SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

YELLOWSTONE CAPITAL LLC and EBF PARTNERS, LLC,

Plaintiffs,

- against -

CORPORATE BAILOUT, LLC, MARK D. GUIDUBALDI & ASSOCIATES, LLC d/b/a PROTECTION LEGAL GROUP, PLG SERVICING, LLC, AMERICAN FUNDING GROUP, COAST TO COAST FUNDING LLC, ROC FUNDING GROUP, LLC, ROC SOUTH LLC, MICHAEL HAMILL, and MARK MANCINO,

Defendants.

Index No. 656079/2017

AMENDED COMPLAINT

Plaintiffs Yellowstone Capital LLC ("Yellowstone") and EBF Partners, LLC ("EBF") (together, "Plaintiffs"), by their undersigned attorneys, allege as follows:

INTRODUCTION

1. In this civil action, Plaintiffs seek monetary and injunctive relief for a pattern of tortious conduct and/or breaches of contract by Defendants Corporate Bailout, LLC ("Corporate Bailout"), Mark D. Guidubaldi & Associates, LLC d/b/a Protection Legal Group ("PLG"), PLG Servicing, LLC ("PLG Servicing"), American Funding Group ("American Funding"), Coast to Coast Funding LLC ("Coast to Coast"), ROC Funding Group, LLC ("ROC Funding"), ROC South, LLC ("ROC South"), Michael Hamill, and Mark Mancino (collectively, "Defendants").

2. Plaintiffs are in the business of purchasing the accounts receivable of merchants – commonly referred to as merchant cash advancing financing – which serves as a critical source of financing for small businesses. American Funding, Coast to Coast, ROC Funding and ROC

South (the "ISO Defendants") are independent sales organizations ("ISOs"), companies that ostensibly support the merchant cash advance industry by brokering merchant agreements for companies like Plaintiffs. The ISO Defendants are anything but the proverbial "honest brokers." As alleged below, they have partnered with companies that purport to offer debt relief services to merchants who have agreements with merchant cash advance companies like Plaintiffs. In practice, for these companies, "debt relief" is a code word for deceiving merchants to breach their existing agreements with Plaintiffs and to instead pay fees to these debt relief entities. In short, they scam merchants into believing that they can save them money when, in fact, they leave these merchants in financial shambles, while causing Plaintiffs to suffer millions of dollars in losses and future lost profits.

3. Defendants Corporate Bailout, PLG, and PLG Servicing (the "Debt Relief Defendants") offer to renegotiate and restructure merchant agreements for the merchants. They have established a regular business practice of making misleading representations to merchants under contract with Plaintiffs promising to save these merchants money on those contracts. In so doing, the Debt Relief Defendants tortiously interfere with Plaintiffs' contracts with the merchants (including merchants located in New York) by inducing the merchants to breach those contracts. In order to accomplish this, they mislead the merchants as to the services they will perform and the cost to the merchant, and they also conceal their relationships with the ISO Defendants and the fact that they or their affiliates are introducing these same merchants to merchant cash advance providers like Plaintiffs only to later induce those merchants to breach their agreements with their cash advance providers. The Debt Relief Defendants also collect money from the merchants, drawing on accounts in which Plaintiffs have perfected security

interests, thereby converting Plaintiffs' property. Defendants have engaged in a similar course of conduct targeting a number of Plaintiffs' competitors.

4. The Debt Relief Defendants attempt to shield their business model from legal scrutiny by maintaining one of them is a law firm that supervises the others in connection with their providing legal services to clients and, as such, immune from liability to third-parties arising from the advice they give. But, in fact, none of the Debt Relief Defendants is a law firm engaged in the provision of legitimate legal services. The advice given to merchants is not given by lawyers; they do not observe the rules applicable to lawyers regarding solicitation, the keeping of client funds, the charging of reasonable legal fees, the client's right to determine whether to settle a dispute, and more; PLG, the lone Debt Relief Defendant that purports to be authorized to practice law, does not supervise the other Debt Relief Defendants who actually provide merchants with the so-called legal advice; and the sole lawyer PLG employs does not provide services to their customers (except by occasionally making a referral to counsel). The Debt Relief Defendants' claim to be providing legal services is simply a sham designed to shield their tortious activities.

5. Plaintiffs now seek damages for the breaches of contract, and tortious interferences with contract and conversions Defendants have perpetrated in the past, and injunctive relief to prevent the continuation of such conduct in the future.

PARTIES

6. Plaintiff Yellowstone is a New York limited liability company with offices in New York and New Jersey. Its primary New York office is located in New York City.

7. Plaintiff EBF is a Delaware limited liability company with its principal place of business in New York.

8. Defendant Corporate Bailout is a Florida limited liability company with its principal place of business in Somerville, New Jersey. At times relevant to the allegations herein, Corporate Bailout also maintained an office in New York City.

9. Defendant PLG is an Illinois limited liability company with its principal place of business in Schaumburg, Illinois.

10. Defendant PLG Servicing is a New Jersey limited liability company with its principal place of business in Tinton Falls, New Jersey.

11. Defendant American Funding is a New Jersey limited liability company with its principal place of business in Tinton Falls, New Jersey.

12. Defendant Coast to Coast is a New Jersey limited liability company with its principal place of business in Tinton Falls, New Jersey.

13. Defendant ROC Funding is a New York limited liability company with its principal place of business in Staten Island, New York.

14. Defendant ROC South is a New Jersey limited liability company with its principal place of business in Tinton Falls, New Jersey.

15. Defendant Michael Hamill is a New Jersey resident and an owner of American Funding and manager of PLG Servicing.

16. Defendant Mark Mancino is a New Jersey resident and an owner and the Chief Financial Officer of one or more Defendants.

JURISDICTION AND VENUE

17. This Court has jurisdiction over the Defendants pursuant to CPLR 301 and 302, since ROC Funding is located in and entered into contracts in New York and Corporate Bailout has an office and has entered into contracts in New York; Plaintiffs and the ISO Defendants

entered into contracts agreeing to the jurisdiction of the New York courts; and a significant part of the tortious activity alleged herein occurred in New York.

18. Venue is proper in New York County under CPLR 503(a), as, among other things, at least one of the parties is a resident of New York County.

FACTUAL BACKGROUND

A. The Merchant Cash Advance Business and Plaintiffs' Agreements with Their Merchants

19. Plaintiffs are purchasers of accounts receivable from merchants (and Plaintiffs along with other purchasers of such accounts are sometimes referred to herein as "Merchant Cash Advance Providers"). Plaintiffs' practice is to enter into merchant cash advance agreements with counterparty merchants (the "Merchant Cash Advance Agreements"). Such merchant cash advance funding provides a critical source of financing to small businesses.

20. Under Plaintiffs' Merchant Cash Advance Agreements, Plaintiffs provide a fixed, up-front capital infusion to the merchant. In exchange, the merchant grants Plaintiffs a percentage share of the merchant's future receivables, up to a fixed amount. Each of the dozens of Merchant Cash Advance Agreements at issue here involved just such an initial capital infusion from Plaintiffs Yellowstone or EBF to the respective merchants. In exchange, the merchants sold to the respective Plaintiffs the right to a percentage of their monthly receivables, to be collected until Plaintiffs received a specified "receipts purchased amount."

21. Under the Merchant Cash Advance Agreements, Plaintiffs gained the exclusive right to automatically debit from the merchants' bank accounts the payments due to Plaintiffs. The amount debited was an agreed-upon approximation of the expected amount of receipts from the merchants' accounts receivable payable to Plaintiffs, and the merchants retained the right, in the event that the debits exceeded their actual receipts in a given month, to "true up" the payment

to reflect the actual receipts. In this way, Plaintiffs remained at risk of not collecting if the merchant's own collections were lower than expected. Plaintiffs also gained the right to debit a merchant's bank account in the event of a default by the merchant.

22. Concurrently with execution of each merchant agreement, Plaintiffs and the respective merchants each entered into security agreements (the "Security Agreements"). The Security Agreements secure the merchants' obligations under the Merchant Cash Advance Agreements by providing Plaintiffs with a security interest in all assets owned, either currently or in the future, by the merchants, including their deposit accounts, accounts receivable, other assets, and the proceeds thereof. The merchants agreed not to further encumber such collateral. Each of the dozens of Merchant Cash Advance Agreements at issue here was accompanied by Security Agreements between Plaintiffs Yellowstone or EBF and their respective merchants.

23. Following execution of each security agreement, Plaintiffs typically filed a UCC-1 financing statement to perfect its security interests in the respective merchant's assets.

24. Following execution of the Merchant Cash Advance Agreements and Security Agreements at issue here, Plaintiffs performed their obligations by providing the funds due to each merchant, with such funding totaling more than $3 million on a cumulative basis.

25. It is common in the industry, and it has been the experience of each of the Plaintiffs, that merchants seek to (and do) renew and/or seek additional Merchant Cash Advance Agreements from those with whom they enter into such agreements. These renewals of Merchant Cash Advance Agreements, and making of new agreements with existing merchant customers, are an important source of revenue for Plaintiffs.

B. The Role of ISOs and Scourge of So-Called "Debt-Relief Companies"

26. Many Merchant Cash Advance Agreements originate thanks to the activity of ISOs, who market and promote them to merchants, pursuant to contracts with Merchant Cash

Advance Providers such as Plaintiffs (the "Merchant Cash Advance Provider/ISO Agreement"). ISOs have played an important role in the growth and overall success of the merchant cash advance industry.

27. The ISO Defendants have Merchant Cash Advance Provider/ISO Agreements with Plaintiffs.

28. While ISOs have helped grow the Merchant Cash Advance industry, another group of companies – ones that present themselves as being able to renegotiate and restructure Merchant Cash Advance Agreements for merchants with their Merchant Cash Advance Providers (the "Debt Relief Companies") – act as parasites seeking to exploit merchants. As alleged below, these Debt Relief Companies could not be any less aptly named.

29. While Plaintiffs welcome healthy and vigorous competition in the merchant cash advance industry, many (if not most) Debt Relief Companies do not provide their services (to the extent their self-serving actions can be characterized as such) in a legally permissible manner. Rather, they have established a regular business practice of making misleading representations to merchants under contract with Merchant Cash Advance Providers, like Plaintiffs, promising them: (a) services they do not (and have no intention to) provide and (b) savings on their Merchant Cash Advance Agreements, when in fact they almost always leave the merchants worse off. In doing so, these Debt Relief Companies interfere with the pre-existing contractual relationship between Plaintiffs and their merchants by, among other things, instructing merchants to stop making cash advance payments and to cease all contact with their Merchant Cash Advance Provider.

30. Each of the Debt Relief Defendants has improperly interfered with Plaintiffs' relationships with dozens of their merchants, resulting in millions of dollars of losses and future lost profits.

31. Given the scourge of Debt Relief Companies, at the insistence of Merchant Cash Advance Providers, most Merchant Cash Advance Provider/ISO Agreements, including those at issue here, provide that an ISO and its affiliates shall not interfere with the Merchant Cash Advance Provider's customer relationships. For example, Yellowstone's agreement with Coast to Coast provides that:

> During the term of this Agreement and for a period of two (2) years thereafter, or after Agent [Coast to Coast] stops receiving Compensation hereunder, whichever comes last, Agent and Agent Parties shall not themselves willfully, nor willfully permit any respective subsidiary, Affiliate or successor in interest of their respective officers, employees, agents or nominees; (i) to interfere, in any manner whatsoever, either directly or indirectly by any arrangement whatsoever, with Yellowstone's contractual relationship with any of its Merchants or clients; (ii) to cause or attempt to cause any Merchant or other Yellowstone client to terminate its relationship with Yellowstone or utilize the services of any entity other than Yellowstone. For the purposes of this Agreement the term "Affiliate" or "affiliate" shall mean, with respect to a specified party, any party that directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, the specified party.

Breaches of such provisions by the ISO Defendants have similarly caused enormous losses for Plaintiffs.

C. Defendants Fail to Observe Their Separate Corporate Existences While Operating as a Unit, a Fact They Conceal from Merchants and Others

32. In an even more sinister twist to the contractual breaches and/or tortious conduct alleged here, the ISO and Debt Relief Defendants have joined forces, unbeknownst to their customers (*i.e.*, merchants) and to Plaintiffs (at least until recently). In so doing, the very same merchants who are referred by the ISO Defendants to Merchant Cash Advance Providers, can

later be referred by those ISO Defendants to the Debt Relief Defendants, without regard to the merchants' need for such purported debt relief services.

33. Upon information and belief, one individual, Mancino, owns or is a co-owner of each of the ISO Defendants and one or more of the Debt Relief Defendants. Working out of Defendants' offices in New Jersey and New York, Mancino plays a role in managing Defendants' businesses on both the debt relief and ISO side of the operation. He solicits and supervises the solicitation of new business for both the ISO Defendants and the Debt Relief Defendants. Mancino's partner, Hamill, aside from owning at least an interest in American Funding, is involved in managing both the ISO Defendants and the Debt Relief Defendants.

34. The Debt Relief Defendants and the ISO Defendants operate effectively as a unit. Most of them operate out of the same location in New Jersey. Funds are shifted from one to another as needed. Their personnel cross over from one defendant employer to another, and receive their paychecks from different defendant entities, according to the needs of the moment. Dozens of employees make calls from Defendants' facilities, including in New York.

35. They also share common computer facilities and data, so that, for example, American Funding, an ISO Defendant, may send an invoice on behalf of ROC South, a different ISO Defendant, or vice-versa. Moreover, if a Merchant Cash Advance Provider owes money to one of the ISO Defendants for referring a merchant, the provider is sometimes directed to pay the money to a different one of the ISO Defendants. A sales representative may make a call on behalf of one Defendant, transfer the customer to a representative of another Defendant who is sitting in the same room, and start a new call on behalf of a third Defendant.

D. Defendants' Regular Business Practices Victimize Both Merchants and Merchant Cash Advance Providers

36. As part of their regular business practices, the Debt Relief Defendants identify merchants under contract with Merchant Cash Advance Providers like (and including) Plaintiffs. Sometimes they obtain such information from the ISO Defendants, who are obviously aware of these merchants' agreements, having brokered them. Other times, they identify merchants by reviewing the Merchant Cash Advance Providers' UCC-1 filings. Other times, they obtain names of merchants who recently have been refused funding by other Merchant Cash Advance Providers, then cold-call the merchants. Employees of some Merchant Cash Advance Providers are willing to transfer such names to the Debt Relief Defendants in exchange for assurances that the Debt Relief Defendants will leave their own customers alone.

37. Once a merchant with a Merchant Cash Advance Agreement has been identified, an employee of Corporate Bailout then calls the merchant and suggests that Corporate Bailout and/or PLG can help it reduce its obligations under its Merchant Cash Advance Agreement. The call is then transferred to another salesperson, who represents that by negotiating on the merchant's behalf, the Debt Relief Defendant will induce the Merchant Cash Advance Provider to accept half or less of the original amount due, thereby ensuring a sizable pot of savings for the merchant. PLG itself does not make these calls or supervise those who do.

38. These calls are highly misleading. For instance, merchants are told, among other things, that they can avoid their payment obligations under their merchant agreements by showing "hardship," when, in fact, "hardship" is not a defense to the payment obligation under any applicable law. They are led to believe that they will receive legal services as part of the fee they pay when, in fact, they seldom or never are put into contact with a lawyer, and if they are sued, PLG will only arrange legal services if, apart from having made all of their regular

scheduled payments to PLG, they pay special additional per-service fees. They are told not to worry about the confessions of judgment many of them have given to their Merchant Cash Advance Providers, when, in fact, the filing of those confessions is a legally significant event, and one that may damage the merchant's credit. They are encouraged to stop paying their Merchant Cash Advance Providers and start paying the Debt Relief Defendants when there is no lawful basis to do so.

39. When merchants agree to this boiler room sales pitch, Corporate Bailout sends them agreements to sign and return, which bear little resemblance to the oral representations made by their representatives. PLG Servicing then becomes one of the channels through which Defendants interact with the merchant.

40. Under the Debt Relief Defendants' agreements with merchants, the Debt Relief Defendants directly debit funds from the merchants' bank accounts. They do so notwithstanding, and in direct violation of, Plaintiffs' perfected security interests in those accounts, thereby converting the Plaintiffs' property. It is also a breach of contract by the merchants, and tortious interference with contract by the Defendants that instigate those breaches. Additionally, under the Merchant Cash Advance Provider/ISO Agreements, any such interference with Plaintiffs' merchant agreements by an affiliate of the ISO is a breach of contract by an ISO Defendant.

41. Furthermore, either at the outset or when a merchant realizes that Plaintiffs and the Debt Relief Defendants are both debiting its bank accounts, leaving it worse off than before it was contacted by Corporate Bailout or PLG Servicing, Corporate Bailout and/or PLG Servicing tells the merchant to cut off Plaintiffs' access to those accounts, thereby inducing the merchant to

further breach its agreement with Plaintiffs. This is a further tortious interference with contract by the Debt Relief Defendants, and further breach of contract by the ISO Defendants.

42. Corporate Bailout represents to merchants that PLG employs "negotiators" and other non-attorney personnel as well as lawyers to assist them with negotiations and litigation. PLG also tries to shield itself from liability to Merchant Cash Advance Providers for tortious acts undertaken by it and the other Debt Relief Defendants by claiming that it provides legal services. However, PLG's operations differ significantly from the legitimate provision of legal services.

43. For one thing, upon information and belief, a significant investor in PLG is a disbarred lawyer, an investment that, if PLG really were a law firm engaged in the provision of legitimate legal services, would be prohibited by Rule of Professional Conduct 5.4.[1] Indeed, PLG is not even registered as a law firm in Illinois, as required by the rules of the Illinois courts.

44. PLG has one employee who is a lawyer, but does not as a rule advise or represent its customers. The advice those merchant customers receive is given by non-lawyers at Corporate Bailout and PLG Servicing, who approach and recruit merchants in ways no lawyer subject to the Rule of Professional Conduct 7.3 would ever be permitted to solicit clients. The non-lawyer personnel at Corporate Bailout and PLG Servicing are not supervised by the solitary lawyer at PLG, but by Mancino and Hamill, who are not lawyers – an arrangement that, if PLG were a law firm engaged in the provision of legitimate legal services, would violate Rule of Professional Conduct 5.3. To the extent that any of the advice the non-lawyers at Corporate Bailout and PLG Servicing give to merchants in furtherance of the Debt Relief Defendants' tortious activity is legal advice at all, giving it violates the prohibition on the unauthorized

[1] All references to the Rules of Professional Conduct herein apply regardless of whether the Illinois or New York Rules of Professional Conduct are consulted.

practice of law. PLG orchestrates this activity, which damages the merchants as well as their Merchant Cash Advance Providers, in flagrant and deliberate disregard of the law.

45. Furthermore, Corporate Bailout and PLG require the merchants to make weekly payments to PLG to cover PLG's retainer fee (ostensibly for legal services), service cost (ostensibly for non-legal services), a further "legal administration fee," and banking fees, while accumulating, via the same payments, "settlement reserves" supposedly for eventual payment to the Merchant Cash Advance Provider. Although the merchants are told that they are paying the funds into an "escrow account," in reality PLG does not treat the funds like client escrow funds; it pays itself from them from the beginning, regardless of whether it is providing any services, and with no differentiation between client funds and funds payable to PLG. If PLG really were a law firm engaged in the provision of legitimate legal services, its practices with respect to client funds would be barred by the Rule of Professional Conduct 1.15.

46. Until the merchant's payments to the Debt Relief Defendants have been made in full – usually weeks after the merchant has been in the "program," and exposed to litigation with its Merchant Cash Advance Provider with whom they have breached their agreement at the instruction of Corporate Bailout or PLG Servicing – PLG does not commit to negotiate on the merchant's behalf or otherwise provide it with any services. If the merchant is sued for its default during the period while it is making payments toward its PLG "retainer" (or, for that matter, at any time) PLG – contrary to what the merchant is told in the initial sales pitch – will not arrange the defense of the lawsuit unless the merchant pays additional task-specific fees, and then only if PLG determines that a "valid defense exists." Unlike true lawyers providing legitimate legal services, PLG does not charge a reasonable fee; it is not paid by the hour or based on results it achieves, but based on the size of the merchant's obligation. If PLG really

were a law firm engaged in the provision of legitimate legal services, its practices with respect to fees would be barred by Rule of Professional Conduct 1.5.

47. The upshot is that merchants that sign up with PLG stop paying their Merchant Cash Advance Providers at the Debt Relief Defendants' direction, and begin to let PLG draw down on their bank accounts, thereby violating their merchant agreements, while the merchant often obtains nothing for its payments. In some instances, when merchants realize that they have been duped, they withdraw from the "program." Indeed, PLG's transaction with merchants is designed to maximize the likelihood that a merchant will simply drop out before PLG lifts a finger on its behalf.

48. Even if a merchant makes all the required payments to PLG, ultimately PLG is unlikely to achieve a settlement for the merchant that improves the merchant's situation relative to the condition it would have been in if it had simply performed under its merchant agreement. In order to ensure that it gets paid even if it does not help the merchant, PLG's retention agreement provides that PLG may terminate the representation for cause, and without the potential for a refund, if the merchant declines to settle with its Merchant Cash Advance Provider for a discount PLG arbitrarily designates as "reasonable." If PLG really were a law firm engaged in the provision of legitimate legal services, its practices with respect to client settlement decisions would be barred by Rule of Professional Conduct 1.2. Defendants can carry on in this way, leaving a trail of damaged and disappointed customers, because they need their merchants to make only a few payments in order for the transaction to be profitable. PLG makes a point not to deliver executed copies of its "retainer" agreements to its "clients," evidently in order to discourage them from believing they have enforceable rights against it under those agreements.

49. Even if PLG and/or Corporate Bailout actually negotiated on a merchant's behalf and procured a settlement acceptable to the merchant, their method – inducing the merchant to cut off payments to its Merchant Cash Advance Provider, and transfer the same funds to PLG – is an unlawful and unjustified procurement of a breach of contract by the merchant and exercise of dominion over the property of the cash advance provider.

50. Furthermore, the fact that the ISO Defendants are under common ownership with the Debt Relief Defendants creates serious conflicts of interest, is misleading to merchants and Merchant Cash Advance Providers, and necessarily leads to breaches of the ISO Defendants' agreements with Plaintiffs. The ISO Defendants' agreements with Plaintiffs prohibit them and their affiliates from interfering with Plaintiffs' merchant agreements, either directly or via the acts of an intermediary. When the Debt Relief Defendants induce a merchant to breach its agreement with a Plaintiff, that is a breach of the ISO Defendants' agreements with the same Plaintiff. It also involves deceiving the merchant because neither the ISO Defendants nor the Debt Relief Defendants inform the merchants that they are under common ownership or in any way related.

i. Gage Construction

51. The experience of one merchant, Thomas Gage of Gage Construction, is representative. In 2016, Gage Construction had cash flow problems and solved them by selling some of its accounts receivable to Yellowstone. Gage had the ability, and every intention, to perform under the agreement by paying Yellowstone. Subsequently Gage began to receive calls and emails from people calling on behalf of PLG. The first caller made a sales pitch, and, when Gage agreed to listen, handed him off to another salesman, named Daryl, who appeared to be the

"closer." Later, when Gage signed up with PLG, Gage had a "case handler," Lisa Kardonis, and at least two "managers."

52. Daryl's high-pressure sales pitch to Gage was that PLG would reduce the cost of the Yellowstone agreement to Gage Construction by 35 percent, and all Gage had to do was to authorize PLG to debit Gage Construction's bank account by ACH transfers. Gage said that he did not want to default on Gage Construction's obligations to Yellowstone or ruin its credit rating, and Daryl said not to worry, as one of the Debt Relief Defendants would take care of Gage Construction. Gage agreed to go ahead and the Debt Relief Defendants sent him some papers to sign, which he did.

53. During the following weeks, although PLG was not doing anything on behalf of Gage Construction, PLG debited Gage Construction's bank account, which was also being debited by Yellowstone. This created added strain on Gage Construction and it stopped paying PLG. Gage's case handler at PLG Servicing (not a lawyer) contacted him and told him he should resume payment to PLG and direct Gage Construction's bank to cut off payment to Yellowstone. Gage was also told not to contact Yellowstone to discuss what was happening. Gage stopped payment to Yellowstone in November 2016.

54. By late January 2017, PLG had accomplished nothing on behalf of Gage Construction, and Gage called them to demand a refund, which it did not receive. In mid-February 2017, Gage directed Gage Construction's bank to cut off payments to PLG. PLG's representative told him Gage Construction owed them just two payments before it would reach the threshold where they would try to negotiate with Yellowstone. Gage pushed back, only to be told later that PLG had "resolved" the situation with Yellowstone and would call him back with the details, something it never did. PLG never gave Gage the name of anyone it spoke to at

Yellowstone, or any other proof that it had accomplished anything on behalf of Gage Construction, or even attempted anything, because in fact PLG did not resolve anything for Gage.

ii. Affinity Designs LLC

55. Meir Sanandaji of Affinity Designs LLC ("AVF") is another merchant who was preyed upon by Defendants. AVF is located in New York City and is in the business of designing and manufacturing jewelry. In July 2016, AVF entered into a merchant agreement with Yellowstone. That fall, representatives of Defendants called him and offered to negotiate on his behalf to reduce the amounts he would have to pay to Yellowstone and two other merchant cash advance companies. They told him he would have to stop payment to Yellowstone and the other companies, stop communicating with them, and authorize the Debt Relief Defendants to begin deducting funds from AVF's bank account. They also told him that if he had legal troubles with Yellowstone or the other merchant cash advance companies, PLG had lawyers on staff who would take care of it. Sanandaji accepted the proposal, revoked Yellowstone's authorization to deduct funds from his account, and paid PLG instead.

56. PLG never did contact Yellowstone to negotiate on behalf of AVF. But after AVF defaulted on its merchant agreement, Yellowstone began to enforce the agreement by filing the applicable confession of judgment and restraining AVF's bank accounts. PLG did nothing to help AVF. It did not return Sanandaji's calls, and when he did get through to speak to someone, he reached a different representative every time, and none of them was able to get anything done or give him any definitive information. By November, 2016, Sanandaji was fed up, and he broke off relations with PLG and set about working out his own accommodations with Yellowstone and the other merchant cash advance companies. PLG gave him a partial refund, but the balance

of what he had paid them was a complete loss. Of course, those payments were in derogation of Yellowstone's rights under its merchant agreement with AVF, and Yellowstone incurred substantial expense and trouble enforcing its rights against AVF as a result of Defendants' interference.

E. Damages to Plaintiffs Caused by Defendants' Tortious Conduct and/or Breaches of Contract

57. The merchants' breaches of their Merchant Cash Advance Agreements, including those of Gage Construction and AVF, have caused tremendous harm (and threaten continued harm) to Plaintiffs. Because of the breaches, Plaintiffs have been unable to collect a substantial amount of the receivables to which they are entitled under the merchant agreements. Plaintiffs have also incurred greater collection costs and legal fees pursuing these receivables.

58. Plaintiffs also face irreparable harm as a result of the merchants' breaches of the Merchant Cash Advance Agreements and the Debt Relief Defendants' conversion of funds in which Plaintiffs had a security interest. Many of the merchants and the future merchants with whom Plaintiffs will contract are thinly capitalized. Without the ability to debit funds due directly from those merchants' bank accounts, Plaintiffs will likely never be able to collect from them. At best, Plaintiffs will accomplish these collections at greatly increased cost due to the expense of litigation with the merchants.

59. Plaintiffs are also faced with considerable business uncertainty caused by the seemingly endless pattern of repeated tortious conduct to which they are being subjected; with delay and distraction; with disruption of its relationships with its customers; and with reputational harm.

60. To compound these dangers and uncertainties, and in response to this action and other litigation, in recent months Defendants have attempted to reinvent themselves (without

changing their basic business model). Upon information and belief, a part of the operations of PLG Servicing has been shifted to a new company called Corporate Client Services, and a part of the operations of Corporate Bailout has been shifted to a company called Main Stream Marketing Group. The "new" companies are managed by Mancino and Hamill, and have many of the same personnel and practices as Corporate Bailout and PLG Servicing. Plaintiffs (and other Merchant Cash Advance Providers), in trying to protect themselves from these practices, face a game of "Whac-a-Mole" in which Defendants will potentially resurface under new names and in new locations again and again in order to evade scrutiny and justice. It is no easy matter to enforce a judgment against Mancino. He was an employee of Hanover, Sterling & Company, Ltd., a brokerage that was shut down by regulators in the 1990s amid charges of violations of the securities laws and RICO (to which Mancino pled guilty). To this day, there is an unsatisfied $70 million judgment outstanding against Mancino related to his Hanover activities.

61. Owing to Defendants' conduct, in 2016 and 2017, over 40 merchants, located in multiple states, including New York, with account balances in excess of $1.1 million, have breached their merchant agreements with Yellowstone. Over 60 merchants, also located in multiple states, including New York, with account balances in excess of $2 million, have breached their merchant agreements with EBF in 2016 and 2017.

FIRST CLAIM
(Tortious Interference with Contract)

62. Plaintiffs repeat and reallege paragraphs 1 through 61 of their Complaint, as if fully set forth herein.

63. Each Plaintiff had a valid and enforceable contract with one or more of the Merchants, under which the applicable Plaintiff had performed in full and was entitled to be paid.

64. Defendants were aware of Plaintiffs' contracts with the Merchants.

65. Defendants intentionally and improperly induced the Merchants to breach their contracts with Plaintiffs. Afterwards, the Merchants in fact breached those contracts.

66. Defendants' inducement of the Merchants to breach their contracts was the direct and proximate cause of the subsequent breaches. The Merchants would not have breached their contracts if Defendants had not solicited them and provided financial incentive for them to do so.

67. Plaintiffs have incurred damages and suffered other injuries as a result of the contractual breaches.

SECOND CLAIM
(Conversion)

68. Plaintiffs repeat and reallege paragraphs 1 through 67 of their Complaint, as if fully set forth herein.

69. Plaintiffs had perfected security interests in their respective Merchants' property, which includes the funds in their bank accounts.

70. Defendants debited funds from the Merchants' bank accounts, despite Plaintiffs' security interests. In so doing, Defendants improperly took possession and control of the funds in those accounts without proper title.

71. Defendants' taking of possession and control of the funds in the Merchants' bank accounts prevented Plaintiffs from exercising their rights to those funds pursuant to their security interests.

72. Plaintiffs did not authorize Defendants to withdraw funds from the Merchants' accounts.

THIRD CLAIM
(Breach of Contract)

73. Plaintiffs repeat and reallege paragraphs 1 through 72 of their Complaint, as if fully set forth herein.

74. Each of Plaintiffs entered into valid and binding ISO Agent Sales Agreements with each of the ISO Defendants.

75. Each of Plaintiffs performed its obligations under its respective ISO Agent Sales Agreements with the ISO Defendants.

76. Under each of their respective ISO Agent Sales Agreements, the ISO Defendants agreed that neither they, nor any company controlling, controlled by, or under common ownership with them, would interfere, directly or indirectly, in any agreement between the respective applicable Plaintiff and its merchants.

77. The ISO Defendants repeatedly breached their respective ISO Agent Sales Agreements with each Plaintiff when PLG and Corporate Bailout induced merchants to stop paying Plaintiffs or otherwise breach their agreements with Plaintiffs.

78. Plaintiffs suffered damages due to the ISO Defendants' breaches of their respective agreements.

PRAYER FOR RELIEF

WHEREFORE Plaintiffs respectfully request that the Court enter judgment on the Complaint as follows:

On Plaintiffs' First Claim, for Tortious Interference with Contract: an award against all Defendants, jointly and severally, of compensatory damages in an amount to be determined at trial, but no less than $500,000, together with pre-judgment and post-judgment interest and all costs; and

On Plaintiffs' Second Claim, for Conversion: an award an award against all Defendants, jointly and severally, of compensatory damages in an amount to be determined at trial, but no less than $500,000, together with pre-judgment and post-judgment interest and all costs;

On Plaintiffs' Third Claim, for Breach of Contract: an award an award against the ISO Defendants, jointly and severally, of compensatory damages in an amount to be determined at trial, but no less than $500,000, together with pre-judgment and post-judgment interest and all costs; and

Punitive damages against all Defendants in an amount to be determined at trial; and

Injunctive relief to bar Defendants from doing any of the following:

(1) further debiting the bank accounts of any merchants with whom Plaintiffs entered into contracts, known to Defendants, under which Plaintiffs had a perfected security interest;

(2) further inducing or abetting breaches by the merchants of those agreements;

(3) inducing additional merchants, known by Defendants to have entered into agreements with Plaintiffs, to breach those agreements, including by inducing merchants to:

(a) discontinue making payments due under their agreements with Plaintiffs and to cease all contact with Plaintiffs;

(b) permit Defendants, to debit the accounts of such merchants where Plaintiffs have perfected security interest in those accounts; and

For such other and further relief as the Court deems just and proper.

Dated: December 5, 2017
New York, New York

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