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the Estate of NorVergence, Inc.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

IN RE:

NORVERGENCE, INC.,

Debtor.

CHARLES M. FORMAN, CHAPTER 7
TRUSTEE OF THE ESTATE OF
NORVERGENCE, INC.,

Plaintiff,

vs.

THOMAS N. SALZANO, DATA
SOLUTIONS, LTD., PETER SALZANO
(named only for notice purposes and not for
any relief herein insofar as Peter Salzano is a
debtor in a case under Chapter 11 of the
Bankruptcy Code), ALEXANDER L.
WOLF, ROBERT FINE, ROBERT
WIZEMAN, WILLIAM JEAN CHARLES,
TERRY SKEMER, ARTHUR SCUTTARO,
ABB BUSINESS FINANCE, ALFA
FINANCIAL CORPORATION, A
DIVISION OF OFC CAPITAL A/K/A
ALFA FINANCIAL A/K/A OFC CAPITAL,
BANC LEASE ACCEPTANCE
CORPORATION A/K/A NORTH TEXAS
CREDIT CORP., BB&T LEASING
CORPORATION A/K/A BB&T LEASING,
CELTIC BANK, CIT GROUP A/K/A CIT
CAPITAL A/K/A CIT TECHNOLOGY
FINANCING SERVICES, INC. A/K/A CIT

Chapter 7

Case No. 04-32079 (RG)

Hon. Rosemary Gambardella, U.S.B.J.

Adv. Pro. No. 06--_____

FINANCIAL USA, INC. A/K/A CIT
LEASING, CITICAPITAL TECHNOLOGY
FINANCE, INC. A/K/A CITI CAPITAL
A/K/A THE CITI GROUP, COMBINED
CAPITAL A/K/A ACC LEASING, COURT
SQUARE LEASING CORPORATION,
DELAGE LANDEN FINANCIAL
SERVICES, INC. A/K/A DELAGE
LANDEN, DOLPHIN FINANCIAL
CORPORATION A/K/A DOLPHIN
CAPITAL CORPORATION A/K/A
DOLPHIN LEASING A/K/A CAPITAL
CROSSING BANK, FIRST LEASE, INC.,
GENERAL ELECTRIC CAPITAL
CORPORATION A/K/A GE CAPITAL, IFC
LEASING, INC. A/K/A IFC CREDIT
CORPORATION A/K/A INSIGHT
FINANCIAL CORP., INFORMATION
LEASING CORP. N/K/A NATIONAL
CITY COMMERCIAL CAPITAL, IRWIN
BUSINESS FINANCE A/K/A IRWIN
COMMERCIAL FINANCE CORP. A/K/A
IRWIN COMMERCIAL LEASING,
LEASING INNOVATIONS, INC.,
LIBERTY BANK LEASING A/K/A
LIBERTY BANK, LYON FINANCIAL
SERVICES, INC. D/B/A U.S. BANCORP
BUSINESS EQUIPMENT FINANCE
GROUP A/K/A US BANCORP, MADISON
CAPITAL, LLC A/K/A MADISON
CAPITAL-FUNDING A/K/A MADISON
CAPITAL EQUIPMENT LEASE, INC.,
NATIONAL PENN LEASING A/K/A
NATIONAL PENN BANK CO.,
NORTHLAND CAPITAL FINANCIAL
SERVICES A/K/A NORTHLAND
LEASING INNOVATIONS, PARTNERS
EQUITY CAPITAL COMPANY, PFG
COMMERCIAL FINANCE, POPULAR
LEASING A/K/A POPULAR LEASING
USA, INC., PREFERRED CAPITAL, INC.
A/K/A PREFERRED CAPITAL, LLC
A/K/A PREFERRED LEASING, LLC
A/K/A PREFERRED CAPITAL LEASING,
R-G CROWN BANK LEASING D/B/A
CROWN BANK LEASING F/K/A CROWN
BANK, A FEDERAL SAVINGS BANK,
STERLING NATIONAL BANK,
STUDEBAKER WORTHINGTON

LEASING GROUP, SUSQUEHANNA
PATRIOT COMMERCIAL LEASING
COMPANY, INC. A/K/A PATRIOT
LEASING COMPANY A/K/A PATRIOT
LEASING, US EXPRESS LEASING, INC.
A/K/A USXL, WELLS FARGO
FINANCIAL LEASING A/K/A WELLS
FARGO FINANCIAL, INC.

Defendants.

**COMPLAINT (i) TO AVOID AND RECOVER
FRAUDULENT TRANSFERS AND SETOFFS
PURSUANT TO 11 U.S.C. §§ 544, 548, 550, 553(b)(1)
AND N.J.S.A. 25:2 *et seq.*, AND FOR (ii) FRAUD, (iii)
BREACHES OF FIDUCIARY DUTY, (iv) AIDING
AND ABETTING A FRAUD, (v) AIDING AND
ABETTING BREACHES OF FIDUCIARY DUTY
AND (vi) DEEPENING INSOLVENCY.**

Charles M. Forman, the duly appointed and acting Chapter 7 Trustee (the "Trustee") of the bankruptcy estate of NorVergence, Inc. (the "Estate"), by and through his special litigation counsel, Porzio, Bromberg & Newman, P.C., hereby brings this Complaint against defendants, Thomas N. Salzano, Data Solutions, Ltd., Peter Salzano (named only for notice purposes and not for any relief herein insofar as Peter Salzano is a debtor in a case under Chapter 11 of the Bankruptcy Code, United States Bankruptcy Court for the District of New Jersey, Case No. 05-11415), Alexander L. Wolf, Robert Fine, Robert Wizeman, William Jean Charles a/k/a Williams Jean Charles (hereinafter, "William Jean Charles"), Terry Skemer, Arthur Scuttaro, ABB Business Finance, Alfa Financial Corporation, a division of OFC Capital a/k/a Alfa Financial a/k/a OFC Capital, Banc Lease Acceptance Corporation a/k/a North Texas Credit Corp., BB&T Leasing Corporation a/k/a BB&T Leasing, Celtic Bank, CIT Group a/k/a CIT Capital a/k/a CIT Technology Financing Services, Inc. a/k/a CIT Financial USA, Inc. a/k/a CIT Leasing, Citicapital Technology Finance, Inc. a/k/a Citi Capital a/k/a The Citi Group, Combined Capital a/k/a ACC Leasing, Court Square Leasing Corporation, DeLage Landen Financial Services, Inc. a/k/a DeLage Landen, Dolphin Financial Corporation a/k/a Dolphin Capital Corporation a/k/a

Dolphin Leasing a/k/a Capital Crossing Bank, First Lease, Inc., General Electric Capital Corporation a/k/a GE Capital, IFC Leasing, Inc. a/k/a IFC Credit Corporation a/k/a Insight Financial Corp., Information Leasing Corp. n/k/a National City Commercial Capital, Irwin Business Finance a/k/a Irwin Commercial Finance Corp. a/k/a Irwin Commercial Leasing, Leasing Innovations, Inc., Liberty Bank Leasing a/k/a Liberty Bank, Lyon Financial Services, Inc. d/b/a U.S. Bancorp Business Equipment Finance Group a/k/a US Bancorp, Madison Capital, LLC a/k/a Madison Capital-Funding a/k/a Madison Capital Equipment Lease, Inc., National Penn Leasing a/k/a National Penn Bank Co., Northland Capital Financial Services a/k/a Northland Leasing Innovations, Partners Equity Capital Company, PFG Commercial Finance, Popular Leasing a/k/a Popular Leasing USA, Inc., Preferred Capital, Inc. a/k/a Preferred Capital, LLC a/k/a Preferred Leasing, LLC a/k/a Preferred Capital Leasing, R-G Crown Bank Leasing d/b/a Crown Bank Leasing f/k/a Crown Bank, a Federal Savings Bank, Sterling National Bank, Studebaker Worthington Leasing Group, Susquehanna Patriot Commercial Leasing Company, Inc. a/k/a Patriot Leasing Company a/k/a Patriot Leasing, US Express Leasing, Inc. a/k/a USXL, Wells Fargo Financial Leasing a/k/a Wells Fargo Financial, Inc. (the defendants beginning with ABB Business Finance and ending with Wells Fargo Financial Leasing shall hereinafter be referred to as the "Leasing Companies") (a glossary of defined terms is attached as **Exhibit "A"** and is incorporated herein by reference), and states:

INTRODUCTION

1. When a "business" is designed, not to earn a profit, but simply to generate cash through the addition of larger and larger numbers of new customers, the "business" will constitute a Ponzi scheme¹.

¹ Charles Ponzi established The Security Exchange Company in Boston on December 26, 1919, promising investors 50% interest in 45 days. His alleged business was international postage stamps, which would be converted into U.S. dollars at great profit. Investors lined up and Ponzi made good on his promise, paying 50% interest to investors in 45 days until his house of cards collapsed in August of 1920. It seems that there was no underlying business and that Ponzi was simply paying interest to old investors with new investors' money. As long as the "business" grew exponentially, it worked. But without a constant supply of new customers, it failed. All told, 40,000 people

2. When a "business" is designed to sell goods or services to customers at a loss (because there is no ultimate intention of paying the vendors) the "business" will constitute a "Bust-Out²."

3. NorVergence, Inc. ("NorVergence" or "Debtor") was a complex and ingenious combination of a Ponzi and a "Bust-Out": it generated cash (not profit) through the exponential expansion of its customer base. But it accomplished that exponential growth by selling its product, telecommunications and internet services, to customers at a great loss. The Insiders, defined below, and particularly Thomas N. Salzano, lived lavishly off the cash flow, until the source of new customers dried up. This scheme shall hereinafter be referred to as the "Salzano Scheme."

SUMMARY

4. NorVergence was incorporated in September, 2001, by Peter Salzano ("Peter"), as CEO and major shareholder. The actual mastermind and principal behind NorVergence from the start was Thomas N. Salzano ("Salzano"), Peter's brother. Salzano was never directly employed by NorVergence as anything other than a consultant, although he managed and controlled all of NorVergence's affairs from the start.

5. Salzano had a history of running telecommunication companies with large call center operations into bankruptcy³, as well as a record of regulatory problems with the Federal Communications Commission ("FCC") and various state agencies.

6. As a result, Salzano chose to keep his name out of the public eye in connection with NorVergence's start up, and chose his brother, Peter to serve as NorVergence's front man.

entrusted an estimated fifteen million dollars with Ponzi. He and his staff lived lavishly. In truth, there was no business, no profit motive, and no profits (only cash). Ponzi went to jail for fraud.

² In a "Bust-Out," a business places large orders with vendors on credit, never intending to repay the vendors. The products are sold to customers at cheaper than wholesale (which causes the product to move very quickly). The operator then quickly shuts things down and leaves with the money, without paying the suppliers, of course. See, e.g., *United States v. Crocket*, 534 F.2d 589, 592 (5th Cir. 1972).

³ National Telecommunications, Co., Inc. and Minimum Rate Pricing filed for bankruptcy protection on February 26, 1999. On November 3, 1999, Discount Call Rating, Inc. also filed for bankruptcy protection.

7. From September, 2001, until late in 2002, Salzano carefully planned the roll out of the Salzano Scheme. NorVergence would be both the victim and the vehicle through which the Salzano Scheme was perpetrated. NorVergence began operations late in 2002. For a few short months of operations in 2002, NorVergence had gross revenues and lease sales receipts of \$19.5 million.

8. In an initial filing with Dunn & Bradstreet in 2001, before operations began, Peter had estimated revenues of \$90 million in the first year of operations. In 2003, the first full year of operations, NorVergence had gross revenues and lease sales receipts of \$142 million. In the first 6 months of 2004, prior to the June 30, 2004 involuntary petition date filing, it had lease receipts and gross revenues approaching \$150 million and anticipated annualized gross revenues and lease sales receipts of \$350 million.

9. The problem, as will be shown below, is that very few of these receipts represented true earnings, as opposed to money simply churned from the acquisition of new customers.

10. The Salzano Scheme caused hundreds of millions of dollars to be funneled into the business, only to be expended on landing new customers, and the lavish lifestyle of Salzano, all to the detriment of NorVergence and NorVergence's customers and creditors.

11. Alexander L. Wolf, Robert Fine, Robert Wizeman, William Jean Charles, Terry Skemer and Arthur Scuttaro (the "Insiders") were all officers and/or directors and/or employees with significant management responsibilities who understood all or a significant part of the Salzano Scheme and nonetheless, breached their fiduciary duties to NorVergence by actively participating in it and by permitting it to continue for almost two years, unabated.

12. In addition to their regular payroll and company credit cards, the Insiders received at least \$854,000.00 in additional payments from NorVergence.

13. The cash passing through NorVergence (there were never profits – only cash) supported Salzano’s lavish lifestyle, as well as the lifestyles of the Insiders. In this Complaint the Trustee seeks to recover some \$2.7 million in known transfers made to Salzano.

14. Finally, the Leasing Companies named in this Complaint were the recipients of fraudulent conveyances and other transfers which, among other things, served to perpetuate the Salzano Scheme. Certain payments made to the Leasing Companies are avoidable as actual intent fraudulent conveyances under 11 U.S.C. § 548 as well as § 544, utilizing state law. The Leasing Companies also knew or should have known about the fraud, and as such, are also liable for aiding and abetting the fraud, aiding and abetting a breach of fiduciary duty, and for the deepening of NorVergence’s insolvency. Some of the Leasing Companies may have also improved their position by way of setoff, in the 90 days prior to the bankruptcy, which amounts are recoverable under 11 U.S.C. § 553(b).

THE BANKRUPTCY PROCEEDING

1. On June 30, 2004 (the "Petition Date"), an involuntary bankruptcy petition was filed against NorVergence under Title 11, Chapter 11 of the United States Code (the "Bankruptcy Code").

2. The involuntary bankruptcy petition was filed as a Chapter 11 by defendants (i) Popular Leasing USA, Inc., (ii) OFC Capital, a Division of ALFA Financial Corporation, and (iii) Partners Equity Capital Company, LLC.

3. At a hearing held on July 14, 2004, the Debtor consented to the entry of an order for relief under Chapter 11 of the Bankruptcy Code and for the immediate conversion of the case to a Chapter 7 liquidation proceeding. On that same date, the Court entered an Order Granting (i) Entry of an Order for Relief Under Chapter 11 of the Bankruptcy Code and (ii) Converting the Case to a Chapter 7 Liquidation Proceeding Pursuant to 11 U.S.C. § 1112(b).

4. On July 14, 2004, the Office of the United States Trustee appointed Charles M. Forman to serve as the Trustee for the Debtor's Chapter 7 estate.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 1334 and 157(b) because this action is a civil proceeding arising under the Bankruptcy Code, or this action arises in or relates to the above-captioned Chapter 7 case under the Bankruptcy Code. This action is a core proceeding under 28 U.S.C. §§ 157(b)(2)(A), (F), and (O). Venue is proper in this core proceeding pursuant to 28 U.S.C. § 1409.

PARTIES

6. The Trustee is the duly appointed, qualified and acting trustee in the above-captioned case under Bankruptcy Code § 702. The Trustee is prosecuting this action on behalf of the Estate.

7. Upon information and belief, Defendant, Thomas N. Salzano is a person who formerly resided at 138 Timberhill Drive, East Hanover, NJ 07936-3336. His present address is unknown.

8. Data Solutions, Ltd. is a consulting company owned and operated by Thomas N. Salzano formerly located at 299-301 Vermont Ave., Irvington, NJ 07111. Its current address is unknown.

9. Peter Salzano was the President and Chief Executive Officer of the Debtor and is an individual residing at 1 Old Lane Extension, Towaco, NJ 07082. He is currently a Chapter 11 Debtor before the United States Bankruptcy Court for the District of New Jersey, Case No. 05-11415. Therefore, no relief is sought in this action against Peter Salzano and he is named here for notice purposes only.

10. Alex Wolf was the Debtor's Chief Operating Officer and is an individual with a mailing address of PO Box 2369C, Kingston, NY 12402.

11. Robert Fine was the Debtor's Vice President and is an individual residing at 481 Beech Street, Apt. J-11, Haworth, NJ 07641.

12. Robert Wizeman was the Debtor's Vice President and is an individual residing at 667 Maple Avenue, Teaneck, NJ 07666.

13. William Jean Charles was the Debtor's Director/Vice President and is an individual residing at 45 Snyder Road, Fords, NJ 08863.

14. Terry Skemer was the Debtor's Vice President and is an individual residing at 10406 SE 19th Street, Bellevue, WA 98004.

15. Arthur Scuttaro was Debtor's Senior Vice President of Application Screening and is an individual residing at 51 Coeyman Avenue, Nutley, NJ 07110.

16. ABB Business Finance ("ABB Business") is a corporation which purchased Equipment Rental Agreements for telecommunications related equipment (hereinafter referred to as "Leases") from NorVergence, with a place of business at 210 Haddon Avenue, Collingswood, NJ 08108-1124.

17. Alfa Financial Corporation, a division of OFC Capital a/k/a Alfa Financial a/k/a OFC Capital ("Alfa/OFC") is a corporation which purchased Leases from NorVergence with a place of business at 576 Colonial Park Drive, Suite 200, Roswell, GA 30075.

18. Banc Lease Acceptance Corporation a/k/a North Texas Credit Corp. ("Banc Lease") is a corporation which purchased Leases from NorVergence, with a place of business at 100 Decker Court, Suite 225, Irving, TX 75062.

19. BB&T Leasing Corporation a/k/a BB&T Leasing ("BB&T") is a corporation which purchased Leases from NorVergence with a place of business at 5130 Parkway Plaza Boulevard, Charlotte, NC 28217-1964.

20. Celtic Bank ("Celtic") is a corporation which purchased Leases from NorVergence with a place of business at 340 East 400 South, Salt Lake City, UT 84111.

21. CIT Group a/k/a CIT Capital a/k/a CIT Technology Financing Services, Inc. a/k/a CIT Financial USA, Inc. a/k/a CIT Leasing ("CIT") is a corporation which purchased Leases from NorVergence with a place of business at 505 5th Avenue, New York, NY 10017.

22. Citicapital Technology Finance, Inc. a/k/a Citi Capital a/k/a The Citi Group ("Citi") is a corporation which purchased Leases from NorVergence with a place of business at 1255 Wrights Lane, Westchester, PA 19380.

23. Combined Capital a/k/a ACC Leasing ("Combined Capital") is a corporation which purchased Leases from NorVergence with a place of business at 954 W. Washington Boulevard, 7th Floor, Suite 7, Chicago, IL 60607.

24. Court Square Leasing Corporation ("Court Square") is a corporation which purchased Leases from NorVergence with a place of business at 14 Great Valley Parkway, Suite 100, Malvern, PA 19355.

25. De Lage Landen Financial Services, Inc. a/k/a De Lage Landen ("DeLage") is a corporation which purchased Leases from NorVergence with a place of business at 1111 Old Eagle School Road, Wayne, PA 19807.

26. Dolphin Financial Corporation a/k/a Dolphin Capital Corporation a/k/a Dolphin Leasing a/k/a Capital Crossing Bank ("Dolphin") is a corporation which purchased Leases from NorVergence with a place of business at 1720A Crete Street, PO Box 56, Moberly, MO 65270.

27. First Lease, Inc. ("First Lease") is a corporation which purchased Leases from NorVergence with a place of business at 185 Commerce Drive, Suite 102, Fort Washington, PA 19034.

28. General Electric Capital Corporation a/k/a GE Capital ("GE Capital") is a corporation which purchased Leases from NorVergence with a place of business at 260 Long Ridge Road, Stamford, C 06927-1600.

29. IFC Leasing, Inc. a/k/a IFC Credit Corporation a/k/a Insight Financial Corp. ("IFC") is a corporation which purchased Leases from NorVergence with a place of business at 2121 Pennsylvania Avenue NW, Washington, DC 20433.

30. Information Leasing Corp. n/k/a National City Commercial Capital ("ILC") is a corporation which purchased Leases from NorVergence with a place of business at 99S Dalton Avenue, Cincinnati, OH 45203.

31. Irwin Business Finance a/k/a Irwin Commercial Finance Corp. a/k/a Irwin Commercial Leasing ("Irwin") is a corporation which purchased Leases from NorVergence with a place of business at 330 120th Avenue, NE, Suite 110, Bellevue, WA 98005.

32. Leasing Innovations, Inc. ("Leasing Innovations") is a corporation which purchased Leases from NorVergence with a place of business at 437 S. Highway 101, Suite 104, Solara Beach, CA 92075.

33. Liberty Bank Leasing a/k/a Liberty Bank ("Liberty") is a corporation which purchased Leases from NorVergence with a place of business at 6139 Ashworth Road, West Des Moines, IA 50266-5715.

34. Lyon Financial Services, Inc. d/b/a U.S. Bancorp Business Equipment Finance Group a/k/a US Bancorp ("U.S. Bancorp") is a corporation which purchased Leases from NorVergence with a place of business at 800 Nicollet Mall, Suite 1500, Minneapolis, MN 55402-7014.

35. Madison Capital, LLC a/k/a Madison Capital-Funding a/k/a Madison Capital Equipment Lease, Inc. ("Madison") is a corporation which purchased Leases from NorVergence with a place of business at 90 Gwynns Mill Court, Owings Mills, MD 21117-3532.

36. National Penn Leasing a/k/a National Penn Bank Co. ("National Penn") is a corporation which purchased Leases from NorVergence with a place of business at 24 N. Reading Avenue, PO Box 367, Boyertown, PA 19512-1010.

37. Northland Capital Financial Services a/k/a Northland Leasing Innovations ("Northland") is a corporation which purchased Leases from NorVergence with a place of business at 3339 St. Germain Sreet, Suite 201, St. Cloud, MN 56301.

38. Partners Equity Capital Company ("Partners Equity") is a corporation which purchased Leases from NorVergence with a place of business at 655 Business Center Drive, Horsham, PA 19044.

39. PFG Commercial Finance ("PFG") is a corporation which purchased Leases from NorVergence with a place of business at 3418 Blue Cypress Drive, Spring, TX 77388-5807.

40. Popular Leasing a/k/a Popular Leasing USA, Inc. ("Popular Leasing") is a corporation which purchased Leases from NorVergence with a place of business at 15933 Clayton Road, Suite 200, Ballwin, MO 63011.

41. Preferred Capital, Inc. a/k/a Preferred Capital, LLC a/k/a Preferred Leasing, LLC a/k/a Preferred Capital Leasing ("Preferred Capital") is a corporation which purchased Leases from NorVergence with a place of business at 1 Plaza Drive #3, Pendleton, NJ 46064-8823.

42. R-G Crown Bank Leasing d/b/a Crown Bank Leasing f/k/a Crown Bank, a Federal Savings Bank ("R-G Crown") is a corporation which purchased Leases from NorVergence with a place of business at 105 Live Oaks Gardens, Casselberry, FL 32707-3222.

43. Sterling National Bank ("Sterling") is a corporation which purchased Leases from NorVergence with a place of business at 650 5th Avenue, New York, NY 10019-6108.

44. Studebaker Worthington Leasing Group ("Studebaker") is a corporation which purchased Leases from NorVergence with a place of business at 100 Jericho Quadrangle #235, Jericho, NY 11753-2708.

45. Susquehanna Patriot Commercial Leasing Company, Inc. a/k/a Patriot Leasing Company a/k/a Patriot Leasing ("Patriot") is a corporation which purchased Leases from

NorVergence with a place of business at 1566 Medical Drive, Suite 201, Pottstown, PA 19464-0274.

46. US Express Leasing, Inc. a/k/a USXL ("USXL") is a corporation which purchased Leases from NorVergence with a place of business at 300 Lanidex Plaza, Parsippany, NJ 07054.

47. Wells Fargo Financial Leasing a/k/a Wells Fargo Financial, Inc. ("Wells Fargo") is a corporation which purchased Leases from NorVergence with a place of business at 420 Montgomery Street, San Francisco, CA 94104.

FACTUAL BACKGROUND FOR SALZANO SCHEME

48. Prior to the Petition Date, NorVergence was engaged in the business of offering for sale and reselling telecommunications services and certain telecommunications equipment to small businesses, church organizations and not-for-profits, typically with a small number of employees. NorVergence's target customer was an unsophisticated small business that had no telecommunications or Information Technology ("IT") staff and no in-house attorney.

A. The Scripts

49. NorVergence's sales materials, training materials and letterhead all began with its prominently displayed motto: "NorVergence: Drastically Reducing Technology Costs." (Emphasis added).

50. The NorVergence Salespeople, known as Inside Sales Representatives ("ISR") and Outside Screening Managers ("OSM") were trained to use a formulaic sales Script ("Script"), verbatim, to land their customers, on penalty of fine or termination. Indeed, during a two-week initial training session for all new employees, there were memorization tests where the sales script had to be repeated, line for line. A mistake typically meant termination of the new employee.

51. Once trained, an ISR in the call center would connect with a potential customer, and through the use of the formulaic Script, obtain an appointment for one of the OSMs to make a visit. NorVergence employed, at its peak, immediately before closing, approximately 1,000 call center ISRs, and about 400 OSMs.

52. The formulaic Scripts which were used to solicit new customers included hypothetical customer questions and answers. The Scripts provided, in pertinent part, as follows:

If considered for the solution, your company receives high speed Internet access and your total charges are certified in writing⁴ to be 30-60% less than you're currently spending. Because the solution eliminates per minute charges and cuts local line charges without switching carriers, there are no out of pocket expenses.

* * *

Customer: How is this possible?

The Nortel engineered Matrix Box [emphasis added] makes unlimited calling possible. When voice is turned into data, all costs per minute are eliminated.

Customer: How does NorVergence make money?

NorVergence is paid for screening qualified applicants for the zero cents per minute calling system.

* * *

Customer: I am not interested.

Sir/Ma'am, I think there's a misunderstanding. Do you think I'm calling to sell you something or switch your service? No. I'm calling to set up an appointment with you. NorVergence is interviewing companies...to utilize their zero cents per minute calling system without switching carriers. The system drastically cuts local and long distance bills because it eliminates per minute charges on all your outbound calls.

* * *

Customer: What happens if NorVergence goes out of business?

Nothing. NorVergence's role is limited to screening and processing qualified applicants.

53. Many of the statements contained in the above Script were obviously false, were known to be false by Salzano and the Insiders, and were intended to defraud the customer into buying the NorVergence package, primarily the "Matrix Box."

⁴ Another version of the script said "Fortune 100" certified.

54. NorVergence's core "product" was the "Matrix Box" mentioned in the Script above, which was represented by its salespeople to be a "high tech" device that would eliminate per minute charges on calls. Customers were also told that the Matrix Box was proprietary to either Nortel, Inc. ("Nortel") or NorVergence.

55. Contrary to the sales Script, the Matrix Box, or T-850 and similar products as it was known by its manufacturer, AdTran, Inc. ("AdTran") were designed solely by AdTran and contained only AdTran technology and intellectual property. They were sold by AdTran to NorVergence at a price of approximately \$1,278.00 per Matrix Box.

56. The only item of intellectual property associated with the box that did not belong to AdTran was the name of the box, "Matrix Gateway," or "Matrix CCS," a combined box and telephone system. These names were supplied by NorVergence.

57. Contrary to the sales Script, the Matrix Box did not eliminate per minute call charges. Rather, the Matrix Box was simply an AdTran router and software which enabled voice and data to be transmitted together over one line. That line still required an ultimate wholesale carrier or carriers, and NorVergence was still required to reimburse that carrier for per minute charges.

58. Contrary to what the ISRs and OSMs told the prospective customers, if NorVergence went out of business or stopped reimbursing its carriers for per minute charges, all customer service would cease.

59. NorVergence had no long term agreements with carriers to support a 5-year commitment, yet locked each customer into a 60 month lease for the Matrix Box.

B. The NorVergence "Solution"

60. Once a prospective appointment was made by an ISR, the OSM would meet in person with the proposed customer and obtain as much information as possible about the customer's current fee structure for its internet and voice usage including copies of bills. The

sales person would then return to headquarters where, allegedly, the customer data was put through a Webulator in the "engineering department" and a customer "Solution" would be "engineered" (the "Solution").

61. In truth, NorVergence had no engineering department.

62. In truth, the NorVergence Solution had nothing to do with the Matrix Box or other innovative technology touted by NorVergence. Rather, NorVergence constructed its cost savings proposals simply by applying a discount of 20-30% to the potential customer's current cost for telecommunications services. NorVergence chose this discounted price without regard to what it would actually cost to provide the services, or the Matrix Box, which was given away by other carriers for free.

63. The promised savings were set forth in the form of a "Cost Savings Proposal," and were represented as a fixed monthly cost for an integrated service package, which would include the cost of telecommunications services and the rental fee of the Matrix Box.

64. The Solution would split the customer's invoices into two separate bills: one, a bill for service and telecommunications charges that would be paid to NorVergence ("NorVergence Service Contract" or "Service Contract"), and the second, a bill for the customer's rental of the Matrix Box. The second of these commitments required the execution of a Lease which the customers were never told would be immediately assigned to a Leasing Company. A 60-month commitment was required.⁵

65. The Solution offered a fixed price which was "guaranteed" for five years irrespective of any growth in the customer's phone and internet usage. Indeed, such growth was encouraged by NorVergence, with words to the effect that "Your business and telecommunications usage may double in the years to come but you'll still be paying the same

⁵ The 60 month requirement motivated NorVergence to make the false statement in its script that "nothing" would happen if NorVergence went out of business, See pg. 13 at para. 53, supra.

fixed price phone and internet bill - - at 20% to 30% less than what you're paying for the service you are using today."

66. Through its deceptive and high pressure sale tactics and outright trickery, NorVergence salespeople signed customers up, putting the bulk (i.e., at least 80%) of the service agreement into the Lease for the Matrix Box. The remaining 20% of the cost of the NorVergence Solution was allocated to the service agreement with NorVergence.

C. A Single Customer Contract

67. An example of a typical transaction with a customer, Investment Management Associates, an affiliate of Darakjian Jewelers, Inc., ("Darakjian") is illustrated through a partial set of documents attached as **Exhibit "B"** to this Complaint. Prior to meeting with a NorVergence OSM, the prospective customer Darakjian had been paying \$1,789.14 per month for his internet and telephone service. After hearing the pitch, and meeting the OSM, Darakjian allowed the OSM to have NorVergence's "engineering department" compile a Solution. In truth, the OSM "engineered" the Solution by simply multiplying the \$1,789.14 current monthly charge by 79.72%. (The OSMs were trained to use decimals in order to arrive at numbers that were not well rounded, and so, used: 79.72% instead of 80%.) Hence: \$1,789.14 monthly (old bills) x 79.72% = \$1,426.30 monthly – the NorVergence Solution.

68. The OSM next needed to divide this \$1,426.30 Solution into two monthly payments: one that would be made for the Lease of the Matrix Box and the other for NorVergence service. Typically, at least 80% of the total would go to the Matrix Box Lease. In this case, 86.2% was allocated to the Matrix Box Lease. Thus,

$$86.2\% \times \$1,426.30 = \$1,229.35 \text{ per month for the Matrix Box Lease}$$

$$13.8\% \times \$1,426.30 = \$196.95 \text{ per month for NorVergence Service Contract.}$$

69. As evidenced by **Exhibit "B,"** Darakjian then signed a 5 year NorVergence Service Contract for unlimited voice and internet for \$196.95 per month and a 5 year Matrix Box Lease at \$1229.35 per month.

70. Following such an order, the Matrix Box would be ordered and drop-shipped by AdTran directly to the customer. Once a delivery and acceptance certificate was received (regardless whether or not the Matrix Box was actually hooked up and operational), NorVergence would immediately transfer the Lease portion of the customer arrangement to a Leasing Company.

71. The Leasing Companies supplied a "Lease Rate" to determine how much to pay to NorVergence for the Leases. Using a common lease rate of .02187, the above example would have resulted in \$46,213.00 in cash, which was immediately paid to NorVergence by the Leasing Company as consideration for signing up Darakjian.

72. This arrangement left just \$196.95 per month, fixed, to be paid under the NorVergence Service Contract to NorVergence to cover actual telephone and internet service. NorVergence would be buying these services from Qwest, T-Mobile and Sprint, not on a fixed price basis, but on a per minute basis. But NorVergence would be receiving \$196.95 per month to service a customer who had been paying its prior carriers \$1,789.14 per month for the same services. (See **Exhibit "B"**).

73. NorVergence did not tell its customers that the Lease provided that customers would actually be obligated to make the Lease payments whether or not NorVergence went out of business, or telephone and internet services were terminated. Contrary to the sales script and the statements made to the customers, the Leasing Companies sought to characterize the Leases in the fine print as finance leases under Article 2A of the Uniform Commercial Code ("UCC"). (See **Exhibit "B"**). As such, the Leasing Companies sought the standing of bona fide

purchasers and the customers would allegedly be unable to raise defenses that their telephone or internet services were gone.

74. NorVergence did not tell its customers that it was retaining only \$196.95 per month, fixed, to try to pay for the escalating cost of providing service to that customer.

75. The \$46,213.00 received from the Leasing Company on account of Darakjian was recognized by NorVergence (improperly) as immediate revenue and consumed in operations. Those operations were geared, almost entirely, towards obtaining new customers.

76. Under this model, NorVergence's Insiders could never have intended for the company to make money. Rather, they intended for it to generate cash, by selling their services at a loss, but immediately monetizing the Leases and churning the flow of new customers.

77. As such, the Salzano Scheme had elements of both a Ponzi and a Bust-Out.

78. Under the circumstances, the Leases, agreed to by the Leasing Companies, were unconscionable in that they contained terms that were unreasonably and unfairly harsh and one-sided in favor of NorVergence and the Leasing Companies. In fact, included in the fine print of the Leases (see **Exhibit "B"**) are provisions that purported to:

- (a) remove any obligations of the Leasing Companies to the customers;
- (b) in many cases require that all legal actions relating to the agreement be brought in a forum distant from the customer's place of business, and in other cases, in a forum where the Leasing Company that would take an assignment was located, which was unknown at the time the customer signed the contract (the latter being known as "floating jurisdiction clauses");
- (c) characterize the vast majority of the total fees agreed to by the customer as payments for the Matrix Box which grossly exceeded its actual price and value;
- (d) characterize the Equipment Rental Agreement as a finance lease under UCC Article 2A in an unconscionable attempt to gain the protection of equipment

finance leases. In fact, NorVergence's agreements with its customers (the "Agreements") were for an integrated telecommunications service offering, although the service component was not documented whatsoever in the Agreements;

- (e) make the obligation to pay rent unconditional; and
- (f) waive all the customer's defenses to demands for payment, even if the promised services were not provided ("hell or high water clauses").

D. Macro View

79. Just as the NorVergence "business model" didn't work from the view of a single customer transaction, it also failed at the macro level.

80. The Debtor's total revenue, at its peak, on NorVergence's Service Contracts with 11,000 customers, was approximately \$2.5 million per month or \$225.00 per customer. However, without even considering payroll, the provider bills necessary to deliver those services were approximately \$4.4 million per month from Qwest and \$2 million per month from Sprint, plus additional charges from other carriers. Again, the overwhelming majority of the Debtor's revenue was not obtained from NorVergence Service Contracts entered into with customers, but from funds obtained from new customer Leases immediately sold to the Leasing Companies. (See **Exhibit "B"**).

81. On the expense side, the Debtor's massive call center and OSM work force (some 1,600 employees), resulted in a payroll of approximately \$10 million per month. Total monthly costs of the "business" were \$18 to \$19 million per month, as follows:

- Payroll - \$10 million
- AdTran - \$800,000.00 (manufactured the Matrix Box)
- ESI - \$1 million (supplied PBX equipment/CCS system)
- Qwest - \$4.4 million (service provider)

- Sprint - \$2 million (cell phone service provider)
- MCI - \$178,000.00
- T-Mobile - \$80,000.00
- Rent - \$200,000.00

Total \$18,600,000.00.

82. So how did NorVergence run a business with \$2.5 million per month of NorVergence Service Contract revenues but \$18,600,000 per month in expenses? Answer: By collecting \$3 to \$4 million per week in Salzano Scheme revenues from defrauded new customers.

83. The NorVergence business model left no money for tomorrow. All of the customer revenue that should have been spent over a 60 month period preserving and servicing the customers was monetized in the sale of the Leases, spent immediately on more call center payroll to acquire new customers, and spent on perks for Salzano and the Insiders.

84. NorVergence's business plan was doomed to fail before NorVergence could fulfill the five year terms it promised to provide its customers because: (a) NorVergence was selling unlimited local, long distance, high speed Internet and wireless services for a fixed monthly price, while it was actually liable to Qwest, T-Mobile, and other carriers on a per minute toll basis that greatly exceeded the fixed amount received from the Leases; (b) the cost of providing the unlimited service NorVergence was selling, together with the funds that were pulled out of NorVergence by Salzano and the Insiders, far exceeded the small payments that customers were required to make directly to NorVergence for their telecommunications service; and (c) NorVergence had promised its customers long-term (i.e., five year) service, but had no long-term contracts or the financial wherewithal in place to provide the promised service.

85. Less than two years after NorVergence put its scheme into effect, new customers were not added quickly enough to maintain the Salzano Scheme and NorVergence thereafter

failed to pay its obligations to its carriers and suppliers, triggering the filing of an involuntary Chapter 11 bankruptcy proceeding against it. Service to the customers was turned off on or about July 15, 2004.

THE INSOLVENCY DEEPENS

86. As of June 30, 2002, shortly after NorVergence commenced operations, it had total assets of \$3,226,085.00 and total liabilities of \$6,270,216.00. Thus, it was insolvent, on a balance sheet basis – at the outset -- by \$3,044,131.00.

87. One year later, on June 30, 2003, the insolvency had deepened considerably. Now, total assets were \$10,585,285.00, but liabilities were \$44,938,501.00 for a total balance sheet insolvency of \$34,353,215.00.

88. On March 31, 2004, the insolvency was four times what it had been on June 30, 2003. As of March 31, 2004, the amount by which liabilities exceeded assets now stood at \$138,201,421.00, an increase of 400% from where it had stood just nine months before.

89. The continued operation of the Salzano Scheme caused a continued "increase" in its insolvency, unabated, from the moment NorVergence began until the June 30, 2004 Petition Date.

KNOWLEDGE/PARTICIPATION OF THE LEASING COMPANIES

90. Typically a Leasing Company would enter into a Master Program Agreement or similar agreement (collectively, an "MPA") with NorVergence governing the terms pursuant to which it would purchase or accept assignments of leases from NorVergence and pay NorVergence cash consideration in return for such assignments. A copy of a sample MPA is annexed hereto as **Exhibit "C."**

91. First, the "credit procedures" section of most MPAs provided that:

"NorVergence acknowledges that [Leasing Company] shall not conduct a customer interview during the credit approval process, which is contrary to [Leasing Company's] standard credit policy."

103. Second, many of the MPAs described how the Lease assignment price would be fixed, as follows:

"The assignment price for each assigned rental agreement shall be the sales price of the Equipment established individually and evidenced by NorVergence's invoice to [Lease Company] ("Assignment Price").

- OR -

"The assignment price for each Assigned Rental Agreement shall be the present value of the assigned rental stream utilizing a buy rate established by [Leasing Company], which shall be individually evidenced by NorVergence's invoice to [Leasing Company] ("Assignment Price")."

92. As described above, that pricing had absolutely nothing to do with the value of the Matrix Box purchased from AdTran, which was \$1,278.00, but rather was calculated based on what the customer had been paying previously for telephone and internet service.

93. Third, although the Lease assignments were generally "non-recourse," each of the MPAs contained a "first rental default" provision, and in some instances "first, second or third" rental default provision. Pursuant to these provisions, if a customer defaulted in the payment of its first rental payment, or in some cases, its second or third rental payment, then NorVergence was required to "buy back" the Lease from the Leasing Company for the dollar amount originally advanced by the Leasing Company, plus an administrative fee.

94. As described above, however, the Lease equipment was primarily the Matrix Box. Despite the fact that the Matrix Box was a decidedly a low-tech "cheap" item of telecommunications equipment, NorVergence leased it to its customers for prices ranging from \$10,000.00 up to \$160,000.00 in some instances, for the same \$1,278.00 item of equipment.

95. AdTran has stated that none of its other customers for the Matrix Box T-850 family of products, such as Incumbent and Competitive Local Exchange Carriers ("ILECs" and "CLECs"), ever sold or leased such products to their end users. Rather, they are generally included as a "free" item with the service agreement entered into with the customers of the respective ILECs and CLECs.

96. With respect to the Matrix Box, customer Darakjian, who had been paying approximately \$1,789.14 monthly for service, prior to signing up with NorVergence, would be renting a Matrix Box for \$1,229.35 fixed, per month, for 60 months, or \$73,761.00 in total. However, the exact same NorVergence Solution, used to sign up a customer previously paying \$5,000.00 per month for service would result in a fixed monthly Matrix Box Lease payment of \$3,208.00, or \$192,480.00 over the term of the Lease for the exact same Matrix Box.

97. This routinely happened on the same day with the same Leasing Company, i.e., the Leasing Companies routinely purchased Leases of the identical Matrix Box for grossly different prices.

98. When two leases for identical pieces of equipment – the Matrix Box – were sold to the same Leasing Company for grossly different prices, the Leasing Companies knew or should have known that NorVergence was engaged in fraudulent activity.

99. When a piece of equipment that was purchased for \$1,278.00 (and that other carriers give away for free) is leased to a customer for more than \$100,000.00, the Leasing Companies knew or should have known that NorVergence was engaged in fraudulent activity.

100. The Attorneys General of the District of Columbia and the States of Arizona, California, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Kansas, Louisiana, Maryland, Massachusetts, Michigan, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, South Dakota, Texas, Washington, West Virginia, all brought actions and/or conducted administrative investigations and or proceedings challenging the conduct of the Leasing Companies in their dealings with NorVergence. Most of the Leasing Companies entered into settlement agreements with the Attorneys General under which they waived all or a major portion of their claims under the Leases.

101. The Leasing Companies who were subject to such proceedings and/or investigations, or who entered into such settlements with the Attorneys General include BB&T, CIT, Court Square, DeLage, Dolphin, GE Capital, IFC, ILC, Interchange Capital Company LLC, Irwin, Liberty, Madison, National Penn, Northland, Popular Leasing, Preferred Capital, R-G Crown, Sterling, TCF Leasing, Inc. d/b/a TCF Express Leasing, U.S. Bancorp, USXL, Wells Fargo.

102. Some of the Leasing Companies had MPAs which prohibited them from speaking to the customers at all. Instead, they were required to accept the delivery and acceptance certificate from NorVergence, confirming that the equipment had arrived. Funding to NorVergence would be made upon receipt of the delivery and acceptance certificate, whether or not the equipment was actually installed and working, and without independent verification.

104. Other Leasing Companies were permitted under their agreements with NorVergence to confirm the customer's receipt of the Matrix Box; but in these cases, the Leasing Companies were typically required to utilize NorVergence's delivery and acceptance script which, among other things, assured a customer that he or she would shortly be receiving their services and would have their T-1 line hooked up.

THE IFC PROCEEDINGS

105. At least one court has already found, in Findings of Fact and Conclusions of Law dated June 5, 2006, that in part because of its use of NorVergence's delivery and acceptance script, one of the Leasing Companies was an actual participant in NorVergence's fraud. See Findings and Fact and Conclusions of Law in *Specialty Optical d/b/a SOS v. IFC Credit Corp.*, Case No. 04-04187-C, County Court at Law, Dallas County, Texas ("SS v. IFC"). A copy of the Court's Findings of Fact and Conclusions of Law are annexed hereto as **Exhibit "C."** The court found:

(5) The Master Agreement between NorVergence and IFC set forth the terms under which IFC would purchase the leases from NorVergence.

IFC approved all of the NorVergence lease forms, including the SOS form IFC also worked in conjunction with NorVergence to prepare the confirmation script that was eventually read by an IFC employee to SOS confirming that SOS would receive the NorVergence telephone service savings that NorVergence had promised.

* * *

(7) IFC read the confirmation script to SOS prior to the expiration of the 60-day period and reaffirmed that SOS would receive the telephone service savings originally promised by NorVergence to SOS. At the time IFC read the script promising these savings, it knew that NorVergence customers were not receiving service and therefore were not receiving the promised savings.

* * *

(12) In the April and May of 2004 timeframe, IFC had knowledge of the fact that NorVergence was making promises of savings with no intention of delivering such savings. IFC had knowledge of this fraud. NorVergence had promised savings to customers without any intention of providing such savings. IFC participated in deceiving customers through its confirmation script.

* * *

(23) The entire Lease from the delivery and acceptance certificate are unconscionable due to the circumstances under which they were entered, the manner in which the terms of the Lease and delivery and acceptance were reached, and the unfairness of the Lease and delivery and acceptance. IFC grossly over-charged for the Matrix Box.

* * *

(32) As of the time that SOS signed the lease, IFC had received telephone calls and letters for several months regarding lack of service. There were defaults on many leases due to this lack of service. This had become so severe, that IFC decided to stopped doing business with NorVergence, but continued only because NorVergence provided it with additional collateral and agreed to allow IFC to have increased holdbacks.

* * *

(33) The lease acquisition from NorVergence was not an isolated occurrence. IFC acquired between 700 and 800 leases from NorVergence. It is currently in litigation on more than 500 of those leases.

* * *

(34) IFC did not act in good faith in connection with the Lease. IFC ratified the conduct of NorVergence.

ALL LEASING COMPANIES ARE LIABLE

106. In a memo from Robert Fine of NorVergence to Bob Hunter of Citi, penned at the time that Citi's MPA was being negotiated, he wrote:

"Prior to funding, we do not allow any of our sources to contact the customer directly for information to conduct an interview." "After funding [Leasing Company] may contact the customer as often as necessary."

107. The record reveals that Citi agreed that it would not communicate with customers. Citi, like IFC, instead "approved" NorVergence's delivery and acceptance script which would confirm delivery and acceptance of the Matrix Box. Other Leasing Companies followed suit.

108. A customer's failure to make its initial Lease payment within 60 days of delivery and acceptance of a Matrix Box (a "First Payment Default"). Beginning in October of 2003 continuing through early 2004, the number of First Payment Defaults continued to increase dramatically. NorVergence was unable to install the boxes quickly enough, or get the customer's T-1 lines activated in time to avoid First Payment Defaults. Although a few Leasing Companies refused to fund NorVergence any further, other simply negotiated protections wherein they would, for example, (a) permit NorVergence more time to make the first, second and third payments for the customers, or (b) fund thirty-six (36) months of the lease rather than sixty (60) months, or (c) keep a holdback of as much as 25% to 50% of the amount that was otherwise due to NorVergence on each lease as a hedge against future First Payment Defaults.

109. As described by the Court in the *SOS vs. IFC* case, the Leasing Companies began to receive numerous calls from dissatisfied customers, and began receiving an increase in the number of leases that were required to be purchased back by NorVergence.

110. During this period of time, and due to the large number of First Payment Defaults, the Leasing Companies could have, pursuant to their contracts, refused to fund future leases.

111. Instead, the Leasing Companies lowered their requirements, making it easier for NorVergence to continue conducting business, even as hundreds and hundreds of customers were defaulting, customers were complaining, and the Leasing Company approved Scripts were confirming for customers that they were about to enjoy the savings from the NorVergence Solution.

112. With respect to the Lease Repurchase Obligations, the Leasing Companies received at least \$6,600,000.00 in actual payments from NorVergence, by way of payment for its repurchase of defaulted Leases. It is unknown how much the Leasing Companies were paid in addition, on account of Lease Repurchase Obligations under the MPAs, by way of set-off, since NorVergence's record keeping does not appear to have captured such set-offs. However, with respect to actual known payments, a number of the Leasing Companies received the following respective amounts:

Company	Lease Repurchase Payments
ABB Business	\$2,151.59
Celtic	\$75,383.59
CIT	\$1,025,329.70
Citi	\$62,040.06
Combined Capital	\$25,016.06
Court Square	\$51,320.31
DeLage	\$899,794.44
Dolphin	\$100,521.63
First Lease	\$68,018.40
GE Capital	\$1,182,255.02
IFC	\$571,739.69
ILC	\$236,384.64
Irwin	\$247,711.07
Liberty	\$66,539.69
Alfa/OFC	\$224,696.77
Patriot	\$169,487.42
PFG	\$25,673.08
Popular Leasing	\$486,474.78
Preferred Capital	\$41,504.13
Sterling	\$136,161.35
Studebaker	\$64,997.17
U.S. Bancorp	\$761,624.49
Wells Fargo	\$98,835.52

TOTAL

\$6,623,660.60

113. Despite the Leasing Companies' knowledge that NorVergence was not fulfilling its end of the bargain to customers, the Leasing Companies continued to participate in locking new customers into 60 month Lease obligations.

114. NorVergence's business plan was a Salzano Scheme that was doomed to fail before NorVergence could approach anything near a five-year term commitment to customers at fixed prices because:

- (a) NorVergence was selling unlimited local long-distance, high-speed internet and wireless services for a fixed monthly price, while it was actually liable to Qwest, T-Mobile, Sprint and other carriers on a permanent toll basis;
- (b) The cost of providing this unlimited service far exceeded the small payments that customers were required to make directly to NorVergence;
- (c) NorVergence had encouraged its customers to grow and make more phone calls, and use more band width, which under the NorVergence Solution would keep customer bills at the same price, while NorVergence's commensurate obligations to Qwest, T-Mobile, Sprint and other carriers would grow proportionately; and
- (d) NorVergence promised the customers long-term (five years) of fixed telecommunications charges, but had no long-term contracts in place with the carriers described above to provide such service.

115. The Leasing Companies, by enabling the Salzano Scheme to continue, enabled Salzano, the Insiders and key employees to take millions of dollars out of the business to support lavish lifestyles.

FIRST COUNT
**(Actual Intent Fraudulent Conveyance Under 11 U.S.C. § 548
As Against Leasing Companies)**

116. The Trustee repeats and re-alleges the allegations contained in all of the foregoing paragraphs as if fully set forth herein.

117. Pursuant to the MPAs with the Leasing Companies, the Debtor needed to "make good" on customer First Payment Defaults (and in some cases second and third payment defaults) by repurchasing the Leases from the Leasing Companies and/or making other accommodations such as covering customers payments when customers failed to make payments due under the Leases.

118. The funds used by the Debtor to fulfill its Repurchase Obligations to the Leasing Companies were obtained almost exclusively from new customers' execution of Leases and the sales of those Leases to Leasing Companies. Had the Debtor not fulfilled its Repurchase Obligations under the MPAs to repurchase Leases upon a First Payment Default, and/or otherwise cover the Leasing Companies' losses, the Leasing Companies would have declared defaults under the terms of the MPAs and the Lease lines would have been terminated, thereby halting the Salzano Scheme in its tracks.

119. In order to continue the fraud, NorVergence needed to keep the Lease lines open and thus needed to fulfill its Repurchase Obligations and otherwise cover the customers First Payment Defaults and similar defaults.

120. The Debtor's customers, upon the cessation of NorVergence's business and the breach of NorVergence's commitments to these customers, were left without contracted for phone and internet services, and as a result became creditors of NorVergence.

121. The Debtor made the Lease Repurchase Obligation payments and other payments to cover the Leasing Companies on the customer defaults with the actual intent to hinder, delay or defraud creditors by perpetuating the Salzano Scheme.

122. Such payments are fraudulent conveyances pursuant to 11 U.S.C. § 548(a)(1)(A).

WHEREFORE, the Trustee demands judgment against the Leasing Company

Defendants:

- a) avoiding the payments to the Leasing Companies as well as all setoffs made by the Leasing Companies pursuant to 11 U.S.C. § 548(a)(1)(A) including but not limited to the following known payments made to the following Leasing Companies:

Company	Lease Repurchase Payments
ABB Business	\$2,151.59
Celtic	\$75,383.59
CIT	\$1,025,329.70
Citi	\$62,040.06
Combined Capital	\$25,016.06
Court Square	\$51,320.31
DeLage	\$899,794.44
Dolphin	\$100,521.63
First Lease	\$68,018.40
GE Capital	\$1,182,255.02
IFC	\$571,739.69
ILC	\$236,384.64
Irwin	\$247,711.07
Liberty	\$66,539.69
Alfa/OFC	\$224,696.77
Patriot	\$169,487.42
PFG	\$25,673.08
Popular Leasing	\$486,474.78
Preferred Capital	\$41,504.13
Sterling	\$136,161.35
Studebaker	\$64,997.17
U.S. Bancorp	\$761,624.49
Wells Fargo	\$98,835.52
TOTAL	\$6,623,660.60

- b) Awarding the Trustee judgment equal to the amount of these payments and directing the defendants to immediately pay the Trustee the appropriate amount due and owing pursuant to 11 U.S.C. § 550(a) together with interest thereon;

- c) Awarding the Trustee attorney's fees, costs and other expenses incurred in this action; and
- d) Granting the Trustee such other and further relief as the Court deems appropriate.

SECOND COUNT

**(Actual Intent Fraudulent Conveyance Under 11 U.S.C. § 544
and N.J.S.A. 25:2-25 As Against Leasing Companies)**

123. The Trustee repeats and re-alleges the allegations contained in all of the foregoing paragraphs as if fully set forth herein.

124. In order to continue to keep the Lease lines open under the MPAs and similar arrangements, the Debtor needed to "make good" on customer First Payment Defaults (and in some cases second and third payment defaults) by repurchasing the Leases from the Leasing Companies and/or making other accommodations such as covering the customer payments.

125. The funds used by the Debtor to fulfill its Repurchase Obligations to the Leasing Companies were obtained almost exclusively from new customers' execution of Leases and the sales of those Leases to Leasing Companies. Had the Debtor not fulfilled its Repurchase Obligations under the MPAs to repurchase Leases upon a First Payment Default, and/or otherwise cover the Leasing Companies' losses, the Leasing Companies would have declared defaults under the terms of the MPAs and the Lease lines would have been terminated, thereby halting the Salzano Scheme in its tracks.

126. In order to continue the fraud, NorVergence needed to keep the Lease lines open and thus needed to fulfill the Repurchase Obligations and otherwise cover the customers First Payment Defaults and similar defaults.

127. The Debtor's customers, upon the cessation of NorVergence's business and the breach of NorVergence's commitments to these customers, were left without contracted for phone and internet services, and as a result became creditors of NorVergence.

128. The Debtor made the Lease Repurchase Obligation payments and other payments to cover the Leasing Companies on the customer defaults with actual intent to hinder, delay or defraud creditors by perpetuating the Salzano Scheme.

129. Such payments are fraudulent transfers pursuant to 11 U.S.C. § 544 and N.J.S.A. 25:2-25.

WHEREFORE, the Trustee demands judgment against the Leasing Companies:

- a) avoiding the payments to the Leasing Companies as well as all setoffs made by the Leasing Companies pursuant to 11 U.S.C. § 544 including but not limited to the following known payments made to the following Leasing Companies:

Company	Lease Repurchase Payments
ABB Business	\$2,151.59
Celtic	\$75,383.59
CIT	\$1,025,329.70
Citi	\$62,040.06
Combined Capital	\$25,016.06
Court Square	\$51,320.31
DeLage	\$899,794.44
Dolphin	\$100,521.63
First Lease	\$68,018.40
GE Capital	\$1,182,255.02
IFC	\$571,739.69
ILC	\$236,384.64
Irwin	\$247,711.07
Liberty	\$66,539.69
Alfa/OFC	\$224,696.77
Patriot	\$169,487.42
PFG	\$25,673.08
Popular Leasing	\$486,474.78
Preferred Capital	\$41,504.13
Sterling	\$136,161.35
Studebaker	\$64,997.17
U.S. Bancorp	\$761,624.49
Wells Fargo	\$98,835.52
TOTAL	\$6,623,660.60

- b) Awarding the Trustee judgment equal to the amount of these payments and directing the defendants to immediately pay the Trustee the appropriate amount due and owing pursuant to 11 U.S.C. § 550(a) together with interest thereon;
- c) Awarding the Trustee attorney's fees, costs and other expenses incurred in this action; and
- d) Granting the Trustee such other and further relief as the Court deems appropriate.

THIRD COUNT
**(Recovery Pursuant to 11 U.S.C. § 553(b) of Certain Amounts
Setoff by Leasing Companies Within the 90 Days Before the
Petition Date)**

130. The Trustee repeats and re-alleges all of the allegations contained in all of the foregoing paragraphs as if set forth fully herein.

131. Upon information and belief, some of the Leasing Companies, during the 90 days prior to the Petition Date, adjusted their debt obligations to the Debtor by setting off amounts that they owed to the Debtor against amounts that the Debtor owed to such Leasing Companies.

132. Upon information and belief, the balance remaining due by the Debtor as of the Petition Date (the "insufficiency" as defined under 11 U.S.C. § 553(b)(2)) was less than the insufficiency of the Debtor that existed on the later of ninety (90) days before the Petition Date and the first date during the 90 days immediately preceding the Petition Date on which there was an insufficiency.

133. To the extent that the insufficiency on the Petition Date was less than the insufficiency that existed on the later of ninety (90) days before the Petition Date and the first date during the 90 days immediately preceding the Petition Date on which there was an insufficiency, such amounts are recoverable pursuant to 11 U.S.C. § 553(b).

WHEREFORE, the Trustee demands judgment against the Leasing Companies:

- a) avoiding the Leasing Companies' setoffs to the extent of any improvement in the insufficiency pursuant to 11 U.S.C. § 553(b)(1);
- b) awarding the Trustee judgment equal to the amount of such improvement in insufficiency and directing the respective defendants to immediately pay the Trustee the appropriate amount due and owing pursuant to 11 U.S.C. § 550(a) together with interest thereon;
- c) awarding the Trustee attorney's fees, costs and other expenses incurred in this action; and
- d) granting the Trustee such other and further relief as the Court deems appropriate.

ADDITIONAL FACTS PERTINENT TO COUNTS FOUR THROUGH EIGHT, AGAINST SALZANO AND WILLIAM JEAN CHARLES AND TO COUNTS NINE THROUGH ELEVEN AGAINST ALL OF THE DEFENDANTS.

134. Based upon a review of the Debtor's books and records and upon information and belief, Salzano unlawfully diverted, converted and misappropriated Debtor's funds for his own personal benefit, and to the detriment of the Debtor, while Debtor was insolvent, by:

- a) charging personal expenses in his own name and, perhaps, in his son's name (Thomas John Salzano)⁶, including but not limited to hotel rooms, airfare, restaurant bills, outings to gentlemen's clubs, clothing, jewelry, vacations, groceries, drug store purchases, car washes and virtually every other personal expense imaginable, to the Debtor's American Express

⁶ The sole information and belief for this allegation is statements made by his son's counsel.

Business Gold/Platinum account (the "AMEX Account"), as well as utilizing other corporate credit cards maintained by NorVergence;

- b) requiring that NorVergence pay all of his other personal living expenses, including rent for several apartment units he was maintaining for himself and/or his companions, as well as car and insurance payments;
- c) funneling Debtor's money to himself through an affiliated company, Data Solutions, Ltd.;
- d) funneling Debtor's money to himself by paying salary, as well as automobile, travel and other expenses, to defendant, William Jean Charles, who would cash Debtor's checks and maintain some of the payment for his personal benefit, as well as remit some of the payment to Salzano; and
- e) paying for a limousine service to ferry his girlfriend to and from college classes.

A. Payment of Salzano's AMEX Charges

135. Based on Debtor's books and records and upon information and belief, between November 25, 2002 and March 24, 2004, Salzano made charges to Debtor's AMEX Account, in his own name, totaling \$811,911.34 (the "TNS AMEX Charges"). Salzano incurred the TNS AMEX Charges on account of expenditures that were entirely unrelated to the Debtor's business.

136. Debtor transferred \$811,911.34 to the AMEX Account between January 13, 2003 and April 20, 2004 (the "TNS AMEX Payments") in order to pay for the TNS AMEX Charges, as detailed in **Exhibit "E,"** attached hereto.

137. In addition, upon information and belief, between November 25, 2002 and March 24, 2004, Salzano made charges to Debtor's AMEX Account in his son's name, Thomas John Salzano, totaling \$268,795.84 (the "TJS AMEX Charges"), by forging Thomas John Salzano's

name on the charge slips⁷. Salzano incurred the TJS AMEX Charges on account of expenditures that were entirely unrelated to the Debtor's business.

138. Debtor transferred \$268,795.84 to the AMEX Account between January 13, 2003 and April 20, 2004 (the "TJS AMEX Payments" and together with the TNS AMEX Payments, the "AMEX Payments") in order to pay for the TJS AMEX Charges made on Salzano's behalf, as detailed in **Exhibit "F,"** attached hereto.

139. Furthermore, upon information and belief, during the same timeframe, Salzano made charges in an unliquidated amount to various other credit cards, including but not limited to a Capital One Visa card, a Discover card, and a First Premier Bank MasterCard, maintained by the Debtor. These charges were on account of expenditures that were entirely unrelated to the Debtor's business (the "Other Charges").

B. Payment of Defendant, Thomas N. Salzano's Personal Living Expenses

140. Based on Debtor's books and records and upon information and belief, between July 2, 2002, and June 25, 2004, Salzano caused Debtor to make rent payments, totaling at least \$415,273.65, for several apartment units he was maintaining for himself and/or his companions (the "Apartment Charges"). The Apartment Charges were on account of expenditures that were entirely unrelated to Debtor's business.

141. Debtor transferred \$415,273.65 to the apartment landlords⁸ between July 2, 2002 and June 25, 2004 (the "Apartment Payments") in order to pay for the Apartment Charges on Salzano's behalf, as detailed in **Exhibit "G,"** attached hereto.

142. In addition, based on Debtor's books and records and upon information and belief, between April 25, 2003 and April 22, 2004, Salzano caused Debtor to make car payments, totaling at least \$20,827.76, for a BMW car he was using (the "BMW Payments"), as detailed in

⁷ See note 6 on p. 35, *supra*.

⁸ Upon information and belief, Defendant, Thomas N. Salzano rented apartments from the following landlords: Tower America Management Corp., LLC; Tower America Urban Renewal Co.; Tower East Urban Renewal Company; Tower Urban East Renewal

"**Exhibit H**," attached hereto. Upon information and belief, a portion of the BMW Payments were on account of expenditures that were entirely unrelated to Debtor's business.

143. Furthermore, based on Debtor's books and records and upon information and belief, between July 18, 2003 and March 8, 2004, Salzano caused Debtor to make car insurance payments, totaling at least \$1,577.28 (the "Car Insurance Payments"), as detailed in **Exhibit "I**," attached hereto. Upon information and belief, the Car Insurance Payments were on account of expenditures that were entirely unrelated to Debtor's business.

144. Finally, upon information and belief, during the same timeframe, Defendant, Thomas N. Salzano caused Debtor to make payments in an unliquidated amount, on behalf of various other personal living expenses incurred by the Debtor (the "Other Expenses"). These Other Expenses were entirely unrelated to the Debtor's business.

C. Payments to Defendant, Thomas N. Salzano Through Data Solutions

145. Based on Debtor's books and records and upon information and belief, between January 29, 2002 and June 30, 2004, Salzano caused Debtor to make payments totaling \$515,154.82 to his affiliated company, Data Solutions, in order to pay in part for consulting services, but also, upon information and belief, to pay for personal expenses that were entirely unrelated to Debtor's business, as detailed in **Exhibit "J**," attached hereto.

146. In addition, upon information and belief, based on assertions by counsel to Thomas John Salzano, on or about July 1, 2003, Salzano funneled \$61,200.00 of Debtor's money through Data Solutions to himself in order to "gift" the money to his son, Thomas John Salzano, for the purchase of his son's personal residence located in Glen Ridge, New Jersey. On or about July 29, 2003, Salzano, funneled an additional \$140,000.00 of Debtor's money through Data Solutions in order to "gift" the money to his son for the purchase of his son's personal residence⁹.

⁹ As to the allegations contained in this paragraph, see note 6 at p. 35, supra.

All of the above-described payments that Salzano funneled through Data Solutions for his own benefit total at least \$716,354.82 (the "Data Solutions Payments").

D. Payments to Defendant, William Jean Charles and Defendant, Thomas N. Salzano Through William Jean Charles

147. Based on Debtor's books and records and upon information and belief, between January 1, 2002 and May 24, 2004, Salzano caused Debtor to pay salary, as well as automobile, travel and other expenses, to William Jean Charles (the "Jean Charles Payments"). The Jean Charles Payments were entirely unrelated to Debtor's business.

148. In his own words, William Jean Charles, was only a "partial" employee of the Debtor who received mileage reimbursement, as well as approximately \$400 per month in compensation from the Debtor to cover his healthcare insurance and parking benefits.

149. Despite William Jean Charles' claims, however, Debtor transferred at least \$273,541.00 to him between January 1, 2002 and May 24, 2004, as detailed in **Exhibit "K"**, attached hereto.

150. Based upon information and belief, William Jean Charles would keep some of the Jean Charles Payments for his own personal benefit and remit a portion of the payments to Salzano for his own personal benefit.

E. Totals

151. The total amount of funds transferred to or for the benefit of the Salzano during the Debtor's two-year existence was \$2,508,281.69, plus other amounts not yet quantified. The total amount of funds transferred to or for the benefit of William Jean Charles during the same timeframe was \$273,541.00, plus other amounts not yet quantified.

FOURTH COUNT
(Fraudulent Transfer Under 11 U.S.C. §§ 548 and 550
As Against Salzano and William Jean Charles)

152. The Trustee repeats and re-alleges the allegations contained in all of the foregoing paragraphs as if fully set forth herein.

153. By way of the AMEX Payments, the Apartment Payments, the BMW Payments, the Car Insurance Payments, the Data Solutions Payments and the Jean Charles Payments, NorVergence made payments to or for the benefit of Salzano in the amount of at least \$2,390,978.69 during the two years preceding the Petition Date (the "TNS Two-Year Fraudulent Transfers"), as more fully described above.

154. By way of the William Jean Charles Payments, NorVergence made payments to or for the benefit of William Jean Charles in the amount of at least \$203,558.00 during the two years preceding the Petition Date (together with the TNS Two-Year Fraudulent Transfers, the "Two-Year Fraudulent Transfers"), as more fully described above.

155. The Debtor made the Two-Year Fraudulent Transfers with the actual intent to hinder, delay or defraud creditors of the Debtor.

156. The Debtor received less than reasonably equivalent value for the Two-Year Fraudulent Transfers.

157. At the time when the Two-Year Fraudulent Transfers were made, the Debtor:

- a) was insolvent;
- b) became insolvent;
- c) was engaged in a business or a transaction for which any property remaining with the Debtor constituted an unreasonably small capital; or
- d) intended to incur, or believed that the Debtor would incur, debts that would be beyond the Debtor's ability to pay as such debts matured on the date of the Two-Year Fraudulent Transfers or as a result of the Two-Year Fraudulent Transfers.

158. The Trustee on behalf of the estate and general unsecured creditors is entitled to avoid the Two-Year Fraudulent Transfers pursuant to 11 U.S.C. § 548.

159. In accordance with the provisions of 11 U.S.C. § 550(a), the Trustee is entitled to recover from the Salzano and William Jean Charles an amount equal to the Two-Year Fraudulent Transfers.

WHEREFORE, the Trustee demands judgment against Salzano and William Jean Charles:

- a) avoiding the Two-Year Fraudulent Transfers pursuant to Bankruptcy Code Section 548;
- b) awarding the Trustee judgment in an amount equal to the Two-Year Fraudulent Transfers and directing Salzano to immediately pay the Trustee an amount equal to \$2,390,978.69 and William Jean Charles to immediately pay the Trustee an amount equal to \$203,558.00 pursuant to 11 U.S.C. § 550(a), together with interest on such amount from the date of the Two-Year Fraudulent Transfers;
- c) awarding the Trustee his attorneys' fees, costs and other expenses incurred in this action; and
- d) granting the Trustee such other and further relief as the Court deems appropriate.

FIFTH COUNT
(Fraudulent Transfer Under 11 U.S.C. §§ 544(b), 550 and
N.J.S.A. 25:2 et seq. as Against Salzano and
William Jean Charles And The Other Insiders)

160. The Trustee repeats and re-alleges the allegations contained in all of the foregoing paragraphs as if fully set forth herein.

161. By way of the AMEX Payments, the Apartment Payments, the Data Solutions Payments, the BMW Payments, the Car Insurance Payments, and the Jean Charles Payments, NorVergence made payments to or for the benefit of Defendant, Thomas N. Salzano in the

amount of at least \$2,508,281.69 (the "TNS Four-Year Fraudulent Transfers"), as more fully described above.

162. By way of the Jean Charles Payments, NorVergence made payments to or for the benefit of William Jean Charles in the amount of at least \$273,541.00 during the four years preceding the Petition Date.

163. As to the other Insiders, NorVergence made the following payments (collectively, the "Insider Payments") in addition to regular salary and benefits:

Company	Amount Paid
Alex Wolf	\$161,033.96
Arthur Scuttaro	\$138,899.39
Robert Fine	\$12,843.60
Robert Weisman	\$37,311.63
Terry Skemer	\$231,128.08
William Jean Charles	\$273,545.43
TOTAL	\$854,762.09

(The Insider payments together with the TNS Four-Year Fraudulent Transfers, the William Jean Charles Payments are hereinafter referred to as the "Four-Year Fraudulent Transfers").

164. NorVergence was insolvent when the Four-Year Fraudulent Transfers were made.

165. All of the Four-Year Fraudulent Transfers were made within four (4) years before the Petition Date.

166. The Debtor made the Four-Year Fraudulent Transfers with the actual intent to hinder, delay or defraud creditors of the Debtor, or, received less than reasonably equivalent value in exchange for the Four-Year Fraudulent Transfers, and:

- a) at the time that the Four-Year Fraudulent Transfers were made, the Debtor was engaged in business or a transaction, or was about to engage in business or a transaction, for which the Debtor's remaining assets were unreasonably small in relation to the business or transaction; and/or

intended to incur, or believed or reasonably should have believed that it would incur, debts that would be beyond its ability to pay as they became due; and

- b) the Debtor was insolvent or became insolvent as a result of the Four-Year Fraudulent Transfers.

167. There exists at least one actual holder of an unsecured claim against the estate that is allowable under 11 U.S.C. § 502, who would have standing to assert a claim for relief under New Jersey's Uniform Fraudulent Transfer Act.

168. The Trustee on behalf of the estate and general unsecured creditors is entitled to avoid the Four-Year Fraudulent Transfers pursuant to N.J.S.A. 25:2-25(a) and 2-25(b), pursuant to 11 U.S.C. § 544(b).

169. In accordance with the provisions of 11 U.S.C. § 550(a), the Trustee is entitled to recover from Salzano, William Jean Charles and the Insiders, an amount equal to the Four-Year Fraudulent Transfers.

WHEREFORE, the Trustee demands judgment against Salzano, William Jean Charles and the other Insiders:

- a) avoiding the Four-Year Fraudulent Transfers under N.J.S.A. 25:2 et seq., and § 544 of the Bankruptcy Code;
- b) awarding the Trustee judgment in an amount equal to the Four-Year Fraudulent Transfers and directing Salzano to immediately pay the Trustee an amount equal to \$2,508,281.69 and William Jean Charles to immediately pay the Trustee an amount equal to \$273,541.00 and the other Insiders to immediately pay the Trustee: Wolf - \$161,033.96, Scuttaro - \$138,899.39, Fine - \$12,843.60, Wizeman - \$37,311.63, and Skemer - \$231,128.08, all pursuant to

11 U.S.C. § 550(a), together with interest on such amount from the date of the Four-Year Fraudulent Transfers;

- c) awarding the Trustee his attorneys' fees, costs and other expenses incurred in this action; and
- d) granting the Trustee such other and further relief as the Court deems appropriate.

SIXTH COUNT
(Fraudulent Transfer Under 11 U.S.C. §§ 544(b), 550
and N.J.S.A. 25:2-27(b) As Against Salzano and
William Jean Charles And The Other Insiders)

170. The Trustee repeats and re-alleges the allegations contained in all of the foregoing paragraphs as if fully set forth herein.

171. The Four-Year Fraudulent Transfers were made to one or more insiders:

- a) for, or on account of, an antecedent debt;
- b) when the Debtor was insolvent; and
- c) Salzano and William Jean Charles had reasonable cause to believe that the Debtor was insolvent.

172. There exists at least one actual holder of an unsecured claim against the estate that is allowable under 11 U.S.C. § 502, who would have standing to assert a claim for relief under New Jersey's Uniform Fraudulent Transfer Act.

173. The Trustee on behalf of the estate and general unsecured creditors is entitled to avoid the Four-Year Fraudulent Transfers under N.J.S.A. §§ 25:2-27(b), pursuant to 11 U.S.C. § 544(b).

174. In accordance with the provisions of 11 U.S.C. § 550(a), the Trustee is entitled to recover from Salzano, William Jean Charles and the other Insiders an amount equal to the Four-Year Fraudulent Transfers.

WHEREFORE, the Trustee demands judgment against Defendants, Thomas N.

Salzano and William Jean Charles:

- a) avoiding the Four-Year Fraudulent Transfers under N.J.S.A. 25:2-27(b), pursuant to Bankruptcy Rule 7001 and sections 323, 541 and/or 544 of the Bankruptcy Code;
- b) awarding the Trustee judgment in an amount equal to the Four-Year Fraudulent Transfers and directing Salzano to immediately pay the Trustee an amount equal to \$2,508,281.69 and William Jean Charles to immediately pay the Trustee an amount equal to \$273,541.00 and the other Insiders to immediately pay the Trustee: Wolf - \$161,033.96, Scuttaro - \$138,899.39, Fine - \$12,843.60, Wizeman - \$37,311.63, and Skemer - \$231,128.08, all pursuant to 11 U.S.C. § 550(a), together with interest on such amount from the date of the Four-Year Fraudulent Transfers;
- c) awarding the Trustee his attorneys' fees, costs and other expenses incurred in this action; and
- d) granting the Trustee such other and further relief as the Court deems appropriate.

SEVENTH COUNT
**(Conversion and Misappropriation As Against
Salzano and William Jean Charles)**

175. The Trustee repeats and re-alleges the allegations contained in all of the foregoing paragraphs as if fully set forth herein.

176. Salzano and William Jean Charles unlawfully diverted, hid, converted and misappropriated funds that rightfully belonged to the Debtor by using the Debtor's funds to pay for personal items and services, unrelated to the Debtor's business, by way of the AMEX

Payments, the Other Charges, the Apartment Payments, the BMW Payments, the Car Insurance Payments, the Other Expenses, the Data Solutions Payments and the Jean Charles Payments.

177. The Debtor and its creditors suffered and will continue to suffer damages as a result of Salzano's and William Jean Charles' conduct.

WHEREFORE, the Trustee demands judgment against Salzano and William Jean Charles:

- a) awarding the Trustee compensatory, consequential and punitive damages, plus interest;
- b) awarding the Trustee his reasonable attorney's fees and costs of suit; and
- c) granting such other relief as the Court deems just and proper.

EIGHTH COUNT
**(Unjust Enrichment As Against Salzano,
William Jean Charles and the other Insiders)**

178. The Trustee repeats and re-alleges the allegations contained in all of the foregoing paragraphs as if fully set forth herein.

179. By diverting, converting and misappropriating Debtor's funds to pay for personal items and services, by way of the AMEX Payments, the Other Charges, the Apartment Payments, the BMW Payments, the Car Insurance Payments, the Other Expenses, the Data Solutions Payments, the William Jean Charles Payments and the other Insider Payments, Defendants, Salzano, William Jean Charles and the other Insiders have been unjustly enriched and have wrongly used such misappropriated funds.

WHEREFORE, the Trustee demands judgment against Salzano, William Jean Charles and the other Insiders:

- a) awarding the Trustee compensatory, consequential and punitive damages, plus interest;
- b) awarding the Trustee his reasonable attorney's fees and costs of suit; and
- c) granting such other relief as the Court deems just and proper.

NINTH COUNT
(Accounting and Turnover Under 11 U.S.C. § 542 As
Against Salzano, William Jean Charles As Well As
The Insiders And The Leasing Companies)

180. The Trustee repeats and re-alleges the allegations contained in all of the foregoing paragraphs as if fully set forth herein.

181. Upon information and belief, during the period covering June 30, 2000 through the Petition Date, additional transactions beyond the ones described in the foregoing paragraphs (the "Additional Transactions"), may have taken place between the Debtor and Salzano, William Jean Charles, the Insiders and the Leasing Companies. These Additional Transactions include, but are not limited to, the Other Charges and the Other Expenses and setoffs by the Leasing Companies for the Debtor's Repurchase Obligations that were not properly recorded by the Debtor.

182. Upon information and belief, all or part of the funds exchanged in connection with the Additional Transactions may be recoverable by the Trustee for the benefit of the estate and the general unsecured creditors pursuant to New Jersey state law and the Bankruptcy Code.

183. Upon information and belief, Salzano, William Jean Charles, the Insiders and the Leasing Companies may be in possession, custody and/or control of property which is, upon information and belief, property of the Debtor's estate or which may otherwise be recoverable by the Trustee.

184. In accordance with § 542(a) of the Bankruptcy Code, the Trustee is entitled to an accounting for all payments or transfers made by the Debtor to Salzano, William Jean Charles, the Insiders and the Leasing Companies during the period covering June 30, 2002 through the Petition Date, as well as all post-petition payments or transfers.

WHEREFORE, the Trustee requests that judgment be entered in his favor and against Salzano, William Jean Charles, the Insiders and the Leasing Companies ordering them to account to the Trustee for all payments or transfers made by the Debtor to them during the period covering June 30, 2002 through the Petition Date, as well as all post-petition payments or transfers.

TENTH COUNT

**(Breach of Fiduciary Duty Against Salzano, Alexander Wolf,
Robert Fine, Bob Wizeman, William Jean Charles,
Terry Skemer and Arthur Scuttaro And Aiding and Abetting
a Breach of Fiduciary Duty Against Leasing Companies)**

185. The Trustee repeats and re-alleges the allegations contained in all of the foregoing paragraphs as if fully set forth herein.

186. As officers, directors, and/or employees with management responsibility at NorVergence, Salzano and the Insiders owed NorVergence fiduciary duties. These duties required Salzano and the Insiders at all times to act on behalf of NorVergence in good faith, to exercise the care that an ordinarily prudent person in a like position would exercise under similar circumstances, and to conduct themselves in a manner they reasonably believed to be in the best interest of the company.

187. As part of their fiduciary duties, Salzano and the Insiders at all times were required to be honest and candid and to make complete disclosure in their dealings with the company and its Board of Directors. Further, in their communications with investors, Salzano and the Insiders were obligated to do so honestly, candidly and completely in all material

respects. They were obligated to refrain from operating the Salzano Scheme to defraud customers and creditors alike.

188. By virtue of the acts and omissions described in this Complaint, the Insiders repeatedly violated their fiduciary duties to NorVergence. The Insiders violated their duties of good faith, due care and loyalty by causing NorVergence to further the Salzano Scheme. The Insiders violated their duties to conduct themselves honestly, candidly and with full disclosure in their dealings with NorVergence and its Board of Directors.

189. By virtue of the acts and omissions described in this Complaint, Salzano, William Jean Charles and other Insiders breached their duties of good faith, due care, and loyalty by entering into transactions with NorVergence directly and through entities in which Salzano or members of his family owned an interest, in which he or his family members derived an improper personal benefit at the expense of the company. Salzano and William Jean Charles breached their duties of good faith, due care, and loyalty by arranging for and facilitating transactions with NorVergence in which they and the other Insiders derived an improper personal benefit at the expense of the company. In each of these transactions, the Insiders and Salzano breached their fiduciary duties by failing to disclose to the company all material facts of each such transaction and/or by deliberately failing to supervise these transactions.

190. In addition to their regular payroll, company credit card use, and benefits, the Insiders received payment of at least \$854,000.00 during the continuance of the Salzano Scheme.

191. By virtue of the acts and omissions described in this Complaint, the Leasing Companies knowingly gave substantial assistance to Salzano and the Insiders to perpetuate the Salzano Scheme, by giving them the means to continue the Salzano Scheme, with actual knowledge that the transactions the Leasing Companies were benefiting from, were fraudulent.

192. As a direct and proximate result of the Leasing Companies' actions and omissions, NorVergence was injured and damaged in at least the following ways:

- (a) its debt was wrongfully expanded out of all proportion to its ability to repay and it became insolvent and thereafter deeply insolvent;
- (b) it was forced into bankruptcy and incurred and continues to incur substantial legal and administrative costs, as well as the costs of governmental investigation;
- (c) its relationships with its customers, suppliers and employees were undermined; and
- (d) its assets were dissipated.

WHEREFORE, the Trustee demands judgment against Salzano, the Insiders and the Leasing Companies:

- a) awarding the Trustee compensatory, consequential and punitive damages, plus interest;
- b) awarding the Trustee his reasonable attorney's fees and costs of suit; and
- c) granting such other relief as the Court deems just and proper.

TENTH COUNT

(Fraud Against Salzano, Alexander Wolf, Robert Fine, Robert Wizeman, William Jean Charles, Terry Skemer and Arthur Scuttaro, and Aiding and Abetting A Fraud Against Defendant Leasing Companies)

193. The Trustee repeats and re-alleges all of the allegations contained in each of the foregoing paragraphs as is set forth fully herein.

194. The actions by Salzano and the Insiders, Wolf, Fine, Wizeman, Charles, Skemer and Scuttaro, constituted a fraud against customers, creditors and investors in that the Insiders were running a Salzano Scheme for the benefit of themselves and to the detriment of creditors, investors and customers.

195. The sales scripts, quoted above, contained false statements.

196. The false statements were intended to induce customers to enter into long term, non-cancelable contracts with the Leasing Companies.

197. The customers relied on the false statements to their detriment, by entering into long term, non-cancelable Lease Agreements with the Leasing Companies.

198. The customers suffered damages as a result of the foregoing.

199. NorVergence suffered damages as a result of the foregoing.

200. By virtue of the acts and omissions described above in this Complaint, the Leasing Companies aided and abetted the Insiders' commission of the fraud.

201. Given the nature of the Salzano Scheme as a Ponzi/Bust-Out, one or more of the Leasing Companies participated in and/or had actual knowledge that the Salzano Scheme was designed to or would benefit Salzano and/or an Insider. One or more of the Leasing Companies gave substantial assistance to Salzano and the Insiders by giving them the means to continue the Salzano Scheme with actual knowledge that the transactions the Leasing Companies were benefiting from were fraudulent.

202. As a direct and proximate result of the Leasing Companies acts and omissions, NorVergence was injured and damaged in at least the following ways:

- a) its debt was wrongfully expanded out of all proportion to it's ability to repay and it became insolvent and there after deeply insolvent;
- b) it was forced into bankruptcy and incurred and continues to incur substantial legal and administrative costs as well as costs of governmental investigations;
- c) its relationships with customers, suppliers, and employees were undermined;
- d) its assets were dissipated.

WHEREFORE, the Trustee demands judgment against Salzano, the Insiders, and the Leasing Companies:

- a) awarding the Trustee compensatory, consequential and punitive damages, plus interest;
- b) awarding the Trustee his reasonable attorney's fees and costs of suit; and
- c) granting such other relief as the Court deems just and proper.

ELEVENTH COUNT
(Deepening Insolvency As Against All Defendants)

203. The Trustee repeats and re-alleges the allegations contained in all of the foregoing paragraphs as if set forth fully herein.

204. The knowledge and participation of the Leasing Companies in the Salzano Scheme as described in paragraphs 103-125 of this Complaint permitted NorVergence's insolvency to deepen, unabated from October 2003 -- when most of the Leasing Companies knew or should have known about the actual fraud -- through June 30, 2004.

205. As of June 30, 2002, NorVergence had total assets of \$3,226,085.00 and total liabilities of \$6,270,216.00. Thus, it was insolvent, on a balance sheet basis by \$3,044,131.00.

206. One year later, on June 30, 2003, the insolvency had deepened considerably. Now, total assets were \$10,585,285.00, but liabilities were \$44,938,501.00 for a total balance sheet insolvency of \$34,353,215.00.

207. On March 31, 2004, the insolvency was four times what it had been on June 30, 2003. On March 31, 2004, the amount by which liability exceeded assets stood at \$138,201,421.00, an increase of 400% from where it had stood just nine months before.

208. The continued operation of NorVergence caused a continued "increase" in its insolvency, unabated, until the June 30, 2004 Petition Date.

WHEREFORE, the Trustee demands judgment against Salzano, the Insiders and the Leasing Companies:

- a) for the amount by which the insolvency deepened during that time period,
- b) for exemplary and punitive damages for injuries caused to NorVergence by the deepening insolvency;
- c) for such other and further relief as this court deems appropriate.

PORZIO, BROMBERG & NEWMAN, P.C.
Special Litigation Counsel to Charles M. Forman,
Chapter 7 Trustee of the Estate of NorVergence,
Inc.

By: /s/ Warren J. Martin Jr.
Warren J. Martin Jr. (WM-0487)

Dated: July 14, 2006