IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

COMPLETE BUSINESS SOLUTIONS GROUP, INC. d/b/a PAR FUNDING Plaintiff, v. SUNROOMS AMERICA INC. d/b/a SUNROOMS AMERICA d/b/a SRA HOME PRODUCTS d/b/a SPA HOME PRODUCTS d/b/a SUN ROOM AMERICA, Defendants and MICHAEL FOTI, GUARANTOR	CIVIL ACTION C.A. NO.: 20-cv-847

ORDER

AND NOW, on this _____ day of _____, 2020, upon consideration of the foregoing petition, it is hereby ordered that:

1) a rule is issued upon Complete Business Group Solutions, Inc. ("CBSG") to show cause why Sunrooms America, Inc. ("Sunrooms") and Michael Foti (collectively, "Defendants") are not entitled to the relief requested;

2) CBSG shall file an answer to the petition within twenty days of service upon the CBSG of the petition;

3) the petition shall be decided under Pa.R.C.P. 206.7;

4) depositions shall be completed within____days of this date;

5) argument shall be held on _____, _____ in Courtroom _____ of the United States District Court for the Eastern District of Pennsylvania; and

6) notice of the entry of this order shall be provided to all parties by Defendants.

BY THE COURT:

_____
J.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

COMPLETE BUSINESS SOLUTIONS GROUP, INC. d/b/a PAR FUNDING Plaintiff, v. SUNROOMS AMERICA INC. d/b/a SUNROOMS AMERICA d/b/a SRA HOME PRODUCTS d/b/a SPA HOME PRODUCTS d/b/a SUN ROOM AMERICA, Defendants and MICHAEL FOTI, GUARANTOR	CIVIL ACTION C.A. NO.: 20-cv-847

DEFENDANTS' PETITION TO STRIKE OR, ALTERNATIVELY, TO OPEN CONFESSED JUDGMENT

AND NOW, come Defendants Sunrooms America, Inc. d/b/a Sunrooms America d/b/a SRA Home Products d/b/a SPA Home Products d/b/a Sun Room America and Michael Foti (collectively "Sunrooms" or "Defendants"), by and through their undersigned attorney, White and Williams, LLP, pursuant to Pa. R. C. P. 2959, file their Petition to Strike Off or Open the Confession of Judgment recently filed by Plaintiff Complete Business Solutions Group's ("CBSG" or "Plaintiff") and, show this Honorable Court as follows:

NATURE OF THE CASE

1. This is a Petition to strike or, alternatively to open a, a confessed judgment in the amount of $1,361,845.70 (the "Confessed Judgment ") that was entered without authority against a small New Jersey business and its owner. *See* Heskin Decl., Exhibit A.

FACTUAL BACKGROUND

A. The Parties

1. Sunrooms is a second-generation, family owned designer and installer of sunrooms, patio covers, pergolas, and screen rooms. It is a New Jersey corporation with its principal place of business located in Williamstown, New Jersey.

2. Plaintiff Michael V. Foti is an adult resident and citizen of New Jersey and owns and operated is the owner of Sunrooms America, Inc.

3. CBSG is a Florida MCA company that purports to purchase the future receivables of small businesses at discounted lump sum prices under so called factoring agreements. While repayment of the advanced sums is purportedly tied to the ebbs and flows of a merchant's generation and collection of future receipts, as this case unfortunately shows, CBSG treats its agreements just like loans that are absolutely repayable.

4. Between June 5, 2019 and January 2, 2020, Sunrooms entered into a series of seventeen criminally usurious loans with Complete Business Solutions Group, Inc. ("CBSG").

5. Each contained the same common terms and conditions, and each charged an interest rate in excess of 100%.

6. The unlawful and unconscionable interest payments pushed Sunrooms into financial catastrophe by causing it to take out more and more unlawful loans as it became unable to catch up with the payments from prior ones.

7. As a direct result of these unlawful and unconscionable terms, Sunrooms could no longer sustain the fixed daily payments required under the loans and stay in business.

8. Thus, on or around January 10, 2020, Sunrooms stopped making payments.

9. Immediately upon missing a payment, Sunrooms' owner, Mr. Foti, was besieged by phone calls, emails and text messages demanding payment.

10. On January 15, 2020, CBSG confessed judgment against both Sunrooms and Foti, personally, in the amount of $1,361,845.70.

11. Specifically, CBSG confessed judgement for the following loans:

- June 4, 2019
- November 13, 2019
- December 2, 2019
- December 17, 2019
- January 2, 2020

See Ex. A, COJ, Affidavit of Default, pg. 2.

12. CBSG fraudulently confessed judgment against Foti under the June 4, 2019 agreement in the amount of $259,791.06. *Id*. Under the June 4, 2019 agreement, CBSG knew that Foti had only guaranteed performance of the representations and warranties. To be sure, the CBSG changed the form of its agreements in or around July 2019 to require that the guarantor also guarantee all terms, obligations and covenants, which was non-existent in the June 4, 2019 agreement.

13. On January 16, 2020, without providing the required notice under Pennsylvania law, CBSG had a sheriff serve a Writ of Execution on numerous banks located in Pennsylvania. As a direct result, the Wells Fargo bank accounts of M. Foti and his wife were unlawfully frozen. CBSG also unlawfully froze the bank account of Sunrooms with Franklin Savings Bank.

14. CBSG was informed that it had unlawfully frozen the bank account of Ms. Foti, a fourth grade school teacher.

15. To this day, CBSG refuses to release the bank account.

B. AR Smash

16. On January 15, 2019, CBSG sent hundreds of emails to clients, vendors, business contacts and personal contacts of Foti, claiming that Sunrooms was in default and owed CBSG $1,296,173.93. Moreover, CBSG claimed to possess a UCC-1 form, requiring the recipient to forward payments of $1,296,173.93 directly to CBSG. Conspicuously missing, however, was the UCC-1 form. That is because CBSG did not file the UCC until January 16, 2020, and it was not entered until January 22, 2020. CBSG thus engaged in numerous counts of mail fraud.

17. In addition to sending default notices to business entities that did not owe Sunrooms receivables, CBSG also sent out default notices to friends and family of Foti, which included his college-age niece.

18. These notices were sent to harass, intimidate and extort Sunrooms and Foti into making payment from any source available, even if they had to borrow money.

C. Threats of Physical Harm

19. On January 15, 2020, Anthony Zigarelli also called Foti berating him for missing payments. He then gave the phone to LaForte, who yelled and screamed at Foti.

20. Among the verbal attacks, LaForte told Foti that he was a "f*&^ing piece of shit" and warned Foti that he would destroy his business, and pursue him personally until the day he died. He also stated that he hoped Foti would get hit by a car. He further threatened to open up a "competing sunroom company" to put him out of business.

21. On January 17, 2020, LaForte called Foti again to verbally abuse him. Among other extortionate tactics, LaForte threatened to "blow the doors" off of both Foti and his counsel. Given the tone and rage in which the threat was made, Foti took this as a physical threat and was in fear for the health and safety of himself and his family.

D. The Agreements

i. The June 4 Agreement

22. Pursuant to the June 4, 2019 Agreement (the "June 4 Agreement"), CBSG agreed to advance $575,000 ("Purchase Price") to Sunrooms in exchange for the purported purchased of $776,250 (the "Purchased Amount") of Sunrooms' receivables (the "Receivables"). *See* Heskin Decl, Ex. B, June Agreement §1.

23. Pursuant to the terms of the June 4 Agreement, the Purchased Amount was to be repaid by daily withdrawals from a designated account, each in the amount of $3,269.36. *Id.*

24. The set payment amount purported to approximate 10% of Sunrooms' daily receipts. *Id*.

25. The June 4 Agreement provided for re-payment of the loan in 237 days. *Id*.

26. Based on those terms, the interest rate charged on this loan amounted to 535%. *See* Heskin Decl., Exhibit I.

27. As part of the Agreement, Defendant Foti was required to execute a personal guaranty (June 4 Guaranty) limited to performance of the representations and warranties:

> **Personal Guaranty of Performance**. The undersigned Guarantor(s) hereby guarantees to Purchaser, Merchant Seller's performance of all of the representations, and warranties made by Merchant Seller in the Agreement for the Purchase and Sale of Future Receivables (the "Purchase Agreement"), as may be renewed, amended, extended or otherwise modified (the "Guaranteed Obligations"). Guarantor's obligations are due at the time of any breach by Merchant of any representation or warranty, or covenant made by Merchant in this Guaranty and the Purchase Agreement.

See Ex. B, p. 17.

28. The Agreement lists filing of a confession of judgment as one of the "Remedies upon Event of Default," however, such remedy must be sought pursuant to the "Warrant of Attorney to Confess Judgment contained in this Purchase Agreement. . ." *See* June Agreement, §11(b).

29. The June Agreement does not list failure to make a payment as an "Event of Default." *See* June Agreement §10.

30. The Agreement also contains a Warrant of Attorney (the "June Guaranty Warrant") which, rather than purporting to permit an attorney to confess judgment against Foti, only allows CBSG to confess judgment against "Merchant Seller." *See* June Agreement §12.

31. The Merchant Seller is identified in the June Agreement as "Sunrooms America Inc." *See* June Agreement pg. 2.

ii. The November 13, 2019 Agreement

32. The November 13, 2019 Agreement (the "November 13 Agreement") provided that CBSG would advance $50,000, while also accounting for $602,864.93 in existing payoff, for a total purchase price of $652,864.93, in exchange for the purported purchased of $868,310.36 of Sunrooms' receivables. *See* Heskin Decl., Ex. C, November Agreement, §1.

33. The Purchased Amount was to be repaid through daily payments of $3,999 which was intended to approximate 10% of Sunrooms' daily receipts. *Id.*

34. The Agreement provided payment of the loan in 217 days. *Id.*

35. The interest rate on this loan amounted to 100 %. *See* Ex. I.

36. Foti was required to execute a personal guaranty in this Agreement as well, but the scope of his guaranty under the November 13 Agreement (and subsequent Agreements) was broader that than included in the June Agreement, and included a guaranty of Sunrooms' performance of all terms and conditions rather than just representations and warranties (as in the June Agreement):

> **Personal Guaranty of Performance**. The undersigned Guarantor(s) hereby guarantees to Purchaser, Merchant Seller's performance of all of the representations, and warranties made and terms, conditions, obligations and covenants undertaken by Merchant Seller in the Agreement for the Purchase and Sale of Future Receivables (the "Purchase Agreement"), as may be renewed, amended, extended or otherwise modified (the "Guaranteed Obligations"). The Guaranteed Obligations are due at the time of any breach by Merchant Seller of any representation or warranty, or term or condition or obligation or covenant made by Merchant Seller in the Purchase Agreement.

See November Agreement, p. 18.

iii. The December 2, 2019 Agreement

37. Pursuant to the December 2, 2019 Agreement (the "December 2 Agreement") CBSG agreed to advance $100,000 to Sunrooms in exchange for purchasing $140,000 of Sunrooms' receivables. *See* Heskin Decl., Ex. D, December 2 Agreement, §1 attached hereto.

38. The Purchased Amount was to be repaid through daily payments of $3,500 which was intended to approximate 10% of Sunrooms' daily receipts. *Id*.

39. The Agreement provided for re-payment of the loan in 40 installments. *Id.*

40. The interest rate on this loan amounted to 262 %. *See* Ex. I.

41. The terms of this Agreement appear to be the same as those of the November 13 Agreement.

iv. The December 17, 2019 Agreement

42. The December 17, 2019 Agreement (the "December 17 Agreement") provided that CBSG would advance $70,000 to Sunrooms in exchange for the purported purchased of $96,600 of Sunrooms' receivables. *See* Heskin Decl., Ex. E, December 17 Agreement, §1 attached hereto.

43. The Purchased Amount was to be repaid through daily payments of $1,288 which was intended to approximate 10% of Sunrooms' daily receipts. *Id.*

44. Re-payment of this loan was to be finished within 75 days. *Id.*

45. The simple interest rate charged on this loan was 330%. *See* Ex. I.

46. The terms of this Agreement appear to be the same as those of the November 13 Agreement.

v. The January 2, 2020 Agreement

47. The January 2, 2020 Agreement (the "January 2 Agreement") provided that CBSG would advance $75,000, accounted for a $52,406.25 in payoff already existing in exchange for the purported purchase of $164,354.06 of Sunrooms' receivables. *See* Heskin Decl., Ex. F, January 2 Agreement, §1, attached hereto.

48. The Purchased Amount was to be repaid through semi-weekly payments of $4,108.85 which was intended to approximate 10% of Sunrooms' daily receipts. *Id*.

49. Payment of this loan was to be finished in 40 installments. *Id*.

50. The simple interest rate charged on this loan is 177%. *See* Ex. I.

LEGAL ARGUMENT

I. THE MCA AGREEMENTS ARE DISGUISED LOANS

A. Plaintiff cannot avoid state usury laws through shams.

51. "Where usury does not appear on the face of the note, usury is a question of fact." *Freitas v. Geddes S&L Ass'n*, 471 N.E.2d 437, 422 (N.Y. 1984). The reason has been long recognized:

> The cupidity of lenders, and the willingness of borrowers to concede whatever may be demanded or to promise whatever may be exacted in order to obtain temporary relief from financial embarrassment, as would naturally be expected, have resulted in a great variety of devices to evade the usury laws; and to frustrate such evasions the courts have been compelled to look beyond the form of a transaction to its substance, and they have laid it down as an inflexible rule that the mere form is immaterial, but that it is the substance which must be considered.

Vee Bee Serv. Co. v. Household Fin. Corp., 51 N.Y.S.2d 590, 592 (N.Y. Sup. Ct. 1944), *aff'd*, 55 N.Y.S.2d 570 (1st Dept. 1945); *see also Fleishman v. Hyman*, 2004 U.S. Dist. LEXIS 19793, at *20 (S.D.N.Y. 2004) ("[W]hen a transaction is challenged as usurious ... [it] must be considered in its totality and judged by its real character, rather than by the name, color, or form which the parties have seen fit to give it."); *Bouffard v. Befese, LLC*, 111 A.D.3d 866, 869 (2d Dep't 2013)

(being a "hard money lender" to those "unable to obtain conventional financing" is nothing more than "plainly usurious" lending); *Topping v. Bank of New York,* 86 F.2d 116, 117-18 (2d Cir. 1936) ("A usurious loan is not made lawful by falsely terming it a sale, or a corporate obligation. . . ."); *Mandelino v. Fribourg*, 242 N.E.2d 823, 826 (N.Y. 1968) ("An instrument which appears on its face to be a purchase-money mortgage may in truth be a cloak for an actual loan at excessive interest and in this situation it may be deemed usurious."); *Feivel Funding Assoc. v Bender,* 156 A.D.3d 416, 417 (1st Dep't 2017) ("Contrary to plaintiff's argument that parol evidence cannot be used to raise an issue of fact as to whether a note legal on its face is usurious, usury may be established by extrinsic facts concerning the 'real character' of the transaction."); *In re Rosner*, 48 B.R. 538 (E.D.N.Y. 1985) ("It is no accident that two of the precedents cited by the Second Circuit involve usurious transactions. *Quackenbos v. Sayer* and *Topping v. Bank of New York.* This is because persons intending to enter into usurious transactions take pains to camouflage as payment for services or property, or anything other than what it really is, the interest they are exacting.").

52. Thus, the mere fact that a transaction may have been denominated as an asset sale is not determinative; the Court must look beyond the curtain. *See Lange v. Inova Capital Funding, LLC*, 441 B.R. 325, 230 (8th Cir. 2011) (finding the purchase of receivables constituted a loan rather than a sale because the agreement "shift[ed] all risk" onto the seller); *Major's Furniture Mart, Inc.*, 602 F.2d 538, 546 (3d Cir. 1979) ("It is apparent to us on the record none of the risks present in a true sale is present here."); *Kerr v. Commer. Credit Group, Inc.*, 456 B.R. 597, 607 (N.D. Ga. 2011) ("[B]uyer's recourse against Debtor effectively transfers the risk of non-collection on Debtor. The Court therefore construes the transaction as a loan, not a sale.").

B. Courts must look at all of the negotiations, circumstances, and relationship of the parties to determine the true nature of the transaction.

53. The *sine qua non* of a loan is that the money advanced is absolutely repayable. *Endico Potatoes*, 67 F.3d at 1069 ("The root of all of these factors is the transfer of risk."); *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*, 79 T.C.M. (CCH) 1769 (2000) ("right to enforce repayment of an advance suggests that the advance is a loan.")).

54. Black Law Dictionary's defines a loan as "a thing lent for the borrower's temporary use; esp., a sum of money lent at interest." *Loan*, Black's Law Dictionary (10th ed. 2014). The Second Circuit has long held the same. *See Cazenovia College v. Renshaw (In re Renshaw),* 222 F.3d 82, 88 (2d Cir. 2000) ("To constitute a loan there must be (i) a contract, whereby (ii) one party transfers a defined quantity of money, goods, or services, to another, and (iii) the other party agrees to pay for the sum or items transferred at a later date. This definition implies that the contract to transfer items in return for payment later must be reached prior to or contemporaneous with the transfer. Where such is the intent of the parties, the transaction will be considered a loan regardless of its form.") (citing *In re Grand Union Co.*, 219 F. 353, 356 (2d Cir. 1914)).

55. In determining its true nature, the conduct and intent of the parties is instructive:

> A loan. . .is the delivery of a sum of money to another under a contract to return at some future time an equivalent 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 v. CIT Group/Factoring*, 67 F.3d 1063, 1068 (2d Cir. 1995) ("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.").

C. The MCA Agreements Operate as Absolutely Repayable Loans.

56. While the Agreements used terms such as "factoring agreement," "sale," and "purchase," the Transaction had none of the hallmarks of a true sale and all of the hallmarks of a loan that charged a usurious interest rate of more than 535%. *See* Heskin Decl., Ex. I.

57. Through the Agreement, Sunrooms did nothing more than pledge its future receivables as security for repayment of the Purchased Amount.

58. The Agreement lacked the quintessential elements of a sale.

59. First, CBSG only acquired a temporary right in Sunrooms' receivables "until such time as the [Purchased Amount] has been delivered by [Sunrooms] to CBSG." *See* Ex. B, June Agreement, p.6, § 5(a).

60. Second, CBSG's temporary interest did not divest Sunrooms of the right to use the proceeds of the Receipts. Pursuant to the Agreement, Sunrooms was only obligated to deposit a specific amount of its receivable collections into the Account so that CBSG could withdraw the Daily Payments. June Agreement, p. 6, § 7. Sunrooms retained the right to use the proceeds of the assets CBSG allegedly purchased. In fact, Sunrooms was *required* to use such proceeds to operate

its business, because the Agreement prohibited Sunrooms from obtaining other financing. June Agreement, p. 27, Stacking Addendum.

61. Third, Sunrooms' repayment obligations were not limited to delivery of the purchased Receipts or even a percentage thereof. The Agreement reflects that CBSG plainly would not wait to be repaid until such receipts were generated and collected. Consequently, CBSG required Sunrooms to repay the Purchased Amount through independent funds.

62. As demonstrated in the attachments and allegations contained in the New Matter (which are incorporated herein), CBSG also treats its MCA Agreements as absolutely repayable loans.

63. Finally, repayment of the Purchased Amount was put beyond any risk of non-payment and CBSG retained full recourse against Sunrooms. Under the Agreement, if an Event of Default occurred, the Plaintiffs immediately became liable for the full outstanding Purchased Amount, together with other fees and costs. June Agreement, p. 9, § 11(a). CBSG could confess judgment against the Plaintiffs for this amount. June Agreement, p. 10, § 12, p. 17. An Event of Default was defined under the Agreement to include any circumstance where Sunrooms failed to collect sufficient revenue to pay the Daily Specified Amount for four days. June Agreement, pg. 26, Appendix A: The Fee Structure. Sunrooms also would default under the Agreement in a number of other situations, including if any proceeding is brought by or against Sunrooms seeking to adjudicate it insolvent or bankrupt; or if Sunrooms admitted in writing that it was unable to pay its debts. June Agreement, p. 8-9, § 10.

64. The Agreements are loans, not sales. The Agreements had a specified term, and required Daily Specified Payments in specific amounts. *See, e.g.,* June Agreement, p. 3:

Purchase Price	**$575,000.00**
Specified Percentage	**10%**
Daily Specified Amount	**$3,269.36**
Amount of Days	**237**
Receivables Purchased Amount	**$776,250.00**
Estimated Final Receipt Date	**SEE SCHEDULES A AND B**

65. The Agreement was also with "full recourse," such that Sunrooms' performance under the Agreement (including its payment obligations) were secured by (i) substantially all of Sunrooms's assets, (ii) Michael Foti's personal guaranty, and (iii) the right of CBSG to confess judgment against both Sunrooms and Foti upon default.

C. The Agreements are Loans as a Matter of Law.

66. When, as here, a seller retains the right to use even a portion of the allegedly purchased assets, courts have found the transaction did not constitute a true sale. *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); *JMW Auto Sales, Ltd. v. FT Dev. Inc. (In re Moye)*, 2010 Bankr. LEXIS 4378 (S.D. Tex. 2010) (Agreement "did not evidence a consummated transfer of the benefits and burdens of ownership" so as to constitute a true sale under Texas law); *Callow v. Comm'r*, 135 T.C. 26, 33-34 (U.S. Tax Crt. 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.); *In re Elkhorn Coal Corp*., 19 B.R. 609, 614 (Bankr. W.D. Ky. 1982), aff'd in relevant part and rev'd on other grounds, 32 B.R. 737 (W.D. Ky. 1983) (court found the transaction constituted a loan because debtor retained right to use proceeds in excess of amount advanced by the bank); *In re O.P.M. Leasing, Inc*., 30 B.R. 642, 648 (Bankr. S.D.N.Y. 1983) (assignment of fraction of lease

proceeds was a loan transaction rather than a sale because assignor retained the right to use the balance of lease payments).

67. Second, the MCA Agreements are not sales of receivables, because obligations thereunder could be repaid with independent funds. A quintessential element of a true sale of receivables is that the purchaser is repaid through the collection of the purchased receivables. *See Endico Potatoes, Inc. v. CIT Group/Factoring, Inc.*, 67 F.3d 1063, 1068 (2d Cir. 1995). Thus, in a bona fide factoring arrangement, the factor is repaid through the account debtor's payment of the purchased receivable to a lockbox or some other account controlled by the factor. *See Grossman v. Butcher*, 1992 Ohio App. LEXIS 3653 at 7 (Ct. App. 10th Dist. June 30, 1992) ("[G]enerally speaking, an agreement to factor contains some variation of the following terms . . . an agreement that the invoice will notify the customer of the sale of the account to the factor, and the customer will be required to pay the factor directly."). However, where the advanced funds could be repaid with independent funds, courts have found the transaction was a loan and not a true sale. *See, e.g.*, *In re Joseph Kanner Hat Co.*, 482 F.2d 937, 940 (2d Cir. 1973) (finding an agreement to be a loan where the "bank office testified that any payment received under the assignment would applied to reduce the amount of the loan"); *In re Evergreen Valley Resort, Inc.*, 23 B.R. 659, 662 (Bankr. Me. 1982) (finding agreement to be a loan where the seller "acknowledges its rights to the assignment would be extinguished were Evergreen to pay the debt in full from some other source").

68. Here, not only could the Purchased Amount be repaid with independent funds, but CBSG required that Sunrooms repay the Purchased Amount with independent funds. Under the terms of the Agreement, CBSG allegedly purchased all of Fleetwood's future Receipts (capital "R") but it required that Sunrooms repay the Purchased Amount from Sunroom's collection of any "receipts" (little "r"), including receivables that had been issued at the time of the Agreements but

not yet paid. Requiring that Sunrooms repay the Purchased Amount from receivables that were not purchased by CBSG demonstrates the transaction was not a true sale and, hence, not an account purchase transaction.

69. Third and perhaps most crucially, this was not a sale because Sunrooms remained liable for repayment of the Purchased Amount even if its receivables proved insufficient. The risk of loss associated with the purportedly sold receivables, both in form and practice, remained with Sunrooms, which is completely inconsistent with a bona fide factoring arrangement. In a true factoring arrangement, the factor purchases the receivables and assumes the risk that factor client will pay the receivable. *Lange v. Inova Capital Funding, LLC*, 441 B.R. 325, 230 (8th Cir. 2011) (finding the purchase of receivables constituted a loan rather than a sale because the agreement "shift[ed] all risk" onto the seller); *Major's Furniture Mart, Inc.*, 602 F.2d 538, 546 (3d Cir. 1979) ("It is apparent to us on the record none of the risks present in a true sale is present here."); *Kerr v. Commer. Credit Group, Inc.*, 456 B.R. 597, 607 (N.D. Ga. 2011) ("[B]uyer's recourse against Debtor effectively transfers the risk of non-collection on Debtor. The Court therefore construes the transaction as a loan, not a sale.").

70. This essential passing of risk does not occur under the Agreements. To the contrary, the Agreement's provisions operated to ensure that the Sunrooms retained "all conceivable risks," including the risk that it would fail to generate or collect upon sufficient receivables to repay CBSG. As shown above, an Event of Default under the Agreement includes any circumstance where Sunrooms fails to collect sufficient revenue to pay the Daily Specified Amount for four days. Agreement, Appendix A: The Fee Structure. It also is an event of default under the Agreement where any proceeding is brought by or against Sunrooms seeking to adjudicate it insolvent or bankrupt; or if Sunrooms admits its inability to pay its debts in writing.

Agreement, p. 8-9, §10. If an Event of Default occurs, the Sunrooms immediately became liable for the full outstanding Purchased Amount, together with additional fees and costs due under the Agreement, and CBSG had the right and power to confess judgment against Sunrooms for this amount. Agreement p. 10, § 12. For these reasons, the transaction between the parties constitutes not an account purchase agreement, but a disguised loan.

71. As explained by the court in *Math Magicians*:

> The merchant cash advances are loans. Defendant requires the merchant cash advance be repaid in full. Defendant's only obligation is to advance cash to the borrower. Defendant does not bear any financial risk other than the borrower being unable to pay. Defendant requires borrower to reimburse it for any losses incurred related to the advance. In the event of a default, defendant is entitled to accelerate the borrower's payments. Borrowers must submit a credit application. Borrowers must agree to a credit check prior to entering into the merchant cash advance agreement. Defendant underwrites the merchant cash advance by assessing the borrower's creditworthiness. Defendant collateralizes the merchant cash advance by filing Uniform Commercial Code-1 financing statements. Defendant requires owners of the borrowers, such as Ms. Sinness, to execute personal guarantees.

Math Magicians, Inc. v. Capital for Merchs. LLC, 2013 Cal. App. Unpub. LEXIS 8694, at *8-9 (Cal. Ct. App. Nov. 26, 2013); *see also Essex Partners Ltd. v. Merch. Cash & Capital*, No. CV1103366CASMRW, 2011 WL 13123326, at *6 (C.D. Cal. Aug. 1, 2011) (holding that a merchant cash advance agreement was a loan, not a purchase of receivables); *Milana v. Credit Discount Co.*, 163 P.2d 869, 871 (Cal. 1945) ("The significant fact is that if the defendants had really purchased the accounts and had taken absolute title there would be no occasion for the provision or practice relating to guarantees of payment within specified periods."); *Techner v.*

Klassman, 240 Cal. App. 2d 514, 521 (Cal. App. Ct. 1966) (noting that for a loan to be usurious, "it is essential that the sum loaned shall be repayable absolutely").[1]

72. Because the MCA Agreements are an absolutely repayable obligation secured by collateral, which put CBSG beyond all financial risk of loss besides non-payment, the CBSG Agreements are loans as a matter of law. *See also Koch v. Boxicon,* 2016 Tex. App. LEXIS 3274 at *18-9 (Tex. App. March 30 2016) (holding that a contract that purported to be an account purchase transaction, but which in fact imposed an absolute obligation to repay the principal and established a fixed payment schedule was in fact a disguised usurious loan); *Funding Metrics, LLC v. NRO Boston, LLC*, 2019 N.Y. Misc. LEXIS 4878, at *11 (NY Sup. Ct. Aug. 28, 2019) (finding agreements substantially similar to the Agreement to be disguised usurious loans); *McNider Marine, LLC v. Yellowstone Capital, LLC*, NY Misc. LEXIS 6165, at *9 (NY. Sup. Ct. Nov. 19, 2019) (same).

II. CBSG CANNOT EVADE STATE CRIMINAL LAWS AND STRONG PUBLIC POLICY THROUGH THE SWIPE OF A PEN

A. New Jersey law applies under this forum's choice-of-law principles.

73. When conducting a conflicts of law analysis, a court starts by considering the law of its forum in order to determine whether a conflicts of law analysis is necessary. Restatement (Second) of Conflicts § 6. Rather, it applies the choice of law rules of its forum state in order to determine which state's law applies. *See* Restatement (Second) of Conflicts of Laws, §§ 7(2), 7(3) (noting that conflicts of laws concepts are to be characterized according to conflicts of law principles, and local law concepts are to be characterized according to local law principles).

[1] Further, CBSG has conceded that its Agreements are loans because it has filed a claim in bankruptcy court against another small business in an attempt to enforce a substantially similar agreement. *See In re A Goodnight Sleepstore, Inc.*, 2019 Bankr. LEXIS 190, at *15-16 (Bankr. E.D.N.C. Jan. 25, 2019) (noting that, when a party files a claim in bankruptcy, it concedes it is a creditor, not an owner of receivables).

74. It is axiomatic that a federal district court sitting in diversity applies the conflict of laws principles of the state in which it sits. *Air Prods. & Chems, Inc. v. Eaton Metal Prods, Co.*, 272 F. Supp. 2d 482, 497 (E.D.Pa. 2003). Under Pennsylvania law, courts first determine whether a true conflict exists between the laws of the states with competing interests in adjudicating the dispute. *Fleetwood Servs v. CBSG*, 374 F. Supp.3d 361, 369-370 (E.D. Pa. 2019).

75. Here, it is clear that Pennsylvania and New Jersey law conflict on the question of whether a commercial loan can be usurious. *Compare* 41 P.S. § 201 ("The maximum lawful rate of interest set forth in this section shall not apply to:… (3) business loans of any principal amount.") *with* N.J. Stat. § 2C:21-19 (declaring it a crime in the second degree to charge more than 50% to any business). Accordingly, there is a true conflict between the laws of Pennsylvania and New Jersey.

76. Under Pennsylvania conflicts of law, a contractual choice of law provision fails if:

> (a) the chosen state has no substantial relationship to the parties or the transaction and there is no other reasonable basis for the parties' choice, ***or***
>
> (b) application of the law of the chosen state would be contrary to a fundamental policy of a state which has a materially greater interest than the chosen state in the determination of the particular issue and which, under the rule of § 188 of the Restatement (Second) of Conflicts of Law, would be the state of the applicable law in the absence of an effective choice of law by the parties.

Kaneff v. Del. Title Loans, Inc. 587 F.3d 616, 621-22 (3d Cir. 2009) (quoting *Berg Chilling Sys. v. Hull Corp.*, 435 F.3d 455, 463 (3d Cir. 2006)) (emphasis added).[2] Here, the contractual choice

[2] Additionally, sister federal courts have found that "[a] claim that goes to 'the validity of the **formation** of the contract…cannot be categorized as one involving the rights or obligations arising under the contract,' and thus 'the claim falls outside the contract's choice of law clause'." *Kaur v. World Bus. Lenders*, 2020 U.S. Dist. LEXIS 31306, at *9 (D. Mass. Feb 24, 2020) (quoting *Northeast Data Sys. v. McDonnell Douglas Computer Sys.*, 986 F.2d 607, 611 (1st Cir. 1993)). Here, Defendants allege unconscionability, which goes to the formation of the contract.

of law provision in the CBSG Agreements fails for two reasons. First, Pennsylvania bears no reasonable relationship to the parties or the transactions underlying the CBSG Agreements, because none of the parties are Pennsylvania citizens, and the transactions do not implicate any possible interest of Pennsylvania. Second, application of Pennsylvania law would violate New Jersey's fundamental public policy regarding usury, and New Jersey, as the jurisdiction most affected by the financial exploitation of its residents, has a materially greater interest in the litigation, and would be selected as the state of applicable law in the absence of an effective choice of law by the parties.

B. Pennsylvania has no substantial relationship to the transactions at issue, and there is no reasonable basis to impose Pennsylvania law.

77. Because Pennsylvania has no substantial relationship to the transactions underlying the CBSG Agreements, New Jersey law governs, not Pennsylvania law. Under the Restatement (Second) of Conflicts of Law, courts, when determining what state's law covers the rights and duties with respect to an issue in contract, consider the following factors in determining which state has the most significant relationship: "(a) the place of contracting, (b) the place of negotiation of the contract, (c) the place of performance, (d) the location of the subject matter of the contract, and (e) the domicile, residence, nationality, place of incorporation and place of business of the parties." Restatement (Second) of Conflicts of Law §188(2).

78. Here, none of the factors favor Pennsylvania.

i. Defendants executed the CBSG Agreements in New Jersey and transmitted them to CBSG via email.

ii. CBSG is a Delaware corporation with a principal place of business located in the State of Florida.

iii. Defendants are all citizens of New Jersey.

iv. The transaction concerned the funding of a business that is located in New Jersey.

v. The subject matter of the Agreements, the monies financed to Sunrooms and the Daily Specified Amount paid to CBSG, thus involved the wiring of funds between a business located in Florida and a business located in New Jersey; and

vi. The collateral of the loan were the assets of Sunrooms, again, a New Jersey business. Mr. Foti a New Jersey citizen, was required to personally guarantee Sunroom's performance of the CBSG Agreements.

79. In a December 5, 2019 deposition in the *Fleetwood* case, Joseph Laforte, who identifies himself as the Sales Director of CBSG, and whom CBSG's attorneys have variously identified as CBSG's President, testified that CBSG is a Florida company:

Q: What is the business address for CBSG?
A: CBSG is located in Florida.
Q: Does CBSG have an office in Philadelphia?
A: No.

LaForte Dep. 56:11-24, attached as Heskin Decl. Ex. H. Additionally, CBSG's 30(b)(6) witness in the same case reiterated, in a February 11, 2020 deposition, Mr. LaForte's claim that CBSG's principal place of business is in Florida, not Pennsylvania. *See* Heskin Decl. Ex. G.

80. Pennsylvania, therefore, bears no reasonable relationship to the CBSG Agreements; rather, the choice of Pennsylvania law is a transparent sham aimed at circumventing New Jersey's prohibition against usury.

C. New Jersey has a materially greater interest in the CBSG Agreements.

81. Even if this Court were to find that Pennsylvania bears some reasonable relationship to the CBSG Agreements, New Jersey law still applies because New Jersey has a materially greater interest than Pennsylvania, and because New Jersey's usury laws and licensure requirements constitute its fundamental public policy. The Third Circuit and the Pennsylvania Supreme Court have made it clear that a usurious lender cannot avoid the criminal usury statutes

of another state by unilaterally imposing a choice of law clause. As the Third Circuit, rejecting the application of a choice of law clause, put it in *Kaneff v. Del Title Loans, Inc:*

> [T]he methods used by usurious lenders, often involv[e] subterfuge, to attempt to circumvent fundamental public policy. The Supreme Court noted the well-established principle articulated over 100 years ago in *Earnest v. Hoskins*, 100 Pa. 551, 41 Legal. Int. 346 (1882), that the Commonwealth's public policy prohibits usurious lending, and it cited a decision entered almost 70 years ago in [*Equitable Credit & Discount Co. v. Geier*, 342 Pa. 445, 21 A.2d 54 (1941)], holding that it is well settled in constitutional law that the regulation of interest rates is a subject within the police power of the state particularly when it comes to cases involving small loans, which profoundly affect the social life of the community.

587 F.3d 616, 621-22 (3d. Cir. 2009).

82. In *Kaneff*, a class action was brought against a lender that charged over 300% interest on its transactions. *Id.* at 624. On appeal, the Third Circuit was tasked with determining whether the laws Delaware—which was selected by the loan's choice of law clause, and had no usury statute—or Pennsylvania—where the plaintiff resided, where the loan's collateral was located, and which had a usury statute—should apply to the loan. *Id.* at 622. In light of the debtor's residence, as well as the fact that Pennsylvania would have to "live with the aftermath of the transaction," the Third Circuit, after recognizing that "the regulation of interest rates is a subject within the police power of the state," held that Pennsylvania had a materially greater interest in the loans than Delaware. *Id.* at 622-24; *see also Gregoria v. Total Asset Recovery, Inc.*, 2015 U.S. Dist. LEXIS 1818, at *11 (E.D. Pa. Jan 7, 2015) (rejecting the use of a choice of law clause to evade usury laws); *Clerk v. First Bank*, 735 F. Supp. 2d 170, 178 (E.D. Pa. 2010) (same).

83. The Pennsylvania Supreme Court has twice rejected similar attempts by usurious lenders to avoid the strong public policies of the Commonwealth through choice-of-law provisions. *See Cash America Net of Nevada, LLC v. PA Dept. of Banking*, 8 A.3d 282 (Pa. 2010) (holding

that an out-of-state lender, that supplied loans to Pennsylvania residents over the internet, was subject to Pennsylvania law); *Pa. Dep't of Banking v. NCAS of Del., LLC*, 948 A.2d 752, 777 (Pa. 2008) ("Any interest that Delaware may have in permitting Cash Advance Centers to charge the Monthly Participation Fee is minimal, at best, and is outweighed by Pennsylvania's significant interest in protecting Commonwealth borrowers from exploitative lending practices.").

84. It is also well settled that usury laws evince a state's strong public policies:

> [U]sury laws are a declaration of this State's public policy. The First Department has characterized usury as a question of supervening public policy. *See Guerin v. New York Life Ins. Co.*, 271 AD 110, 62 N.Y.S.2d 805 (1st Dept 1946). The Court of Appeals has stated in *Schneider v Phelps* [41 NY2d 238, 243, 359 N.E.2d 1361, 391 N.Y.S.2d 568 (1977)], "[the] purpose of usury laws, from time immemorial, has been to protect desperately poor people from the consequences of their own desperation." Further, it has been reasoned from these cases that "the policy underlying our State's usury laws is in fact of a fundamental nature."

Clever Ideas, Inc. v 999 Rest. Corp., 2007 WL 3234747 (N.Y. Sup. Ct. Oct. 12, 2007). *Madden v. Midland Funding, LLC*, 2017 U.S. Dist. LEXIS 27109, *28-29 (S.D.N.Y. Feb. 27, 2017) ("A number of cases have applied New York law — despite the parties' choice of another forum's law — because New York's usury prohibition constitutes a fundamental public policy.) (citing *Am. Equities Grp.*, 2004 U.S. Dist. LEXIS 6970, 2004 WL 870260, at *8 ("New York has a strong public policy against interest rates which exceed 25%, which policy must be enforced.") *Assih*, 893 N.Y.S.2d at 446 ("New York has a strong public policy against interest rates which are excessive and this is a policy the courts must enforce."); *N. Am. Bank, Ltd. v. Schulman*, 474 N.Y.S.2d 383, 387 (N.Y. Sup. Ct. 1984) ("[T]he policy underlying our state's usury laws is in fact of a fundamental nature."); *Guerin v. N.Y. Life Ins. Co.*, 62 N.Y.S.2d 805, 810 (1st Dep't 1946) ("Usury is a question of supervening public policy and relates to charges which are in themselves prohibited.")); *State ex rel. Cooper v. Western Sky Fin., LLC*, 2015 NCBC LEXIS 87, at *28 (N.C.

Super. Ct. 2015) ("The North Carolina usury statute makes clear that '[i]t is the paramount public policy of North Carolina to protect North Carolina resident borrowers through the application of North Carolina interest laws.'"); *O'Brien v. Shearson Hayden Stone, Inc.*, 586 P.2d 830, 833-34 (Wash. 1978) (disregarding choice-of-law provision based on usury statute).

85. Courts interpreting New Jersey's usury statute are in accord—even as it applies to businesses. *See In re McCorhill Publ'g, Inc.*, 86 B.R. 783, 793 (Bankr. S.D.N.Y. 1988) (holding that enforcing New Jersey law would violate New York's "strong public policy against interest rates which exceed 25%, which policy must be enforced"); *Business Incentives Co. v. Sony Corp. of Amer.*, 397 F. Supp. 63, 67 (S.D.N.Y. 1975) (disregarding choice-of-law provision because New Jersey has a strong public policy to protect small businesses from commercial giants).

86. Indeed, the New Jersey Superior Court has held that the purpose of a criminal usury statute is to protect its citizens from usury:

> We have no doubt that the evil sought to be remedied by *N.J.S.A.* 17:16C-1 *et seq.* is the charging of excessive interest to New Jersey consumers. That evil is of such a nature that we are confident the Legislature did not intend to discriminate on the basis of the source of supply. Rather, it endeavored to protect residents of this State from that evil irrespective of whether its source was in-state or out-of-state.

Turner v. Aldens, Inc., 433 A.2d 439, 442-44 (N.J. Super. 1981).

87. It is also well settled that a party cannot contract around the criminal laws of a state. *See Cashcall, Inc. v. Mass. Div. of Banks,* 3 Mass. L. Rep. 5 (Mass. Super. Ct. 2015) (holding that Massachusetts criminal usury laws applied to out-of-state resident despite choice-of-law provision because "[a]ll of the loans were applied for, paid from, and collected from Massachusetts."); *Otoe-Missouria Tribe of Indians v. N.Y. State Dep't of Fin. Servs.*, 769 F.3d 105, 113 (2d Cir. 2014) (same); *W. Sky Fin., LLC v. State ex rel. Olens*, 793 S.E.2d 357, 366 (Ga. 2016) ("Again, the police power to enforce the criminal laws of this State cannot be defeated by the efforts of parties to an

agreement to contract around it.") (citing *BankWest, Inc. v. Oxendine*, 598 S.E.2d 343 (2004) ("The parties to a private contract who admittedly make loans to Georgia residents cannot, by virtue of a choice of law provision, exempt themselves from investigation for potential violations of Georgia's usury laws."); *Western Sky*, 2015 NCBC LEXIS 87, at *87 (N.C. Sup. Ct. Aug. 27, 2015) (same).

III. THE MCA AGREEMENTS ARE UNCONSCIONABLE

88. The MCA Agreements entered into with the CBSG are unconscionable contracts of adhesion that are not negotiated at arms-length nor in good faith.

89. Instead, they contain unconscionable, wholly unfair and one-sided terms that prey upon the desperation of the small business and their individual owners and obfuscate the fact that the contemplated transactions, are, in reality, loans that are absolutely guaranteed and repayable regardless of any change in circumstance or inability to pay.

90. Among these one-sided terms, the MCA Agreements include: (1) a provision giving the CBSG the irrevocable right to withdraw money directly from the merchant's bank accounts, including collecting checks and signing invoices in the merchant's name, (2) a provision preventing the merchant from transferring, (3) moving or selling the business or any assets without permission from the CBSG, (4) a one-sided attorneys' fees provision obligating the merchant to pay the CBSG's attorneys' fees but not the other way around, (5) a venue and choice-of-law provision requiring the merchant to litigate in a foreign jurisdiction under the laws of a foreign jurisdiction, (6) a personal guarantee, the revocation of which is an event of default, (7) a jury trial waiver, (8) a class action waiver, (9) a collateral and security agreement providing a UCC lien over all of the merchant's assets, (10) a prohibition of obtaining financing from other sources, (11) the maintenance of business interruption insurance, (12) an assignment of lease of merchant's premises in favor of CBSG, (13) the right to direct all credit card processing payments to CBSG,

(14) a power-of-attorney "to take any and all action necessary to direct such new or additional credit card processor to make payment to [CBSG]," and (15) a power of attorney authorizing the CBSG "to take any action or execute any instrument or document to settle all obligations due…."

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

92. The MCA Agreements are also unconscionable because they are designed to fail. Among other things, the MCA Agreements are designed to result in a default in the event that the merchant's business suffers any downturn in sales by: (1) forcing the merchant to wait until the end of the month before entitling it to invoke the reconciliation provision, (2) preventing the merchant from obtaining other financing, and (3) and requiring the merchant to continuously represent and warrant that there has been no material adverse changes, financial or otherwise, in such condition, operation or ownership of merchant.

93. The MCA Agreements also contain numerous improper penalties that violate the strong public policy of various states, including New Jersey. Among these improper penalties, the MCA Agreements: (1) require the merchant to sign a confession of judgment entitling the MCA company to liquidated attorneys' fees based on a percentage of the amount owed rather than a good-faith estimate of the attorneys' fees required to file a confession of judgment, (2) accelerate the entire debt upon an Event of Default, and (3) require the merchant to turn over 100% of all of its receivables if it misses just four fixed daily payments.

94. The MCA Agreements are unconscionable and unenforceable as a matter of law.

IV. GROUNDS TO STRIKE THE CONFESSION OF JUDGMENT

95. "A petition to strike a judgment is a common law proceeding which operates as a demurrer to the record." *Resolution Tr. Corp. v. Copley Qu-Wayne Associates*, 546 Pa. 98, 106, 683 A.2d 269, 273 (1996).

96. "A petition to strike a judgment may be granted only for a fatal defect or irregularity appearing on the face of the record." *Resolution Tr.*, 546 Pa. at 106. "In considering the merits of a petition to strike, the court will be limited to a review of only the record *as filed by the party in whose favor the warrant is given*, i.e., the complaint and the documents which contain confession of judgment clauses." *Id.*

97. Any "warrant to confess judgment must be explicit and will be strictly construed, with any ambiguities resolved against the party in whose favor the warrant is given." *Dime Bank v. Andrews*, 2015 PA Super 114, 115 A.3d 358, 371 (Pa. Super. Ct. 2015).

98. "An order of the court striking a judgment annuls the original judgment and the parties are left as if no judgment had been entered." *Resolution Tr.*, 546 Pa. 98 at 106. *See* Pa.R.C.P. No. 2959.

99. Recently, in another fraudulent confession of judgment CBSG filed against another extortion victim, Judge Djerassi found "that the record is fatally flawed" and struck CBSG's confession of judgment. *Complete Business Solutions Group, Inc. v. NG Consulting Services, LLC*, 2017 WL 680045, at *3 (Pa. Com. Pl. 2017).

A. The Judgement was entered against the wrong party (June 4 Agreement)

100. As part of the June Agreement, Defendant Foti was required to execute a personal guaranty (June 4 Guaranty) limited to performance of the representations and warranties:

Personal Guaranty of Performance. The undersigned Guarantor(s) hereby guarantees to Purchaser, Merchant Seller's performance of all of the representations, and warranties made by Merchant Seller in the Agreement for the Purchase and Sale of Future Receivables (the "Purchase Agreement"), as may be renewed, amended, extended or otherwise modified (the "Guaranteed Obligations"). Guarantor's obligations are due at the time of any breach by Merchant of any representation or warranty, or covenant made by Merchant in this Guaranty and the Purchase Agreement.

101. The representations and warranties are found in Section 8 of the Agreement.

102. These representations and warranties are limited to: (a) the financial condition and financial information of the company; (b) business purpose; (c) governmental approvals; (d) no conflicting obligations; (e) no bankruptcy; and (f) authorization.

103. The only breach alleged on the face of the Complaint for Confession of Judgment is that Sunrooms "has failed to deliver to CBSG the Receivables required." *See* Heskin Decl., Ex. A, ¶ 8.

104. A plain review of the contract demonstrates that no breach of the representations and warranties is factually alleged.

105. "Pennsylvania law instructs courts to apply the exact language of a warrant of attorney when they enforce a confession of judgment." *See Complete Bus. Solutions Grp., Inc. v. HMC*, Inc., 2019 U.S. Dist. LEXIS 170909, at *5 (E.D.Pa. Oct. 2, 2009) (citing to *Neducsin v. Caplan*, 2015 Pa. Super. 158, 121 A.3d 498, 505 (Pa. Super. Ct. 2015)). A Judgment "will be stricken" if it is not "made in rigid adherence to the provisions of the warrant of attorney." *Neducsin*, 2015 Pa. Super. at 121. And the warrant "will be strictly construed, with any ambiguities resolved against the party whose favor the warrant is given [i.e. Complete Business]." *Id*. Here, the language in the warrant is clear when it mentions that COJs will be filed "against merchant seller." Accordingly, CBSG cannot confess judgment against Foti.

106. This is not the first time that CBSG has confessed judgment against the wrong party. *See HMC*, 2019 U.S. Dist. LEXIS at *5. In *HMC*, the Court rejected CBSG's attempt to argue that the court should construe the "merchant seller" to include the guarantor just because he

signed the application in both capacities where the applicable Agreement identified the "merchant seller" as the company. *Id*. at *6.

107. The confession in this case, similarly to the confession in HMC, superficially identifies the merchant seller as the company and the owner as the guarantor. *Id*. at *6. *See* Ex. B, June Agreement pg. 18.

108. Pursuant to well-settled law, any ambiguities must be construed against CBSG. *Id*. at *6.

109. For those reasons, the judgment against Defendant Foti should be stricken.

B. The Judgment was entered without authority

110. "Because a warrant of attorney authorizing confession of judgment can be an oppressive weapon, a judgment entered pursuant thereto can be accomplished only by strict adherence to the provisions of the warrant of attorney." *Langman v. Metro Acceptance Corp.,* 318 Pa. Super. 381, 384, 465 A.2d 5, 7 (1983) As such, "[a]ny doubt as to the validity of such a judgment must be resolved against the party entering the judgment." *Id*.

111. Pursuant to the June 4 Agreement, Foti only guaranteed performance of the representations and warranties contained in the June Agreement.

112. He did not guarantee performance of all of Sunrooms' obligations under the June Agreement. *See* June Agreement Guaranty.

113. The representations and warranties contained in the June Agreement are limited and do not include ensuring timely delivery of the allegedly purchased Receivables—which is the only breach of the Agreement alleged in the Confession of Judgment. *See* Complaint in Confession of Judgment ¶8 (Ex.A).

114. Once again, this is not the first time CBSG fails to aver facts warranting entry of a confessed judgment. In *Complete Business Solutions Group, Inc. v. NG Consulting Services, LLC,*

2017 Phil. Ct. Com. Pl., LEXIS 14, at *5 (Pa. Ct. Comm. Pl. Feb. 16, 2017) CBSG entered a confession against a guarantor under a similar guaranty, but failed to aver facts establishing that the merchant had breached any representation and warranties under the applicable agreement.) In *NG*, the court rejected CBSG's "scrivener's error" argument that they purported had no material impact on the case, and struck the judgment against the guarantor. *Id.* The same result is warranted here.

C. The MCA Agreements are unconscionable

115. Under New Jersey law, unconscionability is fact-dependent. *See, e.g., Delta Funding Corp. v. Harris,* 189 N.J. 28, 912 A.2d 104, 110-11 (N.J. 2006).

116. "Courts have recognized that a contract may be either procedurally or substantively unconscionable." *Falk v. Aetna Life Ins. Co*., 2019 U.S. Dist. LEXIS 148962, *6-7, 2019 WL 4143882 (D.N.J. Aug. 31, 2019)

117. "Procedural unconscionability refers to ... 'the process by which an agreement is reached and the form of an agreement, including the use therein of fine print and convoluted or unclear language'… 'Substantive unconscionability looks to whether the […] provision unreasonably favors the party asserting it.'" *Id*. at *7 (internal citations omitted).

118. Here, the Agreements are unconscionable because of the specific circumstances leading to them, as well as because of their terms.

119. Courts have broad discretion in determining the remedy for both forms of unconscionability. *Sitogum Holdings, Inc. v. Ropes,* 352 N.J. Super. 555, 800 A.2d 915, 919 (N.J. Super. Ct. Ch. Div. 2002).

120. "[T]he court may refuse to enforce the entire agreement, strike the unconscionable provision and enforce the remainder of the agreement, or limit the application of the

unconscionable provision as to avoid an unconscionable result." *Id.; See also* N.J. Stat. Ann. § 12A:2-302.

121. The unconscionable nature of the CBSG's agreements has been noted in other cases. *See Fleetwood Servs. LLC v. Complete Bus. Solutions Group*, 2019 U.S. Dist. LEXIS 183250, * 9, 2019 WL 5422884 (E.D.Pa. Oct. 23, 2019)

122. In *Fleetwood*, CBSG also took advantage of a small business' "desperate financial condition" to bind them into unconscionable agreements that provided among other things: "a provision giving complete Business the irrevocable right to withdraw money directly from Fleetwood's bank accounts; a provision giving complete Business the power of attorney to act as if it were Fleetwood, including collecting checks and signing invoices in Fleetwood's name , a provision preventing Fleetwood from transferring, moving or selling the business or any asset without permission from Complete Business; and a one-sided attorneys' fees provision…" Id. at *9.

123. Courts have also recognized that "[a]s with any other price term in an agreement. . . [] may be deemed unconscionable." *De La Torre v. CashCall, Inc*., 5 Cal. 5th 966, 976, 422 P.3d 1004, 1009, 236 Cal. Rptr. 3d 353, 359 (2018).

D. The Agreements are usurious under New Jersey Law (All Agreements)

124. Although the terms of the Agreements mention that Pennsylvania law was to apply to disputes arising from the transaction, this choice of law would contradict the fundamental policy against usury in New Jersey, a state with a materially greater interest in this matter.

125. Under New Jersey Law, the public policy of prohibiting usury is so important, it is embodied in N.J. Rev. Stat. §2C:21-19, which prohibits charging an interest in excess of 50% of loans.

126. Violation of N.J. Rev. Stat. §2C:21-19 is a felony punishable with up to three years in prison.

127. Despite their documented form, the Agreements are, in economic reality, loans that are absolutely repayable.

128. Therefore, the Agreements are subject to the restriction of New Jersey's usury laws.

129. Pennsylvania does have a general prohibition against usury, but where, as here, the loan is for business purposes, lenders are exempt. 41 Pa. Stat. Ann. § 301 ("The maximum lawful rate of interest set forth in this section shall not apply to... (v) business loans of any principal amount."); *see also Smith v. Mitchell*, 420 Pa. Super. 137, 141-42, 616 A.2d 17, 22(1992) (requiring a borrower to pay usurious interest due to the business loan exception).

130. When determining which state has a materially greater interest, Pennsylvania courts have looked to the factors set forth in § 188 of the Restatement (Second) of Conflicts. *See Pa. Dep't of Banking v. NCAS of Del., LLC*, 596 Pa. 638, 649, 948 A.2d 752, 776-77 (2008). These factors include: "(a) the place of contracting; (b) the place of negotiation of the contract; (c) the place of performance; (d) the location of the subject matter of the contract, and (e) the domicile, residence, nationality, place of incorporation and place of business of the parties." *Id.*

131. The factors "are to be evaluated according to their relative importance with respect to the particular issue." Restatement (Second) of Conflicts of Laws § 188 (1971).

132. Here, New Jersey law should govern this dispute. As previously stated, the application of Pennsylvania law would contravene New Jersey's fundamental public policy of prohibiting usurious lending.

133. New Jersey also has a materially greater interest in this dispute than Pennsylvania. While many of the § 188 factors are evenly split (the contract was negotiated and entered into via

telephone and email, and the parties have principle places of business in different states) the most important factor here favors the application of New Jersey law: the place of performance. New Jersey is the place of performance because it is where Sunrooms makes payments on the usurious loans. As such, New Jersey law should apply to this matter.

134. Additionally, under the terms of MCA Agreements themselves, CBSG is limited to the maximum interest rate permitted by law in the event that the Court finds that the MCA Agreements are, in fact, loans. *See* Agreement, pg. 6, § 5(c).

V. GROUNDS TO OPEN THE CONFESSION OF JUDGMENT

135. Alternatively, and at a minimum, "if the truth of the factual averments contained in such record are disputed, then the remedy is by a proceeding to open the judgment and not to strike." *Resolution Tr.,* 546 Pa. at 106.

136. A "petition to open rests within the discretion of the trial court, and may be granted if the petitioner (1) acts promptly, (2) alleges a meritorious defense, and (3) can produce sufficient evidence to require submission of the case to a jury." *RAIT P'ship, LP v. E Pointe Properties I, Ltd.*, 2008 PA Super 225, ¶ 4, 957 A.2d 1275, 1277 (Pa. Super. Ct. 2008).

137. Here, Defendants have acted promptly and have numerous meritorious defenses which are more than sufficient to require submission of this case to a jury.

RELIEF

84. Based upon the defects in the face of the Judgment and supporting documents set forth above, it is respectfully submitted that the Judgment be stricken.

85. Alternatively, based on the timely asserted meritorious defenses asserted above, Defendants respectfully request that this Honorable Court open the Judgment, stay its enforcement and stay the this action until this Petition is resolved.

NEW MATTERS

Counterclaim Plaintiffs Sunrooms America, Inc. and Michael Foti bring this class action lawsuit against Defendants Complete Business Solutions Group ("CBSG"), Full Spectrum Processing, Inc. ("Full Spectrum"), Recruiting and Marketing Resources, Inc. ("RMR"), MCA National Fund, LLC, MCA Capital Fund I, LLC ("MCA Capital") and Joseph LaForte Jr. (collectively, the "Defendants") to obtain legal and equitable relief including damages, restitution and injunctive relief for the Class, as defined below. Counterclaim Plaintiffs make the following allegations upon information and belief, except as to their own actions, the investigation of their counsel and the facts that are a matter of public record:

NATURE OF THE ACTION

1. This class action lawsuit seeks to save small businesses and their owners from financial ruin at the hands of an unlawful and unscrupulous loansharking scheme that is crushing small businesses all over the country and devastating the lives of their individual owners.

2. The extortionate collection tactics are so outrageous and unscrupulous that an employee of one these small business victims recently committed suicide immediately after being berated and accused of fraud by one of Counterclaim Defendants' collections personnel.

3. Counterclaim Defendant Joseph LaForte, Jr. operates the unlawful loansharking scheme through, among other fronts, Counterclaim Defendants CBSG, Full Spectrum, RMR, MCA National Fund, LLC, New and MCA Capital (collectively, the "Enterprise").

4. The Enterprise preys upon individual owners of small businesses who are in desperate need of funding and cannot obtain financing from traditional lenders.

5. The interest rates charged are unconscionable and deceptive. The interest rates charged by the Enterprise are as high as ***875%***.

6. When these small businesses ultimately can no longer afford to pay the unlawful and/or unconscionable interest rates charged, the Enterprise uses extortionate collection practices that are designed to embarrass, intimidate and extort their victims into paying even if the victim has to borrow, pay from individual sources, or sell their personal assets, ***including their homes***.

7. These unconscionable and extortionate tactics include the following:

a) Filing ***forged*** confessions of judgments in a foreign jurisdiction with absolutely zero relationship to the parties;

b) Employing Mafioso-style tactics by sending a former ex-felon and reputed former Mafia soldier to personally visit the victims and demand payment;

c) Threatening to throw their spouses and small children out of their home and onto the streets;

d) Sending thousands of default notices to friends, family, neighbors, vendors, customers, and other business relations, alleging that the victims have defaulted on their debts. Defendants' tactics stoop so low that, in this very case, Defendants actually sent default letters to a victim's niece and to the school of a victim's child;

e) Sending fraudulent UCC notices that intentionally overinflate the amount allegedly borrowed;

f) Harassing victims, spouses, and employees with endless phone calls, emails and text messages, threatening to destroy their business and/or take everything they have;

g) Confessing judgment against the merchants for amounts that are grossly exaggerated and not supported by any good-faith basis in law;

h) Confessing judgment against the individual owners despite no legal basis to do so;

i) Unlawfully seizing the victim's bank accounts without providing notice as required under the Due Process Clause, controlling Third Circuit precedent and Pennsylvania law; and

j) Intimidating their victims by threatening physical bodily harm. Among the physical threats in this case, Defendant LaForte personally threatened to pursue a victim ***until he was dead***, told the victim that he hoped he got ***hit***

by a car, and threatened to ***blow the doors off both the victim and his counsel, i.e., the undersigned***.

8. In conducting its illegal loansharking scheme, the Enterprise disguises its predatory, high-interest loans through so-called factoring agreements, which purport to purchase a merchant's future receivables.

9. Under a legitimate factoring agreement, a factor assumes the risk of loss in the event that the receivables become uncollectable.

10. In reality and practice, however, the Enterprise assumes no risk of loss, and instead enforces its sham factoring agreements as absolutely repayable loans even if the merchant goes out of business or files for bankruptcy.

11. The unlawful collection tactics employed by the Enterprise are as brazen as it gets.

12. Perhaps most shocking is the Enterprise's use of ***forged confessions of judgment***. In this very case, the Enterprise filed a confession of judgment against Plaintiff Rainwater in the State of New York, obtaining a fraudulent judgment in the amount of $38,126.75.

13. In doing so, the Enterprise ***forged*** the affidavit signed by one of its victims, Dr. Christine Rainwater, which only authorized judgment to be entered in her own home state of Virginia. The forgery is ***undeniable***:

14. Below is the original affidavit actually signed by Dr. Rainwater, Ex. 1:

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 , Court of Common Jurisdiction for the County of Prince William in the State of VA the sum of $92,975.30 less any payments timely

15. And below is the ***forged*** affidavit filed by the Enterprise's own attorney, Ex. 2:

4. Merchant Defendant hereby confesses judgment and authorizes entry of judgment in favor of Plaintiff and against Defendants in the Supreme District Court for the Southern District of New York , Court of Common Jurisdiction for the County of Richmond in the State of New York the sum of $92,975.30 less any payments timely made pursuant to the secured Merchant Agreement dated MARCH 30, 2018, plus legal fees to Plaintiff

16. Incredibly, the above is not an isolated incident. Attached are examples of obvious forgeries where the date of the notary precedes the date of the MCA Agreement. *See* Ex. 3.

17. The outrageous collection tactics by the Enterprise and the merchant cash advance ("MCA") industry were recently exposed by Bloomberg News, and have sparked investigations by state and federal regulators, as well as legislation by the United States Congress.

18. As a direct result of the type of conduct described herein, the New York State Legislature banned the use of confessions of judgment on out-of-state victims like Plaintiffs here. The Financial Services Committee of the United States House of Representatives has gone further and passed a bill that would outright ban the use of confessions of judgment nationally.[3]

19. Since 2018, the Enterprise has filed nearly 2,000 confessions of judgment against its small business victims and their individual owners. Over 1,100 of these were filed right here in Philadelphia. Over 750 were filed in the State of New York.

20. Counterclaim Plaintiffs now bring this class action in order to recompense the many thousands of similarly situated victims that have been preyed upon by the Enterprise through their predatory and unlawful loansharking scheme.

[3] https://www.bloomberg.com/news/articles/2019-11-14/ban-on-predatory-lending-tactic-passes-house-finance-committee
https://www.bloomberg.com/news/articles/2019-06-21/n-y-moves-to-ban-confessions-of-judgment-for-out-of-state-loans

THE PARTIES

21. Counterclaim Plaintiff Sunrooms America, Inc. is a New Jersey corporation with a principal place of business located in New Jersey.

22. Counterclaim Plaintiff Michael V. Foti is an adult resident and citizen of New Jersey and is the owner of Sunrooms America, Inc.

23. Counterclaim Defendant Complete Business Solutions Group, Inc. d/b/a Par Funding is a Delaware corporation with a principal place of business located in the State of Florida.

24. Counterclaim Defendant Full Spectrum Processing, Inc. is a Pennsylvania corporation with its principal place of business located at 20 N. 3rd Street, Philadelphia, PA 19106.

25. Counterclaim Defendant Recruiting and Marketing Resources, Inc. is a Pennsylvania corporation with its principal place of business located at 20 N. 3rd Street, Philadelphia, PA 19106.

26. Counterclaim Defendant MCA National Fund, LLC is a limited liability company located at 1080 N. Delaware Ave., Suite 505, Philadelphia, PA 19125. It is owned by Lisa McElhorne, who is a Florida resident and citizen.

27. Counterclaim Defendant MCA Capital Fund I, LLC is a limited liability company located at 1080 N. Delaware Ave., Suite 505, Philadelphia, PA 19125. It is owned by Lisa McElhorne, who is a Florida resident and citizen.

28. Counterclaim Defendant Joseph LaForte, Jr. is an individual resident and citizen of Pennsylvania.

JURISDICTION AND VENUE

29. This Court has subject-matter jurisdiction over this dispute pursuant to 28 U.S.C. § 1331 based on Plaintiffs' claims for violations of the Racketeer Influenced and Corruption

Organizations Act, 18 U.S. C. §§ 1961-1968. The Court has subject-matter jurisdiction over the state-law claims of Plaintiffs because they are so related to the federal claims asserted herein that they form part of the same case or controversy under Article III of the United States Constitution.

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

31. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2) because at least one of the Defendants is located within this District and the underlying judgments at issue were filed within this District.

32. Each Defendant is subject to the personal jurisdiction of this Court because each has voluntarily subjected itself/himself/herself to the jurisdiction of this Court, regularly transacts business within the Commonwealth of Pennsylvania, and has purposefully availed himself of the jurisdiction of this Court for the specific transactions at issue.

COMMON FACTUAL ALLEGATIONS

A. The Structure of the Enterprise

33. Counterclaim Defendant Joseph LaForte, Jr. is the mastermind of the Enterprise.

34. LaForte has been previously convicted of crimes involving fraud or dishonesty and therefore cannot hold legal title to any organization that engages in the sale of securities.

35. LaForte thus operates the Enterprise through various legal fictions and fronts.

36. The Enterprise consists of a group of associated-in-fact entities that are, on paper, owned by LaForte's wife, Lisa McElhorne but in reality, are owned and controlled by LaForte.

37. Each entity has a unique and separate role in conducting the affairs of the Enterprise.

38. Defendants CBSG acts as the lenders on paper.

39. Defendants MCA Capital and MCA National provide the financing for the Enterprise through securities backed investment products that are offered to the public.

40. Defendant Recruiting and Marketing Resources employs LaForte on paper and is owned on paper by his wife Lisa McElhorne. Recruiting and Marketing Resources is a necessary part of the Enterprise because CBSG cannot employ LaForte due to his prior criminal background.

41. Defendant Full Spectrum Processing underwrites and collects upon the loans.

42. LaForte directs and controls the affairs of the Enterprise through each of these separate entities.

43. Each of the Counterclaim Plaintiffs and the Class Members have been directly injured by the unlawful conduct of the Enterprise.

B. The Predatory MCA Industry

44. As Bloomberg News has reported, the MCA industry is "essentially payday lending for businesses," and "interest rates can exceed 500 percent a year, or 50 to 100 times higher than a bank's."[4] The MCA industry is a breeding ground for "brokers convicted of stock scams, insider trading, embezzlement, gambling, and dealing ecstasy." *Id.* As one of these brokers admitted, the "industry is absolutely crazy. … There's lots of people who've been banned from brokerage. There's no license you need to file for. It's pretty much unregulated." *Id.*

45. The National Consumer Law Center also recognized that these lending practices are predatory because they are underwritten based on the ability to collect, rather than the ability of the borrower to repay without going out of business. *See* National Consumer Law Center, *supra*.

[4] https://www.bloomberg.com/news/articles/2014-11-13/ondeck-ipo-shady-brokers-add-risk-in-high-interest-loans

46. This is because MCA companies "receive the bulk of their revenues from the origination process rather than from performance of the loan [and thus] may have weaker incentives to properly ensure long-term affordability, just as pre-2008 mortgage lenders did." *Id.* ("[A] fundamental characteristic of predatory lending is the aggressive marketing of credit to prospective borrowers who simply cannot afford the credit on the terms being offered. Typically, such credit is underwritten predominantly on the basis of liquidation value of the collateral, without regard to the borrower's ability to service and repay the loan according to its terms absent resorting to that collateral.").

47. The MCA companies care only about whether they can collect upon default, and not whether the small business can survive.

C. **The Enterprise's conduct demonstrates the Agreements are treated as loans.**

48. On December 20, 2018, Bloomberg News published an article exposing the unlawful collection tactics employed by the Enterprise when a merchant fails to pay:[5]

[5] https://www.bloomberg.com/graphics/2018-confessions-of-judgment-visit-from-gino/

Gino Gioe enters the Los Angeles office of Radiant Images on Feb. 15, 2018, captured by a surveillance camera. SOURCE: COMPLAINT FILED IN U.S. DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK.

49. As Bloomberg News revealed, the Enterprise routinely employs mob-like intimidation tactics when a merchant cannot pay:

> Gioe's travels around the U.S. show how the regulatory vacuum is enabling intimidation tactics that seem like relics of a lawless past.
>
> Ten of Gioe's unannounced visits to borrowers, from Chicago to small-town Alabama, were described in court papers and interviews with Bloomberg News. He made "threats of violence and physical harm" to employees of a California rehab center, according to one court complaint. A tire-shop owner near Boston said in another court filing he "felt that physical harm would come to me and my family" when Gioe walked into his shop in 2016 demanding immediate payment.
>
> A third borrower, recounting Gioe's visit to his Maryland trucking company last year, described him in an affidavit as resembling "an aging but still formidable character ripped from the World Wrestling

> Federation" who had been sent not to negotiate but to "intimidate me into making a lump-sum payment."[6]

50. In the Bloomberg article, both "Gino" and the principal owner of CBSG, Joseph LaForte, admitted to Bloomberg News that its merchants are "borrowers" and that CBSG is a "lender." *See id.* ("Gioe said the former owner had borrowed $1 million from Par with no intention of paying it back…"), ("Joseph LaForte says his brother is an outside broker for Par who sometimes helps him collect debts but isn't an employee. He says Par had a right to pursue Sharma for reneging on millions of dollars of debt."), ("Joseph LaForte says that even though Gioe was helping borrowers, a few did complain about getting a visit.").

51. The Bloomberg article further goes onto detail numerous examples where the Enterprise is treating its agreements as absolutely repayable loans and not true sales. As described by Bloomberg News, "Gioe's visits followed a pattern. He would show up unannounced, demand to speak to the owner and say he wasn't leaving until he got paid, according to the people who described the visits in court records and interviews. All of the people say Gioe seemed to be trying to intimidate them. Four say they called the police, though no charges were filed." *Id.*

52. In fact, the Enterprise treats its MCA Agreements as so absolutely repayable, that not even a bankruptcy court can stop their collection tactics. *See id.* ("Gioe could be persistent. When he showed up at a beauty-supply warehouse in Chicago last year, its new owner, George Souri, told him a bankruptcy judge had ordered creditors to back off. 'We don't deal with courts, we have our own ways to collect,' Gioe responded, according to an affidavit Souri filed in the bankruptcy case. When Souri forbade him from speaking to the warehouse's former proprietor, Gioe remarked, 'We'll go to her house and deal with her there,' the affidavit states.").

[6] *Id.*

53. Apparently, the Enterprise did not learn its lesson. On August 27, 2019, CBSG was sanctioned nearly $50,000 by the United States Bankruptcy Court for the Central District of California. *See* Ex. 4.

54. If the CBSG Agreements reflected true account purchase transactions, "Gino" would be paying visits to the companies who owed the receivables allegedly purchased and CBSG would not be employing Mafioso-style intimidation tactics against *the seller*.

PREDICATE RICO ACTS

A. Quantico Business Center: Forgery, AR Smash, Fraudulent UCC, Fraudulent Default, and Fraudulent COJ.

55. Quantico Business Center ("QBC") provided office space to businesses that do business with the Federal Bureau of Investigation. It is a limited liability company organize under the laws of Virginia.

56. The company is owned and operated by Dr. Christine Rainwater, a Virginia resident.

57. On March 100, 2018, QBC entered into a high-interest loan with the Enterprise. The loan amount was $61,983 and the principal and interest was $92,975.

58. While on its face, QBC was to repay the loan based on 10% of its daily receivables, the Enterprise unilaterally included this term to disguise the true nature of the transaction.

59. As expressly negotiated by the parties, QBC was required to repay the loan in 40 weeks through 200 fixed daily payments of $465 every business day.

60. In order to avoid the usury laws of various states, the Enterprise disguised this fixed daily payment by falsely representing that $465 per day was a good-faith estimate of 10% of QBC's receivables.

61. As negotiated by the parties, the Enterprise intended to charge and collect the full repayment amount in exactly 40 weeks, which resulted in an unconscionable interest rate of ***535%***.

62. The amount lent, however, was to be disbursed in weekly tranches.

63. Thus, each week, the Enterprise would deposit a certain amount, while simultaneously debiting $465 per day.

64. In early May 2018, however, the Enterprise stopped making the weekly deposits as required under Schedule A of the agreement.

65. As a direct result of this breach of contract, QBC was unable to make the fixed daily payments required under the MCA Agreement.

66. QBC immediately informed CBSG of this breach. In response, CBSG claimed that it was having technical problems making the deposit. This excuse was untenable because it was successfully debiting the account at the same time. In other words, CBSG was claiming it could not deposit funds while at the same time it was debiting funds.

67. After a full three weeks of CBSG's failure to deposit the funds owed under Schedule A, QBS placed a stop payment on its account.

68. In response, the Enterprise unleashed its arsenal of unconscionable and unlawful collection tactics on QBS and Dr. Rainwater.

69. First, the Enterprise verbally abused Dr. Rainwater through numerous phone calls threatening to destroy her business and ruin her financially.

70. Second, the Enterprise unleashed its AR Smash, issuing hundreds of emails to various business contacts regardless of whether those businesses owed QBS receivables. The AR Smash also included sending emails to friends and family, which included Dr. Rainwater's brother, nephew, sister-in-law, brother-in-law, and even a second cousin. The sending of UCC Notices to

family members and other non-account debtors was not a commercially reasonable effort to collect upon a debt, but rather was intend solely to embarrass and to harass QBC into paying a settlement.

71. Third, the Enterprise sent out ***fraudulent UCC Notices*** to various clients that grossly overstated the amount allegedly owed. Although it is undisputable that the Enterprise allegedly purchased, at most, $92,975 in receivables from QBC, the Enterprise nevertheless sent UCC Notices directing QBC's clients to pay CBSG $211,400, Ex. 5:

> Please be advised that the Merchant has defaulted on a secured merchant agreement entered into by and between the Merchant and CBSG (the "Agreement"). The balance currently due and owing to CBSG pursuant to the Agreement is ***$211,400.00.***

72. There was absolutely no good-faith basis for directing QBC's clients to pay CBSG $211,400. That was blatant mail fraud.

73. To be sure, the Enterprise subsequently confessed judgment against QBC and Dr. Rainwater in the State of New York, on July 2, 2018, admitting that the most due and owing was $38,126.

74. But even worse than the mail fraud, in obtaining the confessed judgment through Defendant New York Unity Factor, the Enterprise ***forged*** the affidavit of confession by altering the state and county in which the confession of judgment was authorized.

75. That fraudulent judgment remains on the docket to this day.

76. As a direct result of the Enterprise's unlawful and fraudulent conduct, QBC was forced to close its business.

B. Annie's Pooch: Usury (New Jersey), AR Smash, Fraudulent COJ, and Fraudulent Default

77. Annie's Pooch is a manufacturer of pet foods to national retailers. It is a limited liability company organized under the laws of New Jersey.

78. The company is owned and operated by Ann Hartig, a New Jersey resident.

79. On March 2, 2019, Annie's Pooch entered into a criminally usurious loan with the Enterprise. The loan amount was $40,000 and the principal and interest was $56,000.

80. While on its face, Annie's Pooch was to repay the loan based on 10% of its daily receivables, the Enterprise unilaterally included this term to disguise the true nature of the transaction.

81. As expressly negotiated by the parties, Annie's Pooch was required to repay the loan in 28 weeks through 140 fixed daily payments of $400 every business day.

82. In order to avoid the usury laws, the Enterprise disguised this fixed daily payment by falsely representing that $400 per day was a good-faith estimate of 10% of Annie's Pooch's receivables.

83. As negotiated by the parties, the Enterprise intended to charge and collect the full repayment amount in exactly 28 weeks, which resulted in a usurious and unconscionable simple interest rate of 75%.

84. The Enterprise deducted $400 per day just as contemplated under the agreement each and every day without incident for the first two months.

85. In early May 2019, however, Annie's Pooch had to close its bank account because of potential identity fraud.

86. Annie's Pooch promptly informed CBSG that it had to close its bank account and that it would make up the payments once its new bank account was set up.

87. Incredibly, the Enterprise declared a default, entered a confession of judgment against both Annie's Pooch and Ms. Hartig personally, and also charged numerous default fees and attorney's fees.

88. The judgment obtained Ms. Hartig was fraudulent. In obtaining the judgment by confession, the Enterprise fraudulently represented that Ms. Hartig provided a power of attorney to CBSG authorizing it to confess judgment against them individually as guarantors. That was a knowingly false statement. Pursuant to 3.4 of the MCA Agreement, CBSG is only authorizes to enter judgment against "the Merchant."

89. In addition, the Enterprise launched what it coins as its "AR Smash," where it sends out hundreds and oftentimes thousands of emails to literally anyone and everyone found on the victim's bank statements, which, as described below, have been illegally stolen.

90. These emails often misstate the amount owed and falsely accuse the merchant and individual owner of being in default.

91. The emails are intended to harass, embarrass, and compel the merchant and the individual owner to pay the Enterprise even if they have to borrow funds or exhaust personal resources.

92. In this case, the Enterprise downloaded at least twelve months of bank statements during the funding call without notice or permission.

93. The merchant was told that the purpose of the funding call was to confirm that the merchant's accounts were in good standing. The Enterprise, however, surreptitiously used their limited access to the merchant's bank accounts to download at least twelve months of bank statements in order to execute its "AR Smash" upon any future non-payment.

94. In executing its "AR Smash," the Enterprise sent out default letters to hundreds of business relationships that did not owe receivables to the merchant, and which the Enterprise had no good-faith basis to believe that the entity owed receivables to the merchant.

95. As a direct result of the AR Smash, Annie's Pooch has lost hundreds of thousands of dollars in business. The Enterprise's conduct has also resulted in the devaluation of the business, and has forced Hartig to sell the business.

C. Sunrooms America: Usury (New Jersey), Threats of Physical Harm, AR Smash, Mail Fraud, and Fraudulent COJ.

96. Sunrooms America is a second-generation, family owned designer and installer of sunrooms, patio covers, pergolas, and screen rooms. It is a New Jersey corporation with its principal place of business located in Williamstown, New Jersey.

97. The company is owned and operated by Michael V. Foti, a New Jersey resident.

98. Between June 5, 2019 and January 2, 2020, entered into a series of seventeen criminally usurious loans. *See* Ex. 6.

99. Each contained the same common terms and conditions, and each charged an interest rate in excess of 100%.

100. Like the Enterprise's other victims, the unlawful and unconscionable interest payments pushed Sunrooms into financial catastrophe by causing it to take out more and more unlawful loans with the Enterprise.

101. As a direct result of these unlawful and unconscionable terms, Sunrooms could no longer sustain the fixed daily payments required under the loans and stay in business.

102. Thus, on or around January 10, 2020, Sunrooms stopped making payments.

103. Immediately upon missing a payment, Sunrooms' owner, Mr. Foti, was besieged by phone calls, emails and text messages demanding payment.

104. On January 15, 2020, the Enterprise confessed judgment against both Sunrooms and Foti personally in the amount of $1,361,845.70. In doing so, the Enterprise fraudulently confessed judgment against Foti under the June 4, 2019 agreement in the amount of $259,791.06.

Under the June 4, 2019 agreement, the Enterprise knew that Foti had only guaranteed performance of the representations and warranties. To be sure, the Enterprise changed the form of its agreements in or around July 2019 to require that the guarantor also guarantee all terms, obligations and covenants, which was non-existent in the June 4, 2019 agreement.

105. That same day, the Enterprise also sent hundreds of emails to clients, vendors, business contacts and personal contacts of Foti, claiming that Sunrooms was in default and owed CBSG $1,296,173.93. CBSG also claimed to possess a UCC-1 form, requiring the recipient to forward payments of $1,296,173.93 directly to CBSG. Conspicuously missing, however, was the UCC-1 form. That is because CBSG did not file the UCC until January 16, 2020, and it was not entered until January 22, 2020. CBSG thus engaged in numerous counts of mail fraud.

106. In addition to sending default notices to business entities that did not owe Sunrooms receivables, the Enterprise also sent out default notices to friends and family of Foti, which included his college-age niece.

107. These notices were sent to harass, intimidate and extort Sunrooms and Foti into making payment from any source available, even if they had to borrow money.

108. On January 15, 2020, a guy by the name of Anthony also called Foti berating him for missing payments. He then gave the phone to LaForte, who yelled and screamed at Foti.

109. Among the verbal attacks, LaForte told Foti that he was a "f*&^ing piece of shit" and warned Foti that he would destroy his business, and pursue him personally until the day he died. He also stated that he hoped Foti would get hit by a car. He further threatened to open up a competing sunroom company to put him out of business.

110. On January 16, 2020, without providing the required notice under Pennsylvania law, CBSG had a sheriff serve a Writ of Execution on numerous banks located in Pennsylvania.

As a direct result, the Wells Fargo bank accounts of M. Foti and his wife were unlawfully frozen. CBSG also unlawfully froze the bank account of Sunrooms with Franklin Savings Bank.

111. On January 17, 2020, LaForte called Foti again to verbally abuse him. Among other extortionate tactics, LaForte threatened to "blow the doors" off of both Foti and his counsel. Given the tone and rage in which the threat was made, Foti took this as a physical threat and was in fear for the health and safety of himself and his family.

112. The Enterprise was informed that it had unlawfully frozen the bank account of Ms. Foti, a fourth grade school teacher. To this day, the Enterprise refuses to release the bank account.

C. Michael Heller: Usury (New Jersey), AR Smash, Fraudulent COJ

113. MH Marketing is an online advertising and marketing company.

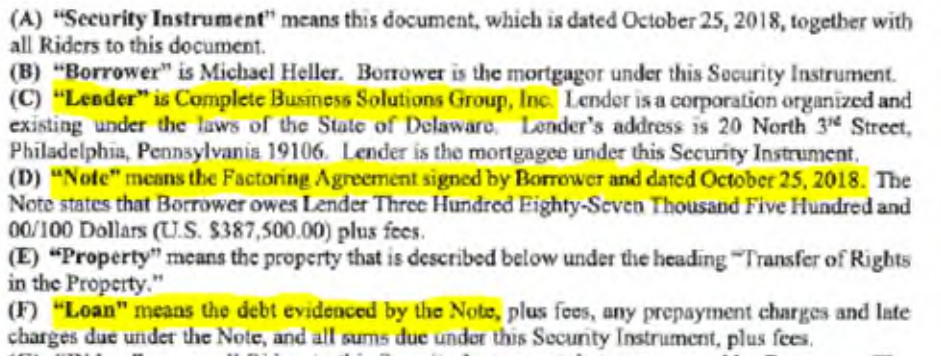
114. The company is owned and operated by Michael Heller, a New Jersey resident.

115. MH Marketing entered into two MCA Agreements with the Enterprise.

116. The first was entered into on October 24, 2018. The loan amount was $250,000 and the principal and interest was $387,500.

117. As expressly negotiated by the parties, MH Marketing was required to repay the loan in 250 business days through 250 fixed daily payments of $1,550. The interest rate on the face of the agreement is 175%.

118. Most notably, in securing the loan, the Enterprise required Mr. Heller to mortgage his New Jersey home. The Enterprise expressly defined the MCA Agreement as a loan:



(A) **"Security Instrument"** means this document, which is dated October 25, 2018, together with all Riders to this document.
(B) **"Borrower"** is Michael Heller. Borrower is the mortgagor under this Security Instrument.
(C) **"Lender"** is Complete Business Solutions Group, Inc. Lender is a corporation organized and existing under the laws of the State of Delaware. Lender's address is 20 North 3rd Street, Philadelphia, Pennsylvania 19106. Lender is the mortgagee under this Security Instrument.
(D) **"Note"** means the Factoring Agreement signed by Borrower and dated October 25, 2018. The Note states that Borrower owes Lender Three Hundred Eighty-Seven Thousand Five Hundred and 00/100 Dollars (U.S. $387,500.00) plus fees.
(E) **"Property"** means the property that is described below under the heading "Transfer of Rights in the Property."
(F) **"Loan"** means the debt evidenced by the Note, plus fees, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus fees.

119. The second was entered into on January 22, 2019. The loan amount was $25,000 and the principal and interest was $31,500.

120. As expressly negotiated by the parties, MH Marketing was required to repay the loan in 20 weeks through 20 fixed weekly payments of $1,575. The interest rate on the face of the agreement is 158%.

121. In May 2019, MH Marketing had lost its largest client and could no longer keep up with the onerous terms dictated under the MCA Agreements.

122. After informing CBSG that MH Marketing could not make payment, LaForte verbally abused Heller, calling him a "moron" and threating to take his house away.

123. Upon missing payment, the Enterprise unleashed its AR Smash.

124. As a direct result of the AR Smash, things went from bad to worse. MH Heller lost even more large accounts and revenue declined even worse.

125. In August 2019, the Enterprise initially agreed to a modification of the repayment term, but immediately confessed judgment against MH Marketing and Mr. Heller personally after just one missed payment.

126. The Enterprise harassed Heller and his wife with repeated phone calls, text messages, and emails, including hundreds of emails sent to customers. As an example, the Enterprise sent the following text to Heller: Fwd:Well, umm... This is awkward... We just sent

your wife an email and several text messages with the Deed of Trust pertaining to the Collateral that is your home... We also just emaieled (sic) her the Foreclosure Warning Letter per your default and refusal to pay."

127. On June 21, 2019, the Enterprise filed a confession of judgment against Mr. Heller—even though it had no right to confess judgment against Mr. Heller personally.

128. Under the express terms of the MCA Agreement, CBSG may only confess judgment against—the merchant.

129. In filing the confession of judgment, the Enterprise filed a knowingly false verified complaint attesting under penalties of perjury that it was entitled to confess judgment against Mr. Heller.

130. As a direct result of the Enterprise's actions, Michael and his wife were forced to file for Chapter 13 bankruptcy and their home is still at risk at foreclosure.

D. Volunteer Pharmacy (Tennessee): Usury (Tennessee), Threats of Physical Harm (Gino), AR Smash, Verbal Abuse.

131. Volunteer Pharmacy provides prescription and non-prescription drugs to local residents in Tennessee.

132. The company is owned and operated by Toby C. Frost, a Tennessee resident.

133. Between November 5, 2013 and May 16, 2016, Volunteer Pharmacy entered into a series of forty-one usurious loans with the Enterprise. *See* Ex. 7.

134. Each contained the same common terms and conditions, and each charged an interest rate in excess of 100%.

135. Like the Enterprise's other victims, the unlawful and unconscionable interest payments pushed Volunteer Pharmacy into financial catastrophe by causing it to take out more and more unlawful loans with the Enterprise.

136. In 2016, Volunteer Pharmacy could no longer sustain the onerous daily payments.

137. Frost called LaForte and asked for longer payment terms. In order to consolidate some of the existing debt and extend the term of the loans, LaForte demanded that Frost put up his home as collateral. Frost had no choice but to comply with the demand so he put up his home as security.

138. In 2017, Volunteer Pharmacy began missing payments due to insufficient funds.

139. LaForte immediately called Frost to verbally abuse him. In addition to cursing out Frost, LaForte instructed Frost to obtain payment by any means possible even if he had to borrow the money from friends or family.

140. If Frost did not come up with the payment, LaForte threatened to throw Frost's wife and children out of their home and onto the streets because he held a mortgage on their home.

141. In addition, the Enterprise launched its AR Smash, and began calling employees of Volunteer Pharmacy to further harass, embarrass and extort payment.

142. The threats ultimately worked and Frost agreed to pay $4,000 per week.

143. Despite continuing to pay $4,000 each and every week as agreed, LaForte instructed Gino to pay Frost a visit.

144. The Enterprise's conduct cannot get more despicable.

145. One late summer evening in 2017, Gino showed up at the home of Toby Frost.

146. His seven-year old son answered the door.

147. Gino demanded to see his dad, and warned the kid that he knew his father was home, and to go get him.

148. After relaying the message to his father, both his son and his young daughter locked their selves in their parent's bedroom, hiding in fear.

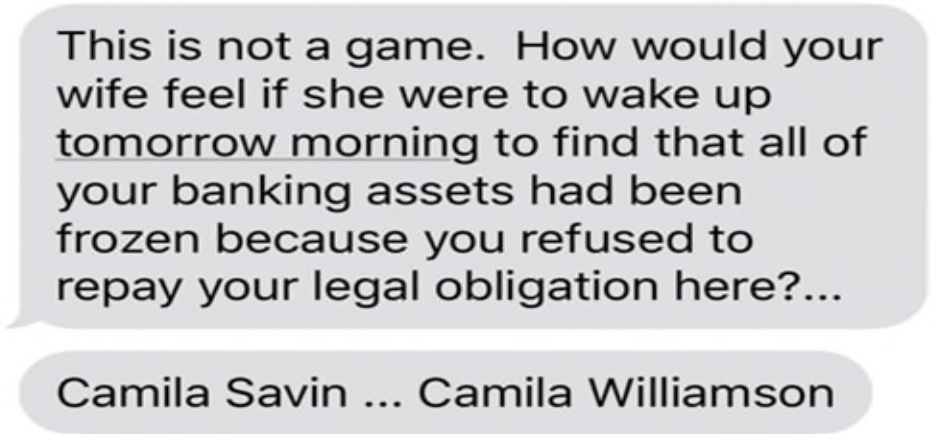
149. Gino confronted Frost and asked why he doesn't pay his bills. He informed Frost that he had been sent by LaForte, and that he had just gotten back from a visit in Texas where a merchant pulled a shotgun on him.

150. Gino left without incident but the message was received.

151. Frost continued to make his $4,000 weekly payments over the next two years.

152. In November 2019, Frost demanded an accounting of everything he received and paid to date. The Enterprise claimed that Volunteer Pharmacy still owed $281,539, despite paying over $1,426,491 more than advanced.

153. On January 27, 2020, the Enterprise threatened to harass Mr. Frost's wife, sending the following text:



154. The Enterprise followed through with their threats and sent numerous text messages to Mr. Frost's wife that same day.

155. The Enterprise also sent Mr. Frost a text message informing him that the debt owed CBSG was absolutely repayable even if the business is no longer operational, and that if he failed to pay, all of his personal income and assets would be seized. *See* Ex. 8.

E. National RX: Usury (Tennessee), Fraudulent COJ, Verbal Abuse and Unlawful Bank Levies

156. National RX provides prescription and non-prescription drugs to local residents in Tennessee.

157. The company is owned and operated by James Frost, a Tennessee resident, and father of Toby Frost.

158. National RX entered into an MCA Agreement with the Enterprise on April 6, 2016.

159. The loan amount was $40,000, and the principal and interest was $56,000. National RX was required to make fixed daily payments of $466.66, resulting in an interest rate of 221%.

160. After deducting fees, National RX actually only received $38,832.

161. In or around May 2016, National RX was having difficulty making the fixed daily payments, and informed CBSG that it had insufficient funds to make the fixed daily payments.

162. After four payments were returned for insufficient funds, the Enterprise confessed judgment against National RX and J. Frost personally in the amount of $65,931.87.

163. In doing so, the Enterprise confessed default fees of $15,215.05 and attorney's fees of $5,000.

164. The Enterprise also falsely represented that it was entitled to confess judgment against J. Frost personally as a guarantor of the MCA Agreement.

165. The guarantee, however, only applies to a breach of any representation, warranty or covenant contained in the MCA Agreement.

166. The confession of judgment does not allege a breach of any representation, warranty, or covenant. Thus, on its face, the confession of judgment is invalid.

167. After confessing judgment, National RX agreed to make payments of $300 per week until judgment amount of $65,931.87 was paid in full.

168. Beginning on July 14, 2016, National RX made the $300 payments each and every week just as agreed.

169. After making total payments of $64,544, J. Frost contacted CBSG and asked for a payoff amount. CBSG claimed that National RX owed a total of $82,000, of which $15,231.87 remained due.

170. Despite not missing a single payment as previously agreed, the Enterprise confessed judgment against National RX and J. Frost personally again on October 30, 2019 in the amount of $16,482.16.

171. Incredibly, in confessing judgment—a second time—CBSG represented under penalty of perjury that "No judgment has been entered in any jurisdiction."

172. The Enterprise also confessed $746.59 in additional attorney's fees, and a $650 domestication fee.

173. On November 7, 2019, the Enterprise then sent Writs of Execution on various bank accounts, including Wells Fargo, Bank of America, and Chase without providing proper service under Pennsylvania law.

174. On November 21, 2019, Colin Pirrone of CBSG sent the following text to J. Frost:

> Mr. Frost… here is where everything is. Every 120 days is a default on the original term since 2016. Yes, you have paid much into this, you have paid well over your original factoring, but that was not done within 120 days…it was not done in 240 days, nor was it done within 360 days… They charge 5k every 120 days for defaulting on the agreed upon term.

175. The above representations are not found anywhere in the MCA Agreement. Instead, the fees charged are just additional interest that the Enterprise extorts from their victims.

176. On January 28, 2020, Pirrone verbally abused J. Frost threating to ruin his business, accused him of conspiring with his son T. Frost, represented that J. Frost was personally liable for

the debt owed by his son and Volunteer Pharmacy. He also referenced J. Frost's former service to the Navy and called him "a disgrace to the Navy uniform."

177. The Enterprise continues to harass and threaten J. Frost in an attempt to extort money that is not even owed under the plain terms of the MCA agreement.

G. Knavas Bounce House: AR Smash

178. Joshua Speakman is a Missouri resident and a fulltime paramedic.

179. On the side, he owns a small business called Knava's Bounce House, which rents inflatable jump houses for children's birthday parties, school functions and other social events.

180. Like many other MCA victims, Mr. Speakman became trapped in MCA debt and was paying nearly $500 per day.

181. On September 12, 2019, Knava's Bounce House was induced to enter into an unconscionable high-interest loan with the Enterprise that promised to free Knava's Bounce House from its MCA debt.

182. The loan amount was $27,000 and principal and interest was $36,450.

183. While on its face, Knava's Bounce House Rentals was to repay the loan based on 10% of its daily receivables, the Enterprise unilaterally included this term to disguise the true nature of the transaction.

184. As expressly negotiated by the parties, Knava's Bounce House Rentals was required to repay the loan in 123 days, which resulted in an unconscionable interest rate of 607%. The loan also included an unconscionable $5,000 default fee, a $5,000 stacking fee, and an attorney's fees provision.

185. The loan proceeds were to be disbursed weekly over fifteen weeks. At the same time, the Enterprise also deducted $295.90 per day as contemplated under the agreement each and

every day until November 22, 2019. In effect, the Enterprise was loaning Knava's Bounce House $2,144 each week, while simultaneously being paid back $1,475 each week. That is why the effective interest rate is an unconscionable 607%.

186. In November 2019, Knava's Bounce House suffered a downturn in sales and could not continue with the unconscionable terms of the MCA Agreement.

187. Knava's Bounce House sought to terminate the unconscionable loan by offering to pay off the existing balance and stop any further weekly cash deposits to its bank account.

188. CBSG refused and continue to deposit cash funds into Knava's Bounce House's bank account while also withdrawing the daily amount, thereby increasing Knava's Bounce House's debt to CBSG and further straining its business operations and cash flow.

189. In an effort to control its own bank account and not take on additional debt the company could not afford, on or about November 21, 2019, Knava's Bounce House stopped payment on the CBSG loan.

190. In response, on November 25, 2019, CBSG contacted Mr. Speakman directly and insisted that he remove the stop payment and resume acceptance of the CBSG deposits to his company's bank account. When Mr. Speakman declined, CBSG responded that the debt would be transferred to collections.

191. On November 25, 2019, CBSG's Chief Financial Officer emailed Mr. Speakman a "Payoff Letter" demanding an immediate cash payment in the amount of $14,251.70. The letter also stated, "Once we have received this payoff amount, a termination of our UCC will be filed. . . . The payoff amount as stated in this letter is valid only until 5:00 p.m. EST on 11/25/19." Unfortunately, Mr. Speakman did not have $14,000 cash on hand for a wire transfer to CBSG's bank account by 5 p.m.

192. Over the next two days, CBSG undertook "collections" efforts that included texts and emails that were both harassing and even threatening at times, along with hostile and intimidating phone calls to Mr. Speakman, all demanding that he immediately resume daily payments to CBSG. With each contact, the strong-arm tactics intensified to that point that Mr. Speakman began to sense a growing threat to his personal safety.

193. Numerous emails clearly intended to embarrass and shame Mr. Speakman into acquiescence were sent to radio advertisers, his girlfriend, his former state representative, employees, his brother and even a charitable organization his company had donated money to in the past. These emails informed the recipients that Mr. Speakman had defaulted on a debt and that any money they owed Mr. Speakman should be sent directly to CBSG instead. The emails included an attached "Notice of Assignment and Lien" and "First Notice." Mr. Speakman interpreted CBSG's tactics as a direct threat to his ability to continue operating his business.

194. On November 26, 2019, Mr. Speakman attempted to convey to CBSG his intention to pay his debt to them, but he also needed to save his business so that he could pay them. At this point, Knava's Bounce House had failed to remit only **two** daily payments totaling $591.80.

195. On November 26, 2019, CBSG filed a creditor's UCC Financing Statement naming Knava's Bounce House Rentals LLC and Mr. Speakman as its debtors and claiming its security interest in any property owned or acquired by the debtors.

196. On November 27, 2019, Mr. Speakman resumed his efforts to renegotiate payment of the loan to no avail. CBSG's response included only more intimidation and ruthlessness.

197. On December 5, 2019 CBSG filed a Judgment by Confession in the Court of Common Pleas for Philadelphia County. The Confession of Judgment claimed a default in unpaid

receivables from November 22, 2019 in the amount of $14,251.70 plus 6% interest, attorney fees and domestication fees ($1369.62), or $15,621.32.

198. On December 12, 2019, CBSG obtained a Writ of Attachment against Wells Fargo Bank, N.A. seeking to collect on the Confession of Judgment plus additional interest and costs for a total of $15,825.25. In doing so, CBSG violated Pennsylvania law by failing to serve notice as required by the United States Due Process Clause and Pennsylvania law.

199. On February 6, 2020, Larry Baronofsky confirmed the true nature of the transaction, i.e., an absolutely repayable loan, by threatening to garnish his wages as a paramedic, issue a blanket writ on all of his companies, and lock up his credit card processors:

> Lindsey – copied here is judgement debtor Joshua Speakman, owner of default merchant referenced above. In the absence of reply from text message I sent him earlier offering to settle, I recommend we domesticate the judgement to Stoddard County (MO) as he is gainfully employed w/ Air Evac Lifeteam and his wages can be attached.

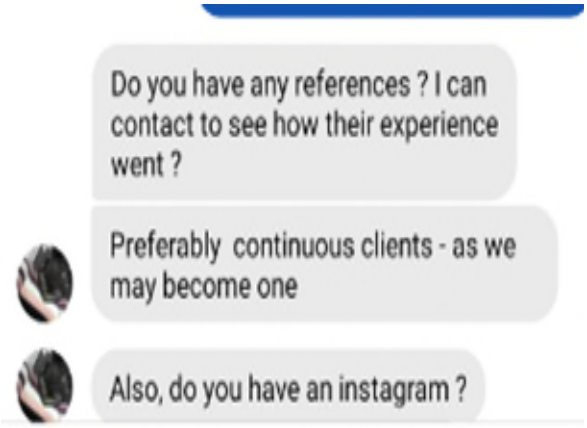
200. On February 10, 2020, Baronofsky threatened Speakman yet again:

> Hey Corey – copied here is judgement debtor Joshua Speakman, owner of default merchant referenced above. See attached – can we issue blanket writs on all his companies? Lock up merchant services processor and other electronic payment methods?
>
> We're hoping to domesticate and attach his weekly wages from job.

Hello, this is Lindsey reaching out regarding your DEFAULTED merchant cash

201. On February 14, 2020, Lindsey Mahon at LMahon@parfunding.com sent a "To Whom It May Concern" email to several individuals employed by at least one school customer notifying those individuals of the Notice of Assignment and UCC lien against "Knavas House Rentals LLC" for defaulting on its contract for future receivables and requesting that the recipients "hold all funds payable in reserve, and then forward to CBSG until $15,043.50 is accrued."

202. Apparently that was not enough. On February 19, 2020, received a fake solicitation from Olivia Wiggins, asking Mr. Speakman for references from "continuous clients," and claiming that she hoped to become one too:



203. Ms. Wiggins, however, lives in Mays Landing, New Jersey—not Missouri. It is therefore clear that this inquiry was nothing more than a fraudulent attempt to find out the identity of Knava's most important clients in order to further extort and harass.

H. Capital Jet: Usury (Texas), Fraudulent COJ, AR Smash, Verbal Abuse

204. Capital Jet charters flights for corporate and retail clients.

205. The company is owned and operated by Craig Campbell and Mary Carleton, residents of Texas.

206. Capital Jet entered into two MCA Agreements with the Enterprise.

207. The first was on August 9, 2019.

208. The loan amount was $112,536.13, and the principal and interest was $151,923.78. Capital Jet was required to make fixed daily payments of $994.09.

209. The term of the loan was 153 business days, and the interest rate was an unconscionable 281%. The first was on August 9, 2019.

210. The second was on September 3, 2019.

211. The loan amount was $25,000, and the principal and interest was $31,000. Capital Jet was required to make fixed weekly payments of $2,214.29.

212. The term of the loan was fourteen weeks, and the interest rate was an unconscionable 206%.

213. In late November 2019, Capital Jet was having difficulty making the fixed daily payments due to a mechanical failure on its only aircraft, and informed CBSG that it had insufficient funds to make the fixed daily payments.

214. On December 2, 2019, after four payments were returned for insufficient funds, the Enterprise confessed judgment against Capital Jet and Mary Carleton and Craig Campbell personally in the amount of $$79,915.20.

215. In doing so, the Enterprise confessed default attorney's fees of $3,773.94 and a domestication fee of $650.

216. On December 5, 2019, CBSG obtained a Writ of Attachment against Wells Fargo Bank, N.A. Bank of America, Capital One, and JP Morgan seeking to collect on the Confession of Judgment plus additional interest and costs for a total of $79,915.20. In doing so, CBSG violated Pennsylvania law by failing to serve notice as required by the United States Due Process Clause and Pennsylvania law.

217. On December 18, 2019, one of the Enterprise's collection's agents called Capital Jet in a fraudulent attempt to book a charter flight. The person identified himself as "Seth."

218. The call was answered by Capital Jet's employee named Darrell. Darrell was forty six-years old, and married with two young kids.

219. After Darrell informed “Seth” that he could accommodate the charter request (by subcontracting it out to another company), “Seth” verbally abused and berated Darrell accusing him and his owners of fraud.

220. Darrell was visibly shaken and distraught. He was also in fear of losing his job.

221. Two days, later, on December 20, 2019, Darrell committed suicide.

I. Petropangea: Usury (Texas), and Unlawful Bank Levies

222. Petropangea is an independent broker providing wholesale petroleum products on a global scale to the oil and gas industry to include drilling, offshore, resellers, construction, and petrochemical.

223. It is a Texas corporation located in League City, Texas.

224. The company is owned and operated by Johnny R. Harrison, a resident of Texas.

225. Petropangea entered into an MCA Agreement with the Broadway Advance on April 4, 2019.The loan amount was $25,000, and the principal and interest was $33,750. Petropangea was required to make fixed daily payments of $281.25.

226. The term of the loan was 120 business days, and the interest rate was an unconscionable 187%.

227. In or around May 21, 2019, Petropangea was contacted by its bank, Capital One, NA’s, fraud division about a voided check had been forged and cashed.

228. The check that was forged was a voided check that Petropangea previously sent to CBSG as a condition of the loan.

229. Petrogangea notified CBSG that the account was frozen and that CBSG would be unable to debit the account.

230. Petropangea advised CBSG that it needed to open a new account and that it would provide CBSG with the account information when it was opened.

231. CBSG treated its inability to debit Petropangea's account as a default, despite the fact that CBSG directly and/or indirectly was responsible for the forgery that necessitated the bank freezing the account.

232. The Enterprise responded by filing a confessed judgment against Petropangea and Johnny R. Harrison in the amount of $28,350.52 on June 13, 2019.

233. In doing so, the Enterprise confessed attorney's fees of $1,348.13.

234. After confessing judgment, the Enterprise also filed a UCC Lien in Texas.

235. Petropangea's customers responded by simply not paying outstanding invoices, which caused tremendous strain on the business.

236. As a result of the Enterprise's aggressive tactics, some of Petropangea's customers stopped doing business with them which resulted in a substantial loss of revenue.

237. Petrogangea could not afford to pay the outstanding balance because of the harm that was caused by the Enterprise's extortionist tactics.

238. However, Petropangea needed to stop the harassment of its customers so it agreed to a reduced payment of $25,000 in full satisfaction of the debt.

239. Petropangea paid the $25,000.

240. Despite acknowledging that Petropangea had a zero balance, the Enterprise unlawfully and without proper service levied an account at Branch Bank and Trust.

241. The Enterprise took an additional $6,800 from that account.

242. Petropangea advised CBSG that the levy violated their settlement agreement to which CBSG responded that the money would never be refunded.

243. The Enterprise also knowingly collected more than permitted under its judgment. The judgment amount was for $28,350.52, and it collected $31,800.

J. Amos Jones Law Firm: Unconscionability, Fraudulent COJ, Fraudulent Inducement

244. The Amos Jones Law Firm is a nine-year-old law firm in Washington, D.C., employing one W-2 employee, an Associate, and several contract attorneys around the country.

245. The company is owned and operated by Amos Jones, who is a resident of the District of Columbia.

246. The company had bootstrapped itself carrying no debt until 2017, when Jones went full time in his firm following seven years as an award-winning professor of Contracts at law schools in North Carolina, the same year in which he was first rated as a top employment attorney by Super Lawyers.

247. Jones entered into an MCA Agreement with Par Funding on November 7, 2019, after uninvited overtures from five (5) distinct Fast Advance Funding salespersons starting on July 25, 2018, offering "CONSOLIDATION" of debt.

248. In October and early November 2019, Jones received various e-mail overtures and assurances from Fast Advance Funding's Joseph Caputo, Zach Burnett, and Matt Solomon expressing an ability to offer products better than the agreements Jones was in.

249. Jones agreed to apply but stipulated that previous agreements barred him from "stacking" any deals so "only a consolidation will work." The Enterprise agreed.

250. As part of the application process, Jones disclosed the existence of the pre-existing MCAs, in which he was in good standing and current, but communicated in e-mail and telephone conversations that if he could reduce his daily payments into one more manageable payment per day, his firm's cash-flow position would improve.

251. In evaluating Jones's application, the Enterprise reviewed financial information including a remarkable credit report showing 23 years of credit history, with never a late payment over 60 credit accounts, no derogatory credit, no judgements or public records, and a 100% positive repayment history, in addition to flawless personal and business tax returns showing solid financials for himself and his business.

252. The Enterprise approved Jones's application and issued a 33-page contract featuring a personal guaranty by Amos Jones on Page 18 and a "Schedule B" on Page 32 showing a schedule depicting the effective daily savings that its "CONSOLIDATION AGREEMENT" would effect for Amos Jones Law Firm.

253. The loan amount was $28,645, and the principal and interest was $38,670.75. Jones was required to make fixed daily payments of $298.89.

254. The Enterprise's consolidation was supposed to have reduced the daily obligations of Amos Jones Law Firm on previous advances from $398.52 to the $298.89, improving cash flow and making repayment more manageable by converting three loans into just the one, that of the Enterprise.

255. This cash-flow improvement, for Amos Jones Law Firm, under the banner of "CONSOLIDATION" in all marketing and loan documents prepared by the Enterprise, was the consideration for Jones paying more for the same amount of money in the refinance.

256. The term of the loan was 129 business days, and the interest rate was an unconscionable 875%.

257. Jones verified funds and bank-account health by obtaining the login details for the operating account and knew or should have known that, when they began withdrawing funds, there

was less than $1,000 in the bank account, leaving little room for another daily draw without paying off the previous advances as the actual "consolidation."

258. Moreover, the Enterprise, as a condition for loan approval, obtained payoff letters and proof of in-good-standing status from these pre-existing obligations, and Jones informed the other lenders that he was about to consolidate those previous loans.

259. However, the Enterprise never paid the consolidation amount of $28,645, and instead withdrew nearly $1,500 over the first five days of the loan from the operating account of Amos Jones Law Firm.

260. This misconduct in violation of its own agreement caused bounced payments on the previous obligations for the first time (defaults on the other cash advances) while costing Jones approximately $1,800 in overdraft fees over the next 30 days due to the domino effect of their withdrawing funds while disbursing none.

261. Jones wrote to Par Funding's Tim Myers beseeching the Enterprise to consolidate the loans as agreed, but all the Enterprise would do is reply asking Jones to telephone them.

262. Having been brushed off by the fraudulent Enterprise, Jones wrote a formal letter of rescission to Tim Myers of Par Funding on November 13, 2019, bearing Jones's official signature and on color letterhead.

263. Myers responded via e-mail, demanding $2,000 to stop everything. At this point, Jones realized that he was dealing with a crooked company that lies all the time about everything, including in its written contracts. He demanded "$1,992.60" as an origination fee.

264. On November 14, 2019, Jones wrote to his bank and copied Par Funding to try to repair the damage and move forward. Jones had worked with five MCA firms in the past and had never had a company lie, misrepresent, and/or fail to transfer funds as agreed. Despite the high

interest rates, the usual MCA products helped the Firm to grow at critical times. The Enterprise was completely different.

265. After learning that CBSG had not paid off the prior outstanding MCA agreements as represented, Jones informed the Enterprise that it was rescinding the agreement.

266. CBSG refused to rescind the agreement and demanded full payment.

267. The Enterprise called or text messaged Jones not fewer than 50 times over the four weeks between Thanksgiving and New Years, and eventually, on Jones's request, turned the matter over to an internal Par attorney, who Jones believed would operate more responsibly according to contract law, public policy, and the federal and state laws being violated by the Enterprise as to Amos Jones Law Firm.

268. However, on December 16, 2019, Par Funding had entered a judgment by confession on December 5, 2019 against Amos Jones Law Firm and Amos Jones in the Philadelphia court for nearly $12,000, but never notified Jones.

269. Par in-house counsel Peter Mulcahy agreed to consent to Jones's filing a Stipulated Petition to Strike Off Judgment by Confession prepared by Jones, but only if Jones were to pay the Enterprise approximately $8,800.

270. Jones struggled to raise $8,800 in a matter of hours to avoid having a (fraudulently obtained) judgment, with its long list of bank accounts to levy as part of the Enterprise's filing, absolutely destroy his liquidity, his credit, and his credibility.

271. He wired 100% of the demanded amount to the Enterprise on January 6, 2020, and filed an on January 8, 2020, granted strike-off petition invalidating the judgment that reported, by consent of Jones and the Enterprise:

272. On Monday Dec. 30, 2019, Plaintiff's General Counsel Peter J. Mulcahy accepted and approved Defendant's draft of an Unopposed Consent Petition to Strike Off Judgment by Confession. All conditions for Plaintiff's consent were met on Monday, January 6, 2020, with the "Full Final Payoff Per Mulcahy" wired from Wells Fargo Bank into Plaintiff's designated TD Bank account.

273. The effective interest rate of this extortionate maneuvering by the Enterprise was an unconscionable 875%. – over a two-month period of non-performance by the Enterprise.

274. The cash-flow problems created intentionally by the Enterprise led eventually to the recording of three late payments on what, for 23 years, had been a spotless, never-late repayment history with all three credit-reporting bureaus, leading to a 75-point drop in Amos Jones's Experian credit score, the closure of a 23-year-old Citibank credit account with a limit of nearly $20,000 that had been in good standing continuously, and the involuntary closure of two other longstanding accounts in good standing, creating a less-favorable debt-utilization ratio that has adversely affected the creditworthiness of Jones.

275. Had Jones, who is only 42 years old, not acted as a Top 100-rated, Lifetime Achievement American attorney and law professor teaching contracts highly accomplished within the Third Circuit, he would not have avoided some of the extremely deleterious consequences – which include death – at the hands of the Enterprise.

CLASS ALLEGATIONS

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

277. Counterclaim Plaintiffs bring this action pursuant to Fed. R. Civ. Pr. 23(b)(2) and 23(b)(3).

278. Sunrooms brings this action individually and on behalf of a class of similarly situated persons defined as follows:

> **RICO Merchant Class**: All merchants that, on or after March 13, 2016, paid money pursuant to a CBSG Agreement as a result of extortionate conduct in violation of the Hobbs Act.
>
> **Unconscionability Merchant Subclass**: All merchants that, on or after March 13, 2016, paid money pursuant to a CBSG Agreement charging an unconscionable interest rate.
>
> **UCC Merchant Subclass**: All merchants that, on or after March 13, 2016, had a UCC notice sent by a member of the Enterprise pursuant to a CBSG Agreement in violation of UCC 9-625.

279. Foti brings this action individually and on behalf of a class of similarly situated persons defined as follows:

> **RICO Individual Class:** All individuals that, on or after March 13, 2016, paid money pursuant to a CBSG Agreement as a result of extortionate conduct in violation of the Hobbs Act.
>
> **Unconscionability Individual Subclass**: All individuals that, on or after March 13, 2016, guaranteed a CBSG Agreement charging an unconscionable interest rate.
>
> **UCC Individual Subclass**: All individuals who, on or after March 13, 2016, had a UCC notice sent by a member of the Enterprise pursuant to a CBSG Agreement in violation of UCC 9-625.

280. Sunrooms brings this action individually and on behalf of a class of similarly situated persons defined as follows:

> **New Jersey Merchant Class:** All merchants residing in New Jersey that, on or after March 10, 2016, paid money pursuant to a CBSG Agreement with an effective interest rate exceeding fifty percent.
>
> **New Jersey Merchant RICO Subclass:** All merchants residing in New Jersey that, on or after March 10, 2016, paid money pursuant to a CBSG Agreement with an effective interest rate exceeding one-hundred percent.

281. Foti bring this action individually and on behalf of a class of similarly situated persons defined as follows:

> **New Jersey Individual Class:** All individuals residing in New Jersey who, on or after March 10, 2016, guaranteed a CBSG Agreement with an effective interest rate exceeding fifty percent.
>
> **New Jersey Individual RICO Subclass:** All individuals residing in New Jersey who, on or after March 10, 2016, guaranteed a CBSG Agreement with an effective interest rate exceeding one-hundred percent.

282. Sunrooms bring this action individually and on behalf of a class of similarly situated persons defined as follows:

> **Writ of Execution Merchant Class:** All merchants that, on or after March 10, 2016, had a writ of execution issued against it in violation of the Due Process Clause and Pennsylvania law.

283. Plaintiffs Campbell, Carleton, and Foti bring this action individually and on behalf of a class of similarly situated persons defined as follows:

> **Writ of Execution Individual Class:** All individuals who, on or after March 10, 2016, had a writ of execution issued against them in violation of the Due Process Clause and Pennsylvania law.

284. The following people are excluded from the Classes: (1) any Judge or Magistrate presiding over this action and members of their families; (2) Counterclaim Defendants, Counterclaim Defendants' subsidiaries, parents, successors, predecessors, and any entity in which the Counterclaim Defendants or their parents have a controlling interest and its current or former employees, officers, and directors; (3) persons who properly execute and file a timely request for exclusion from the Classes; (4) persons whose claims in this matter have been finally adjudicated on the merits or otherwise released or waiver; (5) Counterclaim Plaintiffs' and Counterclaim

Defendants' counsel; and (6) the legal representatives, successors, and assigns of any such excluded persons.

285. **Numerosity**: The exact number of members of the Classes is unknown and is not available to Counterclaim Plaintiffs at this time, but individual joinder is impracticable. Based on publically available documents, each of the Classes likely numbers are in the many hundreds or more.

286. **Commonality and Predominance.** There are many questions of law and fact common to the claims of Counterclaim Plaintiffs and the other Class members, and those questions predominate over any questions that may affect individual members of the Classes. Common questions for the Classes include, without limitation, the following;

a) Whether the MCA Agreements are disguised loans;

b) Whether the choice of law provisions in the MCA Agreements are enforceable;

c) Whether the MCA Agreements are usurious under applicable state law;

d) Whether the merchants are entitled to treble damages under RICO;

e) Whether the Enterprise has engaged in extortionate conduct in violation of the Hobbs Act;

f) Whether the Enterprise has violated Pennsylvania's judgment collection laws; and

g) Whether the Enterprise has violated the Due Process Clause.

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

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

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

FIRST CAUSE OF ACTION (RICO)
(Violation of 18 U.S.C. § 1962(c))

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

A. Culpable Persons

291. Counterclaim Defendants are individuals capable of holding legal interest in property and are thus "persons" within the meaning of 18 U.S.C. § 1962(c) as the term is defined by 18 U.S.C. § 1961(3).

B. The Association-in-Fact Enterprise

292. Counterclaim Defendants are separate individuals or entities associated with each other by shared personal and/or one or more contracts or agreements for the purpose of originating, underwriting, servicing and collecting usurious loans to the Counterclaim Plaintiffs and countless other small businesses throughout the United States.

293. Counterclaim Defendants are also associated-in-fact through common ownership. Specifically, Counterclaim Defendant LaForte owns CBSG, Fast Advance, Full Spectrum, Recruiting & Marketing, and MCA Fund, although it is fronted by his wife Lisa McElhorne.

294. Since at least 2014 and continuing through the present, the members of the Enterprise have had ongoing relations with each other through common control/ownership, shared personnel and/or one or more contracts or agreements relating to and for the purpose of originating, underwriting, servicing and collecting upon unlawful debt issued by the Enterprise to small businesses throughout the United States, including Plaintiffs and the Class Members.

295. The debt, including such debt evidenced by the Agreements, constitutes unlawful debt within the meaning of 18 U.S.C. § 1962(c) and (d) and 18 U.S.C. § 1961(6) because (i) it violates applicable criminal usury statutes and (ii) the rates are more than twice the legal rate

permitted under the laws of New Jersey (N.J. Rev. Stat. § 2C:21-19) and Tennessee (Tenn. Ann. Code § 47-14-103.

296. This association of Counterclaim Defendants constitute a single association-in-fact enterprise (the "Enterprise") within the meaning of 18 U.S.C. § 1962(c), as the term is defined in 18 U.S.C. § 1961(4).

297. The Enterprise has an existence separate and apart from the illegal activity in which it engages by entering into legal financing agreements and attempting to collect lawful debts using legal collection practices.

C. The distinct roles in the Enterprise.

298. The Enterprise has organized itself into a cohesive group with specific and assigned responsibilities and a command structure to operate as a unit in order to accomplish the common goals and purposes of collecting upon unlawful debts as follows:

i. Counterclaim Defendant Joseph LaForte, Jr.

299. LaForte is the leader and mastermind of the Enterprise. LaForte is the true owner and operator of CBSG. LaForte is responsible for the day-to-day operations of the Enterprise and has final say on all business decisions of the Enterprise including, without limitation, which usurious loans the Enterprise will fund, how such loans will be funded, which investors will fund each loan and the ultimate payment terms, amount and period of each usurious loan, including the loans extended to Plaintiffs and the Class Members.

300. In his capacity as the day-to-day leader of the Enterprise, LaForte is responsible for creating, approving and implementing the policies, practices and instrumentalities used by the Enterprise to accomplish its common goals and purposes including: (i) the form of merchant agreements used by the Enterprise to attempt to disguise the unlawful loans as receivable purchase

agreements to avoid applicable usury laws and conceal the Enterprise's collection of an unlawful debt; (ii) the method of collecting the daily payments via ACH withdrawals; and (iii) the collection tactics used when a merchant is unable to pay. All such forms and collection tactics were used to make and collect upon the unlawful loans including, without limitation, loans extended to Plaintiffs and the Class Members.

301. LaForte has also taken actions and, directed other members of the Enterprise to take actions necessary to accomplish the overall goals and purposes of the Enterprise including directing the affairs of the Enterprise, funding the Enterprise, soliciting and recruiting members of the Enterprise, directing members of the Enterprise to collect upon the unlawful loans and executing legal documents in support of the Enterprise.

302. LaForte has ultimately benefited from the Enterprise's funneling of the usurious loan proceeds to himself and the other members of the Enterprise.

ii. Counterclaim Defendant CBSG

303. CBSG maintains officers, books, records, and bank accounts independent of the other Defendants.

304. Directly and through LaForte and its other agent employees, CBSG has been an active participant and central person in the operation and management of the Enterprise and its affairs, and in the orchestration, perpetration, and execution of the Enterprise's collection of unlawful debts. CBSG has been and continues to be responsible for: (i) entering into contracts with brokers to solicit borrowers for the Enterprise's usurious loans and participation agreements with Investors to fund the usurious loans; (ii) pooling the funds of investors in order to fund each usurious loan; (iii) underwriting the usurious loans and determining the ultimate rate of usurious interest to be charged under each loan; (iv) entering into the so-called merchant agreements on

behalf of the Enterprise; (v) servicing the usurious loans; (vi) setting up and implementing the ACH withdrawals used by the Enterprise to collect upon the unlawful debt; and (v) obtaining judgments in its name to further collect upon the unlawful debt.

305. In this case, CBSG: (i) solicited borrowers, including Plaintiffs and other Class Members; (ii) pooled funds from investors to fund the Agreements; (iii) underwrote the Agreements; (iv) entered into the Agreements; (v) collected upon the unlawful debt evidenced by the Agreements by effecting daily ACH withdrawals from the bank accounts of Counterclaim Plaintiffs and the Class Members; and (vi) upon the alleged default by Counterclaim Plaintiffs and other Class Members, filed suit in CBSG's name to collect upon the unlawful debt evidenced therein.

306. CBSG ultimately benefits from the Enterprise's unlawful activity by receiving a management fee from the proceeds of the unlawful debt from the Enterprise's funneling of the usurious loan proceeds and to the investors of the deals, certain of which, upon information and belief, CBSG has also directly participated.

iii. Counterclaim Defendant Full Spectrum Processing

307. Full Spectrum maintains officers, books, records, and bank accounts independent of the other Counterclaim Defendants.

308. Directly and through LaForte and its other agent employees, Full Spectrum has been an active participant and central person in the operation and management of the Enterprise and its affairs, and in the orchestration, perpetration, and execution of the Enterprise's collection of unlawful debts. Full Spectrum has been and continues to be responsible for: (i) entering into contracts with brokers to solicit borrowers for the Enterprise's usurious loans and participation agreements with Investors to fund the usurious loans; (ii) underwriting the usurious loans and

determining the ultimate rate of usurious interest to be charged under each loan; (iii) entering into the so-called merchant agreements on behalf of the Enterprise; (iv) servicing the usurious loans; (v) setting up and implementing the ACH withdrawals used by the Enterprise to collect upon the unlawful debt; and (vi) obtaining judgments in its name to further collect upon the unlawful debt.

309. In this case, Full Spectrum: (i) solicited borrowers, including Plaintiffs and other Class Members; (ii) underwrote the Agreements; (iii) entered into the Agreements; i(v) collected upon the unlawful debt evidenced by the Agreements by effecting daily ACH withdrawals from the bank accounts of Counterclaim Plaintiffs and the Class Members; and (v) upon the alleged default by Counterclaim Plaintiffs and other Class Members, filed suit in CBSG's name to collect upon the unlawful debt evidenced therein.

310. Full Spectrum ultimately benefits from the Enterprise's unlawful activity by receiving a management fee from the proceeds of the unlawful debt from the Enterprise's funneling of the usurious loan proceeds to the other members of the Enterprise.

iv. Counterclaim Defendant Recruiting and Marketing Services ("RMS")

311. RMS maintains officers, books, records, and bank accounts independent of the other Counterclaim Defendants.

312. Directly and through LaForte and its other agent employees, RMS has been an active participant and central person in the operation and management of the Enterprise and its affairs, and in the orchestration, perpetration, and execution of the Enterprise's collection of unlawful debts. RMS has been and continues to be responsible for: (i) entering into contracts with brokers to solicit borrowers for the Enterprise's usurious loans and participation agreements with Investors to fund the usurious loans; (ii) pooling the funds of investors in order to fund each usurious loan; (iii) underwriting the usurious loans and determining the ultimate rate of usurious

interest to be charged under each loan; (iv) entering into the so-called merchant agreements on behalf of the Enterprise; (v) servicing the usurious loans; (vi) setting up and implementing the ACH withdrawals used by the Enterprise to collect upon the unlawful debt; and (v) obtaining judgments in its name to further collect upon the unlawful debt.

313. In this case, RMS: (i) solicited borrowers, including Counterclaim Plaintiffs and other Class Members; (ii) pooled funds from investors to fund the Agreements; (iii) underwrote the Agreements; (iv) entered into the Agreements; (v) collected upon the unlawful debt evidenced by the Agreements by effecting daily ACH withdrawals from the bank accounts of Counterclaim Plaintiffs and the Class Members; and (vi) upon the alleged default by Plaintiffs and other Class Members, filed suit in CBSG's name to collect upon the unlawful debt evidenced therein.

314. RMS ultimately benefits from the Enterprise's unlawful activity by receiving a management fee from the proceeds of the unlawful debt from the Enterprise's funneling of the usurious loan proceeds to the other members of the Enterprise.

v. Defendant MCA Capital Fund I, LLC

315. MCA Capital maintains separate officers, books, records, and bank accounts independent of the other Counterclaim Defendants.

316. Directly and through their members, agent officers, and/or employees, MCA Capital has been and continue to be responsible for providing CBSG and New York Unity with all or a portion of the pooled funds necessary to fund the usurious loans, including the Agreements with Plaintiffs and the Class Members.

317. Among other things, MCA Capital solicits institutional and individual investors to raise capital for the fund. In doing so, MCA Capital represents to these individual investors that

the MCA Agreements are loans with interest rates in excess of 33%, and that the default rate on the loans is one percent.

318. MCA Capital, as an extension of CBSG, has paid these investors interest rate returns between 12% to 44% annually.

319. After being fined by the State of New Jersey and the Commonwealth of Pennsylvania for offering unregistered securities to fund the Enterprise, MCA Capital has since registered the securities it offers to the public.

320. On information and belief, MCA Capital provided the capital to fund the Agreements with Plaintiffs and the Class Members.

321. MCA Capital ultimately benefits from the Enterprise's unlawful activity when the proceeds of collecting upon the unlawful debts are funneled to it. Among other things, MCA Capital is paid a portion of the interest charged to Plaintiffs and the other Class Members in consideration of the capital it provides to the Enterprise.

vi. Defendant MCA National Fund, LLC

322. MCA National maintains separate officers, books, records, and bank accounts independent of the other Counterclaim Defendants.

323. Directly and through their members, agent officers, and/or employees, MCA National has been and continue to be responsible for providing CBSG and New York Unity with all or a portion of the pooled funds necessary to fund the usurious loans, including the Agreements with Counterclaim Plaintiffs and the Class Members.

324. Among other things, MCA National solicits institutional and individual investors to raise capital for the fund. In doing so, MCA National represents to these individual investors

that the MCA Agreements are loans with interest rates in excess of 33%, and that the default rate on the loans is one percent.

325. MCA National, as an extension of CBSG, has paid these investors interest rate returns between 12% to 44% annually.

326. After being fined by the State of New Jersey and the Commonwealth of Pennsylvania for offering unregistered securities to fund the Enterprise, MCA National has since registered the securities it offers to the public.

327. On information and belief, MCA National provided the capital to fund the Agreements with Counterclaim Plaintiffs and the Class Members.

328. MCA National ultimately benefits from the Enterprise's unlawful activity when the proceeds of collecting upon the unlawful debts are funneled to it. Among other things, MCA National is paid a portion of the interest charged to Counterclaim Plaintiffs and the other Class Members in consideration of the capital it provides to the Enterprise

D. Engagement in Interstate Commerce

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

330. Specifically, the members of the Enterprise maintain offices in Florida and Pennsylvania, and use personnel in these offices to originate, underwrite, fund, service and collect on loans made by the Enterprise to borrowers throughout the United States via the extensive use of interstate emails, telephone calls, wire transfers and bank withdrawals processed electronically through an automated clearing house.

331. In the present case, all communications between the Enterprise and Plaintiffs were by interstate email, telephone calls, wire transfers or other interstate wire communications.

Specifically, the Enterprise used interstate emails and telephone calls to originate, underwrite, service and collect upon the Agreements, fund the advances under each of the Agreements, and collect the Daily Specific Amount via electronic interstate withdrawals processed through an automated clearing house.

E. Conducting Affairs through a Pattern of Racketeering.

332. Counterclaim Defendants conducted the affairs of the Enterprise or participated in the affairs of the Enterprise, directly or indirectly, though a pattern of racketeering activity (wire fraud and extortion) in violation of 18 U.S.C. 1962(c).

333. Beginning no later than 2016 and continuing today, Counterclaim Defendants devised and carried out a scheme to conduct the affairs of the Enterprise to intentionally defraud not only Counterclaim Plaintiffs and their business, but other businesses and their owners throughout the United States, and induce them to enter into and make payments on criminally usurious loans for which they had no legal obligation to pay and/or to intentionally defraud others into satisfying such loan obligations when a borrower defaulted.

334. Since Counterclaim Defendants and its agents are web-based companies that conduct virtually all of their business through the internet, email communications, telephone calls, and wire transfers, it was reasonably foreseeable that interstate emails, telephone calls, and wire transfers would be used in furtherance of the scheme, and, in fact, intestate emails, telephone calls and wire transfers are used in furtherance of the scheme.

335. Specifically, Counterclaim Defendants directed, approved or ratified, their agents' use of the internet, interstate email, telephone calls, and other communications to intentionally defraud borrowers throughout the United States, including the Counterclaim Plaintiffs, and to enter

into and make payments on criminally usurious loans for which they had no legal obligation to pay.

336. As part of this scheme, by the use of interstate emails and telephone calls, Counterclaim Defendants' agents target and solicit cash-strapped businesses upon which to pawn off usurious loans funded by Defendants and others. In addition to the fraudulent conduct described in the individual sections above, these interstate emails and telephone calls intentionally created the false impression that the usurious loans are legally enforceable. The Enterprise also engaged in extortion in violation of the Hobbs Act. This fraudulent and extortionate conduct includes:

> (i) misrepresenting the true nature of the loan transactions as receivable sales in order to avoid applicable criminal usury laws;
>
> (ii) falsely representing that disguised loan contracts are enforceable when they are illegal under applicable state law;
>
> (iii) falsely claiming that the contracts are governed under the laws of Pennsylvania when Defendants and its affiliates know strong public policy considerations dictate that another state's laws would govern construction of the contracts;
>
> (iv) advising the illegal loans would be funded through interstate wire transfers;
>
> (v) directing all loan repayments to be made by electronic interstate bank withdrawals via an automated clearing house;
>
> (vi) sending UCC notices that fraudulently represent that CBSG owns the merchant's receivables;
>
> (vii) sending UCC notices and emails fraudulently overstating the amounts due under the loans;
>
> (viii) making phone calls threatening to destroy the merchant's business and ruin the personal lives of the individual owners if they fail to make payment;
>
> (ix) filing judgments of confession using forged instruments;

(x) filing judgments of confession against the individual owners even though the agreements do not permit judgment to be confessed against the individual owners;

(xi) filing judgments of confession for amounts more than permitted under the agreements; and

(xii) sending a former ex-con to intimidate the merchants and their individual owners into making payment.

337. Once the loans are approved by Counterclaim Defendants, Counterclaim Defendants further the scheme by using interstate wires to fund the unlawful loans and electronic interstate bank withdrawals to repay the amounts advanced under the disguised loans, all of which further creates the impression that the usurious loans are legally enforceable contracts which Counterclaim Defendants know to be false.

338. If a borrower defaults, Counterclaim Defendants use interstate e-mails and telephone calls to once again fraudulently induce the borrowers to obtain new advances under loans funded by Counterclaim Defendants that Counterclaim Defendants know misrepresent the true nature of the transaction in an effort to evade applicable usury laws and create the false impression that the contracts are legally enforceable when they are not thereby inducing the borrowers to enter into and make payments on new usurious agreements to pay off the obligations under the old ones.

339. In this case, Counterclaim Defendants used interstate emails, telephone calls, electronic interstate bank withdrawals to transmit and collect on a series of "factoring agreements" with Counterclaim Plaintiffs between 2016 and 2020 that stated Pennsylvania law applied to the MCA Agreements, all with the intent to deceive and defraud Counterclaim Plaintiffs and the putative Class Members.

340. Upon information and belief, borrowers throughout the United States, like Counterclaim Plaintiffs, reasonably rely upon these knowingly false representations in order to enter into and make payments on criminally usurious and/or unconscionable loans.

341. In the present case, through a series of interstate e-mails between November 2013 and January 2020, the Enterprise solicited Counterclaim Plaintiffs, provided Counterclaim Plaintiffs with a copy of the loan application, processed the loan application, and, upon approval by the Enterprise, provided Counterclaim Plaintiffs with a copy of the first Agreement dated June 4, 2019, which the agent asked Counterclaim Plaintiffs to execute, together with a form authorizing the Enterprise to electronically withdraw the daily payments from Counterclaim Plaintiffs' Bank Account. The agent's actions were intentionally designed to and, in fact did, create the impression that the MCA Agreement, and each additional MCA Agreement thereafter, was a legally enforceable contract which Counterclaim Defendants knew to be false.

342. Counterclaim Defendants furthered the scheme against Counterclaim Plaintiffs by funding the MCA Agreements through an interstate wire transfer and thereafter withdrawing the Daily Specified Amount due under the MCA Agreements by electronic interstate withdrawals processed through an automated clearing house, all of which was intentionally designed by Counterclaim Defendants to and, in fact did, create the impression that the MCA Agreements were legally enforceable contracts which Counterclaim Defendants knew to be false.

343. In keeping with its routine business practices, Counterclaim Defendants' scheme included withdrawal of the Daily Specified Amount stated in the MCA Agreements, each and every day as permitted under the MCA Agreements, even if Counterclaim Plaintiffs had not received sufficient payments, reimbursements or other monies from its clients, customers and related third parties to cover full withdrawal of the Daily Specified Amount.

344. Counterclaim Defendants' scheme continued, generating new usurious MCA Agreements until January 2020 and continues today. When Counterclaim Plaintiffs had difficulty making the daily payments under the MCA agreements, Counterclaim Defendants, and/or their agents, used similar emails and wire communications to intentionally create the false impression that each successive disguised loan was a legally enforceable contract in order to induce the Counterclaim Plaintiffs to enter into and make payments on the criminally usurious loans.

345. Counterclaim Plaintiffs reasonably relied upon these knowingly false representations to their detriment, as they executed each of the MCA Agreements and were forced to pay interest in excess of the applicable criminal usury threshold and/or permitted by law.

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

347. As described above in detail, Counterclaim Defendants also engaged in extortion in violation of the Hobbs Act, 18 U.S.C. § 1951. Among their extortionate conduct, Counterclaim Defendants have used threats of physical harm and financial catastrophe to coerce Plaintiffs into paying money to the Enterprise. Counterclaim Defendants' repeated and continuous use of such conduct to participate in the affairs of the Enterprise constitutions a pattern of racketeering activity in violation of 18 U.S.C. § 1962(c).

F. Conducting Affairs Through the Collection of an Unlawful Debt

348. The MCA Agreements constitute unlawful debt within the meaning of 18 U.S.C. 1962(c) because (1) they violate applicable criminal usury statutes, and (2) the rates are more than twice the legal rate.

349. Defendants conducted the affairs of the Enterprise or participated in the affairs of the Lending Enterprise, directly or indirectly, though the collection of this unlawful debt in violation of 18 U.S.C. 1962(c).

350. Specifically, Counterclaim Defendants directed, approved or ratified, its agents to obtain Plaintiffs' authorization to electronically withdrawal payments on an unlawful debt from designated bank accounts.

351. Upon receipt of such authorization, Counterclaim Defendants did, in fact, make the daily withdrawals required by the MCA Agreements.

G. Injury

352. As a direct and proximate cause of Defendants' violation of 18 U.S.C. § 1962(c), Counterclaim Plaintiffs and the Class Members have suffered, and continue to suffer, substantial injury to their business and/or property as Plaintiffs business has been forced into bankruptcy as a direct result of Defendants' demand that they pay usurious amounts of interest based upon an illegal contract.

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

353. Counterclaim Defendants have unlawfully, knowingly, and willfully, combined, conspired, confederated, and agreed together to violate 18 U.S.C. § 1962(c) as describe above, in violation of 18 U.S.C. § 1962(d).

354. By and through each of the Counterclaim Defendants' business relationships with one another, their close coordination with one another in the affairs of the Enterprise, and frequent email communications among Counterclaim Defendants concerning the underwriting, funding, servicing and collection of the unlawful loans, including the MCA Agreements, each Counterclaim Defendant knew the nature of the Enterprise and each Counterclaim Defendant knew that the Enterprise extended beyond each Counterclaim Defendant's individual role. Moreover, through the same connections and coordination, each Defendant knew that the other Counterclaim Defendants were engaged in a conspiracy to collect upon unlawful debts in violation of 18 U.S.C. § 1962(c).

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

356. The participation and agreement of each of the Counterclaim Defendants was necessary to allow the commission of this scheme.

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

358. The injuries to the Counterclaim Plaintiffs directly, proximately, and reasonably foreseeably resulting from or cause these continuous violations of 18 U.S.C. § 1962(d) include, but are not limited to, millions of dollars in improperly collected loan payments and the unlawful entry and enforcement of judgments.

359. Counterclaim Plaintiffs and the Class Members have also suffered damages by incurring attorneys' fees and costs associated with exposing and prosecuting Counterclaim Defendants' criminal activities.

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

361. The Court should also enter such equitable relief as it deems just and proper to preclude the Counterclaim Defendants from continuing to solicit, fund and collect upon unlawful debt, including the CBSG Agreements.

THIRD CAUSE OF ACTION
(Usury: N.J. Rev. Stat. § 2C:21-19)

362. Counterclaim Plaintiffs repeat and incorporate the allegations set forth above.

363. The MCA Agreements with Plaintiffs and the New Jersey Merchant Class and New Jersey Individual Class Members are loans charging interest rates in excess of 50% in violation of N.J. Rev. Stat. § 2C:21-19.

364. Counterclaim Defendants knowingly and intentionally violated N.J. Rev. Stat. § 2C:21-19.

365. A violation of N.J. Rev. Stat. § 2C:21-19 is a felony punishable up to three years in prison.

366. The MCA Agreements are illegal and unenforceable as a matter of law.

FOURTH CAUSE OF ACTION
(Wrongful Execution)

367. Counterclaim Plaintiffs repeat and incorporate the allegations above.

368. Pursuant 2959(a)(3), a judgment creditor who elects to proceed immediately with enforcing a judgment, must serve notice of execution contemporaneous with executing upon a writ.

369. Pursuant to Rule 405, "The person serving the notice shall file a return of service as provided by Rule 405."

370. To this day, CBSG has not served a notice of execution on any Plaintiff, nor has CBSG filed a return of service as provided by Rule 405.

371. Nonetheless, CBSG has wrongfully served a Writ of Execution upon Fulton Bank, TD Bank, PNC, Wells Fargo, and Bank of America.

372. Because CBSG has failed to comply with the service requirements of Pennsylvania law, the writs of execution are void.

373. As a result of CBSG's wrongful execution, the bank accounts of Sunrooms and Foti have had their bank accounts frozen and/or levied at Fulton Bank, TD Bank, PNC, Wells Fargo, and Bank of America.

FIFTH CAUSE OF ACTION
(Violation of UCC 9-625)

374. Counterclaim Plaintiffs repeat and incorporate the allegations above.

375. The transactions between CBSG and Counterclaim Plaintiffs are secured transactions governed by Article 9 of the Uniform Commercial Code 9-625 (the "UCC").

376. Pursuant to the MCA Agreements, upon an Event of Default, CBSG was granted the right to notify the merchant's account debtors and direct that they make payments of their accounts directly to CBSG.

377. In exercising this right, the UCC requires that a secured party act in good faith, which is defined as "honesty in fact in the transaction or conduct concern."

378. Pursuant to UCC 9-625(a) and (b), if a secured party fails to act in good faith: (i) a court may order or restrain collection, enforcement or disposition of collateral and (ii) a debtor may recover damages flowing from the secured party's failure to comply with its obligation to act in good faith including, without limitation, attorneys' fees.

379. In sending out the UCC Lien Notices, CBSG has failed to act in good faith.

380. First, the UCC Lien Notices wrongfully claim that CBSG has purchased the Receivables of Plaintiffs.

381. Second, the UCC Lien Notices were emailed to hundreds, and sometimes thousands, of current and former customers and vendors without regard to whether such recipients actually owed any money to the merchant. The notices were also sent to neighbors, friends and family that had absolutely no expectation of holding receivables due to the merchant. Instead, the notices were sent with the express purpose of harassing, embarrassing, and extorting the merchants into making payments. Hence, rather than being a good faith effort to collect upon a debt under the UCC, the UCC Lien Notices were designed and intended to tarnish the business reputations or extort a settlement.

382. Third, the UCC Lien Notices instructed each recipient to withhold payment and forward the funds directly to CBSG. By requiring hundreds, if not thousands of current and former customers and vendors each to withhold substantial payments, it is transparent that, rather than attempting to collect upon a debt in good faith, the Enterprise had set about attempting to drive Plaintiffs into the ground and extort payment.

383. Plaintiffs are therefore entitled to a permanent injunction under UCC 9-625(a) restraining CBSG from attempting to collect upon any amounts due and owing under the MCA Agreements and to an award of damages under UCC 9-625(b), including attorney's fees, in an amount to be determined at trial.

SIXTH CAUSE OF ACTION
(Unconscionability)

384. Counterclaim Plaintiffs repeat and incorporate the allegations above.

385. The MCA Agreements entered into with the Enterprise are unconscionable contracts of adhesion that are not negotiated at arms-length nor in good faith.

386. Instead, they contain unconscionable, wholly unfair and one-sided terms that prey upon the desperation of the small business and their individual owners and obfuscate the fact that the contemplated transactions, including those involving the Counterclaim Plaintiffs, are, in reality, loans that are absolutely guaranteed and repayable regardless of any change in circumstance or inability to pay.

387. Among these one-sided terms, the MCA Agreements include: (1) a provision giving the MCA company the irrevocable right to withdraw money directly from the merchant's bank accounts, including collecting checks and signing invoices in the merchant's name, (2) a provision preventing the merchant from transferring, (3) moving or selling the business or any assets without permission from the MCA company, (4) a one-sided attorneys' fees provision

obligating the merchant to pay the MCA company's attorneys' fees but not the other way around, (5) a venue and choice-of-law provision requiring the merchant to litigate in a foreign jurisdiction under the laws of a foreign jurisdiction, (6) a personal guarantee, the revocation of which is an event of default, (7) a jury trial waiver, (8) a class action waiver, (9) a collateral and security agreement providing a UCC lien over all of the merchant's assets, (10) a prohibition of obtaining financing from other sources, (11) the maintenance of business interruption insurance, (12) an assignment of lease of merchant's premises in favor of the MCA company, (13) the right to direct all credit card processing payments to the MCA company, (14) a power-of-attorney "to take any and all action necessary to direct such new or additional credit card processor to make payment to [the Enterprise]," and (15) a power of attorney authorizing the MCA company "to take any action or execute any instrument or document to settle all obligations due…."

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

389. The MCA Agreements are also unconscionable because they are designed to fail. Among other things, the MCA Agreements are designed to result in a default in the event that the merchant's business suffers any downturn in sales by: (1) forcing the merchant to wait until the end of the month before entitling it to invoke the reconciliation provision, (2) preventing the merchant from obtaining other financing, and (3) and requiring the merchant to continuously represent and warrant that there has been no material adverse changes, financial or otherwise, in such condition, operation or ownership of merchant.

390. The MCA Agreements also contain numerous improper penalties that violate the strong public policy of various states, including New Jersey, Tennessee, and Texas. Among these improper penalties, the MCA Agreements: (1) require the merchant to sign a confession of judgment entitling the MCA company to liquidated attorneys' fees based on a percentage of the amount owed rather than a good-faith estimate of the attorneys' fees required to file a confession of judgment, (2) accelerate the entire debt upon an Event of Default, and (3) require the merchant to turn over 100% of all of its receivables if it misses just four fixed daily payments. The Enterprise, with the intent to defraud and deceive Plaintiffs and the Class Members.

391. The MCA Agreements are unconscionable and unenforceable as a matter of law.

SEVENTH CAUSE OF ACTION
(Fraud)

392. Counterclaim Plaintiffs repeat and incorporate the allegations above.

393. The Enterprise intentionally and with the intent to deceive misrepresented the true nature of the MCA Agreements.

394. Contrary to the representations on the face of the agreements, the MCA Agreements are in fact disguised loans.

395. The Enterprise intentionally and with the intent to deceive misrepresented the true nature of the guarantees and confessions of judgments contained in the MCA Agreements when confessing judgment against the Plaintiffs identified above. Contrary to the representations of the Enterprise when confessing judgment, the individuals only guaranteed the representations and warranties contained in the MCA Agreements. Also contrary to the representations of the Enterprise when confessing judgment, the confessions of judgment contained in the MCA Agreements did not permit judgment to be confessed against the individual guarantor.

396. Plaintiffs, the Class Members and/or third-parties reasonably relied upon these knowingly false representations by the Enterprise.

397. Plaintiffs and the Class Members were directly and proximately damaged by these knowingly false representations made by the Enterprise.

PRAYER FOR RELIEF

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

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

b) Declaring that the MCA Agreements entered into between Plaintiffs, the Class Members and Defendants constitute loan transactions in violation of New Jersey law;

c) Declaring that the MCA Agreements entered into between Plaintiffs, the Class Members and Defendants are unconscionable and therefore unenforceable;

d) Declaring that the writs of execution used by Defendants violated the Due Process Clause and Pennsylvania law;

e) Declaring that the UCC notices sent by Defendants violated UCC 9-625;

f) Ordering Defendants to pay Plaintiffs and the Class Members statutory damages in connection with the criminally usurious loans, including prejudgment interest;

g) Permanently enjoining Defendants from enforcing any of their rights under the criminally usurious and/or unconscionable loans;

h) Permanently enjoining Defendants from engaging in further unlawful conduct;

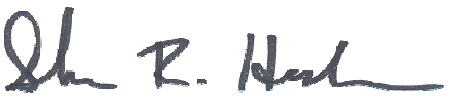
i) Awarding Plaintiffs and the Class Members direct and consequential damages;

j) Awarding Plaintiffs and the Class Members treble damages under RICO;

k) Awarding Plaintiffs and the Class Members their attorneys' fees and costs incurred in this action; and

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

WHITE AND WILLIAMS LLP

BY: 

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Dated: March 13, 2020

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

COMPLETE BUSINESS SOLUTIONS GROUP, INC. d/b/a PAR FUNDING Plaintiff, v. SUNROOMS AMERICA INC. d/b/a SUNROOMS AMERICA d/b/a SRA HOME PRODUCTS d/b/a SPA HOME PRODUCTS d/b/a SUN ROOM AMERICA, Defendants and MICHAEL FOTI, GUARANTOR	CIVIL ACTION C.A. NO.: 20-cv-847

CERTIFICATE OF SERVICE

I, Shane R. Heskin, Esquire, hereby certify that a true and correct copy of the foregoing Petition to Strike or Open the Confession of Judgment was served on March 13, 2020, via ECF, upon:

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