

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF COLORADO**

Civil Action No. 1:22-cv-00550-PAB

ASCENTIUM CAPITAL LLC,

Plaintiff,

v.

PREMIERE COPIER, INC., et al.,

Defendants.

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**DEFENDANTS' COUNTERCLAIMS, ANSWER, AND AFFIRMATIVE DEFENSES**

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Defendants Premiere Copier, Inc., Mark Klenin, and Tod North, individually and in his capacity as Trustee of the Tod R. North Trust (collectively, the “Premiere Parties”), by and through its undersigned counsel MOYE WHITE LLP, hereby submits its Counterclaims, Answer, and Affirmative Defenses to the Complaint (the “Complaint”) filed by Ascentium Capital LLC (“Ascentium”). The Premiere Parties’ Answer and Affirmative Defenses are subject to their Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b) (the “Motion”), and they do not waive any rights or defenses asserted in the Motion whatsoever. The Premiere Parties file these Counterclaims, Answer, and Affirmative Defenses subsequent to their Motion to timely assert their Counterclaims and thus do not waive any defense or argument asserted in their Motion.

**COUNTERCLAIMS**

Defendant Premiere Copier, Inc. (“Premiere”) submits its counterclaims against Ascentium Capital LLC as follows:

## **PRELIMINARY STATEMENT**

Ascentium actively participated and had full knowledge of the approximately \$5 million dollar portfolio it funded for the new and used copiers Premiere sold to its borrowers. To fund this portfolio in a manner that was acceptable to Ascentium, David Carson, Vice President of Sales for Ascentium, told Premiere what price to list on the invoice for the copiers and told Premiere to list all copiers as “new” moving forward. Because certain borrowers have now defaulted on these loans, Ascentium suddenly wants to sue the Premiere Parties for a “fraudulent scheme” that it was part of all along. Ascentium feigning victimhood is a ruse to attempt to recover its loans to third parties from the Premiere Parties. As part of its plans to execute on its scheme, Ascentium has tortiously interfered with Premiere’s business relations and breached Ascentium’s duty of good faith and fair dealing. Accordingly, Premiere is bringing these counterclaims to recover the damages Ascentium caused them, including without limitation, the losses incurred to date and expected future losses from the fallout of Ascentium’s tortious and wrongful conduct.

## **PARTIES**

1. Upon information and belief, Ascentium is a Delaware limited liability company with its primary place of business in Texas.
2. Premiere Copier, Inc. is a Colorado corporation with its principal place of business at 7442 S Tucson Way #170, Centennial, Colorado 80112.

## **JURISDICTION AND VENUE**

3. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332(a)(1).

4. The amount in controversy in this action exceeds \$75,000.00, exclusive of interest, fees, and costs.

5. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1332.

6. Venue is proper in this Court pursuant to 28 U.S.C. § 1391, because a substantial part of the events giving rise to Ascentium's claims have occurred in this judicial district.

### **GENERAL ALLEGATIONS**

7. Ascentium is a commercial lender that provides equipment and technology financial solutions to manufacturers, distributors, resellers, and franchise organizations as well as small, mid-size, and Fortune 500 companies. Ascentium, as a lender, makes its money and profits off of providing loans.

8. In November of 2019, Premiere and Ascentium explored establishing a vendor relationship, whereby Ascentium would provide loans to customers who purchased commercial-grade copier machines and related equipment from Premiere. Essentially, Premiere would present potential borrowers to Ascentium, who would make money off providing loans to the borrowers. In turn, Premiere would sell its copier machines, equipment, and any associated fee.

9. Premiere has other similar vendor relationships with other organizations like Xerox, TimePayment Corporation, Balboa Bank, and Pitney Bowes Financial.

10. On November 20, 2019, Premiere completed and executed that certain Vendor Finance Program Profile and Funding Instructions (the "Vendor Contract"). Ex. 1 to Ascentium's Complaint. Ascentium accepted the Vendor Contract and approved Premiere as a new vendor.

11. The Vendor Contract is a valid contract and established a contractual relationship between Ascentium and Premiere.

12. In the Vendor Contract, Premiere states that the price range of the copiers was between \$6,000.00 and \$40,000.00, with the average transaction size between \$18,000.00 and \$20,000.00. Premiere also stated that the copiers would be both “New” and “Used.” Premiere’s obligations under the Vendor Contract are set forth as follows:

If funds to which Payee [Premiere] is not entitled are deposited into Payee’s account, Payee agrees to promptly remit any such funds to, or as directed by Ascentium Capital LLC. The Payee will give at least thirty (30) days advance written notice to Ascentium Capital LLC regarding any changes in its depository financial institution or other instructions. Payee agrees that a facsimile or other copy of this document, as executed, shall be deemed the equivalent of the originally executed copy for all purposes.

13. The Vendor Contract imposes no other obligations on Premiere.

14. In furtherance of the Vendor Contract, Premiere would present a Borrower to Ascentium to consider for a loan to purchase or lease new or used copier machines and related equipment.

15. In connection with these loans, Premiere would provide Ascentium invoices relating to the sale of copiers to buyers.

16. Ascentium would contract directly with the Borrowers on the loan transaction to purchase the copier machine, related equipment, and working capital, if needed. It was Ascentium’s choice whether to proceed with providing a loan to any Borrower that Premiere presented.

17. If Ascentium approved the Borrower that Premiere presented, Ascentium and the Borrower would execute and complete a financing agreement whereby the only signatories were Ascentium and the Borrower (the “Financing Agreement”).

18. Neither Premiere nor the Premiere Parties were parties, signatories, or otherwise obligated to the Financing Agreement between Ascentium and the Borrowers.

19. Because Ascentium made these loans in connection with the purchase of equipment, Ascentium would first disburse loan proceeds to Premiere to pay for the copiers and equipment, who would, in turn, distribute funds to the Borrowers. Premiere retains a portion of the money from Ascentium to pay for copiers, equipment, and any associated fees and then remits the remainder of the money to the Borrowers.

20. Premiere is not a guarantor on any loans provided by Ascentium or any Financing Agreements between Ascentium and its Borrowers.

21. Should any Borrower be in default on the loan Ascentium provided, Ascentium has rights of a lender against the Borrower based on any of the loan documents, the Financing Agreement, and applicable law.

22. Throughout Ascentium’s and Premiere’s contractual vendor relationship, David Carson, Vice President of Sales for Ascentium, primarily coordinated the loans for the purchase of the copiers and often dictated to Premiere what Ascentium required on the various invoices, including the purchase price and that the copiers be listed as “new.”

23. On or around January 2020, Carson informed Premiere that he approved funding for one customer for \$30,000 without ever having received an invoice for the purchase of a copier

or knowing how much that copier would cost. Carson would often obtain approval for funding and then come back to Premiere for invoices to accomplish a “deal.”

24. On or around July 16, 2020, John Johnson, a finance manager for Ascentium, solicited Premiere and North for working capital cash loans as the “largest private equipment finance company.”

25. On or around August 5, 2020, Carson asks North where the \$7,000 “rebate” check was for one of the borrowers. Ascentium, through Carson, directed Premiere as to what was required on invoices and how to distribute the funds, and assisted the borrowers with any issue related to funding.

26. In connection with the 106 contracts between Ascentium and the Borrowers, Ascentium funded an aggregate of \$5,356,752.02 to the Borrowers through Premiere.

27. However, when some Borrowers began defaulting on these loans, Ascentium terminated the Vendor Contract with Premiere in August of 2021.

28. Shortly thereafter, Premiere received a demand from Ascentium for \$3.7 million to cover the defaulting loans and blaming Premiere for the defaults, presumably as the vendor. Without having any basis, Ascentium was demanding the Premiere Parties act as guarantor for all the loans Ascentium funded related to the copiers.

29. Then, when the Parties refused to step into the shoes of the Borrowers and cover all the defaulting loans, Ascentium sued the Premiere Parties in this action.

30. Within 24 hours of filing suit, Xerox terminated its relationship with Premiere. Premiere had an existing contractual relationship with Xerox worth approximately \$1 million.

31. Within the next month after Ascentium filed this lawsuit, Premiere lost existing and long-standing contractual relationships with TimePayment Corporation, Balboa Bank, and Pitney Bowes Financial worth hundreds of thousands of dollars.

32. The Premiere Parties later discovered that Ascentium told Artist First, one of Premiere's customers, to stay away from Premiere Copier because Premiere was committing fraud, which was false.

33. By making false allegations of fraud, informing other entities that Premiere's business conduct is wrongful and by filing this lawsuit, Ascentium has purposely and tortiously interfered with Premiere's business relationships.

34. Upon information and belief, Ascentium continues to make such false statements, stating the Premiere's business conduct is wrongful, and the damages caused by such statements are continuous and ongoing.

35. As a result of Ascentium's tortious conduct, Premiere has lost thousands of dollars and has suffered significant economic harm to its business.

**COUNT I**  
**TORTIOUS INTERFERENCE WITH A BUSINESS RELATIONSHIP**

36. Premiere incorporates its responses to the preceding paragraphs of the Complaint as if fully set forth herein.

37. Ascentium intentionally and tortiously interfered with the Premiere's current contractual relationships with Xerox, TimePayment Corporation, Balboa Bank, and Pitney Bowes Financial by slandering Premiere and the Premiere Parties, filing a lawsuit alleging baseless claims with the intent to ruin and destroy Premiere's business, and then informing Premiere's contractual

relationships of its allegations as though not disputed so as to intentionally cause these relationships to terminate.

38. Xerox, TimePayment Corporation, Balboa Bank, and Pitney Bowes Financial are third parties that are being induced not to enter into or continue relations with Premiere by Ascentium by Ascentium's slanderous comments and lawsuit.

39. Ascentium was aware of the Premiere's business relationship Xerox, TimePayment Corporation, Balboa Bank, and Pitney Bowes Financial.

40. Accordingly, Ascentium is preventing Premiere from being able to enter into contract negotiations with Xerox, TimePayment Corporation, Balboa Bank, and Pitney Bowes Financial by interfering with the Premiere's business relations.

41. As a direct and proximate result of Ascentium's wrongful actions, this interference has both irreparably harmed Premiere and also caused significant monetary damages resulting from the loss of future sales, customers, and profits.

**COUNT II**  
**BREACH OF GOOD FAITH AND FAIR DEALING**

42. Premiere incorporates its responses to the preceding paragraphs of the Complaint as if fully set forth herein.

43. Premiere and Ascentium contracted, pursuant to the Vendor Contract, for Premiere Copier to present potential borrowers to Ascentium for loans.

44. The Vendor Contract contains an implied covenant of good faith and fair dealing.

45. Ascentium breached its duty of good faith and fair dealing by acting contrary to the agreed common purpose and the parties' reasonable expectations regarding the contract, particularly when it abruptly terminated the Vendor Contract and sought payment of the entire

loan portfolio from Premiere and the Premiere Parties as if they were guarantors, which they were not.

46. Ascentium further breached its duty of good faith and fair dealing by denying and ignoring its own participation in the loans by its authorized representative David Carson whose actions continually affirmed and re-affirmed that Premiere was acting properly under its Vendor Contract with Ascentium.

47. As a direct and proximate result of Ascentium's breach of its duty of good faith and fair dealing, Premiere has suffered damages in an amount to be proven at trial.

WHEREFORE, Defendant Premiere Copier, Inc. respectfully request that the Court award it damages on its tortious interference with business relations and defamation claims; costs, expenses, attorneys' fees, and interest at the statutory rate; and for any other relief the Court finds equitable, just, and proper.

### **ANSWER**

### **PRELIMINARY STATEMENT**

The Premiere Parties generally deny each and every allegation contained in the Preliminary Statement to the extent not specifically admitted in the numerated paragraphs below. The Premiere Parties specifically deny that Ascentium is a victim of a fraudulent scheme. The Premiere Parties further deny that they submitted any false or misleading information to Ascentium, but instead abided by Ascentium's instructions pursuant to the Vendor Contract, as more fully explained in the Motion, which is fully incorporated herein.

### **PARTIES**

#### **A. Ascentium Capital LLC ("Plaintiff")**

1. The Premiere Parties are without sufficient knowledge and information to form a belief as to the truth of the allegations set forth in Paragraph 1 of the Complaint, and therefore, denies the same.

2. The Premiere Parties are without sufficient knowledge and information to form a belief as to the truth of the allegations set forth in Paragraph 2 of the Complaint, and therefore, denies the same.

3. The Premiere Parties are without sufficient knowledge and information to form a belief as to the truth of the allegations set forth in Paragraph 3 of the Complaint, and therefore, denies the same.

4. The Premiere Parties are without sufficient knowledge and information to form a belief as to the truth of the allegations set forth in Paragraph 4 of the Complaint, and therefore, denies the same.

5. The Premiere Parties are without sufficient knowledge and information to form a belief as to the truth of the allegations set forth in Paragraph 5 of the Complaint, and therefore, denies the same.

**B. Premiere Copier, Inc. (“Defendant”)**

6. The Premiere Parties admit the allegations set forth in Paragraph 6 of the Complaint.

7. The Premiere Parties admit it is a citizen of the State of Colorado.

**C. Mark D. Klenin (“Co-Defendant”)**

8. The Premiere Parties admit the allegations set forth in Paragraph 8 of the Complaint.

9. The Premiere Parties admit the allegations set forth in Paragraph 9 of the Complaint.

10. The Premiere Parties admit the allegations set forth in Paragraph 10 of the Complaint.

11. The Premiere Parties admit Klenin is a citizen of the State of Colorado.

**D. Tod R. North (“Co-Defendant”)**

12. The Premiere Parties admit the allegations set forth in Paragraph 11 of the Complaint.

13. The Premiere Parties admit that Ascentium sued North in his individual capacity and in his capacity as a Trustee of the Tod R. North Trust and is a defendant in this lawsuit in both capacities. However, the Premiere Parties filed the Motion to be dismissed from this lawsuit.

14. The Premiere Parties admit the allegations set forth in Paragraph 14 of the Complaint.

15. The Premiere Parties admit the allegations set forth in Paragraph 15 of the Complaint.

16. The Premiere Parties admit the allegations set forth in Paragraph 16 of the Complaint.

17. The Premiere Parties admit that North is citizen of the State of Colorado, both individually and in his capacity as trustee of the Trust.

## **JURISDICTION AND VENUE**

18. The allegations set forth in Paragraph 18 of the Complaint state a legal conclusion to which no response is required. The Premiere Parties deny any remaining allegations set forth in Paragraph 18 of the Complaint.

19. The allegations set forth in Paragraph 19 of the Complaint state a legal conclusion to which no response is required. The Premiere Parties deny any remaining allegations set forth in Paragraph 19 of the Complaint.

20. The allegations set forth in Paragraph 20 of the Complaint state a legal conclusion to which no response is required. The Premiere Parties deny any remaining allegations set forth in Paragraph 20 of the Complaint.

21. The allegations set forth in Paragraph 21 of the Complaint state a legal conclusion to which no response is required. The Premiere Parties deny any remaining allegations set forth in Paragraph 21 of the Complaint.

## **BACKGROUND FACTS**

### **A. Ascentium's Business Model**

22. The Premiere Parties are without sufficient knowledge and information to form a belief as to the truth of the allegations set forth in Paragraph 22 of the Complaint, and therefore, denies the same.

23. The Premiere Parties are without sufficient knowledge and information to form a belief as to the truth of the allegations set forth in Paragraph 23 of the Complaint, and therefore, denies the same.

24. The Premiere Parties are without sufficient knowledge and information to form a belief as to the truth of the allegations set forth in Paragraph 24 of the Complaint, and therefore, denies the same.

25. The Premiere Parties are without sufficient knowledge and information to form a belief as to the truth of the allegations set forth in Paragraph 25 of the Complaint, and therefore, denies the same.

26. The Premiere Parties are without sufficient knowledge and information to form a belief as to the truth of the allegations set forth in Paragraph 26 of the Complaint, and therefore, denies the same.

27. The Premiere Parties are without sufficient knowledge and information to form a belief as to the truth of the allegations set forth in Paragraph 27 of the Complaint, and therefore, denies the same.

28. The Premiere Parties are without sufficient knowledge and information to form a belief as to the truth of the allegations set forth in Paragraph 28 of the Complaint, and therefore, denies the same.

29. The Premiere Parties are without sufficient knowledge and information to form a belief as to the truth of the allegations set forth in Paragraph 29 of the Complaint, and therefore, denies the same.

**B. Origination of the Parties' Business Relationship**

30. The Premiere Parties admit the allegations set forth in Paragraph 30 of the Complaint.

31. The Premiere Parties admit the allegations set forth in Paragraph 31 of the

Complaint.

32. The Premiere Parties admit the allegations set forth in Paragraph 32 of the Complaint.

33. The Premiere Parties admit the allegations set forth in Paragraph 33 of the Complaint.

34. The Premiere Parties admit the allegations set forth in Paragraph 34 of the Complaint.

35. The Premiere Parties admit the allegations set forth in Paragraph 35 of the Complaint.

36. The Premiere Parties admit that it had discussions with Ascentium about establishing a vendor relationship in or around November 2019. The Premiere Parties admit that its discussions with Ascentium involved provided loans to its customers to purchase copier machines and related equipment. The Premiere Parties deny the remaining allegations set forth in Paragraph 36 of the Complaint.

37. The Premiere Parties admit the allegations set forth in Paragraph 37 of the Complaint.

38. The Premiere Parties admit the allegations set forth in Paragraph 38 of the Complaint.

39. The Premiere Parties admit the allegations set forth in Paragraph 39 of the Complaint. The Premiere Parties affirmatively assert that the Vendor Profile constituted a contract between it and Ascentium as set forth more fully in its Motion, which is incorporated herein.

40. The Premiere Parties admit that Ascentium approved Premiere Copier, Inc. as a vendor so its customers would receive loans from Ascentium. The Premiere Parties deny the remaining allegations set forth in Paragraph 40 of the Complaint.

41. The Premiere Parties admits they sells Kyocera copies, but are without sufficient knowledge and information to form a belief as to the truth of the allegations set forth in Paragraph 41 of the Complaint, and therefore, denies the same.

42. The Premiere Parties are without sufficient knowledge and information to form a belief as to the truth of the allegations set forth in Paragraph 42 of the Complaint, and therefore, denies the same.

43. The allegations set forth in Paragraph 43 require no such response. To the extent a response is required, the Premiere Parties the allegations set forth in Paragraph 43 of the Complaint.

44. The Premiere Parties admit the allegations set forth in Paragraph 44 of the Complaint.

45. The Premiere Parties deny the allegations set forth in Paragraph 45 of the Complaint.

46. The Premiere Parties deny the allegations set forth in Paragraph 46 of the Complaint.

47. The Premiere Parties are without sufficient knowledge and information to form a belief as to the truth of the allegations set forth in Paragraph 47 of the Complaint, and therefore, denies the same.

48. The Premiere Parties are without sufficient knowledge and information to form a belief as to the truth of the allegations set forth in Paragraph 48 of the Complaint, and therefore, denies the same.

49. The Premiere Parties deny the allegations set forth in Paragraph 49 of the Complaint.

50. The Premiere Parties deny the allegations set forth in Paragraph 50, including all subparts, of the Complaint.

51. The Premiere Parties admit that Ascentium terminated Premiere Copier, Inc. as a vendor. The Premiere Parties deny the remainder of the allegations set forth in Paragraph 51 of the Complaint.

52. The Premiere Parties admit that they engaged in conversations with Ascentium before Ascentium filed this lawsuit, but the Premiere Parties deny the remaining allegations set forth in the Paragraph 52 of the Complaint.

53. The Premiere Parties deny the allegations set forth in Paragraph 53 of the Complaint.

54. The Premiere Parties are without sufficient knowledge and information to form a belief as to the truth of the allegations set forth in Paragraph 54 of the Complaint, and therefore, denies the same.

**COUNT 1**  
**FRAUD- FALSE REPRESENTATION**

55. The Premiere Parties incorporate their responses to the preceding paragraphs of the Complaint as if fully set forth herein.

56. The Premiere Parties admit that they are not loan brokers and that its customers purchased from Premiere Copier, Inc. copiers and copier equipment. The Premiere Parties deny the remaining allegations contained in Paragraph 56 of the Complaint, including all subparts.

57. The Premiere Parties deny the allegations set forth in Paragraph 57 of the Complaint.

58. The Premiere Parties deny the allegations set forth in Paragraph 58 of the Complaint.

59. The Premiere Parties deny the allegations set forth in Paragraph 59 of the Complaint.

60. The Premiere Parties deny the allegations set forth in Paragraph 60 of the Complaint.

61. The Premiere Parties deny the allegations set forth in Paragraph 61 of the Complaint.

62. The Premiere Parties deny the allegations set forth in Paragraph 62 of the Complaint.

63. The Premiere Parties deny the allegations set forth in Paragraph 63 of the Complaint.

64. The Premiere Parties deny the allegations set forth in Paragraph 64 of the Complaint.

65. The Premiere Parties deny the allegations set forth in Paragraph 65 of the Complaint, including all subparts.

66. The Premiere Parties deny the allegations set forth in Paragraph 66 of the Complaint.

67. The Premiere Parties deny the allegations set forth in Paragraph 67 of the Complaint.

**COUNT 2**  
**FRAUD-CONCEALEMENT**

68. The Premiere Parties incorporate their responses to the preceding paragraphs of the Complaint as if fully set forth herein.

69. The Premiere Parties deny the allegations set forth in Paragraph 69 of the Complaint, including all subparts.

70. The Premiere Parties deny the allegations set forth in Paragraph 70 of the Complaint.

71. The Premiere Parties deny the allegations set forth in Paragraph 71 of the Complaint.

72. The Premiere Parties deny the allegations set forth in Paragraph 72 of the Complaint.

73. The Premiere Parties deny the allegations set forth in Paragraph 73 of the Complaint.

74. The Premiere Parties admit that Ascentium approved borrowers for loans, but denies the remaining allegations set forth in Paragraph 74 of the Complaint.

75. The Premiere Parties admit that Ascentium entered into financing agreements with the borrowers, but denies the remaining allegations set for Paragraph 75 of the Complaint.

76. The Premiere Parties admit that Ascentium disbursed funds to Premiere Copier,

Inc. pursuant to financing agreements Ascentium had with its borrowers, but denies the remaining allegations contained in Paragraph 76 of the Complaint.

77. The Premiere Parties deny the allegations set forth in Paragraph 77 of the Complaint.

78. The Premiere Parties deny the allegations set forth in Paragraph 78 of the Complaint, including all subparts.

79. The Premiere Parties deny the allegations set forth in Paragraph 79 of the Complaint.

80. The Premiere Parties deny the allegations set forth in Paragraph 80 of the Complaint.

**COUNT 3**  
**CIVIL THEFT UNDER C.R.S. § 18-4-401**  
**AGAINST THE PREMIERE PARTIES**

81. The Premiere Parties incorporate their responses to the preceding paragraphs of the Complaint as if fully set forth herein.

82. The Premiere Parties are without sufficient knowledge and information to form a belief as to the truth of the allegations set forth in Paragraph 82 of the Complaint, and therefore, denies the same.

83. The allegations set forth in Paragraph 83 of the Complaint state a legal conclusion to which no response is required. To the extent a response is required, the Premiere Parties are without sufficient knowledge and information to form a belief as to the truth of the allegations set forth in Paragraph 83 of the Complaint, and therefore, denies the same.

84. The Premiere Parties deny the allegations set forth in Paragraph 84 of the Complaint.

85. The Premiere Parties deny the allegations set forth in Paragraph 85 of the Complaint.

86. The Premiere Parties deny the allegations set forth in Paragraph 86 of the Complaint.

87. The allegations set forth in Paragraph 87 of the Complaint state a legal conclusion to which no response is required. To the extent a response is required, the Premiere Parties deny the allegations set forth in Paragraph 87 of the Complaint.

88. The Premiere Parties deny the allegations set forth in Paragraph 88 of the Complaint.

89. The Premiere Parties deny the allegations set forth in Paragraph 89 of the Complaint.

90. The allegations set forth in Paragraph 90 of the Complaint state a legal conclusion to which no response is required. To the extent a response is required, the Premiere Parties deny the allegations set forth in Paragraph 90 of the Complaint.

91. The allegations set forth in Paragraph 91 of the Complaint state a legal conclusion to which no response is required. To the extent a response is required, the Premiere Parties deny the allegations set forth in Paragraph 91 of the Complaint.

92. The Premiere Parties deny the allegations set forth in Paragraph 92 of the Complaint.

**COUNT 4**  
**NEGLIGENT MISREPRESENTATION CAUSING FINANCIAL LOSS**  
**AGAINST THE PREMIERE PARTIES**

93. The Premiere Parties incorporate their responses to the preceding paragraphs of the Complaint as if fully set forth herein.

94. The Premiere Parties deny the allegations set forth in Paragraph 94 of the Complaint, including all subparts.

95. The Premiere Parties deny the allegations set forth in Paragraph 95 of the Complaint.

96. The Premiere Parties deny the allegations set forth in Paragraph 96 of the Complaint.

97. The Premiere Parties deny the allegations set forth in Paragraph 97 of the Complaint.

98. The Premiere Parties deny the allegations set forth in Paragraph 98 of the Complaint.

99. The Premiere Parties deny the allegations set forth in Paragraph 99 of the Complaint.

100. The Premiere Parties deny the allegations set forth in Paragraph 100 of the Complaint.

101. The Premiere Parties deny the allegations set forth in Paragraph 101 of the Complaint, including all subparts.

102. The Premiere Parties deny the allegations set forth in Paragraph 102 of the Complaint.

**COUNT 5**  
**COMMON LAW CIVIL CONSPIRACY**  
**AGAINST THE PREMIERE PARTIES**

103. The Premiere Parties incorporate their responses to the preceding paragraphs of the Complaint as if fully set forth herein.

104. The Premiere Parties deny the allegations set forth in Paragraph 104 of the Complaint.

105. The Premiere Parties deny the allegations set forth in Paragraph 105 of the Complaint.

106. The Premiere Parties deny the allegations set forth in Paragraph 106 of the Complaint.

107. The Premiere Parties deny the allegations set forth in Paragraph 107 of the Complaint.

108. The Premiere Parties deny the allegations set forth in Paragraph 108 of the Complaint.

109. The Premiere Parties deny the allegations set forth in Paragraph 109 of the Complaint.

110. The Premiere Parties deny the allegations set forth in Paragraph 110 of the Complaint.

111. The Premiere Parties deny the allegations set forth in Paragraph 111 of the Complaint.

112. The Premiere Parties deny the allegations set forth in Paragraph 112 of the Complaint.

113. The Premiere Parties deny the allegations set forth in Paragraph 113 of the Complaint.

**COUNT 6**  
**UNJUST ENRICHMENT**  
**AGAINST THE PREMIERE PARTIES**

114. The Premiere Parties incorporate their responses to the preceding paragraphs of the Complaint as if fully set forth herein.

115. The allegations set forth in Paragraph 115 of the Complaint state a legal conclusion to which no response is required. To the extent a response is required, the Premiere Parties deny the allegations set forth in Paragraph 115 of the Complaint.

116. The Premiere Parties deny the allegations set forth in Paragraph 116 of the Complaint.

117. The Premiere Parties deny the allegations set forth in Paragraph 117 of the Complaint.

118. The Premiere Parties deny the allegations set forth in Paragraph 118 of the Complaint.

119. The Premiere Parties deny the allegations set forth in Paragraph 119 of the Complaint.

**COUNT 7**  
**CIVIL LIABILITY UNDER THE COLORADO ORGANIZED CRIME CONTROL ACT**  
**(COLO. STAT. ANN. §§ 18-17-101 ET SEQ.) AND THE FEDERAL RACKETEER**  
**INFLUENCED AND CORRUPT ORGANIZATIONS ACT (18 U.S.C. §§ 1967-1968)**  
**AGAINST THE PREMIERE PARTIES**

120. The Premiere Parties incorporate their responses to the preceding paragraphs of the Complaint as if fully set forth herein.

121. The allegations set forth in Paragraph 121 of the Complaint state a legal conclusion to which no response is required. To the extent a response is required, the Premiere Parties deny the allegations set forth in Paragraph 121 of the Complaint.

122. The Premiere Parties deny the allegations set forth in Paragraph 122 of the Complaint.

123. The Premiere Parties deny the allegations set forth in Paragraph 123 of the Complaint.

124. The Premiere Parties deny the allegations set forth in Paragraph 124 of the Complaint.

125. The Premiere Parties admits that Premiere Copier, Inc. is engaged in interstate commerce and in activities affecting interstate commerce. The Premiere Parties also admit that Premiere Copier, Inc. is operated in Colorado by individuals residing in Colorado with customers residing in states across the country. The Premiere Parties deny the remaining allegations set forth in Paragraph 125 of the Complaint.

126. The allegations set forth in Paragraph 126 of the Complaint state a legal conclusion to which no response is required. To the extent a response is required, the Premiere Parties deny the allegations set forth in Paragraph 126 of the Complaint.

127. The allegations set forth in Paragraph 127 of the Complaint state a legal conclusion to which no response is required. To the extent a response is required, the Premiere Parties deny the allegations set forth in Paragraph 127 of the Complaint.

128. The Premiere Parties deny the allegations set forth in Paragraph 128 of the Complaint.

**A. Mail Fraud.**

129. The allegations set forth in Paragraph 129 of the Complaint state a legal conclusion to which no response is required. To the extent a response is required, the Premiere Parties deny the allegations set forth in Paragraph 129 of the Complaint.

130. The allegations set forth in Paragraph 130 of the Complaint state a legal conclusion to which no response is required. To the extent a response is required, the Premiere Parties deny the allegations set forth in Paragraph 130 of the Complaint.

131. The allegations set forth in Paragraph 131 of the Complaint state a legal conclusion to which no response is required. To the extent a response is required, the Premiere Parties deny the allegations set forth in Paragraph 131 of the Complaint.

132. The Premiere Parties deny the allegations set forth in Paragraph 132 of the Complaint.

133. The Premiere Parties admit they are authentic executives and employees of Premiere Copier, Inc. and that Premiere Copier, Inc. is a bona fide seller of copiers. The Premiere Parties deny the allegations set forth in Paragraph 133 of the Complaint.

134. The Premiere Parties deny the allegations set forth in Paragraph 134 of the Complaint.

135. The Premiere Parties deny the allegations set forth in Paragraph 135 of the Complaint.

**B. Wire Fraud.**

136. The allegations set forth in Paragraph 136 of the Complaint state a legal conclusion to which no response is required. To the extent a response is required, the Premiere Parties deny the allegations set forth in Paragraph 136 of the Complaint.

137. The allegations set forth in Paragraph 137 of the Complaint state a legal conclusion to which no response is required. To the extent a response is required, the Premiere Parties deny the allegations set forth in Paragraph 137 of the Complaint.

138. The allegations set forth in Paragraph 138 of the Complaint state a legal conclusion to which no response is required. To the extent a response is required, the Premiere Parties deny the allegations set forth in Paragraph 138 of the Complaint.

139. The Premiere Parties deny the allegations set forth in Paragraph 139 of the Complaint.

140. The Premiere Parties admit they are authentic executives and employees of Premiere Copier, Inc. and that Premiere Copier, Inc. is a bona fide seller of copiers. The Premiere Parties deny the allegations set forth in Paragraph 140 of the Complaint.

141. The Premiere Parties deny the allegations set forth in Paragraph 141 of the Complaint.

142. The Premiere Parties deny the allegations set forth in Paragraph 142 of the Complaint.

### **C. Bank Fraud.**

143. The allegations set forth in Paragraph 143 of the Complaint state a legal conclusion to which no response is required. To the extent a response is required, the Premiere Parties deny the allegations set forth in Paragraph 143 of the Complaint.

144. The allegations set forth in Paragraph 144 of the Complaint state a legal conclusion to which no response is required. To the extent a response is required, the Premiere Parties deny the allegations set forth in Paragraph 144 of the Complaint.

145. The allegations set forth in Paragraph 145 of the Complaint state a legal conclusion to which no response is required. To the extent a response is required, the Premiere Parties deny the allegations set forth in Paragraph 1 of the Complaint.

146. The allegations set forth in Paragraph 146 of the Complaint state a legal conclusion to which no response is required. To the extent a response is required, the Premiere Parties deny the allegations set forth in Paragraph 146 of the Complaint.

147. The Premiere Parties deny the allegations set forth in Paragraph 147 of the Complaint.

148. The Premiere Parties deny the allegations set forth in Paragraph 148 of the Complaint.

149. The Premiere Parties deny the allegations set forth in Paragraph 149 of the Complaint.

150. The Premiere Parties deny the allegations set forth in Paragraph 150 of the Complaint.

**COUNT 8**  
**MONEY HAD AND RECEIVED**  
**AGAINST THE PREMIERE PARTIES**

151. The Premiere Parties incorporate their responses to the preceding paragraphs of the Complaint as if fully set forth herein.

152. The Premiere Parties deny the allegations set forth in Paragraph 152 of the Complaint.

153. The Premiere Parties deny the allegations set forth in Paragraph 153 of the Complaint.

154. The Premiere Parties deny the allegations set forth in Paragraph 154 of the Complaint.

155. The Premiere Parties deny the allegations set forth in Paragraph 155 of the Complaint.

**COUNT 9**  
**CONSTRUCTIVE TRUST**  
**AGAINST THE PREMIERE PARTIES**

156. The Premiere Parties incorporate their responses to the preceding paragraphs of the Complaint as if fully set forth herein.

157. The Premiere Parties deny the allegations set forth in Paragraph 157 of the Complaint. The Premiere Parties affirmatively assert that a constructive trust is not a cognizable cause of action.

158. The Premiere Parties deny the allegations set forth in Paragraph 158 of the Complaint. The Premiere Parties affirmatively assert that a constructive trust is not a cognizable cause of action.

**COUNT 10**  
**FRAUDULENT TRANSFERS UNDER THE COLORADO UNIFORM FRAUDULENT**  
**TRANSFERS ACT, C.R.S. §§ 38-8-101, *et seq.***  
**AGAINST NORTH INDIVIDUALLY AND AS TRUSTEE OF TOD R. NORTH TRUST**

159. North incorporates his responses to the preceding paragraphs of the Complaint as if fully set forth herein. While not directed at the remaining at the remaining Premiere Parties, to

the extent a response is required, the Premiere Parties incorporate their responses to the preceding paragraphs of the Complaint as if fully set forth herein.

160. The allegations set forth in Paragraph 160 of the Complaint state a legal conclusion to which no response is required. To the extent a response is required, North denies the allegations set forth in Paragraph 160 of the Complaint. While not directed at the remaining at the remaining Premiere Parties, to the extent a response is required, the Premiere Parties also deny the allegations set forth in Paragraph 160 of the Complaint.

161. North denies the allegations set forth in Paragraph 161 of the Complaint. While not directed at the remaining at the remaining Premiere Parties, to the extent a response is required, the Premiere Parties also deny the allegations set forth in Paragraph 161 of the Complaint.

162. The document attached as Exhibit 4 to the Complaint speaks for itself. North denies the allegations set forth in Paragraph 162 of the Complaint that are inconsistent with Exhibit 4. While not directed at the remaining at the remaining Premiere Parties, to the extent a response is required, the Premiere Parties are without sufficient knowledge and information to form a belief as to the truth of the allegations set forth in Paragraph 162 of the Complaint, and therefore, denies the same.

163. The document attached as Exhibit 5 to the Complaint speaks for itself. North denies the allegations set forth in Paragraph 163 of the Complaint that are inconsistent with Exhibit 5. While not directed at the remaining at the remaining Premiere Parties, to the extent a response is required, the Premiere Parties are without sufficient knowledge and information to form a belief as to the truth of the allegations set forth in Paragraph 163 of the Complaint, and therefore, denies the same.

164. North admits the allegations set forth in Paragraph 164 of the Complaint. While not directed at the remaining at the remaining Premiere Parties, to the extent a response is required, the Premiere Parties are without sufficient knowledge and information to form a belief as to the truth of the allegations set forth in Paragraph 164 of the Complaint.

165. The document attached as Exhibit 6 to the Complaint speaks for itself. North denies the allegations set forth in Paragraph 165 of the Complaint that are inconsistent with Exhibit 6. While not directed at the remaining at the remaining Premiere Parties, to the extent a response is required, the Premiere Parties are without sufficient knowledge and information to form a belief as to the truth of the allegations set forth in Paragraph 165 of the Complaint, and therefore, denies the same.

166. The document attached as Exhibit 7 to the Complaint speaks for itself. North denies the allegations set forth in Paragraph 166 of the Complaint that are inconsistent with Exhibit 7. While not directed at the remaining at the remaining Premiere Parties, to the extent a response is required, the Premiere Parties are without sufficient knowledge and information to form a belief as to the truth of the allegations set forth in Paragraph 166 of the Complaint, and therefore, denies the same.

167. North denies the allegations set forth in Paragraph 167 of the Complaint. While not directed at the remaining at the remaining Premiere Parties, to the extent a response is required, the Premiere Parties also deny the allegations set forth in Paragraph 167 of the Complaint.

168. North denies the allegations set forth in Paragraph 168 of the Complaint. While not directed at the remaining at the remaining Premiere Parties, to the extent a response is required, the Premiere Parties also deny the allegations set forth in Paragraph 168 of the Complaint.

169. North denies the allegations set forth in Paragraph 169 of the Complaint. While not directed at the remaining at the remaining Premiere Parties, to the extent a response is required, the Premiere Parties also deny the allegations set forth in Paragraph 169 of the Complaint.

170. North denies the allegations set forth in Paragraph 170 of the Complaint. While not directed at the remaining at the remaining Premiere Parties, to the extent a response is required, the Premiere Parties also deny the allegations set forth in Paragraph 170 of the Complaint.

171. North denies the allegations set forth in Paragraph 171 of the Complaint. While not directed at the remaining at the remaining Premiere Parties, to the extent a response is required, the Premiere Parties also deny the allegations set forth in Paragraph 171 of the Complaint.

**THE PREMIERE PARTIES' RESPONSE TO ASCENTIUM'S PRAYER(S) FOR RELIEF**

The contents of the paragraph beginning with "Wherefore, Ascentium prays . . ." and its subparts constitute a request for damages to which no response is required. To the extent a response is required, the Premiere Parties deny all allegations contained in the prayer for relief. The Premiere Parties further deny that Ascentium is entitled to any recovery in this action.

**GENERAL DENIAL**

The Premiere Parties generally deny each and every allegation contained in the Complaint to the extent not specifically admitted herein. The Premiere Parties specifically deny that Ascentium is entitled to any damages from the Premiere Parties in connection with the claims asserted in the Complaint.

### **AFFIRMATIVE DEFENSES**

1. Plaintiff fails to state a claim upon which relief may be granted.
2. Plaintiff's claims are barred by the economic loss rule.
3. Plaintiff fails to state a claim supporting an award of damages.
4. The Premiere Parties' conduct and actions were based on legitimate business reasons.
5. Plaintiff's damages are barred by failure of a condition precedent.
6. Plaintiff's claims are barred by the statute of limitations.
7. Plaintiff's claims are barred by the doctrines of acquiescence and ratification.
8. Plaintiff has failed to mitigate its damages.
9. Plaintiff's damages, if any, are the result of its own actions or inactions, over which the Premiere Parties had no control.
10. Plaintiff's damages, if any, are speculative and unknown.
11. Plaintiff's damages, if any, may have been caused in whole or in part by the negligence of others for whom the Defendants are not responsible or over whom the Defendants have no control. Specifically, Plaintiff's damages, if any, may have been caused by Ascentium or the Borrowers.
12. Plaintiff's recovery of damages against Defendants, if any, must be reduced by the comparative fault of other persons, including responsible nonparties, pursuant to C.R.S. § 13-21-111.5. Defendants are only responsible for their *pro rata* share of responsibility, if any, for Plaintiff's damages.

13. Plaintiff's claims may be barred by the doctrines of waiver, estoppel, laches, and/or unclean hands.

14. Plaintiff's claims are substantially groundless and frivolous, and the Premiere Parties is entitled to an award of attorney fees and costs pursuant to C.R.S. § 13-17-102.

15. Plaintiff is not entitled to an award of prejudgment interest even if it prevails on its claims because the damages claimed are not sufficiently certain to allow an award of prejudgment interest.

16. The Premiere Parties reserve the right to assert additional defenses, affirmative or otherwise, upon further investigation and discovery into the matters alleged.

WHEREFORE, Defendants Premiere Copier, Inc., Mark Klenin, and Tod North, individually and in his capacity as Trustee of the Tod R. North Trust respectfully request that the Complaint be dismissed with prejudice and that Defendants be awarded their attorney fees and costs to the extent permitted by law, and for such other relief as the Court deems just and proper.

**THE PREMIERE PARTIES REQUEST A JURY TRIAL ON ALL MATTERS SO TRIABLE.**

DATED: May 10, 2022.

Respectfully submitted,

/s/Caleena S. Braig

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*Counsel for the Defendants*

**CERTIFICATE OF SERVICE**

I hereby certify that on May 10, 2022, a copy of the foregoing *Defendants' Answer, Affirmative Defenses and Counterclaims* was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/Caleena S. Braig