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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 scheme<sup>1</sup>.

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<sup>1</sup> 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-Out<sup>2</sup>."

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 bankruptcy<sup>3</sup>, 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.

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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.

<sup>2</sup> 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 (5<sup>th</sup> Cir. 1972).

<sup>3</sup> 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 5<sup>th</sup> 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, 7<sup>th</sup> 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 330 120<sup>th</sup> 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 5<sup>th</sup> 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 writing<sup>4</sup> 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."

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<sup>4</sup> 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.<sup>5</sup>

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

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<sup>5</sup> 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