

CRUSHED BY CONFESSIONS OF JUDGEMENT: THE SMALL BUSINESS STORY

HEARING BEFORE THE COMMITTEE ON SMALL BUSINESS UNITED STATES HOUSE OF REPRESENTATIVES ONE HUNDRED SIXTEENTH CONGRESS FIRST SESSION

HEARING HELD
JUNE 26, 2019



Small Business Committee Document Number 116-031
Available via the GPO Website: www.govinfo.gov

U.S. GOVERNMENT PUBLISHING OFFICE
WASHINGTON : 2019

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WEDNESDAY, JUNE 26, 2019

HOUSE OF REPRESENTATIVES,
COMMITTEE ON SMALL BUSINESS,
Washington, DC.

The committee met, pursuant to call, at 11:33 a.m., in Room 2360, Rayburn House Office Building. Hon. Nydia Velázquez [chairwoman of the Committee] presiding.

Present: Representatives Velázquez, Finkenauer, Golden, Kim, Davids, Veasey, Delgado, Houlahan, Craig, Chabot, Hagedorn, Stauber, Spano, and Joyce.

Chairwoman VELÁZQUEZ. Good morning. The committee will come to order.

I thank everyone for joining us this morning, and I want to especially thank the witnesses who have traveled from across the country to be here with us today.

When I talk to small business owners, one of the first things they mention to me is that access to capital is the lifeblood of their business. Affordable capital fuels new startups and helps existing businesses expand into new markets and grow their customer bases. And we know that when capital is accessible and on fair terms, small businesses can do what they do best, strengthen our communities and fuel our economy.

Unfortunately, affordable capital can be hard to come by for many owners. Whether it is a taxicab driver in New York City pursuing the American dream or a small business owner trying to make payroll, predatory lenders have been targeting individuals and small businesses with loans that have excessively high interest rates, and unfair and abusive terms. This is an ongoing problem in many areas of lending and today's hearing will highlight one aspect of this larger issue.

In recent years, cash-advance firms have been offering small businesses short-term loans that have the equivalent of a 400 percent or more annualized interest rate. Many of these firms then require borrowers to sign a confession of judgment just to get the money.

Because cash flow is so vital to a business's survival, many owners feel they have no choice but to sign away their rights to save their businesses and provide for their employees. By signing, borrowers essentially waive their legal rights regarding any legal dispute that might arise. And if one does arise, the lender can unilaterally declare a default and take actions against the small business owner.

In doing so, these lenders have hijacked our courts by getting rubber stamp judgments without notice or hearings. Many times, small business borrowers only find out about a judgment against them after the lender begins to seize bank accounts or other assets.

Over the past few years, lenders have used these instruments to win more than 32,000 judgments in state courts. While confessions of judgment have been prohibited under the Truth in Lending Act (TILA) for consumer loans since 1985, these protections do not extend to certain types of commercial loans.

That is why I introduced the Small Business Lending Fairness Act, which will put an end to these predatory collection practices. By ending confessions of judgment in commercial lending, we can stop some of the abuses that are crippling honest small business owners.

I find it appalling that New York State law has made our state a magnet for dishonest lenders. And I am encouraged by the news that New York State lawmakers are now taking steps to prevent these out-of-state lenders from using our court system to freeze and drain a borrower's account. But this is not enough, which is why I am working with Senator Brown to close this loophole nationally.

As predatory small business lenders continue to evolve and find creative ways around the law, Congress must similarly be proactive in addressing those predatory practices and rooting out abuses that are harming honest, hard-working small business borrowers.

Closing this loophole ensures that predatory lenders cannot use abusive practices to seize the assets of small firms without due process and protects them when they are looking to obtain a loan.

Again, I want to thank the witnesses for being here, and I now yield to the Ranking Member, Mr. Chabot, for his opening statement.

Mr. CHABOT. Thank you, Madam Chair.

And before I get into the substance of my opening statement this morning, I just wanted to note the passing of a former Chairman of this Committee. When I was first elected in 1994 and sworn in in 1995, the Democrats had controlled the house for 40 years at that time so all the Chairmen and Chairwomen of those Committees were Democrats, and so Republicans in 1995 became the Chairs. And the Chairwoman of this Committee was Jan Meyers. And her portrait is up on the wall in red up there. Jan was a great member of Congress, great Chair of this Committee. She was 90 years old when she passed away. She represented Kansas and did a great job. And so we want to recognize her leadership and we wish the best to her family. And she is held in very high esteem.

Chairwoman VELÁZQUEZ. Would you yield for a second?

Mr. CHABOT. I would be happy to yield.

Chairwoman VELÁZQUEZ. Thank you. And I issued a statement at press time yesterday, and she represented the spirit of bipartisanship of this Committee. We are here discussing issues that are important to the small business community and for her and for us they are not republican or democratic issues. She came here, she did her job, and was very fair, very smart, and committed to serve small businesses in our nation.

I yield back.

Mr. CHABOT. Thank you. Thank you. I reclaim my time.

I just got a notice from the Former Members of Congress that I still am a member because I lost back in 2008. So I joined the Former Members of Congress, and I am still a member. I do not think they ever know I got reelected again. So, but anyway, it indicated that Jan had passed away. And so, she was a great member and I think we are both following in her footsteps, the current Chair and me as the former Chair. So rest in peace, Jan. She was a great lady.

As our economy continues to roar ahead with record unemployment rates and near record small business optimism, our Nation's smallest firms still face obstacles when it comes to financing their projects and growth. With an onslaught of new technologies, leaders are reaching small businesses, entrepreneurs, and startups in novel ways. Despite new technological platforms, the contract between two parties is still where the rubber meets the road. Often these contracts contain a legal provision that we are discussing here today.

Although confessions of judgment have been around for ages, the provision has received increased attention recently at the Federal and state level due to some abuses. Specifically, the provision allows a party to waive his or her due process rights, bypass litigation, and move immediately towards a monetary judgment.

At the Federal level, the Federal Trade Commission, the FTC, is one of the Nation's agencies that oversees consumer protection laws. In 1984, the FTC determined that the use of confessions of judgments should be prohibited in all consumer contracts. Although the FTC through regulation banned confessions of judgment in consumer contracts, they elected not to include business contracts in that prohibition. States, on the other hand, have created a patchwork of rules on how to treat confessions of judgment from an outright ban in some states to allowing them in others. Many of the states that do allow them, such as my state, Ohio, and Pennsylvania, also require certain guardrails and safeguards to protect parties involved in these transactions.

For example, in Ohio, warning language must appear on the contract in bold and "distinctive" lettering. These safeguards help reduce the chances of small business owners not being aware of the provision and/or not understanding the provision, which often leads towards abusive practices.

Most recently, just last week, the state of New York, as was mentioned, voted to ban all out-of-state confessions of judgment.

I look forward to hearing from all four of our witnesses here today about the history of this provision and how it has been utilized in recent years. Additionally, I am interested in hearing how states have regulated this legal tool. As we continue to work to create an environment that allows small businesses to grow, create jobs, and flourish, it is important to look at how states address various issues, including this one.

So I want to thank the witnesses for joining us today, just as the Chairman did, and I yield back.

Chairwoman VELAZQUEZ. Thank you, Mr. Chabot. The gentleman yields back.

And now I recognize the gentlelady from Kansas, Ms. Davids, for the purpose of making a statement on Ms. Meyers's passing.

Ms. DAVIDS. Thank you, Madam Chairwoman. I appreciate the opportunity to, one, just acknowledge the importance of Jan Meyers for the state of Kansas, and particularly for the district that I now represent. She was certainly a leader in our state and as a woman in elected leadership, I appreciated her ability to work in a bipartisan way and bring what I consider to be Midwestern values and pragmatism to not just politics but to our society in general.

I appreciate the time. I just wanted to express that Jan Meyers was such an important figure in Kansas history. Thank you.

Chairwoman VELAZQUEZ. The gentlelady yields back.

And if committee members have an opening statement, we will ask they be submitted for the record.

I would like to take a minute to explain the timing rules. Each witness gets 5 minutes to testify and the members get 5 minutes for questioning. There is a lighting system to assist you. The green light comes on when you begin, and the yellow light means there is 1 minute remaining. The red light comes on when you are out of time, and we ask that you stay within that timeframe to the best of your ability.

I would now like to introduce our witnesses.

Our first witness is Professor Hosea Harvey, Ph.D. Professor Harvey has taught at Temple University's Law School since 2010 where he teaches contracts, banking and financial regulation, and consumer law matters, focusing on how our nation's banking laws influence and impact diverse communities. His work is particularly timely as we consider confessions of judgment in the context of small business lending and the role that Congress can play to ensure a fair marketplace. Professor Harvey earned his B.A. from Dartmouth College and then went on to Stanford University where he received his M.A., J.D., and Ph.D. in political science.

Welcome, Professor Harvey. And you are recognized for 5—I am going to introduce all the members all at once and then we will start.

Our second witness is Mr. Jerry Bush. Mr. Bush is a 28-year certified master plumber from Roanoke, Virginia. He owned JB Plumbing and Heating of Virginia with his father but was recently forced to shut down after 30 years of business due to abusive confessions of judgment associated with cash advances. Mr. Bush is also a dedicated public servant having served as a volunteer fire chief for 25 years. He currently lives in Roanoke with his wife of 19 years, who is a cancer survivor and their 18-year-old son. Welcome, Mr. Bush.

Our third witness today is Mr. Shane Heskin. He is a partner in the Philadelphia office of White and Williams, LLP, a full service regional law firm with over 240 lawyers in 10 offices. Mr. Heskin practices in the firm's commercial litigation department and has nearly 20 years of experience litigating complex matters. Mr. Heskin holds a J.D. from Albany Law School and a B.A. from Mayville State University where he graduated summa cum laude from both schools. Since 2016, Mr. Heskin has represented more than 50 small businesses and individuals in connection with high interest lending products located all over the country. Welcome.

And now I would like to yield to our Ranking Member, Mr. Chabot, to introduce our final witness.

Mr. CHABOT. Thank you, Madam Chair.

Our next witness will be Benjamin Picker. Mr. Picker is a shareholder and attorney at the law firm of McCausland, Keen, and Buckman in Devon, Pennsylvania, which is outside Philadelphia. He is an experienced contract, securities, and consumer protection litigator and has tried cases in both state and Federal courts. Mr. Picker holds a bachelor of arts from the University of Maryland, and his law degree is from Temple University's Beasley School of Law. And we want to thank him for being here. And we want to thank all the witnesses for being here. I yield back.

Chairwoman VELAZQUEZ. Thank you.

Mr. Harvey, you are now recognized for 5 minutes.

STATEMENTS OF HOSEA HARVEY, LAW PROFESSOR AND CONSUMER FINANCE LAW EXPERT; JERRY BUSH, FORMER OWNER, JB PLUMBING & HEATING OF VIRGINIA, INC.; SHANE HESKIN, PARTNER, WHITE AND WILLIAMS, LLP.; BENJAMIN R. PICKER, SHAREHOLDER, MCCAUSLAND KEEN + BUCKMAN

STATEMENT OF HOSEA HARVEY

Mr. HARVEY. Thank you, Chairwoman Velázquez, Ranking Member Chabot, and members of the Committee. My name is Hosea Harvey, and I am a law professor and consumer law aficionado. I appreciate the opportunity to appear before you today to discuss confessions of judgment and the proposed Small Business Lending Fairness Act. I am here today in my individual capacity and not as a representative of any institution.

As you know, a confession of judgment, in its simplest form, is simply a contractual arrangement by which a borrower/debtor agrees to forfeit the right to contest a declaration of default on a credit instrument. As you also know, the U.S. Supreme Court in 1972 held that with respect to business transactions, confessions of judgment are not per se unconstitutional. As a result of that Supreme Court decision, a patchwork of state laws has remained to this day.

As you also know and we heard earlier, in 1984-85, the FTC banned confessions of judgment through the Credit Practices Rule for certain consumer credit contracts. But despite the FTC's action, Congress did not choose to extend this prohibition to business transactions at that time. Perhaps this choice was informed by a belief that business to business transactions take place between sophisticated parties on equal footing. However, the recent Bloomberg News investigation reminds us that that is not always true.

By postulating that business-to-business transactions are often, if not always, on equal commercial footing, we ignore insights from consumer transactional research about how power dynamics and predatory behavior might influence contract terms. We would also falsely expect that businesses always knowingly engage in commercial transactions, and that the inattention to fine print that consumers often manifest is somehow different when that consumer is a small business.

But in a world in which thousands of drivers for your app ride based shares have their own business and can finance their enterprise with a business loan, perhaps the theoretical line between consumer and business credit transactions has blurred over time.

For example, 1099 filings have increased in recent years, roughly 25 percent in the past 2 decades. Almost 100 million 1099s were filed in a recent tax year.

In short, our conventional understanding of small businesses should evolve, just as our economy has evolved over time. Sometimes a singular consumer is also a small business. The law should reflect that.

I do acknowledge that confessions of judgment in business transactions have a limited purpose if exercised with caution and restraint. However, the space is rife with abuse and open for substantial reform. There is also not compelling evidence that eliminating them in the commercial context will have a chilling effect on credit acquisition either, although that is a good talking point for advocates that oppose reform.

The reason why reform is important right now is that the state level approach to commercial confessions of judgment is a fraying patchwork quilt and more procedure than substance. Here, Congress did play a role. Congress chose to somewhat artificially segregate the way we think about the regulation of consumer credit transactions from commercial credit transactions. That transactional Maginot Line reinforces the perception that businesses are on equal footing, are all equally sophisticated, and that market forces are the best to curb predatory behavior. I think the Small Business Lending Fairness Act appropriately eliminates this false dichotomy between consumer and small business transactions.

We do not yet know the full scope of abuse in this space. The lack of research is what made the Bloomberg investigation so noteworthy and impressive. But this Committee can still ask whether Federal consumer law contract prohibitions that we find protect against unfair terms in one context can be extended to business transactions terms that might also be unfair.

I think those prohibitions should be extended. Why? They will bring uniformity and consistency to a space that needs it. This could also reduce disparate outcomes, such as the ones we are here to discuss today. The business models of companies that are egregious offenders would suffer, which may be appropriate if you think they engage in unfair practices.

Given what we know, the Small Business Lending Fairness Act rests on sound evidentiary footing. It codifies and extends the FTC's ban on consumer confessions of judgment to include small business owners as well.

Chairwoman Velázquez, joined by Representative Marshall, Senators Rubio and Brown, and others, does recognize that contractual provisions that deny due process can punish small businesses and serve no compelling purpose. By amending TILA to include a general prohibition on confessions of judgment for businesses, Congress can act to prevent the abuses described here today. This proposed solution is neither partisan nor anti-business.

In short, just hours before the 50th anniversary of the implementation of the Truth in Lending Act, this Committee's consideration

of the Small Business Lending Fairness Act is an important, logical, and necessary extension of TILA's original principles and purpose.

I thank the Committee for its efforts and for the opportunity to testify this morning.

Chairwoman VELÁZQUEZ. Thank you, Mr. Harvey.

Mr. Bush, you are recognized for 5 minutes.

STATEMENT OF JERRY BUSH

Mr. BUSH. Hello. My name is Jerry Bush. And I want to thank the Committee and the Chairwoman and everybody for this.

I am the former owner of JB Plumbing and Heating of Virginia. My father built JB Plumbing and Heating of Virginia 30 years ago so he could give a good life for his family. When I graduated from high school, I was given a work truck and tools so I could one day support my family like he did. My father served in the Army, and when his term was done, he came out and started to be a plumber. He had to do everything from scratch and he was never given anything. As I took interest in the company, we incorporated in 2008. We had a very strong company, and when the house market crashed it hurt us pretty bad but we had a good name and never had to look for work. We started to do more commercial work. We mainly did all new work and sometimes he would have to wait 60 days to get your money and a year after the job to completely receive your 10 percent retainage. When we done a large project in 2015 and was not paid around \$350,000, this put us in a bad position as we tried to fight this contractor. We had personal guarantees that we had to pay suppliers and other subs in which this caused us to have judgments.

I went to our bank, Wells Fargo, and they turned us down for a loan but the gentleman told me he knew some brokers, and within a week I received a call from a broker telling me they could help. I was at a point where I was hoping to win the lawsuit with the contractor who owed us money, plus I had to keep payroll going and jobs because of contracts. The broker said we can get you a better deal within 45 days that you have to earn their trust. So I said okay. They went me the contract and I have never seen a confession of judgment before and asked about it, and they said this is just in case you run away or change accounts where we cannot find you. And they never will use them. They will work with you and then they will do a funding company call from the lending and ask you if the broker told you everything and they will work with you if you run into problems. Nobody explained what all they can do if they want to. Thirty-five days go by and I was paying my dailies and the broker comes back and said, "Hey, I have a sweet deal. I found another company will be there for the long haul," and I said, "My contract says if I take another funding I will go into default." They responded saying, "No, you are good. We got you."

Then, when the time came around for the first one to end, the funding company would call and say, "Hey, are you ready to renew?" And when you tell them no, they go into your account and see you are working with somebody else and they force you to renew or default so then you got to start to have two daily payments and then you keep getting deeper, and the next thing you

know they are taking \$18,000 out daily. They know every day how much you bring in and everything else. And mostly, all made hundreds of thousands off of us. And the amounts the judgments show they went back and started the advance again. For example, if you had \$10,000 left and the advance was \$50,000, but the contract amount was \$70,000, they would take the \$10,000 and add \$70,000 because they said it is in the contract to restart then add legal fees up to \$34,000 and more than the judgments shows \$114,000 plus the \$60,000 that you already had taken out. This is a good reason for them to pay people like the New York marshals because they can and will force to get it.

When the time came where I needed help to get the payments reduced, I did not want to take any more funds and funds were tight because \$18,000 daily added to \$90,000 weekly. I asked for reduced payments from Yellowstone and they would only make you take a new funding contract with no money in return. They would still charge the 400 percent like Last Chance and Main Street. They will give reduced payments for 500 days then come back in a week or so and say, with no warning, and take the money out.

August 7, 2018, when I had to make a choice to keep getting deeper or close doors, I warned all of the funding companies it was going to happen. That Tuesday I had to tell employees and my father it was over. I had to tell the contractors as well. To my father's face and to watch 20 employees and everybody still haunts me.

The chain reaction was awful. Personal guarantees, frozen accounts, certain people holding our equipment and tools for hostage. Our name was smeared. I was at the end. The funding companies even took my father's retirement and money that was from his social security around the end of August 2018. I had companies tell me two ways out: win the lottery or if you die we cannot come after you.

When all this was going on, I closed doors, and after my wife was going through cancer, one day in January 2018, I did not want to renew a loan and the gentleman from one of the funding companies, Yellowstone, said if I did not, he would default me. I told him I was with my wife for her chemo treatment, and his words were, "I will send flowers to make her feel better."

The day when I was at my dark place, I said I would win. I would not let them take my family no more. I sat on the bank and said to myself, I want to see my son grow up. I want to be there for my family, but I cannot take care of them if I never have anything. They were right, and if I was gone, they cannot come after me no more. I was not looking for a way out. I was looking for a way to fix it. And I did. It was my fault. I said my goodbyes on Facebook, begging people to make sure my family was okay, and did the hardest thing I ever had to do and took the pills. I did not want to do this and I really hid myself in the heavy woods and went to sleep, but as I look now, I was lucky and I was found.

My second chance, after about a month, I started to fight again. Seeing my father at age 70 back to hard labor and not the best health and finding out how these companies were making millions. Pictures of them in sports cars, fancy trips, tables of cash they had taken from people all over the country. Every man, every woman,

every race. I started to make calls, sending emails, nothing. No local news would hear me and nobody could understand, even local lawyers.

Can I finish?

Chairwoman VELÁZQUEZ. How much more?

Mr. BUSH. Less than a minute.

Chairwoman VELÁZQUEZ. Okay.

Mr. BUSH. Thank you.

I had one lawyer from New York connect me to Bloomberg News and the story came out but still missed a lot of details, but this was a good start. And when the story came out, the funding companies hit harder. They did all kinds of crazy stuff. They sent letters to a credit card which was Discover and asked and received any kind of bank account numbers and they used it to freeze my accounts. So, with this, I can never have a bank account and will have judgments on my record and personal guarantees.

Basically, I would just like to say that I can never have an account, anything. They have judgments, and this has been hard on my whole family.

Chairwoman VELÁZQUEZ. Thank you, Mr. Bush.

And now Mr. Heskin, you are recognized for 5 minutes.

STATEMENT OF SHANE HESKIN

Mr. HESKIN. Thank you, Chairwoman Velázquez, Ranking Member Chabot, and the other distinguished members of the Committee.

America's small businesses are under attack by predatory lenders that are the business equivalent of payday lending. As New York's highest court described it more than 50 years ago, it is the equivalent of sending someone into battle like a warrior of old by discarding their shield and breaking their sword. I second the testimony by Professor Harvey. Not every small business or every transaction that involves a business means that they are sophisticated parties. My clients are very good at what they do. They know how to fix a boat. They know how to install a sink. They know how to make a fine wine. All things I cannot do. But that does not mean they know how to read a contract in 8 point font. It does not mean they know the legal ramifications of signing a confession of judgment. It certainly does not mean that they understand that they could wake up one morning and have their bank accounts drained by a New York City marshal making over \$1.8 million a year on small businesses when they need that money for payroll.

Let me encourage the Committee to look at Exhibit 6 to my written testimony. It is a sample of 500 small businesses that have been victimized by the COJ. It is by one company. It contains victims: a winery from California, a craft brewery from Colorado, a nail salon from Ohio, a diner from Minnesota, a coffee shop from Texas. That is the definition of Main Street. They are under attack and they need help.

And it is not just the unsophisticated. It preys on even the most sophisticated. I have here with me today Kara DiPietro. She was the Small Business Administration's Small Business Person of the Year in 2017. In 2018, she was listed as one of the fastest growing small businesses in the country. She got preyed upon just last

month where she was fully complying with the terms of her contract with an MCA company and she woke up and found her business accounts frozen. Why? Because she had the audacity to question and MCA company and say, why are you taking out so much money? My revenues are declining and you are taking double and triple the money. Stop it. Their reaction? Freeze their bank accounts, send a COJ in, and here is the next point. It leads right into the next point. There is more work to do.

New York banking the COJ is a great first step. Great first step. But guess what? Ms. DiPietro was victimized by Pennsylvania. A Pennsylvania COJ and a Pennsylvania sheriff froze her bank accounts before she even had notice. We need to do more. We need to stop it now. Not tomorrow, now. Otherwise, the rest of America, there will be more small business victims, just like sophisticated business and unsophisticated businesses.

Now, the next weapon is already here. The next weapon of the MCA industry is the UCC. I do not know what can be done about it but it is just as lethal. For the cost of a stamp, they can send a letter to PayPal, to credit card processors, to your best company, and halt business in its tracks. Drain your credit card processors. Drain your PayPal account, and ruin your relationship that you have built with one of your best customers. That has to be addressed.

Also, the next iteration of the MCA industry is also here. It is Rent-A-Bank. I respectfully submit that you look into that as well.

Chairwoman VELAZQUEZ. Mr. Picker, you are now recognized for 5 minutes.

STATEMENT OF BENJAMIN R. PICKER

Mr. PICKER. Chairwoman Velázquez, Ranking Member Chabot, and members of the Committee. Thank you for the opportunity to be here today to testify and to discuss the history, law, uses, and important due process and fairness considerations relating to confessions of judgment.

I want to start off by saying that I do not disagree with anything that other witnesses have said so far. Absolutely nothing. My experience is not specifically with the MCA industry. It is more generally with the use of confessions of judgment in commercial transactions and litigation.

As has been testified to already, a confession of judgment clause is a contractual provision permitting the plaintiff to take a judgment against a purportedly defaulting defendant without prior notice and before commencement of a lawsuit, thereby skipping the entire normal litigation process. This concept of confession of judgment has been around and dates back to perhaps the 13th Century. So it has been around for a very long time as the Chairwoman mentioned.

During my nearly 15 years of practicing law, a large part of which has been litigating business disputes, I have both utilized and defended against confessed judgments. When asked if I like confessions of judgment as a tool, my response is usually, "Well, it depends on who is using it, me or the other guy." That is because it is a very powerful tool, but it can be abused in the wrong hands. However, when used in appropriate circumstances, it is often a far

less expensive way to reach the same result that would have been reached after years of costly and needless litigation.

In my home state, the Commonwealth of Pennsylvania, confessions of judgment are permitted, but only in connection with commercial transactions. They are prohibited in consumer contracts, such as residential leases, and of course, as we know, in consumer financing transactions. In most states, confession of judgment is generally prohibited.

It should be noted that through the Credit Practices Rule, which was promulgated in 1985, the FTC outlaws the use of confession of judgment in consumer credit transactions. The primary reasons for doing so were: (1) consumers often suffer substantial economic and emotional injury from the use of confession of judgment in consumer credit transactions; (2) consumer credit transactions are often contracts of adhesion where individual consumers have little or no negotiating power; (3) consumers did not understand the provisions; and (4) default usually occurred because of issues beyond a consumer's control, such as unemployment or illness.

I can see that many of those same concerns are present in the small business context, especially when you are talking about MCAs.

As Mr. Heskin said in a different way, the Pennsylvania Supreme Court has described confessions of judgment as "perhaps the most powerful and dramatic document known to civil law."

As a result, states that permit confessions of judgment, including Pennsylvania, require that the provision be placed conspicuously within the contract, that certain formalities be strictly followed, and that there be a way for the defendant to challenge the judgment after the fact.

A warrant of attorney or confession of judgment clause that is bolded or capitalized will ordinarily be sufficiently conspicuous. The Pennsylvania Supreme Court has compared a non-conspicuous confession of judgment clause to actions of the Roman tyrant Caligula, who was said to have had the "the laws inscribed upon pillars so high that the people could not read them."

Regarding formalities, for example, confessions of judgment in Pennsylvania must be accompanied by a complaint describing, paragraph by paragraph, the factual basis for the judgment, and must attach a copy of the instrument or contract permitting the confession of judgment. In addition, an affidavit must be included attesting to the fact that the defendant has income of more than \$10,000. The confessed judgment is filed subject to the misdemeanor penalty relating to the criminal offense of unsworn falsification to authorities.

In some counties like my home county of Montgomery County in Pennsylvania, the court clerk, known as the Prothonotary, has its legal counsel even review all confessions of judgment before they are accepted for filing to ensure that they comport with all legal requirements. This can serve to protect both the plaintiff and the Prothonotary from lawsuits.

The confession of judgment procedure in Pennsylvania also comports with the constitutional guarantee of due process according to the Supreme Court. It requires knowing and voluntary relinquishment of predeprivation process and provides a procedure for chal-

lenging the confessed judgment. A confessed judgment can be challenged by filing a petition with the court within 30 days of receiving notice of the judgment. It can be stricken where there is a clear defect on the face of the papers and can be opened where the defendant shows that it has a meritorious defense.

As I mentioned earlier, confessions of judgment can be abused in the wrong hands. But there are some common sense ways that Congress could act to protect small business borrowers against unscrupulous lenders while protecting the interests of lenders who act appropriately.

I would get into that but it appears that I am out of time.

Chairwoman VELAZQUEZ. Thank you. Thank you so much.

And thank you to all the witnesses for all the information and compelling stories that you have shared with us today.

I would like to start with you, Mr. Bush. I am really particularly concerned that victims of confession of judgment are denied due process and not given any notice before legal action is taken against them. So Mr. Bush, I would like to ask you, how do you find out your account has been seized and your money is gone?

Mr. BUSH. A couple reasons.

Chairwoman VELAZQUEZ. How do you find out?

Mr. BUSH. Normally, I check my account. I normally check my accounts in the morning, online or I turn around and have employs that are supposed to check that has happened. Now, I might get a letter from a bank but that is 2 weeks after it happened.

Chairwoman VELAZQUEZ. Did any entity give you notice or did you only find out once your account had been drained?

Mr. BUSH. No notice.

Chairwoman VELAZQUEZ. No notice.

Mr. Heskin, you have fought numerous COJ battles in court on behalf of victims. How often are victims given notice that their assets, such as bank accounts, might be seized?

Mr. HESKIN. Hardly ever. And in fact, it is the rare occasion that they do get notice. A lot of times they will threaten my clients and say with the push of a button I will drain your bank accounts.

Chairwoman VELAZQUEZ. Mr. Heskin and Professor Harvey, do you think if a small business knew they could have their accounts drained as a result of signing a confession of judgment they would have agreed to the cash advance?

Mr. Harvey?

Mr. HARVEY. Almost always, no. I think they would be very wary of that, particularly if they are in a precarious financial condition as many folks who take these loans or advances are. Thank you.

Chairwoman VELÁZQUEZ. Does this mean that there is potentially no meetings of the mind here between the parties which as I understand is needed for a valid contract?

Mr. HARVEY. Since I teach contracts, that is a great question. Thank you very much.

Yes, there is often a certain gap in understanding about what the contractual instrument is and I think the law can change that. When we have particular provisions that we think are important or potentially unfair, we can highlight them, we can bold them, we can demand additional accountability.

Chairwoman VELÁZQUEZ. Thank you.

And Mr. Heskin, have you seen the use of confessions of judgment in any other circumstances such as any instances where the borrower is not as vulnerable?

Mr. HESKIN. I have never seen it in any of my commercial transactions. I represent primarily insurance companies and we certainly do not use the confession of judgment.

Chairwoman VELÁZQUEZ. Mr. Bush, I understand you eventually paid around \$600,000 to obtain around \$250,000 for your business. Were you ever made aware that you would have to pay back three times the amount you borrowed?

Mr. BUSH. If I understand correctly, yes, I was aware as far as what I had to pay back that was on the contract but what I was not aware of, they can default or make their own rules as they went.

Chairwoman VELÁZQUEZ. How often, Mr. Heskin, do merchant cash advance companies fully and fairly disclose the true cost of capital associated with their cash products?

Mr. HESKIN. I think it is fully disclosed as the cost. What I do not think is disclosed is the true nature of the transaction and the APR. If you were to put the APR on that contract, it would be 2,000 percent. No one in the right mind would sign that.

Chairwoman VELÁZQUEZ. Thank you.

Mr. Harvey, Professor Harvey, by not disclosing the true cost of capital, such as the excessive interest rates, can it be said that these merchant cash advance companies are not dealing in good faith with small businesses?

Mr. HARVEY. Yes, that can be said. It is something we would never tolerate in the consumer transactional environment.

Chairwoman VELÁZQUEZ. Mr. Heskin, many of the small businesses you represent do not have in-house general counsel or large legal departments. We have also heard that small businesses are entering into these agreements when they are most vulnerable. Basic contract law requires that parties have equal access to information and one party is not under duress. Does the relationship between the parties and the circumstances small businesses enter these transactions justify prohibiting confessions of judgment in commercial lending?

Mr. HESKIN. Absolutely. The whole purpose of the usury laws is to protect the necessitous debtor against their own desperation. There is absolutely no bargaining power whatsoever. These are take-it-or-leave-it contracts. If you want the money, sign it.

Chairwoman VELÁZQUEZ. Thank you.

Mr. Harvey, on that same question, any comments?

Mr. HARVEY. I fully agree with Mr. Heskin.

Chairwoman VELÁZQUEZ. Thank you.

Now my time has expired, and I recognize the Ranking Member for 5 minutes.

Mr. CHABOT. Thank you, Madam Chair.

I am going to start with Mr. Picker if I can.

As members of Congress, we often look at how states are approaching and dealing with various issues. You mentioned this briefly during your testimony.

Could you review with us again how confessions of judgment work in Pennsylvania at this time?

Mr. PICKER. Yes. The process is, when there is a default, the plaintiff will file the confessed judgment, along with a complaint laying out the allegations that underlie the default and the basis for the default. Notice must be sent to the defendant and they are given 30 days to challenge that. I will submit though that sometimes that notice is only sent out along with a writ of execution whereby assets can be frozen or taken in the meantime. And the 30-day period begins to run at that point. Of course, the defendant does have the opportunity to go into court once they receive notice of that and obtain relief. The defendant during that 30-day period can file a petition with the court seeking to strike or open the judgment. It can be stricken if there is a defect on the face of the documents if it does not comply with Pennsylvania law in some way, or it can be opened and then litigated in due course like any other litigation matter if the defendant can show to the court that they have a meritorious defense.

Mr. CHABOT. Professor Harvey, let me move to you.

In your testimony, you stated that California has a different approach.

Mr. HARVEY. Yes.

Mr. CHABOT. When it comes to confessions of judgment. Could you share with us what the difference is, how it is administered in California?

Mr. HARVEY. Thank you for the question.

California takes a more thoughtful approach than many states that permit confessions of judgment. They require essentially that an independent attorney advise the debtor before signing an instrument that has a confession of judgment. In addition, the confession must be under oath. Those two provisions heighten and call to attention to both parties what the provision is and how it works and serve as a safeguard to make sure that both sides who sign understand what the term means.

Mr. CHABOT. Thank you.

And I am going to start with Mr. Picker and then I will go down the line, anybody that would like to comment on this.

How can we stop the abuses that we have heard about here today? And you have a particularly sympathetic case, Mr. Bush, and we are certainly sorry to hear about what you and your family had to go through.

How can we stop the abuses but at the same time keep whatever positive aspects there are here? And I guess my thinking would be the situation would be (a) you are trying to save a lot of attorney fees by keeping out of court to begin with. You have a business that needs a loan but for whatever reason is having challenges getting a more standard type of loan so they use this as a mechanism. And I would assume that there are businesses, I would assume it is the majority, although that may not be the case, that ultimately do not fall behind and do not have a terrible experience and get out of whatever their challenge was without the devastating thing that happened to Mr. Bush, for example. So how do we get rid of the abuses but keep whatever positive aspects?

And I will go with you, Mr. Picker.

Mr. PICKER. I believe there are a couple of options. One would be to completely outlaw them in the MCA small business situation. Another would be to do a better job of ensuring that the small business is aware of the provision and what it means. Ways that that could be accomplished would be making sure that the provisions are capitalized and bolded. Making sure that there is a plain language disclosure, perhaps on the first page of the contract and immediately above the signature line that in plain language explains what this means to the small business owner. Another option which New York has undertaken is maybe the New York model where confessions of model can only be filed in the state where the small business is located.

Mr. CHABOT. Okay. Thank you.

Mr. Heskin?

Mr. HESKIN. These transactions involve—

Mr. CHABOT. I think your mic might be off there.

Mr. HESKIN. These transactions involve interstate commerce. They are wires from state to state. Regulation and licensing. If someone has to worry about their license being revoked or reporting to a regulator, then they will be a little bit more cognizant about abusing it.

Mr. CHABOT. Thank you.

Mr. Bush?

Mr. BUSH. The biggest thing I would say would be for is, again, would be stopping as far as where they can do anything they want to, have some kind of a law or something there that basically says they just cannot go in and take your account or change a contract as they want to.

Mr. CHABOT. Okay. Thank you.

And professor?

Mr. HARVEY. I think the California approach is one way but I also think the FTC with its substantial ability to have fines for transactions that violate its rules is another way, the same way it works enforcing COPPA, for example.

Mr. CHABOT. Thank you very much. My time has expired, Madam Chair.

Chairwoman VELÁZQUEZ. The gentleman's time has expired. And now we recognize the gentlelady from Kansas, Ms. Davids.

Ms. DAVIDS. Thank you, Madam Chair.

I would also like to thank you for calling this hearing today. First off, Mr. Bush, thank you for sharing your story. It is exactly the kind of thing that members of Congress need to hear, the real life impacts of the policy that we are going to be voting on in legislation that we are passing. So I appreciate you being so candid with your story.

I represent the Kansas City metro area on the Kansas side, and unfortunately, we know a lot in our area about the wide ranging effects of predatory lending. We have seen Payday lenders prey on financially vulnerable people in the district I represent and it hurts a lot of individuals and businesses alike.

The issue that I would like to address or hear more about, Mr. Harvey, you have spoken, or at least you have given testimony, and as a law professor I think you can probably speak pretty clearly to the due process issues that come up, and then what the Chair-

woman referenced earlier about a meeting of the minds when it comes to contracts, and when we think about the small business owner who is an expert certainly in plumbing or other areas, we know that those folks are often depending on others to help with the legal expertise. So when we talk about sophistication, there is sophistication in a lot of areas. It just might not be around what they have a right to in a contract.

So could you talk a little bit about what that means and what we need to be thinking about as we go forward and the expectation for small business owners?

Mr. HARVEY. Thank you for the question.

I think where we begin is acknowledging that TILA was designed for consumers. And so because Congress chose to largely exempt business transactions from that framework, courts have therefore had a particular focus in evaluating fairness in consumer credit transactions and thus, by default, a lesser emphasis on evaluating principles of fairness, unconscionability, and due process in commercial transactions.

You know, I think the proposed legislation is one way to bridge that gap. By treating small businesses the same as consumers for this purpose, it would be the beginning of courts perhaps evaluating businesses under the same standards that consumer law has applied for the last 50 years. So I think that is one step.

You know, an additional step might be, for example, having dollar thresholds for regulated transactions. That would be another way you might accomplish the same goal. Yes, large banks having leases with large companies for hundreds of millions of dollars might not need the protections that smaller businesses might have. And so there could be a gating mechanism in a regulation or law that would help to achieve that goal as well.

And finally, on due process, yes, the Supreme Court, and many courts, and members of Congress, have defaulted to the view that all businesses are sophisticated and that they are aware of contract terms and read their contracts. And as has been said earlier, that is simply not the correct view. And I think changing the law is one great step towards changing that view and changing courts' evaluation of such provisions. Thank you.

Ms. DAVIDS. To follow up on the comment you just made about the thresholds, can you tell me a couple other, and this is open to all the folks giving testimony today, what other factors might be beneficial for us to think about as far as when a court is evaluating whether or not there is a meeting of the minds and whether or not there is due process, dollar thresholds is one interesting point. Are there others that you all might recommend?

Mr. HARVEY. Sure. I think we could focus on the size of the business. We could evaluate bargaining power after the fact, much like we would do an unconscionability analysis in consumer law.

To be fair, I think the danger with that is we do not want everyone, particularly regulators, evaluating all transactions after the fact. And so I think there would need to be some objective criteria that specified when a transaction like this was too unconscionable in the business sense.

So for me, I think the safest default would either be to outlaw them entirely, to have a financial gating mechanism with a money

threshold, or to establish some basic due process for transactions with confessions of judgment that might involve review by an independent attorney, which again would be one additional way in which courts could be confident that the parties had a chance to evaluate the terms.

Ms. DAVIDS. Mr. Heskin?

Mr. HESKIN. One last comment. One of the other things that would be helpful is to combat the collection practices against small businesses. And so whatever threshold the Congress believes should apply, it would be helpful if the Fair Debt Collection Practices Act applied to those small businesses.

Ms. DAVIDS. Thank you.

I yield back.

Chairwoman VELÁZQUEZ. The gentlelady yields back.

And now we recognize, oh, I am sorry, the gentlelady's time has expired. She just yielded back.

Now we recognize Mr. Golden from Maine for 5 minutes.

Mr. GOLDEN. Thank you, Madam Chair. And I want to thank you as well for holding this hearing.

Just following up on Congresswoman David's testimony—I think it is on. I am sorry.

I do just want to point out so much in policymaking, I think in instances like this there is always this question of who can afford legal counsel and who cannot. And I think that is particularly true when you are talking about businesses and the size of their assets or even whether they have counsel on staff or not. So I will just throw that out there. I hope it is helpful.

Mr. Bush, you know, I wanted to thank you for your testimony and say that this is something that is fairly, I think, common in other areas, too. As a veteran, I can tell you I have seen no shortage of predatory lending off of military bases and others in the ways that people get backed into corners, and it can really have a massive impact on their lives, on their families' lives, on their ability to do their job, to be focused on their job, to deploy down range and defend our country without worrying about what is going on back home in their back accounts and in their families' lives. And I think it is important for people to understand the context of what is worst about these types of practices.

So I wanted to ask you if you would perhaps share with us a little bit more some of the consequences for you and your family in particular. How has this ordeal impacted your family beyond what you have already shared with us?

Mr. BUSH. Well, basically, what it done was when our accounts got frozen and everything I could not pay health insurance. At the time my wife was still getting treated for cancer. They was taking every account they could do. We had, like I said, basically, back work for other people and it just, it hurts your name. I mean, and then the threats never stopped. And I still have threats today. I actually had threats the past 3 or 4 days about just coming up here. And like these two gentlemen, like they said, all they have to do is push that button and they have you.

Mr. GOLDEN. That is right.

Just a follow up. I understand that you have an 18-year-old son planning on continuing his education. I imagine that this is going to be a potential problem as well.

Mr. BUSH. It is. Again, like I mentioned earlier, I cannot have a bank account. I can have nothing in my name, a check card, anything, because every time I try to do something, even have a co-signer, they come after me. It never stops. And like I said, this business was for him, too, and for him to grow his family and all this we lost just by the push of a button.

Mr. GOLDEN. Well, you are doing the right thing by getting behind the microphone to talk about this and spread the word. I have seen a lot of other veterans do this type of thing to help people understand why this is not right and how it is taking advantage of people. So I want to thank you for that. It takes a lot of courage. But it is important. And the threat aspect of it is really I think what is most disturbing. I have seen people overseas picking up side phones and spending their time instead of calling their families, trying to deal with these types of things and the threats that are coming in against their families. And that is when you know someone is really predatory is when they are willing to look past all those types of factors and just resort to threats. You know that their intent was always not good.

I think just to pivot in a different direction, Mr. Picker, as an attorney, just from a practical perspective, what alternatives exist for a client who wants the security of a confession of judgment?

Mr. PICKER. Well, one thing that was mentioned by Mr. Heskin is the ability to obtain a security interest through the Uniform Commercial Code against assets. That could include bank accounts. It could include other assets of the business like cash flow. And as Mr. Heskin said, there can be some of the same impacts and dangers associated with that as there is with confession of judgment because it is fairly easy to execute on that UCC process.

Other than that, you really have the same remedies once you obtain the judgment through the ordinary course of litigation that you would after a confession of judgment. You are just given the opportunity to contest the matter beforehand. So once you obtain a judgment you can do a lot of really all the same things. You can have a writ of execution issued to obtain access to a bank account, seize assets, so on and so forth.

Mr. GOLDEN. So in other words, for those lenders and people that actually want to help small business owners while also having some protections for themselves, there are other means that are not as bad and potentially ripe for abuse than this?

Mr. PICKER. There are, although I would say they are certainly not as expedient, and certainly, likely to be much more expensive to the lender. But yes, they exist.

Mr. GOLDEN. Well, thank you. I mean, clearly this has been very expensive to Mr. Bush and his small business and family.

Thank you, Madam Chair.

Chairwoman VELAZQUEZ. The gentleman yields back.

And we are going to go into a second round. I just need to ask two questions and then we will recognize the Ranking Member.

Mr. Picker, the terms of many merchant cash advance agreements require daily repayment. That means one missed daily pay-

ment can result in default, thereby triggering the confession of judgment clause. Does this not potentially set up for eventual default the many small businesses in our economy with less steady or predictable cash flow?

Mr. PICKER. I cannot say that I am an expert on the small business loan or MCA industry, but having a provision that requires daily repayment certainly increases the risk of default. If you miss just one payment on a daily basis, that is certainly a danger.

Chairwoman VELÁZQUEZ. Thank you.

Mr. Heskin, do you have an estimate of how much small business capital has been lost nationwide as a result of these confessions of judgment? If not, can you give an estimate of how much money your clients have lost?

Mr. HESKIN. I cannot give an estimate nationwide, but I can give an estimate as to my clients. When these COJs are entered against them, they lose everything. They risk their home, their family, their retirement funds. When they get trapped in the cycle of debt, by the time they come to me there is no money to even hire an attorney.

Chairwoman VELÁZQUEZ. Thank you.

I now recognize the Ranking Member.

Mr. CHABOT. Thank you, Madam Chair. I will not take the full 5 minutes.

I just had a question. And I guess this is kind of for our staff as well, not necessarily for the panelists here, unless they would know what I am going to ask offhand. And that is that I would be interested to know just how common confessions of judgment are in the commercial world nowadays, particularly with respect to small business? In other words, how many are there out there nationwide in a typical year's time? Do you know, Mr. Heskin?

Mr. HESKIN. I can answer it this way.

Mr. CHABOT. Okay.

Mr. HESKIN. Our firm represents big businesses. They represent real estate transactions and legitimate transactions, legitimate commercial transactions involving millions of dollars where there is sophisticated business attorneys on the other side. Big dollar money. It is used all the time and it is used effectively. But it is when you do not have the representation of counsel, when you do not have the bargaining power, you do not have the ability to negotiate, that is where it gets abused.

Mr. CHABOT. Okay. Thank you.

Professor, did you—

Mr. HARVEY. Thank you, yes. I think this would be a great opportunity for the Congressional Research Service to get involved in further research in this space.

The truth is that for the Bloomberg study, for example, you have to go do research at the county level. You have to do ground level research in many cases for this data. And so that is simply too exhausting and expensive for any, let's say, academics or other interested parties to do certainly nationwide. It would take a massive amount of resources to go to each county courthouse, run through all the records and evaluate them, and so I think that is one reason why we cannot speak with any certainty about the scope of the problem.

Mr. CHABOT. Okay. Well, the reason for asking the question is that, you know, how many are there out there? How common is it? What are the benefits of it? In other words, I think this is probably done not just to rip off small businesses or the public. I am assuming that there is a positive aspect to this out there that has enabled this practice to go for quite some time since the 1400s I think we heard or something like that. And how common to the extent I am talking percentage-wise, are we talking 1 percent of these? Are we talking 10 percent of these? Are we talking 0.something percentage of these that really ultimately do end up in something that is very detrimental to a person like Mr. Bush here. And in how many of them is it a situation where this business literally would not have been able to get the loan to continue or to expand or grow or whatever and so they actually serve a purpose? And I do not know, I mean, we certainly know that Mr. Bush is evidence of that, that somebody can really be hurt by this. What is the benefit of these things? And then is there a reasonable way that we can modify this, either that the states educate themselves more and do it at the state level or we decide at the Federal level that we need to take this over for whatever reason. So that is really what I am asking. And I do not know if I necessarily want—well, I guess I do.

Mr. Heskin, go ahead. Sure, go ahead.

Mr. HESKIN. I think it is less than 1 percent. If I had to estimate it, I think it is less than 1 percent of the transactions. And where it would be useful if at all is in the context where someone has actually already defaulted and they are giving separate consideration. So I have already breached the contract and I have got a judgment against you already and I say I am going to forebear on my enforcement activities. And if I do, I am going to be able to enter this COJ and exercise my rights. That is Overmeyer.

Mr. CHABOT. Thank you.

Mr. Picker, would you want to comment on that or—

Mr. PICKER. I would agree it is probably less than 1 percent. But that being said, in my practice—

Mr. CHABOT. Just to be clear, are we saying the 1 percent is where it has been abused and it is a problem or are we saying in the number of commercial transactions that we have a confession of judgment?

Mr. PICKER. No, the number of commercial transactions where I see confessions of judgment being utilized. Although I must say I do use them. We represent a lot of commercial landlords and we do generally use confession of judgment in those contexts without abuse. And I would agree though that certainly a situation where a, for instance, a tenant has defaulted or someone under a promissory note has defaulted already and as part of a forbearance agreement, if there is not a confession of judgment already, I think it is an appropriate use of one in that situation because you are helping them out and you should have a little bit more security if they do default again under the forbearance.

Mr. CHABOT. Thank you.

Mr. Bush, I think you were trying to get something in there a minute ago. I do not want to—

Mr. BUSH. That is fine. I was going to say something real quick.

Mr. CHABOT. Sure.

Mr. BUSH. As far as the contractors, we have to have a license. We take classes, stuff like that. I think these loan companies or funding companies ought to be able to turn around and have certain types of classes, certain rules, or certain, you know, things they do, because these companies are growing like crazy. I average 20 calls a day from different companies trying to fund me after we have already been closed for a year.

Mr. CHABOT. Yeah. Thank you. Thank you very much.

Madam Chair, I said I was not going to take up the 5 minutes and I took 5-1/2 minutes. I apologize and yield back.

Chairwoman VELAZQUEZ. The gentleman's time has expired.

And now we recognize the gentleman from Maine, Mr. Golden. Do you have any other questions?

Mr. GOLDEN. Sorry. I thought Dr. Joyce was up.

Just a couple of quick ones, too.

Mr. Heskin, you have seen a lot of this. Obviously, you fought these in court on numerous occasions. Can you tell us just a little bit more just to help us see the bigger picture, how MCAs are marketing to small business owners? What is their point of contact? Are they using salespeople? Are they working with other people? Are they on the internet? You know, how are they finding small business owners to sell their product to and under what context?

Mr. HESKIN. All of the above. They use third-party brokers, which are called ISOs, independent sales offices. And you do not need a license. You do not need any financial experience. In fact, in my experience, many of the people that are doing this have absolutely no financial experience whatsoever. They call you up. They say, I am a small business expert. Take these funds. It is going to help grow your business. They fund you and the next thing you know they ghost you. You are gone. And they collect a 10 percent premium on the money they fund you. And then what happens is after—and this is how they get the leads is UCCs. Once they see that one MCA company has issued a loan to them, they can go and find through a UCC search who is in need of money, and so they cold call them. And my clients get calls 50 times a day. It is non-stop. It is emails. It is cold calls. They even cold called my clients after I have sued them offering to give them more money, saying you have been such a great client, take out more money. And meanwhile, I am in lawsuits with them. It is crazy.

Mr. GOLDEN. And they are calling people who are under a lot of financial stress, obviously, so.

Mr. HESKIN. Absolutely.

Mr. GOLDEN. Last question and then I am done.

Mr. Harvey, merchant cash advance companies are marketing products as business loans. I am not aware of any bank that can make a loan that has a 400 percent interest rate. Other than limiting confessions of judgment and these kinds of commercial transactions, should Congress be looking at regulating the conduct of MCAs in general, and should there be some kind of rules around interest rates and what they are able to sell?

Mr. HARVEY. Well, as you know, there are substantial barriers to regulating interest rates at this level. Nonetheless, I think there is good evidence that businesses in states that have unlimited more or less interest rates are allowed to port those rates into other

states that do not have them, exacerbating this problem. That is certainly true. I think Merchant Cash Advance (or "MCA") companies can be regulated as quasi-financial institutions in certain ways that we regulate large national banks. And I certainly think that one effective way to do so is more transparency. You know, I think part of what is happening here is that people are learning that one MCA company might have 12 different DBAs, and shining a light on who they are would certainly help consumers be more aware of what they are doing. Thank you.

Mr. GOLDEN. Thank you. I yield back.

Chairwoman VELAZQUEZ. The gentleman yields back.

And now we recognize Dr. Joyce of Pennsylvania 13, Ranking Member of the Subcommittee on Rural Development, Agriculture, Entrepreneurship, and Trade for 5 minutes.

Mr. JOYCE. Thank you, Madam Chairwoman. And thank you, Ranking Member Steven Chabot.

First of all, I am proud to see Pennsylvania so represented here on this hearing today, and I know that our insights are important.

Mr. Picker, I would like to address these questions with you if I may, please. Does the Federal Trade Commission currently have any tools to police some of these incredibly unfair and deceptive acts and practices?

Mr. PICKER. Unfortunately, that is not within the area of my expertise. Perhaps, Mr. Harvey could speak better to that.

Mr. JOYCE. Mr. Harvey, would you please comment?

Mr. HARVEY. I would say that the short answer is very limited tools.

Mr. JOYCE. Okay. And for all of you to please answer, you have mentioned that some of the states have instituted safeguards that the guardrails to protect against the bad actors are in place. How effective have these safeguards been?

Mr. Harvey, I will ask you to answer first, please.

Mr. HARVEY. Thank you. I think the short answer there is we do not fully know because so much research has not been done. We can say that when the Bloomberg article came out we paid more attention to New York because that was one of the few times which we had ample evidence and a deep dive into research. I would suggest that by default all guardrails are somewhat designed to be useful safeguards. And so as states have more guardrails, you would expect to see confessions of judgment being abused less, but I do not think we can be certain. I think it is an area in which we need more research to be certain.

Mr. JOYCE. So implementing additional guardrails might not solve the problem without researching or studying further?

Mr. HARVEY. I think it would be fair to say that we do know that some things reduce transactional error. We know that fully reading and acknowledging agreements makes it more likely that consumers and businesses will pay more attention and make better choices. I think forcing bigger disclosure calls more attention to terms. I think those things always work to some degree and they would work here as well. But I also think it is true that we do not have a science for proving how effectively it would work in this case and so, yes, more research is definitely needed.

Mr. JOYCE. Mr. Bush, in your experience, would you like to comment on that on additional safeguards? And in the states that have implemented them, do you see impact?

Mr. BUSH. I will see impact if we had more guards but I guess the big thing to do right now is just more education as far as, you know, let everybody know, say, hey, you know, these loans are out here. Double check. Not all funding companies are bad but just more education to watch out for the ones that are.

Mr. JOYCE. So is my take-home message to this Committee hearing today that there are not all bad actors; that education might be a bigger role than I came in here understanding?

Mr. Bush?

Mr. BUSH. Well, what I am saying is, I am not saying that all funding companies are bad. What I am saying is that we need certain more education. And this is just for my part.

Mr. JOYCE. Right.

Mr. BUSH. As far as being a contractor or a person who takes these loans is, you know, more education as far as, you know, let people know that if you do have a judgment, you know, they can do more. Do not go by what the broker says. You know, you cannot go by exactly what he or she says.

Mr. JOYCE. I understand.

Mr. Heskin, would you like to weigh in on this, please?

Mr. HESKIN. Sure. States do put in safeguards. They ban COJs. But there is one problem, the full faith and credit clause. They can enter a judgment in New York even though it is illegal to do it. It is void the minute the ink hits the paper in Massachusetts. It does not matter. They get the judgment in New York. They can domesticate it to Massachusetts. And even though it is against, abhorrent to their strong public policy, they have to honor it. So there are safeguards. States do not want these but they are forced upon.

Mr. JOYCE. Mr. Picker, would you like to weigh in on these safeguards?

Mr. PICKER. Yes. And just to clarify, the reason that they can go ahead and file in New York where everybody is in Massachusetts is these contracts oftentimes will have a choice of venue or jurisdiction provision which allows them to do that.

That being said, I do not know that I agree or disagree with Mr. Heskin's full faith and credit position there. Many states have statutes, or courts have held, that confessions are against public policy. And I do believe that where a judgment such as confession of judgment would be against the public policy of the state where it is being transferred to, and maybe Mr. Harvey can speak better to that, I do believe that they do have an option to not recognize that judgment.

Mr. JOYCE. Mr. Harvey, would you like to weigh in on that?

Mr. HARVEY. Yes, briefly. I think the Civil Procedure issue is alive and well and states have not agreed.

I also would like to add one final thing if I may. I recognize that it has been hotly disputed but the CFPB's Consumer Complaint Database did shed a lot of light on consumer practices. There could in theory be a large database of complaints by business that had experience with large MCAs companies. That transparency might help to reduce bad actors in that industry as well.

Mr. JOYCE. Gentlemen, thank you. Thank you for traveling here from Pennsylvania.

Madam Chair, I yield.

Chairwoman VELAZQUEZ. The gentleman yields back.

Well, let me take this opportunity to thank all of you for being here today and shedding light into an issue that I believe the federal government should play a role to make sure that businesses, particularly small businesses, are protected. And it means that we have a lot of work to do. I am pleased this committee took the time to shine much-needed light on this practice, especially as Congress looks to act quickly to prohibit confessions of judgment and extend protections to small business owners in commercial transactions.

I will ask unanimous consent that members have 5 legislative days to submit statements and supporting materials for the record.

Without objection, so ordered.

And if there is no further business to come before the committee, we are adjourned. Thank you.

[Whereupon, at 12:49 p.m., the committee was adjourned.]

A P P E N D I X

‘Crushed by Confessions of Judgement: The Small Business Story’

Before the

COMMITTEE ON SMALL BUSINESS

UNITED STATES HOUSE OF REPRESENTATIVES

WASHINGTON, DC

JUNE 26, 2019

INTRODUCTION

Chairwoman Velázquez, Ranking Member Chabot, and members of the Committee, my name is Hosea H. Harvey, and I am a law professor and consumer law scholar. I appreciate the opportunity to appear before you today to discuss confessions of judgment and the proposed Small Business Fair Lending Act. Today, I am here in my individual capacity, and not as a representative of any institution or organization.

BACKGROUND – CONFESSIONS OF JUDGMENT

To secure payment hereof, the undersigned jointly and severally irrevocably authorize any attorney of any court of record to appear for any one or more of them in such court in term or vacation, after default in payment hereof and confess a judgment without process in favor of the creditor hereof for such amount as may then appear unpaid hereon, to release all errors which may intervene in any such proceedings, and to consent to immediate execution upon such judgment, hereby ratifying every act of such attorney hereunder.

A confession of judgment, in its simplest form, is a contractual arrangement by which a borrower/debtor agrees to forfeit the right to contest a declaration of default by the lender/creditor. The history of confessions of judgment (also referred to as *cognovit*) dates back to its Latin roots,¹ or for the lawyers in the room, at least to Blackstone's era. While Dickens wrote about confessions of judgment with scorn,² and some states and state courts condemned³ or lauded⁴ them centuries ago, the United States Supreme Court held in 1972 that, with respect to commercial business to business transactions, confessions of judgment are not *per se* unconstitutional.⁵ As a result of that Supreme Court decision, a patchwork of state laws (both permitting and banning confessions of judgment) has remained until this day.

¹ *Cognovit actionem* translates roughly to "the individual has acknowledged the action."

² *Pickwick Papers*, chapter 47.

³ *Diamant v. Alderman*, 7 N.J.L. 197, 198 (1824).

⁴ *Loh v. Judge of Wayne Circuit Court*, 26 Mich. 186, 188 (1872).

⁵ *DH Overmyer Co. v. Frick Co.*, 405 U.S. 174 (1972).

As committee members know, in 1985, the FTC, pursuant to its Credit Practices Rule, banned certain types of *consumer* credit provisions, including confessions of judgment. But despite the FTC's action⁶ and subsequent developments, Congress did not choose to extend this prohibition to business to business commercial transactions. At the time, this decision was likely predicated on a number of factors, including perhaps, the presumption that business to business transactions take place between sophisticated parties on equal footing. However, the recent Bloomberg News investigation reminds us that this is clearly an erroneous presumption.

By postulating that business to business transactions are often – if not always – on equal commercial footing, we ignore insights from consumer transactional research about how power dynamics and predatory behavior influence contract terms. By reifying the presumption that all businesses are equals, we then can also expect that businesses always knowingly engage in commercial transactions, and that the inattention to fine-print that causes consumers to make inefficient choices does not typically arise in business to business transactions. Yet in a world in which thousands of drivers for your app-based ride-share have their own business and can finance their enterprise with a *business* loan, perhaps the theoretical line between consumer and business credit transactions has blurred over time. When such artificial distinctions are made between consumer and business transactions, they also elevate all business forms and transactions to a flat hierarchy, as if a small business high interest loan to renovate a bodega is functionally equivalent to a major bank's lease of a 50-story office tower.

⁶ In 1985, the FTC specifically prohibited certain consumer transaction practices, including confessions of judgment, cognovits, and other waivers of the right to notice and opportunity to be heard in the event of suit. 16 CFR § 444.2(a)(1). The Rule applies "in connection with the extension of credit to consumers in or affecting commerce", then defines consumer as "a natural person who seeks or acquires goods, services, or money for personal, family, or household use."

The Art of an Unfair Deal

Commercial transactions that contain confession of judgment provisions can allow lenders in some jurisdictions to declare default and then immediately proceed to judgment and remedy without notice to the borrower. In many states, there is also no requirement to serve a complaint or other legal process. Upon judgment execution by the creditor, the debtor thus immediately owes both the principal and outstanding interest, and there is a high procedural bar to disputing the underlying default or debt. For these reasons, some states, like Florida, have banned this provision for business transactions, while others, such as Ohio and, until quite recently, New York, have embraced it as a risk-shifting mechanism appropriate for commercial lending.

In theory, confessions of judgment provisions could have a modest utility in commercial transactions by reducing default costs and risk for creditors and providing struggling businesses with one last option for cash infusion. In states where confessions of judgment are permitted, they do generally facilitate the entry of judgment for creditors without the time and legal expense associated with formal adversarial actions. Generally speaking, the use of confessions of judgment is limited to a few key types of commercial transactions or products: merchant cash advances (the type detailed in the Bloomberg series), short-term loans, short-term credit facilities, and business credit cards. The use of the confession of judgment provision is viewed by those creditors as a method of last resort, and such creditors often cite default rates of 15% or more for high-risk business loans or cash advances. But the common thread to these methods and creditors is that they engage high-risk debtor clients. As such, some scholars think about confessions of judgment as economically efficient vehicles by which creditors can balance risk by enabling quick relief when debtors fail to pay monies owed. In some cases this is true, but in others, as demonstrated

today, the lack of due process protections in some states leaves such transactions ripe for abuse. The inconsistency across state laws also exacerbates the potential for abuse.

View from the States – A Fraying Patchwork Quilt

The state-level approach to commercial confessions of judgment is a fraying patchwork quilt, reflective of a variety of political and historical contexts. Many states that do permit confessions of judgment in commercial transactions do not provide for substantive due process or procedural safeguards. Rather, the focus in those states is on compliance with technical procedure and a limited number of formal criteria, such that the confession of judgment be in writing, under oath, executed by both sides, and tied directly to the credit instrument, including any extensions or assignments. This over-emphasis on process and procedure, instead of transactional fairness, is rooted in the unique way that Congress, among other institutions, has chosen to somewhat artificially segregate the regulation of commercial credit transactions from consumer credit transactions. This transactional Maginot Line reinforces the perception that businesses are all on equal footing, are all equally as sophisticated, and thus market-forces are the best vehicle to curb potentially abusive commercial transactions. The Small Business Lending Fairness Act appropriately eliminates this false dichotomy.

There have been very few studies of the patchwork of state-laws regulating the use of confessions of judgment in commercial transactions.⁷ However, within this state-level patchwork, and absent federal regulation, a number of key policy differences emerge. Some of these differences are particularly interesting for scholars of civil procedure or Constitutional law, such as whether certain courts have jurisdiction over the defendant debtors from other states or whether

⁷ But see H. Ward Classen, Jeanne de Cervens, Robert K. Rowell and James C. Wine, *A Survey of the Legality of Confessed Judgment Clauses in Commercial Transactions*, *The Business Lawyer*, Vol. 47, No. 2 (February 1992), pp. 729-772.

courts in states that do not enforce such judgments still have to give full faith and credit to the judgments of courts in states that do enforce confessions of judgment. But the parts of this patchwork that are most relevant to this Committee involve whether federal consumer law prohibitions on practices that we find fundamentally unfair in one context should be extended to business transactions that may also result in fundamentally unfair outcomes.

The state-law patchwork referenced earlier suggests that Congressional action could bring uniformity and consistency to this space and could reduce disparate outcomes, such as those discussed today. More than half the states have few to no restrictions on confessions of judgment in commercial transactions. The remaining states either generally prohibit confessions of judgment in commercial transactions or have a common law approach in some circumstances. For the minority of states that generally prohibit commercial confessions of judgment provisions, this is not a particularly partisan issue. For example, Alabama, Arizona, Georgia, Idaho, Kentucky, and Texas are joined by the District of Columbia, New Jersey, Rhode Island, and Wisconsin, amongst others, in generally prohibiting the practice. And even corporate-friendly states like Delaware, which does enforce confessed judgment provisions, still requires the debtor receive notice and allows for procedural challenges about whether they knowingly agreed to the provision. Similarly, California's safeguards include that an "independent" attorney has advised the judgment debtor about the consequences of waiving certain rights and defenses. Pennsylvania requires 30 days' notice and a debtor's chance to be heard. Finally, while Ohio generally permits them with few restrictions, so did New York, which is poised to finally end its role in the practice this week.

Because state laws vary so much in this space, Congressional action would result in market disruption for companies that routinely use such provisions. Such action **requires** balancing both the increased transactional efficiency that would result from a standard rule and the reduced

potential for abuse against concerns that such a rule may prevent credit access for cash-strapped small businesses. Further, it requires that Congress consider alternative remedies for the abuses described here today.

Those opposed to an outright prohibition on commercial confessions of judgment would argue that market-forces, state-level action, disclosure rules, or transaction size limits may help reduce any ongoing disparities. However, market forces did not appear to reduce the frequency of abuses described in the Bloomberg investigation. And, the majority of states still permit confessions of judgment for commercial transactions, suggesting a form of legislative inaction. And, while disclosure might be heightened to include more robust warnings or more visible typeface, it is not clear that such disclosure would have its intended effects for transactions in which the borrower is already cash-strapped or does not have access to more traditional small business loans. Nonetheless, some states that do permit confessions of judgment could create additional disclosure regimes designed to better inform and protect small businesses from predatory commercial transactions. For example, California's Small Business Truth-in-Lending Law (2018), brings the traditional consumer disclosure regime to "commercial financing" for transactions between \$5,000 and \$500,000, and is limited to non-depository institution creditors. But despite incremental efforts to bring fairness to this space at the state level, Congressional action is the most efficient – and most effective – solution.

The Proposed Solution

Chairwoman Velázquez, joined by Representative Marshall, Senators Rubio and Brown, and others, recognizes that contractual provisions that deny due process and punish small businesses serve no compelling purpose. The Small Business Lending Fairness Act rests on sound evidentiary footing, codifying and extending the FTC's 1985 ban on consumer confessions of

judgment to include small business owners as well. By amending TILA to include a general prohibition on confessions of judgment provisions for business loans as well, Congress can act to prevent the abuses described here today and begin to engage a larger dialogue recognizing that many commercial transactions are to businesses that are owned and operated by a single individual. This proposed solution is neither partisan nor anti-business. For that reason, the Small Business Finance Association also supports prohibiting such provisions in commercial transactions. And while the SBLFA does not directly address penalties, methods of enforcement, and whether such a prohibition will be retroactive, presumably the FTC, should it be the appropriate regulator, will resolve those details.

Sometimes a short, simple, straightforward law can be the most effective approach to solving difficult problems. And so, today, just hours before the 50th anniversary of the implementation of the Truth in Lending Act, this Committee's consideration of the Small Business Lending Fairness Act and Chairwoman Velázquez's efforts to highlight disparities and abuse of confessions of judgment in commercial transactions are logical and necessary extensions of TILA's original principles and purpose. I thank the Committee for its efforts and for the opportunity to testify this morning.

Small Business's Destroyed by Predatory Funding

By Jerry Bush, Jr.

(Former owner of JB Plumbing and Heating of Virginia, Inc.)

June 26, 2019

My father built JB Plumbing and Heating of Virginia, Inc. 30 years ago so he could give a good life for his family. When I graduated high school, I was given a work truck and tools so I could one day support my family like he did. My father served in the army and when his term was done, he came out and started to be a plumber. He had to do everything from scratch. He was never given anything. As I took more interest in the company, we incorporated in 2008. We had a very strong company and when the house market crashed, it hurt us pretty bad but we had a good name and never had to look for work. We started to do more commercial work. We mainly done all new work and sometimes you would have to wait up to 60 days to get your money and a year after the job was completed to receive your 10% retainage. When we done a large project in 2015 and was not paid around \$350,000 this put us in a bad position as we tried to fight this contractor, we had personal guarantees that we had to pay suppliers and other subs in which this caused us to have judgements.

I went to our bank, Wells Fargo and they turned us down for loan but the gentlemen told me he knew some brokers and within a week I received a call from a broker telling me they could help me. I was at a point where I was hoping to win the lawsuit with the contractor who owed us money plus, I had to keep payroll going and jobs because of contracts. The broker said we can get you a better deal in 45 days that you have to earn their trust. So, I said ok. They sent me the contract and I have never seen a confessions of judgment before and asked about it and they said this is just there in case you run or change accounts and that they never use them and they will work with you, then they will do a funding company call from the lender as if the broker told you everything and they will work with you if you run into problems. Nobody explained what all they can do if they want to. 35 days go by and I am paying my daily's and the broker comes back and said hey, I have a sweet deal. I found another company will be there for the long haul and I said my contract says if I take another funding, I will go into default. They would respond saying, no, you are good, we got you.

Then when the time came around for the first one to end, the funding company's would call and say hey, you ready to renew and you tell them no, they go into your account and see you are working with somebody else and they force you to renew or default so then they got you and you start to have two daily's then you get deeper and next thing you know they are taking \$18,000 out daily. They know every day how much you bring in and everything else. They mostly all made hundreds of thousands off of us and the amounts the judgements showed was where they went back started the advance again. Example: if you had \$10,000 left and the advance was \$50,000 but the contract amount was \$70,000, they would take the \$10,000 and add \$70,000 because they said it's in the contract to restart then add legal fees up to \$34,000 or more then the judgements show \$114,000 plus the \$60,000 they already have taken out. This is a good reason for them to pay people like the New York marshals because they can and will force to get it.

When the time came where I needed help to try to get the payments reduced because I did not want to take anymore or funds was too tight because \$18,000 daily added to \$90,000 weekly. I asked for reduced payments from Yellowstone and they would only make you take a new funding contract with no money in return but you would still get charged up to the 400% others like Last Chance and Main Street. They would give you reduce payments for 5 days then come back in a week or so with no warning and make them up. August 7, 2018 when I had to make a choice to keep getting deeper or close doors, I warned all of the funding companies it was going to happen. That Tuesday, I had to tell my employees and my father it was over as I had to tell all the contractors as well. To watch my fathers face, to watch my 20 employees and everybody else still haunts me.

The chain reaction was awful, personal guarantees, frozen accounts, certain people holding our equipment and tools for hostage, our name smeared, I was to the end. The funding companies even took my fathers retirement and money that was in his account from social security around the end of August 2018. I had companies tell me two ways out. Win the lottery or the day you die we can't come after you. When all of this was going on before I closed doors and after my wife was going through cancer, one day in January 2018, I didn't want to renew the loan but the gentlemen from one of the funding companies, Yellowstone said if I did not, he would default me. I told him I was with my wife for her chemo treatment, his words were, I will send flowers to make her feel better.

The day when I was at my dark place, I said I would win. I would not let them take from my family no more. I sat on the bank and said to myself. I want to see my son grow up. I want to be there for my family but I can not take care of them if I will never have anything. They were right, and if I was gone, they can't come after me no more. I was not looking for a way out. I was looking for a way to fix it. I did it. It was my fault. I said my goodbyes on Facebook, begging people to make sure my family was ok and did the hardest thing I ever done and took the pills. I did not want to do this and I really hid myself in the heavy woods and went to sleep but as I look now, I was lucky and was found.

My second chance, after about a month, I started to fight again. Seeing my father at age 70 back to hard labor and not the best health and finding out how these companies was making millions. Pictures of them in sport cars, fancy trips, tables full of cash that they have taken from people all over the country, every man, every woman and every race. I started to make calls, sending emails, anything. No local news would hear me because nobody ever heard of this before and nobody could understand, even local lawyers.

I had one lawyer from New York connect me to Bloomberg News and the story came out but still missed a lot of details, but this was a very good start and when the story came out the funding companies hit harder. They did all kinds of crazy things. They sent letters to a credit card which was Discover card and asked and received any kind of bank account numbers to find any bank I use to they could freeze them. So, with this, I can never have a bank account and will have judgments on my record and paying of personal guarantees that happen after we closed doors and have a father who has to work the rest of his life.

What I would like to see is number one. That these companies to be investigated due to the way they handle things, the threats, the use of other names and accounts that show no records they are legit. Ways to solve these issues. Everybody has there right in court. Stop the confession of judgements. Educate the public better. No state or city officials should have the right to make money off companies like this. People should not be able to have companies like this if they been charged with federal charges.

I want changes to help others. I don't want nobody to go through this. I am not saying all funding companies are bad, but there are plenty that has went too far because there is no regulations. Even if I had to sleep in my car and come back to DC, I want changes before it's too late. Trades like ours are already dying when you don't need things like this to make it worse for small businesses that built America and still is building America. Big industrial companies don't bring your flowers, fix your house, repair your car or serve your needs.

Since all of this has happened, I feel like I been given a life sentence. Because of the judgements, I cannot even have a checking account in my name. And as the story has come out, I have had merchant companies done many things to try and get the money back. And have even a couple times taken my fathers social security money which we got some of it back. So, you can imagine not even able to have a debit card is very hard for me every day.

I'm asking for more regulations and investigations to fix this problem. I want to thank the committee, the house, the media and other organizations for their time and support to try and put a stop to this.

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Written Testimony of

**Shane R. Heskin
Partner
White and Williams LLP**

Before the United States House of Representatives
Committee on Small Business

“Crushed by Confessions of Judgment: The Small Business Story”

June 26, 2019
11:30 a.m.

Rayburn House Office Building, Room 2360

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WITNESS BACKGROUND STATEMENT

Shane R. Heskin, is a partner in the Philadelphia office of White and Williams LLP, a full-service regional law firm with over 240 lawyers in ten offices. Mr. Heskin practices in the firm's commercial litigation department and has nearly 20 years of experience litigating complex insurance coverage and general commercial matters. He is admitted to practice law before state and federal Courts in New York, Pennsylvania and Massachusetts, as well as before the United States Courts of Appeals for the First, Second, Third and Sixth Circuits.

Before joining White and Williams LLP, Mr. Heskin was Counsel in the New York office of O'Melveny & Myers LLP and an associate in the New York office of Milbank Tweed Hadley & McCoy LLP.

Mr. Heskin holds a J.D. from Albany Law School and a B.A. from Mayville State University. He graduated *summa cum laude* from both schools.

Since 2016, Mr. Heskin has represented more than fifty small businesses and individuals in connection with high-interest lending products located all over the country. These clients include small businesses located in Alabama, Arizona, California, Colorado, Connecticut, Georgia, Florida, Illinois, Kansas, New York, Maryland, Massachusetts, Michigan, Mississippi, New Jersey, New York, Oregon, Pennsylvania, Tennessee, Texas, Utah and Virginia.

Neither Mr. Heskin nor White and Williams LLP has received any federal grants or any compensation in connection with Mr. Heskin's testimony, and he is not testifying on behalf of any organization or individual. The views expressed in his testimony are solely his own.

A copy of Mr. Heskin's *curriculum vitae* and an overall of the firm's practices are attached to this written testimony as Exhibits 1 and 2.

Chairwoman Nydia M. Velázquez and distinguished Members of the Small Business Committee:

Thank you for inviting me to testify at this hearing. My name is Shane Heskin and I am a commercial litigation partner with the law firm of White and Williams LLP. I am admitted to practice law in New York, Pennsylvania and Massachusetts, and I have nearly twenty years of commercial litigation experience before state and federal courts in these and other jurisdictions.

Three years ago, I began representing small businesses and their owners in disputes with merchant cash advance (“MCA”) companies when my father-in-law’s bank accounts were frozen by an MCA company that had obtained a confessed judgment in New York against his third generation, family-owned tire business in Massachusetts. Since then, I have represented more than fifty small businesses in and out of court and consulted with dozens of other merchants, attorneys, consultants, as well as state and federal agencies with respect MCA-related matters. Although MCA disputes are mostly litigated in New York, my clients are from all over the country and have included the following trades:

- a boat mechanic and from Alabama;
- a speech therapist from Arizona;
- a wine distributor from California;
- a nursing home provider from Connecticut;
- an e-commerce retailer from Colorado;
- a restaurant from Florida;
- a landscaper from Georgia;
- a handyman from Kansas;
- a motorcycle repairman from Illinois;
- a trucker from Maryland;
- an auto mechanic from Massachusetts;
- a home renovator from Michigan;
- an iron worker from Mississippi;
- a staffing specialist from New Jersey;
- a daycare provider from New York;
- a leather manufacturer from Oregon;
- a decorator from Pennsylvania;
- a pharmacist from Tennessee;
- a construction worker from Texas;
- a solar installer from Utah; and
- a plumber from Virginia.

Most recently, I argued on behalf of small businesses in two seminal appeals regarding the validity of certain confessed judgments and the enforceability of certain MCA agreements that are pending before the Appellate Division, Supreme Court of the State of New York, Second Department. I am also lead counsel for three other pending state court appeals challenging other aspects of New York's confession of judgment statute.¹

I am here today to testify about confessions of judgment solely in my capacity as an attorney with specialized knowledge of matters germane to this hearing and I am not appearing on behalf of any entity, individual or organization.

Generally speaking, a confession of judgment is a contract provision or written statement signed by a debtor whereby the debtor waives their constitutional rights to due process and consents to the entry of judgment against them in a specific amount without notice or a hearing. Many states deem confessions to be so repugnant to public policy that they have banned their use² and even the highest courts in the jurisdictions that do enforce them have equated their powerful effect to "a warrior of old entering a combat by discarding his shield and breaking his sword." *Atlas Credit Corp. v. Ezrine*, 250 N.E.2d 474, 482 (N.Y. 1969) (citing *Cutler Corp. v. Latshaw*, 374 Pa. 1, 4 (1953)).

New York is one of the states that enforces confessions and, in recent years, many MCA companies have required small businesses and their owners to execute confessions of judgment before advancing any funds. If the small business defaults in its obligations, the MCA companies quickly file the confessions, obtain judgments and immediately begin to enforce the judgments before the small businesses are even aware that a judgment has been filed against them. Since MCA companies began using confessions of judgment in 2012, more than 32,000 confessions have been filed in New York, representing more than \$1.5 billion in judgments.³ Notwithstanding that these confessions were filed in New York, the use of confessions is not solely a New York problem, as even a cursory review of New York's electronic filing system reveals that the vast majority of these judgments are against merchants located outside of New York.⁴

I. THE MCA PROBLEM.

Small businesses and their individual owners are often experts at their trade or profession. But that does not mean they are sophisticated business persons who understand the legal ramifications of a confession of judgment or the distinctions between a factoring agreement and a loan. More often than not, my clients are hard-working middle class workers who are induced into an MCA agreement by some random third-party who claimed that taking out an MCA advance would help them grow their business. Instead of growing, the small business typically ends up

¹ *Merchant Funding Services, LLC v. Volunteer Pharmacy Inc. d/b/a Volunteer Pharmacy, Toby C. Frost and Camillia Frost*, Supreme Court of the State of New York, Second Department, Case Nos. 2017---121 and 2017-00483 and *Merchant Funding Services, LLC v. Micromanos Corporation d/b/a Micromanos and Atsumasa Tockhisako*, Supreme Court of the State of New York, Second Department, Case No. 2017-06548.

² See, e.g., Massachusetts General Law Ch. 231, § 13A and Florida Statute Ch. 55, § 55.05.

³ Zachary Mider and Zeke Faux, *Predatory Lenders Have Co-opted New York's Court System to put the Screws to Borrowers Nationwide* (Nov. 29, 2018) (www.Boomberg.com) and Zachary Mider and Zeke Faux, *N.Y. Moves to Ban Confessions of Judgment for Out-of-State Loans* (June 21, 2019) (www.Bloomber.com) attached as Ex. 3 and Ex. 4.

⁴ Ex. 6 (compiling representative list of small business confessions by just a single MCA company).

entering into a never-ending cycle of debt similar to Payday Lending. Although it usually starts with a small starter loan, it often spirals out of control to the point where the merchant takes out new MCAs just to pay off the prior ones:⁵

Advance Amount: **\$176,000.00**

Liner Tire Inc. ("the Merchant"), a Massachusetts Corporation, located at 144 Boylston Street, Brookline, MA Massachusetts 02445 hereby requests and authorizes Capacity Funding LLC ("Capacity") located at 7 Renaissance Square, 5th Floor, White Plains, NY 10601, to allocate the proceeds of this funding, upon the closing of this transaction on this date, as follows:

- Payoff in the amount of \$66,164.00 to Yellowstone Capital for existing obligations pursuant to the payoff letter received.
- Payoff in the amount of \$47,450.00 to Capacity Deal #2 - Liner Tire for existing obligations pursuant to the payoff letter received.
- Payoff in the amount of \$56,575.00 to Capacity Deal #3 - Liner Tire for existing obligations pursuant to the payoff letter received.

After upfront origination and processing fees of \$5,811.00 to Capacity, Merchant will net \$0.00 which will be wired to Merchant's bank account as provided to Capacity.

In addition, MCA companies will knowingly induce small businesses to take out MCA agreements with other companies to ensure that their MCA agreements get paid off first.⁶ This, of course, is a default under an MCA agreement because they all prohibit a merchant from taking out other loans or entering into an MCA agreement with another company. The term in the industry is called "stacking."⁷

In addition to destroying the small business and the jobs of their employees, the MCA industry is destroying the lives of their individual owners and their families. It causes depression and anxiety, and sometimes leads to divorces.

The below e-mail is an example of what my clients endure:⁸

I need you to call me now . Not your staff You . Its Friday My kids and wife think we are loosing everything I told them you would have us restructured by today . My wife cried all day yesterday and ask me every 5 min have I herd from you or any body else . All I can tell her is no . But that you said you would help us . Its Friday What are you going to do

I firmly believe that the predatory lending of the MCA industry has become a national epidemic, and that action needs to be taken to fix the growing problem.

⁵ See Ex. 7, ¶ 6.

⁶ See Ex. 8.

⁷ See Ex. 9.

⁸ See Ex. 10.

II. AN OVERVIEW OF THE MCA INDUSTRY.

To understand confessions of judgment and their impact on small businesses, I believe it is necessary to provide the Committee with a brief overview of the MCA industry.

Generally speaking, a merchant cash advance is a form of non-traditional financing by which an MCA company purports on paper to purchase a merchant's future receipts at a discounted price. The merchant then repays the MCA company through predetermined daily payments until the full face value of the purchased receipts has been repaid. Although documented as the purchase of future receipts, make no mistake, it has been my experience that many MCA companies treat their cash advances just like loans that are absolutely repayable at effective annual interest rates that exceed 400% simple interest and 2,000% APR.

Merchant cash advances have been around in one form or another since the early 2000s, but they became a popular form of alternative financing for small businesses when banks and other traditional financial institutions tightened credit standards following the recession of 2008. Unable to readily obtain credit from banks, small businesses desperate for cash became easy prey for MCA companies and the independent sales officers ("ISO") who brokered their deals.

Because MCA agreements, on paper, involve the purchase of future receipts and not the lending of money, the MCA industry is virtually unregulated and has been described by more than one commentator as the "wild, wild west" of financing.⁹

A. Distinguishing an MCA agreement from a legitimate factoring agreement.

Traditional factoring has been around for centuries and its distinguishing factor is the transfer of risk. See *Endico Potatoes v. CIT Group/Factoring*, 67 F.3d 1063, 1069 (2d Cir. 1995) ("The root of all of these factors is the transfer of risk.").

In contrast, the *sine qua non* of a loan is that the money advanced is absolutely repayable. See *TIFD III-E, Inc. v. United States*, 459 F.3d 220 (2d Cir. 2006) (citing *Estate of Mixon v. United States*, 464 F.2d 394, 405 (5th Cir. 1972) ("If there is a definite obligation to repay the advance, the transaction [will] take on some indicia of a loan."); *Rosenberg v. Commissioner*, T.C. Memo 2000-108, 79 T.C.M. (CCH) 1769 (2000) ("A taxpayer's right to enforce repayment of an advance suggests that the advance is a loan.").

In distinguishing a sale from a loan, the conduct and intent of the parties is instructive:

A sale is the transfer of the property in a thing for a price in money. The transfer of the property in the thing sold for a price is the essence of the transaction. The transfer is that of the general or absolute interest in property as distinguished from a special property interest. A loan, on the other hand, is the delivery of a sum of money to another under a contract to return at some future time an equivalent

⁹ See, e.g. McCarthy, Brayden, *Small Business Deserves the Same Protections as Consumers When Seeking a Loan* (March 20, 2017) located at <https://www.fundera.com/blog/small-businesses-deserve-the-same-legal-protections-as-consumers-when-seeking-a-loan> and Ex. 5.

amount with or without an additional sum agreed upon for its use; and if such be the intent of the parties the transaction will be deemed a loan regardless of its form. Emphasizing the necessity of appraising the transaction as disclosed by the evidence as a whole rather than by what the transaction appears or is represented by the parties to be, we observed that “All of the negotiations, circumstances and conduct of the parties surrounding and connected with their contracts may be material in determining whether the form thereof covered an intent to violate the usury law”

West Pico Furniture Co. v. Pacific Fin. Loans, 469 P.2d 665, 671-72 (Cal. 1970); *see also Endico Potatoes*, 67 F.3d at 1068 (“Resolution of whether the ‘contemporaneous transfer,’ as CIT describes Merberg’s assignment of accounts receivable to CIT and CIT’s loan advances to Merberg, constitutes a purchase for value or whether the exchange provides CIT with no more than a security interest, depends on the substance of the relationship between CIT and Merberg, and not simply the label attached to the transaction.”); *Trinity Holdings, Inc. v. Firestone Bank*, 1994 WL 449258, at *3 (W.D. Pa. May 4, 1994), *aff’d*, 66 F.3d 313 (3d Cir. 1995) (“The parties’ practices, objectives, activities and relationships are relevant in determining whether the transactions are absolute assignments or secured loans. Despite Firestone’s objection, we are guided by the factors delineated in *In re Joseph Kanner Hat Co., Inc.*, 482 F.2d 937 (2d Cir. 1973)”; *Bouffard v. Befese, LLC*, 111 A.D.3d 866, 869 (2d Dep’t 2013) (“In determining whether a transaction is usurious, the law looks not to its form, but its substance, or real character” and being a “hard money lender” to those “unable to obtain conventional financing” is nothing more than “plainly usurious” lending).

In order to avoid state usury laws, an MCA agreement purports to be a sale of a merchant’s future receivables. This device is not novel. As early as the time of Lord Mansfield, it was recognized that “the most usual form of usury was a pretended sale of goods.” *Quackenbos v. Sayer*, 62 N.Y. 344, 346 (1875); *see also Aardwoolf Corp. v. Nelson Capital Corp.*, 861 F.2d 46, 47 (2d Cir. 1988) (“At the outset, we lay to rest any question there may be as to the nature of the so-called ‘discount.’ It was, as the parties concede, the taking of interest in advance, a practice as old as the proverbial hills.”) (citing *Evans v. National Bank*, 251 U.S. 108, 113 (1919)).

Accordingly, as explained by Chief Justice John Marshall nearly 200 years ago, courts must look beyond the form to ascertain its true nature:

The ingenuity of lenders has devised many contrivances, by which under forms sanctioned by law, the statute may be evaded. . . . Yet, it is apparent, that if giving this form to the contract will afford a cover which conceals it from judicial investigation, the statute would become a dead letter. Courts, therefore, perceived the necessity of disregarding the form, and examining into the real nature of the transaction.

Scott v. Lloyd, 34 U.S. 418, 9 L.Ed. 178 (1835).

By definition, a “sale” is a “contract between two parties . . . by which the seller, in consideration of the payment or promise of payment of a certain price in money, to the buyer the title and possession of the property.” *Crisswell v. European Crossroads Shopping Centr. Ltd.*, 792 S.W.2d 945, 949 (Tex. 1990) (quoting BLACK’S LAW DICTIONARY 1200 (5th ed. 1979)).

In a true sale, the seller retains no benefits of ownership with respect to the subject assets transferred, the risk of loss with the subject assets is wholly transferred to the buyer, and the seller maintains no control over the assets. See *NetBank, FSB v. Kipperman (In Re Commer. Money Ctr. Inc.)*, 350 B.R. 465 (9th Cir. 2006) (finding transaction to be a loan rather than a sale where seller/assignor retained right to surplus proceeds); *In re Evergreen Valley Resort*, 23 B.R. 659, 661 (D. Me. 1982) (recognizing that a loan “is indicated if the assignee must account to the assignor for any surplus received from the assignment over the amount of the debt” rather than retaining such surplus as the benefits of ownership); *In re Hurricane Elkhorn Coal Corp. II*, 19 B.R. 609, 614 (W.D. Ky. 1982) (finding transaction was a loan because debtor retained right to use proceeds in excess of amount advanced).

In other words, in a true sale, “the benefits and burdens of ownership” pass from the seller to the buyer. See *JMW Auto Sales, Ltd. v. FT Dev. Inc. (In re Moye)*, 2010 Bankr. LEXIS 4378 (S.D. Tex. 2010) (holding agreement “did not evidence a consummated transfer of the benefits and burdens of ownership” so as to constitute a true sale); *Callow v. Comm’r*, 135 T.C. 26, 33-34 (U.S. Tax Ct. 2010) (“[T]he key to deciding whether the transaction was a sale or other disposition is to determine whether the benefits and burdens of ownership have passed” from seller to buyer.).

Generally recognized principles of accounting similarly focus on the transfer of ownership in determining whether a transaction must be accounted for as a sale or a loan. In order to be accounted as a sale, three requirements must be met: “First, the transferred financial assets must have been put beyond the reach of the transferor and its creditors. Second, the transferee must have the right to pledge or exchange the asset free of conditions. Third, the transferor must not maintain effective control over the asset.” *MF Global Holdings, Ltd. v. PricewaterhouseCoopers LLP*, 199 F. Supp. 3d 818, 824 (S.D.N.Y. 2016). None of these factors is met in an MCA agreement.

Although an MCA agreement purports to purchase a small business’s future receipts, the business retains responsibility for collecting the very receipts that were purportedly sold, and maintain “effective control” over their receipts. This type of transaction is not a sale under accepted accounting rules; it is a secured borrowing. *Id.* As explained by the Second Circuit:

Such transactions are somewhat ambiguous and admit of definition as loans or sales on slight differences. If a merchant discounts his customer’s note at a bank, endorsing it, but getting immediate credit for its discount value, it would be a most unnatural thing to consider it a loan from the bank. He remains liable if the customer defaults, but the collection is in the bank’s hands, and the transaction is closed in the absence of a default. If, on the other hand, a merchant pledges his accounts to a ‘finance’ company and collects them himself, paying the loan out of his collections, it is clearly a loan, and has always been so considered.

Elmer v. Commissioner, 65 F.2d 568 (2d Cir. 1933); see also *In re Gotham Can Co.*, 48 F.2d 540 (2d Cir. 1931); *Home Bond Co. v. McChesney*, 239 U.S. 568 (1916).

B. The mechanics of an MCA agreement.

On their face, most of the MCA agreements purport to be legitimate factoring agreements—but not all of them.

1. The Factor Rate.

The factor rate is the amount the MCA company charges for the time value of the money being lent. In an MCA agreement, it is the difference between the Purchase Price and the Purchased Amount. The factor rates are typically between .3 and .49. Thus, if a small business is getting an advance of \$100,000, and the factor rate is .49, the Purchase Price would be \$100,000 and the Purchased Amount would be \$149,000. Put another way, the MCA company is advancing the sum of \$100,000 and is being repaid \$149,000, meaning it is charging \$49,000 for the time value of the money advanced.

2. The Daily Payment Amount.

Under a legitimate MCA agreement, an MCA company would review a merchant's historical receivables, typically by reviewing the past three to four months of bank statements, and determine the small business's average monthly receivables in order to predict future revenue streams. A legitimate MCA company would then divide that average monthly revenue by twenty two to come up with a good-faith daily payment. The MCA company divides by twenty two because that is the average number of business days in a month. The MCA company would then multiply the percentage of receivables purchased, typically 10% to 25%, by the daily average to come up with the amount that will be debited each day.

Case Example: If the average monthly receivables equal \$100,000, then the merchant's average daily receivables is \$4,545 (\$100,000 divided by 22). If the MCA company was purchasing 10% of the merchant's receivables, then the good-faith estimated payment should be \$454 (\$4,545 x .10).

3. The Interest Rate.

The expected interest rate of an MCA can be determined based on the face of the agreement.

To determine the expected payback term, one simply has to divide the payback amount, i.e., the Purchased Amount, by the daily payment. Thus, in the two examples above, if the Purchased Amount is \$149,000 and the estimated daily payment is \$454, then the total number of daily payments is 328, which equates to approximately 65 weeks. When adding two days for each week to account for Saturdays and Sundays when no payments are withdrawn, the total expected term is 459 days.

To determine the interest rate, one then has to determine the annualized interest rate, which is determined by dividing the interest charged by the sum advanced. It is always the same as the

factor rate, and thus, in the example above, one would simply divide \$49,000 by \$100,000, which results in an annualized interest rate of 49%. To determine the actual interest rate for the particular transaction, one would multiply the factor rate by 365 days in year and then divide that number by the total days of the expected term. In the example above, the expected simple interest rate would be 39% ($.49 \times 365 = 178.85$ and 459 divided by $178.5 = .388$).

Notably, however, a simple interest rate of 39% is not typical of an MCA agreement. Thus, in order to increase the interest rate, an MCA company may artificially inflate the good-faith estimated daily payment or increase the percentage purchased. In my experience, the estimated daily payment has no relationship to the actual average monthly revenues.

But even where the MCA company increases the percentage of receivables purchased, the sham of the transaction becomes abundantly clear. For example, in one of my cases, the MCA company purchased 156% of the merchant's future receivables—a mathematical impossibility.

4. The Reconciliation Provision.

In order to give the appearance of risk, almost all MCA agreements contain a so-called "reconciliation" provision. The way it is supposed to work is, at the end of the month, a merchant has the right to provide a copy of its bank statements to the MCA company, and if the amount collected through the daily payments exceeds the percentage of receivables allegedly purchased, the MCA company is supposed to provide a refund of any excess amounts collected. To put this in simplest terms, if the business generated no receipts and the MCA company collected \$10,000 through the daily payments, the MCA company is required to refund the merchant the entire \$10,000 because 10% of zero is zero.

The superficial effect of this reconciliation provision allows the MCA company to claim that it is assuming risk. It also allows it to assert that the repayment term is indefinite so there can be no violation of the usury laws.

There are numerous problems with this so-called reconciliation provision. First, throughout all of my cases, I have never seen a merchant actually get money back under a reconciliation provision. Second, the vast majority of my clients do not even know they have a right to ask for a refund because the provision is buried in fine print and is almost never explained to them. Third, the vast majority of MCA agreements contain an addendum declaring a default if the business misses two or more daily payments. Fourth, the MCA companies often stack upon each other so the small business ends up with so many MCA agreements that the percentage of receivables allegedly sold far exceeds its margins and operating expenses.

Case Example: *McNider Marine (Alabama) v. Complete Business Solutions Group.* From just August until November 2016, the MCA companies contracted to take over 89% of McNider's daily receivables, a small Alabama marina:¹⁰

Defendant	Loan Date	Daily %	Daily Payment
New Era	8/11/2016	15%	\$1,711
Ram Capital	9/19/2016	10%	\$1,999
CP	9/30/2016	9%	\$1,208
IBIS	10/6/2016	10%	\$1,165
Yellowstone	10/19/2016	15%	\$3,398
TVT	10/17/2016	15%	\$1,499
ML Factors	10/27/2016	10%	\$2,476
Funding Metrics	11/4/2016	2%	\$530
CP	11/14/2016	3%	\$362
Total Daily		89%	\$14,348

5. The Fees.

The fees charged vary depending upon the number of parties involved and are often misleading. Specifically, if a broker is involved, a merchant may get charged two sets of fees. A sample fee schedule is as follows:

APPENDIX A – FEE STRUCTURE

A. Origination Fee: \$19,995.00 (to cover underwriting and related expenses).

B. ACH Program Fee: \$3,495.00 (the ACH program is labor intensive and is not an automated process, requiring us to charge this fee to cover related costs).

C. Bank Fee: Minimum bank fee of \$195.00 or up to 10% of the funded amount.

D. NSF Fee: \$35.00 each occurrence (up to TWO occurrences before a default is declared).

E. Rejected ACH: \$100.00 (if a merchant directs the bank to reject our debit ACH).

F. Bank Change Fee: \$50.00 (If a merchant requires a change of account to be debited requiring us to adjust our system).

G. Unauthorized Account Fee: \$5,000.00 (if a merchant blocks QF'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).

H. Default Fee: \$2,500.00 or up to 10% of the funded amount, (if a merchant changes bank accounts or switches to another credit-card processor without QF's consent, or commits another default pursuant to the Agreement) or bounces more than 2 debits of the Account.

I. Stacking Fee: If the Merchant takes any further financing from any other finance/factoring company a fee of 10% of the purchased amount will be added to the Merchants current balance.

J. Risk Assessment Fee: \$249.00

K. UCC Fee: \$195.00

¹⁰ See Ex. 11, ¶ 49.

The fee schedule above is for a \$250,000 advance to a non-profit community health care clinic located in California. At first glance, it appears that the merchant is being charged a Bank Fee of \$195. Not so. The merchant is actually being charged \$25,000 because it says \$195 or up to 10% of the funded amount. Thus, this particular merchant was charged nearly \$50,000 in fees for an advance of \$250,000. But it gets worse. The merchant was also charged a separate \$12,500 fee from his broker.¹¹

Note also the NSF Fee. After just two missed payments, it is an event of default, which triggers the enforcement devices described in the next section below.

6. The Personal Guarantee and Confession of Judgment.

In a legitimate factoring agreement, a purchaser does not have recourse against the seller in the event that the account debtor does not pay. Rather, that is a risk assumed by the purchaser. In other words, if a factoring company purchases a receivable owed by ABC company to the seller, and ABC company goes bankrupt or otherwise fails to pay, the factoring company does not get paid and has no recourse against the seller of those receivables.

That is not the case with a typical MCA agreement. In every MCA agreement that I have seen, it contains a personal guarantee, wherein the individual owner guarantees certain performance of the small business under the MCA agreement. Notably, unlike in a legitimate factoring agreement, the personal guarantee is typically invoked "at the time the Merchant admits its inability to pay its debts, or makes a general assignment for the benefit of creditors, or any proceeding shall be instituted by or against Merchant seeking to adjudicate it bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, or composition of it or its debts."¹²

In addition, the vast majority of MCA agreements require a merchant to execute a confession of judgment, permitting the MCA company to obtain a judgment against both the small business and its individual owner in the event of a default. And upon default, the confession of judgment almost always includes liquidated attorney's fees between 25% and 33% of the outstanding balance.

C. The ISOs and Brokers.

In a story that I have heard time and time again from clients, prospective clients, consultants and other attorneys, it almost always starts with a cold call from a broker. The broker professes to know the needs of small businesses and promises to be able obtain financing within 48 hours in concise terms such as "\$50k, 60 day term, \$833 per day."

¹¹ See Ex. 12, at pg. 8.

¹² See *id.* at pg. 5.

Case Example: *Liner Tire (MA). v. Cap Call, LLC et al.*¹³

Barry,

here are the new loan documents for the \$75,000 facility I obtained for you this morning from Everest Business Funding.

Please sign and initial in all places I have flagged and complete the bank log in information on the second to last page. Then fax or email the papers back to me. No notarization or overnight delivery of the original documents is necessary.

Here are the particulars of this loan:

Advance Amount:	\$75,000
Total Payback:	\$108,000
# of Payments:	90
Daily Payment:	\$1,200
Origination Fee:	\$395
Payment Processing Fee:	\$250
Funding Wire Fee:	\$35
Net Amount Funded:	\$74,320

Often, all the small business owner needs to obtain the financing is complete a one-page application, provide the broker with its past three month bank statements, sign various documents, and, of course, pay the broker a commission that is generally equal to 10% of the advance but which I have seen as high as 20%.

Case Example: *AMCO Mechanical Contractors (Texas) v. Ram Capital Funding, LLC*¹⁴

On Wed, Apr 26, 2017 at 12:23 PM, Anthony Collin <anthony@smartbusinessfunder.com> wrote:
Approved!

High risk:

1 of 2 different options:

1) \$40,000.00 at \$1199.00 a day, 1.499 rate

2) \$30,000.00 at \$899.00 a day, 1.499 rate

Both deals pay 10% of the funded amount.

¹³ See Ex. 7, ¶ 14.

¹⁴ Ex. 13, ¶ 55.

Case Example: *Saturn Funding, LLC v. North River Outfitters*:¹⁵

From: Evan Chase <Evan@sidepaper.com>
 Date: Thu, Sep 24, 2015 at 12:41 PM
 Subject: Funding Application
 To: "nroboston@gmail.com" <nroboston@gmail.com>

Hi Jason,

Thank you for contacting Side Paper for a business loan today. I attached our 1 page application for you to fill out. All we need is the 1 page application and the last 4 months of the business's bank statements to get you approved.

Sometimes, the brokers go even further and induce the small business to enter into an MCA agreement with promises of ultimately securing a permanent line of credit at favorable rates once the small business establishes a pattern of timely payments to the MCA company. What the brokers do not tell the small business is that their commission is frequently subject to being "clawed back" by the MCA company if the small business fails to make any of the payments necessary to establish this so-called "pattern." To complete the scam, once the small business makes the required payments, the broker suddenly claims he/she is unable to obtain the line of credit and instead offers to obtain a second MCA agreement for even more money which the small business can use to repay the first agreement while its business fortunes allegedly improve. As a result, the broker keeps its initial commission and may even earn a second commission, while the small business is caught in a "death spiral" of ever increasing MCA debt from which it can never recover.

Case Example: *Mikes Auto (Somerville, MA) and Premier Working Capital Inc.* On January 29, 2016, Stephen Quroiz, a purported "Senior Commercial Banker" with Premier Working Capital induced Mike's Auto to enter into an MCA agreement with Ibis Capital Group, LLC. In doing so, Quroiz wrote in an email that same day: "As discussed, after 5 business days, we will convert the loan into a 3 year Business Line Of Credit with a monthly principal and interest payment, with a credit limit of 175k."¹⁶ Immediately thereafter, the broker "ghosted" the merchant, leaving him with a debt he could not pay. He was later sued in New York by the MCA company.

For their part, MCA companies are more than willing to make advances to small businesses for several reasons. First, the annualized interest under many agreements often exceeds 75% and can be as high as 400%. Second, the small business's performance under the agreements is often secured by the grant of a security interest in substantially all of the business's assets and upon default, the MCA company can exercise its rights and remedies under the Uniform Commercial Code to collect all amounts due under the agreement. Third, MCA companies frequently require the owners of the business to personally guaranty performance under the agreement. Finally, and perhaps most importantly to the present discussion before the Committee, many MCA companies require that the small business and its owners execute a confession of judgment.

¹⁵ Ex. 14, ¶ 60.

¹⁶ Ex. 15.

Compounding the problem is the lack of regulation on both the MCA companies and the brokers. Literally anyone can become an MCA broker regardless of financial experience.

Case Example: *BBK Motorsport (Ill.) v. Snap Advance et al.* On August 4, 2017, Peak Source sent BBK Motorsport's owner the following e-mail:¹⁷

Your business has been pre-approved!

Loan amount \$390,500
Payback \$566,225
Term 18 months
Daily payment \$1,498
Factor rate 1.45

Loan amount \$468,700
Payback \$674,928
Term 15
Daily payment \$2,143
Factor rate 1.44

At his deposition, the broker admitted having no basis for making this representation, and had not even reviewed BBK's financials. In addition, to this day, Peak Source professes on its website that it is "a full service investment agency located in New York City" with expertise in obtaining financing for small businesses with the goal of providing them "with the finances necessary to reach the next level of growth," and that it has a "team of professionals working 24 hours a day, 7 days a week to streamline the funding process." www.peaksourceus.com. According to the owner, however, Peak Source is run by the individual owner and his assistant. Neither has any financial experience whatsoever. Instead, the business was started by paying a few hundred dollars to build a website.¹⁸

Similarly, in my experience, representatives of the MCA companies often have zero financial experience. For example, one of Yellowstone Capital's most profitable funders is dubbed "the Closer," and his prior job was as a customer service representative for Verizon.¹⁹

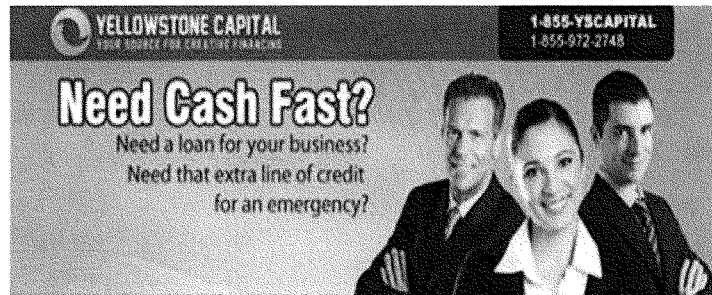
D. The MCAs are advertised as loans.

Through my pre-suit investigations, I have also discovered overwhelming publicly available evidence demonstrating that the MCA companies advertise their products as loans. Yellowstone Capital, for example, has used the following advertisement:

¹⁷ See Ex. 16.

¹⁸ See Ex. 17.

¹⁹ See Ex. 18.



In or around August 2013, Yellowstone also created promotional videos that were marketed to the public on YouTube. One of the Yellowstone employees portrayed a character by the name of Dr. Daniel Dershowitz, a.k.a., Dynamite Disco Danny. The video is titled “Bad Credit Business Loans™ | 855-445-9649.” The premise of the video is that Dr. Dershowitz went to Las Vegas after his divorce, whereupon he overindulged, maxed out his credit cards and started dipping into his business account. Dr. Dershowitz then makes the following statements about his experience with a traditional lender and his experience with Yellowstone:

When the funds got low, I was in over my head. The only way out was to get a business loan. So I went to the bank and when they ran my credit, the lady laughed at me. So I went online and found Yellowstone Capital. I applied for a loan on Monday based on my monthly sales and on Wednesday they gave me my money. It's crazy because my heartrate is higher than my credit score. So if you need money you need to apply right now while their computers are still giving out money to basically any business owner with a pulse.

Below the video is the following link: “CLICK HERE TO APPLY!”
<http://www.yellowstonecap.com/FundsToday>.”

As the video played, subtitles described Yellowstone’s MCA program:

Bad credit business loans are, and forever will be, extremely hard to obtain. Luckily, Yellowstone Capital makes it easy to obtain an unsecured bad credit business loan if you have been turned away by your bank in search of an unsecured bad credit business loan, or unsecured business funding.

We keep our application process super short, and super easy. Once you submit your application, your business funding offer can be approved in the same day. Many of your clients receive their bad credit business loans in as little as three days.

Been turned away for a small business credit card? Apply at Yellowstone Capital for a bad credit business loan, also known as a business cash advance, or a merchant cash advance.

Need money for remodeling, upgrades, or to buy a new location? Our small business loans are easy to obtain for these things.

Our business loans are unsecured. There are no set minimum monthly payments, which means there are never any late fees. So what are you waiting for? Click the link at the top of the description to get started with your bad credit business loan application today!

These videos all link to a loan application on Yellowstone's website.²⁰

Another MCA company also describes its MCA agreements as loans on its website:

A PowerUp Small Business Loan, or ACH loan (Automated Clearing House), is a great way to get a lot of capital for immediate investment. These rates are higher than a traditional loan, so should be used for projects with an immediate ROI. ACH loans pull repayments directly from your checking account, reducing the need to mail out payments. These loans are also a good way to consolidate prior loans, extend the term and get additional working capital.

A Merchant Cash Advance works a little differently. An MCA looks at your predictable income based on past credit card receipts. This works best for companies that see a lot of smaller transactions. Because repayment is contingent on credit card transactions, this type of loan is optimal for seasonal businesses, like ski shops or Italian ice stores. When business slows down in the off-season, so too, does the expectation of repayment.

I have also seen numerous brokers refer to the MCA agreements as loans when soliciting and approving MCA funding:

From: **Jessica DeCara via DocuSign** <dse_na2@docusign.net>
 Date: Wed, Mar 23, 2016 at 12:21 PM
 Subject: Fast Capital 360 - Your Funding Contract
 To: [alice.indelicato](mailto:alice.indelicato@probono.com) <probono@gmail.com>



²⁰ See Ex. 19 (thumb drive of videos).

E. The estimated daily payment is often a sham.

In addition to advertising MCAs as loans, in my experience, the estimated daily payment has no relationship to the merchant's actual estimated receivables as purported on the face of the agreements. Instead, the purported estimated daily payment is tied to the size of the loan and the time period in which the MCA company wants to be repaid.

Case Example: *Antelope Valley Community Clinic (California) v. ML Factors*. As demonstrated by the below chart, the estimated daily payments increase with the size of the loan:²¹

Date	MCA Company	Loan Amount	Amount Received	Loan Payback	Daily %	Daily Payment
6/23/17	ML Factors	\$75,000	\$67,500	\$111,750	10%	\$1,863
9/15/17	ML Factors	\$75,000	\$42,948	\$111,750	10%	\$1,597
9/15/17	Queen	\$150,000	\$135,000	\$224,850	13%	\$2,999
10/17/17	Queen	\$215,000	\$65,131	\$322,285	13%	\$5,899
10/18/17	ML Factors	\$100,000	\$33,893	\$149,000	10%	\$2,484
11/13/17	GTR Source	\$50,000	\$40,000	\$74,950	None	\$1,999
11/27/17	GTR Source	\$75,000	\$60,000	\$112,425	None	\$2,249
11/27/17	ML Factors	\$140,000	\$40,869	\$208,600	10%	\$3,161
11/27/17	Queen	\$300,000	\$40,010	\$449,700	13%	\$8,990
12/27/17	Yellowstone	\$250,000	\$222,500	\$374,750	15%	\$3,999
1/17/18	ML Factors	\$200,000	\$73,391	\$298,000	10%	\$2,980
1/17/18	Ocean Fund	\$550,000	\$142,331	\$824,450	13%	\$5,999
1/19/18	Yellowstone	\$450,000	\$76,745	\$674,550	15%	\$5,499
1/19/18	Queen	\$250,000	\$185,000	\$374,750	13%	\$4,499
Totals		\$2,880,000	\$1,225,318	\$4,311,810		

III. OTHER HIGH-INTEREST LENDERS ARE HARMING SMALL BUSINESSES.

The MCA companies are not the only companies that have provided high-cost financing to my small business clients. Attached is a loan with an APR of 94% that was purportedly made by Celtic Bank but then assigned to Kabbage Inc.²² *But see Madden v. Midland Funding, LLC*, 786 F.3d 246, 251-53 (2d Cir. 2015) (holding assignee not entitled to federal preemption).

On Deck Capital, Inc. has likewise provided high interest rate loans to my clients. On its website, On Deck claims the "weighted average rate for term loans is 25.3% simple interest and 48.7% AIR." <https://www.ondeck.com>. I have seen On Deck interest rates in excess of 84% APR.

Both Kabbage and On Deck have partnered with Celtic Bank to issue these high interest loans. Before it partnered with Celtic Bank, Kabbage provided high-cost funding through MCA agreements.²³ Unlike Kabbage, On Deck appears to issue loans directly when the interest rates do

²¹ See Ex. 20, ¶ 62.

²² See Ex. 21.

²³ See Ex. 22.

not exceed state usury laws, but in states where the interest rates would exceed state usury laws, the loans are issued by Celtic Bank.²⁴

Kabbage has also admitted in numerous publicly available forums that it is a direct lender, and that it assumes the risk of loss.²⁵ To wit, during a joint webinar presented in partnership with the National Federation of Independent Business, Kabbage's Chief Operating Officer admitted the following in response to the question "are you a direct lender?":

The answer is yes. We are not a marketplace lender. We do securitize the receivables that are generated, the loans that are generated, meaning we have investors in those loans that we make, but Kabbage actually takes the risk of loss. All of our loans are made in partnership with Celtic Bank, which is a Utah bank regulated by the FDIC. We work together with Celtic to manage customer relationships from the time they're originated all the way through the repayment of the loan.²⁶

Unsurprisingly, numerous state attorneys general oppose rent-a-bank schemes designed to evade their usury laws. See Letter from Massachusetts Attorney General Maura Healy, dated January 22, 2019 (citing *Pennsylvania v. Think Finance, Inc.*, 2016 WL 183289, at *1, *13 (E.D. Pa. Jan. 14, 2016); *CashCall, Inc. v. Morrissey*, 2014 WL 2404300 (W. Va. May 30, 2014); *Meade v. Marlette Funding LLC*, 2018 Colo. Dist. LEXIS 3856 (D. Col. Aug. 13, 2018)).²⁷

Many of my clients have claimed that the high interest loans from Kabbage and On Deck have led to business failure and/or the need to take out additional financing from MCA companies at even worse interest rates. In other words, my clients view these high-interest loans as a gateway addition to even harsher financing products.

IV. CONFESSIONS OF JUDGMENT AND ENFORCEMENT UNDER NEW YORK LAW.

New York has become a preferred venue for the filing of confessions of judgment because its confession statute is simple to use and its judgment enforcement practices are powerful.

A. New York's confession of judgment statute.

Under New York's confession of judgment statute, a debtor signs a document called an "Affidavit of Confession," wherein the small business and individual owner consent to a judgment being entered against them for a specific amount upon the happening of a breach in the future. See New York Civil Law and Procedure ("CPLR"), § 3218. Without further notice to the debtor, the creditor may file the Affidavit of Confession with a county clerk and the judgment may be entered against the debtor without a hearing or review by a judge.

²⁴ Compare Ex. 23 (lender identified as On Deck) with Ex. 24 (lender identified as Celtic Bank).

²⁵ See Ex. 25.

²⁶ See Ex. 26.

²⁷ Ex. 27.

In the cash advance context, MCA companies frequently require that merchants and their owners execute an affidavit confessing to the entry of a judgment against them upon default in an amount equal to the face value of the allegedly purchased receipts, less any amounts paid under the agreement, plus costs and attorney's fees calculated as percentage of the balance due under the agreement, which generally ranges from 25% to 33%. Thus, an MCA agreement with a balance of \$100,000 can result in a judgment of more than \$133,000 when costs, statutory interest and fees are included.

Upon an event they deem to be a default, an MCA company can file the affidavit together with their own affidavit stating that a default has occurred and a proposed form of judgment that the clerk signs and files without notice to the small business merchant, a hearing or consideration by a judge. The MCA company can thereafter immediately begin to exercise its enforcement rights under New York law.

The entire confession process is seamless and swift. Within hours, MCA companies can file confessions, obtain judgments and, as will be explained below, freeze bank accounts without any prior notice to the small business or its owners. Indeed, in my experience, often the first time a merchant learns that a judgment has been entered against it is when its bank accounts are frozen and it cannot make payroll or pay critical operating expenses such as rent, employee benefits or even taxes. As a result, the MCA company gains incredible leverage over the merchant such that the merchant is forced to capitulate to the MCA company's demands, close its doors or file for bankruptcy just to stave off the aggressive collection tactics employed by certain MCA companies.

Case Example: *Queen Funding, LLC v. Construction Masonry Inc. and Jose Soliz*, N.Y. Index No. 17/811445. On August 3, 2017, Construction Masonry entered into an MCA agreement with Queen Funding. Under the agreement, Queen was supposed to provide \$30,000 in funding, and Construction Masonry was supposed to pay back \$44,970 through fixed daily payments of \$999. Soliz personally guaranteed performance. The agreement was funded on August 9, 2017, but Construction Masonry only received \$25,800.²⁸ On August 14, 2017, after the broker refused to explain the shortfall, Construction Masonry stopped payment. Two days later, Queen filed a judgment by confession. By August 18, 2017, the judgment was entered, and the very same day Queen issued a restraining notice on the merchant's Wells Fargo account opened and maintained in Texas. It then sent in Marshal Barbarovich to levy the account. On August 24, 2017, Wells Fargo issued a check to Vadim Barbarovich for \$56,763.83.²⁹

In short, Queen funded \$25,800 on August 9, 2017, and was repaid \$56,763.83 just fifteen days later. That results in a staggering simple interest rate of 2,920%.

²⁸ See Ex. 28.

²⁹ See Ex. 29.

B. The far reach of New York's judgment enforcement procedures.

Upon obtaining a judgment, an MCA company's collection attorney can immediately issue and serve a restraining notice upon a merchant's bank or any other party believed to be in possession of a merchant's assets. The restraining notices have the force and effect of an injunction issued by a New York court and require the bank or other recipient to immediately restrain the judgment debtors' accounts or risk being held in contempt of court and subject to fines, penalties or even imprisonment. In my experience, through their attorneys, MCA companies readily serve restraining notices upon banks located outside of New York in order to freeze accounts opened and maintained at branches in other states.

New York law does not require that the small business be provided with advance notice of the restraints. Under New York law, the MCA companies can wait up to four days after service to provide the small business debtor with a copy of the restraining notice. *See* CPLR § 5222(d). Thus, by the time a small business receives notices of the restraints, its accounts are typically already frozen.

Perhaps more alarming, upon receipt of a restraining notice, banks not only freeze the business's accounts, but also any account on which the guarantor judgment debtors are signatories and in amounts equal to *twice the amount of the judgment* in order to take advantage of New York's safe harbor provisions in responding to the restraining notice. *See* CPLR § 5222(b). Thus, by merely signing and faxing a restraining notice to a bank's legal department in connection with a \$30,000 confessed judgment, an MCA company's collection attorney can immediately freeze \$60,000 in an account opened and maintained at a Michigan branch of a Texas-based bank with no banking operations in New York.

This practice raises serious due process considerations because, in my opinion, it is a trespass on funds that are not subject to the judgment. *See Siegel v. Northern Boulevard & 80th Street Corp.*, 31 A.D.2d 182, 187, 295 N.Y.S.2d 804, 810-11 (1st Dep't 1968) ("Where the process or attachment is irregular, unauthorized or void, a levy made by the officer renders the party suing out the attachment a trespasser. And where an attachment is for any reason void, the attachment plaintiff will be a trespasser ab initio and liable to the attachment defendant for any damages proximately resulting therefrom.") (citing *Hyde v. Southern Grocery Stores*, 197 S. C. 263 (1941) and *C. J. S. Attachment*, § 504, p. 661)).

In addition, these restraining notices are often served on out-of-state citizens and businesses that are not subject to the personal jurisdiction of a New York court. *See Bristol-Myers Squibb Co. v. Superior Court*, 137 S. Ct. 1773, 1781, 198 L. Ed. 2d 395, 404 (2017) (noting "specific jurisdiction is lacking regardless of the extent of a defendant's unconnected activities in the State.") (citing *Daimler-Chrysler AG v. Bauman*, 571 U.S. 117, 134 S.Ct. 746 (2014) ("[E]ven regularly occurring sales of a product in a State do not justify the exercise of jurisdiction over a claim unrelated to those sales")).

While we believe these restraints also violate New York law, most banks insulate themselves from liability by including provisions in their deposit account agreements permitting the bank to honor any restraining notices or other enforcement devices without regard to whether they are validly issued or properly served. In other words, regardless of whether the restraining

notice is properly issued under New York law, it will be honored by many banks and the onus is placed upon the already financially strapped business to go into New York and challenge the restraints before the money is turned over to the MCA company in satisfaction of the judgment.

Meanwhile, the MCA companies do not even have to go to court to compel a bank to actually turn over the restrained funds. Under New York law, an MCA company's attorneys can issue a property execution or garnishment to a sheriff or New York City marshal. Thereafter, acting as officers of the court, the sheriff or marshal can issue a levy upon the bank. The levy essentially demands that the bank cut a check to the sheriff or marshal in the amount of the judgment plus an additional 5% fee under threat of contempt and the imposition of fines, penalties and even imprisonment if the bank fails to comply. Faced with these threats, it is not surprising that banks comply with these levies without any court intervention.

While New York statutory law imposes territorial limitations and other requirements upon the authority of sheriffs and marshals to levy upon banks, I believe that some MCA companies, collection attorneys and marshals exceed that authority by levying upon banks that have limited or no connection to New York and/or are located beyond the territorial boundaries of the marshal's authority. As a result, without any court intervention, MCA companies are able to initially freeze and then seize bank accounts opened and maintained at bank branches located outside of New York and/or at banks that do not maintain any banking operations in New York and over which the courts of New York have no personal jurisdiction under controlling United States Supreme Court precedent.

In short, in a matter of hours, MCA companies can obtain a confessed judgment against a small business and freeze its bank accounts without any prior notice to the small business or its owner and they can thereafter seize the restrained funds without any court involvement.

Case Example: *Richmond Capital Group, LLC v. The New Y-Capp, Inc.*, N.Y. Index No. 151761/2016. The New Y-Capp provides social services to its local community in Richmond, Virginia. On December 14, 2016, it entered into an MCA agreement with Richmond Capital Group, LLC.³⁰ A confession of judgment was entered just six days after the agreement was signed. Y-Capp's bank accounts were immediately wiped out.³¹

V. CONFESSIONS OF JUDGMENT PROCEDURES IN OTHER STATES.

A. Pennsylvania.

Pennsylvania and certain other states take a slightly different approach to confessed judgments. Instead of requiring the debtor to sign an affidavit confessing to the entry of a judgment, Pennsylvania permits a creditor to do it for the debtor. Under Pennsylvania law, commercial contracts may contain a clause that permits the creditor, or its attorney, to apply to the court for judgment against a debtor in default without requiring or permitting the debtor to respond to contest the judgment at that point in time. The Pennsylvania statute previously worked just like the New York statute, meaning that a judgment creditor could immediately begin enforcement

³⁰ <https://www.bloomberg.com/graphics/2018-confessions-of-judgment-marijuana-smuggler-turns-business-loan-kingpin/>

³¹ See Ex. 30.

action upon entry of the judgment. The Third Circuit, however, held that this prior practice violated the Due Process Clause. See *Jordan v. Fox, Rothschild, O'Brien & Frankel*, 20 F.3d 1250, 1253 (3d Cir. 1994). The statute was subsequently amended to address this holding.

Now, once a judgment is entered, a judgment creditor is required to give a debtor thirty-days notice before it can enforce the judgment. This provides the creditor with the immediate benefit of a judgment lien against real property while affording the debtor an opportunity to contest the judgment prior to execution against a debtor's bank accounts and other personal assets.

However, there are exceptions to this notice rule and even under Pennsylvania law, a judgment creditor can take steps to immediately enforce a judgment without any notice of its entry to the judgment debtor. Thus, even today, a judgment debtor's bank accounts can still be levied prior to the debtor having any notice that a judgment has been entered against it.

Case Example: *Complete Business Solutions Group, Inc. v. HMC, Inc.*, Pa. Comm. Pls., Case ID 190501349. A judgment by confession was entered on May 14, 2019. A writ of execution was issued on May 17, 2019, and served on HMC's bank accounts at Wells Fargo and Bank of America through a Pennsylvania sheriff. Both accounts were frozen before HMC even knew a judgment had been entered against it, even though its bank accounts were opened and maintained in Maryland.³²

B. California.

California takes yet a different approach to confessions. Under California law, a merchant may sign a written statement, verified under oath, confessing to the entry of judgment in a certain amount. To be enforceable, however, it must be accompanied by an independent attorney's declaration stating that the attorney has examined the proposed judgment and has advised the debtor with respect to the waiver of rights and defenses under the confession of judgment procedure and has advised the defendant to utilize the confession of judgment procedure. Upon default, the creditor may file the confession, the declaration and a proposed judgment without notice the debtor. A judge then signs the proposed judgment and a creditor can then immediately begin to exercise its default rights and remedies. The intent of the statute is to protect a debtor's constitutional due process rights under *D.H. Overmyer Co. v. Frick Co.*, 405 U.S. 174 (1972).

VI. CIRCUMVENTING THE LAW OF MASSACHUSETTS AND OTHER STATES THAT BAN CONFESSIONS.

Massachusetts and many other states ban the use of confessions of judgment and void any contractual provisions that permit the entry of confessed judgments. But that does not prevent MCA companies from requiring that Massachusetts businesses and individual owners sign confessions of judgment in order to obtain financing and it does not necessarily prevent MCA companies from enforcing confessed judgments in Massachusetts.

Under the Full Faith and Credit Clause of the United States Constitution, with certain limited exceptions, states must honor money judgments entered in sister states. Thus, an MCA company can attempt to take a confessed judgment, domesticate it in Massachusetts, and enforce

³² See Ex. 31.

it under Massachusetts law even though the strong public policy of Massachusetts would prevent the MCA company from directly obtaining a confessed judgment against the same merchant in Massachusetts.

VII. ABUSES OF CONFESSIONS OF JUDGMENT BY THE MCA INDUSTRY.

The abuses of the confession of judgment statutes are too numerous to discuss in detail. Below are just some of the examples that I have either personally observed or have discovered through my own independent investigation:

- Robo-signing: Filing same generic form of affidavit accusing business and individual owner of being in default because they supposedly “blocked the account” and “stopped remitting payments” despite still being “in receipt accounts-receivable.”³³
- Forging the county in which judgment is authorized by altering the document.³⁴
- Filing a confession of judgment against merchant evacuated due to Hurricane Mathew.³⁵
- Levying out-of-state bank account in Michigan, which had no New York branches and resulted in missing payroll and appointment of receivership.³⁶
- Domesticating a New York confession of judgment to Texas against a California merchant and resident with no ties to Texas whatsoever.³⁷
- Filing confessions of judgment against merchants where confessions of judgment are illegal in their own home state.³⁸
- Filing a confession of judgment against merchant who was on a cruise and was defaulted because one of her customers had bounced a check. The MCA company then levied their account, which contained deposits from customers and was later sued by those customers.³⁹
- Filing confession of judgment against same merchant in two different counties.⁴⁰
- Filing confession of judgment because bank put seven day hold on deposits due to stolen checks.⁴¹

³³ See Ex. 32.

³⁴ Compare Ex. 33 (Kings County listed) with Ex. 34 (Kings County not listed); compare Ex. 36 (Westchester County) with Ex. 37 (Richmond County).

³⁵ See Ex. 35.

³⁶ See Exs. 38-40.

³⁷ See Ex. 41.

³⁸ See Ex. 42.

³⁹ See Ex. 43.

⁴⁰ See Exs. 44 and 45.

⁴¹ See Ex. 13, ¶ 88.

VIII. STATE REFORM OF CONFESSIONS OF JUDGMENT.

On June 20, 2019, the New York Assembly approved a bill that would effectively prohibit the future use of confessions of judgment against businesses and individuals located outside of New York. The bill now awaits Governor Cuomo's signature. While the bill will not impact the more than 32,000 confessed judgments that have already been obtained, it will likely prohibit that number from growing substantially in the near future. However, this does not mean the concern over the use of confessions should be diminished. Other states, such as Pennsylvania, continue to honor them and their use in these states will continue to provide MCA companies with an alternative venue to obtain a judgment against small businesses and begin enforcement.

Further, New York's reform of its confession of judgment statute will do nothing to address other concerns about the MCA industry. This Committee should not lose sight of the need for reform and regulation within the industry. I strongly encourage the Committee to continue to investigate the industry before it overwhelms and destroys small business throughout the United States.

IX. THE NEXT WEAPON OF THE MCA INDUSTRY.

The death of the confession of judgment in New York will not stop the MCA industry from using their next best weapon against small businesses: The Uniform Commercial Code.

In virtually every MCA agreement, a small business has to provide the MCA company with a UCC lien over all of its receivables. As a result, upon any alleged default by the small business owner, the MCA company has a wide range of ways to cripple a business and thereby extort a settlement under duress. Credit card processors and PayPal accounts are usually the first to get hit.⁴² If that does not work, the MCA company can use the merchant's bank statements to identify their customers.⁴³ That, of course, can have a domino effect because not only does it freeze-up desperately needed funds, but more importantly, it also threatens the relationship with the customer.

But perhaps the most egregious example I have seen is where an MCA company sent out UCC notices to the customers of an insurance agent. In doing so, the MCA company represented that it now owned the insurance carrier, and that if the customer did not pay the MCA company directly, their "account will be dropped".⁴⁴

NOTICE OF PURCHASED OF ACCOUNTS RECEIVABLE

*** We now own Your insurance carrier and If you choose to not pay your account will be dropped ***

⁴² See Ex. 46-47.

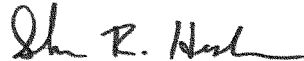
⁴³ See Ex. 48.

⁴⁴ See Ex. 49.

X. CONCLUDING REMARKS.

I would like to once again thank Chairwoman Nydia M. Velázquez and the distinguished Members of the Small Business Committee for the opportunity to appear here today. I hope my testimony has helped shed light on the dangers of confessions of judgment and, more globally, on the need for reform of the MCA industry and other high-interest lenders. As the Committee continues its inquiry, I welcome the opportunity to speak again.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Shane R. Heskin". The signature is fluid and cursive, with the first name "Shane" being more prominent.

Shane R. Heskin

EXHIBIT 1



Shane R. Heskin

Partner

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heskins@whiteandwilliams.com



Shane Heskin has over 15 years of experience litigating nationwide, complex insurance coverage disputes involving a wide-range of issues in California, Delaware, Massachusetts, Missouri, New Jersey, New York, Ohio and Pennsylvania. He brings a passionate belief, a competitive spirit and an inventive approach to resolving challenging coverage issues. His unrelenting efforts have resulted in overturning or developing favorable state appellate precedent on issues such as allocation, owned property, expected or intended, and judicial estoppel. He also has extensive experience fighting forum battles and obtaining dispositive rulings to avoid costly litigation based on choice-of-law.

Shane is a trial lawyer at heart and his diverse trial experience includes both insurance coverage and commercial litigation involving environmental claims and general business disputes. He is also deeply devoted to protecting small business victims against predatory lending practices and has substantial experience litigating usury disputes involving small business loans and Merchant Cash Advances.

Using his experience from litigating dozens of environmental pollution coverage cases involving Superfund Sites, Shane also advises on potential environmental liabilities that might arise from corporate real estate transactions.

Additionally, Shane has written and spoken extensively on allocation issues involving long-term toxic exposures. He authored the chapter on *The Allocation of Long-Term Progressive Injuries in General Liability Insurance Coverage – Key Issues in Every State* (Fourth Edition; Oxford University Press 2018), and the chapter on *Commercial General Liability Policies in the Massachusetts Liability Insurance Manual* (Second Edition; MCLE New England 2011).

During law school, Shane served as an associate editor of the *Albany Law Review*. Prior to joining White and Williams, Shane was Counsel in the New York office of O'Melveny & Myers LLP and an associate in the New York office of Milbank Tweed Hadley & McCoy LLP. In college, Shane was an Academic All-American in football.

Practice Areas

Insurance Coverage and Bad Faith
 Bad Faith and Extra-Contractual Liability

Bar and Court Admissions

Pennsylvania
 Massachusetts
 New York
 U.S. Court of Appeals for the First Circuit
 U.S. Court of Appeals for the Second Circuit
 U.S. Court of Appeals for the Third Circuit
 U.S. Court of Appeals for the Sixth Circuit
 U.S. District Court for the District of Massachusetts
 U.S. District Court for the Eastern District of New York
 U.S. District Court for the Southern District of New York
 U.S. District Court for the Eastern District of Pennsylvania

Education

Albany Law School, JD, *summa cum laude*, 1999
 Mayville State University, BA, *summa cum laude*, 1996



Shane R. Heskin | Continued

Representative Matters

- Obtained summary judgment based on the absolute pollution exclusion and defeated summary judgment on the duty to defend by obtaining New York choice-of-law in the policyholder's home state of Ohio. *GrafTech International Ltd., f.k.a. UCAR International Inc., et al. v. Pacific Employers Insurance Company*, CV-13-818739 (Ohio Ct. Comm. Pl., Cuyahoga County, November 18, 2016); *GrafTech International Ltd., f.k.a. UCAR International Inc., et al. v. Pacific Employers Insurance Company*, CV-13-818739 (Ohio Ct. Comm. Pl., Cuyahoga County, April 7, 2015)
- Obtained summary judgment based on late notice defense in multisite environmental litigation involving more than \$100 million in alleged groundwater cleanup costs. *Travelers Indem. Co. v. Northrop Grumman Corp.*, 3 F.Supp.3d 117 (S.D.N.Y. 2014); *Travelers Indem. Co. v. Northrop Grumman Corp.*, 956 F.Supp.2d 494 (S.D.N.Y. 2013).
- Obtained summary judgment based on choice-of-law and allocation in an asbestos coverage dispute. *Anheuser-Busch v. Ins. Co. of N. Am.*, Case No. 00315 (Pa. Phila. C.P. Comm. Ct. Nov. 1, 2012)
- Obtained a \$2.55 million jury verdict (including punitive damages) in an unfair competition case involving two Philadelphia-based food distributors
- Defended on appeal summary judgment ruling on named insured issue before the United States Court of Appeals for the Sixth Circuit. *Bondex Intern., Inc. v. Hartford Acc. and Indem. Co.*, 667 F.3d 669 (6th Cir. 2011)
- Obtained judgment as a matter of law in environmental pollution case based on allocation, owned property and judicial estoppel. *Boston Gas Co. v. Century Indem. Co.*, 793 F.Supp.2d 511 (D. Mass. 2011), *aff'd*, 708 F.3d 254 (1st Cir. 2013)
- Represented insurance client before the Massachusetts Supreme Judicial Court in reversing prior Appeals Court precedent on allocation of long-term property damage claim and adopting instead, time-on-the-risk, *pro rata* allocation. *Boston Gas Co. v. Century Indem. Co.*, 454 Mass. 337, 910 N.E.2d 290 (Mass. 2009)
- Represented insurance client on appeal to the First Circuit Court of Appeals in reversing jury verdict involving environmental claims on owned property and allocation issues in global coverage action involving contamination at nearly 30 former manufactured gas plant sites. *Boston Gas Co. v. Century Indem. Co.*, 454 Mass. 337, 910 N.E.2d 290 (Mass. 2009)
- Represented insurance client in defending against numerous other underlying environmental and asbestos coverage actions in California Massachusetts, Missouri, New Jersey, New York, Ohio and Pennsylvania
- Directly defended against dozens of underlying asbestos claims involving pipefitting and boilermaker companies

Cases & Deals

NY Federal Court Reaffirms White and Williams Win in Former Gas Plant Pollution Coverage Dispute,
May 17, 2018

White and Williams Secures Summary Judgment in Dispute Over Coverage for Breach of Contract Claims
May 3, 2018

White and Williams Secures Decision on Application of Pollution Exclusion in Ohio Court of Appeals
December 28, 2017



Shane R. Heskin | Continued

Coverage Team Obtains Summary Judgment Based on Employer's Liability Exclusion
June 13, 2017

Coverage Team Secures Significant Choice-of-Law Victory in Ohio State Court
April 14, 2015

White and Williams Coverage Team Records Another Win in Long-Running Environmental Coverage Dispute
January 18, 2013

Commercial Litigation Lawyers Secure \$2.55 Million for Local Stromboli Manufacturer
October 5, 2011

EXHIBIT 2



Our Firm



Founded in 1899, White and Williams LLP is a global-reaching, multi-practice law firm with over 240 lawyers in ten offices. We represent public and private companies in an array of industries, including education, energy and utilities, financial services, food and beverage, healthcare, insurance, life sciences, manufacturing, private equity/venture capital, real estate, staffing and business services, and technology.

White and Williams has a history of excellent client service and success in the courtroom as well as in arbitration. Our lawyers have earned national recognition for their trial prowess, representing clients in high-stakes, complex litigation in both federal and state courts. Our litigators handle shareholder and partnership disputes, professional liability matters, healthcare litigation, class actions, intellectual property disputes, insurance subrogation matters, insurance coverage and reinsurance disputes, and product liability and toxic tort litigation. Our lawyers also have extensive experience arbitrating international and domestic commercial disputes as well as insurance and reinsurance matters.

White and Williams business lawyers represent foreign and domestic companies at all stages of development from start-ups to large multi-national public and private companies as well as private equity, venture capital and angel investors. Our lawyers are well versed in aspects of transactional work as well as the ongoing day to day legal needs of our clients, often serving as general outside counsel on regulatory and compliance issues, labor and employment and employee compensation issues, entity formation, licensing and other intellectual property matters, cybersecurity and data privacy, commercial contracts, corporate governance, real estate and real estate finance matters. We handle sophisticated public and private mergers, acquisitions, divestitures, joint ventures, strategic alliances, public and private debt and equity financings, and bankruptcy and restructuring matters.

White and Williams is a "right-size" firm offering clients the resources of a large firm with the flexibility of a smaller firm. The firm has established relationships with a global network of law firms, enhancing our ability to serve clients.

Firm Highlights

- White and Williams is the law firm clients choose for an unmatched business relationship
- We are committed to our clients' interests and strive to understand each client's unique challenges and how best to address them
- We strive for excellence by delivering the highest quality work in a cost-effective manner, thus adding value to every client relationship
- We remain dedicated to the legal profession, the communities in which we work and live, and the clients we serve



Our Firm | Continued

Throughout its long history, White and Williams has developed progressive initiatives including diversity, community service and pro bono programs and our highly-regarded Women's Initiative. White and Williams is proud to be among the firms in the country to elect a female managing partner.

EXHIBIT 3

Sign Here to Lose Everything	Part 1: "I Hereby Confess Judgment"	Part 2: The \$1.7 Million Man	Part 3: Rubber-Stamp Justice	Part 4: Business-Loan Kingpin	Part 5: A Visit from Gino
<div> Bloomberg the Company & Its Products Bloomberg Anywhere Remote Login Bloomberg Terminal Demo Request </div> <div> Menu Search Bloomberg Welcome, welles </div>					

Sign Here to Lose Everything

Part 3

Rubber-Stamp Justice

Predatory lenders have co-opted New York's court system to put the screws to borrowers nationwide.

Story by [Zachary R. Mider](#) and [Zeke Faux](#)
 Data analysis by [David Ingold](#) and [Demetrios Pogkas](#)
 November 29, 2018

Before the predatory lenders descended, days would come and go with no new court cases filed at the county office building in sleepy Canandaigua, New York, population 10,289.

Ontario County Clerk Matthew Hoose and his staff had plenty of other things to do, processing gun permits and drivers' licenses for people who live among the vineyards and dairy farms on the northern end of the Finger Lakes region. A former corrections officer and tae kwon do instructor, he holds the same post his grandfather once did.

Then around eight months ago, Hoose noticed he was getting busier. A half-dozen new court cases a day were coming in from out-of-town

[Sign Here to Lose Everything](#) [Part 1: How a Lawyer's File Became a Confession of Judgment](#) [Part 2: The \\$10 Million Man](#) [Part 3: The Stamp Justice](#) [Part 4: How a Business Like a Loan Kingpin](#) [Part 5: A Visit from Gino](#)



▲ Canandaigua, New York, in Ontario County PHOTOGRAPHER PHILIP SCALIA/LAMY

The new cases had no connection to Ontario County. In each, a small-business operator—a plumber in Arkansas, a shopkeeper in California—had borrowed money at a steep interest rate, and now the lender was asking for the court's help, saying the company wasn't paying.

Something else was strange: Each one included a document called a confession of judgment, saying the borrower had agreed in advance to lose any court dispute about the transaction. The confessions were signed weeks or months before any case existed and before any payments would have been made or missed.

The confessions meant the paperwork went straight to Hoose for his signature, bypassing a judge. No proof of missed payments was required, and the borrower wasn't even notified. Hoose or a deputy simply signed a piece of paper to make the judgment final and collected a \$225 fee. He says he eventually learned that lenders use Ontario because he often approves cases the same day he gets them.

"They say we're very quick," Hoose says. "Word just gets around."

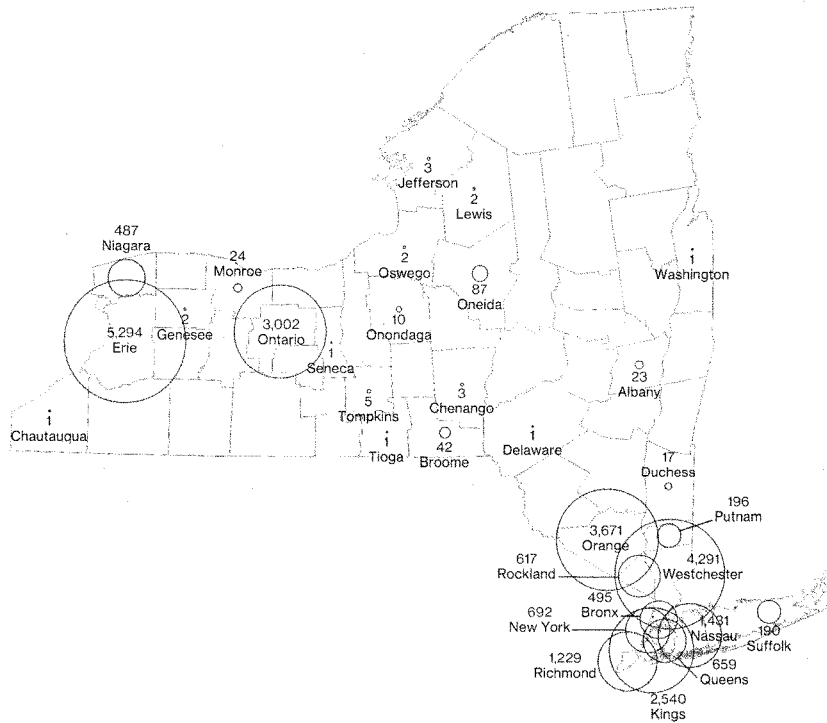
Sign Here to Lose Everything

House at the mercy of the courts in upstate New York counties. Business-Confessions Million Man Stamp Justice Loan Kingpin

Their sign-offs—with electronic signatures or old-fashioned rubber stamps—give loan companies the legal authority to raid borrowers' bank accounts and seize other assets, bypassing the fuss and expense of a trial. Borrowers say lenders often abuse this power, inflating balances or grabbing money when it's not justified. But as long as the paperwork is in order, the clerk is required by law to approve the case, before a borrower has a chance to object.

Where the Action Is

Number of judgments by confession for cash-advance companies approved in New York counties



Note: Numbers are totals from the beginning of 2012 through Nov. 14, 2018
Sources: Bloomberg News analysis of New York State Unified Court System documents; New York State GIS Clearinghouse

Sign Here to Lose Everything **Their Confessions** **Part 1: The Rise of Confessions** **Part 2: The Merchant Cash Advance Industry** **Part 3: Why Small Businesses Get Caught** **Part 4: Why Small Businesses Get Caught** **Part 5: A Visit from Gino**

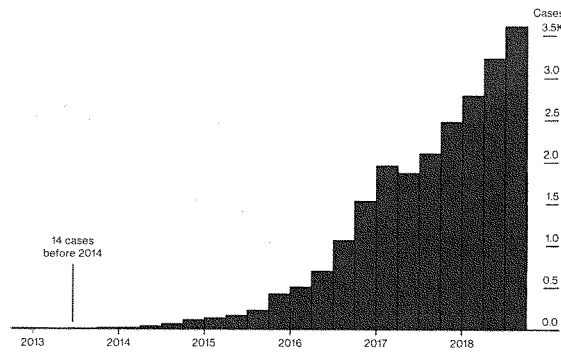
big after the U.S. financial crisis a decade ago. It's driven by telephone salesmen who offer small businesses fast money at costs that can exceed an annualized interest rate of 400 percent. They get around usury laws by saying they aren't making loans but advancing cash in exchange for a share of future revenue. Over the past few years, lenders have begun requiring borrowers to sign such confessions as part of the application.

To shed light on this emerging practice, Bloomberg News obtained and analyzed New York State court cases filed by more than 350 cash-advance companies since the industry began using confessions around 2012. It found more than 25,000 such cases entered in courts around the state, most of them in the past two years, involving lenders and borrowers from all over the country. The judgments are worth an estimated \$1.5 billion.

The data show a sharp increase in filings each year, as more lenders adopted the use of confessions and the industry expanded. By September, clerks were entering more than 1,200 judgments a month. Ontario is the most popular county this year, overtaking Erie, the home of Buffalo, which was tops in 2017. In October, Ontario received 455 cash-advance filings, more than four-fifths of the county's total civil caseload.

A Confessions Boom

Judgments by confession in favor of merchant cash-advance companies in New York state



Note: Totals by quarter
Source: Bloomberg News analysis of New York State Unified Court System documents

The lenders choose New York courts because state law is especially friendly to confessions of judgment. Responding to a surge in their use in consumer lending after World War II, many states restricted them, citing

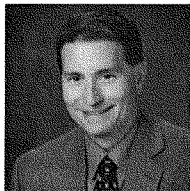
Sign Here to Lose Everything **Small-Business Borrowers** **Porter: The New** **Million Man** **Confessions** **The Federal Trade Commission banned them nationwide for consumer** **loans in 1985.** **Part 5: A Visit from Gino**

Skepticism about these instruments goes back much further. "The field for fraud is too far enlarged by such an instrument," a Missouri judge wrote in 1909. "Oppression and tyranny would follow."

Other states that still allow confessions for business loans impose safeguards. In California, a borrower can't sign one without a lawyer's written recommendation. In Pennsylvania, a lender must give notice to the borrower and wait 30 days before acting on the judgment. But no matter where they're located or who they're giving money to, cash-advance companies can avoid such restrictions by filing their cases in New York.

Norman Valz, a Philadelphia cash-advance lawyer, says he used to file judgments in Pennsylvania but came to regret it. While he waited for the 30-day period to lapse, his borrowers would often have their assets seized by another lender using quicker New York courts. "New York," he says, "is the place to do it."

The obvious venue is the New York County clerk's office in Manhattan, less than a mile from the financial district where many cash-advance lawyers work. But they rarely use that office. It's jammed with cases and takes a couple of weeks to process a judgment. Upstate clerks who have lighter caseloads are speedier. The typical wait in Erie and Ontario is one day.



▲ Ontario County Clerk Matthew Hoose.
SOURCE: FACEBOOK

Hoose, the Ontario clerk, says most of the \$225 fee is passed along to the state court system. The \$41 his county keeps isn't enough to cover labor costs, he says. But since state law allows creditors to file against out-of-state debtors anywhere they want, Hoose has been processing them all, figuring there was nothing he could do to stop it.

That's about to change soon. Hoose says he plans to start rejecting cases from outside the county. "I believe we have the grounds," he says. "Stay tuned."

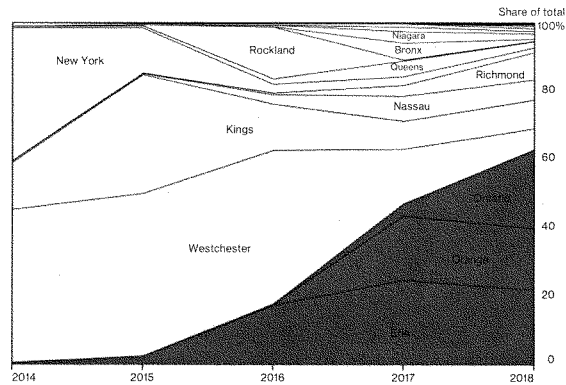
For Paul Piperato, the clerk in Rockland County, 20 miles north of New York City, the breaking point came around the end of 2016. "We were getting inundated," Piperato says. "So I went to my staff, I said, let's reject it. They don't have any ownership in Rockland, no local address. I'm rejecting it." Piperato says the lawyers got the message. The volume of cases tailed off, from 575 in 2016 to just 22 the next year.

How we crunched the numbers
When we heard that predatory lenders were using confessions of judgment to collect debts against small businesses, and that nearly all the legal action was happening in New York State, we set out to quantify the phenomenon.
Most New York trial-court records are publicly available online, but we hit a roadblock right away. The state court website doesn't allow searches based on whether a case involves a confession of judgment. And court officials declined to make the state's database available.
[Read more.](#)

Sign Here to Lose Everything If a merchant confesses judgment in the county, the top choice of cash-advance companies in 2015 and 2016. Then, Judge David Everett tossed out three judgments there, concluding that the deals were loans after all. In a December 2016 case involving a Tennessee pharmacy, he ruled, "The fact that the loan agreement is denominated by another name does not shield it from a judicial determination that such agreement contemplates a criminally usurious transaction."

Changing Places

Erie, Orange and Ontario have become the most popular New York counties for issuing judgments by confession in favor of merchant-cash advance companies.



Note: 2018 data through Nov. 14.
Source: Bloomberg News analysis of New York State Unified Court System documents

Filings in the county dropped, with the volume diverted to other upstate locales. To the industry's relief, dozens of subsequent rulings in Westchester and elsewhere went the lenders' way. These judges accepted their long-standing contention that the transactions aren't really loans and are therefore exempt from usury laws. This year, a state appeals court upheld that view.

No county has awarded more judgments over the past six years than Erie, where Michael Kearns, a former state assemblyman, became clerk last year. He's gathered data about cash-advance judgments and says he plans to discuss the matter with state lawmakers and fellow county clerks.

"The more I learn about these, it does make me feel uneasy," Kearns says. "Someone at least should make the legislators aware of this practice."

Sign Here to Lose Everything **Borrowers hardly even challenge judgments against them. For many, that's because the debts are legitimate. Others can't afford a lawyer because their money had been seized.**

Those who persevere get a swift lesson in geography. "It is odd that the attorney went to Ontario to file the claim when he is located in New York City," wrote Vyacheslav Borisov, a Los Angeles builder who represented himself in a bid in May to vacate one of Hoose's judgments. Borisov went bankrupt before he could get a hearing in Canandaigua.

Because the industry lends to small businesses, not individuals, consumer laws and protections generally don't apply, and the Consumer Financial Protection Bureau has never asserted jurisdiction. Just as they avoid usury rules, companies sidestep almost all state licensing requirements by saying their products aren't loans. California regulates some cash-advance companies, but many operate there without a license.

Last year, cash-advance executives feared New York was trying to regulate the industry. New York Governor Andrew Cuomo included language in his budget proposal that they believed would open the door to oversight by the state's Department of Financial Services. The industry sent a delegation to Albany to register its concern. The language didn't survive in the budget adopted by the legislature. Cuomo, whose office declined to comment, didn't float the idea again this year.

This is the third in a series of articles about the merchant cash-advance industry. Read more about how local, state and federal officials are trying to crack down on it as a result of the Bloomberg News investigation.

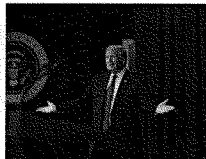
Design and development: Demetrios Pogkas and Christopher Cannon. With assistance from Dean Halford and Mira Rojanasakul.

Edited by Robert Friedman and John Yoskuhl.

Notes: Details of more than 30,000 civil court cases associated with cash-advance companies since 2012 were analyzed to identify those in which the plaintiff filed a confession of judgment and the court entered a judgment in the plaintiff's favor. The dollar value of about one-third of the judgments was available in the state court database. Bloomberg estimated the value of the remainder based on those values and a random sample of more than 1,200 cases where the amount in court filings hadn't been entered in the electronic database.

Yes, you read that right.

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China Sets the Pace in Race to Build the Factory of the Future

[The Sign That Exposed What Little U.S. Tech China Still Needs](#)
[Part 1: The U.S. Economy Is Breaking](#)
[Part 2: Rubber-Stamp Justice](#)
[Part 3: Business Loan Kingpin](#)
[Part 4: The U.S. Government Is On the Edge](#)

[The Ups and Downs of the Pound Show May's Turbulent Leadership](#)
[Colorado's Ski Towns Could Fix the High Cost of American Health Care](#)
[Who's Winning the Tech Cold War? A China vs. U.S. Scoreboard](#)

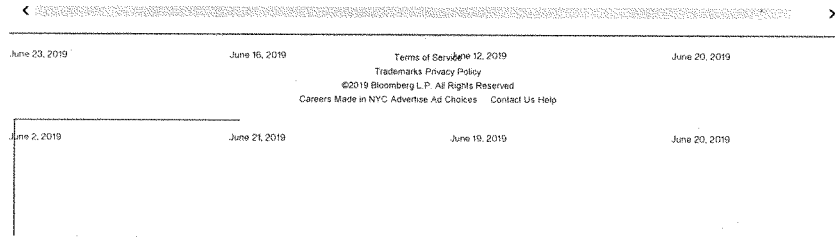


EXHIBIT 4

Politics

New York Moves to Ban Confessions of Judgment for Out-of-State Loans

By [Zachary Mider](#) and [Zeke Faux](#)

June 21, 2019 8:39 AM

- Measure aimed at abusive collections by cash-advance firms
- Lawmaker plans hearings on city marshals' role in industry

LISTEN TO ARTICLE

2:39

New York lawmakers took steps to prevent predatory lenders from using the state's court system to seize the assets of small businesses nationwide.

The state Assembly approved a bill late Thursday prohibiting the use of confessions of judgment against individuals and businesses located outside of the state. The Senate passed the measure earlier this week.

The bill was drafted in response to Bloomberg News articles last year about abuses of these legal instruments by unregulated companies offering a form of financing called a merchant cash advance. In the past few years, lenders have used such confessions to win more than 32,000 judgments in state courts, mostly against small businesses outside of the state.

"It's a win for small businesses across the country who have been exploited by the merchant cash-advance industry," said Brad Hoylman, who heads the Senate Judiciary Committee.

The measure heads to Governor Andrew Cuomo's desk for his signature. The governor has signaled his support for changes to the law governing confessions.

Cash-advance firms offer small businesses such as auto shops and insurance agencies unregulated, short-term loans that can cost the equivalent of 400% or more in annualized interest. Some firms require borrowers to sign a confession of judgment just to get the money.

By signing, borrowers waive their legal rights and agree in advance to lose any dispute that might arise. If the lender declares a default, a county clerk in New York simply rubber-stamps the judgment without notice or a hearing. Often, borrowers find out about a judgment only after the lender begins to seize their bank accounts or other assets.

Current law gives New York residents some protection, requiring confessions of judgment to be filed against them in their home counties, where it may be easier to mount a legal defense. Debtors in other states targeted by a New York judgment didn't have that protection.

Among the lenders' most powerful weapons are the New York City marshals -- government officials, appointed by the mayor, who serve as private debt collectors and pocket a percentage of the money they seize. Bloomberg News reported that the cash-advance industry's favorite marshal, Vadim Barbarovich, earned more than \$1 million in both 2017 and 2018, much of it by seizing cash from the bank accounts of cash-advance borrowers across the country.

Hoylman said that arrangement is up for review. Marshals' authority to enforce state court judgments was due to expire at the end of June. But rather than extend the law for another five years, as lawmakers have in the past, they opted this month to extend it only through June 2020.

In the meantime, Hoylman said he plans to hold hearings on the marshals' activities. "No public official should have a financial incentive, as these marshals do, to facilitate predatory lending," he said.

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EXHIBIT 5



0

(/blog/bookmarks)

NEWS

Small Businesses Deserve the Same Legal Protections as Consumers When Seeking a Loan




LAST UPDATED: MARCH 20, 2017

(https://www.fundera.com/blog/author/braydenmccarthy)

Brayden McCarthy (https://www.fundera.com/blog/author/braydenmccarthy)



 *Small business owners are more like consumers than big businesses, yet we expect small business owners to have the savvy of Wal-Mart or Microsoft, rather than of your friend or next-door neighbor. That's especially problematic since applying for a small business loan can be complicated and opaque, and regulation protects consumers in lending transactions much more than businesses.*

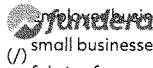
Politicians usually manage to get at least one thing right—small businesses really are the backbone of American society. The people agree—a recent study (<http://www.people-press.org/files/legacy-pdf/606.pdf>) found that Americans have a more positive view of small business than they do of churches and universities. From the corner store that sells your favorite meatball sub to the drycleaner that gets red wine out of white silk, or from your family attorney to your dentist, all of us rely on small businesses, often without fully realizing the depth of this reliance.

Most Small Businesses Are Small, Individual or Family-Driven Enterprises

A small business is usually defined as a business with fewer than five hundred employees, according to the U.S. Census Bureau, the Bureau of Labor Statistics, the Federal Reserve, and the Small Business Administration. By that definition, there are 28 million small businesses in America, 23 million of which are one-person shops (think your CPA or your plumber).

It's first important to understand that not all small businesses are created equal (http://www.hbs.edu/faculty/Publication%20Files/15-004_09b1bf8b-eb2a-4e63-9c4e-0374f770856f.pdf). The vast majority of America's small businesses—about 23 million—are sole proprietorships, employing just one person and reflecting an array of professions from consultants and IT specialists to painters and roofers. Recent research shows that sole proprietorships are achieving record profit margins—and the number of these businesses will continue to grow as technology allows more geographic flexibility and baby boomers look to open their own firms.

Analysis of Census Bureau data shows that there are about 5.7 million employer establishments with fewer than 500 employees (hence why the total number of small businesses adds up to 28 million!). The vast majority of these establishments are modest in size, with more than one-half of them employing fewer than 5 employees and nearly an additional one-third employing between 5 and 19 employees. In fact, of the 5.7 million active


 small businesses, it is estimated that about 5 million are "Main Street" or "mom and pop" small businesses. These are the dry cleaners, mechanics and medical clinics that form the fabric of our communities. Many of these businesses exist largely to support a family and are not principally focused on expansion. While these businesses have high churn rates—opening and closing frequently—and contribute less to net job creation than high growth businesses, they are critical to America's middle class.

This distinction is critical because each of these types approaches their business in different ways, and each of the businesses has varying degrees of experience with financial loan products. But, one thing is certain: small business owners, particularly sole proprietors and main street 'mom and pop' businesses, often know just as much about the loan process as everyday consumers. In fact, while there's no question that these business owners are knowledgeable in a particular industry (think dentists or grocers), they often have little or no background in management, accounting, or finance. Still, our lending, tax, and regulatory systems expect a certain level of expertise in these fields and as such, navigating this part of owning a business is extremely difficult for many small business owners.

No budding entrepreneur starts a business because she relishes the prospect of traveling from bank to bank, applying for credit; nevertheless, this is the first step for many small business owners. Unsurprisingly, some small business owners, such as those in high-growth industries like technology or those with advanced business degrees, are prepared for the credit application process, but the vast majority of small business owners are simply people who had good ideas or were trying to fill market gaps in their communities. Too often, their courageous decision to make a move is often rewarded with entry into a market for loans that provides no safeguards for borrowers.

Small Business Owners Fall Into a Regulatory Gap

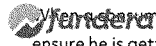
Many aspects of financial regulation, though, rest on the assumption that consumers require more protection than businesses. Private and public law generally treat consumers and businesses differently, often for good reason. Consumers are protected—including with measures like interest rate caps and standardized term disclosure as well as with rules that often require lenders and/or brokers to be state-licensed representatives, for example, increasingly in the mortgage lending space—largely because of concerns about fairness, but these concerns dissipate somewhat for transactions between corporations. We do not expect an individual to have the same expertise or savvy that a large bank has in lending transactions; thus, the government regulates transactions between these consumers and

 of these that no financial institution can take advantage of an information asymmetry. Big businesses, on the other hand, are advised by armies of lawyers and can afford to hire employees whose entire focus is the company's financial state. Barney Frank, one of the sponsors of the Dodd-Frank Act and a champion of consumer financial protection, has even stated (<http://debanked.com/2014/07/what-would-barney-frank-say/>) that businesses do not need the protections that consumers receive.

This all makes perfect sense—until you consider the unique plight of the small business owner. An individual who takes out a loan for a house or a car receives the benefits of numerous consumer protection regulations; if that same person wants to take out a loan for her business, she loses that protection without suddenly gaining insight into business lending. In the small business context, the assumed distinction between business savvy and consumer awareness is unfounded and often inaccurate. The dichotomy, which rests on the assumption that businesses are sophisticated and consumers are not, falls apart because small business owners are treated like businesses but have the expertise of consumers. Even though small businesses are afforded little protection, as Professor Larry Gavin at Ohio State University has argued (https://papers.ssrn.com/sol3/papers.cfm?abstract_id=586901), "in many ways, small businesses most resemble consumers and non-merchants in their abilities to deal with risk, whether financially or cognitively, to secure and process information, and to fend for themselves in the market."

Additionally, many small business owners use personal funds to guarantee business loans; all of a sudden, their entire livelihoods are on the line. Many small business loans (<https://www.fundera.com/business-loans>), including those offered by SBA banks, are guaranteed by personal assets; if a small business loan goes into default, the lender has recourse to the small business owner's personal assets. The result is if the business fails, the borrower not only loses her job and her business, but her personal assets may also be at risk, including property and savings. In turn, this could affect her ability to make rent or mortgage payments, car payments, and student loan payments; it also can have serious repercussions on her ability to pay for everyday items for herself and her family.

To be sure, personal guarantees are an important method of ensuring that small business owners do not take unnecessary or frivolous risks, and they help lenders offer lower rates while tolerating higher risk. However, when personal guarantees are made in a world in which the lender can easily take advantage of a borrower because there is no regulation, this can lead to an unfair environment and perverse incentives.

 When a consumer uses his life savings to buy a house, he knows that there are laws in place to ensure he is getting a fair deal. On the other hand, if he uses his life savings to take out a loan to start a small business—perhaps a hardware store in a small town that has none—there is nothing ensuring that he will get a fair deal.

Consumers Shouldn't Lose Protection Simply for Opening a Small Business

In reality, *consumers* are the same people who own dry cleaners, nail salons, hardware stores, grocery shops, and bookstores; they do not suddenly learn how to spot and avoid shady lending practices when they apply for a business loan (<http://fundera.com/business-loans>). They often lack the ability to hire a team of lawyers, or in most cases, even one person whose job is to focus on the company's finances.

Because small business loans often have serious repercussions for the consumer behind them, perhaps they should be seen as consumer financial products themselves. At the very least, strong legal protections for borrowers should not remain tied to a false dichotomy between consumers and businesses. Small business loans are not unlike consumer loans, because in both cases, the borrower is likely to have less information about the financial product and less time to learn every small detail. Certainly there are exceptions—a small business owner may have studied finance in college, for example. However, so have many consumers, and they do not lose protection.

The current state of financial regulation makes it very difficult to extend consumer financial protection to small business owners, but that can be changed. As small business lenders (<https://www.fundera.com/resources/small-business-lenders>) expand into the wild, Wild West that is online lending, regulation only becomes more sparse, and borrowers even less protected.

Ariel Dobkin was co-contributor for this post while Policy Fellow at Fundera until May 2015. She currently studies at Yale Law School, and was previously a Financial Analyst in the Office of the Director at the Consumer Financial Protection Bureau.

EXHIBIT 6

Investment Recovery Group LLC	William Foster Glidewell Jr	Alabama	\$37,500.00	3/1/2017
The Countersteer Group Inc DBA Supercuts	Jeffrey Tearl Howard	Alabama	\$49,200.00	6/28/2017
Miko Mechanical LLC	Michael Joe Ervin	Arizona	\$590,750.00	11/20/2015
Cloud 9 Fine Art Gallery and Custom Framing	Alison Elizabeth Keyes	Arizona	\$13,750.00	6/27/2016
Norm Ulmer Finish Carpentry LLC	Norman Howard Ulmer III	Arizona	\$7,740.00	7/22/2016
Fast Track Distributing LLC DBA Blackworks Racing	Tanner Garrett Gould	Arizona	\$31,000.00	11/17/2016
Southwest Designs Inc	Hasan M Aysheh	Arizona	\$32,500.00	4/1/2016
SP Jedi Inc	Jed R Elliot	Arizona	\$12,300.00	3/6/2017
RB Club Holdings LLC DBA Paris Nightclub of Scottsdale	Brent John Cornelius	Arizona	\$95,250.00	3/7/2017
JT Bistro LLC DBA JT's Bistro	Ernest Nyarko	Arizona	\$25,400.00	5/3/2017
US Fries Tucson LP DBA US Fries, US Fries GP Corp, US Fries Delaware Corp and US Fries Inv USA Corp	Thomas E Jones	Arizona	\$56,250.00	7/13/2017
IHCP Staffing LLC DBA Interim Homecare of Phoenix and Health Care@Home LLC	Mark Forrest Cohn	Arizona	\$12,400.00	6/8/2017
US LLC DBA Couture Boutique	Lauren Jo Bracken	Arkansas	\$7,320.00	11/14/2016
Balk Knob Convenience LLC, Bald Knob Gas N Go LLC and Yas LLC	Mohammad S Mukhi	Arkansas	\$62,000.00	4/5/2017
Harkrishan Inc.	Inderjeet Grewal	California	\$38,400.00	1/7/2016
Del Indio Distributors Inc.	Maja Ires Gonzales	California	\$99,000.00	3/2/2016
Khalid Chaoui d/b/a Casablanca Reality Group	Khalid Chaoui	California	\$7,800.00	6/26/2016
Ssinfotek Inc.	Prabhakara R. Pelluru	California	\$202,500.00	2/4/2016
Live Oak Market and Liquor	Rupinder S Dhindsa	California	\$57,040.00	4/18/2016
MDK Management Solutions LLC	David Allen Kratz	California	\$30,500.00	5/2/2016
Simjay Solution Inc	Ashok Kakwani	California	\$23,800.00	2/24/2016
California Branden and Co LLC	Ramii Abalkhad	California	\$61,000.00	4/21/2016
Mercer Street LLC DBA Mercer Street Salon	Peter John Jordan	California	\$145,200.00	2/1/2016
One Stop Solutions Inc	Carlota Moreno	California	\$18,765.00	2/23/2016
Rahim A Rashid DBA R&R Motors	Roy Vagh	California	\$260,000.00	11/8/2016
Tripat Trans Inc	Inderjit Singh Ocean	California	\$7,380.00	10/6/2016
Diamond Trading Company of Main Place Romanos Jewelers	Melina Abalkhad	California	\$61,000.00	2/29/2016
Jjang Inc DBA Pho Hana Restaurant	Jin Sool Chang	California	\$93,750.00	2/8/2016
3HBeautysite.Net Inc	Charles Xavier Cook	California	\$87,500.00	7/19/2016
Glass Concepts Inc	Robert Garcia	California	\$19,200.00	11/16/2016

Jeffrey Family Enterprise Inc DBA Albert E Jeffrey Tax	Ronald Salvador Jeffrey	California	\$10,080.00	12/20/2016
Bedder Corp DBA Bedder Mattress	Hector Dominguez Hernandez	California	\$37,800.00	11/10/2016
Biancaml Inc	Cesar Lopez Jr	California	\$18,600.00	10/20/2016
Raj Trucking Inc	Sucha Singh Chauhan	California	\$42,700.00	12/16/2016
I & S Retail	Ilan Studinovski	California	\$61,000.00	9/13/2016
CW3PR	Charles Cullen Walters	California	\$248,000.00	10/8/2016
The Sartorial House	Pearleen Kaur	California	\$37,500.00	11/22/2016
I & S Retail	Ilan Studinovski	California	\$12,000.00	11/18/2016
Virginia Yesenia Acuna DBA Multi Service	Virginia Yesenia Acuna	California	\$7,800.00	11/30/2016
Kwik Kopy Printing DBA Kwik Kopy Business Center 146	Ha Thimay Tran	California	\$24,600.00	12/16/2016
Shaun J Carpenter and Security Solutions Team Inc	Shaun J Carpenter	California	\$62,500.00	10/5/2016
Lots of Stuff LLC	Stephen Marvin Carothers	California	\$28,520.00	3/22/2017
California Branden and Co LLC	Melina N Abalkhad	California	\$61,000.00	4/21/2016
West India Company LLC DBA Bombay To Goa, Rapid Eagle Inc DBA VOIP Essential Inc	Tushar Ram Kothalkar, Naresh Kumar and Sameerkumar Amrut Patil	California	\$38,400.00	7/26/2016
M&A Import Inc DBA All Round	Dong Boo Han	California	\$366,000.00	3/7/2017
Fresh Brands LLC, Gateway Fresh LLC, Glendora Fresh Enterprises Inc DBA Baja Fresh and West Lake Village Fresh Enterprises Inc DBA Baja Fresh	Malik Muhammad Asif and Zobia Asif	California	\$352,000.00	3/10/2017
Absolute Telugu Cuisine DBA Kitchen of Kuchipudi, Satkaara LLC DBA Wisgenx	Nataraj Adike	California	\$268,000.00	4/12/2016
Satkaara LLC DBA Wisgenx, Absolute Telugu Cuisine LLC, Vdesi Productions LLC DBA Absolute Telugu Cinemas, Mallana Food and Hospitality	Nataraj Adike	California	\$301,920.00	3/10/2017
Mallana Food and Hospitality, Vdesi Productions LLC DBA Absolute Telgu Cinemas, Absolute Telugu Cuisine LLC and Satkaara LLC DBA Wisgenx	Nataraj Adike	California	\$31,250.00	3/31/2017
Integration Solutions LLC	Vivek Ganta	California	\$268,000.00	4/12/2016
Colourarte LLC DBA Colourarte and Leslie Blackburn Ohnstad DBA Paints and Pigments	Leslie Blackburn Ohnstad	California	\$43,750.00	4/20/2017
Fresh Brands LLC	Malik Muhammad Asif	California	\$352,000.00	3/10/2017
Lots of Stuff LLC	Stephen Marvin Carothers	California	\$28,520.00	3/22/2017
Pearl Transmedia LLC	Eric Bruce White	California	\$19,200.00	1/26/2017

Rennickbarrett Recruiting Inc	Vinette Marie Morris	California	\$30,750.00	4/6/2017
The Fort Fresno LLC and Craft Beer Wine Bistro LLC	Rajbir Singh Sandhu	California	\$43,400.00	11/15/2016
Sushi On A Roll Inc and Soar93 LLC	Jeffrey Rivera Roberto	California	\$48,800.00	7/14/2017
Comprehensive Certified Home Health Services of CA LLC, Comprehensive Kids Development School, Comprehensive Management MSO Inc, Comprehensive Staffing Solutions LLC	Nosson R Sklar	California	\$110,500.00	12/10/2015
Jaushpreet Restaurant Inc DBA Tandoor Cuisine of India, Harman Corp DBA Amaya Restaurant & Bar Lounge DBA Taal Cultural Cuisine of India	Balbir Singh	California	\$173,600.00	3/2/2016
Fit Club Studios LLC	Corey Michael Lapere	California	\$12,300.00	8/2/2017
Nitai Partners Inc	Aditya Avinash Satsangi	California	\$32,500.00	8/3/2017
Bold Space Design LLC	Paul M. Polk	Chicago	\$49,200.00	12/15/2015
Mountain Trail Home Sales LLC	Nancy Lackey	Colorado	\$25,000.00	1/6/2016
TGO Investment Inc DBA Colorado Concrete Solutions	Jason Allison Marion	Colorado	\$25,200.00	2/23/2017
Automated Media LLC	Shawn Erik Jensen	Colorado	\$31,000.00	4/19/2017
A Cooks Life For Me LLC DBA Bistro At Stapleton	Anthony Frank Ramos	Colorado	\$73,200.00	3/16/2017
BLAS LLC DBA Farmer Girl	Timothy Kevin Payne	Colorado	\$31,250.00	7/28/2017
Wean LLC DBA Aloha Hawaiian Barbecue	Stralfwean Aningal Nunez	Colorado	\$24,600.00	5/4/2017
Crazy Mountain Brewing Company LLC	Kevin Thomas Selvy	Colorado	\$223,850.00	6/22/2017
Crazy Mountain Brewing Company LLC	Kevin Thomas Selvy	Colorado	\$60,500.00	9/19/2017
Kushmaahi Wine and Spirits LLC	Sonali Sandip Patel and Sandip A. Patel	Connecticut	\$168,750.00	2/27/2015
Polly and Joans Cordial Co LLC	Therese H. Clarke	Connecticut	\$31,000.00	1/7/2016
Benoitville LLC	Julian Benoit	Connecticut	\$18,750.00	6/21/2016
Waterbridges LLC DBA Bridges	Joe C Casimiro	Connecticut	\$50,400.00	11/28/2016
North Elm Pizza LLC	Peter Pavlidis	Connecticut	\$18,600.00	8/8/2017
Martech Communications LLC	Donny Eric Marino	Delaware	\$35,280.00	4/19/2016
Pinnacle Professional Cleaning Service LLC	Joseph Thomas Johnson Jr	Delaware	\$9,840.00	6/16/2017
Micherie LLC DBA Cheerz Sports Grill	Deanna Cherie Watson	District of Columbia	\$10,160.00	1/27/2016
Tennis Resorts LLC	Peter C Hendrick	Florida	\$37,500.00	3/18/2016
West Orange Montessori School Inc	Michelle Claire Dulany-Spidle	Florida	\$15,000.00	8/5/2016
Asados El Paisa Corp & Kendall Foods LLC	John Bairo Pelaez Lopera	Florida	\$130,000.00	5/13/2016

Ona A Joiner, Kountry Girl LLC and Kountry Girl Boutique Inc	Ona A Joiner	Florida	\$7,440.00	6/29/2016
BN Empire LLC DBA Sherwood Forest Center	Rajesh Bahl	Florida	\$143,000.00	7/11/2016
CR Passions Inc DBA Big Al's Steaks	Carmen Rene Forston	Florida	\$11,250.00	5/20/2016
All World Spices Inc	Ricardo Sanabria	Florida	\$106,200.00	9/23/2016
Tabernaculo Internacional Palabra De Vida Inc DBA Life In Colors Academy and Tabernaculo Internacional Palabra De Vida Inc DBA T.I.P. De Vida Church	Josue Green Figueroa	Florida	\$31,000.00	7/6/2017
Opmax Support Services LLC	Wilton De Lima Spinellis	Florida	\$305,000.00	9/2/2016
Dark Fiber Underground LLC	Brenda Sue Clifford	Florida	\$7,500.00	5/2/2017
First In Page LLC	Karim Chahdi Ouazzani and Luciana Simal De Souza	Florida	\$218,750.00	11/15/2016
Nellsax Home Health Care LLC	Roberta Pierre	Florida	\$7,440.00	3/3/2017
Shafa Enterprises LLC, Nathani Enterprises LLC and Sanya Enterprises One LLC	Amin B Nathani	Florida	\$30,000.00	6/27/2017
Shafa Enterprises LLC DBA Brooksville Chevron, Sanya Enterprises One LLC and Nathani Enterprises LLC	Amin B Nathani	Florida	\$80,600.00	1/23/2017
Buon Inc DBA Buon Appetito	Fredy Wilder Silva	Florida	\$12,400.00	4/26/2017
Sneaky Tiki LLC DBA Sneaki Tiki	William Andrew Pittman Jr	Florida	\$36,900.00	7/25/2017
GRO Styles LLC and GRO Styles of Orlando Inc	Kiran Bahl	Florida	\$22,140.00	4/20/2016
GRO Styles LLC and GRO Styles of Orlando Inc	Rajesh Bahl	Florida	\$22,140.00	4/20/2016
Spire Management Group Inc.	Runjan Jain	Georgia	\$139,000.00	6/4/2015
Sterling and Associates LLC	Anjelle Charise Culton	Georgia	\$29,500.00	4/21/2016
Rahib Monroe LLC and Anusha Enterprises LLC	Yasmina Momin	Georgia	\$86,800.00	1/14/2016
Manakamana Sai Inc	Mahadatta Timilsina	Georgia	\$37,800.00	7/26/2016
Excel Driving School LLC	Donald White Barber	Georgia	\$9,310.00	8/19/2016
Frank's At The Old Mill Inc	Frank Psomas	Georgia	\$93,000.00	8/30/2016
Sapphire Services LLC	Franklin Tyrell Rutledge	Georgia	\$15,625.00	10/27/2016
L&M Coffee LLC DBA Copper Coin Woodstock, L&M Coffee LLC DBA Copper Coin Brookhaven and L&M Coffee LLC DBA Copper Coin Vickery	Michael Joseph Gullicksen	Georgia	\$155,000.00	7/25/2016
States Polymer LLC	Ashok Kumar Agarwal	Georgia	\$70,760.00	3/1/2017
Savvy Bellas Inc	Aaliyah Donzare Tate	Georgia	\$21,780.00	4/24/2017

Appdev Masters LLC DBA Mobiledev Power	Aarti Lalwani	Georgia	\$155,000.00	11/8/2016
FYJ Sons LLC, FYJ Designs LLC and FYJ Enterprise Inc	Rajesh Ferozali Jiwani	Georgia	\$66,000.00	6/7/2016
FYJ Designs LLC DBA Motifz, FYJ Sons DBA Country Store, FYJ Sons DBA Shell Five Forks Market, FYJ Enterprises Inc DBA Between Grocery	Rajesh Ferozali Jiwani	Georgia	\$617,440.00	6/28/2016
Lyndon Academy LLC	Donald Charles Murdock	Georgia	\$322,500.00	2/17/2017
4Front Healthcare of Atlanta LLC and 4Front Capital Management Group LLC	George Leonard Slaughter	Georgia	\$288,200.00	4/12/2017
Trinity Kidz Academy LLC	Kiffany Terica Heard	Georgia	\$9,840.00	7/3/2017
Sita 71 LLC	Kaushal S Patel	Georgia	\$25,000.00	6/26/2017
Pan Fresco LLC DBA Atlanta Bread Company, F & Q Enterprise Inc DBA Moe's Southwest Grill	Roy Fazal Natha	Georgia	\$62,500.00	12/2/2016
Jibon Inc DBA Puff N Stuff	Mohammed Rezaul Haque	Georgia	\$49,600.00	3/8/2017
Samira Food Inc DBA Hammonds Crossing Exxon	Mohammed Rezaul Haque	Georgia	\$124,000.00	1/17/2017
Zaarabi LLC and Samira Food Inc DBA Hammonds Crossing Exxon	Mohammed Rezaul Haque	Georgia	\$24,600.00	10/10/2017
Pono Holdings LLC	Steve Ysreal Monas	Hawaii	\$18,750.00	2/22/2017
Vet Meds N More Inc DBA National Animal Hospital	Brian Stephen Schiffman	Hawaii	\$25,000.00	10/19/2016
Vet Meds N More Inc DBA National Animal Hospital	Brian Stephen Schiffman	Hawaii	\$12,500.00	3/31/2017
Beena LLC, Beena (Galesburg), LLC	Vijaykumar Patel	Illinois	\$347,500.00	7/8/2015
Complete Therapy Services LLC and Integrated Home Therapy LLC	Hannan T. Othman	Illinois	\$43,400.00	8/2/2016
Veet Export Import LLC	Ajay J. Zaveri	Illinois	\$195,000.00	3/25/2016
Securint Financial Services Inc	Babak F Kakesh	Illinois	\$7,800.00	9/2/2016
Prestige Management LLC	Rhonda G Aylward	Illinois	\$32,000.00	4/29/2016
Paintballcity LLC	Michael J La Lond Jr	Illinois	\$7,860.00	6/15/2016
KNK Wholesale Inc	Nuruddin Lalani	Illinois	\$101,250.00	6/29/2016
3976 N Eleston Inc DBA Irving Park Liquor	Vanya Khoury	Illinois	\$975,000.00	6/1/2016
Cove Construction & Electrical Contracting Inc	Shannon M Mayer	Illinois	\$25,200.00	12/2/2016
MRG LLC	Mark Alan Grimes	Illinois	\$30,000.00	6/8/2016
Cell Store Inc DBA Fix & More	Rozina Bhimani	Illinois	\$31,250.00	6/8/2017
Bel Cielo LLC	Mukta Aggarwal	Illinois	\$2,000,000.00	2/13/2017
Ultimate Pro Bikes LLC DBA UPB Cycling	Juoas Martynaitis	Illinois	\$30,500.00	10/5/2017

Planet Auto Consignment LLC	Mark L. Jones	Indiana	\$12,800.00	2/17/2016
FS1 Indy Rivers Edge LLC DBA	Elizabeth S Firanek	Indiana	\$10,400.00	8/30/2016
Pancheros Mexican Grill				
Grey Wolf Firearms LLC	Paul T Gibson	Indiana	\$42,700.00	9/14/2016
The Golden Leaf Express Inc	Gurwinder Mann	Indiana	\$25,200.00	7/28/2016
El Gallo Negro Enterprises LLC	Alejandro Garcia	Indiana	\$12,500.00	1/26/2017
Hank Beverages LLC DBA Joe's Grill	Heather A Tucker	Indiana	\$12,500.00	7/21/2017
At Brook School				
HM Mart Inc	Prashant Sharma	Iowa	\$46,860.00	1/22/2016
Digger Dan LLC	Daniel Hocevar	Kentucky	\$36,000.00	11/14/2016
Team Quality Inc DBA Huddle House	Jason Ira Morgan	Kentucky	\$122,000.00	1/12/2017
and JR Foods Inc				
Jailey Restoration LLC DBA US	Marti D Orr	Kentucky	\$62,500.00	6/13/2017
National Roofing and GDS Limited				
Liability Co				
Premier Technologies of KY LLC	Elvis Presley Profit	Kentucky	\$10,000.00	8/8/2017
Nautical Brands LLC	Kristian Raymond Carlson	Kentucky	\$17,500.00	4/5/2017
Always Fantastic Job Mechanical	Keith Anthony Thomas	Louisiana	\$115,200.00	7/16/2015
Gospel Stream LLC	Jason Mcharold Lewis	Louisiana	\$18,750.00	12/3/2015
Tropical Tan and Boutique Inc.	Shirley Marie Futrell	Louisiana	\$7,800.00	6/3/2016
Angeli On Decatur LLC	Jerry Lee Crochet	Louisiana	\$21,240.00	6/6/2016
Triumph Kitchen DBA Gouter	Christopher David	Louisiana	\$18,300.00	9/23/2016
Restaurant and Gouter LLC	Wadsworth			
Triumph Kitchen DBA Gouter	Sommer Nichole	Louisiana	\$8,540.00	11/22/2016
Restaurant and Gouter LLC	Wadsworth			
J B Painting LLC	Jack E Baker	Louisiana	\$19,050.00	6/14/2016
Springfield Quick Stop LLC	Sean Monroe Granger	Louisiana	\$9,200.00	11/15/2016
Outlaw Services LLC	Daniella Liza Barron	Louisiana	\$43,750.00	6/23/2017
Cellar Bistro LLC	Joseph M Baranello	Maine	\$18,300.00	6/19/2017
Star Alliance Importing Inc.	Andre Julio Bicho	Maryland	\$100,800.00	12/4/2015
d/b/a Antenna Star Satellite of				
Washington				
Orbit Beverage LLC	Dinesh Madaan	Maryland	\$31,000.00	4/26/2016
Jackson Station LLC	Raymond Polansky	Maryland	\$18,900.00	7/13/2016
Sterling Automotive LLC	Michael Thomas	Maryland	\$59,500.00	8/19/2016
	Ainsworth			
Bal Kuver LLC DBA JP's Fine Wine &	Jiten Kirtikumar Bhavsar	Maryland	\$36,000.00	11/9/2016
Spirits				
Liam Flynn's Ale House LLC DBA Ale	William Gerald Flynn	Maryland	\$14,640.00	11/28/2016
House				
Bal Kuver LLC DBA JP's Fine Wine &	Jiten Kirtikumar Bhavsar	Maryland	\$36,000.00	11/9/2016
Spirits				
KCC Engineering Inc	Bong Jun Jang	Maryland	\$124,000.00	12/21/2016
Castagno Management LLC DBA	Adrien Nicholas	Maryland	\$36,300.00	1/26/2017
Colette	Aeschliman			
Premium Products USA Inc	Alexander Dave Beck	Maryland	\$31,750.00	5/23/2017
Premium Products USA Inc	Sapir Rubinshtein	Maryland	\$32,000.00	1/20/2017

AAB786 Corp, AAB786 LLC, ZZ786 LLC, R G B Corp and RG Korp LLC	Aurangzeb Anees Baig	Maryland	\$184,500.00	4/19/2017
JRV Enterprises LLC DBA Top Shelf Wine & Spirit	Rajesh Atmaram Patel	Maryland	\$630,000.00	7/5/2017
Sajjan Enterprises LLC	Joginder Singh Sajjan	Massachusetts	\$122,000.00	4/4/2017
Dawn E Brule DBA Douglas Flower Shopp and Douglas Flower Shoppe and Gifts LLC	Dawn E Brule	Massachusetts	\$12,300.00	5/1/2017
MMSC Consultants LLC, Lig Ann Arbor LLC, Lig Key West LLC, Lig National Harbor LLC	Mark Gagalas Messmore	Michigan	\$187,500.00	2/10/2016
H-Comm Inc.	Troy Patrick Haggard	Michigan	\$93,000.00	4/14/2016
GK Liquor LLC	Gurjinder Singh	Michigan	\$31,250.00	5/4/2016
New Clinton Auto Service Inc DBA New Clinton Auto Sales	Valerian Fernandes	Michigan	\$18,300.00	3/17/2016
Birch Enterprises Inc DBA President Tuxedo, Birch Media Services LLC	Robert Emmanuel Gafa and Robert G Brannan	Michigan	\$680,000.00	1/20/2017
Simple Petroleum Inc and Haripal Petroleum II Inc	Dhanveer Singh	Michigan	\$51,200.00	4/26/2017
D&G Custom Drywall Inc	Garry Thomas Barlow	Michigan	\$76,800.00	2/3/2017
Rubes Auto LLC	Tyler Scott Rubin	Minnesota	\$97,500.00	6/25/2015
N&L Management Company LLC	Nathan Allan Bergwall	Minnesota	\$25,800.00	8/3/2016
Minne's Diner Restaurant Corporation	Jacquelyn Marie Dusosky	Minnesota	\$48,800.00	2/10/2017
Captain Transport & Recovery Inc	Kayihan Seran	Minnesota	\$51,200.00	2/7/2017
Daniel Glen Hollis Jr DBA Tallahatchie Tires	Daniel Glen Hollis Jr	Mississippi	\$7,860.00	8/23/2016
Fuel Hub 4 Inc DBA Richland Food Mart and Preet Investments Inc	Monika Sharma	Mississippi	\$43,050.00	6/21/2016
Preet Investments Inc DBA Lion Food Store	Ramanpreet Singh	Mississippi	\$18,450.00	11/3/2016
Preet Investments Inc DBA Lion Food Store	Ramanpreet Singh	Mississippi	\$61,500.00	6/1/2016
Marilyn Janice Henley DBA The Red Rooster	Marilyn Janice Henley	Mississippi	\$21,450.00	11/29/2016
Shields Corner Inc	Fred Newton Jones	Mississippi	\$12,300.00	5/30/2017
Shadara D Harris DBA Dress Code Wardrobe	Shadara B Harris	Missouri	\$10,480.00	6/23/2016
DAC Inc DBA Directory Advertising, DAC Incorporated DBA Washington Promotional Group, TMR LLC	Timothy Melvin Roewe	Missouri	\$792,000.00	9/27/2016
Titan Strength Fitness LLC	Debra Joan Miller	Missouri	\$122,400.00	8/29/2016
Wood Creek Enterprises LLC	Ryan Curtis Mays	Missouri	\$143,960.00	8/8/2016
Haris Management LLC DBA Avis Budget Group	Haris Harald Vlahovljak	Missouri	\$7,740.00	1/17/2017

Midwest Renovation LLC	Michael Alan McCarrell	Missouri	\$189,000.00	9/16/2016
USA Pro Roofing and Construction LLC	Daniel Scott Kelly	Nebraska	\$62,500.00	6/27/2016
Fuel Fit Foods LLC DBA Fuel Fit Kitchen	Johnny A Torres	Nebraska	\$31,000.00	12/14/2016
Langer Truck Line Inc	Joseph A Langer	Nebraska	\$37,500.00	7/26/2017
Glitek LLC	Tony H. Le	New Jersey	\$150,000.00	3/11/2016
Yellow Moon LLC	Yun S. Kim	New Jersey	\$50,000.00	2/15/2016
Semiz Limited Liability Company T/A Eagle Diner	Omer Semiz	New Jersey	\$19,500.00	2/4/2016
Quality Products USA Corporation	Malini V Rao	New Jersey	\$12,400.00	8/16/2016
Quality Products USA Corporation	Vidyarany Rao	New Jersey	\$27,280.00	5/4/2016
Four S Shell Limited Liability Company	Shilpa Sathu	New Jersey	\$200,100.00	2/22/2016
Icon General Construction Limited Liability Company DBA Icon Construction	Bhupendra R Patel	New Jersey	\$86,800.00	5/10/2016
Herbakraft Incorporated	Nisha Khanijow	New Jersey	\$248,000.00	3/23/2016
Fast Fuel Services Inc and Best Management Inc	Wazir S Grewal	New Jersey	\$680,000.00	1/25/2016
Blucorp LLC	Yehuda Blumenfeld	New Jersey	\$18,750.00	9/8/2016
Desi Dhaba Food Group III LLC	Vaishali A Patel and Gayatri D Patel	New Jersey	\$73,800.00	3/3/2017
Granite Imports Inc	Subhasree Natesan	New Jersey	\$220,500.00	10/10/2016
Ash Oil and Gas Inc	Hari M Vanga	New Jersey	\$97,600.00	9/21/2016
New Jersey Beverage Distributors LLC DBA NJ Beverage and Fresh To You Wholesale LLC	Dhrupal M Patel	New Jersey	\$590,000.00	9/26/2016
Zoobeedu LLC	Mustafa J Bhatti	New Jersey	\$660,000.00	10/4/2016
Bennigan's Saddlebrook LLC DBA Bennigan's	Kedar R Shah	New Jersey	\$58,000.00	8/10/2016
Baumgart Cafe of Livingston Inc	Joseph Yuan and Peter Hsieh	New Jersey	\$100,000.00	5/28/2015
Healthy Food 23rd Street LLC	Mustafa Coskun	New Jersey	\$94,500.00	6/27/2016
Leapstarr Productions LLC	Elizabeth J Santana	New Jersey	\$195,000.00	2/22/2017
Zoobeedu Inc	Mustafa J Bhatti	New Jersey	\$660,000.00	10/4/2016
Corner Fuel Inc	Krishna K Pirlamarla	New Jersey	\$31,250.00	1/11/2017
Corner Fuel Inc	Krishna K Pirlamarla	New Jersey	\$35,000.00	2/22/2016
Budget Climate Control LLP	Jesse Mendoza	New Mexico	\$62,730.00	10/7/2016
Budget Climate Control LLP	Jesse Mendoza	New Mexico	\$62,730.00	10/7/2016
Miniventures of NY Inc.	Shayla M. Williams	New York	\$189,000.00	6/24/2015
MF Long Island Inc.	Matthew J. Dill	New York	\$24,600.00	2/18/2016
M and R Food Mart	Mohammed D. Alam	New York	\$187,500.00	3/3/2016
Hari Amrit Corp. d/b/a Wingdale Beer and Soda	Tarsem Kaur	New York	\$107,100.00	7/7/2016
_2D2 Enterprises Inc.	Lakshman Viswanathan	New York	\$244,000.00	2/12/2016

The Bow Group Inc.	Alejandro Amabile	New York	\$12,600.00	3/14/2016
Triple Crown Motor Cars LLC	Joseph J Roach	New York	\$19,050.00	7/8/2016
Kajal Fashion Inc	Deepak Sewhani and Ashok Sewani	New York	\$8,960.00	6/5/2016
Rockmore Contracting Corp	John Finn	New York	\$600,000.00	2/17/2016
Orbis Carto Numis Inc	Usha Pravin Joshi	New York	\$16,686.25	6/8/2016
A Plus Grocery & Deli Inc	Mohammed A Sarder	New York	\$30,000.00	8/1/2016
SRI Construction LLC	Guru Switzdoor	New York	\$118,000.00	5/26/2016
George's Auto Parts Inc	Marsha Baratta and George O Baratta	New York	\$72,500.00	12/9/2016
Baig and Shiraz Corp DBA SB Fashion Store	Mirza Imran Baig	New York	\$56,000.00	5/25/2016
Cousins Food Group LLC DBA Cousins NYC	Zachary Papadakis	New York	\$115,000.00	5/24/2016
David Investment Holdings Corp of Delaware Inc	Eric R Braverman	New York	\$64,000.00	8/31/2016
C.H Cycles Inc	Josef Strassberg	New York	\$116,850.00	7/28/2016
Viva Roosevelt Field Mall LLC DBA La Bottega, Café Spice Roosevelt Field Mall LLC, Preesha Operating Corp DBA OSM Deli & Grill, Preesha Operating Corp DBA Ranch 1	Rakesh K Chadha	New York	\$208,500.00	8/10/2016
295 Seventh Market Corp	Seungjin Seo	New York	\$62,000.00	10/14/2015
Vintage India NYC LLC	Prashant Goyal	New York	\$43,750.00	6/29/2016
Jerome Super Market Inc	Haji U Ali	New York	\$22,500.00	7/20/2016
Old Fashion Butcher Shop Inc	Michalia Flori	New York	\$125,000.00	10/20/2016
Project LAV Inc	Luchiya Vavouliotis	New York	\$62,500.00	11/10/2016
Bungzie Inc and Yomp Software Inc	Preeti Bakshi	New York	\$62,500.00	9/23/2016
Grand Street Medicine & Rehabilitation PC	Nooson R Sklar	New York	\$256,000.00	6/22/2016
Yomp Software Inc	Preeti Bakshi	New York	\$36,600.00	4/8/2016
Cafe Mente USA Corp DBA Piatsa Souvlaki	Flora Sorotou	New York	\$60,500.00	12/8/2016
Bolt Management Solutions Inc	Gurneet Singh	New York	\$46,080.00	2/7/2017
Tulsi Restaurant Inc and Dhoom Restuarant LLC	Vijay N Rao	New York	\$279,300.00	9/21/2016
The Comprehensive Center LLC, Comprehensive Management MSO Inc	Nosson R Sklar	New York	\$1,200,000.00	4/13/2016
Definitions Private Training Gyms Inc and Definitions Funding Inc	Garry Steinhart	New York	\$122,000.00	11/28/2016
Iyogi Inc	Vishal Dhar	New York	\$57,936.00	3/22/2017
Old Fashion Butcher Shop Inc	Michalia Flori and Joannis Kukularis	New York	\$125,000.00	10/20/2016
Icell Inc	Ravleen K Sethi	New York	\$1,026,800.00	8/29/2016

ICFU Inc	Surinder S Sahni, Arpreet S Sahni and Ravleen K Sethi	New York	\$1,026,800.00	8/29/2016
Walsh Electrical Contracting Inc	Ryan Walsh	New York	\$560,000.00	1/15/2014
Shawn Elliott Luxury Homes Inc	Shawn R Elliott	New York	\$190,650.00	10/6/2016
Ritz Global Development Inc	Neeru Singh	New York	\$133,000.00	12/10/2015
Tables on Grand LLC	Nosson Sklar and Dean Tischfield	New York	\$132,000.00	3/13/2015
A and E Food Enterprise Inc DBA Planet Wings and SA Fast Food Inc DBA Planet Wings	Abid N Farooq	New York	\$18,900.00	3/9/2017
Green Line Insurance Brokerage Inc	Mian Mohammad Sabar	New York	\$124,000.00	4/11/2017
Tikka Indian Grill Inc	Anwar P Chowdhury	New York	\$49,200.00	4/14/2017
Rieth Hacker Restaurant Group LLC DBA Uriahs	Jason Uriah Reith	New York	\$48,800.00	3/23/2017
Simply Beautiful Medical PC DBA Simply Beautiful MedSpa	Loveleen Sood	New York	\$44,800.00	12/21/2016
United Beverage Distributor Inc, Tri-State Candy Wholesale Inc, DKV Corp, DKV 39 Inc, DKV Beekman Inc, DKV Fitness LLC & DKV Fitness Gyms Parkland Inc	Divyang K Ved	New York	\$250,000.00	12/1/2016
HTC Collection Services LLC	Gene R Kazlow	New York	\$30,750.00	1/18/2017
Sahara Maria Ferreira-Holiday and Natasha M Garm DBA Page Plus of Cicero 11	Sahara Maria Ferreira-Holiday	New York	\$7,380.00	6/26/2017
YGM Group LLC and YGM Medical Supply Group LLC	Yaakov G Pollak	New York	\$630,000.00	9/14/2017
YGM Group LLC and YGM Medical Supply Group LLC	Yaakov G Pollak	New York	\$630,000.00	9/14/2017
Icool Technologies Inc.	Jay Madan	North Carolina	\$68,750.00	2/13/2015
K Convenience Store LLC	Keith Jon Frizzell	North Carolina	\$25,000.00	12/30/2015
Turnt Up Customs LLC	Calvin Lewis McNeill Jr	North Carolina	\$27,520.00	8/30/2016
Ofir Taveras DBA Centro Mobile	Ofir Taveras	North Carolina	\$25,400.00	5/17/2016
Nasa Petroleum Inc DBA Gas N Go	Satya Devi Sharma	North Carolina	\$25,600.00	11/18/2016
Gracie's Steak and Seafood LLC	Dana Lee Skipper	North Carolina	\$12,200.00	4/10/2017
Ifood Inc DBA Steak'N Shake Restaurant	Sashi Kapoor Rattan	North Carolina	\$278,000.00	4/25/2016
Ifood Inc DBA Steak'N Shake Restaurant	Chandru Chhabildas Gurnani	North Carolina	\$198,000.00	1/26/2017
Romos LLC DBA Romos Mexican Deli and Catering	Romo Garcia Rodolfo	North Dakota	\$36,600.00	4/6/2017
Uwin Auto Sales LLC	Srdjan Sudar, Slavica Sudar & Boslika Sudar	Ohio	\$62,100.00	11/23/2015
Uwin Auto Sales	Srdjan Sudar, Slavica Sudar & Boslika Sudar	Ohio	\$62,100.00	11/23/2015
Pauls Auto Sales and Service Inc.	Amarjit Kaur	Ohio	\$75,000.00	4/18/2016

Uwin Auto Sales LLC	Srdjan Sudar, Slavica Sudar & Bosljka Sudar	Ohio	\$62,100.00	11/23/2015
Amelia Nails LLC	Minh Duc Thi Nguyen	Ohio	\$36,600.00	3/28/2016
Level 1 Inc and Wireless One LLC	Joseph W Dickens	Ohio	\$19,350.00	1/16/2017
Wireless One LLC	Joseph W Dickens	Ohio	\$37,800.00	11/30/2016
Joseph B Burda DBA OPM	Joseph B Burda	Ohio	\$31,000.00	1/20/2017
Jnnaebs Corporation DBA First Nails Spa	Nina Bui	Ohio	\$16,800.00	5/24/2017
Hot Rods and Harleys LLC DBA Hot Rods & Harleys Sports Bar & Grill	Melissa M Vore	Ohio	\$35,300.00	3/29/2017
A&N Inc DBA K & R Supermarket	Kefah Etayem	Ohio	\$25,410.00	7/12/2017
All American Basement Waterproofing LLC and All American Basement Waterproofing Franchise Group LLC	Michael A Johns	Ohio	\$25,400.00	4/7/2017
Tammy Delynn Taylor DBA Taylor Made	Tammy Delynn Taylor	Oklahoma	\$12,500.00	2/22/2016
Alsobrook Group LLC	Bobby Joe Alsobrook Jr	Oklahoma	\$24,600.00	6/21/2016
Shree Shivshakti Corp DBA Get N Go, Ganesh FNY Inc	Franklin A Parikh, Anil Parikh and Ami A Parikh	Oklahoma	\$103,200.00	6/24/2017
Sams Place LLC	Sameeh Awny Zurikat	Oklahoma	\$18,750.00	3/8/2017
Yun Kyong Winn DBA Mossa	Yun Kyong Winn	Oregon	\$8,680.00	7/11/2017
Yun Kyong Winn DBA Mossa	Yun Kyong Winn	Oregon	\$8,680.00	7/11/2017
Global Solar Deployment LLC	Corey Christian Wolff	Pennsylvania	\$393,900.00	2/2/2016
786 AR Rahman LLC	Kuldip Singh	Pennsylvania	\$18,600.00	7/11/2016
Skye Packaging LLC	Denise E Munnely	Pennsylvania	\$14,880.00	1/26/2017
Valley National Security Service LLC	Mark Stephen Giovanelli	Pennsylvania	\$126,000.00	1/5/2017
4th Elite Corporation DBA Thumont Liberty, 1st Elite Corporation DBA Gettysburg American Fuel	Fahad Bin Iqbal	Pennsylvania	\$38,400.00	2/7/2017
Taj Palace Restaurant Inc DBA Taj Palace Indian Cuisine	Farhat Chaudry	Pennsylvania	\$91,500.00	7/22/2016
Veracruz Shabo LLC and Waterfalls Quick Lube LLC	Milad Shabo	Rhode Island	\$12,600.00	12/14/2016
Bazaco Inc.	Richard Giles Bazaco	South Carolina	\$31,000.00	2/10/2016
World Wireless LLC	Russell Preston Cann	South Carolina	\$150,000.00	6/7/2016
World Wireless LLC	Russell Preston Cann	South Carolina	\$378,000.00	11/24/2016
RCD Enterprises LLC DBA Gallery Bar & Grill	Ray Clifton Depew Jr	South Carolina	\$7,800.00	1/26/2017
SMB's Food and Beverage LLC and Express Zone LLC	Sharef Bhojani	South Carolina	\$62,500.00	9/25/2017
Merchant Name	Owner	State of Merchant	Purchase Price	Date of Agreement
KJ Enterprise LLC	Kajijo Guya	Tennessee	\$282,225.00	3/11/2015

Holloway Automotive & Towing Corp DBA Memphis Notary Holloway Tires	Beverly Lavette Holloway	Tennessee	\$7,560.00	9/8/2016
Nizardory Inc DBA 40th Ave Market	Hikmat Sadiq Gazi	Tennessee	\$13,750.00	4/6/2017
H and P Motors	Hugo Alberto Guerrero	Texas	\$49,600.00	2/1/2016
A&D Fitness d/b/a 1st Class Training	Dawn Renee Armstrong	Texas	\$87,500.00	2/3/2016
JKA Fitness LLC d/b/a 1st Class Training and A & D Fitness d/b/a 1st Class Training	Antonio Donnel Armstrong	Texas	\$31,250.00	4/13/2016
RJP Trucking Inc	Jose Enrique Cruz	Texas	\$38,400.00	6/6/2016
Rithul Sai DBA Cellkon Wireless, A&V Communications LLC	Swathi Anne	Texas	\$416,000.00	1/21/2016
Grewal Inc	Jaspal Singh Grewal	Texas	\$12,700.00	9/15/2016
Welch's Home Furnishings LLC DBA Welch's Furniture	Daron Anthony Welch	Texas	\$19,350.00	10/7/2016
Michael's Coffee and Wine LLC	Hether Jo Young	Texas	\$12,900.00	3/14/2016
Brannon Family Services LLC DBA Fowlers Sports Bar and Restaurant	James Harry Brannon Jr	Texas	\$90,750.00	10/28/2016
Hira Meats Inc DBA Hira Halal Meat Company	Syed Naiyer Raza	Texas	\$62,000.00	6/20/2016
Yousse Irrigation Inc	Fred Yousse	Texas	\$97,500.00	3/11/2015
Benedicte Restaurant Corporation Inc DBA Café Benedicte	Vahid E Navissi	Texas	\$63,000.00	5/4/2016
Ananda Bhairab LLC DBA 7-11 Convenient Store	Praticksha Raut	Texas	\$9,478.75	7/22/2016
AIK Café Inc DBA Rotana Café & Restaurant	Jourmana Yassin El-Azzeh	Texas	\$15,600.00	11/8/2016
Stacy Lee Bradford DBA The Tin Can Gypsy	Stacy Lee Bradford	Texas	\$25,600.00	3/28/2016
Software Built By Design Inc	Herman Spencer Jr	Texas	\$25,000.00	12/23/2016
CB Mackey Enterprise Inc DBA Avis Mackey	Cassandra Samples Mackey	Texas	\$7,500.00	1/24/2017
Michael's Coffee and Wine LLC	Hether Jo Young	Texas	\$12,900.00	3/14/2016
Istatxsl LLC, Istauss Group LLC and KK Business Group LLC	Srinivas Reddy Kunadi	Texas	\$156,000.00	10/27/2016
S&B Plumbing Inc DBA Fischer & Boone	Stacie Lynn Nelson	Texas	\$10,160.00	12/8/2016
Life Automated LLC	Warren Gregory Stewart	Texas	\$12,800.00	2/1/2017
Coyote Specialities LLC	Vicki Renee Rangeley	Texas	\$12,600.00	4/14/2016
Alberto Alipio Clark DBA Town House Liquors, Wild Bill's Liquor Inc and AA Clark Enterprises LLC	Alberto Alipio Clark	Texas	\$75,600.00	12/20/2016
Allan Ashlan Ali DBA Ediscount Furniture	Allan Ashlan Ali	Texas	\$7,380.00	5/11/2017

Kashi Inc DBA Garrison Food Mart	Vipul Jashbhai Patel	Texas	\$18,450.00	1/16/2017
Bevco International LLC	Steen Frost	Texas	\$166,400.00	3/24/2016
Construction Cleaning Inc DBA Homeport Services	Rachelle Ann Nugent	Texas	\$139,700.00	3/10/2017
KML Carriers LLC	Vilaiwan S Liang	Texas	\$12,500.00	6/14/2017
Savakhone Vilaysane DBA Peter Store	Savakhone Vilaysane	Texas	\$31,250.00	7/24/2017
TFW Industrial Supply & CNC Machine LLC	Troy Adam Gilley	Texas	\$187,500.00	6/21/2017
Kit Communications Inc	Bhaumik Dineshkumar Purohit	Texas	\$92,250.00	5/19/2016
Global Events LLC	Donald Wayne Laube	Texas	\$12,500.00	5/12/2017
Walz & Walz Inc DBA National Helicopter Solutions	Thaddeus Joseph Walz	Texas	\$25,400.00	5/12/2017
Showbiz Multimedia LLC	Vinay Kumar Karna	Texas	\$19,350.00	3/15/2017
Cakecrumbs LLC	Michelle Lynn Dawson	Texas	\$25,000.00	3/23/2017
Guaranteed Guide Service and Rentals LLC DBA Guaranteed Guide Service LLC	Robert Cory Vinson	Texas	\$10,160.00	7/28/2017
Nicobooks LLC DBA Tomas Ramos Photographers and Film Production	Tomas Ramos Jr	Texas	\$25,800.00	3/9/2017
TRRS Group Corp DBA Touch Nine	Radhika Pagadala	Texas	\$31,000.00	5/2/2017
Kit Communications Inc	Dineshkum L Purohit	Texas	\$92,250.00	5/19/2016
Libra Inc DBA Bellagio Nails & Spa	Tom Dang	Texas	\$37,500.00	8/20/2017
Darcy Michelle Vandenberg and Bernard Jacques Vandenberg DBA Chic Style South Ogden	Bernard Jacques Vandenberg	Utah	\$24,200.00	9/11/2017
Cultural Intrigue Limited and Frost Street Warehouse LLC	Adam E Gebb	Vermont	\$44,840.00	4/21/2017
Cultural Intrigue Limited DBA Lunabazaar	Adam E Gebb	Vermont	\$88,160.00	1/4/2017
Melvin Crawley DBA Hawks BBQ & Seafood	Melvin Crawley	Virginia	\$18,900.00	7/6/2016
Ryan R Boylan DDS PC	Ryan Richard Boylan	Virginia	\$151,200.00	4/22/2016
FNI Healthcare Inc	Digvijay Singh	Virginia	\$32,000.00	2/14/2017
Southern Freight Xpress LLC and EL Construction LLC	Guy Leon Elder	Virginia	\$12,500.00	12/30/2016
GE Yun Inc.	Yun Yong Kil	Washington	\$37,200.00	1/18/2016
World Trade Group Inc	Egor Mikhaylovich Kovalev	Washington	\$29,520.00	11/30/2016
Sabotage Sports Training and Management Company LLC	Bonney A Ottow	Washington	\$6,500.00	3/11/2016
Catto LLC and Outlaw Cargo LLC	Amandeep Singh	Washington	\$12,500.00	1/24/2017
Nicholas David Fitsemons DBA Kingston Pizza Factory	Nicholas David Fitsemons	Washington	\$30,750.00	9/23/2016

Good Guys LLC	Annette Pauline Neumiller	Washington	\$19,200.00	1/16/2017
Foggy Bottom Facility Services LLC	Lawrence Edward Fogarty	Washington	\$9,680.00	2/21/2017
Tiffany Marie Wilson DBA Puget Sound Doula	Tiffany Marie Wilson	Washington	\$12,700.00	12/21/2016
Rod Construction LLC and Rod Company LLC	Roman Ivchenko	Washington	\$93,750.00	11/16/2016
Adlimbo LLC	Michael Blake West	Washington	\$59,500.00	3/8/2017
Freight House LLC	John Glenn Verbosky	West Virginia	\$13,420.00	10/7/2016
AVA Consulting LLC	Keith A Thomas	Wisconsin	\$44,800.00	8/18/2016
Kids Campus CDC Inc	Esther Bervelyn Ansah	Wisconsin	\$25,600.00	11/22/2016
	Acheampong			
Jesselimo Express LLC	June A Sumba	Wisconsin	\$12,800.00	2/2/2017
Greenway Corporation, Horizon Exteriors LLC and Klam Construction LLC	Gerald A Klamrowski	Wisconsin	\$63,500.00	2/2/2017
Krupa R. Dave, Ronak J. Dave and Jai Shree Ram Inc.	Krupa R. Dave and Ronak J. Dave		\$50,720.00	
Acropetal Inc and ACROPETAL TECHNOLOGIES LIMITED	Ravi Kumar Dorai Swamy		\$426,000.00	4/30/2015

EXHIBIT 7

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

LINER TIRE, INC., TIRE TATTOO, INC.,
BARRY LINER, and MICHAEL LINER,

Plaintiffs,

-against-

Civil Action No.: 16-12468

CAP CALL, LLC; CAPACITY FUNDING,
LLC; COMPLETE BUSINESS SOLUTIONS
GROUP, INC. d.b.a. PAR FUNDING;
CONSOLIDATED FUNDING, INC.;
EVEREST BUSINESS FUNDING, LLC;
FUNDING METRICS, LLC, d.b.a. QUICK FIX
CAPITAL; IOU FINANCIAL COMPANY;
MANTIS FUNDING, LLC; NEW ERA
LENDING, LLC; PEARL CAPITAL REVIS
VENTURES, LLC; POWERUP LENDING
GROUP, LTD; PRINCIPIS CAPITAL, LLC;
RAPID CAPITAL FINANCE, LLC; RTR
RECOVERY, LLC; SMART BUSINESS
FUNDING, LLC; WIDE MERCHANT
INVESTMENT, INC.; AND YELLOWSTONE
CAPITAL, LLC,

Defendants.

SECOND AMENDED COMPLAINT AND DEMAND FOR A TRIAL BY JURY

Plaintiffs Liner Tire, Inc., Tire Tattoo, Inc., Barry Liner, (collectively "Liner Tire") and Michael Liner (collectively "Plaintiffs"), by their attorneys, White and Williams LLP, as and for their complaint and demand for a trial by jury, allege:

NATURE OF THE ACTION

1. This is an action to save a small, family-owned, one-hundred year old local business and its owner from financial ruin.

2. Liner Tire, which has been servicing the New England area for more than 108 years, has been victimized by a group of predatory lenders that operate primarily out of New York (and do not appear to be licensed to transact business in Massachusetts).

3. In total, Defendants criminally took over \$1.5 million from Liner Tire, based on their predatory loans, which forced Liner Tire's owner, Barry Liner, to drain his life savings and forced his son, Michael Liner, to move back in with his parents at the age of 33. It also caused Liner Tire to lose one of its long-time employees who it could no longer afford to pay.

4. Lire Tire was caught in a common tactic used by these predatory lenders, which begins with a criminally usurious starter loan and ends in financial catastrophe.

5. After inducing the victim to enter into one of these starter loans, a predatory lender will then actively solicit new loans from other lenders to ensure that the victim has sufficient short-term assets to pay off the first criminally usurious loan. The victim then gets caught in an unsustainable spiral that snowballs until it hits the inevitable wall, draining not only the assets of the business but also the *personal* assets of these small business owners because they are required to personally guarantee the loans due to the unfair bargaining power and desperate nature of these transactions. They then use these personal threats of financial disaster to exact even more blood from their victims. That is exactly what happened here. Unfortunately, because Liner Tire's owner had significant personal assets, this process dragged on much longer than most.

6. Once caught in one of these criminally usurious loan spirals, it reaches the point where the victim is no longer receiving any additional cash, but is being forced to enter into one

criminal usurious loan after another, just to pay off the prior criminally usurious loans. And that is exactly what happened here:

Advance Amount: \$176,000.00

Liner Tire Inc. ("the Merchant"), a Massachusetts Corporation, located at 144 Boylston Street, Brookline, MA Massachusetts 02445 hereby requests and authorizes Capacity Funding L.L.C. ("Capacity") located at 7 Renaissance Square, 5th Floor, White Plains, NY 10601, to allocate the proceeds of this funding, upon the closing of this transaction on this date, as follows:

- Payoff in the amount of \$66,164.00 to Yellowstone Capital for existing obligations pursuant to the payoff letter received.

- Payoff in the amount of \$47,450.00 to Capacity Deal #2 - Liner Tire for existing obligations pursuant to the payoff letter received.

- Payoff in the amount of \$56,575.00 to Capacity Deal #3 - Liner Tire for existing obligations pursuant to the payoff letter received.

After upfront origination and processing fees of \$5,811.00 to Capacity, Merchant will net \$0.00 which will be wired to Merchant's bank account as provided to Capacity.

7. In an effort to disguise the criminally usurious nature of these loans, Defendants use a common instrument that purports on its face to be a "factoring agreement." But these agreements (which are unconscionable contracts of adhesion) lack all of the elements of a true "factoring agreement" and are nothing more than a collateralized loan dressed up in sheep's clothing.

8. The criminally usurious nature of these transactions constitutes a per se violation of Mass Gen. Law ch. 93A and the use of these so-called "factoring agreements" demonstrates the intent necessary to treble the damages.

9. Plaintiffs seek to declare the common instrument used by Defendants for what it is—a criminally usurious loan.

10. The evidence discovered through the pre-suit investigation is overwhelming, and on information and belief, a review of Defendants' own files, e-mails and cell phones will reveal even more incriminating evidence of this criminal activity.

11. The evidence obtained to date is also undeniable. In entering into a nearly identical transaction, one of the Defendants actually called the transaction exactly what it was:

LOAN TERMS

For value received, Borrower hereby promises to pay and deliver to POWER UP the repayment amount (as set forth below and together with any additional charges as set forth herein, collectively, the "Repayment Amount") in lawful money of the United States. The Repayment Amount shall be paid to POWER UP by Borrower's irrevocably authorizing only one depositing account acceptable to POWER UP (the "account") to remit the Specific Daily Repayment Amount specified below (the "Specific Daily Repayment Amount") until such time as POWER UP receives payment in full of the Repayment Amount. Borrower hereby authorizes POWER UP to ACH Debit the specified remittances from the Borrower's bank account on a daily basis and will provide POWER UP with all required access codes. Borrower understands that it is responsible for ensuring that the Specific Daily Repayment Amount is not debited by POWER UP remains in the account and will be held responsible for any charges incurred by POWER UP resulting from a rejected ACH attempt, not sufficient funds, Bank Default Charge, blocked account or an event of default (Default Charge)(See Appendix A). POWER UP is not responsible for any overdrafts or rejected transactions that may result from POWER UP ACH debiting the Specific Daily Repayment Amount under the terms of this agreement. POWER UP will debit the Specific Daily Repayment Amount each business day. POWER UP may, upon Borrower's request, extend the time for any payment due under this Agreement for such time as POWER UP in its sole discretion, deems appropriate. Notwithstanding anything to the contrary in this Agreement or any other agreement between POWER UP and its participants and Borrower, upon the occurrence of an Event of Default under Section 3 of the LOAN AGREEMENT TERMS AND CONDITIONS, the Repayment Amount shall be increased as set forth herein.

Loan Amount: \$170,000.00* Repayment Amount: \$234,600.00 Specific Daily Repayment Amount: \$1,396.43

Additional Documentation and Details: *Less origination fee and payoffs to IOU, Pearl, Mantis, Richmond, Yellowstone, Everest, Quickfix; Smart Business

12. Owing to the rapid repayment rate on a daily basis, the effective interest rate on this admitted loan is, at least, 364%.

13. Every other loan transaction provided by Defendants functions exactly the same way, although most were titled differently to disguise their true nature:

PURCHASE AND SALE OF FUTURE RECEIPTS

Merchant hereby sells, assigns and transfers to POWERUP, as the lead purchaser for itself (making POWERUP on behalf of itself, the absolute owner) in consideration of the funds provided ("Purchase Price") specified below, all of Merchant's future receipts, accounts, contract rights and other obligations arising from or relating to the payment of monies from Merchant's customers' and/or other third party payors (collectively the "Receipts") defined as all payments made by cash, check, electronic transfer or other form of monetary payment in the ordinary course of the merchant's business, until such time as the "Receipts Purchased Amount" has been delivered by Merchant to POWERUP. The Receipts Purchased Amount shall be paid to POWERUP by the Merchant irrevocably authorizing only one depositing account acceptable to POWERUP (the "Account") to remit the percentage specified below (the "Specified Percentage") of the Merchant's Receipts, until such time as POWERUP receives payment in full of the Receipts Purchased Amount. In consideration of servicing the account, the Merchant hereby authorizes POWERUP to ACH Debit the "Specified Daily Amount" from the merchant's bank account as the base payment credited against the Specified Percentage due. It is the Merchant's responsibility to provide bank statements for any and all bank accounts held by the Merchant to reconcile the daily payments made against the Specified Percentage permitting POWERUP to debit or credit the difference to the merchant as that payment equals the Specified Percentage. Failure to provide all of their bank statements in a timely manner or missing a month shall forfeit all rights to future reconciliations. POWERUP may, upon Merchant's request, adjust the amount of any payment due under this Agreement at POWERUP's sole discretion and as it deems appropriate in servicing this Agreement. Merchant understands that it is responsible for ensuring that funds adequate to cover amount to be debited by POWERUP remains in the account. Merchant will be held responsible for any fees incurred by POWERUP resulting from a rejected ACH attempt or an event of default (See Appendix A). POWERUP is not responsible for any overdrafts or rejected transactions in the Merchant's account which may result from POWERUP scheduled ACH debit under the terms of this agreement. Notwithstanding anything to the contrary in this Agreement or any other agreement between POWERUP and Merchant, upon the violation of any provision contained in Section 1.11 of the MERCHANT AGREEMENT TERMS AND CONDITIONS or the occurrence of an Event of Default under Section 3 of the MERCHANT AGREEMENT TERMS AND CONDITIONS, the Specified Percentage shall equal 100%. A list of all fees applicable under this agreement is contained in Appendix A.

Purchase Price	Specified Percentage	Specified Daily Repayment Amount	Receipts Purchased Amount
\$175,000.00*	6%	\$1,125.00	\$236,250.00

14. In fact, Liner Tire was specifically told by its broker that these were loans:

Barry,

here are the new loan documents for the \$75,000 facility I obtained for you this morning from Everest Business Funding.

Please sign and initial in all places I have flagged and complete the bank log in information on the second to last page. Then fax or email the papers back to me. No notarization or overnight delivery of the original documents is necessary.

Here are the particulars of this loan:

Advance Amount:	\$75,000
Total Payback:	\$108,000
# of Payments:	90
Daily Payment:	\$1,200
Origination Fee:	\$395
Payment Processing Fee:	\$250
Funding Wire Fee:	\$35
Net Amount Funded:	\$74,320

15. So did the lenders when soliciting Liner Tire's business:

Hi Barry, please give a call to talk about a new potential loan.

Thank You

Jay Kirshner
111 Great Neck Road, Suite 216
Great Neck, NY 11021
tel. (888) 705-3004
jkirshner@poweruplending.com



Hello Barry,

As per our conversations, this email is written to confirm that we are doing this initial deal and will continue to be your go to lender.

We do offer "add-on" loans. These are in the future and could be as early as a month. These are different than what everyone in the industry does called - "Standard-Ref's."

16. Despite these representations to Liner Tire that the true nature of the transaction was a loan, each of the predatory lenders remaining in this lawsuit rely upon their intentional

EXHIBIT 8

Heskin, Shane

From: Heskin, Shane
Sent: Sunday, June 23, 2019 6:49 PM
To: Heskin, Shane
Subject: FW: Update

----- Forwarded Message -----

To: Barry Liner <barry@linertire.com.readnotify.com>
From: Paul Nemoy <pnemoy@kenmorecapital.com>
Subject: Update
Message-ID: <a8c2d0b5-c31d-f0f7-cf81-bdb412f8fbc9@kenmorecapital.com>
Date: Mon, 16 May 2016 18:45:05 -0500
User-Agent: Mozilla/5.0 (Macintosh; Intel Mac OS X 10.11; rv:45.0) Gecko/20100101 Thunderbird/45.0
MIME-Version: 1.0
Content-Type: multipart/alternative; boundary="-----D39865242C903715028D0EDD"

Hi Barry,

Sorry to report that the second lender I had been waiting for just wrote me and said your open balances are just too high for them to do business with you now.

I'm afraid that other than the \$65,000 offer I told you about on Friday, there's nothing else I can do for you at this time.

Barry, I understand what I'm about to say is unsolicited and probably unwanted advice, but I know you well enough to believe that I can be blunt and tell you like it is: You really screwed yourself with that John Braun deal and you are treading in some very dangerous waters. This is a relatively small industry in which word travels fast and few secrets are maintained. John is universally disliked and not trusted by most everyone who knows or knows of him in this business and respectable lenders avoid deals where he has a superior position like the plague. Nobody wants to pay him off and very few secondary lenders will fund behind him. Most won't renew an existing loan once they learn John funded behind them.

To make matters worse, he's actively shopping your statements and materials around to other lenders trying to either lay off some of the loan he recently made to you on somebody else or find someone to stack on top of him to insure that you get enough cash in the bank so the payments he's debiting from your account won't bounce. I don't know if you were aware of this or perhaps even asked him to do this, but he's pretty much poisoned the well where you're concerned and the good lenders who are/were possible players to get you more money or buy out one or more of your open positions are already aware of his presence and are refusing to get involved.

You know that I'll always try to help you in any way that I can, all you have to do is ask me, but I feel very fortunate to have even come up with that \$65,000, 80 day offer for you under these circumstances. I'm pretty sure that John can or already has obtained a similar offer for you, but I'm telling you Barry, as a friend and someone who I hope you know has your best interests at heart, if you keep doing business with him, it won't be

long before you won't be able to get a loan from anybody else and then when that mercurial jerk capriciously decides to cut you off as I promise you he will, you'll end up drowning.

Be careful and be smart.

Paul

--



401 NORTH MICHIGAN AVENUE
SUITE 1200
CHICAGO, ILLINOIS 60611
(888) 263-1231
(888) 398-9967 - FAX

EXHIBIT 9

FILED: ONTARIO COUNTY CLERK 03/02/2018 08:16 AM
 NYSCEF DOC. NO. 2
 201803020017

INDEX NO. 117307-2018
 RECEIVED NYSCEF: 03/02/2018
 Index #: 117307-2018

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF ONTARIO

-----X
 YELLOWSTONE CAPITAL WEST, LLC

Index No.

PLAINTIFF,

-vs-

AFFIDAVIT

LUMINANCE HEALTH GROUP, INC. D/B/A LUMINANCE HEALTH GROUP,
 LUMINANCE RECOVERY CENTER, LLC D/B/A LUMINANCE RECOVERY
 CENTER and
 MICHAEL EDWARD CASTANON

DEFENDANTS.

-----X

State of New York :
 : ss:

County of New York :

TSVI DAVIS being duly sworn, hereby deposes and says as follows, under penalties of
 perjury:

1. I am a principal of YELLOWSTONE CAPITAL WEST, LLC the Plaintiff herein. I am fully familiar with the facts and circumstances stated herein.
2. I make this Affidavit in support of Plaintiff's request for a judgment.
3. The Parties entered into an Agreement whereby Plaintiff purchased certain future receivables from Defendants in about November 22 2017. The value of the receivables purchased was \$289,800.00
4. Pursuant to said agreement, 15% of Defendants' receivables purchased were to be paid daily in the amount of \$1,999.00
5. A copy of the Parties' Agreement is annexed hereto as Exhibit "A."
6. Defendants breached the agreement on or about January 17, 2018 by violating the no stacking clause in the agreement by stopping to make payments to the plaintiff.
7. The agreement does not provide for any notices of default.
8. Defendant breached in about February 25 2018, leaving a balance due on the receivables of \$219,877.00.

FILED: ONTARIO COUNTY CLERK 03/02/2018 08:16 AM
NYSCEF DOC. NO. 2

INDEXED: 117307-2018-018
RECEIVED NYSCEF: 03/02/2018

9. The Defendants have paid the receivables purchased due to Plaintiff in the amount of \$69,923.00 as of March 01, 2018, leaving a current outstanding balance of \$219,877.00.
 10. The value of the receivables that were purchased by Plaintiff and to the extent they were not paid to Plaintiff is \$219,877.00.
 11. There is a current outstanding balance of receivables owed to Plaintiff under the Agreement of \$219,877.00 and as of February 25 2018, Defendants have defaulted on the payment of the receivables purchased in the amount of \$219,877.00.
 12. I am fully familiar with the signature on the Confession of Judgment. It is the signatures of MICHAEL EDWARD CASTANON the principal of Defendant LUMINANCE HEALTH GROUP, INC. D/B/A LUMINANCE HEALTH GROUP, LUMINANCE RECOVERY CENTER, LLC D/B/A LUMINANCE RECOVERY CENTER. As principal, MICHAEL EDWARD CASTANON has full authority to bind that entity, and he is the principal of said entity who negotiated and entered into the Merchant Agreement with Plaintiff (Exhibit "A") and signed the Confession of Judgment.
- The Defendants are in breach of their obligations.
- I therefore request that the judgment be granted to Plaintiff forthwith.

to this March 1, 2018.

TS

PUBLIC

ARIEL BOUSY
NOTARY PUBLIC-STATE
NO. 0290833/
QUALIFIED IN ROCK-
MY COMMISSION EXPI

ORK

EXHIBIT 10

To: Bruce McNider
Subject: Re: Another week with nothing done

Can you please forward it to me?

Warm Regards,
Muhammad Howard // Managing Principal
ULTEGRA FINANCIAL PARTNERS // *Think Outside The Bank*
1099 18th Street Suite 2980 Denver, CO 80202
mhoward@ultegrafinancial.com
Main 303.292.0390 Fax 303.265.9699
Direct 303.292.0390
UltegraFinancial.com

On Dec 23, 2016, at 8:22 AM, Bruce McNider <bruce.mcneider@hotmail.com> wrote:

I have signed it just need to talk with you about it

From: mhoward@ultegrafinancial.com <mhoward@ultegrafinancial.com>
Sent: Friday, December 23, 2016 8:06:46 AM
To: Bruce McNider
Subject: Re: Another week with nothing done

Bruce,

You're over complicating this! I put you in of De and sent you an agreement to sign.

Warm Regards,
Muhammad Howard // Managing Principal
ULTEGRA FINANCIAL PARTNERS // *Think Outside The Bank*
1099 18th Street Suite 2980 Denver, CO 80202
mhoward@ultegrafinancial.com
Main 303.292.0390 Fax 303.265.9699
Direct 303.292.0390
UltegraFinancial.com

On Dec 23, 2016, at 7:33 AM, Bruce McNider <bruce.mcneider@hotmail.com> wrote:

Mo, I need you to call me know . I don't understand why you are not communicating with me . This has gotten serious with wells Fargo . If I had been funded by Dec 2nd like you told me .I wouldn't be in this mess. You told me last Friday this would be done by this Friday now its Friday and its not done . Again I have taken you at your word . Are you keeping your word or not . I have no more time for bullshit and lies.. My dealership is how I provide for my family . And I am loosing it by the min because you are not doing what they told me . You gave me your word last

Friday night again that you would have a plan in place Monday to restructure me and get this executed this week and have me funds. Again I took your word .You told me to trust you .I have all week . And today is no different than last Friday .

I have Dealt with CEO s , and Mill Managers with Multi billion dollar corporation's for 19 years . Such as International paper and I have never dealt with any body quite like you .How can you get deals done with no communication . It seems everybody else is more important than me .Is this the case. Your last email was no worries on Wednesday. Haven't herd from you since

I need to her from you . De and nobody at your office has a clue about what's going on with my case . So who does

I need you to call me now . Not your staff You . Its Friday My kids and wife think we are loosing everything I told them you would have us restructured by today . My wife cried all day yesterday and ask me every 5 min have I herd from you or any body else . All I can tell her is no . But that you said you would help us . Its Friday What are you going to do

334-564-0311

EXHIBIT 11

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

MCNIDER MARINE, LLC and JOHN BRUCE
MCNIDER,

Plaintiffs,

v.

COMPLETE BUSINESS SOLUTIONS
GROUP, INC; FLAT FEE MERCHANT
SERVICES, LLC; IBIS CAPITAL GROUP,
LLC; RETAIL CAPITAL, LLC; RICHMOND
CAPITAL SOLUTIONS, LLC;
YELLOWSTONE CAPITAL, LLC,

Defendants.

DOCKET NO.: 17-cv-2644 (LGS) (JLC)

JURY TRIAL DEMANDED

THIRD AMENDED COMPLAINT

THIRD AMENDED COMPLAINT AND DEMAND FOR A TRIAL BY JURY

Plaintiffs McNider Marine, LLC and John Bruce McNider (collectively “McNider”), by their attorneys, White and Williams LLP, as and for their complaint and demand for a trial by jury, allege:

NATURE OF THE ACTION

1. This is an action to save a small Alabama business from financial ruin at the hands of a group of unregulated, predatory lenders that primarily operate out of New York.
2. McNider is a small marina that has been in the business of selling and repairing boats for more than a decade. It is owned by Bruce McNider and his wife, Melissa McNider. Both have lived in Alabama their entire lives, and have never set foot in New York.
3. McNider and its individual owners have been victimized by a group of predatory lenders that have routinely and systematically taken advantage of them, slowly devastating an otherwise profitable small business.

47. In reality, these transactions are an unlawful pyramid scheme, whereby the merchant is pushed toward an unsustainable level of indebtedness in a relatively short period of time and eventually must declare bankruptcy, creating circumstances under which the MCA Defendants are then permitted to go after the personal assets of the business owner.

48. In fact, in entering into these transactions, the MCA Defendants knew that there was no possibility that McNider could have ever met these daily payment obligations without being forced to enter into a series of further similar transactions because they were taking *more than 100%* of McNider's daily receivables.

49. From just August until November 2016, the MCAs contracted to take over 89% of McNider's daily receivables:

Defendant	Loan Date	Daily %	Daily Payment
New Era	8/11/2016	15%	\$1,711
Ram Capital	9/19/2016	10%	\$1,999
CP	9/30/2016	9%	\$1,208
IBIS	10/6/2016	10%	\$1,165
Yellowstone	10/19/2016	15%	\$3,398
TVT	10/17/2016	15%	\$1,499
ML Factors	10/27/2016	10%	\$2,476
Funding Metrics	11/4/2016	2%	\$530
CP	11/14/2016	3%	\$362
Total Daily		89%	\$14,348

50. In addition to taking 89% of McNider's daily revenues, CBSG contracted to take an additional \$7,373 per day. That is a total of nearly \$22,000 per day, which translates to more than \$462,000 per month.

51. When applying for these loans, McNider informed the MCA Defendants that its monthly revenues were between \$250,000 and \$300,000 per month. In other words, the MCA Defendants contracted to take every penny that came in the door—*and more*.

EXHIBIT 12

QUEEN FUNDING LLC

2221 NE 164 ST, STE 1144 MIAMI BEACH, FL 33160
Ph. (800) 781-0760 Fax (646) 760-9660

SECURED MERCHANT AGREEMENT

This Agreement, dated JANUARY 19, 2018, is between QUEEN FUNDING ("QF") and the merchant listed below (the "Merchant"):

Business Legal Name: ANTELOPE VALLEY COMMUNITY CLINIC

D/B/A: ANTELOPE VALLEY COMMUNITY CLINIC

Type of Entity (check one): ☒ Corporation ☐ LLC ☐ LP ☐ LLP ☐ Sole Proprietor

EIN #: 26-0574826

Physical Address: 45104 10TH ST W, LANCASTER, CA 93534

Mailing Address: 45104 10TH ST W, LANCASTER, CA 93534

PURCHASE AND SALE OF FUTURE RECEIVABLES

Merchant hereby sells, assigns and transfers to QF (making QF the absolute owner) in consideration of the funds provided ("Purchase Price") specified below, the Specified Percentage (defined below) of Merchant's future accounts, contract rights and other obligations arising from or relating to the payment of monies from Merchant's customers' and/or other third party payors (the "Receipts") defined as all payments made by cash, check, credit or debit card, electronic transfer or other form of monetary payment in the ordinary course of the merchant's business), for the payment of Merchant's sale of goods or services until the amount specified below (the "Purchased Amount") has been delivered by Merchant to QF.

The Purchased Amount shall be paid to QF by Merchant's irrevocably authorizing only ONE depositing account acceptable to QF (the "Account") to remit the percentage specified below (the "Specified Percentage") of the Merchant's settlement amounts due from each transaction, until such time as QF receives payment in full of the Purchased Amount. Merchant hereby authorizes QF to ACH Debit the specified remittances from the merchant's bank account on a daily basis and will provide QF with all required access codes, and monthly bank statements. Merchant understands that it is responsible for ensuring that the specified percentage to be debited by QF remains in the account and will be held responsible for any fees incurred by QF resulting from a rejected ACH attempt or an event of default. (See Appendix A). QF is not responsible for any overdrafts or rejected transactions that may result from QF's ACH debiting the specified amounts under the terms of this agreement. QF may, upon Merchant's request, adjust the amount of any payment due under this Agreement at QF's sole discretion and as it deems appropriate. Notwithstanding anything to the contrary in this Agreement or any other agreement between QF and Merchant, upon the violation of any provision contained the MERCHANT AGREEMENT TERMS AND CONDITIONS or the occurrence of an Event of Default under the MERCHANT AGREEMENT TERMS AND CONDITIONS, the Specified Percentage shall equal 100%. A list of all fees applicable under this agreement is annexed hereto in Appendix A.

PURCHASE PRICE:	SPECIFIED PERCENTAGE:	Specific Amount:	PURCHASED AMOUNT:
\$250,000.00	13 %	\$4,499.00	\$374,750.00

THE TERMS, DEFINITIONS, CONDITIONS AND INFORMATION SET FORTH IN THE "MERCHANT SECURITY AGREEMENT" AND "ADMINISTRATIVE FORM" HEREOF ARE HEREBY INCORPORATED HEREIN AND MADE A PART OF THIS MERCHANT AGREEMENT.

FOR THE MERCHANT #1

By: James Allen Cook
Name: JAMES ALLEN COOK
Title: Owner
SSN: XXXX

OWNER/GUARANTOR #1

By: James Allen Cook
Name: JAMES ALLEN COOK
SSN: XXXX

FOR THE MERCHANT #2

By: _____
Name: _____
Title: _____
SSN: _____

OWNER/GUARANTOR #2

By: _____
Name: _____
Title: _____
SSN: _____

To the extent set forth herein, each of the parties is obligated upon his, her or its execution of the Agreement to all terms of the Agreement, including the Additional Terms set forth below. Each of above-signed Merchant and Owner(s) represents that he or she is authorized to sign this Agreement for Merchant, legally binding said Merchant to pay this obligation and that the information provided herein and in all of QF documents, forms and recorded interviews is true, accurate and complete in all respects. If any such information is false or misleading, Merchant shall be deemed in material breach of all agreements between Merchant and QF, and QF shall be entitled to all remedies available under law. QF may produce a monthly statement reflecting the delivery of the Specified Percentage of Receivables from Merchant via Processor and/or Operator to QF. An investigative report may be made in connection with the Agreement. Merchant and each of the above signed Owners authorize QF, its agents and representatives, and any credit-reporting agency engaged by QF to (i) investigate any references given or any other statements or data obtained from or about Merchant or any of its Owners for the purpose of this Agreement, and (ii) pull credit report at any time now or for so long as Merchant and/or Owners(s) continue to have any obligation owed to QF as a consequence of this Agreement or for QF's ability to determine Merchant's eligibility to enter into any future agreement with Company.

ANY MISREPRESENTATION MADE BY MERCHANT OR OWNER IN CONNECTION WITH THIS AGREEMENT MAY CONSTITUTE A SEPARATE CAUSE OF ACTION FOR FRAUD OR INTENTIONAL MISREPRESENTATION.

MERCHANT AGREEMENT TERMS AND CONDITIONS

I. TERMS OF ENROLLMENT IN PROGRAM

1.1 Merchant Deposit Agreement. Merchant shall execute an agreement (the "Merchant Deposit Agreement") acceptable to QF, and appoint a Bank acceptable to QF, to obtain electronic fund transfer services and/or "ACH" payments. Merchant shall provide QF and/or its authorized agent with all of the information, authorizations and passwords necessary to verify Merchant's receivables, receipts and deposits into the account. Merchant shall authorize QF and/or its agent to deduct the amounts owed to QF for the Receipts as specified herein from settlement amounts which would otherwise be due to Merchant from electronic check transactions and to pay such amounts to QF by permitting QF to withdraw the specified percentages by ACH debiting of the account. The authorization shall be irrevocable absent QF's written consent.

1.2 Future Purchases. QF reserves the right to rescind the offer to make any purchase payments hereunder, in its sole discretion.

1.3 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 QF as per the terms of this Agreement.

1.4 Adjustments to the Specific Amount. The Specific Amount is intended to represent the Specified Percentage of Merchant's Receipts each calendar month. At any time, QF may adjust the Specific Amount so that the amount received by QF in the future more closely represents the Specified Percentage. Also, once each calendar month Merchant may request that QF reconcile Merchant's actual receipts and adjust the Specific Amount so that the amount received by QF in the future more closely represents the Specified Percentage. Upon receipt of a written reconciliation request from Merchant, QF may request any and all information from Merchant that QF, in its sole judgment, believes is necessary to accurately reconcile the amount QF has received from Merchant with the actual Specified Percentage. QF shall not be required to adjust the Specific Amount until such time as it has received all such requested information.

1.5 Financial Condition. Merchant and Guarantor(s) authorize QF and its agents to investigate their financial responsibility and history, and will provide to QF any bank or financial statements, tax returns, etc., as QF deems necessary prior to or at any time after execution of this Agreement. A photocopy of this authorization will be deemed as acceptable for release of financial information. QF is authorized to update such information and financial profiles from time to time as it deems appropriate.

1.6 Transactional History. Merchant authorizes their bank to provide QF with Merchant's banking and/or credit-card processing history to determine qualification or continuation in this program.

1.7 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 QF for monies owed to QF from Merchant and (b) actions taken by Processor in reliance upon information or instructions provided by QF.

1.8 No Liability. In no event will QF be liable for any claims asserted by Merchant 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 Merchant and Guarantor(s).

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


1.10 Sale of Receipts. Merchant and QF 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 QF to Merchant. Merchant agrees that the Purchase Price is in exchange for the Receipts pursuant to this Agreement equals the fair market value of such Receipts. QF 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 QF 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 the manner provided in Section 1.1. In no event shall the aggregate of all amounts be deemed as interest hereunder and charged or collected hereunder exceed the highest rate permissible at law. In the event that a court determines that QF has charged or received interest hereunder in excess of the highest rate allowed by law, then the rate in effect hereunder shall automatically be reduced to the maximum rate permitted by applicable law and QF shall promptly refund to Merchant any interest received by QF in excess of the maximum lawful rate, it being intended that Merchant not pay or contract to pay, and that QF 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.

1.11 Power of Attorney. Merchant irrevocably appoints QF 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 QF from Processor, or in the case of a violation by Merchant of Section 1.12 or the occurrence of an Event of Default under Section 4 hereof, from Merchant, under this Agreement, 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 QF; and (v) to file any claims or take any action or institute any proceeding which QF 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.

1.12 Protections against Defaults. The following Protections 1 through 9 may be invoked by QF, 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 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 QF electronic check processor; (b) Merchant changes its arrangements with Processor in any way that is adverse to QF; (c) Merchant changes the electronic check processor through which the Receipts are settled from Processor or to another electronic check processor; or permits any event to occur that could cause diversion of any of Merchant's check transactions to another processor; (d) Merchant interrupts the operation of this business (other than adverse weather, natural disasters or acts of God) transfers, moves, sells, disposes, transfers or otherwise conveys its business or assets without (i) the express prior written consent of QF, and (ii) the written agreement of any purchaser or transferee to the assumption of all of Merchant's obligations under this Agreement pursuant to documentation satisfactory to QF; or (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 checks that are settled through Processor. These protections are in addition to any other remedies available to QF at law, in equity or otherwise pursuant to this Agreement. **Protection 1:** The full uncollected Purchase Amount plus all fees due under this Agreement and the attached Security Agreement become due and payable in full immediately. **Protection 2:** QF may enforce the provisions of the Personal Guarantee of Performance against the Guarantor(s). **Protection 3:** Merchant shall, upon execution of this Agreement, deliver to QF an executed confession of judgment in favor of QF in the amount of the Purchase Amount stated in the Agreement. Upon breach of any provision in this paragraph 1.11, QF may enter that confession of judgment as a judgment with the Clerk of the Court and execute thereon. **Protection 4:** QF may enforce its security interest in the Collateral identified in the Security Agreement herein. **Protection 5:** QF may proceed to protect and enforce its rights and remedies by lawsuit. In any such lawsuit, in which QF shall recover judgment against Merchant, Merchant shall be liable for all of QF's costs of lawsuit, including but not limited to all reasonable attorneys' fees and court costs. **Protection 6:** Merchant shall, upon execution of this Agreement, deliver to QF an executed assignment of lease of Merchant's premises in favor of QF. Upon breach of any provision in this paragraph 1.12, QF may exercise its rights under such assignment of lease. **Protection 7:** QF 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, in an amount consistent with the Specified Percentage. **Protection 8:** QF shall have the right, without waiving any of its rights and remedies and without notice to Merchant and/or Guarantor(s), to notify Merchant's credit card processor of the sale of Receipts hereunder and to direct such credit card processor to make payment to QF of all or any portion of the amounts received by such credit card processor on behalf of Merchant. Merchant hereby grants to QF an irrevocable power-of-attorney, which power-of-attorney shall be coupled with an interest, and hereby appoints QF or any of QF's representatives as Merchant's attorney-in-fact, to take any and all action necessary to direct such new or additional credit card processor to make payment to QF as contemplated by this Section.

p2

Owner 1 Initials: 
Owner 2 Initials: _____

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

1.1.3 Confidentiality. Merchant understands and agrees that the terms and conditions of the products and services offered by QF, including this Agreement and any other QF documentation (collectively, "Confidential Information") are proprietary and confidential information of QF. Accordingly unless disclosure is required by law or court order, Merchant shall not disclose Confidential Information of QF 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 1.1.3.

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

II. 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. Its bank and financial statements, copies of which have been furnished to QF, and future statements which will be furnished hereafter at the discretion of QF, 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 has a continuing, affirmative obligation to advise QF of any material adverse change in its financial condition, operation or ownership. QF may request statements at any time during the performance of this Agreement and the Merchant shall provide them to QF within 5 business days. Merchant's 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.

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 Insurance. Merchant will maintain business-interruption insurance naming QF as loss payee and additional insured in amounts and against risks as are satisfactory to QF and shall provide QF proof of such insurance upon request.

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 QF's prior written consent. Any such change 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 QF or change any of its places of business.

2.7 Estoppel Certificate. Merchant will at any time, and from time to time, upon at least one (1) day's prior notice from QF to Merchant, execute, acknowledge and deliver to QF and/or to any other person, person firm or corporation specified by QF, 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 paid.

2.8 Working Capital Funding. Merchant shall not further encumber the Receipts without (i) the written consent of QF, and (ii) the written agreement of any purchaser or transferee to the assumption of all of Merchant's obligations under this Agreement pursuant to documentation satisfactory to QF, or (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 checks that are settled through Processor. These protections are in addition to any other remedies available to QF at law, in equity or otherwise pursuant to this Agreement. Protection 1: The full uncollected Purchase Amount plus all fees due under this Agreement and the attached Security Agreement become due and payable in full immediately. Protection 2: QF may enforce the provisions of the Personal Guarantee of Performance against the Guarantor(s). Protection 3: Merchant shall, upon whether in the form of a purchase of, a loan against, collateral against or the sale or purchase of credits against, Receipts or future check sales, with any party other than QF.

2.9 Unencumbered Receipts. Merchant has good, complete and marketable title to all Receipts, free and clear of any and all liabilities, liens, claims, charges, 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 QF.

2.12 Business Purpose. Merchant is a valid business in good standing under the laws of the jurisdiction 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.

2.13 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.

III. 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 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 Guarantor(s) prior to the Purchased Amount being paid to QF; (d) Merchant shall willfully, transport, move, interrupt, suspend, dissolve or terminate its business for the purpose of withholding QF's Purchased Receivables; (e) Merchant shall transfer or sell all or substantially all of its assets; (f) Merchant shall make or send notice of any intended bulk sale or transfer by Merchant; (g) Merchant shall use multiple depository accounts without the prior written consent of QF; (h) Merchant shall change its depositing account without the prior written consent of QF; (i) Merchant shall perform any act that reduces the value of any Collateral granted under this Agreement; (j) the attempted ACH debit of the Specific Daily Amount is rejected two times during the term of this Agreement and Merchant does not contact QF in advance of the ACH debit being rejected; (k) Merchant shall block any ACH debit of the Specific Daily Amount or close its bank account; (l) Merchant shall default under any of the terms, covenants and conditions of any other agreement with QF; or

(m) Merchant shall fail to deposit its Receipts into the Account.

3.2 Remedies. If any Event of Default occurs and is not waived pursuant to Section 4.4 hereof, QF 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 Personal Guarantee) or any other legal or equitable right or remedy. All rights, powers and remedies of QF in connection with this Agreement may be exercised at any time by QF 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.

3.3 Costs. Merchant shall pay to QF all reasonable costs associated with (a) a breach by Merchant of the Covenants in this Agreement and the enforcement thereof, and (b) the enforcement of QF's remedies set forth herein, including but not limited to court costs and attorneys' fees.

3.4 Required Notifications. Merchant is required to give QF written notice within 24 hours of any filing under Title 11 of the United States Code. Merchant is required to give QF seven (7) days' written notice prior to the closing of any sale of all or substantially all of the Merchant's assets or stock.

Owner 1 Initials: X J.C.
Owner 2 Initials: _____

IV. 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 both parties.

4.2 Assignment. QF may assign, transfer or sell its rights to receive the Purchased Amount or delegate its duties hereunder, either in whole or in part without prior notice to the Merchant.

4.3 Notices. All notices, requests, consent, 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 and shall become effective only upon receipt.

4.4 Waiver Remedies. No failure on the part of QF 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. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns, except that Merchant shall not have the right to assign its rights hereunder or any interest herein without the prior written consent of QF which consent may be withheld in QF's sole discretion.

4.6 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. If there is any suit, action or proceeding arising hereunder, or the interpretation, performance or breach hereof, then such litigation shall only be instituted in any court sitting in New York State (the "Acceptable Forums"). The parties agree that the Acceptable Forums are convenient, and submit to the jurisdiction of the Acceptable Forums and waive any and all objections to jurisdiction or venue. Should a proceeding be initiated in any other forum, the parties waive any right to oppose any motion or application made by either party to transfer such proceeding to an Acceptable Forum.

4.7 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.

4.8 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 Security Agreement hereto embody the entire agreement between Merchant and QF 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 MATTER ARISING IN CONNECTION WITH OR IN ANY WAY RELATED TO THE TRANSACTIONS OF WHICH THIS AGREEMENT IS A PART OR THE ENFORCEMENT 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 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 ATTORNEY'S 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 SERVICE OF PROCESS. IN ADDITION TO THE METHODS OF SERVICE ALLOWED BY THE NEW YORK STATE CIVIL PRACTICE LAW & RULES ("CPLR"), MERCHANT HEREBY CONSENTS TO SERVICE OF PROCESS UPON IT BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED. SERVICE HEREUNDER SHALL BE COMPLETE UPON MERCHANT'S ACTUAL RECEIPT OF PROCESS OR UPON QF'S RECEIPT OF THE RETURN THEREOF BY THE UNITED STATES POSTAL SERVICE AS REFUSED OR UNDELIVERABLE. MERCHANT MUST PROMPTLY NOTIFY QF, IN WRITING, OF EACH AND EVERY CHANGE OF ADDRESS TO WHICH SERVICE OF PROCESS CAN BE MADE. SERVICE BY QF TO THE LAST KNOWN ADDRESS SHALL BE SUFFICIENT. MERCHANT WILL HAVE THIRTY (30) CALENDAR DAYS AFTER SERVICE HEREUNDER IS COMPLETE IN WHICH TO RESPOND. FURTHERMORE, MERCHANT EXPRESSLY CONSENTS THAT ANY AND ALL NOTICE(S), DEMAND(S), REQUEST(S) OR OTHER COMMUNICATION(S) UNDER AND PURSUANT TO THIS MERCHANT AGREEMENT SHALL BE DELIVERED IN ACCORDANCE WITH THE PROVISIONS OF THIS MERCHANT AGREEMENT.

4.13 Facsimile Acceptance. Facsimile signatures and/or via Portable Digital Format (PDF) shall be deemed acceptable for all purposes.

SECURITY AGREEMENT AND GUARANTY

Business Legal Name: ANTELOPE VALLEY COMMUNITY CLINIC

D/B/A: ANTELOPE VALLEY COMMUNITY CLINIC

Type of Entity (check one): ☒ Corporation ☐ LLC ☐ LP ☐ LLP ☐ Sole Proprietor

EIN #: 26-0574826

Physical Address: 45104 10TH ST W, LANCASTER, CA 93534

Mailing Address: 45104 10TH ST W, LANCASTER, CA 93534

I. SECURITY AGREEMENT

Security Interest. To secure Merchant's payment and performance obligations to QF under the Merchant Agreement, Merchant hereby grants to QF a security interest in all assets now owned, or hereafter acquired, including without limitation: (a) all accounts, including without limitation, all deposit accounts, accounts-receivable, and other receivables, chattel paper, documents, equipment, general intangibles, instruments, and inventory, as those terms are defined by Article 9 of the Uniform Commercial Code (the "UCC"), now or hereafter owned or acquired by Merchant; and (b) all proceeds, as that term is defined by Article 9 of the UCC ("a" and "b" collectively, the "Collateral").

Cross-Collateral. To secure Merchant's and Guarantor's performance of their obligations to QF under this Security Agreement and Guaranty (the "Agreement"), Merchant and/or Guarantor hereby grants QF an additional security interest in:

(the "Additional Collateral"). Guarantor(s) understands that QF will have a security interest in the aforesaid Additional Collateral upon execution of this Agreement. Merchant and Guarantor each acknowledge and agree that any security interest granted to QF under any other agreement between Merchant or Guarantor and QF (the "Cross-Collateral") will secure the obligations hereunder and under the Merchant Agreement.

Merchant and Guarantor each agrees to execute any documents or take any action in connection with this Agreement as QF deems necessary to perfect or maintain QF's first priority security interest in the Collateral, the Additional Collateral and the Cross-Collateral, including the execution of any account control agreements. Merchant and Guarantor each hereby authorizes QF to file any financing statements deemed necessary by QF to perfect or maintain QF's security interest, which financing statement may contain notification that Merchant and Guarantor have granted a negative pledge to QF with respect to the Collateral, the Additional Collateral and the Cross-Collateral, and that any subsequent lien or may be tortiously interfering with QF's rights. Merchant and Guarantor shall be liable for and QF may charge and collect all costs and expenses, including but not limited to attorney's fees, which may be incurred by QF in protecting, preserving and enforcing QF's security interest and rights. Merchant further acknowledges that QF may use another legal name and/or D/B/A when designating the Secured Party, when QF files the above-referenced financing statement(s).

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, the Additional Collateral or the Cross-Collateral, as applicable.

Consent to Enter Premises and Assign Lease. QF 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, QF may execute its rights and remedies under the Assignment of Lease. Merchant also agrees that QF may enter into an agreement with Merchant's landlord giving QF 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 (b) to assign Merchant's lease to another qualified Merchant capable of operating a business comparable to Merchant's at such premises.

Remedies. Upon any Event of Default, QF 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, whether by acceleration or otherwise.

II. GUARANTY

Personal Guaranty of Performance. The undersigned Guarantor(s) hereby guarantees to QF, Merchant's performance of all of the representations, warranties, covenants made by Merchant in this Agreement and the Merchant Agreement, as each agreement may be renewed, amended, extended or otherwise modified (the "Guaranteed Obligations"). Guarantor's obligations are due (i) at the time of any breach by Merchant of any representation, warranty, or covenant made by Merchant in this Agreement and the Merchant Agreement, and (ii) at the time Merchant admits its inability to pay its debts, or makes a general assignment for the benefit of creditors, or any proceeding shall be instituted by or against Merchant seeking to adjudicate it bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, or composition of its debts.

Guarantor Waivers. In the event that Merchant fails to deliver the receivables purchased hereunder or perform any obligation when due under the Merchant Agreement, QF may enforce its rights under this Agreement without first seeking to obtain payment from Merchant, any other guarantor, or any Collateral, Additional Collateral or Cross-Collateral QF may hold pursuant to this Agreement or any other guaranty. QF does not have to notify Guarantor of any of the following events and Guarantor will not be released from its obligations under this Agreement if it is not notified of: (i) Merchant's failure to timely perform any obligation 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 guarantee of the Guaranteed Obligations; (iv) QF's acceptance of this Agreement; and (v) any renewal, extension or other modification of the Merchant Agreement or Merchant's other obligations to QF. In addition, QF 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 QF; (ii) release Merchant from its obligations to QF; (iii) sell, release, impair, waive or otherwise fail to realize upon any collateral securing the Guaranteed Obligations or any other guarantee of the Guaranteed Obligations; and (iv) foreclose on any collateral securing the Guaranteed Obligations or any other guarantee 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 Merchant Amount plus any accrued but unpaid interest and Merchant's other obligations to QF under the Merchant Agreement and this Agreement are satisfied 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 QF 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.

Owner 1 Initials: X Jc
 Owner 2 Initials: _____

IN WITNESS WHEREOF, the parties have executed this Security Agreement
and Guaranty as of the date first written above:

FOR THE MERCHANT #1

By: *James Allen Cook*
X
Name: JAMES ALLEN COOK
Title: Owner
SSN: XXXX

OWNER/GUARANTOR #1

By: *James Allen Cook*
X
Name: JAMES ALLEN COOK
SSN: XXXX

FOR THE MERCHANT #2

By: _____
Name: _____
Title: _____
SSN: _____

OWNER/GUARANTOR #2

By: _____
Name: _____
SSN: _____

AGREED AND ACCEPTED:

QUEEN FUNDING LLC

By: _____
Name: _____
Title: _____

Owner 1 Initials: X *JA*
Owner 2 Initials: *2*

APPENDIX A – FEE STRUCTURE


- A. Origination Fee: \$19,995.00** (to cover underwriting and related expenses).
- B. ACH Program Fee: \$3,495.00** (the ACH program is labor intensive and is not an automated process, requiring us to charge this fee to cover related costs).
- C. Bank Fee:** Minimum bank fee of \$195.00 or up to 10% of the funded amount.
- D. NSF Fee: \$35.00 each occurrence** (up to TWO occurrences before a default is declared).
- E. Rejected ACH: \$100.00** (if a merchant directs the bank to reject our debit ACH).
- F. Bank Change Fee: \$50.00** (If a merchant requires a change of account to be debited requiring us to adjust our system).
- G. Unauthorized Account Fee: \$5,000.00** (if a merchant blocks QF'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).
- H. Default Fee: \$2,500.00** or up to 10% of the funded amount. (if a merchant changes bank accounts or switches to another credit-card processor without QF's consent, or commits another default pursuant to the Agreement) or bounces more than 2 debits of the Account.
- I. Stacking Fee:** If the Merchant takes any further financing from any other finance/factoring company a fee of 10% of the purchased amount will be added to the Merchants current balance.
- J. Risk Assessment Fee: \$249.00**
- K. UCC Fee: \$195.00**

FOR THE MERCHANT #1

By: 
 X
 Name: JAMES ALLEN COOK
 Title: Owner
 SSN: XXXX

FOR THE MERCHANT #2

By: _____
 Name: _____
 Title: _____
 SSN: _____

Owner 1 Initials: X 
 Owner 2 Initials: _____



Authorization for Electronic Funds Transfer

America's Business Capital LLC

535 Route 38 East Suite 110

Cherry Hill, NJ 08002

Phone: (856) 497-4183

Hours: 9:00am-5:00pm/EST Mon-Fri

Customer's Name: Antelope Valley Community Clinic

Customer's Address: 345104 10th St W

Customer's Phone Number: _____

City: Lancaster

State: CA

Zip Code: 93534

By signing below, you authorize America's Business Capital LLC here/after referred to as (ABC) to make debit entries in the form of ACH transfers in accordance with the Payment Schedule. You acknowledge that the origination of ACH transactions to your account must comply with the provisions of U.S. Law and the Rules of the National Automated Clearing House Association.

Your payment will be made automatically from your designated account. If your due date falls on a weekend or holiday, your payment may be deducted on the next business day or added to the end of the term.

If there are insufficient funds in your account, ABC may elect to electronically (or by paper draft) re-present your payment up to two more times. You also understand and authorize ABC to collect a return processing charge by the same means, in an amount not to exceed that as permitted by state law. You may cancel this authorization by sending written notice to ABC at the address above, or by completing a new copy of this form. ABC must be notified of revoked authorization at least 5 days prior to the payment due date or payoff of the contract.

Account Information (Account must be a business account. Personal accounts are not permitted)

Community Bank
Bank Name

12220 3471
Routing Number

03141054
Account Number

AVCC
Primary Account Holder

Joint Account Holder

Payment Schedule (as checked):

☒ Single

Amount: \$12,500

Date: _____

☐ Recurring

Amount: _____

Beginning Date: _____

☐ Daily

☐ Weekly

☐ Other

You acknowledge that you received a copy of this authorization when you signed it. If you should have any question concerning your payment arrangement please contact us at the phone number listed above.

X [Signature] 1/19/13
Customer Signature (Date)

Attach a Voided Check or Deposit Slip to This Form

Keep a copy of this Authorization for Your Records

Dear Merchant,

Thank you for accepting this offer from Queen Funding. We look forward to being your funding partner for as long as you need.

Daily ACH Program:

Queen Funding will require viewing access to your bank account, each business day, in order to calculate 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.

Queen Funding 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: Community Bank

Bank portal website: https://cbank.com

Username: avcccd

Password: cc@avcccd1

Security Question/Answer 1: —

Security Question/Answer 2: —

Security Question/Answer 3: —

Any other information necessary to access your account: —

Merchants preferred contact # 661-942-2391 ext. 457

Please note: In the event that we are unable to access your account, we will take a daily estimated payment. An additional \$39 fee will be assessed for each day we don't have access.

ADDENDUM TO SECURED MERCHANT AGREEMENT

This Addendum is entered into a 19TH day of JANUARY, 2018, by and between QUEEN FUNDING, LLC ("Queen Funding") and ANTELOPE VALLEY COMMUNITY CLINIC (the "Merchant").

1. Should any of the terms of this Addendum conflict with the terms of the agreement between Queen Funding and the Merchant dated JANUARY 19, 2018 (the "Agreement"), then the terms of this Addendum shall govern and be controlling. Capitalized terms used herein but otherwise not defined, shall have the same definition as in the Agreement:

a. By signing below, the Merchant hereby requests and acknowledges that the Specified Percentage shall be revised to \$4,499.00 per business day (the "Daily Payment") which the parties agree is a good-faith approximation of the Specified Percentage, based on the Merchant's receipts due to Queen Funding pursuant the Agreement.

b. The Daily Payment is to be drawn via ACH payment, from the following bank account:

i. Account Number: 03141054
 ii. Routing Number: 122202491
 iii. Account Name: ANTELOPE VALLEY COMMUNITY CLINIC
 iv. Bank Name: COMMUNITY BANK

c. At the Merchant's option, within five (5) business following the end of a calendar month, the Merchant may request a reconciliation to take place, whereby Queen Funding may ensure that the cumulative amount remitted for the subject month via the Daily Payment is equal to the amount of the Specified Percentage. However, in order to effectuate this reconciliation, upon submitting the request for reconciliation to Queen Funding – but in no event later than five (5) business days following the end of the calendar month – the Merchant must produce any and all evidence and documentation requested by Queen Funding in its sole and absolute discretion, necessary to identify the appropriate amount of the Specified Percentage. The foregoing includes without limitation, any and all bank statements, merchant statements or other documents necessary to ascertain the amounts of the Specified Percentage, including login to the Merchant's bank account(s).

d. The Merchant specifically acknowledges that: (i) the Daily Payment and the potential reconciliation discussed above are being provided to the Merchant as a courtesy, and that Queen Funding is under no obligation to provide same, and (ii) if the Merchant fails to furnish the requested documentation within five (5) business days following the end of a calendar month, then Queen Funding shall not effectuate the reconciliation discussed above.

IN WITNESS WHEREOF, the parties have executed this Addendum to the Agreement as of the date first set forth above.

FOR THE MERCHANT #1:

By: JAMES ALLEN COOK

Signature: 

QUEEN FUNDING LLC

By: _____

FOR THE MERCHANT #2:

By: _____

Signature: _____

**This authorization is to remain in full force and effect until QUEEN FUNDING, LLC receives written notification from the Merchant of its termination in such time and in such manner to afford QUEEN FUNDING, LLC a reasonable opportunity to act on it. Revocation of this authorization prior to remittance of the balance owed pursuant to the Agreement shall constitute a breach thereunder.

ACH Authorization Form

For completion of all items required unless otherwise noted

Business Authorized to Debit/Credit Account:

QUEEN FUNDING LLC

646-693-9926

Authorized Business Name

Authorized Business Phone Number

1980 SWARTHMORE AVE

LAKEWOOD

NJ 08701

Authorized Business Address

City

State

Zip

Account Holder Information:

JAMES ALLEN COOK

ANTELOPE VALLEY COMMUNITY CLINIC

Account Holder Name

Account Holder DBA Name (if Business Account)

Account Holder Title

45104 10TH ST W, LANCASTER, CA 93534

Account Holder Address

Account Holder's Bank Information:

Community BANK

Alameda

Account Holder's Bank Name

Account Holder's City

How to find your Routing and Account Numbers on a check:

Routing Number: 122203491

Account Number: 03141054

Routing Number (3 digits)

Account Number

Bank Account Number

Transaction Information:

Professional Service Fee

Circle Amounts (if known) (Optional)

☒ One-time

☐ Recurring

\$ \$25,000.00

JANUARY 19, 2018

No. of Transactions _____ of Open Ended ☐

Amount of Transfer

Transfer Date

Authorization:

We authorize the bank to debit the account holder's account for the amount(s) specified above.

By signing this form, the account holder agrees to authorize the bank to debit the account holder's account for the amount(s) specified above. The bank will not be responsible for any unauthorized debits from the account holder's account. The bank will not be responsible for any unauthorized debits from the account holder's account. The bank will not be responsible for any unauthorized debits from the account holder's account.

X 

Signature of Account Holder

JAMES ALLEN COOK

Print Name of Account Holder

Date

EXHIBIT 13

FILED: RICHMOND COUNTY CLERK 07/03/2017 12:05 PM
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SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF RICHMOND

AMCO MECHANICAL CONTRACTORS,
 LLC; HARROLD W. HERRIDGE; and PEGGY
 S. HERRIDGE,

Plaintiffs,

v.

RAM CAPITAL FUNDING, LLC,

Defendant.

DOCKET NO.:

COMPLAINT AND DEMAND FOR A TRIAL BY JURY

Plaintiffs AMCO Mechanical Contractors, LLC, Harrold W. Herridge, and Peggy S. Herridge (collectively "AMCO"), by their attorneys, White and Williams, LLP, as and for their complaint and demand for a trial by jury, allege:

NATURE OF THE ACTION

1. AMCO is a small mechanical contracting company located in Texas. It is owned by Peggy and Harold Herridge who have lived in Texas their entire lives and have never set foot in New York, let alone Richmond County.

2. Ram Capital Funding, LLC ("Ram") is a New Jersey company with its alleged principal place of business located in Lakewood, New Jersey.

3. N.Y. Ltd. Liab. Co. Law § 808(a) provides that a "foreign limited liability company doing business in this state without having received a certificate of authority to do business in this state may not maintain any action, suit or special proceeding in any court of this state unless and until such limited liability company shall have received a certificate of authority in this state.

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55. After reviewing the bank statements and the bank statements alone, Mr. Collin responded by offering two different options:

On Wed, Apr 26, 2017 at 12:23 PM, Anthony Collin <anthony@smartbusinessfunder.com> wrote:
 Approved!

High risk:

1 of 2 different options:

1) \$40,000.00 at \$1199.00 a day, 1.499 rate

2) \$30,000.00 at \$899.00 a day, 1.499 rate

Both deals pay 10% of the funded amount.

56. AMCO's broker responded: "I really need you to get me \$44,000." In response, Mr. Collin offered the following terms:

On 4/26/17 3:26 PM, Anthony Collin wrote:

I can do:

\$44,000.00 at \$1,699.00 a day payback is 1.499 rate.

Paying 10%

57. AMCO's broker responded by asking if he could "kick the term a little bit so as to get that payment lower?" Mr. Collin responded: "Sorry but this is the best we can offer."

58. Shortly thereafter, AMCO's broker asked Mr. Collin if he could split the difference between the two options with the same 50 payment term at \$1,049 per day:

You're going to shoot me. I just got off the phone with them and what they told me is they want to split the difference between your original option 1 and option 2, so that what they want is \$35,000 at 1.499 with same 50 payment term, so that their daily payment will be \$1,049.93. Can you do it? Otherwise, she said they'll take the \$30,000 as you originally offered it.

59. The next day, on April 27, 2017, AMCO received a competing offer that extended the repayment period over 85 payments:

(citing *Diehl v Becker*, 227 N.Y. 318, 326, 125 N.E. 533 (1919); *Browne v Vredenburg*, 43 N.Y. 195, 198 (1870)); *Bank of Chenango v. Curtiss*, 19 Johns. 326, 331, 1822 N.Y. LEXIS 25, *8 (N.Y. Sup. Ct. 1822) (“*It is not necessary that the contingency should ever happen, in order to render the transaction usurious*. If once infected with usury, no agreement of the parties can render it valid.”) (emphasis added); *Leavitt v. De Launy*, 4 N.Y. 364, 369, 1850 N.Y. LEXIS 105, *11 (N.Y. 1850) (“If the contract provides for the payment of the loan with interest, at all events, it is enough to render it usurious, if in addition to the legal interest, it provides for the payment of excessive interest, upon a contingency. *A stipulation even for a chance of advantage beyond legal interest, is illegal.*”) (emphasis added).

87. The agreement here provides for a usurious rate from the very beginning but it also provides for an even greater amount of interest based on a contingency outside of AMCO’s control—and that contingency actually happened. On the very first page of the agreement, AMCO is required to ensure that the daily specified payment amount of \$1,049 is in its account every business day. If AMCO does not ensure that this amount is available each and every day, then a \$100 ACH Fee is assessed. If this occurs just four times, a default is declared and AMCO is then entitled to take 100% of all of AMCO’s receivables, file and obtain a Judgment by Confession (which is illegal in Texas), and seize all of the personal and business assets of AMCO and Peggy and Harrold Herridge. And that is exactly what happened here.

88. Within days of entering into the Merchant Agreement with Ram on April 26, 2017, AMCO was the victim of a robbery, whereby it had its business checks stolen. As a direct result of this robbery, AMCO was forced to close its business bank accounts and open a new business bank account. AMCO promptly informed Ram of these events and specifically gave Ram the account information for the new business account. Unfortunately, Ram was unable to

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withdraw its daily payment amount of \$1,049 for four consecutive days because it was a new account and therefore the bank placed an automatic, seven day hold on all check deposits. Despite the hold placed on this account, AMCO nevertheless wired Ram the payment amounts that were missed—exactly as Ram instructed.

89. Despite wiring Ram these missed daily payments, Ram nevertheless declared a default, filed a confession of judgment, and then used that judgment to seize AMCO's business bank accounts.

90. In doing so, Ram seized over \$16,000 that was desperately needed to operate the business.

91. As a direct result, AMCO almost did not make payroll, and had to seek alternative funds in order to pay its employees and other necessary expenses of running a business.

92. Both the written agreement and the facts of this case prove that the true nature of the transaction is a collateralized, full recourse loan with an interest rate in excess of 260%.

FIRST CAUSE OF ACTION
 (General Business Law § 349)

93. Plaintiffs repeat and re-allege the allegations of each of the foregoing paragraphs 1 through 92 of this Complaint as if fully set forth herein.

94. The Merchant Agreement entered into between Ram and AMCO on April 28, 2017, involves a consumer-oriented transaction.

95. Ram's conduct in obtaining the Judgment by Confession against AMCO is representative of a consumer-oriented practice commonly used by Ram with respect to other similarly situated consumers and has a broad impact on consumers in New York.

EXHIBIT 14

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

SUPERIOR COURT

SATURN FUNDING, LLC

Plaintiff,

v.

NRO BOSTON, LLC; NORTH RIVER
OUTFITTERS; NRO SPORT, LLC; NRO
EDGARTOWN LLC; JASON INDELICATO
and ALICE INDELICATO,

Defendants.

CIVIL ACTION NO. 16-2523-B

NRO BOSTON, LLC; NORTH RIVER
OUTFITTERS; NRO SPORT, LLC; NRO
EDGARTOWN LLC; JASON INDELICATO
and ALICE INDELICATO,

Plaintiffs-in-counterclaims,
v.

ACE FUNDING SOURCE, LLC; ARCH
CAPITAL FUNDING, LLC; CAPCALL, LLC;
FORWARD FINANCING, LLC; FUNDING
METRICS, LLC; MERCHANT CASH &
CAPITAL, LLC; TVT CAPITAL, LLC; WISE
FUNDING GROUP, LLC; YELLOWSTONE
CAPITAL, LLC; and YES FUNDING
SERVICES, INC.,

Defendants-in-counterclaims.

FIRST AMENDED COUNTERCLAIMS AND DEMAND FOR A TRIAL BY JURY

Counterclaim Plaintiffs NRO Boston, LLC, North River Outfitters, NRO Sport, LLC, NRO Edgartown, LLC (collectively "NRO") and Alice Indelicato and Jason Indelicato (collectively "Counterclaim Plaintiffs"), by their attorneys, White and Williams LLP, as and for their counterclaim and demand for a trial by jury, allege:

NATURE OF THE ACTION

1. This is an action to save a small Massachusetts business from financial ruin.
2. NRO is a clothing and sports retailer with locations in Beacon Hill, Martha's Vineyard, Nantucket and Wellesley. It is owned by Alice and Jason Indelicato, who are husband and wife, and have lived in Massachusetts their whole life.
3. NRO and its individual owners have been victimized by a group of predatory lenders that have routinely and systematically taken advantage of them for years, slowly devastating an otherwise profitable business that has employed dozens of Massachusetts residents for nearly a decade.
4. NRO and its owners are not alone. Numerous other Massachusetts small businesses and citizens have similarly been victimized by the same predatory scheme.
5. Counterclaim Defendants are the commercial equivalent of Payday Lenders. They prey on the weak and desperate and extort unconscionable terms that are expressly prohibited by the criminal laws, civil statutes, and the strong public policy of this Commonwealth.
6. Among other unconscionable business practices, each of the Counterclaim Defendants has knowingly and intentionally violated Mass. Gen. Law c. 271, § 49 by charging

58. A copy of the “loan” document referenced above is attached as Exhibit A, along with a copy of the e-mail. The form of this “loan” is nearly identical to the vast majority of the so-called “factoring agreements” used by almost every Counterclaim Defendant in this action.

a) The “Daily Payment Amount” is a Disguised “Fixed Loan Payment.”

59. The so-called “factoring agreements” purport to purchase future receivables based on a specified percentage of NRO’s daily receivables. While these agreements give the illusion that the repayment term is directly tied to the percentage of receivables, the vast majority of these agreements then alter this daily percentage by fixing a daily repayment amount. This stated daily repayment amount is purportedly based on a good-faith estimate of NRO’s daily future receivables but is, in reality, a knowingly false term unilaterally dictated by Counterclaim Defendants in an attempt to avoid the usury laws.

60. When a series of these so called “factoring agreements” is placed side-by-side, it is undisputable that Counterclaim Defendants determine the daily payment amount based on the full value of the loan, not the estimated daily future receivables.

61. For example, Yellowstone issued a series of purported “factoring agreements” over the course of just five months. Each daily payment amount was allegedly based on 15% of NRO’s daily future receivables. The specified daily payment for each of these transactions, however, varied from \$973 to \$6,995 in proportion to the amount of the loan, not the so called “good-faith” estimate of what would be 15% the merchant’s daily receivables:

					Daily \$	Daily%
NRO Boston	Yellowstone Capital	2/23/2016	100,000	145,900	1,621	15%
NRO Edgartown	Yellowstone Capital	3/11/2016	60,000	87,540	973	15%
NRO Boston	Yellowstone Capital	3/28/2016	210,000	306,390	3,064	15%
NRO Edgartown	Yellowstone Capital	5/17/2016	100,000	145,900	3,316	15%
NRO Boston	Yellowstone Capital	5/17/2016	250,000	364,750	1,327	15%
NRO Edgartown	Yellowstone Capital	6/16/2016	335,000	499,990	5,995	15%
NRO Boston	Yellowstone Capital	6/29/2016	270,000	409,738	3,499	15%
NRO Boston	Yellowstone Capital	7/26/2016	400,000	699,950	6,995	15%
NRO Edgartown	Yellowstone Capital	7/27/2016	400,000	699,950	6,995	15%

EXHIBIT 15

Mike Pedersen Sr

From: Mike Pederson Sr <mike@mikesauto.com>
Sent: Friday, January 29, 2016 11:26 AM
To: mike@mikesauto.com
Subject: FW: : Mikes Auto 1/29- Proposal- Working Capital -
Attachments: MIKES AUTO SERVICE CONTRACT - 012816.pdf

From: sweaver@premierworkingcapital.com [mailto:sweaver@premierworkingcapital.com]
Sent: Friday, January 29, 2016 10:11 AM
To: acley@premierworkingcapital.com
Cc: mike@mikesauto.com
Subject: : Mikes Auto 1/29- Proposal- Working Capital -

Hello Mike:

It was a pleasure speaking to you over the phone yesterday, here is the proposal for your view.

As discussed, after 5 business days, we will convert the loan into a 3year Business Line Of Credit with a monthly principal and interest payment, with a credit limit of 175k.

Amanda and I will call you @ 10 am cst-

Regards

Stephen Quroiz

Underwriter

Senior Commercial Banker

Equal Opportunity Lender

Premer Working Capital, Inc.

Direct: 800.430.3527 x 901
 E fax : 877.287.5188

www.premierworkingcapital.com

www.LifeLines.com/PwvWorking



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EXHIBIT 16

----- Forwarded message -----

From: **Administrative Department** <info@peaksourceus.com>
Date: Fri, Aug 4, 2017 at 12:16 PM
Subject: BBK Motor Sports - Pre Approved
To: brians.bargains@yahoo.com

Good afternoon,

Your business has been pre approved!

Loan amount \$390,500
Payback \$566,225
Term 18 months
Daily payment \$1,498
Factor rate 1.45

Loan amount \$468,700
Payback \$674,928
Term 15
Daily payment \$2,143
Factor rate 1.44

Best,

Dora Garcia

Operations Manager

Peak Source LLC
641 Lexington Avenue | New York, NY 10022
Tel. 646-328-1334 Toll Free. 888-319-3821 Fax. 646-626-6458
www.peaksourceus.com



PEAK SOURCE

EXHIBIT 17

<p>UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK</p> <p>-----X SNAP ADVANCES, LLC,</p> <p>Plaintiff,</p> <p>Case No:2:18-CV-00016BCW</p> <p>-against-</p> <p>SHG OF ILLINOIS, dba BBK MOTORSPORT, MARTIN ADAMS, LLC, BRIAN S. MARTIN,</p> <p>Defendants.</p> <p>-----X October 10, 2018 11:06 a.m. 7 Time Square New York, New York</p> <p>DEPOSITION of NATHAN FRANCIS by Defendant, pursuant to Order before Christine Cutrone, a Shorthand Reporter and Notary Public within and for the State of New York.</p>	<p>2</p> <p>1 A P P E A R A N C E S : 2 3 WHITE AND WILLIAMS, LLP 4 Attorneys for Defendant 5 7 Times Square 6 Suite 2900 7 New York, New York 10036-6524 8 BY: SHANE R. HESKIN, ESQ. 9 10 MAVRIDES, MOYAL, PACKMAN, SADKIN 11 Attorneys for NATHAN FRANCIS 12 PEAK SOURCE 13 1981 Marcus Avenue 14 Suite E117 15 Lake Success, New York 11042 16 BY: JAMIE POLON, ESQ. 17 18 19 20 21 22 23 24 25</p>
<p>3</p> <p>1 STIPULATIONS 2 3 4 IT IS HEREBY STIPULATED AND AGREED 5 by and between the attorneys for the 6 respective parties hereto that filing 7 sealing and certification be and the same 8 are hereby waived. 9 IT IS FURTHER STIPULATED AND AGREED 10 that all objections, except as to the form 11 of the question, be reserved to the time 12 of the trial. 13 IT IS FURTHER STIPULATED AND AGREED 14 that the within examination may be signed 15 and sworn to before any Notary Public with 16 the same force and effect as though signed 17 and sworn to before this Court. 18 19 20 21 22 23 24 25</p>	<p>4</p> <p>1 FRANCIS 2 N A T H A N F R A N C I S, having been 3 first duly sworn by a Notary Public within 4 and for the State of New York, was 5 examined and testified under oath as 6 follows: 7 8 EXAMINATION BY MR. HESKIN: 9 Q. Please state your name for the 10 record. 11 A. Nathan Francis. 12 Q. What is your present business 13 address? 14 A. 641 Lexington Avenue, Suite 15 1428, New York, New York 10022. 16 Q. How are you doing, Mr. Francis? 17 A. I'm doing okay. 18 Q. My name is Shane Heskin. I 19 represent BBK Motorsports. I just have a few 20 questions for you. 21 Can you give me your educational 22 background please? 23 A. Yes. Graduated from high 24 school, Briarcliffe, New York. Went to some 25 community college. Westchester Community.</p>

1 (Pages 1 to 4)

<p>1 FRANCIS</p> <p>2 Went out to Arizona and did some community</p> <p>3 college out there. Played some football. But</p> <p>4 returned back to New York to live.</p> <p>5 Q. What courses did you take at the</p> <p>6 community college?</p> <p>7 A. Different types of sales,</p> <p>8 marketing courses. Basic courses that I had</p> <p>9 to take to fit my curriculum.</p> <p>10 Q. Did you get your degree?</p> <p>11 A. No, I didn't graduate.</p> <p>12 Q. How many semesters did you take?</p> <p>13 A. Semesters? Two years,</p> <p>14 three years of college. Between two and</p> <p>15 three years of schooling.</p> <p>16 Q. What school in Arizona?</p> <p>17 A. Mason (sic) Community College.</p> <p>18 Q. What position did you play in</p> <p>19 football?</p> <p>20 A. Inside and outside linebacker.</p> <p>21 Q. Did you take any courses in</p> <p>22 finance?</p> <p>23 A. No, I did not.</p> <p>24 Q. What did you do after college?</p> <p>25 A. I returned home and I worked as</p>	<p>1 FRANCIS</p> <p>2 a personal trainer.</p> <p>3 Q. Where did you grow up?</p> <p>4 A. Grew up in Westchester, New</p> <p>5 York.</p> <p>6 Q. Where do you live now?</p> <p>7 A. I live in Long Island City.</p> <p>8 Q. How old are you now?</p> <p>9 A. 31 years old.</p> <p>10 Q. How long were you a personal</p> <p>11 trainer?</p> <p>12 A. I was a personal trainer four or</p> <p>13 five years. Four years.</p> <p>14 Q. What did you do after that?</p> <p>15 A. I got a sales job. Worked at an</p> <p>16 international conference company, IPC, working</p> <p>17 in sales.</p> <p>18 Q. For how long?</p> <p>19 A. Two years possibly.</p> <p>20 Q. What year did you stop working</p> <p>21 there?</p> <p>22 A. Let me see. Maybe 2011 maybe.</p> <p>23 Q. Where did you go after that?</p> <p>24 A. I took on other sales jobs just</p> <p>25 working in sales. Worked at Life Alert,</p>
<p>1 FRANCIS</p> <p>2 which is just sales cold calling on the phone.</p> <p>3 From there I got a handful of other just sales</p> <p>4 jobs, cold calling jobs.</p> <p>5 Q. You're the president of Peak</p> <p>6 Source, right?</p> <p>7 A. I am.</p> <p>8 Q. Are you the owner of it?</p> <p>9 A. I am.</p> <p>10 Q. When did you start Peak Source?</p> <p>11 A. End of 2013.</p> <p>12 Q. How did that come about?</p> <p>13 A. I just built some experience in</p> <p>14 sales and saw the importance of having lead</p> <p>15 generating. Being able to generate leads, the</p> <p>16 importance of it. So that was just my way of</p> <p>17 building a job for myself. Just being a more</p> <p>18 structured lead generator.</p> <p>19 Q. Who did the website?</p> <p>20 A. I paid someone to do it for a</p> <p>21 couple hundred bucks, a friend.</p> <p>22 Q. Who decided what went onto the</p> <p>23 website?</p> <p>24 A. I do. I did.</p> <p>25 Q. Are you an investment company or</p>	<p>1 FRANCIS</p> <p>2 are you a sales company?</p> <p>3 A. Just sales.</p> <p>4 Q. Just sales?</p> <p>5 A. That's all we do. Cold calling.</p> <p>6 Q. So if you advertise on your</p> <p>7 website that you're an investment company,</p> <p>8 that's false, right?</p> <p>9 A. If it's listed on there that</p> <p>10 way, yes.</p> <p>11 Q. You have zero financial</p> <p>12 experience whatsoever, correct?</p> <p>13 A. Zero.</p> <p>14 Q. Does anyone at Peak Source have</p> <p>15 any financial experience?</p> <p>16 A. None more than myself in terms</p> <p>17 of just being able to cold call and -- no,</p> <p>18 there's no financial...</p> <p>19 Q. So could you just describe what</p> <p>20 Peak Source does?</p> <p>21 A. Peak Source, we are an LLC</p> <p>22 within New York. We help our clients secure,</p> <p>23 you know, whatever financing they may be</p> <p>24 looking for or qualified for.</p> <p>25 Q. How do you generate most of your</p>

2 (Pages 5 to 8)

<p>1 FRANCIS</p> <p>2 leads?</p> <p>3 A. A lot of our leads come from</p> <p>4 outsource like many other cold callers, other</p> <p>5 lead generators in the industry who we have</p> <p>6 relationships with.</p> <p>7 Q. How many people do you have on</p> <p>8 staff?</p> <p>9 A. I only have one person.</p> <p>10 Q. Who?</p> <p>11 A. Dora, my office assistant.</p> <p>12 Q. Dora Garcia?</p> <p>13 A. Yes.</p> <p>14 Q. Does she have any financial</p> <p>15 background?</p> <p>16 A. None.</p> <p>17 Q. What's her educational</p> <p>18 background?</p> <p>19 A. Graduated college. Has a</p> <p>20 degree. I can't remember which one. But she</p> <p>21 graduated from college. No financial</p> <p>22 background. I believe she has a degree --</p> <p>23 MR. POLON: Objection. You</p> <p>24 can answer.</p> <p>25 A. Criminal justice degree.</p>	<p>1 FRANCIS</p> <p>2 Q. How old is she?</p> <p>3 A. 30 years old.</p> <p>4 Q. How long has she been working</p> <p>5 for you?</p> <p>6 A. Over two years.</p> <p>7 Q. Was she your only employee?</p> <p>8 A. Yes. That works for me, yes.</p> <p>9 Q. Who solicited the transaction at</p> <p>10 issue here?</p> <p>11 A. Who solicited in terms --</p> <p>12 MR. POLON: Objection. Form</p> <p>13 of question. Just rephrase it.</p> <p>14 Q. Do you understand that we're</p> <p>15 here to talk about a transaction that was</p> <p>16 entered into between allegedly Snap Advances</p> <p>17 and BBK Motorsport? Do you understand that?</p> <p>18 A. Yes.</p> <p>19 Q. Who generated that lead?</p> <p>20 A. I received the information from</p> <p>21 Lisa Kelly. From a different funding company.</p> <p>22 Q. Who's Lisa Kelly?</p> <p>23 A. Just a referral. Someone</p> <p>24 referred her to me that I may have other</p> <p>25 relationships with other, you know, advanced</p>
<p>1 FRANCIS</p> <p>2 companies. And I may have people help her</p> <p>3 find a solution.</p> <p>4 Q. Who does Lisa Kelly work for?</p> <p>5 MR. POLON: Objection. You</p> <p>6 can answer.</p> <p>7 A. Green Funding Solutions.</p> <p>8 Q. What does Green Funding do?</p> <p>9 A. It's just another advance</p> <p>10 company. Cash advance company.</p> <p>11 Q. Are they associated with Yellow</p> <p>12 Stone?</p> <p>13 MR. POLON: Objection.</p> <p>14 A. I believe so. Yes. I'm not</p> <p>15 sure what caliber.</p> <p>16 Q. Who is Lynn Davis?</p> <p>17 A. Lynn Davis. I believe that is a</p> <p>18 friend of Lisa Kelly or somebody that works</p> <p>19 alongside with her.</p> <p>20 Q. And you understand that Lynn</p> <p>21 Davis is affiliated with Yellow Stone, right?</p> <p>22 A. Correct.</p> <p>23 Q. So did you understand that</p> <p>24 Yellow Stone had already entered into a</p> <p>25 merchant cash advance agreement --</p>	<p>1 FRANCIS</p> <p>2 MR. POLON: Objection.</p> <p>3 Q. -- with BBK Motorsport prior to</p> <p>4 your solicitation of BBK?</p> <p>5 A. I was not aware of that.</p> <p>6 Q. Well, how did Yellow Stone</p> <p>7 become aware of BBK?</p> <p>8 MR. POLON: Objection.</p> <p>9 A. I'm not sure how they got that</p> <p>10 information.</p> <p>11 Q. Someone from Yellow Stone calls</p> <p>12 you, is that how it worked?</p> <p>13 A. No.</p> <p>14 Q. Who did they call?</p> <p>15 A. I am not sure who they called.</p> <p>16 Q. Who at Peak Source received the</p> <p>17 referral for BBK from Yellow Stone?</p> <p>18 A. I received it from Lisa Kelly.</p> <p>19 Q. What information did Lisa Kelly</p> <p>20 give you?</p> <p>21 A. She provided me with I think</p> <p>22 three months bank statements. A couple of</p> <p>23 months bank statements and then application</p> <p>24 that was filled out.</p> <p>25 Q. An application that was filled</p>

3 (Pages 9 to 12)

<p style="text-align: right;">41</p> <p>1 FRANCIS</p> <p>2 interest to him. I was informed to contact</p> <p>3 them.</p> <p>4 Q. You did say he was preapproved</p> <p>5 for a loan, right?</p> <p>6 A. The wording on there is --</p> <p>7 that's what it does say. My company we do</p> <p>8 work with a handful of different advance</p> <p>9 companies. Some of which do offer, you know,</p> <p>10 loans. Some offer MCAs.</p> <p>11 Q. What company did you have in</p> <p>12 your mind when you told BBK Motorsport that it</p> <p>13 was preapproved for a \$600,000 loan?</p> <p>14 A. I don't necessarily have an</p> <p>15 answer for that. There was no set company in</p> <p>16 mind. I'm trying to throw out numbers that I</p> <p>17 think could be attractive to the merchant.</p> <p>18 From there I would try and source a solution.</p> <p>19 Q. I'm just trying to --</p> <p>20 A. Is this the application?</p> <p>21 Q. Let me ask you this.</p> <p>22 MR. POLON: Let him ask you</p> <p>23 a question.</p> <p>24 Q. The loan has an interest rate,</p> <p>25 right?</p>	<p style="text-align: right;">42</p> <p>1 FRANCIS</p> <p>2 MR. POLON: Objection.</p> <p>3 Calls for a legal conclusion.</p> <p>4 A. Yes, loans are given rates.</p> <p>5 Q. Interest rates?</p> <p>6 A. Yes.</p> <p>7 Q. And an MCA agreement has a</p> <p>8 factor rate, right?</p> <p>9 A. Yes.</p> <p>10 Q. What's your understanding of the</p> <p>11 factor rate?</p> <p>12 MR. POLON: Objection.</p> <p>13 Calls for a legal conclusion. You</p> <p>14 can answer.</p> <p>15 A. A factor rate is dictated by</p> <p>16 when -- pretty much a lender would figure out</p> <p>17 how much of the future sales of the merchant</p> <p>18 they're looking to I guess purchase. And that</p> <p>19 factor rate would calculate the total payback</p> <p>20 amount plus the interest that was owed to that</p> <p>21 lender.</p> <p>22 Q. And that's your typical</p> <p>23 understanding of how MCA agreements work,</p> <p>24 correct?</p> <p>25 A. Correct.</p>
<p style="text-align: right;">43</p> <p>1 FRANCIS</p> <p>2 MR. HESKIN: Mark this.</p> <p>3 (E-mails was marked Exhibit</p> <p>4 1 for identification, as of this</p> <p>5 date October 10, 2018.)</p> <p>6 MR. HESKIN: So I've handed</p> <p>7 the witness what has been marked</p> <p>8 as Exhibit number 1. It's an</p> <p>9 e-mail dated Friday, August 4,</p> <p>10 2017 from Info@PeakSourceUS.com to</p> <p>11 BrianStockbargains@Yahoo.com.</p> <p>12 Q. Do you see here where it states</p> <p>13 loan amount?</p> <p>14 A. Yes.</p> <p>15 Q. \$390,500, correct?</p> <p>16 A. Yes.</p> <p>17 Q. And the payback amount is</p> <p>18 \$566,225, do you see that?</p> <p>19 A. Yes, I do.</p> <p>20 Q. And that's got a set term,</p> <p>21 right?</p> <p>22 A. Yes.</p> <p>23 Q. And has a daily payment amount</p> <p>24 of \$1,498, do you see that?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">44</p> <p>1 FRANCIS</p> <p>2 Q. And it's got a factor rate of</p> <p>3 1.45, do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. What is the interest rate?</p> <p>6 MR. POLON: Objection.</p> <p>7 Legal conclusion. You can answer.</p> <p>8 A. It would be calculated at</p> <p>9 45 percent total payback.</p> <p>10 Q. So it's a 45 percent interest</p> <p>11 rate?</p> <p>12 MR. POLON: Objection.</p> <p>13 A. Well, what I have been told by</p> <p>14 my guys to -- it would be the borrowed amount</p> <p>15 calculated by the factor rate. So the payback</p> <p>16 amount would be \$560,000.</p> <p>17 Q. But I want to know what the</p> <p>18 interest rate is. Not the factor rate.</p> <p>19 MR. POLON: Objection. You</p> <p>20 can answer.</p> <p>21 A. I don't know the actual set</p> <p>22 interest rate. I guess this is just like a</p> <p>23 parameter.</p> <p>24 Q. How did you come up with these</p> <p>25 numbers?</p>

11 (Pages 41 to 44)

<p style="text-align: right;">45</p> <p>1 FRANCIS</p> <p>2 A. Just numbers I was advised on</p> <p>3 sharing from underwriters who I was asking to</p> <p>4 help me get this deal approved. These were</p> <p>5 just numbers that they were throwing around</p> <p>6 and told me to send to see if there would be</p> <p>7 any interest.</p> <p>8 Q. Which underwriters?</p> <p>9 A. I can't remember their names off</p> <p>10 the top of my head. Some of which could be</p> <p>11 friends. Again, at the time I was just</p> <p>12 looking for an avenue of being able to find</p> <p>13 this deal.</p> <p>14 Q. Can you identify a single person</p> <p>15 that gave you these numbers?</p> <p>16 A. No. I don't have their -- I</p> <p>17 don't remember a specific.</p> <p>18 Q. So as you sit here today, you</p> <p>19 have no idea who gave you these numbers.</p> <p>20 A. No, I don't remember who exactly</p> <p>21 provided me this information. I was calling</p> <p>22 around.</p> <p>23 Q. These look like pretty specific</p> <p>24 numbers, right?</p> <p>25 A. Yeah, they're numbers.</p>	<p style="text-align: right;">46</p> <p>1 FRANCIS</p> <p>2 Q. Well, you don't know how they</p> <p>3 were calculated?</p> <p>4 A. To be honest with you, no, I</p> <p>5 don't.</p> <p>6 Q. I'm confused. I mean this looks</p> <p>7 an awful lot like an MCA agreement, right?</p> <p>8 A. It looks like an offer.</p> <p>9 Q. For a cash advance agreement,</p> <p>10 right?</p> <p>11 A. Yeah, it looks like an advance</p> <p>12 amount.</p> <p>13 Q. For a merchant cash advance</p> <p>14 agreement, right?</p> <p>15 A. Yes.</p> <p>16 Q. And I agree this does look like</p> <p>17 the terms of a merchant cash advance</p> <p>18 agreement, so we're on the same page there.</p> <p>19 My question is, why are you</p> <p>20 using the term loan to describe an MCA</p> <p>21 agreement?</p> <p>22 MR. POLON: Objection.</p> <p>23 A. That information -- again in</p> <p>24 terms of us -- even the way that it's even</p> <p>25 listed on my website, like something that's</p>
<p style="text-align: right;">47</p> <p>1 FRANCIS</p> <p>2 there and probably should have been changed,</p> <p>3 but it's just the wording. From my</p> <p>4 understanding anyone that's being advanced</p> <p>5 funds or the way that we had worded it, it was</p> <p>6 just the suggested amount that I was informed</p> <p>7 that, you know, maybe the client would</p> <p>8 possibly qualify for. So I was the</p> <p>9 individual who had presented the information,</p> <p>10 the cash advance with this information.</p> <p>11 Q. So when you say loan amount, you</p> <p>12 really mean cash advance amount, right?</p> <p>13 A. Yeah, for referring to merchant</p> <p>14 cash advances.</p> <p>15 Q. So this is not referring to a</p> <p>16 loan. This is referring to a merchant cash</p> <p>17 advance terms, correct?</p> <p>18 A. Yes, this information.</p> <p>19 Q. But you call it a loan, correct?</p> <p>20 MR. POLON: Objection.</p> <p>21 A. That was not -- again, that's</p> <p>22 how it's listed. That was not meant to devise</p> <p>23 in any type of way.</p> <p>24 Q. So it was a mistake?</p> <p>25 A. Yes, you can say that. It was</p>	<p style="text-align: right;">48</p> <p>1 FRANCIS</p> <p>2 nothing we had pushed on to the individual.</p> <p>3 We did not decide the details of anything</p> <p>4 under there that was just suggested to see if</p> <p>5 that information could possibly work. And</p> <p>6 that's how I had shared the information that I</p> <p>7 received to Brian.</p> <p>8 Q. Your website still calls MCA</p> <p>9 agreements loans, right?</p> <p>10 A. Yes. That wording is still</p> <p>11 there. I did see. That's something that</p> <p>12 should have been up there for a couple of</p> <p>13 years.</p> <p>14 Q. Fixed.</p> <p>15 A. It's still there.</p> <p>16 Q. That's false, correct?</p> <p>17 A. No.</p> <p>18 Q. It's not false?</p> <p>19 A. We work with a handful of</p> <p>20 different lenders who offer different types of</p> <p>21 products. Could be, you know, whatever...</p> <p>22 Q. But your website specifically</p> <p>23 says MCA loan, correct?</p> <p>24 A. It does say MCA loans. And that</p> <p>25 information has been up there for sometime.</p>

12 (Pages 45 to 48)

<p style="text-align: right;">49</p> <p>1 FRANCIS</p> <p>2 Q. I'm just trying to get clarity.</p> <p>3 So when your website says MCA loan, that's a</p> <p>4 mistake too, correct?</p> <p>5 A. Yes. If you read it that way,</p> <p>6 it's just one of the products that we offer.</p> <p>7 It's two different products.</p> <p>8 Q. But MCA agreements, as you</p> <p>9 previously testified, are not loans, correct?</p> <p>10 A. MCAs are cash advances, yeah.</p> <p>11 They're not a loan.</p> <p>12 Q. They're not a loan?</p> <p>13 A. Correct.</p> <p>14 Q. Have you ever had discussions</p> <p>15 with Yellow Stone or any other MCA funder</p> <p>16 about how to characterize these transactions?</p> <p>17 MR. POLON: Objection.</p> <p>18 A. How to characterize the</p> <p>19 transaction?</p> <p>20 Q. Yes.</p> <p>21 A. No. We received an approval</p> <p>22 and we share it with them.</p> <p>23 Q. Did they ever tell you don't</p> <p>24 call it a loan?</p> <p>25 A. I'm aware that these are not</p>	<p style="text-align: right;">50</p> <p>1 FRANCIS</p> <p>2 loans. So they don't.</p> <p>3 Q. Has anyone from the MCA industry</p> <p>4 told you not to call them loans?</p> <p>5 A. Yes, I'm sure in the past. It's</p> <p>6 not a correct way to refer to the product.</p> <p>7 Q. Has Yellow Stone ever told you</p> <p>8 not to call it a loan?</p> <p>9 MR. POLON: Objection.</p> <p>10 A. No.</p> <p>11 Q. Do you have any e-mails where an</p> <p>12 MCA funder ever told you don't call it a loan?</p> <p>13 A. No. I don't believe so.</p> <p>14 Q. How often have you referred to</p> <p>15 MCA agreements as a loan?</p> <p>16 MR. POLON: Objection.</p> <p>17 A. Does not happen often. The</p> <p>18 situation, yes, it is there. But that's</p> <p>19 something that does not happen very often.</p> <p>20 Q. But it happened here, correct?</p> <p>21 A. Yeah, it's there.</p> <p>22 Q. Are you aware of any other</p> <p>23 instances where you've mistakenly referred to</p> <p>24 an MCA agreement as a loan?</p> <p>25 A. No. Not to my recollection.</p>
<p style="text-align: right;">51</p> <p>1 FRANCIS</p> <p>2 Q. Do you see in this offer you</p> <p>3 have a daily payment amount of \$1,498, do you</p> <p>4 see that?</p> <p>5 A. Yes.</p> <p>6 Q. What is that based on?</p> <p>7 A. I'm guessing that is just --</p> <p>8 over the 18 months you do -- you try to</p> <p>9 breakup the amount of days in a month.</p> <p>10 Q. I get it.</p> <p>11 A. By the balance.</p> <p>12 Q. That's how I read it. Right?</p> <p>13 That's how you read it?</p> <p>14 A. Or just a daily payment.</p> <p>15 Probably the merchant filled that out.</p> <p>16 Q. So it's 18 months. You divide</p> <p>17 three -- the payback amount which is \$566,225</p> <p>18 and you divide that by \$1,498, right?</p> <p>19 MR. POLON: Objection.</p> <p>20 Q. 18 months.</p> <p>21 A. I'm not an underwriter.</p> <p>22 Q. How were these numbers arrived</p> <p>23 at? Who came up with these numbers?</p> <p>24 A. (No response.)</p> <p>25 Q. Do you know who came up with</p>	<p style="text-align: right;">52</p> <p>1 FRANCIS</p> <p>2 those numbers?</p> <p>3 A. I'm not sure.</p> <p>4 Q. If you look at the next one, it</p> <p>5 has a term of 15 months, do you see that?</p> <p>6 A. I see it.</p> <p>7 Q. And it has a daily payment of</p> <p>8 amount of \$2,143, do you see that?</p> <p>9 A. Yeah.</p> <p>10 Q. And that's about \$645 higher per</p> <p>11 day, right?</p> <p>12 A. I guess.</p> <p>13 Q. Why is it higher?</p> <p>14 A. I don't know.</p> <p>15 Q. Do you understand how the daily</p> <p>16 payments are calculated?</p> <p>17 A. Not necessarily. Again, I'm</p> <p>18 not sure why that information is higher on</p> <p>19 this one than the other. I'm not sure why it</p> <p>20 was changed.</p> <p>21 Q. What's your understanding of</p> <p>22 what a daily payment is?</p> <p>23 A. An amount that a merchant is</p> <p>24 able to make on a daily basis.</p> <p>25 Q. That's how much they have to</p>

13 (Pages 49 to 52)

EXHIBIT 18

- Home
- Resources
 - MCA Online Glass
 - Funder Directory
 - Lead Sources
 - MCA Software and CRMs
 - Collections Firms
 - Free UCC Search Links
 - UCC Filing Alias List
 - Small Business Finance Rankings
 - MCA Industry Attorneys
 - Accounting & Audit Firms
 - Small Business Forum
- Editorials
 - Merchant Cash Advances
 - P2P Lending
 - Business Lending
 - Bitcoin
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The Closer – Meet the Yellowstone Capital Rep That Originated \$47 Million in Deals Last Year

February 10, 2016 | By: Sean Murray

FEATURE STORY

Juan Monegro started working as a Verizon customer service rep when he was just 19 years old. For someone who would years later become one of the most prolific salesmen in a niche market of financial services, his beginnings are certainly humble, if not strangely improbable. But the way he tells it, the transition wasn't that outlandish. After all, what better place to become a master of working over the phone than by working for an actual phone company?

Born and raised in New York City, it's obvious from his stature that he likes to lift weights. While at Verizon, he was attending college part time and was just 5 classes away from graduation when he joined Yellowstone Capital. That was three and a half years ago, when Bart Maczuga, a friend of his that had just started there recently, spoke of an incredible opportunity for people who were good on the phone. Intrigued, Monegro decided it was worth checking out. He was hired immediately.

They challenged him right out of the gate by giving him a list of dead leads, standard procedure for new sales reps. It was basically a test, he said. Those that manage to turn that list into a sufficient number of funded deals get their shot at the fresh stuff.

"I closed three deals my first month," Monegro said of that experience.

And with that, he hit the ground running. He put school on hold and in his first six months, he originated \$3 million in funded deals, a feat which earned him immediate recognition among his colleagues. Monegro didn't hold back from maximizing his potential either and after just 3 months, began to syndicate.

Some of those deals were through Maczuga, who was already running his own in-house funder. Maczuga, who had originally started in the company's accounting department, was so impressed by the business model, that he literally told the company's CEO, Isaac Stern, that he wanted to fund deals instead. "First week I said to Isaac, I need to put some money in," Maczuga said.

With Stern's blessing, Maczuga went all-in by investing ninety-five percent of his net worth in merchant cash advances. It has worked out very well for him. Today, the two pals still work together closely. Monegro closes, Maczuga funds. But only for the deals that fit the box. When they don't, Monegro has a range of other in-house options to get his clients funded.



In an industry where top notch closers might only originate 200-350 deals a year, Monegro originated an astounding 2,350 deals in 2015. That came out to a grand total of \$47.6 million, according to CEO Stern. That includes renewals, he admitted, but the bulk were new. Some quick math breaks that out to an average deal size of about \$20,000. The largest deal Monegro funded last year was for \$350,000. Meanwhile, the smallest deal he's ever funded was for \$1,000.

Stern explained why it was worth expending the energy to do really small deals. "It's another customer that will eventually grow and may refer her friends and you get your name out there," he said.



Isaac Stern, left and Juan Monegro, right

Monegro summed up his success very simply. "The secret sauce is the relationship that I have with the funders," he said, elaborating that it allows him to get creative to get deals done. One such example was an e-cigarette business that had only been open for thirty days that he got funded through Maczuga.

A team of 8 people support him, whom Stern described as "rock stars." Two of those members were present during the deBanked interview. They help facilitate all of the deal flow, a lot of which comes from outside ISOs.

Jeff Raede, the company's President, later told deBanked in an e-mail, "Juan's ability to focus and quickly identify the best path to closing a deal that is optimal for the merchant and the ISO is unrivaled."

That's perhaps an understatement, considering Monegro and his team are single-handedly out-originating entire brand name funding companies.

deBanked's 2014 [leaderboard](#) only ranked companies that funded at least \$100 million that year. Dozens of companies are funding less than \$47 million annually however, even ones with large staffs and big name backers.

Notably, Yellowstone Capital's numbers in aggregate, make them one of the industry's top-ten players. The [Fundry umbrella](#) (Yellowstone's parent company) originated nearly half a billion dollars in 2015. Because of their growth, they're slated to move to a new 25,000 square foot office by the end of the month in Jersey City, according to CEO Stern.

"Anybody can become anything. There is no ceiling," Stern said of the opportunity his company offers. Nobody is doomed to just work in one department or another, he explained.

With all of his success so far, Monegro has no immediate plans to re-enroll in school. And why should he? He is currently only 29 years old. Not bad for the \$47 million originator.

"We love Juan," Stern said. "They all love him."

Last modified: April 22, 2019



Sean Murray is the President and Chief Editor of deBanked and the founder of the [Broker Fair Conference](#). Connect with me on [LinkedIn](#) or follow me on [Twitter](#). You can view all future deBanked events [here](#).

EXHIBIT 19

Thumb Drive of Videos submitted to Committee

EXHIBIT 20

FILED: ONTARIO COUNTY CLERK 03/28/2018 04:47 PM
 NYSCEF DOC. NO. 1

INDEX# 1175552018018
 RECEIVED NYSCEF: 03/28/2018

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF ONTARIO

ANTELOPE VALLEY COMMUNITY CLINIC
 and JAMES ALLEN COOK,

Plaintiffs,

Index No.:

v.

ML FACTORS, LLC,

Defendants.

COMPLAINT AND DEMAND FOR A TRIAL BY JURY

Plaintiffs Antelope Valley Community Clinic ("Antelope") and James Allen Cook ("Cook") by and through their undersigned attorneys, allege as follows:

NATURE OF THE ACTION

1. This is an action to save a nonprofit organization that provides healthcare services to needy children and adults from the predatory lending practices of Defendant.
2. Defendant ML Factors, LLC is one of the many merchant cash advance ("MCA") companies that prey upon small businesses in desperate need of cash.
3. ML Factors charges unlawful and unconscionable interest rates that ultimately cripple small businesses and cause financial ruin to their individual owners and family.
4. The scheme involves ML Factors advancing funds to Plaintiffs and other small businesses pursuant to so-called MCA agreements.
5. In furtherance of these scheme, ML Factors uses a network of brokers that hold themselves out to be small business financial experts.

FILED: 2018032200248
 ONTARIO COUNTY CLERK 03/28/2018 04:47 PM
 NYSCEF DOC. NO. 1

INDEX# 1175552018018
 RECEIVED NYSCEF: 03/28/2018

62. Despite receiving less than one-million dollars in actual money, Antelope was obligated to pay back \$4,311,810 under the outrageous terms of the MCA loans:

Date	MCA Company	Loan Amount	Amount Received	Loan Payback	Daily %	Daily Payment
6/23/17	ML Factors	\$75,000	\$67,500	\$111,750	10%	\$1,863
9/15/17	ML Factors	\$75,000	\$42,948	\$111,750	10%	\$1,597
9/15/17	Queen	\$150,000	\$135,000	\$224,850	13%	\$2,999
10/17/17	Queen	\$215,000	\$65,131	\$322,285	13%	\$5,899
10/18/17	ML Factors	\$100,000	\$33,893	\$149,000	10%	\$2,484
11/13/17	GTR Source	\$50,000	\$40,000	\$74,950	None	\$1,999
11/27/17	GTR Source	\$75,000	\$60,000	\$112,425	None	\$2,249
11/27/17	ML Factors	\$140,000	\$40,869	\$208,600	10%	\$3,161
11/27/17	Queen	\$300,000	\$40,010	\$449,700	13%	\$8,990
12/27/17	Yellowstone	\$250,000	\$222,500	\$374,750	15%	\$3,999
1/17/18	ML Factors	\$200,000	\$73,391	\$298,000	10%	\$2,980
1/17/18	Ocean Fund	\$550,000	\$142,331	\$824,450	13%	\$5,999
1/19/18	Yellowstone	\$450,000	\$76,745	\$674,550	15%	\$5,499
1/19/18	Queen	\$250,000	\$185,000	\$374,750	13%	\$4,499
Totals		\$2,880,000	\$1,225,318	\$4,311,810		

63. Although the Amount Received was \$1,225,318 (after deducting various fees from the principal amount stated on the loans), ABC and the MCA companies debited additional other fees from Antelope's bank account after the MCA loans were funded.

64. These debits were apparently fees charged for "Professional Services" and/or Broker fees in connection with the MCA loans.

65. Notably, these "Professional Services" fees started in October 2017 and grew larger and larger as the Ponzi scheme spiraled out of control.

66. The amount of the "Professional Service" fees is staggering:

Date	MCA Company	Amount
10/17/17	Queen Funding	\$7,500
11/27/17	Queen Funding	\$15,000
12/27/17	Yellowstone	\$25,000
1/17/18	Ocean Funding	\$40,000
1/19/18	Yellowstone	\$45,000
1/19/18	Queen Funding	\$25,000
Total		\$157,500

EXHIBIT 21

Kabbage® Business Loan Agreement

Loan Amount: \$13,500.00

Merchant Information

Account Number: 135425

Merchant: 1992

Merchant Address: 13065 Iroquois road Apple Valley CA 92308

Owner: Julie Cox

Marketplaces: Bank of America - Bank - *3123

Financial Transaction Channels: ACH Account: Bank of America -

Bank - *3123

Document Creation Date/Time: Oct 30, 2017 11:43 PM Eastern

Lender: Celtic Bank
Salt Lake City, UtahFees
Late Fee: Up to \$100
Returned Payment Fee: \$20

Capital Comparison Tool

This tool is provided to help you understand and assess the cost of your small business financing.

The calculations below involve certain key assumptions about this Loan, including that the Loan is paid off in its entirety according to the agreed payment schedule and that no repayments are missed.

Loan Amount	Disbursement Amount (minus fees withheld) ¹	Repayment Amount	Term (repaid monthly)
\$13,500.00	\$13,500.00	\$19,980.00	12 Months
METRIC	METRIC CALCULATION		METRIC EXPLANATION
Total Cost of Capital \$6,480.00	Interest Expense: \$0.00 Loan Fee: \$6,480.00 Origination Fee: \$0.00 Other Fees: \$0.00 Total Cost of Capital: \$6,480.00		This is the total amount that you will pay in interest or Loan Fees and other fees for the Loan. The amount does not include fees and other charges you can avoid, such as late payment fees and returned payment fees. ²
Annual Percentage Rate (APR)³ 94.96 %	Your loan will have monthly payments of: APR: 94.96 %	See Specific Monthly Schedule below	This is the cost of the Loan - including total interest or Loan Fees and other fees - expressed as a yearly rate. APR takes into account the amount and timing of capital you receive, fees you pay, and the periodic payments you make. While APR can be used for comparison purposes, it is not an interest rate and is not used to calculate your interest expense or Loan Fee.
Average Monthly Payment \$1,665.00	Repayment Amount: \$19,980.00 Term (In months): + 12 Months Average Monthly Payment: \$1,665.00 Specific Monthly Schedule (if available): Months 1-6: \$2,036.25 Months 7-12: \$1,293.75		This is the average monthly repayment amount of the Loan, which does not include fees and other charges you can avoid, such as late payment fees and returned payment fees. ² This is an estimate for comparison purposes only.
Cents on the Dollar (excluding fees) 48.00¢	Interest Expense or Loan Fee: \$6,480.00 Loan Amount: -\$13,500.00 Cents on the Dollar (excluding fees): 48.00¢		This is the total amount of interest or Loan Fee paid per dollar borrowed. This amount is exclusive of fees.
Prepayment	Does prepayment of this Loan result in any new fees or charges?		No (see Section 1.5)
	Does prepayment of this Loan decrease the total interest or Loan Fees owed?		Yes (see Section 1.5 for the interest or fee reduction amount)

¹The Disbursement Amount is the amount of capital that a business receives and may be different from the Loan Amount. The Disbursement Amount is net of fees withheld from the Loan Amount. A portion of the Disbursement Amount may be used to pay off any

amounts owed from a prior loan or an amount owed to a third party.

²Your business may incur other fees that are not a condition of borrowing, such as late payment fees, returned payment fees, or monthly maintenance fees. Those fees are not reflected here. See the agreement for details on these fees (see Sections 1.7 and 1.3).

³APR should be considered in conjunction with the Total Cost of Capital. APR may be most useful when comparing financing solutions of similar expected duration. APR is calculated here according to the principles of 12 C.F.R. § 1026 (Regulation Z), using twelve (12) payment periods per year.

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This Business Loan Agreement ("Agreement") is made by and between Celtic Bank, its successors, assigns and representatives ("we," "us," "our" or "Bank") and merchant ("you" or "Merchant"), along with the principal shareholder, partner, member or other owner of Merchant who submitted the Application on behalf of Merchant ("Owner"), as of the date specified above. Celtic Bank, Merchant and Owner may be referred to as a "Party" or collectively as "Parties" herein.

☒ By checking this box Merchant or Owner understands that it has the responsibility to read this Agreement and have had an opportunity to do so.

☒ By checking this box Merchant or Owner also agrees that the parties included in this Agreement intend to authenticate this writing, agree to all its terms, and electronically sign this Agreement with the same force and effect as a manual signature.

Consent to Electronic Disclosure.

☒ By checking this box you confirm that you can access transaction information by visiting www.kabbage.com and logging in and You agree to receive this Agreement and subsequent disclosures and notices (collectively, "Subsequent Disclosures") electronically. Kabbage will provide electronic copies of periodic statements and Subsequent Disclosures on Kabbage's web site. To access, view and retain electronic disclosures on Kabbage's web site, you must have a computer with Internet access and either a printer connected to your computer to print disclosures/notices or sufficient hard drive space available to save the information. The minimum software requirements include browser software that supports 128-bit security encryption and Adobe Reader® version 9.0 or higher. By clicking the "Submit" button on your application, you acknowledge that you are able to access Kabbage's website (www.kabbage.com) and print, or otherwise retain, electronic disclosures. You may request a paper copy of any legally required disclosure by contacting Kabbage at Kabbage Business Loan-Paper Disclosure Request, P.O. Box 77081, Atlanta, GA 30357. You may also withdraw your consent to electronic disclosures by contacting Kabbage in the same manner. If you withdraw your consent to electronic disclosures, Kabbage may elect to terminate the relationship with you. You agree to provide Kabbage with your current e-mail address for notices. If your e-mail address changes, you must send Kabbage a notice of the new address by writing to Kabbage at least five days before the effective date of the change at Kabbage Email Address Change, P.O. Box 77081, Atlanta, GA 30357.

We are not a party to any purchase transaction between you and either a recipient of the proceeds of a Loan or a merchant accepting a payment card onto which the proceeds of a Loan was loaded (either, a "Recipient"). Consequently, any disputes or concerns you have regarding your purchases from/transactions with or the amounts you owe to the Recipient are to be solely resolved between you and the Recipient alone, and you understand and agree that (a) the Recipient's actions or omissions have no bearing on, and will not give rise to any defense under, your agreement with us, and (b) we will have no liability to you in connection with such purchases or transactions.

THIS IS A COMMERCIAL LOAN. YOU AGREE NOT TO USE ANY PORTION OF THE AMOUNT LOANED FOR PERSONAL, FAMILY OR HOUSEHOLD PURPOSES AND NOT TO REPAY US FROM ANY CONSUMER ACCOUNT.

I. BUSINESS LOAN

1.1. Business Loan. You agree to borrow and we agree to lend to you the amount set forth above. You promise to repay this Loan to us or our order, plus Costs (as defined in Section 1.4 below), plus all other amounts that may become due us under this Agreement, according to the payment schedule set forth below. You will provide us, at all times during this Agreement, with sufficient access to view the activity in (a) your commercial transaction account(s), including, but not limited to, (i) your PayPal business account, the details of which you have provided to us (individually and collectively, as appropriate, your "Business Payment Account"), (ii) one or more designated business checking accounts, the details of which you have provided to us (individually and collectively, as appropriate, your "Bank Account"), (b) the marketplace(s) where you do business, and (c) such other accounts and sales and shipping data as we deem necessary and appropriate, for the purpose of monitoring your business activity and finances. You agree to repay us in U.S. dollars.

Merchant and Owner each understand, acknowledge and agree that Merchant is entering into this Agreement as a commercial transaction and that your agreement not to use any portion of the amount loaned for personal, family or household purposes and not to repay us from any consumer account means that certain important duties imposed upon transactions and communications for consumer purposes, and certain important rights conferred upon consumers, pursuant to federal or state law, will not apply to any aspect of this transaction. Merchant and Owner also understand, acknowledge, and agree that we may be unable to confirm whether, for example, any particular use of any amount loaned or any particular payment conforms to this section. Merchant and Owner understand, acknowledge, and agree that a breach by Merchant of the provisions of this section will not affect our right to (i) enforce this Agreement, regardless of the purpose for which any amount loaned is in fact used, or (ii) use any remedy legally available to us in a commercial transaction, even if that remedy would not have been available had any amount loaned been disbursed for consumer purposes or payment delivered from a consumer account.

You agree to notify us within five (5) business days if (i) the details of your Business Payment Account or Bank Account change, (ii) you open any new account that is similar or (iii) you close your Business Payment Account or Bank Account or any similar account. Furthermore, with regard to information about any marketplace or other service provider that you provided to us to determine the amount of your Loan, you agree to notify us promptly if (i) the details of your account with any such marketplace or other service provider change, (ii) you open a new account with any such marketplace or other service provider or (iii) you close your account with any such marketplace or other service provider.

1.2. Distribution of Proceeds. Proceeds of the Loan can be distributed to you in one of five methods that you hereby elect:

- via automated clearing house in one-to-three business days to a Bank Account, as defined in Section 1.1, registered on your established Kabbage profile;

EXHIBIT 22

Heskin, Shane

From: Heskin, Shane
Sent: Sunday, June 23, 2019 8:39 PM
To: Heskin, Shane
Subject: FW: Coming Soon: Kabbage Will Offer Business Loans!

From: NRO <nroboston@gmail.com>
Sent: Thursday, October 5, 2017 10:45 AM
To: Proper, Justin <Properj@whiteandwilliams.com>
Subject: Fwd: Coming Soon: Kabbage Will Offer Business Loans!

CAUTION: This message originated outside of the firm. Use caution when opening attachments, clicking links or responding to requests for information.

when they changed to celtic

----- Forwarded message -----

From: Kabbage <support@kabbage.com>
Date: Mon, Apr 14, 2014 at 4:00 AM
Subject: Coming Soon: Kabbage Will Offer Business Loans!
To: nroboston@gmail.com

This message contains graphics. If you do not see the graphics, [click here to view](#).

Dear alice,

Kabbage is excited to announce our new loan product! It is still the working capital line you depend on, but our new partnership with Celtic Bank now gives you access to a business line of credit.

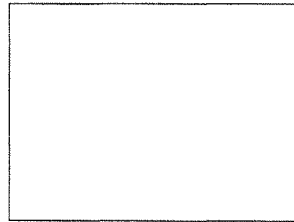
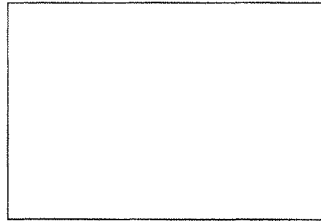
Quick facts about Kabbage loans:

- Kabbage will be converting all existing merchant advances and working capital lines to loans and lines of credit.
- You'll get the **same great terms** with the same personal service.
- **Your payment schedule and rates will NOT change.**
- **Kabbage is the same company** with the same focus on great service.
- Once your MCA has been converted you must read and agree to the new 'Kabbage Business Loan Agreement'.

These changes give us more flexibility, so look for new products, including longer payment terms, in the future!

If you have any questions, give us a call or [send us an email](#)!

Sincerely,
The Kabbage Team



Get cash, make transfers or check on your account – all from your mobile device.

Download the [iPhone](#) or [Android](#) Apps



Phone: [\(888\) 986-8263](tel:888-986-8263)
Email: support@kabbage.com
Mail Address:
Kabbage, Inc.
P.O. Box 77081
Atlanta, GA 30357



[Facebook](#)
[Twitter](#)
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All Kabbage business loans are made by Celtic Bank, a Utah-Chartered Industrial Bank, member FDIC.

[Legal Notice](#)

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EXHIBIT 23


**BUSINESS LOAN AND SECURITY
AGREEMENT SUPPLEMENT**

LOAN AMOUNT
\$25,000.00

Dear Ray,

Congratulations on being approved for a small business loan with On Deck Capital, Inc.! We want to thank you for this opportunity to help your business grow.

Below is a summary of your loan details.

Your Information

Business Name: GLOBAL AUTO RESTORATION LLC

Owner Name: Ray Sprouse

Your Bank: J.P. MORGAN CHASE BANK, N.A.

Routing number: 02387

Account number: ****9261

BUSINESS INFORMATION	OWNER INFORMATION
GLOBAL AUTO RESTORATION LLC 308 Mainsail Lane Woodstock GA, 30189 ****4989	Ray Sprouse 308 Mainsail Lane Woodstock, GA 30189 4488

This Business Loan and Security Agreement Supplement is part of (and incorporated by reference into) the Business Loan and Security Agreement. Borrower should keep this important legal document for Borrower's records.

YOUR LOAN DETAILS	
Borrower	GLOBAL AUTO RESTORATION LLC
Lender	On Deck Capital, Inc.
Loan Amount	\$25,000.00
Origination Fee (Deducted at time of disbursement)	\$0.00
Disbursement Amount (Loan Amount less Origination Fee) <i>Note that the Disbursement Amount may not be the amount deposited to your Designated Checking Account. The amount that will be deposited to your Designated Checking Account will be reduced by any amounts owed to Lender from a prior loan or used to pay off an amount owed to a third party lender.</i>	\$25,000.00
DAILY Payment Amount (Business days only)	\$156.88
Number of DAILY Payments (Business days only)	189
Payment Schedule (“Business day” means any Monday through Friday, except for Federal Reserve holidays)	189 payments of \$156.88 due each Business day.
Total Interest Expense (Does not include any Fees)	\$4,980.32
Total Repayment Amount (Loan Amount plus Total Interest Expense)	\$29,980.32
PREPAYMENT, RENEWAL, AND OTHER FEES	
Prepayment (See Section 10 of the Business Loan and Security Agreement for specific details)	A “Prepayment Interest Reduction Percentage” of 25%, with respect to unpaid interest remaining on this Loan) will be applied to the extent that the Borrower prepays this Loan in whole in accordance with, and subject to, Section 10 of the Business Loan and Security Agreement. Note that 75% of remaining unpaid interest will still be due upon Prepayment in whole. You should keep in mind that partial prepayments will not reduce the Total Interest Expense.
Renewals	Remaining unpaid interest on this Loan will be eligible to be forgiven by Lender if: (i) Borrower is current on its scheduled payments with respect to this Loan and, (ii) while this Loan is outstanding, Borrower enters into a business loan and security agreement for a new qualifying term loan with Lender, a portion of the proceeds of which is used to repay this Loan in whole.
Other Fees	Returned Payment Fee: \$25.00 Late Fee: \$10.00 (maximum \$50.00 within any 20 day period)

SMART Box™ Capital Comparison Tool This tool is provided to help you understand and assess the cost of your small business financing. <i>The calculations below involve certain key assumptions about this Loan, including that the Loan is paid off in its entirety according to the agreed payment schedule and that no repayments are missed.</i>			
Loan Amount \$25,000.00	Disbursement Amount (minus withheld fees) ¹ \$25,000.00	Repayment Amount \$29,650.32	Term 9 Months (repaid Daily)
METRIC	METRIC CALCULATION		METRIC EXPLANATION
Total Cost of Capital \$4,650.32	Interest Expense: \$4,650.32 Loan Fee: \$0.00 Origination Fee: \$0.00 Other Fees: \$0.00 Total Cost of Capital: \$4,650.32		This is the total amount that you will pay in interest or Loan Fees and other fees for the Loan. The amount does not include fees and other charges you can avoid, such as late payment fees and returned payment fees. ²
Annual Percentage Rate (APR)³ 46.65%	Your Loan will have Daily payments of: \$156.88 APR: 46.65%		This is the cost of the Loan – including total interest or Loan Fees and other fees – expressed as a yearly rate. APR takes into account the amount and timing of capital you receive, fees you pay, and the periodic payments you make. While APR can be used for comparison purposes, it is not an interest rate and is not used to calculate your interest expense or Loan Fee.
Average Monthly Payment \$3,294.48	Repayment Amount: \$29,650.32 Term (in months): + 9 Months Average Monthly Payment: \$3,294.48		This is the average monthly repayment amount of the Loan, which does not include fees and other charges you can avoid, such as late payment fees and returned payment fees. ² The actual repayment frequency for the Loan will be Daily. This is an estimate for comparison purposes only.
Cents on the Dollar (excluding fees) 18.6¢	Interest Expense or Loan Fee: \$4,650.32 Loan Amount: + \$25,000.00 Cents on the Dollar (excluding fees): 18.6¢		This is the total amount of interest or Loan Fee paid per dollar borrowed. This amount is exclusive of fees.
Prepayment	Does prepayment of this Loan result in any new fees or charges?	No (see "Prepayment" above)	
	Does prepayment of this Loan decrease the total interest or Loan Fees owed?	Yes (see "Prepayment" above for the interest or fee reduction amount)	
<small> ¹ The Disbursement Amount is the amount of capital that a business receives and may be different from the Loan Amount. The Disbursement Amount is net of fees withheld from the Loan Amount. A portion of the Disbursement Amount may be used to pay off any amounts owed from a prior loan or an amount owed to a third party. </small>			
<small> ² Your business may incur other fees that are not a condition of borrowing, such as late payment fees, returned payment fees, or monthly maintenance fees. Those fees are not reflected here. See the agreement for details on these fees (see "Other Fees" above). </small>			
<small> ³ APR should be considered in conjunction with the Total Cost of Capital. APR may be most useful when comparing financing solutions of similar expected duration. APR is calculated here according to the principles of 12 C.F.R. § 1026 (Regulation Z), using 52 payment periods of equal length and 52 payment dates per year for weekly pay products, and 252 payment dates per year for daily pay products. </small>			
<small>© 2018 ILPA</small>			

EXHIBIT 24



This Business Loan and Security Agreement Supplement is part of (and incorporated by reference into) the Business Loan and Security Agreement. Borrower should keep this important legal document for Borrower's records.

YOUR LOAN DETAILS	
Borrower:	NATIONAL ASSOCIATION OF INDEPENDENT LANDLORDS, INC
Lender:	Celtic Bank
Loan Amount:	\$175,000.00
Origination Fee: (Deducted at time of disbursement)	\$0.00
Disbursement Amount: (Loan Amount less Origination Fee less any principal amount owed to Lender from an existing loan or any amount used to pay off an existing obligation owed to a third party lender)	\$175,000.00
Daily Payment Amount: (Business days only)	\$597.22
Number of Daily Payments: (Business days only)	378
Payment Schedule:	378 payments of \$597.22 due each Business day (in the case of loans with a Daily Payment Amount) or each Wednesday (in the case of loans with a Weekly Payment Amount) in each case immediately following the date the Disbursement Amount is disbursed by Lender. "Business day" means any Monday through Friday except for Federal Reserve holidays. For loans with a Weekly Repayment Amount, if any Wednesday is not a Business day, payment due on such day will be due on the succeeding Business day.
Interest Expense Multiplier: (Total Repayment Amount divided by the Loan Amount. This reflects per dollar interest cost of the loan)	\$1.29
Total Interest Expense: (Does not include any Fees)	\$50,749.16
Total Repayment Amount: (Loan Amount plus Total Interest Expense)	\$225,749.16
PREPAYMENT, RENEWAL, AND OTHER FEES	
Prepayment: (See Section 10 of the Business Loan and Security Agreement for specific details)	A "Prepayment Interest Reduction Percentage" of 25% (with respect to unpaid interest remaining on this Loan) will be applied to the extent that the Borrower prepays this Loan in whole in accordance with, and subject to, Section 10 of the Business Loan and Security Agreement. Note that 75% of remaining unpaid interest will still be due upon Prepayment.
Renewals:	Remaining unpaid interest on this Loan will be eligible to be forgiven by Lender if: (i) Borrower is current on its scheduled payments with respect to this Loan and, (ii) while this Loan is outstanding, Borrower enters into a business loan and security agreement for a new qualifying term loan with Lender, a portion of the proceeds of which is used to repay this Loan in whole.
Other Fees:	Returned Payment Fee: \$25.00 Late Fee: \$10.00 (maximum \$50 within any 20 day period)

Please initial this Business Loan and Security Agreement Supplement here _____



PRICING AND COMPARISON TOOLS (For your reference, we have included these pricing and comparison tools to help you understand the pricing on your Loan. These pricing metrics assume that all payments on your Loan are made on time.)			
PRICING METRIC	METRIC APPLIED TO YOUR LOAN	EXPLANATION OF METRIC	CALCULATION OF METRIC
Total Loan Cost	\$50,749.16	The total amount that you will pay in interest and origination fees.	Total Interest Expense + Origination Fee. With respect to your Loan: \$50,749.16 + \$0.00 = \$50,749.16
Cents on the Dollar	\$0.29	For each dollar borrowed, the amount of interest that will need to be repaid.	Total Interest Expense + Loan Amount (Expressed as Cents of Interest Paid per Dollar Borrowed). With respect to your Loan: \$50,749.16 + \$175,000.00 = \$0.29
Total Interest Percentage (TIP)	29%	The total amount of interest that you will pay as a percentage of the amount borrowed. Note that the TIP is not annualized, and therefore use caution in comparing to loans expressed in annualized terms or with terms of different durations.	Total Interest Expense + Loan Amount (Expressed as a Percentage). With respect to your Loan: \$50,749.16 + \$175,000.00 = 29%
CERTAIN DISCLOSURES			
Loan Pricing Disclosure		Lender uses a system of risk-based pricing to determine interest charges and fees. Risk-based pricing is a system that evaluates the risk factors of your application and adjusts the interest rate up or down based on this risk evaluation. Although Lender believes that its loan process provides expedited turnaround time and efficient access to capital, this loan may be a higher cost loan than loans that may be available through other lenders.	
Loan For Specific Purposes Only		The proceeds of the requested Loan may solely be used for the specific purposes as set forth in the Use of Proceeds Certification of the Business Loan and Security Agreement. IN ADDITION, THE LOAN WILL NOT BE USED FOR PERSONAL, FAMILY OR HOUSEHOLD PURPOSES. Borrower understands that Borrower's agreement not to use the Loan proceeds for personal, family or household purposes means that certain important duties imposed upon entities making loans for consumer/personal purposes, and certain important rights conferred upon consumers, pursuant to federal or state law will not apply to this transaction.	

If you have any questions, please call us at 1.888.828.5717 (we have support available Monday - Friday 8am - 8pm EST and Saturdays 8:30am - 5:30pm EST) or email support@ondeck.com.

Please initial this Business Loan and Security Agreement Supplement here _____

EXHIBIT 25

Heskin, Shane

From: Heskin, Shane
Sent: Sunday, June 23, 2019 8:52 PM
To: Shane R. Heskin Esq. (heskins@whiteandwilliams.com)
Subject: Kabbage Publicly Available Links

<https://www.ceoexclusiveinsights.com/kabbage/>

<https://player.fm/series/cb-insights-a-conversation-with-2380182/a-conversation-with-kathryn-petralia-coo-co-founder-of-kabbage>

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<https://www.lendacademy.com/wp-content/uploads/2018/11/Podcast-174-Kathryn-Petralia.pdf>

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<https://www.occ.gov/news-issuances/bulletins/2017/bulletin-2017-21.html>

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<https://techcrunch.com/2017/08/03/small-business-loan-platform-kabbage-nabs-250m-from-softbank/>

<https://www.forbes.com/sites/darrendahl/2015/05/06/the-six-minute-loan-how-kabbage-is-upending-small-business-lending-and-building-a-very-big-business/#602ed0f29042>

<https://www.youtube.com/watch?v=n9Q9ZopRQNI>

<http://video.foxbusiness.com/v/3993474497001/>

<https://www.kabbage.com/case-studies/accountingprose/>

https://www.youtube.com/watch?v=6V_NsdetkMc

<https://www.facebook.com/KabbageInc/>

<https://www.instagram.com/kabbageinc/>

<https://twitter.com/KabbageInc>

<https://www.linkedin.com/company/kabb...>

https://www.youtube.com/watch?v=I_XEPTtAhjQ

<https://www.youtube.com/watch?v=oiZWpq-kDOI>

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https://www.kabbage.com/pdfs/pressreleases/Kabbage_Expands_Leadership_Team.pdf

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<https://www.youtube.com/watch?v=dQQXaVpwIYU>

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<http://iibig.com/cloudlending/partners/>

<https://www.ftpartners.com/transactions/kabbage>

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<https://www.fico.com/en/latest-thinking/articles/how-kabbage-knows-if-it-can-lend-you-100000-in-just-seven-minutes>

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<http://nathanlatka.com/thetop859/>

<http://www.finnovating.com/interview-to-rob-frohwein-technology-and-data-wil-change-lending-forever/>

https://www.krollbondratings.com/show_report/7360

https://www.krollbondratings.com/show_report/10267

https://www.krollbondratings.com/show_report/6294



Shane Heskin

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heskins@whiteandwilliams.com | whiteandwilliams.com

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EXHIBIT 26



NFIB Member Q & A with Kabbage

Kabbage helps small businesses get the funding they need to grow. Through a fully automated, online platform, businesses can link their latest business data, allowing Kabbage to review the overall health of their business – not just a credit score – to approve and provide loans of up to \$100,000 in minutes.

Q: Are you a direct lender?

A: Yes, Kabbage is a direct lender and we take the risk of loss for all the loans that we make. We issue our loans in partnership with Celtic Bank, a Utah-Chartered Industrial Bank which is regulated by the FDIC.

Q: Does Kabbage look at personal credit?

A: Yes, a hard inquiry is pulled through Experian on the last step of the Kabbage application. This is used to verify the identity of the applicant and adhere to anti money laundering laws.

Q: Do I need to have good credit score to get a loan from you?

A: Not necessarily. However, if we have limited information about the health of your business performance through the data channels linked to the Kabbage application, it is helpful to understand personal financial performance to help inform the decision.

Q: How does a line of credit affect your credit rating with the credit bureaus if you use it or if you don't use it?

A: The hard inquiry during the application process may impact your credit a few points. Using or not using your line doesn't effect your credit at all. It could potentially increase your personal credit score because you will not be using your personal accounts for business purposes any longer. We see that our customers' credit scores increase 10 points on average in the first year of working with us.

Q: Do you qualify start-ups?

A: While we would love to be able to qualify start ups, our business model requires at least one year of business performance history to make a qualification decision. If you are a start up in need of capital; check out credit cards, home equity loans, crowd funding companies like Kickstarter or equity funding through venture capitalists and investors.

Q: What are your rates?

A: Kabbage has 6-month and 12-month pay back terms. Monthly payments to Kabbage include a portion of the original loan amount plus associated costs. The costs range from

1% to 12% of the original loan amount. There are no origination fees or early repayment penalties.

Q: What collateral do you require?

A: We do not require collateral. We make sure that the total amount you are borrowing is not more than you can reasonably pay off. Too many businesses have failed because they have had too much outstanding debt relative to their revenue. We don't want to see that happen to our customers.

Q: If I currently have funding provided from OnDeck. If I seek a line of credit through Kabbage would that jeopardize my agreement or relationship with OnDeck?

A: If you have enough revenue and are able to satisfy repayment of multiple loans, you should be in good shape. OnDeck would be the best resource for answering this question to see how their company handles businesses that have loans with multiple providers.

Q: My experience with these type of lenders is the cost of funds is very high and the people who are on the other end of the phone try to manipulate this information. I haven't ever called Kabbage but have talked with three other lenders. Are there possibly shady options out there?

A: Unfortunately, there is potential to run into some "bad actors". It's important to learn as much as you can about a lender, their terms and their pricing before you move forward with an application

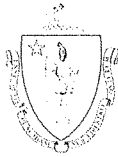
- *Ask key questions about the total cost of the loan and payback terms*
- *Check BBB ratings for the lender*
- *Research the company and its owners*
- *Make sure you can get in touch with the company*

More questions about Kabbage?

Our Customer Service Team is here to help at 888-564-7344

To apply, visit www.kabbage.com/nfib

EXHIBIT 27



MAURA HEALEY
ATTORNEY GENERAL



KARL A. RACINE
ATTORNEY GENERAL

January 22, 2019

Via Email: Comments@fdic.gov

Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, D.C. 20429

**Re: Docket No. RIN 3064-ZA04
Request for Information on Small-Dollar Lending**

Dear Secretary Feldman:

We, the undersigned attorneys general, submit this comment in response to the Federal Deposit Insurance Corporation's ("FDIC") request for information on small-dollar lending.¹

We welcome the FDIC's interest in encouraging FDIC-supervised financial institutions such as state-chartered banks to offer prudently structured and responsibly underwritten small-dollar credit products to consumers. As the FDIC's recent data shows, approximately 8.4 million U.S. households were "unbanked" and approximately 24.2 million U.S. households were underbanked in 2017.² The short-term credit needs of these households are largely met by the fringe financial sector: non-bank entities such as payday lenders and high-cost installment lenders that "are often usurious, sometimes predatory, and almost always worse for low-income individuals than the services offered by traditional banks to their customers."³ Most borrowers are unable to repay these loans when they become due and are instead forced to take out new loans – and pay additional fees – to cover the prior loans, which can trap them in an endless cycle of debt.⁴ The high cost of fringe

¹ See Request for Information on Small-Dollar Lending, 83 Fed. Reg. 58,566 (Nov. 20, 2018).

² See "2017 FDIC National Survey of Unbanked and Underbanked Households," Federal Deposit Insurance Corporation, October 2018 [hereinafter "FDIC Survey"].

³ Mehrsa Baradaran, *It's Time for Postal Banking*, 127 Harv. L. Rev. 165, 166-67 (2014); see FDIC Survey, *supra* note 2, at 8 (discussing alternative financial services for unbanked and underbanked households).

⁴ According to a 2016 study by the Consumer Financial Protection Bureau, an astonishing 80% of payday loans are rolled over. See Consumer Fin. Prot. Bureau, *Supplemental Findings on Payday, Payday Installment, and Vehicle Title Loans, and Deposit Advance Products* at 115-16 (June 2016), available at https://files.consumerfinance.gov/f/documents/Supplemental_Report_060116.pdf. The fees payday lenders reap from such borrowers – estimated to be \$3.8 billion annually – are one of the industry's largest sources of revenue. See Ctr. for Responsible Lending, *Shark-Free Waters: States Are Better Off Without Payday Lending* at 1 (Aug.

NRO 0296235

DSP 591-1

financial products are, in part, a function of the administrative costs such institutions face in originating and servicing credit extended to unbanked and underbanked households.⁵ State-chartered banks face lower administrative costs and can leverage economies of scale to offer small-dollar credit to unbanked and underbanked consumers at lower costs than fringe financial institutions.⁶ There are, however, important legal risks for state-chartered banks that seek to enter this sector.

I. Evasion of State Laws

Many states have enacted laws to protect consumers from abuses associated with high-cost small-dollar credit offered by fringe lenders. These laws reflect the will of the citizens in each state to restrict the ability of fringe lenders to engage in predatory practices. Although the details of these laws vary from state to state, there are features common to most state small-dollar lending laws. Many state laws cap the annual percentage rate (“APR”) licensed lenders can charge for small, unsecured loans, and prohibit unlicensed lending.⁷ In addition to rate caps on installment loans, many state laws substantially circumscribe fringe lenders’ ability to offer extremely predatory products such as high-cost payday loans. These limitations include outright prohibitions, structural

2016), available at <https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-shark-free-waters-aug2016.pdf>.

⁵ See Baradaran, *supra* note 3 at 167; but see Mark Flanney & Katherine Samolyk, *Payday Lending: Do the Costs Justify the Price?* (FDIC Cl. for Fin. Research, Working Paper No. 2005-09, 2005).

⁶ See Baradaran, *supra* note 3 (explaining how similar economies of scale, infrastructure, and clientele can help the Post Office offer affordable small-dollar loans).

⁷ CA: licensed lenders limited to monthly interest charges ranging from 1% to 2.5% for loans of various amounts less than \$2,500. See Cal. Fin. Code § 22303; CT: 36% for small loans less than \$5,000 and 25% for small loans between \$5,000 and \$15,000. See Ch. 668, Part III, Conn. Gen. Stat.; CO: See C.R.S. §§ 5-2-201, 5-2-214; DC: licensed lenders prohibited from charging rates in excess of 24%. See D.C. Code § 28-3301; IL: 99% on consumer installment loans less than \$1,500 and 36% on consumer installment loans between \$1,500 and \$40,000. See 250 Ill. Comp. Stat. §§ 670/15 & 17.2; MA: 12% civil usury rate on small dollar loans of less than \$6,000 and licensed lenders permitted to charge no more than 23%. See Mass. Gen. L. c. 140, § 96; 209 CMR 26.01 (Small Loan Rate Order); MD: licensed lenders prohibited from charging rates in excess of 24% or 33% for consumer loans less than \$6,000, depending on the original and unpaid principal balance of the loans. See Md. Code Ann., Com. Law §§ 12-301-12-303, 12-306; NC: licensed lenders prohibited from charging interest in excess of blended rate of 30% on loans not exceeding \$15,000. See N.C. Gen. Stat. § 53-176; NJ: Criminal usury law prohibits lenders from charging more than 30% to individuals. See N.J.S.A. 2C:21-19. Civil usury law prohibits unlicensed lenders from charging more than 16%. See N.J.A.C. 3:1-1.1; NY: Criminal usury law prohibits licensed lenders from charging more than 25%. See N.Y. Penal L. § 190.40. Civil usury law prohibits unlicensed lenders from charging more than 16%. See N.Y. Gen. Oblig. § 5-501; N.Y. Banking L. § 14-a; NC: licensed lenders prohibited from charging interest in excess of blended rate of 30% on loans not exceeding \$15,000. See N.C. Gen. Stat. § 53-176; OR: licensed lenders prohibited from charging in excess of 36% on consumer finance loans of \$50,000 or less. See Or. Rev. Stat. § 725.340(a); PA: licensed lenders limited to 24% APR under the Consumer Discount Company Act, 7 P.S. §§ 6217.1, and unlicensed lenders limited to 6% APR under Section 201 of the Loan Interest and Protection Law, 41 P.S. § 201; VA: 36% for small loans less than \$2,500. Va. Code Ann. §§ 6.2-1501 and 6.2-1520.

limits,⁸ and restrictions on the ability to take out multiple loans or rollover credit.⁹

Laws restricting small-dollar lending are not particularly new. State usury laws date back to the late nineteenth century, and efforts to restrict small-sum lending began over a century ago.¹⁰ Since the enactment of these laws, states have struggled with efforts by fringe lenders to evade state restrictions. Evasion schemes include structuring loans to fall outside the scope of state lending laws¹¹ or characterizing interest as fees.¹² In recent decades, fringe lenders have attempted to leverage relationships with third parties to overcome state restrictions. In the early 2000s, fringe lenders began to associate with traditional banks to take advantage of the fact that traditional banks are generally not subject to state interest rate caps.¹³ This method became known as “rent-a-bank” lending because the bank participated only by lending its name and charter to the transaction. Payday lenders would claim the bank was the lender, allowing it to take advantage of the bank’s ability to export its home state’s interest rate and evade the usury and other interest rate caps in the state where the borrower resides.¹⁴

By the late 2000s, “rent-a-bank” lending declined as many traditional banks severed their relationships with payday lenders. The financial crisis of 2008 along with increased regulatory scrutiny may have precipitated this decline. When rent-a-bank schemes began to falter, payday lenders turned to Native American tribes in an attempt to take advantage of tribal sovereign

⁸ CA: limits traditional personal-check-based payday loans to \$300. See Cal. Fin. Code sec. 23035(a); CO: effective February 1, 2019, limits rates on payday loans to 36%. See C.R.S. 5-3.1-105; DC: prohibiting all lenders from charging rates in excess of 24%. See D.C. Code § 28-3301; IL: limits payday loans to the lesser of 25% of consumer’s gross monthly income (22.5% for installment payday loans) or \$1,000. See 815 Ill. Comp. Stat. § 122/2-5(e); MA: See Mass. Gen. L. c. 140, § 96; 209 CMR 26.01 (Small Loan Rate Order); NJ: N.J.A.C. 3:1-1.1 and N.J.S.A. 31:1-1(a); OR: requires minimum 31-day term and prohibits certain terms and waivers of rights. See Or. Rev. Stat. § 725A.064; PA: limits interest rate to 24% APR, caps late fees, prohibits compound interest. See 7 P.S. §§ 6217.1; VA: limits payday loans to \$500. Va. Code Ann. § 6.2-1816(5); WA: lesser of 30 percent of the consumer’s gross monthly income or \$700. See Wash. Rev. Code sec. 31.45.073(2).

⁹ CA: Cal. Fin. Code sec. 23037(a); CO: C.R.S. § 5-3.1-106 IL: 815 Ill. Comp. Stat. 122/2-30; IA: Iowa Code sec. 533D.10(1)(c); MA: 209 CMR 26.01 (Small Loan Rate Order); Or. Rev. Stat. § 725A.064(6); VA: Va. Code Ann. sec. 6.2-1816(6); WA: Wash. Rev. Code sec. 31.45.073(2).

¹⁰ See F. B. Hubachek, *The Development of Regulatory Small Loan Laws*, 8 L. & Contemp. Probs. 108, 113 (1941) (detailing the history and the adoption of uniform small loan laws by states in the early twentieth century).

¹¹ See *De La Torre v. CashCall, Inc.*, 422 P.3d 1004 (Cal. 2018) (holding that loans structured to fall outside California’s small-loan rate cap can be unconscionable if the interest rate is too high); *State, ex rel King v. B&B Inv. Group, Inc. et al.*, 329 P.3d 658 (N.M. 2014) (holding that lender’s year-long signature loans structured to evade New Mexico payday lending laws were structurally and procedurally unconscionable).

¹² See, e.g., *Livingston v. Fast Cash USA, Inc.*, 753 N.E. 2d 572 (Ind. 2001) (rejecting lender’s argument that interest charges were simply check cashing fees); *Hamilton v. York*, 987 F. Supp. 953 (E.D. Ky. 1997) (same); see also *Illinois v. CMK Inv., Inc. d/b/a All Credit Lenders*, No. 14 C 2783 (N.D. Ill. Judgment entered June 17, 2016) (alleging installment lender’s mandatory account protection fee that was charged on a sliding scale based on the amount financed was undisclosed interest in violation of the applicable 36% rate cap imposed by Illinois law).

¹³ See Rent-A-Bank Payday Lending: How Banks Help Payday Lenders Evade State Consumer Protections. Consumer Federation of America and the U.S. Public Interest Research Group, Washington, DC, Nov. 13, 2001, available at <https://uspirg.org/reports/usp/rent-bank-payday-lending> (describing the then emerging trend of “rent-a-bank” schemes among payday lenders).

¹⁴ See *Pennsylvania v. Think Finance, Inc.*, No. 14-7139, 2016 WL 183289, at *1 (E.D. Pa. 2016) (describing rent-a-bank scheme, where payday lender partners with “an out-of-state bank” to act “as the nominal lender while the non-bank entity was the de facto lender” in a partnership that sought to take “advantage of federal bank preemption doctrines to insulate the [payday lending entities] from state regulation”).

immunity. Under these tribal lending schemes, “a non-tribal payday lender makes an arrangement with a tribe under which the tribe receives a percentage of the profits, or simply a monthly fee, so that otherwise forbidden practices of the lender are presumably shielded by tribal immunity.”¹⁵

A number of recent decisions have cast doubt on the legality of tribal lending schemes.¹⁶ As a result, payday lenders are once again turning to “rent-a-bank” schemes in order to evade state law. Recent court decisions, however, suggest that “rent-a-bank” schemes are just as legally flawed as tribal lending schemes.¹⁷ State-chartered banks should be wary of entering into relationships with fringe lenders that are structured to evade state rate caps. **We recommend that the FDIC discourage banks from entering into these relationships in any guidance it issues on small-dollar lending.**

II. Ability to Repay

Although state-chartered banks are generally not subject to state usury laws, other than applicable rate caps in a state-chartered bank’s “home” state¹⁸, state-chartered banks are still subject to laws of general applicability such as state unfair and deceptive acts or practices (“UDAP”) laws and the law of unconscionability embedded in state common law and statutes. A state-chartered bank that directly or indirectly extends credit that is structured to fail,¹⁹ that lacks economic substance,²⁰ or where there is no reasonable probability of repayment may violate state UDAP or state-law unconscionability.²¹ **As such, we recommend that the FDIC discourage banks from extending small-dollar loans without considering the consumer’s ability to repay.**

In order to ensure that these small-dollar loans are prudently made, we recommend the FDIC

¹⁵ Kyra Taylor et al., Pub. Justice Found., *Stretching the Envelope of Tribal Sovereign Immunity? An Investigation of the Relationships Between Online Payday Lenders and Native American Tribes* 6 (2017) (internal quotation marks omitted), available at <https://www.publicjustice.net/wp-content/uploads/2018/01/SVCF-Report-FINAL-Dec-4.pdf>.

¹⁶ See, e.g., *CFPB v. CashCall, Inc.*, 2016 WL 4820635, at *6 (C.D. Cal., Aug. 31, 2016) (holding that defendant payday lender was the “true lender” and real party in interest in tribal lending scheme); *MacDonald v. CashCall, Inc.*, 2017 WL 1536427, at *3 (D.N.J. Apr. 28, 2017), *aff’d*, 883 F.3d 220 (3d Cir. 2018) (detailing recent trend of cases in favor of parties challenging tribal lending arrangements across the country).

¹⁷ See, e.g., *Think Finance*, *supra* note 14 (denying motion to dismiss and finding that state’s allegations that non-banks were utilizing a “rent-a-bank” scheme to circumvent state usury laws were sufficient to state a plausible claim for relief and not preempted); *CashCall, Inc. v. Morrissey*, 2014 WL 2404300 (W. Va. May 30, 2014) (not published), *cert. denied*, ___ U.S. ___, 135 S.Ct. 2050 (2015) (holding that substance governs over form in evaluating “true lender” in a “rent-a-bank” scheme); *Meade v. Mariette Funding*, No. 2017CV30377 (Colo. Dist. Ct. Aug. 13, 2018) (order denying non-bank defendant’s motion to dismiss on preemption of applicable Colorado rate caps).

¹⁸ See 12 U.S.C. § 1831d(a).

¹⁹ See *Commonwealth v. Fremont Inv. & Loan*, 897 N.E.2d 548 (Mass. 2008) (holding that mortgage loans structured to fail unless the borrower’s income will increase during the loan’s term were unfair under Mass. UDAP law).

²⁰ See *CFPB v. ITT Educ. Servs., Inc.*, 219 F. Supp. 3d 878 (S.D. Ind. 2015) (denying defendant’s motion to dismiss and finding that the CFPB’s allegation that for-profit college took unreasonable advantage of its students by steering them into institutional loans with a known default rate in excess of 60 percent in order to achieve objectives beyond the return on the loan was sufficient to state a claim); See also *De La Torre & B&B*, *supra* note 11.

²¹ As an example, the D.C. Code provides that it is an unlawful trade practice to “make or enforce unconscionable terms or provisions of sales or leases” and that “in applying this [standard], consideration shall be given to,” among other factors, “knowledge by the person at the time credit sales are consummated that there was no reasonable probability of payment in full of the obligation by the consumer.” D.C. Code § 28-3904(r).

include in any guidance on small-dollar lending factors banks should consider in evaluating a consumer's ability to repay. Specifically, we recommend that the FDIC suggest that banks consider a consumer's monthly expenses such as recurring debt obligations and necessary living expenses in evaluating ability to repay and take into account a consumer's ability to repay the entire balance of the proposed loan at the end of the term without re-borrowing. We also recommend that the FDIC suggest that banks at least consider the consumer's capacity to absorb an unanticipated financial event – for instance, in the unexpected event of a loss of income or the added expense of a medical emergency – and, nonetheless, still be able to meet the payments as they become due.

III. Conclusion

We appreciate the opportunity to submit this this comment. Please contact our offices if you have any questions or need additional information.

Sincerely,

[REDACTED]

KARL A. RACINE
Attorney General for the District of
Columbia

[REDACTED]

XAVIER BECERRA
Attorney General of California

[REDACTED]

KWAME RAOUL
Illinois Attorney General

[REDACTED]

BRIAN E. FROSH
Attorney General of Maryland

[REDACTED]

LETITIA JAMES
New York Attorney General

[REDACTED]

MAURA HEALEY
Massachusetts Attorney General

[REDACTED]

PHILIP J. WEISER
Colorado Attorney General

[REDACTED]


TOM MILLER
Attorney General of Iowa

[REDACTED]

GURBIR S. GREWAL
Attorney General of New Jersey

[REDACTED]


JOSHUA H. STEIN
North Carolina Attorney General




ELLEN ROSENBLUM
Oregon Attorney General



JOSH SHAPIRO
Pennsylvania Attorney General



MARK HERRING
Attorney General of Virginia



WILLIAM TONG
Connecticut Attorney General

EXHIBIT 28

FILED: ERIE COUNTY CLERK 09/13/2018 05:56 PM
NYSCEF DOC. NO. 56

INDEX NO. 811445/2017
RECEIVED NYSCEF: 09/13/2018

Napierski, Christine S.

From: Wells, Steven W.
Sent: Thursday, September 13, 2018 5:12 PM
To: Napierski, Christine S.
Subject: FW: CONSTRUCTION MASONRY - Aug 07, 2017 \$30,000.00

From: Josh Klien <josh@queenfunding.com>
Date: September 13, 2018 at 10:47:27 AM EDT
To: Israel Weinstein <israel@iwlawpc.com>
Cc: Rob Eisenberg <Rob@queenfunding.com>, Max Gross <max@queenfunding.com>
Subject: Fw: CONSTRUCTION MASONRY - Aug 07, 2017 \$30,000.00

\$25,800 BOA 6149 8/9/2017

08/07/2017 WIRE TYPE: WIRE OUT DATE: 170807 TIME: 1057 ET TRN: 2017080700261442 SERVICE... -25,800.00

Edit Description

Type: Withdrawal
Description: WIRE TYPE: WIRE OUT DATE: 170807 TIME: 1057 ET
TRN: 2017080700261442 SERVICE REF: 005672
BNF: CONSTRUCTION MASONRY ID: 2791784834 BNF BK: WELL
S FARGO BANK, NA ID: 121000248 PMT DET: 208038768 FU
NDING
Merchant name: CONSTRUCTION MASONRY Edit
Transaction category: Business Expenses: Business Miscellaneous Edit

EXHIBIT 29

FILED: ERIE COUNTY CLERK 09/13/2018 05:56 PM
NYSCEF DOC. NO. 63

INDEX NO. 811445/2017
RECEIVED NYSCEF: 09/13/2018

WELLS FARGO BANK, N.A.
P.O. Box 1416, MAC D1111-01A
Charlotte, NC 28201

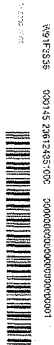
000145 CW01F3SA Y1372-039



Vadim Barbarovich-Marshall
1517 Voorhies Ave.
Suite 3R
Brooklyn, NY 11235

August 24, 2017

CASHIER'S CHECK

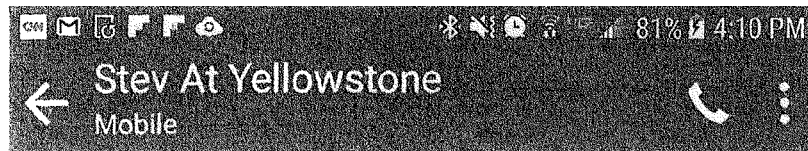


E-3586

PLEASE DETACH BEFORE DEPOSITING

WELLS FARGO		Check Number: 0001304925
Pay to the order of Vadim Barbarovich-Marshall		Date: August 24, 2017
		\$56,763.83
Fifty-Six Thousand Seven Hundred Sixty-Three dollars and 83/100		
For 78787617	Authorized Signature	
FOR INQUIRIES: 480-394-3122	<i>Richard Levy</i>	
⑈0001304925⑈ ⑆121000248⑆ 4861009330⑈		

EXHIBIT 30



It's Steve. Call me

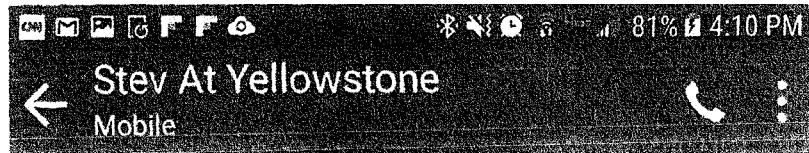
Did you work something out with him?

I don't need him filing the judgement that you signed. I'm only trying to look out for you buddy. Let me know.

Man he is an ass. He has charges being brought on him for drug houses. So he trying to get the 51k ASAP before he goes to jail. I wish i could get to him, he talking to me like a dog so i just emailed him and told him to talk to my lawyer. We did everything we could, so we will see him in court. He got paid on the 16th and he also got paid today, but he needs that money now because of his situation

+ Type a message...





Wow what happened? Thought everything worked out. Sorry this happened man. I really think you should work it out with him before they levy the account. I

f i would have know this would have happened would obviously not told you to deal with them just don't want them to fuck with you more. Let me know if I

can help in any way.

Thanks. Will keep u posted

I just got word that they levied your account. Call me I can help you here.

Just called

Calling you in 5

+ Type a message...



EXHIBIT 31

Commonwealth of Pennsylvania
COUNTY OF PHILADELPHIA

COMPLETE BUSINESS SOLUTIONS GROUP, INC.: PHILADELPHIA COUNTY
Plaintiff : COURT OF COMMON PLEAS
 :
 vs. :
 :
 :
 HMC INCORPORATED : May Term, 2019 No. 001349
 and :
 KARA DIPIETRO : Case ID No. 190501349
Defendant(s)

WRIT OF EXECUTION NOTICE

This paper is a Writ of Execution. It has been issued because there is a judgment against you. It may cause your property to be held or taken to pay the judgment. You may have legal rights to prevent your property from being taken. If you wish to exercise your rights, you must act promptly.

Exempt Property: The law provides that certain property cannot be taken. Such property is said to be exempt. There is a debtor's exemption for \$300.00. There are other exemptions, which may be applicable to you. Attached is a summary of some of the major exemptions. You may have other exemptions or other rights.

If you have an exemption, you should do the following promptly: (1) Fill out the attached exemption claim form and demand for a prompt hearing; (2) Deliver the form or mail it to the Sheriff's Office at the address noted. The fee to file this is \$20.00 (Attorney check, certified check, cashiers check or money order **only**).

You should come to court ready to explain your exemption. If you do not come to court and prove your exemption, you may lose some of your property.

Property Belonging to Another Person: If there is property at your residence (or in your bank account) that belongs to another person or that you own with another person, you should notify that person so that he/she can file a Property Claim (fee to file is \$40.00, attorney check, certified check, cashiers check or money order **only**) or other legal papers with the Sheriff's Office to prevent his/her property from being taken or sold at Sheriff's Sale to satisfy your debt. See enclosed forms.

"YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP."

"LLEVE EST DEMANDA A UN ABOGADO INMEDIATAMENTE. SI NO TIENE ABOGADO O SO NO TIENE EL DINERO SUFICIENTE DE PAGAR TAL SERVICIO VAYA EN PERSONA O LLAME POR TELEFONO A LA OFICINA CUYA DIRECCION SE ENCUENTRA ESCRITA ABAJO PARA AERIGUAR DONDE SE PUDE CONSGUIR ASISTENCIA LEGAL."

Philadelphia Bar Association
 Lawyer Referral and Information Service
 One Reading Center
 Philadelphia, PA 19107
 Telephone: (215) 238-1701

Asociacion De Licenciados De Filadelfia
 Servicio De Referencia E Informacion Legal One
 Reading Center
 Filadelfia, PA 19107
 Telefono: (215) 238-1701

EXHIBIT "A"

PLAINTIFF: Complete Bus. Sol. Grp. Inc VS. DEFENDANT HMC INCORPORATED, et al.
Court & Term No. 190501349 Claim No. _____

**CLAIM FOR
EXEMPTION**

TO THE SHERIFF:

I, the above-named defendant, claim exemption of property from levy (1) or attachment (2):

- (1) From my personal property in my possession which has been levied upon,
 (a) I desire that my \$300.00 statutory exemption by
 [] (I) set aside in kind (specify property to be set aside in kind): _____
 [] (II) paid in cash following the sale of the property levied upon; or
 (b) I claim the following exemption (specify property and basis of exemption): _____
- (2) From my property which is in the possession of a third party, I claim the following exemptions:
 (a) my \$300.00 statutory exemption [] in cash [] in kind
 (specify property): _____
 (b) Social Security benefits on deposit in the amount of: \$ _____
 (c) Other (specify amount and basis of exemption): _____

I request a prompt court hearing to determine the exemption.

Notice of the hearing should be given to me at: (Name, Address & Telephone Number)

I verify that the statements made in this Claim for Exemption are true and correct. I understand that false statements herein are made subject to the penalties of 18 PA.C.S. Section 4904 relating to unsworn falsification to authorities.

Date: _____ Defendant(s): _____
 Phone # _____ Address: _____
 City, Zip: _____

THIS CLAIM TO BE FILED WITH: Office of the Sheriff of Philadelphia County
 Land Title Building
 100 South Broad Street, Fifth Floor Philadelphia, PA 19110
 (215) 686-3559/60

Note: Under paragraphs (1) and (2) of the writ, a description of specific property to be levied upon or attached may be set forth in the writ or included in a separate direction to the Sheriff.

Under paragraph (2) of the writ, if attachment of a named garnishee is desired, his name should be set forth in the space provided.

Under paragraph (3) of the writ, the Sheriff may, as under prior practice, add as a garnishee any person not named in this writ may be found in possession of property of the defendant. See Rule 3111(a). For limitations on the power to attach tangible personal property, see Rule 3108(a).

(b) Each court shall by local rule designate the officer, organization or person to be named in the notice.

MAJOR EXEMPTIONS UNDER PENNSYLVANIA AND FEDERAL LAW

- (1) \$300.00 statutory exemption
- (2) Bibles, school books, sewing machines, uniforms and equipment
- (3) Most wages and unemployment compensation
- (4) Social Security benefits
- (5) Certain retirement fund and accounts
- (6) Certain veteran and armed forces benefits
- (7) Certain insurance proceeds

EXHIBIT "A-1"

COMPLETE BUSINESS SOLUTIONS GROUP, INC.

By: John Hartley, Esquire
 Attorney I.D. No.: 47106
 By: Brian H. Smith, Esquire
 Attorney I.D. No.: 65627
 20 N. 3rd Street
 Philadelphia, PA 19106
 (215) 987-3671

Attorneys for Plaintiff

COMPLETE BUSINESS SOLUTIONS GROUP, INC.: PHILADELPHIA COUNTY
Plaintiff : COURT OF COMMON PLEAS
 :
 vs. :
 :
HMC INCORPORATED : May Term, 2019 No. 001349
 and :
KARA DIPIETRO : Case ID No. 190501349
Defendant(s)

WRIT OF EXECUTION

To the Sheriff of Philadelphia County:

To Satisfy the Judgment, interest and costs against:

HMC INCORPORATED, located at 7190 Oakland Mills Road, #10 Columbia, MD 21046.

Tax ID: 52-2005467

KARA DIPIETRO, residing at 1836 Landrake Road Towson, MD 21204.

SSN: XXXX*Defendant(s)*

- (a) You are directed to levy upon the property of the defendant(s) and to sell defendant's(s') interest therein:
 N.A.
- (b) You are also directed to attach the property of the defendant(s) not levied upon in the possession of
 TD BANK, WELLS FARGO BANK, CAPITAL ONE BANK, JP MORGAN CHASE & CO, BANK OF AMERICA,
 M&T BANK, SANTANDER BANK, PNC BANK, BB&T BANK, CITIZENS BANK, HSBC BANK, as garnishee(s).

(Specifically describe property)

And to notify the garnishee(s) that:

- (a) an attachment has been issued: _____
- (b) except as provided in paragraph (c), the garnishee is enjoined from paying any debt to or for the account of the
 defendant and from delivering any property of the defendant or otherwise disposing thereof;
- (c) the attachment shall not include _____
- (i) the first \$10,000.00 of each account of the defendant with a bank or other financial institution
 containing any funds that are deposited electronically on a recurring basis and are identified as being
 funds, which upon deposit, are exempt from execution, levy, or attachment under Pennsylvania or
 Federal law.

Case ID: 190501349

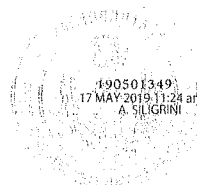
- (ii) each account of the defendant with a bank or other financial institution in which funds on deposit exceed \$10,000.00 at any time if all funds are deposited electronically in a recurring basis and are identified as being funds, which upon deposit, are exempt from execution, levy, or attachment under Pennsylvania, or Federal law.
- (iii) Any funds in the account of the defendant with a bank account or other financial institution that total \$300.00 or less. If multiple accounts are attached, a total of \$30000 in all accounts shall not be subject to levy and attachment as determined by the executing officer. The funds shall be set aside pursuant to the defendant's general exemption provided in 42 Pa.C.S. §8123.
- (d) if property of the defendant not levied upon and subject to attachment is found in the possession of anyone other than a named garnishee, you are directed to notify such person that he or she has been added as a garnishee and is enjoined as above stated.

AMOUNT DUE: \$11,985,719.32
 INTEREST FROM May 14, 2019: \$5,910.77
 COSTS TO BE ADDED: \$173.12
Total: \$11,991,803.21

ERIC FEDER
 Director, Office of Judicial Records

By: _____
Clerk

Date: _____



Case ID: 190501349

EXHIBIT 32

FILED: ONTARIO COUNTY CLERK 03/06/2018 01:43 PM
 NYSCEF DOC. NO. 2
 201803060187

INDEX NO. 117333-2018
 RECEIVED NYSCEF: 03/06/2018
 Index #: 117333-2018

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF ONTARIO

YELLOWSTONE CAPITAL WEST LLC,

Plaintiff,

against-

I.I.FUELS d/b/a I.I. FUELS, I.I. FUELS, LLC D/B/A
 I.I. FUELS, KENNETH D BISHOP, and ERICKA L
 ZENZ,

Defendants.

Index No.:

AFFIDAVIT IN SUPPORT

STATE OF NEW JERSEY)
) ss.:
 COUNTY OF HUDSON)

ELI KLEIN, being duly sworn, upon information and belief, deposes and says:

1. I am a natural person over the age of 18 and reside in the State of New York. I am an Account Manager for Plaintiff YELLOWSTONE CAPITAL WEST LLC ("YSC West") and am fully familiar with the facts and circumstances hereinafter set forth.

2. I make this Affidavit in support of YSC West's entry of a Judgment by Confession against Defendant I.I.FUELS d/b/a I.I. FUELS, I.I. FUELS, LLC D/B/A I.I. FUELS ("Defendant IIF"), Defendant KENNETH D BISHOP ("Defendant Kenneth"), and Defendant ERICKA L ZENZ ("Defendant Ericka") (collectively, "Defendants").

3. On January 23, 2018, Defendant IIF entered into a secured merchant agreement (the "Agreement") whereby YSC West agreed to buy all rights of the Defendant IIF's future accounts-receivable, having a face value of \$203,000.00. The purchase price for these receivables was \$140,000.00. Attached hereto as Exhibit "A" is a true and accurate copy of the Agreement.

FILED: ONTARIO COUNTY CLERK 03/06/2018 01:43 PM
NYSCEF DOC. NO. 2

INDEXED: 117333-2018-018
RECEIVED NYSCEF: 03/06/2018

4. Pursuant to the Agreement, Defendant IIF authorized YSC West to debit from its bank account, by means of an online ACH debit, a percentage of Defendant IIF's accounts-receivable (the "Specified Percentage"), until the purchased amount of receivables – \$203,000.00 – was paid in full.

5. Defendant IIF agreed to exclusively use one bank account approved by YSC West (the "Account"), into which Defendant IIF agreed to deposit all of its receipts, and from which YSC West was to conduct its ACH debits of the Specified Percentage of said receipts.

6. The Agreement provided that in the event Defendant IIF used a bank account other than the Account, or Defendant IIF prevented YSC West from debiting the Account, either by instructing the bank to block YSC West's ACH debits or via other means, Defendant IIF was in default of the Agreement. See Exhibit "A", Para. 3.1.

7. In addition, Defendant Kenneth and Defendant Ericka each executed a personal guarantee of performance, guaranteeing Defendant IIF's performance of its obligations under the Agreement (the "Personal Guarantees"). See Exhibit "A".

8. The Personal Guarantees provide that in the event of Defendant IIF's default under any of the terms of the Agreement, including blocking ACH debits or depositing their accounts-receivable into a bank account other than the Account, YSC West may enforce its rights against Defendant IIF under the Agreement against Defendant Kenneth and Defendant Ericka, without first seeking recourse from Defendant IIF.

9. Furthermore, Defendant Kenneth and Defendant Ericka each executed and delivered into YSC West's possession, notarized Affidavits of Confession of Judgment, authorizing YSC West to enter judgment against Defendant IIF, Defendant Kenneth, and Defendant Ericka, jointly and severally, in the event of Defendants' default of the Agreement, plus legal fees of twenty-five percent (25%) of the total of the aforesaid sums.

FILED: ONTARIO COUNTY CLERK 03/06/2018 01:43 PM
NYSCEF DOC. NO. 2

INDEX# 117333-2018
RECEIVED NYSCEF: 03/06/2018

10. Defendant IIF made payments under the Agreement totaling \$59,572.00, and has stopped remitting payments to YSC West on or about March 6, 2018, although they are still conducting regular business operations and still in receipt of accounts-receivable. This is a default under the Agreement and there remains a balance due and owing to YSC West in the amount of \$143,428.00 (the "Default Amount").

11. While the Agreement does not have a provision stating that YSC West must send Defendant IIF, Defendant Kenneth and/or Defendant Ericka a Notice of Default prior to entering any judgment, Defendant IIF, Defendant Kenneth and Defendant Ericka were made aware that a Confession of Judgment will be entered against them lest they settle their outstanding balance.

12. Defendant IIF, Defendant Kenneth, and Defendant Ericka continue to be in default per paragraph 3.1 of the Agreement, entitled "Events of Default", and continue to refuse to honor their obligations owed to YSC West, by inter alia, blocking YSC West's access to the Account, and by preventing YSC West from debiting the Account per the Agreement. See Exhibit "A", Para. 3.1.

13. Based on the foregoing, YSC West requests the entry of judgment in its favor, plus interest from March 6, 2018, the date of default whereby Defendant IIF ceased making payments pursuant to the Agreement, and was in breach thereof.

14. Furthermore, pursuant to the Affidavits of Confession of Judgment executed by Defendant IIF, YSC West is entitled to legal fees of twenty-five percent (25%) of the Default Amount, which amount totals \$35,857.00.

15. Accordingly, there remains a balance due and owing to YSC West in the amount of \$143,428.00, plus interest from March 6, 2018 (the date of default whereby Defendant IIF ceased making payments under the Agreement), plus legal fees in the amount of \$35,857.00, in addition to costs.

16. No prior request for the within-requested relief has been made.

FILED: ONTARIO COUNTY CLERK 03/06/2018 01:43 PM
NYSCEF DOC. NO. 2

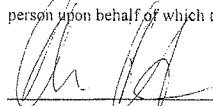
INDEXED: 117333-2018
RECEIVED NYSCEF: 03/06/2018

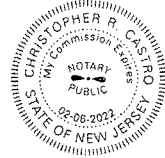
17. YSC West respectfully requests that the Court enter judgment against Defendants, jointly and severally, in the amount of \$143,428.00, plus interest from March 6, 2018, plus legal fees in the amount of \$35,857.00, and costs, and that the Court grant such other and further relief as this Court deems just and proper.

Dated: Jersey City, New Jersey
March 6, 2018


ELI KLEIN

On March 6, 2018, before me, the undersigned Notary Public in and for said state, personally appeared ELI KLEIN, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.


NOTARY PUBLIC



FILED: ONTARIO COUNTY CLERK 03/06/2018 01:43 PM
NYSCEF DOC. NO. 2

INDEXED: 117333-2018
RECEIVED NYSCEF: 03/06/2018

Index No.	Year	RJI No.	Hon.
SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF ONTARIO			

YELLOWSTONE CAPITAL WEST LLC,

Plaintiff,

-against-

I.I.FUELS d/b/a I.I. FUELS, I.I. FUELS, LLC D/B/A I.I. FUELS, KENNETH D BISHOP, and
ERICKA L ZENZ,

Defendants.

AFFIDAVIT IN SUPPORT WITH EXHIBITS

CHRISTOPHER CASTRO, ESQ.
Attorney for Plaintiff

Office and Post Office Address, Telephone
17 STATE STREET
SUITE 4000
NEW YORK, NEW YORK 10004
PHONE: (646) 774-3308
FAX: (978) 313-6609

Service of a copy of the within is hereby admitted.

Dated,

Attorney(s) for

Please take notice
☐ Notice of Entry
that the within is a (certified) true copy of a
duly entered in the office of the clerk of the within name court on
☐ Notice of Assent
that on order of which the within is a true copy will be presented for
settlement to the HON. one of the judges
of the within named court, at on at
Dated,

Yours, etc,
Attorney(s) for

FILED: ONTARIO COUNTY CLERK 03/07/2018 05:49 PM
 NYSCEF DOC. NO. 2
 201803080026

INDEX NO. 117350-2018
 RECEIVED NYSCEF: 03/07/2018
 Index #: 117350-2018

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF ONTARIO
 YELLOWSTONE CAPITAL WEST LLC,

Plaintiff,

-against-

DIG LANDSCAPE CONSTRUCTION, INC. d/b/a DIG
 LANDSCAPE CONSTRUCTION D/B/A GARDEN
 STUDIO D/B/A DIG D/B/A GARDEN STUDIO
 DESIGN and ERIC J FENMORE,

Defendants.

Index No.:

AFFIDAVIT IN SUPPORT

STATE OF NEW JERSEY)
) ss.:
 COUNTY OF HUDSON)

ELI KLEIN, being duly sworn, upon information and belief, deposes and says:

1. I am a natural person over the age of 18 and reside in the State of New York. I am an Account Manager for Plaintiff YELLOWSTONE CAPITAL WEST LLC ("YSC West") and, as such, am fully familiar with the facts and circumstances hereinafter set forth.

2. I make this Affidavit in support of YSC West's entry of a Judgment by Confession against Defendant DIG LANDSCAPE CONSTRUCTION, INC. d/b/a DIG LANDSCAPE CONSTRUCTION D/B/A GARDEN STUDIO D/B/A DIG D/B/A GARDEN STUDIO DESIGN ("Defendant DLC") and Defendant ERIC J FENMORE ("Defendant Eric") (collectively, "Defendants").

3. On February 20, 2018, Defendant DLC entered into a secured merchant agreement (the "Agreement") whereby YSC West agreed to buy all rights of the Defendant DLC's future accounts-receivable, having a face value of \$60,900.00. The purchase price for these receivables was \$42,000.00. Attached hereto as Exhibit "A" is a true and accurate copy of the Agreement.

FILED: ONTARIO COUNTY CLERK 03/07/2018 05:49 PM
NYSCEF DOC. NO. 2

INDEXED: 117350-2018
RECEIVED NYSCEF: 03/07/2018

4. Pursuant to the Agreement, Defendant DLC authorized YSC West to debit from its bank account, by means of an online ACH debit, a percentage of Defendant DLC's accounts-receivable (the "Specified Percentage"), until the purchased amount of receivables – \$60,900.00 – was paid in full.

5. Defendant DLC agreed to exclusively use one bank account approved by YSC West (the "Account"), into which Defendant DLC agreed to deposit all of its receipts, and from which YSC West was to conduct its ACH debits of the Specified Percentage of said receipts.

6. The Agreement provided that in the event Defendant DLC used a bank account other than the Account, or Defendant DLC prevented YSC West from debiting the Account, either by instructing the bank to block YSC West's ACH debits or via other means, Defendant DLC was in default of the Agreement. See Exhibit "A", Para. 3.1.

7. In addition, Defendant Eric executed a personal guarantee of performance, guaranteeing Defendant DLC's performance of its obligations under the Agreement (the "Personal Guarantee"). See Exhibit "A".

8. The Personal Guarantee provides that in the event of Defendant DLC's default under any of the terms of the Agreement, including blocking ACH debits or depositing their accounts-receivable into a bank account other than the Account, YSC West may enforce its rights against Defendant DLC under the Agreement against Defendant Eric, without first seeking recourse from Defendant DLC.

9. Furthermore, Defendant Eric executed and delivered into YSC West's possession, a notarized Affidavit of Confession of Judgment, authorizing YSC West to enter judgment against Defendant DLC and Defendant Eric, jointly and severally, in the event of Defendants' default of the Agreement, plus legal fees of twenty-five percent (25%) of the total of the aforesaid sums.

10. Defendant DLC made payments under the Agreement totaling \$5,320.00, and has stopped remitting payments to YSC West on or about March 2, 2018, although they are still conducting regular business operations and still in receipt of accounts-receivable. This is a default under the

FILED: ONTARIO COUNTY CLERK 03/07/2018 05:49 PM
NYSCEF DOC. NO. 2

INDEXED: 03/07/2018
RECEIVED NYSCEF: 03/07/2018

Agreement and there remains a balance due and owing to YSC West in the amount of \$55,580.00 (the "Default Amount").

11. While the Agreement does not have a provision stating that YSC West must send Defendant DLC and Defendant Eric a Notice of Default prior to entering any judgment, Defendant DLC and Defendant Eric were made aware that a Confession of Judgment will be entered against them lest they settle their outstanding balance.

12. Defendant DLC and Defendant Eric continue to be in default per paragraph 3.1 of the Agreement, entitled "Events of Default", and continue to refuse to honor their obligations owed to YSC West, by inter alia, blocking YSC West's access to the Account, and by preventing YSC West from debiting the Account per the Agreement. See Exhibit "A", Para. 3.1.

13. Based on the foregoing, YSC West requests the entry of judgment in its favor, plus interest from March 2, 2018, the date of default whereby Defendant DLC ceased making payments pursuant to the Agreement, and was in breach thereof.

14. Furthermore, pursuant to the Affidavit of Confession of Judgment executed by Defendant DLC, YSC West is entitled to legal fees of twenty-five percent (25%) of the Default Amount, which amount totals \$13,895.00.

15. Accordingly, there remains a balance due and owing to YSC West in the amount of \$55,580.00, plus interest from March 2, 2018 (the date of default whereby Defendant DLC ceased making payments under the Agreement), plus legal fees in the amount of \$13,895.00, in addition to costs.

16. No prior request for the within-requested relief has been made.

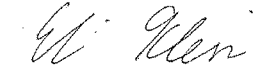
17. YSC West respectfully requests that the Court enter judgment against Defendants, jointly and severally, in the amount of \$55,580.00, plus interest from March 2, 2018, plus legal fees in the

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NYSCEF DOC. NO. 2

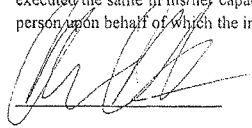
INDEX# 1171502018
RECEIVED NYSCEF: 03/07/2018

amount of \$13,895.00, and costs, and that the Court grant such other and further relief as this Court
deems just and proper.

Dated: Jersey City, New Jersey
March 7, 2018


ELI KLEIN

On March 7, 2018, before me, the undersigned Notary Public in and for said state, personally appeared
ELI KLEIN, personally known to me or proved to me on the basis of satisfactory evidence to be the
individual whose name is subscribed to the within instrument and acknowledged to me that he/she
executed the same in his/her capacity, and that by his signature on the instrument, the individual, or the
person upon behalf of which the individual acted, executed the instrument.



NOTARY PUBLIC



FILED: ONTARIO COUNTY CLERK 03/07/2018 05:49 PM
 NYSCEF DOC. NO. 2

INDEXED: 117360-2018
 RECEIVED NYSCEF: 03/07/2018

Index No. Year RJ1 No. Hon.
 SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF ONTARIO

YELLOWSTONE CAPITAL WEST LLC,

Plaintiff,

-against-

DIG LANDSCAPE CONSTRUCTION, INC. d/b/a DIG LANDSCAPE CONSTRUCTION D/B/A
 GARDEN STUDIO D/B/A DIG D/B/A GARDEN STUDIO DESIGN and ERIC J FENMORE,

Defendants.

AFFIDAVIT WITH EXHIBITS

CHRISTOPHER CASTRO, ESQ.
Attorney for Plaintiff

Office and Post Office Address, Telephone
 17 STATE STREET
 SUITE 4000
 NEW YORK, NEW YORK 10004
 PHONE: (646) 774-3308
 FAX: (978) 313-6609

Service of a copy of the within is hereby admitted.

Dated,

Attorney(s) for

Please take notice
☐ Notice of Entry
 that the within is a (certified) true copy of a
 duly entered in the office of the clerk of the within name court on
☐ Notice of Settlement
 that an order of which the within is a true copy will be presented for
 settlement to the HON. one of the judges
 of the within named court, at on at
 Dated,

Yours, etc.
 Attorney(s) for

EXHIBIT 33

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

-----X
CAPITAL MERCHANT SERVICES, LLC,

Index No.

Plaintiff,

AFFIDAVIT OF CONFESSION OF
JUDGMENT

-against-

CALLIS TRANSPORTATION AND WAREHOUSING
COMPANY d/b/a CALLIS TRANSPORTATION AND
WAREHOUSING COMPANY, MID ATLANTIC
TRANSPORT CO. LLC d/b/a MID ATLANTIC
TRANSPORT CO., AND BRIAN KEITH CALLIS,
Defendants.
-----X

STATE OF MD)

ss.:

COUNTY OF Howard)

BRIAN KEITH CALLIS, being duly sworn, deposes and says:

1) I am a principal, owner, and an officer of CALLIS TRANSPORTATION AND WAREHOUSING COMPANY d/b/a CALLIS TRANSPORTATION AND WAREHOUSING COMPANY, a Corporation located at 7460 CONOWINGO AVE, BLDG B, SUITE 69 & 71, JESSUP, MD 20794 in the County of HOWARD, and as such, I have the authority to act on behalf of CALLIS TRANSPORTATION AND WAREHOUSING COMPANY d/b/a CALLIS TRANSPORTATION AND WAREHOUSING COMPANY, and have been authorized to execute this affidavit of confession of judgment.

2) I am a principal, owner, and an officer of MID ATLANTIC TRANSPORT CO. LLC d/b/a MID ATLANTIC TRANSPORT CO., a Limited Liability Company located at 965 BUCKLEY HALL ROAD, COBBS CREEK, VA 23035 in the County of MATHEWS, and as such, I have the authority to act on behalf of MID ATLANTIC TRANSPORT CO. LLC d/b/a MID ATLANTIC TRANSPORT CO., and have been authorized to execute this affidavit of confession of judgment. (CALLIS TRANSPORTATION AND WAREHOUSING COMPANY d/b/a CALLIS TRANSPORTATION AND WAREHOUSING COMPANY, and MID ATLANTIC TRANSPORT CO. LLC d/b/a MID ATLANTIC TRANSPORT CO. are collectively referred to as "Merchant Defendant".)

3) I reside at 523 SOUTH EAST AVENUE, BALTIMORE, MD 21224, in the County of BALTIMORE CITY.

4) I, individually, and on behalf of Merchant Defendant consent to the jurisdiction of this Court.

5) Merchant Defendant hereby confesses judgment and authorizes entry of judgment in favor of Plaintiff and against Defendants in the Federal District Court for the Southern District of New York, Supreme Court of the State of New York, County of Richmond, Supreme Court of the State of New York, County of Queens, Supreme Court of the State of New York, County of Erie, Supreme Court of the State of New York, County of Nassau, Supreme Court of the State of New York, County of Westchester, Supreme Court of the State of New York, County of Kings, Supreme Court of the State of New York, County of Orange, Supreme Court of the State of New York, County of Ontario, Supreme Court of the State of New York, County of New York, and/or Supreme Court of the State of New York, County of Bronx, in the sum of \$149,900.00 less any payments timely made pursuant to the secured Merchant Agreement dated February 27, 2018, plus legal fees to Plaintiff calculated at twenty-five percent (25%) of the total of the aforesaid sums, costs, expenses and disbursements and interest at the rate of 16% per annum from February 27, 2018, or the highest amount allowed by law, whichever is greater. Such amount shall be set forth in an affidavit to be executed by Plaintiff or an affirmation by Plaintiff's attorney, which shall be attached hereto at the time of entry of this Affidavit of Confession of Judgment.

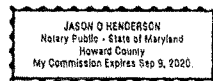
6) In addition, I hereby confess judgment, individually and personally, jointly and severally, and authorize entry of judgment in favor of Plaintiff and against myself in the Federal District Court for the Southern District of New York, Supreme Court of the State of New York, County of Richmond, Supreme Court of the State of New York, County of Queens, Supreme Court of the State of New York, County of Erie, Supreme Court of the State of New York, County of Nassau, Supreme Court of the State of New York, County of Westchester, Supreme Court of the State of New York, County of Kings, Supreme Court of the State of New York, County of Orange, Supreme Court of the State of New York, County of Ontario, Supreme Court of the State of New York, County of New York, and/or Supreme Court of the State of New York, County of Bronx, against me personally in the sum of \$149,900.00 less any payments timely made pursuant to the Merchant Agreement dated February 27, 2018, plus legal fees to Plaintiff calculated at twenty five percent (25%) of the total of the aforesaid sums, costs, expenses and disbursements and interest at the rate of 16% per annum from February 27, 2018, or the highest rate allowed by law, whichever is greater. Such amount shall be set forth in an affidavit to be executed by Plaintiff or an affirmation by Plaintiff's attorney, which shall be attached hereto at the time of entry of this Confession of Judgment.

7) This confession of judgment is for a debt due to Plaintiff arising from Defendants' failure to pay to Plaintiff, Merchant Defendant's accounts-receivable, which were purchased by Plaintiff pursuant to the secured Merchant Agreement dated February 27, 2018, and for Defendants' breach of the secured Merchant Agreement, plus agreed-upon interest, attorneys' fees, costs and disbursements, as agreed-upon by Merchant Defendant and myself, under the secured Merchant Agreement, dated February 27, 2018, of which supporting documents include a Personal Guarantee and/or a UCC-1 financing statement(s).

8) Merchant Defendant and I hereby agree that this Affidavit of Confession of Judgment may be entered in the event of default under the Merchant Agreement dated February 27, 2018, without notice, and that the execution and delivery of this Affidavit of Confession of Judgment and any entry of judgment thereon shall be without prejudice to any and all rights of Plaintiff, which reserves all of its rights and remedies against Defendants.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

9) If for any reason entry of judgment in the above specified amount or execution on the same is outside the jurisdiction of this Court, Merchant Defendant and I hereby consent to the personal jurisdiction, entry of judgment, and execution thereon in any State or Federal Court of the United States of America.



By: [Signature]
 BRIAN KEITH CALLIS, individually, and
 on behalf of CALLIS TRANSPORTATION
 AND WAREHOUSING COMPANY d/b/a
 CALLIS TRANSPORTATION AND
 WAREHOUSING COMPANY, AND MID
 ATLANTIC TRANSPORT CO. LLC d/b/a
 MID ATLANTIC TRANSPORT CO.

On the 27th day of February, in the year 2018, before me, the undersigned Notary Public in and for said state, personally appeared BRIAN KEITH CALLIS, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

[Signature]
 Notary Public

EXHIBIT 34

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF

-----X
CAPITAL MERCHANT SERVICES, LLC,

Index No.

Plaintiff,

AFFIDAVIT OF CONFESSION OF
JUDGMENT

-against-

CALLIS TRANSPORTATION AND WAREHOUSING
COMPANY d/b/a CALLIS TRANSPORTATION AND
WAREHOUSING COMPANY, MID ATLANTIC
TRANSPORT CO. LLC d/b/a MID ATLANTIC
TRANSPORT CO., AND BRIAN KEITH CALLIS,
Defendants.

-----X

STATE OF MD)

) ss.:
COUNTY OF Howard)

BRIAN KEITH CALLIS, being duly sworn, deposes and says:

1) I am a principal, owner, and an officer of CALLIS TRANSPORTATION AND WAREHOUSING COMPANY d/b/a CALLIS TRANSPORTATION AND WAREHOUSING COMPANY, a Corporation located at 7460 CONOWINGO AVE, BLDG B, SUITE 69 & 71, JESSUP, MD 20794 in the County of HOWARD, and as such, I have the authority to act on behalf of CALLIS TRANSPORTATION AND WAREHOUSING COMPANY d/b/a CALLIS TRANSPORTATION AND WAREHOUSING COMPANY, and have been authorized to execute this affidavit of confession of judgment.

2) I am a principal, owner, and an officer of MID ATLANTIC TRANSPORT CO. LLC d/b/a MID ATLANTIC TRANSPORT CO., a Limited Liability Company located at 965 BUCKLEY HALL ROAD, COBBS CREEK, VA 23035 in the County of MATHEWS, and as such, I have the authority to act on behalf of MID ATLANTIC TRANSPORT CO. LLC d/b/a MID ATLANTIC TRANSPORT CO., and have been authorized to execute this affidavit of confession of judgment. (CALLIS TRANSPORTATION AND WAREHOUSING COMPANY d/b/a CALLIS TRANSPORTATION AND WAREHOUSING COMPANY, and MID ATLANTIC TRANSPORT CO. LLC d/b/a MID ATLANTIC TRANSPORT CO. are collectively referred to as "Merchant Defendant".)

3) I reside at 523 SOUTH EAST AVENUE, BALTIMORE, MD 21224, in the County of BALTIMORE CITY.

4) I, individually, and on behalf of Merchant Defendant consent to the jurisdiction of this Court.

5) Merchant Defendant hereby confesses judgment and authorizes entry of judgment in favor of Plaintiff and against Defendants in the Federal District Court for the Southern District of New York, Supreme Court of the State of New York, County of Richmond, Supreme Court of the State of New York, County of Queens, Supreme Court of the State of New York, County of Erie, Supreme Court of the State of New York, County of Nassau, Supreme Court of the State of New York, County of Westchester, Supreme Court of the State of New York, County of Putnam, Supreme Court of the State of New York, County of Orange, Supreme Court of the State of New York, County of Ontario, Supreme Court of the State of New York, County of New York, and/or Supreme Court of the State of New York, County of Bronx, in the sum of \$149,900.00 less any payments timely made pursuant to the secured Merchant Agreement dated February 27, 2018, plus legal fees to Plaintiff calculated at twenty-five percent (25%) of the total of the aforesaid sums, costs, expenses and disbursements and interest at the rate of 16% per annum from February 27, 2018, or the highest amount allowed by law, whichever is greater. Such amount shall be set forth in an affidavit to be executed by Plaintiff or an affirmation by Plaintiff's attorney, which shall be attached hereto at the time of entry of this Affidavit of Confession of Judgment.

6) In addition, I hereby confess judgment, individually and personally, jointly and severally, and authorize entry of judgment in favor of Plaintiff and against myself in the Federal District Court for the Southern District of New York, Supreme Court of the State of New York, County of Richmond, Supreme Court of the State of New York, County of Queens, Supreme Court of the State of New York, County of Erie, Supreme Court of the State of New York, County of Nassau, Supreme Court of the State of New York, County of Westchester, Supreme Court of the State of New York, County of Putnam, Supreme Court of the State of New York, County of Orange, Supreme Court of the State of New York, County of Ontario, Supreme Court of the State of New York, County of New York, and/or Supreme Court of the State of New York, County of Bronx, against me personally in the sum of \$149,900.00 less any payments timely made pursuant to the Merchant Agreement dated February 27, 2018, plus legal fees to Plaintiff calculated at twenty five percent (25%) of the total of the aforesaid sums, costs, expenses and disbursements and interest at the rate of 16% per annum from February 27, 2018, or the highest rate allowed by law, whichever is greater. Such amount shall be set forth in an affidavit to be executed by Plaintiff or an affirmation by Plaintiff's attorney, which shall be attached hereto at the time of entry of this Confession of Judgment.

7) This confession of judgment is for a debt due to Plaintiff arising from Defendants' failure to pay to Plaintiff, Merchant Defendant's accounts-receivable, which were purchased by Plaintiff pursuant to the secured Merchant Agreement dated February 27, 2018, and for Defendants' breach of the secured Merchant Agreement, plus agreed-upon interest, attorneys' fees, costs and disbursements, as agreed-upon by Merchant Defendant and myself, under the secured Merchant Agreement, dated February 27, 2018, of which supporting documents include a Personal Guarantee and/or a UCC-1 financing statement(s).

8) Merchant Defendant and I hereby agree that this Affidavit of Confession of Judgment may be entered in the event of default under the Merchant Agreement dated February 27, 2018, without notice, and that the execution and delivery of this Affidavit of Confession of Judgment and any entry of judgment thereon shall be without prejudice to any and all rights of Plaintiff, which reserves all of its rights and remedies against Defendants.

Remainder of page intentionally left blank

9) If for any reason entry of judgment in the above specified amount or execution on the same is outside the jurisdiction of this Court, Merchant Defendant and I hereby consent to the personal jurisdiction, entry of judgment, and execution thereon in any State or Federal Court of the United States of America.



By: [Signature]
 BRIAN KEITH CALLIS, individually, and
 on behalf of CALLIS TRANSPORTATION
 AND WAREHOUSING COMPANY d/b/a
 CALLIS TRANSPORTATION AND
 WAREHOUSING COMPANY, AND MID
 ATLANTIC TRANSPORT CO. LLC d/b/a
 MID ATLANTIC TRANSPORT CO.

On the 27th day of February, in the year 2018, before me, the undersigned Notary Public in and for said state, personally appeared BRIAN KEITH CALLIS, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

[Signature]
 Notary Public

EXHIBIT 35

Funding Metrics, LLC v D & V Hospitality, Inc.

No Shepard's Signal™
As of: April 8, 2019 7:04 AM Z

Funding Metrics, LLC v D & V Hospitality, Inc.

Supreme Court of New York, Westchester County

January 7, 2019, Decided

66431/16

Reporter

62 Misc. 3d 966 *; 91 N.Y.S.3d 678 **; 2019 N.Y. Misc. LEXIS 311 ***; 2019 NY Slip Op 29008; 2019 WL 138614

Funding Metrics, LLC d/b/a QUICK FIX CAPITAL,
Plaintiff, against **D & V Hospitality, Inc.** and CARL
VITELLINO, Defendant.

Notice of Motion/Affidavit in Supp/Memorandum of
Law/Exhibits A-B (docs 10-14)

Memorandum of Law in Opp/Affirmation in Opp (docs
17-18)

Notice: THE LEXIS PAGINATION OF THIS
DOCUMENT IS SUBJECT TO CHANGE PENDING
RELEASE OF THE FINAL PUBLISHED VERSION.
THIS OPINION IS UNCORRECTED AND SUBJECT
TO REVISION BEFORE PUBLICATION IN THE
PRINTED OFFICIAL REPORTS.

In this matter, where the entry of a judgment by
confession is challenged on the basis that the
accompanying affidavit of non-payment submitted to the
County Clerk lacks information which is a prerequisite to
such entry, and the plaintiff has failed to respond to the
defendant's motion in a legally sufficient manner, the
judgment by confession must be vacated on due
process grounds. Separately, the entry of a judgment
based on a loan agreement that is usurious on its face
and does not involve questions of fraud or fact, does not
require a plenary action to vacate the judgment. Further,
the fact that the loan agreement is denominated by
another name does not shield it from a judicial
determination that such agreement contemplates [***2]
a criminally usurious transaction, which the Court finds
is the case here, rendering the Merchant Agreement
void and mandating vacatur of the judgment by
confession.

Core Terms

Merchant, confession, entry of judgment, vacate,
confession of judgment, defendants', non-payment,
usurious, plenary action, circumstances, accounts
receivable, state of emergency, hurricane, default, debit,
law law law, Memorandum, criminally, products,
Funding, terms, affirmation, conditioned, contingency,
receivables, calculated, operations, customers,
emergency, severally

Counsel: [***1] For Plaintiff: Eric Solomon, Esq., New
York, New York; Christopher R. Murray, Esq., Stein
Adler Dabah & Zeikowitz, LLP, Tarrytown, New York.

For Defendants: Shane R. Heskin, Esq., White and
Williams LLP, New York, New York.

Judges: HON. DAVID F. EVERETT, J.S.C.

Opinion by: DAVID F. EVERETT

Opinion

[*967] [**679] David F. Everett, J.

The following papers were read on the motion:

Defendant Carl Vitellino (Vitellino), a principal, owner
and officer of D & V Hospitality, Inc. (D & V), moves for
orders: vacating the confession of judgment filed on
October 19, 2016 against D & V and on behalf of
plaintiff Funding Metrics, LLC d/b/a Quick Fix Capital
(FM/QFC); voiding the Merchant Agreement between
FM/QFC and D & V dated September 23, 2016;
enjoining prosecution on the Merchant Agreement; and
cancelling the Merchant Agreement on the ground that
the agreement was a loan for which defendants were
charged a criminally usurious interest rate well above
25% per annum,¹ and on the ground that D & V was

¹ In New York, while the defense of civil usury is unavailable to

Funding Metrics, LLC v D & V Hospitality, Inc.

forced to shut down due to the state of emergency [¶968] declared by Florida Governor Rick Scott, preventing it from fulfilling its agreement obligations.

The following facts are taken from the motion papers, affidavits, documentary evidence and the record, and are undisputed unless otherwise indicated.

On October 19, 2016, plaintiff filed an affidavit of nonpayment in support of the entry of a judgment by confession [¶¶3] in the Office of the Westchester County Clerk. The affidavit was accompanied by copies of the Merchant Agreement, which Vitellino executed on behalf of D & V on September 23, 2016, an Addendum of Agreement to Purchase and Sell Future Receivables (Addendum), and a Merchant Security Agreement and Guaranty (Guaranty) by which Vitellino personally guaranteed D & V's performance under the Merchant Agreement. The Merchant Agreement provides, in relevant part, that:

[¶680] "contemporaneously with the execution of this agreement, Merchant [D & V] shall execute and deliver to QFC a duly notarized affidavit of confession of judgment, which affidavit shall be held in escrow by QFC pending a default by the merchant under this agreement. In the event of a default thereunder, the affidavit of confession of judgment shall automatically be released from escrow, and QFC may proceed to enter judgment against the Merchant in accordance with the New York CPLR."

In the notarized Affidavit of Confession of Judgment (Affidavit) executed by Vitellino on September 23, 2016, he confessed judgment "individually and personally, jointly and severally," and authorized the entry of judgment in favor of FM/QFC in the sum [¶¶4] of \$29,200.00, less any payments timely made under the terms of the secured Merchant Agreement, plus legal fees calculated at 25% of the total of the sums, costs expenses and disbursements, and interest at the rate of 16% from September 23, 2016, or the highest amount allowed by law, whichever is greater.

In an affidavit of non-payment submitted in support of the entry of the judgment by confession, John Eckstein (Eckstein), an underwriter for FM/QFC, explains that D

corporate entities, the defense of criminal usury may lie in situations where the lender knowingly charges a corporate entity annual interest in excess of 25% on a loan (see *Penal Law § 190.40*).

22880353v.1

Stuart Wells

& V entered into a secured purchase agreement (the Merchant Agreement) pursuant to which FM/QFC agreed to buy all rights to D & V's future accounts receivable having a face value of \$29,200.00, the purchase [¶969] price for which was \$20,000.00. He explains that, under the terms of the purchase agreement/Merchant Agreement, D & V authorized FM/QFC to debit from its bank account, by online Automated Clearing House (ACH) debit, a percentage of D & V's accounts receivable (the Specified Percentage) until the purchased amount of receivables, that being \$29,200.00, was paid in full, and that Vitellino personally guaranteed payment, and executed the Affidavit authorizing FM/QFC to enter judgment against defendants in the event of default. [¶¶5] Eckstein asserts in his affidavit of non-payment that, after making payments totaling \$1,858.15, D & V stopped making payments, on or about October 6, 2016, despite the fact that it was still conducting regular business operations and was receiving accounts receivable. Without elaborating further, Eckstein declared defendants' failure to make further payments to be as a default under the Merchant Agreement, entitling FM/QFC to the entry of judgment against defendants, jointly and severally, in the amount of \$27,341.85, plus interest from October 6, 2016, costs, and legal fees in the amount of \$6,835.46.

The judgment by confession, as entered by the County Clerk on November 1, 2016, adjudged FM/QFC entitled, with execution thereof, to recover from defendants, jointly and severally, the sum of \$27,341.85, plus interest at 16% in the amount of \$311.62, plus costs and disbursements in the amount of \$225.00, plus attorneys' fees in the amount of \$6,835.46, for a total sum of \$34,713.93.

In support of his motion, Vitellino argues that the facts underlying the entry of the confession of judgment, and which support his current motion to vacate, establish that the Merchant Agreement is actually [¶¶6] a usurious loan, denominated as a purchase agreement for D & V's accounts receivable, and is, therefore, void as a matter of law. Vitellino points out that the Merchant Agreement contains a purchase percentage (also referred to as the Specified Percentage) of daily income of 24.62%, and what is referred to as the purchase price of \$20,000.00, for a purchased amount of \$29,200.00. Vitellino alleges that the Merchant Agreement required payments to FM/QFC "[i]n daily increments of: [¶681] \$265.45" are mathematically inconsistent with the stated Specified Percentage of 24.62%. Vitellino posits that the Merchant Agreement is, in reality, a loan for \$20,000.00

Funding Metrics, LLC v D & V Hospitality, Inc.

that is repayable over a period of 100 days by way of fixed payments of \$265.45, with an annual interest rate of 213%. The Court calculates the annual simple interest rate at [*970] 109%, which, while less than 213%, is nevertheless, a criminally usurious rate (see *Penal Law § 190.40*).

Also problematic, and evidence that this is a usurious loan, rather than a purchase agreement for accounts receivable, is the lack of risk and contingency of repayment. The Merchant Agreement requires defendants to stay in business under the same conditions as when the agreement was [***7] made. There is a provision in the Merchant Agreement that provides that FM/QFC "may upon [D & V's] request, adjust the amount of any payment due under this Agreement at QFC's sole discretion and as it deems appropriate." Yet, when unforeseen circumstances arose, which prevented D & V from making the required payments, via ACH debit or otherwise, FM/QFC sought and obtained the entry of the judgment by confession.

In his sworn affidavit, Vitellino reports that, in early October 2016, weather forecasters were predicting the path that an approaching life-threatening category three hurricane, Hurricane Matthew, was likely to follow. He further reports that, on or about October 3, 2016, Florida Governor Rick Scott declared a state of emergency throughout the state, and ordered mandatory evacuations, which included Palm Beach County, where D & V was located. Vitellino explains that, on the morning of October 5, 2016, when, as part of the declared state of emergency, he was forced by the state to close his business, he called the telephone number listed in the Merchant Agreement and advised the plaintiff's agent that the business would be closed and that there would be no daily receipts. He [***8] asserts that, despite his telephone call advising it of the situation, FM/QFC continued to withdraw, by ACH, the fixed \$265.45 payments throughout the declared state of emergency, and continued to do so, even though the receivables were, as a result of the emergency and the mandatory closure of D & V, \$0. Vitellino avers that, as a result of the hurricane emergency, D & V lost all of its perishable items, and that, after first trying to operate at a sub-sustainable level, it was forced to close entirely. This, he contends, constituted the type of emergency situation that, if the Merchant Agreement truly contemplated risk, and entertained the possibility that FM/QFC might not, under certain circumstances, be paid in full, would meet that criteria.

Nowhere in Eckstein's affidavit of nonpayment is there

an explanation of what he means by "Defendant D & V has since stopped making payments to FM on or about October 6, 2016, although they are still conducting regular business operations [*971] and still in receipt of accounts-receivable." Since D & V authorized FM/QFC to debit funds from its bank account by online ACH debit, an explanation of the circumstances surrounding how and/or why D & V "stopped [***9] making payments" should have been included in his affidavit of nonpayment, rather than the ambiguous and unrevealing statement above. Moreover, this issue should certainly have been addressed in response to defendants' challenge to the entered judgment by confession via the instant motion, but it was not.

Plaintiff's own memorandum of law states that:

"The Merchant Agreement contained an explicit reconciliation and adjustment provisions [sic] by which Funding Metrics assumed [**682] the risk that it might not collect anything from Defendants (Section 3.17).

Moreover, the Merchant Agreement mandated that Payments made to Quick Fix Capital in respect to the full amount of the Receipts shall be conditioned upon the Merchant's sale of products and the payment therefore by Merchant's customers (Section 3.1)" (plaintiff's memorandum of law, at 11).

Yet, the affirmation in opposition submitted by plaintiff's counsel merely states:

"I am the attorney for Plaintiff, Funding Metrics, d/b/a Quick Fix Capital. I make this affirmation in opposition to Defendants' motion to vacate the judgment by confession upon a review of the file maintained by my office.

WHEREFORE, it is respectfully requested that this Honorable Court issue an Order [***10] denying Defendants' Order to Show Cause in its entirety and granting Plaintiff such other and further relief as the Court deems just and proper."

The Merchant Agreement provides, in unambiguous terms, that payments to FM/QFC were conditioned upon D & V's sale of products and payment thereon by D & V's customers. Therefore, it was essential that FM/QFC provide a statement in its affidavit of non-payment to the effect that the affiant had access to, and had reviewed, the business records relevant to establishing that D & V was, in fact, still selling products and receiving payment from its customers for such products at the time it was seeking entry of the judgment by confession. Further,

Funding Metrics, LLC v D & V Hospitality, Inc.

when FM/QFC had an opportunity to address this issue and to provide competent evidence, by sworn affidavit or **[**972]** otherwise, as part of its opposition papers to the instant motion to rebut the facts set forth in Vitellino's sworn affidavit, it chose not to do so. This includes FM/QFC's troubling failure to refute Vitellino's claim that he called the telephone number listed in the Merchant Agreement and advised an FM/QFC agent as to the emergency circumstances and reasons why there would be no daily receipts. **[**111]**

Contrary to plaintiffs' contention, not all efforts to vacate a judgment require a plenary action. Where there are sharply contested issues of fact, or allegations of fraud, a plenary action is an appropriate vehicle (*Midtown Acquisitions L.P. v Essar Global Fund Ltd.*, 162 A.D.3d 583, 583, 75 N.Y.S.3d 900 [2d Dept 2018]; *Scheckter v Ryan*, 161 A.D.2d 344, 345, 555 N.Y.S.2d 99 [1990]). However, where the circumstances underlying the default are such that the entry of judgment is so unfair as to violate defendants' due process rights, a plenary action might not be required. As stated in *New York Practice*, Sixth Edition, a debtor can use the simple motion procedure "if the judgment has been entered in violation of the affidavit's terms, such as where it states a time that has not arrived or a contingency that has occurred" (Siegel Connors, NY Prac § 302 at 565 [6th ed 2018]). Such is the situation in the case before the Court. Here, the contingency that should have been addressed was the inability of defendants to conduct regular business operations due to factors beyond their control, Hurricane Matthew and the declared state of emergency, preventing defendants from fulfilling their obligations under the Merchant Agreement.

It has long been held that "[c]onfessions of judgment are always carefully scrutinized and, in judging them, a liberal attitude **[**12]** should be assumed in favor of judgment debtor . . . [and that a] [c]onfession of judgment entered without authority may be vacated on motion" (*Ripoll v Rodriguez*, 53 AD2d 638, 384 N.Y.S.2d 504 [2d Dept 1976]).

[683]** Here, the Court agrees with defendants' argument that, if FM/QFC actually acknowledged a risk of loss in the context of its financial arrangement with defendants, then it would recognize that the hurricane event and declared emergency might present the type of circumstances which would affect its right and ability to collect anything from D & V, as secured by Vitellino. But it has failed to even address the issue. Therefore, given its refusal to contemplate, let alone acknowledge,

the possibility of not being repaid in this instance, the financial arrangement cannot be deemed to be anything short of a loan, **[**973]** and based upon mathematical calculations, a criminally usurious loan as it significantly exceeds the legal interest rate of 25% for a corporate entity (see *Donatelli v Siskind*, 170 AD2d 433, 565 N.Y.S.2d 224 [2d Dept 1991]).

By recognizing the lack of necessity for a plenary action in cases where it is clear from the submissions attendant to the motion that a judgment has been entered in violation of the Merchant Agreement's terms, and the rate of interest reaches that of criminal usury, the **[**113]** Court finds that defendants may proceed by motion, so as to be spared the needless cost in time and money of pursuing a plenary action, the outcome of which would be the same.

Accordingly, it is

ORDERED that defendants' motion is granted; and it is further

ORDERED that the confession of judgment, under index number 66431/16, entered in the Office of the Westchester County on October 19, 2016, is vacated, and it is further

ORDERED that the Judgment Clerk mark the judgment records accordingly.

This constitutes the decision and order of the Court.

Dated: January 7, 2019

White Plains, New York

HON. DAVID F. EVERETT, J.S.C.

End of Document

EXHIBIT 36



SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER
Broadway Advance LLC,

Plaintiff,

-against-

Thomas Ahn Suess AND C. R. Stelling Insurance Agency,
Defendants.

Index No.

**JOINT AFFIDAVIT OF
CONFESSION OF JUDGMENT**

Thomas A. Suess, being duly sworn, deposes and says:

1. I am a principal, owner, and an officer of C. R. Stelling Insurance Agency ("Merchant Defendant"), a corporation located at 434 West Foothill Blvd, Monrovia, CA 91016, in the County of Los Angeles, and as such, I have the authority to act on behalf of Merchant Defendant.
2. I reside at 1200 Cloverleaf Dr, Monrovia, CA 91016, in the County of Los Angeles.
3. I, individually, and on behalf of Merchant Defendant consent to the jurisdiction of this Court.
4. Merchant Defendant hereby confesses judgment and authorizes entry of judgment in favor of Plaintiff and against Defendants in the Federal District Court for the Southern District of New York, Supreme Court of the State of New York, County of New York, Supreme Court of the State of New York, County of Westchester, and/or Civil Court of the City of New York, County of New York, in the sum of \$676,686.73 less any payments timely made pursuant to the secured Merchant Agreement dated April 13, 2017, plus legal fees to Plaintiff calculated at thirty three percent (33%) of the total of the aforesaid sums, costs, expenses and disbursements and interest at the rate of 16% per annum from \$676,686.73, or the highest amount allowed by law, whichever is greater. Such amount shall be set forth in an affidavit to be executed by Plaintiff or an affirmation by Plaintiff's attorney, which shall be attached hereto at the time of entry of this Affidavit of Confession of Judgment.
5. In addition, I hereby confess judgment, individually and personally, jointly and severally, and authorize entry of judgment in favor of Plaintiff and against myself in the Federal District Court for the Southern District of New York, Supreme Court of the State of New York, County of New York, Supreme Court of the State of New York, County of Westchester, and/or Civil Court of the City of New York, County of New York, against me personally in the sum of \$676,686.73 less any payments timely made pursuant to the Merchant Agreement dated April 13, 2017, plus legal fees to Plaintiff calculated at thirty three percent (33%) of the total of the aforesaid sums, costs, expenses and disbursements and

Page 1 of 1

Merchant Initials: Y



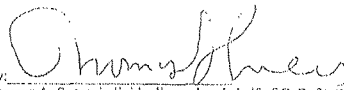
interest at the rate of 16% per annum from \$676,686.73, or the highest rate allowed by law, whichever is greater. Such amount shall be set forth in an affidavit to be executed by Plaintiff or an affirmation by Plaintiff's attorney, which shall be attached hereto at the time of entry of this Confession of Judgment.

6. This confession of judgment is for a debt due to Plaintiff arising from Defendants' failure to pay to Plaintiff, Merchant Defendant's accounts-receivable, which were purchased by Plaintiff pursuant to the secured Merchant Agreement dated April 13, 2017, and for Defendants' breach of the secured Merchant Agreement, plus agreed-upon interest, reasonable attorneys' fees, costs and disbursements, as agreed-upon by Merchant Defendant and myself, under the secured Merchant Agreement, dated April 13, 2017, of which supporting documents include a Personal Guarantee and a UCC-1 financing statement(s).

7. Merchant Defendant and I hereby agree that the execution and delivery of this Affidavit of Confession of Judgment and any entry of judgment thereon shall be without prejudice to any and all rights of Plaintiff, who reserves all of its rights and remedies against Defendants.

8. If for any reason entry of judgment in the above specified amount or execution on the same is outside the jurisdiction of this Court, Merchant Defendant and I hereby consent to the personal jurisdiction, entry of judgment, and execution thereon in any State or Federal Court of the United States of America.

9. I have been authorized by Merchant Defendant to sign this Affidavit of Confession of Judgment on this 14th day of April, 2017.

By: 
 Thomas A. Suess, individually, and on behalf of C. R. Stelling Insurance Agency

~~Sworn to before me this~~
 day of 2017.

Please see Attachment
 Notary Public

Case 2:17-cv-04622-CDJ Document 23-1 Filed 09/27/18 Page 11 of 33

Case 2:17-cv-04069-CDJ Document 5-4 Filed 09/26/17 Page 10 of 10

CALIFORNIA JURAT WITH AFFIANT STATEMENT

GOVERNMENT CODE § 8202

☒ See Attached Document (Notary to cross out lines 1-6 below)☐ See Statement Below (Lines 1-6 to be completed only by document signer(s), not Notary)

1 _____
 2 _____
 3 _____
 4 _____
 5 _____
 6 _____

Signature of Document Signer No. 1 Signature of Document Signer No. 2 (if any)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
 County of Los Angeles

Subscribed and sworn to (or affirmed) before me
 on this 14 day of April, 2017,
 by Date Month Year

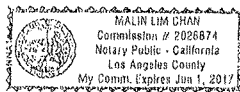
(1) Thomas A. Suess

(and (2) _____),
 Name(s) of Signer(s)

proved to me on the basis of satisfactory evidence
 to be the person(s) who appeared before me.

Signature [Signature]
 Signature of Notary Public

Place Notary Seal Above



OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: Joint Affidavit of Confession of Judgment Document Date: _____

Number of Pages: _____ Signer(s) Other Than Named Above: _____

EXHIBIT E

EXHIBIT 37

Broadway

SUPREME COURT OF THE STATE OF NEW
YORK COUNTY OF RICHMOND
Broadway Advance I.I.C.

Plaintiff,

-against-

Thomas Alan Suess AND C. R. Stelling Insurance Agency,
Defendants.

Index No.

**JOINT AFFIDAVIT OF
CONFESSION OF JUDGMENT**

Thomas A. Suess, being duly sworn, deposes and says:

1. I am a principal, owner, and an officer of C. R. Stelling Insurance Agency ("Merchant Defendant"), a corporation located at 434 West Foothill Blvd, Monrovia, CA 91016, in the County of Los Angeles, and as such, I have the authority to act on behalf of Merchant Defendant.
2. I reside at 1200 Cloverleaf Dr, Monrovia, CA 91016, in the County of Los Angeles.
3. I, individually, and on behalf of Merchant Defendant consent to the jurisdiction of this Court.
4. Merchant Defendant hereby confesses judgment and authorizes entry of judgment in favor of Plaintiff and against Defendants in the Federal District Court for the Southern District of New York, Supreme Court of the State of New York, County of Richmond Supreme Court of the State of New York, County of Richmond and/or Civil Court of the City of New York, County of New York, in the sum of \$676,686.73 less any payments timely made pursuant to the secured Merchant Agreement dated April 13, 2017, plus legal fees to Plaintiff calculated at thirty three percent (33%) of the total of the aforesaid sums, costs, expenses and disbursements and interest at the rate of 16% per annum from \$676,686.73, or the highest amount allowed by law, whichever is greater. Such amount shall be set forth in an affidavit to be executed by Plaintiff or an affirmation by Plaintiff's attorney, which shall be attached hereto at the time of entry of this Affidavit of Confession of Judgment.
5. In addition, I hereby confess judgment, individually and personally, jointly and severally, and authorize entry of judgment in favor of Plaintiff and against myself in the Federal District Court for the Southern District of New York, Supreme Court of the State of New York, County of Richmond, Supreme Court of the State of New York, County of Richmond, and/or Civil Court of the City of New York, County of New York, against me personally in the sum of \$676,686.73 less any payments timely made pursuant to the Merchant Agreement dated April 13, 2017, plus legal fees to Plaintiff calculated at thirty three percent (33%) of the total of the aforesaid sums, costs, expenses and disbursements and

Page 13

Merchant Affirms...



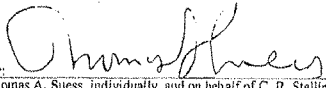
interest at the rate of 16% per annum from \$676,686.73, or the highest rate allowed by law, whichever is greater. Such amount shall be set forth in an affidavit to be executed by Plaintiff or an affirmation by Plaintiff's attorney, which shall be attached hereto at the time of entry of this Confession of Judgment.

6. This confession of judgment is for a debt due to Plaintiff arising from Defendants' failure to pay to Plaintiff, Merchant Defendant's accounts-receivable, which were purchased by Plaintiff pursuant to the secured Merchant Agreement dated April 13, 2017, and for Defendants' breach of the secured Merchant Agreement, plus agreed-upon interest, reasonable attorneys' fees, costs and disbursements, as agreed-upon by Merchant Defendant and myself, under the secured Merchant Agreement, dated April 13, 2017, of which supporting documents include a Personal Guarantee and a UCC-1 financing statement(s).

7. Merchant Defendant and I hereby agree that the execution and delivery of this Affidavit of Confession of Judgment and any entry of judgment thereon shall be without prejudice to any and all rights of Plaintiff, who reserves all of its rights and remedies against Defendants.

8. If for any reason entry of judgment in the above specified amount or execution on the same is outside the jurisdiction of this Court, Merchant Defendant and I hereby consent to the personal jurisdiction, entry of judgment, and execution thereon in any State or Federal Court of the United States of America.

9. I have been authorized by Merchant Defendant to sign this Affidavit of Confession of Judgment on this 14th day of April, 2017.

By: 
Thomas A. Suess, individually, and on behalf of C. R. Stelling
Insurance Agency

Sworn to before me this
day of 2017.

Please see Attachment
Notary Public

FILED: RICHMOND COUNTY CLERK 09/14/2018 09:59 AM

INDEX NO. 152406/2018

NYSCEF DOC. NO. 1

RECEIVED NYSCEF: 09/14/2018

CALIFORNIA JURAT WITH AFFIANT STATEMENT

GOVERNMENT CODE § 8202

☒ See Attached Document (Notary to cross out lines 1-6 below)☐ See Statement Below (Lines 1-6 to be completed only by document signer(s), not Notary)

1 _____
 2 _____
 3 _____
 4 _____
 5 _____
 6 _____

Signature of Document Signer No. 1 _____ Signature of Document Signer No. 2 (if any) _____

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
 County of Los Angeles

Subscribed and sworn to (or affirmed) before me
 on this 14 day of April, 2017,
 by _____
 Date Month Year

(1) Thomas A. Suess
 (and (2) _____),
 Name(s) of Signer(s)

proved to me on the basis of satisfactory evidence
 to be the person(s) who appeared before me.

Signature [Signature]
 Signature of Notary Public

Place Notary Seal Above



OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: Joint Affidavit of Confession of Judgment Document Date: _____

Number of Pages: _____ Signer(s) Other Than Named Above: _____

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EXHIBIT F

EXHIBIT 38

FILED: ORANGE COUNTY CLERK 08/24/2018 07:42 PM
 NYSCEF DOC. NO. 59

INDEX NO. EF001776-2018
 RECEIVED NYSCEF: 08/24/2018

216324

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF ORANGE

GTR SOURCE, LLC
 Plaintiff/Judgment Creditor

-against-

Index No. EF001776-18

FUTURENET GROUP, INC. and
 PARJMAL D MEHTA

INFORMATION SUBPOENA
 WITH RESTRAINING NOTICE

Defendant(s)/Judgment Debtor(s)

EIN: [REDACTED]
 SSN: [REDACTED] SSN

THE PEOPLE OF THE STATE OF NEW YORK

TO: Comerica Bank
 500 Woodward Avenue, MC 3391
 Detroit, Michigan 48226

WHEREAS, in the above-captioned action between the parties listed above, a Judgment was entered on February 14, 2018 in Orange County in favor of said Judgment-Creditor and against said Judgment Debtors in the amount of \$120,154.42 of which \$120,154.42 remains due, plus interest from February 14, 2018.

NOW, THEREFORE WE COMMAND YOU, that you answer in writing under oath, separately and fully, each question in the questionnaire accompanying this Subpoena, each answer referring to the question to which it responds; and that you return the answers together with the original of the questions within seven (7) days after your receipt of the questions and this Subpoena.

AND WHEREAS, it appears that you owe a debt to the judgment debtor or are in possession or in custody of property in which the judgment debtor has an interest, including, but not limited to any and all bank accounts, deposits, and/or depository accounts. TAKE NOTICE that pursuant to subdivision (b) of §5222 of the Civil Practice Law and Rules, which is set forth herein, you are hereby forbidden to make or suffer any sale, assignment or transfer of, or any interference with, any such property or pay over or otherwise dispose of any such debt, except as therein provided.

CIVIL PRACTICE LAW AND RULES

Section 5222(b) - Effect of restraint; prohibition of transfer; duration. A judgment debtor or obligor served with a restraining notice is forbidden to make or suffer any sale, assignment, transfer or interference with any property in which he or she has an interest, except as set forth in subdivisions (b) and (i) of this section, and except upon direction of the sheriff or pursuant to an order of the court, until the judgment or order is satisfied or vacated. A restraining notice served upon a person other than the judgment debtor or obligor is effective only if, at the time of service, he or she owes a debt to the judgment debtor or obligor or he or she is in the possession or custody of property in which he or she knows or has reason to believe the judgment debtor or obligor has an interest, or if the judgment creditor or support collection unit has stated in the notice that a specified debt is owed by the person served to the judgment debtor or obligor or that the judgment debtor or obligor has an interest in specified property in the possession or custody of the person served. All property in which the judgment debtor or obligor is known or believed to have an interest then in and thereafter coming into the possession or custody of such a person, including any specified in the

FILED: ORANGE COUNTY CLERK 08/24/2018 07:42 PM
 NYSCEF DOC. NO. 59

INDEX NO. EF001776-2018
 RECEIVED NYSCEF: 08/24/2018

notice, and all debts of such a person, including any specified in the notice, then due and thereafter coming due to the judgment debtor or obligor, shall be subject to the notice except as set forth in subdivisions (h) and (i) of this section. Such a person is forbidden to make or suffer any sale, assignment or transfer of, or any interference with, any such property, or pay over or otherwise dispose of any such debt, to any person other than the sheriff or the support collection unit, except as set forth in subdivisions (h) and (i) of this section, and except upon direction of the sheriff or pursuant to an order of the court, until the expiration of one year after the notice is served upon him or her, or until the judgment or order is satisfied or vacated, whichever event first occurs. A judgment creditor or support collection unit which has specified personal property or debt in a restraining notice shall be liable to the owner of the property or the person to whom the debt is owed, if other than the judgment debtor or obligor, for any damages sustained by reason of the restraint. If a garnishee served with a restraining notice withholds the payment of money belonging or owed to the judgment debtor or obligor in an amount equal to twice the amount due on the judgment or order, the restraining notice is not effective as to other property or money.

TAKE NOTICE THAT DISOBEDIENCE OF THIS RESTRAINING NOTICE OR FALSE SWEARING OR FAILURE TO COMPLY WITH THIS SUBPOENA MAY SUBJECT YOU TO FINE AND IMPRISONMENT FOR CONTEMPT OF COURT. NON-COMPLIANCE WITH THE INFORMATION SUBPOENA SHALL FIRST SUBJECT YOU TO THE PENALTIES UNDER CPLR 2308(b).

I hereby certify that this Information Subpoena complies with rule 5224 of the Civil Practice Law and Rules and Section 601 of the General Business Law, and that I have a reasonable belief that the party receiving this Subpoena has in their possession information about the debtor that will assist the creditor in collecting the Judgment. The ground(s) of this reasonable belief: **EXAMPLES-** said party appears as a depository institution of the Judgment-Debtor(s) on Debtor's application for credit, response to subpoena, prior payment, or lender/creditor from information received from a credit reporting agency.

Dated: February 14, 2018



Ariel Bouskila, Esq.
 Attorneys for Plaintiff
 Berkovitch & Bouskila, PLLC
 40 Exchange Place Ste 1306
 New York, New York 10005
 Phone: (212) 433-2298

EXHIBIT 39

FILED: ORANGE COUNTY CLERK 08/24/2018 07:42 PM
NYSCEF DOC. NO. 74

INDEX NO. EF001776-2018
RECEIVED NYSCEF: 08/24/2018

Heskin, Shane

Subject: FW: February 23, 2018 Payday

From: Gerry Cooper
Sent: Thursday, February 22, 2018 5:08 PM
To: FNG Remote Employees <RemoteEmployees@futurenetgroup.com>; FNG HQ <Headoffice@futurenetgroup.com>
Subject: February 23, 2018 Payday
Importance: High

To all FutureNet Group employees:

We need to inform all employees that paychecks due Friday, February 23, 2018 will be delayed.

We realize this creates a financial hardship for many of our employees. We are doing everything possible to get everyone paid as quickly as possible. Please bear with us as we work through this situation.

We will provide regular updates.

Sincerely,

Gerry Cooper, SPHR SHRM-SCP
Human Resources Director
FutureNet Group
12801 Auburn St., Detroit, MI 48223
Bus: 313.544.7117 ext. 245
Fax: 313.397.8312
gerryco@futurenetgroup.com



Attention:

The information contained in this message and its attachments is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged material. Any review, retransmission, dissemination or other use of, or taking of any action in reliance upon, this information by persons or entities other than the intended recipient is prohibited. If you received this in error, please contact the sender and delete the material from any system and destroy any copies.

ORANGE COUNTY CLERK 08/24/2018 07:42 PM
OC. NO. 74

INDEX NO. EF001
RECEIVED NYSCEF: 08

Exhibit C

EXHIBIT 40

FILED: ORANGE COUNTY CLERK 08/24/2018 07:42 PM
 NYSCEF DOC. NO. 61

INDEX NO. EF001776-2018
 RECEIVED NYSCEF: 08/24/2018



NEW YORK CITY MARSHAL
Stephen W. Biegel

109 West 38th Street, Suite 200 • New York, NY 10018
 Phone: (212) MARSHAL (627-7425) • Fax: (212) 398-2000
 NYC@MarshalBiegel.com • www.NewYorkCityMarshal.com

LEVY AND DEMAND ON

February 26, 2018

COMERICA C/O CORPORATE
 CREATIONS NETWORK INC
 15 NORTH MILL STREET
 NYACK NY 10960

JUDGMENT CREDITOR
 GTR SOURCE, LLC

VS

FUTURENET GROUP, INC. AND
 PARIMAL D MEHTA

SS# [REDACTED]

JUDGMENT DEBTOR

MARSHAL'S DOCKET # E-27965

Attached is a Property Execution with Notice to Garnishee. As directed under CPLR §5232(a), you are required to immediately turn over to me all property of the judgment debtor currently in your possession or custody, not to exceed the following amount:

Judgment	\$120,154.42
Interest	\$256.14
Statutory Fees	\$75.00
Expense	\$0.90
Poundage	\$6,029.32
TOTAL	\$126,615.78

DIRECT ALL PAYMENTS TO NYC MARSHAL BIEGEL AT ADDRESS ABOVE

FOR BANK USE ONLY. Please checkmark account status: ☒

- ☐ Check is enclosed and accounts released ☐ Account(s) closed on: _____
☐ No account or assets maintained at this office ☐ Joint account / Turnover needed
☐ Account open but contains no funds. ☐ The account of the judgment debtor is overdrawn

Name: _____

Position: _____

I AGREE THAT THE FOLLOWING FORMS ARE ATTACHED TO THIS LEVY:

- ☒ Execution ☐ Information subpoena ☐ Copy of check
☒ Exemption notice and claim forms ☐ Restraining notice ☐ Other _____

SIGNATURE OF OFFICIAL ACCEPTING LEVY: _____

PRINTED NAME: _____

DATE: _____

(BANKAT7)

EXHIBIT 41



Citibank, N.A.
Citi Consumer Subpoena Compliance Unit
701 E. 60th St., North; Mail Code 1251
Sioux Falls, SD 57117
Tel: (605) 331-1662
Fax: (347) 809-6937

May 31, 2019

Magid Nazari
73 Magnolia Ave
San Anselmo CA 94960

Dear Sir/Madam:

We recently received the enclosed subpoena requiring the production of records and/or information from your credit card account issued by Citibank. We are providing you with this information with the thought that you may wish to consult an attorney for the protection of any interest that you may have.

If you have questions regarding the subpoena, you will need to contact either your own attorney or the individual who issued the subpoena. Please reference our Case #265117 on any future communications about this matter.

Sincerely,

A handwritten signature in cursive script that reads "Sharon Stroud".

Sharon Stroud
Subpoena Compliance Unit
605-331-7133

Enclosure

CAUSE NO. 2019-31199

ACE FUNDING SOURCE, LLC

IN THE COUNTY COURT

VS.

NO. 1

LADAN INC DBA LUDWIG'S LIQUOR & SMOKE SHOP;

MAGID NAZARI

HARRIS COUNTY, TEXAS

SUBPOENA DUCES TECUM

To:

Citibank, N.A.
Attn: Legal Department
701 E 60TH ST N
Sioux Falls, SD 57104

This is Subpoena Duces Tecum is issued as part of the litigation in the above referenced matter. You are hereby ORDERED TO PRODUCE the items specified in the Attachment to this subpoena to:

Attorney Anh H. Regent
3601 Audubon
Houston, Texas 77006

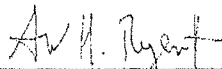
To be returned no later than twenty-four (24) days after the receipt of this document.

TEXAS LAW REQUIRES YOU TO COMPLY WITH THIS SUBPOENA.

Failure to comply may subject you to being held in contempt of court.

Date: May 12, 2019

Respectfully Submitted,

By: 

Anh H. Regent TBN/24004882
REGENT & ASSOCIATES, LLP
3601 Audubon
Houston, Texas 77006
Telephone: (832) 265-4245
Facsimile: (713) 456-2288
aregent@regentlawfirm.com

ATTORNEY FOR PLAINTIFF

ATTACHMENT TO SUBPOENA DUCES TECUM**A. Defendant Identification**

The Defendants' information for you to help identify their accounts is as follows:

- Defendant Name: Ladan Inc dba Ludwig's Liquor & Smoke Shop
- Current Address: 431 San Anselmo Ave, San Anselmo, CA 94960
- Possible Account: Unknown
- FEIN: [REDACTED] 6708

- Defendant Name: Magid Nazari
- Current Address: 73 Magnolia Ave, San Anselmo, CA 94960
- Possible Account: Unknown
- SSN: [REDACTED] XXXX
- Date of Birth: [REDACTED] 1965

The witness is hereby directed to produce the following to attorney Anh H. Regent at 3601 Audubon, Houston, Texas 77006 no later than twenty-four (24) days after service the following:

B. Documents to be Produced

1. A copy of all checks or other payment records on file that Defendant used to pay your company or any of its predecessors, servicing agents, or anyone else associated with your company. As well as any and all obligations owned or serviced by you. Please limit your research and production to the last eight (8) months of records on file.
2. For electronic transactions please produce documents showing all ABA Routing Numbers, Account Numbers and Bank Names for the past eight (8) months of records on file. Please also include the amounts and dates of the transactions.
3. All documents evidencing money or deposit in accounts in banks, brokerage houses or other financial institutions associated with your company, for which the Defendant has the right to withdraw funds, or which are in any way subject to the Defendant's control, for the last eight (8) months.

If any additional costs are needed for research and production, please contact the undersigned immediately, before any such costs are incurred. We will need to contact our client for approval of any extra fees.

C. Method of Production

It is not necessary to make a formal appearance when producing the documents requested by the Subpoena. Your compliance with the Subpoena may be by any of the following methods:

Mailing to: Anh H. Regent
 Attorney for Plaintiff
 3601 Audubon
 Houston, TX. 77006
 Faxing To: (713) 456-2288
 Emailing: aregent@regentlawfirm.com

ENFORCEMENT OF SUBPOENA (T.R.C.P. 176) PROVIDES: (A) CONTEMPT: Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena is issued or a district court in the county in which the subpoena is served, and may be punished by fine or confinement, or both.

EXHIBIT 42

FILED: ORANGE COUNTY CLERK 01/23/2017 12:38 PM
NYSCEF DOC. NO. 1

INDEX NO. EF000584-2017
RECEIVED NYSCEF: 01/23/2017

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ~~ORANGE~~
YELLOWSTONE CAPITAL LLC,

Plaintiff,

-against-

NORTH END SEAFOOD COMPANY D/B/A
NORTH END SEAFOOD, JASON VIVEIROS, and
JESSICA VIVEIROS,

Defendants.

Index No.

**AFFIDAVIT OF
CONFESSION OF JUDGMENT**

STATE OF MA }
COUNTY OF BRISTOL } ss.:

JESSICA VIVEIROS, being duly sworn, deposes and says:

1. I am a principal, owner, and an officer of NORTH END SEAFOOD COMPANY D/B/A NORTH END SEAFOOD ("Merchant Defendant"), a corporation located at 970 COUNTY STREET, SOMERSET MA 02726, in the County of BRISTOL, and as such, I have the authority to act on behalf of Merchant Defendant, and have been authorized by Merchant Defendant to execute this affidavit of confession of judgment.
2. I reside at 1861 SOMERSET AVE, DIGHTON MA 02715, in the County of BRISTOL.
3. I, individually, and on behalf of Merchant Defendant consent to the jurisdiction of this Court.
4. Merchant Defendant hereby confesses judgment and authorizes entry of judgment in favor of Plaintiff and against Defendants in the Federal District Court for the Southern District of New York, Supreme Court of the State of New York, County of New York, Supreme Court of the State of New York, County of Westchester, Supreme Court of the State of New York, County of Rockland, Supreme Court of the State of New York, County of Erie, Supreme Court of the State of New York, County of Orange, and/or Civil Court of the City of New York, County of New York, in the sum of \$50,750.00 less any payments timely made pursuant to the secured Merchant Agreement dated NOVEMBER 15, 2016, plus legal fees to Plaintiff calculated at twenty five percent (25%) of the total of the aforesaid sums, costs, expenses and

disbursements and interest at the rate of 16% per annum from NOVEMBER 15, 2016, or the highest amount allowed by law, whichever is greater. Such amount shall be set forth in an affidavit to be executed by Plaintiff or an affirmation by Plaintiff's attorney, which shall be attached hereto at the time of entry of this Affidavit of Confession of Judgment.

5. In addition, I hereby confess judgment, individually and personally, jointly and severally, and authorize entry of judgment in favor of Plaintiff and against myself in the Federal District Court for the Southern District of New York, Supreme Court of the State of New York, County of New York, Supreme Court of the State of New York, County of Westchester, Supreme Court of the State of New York, County of Rockland, Supreme Court of the State of New York, County of Erie, Supreme Court of the State of New York, County of Orange, and/or Civil Court of the City of New York, County of New York, against me personally in the sum of \$50,750.00 less any payments timely made pursuant to the Merchant Agreement dated NOVEMBER 15, 2016, plus legal fees to Plaintiff calculated at twenty five percent (25%) of the total of the aforesaid sums, costs, expenses and disbursements and interest at the rate of 16% per annum from NOVEMBER 15, 2016, or the highest rate allowed by law, whichever is greater. Such amount shall be set forth in an affidavit to be executed by Plaintiff or an affirmation by Plaintiff's attorney, which shall be attached hereto at the time of entry of this Confession of Judgment.

6. This confession of judgment is for a debt due to Plaintiff arising from Defendants' failure to pay to Plaintiff, Merchant Defendant's accounts-receivable, which were purchased by Plaintiff pursuant to the secured Merchant Agreement dated NOVEMBER 15, 2016, and for Defendants' breach of the secured Merchant Agreement, plus agreed-upon interest, attorneys' fees, costs and disbursements, as agreed-upon by Merchant Defendant and myself, under the secured Merchant Agreement, dated NOVEMBER 15, 2016, of which supporting documents include a Personal Guarantee and a UCC-1 financing statement(s).

7. Merchant Defendant and I hereby agree that the execution and delivery of this Affidavit of Confession of Judgment and any entry of judgment thereon shall be without prejudice to any and all rights of Plaintiff, which reserves all of its rights and remedies against Defendants.

8. If for any reason entry of judgment in the above specified amount or execution on the same is outside the jurisdiction of this Court, Merchant Defendant and I hereby consent to the

personal jurisdiction, entry of judgment, and execution thereon in any State or Federal Court of the United States of America.

By: Jessica Viveiros
 JESSICA VIVEIROS, individually, and on
 behalf of NORTH END SEAFOOD
 COMPANY D/B/A NORTH END
 SEAFOOD

Sworn to before me this
16 day of November, 2016.

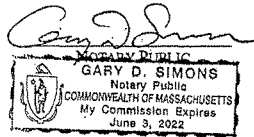


EXHIBIT 43

FILED: ORANGE COUNTY CLERK 04/08/2019 01:12 PM
 NYSCEF DOC. NO. 3

INDEX NO. EF002678-201
 RECEIVED NYSCEF: 04/08/201

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF ORANGE

GILES CONTRACTING LLC D/B/A GILES
 CONSTRUCTION and ANDREW DEREK GILES,

Plaintiffs

v.

EBF PARTNERS, LLC D/B/A EVEREST BUSINESS
 FUNDING,

Defendant

Index No: EF002678-2019

**AFFIDAVIT IN SUPPORT OF
 ORDER TO SHOW CAUSE TO
 STAY ENFORCEMENT OF
 JUDGMENT AND VACATE
 JUDGMENT**

STATE OF MICHIGAN)
) SS.:
 COUNTY OF OAKLAND)

ANDREW DEREK GILES, being duly sworn, deposes and says under penalty of perjury:

1. I am the managing and sole member of Giles Contracting LLC d/b/a Giles Construction ("Giles" or the "Company"). Unless otherwise noted, I am personally familiar with the facts of this case, and I make this affidavit in support of the Plaintiffs' emergency request to stay all efforts of EBF Partners, LLC D/B/A Everest Business Funding ("EBF") to collect upon: (a) a Payment Rights Purchase and Sale Agreement dated February 9, 2018 (the "Agreement") and (b) a confessed judgment in amount of \$95,681.57 (the "Judgment") that was entered against Giles and me in an action entitled *EBF Partners, LLC D/B/A Everest Business Funding v. Giles Contracting LLC d/b/a Giles Construction and Andrew Giles*, Supreme Court of the State of New York, County of Orange, Index No. EF003852-2018 (the "Underlying Matter") until such time as this Court may determine our simultaneously filed request (the "Motion") vacate the Judgment. A copy of the Judgment is attached hereto as Exhibit 1.

FILED: ORANGE COUNTY CLERK 04/08/2019 01:12 PM
NYSCEF DOC. NO. 3

INDEX NO. EF002678-2019
RECEIVED NYSCEF: 04/08/2019

**SUMMARY OF THE ACTION
AND THE NEED FOR EMERGENCY RELIEF**

2. Located in Waterford, Michigan, Giles is a small construction contracting company owned and operated solely by me. In February 2018, I was induced by an unscrupulous broker to enter into the Agreement with EBF as a condition precedent to an approved line of credit that was never funded. Although documented as the purchase of Giles' future receipts, in every conceivable way, EBF treated the Agreement as a loan charging interest at a rate of more than 90% per annum and my repayment obligations as absolute. More specifically, when a customer's check bounced while I was out of the country and unable to collect any further receivables to cover the shortfall, EBF refused to temporarily stop the daily payments required by the Agreement, claiming that doing so would be a breach of the Agreement. Instead, they continued to hit Giles' bank account with withdrawal requests until our bank was forced to block the account. Well aware that Giles had not blocked the account, EBF nonetheless declared a default, accelerated the payments due under the Agreement and obtained the confessed Judgment based upon the false assertion that Giles had blocked its account and was diverting the proceeds of its receivables. In actuality, EBF's actions had caused the account to be blocked and I was desperately trying to collect additional receipts to pay EBF, but it was to no avail.

3. Armed with the Judgment, EBF undertook enforcement actions that have irreparably damaged our business reputations in the Waterford community, caused Giles to lose its two largest repeat customers, cut the Company's revenues in half and nearly destroyed the Company. *Now, I understand that EBF has docketed the Judgment in Michigan and as of April 10, 2019 it will be permitted to continue to collect upon the Judgment under Michigan law.* If not restrained, EBF will most certainly destroy Giles. The Company simply cannot

withstand any further disruptions in its cash flow or damage to its business reputation in the community and we cannot afford to lose any more customers.

4. As will be set forth more fully below and in the accompanying Memorandum of Law, the Company should not be resigned to such a fate because it is apparent from a fair reading of the Agreement and EBF's actions, that the transaction between EBF and Giles was an unenforceable criminally usurious loan and that EBF obtained the Judgment through fraud, misrepresentation and other misconduct warranting its vacatur. Accordingly, it is respectfully submitted that we be granted the temporary restraints sought by this emergency application and, upon consideration of the Motion in its entirety, the Judgment be vacated.

FACTS

A. Giles' business.

5. Giles is a small construction contracting company located in Waterford Township, Michigan that provides building and restoration services to homeowners in and around the Waterford/Oakland County areas. We employ carpenters, electricians, roofers, and other skilled and unskilled laborers as required by our jobs. Our office staff consists of me and a receptionist. In my role as the managing and sole member of Giles, I am responsible for overseeing the Company's contracting jobs, managing the Company's finances, collecting accounts receivable and maintaining the Company's books and records.

6. In early 2018, Giles was rapidly growing. For the prior three years, the Company had been named Contracting Company of the Year in Waterford Township, construction in Oakland County was booming and our revenues were steadily increasing.

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INDEX NO. EF002678-2019
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7. The rapid growth caused cash flow issues for the Company because we were often required to advance funds for permits, materials and labor before we were paid by the homeowner or the general contractor for whom we were performing services.

8. To resolve these cash flow issues and to secure additional work from large box stores such as Home Depot that required evidence of permanent financing, in early 2018, I was attempting to obtain a line of credit for the Company.

9. Unfortunately, in February 2018, I was induced by an unscrupulous broker to enter into the so-called payment rights purchase agreement with EBF as a condition precedent to a line of credit that he represented to me had been approved but, in end, was never funded.

B. Giles Initial Dealings with EBF.

10. In early 2018, the broker presented us with the terms of the Agreement and on or about February 12, 2018, I participated in a telephone call with a representative of EBF as part of EBF's underwriting process.

11. Among other things, the EBF representative requested that I grant immediate access to our operating account at TCF National Bank ("TCF"), a national bank headquartered in Sioux Falls, South Dakota that maintains branches in Michigan and six other states, but does not maintain a branch in New York. See FDIC Research Printout, attached hereto as Exhibit 2.

12. As directed, I allowed the EBF representative to "shadow" into my computer and I logged into the Company's operating account at TCF (the "TCF Account") so that EBF could review our bank statements for the prior three months. I watched as the EBF representative reviewed each statement and took snapshots of screen pages reflecting our Company's deposits and withdrawals for November 2018, December 2018 and January 2019 and when he asked a question, I answered it.

13. At the conclusion of the call, the EBF representative advised that an inspector would be visiting our offices later that day to inspect our operations and appraise our equipment which he did. The next day, February 13, 2018, EBF funded the Agreement.

C. The Agreement.

i. Payment Terms.

14. Pursuant to the Agreement, EBF advanced Giles \$65,000 (the "Purchased Price") in exchange for the purported purchase of \$94,250 (the "Purchased Amount") of the Company's "Future Receipts." See p. 1 of the Agreement, a copy of which is attached hereto as Exhibit 3.

15. The Agreement defined Future Receipts as "all payments made by cash, check, ACH, or other electronic transfer, credit card, debit card, bank card, charge card (each such card shall be referred to herein as a "Credit Card") or other form of monetary payment in the ordinary course of the Seller's business." Agreement, at p.1.

16. The Purchased Amount was to be repaid with daily ACH withdrawals from the TCF Account in the amount of \$725 (a "Daily Payment"). Thus, at the outset of the Agreement, EBF contemplated repayment of the Purchased Amount through 130 equal Daily Payments over 26 weeks which translates into an annual interest rate of more than 90% or more than 3 times (2x) the maximum twenty-five percent (25%) rate of interest permitted under New York's criminal usury laws.

17. Per the Agreement, the Daily Payment was "intended to represent" represent 20% (the "Specified Percentage") of Giles' Future Receipts. See Agreement, at p. 2.

18. Pursuant to the Agreement, Giles was required to deposit all of its Future Receipts into the TCF Account and was "responsible for ensuring that the Daily Payment is available in

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the Account” and the failure to continually perform such covenant constituted an Event of Default under the Agreement. *See* Agreement, at p. 1 and Sec. 3.1.

19. Although EBF represented it knew “the risks that Seller’s business may slow down or fail” and the “Seller going bankrupt or going out of business, in and of itself” purportedly “does not constitute a breach of this Agreement,” the Agreement did not provide any method to adjust the amount of the Daily Payment or excuse non-payment. *See* Agreement, at p. 1-2.

20. Indeed, as I would find out at the end of March 2018, nothing in the Agreement permitted Giles to seek a downward adjustment of the Daily Payment or otherwise obligated EBF to reduce the Daily Payment, even if the Company’s generation of receivables or collection of Future Receipts slowed down.

21. Even the Agreement’s reconciliation provision (the “Reconciliation Provision”), it provided no method to adjust the Daily Payment. Indeed, nothing in the Agreement permitted Giles to seek a downward adjustment of the Daily Payment or otherwise obligated EBF to reduce the Daily Payment, even if the Company’s generation or collection of Future Receipts suddenly slowed down. Just like any other loan, we were required to make the Daily Payment no matter what.

22. Pursuant to the Reconciliation Provision, any credits were to be assessed *at the end of the month*:

Seller may request that EBF reconcile Seller’s actual receipts by either crediting or debiting the difference back to or from the Account so that the amount EBF debited in the most recent calendar month equaled the Specified Percentage of Future Receipts that Seller collected in that calendar month.

See Agreement, at p. 2.

23. In other words, if Giles experienced a temporary slowdown in the collection of its Receipts at the start of any month, it was required to continue making the Daily Payments and could only seek a credit for any overpayments 30 days later. Even if it was subsequently granted a credit through the reconciliation process, nothing in the Reconciliation Provision or any other provision of the Agreement, obligated EBF to adjust the amount of the Daily Payment on a going forward basis to reflect the slowdown in Giles collection of Future Receipts.

24. Indeed, the obligation to make the Daily Payments was reinforced by the last sentence of the Reconciliation Provision:

Notwithstanding anything to the contrary in this Agreement or any other agreement between EBF and Seller, upon the occurrence of an Event of Default, the Specified Percentage shall equal 100%.

See Agreement, at p. 2.

ii. Events of Default.

25. Among other things, the Agreement defined “Events of Default” to include: (i) any intentional interference by Giles with EBF’s right to collect the Daily Payment and (ii) the breach by Giles of any term or covenant of the Agreement, including our responsibility to ensure that sufficient funds were in the TCF Account to satisfy the Daily Payments. See Agreement, p. 5, Sec. 3.1.

26. More specifically, an addendum (the “Addendum”) to the Agreement provided that:

NSF Fee. After 4 NSF’s [Not Sufficient Funds] the agreement will be consider in default.

See Agreement, Addendum, NSF Fee.

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27. Thus, after failing to make the Daily Payments for four days, Giles would be in default of the Agreement and EBF would be entitled to exercise its default rights and remedies under the Agreement.

28. The Addendum further provided that if *Giles* placed an ACH block on the Account and thereby prevented EBF from conducting the daily withdrawals, Giles would be charged a fee of \$2,500 and the Agreement would be deemed in default:

ACH Block on Account. If the Seller places an ACH Block on their account preventing us from processing the ACH debit to the Account. This action would also place the agreement in default.

See Agreement, Addendum, ACH Block on Account. Accordingly, by the Agreement's express terms, the blocking of the Account by the bank, without instructions from Giles, was not an event of default under the Agreement.

29. Finally, the Addendum provided that Giles would be charged a "Default Fee" of \$5,000 if it intentionally diverted receivable collections due EBF:

Default Fee: If the seller changes the bank account or intentionally diverts receivables collections to another account preventing the Buyer from receiving the payments.

See Agreement, Addendum, Default Fee.

iii. **Default Rights and Remedies.**

30. The Agreement EBF full recourse against Giles and me if we failed to perform our obligations under the Agreement.

31. Upon the occurrence of an Event of Default, among other things, the Agreement:

- A. The Specified Percentage shall equal 100%. The full uncollected Purchased Amount plus all fees (including legal fees) due under the Agreement will become due and payable in full immediately.
- B. EBF may enforce the provisions of the Performance Guaranty against the Guarantor.

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- D. EBF may proceed to protect and enforce its rights and remedies by lawsuit, in any such lawsuit, under which EBF shall recover Judgment against Seller, Seller shall be liable for all of EBF's costs of the lawsuit, including but limited to all reasonable attorneys' fees and courts costs.

See Agreement, at p. 7, Sec. 3.2.

32. Additionally, on behalf of Giles and myself as guarantor, I signed an Affidavit of Confession. An "as filed" copy of the Affidavit of Confession is hereto as Exhibit 4.

C. Giles Performed and EBF Declared a Default.

33. Giles fully performed under the Agreement. Between February 14, 2018 and March 21, 2018, EBF withdrew twenty-five (25) Daily Payments from the TCF Account without incident.

34. Meeting the Daily Payments was a struggle for the Company because while business was booming, our rate of collection in March 2018 had slowed significant because clients were simply not paying their bills on time. As a result, I was often required to advance the Company funds from personal savings in order to meet the Company's daily operating expenses and front funds for new projects. Nevertheless, I worked diligently to timely collect our receivables and ensure we could pay EBF.

35. On or about Thursday, March 22, 2018, I received a check (the "Client Check") from a client in the amount of \$8,000 and, in accordance with the Agreement, the Client Check was deposited into the TCF Account.

36. On March 23, 2018, my wife and I were leaving for vacation for a Caribbean cruise. By collecting upon the Client receivable and depositing the \$8,000 Client Check into the TCF Account I sought to ensure that sufficient funds would be available in the TCF Account to make the Daily Payments until I was able to collect additional outstanding receivables when I returned to the office on April 2, 2018.

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37. The \$8,000 deposit was sufficient to cover the \$5,075 in Daily Payments that were required through March 22 – March 30, 2018, plus additional Daily Payments during the week of April 2, 2018 so that Giles had a cushion to collect additional receivables upon our return from vacation.

38. On Tuesday, March 27, 2018, while on our Caribbean cruise, I received an email from EBF claiming that a Daily Payment had been returned and demanding that I provide them with dates when I would be able to bring our EBF account up to date:

On Tue, Mar 27, 2018 at 2:59 PM, Jennifer Guzman <jennifer.guzman@everestbusinessfunding.com> wrote:
 Good afternoon,

After reviewing your account with Everest Business Funding, you have one returned payments that we have not reran and it's causing your account to be Past Due \$725.00. In order to bring your account up to date, you will need to provide us with dates to schedule the payments to bring your account back up to date and avoid further fees to your account.

Missed on 3/21

Please advise,

Jennifer Guzman
 Outreach Collection Everest Business Funding
 P: 703.200.4922
 E: jennifer.guzman@everestbusinessfunding.com
 888.304.9886

Right-click or tap and hold here to
 download pictures. To help protect
 your privacy, Outlook prevented
 automatic download of this picture.

See Email dated March 27, 2018 at 2:59 p.m. from J. Guzman to A. Giles, a copy of which is attached hereto as Exhibit 5.

39. Since I had deposited funds sufficient to cover our Daily Payments while we were on vacation, I did not know why a Daily Payment had been returned.

40. Upon docking into port on March 28, 2018, I logged into our TCF Account and learned, for the first time, that the Client Check in the amount of \$8,000 had been returned for not sufficient funds and that, as a result, the TCF Account was overdrawn and had a negative balance.

41. Later that day, I received a second email from EBF claiming that another Daily Payment had been returned:

-10-

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From: Jennifer Guzman <jennifer.guzman@everestbusinessfunding.com>
 Date: March 28, 2018 at 5:00:18 PM EDT
 To: andrew@gilescontractingllc.com
 Cc: Damaris Badales <damaris@everestbusinessfunding.com>, Jeanette Licursi <jeanette.licursi@everestbusinessfunding.com>
 Subject: Re: Deal#61223 GILES CONTRACTING LLC Return Notice

Good afternoon Andrew,

We received another return notice for the payment from 3/22. We already reschedule your last payment for 4/3 please advise if we can rerun the payment for 4/4.

Thank you.

See Email dated March 28, 2018 from J. Guzman to A. Giles, a copy of which is attached hereto as Exhibit 6.

42. Having discovered why the Daily Payment had been returned, I immediately advised Mrs. Guzman that the returned items were caused by a bounced check that I could not replace until I was home from vacation and had a chance to collect the receivable:

From: Andrew Giles <

andrew@gilescontractingllc.com>

Date: Wed, Mar 28, 2018 at 5:17 PM

Subject: Re: Deal#61223 GILES CONTRACTING LLC Return Notice

To: Jennifer Guzman <jennifer.guzman@everestbusinessfunding.com>

Right now my business acct is a wreck That check that bounced can't be replaced till Monday. So I'd say all payments will have to wait till Wednesday the 4th now. To give me time to deposit receivable once I'm home from vacation.

Andrew Giles
 Giles Contracting & Construction
 6909 Highland Rd
 Waterford MI 48327
 248-742-1401

See Email Dated March 28, 2018 from A. Giles to J. Guzman, a true copy of which is attached hereto as Exhibit 7.

43. Notwithstanding that EBF knew I was on vacation and could not collect any additional Future Receipts until Wednesday April 4, 2018 at the earliest, they refused to stop the Daily Payments and advised that if I did not make an immediate deposit, Giles would be in breach of the Agreement by Monday April 2, 2018:

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On Mar 29, 2018, at 9:52 AM, Norelkys Altaunji <norelkys.altaunji@everestbusinessfunding.com> wrote:

Good morning Andrew,

Your account has been transferred to me due to your request to hold payments until April 4th. Unfortunately we cannot stop your payments since that will put you in breach of your contract and your account will be in default by Monday. Will you be able to make up all of the missed payment on Wednesday?

Thank you

Norelkys Altaunji
 Outsource Collections Everest Business Funding
 T: 888.900.4948
 F: 888.304.9886
 E: norelkys.altaunji@everestbusinessfunding.com

☒ Right-click or tap and hold here to
 download pictures. To help protect
 your privacy, Outlook prevented
 automatic download of this picture.

See Email dated March 29, 2018 from N. Altaunji to A. Giles, a true copy of which is attached hereto as Exhibit 8.

44. At the time, I was out of the country and could not physically collect any receivables or make any deposits and I immediately advised EBF that there was nothing that I could do until I returned from my trip:

On Thu, Mar 29, 2018 at 11:35 AM, Andrew Giles <andrew@gilescontractingllc.com> wrote:
 Yes all will be taken care of by Wednesday. Nothing I can do till I'm back at the office to collect checks and deposit.

Andrew Giles
 Giles Contracting & Construction
 6909 Highland Rd
 Waterford Mi 48327
 248-742-1401

See Email dated March 29, 2018 from A. Giles to N. Altaunji, a copy of which is attached hereto as Exhibit 9.

45. Notwithstanding that I had told EBF that I could not cure the overdrafts because I was on vacation and could not collect any additional receipts until I returned, EBF continued to attempt to withdraw the Daily Payments until a stop payment was placed on the TCF Account. I

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did not place the stop payment on the TCF Account and did not even learn of the stop payment order until EBF told me and declared that I was in default under the Agreement:

On Mar 29, 2018, at 12:04 PM, Norelkys Altaunji <norelkys.altaunji@everestbusinessfunding.com> wrote:

We received notification from your bank today that there was a stop payment placed on our debits. This means you are now in breach of your contract. I will have the unblock form sent to you shortly in order to resume your payments on 4/5 as well as an additional debit form for the past due 11 payments you will have by then, totaling \$7,975.00. Please sign it and return in order to avoid any further action. Please see our money gram instructions below so that you can make a good faith payment until then.

See Email dated March 29, 2018 from N. Altaunji to A. Giles, a copy of which is attached hereto as Exhibit 10.

46. In response to the above email, I immediately advised EBF that I did not place the stop payment on the TCF Account and that it had most likely be done by my bank:

On Thu, Mar 29, 2018 at 12:54 PM, Andrew Giles <agiles@contractingllc.com> wrote:

I will take care of Monday once I'm home from vacation. Obviously I didn't count on a \$8000 check to Bounce the day I left for vacation. Causing all these issues and my bank returning everything. Not sure why they put a stop payment on your daily draw but they may have done it to all our payments. I haven't even talked to my bank and this only came to light Tuesday. I will again take care of it Monday once I'm home

Andrew Giles
 Giles Contracting & Construction
 6909 Highland Rd
 Waterford MI 48327
 248-742-1401

See Email dated March, 29, 2018 from A. Giles to N. Altaunji, a copy of which is attached hereto as Exhibit 11.

47. EBF did not care that I had not placed the stop payment on the TCF Account or that it had likely been done by the bank or that I was on vacation outside of the country and needed time upon my return to collect receivables to pay them. Instead, *even though they knew Giles was not collecting any receivables*, they continued to demand not only that Giles resume making the Daily Payments, but also that the Company immediately come current on all past due amounts.

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48. Indeed, on April 3, 2018, I received notification from EBF that: (i) Giles was in default of the Agreement "due to non payment," (ii) EBF was charging Giles a default fee of \$5,000 and (iii) Giles' assets could be targeted for seizure of Giles did not pay:

From: Norielys Alftaunji <norielys.alftaunji@everestbusinessfunding.com>
 Date: April 3, 2018 at 12:48:00 PM EDT
 To: Andrew Giles <andrew@gilecontractingllc.com>
 Cc: Damaris Burdiles <damaris@everestbusinessfunding.com>, Jeannette Licursi <jeannette.licursi@everestbusinessfunding.com>
 Subject: Deal No. 6123 GILES CONTRACTING LLC | DEFAULT NOTICE

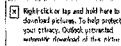
Good afternoon Andrew,

It has been brought to my attention that your account is currently in Default and according to the terms of your agreement you are currently in breach of your contract. Please be advised that the \$5,000 default fee has been assessed due to non payment. If no arrangements are made your accounts may be frozen and your assets may be targeted for seizure. I guarantee you that you are better off working with me than with our attorneys. If your account is brought back up to date and to performing status, we may work with you in waiving the default fees. I will be your point of contact moving forward.

Should you have any questions or concerns you can reach me at 888-304-9396.

Covered yourself accordingly,

Norielys Alftaunji
 Outsourcing Collections | Everest Business Funding
 T: 888-304-9396
 F: 888-304-9396
 E: norielys.alftaunji@everestbusinessfunding.com

 Right-click or tap and hold here to download pictures. To help protect your privacy, Outlook prevented automatic download of this picture.

See Email dated April 3, 2018 from N. Alftaunji to A. Giles, a copy of which is attached hereto as Exhibit 12.

49. At the time, I had just returned from vacation and, despite trying desperately, I had not yet been able to collect upon the \$8,000 Client Check that bounced or any other receivables sufficient to meet the onerous demands of EBF. Moreover, upon returning from vacation, I spoke with our TCF branch manager and confirmed that TCF, not Giles, had placed the stop payment on the account because as a result of EBF's continuous attempts to withdraw funds from an overdrawn account.

50. In other words, EBF, not Giles, had caused the bank, not Giles, to place a stop payment order on the TCF Account. Pursuant to the Agreement, only a stop payment order placed by Giles or me would constitute a default under the Agreement. A stop payment order

placed by the bank, particularly one that resulted from EBF's conduct, was not a breach of the Agreement.

51. Further, if the Agreement were truly the purchase of Future Receipts than Giles should not have any obligation to pay EBF until Giles was paid. Based upon my emails from the prior week, EBF knew that Giles had not collected any additional receipts and would not be able to collect any receipts until I returned from vacation. Nevertheless, as the above emails demonstrate, EBF treated the obligation to make the Daily Payment as absolute and held Giles and me responsible regardless of whether Giles had, in fact, collected any Future Receipts.

D. The Judgment.

52. On April 6, 2018, without any prior notice to me or Giles, EBF filed the Affidavit of Confession that I had signed and thereafter obtained the Judgment in the Underlying Matter in the amount of \$95,681.57 which consists of principal remaining on the Purchased Amount (\$76,125.00) plus attorneys' fees, costs and interest totaling \$19,556.57. See Judgment, Exhibit 1 hereto.

53. In support of the entry of the Judgment, EBF submitted an Affidavit of Non-Payment by Damaris Bardales (the "Bardales Affidavit"), purportedly an Outsource Manager for EBF who swore to being fully familiar with the facts and circumstances set forth in the affidavit. A copy of the Bardales Affidavit (without exhibits) is attached hereto as Exhibit 13.

54. I have never spoken to Mrs. Bardales. She never called me to discuss the Giles account, asked to review Giles' books and records or otherwise asked that I verify any of the statements in her affidavit concerning Giles' operations or its alleged defaults under the Agreement. Indeed, other than the email communications discussed above, no one from EBF ever contacted me or Giles concerning the alleged defaults. No one asked to see a list of our

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outstanding accounts receivable or made any inquiries into our efforts to collect outstanding receivables or asked if we had actually received any Receipts since I returned from vacation. Unfortunately, as of April 6, 2018, I was unable able to collect any additional Receipts to pay EBF.

55. In reviewing the above-cited emails, I understand that Mrs. Bardales was copied on certain emails and presumably was well aware at the time of the Bardales Affidavit that Giles had not blocked the TCF Account or diverted receivables and that the alleged defaults under the Agreement were entirely payment defaults stemming from the bounced Client Check.

56. Nevertheless, the Bardales Affidavit contained numerous false and misleading statements. Among other things:

FALSE STATEMENT	TRUTH
Giles "has stopped remitting the Specified Percentage to EBF on or about 03/21/2018, although they are still conducting regular business operations and still in receipt of accounts-receivable." See Bardales Affidavit, at ¶ 10.	Between March 21 and April 6, 2018, Giles did not have any Future Receipts to remit because I was on vacation in the Caribbean for the majority of this time and in the few days that I return I was unable to collect any outstanding receivables including the receivable from client whose check bounced. Twenty percent of zero is zero.
Giles and me "continue to be in default of the Agreement, and continue to refuse to honor their obligations owed to EBF, by <i>inter alia</i> , blocking EBF's access to the Account, by preventing EBF from debiting the Account per the Agreement, and/or otherwise failing to remit the Specified Percentage to EBF." See Bardales Affidavit, at ¶ 11.	TCF, not Giles, blocked the Account as a result of EBF's continued attempts to withdraw the Daily Payments when it knew the TCF Account was and would continue to be overdrawn. In other words, EBF's actions, not the actions of Giles, caused TCF to block the TCF Account. Further, at the time of Bardales Affidavit, EBF knew that I was trying to collect outstanding receivables to cover the bounced Client Check. Thus, rather than failing to remit payments to them, Giles did not have any Future Receipts from which to pay EBF.

57. Indeed, EBF's conduct demonstrates that the Agreement was not the "purchase" of Future Receipts as attested by Mrs. Bardales (Bardales Affidavit, ¶ 3), but rather a loan whereby Giles and me were absolutely obligated to make the Daily Payments no matter what. If the Agreement were truly the purchase of Future Receipts, we should not have been obligated to pay EBF anything until we actually collected Future Receipts.

58. Considering EBF's treatment of the Agreement as imposing an absolute obligation to make the Daily Payments, the Agreement, on its face, contemplated repayment of the Purchased Amount (\$94,250) by 130 equal Daily Payments of \$725 which translates into an effective annual interest rate of more than 90%.

59. I understand that pursuant to New York's penal code, the maximum interest that may be charged by EBF is 25% per annum. Thus, under the Agreement, EBF charge more than 3 times the maximum interest permitted by law.

E. EBF's Enforcement Actions Have Nearly Destroyed Giles.

60. Once it obtained the Judgment, EBF began a campaign to cripple the Company by seizing the Company's assets in Ohio.

61. Because our TCF Account had been frozen by EBF's continuous attempts to withdraw funds, we were forced to open a new operating account.

62. On or about April 12, 2018, after EBF had sought entry of the Judgment against us, we opened a bank account at a Michigan branch of Huntington National Bank ("Huntington"), a national bank headquartered in Columbus Ohio with no branches or other known connections to New York. See Printout of FDIC insured information concerning Huntington, attached hereto as Exhibit 14.

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63. Despite the fact that Huntington has absolutely no connection to New York, on or about May 1, 2018, EBF caused an Information Subpoena with Restraining Notice (the "Huntington Restraining Notice") to be served upon Huntington. A copy of the Huntington Restraining Notice is attached hereto as Exhibit 15.

64. As a result of the restraining notice, Huntington froze our account, thereby restraining \$29,190.13 (the "Restrained Funds").

65. The Restrained Funds consisted entirely of deposits from three new Giles' clients (the "Restrained Clients") for projects (the "Projects") we had been retained to complete.

66. Without access to the Restrained Funds, we could not purchase materials or higher people to perform the work on the Projects and the Restrained Clients demanded refunds. However, as a result of the Huntington Restraining Notice, we could not return their deposits.

67. We advised EBF that the Restrained Funds were client deposits and requested that they release the Restrained Funds, but they refused to do so unless we agreed to pay the full amount of the Judgment under a payment schedule that we simply could not afford.

68. As we tried to scramble to collect other outstanding receivables to perform the Projects or return the Restrained Clients' deposits, one of the Restrained Clients commenced an action against us in small claims court and obtained a judgment against Giles in the amount \$6,800.

69. The Huntington Restraining Notice caused havoc on our cash flow. Not only were we desperately trying to collect receivables to complete the Projects or at least return the deposits, we were forced to divert resources from other jobs and cease taking on new contracts because we simply did not have the cash flow to undertake them.

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70. Indeed, at this point in time, I was largely keeping the Company alive with advances from my wife's personal savings which have now been virtually entirely depleted.

71. The Restrained Clients and others began to complain about Giles on social media pages and our business reputation, once sterling in the Waterford/Oakland County community, was now in tatters.

72. The harassment did not stop there.

73. After our Huntington accounts were frozen, we were forced to open an account at a Michigan branch of PNC Bank which shortly thereafter, received a marshal levy with respect to the Judgment, froze our account and on or about August 20, 2019 issued a bank check releasing \$3,546.09 to the marshal in satisfaction of the Judgment.

74. Notwithstanding that EBF has collected \$3,546.09, it has never filed a partial satisfaction of judgment with the Court and, instead, it continues to attempt to collect the full amount of the Judgment.

75. In December 2018, EBF filed a Petition and commenced a turn over proceeding against Huntington in a proceeding entitled *EBF Partners, LLC d/b/a Everest Business Funding v. Giles Contracting LLC d/b/a Giles Construction*, Supreme Court of New York, Orange County, Index No. EF011974/2018. A copy of the Petition is attached hereto as Exhibit 17.

76. Notwithstanding that it had levied upon and received the PNC funds, the Petition continued to seek enforcement of the full amount of the Judgment:

WHEREFORE, plaintiff demands judgment requiring Huntington National Bank to turnover any and all safe deposit boxes held in deposit accounts held in the name of the Judgment Debtors, including any held jointly with any other individual up to the judgment of *\$95,681.57* plus interest at 9% from April 12, 2018 to petition, the amount required to satisfy the judgment in the above action and to pay from said funds any and all sheriff's fees due upon execution and to execute and deliver any document

necessary to effect payment, and for such other and further relief,
 and the costs and disbursements of this proceeding.

See Petition at p. 3 (emphasis added).

77. However, before Huntington made an appearance in the matter, EBF withdrew the Petition and Huntington withdrew the restraints. *See* Notice to Withdraw Petition, a copy of which is attached hereto as Exhibit 18.

F. The Devastating Impact of EBF's Efforts to Collect Upon the Fraudulently Obtained Judgment and Usurious Agreement.

78. As described above, EBF's enforcement tactics have had a devastating impact on the Company's cash flow and have caused irreparable damage to the Company's reputation in a community where construction is booming.

79. As a result of EBF's actions, the Company's revenues in 2018 have been cut in half and the Company has incurred tens of thousands in attorneys' fees and other expenses addressing the harm caused by EBF. Indeed, directly as a result of EBF's actions, our two largest customers have ceased doing business with Giles.

80. While the Company's prospects are improving heading into the summer months, it continues to struggle to generate new clients in a community where construction is thriving. It simply cannot incur any further harm to its reputation and operations and yet that is exactly what EBF is attempting to do.

G. EBF's Efforts to Domesticate the Judgment and Enforce the Judgment it in Michigan.

81. EBF is now taking steps to domesticate the Judgment in Michigan. Attached hereto as Exhibit 19 is an Affidavit and Notice of Entry of Judgment (the "Docketing Notice"). According to the Docketing Notice, EBF has docketing the Judgment in Michigan and seeks to

enforce the Judgment in the full amount of \$95,681.57. Once again, it appears that EBF has failed to advise another court that it has received at least a partial satisfaction of the Judgment.

82. EBF's misrepresentation to the Michigan court is consistent with how it has conducted its entire collection efforts – by making misrepresentations to courts to secure the Judgment and enforce it.

83. At the very least, EBF's enforcement proceedings must be stayed until it can properly account for what it has already collected upon the Judgment.

G. The Threat of Immediate Harm and the Need for Temporary Restraints.

84. Pursuant to the Docketing Notice, unless otherwise restrained, EBF will be able to begin its collection efforts under Michigan law as early as Wednesday, April 10, 2019.

85. The Company cannot afford any further disruptions to its cash flow and if EBF is permitted to enforce its rights under Michigan law and potentially seize vehicles or construction equipment owned by Giles and used in its business, Giles will not be able to survive.

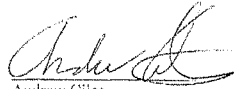
86. As set forth above and will be explained in further detail in the accompanying memorandum of law, EBF had no right to file the Affidavit of Confession and obtain the Judgment. The Company did not block the TCF Account and it did not divert the proceeds of receivables allegedly due and owing to EBF. Put simply, a client's check bounced and we did not have any additional Receipts to cover the bounced check and pay EBF. Pursuant to the Agreement (p. 1-2), EBF allegedly assumed the risk that our Receipts would slow down, but when that, in fact, occurred, they refused to stop the Daily Payments and sought to hold Giles and me absolutely liable for repayment of the full Purchased Amount. Thus, in every substantive way, EBF treated the Agreement like a loan and one that I understand is unenforceable under New York law.

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87. Under the circumstances, EBF should not be permitted to continue to collect upon the Judgment or the Agreement and force Giles to close its operations or file for bankruptcy while this Court adjudicates our valid claims. EBF's enforcement actions have already destroyed the Company's reputation and caused the Company to suffer a nearly 50% decline in its revenues.

WHEREFORE, it is respectfully requested that this Court grant the Plaintiffs emergency application for a restraining notice and, upon consideration of the entire motion, vacate the Judgment.


 Andrew Giles

Sworn to before me this
 8 day of April 2019


 Notary Public

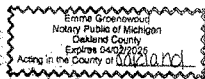


EXHIBIT 44

FILED: ONTARIO COUNTY CLERK 12/20/2017 09:18 AM
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 RECEIVED NYSCEF: 12/20/2017

FILED: ONTARIO COUNTY CLERK 12/19/2017 06:28 PM
 NYSCEF DOC. NO. 3

INDEX NO. 116856-2017
 RECEIVED NYSCEF: 12/19/2017

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF ONTARIO

TVT CAPITAL, LLC

Plaintiffs,

-against-

LEGEND VENTURES LLC D/B/A LEGEND SOLAR/
 MODERN ENERGY/ LEGEND MARKETING / LEGEND
 MOTOR SPORTS and MATHEW SHANE PERKINS,
 SHAUN ALLDREDGE,

Defendants.

Index No.:

JUDGMENT BY CONFESSION

Amount Confessed: \$149,900.00
 Amount Paid: \$41,912.20
 Default Amount: \$107,987.80
 Interest (from 12/01/2017) at 9%: \$479.29
 Attorney's Fees confessed: \$26,996.95
 Costs by Statute (CPLR 3218[b]): \$15.00
 Filing Fee (CPLR 8018[a]): \$210.00
 Total Costs and Disbursements: \$225.00
Judgment Total: \$135,689.04

Total costs taxed
 at: \$ 225.00
 Matthew J. Hoare
 Jacob M. Hoare
 Acting Dep. Clerk

STATE OF NEW YORK)
 COUNTY OF KINGS) ATTORNEY'S AFFIRMATION

The undersigned, an attorney at law of the State of New York, affirms that he is the attorney of record for plaintiff TVT CAPITAL, LLC herein, and states that the disbursements above specified are correct and true and have been or will necessarily be made or incurred herein and are reasonable in amount and affirms this statement to be true under penalties of perjury.

Dated: New York, New York
 12/19/2017



 Jacob Verstandig, Esq.
 Law Offices of Jacob Verstandig, PLLC
 Attorney for Plaintiff/Judgment Creditor
 1459 East 13th Street
 Brooklyn, New York 11230

EXHIBIT 45

FILED: ORANGE COUNTY CLERK 12/15/2017 11:03 AM
NYSCEF DOC. NO. 4

INDEX NO. EF010262-2017
RECEIVED NYSCEF: 12/15/2017

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

TVT CAPITAL, LLC,

Plaintiff,

-against-

LEGEND VENTURES LLC D/B/A LEGEND
SOLAR/MODERN ENERGY/LEGEND
MARKETING/LEGEND MOTOR
SPORTS/SHAMROCK EMPIRE
LLC/QUANTUM PRODIGY INC./THE PERK
LLC/SMPS CONSULTING, LLC and
MATTHEW SHANE PERKINS and SHAUN
ALLDREDGE,

Defendants.

Index No.: EF010262-2017

JUDGMENT BY CONFESSION

Amount Confessed.....	\$824,450.00
Payments Made.....	\$184,300.00
Interest (@16% from December 8 th , 2017).....	+ \$1,683.68
Total.....	\$641,833.68
Statutory Fee.....	\$ 15.00
Filing Fee.....	\$ 210.00
Legal Fees.....	\$211,249.50 (33%)
Cost Total.....	+ \$211,474.50
Judgment Total	\$853,308.18

ATTORNEY'S AFFIRMATION ACTING DEPUTY COUNTY CLERK,

STATE OF NEW YORK, COUNTY OF ORANGE

The undersigned, an attorney at law of the State of New York, affirms that she is one of the attorneys of The Rubin Law Firm, PLLC, attorneys for the Plaintiff herein and states that the disbursements above specified are correct and true and have been or will necessarily be made or incurred herein and are reasonable in amount and affirms this statement to be true under the penalties of perjury.

Dated: December 14, 2017

/s/
Anna Rubin, Esq.
The Rubin Law Firm, PLLC
Attorneys for Plaintiff
90 Broad Street, 16th Floor
New York, NY 10004
T.212-804-7012

Proposed v.81417 Judg.

Filed in Orange County 12/15/2017 11:03 01 AM \$0.00

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Pg: 1793

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Clerk: EB

FILED: ORANGE COUNTY CLERK 12/15/2017 11:03 AM
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JUDGMENT entered the DEC 15 2017 day of 1 2017.

On filing the foregoing Affidavit of Confession of Judgment made by the defendant herein, sworn to the 29th day of September 2017.

NOW, ON MOTION OF The Rubin Law Firm, PLLC, attorneys for Plaintiff it is

ADJUDGED that Plaintiff, TVT CAPITAL, LLC, located at 30 Wall Street, Suite 801, New York, NY 10005, has judgment and does recover of Defendant LEGEND VENTURES LLC D/B/A LEGEND SOLAR/MODERN ENERGY/LEGEND MARKETING/LEGEND MOTOR SPORTS/SHAMROCK EMPIRE LLC/QUANTUM PRODIGY INC./THE PERK LLC/SMPS CONSULTING, LLC, having an address at 204 Playa Della Rosita, Washington, UT 84780, and Defendant MATTHEW SHANE PERKINS having an address at 1564 S Aspen Way, Washington, UT 84780 and Defendant SHAUN ALLDREDGE, having an address at 1564 S Aspen Way, Washington, UT 84780 jointly and severally, the sum of \$640,150.00, plus interest at sixteen percent (16%) as calculated by the clerk in the amount of \$1,683.68, plus costs and disbursements as taxed by the Clerk in the amount of \$225.00, plus reasonable attorney's fees in the amount of \$211,249.50 for a total sum of \$853,308.18 and that the Plaintiff TVT CAPITAL, LLC shall have execution therefor.

Donna Brown

ACTING DEPUTY COUNTY CLERK
 Clerk

EXHIBIT 46

287

Paysafe®

Joyce Johnston-Parich
Paralegal

December 19, 2018

Via First Class Mail
McNider Marine LLC
Attn: Bruce McNider
30160 Highway 43, Suite 1
Thomasville, Alabama 36784


Re: UCC Lien Notice

Dear Mr. McNider:

Paysafe Payment Processing Solutions, LLC as successor-in-interest to iPayment, Inc. ("Paysafe") has received a UCC Lien Notice from Yellowstone Capital LLC informing us of its security interest in McNider Marine LLC's credit card receivables. We have been informed that all payments due or payable to McNider Marine LLC up to an amount of \$250,888.00 must be held and delivered to Yellowstone Capital LLC to satisfy Yellowstone Capital LLC's lien.

Please contact Yellowstone Capital LLC immediately to resolve this matter. At this time, we are holding all payments due to McNider Marine LLC up to the amount owed and will not remit payment until we receive further notice from you and Yellowstone Capital LLC. I have enclosed a copy of the notice received for your review.

Sincerely,


Joyce Johnston-Parich
Paralegal

Encl.

P. O. Box 8339 The Woodlands, Texas 77387
Representing Woodforest National Bank* Houston, Texas
*Member FDIC
Email: joyce.parich@paysafe.com Phone: (281) 895-5904

Rec'd 12/19/18



MCA RECOVERY LLC

17 STATE STREET
SUITE 4000
NEW YORK, NEW YORK 10004

ZACHARY CHASIN
PRESIDENT
E-MAIL: ZC@MCARECOVERY.COM

TEL: (646) 774-3308
FAX: (978) 313-6609
(NOT FOR SERVICE OF PAPERS)

December 18, 2018

Via Email
iPayment, Inc.

UCC LIEN NOTICE OF ASSIGNMENT

Re:
McNider Marine, LLC et al. (See Attached Exhibit
A)
Due to YSC: \$250,888.00

To Whom It May Concern,

I represent MCA Recovery, LLC, the collections firm hired by Yellowstone Capital LLC ("YSC"). This letter serves as formal notice pursuant to Section 9-406 of the Uniform Commercial Code ("UCC") as it has come to our attention that iPayment, Inc. and/or their parent or subsidiary entity(ies) (collectively, "iPayment, Inc.") is an Account Debtor (as this term is defined by the UCC) of the entity(s) listed above and may be described on the attached Exhibit A (hereafter, the "Merchant").

Please be advised that the Merchant has defaulted on a secured agreement entered into by and between the Merchant and YSC on October 19, 2016, a copy of which is enclosed herein for your reference (the "Agreement"). The amount currently due and owing to YSC arising out of the Agreement as it applies to this notice is \$250,888.00.

In accordance with the Agreement, YSC filed a UCC-1 financing statement with the Secretary of State of Alabama, thereby obtaining a perfected security interest in the Merchant's assets, including without limitation the Merchant's accounts-receivable. A copy of the UCC-1 is also enclosed herein for your reference.

It has come to YSC's attention that iPayment, Inc. has made payments to Merchant, representing the Merchant's accounts-receivable. While it is understood that iPayment, Inc. has an agreement with the Merchant and not YSC, this letter is nonetheless being sent to instruct

iPayment, Inc., in accordance with UCC 9-406 to hold in reserve all applicable funds payable to the Merchant under UCC 9-406, as of the date of this notice, until the amount of \$250,888.00 accrues, whereupon same should be forwarded to my client. I am confident that once the above-requested action is taken by iPayment, Inc., in addition to mitigating the risk to iPayment, Inc. with respect to converting the funds in which YSC has a secured interest, this matter will be quickly resolved.

Please comply with the above immediately, and contact me at 646-774-3308 or at notices@mcarecovery.com, if you have any questions or follow-up. I thank you in advance for your anticipated cooperation in this matter.

Sincerely,
MCA RECOVERY, LLC

By: 
Zachary Chasin

LAW OFFICES OF ISAAC H. GREENFIELD PLLC

32 COURT STREET, SUITE 205
BROOKLYN, NEW YORK 11201

Isaac H. Greenfield, Esq.
Managing Attorney

email: info@greenfieldlawpllc.com
Phone: (718) 564-6268
FAX: (516) 387-1117

March 11, 2019

Via Email:
Stripe, Inc.
3180 18th Street Ste 100
San Francisco, California 94110

UCC LIEN NOTICE AND NOTICE OF ASSIGNMENT OF ACCOUNTS-RECEIVABLE
BY ASSIGNOR TO INFLUX CAPITAL LLC, AS ASSIGNEE

Re: LADAN INC
d/b/a Ludwig's Liquor & Smoke Shop
Balance due to ICL: \$454,559.00

To Whom It May Concern,

I am the managing attorney for Law Offices of Isaac H. Greenfield PLLC, the firm retained by Influx Capital LLC ("ICL"). This notice is being sent pursuant to UCC 9-406 as it has come to our attention that Stripe, Inc. ("Account Debtor") has been conducting the credit-card processing and/or is an account debtor (as defined by the Uniform Commercial Code) of LADAN INC d/b/a LUDWIG'S LIQUOR & SMOKE SHOP (the "Merchant"), located at 431 San Anselmo Ave San Anselmo, California 94960.

Please be advised that the Merchant has defaulted on a secured merchant agreement entered into by and between the Merchant and ICL on December 10, 2018, a copy of which is enclosed herein for your reference (the "Agreement"). The balance currently due and owing to ICL pursuant to the Agreement is \$454,559.00.

Pursuant to the Agreement, ICL purchased \$749,500.00 of the Merchant's future accounts-receivable for the purchase price of \$500,000.00. The Agreement was structured so that ICL was to receive a percentage of all of the Merchant's receivables. In accordance with the Agreement, ICL filed a UCC-1 financing statement with the Secretary of State of California, thereby obtaining a perfected security interest in the Merchant's assets, including without limitation the Merchant's accounts-receivable. A copy of the UCC-1 is also enclosed herein for your reference.

It has come to ICL's attention that Account Debtor is in possession of receivables due and owing to the Merchant, constituting "Accounts" as defined by the Uniform Commercial Code. While it is understood that Account Debtor has an agreement with the Merchant and not ICL, this letter is nonetheless being sent to instruct Account Debtor in accordance with UCC 9-406, to hold in reserve all funds payable to the Merchant as of the date of this notice, until the amount of \$454,559.00 accrues, whereupon same should be forwarded to my client. I am confident that once the above-requested action is taken by Account Debtor, in addition to mitigating the risk to Account Debtor with respect to converting the funds in which ICL has a secured interest, this matter will be quickly resolved.

Thank you for your prompt attention to this matter, and please don't hesitate to reach out with any questions or concerns regarding the above, I can be reached at (718) 564-6268.

Sincerely,

Law Offices of Isaac H. Greenfield PLLC

By: 
Isaac H. Greenfield, Esq.

EXHIBIT 47



122 East 42nd Street, Suite 2112 New York, NY 10168

February 11, 2019

Direction Letter for Release of Hold

VIA EMAIL
PAYPAL, INC
ATTN: LEGAL DEPT./CIVIL
2211 NORTH FIRST STREET
SAN JOSE, CA 95131

Re: NRO EDGARTOWN, LLC and ALICE INDELICATO;
Fed Tax Id. 26-4608067, SSN [REDACTED];
Index No. 60925/2016.

Dear Sir/Madam:

We are counsel to Cap Call, LLC and are writing regarding the *UCC Lien* that was sent by RTR Recovery, LLC to PayPal, Inc with respect to **NRO EDGARTOWN, LLC and ALICE INDELICATO; Fed Tax Id. 26-4608067, SSN [REDACTED]**. This merchant is currently working with RTR Recovery, LLC towards satisfying their outstanding balance with Cap Call, LLC. Accordingly, we respectfully request that the hold placed on the Merchant's account be released at this time.

Sincerely,

Douglas Robinson

Douglas Robinson, Esq.
Attorney for Judgment-Creditor
122 East 42nd Street, Suite 2112
New York, NY 10168
E: Drobenson@rtrrecoveryllc.com
T: (718) 775-3673
F: 888-259-5884

EXHIBIT 48

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SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF ORANGE

ADVANTAGE CAPITAL FUNDING, LLC Plaintiff/Judgment Creditor, v. INDEPENDENCE LED LIGHTING LLC/GREENSAVE, LLC and CHARLIE SZORADI Defendants/Judgment Debtors

Index No: EF004129-2018

**AFFIDAVIT IN SUPPORT OF
 ORDER TO SHOW CAUSE**

STATE OF PENNSYLVANIA)
) ss.:
 COUNTY OF DELAWARE)

CHARLIE SZORADI, being duly sworn deposes and says:

1. I am a defendant in this matter and the Chairman and CEO of Independent LED Lighting LLC/Green and Save LLC ("Independent LED"). I submit this affidavit in support of the Defendants' Order to Show Cause seeking to (i) restrain Advantage Capital Funding, LLC ("Advantage") from enforcing a confessed judgment (as amended, the "Judgment") entered in this matter in the initial amount of \$369,405.39; (ii) quash Advantage's collection devices; (iii) vacate the Judgment on the grounds of fraud and misrepresentation; and (iv) direct Advantage to pay restitution for the amounts it fraudulently obtained. Unless otherwise indicated, the facts set forth below are based upon my personal knowledge and recollection.

INTRODUCTION

2. Independence LED is a small Pennsylvania-based manufacturer and supplier of LED fixtures and commercial lighting systems that is on the verge of financial collapse because of Advantage's efforts to collect upon a Judgment that it procured by a fraud upon this Court and

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Independence LED. Among other things, Advantage has written to Independence LED's customers to enforce the Judgment and caused them to freeze payments due and owing to Independence LED. If Advantage's collection efforts are not abated, the notices quashed and Independence LED does not receive immediate payment of the withheld funds, the company will not have the funds necessary to meet its daily operating expenses and it will likely have to cease operations by the end of the year.

3. Independence LED should not suffer such a fate because the Judgment entered in this action was procured by fraud and, largely from my now depleted personal funds, Independence LED has already repaid Advantage the \$206,000 advanced under the applicable merchant agreement, plus an additional \$34,437.22, bringing the current total payment to \$242,437.22. As will be set forth herein, in obtaining the Judgment, Advantage fraudulently represented to the Court that we committed certain defaults under the applicable agreement and then understated Independence LED's payments under the agreement in order to procure a judgment that was falsely inflated by nearly \$60,000. We did not fail to remit purchased receivables as alleged by Advantage so that it could enter the confessed judgment. We simply ran out of collections to pay them! Even more alarming, we told Advantage that our sales had fallen dramatically and that we did have the collections to pay them and that was when the entered the Judgment. If the Agreement were truly the purchase of our future receipts as they claim, then they should not have been able to enter the Judgment simply because we failed to generate receipts – that was the very risk Advantage purportedly assumed under the Agreement.

4. We are a small company and, unexpectedly, during 2018, our long-term clients did not make their typical purchases, funding for government purchases was delayed or denied and new sales slowed dramatically. While all signs point to a much improved 2019, we will be

forced to cease operations before the New Year unless Advantage is enjoined from enforcing the Judgment, the existing enforcement devices are quashed, the withheld funds released and the Judgment is vacated. Accordingly, for the reasons set forth below and in the accompanying memorandum of law, it is respectfully requested that the Motion be granted in its entirety.

FACTUAL BACKGROUND

A. Independence LED's Business.

5. Independence LED is a manufacturer and supplier of commercial LED fixtures and lighting systems to businesses and federal and state governments for use in office buildings and other similar properties.

6. Our sales are typically generated from existing large commercial and government customers or through solicitations from our sales teams. Although we try, we do not generate sales on daily basis and it often takes a long period of time to generate a sale from a lead because we are selling bulk products for use in larger projects.

7. We also do not collect receivables on a daily basis. Typically, upon placing an order, we require a customer to pay a 50% deposit in order to cover a portion of the manufacturing costs with the balance of the order to be paid upon shipment. Depending upon the size of the order, it could take anywhere from 6 to 12 weeks to complete and ship the order. Generally speaking, we receive final payment within 30 days of delivery.

8. The ebbs and flows of our cash flows are apparent from the face of our bank statements which, generally speaking, reflect sporadic large scale deposits rather than a daily income stream.

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B. The Agreements with Advantage.

9. Historically, Independence LED has collected an average of \$200,000 in receipts per month resulting in revenues of approximately \$2,500,000, annually for the years 2015, 2016 and 2017. At the start of 2018, we experienced a sudden drop in our sales and revenue stream. Based upon communications with our existing clients and prospective new clients, we were led to believe that the drop was temporary. According to our existing and prospective customers, certain anticipated large purchases had been delayed and funding for other purchases had been postponed. As a result, our cash-flow slowed and we needed an influx of cash in order to bridge the gap until our sales improved.

10. At this time, after speaking with multiple funding brokers and providing the requested banks statements and other information, we entered into an agreement with Advantage.

i. The Repayment terms.

11. Pursuant to an agreement dated January 30, 2018 (the "Agreement"), Advantage advanced \$206,000 to Independence LED in exchange for the purported purchase of 15% of the monetary proceeds of Independence LED's future sales (the "Future Receipts") until such time as the purchased amount of \$298,700 (the "Purchased Amount") was repaid to Advantage. See Agreement at p. 1, a copy of which is attached hereto as Exhibit A.

12. The Purchased Amount was to be repaid through fixed daily ACH withdrawals from a specified account, each in the equal amount of \$1,580.42 (a "Daily Payment"). Although from the bank statements Advantage knew that Independence LED did not generate or collect receipts on a daily basis, the Daily Payment amount purportedly reflected "the Specified Percent of [Independence LED's] daily Future Receipts." See Agreement, at p. 2, ¶ 2.

13. Under the Agreement, Independence LED was responsible for “ensuring that the Daily Amount is available in the Account each business day or advising [Advantage] prior to each daily withdrawal of shortage of funds.” *See* Agreement, at p. 2, ¶ 1. A failure to do so constituted a default under the Agreement. *See* Agreement, at p. 5, ¶ 15.

14. As required by the Agreement, we also provided Advantage with the password to the specified account so that they could monitor the deposits and withdrawals.

ii. Advantage's default rights and remedies.

15. The Agreement afforded Advantage certain remedies in the event Independence LED defaulted on its obligations under the Agreement. Among other things, Advantage was given the right “to protect and enforce its rights and remedies by arbitration or lawsuit” and to hold Independence LED liable for “all reasonable attorneys’ fees and court costs” incurred in connection with such lawsuit. *See* Agreement at p. 5, § 16.

16. The Agreement did not contain a liquidated damages provision for assessing attorneys’ fees and it did not permit Advantage to file any affidavit of confession or similar judicial device. Indeed, the term “confession” does not appear anywhere in the Agreement.

iii. No modification clause.

17. The Agreement, a fully-integrated document, specifically provided that it could not be modified unless in a writing signed by Advantage:

No modification, amendment, waiver or consent of any provision of this Agreement shall be effective unless same shall be in writing and signed by the Buyer.

See Agreement, p. 6, ¶ 17.

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iv. The so-called reconciliation provision.

18. The Agreement contained a provision entitled "Reconciliation and Changes to the Daily Amount." Under this provision, on the fifteen day of every month, Advantage was supposed to automatically reconcile our account and credit Independent LED the difference between the amount paid and fifteen percent (15%) of Independence LED's actual monthly receipts:

For as long as no Event of Default has occurred, Buyer shall on or about the fifteenth day of every month reconcile the Seller's Account ("Account Reconciliation") by either crediting or further debiting the Seller's Account by the difference between the actual amount debited since the date of the last Account Reconciliation.

See Agreement p. 2, ¶ 2.

19. Additionally, upon our request, Advantage could, in its sole discretion, adjust the amount of the Daily Payments to more accurately reflect its receipt of the purchased percentage (15%) of Independent's actual receipts:

Buyer may, at Buyer's sole discretion as it deems appropriate and upon Seller's request, adjust the amount of the then-applicable Daily Amount due under this Agreement in order to cause such Daily Amount due under this Agreement in order to cease such Daily Amount to more accurately reflect an amount which will reduce the need to credit Seller's account on a consistently recurring basis.

See Agreement p. 2, ¶ 2.

20. However, if Advantage failed to reconcile our account or reduce the amount of the Daily Payment, there was nothing we could do because paragraph 2 specifically provided that Advantage's failure to perform the reconciliation was not a breach of the Agreement:

Failure by Buyer to make an Account Reconciliation at any time for one or more months or portions thereof shall not be deemed as a breach of the Buyer's obligation hereunder and each Account Reconciliation shall be made for the entire period of time since the

date of the last Account Reconciliation and the Specific Percentage of the actual Future Receipts collected by the Seller since the date of the last Account Reconciliation.

See Agreement p. 2, ¶ 2.

21. Advantage never reconciled our account, credited us for overpayments or reduced the amount of the Daily Payment despite collecting more than 45% of our actual receipts, all of which will be explained more fully below.

v. The Anti-Loan Provision.

22. The Agreement required repayment of the Purchased Amount through fixed Daily Payments and, although it contained a reconciliation provision, Advantage's failure to perform such reconciliation was not a breach of the Agreement. In form, substance and every conceivable way, the Agreement was a loan.

23. Advantage tried to disclaim any connection to a loan by including a self-serving provision stating that the agreement was the sale and purchase of future receipts:

Seller is selling a portion of a future revenue stream to Buyer at a discount, not borrowing money from the Buyer. There is no interest rate or payment schedule and no time period during which the Purchased Amount must be collected by the Buyer. If Future Receipts are remitted more slowly than the Buyer may have anticipated or projected because Seller's business has slowed down, or if the Purchased Amount is never remitted because Seller's business went bankrupt or otherwise ceased operations in the ordinary course of business, and Seller has not breached the Agreement, Seller would not owe anything to Buyer and would not be in breach of or default under this Agreement. Buyer is buying the Purchased Amount of Future Receipts knowing the risk that Seller's business may slow down or fail, and Buyer assumes these risks based on Seller's representations, warranties and covenants in this Agreement that are designed to give a Buyer a reasonable and fair opportunity to receive the benefit of its bargain.

See Agreement, at p.2, ¶ 4.

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24. As will be explained below, notwithstanding this provision, when, in fact, our Future Receipts slowed down, Advantage called a default, filed the Judgment and sought to hold us absolutely liable for the Purchased Amount plus additional fees. In other words, when the very risk they purportedly assumed occurred, Advantage sought to avoid all exposure by simply calling a default. This was all part of Advantage's fraud upon the Court and Independence LED.

vi. The Confession of Judgment/Guaranty.

25. I personally guaranteed the performance by Independence LED of its obligations under the Agreement. *See* Agreement, p. 9.

26. Notwithstanding that the Agreement made no mention of a confession affidavit or gave Advantage the right to file a confessed judgment, Advantage separately required me to execute an Affidavit of Confession of Judgement (the "Confession Affidavit") which was drafted entirely by Advantage. A copy of the Confession Affidavit is attached hereto as Exhibit B.

27. The Confession Affidavit did not authorize is filing upon any default under the Agreement. To the contrary, the circumstances upon which the Confession Affidavit could be filed were very limited.

28. Under the Confession Affidavit, entry of judgement was permitted only in the event that Independence LED failed to deliver the purchased receivables to Advantage:

This confession of judgment is for an obligation due to Plaintiff arising from INDEPENDENCE LED LIGHTING LLC/GREENSAVE, LLC's failure to deliver to Plaintiff, INDEPENDENCE LED LIGHTING LLC/GREENSAVE, LLC's accounts receivable, which were purchased by Plaintiff pursuant to the Agreement for the Purchase and Sale of Future Receipts dated January 30, 2018 (hereinafter the "Agreement").

See Confession Affidavit, at p. 1. However, under the Agreement, Advantage did not purchase our accounts receivable, it purchased a percentage (15%) of the collections from our accounts

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receivable. In other words, per the Agreement, we had no obligation to deliver any accounts receivable to Advantage.

29. The judgment was to be in the Purchased Amount (\$298,700) less any payments made by Independence LED plus costs and disbursements and legal fees calculated at 33% of the then outstanding balance of the Purchased Amount, even though the Agreement did not contain a liquidated attorneys' fee provision. *See* Confession Affidavit.

B. Independence LED's continued financial troubles.

30. It was anticipated that the funds advanced by Advantage would cure Independence LED's short-term cash-flow problems until our existing customers returned to their traditional purchase levels and/or Independence LED could solicit new customers. Unfortunately, that did not occur, and the company's sales and collections continued to plummet from historical norms and expectations until hitting an all-time low in early April of 2018 when Advantage filed the Confession Affidavit.

31. Below is a chart of our collections from February, March and April which was generated from our electronic accounting records:

MONTH	RECEIPTS
February 2018	\$66,729.67
March 2018	\$73,336.36
April 15, 2018	\$ 4,744.31

32. Throughout this time, Independence LED continued to make the Daily Payments under the Agreement, in large part because myself and others infused more than \$100,000.00 into the company and payments to other vendors were deferred to pay Advantage.

33. As a result, Advantage was paid substantially more than the 15% of the future receipts that it allegedly purchased under the Agreement. See Payment History attached hereto as Exhibit C.

34. Indeed, between February 1 and April 15, 2018, we paid Advantage 44.7% of our collected receipts:

MONTH	RECEIPTS	PAYMENTS TO ADVANTAGE	PERCENTAGE OF RECEIPTS PAID TO ADVANTAGE
February 2018	\$66,729.67	\$28,447.56	42.7%
March 2018	\$73,336.36	\$34,769.24	47.4%
April 15, 2018	\$ 4,744.31	\$1,580.42	33.3%
TOTALS	\$144,810.34	\$64,797.22	44.7%

35. Although Advantage was required to reconcile our account on the fifteenth of each month, it failed to perform such reconciliations. Thus, rather than credit our account for payments in excess of 15% of our actual receipts and reduce the amount of our Daily Payments to the equivalent of 15% of our actual receipts, Advantage continued to collect 3 times more than it was entitled to collect and bleed the company dry of all available cash.

C. Independence LED requests a payment reduction; but its request is denied.

36. By early April, we had run out of collections and Independence LED could not continue to pay Advantage \$1,580.42 every day. We simply did not have the revenues. Accordingly, we could not renew the ACH withdrawal program and discontinued the Daily Payments as of April 3, 2018.

37. At this time, we were engaged in conversations with Advantage concerning our financial hardship. In several telephone conversations with Advantage's collections department,

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our COO, Michael Smith, explained our financial situation and requested temporary relief from the Daily Payments until our customers paid outstanding invoices and we could obtain approval for a substantial project that would have greatly improved our financial condition.

38. By email to Advantage dated Friday, April 6, 2018, Mr. Smith provided bank statements to Advantage, summarized his prior conversations and specifically requested "some relief so that we can receive the anticipated deposit payments that are due in any day." See Email from M. Smith to Ms. Norton at collections@advantage.com dated April 6, 2018, attached hereto as Exhibit D.

39. Advantage ignored our request for a payment reduction. Instead, the following Monday, they demanded we make two Daily Payments before they would even discuss our account:

A second consecutive payment did not clear, we need \$3,060.84 via wire before 3 PM to avoid default. Once payment is made, we will contact you to discuss this account.

See Email dated April 9, 2018 at 11:54 a.m. from collections@advantagecapitalfunding.com, a copy of which is attached hereto as Exhibit E.

40. The following day, Advantage again pressed us for payment:

A third consecutive payment did not clear. We need \$4,740.00 via wire before 1PM to avoid default. Please provide us with your March statement along with April up to date activity. (We already have February)

See Email dated April 10, 2018 at 10:10 a.m. from collections@advantagecapitalfunding.com, a copy of which is attached hereto as Exhibit F.

41. Mr. Smith immediately responded that we had not yet received the anticipated payment of a large outstanding receivable and he provided them with a copy of our bank statement through April 10, 2018 which showed that, for the month of April, we had deposits

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totaling just \$7,118.54 and had remitted \$1,580.42 or 22% of our deposits to Advantage. *See* Email dated April 10, 2018 at 11:10 a.m. from Mr. Smith to Advantage and bank statement, attached hereto as Exhibit G.

42. In other words, even in early April, when our receipts hit historical lows, we were paying Advantage substantially more than the 15% of future receipts that they had purportedly purchased under the Agreement and rather than reconciling our accounts or reducing our Daily Payments, *they demanded that we pay more* or be deemed to be in default of the Agreement.

43. Advantage never reconciled our account or reduced the amount of the Daily Payments.

D. Advantage files the Confession and Fraudulent Supporting Affidavit

44. Based upon their conversations with Mr. Smith and their email correspondence, Advantage knew that Independence LED was not generating the anticipated sales and collections and was in possession of documentary evidence proving this point.

45. Notwithstanding this knowledge, Advantage failed to offer us a reduction in the Daily Payments or reconcile our account and, on April 13, 2018, Advantage filed the Confession Affidavit and obtained a judgment against us in the amount of \$369,405.39 broken down as follows:

CATEGORY	AMOUNT
Principal Amount	\$291,992.48
Statutory Fees	\$225.00
Legal Fees	\$77,412.91
Judgment Amount	\$369,405.39

See Judgment, a copy of which is attached hereto as Exhibit H.

46. In support of the Judgment, Advantage submitted a Plaintiff Affidavit sworn to by Aaron Greenblott. It contained numerous falsehoods that were clearly aimed at fabricating circumstances that would give Advantage the authority to file the Confession Affidavit. See Plaintiff Affidavit attached hereto as Exhibit J.

47. For example, in his affidavit, Mr. Greenblott falsely stated that Advantage had “agreed to purchase all rights to Defendant’s future receivables having an agreed upon value of \$298,700.” See Plaintiff Affidavit, p. 1, ¶ 3. In fact, Advantage purportedly purchased only a specified percentage (15%) of the Independence LED’s Future Receipts. See Agreement at p.1, ¶ 1. In other words, Advantage did not purchase Independence LED’s rights to future payment represented by an account receivable; it purchased our collections or proceeds of receivables, and, thus, we did not have any obligation to remit anything to Advantage until we got paid which did not occur.

48. By misrepresenting the scope of Advantage’s purported purchase, Mr. Greenblott falsely made it appear that Advantage had purchase all of Independence LED’s receivables so that the failure by Independence LED to remit any receivables once they were even generated (but not paid) would constitute cause to file the Confession Affidavit.

49. Indeed, in the second page of his affidavit, Mr. Greenblott alleges just that by claiming, upon information and belief, that Independence LED defaulted under the Agreement by continuing to “conduct regular business operations,” receiving accounts receivable and failing to remit them to Advantage. See Plaintiff Affidavit, p. 2, ¶ 3.

50. Nothing could be further from the truth. As set forth above, Advantage did not purchase Independence LED’s accounts receivable. It purchase a percentage of Independence LED’s collections. Advantage *knew* that Independence LED’s customers were not paying their

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invoices. They had the bank statements to show it and during telephone calls and in his emails dated April 6 and April 10, 2018, Mr. Smith told Advantage that our customers were not paying their receivables on time. Indeed, the April statement showed that far from withholding payments, we had paid Advantage more than they were entitled. Thus, far from breaching the payment terms of the Agreement as Mr. Greenblott claimed, Independence LED continued to exceed them.

51. Mr. Greenblott also falsely represented how much Independence LED had paid Advantage as of the date of his affidavit. According to Mr. Greenblott's sworn statement, as of the April 13, 2018, Independence LED had made only \$6,707.52 in payments when, in fact, we had made payments totaling \$64,797.22. *See* Payment History, attached hereto as Exhibit C.

52. As a result of Mr. Greenblott's false statements, the Court entered a judgment against us in the initial amount of \$369,405.39.

E. Advantage's extortionist enforcement tactics.

53. Once armed with the Judgment, Advantage employed extortionist enforcement tactics clearly aimed at driving the company into the ground or extorting an unconscionable settlement agreement. And that is exactly what happen.

54. Immediately upon obtaining the Judgment, Advantage filed a UCC-1 statement, and wrote to Independence LED's costumers and directed that they withhold the payment of funds to Independence LED.

55. Advantage's tactics had a devastating impact upon our already dire financial condition. Among other things, customers withheld payments due on our limited sales, threatened to stop doing business with us and, in some instances, actually stopped doing business

with us. It became virtually impossible for us to secure new orders and generate new revenue to meet our daily operating expenses let alone repay Advantage.

56. As if that were not enough, during numerous phone calls with me, Advantage's collection firm threatened to freeze our bank accounts, seize whatever *de minis* amounts were in the accounts and domesticate the Judgment in Pennsylvania.

57. During these calls, Advantage advised that it would not release its notice letters to our clients or relent in its collection efforts unless we immediately paid the fraudulently obtained Judgment in full or entered into a forbearance agreement under terms that were entirely dictated by Advantage.

F. The Extorted Forbearance Agreement.

58. By the end of June, we could not take Advantage's collection efforts any longer. Unless we capitulated to Advantage's demands, Independence LED would have been forced to cease operations and close its doors.

59. Faced with no other alternative, on or July 3, 2018, on behalf of myself and Independence LED, I executed a forbearance agreement (the "Forbearance Agreement") pursuant to which Advantage agreed to retract its notice letters and forebear from taking any further enforcement actions. We were not represented by counsel at this time or at any time prior to execution of the Forbearance Agreement.

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60. In exchange for retraction of the notice letters, Independence LED was required to pay Advantage \$395,065.52 (\$25,000 more than the already inflated Judgment) pursuant to a payment plan that required an initial payment of \$40,000.00, followed by payments totaling \$89,000.00 through the end of August 2018 with the balance to be paid in equal fixed daily payments in the amount of \$1,500 per day. See Forbearance Agreement, attached hereto as Exhibit J.

61. As a result of the Forbearance Agreement, we were obligated to pay Advantage the settlement amount of \$395,065.52 which was in addition to the \$58,706.53 we already paid them under the Agreement and that they failed to acknowledge in entering the Judgment. Thus, by operation of the Forbearance Agreement, in seven months, Advantage turned a \$206,000 advance into a \$453,772.05 obligation.

62. Further, because of the substantial decline in Independence LED's sales in 2018, we would be obligated to repay the \$459,862.74 more quickly than had Advantage honored the Agreement and collected only 15% of our receipts until the original advance was repaid in accordance with the terms of the Agreement. To date, Independence LED has collected approximately only \$800,000 in receipts. Thus, if Advantage had honored the Agreement and collected only 15% of our actual receipts, to date, it would have only collection approximately \$120,000.

63. As part of the forbearance, I was also required to execute a general release of claims against Advantage.

G. Independence LED complies with the Forbearance Agreement.

64. Contrary to expectations, Independence LED's sales have not vastly improved from the start of 2018. However, to date, we have largely complied with the terms of the Forbearance Agreement. Mostly through cash infusions from myself or others, since July 3, 2018, we have paid \$175,640 to Advantage under the Forbearance Agreement.

65. Thus, thru December 16, 2018, we have repaid Advantage \$240,437.22 on an advance of \$206,000 on January 31, 2018, which translates into an effective annual interest rate of more than 23% on the initial advance.

H. The Amended Judgment and Advantage's renewed collection efforts.

66. On November 30, 2018, without prior notice or the filing of a motion with the Court, Advantage filed a proposed amended judgement that admitted its prior fraudulent representations concerning the amounts due and reduced the amount of the initial judgment by \$58,706.53 or the amount by which Advantage had understated our payments in order to obtain the Judgment.

67. The amended judgment also accounted for the forbearance payments made by Independence LED and was entered in the amount of \$134,957.69. A copy of the Amended Judgment is attached hereto as Exhibit K.

68. Although it amended the Judgement, Advantage never amended the Forbearance Agreement.

69. As set forth above, largely through cash infusions from my now fully depleted personal funds, Independence LED paid Advantage \$175,640 under the Forbearance Agreement. Unfortunately, the company's sales did not improve and, once again, we became strapped for

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cash and could not make the onerous \$1,500 daily forbearance payments. We simply do not have the sales revenue to continue to pay Advantage \$7,500 a week.

70. Advantage has once again written to our customers.

71. Attached hereto as Exhibit L is a sample of a UCC Lien Notice dated December 13, 2018 and sent to one of our largest repeat customers, Nextek Power Systems ("Nextek"). Purportedly acting under Section 9-408 of the Uniform Commercial Code, the UCC Lien Notice acknowledges, contrary to Mr. Greenblott's judgment affidavit, that Advantage purchased only a percentage of Independence LED's future receipts. It fails to identify the percentage (15%), but demands that Nextek withhold the payments of all receivables totaling \$139,957.69.

72. In the UCC Lien Notice, Advantage alleges that the \$139,957.69 is the current balance owing under the Agreement. It is not. To date we have made payments totaling \$240,437.22 leaving a balance of \$58,262.78 under the Agreement.

73. The \$139,975.69 appears to be the amount due purportedly under the Amended Judgment plus \$5,000. I have no idea why Advantage appears to have added \$5,000 to the Amended Judgment nor do I understand why Advantage is even entitled to make a UCC demand for the amount of Amended Judgment.

74. As set forth above, under the Agreement, Advantage could hold us liable for the actual costs of lawsuit, including reasonable legal fees. *See* Agreement at p. 5, ¶ 16. The Agreement did not contain a formula for calculating those fees, only the Confession Affidavit did, and the Agreement made no mention of the Confession Affidavit. The Confession Affidavit was a separate agreement that Advantage require I sign and Advantage has never submitted an affidavit of legal services or other evidence establishing that it actually incurred more than \$77,000 in legal fees that might be subject to reimbursement under the Agreement.

75. Advantage should not be able to use its alleged rights under the Agreement and the guise of the UCC to enforce the Judgment. I understand that New York law offers some protection to judgment debtors. By and large, it limits enforcement of judgments to the territorial boundaries of the State of New York and, even then, requires that additional procedures be taken to seize and turn over property located within New York. Nextek is located in Detroit, Michigan. Advantage should not be permitted to avoid these limitations and procedural requirements to execute on the Judgment in another state by the mere expediency of a letter invoking the UCC.

I. The Need for Emergency Relief.

76. Unless the UCC Lien Notices are quashed and Advantage's judgment enforcement actions abated, Independence LED will not survive. Sales and revenue in 2018 have dropped significantly from historical norms, and while the future looks bright, the company simply cannot weather a further disruption of its cash flow. We have already exhausted every avenue to repay Advantage more than \$240,000 in the past 10 months – more than double what it would have been entitled had it adhered to the terms of the Agreement and collected just 15% of our actual receipts in 2018 ($\$120,000 \times 15\% = \$120,000$).

77. As a result of the UCC Lien Notice, Nextek is restricted from making a \$15,000 payment that is due to us before the end of the year. These funds are desperately needed to pay employees, insurance, rent and to purchase inventory to fulfill other orders.

78. We have already deferred payment of other essential operating expenses to make the onerous payments under the fraudulently obtained Forbearance Agreement. Among other things, we are two months past due on rent totaling nearly \$6,600, we are substantially past due on amounts owed to sheet metal, tube and other critical supply vendors, and by the end of the

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year, we must come current on past due workers compensation and health care premiums totaling approximately \$8,000. If we do not come current on these payments, we will be evicted, existing orders will not be fulfilled, we will be forced to reimburse deposits, and employees will likely quit because we cannot continue to provide them with even the most basic employment benefits.

79. Many of our key employees have already accepted temporary compensation reductions in 2018 and we have cut other operating expenses to the bone. We desperately need payments from our customers and cannot withstand even a minor disruption to our cash flow such as the withholding of the \$15,000 payment by Nextek.

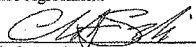
80. Further, Advantage did not copy us (or our recently retained counsel) on the UCC Lien Notice it sent to Nextek or any other customer. Other customers owe us significantly more than Nextek for deposits and finished goods, such that by the end of the year, we will likely have sufficient funds to pay to the balance of \$58,262.78 that is outstanding under the Agreement, as well as come current on the most critical of our past due operating expenses. However, if unbeknownst to us, Advantage has also frozen funds due from these clients, we will simply not have the funds to repay them or meet our other operating expenses and we will be forced to close.

81. Advantage should not be permitted to drive our company into the ground to enforce a Judgment that was entered without authority and procured by fraud.

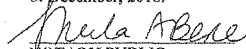
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WHEREFORE, for the reasons set forth herein and the accompanying memorandum of law, it is respectfully submitted that the Judgment (including as amended) be vacated, Advantage's enforcement devices quashed and Advantage be ordered to pay restitution in the amount (\$175,640) it extorted from us under the Forbearance Agreement.

 12/17/18
Charlie Szoradi

Sworn to before this 17th day
of December, 2018.


NOTARY PUBLIC

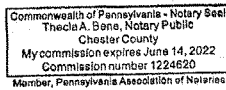


Exhibit A

EXHIBIT 49

Date: July 12, 2017

Re: Purchased of Accounts Receivable from CR Stelling Insurance Agency
Our Client: Complete Business Solutions Group, Inc.

NOTICE OF PURCHASED OF ACCOUNTS RECEIVABLE

*** We now own Your insurance carrier and If you choose to not pay your account will be dropped ***

Please be advised that all present and future accounts receivables of CR Stelling Insurance Agency, up to the amount of \$588,496.31 were purchased by COMPLETE BUSINESS SOLUTIONS GROUP, INC. ("CBSG") and accordingly, all payments for CR STELLING INSURANCE AGENCY, now or in the future, should be made directly to CBSC, and not to CR STELLING INSURANCE AGENCY or any other entity. CBSC's security interest has been duly recorded by its filing under Article 9 of the Uniform Commercial Code. All payments, up to the amount of \$588,496.31 should now be made payable to Complete Business Solutions Group, Inc. and remitted as follows:

PAYMENTS VIA MAIL OR OVERNIGHT DELIVERY:	ELECTRONIC PAYMENTS (WIRE OR ACH)
Complete Business Solutions Group, Inc. Accounts Receivable Department	Account Name: Complete Business Solutions Group, Inc.
141 N. 2 nd Street	TD Bank Acct.: [REDACTED]
Philadelphia, PA 19106	TD Routing No: [REDACTED]

Payment to CR Stelling Insurance Agency or any other entity will not discharge your obligations herein.

We thank you in advance for your cooperation.

Very truly yours,

Rainer Lloyd Collections for
Complete Business Solutions Group, Inc.

Written Testimony of
Benjamin R. Picker, Esq.
McCausland Keen + Buckman*
Devon, Pennsylvania

***“Crushed by Confessions of Judgement:
The Small Business Story”***

U.S. House of Representatives
Small Business Committee

June 26, 2019

*The opinions expressed herein are mine alone and do not necessarily represent the position of McCausland Keen + Buckman.

Chairwoman Velázquez, Ranking Member Chabot, and members of the House Small Business Committee, thank you for the opportunity to be here today as an invited guest of the Committee to discuss the history, law, uses, and important due process and fairness considerations relating to confessions of judgment.

A confession of judgment clause, also known as a warrant of attorney or cognovit provision, is a contractual provision permitting the plaintiff to take a judgment against a purportedly defaulting defendant without prior notice and before commencement of a lawsuit, thereby skipping the entire normal litigation process. The concept of confession of judgment dates back to perhaps the 13th Century. Howard H. Hoekje, *Confession of Judgment Under a Warrant of Attorney*, Akron Law Review (August 2015).

During my nearly fifteen years of practicing law, a large part of which has been litigating business disputes, I have both utilized and defended against confessed judgments. When asked if I like confession of judgment my canned response is usually, "It depends on who is using it, me or the other guy." That is because it is a very powerful tool that can be abused in the wrong hands. However, when used in appropriate circumstances, it is often a far less expensive way to reach the same result that would usually be reached after years of costly and needless litigation.

In my home state, the Commonwealth of Pennsylvania, confessions of judgment are permitted, but only in connection with commercial transactions. They are prohibited in consumer contracts, such as residential leases and consumer financing transactions. In most states, confession of judgment is generally prohibited.

It should be noted that through its Credit Practices Rule, which was promulgated in 1985, the Federal Trade Commission outlawed the use of confession of judgment in consumer credit transactions. The primary reasons for the Credit Practices Rule were: (1) consumers often suffer substantial economic and emotional injury from the use of confession of judgment in consumer credit transactions; (2) consumer credit contracts are often contracts of adhesion where individual consumers have little or no negotiating power; (3) consumers did not understand the provisions; and (4) default usually occurred because of issues beyond a consumer's control, such as unemployment or illness.

The Pennsylvania Supreme Court has described confession of judgment as “perhaps the most powerful and drastic document known to civil law.” *Cutler Corp. v. Latshaw*, 374 Pa. 1, 97 A.2d 234 (1953). The Court explained that “[t]he signing of a warrant of attorney is equivalent to a warrior of old entering a combat by discarding his shield and breaking his sword.” Therefore, in Pennsylvania “the law jealously insists on proof that this helplessness and impoverishment was voluntarily accepted and consciously assumed.”

As a result, states that permit confession of judgment, including Pennsylvania, require that the provision be placed conspicuously within the contract, that certain formalities be strictly followed, and that there be a way for the defendant to challenge the judgment.

A warrant of attorney that is bolded or capitalized will ordinarily be sufficiently conspicuous. The Pennsylvania Supreme Court has compared a non-conspicuous confession of judgment clause to actions of the Roman tyrant Caligula, who was said to have had “the laws inscribed upon pillars so high that the people could not read them.” *Cutler*, 374 Pa. at 6.

Regarding formalities, for example, confessions of judgment in Pennsylvania must be accompanied by a complaint describing, paragraph by paragraph, the factual basis for the judgment, and a copy of the instrument or contract permitting the confession of judgment must be attached. In addition, an affidavit must be included attesting to the fact that the defendant has income of more than \$10,000. The confessed judgment is filed subject to the misdemeanor penalty relating to the criminal offense of unsworn falsification to authorities.

In some Pennsylvania counties, including my home county of Montgomery County, the court clerk, known as the Prothonotary, has its legal counsel review all confession of judgment filings before they are accepted to ensure that they comport with all legal requirements. This can serve to protect both the plaintiff and Prothonotary from lawsuits.

The confession of judgment procedure in Pennsylvania also comports with the constitutional guarantee of due process. It requires knowing and voluntary relinquishment of pre-deprivation process and provides a procedure for challenging the confessed judgment. In Pennsylvania, a confessed judgment can be challenged by filing a petition with the court within thirty days of receiving notice of the judgment. It can be stricken where there is a clear defect on the face of the judgment

papers. Moreover, judgment can be opened where the defendant shows that it has a meritorious defense.

As I mentioned earlier, confession of judgment can be abused in the wrong hands. It appears that sometimes, small business owners do not read or negotiate contracts before signing them. Sometimes, small businesses do not have the resources to hire an attorney to litigate such matters. And sometimes, the most unscrupulous, including some of the companies mentioned in the series of Bloomberg articles, provide small business financing with the hope and expectation from the very time the loan documents are signed that the loan will never be repaid, and leveraging that as a way to take the borrower's assets as part of the lender's business model.

There are some common sense ways that Congress could act to protect small business borrowers against unscrupulous lenders while protecting the interests of lenders who act appropriately.

First, it is my opinion that any legislative action should be limited to small business loans. It should not be expanded to include any and all confessions of judgment, such as those ordinarily contained in commercial leases. Leases are not loans. Furthermore, I am not aware of any evidence that commercial landlords are abusing confessions of judgment. In any such legislation, the term "small business" should be clearly defined (whether by number of employees or annual revenue, or both), because larger businesses tend to be more sophisticated and often times employ attorneys or have outside attorneys on retainer who can regularly review contracts and protect their interests.

Second, any such legislation should require that the confession of judgment provision be capitalized and bolded, and that a plain language disclosure be placed on the first page of the contract and immediately before the signature block of the contract. The plain language disclosure should, at a minimum, inform the borrower that the confession of judgment provision permits the entry of a civil judgment upon default and with limited right to contest it, and that the borrower has the right to consult with an attorney before signing the contract. This requirement will help ensure that the borrower is aware of the provision, and has a basic understanding of its import, before signing the contract.

Finally, any such legislation should require that the confessed judgment be filed only in the state where the borrower is location. The small business loan contracts often have consent to jurisdiction provisions that allow the lender to confess judgment or file suit in states that have no connection to the borrower. This will protect small businesses from having to litigate in states that may be across the country from their business location and it will alleviate the burden on certain court systems, like those in New York and Philadelphia, which have been magnets for such judgment filings. Of course, this requirement will serve to prohibit the use of confessions of judgment in instances where the borrower is located in a state that prohibits confession of judgment. However, I do not know whether this will result in lenders refusing to lend money to small businesses located in states where confession of judgment is prohibited, or whether lenders will simply omit confession of judgment clauses from contracts with small businesses located in such states.

Thank you again for giving me the opportunity to speak here today. I would be happy to take any questions that you may have.

Written testimony of

Anne Fleming
Professor of Law
Georgetown University Law Center

Before the United States House of Representatives
Committee on Small Business
“Crushed by Confessions of Judgement: The Small Business Story”

Submitted July 8, 2019

Witness Background Statement

Anne Fleming is a Professor of Law at Georgetown University Law Center, where she teaches courses on contracts, bankruptcy, secured transactions, and consumer finance. Professor Fleming's research examines the relationship between law and business over time, with a focus on the financial services industry and its regulation.

She is the author of *City of Debtors: A Century of Fringe Finance* (Harvard Univ. Press, 2018), which explores the growth and regulation of small-dollar lending institutions in the United States over the twentieth century. In 2019, *City of Debtors* won the Ralph Gomory book prize from the Business History Conference and the best book award from the American College of Consumer Financial Services Lawyers.

Professor Fleming's other scholarship has examined the history of "truth-in-lending" laws, the intersection of legal history and economic history, and the role of the doctrine of unconscionability in protecting poor consumers. The American Society for Legal History has recognized her work with the Kathryn T. Preyer Scholars Award and a William Nelson Cromwell Foundation Fellowship. She has also received the K. Austin Kerr prize and the Herman E. Krooss dissertation prize from the Business History Conference.

Prior to entering academia, Professor Fleming practiced law as a staff attorney for South Brooklyn Legal Services, representing low-income homeowners facing foreclosure. She also served as a law clerk to the Honorable Marjorie O. Rendell of the U.S. Court of Appeals for the Third Circuit and the Honorable Miriam Goldman Cedarbaum of the U.S. District Court for the Southern District of New York.

Professor Fleming received her J.D., *magna cum laude*, from Harvard Law School. She also holds a Ph.D. in History from the University of Pennsylvania and a B.A. from Yale University. Prior to joining the Georgetown faculty, she taught at Harvard Law School as a Climenko Fellow and Lecturer on Law.

Professor Fleming has not received any federal grants or any compensation in connection with her testimony, and she is not testifying on behalf of any organization. The views expressed in her testimony are solely her own.

Chairwoman Velázquez, Ranking Member Chabot, and Members of the Committee:

Thank you for holding a hearing on the impact of confessions of judgment on small businesses, and for inviting me to submit written testimony.

A confession of judgment is an incredibly powerful debt collection tool. The debtor signs away the right to oppose the creditor's claim for damages and to assert otherwise-valid defenses in court. With the aid of a confession, the creditor can then obtain a money judgment quickly and at low cost after declaring a default, before proceeding to seize the debtor's property. It is no wonder that some creditors have required small businesses to execute a confession of judgment as a condition of receiving a loan.

More than thirty years ago, the Federal Trade Commission (FTC) found creditors' use of confessions of judgment in consumer lending to be an unfair practice. Accordingly, since 1985, the FTC has banned the use of confessions in connection with consumer loans under its Credit Practices Rule.¹

Furthermore, even before the FTC rulemaking, a number of states banned the use of confessions for all or some subset of consumer loans, based on similar concerns. New York, for example, banned the use of confessions in connection with small-sum loans in the 1930s and for all retail installment sales contracts in the 1950s.² But the "Full Faith and Credit" Clause of the U.S. Constitution requires states such as New York to enforce judgments validly obtained in other states, including judgments obtained by confession.³ Thus, New York and other states could only go so far to protect their residents from confessions of judgment. Federal action was necessary.

Constitutional constraints have likewise hampered state-level efforts to regulate the use of confessions in commercial transactions.⁴ Although some states have banned the use of confessions entirely, these bans are ineffective because lenders can still enforce judgments by confession obtained in states that allow them. Accordingly, in the absence of action by all fifty states, no state can fully protect its small business owners from confessions of judgment.

In the 1980s, the FTC decided to ban confessions for consumer loans based on several findings. First, it found that consumers suffered "substantial economic or monetary injury" from creditors' use of confessions.⁵ It also found that consumers could not reasonably avoid confessions or the "harsh consequences" that flowed from their use. The FTC then acknowledged that banning confessions could increase creditor costs, which could then be passed on to borrowers in the

¹ FTC Credit Practices Rule, 49 Fed. Reg. 7740 (1984).

² ANNE FLEMING, *CITY OF DEBTORS: A CENTURY OF FRINGE FINANCE* 79, 168 (2018).

³ Article IV of the U.S. Constitution states that "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State."

⁴ For example, see *C.F. Trust v. Peterson*, 6 Mass. L. Rep. 505 (1997) (finding that the constitutional "principles of full faith and credit mandate" state enforcement of a confessed judgment if valid where rendered, even if confessions are "repugnant" to the state's "own statutes").

⁵ FTC Credit Practices Rule, 49 Fed. Reg. at 7740.

form of higher interest rates, reduced credit availability, or other restrictions on loan terms. But, after weighing the costs and benefits, the FTC ultimately concluded that the overall costs to consumers were greater than the benefits derived from confessions. Based on these findings, the FTC banned the use of confessions in consumer lending.

Federal law now draws a bright line between loans to consumers and to businesses when regulating confessions of judgment. It affords significant protection to consumers and almost none to businesses. Yet, the concerns that motivated the FTC ban on confessions for consumers also arise when the borrowers are owners of small businesses – like the neighborhood pizzeria, bodega, auto repair shop, or florist. Small business borrowers also suffer substantial injuries from confessions, which they cannot reasonably avoid.

Substantial harm to small business borrowers

Like consumers, small businesses and their employees may also suffer substantial economic injury from creditors' use of confessions of judgment. The business can lose access to the funds in its bank account without advance warning, after its creditor obtains a judgment and issues notice to the debtor's bank. If the business is locked out of its bank accounts, it then cannot meet payroll for its workers, who have their own bills to cover. True, the bank account belongs to the business. But the seizure directly impacts small business employees and their households.

Furthermore, individual small business owners also stand to lose their *personal* property without warning as a result of signing a confession for a business loan. A 2017 Federal Reserve survey of small business employers found that the majority (55%) personally guaranteed their business loans and a third (33%) pledged their personal assets as collateral.⁶ If small business owners sign a personal guarantee of the business loan and a confession of judgment, the lender can then seize the individual owners' personal bank accounts and other property, along with the business's assets, upon declaring a default. The harm caused by such a deprivation of household property is no less significant merely because the loan proceeds were used to fund a small business venture rather than to buy household goods or services.

The FTC banned confessions for consumer loans based in part on evidence of the harms inflicted on consumers by sudden deprivations of their household property.⁷ These same harms arise out of the use of confessions in the small business context.

Difficulty of avoiding harm for small business debtors

⁶ FEDERAL RESERVE, SMALL BUSINESS CREDIT SURVEY: REPORT ON EMPLOYER FIRMS 5 (2017), available at <https://www.fedsmallbusiness.org/medialibrary/fedsmallbusiness/files/2018/sbcs-employer-firms-report.pdf>. Non-employer small businesses likewise reported frequent use of personal guarantees (39%) and pledging of personal assets (26%) to secure their business debts. FEDERAL RESERVE, SMALL BUSINESS CREDIT SURVEY: REPORT ON NONEMPLOYER FIRMS 8 (2018), available at <https://www.fedsmallbusiness.org/medialibrary/fedsmallbusiness/files/2018/sbcs-nonemployer-firms-report.pdf>.

⁷ FTC Credit Practices Rule, 49 Fed. Reg. at 7749.

Nor are most small business owners better equipped than most consumers to protect themselves from these sudden deprivations of property. Many small business owners are no more legally sophisticated than the average consumer and no more likely to have an attorney review a loan contract before signing it. In terms of legal sophistication, many small business owners are more akin to consumers than to big businesses.

When the FTC studied confessions of judgment for consumer loans, it found that many consumers did not understand that they were signing a confession or that a confession constituted a waiver of their right to contest the creditor's claim in court.⁸ Because consumers possessed a limited understanding of confessions of judgment, they also did not negotiate over the terms or shop around for loans without confessions.

Evidence suggests that small business owners suffer from similar deficits of understanding. For example, Doug and Janelle Duncan, the owners of a Florida real estate agency, both signed confessions as a condition of receiving a merchant cash advance – without consulting an attorney.⁹ As reported by *Bloomberg News*, the borrowers paid a steep price: the loss of their business and their retirement savings. Most states do not require a borrower to receive legal advice from an attorney before entering into an enforceable confession of judgment.¹⁰ In nearly all states that allow confessions, small business owners can sign away their right to contest a creditor's collection suit without fully understanding the risk assumed.

To be sure, some small business owners do have legal training or some greater degree of legal sophistication, just as some consumers do. Legal sophistication exists along a spectrum. But a borrower's reason for taking out a loan – whether to fund small business operations or to pay for household goods and services – does not determine where he or she falls along this spectrum. Over the course of their lives, small business owners will likely incur both business and consumer debts and will grant creditors the right to pursue their personal property in satisfaction of both types of debt. These individuals acquire no greater legal sophistication when they are borrowing as small business owners, rather than as individual consumers.

Yet, federal law makes a strong distinction between these two contexts. It offers no protection from confessions of judgment to an individual who borrows to fund a business. But it offers complete protection to the same individual when he or she borrows to fund consumption.

Minimal impact on access to and cost of small business credit

The strongest argument in favor of allowing confessions of judgment is that they lower lenders' costs to collect defaulted loans, and thereby lower the cost of credit and improve access to capital for small businesses. If confessions are banned, creditors might start charging small business

⁸ FTC Credit Practices Rule, 49 Fed. Reg. at 7749, 7753.

⁹ Zachary Mider and Zeke Faux, *'I Hereby Confess Judgment'*, BLOOMBERG NEWS, Nov. 20, 2018.

¹⁰ California has this requirement. Cal. Code Civ. Proc. 1132.

borrowers higher interest rates or refuse to lend to some entirely, in order to compensate for their higher collection costs.

But this risk is mitigated by the availability of other security devices. If Congress were to ban the use of confessions for small business loans, lenders would still be able to require borrowers to grant a security interest in their assets, including accounts receivable and deposit accounts. And lenders would also still be able to go to court to get a money judgment against debtors who default. And lenders could still require debtors to agree to pay the creditor's court costs and attorneys' fees incurred in any collection actions. A ban on confessions of judgment would deprive small business lenders of one remedial tool, but would not empty their whole arsenal.

Consumer lenders and borrowers have managed to get along without confessions of judgment for more than thirty years. Small business lenders and borrowers could do the same.

Conclusion

Large businesses and consumers rest on opposite ends of a spectrum, in terms of their legal sophistication and the nature of the harms they suffer when deprived of access to their property without warning. Small businesses fall somewhere between these two poles. But many small business owners are more akin to consumers than large enterprises – both in their legal sophistication and their vulnerability to loss.

Yet, federal law governing confessions of judgment currently lumps together all business debtors, despite the wide variety of enterprises that fall within the business category and their differences from one another.

Applying the “business” label to a loan does not make the individual borrower any more sophisticated or a sudden loss of property any less painful. As recent investigations have shown, plumbers, cab drivers, and other small business owners are just as vulnerable as consumers to losing everything that they have worked to achieve.¹¹ These losses will continue to pile up in the absence of legal constraints on the use of confessions in small business lending.

Banning confessions of judgment for small business loans would bring the law into closer conformity with the messy reality of debtor-creditor relationships – a reality that is not well captured by a bright-line distinction between consumer debtors and business debtors. And it would ensure that similar groups of borrowers – consumers and small business owners – receive similar legal protections against similar harms.

¹¹ Zachary Mider and Zeke Faux, ‘*I Hereby Confess Judgment*’, BLOOMBERG NEWS, Nov. 20, 2018; Brian M. Rosenthal, ‘*They Were Conned*’: How Reckless Loans Devastated a Generation of Taxi Drivers, NEW YORK TIMES, May 19, 2019.