENYON STREET, HARTFORD, LLC v. CITY OF HARTFORD	Hartford JD	
CV	HHD-CV-21-6136064-S	894 HOPMEADOW STREET, LLC v. D'ARCANGELO, JOHN	Hartford JD	
CV	HHD-CV-19-6118760-S	ACE EAST, LLC v. STURTEVANT, HAZEN	Hartford JD	
CV	HHD-CV-13-6038039-S	ACOSTA, LAURY v. MACY'S CORPORATE SERVICES, INC.	Hartford JD	
CV	HHD-CV-19-6117075-S	ACPRODUCTS, INC. v. THE MORGANTI GROUP, INC.	Hartford JD	
FA	HHD-FA-16-5041602-S	ADAMS, ABIGAIL, E. v. CORCORAN, CHRISTOPHER, J .	Hartford JD	NEW
CV	HHD-CV-17-5052277-S	ADT, LLC v. ONE TOUCH REPAIR, INC.	Hartford JD	
CV	HHD-CV-17-6083005-S	AJAX TELEMARKETING GROUP, LLC v. V3 TECHNOLOGIES, LLC	Hartford JD	
CV	HHD-CV-20-6122895-S	ALFA ADVANCE, LLC v. NGUYEN, PHILLIP	Hartford JD	NEW
CV	HHD-CV-16-6067189-S	ALLIED BUILDING PRODUCTS CORP. v. CATCHIN RAYS 2, LLC	Hartford JD	
CV	HHD-CV-19-6116685-S	AMERICAN EXPRESS NATIONAL BANK v. DAVIDSON, DANIEL, AKA DANIEL J DAVIDSON	Hartford JD	
CV	HHD-CV-21-6137110-S	AMERICAN EXPRESS NATIONAL BANK v. MORAN, DANIEL	Hartford JD	
CV	HHD-CV-11-6026751-S	AMERICAN INTEGRITY RESTORATION, LLC v. MILESTONE COMMONS CONDOMINIUM ASSOCIATION NO. 1, I	Hartford JD	
FA	HHD-FA-14-4072276-S	ANDREA,JENNY v. ANDREA,ROBERT,W.	Hartford JD	
CV	HHD-CV-17-6082169-S	ATTIANESE, RICHARD v. CALIENDO, LAUREL	Hartford JD	
FA	HHD-FA-12-4065102-S	BALBONI,JODY,L v. BALBONI,MICHAEL,D	Hartford JD	
CV	HHD-CV-21-6138407-S	BALDWIN, ANN v. DIDIO, KELLY	Hartford JD	NEW
CV	HHD-CV-17-6081502-S	BALDWIN, CHERYL L v. MOORE, ARON J	Hartford JD	
CV	HHD-CV-10-6008498-S	BANAS, EDWARD v. ARMBRUSTER, LORRAINE	Hartford JD	
CV	HHD-CV-19-6113288-S	BANCROFT, JAMIE v. FISHER, ROSEANNE	Hartford JD	
CV	HHD-CV-21-6145302-S	BANKERS HEALTHCARE GROUP, LLC v. CAPPS, STEPHANIE D, D/B/A STEPHANIE D. CAPPS APN	Hartford JD	NEW
CV	HHD-CV-21-6137961-S	BATAILLE, JEAN v. PACIFIC SPECIALTY INSURANCE CO.	Hartford JD	
CV	HHD-CV-19-6104512-S	BELDON FOREST COURT, INC. v. HEIRS BENEFICIARIES AND/OR DEVISEES OF HARRY CARTS	Hartford JD	
CV	HHD-CV-17-6080790-S	BELFRY PROPERTIES, LLC v.	Hartford JD	

		BRADY, JASON		
CV	HHD-CV-17-6081670-S	BELFRY PROPERTIES, LLC v. BRADY, JASON	Hartford JD	
FA	HHD-FA-11-4058096-S	BENJAMIN,MARC,A. v. BENJAMIN,KARRIE,A.	Hartford JD	
CV	HHD-CV-20-6124596-S	BENNETT, CAROLANN v. JOHN W. BAHRE, INC.	Hartford JD	
CV	HHD-CV-20-6135881-S	BERNARDINO, TONY v. TOWN OF EAST WINDSOR PLANNING AND ZONING COMMISSIO	Hartford JD	NEW
FA	HHD-FA-13-4069817-S	BIRBARA, CAROLYN, A. v. BIRBARA, JAMES, P.	Hartford JD	
CV	HHD-CV-14-6051805-S	BIXLER, JAMES v. NIGHTINGALE, JEREMY	Hartford JD	
FA	HHD-FA-10-4051782-S	BORRUSO,THOMAS,A v. BORRUSO,JEAN,M	Hartford JD	
FA	HHD-FA-14-4071703-S	BOVAT,ANGELA v. BOVAT JR,PAUL	Hartford JD	
CV	HHD-CV-20-5065839-S	BRAULT, MARK v. TOWN OF HARTLAND	Hartford JD	
CV	HHD-CV-20-6134447-S	BRAULT, MARK v. TOWN OF HARTLAND	Hartford JD	
CV	HHD-CV-21-6145414-S	BRIDGE FUNDING CAP, LLC v. BELOVED TRANSPORT, INC.	Hartford JD	NEW
CV	HHD-CV-21-6143528-S	BRIDGE FUNDING CAP, LLC v. FAT CAT CONVERTERS, INC.	Hartford JD	NEW
CV	HHD-CV-21-6143765-S	BRIDGE FUNDING CAP, LLC v. FLOORING TEXAS, LLC	Hartford JD	
CV	HHD-CV-21-6145415-S	BRIDGE FUNDING CAP, LLC v. JHL TRADING INC.	Hartford JD	NEW
CV	HHD-CV-21-6144621-S	BRIDGE FUNDING CAP, LLC v. OPTION ONE MANAGEMENT GROUP LLC	Hartford JD	NEW
CV	HHD-CV-21-6144370-S	BRIDGE FUNDING CAP, LLC v. QUICK WAY CONVENIENCE STORE INC.	Hartford JD	
CV	HHD-CV-21-6145419-S	BRIDGE FUNDING CAP, LLC v. RIO EXPORT, LLC	Hartford JD	NEW
CV	HHD-CV-21-6143748-S	BRIDGE FUNDING CAP, LLC v. SKM SALON, LLC	Hartford JD	
CV	HHD-CV-21-6144600-S	BRIDGE FUNDING CAP, LLC v. SYNCHRONUS CONSTRUCTION, INC.	Hartford JD	
CV	HHD-CV-21-6143590-S	BRIDGE FUNDING CAP, LLC v. UNITED DIAGNOSTICS AND SERVICES LLC	Hartford JD	
CV	HHD-CV-21-6144802-S	BRIDGE FUNDING CAP, LLC v. VILSAINT ENTERPRISES, LLC	Hartford JD	NEW
CV	HHD-CV-17-6077527-S	BROWN, LEAVERNE v. STEARNS, REBECCA	Hartford JD	
CV	HHD-CV-20-6125088-S	BROWN, MICHAEL v. CASCIO, LAURA	Hartford JD	
FA	HHD-FA-14-4072549-S	BRUECKNER, PAIGE, L. v. BRUECKNER, KYLE, J.	Hartford JD	
CV	HHD-CV-20-6127489-S	BRYANT, MARIE v. WINDSOR MEDICAL CENTER, LLC	Hartford JD	NEW
CV	HHD-CV-21-6139614-S	BUYAK, DAVID v. HURTT, REED	Hartford JD	NEW

CV	HHD-CV-17-6079314-S	BWE, LLC v. SPAVENTO, JOHN	Hartford JD	
CV	HHD-CV-19-6115246-S	CAFAZZO, JOHN v. KANGOS, EDWARD	Hartford JD	
FA	HHD-FA-17-6074805-S	CANTONE, SEBASTIANA v. CANTONE, SALVATORE	Hartford JD	
FA	HHD-FA-19-6110143-S	CARBONI, NICOLE T. v. WOJDYLA, MARK R.	Hartford JD	
CV	HHD-CV-14-6050163-S	CARLONE, CAROL, EXECUTOR OF THE ESTATE OF MICHAEL v. PRIMS, ROBERT	Hartford JD	
CV	HHD-CV-18-6091246-S	CAROLINA CASUALTY INSURANCE COMPANY v. FORAN BROTHERS CONTRACTORS, INC. D/B/A FORAN BROTH	Hartford JD	
CV	HHD-CV-17-6076801-S	CARRIER, EDWARD S. v. 1735 ASYLUM AVENUE, LLC	Hartford JD	
CV	HHD-CV-18-6086429-S	CARRIER, EDWARD S. v. VON HOLLANDER, REINHARD H.	Hartford JD	
CV	HHD-CV-20-6134872-S	CARRINGTON, CHRISTOPHER v. REID, LESTER	Hartford JD	NEW
FA	HHD-FA-17-6084132-S	CARROLL, DAYNA P. v. CARROLL, KEVIN J.	Hartford JD	NEW
CV	HHD-CV-14-6054884-S	CARROLL, STEPHANIE v. HANDY, JACQUELINE	Hartford JD	
FA	HHD-FA-17-5049322-S	CARTER,JULIE v. CARTER,DAVID	Hartford JD	
CV	HHD-CV-14-6050720-S	CAVACIUTI, TRACY PPA DYLAN CAVACIUTI v. GNESDA, SUSAN	Hartford JD	
FA	HHD-FA-12-4060523-S	CAZACU,MILENA v. CAZACU,CRISTIAN	Hartford JD	
CV	HHD-CV-20-6124877-S	CELIO, ANN v. DEDIC, SAHZA	Hartford JD	
CV	HHD-CV-12-6030598-S	CENTRAL AUTO & TRANSPORT, INC. v. ORTEGA, JUSTO	Hartford JD	
CV	HHD-CV-19-6118266-S	CHIEF OF STAFF, LLC v. THE HARTFORD CLUB	Hartford JD	
FA	HHD-FA-17-6076348-S	CHRISTIAN, KARL P. v. CHRISTIAN, TIFFANY LEE BIANCO	Hartford JD	
CV	HHD-CV-18-6093119-S	CHRISTIAN, KARL v. BIANCO, TIFFANY LEE	Hartford JD	
CV	HHD-CV-21-6144377-S	CHROME CAPITAL, LLC v. COLUMBUS SPECIALTY CONTRACTOR INC.	Hartford JD	NEW
CV	HHD-CV-21-6144887-S	CHROME CAPITAL, LLC v. LINDSAY, JASON	Hartford JD	
CV	HHD-CV-21-6139090-S	CHROME CAPITAL, LLC v. OBERG, JOSEPH S., DBA SERVANT CONSTRUCTION	Hartford JD	
CV	HHD-CV-21-6144305-S	CHROME CAPITAL, LLC v. TWIN FLOORING, INC.	Hartford JD	NEW
FA	HHD-FA-18-6090839-S	CICHON, ERIC P v. CICHON, JONIDA	Hartford JD	
CV	HHD-CV-21-6138877-S	CITY OF HARTFORD v. CHEATEM, JILL M.	Hartford JD	NEW
CV	HHD-CV-19-6112729-S	CITY OF HARTFORD v. HARTFORD POLICE UNION	Hartford JD	
FA	HHD-FA-14-4075972-S	CLARKE, BRIAN, J. v. BIRNIE-CLARKE, LAURA	Hartford JD	

CV	HHD-CV-20-6125284-S	CLEARSPAN FABRIC STRUCTURES INTERNATIONAL, INC. v. BUCKMAN'S, INC.	Hartford JD	
CV	HHD-CV-12-6028963-S	CLEMENS, DEAN v. FARRELL, ANDREA	Hartford JD	
CV	HHD-CV-14-6050532-S	COLON, JR, PHILIP v. GUARCO, MICHAEL B	Hartford JD	
FA	HHD-FA-17-4085958-S	COMISO, NADIA, K. v. COMISO, DAVID, A.	Hartford JD	
CV	HHD-CV-18-5056999-S	COMPANIONS & HOMEMAKERS, INC. v. CYNTHIA MICHAUD-INNARELLI	Hartford JD	
CV	HHD-CV-12-6030446-S	CONNECTICUT TAX LIENS 1, LLC v. GARCIA, ADMINISTRATOR, MANUEL	Hartford JD	
FA	HHD-FA-11-4056382-S	CONROY,CHRISTINE v. CONROY,MARTIN	Hartford JD	
CV	HHD-CV-15-6058583-S	CORDOVA, IVAN v. DEROSIER, JOSEPH	Hartford JD	
CV	HHD-CV-09-5028891-S	COSTA, JEREMY v. BRAITHWAITE, SHAYNE	Hartford JD	
CV	HHD-CV-15-6058411-S	CRONE, KIMBERLY v. CONNECTICUT STATE COLLEGES & UNIVERSITIES	Hartford JD	
CV	HHD-CV-14-6056034-S	CROWLEY, BARBARA v. TOWN OF ENFIELD	Hartford JD	
CV	HHD-CV-20-6130538-S	CRYSTAL RESTORATION SERVICES OF NEW ENGLAND, INC. v. FIRST GENERAL SERVICES OF HARTFORD, INC.	Hartford JD	
CV	HHD-CV-21-6139086-S	CRYSTAL SPRINGS CAPITAL, INC. v. BCK COATINGS, INC.	Hartford JD	
CV	HHD-CV-21-6137462-S	CRYSTAL SPRINGS CAPITAL, INC. v. BCK COATINGS, INC.	Hartford JD	
CV	HHD-CV-21-6140784-S	CRYSTAL SPRINGS CAPITAL, INC. v. DICKEY CREEK AND TAYLOR LLC	Hartford JD	
CV	HHD-CV-21-6140751-S	CRYSTAL SPRINGS CAPITAL, INC. v. FINTECH UNITED GROUP LLC	Hartford JD	
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EXHIBIT 7

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FEDERAL TRADE COMMISSION, Plaintiff, v. RCG ADVANCES, LLC, a limited liability company, f/k/a Richmond Capital Group, LLC, also d/b/a Viceroy Capital Funding and Ram Capital Funding, RAM CAPITAL FUNDING LLC, a limited liability company, ROBERT L. GIARDINA, individually and as an owner and officer of RCG ADVANCES, LLC, JONATHAN BRAUN, individually and as a *de facto* owner and an officer or manager of RCG ADVANCES, LLC, and TZVI REICH, a/k/a Steven Reich, individually and as an owner and officer of RAM CAPITAL FUNDING LLC, and as a manager of RCG ADVANCES, LLC, Defendants.	**Case No. 20-CV-4432** **COMPLAINT FOR PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF**

Plaintiff, the Federal Trade Commission ("FTC"), for its Complaint alleges:

1. The FTC brings this action under Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b) to obtain permanent injunctive relief, rescission or reformation of contracts, restitution, the refund of monies paid, disgorgement of ill-gotten monies, and other equitable relief for Defendants' acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a) in connection with their business financing activities.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337(a), and 1345.

3. Venue is proper in this District under 28 U.S.C. § 1391(b)(1), (b)(2), (c)(1), (c)(2), and (d), and 15 U.S.C. § 53(b).

PLAINTIFF

4. The FTC is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41–58. The FTC enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce.

5. The FTC is authorized to initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act and to secure such equitable relief as may be appropriate in each case, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies. 15 U.S.C. § 53(b).

DEFENDANTS

6. Defendant **RCG Advances, LLC** ("RCG"), formerly known as Richmond Capital Group LLC, and also doing business as Viceroy Capital Funding and Ram Capital Funding, is a New York limited liability company. RCG lists its address as 111 John Street Suite 1210, New York, NY 10038. RCG transacts or has transacted business in this District and throughout the United States. At times material to this Complaint, acting alone or in concert with others, RCG has advertised, marketed, offered, or distributed financing to businesses throughout the United States.

7. Defendant **Ram Capital Funding LLC** ("Ram"), is a New Jersey limited liability company. Ram lists its address as 111 John Street Suite 1210, New York, NY 10038. Ram transacts or has transacted business in this District and throughout the United States. At times material to this Complaint, acting alone or in concert with others, Ram has advertised, marketed, offered, or distributed financing to businesses throughout the United States.

8. Defendant **Robert L. Giardina** ("Giardina") is the owner, officer, managing member, and partner of RCG. At times material to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, had the authority to control, or participated in the acts and practices set forth in this Complaint. Defendant Giardina resides in this District and, in connection with the matters alleged herein, transacts or has transacted business in this District and throughout the United States.

9. Defendant **Jonathan Braun** ("Braun") is a *de facto* owner and an officer or manager of RCG. At times material to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, had the authority to control, or participated in the acts and practices set forth in this Complaint. Defendant Braun resides in this District and, in connection with the matters alleged herein, transacts or has transacted business in this District and throughout the United States.

10. Defendant **Tzvi Reich**, also known as Steve Reich ("Reich"), is president and manager of Ram, and a manager of RCG. At times material to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, had the authority to control, or participated in the acts and practices set forth in this Complaint. Defendant Reich resides in this

District and, in connection with the matters alleged herein, transacts or has transacted business in this District and throughout the United States.

COMMON ENTERPRISE

11. Defendants RCG and Ram (collectively, "Corporate Defendants") have operated as a common enterprise while engaging in the unlawful acts and practices alleged below. Corporate Defendants have conducted the business practices described below using common officers, managers, business functions, employees, and office locations, and have commingled funds. Because these Corporate Defendants have operated as a common enterprise, each of them is jointly and severally liable for the acts and practices alleged below. Defendants Giardina, Braun, and Reich have formulated, directed, controlled, had the authority to control, or participated in the acts and practices of the Corporate Defendants that constitute the common enterprise.

COMMERCE

12. At all times material to this Complaint, Defendants have maintained a substantial course of trade in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFENDANTS' BUSINESS ACTIVITIES

Overview

13. Since at least 2015, Defendants have engaged in a number of deceptive and unfair practices while providing small business financing. Proposed Defendants' victims include small businesses, medical offices, non-profit organizations, and religious organizations (hereinafter, "consumers").

14. Defendants purport to provide immediate funds in a specific amount in exchange for consumers' agreement to repay a higher amount from future business revenues. The repayment amount is remitted over time through daily debits from consumers' bank accounts.

15. In advertising their financing products to consumers, Defendants falsely claim that their financing products do not feature a personal guaranty or upfront costs. In addition, Defendants promise consumers a specific amount of financing, but provide a much smaller amount. Defendants also engage in unfair collection practices, including, in some instances, by filing confessions of judgment against consumers in circumstances not permitted by their financing agreements and threatening physical violence, and make unauthorized debits from consumers' accounts.

Defendants' Misrepresentations Regarding Their Financing Products

16. Defendants advertise their financing products on the Internet. On their website, Defendants claim that their financing product requires "no personal guaranty of collateral from business owners."

17. In reality, Defendants' financing contracts do include a "personal guaranty" that consumers must agree to:

> **Personal Guaranty of Performance**. The undersigned Guarantor(s) hereby guarantees to RCG, Merchant's good faith, truthfulness and performance of all of the representations, warranties, covenants made by Merchant in the Merchant Agreement in Sections thereof 2.3, 2.5, 2.6, 2.9, 2.10, 2.11, 2.12, 2.13 and 2.14, as each agreement may be renewed, amended, extended or otherwise modified (the "Guaranteed Obligations"). Guarantor's obligations are due at the time of any breach by Merchant of any representation, warranty, or covenant made by Merchant in the Agreement.

18. In previous versions of their contracts, Defendants included the following provision:

> **Personal Guaranty**. In the event of a Default under Sections 2.3, 2.5, 2.6, 2.9, 2.10,

> 2.11, 2.12, 2.13, and 2.14 hereof, should RCG determine that the Purchase Amount cannot be obtained from the Merchant's business, RCG will enforce its rights against the Guarantors of this transaction. Said Guarantors will be jointly and severally liable to RCG for all of RCG's losses and damages, in additional [sic] to all costs and expenses and legal fees associated with such enforcement.

19. Also on their website, Defendants claim that their financing requires "no upfront costs." In fact, Defendants withhold various fees upfront, prior to disbursing the funding to consumers. Some of these fees appear buried in Defendants' contracts, without any language alerting consumers that they are withdrawn upfront. Other withheld amounts are not disclosed anywhere in the contract.

20. Defendants promise consumers a specific amount of financing. For example, the first page of Defendants' contracts prominently sets forth the financing amount as the "Total Purchase Price." In reality, however, Defendants provide consumers with substantially less than the total amount promised by withholding various fees ranging from several hundreds to tens of thousands of dollars prior to disbursement. As discussed above, these fees appear several pages into Defendants' contracts and without any indication that they reduce the amount of funds consumers were promised. In addition, Defendants sometimes withdraw fees that are in excess of amounts listed near the end of the agreements. Specifically, in internal emails, Defendants have directed that higher fees be charged and smaller amounts transferred to consumers than those promised. As a result, consumers in numerous instances have complained that they received significantly less funding than they were promised.

Defendants' Collections Practices

21. In order to obtain funding, Defendants require businesses and their owners to confess judgment to the full amount owed under the contract, so that Defendants can immediately proceed to court to collect on a purportedly owed judgement. At the same time, Defendants' contracts provide that Defendants will not hold consumers in breach if payments are remitted more slowly than anticipated because business revenues slowed down and that consumers do not owe anything if the business shuts down entirely:

> If Future Receipts are remitted more slowly than RCG may have anticipated or projected because Merchant's business has slowed own, or if the full Purchased Amount is never remitted because Merchant's business went bankrupt or otherwise ceased operations in the ordinary course of business, and Merchant has not breached this Agreement, Merchant would not owe anything to RCG and would not be in breach or default under this Agreement.

22. In practice, however, Defendants in many instances file confessions of judgment against consumers for missing payments due to a slowdown in business revenues or due to a business shutdown, a violation of the terms of the financial agreement.

23. In addition, Defendants have also filed confessions of judgment against consumers who were still making required payments but payments temporarily could not be processed due to technical issues outside of the consumers' their control. For example, in some instances, consumers' banks unexpectedly and temporarily locked their bank accounts due to fraud or security alerts, thus preventing Defendants from effectuating the daily withdrawals. Despite consumers' attempts to explain and resolve the situation, Defendants held them in default and filed confessions of judgment against them.

24. In other instances, Defendants filed confessions of judgment against consumers who did not breach relevant provisions of Defendants' financing agreements, including one consumer who was still continuing to make daily payments to Defendants.

25. Because Defendants' confessions of judgment require both the business entity and the individual owner to confess judgment to the entire repayment amount, upon filing the confession of judgment in court, Defendants in many instances are able to seize consumers' business and personal assets. Consumers do not expect to face a confession of judgment filing because, in a number of instances, consumers have not breached the relevant provisions in the financing agreement, or were promised that they would not be held in breach if they could not pay due to a slowdown in business revenues. Numerous consumers report being financially devastated by Defendants' confession of judgment filings.

26. Defendants also make threatening collection calls to consumers, frequently using obscene or profane language, to induce them to continue making payments. For example, Defendants have threatened violence or other criminal means to harm the physical person, reputation, or property of the consumer or third parties if they do not continue making their daily payments. Defendants' representatives told one consumer they were going to "break his jaw" if he did not make the required payments, and told another consumer they would "come down there and beat the s**t out of you." Defendants threatened another consumer that if he did not pay, they would ruin his reputation by falsely accusing him of being a child molester.

27. Defendants' threats caused or likely caused consumers to fear for their physical safety and forego important contractual and legal rights, including the right to have their payments reduced or reconciled, and induced the payment of a disputed payment obligation.

Defendants' Unauthorized Withdrawals

28. Defendants make unauthorized withdrawals from consumers' accounts. For example, although Defendants' contracts state that they will debit the specific daily amount once on each *business* day, Defendants in many instances make two withdrawals from consumers' accounts on a single day following a bank holiday. Consumers do not authorize these additional payments, do not expect to have their accounts debited twice in one day, and often face financial hardships and overdrawn accounts as a result. When consumers complain about the unauthorized debits, Defendants in many instances do not refund the additional amounts withdrawn.

29. Based on the facts and violations of law alleged in this Complaint, the FTC has reason to believe that Defendants are violating or are about to violate laws enforced by the Commission.

VIOLATIONS OF THE FTC ACT

30. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits "unfair or deceptive acts or practices in or affecting commerce."

31. Misrepresentations or deceptive omissions of material fact constitute deceptive acts or practices prohibited by Section 5(a) of the FTC Act.

32. Acts or practices are unfair under Section 5 of the FTC Act if they cause or are likely to cause substantial injury to consumers that consumers cannot reasonably avoid themselves and that is not outweighed by countervailing benefits to consumers or competition. 15 U.S.C. § 45(n).

Count I

Misrepresentations Regarding Financing Products

33. In numerous instances in connection with the advertising, marketing or offering of business financing, Defendants represent, directly or indirectly, expressly or by implication, that:

a. Defendants require no personal guaranty from business owners;

b. Defendants charge no upfront costs; and

c. Consumers will receive a specific amount of financing.

34. In truth and in fact, in numerous instances in which Defendants have made the representations set forth in Paragraph 33, such representations were false or misleading at the time Defendants made them.

35. Therefore, Defendants' representations as set forth in Paragraph 33 are false or misleading and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

Count II

Unfair Use of Confessions of Judgment

36. In numerous instances, Defendants use confessions of judgment unfairly, including by filing confessions of judgment against consumers who (a) are current in their payments or did not breach the Defendants' contract; (b) miss payments due to a slowdown in business revenues or business cessation, despite contractual representations that consumers will not be in breach or default under those circumstances, or (c) whose payments cannot be processed due to temporary technical difficulties outside the consumers' control.

37. Defendants' actions cause or are likely to cause substantial injury to consumers

that consumers cannot reasonably avoid themselves and that is not outweighed by countervailing benefits to consumers or competition.

38. Therefore, Defendants' acts or practices as set forth in Paragraph 36 constitute unfair acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45(a), (n).

Count III

Unfair Collection Threats

39. In numerous instances, Defendants unfairly seek to induce consumers to make payments, including by threatening to use violence or other unlawful or criminal means to harm the physical person, reputation, or property of the consumer or third parties or to ruin consumers' businesses.

40. Defendants' actions cause or are likely to cause substantial injury to consumers that consumers cannot reasonably avoid themselves and that is not outweighed by countervailing benefits to consumers or competition.

41. Therefore, Defendants' acts or practices as set forth in Paragraph 39 constitute unfair acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45(a), (n).

Count IV

Unauthorized Withdrawals

42. In numerous instances, Defendants withdraw funds from consumers' bank accounts without the express informed consent of those consumers.

43. Defendants' actions cause or are likely to cause substantial injury to consumers that consumers cannot reasonably avoid themselves and that is not outweighed by countervailing benefits to consumers or competition.

44. Therefore, Defendants' acts or practices as set forth in Paragraph 42 constitute unfair acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45(a), (n).

CONSUMER INJURY

45. Consumers are suffering, have suffered, and will continue to suffer substantial injury as a result of Defendants' violations of the FTC Act. In addition, Defendants have been unjustly enriched as a result of their unlawful acts or practices. Absent injunctive relief by this Court, Defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

46. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and such other relief as the Court may deem appropriate to halt and redress violations of any provision of law enforced by the FTC. The Court, in the exercise of its equitable jurisdiction, may award ancillary relief, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies, to prevent and remedy any violation of any provision of law enforced by the FTC.

PRAYER FOR RELIEF

Wherefore, Plaintiff FTC, pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b) and the Court's own equitable powers, requests that the Court:

A. Enter a permanent injunction to prevent future violations of the FTC Act by Defendants;

B. Award such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the FTC Act, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies; and

C. Award Plaintiff the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper.

Respectfully submitted,

ALDEN F. ABBOTT
General Counsel

Dated: June 10, 2020

/s/ Ioana Gorecki

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FEDERAL TRADE COMMISSION

EXHIBIT 8

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK, by LETITIA JAMES, Attorney General of the State of New York,

Petitioners,

-against-

RICHMOND CAPITAL GROUP LLC, also doing business as Ram Capital Funding and Viceroy Capital Funding, and now known as RCG Advances LLC;
RAM CAPITAL FUNDING LLC;
VICEROY CAPITAL FUNDING INC., also doing business as Viceroy Capital Funding and Viceroy Capital LLC;
ROBERT GIARDINA, individually and as a principal of RICHMOND CAPITAL GROUP LLC, RAM CAPITAL FUNDING LLC, and VICEROY CAPITAL FUNDING INC.;
JONATHAN BRAUN, also known as John Braun, individually and as a principal of RICHMOND CAPITAL GROUP LLC, RAM CAPITAL FUNDING LLC, and VICEROY CAPITAL FUNDING INC.;
TZVI REICH, also known as Steve Reich, individually and as a principal of RICHMOND CAPITAL GROUP LLC, RAM CAPITAL FUNDING LLC, and VICEROY CAPITAL FUNDING INC.; and
MICHELLE GREGG, individually and as a principal of RICHMOND CAPITAL GROUP LLC, RAM CAPITAL FUNDING LLC, and VICEROY CAPITAL FUNDING INC.;

Respondents.

VERIFIED PETITION

Index No. _____

IAS Part _____

Assigned to Justice _____

The People of the State of New York (the "People"), by their attorney, Letitia James, Attorney General of the State of New York (NYAG), bring this special proceeding pursuant to Exec. L. § 63(12) against Richmond Capital Group LLC

("Richmond"), Ram Capital Funding LLC ("Ram"), Viceroy Capital Funding Inc. ("Viceroy"), Robert Giardina, Jonathan Braun, Tzvi "Steve" Reich, and Michelle Gregg.

The NYAG, on behalf of the People, alleges upon information and belief:

PRELIMINARY STATEMENT

1. Since at least 2015, Respondents have preyed upon victims by offering them funding in the form of so-called "merchant cash advances." These merchant cash advances are in fact fraudulent, usurious loans with interest rates in the triple and even quadruple digits, far above the maximum rate permissible for a loan under New York law.

2. Richmond, Ram, and Viceroy issue, service, and collect on the loans. Individual Respondents Giardina, Braun, Reich, and Gregg have operated Richmond, Ram, and Viceroy at all times relevant to this Petition.

3. Respondents have issued more than 3,000 fraudulent, usurious loans since 2015 and have illegally collected from merchants more than $77 million in payments on the loans.

4. On information and belief, Respondents have collected tens of millions more from merchants' bank accounts by executing on judgments issued against merchants by New York State Supreme Court.

5. Respondents' victims are small businesses located in New York and throughout the United States. Such merchants often find themselves short of capital and unable to quickly get small business loans from traditional banks. In

desperate need of funding to pay their expenses and keep their businesses afloat, they succumb to Respondents' deceptive, high-pressure sales tactics and their promise of readily available, short-term funding with rapid approval.

6. Respondents loan money to merchants under the guise of a merchant cash advance, which they describe as a "Purchase and Sale of Future Receivables." As a general matter, an issuer of a merchant cash advance provides a merchant with a lump sum payment in exchange for a share of the merchant's future sales proceeds, or "receivables," up to a certain total repayment amount.

7. As a result, unlike a loan, a merchant cash advance does not guarantee an issuer with a regular payment or a fixed, finite term. Instead, payment amounts may vary through a "reconciliation" process in which the issuer "reconciles" the merchant's payment amounts in accordance with its actual receivables. Because payment amounts vary, the lengths of repayment terms also vary.

8. This variability and lack of security create certain risks for issuers but also create certain protections for merchants by reducing required payments when business is slow.

9. In contrast, a traditional closed-end installment loan has a fixed regular payment amount and a finite repayment term. In exchange for the certainty this structure provides for creditors (and the rigidity it imposes on borrowers), New York law guarantees certain protections to loan borrowers, including a maximum interest rate of 16%. The law also imposes certain

regulations on loan issuers, including the requirement of specialized licenses and regular oversight by governmental entities.

10. Respondents style their transactions as merchant cash advances – "purchases of receivables" – in order to evade New York's 16% interest rate cap and the other legal protections and requirements that exist for loans. But in fact, Respondents' transactions function as loans, and as a result their customers are entitled to the protections afforded to borrowers under New York law.

11. Respondents market and collect upon their cash advances as loans. They require merchants to repay the loans through daily payments, which are debited from merchants' bank accounts each day at set amounts ranging from $199 to $14,999. They require the loans to be repaid in short terms, such as 60 days, at annual interest rates well above the 16% threshold that defines usury under New York law. In fact, the annual interest rates charged by Respondents regularly exceed 100% – and in some cases exceed even 1,000%.

12. Respondents regularly defraud the merchants to whom they loan money. They issue loans in smaller amounts than promised and withdraw more money from merchants' bank accounts than the merchants agree to pay. They advertise merchant cash advances with no upfront fees, only to require merchants to pay upfront fees in their agreements. They then charge merchants these fees – which do not relate to any expense or labor of Respondents but are simply more profit for them – in amounts even higher than disclosed.

13. Respondents advertise merchant cash advances with no need of a personal guarantee, then require merchants to sign personal guarantees prior to receiving cash advances.

14. Respondents advertise that they will arrange flexible repayment plans if a merchant is unable to make its daily payments, and they represent in their agreements that they will adjust or "reconcile" payment amounts based on the merchants' actual receipts, or "receivables."

15. These representations are false. In fact, Respondents debit payments from merchants' bank accounts in fixed daily amounts that do not change from day to day.

16. Respondents structure their loans to ensure that merchants have no choice but to repay them at Respondents' onerous terms and despite their fraudulent abuses. They do this by requiring merchants to sign confessions of judgment, in which each merchant confesses judgment for the full repayment amount of its loan. Respondents promise that they will file the confessions in court only in certain narrow circumstances. They then regularly break those promises and file confessions in New York State Supreme Court – regardless of whether the merchants are located in New York – based on mere missed payments or even based on no default at all. With the confessions, Respondents also file false affidavits in which they misrepresent to courts the nature of their loans and often the amounts paid and still due.

17. Using the confessions and their own false affidavits, Respondents obtain judgments against merchants quickly, with no legal notice to the merchants, no judicial review, and no other evidence showing that judgment is warranted. On information and belief, Respondents have obtained judgments in this way against more than 400 merchants.

18. Respondents create a climate of intimidation and fear to discourage merchants from missing their payments or from questioning Respondents' tactics, typically through phone calls made by Respondent Braun. Braun has regularly called merchants' representatives and harassed, insulted, sworn at, and threatened them. He has told them that he knows where they live and threatened to seize their assets, destroy their businesses, and do violence to them and their families.

19. Respondents inflict immense financial and personal harm upon the merchants they purport to help. They wrongly obtain judgments against merchants, strip money from their bank accounts, and force them into downward spirals of unending debt. Merchants have been forced to take desperate measures to deal with their purported debts to respondents. Many have been forced to shut their doors, file for bankruptcy, or both.

20. Respondents' practices were first highlighted in an exposé in the financial news periodical *Bloomberg*. Zeke Faux & Zachary Mider, "Sign Here to Lose Everything, Part 4: Marijuana Smuggler Turns Business-Loan Kingpin While out on Bail," *Bloomberg*, Dec. 3, 2018, *available at*

https://www.bloomberg.com/graphics/2018-confessions-of-judgment-marijuana-smuggler-turns-business-loan-kingpin/. *Bloomberg* reported that merchants had complained that Richmond, through its filing of confessions of judgment and other tactics, had "cheated them, sometimes threatening to leave them penniless, or worse."

21. The NYAG brings this petition pursuant to New York Executive Law 63(12) for an order (a) permanently enjoining Respondents from engaging in the fraudulent and illegal practices alleged herein; (b) ordering Respondents to cease all collection of payments on merchant cash advances; (c) declaring void and ordering rescission of each of Respondents' usurious, fraudulent, and illegal agreements; (d) ordering Respondents to apply for vacatur of all judgments obtained by them pursuant to such agreements; (e) staying all marshals and/or sheriffs who hold executions under such judgments from executing or collecting upon them; (f) ordering Respondents to file papers sufficient to terminate all liens or security interests related to their cash advances; (g) ordering Respondents to provide an accounting; (h) ordering Respondents to pay full restitution and damages; (i) ordering Respondents to disgorge all profits; (j) awarding costs to the NYAG; and (k) granting such other and further relief as the Court deems just and proper.

PARTIES AND JURISDICTION

22. Petitioners are the People of the State of New York.

23. The NYAG brings this special proceeding on behalf of the People pursuant to, *inter alia*, Executive Law § 63(12), which authorizes the NYAG to seek

injunctive relief, restitution, damages, and costs when any person or entity has engaged in repeated fraudulent or illegal acts or has otherwise demonstrated persistent fraud or illegality in conducting its business.

24. Respondent Richmond Capital Group LLC is a New York limited liability company. Richmond does business from an office in New York County and maintains a registered agent for the service of process in Kings County.

25. Richmond has admitted that it has done business under the names Ram Capital Funding and Viceroy Capital Funding.

26. On or about May 6, 2019, Richmond filed paperwork with the New York Department of State to change its name to RCG Advances, LLC. Because this name change occurred after the events set forth herein, the company is referred to here as "Richmond."

27. Respondent Ram Capital Funding LLC is a limited liability company organized under the laws of New Jersey. Ram does business from an office in New York County and maintains a registered address for the service of process in New York County.

28. Respondent Viceroy Capital Funding Inc. is a domestic business corporation organized under the laws of New York. Viceroy does business from an office in New York County and maintains a registered address for the service of process in New York County.

29. Respondent Robert Giardina, as Managing Partner of Richmond and owner of Richmond and Viceroy, formulates, directs, controls, or participates in

Respondents' acts and practices. Giardina resides, on information and belief, in Richmond County, New York.

30. Respondent Jonathan Braun, also known as "John Braun," is a principal of Richmond, Ram, and Viceroy and formulates, directs, controls, or participates in their acts and practices. Braun is currently an inmate at Federal Correctional Facility Otisville in Otisville, New York.

31. Braun was convicted on November 3, 2011 in the United States District Court for the Eastern District of New York of the crimes of conspiracy to import marijuana and money laundering conspiracy, and on May 28, 2019 he was sentenced to a term of imprisonment of 10 years as punishment for those offenses. *United States v. Braun*, No. 10-cr-00433-KAM-1 (E.D.N.Y), ECF Nos. 36, 48, 163. Braun engaged in the conduct set forth herein while on supervised release under the supervision of the United States Probation Department during the years after his conviction and prior to his sentencing.

32. Respondent Tzvi Reich, also known as "Steve Reich," is owner of Ram and is also involved in the management of Richmond and Viceroy. Reich formulates, directs, controls, or participates in the three companies' acts and practices. Reich maintains a place of business in New York County and on information and belief resides in New Jersey.

33. Respondent Michelle Gregg, as Managing Director and Director of Finance of both Richmond and Viceroy, formulates, directs, controls, or participates in Respondents' acts and practices. Gregg resides in New York County.

FACTS

A. Respondents Use Deception and Aggressive Tactics to Market Their Loans to Merchants

34. Respondents prey upon cash-strapped small businesses in New York and throughout the United States. The merchants are often unable to quickly obtain conventional funding from banks in the form of small business loans and have few, if any, other resources to obtain the capital they need to pay their employees' wages, pay rent and other expenses, and keep their businesses afloat.

35. Respondents expressly advertise their merchant cash advances as "loans" and directly market them to merchants by cold-calling them on the telephone. Respondents tell merchants that the loans are repaid through daily payments at set amounts and are subject to finite repayment terms.

36. They promise to merchants, however, that those payments can be adjusted as needed. Respondents and the brokers who work with them to market the cash advances represent to merchants that Respondents will provide flexible repayment terms. They tell merchants Respondents will "work with" them if they have difficulty making their daily payments.

37. These representations are false, as set forth below. In fact, Respondents charge merchants daily payments set to fixed amounts that Respondents do not reconcile or adjust.

38. Respondents also misrepresent the amounts of the cash advances they will provide. They falsely advertise "No Upfront Costs" and misrepresent to merchants, *inter alia*, their net advance amounts, the fees they will deduct from the

advances, and the amounts of the daily payments they will debit from merchants' bank accounts.

39. Once a merchant agrees to apply for a loan, Respondents send the merchant an initial draft of a "Merchant Agreement," an affidavit of confession of judgment, and other forms and draft agreements for the merchant to sign.

40. Much of the Merchant Agreement is printed in small type. Until late 2017 and early 2018, Respondents printed most of the agreement's language in tiny type of about a 4-point type size that was for all intents and purposes illegible, as shown below:

41. Respondents and the brokers they work with then repeatedly call and email merchants to push them to sign the agreements. They urge merchants to sign and return their agreements immediately after receiving them, leaving merchants with insufficient time to review the agreements' terms or consult professionals concerning them.

B. Respondents Loan Money at Interest Rates in the Triple and Quadruple Digits

42. Respondents loan money to merchants at annual interest rates in the triple and quadruple digits. They attempt in their Merchant Agreements to disguise each loan as a "Purchase and Sale of Future Receivables," but in reality, Respondents market, underwrite, and collect upon the transactions as loans, with interest rates far above those permissible under New York law.

1. Respondents' Purported "Merchant Cash Advances" Are in Fact Usurious Loans under New York Law

43. Under New York law, a person or entity engages in usury when it charges, takes, or receives interest on a loan at an annual rate above 16%. Gen. Oblig. Law § 5-501(1), Banking Law § 14-a(1). A person or entity commits criminal usury when it charges, takes, or receives interest on a loan at a rate above 25%. Penal Law § 190.40.

44. Merchant cash advances, such as those issued by Respondents, typically have interest rates far above these 16% and 25% thresholds. If these cash advances are loans, then under New York law they are usurious and their agreements void.

45. Respondents attempt to escape liability for usury by styling each merchant cash advance as a "Purchase and Sale of Future Receivables" and by stating in their agreements that the advances are not loans.

46. But under New York law it is the substance of a transaction, as shown by the dealings of the parties – and not its form – that determines whether it is a loan. *E.g.*, *Blue Wolf Capital Fund II, L.P. v. Am. Stevedoring Inc.*, 105 A.D.3d 178, 183 (1st Dep't 2013). A transaction is a loan if, among other things, repayment is provided for "absolutely," and the principal is "in some way be secured as distinguished from being put in hazard." *Rubenstein v. Small*, 273 A.D. 102, 104 (1st Dep't 1947).

47. Respondents' make clear in their dealings with merchants that their merchant cash advances are loans. Respondents expressly describe the transactions as "loans" and describe themselves as "lenders" in their marketing.

48. In its website, for example, Ram advertises, "As a private lender, Ram Capital Funding takes pride in investing in projects that traditional banks may deny . . . . Our rapport with the borrowers can be summarized as a partnership for the duration of the loan . . . ."

49. Respondents also expressly describe their merchant cash advances as "loans" in their direct communication with merchants. For example, Respondent Jonathan Braun urged a merchant to take out a cash advance from Richmond in or around December 2017 by asking, "Are you ready to take our loan?" and stating, "We'll go ahead and loan you the money."

50. Respondents show in their underwriting practices that their cash advances are loans. When underwriting new merchant cash advances Respondents evaluate not merchants' receivables, which are the assets they are purportedly buying, but instead such factors as merchants' credit ratings and bank balances.

51. Respondents' cash advances are loans because Respondents structure them so that they are subject to repayment absolutely, not on a contingent basis. They do this in a number of ways.

52. First, Respondents require merchants to repay the cash advances through daily payments at fixed amounts that are not reconciled. These amounts are stated in Respondents' agreements and called either a "Specific Daily Amount" or an "Estimated Daily Amount."

53. These fixed daily payment amounts do not vary from day to day. Respondents state in their agreements that they will "reconcile" merchants' payment amounts based on a "Specified Percentage" of their "receivables," but this contract language is a sham, as set forth below.

54. Second, each of Respondents' agreements indicates a finite repayment term. The repayment term is the total repayment amount of the cash advance, called a "Total Purchased Amount," divided by its daily payment amount. For example, an agreement with a total repayment amount of $59,960 and a daily amount of $999 indicates a finite repayment term of 60 business days ($59,960 ÷ $999 = 60).

55. Respondents expressly discuss the fixed repayment terms of their merchant cash advances in their internal and external communications, referring to terms such as "60 days" or "30 DAYS."

56. Third, Respondents draft their agreements to provide them with security in the event of default. Their agreements state that (a) Respondents are purchasing not only a merchant's receivables but instead a wide array of assets, including "all of merchant's future accounts, contract rights, and other entitlements"; (b) the cash advances are personally guaranteed by guarantors, who are in most cases merchants' principals; (c) Respondents hold security interests under the Uniform Commercial Code over "all accounts" and other assets of merchants; and (d) bankruptcy or the termination of merchant's business is an event of default triggering immediate payment of the entire amount due.

57. And fourth, Respondents require merchants and their guarantors to provide Respondents with signed, notarized confessions of judgment. Respondents file the confessions in New York State Supreme Court in the event of any purported default and thereby obtain immediate judgment against merchants and their guarantors for the full repayment amount of the cash advance – with no notice, no judicial review, and no other proof of default aside from Respondents' own self-serving (and often false) affidavits.

58. Each of these practices of Respondents ensures that their merchant cash advances are subject to repayment absolutely and are thus loans under New York law.

2. Respondents Charge Merchants Annual Interest Rates in the Triple and Even Quadruple Digits

59. Respondents charge merchants annual interest rates on their loans in the triple and even quadruple digits, far above the maximum permissible interest rate of 16% for loans under New York law.

60. Neither Richmond nor Ram nor Viceroy is licensed as a lender under New York law.

61. The interest rate charged by Respondents to a merchant cash advance recipient can be calculated based on (1) the amount, or principal, of the merchant cash advance; (2) the daily payment amount; and (3) the total repayment amount.

62. For example, Richmond agreed in a Merchant Agreement that it would provide a merchant with a cash advance of $20,000, minus fees. The advance was to be repaid in the amount of $29,980 through daily payments of $599, resulting in a 50-day term ($29,980 ÷ $599 = 50).

63. The principal was $20,000, and the amount of interest, not including fees, was $9,980 ($29,980 – $20,000 = $9,980). This interest amount, paid over 50 days, yields an annual interest rate of 250%.

64. If Respondents' fees are also treated as interest, the principal is less, and the interest amount and interest rate are higher. In the example above, Richmond deducted $3,998 in fees from the $20,000 advance, resulting in a net cash advance of only $16,002. If this $3,998 in "fees" is actually interest, then the principal is $16,002 ($20,000 – $3,998 = $16,002), the interest amount is $13,978

($29,980 – $16,002 = $13,978), and the annual interest rate over a 50-day term is 438%.

65. And in fact, such "fees" do constitute interest under New York law, for they do not reflect any labor or expense by Respondents but instead are simply profit for Respondents and the brokers they work with.

66. The example above is typical of Respondents' cash advances; Respondents regularly charge merchants interest in the triple and even quadruple digits.

67. On one occasion, Respondents charged a merchant annual interest approaching 4,000 percent. Richmond loaned it $10,000 and required the merchant to pay back $19,900 in daily payments of $999 over a 10-day term. In an email, Braun wrote, "YES THAT IS 10 PAYMENTS." The merchant's annual interest rate, including interest that was purportedly "fees," was 3,910 percent.

C. Respondents Engage in Repeated and Persistent Fraud in Their Dealings with Merchants

68. Respondents repeatedly engage in fraud in violation of Executive Law § 63(12) in their dealings with merchants.

1. Respondents Misrepresent to Merchants the Upfront Fees They Charge, the Amounts of Their Advances, and the Amounts They Debit from Merchants' Bank Accounts

69. Respondents falsely advertise to merchants that they charge "No Upfront Costs," but in reality they charge merchants the upfront costs of an "Origination Fee" and an "ACH Program Fee." These fees, when deducted from

Respondents' merchant cash advances, leave merchants with smaller net cash advances than initially indicated.

70. Respondents misrepresent the amounts of both of these fees.

71. Respondents state in an appendix that they will charge an ACH Program Fee at either an express amount or a percentage – either 10% or 12% "of the funded amount" – but they do not state in their agreement which of the two forms of fee calculation will apply or how such a determination will be made.

72. By setting out express fee amounts, Respondents create the impression that these are the amounts of the fees that will be charged. And, by failing to disclose that they are in fact charging a percentage-based fee or disclose the amount of such fee, Respondents make it impossible for merchants to determine how much in fees Respondents will actually charge.

73. In any event, Respondents repeatedly charge merchants more than either the express amounts of their fees or the percentage-based amount of their ACH Program Fees, leaving merchants with significantly less cash than represented.

74. Respondents also misrepresent the work they do that purportedly justifies the fees they charge. They tell merchants that they deduct an ACH Program Fee because managing merchants' payments is "labor intensive and . . . not an automated process," but in fact the process is entirely automated; the fee is simply more profit for Respondents. They tell merchants that they deduct an

Origination Fee to "cover Underwriting and related expenses," but in fact the fee is simply paid out as a commission to Respondents' brokers.

75. Respondents also withhold funds from merchants' agreed-upon advances, calling the withheld amounts "reserves," and then keeping the money and failing to provide the "reserved" amounts.

76. Respondents also misrepresent to merchants the amounts they will debit from their bank accounts. A merchant might agree to pay Respondents a daily amount of $299, for example, only to be charged $499 each day.

77. Respondents misrepresent in their agreements that they will debit merchants' bank accounts only on "business days," but they do so for holidays as well, typically by double-debiting a merchant's bank account on the business day after a holiday. In doing so, Respondents debit the account more often than promised and make it more likely that a merchant will default due to insufficient bank funds.

78. Respondents regularly debit money from merchants' bank accounts even after the merchants have paid off their advances, resulting in overcharges of thousands of dollars.

2. Respondents Misrepresent to Merchants the Fundamental Structure of Their Cash Advances

79. Respondents misrepresent to merchants their fundamental practices in structuring merchant cash advances.

80. Respondents advertise that merchants can obtain a cash advance with no collateral and no personal guarantee. This is false. In fact, Respondents' agreements expressly require both extensive collateral and a personal guarantee.

81. Respondents state in their marketing communications that they will provide merchants with flexible payment plans and will "work with" merchants that have difficulty making their daily payments. Respondents state in their agreements that they will reconcile merchants' payment amounts based on their "receivables," both before and after debiting payments from their accounts.

82. These representations are also false. In fact, Respondents debit merchants' accounts by fixed daily amounts that do not change from day to day.

83. Respondents state in their agreements that a merchant "would not owe anything" if it is unable to make payments due to a business slowdown.

84. This is false. When a merchant is unable to pay its fixed daily amount, due to a business slowdown or any other reason, Respondents either push the merchant to refinance its existing cash advance or declare default on the merchant and obtain court judgment against it.

85. Respondents state in their agreements that they will file merchants' confessions of judgments only in certain specific circumstances, such as when a merchant obstructs customers' payments from being deposited into its bank account to be debited by Respondents.

86. This is also false. In fact, Respondents file merchants' confessions of judgment based on any purported default, including even a few missed payments by the merchant.

87. Respondents maximize merchants' debt in pursuit of either of two possible outcomes. First, when a merchant is unable to pay its fixed daily amount, Respondents push the merchant to take out yet another cash advance, with much of the principal of the new advance being used to refinance the prior advance and to pay additional fees. The remainder is wired to the merchant. The merchant is then stuck with a daily payment amount even higher than the prior daily payment it was already struggling to meet.

88. Second, when a merchant is unable to make its daily payment and does not refinance its loan, Respondents declare default and file the merchant's confession of judgment in New York State Supreme Court to obtain judgment against the merchant. Respondents then use the judgment, with the assistance of the New York City Marshals, to seize the full repayment amount of the loan from any bank account they can trace to the merchant or its guarantor.

D. Respondents Abuse the Process of Filing Confessions of Judgment and Use Confessions and False Affidavits to Fraudulently Obtain Judgments Against Merchants

89. Central to Respondents' business is their practice of obtaining court judgments against merchants by filing confessions of judgment. This practice provides Respondents with immense leverage, which they abuse freely.

1. Respondents Use Confessions of Judgment to Obtain Immediate Judgments with No Notice, No Proof of Default, and No Judicial Review

90. Respondents regularly file merchants' confessions in New York State Supreme Court in order to obtain judgment against the merchants pursuant to CPLR 3218. They file for judgment in New York courts even though many of the merchants they loan money to are in other states, such as Texas or California.

91. For Respondents, the process of obtaining judgments is nearly instantaneous. Respondents file confessions and their own affidavits with no notice to the merchant, no other documentary proof of default or of money owed, and no judicial review. The clerk of each court then typically issues judgments in Respondents' favor, often the same day that Respondents file their papers.

92. Using this technique, Respondents have obtained judgments against, on information and belief, more than 400 merchants immediately upon determining that a merchant has defaulted on an agreement – and in some cases, just days after the merchant has signed its Merchant Agreement and confession.

2. Respondents Engage in Fraud by Obtaining Court Judgments Based on False Affidavits

93. Respondents engage in fraud by filing false affidavits in New York State Supreme Court along with merchants' confessions of judgment.

94. Respondents' affidavits, which are executed by Giardina or Gregg, misrepresent the usurious nature of their cash advances by disguising Respondents' practices in calculating merchants' payment amounts. In them, Giardina and

Gregg have repeatedly testified that merchants have made (or have failed to make) "Specified Percentage Payments" to Respondents.

95. This testimony is false. In fact, Respondents collect payments set to fixed daily amounts that are not calculated based on any "Specified Percentage."

96. By falsely testifying that Respondents collect "Specified Percentage Payments," Giardina and Gregg conceal from courts that Respondents' merchant cash advances are not purchases of receivables but are in fact usurious loans.

97. Respondents also file false affidavits that misrepresent to courts the facts of purported defaults and the amounts paid by merchants and the amounts still owed, as has already been found in one New York State Supreme Court decision, *Richmond Capital Group LLC v Megivern*, No. 151406/2018, 2018 WL 6674300, at *3-4 (Sup. Ct. Richmond Cnty. Nov. 28, 2018). In *Megivern*, Justice Orlando Marrazzo found and ruled as follows:

> The record is replete with evidence that Plaintiff [Richmond] made false statements and misrepresentations to the Court which necessitate the vacatur of the Judgement [sic]. In the Affidavits of Ms. Gregg and Ms. Rabinovich [counsel for Richmond], both stated that Defendants had not paid one dollar under the agreement, while in fact Defendants had paid $2,990 as of June 1, 2018 . . . .
>
> . . .
>
> The Court finds that Plaintiff's actions in making false statements to the Court were meant to undermine the truth-seeking function of the judicial system and essentially made the Court an unwilling participant in its fraud . . . . Defendants have proven by clear and convincing evidence that the Plaintiff acted knowingly to try and hinder the Court's adjudication of the case and the Defendants' defense. Plaintiff repeatedly made false, sworn statements to the Court that resulted in the Court entering a Judgment for an inflated amount . . . . Therefore, based on the fraud committed on this Court by Plaintiff, the Judgement and Confession by Judgment are hereby vacated. Any lesser

> sanctions would not suffice to correct the offending behavior since Plaintiff's fraud was central to the substantive issues in the case and Plaintiff's lack of scruples in this case warrant this heavy sanction.

Id.

98. The facts of *Megivern* are not unique. Respondents have repeatedly obtained orders of judgment against merchants by filing affidavits that falsely state the facts of purported defaults and misrepresent to courts the amounts the merchants have paid and the amounts still due.

E. Respondents Cause Merchants to Enter Unconscionable Contracts

99. Respondents engage in fraud by obtaining merchants' signatures on the agreements through procedurally unconscionable means and filling their agreements with substantively unconscionable provisions. In doing so Respondents violate Section 63(12), which defines "fraud" to include "any . . . unconscionable contractual provisions."

100. Respondents use numerous procedurally unconscionable tactics, including the following:

- Respondents take advantage of merchants' desperate financial conditions by preying upon merchants that need immediate funding to keep their businesses afloat;
- Respondents misrepresent to merchants, *inter alia*, (a) that their cash advances are purchases of receivables and not loans, (b) that they will offer flexible repayment plans and will reconcile payments; (c) the amounts of their cash advances, their fees, and their debits from merchants' bank accounts; and (d) the circumstances under which they will file merchants' confessions of judgment;
- Respondents modify the amounts of their cash advances and fees after merchants have already signed Respondents' agreements and forms, at

which point merchants have little leverage to resist the late changes; and

- Respondents and the brokers they work with urge merchants to sign Respondents' agreements as quickly as possible, leaving them little time to consult with professionals.

101. Respondents' agreements include substantively unconscionable clauses, including their clauses providing for interest at triple- and even quadruple-digit rates.

102. Respondents also include substantively unconscionable clauses that, applied together, enable them to immediately obtain and execute judgments against merchants and guarantors, including the following:

- Clauses requiring merchants and guarantors to execute confessions of judgment, which Respondents may file in New York court in case of purported default, with no notice, in order to obtain immediate judgments;
- Acceleration clauses causing, in the event of certain defaults, all interest that would eventually be paid over time to be immediately due;
- Clauses requiring each cash advance to be guaranteed and to be secured by "all accounts" and "all proceeds" of the merchant;
- Clauses stating that Respondents hold secured interests pursuant to the UCC; and
- Clauses providing that a bankruptcy proceeding or an interruption or termination of a merchant's business constitutes default and triggers the acceleration clause.

103. In addition, Respondents' agreements also include the following unconscionable provisions:

- Clauses requiring merchants to provide Respondents their bank account passwords and all other information necessary to log into their bank accounts;

- Clauses prohibiting merchants from interrupting, moving, selling, or transferring their businesses without Respondents' consent;
- Clauses providing that merchants must pay Respondents' attorneys' fees in the event of litigation in which Respondents are successful, but not requiring Respondents to pay merchants' attorneys' fees if Respondents lose;
- Refinancing terms requiring that when a merchant obtains a new cash advance to refinance a prior cash advance, the total repayment amount of the prior advance is deducted from the principal of the new advance, including all interest that would have been paid over time; and
- Power-of-attorney clauses providing that Respondents may serve as merchants' agent and attorney-in-fact, with the power to collect money, endorse checks, sign merchants' names on invoices, and file any claims Respondents deem necessary.

F. Respondents Harass and Threaten Merchants in Order to Force Them to Repay Their Loans

104. Respondents have subjected merchants to a torrent of harassment, insults, abuse, and threats, typically delivered by Braun by telephone, when merchants contact them to request adjustments of their payments or when Respondents determine that merchants have defaulted.

105. When one merchant's bank stopped payments to Richmond due to an unexplained $10,000 debit to the merchant's bank account, Braun repeatedly called the business's owner, demanding, "You owe me money. Give me my money now." Braun warned the owner not to "fuck with" him and threatened to "destroy" the merchant and make his life a "living hell." Braun threatened, "I know where you live. I know where mother lives." Braun said, "I will take your daughters from you," and, "You have no idea what I'm going to do."

106. Another merchant explained to Gregg that it was having difficulty making payments due in part to a lack of incoming receivables. In response, the merchant's principal received not payment reconciliation from Respondents but instead a series of vivid threats in calls from Braun. Braun threatened that he would come to the principal's synagogue in Brooklyn and "beat the shit out of" him and "publicly embarrass" him. Braun warned the man, "I am going to make you bleed," and, "I will make you suffer for every penny."

107. A recipient of an advance from Ram was unable to make payments during a business slowdown. Ram filed the merchant's confession of judgment, and shortly afterward Braun called the merchant's principal and demanded, "Why don't you pay me, you redneck piece of shit?" Braun told him, "I'm going to get my money one way or the other," and said, "Be thankful you're not in New York, because your family would find you floating in the Hudson."

G. Merchants' and Guarantors' Businesses, Finances, and Credit Have Been Demolished as a Result of Respondents' Conduct

108. Respondents inflict immense financial and personal harm upon the merchants they purport to help. They pressure merchants into deceptive and lopsided agreements, loan money to them at triple- and quadruple-digit interest rates, wrongly seize large sums from their bank accounts, wrongly file judgments against them that ruin their credit, and force them into spirals of unending debt.

109. Merchants have been forced to take desperate measures to deal with the debts owed to Respondents and the judgments that they obtained, including terminating employees and taking out further cash advances from other providers.

The principal of one merchant attempted suicide as the result of a cycle of merchant cash advances that started with an advance form Richmond. Many merchants that have received cash advances from Respondents have shut their doors, filed for bankruptcy, or both.

H. Each Respondent Is Responsible for the Acts Set Forth Herein

110. Each Respondent is responsible for the usurious, fraudulent, and illegal conduct set forth herein.

1. Richmond, Ram, and Viceroy Are Parties to the Agreements at Issue

111. Richmond, Ram, and Viceroy are parties to the usurious, fraudulent, and illegal agreements discussed herein. Each has entered agreements in which it has, *inter alia*, (a) loaned money at interest rates far above those permissible under New York law; (b) promised flexible payment amounts and reconciliation of payments but instead charged merchants based on fixed daily amounts that do not change from day to day; (c) misrepresented that it would provide advances in certain amounts and at certain fees, then deviated from those amounts in practice; (d) caused merchants to agree to unconscionable agreements; and (e) obtained judgment from New York courts based on the filing of (i) false affidavits executed by Giardina and Gregg and (ii) confessions of judgment whose filing violated Respondents' promises to the merchants.

2. Robert Giardina Is a Principal Decision-Maker for Respondents and Directly Participates in Their Misdeeds

112. Robert Giardina is Managing Partner of Richmond and holds direct supervisory control over Richmond's operations.

113. Giardina is responsible, with Braun, Reich, and Gregg, for supervising Respondents' marketing, issuance, and servicing of fraudulent, usurious loans and their collection of payments on those loans.

114. Giardina is a hands-on supervisor. He interacts closely with the individuals working with Respondents, including Braun, Reich, and Gregg, and is familiar with their acts.

115. Giardina is personally responsible for the following acts of Respondents, among others:

- Causing Richmond to advertise merchant cash advances as "loans" and falsely advertise flexible payment plans (among other misrepresentations) on Richmond's website, which Giardina supervises;
- Reviewing new applications for merchant cash advances and instructing colleagues to draft new cash advance agreements;
- Planning for merchant cash advances to be administered according to finite repayment terms;
- Supervising Respondents' relationship with Actum Processing, which is responsible for debiting money in fixed daily amounts from merchants' bank accounts;
- Causing Respondents to double-debit merchants' bank accounts for the days after holidays, even though Respondents represent that they will debit only for "business days"; and

- Executing affidavits in which he has falsely testified that merchants have made "Specified Percentage Payments" to Respondents when in fact all such payments are based on fixed daily amounts.

116. Giardina is well aware that Respondents' merchant cash advances are usurious loans. He regularly receives emails from his colleagues in which they discuss plans to administer merchant cash advances at amounts and finite terms indicating interest rates far in excess of those permissible for loans under New York law.

117. Giardina is well aware that Respondents short-change merchants on their advances and overcharge them on fees and payments. He has regularly received emails from Braun including amounts different from those the merchants have agreed to, and Giardina is solely responsible for issuing cash advances to merchants from Richmond's bank account.

3. Jonathan Braun Is a Principal Decision-Maker for Respondents and Directly Participates in Their Misdeeds

118. Braun is or has been a principal decision-maker for Respondents with influence far beyond his title of "Senior Funding Manager."

119. Braun is personally responsible for the following acts of Respondents, among others:

- Marketing cash advances to merchants by telephone as "loans," subject to finite repayment terms;
- Falsely promising to merchants that Respondents will be flexible and will "work with" merchants who have difficulty with their daily payments;

- Participating in underwriting conversations in which Respondents discuss only such factors as merchants' credit and bank balances, not their actual receivables;

- Instructing that merchant cash advances be administered at amounts indicating interest rates in the triple and quadruple digits, far above the rates permissible for loans under New York law;

- Instructing that merchant cash advances be subject to finite repayment terms, such as "10 PAYMENTS" or "50 days";

- Instructing that merchant cash advances be administered at amounts different from those set forth in Respondents' signed agreements;

- Determining when merchants have defaulted on their agreements and instructing colleagues to file confessions of judgment; and

- Calling merchants by telephone and harassing them, threatening to seize and destroy their property and businesses, and threatening violence to them and their families.

4. Tzvi "Steve" Reich Is a Principal Decision-Maker for Respondents and Directly Participates in Their Misdeeds

120. Reich owns Ram and is its principal decision-maker.

121. Reich is closely involved in decision-making for merchant cash advances issued by Richmond and Viceroy.

122. Reich is personally responsible for the following acts of Respondents, among others:

- Causing Ram to advertise itself as a "lender" and merchant cash advances as "loans" and falsely advertising flexible payment plans (among other misrepresentations) on Ram's website, which Reich supervises;

- Communicating to merchants that cash advances are subject to fixed daily payments and finite repayment terms;

- Participating in underwriting conversations in which Respondents discuss only such factors as merchants' credit and bank balances, not their receivables;

- Falsely promising to merchants that Ram will honor merchants' refusal to pay fees, then causing Ram to collect fees in excess of those the merchant agreed to;
- Planning for merchant cash advances to be administered according to finite repayment terms;
- Causing Ram to collect fees from merchants in excess of the amounts indicated in Ram's agreements;
- Causing Ram to wire money to merchants for their cash advances in amounts different from those represented in Ram's agreements; and
- Causing Ram to debit merchants' bank accounts at higher daily amounts than those shown in Ram's agreements.

123. Reich is well aware that Respondents' merchant cash advances are usurious loans. He regularly receives emails from his colleagues in which they discuss plans to administer merchant cash advances at amounts and finite terms indicating interest rates far in excess of those permissible for loans under New York law.

124. Reich is well aware that Respondents short-change merchants on their advances and overcharge them on fees and payments. He has regularly received emails from Braun including amounts different from those the merchants have agreed to.

5. Michelle Gregg Is a Principal Decision-Maker for Respondents and Directly Participates in Their Misdeeds

125. Respondent Gregg is a decision-maker for Respondents and serves as Managing Director and Director of Finance for both Richmond and Viceroy.

126. Gregg is personally responsible for the following acts of Respondents, among others:

- Managing Respondents' collection of payments from merchants and their debiting of merchants' bank accounts;
- Causing merchant cash advances to be repaid through daily debits at fixed amounts over finite terms and at interest rates far in excess of those permissible for loans under New York law;
- Causing payments to be debited from merchants' bank accounts at fixed daily amounts higher than those disclosed in Respondents' signed agreements;
- Causing Respondents to double-debit merchants' bank accounts for the days after holidays, even though Respondents represent that they will debit only for "business days";
- Collecting payments for Respondents by contacting merchants by telephone;
- Executing affidavits in which she has falsely testified concerning the amounts that merchants have paid on their cash advances and the amounts still due; and
- Executing affidavits in which she has falsely testified that merchants have made "Specified Percentage Payments" to Respondents, when in fact all such payments are based on fixed daily amounts.

127. Gregg is well aware that Respondents' merchant cash advances are usurious loans. She regularly receives emails from her colleagues in which they discuss plans to administer cash advances at amounts and finite terms indicating interest rates far in excess of those permissible for loans under New York law.

128. Gregg is also well aware that Respondents short-change merchants on their advances and overcharge them on fees and payments. She has regularly received emails from Braun including amounts different from those the merchants have agreed to.

FIRST CAUSE OF ACTION BY THE PEOPLE AGAINST ALL RESPONDENTS PURSUANT TO EXECUTIVE LAW § 63(12):

ILLEGAL ACTS IN THE FORM OF USURY

129. The People repeat and re-allege paragraphs 1 through 128 as if fully set forth herein.

130. Executive Law § 63(12) provides for relief upon petition by the NYAG "whenever any person shall engage in repeated fraudulent or illegal acts or otherwise demonstrate persistent fraud or illegality in the carrying on, conducting or transaction of business."

131. As set forth above, Respondents have engaged in usury in violation of General Obligation Law § 5-501(1) by repeatedly and persistently charging, taking, or receiving money as interest on the loan of money at rates in the triple and quadruple digits, far exceeding the maximum permissible rate of 16% prescribed in Banking Law § 14-a(1).

132. Accordingly, Respondents have engaged in repeated and persistent illegality in violation of Executive Law § 63(12).

SECOND CAUSE OF ACTION BY THE PEOPLE AGAINST ALL RESPONDENTS PURSUANT TO EXECUTIVE LAW § 63(12):

ILLEGAL ACTS IN THE FORM OF CRIMINAL USURY

133. The People repeat and re-allege paragraphs 1 through 132 as if fully set forth herein.

134. Executive Law § 63(12) provides for relief upon petition by the NYAG "whenever any person shall engage in repeated fraudulent or illegal acts or

otherwise demonstrate persistent fraud or illegality in the carrying on, conducting or transaction of business."

135. As set forth above, Respondents have engaged in criminal usury in violation of Penal Law § 190.40 by, without being authorized or permitted by law to do so, repeatedly, persistently, and knowingly charging, taking, or receiving money as interest on loans at annual rates exceeding 25% or the equivalent rate for a longer or shorter period.

136. Accordingly, Respondents have engaged in repeated and persistent illegality in violation of Executive Law § 63(12).

THIRD CAUSE OF ACTION BY THE PEOPLE AGAINST ALL RESPONDENTS PURSUANT TO EXECUTIVE LAW § 63(12):

ILLEGAL ACTS IN THE FORM OF ENGAGING IN THE BUSINESS OF MAKING HIGH-INTEREST LOANS AND CHARGING EXCESSIVE INTEREST WITHOUT A LICENSE IN VIOLATION OF BANKING LAW §§ 340 AND 356

137. The People repeat and re-allege paragraphs 1 through 136 as if fully set forth herein.

138. Executive Law § 63(12) provides for relief upon petition by the NYAG "whenever any person shall engage in repeated fraudulent or illegal acts or otherwise demonstrate persistent fraud or illegality in the carrying on, conducting or transaction of business."

139. Under Banking Law § 340 it is unlawful for a person or entity to "engage in the business of making loans . . . in a principal amount of fifty thousand dollars or less for business and commercial loans, and charge . . . a greater rate of

interest than the lender would be permitted by law to charge if he were not a licensee hereunder except as authorized by [Banking Law Article IX] and without first obtaining a license from the superintendent."

140. Under Banking Law § 356 it is unlawful for a person or entity, "other than a licensee under [Banking Law Article IX]," to "charge . . . interest . . . greater than [it] would be permitted by law to charge if it were not a licensee hereunder upon a loan not exceeding the maximum amounts prescribed" in Banking Law § 340.

141. As set forth herein, Respondents have repeatedly or persistently engaged in the business of making business and commercial loans in New York in principal amounts of fifty thousand dollars or less.

142. In making such loans, Respondents have charged interest at rates above the maximum interest rate a lender is permitted to charge without a license, which is 16% pursuant to General Obligations Law § 5-501(1) and Banking Law § 14-a(1).

143. Respondents have engaged in the business of making high-interest loans and have charged excessive interest without obtaining the requisite licenses from the Department of Financial Services or the Superintendent of Banking.

144. Accordingly, Respondents have engaged in repeated and persistent illegality in violation of Executive Law § 63(12).

FOURTH CAUSE OF ACTION BY THE PEOPLE AGAINST ALL RESPONDENTS PURSUANT TO EXECUTIVE LAW § 63(12):

FRAUD

145. The People repeat and re-allege paragraphs 1 through 144 as if fully set forth herein.

146. Executive Law § 63(12) provides for relief upon petition by the NYAG "whenever any person shall engage in repeated fraudulent or illegal acts or otherwise demonstrate persistent fraud or illegality in the carrying on, conducting or transaction of business."

147. Executive Law § 63(12) defines "fraud" and "fraudulent" to include "any device, scheme or artifice to defraud and any deception, misrepresentation, concealment, suppression, false pretense, false promise or unconscionable contractual provisions."

148. As set forth above, Respondents have repeatedly and persistently engaged in fraud by, *inter alia*:

- Misrepresenting the nature of their cash advances;
- Misrepresenting that their merchant agreements are enforceable when in fact they are usurious loans, and thus void under New York law;
- Falsely advertising that Richmond's merchant cash advances require no collateral and no personal guarantee;
- Falsely advertising flexible repayment plans on their websites;
- Falsely representing to merchants that they will recalculate their payment amounts and reconcile their accounts;
- Falsely advertising that Richmond's merchant cash advances have no upfront costs;

- Short-changing merchants on their cash advances and overcharging them on fees deducted from the advances;
- Misrepresenting the basis of the fees they deduct from merchant cash advances;
- Falsely representing to merchants that they will provide cash advances at certain amounts, then changing those amounts after obtaining merchants' signatures on Respondents' agreements and confessions of judgment;
- Subjecting merchants' principals to harassment, insults, and threats in order to pressure them to pay money to Respondents;
- Falsely representing to merchants that Respondents will file merchants' confessions of judgment in court only in certain limited circumstances, when in practice Respondents file confessions based on any purported default, or even no default at all;
- Declaring merchants in default on false pretenses;
- Obtaining judgments in New York State Supreme Court based on false affidavits that misrepresent merchants' payment histories and amounts due; and
- Obtaining judgments in New York State Supreme Court based on affidavits that falsely state that Respondents collect "Specified Percentage Payments," thereby concealing from courts the fact that their merchant cash advances are in fact usurious loans.

149. Accordingly, Respondents have engaged in repeated and persistent fraud in violation of Executive Law § 63(12).

FIFTH CAUSE OF ACTION AGAINST ALL RESPONDENTS PURSUANT TO EXECUTIVE LAW 63(12):

FRAUD IN THE FORM OF UNCONSCIONABILITY

150. The People repeat and re-allege paragraphs 1 through 149 as if fully set forth herein.

151. Executive Law § 63(12) provides for relief upon petition by the NYAG "whenever any person shall engage in repeated fraudulent or illegal acts or

otherwise demonstrate persistent fraud or illegality in the carrying on, conducting or transaction of business."

152. Executive Law § 63(12) defines "fraud" and "fraudulent" to include "any . . . unconscionable contractual provisions."

153. Respondents have repeatedly and persistently used procedurally unconscionable tactics in obtaining merchants' signatures on their agreements, as set forth above.

154. Respondents have repeatedly and persistently caused merchants to agree to substantively unconscionable contract provisions, as set forth above.

155. Accordingly, Respondents have engaged in repeated and persistent fraud in the form of unconscionability in violation of Executive Law § 63(12).

SIXTH CAUSE OF ACTION AGAINST BRAUN, RICHMOND, AND RAM PURSUANT TO EXECUTIVE LAW 63(12):

ILLEGALITY IN THE FORM OF HARASSMENT IN THE SECOND DEGREE AND AGGRAVATED HARASSMENT IN THE SECOND DEGREE

156. The People repeat and re-allege paragraphs 1 through 155 as if fully set forth herein.

157. Executive Law § 63(12) provides for relief upon petition by the NYAG "whenever any person shall engage in repeated fraudulent or illegal acts or otherwise demonstrate persistent fraud or illegality in the carrying on, conducting or transaction of business."

158. Braun, Richmond, and Ram have repeatedly and persistently committed the illegal acts of harassment in the second degree and aggravated harassment in the second degree in violation of New York law.

159. A person is guilty of harassment in the second degree, a criminal violation, when, "with intent to harass, annoy or alarm another person," the person, *inter alia*, "subjects such other person to physical contact . . . or threatens to do the same," Penal L. § 240.26(1), or "engages in a course of conduct or repeatedly commits acts which alarm or seriously annoy such other person and which serve no legitimate purpose," Penal L. § 240.26(3).

160. A person is guilty of aggravated harassment in the second degree, a misdemeanor, when, "with intent to harass another person," the person, *inter alia*, "communicates . . . by telephone . . . a threat to cause physical harm to, or unlawful harm to the property of, such person, or a member of such person's same family or household . . . and the actor knows or reasonably should know that such communication will cause such person to reasonably fear" such harm, Penal L. § 240.30(1), or when the person, "[w]ith intent to harass or threaten another person . . . makes a telephone call . . . with no purpose of legitimate communication," Penal L. § 240.30(2).

161. Respondents have repeatedly and persistently committed the illegal acts of harassment in the second degree and aggravated harassment in the second degree by telephoning merchants' principals and guarantors and, *inter alia*, insulting and berating them, threatening to take or destroy their businesses and

their property, threatening to come to their homes and businesses, and threatening to do violence to them and to their families.

162. Respondents have threatened merchants' principals with physical contact.

163. Respondents have threatened physical harm to merchants' principals and guarantors and to members of their families and households.

164. Respondents have threatened unlawful harm to the property of merchants' principals and guarantors.

165. Such acts of Respondent constitute a course of conduct.

166. Respondents have engaged in such acts with the intent to harass, annoy, and alarm merchants' principals and guarantors.

167. Respondents have engaged in such communications knowing, or while they reasonably should have known, that they would cause merchants' principals and guarantors to reasonably fear harm to their physical safety and unlawful harm to their property and would reasonably fear such harms to members of their families and households.

168. Such acts have seriously alarmed or annoyed the debtors who received the communications.

169. Such acts serve no legitimate purpose and have no purpose of legitimate communication.

170. Accordingly, Respondents have engaged in repeated and persistent illegality through harassment in the second degree and aggravated harassment in the second degree in violation of Executive Law § 63(12).

PRAYER FOR RELIEF

WHEREFORE, the People of the State of New York respectfully request that the Court issue an order and judgment:

a. Permanently enjoining Respondents; their agents, trustees, employees, successors, heirs, and assigns; and any other person under their direction or control, whether acting individually or in concert with others, or through any corporate or other entity or device through which one or more of them may now or hereafter act or conduct business, from engaging in the fraudulent and illegal practices alleged herein;

b. Ordering Respondents to cease all collection of payments or other moneys related to merchant cash advances;

c. Ordering the rescission of each agreement entered into between Respondents and any merchant in connection with a merchant cash advance, including each Merchant Agreement; Security Agreement and Guaranty; Authorization Agreement for Direct Deposit (ACH Credit) and Direct Payments (ACH Debits); "Appendix A: The Fee Structure"; Addendum to Secured Purchase and Sale of Future Receivables Agreement; and form providing Respondents with access to merchants' bank accounts;

d. Ordering Respondents to apply for vacatur of all confessions of judgment filed by them and all judgments issued in their favor based on such filings, by all courts of this State that have issued such judgments, in papers acceptable to the NYAG;

e. Ordering Respondents to file papers sufficient to terminate all liens or security interests related to their merchant cash advances;

f. Staying all marshals and/or sheriffs who hold executions under such judgments from executing or collecting upon them;

g. Ordering Respondents to provide an accounting to the NYAG of the names and addresses of each merchant from whom Respondents collected or received monies since February 8, 2013 in connection with merchant cash advances and a complete history, by dates, amounts, and sources, of all monies collected or received by Respondents from all such merchants (whether through daily payments, execution of judgments, or any other avenue), and all moneys provided by Respondents to such merchants;

h. Ordering Respondents to pay full restitution and damages to the NYAG as to all merchants that have entered into agreements with Respondents for merchant cash advances, including those not identified at the time of the order;

i. Ordering Respondents to disgorge all profits from the fraudulent and illegal practices alleged herein;

j. Awarding to the NYAG, pursuant to New York Civil Practice Law and Rules § 8303(a)(6), costs in the amount of $2,000 against each Respondent; and

k. Granting such other and further relief as the Court deems just and proper.

Dated: June 10, 2020

Respectfully submitted,

LETITIA JAMES
Attorney General of the State of New York
Attorney for Petitioners

By: _____
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EXHIBIT 9

ALPHA
RECOVERY PARTNERS
1274 49th ST STE 197
Brooklyn NY 11219

Tel: (929) 605-4138

February 24, 2022

Re: Indigo Installations, Inc. and Christopher A. Turrentine

Dear Sirs/Madams,

Please see the enclosed letter and supporting documents, requesting that a hold be placed on the following merchant's accounts receivable:

Indigo Installations, Inc. and Christopher A. Turrentine
7201 Buckleigh Point Ct, Mckinney, TX 75071

The original documents will follow via mail.

Very Truly Yours,

Florence Zabokritsky Esq. as Counsel,
Alpha Recovery Partners
1274 49th ST STE 197
Brooklyn NY 11219
Info@AlphaRecoveryPartners.com

ALPHA
RECOVERY PARTNERS
1274 49th ST STE 197
Brooklyn NY 11219

Tel: (929) 605-4138

VIA FACSIMILE & FED EX
Bargreen Ellingson
2450 Handley Ederville Rd
Fort Worth, TX 76118

UCC LIEN NOTICE AND NOTICE OF POWER OF ATTORNEY ("POA") GRANTED BY MERCHANT TO GOFUND ADVANCE GIVING GOFUND ADVANCE ("POA") OVER ACCOUNT RECEIVABLES OF MERCHANT

Re: Indigo Installations, Inc. and Christopher A. Turrentine

EIN: 85-2983119

Balance due to GoFund Advance: $31,360.00

Attn Legal Department:

I represent GoFund Advance ("GoFund Advance") in the above matter. This notice is being sent pursuant to §9-406 of the Uniform Commercial Code (UCC) as it has come to our attention that you may have a balance owed to Indigo Installations, Inc. and Christopher A. Turrentine (the "Merchant"), located at 7201 Buckleigh Point Ct, Mckinney, TX 75071.

Please be advised that the Merchant has defaulted on a secured merchant agreement entered into by and between the Merchant and GoFund Advance, a copy of which is enclosed for your reference ("Agreement"). The balance currently due and owing to GoFund Advance pursuant to the Agreement is $31,360.00.

Pursuant to the enclosed Agreement, GoFund Advance purchased $63,960.00 of the Merchant's future accounts. The Agreement was structured so that GoFund Advance was to receive 45% of all the Merchant's deposits. In accordance with the Agreement, GoFund Advance filed a UCC-1 financing statement with the appropriate Secretary of State of Texas, thereby obtaining a perfected security interest in the Merchant's assets, including without limitation, the Merchant's accounts receivables. A copy of the UCC-1 is also enclosed for your reference.

The Merchant has breached the Agreement due to non-payment of the receivables and therefore is currently in default. Pursuant to Section 9-406 of the UCC, you are directed to forward all receipts due the Merchant to GoFund Advance as same become due. Please direct all funds owed by you on behalf of the Merchant, or collected by you on behalf of the Merchant to this firm until the amount $31360.00 accrues.

The UCC-1 puts all parties on notice of GoFund Advance's rights to the Merchant's assets as

a secured party. This notice is to inform you that not forwarding said funds to GoFund Advance is a violation of the UCC-1 filing and security interest, and hereby interfering with the Agreement entered into by and between the Merchant and GoFund Advance.

Please understand that no representative of the Merchant has any authority to collect or receive your payment. Payments made to the Merchant will not discharge your obligation as described above and will result in you paying the obligation twice as UCC §9-406 directs that once an account debtor has been notified of the assignment of an account, the account debtor may not discharge the account obligation by paying the assignor (here, the Merchant). Thus, remitting payment to anyone other than GoFund Advance will result in your having to pay GoFund Advance.

Please direct all funds owed by you on behalf of the Merchant, or collected by you on behalf of the Merchant to this firm until the amount $31360.00 accrues. The UCC-1 puts all parties on notice of GoFund Advance's rights to the Merchant's assets as a secured party.

We trust that you share GoFund Advance's desire to avoid time, expense and inconvenience which would inevitably accompany a formal legal proceeding and will, therefore, promptly forward full payment in order to amicably resolve this situation. If necessary, GoFund Advance will indemnify **Bargreen** Ellingson for all actions taken with respect to this matter.

Please contact me with any questions.

Very Truly Yours,

GoFund Advance
5308 13TH AVE SUITE 324 BROOKLYN
NY 11219

Florence Zabokritsky Esq. as Counsel,
Alpha Recovery Partners.
1274 49th ST STE 197
Brooklyn NY 11219
Info@AlphaRecoveryPartners.com

EXHIBIT 10

Jared M. Alfin
jalfin@hgesq.com
(860) 651-1333, ext. 105

Please reply to Simsbury

FOR SETTLEMENT PURPOSES ONLY
March 9, 2022

kara.urban@pnc.com

Kara Urban

PNC Bank

Garnishment & Levy Department

249 Fifth Ave 21st Floor
Pittsburgh, PA 15222

Re: **GOFUND ADVANCE, LLC v. INDIGO INSTALLATIONS, INC., ET AL**

Dear Ms. Urban

This firm represents the plaintiff in the above-referenced litigation. This is to inform you that the above captioned matter has been partially settled, the specific payment terms of which are private. The account holders' notarized signature is below. Therefore, please accept this correspondence as notice to immediately release the total amount of **$7,702.00**, payable to *Hassett & George, P.C.* and send it to Hassett & George, P.C. c/o Jared M. Alfin, Esq., 945 Hopmeadow Street, Simsbury, CT 06070. Please release all the accounts and remaining funds to the account holders. Should you have any questions, please do not hesitate to contact me directly.

Very truly yours,

Jared M. Alfin

INDIGO INSTALLATIONS, INC. D/B/A INDIGO INSTALLATIONS and **CHRISTOPHER A. TURRENTINE**

By:_____
CHRISTOPHER A. TURRENTINE
Duly Authorized

STATE OF _____)
) ss: _____ March__, 2022.
COUNTY OF _____)

Personally appeared, **CHRISTOPHER A. TURRENTINE**, individually and on behalf of **INDIGO INSTALLATIONS, INC.,** its duly authorized agent/owner, as aforesaid signer of the foregoing instrument, and acknowledged the same to his free act and deed and the free act and deed of said companies, before me.

_____
Print Name:
Notary Public
My Commission Expires:

EXHIBIT 11

From: Heskin, Shane
Sent: Tuesday, March 8, 2022 11:26 AM
To: Jared Alfin
Cc: rhassett@hgesq.com; Wells, Stuart
Subject: RE: Correspondence to PNC Bank40.docx

I am still waiting.

From: Heskin, Shane <heskins@whiteandwilliams.com>
Date: Monday, Mar 07, 2022, 9:48 PM
To: Jared Alfin <Jalfin@hgesq.com>
Cc: rhassett@hgesq.com <rhassett@hgesq.com>, Wells, Stuart <Wellss@whiteandwilliams.com>
Subject: RE: Correspondence to PNC Bank40.docx

Can I please get a copy of the affidavit?

From: Heskin, Shane <heskins@whiteandwilliams.com>
Date: Monday, Mar 07, 2022, 2:16 PM
To: Jared Alfin <Jalfin@hgesq.com>
Cc: rhassett@hgesq.com <rhassett@hgesq.com>, Wells, Stuart <Wellss@whiteandwilliams.com>
Subject: RE: Correspondence to PNC Bank40.docx

Jared,

This is my second request. Please provide me with a copy of the complaint you purported to file on February 24, 2022.

We have searched the docket and called the court and cannot find it anywhere.

Please provide by 5 pm today. Time is of the essence.

Thanks,
-Shane

From: Heskin, Shane <heskins@whiteandwilliams.com>
Date: Friday, Mar 04, 2022, 7:15 PM
To: Jared Alfin <Jalfin@hgesq.com>
Subject: FW: Correspondence to PNC Bank40.docx

Jared,

This settlement agreement, drafted by you, represents to my client that a lawsuit has been commenced against my client.

Please provide me with a copy of the lawsuit referenced in the second WHERAS clause.

From: Jared Alfin <Jalfin@hgesq.com>
Date: Friday, Mar 04, 2022, 11:33 AM
To: Heskin, Shane <heskins@whiteandwilliams.com>
Cc: Donna Pare <dpare@hgesq.com>
Subject: RE: Correspondence to PNC Bank40.docx

CAUTION: This message originated outside of the firm. Use caution when opening attachments, clicking links or responding to requests for information.

Shane: As discussed, my client and your client negotiated a settlement agreement on their own. I sent along to my client a copy of the draft settlement agreement attached and the release letter that I had presigned in case I was not in the office so it could get to the bank quicker to release the account per their deal if it was signed by your client. I suspect that my client sent the letter to your client and the settlement agreement to sign per their discussions; however, your client did not sign it. I suspect that your client sent the letter to the bank per the email that he sent and copied you. For the record, I did NOT send any letter to the bank and would NOT send any letter to the bank, unless it was signed by your client together with the settlement agreement, which provides me with authorization. Therefore, you should check with your client as I believe that HE (and only he) sent the letter to the bank himself. Again, I did not send it to the bank.

My client was dealing with your client and was my understanding that my client was going to send the settlement agreement attached and the release letter to your client to sign. Then, the agreement and the letter come back to me and I then send everything to the bank, once your client has signed off on BOTH the letter and settlement agreement. This way, there is no question that there is authority from your client. I have no idea why your client does not have the settlement agreement. Again, I simply sent along a settlement agreement and release letter to my client. I was not involved in any negotiations or discussions. And again, I did not send the letter to the bank.

My guess is that your client sent the letter to the bank on his own and you are under the impression that I sent it, which is NOT true. Also, the letter is not operative unless it is signed by your client under oath since it is required to be signed by your client. Obviously, that did not happen and the bank is not going to release any money.

If you would like to discuss, please call me; however, hanging up the phone on me when trying to explain the situation is not helpful, nor professional. I always speak to you professionally, even when we disagree. I am not sure why you have a habit of yelling and hanging up on me when I am trying to speak. In any event, I welcome a call to discuss this matter professionally.

The simple solution is to have the parties work out a settlement.

From: Heskin, Shane <heskins@whiteandwilliams.com>
Sent: Friday, March 4, 2022 11:09 AM
To: Jared Alfin <Jalfin@hgesq.com>
Subject: Correspondence to PNC Bank40.docx

Jared,

Please provide me with a copy of the purported settlement agreement referred to in your attached letter.

Also, if you do not immediately agree to release the bank accounts and dismiss your action, we will be seeking a TRO our pending SDNY class action on Monday.

Regards,
-Shane