

HALL, ESTILL, HARDWICK, GABLE, GOLDEN & NELSON
 1120 20th Street, N.W.
 Suite 700, North Building
 Washington, D.C. 20036
 (202) 973-1200
 STEVEN D. CUNDRRA, ESQ. (SC8282)
 JEFFREY M. SHERMAN, ESQ. (JS7394)
 RONALD M. LEVIN, ESQ. (RL3334)
 AMY EPSTEIN GLUCK, ESQ. (AG3351)

KELLY & BRENNAN, P.C.
 1800 Route 34, Suite 403
 Wall, New Jersey 07719
 (732) 280-8825
 ANDREW J. KELLY, ESQ. (AK6477)
 Local Counsel for Plaintiff

Attorneys for Plaintiff

UNITED STATES BANKRUPTCY COURT
 FOR THE DISTRICT OF NEW JERSEY

]	Chapter 7
In re]	
]	Case No. 04-32079-RG
NorVergence, Inc.,]	
]	
Debtor.]	
]	
]	
DIVERSIFIED AEROSPACE SERVICES, LLC,]	Adv. Proc. No. 04-2862
]	
Plaintiff]	
]	
v.]	AMENDED COMPLAINT
]	
]	
IFC CREDIT CORP.,]	
CHARLES FORMAN, TRUSTEE, AND]	
ACCESS INTEGRATED TECHNOLOGIES, INC.,]	
]	
Defendants.]	

_____]

TO THE HONORABLE ROSEMARY GAMBARDELLA, BANKRUPTCY JUDGE:

COME NOW those parties in interest identified in Exhibit A hereto (“Plaintiffs”), by and through their undersigned counsel, and respectfully request that this Court enter judgment in their favor against IFC Credit Corporation (“IFC”), Charles Forman, Trustee for NorVergence, Inc., debtor, and Access Integrated Technologies, Inc. (“Access”) (collectively, “Defendants”), on the grounds as hereinafter set forth.

SUMMARY OF NATURE OF CLAIMS AND FACTS ASSERTED

1. By this Amended Complaint, Plaintiffs seek (a) a declaration that the “equipment leases” entered into by and between Plaintiffs and NorVergence were in fact employed as a device to defraud Plaintiffs, and are thus void and unenforceable as a matter of law and (b) permanent injunctive relief against Defendants from enforcing the terms of those documents against Plaintiffs. NorVergence engaged in a scheme and conspiracy to induce Plaintiffs, and other similarly situated small business owners, to sign five-year agreements to obtain unlimited fixed-price voice and data communications services at discounted rates. NorVergence represented that these discounted rates and services were available only through the use of a proprietary and expensive NorVergence “Matrix” box that would supposedly allow them to obtain the lowest prices for each Plaintiff on their telephone and internet services. NorVergence’s “scam” was to induce small business owners to execute these five-year “equipment leases” for its proprietary “Matrix” box, then immediately assign or pledge the leases to leasing companies and other financial institutions, which acted in concert with NorVergence, that required Plaintiffs to pay monthly equipment rental payments totaling \$15,000 to \$300,000. In truth, the “Matrix” box was an “off the shelf” limited utility device costing

between \$400 - \$1,200 that was not proprietary to NorVergence at all and performed no useful function to the small-business owners with whom NorVergence contracted.

2. None of the plaintiffs, or any of Norvergence's other 11,000 nationwide customers, currently receives any telecommunications services from NorVergence, which is currently in the process of a Chapter 7 liquidation. However, IFC acted in concert with NorVergence to defraud Plaintiffs and is now claiming that Plaintiffs are obligated to continue to pay the monthly lease rental payments for the useless "Matrix" boxes regardless of the fact that Plaintiffs did not obtain, and are not receiving, the promised local, long distance, cell phone and T-1 internet communications services that the "Matrix" box was to provide. In addition, Access asserts an interest in the NorVergence contracts with Plaintiffs by virtue of an alleged security interest in its favor against certain assets of NorVergence. Plaintiffs are also being threatened with lawsuits by IFC for the alleged balances of \$15,000 to \$300,000 for the useless "Matrix" boxes and defamation of their credit and business reputations, and may be exposed to similar liability to Access if Access ever becomes a holder of the documents.

3. This scandal has become the subject of national and local media attention. On October 15, 2004, CBS did a nationally broadcast exposé on the details of the NorVergence scam and the role of the leasing companies. Attorney Generals in five (5) states -- New Jersey, Illinois, Florida, Texas, and Connecticut -- have launched in-depth investigations into the scandal and the roles the leasing companies have played in the fraud perpetuated by NorVergence. The New Jersey Attorney General and Attorney Generals from two (2) other states have issued cease and desist orders against the leasing companies to prohibit them from collecting on the lease agreements from former NorVergence customers, but many of them, such as IFC, are not heeding the AGs' orders. Instead, IFC has filed close to 4500 suits in Cook County courts against non-resident small businesses and their owners in defiance of those orders and in a

transparent effort to evade the jurisdiction of the states of residence of the NorVergence fraud victims.

4. On October 21, 2004, the Office of the Attorney General of the State of Florida filed suit against IFC and eleven (11) other leasing companies for violations of the Florida Deceptive and Unfair Trade Practices Act and for injunctive relief, for *inter alia*, demanding payments from small business consumers and their owners despite knowing that the contracted for goods and services were not being provided and to enjoin them to cease their collection efforts against Florida small business consumers and their owners. (*See* Complaint for Injunctive Relief and Other Statutory Relief filed by State of Florida, Office of Attorney General, Department of Legal Affairs, attached hereto as Exhibit B). Further, on November 3, 2004, the Federal Trade Commission filed a supporting Complaint for Injunctive and Other Equitable Relief. (Attached hereto as Exhibit C). Finally, on November 8, 2004, the eve of the hearing on IFC's motion to lift the bankruptcy stay, IFC withdrew its motion to lift stay opting to argue its position within this adversary proceeding.

PARTIES

5. Plaintiffs are victims of fraudulent schemes perpetrated by NorVergence and its officers, directors, employees, agents and others as well as IFC. They are principally small businesses and small business owners throughout the United States.

6. Defendant IFC Credit Corporation ("IFC") is a Delaware corporation with its principal place of business located at 8700 Waukegan Rd., Morton Grove, IL 60053. IFC described itself as follows: "IFC Credit Corporation is a specialty finance company providing cost-effective leasing to businesses nationwide.... IFC provides services to a wide spectrum of businesses. Our venture leasing services are used by early-stage venture backed companies. Middle market companies with leasing requirements exceeding \$250,000 appreciate our experience in structuring and completing transactions,

while companies with lesser needs obtain convenient pre-approved credit with our Emerald Lease Line credit card. Manufacturers and dealers of equipment increase sales productivity and improve customer service through our vendor leasing services. IFC also provides lease funding through a nationwide network of independent leasing brokers.” See “www.ifccredit.com”

7. Defendant Charles Forman is the duly qualified, appointed and serving Chapter 7 Trustee of the bankruptcy estate of NorVergence, Inc. NorVergence, Inc., debtor in the above captioned administrative case, although not named as a defendant herein, converted an involuntary Chapter 11 petition filed on June 30, 2004, into a Chapter 7 proceeding, by conversion order dated July 14, 2004. NorVergence had been a privately held phone-service reseller, which was 76% owned by the “Summer Avenue Trust” and 24% owned by the family and friends of Thomas and Peter Salzano, was founded in 2001 by the Salzano brothers, and was located at 550 Broad Street in Newark, New Jersey and incorporated under the laws of New Jersey.

8. Defendant Access Integrated Technologies, Inc. (“Access”), is an intellectual property company, and describes itself as follows: “Access^{IT}, Inc. was founded in April of 2000, by a small group of individuals with entrepreneurial experience and the vision to operate and grow a network of carrier-neutral Colocation or Internet Data Center facilities called AccessColocentersSM. While the goals for the company have expanded beyond this vision, it remains the cornerstone of the foundation for the future of Access^{IT} in its plan to be the global leader in providing fully managed solutions for the storage and delivery of digital media.” See “www.accessitx.com/12_ourcompany.htm.”

JURISDICTION AND VENUE

9. This Court is vested with subject matter jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§1334(b) and 157(a).

10. This is a core proceeding pursuant to 28 U.S.C. §§157(b)(2)(A) and (b)(2)(O). Plaintiffs hereby consent to the entry of a final order or judgment by the Bankruptcy Court in this proceeding.

11. Venue is proper in this district and division pursuant to 28 U.S.C. §1409(a).

FACTS COMMON TO ALL PLAINTIFFS

12. Between 2001 and up until its involuntary bankruptcy on June 30, 2004, NorVergence promised Plaintiffs that it would deliver inexpensive, unlimited local and long-distance phone, cell phone service, and high-speed internet access to them, as well as more than 11,000 small and medium-sized businesses in twenty (20) states across the country.

13. NorVergence represented that it could provide unlimited local, long distance, cellular and internet services to small business owners with good credit ratings at discount prices that were below the current (and more limited) monthly communications services that were currently being provided to the prospective customers by other communications companies.

14. NorVergence represented that these discounted rates and services were available only through the use of a proprietary and expensive “Matrix” box that would supposedly allow them to obtain unlimited local and long distance calling with no per minute charge, high speed internet service, and unlimited cellular phone service.

15. However, to obtain this unlimited deeply discounted and technologically superior service, NorVergence required its customers to sign five-year “hardware and service rental” plans that included the installation and use of its “Matrix” box.

16. NorVergence procured telephone/telecommunications bills from the Plaintiffs, totaled their current telephone/telecommunications costs, and guaranteed them that their “Matrix” solution “unlimited” service would be at least 30% less than their current bills from other vendors.

17. Once NorVergence determined the total new reduced fixed monthly cost for a Plaintiff's telephone/telecommunications services package, they "backed out" certain minimal fixed monthly service costs (that they arbitrarily determined and that had no relationship to their true value), such as for "circuit facility" (e.g., \$9.99 per month) and cellular and internet access. The remaining balance (which could exceed 90% of the total monthly "hardware and service" bill and which varied with each customer) was then allocated to "rental" of the "Matrix" box.

18. However, the "Matrix" and "Matrix SOHO" are, respectively, an 850 RCU and 2050 RCU or similar piece of equipment made by a public company called Adtran, and these same boxes are available for sale in the public market for costs ranging from approximately \$400 to \$1,200. This sum is a small fraction of the total rental payments that each Plaintiff was required to make under its NorVergence Lease Agreement.

19. NorVergence and IFC were certainly aware that Plaintiffs and other persons who were leasing the same equipment for the same five-year term were all paying wildly disparate monthly payments for the same piece of equipment.

20. Each lease agreement contained the following provision:

YOU AGREE THAT IF ARTICLE 2A OF THE UNIFORM
COMMERCIAL CODE IS DEEMED TO APPLY TO THE
RENTAL, THE RENTAL WILL BE CONSIDERED A FINANCE
LEASE THEREUNDER. YOU WAIVE YOUR RIGHTS AND
DEFENSES UNDER ARTICLE 2A OF THE UCC.

By including this provision, NorVergence created the false impression that the lease payments approximated the cost of purchasing the equipment plus a reasonable profit. However, the actual cost of the equipment was sometimes less than a Plaintiff's monthly rental payment and was always a miniscule fraction of the total payments due under the lease agreement.

21. Neither piece of equipment functions to make landline phone calls unlimited for local, long distance, or toll free 800 dialing, or to make cellular calls unlimited for flat rate charges. 22. The “Matrix” is a standard T1 integrated access device (IAD), which supports voice data and video streaming over a single high capacity circuit. An IAD can combine multiple services so that one line can replace multiple access lines, and provide an Internet access device and an intra-office router. The Matrix SOHO does nothing to save phone or intranet costs and does not even allow phone line connection for access to the Internet. In fact, for a customer, such as any of the plaintiffs herein, the “Matrix” box is and was useless.

23. Nonetheless, NorVergence marketed services to small businesses, such as Plaintiffs, who did not have a telecommunications department or telecommunications specialist amongst their staff.

24. These “Matrix” boxes were further useless to small businesses such as Plaintiffs because the unlimited phone and Internet services had nothing to do with the “Matrix” box. In some instances, NorVergence never even physically connected the “Matrix” box to their customers’ telephone lines or equipment.

25. NorVergence required Plaintiffs to sign five (5) year rental equipment leases for the “Matrix” box as part of their contract for communications services. However, NorVergence and its agents separated this monthly lease bill for the “Matrix” box apart from each customer’s bill for monthly telephone and Internet services although the “Matrix” box and communications services were marketed and represented as one complete service plan.

26. The equipment rental agreements contained these additional provisions so that Plaintiffs could not assert any of the defenses they had against NorVergence against an assignee of the NorVergence Lease Agreements, namely, IFC:

- a. You agree that you will not assert against the new owner any claims, defenses or set-offs that you may have against us;
- b. Your obligation to make Rental Payments for the entire term are not subject to set off, withholding or deduction for any reasons whatsoever;
- c. YOUR DUTY TO MAKE THE RENTAL PAYMENTS IS UNCONDITIONAL DESPITE EQUIPMENT FAILURE, DAMAGE, LOSS OR ANY OTHER PROBLEM.
- d. NO BREACH BY RENTOR OR ANY OTHER PERSON WILL EXCUSE YOUR OBLIGATION TO ANY ASSIGNEE.

27. The equipment rental agreements also included the following “floating jurisdiction” provision:

This agreement shall be governed by, construed and enforced in accordance with the laws of the State in which Rentor’s principal offices are located or, if this Lease is assigned by Rentor, the State in which the assignee’s principal offices are located, without regard to such State’s choice of law considerations and all legal actions relating to this Lease shall be venued exclusively in a state or federal court located within that State, such court to be chosen at Rentor’s or Rentor’s assignee’s sole option.

28. NorVergence informed Plaintiffs that the only way they could realize the substantial discounts promised by NorVergence was to rent the Matrix.

29. NorVergence then purported to sell and/or assign the “Matrix” equipment leases to banks, leasing companies, and other financial institutions, including IFC, separate from the telecommunications services they represented that Plaintiffs were obtaining from NorVergence. In many cases, the “Matrix” box was never delivered or installed at the Plaintiffs’ premises, and, even if installed, the phone service promised was never connected or provided by NorVergence. In all cases, the “Matrix” box did not provide any function for Plaintiffs’ telecommunications services and thereby severely injured their businesses.

30. In October 2003, NorVergence and IFC entered into an agreement called the “Master

Program Agreement,” which included an agreement by NorVergence to assign the Lease Agreements it had with Plaintiffs to IFC. The Master Program Agreement was subsequently amended in March 2004 and May 2004.

31. The Master Program Agreement stated that NorVergence was required to repurchase the assigned agreements in the event that it breached any of its representations, covenants or warranties or in the event that a lessee defaulted on its first rental payment and did not cure the default within 30 days.

32. On June 14, 2004, NorVergence entered into two security agreements with IFC (the “Security Agreements”) whereby it granted IFC a security interest in its title and interest in certain NorVergence Agreements, the equipment subject to those agreements and all monies due and to become due under those agreements as collateral to secure its performance under the Master Program Agreement.

33. On June 25, 2004, five days before NorVergence’s bankruptcy, IFC perfected its security interest in the Fraud Victims’ NorVergence Lease Agreements. On June 30, 2004, just 16 days after NorVergence entered into the Security Agreements, an involuntary bankruptcy petition was filed against NorVergence in the U.S. Bankruptcy Court for the District of New Jersey.

34. In some cases, NorVergence permitted its receivables under the contracts to become collateral for lenders; in the instant case, both IFC and Access assert a security interest in Plaintiffs’ fraudulently obtained contracts with NorVergence and have indicated that they will seek to bill and collect lease payments from the Plaintiffs on the fraudulently obtained NorVergence “Matrix” lease agreements.

COUNT I – DECLARATORY JUDGMENT

35. Plaintiffs incorporate by reference the averments contained in paragraphs 1 - 34 as if fully stated herein.

36. NorVergence made material misrepresentations of fact to Plaintiffs in order to induce them

to enter into a commercial agreement with NorVergence, *i.e.*, -- NorVergence and its agents represented falsely to the Plaintiffs that the rental of the “Matrix” was necessary to obtain the deeply discounted rates on the long-distance, cellular service, and internet service that NorVergence sold to Plaintiffs.

37. NorVergence further represented falsely to Plaintiffs that it could provide telephone and telecommunications services at a deeply discounted rate through the “Matrix” box.

38. NorVergence further represented to Plaintiffs that the “Matrix” box contained valuable, unique and proprietary property that could route each plaintiff’s services to the lowest telecommunications carrier, and, therefore, the box was extremely valuable and justified the high rental payments being charged by NorVergence.

39. In fact, the “Matrix” box was not necessary at all for Plaintiffs’ long-distance, cellular service, and Internet services that they reasonably believed they were obtaining from NorVergence.

40. Further, the Plaintiffs were not provided with the discounted long-distance, cellular service, and Internet services that NorVergence and its agents represented they were able to provide. 41.

Further, the lease rentals being charged bore no relationship to the true value of the “Matrix” boxes; in fact, the boxes cost only a small fraction of the fraudulent, inflated rental payments charged and were worthless to Plaintiffs.

42. When NorVergence made these material misrepresentations, it knew they were false, or, at least, made such misrepresentations recklessly without any knowledge of their truth. NorVergence made these material misrepresentations with the intention that Plaintiffs act upon and rely upon said misrepresentations. Indeed, NorVergence and its agents made these material misrepresentations so that Plaintiffs would sign a lease for a virtually useless apparatus under a lease that could subsequently be sold, assigned or pledged by NorVergence to a bank, finance or leasing company for the mutual benefit and

profit of NorVergence and its agents and the banks, finance, and leasing companies.

43. The banks, finance, and leasing companies paid NorVergence a facially dubious and questionable highly discounted price for NorVergence leases for the right to collect exorbitant and unconscionable payments from Plaintiffs each month for the “rental” of useless equipment.

44. In fact, as NorVergence and IFC knew, or should have known, and intended, Plaintiffs relied on the material misrepresentations made by NorVergence and its agents and signed “equipment rental agreements” for the worthless “Matrix” boxes from NorVergence.

45. In the course of NorVergence’s business, NorVergence represented to Plaintiffs that Plaintiffs were required to purchase the “black box” or “Matrix” to obtain the deeply discounted rates on the long-distance, cellular service, and Internet services that NorVergence sold to Plaintiffs. 46.

NorVergence further represented to Plaintiffs that the NorVergence “Matrix” boxes could provide telephone and telecommunications services at highly discounted rates.

47. The representations made by NorVergence were made with the intent that they be relied upon by Plaintiffs.

48. Because NorVergence procured the rental equipment agreements by the above described fraudulent inducements and material misrepresentations regarding the value, use, and need for the “Matrix,” all said rental equipment agreements must be declared void and unenforceable.

49. Because the “Matrix” boxes have no function and, therefore, Plaintiffs received no value out of the lease agreements, these rental equipment agreements are void and unenforceable.

50. The contracts are void and unenforceable as against IFC because IFC knew or should have known that NorVergence was perpetuating a fraudulent scam on Plaintiffs, and because of their inherent invalidity and unenforceability as a matter of fact and law; they are void and unenforceable as against

Access because of their inherent invalidity and unenforceability as a matter of fact and law.

WHEREFORE, Plaintiffs request this Honorable Court enter judgment as follows:

A. declaring Plaintiffs' "Matrix" equipment lease agreements void and unenforceable by Defendants and any other party acting in concert with them or either of them, or who have or acquire knowledge of the content of such declaration, and

B. granting Plaintiffs such other relief as the Court determines to be just and reasonable.

COUNT II -- PERMANENT INJUNCTIVE RELIEF

51. Plaintiff incorporates by reference the averments contained in paragraphs 1 – 50 as if fully stated herein.

52. In order to fully implement the relief sought hereinabove, Plaintiffs request a permanent injunction to prevent Defendants from assigning, transferring, further hypothecating, syndicating, selling, vending, collecting or suing to enforce any term of any agreement with or to collect any payments from Plaintiffs.

53. Plaintiffs have a certain right to the relief sought.

54. Plaintiffs will suffer irreparable injury if a permanent injunction is not issued.

WHEREFORE, Plaintiffs request that this Honorable Court issue a permanent injunction:

A. preventing Defendants from assigning, transferring, further hypothecating, syndicating, selling, vending, collecting or suing to enforce any term of any agreement with or to collect any payments from Plaintiffs; and

B. granting such other relief as the Court determines to be just and reasonable.

COUNT III – VIOLATIONS OF THE NEW JERSEY CONSUMER FRAUD ACT

55. Plaintiff incorporates by reference the averments contained in paragraphs 1 - 54 as if fully stated herein.

56. N.J.S.A. 56:8-1, et seq. is the New Jersey Consumer Fraud Act or the CFA.

57. N.J.S.A. 56:8-2 ("Section 2") states that:

The act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing, concealment, suppression, or omission of any material fact with the intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise or real estate, or with the subsequent performance of such person as aforesaid, whether or not any person has in fact been misled, deceived or damaged thereby, is declared to be an unlawful practice.

58. N.J.S.A. 56:8-1(d) defines "person" to include any "business entity or association." 59.

N.J.S.A. 56:8-1(e) defines "sale" to include "any sale, rental or distribution."

60. N.J.S.A. 56:8-1(c) defines "merchandise" to include "any objects, wares, goods, commodities, services or anything offered directly or indirectly to the public for sale."

61. Section 2 of the N.J.S.A. protects businesses from deceptive or unconscionable practices when they purchase or rent goods for business purposes from companies that promote those goods from New Jersey.

62. NorVergence created the plan to sell the equipment rental agreements in its New Jersey office. In addition, NorVergence executed the equipment rental agreements with the Fraud Victims in New Jersey. Therefore, the Fraud Victims were protected by Section 2 at the time they entered into the equipment rental agreements.

63. N.J.S.A. 56:8-2.11 states that:

Any person violating the provisions of the within act shall be liable for a refund of all moneys acquired by means of any practice declared herein to be unlawful.

64. N.J.S.A. 56:8-2.12 adds that: “The refund of moneys herein provided for may be recovered in a private action....”

65. The purpose and effect of N.J.S.A. 8-2.11 and N.J.S.A. 8-2.12 are to nullify the obligation of any person who pays money in connection with a contract that was obtained by a practice that violates the CFA. As such, these sections provide any person who enters into a contract that was obtained by a practice that violates the CFA with a so-called “real defense” against an assignee of that contract.

66. NorVergence and others used the following deceptive practices in connection with its offer and sale of the equipment rental agreements to Plaintiffs:

- a. It misrepresented that the only way they could realize the substantial discounts promised by NorVergence was to rent the Matrix;
- b. It misrepresented the true nature of the Matrix by indicating that it was proprietary and would enable NorVergence to pass on savings to Plaintiffs;
- c. It knowingly concealed, with the intent that Plaintiffs rely on the concealment, that Plaintiffs could have purchased the Matrix on the Internet for a relatively small sum between \$400 and \$1200, which was a small fraction of the total rental payments that each Plaintiff was required to make under its NorVergence Lease Agreement.
- d. It knowingly concealed, with the intent that Plaintiffs rely on the concealment, that the Matrix had nothing to do with any proposed cost savings on the telecommunications services they were purchasing;
- e. It and others knowingly concealed, with the intent that Plaintiffs rely on the concealment, that Plaintiffs and other persons who were leasing the same equipment for the same term were paying wildly disparate monthly payments.

67. The equipment rental agreements included the following statement that falsely suggested that the agreements qualified as finance leases under Article 2A of the Uniform Commercial Code:

YOU AGREE THAT IF ARTICLE 2A OF THE UNIFORM COMMERCIAL CODE IS DEEMED TO APPLY TO THE RENTAL, THE RENTAL WILL BE CONSIDERED A FINANCE LEASE THEREUNDER. YOU WAIVE YOUR RIGHTS AND DEFENSES UNDER ARTICLE 2A OF THE UCC.

68. By misrepresenting that the equipment rental agreements qualified as finance leases, NorVergence created the false impression that the lease payments approximated the cost of purchasing the equipment plus a reasonable profit. In fact, the actual cost of the equipment was sometimes less than a Plaintiff's monthly rental payment and was always a miniscule fraction of the total payments due under the lease agreement.

69. The equipment rental agreements included the following statement that falsely suggested that Plaintiffs were given an option to purchase the rented equipment and adequate information to make a reasoned decision about the relative merits of renting and purchasing the equipment:

You understand that the Equipment may be purchased for cash or it may be rented. By signing this Rental, you acknowledge that you have chosen to rent the Equipment from us for the term of this Rental, and that you have agreed to pay the specified rental payment and other fees described herein.

70. The equipment rental agreements included the following statements to create the false belief that the rentors would not be able to assert any of the defenses they had against NorVergence against an assignee of the NorVergence Lease Agreements:

- a. You agree that you will not assert against the new owner any claims, defenses or set-offs that you may have against us;
- b. Your obligation to make Rental Payments for the entire term are not subject to set off, withholding or deduction for any reasons whatsoever;
- c. YOUR DUTY TO MAKE THE RENTAL PAYMENTS IS UNCONDITIONAL DESPITE EQUIPMENT FAILURE, DAMAGE, LOSS OR ANY OTHER PROBLEM.
- d. NO BREACH BY RENTOR OR ANY OTHER PERSON WILL EXCUSE YOUR OBLIGATION TO ANY ASSIGNEE.

71. When it agreed to do business with NorVergence, IFC knew or should have known, through the most basic due diligence, that NorVergence was primarily selling a discounted package of telecommunications services and the Matrix was an incidental part of those services.

72. Further, in receiving contracts from NorVergence where the total price varied from between \$20,000 and \$340,000 for the same product, IFC knew or should have known that the contracts, on their face, were part of a scheme to defraud the NorVergence customers.

73. The equipment rental agreements also included the following “floating jurisdiction” provision:

This agreement shall be governed by, construed and enforced in accordance with the laws of the State in which Rentor’s principal offices are located or, if this Lease is assigned by Rentor, the State in which the assignee’s principal offices are located, without regard to such State’s choice of law considerations and all legal actions relating to this Lease shall be venued exclusively in a state or federal court located within that State, such court to be chosen at Rentor’s or Rentor’s assignee’s sole option.

74. The provision set forth in the previous paragraph purports to establish that if the agreement is assigned, then: (a) the law governing the agreement would change from the law of

New Jersey -- where NorVergence's principal offices were located -- to the law of the state where the assignee's principal offices were located, an unknown location; and (b) mandatory venue for an action that arises under the agreement would change from New Jersey to the state where the assignee's principal offices were located, an unknown location.

75. NorVergence targeted businesses such as Plaintiffs because they knew that Plaintiffs had no telecommunications staff or department and were just as vulnerable to the aforementioned business practices as individual consumers purchasing the same goods and services.

76. NorVergence prepared the equipment rental agreements and offered them to Plaintiffs on a "take it or leave it" basis.

77. NorVergence obtained its equipment rental agreement with each Plaintiff by a practice that violates the CFA.

78. In October 2003, NorVergence and IFC entered into an agreement called the "Master Program Agreement," which included an agreement by NorVergence to assign the Lease Agreements it had with Plaintiffs to IFC. The Master Program Agreement was subsequently amended in March 2004 and May 2004.

79. The Master Program Agreement stated that NorVergence was required to repurchase the assigned agreements in the event that it breached any of its representations, covenants or warranties or in the event that a lessee defaulted on its first rental payment and did not cure the default within 30 days.

80. On June 14, 2004, NorVergence entered into two security agreements with IFC (the "Security Agreements") whereby it granted IFC a security interest in its title and interest in

certain NorVergence Agreements, the equipment subject to those agreements and all monies due and to become due under those agreements as collateral to secure its performance under the Master Program Agreement.

81. On June 25, 2004, five days before NorVergence's bankruptcy, IFC perfected its security interest in the Fraud Victims' NorVergence Lease Agreements.

82. On June 30, 2004, just 16 days after NorVergence entered into the Security Agreements, an involuntary bankruptcy petition was filed against NorVergence.

83. While NorVergence's bankruptcy case was proceeding, IFC moved the Bankruptcy Court to lift the automatic stay so that it could enforce the Security Agreements to obtain and then attempt to enforce the Fraud Victims' NorVergence Lease Agreements by billing and collecting the accelerated amounts allegedly due under the those Agreements. The alleged bases for IFC's motion were that: (a) many of the companies whose NorVergence equipment rental agreements were assigned to it failed to make timely payments; (b) the failure of these companies to make timely payments triggered NorVergence's repurchase obligations under the Master Program Agreement; (c) NorVergence has failed to perform its repurchase obligations; and (d) IFC agreed to "forebear" from pursuing its rights against NorVergence if NorVergence pledged hundreds of additional equipment rental leases to it.

84. NorVergence's equipment rental agreements provide that the Trustee enforce the agreements in New Jersey in accordance with New Jersey law.

85. In cases where an equipment rental agreement was assigned to IFC under the Master Program Agreement and the rentor has defaulted, IFC has used the "floating jurisdiction" provision to sue the rentor in Illinois under Illinois law.

86. If IFC obtains Plaintiffs' equipment rental agreements through enforcing the Security Agreements or through a voluntary agreement with the Trustee, it may, as it has with other renters, use the "floating jurisdiction" provision in those agreements to sue Plaintiffs in Illinois under Illinois law.

87. Insofar as the floating jurisdiction provision in each NorVergence Lease Agreement allows the law governing the agreement and the mandatory venue for actions that arise under the agreement to change when the agreement is assigned to an assignee that was unknown when the agreement was executed, it constitutes an unconscionable commercial practice that violates the CFA. As such, it is void and unenforceable.

88. The NorVergence equipment rental agreements include the following provision:

If any term of this Rental conflicts with any law in a state where the Rental is to be enforced, then the conflicting term shall be null and void to the extent of the conflict but this will not invalidate the rest of the Rental.

89. When the unconscionable aspect of the "floating jurisdiction" is removed from the equipment rental agreement, the agreement states it is governed by New Jersey law and that mandatory venue is in New Jersey.

WHEREFORE, because NorVergence obtained the equipment rental agreements with Plaintiffs by practices that violate the CFA, because the "floating jurisdiction" provision in those agreements violates the CFA, and because NorVergence and others knew that the rental payments being made were not in accordance with the actual cost of the equipment, Plaintiffs request the following relief:

- A. a declaration that NorVergence and others obtained the equipment rental agreements by practices that violate the CFA and are thereby void and unenforceable;
- B. a declaration that each Plaintiff can use a determination that NorVergence and others obtained each equipment rental agreement by a practice that violates the CFA as a real defense against any assignee that attempts to enforce it;
- C. treble damages against Defendants for their violations of the CFA; and
- D. reasonable attorneys fees and any other relief that this Court deems just and reasonable.

**COUNT IV – CONSPIRACY TO COMMIT FRAUD UNDER THE
NEW JERSEY CONSUMER FRAUD ACT**

90. Plaintiffs incorporate by reference the averments contained in paragraphs 1 – 89 as if fully stated herein.

91. NorVergence and IFC had an agreement or a confederation with a common design to defraud Plaintiffs or to cause injury to Plaintiffs.

92. IFC knew that the NorVergence lease agreements were unlawful and based on fraud as it knew of the great disparity in the amounts required to be paid monthly by each Plaintiff for the same equipment.

93. The existence of this agreement between NorVergence and IFC was for an unlawful purpose, namely, to compel Plaintiffs to pay outrageous sums for five (5) years for a worthless piece of equipment that cost, in many instances, less than one monthly rental payment.

JURY DEMAND

The Plaintiffs hereby demand a trial by jury on all issues contained herein.

/s/
ANDREW J. KELLY, ESQ.