

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

TONY GEORGITON and BASIL MESSADOS,

Plaintiffs,

-against-

CAPITAL ONE EQUIPMENT FINANCE CORP., f/k/a ALL
POINTS CAPITAL CORP., d/b/a CAPITAL ONE TAXI
MEDALLION FINANCE,

Defendant.

Index No. _____

SUMMONS

Plaintiffs designate Queens
County as place of trial

Venue is proper pursuant to
§ 503 of New York
Civil Practice Law and
Rules

TO: THE ABOVE NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED to answer the complaint in this action (the “Complaint”) and to serve a copy of your response, 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 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 for the relief demanded in the Complaint.

Dated: December 23, 2016
New York, New York

Respectfully submitted,

FOX ROTHSCHILD LLP

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VERIFIED COMPLAINT

Plaintiffs Basil Messados (“Messados”) and Tony Georgiton (“Georgiton”) (collectively “Plaintiffs”) by and through their attorneys, Fox Rothschild LLP, as and for a Verified Complaint against Defendant Capital One Equipment Finance Corp. f/k/a All Points Capital Corp., d/b/a Capital One Taxi Medallion Finance (“Capital One” or “Defendant”), set forth and allege:

NATURE OF THE ACTION

1. Plaintiffs bring the present action in order to vacate thirteen (13) confession of judgments (“Confession of Judgments”) relating to thirteen (13) loan agreements (the “Loan Agreements”)¹ Capital One unlawfully obtained in breach of a mutual release agreement (“Mutual Release”) between Capital One, Action Funding of NY LLC (“Action Funding”), and Action Funding’s members and owners, which include Plaintiffs as they are both 35% owners of Action Funding.

2. At the time the Mutual Release was entered into, and at all times relevant to Capital One’s and Plaintiffs’ business dealings with each other, Capital One knew of Plaintiffs’ combined

¹ Plaintiffs Messados and Georgiton are members, managers, officers, and/or owners of the borrower entities to the Loan Agreements and either Messados and/or Georgiton guaranteed the Loan Agreements.

70% ownership interest in Action Funding. A copy of the Partner List from Action Funding's Tax Return for the year ending December 31, 2014 is attached to the Affirmation of Brett A. Berman, Esq., counsel for Plaintiffs, as Exhibit "A", which shows Plaintiffs' combined 70% ownership in Action Funding.²

3. The Mutual Release, which releases all of Capital One's claims against Plaintiffs, was executed on November 2, 2016.

4. On November 16, 2016, despite having entered into the Mutual Release just two weeks earlier, Capital One filed, in addition to *five* other actions against Plaintiffs and related entities, the Confession of Judgments, attempting to enforce "liabilities, rights, debts, [and] obligations" it had "release[d] and forever discharge[d]" in the Mutual Release a mere two weeks before.

5. The Confession of Judgments are predicated on Capital One's fraudulent conduct throughout its relationship with Plaintiffs, including, but not limited to, Capital One's repeated promises and representations concerning its purported long-term commitment to the taxicab medallion industry, which is demonstrably false based on Capital One's decision to abandon the taxi industry in order to partner with the taxi industry's biggest threat, Uber Technologies, Inc. ("Uber").

6. From the time Capital One and Plaintiffs entered into their partnership agreement, Capital One has repeatedly misrepresented to Plaintiffs that, consistent with industry custom and practice and just like every other lender in the industry, it would renew the taxi medallion loan agreements at their maturity dates.

² All exhibits referenced herein are attached to the Affirmation of Brett A. Berman, Esq., counsel for Plaintiffs, in Support of Plaintiffs' Order to Show Cause Seeking Temporary Restraints and a Preliminary Injunction.

7. Capital One did not negotiate in good faith and did not refinance the Loan Agreements, and, accordingly, based on the Mutual Release and Capital One's fraudulent conduct, explained more fully below, Plaintiffs respectfully request that this Court enter an order vacating the Confession of Judgments.

PARTIES

8. Plaintiff Tony Georgiton is an adult individual who resides in Long Island City, New York.

9. Plaintiff Basil Messados is an adult individual who resides in Long Island City, New York.

10. On information and belief, Defendant is a New York Corporation with a principal place of business in Melville, New York.

JURISDICTION AND VENUE

11. This Court has jurisdiction over this matter pursuant to CPLR §§ 301 and 302 because: (i) Capital One is present in and transacts business within the State of New York; and (ii) Capital One committed a breach of contract within the State of New York out of which the causes of action asserted herein arise. The amount in controversy, exclusive of punitive damages, interests, costs, disbursements and counsel fees claimed, is in excess of \$500,000.

12. Venue is proper in Queens County because the Confession of Judgments were entered in Queens County. *See Terezakis v. Goldstein*, 640 N.Y.S.2d 1005, 1006 (1996) ("This Court holds that an action to vacate a confession of judgment is properly venued in the county where the underlying judgment was entered.").

FACTS

A. Plaintiffs' Impeccable Reputation in the Taxi Medallion Industry

13. Prior to managing one of the largest and most reputable medallion fleets in New York City, Plaintiffs were New York City taxicab drivers in the 1980s.

14. Plaintiffs manage nearly 600 New York City taxicab medallions through their company, Queens Medallion Leasing, Inc., and have been involved in the New York City taxi medallion industry since 1991.

15. Plaintiffs have long-standing and successful business relationships with multiple lenders, and have relied upon numerous and various lending relationships to finance their own medallions.

16. In approximately 27 years of doing business in the taxi industry, Plaintiffs have developed impeccable reputations and have *never* had any lending institutions file judgments or complaints against them. With every single lender, including Capital One, Plaintiffs have never been late or missed any payments in all their business ventures.

17. Through the years, when a taxi medallion loan agreement has matured and a balloon payment has become due, Plaintiffs' lenders have either refinanced, renewed, modified or extended that loan.

18. This same procedure has been followed by *all* of the lenders with which the Plaintiffs work (with the exception of Capital One's recent bad faith actions, as detailed herein), as it provides Plaintiffs with the liquidity needed to operate a successful business.

19. Indeed, if lenders did not refinance when the loans matured and balloon payments became due, the entire taxicab medallion industry would implode as hundreds of millions of dollars

would suddenly become due and owing with no realistic way for the borrowers to make the huge balloon payments.

B. The 2010 Participation Agreement

20. In late 2010, Plaintiffs, along with another fleet owner in the industry, through Action Funding, entered into a participation agreement with Capital One (the “Participation Agreement”), whereby Plaintiffs agreed to bring their medallion contacts in the New York City taxi industry who financed their loans with other lenders to Capital One. A copy of the Participation Agreement is at Exhibit “B”.

21. At the time they entered into the Participation Agreement, Plaintiffs had no lending relationship with Capital One and were not seeking a relationship with Capital One.

22. As a result of the Participation Agreement, Plaintiffs became successful originators of third party loans for Capital One for Plaintiffs’ medallion leasing clients, with Messados being the primary point of contact for their business dealings with Capital One.

23. This partnership resulted in an increase in Capital One’s taxi medallion portfolio in New York City of approximately eighty million dollars (\$80m) from Plaintiffs’ efforts during the years 2013-2014 alone.

24. In or around late 2012, Capital One, looking to break into the industry and become the leading medallion lender in New York City, actively and aggressively began enticing Plaintiffs through its Senior Vice President, Paul Dell’Aquila (“Dell’Aquila”), to bring their banking business to Capital One.

25. Dell’Aquila induced Plaintiffs with significantly lower interest rates, increased equity, and better amortization, and promised them that Capital One was committed to the New York City medallion industry for the long haul.

26. Capital One, through Dell'Aquilo, further represented to Plaintiffs that, consistent with industry custom and practice, it would renew any Loan Agreements that the parties would enter into at their maturity dates just like every other lender in the industry.

27. Indeed, Capital One was so intent on forging its way into the New York City taxi medallion market that it was offering, if not begging, to lend Plaintiffs over one hundred million dollars (\$100m) based on the value of the medallions alone, without ever evaluating any of Plaintiffs' business or personal financial statements at the time.

28. After Capital One presented its attractive offer to Plaintiffs, and based on the relationships formed between Plaintiff and Capital One through the Participation Agreement, Plaintiffs decided to transfer the financing of many of their medallions from Doral Bank (n/k/a Banco Popular) to Capital One.

29. Thus, the parties forged a business relationship in addition to their partnership, wherein Capital One serviced the debt associated with Plaintiffs' lending needs for almost four years.

30. Because of Capital One's relationship with Plaintiffs under the Participation Agreement, Capital One entered into numerous loan agreements with companies involved in the medallion leasing industry.

C. The 2014 Loan Agreements

31. In addition to Capital One's previous loans with companies in the taxi medallion leasing industry, a significant number of which arose from the Participation Agreement, on or around January 7, 2014, as a result of Capital One's Senior Vice President's, Dell'Aquilo, repeated assurances regarding Capital One's long-term commitment to the medallion industry and its ability to provide borrowers with lower interest rates and more cash flow, Capital One entered into the

thirteen Loan Agreements with entities related to Plaintiffs (the “Borrower Entities”) subject to the present dispute.³ *See* Samson Transport LLC Loan at Exhibit “C”; Spryo & George Ltd. Loan at Exhibit “D”; Ploutonas Transport Inc. Loan at Exhibit “E”; Kukla Cab Corp. Loan at Exhibit “F”; Tavli Transport Inc. Loan at Exhibit “G”; Filarakia LLC Loan at Exhibit “H”; Tommy & Yiayia Ltd. Loan at Exhibit “I”; Bouzoukia LLC Loan at Exhibit “J”; Varia Transport Inc. Loan at Exhibit “K”; Skilla LLC Loan at Exhibit “L”; Plakoto Transport Inc. Loan at Exhibit “M”⁴; Walk Cab Corp. Loan at Exhibit “N”; Spasarhidis Enterprises Loan at Exhibit “O”.

32. As required by Capital One and pursuant to the Partnership Agreement, Plaintiffs executed affidavits for confession of judgment for the Loan Agreements. *See* Samson Transport LLC Loan Confession of Judgment, Index No. 13239/2016 at Exhibit “P”; Spryo & George Ltd. Loan Confession of Judgment, Index No. 13240/2016 at Exhibit “Q”; Ploutonas Transport Inc. Loan Confession of Judgment, Index No. 13235/2016 at Exhibit “R”; Kukla Cab Corp. Loan Confession of Judgment, Index No. 13234/2016 at Exhibit “S”; Tavli Transport Inc. Loan Confession of Judgment, Index No. 13233/2016 at Exhibit “T”; Filarakia LLC Loan Confession of Judgment, Index No. 13230/2016 at Exhibit “U”; Tommy & Yiayia Ltd. Loan Confession of Judgment, Index No. 13229/2016 at Exhibit “V”; Bouzoukia LLC Loan Confession of Judgment, Index No. 13227/2016 at Exhibit “W”; Varia Transport Inc. Loan Confession of Judgment, Index No. 13251/2016 at Exhibit “X”; Skilla LLC Loan Confession of Judgment, Index No. 13250/2016 at Exhibit “Y”; Plakoto Transport Inc. Loan Confession of Judgment, Index No. 13249/2016 at Exhibit “Z”; Walk Cab Corp. Loan Confession of Judgment, Index No. 13248/2016 at Exhibit

³ Plaintiffs Messados and Georgiton are members, managers, officers, and/or owners of the Borrower Entities to the Loan Agreements and either Messados and/or Georgiton guaranteed the Loan Agreements.

⁴ A copy of the loan agreement for Plakoto Transport Inc. is not included because it cannot be located at this time.

“AA”; Spasarhidis Enterprises Loan Confession of Judgment, Index No. 13247/2016 at Exhibit “BB”.

33. The Loan Agreements are all materially similar and were two-year, interest-only loans with balloon payments due at maturity. *See* Exhibits C-O, § 1.

34. Capital One required the Borrower Entities to agree to prepayment penalties in the Loan Agreements.

35. Prior to its decision to pull the plug on the medallion taxicab industry, Capital One should have given Plaintiffs notice that it would not refinance the Loan Agreements and should have waived the prepayment penalties because, at the time, there were still many traditional lenders ready, willing, and able to finance Plaintiffs’ taxi portfolio.

36. As required by the terms of the Loan Agreements, the Borrower Entities always made their interest payments on time and in full to Capital One.

37. In the taxi cab medallion industry, when a loan agreement matured and the balloon payment became due, the industry standard, custom, and practice is for lenders to either refinance, renew, modify or extend that loan.

38. This same procedure has been followed by *all* of the lenders with which Plaintiffs have worked (with the exception of Capital One’s recent bad faith actions), as it provides Plaintiffs with the liquidity they need to operate a successful medallion business.

39. Indeed, if lenders did not refinance when the loans matured and balloon payments became due, the entire taxicab medallion industry would implode as hundreds of millions of dollars would suddenly become due and owing with no realistic way for the borrows to make the huge balloon payments.

40. At the time that the parties entered into their dual business relationship/partnership, the New York City Taxi medallion industry was booming and medallion prices were higher than ever.

41. Then, as app-based companies like Uber and Lyft entered into the transportation marketplace in New York City in mid to late 2014, Capital One got cold feet, allowing the speculation that these app companies could pose an existential threat to the medallion taxicab industry, as well as its own desire to do business with these new companies, to sour its thinking on the promises and business relationship it had already forged with Plaintiffs.

42. Capital One's own actions were taken to not only exit the New York City taxi medallion market for perceived greener pastures, but also to bolster its planned new investment in app-based transportation options that, at the time, were just starting to emerge in New York City and which now, a couple years later, are booming industries.

43. Plaintiffs, as well as the rest of the fleet owners in New York City and around the country, learned of Capital One's partnership with Uber in 2014, conveniently right after the Plaintiffs agreed to enter into additional loan agreements with Capital One.

44. Though Plaintiffs were concerned and felt betrayed by the news, especially given the fact that Capital One had been their partner in loan originations since 2010, Capital One, through Dell'Aquilo, continued to represent to Plaintiffs that it was fully committed to the taxi medallion industry and would stand by its promises and representations to, among other things, renew and refinance all of the Loan Agreements.

45. Meanwhile, despite these promises and representations, after partnering with Uber, Capital One pulled the plug on its medallion financing, and as the leading lender in the New York

City market, immediately caused the value of medallions to plummet, destroyed liquidity, and put Plaintiffs and others similarly situated in a position to fail.

46. Recent news articles reveal Capital One's betrayal in action.⁵

47. Had Capital One been honest about its intentions to exit the medallion industry and not refinance the Loan Agreements, Plaintiffs could have refinanced their loans with many traditional lenders that were ready, willing, and able to finance Plaintiffs' medallion portfolio.

48. Ironically, it is Capital One's own actions that have led to the purported "defaults" under the Loan Agreements.

D. Standstill Agreements

49. In early 2016, prior to the maturity dates on the Loan Agreements, Capital One's Senior Director, Rick Knodel ("Knodel"),⁶ represented to Plaintiffs and their counsel, Ellen Walker of Granoff Walker & Forlenza, P.C., that Capital One would be offering various refinancing options for Plaintiffs to begin restructuring their medallion debt.

50. On April 1, 2016, in an effort to accommodate the negotiations which would ensue, and at the strong encouragement of Knodel, Plaintiffs entered into a standstill agreement with Capital One (the "First Standstill Agreement"), which extended the maturity date on the Loan Agreements to May 1, 2016.

51. On or around May 1, 2016, when it became clear that negotiations for a restructured agreement were still ongoing in late April, Plaintiffs entered into a second standstill agreement

⁵ A simple Google search uncovers articles written as recently as June 2016 with titles such as, "Capital One Is Offering Free Uber Rides to Card Members," and "How to get a free Uber ride using your Capital One card." *See Capital One Is Offering Free Uber Rides to Card Members*, FORTUNE (June 15, 2016), <http://fortune.com/2016/06/15/capital-one-uber/>; Avery Hartmans, *How to get a free Uber ride using your Capital One card*, BUSINESS INSIDER (June 15, 2016, 10:30 AM), <http://www.businessinsider.com/how-to-get-a-free-uber-ride-using-your-capital-one-card-2016-6>. Capital One and Uber's own respective websites reveal their partnership as well.

⁶ Knodel replaced Dell' Aquilo as Defendant's primary contact at Capital One.

(the “Second Standstill Agreement” and together with the First Standstill Agreement, the “Standstill Agreements”)⁷ with Capital One, this time extending the maturity date on the Notes to October 1, 2016.

52. During this time, Plaintiffs provided all of the documentation requested of them, including updated financials for the Borrower Entities as well as Plaintiffs’ own personal financial statements, and believed that Capital One was negotiating with them in good faith.

53. Moreover, during this time, the Plaintiffs engaged Bjorn Aaserod (“Aaserod”) of Cambridge Securities to work with them and Knodel on refinancing the loans at issue.

54. Aaserod sent emails to Knodel on numerous occasions to provide suggestions for a long-term agreement with Capital One, all of which went unanswered.

55. Immediately before the Second Standstill Agreement expired on October 1, 2016, Knodel assured Plaintiffs that a new standstill agreement was on its way.

56. Knodel also told Plaintiffs that Capital One would not consider them in default by reason of the maturity of the Loan Agreements, and that Plaintiffs should disregard any default letters that they received in the mail as the negotiations continued.

57. Plaintiffs relied on Knodel’s representations and promises as they awaited a proposal from Capital One to refinance their medallion debt.

58. In the meantime, the Borrower Entities continued making payments to Capital One in good faith, this time paying not only interest but also principal on the outstanding loans.

59. Unsurprisingly, Capital One accepted the payments, even after the expiration of the Second Standstill Agreement.

⁷ Plaintiffs and the Borrower Entities all entered into Standstill Agreements with Capital One that are materially the same.

60. Despite its repeated assurances to the contrary, Capital One ultimately refused to refinance the Loan Agreements.

61. As such, Plaintiffs did not pay the entire sum due under the Loan Agreements on October 1, 2016.

E. The 2016 Sale and Assignment Agreement and Mutual Release

62. On November 2, 2016, after the parties executed the Standstill Agreements and right before Capital One filed the Confession of Judgments and the five related actions, Action Funding, of which the Plaintiffs own 70%, entered into a Sale and Assignment Agreement with Capital One (the “Sale and Assignment Agreement”), whereby Action Funding sold and assigned its interests in certain loan agreements to Capital One for what amounted to essentially twenty cents on the dollar. *See* Sale and Assignment Agreement” at Exhibit “CC”.

63. Pursuant to the Sale and Assignment Agreement, Action Funding and Capital One entered into a mutual release agreement (the “Mutual Release”). *See* Mutual Release at Exhibit “DD”.

64. The only reason Plaintiffs agreed to this sale and assignment at such a steep discount was because Capital One agreed to, pursuant to the Mutual Release, release all claims against Plaintiffs relating to the Participation Agreement and the underlying Loan Agreements.

65. Capital One entered into the Mutual Release to, among other things, avoid claims of fraudulent inducement and other claims by Action Funding and Plaintiffs (collectively 70% owners of Action Funding) for its repeated misrepresentations, fraud and bad faith relating to its purported intent to refinance and restructure the Loan Agreements.

66. The Mutual Release contains broad release language, stating that Capital One released all of its claims against Plaintiffs arising under the Participation Agreement.

67. Specifically, the Mutual Release states that Capital One “hereby releases and forever discharges [Action Funding], and each of [Action Funding’s] officers, directors, members, employees, agents, subsidiaries, affiliates, attorneys, predecessors, successors, and assigns, and the successors and assigns of any such person or entity, from any and all actions, causes of action, suits, losses, liabilities, rights, debts, obligations, costs, expenses, liens, covenants, contracts, damages, controversies, agreements, promises, variances, trespasses, judgments, executions, demands and claims of any nature whatsoever, whether in law or equity, whether known or unknown, and any and all rights, duties, liabilities and obligations, by reason of any matter or cause arising out of, based upon, or in any manner connected with any transaction, event, circumstance, action, failure to act, or occurrence of any sort or type, which [Capital One] ever had, now has, or hereafter may have against [Action Funding], from the beginning of time to the date of this Release, arising out of or in connection with the Participation Agreements.” *See* Exhibit “DD” at ¶ 3.

68. Paragraph 4 of the Mutual Release states that “[t]his Release is intended to and does cover any and all claims and facts, whether known to [Capital One] at the time of the execution of this Release or not, which have resulted or hereafter may result or be discovered regarding, related to or arising from the Participation Agreements. [Capital One] hereby waives any right or claim that might arise as a result of such different or additional claims or facts.” *See* Exhibit “DD” at ¶ 4.

69. “Participation Agreements” is defined in the Sale and Assignment Agreement to include the Participation Agreement entered into in late 2010 and attached as Exhibit “DD”.

70. Plaintiffs each own a 35% ownership interest in Action Funding and are therefore “officers, directors, members, employees, [and/or] agents” of Action Funding. *See* Exhibit “DD” at ¶ 3.

71. On November 2, 2016, when Capital One entered into the Mutual Release, the Loan Agreements had reached their extended October 1, 2016 maturity date and were in “default.”

72. The Mutual Release specifically “releases and forever discharges” liabilities and debts owed to Capital One by Action Funding and its officers, directors, members, employees and agents, which includes Plaintiffs. *See* Exhibit “DD” at ¶ 4.

73. Because the Loan Agreements at issue were guaranteed by Plaintiffs and came about as a direct result of the Partnership Agreement, Capital One waived, released, and relinquished “any and all actions, causes of actions, [or] suits” against Plaintiffs arising out of the debts owed to Capital One under the Loan Agreements. *See* Exhibit “DD” at ¶ 4.

74. The Mutual Release provides that “[i]n the event that any Party breaches any part of Sections 1 through 4 of this Release, the non-breaching party shall be entitled to seek any and all equitable and legal relief provided by law and to recover from the breaching party, in addition to any other relief provided by law, reasonable and documented costs and expenses (including reasonable attorneys’ fees and expenses).” *See* Exhibit “DD” at ¶ 10.

F. Capital One’s Bad Faith Litigation Has Caused Significant Harm

75. Despite the continued negotiations between Plaintiffs and Capital One, all of which Plaintiffs believed to be in good faith, Capital One filed the Confession of Judgments and the *five* other actions against Plaintiffs and related entities, making it abundantly clear that Capital One never intended to enter into a restructured, long-term agreement and only wanted to string

Plaintiffs along until it was finally time to cut off one of its last remaining ties to the New York City taxi medallion market.

76. Capital One, Action Funding, and Plaintiffs entered into the Participation Agreement in 2010.

77. After the Participation Agreement was entered into, Plaintiffs increased Capital One's taxi medallion portfolio by nearly eighty million dollars (\$80) from Plaintiffs' efforts during the years 2013-2014 alone.

78. However, after partnering with Uber, the taxi industry's biggest competitor, Capital One decided to completely bail on the taxi industry and refused to restructure and refinance the Loan Agreements as Dell'Aquilo and Knodel had previously promised Plaintiffs.

79. In negotiating the alleged "defaults" under the Loan Agreements, which were ultimately caused by Capital One's own fraud, two separate Standstill Agreements were entered into on April 1, 2016 and May 1, 2016.

80. After the expiration of the second Standstill Agreement on October 1, 2016, Capital One continued to accept payments from Plaintiffs and the Borrower Entities.

81. On November 2, 2016, Capital One, Action Funding, and Plaintiffs negotiated and entered into the Sale and Assignment Agreement and Mutual Release.

82. Plaintiffs only agreed to the Sale and Assignment Agreement based on the Mutual Release, which released all of Capital One's claims, "whether known or unknown," against Plaintiffs and Action Funding relating to the Partnership Agreement, which includes all the underlying Loan Agreements at issue in the Confession of Judgments and all of Capital One's other claims against Plaintiffs.

83. Plaintiffs would not have agreed to the Sale and Assignment Agreement but for the Mutual Release and their good faith belief that Plaintiffs and Action Funding were being released from all of Capital One's purported claims relating to the Participation Agreement and the Loan Agreements.

84. After the Mutual Release was entered into on November 2, 2016, Capital One immediately breached that agreement and began an all-out litigation attack on Plaintiffs that gives a flavor of Capital One's bad faith and fraudulent conduct:

- a. On November 11, 2016, less than two weeks after the Mutual Release was signed, Capital One filed two § 3213 motions for summary judgment in lieu of complaint based on similar loans to the Loan Agreements at issue in this case. (Index Nos. 655934/2016; 655935/2016).
- b. On November 14, 2016, Capital One filed two fraudulent conveyance complaints against Plaintiffs. (Index Nos. 655949/2016; 655951/2016).
- c. On November 16, 2016, Capital One filed a complaint for replevin. (Index No 656019/2016).
- d. Also on November 16, 2016, Capital One entered the thirteen (13) Confession of Judgments at issue in the instant case.
- e. On December 15, 2016, Capital One filed a Motion for Pre-Judgment Order of Attachment and Temporary Restraining Order against Defendants. (Index No. 655935/2016, Doc. No. 13).
- f. On December 20, 2016, Capital One filed another Motion for Pre-Judgement Order of Attachment and Temporary Restraining Order. (Index No. 655934/2016). (together the "Capital One Actions")

85. All of the Capital One Actions came after months of constant promises and reassurances from Dell'Aquilo and Knodel that Capital One would restructure and refinance the Loan Agreements, came after the Standstill Agreements had been entered into, and came after Capital One, Action Funding, and Plaintiffs had entered into the Mutual Release that specifically released Plaintiffs from all the claims subsequently filed by Capital One.

86. Capital One fraudulently induced Plaintiffs to enter into the Participation Agreement and subsequent Loan Agreements and then proceeded to string Plaintiffs along as Capital One unlawfully exited the taxi medallion industry to partner with the taxi industry's biggest competitor.

87. Now, Capital One is attempting to litigate Plaintiffs into submission by filing a half dozen litigation actions demonstrating Capital One's bad faith, which has had a severe negative effect on Plaintiffs' credit ratings, lines of credit, and, among other things, their ability to maintain their business operations.

88. The Capital One Actions against Plaintiffs are all part of an unethical and unrelenting scheme to harm not only Plaintiffs, but Plaintiffs' businesses and staff (office staff, mechanics, etc.) and also the medallion taxicab drivers who rely upon their weekly checks and medical insurance to support themselves and their families.

89. Capital One's actions of partnering with Uber and pulling the plug on its medallion financing immediately caused the value of medallions to plummet, destroyed liquidity, and put Plaintiffs and others similarly situated in a position to fail.

90. Moreover, Capital One's actions will have a ripple effect on the entire medallion industry and trigger a domino effect of defaults between medallion owners and other lenders.

91. With the value of the medallions plummeting based on this conduct, medallion owners will not be able to sell and/or use all their medallions and, as a result, will not be able to make their loan payments to their lending institutions.

92. By way of example, Plaintiffs had a long-standing business relationship with Banco Popular and had reached an agreement on all terms agreed upon to refinance a loan relating to a taxi medallion mini fleet.

93. However, because of Capital One's actions and the improper judgments obtained by Capital One, Banco Popular informed Plaintiffs that they cannot move forward on the deal for the mini fleet.

94. But for Capital One's prepayment penalties and recent actions, Plaintiffs would have been able to refinance this mini fleet.

G. Capital One's Post-Judgment Discovery

95. On December 16 and 21, 2016, Capital One issued many subpoenas requiring:

- a. Plaintiff Tony Georgiton to appear for a deposition on January 11, 2017;
- b. Plaintiff Basil Messados to appear for a deposition on January 12, 2017; and
- c. Plaintiff Tony Georgiton to produce ten (10) categories of documents on or before December 28, 2016.
- d. Plaintiff Basil Messados to produce ten (10) categories of documents on or before December 28, 2016.
- e. Plaintiff Georgiton to produce eleven (11) categories of documents, answer interrogatories, and appear for deposition on January 19, 2017.
- f. Plaintiff Messados to produce eleven (11) categories of documents, answer interrogatories, and appear for deposition on January 20, 2017.

See December 16 and 21, 2016 Subpoenas at Exhibits EE, FF, GG, HH, II, and JJ.

96. Capital One's post-judgment discovery is inappropriate because the Confession of Judgments should never have been entered in the first place and should now be vacated.

FIRST COUNT
(Breach of Contract)

97. Plaintiffs repeat and re-allege each of the foregoing allegations, as if set forth at length herein.

98. Plaintiffs performed each of their obligations under the Participation Agreement, the Sale and Assignment Agreement, and the Mutual Release.

99. Plaintiffs are beneficiaries under the Mutual Release.

100. The Mutual Release explicitly releases Action Funding's "officers, directors, members, employees, [and/or] agents" in their individual capacities. *See* Exhibit "DD" at ¶ 3.

101. Accordingly, the circumstances indicate that Capital One and Action Funding intended Plaintiffs, as individuals, to benefit from the Mutual Release.

102. Capital One breached its obligations to Plaintiffs by filing the Confession of Judgments for debts and obligations for which it had released Plaintiffs.

103. As a result of Capital One's breach of its contractual obligations to Plaintiffs, Plaintiffs have suffered damages by being subject to unlawful Confession of Judgments.

SECOND COUNT
(Fraudulent Misrepresentation)

104. Plaintiffs repeat and re-allege each of the foregoing allegations, as if set forth at length herein.

105. Capital One, through its representative, Dell'Aquilo, made several affirmative misrepresentations that Capital One would refinance the Loan Agreements in an effort to induce the borrowers to transfer the financing of their medallions from other lenders to Capital One.

106. Upon information and belief, Capital One had no intention of upholding its promises and commitments to the taxi medallion industry.

107. Plaintiffs justifiably relied upon Capital One's misrepresentations.

108. As a result of their justifiable reliance on Capital One's misrepresentations, Plaintiffs have suffered damages.

109. Had the companies Plaintiffs guaranteed the Loan Agreements for remained with their prior lenders or been allowed to refinance with them, who to this day remain committed to

the New York City taxi medallion industry, Plaintiffs would not be facing the bare knuckles tactics that Capital One is taking.

THIRD COUNT
(Vacate Confession of Judgments)

110. Plaintiffs repeat and re-allege each of the foregoing allegations, as if set forth at length herein.

111. Pursuant to CPLR § 5240, Plaintiffs seek an Order declaring that Capital One's action in filing the Confession of Judgments was unlawful and in violation of the Mutual Release.

112. Accordingly, Plaintiffs seek an Order from this Court vacating the Confession of Judgments obtained by Capital One.

FOURTH COUNT
(Declaratory Judgment Vacating the Confession of Judgments)

113. Plaintiffs repeat and re-allege each of the foregoing allegations, as if set forth at length herein.

114. An actual and justiciable controversy presently exists between Plaintiffs and Capital One concerning the right of Capital One to have filed the Confession of Judgments against Plaintiffs.

115. Plaintiffs have no adequate remedy at law.

116. A judicial determination is necessary and required at this stage in order to adjudicate the parties' respective rights and obligations therein.

117. Pursuant to CPLR § 3001, Plaintiffs seek an Order declaring that Capital One's action in filing the Confession of Judgments was unlawful and in violation of the Mutual Release.

118. Accordingly, Plaintiffs seek an Order from this Court vacating the Confession of Judgments obtained by Capital One.

CONCLUSION

WHEREFORE, and as to each and every Count set forth above, Plaintiffs demand judgment in favor of Plaintiffs and against Capital One for one or more of the following forms of relief, or some combination thereof:

- a) An Order vacating the Confession of Judgments;
- b) A declaratory judgment declaring that Capital One's actions in filing the Confession of Judgments were unlawful;
- c) An Order prohibiting Capital One from engaging in any debt collection actions including, but not limited to, conducting post-judgment discovery against Plaintiffs related to the Confession of Judgments;
- d) Compensatory damages, together with interest unpaid and due and owing to Plaintiffs;
- e) Punitive damages;
- f) Costs and expenses including, but not limited to, reasonable attorneys' fees; and
- g) Any other relief as the Court may deem just and proper.

Dated: New York, New York
December 23, 2016

FOX ROTHSCHILD LLP

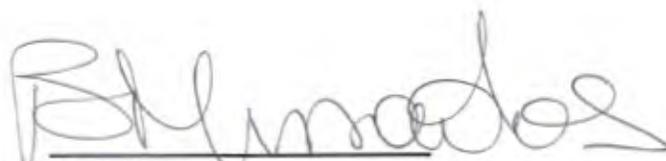
By: /s/ Brett A. Berman, Esq.
Brett A. Berman, Esq.
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Alexandra L. Sobol, Esq.
100 Park Avenue, Suite 1500
New York, New York 10017
(212) 878-7900
Attorneys for Plaintiffs

VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF QUEENS)

BASIL MESSADOS, being duly sworn, states:

I am the plaintiff herein and have personal knowledge of the facts alleged. I have read the foregoing Verified Complaint and know the contents thereof to be true, except as to those matters stated to be alleged upon information and belief, and as to those matters I believe them to be true.



Basil Messados

Sworn to before me this
23rd day of ~~November~~ December 2016



Notary Public

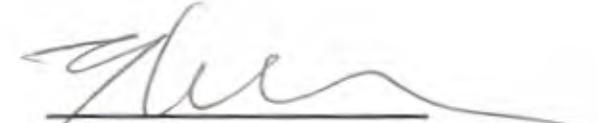
PETER G. COSMAS
Notary Public, State of New York
No. 01CO041523
Qualified in Nassau County
Commission Expires May 8, 2018

VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF QUEENS)

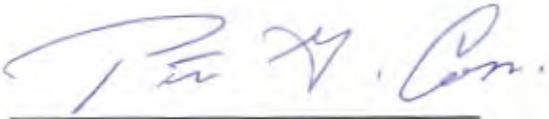
TONY GEORGITON, being duly sworn, states:

I am the plaintiff herein and have personal knowledge of the facts alleged. I have read the foregoing Verified Complaint and know the contents thereof to be true, except as to those matters stated to be alleged upon information and belief, and as to those matters I believe them to be true.



Tony Georgiton

Sworn to before me this
23rd day of ~~November~~ December 2016



Notary Public

JUDITH A. COSMIR
Notary Public, State of New York
No. 01CO6041523
Qualified in Nassau County
Commission Expires May 8, 2018