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12 EXQUISITE CATERERS, LLC,
13 ET AL., on behalf of themselves
And all others similarly situated,

14 Plaintiff,

15 vs.

16 POPULAR LEASING USA, INC.,
17 ET AL. AND DOE CORPS 1-40,

18 Defendant.
19
20

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MONMOUTH COUNTY
DOCKET NO. MON-L-3686-04

CIVIL ACTION

**FEDERAL TRADE COMMISSION'S
OBJECTION TO PROPOSED
SETTLEMENT AGREEMENT**

21 **I. INTRODUCTION**

22 The Federal Trade Commission ("FTC" or "Commission") objects to the class action
23 settlement agreement ("proposed settlement") preliminarily approved by this Court on February
24 26, 2008, between the plaintiffs and defendant IFC Credit Corporation ("IFC"). The proposed
25 settlement should not be finally approved because it is not fair and reasonable to the class. If
26 approved, the settlement will jeopardize the availability of funds to compensate class members
27

1 injured by IFC's illegal practices. Further, the legal consequences of the proposed settlement
2 trigger constitutional due process obligations that are clearly not satisfied here.
3

4 The FTC is uniquely positioned to comment on the proposed settlement agreement. As
5 the nation's chief consumer protection agency, the FTC's mission is to protect consumers from
6 unfair or deceptive commercial acts or practices.¹ Pursuant to its statutory authority under the
7 FTC Act, 15 U.S.C.A. §§ 41-57, the Commission routinely brings enforcement actions under the
8 consumer protection and antitrust laws, often seeking monetary relief, including refunds for
9 consumers. Indeed, the FTC has brought such an action against IFC. The FTC also has an
10 interest in class action settlements, such as this one, that do not provide appropriate relief for
11 consumers.² Consistent with that interest, the FTC has taken a number of actions. First, since
12 January 2002, the FTC has filed amicus briefs or intervened in numerous class action cases to
13 raise issues about proposed settlements. Second, in February 2002, the FTC filed comments
14 with the Judicial Conference's Committee on Rules of Practice and Procedure regarding
15 proposed amendments to Rule 23 of the Federal Rules of Civil Procedure, governing class action
16 litigation. Third, in September 2004, the FTC and the Georgetown Journal of Legal Ethics
17 cosponsored a workshop on "Protecting Consumer Interests in Class Actions" during which
18 judges, academics, practitioners, corporate and government attorneys, economists, consumer
19 advocates, and claims facilitators gathered to discuss the current state of class action practice, as
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25 ¹ The FTC Act provides the Commission with broad law enforcement authority over
entities engaged in, or whose business affects, commerce. See 15 U.S.C.A. § 45.

26 ² Concerns about class actions motivated Congress to enact the Class Action Fairness Act
27 of 2005, signed into law in February 2005.

1 well as promising proposals for the future.³ Through these actions, the FTC has developed
2 considerable experience in analyzing class action settlements.

3
4 The FTC also has a strong and vested interest in a fair resolution of this particular matter.
5 On June 6, 2007, the FTC filed a complaint against IFC in the United States District Court for
6 the Northern District of Illinois, alleging that IFC purchased and collected on NorVergence
7 rental agreements, with knowledge that the rental agreements were procured by deceiving
8 relatively unsophisticated small businesses and non-profit organizations. FTC v. IFC Credit
9 Corp., No. 1:07-cv-03155 (N.D. Ill. filed June 6, 2007).⁴ The FTC alleged that IFC uses
10 deceptive tactics to coerce consumers to make payments on the rental agreements, including
11 misrepresenting to consumers that they have no defenses to making such payments.⁵ The FTC
12 also alleged that IFC's collection practices and use of distant forums is unfair in violation of
13 Section 5 of the FTC Act, 45 U.S.C.A. §§ 45(a) and (n), because they cause substantial injury to
14 consumers, which was not reasonably avoidable by the consumers themselves, and not
15 outweighed by countervailing benefits to consumers or competition.⁶ The FTC's complaint was
16 brought pursuant to Section 13(b) of the FTC Act, 15 U.S.C.A. § 53(b), which authorizes the
17 Commission to seek permanent injunctive relief to remedy violations of Section 5 of the FTC
18 Act. The FTC is seeking, among other things, complete cessation of IFC collections on
19 NorVergence contracts and payment of consumer redress in the amount of all monies already
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21
22 ³ Information about the FTC's Class Action Fairness Project, including the FTC briefs,
23 Rule 23 comment, and details about the workshop is available at
www.ftc.gov/bcp/workshops/classaction/index.htm.

24 ⁴ A copy of the Commission's complaint against IFC is attached for the Court's
25 convenience as Attachment A.

26 ⁵ See Attachment A at 20.

27 ⁶ Id. at 21-22.

1 collected. The parties are currently engaged in discovery and will be filing dispositive motions
2 with the court on or before March 28, 2008.

3
4 **II. THE PROPOSED SETTLEMENT IS NEITHER FAIR NOR REASONABLE**

5 **A. The Proposed Settlement Risks Significant Consumer Injury**

6 The basic test for court approval of a settlement of a class action is whether it is fair and
7 reasonable to the members of the class. Chattin v. Cape May Greene, Inc., 216 N.J. Super. 618,
8 627 (App. Div. 1987). The purpose of this requirement is to protect class members from a
9 settlement that is not in their best interests. Ibid. In making a fairness determination, a trial
10 court should not evaluate the settlement by the same criteria applied in a trial. Builders League
11 of South Jersey, Inc. v. Gloucester County Util. Auth., 386 N.J. Super., 462, 471 (App. Div.
12 2006). The purpose of a fairness determination is to assure that a settlement is reasonable, not
13 to adjudicate the case on its merits. Id. at 472.

14 The standards for approval of class action settlements that have been developed in the
15 federal courts have been followed by New Jersey state courts as well. Schmoll v. J.S.
16 Hovnanian & Sons, LLC, 2006 WL 1520751, at *3 (Ch. Div. February 09, 2006) (citing In re
17 Prudential Ins. Co. America Sales Practice Litig. Agent Actions, 148 F.3d 283, 317 (3d Cir.
18 1998)). Courts may consider a variety of related factors in evaluating the fairness of a proposed
19 class action settlement, ibid., as well as the interests of third parties whose rights are affected.
20 Eichenholtz v. Brennan, 52 F.3d 478, 482 (3d Cir. 1995).

21
22 As a party in litigation against IFC involving the same conduct at issue here, the FTC is
23 clearly a third party whose interests should be considered in determining whether the proposed
24 settlement adequately protects class members' rights. The economic injury suffered by
25 consumers as a result of IFC's practices is significant; as the FTC alleged in its complaint, IFC
26 has demanded payment in full on rental agreements in amounts ranging from \$4,439, to as much
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1 as \$160,672.⁷ The proposed settlement perpetuates this harm by providing IFC with an
2 enforceable judgment against class members that requires them to pay additional money to IFC.
3

4 Under the terms of the proposed settlement, class members who do not opt out of the
5 class pay IFC substantial sums on their rental agreements with IFC. Class members are
6 “obligated to pay IFC an amount equal to the sum of (i) all amounts due on the Class member’s
7 Rental Agreement through July 15, 2004, including charges for insurance and late fees and (ii)
8 twenty percent (20%) of the remaining contract balance due on the Rental Agreement as of July
9 15, 2004, excluding any late fees or penalties incurred after July 15, 2004, plus applicable taxes
10 paid or incurred by IFC, less a credit for all amounts paid on the Rental Agreement after July 15,
11 2004.” Settlement Agreement ¶ 9 a (emphasis in original). For class members who do not opt
12 out and who fail to pay IFC pursuant to the terms of the proposed settlement, the amount they
13 owe increases to the full amount they owed under the rental agreements. Id. ¶¶ 9 e-f.
14

15 If a class member fails to opt out and does not make payments to IFC, or otherwise
16 defaults on payments made under the terms of the proposed settlement, IFC “may enforce its
17 rights in any . . . legally permissible court of competent jurisdiction” against any such individual.
18 Id. ¶ 15. This provision grants IFC a basis for suing class members in a forum it selects and
19 resembles a default judgment more than a traditional settlement. Further, the proposed
20 settlement requires class members to release any claims they may have had against IFC relating
21 to their rental agreements. See id. ¶ 6 g.
22

23 **B. The Proposed Settlement Does Not Provide Class Members with Due Process**

24 Given the legal effect of the proposed settlement, class members should be provided with
25 sufficient notice and the opportunity to be heard with respect to the terms – and consequences –
26 of this agreement. Both elements are fundamental guarantees of the Fourteenth Amendment’s
27

28 ⁷ Attachment A at 3.

1 Due Process Clause, which “at a minimum . . . require[s] that deprivation of life, liberty, or
2 property by adjudication be preceded by notice and opportunity for hearing appropriate to the
3 nature of the case.” Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 313; 70 S. Ct.
4 652, 656-67; 94 L. Ed. 865, 873 (1950). “This right to be heard has little reality or worth unless
5 one is informed that the matter is pending and can choose for himself whether to appear or
6 default, acquiesce or contest.” Id. at 314.

8 The fact that the proposed settlement establishes an enforceable money judgment against
9 class members who do not opt out requires that delivery of the settlement notice comport with
10 constitutional due process standards. As a result of the settlement agreement, class members are
11 essentially parties subject to an action initiated by IFC, and thus must be served in a manner that
12 comports with procedural due process. The precise method of service may be “reasonably
13 calculated, under all of the circumstances, to apprise interested parties of the pendency of the
14 action.” O’Connor v. Altus, 67 N.J. 106, 127 (1975) (citing Mullane, 339 U.S. at 314). Further,
15 “[i]t is elementary that service must be accomplished in accordance with the pertinent rules” in a
16 manner that complies with these constitutional parameters. Jameson v. Great Atlantic and
17 Pacific Tea Co., 363 N.J. Super. 419, 425 (App. Div. 2003). In New Jersey, personal delivery is
18 the primary method of service. City of Passaic v. Shennett, 390 N.J. Super. 475, 483 (App. Div.
19 2007). This rule applies not only to individuals, but also to partnerships and individual
20 corporations. R. 4:4-4(a)(1), (4)-(5). Corporations must also be served by personal delivery
21 upon either an individual authorized to receive service on behalf of the business or, if service
22

1 cannot be effected on such an individual, then by personal service upon another individual at the
2 place of business.⁸ R. 4:4-4(a)(6).

3
4 Rather than using personal service, IFC is sending notice of the proposed settlement to
5 class members via regular mail, which is not an adequate method. Service by ordinary mail is
6 permitted only under limited circumstances; for example, individuals or corporations outside of
7 New Jersey may be served by ordinary mail if it is accompanied by an affidavit setting forth why
8 personal service could not be effected and service is also made simultaneously by registered or
9 certified mail.⁹ R. 4:4-4(b)(1)(C). The N.J. Court Rules, 1969, expressly provide, however, that
10 if service is accomplished by ordinary mail in a situation in which personal service is required,
11 default may not be entered against a defendant who fails to answer or appear in response. R.
12 4:4-4(c). In general, “[a] default judgment will be considered void when a substantial deviation
13 from service of process rules has occurred.” Jameson, 363 N.J. Super. at 425. Since the
14 proposed settlement essentially amounts to a default judgment against consumers who do not
15 respond, it is constitutionally deficient and should not be approved in its current form.

16
17 These constitutional infirmities raise heightened concerns in the context of the proposed
18 settlement, given the high stakes of not opting out. Without adequate notice to class members,
19 they may inadvertently be subjecting themselves to significant liability as well to as the release
20 of

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24 ⁸ Of course, service upon just any individual at a corporation’s place of business may not
25 comply with the rules of service. See Jameson, 363 N.J. Super. at 430 (personal service upon
26 head cashier at retail location of major supermarket chain did not satisfy requirements of R. 4:4-
4(a)(6)).

27 ⁹ Exceptions may apply if a specific statute or court order provides otherwise, but that is
28 not the case here. See R. 4:4-4(b)(2)-(3).

1 any claims against IFC.¹⁰ Compounding the harm to class members is that many of them are not
2 part of the underlying class action against IFC, and therefore have no reason to be expecting a
3 settlement proposal.¹¹ As many of these class members are small businesses and non-profit
4 organizations, they lack the institutional resources to monitor carefully all incoming mail,
5 particularly from an entity with which they may not have had contact for many years. They are
6 not likely to anticipate (nor should they be expected to anticipate) receiving such a legally
7 significant document in such an innocuous manner.¹²

8
9 Thus, the Court should reject the proposed settlement. If this Court does choose to
10 approve it, however, it should, at a minimum, amend it to require that class members opt in to
11 the agreement by providing that they affirmatively consent to its terms. This approach would
12 best protect class members who do not receive or who miss the settlement notice as well as those
13 individuals who fail to understand the consequences if they take no action.

14 **III. CONCLUSION**

15 For the reasons set forth above, the FTC respectfully submits that this Court should not
16 approve the proposed settlement or, in the alternative, should amend the proposed settlement to
17 require class members to affirmatively opt in to the settlement.
18

19 ¹⁰ The notice itself is also complicated, setting forth a detailed payment schedule, process to
20 opt out, and method of objecting to the proposed settlement. The complexity of the proposed
21 settlement exacerbates the risk that consumers will not appreciate the ramifications of inaction,
22 making adequate notice that much more essential.

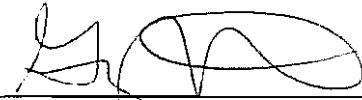
23 ¹¹ While this Court previously certified a class composed solely of New Jersey consumers,
24 the proposed settlement expands the class to all consumers nationwide. Settlement Agreement ¶
25 2 b.

26 ¹² This likelihood of missing or not appreciating the significance of the notice is great even
27 for class members represented by counsel in their dealings with IFC, as IFC is mailing the
28 settlement notices directly to class members. See Defendants' Motion for Sanctions, In re
Norvergence Litig., Case N. 04 L 12891 (Ill. Cir. Ct. filed March 11, 2008), ¶ 17 (attached as
Attachment B). These individuals are accustomed to having their attorneys handle IFC-related
matters and not to receiving or reviewing such materials on their own.

1 Dated: March 25, 2008

Respectfully submitted,

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FILED

JUN - 6 2007 10

MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

JUN - 6 2007

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

IFC CREDIT CORPORATION,

Defendant.

07CV3155
JUDGE GOTTSCHALL
MAG. JUDGE COLE

**COMPLAINT FOR INJUNCTIVE
AND OTHER EQUITABLE
RELIEF, INCLUDING
RESTITUTION**

Plaintiff, the Federal Trade Commission ("FTC"), by its undersigned attorneys, alleges:

1. This is an action under Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), to secure preliminary and permanent injunctive relief, including rescission of contracts, cessation of collections, restitution, disgorgement of ill-gotten gains, and other equitable relief, for defendant's unfair and deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), in connection with financing the sales of telecommunications services and related products to businesses and religious and other non-profit organizations.

2. The allegations in this complaint arise in the course of defendant's financing the sales of telecommunications services by NorVergence, Inc. ("NorVergence"), a New Jersey company. A default judgment was entered against NorVergence in the United States District Court for the District of New Jersey, in *FTC v. NorVergence, Inc.*, Docket No. CV- 04-5414-DRD ("NorVergence Judgment"), on July 22, 2005. The Court found that NorVergence had

violated Section 5 of the FTC Act, 15 U.S.C. § 45. NorVergence is also a debtor in a Chapter 7 bankruptcy proceeding in that district (Docket No. Bkr-04-32079-RG).

JURISDICTION AND VENUE

3. This Court has jurisdiction over this matter pursuant to 15 U.S.C. §§ 45(a) and 53(b), and 28 U.S.C. §§ 1331, 1337(a), and 1345.

4. Venue is proper in the United States District Court for the Northern District of Illinois under 15 U.S.C. § 53(b) and 28 U.S.C. §§ 1391(b) and (c).

PLAINTIFF

5. Plaintiff Federal Trade Commission is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41-58. The FTC enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce. The FTC may initiate federal district court proceedings by its own attorneys to enjoin violations of the FTC Act and secure appropriate equitable relief, including restitution and other equitable relief for injured consumers. 15 U.S.C. § 53(b).

DEFENDANT

6. Defendant IFC Credit Corporation ("IFC") is an Illinois corporation with its principal place of business located at 8700 Waukegan Rd., Morton Grove, IL 60053. It transacts business in this district.

COMMERCE

7. At all times material this complaint, defendant has maintained a substantial course of trade in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

BACKGROUND STATEMENT OF FACTS

Summary

8. IFC helped finance a massive, fraudulent scheme by NorVergence, a reseller of telecommunications services. The victims of this fraud were small businesses and religious and other non-profit organizations, and individuals who personally guaranteed the obligations of these organizations (collectively, "consumers"). The consumers agreed to five-year, price-guaranteed, contracts for greatly discounted telecommunications services. The written contracts, however, concealed their predominant purpose - the financing of telecommunications services - by using the title "Equipment Rental Agreement," referencing a minor piece of equipment, and omitting any mention of the services that were being financed. This made it easier for IFC and other finance companies who purchased the contracts to enforce them even if the promised services were never delivered, because it could appear that NorVergence had fulfilled its obligation simply by delivering the equipment.

9. IFC and NorVergence entered into a complex contract (called the "Master Program Agreement"), and IFC subsequently purchased \$21 million of NorVergence Rental Agreements. NorVergence told consumers that payment on the Rental Agreements would ensure all the savings promised by NorVergence on telecommunications services. IFC repeated that promise to its customers.

10. In fact, despite making payments, none of these consumers received more than a small period of services, and many consumers never received any of the promised services. Nonetheless, IFC has demanded payment in full on Rental Agreements ranging from \$4,439 to \$160,672. IFC falsely claims that consumers have no defenses because the minor piece of equipment mentioned in the contracts, which typically costs less than \$1,300 and, in some cases,

as little as \$272, was delivered to the consumers' premises. IFC has enforced its payment demands by filing suits and executions of judgments in courts far distant from where the consumers are located.

The Underlying Scheme That IFC Financed

11. NorVergence resold telecommunications services it purchased from common carriers or others. NorVergence marketed its services as integrated, long-term packages, including landline and cellular telephone service and Internet access.

12. NorVergence promised substantial savings to consumers and priced its service packages at a discount, typically 30% less than the amount the consumer was currently paying for those services. NorVergence salespeople communicated the promised savings to prospective customers in writing in the form of a "Cost Savings Proposal" so customers could see what they would be paying and saving on a monthly and annual basis. The "Cost Savings Proposal" was prepared without regard to the cost NorVergence would incur in providing the services and related equipment. NorVergence also typically promised unlimited minutes for both long distance and cellular calls for a fixed charge, although NorVergence was obligated to pay its telecommunications service providers on a usage basis for the services it provided to consumers. NorVergence also represented that, if anything happened to NorVergence, the consumer would continue to receive the services for which they had contracted.

13. In its sales presentations, NorVergence represented that it could produce the dramatic savings and unlimited minutes through the installation of a "black box," with proprietary technology, on the customers' premises. NorVergence called the box the Matrix, an acronym for "Merged Access Transport Intelligent Xchange." It would supposedly route

telecommunications in a manner to provide the promised savings. The Matrix came in two versions, the Matrix 850 and the Matrix SOHO.

14. The Matrix 850 is a standard integrated access device, or IAD, commonly used to connect telephone equipment to a long-distance provider's T-1 (high bandwidth data line) or similar data line. The Matrix Soho is a standard firewall/router typically used to access Internet services.

15. The Matrix boxes do not establish or change the costs of long distance service significantly, if at all. They can do nothing to provide unlimited minutes on landlines and cannot affect cellular services at all (the Soho does not even provide access to telephone or cellular phone services). In fact, the Matrix boxes alone have virtually no value. They are not directly compatible with other telecommunications service providers and, in any event, the finance company, such as IFC, owns the Matrix, so the consumer can neither alter nor sell it. Thus, receipt of services was contingent upon the continued availability of service from NorVergence.

16. NorVergence procured customers' signatures on a large set of documents, including a "Customer Qualifying Questionnaire," an "Accurate Bill Receipt and Proposal Request," a "Receipt of Savings Guarantee Subject to Mutual Due Diligence & Acceptance by Engineering," a "Credit Application," a "Letter of Agency," a "No-Risk Reservation Agreement," a "Hardware Application," and a "Service Application," all of which were represented to be "non-binding." The "non-binding" nature of the hardware and service applications were stated in bold print capital letters at the top of the documents.

17. A document entitled "Equipment Rental Agreement" (or "Rental Agreement") was included with other documents that NorVergence had consumers sign. This was the contract NorVergence assigned to IFC. Salespeople simply included the Rental Agreement in the pile of

documents, or told customers they needed to sign it before the equipment was installed so they could get the promised services. On the back page and in small print, the Rental Agreement provided that it was not subject to cancellation for any reason.

18. The Rental Agreement listed a monthly payment to be made to NorVergence for 60 months or, rarely, a shorter term. Most of the total price for services and equipment quoted to the consumer was allocated to the Rental Agreement. The Rental Agreement, however, did not list the services to be provided. It listed only the Matrix box and, occasionally, some related equipment. The remaining balance of the quoted price for services was allocated to the service applications or agreements, but it was only a small fraction of the rental amount and was unrelated to the actual costs of providing telecommunication services. In many cases, the owners of the small businesses or managers of the non-profit organizations were required to personally guarantee payment of the Rental Agreement.

19. NorVergence paid its principal supplier \$1,278 for each Matrix 850 pre-equipped with two "cards" (with each card servicing four lines), or \$1,224 with no cards. NorVergence's cost for the Matrix 850 could increase if extra cards (which increased the number of outgoing lines the box could service), costing approximately \$78 each, were installed. The maximum number of cards that could be installed in a Matrix 850 was six. According to IFC records, only 19 Matrix Rental Agreements assigned to IFC had more than two cards and only five of those had more than three cards. NorVergence paid \$272 for each Matrix Soho it provided to its customers. There were no "cards" associated with Soho boxes.

20. Payments specified in the Rental Agreements were not based on the cost or value of the Matrix boxes. Instead, over the life of the Rental Agreements, they dramatically exceeded NorVergence's cost for the Matrix boxes and the Matrix boxes' fair market value. The total

“rental” payments for the \$1,278 Matrix 850 ranged from \$4,439 to \$160,672. The total rental payments for the \$272 SOHO totaled from \$7,217 to \$34,631.

The Close Relationship Between IFC and NorVergence

21. On or about October 10, 2003, IFC entered into a Master Program Agreement with NorVergence to provide financing for NorVergence’s sales. IFC internally referred to the arrangement as the “IFC Credit/NorVergence Partnership.” Prior to entering into this relationship, IFC reviewed NorVergence’s proposed operations and its marketing approach to consumers, including the five-year price guarantee on telecommunications services.

22. The Master Program Agreement provided that, in the event of a default on a consumer’s first payment, IFC could require NorVergence to repurchase the Rental Agreement. It also provided that consumers would be liable for Rental Agreement payments even if NorVergence failed to provide the promised telecommunications services.

23. NorVergence sold or assigned Rental Agreements to IFC, usually for the full five-year term, or occasionally for some part of that term. IFC paid NorVergence a discounted portion of the total rental price. For example, in one instance IFC paid NorVergence \$49,000 for a Rental Agreement for a Matrix box with a single card, where the consumer’s total rental payments were nearly \$65,000. In another instance, IFC paid \$93,000 for a Rental Agreement calling for over \$160,000 in consumer payments for a Matrix with four cards.

24. By early 2004, many consumers told IFC that the equipment NorVergence had delivered to them had not been hooked up or was not providing the promised service. In addition, many consumers who might otherwise have refused to make their first or subsequent payments to IFC, which would have triggered IFC’s right of recourse under the Master Program Agreement, indicated to IFC that they were making the payments because NorVergence was secretly

reimbursing them. Instead of exercising its remedies against NorVergence under the Master Program Agreement, however, IFC chose not only to keep the Rental Agreements and seek its remedies against the consumer victims, but also to purchase additional NorVergence Rental Agreements. Despite receiving ever-increasing reports of NorVergence's failures to provide promised services to consumers, IFC maintained its close relationship with NorVergence up to the date of NorVergence's bankruptcy filing.

Collapse of NorVergence and IFC's Response

25. After selling or assigning the Rental Agreements, NorVergence's only ongoing income came from the small amounts consumers were paying under the written telecommunications services agreements. That income was only a small fraction of the cost of providing these services. Much of the proceeds NorVergence received from the assignment of the Rental Agreements was used for other purposes and what remained was insufficient to pay for the five years of telecommunications services it had promised consumers.

26. IFC continued to finance NorVergence's fraudulent sales scheme by accepting new assignments of NorVergence Rental Agreements, despite NorVergence's failure to provide promised services and the resulting high rate of default among the IFC consumers.

27. IFC's response to information that consumers were not receiving the promised services was to change the Master Program Agreement with NorVergence several times. Each change further limited IFC's risk of financial losses due to the increasing customer defaults caused by NorVergence's failure to deliver the promised telecommunications services. For example, IFC increased the "holdback" or reserve amount it was entitled to retain pursuant to the Master Program Agreement. The holdback amount was a percentage of the payoff IFC owed NorVergence for assignment of contracts, initially 10% or less. As NorVergence declined and

consumer problems mounted, however, the holdbacks IFC demanded reached at least 50% of the payoff price. Other changes to the Master Program Agreement improved IFC's position in the event of a NorVergence bankruptcy.

28. On June 16, 2004, just two weeks before NorVergence's involuntary Chapter 11 filing, IFC and NorVergence entered into agreements that gave IFC security interests in over \$15 million of Rental Agreements still owned by NorVergence. IFC paid nothing for this additional security. After the bankruptcy filing, it was obvious from NorVergence's financial condition that no consumers who were party to these Rental Agreements would ever receive any of the promised services. Nevertheless, IFC sought relief from the automatic bankruptcy stay in order to take possession of these Rental Agreements and begin collections. After the FTC and other parties filed objections to lifting the stay, IFC withdrew its petition for relief from stay. The NorVergence Judgment subsequently determined that those unassigned Rental Agreements were void and unenforceable.

29. Even today, long after the NorVergence bankruptcy, IFC continues to represent to consumers that they are still obligated on the Rental Agreements held by IFC because the payments called for by the Agreements are rental payments for the Matrix box, and not payment for services as NorVergence had promised. IFC also continues to insist on payment of the full balance remaining on NorVergence Rental Agreements, based on an acceleration clause. In some lawsuits, IFC has discounted this payment stream to a present value but added interest back in. In other suits, IFC has claimed that it was damaged in the amount of its payoff to NorVergence. In some or all of these suits, IFC claimed it had paid the full payoff amount, while it had actually paid thousands of dollars less because of the holdback amount it kept as a reserve against losses.

30. Paying for up to five years of unreceived phone services places a severe financial burden on many consumers, all of whom also have to pay for actual phone services to maintain their businesses or organizations.

The NorVergence Rental Agreements Acquired by IFC and Other Information Alerted IFC to the Likelihood that NorVergence Was Engaged in Deception

31. The NorVergence Rental Agreements and other information available to IFC when it acquired the Agreements demonstrated that the predominant purpose of the transaction between consumers and NorVergence was the purchase of a long-term package of telecommunications services. This raised the likelihood that consumers were deceived into signing the Rental Agreements, which purported to bind them to make substantial monthly payments over a lengthy term just to rent a simple piece of telecommunications equipment, with no mention of telecommunications services. The likelihood of deception by NorVergence was apparent not only from the Agreements themselves, but also from materials describing NorVergence's sales pitch to consumers, from widely varying contract prices, and from continuing consumer complaints. Finally, if IFC had analyzed the value of the Matrix box as required by provisions of the Rental Agreements and applicable laws, the likely deception of consumers would also have been apparent.

32. Before IFC purchased Rental Agreements, NorVergence provided materials to IFC that demonstrated that NorVergence was primarily selling to consumers a savings package on telecommunications services. For example, NorVergence described to IFC the focus of its sales presentations, which heavily emphasized to consumers the savings on telecommunications that NorVergence could provide. One of these descriptions was in a NorVergence PowerPoint for

potential financiers (including IFC), which demonstrated the “cost savings strategy” it would use to attract customers:

<p style="text-align: center;">Cost Savings Strategy</p> <ul style="list-style-type: none">■ Cost Savings Strategy<ul style="list-style-type: none">– Customer establishes Current Expenditures with NorV Rep– OLD MONTHLY AMOUNT– NorV Engineering determines Monthly Rental Amount for New MATRIX and Monthly Amount for New Resold Access Facilities – NEW MONTHLY AMOUNT ■ Savings is Presented to Customer as difference between OLD and NEW. When Cost Savings are established, the deal is signed 60.33% of the time!

33. IFC itself made statements to consumers consistent with NorVergence’s representations of telecommunications cost savings that were guaranteed for five years, and reinforcing the impression that payments on the Rental Agreements were for telecommunications services. A “Confirmation Script” that IFC used for calling consumers before accepting assignment of their Rental Agreements included the following passage: “[the] flat monthly cost is protected for a 60-month term, producing the NorVergence savings you were promised.” The promised 5-year savings could only result if NorVergence provided the promised telecommunications services.

34. NorVergence never offered to sell Matrix boxes and never quoted a sales price to consumers. As NorVergence explained to IFC when demonstrating its business plan: “We do not sell, we require the customer to submit an application for cost savings solution.”

35. IFC accepted the form of the NorVergence Rental Agreement even though it differed significantly from IFC’s normal form contracts for equipment leases. For example, IFC’s typical equipment leases contain language stating an unequivocal intent to be governed by

Uniform Commercial Code Article 2A (“UCC Art. 2A”). Some provisions of UCC Art. 2A are significantly more favorable to creditors than the laws relating to non-lease finance contracts or service agreements.

36. NorVergence Rental Agreements did not state an unequivocal intent to be covered by UCC Art. 2A. UCC Art. 2A applies only to *bona fide* equipment lease financing and it does not apply to the financing of services, the predominant purpose of the IFC financing of NorVergence. The NorVergence Rental Agreements refer only to a possibility that some future interpretation might determine that UCC Art. 2A applied to the agreement:

ARTICLE 2A STATEMENT: YOU AGREE THAT IF ARTICLE 2A OF THE UNIFORM COMMERCIAL CODE IS DEEMED TO APPLY TO THIS RENTAL, THIS RENTAL WILL BE CONSIDERED A FINANCE LEASE THEREUNDER.

It was clear, however, that these were not “finance leases” as defined in Article 2A for various reasons. Among others, § 2A-103(1)(g) requires that “the lessor [rentor] does not select, manufacture, or supply the goods.” Here, the original “rentor,” NorVergence, selected and supplied the Matrix box, as well as the telecommunications services. Therefore, Article 2A would not apply.

37. It was obvious that the “rental” payments in the NorVergence Rental Agreements were unrelated to the value of the Matrix box and were instead intended by NorVergence and the consumer to cover services. That was evident in part because of the great disparity in “rental” prices. During its first two weeks of purchases, IFC accepted Rental Agreements from NorVergence, that called for widely varying consumer payments for identical equipment. Further, rental payments for Matrix boxes with more cards were often for substantially less than the payments for boxes with fewer cards.

38. It would also have been obvious to IFC that the payments were for services, not just equipment, had it complied with various obligations it had to analyze the value of the Matrix box. Because IFC treated the NorVergence Rental Agreements as leases for accounting and tax purposes, it was required, under generally accepted accounting principles, to determine the actual value of the equipment furnished and its likely value at the end of the rental term. Had IFC followed these principles, it would have determined that the value of the Matrix box was only a tiny fraction of the rental amount and that the tremendous range of rental amounts bore no relationship to the value of the Matrix supposedly rented.

39. IFC also should have determined the actual value of the Matrix box in order to determine an appropriate amount of business personal property tax to collect in the many jurisdictions where this applies. These taxes are typically due on the fair market value (or some equivalent) of the business equipment, with depreciation sometimes taken into account. Had IFC ascertained the fair market value of the Matrix box, it would have determined that the rental amounts bore no relationship to the value of the Matrix supposedly rented. While IFC may only have collected property taxes on a few occasions, in the affected state(s) IFC collected 5 to 65 times the amount of property taxes actually due.

40. Further, IFC should have determined the Matrix Box replacement cost to determine how much insurance consumers should be required to carry pursuant to the Rental Agreements. Those agreements provided that the consumer must carry loss and damage insurance on the Matrix box or, in the alternative, that IFC could obtain that insurance and pass the cost of premiums on to the consumer ("force placed insurance"). However, IFC based its insurance demands on the full amount it paid, or was obligated to pay, NorVergence for the

Rental Agreement. Had IFC ascertained an actual cost to replace the Matrix box, it would have determined that the rental amounts bore no relationship to the value of the Matrix supposedly rented.

41. As a result of IFC requiring insurance coverage based on its payoff amount to NorVergence, consumers paid premiums for loss and damage coverage based on an amount that was 5 to 65 times higher than the amount of coverage that IFC was entitled to require. The consumer's opportunity to learn of this deception was extremely limited because the policies were in IFC's name and for IFC's benefit. Because the consumer was not the insured party, he or she could not make any inquiry of the insurance company regarding the policy, coverage, or actual premium amounts.

42. Finally, IFC's payoff amount to NorVergence could vary depending on the consumer's credit rating, but the credit rating could not have affected the cost to replace the Matrix box, another strong indication that the rental amounts bore no relationship to the value of the Matrix box and, thus, that NorVergence consumers were likely the victims of deception.

Deceptive Rental Agreement Language

43. Several contractual provisions in the NorVergence Rental Agreements were the basis for misrepresentations by IFC concerning consumers' rights and obligations. These included various provisions that appeared to allow IFC to enforce the Rental Agreements in the event of a NorVergence default, or that created an ambiguity regarding IFC's ability to enforce.

44. Among the provisions that IFC has claimed prevent consumers from ever raising any defenses are the Rental Agreement's "Assignment" provisions, which appear in tiny type on the back of the agreement:

ASSIGNMENT: YOU MAY NOT SELL, PLEDGE, TRANSFER, ASSIGN OR SUBRENT THE EQUIPMENT OR THIS RENTAL. We may sell, assign or transfer all or any part of this Rental and/or the Equipment without notifying you. The new owner will have the same rights that we have, but not our obligations. You agree you will not assert against the new owner any claims, defenses or set-offs that you may have against us.

...
YOU UNDERSTAND THAT ASSIGNEE IS A SEPARATE AND INDEPENDENT COMPANY FROM RENTOR/MANUFACTURER AND THAT NEITHER WE NOR ANY OTHER PERSON IS THE ASSIGNEE'S AGENT. YOU AGREE THAT NO REPRESENTATION, GUARANTEE OR WARRANTY BY THE RENTOR OR ANY OTHER PERSON IS BINDING ON ANY ASSIGNEE, AND NO BREACH BY RENTOR OR ANY OTHER PERSON WILL EXCUSE YOUR OBLIGATION TO ANY ASSIGNEE.

45. Another tiny-type provision relied on by IFC, also on the back of the agreement, purports to waive all defenses against the original "Rentor," which was NorVergence, while preserving claims against the "manufacturer or supplier," which was also NorVergence:

YOUR DUTY TO MAKE THE RENTAL PAYMENTS IS UNCONDITIONAL DESPITE EQUIPMENT FAILURE, DAMAGE, LOSS OR ANY OTHER PROBLEM. . . . If the equipment does not work as represented by the manufacturer or supplier or any other person fails to provide service or maintenance, or if the Equipment is unsatisfactory for any other reason, you will make any such claim solely against the manufacturer or supplier or other person and will make no claim against us.

This confusing provision creates the false impression that the consumer's duty to pay would survive a complete failure of consideration. This and the assignment provisions, among others, have been cited by IFC to support its misleading claims that consumers had no defenses to IFC demands for payment in full, regardless of any fraud or deception perpetrated by NorVergence or participated in by IFC.

46. IFC also used the NorVergence Rental Agreement's ambiguous reference to a purported possibility that UCC Art. 2A might apply to mislead consumers about their ability to raise defenses. IFC misrepresents that consumers have automatically waived defenses by

application of UCC Art. 2A, which provides lessees under UCC Art. 2A "finance leases" with fewer rights to assert defenses than other lessees or renters.

47. IFC was in a much better position than consumers to understand that the ambiguous UCC Art. 2A paragraph could not render the Rental Agreement an Article 2A finance lease. It was also in a much better position to understand that other ambiguities or false statements in the Rental Agreement could give rise to consumers' defenses against IFC. Indeed, a May 2004 internal circulation included the following comment made by IFC's general counsel:

[T]o the extent that the Customer has not received any consideration in the form of working equipment in exchange for the rental payments due under the contract - we may be hard pressed to show how we have a valid and enforceable contract - and some of these unfair business statutes provide for treble damages and attorneys fees if we lose.

Deceptive Claims Regarding Other Theories of Consumers' Liability to IFC

48. IFC regularly claimed in debt collection letters and elsewhere that consumers could be liable to IFC for "Fraud in the Inducement" and "Misrepresentation" and for intentionally deceiving IFC into paying NorVergence for the Rental Agreements. These claims were supposedly based on oral and written acknowledgments from consumers that Matrix boxes had been delivered.

49. One of these acknowledgments was obtained within a few days or weeks after the Matrix box was delivered to the consumer's business premises. At that time, IFC obtained from the consumer a signature to a boilerplate acceptance form. The acceptance form IFC used for NorVergence consumers was markedly different from IFC's standard acceptance form for equipment financing. In IFC's standard acceptance form, the consumer acknowledges that the equipment is "in good order and condition," in other words, that it is working. At this point in

time, however, the NorVergence consumer could not possibly know whether the Matrix box would work, and would not know so for months, and thus could not “accept” in the legal sense. Nevertheless, IFC attempted to create a binding obligation by using an acceptance form reciting that the consumer “has received and accepted all the Equipment described in the . . . Rental Agreement” and that the “Equipment conforms with our requirements.” The form also provided that the consumer agreed that the rental payment will begin in 60 days, but said nothing further about the equipment, including whether it was operational.

50. Another acknowledgment was obtained by telephone. The script for that call was also markedly different from IFC’s standard telephone script for equipment financing. In IFC’s standard script, consumers are asked if they have any agreements other than the lease, and if they authorized IFC to pay the vendor. However IFC’s Matrix script (discussed in Paragraph 33 above), did not ask these questions. While it sought confirmation of the rental price, it asked only the following regarding the Matrix equipment:

I also have your company’s billing address as [street address]. Is that the same address where the Matrix equipment was delivered and mounted?

51. Thus, neither the acceptance form nor the script IFC used in the phone calls made any reference to whether the Matrix box was operating or even connected, let alone providing the promised performance. IFC was regularly receiving reports that delivery of the Matrix box occurred weeks or months before the Matrix was likely to be installed and become operational, if it ever was, and thus that the consumer was signing or verbally agreeing to no more than the equivalent of a delivery receipt. Nonetheless, IFC still treated the consumer’s delivery acceptance as if it were an agreement that rental payments should begin even if the Matrix was not connected.

52. Starting some time in 2005, after some consumers had refused to pay IFC and mounted defenses to lawsuits, IFC began threatening to raise, or raised, counterclaims based on the consumers' so-called "acceptance" of the Matrix boxes. IFC asserts that, when consumers accepted or acknowledged delivery, this was a false representation to IFC that the consumers had actually "accepted" the Matrix boxes in a technical legal sense, creating a binding obligation. IFC further claims the consumers intended to mislead IFC into paying NorVergence for the assignment of the Rental Agreement.

53. IFC's standard acceptance form and telephone scripts may, in fact, alert renters/lessees that "[standard script:] the lessor is relying upon this certificate of acceptance in making payment to the supplier" or that the renter/lessee "[standard script:] authorize[s] IFC to Pay the Vendor and start the lease." However, IFC avoided using any equivalent language with the NorVergence consumers.

54. Acknowledgment of the box's delivery is not equivalent to a representation by the consumer that the Matrix was working or that NorVergence was providing any telecommunications services. Nonetheless, IFC continues to claim that consumers who only acknowledged delivery actually "accepted" the Matrix boxes and misled IFC. These additional theories of liability add further burden and costs of defense for the consumers.

Unfair Distant Forum Lawsuits and Collection Actions

55. IFC has filed nearly 500 collection suits in forums distant from the consumers' business location and that of the personal guarantors. Most or all of these suits were filed after the NorVergence bankruptcy, when it was obvious that none of the consumers would ever receive the services and savings that NorVergence and IFC promised. Some consumers have

challenged the jurisdiction or venue of the distant forum, with varying results. In every case, however, even a successful challenge in the distant forum adds substantially to the consumers' costs.

56. In some cases, IFC has obtained default judgments in the distant forum and domesticated or executed the judgments locally. In other cases, IFC has domesticated or executed the distant forum judgment in a distant forum. For example, IFC obtained a default judgment in Illinois against a California consumer and then executed the judgment in Florida. Although the consumer had no property in Florida, the consumer's California bank had a branch in Florida. IFC was therefore able to seize the California consumer's business bank account funds through the Florida execution action.

57. IFC purported to base the jurisdiction of the distant courts on a "floating venue" provision in the NorVergence Rental Agreement. It provides that any suit under the contract would be brought in the state of any future assignee, and interpreted under the laws of that state, if the assignee chose to do so:

This agreement shall be governed by, construed and enforced in accordance with the laws of the State in which the Rentor's principal offices are located or, if the lease is assigned by Rentor, the laws of the state in which the assignee's principal offices are located, without regard to such State's choice of law considerations and all legal actions relating to this lease shall be venued exclusively in a state or federal court in that State, such court to be chosen exclusively at Rentor or Rentor's assignee's sole option.

Based on this language, no consumer could know at the time of signing what state might be the venue under the contract or what state's laws might apply to the contract. Indeed, the potential venue and applicable laws could change from time to time if the contract were reassigned, which

occurred in some cases. Many courts have refused to enforce this provision when challenged by the consumer, but IFC has continued to file new distant forum suits.

VIOLATIONS OF SECTION 5 OF THE FTC ACT

58. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits unfair or deceptive acts or practices in or affecting commerce.

59. An act or practice is unfair if it causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition, 15 U.S.C. § 45(n).

60. Defendants have engaged in the following unfair or deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT 1 - Misrepresenting Consumers' Obligations

61. In numerous instances, in connection with the financing of a long-term package of telecommunications services and incidental equipment, IFC has represented, expressly or by implication, directly or indirectly:

- a. That consumers have no defenses to payment on the NorVergence Rental Agreements, including defenses of fraud in the inducement or defenses that material provisions of the NorVergence rental contract are unenforceable, or that they are precluded from raising any defenses or counterclaims; and
- b. That consumers are obligated to pay IFC under other theories of liability, including fraud in the inducement and misrepresentation.

62. In truth and in fact:

- a. Consumers do have defenses to payment on the NorVergence Rental Agreements, including defenses of fraud in the inducement or defenses that material provisions of the NorVergence rental contract are unenforceable, and are not precluded from raising any defenses or counterclaims; and
- b. Consumers are not obligated to pay IFC under other theories of liability, including fraud in the inducement and misrepresentation.

63. Therefore, the representations set forth in Paragraph 61 above are false or misleading and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

**COUNT II - Unfair Acceptance of and Collection on
NorVergence Rental Agreements**

64. IFC's practices of accepting and collecting on the NorVergence Rental Agreements, as described in Paragraphs 8-57, cause or are likely to cause substantial injury that is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or competition.

65. Therefore, IFC's practices, as alleged in Paragraph 64, are unfair in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT III - Unfair Use of Distant Forums

66. IFC's practices of filing lawsuits and execution actions on NorVergence Rental Agreements in venues other than the consumer's place of business, the location where the consumer executed the contract, or the residence of the individual guarantor, as described in Paragraphs 8-57, cause or are likely to cause substantial injury that is not reasonably avoidable by

consumers themselves and not outweighed by countervailing benefits to consumers or competition.

67. Therefore, IFC's practices, as alleged in Paragraph 66, are unfair and violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

CONSUMER INJURY

68. Consumers throughout the United States have suffered substantial monetary loss as a result of defendant's unlawful acts or practices. In addition, defendant has been unjustly enriched as a result of its unlawful practices. Absent injunctive relief by this Court, defendant is likely to continue to injure consumers and to harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

69. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers the Court to grant injunctive and other relief to halt and redress violations of the FTC Act. The Court, in the exercise of its equitable jurisdiction, may award other ancillary relief to prevent and remedy injury caused by defendant's violations, including but not limited to restitution, reformation or rescission of contracts, cancellation of purported debts, and disgorgement of ill-gotten gains.

PRAYER FOR RELIEF

Plaintiff requests that the Court, as authorized by Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and pursuant to its own equitable powers:

1. Award plaintiff preliminary injunctive and ancillary relief as may be necessary to avert the likelihood of consumer injury during the pendency of this action and to preserve the possibility of effective final relief.

2. Enter judgment against defendant and in favor of the FTC for each violation alleged in this complaint.
3. Enter a permanent injunction to prevent future violations of the FTC Act by defendant.
4. Award relief as the Court finds necessary to redress injury to consumers resulting from the defendant's violations of the FTC Act, including but not limited to restitution, reformation or rescission of contracts, disgorgement of ill-gotten gains, and the cancellation of purported debts.

5. Award plaintiff the costs of bringing this action, as well as any other and additional equitable relief as the Court may determine to be just and proper.

Respectfully submitted,

Dated: June 6, 2007


Local Counsel:

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**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION**

IN RE NORVERGENCE LITIGATION,)
) Case No. 04 L 12891
(IFC CREDIT CORPORATION, assignee of)
Norvergence, Inc.),) (transferred/consolidated)
) Judge James C. Murray

NOTICE OF MOTION

To: Ms. Debra Devassy
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Ms. Beth Alcantar
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To all joint defense counsel via broadcast email

PLEASE TAKE NOTICE that on MARCH 20, 2008 at the hour of 1:30 PM, I shall appear before the Honorable JAMES C. MURRAY, JR., or any Judge sitting in his stead, in the Courtroom normally occupied by him (2005) at the Richard J. Daley Center, 50 W. Washington Street, Chicago, IL 60602 and there and then present the attached (1) Motion for Sanctions, at which time you may appear.



Michael J. Fleck
Attorney for Certain Defendants as set forth
in Exhibit 'A' to Motion

Prepared by:

Michael J. Fleck #34807
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**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
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IN RE NORVERGENCE LITIGATION,)	
)	Case No. 04 L 12891
(IFC CREDIT CORPORATION, assignee of)	
Norvergence, Inc.),)	(transferred/consolidated)
)	Judge James C. Murray

NOTICE OF FILING/PROOF OF SERVICE

To: Ms. Debra Devassy
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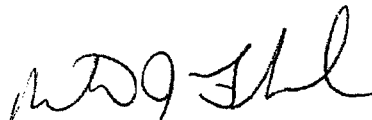
Ms. Beth Alcantar
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To all joint defense counsel via broadcast email

Please take notice that on March 11, 2008, we caused to be filed with the Cook County Circuit Court Clerk, the following:

1. Motion for Sanctions;
2. Notice of Motion; and
3. This Notice of Filing and Proof of Service,

Copies of which are served upon you.

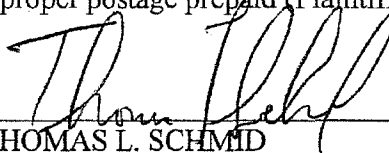


Michael J. Fleck
Attorney for Certain Defendants as set forth
in Exhibit 'A' to Motion

Prepared by:
Michael J. Fleck #34807
Law Office of Michael J. Fleck, P.C.
10771 Route 47 PO Box 992
Huntley, IL 60142
847-669-2558

PROOF OF SERVICE

I, Thomas L. Schmid, an attorney, do hereby certify that on March 11, 2008, I served the foregoing documents on the above-named addressees, by (1) emailing same in PDF format; and (2) depositing same in the United States Mail, proper postage prepaid (Plaintiffs' Counsel only), on or before the hour of 5:00 pm



THOMAS L. SCHMID

Attorney for Certain Defendants as set forth
in Exhibit 'A' to Motion

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**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION**

IN RE NORVERGENCE LITIGATION,)	
)	Case No. 04 L 12891
(IFC CREDIT CORPORATION, assignee of)	
Norvergence, Inc.),)	(transferred/consolidated)
)	Judge James C. Murray

MOTION FOR SANCTIONS

NOW COMES the Law Office of Michael J. Fleck, P.C., attorney of record for the defendants attached hereto as Exhibit 'A' in this Consolidated Action, and moves this Court to impose sanctions against Plaintiff IFC Credit Corporation (IFC) and its counsel of record for the reasons set forth below:

1. As this Court is well aware, IFC filed hundreds of lawsuits against numerous defendants, all of which were consolidated before this Court. These lawsuits are related to the transactions concerning IFC, NorVergence, and the individual defendants.
2. IFC is represented by in-house and outside counsel in these matters.
3. A number of defendants filed Motions to Dismiss, challenging the forum selection clause and arguing that IFC should not have filed suit in Illinois.
4. IFC vigorously opposed these motions, and appealed the lower courts' decisions (in Federal and State Court) which initially granted the Motions to Dismiss.
5. Both the Seventh Circuit Court of Appeals and the Illinois Appellate Court, First District, agreed with IFC's contention that jurisdiction is proper in Illinois, reversing the trial Court and remanding the cases for further proceedings. *See, IFC Credit*

Corp. v. Aliano Bros. Gen. Contractors, Inc., 437 F.3d 606, (7th Cir. 2006) and *IFC Credit Corp. v. Rieker Shoe Corp.*, 378 Ill.App.3d 77 (1st Dist. 2007).

6. Among the arguments made by IFC in its Appellate Briefs in *Rieker Shoe*, IFC contended that:
 - a. Illinois has a strong interest in this suit, as IFC is an Illinois Corporation, and “Illinois has a ‘significant and substantial’ interest in resolving cases between Illinois residents”; *IFC Credit Corporation Appellate Brief*, filed July 22, 2005 in *IFC Credit Corp. v. Rieker Shoe Corp.*, 05-1310 (1st Dist. Ill.) at p.31.
 - b. IFC suffered its damages in Illinois as Rieker’s failure to perform under the Agreement caused IFC’s monetary loss to occur in Illinois; *Id.*
 - c. “PolyTech’s separate argument that New Jersey law applies should be rejected . . . the substantial relationship between the chosen forum – Illinois – and the parties justifies enforcement of the choice of law provision” *IFC Credit Corporation Appellate Reply Brief*, dated January 17, 2006 in *IFC Credit Corp. v. Rieker Shoe Corp.*, 05-1310 (1st Dist. Ill.) at pp. 10-12.

Copies of said briefs have been previously tendered to Judge Henry on May 31, 2007, pursuant to request of the Court.

7. As this Court is also aware, the Federal Trade Commission (FTC) has filed its suit against IFC for violations of the FTC Act. This case is pending in the Federal District Court for the Northern District of Illinois as Cause Number 07-cv-03155.
8. Thus, IFC has chosen Illinois as the forum for these actions, vigorously and successfully defended this forum, rejecting New Jersey law. The cases before this Court and the FTC case are still pending in Illinois.

9. In New Jersey, a class action suit was filed against all NorVergence Lessors entitled *Exquisite Caterers et al. v. Popular Leasing et al.*, Docket No.: MON - L-3686-04. In 2006, many of the NorVergence Leasing Companies settled the class action matters. IFC did not initially settle, and instead continued to pursue the hundreds of cases it filed in Illinois.
10. Recently, without informing this Court, any defense counsel, and on information and belief, without informing the FTC or the Federal Court in the FTC action, and completely contrary to all of IFC's arguments before the Illinois Courts, IFC had engaged in negotiations with the New Jersey class action counsel and in fact brokered a supposed settlement in the New Jersey class action matter, agreeing to a nationwide class. A copy of the order and legal notice is attached hereto as Exhibit 'B' and made a part hereof.
11. The "settlement", which is believed to have been entered on February 26, 2008, purports to resolve all claims between IFC and your defendants in this Consolidated matter.
12. Since this Order was entered, despite numerous communications with IFC's counsel, no mention of the class action settlement has been made by IFC's counsel to defendants' counsel (movant). Defendants' counsel has not yet received any copy of the order or settlement notice directly from IFC.
13. It is believed that the nationwide class consists of all of the cases pending before this Court in the Consolidated NorVergence matter.
14. Counsel of record for defendants were never made aware of this supposed settlement, nor of the possibility of such a settlement.

15. Furthermore, Counsel of record for defendants were not included in any settlement negotiations, nor asked for any input in the settlement.
16. Even after the settlement order was entered in the New Jersey class action, IFC never made Counsel of record for your defendants aware of the settlement. Counsel for defendants were made aware of this settlement from FTC counsel and from clients who received legal notice of the settlement directly from IFC.
17. Moreover, IFC, knowing that all of these defendants are represented by counsel, sent the settlement notification directly to defendants, and not through counsel of record, not even copying counsel of record on this direct communication, nor seeking permission to communicate same.
18. IFC's actions have undermined this Court's authority to adjudicate these matters – the Court that it chose to adjudicate its claims by filing hundreds of suits in this county.
19. IFC's actions have adversely affected defense counsel's relationship with their clients by calling into question what is being done by their attorneys to properly defend and pursue defendants' claims in this Court, while some unknown settlement was being brokered elsewhere.
20. This is not the first time that IFC has directly communicated with represented defendants in this matter without permission from counsel. In June, 2005, IFC sent demand letters directly to represented defendants, threatening "Legal Action", unless payment is made, *even though the case had been pending for almost one year*. A sample of such a letter is attached hereto as Exhibit 'C' and made a part hereof.
21. IFC Credit Corporation and its counsel should be sanctioned because:

- a. Despite arguments to the contrary filed in pleadings with Courts in these cases, IFC has, without the knowledge, input or consent of this Court or defense counsel, abrogated the forum selected by IFC and under the cover of darkness, negotiated a settlement that purports to resolve the cases it filed in Illinois, using a distant forum that it claimed did not apply to these cases. Had IFC not challenged the motions to dismiss, these defendants would not have expended considerable funds challenging the jurisdiction that IFC abrogated in favor of New Jersey.
- b. Even though the purported class settlement offers an “opt-out” provision, IFC’s actions have undermined this Court’s authority to adjudicate these matters, and have adversely affected defense counsel’s relationship with their clients by calling into question what is being done by their attorneys to properly defend and pursue defendants’ claims in this Court.
- c. IFC violated its duty to be honest and forthright with this Court. *Semmens v. Semmens*, 77 Ill.App.3d 936, 940 (4th Dist., 1979);
- d. Attorneys for IFC are under a duty as officers of the court to make full and frank disclosure of all matters which the court ought to know and has a duty of candor to the court. *City of Chicago v. Higginbottom*, 219 Ill.App.3d 602, 628 (1st Dist. 1991); *People v. Sleezer*, 8 Ill.App.2d 12, 22 (2 Dist. 1955);
- e. IFC failed to inform opposing counsel of negotiations of settlement (*Pittman v. Lageschulte*, 45 Ill.App.2d 207, 221 (2nd Dist. 1964)), or an order that purports to be dispositive of the matters pending before this Court (*Cooper v. United Development Co.*, 122 Ill.App.3d 850, 856 (1st Dist. 1984)).

- f. Without first obtaining consent, IFC corresponded directly with parties represented by counsel with legal documents purported to be potentially dispositive of the action pending in this Court. Such communication disrupts the attorney-client relationship established between defense counsel and defendants, drawing question as to the establishment of such a settlement without their attorney's input and is a clear and direct violation of R.P.C. 4.2.

WHEREFORE, Defendants, through their counsel, respectfully request that this Court sanction IFC and its attorneys for its abhorrent conduct toward this Court and these proceedings as follows:

1. Enjoining IFC from adjudicating and disposing of the claims in this litigation in any jurisdiction other than this Court;
2. Requiring IFC to reimburse defendants for attorney fees and costs associated with challenging the forum selection clause, as it vigorously fought for jurisdiction in Illinois, only to abrogate its selected forum in the end.
3. Other and further sanctions as this Court deems appropriate.



Michael J. Fleck
Attorney for Defendants
(as listed)

Prepared By:

Michael J. Fleck #34807
Law Office of Michael J. Fleck, P.C.
10771 Route 47 PO Box 992
Huntley, IL 60142
847-669-2558

EXHIBIT A

Defendant List

Law Office of Michael J. Fleck, P.C.

03-11-08 Consolidation Report

Case No	Lessor	Client	Guarantor	Status
04 M2 2010	IFC Credit Corp	Moore Construction Management, Inc.	Stan Moore	Motion to Dismiss
04 M2 2011	IFC Credit Corp	Smith Brothers Electric Co., Inc.	Raymond W. Smith	Motion to Dismiss
04 M2 2051	IFC Credit Corp	Continental Auto Parts, LLC	Thomas Lee	Motion to Dismiss
04 M2 2054	IFC Credit Corp	John Galt Insurance Agency Corporation	None	Motion to Dismiss
04 M2 2056	IFC Credit Corp	First Cable Line, Inc.	Kou Chueh Lin	Motion to Dismiss
04 M2 2060	IFC Credit Corp	BIT California, LLC	Steve Shill	Motion to Dismiss
04 M2 2067	IFC Credit Corp	Thunderhorse Saloon, Inc.	Christina Antee	Motion to Dismiss
04 M2 2119	IFC Credit Corp	Microphoto, Incorporated	None	Motion to Dismiss
04 M2 2122	IFC Credit Corp	RGH Enterprises, Inc.	Robert Hume	Motion to Dismiss
04 M2 2125	IFC Credit Corp	Lagniappe Enterprises, Inc.	Martin Silverberg	Motion to Dismiss
04 M2 2154	IFC Credit Corp	Quick Thrift Foods, Inc.	James E. Barlow	Motion to Dismiss
04 M2 2168	IFC Credit Corp	Detweiler's Propane Gas Service, LC	None	Motion to Dismiss
04 M2 2172	IFC Credit Corp	Ronan Sign Company, Inc.	Nancy Schneider	Motion to Dismiss
04 M2 2182	IFC Credit Corp	Mariela's Travel Corp.	Antonio Moulton	Motion to Dismiss
04 M2 2187	IFC Credit Corp	Independent Associates of Pennsylvania, Inc	Preston D. Joswiak	Motion to Dismiss
04 M2 2220	IFC Credit Corp	Reliable Care LLC	Julie Nweke	Motion to Dismiss
04 M2 2224	IFC Credit Corp	B & G Industrial Rentals, INC.	Cherie A. Hudson	Motion to Dismiss
04 M2 2229	IFC Credit Corp	Fulgo, Inc.	Roger C. Ho	Motion to Dismiss
04 M2 2231	IFC Credit Corp	Foot & Leg Healthcare Specialists, P.A.	Douglas Elleby	Motion to Dismiss
04 M2 2233	IFC Credit Corp	Auto Trim Design of Suncoast, Inc.	William G. Davis	Motion to Dismiss
04 M2 2234	IFC Credit Corp	Harry Major Machine & Tool Co.	None	Motion to Dismiss
04 M2 2259	IFC Credit Corp	AC Trucking, Inc.	Chris Athanasiadis	Motion to Dismiss
04 M2 2270	IFC Credit Corp	Village Restaurants, LLC	James Verfurth	Motion to Dismiss
04 M2 2271	IFC Credit Corp	Brac Properties, LLC	Rhonda Erlich	Motion to Dismiss
04 M2 2318	IFC Credit Corp	Vanguard Controls, Inc.	Peter Marcus	Motion to Dismiss

Case No	Lessor	Client	Guarantor	Status
04 M2 2321	IFC Credit Corp	Wesley H. Smith Landscape Contractors	Wesley H. Smith	Motion to Dismiss
04 M2 2325	IFC Credit Corp	Walnut Hill Paint Company, Inc.	None	Motion to Dismiss
04 M2 2327	IFC Credit Corp	R.D. Spicher Enterprises, Inc.	Randall D. Spicher	Motion to Dismiss
04 M2 2328	IFC Credit Corp	Kevil Chevrolet, Inc.	Michael Kevil	Motion to Dismiss
04 M2 2330	IFC Credit Corp	Saddleback Properties, Inc.	Michael Simon	Motion to Dismiss
04 M2 2344	IFC Credit Corp	Lasfeli Export, Inc.	Luis Aguirre	Motion to Dismiss
04 M2 2376	IFC Credit Corp	Girl Scouts of the USA	Kimberly Karl	Motion to Dismiss
04 M2 2401	IFC Credit Corp	German Auto World, Inc.	None	Motion to Dismiss
04 M2 2404	IFC Credit Corp	Active Wave, Inc.	Touraj Ghaffari	Motion to Dismiss
04 M2 2415	IFC Credit Corp	Dowd Builders, Inc.	Kevin Dowd	Motion to Dismiss
04 M2 2460	IFC Credit Corp	Edgley Construction Group, Inc.	Robert Edgley	Motion to Dismiss
04 M2 2473	IFC Credit Corp	Unicasa Global-Realty & Management, Inc.	Diego Rios	Motion to Dismiss
04 M2 2477	IFC Credit Corp	White Flint Venture Group, Inc.	James B. Thomas	Motion to Dismiss
04 M2 2512	IFC Credit Corp	Galaxy Electronics Associates, Inc.	None	Motion to Dismiss
04 M2 2524	IFC Credit Corp	Zua Autoparts, Inc.	None	Motion to Dismiss
04 M2 2613	IFC Credit Corp	Surface Center, Inc.	None	Motion to Dismiss
04 M2 2625	IFC Credit Corp	Elite Body Works, Inc.	James Gatto	Motion to Dismiss
04 M2 2635	IFC Credit Corp	Wilson Power, Inc.	James M. Wilson	Motion to Dismiss
04 M2 2637	IFC Credit Corp	Magnetic Technologies, Ltd.	None	Motion to Dismiss
04 M2 2694	IFC Credit Corp	Stop and Go, Inc.	Joseph Zahara	Motion to Dismiss
04 M2 2764	IFC Credit Corp	Fashion Cleaners, Inc.	Covy Cantville	Motion to Dismiss
04 M2 2765	IFC Credit Corp	C & B Signs, Inc.	Carol A. Brodeur	Motion to Dismiss
04 M2 2782	IFC Credit Corp	Robert Richardson d/b/a Bob's Transmission	Robert F. Richardson,	Motion to Dismiss
04 M2 2846	IFC Credit Corp	Lalji Investors, LLC	Hemant G. Thaker	Motion to Dismiss
04 M2 2851	IFC Credit Corp	Martin C. Beisner Co. d/b/a Quality Printing	Bonnie B. Ferguson	Motion to Dismiss
04 M2 2908	IFC Credit Corp	Thomas R. Riggs d/b/a Compusolutions, Inc.	None	Motion to Dismiss
04 M2 2925	IFC Credit Corp	Hotsy Equipment Company	Jacob Schlicht	Motion to Dismiss
04 M2 3020	IFC Credit Corp	Peerless Coatings, LLC	Richard W. Bottomi	Motion to Dismiss

Case No	Lessor	Client	Guarantor	Status
04 M2 3026	IFC Credit Corp	K & D Industries, Inc.	Kenneth M. Lafser	Motion to Dismiss
04 M2 3028	IFC Credit Corp	Red Ribbon Bakeshop, Inc.	Daniel M. Moran	Motion to Dismiss
04 M2 3030	IFC Credit Corp	Sonic Boom Mobile Electronics and Pagers,	Christopher R. Delucia	Motion to Dismiss
04 M2 3206	IFC Credit Corp	RES Properties, Inc.	Robert Small	Motion to Dismiss
04 M3 2646	IFC Credit Corp	South Coast Dental Laboratory, Inc.	Richard L. Hale II	On Appeal
04 M3 2648	IFC Credit Corp	Restaurant Graphics, Inc.	Thomas Stavarakis	On Appeal
04 M3 2670	IFC Credit Corp	W & S Hubbell, Inc.	William R. Hubbell	On Appeal
04 M3 2674	IFC Credit Corp	J&W Cycles, Inc.	Nancy K. Jones	On Appeal
04 M3 2675	IFC Credit Corp	Vehicle Equipment Company, Inc.	Daniel R. Davis	Motion to Dismiss
06 M2 1089	IFC Credit Corp	Trucatrice	Pedro H. Alonzo	Motion to Dismiss
06 M2 1678	IFC Credit Corp	Michael Sculley d/b/a Sprint Printing	Michael Sculley	Motion to Dismiss
06 M2 1679	IFC Credit Corp	PBO Corp.	David Postier	Motion to Dismiss
06 M2 1701	IFC Credit Corp	Glendale Area Schools Federal Credit Unio	Stuart Perlitsh	Motion to Dismiss
06 M2 1706	IFC Credit Corp	Ripp Modifications, LLC	Ross Esposito	Motion to Dismiss
06 M2 1709	IFC Credit Corp	The Monroe Group, LLC	John Christo and Mark	Motion to Dismiss
06 M2 1715	IFC Credit Corp	J.A. Archambault & Son, Inc.	Leon Archambault	Motion to Dismiss
06 M2 1718	IFC Credit Corp	RJR Kids LLC	Randall R. Hodges	Motion to Dismiss
06 M2 1720	IFC Credit Corp	Katz, Ippoliti & Co., P.C.	Barry Katz	Motion to Dismiss
06 M2 1723	IFC Credit Corp	Spanjer Corp.	Steven Silverberg	Motion to Dismiss

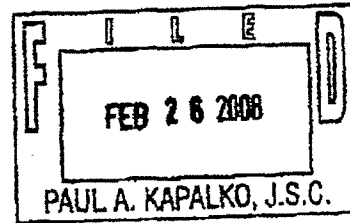
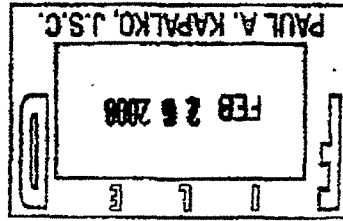
EXHIBIT B

**New Jersey Class Action and
Legal Notice**

KANTROWITZ, GOLDHAMER &
 GRAIFMAN, P.C.
 210 Summit Avenue
 Montvale, New Jersey 07645
 Tel: (201) 391-7000

GREEN & PAGANO, LLP
 522 Rt. 18, P.O. Box 428
 East Brunswick, NJ 08816
 Tel: (732) 390-0480

COHN LIFLAND PEARLMAN
 HERRMANN & KNOFF, LLP
 Park 80 Plaza West One
 Saddle Brook, New Jersey 07663
 Tel: (201) 845-9600



Attorneys for Plaintiff

_____	X	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION:
EXQUISITE CATERERS, LLC,	:	MONMOUTH COUNTY
ET ALS., on behalf of themselves	:	DOCKET NO. L-3686-04
And all others similarly situated,	:	
	:	
Plaintiff,	:	CIVIL ACTION
-vs-	:	
	:	ORDER OF APPARENT
POPULAR LEASING USA, INC.,	:	MERIT AND OTHER RELIEF
ET ALS. AND DOE CORPS I-40,	:	
	:	
Defendant.	:	
_____	X	

This matter having come before the Court for an Order preliminarily certifying a settlement class and preliminarily approving a settlement between plaintiff, Tri-State Pump, Inc., individually and on behalf of the proposed Settlement Class (the "Class"), and defendant IFC Credit Corporation and the Court having reviewed the Settlement Agreement executed by the parties and the attachments thereto and the parties having consented to the entry of this Order;

IT IS ON THIS 26 day of February, 2008

ORDERED AS FOLLOWS:

1. This action may be provisionally maintained as a class action.
2. The following settlement class is provisionally certified:

All for profit and non-profit entities and all individuals throughout the United States that entered into, or guaranteed, Rental Agreements. Rental Agreements are defined as "rental agreements with Norvergence for the lease of telecommunications equipment or provision of services to be supplied by or on behalf of Norvergence which Rental Agreements were purchased and are currently held by Defendant in total or in part and for which there was a balance remaining due to Defendant on such Rental Agreement as of July 15, 2004. Excluded from the Class are any entities who had already paid the full amount due under the agreement prior to July 15, 2004, or had entered into an independent settlement agreements with the settling Defendant directly on or after July 15, 2004 and prior to December 31, 2008.

3. The plaintiff and Class counsel provisionally are found to fairly and adequately represent the interests of the Class and to satisfy the requirements to be representatives of and counsel to the Class.

4. Without prejudice to final consideration, the terms and conditions of the Settlement Agreement, and the settlement provided for therein, are preliminarily approved as fair and reasonable, and in the best interests of the Class.

5. A hearing shall be held before the Court at 2:30 p.m. on April 18, 2008 in Courtroom _____ at the Superior Court of New Jersey, Monmouth County Courthouse, 71 Monument Park, Freehold, New Jersey: (a) to determine whether the proposed settlement is fair and reasonable to the Class and whether the final judgment and approval should be entered by the Court, and (b) to consider the application of Class counsel for an award of attorneys' fees and for reimbursement of expenses.

6. The Notice of Class Action attached to the parties' Settlement Agreement as Exhibit "A" is approved for the purpose of notifying the Class as to the proposed settlement, the hearing thereon, and the rights of members of the Class with respect thereto.

7. Defendant shall provide notice to the Class by sending at the defendant's expense the Notice of Class Action to the respective lessees of the Defendant who are members of the Class by first class mail not less than 45 days prior to the date set for final hearing as set forth in paragraph 5 above.

8. Within 15 days prior to the date of the Court's hearing on the Final Judgment and Order referenced in paragraph 5 above, defendant shall file proof, by certification, of the giving of notice.

9. Notice to the Class prescribed by paragraphs 7 and 8 of this Order is hereby found to be the best notice practicable under the circumstances and to satisfy the requirements of Rule 4:32-4 of the New Jersey Rules of Civil Procedure and due process of law and shall constitute due and sufficient notice to all persons entitled thereto.

10. Defendant shall be responsible for all costs and expenses incurred in connection with disseminating the Notice to the Class.

11. Any member of the Class who has not requested exclusion from the Class may appear in person or through a lawyer at the aforementioned hearing and be heard in support of or in opposition to the fairness, reasonableness and adequacy of the proposed settlement, the request for an award of fees and costs, or any other matter discussed in the Notice of Class Action; provided, however, that no person shall be heard in opposition to the proposed settlement, the request for fees and costs, or any other matter unless that

person has filed written objections with the Clerk of the Court, Superior Court of New Jersey, Monmouth County Law Division, 71 Monument Park, P.O. Box 1260, Freehold, New Jersey 07728-1266, postmarked no later than March 31, 2008, with copies to:

Gary Graifman, Esq.
Kantrowitz, Goldbamer & Graifman
210 Summit Avenue
Montvale, New Jersey 07645

12. Any member of the Class who does not make an objection in the manner provided shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the fairness, adequacy, or reasonableness of the proposed settlement or to the request for attorneys' fee and expenses.

13. All individuals, and all for profit and non-profit entities noted in the Class definition contained in paragraph 2 above, shall be deemed members of the Class unless they request to be excluded. If a Class Member requests exclusion, such Class Member will no longer be considered a member of the Class and thus cannot voice approval of or objection to the settlement or the application for attorneys' fees and expenses, will not receive the settlement compensation, and will not be bound by any final judgment and Order entered in this litigation.

14. In order to request exclusion from the Class, a Class Member must mail a written request to the Clerk of the Court, Superior Court of New Jersey, Monmouth County Law Division, 71 Monument Park, P.O. Box 1260, Freehold, New Jersey 07728-1266, postmarked on or before March 31, 2008, with copies to counsel identified in paragraph 11 herein.

15. Plaintiff's counsel shall file his Memorandum of Law in Support of the settlement no later than April 11, 2008.

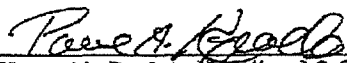
16. Plaintiff's counsel shall file his application for attorneys' fees and expenses no later than April 11, 2008.

17. In the event that the Settlement Agreement is terminated, final approval of the proposed settlement is not provided by the Court, or for any reason the parties fail to obtain a final judgment, then, in any of such events, the Settlement Agreement shall become null and void and of no further force and effect and neither it nor any order or judgment adopting it may be used or referred to for any purpose whatsoever. In that instance, the parties shall have 30 days in which to submit a proposed Order to the Court concerning case management.

18. The Court retains jurisdiction of this action to consider all further applications arising out of or connected with the proposed settlement herein.

19. The parties are directed to carry out their obligations under the Settlement Agreement.

20. Plaintiffs' counsel shall serve a copy of this Order on all named parties or their counsel within 7 days of receipt.


Honorable Paul A. Kapalko, J.S.C.

Consent to entry of this Order:

Green & Pagano, LLP

Attorneys for Plaintiff
Tri-State Pump

By: 
Michael Scott Green

Platzer Swergold Karlin Levine
Goldberg & Jaslow, LLP

Attorneys for IFC Credit Corporation

By: 
Steven D. Karlin

SUPERIOR COURT OF NEW JERSEY LAW DIVISION, MONMOUTH COUNTY

**IF YOU, YOUR BUSINESS OR NON-PROFIT ENTITY RENTED
NORVERGENCE TELECOMMUNICATIONS EQUIPMENT PURSUANT
TO A LEASE ACQUIRED BY IFC CREDIT CORP., A CLASS ACTION
SETTLEMENT WILL AFFECT YOU, OR YOUR COMPANY'S, RIGHTS**

You are receiving this notice because the records of IFC Credit Corporation (the "Lessor") reflect that you, your business or non-profit entity ("your Company") entered into, or guaranteed a Rental Agreement or Equipment Rental Agreement (the "Rental Agreement") to finance certain equipment supplied by NorVergence, Inc., which Rental Agreement was acquired by Lessor, and that a balance remained on the Rental Agreement as of July 15, 2004 (the "Event Date").

Pursuant to a proposed settlement in a class action lawsuit described below, the Lessor is offering your Company the opportunity to pay off the Rental Agreement held by the Lessor at a substantial discount and to settle any and all disputes between your Company, any individual guarantor and the Lessor arising from the Rental Agreement.

In order to participate in the settlement terms described herein, your Company must pay all amounts due on its Rental Agreement through July 15, 2004, including 100% of any and all unpaid monthly payments, late fees, and taxes (collectively, the "Cure Amount").

If this Settlement is approved, the Lessor will:

- (a) forgive eighty percent (80%) of the remaining contract balance ("Post-Event Balance") due on your Company's obligations to Lessor under the Rental Agreement after July 15, 2004;
- (b) forgive any late fees and penalties assessed on your Company's account on or after July 15, 2004;
- (c) fully credit any payments your Company made to the Lessor on or after July 15, 2004, including, but not limited to, monthly payments and payments for insurance-related charges, if any (such amount, the "Post-Event Date Payment Credit"); and
- (d) withdraw any and all adverse credit reports the Lessor filed, if any, as a result of not receiving payment on the Rental Agreement on or after July 15, 2004;

Your Company's "Settlement Balance" shall equal the sum of: the Cure Amount; plus the twenty percent of the Post-Event Date Balance; minus your Post-Event Date Payment Credit.

Lessor shall issue a "Refund" to your Company if your Company does not opt out of this Settlement Agreement, and if the Court gives this Settlement Agreement final approval, and if your Company's Settlement Balance is a negative number. In the event a refund to your Company is warranted, Lessor shall send such refund within one hundred eighty (180) calendar days of the settlement becoming final under the terms of the Settlement Agreement. If your

Company's Settlement Balance is positive, you will be obliged to pay it to the Lessor under the terms described herein.

The summary of the details of the settlement terms for your Company are attached hereto in a Summary Sheet.

If you do not take steps to exclude your Company from this settlement, your Company will automatically be included in the class.

**Your Company's Rights Will Be Affected Whether You Act or Don't Act.
Please Read This Notice Carefully.**

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
YOUR COMPANY CAN DO NOTHING	If your Company does nothing, your Company will automatically be included in the Class Settlement. Your Company and the Lessor will agree to settle all claims that each has or could have arising from the Rental Agreement. If your Company is entitled to a refund under the terms hereof, that refund will be sent to your Company within one hundred eighty (180) days of the settlement becoming final under the terms of the Settlement Agreement. If your Company still owes money under the terms of this Settlement Agreement, the Lessor will send your Company an invoice within thirty (30) days of the settlement becoming final under the terms of the Settlement Agreement. Your Company may choose to (i) pay the invoiced amount <i>less 10%</i> if you pay within thirty (30) days, (ii) pay the invoiced amount in twelve (12) equal monthly payments, or (iii) pay the invoiced amount <i>plus 10%</i> in eighteen (18) equal monthly payments. If your Company fails to pay under any of the above options within thirty (30) days, your Company will be considered in default under the terms of the Settlement Agreement, and your Company's payment obligations under the Rental Agreement will remain in full force and effect and will be enforceable by the Lessor under the Settlement Agreement with no reduction in the outstanding lease payments owed under the Rental Agreement.
YOUR COMPANY CAN EXCLUDE ITSELF FROM THE SETTLEMENT	If your Company does not want to receive the benefits of the Settlement and does not want to give up its right to be part of another lawsuit against the Lessor, your Company must write to Class Counsel to exclude your Company from the Settlement Class. Your Company must send its request for exclusion to Class Counsel by March 31, 2008, in the manner described below.
YOUR COMPANY CAN OBJECT TO THE SETTLEMENT	If your Company does not want to exclude itself, but you do not like something about the Settlement, your Company may write to the Court to explain why your Company doesn't like the Settlement. To see how to send such objections, refer to paragraph 15 of this Notice. Excluding your

	Company from this Settlement is the only sure way to avoid being bound to its terms.
YOU CAN GO TO A HEARING	If your Company objects to the Class Settlement, you may also ask to appear in Court, either on your own or through an attorney of your choosing, and speak to the Court about the fairness of the Settlement.

- These rights and options – **and the deadlines to make your Company's decision** – are explained in this Notice.
- The Court in charge of this case still has to decide whether to approve this settlement.

BASIC INFORMATION

1. Why did I get this Notice?

Your Company is receiving this notice because the records of the Lessor reflect that your Company entered into a Rental Agreement regarding the finance of certain equipment provided by NorVergence, Inc., and that a balance due to the Lessor remained on your Company's Rental Agreement as of July 15, 2004. That Rental Agreement is currently held, either in whole or in part, by the Lessor.

Your Company has a right to know about a proposed settlement of a class action lawsuit, and about all of your Company's options, before the Court decides whether to approve the Settlement. This Notice explains the lawsuit, the Settlement, your Company's legal rights, what benefits are available through the Settlement, and what your Company must agree to in order to receive those benefits.

The Court in charge of the case is the Superior Court Law Division, for Monmouth County, New Jersey, and the case is known as *Exquisite Caterers, LLC, et al., on behalf of themselves and all others similarly situated v. Popular Leasing USA, Inc., et al. and Doe Corps 1-40*, case No. L-3686-04. The company that brought the suit is called the Plaintiff and the company that was sued, the Lessor, is one of the Defendants.

2. What is this lawsuit about?

One of the Plaintiffs to this case, TRI-STATE PUMP, INC., entered into a Rental Agreement with NorVergence, Inc. for the use of telecommunications equipment supplied by that Company. This Rental Agreement was subsequently acquired by the Lessor. The Plaintiff claimed that the Lessor engaged in commercial practices in violation of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-2, by entering into such Rental Agreements with Plaintiff and others, and that the Lessor knew or should have known that NorVergence had made misrepresentations to Plaintiff and others concerning the financed equipment. The lawsuit sought damages and injunctive relief. The Lessor has denied each and every one of the Plaintiff's allegations. Both parties have engaged in extensive investigation of the claims asserted.

3. Why is this a class action?

In a class action, one or more Class Representatives (in this case, TRI-STATE PUMP, INC.), sues on behalf of others who have similar claims. In this case, all individuals, and all for profit and non-profit entities residing in the United States that entered into Rental Agreements with NorVergence, Lessor, or any other lessor for the lease of telecommunications equipment to be supplied by or on behalf of NorVergence, Inc. that were acquired by the Lessor (each such entity, a "Lessee") is a member of the Class.

In a class action, one court resolves the issues in the case for all Class Members, except those who exclude themselves from the Class. Superior Court Judge Paul A. Kapalko is in charge of this class action.

4. Why is there a settlement?

The Court has not decided in favor of either the Plaintiff or the Defendant. Instead, both sides agreed to a Settlement. That way, they avoid the cost of a trial, and all of the Class Members can receive the benefits of the Settlement without bringing their own litigation. The Class Representative and the Class Attorneys think the Settlement is the best resolution for all Class Members.

5. Who is in the Settlement?

The Settlement includes all Class Members defined in the Settlement Agreement as all for profit and non-profit entities and all individuals throughout the United States that entered into, or guaranteed, Rental Agreements except any such entities or individuals which have entered into settlement agreements with the Lessor concerning or related to the Rental Agreements on or after July 15, 2004 and prior to December 31, 2008.

Your Company will automatically be considered part of the Class unless you write to Class Counsel to say your Company wants to be excluded from the Settlement.

THE SETTLEMENT BENEFITS – WHAT YOUR COMPANY WILL GET IF IT REMAINS IN THE SETTLEMENT CLASS

6. What does the Settlement Provide?

If this Settlement is approved, the Lessor will:

- (a) forgive eighty percent (80%) of the remaining contract balance ("Post-Event Balance") due on your Company's obligations to Lessor under the Rental Agreement after July 15, 2004,
- (b) forgive any late fees and penalties assessed on your Company's account on or after July 15, 2004;

(c) fully credit any payments your Company made to the Lessor on or after July 15, 2004, including, but not limited to, monthly payments and payments for insurance-related charges, if any (such amount, the "Post-Event Date Payment Credit"); and

(d) withdraw any and all adverse credit reports the Lessor filed, if any, as a result of not receiving payment on the Rental Agreement on or after July 15, 2004;

Your Company's "Settlement Balance" shall equal the sum of: the Cure Amount; plus the twenty percent of the Post-Event Date Balance; minus your Post-Event Date Payment Credit.

Lessor shall issue a refund to your Company if your Company does not opt out of this Settlement Agreement, and if the Court gives this Settlement Agreement final approval, and if your Company's Settlement Balance is a negative number. If your Company's Settlement Balance is positive, you will be obliged to pay it to the Lessor under the terms described herein.

In order to participate in the settlement terms described herein, your Company must pay the Cure Amount, which is all amounts due on its Rental Agreement through July 15, 2004, including 100% of any and all unpaid monthly payments, late fees, and taxes.

The summary of the details of the settlement terms for your Company are attached hereto in a Summary Sheet.

7. What are my Company's obligations under the Settlement?

In exchange for the benefits listed above, your Company must agree to release the Lessor from any claims concerning your Rental Agreement, as described more fully below. Your Company must also agree to pay the Lessor the Settlement Balance.

8. What are my Company's payment options?

If your Company does not exclude itself from the Settlement Class, the Lessor will send a lump sum invoice to your Company. This lump sum invoice will set forth your Company's Settlement Balance, an amount equal to the Settlement Balance. Your Company may make a lump sum payment of the entire Settlement Balance, less 10%, within thirty (30) calendar days of the date of the Lessor's invoice if you like.

If your Company does not wish to pay the invoice in a lump sum within thirty (30) days, your Company may pay the invoiced amount in twelve (12) equal monthly payments without deduction, or may pay the invoiced amount, plus 10%, in eighteen (18) equal monthly payments.

- If your Company begins paying the Settlement Balance in installments, your Company may pay off the remaining balance at any time without further penalty.

IMPORTANT: If your Company does not exclude itself from the Settlement Class but also fails to make any payment to the Lessor within thirty (30) calendar days of Lessor sending its monthly payment plan invoice, your Company's payment obligations under the Rental Agreement will remain in full force and effect and will be enforceable by the Lessor under the Settlement

Agreement with no reduction in the outstanding lease payments owed under the Rental Agreement.

If your Company begins making payments under either of the installment payment plans discussed above but fails to make any monthly payment within ten (10) calendar days of the date the payment is due, your Company will be notified that it is in default under the terms of Settlement and your Company shall have fifteen (15) calendar days from the date of the default notice to make its monthly payment. If your Company does not make its monthly payment within fifteen (15) calendar days from the date of the default notice, or if your Company fails on three or more occasions to make its monthly payments within ten (10) calendar days of the due date regardless of whether payment is made later, your Company's payment obligations under the Rental Agreement will remain in full force and effect and will be enforceable by the Lessor under the Settlement Agreement with no reduction in the outstanding lease payments owed under the Rental Agreement. Without prejudice to Lessor's right to enforce its rights in any otherwise legally permissible court of competent jurisdiction against Class Members who have opted out of the Settlement Agreement or Defaulting Class Members, Lessor has agreed that it will not institute any legal proceedings against your Company except in New Jersey. If your Company has initiated litigation against Lessor, Lessor may assert counterclaims or separate claims against your Company in any State where such action is pending.

9. What will my Company give up if its stays in the Class?

Unless you exclude your Company by sending a written request for exclusion to Class Counsel, your Company is staying in the Class, and that means that it can't sue, continue to sue, or be part of any other lawsuit against the Lessor about the legal issues in this case. It also means that all of the Court's orders will apply to your Company and legally bind it. If you do not exclude your Company from the Settlement, your Company will be bound by a "Release of Claims," which provides that:

All members of the Class, and each of them (excluding members who have properly requested exclusion) are barred from asserting any of the Settled Class Claims, as hereafter defined. Settled Class Claims includes any claim or cause of action whatsoever, whether known or unknown, that any member or members of the Class ever had, now have, or hereafter can, shall, or may have against the Lessor and/or any of its subsidiaries, parents, affiliates, predecessors, assigns, officers, directors, employees, shareholders, attorneys, and agents by reason of, or arising out of or relating to any and all Rental Agreements including but not limited to any of the facts, transactions, actions, conduct or omissions, actual or purported which were or could have been alleged in this action. All and every member of the Class shall be conclusively deemed to have waived any and all Settled Class Claims as to Lessor.

EXCLUDING YOUR COMPANY FROM THE SETTLEMENT

If your Company doesn't want to accept the Settlement and wants to keep the right to sue or continue to sue the Lessor, on its own, about the legal issues in this case, then you must take

steps to get your Company out of the Settlement. This is called excluding yourself – or is sometimes referred to as “opting out” of the Settlement Class.

IMPORTANT: The fact that your Company may already be engaged with Lessor in litigation about your Rental Agreement does not automatically exclude your Company from the Settlement Class. Also, the fact that your Company may be represented by counsel other than Class Counsel does not automatically exclude your Company from the Settlement Class. To be excluded from the Settlement Class, your Company must write to Class Counsel as described below.

10. How do I get my Company out of the Settlement?

To exclude your Company from the Settlement, you must send a letter to Class Counsel and Lessor’s Counsel. Be sure to include your Company’s name, address, telephone number, and your name and signature. You must mail the exclusion request postmarked no later than **March 31, 2008** to:

Gary Graifman, Esq.
Kantrowitz, Goldhamer & Graifman
210 Summit Avenue
Montvale, New Jersey 07645

Steven D. Karlin, Esq.
Platzer, Swergold, Karlin, Levine & Jaslow
1065 Ave. of the Americas, 18th Floor
New York, NY 10018

You can’t exclude your Company on the phone or by e-mail. If your Company asks to be excluded, your Company will not have settled the outstanding balance on its Rental Agreement, and cannot object to the Settlement. Your Company will not be legally bound by anything that happens in this lawsuit. Your Company may be able to sue (or continue to sue) the Lessor in the future.

11. If I don’t exclude my Company, can I sue the Lessor over my Company’s Rental Agreement in a different lawsuit or court?

No. Unless you exclude your Company, your Company gives up any right to sue the Lessor for the claims that this Settlement resolves. If your Company has a pending lawsuit, speak to your lawyer in that case immediately. You must exclude your Company from this Class to continue your Company’s lawsuit.

12. If I exclude my Company, can I get a discount off my Company’s Rental Agreement?

If you exclude your Company from the Settlement, the Lessor is not obligated to compromise or settle your Company’s Rental Agreement balance and will be free to pursue collection of the full Rental Agreement balance, without any discount. But your Company may sue, continue to sue, or be part of a different lawsuit against the Lessor.

THE LAWYERS REPRESENTING YOUR COMPANY

13. Does my Company have a lawyer in this case?

The Court asked the law firm of Kantrowitz Goldhamer & Graifman, PC in Montvale, New Jersey; the law firm of Green & Pagano, LLP in East Brunswick, New Jersey; and Cohn Lifland Pearlman Herrmann & Knopf, LLP in Saddle Brook, New Jersey to represent your Company and other Class Members. These lawyers are called Class Counsel. Your Company will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

14. How will the Class Lawyers be paid?

In connection with the Settlement, Class Counsel will file an Application with the Court seeking an award of counsel fees and reimbursement of expenses in the amount of \$150,000. The Court may award less than that amount. The Lessor will pay the fees and expenses that the Court awards. The Lessor will also be responsible for the costs of administering the Settlement. Class members will not pay any attorneys' fees.

OBJECTING TO THE SETTLEMENT

If your Company stays in the Settlement Class, you can tell the Court that you don't agree with the Settlement or some part of it.

15. How do I tell the Court if I don't like the Settlement?

If your Company is a Class Member, your Company can object to the Settlement if you don't like any part of it. You can give reasons why you think the Court should not approve it. The Court will consider your views. To object, you must mail the objection **no later than March 31, 2008** to the Court and Class Counsel designated below:

Clerk of the Court
Re: Objection to Exquisite Caterers Class Settlement
Superior Court of New Jersey
Monmouth County Law Division
71 Monument Park
Freehold, New Jersey 07728-1266

Gary Graifman, Esq.
Kantrowitz, Goldhamer & Graifman
210 Summit Avenue
Montvale, New Jersey 07645

Be sure to include your Company's name, address, telephone number, your name and signature, and the reasons you object to the settlement.

16. What is the difference between objecting and excluding?

Objecting is simply telling the Court that you don't like something about the settlement. You can object only if your Company stays in the Class. Excluding your Company is telling the Court that your Company doesn't want to be part of the Class. Please note that your Company cannot both exclude itself from the Settlement Class and object to the Class Settlement. If your Company excludes itself from the Settlement Class by sending a written request for exclusion to Class Counsel, then it has no standing to object to Class Settlement by sending a letter to the Court and Class Counsel.

THE COURT'S FAIRNESS HEARING

The Court will hold a hearing to decide whether to approve the Settlement. You may attend and you may ask to speak, but you don't have to.

17. When and Where will the Court decide whether to approve the Settlement?

The Court will hold a Fairness Hearing at 2:30 p.m. on April 18, 2008, in Courtroom ____ at the Monmouth County Courthouse, 71 Monument Park, Freehold, New Jersey 07728. At this hearing the Court will consider whether the settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. Judge Paul A. Kapalko will listen to people who have asked to speak at the hearing. The Court may also decide how much to pay to Class Counsel. After the hearing, the Court will decide whether to approve the settlement. We do not know how long these decisions will take.

18. Do I have to come to the hearing?

No. Class Counsel will answer questions Judge Kapalko may have. But, you are welcome to come at your own expense. If you send an objection, you don't have to come to Court to talk about it. As long as you mailed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it's not necessary.

19. May I speak at the hearing?

You may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter, posted by no later than March 31, 2008, see paragraph 15 of this Notice.

GETTING MORE DETAILS ABOUT THE SETTLEMENT

20. Are there more details about the Settlement?

This notice summarizes the proposed settlement. More details are in a Settlement Agreement. You can get a copy of the Settlement Agreement by writing Gary Graifman, Esq. Kantrowitz, Goldhamer & Graifman, 210 Summit Avenue, Montvale, New Jersey 07645

DATE:

SUMMARY SHEET

Class Member(s)
Address
Account #

Below is Your Company's "Settlement Balance":

Item	Amount
1. Unpaid monthly payments due on your Rental Agreement, plus unpaid late fees and taxes through July 15, 2004 (Cure Amount)	
2. Plus 20% of monthly payments due on your Rental Agreement after July 15, 2004, excluding any late fees or penalties incurred after July 15, 2004 plus applicable taxes paid or incurred by IFC i.e., 20% of your Post Event Date Balance	
3. Minus a credit equal to any payments your Company has made under its Rental Agreement since July 15, 2004, including but not limited to monthly payments, late fees, and penalties	
4. Settlement Balance (Sum of #1, #2, -#3)	

Three Payment Options:

a. Lump Sum Payment (Settlement Balance less 10%)	
b. Twelve monthly payments (Settlement Balance divided by 12)	
c. Eighteen monthly payments (Settlement Balance plus 10% divided by 18)	

EXHIBIT C

**Sample of Demand Letter
from IFC June, 2005**



CREDIT CORPORATION

NOTICE OF LEGAL ACTION

June 13, 2005

Vehicle Equipment Description
4303 Irving Blvd., Suite C
Dallas, TX 75247

RE: Account Number 22013001

Dear Sir or Madam:

We have already notified you that your lease with IFC Credit Corporation has "Defaulted and been Accelerated".

You are hereby notified that if receipt of \$34,419.00 due under said Agreement has not occurred by 5 p.m. on June 24, 2005, we then would find no alternative but to take additional legal action on the subject Equipment Rental Agreement to collect full payment of all amounts due pursuant of the terms and conditions set forth under said Agreement.

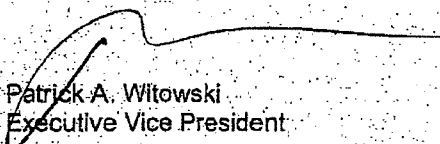
You may not be aware that your representations made by: (1) signing the Equipment Rental Agreement; (2) signing the corresponding Delivery and Acceptance Certificate; and (3) your confirming to IFC Credit Corporation by telephone that the equipment was received and accepted, induced IFC Credit Corporation to purchase your Equipment Rental Agreement from NorVergence.

Your continued failure to make the payments set forth in your Agreement implicates you in misrepresenting to us as to the authenticity of your representations that we relied upon in purchasing your Agreement. Therefore, in order to enforce compliance and collection of the amounts due to us, we will now be filing the serious additional claims of "**Fraud in the Inducement**" and "**Misrepresentation**" against you in court to further assure collection of all amounts due and owing to us, plus attorney's fees and costs.

Receipt of any monies less than the entire amount demanded herein will not alter our rights or intention in connection with the subject Agreement and/or all fraudulent conduct on your part. Any such sums received will be deposited and applied against the sums due, but no such act shall cure any default declared herein or affect acceleration of all sums due as set forth herein.

Sincerely,

IFC CREDIT CORPORATION


Patrick A. Witowski
Executive Vice President