

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

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GENCARELLI PIZZERIA & RESTAURANT, INC & SALVATORE GENCARELLI, THE TRUTH 501, LLC. <p style="text-align: center;">Plaintiffs,</p> v. ALTCESS FUNDING MANAGEMENT, LLC,. a Delaware Limited Liability Company, AFFITNITY CAPITAL FUNDING, LLC., a Virginia Limited Liability Company, ADVANTAGE PLATFORM SERVICES INC. a New York Corporation d/b/a ADVANTAGE CAPITAL FUNDING. <p style="text-align: center;">Defendants.</p>	Docket No.: <p style="text-align: center;">COMPLAINT AND JURY DEMAND</p>

Plaintiffs, Salvatore Gencarelli in his individual capacity, the Truth 501, LLC, a New Jersey Limited Liability Company and Gencarelli Pizzeria & Restaurant, Inc., a New Jersey Corporation, (**“Gencarelli”**) (**collectively, the “plaintiffs”**) by and through their undersigned counsel, file this complaint (**the “Complaint”**) against the defendants Altcess Funding Management LLC, Affinity Capital Funding LLC & Advantage Platform Services Inc., d/b/a Advantage Capital Funding (**collectively, the “defendants”**) and allege as follow:

THE PARTIES

1. Gencarelli Pizzeria & Restaurant Inc. is corporation authorized to conduct business in the state of New Jersey that operates a restaurant located at 501 Bloomfield avenue, Newark, NJ 07107.

2. Salvatore Gencarelli is the principal owner of Gencarelli Pizzeria & Restaurant Inc. and a resident of the State of New Jersey.

3. The Truth 501, LLC (“**The Truth**”) is a New Jersey Limited Liability Company.

4. Altcess Funding Management (“**Altcess Defendant**”) is a private investment company with a principal place of business at 1679 S Dupont Hwy Street 100 Dover, Delaware 19901 that conducts business in the state of New Jersey.

5. Affinity Capital Funding (“**Affinity Defendant**”) is a private investment company with a principal place of business at 1100 Wilson Rd, Floor 10, Arlington, Virginia 22209 that conducts business in the state of New Jersey.

6. Advantage Platform Services Inc. d/b/a Advantage Capital Funding (“**Advantage Capital Defendant**”) is a New York Corporation located at 104 East 25th Street, 10th Floor, New York, New York 10010.

JURISDICTION AND VENUE

7. This Court has original jurisdiction over this action under 28 U.S.C 1332, in that the amount in controversy exceeds seventy-five thousand dollars (\$75,000) and Plaintiffs are citizens of a state which is different from the state where Defendants are incorporated and have their principal place of business.

8. Venue is proper in this district, because the incident occurred in Newark, New Jersey in the County of Essex, which falls within the jurisdiction of this court. All evidence and the large majority of witnesses would be located in New Jersey.

BACKGROUND

9. This matter arises from two usurious interest rate loans obtained by the Plaintiffs that were brokered, originated and/or serviced by the Defendants.

10. Gencarelli Pizzeria & Restaurant Inc. is the borrower in both relevant loans and Salvatore Gencarelli acted as a guarantor on both of the relevant loans. The Truth 501 LLC is also a guarantor and an additional seller on both relevant loans.

11. The first loan ("**Affinity Capital Loan**") was brokered, originated and/ or serviced by the Affinity Defendant as the Lead lender and the Altcess Defendant as the Collateral Agent, and attempts to circumvent New Jersey usury laws by using a governing law provision which states that all obligations of the parties shall be governed in accordance with the internal laws of the Commonwealth of Virginia. However, the Affinity Capital Loan was made to the Plaintiffs Gencarelli Pizzeria, a New Jersey Corporation, The Truth, a New Jersey Limited Liability Company and to Plaintiff Salvatore Gencarelli, who is a citizen of New Jersey, the contract was executed in New Jersey, the proceeds of the loan were received in New Jersey, Plaintiffs received all the information about the loan in New Jersey and the guarantors are residents of New Jersey.

12. Since the Commonwealth of Virginia has no substantial relationship to the transaction and application of the Commonwealth of Virginia's usury law in this case would be contrary to fundamental policy of the state of New Jersey, which has a materially greater interest in the matter, the applicable state law should be that of the state of New Jersey.

13. In the present case, the Affinity Capital Loan includes an annual interest rate of over 50% per annum making it criminally usurious under N.J. Stat. Ann. § 2C:21-19.

14. The second loan (“**Advantage Capital Loan**”), was brokered, originated and/or serviced by the Advantage Capital Defendant and is a loan with a usurious interest rate disguised as a Merchant Cash Advance (“MCA”). Merchant Cash Advances avoid characterization as loans to refrain from being subjected to state usury laws. MCA’s are typically non-recourse “purchases” of the Merchant’s future cash receipts or collections on receivables. MCA’s can escape state usury laws primarily because the “purchaser” of the future receivables has no recourse in the event of non-payment by the “seller.”

15. While many factors can be taken into account to determine if the MCA is actually a usurious loan, the most relevant factor to the determination is whether the buyer of the future receivables has some form of recourse against the seller in the event of non-payment.

16. Additionally, personal guarantees of MCA’s will not make it a usurious loan as long as the personal guarantee mirrors the obligations of the seller. However, in this case, the personal guarantee is so broad and over encompassing that it creates an additional obligation and eliminates any risk of non-payment to the buyer.

17. Given that the Advantage Capital Loan provides the Advantage Capital Defendant a form of recourse in the event that the merchant defaults, the Advantage Capital Loan is actually a usurious loan and not a Purchase of Future receivables as it claims to be.

18. The Advantage Capital Loan has a governing law provision which states that the applicable law will be that of the state of New York. The criminal usury statutes found in New York Penal Law §§190.40 and 190.42 forbid interest rates above 25% per annum.

19. Given that the loan was made to a New Jersey Corporation, which conducts business

in the state of New Jersey, the agreement was entered into in New Jersey, the Plaintiffs received the proceeds from the loan in New Jersey, received all the information about the loan in New Jersey and had personal guarantors who are residents of New Jersey, New Jersey law should apply. Consequently, the Advantage Capital Loan is in violation of New Jersey's criminal usury statute N.J. Stat. Ann. § 2C:21-19 since the interest rate exceeds 50% per annum.

20. The Advantage Capital Loan has an interest rate of 117% per annum and therefore is in violation of New York state usury laws as well as New Jersey state usury laws.

THE AGREEMENTS

THE AFFINITY CAPITAL LOAN

21. On or about December 19, 2019, the Debtor agreed to borrow a principal of \$353,000.00 and \$182,028.00 in interest from the Affinity Defendant and the Altcess Defendant.

22. Pursuant to the Affinity Capital Loan Agreement the Plaintiffs were to repay the Defendants a total of \$535,028.00 in accordance with an attached payment schedule requiring an aggregate of \$2,057.80 each business day for 260 days, creating a usurious interest rate of 51.5%.

23. Section 11.2 of the Affinity Capital Loan states that the all the rights and obligations of the parties shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia. Section 11.2 (in relevant part):

THIS AGREEMENT, THE OTHER LOAN DOCUMENTS (EXCLUDING THOSE LOAN DOCUMENTS THAT BY THEIR OWN TERMS ARE EXPRESSLY GOVERNED BY THE LAWS OF ANOTHER JURISDICTION) AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER AND

THEREUNDER SHALL IN ALL RESPECTS BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE COMMONWEALTH OF VIRGINIA (WITHOUT REGARD TO THE CONFLICT OF LAWS PRINCIPLES THAT WOULD RESULT IN THE APPLICATION OF ANY LAWS OTHER THAN THE LAWS OF THE COMMONWEALTH OF VIRGINIA), INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, REGARDLESS OF THE LOCATION OF THE COLLATERAL, PROVIDED, HOWEVER, THAT IF THE LAWS OF ANY JURISDICTION OTHER THAN VIRGINIA SHALL GOVERN IN REGARD TO THE VALIDITY, PERFECTION OR EFFECT OF PERFECTION OF ANY LIEN OR IN REGARD TO PROCEDURAL MATTERS AFFECTING ENFORCEMENT OF ANY LIENS IN COLLATERAL, SUCH LAWS OF SUCH OTHER JURISDICTIONS SHALL CONTINUE TO APPLY TO THAT EXTENT.

24. However, application of Virginia Law would be contrary to New Jersey's fundamental interests in preventing usurious and unlicensed lending. While Virginia does not allow certain business entities, such as corporations, to use usury as a defense, New Jersey considers interest rates of over 50% per annum on loans to a corporation a criminal offense.

25. Additionally, New Jersey has a materially greater interest than Virginia in having its laws applied in this instance since the agreement was signed in New Jersey, by a New Jersey corporation, doing business in New Jersey and the proceeds of the loan were received in New Jersey.

26. Given that the governing law provision should not be enforced, and New Jersey law should be applied, the Affinity Capital Loan would be in violation of New Jersey Criminal usury statute N.J. Stat. Ann. § 2C:21-19.

27. New Jersey's criminal usury statute N.J. Stat. Ann. § 2C:21-19 (in relevant part):

For the purposes of this section and notwithstanding any law of this State which permits as a maximum interest rate a rate or rates agreed to by the parties of the transaction, any loan or forbearance with an interest rate which exceeds 30% per

annum shall not be a rate authorized or permitted by law, except if the loan or forbearance is made to a corporation, limited liability company or limited liability partnership any rate not in excess of 50% per annum shall be a rate authorized or permitted by law.

28. The Affinity Capital Loan charged the Plaintiffs a criminally usurious interest rate of approximately 51.5% in violation of New Jersey's criminal usury statute N.J. Stat. Ann. § 2C:21-19.

THE ADVANTAGE CAPITAL LOAN

29. The Advantage Capital loan was originated by the Advantage Capital Fund Defendant. This loan was classified by the Defendant as a Merchant Cash Advance and became effective on October 30, 2019. Pursuant to the Advantage Capital loan agreement the Plaintiffs were loaned \$188,500.00 for which the principal was \$130,000.00 and \$58,500.00 in interest to be repaid over 140 days through any payments made to the merchant in connection with the relevant business by cash, check, ACH or other electronic transfer. Pursuant to the provisions, the Advantage Capital loan is to be governed by the laws of the state of New York.

30. Additionally, the Plaintiffs were also required to pay a \$5,000.00 origination fee. Although identified as a fee the origination fee, is in substance, an additional interest under the loan.

31. Considering the 140-day term of the Advantage Capital loan, the effective interest rate per annum is approximately 117%.

32. MCA's are allowed to escape state usury laws because the purchaser of the future receivables will bear the risk of non-payment if the seller of the receivables defaults or ceases generating the purchased receivables.

33. However, while the Advantage Capital Defendant denominates the Advantage Capital

Loan as an MCA, it is in every conceivable way, a loan in which the Plaintiff borrowed \$130,000.00 at the usurious interest rate of 117% per annum.

34. For an MCA to be valid it must provide the buyer no recourse in the case that the merchant defaults, however in this instance, the Advantage Capital loan includes two additional guarantees in that will be enforced in the event of default by the merchant.

35. The first guarantee is a Personal Guarantee of Performance signed by the Plaintiff's principal owner, Salvatore G. Gencarelli. The personal guarantee is so overly broad as to create an additional obligation in connection with the agreement and is inconsistent with the transfer of ownership of the Future Receipts. The personal guarantee eliminates the Defendant's risk of non-payment and makes this a loan with a usurious interest rate rather than a Merchant Cash Advance. Stated otherwise, Gencarelli is individually responsible even if the Defendant has no recourse against the Plaintiff companies under the non-recourse provisions of the MCA, specifically paragraph 4 of the agreement entitled **Sale of Future Receipts (THIS IS NOT A LOAN)**. The Personal Guarantee of Performance in relevant part provides:

Guarantor hereby irrevocably, absolutely and unconditionally guarantees to Buyer prompt and complete performance of all of Seller's obligations under the purchase agreement.

36. The Personal Guarantee of Performance purposely lacks specificity to imply that the guarantor must fulfill the obligations of the Plaintiff, providing the Defendant recourse in the event of non-payment which in turn makes this agreement a usurious loan.

37. Additionally, the second guarantee is an Additional Seller Addendum signed on

October 30, 2019 by and between the Advantage Capital Defendant and The Truth 501, LLC ("The Truth").

38. The Additional Seller Addendum states that each additional seller, in this case The Truth is fully bound by the same terms, conditions, warranties and covenants of the Purchase Agreement.

39. Section 2 of the Additional Seller Addendum states that the Buyer may file suit against, or otherwise seek to collect receipt of the amount sold from any seller.

40. The provisions included in the additional guarantees are intended to make the Plaintiffs believe that in the event of non-payment, the guarantors will be held liable for the purchased amount.

41. These additional guarantees clearly shift the risk of non-payment from the Defendant onto the Plaintiffs and the additional guarantors by providing the Defendant recourse, making the Advantage Capital loan a loan with a usurious interest rate rather than a Merchant Cash Advance.

42. The criminal usury statutes found in New York Penal Law §§190.40 and 190.42 forbid interest rates above 25% per annum.

43. The Advantage Capital Loan is clearly in violation of New York's criminal usury statute since they carry an interest rate of approximately 117% per annum.

44. In the alternative, given that the loan was made to a New Jersey Corporation, which conducts business in the state of New Jersey, the agreement was entered into in New Jersey, the Plaintiffs received the proceeds from the loan in New Jersey, received all the information about the loan in New Jersey and had guarantors who are residents of New Jersey, New Jersey law should apply. Consequently, the Advantage Capital Loan is in violation of New Jersey's criminal usury statute N.J. Stat. Ann. § 2C:21-19 since the interest rate exceeds 50% per annum.

45. The Advantage Capital Loan has an interest rate of 117% per annum and therefore is in violation of New York and New Jersey state usury laws.

COUNT ONE

(Usury- Affinity Capital Loan)

46. Plaintiffs repeat and re-allege all prior paragraphs as if fully set forth herein.

47. As alleged above, Plaintiffs paid Altcess Defendant and Affinity Defendant interest in excess of the maximum permissible rate authorized under N.J. Stat. Ann. § 2C:21–19.

48. The Affinity Capital Loan contains a governing law provision stating that the applicable law will be that of the state of Virginia. Virginia Code section 6.2-308 prohibits corporations from asserting usury as a defense to pay an outstanding loan regardless of the interest rate per annum.

49. Under New Jersey law, a choice-of-law provision will be enforced unless it violates public policy. *Instructional Sys., Inc. v. Computer Curriculum Corp.*, 130 N.J. 324, 342 (1992). Furthermore, New Jersey courts have held that a chosen state’s law will apply unless: (a) the chosen state law has no relationship to the parties or the transaction and there is no other reasonable basis for the parties’ choice, or (b) application of the chosen state law would be contrary to a fundamental policy of a state which has a materially greater interest than the chosen state. *MacDonald v. CashCall, Inc.*, CV 16-2781, 2017 WL 1536427, at *8 (D.N.J. Apr. 28, 2017), *aff’d*, 883 F.3d 220 (3d Cir. 2018).

50. Here, the Plaintiff Gencarelli Pizzeria is a New Jersey Corporation, the loan agreement

was entered into in New Jersey, Plaintiffs received the proceeds of the loan in New Jersey and conduct the relevant business in New Jersey. All of these factors point to the fact that New Jersey has a materially greater interest than Virginia in having its laws applied.

51. Applying Virginia law would also be contrary to New Jersey's fundamental interest in preventing usurious lending. While Virginia allows corporations to take out loans with virtually any interest rate without allowing those corporations to use usury as a defense, New Jersey criminal usury statute classifies loans to corporations with interest rates above 50% per annum a crime of the second degree.

52. Due to the fact that New Jersey has greater interest in their law applying in the instant case, as well as that application of Virginia Law would be contrary to New Jersey's fundamental interest in preventing usurious lending, New Jersey usury law should apply to the Affinity Capital Loan.

53. In connection with the Affinity Capital Loan, the Defendants charged a criminally usurious interest rate under applicable New Jersey law, including New Jersey Statutes Annotated 2c:21-19(a), exceeding 50% per annum.

54. The Altcess and Affinity defendants willfully intended to enter into a criminally usurious transaction with the Plaintiffs through the Affinity Capital Loan.

55. The Altcess and Affinity defendants were unjustly enriched by receiving the transfers in connection with the criminally usurious loan.

56. As a matter of public policy, the Altcess and Affinity defendants should not be permitted to receive any amounts in connection with the criminally usurious loan.

WHEREFORE, the Plaintiffs respectfully request the entry of a judgment against the Altcess and Affinity defendants: (a) Declaring that the Affinity Capital Loan is a criminally

usurious loan and void under applicable state law and or as a matter of public policy; (b) avoidance and recovery of payments made by the Plaintiffs to the Defendants with respect to the usurious loans; (c) an award of damages based on the Defendant's conduct in connection with, and the usurious nature of, these loans pursuant to applicable state law; (d) voiding of the loan agreements and security associated with the loans; (e) compensatory damages; (f) punitive damages; (g) attorney fees and costs; and (h) any other relief this Court finds equitable and just.

COUNT TWO

(Usury- Advantage Capital Loan)

57. Plaintiffs repeat and re-allege all prior paragraphs as if fully set forth herein.

58. Pursuant to the Advantage Capital Loan documents, the Advantage Capital Loan is subject to the laws of the State of New York.

59. The Plaintiffs were absolutely required to repay the principal of the Advantage Capital Loan plus the unconscionable and usurious interest rate.

60. The Advantage Capital defendant did not purchase, or in any way assume the risk of nonpayment of the future receipts.

61. Although papered as a sale of future receipts, the Plaintiffs transaction with the Advantage Capital defendant was, in all material respects a loan.

62. The Advantage Capital Loan expressly and/or impliedly constitutes a loan transaction.

63. By virtue of the Personal Guarantee of Performance and the Additional Seller Addendum as well as other protections afforded to the Advantage Capital Defendant, the Defendant understood that the principal and the interest of the Advantage Capital loan was to be

repaid and there was no substantial risk of the Advantage Capital Defendant losing the entire amount of the monies loaned to the Plaintiffs.

64. In connection with the Advantage Capital Loan, the Advantage Capital defendant charged a usurious interest rate under applicable New York Penal Law §§190.40 and 190.42, exceeding 25% per annum.

65. In connection with the Advantage Capital Loan, the Advantage Capital defendant charged a criminally usurious interest rate under applicable New Jersey law, including New Jersey Statute annotated 2C:21-19(a), exceeding 50% per annum.

66. The Advantage Capital defendant willfully intended to enter into a usurious loan transaction with the Plaintiffs through the Advantage Capital loan.

67. The Advantage Capital defendant was unjustly enriched by receiving the transfers in connection with the criminally usurious Advantage Capital loan.

68. As a matter of equity and public policy, the Advantage Capital Defendant should not be permitted to receive any amounts in connection with the criminally usurious Advantage Capital loan.

WHEREFORE, The Plaintiffs respectfully request the entry of a judgment against the Advantage Capital defendant: (a) Declaring that the Advantage Capital Loan is a criminally usurious loan and void under applicable state law and or as a matter of public policy; (b) avoidance and recovery of payments made by the Plaintiffs to the Defendants with respect to the usurious loans; (c) an award of damages based on the Defendant's conduct in connection with, and the usurious nature of, these loans pursuant to applicable state law; (d) voiding of the loan agreements and security associated with the loans; (e) compensatory damages; (f) punitive damages; (g) attorney fees and costs; and (h) any other relief this Court finds equitable and just.

COUNT THREE

(Unconscionability- Affinity Capital Loan)

69. Plaintiffs repeat and re-allege all prior paragraphs as if fully set forth herein.

70. Plaintiffs entered into the Affinity Capital Loan with the Defendants due to inability to raise funds from traditional sources and while desperate for cash to fund operations.

71. The Plaintiffs entered into a loan agreement with the Altcess and Affinity Defendants out of necessity and with no other recourse.

72. There was overreaching or imposition resulting from the bargaining disparity between the parties, which led to the acceptance of the usurious loan terms.

73. The loan agreement was so patently unfair that no reasonable person not acting under compulsion or out of necessity would accept its terms.

74. The terms of the Affinity Capital Loan should not be enforced since the usurious interest rate is in violation of public policy.

75. As a direct and proximate cause of the knowingly false representations made by the Altcess and Affinity defendants on which the Plaintiffs reasonably relied, the Plaintiffs suffered damages in the form of unconscionable, exorbitant and criminally usurious fees and interest and otherwise.

WHEREFORE, the Plaintiffs respectfully request the entry of a judgment against the Altcess and Affinity defendants: (a) Declaring that the Affinity Capital Loan is a criminally usurious loan and void under applicable state law and or as a matter of public policy; (b) avoidance and recovery of payments made by the Plaintiffs to the Defendants with respect to the usurious loans; (c) an award of damages based on the Defendant's conduct in connection with, and the

usurious nature of, these loans pursuant to applicable state law; (d) voiding of the loan agreements and security associated with the loans; (e) compensatory damages; (f) punitive damages; (g) attorney fees and costs; and (h) any other relief this Court finds equitable and just.

COUNT FOUR

(Unconscionability- Advantage Capital Loan)

76. Plaintiffs repeat and re-allege all prior paragraphs as if fully set forth herein.

77. Plaintiffs entered into the Advantage Capital Loan with the Advantage Capital Defendant due to inability to raise funds from traditional sources and while desperate for cash to fund operations.

78. The Plaintiffs entered into the loan agreement with the Advantage Capital Defendant out of necessity and with no other recourse.

79. There was overreaching or imposition resulting from the bargaining disparity between the parties, which led to the acceptance of the usurious loan terms.

80. The loan agreement was so patently unfair that no reasonable person not acting under compulsion or out of necessity would accept its terms.

81. The terms of the Advantage Capital Loan should not be enforced since the usurious interest rates are in violation of public policy.

82. As a direct and proximate cause of the knowingly false representations made by the Advantage Capital Defendant on which the Plaintiffs reasonably relied, the Plaintiffs suffered damages in the form of unconscionable, exorbitant and criminally usurious fees and interest and otherwise.

WHEREFORE, the Plaintiffs respectfully request the entry of a judgment against the Advantage Capital defendant: (a) Declaring that the Affinity Capital Loan is a criminally usurious loan and void under applicable state law and or as a matter of public policy; (b) avoidance and recovery of payments made by the Plaintiffs to the Defendants with respect to the usurious loans; (c) an award of damages based on the Defendant's conduct in connection with, and the usurious nature of, these loans pursuant to applicable state law; (d) voiding of the loan agreements and security associated with the loans; (e) compensatory damages; (f) punitive damages; (g) attorney fees and costs; and (h) any other relief this Court finds equitable and just.

COUNT FIVE

(Breach of Contract- Affinity Capital Loan)

83. Plaintiffs repeat and re-allege all prior paragraphs as if fully set forth herein.

84. At all times mentioned herein, Plaintiffs performed and completed all conditions, covenants, and promises to be performed under the loan agreements.

85. Defendants Altcess and Affinity breached the Contract by failing to provide Plaintiffs a legitimate payoff amount after each loan repayment and after Plaintiffs requested a formal payoff

86. Plaintiffs have repeatedly requested that the Defendants provide current, accurate payoff amounts.

87. Defendants have not provided a legitimate payoff and refuse to credit the Plaintiffs for the payments that have been made.

88. Plaintiffs cannot get a valid payoff and that is impeding any payments on the outstanding balance.

89. As a direct and proximate result of Defendants' breach, Plaintiffs have suffered damages, including lost profits, and has and will incur attorneys' fees and costs in connection with the commencement and prosecution of this action.

WHEREFORE, the Plaintiffs respectfully request the entry of a judgment against the Altcess and Affinity defendants: (a) Declaring that the Affinity Capital Loan is a criminally usurious loan and void under applicable state law and or as a matter of public policy; (b) avoidance and recovery of payments made by the Plaintiffs to the Defendants with respect to the usurious loans; (c) an award of damages based on the Defendant's conduct in connection with, and the usurious nature of, these loans pursuant to applicable state law; (d) voiding of the loan agreements and security associated with the loans; (e) compensatory damages; (f) punitive damages; (g) attorney fees and costs; and (h) any other relief this Court finds equitable and just.

COUNT SIX

(Breach of Contract- Advantage Capital Loan)

90. Plaintiffs repeat and re-allege all prior paragraphs as if fully set forth herein.

91. At all times mentioned herein, Plaintiffs performed and completed all conditions, covenants, and promises to be performed under the Contracts.

92. Defendant Advantage Capital breached the Contract by failing to provide Plaintiffs a legitimate payoff amount after each loan repayment.

93. Plaintiffs have repeatedly requested that the Defendant provide current, accurate payoff amounts.

94. Defendant has not provided a legitimate payoff and refuses to credit the Plaintiffs for the payments that have been made.

95. Plaintiffs cannot get a valid payoff and that is impeding any payments on the outstanding balance.

96. Consequently, Defendant has filed a UCC-1 and has placed a lien on the property of the Plaintiffs further preventing the Plaintiffs from generating capital to continue with the business operations.

97. As a direct and proximate result of Defendant's breach, Plaintiffs have suffered damages, including lost profits, and has and will incur attorneys' fees and costs in connection with the commencement and prosecution of this action.

WHEREFORE, the Plaintiffs respectfully request the entry of a judgment against the Advantage Capital defendant: (a) Declaring that the Loan is a criminally usurious loan and void under applicable state law and or as a matter of public policy; (b) avoidance and recovery of payments made by the Plaintiffs to the Defendants with respect to the usurious loans; (c) an award of damages based on the Defendant's conduct in connection with, and the usurious nature of, these loans pursuant to applicable state law; (d) voiding of the loan agreements and security associated with the loans; (e) compensatory damages; (f) punitive damages; (g) attorney fees and costs; and (h) any other relief this Court finds equitable and just.

COUNT SEVEN

(Bad Faith/Breach of Implied Covenant of Good Faith and Fair Dealing)

98. Plaintiffs repeat and re-allege all prior paragraphs as if fully set forth herein.

99. Defendants Altcess, Affinity and Advantage Capital are held to an implied covenant of good faith and fair dealing concerning its duties and obligations under the terms of its loan agreements with the plaintiffs. However, Defendants have charged the Plaintiffs

criminally usurious and unconscionable interest rates and failed to provide the Plaintiffs legitimate payoff amounts.

100. Plaintiffs has repeatedly asked the Defendants for current payoff amounts; however, Defendants refuse to provide legitimate payoff amounts which has impeded further payment of outstanding loan amounts.

101. The defendants breached this covenant by its actions: (a) in failing to attempt to effectuate a prompt, fair, and equitable settlement of plaintiffs' claim; (b) by compelling the plaintiffs to institute litigation to recover amounts due under the loan agreements; (c) taking a bad faith position as to payoff amounts; (d) breaching its contractual obligations and duty of good faith and fair dealing to Plaintiff.

102. As a direct and proximate result of Defendants actions and inactions, the Plaintiffs have been damaged.

WHEREFORE, the Plaintiffs respectfully request the entry of a judgment against all named defendants: (a) Declaring that the loans are criminally usurious loan and void under applicable state law and or as a matter of public policy; (b) avoidance and recovery of payments made by the Plaintiffs to the Defendants with respect to the usurious loans; (c) an award of damages based on the Defendants' conduct in connection with, and the usurious nature of, these loans pursuant to applicable state law; (d) voiding of the loan agreements and security associated with the loans; (e) compensatory damages; (f) punitive damages; (g) attorney fees and costs; and (h) any other relief this Court finds equitable and just.

COUNT EIGHT

(Fraud)

103. Plaintiffs repeat and re-allege all prior paragraphs as if fully set forth herein.

104. Plaintiffs have made payments on both loan agreements with the defendants; however, Defendants refuse to credit the plaintiff in accordance with the payments made.

105. Plaintiffs have requested payoff amounts on the loans, but the Defendants have refused to provide legitimate payoff, impeding the Plaintiffs from continuing to make payments on the outstanding amounts.

106. The Plaintiffs, to their detriment, reasonably relied upon the knowingly false representations made by the Altcess, Affinity and Advantage Capital Defendants.

107. As a direct and proximate cause of the knowingly false representations made by the defendants on which the Plaintiffs reasonably relied, the Plaintiffs suffered damages in the form of unconscionable, exorbitant and criminally usurious fees and interest and otherwise.

WHEREFORE, the Plaintiffs respectfully request the entry of a judgment against all named defendants: (a) Declaring that the loans are criminally usurious loan and void under applicable state law and or as a matter of public policy; (b) avoidance and recovery of payments made by the Plaintiffs to the Defendants with respect to the usurious loans; (c) an award of damages based on the Defendants' conduct in connection with, and the usurious nature of, these loans pursuant to applicable state law; (d) voiding of the loan agreements and security associated with the loans; (e) compensatory damages; (f) punitive damages; (g) attorney fees and costs; and (h) any other relief this Court finds equitable and just.

COUNT NINE

(Fraud-Advantage Capital Loan)

108. Plaintiffs repeat and re-allege all prior paragraphs as if fully set forth herein.

109. The Advantage Capital Defendant Knowingly and falsely represented to the Plaintiffs that the Agreement for the Purchase and Sale of Future Receipts was a purchase of Future Receipts in an attempt to circumvent New York Usury laws.

110. The Advantage Capital Defendant knowingly and falsely represented the value of the Future Receipts to the Plaintiffs by setting it arbitrarily based on the Plaintiffs ability to make daily withdrawals and not on any evaluation, assessment or analysis of the Plaintiffs customers or past or expected future receivables.

111. The Advantage Capital Defendants knowingly and falsely represented that the Processing Fees and other fees charged in connection with their respective Loans were reasonable costs of servicing such Loans where, in fact, they constitute additional interest.

112. The Advantage Capital Defendants engaged in fraudulent conduct by failing to disclose the interest rate being charged on their loans.

113. The Advantage Capital Defendants made each of these representations knowing they were false at the time they were made.

114. The Advantage Capital Defendants made each of these representations willfully, maliciously and with reckless disregard for the truth intending to deceive the Plaintiffs and circumvent state usury laws

115. The Plaintiffs, to their detriment, reasonably relied upon the knowingly false representations made by the Advantage Capital defendants.

116. As a direct and proximate cause of the knowingly false representations made by

the Advantage Capital defendant on which the Plaintiffs reasonably relied, the Plaintiffs suffered damages in the form of unconscionable, exorbitant and criminally usurious fees and interest and otherwise.

WHEREFORE, the Plaintiffs respectfully request the entry of a judgment against the Advantage Capital defendant: (a) Declaring that the loan is criminally usurious loan and void under applicable state law and or as a matter of public policy; (b) avoidance and recovery of payments made by the Plaintiffs to the Defendant with respect to the usurious loans; (c) an award of damages based on the Defendant's conduct in connection with, and the usurious nature of, these loans pursuant to applicable state law; (d) voiding of the loan agreements and security associated with the loan; (e) compensatory damages; (f) punitive damages; (g) attorney fees and costs; and (h) any other relief this Court finds equitable and just.

**SCURA, WIGFIELD, HEYER, STEVENS &
CAMMAROTA LLP**
Attorneys for the Plaintiffs

/s/ John J. Scura III, Esq.
John J. Scura III, Esq.

Dated: July 8, 2020

JURY DEMAND

Plaintiffs hereby demand a trial by jury on all issues so triable.

**SCURA, WIGFIELD, HEYER, STEVENS &
CAMMAROTA LLP**

Attorneys for the Plaintiffs

/s/ John J. Scura III, Esq.

John J. Scura III, Esq.

Dated: July 8, 2020

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, John J. Scura III, Esq. is hereby designated as trial counsel herein.

**SCURA, WIGFIELD, HEYER, STEVENS &
CAMMAROTA LLP**

Attorneys for the Plaintiffs

/s/ John J. Scura III, Esq.

John J. Scura III, Esq.

Dated: July 8, 2020

CERTIFICATION PURSUANT TO LOCAL F.R.C.P. 11.2

To the best of my knowledge, information and belief, the matter in controversy is not the subject of any other action pending in any court or of a pending arbitration or administrative proceeding. I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

**SCURA, WIGFIELD, HEYER, STEVENS &
CAMMAROTA, LLP.**

Attorneys for Plaintiffs

/s/ John J. Scura III, Esq.

By: John J. Scura III, Esq.

Dated: July 8, 2020