

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT  
IN AND FOR BROWARD COUNTY, FLORIDA

EBF PARTNERS, LLC d/b/a  
EVEREST BUSINESS FUNDING, a  
Delaware limited liability company,

CASE NO.:

Plaintiffs,

v.

MCA HELPLINE, LLC, a Florida  
limited liability company, DECISION  
ONE DEBT RELIEF, LLC, an  
Oklahoma limited liability company,  
and TODD FISCH, an individual,

Defendants.

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**COMPLAINT**

Plaintiff, EBF Partners, LLC d/b/a Everest Business Funding (“Everest”), hereby files this Complaint against Defendants, MCA Helpline, LLC (“MCA Helpline”), Decision One Debt Relief, LLC (“Decision One”), and Todd Fisch, and states the following:

**INTRODUCTION**

1. This is an action monetary damages arising from Defendants’ tortious interference with one or more of Everest’s contractual relationships.

2. Everest is in the business of purchasing the accounts receivable of merchants – commonly referred to as merchant cash advance financing. Merchant cash advance financing serves as a critical source of funding for small businesses.

3. In furtherance of its business, Everest develops and cultivates relationships with Independent Sales Organizations (“ISOs”), which support the merchant cash advance industry by

brokering relationships between merchant cash advance providers, such as Everest, and merchants.

4. Upon information and belief, Defendants, MCA Helpline and Decision One, at the behest of Defendant Fisch, are systematically targeting ISOs with whom Everest has existing contractual relationships and improperly soliciting information from these ISOs regarding Everest's merchant contracts.

5. Armed with information regarding Everest's merchant contracts and in holding themselves out as so-called "debt relief companies," Defendants have engaged and continue to engage in the business practice of making misleading representations to Everest's customers; namely, promising to save the merchants money on their existing contracts with Everest when they have no intention or ability to uphold such a promise. In so doing, Defendants tortiously interfere with Everest's merchant agreements by inducing the merchants to breach their contractual obligations to Everest in favor of entering a new payment relationship with the debt relief company.

6. Everest seeks damages for Defendants' tortious interference with at least a dozen of its merchant contracts.

#### **PARTIES, JURISDICTION, AND VENUE**

7. Defendant, MCA Helpline, is a Florida limited liability company with its principal place of business located at 1200 Biscayne Boulevard, 510, Miami, Florida 33181.

8. Defendant, Decision One, is an Oklahoma limited liability company with its principal place of business in Tulsa, Oklahoma. Decision One is subject to the jurisdiction of this Court pursuant to Fla. Stat. §§ 48.193(1) and (2) because it operates, conducts, engages in,

and/or carries on a business venture in this state; committed a tortious act within this state; and otherwise engages in substantial and not isolated business activities in this state.

9. Defendant Fisch is an individual who, upon information and belief, resides in Broward County, Florida, and is otherwise *sui juris*.

10. Everest is a Delaware limited liability company with its principal place of business in Miami-Dade County, Florida.

11. This Court has jurisdiction over the subject matter of this action pursuant to Fla. Stat. § 26.012. Moreover, jurisdiction is proper in this Court in that the damages sought exceed \$15,000.

12. Venue in this action is proper in Broward County, Florida pursuant to Fla. Stat. §§ 47.011 and 47.021, as at least one of the Defendants resides in Broward County.

13. All conditions precedent to the filing of this action have been performed, satisfied, or waived.

14. Everest has retained the undersigned counsel to represent it in this action and has agreed and obligated itself to pay a reasonable fee for their services.

### **FACTUAL BACKGROUND**

#### **I. Everest's Business**

15. Everest is in the business of purchasing accounts receivable from merchants. Everest's practice is to enter into merchant cash advance agreements with counterparty merchants whereby Everest purchases the right to a percentage of the merchant's future receivables in exchange for an up-front infusion of capital to the merchant.

16. Each of the merchant cash advance agreements at issue in this case<sup>1</sup> involved such an initial capital infusion from Everest to the merchants. In exchange, the merchants sold Everest the right to a percentage of their daily receivables, to be collected until Everest received a specified “receipts purchased amount.”

17. Under these merchant cash advance agreements, Everest gained the exclusive right to automatically debit the payments due to Everest from the merchants’ bank accounts. The amount debited is an agreed-upon approximation of the expected amount of receipts from the merchants’ accounts receivable payable to Everest. In the event that the debit exceeds the merchant’s actual receipts in a given month, the merchant retains the right to “true up” the payment to reflect its actual receipts. In this way, Everest remains at risk of non-performance by the merchants under the agreements if the merchant’s receivables are lower than expected, or none at all.

18. It is common in the industry that merchants seek to renew existing or enter into new merchant cash advance agreements with those merchant cash advance providers they have done business with in the past. Such renewals and the making of new agreements with existing merchant customers is an important source of revenue for Everest and a vital aspect of its continued business success.

## **II. The Role of Independent Sales Organizations and Debt Relief Companies**

19. Many merchant cash advance agreements originate from the activity of ISOs, which essentially serve as business brokers between merchant cash advance providers, such as Everest, and small businesses that may be seeking alternatives to traditional bank loans.

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<sup>1</sup> Everest has not identified the specific merchant accounts at issue in this litigation for confidentiality purposes. The names of the merchants will be produced through discovery, subject to a confidentiality order.

20. Everest enters into agreements with ISOs to market and promote its services to merchants (“ISO Agreements”).

21. The ISO Agreements prohibit the ISO and its affiliates from interfering with Everest’s customer relationships.

22. Given the important role that ISOs play in the merchant cash advance industry, Everest devotes considerable time and resources to developing and cultivating its relationships with ISOs.

23. For example, Everest is the headline sponsor of an event on January 25, 2018, which has been marketed to ISOs with whom Everest has existing relationships, and also to ISOs who may become partners with Everest in the future.

24. While ISOs have helped grow the merchant cash advance industry, another group of companies—known as debt relief companies—pose a threat to Everest, and to the merchant cash advance industry as a whole, by preying on innocent merchants.

25. Under the guise that they can renegotiate and restructure merchant cash advance agreements with providers, like Everest, debt relief companies make empty promises to merchants to provide services they cannot and will not provide and offer savings on merchants’ existing merchant cash advance agreements, though they almost always leave the merchants in a worse position. In so doing, the debt relief companies interfere with the pre-existing contractual relationships between Everest and its merchants by, among other things, instructing merchants to switch bank accounts, stop making payments, and to cease all contact with Everest.

26. In light of the increased prominence and interference of debt relief companies in the merchant cash advance industry, Everest’s ISO Agreements specifically prohibit the ISO and its affiliates from interfering with Everest’s merchant relationships.

### **III. Defendants' Background and Involvement in the Merchant Cash Advance Industry**

27. Upon information and belief, Defendant MCA Helpline is a debt relief company managed by GCC Holdings, Inc. a/k/a Gateway Capital Corporation (“Gateway Capital”), a Delaware corporation with its principal place of business in Miami, Florida.

28. Upon information and belief, Gateway Capital is the holding company for various entities including, but not limited to, MCA Helpline.

29. MCA Helpline holds itself out to the public as “a group comprised of lawyers, negotiators, MCA [Merchant Cash Advance] industry veterans with proven experience in MCA Settlement and Restructuring.” See <http://mcahelpline.com/>, last accessed January 24, 2018. MCA Helpline advertises that it can reduce monthly business debt by 60%-80%. See *Id.*

30. Upon information and belief, MCA Helpline and Defendant Decision One are related entities under common ownership.

31. The format and information on the Decision One website mirrors the MCA Helpline website.

32. Decision One is a debt relief company which similarly holds itself out as “a group comprised of lawyers, negotiators, and financing specialists with proven experience in debt restructuring.” See <https://decisiononedebtrelease.com/business-debt-relief/>, last accessed January 24, 2018. Like MCA Helpline, Decision One also advertises that it can reduce monthly business debt by 60%-80%. See *id.*

33. Defendant Fisch is the Chief Executive Officer of MCA Helpline and president of Gateway Capital.

34. Fisch describes himself as “[a] renowned outsourcing professional with expertise in financial products’ sales and marketing” and claims that his “career has been a natural

evolution from telecommunications to outsourcing to MCA lead generation to MCA broker and funder to MCA renegotiation.” See <https://www.linkedin.com/in/toddfisch>, last accessed January 24, 2018.

35. Upon information and belief, Fisch’s background in telecommunications was fraught with controversy, as he pled guilty in 1988 to fraud and conspiracy charges brought in a federal court based on allegations that he and his family members helped swindle \$9.5 million from thousands of people in telephone solicitations dating back to 1982. See [http://articles.latimes.com/1988-03-19/local/me-1139\\_1\\_tough-sentencing](http://articles.latimes.com/1988-03-19/local/me-1139_1_tough-sentencing). Upon information and belief, Fisch was sentenced to prison again in 1998, after pleading guilty to conspiracy to commit wire fraud. Upon information and belief, one of the conditions of his supervised release was that Fisch could not enter into employment involving telephone sales without written permission of his probation officer.

36. Fisch has since found his way to the merchant cash advance industry, aligning himself with debt relief companies, including MCA Helpline and Decision One. These companies use telephone communications and other means to lure merchants into abandoning their obligations under existing merchant cash advance agreements with providers, including Everest.

#### **IV. Defendants’ Interference with Everest’s Business Relationships**

37. As part of their regular business practices, Defendants identify merchants under contract with merchant cash advance providers, including Everest.

38. Upon information and belief, Defendants obtain information about Everest’s existing merchant contracts from various sources including, in some cases, the ISOs who brokered them.

39. Upon information and belief, Fisch, through MCA Helpline and/or Decision One, is actively courting ISOs known to do business with Everest and soliciting information from those ISOs about Everest's customers.

40. For example, Fisch, acting both individually and through MCA Helpline, has promoted an event to ISOs which is scheduled to take place at the same time and at the same venue as the January 25, 2018 event headlined by Everest.

41. To the extent any specific ISOs or their affiliates who have ISO Agreements with Everest have leaked information about Everest's merchants to Defendants, or to any other third party, such conduct constitutes both a breach of the ISO Agreement and tortious interference with Everest's merchant contracts. Through the course of discovery in this lawsuit, Everest plans to add as additional Defendants, as yet unidentified ISOs, which have been working with Defendants to target Everest's merchant accounts in violation of their contractual agreements.

42. Upon information and belief, once a merchant is identified as having an existing relationship with Everest, Defendants contact the merchant and offer to restructure or renegotiate the agreement with Everest on the merchant's behalf. Upon information and belief, Defendants mislead the merchants during these communications by offering that they can persuade Everest to significantly reduce the amount of money the merchant must pay to Everest under the terms of the existing agreement.

43. Upon information and belief, Defendants direct the merchants to stop paying Everest all together and start paying Defendants instead.

44. Upon information and belief, Defendants do not take any steps to renegotiate the terms of the merchants' existing agreements with Everest, nor do they make any payments to



Everest on the merchants' behalf, resulting in a breach of the merchants' agreements with Everest.

45. Upon information and belief, Defendants direct the merchants to discontinue Everest's access to the merchant's bank account, resulting in a further breach of the merchants' agreements with Everest.

46. Upon information and belief, Defendants solicited and entered agreements with at least twelve merchants that have existing merchant cash advance agreements with Everest.

47. Everest has fulfilled its obligations pursuant to the merchant agreements at issue here and is entitled to be paid under those agreements.

48. Upon information and belief, the merchants have ceased payments to Everest at the direction of Defendants, thereby breaching their merchant agreements with Everest.

**COUNT I**  
**Tortious Interference with a Contractual Relationship**

49. Everest incorporates by reference the allegations contained in paragraphs 1 through 49 of the Complaint.

50. Everest had a valid and enforceable contract with one or more merchants, under which Everest performed in full and was entitled to be paid.

51. Defendants had knowledge of Everest's contracts with the merchants.

52. Defendants intentionally and unjustifiably induced the merchants to breach their agreements with Everest by offering them financial incentives to abandon their agreements with Everest in favor of making payments to Defendants instead.

53. The merchants did in fact breach their agreements with Everest.

54. As a direct and proximate result of Defendants' actions, Everest has been damaged.

**WHEREFORE**, Plaintiff, EBF Holdings, LLC d/b/a Everest Business Funding, respectfully requests that this Court enter judgment against Defendants, MCA Helpline, LLC, Decision One Debt Relief, LLC, and Todd Fisch, for compensatory damages and such other relief as this Court deems just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiffs hereby demand a trial by jury of all issues so triable as a matter of law.

Dated: January 24, 2018

Respectfully submitted

**TRIPP SCOTT, P.A.**

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