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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MARLIN & ASSOCIATES HOLDING LLC and MARLIN & ASSOCIATES SECURITIES LLC Plaintiffs, - against - THINK FINANCE, INC., Defendant.	17 CV _____ ( ) **COMPLAINT**

Plaintiffs Marlin & Associates Holding LLC and Marlin & Associates Securities LLC (collectively "Marlin"), as and for their complaint against Think Finance, Inc. and its affiliates ("Think Finance," the "Company," or "Defendant"), by their undersigned counsel, allege as follows:

INTRODUCTION

1. On July 1, 2016, Marlin and Defendant entered into an Engagement Agreement (the "Agreement"), pursuant to which Marlin agreed to provide financial advisory services to Defendant in connection with a refinancing of an expiring credit facility, as well as a possible equity transaction and/or a possible sale of the Company. A copy of the Agreement is attached as Exhibit 1.

2. Defendant's existing credit facility was expiring. Without a new facility, Defendant would no longer be able to make new loans, thereby putting Defendant's entire business at risk. No equity or other transaction was likely without a refinancing of the credit facility.

3. Under the Agreement, the parties agreed that as consideration for the services Marlin would provide to Think Finance, in addition to a monthly retainer fee and reimbursement for expenses, Think Finance would pay to Marlin a "Success Fee" for each successful transaction.

4. On or about March 21, 2017, after eight months of hard work under challenging circumstances, through Marlin's efforts and at Think Finance's direction, a Term Sheet and Letter of Intent were signed by Think Finance's affiliate and designee Circle of Nations Lending Authority ("Circle of Nations"), on the one hand, and BasePoint Capital LLC and Receivables Funding LLC (together "BasePoint"), on the other hand, to replace the existing facility in an aggregate amount of $175 million with the ability to increase the credit facility up to $250 million upon written request. The Transaction closed on or about May 10, 2017 (the "BasePoint Transaction").

5. Upon completion of the BasePoint Transaction, in accordance with the Agreement, Think Finance owed Marlin a Success Fee of $6 million plus reimbursement of expenses and two month's unpaid retainer fees.

6. Although Defendant admitted its contractual obligation to pay Marlin a Success Fee, Defendant nonetheless announced that it no longer wanted to pay Marlin the full Success Fee due or pay the balance due for retainers or expenses. Instead, Defendant unilaterally decided to pay Marlin $2 million – or one-third of the Success Fee to which the parties had agreed and

Marlin was unquestionably entitled. Defendant then sent payment of $2 million. Despite a well-documented contractual obligation, despite due demand, Think Finance has refused to pay Marlin the balance due.

7. Marlin deposited the check from Think Finance reserving its rights to collect the full Success Fee due as well as other past due amounts by including an explicit reservation of rights, pursuant to NYUCC § 1-308, in its endorsement. Marlin then sent to Think Finance a further invoice for the remaining amounts due after crediting the partial payment, to which Think Finance neither responded nor objected.

8. Think Finance's refusal to pay Marlin the full amount of the Success Fee together with other fees and expenses due to Marlin, as agreed by the parties, constitutes a material breach of the terms and provisions of the Agreement and its failure to object in any way to Marlin's invoice is an account stated.

9. Marlin brings this action against Think Finance to recover the full amount it is owed under the Agreement as well as its reasonable attorney's fees, to which Think Finance expressly agreed in the Agreement.

THE PARTIES

10. Marlin & Associates Holding LLC is a limited liability company duly organized under the laws of the State of New York, with a principal place of business located at 570 Lexington Avenue, 48th Floor, New York, New York 10022.

11. Kenneth Marlin is a New York resident and is the sole Member of Marlin & Associates Holding LLC.

12. Marlin & Associates Securities LLC is a limited liability company duly organized under the laws of the State of New York, with a principal place of business located at 570 Lexington Avenue, 48th Floor, New York, New York 10022.

13. Marlin & Associates Holding LLC is the sole Member of Marlin & Associates Securities LLC.

14. Think Finance is not incorporated under the laws of the State of New York, is not authorized to do business in New York, nor does it have its principal place of business, nor any place of business, in New York.

15. Upon information and belief, Think Finance, Inc. is a corporation organized under the laws of the State of Delaware, with a principal place of business located at 4150 International Plaza, Suite 400, Fort Worth, Texas 76109.

JURISDICTION AND VENUE

16. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(a)(1) because there is complete diversity among the parties and the amount in controversy exceeds $75,000.

17. Venue is proper in this Court pursuant to Section 14 of the Agreement which provides for exclusive jurisdiction in the "courts of the State of New York and the United States District Court for the Southern District of New York." (Ex. 1, § 14). Venue is also proper pursuant to 28 USC § 1391(b)(2).

18. Think Finance expressly consented to personal jurisdiction in the "courts of the State of New York and the United States District Court for the Southern District of New York" in the Agreement.

FACTUAL ALLEGATIONS

19. Marlin is a boutique investment bank and strategic advisory firm that advises primarily middle-market firms on mergers, acquisitions and capital raising.

20. Think Finance and its affiliates are in the business of making so-called "payday" loans, installment loans and other subprime consumer loans at high interest rates together with affiliated Native American tribes, including the Otoe-Missouria Tribe of Indians and the Tunica Biloxi Tribe of Louisiana, among others.

21. Defendant claims it is not a direct lender and is instead only a loan servicer. However, through a series of affiliated companies, Defendant is not only the primary loan servicer; it also solicits the loans; arranges and manages the entire loan process including marketing, loan origination, underwriting, loan servicing and reporting and compliance; and ultimately owns most of the economic interest; bears most of the risk of losses; and reaps the vast majority of the financial gain from these high-interest consumer loans.

22. Defendant's activities incorporate negotiating with the Native American tribes; arranging for and servicing a credit facility as a source of loan capital; utilizing Defendant's proprietary database to send solicitations to a wide range of subprime consumers in approximately 46 states; soliciting loans through its website; providing and operating a technology platform supporting loan origination and processing; underwriting and risk management; servicing, tracking the loan payments; and guaranteeing a financial return to the providers of the credit facility.

23. Without a credit facility, there would be no capital to make loans. Without a credit facility, no one would be interested in making an equity investment in or acquiring the Defendant. In short, without a credit facility Defendant's business would not survive.

24. Think Finance operates via a web of affiliated legal entities including a credit "warehouse" that draws from the credit facility, corporations established by Native American tribes and certain entities headquartered in the Cayman Islands.

Think Finance

25. Think Finance was founded in 2001 under its original name, Pay Day One Holdings, LLC. Originally a Texas limited liability company, Pay Day One Holdings, LLC subsequently became a Delaware limited liability company on or about April 26, 2004. On September 1, 2005, Pay Day One Holdings, LLC became a Delaware corporation known as Pay Day One Holdings, Inc.

26. On August 3, 2007, Pay Day One Holdings, Inc. changed its name to ThinkCash, Inc. On April 27, 2010, ThinkCash, Inc. changed its name to Think Finance, Inc.

27. In May 2014, Think Finance spun off certain of its businesses into Elevate Credit, Inc.

28. In September 2010, Think Finance, in a press release accessible at http://www.businesswire.com/news/home/20100923005165/en/Finance-Secures-90-Million-Credit-Facility-Support), announced that it had "secured a $90 million credit facility from Victory Park Capital Advisors ("VPC") an investment firm with a focus on alternative credit that provides privately negotiated debt and equity capital solutions (the "VPC Facility").

29. Funds from the VPC Facility were used as capital for a credit "warehouse" called GPL Servicing Ltd ("GPLS"), a Cayman Islands limited liability company that is effectively operated and controlled by Defendant, such that, until recently, the financial statements of GPLS and the VPC Facility were consolidated with those of Defendant.

30. GPLS then uses these funds from the VPC Facility to provide capital needed to originate consumer loans made by Think Finance and its affiliates. The process is complex: consumers seek loans via Defendant's website; Defendant approves and underwrites the loans; Defendant's affiliate GPLS lends the required funds (briefly) to companies that have been set up by Native American tribes, who are permitted to make high-interest consumer loans without being subject to state lending laws and regulations, including usury laws. Typically, the tribes hold the consumer loans for only a brief period (e.g., two days) before selling equity participation interests that represent almost the entirety of the economics in the consumer loans to GPLS (using funds drawn from the VPC Facility). The tribes earn an immediate profit.

31. In using this structure, Defendant asserts that the tribal entities own the consumer loans at the time they are made (albeit briefly) and that GPLS owns equity participation interests in the loans. Defendant also asserts that GPLS passes the majority of the loans' economic interests to Defendant in return for a guarantee of a fixed return on the funds it has committed to fund consumer loans.

32. At the time Defendant engaged Marlin, it was under tremendous pressure: the VPC Facility was set to expire on March 31, 2017 and VPC had indicated that it would be unwilling to extend the VPC Facility upon the existing terms. (VPC ultimately decided not to provide any further funds whatsoever to Think Finance and its affiliates.) At the same time, consumers, states and other governmental agencies, including the Commonwealth of Pennsylvania and the Consumer Finance Protection Bureau, have alleged that Think Finance and certain of its affiliates are engaged in what is known as a "rent-a-tribe" scheme through which loans are made nominally by the tribes in an effort to skirt state usury laws, but in which Think Finance and its affiliates have the bulk of the economic risk as well as the majority of the

financial gain. Adding to this pressure, at about the time Defendant entered into the Agreement with Marlin, the Chippewa Cree Tribe of the Rocky Boy's Indian Reservation, Montana, one of the Defendant's largest clients, ceased doing business with Defendant.

33. The combination of the expiration of its credit facility, the lawsuits and loss of an important client made it challenging for Defendant to obtain new financing. Under this imminent threat to its business, Defendant engaged Marlin to help find a replacement source of capital.

34. At about this same time, in an attempt to insulate itself from the perception of unsavory lending practices, and in anticipation of a refinancing of the VPC facility (a clear prerequisite to its survival and any restructuring), Defendant began to contemplate another restructuring of its business – this time into new entities through which Think Finance would concentrate its activities going forward. Under the proposed new structure, Think Finance would transfer substantially all of its business and assets to new, affiliated entities except those related to existing loans or the existing VPC Facility and related structure. The new entities would be owned by the same owners of Think Finance and be managed by the same executive team as Think Finance and would continue to carry out loan servicing for the Native American Tribes now conducted by Think Finance – albeit under a somewhat different structure and under a new name "Cortex".

35. Defendant was advised that before it transferred assets to the new entities, it should prepare a solvency analysis. Defendant asked Marlin to assist in preparing such analysis, which Marlin did. The solvency analysis identified several areas that may require Defendant to have cash in the future including the cost of defending against several law suits as a well as the cost of possible judgments. Nevertheless, upon information and belief, Defendant plans to leave

only a bare minimum amount of cash in Think Finance and to rely on payments from its affiliated tribal entities to provide cash flow necessary to meet its future financial obligations. Defendant has characterized the likelihood of receiving all of these payments as low based upon its history with the Chippewa Cree Tribe of the Rocky Boy's Indian Reservation, Montana and other tribal entities. The solvency analysis also indicates that, without those cash payments, the Defendant would be unable to meet its future financial obligations.

36. Upon information and belief, Defendant has begun the process of establishing Cortex and plans to transfer substantially all of its business and assets – including its subprime consumer lending activity - to Cortex. The executives of Think Finance have already begun using Cortex email addresses and refer to the Cortex platform on their website.

The Agreement

37. On or about July 1, 2016, Marlin and Think Finance entered into the Agreement, which states in part that Think Finance would engage Marlin as Think Finance's "exclusive financial and strategic advisor in connection with a possible Transaction." Marlin agreed to provide "customary financial advisory services to [Think Finance] in connection with a possible Transaction." (Ex. 1, § 1).

38. The Agreement provides that its term would begin on July 1, 2016 and extend for a duration of a minimum of six months and continue until (i) the Agreement is canceled in writing by Think Finance or Marlin and (ii) all monies due to Marlin under the Engagement Agreement have been paid in full. (Ex. 1, § 3). Further, the Agreement states that the Term of the Agreement will be "automatically extended as long as active discussions concerning a Transaction are ongoing" and the "Term extension will end only when such discussions with all potential Purchasers are terminated." (Id.).

39. During the term of the Engagement, Think Finance agreed to pay Marlin a retainer fee of $20,000 per month, and that such payments would be credited against the gross amount of a Success Fee (described below).

40. In addition to the monthly retainer fee, Think Finance also agreed to reimburse Marlin for its reasonable expenses and to compensate Marlin with a "Success Fee" for completed Transactions. (Ex. 1, § 5.2). Think Finance further agreed to pay all compensation due to Marlin, including the Success Fee, to Marlin simultaneously with the consummation of a transaction.

41. Because Think Finance was exploring, with Marlin's assistance, both equity investments and the refinancing of the VPC Facility, the Agreement provides for Defendant to pay Marlin a Success Fee for a variety of transactions including specifically for this refinancing, to the extent it is consummated more than 120 days after the date of the Agreement – which it was:

> For (i) a Non Pre-existing VPC Refinancing Transaction ...: 5.0% of the amounts of any facilities refinancing the VPC Facility except for any amounts contributed to or invested by [Think Finance], any of its Affiliates, or any of their respective equity holders, directors, executive officers or any of their respective trusts or other estate planning entities; provided, however, that in no event shall the Success Fee pursuant to this Section 5.2(C) exceed $6,000,000.

(Ex. 1, § 5.2).

42. "Transaction" is defined in the Section 2 of the Agreement and captures a broad array of transactions specifically including "the refinancing of the existing Victory Park Capital ("VPC") financing facility ("VPC Facility"), which the Company or any of its Affiants will continue to act as the sole or primary servicers by any persons or entities…" with certain exceptions for pre-existing relationships. (Ex. 1, § 2(b)).

43. The Agreement defines Affiliate broadly, to include "any entity directly or indirectly controlling, controlled by, or under common control with such entity." (Ex. 1 §13).

44. The Agreement also provides that "[f]ollowing the termination of the Agreement, Marlin will be entitled to a Success Fee if [Think Finance or its affiliates] consummates or enters into any agreement that subsequently results in a Transaction within twelve (12) months following the effective time of such termination (the "Tail Period"), regardless of whether or not [Think Finance] requests Marlin's services during the Tail Period." (Ex. 1, § 5).

45. The Agreement contains no other condition precedent to Marlin's earning the Success Fee.

The BasePoint Transaction

46. On or about March 21, 2017, through Marlin's efforts and at Think Finance's direction, a Term Sheet and Letter of Intent were signed by Think Finance's affiliate and designee Circle of Nations, on the one hand, and BasePoint, on the other hand, to refinance the VPC Facility in an amount of $175 million with the ability to increase the credit facility up to $250 million upon written request. The BasePoint Transaction closed on or about May 10th 2017.

47. The BasePoint Transaction was precisely the transaction that the parties contemplated: a new institutional investor credit facility to the Warehouse tribal lender, which in turn would loan the funds to the tribes, and Think/Cortex would service the loans as well the new facility.

48. Marlin played a crucial role in introducing BasePoint to Think Finance and Circle of Nations and in bringing together the transaction. Without Marlin's involvement, Think Finance would have been unable to initiate, or close, this transaction.

49. Although the Agreement unequivocally requires Think Finance to pay Marlin the Success Fee upon consummation of a Transaction alone, Marlin put forth far greater services than was required. Among other things, Marlin:

a. coordinated with Think Finance's staff and built a detailed model of its client portfolios and its business (a particularly challenging task given the number of parties involved and the complexities of its business model), which took months to complete;

b. created a 100+ slide management presentation that described Think Finance's market, the business, the complex relationships among the parties, and the investment and lending opportunities;

c. contacted 150 potential credit investors and had detailed conversations with approximately 45 of these parties that showed preliminary interest and sent detailed materials to the more than 20 parties that executed NDAs and received the detailed materials that Marlin helped to prepare); and

d. worked with each of those 20-plus parties to help them better understand the opportunity.

50. All of this led to Marlin presenting the BasePoint opportunity, a qualified firm providing a new credit facility of an initial $175 million and as much as $250 million upon request (far larger than the VPC Facility it was replacing), under terms to which Think Finance agreed.

51. In addition, Marlin advised Think Finance on the structure and approach to restructure and prepare for a future potential separation of the newly created Cortex platform, and assisted Think Finance in the preparation and presentation of materials for the required

solvency opinion; aided in coordinating and responding to due diligence review questions; made trips to meet with Circle of Nations and the consumer lending entities and more. In fact, Marlin became so integral to Think Finance's operations that it even helped Think Finance preserve an important client relationship by helping to create a presentation and developing a strategy to convince that client, MobiLoansLLC, to continue participating and continuing to use Think Finance as a service provider.

52. On April 12, 2017, after the Term Sheet and Letter of Intent were signed by Circle of Nations and BasePoint but before the transaction closed, Martin Wong, Think Finance's Chief Executive Officer, emailed Jonathan Kaufman, the Marlin investment banker leading the Think Finance engagement, purporting to terminate the Agreement effective March 31, 2017. Mr. Wong phrased his statement as one "to confirm our conversation of March 30 wherein I informed you of our decision to terminate the Engagement Agreement between Marlin & Associates and Think Finance, effective March 31, 2017."

53. Mr. Kaufman responded to Mr. Wong within minutes, establishing that this was the first he was hearing of a purported termination and that the Agreement did not allow termination under these circumstances because Section 3 of the Agreement provides that its Term was automatically extended since active negotiations concerning the BasePoint Transaction were ongoing (Ex. 1, § 3). Further, the Agreement could not be terminated until all fees due to Marlin have been paid.

54. There has been no further communication from Defendant on this issue and Marlin is not aware that there is any further dispute that Defendant's purported termination was ineffective. Defendant would not escape of any of its obligations even if it could have properly terminated the Agreement on April 12, 2017. The Agreement clearly provides that "[f]ollowing

the termination of the Agreement, Marlin will be entitled to a Success Fee if [Think Finance or its affiliates] consummates or enters into any agreement that subsequently results in a Transaction within twelve (12) months following the effective time of such termination (the "Tail Period") regardless of whether or not [Think Finance] requests Marlin's services during the Tail Period." (Ex. 1, § 5).

55. Under the terms of the Agreement, the Success Fee was payable by Defendant to Marlin "simultaneously" with the consummation of the BasePoint Transaction, which occurred on May 10, 2017.

56. Prior to the BasePoint Transaction's closing, Marlin discussed the fee and the fee calculation with Defendant's CFO and CEO. Defendant voiced no objection to the fee or the method of calculation, other than a vague reference to a potential future conversation. Marlin then duly invoiced Think Finance for the Success Fee of $6,000,000 plus unreimbursed expenses and unpaid retainer fees, as agreed in the Agreement, with such amounts to be paid by Defendant to Marlin immediately upon closing of the Transaction. The Agreement called for a Success Fee of 5.0 % of the total financing – which would have resulted in a Success Fee of as much as $12.5 million less retainers paid. Because the Agreement caps Marlin's Success Fee at $6 million, Marlin invoiced the reduced sum to $6,000,000.

57. Following the May 10, 2017 closing of the Transaction Marlin again invoiced Defendant.

Think Finance's Breach of the Agreement

58. On May 17, 2017, after repeated inquiries by Marlin to Defendant as to the status of the payment to Marlin for the Success Fee that was due on May 10th, Mr. Wong informed Marlin that, while admitting that Marlin was due a Success Fee as a result of the BasePoint

Transaction, he rejected the amount of Marlin's invoice. Mr. Wong informed Marlin that Defendant had unilaterally decided that Marlin's Success Fee should be $2 million rather than the contractually mandated $6 million. The next day Marlin received a check from Think Finance in the amount of $2,000,000, representing 33 percent of the Success Fee that was contractually due. Copies of the front and back of the check, drawn on the account of Think Finance's affiliate TC Loan Service LLC, are attached as Exhibit 2. The check contained a blatantly false handwritten note reading, "Paid in Full for Services."

59. Pursuant to Section 5 of the Agreement, Marlin has a lawful right to the full Success Fee.

60. Think Finance has no lawful basis for unilaterally declaring a one-third payment on an outstanding balance as "Paid in Full."

61. On May 18, 2017, Marlin deposited the check under protest, without prejudice, and with a full reservation of rights. Marlin's endorsement provided that it was: "Without prejudice, under protest, with reservation of all rights to recover the entire $6 million fee that Think Finance Inc. owes to Marlin & Associates pursuant to the parties' Agreement of July 2016." (Ex. 3).

62. On or about May 22, 2017, Marlin's Managing Member, Kenneth Marlin, emailed Mr. Wong, demanding full payment of the outstanding amounts due to Marlin pursuant the Agreement. Mr. Marlin further detailed Marlin's extensive efforts on behalf of Think Finance that lead to the BasePoint Transaction. Mr. Marlin followed up with two phone calls with Mr. Wong – to no avail – and with attempts to reach several Think Finance Board members – who declined to be involved. Mr. Wong refused to pay the full contractually mandated Success Fee for the BasePoint Transaction as per the Agreement.

63. To date, Think Finance has refused to pay the remaining balance of the Success Fee or other fees due to Marlin.

64. On or about June 1, 2017, Marlin sent Think Finance an updated invoice for the balance of the success fee due from Think Finance, after accounting for the $2 million partial payment. A copy of the invoice is attached as Exhibit 3.

65. Think Finance ignored the June 1 invoice and has continued to refuse to pay the outstanding balance owed to Marlin for the BasePoint Transaction.

66. Think Finance has neither objected nor responded to Marlin's June 1 invoice.

67. Marlin commenced this action to recover the full sums it is lawfully owed under the Agreement, including reasonable attorney's fees, which Think Finance expressly agreed the the prevailing party should receive in connection with an action arising under the Agreement.

AS AND FOR A FIRST CAUSE OF ACTION
(Breach of Contract)

68. Marlin repeats and realleges each and every allegation set forth in paragraphs 1 through 67 as if fully set forth herein.

69. Marlin and Think Finance entered into the Agreement on or about July 1, 2016.

70. Marlin agreed to provide financial and strategic advisory services to Think Finance.

71. Think Finance agreed to pay Marlin a Success Fee equal to 5.0% of the total amounts of a non-pre-existing financing transaction, but in no event could the Success Fee exceed $6,000,000.00.

72. Marlin performed the entirety of its obligations under the Agreement

73. As a result of the successful BasePoint Transaction, Marlin was entitled to a $6,000,000.00 Success Fee under Section 5.2 of the Agreement.

74. To date, Think Finance has paid Marlin less than one third of the total amounts to which Marlin is contractually entitled and has refused to pay the amounts due.

75. Think Finance has breached the Agreement by failing to pay the remaining $4,042,010.27 owed to Marlin, as specifically provided for in the Agreement.

76. As a direct and proximate result of Think Finance's breach of the Agreement, Marlin has been damaged in an amount of at least $4,042,010.27.

77. Accordingly, Marlin is entitled to damages from Think Finance in an amount no less than $4,042,010.27, together with pre- and post-judgment interest as provided for in Section 15 of the Agreement, which states, "For any payment not received by Marlin within 45 days of the due date, interest will accrue at the at the one-year LIBOR rate plus ten percent (10%) per year or the highest rate permitted by law…", along with reasonable attorneys' fees and expenses related to this action, for which the Agreement also expressly provides. As of the filing of this Complaint, the current one-year LIBOR Rate is 1.74% making the total interest rate on outstanding balances 11.74%.

AS AND FOR A SECOND CAUSE OF ACTION
(Account Stated)

78. Marlin repeats and realleges each and every allegation set forth in paragraphs 1 through 77 as if fully set forth herein.

79. For services Marlin performed on behalf of Think Finance, Marlin duly sent invoices to Think Finance, in the total amount of $6,000,000.

80. On or about June 1, 2017, Marlin sent Think Finance an updated invoice detailing the remaining outstanding balance of $4,042,010.27

81. At no time did Think Finance object to or complain about the June 1 invoice.

82. Think Finance has not remitted the full amounts due, nor any further amounts since the $2,000,000 payment on May 17, 2017.

83. An account has been stated.

84. Marlin has been damaged by Think Finance in the amount of at least $4,042,010.27.

85. Marlin is therefore entitled to damages from Think Finance in an amount no less than 4,042,010.27, together with pre- and post-judgment interest as called for in the Agreement of the one-year LIBOR rate (1.74%) plus ten percent per year, along with reasonable attorneys' fees and expenses related to this action.

AS AND FOR A THIRD CAUSE OF ACTION
(Quantum Meruit)

86. Marlin repeats and realleges each and every allegation set forth in paragraphs 1 through 85 as if fully set forth herein.

87. The Success Fee mandated by the Agreement is fair compensation for the work contemplated by the Agreement, and the value created by Marlin's services to Defendant.

88. As a result of Defendant's acceptance of the fruits of Marlin's considerable efforts, and its failure to pay Marlin the value of its services, Marlin has lost significant compensation which is payable to Marlin in quantum meruit.

89. The Agreement's Success Fee is customary for the work performed.

90. Marlin seeks damages equal to the fair and reasonable value of Marlin's services and lost compensation, in an amount to be determined at trial, but in no event less than $4,042,010.27.

AS AND FOR A FOURTH CAUSE OF ACTION
(Unjust Enrichment)

91. Marlin repeats and realleges each and every allegation set forth in paragraphs 1 through 90 as if fully set forth herein.

92. Defendant has realized the benefit of being able to continue its business and proceed with its reorganization though Marlin's extensive efforts.

93. Defendant has refused to pay Marlin for the value of its services, and has therefore enriched itself at Marlin's direct expense.

94. Equity and good conscience militate against permitting Defendant to retain the monies it has received as a result of these activities, which rightfully belong to Marlin.

95. As a result of Defendant's failure to pay Marlin for the value of its services, Marlin has been damaged and Defendant has been unjustly enriched to the extent that money Defendant received was not paid to Marlin but was instead retained by Defendant.

96. Marlin is therefore entitled to restitution of the monies that Defendant rightfully owes to it, in an amount to be determined at trial, in no event less than $4,042,010.27.

WHEREFORE, Marlin respectfully request that this Court enter judgment in its favor and against Defendant as follows:

(A) On the First Cause of Action damages in an amount of at least $4,042,010.27, plus 11.74% interest accruing from 45 days after the closing of the BasePoint Transaction;

(B) On the Second Cause of Action damages in an amount of at least $4,042,010.27, plus 11.74% interest accruing from 45 days after the closing of the BasePoint Transaction;

(C) On the Third Cause of Action damages in an amount of at least $4,042,010.27;

(D) On the Fourth Cause of Action damages in an amount of at least $4,042,010.27;

(E) Marlin's reasonable attorneys' fees and expenses associated with filing and prosecuting this action; and

(F) Such other and further relief as this Court may deem just and proper.

Dated: New York, New York
June 30, 2017

COHEN TAUBER SPIEVACK & WAGNER P.C.

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