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UNITED STATES BANKRUPTCY COURT  
 FOR THE DISTRICT OF NEW JERSEY

	]	
In re	]	Chapter 7
	]	
NorVergence, Inc.,	]	Case No. 04-32079/RG
	]	
Debtor.	]	
	]	
	]	
DIVERSIFIED AEROSPACE SERVICES, LLC,	]	Adv. Proc. No.
	]	
Plaintiff	]	
	]	
v.	]	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 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 propriety 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 and performed no useful function to the small-business owners with whom NorVergence contracted.

2. None of the plaintiffs, nor any of Norvergence’s other 11,000 nationwide customers, currently receive 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.

### **PARTIES**

3. 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.

4. 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”

5. 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.

6. Defendant Access Integrated Technologies, Inc. (“Access”), is an intellectual property company, and describes itself as follows: “Access<sup>IT</sup>, 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 AccessColocenters<sup>SM</sup>. While the goals for the company have expanded beyond this vision, it remains the cornerstone of the foundation for the future of Access<sup>IT</sup> 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/l2\\_ourcompany.htm](http://www.accessitx.com/l2_ourcompany.htm).”

### **JURISDICTION AND VENUE**

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

8. 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. 9  
Venue is proper in this district and division pursuant to 28 U.S.C. §1409(a).

### **FACTS COMMON TO ALL PLAINTIFFS**

10. 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.

11. 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.

12. 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.

13. However, to obtain this unlimited deeply discounted and technologically superior service,

NorVergence required its customers to sign five-year rental contracts “hardware and service rental” plans that included the installation and use of its “Matrix” box.

14. 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 10% less than their current bills from other vendors.

15. 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 bill and which varied with each customer) was then allocated to “rental” of the “Matrix” box.

16. 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.

17. Neither piece of equipment does anything to make landline phone calls unlimited for local, long distance, or toll free 800 dialing, or make cellular calls unlimited for flat rate charges. 18. The “Matrix” is a standard T1 integrated access device (IAD), which supports voice data and video streaming over a single high capacity circuit. 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.

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

20. 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.

21. 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.

22. NorVergence then purported to sell and/or assign the “Matrix” equipment leases to banks, leasing companies, and other financial institutions – such as 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.

23. 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 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 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 400 suits in Cook County courts in the past seven (7) weeks 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.

24. 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).

25. In some cases, NorVergence permitted its receivables under the contracts to become collateral for lenders; in the instant case, both IFC and Access asset 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**

26. Plaintiffs incorporate by reference the averments contained in paragraphs 1 - 20 as if fully



stated herein.

27. 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.

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

29. 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.

30. 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.

31. 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. 32.

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.

33. 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.

34. 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.

35. 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.

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

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

39. 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.

40. 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.

41. 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**

42. Plaintiff incorporates by reference the averments contained in paragraphs 1 - 36 as if fully stated herein.

43. 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.

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

45. 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.

Dated: November 1, 2004

Respectfully submitted,

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and

