

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
CHANCERY DEPARTMENT
FIRST DISTRICT

FILED
06 JUL -5 PM 1:34

PURE SOLUTIONS, INC.,

CASE NO.:

Plaintiff

v.

06CH13263

IFC CREDIT CORPORATION, INC.,

Defendant

CLASS-ACTION COMPLAINT
JURY TRIAL DEMANDED
INJUNCTIVE RELIEF SOUGHT

This is a class action by Pure Solutions, Inc. ("PSI"), on behalf of itself and all others similarly situated, for violations of the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS §505/1, *et seq.*, and for declaratory and equitable relief, rescission of a contract and/or monetary damages for fraud, negligence, and breach of contract. PSI alleges as follows:

1. IFC seeks to enforce assigned contacts for illegal counterfeit access devices that violated federal law. PSI, on behalf of the class, seeks to bar enforcement of the contracts, recover amounts paid IFC plus other damages, interest, costs and attorneys' fees, and obtain declaratory and equitable relief as set forth below.
2. IFC knew or should have known at the time of the assignment that these were illegal counterfeit access devices, and that its assignor was committing felonious acts

under federal law by trafficking in counterfeit access devices.

3. IFC has taken action against PSI and other class members to enforce the assigned contracts, knowing that these were illegal counterfeit access devices that violated federal law.

4. IFC has taken action against PSI and other class members to enforce the assigned contracts, knowing that at least two prior courts have held that these contracts was illegal and unenforceable, as described below

5. IFC is bound by these decisions, as described below.

PARTIES

6. PSI is a Florida corporation with a principal place of business at 13620 Wright Circle, Tampa, Florida 33626.

7. Defendant IFC Credit Corporation (“IFC”), is an Illinois corporation with a principal place of business at 8700 Waukegan Road, Suite 100, Morton Grove, Illinois 60053.

FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

8. PSI conducts a small business which manufactures dietary supplements for sale to retail outlets and, occasionally, for direct sale to the public. PSI has gross income of approximately \$700,000 per year and has four employees. PSI does not employ any electrical engineers or telecommunications specialists and is unsophisticated in the use of telecommunications equipment.

9. In or about March, 2004, PSI was approached by a New Jersey telecommunications company known as NorVergence, Inc. (“NorVergence”), which

claimed to be a provider of telecommunications services.

10. NorVergence described the equipment and services which NorVergence claimed to offer, and NorVergence subsequently provided PSI with documentation that purported to describe its equipment and services, certain requirements which PSI purportedly needed to meet to qualify for them, and the benefits PSI would purportedly receive from their use.

11. Specifically, NorVergence claimed that it offered something called the “Matrix Solution”, which it described as “Free Unlimited Calling Circuitry with High Speed Internet Access”, and “the revolutionary ‘Voice as Unlimited Data’ solution”. NorVergence claimed that its Matrix Solution would provide “free unlimited phone calling anywhere in the USA”, and that it represented “a huge engineering advance”. NorVergence further represented that “This revolutionary solution allows admitted participants to drastically cut telecommunications costs immediately since all per minute charges are removed from your calls.”

12. NorVergence informed PSI that “competition for unlimited circuits is fierce and applications are processed on a first come first served basis”, and that an application, interview and credit check would be required for consideration. Included in the information requested from PSI were PSI’s telephone bills.

13. On or about March 16, 2004, NorVergence, gave PSI a one-page “Proposal of Enhanced Telecommunications Benefits”. The Proposal contained two columns, one entitled “Current Monthly Costs”, the other “New Monthly Costs”, representing the costs PSI would purportedly incur if it obtained the Matrix Solution. Current Monthly Costs were listed as \$285.96, for “Total Domestic Outbound Charges”; \$115.03, for “Existing

Domestic Inbound 8XX Charges”; \$458.91, for “Total Cellular Costs”; \$276.54, for “Total Local Phone Charges”; and \$129.95, for “Internet Access”. The resulting “Total Current Monthly Costs” were stated as \$1266.39. New Monthly Costs were listed as \$79.00, for “Quantity 1 Circuit Facility”; \$33.00, for “Unlimited Domestic 8XX”; \$71.96, for “Unlimited Cellular Access for 4 cell phones”; **and \$774.70, for “Monthly MATRIX Gateway Rental Payment”**. The resulting total “New Monthly Costs” were stated as \$958.66. The Proposal further stated that “Customer Monthly Savings” and “Customer Yearly Savings” would be \$307.73 and \$3692.76, respectively.

14. NorVergence informed PSI that the promised savings would commence upon installation of the Matrix Voice Gateway product and a so-called T-1 line, which is a high-speed data transmission line that can carry both voice (telephone) communications and data. NorVergence claimed that its Matrix Voice Gateway products used proprietary technology and/or voice over internet protocol (“VOIP”), which is a standard term used in the telecommunications industry to describe the digitization of telephone signals to permit them to be transmitted over the internet; this, NorVergence claimed, was what allowed it to offer free unlimited calling, since unlimited internet access may be had for a low monthly fee.

15. PSI was persuaded by the forgoing representations, and others, that it would obtain the promised savings if it accepted NorVergence’s offer. As a result, on or about March 16, 2004, PSI executed a so-called “Non-Binding Application” to receive the T-1 line and “Cellular Handsets”. The Application stated that, if it was approved by NorVergence, NorVergence would perform the following services: (i) “Coordinate and arrange for delivery of Carrier Neutral High Speed ‘Voice as Unlimited DataTM, T1

Access Facilities through your Local Service Provider”, (ii) “Program and provide Cellular ‘Voice as Unlimited DataTM’ handsets (as applicable) for toll and surcharge free Cellular calling if the Cellular LOA is attached”, (iii) Coordinate the National Conversion Assistance Program to provide for a smooth transition to new Cellular numbers or 800 Direct Technology, if applicable”, (iv) Coordinate the transfer of your Business Telephone Numbers and or Toll Free Number(s) to Unlimited Domestic Inbound Calling without per Minute Charges, if number portability form is attached (NPF)”, (v) “Connect your lines to Unlimited Outbound Domestic Toll Free Calling without per Minute Charges, Fees, or Surcharges”, (vi) “Activate Fraud Protection Technology (“FPT”) on all MATRIXTM outbound Outbound Lines and Cellular phones Removing Toll Fraud and Hacker Liability”, and (vii) “Upon approval, NorVergence agrees to indemnify, save, and hold harmless ‘Applicant’ from former carrier/provider and third party Early Termination Fees arising from all telecommunications service(s) incurred heretofore, volume commitments made, and/or signed contract(s) if any are provided by former carriers/service providers”.

16. PSI’s Application was subsequently approved.

17. On or about March 30, 2004, PSI executed a document which purported to be an equipment lease for a “MATRIX 2003 (2 cards)”. The lease document, which was executed by NorVergence on or about April 8, 2004, stated that the monthly rental for the leased Matrix was \$774.70 plus applicable taxes, that the rental term was 60 months, and that “THIS RENTAL MAY NOT BE CANCELLED OR TERMINATED EARLY”. The terms and conditions printed on the back of the lease document included a provision which permitted NorVergence to assign the lease to a third party, which “will have the

same rights that we have, but not our obligations.” In addition, it stated that PSI agreed not to assert against the assignee any claims, defenses or set-offs it might have against NorVergence.

18. The terms and conditions on the back of the purported equipment lease also included (i) provisions that disclaimed all express and implied warranties and purported to place the sole risk of equipment failure or any other problem upon PSI, (ii) a provision that PSI’s duty to make rental payments would be “unconditional, despite equipment failure, damage, loss or any other problem”, (iii) and a provision that, “if the Equipment does not work as represented by the manufacturer or supplier, or that if the manufacturer or supplier or any other person fails to provide service or maintenance, or that if the Equipment is unsatisfactory for any other reason, you will make any such claim solely against the manufacturer or supplier or other person and will make no claim against us.”

19. The terms and conditions on the back of the purported equipment lease also included a provision that PSI understood “that any assignee is a separate and independent company from rentor/manufacturer and that neither we nor any other person is the assignee’s agent”, and also “that no representation, guarantee or warranty by the rentor is binding on any assignee, and no breach by rentor or any other person will excuse your obligations to any assignee.”

20. The terms and conditions on the back of the purported equipment lease also included a provision that if Article 2A of the Uniform Commercial Code were deemed to apply, the rental would be considered a finance lease thereunder. They also included a provision which purported to waive all rights and remedies under Article 2A.

21. The terms and conditions on the back of the purported equipment lease also

included a provision that purported to obligate PSI to insure the equipment against all risk of loss “in an amount at least equal to the replacement cost”.

22. On or about April 15, 2004, NorVergence assigned PSI’s Matrix lease to IFC. NorVergence and IFC had previously entered into a so-called Master Program Agreement, dated October 10, 2003, pursuant to which NorVergence assigned customer leases to IFC in exchange for a lump-sum payment that was discounted from the total amount due under the lease over its full 60-month term.

23. PSI was subsequently notified of the assignment and directed to make payments to IFC.

24. On or about May 12, 2004, PSI was sent a letter by the Customer Service Department of First Portland Corporation or FIRSTCORP, which is a division or wholly owned subsidiary of IFC. The letter stated that PSI would be invoiced \$26.31 per month for property insurance on the equipment, unless Plaintiff provided proof of independent insurance. The letter also stated that PSI could contact FIRSTCORP to confirm certain information about the insurance policy, including “insured equipment value of \$33,995”. PSI believes that this amount is what IFC paid NorVergence for the assignment of the lease.

25. NorVergence shipped the Matrix box to PSI and installed it, but it never provided the free, unlimited calling services promised.

26. On or about June 30, 2004, three leasing companies which also purchased equipment leases from NorVergence filed an involuntary Chapter 11 petition against NorVergence in the United States Bankruptcy Court for the District of New Jersey. Shortly thereafter, the case was converted to Chapter 7. NorVergence terminated the

employment of all employees and ceased business.

27. PSI made its first four rental payments to IFC, the aggregate amount of which was \$3706.34. This amount included the monthly rental (which had been increased to \$856.69 by NorVergence, purportedly to include applicable taxes for which PSI was obligated under the lease), the \$26.31 monthly charge for insurance, and late charges.

28. PSI failed to make the fifth payment, which was due on September 1, 2004. On or about September 15, 2004, IFC sent PSI a "Notice of Default and Acceleration", which demanded payment in full of the balance due under the lease, in the amount of \$45,801.01, by 5 PM on September 22, 2004. Notwithstanding this demand, PSI has paid nothing further to IFC.

29. NorVergence was, in fact, engaged in a massive fraud, in which it had the knowing cooperation and assistance of IFC and other leasing companies.

30. The Matrix products were not engineered by NorVergence and do not provide free unlimited calling by means of VOIP, or by any other means. Instead, the Matrix boxes were products purchased by NorVergence from a Huntsville, Alabama electronics manufacturing company known as Adtran, Inc. Their retail prices are typically a few hundred dollars. They do not contain any proprietary software or hardware or anything else of value added by NorVergence. Their intended uses, as designed and marketed by Adtran, include providing internet access through a T-1 line, and serving as a router for internet traffic on a local network.

31. Phone service and internet access were actually provided to customers by NorVergence, but not by the means advertised in connection with the Matrix product

line. Instead, these services were purchased by NorVergence from telecommunications carriers such as Qwest, T-Mobile and Sprint and resold to customers without disclosing their source to the customers. These resold telecommunications services were discontinued by NorVergence and the carriers after NorVergence's bankruptcy case was converted to Chapter 7, and PSI has had to obtain telecommunications services from other sources

32. NorVergence's operation was a sophisticated high-tech Ponzi scheme that worked as follows: NorVergence first obtained a customer's phone bills. It then set the rental rate on the Matrix box at a level that, when combined with all other costs quoted by NorVergence, purported to give the customer a 20% to 30% savings over its existing telephone and internet service; however, this rental bore no relation to the actual value of the Matrix box, which was, at most, a few percent of the amount due over the term of the lease. The customer, believing it was getting a great deal through the use of revolutionary technology, leased the Matrix. NorVergence then supplied the customer with ordinary telephone and internet service purchased by NorVergence from the carriers, without disclosing to the customer that the source of its telecommunications services was not the Matrix box. The carriers charged NorVergence for the phone service on the usual basis, by the minute used by each customer. NorVergence's rental rates were insufficient to cover these charges; hence NorVergence was reselling phone service below cost. However, NorVergence obtained its money up front from leasing companies such as IFC. Therefore, it could pay the carriers' bills, and transfer substantial funds to its principals, as long as it could generate a sufficiently high volume of new Matrix leases. Eventually, of course, like all Ponzi schemes, this one had to collapse when the income from the sale

of new leases could no longer keep pace with the continuously accumulating monthly charges by the carriers, and collapse it did.

33. The cooperation of IFC and the other leasing companies was essential to the success of the scheme. They provided NorVergence with the funding that enabled the scheme to operate. They did so knowing that they were thereby providing funding for a massive fraud.

34. IFC, in particular, knew the actual value of the Matrix boxes, or consciously avoided learning the actual value of the Matrix boxes. IFC knew, or consciously avoided knowing, that the rental rates for the Matrix boxes were ridiculously excessive in view of the actual value of the Matrix boxes. IFC knew that the rental rates for similar or identical Matrix products differed dramatically from one lease to another. IFC knew, or consciously avoided knowing, that the Matrix products did not have the capabilities touted by NorVergence to its customers. IFC knew the financial condition of NorVergence and knew, or consciously avoided knowing, that NorVergence was reselling, below cost, phone service purchased from carriers, and that NorVergence was unable to continue doing this indefinitely. IFC knew, or consciously avoided knowing, that the money it was paying NorVergence to purchase leases was the primary or sole means by which NorVergence could pay the carriers and continue operations which generated new leases. IFC recognized that NorVergence was incurring huge liabilities to customers and carriers that it would eventually be unable to pay, and IFC worked with NorVergence to design a rental agreement which IFC believed would insulate it from these liabilities and enable it to sue the customers successfully for the full amount of the lease payments. IFC aided and abetted NorVergence's fraud by sending a letter to PSI,

and similar letters to other customers, that informed PSI it would be charged for insurance on its Matrix box, on the basis of a purported value for the Matrix of \$33,995, whereas the actual value of PSI's Matrix was a few percent of that amount, or less.

35. IFC was, in fact, a full partner in the scheme because IFC shared, or intended to share, the profits of the scheme. In PSI's case, for example, IFC is believed to have paid NorVergence \$33,995 for assignment of PSI's lease. It has received payments from PSI in the amount of \$3706.34, and has demanded immediate payment of an additional \$45,801.01, for a total of \$49,507.35. If IFC were entitled to payment, its profit would be \$15,512.35. This represents 31.3% of the combined income to IFC and NorVergence, and a 45.6% return on IFC's investment. If IFC were to be paid in equal monthly amounts for 60 months, its annual rate of return would be approximately 16%, which would be excessive in the then-current low-rate environment if the obligation were really fully collateralized and IFC had an absolute right to payment.

36. The leases assigned to IFC by NorVergence were drafted to comply with the terms of a master agreement between IFC and NorVergence. One purpose of this agreement and the lease terms drafted pursuant to it was to attempt to give IFC rights to enforce the leases that NorVergence did not, and could not, have, because of the fraudulent nature of NorVergence's scheme.

37. After the collapse of NorVergence, the Attorney Generals of several states, including Florida and Illinois, as well as the Federal Trade Commission, commenced an investigation. The Attorney General of Florida subpoenaed documents from IFC, and requested IFC to desist from asserting claims against NorVergence customers. IFC sent its demand and notice of acceleration to PSI after receiving the Attorney General's

request. IFC purchased NorVergence customer leases from other leasing companies, notwithstanding the requests and subpoenas of the Attorney Generals of Florida, Illinois and other states. Recognizing that law enforcement authorities might take stronger action, IFC gave PSI and other customers unreasonably short periods of time to make payment of accelerated amounts.

38. The Matrix products marketed by NorVergence were counterfeit access devices as defined by 18 U.S.C. §1029, in that they were fictitious or sham devices that did not have the access capabilities touted by NorVergence.

39. NorVergence trafficked in counterfeit access devices by offering the Matrix boxes for lease to customers, entering into leases with customers, and providing Matrix boxes to customers pursuant to those leases. This trafficking in counterfeit access devices was a felonious act under 18 U.S.C. §1029. In particular, formation of each lease was a criminal act by NorVergence. As a result, each lease was an unenforceable, illegal contract, void *ab initio*.

40. Subsequent to the bankruptcy of NorVergence, on or about November 4, 2004, the Attorney General of Illinois brought suit against NorVergence in the Circuit Court of the Seventh Judicial Circuit, Sangamon County, Illinois, Docket # 2004-CH-655, alleging that the leases violated the Illinois Consumer Fraud and Deceptive Business Practices Act, 805 ILCS 505/1, *et seq.*. The Attorney General obtained an injunction and declaratory judgment against NorVergence in said suit, pursuant to an Order entered on or about May 6, 2005. Findings made by the Court included the following:

14. The NorVergence rental agreements for Matrix and Matrix Soho routers and firewalls and related equipment were part of a unified agreement under which NorVergence promised to provide telecommunications services in exchange for consumers' payments.

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

15. NorVergence engaged in a pattern or practice of deceptive and unfair practices directed at consumers, including Illinois consumers...

16. All Equipment Rental Agreements or other contracts procured between NorVergence and Illinois consumers or between finance companies and Illinois consumers as a result of a NorVergence solicitation directed to an Illinois consumer are the result of deceptive and unfair practices and fraud on the part of NorVergence...

On the basis of these findings, the Illinois Court held that, under Illinois law, the NorVergence leases were void *ab initio* and unenforceable.

41. At all relevant times, IFC was aware of the Attorney General's suit against NorVergence and knew the findings made by the Court.

42. Subsequent to the bankruptcy of NorVergence, the Federal Trade Commission (the "FTC") brought suit against NorVergence in the United States District Court for the District of New Jersey, Docket # 2:04-cv-05414-DRD-SDW. On or about June 29, 2005, the FTC obtained judgment against NorVergence, as modified by an order entered August 8, 2005, for the amount of \$181,721,914. Findings made by the Court included the following:

7. NorVergence's principal business since at least 2002, and continuing until shortly before its bankruptcy filing in July, 2004, has been reselling telecommunications services, purchased from common carriers or others, principally to consumers who were small businesses, non-profit organizations, churches, and municipalities. NorVergence marketed its services as integrated, long-term packages, including landline and cellular telephone service and Internet access.

8. NorVergence promised to provide to consumers heavily discounted telecommunications services for a long term, typically five years, in exchange for consumers' payments. Consumers signed a set of applications and agreements at the outset with a total price equal to the promised monthly payments over five years. Most of the total payments

were allocated to a rental agreement for a “Matrix” or “Matrix Soho” (or similar product), which were standard routers or firewalls that cost between \$200 and \$1,550. The total cost to the customer was \$7,000 to \$340,000, with an average cost of \$29,291. The price of the rental agreement had nothing to do with the cost of the Matrix, which itself was an incidental part of the promised services. The rental agreements on their face, however, purported to cover only the Matrix box.

9. The telecommunications services NorVergence promised to consumers have not been provided at least since August, 2004, and, in some cases, have never been provided. At the same time, various finance companies who took assignments from NorVergence of the majority of the rental agreements have insisted that consumers continue to pay on those agreements.

13. ... in connection with the sale and financing of telecommunications services and related products, ... NorVergence violated Section 5(a) of the FTC Act, 15 U.S.C. §45(a), by falsely representing, directly or by implication, that: (A) consumers’ payments on NorVergence’s rental agreement and associated service agreements would result in consumers receiving promised discounted telecommunications services for a long term; (B) NorVergence would treat the applications, forms, and rental agreement consumers signed as a unified agreement under which NorVergence would provide telecommunications services in exchange for consumers’ payments; and (C) the equipment listed in NorVergence’s rental agreement would create the promised substantial savings in consumers’ total cost of telecommunications services.

14. ... in connection with the sale and financing of telecommunications services and related products, ... NorVergence violated Section 5(a) of the FTC Act, 15 U.S.C. §45(a), by (1) representing, directly or by implication, that NorVergence would provide substantially discounted telecommunications services to consumers for a long term; and (2) failing to disclose the following facts that would have been material to consumers when they contracted with NorVergence: (A) that NorVergence did not have a long-term commitment from any service provider for the services it was promising to provide to consumers; (B) that the equipment covered by the rental agreement would be of little or no value to the consumer if NorVergence failed to provide the promised telecommunication services.

15. ... NorVergence provided others with the means and instrumentalities for the commission of deceptive and unfair acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. §45(a), by furnishing third-party finance companies with rental agreements from consumers that allowed finance companies to: (A) Misrepresent that consumers owe money on the rental agreements regardless of whether NorVergence provided the

promised telecommunications services; and (B) File collection suits against consumers in distant forums.

On the basis of these findings, the New Jersey District Court held that NorVergence's leases were void and unenforceable.

43. At all relevant times IFC was aware of the FTC's suit against NorVergence and knew the findings made by the Court.

44. Other Courts have held that NorVergence violated applicable law, and that the leases are illegal, void, and unenforceable. At all relevant times IFC was aware of these decisions and knew the findings made by these Courts.

45. IFC made no attempt to intervene in any of the proceedings against NorVergence which challenged the validity of the leases.

46. IFC has continued efforts to collect payments purportedly due under PSI's lease, and other leases assigned to IFC, even after IFC became aware that the legality of the leases was being challenged, and, furthermore, after IFC became aware that one or more Courts had made findings that the leases were illegal, void and unenforceable.

47. In the course of its collection efforts, IFC has knowingly made false or misleading representations to PSI and other lessees, including, but not limited to, the following:

- a. that the leases are valid and enforceable;
- b. that PSI and other lessees were obligated to pay for property insurance for the Matrix boxes; and
- c. that the equipment value of the Matrix boxes was an amount vastly greater than their actual value.

48. IFC's collection efforts have included demand letters, threats of suit and

actual suit. As a result, lessees, including PSI, have either paid amounts demanded by IFC, or incurred expenses to defend against IFC's claims.

49. PSI has been damaged by the conduct of NorVergence and IFC; in particular, PSI has been damaged by IFC's efforts to collect an unenforceable and void obligation. PSI's damages include \$3706.34 in payments to IFC, legal fees to respond to IFC's collection efforts, and \$18,463.80, which represents the benefit of its bargain with NorVergence, and is equal to the savings in telephone and internet access costs over the 60-month term of the lease, which PSI was promised and had a contractual right to receive by virtue of having given valid consideration in exchange therefor. IFC is liable for these damages, as more fully set forth in the Counts below.

CLASS ACTION ALLEGATIONS

50. This action is brought by PSI as a class action pursuant to 735 ILCS §5/2-801, *et seq.*, on behalf of itself and all others similarly situated. The class is defined as follows:

All persons and entities who signed, as lessee or lessee's guarantor, a lease of one or more so-called Matrix products or any other equipment from NorVergence for use in a facility located within the United States, and whose lease was acquired by IFC, either as a result of an assignment by NorVergence or as a result of a transfer to IFC by any other person or entity. Specifically included in this class are all lessees on any such leases acquired by IFC subsequent to the date this action is commenced. Specifically excluded from this class are any and all persons and entities who/which would be deemed insiders of IFC, NorVergence or any person or entity that acquired such NorVergence-customer leases, where the term "insider" has the same meaning as defined in 11 U.S.C. §101.

As used herein, the term "lease" includes purported guaranties given by any person or entity in the same document.

51. The precise number of class members is unknown and must be determined through discovery; however, PSI believes that there are approximately eight hundred class members, located in at least several different and geographically separated states, including New York, Florida and Texas. Therefore the class for whose benefit this action is brought is so numerous and scattered that joinder of all members is impracticable.

52. There are questions of law and fact common to the class. These include the following:

a. Whether IFC is subject to the claims and defenses class members may assert against NorVergence.

b. Whether NorVergence misrepresented the value, function and/or capabilities of the equipment leased to class members.

c. Whether NorVergence resold telephone service and/or internet access to class members below its cost of obtaining these services from telecommunications carriers.

d. Whether IFC knew, or consciously avoided knowing, or negligently failed to ascertain, that NorVergence was misrepresenting the value, function and/or capabilities of the leased equipment and/or that NorVergence was reselling telephone service and/or internet access to class members below cost.

e. Whether IFC knew, or consciously avoided knowing, or negligently failed to ascertain, that NorVergence depended upon funds advanced to it by IFC and other leasing companies for the continuing ability to perpetrate a fraudulent scheme.

f. Whether IFC and NorVergence collaborated to design a lease document intended to immunize IFC from claims by defrauded class members, to which

NorVergence was subject.

- g. Whether IFC and NorVergence shared the profits of a fraudulent scheme.
- h. Whether IFC was an undisclosed principal for which NorVergence was an agent.
- i. Whether IFC is estopped to deny that NorVergence was its agent.
- j. Whether the Matrix products leased by NorVergence were counterfeit access devices within the meaning of 18 U.S.C. §1029.
- k. Whether NorVergence and IFC trafficked in counterfeit access devices in violation of 18 U.S.C. §1029.
- l. Whether IFC conspired with NorVergence to traffic in counterfeit access devices in violation of 18 U.S.C. §1029.
- m. Whether IFC aided and abetted NorVergence to traffic in counterfeit access devices in violation of 18 U.S.C. §1029, for example, by misrepresenting the value of Matrix products in connection with the purchase of insurance for which IFC charged class members.
- n. Whether IFC is liable to class members for NorVergence's fraud, and, if so, the measure of damages.
- o. Whether IFC is liable for NorVergence's breach of its contracts with class members, and, if so, the measure of damages.
- p. Whether IFC owed class members a duty in tort to use reasonable care to prevent funds advanced by it from being used to perpetrate a fraudulent scheme.
- q. Whether IFC failed to use reasonable care to prevent funds advanced

by it from being used to perpetrate a fraudulent scheme.

- r. If IFC is liable to class members for negligence, the measure of damages.
- s. Whether IFC knowingly attempted to collect payment on leases it knew had been declared void and unenforceable by one or more courts of law.
- t. Whether IFC billed class members for inflated property insurance premiums that it knew were excessive in view of the actual value of the Matrix boxes.
- u. Whether IFC knowingly or negligently misrepresented the value of the Matrix boxes to class members.
- v. Whether IFC's deliberate, reckless or negligent conduct was the proximate cause of class members' damages.
- w. Whether class members are entitled to injunctive relief to restrain further collection efforts by IFC.

53. The claims of PSI and the claims of other class members derive from a common nucleus of operative fact and have a similar or identical basis in law. In particular, NorVergence obtained the leases of all class members by the same or substantially similar conduct, which included making the same or substantially similar fraudulent representations to all class members; providing the same or substantially similar documents and materials to all class members; leasing Matrix boxes, which were not capable of providing free, unlimited long-distance calling, to all class members; establishing rental amounts, which bore no relation to the actual value of the Matrix boxes, for all class members; and assigning the leases of all class members to IFC, which took the assignments, and advanced funds to NorVergence with knowledge or notice of

the fraudulent nature of NorVergence's activities. Furthermore, IFC engaged in the same or substantially similar conduct towards all class members in collecting, or attempting to collect, amounts purportedly due under the leases, including knowingly misrepresenting the validity of the leases, the value of the Matrix boxes, and the amount of the insurance premiums for appropriate casualty insurance. Therefore the claims of PSI are typical of the claims of all class members, and PSI will fairly and adequately protect the interests of the class.

54. Common questions of law and/or fact predominate over questions, if any, which affect only individual members, and a class action is superior to other methods for the fair and efficient adjudication of the controversy. In particular, the individual claims of class members are so small that it is unlikely that they will find it economically feasible to assert or defend their rights. Furthermore, class members are predominantly small businesses which lack the resources necessary to conduct litigation on an individual basis.

COUNT I

55. This Count states a claim for declaratory relief pursuant to 735 ILCS §5/2-701.

56. The allegations of Paragraphs 1 - 54 are incorporated herein.

57. IFC has accelerated the monthly lease payments of PSI and other class members and has demanded immediate payment in full of the entire amount thereof.

58. IFC has informed PSI and other class members that it is the assignee of a lease subject to Article 2A of the Uniform Commercial Code, and that under the

provisions of Article 2A, as well as the terms of the lease itself, claims and defenses that PSI and other class members have against NorVergence may not be asserted against IFC.

59. PSI's lease, and those of other class members, are not leases subject to Article 2A because they are disguised agreements to provide resold telephone service and internet access, and are not leases of goods. The assignment of PSI's lease, and the leases of other class members, to IFC was the transfer of an account, and is thereby subject to Article 9 of the Uniform Commercial Code, as enacted in Illinois. In the alternative, the leases are subject to Article 2A, and PSI and other class members may cancel the leases on account of NorVergence's fraud and breach of contract and recover damages in accordance with the provisions of Article 2A.

60. Notwithstanding any language in the leases to the contrary, IFC is not entitled to immunity from the claims and defenses of PSI and other class members against NorVergence because it took its assignments of the leases with knowledge of those claims and defenses. Furthermore, the claims and defenses of PSI and other class members against NorVergence include claims and defenses that may be asserted even against a good faith assignee for value and without knowledge thereof.

61. The lease terms are not enforceable by NorVergence or IFC against PSI and other class members because, although they purport to be equipment leases, they are actually agreements to provide resold telephone service and internet access, and were procured by fraud.

62. The lease terms are not enforceable by NorVergence or IFC against PSI and other class members because the leases are unconscionable, for reasons which include the amount of the monthly rental payment, because it bears no relation to the actual value of

the leased equipment and is grossly excessive in relation to the value of the leased equipment.

63. The lease terms are not enforceable by NorVergence or IFC against PSI and other class members because NorVergence breached its contract with PSI and other class members.

64. The lease terms are not enforceable by NorVergence or IFC against PSI and other class members because the leases were the instrumentalities by which a federal crime was perpetrated, specifically, trafficking in counterfeit access devices in violation of 18 U.S.C. §1029, and formation of each lease was an illegal act by NorVergence.

65. The lease terms are not enforceable by NorVergence or IFC against PSI and other class members because the leases are illegal agreements made in violation of the Illinois Consumer Fraud and Deceptive Business Practices Act and the Federal Trade Commission Act, and the lease terms constitute prohibited waivers of rights under the Illinois Consumer Fraud and Deceptive Business Practices Act.

66. Enforcement of the lease terms by NorVergence or IFC against PSI and other class members is barred by the doctrine of res judicata and/or collateral estoppel.

67. The lease terms are not enforceable by IFC because IFC has committed fraud, as described in Paragraph 47, independent of the wrongful conduct of NorVergence.

68. By virtue of the foregoing, PSI and other class members are entitled to declaratory judgment that their leases are void *ab initio*, that IFC may not enforce their purported obligations under the leases, that they have no liability whatsoever to IFC, that they are entitled to cancel the leases under applicable provisions of the Uniform

Commercial Code, including 810 ILCS §§5/2A-505 and 5/2A-508, and that they are entitled to recover all payments made to IFC, together with other damages, including incidental and consequential damages, interest and costs.

WHEREFORE, PSI prays that this Court grant, on behalf of all class members,

a. Declaratory judgment against IFC that their leases and/or guaranties are void *ab initio*, that IFC may not enforce their purported obligations under the leases and/or guaranties, that they have no liability whatsoever to IFC, that they are entitled to cancel the leases under applicable provisions of the Uniform Commercial Code, including 810 ILCS §§5/2A-505 and 5/2A-508, and that they are entitled to recover all payments made to IFC, together with other damages, including incidental and consequential damages, interest and costs: and

b. Such other and further relief as may be necessary and just.

COUNT II

69. This Count states a claim for compensatory damages, punitive damages, interest, costs and reasonable attorneys' fees under the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS §505/1, *et seq.*

70. The allegations of Paragraphs 1 - 54 are incorporated herein.

71. The Matrix products marketed by NorVergence were counterfeit access devices as defined by 18 U.S.C. §1029.

72. The Matrix products marketed by Norvergence were leased to customers illegally, in violation of the Illinois Consumer Fraud and Deceptive Business Practices Act and the Federal Trade Commission Act.

73. The leases for Matrix products assigned to IFC are illegal contracts that are void *ab initio* and unenforceable.

74. At all relevant times IFC knew, or reasonably should have known, that the leases assigned to it were based on illegal transactions and were void and unenforceable. In particular, IFC was aware of findings to this effect made by the Illinois Circuit Court for Sangamon County and the United States District Court for the District of New Jersey.

75. IFC has attempted to persuade or compel PSI and other class members to make payments on the unenforceable leases, and has obtained payments from PSI and other class members, notwithstanding IFC's knowledge of the void nature of the leases. In the course of its collection efforts, IFC has falsely represented, expressly or impliedly, with full knowledge of falsity, that the leases are valid and enforceable.

76. IFC's attempts to collect obligations it knew were unenforceable, and its representations that the obligations were valid and enforceable, were unfair and deceptive acts and practices in violation of the Illinois Consumer Fraud and Deceptive Business Practices Act.

77. IFC has, from time to time, made written demands upon PSI and other class members for payment of property insurance premiums for the Matrix boxes. These premiums have been based on an insured value that has no relation whatsoever to the actual value of the Matrix boxes, and IFC, at the time it made said demands, knew, or reasonably should have known, that the insured value had no relation whatsoever to the actual value of the Matrix boxes. Nevertheless, IFC falsely represented to class members that the insurable value of the Matrix boxes was the amount stated in its written communications. These representations and demands for payment of excessive insurance

premiums were also unfair and deceptive acts and practices in violation of the Illinois Consumer Fraud and Deceptive Business Practices Act.

78. IFC further engaged in unfair or deceptive acts and practices in violation of the Illinois Consumer Fraud and Deceptive Business Practices Act by knowingly or negligently financing NorVergence's fraudulent scheme. Specifically, IFC's agreement with NorVergence to accept assignment of leases which it knew, or reasonably should have known, were illegal and unenforceable, and its acceptance of each such assignment pursuant to that agreement, all with the intent to collect money from class members purportedly payable under those leases, were additional unfair or deceptive acts or practices in violation of the Illinois Consumer Fraud and Deceptive Business Practices Act.

79. The assignment of the leases was the primary or sole mechanism by which NorVergence obtained the money necessary to operate its scheme, and was also the primary or sole mechanism by which IFC sought to insulate itself from liability for participating in the scheme, and to obtain greater rights to enforce the leases than held by NorVergence; without the participation of IFC and the other leasing companies, NorVergence simply could not have conducted business. IFC intended to use the terms and form of the leases to insulate itself from liability, and provide itself with rights that it knew, or reasonably should have known, that NorVergence could not have; IFC intended to profit from conduct by NorVergence that it knew, or reasonably should have known, was fraudulent and illegal. Furthermore, PSI and the other class members were the intended victims of the scheme, and their losses were the foreseeable and intended losses of amounts which the participants in the scheme, including IFC, sought to appropriate for

themselves and did appropriate for themselves.

80. By virtue of the foregoing, PSI and other class members are entitled to judgment for the amount of their damages proven at trial, punitive damages, interest and costs, plus reasonable attorneys' fees.

WHEREFORE, PSI prays that this Court grant, on behalf of all class members, judgment against IFC for the amount of their damages proven at trial, punitive damages, interest and costs, plus reasonable attorneys' fees, and it additionally prays that this Court grant it such other and further relief as may be necessary and just.

COUNT III

81. This Count states a claim for common law fraud and/or rescission or cancellation of a lease.

82. The allegations of Paragraphs 1 - 54 are incorporated herein.

83. NorVergence made false representations to PSI and other class members concerning the function, capabilities and price of its Matrix products. IFC participated and conspired with and/or aided and abetted NorVergence to do this, and, furthermore, IFC itself made additional false representations concerning the price of the Matrix products to PSI and other class members, all as set forth above.

84. NorVergence and IFC both acted knowing that these representations were false, with the intent that PSI and other class members be induced to enter into leases unconditionally and irrevocably obligating them to pay money to IFC.

85. PSI and other class members did enter into such leases, in reasonable reliance on the representations of NorVergence and IFC. These leases were assigned by

NorVergence to IFC.

86. By virtue of their reliance on the false representations, PSI and other class members have suffered damages, including the damages described in Paragraph 49.

87. By virtue of the foregoing, pursuant to 810 ILCS §§5/2A-508 and 5/2A-505 and other applicable law, PSI and other class members are entitled to cancel or rescind their leases and recover all payments made to IFC, together with other damages, including incidental and consequential damages, interest and costs.

WHEREFORE, PSI prays that this Court grant, on behalf of all class members, judgment against IFC for rescission of their leases and/or the amount of their damages proven at trial, punitive damages, interest and costs, and it additionally prays that this Court grant it such other and further relief as may be necessary and just.

COUNT IV

88. This Count states a claim for cancellation of a lease pursuant to 810 ILCS §§5/2A-508 and 5/2A-505 for breach of lessor's obligations thereunder.

89. The allegations of Paragraphs 1 - 54 are incorporated herein.

90. NorVergence breached its contract with PSI and other class members by failing to provide them with a product that permitted them to make unlimited free telephone calls for 60 months through the use of VOIP or by any other means.

91. NorVergence further breached its contract with PSI and other class members by failing to provide them with the promised amount of cost savings for telephone service and internet access.

92. IFC was responsible for performing NorVergence's contractual obligations to

PSI and other class members, and is liable for NorVergence's breach to the same extent as NorVergence, because NorVergence was the agent, partner, and/or joint venturer of IFC. Furthermore, claims and defenses of class members may be asserted against IFC pursuant to Article 9 and/or Article 2A of the Illinois Uniform Commercial Code.

93. By virtue of the foregoing, pursuant to 810 ILCS §§5/2A-508 and 5/2A-505 PSI and other class members are entitled to cancel their leases and recover all payments made to IFC, together with other damages, including incidental and consequential damages, interest and costs.

WHEREFORE, PSI prays that this Court grant, on behalf of all class members, judgment against IFC for cancellation of their leases and the amount of their damages proven at trial, interest and costs, and it additionally prays that this Court grant it such other and further relief as may be necessary and just.

COUNT V

94. This Count states a claim for negligence.

95. The allegations of Paragraphs 1 - 54 are incorporated herein.

96. IFC owed PSI and other class members a duty in tort to use reasonable care to avoid purchasing fraudulent leases from NorVergence in such a manner as to provide the financing that enabled NorVergence to operate an ongoing scam.

97. IFC failed to use such reasonable care. IFC had actual knowledge or notice of NorVergence's fraud. In particular, IFC knew or reasonably should have known that the Matrix products were incapable of providing unlimited free telephone calling through the use of VOIP or by any other means; that the Matrix products were simply connection

or routing devices purchased from Adtran by NorVergence, and had an approximate retail price of a few hundred dollars; that the monthly rental rates for the Matrix products were unrelated to their value and were grossly excessive; that the leases purchased by IFC had widely varying monthly rental rates for similar or identical products; that NorVergence was actually supplying phone service and internet access to its customers by reselling service/access purchased from telecommunications carriers; that NorVergence was reselling such service below cost; that NorVergence was in precarious financial condition; and that NorVergence's activities were in the nature of a Ponzi scheme that must eventually collapse.

98. PSI and other class members have been damaged by IFC's negligence, which was the actual and proximate cause of their damages.

99. The damages suffered by PSI and other class members include the damages described in Paragraph 49.

100. By virtue of the foregoing, PSI and other class members are entitled to judgment for the amount of their damages proven at trial, plus interest and costs.

WHEREFORE, PSI prays that this Court grant, on behalf of all class members, judgment against IFC for cancellation of their leases and the amount of their damages proven at trial, interest and costs, and it additionally prays that this Court grant it such other and further relief as may be necessary and just.

COUNT VI

101. This Count states a claim for injunctive and other equitable relief.

102. The allegations of Paragraphs 1 - 54 are incorporated herein.

103. IFC is continuing to collect monthly payments on the NorVergence leases it holds. IFC is continuing to demand payment from class members which have stopped paying their monthly payments, and has taken steps to compel payment, including the sending of demand letters and notices of acceleration, and the commencement of suit in forums distant from the location of the class members sued.

104. IFC is engaging in the foregoing collection efforts notwithstanding the fact that it has been informed of the invalidity of the leases by the Attorney Generals of several states, including Florida and Illinois, who have subpoenaed documents from IFC and requested it to cease collection attempts. Furthermore, IFC is engaging in the foregoing collection efforts notwithstanding the fact that it is aware that an Illinois court, as well as other state and federal courts, have entered judgments declaring the leases void *ab initio*.

105. PSI and other class members will suffer irreparable injury if IFC's collection efforts continue. In particular, PSI and other class members are small businesses which lack the resources to defend lawsuits for relatively small amounts of money in distant forums, and there is a high risk that default judgments will be entered against them and/or that they will continue to make payments or agree to disadvantageous settlements which waive their rights. PSI and other class members do not have an adequate remedy at law. In addition, the public interest requires that IFC be barred from enforcing agreements which it knows, or reasonably should know, are illegal and void.

106. This Court has equitable jurisdiction to restrain IFC's collection efforts. This Court may also restrain IFC from doing any act by which it would benefit from any

judgments or agreements it has obtained as a result of its collection efforts.

107. By virtue of the foregoing, PSI and other class members are entitled to a preliminary and permanent injunction which (i) restrains IFC from taking any action against any class member to collect any amount purportedly owed it pursuant to a NorVergence lease assigned to IFC; (ii) restrains IFC from enforcing any judgment obtained against any class member for any debt purportedly owed IFC pursuant to a NorVergence lease assigned to IFC; and (iii) restrains IFC from collecting or attempting to collect any money purportedly owed IFC by any class member pursuant to any settlement agreement between IFC and that class member purporting to resolve the class member's liability to IFC arising out of any lease assigned to IFC by NorVergence.

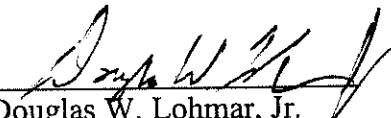
108. PSI and other class members are also entitled to a determination by this Court that IFC is equitably estopped or otherwise barred from pleading res judicata, collateral estoppel, accord and satisfaction, or any other affirmative defense in this action by virtue of any such judgment against or settlement agreement with any class member.

WHEREFORE , PSI, on behalf of itself and other class members similarly situated, prays that this Court preliminarily and permanently enjoin IFC from (i) taking any action against any class member to collect any amount purportedly owed it pursuant to a NorVergence lease assigned to IFC; (ii) from enforcing any judgment obtained against any class member for any debt purportedly owed IFC pursuant to a NorVergence lease assigned to IFC; and (iii) from collecting or attempting to collect any money purportedly owed IFC by any class member pursuant to any settlement agreement between IFC and that class member purporting to resolve the class member's liability to IFC arising out of any lease assigned to IFC by NorVergence., and that it award costs,

interest and reasonable attorneys' fees; grant such other and further relief as may be necessary and just.

DATED: July 3, 2006

PURE SOLUTIONS, INC.
By its Attorney



Douglas W. Lohmar, Jr.
Firm I.D. No. 38250
Roberti & Lohmar
111 West Washington St., Suite 823
Chicago, Illinois 60602
(312) 977-9662 (phone)
(312) 553-0122 (fax)