

# United States District Court Southern District of Florida

Miami-Dade Division

Case No:

Putative Class Action

**Peter M. Blauzvern DDS PC**, a New York professional corporation, **Jeff E. Donnelly**, a citizen of Massachusetts, **John M. Highsmith, DDS, PA**, a North Carolina professional association, **Steven B. Oken**, a citizen of New York, **Justin Chang, PC**, a Georgia professional corporation, **David Alemar DMD, PC**, a Georgia professional corporation, **Jeffrey S. Thaller**, a citizen of New Jersey, **Michael S. Burstein**, a citizen of New York, **Charles H. Estelle**, a citizen of Pennsylvania, **Kenneth A. Korpan DDS, PC**, an Illinois professional corporation, **Stuart A. Curry**, a citizen of Alabama, **Gary Lederman**, a citizen of the State of New York, **Brian A. McMurtry, DDS, PA**, a North Carolina professional association, **Dr. Chandra R. Williams DMD, LLC**, a Georgia limited liability company, **Geoffrey S. Wozar, DMD, PC**, a Pennsylvania professional corporation, **Jennifer Goldman**, a citizen of California, **Amy Thu Tran**, a citizen of California, **Mountain Lakes Dental Associates, PA**, a New Jersey professional association, **Peter K. Eng**, a citizen of New Jersey, **Eye-Deal Family Eye Care, Inc.**, a Florida corporation, **David Archibald**, a citizen of Florida, **Paul Taylor DMD, Inc.**, a California corporation, **Arthur B. Silver DDS PC**, a Georgia professional corporation, **John C. Sieweke DDS PC**, a Georgia professional corporation, **John C. Sieweke**, a citizen of Georgia, **Amarilis**

**Jacobo**, a citizen of New York, **Stephen R. Kepley**, a Florida citizen, **Mark Margolies**, a citizen of Pennsylvania, **George C. Weeks DDS PA**, a Florida professional association, **George C. Weeks**, a Florida citizen, **Alan M. Rapoport**, a citizen of Massachusetts, **Raymond Goodman, OD, PA**, an Idaho professional association, **Raymond Goodman**, a citizen of Idaho, **Cary Family Eye Care, OD, PA**, a North Carolina professional association, **Dwight W. Barnes**, a citizen of North Carolina, **Steven J. Luccarelli**, a citizen of New York, **Stanely D. Halpern, DDS, PC**, a Georgia professional corporation, **Stanley D. Halpern**, a citizen of Georgia, **Webster Cosmetic Dental Ltd.**, an Illinois limited company, d/b/a Webster Cosmetic Dental, **Barbara Webster**, a citizen of Illinois, **Eric Smith**, a citizen of Utah, **David S. Lee, DDS, Inc.**, a California corporation, **David S. Lee**, a citizen of California, **Stone Creek Dental, PC**, an Idaho professional corporation, **Casey S. Butterfield**, a citizen of Idaho, **Carolina Family Vision, OD, PA**, a North Carolina professional association, **Adam B. Bryan**, a citizen of North Carolina, **Kristy L. Tart-Bryan**, a citizen of North Carolina, **Peter Epstein DMD PA**, a Florida professional association, **Peter Epstein**, a Florida citizen, **Christopher Young DMD PA**, a Florida professional association, **Christopher Young**, a Florida citizen,

**Chadds Ford Dental Associates, Inc.**, a Pennsylvania corporation, **Andrew Pratt**, a citizen of Pennsylvania, **J.M. Arrue DMD LLC**, a Georgia limited liability company, **J.M. Arrue**, a Georgia citizen, **Troy R. Lindh DMD PA**, a Florida professional association, **Troy R. Lindh**, a Florida citizen, **Brian G. DePetris**, a New Jersey citizen, **Gordon Bell**, a citizen of Pennsylvania, **Benjamin Gamm**, a citizen of Massachusetts, **Eyexam Associates, PA**, a New Jersey professional association, **Elizabeth Lewis**, a Georgia citizen, **Kelly L. Kalmar**, a New York citizen, **Kalmar Family Dentistry, LLP**, a New York limited liability partnership, **Henderson Mill Dental Care, PC**, a Georgia professional corporation, **John H. Mason**, a citizen of Florida,

Defendants.

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Plaintiffs,

vs.

**Brican America, Inc.**, a Florida corporation, **Brican America, LLC**, a Florida limited liability company, **Brican Financial Services, LLC**, a Florida limited liability company, **Jean Francois Vincens, Jacques Lemacon, Salvatore M. DeCanio, Jr., JJR Investments, LLC**, a Florida limited liability company, **Lifestyle of Vision, Inc.**, a Florida corporation, **Viso Lasik Medspas, LLC**, a Florida limited liability company, **Viso Lasik Medspas of Charlotte, LLC**, a North Carolina limited liability company, **Viso Lasik Medspas of San Antonio, LLC**, a Texas limited liability company, and **NCMIC Finance Corporation**, doing business as Professional Solutions Financial Services, an Iowa corporation authorized to do business in Florida,

# Complaint

Plaintiffs, by and through their undersigned attorneys, sue Defendants, **Brican America, Inc.**, a Florida corporation, **Brican America, LLC**, a Florida limited liability company, **Brican Financial Services, LLC**, a Florida limited liability company, **Jean Francois Vincens, Jacques Lemacon, Salvatore M. DeCanio, Jr., JJR Investments, LLC**, a Florida limited liability company, **Lifestyle of Vision, Inc.**, a Florida corporation, **Viso Lasik Medspas, LLC**, a Florida limited liability company, **Viso Lasik Medspas of Charlotte, LLC**, a North Carolina limited liability company, **Viso Lasik Medspas of San Antonio, LLC**, a Texas limited liability company, and **NCMIC Finance Corporation**, doing business as Professional Solutions Financial Services, an Iowa corporation, and allege:

## Overview of Suit

This putative class action suit, filed in this court pursuant to 28 U.S.C. § 1332(d)(2)(A), is brought by a group of dentists and optometrists located in various states against several Florida entities and their principals, their related companies, and an equipment leasing company, for relief from contracts which were entered into as a result of fraud perpetrated by the Florida entities and their principals, for the benefit of the related companies, with knowledge or confirmation by the equipment leasing company, and for money damages.

The fraud involved the sale to the individual Plaintiffs, through an installment sales or loan agreement improperly labeled a financing lease (solely to obtain the “Hell or high water” protection of Article 2A of the Uniform Commercial Code), of a flat screen television, a computer, and certain inexpensive software used to display advertising in the office of each

optometrist or dentist (collective referred to as the Display System), having a total fair market value of \$3,500, for an inflated price of approximately \$30,000. Included with the sale, and the predominate feature of the contract, was a marketing agreement by a related company which promised to pay the individual Plaintiffs a sum of money almost equal to the monthly lease payments, for the right to advertise services by the related entity on the television monitor in the offices of each Plaintiff. The fraudulent sales were used to create a pool of money for the related company, which at the time of the perpetration of the fraud, had no business and no income with which it could possibly fulfill its contractual obligation to pay advertising fees, other than the money diverted to it from the fraud perpetrators.

Because the payments under the marketing and advertising agreements were just slightly less than the required monthly lease payments, the fraud set-up was a classic Ponzi scheme which was doomed to collapse when the new money brought in by continuing the fraudulent sales could no longer pay the debts created under the earlier contracts. After the collapse, the Plaintiffs exercised their contractual right to require that the specific Brican company which was the vendor under their contract, repurchase the equipment and cancel the lease. The Brican companies refused, resulting in this suit.

## **Allegations as to All Counts**

### **Jurisdiction and Venue**

1. This court has jurisdiction over this matter under 28 U.S.C. § 1332(d)(2)(A) because the sum or value of the amount in controversy exceeds \$5,000,000, exclusive of costs and interest, and is a class action in which one or more members of the class of Plaintiffs is

a citizen of a State different from any Defendant.

2. Venue is properly vested in this court because almost all of the Defendants are residents of the Southern District of Florida, many of the contracts were entered into within the jurisdiction of this court, and because many of the applicable contracts contain a choice of situs provision whereby the parties have agreed that any action related to the contract shall be situated in Miami-Dade County, Florida.

### **Parties**

3. Plaintiff **Peter M. Blauzvern DDS PC** is a corporation organized and existing under the laws of the State of New York, is qualified to do business and is actually doing business in the State of New York, is a citizen of the State of New York, and is authorized to sue and be sued.
4. The primary business of Plaintiff Peter M. Blauzvern DDS PC is the practice of dental medicine.
5. Plaintiff Peter M. Blauzvern DDS PC claims no expertise in equipment leasing.
6. Plaintiff **Jeff E. Donnelly** is a citizen of the Commonwealth of Massachusetts, and is *sui juris*.
7. The primary business of Plaintiff Jeff E. Donnelly is the practice of dental medicine.
8. Plaintiff Jeff E. Donnelly claims no expertise in equipment leasing.
9. Plaintiff **John M. Highsmith, DDS, PA**, is a corporation organized and existing under the laws of the State of North Carolina, is qualified to do business and is actually doing business in the State of North Carolina, is a citizen of the State of North Carolina, and is authorized to sue and be sued.

10. The primary business of Plaintiff John M. Highsmith, DDS, PA, is the practice of dental medicine.
11. Plaintiff John M. Highsmith, DDS, PA, claims no expertise in equipment leasing.
12. Plaintiff **Steven B. Oken** is a citizen of the State of New York, and is *sui juris*.
13. The primary business of Plaintiff Steven B. Oken is the practice of dental medicine.
14. Plaintiff Steven B. Oken claims no expertise in equipment leasing.
15. Plaintiff **Justin Chang, PC**, is a corporation organized and existing under the laws of the State of Georgia, is qualified to do business and is actually doing business in the State of Georgia, is a citizen of the State of Georgia, and is authorized to sue and be sued.
16. The primary business of Plaintiff Justin Chang, PC, is the practice of dental medicine.
17. Plaintiff Justin Chang, PC, claims no expertise in equipment leasing.
18. Plaintiff **David Alemar, DMD, PC**, is a corporation organized and existing under the laws of the State of Georgia, is qualified to do business and is actually doing business in the State of Georgia, is a citizen of the State of Georgia, and is authorized to sue and be sued.
19. The primary business of Plaintiff David Alemar, DMD, PC, is the practice of dental medicine.
20. Plaintiff David Alemar, DMD, PC, claims no expertise in equipment leasing.
21. Plaintiff **Jeffrey S. Thaller** is a citizen of the State of New Jersey, and is *sui juris*.
22. The primary business of Plaintiff Jeffrey S. Thaller is the practice of dental medicine.
23. Plaintiff Jeffrey S. Thaller claims no expertise in equipment leasing.

24. Plaintiff **Michael S. Burstein** is a citizen of the State of New York, and is *sui juris*.
25. The primary business of Plaintiff Michael S. Burstein is the practice of dental medicine.
26. Plaintiff Michael S. Burstein claims no expertise in equipment leasing.
27. Plaintiff **Charles H. Estelle** is a citizen of the Commonwealth of Pennsylvania and is *sui juris*.
28. The primary business of Plaintiff Charles H. Estelle is the practice of dental medicine.
29. Plaintiff Charles H. Estelle claims no expertise in equipment leasing.
30. Plaintiff **Kenneth A. Korpan, DDS, PC**, is a corporation organized and existing under the laws of the State of Illinois, is qualified to do business and is actually doing business in the State of Illinois, is a citizen of the State of Illinois, and is authorized to sue and be sued.
31. The primary business of Plaintiff Kenneth A. Korpan, DDS, PC, is the practice of dental medicine.
32. Plaintiff Kenneth A. Korpan, DDS, PC, claims no expertise in equipment leasing.
33. Plaintiff **Stuart A. Curry** is a citizen of the Commonwealth of Pennsylvania and is *sui juris*.
34. The primary business of Plaintiff Stuart A. Curry is the practice of dental medicine.
35. Plaintiff Stuart A. Curry claims no expertise in equipment leasing.
36. Plaintiff **Gary Lederman** is a citizen of the State of New York, and is *sui juris*.
37. The primary business of Plaintiff Gary Lederman is the practice of dental medicine.
38. Plaintiff Gary Lederman claims no expertise in equipment leasing.
39. Plaintiff **Brian A. McMurtry, DDS, PA**, is a corporation organized and existing under

the laws of the State of North Carolina, is qualified to do business and is actually doing business in the State of North Carolina, is a citizen of the State of North Carolina, and is authorized to sue and be sued.

40. The primary business of Plaintiff Brian A. McMurtry, DDS, PA, is the practice of dental medicine.
41. Plaintiff Brian A. McMurtry, DDS, PA, claims no expertise in equipment leasing.
42. Plaintiff **Dr. Chandra R. Williams DMD, LLC**, is a limited liability company organized and existing under the laws of the State of Georgia, is qualified to do business and is actually doing business in the State of Georgia, is a citizen of the State of Georgia, and is authorized to sue and be sued.
43. The primary business of Plaintiff Dr. Chandra R. Williams DMD, LLC, is the practice of dental medicine.
44. Plaintiff Dr. Chandra R. Williams DMD, LLC, claims no expertise in equipment leasing.
45. Plaintiff **Geoffrey S. Wozar, DMD, PC**, is a professional corporation organized and existing under the laws of the Commonwealth of Pennsylvania, is qualified to do business and is actually doing business in the Commonwealth of Pennsylvania, is a citizen of the Commonwealth of Pennsylvania, and is authorized to sue and be sued.
46. The primary business of Plaintiff Geoffrey S. Wozar, DMD, PC, is the practice of dental medicine.
47. Plaintiff Geoffrey S. Wozar, DMD, PC, claims no expertise in equipment leasing.
48. Plaintiff **Jennifer Goldman** is a citizen of the State of California, and is *sui juris*.
49. The primary business of Plaintiff Jennifer Goldman is the practice of dental medicine.



50. Plaintiff Jennifer Goldman claims no expertise in equipment leasing.
51. Plaintiff **Amy Thu Tran** is a citizen of the State of California, and is *sui juris*.
52. The primary business of Plaintiff Amy Thu Tran is the practice of dental medicine.
53. Plaintiff Amy Thu Tran claims no expertise in equipment leasing.
54. Plaintiff **Mountain Lakes Dental Associates, PA**, is a professional association organized and existing under the laws of the State of New Jersey, is qualified to do business and is actually doing business in the State of New Jersey, is a citizen of the State of New Jersey, and is authorized to sue and be sued.
55. The primary business of Plaintiff Mountain Lakes Dental Associates, PA, is the practice of dental medicine.
56. Plaintiff Mountain Lakes Dental Associates, PA, claims no expertise in equipment leasing.
57. Plaintiff **Peter K. Eng** is a citizen of the State of New Jersey and is *sui juris*.
58. The primary business of Plaintiff Peter K. Eng is the practice of dental medicine.
59. Plaintiff Peter K. Eng claims no expertise in equipment leasing.
60. Plaintiff **Eye-Deal Family Eye Care, Inc.**, is a corporation organized and existing under the laws of the State of Florida, is qualified to do business and is actually doing business in the State of Florida, is a citizen of the State of Florida, and is authorized to sue and be sued.
61. The primary business of Plaintiff Eye-Deal Family Eye Care, Inc., is the practice of optometry.
62. Plaintiff Eye-Deal Family Eye Care, Inc., claims no expertise in equipment leasing.

63. Plaintiff **David Archibald** is a citizen of the State of Florida, and is *sui juris*.
64. The primary business of Plaintiff David Archibald is the practice of optometry.
65. Plaintiff David Archibald claims no expertise in equipment leasing.
66. Plaintiff **Paul Taylor DMD, Inc.**, is a corporation organized and existing under the laws of the State of California, is qualified to do business and is actually doing business in the State of California, is a citizen of the State of California, and is authorized to sue and be sued.
67. The primary business of Plaintiff Paul Taylor DMD, Inc., is the practice of dental medicine.
68. Plaintiff Paul Taylor DMD, Inc., claims no expertise in equipment leasing.
69. Plaintiff **Arthur B. Silver DDS PC**, is a professional corporation organized and existing under the laws of the State of Georgia, is qualified to do business and is actually doing business in the State of Georgia, is a citizen of the State of Georgia, and is authorized to sue and be sued.
70. The primary business of Plaintiff Arthur B. Silver DDS PC, is the practice of dental medicine.
71. Plaintiff Arthur B. Silver DDS PC, claims no expertise in equipment leasing.
72. Plaintiff **John C. Sieweke DDS PC**, is a professional corporation organized and existing under the laws of the State of Georgia, is qualified to do business and is actually doing business in the State of Georgia, is a citizen of the State of Georgia, and is authorized to sue and be sued.
73. The primary business of Plaintiff John C. Sieweke DDS PC, is the practice of dental

medicine.

74. Plaintiff John C. Sieweke DDS PC, claims no expertise in equipment leasing.
75. Plaintiff **John C. Sieweke** is a citizen of the State of Georgia and is *sui juris*.
76. The primary business of Plaintiff John C. Sieweke is the practice of dental medicine.
77. Plaintiff John C. Sieweke claims no expertise in equipment leasing.
78. Plaintiff **Amarilis Jacobo** is a citizen of the State of New Jersey and is *sui juris*.
79. The primary business of Plaintiff Amarilis Jacobo is the practice of dental medicine.
80. Plaintiff Amarilis Jacobo claims no expertise in equipment leasing.
81. Plaintiff **Stephen R. Kepley** is a citizen of the State of Florida, and is *sui juris*.
82. The primary business of Plaintiff Stephen R. Kepley is the practice of dental medicine.
83. Plaintiff Stephen R. Kepley claims no expertise in equipment leasing.
84. Plaintiff **Mark Margolies** is a citizen of the Commonwealth of Pennsylvania, and is *sui juris*.
85. The primary business of Plaintiff Mark Margolies is the practice of dental medicine.
86. Plaintiff Mark Margolies claims no expertise in equipment leasing.
87. Plaintiff **George C. Weeks DDS PA**, is a professional association organized and existing under the laws of the State of Florida, is qualified to do business and is actually doing business in the State of Florida, is a citizen of the State of Florida, and is authorized to sue and be sued.
88. The primary business of Plaintiff George C. Weeks DDS PA, is the practice of dental medicine.
89. Plaintiff George C. Weeks DDS PA, claims no expertise in equipment leasing.

90. Plaintiff **George C. Weeks** is a citizen of the State of Florida, and is *sui juris*.
91. The primary business of Plaintiff George C. Weeks is the practice of dental medicine.
92. Plaintiff George C. Weeks claims no expertise in equipment leasing.
93. Plaintiff **Alan M. Rapoport** is a citizen of the Commonwealth of Massachusetts, and is *sui juris*.
94. The primary business of Plaintiff Alan M. Rapoport is the practice of dental medicine.
95. Plaintiff Alan M. Rapoport claims no expertise in equipment leasing.
96. Plaintiff **Raymond Goodman, OD, PA**, is a professional association organized and existing under the laws of the State of Idaho, is qualified to do business and is actually doing business in the State of Idaho, is a citizen of the State of Idaho, and is authorized to sue and be sued.
97. The primary business of Plaintiff Raymond Goodman, OD, PA, is the practice of optometry.
98. Plaintiff Raymond Goodman, OD, PA, claims no expertise in equipment leasing.
99. Plaintiff **Raymond Goodman** is a citizen of the State of Idaho, and is *sui juris*.
100. The primary business of Plaintiff Raymond Goodman is the practice of dental medicine.
101. Plaintiff Raymond Goodman claims no expertise in equipment leasing.
102. Plaintiff **Cary Family Eye Care, OD, PA**, is a professional association organized and existing under the laws of the State of New Jersey, is qualified to do business and is actually doing business in the State of New Jersey, is a citizen of the State of New Jersey, and is authorized to sue and be sued.
103. The primary business of Plaintiff Cary Family Eye Care, OD, PA, is the practice of

optometry.

104. Plaintiff Cary Family Eye Care, OD, PA, claims no expertise in equipment leasing.
105. Plaintiff **Dwight W. Barnes** is a citizen of the State of North Carolina, and is *sui juris*.
106. The primary business of Plaintiff Dwight W. Barnes is the practice of dental medicine.
107. Plaintiff Dwight W. Barnes claims no expertise in equipment leasing.
108. Plaintiff **Steven J. Luccarelli** is a citizen of the State of New York, and is *sui juris*.
109. The primary business of Plaintiff Steven J. Luccarelli is the practice of dental medicine.
110. Plaintiff Steven J. Luccarelli claims no expertise in equipment leasing.
111. Plaintiff **Stanely D. Halpern, DDS, PC**, is a professional corporation organized and existing under the laws of the State of Georgia, is qualified to do business and is actually doing business in the State of Georgia, is a citizen of the State of Georgia, and is authorized to sue and be sued.
112. The primary business of Plaintiff Stanely D. Halpern, DDS, PC, is the practice of dental medicine.
113. Plaintiff Stanely D. Halpern, DDS, PC, claims no expertise in equipment leasing.
114. Plaintiff **Stanley D. Halpern** is a citizen of the State of Georgia, and is *sui juris*.
115. The primary business of Plaintiff Stanley D. Halpern is the practice of dental medicine.
116. Plaintiff Stanley D. Halpern claims no expertise in equipment leasing.
117. Plaintiff **Webster Cosmetic Dental Ltd.**, is a limited corporation organized and existing under the laws of the State of Illinois, is qualified to do business and is actually doing business in the State of Illinois, is a citizen of the State of Illinois, and is authorized to sue and be sued.

118. The primary business of Plaintiff Webster Cosmetic Dental Ltd., is the practice of dental medicine.
119. Plaintiff Webster Cosmetic Dental Ltd., claims no expertise in equipment leasing.
120. Webster Cosmetic Dental Ltd., does business as Webster Cosmetic Dental.
121. Plaintiff **Barbara Webster** is a citizen of the State of Illinois and is *sui juris*.
122. The primary business of Plaintiff Barbara Webster is the practice of dental medicine.
123. Plaintiff Barbara Webster claims no expertise in equipment leasing.
124. Plaintiff **Eric S. Smith** is a citizen of the State of Utah, and is *sui juris*.
125. The primary business of Plaintiff Eric S. Smith is the practice of dental medicine.
126. Plaintiff Eric S. Smith claims no expertise in equipment leasing.
127. Plaintiff **David S. Lee, DDS, Inc.**, is a corporation organized and existing under the laws of the State of California, is qualified to do business and is actually doing business in the State of California, is a citizen of the State of California, and is authorized to sue and be sued.
128. The primary business of Plaintiff David S. Lee, DDS, Inc., is the practice of dental medicine.
129. Plaintiff David S. Lee, DDS, Inc., claims no expertise in equipment leasing.
130. Plaintiff **David S. Lee** is a citizen of the State of California, and is *sui juris*.
131. The primary business of Plaintiff David S. Lee is the practice of dental medicine.
132. Plaintiff David S. Lee claims no expertise in equipment leasing.
133. Plaintiff **Stone Creek Dental, PC**, is a professional corporation organized and existing under the laws of the State of Idaho, is qualified to do business and is actually doing

business in the State of Idaho, is a citizen of the State of Idaho, and is authorized to sue and be sued.

134. The primary business of Plaintiff Stone Creek Dental, PC, is the practice of dental medicine.
135. Plaintiff Stone Creek Dental, PC, claims no expertise in equipment leasing.
136. Plaintiff **Casey S. Butterfield** is a citizen of the State of Idaho, and is *sui juris*.
137. The primary business of Plaintiff Casey S. Butterfield is the practice of dental medicine.
138. Plaintiff Casey S. Butterfield claims no expertise in equipment leasing.
139. Plaintiff **Carolina Family Vision, OD, PA**, is a professional corporation organized and existing under the laws of the State of North Carolina, is qualified to do business and is actually doing business in the State of North Carolina, is a citizen of the State of North Carolina, and is authorized to sue and be sued.
140. The primary business of Plaintiff Carolina Family Vision, OD, PA, is the practice of optometry.
141. Plaintiff Stone Creek Dental, PC, claims no expertise in equipment leasing.
142. Plaintiff **Adam B. Bryan** is a citizen of the State of North Carolina, and is *sui juris*.
143. The primary business of Plaintiff Adam B. Bryan is the practice of optometry.
144. Plaintiff Adam B. Bryan claims no expertise in equipment leasing.
145. Plaintiff **Kristy L. Tart-Bryan** is a citizen of the State of North Carolina, and is *sui juris*.
146. The primary business of Plaintiff Kristy L. Tart-Bryan is the practice of optometry.
147. Plaintiff Kristy L. Tart-Bryan claims no expertise in equipment leasing.

148. Plaintiff **Peter Epstein DMD PA**, is a professional corporation organized and existing under the laws of the State of Florida, is qualified to do business and is actually doing business in the State of Florida, is a citizen of the State of Florida, and is authorized to sue and be sued.
149. The primary business of Plaintiff Peter Epstein DMD PA, is the practice of dental medicine.
150. Plaintiff Peter Epstein DMD PA, claims no expertise in equipment leasing.
151. Plaintiff **Peter Epstein** is a citizen of the State of Florida, and is *sui juris*.
152. The primary business of Plaintiff Peter Epstein is the practice of optometry.
153. Plaintiff Peter Epstein claims no expertise in equipment leasing.
154. Plaintiff **Christopher Young DMD PA**, is a professional corporation organized and existing under the laws of the State of Florida, is qualified to do business and is actually doing business in the State of Florida, is a citizen of the State of Florida, and is authorized to sue and be sued.
155. The primary business of Plaintiff Christopher Young DMD PA, is the practice of dental medicine.
156. Plaintiff Christopher Young DMD PA, claims no expertise in equipment leasing.
157. Plaintiff **Christopher Young** is a citizen of the State of Florida, and is *sui juris*.
158. The primary business of Plaintiff Christopher Young is the practice of optometry.
159. Plaintiff Christopher Young claims no expertise in equipment leasing.
160. Plaintiff **Chadds Ford Dental Associates, Inc.**, is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, is qualified to do business and



is actually doing business in the Commonwealth of Pennsylvania, is a citizen of the Commonwealth of Pennsylvania, and is authorized to sue and be sued.

161. The primary business of Plaintiff Chadds Ford Dental Associates, Inc., is the practice of dental medicine.
162. Plaintiff Chadds Ford Dental Associates, Inc., claims no expertise in equipment leasing.
163. Plaintiff **Andrew Pratt** is a citizen of the Commonwealth of Pennsylvania, and is *sui juris*.
164. The primary business of Plaintiff Andrew Pratt is the practice of optometry.
165. Plaintiff Andrew Pratt claims no expertise in equipment leasing.
166. Plaintiff **J.M. Arrue DMD LLC**, is a limited liability company organized and existing under the laws of the State of Georgia, is qualified to do business and is actually doing business in the State of Georgia, is a citizen of the State of Georgia, and is authorized to sue and be sued.
167. The primary business of Plaintiff J.M. Arrue DMD LLC, is the practice of dental medicine.
168. Plaintiff J.M. Arrue DMD LLC, claims no expertise in equipment leasing.
169. Plaintiff **J.M. Arrue** is a citizen of the State of Georgia, and is *sui juris*.
170. The primary business of Plaintiff J.M. Arrue is the practice of optometry.
171. Plaintiff J.M. Arrue claims no expertise in equipment leasing.
172. Plaintiff **Troy R. Lindh DMD PA**, is a professional corporation organized and existing under the laws of the State of Florida, is qualified to do business and is actually doing business in the State of Florida, is a citizen of the State of Florida, and is authorized to

sue and be sued.

173. The primary business of Plaintiff Troy R. Lindh DMD PA, is the practice of dental medicine.
174. Plaintiff Troy R. Lindh DMD PA, claims no expertise in equipment leasing.
175. Plaintiff **Troy R. Lindh** is a citizen of the State of Florida, and is *sui juris*.
176. The primary business of Plaintiff Troy R. Lindh is the practice of optometry.
177. Plaintiff Troy R. Lindh claims no expertise in equipment leasing.
178. Plaintiff **Brian G. DePetris** is a citizen of the State of New Jersey, and is *sui juris*.
179. The primary business of Plaintiff Brian G. DePetris is the practice of dentistry.
180. Plaintiff Brian G. DePetris claims no expertise in equipment leasing.
181. Plaintiff **Gordon Bell** is a citizen of the Commonwealth of Pennsylvania, and is *sui juris*.
182. The primary business of Plaintiff Gordon Bell is the practice of dentistry.
183. Plaintiff Gordon Bell claims no expertise in equipment leasing.
184. Plaintiff **Benjamin Gamm** is a citizen of the Commonwealth of Massachusetts, and is *sui juris*.
185. The primary business of Plaintiff Benjamin Gamm is the practice of dentistry.
186. Plaintiff Benjamin Gamm claims no expertise in equipment leasing.
187. Plaintiff **Eyeacam Associates, PA**, is a professional corporation organized and existing under the laws of the State of New Jersey, is qualified to do business and is actually doing business in the State of New Jersey, is a citizen of the State of New Jersey, and is authorized to sue and be sued.

188. The primary business of Plaintiff Eyeacam Associates, PA, is the practice of optometry.
189. Plaintiff Eyeacam Associates, PA, claims no expertise in equipment leasing.
190. Plaintiff **Elizabeth Lewis** is a citizen of the State of Georgia, and is *sui juris*.
191. The primary business of Plaintiff Elizabeth Lewis is the practice of optometry.
192. Plaintiff Elizabeth Lewis claims no expertise in equipment leasing.
193. Plaintiff **Kalmar Family Dentistry, LLP**, is a limited liability partnership organized and existing under the laws of the State of New York, is qualified to do business and is actually doing business in the State of New York, is a citizen of the State of New York, and is authorized to sue and be sued.
194. The primary business of Plaintiff Kalmar Family Dentistry, LLP, is the practice of dental medicine.
195. Plaintiff Kalmar Family Dentistry, LLP, claims no expertise in equipment leasing.
196. Plaintiff **Kelly L. Kalmar** is a citizen of the State of New York, and is *sui juris*.
197. The primary business of Plaintiff Kelly L. Kalmar is the practice of optometry.
198. Plaintiff Kelly L. Kalmar claims no expertise in equipment leasing.
199. Plaintiff **Henderson Mill Dental Care, PC**, is a professional corporation organized and existing under the laws of the State of Georgia, is qualified to do business and is actually doing business in the State of Georgia, is a citizen of the State of Georgia, and is authorized to sue and be sued.
200. The primary business of Plaintiff Henderson Mill Dental Care, PC, is the practice of dental medicine.
201. Plaintiff Henderson Mill Dental Care, PC, claims no expertise in equipment leasing.

202. Plaintiff **John H. Mason** is a citizen of the State of Florida, and is *sui juris*.
203. The primary business of Plaintiff John H. Mason is the practice of dentistry.
204. Plaintiff John H. Mason claims no expertise in equipment leasing.

**Brican America, Inc.**

205. Defendant, Brican America, Inc., is a corporation organized and existing under the laws of the State of Florida, having its principal place of business in Miami-Dade County, Florida, and is authorized to sue and be sued.
206. Defendant, Brican America, Inc., is a citizen of the State of Florida, and has its principal office at 5301 Blue Lagoon Drive, Suite 520, Miami, FL, as do Brican America, LLC, Brican Financial Services, LLC, and the registered agent of JJR Investments, LLC.
207. The main entrance door to the offices of Brican America, Inc., Brican America, LLC, and Brican Financial Services, LLC, (Suite 550, 5301 Blue Lagoon Drive, Miami, FL) has glass double doors, with a sign next to the door which says simply, “Brican.”
208. There are doors down the hallway from suite 550, one to the North and one to the South, which are exit doors from suite 550, but which have signs saying, “Brican America, Inc.”
209. Defendant, Brican America, Inc., was formed on July 30, 2004, by Laurent Goldstein and Defendant, Jean Francois Vincens, who at the time was an owner of 50% of the outstanding stock of Brican Systems Corporation Vancouver (hereafter Brican Canada).  
[Vincens Tr., pp. 16-18<sup>1</sup>.]

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<sup>1</sup>“Vincens Tr.,” refers to the transcript of the deposition of Jean Francois Vincens taken on Oct. 8, 2009, in the case of *NCMIC Finance Corporation v. Brican America, Inc.*, case

210. Upon knowledge, information and belief, Plaintiffs allege that Jeff Vincens is the same person as Defendant, Jean Francois Vincens. [Cook (Oct.) Tr., p. 25.]
211. The original stockholders of Brican America, Inc., were Jean Francois Vincens, Jacques Lemacon, and Laurent Goldstein. [Vincens Tr., p. 17.]
212. The present stockholders of Brican America, Inc., are Jean Francois Vincens and Jacques Lemacon. [Vincens Tr., p. 18.]
213. Brican America, Inc., presently has no business, but when it did business, the primary business of Brican America, Inc., was to sell Display Systems to raise money to open and operate the business of Viso Lasik Medspas, LLC. At one point in time during its sales process, the primary business of Brican America, Inc., (selling Display Systems to raise money for Viso Lasik Medspas, LLC), was transferred to Brican America, LLC, to act as vendor under equipment rental agreements, and the business of Brican America, Inc., became to act as the lessor of equipment rental agreements which were to be immediately assigned to NCMIC Finance Corporation.
214. The use of Brican America, Inc., to be the lessor and assignor, and the use of Brican America, LLC, to act as vendor, was done at the direction of NCMIC Finance Corporation.

### **Brican America, LLC**

215. Defendant, Brican America, LLC, is a limited liability company organized and existing under the laws of the State of Florida, having its principal place of business in Miami-

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number 09-CV-21192 (Huck) (S.D.Fla.). All other transcript citations are to depositions taken in the same case.

Dade County, Florida, and is authorized to sue and be sued.

216. Defendant, Brican America, LLC, is a citizen of the State of Florida, and has its principal office at 5301 Blue Lagoon Drive, Suite 520, Miami, FL.
217. Defendant, Brican America, LLC, was formed on July 18, 2006.
218. The managing members of Brican America, LLC, are Jean Francois Vincens and Jacques Lemacon.
219. The primary business of Brican America, LLC, was and is to sell Display Systems to raise money to open and operate the business of Viso Lasik Medspas, LLC, and to thereby act as vendor under equipment lease agreements to be entered into by Brican America, Inc., immediately assigning those agreements to NCMIC Finance Corporation.

**Brican Financial Services, LLC**

220. Defendant, Brican Financial Services, LLC, is a limited liability company organized and existing under the laws of the State of Florida, having its principal place of business in Miami-Dade County, Florida, and is authorized to sue and be sued.
221. Defendant, Brican Financial Services, LLC, is a citizen of the State of Florida, and has its principal office at 5301 Blue Lagoon Drive, Suite 520, Miami, FL.
222. Defendant, Brican Financial Services, LLC, was formed on April 17, 2009, the day after NCMIC Finance Corporation stopped funding contracts for Brican America, Inc.
223. The managing members of Brican Financial Services, LLC, are Jean Francois Vincens and Jacques Lemacon.
224. The primary business of Brican Financial Services, LLC, was to act as the lessor under supposed equipment rental agreements which were intended to be (and some were) sold

to leasing companies in connection with the sale of Display Systems by Brican America, LLC.

**Jean Francois Vincens**

225. Defendant, Jean Francois Vincens, is a citizen of the countries of France and Canada, and is in the United States of America on a visa. [Vincens Tr., p. 8.]
226. While in the United States of America, Jean Francois Vincens, resides in Miami-Dade County, Florida.
227. Defendant, Jean Francois Vincens, is over the age of 18 and is *sui juris*.
228. Defendant, Jean Francois Vincens, is a substantial stockholder and officer in the following corporations which are involved in this suit, and is a managing member or an officer of a corporation which is a managing member, of limited liability companies which are involved in this suit:
- a. Brican America, Inc.;
  - b. Brican America, LLC,;
  - c. Brican Financial Services, LLC;
  - d. JJR Investments, LLC, which itself is a managing member of the following limited liability companies involved in this suit:
    - i. Viso Lasik Medspas, LLC;
    - ii. Viso Lasik Medspas of Charlotte, LLC; and
    - iii. Viso Lasik Medspas of San Antonio, LLC.
229. Defendant, Jean Francois Vincens, has previously been involved in an equipment leasing fraud described by the United States Court of Appeals, Eleventh Circuit as:

This case involves a scheme to use electronic billboards and kiosks (collectively “kiosks”) for advertising. The promoters of the scheme<sup>FN1</sup> executed it in the following way. First, they organized Optical Technologies, Inc., and a group of affiliated companies, Recomm International Display Corp., Recomm Operations, Inc., and Recomm Enterprises, Inc. (hereafter referred to collectively with Optical Technologies, Inc., as “Recomm”).<sup>FN2</sup> Recomm, in turn, (1) convinced several advertising agencies of the merits of advertising via kiosks, and (2) convinced pharmacists, veterinarians, optometrists, and others of the profits they would earn by locating the kiosks at their places of business. Having accomplished this, Recomm (3) acquired the necessary kiosks, leased them to the pharmacists and others (the “Lessees”), assigned the leases to finance companies (the “Lessors”),<sup>FN3</sup> and (4) entered into advertising contracts with the Lessees. These contracts provided that the Lessees would receive a stated percentage of the fees Recomm received from the advertising agencies. Recomm, the Lessees, and the Lessors contemplated that the Lessees' share of the advertising fees would more than cover the Lessees' lease payments.

FN1. Jean Francois Vincens and Raymond Manklow.

FN2. The promoters formed other Recomm corporations as well. Although it is unnecessary to refer to them by name, all ultimately became part of the Chapter 11 bankruptcy case involved in this appeal.

FN3. As far as we can tell from the record, the lease assignments were without recourse.

The scheme worked for the benefit of all parties for a few years, until mid-1995, when Recomm began to experience cash-flow problems and ceased remitting to the Lessees their portions of the advertising fees. The Lessees responded in two ways. First, they quit paying the Lessors the rent due on the kiosk leases; then, they sued Recomm. As the law suits multiplied, Recomm turned to the bankruptcy court for relief. In January 1996, Recomm filed a Chapter 11 petition<sup>FN4</sup> in the Bankruptcy Court for the Middle District of Florida.<sup>FN5</sup>

*In re: Optical Technologies, Inc.*, 425 F.3d 1294, 1296-97 (11<sup>th</sup> Cir. 2005).

230. The equipment supplier for the Optical Technologies scheme was a company owned by Defendant Jean Francois Vincens.
231. At some point in time, Defendant Jean Francois Vincens sold the equipment supply company to his nephew, Jacques Lemacon.



232. Defendant Jean Francois Vincens duplicated the Optical Technologies scheme using Brican America, Inc., Brican America, LLC, Brican Financial Services, LLC, JJR Investments, LLC, Viso Lasik Medspas, LLC, Viso Lasik Medspas of Charlotte, LLC, and Viso Lasik Medspas of San Antonio, LLC.
233. Defendant, Jean Francois Vincens, sold his stock in the Recomm Companies to three Recomm employees in 1994, and received a total of \$8,965,170 for his stock in Recomm International, Recomm Enterprises and/or Recomm Operations. *In re: Optical Technologies, Inc.*, 252 B.R. 531, 534-536 (M.D.Fla. 2000).
234. After his sale of stock, Defendant, Jean Francois Vincens, left the country to return to Canada. [Vincens Tr., pp. 9-10.]
235. While in Canada, Jean Francois Vincens became associated with, and ultimately was an equity owner of, Brican Canada.
236. Upon knowledge, information, and belief, Plaintiffs allege that Brican Canada was engaged in a similar sales scheme of selling or leasing Display Systems to doctors, with associated marketing or advertising agreements.
237. Upon knowledge, information, and belief, Plaintiffs allege that the sales by Brican Canada were performed in Canada and Europe.
238. One of the funding sources utilized by Brican Canada was NCMIC Finance Corporation.
239. Brican Canada developed or modified certain software used in the Display Systems.
240. In 2004, Defendant, Jean Francois Vincens, returned to the United States to begin the business of Brican America, Inc., which was to sell advertising to be displayed in the

offices of optometrists (and later, dentists and other health care providers) utilizing a flat screen television, a computer and inexpensive computer software, as a means of raising money to equip, build-out and open a business through which to sell spa treatments in upscale offices referred to as a medical spa. [Vincens Tr., p. \*\*.]

**Jacques Lemacon**

241. Defendant Jacques Lemacon is the nephew of Defendant Jean Francois Vincens.
242. Upon knowledge, information and belief, Plaintiffs allege that Defendant, Jacques Lemacon, is a citizen of a country other than the United States of America, and is present in the United States pursuant to a visa.
243. While in the United States of America, Jacques Lemacon, resides in Miami-Dade County, Florida.
244. Defendant, Jacques Lemacon, is over the age of 18 and is *sui juris*.
245. Defendant, Jacques Lemacon, is a substantial stockholder and officer in the following corporations which are involved in this suit, and is a managing member or an officer of a corporation which is a managing member, of limited liability companies which are involved in this suit:
  - a. Brican America, Inc.;
  - b. Brican America, LLC,;
  - c. Brican Financial Services, LLC;
  - d. JJR Investments, LLC, which itself is a managing member of the following limited liability companies involved in this suit:
    - i. Viso Lasik Medspas, LLC;

- ii. Viso Lasik Medspas of Charlotte, LLC; and
- iii. Viso Lasik Medspas of San Antonio, LLC.

246. Defendant Jacques Lemacon is the owner of the company used to supply the computer hardware and television systems for the Brican Display Systems.

**Salvatore M. DeCanio, Jr.**

247. Upon knowledge, information and belief, Plaintiffs allege that Defendant, Salvatore M. DeCanio, Jr., is a resident of and domiciled within the jurisdiction of the Southern District of Florida, and is a citizen of the State of Florida.

248. Defendant, Salvatore M. DeCanio, Jr., is over the age of 18 and is *sui juris*.

249. Defendant, Salvatore M. DeCanio, Jr., is a substantial stockholder and officer in the following corporations which are involved in this suit, and is a managing member or an officer of a corporation which is a managing member, of limited liability companies which are involved in this suit:

- a. Lifestyle of Vision, Inc., a Florida corporation, which itself is a managing member of the following limited liability companies involved in this suit:
  - i. Viso Lasik Medspas, LLC;
  - ii. Viso Lasik Medspas of Charlotte, LLC; and
  - iii. Viso Lasik Medspas of San Antonio, LLC.

**JJR Investments, LLC**

250. Defendant, JJR Investments, LLC, is a limited liability company organized and existing under the laws of the State of Florida, is a citizen of the State of Florida, is authorized to, and actually doing business in, the State of Florida, and is authorized to sue and be

sued.

251. The address of the registered agent for JJR Investments, LLC, is 5301 Blue Lagoon Drive, Suite 520, Miami, FL.
252. Defendant, JJR Investments, LLC, was formed on July 18, 2006, the same date as Brican America, LLC, was formed, and utilizing the same lawyer.
253. Defendant, JJR Investments, LLC, is a managing member of the following limited liability companies involved in this suit:
  - i. Viso Lasik Medspas, LLC;
  - ii. Viso Lasik Medspas of Charlotte, LLC; and
  - iii. Viso Lasik Medspas of San Antonio, LLC.

**Lifestyle of Vision, Inc.**

254. Defendant, Lifestyle of Vision, Inc., was formed as Laser Eye Spa, Inc., under the laws of the State of Florida on September 13, 2006, and changed its name to Lifestyle of Vision, Inc., on March 4, 2007.
255. Defendant, Lifestyle of Vision, Inc., is a resident and citizen of the State of Florida, having its principal place of business at 9 Fairway Drive, Boynton Beach, FL.
256. Defendant, Lifestyle of Vision, Inc., is authorized to sue and be sued.

**Viso Lasik Medspas, LLC**

257. Defendant, Viso Lasik Medspas, LLC, is a limited liability company organized and existing under the laws of the State of Florida, is a resident of and citizen of the State of Florida, and is authorized to sue and be sued.
258. Defendant, Viso Lasik Medspas, LLC, was organized on November 26, 2007.

259. The majority interest in Defendant, Viso Lasik Medspas, LLC, is owned by JJR Investments, LLC, and Lifestyle of Vision, Inc.

**Viso Lasik Medspas of Charlotte, LLC**

260. Defendant, Viso Lasik Medspas of Charlotte, LLC, is a limited liability company organized and existing under the laws of the state of North Carolina, is a resident and citizen of the State of North Carolina, and is authorized to sue and be sued.

261. Defendant, Viso Lasik Medspas of Charlotte, LLC, was organized on November 27, 2007, by JJR Investments, LLC, Lifestyle of Vision, Inc., and a Dr. Amir Khoshnevis.

262. The majority interest in Defendant, Viso Lasik Medspas of Charlotte, LLC, is owned by JJR Investments, LLC, and Lifestyle of Vision, Inc.

**Viso Lasik Medspas of San Antonio, LLC**

263. Defendant, Viso Lasik Medspas of San Antonio, LLC, is a limited liability company organized and existing under the laws of the State of Texas, is a resident and citizen of the State of Texas, and is authorized to sue and be sued.

264. Defendant, Viso Lasik Medspas of San Antonio, LLC, was organized on January 3, 2008, by JJR Investments, LLC, Lifestyle of Vision, Inc., and one Mark K. Davis & Associates, PA.

265. The majority interest in Defendant, Viso Lasik Medspas of San Antonio LLC, is owned by JJR Investments, LLC, and Lifestyle of Vision, Inc.

**NCMIC Finance Corporation**

266. Defendant, NCMIC Finance Corporation, is a corporation organized and existing under the laws of the State of Iowa, is a resident and a citizen of the State of Iowa, having its

principal place of business in the State of Iowa.

267. Defendant, NCMIC Finance Corporation, was incorporated on September 9, 1993.
268. Defendant, NCMIC Finance Corporation, adopted the fictitious name “Professional Solution Financial Services” on July 6, 2009<sup>2</sup>.
269. Defendant, NCMIC Finance Corporation, is authorized to sue and be sued.
270. Defendant NCMIC Finance Corporation, at all times material hereto, was and is authorized to do business in, and is doing business in, the State of Florida.

### **Program**

271. Defendants, Jean Francois Vincens and Jacques Lemacon, jointly determined to conduct the following program:
  - a. They would sell a flat screen television and computer with inexpensive display software and a library of graphics (whether graphic art, photographs, or video) to an optometrist or dentist for use in his, her or its office;
  - b. At the same time, and as the predominate feature of the contract, they would enter into a marketing or advertising agreement whereby one of their related entities would contract to pay the optometrist or dentist advertising revenue to utilize a portion of the time that the display system would be used with patients present, which revenue would be almost equal to the monthly cost of the system if the optometrist or dentist decided to lease the system;

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<sup>2</sup>Sometimes in this complaint, Professional Solution Financial Services is used in place of NCMIC Finance Corporation, but only for clarification purposes. At all times material to the facts alleged herein, NCMIC Finance Corporation used Professional Solution Financial Services as a trade name.

- c. They had already entered into a vendor relationship or program agreement with a funding source whereby the funding source would either directly enter into an equipment rental agreement under a semi-private label arrangement<sup>3</sup>, or would receive an assignment from the vendor (their company) of an equipment rental agreement to be signed by the customer;
- d. Once the signed equipment rental agreement and acceptance certificate were received by the funding source, a purchase order was issued by the funding source, and upon telephone verification with the customer that the goods had been received, the funding source would disburse the net present value of the lease payments to them;
- e. They would use the money paid to:
  - i. Pay approximately \$3,500 for the equipment and software license;
  - ii. Pay a commission of either \$1,000 or \$2,000 dollars to the commissioned salesperson<sup>4</sup>;
  - iii. Pay the marketing or advertising contract payments coming due to each of the contracted dentists or optometrists;

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<sup>3</sup>A semi-private label relationship is a form of institutionalized deception whereby the funding source permits the vendor to place the vendor's name and logo in one or more predominate places, using some of the largest type sizes used in the document, for the purpose of giving the customer the impression that the contract is with the vendor, while in the small type used throughout the rest of the document, it is disclosed (if one has the physical ability to read that small type) that the lessor is an entity other than the vendor.

<sup>4</sup>Sales personal were compensated on either a straight commission basis, in which case the commission would be \$2,000 per contract, or a combination of salary (\$4,000 per month) and commission of \$1,000 per contract.

- iv. Pay their indirect overhead; and
- v. Transfer the balance of the money to an associated entity owned by them to ultimately rent, equip, and open medical spas in three cities<sup>5</sup>.

272. As Defendant, Jean Francois Vincens, agreed in his deposition:

So the advertising was done to entice doctors into entering into these lease agreements so Brican could generate income that it would then lend back to Viso Lasik.

[Vincens Tr., p. 74.]

### **Fraudulent Aspect of Program**

273. At the time of entering into the marketing or advertising agreements, the company utilized by Jean Francois Vincens and Jacques Lemacon as the advertising company, Viso Lasik Medspas, LLC, had no business and no source of income with which to meet its contractual obligations to pay for advertising; rather, it was utilizing the monetized portions of the equipment rental agreements to pay for the advertising, which payment obligations were the attraction of the Plaintiffs into the program.

274. No Defendant reserved any money from the monetization of the leases to enable that Defendant to meet the obligation of paying advertising or marketing fees in the future.

275. In short, the lease of equipment with a marketing or advertising contract was a Ponzi scheme which could survive as long, and only as long, as more and more transactions were closed to fund the payment of the marketing contracts.

276. In fact, unless sales of contracts outpaced the payments due under the marketing and advertising contracts, the Ponzi scheme would, and did, collapse:

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<sup>5</sup>Over \$7,000,000 was transferred to the Viso Lasik Medspas in this fashion.



- a. Each contract would generate approximately \$24,000 from the funding source;
- b. From that \$24,000, \$3,500 would be paid for the equipment, leaving a balance of \$20,500;
- c. From that \$20,500, commissions would be paid (assuming the lowest amount) of \$1,000, leaving a balance of \$19,500 before meeting indirect overhead;
- d. Yet, to generate the \$19,500, Brican America, Inc., Brican America, LLC, and/or Viso Lasik Medspas would enter into contracts requiring them to pay a minimum of \$5,800 per year for the 5-year term of the leasing agreement, for a total payout of \$29,400; and,
- e. As a result, each contract was approximately \$5,000 underwater before any indirect overhead was paid.

277. However, no Plaintiff was advised of these features of the program by any Defendant.

### **Beginning of Fraudulent Program**

278. The first step taken by Defendants, Jean Francois Vincens and Jacques Lemacon, toward the conduct of the fraud was the formation of Brican America, Inc., on July 30, 2004.

279. Between July 30, 2004 and July 16, 2005, Brican America, Inc., and NCMIC Finance Corporation operated under what is known in the lease-finance industry as a vendor relationship, whereby NCMIC Finance Corporation has orally agreed to act as a funding source for the finance of equipment sold by Brican America, Inc., the vendor.

280. On or about July 16, 2005, Brican America, Inc., entered into a contract with NCMIC Finance Corporation, known as a "Vendor Agreement," a true and correct copy of

which is attached hereto as Plaintiffs' Exhibit 1, and by reference is made a part hereof.

281. Although the formal Vendor Agreement was entered into on July 16, 2005, the parties to the Vendor Agreement actually began their vendor relationship before December, 2004, according to the former employee of NCMIC Finance Corporation who was responsible for funding leases generated by Brican America, Inc., Paula Barkley. [Barkley Tr., p. 28.]
282. Among other things, Plaintiffs' Exhibit 1 provides that NCMIC Finance Corporation intended to purchase goods from Brican America, Inc., for the purpose of leasing or financing such goods to customers of Brican America, Inc.
283. Fred Scott was authorized by NCMIC Finance Corporation to negotiate a relationship with Vincens and his companies (and Fred Scott ultimately signed the Vendor Agreement on behalf of NCMIC Finance Corporation).
284. Prior to utilizing marketing or advertising agreements in connection with sales of the Display Systems, Jean Francois Vincens advised NCMIC Finance Corporation, through its employee, Fred Scott, of Vincens' intention to utilize advertising and marketing agreements in connection with the sale of Display Systems. [Vincens Tr., pp. 165-166.]
285. Fred Scott, on behalf of NCMIC Finance Corporation, voiced no objection to Jean Francois Vincens to his announced intention to utilize the marketing or advertising agreements, and never asked for a copy. [Vincens Tr., p. 166.]
286. Jean Thompson began her employment with NCMIC Finance Corporation during September, 2004, and became an account manager for NCMIC Finance Corporation in September, 2005, which is her present position with NCMIC Finance Corporation.

[Thompson Tr., pp. 5-6.]

287. Sometime between September, 2005, and February, 2007, Jean Thompson learned of the use of the advertising and marketing agreements. [Thompson Tr., pp. 12-14.]
288. After learning of the utilization of the advertising and marketing agreements, Jean Thompson conversed with Fred Scott and possibly Scott Stewart and Bill Artino, all people above her in the chain of command within NCMIC Finance Corporation, about the utilization of these agreements by Brican America, Inc. [Thompson Tr., pp. 13-14.]
289. No one at NCMIC Finance Corporation voiced a concern about the utilization of the advertising and marketing agreements by Brican America, Inc., and no one at NCMIC Finance Corporation requested that Brican America, Inc., provide NCMIC Finance Corporation with copies of the advertising and marketing agreements in use. [Thompson Tr., pp. 14-15.]
290. During the time that the parties operated under the vendor relationship and the Vendor Agreement, the televisions which were a part of the goods leased or financed, had a maximum cost of less than \$2,000.
291. During the time that the parties operated under the vendor relationship and the Vendor Agreement, the computers which were a part of the goods leased or financed, had a maximum cost of less than \$1,000.
292. During the time that the parties operated under the vendor relationship and the Vendor Agreement, the software used on the computers which were a part of the goods leased or financed, had a maximum fair market value of \$500 per license.
293. Plaintiffs have knowledge, information and belief, and therefore allege, that minimal

(less than \$10) or no license fees were paid by Brican America, Inc., for the use of the software developed by Brican Canada.

294. NCMIC Finance Corporation knew, or with the exercise by them of reasonable care, would have known, that the maximum value of the goods subject to the lease or finance agreement was \$3,500.
295. Upon knowledge, information and belief, Plaintiffs allege that NCMIC Finance Corporation valued the equipment at \$3,500 for tax purposes.
296. Ignoring the maximum value of the goods subject to the lease or financing agreement, NCMIC Finance Corporation entered into leases directly with the customers of the program, including Plaintiffs, requiring those customers to repay approximately \$30,000 for the goods worth \$3,500.
297. NCMIC Finance Corporation knew, or with the exercise of reasonable care, would have known that the advertising and marketing agreements were the predominate feature of the transactions with Plaintiffs.
298. NCMIC Finance Corporation knew, or with the exercise of reasonable care, would have known that the contractual commitment to pay each Plaintiff almost the entire cost of the lease of the Display System leased by that doctor (with the contractual entitlement to stop making payments under all related contracts, including the equipment rental agreements should the advertising and marketing fees not be paid) was the reason that the Plaintiffs were entering into the leases.
299. NCMIC Finance Corporation permitted Defendant, Brican America, Inc., to utilize an institutionalized form of deception known as “semi-private label” leasing whereby the

name and logo of Brican America, Inc., is dominant on the equipment lease application and agreement, and the name of Professional Solution Financial Services, is included on the form, but in a much smaller font.

300. Semi-private label leasing is designed to deceive the lessee into believing that he is entering into a lease with the same entity as that selling the product to him. In other words, lead the customer to believe that the vendor and the lessor were the same entity.
301. The effect of that deception is that the customer believes that it will have certain legal rights against the lessor if the vendor fails to perform which the customer, in fact, does not have.

### **Fraudulent Program Grows**

302. During the early sales under the program, the vendor was Brican America, Inc., and the lessor or secured party was NCMIC Finance Corporation, doing business as Professional Solution Financial Services, operating under the semi-private label lease form.
303. The salesman would advise the potential customer that:
  - a. The equipment (described by various names such as the Brican Display System, and later, the Exhibeo System) could be purchased for an outright payment of \$22,000 or could be leased for \$508 per month plus tax, for 60 months, with a \$1 buy-out at the end of the lease, for a total cost of \$30,481;
  - b. At the same time, Brican America, Inc., would enter into a marketing or advertising agreement through which Brican America, Inc., would pay the customer almost \$500 per month, resulting in the net cost of the system to the

customer being next to nothing;

- c. The marketing agreement provided that if it stopped making payments on the marketing agreement, the customer could either stop making payments or Brican America, Inc., would buy back the system and lease agreement so that the customer would have no further financial obligation.

304. The salesmen failed to advise the Plaintiffs that:

- a. The advertising entity had no business, no income, and no source for paying the financial obligations under the advertising or marketing agreement except by utilizing the monetized portion of the leases which would be insufficient to meet the financial obligations on a long-term basis, and
- b. No entity was reserving sufficient funds from the monetization of the leases to enable fulfillment of the financial obligation to pay the advertising and marketing agreements.

305. Prior to offering the marketing agreements to customers, Defendant Jean Francois Vincens discussed the concept and use of marketing agreements with Fred Scott, of NCMIC Finance Corporation, who gave his verbal consent to their use. [Vincens Tr., pp. 165-166.]

306. An example of such a lease and marketing agreement are attached hereto as Plaintiffs' Exhibit 2, and by reference, are made a part hereof.

#### **NCMIC Finance Corporation Affirms the Cancellation Provision**

307. Fred Scott left the employ of NCMIC Finance Corporation before July, 2008.

308. A successor employee of NCMIC Finance Corporation responsible for certain aspects

of the relationship with Vincens and his companies was Todd Cook, a vice-president and manager of the equipment leasing division of NCMIC Finance Corporation.

309. Mr. Cook was not employed by NCMIC Finance Corporation during the same time that Fred Scott was employed by NCMIC Finance Corporation.

310. According to the testimony of Todd Cook, he became aware of the marketing agreements, and the specific language which permitted the customer to cancel the lease if Brican America, Inc., failed to honor its financial commitments pursuant to the marketing agreement, during July, 2008<sup>6</sup>. [Cook (Oct.) Tr., p. 13.]

311. When Mr. Cook became aware of the existence of the marketing agreements, he asked Vincens and Lemacon how many such agreements existed. [Cook (Nov.) Tr., p. 76.]

312. Vincens and Lemacon responded that there were “some.” [Cook (Nov.) Tr., p. 76.]

313. Although Mr. Cook was a CPA by education and training, and accustomed to exactness in his business affairs, he accepted the representation that there were “some” marketing agreements in existence, and failed to request copies of all which had been extended to customers. [Cook (Nov.) Tr., p. 76.]

314. Although Mr. Cook reported to the president of NCMIC Finance Corporation in the hierarchy of the corporation, according to the president of NCMIC Finance Corporation, Gregory Cole, no one advised him of the existence of the marketing agreements until April, 2009. [Cole Tr., p. \*\*.]

315. During July, 2008, (the time when Mr. Cook admits to knowledge of the existence of

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<sup>6</sup>Mr. Cook did not become aware of the existence of a written Vendor Agreement with Brican America, Inc., until a visit to the offices of Brican America, Inc., in November, 2008. [Cook (Oct.) Tr., p. 16.]

the marketing agreements) the Vendor Agreement between NCMIC Finance Corporation and Brican America, Inc., provided that Brican America, Inc., warranted and represented that:

6.c. There are no other agreements or warranties given to Lessee relating to the Goods or Leases written or verbal that are not included in the documents given to PSFS.

316. Brican America, Inc., had not provided NCMIC Finance Corporation with copies of the marketing agreements because, as Jean Francois Vincens testified, nobody from NCMIC Finance Corporation asked for them. [Vincens Tr., p. 166.]

317. Upon learning of the apparent breach of representation and warranty contained in ¶ 6.c, as quoted above, rather than demanding that copies of all such agreements be provided to it, NCMIC Finance Corporation asked Brican America, Inc., how many leases had marketing agreements connected to them. [Cook (Nov.) Tr., p. 76.]

318. Brican America, Inc., answered that only “some” existed. [Cook (Nov.) Tr., p. 76.]

319. NCMIC Finance Corporation took no steps to obtain copies of all of the marketing agreements, or to advise those Plaintiffs who had marketing agreements that NCMIC Finance Corporation would not honor the representations contained in the marketing agreement, specifically the representation that the equipment rental agreement could be canceled.

320. By permitting the existence of the marketing agreements, as authorized by Fred Scott, NCMIC Finance Corporation ratified and confirmed the cancellation provision contained therein.

321. By failing to so notify the customers of a contrary position in July, 2008 (when Todd



Cook learned of the marketing agreements), NCMIC Finance Corporation ratified and affirmed the cancellation provision of the advertising and marketing agreements.

### **NCMIC Finance Corporation Conspires with the Brican Companies**

322. Having learned that the leases contained related marketing agreements which contained cancellation clauses, NCMIC Finance Corporation, through its officer and employee Todd Cook, conspired with Brican America, Inc., and Brican America, LLC, to modify the contract documents so that the fraud could continue.
323. From the beginning of the vendor relationship through December, 2008, 25% of the total business done by NCMIC Finance Corporation was with Brican America, Inc. That figure increased to 70% during the first four months of 2009. [Cook (Oct.) Tr., p. 23.]
324. During July and August, 2008, Todd Cook, the vice president and general manager of the equipment finance division of NCMIC Finance Corporation, assisted Brican America, Inc., and Brican America, LLC, in furthering the fraud in this fashion:
- a. He changed the program from a semi-private label program (where the name and logo of Brican America, Inc., were dominant on the lease forms) to a private label program (where only the name of Brican America, Inc., or Brican America, LLC, appeared on the lease forms), although by agreement the leases would be immediately assigned to NCMIC Finance Corporation;
  - b. He advised Brican America, Inc., and Brican America, LLC, that Brican America, LLC, could not be both the vendor and the lessor on leases to be assigned to NCMIC Finance Corporation;

- c. He helped rewrite the language of the marketing agreement, changing it from:
6. Cancellation: If Brican fails to honor its financial commitment pursuant to this agreement, then all related agreements can be cancelled by the Client<sup>7</sup>

To:

6. Cancellation: If Brican fails to honor its commitment relating to the advertising fees, and if the Client requests it, Brican will assume assignment of the Client's lease agreement in regard to [the display system].

[Cook (Oct.) Tr., pp. 12-17.]

325. Pursuant to the direction of NCMIC Finance Corporation, Brican America, LLC, became the vendor, Brican America, Inc., became the lessor, and Brican America, Inc., assigned the leases immediately to NCMIC Finance Corporation pursuant to the Vendor Agreement.
326. In spite of this direction coming from NCMIC Finance Corporation, NCMIC Finance Corporation failed to either amend the Vendor Agreement, or to enter into a new Vendor Agreement, whereby Brican America, LLC, would become a vendor under a written Vendor Agreement with NCMIC Finance Corporation.
327. The parties continued to operate with no regard for any difference between Brican America, Inc., and Brican America, LLC.

**Professional Solution Financial Services Stops Funding, but the Fraud Marches On**

328. On April 15, 2009, NCMIC Finance Corporation, doing business as Professional Solution Financial Services, stopped funding any more assignment of leases from

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<sup>7</sup>The only "related agreements" would be the lease agreements.

Brican America, Inc., although \$3,000,000 in purchase orders had been issued by NCMIC Finance Corporation to Brican America, Inc., and Brican America, Inc., had acquired the equipment to fill those purchase orders. [Cook (Oct.) Tr., p. \*\*.]

329. Defendants, Jean Francois Vincens and Jacques Lemacon, immediately formed Brican Financial Services, LLC, to be the funding source for the fraud.
330. Ultimately, as happened in the prior kiosk fraud committed by Defendant, Jean Francois Vincens, the payments under the marketing and advertising agreements stopped.
331. By the time that the payments stopped, Brican America, Inc., and Brican America, LLC, transferred over \$7,000,000 to Defendants, Viso Lasik Medspas, LLC, Viso Lasik Medspas of Charlotte, LLC, and Viso Lasik Medspas of San Antonio, LLC, (jointly referred to as the Viso Lasik Defendants).
332. Ostensibly, the money transferred to the Viso Lasik Defendants was transferred pursuant to a “Credit Agreement,” dated January 1, 2008, a copy of which is attached hereto as Plaintiffs’ Exhibit 3.
333. However, as Defendant, Jean Francois Vincens testified in his deposition, it was the plan all along for the money raised by the sale of the Display Systems, and the monetization of those leases obtained during said sale, to fund the start-up of the business of the Viso Lasik Defendants.
334. On May 4, 2009, less than 3 weeks after NCMIC Finance Corporation stopped funding, NCMIC Finance Corporation filed suit in this court against Brican America, Inc., and only Brican America, Inc., requesting that this court enter an order requiring Brican America, Inc., to repurchase \$38,000,000 in leases funded by NCMIC Finance

Corporation. *NCMIC Finance Corporation v. Brican America, Inc.*, 09-cv-21192 (Huck) (S.D.Fla.).

335. On January 1, 2010, Brican America, Inc., and Viso Lasik Medspas, LLC, breached the marketing and advertising agreements by failing to make the quarterly payments coming due thereunder to each putative class member.
336. On February 22, 2010, NCMIC Finance Corporation and Brican America, Inc., agreed to the dismissal of the suit with prejudice. (DE 94)
337. On February 23, 2010, this court enter its order of dismissal with prejudice. (DE 95)
338. In a press release to the putative class members in March, 2010, NCMIC Finance Corporation asserted that it believed that Brican America, Inc., was insolvent and to continue to incur attorneys' fees to pursue a money judgment against an apparently insolvent company "did not make business sense."<sup>8</sup>

### **Demand to Repurchase**

339. Plaintiffs have demanded that Defendants Brican America, Inc., and Brican America, LLC, repurchase the lease agreements.
340. Defendants Brican America, Inc., and Brican America, LLC, responded to the demands advising that neither was in a position to do so, and reiterated to each Plaintiff that he, she or it should continue making the payments coming due under the lease or finance agreements.

### **Damages**

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<sup>8</sup>Dismissing a claim *with prejudice* does not make business sense if one really believed that one's opponent was insolvent.

341. Each Plaintiff has been damaged as a result of the actions of each Defendant.
342. Each Plaintiff has retained the undersigned attorneys to represent them, and are obligated to pay said attorneys a reasonable fee for their services.
343. Each equipment rental agreement contains a one-way attorneys' fee-shifting provision requiring each Plaintiff to pay the attorneys' fee of NCMIC Finance Corporation.
344. Pursuant to § 57.105, FLA. STAT. (2009), said provision is made reciprocal.
345. Plaintiffs have performed all conditions by them to be performed prior to bringing this claim for relief.

## **Fraud Perpetrated on Named Plaintiffs**

### **Peter M. Blauzvern DDS PC**

346. On or about January 20, 2009, Brican America, LLC, represented to this Plaintiff that if it would enter into a lease with Brican America, Inc., for 1 Exhibeo System, which would require a monthly payment of \$508, Brican America, LLC, would enter into a marketing agreement on behalf of Viso Lasik Medspas, LLC, through which Brican America, LLC, would pay a minimum of \$5,800 per year to Plaintiff, and that if it failed to pay the minimum of \$5,800 per year, or if Viso Lasik Medspas, LLC, failed to make the payment, then Brican America, LLC, would at Plaintiff's request "repurchase" Plaintiff's lease agreement, leading Plaintiff to reasonably believe that the lease would be canceled.
347. The above representations are contained in Plaintiffs' Exhibit 4 attached hereto.
348. The above representations were false when they were made by Brican America, LLC, and were known by Brican America, LLC, to be false when they were made.

349. Brican America, LLC, intended that Plaintiff rely upon those representations.
350. Plaintiff reasonably relied upon those representations to its detriment.
351. Plaintiff has been damaged as a result of such reliance.
352. On February 7, 2009, Brican America, Inc., executed Plaintiffs' Exhibit 4 as Lessor.
353. On February 3, 2009, Brican America, Inc., assigned its interest in Plaintiffs' Exhibit 4 to NCMIC Finance Corporation.
354. Brican America, LLC, and Viso Lasik Medspas, LLC, breached the marketing agreement on or about January 1, 2010, by failing to pay Plaintiff the fee required by the contract.
355. On or about February 1, 2010, Plaintiff demanded that Brican America, LLC, repurchase the lease, and end Plaintiff's obligation to make payments thereunder.
356. On or about February 11, 2010, Brican America, LLC, refused to assume the lease, and advised Plaintiff that it must continue making its lease payments.

**Jeff E. Donnelly**

357. On or about April 20, 2009, Brican America, LLC, represented to this Plaintiff that if he would enter into a lease with Brican America, Inc., for 1 Exhibeo System, which would require a monthly payment of \$508, Brican America, LLC, would enter into a marketing agreement on behalf of Viso Lasik Medspas, LLC, through which Brican America, LLC, would pay a minimum of \$5,800 per year to Plaintiff, and that if it failed to pay the minimum of \$5,800 per year, or if Viso Lasik Medspas, LLC, failed to make the payment, then Brican America, LLC, would at Plaintiff's request "repurchase" Plaintiff's lease agreement, leading Plaintiff to reasonably believe that the lease would

be canceled.

358. The above representations are contained in Plaintiffs' Exhibit 5 attached hereto.
359. The above representations were false when they were made by Brican America, LLC, and were known by Brican America, LLC, to be false when they were made.
360. Brican America, LLC, intended that Plaintiff rely upon those representations.
361. Plaintiff reasonably relied upon those representations to its detriment.
362. Plaintiff has been damaged as a result of such reliance.
363. On April 30, 2009, Brican America, Inc., executed Plaintiffs' Exhibit 5 as Lessor.
364. Thereafter, Brican America, Inc., assigned its interest in Plaintiffs' Exhibit 5 to NCMIC Finance Corporation.
365. Brican America, LLC, and Viso Lasik Medspas, LLC, breached the marketing agreement on or about January 1, 2010, by failing to pay Plaintiff the fee required by the contract.
366. On or about March 3, 2010, Plaintiff demanded the Brican America, LLC, repurchase the lease, and end Plaintiff's obligation to make payments thereunder.
367. Thereafter, Brican America, LLC, refused to assume the lease, and advised Plaintiff that it must continue making its lease payments.

**David Alemar DMD, PC**

368. On or about March 30, 2009, Brican America, LLC, represented to this Plaintiff that if he would enter into a lease with Brican America, Inc., for 1 Exhibeo System, which would require a monthly payment of \$508, Brican America, LLC,, would enter into a marketing agreement on behalf of Viso Lasik Medspas, LLC, through which Brican

America, LLC, would pay a minimum of \$5,800 per year to Plaintiff, and that if it failed to pay the minimum of \$5,800 per year, or if Viso Lasik Medspas, LLC, failed to make the payment, then Brican America, LLC, would at Plaintiff's request "repurchase" Plaintiff's lease agreement, leading Plaintiff to reasonably believe that the lease would be canceled.

- 369. The above representations are contained in Plaintiffs' Exhibit 6 attached hereto.
- 370. The above representations were false when they were made by Brican America, LLC, and were known by Brican America, LLC, to be false when they were made.
- 371. Brican America, LLC, intended that Plaintiff rely upon those representations.
- 372. Plaintiff reasonably relied upon those representations to its detriment.
- 373. Plaintiff has been damaged as a result of such reliance.
- 374. On April 15, 2009, Brican America, Inc., executed Plaintiffs' Exhibit 6 as Lessor.
- 375. Brican America, LLC, and Viso Lasik Medspas, LLC, breached the marketing agreement on or about January 1, 2010, by failing to pay Plaintiff the fee required by the contract.

**Kenneth A. Korpan DDS, PC**

- 376. On or about March 23, 2009, Brican America, LLC, represented to this Plaintiff that if it would enter into a lease with Brican America, Inc., for 1 Exhibeo System, which would require a monthly payment of \$508, Brican America, LLC, would enter into a marketing agreement on behalf of Viso Lasik Medspas, LLC, through which Brican America, LLC, would pay a minimum of \$5,800 per year to Plaintiff, and that if it failed to pay the minimum of \$5,800 per year, or if Viso Lasik Medspas, LLC, failed to make



the payment, then Brican America, LLC, would at Plaintiff's request "repurchase" Plaintiff's lease agreement, leading Plaintiff to reasonably believe that the lease would be canceled.

377. The above representations are contained in Plaintiffs' Exhibit 7 attached hereto.
378. The above representations were false when they were made by Brican America, LLC, and were known by Brican America, LLC, to be false when they were made.
379. Brican America, LLC, intended that Plaintiff rely upon those representations.
380. Plaintiff reasonably relied upon those representations to its detriment.
381. Plaintiff has been damaged as a result of such reliance.
382. On or about March 11, 2009, Brican America, Inc., executed Plaintiffs' Exhibit 7 as Lessor.
383. On April 14, 2009, Brican America, Inc., assigned its interest in Plaintiffs' Exhibit 4 to NCMIC Finance Corporation.
384. Brican America, LLC, and Viso Lasik Medspas, LLC, breached the marketing agreement on or about January 1, 2010, by failing to pay Plaintiff the fee required by the contract.

**Dr. Chandra R. Williams DMD, LLC**

385. On or about February 22, 2009, Brican America, LLC, represented to this Plaintiff that if it would enter into a lease with Brican America, Inc., for 1 Exhibeo System, which would require a monthly payment of \$508, Brican America, LLC,, would enter into a marketing agreement on behalf of Viso Lasik Medspas, LLC, through which Brican America, LLC, would pay a minimum of \$5,800 per year to Plaintiff, and that if it failed

to pay the minimum of \$5,800 per year, or if Viso Lasik Medspas, LLC, failed to make the payment, then Brican America, LLC, would at Plaintiff's request "repurchase" Plaintiff's lease agreement, leading Plaintiff to reasonably believe that the lease would be canceled.

386. The above representations are contained in Plaintiffs' Exhibit 8 attached hereto.
387. The above representations were false when they were made by Brican America, LLC, and were known by Brican America, LLC, to be false when they were made.
388. Brican America, LLC, intended that Plaintiff rely upon those representations.
389. Plaintiff reasonably relied upon those representations to its detriment.
390. Plaintiff has been damaged as a result of such reliance.
391. On March 11, 2009, Brican America, Inc., executed Plaintiffs' Exhibit 8 as Lessor.
392. On March 11, 2009, Brican America, Inc., assigned its interest in Plaintiffs' Exhibit 8 to NCMIC Finance Corporation.
393. Brican America, LLC, and Viso Lasik Medspas, LLC, breached the marketing agreement on or about January 1, 2010, by failing to pay Plaintiff the fee required by the contract.

### **Similar Contracting with Remaining Plaintiffs**

394. A similar scenario occurred with each of the following Plaintiffs. Copies of their contracts, marketing agreements, and communication to and from Defendants will be supplied with the Rule 26 disclosures, and not attached to this complaint to avoid unnecessarily attaching a large number of exhibits to the complaint. The additional Plaintiffs are:

- a. Geoffrey S. Wozar, DMD, PC
- b. Jennifer Goldman
- c. Amy Thu Tran
- d. Mountain Lakes Dental Associates, PA
- e. Peter K. Eng
- f. Eye-Deal Family Eye Care, Inc.
- g. Paul Taylor DMD, Inc.
- h. Arthur B. Silver DDS PC,
- i. John C. Sieweke DDS PC,
- j. John C. Sieweke,
- k. Amarilis Jacobo,
- l. Stephen R. Kepley,
- m. Mark Margolies,
- n. George C. Weeks DDS PA,
- o. George C. Week,
- p. Alan M. Rapoport,
- q. Raymond Goodman, OD, PA,
- r. Raymond Goodman,
- s. Cary Family Eye Care, OD, PA,
- t. Dwight W. Barnes,
- u. Steven J. Luccarelli,
- v. Stanely D. Halpern, DDS, PC,

- w. Stanley D. Halpern,
- x. Webster Cosmetic Dental Ltd.,
- y. Barbara Webster,
- z. Eric Smith;
- aa. John M. Highsmith, DDS, PA
- bb. Steven B. Oken
- cc. Justin Chang, PC;
- dd. Jeffrey S. Thaller
- ee. Michael S. Burstein
- ff. Charles H. Estelle
- gg. Stuart A. Curry
- hh. Gary Lederman
- ii. Brian A. McMurtry, DDS, PA
- jj. David S. Lee, DDS, Inc.,
- kk. David S. Lee,
- ll. Stone Creek Dental, PC,
- mm. Casey S. Butterfield,
- nn. Carolina Family Vision, OD, PA,
- oo. Adam B. Bryan,
- pp. Kristy L. Tart-Bryan,
- qq. Peter Epstein DMD PA,
- rr. Peter Epstein,

- ss. Christopher Young DMD PA,
- tt. Christopher Young,
- uu. Chadds Ford Dental Associates, Inc.,
- vv. Andrew Pratt,
- ww. J.M. Arrue DMD LLC,
- xx. J.M. Arrue,
- yy. Troy R. Lindh DMD PA,
- zz. Troy R. Lindh,
- aaa. Brian G. DePetris,
- bbb. Gordon Bell,
- ccc. Benjamin Gamm,
- ddd. Eyeacam Associates, PA,
- eee. Elizabeth Lewis,
- fff. Kelly L. Kalmar,
- ggg. Kalmar Family Dentistry, LLP,
- hhh. Henderson Mill Dental Care, PC,
- iii. John H. Mason.

**Class Action Allegations: Numerosity**

395. Plaintiffs request that this court certify the following class and subclasses<sup>9</sup>:

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<sup>9</sup>The reason for the existence of the subclasses, grouped by state, is for the application of Little FTC Acts from the various states as required by *Phillips Petroleum v. Shutts*, 472 U.S. 797 (1985).

- a. **Main class:** All entities which entered into contracts with any of the Defendant entities for purchase or lease of an advertising display system and also entered into a marketing or advertising agreement with one or more of the Defendant entities, and all individuals who personally guaranteed payment of the purchase or lease agreement.
396. The main class consists of over 1670 entities, thus satisfying the numerosity requirement of Rule 23.
397. Each subclass consists of more than 30 members, thereby individually satisfying the numerosity requirement of Rule 23.
398. According to the suit filed by *NCMIC Finance Corporation v. Brican America, Inc.*, case number 09-CV-21192 (Huck) (S.D.Fla.), NCMIC Finance Corporation has entered into 1672 leases with customers of Brican America, Inc., having a total value of more than \$38,000,000.

### **Commonality**

399. There are numerous issues of law and fact which are common to the claims of the putative class representatives and class members, including:
- a. Whether the contracts are void *ab initio* for fraud;
  - b. Whether the contracts are enforceable;
  - c. Whether the contracts were breached;
  - d. Whether the claimants were damaged as a result of the breach;
  - e. Whether the various Defendants fraudulently misrepresented material facts to the claimants which were known to the Defendants to be false or which were represented with reckless disregard for their truthfulness, with the intent that the

claimants rely upon those representations, and whether the claimants relied upon those representations to their detriment;

- f. Whether Defendant NCMIC Finance Corporation ratified and affirmed the cancellation clause contained in the marketing and advertising agreements;
- g. Whether the various Defendants conspired to defraud the claimants;
- h. Whether the Defendants violated the Little FTC Acts of the resident states of the claimants causing them damage;
- i. Whether the corporate identities of the various Defendants, except NCMIC Finance Corporation, should be pierced and each Defendant become jointly and severally obligated for the damages claimed by the claimants; and,
- j. Such other issues as are identified as discovery is conducted in this matter.

### **Typicality**

400. The fraud perpetrated on the putative class representatives is typical of the fraud encountered by each member of the putative class, thereby satisfying the typicality requirement of Rule 23.

### **Adequacy of Representation**

401. The putative class representatives are adequate representatives of the class and will fairly and adequately protect the interests of the class members.

402. The putative class members are committed to the prosecution of this action, and have retained competent counsel who are experienced in complex class action litigation growing out of equipment leasing.

403. There is no hostility among the various putative class representative and any class

member.

404. To prosecute this action, the putative class representatives have retained the undersigned law firms to represent the class:

- a. Ronald P. Gossett of Gossett & Gossett, P.A., has litigated several group and class action cases arising out of equipment leasing, including those involving NorVergence, Inc., (a telephone equipment leasing fraud case which fraud extended to 11,000 small businesses throughout the country), and those involving the 3Com Power of \$Zero™ Program (another telephone equipment leasing fraud case involving approximately 300 small businesses located in 12 states<sup>10</sup>); and,
- b. Michael J. Witt, of West Des Moines, Iowa, who before starting his firm, was Managing Counsel at Wells Fargo & Co., and was chief counsel to Wells Fargo Equipment Finance and Wells Fargo Financial Leasing. Earlier, he was Sr. Vice President and General Counsel of Advanta Leasing Corp. He is well experienced in UCC law, and equipment rental agreements in particular.

405. Neither the putative class representatives or their chosen counsel anticipate any difficulty in the management of this litigation as a class action.

### **Predominance**

406. The common questions of law and fact predominate over any question that may be

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<sup>10</sup>The motion for class certification is presently scheduled for evidentiary hearing to be conducted by the United States District Court for the Eastern District of Pennsylvania on May 4 and 5.



individualized of any class member.

### **Superiority**

407. Class representation and litigation as a class in one court is far superior to having the common questions of law and fact decided by many courts in each of the two available fora—Miami-Dade County, Florida, and through a floating jurisdiction clause of questionable enforceability, the courts in Iowa.
408. There is no particular or overriding interest of any member of any of the class members in individually controlling the prosecution of separate claims.

## **Count I Declaratory Relief**

409. Plaintiffs adopt and reallege the allegations contained in ¶ 1 through 408 as though said allegations were set forth individually herein.
410. This is an action for declaratory relief, seeking a declaration of the court as to the rights and obligations of the parties to the respective marketing and advertising agreements, and the equipment rental agreements.
411. Plaintiffs, and those similarly situated, are genuinely in doubt about their rights and obligations under the contracts—the equipment rental agreements and the marketing and advertising contracts.
412. Pursuant to § 86.021, FLA. STAT. (2009), Plaintiffs are entitled to declaratory relief.
413. There is a bona fide need for the declaration sought herein because the funding source, NCMIC Finance Corporation (in most cases) is threatening to sue each Plaintiff who has

stopped paying the contract when he, she or it discovered the fraud, and when the obligor under the marketing and advertising contract stopped paying the fees required by said contracts.

Wherefore, Plaintiffs request that this court enter its final judgment declaring that the equipment rental agreement contracts are unenforceable, and assessing money damages against Defendants who are responsible for same. Further, Plaintiffs request that this court grant them such further relief as this court deems just.

## **Count II**

### **Money Damages Breach of Contract**

414. Plaintiffs adopt and reallege the allegations contained in ¶ 1 through 408 as though said allegations were set forth individually herein.

415. This is an action for money damages against **Brican America, Inc.**, a Florida corporation, **Brican America, LLC**, a Florida limited liability company, **Brican Financial Services, LLC**, a Florida limited liability company, **Jean Francois Vincens, Jacques Lemacon, Salvatore M. DeCanio, Jr., JJR Investments, LLC**, a Florida limited liability company, **Lifestyle of Vision, Inc.**, a Florida corporation, **Viso Lasik Medspas, LLC**, a Florida limited liability company, **Viso Lasik Medspas of Charlotte, LLC**, a North Carolina limited liability company, and **Viso Lasik Medspas of San Antonio, LLC**, a Texas limited liability company, jointly and severally, in an amount exceeding \$75,000, plus costs, interest and attorneys' fees.

416. **Brican America, Inc.**, a Florida corporation, **Brican America, LLC**, a Florida limited liability company, **Brican Financial Services, LLC**, a Florida limited liability

company, **Jean Francois Vincens, Jacques Lemacon, Salvatore M. DeCanio, Jr., JJR Investments, LLC**, a Florida limited liability company, **Lifestyle of Vision, Inc.**, a Florida corporation, **Viso Lasik Medspas, LLC**, a Florida limited liability company, **Viso Lasik Medspas of Charlotte, LLC**, a North Carolina limited liability company, and **Viso Lasik Medspas of San Antonio, LLC**, a Texas limited liability company, were alter egos of each other, with the individual Defendants, Jean Francois Vincens, Jacques Lemacon, and Salvatore M. DeCanio, Jr., ignoring the corporate entities and conducting business without regard thereto.

417. **Brican America, Inc.**, a Florida corporation, **Brican America, LLC**, a Florida limited liability company, **Brican Financial Services, LLC**, a Florida limited liability company, **Jean Francois Vincens, Jacques Lemacon, Salvatore M. DeCanio, Jr., JJR Investments, LLC**, a Florida limited liability company, **Lifestyle of Vision, Inc.**, a Florida corporation, **Viso Lasik Medspas, LLC**, a Florida limited liability company, **Viso Lasik Medspas of Charlotte, LLC**, a North Carolina limited liability company, and **Viso Lasik Medspas of San Antonio, LLC**, a Texas limited liability company, breached the contract between the parties, Plaintiffs' Exhibits 4 and higher.

418. Plaintiffs and each class member were damaged as a direct and proximate result of said breach.

419. Plaintiffs and each class member will continue to incur damage throughout the life of Plaintiffs' Exhibit 4 and higher, as a direct and proximate result of said breach.

Wherefore, Plaintiffs on behalf of themselves and all putative class members, demand money judgment against **Brican America, Inc.**, a Florida corporation, **Brican America, LLC**,

a Florida limited liability company, **Brican Financial Services, LLC**, a Florida limited liability company, **Jean Francois Vincens, Jacques Lemacon, Salvatore M. DeCanio, Jr., JJR Investments, LLC**, a Florida limited liability company, **Lifestyle of Vision, Inc.**, a Florida corporation, **Viso Lasik Medspas, LLC**, a Florida limited liability company, **Viso Lasik Medspas of Charlotte, LLC**, a North Carolina limited liability company, and **Viso Lasik Medspas of San Antonio, LLC**, a Texas limited liability company, jointly and severally, plus costs, interest and attorneys' fees, and such further relief as this court deems just.

### **Count III**

## **Money Damages for Fraudulent Misrepresentations**

420. Plaintiffs adopt and reallege the allegations contained in ¶ 1 through 408 as though said allegations were set forth individually herein.
421. This is an action for money damages in an amount exceeding \$75,000, plus costs, interest and attorneys' fees for the tort of fraudulent misrepresentation, against **Brican America, Inc.**, a Florida corporation, **Brican America, LLC**, a Florida limited liability company, **Brican Financial Services, LLC**, a Florida limited liability company, **Jean Francois Vincens, Jacques Lemacon, Salvatore M. DeCanio, Jr., JJR Investments, LLC**, a Florida limited liability company, **Lifestyle of Vision, Inc.**, a Florida corporation, **Viso Lasik Medspas, LLC**, a Florida limited liability company, **Viso Lasik Medspas of Charlotte, LLC**, a North Carolina limited liability company, and **Viso Lasik Medspas of San Antonio, LLC**, a Texas limited liability company.
422. **Brican America, Inc.**, a Florida corporation, **Brican America, LLC**, a Florida limited liability company, **Brican Financial Services, LLC**, a Florida limited liability

company, **Jean Francois Vincens, Jacques Lemacon, Salvatore M. DeCanio, Jr., JJR Investments, LLC**, a Florida limited liability company, **Lifestyle of Vision, Inc.**, a Florida corporation, **Viso Lasik Medspas, LLC**, a Florida limited liability company, **Viso Lasik Medspas of Charlotte, LLC**, a North Carolina limited liability company, and **Viso Lasik Medspas of San Antonio, LLC**, a Texas limited liability company, were alter egos of each other, with the individual Defendants, Jean Francois Vincens, Jacques Lemacon, and Salvatore M. DeCanio, Jr., ignoring the corporate entities and conducting business without regard thereto.

423. Said Defendants made certain representations to Plaintiffs more particularly set forth above.
424. Said representations were false when they were made by Defendants.
425. The falsity of the representations was known to Defendants at the time they made them, or they made them under circumstances where they should have known of the falsity thereof.
426. Defendants intended that Plaintiffs and each class member rely upon said representations.
427. Plaintiffs and each class member reasonably relied upon the representations to the financial detriment of Plaintiffs and each class member.
428. Plaintiffs and each class member have been damaged as a result of said reliance upon the fraudulent misrepresentations made by Defendants.
429. As an item of special damage, Plaintiffs and each class member have incurred attorneys' fees in defending each case brought by NCMIC Finance Corporation to collect on the

equipment rental agreements, solely, proximately and directly as a consequence of the fraudulent misrepresentations made by Defendants to Plaintiffs and each class member.

430. Not unexpectedly, because a claim for relief based upon fraudulent misrepresentation arose under common law, the elements are substantially identical from state to state.<sup>11</sup>

They are:

State	Authority	Elements
Alabama	<i>Consolidated Constr. Co. of Alabama v. Metal Bldg. Components, L.P.</i> , 961 So.2d 820, 825 (Ala.2007)	To establish the elements of fraudulent misrepresentation claimant has to show: (1) that the representation was false, (2) that it concerned a material fact, (3) that the claimant relied on the false representation, and (4) that actual injury resulted from that reliance.
Arkansas	<i>Rosser v. Columbia Mut. Ins. Co.</i> , 55 Ark.App. 77, 928 S.W.2d 813 (1996)	In an action for fraudulent misrepresentation and deceit, the plaintiff must show triable issues of fact with respect to each of the following elements: 1) a false representation of fact; 2) knowledge that the representation is false, or knowledge that there is insufficient evidence upon which to make the representation; 3) intent to induce action or inaction on reliance upon the representation; 4) justifiable reliance upon the representation; and 5) damage suffered as a result.
California	<i>Morgan v. AT&amp;T Wireless Services, Inc.</i> , 177 Cal.App.4th 1235, 99 Cal.Rptr.3d 768 (Cal.App. 2009)	A [common law] fraudulent deception must be actually false, known to be false by the perpetrator and reasonably relied upon by a victim who incurs damages

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<sup>11</sup>Named Plaintiffs are joining this suit on a daily basis. As they join, the complaint will be amended as appropriate to add states which do not presently appear in this table.

Florida	<i>Biscayne Inv. Group, Ltd. v. Guarantee Mgmt. Servs., Inc.</i> , 903 So.2d 251 (Fla. 3d DCA 2005); <i>Elders v. United Methodist Church</i> , 793 So.2d 1038 (Fla. 3d DCA 2001); <i>Chino Elec., Inc. v. United States Fid. Guar. Co.</i> , 578 So.2d 320, 322 n. 4 (Fla. 3d DCA 1991).	To state a cause of action for fraudulent misrepresentation, a plaintiff is required to allege the following elements in the complaint: (1) a misrepresentation of a material fact; (2) which the person making the misrepresentation knew to be false; (3) that the misrepresentation was made with the purpose of inducing another person to rely upon it; (4) that the person relied on the misrepresentation to his detriment; and (5) that this reliance caused damages.
Georgia	<i>Lehman v. Keller</i> , 677 S.E.2d 415 (Ga.App. 2009)	The tort of “fraud” has five elements: (1) a false representation or omission of a material fact; (2) scienter; (3) intention to induce the party claiming fraud to act or refrain from acting; (4) justifiable reliance; and (5) damages.
Illinois	<i>Linhart v. Bridgeview Creek Development, Inc.</i> , 391 Ill.App.3d 630, 909 N.E.2d 865 (Ill.App. 2009)	The elements of common law fraud are: (1) a false statement of material fact; (2) defendant’s knowledge that the statement was false; (3) defendant’s intent that the statement induce the plaintiff to act; (4) plaintiff’s reliance upon the truth of the statement; and (5) plaintiff’s damages resulting from reliance on the statement.
Kansas	<i>Alires v. McGehee</i> , 85 P.3d 1191, 1199 (Kan.2004)	The elements of fraud are as follows: (1) an untrue statement of fact; (2) known to be untrue by the party making it; (3) made with the intent to deceive or with reckless disregard for the truth; (4) upon which another party justifiably relies and acts to his or her detriment.
Massachusetts	<i>Commerce Bank &amp; Trust Co. v. Hayeck</i> ,	the elements of common law deceit, which include ‘misrepresentation of a

	46 Mass.App.Ct. 687, 709 N.E.2d 1122 (1999)	material fact, made to induce action, and reasonable reliance on the false statement to the detriment of the person relying
Missouri	<i>State ex rel. Painewebber, Inc., v. Voorhees</i> , 891 S.W.2d 126 (Mo. 1995)	In Missouri, common law fraud has nine essential elements: “a representation; that is false; that is material; the speaker’s knowledge of its falsity or ignorance of its truth; the speaker’s intent it be acted on; the hearer’s ignorance of the falsity of the representation; the hearer’s reliance; the hearer’s right to rely on it; and injury
New York	<i>Lama Holding Co. v. Smith Barney, Inc.</i> , 88 N.Y.2d 413, 668 N.E.2d 1370 (N.Y. App. 1996)	In action to recover damages for fraud, plaintiff must prove misrepresentation or material omission of fact which was false and known to be false by defendant, made for purpose of inducing other party to rely upon it, justifiable reliance of other party on misrepresentation or material omission, and injury.
North Carolina	<i>Ragsdale v. Kennedy</i> , 286 N.C. 130, 209 S.E.2d 494 (1974)	The elements of fraud are (1) false representation or concealment of a material fact, (2) reasonably calculated to deceive, (3) made with intent to deceive, (4) which does in fact deceive, and (5) resulting in damage to the injured party.
Pennsylvania	<i>Youndt v. First National Bank of Port Allegeny</i> , 868 A.2d 539 (Pa. Super. 2005)	The specific elements of fraud are as follows: (1) a representation; (2) which is material to the transaction at hand; (3) made falsely, with knowledge of its falsity or recklessness as to whether it is true or false; (4) with the intent of misleading another into relying on it; (5) justifiable reliance on the misrepresentation; and (6) the resulting injury was proximately



		caused by the reliance
Tennessee	<i>Dobbs v. Guenther</i> , 846 S.W.2d 270, 274 (Tenn.Ct. App.1992)	A plaintiff must allege the following elements to assert a common law fraud claim: “(1) an intentional misrepresentation of a material fact, (2) knowledge of the representation’s falsity, ... (3) an injury caused by reasonable reliance on the representation [and (4) the requirement] that the misrepresentation involve a past or existing fact....”
Texas	<i>Marin v. Iesi Tx Corp.</i> , 2009 WL 3321267 (Tx.App.)	stating elements of common-law fraud: (1) material representation that was false when made; (2) when representation was made, speaker knew it was false or made it recklessly as positive assertion without any knowledge of its truth; (3) speaker made representation with intent that other party should act upon it; (4) other party actually and justifiably relied on representation; and (5) thereby suffered injury.
Virginia	<i>Winn v. Aleda Const. Co., Inc.</i> , 227 Va. 304, 315 S.E.2d 193 (Va. 1984)	The elements necessary to state a claim of actual fraud are: (1) a false representation (2) of a material fact (3) made intentionally or knowingly (4) with the intent to mislead (5) reliance by the misled party and (6) injury.

**Applicable Law per *Shutts*:**

431. *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 816 (1985), requires the following analysis:

We must first determine whether Kansas law [where the court is situated] conflicts in any material way with any other law which could apply. There can be no injury in applying Kansas law if it is not in conflict with that of any other jurisdiction connected to this suit.

432. Examining the table of laws of the various states set forth above, we see that the law of Florida does not conflict in any material way with the law of any other state which could apply.

433. Therefore, Plaintiffs assert that the law of Florida applies to the common law fraud claims of the class. That law is:

To state a cause of action for fraudulent misrepresentation, a plaintiff is required to allege the following elements in the complaint: (1) a misrepresentation of a material fact; (2) which the person making the misrepresentation knew to be false; (3) that the misrepresentation was made with the purpose of inducing another person to rely upon it; (4) that the person relied on the misrepresentation to his detriment; and (5) that this reliance caused damages.

*Biscayne Inv. Group, Ltd. v. Guarantee Mgmt. Servs., Inc.*, 903 So.2d 251 (Fla. 3d DCA 2005); *Elders v. United Methodist Church*, 793 So.2d 1038 (Fla. 3d DCA 2001); *Chino Elec., Inc. v. United States Fid. Guar. Co.*, 578 So.2d 320, 322 n. 4 (Fla. 3d DCA 1991)

434. Punitive damages are able to be award for fraudulent misrepresentation in all states:

State	Authority	Punitive Damages	
		Yes	No
Alabama	<i>Hunt Petroleum Corp. v. State</i> , 901 So.2d 1 (2004)	✓	
Arkansas	<i>Robertson Oil Co., Inc. v. Phillips Petroleum Co.</i> , 14 F.3d 373 (8 <sup>th</sup> Cir. 1993)	✓	
California	<i>The Ambassador Hotel Co., Ltd. v. Wei-Chuan Investment</i> , 189 F.3d 1017 (9 <sup>th</sup> Cir. 1999)	✓	
Florida	<i>Wallace Int'l Trucks, Inc. v. Magruda Trucking Co., LP</i> , 265 Fed.Appx. 816, 2008 WL 399449 (C.A.11 (Fla.))	✓	
Georgia	<i>Southern Prestige Homes, Inc. v.</i>	✓	

	<i>Moscoso</i> , 243 Ga.App. 412, 532 S.E.2d 122 (Ga.App.,2000)		
Illinois	<i>Cripe v. Leiter</i> , 291 Ill. App. 3d 155, 225 Ill. Dec. 348, 683 N.E.2d 516 (3d Dist. 1997)	✓	
Kansas	<i>Tetuan v. A.H. Robbins Co.</i> , 738 P.2d 1210 (Kan. 1987)	✓	
Massachusetts	<i>Computer Systems Engineering, Inc. v. Qantel Corp.</i> , 740 F.2d 59 (C.A.Mass.,1984)	✓	
Missouri	<i>Williams v. Finance Plaza, Inc.</i> , 78 S.W.3d 175 (Mo.App. W.D. 2002)	✓	
New York	<i>Barclays Bank of New York, N.A. v. Heady Electric Co., Inc.</i> , 174 A.D.2d 963, 571 N.Y.S.2d 650 (1991)	✓	
North Carolina	<i>Oestreicher v. American National Stores, Inc.</i> , 225 S.E.2d 797 (N.C. 1976)	✓	
Pennsylvania	<i>Delahanty v. First Pennsylvania Bank, N.A.</i> , 318 Pa.Super. 90, 464 A.2d 1243 (Pa.Super. 1983)	✓	
Tennessee	<i>Tschira v. Willingham</i> , 135 F.3d 1077 (C.A.6 (Tenn.),1998)	✓	
Texas	<i>Glazener v. Jansing</i> , 2003 WL 22207226 (Tex.App.-Austin)	✓	
Virginia	<i>Vanguard Military Equipment Corp. v. David B. Finestone Co., Inc.</i> , 6 F.Supp.2d 488 (E.D.Va. 1997)	✓	

435. Applying *Shutts* again, we find that the law of Florida does not conflict in any material way with any other law which could apply regarding the ability to award punitive damages against Defendants in connection with the common law fraud claims.

436. Therefore, Plaintiffs contend that the applicable legal principles relating to the claim for punitive damages for the common law fraud claims are those of Florida.

Wherefore, Plaintiffs on behalf of themselves and all putative class members, demand money judgment against Defendants plus costs, interest and attorneys' fees, and such further relief as this court deems just.

## **Count IV**

### **Money Damages for Conspiracy to Commit Fraud**

437. Plaintiffs adopt and reallege the allegations contained in ¶ 1 through 408 as though said allegations were set forth individually herein.

438. This is an action for money damages against all Defendants in an amount exceeding \$75,000, plus costs, interest and attorneys' fees, sounding in the tort of conspiracy to commit fraud<sup>12</sup>.

439. **Brican America, Inc.**, a Florida corporation, **Brican America, LLC**, a Florida limited liability company, **Brican Financial Services, LLC**, a Florida limited liability company, **Jean Francois Vincens, Jacques Lemacon, Salvatore M. DeCanio, Jr., JJR Investments, LLC**, a Florida limited liability company, **Lifestyle of Vision, Inc.**, a Florida corporation, **Viso Lasik Medspas, LLC**, a Florida limited liability company, **Viso Lasik Medspas of Charlotte, LLC**, a North Carolina limited liability company, and **Viso Lasik Medspas of San Antonio, LLC**, a Texas limited liability company,

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<sup>12</sup>Plaintiffs are not presently able, in good faith, to allege malice as defined by the law of the Commonwealth of Pennsylvania related to the tort of conspiracy to commit fraud. Therefore, those Plaintiffs who are citizens of the Commonwealth of Pennsylvania are not a part of the class seeking money damages for conspiracy to commit fraud.

were alter egos of each other, with the individual Defendants, Jean Francois Vincens, Jacques Lemacon, and Salvatore M. DeCanio, Jr., ignoring the corporate entities and conducting business without regard thereto.

440. All Defendants knowingly and intentionally conspired together with the specific intent to defraud Plaintiffs and each class member by making the fraudulent misrepresentations to Plaintiffs and each class member as set forth above.
441. Said representations were false when they were made by Defendants.
442. The falsity of the representations was known to Defendants at the time they were made, or Defendants made them under circumstances where they should have known of the falsity thereof.
443. Defendants intended that Plaintiffs and each class member rely upon said representations.
444. Plaintiffs and each class member reasonably relied upon the representations to the financial detriment of Plaintiffs and each class member.
445. Plaintiffs and each class member have been damaged as a result of said reliance upon the fraudulent misrepresentations made by Defendants.
446. As an item of special damage, Plaintiffs and each class member have incurred attorneys' fees in defending any action brought by Defendant, NCMIC Finance Corporation, to enforce the equipment rental agreements, solely, proximately and directly as a consequence of the fraudulent misrepresentations made by Defendants to each such Plaintiff and each class member.
447. Punitive damages are able to be awarded for fraudulent misrepresentation in all states:

State	Authority	Punitive Damages	
		Yes	No
Alabama	<i>Hunt Petroleum Corp. v. State</i> , 901 So.2d 1 (2004)	✓	
Arkansas	<i>Robertson Oil Co., Inc. v. Phillips Petroleum Co.</i> , 14 F.3d 373 (8 <sup>th</sup> Cir. 1993)	✓	
California	<i>The Ambassador Hotel Co., Ltd. v. Wei-Chuan Investment</i> , 189 F.3d 1017 (9 <sup>th</sup> Cir. 1999)	✓	
Florida	<i>Wallace Int'l Trucks, Inc. v. Magruda Trucking Co., LP</i> , 265 Fed.Appx. 816, 2008 WL 399449 (C.A.11 (Fla.))	✓	
Georgia	<i>Southern Prestige Homes, Inc. v. Moscoso</i> , 243 Ga.App. 412, 532 S.E.2d 122 (Ga.App.,2000)	✓	
Illinois	<i>Cripe v. Leiter</i> , 291 Ill. App. 3d 155, 225 Ill. Dec. 348, 683 N.E.2d 516 (3d Dist. 1997)	✓	
Kansas	<i>Tetuan v. A.H. Robbins Co.</i> , 738 P.2d 1210 (Kan. 1987)	✓	
Massachusetts	<i>Computer Systems Engineering, Inc. v. Qantel Corp.</i> , 740 F.2d 59 (C.A.Mass.,1984)	✓	
Missouri	<i>Williams v. Finance Plaza, Inc.</i> , 78 S.W.3d 175 (Mo.App. W.D. 2002)	✓	
New York	<i>Barclays Bank of New York, N.A. v. Heady Electric Co., Inc.</i> , 174 A.D.2d 963, 571 N.Y.S.2d 650 (1991)	✓	
North Carolina	<i>Oestreicher v. American National Stores, Inc.</i> , 225 S.E.2d 797 (N.C. 1976)	✓	

Pennsylvania	<i>Delahanty v. First Pennsylvania Bank, N.A.</i> , 318 Pa.Super. 90, 464 A.2d 1243 (Pa.Super. 1983)	✓	
Tennessee	<i>Tschira v. Willingham</i> , 135 F.3d 1077 (C.A.6 (Tenn.),1998)	✓	
Texas	<i>Glazener v. Jansing</i> , 2003 WL 22207226 (Tex.App.-Austin)	✓	
Virginia	<i>Vanguard Military Equipment Corp. v. David B. Finestone Co., Inc.</i> , 6 F.Supp.2d 488 (E.D.Va. 1997)	✓	

448. Applying *Shutts* again, we find that the law of Florida does not conflict in any material way with any other law which could apply regarding the ability to award punitive damages against Defendants in connection with the common law fraud claims.

449. Therefore, Plaintiffs contend that the applicable legal principles relating to the claim for punitive damages for the common law fraud claims are those of Florida.

Wherefore, Plaintiffs on behalf of themselves and all putative class members, demand money judgment for compensatory and punitive damages against each Defendant, jointly and severally, plus costs, interest and attorneys' fees, and such further relief as this court deems just.

## **Count V**

### **Money Damages for Violation of Little FTC Acts of Various States**

450. Plaintiffs adopt and reallege the allegations contained in ¶ 1 through 408 as though said allegations were set forth individually herein.

451. This is an action for money damages against each Defendant, jointly and severally, in an amount exceeding \$75,000, plus costs, interest and attorneys' fees, sounding in the

violation by Defendants of each applicable state’s adaptation of a Little FTC Act, which in Florida is codified at §§ 501.201 *et seq.*, FLA. STAT. (2009).

452. The conduct of Defendants as more particularly alleged above, violates the Florida Deceptive and Unfair Trade Practices Act.
453. Plaintiffs have been damaged as a direct and proximate result of the violation by Defendants of Florida Deceptive and Unfair Trade Practices Act.
454. All conditions precedent to be performed by Plaintiffs prior to the bringing of an action under the Florida Deceptive and Unfair Trade Practices Act have either been performed by Plaintiffs, or would be futile as is evidenced by the efforts of each individual Plaintiff to have the various Defendants fulfill their obligations under the existing contracts.
455. The most divergent law governing the claims raised by Plaintiffs is the statutory law enacted by each state known generally as consumer protection laws, deceptive and unfair trade practices acts, or Little FTC Acts:

The ABA Journal reported in 1986 that “business lawyers involved in commercial disputes are beginning to use what are probably the most potent litigation weapons now available—state versions of the Federal Trade Commission Act, known as ‘Little FTC Acts,’ and that such statutes “will play an increasingly decisive role in business litigation.”<sup>13</sup> This is a fairly recent development in state consumer protection litigation, but may well be a precursor of things to come.

The original rationale for little FTC Acts was to provide greater protection for consumers in their private suits against deceptive or unfair sellers, due to the perceived inadequacies of common-law or UCC remedies. Business people were not thought to need any augmented legal protection because presumably they could protect themselves.

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<sup>13</sup>Gilleran and Stadfeld, *Little FTC Acts Emerge in Business Litigation*, 72 A.B.A.J. 58, 61 (1986).



After the initial wave of little FTC Acts in the late 1960s and early 1970s, some state courts and legislatures began to recognize that inexperienced purchasers of business franchises were at much the same disadvantage as consumers of automobiles or houses<sup>14</sup>. Thus, statutory consumer protection was extended to such purchasers either through amendment to the state law, [citation omitted] or the enactment of new legislation. ...

Mary Dee Pridgen, CONSUMER PROTECTION AND THE LAW § 4:3 (2009).

456. Some states, such as Pennsylvania, confine their Little FTC Act coverage to individual claimants who have purchased goods for household or personal use. Some, such as Florida, extend coverage to businesses.
457. All Little FTC Acts carry with them the potential for award of treble damages, and attorneys' fees.
458. In all of the applicable FTC Acts, found in the table below, a fraudulent misrepresentation is a basis for relief under the Act.
459. Because common law claims for fraud carry with them the potential for an award of punitive or exemplary damages, and because generally speaking, a claimant cannot duplicate recovery of its damages, it would appear that a claimant would need to make an election of remedies between an award of compensatory and punitive damages for common law fraud, and an award of compensatory and treble damages for a violation of the Little FTC Act based upon the same fraud.
460. However, because an election of remedy is to be made only after the return of the verdict (in a jury trial) or after return of preliminary findings by the court (in a bench

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<sup>14</sup>Note, *Toward Greater Equality in Business Transactions: A Proposal to Extend the Little FTC Act to Small Businesses*, 96 HARV. L. REV. 1621 (1983)

trial), Plaintiffs will continue to pursue their claims individually and on behalf of those class members who have viable Little FTC Act claims.

461. The Due Process Clause and the Full Faith and Credit Clause of the Constitution of the United States require “that for a State’s substantive law to be selected in a constitutionally permissible manner, that State must have a significant contact or significant aggregation of contacts, creating state interests, such that choice of its law is neither arbitrary nor fundamentally unfair.” *Phillips Petroleum v. Shutts*, 472 U.S. 797, 819 (1985) quoting *Allstate Ins. Co. v. Hague*, 449 U.S. 302, 312-313 (1981).

462. In this case, the fraudulent conduct complained of occurred within the home state of each Plaintiff—the location where the written fraudulent representations were conveyed to the customers. Each of those states would have a significant state interest in regulating away the fraudulent behavior, or punishing its occurrence. Therefore, the law of each such state will be examined to see if there is a commonality sufficient to litigate this issue through a class action.

463. The various state Little FTC Acts are as follows:

<b>State—Applicable to Case</b>	<b>Authority</b>	<b>Elements</b>
Alabama: No	§ 8-19-3. Definitions.	Limited to “Any natural person who buys goods or services for personal, family or household use”
Arkansas: No	§ 4-88-101	Creates no private cause of action.
California: No	§ 1761. Definitions	Limited to primarily personal, family or household purposes
Florida Yes	§§ 501.201 <i>et seq.</i>	“Consumer” means an individual; child, by and through its parent or

			legal guardian; business; firm; association; joint venture; partnership; estate; trust; business trust; syndicate; fiduciary; corporation; any commercial entity, however denominated; or any other group or combination.
Georgia:	Yes	§ 10-1-370 <i>et seq.</i>	The Uniform Deceptive Trade Practices Act, §§ 10-1-370 through 10-1-382 applies to businesses, while the Fair Trade Business Practices Act, found at § 10-1-392 <i>et seq.</i> , does not. DLL has previously advised this court that “the consumer protection law statutes in ... Georgia, ... limit claims to those related to goods or services acquired for personal, family or household use. ... GA. CODE ANN. §§ 10-1-392, 10-1-393 (2009).” DE# 87, p. 74, fn. 37. This misstates Georgia law. Further, DLL advised this court in the same paragraph that Georgia’s law “entirely prohibit[s] consumer protection class actions,” then cites a portion of the inapplicable Fair Trade Business Practices Act in support of that statement. “Chapter 5B” referred to in § 10-1-399, refers to telemarketing restrictions found in § 10-5B-101 <i>et seq.</i> ; “this part” referred to in § 10-1-399 refers to the Fair Trade Business Practices Act, the first section of which, § 10-1-390, states “This part shall be known and may be cited as the “Fair Business Practices Act of 1975.”
Illinois:	No	§ 505/1. Definitions	Limited by the definition of consumer as being “any person who purchases or contracts for the purchase of merchandise not for resale in the ordinary course of his trade or business but for his use or that of a

			member of his household.”
Kansas:	No	§ 50-623 <i>et seq.</i>	“Consumer” means an individual, husband and wife, sole proprietor, or family partnership who seeks or acquires property or services for personal, family, household, business or agricultural purposes. The Kansas company involved is “Individual Assurance Company, LLC, which is most likely not a family partnership.
Massachusetts:	Yes	Mass. Gen. Laws ch. 93A, § 11 (2009).	Any person who engages in the conduct of any trade or commerce and who suffers any loss of money or property, real or personal, as a result of the use or employment by another person who engages in any trade or commerce of an unfair method of competition or an unfair or deceptive act or practice declared unlawful by section two or by any rule or regulation issued under paragraph (c) of section two may, as hereinafter provided, bring an action in the superior court, or in the housing court as provided in section three of chapter one hundred and eighty-five C, whether by way of original complaint, counterclaim, cross-claim or third-party action for damages and such equitable relief, including an injunction, as the court deems to be necessary and proper.
Missouri:	No	§ 407.010 <i>et seq.</i>	Private cause of action limited to those who purchase goods for personal, family or household purposes
New York:	Yes	§ 349. Deceptive acts and practices unlawful	In addition to the right of action granted to the attorney general pursuant to this section, any person who has been injured by reason of any violation of this section

			may bring an action in his own name to enjoin such unlawful act or practice, an action to recover his actual damages or fifty dollars, whichever is greater, or both such actions. The court may, in its discretion, increase the award of damages to an amount not to exceed three times the actual damages up to one thousand dollars, if the court finds the defendant willfully or knowingly violated this section. The court may award reasonable attorney's fees to a prevailing plaintiff.
North Carolina:	Yes	§ 75-16. Civil action by person injured; treble damages	If any person shall be injured or the business of any person, firm or corporation shall be broken up, destroyed or injured by reason of any act or thing done by any other person, firm or corporation in violation of the provisions of this Chapter, such person, firm or corporation so injured shall have a right of action on account of such injury done, and if damages are assessed in such case judgment shall be rendered in favor of the plaintiff and against the defendant for treble the amount fixed by the verdict.
Pennsylvania:	No	201-9.2. Private actions.	Limited to "goods or services primarily for personal, family or household purposes"
Tennessee:	No	§ 47-18-101 <i>et seq.</i>	Defines consumer to be a "natural person" thus, if any class member is a natural person, this law would permit a claim. The Tennessee claimants are not natural persons.
Texas:	Yes	§ 17.50. Relief for Consumers	"Consumer" means an individual, partnership, corporation, this state, or a subdivision or agency of this state who seeks or acquires by purchase or lease, any goods or services, except that the term does not include a

		business consumer that has assets of \$25 million or more, or that is owned or controlled by a corporation or entity with assets of \$25 million or more. Note: DLL asserted that the statute of limitations under the Texas code is two years, and that is correct, but incomplete. The statute of limitations is “two years after the consumer discovered or in the exercise of reasonable diligence should have discovered the occurrence of the false, misleading, or deceptive act or practice.” § 17.565.
Virginia:	No	§ 59.1-196, <i>et seq.</i> Limits consumer transaction to one primarily for personal, family or household purposes

464. In each state, if the elements of a claim for relief for common law fraud are proved, that same evidence establishes a violation of the Little FTC Act.

465. From the above, Plaintiffs concede that not all Plaintiffs can sue Defendants for violation of the home state’s Little FTC Act, and will provide the court and counsel with a table delineating which Plaintiffs seek damages for violation of their state’s Little FTC Act when all named Plaintiffs have been joined.

Wherefore, Plaintiffs demand money judgment against Defendants, jointly and severally, for all damages incurred by Plaintiffs and all putative class members similarly situated, as a direct and proximate result of their violation of said act, plus the enhanced damages provided by each such act, costs, interest and attorneys’ fees, and requests that this court grant it such further relief as this court deems just.

## Demand for Trial by Jury

Plaintiffs demand trial by jury of all issues so triable.

Dated: March 16, 2010  
Hollywood, FL

/s/ *Ronald P. Gossett*

Ronald P. Gossett (210811)  
rongossett@gossettlaw.com  
Gossett & Gossett, P.A.  
4700 Sheridan St., Building I  
Hollywood, FL 33021  
(954) 983-2828 • (954) 212-0439 Fax  
Attorneys for Plaintiffs