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State of Minnesota
1/17/2025 2:52 PM

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF CARVER FIRST JUDICIAL DISTRICT

My Pillow, Inc. and Michael J. Lindell, Plaintiffs, v. Shine Capital Group LLC; Merchant Capital; Gabe Cohen; Creditline Capital Group; Michael Mandel; Saul Tendler; and John and Jane Does, Defendants.	§§ §§ §§ §§ §§ §§ §§ §§ § §§ §	Civil Action No. _____ **COMPLAINT** Jury Trial 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") and Michael J. Lindell ("Lindell")(and collectively "Plaintiffs") against Defendant Merchant Capital, an alleged merchant cash advance company (hereinafter "Merchant Capital" or "the MCA"); that made an illegal loan to Plaintiffs; Defendants Shine Capital Group, LLC ("Shine"), Michael Mandel ("Mandel"), and Saul Tendler ("Tendler") all of whom are associated with Merchant Capital and were involved in the illegal loan; Defendants Creditline ("Creditline") and Gabe Cohen ("Cohen"), who facilitated the illegal loan; and John and Jane Doe Investors, Members, Owners, and/or Funding Partners in Merchant Capital (and all of the Defendants together are "the Enterprise").

This RICO action is based on a so-called "Merchant Cash Advance Agreement" (the "MCA Agreement") between Merchant Capital and My Pillow, dated July 3, 2024, pursuant to which Merchant

Filed in District Court
State of Minnesota
1/17/2025 2:52 PM

Capital paid funds to allegedly purchase My Pillow's future receivables at a discount and My Pillow agreed to repay the funds via daily payments.

While couched as the purchase of future receivables, the terms and conditions of the MCA Agreement, as well as the Defendants' actions since that time, demonstrate that despite the disclaimers in the MCA Agreement, no sale of receipts ever took place, and the form agreement was merely a sham intended to evade the applicable usury laws, here New York law.

In addition, Merchant Capital's alleged risk in these transaction is virtually nonexistent because My Pillow, as the borrower, always remained liable for the debt and My Pillow and Lindell (as the alleged guarantor) bore all the risk of non-payment from any receivables, while Merchant Capital only bore the risk that the non-payment of receivables would leave My Pillow unable to pay on the loan, at which point Merchant Capital would go after Lindell as the guarantor as well as virtually all of My Pillow's other assets. As a result, the MCA never made a bona fide purchase of My Pillow's receivables under the MCA Agreement and the transaction is, in reality, an illegal, usurious loan.

Specifically, My Pillow borrowed (and Lindell allegedly guaranteed) a total of $2,000,000.00 pursuant to the MCA Agreement, which required My Pillow to make daily payments totaling $41,428.57, for a total repayment amount of $3,913,800.00. Not only that, Merchant Capital also took an additional $200,000.00 in a so-called "origination fee," representing an even greater amount of hidden interest.

Pursuant to the MCA Agreement, My Pillow has thus been charged an interest of **385%**, a rate that is many times greater than the maximum interest rate permitted under relevant state usury law, that is, New York.

Plaintiffs have now learned that the transaction with Merchant Capital was made based on Defendants' fraudulent statements, that the entire nature of the transaction was misrepresented, and that the

Filed in District Court
State of Minnesota
1/17/2025 2:52 PM

transaction is in reality a loan that is usurious, unconscionable, and unenforceable, and that Defendants' concerted misconduct relating thereto 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.

2. Plaintiff Lindell is a Texas citizen.

3. Defendant Merchant Capital, an alleged merchant cash advance company, extends usurious loans, masked as "purchases" of businesses' accounts receivable, in flagrant violation of the applicable state usury law. Merchant Capital is located at 124 Grove Avenue, Suite 194, Cedarhurst, NY 11516.

4. Defendant Shine is, upon information and belief, another "merchant cash advance" company which is affiliated with Merchant Capital. Shine's location is unknown.

5. Defendant Saul Tendler (who may also be known as Yissochor Tendler) is associated with Merchant Capital and Shine. Upon information and belief, his address is 1814 Lakewood Road, Toms River, NJ. Upon information and belief, Tendler's address location is shared by a number of these usurious and illegal lenders.

6. Defendant Michael Mandel (who may also be known as Moshe Nathaniel Mandel) is associated with Merchant Capital. His address is unknown.

7. Defendant Creditline is, upon information and belief, the entity that brokered the usurious loan. Its address is unknown.

8. Defendant Cohen is affiliated with Creditline and was involved in the brokering of the usurious loan transaction. His address is unknown.

Filed in District Court
State of Minnesota
1/17/2025 2:52 PM

9. 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 Merchant Capital, and Plaintiffs have thus sued said Defendants using fictitious names.

VENUE AND JURISDICTION

23. 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. As a result, the bulk of the resulting injury and damages occurred in Carver County, Minnesota.

24. In addition, many of the actions at issue occurred in or were directed to Carver County, the unconscionable and fraudulent MCA Agreement at issue was executed by Lindell in Carver County, and the choice of venue clause (for venue in New York) should be void as an overreaching, unconscionable, and unenforceable provision of the MCA Agreement.

25. There is personal jurisdiction over the Defendants because they: (a) purposefully directed activities and consummated the MCA 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, including soliciting the MCA Agreement at issue here in Minnesota; (d) Defendants conspired to engage in unlawful activity in Minnesota; and (e) exercise of jurisdiction comports with due process notions of fair play and substantial justice.

26. This Court has personal jurisdiction over Merchant Capital because it entered into the MCA Agreement with My Pillow, a Minnesota corporation and Lindell signed the MCA Agreement on behalf of My Pillow in Minnesota.

Filed in District Court
State of Minnesota
1/17/2025 2:52 PM

27. In addition, all Defendants engaged in an unlawful conspiracy both inside and outside Minnesota which had the effect of harming the Plaintiffs in Minnesota and as a result, the harm caused in Minnesota was foreseeable.

28. In addition, Cohen, acting as a broker on behalf of Creditline, communicated with Lindell in Minnesota on a number of occasions when brokering this transaction and the MCA Agreement at issue.

29. Tendler also communicated with Lindell in Minnesota a number of times regarding the usurious loan.

30. The amount at issue and subject to the MCA Agreement exceeds $50,000.00.

BACKGROUND OF THE MCA INDUSTRY

A. The Predatory MCA Industry.

30. 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.

31. 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]

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

Filed in District Court
State of Minnesota
1/17/2025 2:52 PM

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

33. 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 of Shine as a litigant confirms its predatory strategy.

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

35. 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]

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[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
1/17/2025 2:52 PM

36. 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.

37. 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." *Id*. (noting that "a 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.").

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

38. 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.

39. 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.

40. 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

Filed in District Court
State of Minnesota
1/17/2025 2:52 PM

to additional, extraordinary lengths to alter the language in their MCA agreements in an ongoing attempt to avoid state usury laws and case law.

41. 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.

42. 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.

43. Here, although the MCA Agreement is titled a "Standard Merchant Cash Advance Agreement," and purports to represent the sale and purchase of My Pillow's future receivables, the Enterprise markets, underwrites, and collects upon its transactions as loans, with interest rates far greater than those permissible under state usury law, here, New York.

C. 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

Filed in District Court
State of Minnesota
1/17/2025 2:52 PM

the fact that these transactions, including those involving the Plaintiffs here, are in reality usurious, illegal loans.

46. Among the one-sided terms 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 agreement to provide what is invariably an overbroad UCC lien and/or security interest covering all of 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 July 3, 2024 MCA Agreement.

48. And some of the terms in the MCA Agreement at issue here were particularly egregious. For example, the attorneys' fee provision purportedly defines "reasonable attorney fees" to include "which may include a contingency fee of up to 40% of the amount claimed, as well as administrative or filing fees and arbitrator compensation in any arbitration, expert witness fees, and costs of suit."

49. Another egregious provision in the MCA Agreement required My Pillow to grant Merchant Capital an irrevocable power-of-attorney under the following circumstances:

> If an Event of Default takes place under Section 30, then [My Pillow] irrevocably appoints [Merchant Capital] as its agent and attorney-in-fact with full authority to

Filed in District Court
State of Minnesota
1/17/2025 2:52 PM

> take any action or execute any instrument or document to settle all obligations due to [Merchant Capital] from [My Pillow], including without limitation (i) to collect monies due or to become due under or in respect of any of the Collateral (which is defined in Section 29); (ii) to receive, endorse and collect any checks, notes, drafts, instruments, documents, or chattel paper in connection with clause (i) above; (iii) to sign [My Pillow's] name on any invoice, bill of lading, or assignment directing customers or account debtors to make payment directly to [Merchant Capital]; and (iv) to file any claims or take any action or institute any proceeding which [Merchant Capital] 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.

50. A separate provision required My Pillow to grant to Merchant Capital an irrevocable power-of-attorney to seize such things as credit card payments that are due to My Pillow:

> [W]hich power-of-attorney will be coupled with an interest, and hereby appoints [Merchant Capital] and its representatives as each [My Pillow's] attorney-in-fact to take any and all action necessary to direct such new or additional credit card and/or check processor and account debtor(s) to make payment to [Merchant Capital]….

FACTUAL BACKGROUND OF THIS DISPUTE

D. The Interest Charged Is Usurious

41. On July 2, 2024, Lindell was in communications with Cohen seeking funds for My Pillow.

42. On July 3, 2024, My Pillow borrowed (and Lindell allegedly guaranteed) a total of $2,000,000.00 pursuant to the MCA Agreement. The MCA Agreement required My Pillow to make daily payments totaling $41,428.57, for a total repayment amount of $3,913,800.00. My Pillow was also required to pay an additional $200,000.00 in so-called "fees," representing an even greater amount of hidden interest.

43. As a result, My Pillow has been charged an interest of **385%**, a rate that is many times greater than the maximum interest rate permitted under the relevant state usury law, that is, New York.

Filed in District Court
State of Minnesota
1/17/2025 2:52 PM

E. There Was No Underwriting Process, Demonstrating that the Transaction is a Usurious Loan.

53. Neither Merchant Capital, Tendler, Shine, Mandel, nor Cohen engaged in any meaningful underwriting process as to the My Pillow's receivables before agreeing to provide funds, demonstrating that the transaction at issue is a loan, and not a purchase of My Pillow's future receivables.

54. Specifically, My Pillow never provided any information regarding its receivables, thus demonstrating that its receivables were unrelated to the transactions.

55. On July 2, 2024, only one day before the loan funded, Cohen requested Lindell provide a balance sheet for My Pillow, which document was never delivered to Defendants.

56. The foregoing further underscores the fraudulent nature of the MCA Agreement.

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

57. Like many MCA companies, Merchant Capital and the Enterprise took advantage of My Pillow, a cash-strapped business that needed funds quickly.

58. In addition, the MCA Agreement states that the daily payment thereunder was 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 Merchant Capital had no information about My Pillow's receivables before making the loan.

59. Upon information and belief, Merchant Capital has also filed a UCC lien against My Pillow and Lindell, further demonstration that the transaction is a loan.

Filed in District Court
State of Minnesota
1/17/2025 2:52 PM

G. The MCA Agreement Is One-Sided and Unconscionable.

60. The MCA Agreement also includes a number of other, one-sided provisions: (1) a schedule setting forth a number of so-called fees that My Pillow was required to pay upon the occurrence of certain events, for example, a default fee, a "UCC Fee," and a rejected ACH fee, and a monthly service fee; (2) a prohibition against the diversion of any funds in any of My Pillow's bank accounts; (3) requiring My Pillow to give Merchant Capital advance permission to contact any bank of My Pillow's to obtain any information Merchant Capital wanted; (4) granting Merchant Capital the right to enter My Pillow's business; (5) requiring My Pillow to provide information about its vendors and suppliers so that Merchant Capital could contact such parties at any time; and (6) requiring My Pillow to keep the MCA Agreement confidential.

61. In addition, the MCA Agreement requires Plaintiffs to allegedly forego their right to assert any counterclaim against Merchant Capital: "In any litigation or arbitration commenced by Merchant Capital, [My Pillow] and each Guarantor will not be permitted to interpose any counterclaim." This provision is yet another blatant attempt to improperly avoid state usury law.

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

63. The guaranty provisions of the MCA Agreement are similarly unconscionable, for example, by requiring the guarantor to pay for any amount that Merchant Capital might be required to return in the event that either My Pillow and/or its guarantors are subject to a bankruptcy proceeding and requiring the guarantors to perform without first requiring Merchant Capital to provide them with notice of material changes, failures to perform, renewals or modifications to the MCA Agreement, and/or any other extension of additional funds to My Pillow.

Filed in District Court
State of Minnesota
1/17/2025 2:52 PM

64. The guaranty is further unconscionable because it states that virtually all of its provisions survive "any termination of this Guarantee."

65. The MCA 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; (b) that there is no fixed repayment term; and (c) there is no interest rate.

66. In addition, the MCA 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 MCA 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 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.

67. 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.

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

68. Despite its disclaimers, the transaction between My Pillow and Merchant Capital 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 MCA Agreement were fixed and the so-called reconciliation provision therein was a mere subterfuge to avoid the applicable usury laws and circumvent case law. Rather, just like any other loan, the purchased amount was to be repaid within a specified time and any request for reconciliation would not change the total amount owed;

(b) The default and remedy provisions purported to hold My Pillow absolutely liable for repayment of the purchased amount. The MCA Agreement

Filed in District Court
State of Minnesota
1/17/2025 2:52 PM

required My Pillow to ensure sufficient funds in the designated bank account to make the daily payments;

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

(d) Unlike true receivable purchase transactions, the MCA Agreement was entered into without any information about or analysis of My Pillow's past and/or future receivables;

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

(f) Merchant Capital assumed no risk of loss which would have resulted from My Pillow's 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 Merchant Capital's purported right to get paid all of the amount allegedly still owed);

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

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

H. The MCA Agreement Transfers All Risk of Loss to Plaintiffs.

Filed in District Court
State of Minnesota
1/17/2025 2:52 PM

69. The MCA Agreement also contained numerous other provisions which transferred any risk of loss away from Merchant Capital 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 Merchant Capital a number of one-sided procedural and substantive rights to enforce the MCA Agreement, such as requiring My Pillow to indemnify any of My Pillow's credit card or check processors if Merchant Capital were to seize funds from any such entity and an acceleration clause which purportedly required My Pillow to pay all of the remaining loan amount upon any event of default.

a. Sham Reconciliation Provision

70. In order to evade state usury laws, the MCA Agreement contained a sham reconciliation provision to give the appearance that the loan does not have a definite term.

71. Under a legitimate reconciliation provision, if a borrower pays more through its fixed weekly 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 MCA Agreement provides that Merchant Capital still remains responsible for the entire amount no matter what the outcome of any requested reconciliation.

72. Upon information and belief, Merchant Capital does not even have a reconciliation department, and thus, the reconciliation provision is a meaningless.

b. Ascertainable Fixed Term

Filed in District Court
State of Minnesota
1/17/2025 2:52 PM

73. The MCA 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 seventy days.

c. Taking an Inordinately Broad Security Interest

74. The MCA Agreement purports to allow Merchant Capital to "purchase" a set percentage of My Pillow's future receivables.

75. However, rather than taking a security interest in future receivables, the security interest in the MCA Agreement is substantially broader than that, purportedly granting Merchant Capital a security interest in:

> [[A]ll accounts, including without limitation, all deposit accounts, accounts-receivable, and other receivables, as those terms are defined by Article 9 of the Uniform Commercial Code (the "UCC"), now or hereafter owned or acquired by [My Pillow]; and (b) all proceeds, as that term is defined by Article 9 of the UCC.

76. That security interest is further proof that the alleged "purchase" of My Pillow's receivables was nothing but a sham and that Merchant Capital had no risk under the transaction.

d. Alleged Guaranty by Lindell

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

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

> If any Event of Default takes place under the Agreement, then [Merchant Capital] may enforce its rights under this Guarantee without first seeking to obtain payment from [My Pillow], any other guarantor, or any Collateral or Cross-Collateral [Merchant Capital] may hold pursuant to this Guarantee or any other agreement or guarantee. [Merchant Capital] does not have to notify any Guarantor of any of the

Filed in District Court
State of Minnesota
1/17/2025 2:52 PM

> following events and Guarantor(s) will not be released from its obligations under this Guarantee even if it is not notified of: (i) [My Pillow's] failure to pay timely any amount owed under the Agreement; (ii) any adverse change in [My Pillow'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) [Merchant Capital's] acceptance of the Agreement with [My Pillow]; and (v) any renewal, extension, or other modification of the Agreement or [My Pillow's] other obligations to [Merchant Capital]. In addition, [Merchant Capital] 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 [My Pillow's] other obligations to [Merchant Capital]; … (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 [My Pillow's] other obligations to [Merchant Capital] under the Agreement and this Guarantee **are paid in full**, each Guarantor shall not seek reimbursement from [My Pillow] 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 [My Pillow], any other guarantor, or any collateral provided by [My Pillow] 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.

79. The foregoing provision is further evidence that Merchant Capital assumed no risk under the MCA Agreement.

80. Plaintiffs recently learned that courts have ruled that MCA 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)

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

Filed in District Court
State of Minnesota
1/17/2025 2:52 PM

A. The Unlawful Activity.

82. 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.

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

84. Here, the interest rate that My Pillow was paying on the loan was **385%**.

85. The disclosures Defendants made about the loan are clearly fraudulent (for example, the MCA 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.

86. 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 Cohen; Mandel; Tendler; and the John and Jane Doe Investors was, and is, a person or entity that exists separate and distinct from the Enterprise, described below.

87. Upon information and belief, Cohen, on behalf of Creditline, brokered the usurious loan and purported guaranty and Cohen and Creditline were paid by Merchant Capital for their improper and illegal acts to facilitate the usurious loan.

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

Filed in District Court
State of Minnesota
1/17/2025 2:52 PM

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

C. The Enterprise.

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

91. 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.

92. 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.

93. The debt evidenced by My Pillow's MCA 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.

94. 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.

Filed in District Court
State of Minnesota
1/17/2025 2:52 PM

95. 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.

96. 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:

i. Merchant Capital and/or Shine.

97. Merchant Capital and/or Shine, upon information and belief, maintain officers, books, records, and bank accounts independent of various other Defendants, including the John and Jane Doe Investors.

98. Each of Cohen; Mandel; Tendler; Creditline; and the John and Jane Doe Investors have operated, engaged and/or conspired with Merchant Capital and/or Shine as part of an unlawful enterprise to collect upon unlawful debt and commit wire fraud.

99. Pursuant to its membership in the Enterprise, the Merchant Capital and/or Shine has: (i) engaged brokers like Cohen and Creditline 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) underwritten the usurious loans and determining the ultimate rate of usurious interest to be charged under 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

Filed in District Court
State of Minnesota
1/17/2025 2:52 PM

(vi) set-up and implemented the ACH withdrawals used by the Enterprise to collect upon the unlawful debts.

ii. The Brokers.

100. Upon information and belief, Cohen and Creditline acted as brokers for the placement of the usurious loan and, upon information and belief, were paid to broker the illegal loan between Merchant Capital and My Pillow. Among other things, Cohen (on behalf of Creditline): (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 Merchant Capital and/or Shine.

iii. The Associates of Merchant Capital and/or Shine.

101. Mandel and Tendler facilitated the usurious loan, the Enterprise, and for Tendler, the improper collection efforts of the usurious loan.

iv. The John and Jane Doe Investors.

102. 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 Merchant Capital.

103. Directly and through their members, agent officers, and/or employees, the Investors have been and continue to be responsible for providing Merchant Capital 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.

Filed in District Court
State of Minnesota
1/17/2025 2:52 PM

104. 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.

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

105. Upon information and belief, the John and Jane Doe Owner(s) of Merchant Capital 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.

106. 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.

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

Filed in District Court
State of Minnesota
1/17/2025 2:52 PM

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

E. Interstate Commerce.

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

110. 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.

111. 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 MCA Agreement, fund the advance under the Agreement, and collect the daily payments via interstate electronic ACH debits.

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

F. Injury and Causation.

113. 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).

Filed in District Court
State of Minnesota
1/17/2025 2:52 PM

114. 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.

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

116. 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
(Conspiracy under 18 U.S.C. § 1962(d))

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

118. 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).

119. 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 MCA 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).

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State of Minnesota
1/17/2025 2:52 PM

120. 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 MCA Agreement, in violation of 18 U.S.C. § 1962(c).

121. 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 MCA Agreement.

122. 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).

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

124. 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.

125. 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).

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

127. 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
1/17/2025 2:52 PM

128. 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.

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

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

131. 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).

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

133. 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.

134. 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.

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

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

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State of Minnesota
1/17/2025 2:52 PM

THIRD CAUSE OF ACTION
(Declaratory Judgment)

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

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

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

140. Plaintiffs are also seeking a declaration that the MCA 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:

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

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

c) 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) Any further relief deemed appropriate by the Court.

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State of Minnesota
1/17/2025 2:52 PM

Dated: January 17, 2025

BERENS & MILLER, P.A.

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ACKNOWLEDGMENT

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

Dated: January 17, 2025

/s/Barbara Podlucky Berens
Barbara Podlucky Berens (#209788)