Filed in District Court
State of Minnesota
12/2/2024 5:44 PM

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF CARVER FIRST JUDICIAL DISTRICT

My Pillow, Inc.; Michael J. Lindell; Lindell Media LLC; MP Air LLC; Lindell Technologies, LLC; Nutrajoe, LLC; MP Distribution, LLC; Lindell Properties, LLC; Lindell Publishing, LLC; Mike Lindell Products LLC; Vocl LLC; My Pillow Canada, Inc.; Lindell Services, LLC; SB Purchase, LLC; My Pillow Logistics, LLC; NJ Purchase, LLC; Mystore Studio, LLC; V-Investment, LLC; Prior Lake 40 Acres, LLC; and MP International Distribution, LLC, Plaintiffs, v. Cobalt Funding Solutions; Sam Berger; Shawn Rodgers; Streamline Advance; and John and Jane Does, Defendants.	§	Civil Action No. _____ **COMPLAINT** **Jury Requested**

INTRODUCTION

This is an action for violations of the Racketeer Influenced and Corruption Organizations Act, 18 U.S. C. §§ 1961-68 ("RICO") brought by Plaintiffs My Pillow, Inc. ("My Pillow"); Michael J. Lindell ("Lindell"); as well as Lindell Media LLC; MP Air LLC; Lindell Technologies, LLC; Nutrajoe, LLC; MP Distribution, LLC; Lindell Properties, LLC; Lindell Publishing, LLC; Mike Lindell Products LLC; Vocl LLC; My Pillow Canada, Inc.; Lindell Services, LLC; SB Purchase, LLC; My Pillow Logistics, LLC; NJ

Filed in District Court
State of Minnesota
12/2/2024 5:44 PM

Purchase, LLC; Mystore Studio, LLC; V-Investment, LLC; Prior Lake 40 Acres, LLC; and MP International Distribution, LLC (the latter together the "Other Entities"); against Defendant Cobalt Funding Solutions, an alleged merchant cash advance company (hereinafter "Cobalt" or "the MCA"); Defendant Sam Berger ("Berger"), who is associated with Cobalt; Defendant Shawn Rodgers ("Rodgers"), who introduced Lindell to Cobalt and brokered the transaction at issue while acting on behalf of Defendant Streamline Advance ("Streamline"); and John and Jane Doe Investors, Members, Owners, and/or Funding Partners in Cobalt (and all of the Defendants together are "the Enterprise" under RICO law).

This RICO action is based on a so-called "Standard Merchant Cash Advance Agreement" dated September 16, 2024 (the "Agreement") pursuant to which Cobalt purportedly paid funds to allegedly purchase My Pillow's future receivables at a discount and My Pillow agreed to repay Cobalt through daily payments.

While couched as the purchase of future receivables, the Agreement's terms and conditions, as well as the Defendants' actions since that time, demonstrate that despite the disclaimers in the Agreement and the incorporated guaranty, no actual sale of receipts ever took place, and the form Agreement is merely a sham intended to evade the applicable usury law.

Cobalt has no risk in the transaction because My Pillow, as the borrower, always remained liable for the entire debt, as did the Other Entities (incorrectly identified as additional "merchants" under the Agreement), and Lindell (as the purported guarantor), all

Filed in District Court
State of Minnesota
12/2/2024 5:44 PM

of whom or which bore the entire risk of the non-payment of any My Pillow receivables and all of whom or which remained on the hook for the entire amount at issue. As a result, Cobalt never made a bona fide purchase of My Pillow's receivables under the Agreement and the transaction is, in reality, a usurious loan.

Specifically, My Pillow and the Other Entities borrowed (and Lindell allegedly guaranteed) $1,559,510.87, with daily payments of $45,225.82, which yields a total amount to be paid of $2,261,290.76. Given those sums, My Pillow has been charged an interest rate of **409.1%**, which is many times greater than the maximum interest rate permitted under the applicable state usury law (that is, New York).

Not only that, but Cobalt took an additional $124,760.87 upfront as a so-called "origination fee" to purportedly "cover underwriting and the ACH debit program, as well as related expenses." That "fee" represented an even greater amount of hidden interest. As a result, this transaction is an illegal, usurious loan.

Plaintiffs have now learned that the arrangement with Cobalt was made based on Defendants' concerted misconduct and fraudulent statements, that the entire nature of the transaction was misrepresented, that the loan was usurious, unconscionable, and thus unenforceable, and that the Defendants' coordinated misconduct violates RICO.

It is against this backdrop that Plaintiffs file this Complaint.

PARTIES

1. Plaintiff My Pillow is a Minnesota corporation with its principal place of business in Chaska, Minnesota.

Filed in District Court
State of Minnesota
12/2/2024 5:44 PM

2. Plaintiff Lindell is a Texas citizen and the founder of My Pillow.

3. Plaintiff Lindell Media LLC is a Minnesota LLC with its principal place of business in Minnesota.

4. Plaintiff MP Air LLC is a Minnesota LLC with its principal place of business in Minnesota.

5. Plaintiff Lindell Technologies, LLC is a Minnesota LLC with its principal place of business in Minnesota.

6. Plaintiff Nutrajoe, LLC is a Minnesota LLC with its principal place of business in Minnesota.

7. Plaintiff MP Distribution, LLC is a Minnesota LLC with its principal place of business in Minnesota.

8. Plaintiff Lindell Properties, LLC is a Minnesota LLC with its principal place of business in Minnesota.

9. Plaintiff Lindell Publishing, LLC is a Minnesota LLC with its principal place of business in Minnesota.

10. Plaintiff Mike Lindell Products LLC is a Minnesota LLC with its principal place of business in Minnesota.

11. Plaintiff Vocl LLC is a Minnesota LLC with its principal place of business in Minnesota.

12. Plaintiff My Pillow Canada, Inc. is a Minnesota corporation with its principal place of business in Minnesota.

Filed in District Court
State of Minnesota
12/2/2024 5:44 PM

13. Plaintiff Lindell Services, LLC is a Minnesota LLC with its principal place of business in Minnesota.

14. SB Purchase, LLC is a Minnesota LLC with its principal place of business in Minnesota.

15. My Pillow Logistics, LLC is a Minnesota LLC with its principal place of business in Minnesota.

16. Plaintiff NJ Purchase, LLC is a Minnesota LLC with its principal place of business in Minnesota.

17. Plaintiff Mystore Studio, LLC is a Minnesota LLC with its principal place of business in Minnesota.

18. Plaintiff V-Investment, LLC is a Minnesota LLC with its principal place of business in Minnesota.

19. Plaintiff Prior Lake 40 Acres, LLC is a Minnesota LLC with its principal place of business in Minnesota.

20. Plaintiff MP International Distribution, LLC is a Minnesota LLC with its principal place of business in Minnesota.

21. Defendant Cobalt is a purported merchant cash advance company which is located, upon information and belief, at 99 Wall Street, Suite 3618, New York, NY 10005 and extends usurious loans, masked as “purchases” of businesses’ accounts receivable, in flagrant violation of the applicable state usury law.

Filed in District Court
State of Minnesota
12/2/2024 5:44 PM

22. Defendant Sam Berger (who may also be known as Shaya Berger) is associated with Cobalt. His address is unknown.

23. Defendant Rodgers brokered the illegal transaction and is associated with Streamline. His address is unknown.

24. Defendant Streamline is associated with Rodgers who, upon information and belief, was acting on behalf of Streamline. Its address is unknown.

25. John and Jane Does Investors, Investors, Members, Owners, and/or Funding Partners (hereinafter the "Investors") are persons or entities currently unknown to Plaintiffs that own, participate in, and/or provided funds to Cobalt, and Plaintiffs have thus sued said Defendants using fictitious names.

VENUE AND JURISDICTION

26. Venue is appropriate in this county pursuant to Minn. Stat. § 542.09 because Defendants engaged in fraud and other intentional misconduct, which was purposefully aimed at My Pillow, a Minnesota corporation located in Carver County, and the Other Entities, purported "merchants" under the Agreement, all of which are citizens of Minnesota and most of which are located in Carver County. As a result, the bulk of the resulting injury being felt by Plaintiffs is in Carver County, Minnesota.

27. In addition, many of the actions at issue occurred in or were directed to Carver County, the unconscionable and fraudulent Agreement and purported guaranty at issue were executed by Lindell in Carver County, and the choice of venue clauses (for venue in New

Filed in District Court
State of Minnesota
12/2/2024 5:44 PM

York) should be void as an overreaching, unconscionable, and unenforceable provisions of the two agreements at issue.

28. There is personal jurisdiction over the Defendants because they: (a) purposefully directed activities and consummated the Agreement with a Minnesota corporation; (b) the claims arise from Defendants' forum-related activities in making and attempting to collect on a usurious loan; (c) upon information and belief, Defendants solicit and/or engage in business in Minnesota; (d) Defendants conspired to engage in unlawful activity in Minnesota; and (e) the exercise of jurisdiction comports with due process notions of fair play and substantial justice.

29. This Court has personal jurisdiction over Cobalt because it engaged in negotiations with and entered into the Agreement with My Pillow, a Minnesota corporation and Lindell signed the Agreement on behalf of My Pillow in Minnesota. The Other Entities, which are purportedly "merchants" under the Agreement, are all incorporated in Minnesota and their principal places of business are all in Minnesota, and Lindell signed on behalf of these alleged "merchants" in Minnesota.

30. In addition, Cobalt, Berger, Rodgers, and Streamline engaged in an unlawful conspiracy both inside and outside Minnesota which had the effect of harming the Plaintiffs, all but one Minnesota citizens, in Minnesota and as a result, the harm caused in Minnesota was foreseeable.

31. The Court has personal jurisdiction over the John and Jane Doe Defendants because they engaged in the unlawful conspiracy with Cobalt outside Minnesota, but

Filed in District Court
State of Minnesota
12/2/2024 5:44 PM

which had the effects of harming the Plaintiffs, all but one Minnesota residents, in Minnesota and as a result, the harm in Minnesota was foreseeable.

32. In addition, Rodgers, as acting on behalf of Streamline, and also the broker on behalf of Cobalt, communicated with Lindell in Minnesota on several occasions when brokering the illegal transaction and the Agreement at issue.

33. Berger, apparently on behalf of Cobalt, also communicated with Lindell in Minnesota several times regarding the illegal transaction and the Agreement at issue.

34. The amount at issue exceeds $50,000.00.

BACKGROUND OF THE MCA INDUSTRY

A. The Predatory MCA Industry.

35. The MCA industry specializes in providing struggling businesses with high-risk loans at exorbitant interest rates, disguising those loans as the alleged purchase of future receivables. The MCA industry typically seeks to hide within the gray areas of the law, attempting to take advantage of procedural remedies and loopholes in distant state courts to disguise its predatory lending practices.

36. The Federal Deposit Insurance Corporation ("FDIC") has stated that "predatory lending" involves at least one of the following elements: (1) making unaffordable loans based on the assets of the borrower rather than on the borrower's ability to repay an obligation; (2) inducing a borrower to refinance a loan repeatedly in order to charge high points and fees each time the loan is refinanced…; or (3) engaging in fraud or

deception to conceal the true nature of the loan obligation, or ancillary products, from an unsuspecting and unsophisticated borrower."[1]

37. Another fundamental characteristic of predatory lending is the aggressive marketing of credit to prospective borrowers who simply cannot afford the credit on the terms being offered. Typically, such credit is underwritten predominantly on the basis of liquidation value of the collateral, without regard to the borrower's ability to service and repay the loan according to its terms absent resorting to that collateral.

38. This is what Cobalt and other MCA companies do. Among other things, they require unaffordable daily payments that they know the borrowers are unlikely to be able to repay given the extraordinary interests rates and fees that they demand. MCAs like Cobalt further leverage various legal and contractual processes to guarantee full repayment, thus assuming virtually no risk in the transaction.

39. In addition, MCA companies will immediately sue borrowers that are struggling to pay daily payments with the intent to obtain a default judgment, knowing that the borrowers are unlikely to be able to retain counsel because the borrowers are unable to afford to do so. A search for Cobalt as a litigant confirms its frequent employment of this predatory strategy.

40. In other cases, MCA companies will initiate a lawsuit with the intent of gaining the leverage to force the borrower to enter into an onerous, unconscionable "settlement agreement," in which the debtor allegedly remains obligated to make all the

[1] *See* FDIC website, at https://www.fdic.gov/news/financial-institution-letters/2007/fil07006a.html.

remaining payments while purportedly waiving the right to prosecute a claim against the MCA lender.

41. Thus, as Bloomberg News has reported, the MCA industry is "essentially payday lending for businesses," and "interest rates can exceed 500 percent a year, or 50 to 100 times higher than a bank's."[2] The MCA industry is a breeding ground for "brokers convicted of stock scams, insider trading, embezzlement, gambling, and dealing ecstasy."[3] As one of these brokers admitted, the "industry is absolutely crazy.… There's lots of people who've been banned from brokerage. There's no license you need to file for. It's pretty much unregulated."[4]

42. The National Consumer Law Center has also recognized that the lending practices of MCAs are predatory because the transactions are underwritten based on the ability to collect rather than the ability of the borrower to repay without going out of business.

43. One reason for this is that MCA companies receive the bulk of their revenues from the origination process rather than from performance of the loan and thus may have weaker incentives to properly ensure long-term affordability, just as pre-2008 mortgage lenders did.

---

[2] Zeke Faux & Dune Lawrence, *Is OnDeck Capital the Next Generation of Lender or Boiler Room?*, BLOOMBERG (Nov. 13, 2014, 6:07 AM), https://www.bloomberg.com/news/articles/2014-11-13/ondeck-ipo-shady-brokers-add-risk-in-high-interest-loans.

[3] *Id.*

[4] *Id.*

Filed in District Court
State of Minnesota
12/2/2024 5:44 PM

B. MCA Agreements Are Substantively and Procedurally Unconscionable.

44. MCA Agreements are unconscionable contracts of adhesion that are not negotiated at arms-length (despite frequently including written disclaimers to the contrary). Instead, MCA companies target and prey on struggling businesses that are otherwise facing a cash crunch, the inability to pay their employees or purchase additional products, and possible closure.

45. Further, these MCA Agreements contain a number of one-sided terms that prey upon the desperation of these businesses and their individual owners and are designed to conceal the fact that these transactions, including those involving the Plaintiffs here, are in reality usurious, illegal loans.

46. Among the one-sided provisions typically included in MCA Agreements are: (1) a provision giving the MCA company the irrevocable right to withdraw money directly from the borrower's bank accounts, including collecting checks and signing invoices in the borrower's name; (2) a provision preventing the borrower from transferring, moving, or selling its business or any of its assets without permission from the MCA company; (3) a one-sided attorneys' fees provision obligating the borrower to pay the MCA company's attorneys' fees but not the other way around; (4) a venue and choice-of-law provision which purports to require the borrower to litigate in a foreign jurisdiction under the laws of a foreign jurisdiction; (5) absolute and unconditional business and personal guaranties of all of the borrower's obligations; (6) a jury trial waiver; (7) a class action waiver; (8) an

Filed in District Court
State of Minnesota
12/2/2024 5:44 PM

agreement to provide a UCC lien over the borrower's assets; and (9) a prohibition from obtaining financing from any other source.

47. **All** of the foregoing terms were included in the September 16, 2024 Agreement at issue here.

C. MCA Lenders Take a Number of Steps to Disguise Their Usurious Loans.

48. To facilitate their predatory conduct, MCA lenders make every effort to disguise their MCA agreements as the "purchase" of a business's future receivables or revenue streams (and the accompanying guaranties are similarly disguised) when the transactions evidenced by those MCA Agreements (and the guaranties) are in fact illegal, usurious loans.

49. The MCA lenders use the fraudulent guise of their alleged purchase of receivables or future revenue streams in the hopes of evading state usury laws.

50. The MCA lenders also go out of their way to expressly (but falsely) allege in their MCA agreements that the transactions subject to the MCA agreements are not loans. Courts have nonetheless ruled that such express disclaimers (and other terms of the agreements) are not enough to transform these transactions from usurious loans to other, nonregulated arrangements. Nonetheless, as the case law develops, the MCA lenders continue to hide their true intent by going to additional, extraordinary lengths to alter the language in their MCA agreements in an ongoing attempt to avoid state usury laws and case law.

51. Despite the MCA lenders' ongoing and ever-evolving evasive efforts, the true nature of these transactions remains the same. This industry essentially engages in loan sharking, and the so-called "merchants" and their guarantors remain the only parties that have actual risk in these transactions as the MCA lenders embed the agreements with a plethora of disclaimers, fraudulent statements, and unconscionable remedies, and employ other improper tactics and devices to ensure that they will be repaid at grossly inflated rates by hook or by crook.

52. The MCA companies only care about whether they can collect upon default or nonpayment, and not whether the struggling businesses on which they prey are able to even survive.

FACTUAL BACKGROUND OF THIS DISPUTE

53. Like many MCA companies, Cobalt (with the other Defendants, acting as an enterprise), took advantage of My Pillow, a cash-strapped business that needed funds quickly.

54. Here, although the Agreement is titled a "Standard Merchant Cash Advance Agreement," and purports to represent the sale and purchase of My Pillow's future receivables, all of the Defendants (acting as an Enterprise) market, solicit, extend (with virtually no underwriting), and collect upon these transactions as loans, with interest rates far greater than those permissible under state usury law, here, New York.

A. The Interest Rate Charged Is Usurious.

55. After communications with Rodgers, on September 16, 2024, My Pillow borrowed (and Lindell allegedly guaranteed) a total of $1,559,510.87 pursuant to the

Filed in District Court
State of Minnesota
12/2/2024 5:44 PM

Agreement. The Agreement required My Pillow to make fifty daily payments of $45,225.82, for a total repayment amount of $2,261,290.76.

56. As a result, My Pillow has been charged an interest rate of 409.1%, a rate that is many times greater than the maximum interest rate permitted under the relevant state usury law, that is, New York.

57. My Pillow was also required to pay an additional $124,760.87 in a so-called up front "origination fee," and as a result, the additional fee was deducted from the amount of the original funds, which resulted in an even greater rate of interest charged.

B. There Was No Underwriting Process, Further Demonstrating that the Transaction Is a Usurious Loan.

58. None of the Defendants engaged in any meaningful underwriting process as to the My Pillow's receivables before Cobalt agreed to provide funds, demonstrating that the transaction at issue is a loan, and not a purchase of My Pillow's future receivables.

59. Specifically, My Pillow was never asked to provide and never did provide any information at all regarding its receivables before Cobalt lent funds, thus demonstrating that My Pillow's receivables were unrelated to the transaction or the Agreement.

60. Further, none of the Other Entities were asked to provide (and did not provide) any information on their receivables before Cobalt lent funds, and therefore their receivables were also unrelated to the transaction and the Agreement.

61. The complete absence of any investigation into any entity's receivables further underscores the fraudulent nature of the transaction and the Agreement.

Filed in District Court
State of Minnesota
12/2/2024 5:44 PM

C. Other Evidence Demonstrates that the Transaction Is a Usurious Loan.

62. There is other evidence confirming that the transaction is an illegal, usurious loan. For example, the Agreement states that the daily payments thereunder are supposed to be an "'Estimated Payment'" based on an "approximation" of the percentage of receivables allegedly being purchased, but there was no legitimate basis to make such an approximation or define the amount of any estimated payment when Cobalt had no information about My Pillow's and/or the Other Entities' receivables before making the loan.

63. Cobalt has also filed a UCC lien against My Pillow and has sought to seize funds even though its lien does not have priority, further demonstration that the transaction here is a loan.

D. The Agreement Is One-Sided and Unconscionable.

64. The Agreement also includes a number of other, one-sided provisions: (a) a schedule setting forth a number of so-called fees that My Pillow and the Other Entities were required to pay upon the occurrence of certain events, for example, a default fee, a stacking fee (for 25% of the allegedly outstanding receivables if My Pillow or any of the Other Entities obtained financing from anywhere else), a UCC Fee, and a wire fee; (b) a prohibition against the diversion of any credit card or check transaction to another processor; (c) granting Cobalt the right to direct "any credit card processor to make payment to [Cobalt] of all or any portion of the amounts received by such credit card processor on behalf of [My Pillow or the Other Entities]"; (d) granting Cobalt the right to

Filed in District Court
State of Minnesota
12/2/2024 5:44 PM

enter My Pillow's or the Other Entities' premises at any time and without any prior notice; and (e) requiring My Pillow and the Other Entities to keep the Agreement confidential.

65. Such provisions further demonstrate the unconscionability of the transaction and the Agreement itself.

66. Other terms of the Agreement are particularly egregious. For example, the Agreement provides that Cobalt could "choose to monitor and/or record telephone calls with any Merchant [i.e., My Pillow as well as the numerous, unrelated Other Entities] and its owners, employees, and agents."

67. Another egregious provision in the Agreement required My Pillow (and all of the Other Entities) to grant Cobalt an extremely broad and irrevocable power-of-attorney:

> Each Merchant irrevocably appoints [Cobalt] as its agent and attorney-in-fact with full authority to take any action or execute any instrument or document to settle all obligations due to [Cobalt], or, if [Cobalt] considers an Event of Default to have taken place under Section 34, to settle all obligations due to [Cobalt] from each Merchant, including without limitation (i) to obtain and adjust insurance; (ii) to collect monies due or to become due under or in respect of any of the Collateral (which is defined in Section 33); (iii) to receive, endorse and collect any checks, notes, drafts, instruments, documents, or chattel paper in connection with clause (i) or clause (ii) above; (iv) to sign each Merchant's name on any invoice, bill of lading, or assignment directing customers or account debtors to make payment directly to [Cobalt]; and (v) to file any claims or take any action or institute any proceeding which [Cobalt] may deem necessary for the collection of any of the unpaid Receivables Purchased Amount from the Collateral, or otherwise to enforce its rights with respect to payment of the Receivables Purchased Amount.

Filed in District Court
State of Minnesota
12/2/2024 5:44 PM

68. A separate provision required My Pillow and all of the Other Entities to grant to Cobalt an irrevocable power-of-attorney to seize such things as credit card payments that are due to My Pillow or any of the Other Entities without any notice:

> Each Merchant [My Pillow or the Other Entities] hereby grants to [Cobalt] an irrevocable power-of-attorney, which power-of-attorney will be coupled with an interest, and hereby appoints [Cobalt] and its representatives as each Merchant's [My Pillow and all of the Other Entities] attorney-in-fact to take any and all action necessary to direct such new or additional credit card and/or check processor to make payment to [Cobalt]….

69. In addition, Plaintiffs must allegedly forego their right to assert any counterclaim against Cobalt: "In any litigation or arbitration commenced by Cobalt, each Merchant [My Pillow and the Other Entities] and each Guarantor will not be permitted to interpose any counterclaim." This provision is yet another blatant attempt to improperly avoid New York usury law.

70. The guaranty provisions of the Agreement are similarly unconscionable, for example, by providing that virtually all of its provisions survive "any termination of this Guarantee."

71. The Agreement and the guaranty provisions are also unconscionable because they contain many false statements, including such misrepresentations as: (a) that transaction is not a loan; and (b) there is no interest rate.

72. In addition, the Agreement is unconscionable because it is designed so that the entire transaction would inevitably fail and cause My Pillow to default. Among other things, the Agreement is designed to result in a default in the event that My Pillow's business suffers any downturn in revenues by: (a) preventing My Pillow from obtaining

Filed in District Court
State of Minnesota
12/2/2024 5:44 PM

any other financing; and (b) requiring My Pillow to continuously represent and warrant that there have been no material adverse changes, financial or otherwise, in its condition, operation, or ownership.

73. My Pillow, as borrower, and Lindell, as the purported guarantor, thus fell victim to all of these and other predatory tactics of the typical merchant cash advance company when entering into the usurious loan.

D. Defendants Took Other Steps to Intentionally Disguise the True Nature of the Transaction.

74. Despite its disclaimers, the transaction between My Pillow, the Other Entities, and Cobalt is, in economic reality, a loan that is absolutely repayable. Among other indicia that this transaction is really a loan are:

(a) The daily payments required by the Agreement were fixed and the so-called reconciliation provision is a mere subterfuge to avoid the applicable usury law and circumvent case law. Rather, just like any other loan, the purchased amount was to be repaid within a specified period of time and any request for reconciliation would not change the total amount owed;

(b) The default and remedy provisions purported to hold My Pillow and the Other Entities absolutely liable for repayment of the purchased amount. The Agreement required My Pillow to ensure sufficient funds in the designated bank account to make the daily payments;

(c) While the Agreement purported to "assign" all of the future account receivables of My Pillow and/or the Other Entities to Cobalt until the purchased amount is paid, My Pillow and the Other Entities retained all the indicia of and obligations related to the ownership of their account receivables, including the duty to collect, possess and use the proceeds thereof. Indeed, rather than purchasing receivables, Cobalt acquired a security interest in the accounts (and virtually all other assets) of My Pillow and the Other Entities to secure payment of the loaned amount;

Filed in District Court
State of Minnesota
12/2/2024 5:44 PM

(d) Unlike true receivable purchase transactions, the Agreement was entered into without any information about or analysis of the past, current, or future receivables of either My Pillow or the Other Entities;

(e) The purchased amount was not calculated based upon the fair market value of the future receivables of My Pillow or the Other Entities, but rather was unilaterally dictated by Cobalt and the other Defendants based upon the interest rate they wanted to be paid. Indeed, Defendants did not request any information concerning the account debtors of My Pillow or the Other Entities upon which to make a fair market determination of the value of the receivables;

(f) Cobalt assumed no risk of any loss that would result from either My Pillow's or the Other Entities' failure to generate sufficient receivables to cover the daily payments because the failure to maintain sufficient funds in the designated bank account constituted a breach (which would in turn trigger Cobalt's purported right to get paid all of the amount allegedly still owed);

(g) Cobalt required that My Pillow and the Other Entities undertake certain affirmative obligations and make certain representations and warranties that were aimed at ensuring My Pillow and the Other Entities would continue to operate and generate receivables and any breach of such obligations, representations, and warranties constituted a default, which fully protected Cobalt or any of the Other Defendants from any risk of loss resulting from My Pillow's and/or the Other Entities failure to generate and collect the receivables that were allegedly purchased.

(h) Cobalt required Lindell to allegedly guarantee the performance of the representations, warranties and covenants, some of which Cobalt knew were in breach from the start. For example, there is a provision which stated that My Pillow's execution of the Agreement would not cause or create a default in any other agreement, but Cobalt was aware that My Pillow was already a party to other loan agreements with publicly filed UCC liens.

E. Other Provisions of the Agreement also Operate to Transfer All Risk of Loss to Plaintiffs.

75. The Agreement also contained a number of other provisions which

transferred any risk of loss away from Cobalt and solely onto the Plaintiffs. Such provisions include: (a) a sham reconciliation provision; (b) a defined term; (c) requiring an overly broad security interest; (d) an unconscionable personal guaranty; and (e) various other, general provisions that purport to grant Cobalt a number of one-sided procedural and substantive rights to enforce the Agreement, such as requiring My Pillow and the Other Entities to indemnify any of their credit card or check processors if Cobalt were to seize funds from any such entity and an acceleration clause which purportedly required My Pillow and the Other Entities to pay all of the remaining loan amount upon any event of default.

a. A Sham Reconciliation Provision.

76. As one attempt to evade New York usury laws, the Agreement contained a sham reconciliation provision to give the appearance that the loan does not have a definite term.

77. Under a legitimate reconciliation provision, if a borrower pays more through its fixed daily payments than it actually received in receivables, the borrower is entitled to seek the repayment of any excess money paid to coincide with the receivables collected. Thus, if income decreases, so do the payments. Here, however, the Agreement provides that My Pillow and the Other Entities still remain responsible for the entire amount no matter what the outcome of any requested reconciliation.

78. Upon information and belief, Cobalt does not even have a reconciliation department, and thus, the reconciliation provision is meaningless.

Filed in District Court
State of Minnesota
12/2/2024 5:44 PM

b. An Ascertainable Fixed Term.

79. The Agreement provides an ascertainable fixed term, since the daily payment is fixed as well as the total amount to be repaid (fraudulently labeled "Purchased Amount"), neither of which is subject to actual adjustment. The fixed term can thus be quickly and easily determined by dividing the "Purchased Amount" by the daily payment amount, resulting in a term of fifty days.

c. Taking an Inordinately Broad Security Interest.

80. The Agreement purports to allow Cobalt to "purchase" a set percentage of My Pillow's or the Other Entities future receivables.

81. However, rather than taking a security interest in My Pillow's or the Other Entities future receivables, the security interest in the Agreement is substantially broader than that, purportedly granting Cobalt a security interest in:

> (a) all accounts, including without limitation, all deposit accounts, accounts-receivable, and other receivables, chattel paper, documents, equipment, general intangibles, instruments, and inventory, as those terms are defined by Article 9 of the Uniform Commercial Code (the "UCC"), now or hereafter owned or acquired by any Merchant; and (b) all proceeds, as that term is defined by Article 9 of the UCC.

82. The breadth of Cobalt's security interest is further proof that the alleged "purchase" of My Pillow's or the Other Entities' receivables is nothing but a sham and that Cobalt has no risk in the transaction.

d. An Alleged Guaranty by Lindell.

83. Cobalt further ensured that it would bear no risk of loss by requiring Lindell to execute the Agreement (including its specific "guarantee" provisions) as an alleged

Filed in District Court
State of Minnesota
12/2/2024 5:44 PM

guarantor.

84. The guaranty provisions state, inter alia, that:

> If [Cobalt] considers any Event of Default to have taken place under the Agreement, then [Cobalt] may enforce its rights under this Guarantee without first seeking to obtain payment from any Merchant, any other guarantor, or any Collateral, Additional Collateral, or Cross-Collateral [Cobalt] may hold pursuant to this Guarantee or any other agreement or guarantee. [Cobalt] does not have to notify any Guarantor of any of the following events and Guarantor(s) will not be released from its obligations under this Guarantee even if it is not notified of: (i) any Merchant's failure to pay timely any amount owed under the Agreement; (ii) any adverse change in any Merchant's financial condition or business; (iii) any sale or other disposition of any collateral securing the Guaranteed Obligations or any other guarantee of the Guaranteed Obligations; (iv) [Cobalt's]acceptance of the Agreement with any Merchant; and (v) any renewal, extension, or other modification of the Agreement or any Merchant's other obligations to [Cobalt]. In addition, [Cobalt] may take any of the following actions without releasing any Guarantor from any obligations under this Guarantee: (i) renew, extend, or otherwise modify the Agreement or any Merchant's other obligations to [Cobalt]; (ii) if there is more than one Merchant, release a Merchant from its obligations to [Cobalt] such that at least one Merchant remains obligated to [Cobalt]; (iii) sell, release, impair, waive, or otherwise fail to realize upon any collateral securing the Guaranteed Obligations or any other guarantee of the Guaranteed Obligations; and (iv) foreclose on any collateral securing the Guaranteed Obligations or any other guarantee of the Guaranteed Obligations in a manner that impairs or precludes the right of Guarantor to obtain reimbursement for payment under the Agreement. Until the Receivables Purchased Amount and each Merchant's other obligations to [Cobalt] under the Agreement and this Guarantee are paid in full, each Guarantor shall not seek reimbursement from any Merchant or any other guarantor for any amounts paid by it under the Agreement. Each Guarantor permanently waives and shall not seek to exercise any of the following rights that it may have against any Merchant, any other guarantor, or any collateral provided by any Merchant or any other guarantor, for any amounts paid by it or acts performed by it under this Guarantee: (i) subrogation; (ii) reimbursement; (iii) performance; (iv) indemnification; or (v) contribution.

85. The foregoing provision is further evidence that Cobalt assumed no risk under the Agreement.

Filed in District Court
State of Minnesota
12/2/2024 5:44 PM

86. Moreover, the "merchants" under the Agreement allegedly include Lindell Legal Offense Fund, The Lindell Foundation, Inc., and Lindell Foundation Outreach, Inc.; all nonprofit companies that neither My Pillow nor Lindell have any ownership interest in, further evidence of Defendants' improper overreaching in an effort to ensure they have absolutely no risk in the usurious transaction.

87. Plaintiffs recently learned that courts have ruled that Agreements like this one are fraudulent and unconscionable contracts for illegal, usurious loans and that MCA companies that engage in this misconduct with others in an enterprise violate RICO when conducting their business. As a result, Plaintiffs commenced this lawsuit.

FIRST CAUSE OF ACTION
(RICO: 18 U.S.C. § 1962)

88. Plaintiffs repeat and reallege all of the paragraphs in the Complaint as though set forth here.

A. The Unlawful Activity.

89. There are two predicate acts underlying the First and Second Causes of Action in this Complaint. First, the making of unlawful, usurious loans, and second, engaging in wire fraud.

90. As set forth more fully above, despite the many false statements and contract terms allegedly to the contrary, the financial arrangement between Cobalt and My Pillow is a loan, and not a merchant cash advance.

91. Here, the interest rate that My Pillow was paying on the loan was 409.1%.

92. The disclosures Defendants made about the loan are clearly fraudulent (for example, the Agreement's representation that this arrangement is not a loan). This loan violates state usury law, as set forth more fully herein.

B. Culpable Persons.

93. Defendants are all "persons" within the meaning of 18 U.S.C. § 1961(3) and 18 U.S.C. § 1962(c) in that each is either an individual, corporation, or limited liability company capable of holding a legal interest in property. At all relevant times, each of Rodgers; Berger; Streamline; and the John and Jane Doe Investors was, and is, a person or entity that exists separate and distinct from the Enterprise, described below.

94. Upon information and belief, Rodgers, on behalf of Streamline, brokered the usurious loan and purported guaranty and Rodgers and Streamline were paid by Cobalt for their improper and illegal acts to facilitate the usurious loan.

95. The John and Jane Doe Investors are individuals and business entities that provide funding for illegal and grossly usurious loans, including this one.

96. Through their operation of and engagement with Cobalt, the foregoing Culpable Persons solicit, underwrite, fund, service, and collect upon unlawful debt incurred by businesses like My Pillow.

C. The Enterprise.

97. Defendants all constitute an Enterprise (the "Enterprise") within the meaning of 18 U.S.C. §§ 1961(4) and 1962(c).

98. Defendants are associated in fact and through relations with one another for the common purpose of carrying out an ongoing unlawful enterprise. Specifically, the

Enterprise has a common goal of soliciting, funding, servicing, and collecting upon usurious loans that charge exorbitant interest greatly in excess of the permitted interest rate under the applicable usury laws.

99. Since at least 2023 and continuing through the present, the members of the Enterprise have had ongoing relations with each other through common control/ownership, shared personnel and/or one or more contracts or agreement relating to and for the purpose of originating, underwriting, servicing and collecting upon unlawful debt issued by the Enterprise to struggling businesses throughout the United States.

100. The debt evidenced by the Agreement constitutes unlawful debt within the meaning of 18 U.S.C. § 1962(c) and (d), and 18 U.S.C. § 1961(6) because: (a) it violates the applicable criminal usury statutes; and (b) the rates are more than many times more than the legal rate for interest permitted under the applicable usury law.

101. Since at least 2023 and continuing through the present, the members of the Enterprise have had ongoing relations with each other through common control/ownership, shared personnel, and/or one or more contracts or agreement relating to and for the purpose of collecting upon fraudulent fees through electronic wires.

102. The Enterprise's misconduct also constitutes "fraud by wire" within the meaning of 18 U.S.C. § 1343, which is "racketeering activity" as defined by 18 U.S.C. § 1961(1). Its repeated and continuous use of such conduct to participate in the affairs of the Enterprise constitutions a pattern of racketeering activity in violation of 18 U.S.C. § 1962(c).

D. The Roles of the RICO Persons in Operating the Enterprise, and the Roles of the Individual Companies Within the Enterprise.

103. The RICO Persons have organized themselves and the Enterprise into a cohesive group with specific and assigned responsibilities and a command structure to operate as a unit in order to accomplish the common goals and purposes of collecting on unlawful debts including as follows:

a. Cobalt.

104. Cobalt, upon information and belief, maintains officers, books, records, and bank accounts independent of the various other Defendants, including the John and Jane Doe Investors.

105. Each of Rodgers; Berger; Streamline; and the John and Jane Doe Investors have operated, engaged and/or conspired with Cobalt as part of an unlawful Enterprise to collect upon unlawful debt and commit wire fraud.

106. Pursuant to its membership in the Enterprise, the Cobalt has: (i) engaged brokers like Rodgers and Streamline to solicit borrowers for the Enterprise's usurious loans and participation agreement with the John and Jane Doe Investors to fund the usurious loans; (ii) pooled the funds of John and Jane Doe Investors in order to fund each usurious loan; (iii) extended the usurious loans and determined the ultimate rate of usurious interest to be charged for each loan; (iv) entered into so-called merchant cash advance agreements on behalf of the Enterprise to memorialize the usurious loans; (v) serviced the usurious loans; and (vi) set-up and implemented the ACH withdrawals used by the Enterprise to collect upon the unlawful debts.

b. The Brokers.

107. Upon information and belief, Rodgers and Streamline acted as brokers for the placement of the usurious loan and, upon information and belief, were paid to broker the illegal loan between Cobalt and My Pillow. Among other things, Rodgers (on behalf of Streamline): (i) solicited My Pillow and Lindell; (ii) facilitated the usurious loan transaction; (iii) solicited and gathered information from Plaintiffs to assist in the completion of the usurious loan transaction; and (iv) demanded payment to Cobalt and/or Cobalt.

c. The Associates of Cobalt.

108. Berger facilitated the offering and completion of the usurious loan, the Enterprise, and the improper collection efforts of the usurious loan.

d. The John and Jane Doe Investors.

109. The John and Jane Doe Investors are, upon information and belief, a group of organizations and individual investors who maintain separate officers, books, records, and bank accounts independent of Cobalt.

110. Directly and through their members, agent officers, and/or employees, the Investors have been and continue to be responsible for providing Cobalt with all or a portion of the pooled funds necessary to fund the usurious loans, including the Agreement with My Pillow, and to approve and ratify the Enterprise's efforts to collect upon the unlawful debts by, among other things, approving early payoff terms, settlement agreement and other financial arrangements with borrowers to collect upon the unlawful debts.

111. The Investors ultimately benefit from the Enterprise's unlawful activity when the proceeds of the collection of unlawful debts are funneled to the Investors according to their level of participation in the usurious loans.

e. The John and Jane Doe Owner(s).

112. Upon information and belief, the John and Jane Doe Owner(s) of Cobalt are the masterminds of the Enterprise. They are responsible for the day-to-day operations of the Enterprise and have final say on all business decisions of the Enterprise including, without limitation, which usurious loans the Enterprise will fund, how such loans will be funded, which of Investors will fund each loan, and the ultimate payment terms, amount and period of each usurious loan.

113. In their capacity as the mastermind of the Enterprise, the John and Jane Doe Owner(s) are responsible for creating, approving and implementing the policies, practices and instrumentalities used by the Enterprise to accomplish its common goals and purposes including: (i) the form of merchant agreement used by the Enterprise to attempt to disguise the unlawful loans as a receivable purchase agreement to avoid applicable usury laws and conceal the Enterprise's collection of an unlawful debt; and (ii) the method of collecting the daily payments via ACH withdrawals. All such forms were used to make and collect on the unlawful loans including, without limitation, loans extended to My Pillow.

114. The John and Jane Doe Owner(s) have also taken actions and, directed other members of the Enterprise to take actions necessary to accomplish the overall goals and purposes of the Enterprise, including directing the affairs of the Enterprise, funding the

Filed in District Court
State of Minnesota
12/2/2024 5:44 PM

Enterprise, directing members of the Enterprise to collect upon the unlawful loans and executing legal documents in support of the Enterprise.

115. The John and Jane Doe Owner(s) ultimately benefited from the Enterprise's funneling of the usurious loan proceeds to Cobalt and to the John and Jane Doe Investors.

E. Interstate Commerce.

116. The Enterprise is engaged in interstate commerce and uses instrumentalities of interstate commerce in its daily business activities.

117. Specifically, members of the Enterprise maintain offices in New York and use personnel in these offices to originate, underwrite, fund, service and collect upon the usurious loans made by the Enterprise to entities in Minnesota, including My Pillow, and throughout the United States via extensive use of interstate emails and other communications, wire transfers, and bank withdrawals processed through an automated clearing house.

118. In the present case, all communications between the members of the Enterprise and My Pillow were by interstate communications, wire transfers or ACH debits, and other interstate wire communications. Specifically, the Enterprise used interstate communications to originate, underwrite, service and collect upon the Agreement, fund the advance under the Agreement, and collect the daily payments via interstate electronic ACH debits.

119. The Agreement further and expressly provides that "this Agreement … evidences a transaction affecting interstate commerce."

Filed in District Court
State of Minnesota
12/2/2024 5:44 PM

F. Injury and Causation.

120. Plaintiffs have and will continue to be injured in their business and property by reason of the Enterprise's violations of 18 U.S.C. § 1962(c).

121. The injuries to the Plaintiffs directly, proximately, and reasonably foreseeably resulting from or caused by these violations of 18 U.S.C. § 1962(d) include, but are not limited to, thousands of dollars in improperly collected, criminally usurious loan payments.

122. Plaintiffs have also suffered damages by incurring attorneys' fees and costs associated with exposing and prosecuting Defendants' criminal activities.

123. Pursuant to 18 U.S.C. § 1964(c), Plaintiffs are entitled to treble damages, plus costs and attorneys' fees from Defendants.

SECOND CAUSE OF ACTION
(RICO: Conspiracy under 18 U.S.C. § 1962(d))

124. Plaintiffs repeat and reallege all of the paragraphs in Complaint as though set forth herein.

125. Defendants have unlawfully, knowingly, and willfully, combined, conspired, confederated, and agreed together to violate 18 U.S.C. § 1962(c) as describe above, in violation of 18 U.S.C. § 1962(d).

126. By and through each of the Defendants' business relationships with one another, their close coordination with one another in the affairs of the Enterprise, and frequent email and other communications among the Defendants concerning the underwriting, funding, servicing, and collection of the unlawful loan, including the

Agreement, each Defendant knew the nature of the Enterprise and each Defendant knew that the Enterprise extended beyond each Defendant's individual role. Moreover, through the same connections and coordination, each Defendant knew that the other Defendants were engaged in a conspiracy to collect upon unlawful debts in violation of 18 U.S.C. § 1962(c).

127. Each Defendant agreed to facilitate, conduct, and participate in the conduct, management, or operation of the Enterprise's affairs in order to collect upon unlawful debts, including the Agreement, in violation of 18 U.S.C. § 1962(c).

128. In particular, each Defendant was a knowing, willing, and active participant in the Enterprise and its affairs, and each of the Defendants shared a common purpose, namely, the orchestration, planning, preparation, and execution of the scheme to solicit, underwrite, fund and collect on unlawful debts, including the loan to My Pillow pursuant to the Agreement.

129. Each Defendant agreed to facilitate, conduct, and participate in the conduct, management, or operation of the Enterprise's affairs in order to commit wire fraud through a pattern of racketeering activity in violation of 18 U.S.C. § 1962(c).

130. The participation and agreement of each Defendant was necessary to allow the commission of this scheme.

131. Plaintiffs have been and will continue to be injured in their business and property by reason of the Defendants' violations of 18 U.S.C. § 1962(d), in an amount to be determined at trial.

Filed in District Court
State of Minnesota
12/2/2024 5:44 PM

132. Each Defendant agreed to facilitate, conduct, and participate in the conduct, management, or operation of the Enterprise's affairs in order to commit wire fraud through a pattern of racketeering activity in violation of 18 U.S.C. § 1962(c).

133. The participation and agreement of each Defendant was necessary to allow the commission of this scheme.

134. Plaintiffs have been and will continue to be injured in their business and property by reason of the Defendants' violations of 18 U.S.C. § 1962(d), in an amount to be determined at trial.

135. The injuries to the Plaintiffs directly, proximately, and reasonably foreseeably resulting from or cause these violations of 18 U.S.C. § 1962(d) include, but are not limited to, thousands of dollars in improperly collected loan payments.

136. Plaintiffs have also suffered damages by incurring attorneys' fees and costs associated with exposing and prosecuting Defendants' criminal activities.

137. Pursuant to 18 U.S.C. § 1964(c), Plaintiffs are entitled to treble damages, plus costs and attorneys' fees from the Defendants.

138. Each Defendant agreed to facilitate, conduct, and participate in the conduct, management, or operation of the Enterprise's affairs in order to commit wire fraud through a pattern of racketeering activity in violation of 18 U.S.C. § 1962(c).

139. The participation and agreement of each Defendant was necessary to allow the commission of this scheme.

140. Plaintiffs have been and will continue to be injured in their business and property by reason of the Defendants' violations of 18 U.S.C. § 1962(d), in an amount to

Filed in District Court
State of Minnesota
12/2/2024 5:44 PM

be determined at trial.

141. The injuries to the Plaintiffs directly, proximately, and reasonably foreseeably resulting from or cause these violations of 18 U.S.C. § 1962(d) include, but are not limited to, thousands of dollars in improperly collected loan payments.

142. Plaintiffs have also suffered damages by incurring attorneys' fees and costs associated with exposing and prosecuting Defendants' unlawful activities.

143. Pursuant to 18 U.S.C. § 1964(c), Plaintiffs are entitled to treble damages, plus costs and attorneys' fees from the Defendants.

THIRD CAUSE OF ACTION
(Declaratory Judgment)

144. Plaintiffs repeat and reallege all of the paragraphs in the Complaint as though fully set forth herein.

145. An actual controversy exists regarding the unconscionability and unlawfulness of the Agreement at issue.

146. Plaintiffs are therefore seeking from the Court a declaration that for the reasons set forth herein, the Agreement is both unconscionable and unlawful, and therefore is void and unenforceable.

147. Plaintiffs are also seeking a declaration that the Agreement is a usurious loan in violation of the applicable state usury laws and is thus void and unenforceable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand judgment in their favor against Defendants, jointly and severally, and seek an Order:

Filed in District Court
State of Minnesota
12/2/2024 5:44 PM

a) Declaring that the Agreement is unconscionable and unlawful, and therefore void and unenforceable;

b) Declaring Plaintiffs' Agreement is a usurious loan in violation of the laws of New York and thus void and unenforceable;

c) Finding that Defendants have violated 18 U.S.C. § 1962;

d) Awarding compensatory, direct, and consequential damages, including prejudgment interest, in an amount to be determined at trial or by summary determination;

e) Awarding treble damages;

f) Requiring Defendants to pay Plaintiffs' attorneys' fees and costs; and

g) Such other and further relief deemed appropriate by the Court.

Dated: December 2, 2024

BERENS & MILLER, P.A.

s/Barbara Podlucky Berens
Barbara Podlucky Berens (#209788)
Kari Berman (#0256705)
80 South 8th Street
3720 IDS Center
Minneapolis, MN 55402
(612) 349-6171
bberens@berensmiller.com
kberman@berensmiller.com

Attorneys for Plaintiffs

ACKNOWLEDGMENT

The undersigned hereby acknowledges that costs, disbursements, and reasonable attorney and witness fees may be awarded pursuant to Minn. Stat. § 549.211, subd. 2, to the party against whom the allegations in this pleading are asserted.

Dated: December 2, 2024

By: s/Barbara Podlucky Berens