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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF PINAL

FLORIGHT PUMP & REPAIR, LLC, an Arizona limited liability company,

Plaintiff,

vs.

MCA RESOLVE LLC, a Florida limited liability company, ABSM LLC, a Florida limited liability company, doing business as COASTAL DEBT RESOLVE, ARI DINOV, an individual, PAUL GRAFMAN, an individual, JOHN DOES 1-10, JANE DOES 1-10, and ENTITY DOES 1-10,

Defendants.

Case No. _____

VERIFIED COMPLAINT

(Fraudulent Inducement; Violation of A.R.S. § 44-1522 (Consumer Fraud); Unjust Enrichment; Declaratory Relief; and Breach of Fiduciary Duties)

TIER 3
(RULE 26.2, ARIZ.R.CIV.P.)

Plaintiff Floright Pump & Repair LLC, an Arizona limited liability company (hereinafter "Plaintiff"), for its Verified Complaint against Defendants, alleges the following:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff is an Arizona limited liability company.

2. Defendant, MCA Resolve LLC ("MCAR") is a Florida limited liability company that has caused events to occur within Pinal County, Arizona out of which the causes of action herein alleged arise.

3. Defendant, Ari Dinov ("A. Dinov") is an individual that resides in Florida and has caused events to occur within Pinal County, Arizona out of which causes of action herein alleged arise. A. Dinov is the Vice President of MCAR and profited from the fraudulent actions of MCAR. As such, A. Dinov intentionally directed such acts, or should have known such acts occurred, that are a result of the causes of actions herein alleged against MCAR.

4. Defendant, Paul Grafman a/k/a Paul Graffman ("Grafman") is an individual that resides in Florida and has caused events to occur within Pinal County, Arizona out of which causes of action herein alleged arise. Grafman is the President of MCAR, Statutory Agent, and profited from the fraudulent actions of MCAR. As such, Grafman intentionally directed such acts, or should have known such acts occurred, that are a result of the causes of actions herein alleged against MCAR.

5. Defendant, ABSM LLC doing business as Coastal Debt Resolve ("CDR") is a Florida limited liability company that has caused events to occur within Pinal County, Arizona out of which the causes of action herein alleged arise.

6. Plaintiff names as defendants JOHN DOES 1 through 10, JANE DOES 1 through 10, and ENTITY DOES 1 through 10, whose true names, identities and capacities are presently unknown to Plaintiff. Plaintiff alleges that each of the fictitiously named defendants are responsible in some manner for the occurrences herein alleged, and that Plaintiff's damages as herein alleged were directly or proximately caused by their conduct.

7. Once Plaintiff ascertains the true names, identities, and capacities of JOHN DOES 1 through 10, JANE DOES 1 through 10, and ENTITY DOES 1 through 10, Plaintiff reserves the right

to amend this Complaint to insert their true names and capacities and to allege such additional facts as are necessary to support the claims against these newly identified defendants.

8. This is an action for damages of more than $300,000.00 and is therefore a Tier 3 case as that term is defined in Rule 26.2, ARIZONA RULES OF CIVIL PROCEDURE.

GENERAL ALLEGATIONS

9. Plaintiff repeats and incorporates all allegations of this Complaint as if fully set forth herein.

10. According to a press release issued by Alison Biscardi on January 19, 2022, Chief Operating Officer of CDR, CDR and MCAR (the "DSC Entities") are owned by or share profits with one another. (*See* Exhibit 1)

11. According to the January 19, 2022 press release, MCAR and unnamed ENTITY DOES 1 through 10"have serviced companies over $150 Million through dedicated business debt servicing".

12. MCAR and ENTITY DOES 1 through 10 contract with businesses to purportedly help reduce their debt.

13. MCAR and ENTITY DOES 1 through 10 utilize CDR and ENITTY DOES 1 through through10 to solicit business debt settlement services for the benefit of, or on behalf of MCAR.

14. Upon information and belief, the DSC Entities utilize ENTITY DOES 1 through 10 to help further the fraudulent actions of the DSC Entities.

The Debt Settlement Services

15. The DSC Entities have engaged in a systematic and deceptive practice aimed at soliciting customers for their debt settlement services, particularly targeting small business merchants, such as Plaintiff, with existing business financing arrangements with their creditors ("Merchant(s)").

16. The DSC Entities' solicitation process includes widespread marketing and advertising campaigns that intentionally misrepresent the nature and benefits of their services.

17. One method the DSC Entities use to identify potential Merchants to solicit their debt settlement services is reviewing Uniform Commercial Code Financing Statements ("UCC Statement(s)") filed against Merchants with the Secretary of State.

18. When the DSC Entities believe a UCC Statement is affiliated with a business financing obligation, they will begin contacting the Merchant in an attempt to sell their debt settlement services.

19. Through these campaigns, the DSC Entities knowingly and falsely mislead Merchants by promising significant debt reduction, up to sixty percent (60%) in some cases, to Merchants who have financial obligations under existing business financing agreements with their creditors.

20. Through these campaigns, the DSC Entities knowingly and falsely mislead Merchants by stating they have special connections with the underlying creditors that will help negotiate the total outstanding debt down.

21. Through these campaigns, the DSC Entities knowingly and falsely make other misrepresentations that induce Merchants to contract with them for the purported debt reduction services.

22. The DSC Entities then fraudulently induce Merchants to sign a "Business Debt Resolution and Settlement Agreement", under which Merchants enroll their current outstanding business debts with their creditors ("Total Business Debt") into the debt settlement program with one of the DSC Entities (the "Program").

23. The Program calculates the estimated number of months the Program will last to sufficiently resolve the Total Business Debt (the "Program Length").

24. The Program calculates the estimated cumulative amount needed to settle the Total Business Debt as a percentage of the Total Business Debt (the "Estimated Settlement Amount").

25. The Program calculates the weekly payment amount a Merchant is required to make towards the Program based on the Program Length and Estimated Settlement Amount (the "Weekly Payment").

26. The Weekly Payments are deposited into an escrow account offered through an affiliate of the DSC Entities, ENTITY DOES 1 through 10, and opened by Merchant as required by the Program (the "Escrow Account").

27. The Weekly Payments are purportedly for the purpose of accumulating funds for settlement negotiations with the Merchant's creditors (the "Settlement Account") and to cover the DSC Entities' fees, (the "DSC Fees").

28. Pursuant to the Program, Merchants are "promised" debt relief services to reduce the Total Business Debt in exchange for their compliance with a series of stringent and detrimental conditions that only benefit the DSC Entities while severely harming the Merchant.

29. However, according to the Program, the DSC Entities generally will not begin settlement negotiations with the Merchants' creditors until 20-30% of the Total Business Debt is accumulated in the Settlement Account.

30. Furthermore, the Program includes provisions that restrict the Merchants' ability to communicate with their creditors or to take independent action to address the Total Business Debt, effectively leaving Merchants at the mercy of the DSC Entities for the absolute resolution of their Total Business Debt.

31. The DSC Entities' representations to Merchants regarding their ability to negotiate the Total Business Debt are grossly exaggerated or outright false.

32. In many cases, the DSC Entities do not engage in meaningful negotiation efforts on behalf of Merchants.

33. In the event a settlement offer is presented by one of Merchants' creditors, such settlement offer is an amount generally much greater than the Estimated Settlement Amount.

34. In the event a settlement offer is presented by one of Merchants' creditors, such settlement offer is for a term generally much longer than the Program Length.

35. Instead, the DSC Entities focus on diverting the Merchant's Weekly Payments into their own accounts under the false pretense of accumulating the Settlement Account to settle the Total Business Debt.

36. The practices employed by the DSC Entities to solicit and contract with Merchants constitute a deliberate and coordinated effort to undermine the financial interests of Merchants and to enrich themselves at the expense of both the Merchants' creditors and the Merchants themselves.

37. For instance, the Program requires Merchants to make substantial upfront payments for the DSC Fees through the Weekly Payments regardless of any performance by the DSC Entities.

38. The DSC Fees include a nonrefundable dispensation fee of 20% of the Total Business Debt enrolled into the Program (the "Dispensation Fee").

39. The DSC Fees include a nonrefundable retainer fee of 10% of the Total Business Debt enrolled into the Program (the "Retainer Fee").

40. The Program is intentionally designed by the DSC Entities to ensure the Dispensation Fee and Retainer Fee are paid as quickly as possible before the Weekly Payments are fully allocated towards the Settlement Account.

41. The DSC Entities debit the Dispensation Fee and Retainer Fee directly from the Escrow Account linked to the Merchant's Weekly Payments.

42. Initially, the Program requires 100% of the Weekly Payments to be allocated to the Retainer Fee until paid in full.

43. Once the Retainer Fee is paid, the Weekly Payments are then allocated, based on a percentage split, to the Dispensation Fee and Settlement Account until the Dispensation Fee is paid in full.

44. Generally, the percentage split between the Dispensation Fee and Settlement Account is comprised of approximately 60-70% of the Weekly Payment being attributed to the Dispensation Fee, with the remainder of the Weekly Payment being attributed to the Settlement Account.

45. Once the Dispensation Fee is fully paid, the Weekly Payments are then entirely allocated to the Settlement Account.

46. According to the Program, the Dispensation Fee and Retainer Fee are both paid in full before any performance is required by the DSC Entities, and such fees are nonrefundable.

47. The DSC Entities profit from the Program whether or not the Total Business Debt enrolled into the Program is reduced or settled with the Merchants' creditors.

48. The DSC Entities' guaranteed profit derives from a percentage of the Merchant's Total Business Debt enrolled into the Program, crafted by the DSC Entities to enrich the DSC Entities.

49. Additionally, after Merchants enter into the Business Debt Resolution and Settlement Agreement, the DSC Entities will advise Merchants to change their bank accounts and/or to stop making payments to their creditors, without informing Merchants of the legal consequences of defaulting on their financial obligations with their creditors.

50. The DSC Entities know, or have reason to know, that Merchants may be sued for breach of contract as a result of relying on their advice of defaulting on their creditors.

51. The DSC Entities offer through an affiliate, and for an additional fee, services for legal defensive representation that results from creditors suing Merchants after they default on their creditors (the "Legal Plan").

52. Upon execution of the Legal Plan, the DSC Entities will appoint, from a network of attorneys, an attorney to represent Merchant in the lawsuit.

53. The Legal Plan is concocted to make it appear that the attorney assigned to Merchant will be representing Merchant when in fact the attorney is actually contracted with the DSC Entities and not the Merchant.

54. The Legal Plan is concocted to act as a "legal shield" to protect its Merchants from any legal actions brought by their creditors, but is actually a mechanism to delay the action and more often than not, does not prevent judgments from being entered against the Merchants from their creditors.

55. The Legal Plan is concocted to add an additional revenue stream for the DSC Entities and to help further the fraudulent actions of the DSC Entities.

56. The DSC Entities continuously engage in similar behaviors as described above to defraud Merchants through an elaborate scheme across the country.

57. Between 2023 to 2024, there have been at least ten (10) complaints filed against MCAR with the Better Business Bureau by Merchants that experienced similar fraudulent behaviors alleged herein.

58. More often than not, Merchants end up in a worse position than they were in prior to being solicited by and contracting with the DSC Entities.

Events Leading to the MCAR Agreement and Contract Terms

59. On or about January 12, 2023, Plaintiff entered into that certain Business Loan and Security Agreement with Channel Partners Capital, LLC for business working capital (the "Channel Partners Agreement").

60. The Channel Partners Agreement was a secured debt pursuant to the terms of the contract.

61. Upon information and belief, on or about August 2, 2023, that certain Uniform Commercial Code Financing Statement was filed with the Arizona Secretary of State's Office by Channel Partners Capital LLC listing Plaintiff as a debtor (the "Channel Partners UCC Filing").

62. On or about September 28, 2023, Plaintiff entered into that certain Revenue Purchase Agreement with ByzFunder NY LLC for additional business working capital (the "ByzFunder Agreement").

63. The ByzFunder Agreement was a secured debt pursuant to the terms of the contract.

64. On or about October 20, 2023 Joshua Whitford, President of Plaintiff, received a call on his personal cell phone number ending in -4170 from CDR soliciting debt settlement services for the purported benefit of Plaintiff.

65. Prior to this call, Plaintiff had not communicated with, or attempted to communicate with the DSC Entities for any debt settlement services.

66. Based on information and belief, CDR found the Channel Partners UCC Filing and began to solicit services to Plaintiff as CDR had reason to believe Plaintiff may have outstanding business debt.

67. Mr. Whitford received numerous phone calls, emails, and text messages from CDR in attempts to further solicit its debt settlement services for Plaintiff after the first solicitation attempt failed.

68. During this solicitation campaign, Christopher Boulahanis ("Boulahanis") of CDR made numerous representations to Plaintiff that CDR would be able to reduce Plaintiff's debts with its creditors.

69. CDR, through Boulahanis, orally represented to Plaintiff via telephone calls that CDR could reduce Plaintiff's debt with its creditors by approximately 60%.

70. CDR knew, or should have known, the representations made to Plaintiff at the time of solicitation regarding its debt settlement services were misleading and false.

71. Plaintiff materially and detrimentally relied on CDR's representations relating to its purported debt settlement services ability to reduce Plaintiff's debt.

72. Plaintiff was fraudulently induced into entering into that certain Business Debt Resolution and Settlement Agreement with CDR's affiliated company MCAR on or about October 26, 2023 based on the intentional misrepresentations by CDR (the "MCAR Agreement"). A true and correct copy of the MCAR Agreement is attached hereto as Exhibit 2.

73. Pursuant to the terms of the MCAR Contract, MCAR:

a. Enrolled $97,840.89 from ByzFunder and $125,775.00 from Channel Partners, totaling $223,615.89 as unsecured debt of Plaintiff ("Plaintiff's Total Debt");

b. Estimated the total duration of the program would last 12 months to sufficiently resolve the Plaintiff's Total Debt ("Plaintiff's Program Length");

c. Estimated the cumulative amount needed to settle Plaintiff's Total Debt would be $96,154.83, or 43% of Plaintiff's Total Debt ("Estimated Settlement Amount");

d. Calculated Plaintiff's weekly payment amount for the debt settlement Program was $3,056.16 ("Plaintiff's Weekly Payment");

e. Represented that MCAR would unenroll any debt from the Program if MCAR discovered any enrolled debt was secured or consumer/personal debt;

f. Charged a nonrefundable dispensation fee of $44,723.18, or 20% of Plaintiff's Total Debt ("MCAR Dispensation Fee");

g. Charged a retainer fee of $22,361.59, or 10% of Plaintiff's Total Debt ("MCAR Retainer Fee");

h. Charged a weekly administrative account maintenance fee of $55.00 ("Service Fees);

i. Estimated the amount Plaintiff would ultimately save by utilizing the Program is $82,737.88, or 37% of Plaintiff's Total Debt ("Plaintiff's Estimated Savings Amount"); and

j. Would begin making negotiated settlement offers to Plaintiff's creditors once the Settlement Account reached 20-30% of Plaintiff's Total Debt.

74. According to the MCAR Agreement, MCAR was entitled to receive $67,084.77 for its MCAR Dispensation Fee and MCAR Retainer Fee regardless of whether any successful settlement or reduction of Plaintiff's Total Debt resulted from the MCAR Agreement.

75. MCAR structured Plaintiff's payment schedule under the MCAR Agreement so that MCAR would receive the MCAR Dispensation Fee and MCAR Retainer Fee before the Weekly Payment would be completely attributed to the Settlement Account.

76. The MCAR Agreement structured Plaintiff's payments towards the Program as follows ("Plaintiff's Payment Schedule"):

a. Between November 1, 2023 and December 20, 2023, Plaintiff was obligated to make weekly payments of $2,888.94 to pay the MCAR Retainer Fee in full;

b. Between December 27, 2023 and May 15, 2024, Plaintiff was and is obligated to make Weekly Payments of $3,056.16 to be allocated as follows:

i. $2,090.31 applied to the MCAR Dispensation Fee;

ii. $55.00 applied to the Service Fee;

iii. $910.85 applied to the Settlement Account;

c. One Weekly Payment of $3,056.16 on May 22, 2024 to be allocated as follows:

i. $826.71 applied to the MCAR Dispensation Fee;

ii. $55.00 applied to the Service Fee;

iii. $2,174.45 applied to the Settlement Account;

d. The remaining Weekly Payments of $3,056.16 applied to the Settlement Account until Plaintiff's Program Length was completed.

77. Within the first 21 weeks of Plaintiff's Payment Schedule, MCAR applied or will apply $23,111.52 to the MCAR Retainer Fee, $44,723.22 to the MCAR Dispensation Fee, and $1,210.00 to the Service Fees, totaling $69,044.74 being paid to MCAR.

78. Within the first 21 weeks of Plaintiff's Payment Schedule, MCAR applied or will apply $20,391.45, or ~9% of Plaintiff's Total Debt, to the Settlement Account.

79. Within the first 21 weeks of Plaintiff's Payment Schedule, Plaintiff paid or will have paid $89,436.19 towards the MCAR Agreement even though only ~23% of those funds have been or will be applied to the Settlement Account.

80. Plaintiff's Payment Schedule was strategically designed by MCAR so that Plaintiff would wait thirty (30) weeks from the effective date of the MCAR Agreement before the Settlement Account represented 20% of Plaintiff's Total Debt, an amount required for MCAR to begin negotiating with Plaintiff's creditors, and an amount that would still not be nearly enough to cover any settlements derived from Plaintiff's Total Debt.

81. Upon information and belief, Plaintiff's Program Length was calculated by MCAR to fraudulently induce Plaintiff into entering into the MCAR Agreement so MCAR could collect the MCAR Dispensation Fee and MCAR Retainer Fee.

82. There was no merit to Plaintiff's Program Length calculation and MCAR knew, or should have known, that such calculation was misleading and not a good faith estimate to resolve Plaintiff's Total Debt.

83. Upon information and belief, Plaintiff's Estimated Settlement Amount was calculated by MCAR to fraudulently induce Plaintiff into entering into the MCAR Agreement so MCAR could collect the MCAR Dispensation Fee and MCAR Retainer Fee.

84. There was no merit to Plaintiff's Estimated Settlement Amount calculation and MCAR knew, or should have known, that such calculation was misleading and not a good faith estimate to resolve Plaintiff's Total Debt.

85. Upon information and belief, Plaintiff's Estimated Savings Amount was calculated by MCAR to fraudulently induce Plaintiff into entering into the MCAR Agreement so MCAR could collect the MCAR Dispensation Fee and MCAR Retainer Fee.

86. There was no merit to Plaintiff's Estimated Savings Amount calculation and MCAR knew, or should have known, that such calculation was misleading and not a good faith estimate to resolve Plaintiff's Total Debt.

The ByzFunder Event of Default and Lawsuit Against Plaintiff

87. On October 26, 2023, the same date of the effective date of the MCAR Agreement, Jadine Julce from MCAR emailed Plaintiff requesting a copy of the contracts affiliated with Plaintiff's Total Debt.

88. Plaintiff provided the requested contracts the same day. (*See* Exhibit 3)

89. MCAR did not unenroll the debts from the Program after Plaintiff provided copies of the contracts even though MCAR knew, or should have known, the debts were secured.

90. Ms. Julce also advised Plaintiff to change its payment processor and business bank account due to ensure "the highest level of protection", stated that "we always want to make sure that we try to stay 2 steps ahead of your creditors…and keep in mind that it is time sensitive". (*See* Exhibit 3)

91. Ms. Julce further recommended Plaintiff should "…cease communication with the creditors which can assist in establishing your hardship based on our experience". (*S*ee Exhibit 3)

92. MCAR knew, or should have known based on its prior experiences with other Merchants that its advice to Plaintiff to perform actions that would constitute an event of default under Plaintiff's financial obligations to its creditors would have adverse and detrimental legal consequences to Plaintiff.

93. MCAR knew, or should have known based on its prior experiences with other Merchants, that following such advice would most likely result in Plaintiff being sued by ByzFunder for breach of contract.

94. MCAR did not disclose to Plaintiff what legal actions would result from taking such actions that would cause a default with its creditors.

95. Pursuant to Section 2(d) of the MCAR Agreement, MCAR "…do[es] not provide legal, tax, or bankruptcy advice".

96. MCAR did in fact provide legal advice to Plaintiff, which Plaintiff materially and detrimentally relied upon, and which advice resulted in adverse legal actions to Plaintiff.

97. On October 27, 2023, based on the advice and counsel of MCAR, Plaintiff changed its bank account and confirmed such change by emailing Ms. Biewer confirmation of the change. (*See* Exhibit 3)

98. On or about November 7, 2023, approximately one week after following the advice from MCAR, non-party business funder ByzFunder, one of Plaintiff's creditors whose debt was enrolled into the MCAR Agreement, filed a lawsuit against Plaintiff for breach of contract and breach of guaranty (the "ByzFunder Lawsuit") (*See* Byzfunder vs. Floright Pump & Repair LLC, et al. Index No. EC2023-36195).

99. According to the Transaction History produced in the ByzFunder Lawsuit, Plaintiff prevented ByzFunder from receiving remittances due under the ByzFunder Agreement on or about November 1, 2023, by switching its bank account on the advice and counsel of MCAR. (*See* Exhibit 4)

100. On or about October 26, 2023, an addendum to the MCAR Agreement was executed by Plaintiff ("MCAR Agreement Addendum") wherein MCAR "warrant[ed] that it shall appoint an attorney of its choice and pay all legal expenses, if any, associated with the civil defense of Client in connection with potential Breach of Contract claims related to Client's merchant cash advances/loans".

101. However, on or about November 1, 2023, an additional agreement, entitled "Citadel Business Legal Plan Membership Agreement" (the "Citadel Agreement") presented by the DSC Entities, was entered into by Plaintiff and Citadel Business Legal Plan, LLC ("Citadel") wherein Plaintiff was required to pay a one-time enrollment fee of $750.00 (the "Citadel Enrollment Fee") and a monthly membership fee of $100.00 (the "Citadel Monthly Fee") for the legal services referenced therein and in confliction with the MCAR Agreement Addendum.

102. Upon information and belief, the Citadel Enrollment Fee and/or the Citadel Monthly Fee is used to pay the attorney assigned to the Merchant pursuant to the Citadel Agreement/MCAR Agreement Addendum.

103. The Citadel Enrollment Fee and Citadel Monthly Fee is paid by Plaintiff and not MCAR.

104. On November 15, 2023, attorney Anthony Montoya ("Mr. Montoya") emailed Plaintiff, stating "I am the attorney contracted by MCA Resolve…assigned to represent you in this lawsuit. My fees are included in your agreement with MCA and my continued representation is contingency on your enrollment." (*See* Exhibit 5)

105. The email from Mr. Montoya included an attachment described as "client agreement" to which Mr. Whitford, on behalf of Plaintiff, needed to sign and return or acknowledge via email.

106. The "client agreement" includes a provision that states, "Fee and Costs. The law firm will undertake this representation based on the client's enrollment with Frontline [MCA Resolve]. At any time that the client cancels with MCA Resolve the firm has explicit authority to withdraw as counsel". (*See* Exhibit 6)

107. Upon information and belief, Mr. Montoya's reference to Frontline in the "client agreement" is a separate but similar entity to Citadel that was administratively dissolved in August of 2021 – Frontline Legal Services LLC ("Frontline").

108. Upon information and belief, Mr. Montoya currently is, or was contracted, with Frontline through the DSC Entities and/or Entity Does 1-10.

109. Upon information and belief, Mr. Montoya currently is, or was contracted, with Citadel through the DSC Entities and/or Entity Does 1-10.

110. Upon information and belief, Mr. Montoya currently is, or was contracted, with the DSC Entities and/or Entity Does 1-10.

111. Upon information and belief, Citadel is a successor in interest to Frontline and offers the same services with almost identical contract terms as Frontline.

The Settlement Communications by Plaintiff's Creditors to Resolve Debt

112. Pursuant to Section 4(a) of the MCAR Agreement, Plaintiff was prohibited from communicating with its creditors whose debts were enrolled into the Program.

113. Under the MCAR Agreement, "If [Plaintiff] directly negotiate[s] with, enter[s] a settlement agreement with, make[s] payment to, or withdraw[s] a creditor from this Program,

[MCAR] shall be entitled to a fee of Twenty Percent (20)% of the balance then owing to that creditor, and the creditor shall be immediately removed from the Program". (*See* Exhibit 2 at Section 4(a))

114. On or about October 31, 2023 ByzFunder notified Plaintiff via email of a default under the ByzFunder Agreement and that failure to cure such default would result in a lawsuit filed against Plaintiff and Mr. Whitford ("ByzFunder Email #1").

115. ByzFunder Email #1 also notified Plaintiff there were potential opportunities to resolve the matter if Plaintiff communicated payment or other issues to ByzFunder.

116. Plaintiff forwarded ByzFunder Email #1 to MCAR for handling pursuant to the MCAR Agreement. (*See* Exhibit 7)

117. Upon information and belief, MCAR did not respond to ByzFunder Email #1.

118. On or about November 15, 2023, ByzFunder's counsel emailed Plaintiff attempting to resolve the ByzFunder Lawsuit ("ByzFunder Email #2").

119. Plaintiff forwarded ByzFunder Email #2 to MCAR for handling pursuant to the MCAR Agreement. (*See* Exhibit 8)

120. Upon information and belief, MCAR did not respond to ByzFunder Email #2.

121. To date, despite the ongoing ByzFunder Lawsuit, MCAR has not responded to ByzFunder Email #1.

122. To date, despite the ongoing ByzFunder Lawsuit, MCAR has not responded to ByzFunder Email #2.

123. To date, despite the ongoing ByzFunder Lawsuit, MCAR has not in any way attempted to resolve the ByzFunder Lawsuit with ByzFunder on behalf of Plaintiff, despite representing to Plaintiff that MCAR would reduce Plaintiff's debt with ByzFunder.

124. On or about November 27, 2023, non-party funder Channel Partners emailed Plaintiff attempting to resolve the outstanding debt relating to the Channel Partners Agreement ("CP Email #1).

125. Plaintiff forwarded CP Email #1 to MCAR for handling pursuant to the MCAR Agreement. (*See* Exhibit 9)

126. Upon information and belief, MCAR did not respond to CP Email #1.

127. On or about December 15, 2023, Channel Partners emailed Plaintiff attempting to resolve the outstanding debt and notice of contract breach relating to the Channel Partners Agreement ("CP Email #2).

128. Plaintiff forwarded CP Email #2 to MCAR for handling pursuant to the MCAR Agreement. (*See* Exhibit 10)

129. Upon information and belief, MCAR did not respond to CP Email #2.

130. On or about January 16, 2024, Channel Partners again emailed Plaintiff attempting to resolve the outstanding debt relating to the Channel Partners Agreement ("CP Email #3).

131. Plaintiff forwarded CP Email #3 to MCAR for handling pursuant to the MCAR Agreement. (*See* Exhibit 11)

132. Upon information and belief, MCAR did not respond to CP Email #3.

133. Despite Channel Partners' attempts to negotiate with Plaintiff as far back as November 2023, it wasn't until February 2024 that MCAR presented a certain settlement offer from Channel Partners to Plaintiff.

134. On or about February 2, 2024, Ben Dinov ("B. Dinov"), Debt Negotiator of MCAR, emailed Plaintiff the purported settlement offer provided by Channel Partners: $100,000.00 to be paid over 16 monthly payments. (*See* Exhibit 12)

135. According to the MCAR Agreement, MCAR estimated the Channel Partners debt of $125,775.00 would settle at a 57% discount, or $54,083.25.

136. The estimated settlement by MCAR for the Channel Partners debt versus the actual settlement offer from Channel Partners was a $45,916.75, or 36.5%, difference from the estimation by MCAR.

137. Accepting the settlement offer from Channel Partners would have resulted in a savings of $25,775.00, or 21.5% discount for Plaintiff.

138. Plaintiff responded to MCAR, stating "The savings on this would not even cover the fees we paid to cover your company, so why would this be a good settlement?" (*See* Exhibit 12)

139. B. Dinov responded, "Well when they sue the balance will end up doubling and they will eventually get a judgement that is what we are trying to avoid you get lots of time here so I think it's very good." (*See* Exhibit 12)

140. B. Dinov and MCAR knew, or should have known, that their representation that the balance would double once litigation was initiated was false and misleading.

141. Plaintiff responded, "Ok we can't afford to pay your MCA monthly fee and their settlement. So, we do not accept." (*See* Exhibit 12)

142. B. Dinov responded, "You would only be paying the 100k over 16 months you would not be paying both please advise." (*See* Exhibit 12)

143. B. Dinov and MCAR knew, or should have known, that their representation that Plaintiff would not be liable for paying the MCAR Dispensation Fee, MCAR Retainer Fee, and the Channel Partners settlement was false and misleading.

144. Mr. Whitford responded, "Does that mean the monthly payments to Channel Partners come out of Secure Account Service that was set up? Also, on another note, this settlement amount is already greater than the original estimate and we still have the Byzfunder account to consider. Where are we at with that resolution given the fact that they have already received $60k from our client?" (*See* Exhibit 12)

145. B. Dinov urged Mr. Whitford to accept the settlement agreement, stating, "That is correct the monthly payments come from SAS to pay your creditors. I will work on getting everything worked out 1 thing at a time do you want to go ahead and do the channel partners deal?" (*See* Exhibit 12)

146. B. Dinov and MCAR knew, or should have known, that their representation that there would be sufficient funds accumulated in the Settlement Account to pay the entire Channel Partners settlement offer was false and misleading.

147. Mr. Whitford, still concerned about the settlement amount compared to what was represented to him in the MCAR Agreement, stated,

> "I still have concerns on how this is going to work. At this time a majority of our payments are still going to the program fees and MCA pulls their funds the day before each deposit gets made into SAS. Therefore, if we were to agree to the Channel Partners settlement and say our payments to them were at the beginning of each month by the time we hit the beginning of April 2024 the SAS account would be negative and there would not be enough at the beginning of May 2024 for the Channel Partners payment. Not to mention the fact that our payment schedule for MCA only goes through November 2024 but our payments to Channel Partners would continue until June 2025 if we started in March 2024 and there would not be enough funds in SAS to cover the last payment to Channel Partners. This is why I ask about settlement with Byzfunder because obviously the funds being put into SAS would not be able to cover anything for them."

(*See* Exhibit 12)

148. B. Dinov, responded stating "It all depends what they settle for Channel will file a suit very soon and the balance will continue to grow my suggestion is we do the deal as there giving us lots of time to pay the debt off." (*See* Exhibit 12)

149. Mr. Whitford responded with, "So how do we deal/handle the negative balance in SAS in order to make the payments?" (*See* Exhibit 12)

150. B. Dinov avoided addressing Mr. Whitford's concern and instead evasively replied, "You have been handling it we just cant give up." (*See* Exhibit 12)

151. Instead of trying to negotiate the Channel Partners debt to Plaintiff's benefit in accordance with the MCAR Agreement, MCAR attempted to convince Plaintiff to agree to a settlement that was more than the entire Plaintiff's Estimated Settlement Amount provided for in the MCAR Agreement.

152. The actions alleged herein by Defendants A. Dinov and Grafman were fraudulent and represent an abuse of the corporate forms, warranting an equitable remedy that pierces the corporate veil and holds Defendants A. Dinov and Grafman personally liable for the debts and liabilities of Defendants MCAR and CDR.

COUNT I
(FRAUDULENT INDUCEMENT)
(as to all Defendants)

153. Plaintiff incorporates each paragraph of this Complaint into this cause of action.

154. Under Arizona law, a fraud claim requires: a representation; its falsity; its materiality; the speaker's knowledge about its falsity or ignorance of its truth; the speaker's intent that it be acted upon and in the manner reasonably contemplated; the hearer's ignorance of its falsity; the hearer's reliance on its truth; the hearer's right to rely thereon; and the hearer's consequent and proximate injury. *Rhoads v. Harvey Publ'ns, Inc.*, 131 Ariz. 267, 269, 640 P.2d 198, 200 (App. 1982).

155. Specifically, Defendants committed fraud in the following ways:

a. Defendant CDR represented to Plaintiff through multiple emails and telephone calls that the DSC Entities would provide or cause to be provided services which would reduce Plaintiff's debt, upon which Plaintiff detrimentally relied and was subsequently damaged.
b. On or about October 20, 2023 Joshua Whitford, President of Plaintiff, received a call on his personal cell phone number ending in -4170 from CDR soliciting debt settlement services for the purported benefit of Plaintiff.
c. During this solicitation campaign, Boulahanis from CDR made numerous representations to Plaintiff that CDR and/or MCAR would be able to reduce Plaintiff's debts with its creditors.
d. Specifically, CDR represented to Plaintiff that the DSC Entities could reduce its debt with its creditors by sixty percent (60%).
e. As set forth herein, CDR is affiliated with and delivered Plaintiff to MCAR for the enrollment of Plaintiff's debts into the Program.
f. Plaintiff's Payment Schedule was strategically designed by MCAR so that Plaintiff would wait thirty (30) weeks from the effective date of the MCAR Agreement before the Settlement Account represented 20% of Plaintiff's Total Debt, which would be $44,723.18, an amount that would still not be nearly enough to cover the settlements of Plaintiff's Total Debt.
g. According to the MCAR Agreement, MCAR represented to Plaintiff that the Channel Partners debt of $125,775.00 would settle at an approximate 57% discount, or $54,083.25.
h. The estimated settlement by MCAR for the Channel Partners debt versus the actual settlement offer from Channel Partners was a $45,916.75, or 36.5%, difference from the figure represented by MCAR.
i. As a result, Defendants representation to Plaintiff that the Channel Partners debt would be reduced by 57% were false.
j. The services performed by MCAR, if any, were performed in a manner to intentionally induce the Plaintiff to keep making weekly payments while MCAR knew or reasonably should have known that the Defendants were not performing

in a manner which would align with the mutual understanding between the parties at the outset of the MCAR Agreement.

k. The DSC Entities failed to disclose the consequences of its debt settlement programs.

l. The DSC Entities represented their actions and/or inactions to Plaintiff such that Plaintiff believed that its debts would be settled and no harm would come to Plaintiff.

m. The DSC Entities misrepresented the legal representation it would provide to Plaintiff in the event lawsuits were filed arising from any defaults.

n. The DSC Entities unlawfully provided legal advice in violation of Arizona law.

156. Defendants' representations were false.

157. Defendants' representations were material to Plaintiff when made because Plaintiff was experiencing economic difficulty and sought MCAR's assistance and services in order to reduce its debt obligations.

158. These representations concerned material facts about the nature, quality, and efficacy of the debt settlement services provided by Defendants.

159. Plaintiff would not have contracted with MCAR were it not for these representations regarding MCAR's services.

160. MCAR's representatives knew of the falsity of MCAR's representations that (1) MCAR would reduce Plaintiff's debt by sixty percent (60%) and (2) that MCAR would make diligent efforts to reduce Plaintiff's debts with its creditors.

161. MCAR made these false representations with the intent to induce Plaintiff to rely upon them, thereby enrolling in Defendant's debt settlement program. This intention is evidenced by Defendants' aggressive marketing strategies, targeting vulnerable consumers such as Plaintiff, and the making of false statements to Plaintiff in order to induce it to take certain actions with regard to Plaintiff's debts.

162. Plaintiff, believing the representations to be true, and with no reason to suspect otherwise due to the apparent legitimacy of Defendants' business, justifiably relied on these misrepresentations when deciding to enroll in the debt settlement program.

163. Plaintiff had a right to rely upon Defendant's representations regarding its services.

164. Plaintiff did in fact rely upon Defendant's representations regarding its services.

165. As a result of Defendants' misrepresentations, Plaintiff suffered substantial damages in justifiable reliance on the DSC Entities' misrepresentations, which resulted in disruptions to Plaintiff's business and Plaintiff's inability to collect payments from its customers due to UCC liens; and lost profits.

166. As a result of Defendants' fraudulent inducement of Plaintiff into the MCAR Agreement, Plaintiff is entitled to rescission of the MCAR Agreement.

COUNT II
VIOLATION OF A.R.S. § 44-1522 (CONSUMER FRAUD)
(As to all Defendants)

167. Plaintiff incorporates each paragraph of this Complaint into this cause of action.

168. Consumer fraud exists under A.R.S. § 44-1522(A) when a false promise or misrepresentation is made and relied on in connection with the sale or advertisement of merchandise causing damage. *Dunlap v. Jimmy GMC of Tucson, Inc.*, 136 Ariz. 388, 342, 344, 666 P.2d 83,87, 89 (Ct. App. 1983)

169. Pursuant to A.R.S. § 44-1521, "advertisement" includes the attempt by publication, dissemination, solicitation or circulation, oral or written, to induce directly or indirectly any person to enter into any obligation or acquire any title or interest in any merchandise.

170. Pursuant to A.R.S. § 44-1521, "merchandise" means any objects, wares, goods, commodities, intangibles, real estate or services.

171. Defendants advertised their debt settlement services by soliciting, through emails and telephone calls, Plaintiff's entrance into the MCAR agreement.

172. Defendants' offered services include debt settlement and reduction services, which constitutes merchandise under Arizona law.

173. MCAR made these false representations with the intent to induce Plaintiff to rely upon them, thereby enrolling in Defendants' debt settlement program.

174. This intention is evidenced by Defendants' aggressive marketing strategies, targeting vulnerable consumers such as Plaintiff, and the making of false statements to Plaintiff in order to induce it to take certain actions with regard to Plaintiff's debts.

175. Defendants' representations were material to Plaintiff when made because Plaintiff was experiencing economic difficulty and sought MCAR's assistance and services in order to reduce its debt obligations.

176. Defendants' representations were false.

177. Plaintiff, believing the representations to be true, and with no reason to suspect otherwise due to the apparent legitimacy of Defendants' business, justifiably relied on these misrepresentations when deciding to enroll in the debt settlement program.

178. As a direct and proximate result of relying on Defendants' false representations, Plaintiff suffered actual damages, including, but not limited to:

a. Money damages not less than $71,920.48 for payments made to Defendants;

b. Liened accounts receivables in an amount not less than $56,999.65;

c. Interest income on liened accounts receivable in an amount not less than $3,878.66;

d. Accounts payable unable to be remitted due to liened accounts receivable in an amount not less than $37,361.25;

e. Loss of existing customers, profits, and business reputation, including but not limited to the inability to obtain business financing; and

f. damage to Mr. Whitford's credit score.

179. Plaintiff's damages are directly attributable to Defendants' fraudulent conduct and misrepresentations.

180. MCAR's conduct also warrants punitive damages in an amount appropriate to punish Defendant MCAR for its fraudulent, malicious, oppressive, and egregious conduct toward Plaintiff

and to serve as a deterrent to prevent MCAR and others from engaging in similar conduct in the future. Plaintiff asserts that Defendants' conduct, as detailed herein, was intentional, performed in bad faith, and demonstrates a reckless disregard for the rights of Plaintiff and others, thereby justifying an award of punitive damages under Arizona law.

181. As a result of Defendants' material misrepresentations, Plaintiff suffered economic damages in an amount to be fully proven at trial, but not less than $169,450.19.

COUNT III
UNJUST ENRICHMENT
(As to all Defendants)

182. Plaintiff incorporates each paragraph of this Complaint into this cause of action.

183. To establish a claim for unjust enrichment, a party must show: (1) an enrichment; (2) an impoverishment; (3) a connection between the enrichment and the impoverishment; (4) the absence of justification for the enrichment and the impoverishment; and (5) the absence of a legal remedy. *See Freeman v. Sorchych* , 226 Ariz. 242, 251, 27, 245 P.3d 927 (App. 2011).

184. Plaintiff is legally entitled to the funds held by Defendants that are unlawfully possessed and were improperly obtained by the unlawful conduct of Defendants, causing Defendants' enrichment and Plaintiff's impoverishment.

185. A causal and logical connection exists between Defendants' enrichment and Plaintiff's impoverishment exists through the material misrepresentations made by Defendants to Plaintiff.

186. No justification exists for Defendants' enrichment and Plaintiff's impoverishment other than Defendants' improper and unlawful conduct with regarding to inducing Plaintiff to enter into Defendants' debt settlement program, through which Plaintiff has been damaged.

187. As a result of Defendants' material misrepresentations, Defendants have been unjustly enriched in an amount to be fully proven at trial, but not less than $169,450.19.

COUNT IV
(DECLARATORY JUDGMENT)
(As to all Defendants)

188. Plaintiff incorporates each paragraph of this Complaint into this cause of action.

189. Pursuant to the Uniform Declaratory Judgment Act, A.R.S. § 12-1831 et seq., Plaintiff is entitled to a declaration of its rights under the MCAR Agreement and because there is a present controversy between the parties that can be resolved by judicial determination.

190. Plaintiff is interested under written contract or other writings constituting a written contract, and therefore may have determined any question of construction or validity arising under the MCAR Agreement, and obtain a declaration of rights, status, or other legal relations thereunder. *See* A.R.S. § 12-1382.

191. The Court may order a speedy hearing of an action for a declaratory judgment and may advance it on the calendar, and Plaintiff requests a speedy hearing pursuant to Rule 57, ARIZONA RULES OF CIVIL PROCEDURE.

192. Plaintiff is entitled to a declaration that the MCAR Agreement is void and/or voidable at Plaintiff's election as a result of Defendants fraudulent inducement of Plaintiff to enter the MCAR Agreement through Defendants' misrepresentations made to induce Plaintiff.

193. Plaintiff is entitled to a declaration that the MCAR Agreement is void as against public policy as an instrument and part of an unlawful scheme to defraud Arizona small businesses.

194. Plaintiff is entitled to a declaration that Plaintiff is not obligated to continue performance and payment under the MCAR Agreement.

195. Plaintiff is entitled to rescission of the MCAR Agreement as a result of the Defendant's fraudulent conduct.

COUNT V
BREACH OF FIDUCIARY DUTIES
(As to all Defendants)

196. Plaintiff incorporates each paragraph of this Complaint into this cause of action.

197. Plaintiff and Defendants shared a relationship whereby the Plaintiff reposed trust and confidence in Defendants.

198. Plaintiff and Defendants shared a relationship whereby the Defendants undertook such trust and assumed a duty to advise, counsel, and/or protect Plaintiff.

199. Defendants accepted such trust and assumed such a duty at a time when all parties understood that the Defendants were to protect a weaker party, being Plaintiff.

200. As a result of Defendants breaches of fiduciary duties, Plaintiff has suffered substantial damages in an amount to be proven at trial, but not less than $169,450.19.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38.1, Arizona Rules of Civil Procedure, Plaintiff respectfully requests a trial by jury.

DEMAND FOR RELIEF

WHEREFORE, FloRight Pump and Repair, LLC, prays for Judgment of and from Defendants, as follows:

a) for actual damages in an amount to be proven at trial but not less than $169,450.19;

b) for all court costs and reasonable attorneys' fees as provided for by applicable law;

c) For punitive damages in an amount appropriate to punish Defendants for their fraudulent, malicious, oppressive, and egregious conduct toward Plaintiff and to serve as a deterrent to prevent Defendants and others from engaging in similar conduct in the future.

d) For a declaration that the MCAR Agreement is void and/or voidable as a result of Defendants' fraudulent inducement of Plaintiff to enter the MCAR Agreement;

e) For a declaration that Plaintiff is not obligated to continue performance and payment under the MCAR Agreement;

d) For a declaration that the MCAR Agreement is void as against public policy as part and instrument of an unlawful scheme to defraud Arizona small businesses;

d) For rescission of the MCAR Agreement to fully restore Plaintiff to its financial position before entering into the MCAR Agreement;

d) for pre-judgement interest and post judgment interest pursuant to A.R.S. § 44-1201 from entry of Judgment until paid in full; and

e) for such further and other relief, both general and special, at law or in equity, as the Court deems appropriate.

RESPECTFULLY SUBMITED this 22nd day of April, 2024.

WILKIE PUCHI L.L.P.

By: _____

Blake Wilkie, Esq.
3370 N. Hayden Road, Suite 123-283
Scottsdale, Arizona 85251
Attorneys for Plaintiff

VERIFICATION

1. I, Joshua Whitford, am the owner and authorized agent of Plaintiff in the above-captioned matter.

2. I have read the foregoing Verified Complaint, and I verify that the matters and things stated therein are true to the best of my knowledge, except as to those statements made upon information and belief, and as to those, I believe them to be true.

3. I declare under penalty of perjury that the above information is true and correct.

DATED this 12 day of April, 2024.

Joshua Whitford
Owner and Authorized Agent of FloRight Pump and Repair, LLC