

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

AKF, INC. d/b/a FUNDKITE, INC.,

Plaintiff,

-against-

JTT FUNDING INC., D1 SERVICING GROUP
LLC a/k/a DECISION 1 SERVICING GROUP,
STEVEN RUSSO, MATT FRANK, ANTHONY
ANASTASIO, DEMETRIOS BOUDOURAKIS
a/k/a JIMMY BOUDOURAKIS, MICHELLE
BONILLA, JENNIFER GATELY,

Defendants.

Index No.

Date Purchased:

Plaintiff designates New York County as
the place of trial.

The basis of venue is that all parties
consented to jurisdiction in New York
County.

SUMMONS

TO EACH OF THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the Verified Complaint in this action and to serve a copy of your Answer, or, if the Complaint is not served with this Summons, to serve a Notice of Appearance, on the Plaintiff's Attorney within 20 days after the service of this Summons, exclusive of the day of service (or within 30 days after the service is complete if this Summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Complaint.

Plaintiff designates New York County as the place of venue. The basis of venue in New York County is CPLR §§ 501 and 503.

Dated: New York, New York
November 2, 2017

Respectfully submitted,

/s/ Oleg A. Mestechkin

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Wing K. Chiu, Esq.

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VERIFIED COMPLAINT

Plaintiff AKF, Inc. d/b/a FundKite, Inc. (“Plaintiff” or “FundKite”), by and through its undersigned attorneys, The Mestechkin Law Group, PC, as and for its Verified Complaint, against Defendants JTT Funding Inc. (“JTT”), D1 Servicing Group LLC a/k/a Decision 1 Servicing Group (“Decision 1”), Steven Russo, Matt Frank, Anthony Anastasio, Demetrios Boudourakis a/k/a Jimmy Boudourakis, Michelle Bonilla, Jennifer Gately, alleges as follows:

NATURE OF CASE

1. This is an action for breach of contract, breach of fiduciary duty, tortious interference with a contract, conversion and fraud arising from a faithless agent’s scheme to wrongfully profit from Plaintiff by agreeing on the one hand to obtain merchants for Plaintiff’s Merchant Agreements while on the other hand secretly acting to undermine those agreements by inducing the same merchants to enter into funding arrangements with debt consolidation companies with whom the agent worked to earn more commissions that effectively undermined and devalued Plaintiff’s interests in those MA agreements.

PARTIES, JURISDICTION AND VENUE

2. Plaintiff AKF, Inc. d/b/a FundKite, Inc. (“FundKite”) is a New York Corporation

with a principal place of business at 29 West 17th Street, 7th Floor, New York, NY, 10011.

3. Defendant JTT Funding Inc. (“JTT”) is a New York Corporation with a principal place of business at 535 Broadhallow Road, Suite B-36 Melville, NY, 11747.

4. Defendant Steven Russo is an employee of JTT who has a work address located at 535 Broadhallow Road, Suite B-36 Melville, NY, 11747.

5. Defendant Matt Frank is an employee of JTT who has a work address located at 535 Broadhallow Road, Suite B-36 Melville, NY, 11747.

6. Defendant Demetrios Boudourakis a/k/a Jimmy Boudourakis, is the President of JTT who has a work address located at 535 Broadhallow Road, Suite B-36 Melville, NY, 11747.

7. Defendant Michelle Bonilla is an employee of JTT who has a work address located at 535 Broadhallow Road, Suite B-36 Melville, NY, 11747.

8. JTT and the Defendants who are officers and employees of JTT will be hereinafter referred to as the “JTT Defendants”.

9. D1 Servicing Group LLC a/k/a Decision 1 Servicing Group (“Decision 1”) is a New York limited liability company with a principal place of business at 30 Broad Street, New York, New York, 10004.

10. Defendant Anthony Anastasio is the Director of Client Relations for Defendant Decision 1 who has a work address located at 30 Broad Street, New York, New York, 10004.

11. Decision 1 and the Defendants who are officers and employees of Decision 1 will be hereinafter referred to as the “Decision 1 Defendants”.

12. Defendant Jennifer Gately is a Notary Public who resides at 59 S. Park Dr., Massapequa, New York, 11758-2444.

13. Jurisdiction over the JTT Defendants is proper in this county because the JTT

Defendants all have a principal place of business in New York. JTT agreed to resolve all disputes with Plaintiff arising from an agreement at issue in this proceeding and the acts about which Plaintiff complains against JTT occurred in this County.

14. Jurisdiction over the Decision 1 Defendants is proper in this county because the Decision 1 Defendants all have a principal place of business in New York, New York and the acts about which Plaintiff complains against the Decision 1 Defendants occurred in this County.

15. Venue is proper in this Court under CPLR §§ 501 and 503 for the same reasons that personal jurisdiction exists over all Defendants.

FACTS COMMON TO ALL CLAIMS

16. Plaintiff FundKite specializes in purchasing the accounts receivable of merchants, which serves as a critical source of financing for small businesses.

17. Under FundKite's Merchant Agreement ("MA") with merchants, FundKite provides to the merchant a fixed, up-front capital infusion. In exchange, the merchant sells to FundKite the right to a percentage of its monthly receivables, to be collected until FundKite receives specified receipts purchased amount.

18. Under the MA, the merchant agrees to allow FundKite the exclusive right to automatically debit from the merchant's bank accounts the payments due to FundKite. The amount debited is an agreed-upon approximation of the expected amount of receipts from the merchants' accounts receivable payable to FundKite, and the merchants retain the right, in the event that the debits exceed their actual receipts in a given month, to "true up" the payment to reflect the actual receipts.

19. In this way, FundKite remains at risk of not collecting if the merchant's own collections are lower than expected. FundKite also gains the right to debit a merchant's bank

account in the event of a default by the merchant.

20. Concurrently with execution of each MA, FundKite and the respective merchant each enter into Security Agreements.

21. The Security Agreement secures the merchant's obligations under the MA by providing FundKite with a security interest in all assets owned by the merchant, including its deposit accounts, accounts receivable, other assets, and the proceeds thereof. Most importantly, the merchant agrees not to further encumber such collateral.

22. Encumbrance of collateral severely undermines FundKite's ability to protect the interests in its investment by eliminating, diminishing and/or subordinating the value of assets from which FundKite can recover in the event that a merchant defaults on the MA.

23. Following execution of each Security Agreement, FundKite typically files a financing statement under the Uniform Commercial Code (UCC) to perfect its security interest in the respective merchant's assets.

24. Following execution of the MA and Security Agreements, FundKite performs its obligations under the MA by providing the funds promised to the merchant.

25. FundKite obtains its potential merchants through referrals, direct marketing, and agents called Independent Sales Organizations ("ISOs"), who market and promote FundKite's programs to merchants.

26. Funding companies like FundKite enlist ISOs typically through the execution of service contracts that are standard in the industry ("ISO Agreements"). A copy of a ISO Agreement used by FundKite is attached hereto as Exhibit 1.

27. As part of these ISO agreements, FundKite often allows the ISOs to manage FundKite's relationship with these merchants, including allowing agents to answer any questions

a merchant may have or provide merchants with information about their obligations under their MA with FundKite. As with any agent, ISOs have a fiduciary duty to act in the best interests of their principle, in this case funding companies like FundKite who employ those ISOs.

28. To ensure that an ISO effectively fulfills its obligations to FundKite and its merchants, an ISO is required to abide by certain covenants set forth in the ISO Agreement in exchange for the right to earn valuable commissions under the ISO Agreement. Some of these covenants include:

- (1) “Agent will not . . . provide . . . Merchant information . . .to any third party without the prior written consent of FundKite” (*Id.* § 7(d));
- (2) “Agent will . . . not act in such a way as to cause any direct or indirect damage to the business or name of FundKite or any of its affiliates” (*Id.* § 7.2(a));
- (3) “Agent will . . . immediately inform FundKite of any changes in the . . . operations of itself or of any Merchant”; (*Id.* § 7.2(e));
- (4) “Agent will . . . deliver to FundKite all documents required to form a complete Merchant Application. Including, without limitation . . . documents required according to FundKite guidelines”; (*Id.* § 7.2(f));
- (5) “Agent will . . .not to refer a potential Merchant if Agent knows Merchant is misrepresenting information on the application and/or during the underwriting process”; (*Id.* § 7.2(h));
- (6) “Agent will . . . not cause or solicit a Merchant to terminate or alter its credit card processing to another bank or processor, which has no contractual affiliation with FundKite or any of its affiliates”; (*Id.* § 7.2(i));
- (7) “Agent will . . .not offer any other working capital product to a Merchant after it has been funded by FundKite or its affiliates” (*Id.* § 7.2(j));
- (8) “Agent . . . may not themselves and may not permit any respective subsidiary, Affiliate or successor in interest of Agent and Agent Parties or any of their respective shareholders, directors, officers, employees, agents or nominees: (a) to interfere, in any manner whatsoever, either directly or indirectly by any arrangement whatsoever, with FundKite’s contractual relationship with any of its Merchants or clients; and (b) to cause or

attempt to cause any Merchant or other FundKite client to terminate its relationship with FundKite or utilize the services of any entity other than FundKite” (*Id.* § 9).

29. On or about May 23, 2017, Defendant JTT and its President, Defendant Boudourakis, entered into an ISO agreement with FundKite to introduce qualified merchants who seek the services offered by FundKite and to manage the relationships with any merchants with whom FundKite eventually enters into a MA with. A true and correct copy of the ISO Agreement between FundKite and JTT is attached as Exhibit 1.

30. By signing the ISO Agreement, JTT and Defendant Boudourakis agreed to be bound by the terms and conditions of that agreement, including those described herein.

31. Soon after entering into this ISO Agreement, the JTT Defendants began introducing merchant clients for FundKite and eventually introduced a potential client – a business located in Florida (the “Merchant”).

32. On June 22, 2017, FundKite made an initial pre-approval offer to the Merchant.

33. As part of the offer, the Merchant would agree to allow FundKite to withdraw a certain amount of the Merchant’s daily receipts from the Merchant’s bank account to which FundKite would be provided access by the Merchant until the Merchant’s obligations to FundKite are fulfilled. A true and correct copy of the pre-approval offer made by FundKite to the Merchant is attached as Exhibit 2.

34. The offer was contingent upon a signed agreement by the Merchant and the execution of various vital documents, including a security interest agreement and a confession of judgment.

35. The Merchant signed FundKite’s offer on June 28, 2017. The Merchant also executed a security interest agreement. The JTT Defendants then provided FundKite with a

confession of judgment allegedly executed by the Merchant.

36. A true and correct copy of the MA signed by the Merchant is attached as Exhibit 2.

37. A true and correct copy of the confession of judgment allegedly executed by the Merchant and provided by the JTT Defendants to FundKite is attached hereto as Exhibit 3.

38. A true and correct copy of Security Interest Agreement is attached as Exhibit 4.

39. By executing FundKite's MA, the Merchant agreed to various terms and conditions meant to protect FundKite's interests in the MA, including:

- (1) "Merchant shall authorize [FundKite] . . . to deduct the amount owed to [FundKite] for the receipts as specified herein . . . and to permit [FundKite] to withdraw the specified percentages by [FundKite] debiting of [Merchant's] account. The authorization shall be irrevocable without the written consent of [FundKite]" (MA § 1.1 (Ex. 2));
- (2) "to investigate their financial responsibility and history [Merchant and Guarantor] . . . will provide to [FundKite] any financial or bank statements . . . as [FundKite] deems necessary prior to or at any time after execution of this Agreement" (*Id.* § 1.4);
- (3) Merchant shall not "change[] its arrangements with Processor in any way that is adverse to" FundKite (*Id.* § 1.11(b));
- (4) "Merchant shall, upon execution of this Agreement, deliver to [FundKite] an executed confession of judgment in favor of Funder in the amount of Purchase Amount stated in the Agreement." (*Id.* § 1.11 at Protection 3);
- (5) "Merchant has a continuing, Affirmative obligation to advise [FundKite] of any material adverse change of its financial condition, operation or ownership" (*Id.* § 2.1);
- (6) "Merchant shall not change its processor and terminals . . . or take any actions that could have an adverse effect upon Merchant's obligations under this Agreement" (*Id.* § 2.5);
- (7) "Merchant has good, complete and marketable title to all Receipts free and clear of any and all liabilities, liens, claims, changes, restriction, conditions, options, rights, mortgages, security, interests, equities, pledges

and encumbrances of any kind or nature whatsoever” (*Id.* § 2.11);

- (8) Merchant shall not “perform any act that reduces the value of any Collateral granted under this Agreement” (*Id.* § 3.1(k)).

40. By executing the Security Agreement, the Merchant agreed to various terms and conditions meant to protect FundKite’s interests in the MA, including:

- (1) “To secure Merchant’s payment and performance obligations to [FundKite] . . . Merchant hereby grants to [FundKite] a security interest in (a) all accounts, chattel paper, documents, equipment, general intangibles, instruments, and inventory” (Security Agreement at “Security Interest” (Ex. 4));
- (2) “Merchant and Guarantor each agrees not to create, incur, assume, or permit to exist, directly or indirectly, any lien on or with respect to any of the Collateral” (*Id.* at “Negative Pledge”); and

41. After these agreements were executed, FundKite proceeded to comply with its obligations under the MA by funding the Merchant’s account in the agreed-upon amount on June 28, 2017.

42. In addition, as per FundKite’s ISO Agreement with JTT, FundKite then complied with its obligations under that agreement by paying to the JTT Defendants JTT’s commission for locating the Merchant, assisting the Merchant in completing the MA and managing FundKite’s relationship with the Merchant.

43. Within a month after the MA was executed, the Merchant on August 1, 2017 notified FundKite that from that date forward, it would not make the regularly-scheduled payments under the MA, in violation of the Merchant’s obligations under that agreement. Additionally, the merchant notified its bank to block FundKite’s otherwise authorized debits.

44. Since August 1, 2017, the Merchant has not made any payments to FundKite under the MA.

45. During the communications between the Merchant and FundKite, the Merchant

claimed that its inability to pay should not have been a surprise to FundKite because the Merchant had disclosed its troubled financial situation to FundKite.

46. When asked to identify which person at FundKite to whom the Merchant had disclosed this information, the Merchant admitted that it provided this information not to FundKite, but to FundKite's ISO agent, namely the JTT Defendants including JTT's CEO, Jimmy Boudourakis, and thus believed that it had disclosed this information to FundKite.

47. Neither the JTT Defendants nor Boudourakis ever disclosed to FundKite during or after the Merchant's execution of the MA that the Merchant was having financial troubles even though under JTT's ISO Agreement with FundKite, the JTT Defendants were obligated to keep FundKite apprised of any adverse changes to the Merchant's financial situation.

48. The Merchant then added that it would have been able to make payments under the MA if the JTT Defendants had issued to the Merchant a line of credit, as the Merchant claims had been promised.

49. The Merchant provided some emails and texts showing that JTT, the JTT Defendants and JTT's CEO, Jimmy Boudourakis, were themselves actively assisting the Merchant in trying to secure a line of credit for the Merchant – even though the JTT defendants were expressly forbidden under Section 7.2(j) of the ISO Agreement from “offer[ing] any other working capital product to a Merchant after it has been funded by FundKite” and under Section 9 from (a) “interfer[ing], in any manner whatsoever, either directly or indirectly by any arrangement whatsoever, with FundKite's contractual relationship with any of its Merchants or clients; and (b) to cause or attempt to cause any Merchant or other FundKite client to terminate its relationship with FundKite or utilize the services of any entity other than FundKite”.

50. More importantly, the Merchant revealed in an August 1, 2017 email to FundKite

that the JTT Defendants had made promises to it about securing a line of credit *before* submitting and executing its application to FundKite for funding.

51. These terms and conditions were set forth in the MA that FundKite provided to the JTT Defendants and to potential merchants, including the MA that the JTT Defendants had brokered between Plaintiff and the Merchant.

52. As such, the JTT Defendants were fully aware that it was critically important to FundKite that FundKite be able to protect itself against a default by a merchant. As such, the JTT Defendants were fully aware that FundKite would only extend funding to potential merchants whose assets were free and clear of any liens or encumbrances, which a line of credit would certainly have encumbered. Moreover, the JTT Defendants were fully aware that FundKite would only extend funding to merchants about whom there was full disclosure of their finances.

53. Given this awareness of the importance of these considerations to FundKite and given its contractual and fiduciary duties to FundKite, it is baffling how the JTT Defendants thought it would be proper to not only fail to disclose the fact that the Merchant was having financial difficulties and was seeking a line of credit, but for the JTT Defendants – FundKite’s agent entrusted to protect and promote the interests of FundKite – to be the very party that would try to extend a line of credit to the Merchant and therefore undermine FundKite’s interests in the MA.

54. Had FundKite been aware that the JTT Defendants were engaged in promising to the Merchant to secure a line of credit for the Merchant, FundKite would have deemed the Merchant to be ineligible for funding.

55. Had FundKite been aware that the JTT Defendants were engaged in such tortious conduct, FundKite would never have paid the JTT Defendants any commissions under the ISO

Agreement and would immediately have terminated its ISO Agreement with the JTT Defendants for breach of fiduciary duty, bad faith and fraud.

56. The Merchant then told FundKite not to worry about its payments under the MA— notwithstanding that the Merchant was not able to obtain a line of credit – because the Merchant was working with a debt-consolidation company, Defendant Decision 1, to pay off the Merchant’s obligations under the MA– even though the Merchant was forbidden under the MA from taking this action because it required the Merchant to allow Decision 1 to encumber the Merchant’s assets with a potential lien and required the Merchant to give FundKite notice prior to taking this action.

57. The Merchant then informed FundKite that the JTT Defendants had been actively assisting the Merchant in its debt consolidation efforts with the Decision 1 Defendants – even though the JTT defendants were expressly forbidden under Section 9 of its ISO Agreement with FundKite from “interfer[ing], in any manner whatsoever, either directly or indirectly by any arrangement whatsoever, with FundKite’s contractual relationship with any of its Merchants or clients; and (b) to cause or attempt to cause any Merchant or other FundKite client to terminate its relationship with FundKite or utilize the services of any entity other than FundKite”.

58. FundKite then informed the Merchant that it was potentially in breach of various provisions of the MA and warned the Merchant that FundKite would pursue its legal remedies, including filing a confession of judgment that was signed by the Merchant.

59. At that point, the Merchant claimed that it had never signed any confession of judgment. More shockingly, however, the Merchant proceeded to disclose emails and texts showing that the JTT Defendants had told the Merchant that a confession of judgment was not required and had advised the Merchant to cover up the fact that it had not signed a confession of

judgment.

60. By advising the Merchant that a confession of judgment was not required, the JTT Defendants caused the Merchant not to execute a proper confession of judgment.

61. A proper confession of judgment would have allowed FundKite to obtain relief under the MA without having to resort to filing a costly and time-consuming litigation and thus has harmed FundKite's business.

62. By advising the Merchant that a confession of judgment was not required, the JTT Defendants committed an act that caused direct damage to FundKite's business in violation of their ISO Agreement with FundKite.

63. Had FundKite been aware that the Merchant had not executed a proper confession of judgment, FundKite would not have approved the Merchant for funding.

64. FundKite was not aware of the lack of a proper confession of judgment by the Merchant because the JTT Defendants had, in fact, delivered to FundKite what appeared to be a proper confession of judgment.

65. Based on the fact that the Merchant denies having ever signed the confession of judgment, JTT's awareness that FundKite would not have extended the funding without a confession of judgment, and JTT's submission of a confession of judgment to FundKite, it became apparent to FundKite that the JTT Defendants had fabricated the confession of judgment in order to complete FundKite's offer of funding to the Merchant and to receive its commissions under the ISO Agreement.

66. A cursory review of the confession of judgment purportedly signed by the Merchant (attached as Ex. 3, hereto) shows that the signature was notarized in Nassau County, by Defendant Jennifer Gately, where JTT's offices are located, even though the Merchant is a

located in Florida. Given the fact that (i) the Nassau County notary could not have notarized a signature in Florida, (ii) the Merchant's signatory asserts that she had not left the State of Florida on the day when the confession of judgment was signed and notarized, and (iii) the executed copy of the confession of judgment was received by FundKite from the JTT Defendants and Defendant Gately on the date it was executed, the confession of judgment was clearly fabricated by JTT.

67. Had FundKite been aware that the JTT Defendants had fabricated the confession of judgment, FundKite would not have approved the Merchant for funding.

68. Had FundKite been aware that the JTT Defendants had fabricated the confession of judgment, FundKite would not have paid the JTT Defendants any commissions under the ISO Agreement.

69. Moreover, had FundKite been aware that the JTT Defendants had fabricated the confession of judgment, FundKite would immediately have terminated its ISO Agreement with the JTT Defendants for breach of fiduciary duty, bad faith and fraud.

70. The Merchant eventually entered into an agreement with Decision 1 to consolidate the Merchant's debt.

71. This agreement required the Merchant to consent to encumbering its assets with a potential lien in Decision 1's favor in the event that the Merchant defaulted on its agreement with Decision 1 – an agreement which violated the Merchant's agreement not to perform any act that reduces the value of its assets and not to perform any acts that create directly or indirectly, any lien on or with respect to the Merchant's assets.

72. The Decision 1 Defendants were aware that the Merchant had made an agreement with FundKite that forbade the Merchant from entering into a contract with any party that could

result in encumbering the Merchant's assets with a potential lien.

73. The Decision 1 Defendants were aware that if the Merchant made any agreement with any party that could result in encumbering the Merchant's assets with a potential lien, that entering into such an agreement would constitute a breach by the Merchant of its MA with FundKite.

74. Despite the Decision 1 Defendants' awareness that making this agreement with the Merchant would induce the Merchant's breach of its MA with FundKite, the Decision 1 Defendants, nonetheless, made an agreement with Merchant for purported debt consolidation services.

75. The Decision 1 Defendants thus induced the Merchant's breach of its MA with FundKite and tortiously interfered with FundKite's MA with the Merchant.

76. Soon after entering into this agreement with Decision 1, the Merchant then proceeded to disable FundKite's access to the Merchant's debit account that was set up to allow FundKite to withdraw the Merchant's payments under the MA.

77. FundKite discovered that the Merchant took this action with the advice and assistance of the JTT Defendants and the Decision 1 Defendants, even though the JTT and Decision 1 Defendants knew that such an action by the Merchant would constitute a breach of the Merchant's MA with FundKite.

78. The JTT and Decision 1 Defendants were both aware that the Merchant's actions would result in a breach of the MA and thus both the JTT and Decision 1 Defendants induced the Merchant's breach of its MA with FundKite and tortiously interfered with FundKite's MA with the Merchant.

79. Not surprisingly, the Decision 1 Defendants did not provide any relief whatsoever

for the Merchant. The Decision 1 Defendants did not make any payments to FundKite on the Merchant's behalf under the MA, thereby misleading the Merchant into thinking that they would receive relief and causing harm to Plaintiff by not receiving payments under the MA.

80. The Decision 1 Defendants continued its deception and harm to the Merchant and to Plaintiff by falsely, improperly, and without authority providing legal advice to the Merchant to ignore Plaintiff's requests for payment and to ignore any lawsuits by Plaintiff even though that advice was not rendered by a lawyer representing the Merchant and even though that advice was patently counter to the Merchant's best interests.

81. As a result of Defendants' egregious conduct, FundKite has suffered damages in the loss of its purchase price, the incurring of legal fees and costs in attempting to recover its losses, loss of future business that was foreseeable since many merchants subscribing to agreements enter into subsequent agreements, and harm to FundKite's reputation.

FIRST CAUSE OF ACTION
(Breach of the ISO Agreement Against the JTT Defendants)

82. Plaintiff repeats and realleges each and every allegation contained in the preceding paragraphs as if fully set forth herein.

83. Plaintiff and Defendant JTT entered into a binding independent service organization agreement ("ISO Agreement").

84. Plaintiff performed its obligations under the ISO Agreement by making payments of all commissions due to JTT under that agreement.

85. The JTT Defendants were fully aware of the Merchant's dire financial condition before and after execution of the MA.

86. The JTT Defendants failed to disclose to Plaintiff the fact of the Merchant's dire financial condition before and after execution of the MA.

87. By failing to disclose the Merchant's dire financial condition before and after execution of the MA, the JTT Defendants breached various provisions of the ISO Agreement, including but not limited to Sections 7.2(a), 7.2(e), and 7.2(h) of the ISO Agreement.

88. The JTT Defendants without justification advised the Merchant to not provide a confession of judgment and to provide a fraudulent confession of judgment.

89. By advising the Merchant to not provide a confession of judgment and to provide a fraudulent confession of judgment, the JTT Defendants breached various provisions of the ISO Agreement including but not limited to Sections 7.2(a), 7.2(d) and 7.2(f) of the ISO Agreement.

90. The JTT Defendants offered a line of credit to the Merchant after it signed the ISO Agreement with Plaintiff.

91. By offering the Merchant with a line of credit, the JTT Defendants breached various provisions of the ISO Agreement, including but not limited to Sections 7.2(a), 7.2(b), 7.2(j), and 9 of the ISO Agreement.

92. The JTT Defendants worked with and assisted Decision 1 Defendants to enter into a debt-consolidation agreement with the Merchant.

93. By assisting the Decision 1 Defendants to enter into a debt-consolidation agreement with the Merchant, the JTT Defendants breached various provisions of the ISO Agreement, including but not limited to Section 9 of the ISO Agreement.

94. The JTT Defendants worked with and assisted the Merchant in disabling Plaintiff's access to the Merchant bank account.

95. The JTT Defendants also advised the Merchant that it was not obligated to make payments under the MA.

96. By assisting the Merchant in disabling Plaintiff's access to the Merchant bank

account and advising the Merchant that it was not obligated to make payments under the MA, the JTT Defendants breached the ISO Agreement, including but not limited to Section 7.2(i) of the ISO Agreement.

97. As a result of Defendant's breaches, Plaintiff has suffered and will suffer damages in an amount not less than Fifty Thousand (\$50,000) Dollars and irreparable harm.

SECOND CAUSE OF ACTION

(Fraud in Formation of MA Agreement vs. JTT Corporate and Individual Defendants and Defendant Gately)

98. Plaintiff repeats and realleges each and every allegation contained in the preceding paragraphs as if fully set forth herein.

99. The JTT Defendants signed an ISO Agreement with Plaintiff in which it agreed to represent the interests of Plaintiff.

100. As such, it had a duty to act in good faith, which included fully disclosing all facts material to Plaintiff's decision to extend funding to the Merchant, and not performing any acts that would undermine or harm Plaintiff's business.

101. The JTT Defendants were fully aware that the Merchant was having financial problems prior to the Merchant's application for funding from Plaintiff, yet failed to disclose this fact to Plaintiff.

102. Had Plaintiff been aware that the Merchant was having such financial problems, Plaintiff would not have approved the Merchant for funding.

103. The JTT Defendants were fully aware that Plaintiff would not extend funding to merchants whose assets were, or would be, encumbered.

104. The JTT Defendants were fully aware that the Merchant was seeking a line of credit that would have encumbered the Merchant's assets.

105. Despite this knowledge, the JTT Defendants offered the Merchant a line of credit

prior to the Merchant's completion of its MA with Plaintiff.

106. Despite this knowledge and despite its fiduciary duty to Plaintiff, the JTT Defendants failed to disclose both the fact that the Merchant was seeking a line of credit and that the JTT Defendants were the parties which was making the offer to the Merchant.

107. The JTT Defendants knew that concealment from Plaintiff of the fact that the Merchant was seeking a line of credit from third parties would cause Plaintiff to approve the Merchant for funding.

108. Had Plaintiff been aware of these facts, Plaintiff would never have extended funding to the Merchant.

109. Plaintiff relied on the JTT Defendants' silence in the face of its duty to speak to complete the MA with the Merchant.

110. The Merchant has since defaulted on the MA, causing Plaintiff damages in an amount not less than Fifty Thousand (\$50,000) Dollars and irreparable harm.

THIRD CAUSE OF ACTION
(Breach of Fiduciary Duty Against JTT Corporate and Individual Defendants)

111. Plaintiff FundKite repeats and realleges each and every allegation contained in the preceding paragraphs as if fully set forth herein.

112. The JTT Defendants signed an ISO Agreement with Plaintiff in which the JTT Defendants agreed to represent the interests of Plaintiff as Plaintiff's agent.

113. As such, the JTT Defendants had a fiduciary duty to act in good faith and in the best interests of Plaintiff, which included fully disclosing all facts material to Plaintiff's decision to extend funding to the Merchant, and to not perform any acts that would undermine or harm Plaintiff's relationship with the Merchant or Plaintiff's business.

114. Despite its awareness that the Merchant was having financial problems prior to

the Merchant's application for funding from Plaintiff and that such a merchant would present an unjustifiable risk for Plaintiff to provide funding, the JTT Defendants failed to disclose the fact of the Merchant's financial problems to Plaintiff.

115. The JTT Defendants' failure to disclose this risk prevented Plaintiff from rejecting the Merchant for funding and caused Plaintiff to approve the Merchant for funding.

116. Despite its awareness that Plaintiff would not extend funding to merchants whose assets were, or would be, encumbered, the JTT Defendants offered the Merchant a line of credit prior to the Merchant's completion of its MA and JTT Defendants never disclosed this fact to Plaintiff.

117. Had Plaintiff been aware of these facts, Plaintiff would never have extended funding to the Merchant.

118. The JTT Defendants aided and assisted the Merchant in stopping all payments to Plaintiff, in blocking Plaintiff's access to the Merchant's account and in engaging, assisting and working with a debt consolidation agency to consolidate the Merchant's debt, which are all breaches by the Merchant under the MA.

119. The JTT Defendants' aid and assistance to the Merchant in breaching each of these provisions of the MA was the direct and proximate cause of the Merchant's breaches.

120. The Merchant would not have breached the MA if the JTT Defendants had not aided and assisted the Merchant and provided financial incentive for it to do so.

121. Each of these breaches of fiduciary duty by the JTT Defendants was willful, wanton, fraudulent and malicious and have caused Plaintiff damages in an amount not less than One Million (\$1,000,000) Dollars and irreparable harm.

FOURTH CAUSE OF ACTION

(Tortious Interference with Contract Against JTT Corporate and Individual Defendants)

122. Plaintiff FundKite repeats and realleges each and every allegation contained in the preceding paragraphs as if fully set forth herein.

123. The JTT Defendants signed an ISO Agreement with Plaintiff in which the JTT Defendants agreed to be Plaintiff's agent.

124. As Plaintiff's agent, the JTT Defendants were required to understand the terms and conditions under which Plaintiff would extend funding to merchants.

125. These terms and conditions were set forth in the MA that Plaintiff provided to the JTT Defendants and to potential merchants, including the MA with the Merchant.

126. The JTT Defendants worked directly with the Merchant in reviewing the MA and in complying with its terms.

127. As such, the JTT Defendants were fully aware that the Merchant was required under its MA with Plaintiff to allow Plaintiff to deduct monthly payments from the Merchant's account, to not make any changes to the account that would deprive Plaintiff of access, and to not perform any act that would reduce the value of any collateral granted to Plaintiff under the MA.

128. Despite this awareness, the JTT Defendants aided and assisted the Merchant in stopping all payments to Plaintiff, in blocking Plaintiff's access to the Merchant's account and in engaging a debt consolidation agency, which are all breaches by the Merchant under the MA.

129. As such, the JTT Defendants intentionally and improperly induced the Merchant to breach the MA with Plaintiff.

130. The JTT Defendants' inducement of the Merchant to breach the MA was the direct and proximate cause of the Merchant's breaches.

131. The Merchant would not have breached the MA if the JTT Defendants had not

aided and assisted the Merchant and provided financial incentive for it to do so.

132. Plaintiff has incurred damages as a result of the Merchant's breaches caused by the JTT Defendants' tortious interference in an amount not less than Fifty Thousand (\$50,000) Dollars and irreparable harm.

FIFTH CAUSE OF ACTION
(Tortious Interference with Contract Against Defendant Decision 1 Defendants)

133. Plaintiff repeats and realleges each and every allegation contained in the preceding paragraphs as if fully set forth herein.

134. Plaintiff had a valid and enforceable MA with the Merchant.

135. The Decision 1 Defendants were aware of Plaintiff's MA with the Merchant and the terms contained therein.

136. The Decision 1 Defendants intentionally and improperly induced the Merchant to breach its MA with Plaintiff.

137. Because of the Decision 1 Defendants' actions, the Merchant in fact breached its MA with Plaintiff.

138. The Decision 1 Defendants' inducement of the Merchant to breach its MA with Plaintiff was the direct and proximate cause of the subsequent breaches.

139. The Merchant would not have breached its MA with Plaintiff if the Decision 1 Defendants had not solicited the Merchant and provided financial incentive for it to do so.

140. Plaintiff has incurred damages as a result of the Merchant's breaches caused by the Decision 1 Defendants' tortious interference in an amount not less than Fifty Thousand (\$50,000) Dollars and irreparable harm.

SIXTH CAUSE OF ACTION
(Conversion Against Decision 1 Defendants)

141. Plaintiff repeats and realleges each and every allegation contained in the

preceding paragraphs as if fully set forth herein.

142. Plaintiff has perfected security interests in the Merchant's property, which includes the funds in the Merchant's bank accounts.

143. Plaintiff has incurred damages as a result of the Decision 1 Defendants' acts of conversion in an amount not less than Fifty Thousand (\$50,000) Dollars and irreparable harm.

WHEREFORE, Plaintiff respectfully requests that the Court enter judgment as against all Defendants jointly and severally as applicable as follows:

(a) On Plaintiff's breach of contract claim, awarding Plaintiff compensatory and consequential damages in an amount to be determined at trial, but in any event no less than \$250,000, together with pre-judgment and post-judgment interest, all late charges, fees, penalties and costs;

(b) On Plaintiff's fraud claim, awarding Plaintiff compensatory damages in an amount to be determined at trial, but in any event no less than \$50,000, together with pre-judgment and post-judgment interest, all late charges, fees, penalties and costs;

(c) On Plaintiff's breach of fiduciary duty claim, awarding Plaintiff actual and punitive damages, in an amount to be determined at trial but in any event no less than \$1,000,000, together with pre-judgment and post-judgment interest, all late charges, fees, penalties and costs;

(d) On Plaintiff's tortious interference claim against JTT Defendants, awarding compensatory damages in an amount to be determined at trial, but no less than \$50,000, together with pre-judgment and post-judgment interest and all costs;

(e) On Plaintiff's tortious interference claim against Decision 1 Defendants, awarding compensatory damages in an amount to be determined at trial, but no less than \$50,000, together

with pre-judgment and post-judgment interest and all costs; and

(f) On Plaintiff's claim for conversion, awarding Plaintiff compensatory damages in an amount to be determined at trial, but no less than \$500,000, together with pre-judgment and post-judgment interest and all costs; and

(g) Such other and further relief as the Court deems just proper including the attorneys' fees, costs and disbursements incurred in this action.

Dated: New York, New York
November 2, 2017

Respectfully submitted,

/s/ Oleg A. Mestechkin
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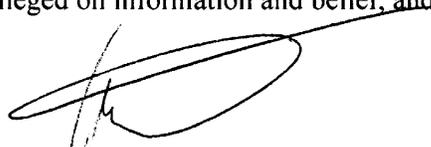
*Attorneys for Plaintiff AKF, Inc. d/b/a
FundKite, Inc.*

VERIFICATION

State of New York
County of New York } ss.:

Alex Shvarts, being duly sworn, deposes and says:

- 1. I am over the age of 18 and reside in Kings County, New York.
- 2. I am an officer of AKF, Inc. d/b/a FundKite, Inc., the Plaintiff in the above-captioned proceeding and am fully familiar with the facts and circumstances alleged in this proceeding.
- 3. I have read the foregoing Verified Complaint, and know the contents thereof to be true, except as to those matters therein stated to be alleged on information and belief, and that as to those matters I believe them to be true.



ALEX SHVARTS

State of New York
County of Kings } ss.:

On this, the 31 day of October 2017, before me a notary public, the undersigned officer, personally appeared **ALEX SHVARTS**, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained.

In witness hereof, I hereunto set my hand and official seal.



NOTARY PUBLIC

EILEEN MCGRATH
 NOTARY PUBLIC-STATE OF NEW YORK
 No. 01MC636355
 Qualified In Nassau County
 My Commission Expires 08-21-2021