

CAUSE 06-10308-C FILED

CHIEF SECURITY AND SAFE, INC. and	§	IN THE COUNTY COURT
DARRYL HESTER, Individually	§	2006 MAY -5 PM 3-30
	§	
	§	CLERK OF DISTRICT COURT
Co-Plaintiffs	§	NUMBER <u>3</u>
	§	
VS.	§	
IFC CREDIT CORPORATION,	§	
Defendant.	§	DALLAS COUNTY, TEXAS

PLAINTIFFS' ORIGINAL PETITION

CHIEF SECURITY AND SAFE, INC. and DARRYL HESTER (collectively "Plaintiffs"), complain of **IFC CREDIT CORPORATION** ("Defendant"), and for its causes of action respectfully shows:

Discovery Level

1. Discovery is to be conducted under Level 2 of the Texas Rules of Civil Procedure. **IFC Credit Corporation may be served by certified mail at C.T. Corp. Services at 350 North Saint Paul, Dallas, TX. 75201.**

Introduction

2. This case involves a purported rental agreement (the "Rental Agreement")¹ between NorVergence, Inc. ("NorVergence"), as original lessor, and Plaintiff, as lessee, of telecommunications equipment and accessories (collectively the "Equipment"). Defendant claims that it now owns the purported Rental Agreement, the right to payment thereunder, and the Equipment.

3. Plaintiffs sue for declaratory judgment that certain provisions of the purported Rental Agreement are unenforceable, that the purported Rental Agreement is actually intended

¹ The use of the term "Rental Agreement" is for brevity and reference only and is not intended to be and is not a characterization or admission that the transaction is a lease or rental agreement as opposed to a transaction intended for security or other non-lease or non-rental transaction.

for security, and that Defendant is not entitled to recover any purported “rentals” or other sums it may claim to be owed under the purported Rental Agreement. Morey Lumber also sues for fraud and violations of the Texas Deceptive Trade Practices – Consumer Protection Act (the “DTPA”).

4. Plaintiffs do not seek any relief or remedy under or in connection with any federal law or regulation.

Operative Facts

5. In late 2003 and early 2004, NorVergence approached the various Plaintiffs and solicited the provision of the regular long distance telephone service, and cellular telephone service for their places of business in Texas. NorVergence represented to Plaintiffs that they would receive high quality cost-effective regular long distance and cellular telephone service and internet connectivity.

6. NorVergence presented Plaintiffs with a bundle of documents that included service agreement (the “Service Agreements”) and the Rental Agreement. A true and correct copy of the Service Agreement is attached to this petition as **Exhibit 1** and incorporated by reference. A true and correct copy of the Rental Agreement is attached to this petition as **Exhibit 2**, and incorporated by reference. The Rental Agreement and Service Agreement for the Equipment were presented to Plaintiffs as one integrated transaction accompanied by many.

7. NorVergence, without notice or justification, failed to complete the installation process and failed to ever provide any telephone service whatsoever to Plaintiffs. Consequently, the Equipment is totally worthless, and has never been used. Therefore, there has been a failure of consideration and frustration of the essential purpose regarding the purported Rental Agreement. Additionally, the provisions of the purported Rental Agreement which purport to require payment by Plaintiff despite not being able to use the Equipment are unconscionable and unenforceable.

8. On June 30, 2004, NorVergence was placed into an involuntary bankruptcy in New Jersey. NorVergence immediately ceased operations, terminated almost all of its employees, and terminated all telephone service to its customers.

9. Defendant knew or should have known when it acquired the Rental Agreement from NorVergence that NorVergence was insolvent and would be unable to provide service to its customers. Defendant was “inextricably intertwined” with and closely connected with NorVergence.

10. Plaintiffs, through its attorney, revoked acceptance, if any, of the Equipment, and requested that Defendant have an authorized technician disconnect and remove the Equipment. However, Defendant has ignored that request, and has failed to mitigate any damages it may claim to have sustained under of in connection with the Rental Agreement.

11. Defendant engaged in distant forum abuse by filing suit in Cook County, Illinois against Plaintiffs and other small businesses located in Texas and other states. Plaintiffs and most of these other small businesses did not have sufficient contacts with Illinois to support the exercise of personal jurisdiction. Defendant nonetheless filed these suits against other NorVergence “lessees” on the basis of a nonspecific, inconspicuous “floating” forum selection clause in the Rental Agreement which trial and appellate courts in Texas and elsewhere has found to be unenforceable.

12. The Attorney General for the State of Texas subsequently filed suit against NorVergence, complaining of the same wrongful conduct as that alleged above.² In that case, the Court entered judgment under which it was “ORDERED, ADJUDGED, AND DECREED

² *State of Texas v. NorVergence, Inc.*, Harris County District Courts Cause 2004-65357, in the 270th District Court, Harris County, Texas.

that all contracts and rental agreements between NorVergence and Texas consumers, businesses or persons are hereby declared void *ab initio* and unenforceable.”³

13. Defendant was and is in privity with NorVergence in regard to the Rental Agreement. Consequently, the judgment alleged in the preceding paragraph of this petition is res judicata and is binding upon Defendant and preclude any claims by or liability to Defendant under the Rental Agreement and the alleged guaranty (the “Guaranty”)⁴ of some of the Plaintiffs’.

Request for Declaratory Judgment

14. Plaintiffs seek and is entitled to declaratory judgment that:
- a. the floating forum selection clause in the Rental Agreement (in the paragraph captioned “APPLICABLE LAW”) is not enforceable because it does not name any particular state, and thus fails to provide reasonable notice to Plaintiff that it would be subject to being hailed into or required to litigate in the courts of any particular state;
 - b. the floating forum selection clause in the Rental Agreement (in the paragraph captioned “APPLICABLE LAW”) is not enforceable because it is not set out conspicuously in print, type, or other form of writing that is bold-faced, capitalized, underscored, or otherwise set out in such a manner that a reasonable person against whom the provision may operate would notice;
 - c. the floating choice of law clause in the Rental Agreement (in the paragraph captioned “APPLICABLE LAW”) is not enforceable and does not mandate or warrant application of Illinois law because that clause does not name any particular state, is not set out conspicuously in print, type, or other form of writing that is bold-faced, capitalized, underscored, or otherwise set out in such a manner that a reasonable person against whom the provision may operate would notice, and thus fails to provide reasonable notice to Plaintiff that it would be subject to the laws of any particular state;
 - d. the floating choice of law clause in the Rental Agreement (in the paragraph captioned “APPLICABLE LAW”) does not is not enforceable

³ Default Judgment Against Defendant NorVergence, Inc. (p. 4). A true and correct copy of that judgment is attached to this petition as **Exhibit 3** and incorporated by reference.

⁴ The use of the term “Guaranty” is for brevity and reference only and is not intended to be and is not a characterization or admission that some Plaintiffs’ bound by or liable any guaranty under or in connection with any obligation.

and does not mandate or warrant application of New York law because there is there is not a reasonable or substantial relationship between Illinois and the Rental Agreement;

- e. the Rental Agreement is subject to, governed by and interpreted under Texas law;
- f. the waiver in the Rental Agreement of claims and defenses as against the original lessor (in the paragraph captioned "ASSIGNMENT") is void and unenforceable because Defendant knew or should have known at the time it acquired the purported Rental Agreement from NorVergence that NorVergence was insolvent and not providing or able to provide service to its customers, and because of the close connection between Defendant and NorVergence;
- g. the waiver in the Rental Agreement of claims and defenses does not preclude a claim or defense of usury because usury constitutes illegality, and is a real defense which may be asserted against an assignee despite the waiver;
- h. the Rental Agreement is actually a secured transaction because the five-year term primary term of the Agreement exceeds the reasonably predictable economic life of the Equipment;
- i. Plaintiff is not bound by any purported acceptance by it of the Equipment because it revoked any such acceptance;
- j. those provisions of the Rental Agreement (including, without limitation, the purported "hell or high water" absolute payment provision) and/or any Delivery and Acceptance Certificates for the Equipment which would require payment by Plaintiff despite never receiving use of the Equipment are unconscionable and, therefore, unenforceable;
- k. the "hell or high water" provision alleged above does not preclude a claim or defense of fraud in the inducement;
- l. the provision of the Rental Agreement which provide that "[P]laintiff's] duty to make rental payments is unconditional despite any equipment failure, damages, loss or any other problem" does not apply to claims based upon lack of service or lack of installation of the Equipment, and lack of installation and/or service constitutes a breach of the Rental Agreements by the lessor;
- m. the provisions in the Rental Agreement which provide for acceleration and recovery of future rentals as immediately due and owing constitute a penalty and are therefore unenforceable;
- n. the waiver in the Rental Agreement of claims and defenses does not preclude a claim or defense that the rental acceleration clause is an

unenforceable penalty because the same are apparent from the face of the Rental Agreement, and Defendant thus had notice of that claim and at the time it received assignment of the Rental Agreement;

- o. Defendant is required to mitigate any damages it may claim to have sustained under the Rental Agreement, and has failed to do so;
- p. there has been a total failure of the consideration in regard to the Rental Agreement and the Guaranty because the Equipment is totally useless;
- q. the Rental Agreement is not subject to or governed by Article 2A of the Uniform Commercial Code;
- r. the Rental Agreement is within the scope of Texas usury statutes and case law;
- s. the maximum annual interest rate ceiling for or in connection with the Rental Agreement is the rate provided under Chapter 302 of the Texas Finance Code because no interest rate is provided for in the Rental Agreement;
- t. charging or contracting for an annual interest rate of twice or more than twice the rate provided under Chapter 302 of the Texas Finance Code under or in connection with the Rental Agreement will result in forfeiture of all interest and principal thereby charged or contracted for, and render Defendant liable for usury penalties and attorney's fees;
- u. the Rental Agreement is void *ab initio* under and by virtue of the judgment alleged in Paragraph 12 of this petition;
- v. the judgments alleged above are res judicata in regard to any claims by or liability to Defendant under or in connection with the Rental Agreement [and any related guaranty];
- w. the floating forum selection clause in the Guaranty is not enforceable because it does not name any particular state, and thus fails to provide reasonable notice to Mr. Morey that it would be subject to being hailed into or required to litigate in the courts of any particular state;
- x. the floating choice of law clause in the Guaranty does not is not enforceable and does not mandate or warrant application of Illinois law because there is there is not a reasonable or substantial relationship between Illinois and the Rental Agreement; and
- y. Defendant is not entitled to recover any purported rentals or other sums which Defendant might claim to be owed under or in connection with the Rental Agreement.

15. Declaratory judgment on these matters is appropriate because there are questions as to the validity and construction of the status, rights, and other legal relations of Plaintiff and Defendant under the Rental Agreements, and the construction of certain statutes.

Rescission

16. Plaintiff is entitled to and seek rescission of the equipment rental agreements. Furthermore, Plaintiff is entitled to rescission based on NorVergence's breach of its service agreement which provides for the termination when the NorVergence network as a downtime of at least 96 aggregate hours.

Fraud

17. Plaintiffs reasonably relied to its detriment upon the representations alleged above. NorVergence knew or should have known of the falsity of those representations at the time they were made. Upon information and belief, Defendant knew or should have known of the falsity of those representations at the time it took assignment of the Rental Agreement and the Guaranty, and is thus bound by and liable for the same. These false representations were the producing cause of actual damages sustained by Plaintiffs.

DTPA Violations

18. Plaintiff is a "consumer" under and as defined in the Texas Deceptive Trade Practices – Consumer Protection Act (the "DTPA") and, therefore, has standing to avail itself of the DTPA. Specifically, Plaintiff sought to acquire goods and services from NorVergence, and NorVergence was "inextricably intertwined" with IFC. Consequently, Plaintiff has standing to assert DTPA claims against Defendant. Plaintiff asserts the DTPA both as to conduct of Defendant itself and as to conduct of NorVergence for which Defendant is vicariously liable.

19. Defendant itself violated in the DTPA by:

- a. falsely representing that the Rental Agreement permitted it to accelerate the remaining rentals purportedly payable even though the acceleration clause is an unenforceable penalty; and

- b. grossly overcharging Plaintiff for the Equipment under the Rental Agreement.
20. Defendant, acting in concert with NorVergence, violated the DTPA by:
- a. causing confusion or misunderstanding as to the source or sponsorship of the Equipment and services to be provided together with the Equipment and the Rental Agreement; and
 - b. causing confusion or misunderstanding as to the affiliation, connection, and association between Defendant and NorVergence and between NorVergence and the providers of telecommunications services in connection with the Equipment and the Rental Agreements.

21. Additionally, the Certificate of Delivery and Acceptance regarding the Equipment and many of the provisions the Rental Agreement are unconscionable under the DTPA, such as:

- a. the waiver of principle agent relationship;
- b. the “hell or high water” clause which purports to require payment even when the telecommunications services which the Equipment was to be used for were not provided;
- c. the purported waiver of claims and defenses as to the lessor’s assignee;
- d. the provision that the Rental Agreement cannot be cancelled; and
- e. the waiver of the right to revoke acceptance of the Equipment.

Further, these provisions are an impermissible waiver of Plaintiff’s rights and remedies under the DTPA.

22. The DTPA violations alleged above were committed knowingly.

Wrongful Acceleration

23. The purported rental acceleration clause in the Rental Agreement is an unenforceable penalty. The amount which Defendant is entitled to recover in regard to that agreement is \$0.00. Any acceleration of unaccrued future “rentals” purportedly payable under the Rental Agreement is thus wrongful.

Usury

24. Upon information and belief, Defendant, acting together with NorVergence, violated Texas usury laws by contracting for and charging usurious interest.

25. The Rental Agreement is actually intended for security because the five-year term primary term of the Agreement exceeds the reasonably predictable economic life of the Equipment.⁵

26. Because that agreement does not set forth an annual interest rate, the maximum rate which could be legally contracted for or charged is the applicable rate provided under Chapter 302 of the Texas Finance Code.

27. Upon information and belief, Defendant and NorVergence charged and contracted for an annual interest rate of equal to or greater than twice the applicable rate provided under Chapter 302 of the Texas Finance Code, and Defendant further charged at such rate through its acceleration notice letter to Plaintiff and through its petition in this case. Further, Defendant collected usurious interest.

28. Defendant is thus subject to and liable for penalties and attorney's fees under the Texas Finance Code for charging usurious interest in connection with the Rental Agreement.

Damages

29. Plaintiffs are entitled and seek to recover actual economic damages which exceed the minimum jurisdictional limit of this Court. These damages consist, among other things, of rentals and other sums paid by Plaintiff to Defendant in connection with the Rental Agreement, and attorney's fees and expenses incurred by Plaintiffs in defending Defendant's wrongful and abusive lawsuit in Illinois.

30. Plaintiff is also entitled to recover treble damages under the DTPA.

⁵ Tex. Bus. & Com. Code Ann. §1.203(b), (b)(1)(Tex. UCC)(Vernon 200_).

31. Plaintiff is also entitled under the Texas Finance Code to recover damages for charging and contracting for and collecting usurious interest.

Attorney's Fees

32. Plaintiffs seek and are entitled under Chapter 37 of the Texas Civil Practices and Remedies Code, the Texas Finance Code, and the DTPA to recover reasonable attorney's fees incurred in connection with this case.

Conditions Precedent

33. Plaintiffs have fulfilled all conditions precedent for asserting and recovering upon their claims.

Prayer

Plaintiff respectfully requests that it be granted and have and recover judgment of, from, and against Defendant for:

1. declaratory judgment as listed in the subparagraphs of Paragraph 14 of this petition, which are incorporated into this prayer by reference;
2. rescission of the rental agreement;
3. actual economic damages;
4. reasonable attorney's fees;
5. court costs;
6. prejudgment interest;
7. post-judgment interest on the entire amount of the judgment; and
8. other and further relief to which it may be entitled.

Morey Lumber further requests that it be granted and have and recover judgment of and from Defendant for:

1. damages and penalties under the Texas Finance Code for usury; and
2. treble damages under the DTPA;

Respectfully submitted,



Donald Scott Mackenzie
Texas Bar No.24030088
9603 White Rock Trail, Suite 324
Dallas, Texas 75238
(214) 245-4625
(214) 764-0780 – facsimile

ATTORNEY FOR PLAINTIFF

EXHIBIT 1



ATM SERVICE LEVEL AGREEMENT (SLA):

© 2002 NorVergence, Inc.

This Agreement sets forth the SLA applicable to the NorVergence ATM Circuitry Service. Except as otherwise set forth herein, capitalized terms shall have the definitions assigned to them in the Agreement. If Customer has ordered Service, then the NorVergence Service and the Service shall, collectively, be subject to the SLAs set forth herein. The SLA is effective as of the first day of the second month after initial installation of Service. All service credits under this SLA shall be calculated based upon the customer's monthly recurring circuit (MRC) charge.

NETWORK AVAILABILITY

GOAL: 100%

REMEDY: Each cumulative hour of NorVergence ATM Circuit Network Downtime qualifies Customer for one day's ATM circuit charges pro-rated from the MRC of the Affected Circuit.

LATENCY

GOAL: 75 ms

REMEDY: When packet/cell latency measured as an average on a 30 day continuous basis every 5 minutes falls between the following thresholds, the percentage of the ATM Circuit MRC shown shall be credited to the customer: 76 - 105 ms = 10% of ATM MRC; 106 - 115 ms = 25% of ATM MRC; Greater than 115 ms = 50% of ATM MRC

CELL DELIVERY

GOAL: 99.8%

REMEDY: When packet/cell delivery in a 30 day continuously measured period every 5 minutes falls between the following thresholds, the percentage of the ATM Circuit MRC shown shall be credited to the customer: 99.799% - 99.60% = 10% of ATM MRC 99.599% - 99.250 = 15% of ATM MRC less than 92.25% = 20% of ATM MRC

COMPONENTS INCLUDED. All relevant on-net components including the MATRIX access device and ATM Circuit to the Customer Premise. Not including other customer premise equipment, such as routers, hubs, switches, LANs, and PBX.

MEASUREMENT. Network Availability. "Network Downtime" exists when a particular Customer circuit (the "Affected Service") is unable to transmit and receive data and NorVergence records such failure in the NorVergence trouble ticket system. Network Downtime is measured from the time the trouble ticket is opened to the time the Affected Service is again able to transmit and receive data.

Latency. The average roundtrip network delay ("Latency") will be measured on an ongoing basis every 5 minutes by "pinging" the circuit throughout each month of service and averaged to adequately determine a consistent monthly performance level for Latency.

Cell Delivery. Cell Delivery will be measured on an ongoing basis every 5 minutes to adequately determine a consistent monthly performance level for cells actually delivered between the relevant points.

REMEDIES: Upon Customer's request to NorVergence made within five (5) business days of the last day of the month in which the relevant SLA was not met, Customer shall be entitled to service credits as set forth herein. A credit shall be applied only to the month in which the event giving rise to the credit occurred. The maximum SLA credits issued in any one calendar month shall not exceed: (i) 20 days' charges pro-rated from the MRC of the Affected Service with respect to Network Availability; or (ii) 75% of the MRCs of the Affected Service with respect to the other SLAs. In no event shall the total credit, in the aggregate for all SLAs, issued in one month exceed the equivalent of 50% of the relevant aggregate MRCs for the Affected Service.

SERVICE CREDIT EXCEPTIONS: Service credits shall not be issued where the Service is unavailable as a result of: (i) the acts or omissions of Customer, its employees, contractors, agents or its End Users; (ii) the failure or malfunction of equipment, application, local loops or systems not owned or controlled by NorVergence; (excluding the MATRIX Box itself) or (iii) Force Majeure events; or (iv) scheduled service maintenance, alteration, or implementation. No credits will be granted pursuant to the SLA unless Customer provides NorVergence with accurate, current contact information, including a valid pager number, fax number and email address.

NORMAL MAINTENANCE: Normal Maintenance refers to upgrades of hardware or software or upgrades to increase capacity. Normal Maintenance may temporarily degrade the quality of the Service, including possible outages. Such effects related to Normal Maintenance shall not give rise to service credits under this SLA. Normal Maintenance shall be undertaken only on Sunday and Wednesday mornings between the hours of 12:00 AM and 6:00 AM Local Time. For purposes of this SLA, "Local Time" refers to the local time in the time zone in which an Affected Service is located. NorVergence shall provide as least two (2) days prior notice of Normal Maintenance. Urgent Maintenance: Urgent Maintenance refers to efforts to correct network conditions that are likely to cause a material Service outage and that require immediate action. Urgent Maintenance may degrade the quality of the Services, including possible outages. Such effects related to Urgent Maintenance shall entitle Customer to service credits as set forth in this SLA. NorVergence may undertake Urgent maintenance at any time deemed necessary and shall provide notice of Urgent Maintenance to Customer as soon as is commercially practicable under the circumstances.

CUSTOMER TERMINATION RIGHTS. Customer may terminate the Affected Services without penalty if, in any single calendar month: (i) Network Downtime exists for at least ninety-six (96) hours in the aggregate; or (ii) any single event entitling Customer to credits under Network Availability exists for a period of at least thirty-six (36) consecutive hours. Such termination must be conducted by written notice to the NorVergence, with a courtesy copy to the attention of the NorVergence Chief Managing Officer, sent by certified US Mail return receipt requested within five (5) business days following the end of the relevant calendar month. Such termination will be effective forty-five (45) days after receipt of written notice by NorVergence. The provisions of this SLA state Customer's sole and exclusive remedies for Service interruptions or Service deficiencies of any kind whatsoever.

Effective 11/1/01



Registered Partner



MATRIX™ T1 Non-Binding Services Application

THIS IS A NON-BINDING APPLICATION TO RESERVE "VOICE AS UNLIMITED DATA™", HIGH SPEED T-1 ACCESS FACILITIES AND CELLULAR HANDSETS SUBJECT TO THE TERMS BELOW, FINAL CREDIT AND ENGINEERING APPROVAL

This Services Application is non-binding until you are approved for the "Voice as Unlimited Data™" services herein and all parties agree to move forward. Access Facilities will then be conducted and installation confirmed and all terms below will apply.

Site Information			
Applicant Company Name:	Address:	Voice as Unlimited Data™ Multi-Access Request: <input type="checkbox"/> T-1 <input type="checkbox"/> Unlimited Domestic Toll Free <input type="checkbox"/> Cellular <input type="checkbox"/> Fraud Protection Technology	
Contact:	Phone #:	Order Date:	
Floor(s)/ Closet(s) Name:	Department(s):	Screeners' Rating (for office use only)	Screening Mgr:

If approved and mutual consent is given, the following services will be performed:

- NorVergence will coordinate Carrier Neutral provisioning of your High Speed "Voice as Unlimited Data™" T1 Access Facilities.
- NorVergence will arrange for delivery of "Voice as Unlimited Data™" High Speed T-1 Circuitry through your Local Service Provider to your premise.
- NorVergence will program and provide Cellular "Voice as Unlimited Data™" handsets (as applicable) for toll free and surcharge free Cellular calling.
- NorVergence will coordinate the transfer of your Business Telephone Numbers and or Toll Free Number(s) to Unlimited Domestic Inbound Calling without per Minute Charges, if number portability form is attached (NPTF).
- NorVergence will connect your outbound lines to Unlimited Outbound Domestic Toll Free Calling without per Minute Charges, Fees, or Surcharges.
- NorVergence will have Fraud Protection Technology ("FPT") activated on all MATRIX™ Outbound Lines and Cellular phones Removing Toll Fraud and Hacker Liability.
- NorVergence will coordinate the National Conversion Assistance Program to provide for a smooth transition to new Cellular numbers, if applicable.

If approved and mutual consent is given, Applicant agrees to:

- Authorize NorVergence to submit this Application for Credit and Engineering Acceptance.
- Save and Hold NorVergence Harmless if Credit or Engineering Approval is Not Granted for the Solution.
- Purchase the access services on the terms below and allow Local Service Provider installation.
- Within 30 days of Matrix mounting, applicant will expeditiously allow the Local Service Provider and PBX Technician access to connect all facilities.

If approved and mutual consent is given, NorVergence agrees to:

- Coordinate & Enable Carrier Neutral "Voice as Unlimited Data™" with T-1, Internet Access, for \$ /per month for a 60 month term.
- Coordinate & Enable Unlimited Cellular Access for \$ /per month on a 60 month term for Cellular Handsets(if applicable)
- Coordinate & Enable Unlimited Toll Free Domestic Calling for \$ /per month on a 60 month term for Toll Free Numbers(if applicable)
- Coordinate & Enable Free Unlimited Domestic U.S. Calling for Outbound/Inbound Toll Free 8XX lines attached to your Phone System
- Coordinate & Enable the transfer of your Business Telephone Numbers for Inbound lines attached to your Phone System (if applicable).
- Carrier Neutral Unlimited Cellular Service: - One new State of the Art Tri-Mode Cellular Handset per Cellular access number every 12 Months as requested by customer
- (Qty.) Phone sets/Phone Numbers
- National Conversion Assistance Program Request Attached
- Unlimited Domestic Toll Free Service - Four Numbers Per Matrix Box Maximum

*NorVergence will provide one additional Unlimited Domestic Calling Outbound line subject to your PBX Capacity

WARRANTY & ADDITIONAL TERMS and GUARANTEES of SERVICE: After approval, as long as Customer Applicant remains in good credit standing, this Agreement authorizes the Service Provider Carrier to guarantee pricing, service assurance and circuit continuity on all T-1s installed & Cellular phones programmed. Additionally, throughout the term, customers may request a change in Cellular Providers, subject to availability at the time of their request. In order to guarantee the customer savings outlined in your proposal, customer agrees that NorVergence may enhance or modify underlying carriers, business telephone numbers, transport facilities and handsets at any time during the term at NorVergence cost. All International & Directory Assistance calls are billed separately. Cell phones DO NOT include direct dialed International Calling capability. For comprehensive Terms and Conditions included herein by reference, please visit our web site at www.NorVergence.com.

Applicant Authorization

The parties noted below, as duly authorized representatives of their respective companies, hereby approve the above services to be provided and purchased on the terms herein subject to customer written confirmation of Matrix™ Solution Mounting. This application is further conditioned upon Credit Approval, Engineering Review, and final consent of all parties to move forward prior to System Mounting.

Name (please print)	Applicant Title:	Signature	Date

NorVergence Authorization

Name (please print)	Employee Title:	Signature	Date

EXHIBIT 2



Equipment Rental Agreement

Rental Number _____

Renter (Full Legal Name) NorVergence, Inc				Renter (Full Legal Name)			
Address 550 Broad St 3rd Floor				Address			
City Newark	State NJ	County Essex	Zip Code 07102	City	State	County	Zip Code
Telephone Number 973 - 242 - 7500			Telephone Number		Federal Tax ID Number		State of Organization

Dear Customer: We've written this Equipment Rental Agreement (the "Rental") in simple and easy-to-read language because we want you to understand its terms. Please read this Rental carefully and feel free to ask us any questions you may have about it. We use the words you and your to mean the Renter indicated above. The we, us and our refer to the Renter indicated herein.

Rental Agreement: We agree to rent to you and you agree to rent from us the Equipment listed below (the "Equipment"). You promise to pay us the Rental Payments shown below according to the payment schedule below.

Quantity	Equipment Model & Description	Serial Number

Equipment to be new unless otherwise noted: Used Reconditioned

Equipment Location (if different from Renter address above)
Address

City	State	County	Zip Code	Renter Contact Name	Telephone Number
------	-------	--------	----------	---------------------	------------------

Transaction Terms: Rental Payment \$ _____ (plus applicable taxes) Security Deposit \$ 0

RENTAL TERM 60 Months

If checked the first payment is due approximately 60 days after date of acceptance.

Your payments shown above may not include any applicable tax. If any taxes are due, you authorize us to pay the tax when it is due and agree to reimburse us by adding a charge to your Rental Payment. You authorize us to insert or correct missing or incorrect information on the Rental; we will send you notice of such changes. Payments will be applied first to past due balances, taxes, fees and late charges, and then to the current amount due.

You agree to all the terms and conditions shown above and the reverse side of this Rental, that those terms and conditions are a complete and exclusive statement of our agreement and that they may be modified only by written agreement between you and us. Terms or oral promises which are not contained in this written Rental may not be legally enforced. You also agree that the Equipment will not be used for personal, family or household purposes. You acknowledge receipt of a copy of this Rental. Your obligations to make all Rental Payments for the entire term are not subject to set off, with holding or deduction for any reason whatsoever.

This Rental is not binding on us until we accept it by signing below. You authorize us to record a UICC-1 financing statement or similar instrument, and appoint us as your attorney-in-fact to execute and deliver such instrument, in order to show our interest in the Equipment.

THIS RENTAL MAY NOT BE CANCELLED OR TERMINATED EARLY.

Renter: NorVergence, Inc.	Renter: _____
By: X _____	By: X _____
Accepted on behalf of Renter on: _____	Name (print) _____
	Date/Title: _____

You agree that a facsimile copy of this Rental bearing signatures may be treated as an original.

Guaranty: In this guaranty, you means the person(s) making the guaranty, and we, us and our refer to the Renter indicated above. You will unconditionally, jointly and severally guarantee that the Renter will make all payments and pay all the other charges required under this Rental and under any other agreement now or hereafter entered into between the Renter and us (the "agreement(s)") when they are due and will perform all other obligations under the agreement(s) fully and promptly. You also agree that we may make other arrangements with the Renter and you will still be responsible for those payment and other obligations. We do not have to notify you if the Renter is in default. If the Renter defaults, you will immediately pay in accordance with the default provisions of this Rental all sums due under the terms of this Rental and you will perform all other obligations of Renter under this Rental. It is not necessary for us to proceed first against the Renter before enforcing this guaranty. You will reimburse us for all the expenses we incur in enforcing and of our rights against the Renter or you, including attorney fees. THE SAME STATE LAW AS THE RENTAL WILL GOVERN THIS GUARANTY. YOU AGREE TO JURISDICTION AND VENUE AS STATED IN THE PARAGRAPH TITLED APPLICABLE LAW OF THE RENTAL.

Personal Guaranty: By: X(sign) _____, Individually	Personal Guaranty: By: X(sign) _____, Individually
Name (print) _____	Name (print) _____

Equipment Rental (continued)

RENT TERM OF RENTAL: You agree to pay us the amount specified in this Rental as the Rental Payment (plus any applicable taxes) when each payment is due. Your acceptance of the Equipment will be conclusively and irrevocably established upon the receipt by us of your confirmation (verbal or written) of such acceptance. However, if you have not provided us with confirmation of acceptance or provided us with written notice of non-acceptance of the Equipment, in either case, within 10 days after delivery of the Equipment, you will be deemed to have inspected and irrevocably accepted the Equipment and to have authorized us to pay for the Equipment. The term of this Rental begins on a date designated by us after receipt of all required documentation and acceptance by us ("Commencement Date") and continues for the number of months designated as "Rental Term" on the face of this Rental. The Rental Payments are payable in advance periodically as stated in or on any schedule to this Rental. You agree to pay an interim Rental Payment in the amount of one-thirtieth (1/30th) of the Rental payment for each day from and including the Effective Date ("which shall be the date the Equipment is installed") until the day preceding the Commencement Date.

PAYMENT: You authorize us to change the Rental Payment by not more than 15% due to changes in the Equipment configuration, which may occur prior to our acceptance of this Rental. Restrictive endorsements on checks you send to us will not reduce your obligations to us. Whenever any Rental Payment or other payment is not made when due, you agree to pay us, within one month, a late charge of the greater of ten percent (10%) of the payment or \$20.00 for each delayed payment for our internal operating expenses arising as a result of each delayed payment, but only to the extent permitted by law.

LOCATION AND OWNERSHIP OF EQUIPMENT: You will keep and use the Equipment only at "the Equipment location address." You agree that the Equipment will not be removed from that address unless you get our written permission in advance to move it. You agree to pay the costs incurred by us to verify installation of the Equipment prior to commencement or during the term of the Rental. We are the owner of the Equipment and have title to the Equipment.

USE, MAINTENANCE AND INSTALLATION: You are responsible for protecting the Equipment from damage except for ordinary wear and tear and from any other kind of loss while you have the Equipment. If the Equipment is damaged or lost, you agree to continue to pay rent. You will not move the Equipment from the Equipment location without our advance written consent. You will give us reasonable access to the Equipment location so that we can check the Equipment's existence, condition and proper maintenance. You will use the Equipment in the manner for which it was intended, as required by all applicable manuals and instructions and keep it eligible for any manufacturer's certification and/or standard, full service maintenance contract. At your own cost and expense, you will keep the Equipment in good repair, condition and working order, ordinary wear and tear excepted. All replacement parts and repairs will become our property. You will not make any permanent alterations to the Equipment.

REDELIVERY OF EQUIPMENT; RENEWAL: You shall provide us with written notice, by certified mail, sent not less than 120 days nor more than 180 days prior to the expiration of the Rental Term or any renewal Rental Term of your intention either to exercise any option to purchase all but not less than all of the Equipment (if we grant you such an option) or cancel the Rental and return the Equipment to us at the end of the Rental Term. If you elect to return the Equipment to us at the expiration of the original or any renewal term of the Rental, you agree to return the Equipment in accordance with the paragraph titled Return of Equipment. If we have not received written notice from you of your intention to purchase or return the Equipment, the Rental will automatically renew for succeeding one-year periods commencing at the expiration of the original Rental Term. If this Rental is renewed, the first renewal payment will be due the first day after the original Rental Term expired. Any security deposit held by us shall continue to be held to secure your performance for the renewal period.

LOSS; DAMAGE; INSURANCE: You are responsible for and accept the risk of loss or damage to the Equipment. You agree to keep the Equipment insured against all risks of loss in an amount at least equal to the replacement cost until this Rental is paid in full and will list us as loss payee. You will also carry public liability insurance with respect to the Equipment and the use thereof and name us as additional insured. You will give us written proof of this insurance before this Rental Term begins. You agree to promptly notify us in writing of any loss or destruction or damage to the Equipment and you will, at our option, (a) repair the Equipment to good condition and working order, (b) replace the Equipment with like Equipment in good repair, condition and working order, acceptable to us and transfer clear title to such replacement Equipment to us, such Equipment shall be subject to the Rental and be deemed the Equipment, or (c) pay to us the present value of the total of all unpaid Rental Payments for the full Rental term plus the estimated Fair Market Value of the Equipment at the end of the originally scheduled Rental term, all discounted at six percent (6%) per year whereupon the Rental shall terminate. All proceeds of insurance received by us as a result of such loss or damage will be applied, where applicable, toward the replacement or repair of the Equipment or the payment of your obligations. IF YOU DO NOT GIVE US PROOF OF PHYSICAL DAMAGE INSURANCE, WE MAY (BUT WILL NOT BE OBLIGATED TO) OBTAIN OTHER PHYSICAL DAMAGE INSURANCE AND CHARGE YOU A MONTHLY CHARGE EQUAL TO 0.25% OF THE ORIGINAL EQUIPMENT COST DUE TO THE INCREASED CREDIT RISK TO US AS WELL AS TO COVER OUR INCREASED INTERNAL OVERHEAD COSTS OF REQUESTING PROOF OF PHYSICAL DAMAGE INSURANCE FROM YOU.

ASSIGNMENT: YOU MAY NOT SELL, PLEDGE, TRANSFER, ASSIGN OR SUBRENT THE EQUIPMENT OR THIS RENTAL. We may sell, assign or transfer all or any part of this Rental and/or the Equipment without notifying you. The new owner will have the same rights that we have, but not our obligations. You agree you will not assert against the new owner any claims, defenses or set-offs that you may have against us.

TAXES AND FEES: You agree to pay when due all sales and use taxes, personal property taxes and all other taxes and charges, license and registration fees, relating to the ownership, leasing, rental, sale, purchase, possession or use of the Equipment as part of this Rental or as billed by us. You agree to pay us any estimated taxes when we request payment. You agree that if we pay any taxes or charges on your behalf in excess of the estimated taxes previously collected, you will reimburse us for all such payments and shall pay us a late charge (as described in the paragraph titled Payment) on such payments if applicable with the next payment. You agree to pay us a monthly fee up to one hundred and fifty thousandths of one percent (.150%) of the original Equipment cost to reimburse us for our costs of preparing, reviewing and filing any such returns. You agree, and we have the right to (i) bill monthly the estimated applicable personal property taxes together with the fees described herein and (ii) bill any remaining estimated amount due upon assessment of such taxes, without regard to any discounts we may obtain. You also agree to appoint us as your attorney-in-fact to sign your name to any document for the purpose of such filing, so long as the filing does not interfere with your right to use the Equipment. We may charge you and you shall pay to us a one time administrative fee of up to \$75.00 to reimburse us for documentation and investigation costs. You also agree to pay us for any filing and releasing fees prescribed by the Uniform Commercial Code or other law including filing or other fees incurred by us.

LIABILITY: We are not responsible for any losses or injuries caused by the installation or use of the Equipment. You agree to reimburse us for and to defend us against any claims for the losses or injuries caused by the Equipment.

DEFAULT: Each of the following is a "Default" under this Rental: (a) you fail to pay any Rental Payment or any other payment when due, (b) you fail to perform any of your other obligations under this Rental or in any other agreement with us or with any of our affiliates, and this failure continues for 10 days after we have notified you of it, (c) you become insolvent, you dissolve or are dissolved, you fail to pay your debts as they mature, you assign your assets for the benefit of your creditors, or you enter (voluntarily or involuntarily) any bankruptcy or reorganization proceeding, or (d) any guarantor of this Rental dies, does not perform its obligations under the guaranty, or becomes subject to one of the events listed above.

REMEDIES: If a Default occurs, we may do one or more of the following: (a) cancel or terminate this Rental or any or all other agreements that we have entered into with you; (b) require you to immediately pay us, as compensation for loss of our bargain and not as a penalty, a sum equal to (i) all amounts then due under this Rental plus, (ii) all unpaid Rental Payments for the remainder of the term plus our anticipated residual interest in the Equipment each discounted to present value at the rate of 6% per annum; (c) deliver the Equipment to us as set forth in the paragraph titled Return of Equipment; (d) peacefully repossess the Equipment without court order and you will not make any claims against us for damages or trespass or any other reason; and (e) exercise any other right or remedy available at law or in equity. You agree to pay all of our costs of enforcing our rights against you, including reasonable attorneys' fees and costs, if we take possession of the Equipment, we may sell or otherwise dispose of it with or without notice, at a public or private sale, and apply the net proceeds (after we have deducted all costs related to the sale or disposition of the Equipment) to the amounts that you owe us. You agree that if notice of sale is required by law to be given, 10 days notice shall constitute reasonable notice. You will remain responsible for any amounts that are due after we have applied such net proceeds. All our remedies are cumulative, are in addition to any other remedies provided for by law and may be exercised either concurrently or separately. Any failure or delay by us to exercise any right shall not operate as a waiver of any right, other or future rights or to modify the terms of this Rental.

SECURITY DEPOSIT: We will retain any required security deposit to ensure your performance of your obligations. Any security deposit is non-interest bearing. We may, but are not obligated to, apply any security deposit to cure any default by you, in which event you will promptly restore any amount so applied. If you are not in default, any security deposit will be returned to you within 90 days after the end of the original or renewal Rental Term (or as otherwise required by applicable law), or at your direction we may apply the security deposit towards your purchase of the Equipment (if we grant you a purchase option).

RETURN OF EQUIPMENT: If (a) a default occurs, or (b) you do not purchase the Equipment at the end of the Rental Term, you will immediately return the Equipment to any location(s) and aboard any carrier(s) we may designate in the continental United States. The Equipment must be properly packed for shipment in accordance with the manufacturer's recommendations or specifications, freight prepaid and insured, maintained in accordance with the paragraph titled Use Maintenance and Installation, and in "average Saleable Condition". "Average Saleable Condition" means that all of the Equipment is immediately available for use by a third party buyer, user or Renter, other than yourself, without the need for any repair or refurbishment. All Equipment must be free of markings. You will pay us for any missing or defective parts or accessories, including manuals and licenses. You will continue to pay Rental Payments until the Equipment is received and accepted by us.

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

APPLICABLE LAW: 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. We both intend to comply with applicable laws. If it is determined that your Rental Payment results in a payment greater than would be allowed by applicable law, then any excess collected by us will be applied to any outstanding balance due and owing under this Rental. In no event will we charge or receive or will you pay any amounts in excess of that allowed by applicable law. This agreement shall be governed by, construed and enforced in accordance with the laws of the State in which Renter's principal offices are located or, if this Lease is assigned by Renter, 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 Renter or Renter's assignee's sole option. You hereby waive right to a trial by jury in any lawsuit in any way relating to this rental.

ADDITIONAL SERVICES: To request copies of your billing or payment history or for other information or services with respect to your Rental, please contact us. You will be charged a reasonable fee for these services.

OTHER CONDITIONS: You understand and agree that:

YOUR DUTY TO MAKE THE RENTAL PAYMENTS IS UNCONDITIONAL DESPITE EQUIPMENT FAILURE, DAMAGE, LOSS OR ANY OTHER PROBLEM. RENTER IS RENTING THE EQUIPMENT "AS IS", WITHOUT ANY WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE IN CONNECTION WITH THIS AGREEMENT. If the Equipment does not work as represented by the manufacturer or supplier, or if the manufacturer or supplier or any other person fails to provide service or maintenance, or if the Equipment is unsatisfactory for any reason, you will make any such claim solely against the manufacturer or supplier or other person and will make no claim against us.

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 this Rental.

NO WARRANTIES: We are renting the Equipment to you "AS IS". WE MAKE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE IN CONNECTION WITH THIS AGREEMENT. We transfer to you for the term of this Rental all warranties, if any, made by manufacturer or supplier to us. We are not liable to you for any modifications or rescission of supplier or manufacturer warranties. You agree to continue making payments to us under this Rental regardless of any claims you may have against the supplier or manufacturer. YOU WAIVE ANY RIGHTS WHICH WOULD ALLOW YOU TO: (a) cancel or repudiate the Rental; (b) reject or revoke acceptance of the Equipment; (c) grant a security interest in the Equipment; (d) accept partial delivery of the Equipment; (e) "cover" by making any purchase or Rental of substitute Equipment; and (f) seek specific performance against us.

YOU UNDERSTAND THAT ANY ASSIGNEE IS A SEPARATE AND INDEPENDENT COMPANY FROM RENTOR/MANUFACTURER AND THAT NEITHER WE NOR ANY OTHER PERSON IS THE ASSIGNEE'S AGENT. YOU AGREE THAT NO REPRESENTATION, GUARANTEE OR WARRANTY BY THE RENTOR OR ANY OTHER PERSON IS BINDING ON ANY ASSIGNEE, AND NO BREACH BY RENTOR OR ANY OTHER PERSON WILL EXCUSE YOUR OBLIGATIONS TO ANY ASSIGNEE.

Renter: Please initial if submitting via facsimile.

EXHIBIT 3

bag P. 6
5

CAUSE No. 2004-65357

STATE OF TEXAS,
Plaintiff,

v.

NORVERGENCE, INC.
Defendant.

§
§
§
§
§
§
§
§
§
§
§

IN THE DISTRICT COURT

HARRIS COUNTY, TEXAS

270th JUDICIAL DISTRICT

DEFAULT JUDGMENT AGAINST DEFENDANT NORVERGENCE, INC.

On this day came on to be heard the above-entitled and numbered cause wherein THE STATE OF TEXAS is Plaintiff and NORVERGENCE, INC. is the Defendant. The Plaintiff appeared in person by its attorney of record and announced ready for trial. The Defendant, although having been duly and legally cited to appear and answer, failed to appear and answer, and wholly made default.

Citation was served according to law and return of service was made to the clerk where it remained on file for the time required by law. The Court has read the pleadings and the papers on file, has heard and considered the testimony and evidence presented by Plaintiff, and is of the opinion that the allegations of Plaintiff's Petition have been sufficiently proven.

FINDINGS

This court, based upon the testimony and evidence presented, makes the following findings:

1. Plaintiff filed a petition in this cause pursuant to the provisions of the Texas Deceptive Trade Practices Act ("DTPA"), the allegations of which the court takes notice.
2. The Texas Attorney General is charged with, among other things, the responsibility of enforcing the DTPA on behalf of the public interest.

3. NORVERGENCE is a corporation organized under New Jersey law with its principal place of business located at 550 Broad Street, Newark, New Jersey.
4. At all times relevant to this matter, NORVERGENCE did business from its principal place of business located at 550 Broad Street, Newark, New Jersey and from various offices in the State of Texas.
5. On or about June 30, 2004, creditors of NORVERGENCE filed an involuntary bankruptcy petition in U.S. Bankruptcy Court for the District of New Jersey.
6. NORVERGENCE currently is in Chapter 7 bankruptcy in the U.S. Bankruptcy Court for the District of New Jersey (Docket 04-32079-RG).
7. A trustee, Charles Forman, has been appointed to act in the stead of NORVERGENCE. The plaintiff does not allege that the trustee is involved in any of the wrongdoing alleged to have been committed by NORVERGENCE.
8. NORVERGENCE, at all times relevant hereto, engaged in trade and commerce within the meaning of the DTPA in the State of Texas, to wit: advertising, offering for sale, selling, and providing telecommunications service and related telecommunications equipment, and charging Texas consumers for, or causing them to be charged for, the same.
9. NORVERGENCE has engaged in unfair and deceptive acts or practices in the conduct of trade and commerce, in violation of the DTPA because it materially misrepresented the nature of its telecommunications services to all Texas consumers who contracted for same.
10. The NORVERGENCE rental agreements for Matrix and Matrix Soho routers and firewalls and related equipment were part of a unified agreement under which NORVERGENCE promised to provide telecommunications services in exchange for consumers' payments.

These services have not been provided at least since a time early in the NORVERGENCE bankruptcy case and in some cases have never been provided.

11. All Equipment Rental Agreements or other contracts procured between NORVERGENCE and Texas consumers or between finance companies and Texas consumers as a result of a NORVERGENCE solicitation directed to any Texas consumer are the result of deceptive and unfair practices and fraud on the part of NORVERGENCE and, therefore, are declared void *ab initio* and are unenforceable.
12. All of the unfair and deceptive acts or practices alleged in Plaintiff's petition constitute the basis for the execution and filing of this Default Judgment.
13. Any references to the acts and practices of NORVERGENCE shall mean that such acts and practices are by and through the acts of said corporation's officers, agents, servants, employees, attorneys, and representatives; all other persons or entities directly or indirectly under their control, wholly or partially; and all other persons or entities in active concert or participation with them who receive actual notice of this Default Judgment by personal service or otherwise.
14. This Court has jurisdiction over the subject matter of the complaint having been filed herein and over the parties to this Default Judgment.
15. The court finds that 1,020 Texas small businesses and consumers were victims of NorVergence's fraud and deceptive acts and practices and that a civil fine and penalty should be awarded to the State of Texas for each such victim.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Defendant, its officers, agents, servants, employees, and attorneys, and any other person in active concert or

participation with Defendant shall be permanently enjoined from engaging in the following acts or practices:

1. Engaging in any commerce in the State of Texas, including, but not limited to, the business of advertising, offering for sale, selling, and providing telecommunications service and related telecommunications equipment, and charging Texas consumers for, or causing them to be charged for, the same.
2. Assigning any NorVergence equipment rental agreement (or any part thereof) where a Texas business, consumer, person, or entity is a party thereto, to any other person, entity or finance company.
3. Enforcing, attempting to enforce, collecting or attempting to collect any monies purportedly owed under any NorVergence equipment rental agreement from any Texas consumer, business or entity.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that all contracts or agreements between NorVergence and Texas consumers, businesses or persons are hereby declared void *ab initio* and unenforceable.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that any consumer financing agreements owned or held in whole or part by NorVergence shall be deemed void and uncollectible by any person or entity.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that any NorVergence consumer financing agreements transferred or assigned to any third party after those contracts were rejected in the Bankruptcy Case pursuant to 11 U.S.C. § 365 shall be deemed void and uncollectible by any person or entity.

IT IS ALSO ORDERED that to the extent that NorVergence has a residual, contingent, or similar right to any consumer financing agreement not currently owned or held by NorVergence, those agreements shall be deemed void and uncollectible as of the time that NorVergence's residual, contingent, or similar right matures.

IT IS ALSO ORDERED that NorVergence shall notify each consumer affected by this section that their consumer financing agreement has been deemed uncollectible and void, either immediately or in the future, as applicable.

IT IS FURTHER ORDERED that Plaintiff, State of Texas, have Judgment and recover from Defendant NorVergence, the sum of \$ 162,000.⁰⁰ for reimbursement of attorney fees and investigative costs which were incurred on behalf of the Plaintiff and which do not constitute an antecedent debt with respect to this litigation.

IT IS FURTHER ORDERED that Plaintiff, State of Texas, have Judgment and recover from Defendant NorVergence, the sum of \$ 10,000,000.⁰⁰ for civil fines and penalties and which do not constitute an antecedent debt with respect to this litigation.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, to the extent not prohibited by bankruptcy law :

1. Defendant shall make payment of all amounts due herein to the Plaintiff by delivery of a cashier's check or money order to the Office of the Attorney General, Consumer Protection Division, 300 West 15th Street, 9th Floor, William Clements Building, Austin, Texas 78701. Such check or money order shall be made payable to the Office of the Attorney General.
2. All costs of court incurred in this case are taxed against Defendant.
3. Defendant shall pay pre-judgment and post-judgment interest on all monetary awards set

forth in this judgment as provided by law.

4. The State of Texas have all writs and processes as may be necessary in the enforcement and collection of this judgment.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that all relief not expressly granted herein is denied.

SIGNED this 29th day of April 2005.

F I L E D
CHARLES MACARISSE
District Clerk

APR 29 2005

By D. Sutton 10:25
Deputy



JUDGE PRESIDING