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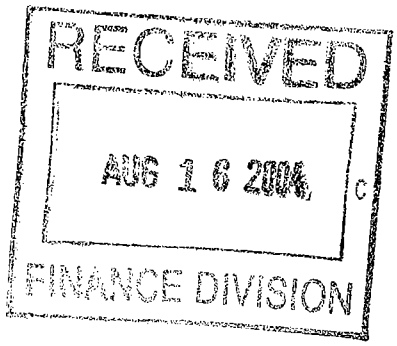

EXQUISITE CATERERS, LLC on behalf of themselves and all others similarly situated, Plaintiffs, v. POPULAR LEASING USA, INC., PARTNERS EQUITY CAPITAL COMPANY, LLC, INTERCHANGE FINANCIAL SERVICES CORPORATION, GENERAL ELECTRIC CAPITAL CORPORATION, CIT TECHNOLOGY FINANCING SERVICES, INC., NORV CAPITAL, DE LAGE LANDEN FINANCIAL SERVICES, INC., ABB BUSINESS FINANCE, ABB STRUCTURED FINANCE (AMERICAS), INC., OFC CAPITAL, ALFA FINANCIAL CORPORATION, IFC CREDIT CORPORATION STUDEBAKER-WORTHINGTON LEASING CORP.AND DOE CORPS. 1-40, Defendants.	SUPERIOR COURT OF NEW JERSEY MONMOUTH COUNTY: LAW DIVISION DOCKET NO.: 3686-04 CIVIL ACTION CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiffs, by their attorneys, allege upon personal knowledge as to themselves and upon information and belief as to the other allegations of this Complaint, as follows:

NATURE OF THE CASE

1. This is a class action pursuant to Rule 4:32 of the Rules Governing the Courts of the State of New Jersey, on behalf of all persons and entities residing in the United States of America who leased a Matrix (Adtran 850 RCU) and/or Matrix SOHO (Adtran 2050) and/or other network computer equipment from Norvergence, Inc. using an Equipment Rental Agreement (Exhibit 1) the same as or similar to the agreement used in the transaction with the plaintiff and whose lease was then assigned to "lease assignees", Popular Leasing USA, Inc., the other named defendants and/or Doe Corps 1-40.

2. This is an action to secure compensatory, statutory and punitive damages, preliminary and permanent injunctive relief, including rescission of contracts, cessation of collections and other equitable relief. The claims asserted herein are premised on deceptive, unlawful and unfair business practices in violation of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq., the New Jersey Truth-in-Consumer Contract, Warranty, and Notice Act, N.J.S.A. 56:12-14 et seq., the FTC Holder Rule 16 C.F.R. Sec. 433.2, the "FTC Act" 15 U.S.C. sections 45(a), 52, 53 and 57b, and claims of breach of contract, breach of implied warranties of merchantability and fitness for a particular purpose, and other claims set forth herein.

3. As described in more detail below, defendant Popular Leasing USA, Inc. (hereinafter "Popular" or "Popular Leasing") is a "lease assignee" of Equipment Rental Agreements and one of the preferred assignees of Norvergence, Inc. (hereinafter "Norvergence").

4. Norvergence resells telecommunications services mostly to small businesses. Norvergence claims to discount by 30-60% the cost of landline phone, cell phone and high-speed internet services from major telecommunications service providers such as Qwest, T-Mobile, and

Sprint. Norvergence is allegedly able to discount these costs by assisting in access to the providers and through the use of equipment (network "boxes" such as the Matrix and Matrix SoHo) that are rented to clients. Norvergence claimed that its "boxes" would route landline phone, cell phone and high-speed internet access at a 30%-60% savings and/or for free, and allow unlimited local and long distance calling with no per minute charges on landline phones, allowing unlimited calling anywhere at anytime for cell phones.

5. Norvergence, after obtaining long-term equipment rental agreements for the "boxes" for as much as 60 months, would assign the first 12 months of the lease, or as much as the entire 60 months, to a leasing company such as defendant, Popular Leasing USA, Inc. or the other named Defendants or Doe Corps. 1-40.

6. For example, Norvergence leased equipment, a Matrix SoHo "box," to the plaintiff for a term of 60 months and arranged for the assignment of 12 months of the lease to the defendant Popular Leasing. Popular Leasing, after buying 12 months of the lease from Norvergence, sought to enforce 12 months of the lease.

7. The equipment was misrepresented to consumers by Norvergence as necessary to allow them to access landline phones with unlimited local and long distance calling with no per minute charge, high-speed internet services and unlimited cell phone service for a 30%-60% savings or for free. The equipment consisted of the Norvergence Matrix, Matrix Soho network "boxes" and/or other network equipment. These "boxes" were misrepresented by Norvergence to have their proprietary software and hardware and patents or patents pending. In reality, these Norvergence "boxes" were manufactured by a network equipment manufacturer, Adtran, Inc., a publicly traded company, and had no proprietary Norvergence software or hardware or patents

attached to them.

8. The Matrix "box" is actually an Adtran 850 which does nothing to make phone or internet costs free and does not reduce costs as represented by Norvergence. It does not make landline phone calls unlimited for local, long distance or toll free 800 calling without per minute charges, nor does it make cell phone calls unlimited without additional charges. Its normal function is to channel voice lines, up to 24, in an office, and provide an internet access device for a T-1 line and a built-in router (a router routes internet data around an office). Savings of approximately 2 cents a minute may be obtained on phone calls by channeling via a T-1 line to a central office. The Matrix SoHo "box" is actually an Adtran 2050 which does nothing to save phone or internet costs. Its normal functions include acting as a firewall for internet access, allowing for VPNs (virtual private networks) and serving as a router for internet traffic in an office. The Matrix SoHo does not even allow phone line connections or access to the internet and would require a separate modem to access the internet.

9. In those offices of Norvergence client's that had Matrix boxes, a T-1 line was installed. (A T-1 line is a major high-speed connection to the internet and allows for both phone and internet data to be transmitted directly to a service provider of phone and internet services.) The T-1 line was owned, or leased, by Norvergence from a major telecommunications provider, of phone and internet services (such as Qwest). Norvergence was then billed for phone and internet services that were used by Norvegence's clients over the T-1. A T-1 was not installed in the offices of those that used the Matrix SoHo. In these instances, the Matrix SoHo "box" could not even allow access to the internet.

10. Norvergence also claimed that both the Matrix and Matrix SoHo provided voice-

over IP (VoIP) which they do not. Voice-over IP allows for analog voice on phone lines to be converted to digital information which is then transmitted over the internet, presumably at a savings from regular analog voice transmitted over phone lines. This misrepresentation to consumers was another way Norvergence explained how its "boxes" enabled a cost savings to them.

11. Despite representations to the contrary, consumers were renting equipment that was not necessary for any savings on their access to landline phone or internet access. In fact, often the equipment itself was not necessary for the clients to access their landline phone or internet access at all, and it was frequently not installed by Norvergence installers, or just plugged into power outlets without connection to a network or phones so that the power lights blinked. And, the equipment was often older, discontinued models. All of this was misrepresented by Norvergence to class members.

12. In addition, Norvergence, Popular Leasing and the other named Defendants and Doe Corps. 1-40 did not apply the usual finance industry standards for granting the lease, the value of the equipment leased by Norvergence and Popular Leasing and the other named Defendants and Doe Corps. 1-40 has no relationship to the value of the lease. The retail cost for the equipment that was leased was far less than the aggregate cost of the lease. An Adtran 850 or Matrix at retail is approximately $1200, an Adtran 2050 or Matrix SoHo at retail is $395.00. For example, plaintiff leased a Matrix SoHo for $374.89 per month for 60 months, totaling $22, 493.40. Even the 12 month assigned lease amount due to Popular Leasing from Exquisite totaled $4498.68, well in excess of the retail cost of the unit of $395.00.

13. After making a successful sales pitch, Norvergence presents the Equipment Rental

Agreement to the customer amid various papers the customer signs, including a Matrix or Matrix SoHo Services Application, Matrix or Matrix SoHo Hardware Application and Credit Application. (See Exhibit A - Equipment Rental Agreement), (See Exhibit B which includes: "A Cost Savings Proposal for: Exquisite Caterers including Credit Application, Equipment Rental Agreement Pg 1 of 2, Matrix SOHO Non-Binding Hardware Application, MATRIX SOHO Non-Binding Services Application, "Norvergence Proposal of Enhanced Telecommunications Benefits", Norvergence Brochure - "Solutions Overview") .

The assignment of the lease to a leasing company such as Popular Leasing or other defendants is not included, and customers are not aware, upon information and belief, that their lease will be assigned to a lease assignee. (See Exhibit C - Exhibit C Partial Term Lease Specification). Furthermore, a personal guaranty was part of the equipment rental agreement, making an individual consumer ultimately responsible for the monthly payments.

14. Although the lease purports to only finance the Matrix or Matrix SoHo boxes, the sales pitch for the items is made in conjunction with an application for services that, upon information and belief, must be done together in order to obtain the 30%-60% promised savings. Norvergence is actually selling a "cost savings proposal" or "total solution" to reduce total telecommunications costs (See Exhibit B - "Cost Savings Proposal" - Cover Page, "Norvergence Proposal of Enhanced Telecommunications Benefits", and Norvergence Brochure - "Solutions Overview") and the exorbitant lease for the equipment represents payments for that overall cost savings proposal or "business proposal" and not the leasing of the equipment. This is the "total solution" or "cost savings solution" of combined service and hardware or the "Matrix Hardware Solution" which purports to provide "Unlimited Domestic US Landline calling, Unlimited

Domestic Cellular/Firewall Solution and Internet access." These deceptions fraudulently induce customers to "sign up."

Norvergence goes so far as to ask potential customers to submit the total of their telecommunications bills, including landline phone, cell phone and internet services, so that Norvergence's "Cost Savings Proposal" that combines service costs with the equipment rental cost automatically slashes these costs by 30% - 60% to induce customers to sign the exorbitant equipment rental agreements. (See Exhibit B - "Accurate Bill Receipt and Proposal Request.")

15. Norvergence does not fill in the lease agreements with a truthful description of how the exorbitant equipment rental cost is packaged into their "cost savings proposal" to lower all telecommunication service costs. This packaging is their intangible"total solution" on how to deceptively lower service costs. Norvergence then makes the finance contract look like an equipment lease, because Uniform Commercial Code Article 2A ("UCC Art. 2A") equipment lease provisions are significantly more favorable to creditors than the provisions relating to non-lease finance contracts. Finance contracts for business ventures and other general intangible items cannot qualify as Art. 2A leases. In addition, the equipment rental agreement may not qualify as a lease because it does not fit the definition of a "negotiable instrument", and, again, Art. 2A would not apply to it.

16. Furthermore, the equipment lease agreement misrepresents that the lessee is waiving all rights and remedies under Article 2A of the UCC , the rental is made without any warranties and the agreement is governed by the law of the State in which the assignee's principal office is located, not where the lessee resides.

17. Finally, the equipment rental agreements used by Norvergence and assigned

to Popular Leasing and the other defendants and the misrepresentations made by Norvergence, Popular Leasing and the other defendants to plaintiff and the Class violated federal law. The agreements did not contain specific language required by the FTC Holder Rule and contained misrepresentations. The misrepresentations made were fraudulent and unconscionable acts that violated the FTC Act as described further below. The FTC recently settled a case concerning a similar scheme. (See Exhibit D - Complaint for Injunctive and Other Equitable Relief, and Stipulated Final Judgement and Order, Federal Trade Commission v. Leasecomm Corporation and Microfinancial Incorporated, United States District Court, District of Massachusetts, (2003)).

18. In July of 2004 Norvergence voluntarily sought Chapter 11 bankruptcy protection after being forced into court by an involuntary petition for Chapter 11 bankruptcy by three of Leasing Company creditors, including Popular Leasing, OFC Capital (OFC), a division of ALFA Financial and Partners Equity Capital (Partners). According to the filing, Popular, OFC and Partners are seeking $397, 630.00, $283, 394.00 and $697, 683.00, respectively, in alleged breach of contract damages. (MonitorDaily.com, July 8, 2004) And, in July of 2004, services via Norvergence were suspended.

19. Popular Leasing and the other defendants sought to enforce the lease agreements despite the fact that class members no longer had access to landline phone, cell phone or internet services through Norvergence, despite the fact that the equipment was of no use to class members and despite the fact that the equipment capabilities were grossly misrepresented to plaintiff and class members.

20. Plaintiff alleges on information and belief that Popular and the other named Defendants and Doe Corps. 1-40 have been fully aware of the misrepresentations of the leased

equipment by Norvergence for at least the last year, yet it still bought and enforced the lease agreements.

21. This action seeks compensation for members of the Class for the financial costs incurred by them as a result of the enforcement of their equipment rental agreements by Popular. This action also seeks an injunction preventing Popular from the continued enforcement of the lease agreements and/or a declaratory judgment that the leases are not enforceable. And, this action seeks an award of punitive damages against Popular for its indefensible conduct as described more fully below.

PARTIES

22. Plaintiff, Exquisite Caterers, LLC is located at 52-B North Main Street, Marlboro, Monmouth County, New Jersey.

23. (a) Defendant, Popular Leasing USA, Inc., a "lease assignee", has a principal place of business at 4400 Rt. 9 South, Suite 1000, Freehold, Monmouth County, New Jersey. It is a Delaware corporation.

(b) Defendant, Partners Equity Capital Company, LLC, a "lease assignee", is a Pennsylvania corporation.

(c) Defendant Interchange Financial Services Corporation, a "lease assignee", has a principal place of business at Park 80 West Plaza Two, Saddle Brook, New Jersey. It is a New Jersey Corporation.

(d) Defendant General Electric Capital Corporation, a "lease assignee", has a principal place of business at 260 Long Ridge Road, Stamford, CT. It is a Delaware corporation.

(e) Defendant CIT Technology Financing Services, Inc. a "lease assignee", has a

principal place of business at 2 Gatehall Drive, Parsippany, New Jersey. It is a Massachusetts corporation.

(f) Defendant ABB Business Finance, a division of ABB Structured Finance (Americas) Inc., and defendant ABB Structured Finance (Americas) Inc. are "lease assignees", and have a principal place of business at One Research Drive, Westboro, MA.

(g) Defendant OFC Capital, a division of Alfa Financial Corporation and Alfa Insurance, and defendant Alfa Financial Corporation are "lease assignees", and have a principal place of business at 576 Colonial Park Drive, Suite 200, Roswell, GA.

(h) Defendant Norv Capital, a division of De Lage Landen Financial Services, and defendant De Lage Landen Financial Services are "lease assignees" and have a principal place of business at 1055 Westlakes Drive, Berwyn, PA. De Lage Landen Financial Services, Inc. is a Michigan corporation.

(i) IFC Credit Corporation is a "lease assignee" and has its principal place of business at 8700 Waukegan Road, Suite 100, Morton Grove, IL.

(j) Studebaker-Worthington Leasing Corp. is a "lease assignee" and has its principal place of business at 100 Jericho Quadrangle, Jericho, New York.

(k) Defendants had, and continue to have, significant contacts with Monmouth County and the State of New Jersey. Among other things, defendants do business in Monmouth County and the State of New Jersey, and had, and continue to have, numerous agents in Monmouth County and the State of New Jersey through which it does business; and derives significant revenue and income from residents of Monmouth County and the State of New Jersey. In addition, Plaintiff's causes of action against defendants, as alleged below, were and are related

to the Company's contacts with Monmouth County and the State of New Jersey.

(l) Norvergence, Inc. (hereinafter "Norvergence") a non-party, was the original holder of the equipment rental agreements at issue. It is a New Jersey corporation with its principal place of business at 550 Broad Street, Newark, New Jersey. "It is privately owned and was founded in 2001 and has about 7, 000 existing customers nationwide." Bergen Record, Friday, July 9, 2004. "Some 4,000 more had signed leasing agreements in the last six months but were never connected." BroadbandReports.com.

24. Doe Corps 1-40, "lease assignees", who as of the date of this complaint are unidentified, are financing companies that were assigned the same or similar equipment rental agreements used in the transaction between Exquisite Caterers and Norvergence.

VENUE

25. Venue in this action properly lies in Monmouth County based on the fact that the plaintiff's principal place of business is located there.

CLASS ACTION ALLEGATIONS

26. This action is brought and may properly proceed as a class action, pursuant to the provisions of Rule 4:32 of the New Jersey Court Rules. Plaintiff brings this action on behalf of itself and all others similarly situated. The Class is defined as follows:

> All persons and/or entities residing in the United States of America who leased one or more Matrix (Adtran 850 RCU) units and/or one or more Matrix SOHO (Adtran 2050) units and/or other network equipment units from Norvergence and entered into an Equipment Rental Agreement, and whose lease was then sold and/or assigned to Popular Leasing USA, Inc., the other named defendants or Doe Corps 1-40. Specifically excluded from this class are any person and/or entity in which defendant has a controlling interest, and the officers, directors, employees, affiliates, subsidiaries, legal representatives, heirs, successors and

their assigns of any such person or entity, together with immediate family member of any officer, director or employee of said companies (the "Class").

27. This action is properly maintainable as a class action. The class for whose benefit this action is brought is so numerous that Joinder of all members is impracticable, and the disposition of their claims in a class action will provide substantial benefits to both the parties and the Court.

28. A class action is superior to other methods for the fair and efficient adjudication of the claims herein asserted, and no unusual difficulties are likely to be encountered in the management of this class action. Since the damages suffered by individual class members may be relatively small, the expense and burden of individual litigation makes it impossible for members of the Class to individually seek redress for the wrongful conduct alleged.

29. There are questions of law and fact which are common to the Class and which predominate over questions affecting any individual class member. The common questions include, inter alia, the following:

a. Whether Norvergence misrepresented the purpose, use, capabilities and worth of the Matrix and Matrix SoHo equipment that was rented by class members.

b. Whether defendant Popular Leasing and all other defendants knew or should have known of the misrepresentations of the Matrix and Matrix SoHo equipment by Norvergence.

c. Whether Norvergence, defendant Popular Leasing and all other Defendants' actions constitute violations of the New Jersey Consumer Fraud Act, and, if so, the measure of damages and triple damages.

d. Whether Norvergence, defendant Popular Leasing and all other Defendants'

actions constitute a breach of contract.

e. Whether Norvergence, defendant Popular Leasing and the other named Defendants and Doe Corps. 1-40 actions constitute breach of implied and express warranties.

e. Whether the equipment rental agreement at issue violates the CFA and/or was obtained by practices that violate the CFA and is, therefore, illegal, void and unenforceable.

f. Whether pursuant to the equipment rental agreements and applicable state and federal law, defendant Popular Leasing and Defendant Doe Corps 1-40 as assignees and/or holders in due course of the rental agreements are subject to all the claims and defenses that plaintiff and all others similarly situated have against the original equipment rental agreement seller Norvergence.

g. Whether defendant Popular Leasing and the other named Defendants and Doe Corps. 1-40 as assignees and/or holders in due course, violated the FTC Holder Rule, more specifically 16 C.F.R. Sec. 433.2, by not providing in the equipment lease agreement in 10-point bold face type:

> Any holder of this consumer credit contract is subject to all claims and defenses which the debtor could assert against the seller of goods or services obtained with the proceeds hereof. Recovery hereunder by the debtor shall not exceed amounts paid by the debtor hereunder. [16 C.F.R. Sec. 433.2]

h. Whether, by not containing the FTC Holder Rule in 10-point bold face type as stated above in the equipment rental agreements, Popular Leasing and the other named Defendants and Doe Corps. 1-40 as assignees and/or holders in due course violated the Truth-In-Consumer Contract, Warranty and Notice Act (N.J.S.A. 56:12-14 et seq.) and specifically

N.J.S.A. 56:12-40, which states in relevant part:

> No seller, lessor, creditor, lender or bailee shall in the course of his business offer to any consumer or prospective consumer or enter into any written consumer contract or give or display any written consumer warranty notice or sign after the effective date of this act which includes any provision that violates any clearly established legal right of a consumer or responsibility of a seller, lessor, creditor, lender or bailee as established by State or Federal law at the time the offer is made or the consumer contract is signed or the warranty, notice or sign, is given or displayed.

If violations are found, then the minimum penalty of $100.00 must be awarded per violation.

i. Whether Norvergence, Popular Leasing and the other named Defendants and Doe Corps. 1-40 deceptive practices and fraud violated the FTC Act" 15 U.S.C. sections 45(a), 52, 53 and 57b.

j. Whether defendant Popular Leasing and the other named Defendants and Doe Corps. 1-40 actions have proximately caused injury to defendant and all others similarly situated and, if so, the proper measure of damages.

k. Whether defendant Popular Leasing and the other named Defendants and Doe Corps. 1-40 have been unjustly enriched by their practices as detailed herein which allow them to reap thousands of dollars from unsuspecting customers.

l. Whether defendant Popular Leasing and the other named Defendants and Doe Corps. 1-40 actions were sufficiently wrongful so as to entitle plaintiff and all others similarly situated to punitive damages; and,

m. Whether the Class has been damaged and/or suffered irreparable harm and, if so, the extent of such damages and/or the nature of the equitable and injunctive relief which each member of the Class is entitled.

30. Because Plaintiff's claims and the claims of members of the Class all derive from a common nucleus of operative fact, Plaintiff is asserting claims that are typical of the claims of the entire Class, and Plaintiffs will fairly and adequately represent and protect the interests of the Class in that it has no interests that are antagonistic to those of the other members of the Class. Plaintiffs have retained counsel who are competent and experienced in the prosecution of class action litigation.

ALLEGATIONS OF FACT

31. On September 17, 2003, David Esquerazi, President of Esquisite Caterers executed as a "renter" an equipment rental agreement with Norvergence for a Matrix SoHo. On November 12, 2003, a representative of Norvergence executed and accepted as a "rentor" the rental agreement. The rental agreement also required that David Esquerazi give a personal guaranty. The equipment rental agreement was for a 60 month term at $374.89 per month. (See Exhibit A - Equipment Rental Agreement).

The rental agreement was made in conjunction with a service plan that included unlimited wireless calling for seven cell phones, portability of cell phone numbers from their prior provider Verizon, landline phones with unlimited local and long distance and high-speed internet access reducing charges of their already connected Comcast cable modem. They were to pay Norvergence a total of $90.93 for 7 cell phones with unlimited calling and $9.99 per month for High Speed Internet Access. Inclusive of the equipment rental agreement, Exquisite's total monthly charge for 2 unlimited local and long distance landline phones with no per minute charges, 7 cell phones with unlimited calling and High Speed Internet Access, there

telecommunications "cost savings proposal" or "total solution", was $475.81 a month!!!!.

This would be, if accurate, a large savings over what they had paid for those services previously. Norvergence represented to Exquisite that installation of the Matrix Box was required for these savings and that the box had Norvergence proprietary hardware with Norvergence patents.

AT NO TIME did Norvergence advise Exquisite that the "equipment" may be purchased for cash rather than rented despite the lease saying otherwise. In addition, at no time was Exquisite quoted a cost for the equipment.

32. On November 11, 2003, David Esquenazi, President of Exquisite Caterers, executed a "Delivery and Acceptance Certificate". (See Exhibit A - Equipment Rental Agreement - Delivery and Acceptance Certificate).

33. On November 11, 2003, a Norvergence representative executed an "Exhibit C-Partial Term Lease Specification" assigning and selling the partial term of the full term lease of 12 months to Popular Leasing. (See Exhibit C - Exhibit C-Partial Term Lease Specification). The unpaid balance of the partial term lease being assigned to Popular Leasing equaled $4408.68 payable in 12 monthly payments of $374.89, with the first payment being due on January 2, 2004. At no time was Exquisite Caterers directly informed by Norvergence that part of their lease would be assigned to another financing company.

34. Exquisite Caterers made the monthly payments on the lease to Popular Leasing of $374.89 in January and February of 2004.

35. On March 16, 2004, David Esquenazi of Exquisite Caterers sent a letter to Norvergence requesting termination of contract due to poor service on behalf of Norvergence,

previous phone numbers were not made portable as promised and he requested a refund of all monies paid to Norvergence. (See attached Exhibit E)

36. On April 28, 2004, Popular Leasing sent a letter to Exquisite Caterers claiming a failure to pay monthly payments for March and April of 2004, for a total due of $834.50. Notice was given to accelerate the balance of the account to be paid in full in the amount of $3,944.21 within 7 days and a return of the equipment. Popular Leasing then threatened to report the pay history to all major credit bureau agencies, in addition to Dunn & Bradstreet. (See attached Exhibit F). On or about March 2004, Exquisite Caterers informed Popular Leasing that the Matrix Box did nothing for them and that it was a "scam."

37. On May 25, 2004, Norvergence sent a letter to Exquisite Caterers apologizing and crediting their account for $1011.49, and a one time credit of $2422.08. Additional credits were also issued for cell services, circuit facility charges for 12 months. (See attached Exhibit G)

38. On July 2, 2004, Popular Leasing sent a letter to Exquisite Caterers advising them of the Chapter 11 filing of Norvergence and instructed them to continue making their monthly payments, and advising them that the pending bankruptcy will not affect their obligations under the Rental Agreement. (See attached Exhibit H)

39. On July 7, 2004, Norvergence sent a letter to Exquisite Caterers advising them of the Chapter 11 Bankruptcy petition, and stating that it will continue to provide uninterrupted service if it finds the necessary financing. (See attached Exhibit I)

40. On July 15, 2004, Popular Leasing sent a letter to Exquisite Caterers stating that Norvergence was now in Chapter 11 and out of business. The letter urged them to contact an alternative service provider that uses their Matrix Box, namely XO Communications, MCI, or

Light Year. They were also urged to make arrangements for interim long distance coverage through a local line provider, although "that may or may not be necessary." (See attached Exhibit J) Further perpetuating an exorbitant lease for a box that did not perform as represented. And, clearly AFTER the defendants were on notice from angry consumers that the equipment rental agreement, the "boxes" and the Norvergence "total savings solution" were misrepresented to plaintiff and the Class. They were also on notice that services were no longer being provided by Norvergence.

41. The Equipment Rental Agreement used in the transaction with the plaintiff is the same or similar to the Equipment Rental Agreement used in the transactions with each member of the Class that plaintiff represents herein.

42. The Equipment Rental Agreement used in the transaction with the plaintiff and all others similarly situated violates the FTC Holder Rule, more specifically 16 C.F.R. Sec. 433.2, by not providing in the equipment lease agreement in 10-point bold face type:

> Any holder of this consumer credit contract is subject to all claims and defenses which the debtor could assert against the seller of goods or services obtained with the proceeds hereof. Recovery hereunder by the debtor shall not exceed amounts paid by the debtor hereunder. [16 C.F.R. Sec. 433.2]

43. Norvergence is the seller, lessor and/or original rentor of the Equipment Rental Agreement and/or lease. Norvergence is also the assignor of the partial term lease to Popular Leasing and the other named Defendants and Doe Corps. 1-40.

44. The plaintiff and others similarly situated are the buyers, lessees and/or renters of the Equipment Rental Agreement.

45. Defendant Popular Leasing and the other named Defendants and Doe Corps. 1-40

are the lease assignees and partial term lessors of the Equipment Rental Agreement.

46. Popular Leasing and the other named Defendants and Doe Corps. 1-40 were on notice of Norvergence's deceitful and fraudulent practices by Exquisite Caterers and other lessees. Upon information and belief, Norvergence, Popular Leasing and the other named Defendants and Doe Corps. 1-40 received many complaints about the misrepresentations made by Norvergence.

47. Norvergence made uniform misrepresentations in sales scripts and pitches, their Internet website and other written materials about the equipment rented in the Equipment Rental Agreements which were assigned by Norvergence and the systems they would be a part of. Plaintiff asserts, upon information and belief, that the equipment rented under the Equipment Rental Agreement, assigned to Popular Leasing and Does 1-40, the MATRIX and MATRIX SoHo, did nothing that enabled unlimited landline calling nationwide with no per minute charges or unlimited cellular calling. None of the equipment rented lowered the cost of the services. In fact, the MATRIX SoHo could not even enable access to the Internet, since a cable or other additional modem was necessary. In addition, the equipment rented was not capable of providing VoIP (Voice over Internet Protocol), voice transformed to data, and, therefore, could not save the consumer money with that technology.

Below are examples, from Norvergence's own website of some of the material uniform, written misrepresentations made by Norvergence to all class members.

- *"The MATRIX CCS, combined with the MATRIX Gateway, allows businesses to acquire a state-of-the-art phone system enabling unlimited calling nationwide, high-speed Internet access, unlimited cellular connectivity - with no per-minute charges."*

- *"The Norvergence MATRIX Phone System was engineered and designed based on the latest Next Generation Networking from the Fortune 500 in early 2000.*

NorVergence was then founded after a year of Research and Development in 2001."

- *"The Norvergence Patent Pending Phone System design, based on its "Merged Access Transport Intelligent Xchange Hardware Access System, is the Long Awaited "Killer Application" of Voice and Data."*

- *"What Does The NorVergence MATRIX Systems Offer?*
  Drastic Reductions up to 60% off all calling costs including current Local, Wireless, Long Distance and Internet Access...Revolutionary New Packetized Telephony Circuitry and Next Generationi Private Data Networking Equipment including: Norvergence Free, Unlimited Calling to Any Phone Number in the USA Inbound and Outbound! Norvergence High-speed Internet Access!!! NO Risk - NO Disruption - Current Carriers Remain Resident for Redundancy!"

- *"How Does Norvergence Accomplish this? Norvergence Toll Quality 'Voice as Unlimited Data Phone System', NorVergence State-of-the-Art compression firmware and Advanced Software Engineering, Norvergence Dynamically converged Voice and Data Internet Access on One High Speed Circuit, Norvergence Strategic Carrier Relationships with Major Telcos!"*

- *"We've developed a suite of applications and hardware starting with the MATRIX CCS, designed to help our customers achieve their business goals and significantly reduce their bottom line."*

- *"All Norvergence products are designed, engineered and manufactured according to the highest scientific standards set forth by FCC and applicable laboratory manufacturing regulations."*

- *"The MATRIX CCS product line helps growing businesses save money across a multitude of business applications. The CCS provides cost-cutting technology that enhances business, increases productivity, and grows the bottom line. The MATRIX CCS, combined with the MATRIX Gateway, allows businesses to acquire a state-of-the-art phone system enabling unlimited calling nationwide, high-speed Internet access, unlimited cellular connectivity - with no per-minute charges."*

- *"INSTALLATION: Once installed, the MATRIX CCS Solution maintains a continuous management connection for remote monitoring, provisioning, testing, troubleshooting and upgrades as required."*

- *"DYNAMIC ALLOCATION : Norvergence has patent-pending technology that allows an incredible amount of convergence on T-1 service. Norvergence is able to provide 32 simultaneous phone calls on a single T-1 (compared to the normal*

limit of 24), and also provides up ...speed of Internet access. MATRIX dynamic allocation and ATM/IP compr...algorithms create the most efficient use of T-1 loops ever."

- *"COST-REDUCTION : Our MATRIX technology and patent-pending convergence functionality creates...opportunity for customers to clear away antiquated expenses, obsolete security features and time-consuming productivity problems. The MATRIX(TM) CCS allows for unlimited 800 calling and cellular usage with no per-minute charges; free, unlimited local and long distance calling, and other needed solutions such as unlimited audio, video and Web conferencing, managed LAN, ASIC chip-based managed firewall and disaster recovery/back-up services."*

- *"CELLULAR PHONES: With Norvergence cellular, customers are able to talk for as long as they want without watching the clock or counting minutes. There are no roaming costs, per minute charges or hidden fees to worry about. Customers receive unlimited cellular without restrictions."*

- *"VoATM/VoIP : Voice over Internet Protocol (VoIP) allows a voice call to be transformed into data ...then sent out over the Internet. Voice over Asynchronous Transfer Mode (VoATM) acts on those packets further and makes sure there is sufficient bandwith to...the calls across the Internet or to a next-generation network carrier without an(y loss) of clarity over the public phone network. With an ATM enhancement, companies combine their voice and data applications to travel on a single network platform. VoATM is a mature technology at the core of the worldwide telephone network..."*

- *"Toll Quality Voice : Norvergence guarantees unlimited toll-quality voice on all MATRIX (TM) voice... No other competitor can offer the true toll quality that MATRIX(TM) CCS convergence...technology provides, including no per-minute costs. Norvergence voice and data protocols are not experimental, new, or untested...Norvergence toll quality voice is possible because of the stable, reliable, hardened....voice over ATM backbone utilized on every call. This is the same backbone and ...technology inherent in every major telephone network. VoIP is merely a custom.."*

- *"Frequently Asked Questions (FAQs):*
  1. What is Norvergence Capital and what does it do?
  Norvergence Capital ensures that each Norvergence customer has access to...complete line of MATRIX(TM) products. Norvergence Capital provides seamless...financing for all Norvergence products, allowing customers to rent equipment...necessary for their customized technology solution.
  2. Why is my only option to rent equipment??
  Savvy customers want to avoid large capital outlays for equipment and avoid..."

- *"...Choosing EZ SAVE (TM)...We care About Customer Satisfaction and Prove it with a 30 Day Money Back Guarantee! We are so sure of your satisfaction that we offer a 30 day complete money back guarantee. If you are not completely satisfied, we will refund your money, no questions asked. GUARANTEED!"*

- *"Innovation...Norvergence has pioneered the most advanced communications cost cutting technology available. The MATRIX is a breakthrough in design..."*

- *"Drastic Savings in Telecommunications Costs. Integrated with the MATRIX Gateway Solution enabling removal of all per minute charges, eliminating 95% of line charges, and SLASHING Internet and Wireless costs - today!"*

- *"The integrated MATRIX T-1 "Voice As Unlimited Data" Gateway removing all toll charges from your Telecommunications Structures!"*

- *"Norvergence Equipment Warranty, WARRANTY PERIOD: Except as noted below, supplied under Purchaser orders for use in the United States is five (5) years."*

- *"The Company's Managed Care/Total Care philosophy and engineering products (including the MATRIX SOHO and MATRIX Enterprise CCS) are drastically reducing Technology costs for the small to medium sized Enterprise."*

FIRST COUNT
(Violation of the FTC Holder Rule - 16 C.F.R. Sec. 433.2)

48. Plaintiff hereby incorporates by reference each of the preceding allegations as though fully set forth herein.

49. Norvergence and Defendants Popular Leasing and the other named Defendants and Doe Corps. 1-40 violated the FTC Holder Rule (16 C.F.R. Sec. 433.2).

50. Norvergence and Defendants Popular Leasing and the other named Defendants and Doe Corps. 1-40 violated the FTC Holder Rule (16 C.F.R. Sec. 433.2) include specifically, but not limited to, the following:

a. by not by not providing in the equipment lease agreement in 10-point bold face

type:

> Any holder of this consumer credit contract is subject to all claims and defenses which the debtor could assert against the seller of goods or services obtained with the proceeds hereof. Recovery hereunder by the debtor shall not exceed amounts paid by the debtor hereunder. [16 C.F.R. Sec. 433.2].

51. All contracts made by Norvergence and defendants Popular Leasing and Doe Corps. 1-40 with the plaintiff and all members of the Class are, therefore, in violation of the FTC Holder Rule 16 C.F.R. Sec. 433.2 and void.

52. By virtue thereof, the Class is entitled to injunctive relief to prevent enforcement, a declaratory judgment to set aside the leases and/or compensatory damages.

SECOND COUNT

(Violation of the Truth-in-Consumer Contract, Warranty and Notice Act; N.J.S.A. 56:12-14 to 12-18)

53. Plaintiff hereby incorporates by reference each of the preceding allegations as though fully set forth herein.

54. Norvergence and Defendants Popular Leasing and the other named Defendants and Doe Corps. 1-40 have violated the Truth-in-Consumer Contract, Warranty and Notice Act (**N.J.S.A. 56:12-14 et seq.**)

55. (a) Norvergence and Defendants Popular Leasing and the other named Defendants and Doe Corps. 1-40 stated in the equipment lease agreement entered into that "the lessee is waiving all rights and remedies under Article 2A of the UCC, the rental is made without any warranties and the agreement is governed by the law of the State in which the assignee's principal office is located", not where the lessee resides. These misrepresentations violate the Truth-in-Consumer Contract, Warranty and Notice Act by not displaying in writing the implied

and express warranties which are responsibilities established by State and Federal law, and are unconscionable acts.

(b) Norvergence and Defendants Popular Leasing and the other named Defendants and Doe Corps. 1-40 offered only a 5 year warranty on the equipment being leased, whereas the manufacturer Adtran actually offers a 10 year warranty. By not displaying or noticing plaintiff and Class members in writing of the actual manufacturer warranty in the equipment rental agreement or its accompanying materials, Norvergence and defendants misrepresented the warranty and violated the Truth-in-Consumer Contract, Warranty and Notice Act, which are unconscionable acts.

56. Norvergence and Defendants Popular Leasing and the other named Defendants and offered and/or entered into a written consumer contract and/or gave or displayed a written consumer warranty, notice or sign which included - or failed to include - a provision that violated their clearly established responsibilities as established by State or Federal Law at the time the offer was made, the contract was signed or the warranty was given.

57. Each of the aforesaid violations of the FTC Holder Rule and CFA are individual and separate violations of the Truth-in-Consumer Contract, Warranty and Notice Act warranting a separate statutory award of damages for each violation.

58. Norvergence and Defendants Popular Leasing and the other named Defendants and Doe Corps. 1-40 violated this Act by entering into a contract with the plaintiff and all others similarly situated with provisions that violate clearly established rights of the consumer plaintiff and all others similarly situated in violation of N.J.S.A. 56:12-40.

59. By way of example, the rights of plaintiff that have been violated include, the

failure to provide the information required by the FTC Holder Rule as detailed in Count I above.

60. By virtue thereof, the Class is entitled to injunctive relief to prevent enforcement, a declaratory judgment to set aside the leases and/or compensatory damages.

THIRD COUNT
(Violations of the New Jersey Consumer Fraud Act - N.J.S.A. 56:8-1 et.seq)

61. Plaintiff hereby incorporates by reference each of the preceding allegations as though fully set forth herein.

62. Norvergence and Defendants Popular Leasing and the other named Defendants and Doe Corps. 1-40 violations of the FTC Holder Rule constitute unconscionable commercial practices in violation of the CFA.

63. Norvergence and Defendants Popular Leasing and the other named Defendants and Doe Corps. 1-40 violations of the Truth-in-Consumer Contract, Warranty and Notice Act (N.J.S.A. 56:12-14 to 12-18) constitute unconscionable commercial practices in violation of the CFA.

64. Norvergence and Defendants Popular Leasing and Doe Corps. violated the "FTC Act" 15 U.S.C. sections 45(a), 52, 53 and 57b by utilizing deceptive and unfair practices in or affecting commerce and the dissemination of false advertisements for the purpose of inducing plaintiffs and Class members into entering into the equipment rental agreement. The violations of the Federal Trade Commission Act, the "FTC Act" 15 U.S.C. sections 45(a), 52, 53 and 57b constitute unconscionable commercial practices in violation of the CFA.

65. Norvergence and Defendants Popular Leasing and the other named Defendants and Doe Corps. 1-40 have engaged in unconscionable commercial practices, deception, fraud,

false promise, false pretenses and/or misrepresentations in its interactions with plaintiff and all others similarly situated in violation of the CFA.

66. Defendants Popular Leasing and Does Corps. 1-40 knowingly concealed, suppressed or omitted material facts in their interactions with defendant and all others similarly situated in violation of the CFA.

67. All contracts made by Defendants Popular Leasing and the other named Defendants and Doe Corps. 1-40 with the plaintiff and all members of the Class are, therefore, in violation of CFA, unenforceable and void.

68. Plaintiff and all members of the Class suffered an ascertainable loss in their payments of the illegal and fraudulently induced equipment rental agreement and in the improper debt or lien of the illegal and fraudulently induced equipment rental agreement.

69. Plaintiff and all members of the Class all read or heard or saw or knew or were made aware of the misrepresentations made by Norvergence, the original owner of the lease, in its uniform sales scripts and/or written materials in the agreements entered into which violated the FTC Holder Rule and Truth-in-Consumer, Contract, Warranty and Notice Act, and by defendants in their written materials.

70. By virtue thereof, the Class is entitled to injunctive relief to prevent enforcement, a declaratory judgment to set aside the leases and/or compensatory damages.

FOURTH COUNT
(Breach of Contract)

71. Plaintiff hereby incorporates by reference each of the preceding allegations as though fully set forth herein.

72. As a direct result of Norvergence and Defendants Popular Leasing and Doe Corps. 1-40 fraudulent inducement, plaintiff and all others similarly situated entered into contracts which they would not have done had they known the true facts.

73. Norvergence and Defendants Popular Leasing and the other named Defendants and Doe Corps. 1-40 breached their contract with plaintiff and all others similarly situated by not performing according to their obligations under the applicable law.

74. Norvergence and Defendants Popular Leasing and the other named Defendants and Doe Corps. 1-40 breached their contract with plaintiff and all others similarly situated by not acting in good faith and unconscionable commercial practices.

75. Plaintiff and all members of the class all read, heard, saw, knew or were made aware of the misrepresentations made by Norvergence, the original owner of the lease, in its uniform sales scripts and/or written materials in the agreements entered which violated the FTC Holder Rule and Truth-in-Consumer, Contract, Warranty and Notice Act, New Jersey Consumer Fraud Act and by Defendants in their written materials.

76. As a direct and proximate cause of Norvergence and Popular Leasing and Doe Corps. 1-40 breach of contract, plaintiff and class members have been damaged.

FIFTH COUNT
(Breach of Implied Warranty of Merchantability)

77. Plaintiffs hereby incorporate by reference each of the preceding allegations as though fully set forth herein.

78. Plaintiff and Class members leased equipment from Norvergence which then assigned and/or sold the lease to Popular Leasing and the other named Defendants and Doe Corps.

1-40.

79. An implied warranty that the goods were merchantable arose by operation of law as part of the leasing of the equipment.

80. Norvergence and lease assignees Popular Leasing and the other named Defendants and Doe Corps. 1-40 breached the implied warranty of merchantability in that the equipment was not in merchantable condition when leased or any time thereafter and were not fit for the ordinary purposes for which the equipment were used.

81. Plaintiff and class members notified Norvergence and Defendant Popular Leasing and Does 1-40 of the defects in the goods within a reasonable time after discovering the breach.

82. Defendant Popular Leasing, the other named Defendants and Doe Corps. 1-40 knew or should have known of the defects of the goods.

83. WHEREFORE, as a result of Norvergence and lease assignees Popular Leasing and the other named Defendants and Doe Corps. 1-40 breach of Implied Warranty of Merchantability, Plaintiffs and the Class have suffered damages in an amount to be determined upon trial, which they are entitled to recover.

SIXTH COUNT
(Breach of Implied Warranty of Fitness for a Particular Purpose)

84. Plaintiffs hereby incorporate by reference each of the preceding allegations as though fully set forth herein.

85. At the time of contracting the equipment lease agreement, Norvergence, the original owner of the equipment lease agreements, had reason to know that the plaintiff and class members required the equipment for a particular purpose and that the plaintiff and class members

were relying on Norvergence's skill or judgment to select or furnish suitable equipment.

86. As a result of the circumstances of the leasing of the equipment, an implied warranty arose that the goods were fit for plaintiff and class members purposes.

87. The equipment was not fit for plaintiff and class members purpose in that they did not reduce the cost of local and long distance phone calls and Internet access, were unable to access the Internet, unable to provide VoIP, and unable to provide other telecommunication functions that were misrepresented by Norvergence.

88. Plaintiff and class members notified Norvergence and Defendant Popular Leasing and Does 1-40 of the defects in the goods within a reasonable time after discovering the breach.

89. Defendant Popular Leasing, the other named Defendants and Doe Corps. 1-40 knew or should have known of the defects of the equipment.

90. As a result of Norvergence and Defendants breach of the implied warranty of fitness for a particular purpose, plaintiff and Class Members have suffered damages.

91. WHEREFORE, as a result of Norvergence and Defendants breach of Implied Warranty of Fitness for a Particular Purpose, Plaintiffs and the Class have suffered damages in an amount to be determined upon trial, which they are entitled to recover.

SEVENTH COUNT
(Breach of Express Warranty)

92. Plaintiffs hereby incorporate by reference each of the preceding allegations as though fully set forth herein.

93. Plaintiff and the Class lease equipment from Norvergence, the original owner of the equipment lease agreements, and the lease assignees Popular Leasing and the other named

Defendants and Doe Corps. 1-40.

94. In connection with this lease, Norvergence and the lease assignees expressly warranted the equipment leased for five years and expressly warranted through misrepresentations that the equipment reduced the cost of local and long distance phone calls and Internet access, was able to access the Internet, and able to provide VoIP.

95. Norvergence breached this express warranty in that the equipment could not reduce the cost of local and long distance phone calls and Internet access, was unable to access the Internet, and was unable to provide VoIP, amongst other things.

96. Plaintiff and the Class notified Norvergence and lease assignees Popular Leasing and the other named Defendants and Doe Corps. 1-40 of the nonconformities in the equipment, which was within a reasonable time after Plaintiff and the Class discovered the breach.

97. As a result of Norvergence and Defendants breach of the Express Warranty, plaintiff and Class Members have suffered damages.

98. WHEREFORE, as a result of Norvergence and Defendants breach of the Express Warranty, Plaintiffs and the Class have suffered damages in an amount to be determined upon trial, which they are entitled to recover.

EIGHTH COUNT
(Declaratory Judgment under Rule 4:32-1(b)(2))

99. Plaintiff hereby incorporates by reference each of the preceding allegations as though fully set forth herein.

100. Plaintiff and class members seek a Declaratory Judgment under Rule 4:32-1(b)(2) that the Equipment Rental Agreements are unenforceable as violative of the FTC Holder Rule,

Truth-in-Lending Law, the New Jersey Consumer Fraud Act and the Truth-in-Consumer Contract, Warranty and Notice Act.

WHEREFORE, Plaintiff, on behalf of itself and the members of the Class, demand judgment as follows:

(a) A determination that this action is a proper class action maintainable pursuant to Rule 4:32-1 et. seq. and appointing plaintiff a representative of the Class;

(b) Equitable and injunctive relief:

(i) enjoining Popular Leasing and the other named Defendants and Doe Corps. 1-40 from pursuing the policies, acts and practices described in this Complaint; and

(ii) enjoining Popular Leasing and the other named Defendants and Doe Corps. 1-40 from enforcing the Equipment Rental Agreements.

(c) An order requiring disgorgement and/or imposing a constructive trust upon Popular Leasing and the other named Defendants and Doe Corps. 1-40 monies received from the enforcement of the Equipment Rental Agreements, and requiring defendants to pay plaintiff and all members of the Class for any act or practice declared by this Court to be unlawful;

(d) Damages in an amount to be determined at trial;

(e) Statutory damages for violations of the applicable Consumer Fraud Acts and Truth-in-Consumer Contract, Warranty, and Notice Act. Pre-judgment and post-judgment interest at the maximum rate allowable at law;

(f) Punitive damages in an amount to be determined at trial;

(h) For a declaratory judgment declaring the agreements unenforceable and setting them

aside in that defendants violated the FTC Holder Rule, the New Jersey Consumer Fraud Act and the Truth-in-Consumer Contract, Warranty and Notice Act;

(g) The costs and disbursements incurred by Plaintiff in connection with this action, including reasonable attorneys' fees; and

(i) Such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury.

Dated: 8/13/04

KANTROWITZ, GOLDHAMER & GRAIFMAN

By: _____

Gary Graifman, Esq.
210 Summit Avenue
Montvale, New Jersey 07645
Tel: (201) 391-7000
Fax:(201) 307-1086

Dated: 8/13/04

LAW OFFICES OF MICHAEL SCOTT GREEN

By: _____

Michael S. Green, Esq.
14 Easton Ave., #340
New Brunswick, New Jersey 08901
Tel: (732) 390-0480
Fax: (732) 390-0481

PLAINTIFF'S COUNSEL

DESIGNATION OF TRIAL COUNSEL

Pursuant to Rule 4:25-4, Gary Graifman, Esq. and Michael S. Green, Esq. are hereby designated as trial counsel for the Plaintiff in the above matter.

Dated: 8/13/04

KANTROWITZ, GOLDHAMER & GRAIFMAN

By: _____

Gary Graifman, Esq.
210 Summit Avenue
Montvale, New Jersey 07645
Tel: (201) 391-7000
Fax:(201) 307-1086

Dated: 8/13/04

LAW OFFICES OF MICHAEL SCOTT GREEN

By: _____

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14 Easton Ave., #340
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PLAINTIFF'S COUNSEL

CERTIFICATION OF NO OTHER ACTIONS

Pursuant to Rule 4:5-1, it is hereby stated that the matter in controversy is not the subject of any other action pending in any other court or of a pending arbitration proceeding to the best of my knowledge or belief. Also, to the best of my belief, no other action or arbitration proceeding is contemplated. Further, other than the parties set forth in this pleading, Plaintiff knows of no other parties that should be joined in the above action. In addition, we recognize the continuing obligation of each party to file and serve on all parties and the Court an amended certification if there is a change in the facts stated in this original certification.

Dated: 8/13/04

By: Gary Graifman
GARY GRAIFMAN, ESQ.

Dated: 8/13/04

By:
MICHAEL S. GREEN, ESQ.