SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK, by LETITIA JAMES, Attorney General of the State of New York,

Petitioner,

-against-

YELLOWSTONE CAPITAL LLC, FUNDRY LLC, DELTA BRIDGE FUNDING LLC, CLOUDFUND LLC, ABC MERCHANT SOLUTIONS, LLC, ADVANCE MERCHANT SERVICES LLC, BUSINESS ADVANCE TEAM LLC, CAPITAL ADVANCE SERVICES LLC, CAPITAL MERCHANT SERVICES, LLC, CASH VILLAGE FUNDING LLC, FAST CASH ADVANCE LLC, FUNDZIO LLC, GREEN CAPITAL FUNDING LLC, HFH MERCHANT SERVICES LLC, HIGH SPEED CAPITAL LLC, MERCHANT CAPITAL PAY LLC, MERCHANT FUNDING SERVICES LLC, MIDNIGHT ADVANCE CAPITAL LLC, MR. ADVANCE CAPITAL LLC, OCEAN 1213 LLC, SIMPLY EQUITIES LLC, TVT CAP FUND LLC, TVT CAPITAL HR, LLC, THRYVE CAPITAL FUNDING LLC, WCM FUNDING LLC, WEST COAST BUSINESS CAPITAL, LLC (f.k.a. YELLOWSTONE CAPITAL WEST LLC), WORLD GLOBAL CAPITAL LLC (including each entity captioned herein doing business under any other name), DAVID GLASS, YITZHAK ("Isaac") STERN, JEFFREY REECE, BARTOSZ ("Bart") MACZUGA, VADIM SEREBRO, TSVI ("Steve") DAVIS, AARON DAVIS, MATTHEW MELNIKOFF, MARK SANDERS, and DAVID SINGFER,

Respondents.

VERIFIED PETITION

Index No. _____/2024

IAS Part ___

Assigned to Justice _____

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Petitioner the People of the State of New York ("Petitioner"), by their attorney, Letitia James, Attorney General of the State of New York ("NYAG"), brings this special proceeding pursuant to Executive Law § 63(12) against Yellowstone Capital LLC, Fundry LLC, Delta Bridge Funding LLC, Cloudfund LLC, David Glass, Bartosz ("Bart") Maczuga, Jeffrey Reece, Vadim Serebro, Yitzhak ("Isaac") Stern, Tsvi ("Steve") Davis, Aaron Davis, Matthew Melnikoff, Mark Sanders, David Singfer, and all other Respondent entities listed above (collectively, "Respondents").

The NYAG, on behalf of Petitioner, alleges as follows:

PRELIMINARY STATEMENT

1. Yellowstone Capital, Fundry, Delta Bridge, Cloudfund, and the other Respondents named herein have engaged for years in a fraudulent, illegal scheme—under the leadership of David Glass, Isaac Stern, Jeffrey Reece, Bart Maczuga, and Vadim Serebro—to fleece money from small businesses by issuing them illegal, short-term loans at sky-high interest rates through so-called "merchant cash advances," or "MCAs."

2. Through their illegal transactions, which Respondents have enforced using judgments that they have fraudulently obtained from the New York courts, Respondents have illegally collected billions of dollars from struggling small businesses in New York and across the United States. By doing so, they have driven merchants even further into debt or financial ruin—or worse—causing

immense harm not only to the small businesses themselves, but also to the lives of their owners, employees, and others who depend on them.

3. Respondents purport to help struggling small businesses by providing them with rapid access to funding with flexible repayment options, with no lengthy application process and despite past credit problems.

4. In reality, Respondents' transactions are illegal, usurious, fraudulent loans, set to fixed payment amounts that Respondents debit from merchants' bank accounts each business day ("Daily Amounts"). Respondents set their transactions to finite terms, such as 60 days or 90 days.

5. Respondents memorialize each funding transaction in an agreement in which they fraudulently describe the deal as a "Purchase and Sale of Future Receivables," or similar language. Respondents falsely state in their agreements that they are buying a portion, which they call a "Specified Percentage," of the merchants' future receipts of revenue, sometimes called "receivables." Respondents set each merchants' payments to a fixed, recurring amount that they fraudulently state reflects a Specified Percentage of the merchant's future revenue.

6. Respondents misrepresent that if merchants' revenue declines in the future, the merchants can "reconcile" their past payment amounts accordingly, obtaining refunds for past payments—and, in the case of Delta Bridge, adjustment for future payments as well—so the merchants are never paying more than a set percentage of their revenue. And Respondents falsely state in the agreements that

the transactions are open-ended, such that the advances may be paid off over a long term if the merchants' receipt of revenue slows down.

7. All these representations are a sham, created by Respondents to lure merchants to sign their loan agreements and to evade New York usury law by disguising the loans as something they are not. But Respondents' transactions are usurious loans, not purchases of revenue.

8. Respondents collect on the transactions according to fixed Daily Amounts that have no connection to the Specified Percentages stated in the agreements, and Respondents debit them from merchants' bank accounts each business day, regardless of declines in the merchants' revenue.

9. Respondents' promises of payment reconciliation are a fraud. Respondents deliberately increase their Specified Percentages while planning their transactions in order to put the remedy of reconciliation far out of reach for merchants, making it impossible for merchants to qualify for fair refunds of excess payments collected by Respondents when merchants' intake of revenue declines.

10. Despite their promises of open-ended payment terms, Respondents set their transactions to finite terms, such as 60 or 90 business days, which Respondents regularly negotiate and manipulate, largely based on the perceived risk of repayment and without regard to the percentages of merchants' revenue purportedly purchased. These finite repayment terms are not affected by reconciliations or adjustments based on Specified Percentages of merchants' revenue, which Respondents virtually never provide.

11. Through their fixed payments and finite terms, Respondents charge the merchants sky-high annual interest rates that are regularly in the triple digits—reaching at least as high as 820%—far beyond both the maximum civil usury interest rate of 16% and the maximum criminal usury interest rate of 25%.

12. Respondents require the transactions to be personally guaranteed and extensively secured against a vast array of merchants' assets, far beyond the revenue Respondents purport to be purchasing.

13. Respondents claim for themselves priority status as secured creditors under UCC Article 9, enabling them to ensure full repayment in the event of merchant bankruptcy, long after merchants' revenue has dwindled to zero, while unsecured and lower-priority creditors may recover little to nothing.

14. Respondents declare merchants in default when they merely have insufficient funds in their bank account to cover Respondents' debits of Daily Amounts, and in the event of such "default" Respondents file legal actions against merchants and their guarantors to immediately recover not only the missed payments but also the merchant's entire remaining balance.

15. And on top of their usury scheme, Respondents, through their Yellowstone operation, have defrauded merchants in other ways by repeatedly charging the merchants hidden, undisclosed fees and by debiting from the merchants' bank accounts excess payments that the merchants never agreed to.

16. Respondents have also directed their fraudulent scheme at the New York judiciary. This was an essential part of Respondents illegal usury scheme, as

Respondents counted on being able to enforce their agreements with merchants, who were located all over the country, in the courts of this state.

17. When Respondents sought to enforce their agreements, they did so by fraudulently obtaining judgments from the New York courts. Respondents file court papers falsely stating that they collect "Specified Percentages" of merchants' revenue and that merchants have defaulted on the transactions by failing to pay such percentages to Respondents. By fraudulently filing such papers in court, Respondents have created before the courts the illusion that their transactions are lawful investments in merchants' future receipts of revenue—when in reality they are nothing more than fixed-payment, short-term, ultra-high-interest loans. Respondents have then used these fraudulently obtained judgments as a tool to seize even more money from the bank accounts of merchants and their guarantors, in addition to the money Respondents wrongly collected as Daily Amounts.

18. Respondents have conducted their fraudulent, illegal scheme under numerous corporate names and purported corporate forms. From 2009 to 2021, Respondents managed their operation under the names of Yellowstone Capital, Fundry, and numerous subsidiary companies ("Yellowstone Subsidiaries"), such as Green Capital Funding LLC, Capital Advance Services LLC, and World Global Capital LLC. Each of these was merely an interchangeable brand name, an alias, for Yellowstone Capital, and all such entities provided the same usurious, fraudulent MCA product put forth by Yellowstone Capital.

19. Respondents have for years concealed their association with David Glass, a notorious white-collar criminal who was previously convicted of securities fraud, even as Glass has been actively engaged with Respondents for years in shaping and managing their fraudulent, illegal MCA business.

20. In 2021, Respondents purported to wind down the Yellowstone/Fundry operation and sell its software assets to a brand-new MCA company, Delta Bridge—a transaction arranged by Glass—but the asset sale was a sham. Delta Bridge and its affiliated company Cloudfund were nothing more than new names for the same Yellowstone/Fundry operation, run by former Yellowstone officers, staffed by the same Yellowstone personnel, and selling the same fraudulent, illegal, usurious MCA product that was long sold by Yellowstone.

21. Since 2013, Respondents under their various names have illegally, fraudulently collected an estimated $4.5 billion from merchants and their guarantors, including an estimated $1.38 billion in interest. Businesses throughout the country have been ruined as a result. Many, such as the popular New York City-based City Bakery, have been forced to lay off their employees and go out of business after being pushed by Respondents into deepening spirals of debt. When one merchant, Jerry Bush, a plumber based in Virginia, was told by Respondent Steve Davis that death was the only escape from his ballooning debts to Yellowstone (or winning the lottery), the merchant attempted suicide in a desperate attempt to save himself and his family from a bottomless pit of debt.

22. Petitioner now seeks relief for the merchants that have been harmed by Respondents' repeated and persistent fraud and illegality and an injunction prohibiting Respondents from engaging in similar conduct in the future.

23. Pursuant to New York Executive Law § 63(12), Petitioner seeks an order:

a. Permanently enjoining Respondents from engaging in the fraudulent and illegal practices alleged herein;

b. Permanently enjoining Respondent Glass from engaging in or profiting from MCAs, loans, or business funding in the future, and enjoining all other Respondents from involvement in the Merchant Cash Advance business for no less than ten years;

c. Ordering Respondents to cease all collection of payments on MCAs pending the hearing of this Petition;

d. Declaring void and ordering rescission of each of Respondents' usurious, fraudulent, and illegal agreements;

e. Ordering Respondents to file papers sufficient to obtain vacatur of all judgments obtained by them pursuant to such agreements;

f. Staying all marshals, sheriffs, and collection agents from executing or collecting upon such judgments;

g. Ordering Respondents to apply for dismissal of all pending court proceedings concerning such agreements;

h. Ordering Respondents to file papers sufficient to terminate all liens or security interests related to their cash advances;

i. Ordering Respondents to provide a detailed accounting of all moneys collected;

j. Ordering Respondents to pay full restitution and damages to merchants in the amount of every dollar of interest Respondents have illegally collected from merchants, every dollar Respondents have fraudulently overcollected from merchants beyond the total collection amounts represented, every dollar of their fraudulent fees, and every dollar they have collected through execution of their fraudulently obtained court judgments;

k. Ordering Respondents to disgorge all profits;

l. Awarding civil penalties and costs to the NYAG;

m. Setting aside the asset transfer between Yellowstone and Delta Bridge; and

n. Granting such other and further relief as the Court deems just and proper.

PARTIES AND JURISDICTION

24. Petitioner is the People of the State of New York.

25. The NYAG brings this special proceeding on behalf of the People pursuant to, *inter alia*, Executive Law § 63(12), which authorizes the NYAG to seek injunctive relief, restitution, damages, and costs when any person or entity has

engaged in repeated fraudulent or illegal acts or has otherwise demonstrated persistent fraud or illegality in conducting its business.

I. CORPORATE RESPONDENTS

A. Yellowstone Capital and Fundry

26. Respondent Yellowstone Capital LLC is a limited liability company organized under New York law in 2009. Ex. 436 (Articles of Organization).[1] From 2009 until 2016, Yellowstone Capital LLC was headquartered at 160 Pearl Street in Manhattan. *See* Kern Tr. at 29:14-25; Melnikoff Tr. at 41:14-18.[2]

27. After 2016, Yellowstone and its subsidiaries maintained offices in Manhattan at 30 Broad Street, 14th Floor, and 116 Nassau Street, Suite 804, and in New Jersey at One Evertrust Plaza, Jersey City. In all of their MCA transactions with merchants, Yellowstone and its subsidiaries prominently listed one of their Manhattan addresses, locating themselves in the Financial District of the financial capital of the world. *E.g.*, Ex. 1 (hereinafter "Yellowstone 2018 Exemplar") at 2; Ex. 2 (hereinafter "Yellowstone 2020 Exemplar") at 1.

28. The MCA agreements that Yellowstone and its subsidiaries entered into with merchants were all negotiated and carried out in New York, and each of the payments collected from merchants was delivered to Yellowstone in New York, as expressly stated in the agreements. *See, e.g.*, Yellowstone 2020 Exemplar at 11-

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[1] Exhibits cited herein are exhibits to the Affirmation of Adam J. Riff, filed herewith.

[2] Transcripts are identified by exhibit number in paragraphs 83 and 112, *infra*.

12 § 43; Ex. 87 at 11 § 43 (Nov. 2018 Green Capital contract); *see also infra* ¶¶ 466-472 (discussing Respondents' targeting of New York as an essential part of their fraudulent and illegal usury scheme).

29. Respondent Fundry LLC is a limited liability company organized under New York law in 2015. *See* Ex. 437 at 28 (Fundry Articles of Organization). Fundry is an alias for Yellowstone Capital LLC, and its employees and representatives have used the two names "interchangeably." Stern Tr. at 31:19-20; *see also* Reece Tr. at 24:24-25:2.

30. Yellowstone Capital LLC and Fundry currently have no offices of their own, but instead do business from the offices of Delta Bridge, as set forth *infra* ¶¶ 637-651, and from the homes of their officers, Respondents Stern, Reece, and Glass.

31. Yellowstone purportedly ceased issuing new MCAs in May 2021. In reality, Yellowstone has continued to operate under the Delta Bridge name, as set forth below. *See infra* Part IV. Yellowstone also continues to collect on certain outstanding MCAs that were issued prior to May 2021. *See, e.g.*, Stern Tr. at 150:11-151:17.

B. Yellowstone Subsidiaries

32. Yellowstone Capital LLC issued and collected on its MCAs through numerous subordinate limited liability corporations ("Yellowstone Subsidiaries"). *See* Ex. 47 (Yellowstone Organization Charts) (defining such entities as "Funding

Platforms"); *see also infra* ¶¶ 59-69 (explaining that Yellowstone and the Subsidiaries form a common enterprise).

33. As used in this Petition, the name "Yellowstone" refers collectively to Yellowstone Capital LLC, Fundry, and all Yellowstone Subsidiaries.

34. Each of the Yellowstone Subsidiaries identified herein on information and belief operated from Yellowstone Capital LLC's offices.

35. Respondent ABC Merchant Solutions, LLC, is a Yellowstone Subsidiary and a limited liability company organized under New York law in 2016. *See* Ex. 437 at 1 (New York Department of State ("NY DOS") Entity Information).

36. Respondent Advance Merchant Services LLC is a Yellowstone Subsidiary and a limited liability company organized under New York law in 2015. *See id.* at 4 (NY DOS Entity Information).

37. Respondent Business Advance Team LLC is a Yellowstone Subsidiary and a limited liability company organized under New York law in 2016. *See id.* at 7 (NY DOS Entity Information). Business Advance Team LLC did business under its own name and the names Accel Funding, BRC, and Everyday Capital. *See* Ex. 47 (Yellowstone Organization Chart).

38. Respondent Capital Advance Services LLC is a Yellowstone Subsidiary and a limited liability company organized under New York law in 2015. *See* Ex. 437 at 9 (NY DOS Entity Information).

39. Respondent Capital Merchant Services, LLC, is a Yellowstone Subsidiary and a limited liability company organized under New York law in 2015. *See id.* at 12 (NY DOS Entity Information).

40. Respondent Cash Village Funding LLC is a Yellowstone Subsidiary and a limited liability company organized under New York law in 2017. *See id.* at 15 (NY DOS Entity Information).

41. Respondent Fast Cash Advance LLC is a Yellowstone Subsidiary and a limited liability company organized under New York law in 2018. *See id.* at 25 (NY DOS Entity Information).

42. Respondent Fundzio LLC is a Yellowstone Subsidiary and a limited liability company organized under New York law in 2017. *See id.* at 31 (NY DOS Entity Information).

43. Respondent Green Capital Funding LLC is a Yellowstone Subsidiary and a limited liability company organized under New York law in 2015. *See id.* at 37 (NY DOS Entity Information).

44. Respondent HFH Merchant Services LLC is a Yellowstone Subsidiary and a limited liability company organized under New York law in 2017. *See id.* at 40 (NY DOS Entity Information).

45. Respondent High Speed Capital LLC is a Yellowstone Subsidiary and a limited liability company organized under New York law in 2014. *See id.* at 43 (NY DOS Entity Information).

46. Respondent Merchant Capital Pay LLC is a Yellowstone Subsidiary and a limited liability company organized under New York law in 2018. *See id.* at 46 (NY DOS Entity Information).

47. Respondent Merchant Funding Services LLC is a Yellowstone Subsidiary and a limited liability company organized under Florida law in 2013. *See id.* at 49 (Articles of Organization).

48. Respondent Midnight Advance Capital LLC is a Yellowstone Subsidiary and a limited liability company organized under New York law in 2016. *See id.* at 53 (NY DOS Entity Information).

49. Respondent Mr. Advance Capital LLC is a Yellowstone Subsidiary and a limited liability company organized under New York law in 2019. *See id.* at 56 (NY DOS Entity Information).

50. Respondent Ocean 1213 LLC is a Yellowstone Subsidiary and a limited liability company organized under New York law in 2017. *See id.* at 59 (NY DOS Entity Information).

51. Respondent Simply Equities LLC is a Yellowstone Subsidiary and a limited liability company organized under New York law in 2018. *See id.* at 62 (Articles of Organization).

52. Respondent Thryve Capital Funding LLC is a Yellowstone Subsidiary and a limited liability company organized under New York law in 2016. *See id.* at 65 (NY DOS Entity Information).

53. Respondent TVT Cap Fund LLC is a Yellowstone Subsidiary and a limited liability company organized under New York law in 2016. *See id.* at 68 (NY DOS Entity Information).

54. Respondent TVT Capital HR, LLC, is a Yellowstone Subsidiary and a limited liability company organized under New York law in 2018. *See id.* at 71 (NY DOS Entity Information).

55. Respondent WCM Funding LLC is a Yellowstone Subsidiary and a limited liability company organized under New York law in 2017. *See id.* at 74 (NY DOS Entity Information).

56. Respondent West Coast Business Capital, LLC ("West Coast Capital"), is a Yellowstone Subsidiary and a limited liability company organized under New York law in 2012. *See id.* at 77 (NY DOS Entity Information). West Coast Capital was known as Yellowstone Capital West LLC until 2018, when it changed its name to West Coast Business Capital, LLC. *See id.* at 82 (Certificate of Amendment).

57. Respondent World Global Capital LLC ("World Global") is a Yellowstone Subsidiary and a limited liability company organized under New York law in 2016. *See id.* at 80 (NY DOS Entity Information). World Global has done business under its own name and over forty additional entity names ("World Global DBAs"), as identified in its MCA agreements and in Yellowstone's Organization Chart. *See* Ex. 47. The World Global DBAs include:

1) 1 West Financial
2) 24 Capital

3) ABC Merchant Solutions

4) Accel Capital Services

5) Blue Rock Capital

6) Cardinal Advance

7) Cardinal Funding

8) Citi Cap

9) Clara Capital

10) Crestmont Capital

11) Direct Capital Source

12) EIN Cap

13) Everlasting Capital

14) Fast Cash Advance

15) Fast Cash Funding

16) Fastline Capital

17) Flash Advance

18) Fortress Advance

19) Funderslink

20) Fundit Lending Solutions

21) Fundkite Funding

22) Fundworks

23) Grand Capital Funding

24) Ibex Funding Group

25) Ifundco

26) Karish Funding

27)Main Street Merchant Services

28)Mainstreet Capital Group

29)Mass Capital Funding

30)New Era Advance

31)One Funder

32)One World Funding

33)PBS Capital

34)Prosperum Funding

35)RBS Funding

36)RTR Funding

37)Richmond Funding

38)SBG Funding

39)Samson Advance

40)Simple Funding Solutions

41)Smart Business High Risk

42)Sprout Funding

43)Standard Financing

44)Three Tree Funding

45)Velocity Capital Group

46)Velocity Funding Group

47)Westwood Funding

48)Yes Funding

58. The Yellowstone Subsidiaries memorialized their MCAs in agreements substantially identical to the Yellowstone agreements. *See generally* Exs. 462 and 463 (exemplar agreements in alphabetical order by Yellowstone Subsidiary).

C. Yellowstone, Its Subsidiaries, and Fundry Form a Common Enterprise

59. Yellowstone Capital LLC, Fundry, and the Yellowstone Subsidiaries form a common enterprise.

60. Respondent Stern, Yellowstone's co-founder and CEO, explained that "Yellowstone issued merchant cash advances through various LLCs." Stern Tr. at 54:8-11. He testified that the LLCs were simply "Yellowstone entities" that "were owned and controlled by Yellowstone" and used simply as "different Yellowstone brands," *id.* at 54:25-55:9, and treated as "just the [contractual] paper that the merchant cash advances were funded on," *id.* at 56:17-19; *accord* Maczuga Tr. at 112:22-113:11; S. Davis Tr. at 214:9-24.

61. Stern testified that "there were no differences among [the] merchant cash advances that the [subordinate] entities offered," and Yellowstone's personnel "use[d] the entities interchangeably." Stern Tr. at 56:3-5, 62:24-63:2; *accord* S. Davis Tr. at 24:18-25:13; Ehrlich Tr. at 66:22-67:4; Kern Tr. at 165:16-166:7; McNeil Tr. at 103:1-104:16; Melnikoff Tr. at 86:18-25; Saffer Tr. at 35:12-24, 104:7-20, 155:25-156:4; Schwartz Tr. at 72:14-73:7, 79:8-15; Worch Tr. at 42:21-44:25, 144:24-145:5; Yagecic I Tr. at 127:22-128:6.

62. Respondents occasionally referred to such Yellowstone brands as "white labels."

63. The Yellowstone Subsidiaries were "identical in terms of their operations, personnel, [and] location." Stern Tr. at 70:6-11; *accord* Reece Tr. at 58:12-59:25. They had no separate officers, employees, boards of directors, legal counsel, office addresses, Stern Tr. at 58:6-20, or phone numbers aside from those of Yellowstone Capital LLC, *see, e.g.*, Ex. 117 at 9, 15 (Mar. 8, 2018 Yellowstone Capital LLC agreement); Ex. 106 at 9-10 (Green Capital Funding LLC agreement of the same date); Ex. 89 at 7 (May 29, 2015 Merchant Funding Services LLC agreement); Ex. 119 at 1 (May 28, 2015 Yellowstone Capital LLC agreement); Ex. 98 at 1, 10 (Jan. 19, 2017 Yellowstone Capital West LLC agreement).

64. The Yellowstone Subsidiaries were operationally identical, with no differences in underwriting, servicing, or collections. *See* Stern Tr. at 61:18-63:5. The Yellowstone Subsidiaries were financially identical, including in their distribution of revenues and profits. Stern Tr. at 61:14-17. The Yellowstone Subsidiaries differed only in their names and in their use of different bank accounts to collect payments. Stern Tr. at 70:6-11; McNeil Tr. at 113:6-10.

65. Yellowstone issued its MCAs through subsidiary names such as Green Capital Funding and High Speed Capital largely to conceal from merchants Yellowstone's involvement in its MCA transactions. *See* Ex. 325 at 5 (email to all Yellowstone personnel, stating: "We are treating Green Capital with the same level of discretion as HighSpeed; looking to avoid a direct Yellowstone connection"). Yellowstone had a "particularly bad" relationship in the MCA industry, Ehrlich Tr. at 70:22-71:3, so it "tr[ied] to obscure its involvement in deals through the use of . . .

different entities," Williams Tr. at 60:12-18; *accord id.* at 58:14-19, 61:24-62:5; Yagecic I Tr. at 131:20-22; Vasquez Tr. at 37:11-13, 38:6-12.

66. Around 2015, for example, Yellowstone began selling MCAs through Green Capital, a Yellowstone Subsidiary, "the whole purpose" of which "was to try to separate from the extremely negative reputation that Yellowstone had." Ehrlich Tr. at 69:9-70:5; *see* Ex. 325 at 5. Merchants "knew to stay away from Yellowstone, but then they would come to Green Capital, thinking they were speaking with a new company, but it's the same paper." Ehrlich Tr. at 70:14-19; *see, e.g.* Alabudi Aff. ¶¶ 65-66, 70, 73.

67. For example, the merchant Austin's Habibi entered into an MCA agreement with High Speed Capital in March 2018 in part because its owner had previously had a bad experience with a different Yellowstone Subsidiary and believed that High Speed was not Yellowstone-affiliated—an understanding that was fraudulently confirmed by a broker working with High Speed Capital, who falsely "confirmed that they were 'different' companies." Alabudi Aff. ¶ 70.

68. Also in 2015, Respondents created the company Fundry LLC, and they began using Fundry as a "brand name" for Yellowstone's overall operation. *See* Stern Tr. at 51:16-52:18; *accord* Reece Tr. at 24:24-25:2 ("Fundry is the rebranding of Yellowstone.").

69. For "operational and financial purposes," there was no difference between Fundry and Yellowstone Capital LLC. Stern Tr. at 51:18-22; *accord* Glass Tr. at 44:24:45:4. Fundry had no personnel, office address, or phone lines separate

from those of Yellowstone Capital LLC. Stern Tr. at 52:13-18. Respondents used the Yellowstone and Fundry names "interchangeably." Stern Tr. at 31:19-20.

D. Delta Bridge Entities

70. Respondent Delta Bridge Funding LLC is a limited liability company organized under Delaware law in 2021. *See* Ex. 437 at 21 (Certificate of Formation). Delta Bridge Funding LLC maintains offices in Suffern, New York, and in Fort Lauderdale and Aventura, Florida. *See* Ex. 53.

71. In its MCA transactions with merchants, Delta Bridge prominently lists its Suffern address, continuing Yellowstone's practice of outwardly identifying itself as a New York-based company. *E.g.*, Ex. 3 (hereinafter "Delta Bridge Exemplar") at 1; *see also infra* ¶¶ 466-472.

72. The MCA agreements that Delta Bridge has entered into with merchants were all negotiated and carried out in New York, and each of the payments collected from merchants was delivered to Delta Bridge in New York, as expressly stated in the agreements. *See, e.g.*, Delta Bridge Exemplar at 10 § 38; *see also infra* ¶¶ 466-472 (discussing Respondents' targeting of New York as an essential part of their fraudulent and illegal usury scheme).

73. Respondent Cloudfund LLC is a limited liability company organized under New York law in 2021. *See* Ex. 437 at 18 (Articles of Organization). Cloudfund is an affiliate of Delta Bridge Funding LLC and is operated from the same offices. Maczuga Tr. at 114:8-25. Cloudfund does business both under its own name and under other names, including: Samson Group, Unique Capital,

Alternative Fast Source, Red Hawk Funding, and WWF Funding Group. *E.g.*, Exs. 63, 69, 99, 91, 56.

74. Since May 2021, Respondents' MCA agreements have identified Cloudfund as party to its agreements and Delta Bridge Funding LLC as Cloudfund's "servicing agent," responsible for servicing the transactions. Serebro Tr. at 97:17-25; *e.g.*, Delta Bridge Exemplar at 1, 3 § 8.

75. In fact, Delta Bridge Funding LLC and Cloudfund operate as a common enterprise. The two entities are referred to collectively as "Delta Bridge" in this Petition.

76. As Respondent Bart Maczuga—CEO of both entities—testified, "[I]t's all one . . . it's one company." Maczuga Tr. at 114:8-15; *see also* Saffer Tr. at 37:12-18 ("Cloud Fund and Delta Bridge are the same").

77. Cloudfund is simply a "brand name," or "platform," for Delta Bridge's MCAs, created for the "sole purpose of being . . . [named] on the contract" for Delta Bridge's MCAs. Maczuga Tr. at 113:12-114:12.

78. Cloudfund has no employees of its own apart from those who work for Delta Bridge Funding LLC. *See id.* at 114:8-9; Serebro Tr. at 89:14-90:6, 91:25-92:8.

79. Cloudfund has no offices separate from those of Delta Bridge Funding LLC. *See* Maczuga Tr. at 114:8-25.

80. Cloudfund has no directors or officers separate from those of Delta Bridge Funding LLC. *See id.* at 114:4-15; Serebro Tr. at 89:14-90:6, 91:25-92:8.

81. On information and belief, Cloudfund has no telephone lines separate from those of Delta Bridge Funding LLC.

82. Delta Bridge is also Yellowstone's legal successor, as set forth below. *Infra* Part IV.

II. INDIVIDUAL RESPONDENTS

83. The individual Respondents, who are detailed in this Part, are summarized in this chart:

RESPONDENT	ROLE	TESTIMONY
David Glass	Yellowstone *de facto* officer, part owner, and co-founder (2015-present) Yellowstone CFO, part owner (2009-2014)	Ex. 9 ("Glass Tr.") Ex. 10 ("Glass Strike Tr.") (*see infra* ¶ 600 & n.13)
Yitzhak ("Isaac") Stern	Yellowstone CEO, part owner, and co-founder (2009-present)	Ex. 20 ("Stern Tr.")
Jeffrey Reece	Yellowstone president and part owner (2015-present)	Ex. 15 ("Reece Tr.")
Bartosz ("Bart") Maczuga	Delta Bridge CEO, majority owner, and co-founder (2021-present) Yellowstone Co-CEO and part owner (2019-2021) Yellowstone Funder (2012-2019)	Ex. 12 ("Maczuga Tr.")
Vadim Serebro	Delta Bridge general counsel, part owner, and co-founder (2021-present) Yellowstone general counsel (2018-present)	Ex. 18 ("Serebro Tr.")
Aaron Davis	Yellowstone & Delta Bridge Funder (to present)	Ex. 6 ("A. Davis Tr.")
Tsvi ("Steve") Davis	Yellowstone Funder (to 2018) and part owner (to present)	Ex. 7 ("S. Davis Tr.")
Matthew Melnikoff	Yellowstone & Delta Bridge Funder (to present)	Ex. 14 ("Melnikoff Tr.")
Mark Sanders	Yellowstone & Delta Bridge Funder (to present)	N/A (*see infra* ¶ 107)
David Singfer	Yellowstone & Delta Bridge Funder (to present)	Ex. 19 ("Singfer Tr.")

A. Officer Respondents

84. Respondents Glass, Stern, Reece, Maczuga, and Serebro, each of whom has served as an officer of Yellowstone and/or Delta Bridge, are collectively referred to herein as Officer Respondents.

85. Respondent David Glass currently resides in Fort Lauderdale, Florida. Glass Tr. at 13:11-13. Glass co-founded Yellowstone with Isaac Stern in 2009, *id.* at 39:5-6, served as its managing member and chief financial officer through 2014, *id.* at 29:25-30:5; Ex. 409 at 1 (identifying Glass as Yellowstone's Managing Member); Ex. 414 at 2 (same), and has since January 2015 remained active in planning Respondents' operations and transactions as an undisclosed, *de facto* officer and shareholder, as set forth below.

86. Glass was Yellowstone Capital LLC's registered agent when the entity was organized in 2009, listing his Manhattan residence as the place of service. Ex. 436 (Articles of Organization). Glass managed Yellowstone working out of Yellowstone's Manhattan office at 160 Pearl Street through at least 2014. Glass Tr. at 35:23-25, 59:2-5, 63:21-64:10.

87. Glass has maintained his ownership share in Yellowstone through New York entities including Grace Capital LLC. *See* Ex. 417. According to the New York Department of State, Glass is the registered agent for Grace Capital, at residential addresses in Brooklyn and Southhampton, New York. *See* Ex. 437 at 34 (NY DOS entity information for Grace Capital); *see also* Ex. 368 at 1 (reference to a gathering at "glass's hamptons place" in 2019); Saffer Tr. at 224:18-25.

88. Respondent Yitzhak ("Isaac") Stern resides in Hillside, New Jersey. Stern co-founded Yellowstone with Glass in 2009 and since that time has led the company as its chief executive officer ("CEO"). Stern Tr. at 14:6-7, 82:4.

89. Stern managed Yellowstone working out of Yellowstone's Manhattan office at 160 Pearl Street until 2016. Glass Tr. at 35:23-25, 59:2-5, 63:21-64:10.

90. Respondent Jeffrey Reece currently resides in Providence, Utah. Reece joined Yellowstone's management team in 2015, serves as its president, and is a part owner of Yellowstone. Reece Tr. at 13:9-10, 21:7-8; Stern Tr. at 28:23-29:3.

91. Reece managed Yellowstone working out of Yellowstone's Manhattan office at 160 Pearl Street until 2016. Reece Tr. at 39:13-17.

92. Respondent Bartosz ("Bart") Maczuga currently resides in Sunny Isles Beach, Florida. Maczuga Tr. at 19:19-24. Maczuga started at Yellowstone in 2011 in a behind-the-scenes role working for David Glass, who recruited him for the role, and then became a Funder the next year. *Id.* at 38:2-39:25, 43:19-45:8; *see infra* ¶ 97 (defining "Funder"). During the years 2016 through 2018, Maczuga was ranked as one of Yellowstone's top Funders. *See* Ex. 54. Maczuga was a Funder on Yellowstone transactions, working out of Yellowstone's Manhattan office at 160 Pearl Street until 2016.

93. In February 2019 Maczuga was promoted to co-CEO of Yellowstone, serving alongside Stern. Maczuga Tr. at 34:7-8; 374:24-25. From May 2021 until the present Maczuga has served as CEO of Delta Bridge, which company he co-owns with Respondent Vadim Serebro. Maczuga Tr. at 28:15-19; Serebro Tr. at 68:3-12.

94. Respondent Vadim Serebro resides in Yonkers, New York. Serebro Tr. at 12:19-24. Together with Maczuga, Serebro is co-founder and co-owner of Delta Bridge. *See* Ex. 52. Serebro is also the sole owner of an affiliated collections firm dedicated to collecting on defaulted Delta Bridge MCAs, called Max Recovery, which previously performed the same function at Yellowstone. *See infra* ¶¶ 587-590; Serebro Tr. at 68:20-69:17, 74:11-21.

95. Serebro is Delta Bridge's general counsel (2021 to present) as well as Yellowstone's general counsel (2018 to present), where he worked beginning in 2013. *See* Exs. 50, 51; Serebro Tr. at 19:16-20:14; Stern Tr. at 135:8-11. Serebro also uses the title of general counsel at Max Recovery, the collections firm he solely owns and manages. Serebro Tr. at 20:23-24, 69:9-17. In addition, Serebro holds the title of Chief Strategy Officer at Delta Bridge. *Id.* at 51:25-52:17.

96. Serebro has personally invested in hundreds of Respondents' individual MCA transactions as a "participant" (defined *infra* ¶ 98), through an entity he owns called VS Ventures. Serebro Tr. at 58:14-59:7, 62:7-63:3, 103:13-107:7; 130:24-133:18.

B. Funder Respondents

97. Both Yellowstone and Delta Bridge operate through individuals they refer to as "funders" ("Funders"), who purportedly serve as independent contractors and are responsible for negotiating, underwriting, issuing, servicing, and collecting upon the companies' MCAs, as set forth herein. *E.g.*, Melnikoff Tr. at 28:16-29:7; Maczuga Tr. at 76:14-80:19; A. Davis Tr. at 31:25-32:13; S. Davis Tr. at 47:25-15,

50:14-51:13; Singfer Tr. at 21:8-20; Saffer Tr. at 39:4-41:11; *see also infra* ¶¶ 327-331 (discussing Funders' negotiations with merchants).

98. Yellowstone's and Delta Bridge's Funders participate financially in each of the MCAs they manage by investing money into the transactions and sharing in the profits and losses that result. *See* Glass Tr. at 133:9-15; Kern Tr. at 38:12-19; S. Davis Tr. at 41:6-13; Ehrlich Tr. at 20:4-15, 59:6-25, 83:7-84:14; *see also infra* ¶ 630 (Funder compensation same at Yellowstone and Delta Bridge). Yellowstone and Delta Bridge's Funders also regularly invest in individual Yellowstone and Delta Bridge MCA deals managed by other Funders through so-called "participation" or "syndication" arrangements. Maczuga Tr. at 55:4-10; Reece Tr. at 45:11-20; Saffer Tr. at 63:15-20; Yagecic II Tr. at 93:2-6; McNeil Tr. at 142:6-24 (testifying about Ex. 288).

99. The Funder respondents identified herein include Maczuga, who served as a Funder at Yellowstone prior to being named Yellowstone's co-CEO, and five of Respondents' top ten additional Funders from 2016 through 2022, as determined by total dollars advanced to merchants in Yellowstone's and Delta Bridge's MCAs ("Funder Respondents"). *See* Ex. 54 (list of top Yellowstone/Delta Bridge Funders by year by dollars advanced). Each Funder Respondent remains active in the MCA industry as of at least 2023.

100. The Funder Respondents include the following individuals.

101. Respondent Aaron Davis resides in Pomona, New York. A. Davis Tr. at 12:17-21. Aaron Davis worked as a Funder at Yellowstone from around 2009

until at least May 2021 and at Delta Bridge from May 2021 to the present. *See id.* at 20:15-18, 41:7-17. Respondents Aaron Davis and Steve Davis are brothers.

102. Respondent Tsvi ("Steve") Davis currently resides in Miami Beach, Florida. S. Davis Tr. at 13:9-11. He previously resided in Brooklyn, as of 2018. *See* Ex. 415 at 1. Steve Davis joined Yellowstone at its inception in 2009, became a Yellowstone shareholder in 2011, worked at Yellowstone until at least 2018, and remains a part owner of the company to the present. *Id.* at 22:3-8, 28:6-16; Stern Tr. at 37:22-24, 105:2-11.

103. Steve Davis was consistently Respondents' highest-ranking Funder while working at Yellowstone. *See* Ex. 54 at 1. In 2017, for example, Davis funded $195.5 million in MCA deals, which was over five times what Yellowstone's second-highest Funder funded that year. *Id.*

104. In addition to retaining an ownership stake in Yellowstone, Steve Davis has remained active in the MCA industry through his ownership of Nomas Recovery LLC, a company operated by Davis's nephew, Avraham Weinstein, that collects payments for MCA issuers. *See* Ex. 338 at 2; Ex. 146 at 1; Maczuga Tr. at 406:6-407:25.

105. Respondent Matthew Melnikoff resides in Roslyn, New York. Melnikoff Tr. at 13:9-12. Melnikoff worked as a Funder at Yellowstone from 2012 until at least May 2021 and at Delta Bridge from May 2021 to the present. *Id.* at 16:8-13, 20:10-12, 59:14-25.

106. Respondent Mark Sanders resides in Port Washington, New York. *See* Ex. 48. Sanders worked as a Funder at Yellowstone from 2014 until at least May 2021 and at Delta Bridge from May 2021 to the present. Melnikoff Tr. at 32:11-22.

107. Respondents Sanders and Melnikoff are partners on each of the Yellowstone and Delta Bridge MCA deals for which they serve as Funder. Melnikoff testified that at both Yellowstone and Delta Bridge, he and Sanders have "shared everything 50/50," and that their approach to Yellowstone and Delta Bridge MCA deals was exactly the same. Melnikoff Tr. at 33:18-35:21, 36:16-37:23.

108. Respondent David Singfer resides in Teaneck, New Jersey. Singfer Tr. at 11:15-18. Singfer worked as a Funder at Yellowstone from March 2013 until at least May 2021 and at Delta Bridge from May 2021 to the present. *Id.* at 16:16-18, 28:3-8.

109. The Funder Respondents were personally involved in and/or responsible for, negotiating the MCA agreements they managed, carrying out the transactions, and collecting payments from merchants. *See supra* ¶ 97. Each of these occurred in New York, as expressly stated in the agreements. *See, e.g.*, Delta Bridge Exemplar at 10 § 38 ("[T]he transaction contemplated in this Agreement was negotiated, and is being carried out, in New York."); Yellowstone 2020 Exemplar at 11-12 § 43 (same). In addition, until at least 2016, the Funder Respondents managed their Yellowstone MCAs working out of Yellowstone's Manhattan office at 160 Pearl Street. *See* McNeil Tr. at 41:8-12; Schwartz Tr. at 35:2-12; Singfer Tr. at 24:3-11; S. Davis Tr. at 112:17-113:2.

110. Yellowstone and Delta Bridge engaged sales representatives (called "Sales Reps"[3]) to connect merchants with Funders. Sales Reps often acted as intermediaries in the negotiations between Funders and merchants. *See infra* ¶¶ 163, 327, 329, 607, 631. Sales Reps had access to the internal Yellowstone and Delta Bridge systems, were required to adhere to internal Yellowstone and Delta Bridge rules and policies, and worked side-by-side with Funders in the Yellowstone offices. Aryeh Tr. at 38:17-39:3, 70:22-71:13, 126:7-25. Sales Reps often worked with outside brokers (sometimes called independent sales organizations, or "ISOs"), who were also engaged with Yellowstone and Delta Bridge, to obtain merchant referrals.[4] *See infra* ¶¶ 163, 327, 420, 607, 631.

THE ATTORNEY GENERAL'S INVESTIGATION

111. Prior to bringing this proceeding, the NYAG conducted an extensive investigation of Respondents and their business practices in marketing, issuing,

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[3] Sales Reps at Delta Bridge are called "Platform ISOs." *See* Maczuga Tr. at 80:24-82:13. As used in this Petition, "Sales Rep" refers to sales representatives at both Yellowstone and Delta Bridge.

[4] Yellowstone's brokers included Jonathan Braun, who worked with Yellowstone from 2013 through 2018, and Tzvi Reich, who worked with Yellowstone from 2014 until at least April 2018. *See* Tr. of Test. Hrg. of Jonathan Braun ("Braun Tr."), Ex. 443, at 12:13-13:24; Tr. of Test. Hrg. of Tzvi Reich ("Reich Tr."), Ex. 442, at 24:5-26:10; Alabudi Aff. ¶¶ 34-47; Ostrowski Aff. ¶¶ 19, 36. In addition to their work with Yellowstone, Braun and Reich were principal decision-makers of Richmond Capital Group LLC ("Richmond") and Ram Capital Funding LLC ("Ram"), two companies that also purported to issue MCAs. *See People v. Richmond Capital Group LLC*, No. 451368/2020, 2023 WL 6053768, at *1, *6 & n.11 (Sup. Ct. N.Y. Cnty. Sept. 15, 2023). In fact, Braun, Reich, Richmond, and Ram were "predatory lenders," and their so-called MCAs were "loans, not . . . legitimate purchase[s] of accounts receivables." *Id.* at *1, *16.

servicing, and collecting upon MCAs. The investigation was initially prompted by public reports of merchants abused by Yellowstone and others in the MCA industry. *See*, *e.g.*, Zachary R. Mider & Zeke Faux, *Sign Here to Lose Everything, Part 1: I Hereby Confess Judgment*, Bloomberg (Nov. 20, 2018), Ex. 438 (including Parts 2-5 of the series); Bethany McLean, *'We're coming after you': Inside the Merchant Cash Advance Industry*, Yahoo! Finance (Dec. 8, 2018), Ex. 439.

112. During its investigation, the NYAG has obtained the testimony of numerous current and former officers, owners, associates, agents, and employees of Yellowstone and Delta Bridge—including some of the companies' top Funders, *see* Ex. 54—pursuant to testimonial subpoenas issued under Executive Law § 63(12). In addition to the testimony of Respondents listed above, *supra* ¶ 83, several individual Respondents produced documents, and the NYAG has obtained documents and testimony from other individuals not named in this proceeding, including the following:

- Yeohonatan ("Jonathan") Aryeh, a Sales Rep for Delta Bridge and a former Yellowstone Sales Rep ("Aryeh Tr."), Ex. 4.
- Avraham ("Avi") Dahan, a former Yellowstone and Delta Bridge Funder ("Dahan Tr."), Ex. 5.
- Scott Ehrlich, a former Yellowstone Funder and Sales Rep ("Ehrlich Tr."), Ex. 8.
- Michael ("Mark") Kern, a former Yellowstone and Delta Bridge Funder ("Kern Tr."), Ex. 11.
- Desmond Miller, a former Yellowstone Funder ("Miller Aff."), Ex. 34; *see also* Ex. 35 (exhibits to Miller Aff.); Ex. 324 (supplemental affidavit); Ex. 325 (exhibits to supplemental affidavit).

- James ("Jim") McNeil, a former Yellowstone and Delta Bridge Funder ("McNeil Tr."), Ex. 13.
- Steven Saffer, a former Yellowstone and Delta Bridge Funder ("Saffer Tr."), Ex. 16.
- Michael Schwartz, a former Yellowstone and Delta Bridge Funder ("Schwartz Tr."), Ex. 17.[5]
- Shabely Vasquez, a former assistant to a Yellowstone Sales Rep ("Vasquez Tr."), Ex. 21.
- Kevin Williams, a former Yellowstone Funder ("Williams Tr."), Ex. 22.
- Mendy ("Mark") Worch, a former Yellowstone Funder ("Worch Tr."), Ex. 23.
- Arlena Yagecic, Yellowstone's former operations manager, Ex. 24 ("Yagecic I Tr.") and Ex. 25 ("Yagecic II Tr.").

113. The NYAG has also interviewed and gathered affidavits from numerous merchants that lost significant sums of money after obtaining MCAs from Respondents, including the following:

- Ali Alabudi, owner of Austin's Habibi, Austin, TX ("Alabudi Aff."), Ex. 26; *see also* Ex. 27 (exhibits to Alabudi Aff.).
- Jerry Bush, Jr., former owner of J.B. Plumbing & Heating of Virginia, Inc. ("J.B. Plumbing"), Richmond, VA ("Bush Aff."), Ex. 28; *see also* Ex. 29 (exhibits to Bush Aff.).
- David Israel, owner of Elite Lanes LLC, Round Rock, TX ("Israel Aff."), Ex. 30; *see also* Ex. 31 (exhibits to Israel Aff.).
- Kelly Sean Karcher, founder and president of Hygge Supply Inc., Grand Traverse, MI ("Karcher Aff."), Ex. 32; *see also* Ex. 33 (exhibits to Karcher Aff.).

[5] Schwartz used the name "Michael Samuels" when working at Yellowstone and Delta Bridge. Schwartz Tr. at 11:13-23, 21:11-14.

- Jeremy Ostrowski, CEO of Zomongo.TV USA Inc. ("Zomongo"), Calgary, Alberta, Canada ("Ostrowski Aff."), Ex. 36; *see also* Ex. 37 (exhibits to Ostrowski Aff.).

- Maury Rubin, former owner of The City Bakery, New York, NY ("Rubin Aff."), Ex. 38; *see also* Ex. 39 (exhibits to Rubin Aff.).

- Vahe Shahinian, owner of It's My Seat, Inc., Glendale, CA ("Shahinian Aff."), Ex. 40; *see also* Ex. 41 (exhibits to Shahinian Aff.).

- Jerome Turner, Jr., founder of Metropolitan Security Associates Inc., Fayetteville, Georgia ("Turner Aff."), Ex. 42; *see also* Ex. 43 (exhibits to Turner Aff.).

114. As part of its investigation, the NYAG also served upon Yellowstone and Delta Bridge investigative subpoenas pursuant to Executive Law § 63(12). Exs. 445, 446. In response, Respondents produced to the NYAG extensive documents showing their business practices in detail.[6]

115. The NYAG has also gathered, pursuant to subpoena, documents from payment processors that provided Automated Clearing House ("ACH") payment processing services to Yellowstone showing in detail the amounts and dates of funds collected by Respondents from merchants pursuant to MCAs. *E.g.*, Ex. 403. Such payment processors included ACH Works, Actum Processing LLC, Nuvei Commerce

[6] Yellowstone failed to produce any documents or information in response to the Subpoena dated October 20, 2023, and Delta Bridge failed to produce any documents or information in response to the second and third requests of the Subpoena of the same date. *See* Ex. 445 at 18; Ex. 446 at 18.

LLC, and Global Holdings LLC.[7] *See* Ex. 469 (affidavits certifying business records).

116. During the time period at issue, Respondents Yellowstone, Stern, and Reece, were also the targets of investigations by other government agencies. The Federal Trade Commission sued Yellowstone, Stern, and Reece on August 3, 2020, and settled on May 4, 2021, and the State of New Jersey sued Yellowstone on December 8, 2020, and settled on December 27, 2022. *See infra* ¶ 655; Complaint, FTC v. Yellowstone Capital LLC et al., No. 20-cv-06023 (S.D.N.Y. Aug. 3, 2020), ECF No. 1; Consent Order, In re Yellowstone Capital LLC et al., No. C-000180-20 (Dec. 27, 2022).

STATUTE OF LIMITATIONS AND TIME PERIOD AT ISSUE

117. The applicable statute of limitations for Petitioner's claims against Respondents brought pursuant to Executive Law § 63(12) is six years. CPLR 213(9).

118. In addition, the NYAG entered into a series of tolling agreements from March 7, 2019 until October 7, 2023, with Yellowstone Capital LLC, which was defined to include its "respective affiliates, predecessors, shareholders, officers,

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[7] Yellowstone used ACH Works, Actum Processing, and platforms called "Go ACH" and "Paysmith" for its payment processing. *See* Reece Tr. at 155:10-14 (Actum); Glass Tr. at 77:7-12 (ACH Works); Kern Tr. at 219:10-18 (ACH Works and Go ACH); Ehrlich Tr. at 129:24-130:2 (same); Exs. 255, 320 (Paysmith). Nuvei Commerce LLC is a successor to Check Gateway, which handled the processing for transactions on the Go ACH platform, and Global Holdings is a successor to the entity that handled processing for transactions on the Paysmith platform.

directors, heirs, executors, administrators, representatives, successors, and assigns and all other persons or entities acting on [its] behalf or under [its] control, including but not limited to the entities listed" in an attached appendix ("Tolling Agreements"). Ex. 449.

119. Each Respondent belongs to one or more of the categories identified in the foregoing paragraph 118.

120. As a result, Petitioner's claims are timely as to all Respondents to the extent they accrued in or after August 2013.

FACTS

I. RESPONDENTS' ILLEGAL PRACTICE OF USURY

121. The facts set forth below show that Yellowstone and Delta Bridge's so-called MCAs are in fact loans. The MCAs regularly carried interest rates in the triple digits, far higher than the maximum permissible rates under New York usury laws, rendering them usurious and illegal. *See infra* ¶ 465.

122. Respondents' MCA transactions are straightforward: In exchange for a lump sum payment to a merchant, Respondents debit fixed payments from the merchant each business day until Respondents have collected the lump sum, plus a premium. The lump sum to the merchant is called the "Purchase Price"; the fixed payments are referred to herein as the "Daily Amount"[8]; and the lump sum plus the

[8] At various times, Respondents' contracts used the terms "Daily Payment," "Initial Daily Installment," or "Remittance Amount." *E.g.* Yellowstone 2018 Exemplar at 10 (Addendum); Yellowstone 2020 Exemplar at 1; Delta Bridge Exemplar at 1. In

premium is called the "Purchased Amount." *See, e.g.*, Yellowstone 2018 Exemplar at 2, 10; Yellowstone 2020 Exemplar at 1; Delta Bridge Exemplar at 1. The Purchase Price and the Purchased Amount are sometimes referred to as the "Funding Amount" and the "Payback Amount," respectively. The number of fixed daily debits, calculated by simply dividing the Payback Amount by the Daily Amount, is called the "Term" or "Length" of the transaction. *See infra* ¶¶ 142-143.

123. In their Agreements, however—the text of which is not negotiated with merchants and is drafted entirely by Respondents, Rubin Aff. ¶ 19; Bush Aff. ¶ 6; Ostrowski Aff. ¶ 7—Respondents describe their MCA transactions are something different: a purchase of a percentage—the "Specified Percentage"—of the merchant's daily revenue received for the sale of goods and services.[9] *See, e.g.*, Yellowstone 2018 Exemplar at 2; Yellowstone 2020 Exemplar at 1; Delta Bridge Exemplar at 1. These and similar statements are fraudulent and misleading. They were also essential to Respondents' illegal scheme: Had Respondents disclosed that the transactions were loans based on fixed payments and finite terms, the

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addition, some Yellowstone and Delta Bridge MCA transactions employed weekly or biweekly payments, rather than daily payments. *See infra* ¶ 132.

[9] Respondents have used the terms "receivables," "receipts," and "revenue" interchangeably. *E.g.*, Maczuga Tr. at 159:2-6; Reece Tr. at 61:7-11; Ex. 126. Respondents' agreements typically purported to purchase a share merchants' receipts of revenue—that is, a share of moneys the merchant received for "the sale of goods and services," *see infra* ¶ 371, limited to "payments or deliveries of monies" actually received by merchants, rather than money owed but not yet paid, *see* Delta Bridge Exemplar at 2 § 1(c); Yellowstone 2020 Exemplar at 2 § 1(c); *accord* Yellowstone 2018 Exemplar at 1. Accordingly, as used herein, the term "revenue" is used to mean "receipts of revenue."

agreements would have been plainly void and unenforceable because of their astronomic interest rates.

124. In truth, as detailed herein, Respondents' agreements are designed and enforced to virtually guarantee their continued collection of the fixed Daily Amount from merchants. The value of the fixed Daily Amount is disconnected from any fluctuations in the merchant's revenue, and—just like loan remittances—the payment amounts are altered only through the merchant's default or through Respondents' lowering the payment amount through an "adjustment"—a discretionary exercise of beneficence that sets a new payment amount prospectively, but without any consideration of or reference to the percentage of revenue Respondents purportedly purchased. *See infra* Part I.B and ¶¶ 305-316.

125. Respondents also make it virtually impossible for merchants to adjust their payments retroactively by obtaining a refund of excess payments following a drop in revenue—a process called "Reconciliation." *See infra* ¶¶ 193-304. Until at least 2018, Yellowstone failed to affirmatively notify merchants of their right to Reconcile, had no procedure in place if a merchant requested a Reconciliation, and used contract language that made Reconciliation needlessly difficult and ultimately discretionary. *See infra* ¶¶ 193-202. Following increased scrutiny of the MCA industry and Yellowstone specifically, Yellowstone changed its agreements and implemented a process that made it easier for merchants to *request* a Reconciliation—but structured its agreements so that the *result* of the Reconciliation would almost never be a refund to the merchant. *See infra* ¶¶ 203-

248. Indeed, Yellowstone did not issue a single Reconciliation refund throughout its entire existence until 2020, and only very rarely after that. *See infra* ¶¶ 186-191. Yellowstone accomplished this chiefly by manipulating the Specified Percentages stated in its agreements with merchants—a practice that Delta Bridge continued. *See infra* ¶¶ 203-248.

126. For nearly all of Yellowstone's and Delta Bridge's existence, the "Specified Percentage" has been mostly an afterthought—Funders described it as "irrelevant," just "a number on the contract," and something that was included in the agreements for ambiguous "legal purposes" but was almost never discussed internally or negotiated with merchants. *See infra* ¶¶ 317-378. Although Yellowstone's and Delta Bridge's agreements state that the Daily Amount is intended to approximate the Specified Percentage of the merchant's daily revenue, the reality is the Funders negotiated and set the Daily Amount based on how quickly they wanted to be repaid and did not use the Specified Percentage at all. *See infra* ¶¶ 134-151. Yellowstone and Delta Bridge provided Funders with no guidance on how to set the Specified Percentage in their MCA agreements and took no interest in examining how the Specified Percentages were in fact being set. *See infra* ¶¶ 318-321. Both companies routinely entered into multiple concurrent MCA agreements with individual merchants, with a combined Specified Percentage that could reach as high as—or higher than—100%. *See infra* ¶¶ 342-357. As a result, the Specified Percentage could not, in fact, be the percentage of revenue that Yellowstone and Delta Bridge purchased from merchants.

127. Instead, the main function of the Specified Percentage was to serve as a barrier to Reconciliation. *See infra* ¶¶ 203-248. Starting around the same time that Yellowstone adjusted the boilerplate language in its MCA agreements to make Reconciliation theoretically more available, it also began to fix the Specified Percentage on most of its agreements, using values that rose steadily over time. *See id.* Over the next several years, the gap between merchants' Daily Amounts, and the percentage of revenue that those amounts were purportedly intended to approximate, widened considerably, as Specified Percentages rose from 10 or 15% to 25%. *See id.* By March 2020, the most common Specified Percentage that Yellowstone used in its agreements with merchants was *49%*. *See infra* ¶ 226. The result was that only the few merchants who experienced a drop in revenue so precipitous that Yellowstone's total collections *actually* amounted to fully half of their revenue during the term of the MCA could potentially receive a Reconciliation refund—and a very small refund at that. *See infra* ¶¶ 209-212. Delta Bridge continued this practice through at least August 2022. *See infra* ¶ 248.

128. Because the "MCAs" issued by Yellowstone and Delta Bridge were monies to be paid back with interest in fixed payments alterable only at the whim of a Funder—and for the additional reasons that follow—Yellowstone's and Delta Bridge's so-called MCA transactions with merchants were and are usurious loans, fraudulently cloaked as purchases of revenue.

A. New York Law Prohibits Usurious Loans When Cloaked as Purchases of Revenue

129. Courts have repeatedly held that under certain circumstances, a so-called merchant cash advance or purchase of revenue may actually be a usurious loan. *E.g.*, *Davis v. Richmond Capital*, 194 A.D.3d 516 (1st Dep't 2021); *LG Funding, LLC v. United Senior Props. of Olathe, LLC*, 181 A.D.3d 664 (2d Dep't 2020); *People v. Richmond Capital Group LLC*, No. 451368/2020, 2023 WL 6053768, at *16 (Sup. Ct. N.Y. Cnty. Sept. 15, 2023); *Fleetwood Servs., LLC v. Richmond Cap. Grp. LLC*, No. 22-1885-CV, 2023 WL 3882697, at *2 (2d Cir. June 8, 2023).

130. In determining whether such a transaction is a loan, a court considers several non-dispositive factors, including:

> [1] the discretionary nature of [provisions providing for reconciliation of payments based actual receivables], [2] the allegations that defendants refused to permit reconciliation, [3] the selection of daily payment rates that did not appear to represent a good faith estimate of receivables, [4] provisions making rejection of an automated debit on two or three occasions without prior notice an event of default entitling defendants to immediate repayment of the full uncollected purchased amount, and [5] provisions authorizing defendants to collect on the personal guaranty in the event of plaintiff business's inability to pay or bankruptcy[.]

Davis, 194 A.D.3d at 517. A loan is also indicated when a transaction is "negotiated and understood to be based on a fixed term with a fixed repayment schedule" and the creditors "advertise[] themselves as lenders." *Richmond Capital*, 2023 WL 6053768 at *3 (emphasis omitted); *see also id.* at *10 (loan indicated when "Borrowers and their Guarantors remain[] liable for repayment in the event of bankruptcy"); *Fleetwood Servs., LLC v. Ram Capital Funding*, LLC, No. 20-CV-5120

(LJL), 2022 WL 1997207, at *13 (S.D.N.Y. June 6, 2022) (loan indicated by "nominal reconciliation provision" that is "largely illusory").

B. Respondents' MCAs Have Fixed Durations and Payment Amounts that Do Not Approximate a Specified Percentage of Revenue

131. In setting the Daily Amounts and Lengths of their MCA transactions, Respondents did not consider the percentage of revenue they were purportedly agreeing to purchase. This is a key factor showing usury. *See Davis*, 194 A.D.3d at 517 ("selection of daily payment rates that did not appear to represent a good faith estimate of receivables").

132. A minority of Respondents' MCA transactions were based on payments that were collected weekly or biweekly, rather than daily. *See* Maczuga Tr. at 203:8-20; *see also* Ex. 468. In all respects material to this Petition, such payments were identical to daily payments except that they purported to approximate the Specified Percentage of merchants' weekly or biweekly revenue, rather than daily. As used in this Petition, the term "Daily Amount" includes such weekly or biweekly payments.

1. The Daily Amounts Are Fixed and Do Not Approximate a Specified Percentage of Revenue

133. Yellowstone and Delta Bridge collected Daily Amounts from merchants in fixed amounts that typically did not fluctuate from day to day. Melnikoff Tr. at 79:7-15, 92:24-93:3, 99:12-15, 100:19-24, 108:5-9; McNeil Tr. at 72:3-21, 83:17-21; Dahan Tr. at 85:5-8, 88:10-14, 118:14-17; Yagecic I Tr. at 178:20-23; Alabudi Aff. ¶ 18; Karcher Aff. ¶ 23; Shahinian Aff. ¶ 21; Turner Aff. ¶ 22; *see, e.g.* Ex. 403

(spreadsheet produced by ACHWorks, one of Yellowstone's payment processors, reflecting some of the payments it processed for Yellowstone); *see also* Ex. 144 (payment "per business day"); Ex. 129 at 9 (same). Starting in 2015, Yellowstone required that all Yellowstone MCA agreements include what Respondent Stern called a "Fixed Payment Addendum." Ex. 325 at 9; *see also infra* ¶¶ 194-196 (discussing Fixed Payment Addendum).

134. Yellowstone's and Delta Bridge's MCA agreements stated that the Daily Amount reflected "a good-faith approximation of the Specified Percentage, based on the Merchant's prior receipts due to [Yellowstone] pursuant [to] the Agreement," or similar language. *E.g.* Yellowstone 2018 Exemplar at 10 Addendum § 1(a); Yellowstone 2020 Exemplar at 2 § 1(g) ("good faith approximation of the Specified Percentage of [the merchant's] Future Receipts"); Delta Bridge Exemplar at 2 § 1(i) (same). Some versions of the agreements also stated that the Daily Amounts were fixed at merchants' request; however, merchants rarely, if ever, requested such an arrangement. Miller Aff. ¶¶ 37-38.

135. Setting the Daily Amount was left up to the discretion of individual Funders. Reece Tr. at 62:25-63:7; Maczuga Tr. at 153:14-154:11.

136. Apart from the language in the agreements, Yellowstone and Delta Bridge did not provide any policy or guidance concerning how to set the Daily Amount, including that the Daily Amount should approximate a Specified Percentage of the merchant's daily receipts of revenue. *See* Maczuga Tr. at 153:14-19; Reece Tr. at 62:25-63:7, 189:21-190:5; Stern Tr. at 261:23-262:9 ("The

Yellowstone model as a whole allowed funders the freedom to price deals in any way they wanted."); Worch Tr. at 226:5-12.

137. Yellowstone and Delta Bridge took no measures to determine whether the Daily Amount on its agreements in fact reflected an estimate of the Specified Percentage of the merchant's receipts of revenue. In fact, Yellowstone's president, Respondent Reece, testified that "at the outset of the transaction there's ***no way to determine*** whether the daily payment amount reflects an estimate of the specified percentage of the merchant's receivables," flatly contradicting the representation in Yellowstone's MCA agreements. Reece Tr. at 194:25-195:21 (emphasis added); *see also* Reece Tr. at 189:21-190:5, 195:9-15. Nor did Yellowstone have any way to check the Daily Amount during the term of the transaction unless and until a Reconciliation was performed, Reece Tr. at 170:18-25, 189:21-190:2, 194:24-195:15, which was exceedingly rare, *infra* ¶¶ 186-190.

138. Respondent Maczuga, the Delta Bridge CEO who was formerly co-CEO of Yellowstone and one of its biggest Funders, testified that Respondents relied on *merchants* to confirm whether the Daily Amount approximated a Specified Percentage of the merchant's future revenue. Maczuga Tr. at 210:7-17.

139. In reality, Funders fixed the Daily Amount without regard to the Specified Percentage stated in the Yellowstone or Delta Bridge MCA agreement. Funder Respondents were clear about this in their testimony. For example, Respondent Melnikoff admitted that "***deals are not based on a specified percentage, they're based on the fixed daily amount***." Melnikoff Tr. at 97:8-

98:25 (emphasis added), 106:15-107:18; *see also id.* at 102:10-19 (explaining to a hypothetical merchant: "[T]his is not based off of a percentage of your revenue, it's based off $146 a day . . . ."); *id.* at 130:5-9 (unable to identify "any way that the specified percentage was used in calculating the daily payment amount"), 134:8-21. One former Yellowstone and Delta Bridge Funder testified that "the daily payment amount has nothing to do with the specified percentage of receivables." McNeil Tr. at 108:14-17; *accord id.* at 120:3-5 ("[I]t's not being calculated . . . on individual deals generally . . . ."), 99:19-100:2, 119:2-6, 121:13-21, 123:6-20; Melnikoff Tr. at 131:11-132:2; Aryeh Tr. at 94:6-17; Ehrlich Tr. at 114:19-21; Dahan Tr. at 69:2-8, 71:19-72:6; Williams Tr. at 88:18-89:13, 125:9-17; Worch Tr. at 129:20-130:9 (discussing Ex. 304); Miller Aff. ¶ 39; Alabudi Aff. ¶ 24; Shahinian Aff. ¶ 15.

140. Another former Yellowstone and Delta Bridge Funder testified that as a Funder he did not "ever calculate the daily payment amount by approximating the specified percentage based on the merchant's prior receipts." Dahan Tr. at 69:2-8, 71:25-72:6. He testified further that, when acting as the Sales Rep on deals with other Funders, he was unaware of anyone else at Yellowstone who "calculate[d] the daily payment amount by approximating the specified percentage based on the merchant's prior receipts." Dahan Tr. at 69:2-8; *accord* McNeil Tr. at 99:10-100:2.

141. Rather, Funder Respondents admitted in testimony that the Daily Amount was a function of how long the transaction was intended to last. A higher Daily Amount meant a faster payoff, and a lower Daily Amount meant that the merchant would have longer to pay the Payback Amount. Melnikoff Tr. at 131:11-

132:2; Singfer Tr. at 57:23-58:5; *see also* Dahan Tr. at 69:22-70:6, 72:17-25 ("[T]his is what the funder thinks the merchant can handle and what would make sense for his business . . . ."); Worch Tr. at 125:20-126:2, 242:17-244:2, 266:9-12; Saffer Tr. at 124:4-10.

142. Accordingly, Funders admitted in testimony that they calculated the Daily Amount for Yellowstone and Delta Bridge MCAs by simply "dividing the purchased amount," *i.e.*, the Payback Amount, "by the . . . term of the transaction, the fixed number of daily payments." Melnikoff Tr. at 128:5-19; *accord id.* 102:2-7; Singfer Tr. at 56:18-58:5; Kern Tr. at 74:12-16, 96:7-23; McNeil Tr. at 84:19-22, 96:25-97:8, 99:10-100:2, 108:8-13; Schwartz Tr. at 58:11-22; Dahan Tr. at 69:9-70:6, 118:14-20; Saffer Tr. at 95:2-18, 124:4-10, 158:12-159:1; Aryeh Tr. at 100:10-15; Ehrlich Tr. at 112:20-113:3; Vasquez Tr. at 46:13-16, 48:9-18; Miller Aff. ¶ 54; Alabudi Aff. ¶ 24; Ex. 299 at 5 ("We are giving you more money so the cost of the daily has to go up"); Ex. 228 at 1-2 (email negotiating deal); Ex. 113 at 2, 13 (resulting agreement); Ex. 202 (email negotiating deal); Ex. 110 at 2 (resulting agreement).

143. According to Respondent Maczuga, "***there is no other way*** to calculate" the Daily Amount than by dividing the Payback Amount by the number of days in the term. Maczuga Tr. at 153:8-13 (emphasis added); *see also id.* at 145:22-146:11, 151:3-9, 164:3-7, 205:3-8.

144. Rather than approximating the Daily Amount, Yellowstone's President and many Funders understood that the Specified Percentage reflected a "ceiling,"

and was therefore properly set at a value *exceeding* the percentage of the merchant's revenue actually approximated by the Daily Amount. *Infra* ¶ 240.

145. The fact that the Daily Amount was fixed without regard to the Specified Percentage is particularly evident in so-called "Side-by-Side" deals, where Yellowstone and Delta Bridge entered into two or more simultaneous MCA transactions with a merchant. *See* Reece Tr. at 148:18-21, 149:3-5 (defining side-by-side deal); Maczuga Tr. at 193:5-18 (same), 196:11-15 (admitting that Delta Bridge also does Side-by-Side deals); Melnikoff Tr. at 124:3-22.

146. For example, on September 5, 2018, Yellowstone (through Yellowstone Subsidiaries) entered into three separate MCA transactions on three separate agreements with a single merchant, Maslow Media Group, Inc. Exs. 93, 94, 95. Each of the three agreements purported to purchase the same percentage of Maslow Media Group's receipts of revenue, because each stated a Specified Percentage of 25%. *Id.* However, each agreement fixed a wildly different Daily Amount—$1,490, $4,470, and $7,450—and each agreement represented that *its* Daily Amount represented "a good-faith approximation" of 25% of Maslow Media Group's daily revenue. *Id.* at 12. In fact, the Daily Amounts were not an approximation of Maslow Media Group's revenue, which is clear because under no circumstances

could 25% of a single company's revenue, approximated as of the exact same date, equal three different amounts.[10]

147. The different Daily Amounts were not attributable to different revenue projections; that would have been impossible, given that Yellowstone approximated all three on the same date. Instead, according to Respondent Melnikoff, who was the Funder on one of the three deals, Yellowstone set different Daily Amounts because the agreements stated different Purchased Amounts. Melnikoff Tr. at 127:19-128:9. Other Funders and Sales Reps testifying about Side-by-Side deals—and Respondent Maczuga—acknowledged that the different Daily Amounts were explained by the fact that the agreements stated different Purchased Amounts. Aryeh Tr. at 160:21-161:21; Saffer Tr. at 161:7-14; Maczuga Tr. at 204:20-205:8. This is consistent with the fact that the Daily Amount is simply the Payback Amount divided by the Length of the transaction, and is calculated without regard to the percentage of revenue Respondents were purportedly purchasing.

[10] After Maslow Media Group supposedly defaulted, Yellowstone filed three separate court actions, based on each of the three agreements, in Richmond County Supreme Court. *Infra* ¶¶ 477-483. Respondent Serebro represented Yellowstone in those actions, and filed the papers on its behalf. *Id.*

148. Additional examples of Side-by-Side deals at Yellowstone include the following:

Contract Date	Yellowstone Subsidiary	Specified Percentage	Daily Amount	Purchased Amount	Exhibit No.
Merchant: ADM Group, LLC					
9/24/2018	Green Cap. Funding	25%	$13,500	$384,725	57
9/24/2018	ABC Merch. Solutions	25%	$13,500 *(weekly)*	$384,725	58
Merchant: Cumberland Surgical Hospital of San Antonio, LLC					
9/18/2018	Green Capital	25%	$1,737	$208,500	71
9/18/2018	Samson Advance	25%	$2,896	$347,500	72
Merchant: FTE Networks, Inc.					
9/21/2018	Green Capital	15%	$8,999	$749,500	80
9/21/2018	Capital Merch. Servs.	15%	$5,999	$374,750	81
Merchant: Maslow Media Group, Inc.					
9/5/2018	Everyday Capital	25%	$7,450	$745,000	93
9/5/2018	Advance Merch. Svcs.	25%	$4,470	$447,000	94
9/5/2018	Capital Advance Svcs.	25%	$1,490	$149,000	95
Merchant: RCS Safety LLC					
3/18/2019	West Coast Bus. Cap.	25%	$1,890	$188,874	103
3/19/2019	West Coast Bus. Cap.	25%	$1,859	$185,876	102
Merchant: Stradmont Oak Investments LLC					
3/20/2018	Yellowstone Cap.	25%	$610	$50,750	108
3/20/2018	Yellowstone Cap.	25%	$689	$58,000	109

149. Additional examples of Side-by-Side deals at Delta Bridge include the following:

Date	Specified Percentage	Daily Amount	Purchased Amount	Contract ID
Merchant: B&H Pizza LLC				
7/27/2022	39%	$600	$111,200	5092488-404
8/2/2022	39%	$100	$16,390	5321588-765
Merchant: Barrels & Bouchons LLC				
1/7/2022	49%	$337	$26,982	5095979-584
1/26/2022	49%	$210	$17,988	5095979-315
Merchant: Bath Pros LLC				
10/12/2021	45%	$300	$27,600	5084718-331
10/15/2021	35%	$750	$61,650	5088187-179
Merchant: Coastal Carolina Radio LLC				
9/7/2022	13%	$4,375	$43,570	5000951-004
9/19/2022	9%	$625	$37,500	5186103-772
Merchant: Dale's Auto Service Centers, Inc.				
7/19/2022	32%	$165	$14,500	5204372-020
7/19/2022	25%	$315	$36,250	5163498-177
Merchant: Loan X Mortgage LLC				
2/18/2022	49%	$5,612 *(weekly)*	$82,445	5182993-460
2/18/2022	49%	$878	$67,455	5182993-054
Merchant: One Twenty Clothing Company US LLC				
7/27/2021	39%	$1600	$117,300	5035751-393
7/30/2021	39%	$1600	$117,300	5038480-757
Merchant: Rod Bowers Construction Inc.				
10/6/2021	20%	$2,983	$347,500	5011526-701
10/6/2021	39%	$2,983	$347,500	5020998-135
Merchant: Roy's GJD Detail Wash & Maintenance				
11/22/2021	39%	$1,200	$31,477.50	5058081-086
11/24/2021	40%	$194	$12,401.50	5069077-836
Merchant: Television Korea 24 Inc				
6/15/2022	45%	$3,923	$102,000	5206395-638
6/27/2022	45%	$2,877	$74,800	5031827-727
Merchant: Television Korea 24 Inc				
9/6/2022	21%	$4,446 *(weekly)*	$115,600	5206395-384
9/12/2022	17%	$3,400 *(weekly)*	$88,400	5031827-667
Merchant: Thaitran Inc.				
5/24/2021	25%	$589	$56,000	5000126-414
5/25/2021	25%	$412	$35,000	5000126-307

Merchant: The Carrie Brazer Center for Autism, Inc.				
5/23/2022 5/27/2022	25% 25%	$1,500 *(weekly)* $667 *(weekly)*	$70,000 $28,000	5015246-611 5258504-361
Merchant: Wak21 LLC				
7/27/2022 8/2/2022	45% 45%	$759 $276	$121,352 $41,370	5069385-632 5319819-641

See Ex. 395; *see also* Maczuga Tr. at 197:2-199:23, 271:15-272:15.

150. Merchants also understood that the Daily Amount was simply the Payback Amount divided by the Length of the transaction. *See, e.g.*, Rubin Aff. ¶ 14.

151. Merchants affirmed that the Daily Amounts set in their agreements with Yellowstone and Delta Bridge did *not* approximate a Specified Percentage of their daily revenue. Alabudi Aff. ¶¶ 14, 18, 68; Bush Aff. ¶¶ 16-20; Israel Aff. ¶ 11; Karcher Aff. ¶ 20; Ostrowski Aff. ¶¶ 13-14, 30-31, 43-44; Rubin Aff. ¶¶ 14, 32; Turner Aff. ¶¶ 17-19. Furthermore, they affirmed that if the Daily Amounts *had* approximated a Specified Percentage of their daily revenue, the Daily Amounts would have been far higher than anything their business could sustain, and they never would have agreed to the transaction. Israel Aff. ¶ 12; Karcher Aff. ¶¶ 20-21; Rubin Aff. ¶ 31; Turner Aff. ¶¶ 17-19.

2. The Lengths of the Transactions Are Fixed and Do Not Vary Based on a Specified Percentage of Revenue

152. As noted above, the Length of a Yellowstone or Delta Bridge MCA was the quotient of the Payback Amount and the Daily Amount. *Supra* ¶ 142. The Daily Amount was not even indirectly linked to the Specified Percentage, because

the Length of the transaction was also determined without regard to the Specified Percentage.

153. For example, one Funder, Respondent Melnikoff, testified that "we would give [prospective merchants] the amount of days that we were comfortable in the deal, ***not a specified percentage***." Melnikoff Tr. at 92:24-93:3 (emphasis added); *see also* Singfer Tr. at 88:6-15 ("Q. So what are the sort of factors that would make you want to go under a shorter term with a merchant? . . . A. . . . . ***It's not so much revenue related***, it's just how much, you know, I like the deal based on a combination of similar factors." (emphasis added)). One former Yellowstone and Delta Bridge Funder testified the Specified Percentage generally played no role in formulating the funding amount and Term of an offer. *See* McNeil Tr. at 119:2-6; *see also* Williams Tr. at 116:5-12 ("[The Specified Percentage is] not telling me how long the deal is paying back.").

154. Yellowstone and Delta Bridge did not provide any policy or guidance concerning how to set the Length of a transaction, including that the Length should vary based on a Specified Percentage of the merchant's future daily revenue. Stern Tr. at 257:7-24; Singfer Tr. at 87:8-12. Respondent Isaac Stern, Yellowstone's co-founder and CEO, testified that the company was not "set up" to provide such guidance. Stern Tr. at 257:7-24 ("[T]o tell funder A, Hey, you should really be doing this . . . or funder B, You should really be doing that . . . that's not the way that the company was set up.").

155. In practice, Funders typically determined the Length of MCA transactions based on their perceived "riskiness": riskier transactions had shorter Terms, and less risky transactions had longer Terms. For example, one former Yellowstone and Delta Bridge Funder testified, "If I was concerned [an MCA] would be more of a credit risk, the terms would be a little shorter . . . ." Schwartz Tr. at 50:25-51:3. Another former Funder testified that "the riskier the deal, typically the shorter, the less amount of days, and the better the deal, the more the amount of days." McNeil Tr. at 115:15-18; *see also* McNeil Tr. at 98:16-99:3, 117:2-10; Dahan Tr. at 99:15-19; S. Davis Tr. at 142:6-25 ("[W]e'll change the terms a little bit to speed it up, to make it, you know, a little bit less risk on our end."); Melnikoff Tr. at 118:12-23; *see also* Miller Aff. ¶¶ 59-60 ("We made such pre-funding adjustments to term lengths not based on any Specified Percentage but instead by arbitrary amounts as a means of closing MCA deals and winning merchants' business."); Williams Tr. at 110:14-20, 117:10-23, 118:24-119:14; Worch Tr. at 125:20-126:2, 173:10-20 (discussing Ex. 251), 177:2-178:23, 188:6-189:13 (discussing Ex. 279).

156. Factors that were relevant to individual determinations of "riskiness" included the size of the Funding Amount, merchant's bank balances, credit report, credit score, industry, business size, history of payments on other MCAs, and the payments the merchant was making concurrently to other MCA companies. *See* A. Davis Tr. at 79:11-13, 80:7-81:14; Singfer Tr. at 87:13-88:15; S. Davis Tr. at 141:5-20; Dahan Tr. at 96:11-99:19; Melnikoff Tr. at 118:12-23; McNeil Tr. at 115:19-117:10; Aryeh Tr. at 151:3-7; *see also* Williams Tr. at 110:14-113:9 (risk

factors suggesting a shorter Term included if the merchant was a gambler or didn't pay child support); Worch Tr. at 177:2-178:23.

157. For example, in December 2022, Delta Bridge issued an MCA that its Funders, Respondents Melnikoff and Sanders, set to be paid back by the merchant in just "15 pmts." Ex. 125 at 1; *see* Ex. 62 (resulting agreement signed by merchant). The transaction was unquestionably risky: the merchant was already paying off ten cash advances to other MCA companies and had a bank balance of negative $18,000. *See* Ex. 125 at 1; *see also infra* ¶¶ 358-369 (discussing transactions with merchants who already had preexisting MCAs, also known as Stacking).

158. As a consequence, Funders often sent concurrent offers that defied the purported operation of the Specified Percentage as setting the share of revenue purchased by Yellowstone or Delta Bridge. If the MCA transactions were in fact purchases of a Specified Percentage of revenue, offers with *larger* Funding Amounts would necessarily have been for *longer* Terms—more money takes longer to pay off. But often the reverse was true: Funders would *shorten* the Length of an MCA offer for a *higher* Funding Amount. *E.g.*, Dahan Tr. at 96:11-97:21 (testifying about Ex. 289); Exs. 199, 221, 289; 198, 190; *see also* Rubin Aff. ¶ 32 (explaining that the Specified Percentages and Daily Amounts stated in consecutive agreements with Yellowstone suggested a 90% drop in revenue, but no such drop occurred).

159. Funders testified that this was consistent with their underwriting practices, which set the Term based on perceived riskiness, not any Specified

Percentage: it was considered riskier to give a merchant more money. *See* Dahan Tr. at 96:11-99:19; Saffer Tr. at 97:8-21.

160. Similarly, another Funder, Respondent Steve Davis, testified that he had a practice of increasing merchants' Daily Amounts if they were making concurrent payments to other MCA companies—even though the effect of such "Stacked" deals (defined *infra* ¶ 358) would be to reduce the revenue available to pay Yellowstone. *See* S. Davis Tr. at 141:5-20.

161. Indeed, it was typical that Funders would—while underwriting and negotiating prospective MCA transactions—make adjustments to the proposed Length or the Daily Amount without regard to how the Specified Percentage—which was typically fixed, *see infra* ¶¶ 218, 222, 234—would bear on those adjustments (or vice versa). *See* McNeil Tr. at 85:3-13 (admitting that Yellowstone was "agreeing to change the term of the offer [for an MCA], the number of daily payments, but everything else about the offer was to remain the same"); Saffer Tr. at 101:12-102:2 (testifying that he extended an MCA's term length, at a merchant's request, while keeping all other values in the offer the same); Dahan Tr. at 87:15-90:22; Worch Tr. at 242:17-244:2.

162. Respondent Glass was closely involved in establishing Yellowstone's practice of using fixed Terms for its MCAs. One Funder, Respondent Melnikoff, testified that Glass personally taught him "how long to make the deal," "how long to price the deal out for," and how to "calculate[] daily payments . . . by dividing the purchase amount by the term of the transaction." Melnikoff Tr. at 63:16-64:20,

128:15-19. Melnikoff testified repeatedly that Glass taught him to "***keep deals short***," *id.* at 215:15-18, 217:23-24, 219:13-15-25 (emphasis added).

163. Funders and Sales Reps working on Yellowstone and Delta Bridge MCA transactions regularly discussed such finite repayment Terms, measured by days, in internal communications and in communications with merchants and brokers. *E.g.*, Alabudi Aff. ¶ 28; Bush Aff. ¶¶ 11-12; Aryeh Tr. at 142:6-17, 143:13-16, 179:25-180:6; Dahan Tr. at 84:25-85:8, 88:7-14, 90:23-91:3, 118:14-17; S. Davis Tr. at 182:24-183:4; Ehrlich Tr. at 37:18-38:9; Kern Tr. at 86:7-19; McNeil Tr. at 70:12-72:21; Miller Aff. ¶¶ 41, 53-54, 57-58; Vasquez Tr. at 81:17-23; Williams Tr. at 75:18-24, 115:11-16; *see also* Ex. 323 (compiled communications in which Respondents discussed and negotiated term lengths).

164. At least one Funder sent marketing emails to merchants offering MCAs with "longer terms." *E.g.*, Exs. 182, 183; Rubin Aff. ¶ 35.

165. The circumstances that could alter the fixed Term of a Yellowstone or Delta Bridge MCA include: (a) "Refinancing" the MCA (as defined *infra* ¶ 336) or other prepayment by the merchant; (b) the merchant's default; and (c) bounced payments due to insufficient funds in the merchant's bank account. Melnikoff Tr. at 79:7-19 ("[I]f no payments bounce, if all payments are made, then it's an 80-day deal, yes."); Dahan Tr. at 70:18-24; McNeil Tr. at 72:9-21 ("[I]f the merchant bounced payments or if the merchant requested lowered payments, it could get extended, but . . . with perfect pace . . . [i]t should be 75 payments."); Maczuga Tr. at

92:16-93:15; Kern Tr. at 162:25-163:10; Saffer Tr. at 97:22-98:10; Yagecic II Tr. at 184:25-185:16; Williams Tr. at 99:2-14; Miller Aff. ¶ 62.

166. Adjustments to the Daily Amount also altered the fixed Term of a Yellowstone or Delta Bridge MCA; however, such Adjustments were wholly discretionary and did not operate to align the Daily Amount with a Specified Percentage of the merchant's daily revenue. *See infra* ¶¶ 305-316.

167. Although the circumstances listed in the foregoing two paragraphs could change the Term of an MCA, none of them changed the Term based on the percentage of revenue that Respondents had purportedly purchased.

168. Yellowstone and Delta Bridge sometimes described the Term as an "estimated term," or a "projected duration." *See, e.g.*, Ex. 153. However, Yellowstone and Delta Bridge's Terms were only "estimates" or "projections" in the sense that they could be lengthened or shortened in the circumstances listed in the foregoing paragraphs 165-166, which are not based on a Specified Percentage of the merchant's revenue.

169. Absent a Funder's discretionary Adjustment of the Daily Amount (or a merchant's early payoff), Respondents required merchants to continue paying the Daily Amount at the fixed rate, for the fixed number of days, even if the merchant's revenue had dropped to little or nothing. *See, e.g.*, *infra* ¶¶ 405-412.

170. In extremely rare instances, Reconciliation altered the Term of Yellowstone and Delta Bridge MCAs. However, as discussed below, Yellowstone and Delta Bridge strategically structured their agreements to make Reconciliation

unavailable to virtually all merchants. Furthermore, on the rare occasions that Respondents did grant a Reconciliation, they Reconciled the merchant's payments against the made-up percentage that they had grossly inflated, and therefore did not align the merchant's payments with the percentage of revenue actually represented by the Daily Amount negotiated and agreed to in the contract.

171. At times, Respondents included boilerplate statements in their agreements with merchants claiming that the agreement had no "fixed duration or term," referencing the merchants' purported right to Reconciliation and Adjustment. *E.g.*, Yellowstone 2020 Exemplar at 3 § 2; Delta Bridge Exemplar at 3 § 2. These statements were fraudulent and misleading: As just described, Reconciliation was unavailable to virtually all merchants, and Adjustments were discretionary and not based on the percentage of revenue purchased. *See supra* ¶¶ 166-170.

3. Respondents Ignored the Specified Percentage Altogether When Underwriting MCA Transactions

172. Neither Yellowstone nor Delta Bridge had any policy or guidance concerning how—or whether—Funders were supposed to account for the Specified Percentage when underwriting potential transactions and when formulating and modifying offers to merchants. *See* Maczuga Tr. at 142:23-143:14; 153:14-154:11; Stern Tr. at 261:23-262:9 ("The Yellowstone model as a whole allowed funders the freedom to price deals in any way they wanted.").

173. In practice, the Specified Percentage—*i.e.*, the percentage of the merchant's revenue that Respondents were purportedly purchasing—did not factor

into the Funders' underwriting process at all. *See* A. Davis Tr. at 104:13-19; Singfer Tr. at 95:25-96:14, 142:9-21; McNeil Tr. at 123:6-20; Dahan Tr. at 67:10-18. One Funder, Respondent Matthew Melnikoff stated, "[T]he specified percentage was just a number that relates to what we're thereabouts taking a daily basis, but ***we're basing this [MCA] off of fixed daily, so that number [Specified Percentage] doesn't really matter***. If it's $100 a day, it's $100 a day." Melnikoff Tr. at 100:2-24 (emphasis added) (explaining what he told merchants who complained about the size of Yellowstone's Specified Percentages); *accord id.* at 131:20-23 (stating that the Specified Percentage "wasn't really calculated" at Yellowstone). Melnikoff testified that the Specified Percentage was irrelevant to the process of formulating an initial offer, because "we based our . . . offers off fixed daily amounts." *Id.* at 106:15-108:9; *see also id.* at 102:10-15, 119:25-120:4; 130:5-9; Ex. 171.

174. Numerous Funder Respondents testified similarly:

- Respondent David Singfer, asked how he would "factor in the specified percentage in the process of underwriting a deal," testified: "It didn't factor into what I felt comfortable extending to a merchant." Singfer Tr. at 95:25-96:14.
- Respondent Aaron Davis confirmed that the Specified Percentage did not factor in "for purposes of underwriting" because he knew that the number would be fixed by the contract generator "and I'll leave it at that." A. Davis Tr. at 104:13-19.
- Former Yellowstone and Delta Bridge Funder Jim McNeil testified that it was important in the underwriting process "to make sure that the merchants can handle the daily payments and that . . . the daily payments aren't eating up too much of their business . . . . But ***as far as comparing it against any specified percentage, that's not something that you do because it's enough to make sure that they can handle the daily payments*** and your assumption is that's going to be lower than any specified percentage anyway." McNeil Tr.

at 123:6-20 (emphasis added); *see also id.* at 119:2-19 ("Q: When you're formulating an initial offer . . . does the specified percentage play a role in your consideration? A: Again, generally, no.").

- Former Yellowstone and Delta Bridge Funder Michael Kern testified that an email containing the Key Terms (defined *infra* ¶ 327) provided "sufficient information for preparing a merchant cash advance agreement," even though they did not state a Specified Percentage. Kern Tr. at 86:7-24 (discussing Ex. 200 at 2); *accord id.* at 88:23-89:15 (discussing Ex. 187). Kern also testified that an email, which failed to identify any Specified Percentage, summarized "the final terms of the [MCA] deal." *Id.* at 94:16-95:5; *see* Ex. 240.

- Former Yellowstone and Delta Bridge Funder Michael Schwartz testified that "The specified percentage was not really a factor [during underwriting]." Schwartz Tr. at 69:8-12; *see also id.* at 67:7-14 ("when you are underwriting a deal, you are not really looking at the specified percentage" and "[y]ou are looking at indications of how much money [merchants] have coming in and the length of the term that you want for the deal").

- Former Yellowstone and Delta Bridge Funder Avi Dahan testified that the Specified Percentage was not "used in any underwriting at Yellowstone" and was not "used in planning new contracts." Dahan Tr. at 67:10-18; *see also id.* at 91:22-25, 118:21-119:21.

- Former Yellowstone Funder Kevin Williams testified that the "Specified percentage has nothing to do with anything." Williams Tr. at 138:13-14; *accord id.* at 115:17-116:12 ("The specified percentage is irrelevant."); *id.* at 67:10-21, 69:2-8, 80:10-14, 87:20-89:13, 138:13-14, 141:15-142:2; *see also* Aryeh Tr. at 91:6-13; Ehrlich Tr. at 91:20-92:24.

175. Respondent David Glass, who designed Yellowstone's underwriting process and trained Funders in "how to underwrite [an MCA] file," Melnikoff Tr. at 63:16-24, taught Funders to plan their MCAs based on "fixed daily amounts," not "specified percentage[s]," *id.* at 107:19-108:9; *see also id.* at 173:20-24 (testifying that neither Glass nor Respondent Stern "said anything about the specified percentage"). Glass taught Funders methods for determining "how much to give [a

merchant], . . . how much to purchase, . . . and how long to price the deal out for." Melnikoff Tr. at 64:8-65:8.

176. When discussing prospective deals with Yellowstone management, including Respondents Isaac Stern and Jeffrey Reece, Funders would typically reference the Funding Amount, the Payback Amount, and the Length of the transaction—not any Specified Percentage. Saffer Tr. at 192:3-194:10; *see, e.g.*, Ex. 467 at 1, 3 (text messages between Respondents Saffer and Reece); *see also infra* ¶ 327 (defining the "Key Terms"). Maczuga confirmed that Funders reference the same terms—and not any Specified Percentage—in their internal communications about Delta Bridge MCA transactions. Maczuga Tr. at 164:8-15; *see, e.g.*, Ex. 134.

177. Funders testified that their responsibilities and practices remained the same following the switch from Yellowstone to Delta Bridge. For example, one former Yellowstone and Delta Bridge Funder testified that "we underwrote cash advances [at Delta Bridge] just like we did at Yellowstone." Dahan Tr. at 145:25-146:2. Likewise, when Respondent Aaron Davis was asked whether "the underwriting process that you used at Delta Bridge is the same as the one that you used at Yellowstone," he replied, "Yes. It's my underwriting process . . . ." A. Davis Tr. at 53:5-10; *accord* McNeil Tr. at 190:11-15 (acknowledging that Delta Bridge's and Yellowstone's underwriting practices were "basically the same"); Saffer Tr. at 41:9-11 ("Any funder responsibilities different at Delta Bridge than at Yellowstone[?] Not that I can think of."); Kern Tr. at 178:21-179:3 (unaware of any

difference in Delta Bridge's underwriting practices and those of Yellowstone); Melnikoff Tr. at 107:8-18, 206:22-207:17; Singfer Tr. at 44:11-46:21.

178. The insignificance of the Specified Percentage in the context of a typical Yellowstone and Delta Bridge deal stood in stark contrast to its centrality in the tiny fraction of "Split Funding" deals (also known as "Credit Card" deals) that Yellowstone and Delta Bridge did. McNeil Tr. at 93:14-95:8, 100:17-102:12; Maczuga Tr. at 135:21-136:4; Dahan Tr. at 78:16-79:15; Miller Aff. ¶¶ 75-79. But, with the exception of its first year in business, Split Funding deals have never been more than a small fraction of Respondents' deals. Glass Tr. at 73:17-24; Kern Tr. at 61:7-24; Miller Aff. ¶ 79. In Split Funding deals—where Yellowstone or Delta Bridge automatically debited a percentage of the merchant's credit card transactions each day, Yagecic II Tr. at 162:11-19; Maczuga Tr. at 131:19-132:15, 134:4-25; Dahan Tr. at 78:16-79:15; Miller Aff. ¶¶ 75-79—the Specified Percentage mattered a lot, unlike the vast majority of transactions that were fixed payment deals.

C. During the Repayment Period, Respondents Do Not Change the Fixed Durations and Payment Amounts Based on a Specified Percentage of Revenue

179. As noted in the foregoing section, Respondents entered into MCA transactions with fixed Daily Amounts and Lengths that ignored the percentage of revenue that Respondents were purportedly purchasing.

180. Likewise, Respondents ensured that when merchants' revenue declined during the term of the MCA transaction, the merchants had no ability to

make corresponding changes to their payments to Respondents—even though the transaction was purportedly a purchase of a percentage of that revenue.

181. Prospective changes to Daily Amounts, called "Adjustments," were wholly discretionary and did not operate to align the Daily Amount with the percentage of revenue that Respondents had purportedly purchased.

182. And Respondents made it all but impossible for merchants to adjust their payments retroactively through Reconciliation, the process of obtaining a refund of excess payments following a drop in revenue. Respondents protected themselves from having to issue refunds through a number of strategies, including by incorporating contractual language that rendered Reconciliation illusory, and then by manipulating the Specified Percentages stated in the contracts which had the same effect. Respondents' manipulation of the Reconciliation process through such tactics is a key factor showing usury. *See Davis*, 194 A.D.3d at 517 (usury indicated by "discretionary nature of the reconciliation provisions" and "allegations that defendants refused to permit reconciliation"); *Fleetwood*, 2022 WL 1997207, at *13 ("nominal[] . . . reconciliation provision," that is "largely illusory").

183. As a result, Respondents virtually never issued any refunds to merchants as the result of a Reconciliation. Respondents issued Reconciliation refunds on just 2.4% of their more recent Delta Bridge MCA deals since August 2022, 0.37% of their earlier Delta Bridge deals, and 0.06% of their MCA deals at Yellowstone—including zero prior to 2020. *See infra* ¶¶ 186-189.

184. By itself, the unavailability of Reconciliation confirmed that Respondents' MCAs were loans. As Respondent Glass explained to a Funder in February 2020: "The merchants[']right to a reconciliation is what makes ou[r] product not a loan. ***If the merchant's right to reconciliation is a sham then the product is a loan.***" Ex. 359 at 2. Respondent Stern chimed in: "The only reasons MCA's are not a loan is because we purchase a percentage of their sales and every month they have the ability to review if we possibly overcollected that percentage and receive a refund." *Id.* at 3.

1. Respondents Virtually Never Issued Reconciliation Refunds

185. The strategies that Respondents used as barriers to Reconciliation were enormously successful in ensuring that Respondents did not have to issue Reconciliation refunds, which confirms that the Reconciliation rights in Respondents' MCAs were "a sham." *Id.* at 2.

186. Out of the approximately 87,180 MCA agreements that Yellowstone entered into before January 13, 2020, Yellowstone *never* issued any refund to a merchant as the result of a Reconciliation. *See* Ex. 399 (deal list); Ex. 398 (reconciliation records). None of the witnesses who testified in the investigation were able to identify any such refund, *e.g.*, Maczuga Tr. at 233:12-22; Kern Tr. at 162:4-19, and no such refund was evident in the documents Yellowstone produced in the NYAG's investigation.

187. From January 13, 2020 until it stopped entering into new MCA agreements on May 21, 2021, Yellowstone entered into a total of approximately

11,133 MCA agreements with 7,489 merchants, but only issued 56 Reconciliation refunds in connection with 56 deals (0.5% Reconciliation refund rate); six additional refunds have been issued since Yellowstone stopped entering into new MCA agreements. *See* Ex. 397 (deal list); Ex. 398 (reconciliation records); *see also* Maczuga Tr. at 234:9-21.

188. From Delta Bridge's inception on May 24, 2021, until it modified how the Specified Percentage is suggested in its Contract Generator on August 9, 2022, Delta Bridge entered into a total of approximately 11,472 MCA agreements with 7,533 merchants, but only issued 53 refunds in connection with 43 deals (0.37% Reconciliation refund rate). *See* Ex. 394 (deal list and reconciliation records).

189. From August 9, 2022, when Delta Bridge modified how the Specified Percentage is suggested in its Contract Generator, until April 28, 2023 (the most recent data available), Delta Bridge entered into a total of approximately 6,048 MCA agreements with 4,515 merchants, but only issued 194 refunds in connection with 145 deals (2.4% Reconciliation refund rate). *See* Ex. 394 (reconciliation records).

190. Reconciliation refunds were so rare that during testimony, Funders and Sales Reps were almost uniformly unable to identify a single Reconciliation that was performed on a Yellowstone or Delta Bridge MCA transaction. Aryeh Tr. at 167:20-25; A. Davis Tr. at 149:4-7; Reece Tr. at 173:7-17; Schwartz Tr. at 116:18-24; Saffer Tr. at 177:5-178:11; Kern Tr. at 158:13-160:10, 181:4-182:4; Melnikoff Tr. at 173:25-174:9; Singfer Tr. at 131:5-16; Dahan Tr. at 128:5-14, 137:11-15; S. Davis

Tr. at 244:22-245:3, 246:12-247:4; Williams Tr. at 138:20-25, 140:8-16; Worch Tr. at 206:5-11, 208:20-25, 214:24-215:11; Miller Aff. ¶ 45; *see also* Yagecic I Tr. at 210:11-16; Vasquez Tr. at 135:15-136:4; Ehrlich Tr. at 127:15-23; Reich Tr. at 145:2-16; McNeil Tr. at 94:13-16.

191. Respondent Maczuga testified that in deals he had funded at Yellowstone, there were in fact no instances in which money was refunded back to a merchant as the result of Reconciliation, nor was he aware of any such refunds in deals by the team of Funders he supervised. Maczuga Tr. at 224:4-9, 225:22-226:5. Respondent Steve Davis, Yellowstone's biggest Funder, likewise testified that no Reconciliation refund was ever issued on any deal he funded. S. Davis Tr. at 244:22-245:11.

192. Even as late as 2020, Yellowstone's President, Respondent Jeffrey Reece, reported to the rest of the management team—Respondents Bart Maczuga, David Glass, and Isaac Stern—that Funders did not even understand Reconciliation. He wrote that every Funder still required "3-4 explanations" about Reconciliation, and that his conversations with them left him "deeply concerned." Ex. 358 at 3-4; *see id.* at 5 (Maczuga confirming).

2. Respondents Made Reconciliation Expressly Discretionary Until 2018

193. Until at least 2018, Yellowstone used MCA contracts with a Reconciliation clause that did not give merchants any enforceable right to have their account Reconciled, and which was therefore illusory on its face. Instead, the

clause left the decision whether to perform a Reconciliation within Yellowstone's discretion ("Discretionary Reconciliation Clause").

194. The clause, which was part of the mandatory Fixed Payment Addendum to Yellowstone's form MCA contracts, stated as follows (or similar phrasing):

> At the Merchant's option, within five (5) business [days] following the end of a calendar month, the Merchant may request a reconciliation to take place, whereby Yellowstone ***may*** ensure that the cumulative amount remitted for the subject month via the Daily Payment is equal to the amount of the Specified Percentage. . . .
>
> . . . The Merchant specifically acknowledges that . . . the potential reconciliation discussed above [is] being provided to the Merchant ***as a courtesy, and that Yellowstone is under no obligation to provide same*** . . . .

E.g., Yellowstone 2018 Exemplar at 10 Addendum § 1(c, d) (emphases added).

195. The Fixed Payment Addendum also granted Yellowstone the "sole and absolute discretion" to dictate which "evidence and documentation" the merchant needed to provide as a precondition to Reconciliation, and allowed Yellowstone to refuse any Reconciliation if the merchant failed to provide such documentation within five days. *E.g.*, *id.* at 10 Addendum § 1(c).

196. In August 2015, Respondents Stern and Vadim Serebro directed everyone at Yellowstone to use the Fixed Payment Addendum, which included the Discretionary Reconciliation Clause, in all Yellowstone MCA agreements. Ex. 325 at 9 (email from Serebro, forwarded by Stern to "Yellowstone All").

197. Yellowstone's Discretionary Reconciliation Clause ensured that merchants had no enforceable right to demand that Yellowstone perform a

Reconciliation and refund excess payments, since Reconciliation expressly was not an "obligation" but instead merely an accommodation that Respondents "may" (or may not) provide as they wished, "as a courtesy." *Supra* ¶ 194.

198. Because the Discretionary Reconciliation Clause deprived merchants of the right to ensure that their payments were actually based on a Specified Percentage of revenue, Yellowstone's agreements containing this clause were usurious on their face.

199. Yellowstone's agreements containing the Discretionary Reconciliation Clause were also usurious in practice. During the time the clause was included in Yellowstone's MCA agreements (until at least 2018, *see supra* ¶ 194) Respondents did not provide a single Reconciliation refund. In fact, Respondents issued no such refunds until at least 2020, as discussed above. *See supra* ¶ 186.

200. Moreover, despite the inclusion of the Discretionary Reconciliation Clause in its contracts, Yellowstone did not actually have any policies or procedures concerning Reconciliation until late 2018. Yagecic I Tr. at 202:18-204:11; McNeil Tr. at 92:9-21, 160:8-14; Maczuga Tr. at 226:7-19; Dahan Tr. at 139:15-20; *see generally* Ex. 408 ("Internal Procedures for Sales Reps, ISOs, and Funding"). Nor did Yellowstone take steps to inform merchants that they were eligible for a Reconciliation. Alabudi Aff. ¶¶ 14, 35; Shahinian Aff. ¶ 14; *see infra* ¶ 330.

201. In fact, Yellowstone "did not see itself as involved in the reconciliation process" at all during that period. Glass Tr. at 144:8-10; *id.* at 129:14-22.

202. Funders who separated from Yellowstone prior to (or close to) that date were not even familiar with the term "Reconciliation" in the MCA context. Scott Ehrlich, who stopped funding new deals in 2017 and separated from Yellowstone in 2018, understood Reconciliation to describe a scenario where a merchant in default paid the balance on an MCA in order to be released from a judgment. *See* Ehrlich Tr. at 125:9-126:23. Mark Worch, who was terminated by Yellowstone in April or May of 2019, understood Reconciliation to be the same as an Adjustment, and testified that he "never had a case" where a Reconciliation resulted in a refund. Worch Tr. at 203:3-204:25, 206:5-11, 208:20-25, 214:24-215:11, 267:25-268:6. Kevin Williams, who separated from Yellowstone in 2018 or 2019, understood Reconciliation to include both of the scenarios described by Ehrlich and Worch, and testified that the "[s]pecified percentage has nothing to do with" Reconciliation—or, for that matter, anything else at Yellowstone. Williams Tr. at 134:14-22, 136:25-138:18.

3. Starting Around 2018, Respondents Used Fixed Specified Percentages that Were Grossly Inflated to Ensure that Merchants Would Still Be Unable to Adjust Payments Retroactively Through Reconciliation

203. Beginning in 2018, Yellowstone experienced a period of intense scrutiny from the press and government regulators, including the New York Attorney General.

204. In response, Yellowstone engaged in a series of sham changes to make it seem like it was complying with the law when it was not. Yellowstone updated its

contracts, procedures, and disclosures, to make it easier for merchants to *request* that Yellowstone reconcile past payments against the Specified Percentage of the business's actual receipts of revenue. *See* Ex. 235 (Sept. 20, 2018 email from Reece regarding "new merchant agreement"); McNeil Tr. at 148:10-15; *see also* Glass Tr. at 129:14-130:5 (reminder emails prompted by NYAG investigation). In testimony, Yellowstone's former operations manager described these efforts as a "get this done over the weekend kind of thing." Yagecic I Tr. at 203:24-204:11.

205. At the same time, as described herein, Yellowstone began inflating the Specified Percentages used on its MCA agreements. *See infra* ¶¶ 217-228. The purpose and effect of this change was to ensure that Yellowstone would never have to actually refund payments as a result of a Reconciliation. *Infra* ¶¶ 230-232. The change took place at the direction and with the support of Yellowstone management, including Respondents Stern, Glass, and Reece. *See infra* ¶¶ 219-232. Delta Bridge, under the direction of Respondents Maczuga and Serebro, continued the practice of using inflated Specified Percentages on its MCA contracts. *Infra* ¶ 248.

206. Using higher Specified Percentages on the MCA agreements made it less likely that Yellowstone or Delta Bridge would ever owe merchants any refund. Reece Tr. at 205:25-206:5; Maczuga Tr. at 232:24-233:5, 269:8-13; McNeil Tr. at 161:7-11, 181:18-21; Saffer Tr. at 182:12-19; Singfer Tr. at 138:17-21; Melnikoff Tr. at 170:11-17. In addition to Respondents' testimony, this is confirmed by data produced by Delta Bridge which reflects that Delta Bridge contracts with higher

Specified Percentages resulted in vastly fewer refunds than Delta Bridge contracts with lower Specified Percentages. *See* Second Expert Affidavit of Blake Rubey ("Rubey Figures Aff."), Ex. 472 at ¶ 16.

207. Thwarting Reconciliation refunds was exactly Respondents' objective in increasing the Specified Percentages. As Respondent Stern wrote to Respondent Glass in a September 2019 text message that anticipated even greater increases: "If funders don['t] want" to issue refunds, they can "***[m]ake the specified [percentage] high.***" Ex. 367 at 13 (emphasis added). Glass replied: "[R]ight. The funders will learn quickly." *Id.*

208. Likewise, Respondent Maczuga, the Delta Bridge CEO and former Yellowstone co-CEO, explained in a 2022 text message: "***[E]veryone was making [the Specified Percentage] higher than they should to protect themselves, thus making it a sham to begin with***." Ex. 331 at 4; *see also* Ex. 292 at 1 (January 2018 email from former Yellowstone and Delta Bridge Funder to a merchant, stating that "[o]ur legal department changed all of our contracts to reflect a higher amount to protect ourselves").

209. Inflating the Specified Percentages "protect[ed]" Respondents, Ex. 331 at 4, by insulating them from ever having to actually refund payments as a result of a Reconciliation—"thus making [Reconciliation] a sham to begin with," *id.*; *accord* McNeil Tr. at 181:4-182:22 (testifying that the reason Specified Percentages were increased was because "that made it less likely that a reconciliation would require any refund back to the merchant").

210. By Reconciling merchants' payments against a made-up, inflated Specified Percentage number that bore no relation to the Daily Amount actually negotiated by the parties, Yellowstone, Delta Bridge, and their Funders made it virtually impossible for merchants to qualify for any Reconciliation refund. As one merchant explained, "I cannot imagine that [my business] would have taken advantage of this reconciliation process, since reconciling [my business's] payments based on this 15% 'Specified Percentage' likely would have caused its payment amount not to decrease but to increase." Ostrowski Aff. ¶¶ 30-31; *see also id.* ¶ 16.

211. Furthermore, for the very few merchants who did qualify, the limited refund ensured only that the merchant's payments were Reconciled to the made-up number. As Respondent Maczuga acknowledged in his testimony, a higher specified percentage "mean[s] that, if [a] merchant does qualify for a refund, the amount of the refund would be a lot less." Maczuga Tr. at 233:6-11; *see also* Kern Tr. at 212:23-213:6 (agreeing that a merchant whose revenues "fall off a cliff" would only be entitled to a very small refund through Reconciliation).

212. For example, consider a merchant whose Daily Amount in fact represented 5% of her business's daily revenue. If the Daily Amount and the Specified Percentage approximated one another—that is, if the Specified Percentage was also 5%—the merchant would be eligible for a Reconciliation refund as soon as her revenue dropped to the point where the amount paid to Delta Bridge represented more than 5% of her business's revenue. But if the merchant's MCA contract set the Specified Percentage at 25%, she would not be eligible for any

Reconciliation refund until her revenue dropped *much farther*—to the point where the amount paid to Delta Bridge represented almost a *quarter* of her business's revenue. Furthermore, the amount of the refund would be limited to the amount by which her payments exceeded 25% of revenue, rather than the amount by which her payments exceeded 5% of revenue.

213. Testifying about the Reconciliation process Yellowstone eventually established, Isaac Stern, Yellowstone's co-founder and CEO, said that it was important for merchants to be able to request a Reconciliation and to have those requests evaluated. Stern Tr. at 296:24-299:24. But once the process was in place, Stern was indifferent to the results of the process and whether it actually resulted in refunds to merchants. *Id.*

214. As Yellowstone's former operations manager acknowledged in her testimony, although Yellowstone "create[d] a process that made it easier for merchants to request a reconciliation, . . . because the specified percentage was fixed, it was actually harder or just as hard for merchants to *actually receive a refund* as a result of the reconciliation." Yagecic II Tr. at 169:13-172:11 (emphasis added).

215. One former Yellowstone and Delta Bridge Funder eventually caught on to the fact that inflating the Specified Percentages made it harder for merchants to ever receive a refund. In his testimony, the Funder explained that "the specified percentage, you know, needed to be lower and that way I could do more reconciliations." Saffer Tr. at 252:22-253:1; *see also id.* at 247:21-24 ("Q. So were

there merchants who were not qualifying for reconciliations because their specified percentage was too high? A. That could have been the case . . . ."); Kern Tr. at 210:5-18 (agreeing that "if a merchant's revenue stays roughly the same as what it had been immediately prior to the agreement, it would not benefit from reconciliation, it would actually owe money").

216. Yellowstone implemented its policy of inflating the Specified Percentage through its "Contract Generator," which was contained within Panther, Yellowstone's proprietary customer relationship management software. Starting in or around 2017, Funders were instructed to use the Contract Generator to create Yellowstone's MCA contracts with merchants. *See* Ex. 305; Reece Tr. at 57:25-58:3. As discussed more fully herein, Delta Bridge acquired Panther from Yellowstone and changed its name to Bobcat. *Infra* ¶¶ 599, 624. Bobcat includes the Contract Generator originally developed by Yellowstone, with some modifications made by Delta Bridge.

217. Contracts predating the Contract Generator were created using Microsoft Word templates, with the value for the Specified Percentage generally preset by Yellowstone at 10 to 15%. *Id.*; Melnikoff Tr. at 173:13-15; Schwartz Tr. at 66:2-13; McNeil Tr. at 90:5-9, 175:18-176:6; Saffer Tr. at 106:6-19; Ehrlich Tr. at 91:20-92:24, 98:3-7; *see also* Yagecic I Tr. at 173:9-17; Yagecic II Tr. at 142:22-25, 143:15-22; Saffer Tr. at 107:3-9 (testifying that Yellowstone "changed the default percentage in the generator and they changed it from 15 to 25"); McNeil Tr. at 90:12-17; Melnikoff Tr. at 93:9-14, 173:13-15 (testifying that the default Specified

Percentage was initially "10 to 15 percent" but then "changed to 25 percent"); Schwartz Tr. at 66:5-13 (testifying that "at some point the percentage went from 15 percent to 25 percent").

218. When the Contract Generator launched, the Specified Percentages were vastly increased to a fixed 25%. Ex. 373 at 6 (January 2019 text from Reece to Glass and Stern: "It was at 15% for years. Then 25% when we introduced the generator.").

219. The direction to increase the Specified Percentage to 25% came directly from Yellowstone management. A May 2018 email from Respondent Jeffrey Reece to Respondent Glass and others stated that "*we* changed [the Specified Percentage in the Contract Generator] from 15% -> 25%." Ex. 266 (emphasis added); *see also id.* (Glass email approving a rule that Specified Percentages "must be 25%"); *see also* McNeil Tr. at 179:4-180:2 (Stern and Reece must have been involved).

220. Lena Yagecic, who managed the Contract Generator as Yellowstone's operations manager (supervised by Reece) testified that Respondents Glass and Serebro instructed her to set the Specified Percentage at 25%. Yagecic II Tr. at 143:15-22. Yagecic attempted to persuade Glass that the Specified Percentage should be calculated as a function of the merchant's revenue and the Daily Amount, but Glass wanted it set at 25%, and his word was final. Yagecic II Tr. at 150:4-151:7.

221. Funders understood that Yellowstone was responsible for setting the Specified Percentage at 25%, and attributed that decision to its "legal department."

E.g., Ex. 292 (January 2018 email from former Funder McNeil to a merchant, stating that "[o]ur legal department changed all of our contracts to reflect a higher amount to protect ourselves."); *see also* McNeil Tr. at 175:25-176:15; Saffer Tr. at 110:22-111:7; Dahan Tr. at 67:19-21; *accord* Yagecic II Tr. at 143:15-22.

222. At times, the default Specified Percentage was actually fixed within the Contract Generator and could only be altered by Yellowstone's operations staff upon request from a Funder. Yagecic II Tr. at 158:14-159:9, 160:2-6; A. Davis Tr. at 103:11-104:5. The Specified Percentage was fixed at the direction of Yellowstone management, including through an email from Respondent Reece directing that "all contracts coming out of the generator have a 25% of sales on the front page." Ex. 266. At one point, Respondent Glass expressed surprise to Yagecic that Funders even had the ability to adjust the Specified Percentage and directed that it be fixed at 25%. Yagecic II Tr. at 150:4-151:7.

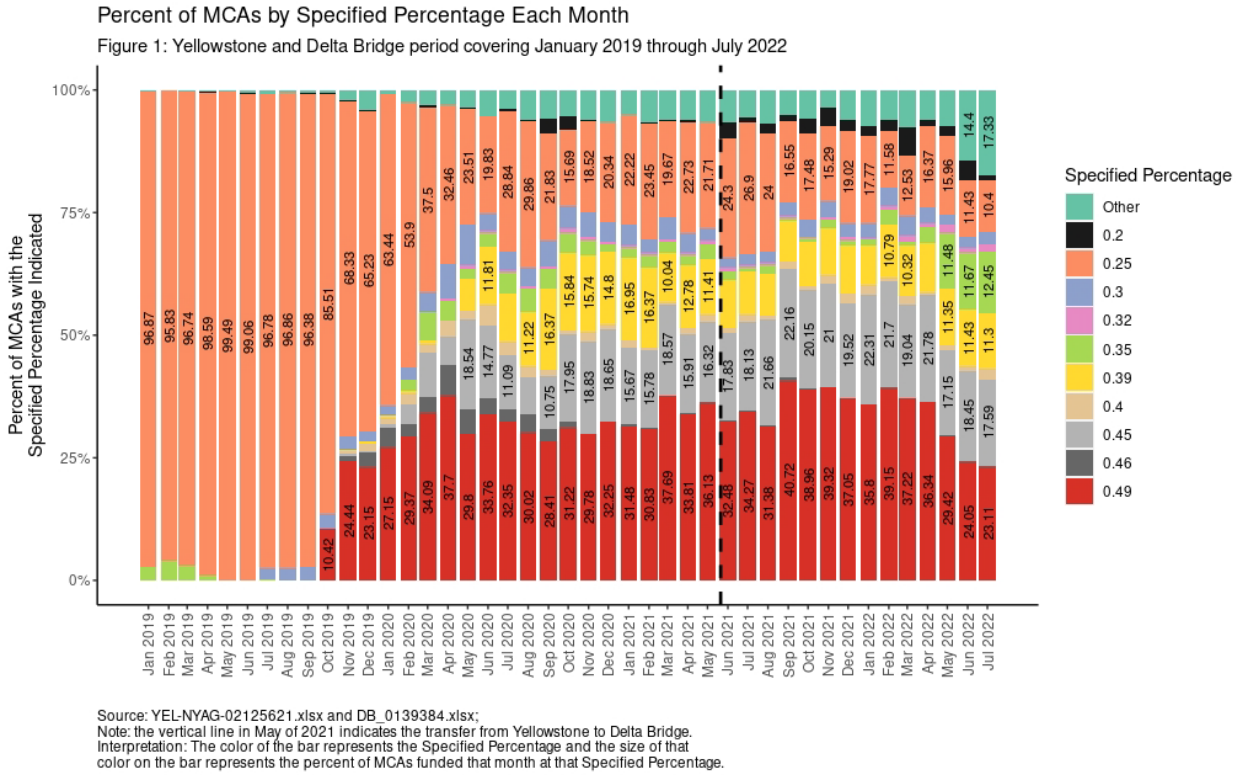
223. At other times, it was technically possible for Funders to alter the preset Specified Percentage within the Contract Generator, but Yellowstone used other strategies to ensure that the Specified Percentage remained consistent. For example, from at least May 2018 through February 2019, a message in the generator directed that the Specified Percentage "***[m]ust*** be 25%" (with the rare exception of Split Funding deals, as defined *supra* ¶ 178). *See* Ex. 254 (emphasis added); Exs. 195, 256, 264 (same). Respondent Glass insisted on the inclusion of that message in the Contract Generator, even overruling Respondent Stern, ostensibly Yellowstone's CEO, who wanted the message excluded. *See* Ex. 254

("[Isaac] wants the message removed. Dave wants it there."); Yagecic II Tr. at 164:7-165:13, 167:5-10.

224. For another example, as of December 2018, Yellowstone set a limit prohibiting Specified Percentages lower than 10%. *See* Ex. 208 (Funder's assistant writing that "the lowest we can put is 10%"). This limit applied regardless of how the percentage related to the Daily Amount and to a merchants' revenue.

225. Until approximately October 2019, Yellowstone management used the Contract Generator to ensure that the Specified Percentages on virtually all of Yellowstone's MCA agreements were not only inflated but were also uniform. *See infra* ¶ 226 (bar graph); *see also* Maczuga Tr. at 262:15-23 (confirming that the graph is "consistent with what [he] know[s] about Yellowstone's MCA contracts"); A. Davis Tr. at 103:11-104:5; Saffer Tr. at 106:9-107:19, 127:19-20; Melnikoff Tr. at 100:10-16; Worch Tr. at 194:3-17, 196:2-15. The Specified Percentages remained the same on virtually all of Yellowstone's MCA agreements regardless of how the designated percentage related to the Daily Amount and to a merchants' revenue.

226. In approximately October 2019, the Specified Percentages on Yellowstone's MCA contracts began to increase even further, as shown in the bar graph below.



Source: YEL-NYAG-02125621.xlsx and DB_0139384.xlsx;
Note: the vertical line in May of 2021 indicates the transfer from Yellowstone to Delta Bridge.
Interpretation: The color of the bar represents the Specified Percentage and the size of that color on the bar represents the percent of MCAs funded that month at that Specified Percentage.

Rubey Figures Aff. Ex. 1. This bar graph shows the proportion of Respondents' MCA agreements stating a given Specified Percentage, for each month since January 2019. This graph shows that the Specified Percentages on Yellowstone's MCA contracts were almost uniformly 25% until October 2019. In October 2019, approximately ten percent of Yellowstone's MCA contracts stated a Specified Percentage of 49%. *Id.* By April of 2020, ***49% was the most used Specified Percentage on Yellowstone's MCA contracts***. *Id.* And 49% remained the most used Specified Percentage through the remainder of the Yellowstone period and the

transition to Delta Bridge (indicated by the vertical dashed line), and on Delta Bridge's MCA contracts through July 2022. *Id.* Virtually all of Yellowstone and Delta Bridge's other MCA contracts stated Specified Percentages of 25, 30, 39, or 45%. *Id.*

227. Yellowstone expressly permitted Specified Percentages as high as 49%. *See* Reece Tr. at 72:14-18.

228. The further increase in Specified Percentages from October 2019 to April 2020 coincided with Yellowstone's preparations to implement additional measures to ostensibly make it easier for merchants to *request* a Reconciliation, such as email reminders and a process for submitting such requests. *See* Ex. 367 at 12-13; Ex. 366 at 8-10; *see also* Glass Tr. at 129:14-130:5 (reminder emails prompted by NYAG investigation).

229. Yellowstone's management, including Respondents Glass and Maczuga, were directly involved in establishing Yellowstone's responses to Reconciliation requests from merchants when the process was eventually implemented in 2020. *See* Ex. 363 at 12 (Glass text to Stern, Reece, and Maczuga in Jan. 2020: "I want to low key be involved in first couple of [Reconciliation] controversies. So we can sorta decide together how to handle." Maczuga: "dont worry. . . . I will be getting advised by you to set some ground rules for sure." Reece: "This will be . . . [a]ll [Glass] and [Maczuga]."); Ex. 362 at 4-6 (Glass involved in response to first Reconciliation call from merchant in January 2020). Maczuga confirmed this in his testimony, explaining that Glass was "involved" and

"very aware of the [Reconciliation] process and how it was handled." Maczuga Tr. at 230:10-18. Respondents Glass, Stern, Maczuga, Reece, and Serebro participated in discussions about how to handle specific Reconciliation requests; these discussions took place in an ongoing groupchat called the "GC Chat." Reece Tr. at 186:23-187:16.

230. The further increase in Specified Percentages was another protective measure by Respondents against ever having to actually issue any Reconciliation refund to merchants. In a September 2019 text message exchange that anticipated the increase, Stern wrote to Glass: "If funders don['t] want" to issue refunds, they can "***[m]ake the specified [percentage] high.***" Ex. 367 at 13. Glass replied: "[R]ight. The funders will learn quickly." *Id.* The next day Glass wrote to Stern: "***Specified percentages will explode[.] And that's good.***" Ex. 366 at 10; *see also* Ex. 363 at 12 (Glass to Stern, Reece, Maczuga in January 2020: "Really don't know what to expect. ***I guess purchase percentages will go up.***"); Maczuga Tr. at 231:20-232:7 (confirming that "purchase percentages" referred to the Specified Percentages on Yellowstone's MCA contracts).

231. Respondent Maczuga, who was Yellowstone's co-CEO at the time, agreed that "funders were raising the specified percentage ***because of the increased availability of reconciliation***." Maczuga Tr. at 270:6-10.

232. The point of the increase was to maintain the status quo of never having to actually issue any Reconciliation refund to a merchant, while misleading courts and regulators into believing that Respondents were complying with legal

requirements because Reconciliation was nominally available. As Glass wrote to Stern, Reece, and Maczuga in January 2020: "The ideal scenario is this. Isaac gets asked in a deposition one day, 'out of 30,000 merchants you refunded 5 why is that.' And his answer is 'they weren't eligible for refunds.'" Ex. 362 at 6. During a text message exchange earlier in 2019, Glass had asked Stern and Reece whether "it looks bad if specified percentages start to rise," and pointed out that "we won't be collecting one penny faster than we were before[.] ***It will just be more legal. . . . Reconciliation issue solved***." Ex. 373 at 5; *accord* Ex. 372 at 3 (similar conversation with a Yellowstone employee).

233. Although the Specified Percentages stated on Yellowstone's agreements were no longer uniform, they largely stratified into four or five categories, of 25, 30, 39, 45, or 49%. *See supra* ¶ 226 (bar graph).

234. This limited variation across all Yellowstone and Delta Bridge agreements masked the fact that individual Funders typically used the same one or two Specified Percentages for all of their Yellowstone and Delta Bridge MCA deals. *See* A. Davis Tr. at 103:11-104:5; Saffer Tr. at 106:9-107:19, 127:19-20; Schwartz Tr. at 65:25-66:9 (testifying that the Specified Percentage "was always a set number" and that "all funders would generally have the same number that it would be set to"); Dahan Tr. at 62:22-63:3 ("In general it [the Specified Percentage] stayed the same."); Kern Tr. at 109:20-23; McNeil Tr. at 88:10-25; Melnikoff Tr. at 100:10-16; Worch Tr. at 194:3-17, 196:2-15, 256:23-257:3; *see also* Ex. 335 at 5 (Maczuga text in April 2022: "The funders getting mad lazy with the 49 [percent]").

235. During his testimony, Yellowstone's president was able to identify only one single Funder who modified the Specified Percentage based on merchants' revenue expectations. *See* Reece Tr. at 197:18-198:10. That one Funder specialized in Credit Card deals where the Specified Percentage is critical (*see supra* ¶ 178), was not one of Yellowstone's top funders, and stopped funding altogether in approximately 2017 to become Yellowstone's operations manager. *See* Yagecic I Tr. at 35:3-8, 171:18-19.

236. Steven Saffer, a former Yellowstone and Delta Bridge Funder, grew concerned as the Specified Percentages were inflated higher and higher. After the New Jersey Attorney General sued Yellowstone in December 2020, Saffer worried that these practices could threaten the long-term viability of the MCA business, and he reported his concerns about the Specified Percentage to Respondent Vadim Serebro. Saffer testified that he told Serebro:

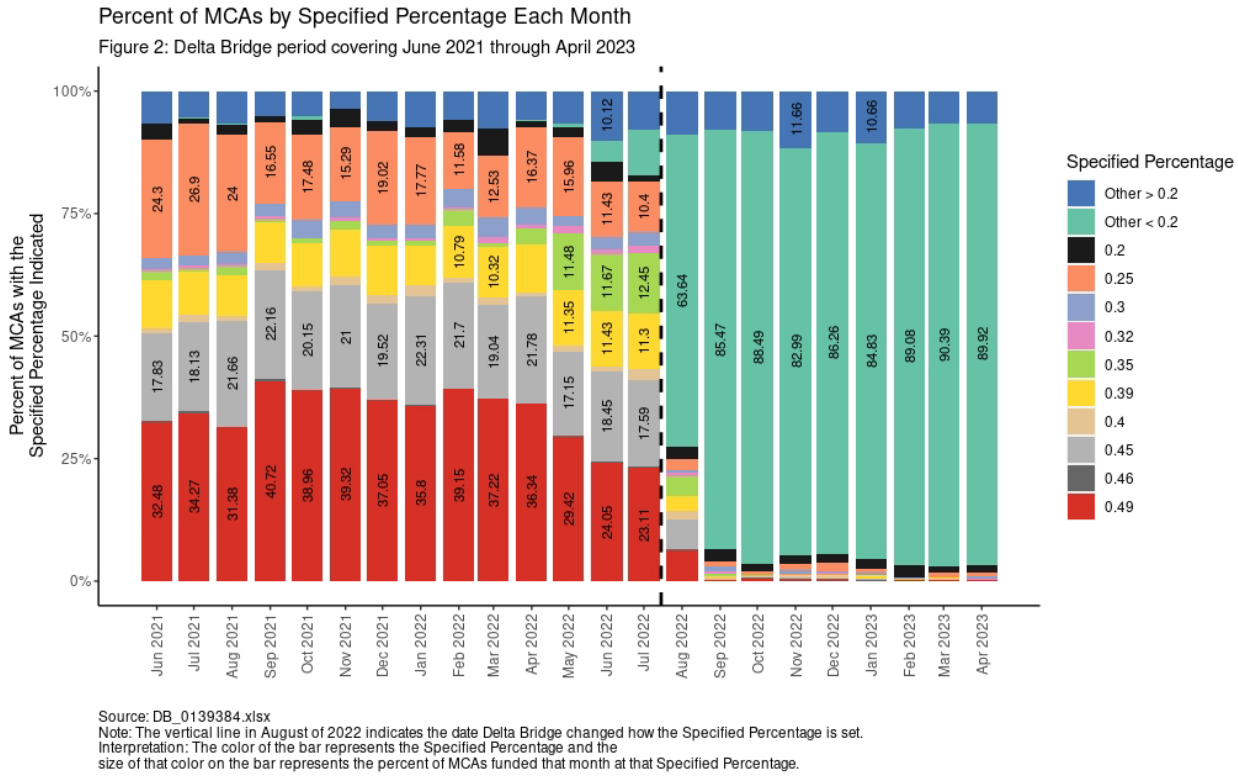
> Clearly the specified percentage is going to be an issue because you let funders choose whatever specified percentage they want and they can make a specified percentage on a contract ***49 percent and that's not a realistic percentage*** and where's the longevity of [the MCA business] going to be if [the Specified Percentage is] not truly connected to where it's supposed to be.

Saffer Tr. at 237:25-238:22. Saffer continued to raise these concerns with Serebro at Yellowstone and then at Delta Bridge up through 2022, but never had the impression "that it really mattered." Saffer Tr. at 236:6-238:22. He also expressed the concerns to Respondent Maczuga, Delta Bridge's CEO. Saffer Tr. at 234:20-236:5.

237. The Specified Percentages were inflated compared to what they would have been had they reflected the Daily Amounts as a percentage of merchants' revenue. This is shown in the affidavit of Blake Rubey, Data Analyst for the Office of the Attorney General, who analyzed three agreements with merchants and the merchants' receipts of revenue, and concluded that "the Stated Specified Percentages in Respondents' Agreements were far higher than what they would have been had the Daily Amounts in the Agreements in fact amounted to a Specified Percentage of the merchants' Average Daily Revenue." First Expert Affidavit of Blake Rubey ("Rubey Aff."), Ex. 470 at ¶¶ 29, 54; *see also* Exhibits to Rubey Aff. ("Rubey Aff. Exs."), Ex. 471.

238. Respondent Maczuga, Delta Bridge's CEO, admitted in an August 2022 text message that the Specified Percentages were inflated, writing that Delta Bridge's MCA contracts "are just defaulting to 30-50% of receivables by default (which after doing some math, ***is way way way higher than you need to grab the agreed upon estimated daily payments***)." Ex. 331 at 4 (emphasis added); *see also* Yagecic II Tr. at 151:8-18 ("[I]t's likely that most of the time [the Specified Percentage] was higher . . . ."); Saffer Tr. at 247:21-24 ("Q. So were there merchants who were not qualifying for reconciliations because their specified percentage was too high? A. That could have been the case . . . ."); Kern Tr. at 210:5-18 (agreeing that "if a merchant's revenue stays roughly the same as what it had been immediately prior to the agreement, it would not benefit from reconciliation, it would actually owe money").

239. Indeed, Delta Bridge's Specified Percentages dropped dramatically starting in August 2022, when Delta Bridge purportedly began, to some extent, to tie the Specified Percentage to the Daily Amount, as shown in the bar graph below. *See also* Maczuga Tr. at 389:5-16; *infra* ¶¶ 249-260 (describing policy change).



Rubey Figures Aff. Ex. 2. This bar graph shows the proportion of Delta Bridge's MCA agreements stating a given Specified Percentage for each month from Delta Bridge's inception through April 2023. It shows that after August 2022 (indicated by the vertical dashed line), virtually all of Delta Bridge's MCA agreements stated a Specified Percentage below 20%, when previously, virtually none of Delta Bridge's agreements stated a Specified Percentage below 20%; indeed, the majority of agreements prior to August 2022 stated Specified Percentages of 45% or higher. *Id.*

(As described herein, the change that occurred in August 2022 was not enough to make Reconciliation a real option for merchants and did not cure other aspects of Respondents' transactions that made them loans. *Infra* ¶¶ 252-260.)

240. Respondents' practice of setting Specified Percentages that dramatically exceeded the Daily Amounts was entirely consistent with the widely held view among management and Funders that the Specified Percentage was a *ceiling* on collections, *i.e.*, that the Specified Percentage could be any number so long as it exceeded the percentage of the merchant's revenue actually approximated by the Daily Amount. As Delta Bridge CEO, Respondent Maczuga advised a Funder in August 2021 that a merchant's MCA agreement with Delta Bridge was a purchase of "UP TO 49%" of the merchant's revenue. Ex. 343 at 3 (emphasis in original). In addition:

- Respondent Jeffrey Reece, Yellowstone's president, admitted that the Specified Percentage was treated as "an upper limit, like a ceiling, on what Yellowstone could collect from the merchant each day." Reece Tr. at 204:25-205:13.
- Respondent Steve Davis testified that the Specified Percentage "was the ceiling," and the Daily Amount "wasn't to exceed" the Specified Percentage. S. Davis Tr. at 217:24-218:9; *accord id.* at 162:8-14 (agreeing that the Specified Percentage "reflected a ceiling"), 220:22-221:7 (same). He also testified that, "[m]ost likely, [the Daily Amount] did go below" the Specified Percentage. *Id.* at 161:19-162:19; *see also id.* at 160:10-18 (testifying that the Daily Amount "would represent, you know, up to [the specified] percent"), 217:4-7 ("as long as [the Daily Amount] is under th[e] [Specified Percentage], you know, it's ok"), 219:4-7 (agreeing that he understood "the daily payment to be a number that was under the specified percentage").
- Respondent Aaron Davis admitted, "the specified percentage was sort of like a ceiling above which you knew that you could not collect more than that," and "you can maybe call it a cap . . . because I would say

certainly far more often we're collecting under that number as opposed to over." A. Davis Tr. at 162:8-17, 163:23-164:3.

- Former Yellowstone and Delta Bridge Funder Jim McNeil testified: "[T]he daily payment . . . in general it was much lower than the 25 percent specified percentage threshold." McNeil Tr. at 98:13-99:8 ("[O]n 90 plus percent of the deals it's going to be well below that 25 percent of their real rev[enue]."); *accord id.* at 88:10-21 ("the specified percentage basically says it enables us to collect up to 25 percent of the merchant's receivables"), 92:22-6, 94:7-10, 97:20-23, 119:17-120:5 (the Specified Percentage is "just something that you want to make sure you're not going over. . . . it's not being calculated, you know, on individuals generally"), 121:22-122:3, 123:6-20.

- Former Yellowstone and Delta Bridge Funder Michael Schwartz testified: "I would always go out of my way to make sure [the Daily Amount] is under that specified percent . . . ." Schwartz Tr. at 68:5-7; *accord id.* at 67:4-6 ("The specified percentage all that is so that I don't collect more than a certain percentage of the revenue."); *id.* at 114:23-25.

- Former Yellowstone Funder Mark Worch testified: "It hurt your ability to collect if you did it wrong . . . . I always tried to use a higher number on a contract . . . ." Worch Tr. at 193:7-20, 238:2-5, 272:12-20; *see also* Aryeh Tr. at 91:2-23 (Specified Percentage ensures "that Yellowstone doesn't collect more than 25 percent of [a merchant's] income for the month"); Braun Tr. at 142:8-12; *supra* ¶ 110 n.4 (identifying Braun as former broker for Yellowstone).

241. But as Respondent Maczuga later explained, in an August 2022 text message: "[I]f you draft the contract with 49% and you only really need 5, 10, 25, 29%, etc., ***then the whole idea of making it a sale of future receivable . . . is thrown out the window***." Ex. 331 at 4.

242. An example illustrates how the Specified Percentage was used so effectively to thwart merchants' ability to Reconcile. Delta Bridge (via its affiliate, Respondent Cloudfund) entered into an MCA agreement with the merchant Cookies Restaurant Group LLC ("Cookies") in Catskill, New York, on February 25, 2022.

Rubey Aff. Ex. 2B. The agreement stated a Daily Amount of $208 and a Specified Percentage of 49%, and stated that the Daily Amount was "a good faith approximation of the Specified Percentage of [Cookies'] Future Receipts." *Id.* at 1.

243. But a review of the bank statements that Cookies submitted to Delta Bridge during the underwriting phase reflects that $208 was actually between *13% and 18%* of Cookies' average daily revenue—not 49%, as stated in the agreement. *See* Rubey Aff. ¶ 29 & Table 1. The Specified Percentage stated in Delta Bridge's agreement was about three times what it should have been. *See id.*

244. Cookies experienced a drop in revenue during the first months of the agreement, and on May 5, 2022, Cookies submitted a Reconciliation request to Delta Bridge. *See* Ex. 394 at 164 (row 26989). In the request, the merchant reported having collected $37,041 in revenue since the start of the agreement, which reflected a decrease of about half of Cookies' revenue. *See id.* According to Delta Bridge's records, it had collected $6,953 from the merchant as of that date. *See id.*

245. Applying the 49% Specified Percentage stated in the agreement to the $37,041 in revenue reported by Cookies, Delta Bridge determined that it was entitled to $18,150.09, and that since it had only collected $6,953, no refund was due to Cookies. *See* Rubey Aff. ¶ 33; Ex. 394 at 164 (row 26989). As a result, Delta Bridge denied the Reconciliation request summarily, without any further inquiry or investigation. *See* Ex. 394 at 164 (row 26989) ("INELIGIBLE").

246. But Cookies would have been entitled to a refund if Delta Bridge had not used an inflated Specified Percentage. If Delta Bridge had instead used a value between 13% and 18%—which reflected the Daily Amount as a percentage of the merchant's actual revenue at the time of the agreement, *supra* ¶ 243—it would have shown that Delta Bridge had in fact overcollected between $559 and $1,822 from Cookies, and Cookies would have been entitled to a refund in that amount. *See* Rubey Aff. ¶ 36.

247. Instead, Delta Bridge continued to debit Cookies' bank account in fixed amounts, and then refinanced the agreement the next month, driving the merchant even further into debt. *See* Ex. 457 at 4; *see also infra* ¶ 432-444 (describing how Respondents push struggling merchants to refinance). Two months later, Delta Bridge filed a complaint against Cookies and its owner personally in Queens County Supreme Court, claiming that Cookies was "depriving [Delta Bridge] of its Specified Percentage of the Business Defendant's daily receipts." *Id.* at 28 ¶ 22. Default judgement was entered in October 2022 and remains outstanding against the merchant and owner. *Id.* at 2.

248. Until at least August 2022, Delta Bridge, and Funders at Delta Bridge, continued to adhere to the same practices concerning the Specified Percentage when working on Delta Bridge MCA deals. *See supra* ¶ 226 (bar graph); Maczuga Tr. at 153:14-154:11; *supra* ¶ 177.

4. Delta Bridge's New Practice of Suggesting a Specified Percentage

249. On or about August 9, 2022—after issuing MCAs for more than a year—Delta Bridge purportedly modified how the Specified Percentage is set in its contract generator. Since implementing the modification, the Specified Percentages on Delta Bridge's contracts have reduced substantially. Nevertheless, as described below, Delta Bridge maintains other barriers ensuring that merchants lack a realistic opportunity to Reconcile, and it continues to include protections in its agreements with merchants that are hallmarks of loans.

250. Delta Bridge has produced only one single document that supposedly concerns the modification, Ex. 460, despite the NYAG's subpoena calling for all documents concerning the specified percentage, Ex. 446 at 8 (request 7), and all documents concerning Delta Bridge's policies and practices for setting the specified percentage, *id.* (request 10), and the NYAG's more specific follow-up request specifically seeking "all documents concerning the [August 2022 modification], not limited to formal written policies, and a Privilege Log listing any such documents withheld on the claimed basis of privilege," Ex. 461 at 2. As a result, the NYAG's understanding of the modification and its functionality is based on the self-serving testimony of Delta Bridge's CEO, a video created for the NYAG for demonstration purposes, and the representations of Delta Bridge's attorneys.

251. The modification was implemented less than two months after Yellowstone's counsel notified the NYAG that Delta Bridge had taken over significant Yellowstone assets, *see generally* Part IV, *infra*, and about six weeks

after the NYAG requested that Delta Bridge's counsel explain how Delta Bridge's practices differed from Yellowstone's and what steps Delta Bridge had taken to prevent usury and fraud. Ex. 447 at 1. The modified contract generator contains a new field for the merchant's average monthly deposits, which are either entered by the Funder directly, or pulled from the bank statements submitted by the merchant. *See* Maczuga Tr. at 385:24-386:10, 394:21-395:14, 390:23-391:7. According to Delta Bridge's CEO, the contract generator then suggests a Specified Percentage by dividing the Daily Amount by the merchant's average daily deposits. *See* Maczuga Tr. at 387:25-388:14.

252. However, Funders still have the ability to inflate the Specified Percentage and set it at whatever value they like. *See* Maczuga Tr. at 394:7-14, 395:15-19.

253. Moreover, Funders continue to retain complete discretion in determining which of the deposits reflected on a merchant's bank statement count as "revenue." *See* Maczuga Tr. at 396:9-397:21; *see also* A. Davis Tr. at 109:19-110:3. As before, these determinations are not disclosed to merchants. *See* Maczuga Tr. at 397:22-398:3; *see infra* ¶¶ 370-378.

254. As before, Funders are permitted to change the Specified Percentage for any reason at all, and do not even have to document or provide any justification for the change. *See* Maczuga Tr. at 395:15-24.

255. As before, Delta Bridge does not have any safeguards, controls, or other measures to ensure that the Specified Percentage that is ultimately set on its

contracts with merchants is in fact an approximation of the Daily Amount as a percent of the merchant's average daily revenue. *See* Maczuga Tr. at 399:24-400:12.

256. Meanwhile, Delta Bridge did not announce, explain, or offer any training concerning the modification to Funders when it was introduced or thereafter. *See* A. Davis Tr. at 115:6-9, 118:17-25; Saffer Tr. at 122:1-8. After the modification was implemented, Funders still struggled to explain or understand how the contract generator calculates the suggested Specified Percentage. *See* Melnikoff Tr. at 96:23-98:13, 108:21-23, 172:17-173:3 (testifying incorrectly that the modification matches the Specified Percentage to the Factor Rate); Saffer Tr. at 120:13-121:18. One Funder, Respondent Aaron Davis, called it "a system that's rife with . . . big problems." A. Davis Tr. at 109:19-20.

257. Delta Bridge is also continuing to collect on—and obtain judgments to enforce—its MCA agreements that predated the August 2022 change in the contract generator. *See* Maczuga Tr. at 401:9-21; *see, e.g.*, *infra* ¶¶ 494-500 (judgment to enforce June 2022 agreement with Specified Percentage of 49% obtained by Delta Bridge in Oct. 2023). All of these agreements were subject to Respondents' policy of grossly inflating the Specified Percentages. *See supra* ¶ 248. Delta Bridge is aware of this, because, at a minimum, it is aware that the average Specified Percentage dropped substantially starting in August 2022. *See* Maczuga Tr. at 389:5-16; *see also supra* ¶ 239 (showing the drop in Aug. 2022). The effect of these inflated Specified Percentages is that it is virtually impossible for those merchants with

earlier agreements to qualify for a Reconciliation refund, and any refund that they do qualify for would be far less than they are entitled to. *See supra* ¶¶ 205-248.

258. Nevertheless, Delta Bridge has not taken any measures to examine any older agreements, or to ensure that the merchants bound to those agreements have a genuine opportunity to obtain a Reconciliation. *See* Maczuga Tr. at 402:13-25. To the contrary, it is continuing to enforce them in New York State Supreme Court. *See id.* at 401:9-21; *see, e.g.*, *infra* ¶¶ 494-500.

259. Delta Bridge has also continued to let Funders exercise their own discretion in deciding whether to grant prospective Adjustments to Daily Amounts, and Funders do not recalculate Daily Amounts to align with the Specified Percentage of the merchant's daily revenue. *Infra* ¶¶ 309-316.

260. Furthermore, although inflating the Specified Percentage was remarkably effective at preserving Respondents' ability to collect fixed payments for finite Terms, it was far from the only strategy they used. As detailed below, Respondents have created a number of other barriers to avoid ever having to issue Reconciliation refunds, and they do not modify merchants' Daily Amounts prospectively based on the Specified Percentage. And beyond Reconciliation, Respondents' practices have consistently treated the Specified Percentage as the feint that it is, rather than the percentage of revenue they purportedly purchased. Their Agreements with merchants have also preserved their authority to collect even after the merchant was closed or bankrupt. These and other aspects of

Respondents' so-called MCAs are also hallmarks of loans, and most of them are continuing today, as described in detail below.

5. Additional Barriers to Reconciliation

261. Respondents used a variety of strategies to insulate themselves from having to provide Reconciliation refunds to merchants whose revenue declined during the term of their MCA, in addition to inflating the Specified Percentage. These strategies made it needlessly difficult, or even impossible, for merchants to Reconcile their payments with the percentage of revenue Respondents had purportedly purchased and helped to ensure that merchants' right to Reconciliation was "a sham." Ex. 359 at 2 ("If the merchant's right to reconciliation is a sham then the product is a loan.")

a. Respondents Use the Effects of Declining Revenues to Disqualify Merchants from Reconciliation

262. According to Respondents' agreements with merchants, Reconciliation was not available at all to merchants whose declining revenues left insufficient funds in their bank accounts to accommodate debits of the Daily Amounts. Yet declining revenues were the very circumstance that was supposed to *give rise* to merchants' Reconciliation rights. *E.g.*, Delta Bridge Agreement at 4 § 10(a) (standard Delta Bridge MCA agreement granting merchant "the right" to Reconciliation upon "unforeseen decrease" in revenue).

263. Respondents accomplished this through contractual language barring merchants from Reconciliation if the merchant was "in default" of its Agreement, and by deeming a "default" to include four bounced payments. *E.g.*, Delta Bridge

Exemplar at 4 § 10(a) (conditioning the availability of Reconciliation "so long as [merchant] is not then in default under the terms of this Agreement"); *id.* at 9-10 § 25(g) (defining "Events of Default" to include "[merchant] causes four (4) or more ACH transactions attempted by [Delta Bridge] during any thirty-day period during the term of this Agreement to be rejected by [merchant's] bank"); Yellowstone 2020 Exemplar at 3 § 10(a); *id.* at 10 § 27(h).

264. As a result, the availability of Reconciliation was illusory for merchants whose revenue declined such that their bank accounts were insufficiently funded when Respondents attempted to debit the Daily Amounts. By deeming such merchants in "default," Respondents could refuse any Reconciliation request, no matter if they had collected more than the percentage of the declining revenue purportedly purchased.

b. Respondents Manipulate How Merchants' Revenue Is Calculated When Performing Reconciliations

265. As part of the Reconciliation process that Respondents eventually established, Respondents reviewed merchants' bank statements and determined which of the credits listed on the statements qualified as revenue. Under Respondents' MCA agreements, revenue was merchants' receipts for the "sale of goods and services" (except for a period when it was all receipts from any source). *See supra* ¶ 123 n.9; *infra* ¶¶ 445-448. Respondents manipulated this process in a manner that made it more difficult for merchants to qualify for a Reconciliation refund.

266. Because Reconciliation was supposed to examine whether Respondents had collected more than the percentage of revenue stated in the contract, it was critical to determine which of the deposits into a merchant's bank account were revenue in the first place. If credits other than revenue (*e.g.*, loans, investments, refunds, chargebacks) were wrongly treated as revenue during the Reconciliation process, the merchant's total revenue would be artificially inflated, and the merchant would be less likely to qualify for any refund as a result. *See* Glass Tr. at 139:24-140:2 ("The higher [the merchant's] sales, the less likely they would be eligible for a refund.").

267. With limited exceptions, Yellowstone and Delta Bridge did not have any policy or guidance concerning what qualifies as revenue under the terms of their MCA agreements, when evaluating Reconciliation requests from merchants. *See* Maczuga Tr. at 235:23-236:16.

268. As a result, Funders have treated merchants' nonrevenue receipts—such as loans from family members—as revenue, making it appear during the Reconciliation process that merchants' revenue had not in fact dropped. *See* Ex. 152 at 1-4 (Delta Bridge Funder informing merchant that a loan "[f]rom a family member" counts as revenue for the purposes of a Reconciliation).

269. Furthermore, it was "common knowledge" among Respondents that they treated funding that merchants received from MCA transactions with other MCA companies as revenue when evaluating Reconciliation requests. Maczuga Tr. at 236:7-21, 237:13-19; *accord* Singfer Tr. at 60:4-12; Reece Tr. at 179:21-180:21; Ex.

361 at 7 (message from Maczuga to Reece, Stern, and Glass concerning Reconciliation request: "MCA is revenue"); Ex. 210 (email from Funder refusing merchant's request for a Reconciliation refund, based in part on the treatment of funding from another MCA company as revenue).

270. As a result, if a merchant received a cash infusion from another MCA company during the term of a Yellowstone or Delta Bridge MCA—which was common—the merchant would be hard-pressed to demonstrate that their business's revenue had fallen significantly enough to warrant a Reconciliation refund. Moreover, at least some merchants who sought out cash infusions from other MCA companies did so precisely because they had experienced a cash shortfall which should have entitled them to Reconciliation. *E.g.* Alabudi Aff. ¶ 63.

271. For example, in December 2018, the merchant Get Me Placement submitted a Reconciliation request to Yellowstone based on its "dramatic decrease in our accounts receivable" during the month prior, and then followed up directly with the Funder about the request. Exs. 214, 212. The Funder replied that the merchant was not eligible for any refund because the business had received another merchant cash advance, and that the merchant "actually owe[s] a balance to [Yellowstone]" as a result of the supposed surge in revenue. Ex. 210 at 2. Rather than agreeing to Reconcile, the Funder proposed suspending four payments as a "middle ground." *Id.* at 1; *see also id.* (merchant's attorney noting that "If you contend those are future receipts, th[e]n [Yellowstone] would not be allowed to

consider the future receivables of those sales from its calculations, as that would mean you are counting those deposits as 'receipts' 2 different times.").

272. This practice of counting funding from other MCA companies as revenue for purposes of a Reconciliation was not disclosed to merchants, *see* Reece Tr. at 182:23-183:21; Maczuga Tr. at 237:20-238:6 (claiming incorrectly that the agreements disclose this), and it was continued by Delta Bridge, *see* Maczuga Tr. at 236:17-21; Ex. 329 at 4 (Maczuga advising Funder in December 2022 that "MCA deposit into account [] is . . . revenue as far as reconciliation goes").

273. This practice of counting funding from other MCA companies as revenue for purposes of a Reconciliation was also inconsistent with how Respondents treated the very same deposits when pricing and underwriting Yellowstone and Delta Bridge MCA transactions at their outset. According to Respondent Maczuga, Yellowstone and Delta Bridge left it up to individual Funders to decide whether to count funding from other MCA companies as revenue during underwriting, and that it would be "perfectly consistent" with Delta Bridge's policies if Funders did *not* count such funding as revenue in their underwriting. Maczuga Tr. at 239:6-18.

274. And Funders testified that indeed, they did *not* count funding from other MCA companies as revenue for purposes of pricing and underwriting Yellowstone and Delta Bridge MCA transactions. *See* Singfer Tr. at 59:17-60:12 ("Q. So funding from other MCA companies you generally did not count as revenue? A. Not as far as determining how much I would feel comfortable giving, but in other

cases I would consider it revenue. Q. In what other cases would you consider it revenue? A. If it were for a reconciliation process."); Kern Tr. at 98:23-99:2, 203:10-15; Williams Tr. at 233:5-9.

275. As a result, Respondents used one standard for defining revenue when setting the Specified Percentage and Daily Amount at the outset, and a different standard when performing Reconciliations. *See also infra* ¶¶ 370-378 (describing how Yellowstone and Delta Bridge allowed Funders to determine what counted as revenue during underwriting). This discrepancy raised the bar substantially for merchants to qualify for any Reconciliation refund, and ensured that the process was not actually aimed at reconciling merchants' payments with the percentage of revenue Respondents had purportedly purchased. Furthermore, the discrepancy was not disclosed to merchants. *See* Reece Tr. at 182:23-183:21.

276. This was a problem that infected Respondents' Reconciliation process more broadly. Yellowstone and Delta Bridge did not require Funders, when evaluating Reconciliation requests, to be consistent with the revenue determinations they used when underwriting the deal in the first place. *See* Maczuga Tr. at 236:17-21, 239:6-18.

277. Yellowstone and Delta Bridge did not even require Funders to justify the determinations that they made with respect to which deposits counted as revenue when evaluating Reconciliation requests. For example, in February 2023, the merchant Sirius Sage submitted a Reconciliation request to Delta Bridge, and reported only $6,364 in sales, which would qualify the merchant for a $413 refund.

See Ex. 394 at 347 (row 56199). The Funder responsible for the deal denied the refund, and recorded a justification in Delta Bridge's internal system: "I counted 13,298.74 in *deposits* since [the deal funded]." *Id.* (emphasis added). In denying the refund, the Funder did not—and was not required to—explain the discrepancy between the merchant's revenue calculation ($6,364) and his own ($13,298.74), including whether he treated any of the "deposits" as revenue in a manner that was either incorrect, or inconsistent with how the deal was underwritten at the outset.

278. Delta Bridge's own review of a Funder's denial of a Reconciliation refund did not cure this defect. Just like the Funder, the Delta Bridge staff member reviewing the denial did not have any consistent company policy or guidance to apply concerning which deposits qualified as revenue. *See* Maczuga Tr. at 235:23-236:11. And even if such policies had existed, the staff member had no way of knowing whether that approach was consistent with how the Funder had underwritten the deal at the outset. Furthermore, Delta Bridge assigned members of its staff (who were not underwriters) to undertake the review, and like the Funders, they did not have to justify the determinations that they made with respect to which deposits counted as revenue. In the case of the Reconciliation request made by Sirius Sage described in the foregoing paragraph, a Delta Bridge staff member agreed with the Funder's refund denial, and recorded a meager justification that made it impossible to tell whether any deposits were incorrectly treated as revenue: "More than 13K in sales." Ex. 394 at 347 (row 56199).

c. Respondents Do Not Provide Relief to Merchants When They Experience Sudden Drops in Revenue

279. Even when a Reconciliation warranted a refund to a merchant, Respondents' Reconciliation procedures ensured that they would not have to issue any refund until well after the merchant's business experienced a drop in revenue.

280. The Reconciliation provisions in Yellowstone and Delta Bridge's MCA agreements expressly provided that Reconciliation was "retroactive." *E.g.*, Yellowstone 2020 Exemplar at 3 § 10(a); Delta Bridge Exemplar at 4 § 10(a); *see* Kern Tr. at 132:11-18. Reconciliation provided only a credit for past overpayments—not any adjustment to current payments that a merchant lacked funds to remit. *See also infra* ¶¶ 305-316 (explaining that Adjustments were entirely discretionary on the part of Funders and did not operate to align the Daily Amount with the percentage of merchants' revenue that Respondents had purportedly purchased).

281. In addition, because Yellowstone and Delta Bridge's Reconciliation procedures looked at merchants' payments over the entire term of the MCA, *see* Maczuga Tr. at 239:19-240:4, Reconciliation refunds continued to be unavailable in the case of a sudden drop in revenue. Merchants did not qualify for a Reconciliation refund until their cumulative payments to Yellowstone or Delta Bridge exceeded the inflated percentage of their actual revenue over the entire term of the MCA. *See* Kern Tr. at 134:7-17 (Reconciliation entailed evaluating merchant's "total revenue for that month").

282. As Glass explained to Reece, Yellowstone's President, in reference to a merchant who had submitted a Reconciliation request: "So if we collect 30% [of the merchant's revenue] for January and the overall percentage collected is still under 25%"—the Specified Percentage on the contract—"the [merchant] is NOT owed money." Ex. 360 at 6.

283. Accordingly, even when experiencing a substantial or complete loss of revenue, Reconciliation afforded merchants no relief at all from Respondents' debits of the Daily Amount until the merchant qualified for a Reconciliation refund. As one former Yellowstone and Delta Bridge Funder admitted, Reconciliation would not necessarily help a merchant facing "lower revenues in the next few weeks." Kern Tr. at 137:11-24; *see also id.* at 130:12-137:24 (discussing Exs. 215, 295).

284. This allowed Yellowstone to reject Reconciliation requests from merchants during the early days of the COVID pandemic, when local lockdowns had a severe impact on many merchants' revenues. For example, one merchant who was denied a Reconciliation refund in April 2020 sent an email complaining that Yellowstone was counting "income [from] before the covid outbreak. Now, my income will be very limited." Ex. 170.

285. By withholding Reconciliation refunds until well after the merchant experienced the drop in revenue, Respondents also discouraged merchants from availing themselves of the Reconciliation process at all. *See* Kern Tr. at 213:6-18 (acknowledging that merchants experiencing a revenue decrease did not want to "wait[] for me to over debit and then refund").

286. Furthermore, until at least 2019, Yellowstone used MCA agreements that limited Reconciliation altogether to the one month preceding the Reconciliation request from the merchant. *E.g.*, Ex. 111 at 3 § 10(a) (granting right to Reconciliation "for one (1) full calendar month immediately preceding the day when such request for reconciliation is received"); Yellowstone 2018 Exemplar at 10 Addendum § 1(c) (granting right to Reconciliation for the "subject month" preceding the request). As a result, even if Yellowstone had, during earlier months, collected more than the percentage of revenue it purportedly purchased, merchants were not entitled to any refund at all.

287. In addition, until at least 2019, Yellowstone also used agreements that imposed arbitrary and unreasonable hurdles on merchants seeking a Reconciliation, including requiring them to submit Reconciliation requests within a narrow five-day window after the close of each month. *E.g.*, Ex. 111 at 4 § 11(c) ("[Yellowstone's] receipt of [merchant's] request for Reconciliation after the expiration of the five (5) Workday period following the last day of the Reconciliation Month for which such Reconciliation is requested nullifies and makes obsolete [merchant's] request for Reconciliation for that specific Reconciliation Month."). As a result, a merchant that contacted Yellowstone concerning flagging revenues in mid-February would not be entitled to Reconciliation but would instead be required to "wait until the beginning of the following month, March 2019, to ask for a reconciliation of February." Kern Tr. at 145:25-148:11 (discussing Ex. 193).

288. For example, one former Yellowstone and Delta Bridge Funder testified about a merchant who contacted him on February 14, 2019, to report difficulty keeping up with Yellowstone's daily debits. *See* Kern Tr. at 146:12-148:11. The Funder testified that under Yellowstone's agreement, it was too late for the merchant to obtain Reconciliation for January 2019, and that the merchant would have to wait until March 2019 and request Reconciliation as to February. *See id.*; *see also* Ex. 193. The Funder admitted that as a result of these limitations, Reconciliation typically was not a meaningful option for merchants struggling to sustain Respondents' daily debits. *See* Kern Tr. at 212:23-213:19.

d. Yellowstone and Delta Bridge Disincentivized Reconciliation, and Their Funders Disfavored It

289. Funders' compensation was primarily centered on profit-and-loss statements—which Respondents called "PNL" statements—that Yellowstone and Delta Bridge sent to each Funder at the end of every month. *See* Reece Tr. at 210:14-25; Maczuga Tr. at 216:17-217:7. The PNL statements sent to each Funder listed the Yellowstone or Delta Bridge MCA transactions that Funder was responsible for, and identified as "Active" those transactions that had paid at least three percent of the outstanding balance at the end of the previous month. *See* Maczuga Tr. at 217:8-218:3; Reece Tr. at 211:2-7; McNeil Tr. at 157:21-24. Deals that failed to pay at least three percent of the outstanding balance at the end of a month were identified in the Funder's PNL statement as in default ("PNL Default"), except for limited cases where a one-month grace period was allowed. *See* Maczuga Tr. at 218:5-19; McNeil Tr. at 157:21-158:12.

290. Yellowstone and Delta Bridge's compensation structure for Funders disincentivized Reconciliation. *See* McNeil Tr. at 156:15-157:9 ("[R]econciliation . . . [i]s kind of in a little bit of a conflict for the funder in the PNL."); Saffer Tr. at 188:6-16 (testifying that Reconciliation could negatively impact a Funder's PNL "if you use too low of a specified percentage").

291. The consequence of a Reconciliation refund could be that an otherwise-performing transaction could enter PNL Default if the refund lowered the total payments to Yellowstone or Delta Bridge below the three percent threshold. *See* Reece Tr. at 211:8-13, 212:7-19; McNeil Tr. at 156:15-159:3; Yagecic I Tr. at 210:3-7, 217:20-24; Ex. 370 at 4 (Glass writing: "You refund it hurts ur pnl.").

292. When a transaction entered PNL Default, the consequences were serious for Funders' compensation. *See* Reece Tr. at 214:17-22; Maczuga Tr. at 219:3-221:2; McNeil Tr. at 158:22-159:3. Once a transaction was determined to be in PNL Default, Yellowstone or Delta Bridge deducted the full Funding Amount (less payments received) from the profits allocated to the Funder. *See* Maczuga Tr. at 219:3-221:2; Ehrlich Tr. at 110:18-111:10. That deduction could not be reversed even if the merchant made up their missed payments, although any further collections from the merchant would be applied to the Funder. *See* Maczuga Tr. at 219:3-221:2; Ex. 128 at 1.

293. Funders sometimes expressed alarm that a Reconciliation could have this effect. One former Funder testified that he raised this issue with Yellowstone and Delta Bridge management repeatedly between 2020 and 2022, telling them: "I

don't want [Reconciliation] to affect my PNL and I should be able to reconcile as many times as I want without it affecting me." Saffer Tr. at 236:6-19; *see also* Saffer Tr. at 234:23-235:10, 237:25-238:6; Singfer Tr. at 137:10-20 (describing an instance where this occurred); DS-AG-000106 at -113 (texts between Singfer and Maczuga); Yagecic I Tr. at 210:3-7 (describing this as "one of [Funders'] overarching concerns" with respect to Reconciliation); *id.* at 217:20-24.

294. Yellowstone management was aware of this, *see* Ex. 364 at 6-7 (Stern and Reece discussing, and dismissing, Funders' concerns); Yagecic I Tr. at 210:3-7, 217:20-24 ("I do remember [Funders] having that concern and voicing it."), and even implemented a policy that allowed Funders a one-month reprieve from PNL Default if it were caused by a Reconciliation—but that policy was only effective for a brief period during the height of the COVID pandemic in April 2020, *see* Singfer Tr. at 158:16-159:16 (testifying about Ex. 355).

295. Even for transactions that remained Active, a Reconciliation refund could hit a Funder's pocketbook by delaying payment to the Funder. Yagecic I Tr. at 215:12-216:9. A consequence of any refund would be to push back the date by which the balance would reach zero, and Yellowstone and Delta Bridge paid Funders their share of the profits from an MCA deal only once the deal was paid in full. *See* Yagecic I Tr. at 215:12-216:9; Miller Aff. ¶ 51.

296. Consistent with the financial incentives created by Yellowstone and Delta Bridge, Funders who granted relief to merchants would typically agree to make Adjustments rather than any Reconciliation. *See* A. Davis Tr. at 148:24-

149:11; Singfer Tr. at 121:21-122:3; McNeil Tr. at 157:7-15; Dahan Tr. at 126:11-127:16; Schwartz Tr. at 116:6-17 (admitting that he was "more likely to adjust . . . payments than . . . to perform a reconciliation" upon learning that a merchant was experiencing financial difficulties); Kern Tr. at 212:23-213:19; Miller Aff. ¶ 49; *see also* Turner Aff. ¶¶ 23-25 (proposing lowering of weekly payment upon learning merchant was experiencing shortage of funds); Alabudi Aff. ¶ 27 (proposing Refinancing as a response to drop in revenue). As discussed below, such Adjustments were discretionary on the part of the Funder, and even when granted, did not operate to align the Daily Amount with an approximation of the Specified Percentage of the merchant's daily revenue. *Infra* ¶¶ 305-316.

297. As one Funder, Respondent Aaron Davis, put it: "I don't think [Reconciliation] would happen that often [at Yellowstone]. . . . A merchant would call up and he would say I need—I need help, my revenues are down, and we would deal with it in, you know, in our own way." A. Davis Tr. at 148:24-149:11. One former Yellowstone and Delta Bridge Funder explained that: "[Reconciliation] wasn't a thing that we liked doing . . . we were hoping that okay, the merchant's revenue dropped off somewhat and they should still be able to handle a [re]duced payment as opposed to some type of reconciliation." McNeil Tr. at 157:2-15.

298. When merchants proactively reported a drop in revenue, Funders almost never raised the possibility of performing a Reconciliation to retroactively adjust the merchant's payments to match the Specified Percentage of their actual revenue. *E.g.*, McNeil Tr. at 156:8-13; Alabudi Aff. ¶¶ 27, 39.

299. For example, in May 2019 a merchant wrote former Yellowstone Funder Michael Kern that he "wanted to see [his] options" for coping with his payments to Yellowstone in view of delayed payments coming into his business. Ex. 176 at 2. Although the merchant was eligible to seek Reconciliation at the time, *see* Kern Tr. at 140:15-143:25, Kern failed to raise it, offering only to reduce the Daily Amount for the next four days, *see* Ex. 176 at 2; *see also*, *e.g.*, Ex. 224 at 1-3 (Funder failing to offer Reconciliation in response to merchant's report that her "income has dropped" and that she was "down 10 clients," instead stating that her "only options" were to take out a renewal MCA or face a legal proceeding); Exs. 285, 149, 145 at 1.

300. Yellowstone and Delta Bridge also discouraged *merchants* from ever requesting a Reconciliation by threatening to "increase" the Daily Amount, or debit a lump sum, if the result of the requested Reconciliation was that the Specified Percentage of merchants' actual revenues was less than the amount debited. *See* Delta Bridge Exemplar at 4 § 10(a, c); Yellowstone 2020 Exemplar at 3-4 § 10(a, c); *see also* Ex. 174 (standard email to merchant stating: "Please be advised that a reconciliation will not necessarily result in a refund, and may result in an amount due to [Yellowstone].").

301. One Funder, Respondent Steve Davis, explained the chilling effect from the merchant's perspective: "[I]f I call [Yellowstone] and start getting technical with the contract, right, it can theoretically go both ways. . . And then maybe [Yellowstone] can say that they want to raise the payments." S. Davis Tr. at

227:18-25; *see also* Kern Tr. at 127:13-128:23 (acknowledging that the Reconciliation clause could obligate merchants to higher payments), 210:5-18.

302. Funders and their teams threatened to enforce this provision against merchants who submitted Reconciliation requests. *See supra* ¶ 271 (describing response to Reconciliation request in which Funder told the merchant he "actually owe[s] a balance to [Yellowstone]," because the business had received a cash advance from another MCA company).

303. In testimony, some Yellowstone and Delta Bridge individuals claimed that no increase was ever actually applied—but that was not conveyed to merchants, and the threat was left hanging over them. *See* Kern Tr. at 127:13-128:8.

304. Yellowstone and Delta Bridge also required merchants to provide the login and password to access their bank account in order to qualify for a Reconciliation refund. Ex. 406 at 2; Maczuga Tr. at 240:8-20.

6. Prospective Payment Modifications—Which Are Discretionary and Do Not Align Payments With the Specified Percentage—Are Not a Substitute for Reconciliation

305. When merchants reported difficulty keeping up with Respondents' daily debits because of decreased revenue, Funders sometimes responded by lowering the Daily Amount going forward—usually temporarily—or by temporarily suspending the daily debits altogether. *See* Maczuga Tr. at 242:16-25; Singfer Tr. at 121:21-122:3, 124:8-11, 124:22-125:8, 126:9-13; Saffer Tr. at 164:12-165:6; A. Davis Tr. at 136:14-20.

306. However, the changes were not aimed at aligning the Daily Amounts with the percentage of revenue that Respondents purportedly purchased. To the contrary, Yellowstone and Delta Bridge expected that Funders would treat the Specified Percentage as entirely irrelevant to (1) the decision whether to change the Daily Amount, and (2) by how much. Respondent Maczuga, Delta Bridge's CEO, was clear about this in his testimony: "[T]he specified percentage does not play a role in adjustments . . . ." Maczuga Tr. at 244:25-245:8.

307. Since at least September 2018, Respondents' MCA contracts have provided a process for merchants to request reductions to the Daily Amount ("Adjustments"). *See* Ex. 235. The contracts that Yellowstone used did not explain how the new Daily Amount would be calculated, or include any reference to the Specified Percentage. *See e.g.*, Yellowstone 2020 Exemplar at 4-5 §§ 12-13.

308. Yellowstone's contracts also disallowed Adjustments unless a Reconciliation had occurred and resulted in a refund of at least 15% of the total amount collected. *See id.* at 4 § 12(b). As a result, Adjustments were unavailable to virtually all merchants under the terms of Yellowstone's agreements, since Reconciliation was an explicit precondition, and Respondents made it virtually impossible to obtain any Reconciliation as discussed above. *See supra* ¶¶ 179-304. Yellowstone's contracts also provided that any adjusted Daily Amount would automatically revert to the original amount after 30 days. *See* Yellowstone 2020 Exemplar at 4 § 12(a, b).

309. The form MCA contracts used by Delta Bridge, however, did include an express promise that when performing an Adjustment, Delta Bridge would determine a new Daily Amount that "more closely reflect[s] the [merchant's] actual [revenue] multiplied by the Specified Percentage." *See e.g.*, Delta Bridge Exemplar at 4 § 12(a); *see also id.* at 5 § 12(a) (providing that the Daily Amounts would automatically revert to the original amount after 30 days).

310. Despite promising merchants an opportunity to align their Daily Amount with a Specified Percentage of their actual revenue, Delta Bridge never actually did so. *See* Maczuga Tr. at 244:25-245:8. This continued the practice concerning Adjustments that had been established at Yellowstone.

311. Yellowstone and Delta Bridge did not have any policies or guidance concerning how to calculate a reduced payment amount. *See* Maczuga Tr. at 244:12-18; Reece Tr. at 208:8-25; McNeil Tr. at 153:20-24. Rather, Yellowstone and Delta Bridge left the decision whether to adjust the Daily Amount, and by how much, "wholly within the discretion of individual Funders." Maczuga Tr. at 243:2-18; *accord* Reece Tr. at 207:23-208:2; A. Davis Tr. at 139:13-20; Ehrlich Tr. at 116:23-117:7, 118:18-22; Singfer Tr. at 123:23-124:11; Kern Tr. at 179:20-22; Williams Tr. at 130:14-19, 133:18-134:6.

312. At both Yellowstone and Delta Bridge, the Specified Percentage was entirely irrelevant to the decision whether to grant reductions to the Daily Amount, as well as the calculation of a new Daily Amount when a reduction was granted. *See* Maczuga Tr. at 244:25-245:8; A. Davis Tr. at 139:21-140:2, 140:19-23; Singfer

Tr. at 125:13-24; Dahan Tr. at 127:22-128:4; Saffer Tr. at 166:19-167:2; S. Davis Tr. at 231:16-20, 232:18-22; Ehrlich Tr. at 127:15-23, 128:15-25; Vasquez Tr. at 136:20-137:3; *see, e.g.*, Ex. 229 (Oct. 2018 email from Melnikoff denying a 75% reduction despite an 84.5% decrease in business revenue, and telling the merchant, "unfortunately you are not the one that calls the shots here").

313. Funder Respondents testified that they in fact never took the Specified Percentage into account when adjusting the Daily Amount pursuant to Yellowstone or Delta Bridge MCA contracts. *See* A. Davis Tr. at 139:21-140:2, 140:19-23; Singfer Tr. at 125:13-24; S. Davis Tr. at 231:16-20, 232:18-22; *accord* Saffer Tr. at 165:7-166:2, 166:19-167:2.

314. Instead, the decision whether to reduce the remittance amount was the product of negotiation between the Funder and merchant, and ultimately within the Funder's discretion. *See* Maczuga Tr. at 243:19-244:2 ("[I]t's just based on the conversation . . . . It's not an exact calculation."); *id.* at 245:6-20; Reece Tr. at 207:23-208:7; Singfer Tr. at 125:13-24; Saffer Tr. at 165:13-20, 180:6-16; Kern Tr. at 179:4-180:5; A. Davis Tr. at 137:2-139:20; Melnikoff Tr. at 141:22-142:23; Dahan Tr. at 127:22-128:4; S. Davis Tr. at 231:16-20, 232:18-22; Ehrlich Tr. at 116:23-117:15; Williams Tr. at 130:14-19, 133:18-134:13; Worch Tr. at 217:14-218:21; *see also* Miller Aff. ¶ 48; Karcher Aff. ¶ 27; Turner Aff. ¶ 25.

315. The primary factor Respondents used in determining whether to revise the remittance amount following a merchant's request for relief—and in calculating the new remittance amount—was the merchant's ability and willingness to pay.

See Singfer Tr. at 125:13-24; Saffer Tr. at 165:13-20, 180:6-16; A. Davis Tr. at 137:2-139:20; Melnikoff Tr. at 141:22-142:23; Dahan Tr. at 127:22-128:4; S. Davis Tr. at 231:16-20, 232:18-22; Ehrlich Tr. at 116:23-117:15; Williams Tr. at 133:18-134:13; Worch Tr. at 217:14-218:21.

316. Another key factor, according to Funders, was keeping the merchant's Daily Amounts high enough to keep the deal profitable for the Funder under Yellowstone and Delta Bridge's compensation structure, which allocated profits to Funders only on deals that paid at least three percent of the outstanding balance at the end of each month, and penalized Funders when a deal fell short of that threshold. *See* Melnikoff Tr. at 142:23-144:3 ("In most situations I would not agree to accept less on a daily that would" result in a hit to the monthly compensation); Ehrlich Tr. at 116:23-117:7; *see supra* ¶¶ 289-292 (describing compensation structure); *see also* Ex. 225 at 4 (Sept. 2018 email from Maczuga to merchant seeking a "minimum payment" of "3% of the current balance" by the end of the month).

D. Respondents Treat the Specified Percentage—Purportedly the Share of Revenue That Respondents Are Purchasing—As Irrelevant Except as a Barrier to Reconciliation

317. Respondents sometimes described their MCA transactions as a purchase, from the merchant's business, of a Specified Percentage of the business's total receipts of revenue.

318. But the actual percentage that Yellowstone and Delta Bridge were purportedly purchasing from the merchant—which would be a highly consequential

figure in a true purchase of revenue—was treated as irrelevant by Yellowstone and Delta Bridge's Funders, Sales Reps, and executives. *See* Aryeh Tr. at 90:25-91:5; McNeil Tr. at 91:18-93:7.

319. Yellowstone management did not monitor or analyze how the Specified Percentage was actually set in its MCA contracts. For example, Respondent Stern testified that the Specified Percentage was "not a number I tracked or—or knew." Stern Tr. at 279:14-18, 281:23-25. Respondents Reece and Maczuga testified that they never analyzed or reviewed the Specified Percentages used on Yellowstone's MCA contracts, and were not aware of any such review ever being performed. *See* Reece Tr. at 67:5-12, 192:22-193:21; Maczuga Tr. at 262:5-14; *accord* Glass Tr. at 203:14-19. Respondent Glass testified that "to the extent that Yellowstone ever involved itself in specified percentages, to my knowledge it was always for what it perceived to be *legal reasons, not business . . . reasons*." Glass Tr. at 218:11-14 (emphasis added).

320. Until 2019, Yellowstone did not even track the Specified Percentages stated on its MCA contracts at all.

321. At times, Yellowstone and Delta Bridge allowed Funders to set or change the Specified Percentage on Yellowstone and Delta Bridge MCA contracts. However, Yellowstone and Delta Bridge did not have any policies or guidelines concerning how the Specified Percentage should properly be set. *See* Stern Tr. at 288:22-289:4; Reece Tr. at 66:16-20, 157:18-159:20; Maczuga Tr. at 142:15-143:22, 155:2-13; Dahan Tr. at 64:23-65:4 (no limits on setting the percentage); S. Davis Tr.

at 163:9-14 (up to Funder to set the percentage); Yagecic I Tr. at 169:21-24, 172:15-18, 174:11-24. Rather, as Maczuga testified, "it was wholly within the discretion of the funder." Maczuga Tr. at 143:15-22.

322. But Funders testified that the Specified Percentage was "irrelevant," just "a number on the contract" and something they "never really paid much attention to" and weren't "focused on," and that was included on the contracts for ambiguous "legal purposes" that somehow transformed the agreement into something that was "not a loan." A. Davis Tr. at 104:20-105:5; Dahan Tr. at 66:12-14; McNeil Tr. at 91:18-93:7; Kern Tr. at 105:6-13; Williams Tr. at 71:22-72:13, 73:4-20, 74:6-8, 81:8-22, 104:2-11, 116:5-12; Worch Tr. at 224:20-225:2, 270:8-12; *accord* Dahan Tr. at 67:19-21 ("Q. Why is there a specified percentage on the MCA contracts? A. I . . . don't know. I'm not a lawyer."); Glass Tr. at 218:11-14 (testifying that Yellowstone only concerned itself with Specified Percentages for "legal reasons, not business . . . reasons"); Vasquez Tr. at 44:19-45:15, 58:22-59:4.

323. Funder Respondents testified that they ignored the Specified Percentage when underwriting potential transactions and when formulating and modifying offers to merchants. *See supra* ¶¶ 172-177.

324. Funders almost uniformly testified that the only thing the Specified Percentage was actually used for at Yellowstone and Delta Bridge was Reconciliation (which was nonexistent until 2020) and collections. *See* Melnikoff Tr. at 100:2-7; A. Davis Tr. at 120:7-17; McNeil Tr. at 91:18-94:24 (testifying that the Specified Percentage "wasn't really discussed among the firm" until Reconciliation

became a priority); Dahan Tr. at 66:7-14 ("Q. What do you recall the specified percentage being used for during your time at Yellowstone? A. It's going to sound funny, but nothing."); Saffer Tr. at 117:5-119:7; Aryeh Tr. at 90:25-91:5.

325. Respondent Reece, Yellowstone's president, agreed that the only thing the Specified Percentage was actually used for at Yellowstone was Reconciliation. *See* Reece Tr. at 74:15-75:3. Outside of the Reconciliation context, he could not identify a single Yellowstone rule, regulation, or even guideline that in any way concerned the Specified Percentage. *See* Reece Tr. at 159:4-20; *accord* Maczuga Tr. at 192:11-19, 216:6-15.

326. Funders and Sales Reps were aware that Merchants who observed the Specified Percentage on their MCA contracts with Yellowstone and Delta Bridge often understood it (incorrectly) to describe an interest rate. *See* Schwartz Tr. at 106:18-21; McNeil Tr. at 90:15-91:17, 102:7-12; *see also* Alabudi Aff. ¶ 11 (merchant explaining that he understood the Specified Percentage to be the interest rate); Karcher Aff. ¶ 18 (same); Rubin Aff. ¶ 11 (same); Turner Aff. ¶ 15 (same). Yellowstone management and staff were likewise aware of this. *See* Ex. 374 at 7 (Maczuga writing to Stern and Glass: "Ppl still think the 15-25% on page one is an interest rate."); Yagecic I Tr. at 167:20-22 ("[A] lot of merchants think the specified percentage is like their interest rate.").

1. Respondents Did Not Negotiate the Specified Percentage With Merchants

327. The terms of Respondents' MCA transactions were determined through negotiation between Funders and merchants, with a Sales Rep typically acting as

intermediary, and sometimes an outside broker as well. Those negotiations typically focused on (1) the Funding Amount, (2) the Payback Amount (or the "Factor Rate," which was the multiplier applied to the Funding Amount to calculate the Payback Amount), and (3) the fixed Daily Amount and/or Length of the transaction (together, the "Key Terms"). *See* Maczuga Tr. at 163:15-164:7; Aryeh Tr. at 88:21-89:20, 95:20-25, 143:9-21; Melnikoff Tr. at 77:21-24, 109:13-110:23; Dahan Tr. at 90:23-91:25, 116:19-117:16; S. Davis Tr. at 181:2-12; Kern Tr. at 86:8-23; McNeil Tr. at 70:12-23, 83:17-21; Saffer Tr. at 132:6-133:7; Worch Tr. at 124:23-125:19, 129:20-130:17; Williams Tr. at 90:11-92:10; Ehrlich Tr. at 76:12-22; Vasquez Tr. at 82:6-11; Alabudi Aff. ¶ 28; Bush Aff. ¶¶ 10-11, 15; Israel Aff. ¶ 13; Karcher Aff. ¶¶ 11, 15; Ostrowski Aff. ¶ 10; Rubin Aff. ¶¶ 25, 33, 36. The Daily Amount and the Length were related to one another as discussed above. *See supra* ¶¶ 142-143.

328. For example, when planning a typical MCA, an underwriter working for Respondents Melnikoff and Sanders settled on an $8,000 Funding Amount, a 1.459 Factor Rate, and an 80-day term. *See* Ex. 326 at 2; Melnikoff Tr. at 74:7-14, 77:21-24 (testifying about Ex. 326). By multiplying the $8,000 Funding Amount by the 1.459 Factor Rate, the underwriter determined a Payback Amount of $11,672. *See* Melnikoff Tr. at 91:22-92:9 ($8,000 x 1.459 = $11,672). Then, by dividing that $11,672 Payback Amount by the 80-day term, he determined a Daily Amount rounded to $146 ($11,672 ÷ 80 = $145.90). *See id.* 102:2-10; *see also* McNeil Tr. at 71:6-72:21 (providing another example); Saffer Tr. at 99:24-105:9, 123:24-124:15 (same). The Funding Amount, Payback Amount, and Daily Amount were all

then incorporated into a Yellowstone MCA agreement signed by the merchant; the 80-day term was incorporated as the quotient of the Payback Amount and the Daily Amount. *See* Melnikoff Tr. at 91:16-92:9, 101:20-102:10 (testifying about Ex. 327 at 2, 12). Melnikoff approved the terms, instructing his team: "[P]lease fund." Ex. 326 at 1.

329. When transmitting an offer to a merchant, and in the course of negotiating offers, Funders, Sales Reps, and merchants all routinely focused on the Key Terms, and virtually never discussed any percentage of revenue that Yellowstone or Delta Bridge were purportedly offering to purchase. *See* Aryeh Tr. at 88:21-89:20, 95:20-25, 97:15-17, 98:6-8, 143:9-21, 179:17-181:7, 191:3-192:11; A. Davis Tr. at 104:6-12, 121:22-122:7; Singfer Tr. at 88:10-90:13, 96:6-9; Melnikoff Tr. at 109:13-110:23; Dahan Tr. at 90:23-91:25, 116:19-117:16, 119:10-21; McNeil Tr. at 100:17-102:12; S. Davis Tr. at 181:2-12; Worch Tr. at 124:23-125:19, 129:20-130:17, 224:6-225:2, 228:7-11; Ehrlich Tr. at 76:12-22; Williams Tr. at 90:11-92:10; Vasquez Tr. at 44:16-45:15, 58:22-59:7, 84:3-85:16, 93:13-96:4; Alabudi Aff. ¶¶ 7, 11, 14, 28, 35, 69; Bush Aff. ¶ 10-11, 15; Israel Aff. ¶¶ 9, 13, 17; Ostrowski Aff. ¶¶ 10, 28; Rubin Aff. ¶¶ 16, 31; Shahinian Aff. ¶ 11; Turner Aff. ¶ 14; *see also* Reece Tr. at 68:3-7 (no knowledge that Funders and merchants were negotiating the specified percentage "aside from the fact that it was a number on the contract").

330. Likewise, Funders, Sales Reps, and brokers did not explain to or discuss with merchants the notion that the Daily Amount was intended to approximate a percentage of the merchants' daily revenue. *See* Alabudi Aff. ¶ 14;

Bush Aff. ¶ 10; Israel Aff. ¶ 10; Rubin Aff. ¶¶ 14, 16; Turner Aff. ¶¶ 14-16. Nor did they discuss with or explain to merchants their purported Reconciliation rights, or how the value of the Specified Percentage would impact those rights. *See* Alabudi Aff. ¶¶ 14, 35; Bush Aff. ¶¶ 10, 15; Israel Aff. ¶ 14; Karcher Aff. ¶ 28; Ostrowski Aff. ¶¶ 16, 28; Rubin Aff. ¶¶ 16-17, 31, 45; Shahinian Aff. ¶ 14; Turner Aff. ¶ 20.

331. In addition to the testimony, documents produced by Delta Bridge confirm that negotiations with merchants concerning Delta Bridge agreements focused on the Key Terms, and virtually never discussed any percentage of revenue. *See, e.g.*, Exs. 148 (Melnikoff/Sanders team), 162 at 1-2 (Melnikoff/Sanders team), 156 (Singfer), 145 at 4-5 (Singfer), 130 (Ferry), 147 at 8 (Ferry), 129 at 9 (Vaysman), 127 (Kern), 151 (Kern), 137 at 4 (McNeil); *accord* Melnikoff Tr. at 109:13-110:23; Singfer Tr. at 88:10-90:13. For example, in May 2022, former Delta Bridge Funder Jim McNeil wrote to a merchant: "Ok, we are able to offer the following options: 75,000 paying back 100,425 with daily payment of 743[;] 90,0000 paying back 121,500 with a daily payment of 837[; or] 100,000 paying back 137,900 with a daily payment of 859." Ex. 137 at 4.

332. Respondent Melnikoff testified that he understood that merchants entering MCA transactions with Yellowstone and Delta Bridge were contracting to pay the Daily Amount—not the Specified Percentage stated on the contract. *See* Melnikoff Tr. at 97:8-15, 134:22-135:9. Avi Dahan, a former Funder and Sales Rep for Yellowstone and Delta Bridge, testified that when he was acting as the Sales Rep on a deal, channeling the negotiations between Funder and merchant, he would

not even know what the Specified Percentage was unless he reviewed the full MCA contract himself. *See* Dahan Tr. at 63:20-25; *accord* Vasquez Tr. at 47:13-17.

333. Like the Funders, most merchants did not understand the deals they were negotiating to be a sale of a Specified Percentage of revenue, or that the Daily Amount was intended to approximate a percentage of their daily revenue. *E.g.*, Alabudi Aff. ¶ 14; Rubin Aff. ¶ 31. If they had, the percent they were agreeing to sell would have been a critically important term. But as one former Yellowstone and Delta Bridge Funder testified, "the only time Specified Percentages were discussed at all during the pre-funding phase was if a merchant raised it because they were confusing it with an interest rate." McNeil Tr. at 100:17-102:12. Another former Yellowstone and Delta Bridge Funder testified that he "ha[s] never even fielded a question from a merchant about [the Specified Percentage]." Dahan Tr. at 66:14-15; *see also* Dahan Tr. at 110:8-111:13, 119:10-21 ("Q. And you have no recollection of the specified percentage ever being discussed before the contracts were drawn up, right? A. Yes."); Aryeh Tr. at 179:17-181:7 (Sales Rep testifying that "I never really paid attention to [the Specified Percentage] much, unless it was brought to my attention").

334. In fact, unless a merchant raised the issue themselves, Funders and Sales Reps typically did not discuss with merchants the fact that the transaction was (ostensibly) a purchase of revenue at all. *See* Alabudi Aff. ¶¶ 7, 11, 14, 35, 69; McNeil Tr. at 101:18-102:12; Aryeh Tr. at 179:17-181:7; Williams Tr. at 81:8-22; Shahinian Aff. ¶ 11.

335. In the rare instances when merchants did try to negotiate the Specified Percentage, Funders would typically tell them to ignore it. One Funder, Respondent Melnikoff, testified that he would rebuff such requests, and tell the merchant that "we're basing this off of a fixed daily, so [the Specified Percentage] doesn't really matter, if it's $100 a day, it's $100 a day," or that "this is not based off of a percentage of your revenue, it's based off $146 a day." Melnikoff Tr. at 100:8-24, 102:10-19. Another Funder dismissed a merchant's request for a lower Specified Percentage by replying to the merchant: "This is a bit confusing but, [the Specified Percentage] has nothing to do with the actual rate or cost of the advance." Ex. 292 at 1.

336. When "Refinancing" an MCA deal with a merchant (where the Funding Amount from a new Yellowstone or Delta Bridge MCA was applied to pay off the balance of an earlier Yellowstone or Delta Bridge MCA, *see* Reece Tr. at 188:18-24), the Specified Percentage on the new contract would sometimes increase substantially. *See, e.g.*, Ex. 292 at 1 (increase from 10% to 25%); Ex. 263 (same); Ex. 298 (same); Rubin Aff. ¶ 31 (same). Even then, Funders typically would not point out or discuss the Specified Percentage, unless the merchant happened to notice the increase and ask about it (often confusing it with an interest rate). *See id.*; S. Davis Tr. at 172:7-173:5; McNeil Tr. at 172:13-174:21; Saffer Tr. at 111:21-112:8; Rubin Aff. ¶ 31; *see also* Reece Tr. at 83:13-84:25.

337. For example, in late 2017 the merchant City Bakery refinanced an MCA with the Yellowstone Subsidiary Capital Advance Services. The original MCA

stated a Specified Percentage of 10%, and the new MCA stated a Specified Percentage of 25%. But according to the merchant:

> No one ever discussed this change with me, or the impact it could have on City Bakery's reconciliation rights. The notion that the agreement was raising City Bakery's obligation to Capital Advance from 10 percent to a quarter of every dollar of City Bakery's revenue would have been a startling change—and impossible for City Bakery to bear—but it never came up. This was consistent with my understanding that the transaction was a loan to be repaid in fixed amounts, not a purchase of future receivables.

Rubin Aff. ¶ 31; *see also id.* ¶ 32 (noting that while the Specified Percentage of revenue *increased*, the Daily Amount actually *decreased*, even though there was no corresponding drop in revenue).

338. Yellowstone produced approximately 1,346 recordings of "Funding Calls"—phone calls between Funders and merchants to review key details of the transaction just prior to Yellowstone's transfer of the Funding Amount to the merchant—and none of them included any mention of the Specified Percentage of revenue that Yellowstone was supposedly purchasing from the merchant (with the exception of Credit Card Deals, discussed *supra* ¶ 178). *See also* Bush Aff. ¶ 15.

339. Funders who testified about the Funding Call recordings confirmed that the recordings were typical, notwithstanding their lack of discussion of the Specified Percentage or any purchase of revenue. *See* Singfer Tr. at 68:25-69:4, 73:9-74:15; S. Davis Tr. at 145:13-146:9.

340. Neither Yellowstone nor Delta Bridge have any policy or guidance concerning what—or whether—Funders and Sales Reps are supposed to communicate to merchants about the nature of the transaction or the Specified

Percentage. *See* Schwartz Tr. at 103:10-13; *see also* Ex. 374 at 7 (Maczuga reporting to Glass and Stern, "Ppl are saying whatever the fuck they want" on Funding Calls and suggesting that they should be "[s]tandardize[d] . . . a little bit."); S. Davis Tr. at 137:25-138:5 ("[Yellowstone] didn't tell us what we have to ask for or what we needed to hear" on Funding Calls). Yellowstone also had no way of tracking or confirming what was discussed or disclosed on Funding Calls. *See* Reece Tr. at 184:15-19; Yagecic I Tr. at 143:8-11.

341. All this is true even though Respondents' contracts purport to purchase up to 49% of merchants' receipts of revenue.

2. Respondents Purported to Purchase Shares of Merchants' Revenue that Were Improbably (or Impossibly) Large

342. Yellowstone and Delta Bridge regularly entered into MCA contracts with merchants with a Specified Percentage of *49%*, purporting to purchase nearly half of the stream of revenue—*not profits*—flowing into the merchant's business. Respondent Reece, Yellowstone's president, testified that Yellowstone set 49% as the maximum Specified Percentage allowed on its MCA contracts, although he was not aware of any business reason for doing so. *See* Reece Tr. at 72:14-18, 74:11-14.

343. Indeed, from approximately March 2020 through July 2022, 49% was the most commonly used Specified Percentage on Yellowstone and Delta Bridge MCA contracts with merchants. *See supra* ¶ 226 (bar graph). Setting the Specified Percentage at 49% was consistent with Yellowstone's policies. *See* Reece Tr. at

72:14-18; *see also* Ex. 406 at 1 (instructional materials provided to Delta Bridge Funders with a sample MCA agreement stating a Specified Percentage of 45%).

344. Yellowstone even entered MCA transactions where it purported to purchase *all* of a merchant's revenue, setting the Specified Percentage at 100%—and then filed those contracts in court actions against at least two of the merchants. *See* Ex. 73, 120. In one case, Yellowstone purported to purchase *250%* of the revenues of a merchant called PLS Scientific. *See* Ex. 397 at 50 (row 4571).

345. As Respondent Glass wrote in a January 2019 text message to a Yellowstone employee: "[T]he [merchants] that are desperate will sign on to 100[.] So if they are willing to why wouldn't we." Ex. 372 at 3.

346. But as one former Yellowstone and Delta Bridge Funder acknowledged, even *25%* was not a realistic share of revenue for merchants to sell, "because then he has other expenses, payroll, rent, he has to take money for himself." McNeil Tr. at 119:2-19; *see also* Saffer Tr. at 238:9-17 ("49 percent [is] not a realistic percentage"). "[I]n general you're not going anywhere near that 25 percent threshold because you're going to kill the merchant if you do." McNeil Tr. at 122:22-24.

347. Moreover, Yellowstone also regularly entered into multiple concurrent MCA transactions with a single merchant—a practice that Delta Bridge continued.

348. As a result, Yellowstone and Delta Bridge would end up purchasing multiples of 15, 25, or 49% of a merchant's revenue. *See* Maczuga Tr. at 210:18-211:3 (admitting that Delta Bridge had purchased 98% of a merchant's revenue,

where the merchant had two concurrent Delta Bridge contracts, each with a Specified Percentage of 49%).

349. For example, Yellowstone purchased 75% of a merchant's revenue, where the merchant (City Bakery) had three concurrent Yellowstone MCA contracts, each with a Specified Percentage of 25%. *See* Rubin Aff. ¶¶ 43-45. When the merchant was forced to close the business under the weight of the onerous Yellowstone MCAs, Yellowstone procured a "Settlement Agreement" which stated that City Bakery had separately defaulted under each of the three concurrent agreements. *See id.* ¶¶ 48-49, 52.

350. For another example, Delta Bridge purchased ***225%*** of a merchant's revenue, where the merchant had ***nine*** concurrent Delta Bridge MCA contracts, each with a Specified Percentage of 25%. *See* Ex. 395 at 3 (Castilleja Auto Repair – Contract IDs ending in 033, 263, 170, 238, 791, 729, 894, 834, 434).

351. Delta Bridge's founder and CEO Respondent Bart Maczuga testified that there is no problem with Delta Bridge purchasing *more than 100%* of a merchant's revenue, as long as the merchant and the Funder "are both comfortable" with that arrangement. Maczuga Tr. at 211:20-24, 214:6-17. Delta Bridge does not even monitor whether it has purchased more than 100% of a merchant's revenue. *See* Maczuga Tr. at 211:4-19.

352. Respondent Glass advocated allowing Funders to enter into concurrent transactions with merchants. *See* Ex. 334 at 4 (May 2022 text from Glass to Funder: "That's why i pushed internal stacking years ago").

353. Concurrent transactions included Side-by-Side deals, where the concurrent MCA transactions commenced on the same day, including the Yellowstone and Delta Bridge transactions identified in paragraphs 148 and 149, *supra*. Additional examples of concurrent transactions at Delta Bridge include:

Contract Date	Specified Percentage	Contract ID
Merchant: Associated Educational Services of Virginia Inc		
6/24/2021	25%	5016615-586
7/19/2021	25%	5016615-459
8/2/2021	25%	5038966-756
8/19/2021	25%	5051958-067
9/14/2021	25%	5067484-629
10/1/2021	25%	5067484-339
10/15/2021	25%	5067484-855
11/1/2021	25%	5099885-730
	Total: 200%	
Merchant: Bubba's Liquidation Country Store LLC		
10/4/2021	49%	5079126-308
12/10/2021	49%	5130602-705
3/3/2022	25%	5192178-026
	Total: 73%	
Merchant: Castilleja Auto Repair		
06/04/2021	25%	5005971-033
06/21/2021	25%	5005971-263
7/1/2021	25%	5005971-170
7/13/2021	25%	5005971-238
7/19/2021	25%	5005971-791
7/26/2021	25%	5005971-729
8/9/2021	25%	5043990-894
8/18/2021	25%	5050865-834
8/26/2021	25%	5056237-434
	Total: 225%	
Merchant: Michael J Batista		
11/19/2021	25%	5114757-727
12/9/2021	25%	5128376-400
8/10/2022	3%	5162558-225
8/26/2022	12%	5080964-795
	Total: 65%	

Merchant: Palm Bay Collision Repair, Inc.		
11/22/21 2/25/22 5/26/2022	25% 20% 25% *Total: 70%*	5020031-625 5187799-940 5020031-656
Merchant: One Twenty Clothing Company US LLC		
7/27/2021 7/30/2021 9/27/2021	39% 39% 39% *Total: 117%*	5035751-393 5038480-757 5074015-432
Merchant: Physical Therapy Solutions Inc.		
8/4/2021 8/18/2021 10/6/2021 11/1/2021 11/29/2021	23% 25% 25% 25% 25% *Total: 123%*	5040988-493 5051166-556 5009992-246 5023258-009 5040988-035
Merchant: Prime Health Products LLC		
1/18/2022 2/23/2022 5/12/2022	49% 49% 35% *Total: 133%*	5054284-700 5184513-463 5245192-965
Merchant: Sinclair Custom Award Designs LLC		
7/13/2021 8/23/2021 10/27/2021 11/23/2021	25% 25% 25% 25% *Total: 100%*	5026709-708 5053586-799 5097081-447 5117283-332
Merchant: Todos LLC		
7/12/2021 7/27/2021 8/18/2021 9/15/2021 11/17/2021	25% 25% 25% 25% 25% *Total: 125%*	5002382-829 5002382-388 5050962-644 5068454-407 5002382-672
Merchant: Willie J Harvey		
11/8/2021 1/3/2022 1/18/2022 3/15/2022	25% 25% 25% 20% *Total: 95%*	5039218-861 5144574-143 5068029-247 5200688-487

See Ex. 395; *see also* Maczuga Tr. at 197:2-199:23, 271:15-272:15.

354. Yellowstone's and Delta Bridge's policies concerning Side-by-Side deals were silent with respect to how the Specified Percentage should be set. *See* Ex. 407 at 7; Reece Tr. at 151:15-18; Maczuga Tr. at 195:7-19, 196:16-22.

355. The practice of entering into Side-by-Side deals was approved by Yellowstone management, because it enabled Yellowstone's Funders to compete for bigger deals. *See* S. Davis Tr. at 206:9-22, 209:8-212:11; *see also* McNeil Tr. at 105:12-20, 109:2-10.

356. Concurrent transactions were sometimes contracted through different Yellowstone entities and were sometimes handled by different Yellowstone Funders. *See* Ex. 450 at 1; *see, e.g.*, Melnikoff Tr. at 122:11-127:18.

357. Had the Specified Percentages on the concurrent contracts represented the percentage of merchants' revenue that Yellowstone and Delta Bridge were purchasing, they would have added up to enormous percentages—sometimes more than 100%—of the merchant's revenue. But because the transactions were not actual purchases of revenue, the Specified Percentages were irrelevant—according to Funders, the Daily Amount was the only figure that mattered.

358. Similarly, Respondents knowingly entered into MCA contracts with merchants who already had ongoing MCA agreements with *other* MCA companies—a practice called "Stacking" or "Hopping."

359. Stacking was a "very common" practice at Yellowstone and Delta Bridge, according to Respondent Maczuga, the Delta Bridge CEO and former Yellowstone Funder and co-CEO. Maczuga Tr. at 166:2-10; *accord* Dahan Tr. at

100:23-101:5; McNeil Tr. at 135:20-25; S. Davis Tr. at 184:11-20; Melnikoff Tr. at 113:14-21; Saffer Tr. at 136:8-13; Vasquez Tr. at 96:11-17. In March 2019, Maczuga wrote to the rest of the Yellowstone management team that "90% of Funders in House don't take first positions," referring to transactions that did not have ongoing MCA agreements with other MCA companies. Ex. 371 at 10. Some Yellowstone and Delta Bridge Funders even had a preference for MCA transactions that were Stacked. *See* McNeil Tr. at 139:12-140:10; Ehrlich Tr. at 24:13-25:5; *see, e.g.*, Ex. 246 (Funder rejecting a merchant because "[I] don't want to fund in a first [position]"); Ex. 238 (same); Ex. 220 (same).

360. At both Yellowstone and Delta Bridge, Funders entered into MCA transactions with merchants who were already paying off ***nine or more*** pending MCA deals to other MCA companies. *See* Ex. 62 (Cloudfund agreement with Argo Hardware Inc. dated Dec. 16, 2022); Ex. 125 (email with Respondent Melnikoff of the same date reflecting that Argo already had "10 advances"); S. Davis Tr. at 183:24-184:5, 193:12-20 (testifying about a 10th position deal reflected in Ex. 265); *see also* Ex. 205 (Respondents Melnikoff and Sanders sending contracts for a "7th position" deal); Ex. 244 at 3 (Melnikoff agreeing to a "6th position" deal); Ex. 189 (Respondent Singfer extending an offer on a "7th" position deal); Ex. 232 (same); Ex. 222 (same).

361. Yellowstone and Delta Bridge had no rules, policies, or limits concerning the quantity of pending MCA transactions that a merchant was allowed to have—or the percentage of revenue it was allowed to have already sold—when

entering into a new MCA transaction with Yellowstone or Delta Bridge. *See* Maczuga Tr. at 177:19-178:3 ("We give the discretion fully to the funders."); Williams Tr. at 121:6-14.

362. Yellowstone and Delta Bridge did not monitor or track the Specified Percentages on a merchant's pending MCA transactions—or even the quantity of pending MCA transactions—as of the time Yellowstone and Delta Bridge entered into an MCA contract with a merchant. *See* Maczuga Tr. at 173:24-174:14; Melnikoff Tr. at 120:13-121:4; Saffer Tr. at 147:13-148:10; S. Davis Tr. at 197:25-198:7.

363. According to Maczuga's testimony, Delta Bridge has no problem purchasing a share of a merchant's revenue where the merchant has *already sold all of its revenue* to other MCA companies. *See* Maczuga Tr. at 177:8-178:17. Delta Bridge is perfectly comfortable with that scenario, according to its founder and CEO, as long as there is "a comfort level between the merchant and funder." Maczuga Tr. at 174:8-25.

364. But Funders did not even know of, were not informed about, and did not inquire about, the percentage of revenue that merchants had already sold to other MCA companies. *See* Aryeh Tr. at 145:17-146:6; Singfer Tr. at 85:23-86:9; McNeil Tr. at 139:2-5; Saffer Tr. at 140:17-141:15, 142:22-144:5; Dahan Tr. at 103:10-16; Melnikoff Tr. at 118:24-119:10; Williams Tr. at 122:9-123:13; S. Davis Tr. at 191:22-193:4; Maczuga Tr. at 170:8, 171:17-22; Vasquez Tr. at 98:7-25.

365. Funders did not even understand the Specified Percentages stated on the other pending MCA transactions to be relevant to prospective Yellowstone or Delta Bridge MCA deals. *See* Singfer Tr. at 85:23-86:9; Williams Tr. at 122:9-124:7; S. Davis Tr. at 195:18-197:14; Saffer Tr. at 145:17-146:9 ("[T]he way it was explained to me and the way I was trained was . . . it never mattered . . . what percentage they pledge to another company. . . . [T]hat was on the merchant . . . ."); *see also* Saffer Tr. at 143:6-12 (Specified Percentage is only relevant "in the case of reconciliation").

366. For Funders, the most salient information about the other pending MCA transactions was not their Specified Percentages, but the cumulative value of the Daily Amounts as compared to the merchant's total revenue, which Funders would use to gauge whether the merchant had enough funds left in their accounts for Yellowstone or Delta Bridge to debit. *See, e.g.*, Melnikoff Tr. at 120:4-7 ("[I]f I see another company taking a certain amount per day, then I can determine whether the merchant can afford another daily payment."); McNeil Tr. at 139:5-10; S. Davis Tr. at 196:20-23.

367. Funders were indifferent to the percentage of revenue that merchants had already sold, even though they invariably knew when a prospective merchant *had* already sold portions of revenue through Stacked transactions. *See* Maczuga Tr. at 167:9-25; S. Davis Tr. at 190:4-191:6; Kern Tr. at 196:15-23; Saffer Tr. at 126:13-19; Vasquez Tr. at 96:11-98:25; *see, e.g.*, Ex. 192 (email exchange between

Sales Rep and Funder); Ex. 180 (same); Ex. 184 (same); Ex. 451 (email noting prospective merchant had other MCAs).

368. Had the Specified Percentages on MCA contracts represented the percentage of the merchant's revenue already sold to other MCA companies, they would have added up to significant percentages—sometimes more than 100%—of the merchant's revenue. But Funders were not concerned with—and would not have known—whether the merchant had already sold most or all of its revenue. *See* Maczuga Tr. at 172:13-174:14; Williams Tr. at 122:22-124:7 (stating that it would be "irrelevant" if a merchant "had already pledged a hundred percent of their revenues" to other MCA issuers before Yellowstone issued the merchant an MCA); S. Davis Tr. at 195:18-197:14 (testifying that "the specified percentage [on the other MCA agreements] can be 150 percent theoretically").

369. Furthermore, even though Respondents invariably knew before issuing an MCA if the transaction was Stacked, they used MCA agreements that required merchants to warrant that the *opposite* was true. *See* Delta Bridge Exemplar at 7 § 19(o) ("[Merchant] specifically warrants and represents that it is not currently bound by the terms of any future receivables and/or factoring agreement which may encumber in any way the Future Receipts"); Yellowstone 2020 Exemplar at 8 § 21(o) (same text in Yellowstone agreement). As a result, Respondents ensured that many merchants were in default of their agreements from Day One. *See* Delta Bridge Exemplar at 8 § 25(b) ("Events of Default"); Yellowstone 2020 Exemplar at 10 § 27(b) (same). For example, in December 2022, Delta Bridge entered into an MCA

agreement with a merchant warranting that the merchant had no Stacked transactions, even though the Delta Bridge funding team was then aware of the merchant's ten Stacked transactions. *See* Ex. 62 at 7 § 19(o) (agreement); Ex. 125 at 1 (emails among funding team).

3. Yellowstone and Delta Bridge Left It up to Individual Funders to Determine What Counted as "Revenue"

370. Had the Specified Percentage on Yellowstone and Delta Bridge's MCA contracts been the percentage of merchants' revenue that Yellowstone and Delta Bridge were purchasing, the question of which deposits into a merchant's bank account were revenue under the terms of the MCA contract would have been highly consequential to Yellowstone and Delta Bridge (and the merchant) during the underwriting and negotiation process.

371. Respondents' MCA agreements defined the receipts that were purportedly the subject of the transaction as the merchant's receipts for the "sale of goods and services." *E.g.*, Delta Bridge Exemplar at 2 § 1(c); Ex. 111 at 1 § 1(c) (same); Yellowstone 2018 Exemplar at 2. Although at times, Yellowstone's contracts defined receipts expansively as "any and all monies . . . received by [the merchant] from any source," altogether abandoning the fiction that the transaction was a purchase of future revenue, as such "monies" could include anything from tax refunds or retuned checks to loans or investment income. *See infra* ¶¶ 446-447.

372. Funders testified that their primary means of determining merchants' revenue was to review their historical revenue as reflected in their recent bank statements. *See* Melnikoff Tr. at 30:7-14; Singfer Tr. at 46:3-14, 58:8-23; McNeil Tr.

at 114:8-15; Kern Tr. at 98:10-12, 100:11-102:19 (discussing Ex. 425), 200:6-17 (testifying that he would "look at the past few [statements] and see the consistency of the deposits, and I would make that assumption that it would be the same or similar for the next few months"); *see also* Ex. 407 at 3 (Yellowstone's policy concerning documents required when submitting a deal for underwriting); Reece Tr. at 152:4-154:10 (testifying about the policy); Williams Tr. at 230:14-231:10; Worch Tr. at 228:12-19, 245:11-21, 249:9-13.

373. But Yellowstone and Delta Bridge had no policies or guidance setting out what types of deposits qualified as revenue, even though the merchant's revenue was purportedly the stream of money of which Yellowstone and Delta Bridge were purchasing a percentage.

374. Instead, during the underwriting and negotiation process, Yellowstone and Delta Bridge deferred to individual Funders to determine which deposits into a merchant's bank account qualified as revenue. *See* Singfer Tr. at 59:8-60:8.

375. In calculating revenue, Funders typically counted as revenue deposits from credit card processors such as Bankcard. *See* Worch Tr. at 246:5-20; Williams Tr. at 231:22-24. Funders typically excluded credits due to refunds or returned checks. *See* McNeil Tr. at 124:12-17, 127:5-7; Kern Tr. at 197:16-18.

376. If a prospective merchant received a loan or funding from another MCA company, Funders typically did not count that deposit as revenue, *see* Singfer Tr. at 59:17-60:12; Kern Tr. at 98:23-99:2, 203:10-15; Williams Tr. at 233:5-9, although Maczuga, Delta Bridge's CEO, testified that Funders were allowed to

exercise their own discretion in determining whether to count MCA funding as revenue, *see* Maczuga Tr. at 239:6-18. As noted above, the practice of treating MCA funding as nonrevenue was inconsistent with Respondents' regular practice of counting MCA funding as revenue in the context of a Reconciliation. *Supra* ¶¶ 269-275.

377. From the information contained in a merchant's bank statement, Funders were not always able to discern whether certain credits or deposits were attributable to revenue or some other source. *See* McNeil Tr. at 124:18-125:6, 127:11-12, 127:20-128:2; Worch Tr. at 249:19-251:6. Examples sometimes included wire transfers, transfers from other bank accounts, and cash deposits. *See id.*

378. Determinations of what counted as revenue during underwriting or Reconciliation were not disclosed to merchants by Yellowstone, Delta Bridge, or individual Funders.

4. The Specified Percentage Was Only Relevant to Reconciliation—Where it Has Served Chiefly as an Impediment

379. According to Maczuga, "Reconciliation is the driving . . . factor of the specified percentage." Maczuga Tr. at 216:11-13. Funder Respondents testified likewise that the Specified Percentage was relevant in the context of Reconciliation. *See* A. Davis Tr. at 120:7-17; Singfer Tr. at 95:25-96:14, 109:5-9, 142:9-21; McNeil Tr. at 91:18-92:21; Saffer Tr. at 143:6-12 (Specified Percentage is only relevant "in the case of reconciliation").

380. Yellowstone eventually developed a process where, upon request from a merchant, Yellowstone reviewed a merchant's bank statements and/or self-reported revenue to determine whether Yellowstone's total collections from the merchant exceeded the Specified Percentage of the merchant's revenue. Delta Bridge continued that process.

381. As described in detail above, *supra* ¶¶ 203-248, the Specified Percentage was relevant to the Reconciliation process because it was manipulated to *prevent* merchants from ever qualifying for a refund as a result of that process.

E. Respondents Claim Rights to Repayment in the Event of Bankruptcy or Lack of Revenue

382. Respondents also reserve for themselves extensive recourse against merchants—and their owners personally—ensuring their authority to collect the full Payback Amount (or more) in the event of default. The recourse that Respondents reserve for themselves extends far beyond the percentage of business revenue they are purportedly purchasing, and it even extends to circumstances where a merchant files for bankruptcy or its intake of revenue dwindles to zero.

383. Respondents' claim to such recourse is facilitated by their requirement that each transaction is personally guaranteed in the event of default—usually by the business's owner. *E.g.*, Delta Bridge Exemplar at 12-15; Yellowstone 2020 Exemplar at 10 § 27(i), 14-16; Yellowstone 2018 Exemplar at 6-7; *see also* Rubin Aff. ¶ 18. Respondents' Agreements provide explicitly that they can be enforced against the guarantor in the event of default. *E.g.*, Delta Bridge Exemplar at 9 § 26(c) ("If any Event of Default occurs . . . [Delta Bridge] may enforce the provisions of any

Guaranty against each Guarantor."); Yellowstone 2020 Exemplar at 10 § 30(b) ("Upon [merchant's] default, [Yellowstone] may immediately . . . [e]nforce[e] the provisions of the Personal Guarantee of Performance against the Guarantor(s) without first seeking recourse from [merchant]."); Delta Bridge Exemplar at 12-13 § 2 ("[I]f default or breach shall at any time be made by [merchant] in the Guaranteed Obligations, Guarantor shall well and truly perform (or cause to be performed) the Guaranteed Obligations and pay all damages and other amounts stipulated in the Agreement with respect to the non-performance of the Guaranteed Obligations, or any of them."); Yellowstone 2020 Exemplar at 14 § 2 (same).

384. Respondents' Agreements also require full, immediate payment of the entire Payback Amount in the event of default—discarding altogether the notion of payments tied to the merchants' revenue. Delta Bridge's acceleration clause, for example, states that in an "Event of Default," "The Specified Percentage shall equal 100%. The full undelivered Purchased Amount plus all fees and charges (including legal fees) assessed under this Agreement will become due and payable in full immediately." Delta Bridge Exemplar at 9 § 26(a); *accord* Yellowstone 2020 Exemplar at 10 § 29.

385. Respondents reserve such recourse for themselves—plus the additional recourse described below—even while misrepresenting their transactions as "non-recourse" purchases of merchants' revenue. *E.g.*, Delta Bridge Exemplar at 3 § 3; *accord, e.g.*, Yellowstone 2020 Exemplar at 3 § 3 (providing that the transaction is "without recourse" against the merchant). These "non-recourse" provisions are a

sham because, as demonstrated herein, their exceptions swallow the rule. *E.g.*, Delta Bridge Exemplar at 3 § 3 (transaction is "without express or implied warranty to [Respondents] of collectability of the Purchased Future Receipts by [Respondents] and without recourse against [the merchant] and/or Guarantor(s), except as specifically set forth in this Agreement"); Yellowstone 2020 Exemplar at 3 § 3 (same).

1. Respondents Claim Extensive Recourse in the Event of Merchant Bankruptcy

386. Although Respondents purport to be buying a percentage of each merchant's revenue, Respondents reserve rights to repayment even if the merchant's business fails altogether and files for bankruptcy. This is a key factor showing usury. *See Fleetwood*, 2023 WL 3882697, at *2 ("whether there is any recourse should the merchant declare bankruptcy"); *Davis*, 194 A.D.3d at 517 (usury shown by "provisions authorizing [MCA lender] to collect on the personal guaranty in the event of plaintiff business's . . . bankruptcy").

387. Respondents obtain security interests pursuant to Article 9 of the Uniform Commercial Code ("UCC") in a vast array of merchants' assets. Delta Bridge Exemplar at 8 § 21(ii); Yellowstone 2020 Exemplar at 9 § 22; Yellowstone 2018 Exemplar at 6 § I. These secured interests give Respondents priority status in the event of a merchant's bankruptcy, ensuring that they can still recover in full against the merchant's assets—even if the merchant has collected zero dollars in revenue, and even while unsecured and lower-priority claims against the merchant remain uncollectable. *See*, *e.g.*, 1 Collier on Bankruptcy P. 1.03 § 4 (explaining that

secured creditors "receive their collateral or its value" prior to unsecured creditors, who "receive a dividend from what assets remain").

388. Moreover, Respondents obtain security interests in assets well beyond the merchant's revenue that are the subject of the MCA transaction, even including their "equipment, general intangibles, instruments, and inventory." Respondents state in their Agreements that they hold:

> [A] continuing, perfected and first priority lien upon and security interest in, to and under all of [merchant's] right, title and interest in and to the following (collectively, the "Collateral") . . . :
>
> i. 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") . . . and
>
> ii. all [merchant's] proceeds, as such term is defined by Article 9 of the UCC.

E.g., Delta Bridge Exemplar at 8 § 21; Yellowstone 2020 Exemplar at 9 § 22; *see also, e.g.*, Yellowstone 2018 Exemplar at 6 § I; *see, e.g.*, Karcher Aff. ¶ 33 (describing Delta Bridge's UCC lien against Airbnb income generated by the merchant's guarantor and principal, which had no relationship to the business that was party to the MCA agreement, Hygge Supply); Resp. to Mot. to Enforce Auto. Stay, In Re Hygge Supply, Inc., No. 23-00468-jwb (Bankr. W.D. Mich. Apr. 19, 2023), ECF No. 21 (filing by Delta Bridge in Hygge Supply's subsequent bankruptcy proceeding, asserting UCC claims against the guarantor's unrelated Airbnb income).

389. Respondents' recent agreements, which limit merchants' liability in the event of a bankruptcy that results in the merchant "ceas[ing] its operations,"

e.g., Delta Bridge Exemplar at 5 § 14(b)(iii); Yellowstone 2020 Exemplar at 6 § 16(b)(iii), provide no such protection to guarantors at all—or to merchants in the event of a reorganization bankruptcy, such as one pursuant to Chapter 11 of the Bankruptcy Code. As a result, Respondents ensure that in the event of some default (which would typically precede a bankruptcy), they are able to pursue their secured interests to the full, accelerated Payback Amounts against guarantors, and against merchants in a reorganization bankruptcy.

390. Until at least October 2018, Yellowstone used agreements that included further provisions claiming recourse in bankruptcy. Those agreements included a "Security Agreement and Guaranty" which reserved for Yellowstone rights to seek repayment from the guarantor—typically the business's owner—should the business enter bankruptcy. The agreements provided:

> In the event that [Yellowstone] must return any amount paid by Merchant or any other guarantor . . . because that person has become subject to a proceeding under the United States Bankruptcy Code or any similar law, Guarantor's obligations under this Agreement shall include that amount.

E.g., Ex. 104 at 7 (Oct. 2018 agreement between Green Capital and RMI Holdings).

391. Until at least March 2018, Yellowstone used agreements that also provided:

> Guarantor's obligations are due . . . at the time Merchant admits its inability to pay its debts, or makes a general assignment for the benefit of creditors, or any proceeding shall be instituted by or against Merchant seeking to adjudicate it bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, or composition of it or its debts.

E.g., Yellowstone 2018 Exemplar at 6 § II.

392. Yellowstone's Agreements during this period also provided that a merchant would default on its Agreement if "Merchant interrupts the operation of his business . . . without . . . the express written permission of [Yellowstone]." *Id.* at 3 § 1.10(d). Although the clause included exceptions for "adverse weather, natural disasters, or acts of God," there was no exception for business interruptions resulting from bankruptcy, even though the typical bankruptcy involves at least some length of business interruption, if not termination. *Id.*

393. And until at least February 2016, Yellowstone's Agreements provided that the mere filing of a bankruptcy proceeding was an event of default. *E.g.*, Ex. 105 at 2 § 3.1(c) (defining "Event of Default" to include when "any proceeding [is] instituted by or against Merchant seeking to adjudicate it a bankrupt or insolvent"). The Agreements specifically provided that in the case of bankruptcy, Yellowstone could recover from the guarantor and also file the Merchant's confession of judgment in court. *See id.* § 2.8.

2. When Merchants Are Unable to Make Just a Few Payments, Respondents Take Court Action to Obtain Full Repayment of Pending Balances from Merchants and Their Guarantors

394. Respondents' agreements also use merchants' inability to pay as grounds for default, entitling Respondents to immediate repayment, from the merchant and the guarantor, of the full uncollected Payback Amount plus various significant fees. This is a key factor showing usury. *See Davis*, 194 A.D.3d at 517 ("provisions making rejection of an automated debit on two or three occasions without prior notice an event of default entitling [Respondents] to immediate

repayment of the full uncollected purchased amount," and "provisions authorizing defendants to collect on the personal guaranty in the event of plaintiff business's inability to pay").

395. Respondents' Agreements define "Event of Default" to include instances where merchants have insufficient funds in their bank accounts to cover Respondents' debits of the Daily Amounts. *E.g.*, Delta Bridge Exemplar at § 25(g) ("[merchant] causes four (4) or more ACH transactions attempted by [Delta Bridge] during any thirty-day period during the term of this Agreement to be rejected by [merchant's] bank"); *id.* at 8-9 § 25(a) ("[merchant] interferes with [Delta Bridge's] right to collect the Remittance Amount"); Yellowstone 2020 Exemplar at 10 § 27(a) ("[Merchant] shall violate any term, condition or covenant in this Agreement governing [merchant's] obligations of timely delivery and in full of Initial Daily Installments . . . ."); *id.* § 27(g) ("[Merchant] interferes with [Yellowstone's] collection of Initial Daily Installments"); *id.* § 27(h) ("Four (4) or more ACH transactions attempted by [Yellowstone] are rejected by [merchant's] bank"); Yellowstone 2018 Exemplar at 8 § D (stating that merchants are allowed "up to four occurrences [of insufficient funds] before a default is declared"); *id.* at 2 (requiring the merchant to "ensur[e] that the specified percentage to be debited," redefined as the Daily Amount, "remained in the [merchant's bank] Account").

396. Respondents' Agreements contain no exception for insufficient funds in a merchant's bank account caused by insufficient revenue, *see generally, e.g.*, Delta Bridge Exemplar; Yellowstone 2020 Exemplar; Yellowstone 2018 Exemplar, even

though bounced debits can result from diminished revenue, *see, e.g.*, Alabudi Aff. ¶¶ 38, 42; Israel Aff. ¶¶ 22-23.

397. For example, Yellowstone in 2019 issued an MCA to the merchant Astorga Enterprises, Inc. ("Astorga"), through the Yellowstone Subsidiary High Speed Capital. *See* Ex. 64 at 1. The MCA used the standard Yellowstone MCA agreement, which included a provision stating that an "Event of Default" would occur if "[f]our or more ACH transactions attempted by [Respondents] are rejected by [merchant's] bank." *Id.* at 15 § 27(h).

398. On April 8, 2019, the Funder notified the merchant, "Last 5 payments have bounced," and wrote that in such an instance "the account goes into a charge off status," indicating that Yellowstone would send the matter to collections. Ex. 177 at 2. The merchant responded that the business had closed. *See id.*

399. The following day, April 9, Respondent Serebro filed for judgment on High Speed's behalf in Broome County Supreme Court against Astorga and its guarantor to recover the total remaining balance of $33,932, plus attorneys' fees and costs, for a total of $42,714.37. *See* Ex. 379 at 1. Serebro filed in court the merchant's confession of judgment, along with an affidavit stating that it defaulted when it "stopped remitting the specified percentage" to High Speed and that the merchant "continued to be in default" by "failing to remit the Specified Percentage to [High Speed]." *Id.* at 7 ¶¶ 11-12. That same day, the court issued judgment against the merchant and its guarantor in the full, accelerated amount Respondents requested. *Id.* at 12.

400. For another example, on June 21, 2022, Respondents issued the merchant Pharmalab Enterpises Inc. ("Pharmalab") an MCA through their Cloudfund name in the funding amount of $500,000, with Respondents Sanders and Melnikoff as Funder. *See* Ex. 100 at 1; Ex. 131. Delta Bridge's agreement with Pharmalab stated that the merchant would default if it "cause[d] two (2) or more ACH transactions attempted by [Respondents] during any thirty-day period during the term of this Agreement to be rejected by [merchant's] bank." Ex. 100 at 9 § 25(g).

401. About a month later, on July 28, 2022, Delta Bridge notified Pharmalab that two weekly payments had "bounced," which was a "condition of default," and that if the merchant did not respond within the hour, its "file" would be "released to legal." Ex. 131; *see also* Ex. 396 at row 95 (Delta Bridge chart stating that Pharmalab defaulted through "[e]xcessive returns for insufficient funds"). Three business days after Delta Bridge sent that notice, on August 2, 2022, Respondent Serebro filed a complaint on Delta Bridge's behalf against Pharmalab and its owner, Alberto Perez, alleging that Pharmalab "breached the Agreement by . . . depriving [Delta Bridge] of its Specified Percentage of the [merchant's] daily receipts." Ex. 386 at 4 ¶ 22.

3. Respondents Exercise Their Secured, Guaranteed Rights to Repayment Despite Merchants' Lack of Revenue or Closing of Their Businesses

402. The secured, guaranteed interests that Respondents write into their agreements provide them with tremendous leverage over merchants' assets.

Respondents have repeatedly abused that leverage by collecting money from merchants who have no actual revenue left to provide.

403. Former Yellowstone Funder and Sales Rep Scott Ehrlich described Respondents' grasp for assets in such situations as follows:

> [M]ostly, the funders wanted to get everything they could. So it wasn't just about the percentage of [the merchants'] future receivables for the next three months, when they're in a business lull.
>
> It was: Well, what do they have? Do they have a car? Do they have a house? Do they have anything? What can we get that will help us pay this off?

Ehrlich Tr. at 128:15-25.

404. Respondent Melnikoff testified that if a merchant was having trouble making the Daily Amounts and the deal was at risk of PNL Default (defined at ¶ 289, *supra*)—and therefore at risk of diminishing his compensation as a Funder—he would sometimes "suggest to them maybe you can borrow some money from a friend to help you with your business to make a minimum payment," or that he might ask the merchant to pay from their personal funds "to help get a minimum payment in." Melnikoff Tr. at 145:15-147:21. Melnikoff testified that he asked some merchants to pay even when their businesses were forced to close during the COVID lockdowns in hopes of keeping the deal out of PNL Default, explaining that "that's the nature of my business and the way that I was always taught." Melnikoff Tr. at 160:6-25, 162:15-22.

405. For example, in June 2018 Respondents Melnikoff and Sanders learned that the merchant Alpha Fusion Inc. was unable to make its payments

because "[t]he restaurant is shut down because their lease agreement wasn't renewed," and that the merchant's owner was instead "driving for uber eats and grub hub" to make a living. Ex. 257 at 2. Instead of writing off the file, Melnikoff and Sanders—who had already rushed to obtain judgment against the merchant in New York County Supreme Court a week earlier—directed Serebro's collections firm to freeze the owner's earnings from Uber Eats and GrubHub. *See id.* at 1; *see also* Melnikoff Tr. at 153:23-159:14 (testifying about this exchange). The merchant even offered to pay Yellowstone the "princip[al]" on the deal, but Melnikoff and Sanders refused, instead directing the collections firm to "get us all of our money please." *Id.* at 2.

406. Similarly, in April 2019, a Yellowstone Funder contacted the merchant Astorga about missed payments and was told that its business had closed. *See* Ex. 177 at 2. The Funder understood that the absence of revenue meant "all payments would bounce" if Yellowstone continued to collect. *Id.* at 1. But instead of closing the account, the Funder demanded, "How do you plan on paying this off?" *id.*, and referred the matter to Serebro, who obtained judgment against the merchant on Yellowstone's behalf, for failing to make its daily payments. *See supra* ¶ 399.

407. Similarly, Respondent Steve Davis wrote in an October 2017 email that a merchant was "out of business." Ex. 303 at 1. Instead of writing off the file, Yellowstone obtained judgment in Erie County Supreme Court. *See* Ex. 387. Davis continued to pursue payment from sources other than the merchant's revenue,

writing that the merchant "will pay us off when he sells his real-estate." Ex. 303 at 1.

408. In another instance, in March 2018 Respondents Melnikoff and Sanders demanded payment from the merchant Eloope Management, LLC, and in response the merchant's principal responded that she had just come back from giving birth and that her business had no "money flowing in" because a large customer of the merchant had filed for bankruptcy and was not paying a large invoice due to the merchant. Ex. 282 at 3. Melnikoff responded that if the merchant did not begin making payments, "Things will get REAL messy." *Id.* at 2. Melnikoff then told the merchant to pay Yellowstone from sources besides revenue, stating, "If I were you I would figure out a way for you to get this deposit. I'm sure you got gifts for the birth of your daughter. Please borrow funds from someone . . . ." *Id.*; *see also* Melnikoff Tr. at 150:2-151:8 (testifying about this exchange).

409. Similarly, after a merchant notified Respondents Melnikoff and Sanders in March 2018 that "[t]he business has not been operating," and that he had "accepted a part time job elsewhere," Melnikoff and Sanders demanded that he continue making $200 weekly payments. Ex. 274 at 3-4. The payments ensured that the deal remained in Active status on the Funders' PNL. *Id.* at 1 ("3% is $149.01"); *see also*, *e.g.*, Ex. 322 (email from Respondent Steve Davis to merchant who was not taking in revenue due to dockworker strike: "We need to get payments in the meantime or we will be forced to sue the business and against [you]

personally as this was personally guaranteed. If we are not getting paid we have nothing to lose. . . . Guide yourself accordingly."); Ex. 283 (email to Melnikoff and Sanders from collections agent stating, "We just confirmed that this place is out of business. We're going to . . . see if we have any money frozen out there which we can pull and apply to the balance."); *cf.* Ex. 249 at 1 (email from Melnikoff to a colleague proclaiming, "Don't worry we are getting paid from an SBA loan !!!!!!!!!!!!!"); Ex. 239 (Melnikoff notified of merchant's family member complaining that Yellowstone had placed a lien on his business because of a purported default when he was not even party to the MCA agreement at issue); Alabudi Aff. ¶¶ 51-55 (describing the judgment and lien that Yellowstone obtained by claiming falsely that the merchant had missed payments); Israel Aff. ¶¶ 22-23 (describing threatening letter sent by Respondent Serebro on behalf of Delta Bridge in May 2022, after merchant sent Delta Bridge a notification and supporting bank statements reflecting that it had "no receivables coming in").

410. Some merchants were made to understand that there was simply no escaping their debt to Yellowstone. Jerry Bush, a plumber based in Virginia, laid off his employees and closed his family business—which was started by his father—after the business was unable to keep up with the ballooning daily payments collected by Yellowstone. *See* Bush Aff. ¶¶ 56. After doing so, Bush received a series of calls from Respondent Steve Davis, who was the Funder on Bush's deals with Yellowstone. *See id.* ¶¶ 58-59. Davis insisted that Bush resume daily payments despite the business's closure and lack of revenue. *See id.* ¶ 59. Davis

told Bush there was no escaping the debt unless Bush "won the lottery or . . . was dead, because [Davis] could not collect money from a dead body." *Id.*

411. Bush concluded from his call with Davis that as long as Bush was alive there would be no way to protect himself or his family from his business's debt to Yellowstone. *See id.* ¶ 60. Shortly after the call with Davis, Bush walked into the woods, recorded a suicide message, and overdosed on oxycodone pills in an attempt to take his life. *See id.* ¶ 61. Fortunately, the attempt was unsuccessful. *See id.* ¶ 62; *see also* Davis Tr. at 239:14-16 (stating that he arranged ten MCAs with Bush's company and observing, "I made a lot of money on the guy").

412. Even today, Yellowstone's Funders—now Delta Bridge's Funders—maintain that merchants have an obligation to continue remitting payments even after the merchant's business closed and is no longer generating any revenue. *See* Melnikoff Tr. at 151:10-24 ("[I]f the business is no longer active, then we're most likely not collecting. There might be a handful of situations where a merchant wanted to do the right thing because they signed a contract and know that it's the right thing to . . . repay what was given to them, but in most situations, I would say that if the business is down and gone, then we're probably not collecting anymore."); A. Davis Tr. at 143:17-21 ("If those revenues end up ceasing to exist, I'm still entitled to my portion, but if the business's doors are closed I wouldn't hold my breath because there are no revenues."); Singfer Tr. at 127:25-128:15 ("Well, if I knew they were out of business, I would[] . . . ask them if they're still interested in paying. . . . If they volunteered to send in money or settle, we wouldn't object to it.");

see also S. Davis Tr. at 235:25-236:19 (testifying about circumstances where merchants continued to pay after closing their business: "[I]t's because they're stand-up people and they know that I took a risk in funding them and . . . they had a responsibility as a normal human being that they're going to repay . . . what they got from me . . . .").

F. Other Indicia that Respondents' MCAs Are Loans

1. Everyone Knew They Were Loans

413. Funders and Sales Reps repeatedly referred to Yellowstone MCAs as "loans" and to Yellowstone Funders as "lenders"—including in communications with merchants. *See, e.g.*, Ex. 250 (email from Singfer to merchant stating, "I am David your lender."); Singfer Tr. at 161:6-9 (testifying about Ex. 250); Ex. 241 (Melnikoff asking an MCA recipient, "Wh[y] would you default on the loan?"); Melnikoff Tr. at 228:13-231:17 (testifying about Ex. 241); Ex. 268 (email from Maczuga to merchant with the subject: "RE: Add on loan"); Ex. 272 (email from Funder to merchant stating, "Yes, we will try and increase the loan amount"); McNeil Tr. at 214:12-19 (testifying about Ex. 272); Aryeh Tr. at 199:6-9 (testifying about Ex. 320); *id.* at 200:24-201:2 (testifying about Ex. 293); Miller Aff. ¶ 68 (former Funder affirming that Yellowstone personnel described MCAs as "loans" and "short-term loans"); Williams Tr. at 149:9-21; *see also* Ex. 185 at 2 (March 2019 email from Melnikoff to merchant: "Damien you plan on paying us the money you borrowed?"); Melnikoff Tr. at 232:6-24 (testifying about Ex. 185); S. Davis Tr. at 232:14-15 ("I'm trying to be paid back on my principal and my money out . . . .").

414. Until at least March 2019, Respondents appended an addendum to some of their Yellowstone MCA agreements which described the Funding Amount as "The Loan Amount." *See, e.g.* Ex. 55 at 21; Ex. 186 at 1 (email transmitting Ex. 55); Ex. 76 at 13; Ex. 74 at 19; Ex. 59 at 4; Ex. 68 at 11; Ex. 70 at 12; Ex. 308 at 1 (email transmitting Ex. 70); Ex. 430 at 7; Rubin Aff. ¶ 30; *see also* Shahinian Aff. ¶ 16 (addendum describing the amount collected from the merchant beyond the Funding Amount as the "Total Interest").

415. Similarly, until at least November 2018, one Yellowstone Funder sent letters to merchants on official Yellowstone letterhead in which he signed off as "Jim McNeil, Lender." McNeil Tr. at 223:14-20 (testifying about Ex. 430 at 1); *see also* Ex. 430 (collecting such letters); Rubin Aff. ¶ 38.

416. Similarly, until at least April 2019, another Yellowstone Funder sent letters to merchants on official Yellowstone letterhead that described the merchant's outstanding balance as a "current debt" to Yellowstone. Ex. 431 at 1; Saffer Tr. at 244:11-245:16; *see also* Ex. 431 (collecting such letters); Shahinian Aff. Ex. D at 4.

417. During their testimony *in this investigation*, some Funders referred to Yellowstone and Delta Bridge MCA transactions as "loans" and themselves as "lenders." *See* Melnikoff Tr. at 31:6-10 (testifying that Funders that "worked in-house worked for Yellowstone and the ones that would not be considered an in-house funder was an outside lender/funder, however you want to put it"); Williams Tr. at 35:20-22 ("I mean, you need to see how much someone qualifies for to lend

them money."); *id.* at 109:18-20, 110:5-6, 179:23-180:11; *see also* Worch Tr. at 181:17-20 ("[E]very merchant wants to borrow"). Similarly, Maczuga referred to the "amount netted by the merchant" in an MCA transaction as the "principal"—a term associated with a loan, not purchase of revenue. Maczuga Tr. at 219:10-25; *see also* S. Davis Tr. at 232:14-15 (same). Dahan referred to merchants' balances as "debt" to Yellowstone. *See* Dahan Tr. at 43:19.

418. As Melnikoff explained candidly when testifying about an email he wrote that used the word "loan" instead of "advance": "Sometimes you confuse the two." Melnikoff Tr. at 229:11-12.

419. Most of the support staff who assisted Funders and Sales Reps in their day-to-day work understood that they were working in the loan business—and would refer to the transactions as such. *See* Vasquez Tr. at 117:8-120:18.

420. Brokers that sold Yellowstone MCAs—known as Independent Sales Organizations, or "ISOs"—often referred to Yellowstone MCAs as "loans" when acting as the broker for Yellowstone MCA transactions. Aryeh Tr. at 202:4-7; Rubin Aff. ¶ 27 (broker described attached Yellowstone contract as a "lender contract"); Bush Aff. ¶¶ 4, 8 (broker described Yellowstone as "lender" and merchant as "borrow[ing]"); *id.* ¶ 12; Alabudi Aff. ¶ 26 (broker offered merchant "another loan"); *id.* ¶¶ 6, 20, 22; Shahinian Aff. ¶ 3 (broker offered "Unsecured Loan[s]"); Karcher Aff. ¶¶ 7, 10, 12. But Yellowstone Sales Reps, who managed Yellowstone's relationships with ISOs, were not aware of any policies or guidelines that ISOs were required to follow, *see* Dahan Tr. at 75:25-76:18, and Funders felt that Yellowstone

had insufficient safeguards to correct for the misimpressions that merchants were left with as a result of their communications with ISOs, *see* McNeil Tr. at 24:12-25:4; *see also* Ex. 404 at 19 (response to FTC CID, stating: "Yellowstone understands that ISOs engage in a variety of marketing to attract interested merchants, much of which is unknown to Yellowstone . . . .").

421. Furthermore, dozens of the ISOs that Yellowstone partnered with to broker its MCAs to merchants had names like "Business Loan Masters," "Loan Supply Company," "True Business Lender," "Reliable Lending Group," "Quick Capital Commercial Lending," and "American Lending Inc." Ex. 424. These typically confirmed merchants' understanding that the MCA transactions were loans.

422. Yellowstone and Delta Bridge did not have any measures or policies in place to ensure that merchants understood that the MCA transactions were not loans, apart from boilerplate language in their form MCA agreements. *See* Aryeh Tr. at 203:10-205:4.

423. Merchants commonly understood Yellowstone and Delta Bridge's MCAs as loans. *See* Shahinian Aff. ¶ 7; Alabudi Aff. ¶¶ 6, 20, 22, 26; Bush Aff. ¶¶ 8, 12; Ostrowski Aff. ¶¶ 11, 21, 27; Turner Aff. ¶¶ 10, 15, 22; Israel Aff. ¶ 7; Karcher Aff. ¶¶ 7, 14. Funders were aware of this. *See* McNeil Tr. at 216:24-217:18; Ehrlich Tr. at 43:17-44:4; Williams Tr. at 150:13-18.

424. Merchants often referred to Yellowstone's MCA transactions as "loans," and Funders and Sales Reps typically did not correct them. *See* Miller Aff.

¶ 69; Shahinian Aff. ¶¶ 8-9; Alabudi Aff. ¶ 6; McNeil Tr. at 217:3-5, 218:25-219:5; Worch Tr. at 232:3-9 (testifying about Ex. 213 at 5); Vasquez Tr. at 114:22-25. For example, a merchant emailed Maczuga repeatedly over an 11-month period in 2018 and inquired about "renewing our loan," noted that Yellowstone had overcollected on "the old loan," asked to "borrow" additional money, and requested "an accounting of . . . our loan." Ex. 191 at 2-4. Maczuga responded to each email and did not dispute that the transaction was a loan. *See id.* These communications occurred shortly before Maczuga was elevated to Yellowstone's co-CEO.

425. Maczuga's failure to dispute a merchant's perception that the transaction was a loan was typical of Respondents' responses to such communications. *See*, *e.g.*, Ex. 135 at 4-5 (merchant asked to "give you a call so I can discuss the loan" with Delta Bridge, and Respondent Aaron Davis responded, "[O]f course"); Ex. 312 at 1 (merchant sent Respondent Steve Davis an email seeking a status update, with subject line, "[L]oan," and Davis responded with the same subject line and attaching a draft Yellowstone MCA agreement); Ex. 216 (merchant asked for the "payoff on this loan," and Respondent Melnikoff responded with the amount); Ex. 158 (merchant asked if Respondent Singfer was able to provide the balance on its Delta Bridge "loan," and Singfer responded, "I am the right person" and stated a balance amount); Ex. 277 at 3 (merchant asked for the balance on its "loan," and former Funder Kern responded with the balance amount; merchant subsequently asked, "Can we look at doing another loan?" and Kern responded, "Sure"); Ex. 224 at 1-2 (merchant emailed former Funder McNeil

repeatedly and expressed concern about a refinancing that meant "8k being added to the loan," referred to "taking out a [new] loan to pay off the interest from my first loan," and expressed a desire to "finish out this [current] loan before legal gets involved"; McNeil responded to each email and did not dispute that the transactions were loans).

2. Yellowstone Also Did Deals That Were Explicitly Loans, Which Were No Different from Yellowstone and Delta Bridge's So-Called MCAs

426. For a time, Yellowstone entered into transactions with merchants in California through its Yellowstone Capital West ("Yellowstone West") entity that were explicitly identified as, and acknowledged to be, "loans." The loans were memorialized in "Loan Agreement[s]" that referred to the transactions as "loan[s]" and referred to merchants as "Borrower[s]." *See, e.g.*, Ex. 86 at 1; Ex. 112 at 1; Ex. 98 at 1.

427. During his testimony, Yellowstone's co-founder and CEO, Isaac Stern, could not identify any difference between Yellowstone West loans and Yellowstone MCAs, apart from different regulatory reporting requirements. *See* Stern Tr. at 242:22-245:4 (discussing Ex. 98).

428. According to Funders and Sales Reps who worked the deals, the only differences between a Yellowstone West loan and a Yellowstone or Delta Bridge MCA were that Yellowstone West loans (a) had a $5,000 minimum funding amount, (b) disallowed Confessions of Judgment, and (c) were limited to merchants located in California. *See* Aryeh Tr. at 249:23-250:25; S. Davis Tr. at 272:7-273:19; Kern Tr.

at 170:16-171:2; McNeil Tr. at 184:7-185:15; Melnikoff Tr. at 185:11-187:8; Dahan Tr. at 144:2-15; Saffer Tr. at 206:25-210:3; Miller Aff. ¶¶ 73-74.

429. The Funders and Sales Reps who testified could not identify any difference between Yellowstone West loans and Yellowstone MCAs—or between Yellowstone West loans and Delta Bridge MCAs—apart from the differences identified in paragraph 428, above. *See* Aryeh Tr. at 249:23-250:25; S. Davis Tr. at 272:7-273:19; Kern Tr. at 170:16-171:2; McNeil Tr. at 184:7-185:15; Melnikoff Tr. at 184:18-187:8; Dahan Tr. at 144:2-15; Saffer Tr. at 206:25-210:3. They testified that Yellowstone West loans were underwritten, sold, and serviced in the same manner as Yellowstone and Delta Bridge MCAs. *See id.* Only one Funder identified a difference in how he underwrote Yellowstone West loans: he said he underwrote them "more conservatively," but his basis for doing so had nothing to do with the fact that it was a loan—it was that the lack of a confession of judgment made the transaction riskier. S. Davis Tr. at 272:7-273:19.

430. The differences between Yellowstone's loans and Yellowstone and Delta Bridge's MCAs were so immaterial that several Funders and Sales Reps were not even aware that they had ever worked on a Yellowstone loan product until they were confronted during testimony with the Yellowstone West loan contract they worked on as a Funder or Sales Rep. *See* Aryeh Tr. at 214:15-215:2, 248:2-25; Melnikoff Tr. at 183:2-12, 184:18-185:10; Dahan Tr. at 141:25-142:14.

431. The Yellowstone West loans used interest rates that vastly exceeded New York's 16% interest rate cap (as well as California's 10% cap).

3. Respondents Pushed Merchants Experiencing Financial Trouble to Take on More Debt to Keep Up with the Daily Debits

432. When merchants reported to Funders that their business was low on cash and could not keep up with the daily debits as a result, rather than offer Reconciliation, Yellowstone and Delta Bridge Funders often steered them to Refinance their Yellowstone or Delta Bridge MCAs. *See* Melnikoff Tr. at 144:22-145:14; S. Davis Tr. at 233:6-12; McNeil Tr. at 148:16-149:4; Dahan Tr. at 127:12-16; Alabudi Aff. ¶¶ 23, 27, 38-40; Bush Aff. ¶¶ 45-49, 55; Ostrowski Aff. ¶¶ 36-37; *see, e.g.*, Ex. 162 at 2-4. In a Refinancing, a merchant entered a new Yellowstone or Delta Bridge MCA transaction, and the Funding Amount from the new MCA was applied to pay off the balance of the earlier MCA. *See supra* ¶ 336.

433. Yellowstone's and Delta Bridge's compensation structure for Funders incentivized Refinancing. Yellowstone and Delta Bridge paid Funders their share of the profits on an MCA transaction only when the transaction was paid off in full, *see supra* ¶ 295, and an MCA transaction was deemed fully paid when paid off by funding from a subsequent MCA in a Refinancing. *See* S. Davis Tr. at 154:11-24 (testifying that the PNL system incentivized Funders to Refinance deals at the end of the month).

434. Because Reconciliation was not a realistic path to relief, and because payment Adjustments were wholly discretionary, struggling merchants often had little choice but to Refinance when presented with that as an option. *See* Alabudi Aff. ¶ 41 ("I felt I had no choice . . . ."); Bush Aff. ¶ 29 ("I had no choice."), ¶ 48 ("I

was desperate . . . ."), ¶ 52 ("I felt I had no choice."); *see also supra* ¶¶ 242-247 (describing how Cloudfund prevented the merchant Cookies from Reconciling despite a 50% drop in revenue, and then Refinanced its MCA a month later).

435. Refinancing provided a short-term cash infusion to the merchant's struggling business, or an opportunity to reduce the Daily Amount, but it deepened their indebtedness to Yellowstone or Delta Bridge. *See* Melnikoff Tr. at 144:22-145:14; S. Davis Tr. at 233:6-22; McNeil Tr. at 148:16-149:22; Rubin Aff. ¶ 7; Alabudi Aff. ¶ 2. Like all of Yellowstone's and Delta Bridge's MCAs, the new MCA transaction also carried a pile of new fees. When cash from the new MCA was also depleted, merchants were offered the "opportunity" to Refinance again, starting the debt cycle anew.

436. For example, in September 2018, a merchant asked her Yellowstone Funder to reduce her Daily Amount because her business was experiencing "hardship"—she was "down 10 clients," and her "business [was] suffering financially . . . [and] it's just getting worse." Ex. 224 at 1-2. The Funder proposed that the merchant reduce her payments through a "zero net refi," meaning a Refinancing that did not result in any additional funding to the merchant, but reduced the Daily Amount and increased the total amount owed to Yellowstone. *Id.* at 2. The merchant replied to the Funder: "My only concern is the additional 8k being added to the loan. . . . I'm asking please can you work with me without adding the interest on interest." *Id.* The Funder replied: "[I]f you cannot make payments your account will be transferred to our legal department [to obtain a judgment]. Or you can

renew." *Id.* That left the merchant with little choice: "Ok I have no choice but to rewrite my current loan for the lower payment." *Id.* at 1.

437. For another example, in December 2018, a merchant informed two Funders that his revenue "reflects a significant decrease," and requested a reduction in the Daily Amount. Ex. 211. The Funders replied that in order to reduce the Daily Amount, they would "need to request a 2nd restructure," referring to a Refinancing. *Id.*; *see also* Ex. 253.

438. For another example, in November 2017, Respondent Melnikoff wrote to a merchant who was having trouble sustaining the daily debits: "Please call regarding a renewal offer. I understand you might be having a small issue, however if we can discuss what's going on I'm sure we can figure it out and get you more money." Ex. 300 at 2.

439. For another example, in April 2017, Respondent Steve Davis Refinanced a merchant's Yellowstone MCA. The new MCA obligated the merchant to pay Yellowstone $56,962—including more than $5,000 in fees—but netted the merchant *only $72*. *See* Ex. 313. Unsurprisingly, the merchant soon defaulted and Yellowstone obtained a judgment for the full balance plus an additional $7,304 in "Attorneys Fees." Ex. 391.

440. Testifying about such Refinancings, one former Yellowstone and Delta Bridge Funder admitted that "[i]t doesn't make sense for the merchant to refi the balance, net so little, and then have to pay back so much. You're just pushing off the deal and it will—eventually, in my opinion, it would go bad." McNeil Tr. at 148:16-

149:22. The Funder conceded: "It was just digging the merchant into a deeper hole." McNeil Tr. at 148:16-149:22.

441. One merchant likened this cycle of debt to "quicksand." Rubin Aff. ¶ 48. As he put it: "[T]he only way we could afford to make the [daily payments] was to take on even more debt—often from Yellowstone itself." Rubin Aff. ¶ 7; *see also* Bush Aff. ¶ 30 (discussing renewals arranged by Respondent Steve Davis and concluding, "[W]e needed to take out each new [renewal] MCA from [Yellowstone] in part to pay off the last one.").

442. Another merchant explained that repeated Refinancings were the only option provided when his business's "revenue was not enough to keep up with ballooning daily bills due" to Yellowstone, and that these perpetuated the "cycle of MCA transactions." Bush Aff. ¶¶ 54-56; *see also supra* ¶¶ 410-411 (describing how this merchant came to see suicide as the only way out of the MCA cycle).

443. One Funder, Respondent Steve Davis, used a brutal analogy to describe the coercive predicament confronted by desperate merchants presented with an option to Refinance: "Once a junkie always a junkie." Ex. 318; S. Davis Tr. at 286:17-287:22.

444. Upon information and belief, merchants who had been expressly promised an early-payoff discount did not receive any discount when their MCA was paid off as the result of a Refinancing; rather, Yellowstone deducted the full balance on the prior MCA transaction from the Funding Amount of the new transaction.

4. Yellowstone Used Contracts that Purported to Purchase a Share of All Monies the Merchant Received from Any Source

445. From at least December 2019 through May 2021, Yellowstone used MCA contracts that altogether abandoned the fiction that the transactions were intended to purchase a share of the future revenue generated by merchants' businesses.

446. During this period, Yellowstone used MCA contracts that expansively defined the "receipts" that formed the basis of the transaction as "any and all monies . . . received by [the merchant] from any source." *E.g.*, Yellowstone 2020 Exemplar at 2 § 1(c); Ex. 118 at 3 § 1(c) (2019 Green Capital Funding contract); Ex. 123 at 2 § 1(c) (2021 Green Capital Funding contract). These contracts did not even purport to link the share of purchased receipts to the merchants' receipts for the "sale of goods and services." *Compare e.g.*, Delta Bridge Exemplar at 2 § 1(c); Ex. 111 at 1 § 1(c); Yellowstone 2018 Exemplar at 1.

447. As a result, Respondents' so-called MCA transactions ostensibly purchased a Specified Percentage of "monies . . . received" by merchants for any reason—whether through investments into the business, loans, returned checks, tax refunds, interest on deposits, or "from any [other] source." Yellowstone 2020 Exemplar at 2 § 1(c); *see supra* ¶¶ 375-377.

448. Respondents' transactions that purported to purchase a share of merchants' receipts from any source, beyond receipts generated from the sale of goods and services, were usurious on their face.

5. Yellowstone Marketed Its MCAs to Merchants as Loans

449. Yellowstone marketed its MCAs to merchants as loans.

450. For example, until at least November 2018, Yellowstone advertised its MCA products using a website called "Bad Credit Business Loans," where Yellowstone informed prospective merchants: "If you are looking for a small business loan with bad credit, we can supply cash advances in less than 24 hours," and "[S]imply apply for a merchant cash advance online . . . we will deliver a lending decision in a matter of hours . . . ." Ex. 434 at 3-4; *see* Ex. 404 at 5 (discussing this exhibit in response to FTC CID).

451. In 2016, Yellowstone advertised itself to brokers as the year's "Top Direct Lender." Ex. 227 at 2; *see also* Ex. 226 at 2 (2018 ad describing Thryve Capital, a Yellowstone Subsidiary, as a "leading direct lender").

452. Yellowstone also advertised its MCAs to merchants through a website it controlled called Small Business Funders, where Yellowstone informed prospective merchants: "We at Small Business Funders are more than delighted to offer you a 'no collateral' loan. To be more accurate, we are willing to extend you a cash advance based on your previous and expected sales. . . . If you do meet all of the requirements listed above then you immediately pre-qualify for a no collateral loan from our company." Ex. 434 at 23-24; *see* Ex. 404 at 6-7 (discussing this exhibit in response to FTC CID); *see also* Ex. 434 at 14 (additional Small Business Funders website). Yellowstone began collecting applications through Small Business Funders by July 2015. *See* Ex. 325 at 7.

453. Yellowstone promoted itself in video advertisements featuring spokespeople making the following claims:

- "For the past four years, Yellowstone Capital has successfully helped small businesses navigate cash flow issues. With verifiable monthly revenue . . . , a simple loan is at your disposal . . . ." Ex. 432 at 2 (lines 10-16).
- "I learned about this small business loan company, Yellowstone Capital. . . . It's the most amazing thing I've ever seen." *Id.* at 7 (lines 10-11, 20-21).
- "I went online, and I found Yellowstone Capital. I applied for a loan on Monday based on my monthly sales, and on Wednesday, they gave me my money." *Id.* at 11 (lines 13-16).

454. Until at least 2018, Yellowstone also advertised its MCAs as "loans" on what it called a "Mobile Website," *see* Ex. 404 at 6-7 (response to FTC CID), where Yellowstone informed prospective merchants:

- "If your business is in need of quick working capital loan [*sic*], then give us a call . . . and find out how easy it can be to get a merchant cash advance. Your loan application will be processed quickly . . . ." Ex. 435 at 1.
- "[C]ash advances are becoming an increasingly popular way for business owners to borrow money. . . . A cash advance is basically just an unsecured small business loan . . . ." *Id.* at 3.
- "At Yellowstone Capital we offer business cash advance loans . . . ." *Id.* at 6.
- "[W]e offer specialist business cash advances, which are becoming an increasingly popular way to borrow." *Id.* at 9.
- "A cash advance is an alternative method of borrowing . . . ." *Id.* at 12.
- "Here at Yellowstone Capital we offer an alternative lending scheme in the form of a business cash advance." *Id.* at 14.

455. Yellowstone and the brokers it worked with also marketed Yellowstone's MCAs as "loans" when communicating with merchants by telephone or email. *See supra* ¶¶ 413-416, 420-422.

456. Glass, Stern, and Maczuga were personally involved in Yellowstone's marketing efforts. *See* Ex. 314 (March 2017 correspondence about a marketing proposal for Yellowstone's MCAs); Ex. 325 at 3 (April 2015 invitation from Stern to a "Sales and marketing meeting").

6. Yellowstone Specifically Pursued Merchants Who Were High Credit Risks and Desperate for Funding

457. Respondents target their MCAs at merchants that lack access to traditional credit from banks or other sources. *See*, *e.g.*, Bush Aff. ¶ 2 (merchant resorted to taking out MCAs when its "business needed financing but was unable to obtain a loan from bank"); Rubin Aff. ¶ 4 (same); Ostrowski Aff. ¶ 5 (same).

458. A presentation created by Yellowstone when it was seeking financing in 2015 stated that Yellowstone "specializes in financing short-term advances for merchants with low credit." Ex. 419 at 8; *id.* at 4 ("[T]he firm focuses on shorter (3-4 month) deals with merchants whose poor credit prevents them from qualifying for traditional banking products.").

459. As noted above, Yellowstone marketed its MCAs using a website called "Bad Credit Business Loans," until at least November 2018. *Supra* ¶ 450; *see* Ex. 434 at 3 ("If you are looking for a small business loan with bad credit, we can supply cash advances in less than 24 hours."); *see also* Ex. 434 at 32 (Yellowstone website titled "Bad Credit Salon Financing," stating: "Countless business owners with bad

credit come to Yellowstone Capital since obtaining a loan from a bank can be a lot of work . . . ."); Ex. 433 (promotional mailer to merchant stating, "Bad Credit / No Problem," and "WE PROVIDE IMMEDIATE FUNDING WHEN OTHERS DECLINE!!!").

460. Furthermore, Yellowstone and its Funders commenced the MCA transactions with merchants, knowing that the merchants' revenue was likely to drop. *See* Ex. 374 at 2 (Maczuga writing to Glass and Stern: "I think a lot of these people expect th[e] drop in sales that's why they're taking our money to begin with.").

461. One former merchant was surprised to hear from a Yellowstone broker during the peak of the COVID-19 pandemic. Yellowstone already had an outstanding judgment against the merchant, and the merchant informed the broker that his business—a restaurant—was shut due to the pandemic. Even though the business was closed and no longer generating revenue, the broker offered him a new MCA, writing, "I know about the past but i wanna give u another shot." Alabudi Aff. ¶ 76.

G. Respondents' Loans Used Interest Rates that Vastly Exceeded the Legal Limit

462. The formula to calculate the interest rate of a loan with a term of less than a year is (A/P)/(T/M), where A is the interest amount, P is the principal amount, T is the number of days in the term, and M is the number of business days in a year. *See* Rubey Aff. ¶ 47; *accord* *People v. Richmond Capital Group LLC*, No. 451368/2020, 2023 WL 6053768, at *12-13 (Sup. Ct. N.Y. Cnty. Sept. 15, 2023).

463. The principal amount of each of Respondents' MCAs is the Funding Amount stated on the contract. The interest amount of Respondents' MCAs is the difference between the Funding Amount and the Payback Amount stated on the contract. The term, as noted *supra* ¶¶ 142-143, was the Payback Amount divided by the Daily Amount stated on the contract. The average number of business days in a year is 251. *See* Rubey Aff. ¶ 47; *see also, e.g.*, Ex. 154 at 2 (cell C11).

464. Where fraudulent fees deducted from the Funding Amount are treated as interest—such as the so-called ACH Program Fee and Bank Fee, *see infra* ¶¶ 539-541—when calculating the interest rate the amount of such fees is added to the interest amount. *See* Rubey Aff. ¶ 53.

465. Applying the above formula, Blake Rubey, Data Analyst for the Office of the Attorney General, demonstrated that MCAs issued by Yellowstone and Delta Bridge grossly exceeded New York's 16% civil usury threshold and 25% criminal usury threshold. *See* Rubey Aff. ¶¶ 50-53 & Ex. 4. Mr. Rubey analyzed the MCA agreements submitted herewith and found that they include Yellowstone agreements with annual interest rates as high as 678.46%, and Delta Bridge agreements with annual interest rates as high as 819.93%. *Id.* at ¶ 52. These rates are even higher when fees are included as interest. *Id.* at ¶ 53.

II. RESPONDENTS MISREPRESENT THEIR USURIOUS TRANSACTIONS TO THE NEW YORK COURTS

466. Respondents have directed their fraudulent, usurious scheme not only at merchants but also at the New York judiciary. Respondents have done this by filing complaints and affidavits in New York State Supreme Court in which they

misrepresent to the courts that they collected payments from merchants based on Specified Percentages stated in their Agreements, when in reality they do so based on arbitrary amounts, as set forth above. *Supra* ¶¶ 131-178.

467. Furthermore, Respondents have specifically made ***New York's*** courts an unwitting part of their illegal scheme. Respondents made sure that they would be able to hail merchants to court in New York to enforce the agreements, no matter where those merchants were located. Respondents accomplished this through sweeping forum-selection provisions in their agreements that made New York the exclusive forum for disputes arising under the agreements. *See* Delta Bridge Exemplar at 10 § 38; Yellowstone 2020 Exemplar at 11-12 § 43; Yellowstone 2018 Exemplar at 5 § 4.6; *see also, e.g.*, Ex. 427 at 4 (letter from Respondent Serebro to North Carolina Department of Justice concerning North Carolina merchant stating that "the proper forum in which to contest, challenge or otherwise dispute the [agreement with Yellowstone] . . . is in N.Y. State Supreme Court").

468. Moreover, since at least November 2018, Respondents' agreements have identified New York explicitly as the locus of the entire illegal transaction:

> [Merchant] and each Guarantor acknowledge and agree that the Purchase Price is being paid and received by [merchant] in New York, that the Specified Percentage of the Future Receipts are being delivered to [Delta Bridge] in New York, and that the transaction contemplated in this Agreement was negotiated, and is being carried out, in New York. [Merchant] and each Guarantor acknowledge and agree that New York has a reasonable relationship to this transaction.

Delta Bridge Exemplar at 10 § 38; Yellowstone 2020 Exemplar at 11-12 § 43; Ex. 87 at 11 § 43 (Nov. 2018 Green Capital contract).

469. The misrepresentations in Respondents complaints and affidavits, directed at the New York courts pursuant to the sweeping provisions in the foregoing two paragraphs, are an essential part of Respondents' fraudulent usury scheme. Respondents have used them to create the illusion before the New York courts that their transactions are actual purchases of future receipts of revenue and not illegal, usurious loans.

470. In reliance on Respondents' false papers, New York courts have repeatedly issued judgments against merchant borrowers and in Respondents' favor, which Respondents have used as a basis to seize the assets of merchants and their guarantors, usually by serving the judgments upon merchants' banks.

471. Respondents' fraudulent misrepresentations to New York courts were made in court actions supervised by Respondent Serebro, or in papers filed by him personally. *See* Serebro Tr. at 27:18-28:6, 39:1-17, 43:5-10, 51:2-7.

472. Respondents have obtained thousands of judgments from the New York courts based on their false affidavits and complaints, on information and belief, during the fifteen years that Respondents have operated their fraudulent, illegal usury scheme.

473. Had Respondents disclosed in their court filings the true nature of their transactions—that they are loans, set to fixed Daily Amounts and finite terms, with no chance at a fair Reconciliation, and with sky-high annual interest rates—their attempts to obtain judicial enforcement for their illegal transactions would have been easily rebuffed.

A. Respondents Have Misrepresented Their Transactions in False Affidavits

474. Since at least 2014, Yellowstone has filed false affidavits in New York State Supreme Court—typically calling them "Affidavit[s] of Non-Payment"—as well as a copy of the relevant merchant agreement. *E.g.*, Ex. 384 at 1. The false affidavits and agreements accompanied merchants' confessions of judgment, and Yellowstone filed all of these through Respondent Serebro and its other lawyers.

475. Yellowstone obtained the signed confessions of judgment from merchants at the time they executed their agreements with Yellowstone, before any default occurred. *See*, *e.g.*, Yellowstone 2018 Exemplar at 2 § 1.10 (Protection 3); Alabudi Aff. ¶¶ 15, 69. Yellowstone then filed the merchants' confession of judgment upon purported default, typically without sending them any notice. *See, e.g.*, Alabudi Aff. ¶ 50. In reliance on such papers, the clerks' offices of the New York courts regularly issued judgments against the merchants and in Yellowstone's favor, typically within a day or two, with no adversarial proceeding and no judicial review. *See*, *e.g.*, Ex. 384 at 7.

476. The affidavits accompanying the confessions of judgment were false, because they represented that Yellowstone "was to conduct its ACH debits of the Specified Percentage" of merchants' revenue and that the merchant had defaulted when it "stopped remitting the Specified Percentage" to Yellowstone. *Id.* at 2-3 ¶¶ 6, 11-12. In fact, Yellowstone had no practice of collecting payments based on Specified Percentages, as set forth above. Yellowstone did not determine Daily Amounts based on such percentages during underwriting, *supra* ¶¶ 131-178, and it

virtually never (and not until at least 2020) performed Reconciliations to ensure that merchants' payments equaled such percentages, *supra* ¶¶ 185-192. The agreements that Respondents filed along with the affidavits contained similar false representations.

477. For example, in the case of the merchant Maslow Media, Serebro filed an affidavit in Richmond County Supreme Court signed by the Yellowstone Funder Jim McNeil in which McNeil represented that the merchant agreed to allow Respondent Business Advance Team (a Yellowstone Subsidiary) "to conduct its ACH debits of the Specified Percentage" of merchants' revenue and that the merchant defaulted when it "stopped remitting the Specified Percentage" to Business Advance Team. Ex. 384 at 2-3 ¶¶ 6, 11-12. With the affidavit, Serebro filed a copy of Business Advance Team's MCA agreement with Maslow Media, which stated that the Daily Amount was a "good-faith approximation of the Specified Percentage." Ex. 96 at 8.

478. But as McNeil has testified, he had no practice of "comparing [Daily Amounts] against any specified percentage," or discussing Specified Percentages when "formulating an initial offer" for an MCA. McNeil Tr. at 119:2-19, 123:6-20.

479. Accordingly, both McNeil's affidavit and the representation in Respondents' agreement with Maslow Media—both of which were filed in court by Serebro—were false.

480. Moreover, on the same day that Serebro initiated proceedings against Maslow Media on behalf of the Yellowstone Subsidiary Business Advance Team, he

also initiated two separate proceedings against the same merchant on behalf of the Yellowstone Subsidiaries Advance Merchant Services and Capital Advance Services, seeking to enforce their separate agreements with the same merchant.[11] The latter two proceedings were supported by affidavits of two other Yellowstone personnel; those affidavits were near-duplicates of the McNeil affidavit filed in support of the Business Advance Team proceeding, including the same false representations. Ex. 383 at 2-3 ¶¶ 6, 11-12; Ex. 385 at 2-3 ¶¶ 6, 11-12.

481. But it was patent from the face of the agreements that for least two of them (if not all three), the Daily Amounts bore no relationship at all to the Specified Percentages stated in the agreements. *Supra* ¶¶ 145-147. As discussed above, the Yellowstone Subsidiaries' three agreements with Maslow Media were a so-called Side-by-Side deal: they were each entered into on the same date, they all set wildly different Daily Amounts—$7,450, $4,470, and $1,490—and each agreement stated that *its* Daily Amount reflected a "good-faith approximation of the Specified Percentage" of 25% of the merchant's prior revenue. *Id.*

482. Despite the plain falsity of at least two of the affidavits—which stated that the Yellowstone Subsidiary was to conduct debits of 25% of Maslow Media's revenue and that Maslow Media had defaulted when it "stopped remitting the

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[11] *See Bus. Advance Team LLC d/b/a Everyday Capital. v. Maslow Media Group, Inc.*, Index No. 152382/2018 (Sup. Ct. Richmond Cnty. Sept 12, 2018); *Advance Merchant Servs. v. Maslow Media Group, Inc.*, Index No. 152383/2018 (Sup. Ct. Richmond Cnty. Sept 12, 2018); *Capital Advance Servs. LLC v. Maslow Media Group, Inc.*, Index No. 152384/2018 (Sup. Ct. Richmond Cnty. Sept 12, 2018).

Specified Percentage"—Serebro filed all of them in Richmond County Supreme Court in the separate proceedings to enforce the agreements.

483. Within one day after Serebro filed the false affidavits, the Richmond County court issued judgments in the Yellowstone Subsidiaries' favor in each of the three proceedings. Exs. 383 at 7, 384 at 7, 385 at 7.

484. Serebro filed similarly false affidavits in two proceedings by Yellowstone Subsidiaries against the merchant VA Electrical Contractors LLC ("VA Electrical"). VA Electrical was another Side-by-Side deal, in which Yellowstone Subsidiaries issued a pair of MCAs dated six days apart. The two agreements set radically different Daily Amounts ($1,124 and $4,497) and each stated that its Daily Amount represented a "good-faith approximation of the Specified Percentage" of 25%. Ex. 116 at 2, 9; Ex. 115 at 2, 9. The near-identical affidavits stated that the Yellowstone Subsidiaries were to conduct debits of 25% of VA Electrical's revenue and that VA Electrical had defaulted when it "stopped remitting the Specified Percentage." Ex. 390 ¶¶ 6, 11-12; Ex. 389 ¶¶ 6, 11-12.

485. Despite the falsity apparent on the face of the agreements and affidavits, Serebro on January 31, 2019 filed them in separate proceedings against VA Electrical on behalf of each Yellowstone Subsidiary. *See id.*

486. Some of the deals for which Serebro filed false affidavits were deals in which Serebro had invested personally, as a "participant" in the deal through his entity VS Ventures. *See supra* ¶ 96 (discussing Serebro's participation through VS Ventures).

487. For example, Serebro made a personal investment of $750 in Yellowstone's September 26, 2018 MCA with the merchant Kite Restaurant Group LLC ("Kite Restaurant"), through VS Ventures. *See* Serebro Tr. at 126:2-13; Ex. 234 at 1; Ex. 90.

488. A few months later, Serebro acted as the attorney representing Yellowstone in a lawsuit that he filed against Kite Restaurant in Ontario County Supreme Court, based on the merchant's purported default. In support of his request for a judgment against the merchant, Serebro filed an affidavit signed by Salvatore Laspisa, who was then a member of Maczuga's funding team and is now a Funder at Delta Bridge. Ex. 382 at 1; *see* Maczuga Tr. at 99:3-100:8 (Maczuga employed Laspisa); Ex. 51 at 2. The affidavit that Serebro filed (and the MCA agreement itself) contained the standard false representations stating that Yellowstone collected payments based on Specified Percentages of merchants' revenue. Ex. 382 at 2-3 ¶¶ 6, 11-12; *see supra* ¶ 476. But the Funder, Maczuga, had no practice of setting the Daily Amount based on the Specified Percentage, *supra* ¶¶ 138, 143, 147, Yellowstone took no measures to ensure that he did so, *supra* ¶ 136, and Serebro himself made no such efforts even when he personally invested in an MCA deal, Serebro Tr. at 130:24-133:18.

489. As a result of the false representations Serebro filed with the court, the Ontario County Clerk granted judgment against Kite Restaurant within two days, including more than $5,000 in "Attorney's Fees." Ex. 382 at 9. A portion of the amount collected subsequently was retained by Serebro through the contingency fee

arrangement between his affiliated collections company and Yellowstone. *Infra* ¶¶ 815-816.

490. Yellowstone and its representatives, including the Funder Respondents, filed affidavits in New York State Supreme Court repeatedly and as a matter of practice, in which they falsely represented that the Daily Amounts they collected were based on Specified Percentages of merchants' revenue, when in reality Yellowstone and its Funders had no such practice. *See*, *e.g.*, Ex. 392 at 1 (affidavit by Respondent Steve Davis); Ex. 97 (MCA agreement filed with the affidavit); Ex. 392 at 7 (affidavit in connection with deal by Respondent Aaron Davis); Ex. 65 (MCA agreement filed with the affidavit); Ex. 392 at 13 (affidavit in connection with deal by Respondents Melnikoff and Sanders); Ex. 75 (MCA agreement filed); Ex. 392 at 19 (affidavit in connection with deal by former Funder Schwartz); Ex. 66 (MCA agreement filed); Ex. 392 at 25 (affidavit by former Funder Dahan); Ex. 92 (MCA agreement filed); Ex. 392 at 31 (affidavit by former Funder Kern); Ex. 78 (MCA agreement filed); Ex. 392 at 37 (affidavit by former Funder Singfer); Ex. 122 (MCA agreement filed); Ex 392 at 44 (affidavit by former Funder Saffer); Ex. 464 (MCA agreement filed).

B. Respondents Misrepresent Their Transactions in Verified Complaints

491. In spring 2019, the New York legislature enacted a law providing that confessions of judgment could be filed only as to confessors located in New York, not those located in other states. *See* CPLR § 3218 (effective Aug. 30, 2019).

492. Because of the new law, Respondents were no longer able to obtain judgments against merchants located outside New York State by filing their confessions of judgment. Instead, in the event of purported default by out-of-state merchants, Respondents conducted their court proceedings against merchants by filing complaints against them, followed in most cases by motions for default judgment.[12]

493. In these complaints, Respondents—as Yellowstone/Fundry and as Delta Bridge/Cloudfund—continued to make the same false representations to New York courts, stating that the merchants had agreed to pay the Specified Percentage of their revenue, and had then deprived Respondents of that percentage of revenue.

494. For example, on November 28, 2022, Serebro filed a verified complaint in Queens County Supreme Court on Cloudfund's behalf against the merchant BKM Hospitality Mgt. Inc. ("BKM") for purportedly defaulting on an MCA. Ex. 380 at 1.

495. The complaint was verified by Nick Pugliese, swearing under penalty of perjury that the contents of the complaint were "true to the best of [his] knowledge." Ex. 380 at 11. Pugliese was an employee of Respondents Melnikoff and Sanders, indicating that they were the Funders on the deal. *See* Melnikoff Tr. at 113:2-7.

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[12] As to merchants located in New York, Yellowstone continued to file confessions of judgment and affidavits until at least June 2021. *See*, *e.g.*, Ex. 381 ¶¶ 4-6, 10 (affidavit filed by Serebro June 22, 2021 and stating that High Speed Capital debited "Specified Percentage" payments from merchant located in West Babylon, New York); *see also* Ex. 77 (MCA agreement with merchant).

496. In the complaint verified by Pugliese, Cloudfund alleged the following:

> Pursuant to the Agreement, [BKM] authorized [Cloudfund] to debit from its bank account . . . Forty nine percent (49%) of [BKM's] accounts-receivable (the "Specified Percentage"), by means of an online ACH debit, an initial fixed, agreed-upon amount from its bank account as a good faith approximation of the Specified Percentage . . . .
>
> . . .
>
> Initially [BKM] . . . deposited their receivables into the Account from which [Cloudfund] could debit the Specified Percentage.
>
> On or about 10/24/2022, [BKM] breached the Agreement by . . . depriving [Cloudfund] of its Specified Percentage of [BKM's] daily receipts.
>
> . . .
>
> [BKM] refuse[s] to remit the Specified Percentage of its daily receivables to [Cloudfund] . . . .

Ex. 380 at 5-7 ¶¶ 14-26.

497. Along with the complaint, Serebro filed as an exhibit Cloudfund's MCA agreement with BKM, dated June 8, 2022, which stated that the Daily Amount fixed in the agreement was "a good faith approximation of the Specified Percentage of [the merchant's] Future Receipts." Ex. 67 at 3 (definition of "Remittance Amount").

498. In fact, Cloudfund, like Yellowstone, had no practice of determining Daily Amounts based on Specified Percentages at the time of the BKM agreement, as set forth above. *Supra* ¶¶ 131-178.

499. Indeed, in the words of Melnikoff, who was the Funder on the BKM deal, the Specified Percentage "doesn't really matter" and "wasn't really calculated" during the process of underwriting and negotiating an MCA, and his practice, both

at Yellowstone and Delta Bridge, was to determine the Daily Amount for an MCA based on "fixed daily amounts" and the desired "amount of days," "not a specified percentage." Melnikoff Tr. at 92:24-93:3, 97:8-15, 100:2-24.

500. As a result, Cloudfund's representations to the Court were false. Cloudfund did not determine BKM's Daily Amount by making a "good faith approximation of the Specified Percentage," Cloudfund did not "debit the Specified Percentage" from the merchant's bank account, and the merchant neither "depriv[ed] [Cloudfund] of the Specified Percentage" nor "refuse[d] to remit the Specified Percentage" to Cloudfund, as stated in Cloudfund's complaint. *Supra* ¶¶ 496-497. Nevertheless, in reliance on its false allegations, Cloudfund obtained judgment against the merchant on October 5, 2023. Ex. 380 at 14.

501. Both Cloudfund and Yellowstone filed complaints in New York State Supreme Court repeatedly and as a matter of practice, in which they falsely represented that they debited payments set to Specified Percentages of merchants' revenue. But as set forth above, and as shown by Respondents' internal communication and testimony from their top Funders, Respondents have for years followed a general practice of setting Daily Amounts unrelated to any Specified Percentage of revenue. *Supra* ¶¶ 131-178. Each time they represented otherwise to a court and thereby obtained judgment against a merchant, they did so fraudulently. *E.g.*, Ex. 393 at 58, 66 (complaint verified by Respondent Melnikoff); Ex. 79 (MCA agreement filed with the complaint); Ex. 393 at 73, 81 (complaint filed in connection with deal by Respondent Singfer); Ex. 121 (MCA agreement filed with

the complaint); Ex. 393 at 88, 96 (complaint filed in connection with deal by Respondents Melnikoff and Sanders); Ex. 84 (MCA agreement filed); Ex. 393 at 16 (complaint in connection with deal by Respondent Aaron Davis); Ex. 85 (MCA agreement filed); Ex. 393 at 2, 10 (complaint verified by former Funder Kern); Ex. 61 (MCA agreement filed); Ex. 393 at 31, 39 (complaint verified by former Funder Dahan); Ex. 124 (MCA agreement filed); Ex. 393 at 45, 53 (complaint verified by former Funder McNeil); Ex. 88 (MCA agreement filed); Ex. 393 at 103, 109 (complaint verified by former Funder Saffer); Ex. 465 (MCA agreement filed); Ex. 393 at 116, 124 (complaint filed in connection with deal by former Funder Schwartz); Ex. 466 (MCA agreement filed); *supra* ¶ 247 (discussing complaint filed by Cloudfund against the merchant Cookies Restaurant Group).

C. Respondents Misrepresent the Facts of Merchants' Payment Histories in Claiming that the Merchants Have Defaulted on Their MCAs

502. Respondents have also repeatedly filed court papers containing false statements about the facts that purportedly led to a claimed merchant default.

503. For example, the Yellowstone Subsidiary Capital Advance Services in May 2018 filed a false affidavit by Respondent Steve Davis in Kings County Supreme Court in a proceeding against the merchant Zomongo. *See* Ostrowski Aff. ¶ 49. In it, Davis falsely testified that Zomongo had "caused [its] receivables to be deposited in a separate account or blocked the ACH payments to [Capital Advance], . . . so that [Capital Advance] could not collect the receivables they purchased." *Id.* ¶ 50. In fact, Yellowstone was not collecting any agreed-upon share of "receivables"

but instead attempting to debit Zomongo's bank account by amounts far exceeding even the Daily Amount stated in Yellowstone's agreement, causing Yellowstone's excess debit attempts to bounce due to insufficient funds. *See id.* ¶¶ 47-48, 51.

504. In his affidavit, Steve Davis also misrepresented Zomongo's balance, understating its payments to date and overstating its balance due by $70,486, as set forth in an affidavit by the merchant. *See id.* ¶ 52.

505. Yellowstone obtained a court judgment against Zomongo in reliance on Steve Davis's false affidavit. Yellowstone enforced the judgement by engaging a New York City Marshal to seize hundreds of thousands of dollars from Zomongo's bank account. *See id.* ¶ 54.

506. The same Yellowstone Subsidiary filed a false affidavit in Erie County Supreme Court against the merchant Austin's Habibi. The affidavit was signed by Avraham Weinstein, an employee of Respondent Steve Davis, *see* S. Davis Tr. at 61:20-62:23, indicating that Davis was the Funder on the deal. In his affidavit, Weinstein falsely testified that the merchant defaulted when it "stopped remitting payments to [Capital Advance] on or about November 27, 2017." Alabudi Aff. ¶¶ 51-52. In fact, Yellowstone had "successfully debited the daily payment [from Austin's Habibi's bank account] at least once every business day in November." Alabudi Aff. ¶¶ 48, 52 & Ex. Q. Yellowstone then obtained a court judgment for $26,508.75 against Austin's Habibi—including $5,265.75 in supposed "'Attorney's Fees'"—in reliance on Weinstein's false affidavit. *See id.* ¶¶ 53, 60.

507. Yellowstone also filed a false affidavit in Erie County Supreme Court against the merchant Air Charter Division, Inc., in December 2018. The affidavit—which was filed by Serebro and signed by former Funder Jim McNeil—stated that the merchant "continue[s] to be in default of the Agreement, and continue[s] to refuse to honor [its] obligations owed to [Yellowstone]." Ex. 378 at ¶ 12. However, when judgment was entered a few days later, the merchant contacted McNeil, who "[c]onfirmed the merchant is *not* in default and the payments are clearing." Ex. 209 (emphasis added). Nevertheless, Yellowstone proceeded to clear $30,000 from the merchant's bank account, leaving him pleading for help on Christmas Eve so that he could continue operations and pay his employees. *See* Ex. 203. The judgment remains outstanding today against the business and the merchant personally.

508. Yellowstone also filed a false affidavit in Erie County Supreme Court against the merchant SMJ Performing Arts, LLC, in April 2018, and the court entered judgment the following day. The affidavit was filed even though the merchant "hadn't bounced or blocked" any payments, Ex. 201, but had simply "called to 're-negotiate'" her contract, and told the Funder, Respondent Melnikoff, that he "would be hearing from her attorney," Ex. 273. Based on the fact that the merchant was "very aggressive" on the phone and threatened to involve counsel, Ex. 201, Melnikoff ordered the merchant's confession of judgment to be filed, writing "Let's go FREEZE IT UP!!," referring to the merchant's bank accounts. Ex. 273. The next day Yellowstone filed an affidavit falsely stating that the merchant "continue[d] to be in default" of the agreement and "continue[d] to refuse to honor

[her] obligations to [Yellowstone]." Ex. 388 ¶ 12. The affidavit was filed by Renata Bukhman, who is now Chief Compliance Officer at Delta Bridge, *id.* at 5; Ex. 51, and signed by Melnikoff's administrative assistant at Melnikoff's direction, Ex. 273. In January 2019, Reece learned that Yellowstone had obtained judgment against the merchant despite the lack of any default. *See* Ex. 201. Nevertheless, the judgment remains outstanding against the merchant and its owner personally.

509. On information and belief, the examples of Zomongo, Austin's Habibi, Air Charter Division, and SMJ Performing Arts are a fraction of the instances in which Respondents have fraudulently obtained judgments against merchants by declaring them in default on false pretenses.

III. RESPONDENTS ENGAGE IN REPEATED AND PERSISTENT FRAUD IN THEIR DEALINGS WITH MERCHANTS

510. Respondents have also directed their fraudulent practices at merchants, in their marketing and promoting of MCA products, charging merchants exorbitant undisclosed fees, and collecting excess payments from them.

A. Respondents Misrepresent that Their Transactions Are Not Loans and that They Will Provide Flexible Payment Structures and Terms

511. Respondents have for years misrepresented to merchants that their transactions are not loans, even while the facts of their transactions (and other language in their agreements themselves) indicate otherwise. *See generally* Part I, *supra*.

512. For example, in their Delta Bridge agreements, Respondents include language such as the following:

> Guarantor acknowledges and agrees that the Purchase Price paid by [Delta Bridge] to [merchant] . . . is not intended to be treated as a loan or financial accommodation from [Delta Bridge] to [merchant].

E.g., Delta Bridge Exemplar at 13 § 6; *see also*, *e.g.*, Yellowstone 2020 Exemplar at 6 § 16(d) ("**Not a Loan.** [Merchant] and [Yellowstone] agree that the [transaction] . . . is not intended to be, nor shall it be construed as, a loan from [Yellowstone] to [merchant] . . . .").

513. Such disclaimers are false. Respondents' transactions are in their substance fixed-payment, term-limited loans and are not purchases of merchants' future revenue, as set forth above. *Supra* ¶¶ 131-381.

514. Similarly, as set forth above, Respondents also misrepresent that merchants' Daily Amounts are determined based on Specified Percentages of the merchants' revenue, that merchants can obtain Reconciliations and Adjustments based on such percentages in the event that their revenues decline, and that the transactions are subject to open-ended repayment terms. *Supra* ¶¶ 134, 194, 204, 307-309.

515. These representations are also false. In practice, Respondents require merchants to repay their transactions over finite terms through fixed Daily Amounts that are not based on merchants' revenue, and Respondents take numerous measures to make it virtually impossible for merchants to obtain a Reconciliation or an Adjustment based on a Specified Percentage. *Supra* ¶¶ 131-316.

516. Respondents have made similar misrepresentations in their advertising. For example, in November 2018, Yellowstone falsely advertised on its website,

> The biggest advantage that merchant cash advances (also known as a MCA) can offer are flexibility in repayment. Instead of a hard and fast amount due every month, a merchant cash advance is repaid by taking a fixed percentage of your daily sales at the end of every business day. . . . [A] small predetermined percentage of these sales are [*sic*] taken out at regular intervals, no matter how the sale was completed.

Ex. 455; *see also*, *e.g.*, Ex. 434 at 11 ("[O]ur business cash advances are based on your daily sales. You continue to deposit your sales into a bank account and at regular intervals, a small determined percentage of those deposits is taken as repayment."); Ex. 434 at 34 ("A small percentage of your total sales is taken as repayment. It doesn't matter if it takes you 5 weeks, 5 months or 1 year to pay us back because you still pay back the same amount."); Ex. 432 at 16 (lines 5-9) (advertisement stating: "You continue to deposit your sales into a bank account, and at regular intervals, a small, predetermined percentage of those deposits are taken out as a repayment."); *id.* at 20 (lines 6-11) (advertisement stating: "Rather than have a set payment amount for you to meet each month, we have a percentage payment plan that works with your monthly sales. Having a slow month? Then you're required to payback less that month.").

517. Such representations are false. Respondents require merchants to repay their MCAs by fixed Daily Amounts and for finite Terms, as set forth above. *Supra* ¶¶ 131-316.

518. Yellowstone also promoted "flexible payment structure[s]" during their phone solicitations with merchants. Miller Aff. ¶¶ 47-48.

519. Such representations were also false, *id.*, as former Funder Desmond Miller explained in an affidavit:

> I frequently overheard colleagues, particularly the funders Steve Davis, Aaron Davis, Bart Maczuga, and Avi Dahan, speaking on the phone and apparently responding to requests from merchants for adjustment of their payment amounts. They typically refused such requests, stating that the merchants had signed agreements for daily payments at certain amounts and that Yellowstone would not make exceptions.

Id. ¶ 48.

520. For example, merchant Jerry Bush explained in an affidavit that when he began interacting with the Yellowstone Subsidiary Capital Advance Services, "[T]he broker told me that if I ever had any issues while repaying the CAS transactions, I should let them know, and they would 'work with' me, which I understood to mean that they would adjust JB Plumbing's payment amounts if needed." Bush Aff. ¶ 44. Several months later, while facing a revenue shortfall, Bush contacted Yellowstone and asked Respondent Steve Davis to adjust the payment amounts. *See id.* ¶ 46. But Davis "refused to provide an adjustment. He offered only another renewal transaction, similar to those that we had entered previously." *Id.* ¶ 47.

521. Similarly, merchant Ali Alabudi explained in an affidavit that broker Ezra Moss, also working on Capital Advance Services' behalf, told him that Capital Advance Services and Moss's own company "would be flexible if [Alabudi] ran into trouble making payments." Alabudi Aff. ¶ 8. Alabudi subsequently experienced a

business slowdown and asked Jonathan Braun, his point of contact on the Capital Advance transaction, for a five-day break in payments. *See id.* ¶ 37. Braun provided no such accommodation but instead pushed Alabudi to take out yet another MCA from Capital Advance Services. *See id.* ¶¶ 40-41; *see also* Turner Aff. ¶¶ 7, 26-27 (Funder promised that Delta Bridge "would be willing to work with" the merchant in the event of difficulty with payments, only to be later threatened with litigation when it was unable to make payments).

B. Respondents Falsely Promise No Collateral and No Personal Guarantees

522. Respondents have also misrepresented to merchants that their Yellowstone MCAs do not require collateral or personal guarantees.

523. For years, Yellowstone made such claims, advertising "cash advances" with no requirement of "[c]ollateral" or "[p]ersonal guarantees." Ex. 434 at 29. Yellowstone advertised, "We do not require you to secure [your cash advance] with a personal guarantee." *Id.* at 26; *see also*, *e.g.*, *id.* at 23 (advertising a "'no collateral' loan" in the form of "cash advance"); *id.* at 20 (advertising "business cash advances" with "No collateral"); *id.* at 8-9 (website advertising "Unsecured Business Funding" and "No collateral required" as of Nov. 9, 2018); *id.* at 17 (advertising "business cash advance[s]" that were "not . . . dependent on any kind of collateral"); Ex. 432 at 14 (advertising "a completely unsecured business cash advance").

524. Respondents have made similar representations in their telephone solicitations, as former Yellowstone Funder and Sales Rep Desmond Miller explained in an affidavit: "In our phone conversations with merchants,

Yellowstone's funders and representatives frequently described the MCAs as requiring no collateral or personal guarantees." Miller Aff. ¶ 64.

525. Such representations are false. As set forth above, whether operating as Yellowstone or Delta Bridge, Respondents have for years required each MCA to be backed by a personal guarantee and collateralized against a vast array of merchants' property, far beyond the mere percentage of revenue that Respondents are purportedly investing in. *Supra* ¶¶ 383, 386-388.

C. Respondents Falsely Promise Merchants that They Will Provide More Desirable Financing Terms or Nonexistent Forms of Financing

526. Respondents, through their Sales Reps and brokers, repeatedly sell their MCAs to merchants with false promises of future financing in a more desirable form, such as a line of credit, or with more desirable terms for their MCAs. In fact, Yellowstone had no such "line of credit" programs. *See* S. Davis Tr. at 276:14-20; *see also* McNeil Tr. at 193:9-11 (Delta Bridge provides no products or services besides MCAs).

527. As one former Yellowstone Funder and Sales Rep explained:

> While selling its MCAs, Yellowstone's sales representatives and funders, including me, made it a practice to tell merchants that a Yellowstone MCA—with daily payments at fixed amounts, a short repayment term, and a high interest rate—was merely an introductory transaction for new customers. We told merchants that once they established a history of making payments to Yellowstone, we would provide them with additional funding with more desirable features, such as monthly payments, longer repayment terms, and lower interest rates.
>
> Such promises were in my experience false, as Yellowstone had no practice of providing merchants with subsequent funding with such features. Instead, when merchants wanted additional funding after an

> initial MCA, we would provide them with a second MCA similar to the first—with daily payments at fixed amounts, high interest rates, and short, finite terms.

Miller Aff. ¶¶ 83-85; *see also* S. Davis Tr. at 135:22-136:11.

528. Numerous merchants experienced such fraud by Respondents' Sales Reps and brokers. In November 2018, for example, a merchant emailed Yellowstone complaining that a broker had sold him a "loan" with Green Capital on the promise that the merchant would be subsequently provided a "line of credit," which Respondents did not provide. Ex. 218; *see also, e.g.*, Bush Aff. ¶ 12 (testimony from a merchant that a broker working with Yellowstone offered the merchant a transaction with "lower interest"); Ex. 302 (merchant asking whether tight cash flow situation would adversely affect "the possibility of a line of credit").

529. One former Yellowstone and Delta Bridge Funder testified that it was a common occurrence that brokers "just misinformed them and misled [merchants]," telling them, "'[Y]es, just take this, don't worry about it, and in 30 days I'm going to get you a consolidation and pay everything off at 3 percent,' and the merchant will believe that." McNeil Tr. at 23:6-13, 24:22-25:2. The Funder admitted that "Yellowstone had insufficient safeguards to correct for [such] misimpressions about MCA deals" and observed that "there was no oversight" of brokers' and in-house Sales Reps' sales pitches to merchants. *Id.* at 24:12-18; *accord* Aryeh Tr. at 211:18-213:16.

530. But such misrepresentations were also made by Respondents' Funders directly. For example, in September 2017, Respondent Steve Davis sent a merchant

a letter falsely stating that Yellowstone had "approved [the merchant] with an extended open line of credit in the amount of $475,000 which can be used as an additional cash resource for the company." Ex. 456; *see also* Ex. 267 at 4 (Yellowstone Funder offering a merchant a new MCA deal and telling merchant that it "will keep you on a LINE OF CREDIT program").

531. But as Davis admitted, Yellowstone had no such "line of credit" programs. S. Davis Tr. at 276:14-20. To the contrary, after a merchant takes out an initial MCA, the only additional financing Respondents provide is additional MCAs, typically Refinancing the balance of their existing MCA, thereby charging usurious interest on top of prior usurious interest and driving merchants into a downward spiral of debt. *See supra* ¶¶ 432-444.

532. Respondents have continued this practice of benefitting from the misrepresentations of its agents since they refashioned themselves as Delta Bridge in May 2021.

533. David Israel, a merchant who took out an MCA with Delta Bridge, was offered the MCA by a broker in early 2022 who told him that if he made "three to four months of on-time payments, . . . then the transaction would convert into an open line of credit at a lower . . . interest rate." Israel Aff. ¶ 4 & Ex. D (email from merchant stating, "We were told to believe that if we signed a contract for an advance that it would create credibility with your company, and the balance of the advances would then turn into a line of credit within a couple of weeks.").

534. This representation was false. Delta Bridge does not "convert" its MCAs into lines of credit, as it, like Yellowstone, provides no product or service aside from its MCAs. *See* McNeil Tr. at 193:9-11; Dahan Tr. at 148:2-5; A. Davis Tr. at 56:2-6.

D. Yellowstone Concealed the Fees It Charged to Merchants

535. Respondents concealed from merchants the amounts of their fees and misrepresented the basis for them while working in the Yellowstone organization.

536. Yellowstone charged merchants an "ACH Program Fee" and a "Bank Fee" or a "Due Diligence Fee," but it did not disclose the amounts of those fees to merchants in their agreements. Instead, Yellowstone's agreements stated that these fees would be set at either a fixed amount "or up to 10% of the funded amount," or similar language. *E.g.*, Yellowstone 2018 Exemplar at 8 §§ B, C; Ex. 111 at 15 § 3(a) (May 2019 Funderslink agreement); *compare, e.g.*, Ex. 82 at 7 (Capital Advance agreement disclosing "ACH Program Fee" of "$395 or up to 10% of the funded amount"), *with* Ex. 319 (funding email for the transaction indicating the deduction of $7,750 as a "Bank Fee").

537. Yellowstone typically disclosed the actual amount of those fees to merchants only orally, during "Funding Calls" (defined *supra* ¶ 338), after the merchants had already signed Yellowstone's agreements. *See* Bush Aff. ¶ 38; S. Davis Tr. at 176:5-177:6; Williams Tr. at 175:6-13; Worch Tr. at 148:10-150:3; Bush Aff. ¶¶ 37-38; *see also* McNeil Tr. at 96:12-17. As a result, merchants had no way of determining their fees from Yellowstone's written agreements and would not

know such fees until the merchants had already signed them—if at all. *See* S. Davis Tr. at 176:22-177:6.

538. In many cases, merchants did not learn of the money that Yellowstone fraudulently deducted from its advances as "fees" until the merchants received their advances—and saw that they were not provided in the amounts stated in Yellowstone's agreements. *E.g.*, Shahinian Aff. ¶¶ 19-20 (merchant "shocked" when Yellowstone Capital West provided $186,000 in funding, "not the $200,000 in the contract"); *id.* ¶ 18 (Yellowstone Capital West charged merchant "6,000 'professional service' fee" that was not disclosed in agreement "for reasons that were never explained"); Alabudi Aff. ¶ 25 (Capital Merchant Services provided funding with "an unexplained shortfall of $313"); Ostrowski Aff. ¶ 17 (HFH Merchant Funding Services provided "$26,038 less" in funding than the "$200,000 'Purchase Price'"); *id.* ¶ 32 (Capital Advance Services provided $276,000 in funding instead of the stated $300,000); *id.* ¶ 45 (Capital Advance Services provided $30,442 less in funding than the stated $575,000 funding amount—in addition to $369,558 in a misstated prior balance).

539. Yellowstone also misrepresented the basis for its fees, which lacked any apparent "relationship to any work or service associated with [Yellowstone's] lending of money" and which often "seemed to increase with each renewal transaction." *See* Bush Aff. ¶ 40.

540. Yellowstone falsely stated that it charged its "ACH Program Fee" because "the ACH program is labor intensive and is not an automated process,

requiring us to charge this fee to cover related costs." *E.g.*, Yellowstone 2018 Exemplar at 8 § B. In fact, debiting ACH payments at fixed amounts, as Yellowstone did, is highly automated and required little to no work. *See* Schwartz Tr. at 74:13-16; Kern Tr. at 37:6-8; Ehrlich Tr. at 129:24-130:3; Williams Tr. at 167:12-14. Yellowstone did not use the proceeds from ACH Program Fees to arrange for ACH payments but instead distributed them as additional profit for the Funders. *See* Ehrlich Tr. at 142:14-24; Williams Tr. at 168:2-23; *see also* Ehrlich Tr. at 138:20-141:22 (discussing "professional service fee" paid to Sales Reps).

541. Similarly, Yellowstone collected money from merchants for so-called "Bank Fee[s]," Yellowstone 2018 Exemplar at 8 § C, but it did not use such fees in connection with any banking services. Instead, it divided those amounts between itself and its Funders as additional profit. *See* S. Davis Tr. at 156:14-17; McNeil Tr. at 72:22-73:11. Yellowstone's Sales Reps typically told merchants, "Don't worry about this," without "explaining that [the bank fee] was just a commission fee." Ehrlich Tr. at 141:5-10.

542. Similarly, both Yellowstone and Delta Bridge collected money from merchants for so-called "Due Diligence Fee[s]." Yellowstone 2020 Exemplar at 17; Delta Bridge Exemplar at 1. But due diligence was part of the standard underwriting process for all of Respondents' transactions with merchants, *see* Melnikoff Tr. at 28:16-29:20; Saffer Tr. at 43:6-14; *see also supra* ¶ 177 (same underwriting process at Yellowstone and Delta Bridge), and upon information and belief, the amount of the fee did not vary based on the complexity of underwriting

the transaction. To the contrary, the amount of the Due Diligence Fee was based simply "on what was negotiated" between the merchant and the Funder. Kern Tr. at 41:2-11.

E. Respondents Fraudulently Continued to Debit Merchants' Bank Accounts After the Transactions Were Complete

543. After merchants had fully repaid the Payback Amounts stated in the Yellowstone agreements, Respondents, while working in the Yellowstone organization, had a standard practice of fraudulently continuing to debit the Daily Amounts from merchants' bank accounts for at least three to five days, and often much longer. *See, e.g.*, McNeil Tr. at 185:16-186:18; Kern Tr. at 222:8-13. As a result of the overcollections, Respondents also regularly misrepresented to merchants the total amounts collected and the remaining balance.

544. Yellowstone management expressly authorized overcollection as a matter of company policy. For example, in September 2017, Respondent Serebro emailed an announcement to a group of Funders informing them of a new policy which permitted them to continue debiting merchants' bank accounts for up to 51 days after an MCA was fully paid off. Ex. 307 at 2 (informing Funders that Yellowstone would begin "refund[ing] any overcollection" "by the 20th day of the month following the month in which the deal pays off"). Respondent Stern forwarded Serebro's announcement to all Yellowstone Funders the next day. *Id.* at 1.

545. Yellowstone had the ability to stop overcollections by automatically halting the debits as soon as a merchant's balance reached zero, and management debated whether to do so as early as 2019, but Respondents Stern and Glass "overruled" Respondent Reece, who recommended such a policy. Reece Tr. at 166:19-169:20. It was not until July 2020 that Respondents finally ceased its overcollection practice by automatically "shutting [debits] off at zero." Stern Tr. at 205:7-206:21; *see id.* at 192:2-17; Ex. 169 (July 2020 email from Maczuga announcing new policy).

546. Respondents often justified their overcollections by claiming that they needed to take an extra three to five days' worth of payments because it took that long for the ACH debits "to clear" after being debited from merchants' bank accounts. *E.g.*, McNeil Tr. at 185:16-186:18; Kern Tr. at 222:8-13; Ex. 242 at 3; Ex. 179; Bush Aff. ¶ 32 (administrator explained to merchant that MCA was "always 4-5 payments behind" in tracking payments).

547. Even if Respondents' "ACH lag time" explanation had been true, it would not have provided Yellowstone with a basis for overcollection, as Yellowstone did not disclose its overcollection practice to merchants in its agreements or otherwise. *See generally*, *e.g.*, Yellowstone 2020 Exemplar; Yellowstone 2018 Exemplar.

548. Moreover, the risk that one of the final payments would not clear at the end of the three-to-five-day period provided no logical basis for Respondents to keep debiting *more* money: If the risk materialized and a payment failed to clear,

then presumably the subsequent, excess payments also would not clear. Thus, the overcollections were not really about mitigating risk—instead, they were about debiting as many dollars from merchants as Respondents could get away with.

549. But in any event, Respondents' explanation about its ACH payments "clear[ing]" was false. In fact, Yellowstone was able to determine from its payment processors within about two days of payment whether a merchant's payment had cleared and had not bounced or been blocked. *See* Kern Tr. at 221:5-20; Ex. 294.

550. Furthermore, Yellowstone repeatedly overcollected for periods far longer than even its purported three-to-five-day delay, in some cases running overcollections into multiple weeks. *See* Stern Tr. at 203:21-204:3 (acknowledging that a 15-day overcollection, as shown by Yellowstone's internal communications, was "far past any ACH lag time" (discussing Ex. 369 at 5-9)); Melnikoff Tr. at 196:11-22 (discussing MCA where Yellowstone "continued to debit payments for ten days").

551. For example, Yellowstone in September 2017 issued an MCA to the merchant Clifton Ventures through ABC Merchant Solutions, a Yellowstone Subsidiary, for a "[f]unded" amount of "$70,000 and a "[p]ayback" of $104,300. Ex. 217 at 2. The MCA to Clifton Ventures was funded by "TeamBAD," *id.*, which was Respondent Maczuga's funding group at Yellowstone, *see* Ex. 54 at 1 (line 26). In October 2018, an administrator at Yellowstone emailed Maczuga's funding group stating that the MCA was "[p]aid off today," but that Yellowstone was "[l]eaving on" its debits from the merchants' bank account "until $23,767.50 overcollected,"

meaning that Yellowstone would overcollect almost $24,000 on top of its $104,300 Payback Amount. Ex. 217 at 2; *see also*, *e.g.*, Ex. 369 at 6-7 (Respondents Stern, Maczuga, and Reece discussing an amount "overcollect[ed] for 15 days," which Maczuga explained was the sort of event that "happens daily"); Ex. 175 (showing overcollected amounts of up to 40% of total collectable amounts); Ex. 401 (showing overcollected amounts ranging up to 137% of total collectible amounts); Ex. 420 at 6, 12 (showing aggregate amounts "[d]ue to merchants" as a result of "excess collections on merchant cash advances" of $569,164 in 2018 and $695,559 in 2019); Exs. 278, 275 (email from merchant pleading with Respondent Maczuga to stop debiting after the transaction was already paid off).

552. Respondents applied a similar approach to collections on Yellowstone MCAs whose balances were purportedly transferred to new Yellowstone MCAs under Refinancing arrangements. *See* Bush Aff. ¶¶ 31-36; *see also supra* ¶ 336 (defining Refinancing). Respondents did so by not accounting for merchants' recent payments—thereby overstating the unpaid balances that were being transferred to new "renewal" MCAs, and consequently (1) reducing the net amounts of new funding that Respondents provided, and (2) charging interest on the artificially inflated refinancing amount. *See id.*

553. For example, in issuing a renewal MCA to the merchant JB Plumbing, through Capital Advance Services, Respondents failed to account for five days of past payments of $1,699 per day, thereby overstating the merchant's unpaid balance by $8,495. *See id.* ¶¶ 32-33; *see also* Ostrowski Aff. ¶ 24 (Capital Advance

Services failed to account for $7,996 in payments when refinancing an HFH Merchant Services MCA); Ex. 291 (email from Respondent Melnikoff to merchant stating, "All over collection will be applied to the new deal"); Ex. 223 at 1-2 (email from merchant to Funder complaining that when issuing a renewal MCA Yellowstone failed "to return the overdebit amount" from its prior MCA); *cf.* Ex. 281 at 1 (after Funder retained merchant's overcollected amount, Sales Rep wrote "This will force her to get back on the phone with me :) [to sell a new MCA]," to which the Funder replied, "300k here if she wants it.").

554. Instead of refunding the overcollected amounts, Yellowstone used them as a slush fund to charge merchants fees for purported defaults. *See* Reece Tr. at 166:11-168:9, 169:15-20; Kern Tr. at 222:8-223:4; McNeil Tr. at 187:3-188:13. For example, Respondents in December 2018 determined that an MCA funded by Respondent Steve Davis had been overcollected by $4,000. *See* Ex. 207 at 1. Respondents Reece and Stern discussed the overcollection with Glass, and Glass instructed them to "subject Steve's over collection to usual refund procedure." *Id.* Stern instructed Reece to handle accordingly, telling Reece to "note the amount not refunded that can be held for bounce fees." Ex. 206 at 1; *see also*, *e.g.*, Ex. 452 at 1 ("[A]pply full overcollection toward NSF fee (14x)."); Ex. 259 (July 2018 emails from Reece to Yellowstone Funders, copying Glass and Stern, setting forth Yellowstone policy allowing deduction of fees from overcollected amounts).

555. Respondents often fabricated their purported fees in order to claim the overcollected amounts as extra profit. For example, Respondent Steve Davis

instructed Yellowstone's accounting department to deduct $22,680 in fees from an overcollected amount, then reduced his demand to $14,995 when he was told that fee requests over $15,000 needed to be substantiated. *See* Ex. 315. Davis was asked to confirm that he was "refunding the rest of the balance," and Davis responded, "No ill keep it for a while until I decide what to do with it, I don't refund defaulting merchants, rather burn it." *Id.*; *see also* Ex. 269 at 1 (Yellowstone staffer announcing, "WE NOT REFUNDING [*sic*]" overcollected amount); Ex. 237 at 1 (Yellowstone staffer discussing charging "legal fees" in order to "clean up the overcollection").

556. Respondents also kept overcollected amounts to pay off pending balances and fees from other Yellowstone MCAs with the merchant that were still outstanding. For example, upon learning that Steve Davis had accumulated "a ton of overpaid deals," Glass instructed that Yellowstone retain such overpaid balances in instances where Yellowstone had "another contract outstanding." Ex. 377 at 2; *see also, e.g.*, Ex. 375 at 2 (Maczuga instructing colleague to issue "[n]o refund" of overcollected amount because of pending balance); Ex. 284 at 1 (Funder taking fees from overcollected amount based on merchant's purported default in a prior deal).

557. Yellowstone regularly misrepresented to merchants that they would refund any overcollected amounts. *E.g.*, Ex. 429 (instructing merchant not to initiate stop-payment order at its bank during overcollection and representing that any overcollected amounts would be refunded). Such representations were false, as Yellowstone regularly retained such amounts unless and until merchants

repeatedly demanded that they be refunded, and it was "up to the funder's discretion whether to refund the merchant." Ehrlich Tr. at 157:18-23; *accord* Williams Tr. at 197:4-10 ("[S]ome [merchants] got over-collected for weeks, some people got over-collected for months. So it all depends when you've [been] found out, either you're going to get a call from the merchant or you realized in your books that you over-collected the money.").

558. For example, a merchant notified his Yellowstone Funder on November 20, 2017, that his MCA should be paid off within a few days, and the Funder informed him that there were instead "8 more payments," stating, "We overcollect till the 'cleared' balance is zero and the[n] we refund any overcollection." Ex. 297 at 2-3. Two weeks later, on December 6, 2017, the merchant contacted the Funder and asked how long the refund would take, and the Funder replied that it should come by the end of that week. *See id.* at 1-2. After yet another week, the merchant emailed again, complaining, "Mark, it's been another week. I have to have these funds back." *Id.* at 1. The Funder finally responded to the merchant's persistence on December 13, 2017, arranging a refund about three weeks after the deal was paid off. *See id.*

559. The Funder's failure to provide an overcollection absent the merchant's persistent requests—if at all—was typical of Respondents' practices. *See*, *e.g.*, Ex. 230 (notification to Respondents Aaron Davis, Stern, and Reece from Yellowstone customer service email that merchant complained she had repeatedly contacted Yellowstone because "she was overcollected and was told she could get refunded,

but has yet to see the refund"); Ex. 271 (when Respondent Melnikoff was informed that "We over collected over 1K on a 12K deal, She's only asking for $334 (2 payments)," he authorized a $334 refund despite knowing the merchant was entitled to triple that amount); Ex. 245 (merchant complaining to Respondents Sanders and Melnikoff, "I . . . wonder if I was not doing my own math and diligently tracking things myself how much I may have been overcharged past what I agreed with the loan had I not called attention to the matter."); Ex. 270 at 2 (merchant complaint to Respondent Sanders that its $1,045 overcharge had not been refunded despite several requests); Ex. 172 (merchant complaint to Respondent Singfer that its account was still being debited after being paid off, followed by email one month later stating that she "was told I would get the rest of my return yesterday and so far nothing"); Ex. 276 (Funder notified on Apr. 17, 2018 that "merchant has been waiting for a refund since 4/6/2018 and has contacted lawyers"); Ex. 173 at 2 (merchant complaint to Funder, "Why did I have to ask for it to cause the debits to stop?"); Ex. 280 (merchant complaint to Funder, "STOP taking my money you have your money!"); Ex. 178 at 4-5 (merchant complaint to Funders that Yellowstone had overcollected $19,670 on its "loan"); Ex. 196 at 1 (Funder emailed, "I swear merchant did not and will not ask about overcollections").

IV. DELTA BRIDGE IS THE SAME BUSINESS AS YELLOWSTONE, CONTINUED BY RESPONDENTS UNDER A DIFFERENT NAME

560. On Friday, May 21, 2021, Yellowstone stopped entering into new MCA transactions, transferred virtually all of its assets to Delta Bridge, and focused its business on winding down its existing MCA relationships.

561. The next business day, Monday, May 24, 2021, Delta Bridge continued Yellowstone's MCA business essentially uninterrupted.

562. From its first day in business, Delta Bridge had the benefit of virtually all of Yellowstone's personnel, as described below. *Infra* ¶¶ 572-590.

563. From its first day in business, Delta Bridge also had the benefit of virtually all of Yellowstone's assets, as described below. *Infra* ¶¶ 598-614.

564. Yellowstone transferred some of its assets to Delta Bridge through Maczuga LLC, a single-member entity managed by Respondent Maczuga. The asset transfer was effected through two agreements:

- The Asset Purchase Agreement dated May 21, 2021, between Yellowstone's parent company Pinnex Capital Holdings, LLC ("Pinnex") and Maczuga LLC, Ex. 44 (hereinafter, "APA"); and
- The Software License Agreement dated May 24, 2021, between Maczuga LLC and Delta Bridge Funding LLC, Ex. 45 (hereinafter, "SLA").

565. The APA and the SLA described the subject assets as "software." APA Art. I; SLA at 1. This was fraudulent and misleading, as discussed herein, as the agreements covered assets other than software, APA Ex. 1; SLA Ex. 1, and because

Yellowstone conveyed virtually all of its assets to Delta Bridge—not just software, *infra* ¶¶ 603-615.

566. The APA expressly purported to exclude Pinnex's liabilities from the assets transferred. APA § 1.5.

567. The APA stated a purchase price of $120 million, to be paid in daily installments for 20 years, with a buyout clause providing that the purchase price could be fully satisfied at any time upon a $25 million lump-sum payment by Maczuga LLC. APA § 1.4. The SLA contained parallel provisions that made Delta Bridge the ultimate source of the funds. SLA §§ 3, 5, 6. Together, these provisions provided that Delta Bridge would become sole owner of the subject assets when the buyout clause was exercised.

568. Delta Bridge exercised the buyout clause in January 2022. It ultimately paid approximately $28 million for the Yellowstone assets described in the agreements. *See* Maczuga Tr. at 349:18-350:7; Stern Tr. at 173:20-23, 175:4-17; Glass Tr. at 229:25-230:6.

569. Since the asset transfer, as described below, Delta Bridge has carried on Yellowstone's MCA business. Indeed, Delta Bridge is not only carrying on Yellowstone's business under its *own* name, it is also continuing to handle *Yellowstone's* remaining business operations during Yellowstone's so-called "wind down" phase—and it is doing so free of charge.

570. As described herein, Yellowstone and its principals engineered the asset transfer as a strategy to shield them from liability in investigations by the

NYAG, the Federal Trade Commission ("FTC"), and the New Jersey Attorney General (together, the "Government Investigations"). Accordingly, and for the additional reasons that follow, Delta Bridge is Yellowstone's legal and factual successor and is liable for Yellowstone's obligations.

A. The Same People Are Doing the Same Jobs In the Same Offices

571. At every level of the organization, Delta Bridge's MCA business is handled by former Yellowstone individuals.

1. The Same People Are In Charge

572. Delta Bridge's executive team has been comprised—since inception—entirely of longtime Yellowstone executives, most of whom hold the same position at Delta Bridge that they did at Yellowstone. Furthermore, there is material overlap in ownership of the two entities.

573. Respondent Bart Maczuga is the Chief Executive Officer of Delta Bridge. *See* Ex. 51. He held the same role at Yellowstone (together with Isaac Stern), beginning in February 2019. *See* Ex. 50. Previously he had been a Funder at Yellowstone, since 2012. *See* Ex. 48. Maczuga had a 10% indirect ownership stake in Yellowstone through his entity Zuga Corp, and has a 55% indirect ownership stake in Delta Bridge through his entity Maczuga LLC. *See* Ex. 402; Ex. 52.

574. Respondent Vadim Serebro is the general counsel of Delta Bridge. *See* Ex. 51. He has held the same role at Yellowstone since 2018. *See* Ex. 50; Serebro Tr. at 20:1-3. Previously he had been an attorney at Yellowstone since 2013. *See*

Ex. 50; Serebro Tr. at 19:16-21. Serebro has a 10% indirect ownership stake in Delta Bridge through his entity VS Ventures LLC. *See* Ex. 52.

575. Robin Spence is the Chief Financial Officer of Delta Bridge. *See* Ex. 51. He was the Chief Operating Officer at Yellowstone, beginning in March 2015 when he was recruited to join the company by Reece, Yellowstone's president. *See* Ex. 50; Reece Tr. at 27:17-22. Spence had a 0.8% interest in Yellowstone through his entity RM Capital, Inc., and has a 5% interest in Delta Bridge through his entity Dablam LLC. *See* Ex. 402; Ex. 52.

576. Delta Bridge's middle management is also comprised—since inception—entirely of longtime Yellowstone managers and employees. Chris Clarke, a manager at Delta Bridge, held the same role at Yellowstone since 2010. *See* Ex. 51; Ex. 50. Gennadiy Matusevich, also a manager at Delta Bridge, held the same role at Yellowstone since 2018. *See* Ex. 51; Ex. 50. Melanie Cook, who started at Yellowstone in 2019, was promoted from Operations Specialist at Yellowstone to Operations Manager at Delta Bridge. *See* Ex. 51; Ex. 50. Renata Kerman, who started at Yellowstone in 2015, was Corporate Counsel at Yellowstone and was given the additional title of Chief Compliance Officer at Delta Bridge—a position that did not exist at Yellowstone since early 2019. *See* Ex. 51; Ex. 181; Ex. 50; Serebro Tr. at 44:13-46:12.

577. At inception, even Delta Bridge's junior employees were exclusively Yellowstone alumni. *Compare* Ex. 50 *with* Ex 51; *see also* Maczuga Tr. at 297:7-19

(Flores). Delta Bridge later added three junior "operations specialists," who are the only non-Yellowstone individuals at the company. *Compare* Ex. 50 *with* Ex. 51.

578. Maczuga, Serebro, and Spence continue to perform services for Yellowstone, concurrent with their respective roles as CEO, general counsel, and CFO of Delta Bridge. *Infra* ¶¶ 642-648. Serebro continues to serve as Yellowstone's general counsel, concurrent with his role as general counsel of Delta Bridge. *Infra* ¶ 647. Most of Delta Bridge's mid-level and junior employees also continue to perform services for Yellowstone. *Infra* ¶ 649.

579. Ultimately, Delta Bridge shed only a few Yellowstone employees. The only Yellowstone employees who did not transition to Delta Bridge were (1) very junior staff members, and (2) Stern and Reece, who were expressly excluded as part of the scheme to avoid liability in the Government Investigations, as discussed below. *Compare* Ex. 50 *with* Ex. 51; *see infra* ¶ 672. (Three employees of Yellowstone's affiliated collections companies simply transitioned to a different payroll system. *See* Ex. 50.)

2. The Same People Sell, Underwrite, Service, and Collect on Delta Bridge MCAs

580. Yellowstone's Funders—the people who underwrote, negotiated, and continue to service Yellowstone's MCA transactions—are now doing the same as Funders for Delta Bridge.

581. Every single active Yellowstone Funder—except for one—moved over to Delta Bridge and started funding Delta Bridge MCA deals on the day Delta Bridge opened for business. *Compare* Ex. 51 at 2-3 (filter "ifo" = "TRUE") *with* Ex.

48; *see also* Maczuga Tr. at 341:25-342:5. The lone Funder who did not make the transition (Josh Weiss) was not a top funder; he too would have been welcome at Delta Bridge but did not want to pay Delta Bridge's mandatory fee. *See* Maczuga Tr. at 301:12-302:5.

582. Delta Bridge later added a few new Funders, but most of them were people who had formerly been affiliated with Yellowstone—for example, as Sales Reps or as underwriters for other Funders. *Compare* Ex. 51 at 2-3 (filter "ifo" = "TRUE") *with* Ex. 48 (Funders) *and* Ex. 49 (Sales Reps); *see also* Ex. 332 at 6 (Papajan); Maczuga Tr. at 246:10-18 (Papajan); Ex. 197 (Ganesh); Ex. 168 (Jara); Ex. 306 (Rosenzweig). Only two of Delta Bridge's 44 Funders (Avery Cramer and David Martin) are individuals who were not previously associated with Yellowstone, and both of them are minor Funders for Delta Bridge. *See* Maczuga Tr. at 178:21-182:7.

583. Delta Bridge and Yellowstone even acted in concert in terminating their relationships with Funders. Both entities terminated one Funder on the exact same day in March 2022 (Avi Dahan), and terminated another Funder within two months of one another in January and March of 2022 (Yehudah Finkelstein). *See* Ex. 51 at 2-3; Ex. 48.

584. Every single active Yellowstone Sales Rep—except for one—also moved over to Delta Bridge and started selling Delta Bridge MCAs on the day Delta Bridge opened for business. *Compare* Ex. 51 at 2-3, *with* Ex. 49; *see also* Maczuga Tr. at

340:24-341:15. The lone Sales Rep who did not make the transition was the same Josh Weiss. *See supra* ¶ 581.

585. Delta Bridge later added a few Sales Reps, but once again, most of them were people who had formerly been affiliated with Yellowstone. *Compare* Ex. 51 at 2-3, *with* Ex. 49; *see also supra* ¶ 582 (Papajan, Ganesh, Jara, and Rosenzweig). Only two of Delta Bridge's 66 Sales Reps (the same Avery Cramer and David Martin, *see supra* ¶ 582) are individuals who were not previously associated with Yellowstone.

586. Delta Bridge also signed up many of Yellowstone's former brokers (known as ISOs) to sell Delta Bridge MCAs. *See* Maczuga Tr. at 358:23-359:14; McNeil Tr. at 190:21-191:8; Melnikoff Tr. at 208:20-209:5.

587. When a Delta Bridge MCA defaults, Delta Bridge also uses the same two collection companies that Yellowstone used, run by Yellowstone (now Delta Bridge) insiders. Those two collection companies, Max Recovery Group, LLC, and Regain Group, LLC, "are the *only* approved collection vendors," according to Delta Bridge policies. Ex. 405 at 8; *accord* Maczuga Tr. at 360:4-361:21.

588. Max Recovery Group is owned and run by Delta Bridge's General Counsel, Respondent Vadim Serebro—just it was at Yellowstone. *See* Maczuga Tr. at 360:12-21; Serebro Tr. at 68:20-69:17.

589. Regain Group was formerly known as MCA Recovery, LLC, and both are run by Zachary Chasin. *See* Maczuga Tr. at 361:4-21. MCA Recovery was at

one time wholly owned by Yellowstone, and more recently is owned jointly by Chasin and Arch Capital, one of Glass's entities. *See* Ex. 422; Ex. 416.

590. Max Recovery Group, owned and operated by Respondent Serebro, is continuing to handle collections for Yellowstone MCAs, while concurrently handling collections for Delta Bridge MCAs. *See* Serebro Tr. at 68:20-69:8; Ex. 405 at 8; Ex. 143 (handling Yellowstone collections as of January 2022). Likewise, Chasin is continuing to handle collections for Yellowstone MCAs through MCA Recovery, and for Delta Bridge MCAs through Regain Group. *See* Maczuga Tr. at 361:4-21; Ex. 405 at 10; Ex. 140 (handling Yellowstone collections as of April 2022).

3. Respondents and their Personnel Continued to Work From the Same Locations

591. One of Delta Bridge's three locations is a Florida office that was opened by Yellowstone in 2019 or 2020. *See* Ex. 53 (showing Delta Bridge's "Tardis" office location in Fort Lauderdale); Ex. 167 (email to Yellowstone accounting staff attaching invoice for the "new FL office start-up costs" in August 2020); Ex. 413 (the attached invoice); Ex. 412 (tax form showing rent payments from Yellowstone to Tardis in 2019). Tardis Capital Investments, the owner of the property, is owned by entities controlled by Stern, Glass, and Glass's girlfriend. *See* Stern Tr. at 153:6-154:9, 158:5-25.

592. Delta Bridge's general counsel, Vadim Serebro, continued to work out of Yellowstone's headquarters in Jersey City, which he used for both his Delta Bridge and Yellowstone work. *See* Serebro Tr. at 86:10-87:1; Saffer Tr. at 15:11-16:7. His collections firm, Max Recovery Group, also continued to operate out of the

same office. *See* Stern Tr. at 148:15-149:13; Saffer Tr. at 15:11-16:19. Yellowstone did not charge any rent to Delta Bridge, Serebro, or his collections firm, for use of the office. *See* Serebro Tr. at 86:10-87:1; Stern Tr. at 148:15-149:13, 152:20-24. The other collection company, Regain Group (also known as MCA Recovery), also continued to work out of the Yellowstone office. *See* Saffer Tr. at 15:21-17:2; Ex. 150 at 3.

593. Chris Clarke, a manager at Delta Bridge who supervised the accounting team, also continued to work out of the Yellowstone headquarters in Jersey City. *See* Ex. 150 at 3.

594. Many of Delta Bridge's Funders and Sales Reps also continued to work out of the Yellowstone headquarters, according to testimony, documents, and records of the "desk fees" paid to Yellowstone by the Funders. *See* Saffer Tr. at 13:24-15:10; Ex. 400 (desk fees); Ex. 150 at 3-4; *see also* Ex. 137 at 5, 7 (May 2022 email from Delta Bridge Funder to merchant that "we are cloudfund," and indicating "1 Evertrust Plaza" as his address, *i.e.*, the former Yellowstone office); Schwartz Tr. at 15:3-16 (Delta Bridge Funder identifying Delta Bridge's address as "One Evertrust Plaza, Jersey City").

595. The desk fee records show that at least eight Funders continued to work out of the Yellowstone headquarters after switching over to Delta Bridge in May 2021: Respondents Aaron Davis and Singfer, as well as Alex Chasin, Elliot Klein, Jim McNeil, Steven Saffer, Michael Schwartz, and Lanny Vaysman. *See* Ex. 400 (rows 2, 5, 6, 7, 12, 51, 148, 154). At least three more Funders kept their

Yellowstone desks, but the desk fee records do not indicate they were ever charged for the space. *See* Ex. 164 (Avi Dahan); Ex. 165 (Mitchell Cohen); Ex. 166 (Leor Friedman and Sales Rep Rowland Ezekiel). At least five Funders continued to work out of the Yellowstone headquarters all the way until December 2022, when Yellowstone gave up its lease: Respondent Singfer, as well as Alex Chasin, Elliot Klein, Jim McNeil, and Steven Saffer. *See* Ex. 400 (rows 2, 5, 6, 7, 12); *see also* Stern Tr. at 136:13-18, 149:4-8 (lease termination).

596. Yellowstone Funders who worked from other locations, or from home, continue to work from those locations as Funders for Delta Bridge. *E.g.*, Melnikoff Tr. at 17:3-6, 41:14-22.

B. Delta Bridge Succeeded to Virtually All of Yellowstone's Assets In the So-Called "Purchase of Software"

597. From inception, Delta Bridge had the benefit of virtually all of Yellowstone's assets—even though the transaction between the two entities was purportedly limited to "software."

1. The Transition to Delta Bridge Was Fraudulently Disguised as a Sale of Software

598. The transition from Yellowstone to Delta Bridge was effected through the APA between Pinnex and Maczuga LLC, and the SLA between Maczuga LLC and Delta Bridge. *Supra* ¶ 564.

599. The APA itself described the transaction as a "Purchase of Software" by Maczuga LLC from Pinnex, the Yellowstone holding company. APA Art. I. The software that was included in the purchase was Yellowstone's two proprietary

customer relationship management (CRM) systems, Panther and Jasper. APA Ex. 1.

600. However, as Respondent Glass admitted in testimony, "If you just look at [the transaction] as software, you're not understanding the relationship." Tr. of Test. of David Glass ("Glass Strike Tr.") at 987:1-3, *Strike PCH, LLC v. Stern*, July 21-22, 2021, Ex. 10.[13]

601. Indeed, an exhibit buried at the end of the APA made clear that the transaction was not limited to "software," but included all "electronically stored information used by Pinnex to support all revenue-generating aspects of its business." APA Ex. 1. The electronically stored information included, among other things, valuable information about Yellowstone merchants including their contact information, payment histories, defaults, and prior submissions. *See* Maczuga Tr. at 333:12-17, 334:11-14, 344:16-24.

602. The transaction also included an agreement from Respondent Isaac Stern not to compete with Delta Bridge (the "Stern Noncompete"). Ex. 46; APA § 1.3 (identifying the Stern Noncompete as a "Closing Deliverable[]"). But Glass admitted that Stern was for all practical purposes barred from the MCA industry

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[13] The Glass Strike Transcript consists of testimony by Respondent Glass, under oath, before an arbitral tribunal in an arbitration against Respondent Stern by Strike PCH, an indirect minority owner of Yellowstone's holding company, Pinnex. Strike Tr. at 561:8-12 (Glass sworn in), 897:5-10. In that proceeding, Glass was Stern's designated representative to testify in his stead and on his behalf. *Id.* at 754:19-755:16, 842:11-25. Stern was present in the room for Glass's testimony. *Id.* at 559:5, 677:22-24, 689:20-21, 892:5, 990:13-19. The testimony took place on July 21 and 22, 2021.

anyway, as long as the Government Investigations of Yellowstone (and Stern) were ongoing, and so the Stern Noncompete was "worth absolutely zero." Glass Tr. at 235:16-236:7.

2. Delta Bridge in Fact Succeeded to Virtually All of Yellowstone's Assets

603. In reality, Delta Bridge succeeded to far more Yellowstone assets than those described in the APA (the software, the Stern Noncompete, and the electronically stored information).

604. Furthermore, Delta Bridge succeeded to Yellowstone's other assets for free, and without formalizing the transfer in any agreement. *See* Maczuga Tr. at 345:21-347:16 (confirming that Delta Bridge and Maczuga LLC did not "pay for any assets or opportunities that weren't included in the APA" and that "[t]he only payments were made for the software").

605. Delta Bridge succeeded to virtually all of Yellowstone's relationships with the people who sell, underwrite, negotiate, service, and collect on their MCA agreements with merchants: the Funders, Sales Reps, ISOs, and collection companies. *See supra* ¶¶ 580-590. According to Glass, these relationships embodied the "true value" of Yellowstone, and they were transferred to Delta Bridge. Glass Strike Tr. at 739:14-17; *accord* Glass Strike Tr. at 872:4-9 ("The value here is the [Funders]. Okay? 50 [Funders] that, combined, have 300 years of experience engaging in merchant cash advance; they know what they're doing. That's the value.").

606. Respondent Maczuga testified that the transfer of these relationships was "not really . . . on paper, but it was assumed that . . . that was part of the sale." Maczuga Tr. at 333:18-22, 340:24-342:9; *accord* Glass Strike Tr. at 987:4-7 ("What we essentially did was we said, 'We're going to allow you to poach our 50 [Funders]. We're going to lean them your way.'").

607. By succeeding to Yellowstone's merchant data, *supra* ¶ 601; *infra* ¶ 625, and its relationships with the people who interacted with the merchants—that is, Funders, Sales Reps, and ISOs, *supra* ¶ 605—Delta Bridge also succeeded to virtually all of Yellowstone's merchant relationships (including valuable opportunities to renew or Refinance), as well as the sales channels that connected Yellowstone to new prospective merchants. *See* Maczuga Tr. at 344:16-345:20; Dahan Tr. at 146:22-147:25; A. Davis Tr. at 53:21-25; McNeil Tr. at 190:21-191:8, 192:7-15; Melnikoff Tr. at 208:20-209:5. One former Yellowstone and Delta Bridge Funder explained that it was "the same reps who handled the same ISO shops so the deals still kept coming in to Delta Bridge just as they did previously with [Yellowstone]." McNeil Tr. at 190:21-191:8.

608. Indeed, when Delta Bridge started, most of the merchants it sold MCAs to were businesses that had a prior relationship with Yellowstone or came through sales channels established at Yellowstone. *See* Maczuga Tr. at 352:18-23; McNeil Tr. at 191:20-192:15, 192:7-15.

609. Delta Bridge also succeeded to Yellowstone's intellectual property, including, among other things: the form MCA contracts that Yellowstone used with

its merchants, which it created and updated continually over time; the rules and policies that governed Yellowstone's internal and external business practices; and various forms and instruction manuals. *See* Maczuga Tr. at 343:15-344:15; *see also* McNeil Tr. at 26:11-20.

610. Delta Bridge also succeeded to the various internet domain names and email accounts that Yellowstone created for Funders and Sales Reps to use for their communications, including communications with merchants and brokers. *See* Maczuga Tr. at 342:10-14; A. Davis Tr. at 35:21-37:16; Melnikoff Tr. at 55:3-10, 66:23-24; Singfer Tr. at 42:12-16. The unique domain names and email addresses used by the Funders and Sales Reps were created and previously owned and managed by Yellowstone and are now owned and managed by Delta Bridge. *See* Maczuga Tr. at 342:10-14; A. Davis Tr. at 35:21-37:16, 40:13, 41:6; Kern Tr. at 26:9-15; Melnikoff Tr. at 56:5-8; Saffer Tr. at 68:3-14; Singfer Tr. at 42:12-16. The domains and email addresses are valuable because they are an important means of communication among everyone in the sales channel, including Funders, Sales Reps, brokers, and merchants. *See* A. Davis Tr. at 40:8-24 ("If I had to continue doing what I was doing and change my e-mail and people that knew my new address couldn't contact me at my previous e-mail address it would matter, yes.").

611. Although Delta Bridge succeeded to virtually all of Yellowstone's assets, the only assets it actually paid for were the software and the electronically stored information. There is no agreement memorializing the transfer of the other assets, which Delta Bridge did not pay for. *See* Maczuga Tr. at 345:21-347:16. Even

the Stern Noncompete (which was worthless in any case) was not part of the purchase price under the terms of the APA, and it was not mentioned in the SLA at all. *See* APA § 1.4 ("Purchase Price Consideration"); *see generally* SLA.

612. In testimony, members of Yellowstone management were able to identify only one significant asset that Yellowstone retained following the APA: the right to receive payments from merchants with existing Yellowstone MCAs that were still pending at the time of the sale. *See* Reece Tr. at 97:11-14, 102:14-18; *accord* Maczuga Tr. at 336:16-25 (also identifying office equipment as excluded from the sale); Glass Tr. at 233:19-24 (same).

613. Even that lone asset purportedly retained by Yellowstone has largely been acquired by Delta Bridge over time, as Delta Bridge and its Funders have Refinanced old Yellowstone deals at Delta Bridge. *See* Ex. 160 (email notification generated by Delta Bridge instructing Funder: "[Merchant] has an active balance with Fundry. . . . All Fundry balances must be paid off by Delta Bridge when renewing."); Ex. 330 (Aug. 2022 text from Spence to Yellowstone management reporting a "$260k refi from Delta"); Dahan Tr. at 146:22-147:25; A. Davis Tr. at 55:3-11; McNeil Tr. at 191:17-19; Melnikoff Tr. at 209:5-10; *see supra* ¶ 336 (defining Refinancing). In testimony, Maczuga described this as "paying off the Fundry platform, and moving [a deal] onto the Delta platform." Maczuga Tr. at 283:12-14.

614. In each Refinancing, Yellowstone merchants signed a new MCA agreement with Delta Bridge, and Delta Bridge deducted the merchant's remaining

Yellowstone balance from the Funding Amount on the new Delta Bridge deal. *See* Maczuga Tr. at 353:15-355:5; *see, e.g.*, Ex. 60 at 1, 16 (Cloudfund contract and addendum deducting $85,973.25 to pay off the balance to Green Capital Funding, the Yellowstone Subsidiary); *see supra* ¶ 336 (defining Refinancing). At the same time, Delta Bridge made a direct payment to Yellowstone, amounting to the remaining balance on the merchant's Yellowstone MCA. *See* Maczuga Tr. at 353:15-356:4. As a result of the Refinancing, Yellowstone was paid in full and relieved of the risk of nonpayment by the merchant; that risk was transferred from Yellowstone to Delta Bridge. *See* Maczuga Tr. at 356:5-12; *see, e.g.* Ex. 344 at 4-5 (Maczuga texting Stern, Glass, and Reece about $750,000 loss incurred by Delta Bridge due to a merchant's default shortly after Refinancing at Delta Bridge and paying the merchant's $403,000 balance with Yellowstone).

615. During his testimony, Respondent Maczuga was unable to provide any non-privileged reason that Delta Bridge purchased only certain assets from Yellowstone, rather than purchase the company outright. *See* Maczuga Tr. at 337:2-338:4; *accord* Reece Tr. at 103:15-21 ("I don't know why it wasn't sold as a full business as opposed to assets."). When pressed, Maczuga claimed that he was just not interested in acquiring the right to receive payments from merchants with existing Yellowstone MCAs that were still pending, because "[t]he price would be significantly different." Maczuga Tr. at 338:5-18. But Maczuga never even explored what the additional cost would have been, or whether it would have been offset by

the immediate stream of revenue to Delta Bridge that would have come with the right to receive the payments. *See* Maczuga Tr. at 338:5-340:21.

C. Delta Bridge *Is* Yellowstone—Minus the "Baggage" of the Investigations

616. Having succeeded to virtually all of Yellowstone's assets, Delta Bridge is now continuing the same business that Respondents ran under the Yellowstone name for more than a decade. Indeed, not only is Delta Bridge continuing Yellowstone's business under the Delta Bridge name, it is also handling the remaining business operations for Yellowstone itself, and doing so free of charge.

617. As Respondent Glass testified, referring to Delta Bridge: "[T]he company goes on without us." Glass Strike Tr. at 738:11-12; *accord* Glass Strike Tr. at 740:13-17 (Q: "And so in effect, if I understand it, the business goes on as it was before, minus the three of you?" Glass: "That's correct."); *id.* at 739:25-740:3 ("[W]e sold the software and Isaac's agreement to not compete to Delta Bridge, and they continued without us."). Glass described Delta Bridge as "a new company without the baggage"—meaning the individual targets of the Government Investigations. Glass Strike Tr. at 737:1-21.

618. One Funder described it in testimony as "a seamless transition" to Delta Bridge. A. Davis Tr. at 50:3-4. Another was unable to identify any differences from Yellowstone, when he started at Delta Bridge. *See* Singfer Tr. at 41:9-18. At least one Funder described the transition as a "rebrand[]" when questioned by a confused merchant. Ex. 147 at 5-6.

619. Pitching a prospective investor, Stern wrote: "The company is technically a start up[.] But between us would instantly be profitable," noting that it would have "[m]y entire team" plus all of Yellowstone's assets apart from the existing MCA deals. Ex. 351 at 1, 5.

620. Delta Bridge continues to gratuitously protect Yellowstone's interests, including by not allowing Funders to enter into deals with any merchant who has a pending balance with Yellowstone unless the new deal pays off the Yellowstone balance. *See* Ex. 333 (Delta Bridge employee assuring Glass in May 2022 that "there are rules in place, you have to either settle or refi the balance at fundry to fund at delta"). Delta Bridge also has an arrangement with Yellowstone that protects Yellowstone from the financial impact of negative balances in Funders' Yellowstone portfolios. *See* Maczuga Tr. at 291:6-23 ("I made an agreement with Fundry that if [a Funder's book] ends negative at Fundry, we will send the difference from Delta.") (testifying about Ex. 341).

621. Delta Bridge has even asserted *Yellowstone's* attorney-client privilege as a basis for withholding documents in the NYAG's investigation. *See* Ex. 459 at 11 (privilege log - emails) (rows 316-331); *id.* at 15 (privilege log - mobile) (rows 10, 13-14, 17-22). And Yellowstone has produced to the NYAG numerous internal Delta Bridge documents, *e.g.*, Ex. 142 ("borrowing base report" email sent Mar. 2022 from dbfreporting@gmail.com to Spence, Maczuga, and Delta Bridge's main investor); Ex. 155 ("RE: CloudFund LLC Monthly Reconciliation"), and vice versa, *e.g.*, Ex. 163

(June 2021 email from Reece to Stern, vendors@fundrycap.com, and funders@fundrycap.com).

1. Delta Bridge's Business Is the Same as Yellowstone's

622. The next business day after Yellowstone stopped entering into new MCA transactions, Delta Bridge began entering into MCA transactions, picking up right where Yellowstone left off. *See, e.g.*, Ex. 107 (Cloudfund agreement dated Monday, May 24, 2021, Delta Bridge's first day in business); Ex. 114 (Yellowstone Subsidiary agreement dated Friday, May 21, 2021, the day Yellowstone stopped entering into new MCA transactions).

623. Virtually all of the individuals selling, negotiating, servicing, and staffing Delta Bridge MCA deals were the same as the individuals who were performing those functions at Yellowstone. *See supra* ¶¶ 572-590.

624. In their work on Delta Bridge MCAs, all of those individuals were using the same CRM software as they had been using in their work on Yellowstone MCAs: Jasper, which was renamed for a different gemstone, Citrine; and Panther, which was renamed Bobcat, another large feline. *See* Maczuga Tr. at 363:21-364:12; McNeil Tr. at 26:23-27:17 ("They're very similar, yes."); *see also* A. Davis Tr. at 52:22-53:4 ("They're the same."); Singfer Tr. at 51:4-12.

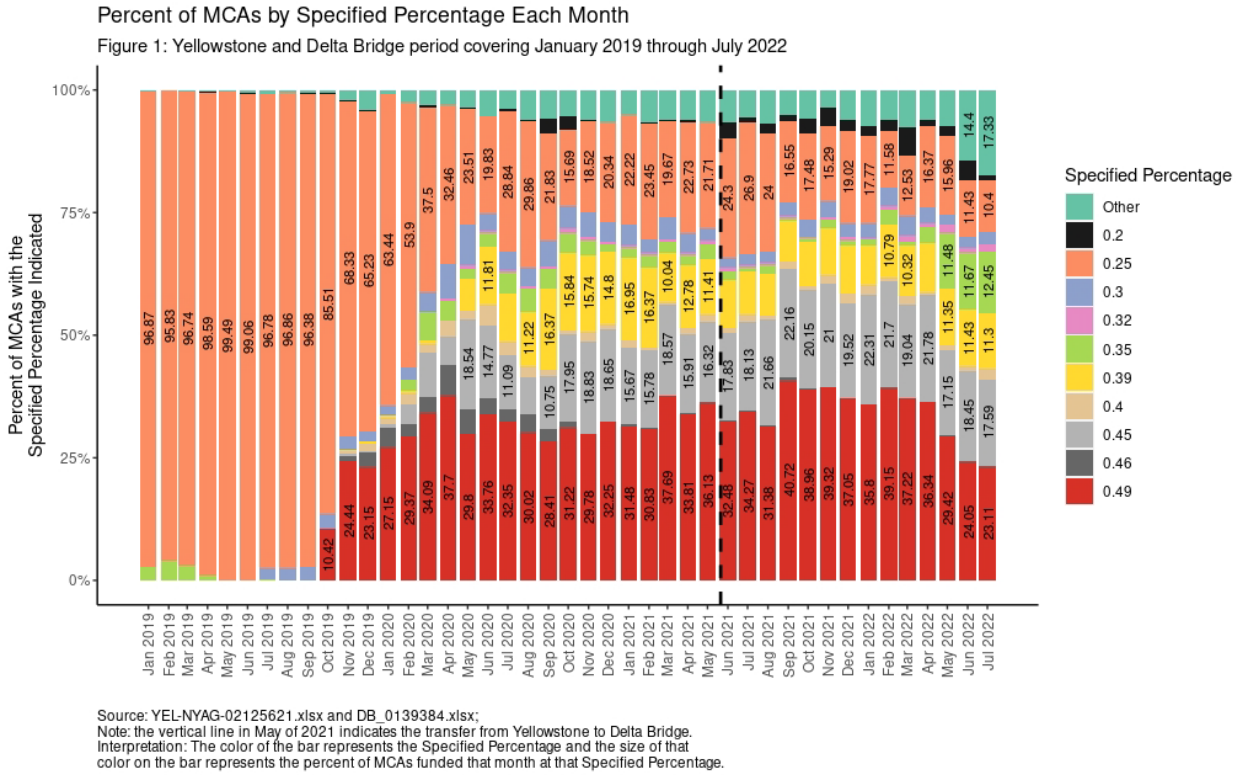
625. Those individuals also retained access to the original Yellowstone systems (Panther and Jasper) where they had access to valuable data about prior deals, such as payoff histories, defaults, and submissions. *See supra* ¶ 601; Aryeh Tr. at 126:16-25; McNeil Tr. at 53:20-25; Singfer Tr. at 44:3-7; *see, e.g.*, Ex. 160

(email notification generated by Bobcat submitting prospective deal to Delta Bridge Funder, including the merchant's Yellowstone deal history); Worch Tr. at 65:19-66:6 (testifying about Ex. 160). More broadly, Delta Bridge had the benefit of all of the "electronically stored information used by Pinnex to support all revenue-generating aspects of its business." APA Ex. 1.

626. Funders at Delta Bridge have the same responsibilities as they had at Yellowstone, and the process they use in funding deals is the same. *See* Maczuga Tr. at 79:19-25; A. Davis Tr. at 31:25-32:13; Saffer Tr. at 39:4-41:11; Ex. 350 at 6 (Glass texting, the night before Delta Bridge opened for business, "Is it harder to fund than before?" and Maczuga assuring him, "No, it's the same process.").

627. According to testimony from Funder Respondents and Delta Bridge's CEO, Funders use the same methods to underwrite and price Delta Bridge MCA deals that they used to underwrite and price Yellowstone MCA deals. *See* Maczuga Tr. at 362:12-24; A. Davis Tr. at 51:22-52:12, 53:6-13, 78:4-8; Kern Tr. at 178:21-179:3; Melnikoff Tr. at 210:4-18; Dahan Tr. at 145:25-146:2; McNeil Tr. at 190:11-15; Singfer Tr. at 44:11-46:21.

628. Accordingly, there was no change whatsoever in how Specified Percentages were set on MCA contracts before and after the May 24, 2021, transition from Yellowstone to Delta Bridge, as reflected in this bar graph.



Source: YEL-NYAG-02125621.xlsx and DB_0139384.xlsx;
Note: the vertical line in May of 2021 indicates the transfer from Yellowstone to Delta Bridge.
Interpretation: The color of the bar represents the Specified Percentage and the size of that color on the bar represents the percent of MCAs funded that month at that Specified Percentage.

Rubey Figures Aff. Ex. 1. This bar graph shows the proportion of Respondents' MCA agreements stating a given Specified Percentage, for each month since January 2019. The vertical dashed line in May 2021 indicates the transition from Yellowstone to Delta Bridge. The bar graph reflects that the transition from Yellowstone to Delta Bridge did not result in any material change in the proportion of MCA agreements stating a given Specified Percentage. *Id.*

629. Delta Bridge did not provide any additional training or instruction when Funders transitioned from Yellowstone to Delta Bridge. *See* Maczuga Tr. at

157:11-22 (no additional training for Funders), 362:25-363:5 (same, concerning underwriting specifically); A. Davis Tr. at 50:5-8; *see also* Maczuga Tr. at 155:17-156:5 (no training on how to set the Specified Percentage or the Daily Amount because the Funders already "had experience in the industry"—meaning at Yellowstone).

630. Funders at Delta Bridge are compensated in the same way they were compensated at Yellowstone: through the PNL system, described above. *See* Maczuga Tr. at 221:3-222:18; Ex. 349 at 1 (Maczuga texting Respondent Singfer: "Funding limit, commission structure, all that stuff will be unchanged."); Ex. 348 (same text to another Funder); Singfer Tr. at 40:14-41:18 (testifying about Ex. 349 at 1); *supra* ¶¶ 289-292, 295 (describing PNL system).

631. The sales process is also the same at Delta Bridge as it was at Yellowstone. *See* Maczuga Tr. at 81:2-17; Aryeh Tr. at 128:23-129:15. Delta Bridge also leverages the sales channels established during the Yellowstone period, wherein merchants were signed up for MCAs through relationships among brokers, Sales Reps, and Funders. *Supra* ¶ 607; *see also supra* ¶ 608 (explaining that when Delta Bridge started, a substantial portion of its business was with merchants that had a prior relationship with Yellowstone).

632. Delta Bridge did not alert merchants about the switch from Yellowstone to Delta Bridge, even when merchants with an existing Yellowstone MCA Refinanced the Yellowstone MCA at Delta Bridge. *See* Maczuga Tr. at 357:7-358:21. The Funder or Sales Rep would simply treat it as a normal Refinancing; the

only differences were that the merchant received a Cloudfund-branded MCA contract, instead of a Yellowstone one, and the contract included an addendum authorizing payoff of the balance to Yellowstone. *Id.*

633. For example, the merchant Anchor Smokehouse expressed surprise to receive an email "from cloudfund" when she was negotiating a Refinancing of her Yellowstone MCA in January 2022. Ex. 147 at 6 . In reply, the Funder explained that "we rebranded since your last funding." *Id.* at 5.

634. Delta Bridge also did not alert the ISOs that brokered its MCA transactions about the switch from Yellowstone to Delta Bridge, except insofar as it was necessary to onboard them to the Delta Bridge system. *See* Maczuga Tr. at 358:23-359:14. ISOs working with Yellowstone and Delta Bridge understood them to be one and the same. *See* Ex. 157 at 5 (email from ISO to Respondent Serebro stating, "Everyone on your end is in cohoots [*sic*] and NO ONE can get a straight or honest answer from YS [Yellowstone], Delta [Bridge], Cloud[fund], Green [Capital] or whatever the heck you call yourselves.").

635. The parties to both the APA and the SLA—Delta Bridge, Pinnex, and Maczuga LLC—all agreed not to make any public announcement concerning the transition at all, absent the consent of the others. *See* APA § 4.3; SLA § 12. In fact, no public announcement concerning Delta Bridge's launch was ever made. *See* Maczuga Tr. at 359:16-20.

2. Delta Bridge Employees and Funders Are Also Handling the So-Called "Wind-Down" of Yellowstone's Business

636. Shorn of its assets, Yellowstone is now essentially a shell. Yellowstone's president testified that the only purpose of Yellowstone's continued existence—and the only thing standing in the way of dissolution—is resolution of the outstanding litigations. *See* Reece Tr. at 40:15-24 ("[N]ow that the business has been shut down for a number of years and once litigation is done, then we'll make a final distribution, should there be one, and then we will permanently close the business.").

637. Without any assets or personnel of its own, Yellowstone's few remaining business operations have all been handled by *Delta Bridge* employees (*i.e.*, the former Yellowstone employees). *See* Maczuga Tr. at 300:21-301:9; Stern Tr. at 147:10-148:14. Many of these Delta Bridge employees still use Yellowstone email addresses for that purpose. *See* Maczuga Tr. at 303:4-8.

638. All of Delta Bridge's top executives and middle management have continued to perform services for Yellowstone since the transition to Delta Bridge. *See* Maczuga Tr. at 294:4-297:2 (testifying about Ex. 51). In total, at least 14 of Delta Bridge's 25 employees continued to perform services for Yellowstone. *See id.*

639. Delta Bridge and its employees have provided these services for Yellowstone without pay. *See* Maczuga Tr. at 279:19-22, 280:13-21, 283:17-284:5, 298:22-299:6. Rather, Delta Bridge and its employees have provided services to Yellowstone "gratuitously," on a "volunteer[]" basis. Maczuga Tr. at 352:2-12; *see*

also Stern Tr. at 135:8-16 (testifying that Serebro is serving as Yellowstone's general counsel without pay); Serebro Tr. at 85:22-86:1 (same); Glass Strike Tr. at 741:21-742:5 (Glass testifying about Spence: "I could call him. I can ask him questions. He's not contractually obligated to answer them, but he will.").

640. The APA between Pinnex and Maczuga LLC expressly provided that Maczuga would "cause [Delta Bridge's holding company] to provide to [Pinnex] reasonably requested services employing the Software for the purpose of winding-down [Pinnex's] affairs." APA § 4.1 ("Further Assurances"). The SLA, to which Delta Bridge was itself a party, did not include any obligation to provide wind-down services to Pinnex. *See generally* SLA; *see also id.* § 11(a).

641. Delta Bridge employees have continued to provide services to Yellowstone long after Delta Bridge terminated the continuing obligations between the two companies by exercising the buyout clause in the APA and SLA. *See* Maczuga Tr. at 351:7-352:7 ("It wasn't written anywhere. It was just something that I promised them and made a vow to Isaac that I would help him wind down [Yellowstone]. . . . I volunteered myself and others."); *see also* Stern Tr. at 186:6-16 (testifying that the parties' obligations to one another were completed as of the buyout).

642. As Yellowstone wound down its existing MCA relationships, Respondent Maczuga, the Delta Bridge CEO, was actively monitoring Yellowstone activity within the Yellowstone system, looking for irregularities to address or to bring to the attention of other members of Yellowstone management. *See* Maczuga

Tr. at 36:13-17, 287:5-15, 289:2-290:4. In doing so, Maczuga continued his duties as Yellowstone co-CEO prior to the transition. *See id.*

643. For example, in April 2022, Maczuga learned (from a Delta Bridge employee doing Yellowstone work) that certain Funders were seeking to withdraw funds from their residual Yellowstone portfolios before certain debits had been deducted. *See* Maczuga Tr. at 284:15-287:15 (testifying about Ex. 336). Concerned that Funders might end up withdrawing more funds from Yellowstone than they were entitled to, Maczuga directed the employee not to process any withdrawals until the debits were processed. *See id.* These discussions occurred in a group chat that included Yellowstone management—Respondents Stern, Glass and Reece—but it was Maczuga who gave the direction to hold the payments. *Id.*

644. Stern, Yellowstone's CEO, testified that when he needs information about a Funder's residual Yellowstone portfolio, he gets it from the Delta Bridge CEO: "If I needed something on a specific funder, I'd say, 'Hey, Bart, can you—can you get me so-and-so report[?]' [H]e would know how to access it. I actually have no idea how to." Stern Tr. at 131:6-22; *see also* Stern Tr. at 129:16-25.

645. Spence, the Delta Bridge CFO, is responsible for sending monthly financials to Yellowstone stakeholders including Glass. *See* Glass Strike Tr. at 743:12-13. Spence also continues to generate and send the monthly PNLs to Funders for their remaining Yellowstone deals, as well as for their Delta Bridge deals. *See* Maczuga Tr. at 273:13-275:22; Yagecic II Tr. at 85:7-13; *see, e.g.*, Ex. 453 (Jan. 2023 email from Spence to Funder); *see also* Worch Tr. at 87:12-14 (this was

Spence's job at Yellowstone too). Spence and another Delta Bridge employee continue to handle Yellowstone's remaining accounting needs. *See* Stern Tr. at 60:13-61:6, 129:19-23.

646. When Yellowstone's management—including Stern, Glass, and Reece—require financial information about Yellowstone, Spence is still the one they go to. *See* Reece Tr. at 131:3-17; Glass Strike Tr. at 741:21-742:5; Stern Tr. at 131:9-14. Glass testified that Spence "is at my disposal." Glass Strike Tr. at 741:21-742:5.

647. Likewise, Serebro, the Delta Bridge general counsel, handles legal matters for Yellowstone in his concurrent role as *its* general counsel. *See* Maczuga Tr. at 280:13-16, 280:25-281:9; Stern Tr. at 17:8-16, 129:19-23, 135:8-11. Stern testified that he spoke with Serebro "half a dozen times" when preparing for his testimony in the NYAG's investigation. Stern Tr. at 18:8-10.

648. Since transitioning to Delta Bridge, Spence and Serebro have spent as much as 25% of their time working on residual Yellowstone matters, *see* Maczuga Tr. at 281:10-21, and Maczuga has spent as much of 20% of his time on Yellowstone matters, *see id.* at 293:3-16, although their work for Yellowstone has diminished over time.

649. In addition to the executives, Delta Bridge's mid-level and junior employees have also performed services for Yellowstone. *See* Maczuga Tr. at 294:4-297:2 (testifying about Ex. 51); Stern Tr. at 132:16-133:16, 194:18-195:4; *see, e.g.*, Ex. 136 (May 2022 email from Delta Bridge employee, sending Yellowstone daily

cash report to Yellowstone management, including Stern, Reece, and Maczuga); Ex. 138 (same); Ex. 330 (Delta Bridge employees sending Yellowstone financials to Yellowstone management in an Aug. 2022 groupchat); Ex. 336 (same, in Apr. 2022); Ex. 132 (identical, simultaneous emails to Funder sent by manager in her Yellowstone and Delta Bridge capacities). One junior Delta Bridge employee has continued to perform services as a personal assistant to Respondent Stern, the Yellowstone CEO, as she had done prior to the transition. *See* Maczuga Tr. at 297:20-298:21.

650. None of the Delta Bridge employees, including Maczuga, Spence, and Serebro, have been compensated by Yellowstone—or by Delta Bridge—for the services they have provided to Yellowstone. *See* Maczuga Tr. at 279:19-22, 280:13-21, 298:22-299:6; Stern Tr. at 133:25-134:6. Likewise, Delta Bridge itself has not been compensated by Yellowstone for the services that its CEO, CFO, General Counsel, and other employees, have provided to Yellowstone, even though Delta Bridge pays each of the executives an annual salary ranging from $475,000 to $950,000. *See* Maczuga Tr. at 283:17-284:5, 300:11-20.

651. Since the transition, Delta Bridge Funders have continued to service their remaining Yellowstone MCA deals while concurrently negotiating and servicing MCA deals at Delta Bridge. *See* Stern Tr. at 151:8-12; Maczuga Tr. at 341:21-342:5; A. Davis Tr. at 56:7-13; 36:8-37:14; Saffer Tr. at 70:20-71:22. There are no differences in how Funders service their Yellowstone and Delta Bridge deals. *See* A. Davis Tr. at 56:7-13.

D. Yellowstone Transferred Its Assets to Shield Them from Potential Liability Resulting from the Government Investigations

652. Yellowstone transferred its assets to Delta Bridge at a time when it was facing potentially staggering liabilities in the NYAG and other Government Investigations. *Infra* ¶¶ 654-655. In addition, Yellowstone's primary lender was threatening to foreclose its loan as a result of the Government Investigations, and efforts by Yellowstone's management to find replacement financing were met with rejection due to concern about liability in the investigations. *Infra* ¶¶ 658-661.

653. In that context, Yellowstone's management devised a plan to transfer virtually all of its assets to an insider, Maczuga, while retaining "the baggage" of the Government Investigations. Glass Strike Tr. at 737:1-21; *infra* ¶¶ 663-666. Yellowstone's management—and Delta Bridge's management, which was largely the same—believed the plan would allow Yellowstone's MCA business to "grow free and clear" of the "legacy legal issues" that Yellowstone was facing. *Infra* ¶¶ 665-666.

1. Yellowstone Recognized at the Time of the Asset Transfer that the Investigations Presented Grave Liabilities

654. At the time that Yellowstone transferred its assets to Delta Bridge, Yellowstone was under investigation by the NYAG, and faced a threat of colossal monetary liabilities. Respondent Glass estimated in February 2020 that Respondents would have to pay back around ***$2 billion*** if Yellowstone's MCAs were determined to be loans. *See* Ex. 359 at 2 (Glass text to Respondents Maczuga and

Stern and a Funder: "If the merchant's right to reconciliation is a sham then the product is a loan. And we'd be over the usu[r]y cap and would have to pay back around 2 billion dollars.").

655. At the time of the asset transfer, Yellowstone had also recently been sued by the State of New Jersey, which claimed that Yellowstone's MCAs were in fact usurious loans. Complaint ¶ 168(a), Grewal v. Yellowstone Capital LLC et al., No. C-000180-20 (N.J. Super. Ct. Ch. Div. Dec. 8, 2020). And it had just resolved (less than one month prior) a lawsuit by the FTC, incurring a liability of $9,837,000 to the FTC. Stipulated Order for Permanent Injunction and Monetary Judgment, FTC v. Yellowstone Capital LLC et al., No. 20-cv-06023-LAK (S.D.N.Y. May 4, 2021), ECF No. 44.

656. Yellowstone was also facing myriad civil litigations by former merchants and business partners, including Respondent Davis. *See, e.g.*, New Y-Capp v. Arch Cap. Funding, LLC, No. 18-CV-3223 (ALC), 2022 WL 4813962, at *4-5 (S.D.N.Y. Sept. 30, 2022); Complaint, Caporly LLC v. Pinnex Capital Holdings LLC, Doc. No. 1 (Del. Ch. Apr. 16, 2021) (suit by Respondent Davis).

657. During the time that the asset transfer from Yellowstone to Delta Bridge was being negotiated, Yellowstone was also confronting financial calamity. The company was approaching insolvency, according to Glass. *See* Glass Strike Tr. at 591:7-20 (Glass testifying two months after the APA was signed: "So . . . today's valuation, the company is worth pretty close to zero. All the company has left right now is the receivables that it's collecting versus the money that it still owes [to its

primary lender]."); *accord* Glass Strike Tr. at 737:22-25; *see also id.* at 755:13-16, 842:22-25 ("I feel and [Stern] felt that nobody is in a better position to speak to the current value of the company . . . than I am.").

658. More urgently, Pinnex's primary lender—a credit facility called YESCO—was threatening to foreclose on its loan to Pinnex (Yellowstone's holding company) and had given Stern a foreclosure deadline of April 7, 2021. *See* Glass Strike Tr. at 750:17-25; Maczuga Tr. at 315:15-316:14. YESCO had earlier informed Stern that it would not lend Yellowstone any additional funds because "[t]hey are concerned that they will get stuck holding the bag for [the] FTC." Ex. 353 at 4.

659. Stern was able to buy some additional time and avoid foreclosure by signing a personal guarantee for more than $70 million in order "to prevent the company from collapsing." Glass Strike Tr. at 750:17-751:11.

2. The Asset Transfer Was Motivated by Yellowstone's Liabilities

660. The impending loss of Yellowstone's credit line left it with limited options: It could find new lenders or investors, or it could sell the company. *See* Maczuga Tr. at 306:6-13, 310:21-311:2; Glass Strike Tr. at 737:22-25, 930:12-22. Yellowstone's management expended significant efforts pursuing these options. *See* Maczuga Tr. at 306:6-307:2; Glass Strike Tr. at 737:6-15; Glass Tr. at 235:9-236:13; Reece Tr. at 126:22-127:3; Stern Tr. at 163:19-164:10.

661. But Yellowstone's management found that Yellowstone's potential liability in the ongoing Government Investigations and lawsuits was an

insurmountable obstacle for the prospective lenders, investors, and buyers they approached. *See* Maczuga Tr. at 306:6-307:2; Glass Strike Tr. at 737:6-15; Glass Tr. at 235:9-236:13; Reece Tr. at 126:22-127:3; Stern Tr. at 163:19-164:10.

662. Furthermore, Yellowstone's management—including Respondents Stern, Glass, Maczuga, and Reece—harbored their own concerns about liability in the investigations if Yellowstone remained in business. *See* Maczuga Tr. at 309:16-310:18, 311:17-312:17; Reece Tr. at 127:18-128:23.

663. In testimony, Respondent Reece admitted that this concern over Yellowstone's future liability in the Government Investigations motivated the transfer of Yellowstone's assets to Delta Bridge. *See* Reece Tr. at 127:18-129:4 (Q: "[I]s that concern [about liability in the investigations if Yellowstone remained in its existing form] part of what motivated the decision to enter into the asset sale between Pinnex and Maczuga LLC?" A: "It was one, certainly.").

664. Yellowstone's management ultimately concluded that they could resolve these concerns by starting a new company to continue Yellowstone's business, without what Glass called "the baggage" of Stern and Reece's involvement, as both were named defendants in the FTC lawsuit. Glass Strike Tr. at 737:1-21; *see id.* ("The only thing necessary for Delta to continue to operate was the removal of myself, Isaac Stern who is the defendant in the FTC case, and Jeffrey Reece who is a personal defendant in the FTC case."); *id.* at 806:17-807:5 ("[W]hen reality set in that there wasn't going to be any funding whatsoever coming to this company that has its issues, the plan was get a new company opened that we

are not owners of . . . [and] get an indirect $6 million a year payment from them."); Maczuga Tr. at 317:12-318:9; Reece Tr. at 117:24-118:17; Stern Tr. at 163:19-164:10 ("[T]he only choice we had was to sell the software to someone."); *see also* Ex. 345 (Glass texting Stern and Reece a few months after the transfer: "I think we are in the 9th inning of our regulatory issues. . . . Never know what next shoe to drop will be. . . . But I think the delta transaction sends a great message.").

665. Yellowstone's plan hinged on the new company's ability to convince investors and lenders that Yellowstone's liabilities would remain with Yellowstone. In a text message to Maczuga, Reece, and Serebro, Spence summarized Delta Bridge's pitch to potential lenders:

> The product (MCA) is great, and our model is great . . . . The problem is legacy legal issues at the old firm . . . . Even though we believe we'll be vindicated in the courts, it's (i) too expensive, and (ii) too distracting. . . . Newco [*i.e.*, the "new company"] solves the legacy legal issues (freeing up millions in legal every year) . . . .

Ex. 352. In testimony, Maczuga confirmed that the text from Spence represented Delta Bridge's pitch to prospective lenders and investors. *See* Maczuga Tr. at 322:20-23.

666. Stern made a similar pitch for YESCO to finance the new company:

> So One other angle we are working on is having [Yellowstone] sell the assets(not including the receivables) of the company to a new company started by Bart [Maczuga] and Vadim [Serebro] and have yellow wind down and pay off the yesco debt. The new company would have a clean slate but With all the experience of old company to grow free and clear.

Ex. 351 (typos in original); *see also* Stern Tr. at 166:20-167:22 (testifying about Ex. 351).

3. Yellowstone Engineered the Sale to an Insider and Maintained Significant Control

667. The structure and financing of Delta Bridge's acquisition of Yellowstone's assets was arranged by Yellowstone management. The transaction was conceived by Respondent Glass. *See* Glass Strike Tr. at 567:14-24 ("It was my idea."). Glass testified that "nobody knows more" about the transaction than he does, "including the buyer," *i.e.*, Maczuga. Glass Strike Tr. at 567:14-24 ("I was very involved in the asset sale to Delta. . . . It was my idea. I negotiated it. . . . There's nobody that would know more about that, including the buyer.").

668. The transaction was largely "negotiated" in a group chat among Yellowstone management, including Maczuga, Stern, Glass, and Reece. *See* Maczuga Tr. at 331:21-332:9, 333:2-5; *see also* Glass Tr. at 230:3-231:3 (identifying those four as the individuals involved in negotiations, plus Fligelman "on the Delta side").

669. Both of Delta Bridge's main sources of financing are traceable to Respondent Stern, the Yellowstone CEO. It was Stern who identified Delta Bridge's main investor, Asaf Fligelman, and connected him with Maczuga. *See* Reece Tr. at 121:11-122:11. Of the four owners of Delta Bridge (*i.e.*, Fliegelman, Maczuga, Serebro, and Spence), Fliegelman is the only one who was not formerly involved with Yellowstone. *See* Ex. 52 (Fliegelman's interest in Delta Bridge's holding company is 30%, through his entity Lianaco LLC).

670. Fliegelman, in turn, secured the other primary source of Delta Bridge's financing—its primary lender (Basepoint Capital). *See* Maczuga Tr. at 320:7-17.

671. Stern's identification of Fligelman was the result of extensive efforts by Yellowstone's management, including Respondents Glass and Reece, to identify financing for Delta Bridge so that Delta Bridge could acquire the assets from Yellowstone. *See* Maczuga Tr. at 316:15-317:7; Glass Strike Tr. at 800:15-801:7. Glass described these efforts as "a mad scramble to try to sell [Yellowstone's] assets off." Glass Strike Tr. at 802:14-25. Glass testified that "we were seeking to get funding for the new company. Had we not been able to secure funding for the new company, there wouldn't have been anybody to purchase our assets . . . ." Glass Strike Tr. at 800:15-18; *accord* Glass Strike Tr. at 800:2-3 ("We arranged to sell an asset to salvage some funds for ourselves . . . ."), 737:22-23 ("We sold them the asset so that we didn't walk away with nothing at all, because that's what we were heading towards.").

672. Stern and Reece—Yellowstone's CEO and President—were expressly excluded from direct involvement in Delta Bridge because they had been named as defendants in the FTC investigation. *See* Glass Strike Tr. at 737:1-5 ("The only thing necessary for Delta to continue to operate was the removal of myself, Isaac Stern who is the defendant in the FTC case, and Jeffrey Reece who is a personal defendant in the FTC case); Ex. 351 at 3 (Stern texting: "It's better after all the lawsuits that my [n]ame not be on it."); Maczuga Tr. at 317:8-318:9 ("So me, myself, was not named in the FTC, or any of those investigations. So it was best for me to leave [Stern and Reece] behind, and start my own company."); Stern Tr. at 178:6-179:7 ("At the time every conversation that I had . . . was, you know, what's the

story with the FTC lawsuit . . . . So whatever company they were going to be, me being in it in any way would be detrimental to their being able to raise debt based on my experiences I had just come off of having."); *see also* Reece Tr. at 117:24-118:17 ("[P]ractically speaking, it would likely be difficult to have an institution invest in a business in which I was a senior leader" as a named defendant in the FTC case).

673. Glass has denied involvement at Delta Bridge since the transfer but testified that "I'm allowed to have any backdoor deal I want with Delta" and "I cannot prove that [such] a deal does not exist." Glass Strike Tr. at 927:3-22; *see also* Glass Strike Tr. at 868:12-15 ("[T]here's no restriction from me for going in and buying shares. There's no restriction for Bart to give me the entire company back.").

674. In fact, Glass has maintained some involvement in Delta Bridge's business. *See, e.g.*, Ex. 346 (June 2021 texts between Glass, Maczuga, and a Delta Bridge Funder discussing the health of Delta Bridge's business); Ex. 347 (June 2021 texts between Glass, Maczuga, and a Delta Bridge Funder concerning collections on Delta Bridge MCAs); Ex. 339 (Maczuga seeking Glass's advice in Dec. 2021 about a potential change in Delta Bridge's business, and Glass talking him out of it); Ex. 340 (Delta Bridge employee updating Glass in Dec. 2021 on a Delta Bridge "developers call"); Ex. 342 (Maczuga updating Glass and Stern in Oct. 2021 on Delta Bridge financials); Ex. 338 (Glass urging a Delta Bridge Funder not to exit the MCA business in Jan. 2022).

675. Similarly, Stern texted a prospective Delta Bridge lender in January 2021 that he would not be "[o]fficially" involved at Delta Bridge, but "would advise them [f]or free." Ex. 351 at 3.

676. Delta Bridge continues to make rent payments to Stern and Glass, through their entity Tardis Capital Investments, *supra* ¶ 591, and Glass, Stern, and Reece continue to receive correspondence at the Tardis office used by Delta Bridge, *see* Ex. 411 (Mar. 2022 IRS notice to MBO Capital Holdings LLC, the entity through which Glass, Stern, and Reece maintain their ownership of Yellowstone); Ex. 410 (correspondence to Glass in Nov. and Dec. 2021).

677. Yellowstone also maintained significant control over the assets it conveyed until at least January 2022, when Delta Bridge and Maczuga LLC ultimately exercised the buyout clause. According to the APA, Maczuga LLC was not allowed to "sell, transfer, lease, dispose of or license the [subject assets] to any person, except [Delta Bridge]." APA § 3.3 ("Covenants of Seller"); *see also* SLA § 1(a) (making license exclusive to Delta Bridge without right to sublicense).

678. Furthermore, Pinnex (Yellowstone's holding company) held a security interest in Delta Bridge's holding company, Whenco LLC, until at least January 2022 when Delta Bridge and Maczuga LLC ultimately exercised the buyout clause. The security interest extended to Maczuga LLC's entire 55% ownership stake in Whenco, and it was granted through a Pledge and Security Agreement attached to the APA and signed by Maczuga. APA Ex. 3 § 2 ("As security for [the payments to Pinnex], [Maczuga LLC] hereby pledges and assigns to [Pinnex], and grants to

[Pinnex] a security interest in . . . [a]ll of [Maczuga LLC's] membership interests in [Whenco LLC] . . . ."); *see* Ex. 52 (showing Maczuga LLC's 55% stake in Whenco). The asset transfer itself was conditioned on Maczuga's pledge of its interest in Whenco to Pinnex. APA at 1; APA Ex. 3 at 1.

679. Conditions that could cause Pinnex to realize Maczuga LLC's majority interest in Whenco included, among other things, a single missed payment under the APA. APA Ex. 3 § 6(a) (defining "Event of Default" to include "the occurrence of an Event of Default under the APA"); APA § 2.1(a) (defining "Event of Default" to include "fail[ure] to make any payment required hereunder when due and payable"); *accord* Glass Strike Tr. at 869:21-24 (Glass explaining that "if they do miss a payment, Pinnex, the main company, steps back in to take over majority control of the new company").

4. Delta Bridge Significantly Underpaid for the Assets It Acquired from Yellowstone

680. Delta Bridge paid approximately $28 million for the Yellowstone assets described in the APA and the SLA. *Supra* ¶ 568.

681. But Respondent Glass testified that the true value of the assets at the time of the transfer was far more than that. *See* Glass Tr. at 234:14-235:6 ("probably a couple of hundred million dollars"); *see also* Glass Strike Tr. at 842:22-25 ("I feel and [Stern] felt that nobody is in a better position to speak to the current value of the company [shortly after the asset transfer] . . . than I am.").

682. Indeed, during 2020 alone, Yellowstone lent approximately $325,998,508 to merchants in connection with its MCA agreements, and collected

approximately $477,652,363, yielding a profit of more than $150 million. Ex. 154 at cells AO7, AO9. During the first five months of 2021, by the time of the asset transfer to Delta Bridge, Yellowstone had already lent approximately $139,412,589 to merchants in connection with its MCA agreements, and collected approximately $197,121,588, yielding a profit of more than $57 million. *Id.* at cells AB7, AC7, AD7, AE7, AF7, AB9, AC9, AD9, AE9, AF9.

683. Prior to the sale, the company obtained a valuation that was limited to the software assets described in the APA and the SLA, and did not account for all of the other assets transferred to Delta Bridge. *See* Maczuga Tr. at 349:7-15; *see also supra* ¶¶ 605-614 (describing other assets transferred). Maczuga was indifferent to the results of the valuation in any event. *See* Maczuga Tr. at 348:24-349:6 ("I knew what I felt this was worth to me. It might not have been worth the same to whoever's doing the valuation."); *see also id.* at 364:13-365:4 (Maczuga testifying that he had no idea what it would have cost to recreate the software independently and that he had never bothered to find out).

684. In fact, as described above, Delta Bridge succeeded to far more of Yellowstone's assets than those described in the APA and the SLA—including all of Yellowstone's relationships with the people who sell, underwrite, negotiate, service, and collect on their MCA agreements with merchants, which embodied Yellowstone's "true value." Glass Strike Tr. at 739:14-17, 872:4-9; *see supra* ¶¶ 605-614. Delta Bridge succeeded to these additional assets from Yellowstone without paying for them. *See supra* ¶¶ 604, 611.

685. In fact, Respondents have continued to generate substantial proceeds by carrying on Yellowstone's MCA business through the Delta Bridge entity—far more than the $28 million purchase price. As of the end of 2023, Delta Bridge has collected an estimated $1.2 billion through its MCA transactions, including at least $361 million in interest.[14]

V. SCALE AND EFFECTS OF RESPONDENTS' FRAUD AND ILLEGALITY

686. Respondents have operated their illegal, fraudulent scheme at a massive scale since at least 2013, which is the start of the period at issue. *Supra* ¶¶ 117-120.

687. During the entirety of the period at issue, Respondents have issued 115,468 MCA transactions, through which they have collected an estimated $4.5 billion from merchants, of which $1.38 billion constitutes interest.[15]

688. Through their fraudulent and illegal practices, Respondents have inflicted immense harm upon small businesses, their principals, their employees, and the communities in which they operate.

689. For example, Yellowstone, through its MCAs and its collections on them, pushed City Bakery, a beloved New York institution that employed 30 to 50

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[14] Blake Rubey, Data Analyst for the Office of the Attorney General, calculated these figures using data produced by Delta Bridge in Exhibit 468.

[15] Blake Rubey, Data Analyst for the Office of the Attorney General, calculated these figures using data produced by Yellowstone and Delta Bridge in Exhibits 397, 399, and 468.

workers, to close its doors in 2019 after nearly three decades of business. *See* Rubin Aff. ¶¶ 1, 50. Between 2017 and 2019, the Yellowstone Subsidiaries Capital Advance Services and High Speed Capital issued to City Bakery a series of MCAs. *See id.* ¶¶ 6-9. The transactions had finite Terms and fixed Daily Amounts that had no connection to the Specified Percentages stated in the agreements. *See id.* ¶¶ 25-36.

690. By 2018, City Bakery found itself stuck in a spiral of debt, such that the only way it could afford to pay Yellowstone was by taking out new MCAs, including from Yellowstone itself. *See id.* ¶¶ 36, 39, 49. Yellowstone issued a final series of MCAs to City Bakery in 2019, which together purported to claim a right to *three-quarters* of City Bakery's daily revenue. *See id.* ¶ 45. The transactions' escalated Daily Amounts were more than the business could bear, and City Bakery closed its doors in October 2019. *See id.* ¶¶ 32, 47, 49.

691. Yellowstone—operating through its Subsidiaries HFH Merchant Services and Capital Advance Services, and with Respondent Steve Davis as Funder—worked disastrous effects on the Calgary, Canada-based business Zomongo and on the personal finances of its owner, Jeremy Ostrowski. *See* Ostrowski Aff. ¶¶ 1, 49, 55. Yellowstone shorted Zomongo on its funding amounts, overcollected daily payments from it, and fraudulently obtained judgment against it by filing a false affidavit executed by Steve Davis. *See generally id.* Yellowstone's conduct, in conjunction with that of other funding companies introduced to Zomongo

by Yellowstone's brokers, "ruined Zomongo's business, pushing it to dramatically reduce its operations and lay off about 300 employees." *Id.* ¶¶ 55-56.

692. Yellowstone's MCAs had a "ruinous impact" on the business and personal finances of merchant Ali Alabudi, owner of the Austin, Texas-based business Austin's Habibi. *See* Alabudi Aff. ¶ 77. Alabudi, formerly a restaurant owner, took out a series MCAs from 2016 through 2018 from Yellowstone, operating variously as Capital Advance Services, Merchant Funding Services, and High Speed Capital. *See id.* ¶¶ 1-2. Respondents' purported MCAs were fraudulent loans, set to fixed Daily Amounts and finite terms, and Yellowstone (as Capital Advance Services) fraudulently filed a confession of judgment previously executed by Alabudi and obtained judgment against him and his business, Austin's Habibi. *See generally id.*

693. In 2019, Alabudi was forced to close his restaurant, partly due to financial pressure from paying interest and fees on Yellowstone's MCAs. *See id.* ¶ 77. After closing the restaurant, Alabudi reopened Austin's Habibi as a food truck, but the business continues to suffer as the result of the fraudulently obtained judgment. Alabudi is today unable to sell food through online food applications such as Door Dash and Uber Eats, since Yellowstone uses its judgment against him and Austin's Habibi to seize revenues that are processed by those companies. *See id.* ¶ 78.

694. As discussed above, the experience that merchant Jerry Bush, former owner of Richmond, Virginia-based J.B. Plumbing, had with Yellowstone came close

to ending Bush's life. *See supra* ¶¶ 410-411. Bush was told by Respondent Steve Davis that even after closing his business, he could escape its debts to Yellowstone only by winning the lottery or if he were dead, since Davis could not collect money from a dead body. *See* Bush Aff. ¶¶ 59-61. Prompted by Davis's comments, and desperate to save himself and his family from Yellowstone's collection efforts, Bush attempted suicide about two days later. *See id.* ¶ 61.

695. Respondents continue to work ruinous effects on merchants' businesses through their Delta Bridge organization. Hygge Supply, a home kit company based in Michigan, took out a pair of MCAs from Delta Bridge/Cloudfund, doing business as Samson Group, in July and August 2022. *See* Karcher Aff. ¶¶ 1, 9. Hygge Supply found in August 2022 that it was generating insufficient revenue to sustain Delta Bridge's daily debits, and in October 2022, the debits started bouncing because the merchant had insufficient funds in its bank account. *See id.* ¶¶ 25, 30. Delta Bridge sued the merchant in New York state court and, through a collection agent, obtained a UCC lien against an unrelated group of properties that the merchant's guarantor used to generate rental income, and notified one of the merchant's prospective clients that all funds owed to the merchant should be put in a trust for payment to Delta Bridge. *See id.* ¶¶ 33-34. In March 2023, Hygge Supply filed for bankruptcy. *See id.* ¶ 36. Nevertheless, despite the bankruptcy, Delta Bridge continued to assert its UCC claims against the guarantor's unrelated assets, including through filings in the bankruptcy proceeding itself. *See* Resp. to

Mot. to Enforce Auto. Stay, In Re Hygge Supply, Inc., No. 23-00468-jwb (Bankr. W.D. Mich. Apr. 19, 2023), ECF No. 21.

696. Respondents, meanwhile, have benefited greatly from their fraudulent, illegal exploitation of merchants.

697. For example, Stern, who delivered bakery products before getting into the MCA business, *see* Stern Tr. at 25:7-10, and who was adjudged bankrupt in 2010, *see* Ex. 421 (Order of Discharge dated June 11, 2010), has made enough money issuing fraudulent and illegal loans that he will "never [have to] work again for his entire life," Glass Strike Tr. at 808:18-21; *see also* Stern Tr. at 24:18-21 (testifying that he has no work or employment aside from his position with Yellowstone); Glass Tr. at 25:16-26:2 (testimony by Respondent Glass that he has not had any job since he stepped down as Yellowstone's Chief Financial Officer in 2014).

698. Yellowstone and Delta Bridge's Funders have also become fabulously wealthy through their work issuing fraudulent and illegal loans. *See* Ex. 339 at 7 (Maczuga texting Glass in Dec. 2021 about Yellowstone/Delta Bridge: "This place made like 30+ millionaires"); *accord* Ex. 328 at 11 (Maczuga defending Glass in Dec. 2022, stating that he "single handedly created 30+ millionaires"); *see also* Ex. 338 at 3-4 (Jan. 2022 text from a Delta Bridge and former Yellowstone Funder to Glass: "I just don't know how much more money I really need to live at this point. . . . I've already accomplished for what I need for life after 55").

VI. LIABILITY OF INDIVIDUAL RESPONDENTS

A. Officer Respondents

699. Each Officer Respondent—Glass, Stern, Reece, Maczuga, and Serebro—has supervised the acts of Respondents' personnel in effecting Respondents' fraudulent and illegal MCA transactions and has been personally involved in developing and/or implementing policies and practices at Yellowstone and/or Delta Bridge for effecting such transactions, as set forth herein.

700. Through such conduct, each Officer Respondent has been involved in and aware of repeated and persistent fraud and illegality in violation of Executive Law § 63(12).

701. As a result, each Officer Respondent is individually liable for all repeated and persistent fraud and illegality of Respondents in connection with transactions of Yellowstone and/or Delta Bridge occurring during the duration of his role as officer of such entity.

1. David Glass

a. Glass Actively Managed, Directed, and Participated in Yellowstone's Operations Throughout Its Entire Existence

702. Glass has been continually involved in and aware of Respondents' fraud and illegality, as shown by the facts set forth above and the evidence filed herewith, such as the following.

703. Glass regularly discussed and formulated Respondents' policies and practices for its MCA business during frequent discussions—by text message, email, and in person—with the other Officer Respondents, including Stern, Reece,

Maczuga, and Serebro. *See* Stern Tr. at 91:7-94:12; *see, e.g.*, *supra* ¶¶ 162, 175, 192, 207, 218-223, 228-232, 282, 294, 340, 352, 545, 554, 556.

704. Glass trained Funders to plan their MCAs based on finite repayment terms, which he trained them should be kept "short." *Supra* ¶ 162.

705. Glass trained Funders in how to set Daily Amounts for MCAs by dividing their total Payback Amounts by the number of days in their finite repayment terms. *Id.*

706. Glass, along with Reece and Serebro, arranged for Yellowstone's contract-generating software to fix the Specified Percentages at 25%, regardless of how that percentage related to the Daily Amount and to a merchants' revenue. *Supra* ¶¶ 219-220, 222.

707. Glass—overruling Stern—directed that Yellowstone's contract-generating software include a message instructing Funders that Specified Percentages "must be 25%," regardless of how that percentage related to the Daily Amount and to a merchants' revenue. *Supra* ¶ 223.

708. Glass was personally involved in planning and carrying out Yellowstone's responses to Reconciliation requests submitted by merchants. *Supra* ¶ 229.

709. Glass was aware that Yellowstone fraudulently processed merchants' Reconciliation requests so as to avoid refunds by treating funds received by merchants from other MCA companies as revenue. Glass Tr. at 189:9-190:25.

710. Glass was aware that merchants did not understand Specified Percentages and commonly mistook them for interest rates. *Supra* ¶ 326.

711. Glass was aware that Respondents' Reconciliation clauses provided merchants with no relief for sudden, recent revenue drops but only on an averaged basis over the entire transaction. *Supra* ¶ 282.

712. Glass was aware that Yellowstone discouraged Funders from issuing refunds to merchants by decreasing their compensation in the event of such refunds. *Supra* ¶¶ 291, 294.

713. Glass, together with Stern, maintained Yellowstone's policy of overcollecting payments beyond the total repayment amounts stated in Respondents' agreements and using such amounts as slush funds for charging fees to the merchants. *Supra* ¶¶ 544-545, 554.

714. Glass was aware that Yellowstone exercised no oversight on representations made by its Funders to merchants during Funding Calls. *Supra* ¶ 340.

715. Glass was consulted by other members of Yellowstone's management, including Yellowstone's president, concerning revisions to Yellowstone's template contract for its agreements with merchants. *See* Ex. 261.

716. Glass typically had to sign off on Yellowstone's policies applicable to its Funders and its template contracts with merchants, and often drafted Yellowstone's policies, and internal announcements implementing those policies. *See* Reece Tr. at 160:19-161:20; Maczuga Tr. at 378:5-24.

717. Glass participated in Yellowstone's MCA transactions both directly, as a Funder, and through his companies Arch Capital and Nevada Factoring, which served as sales representatives for and investors in Yellowstone's MCAs. *Infra* ¶ 726.

b. Glass Is a De Facto Officer and Shareholder of Yellowstone

718. Glass has for years been a *de facto* officer and shareholder of Yellowstone, even as Respondents have attempted to conceal his integral role in the company due to his criminal background.

719. Glass is a notorious white-collar criminal in the New York financial world. From 1995 to 1996 he was an account manager for the Long Island-based investment firm Sterling Foster, *see* Glass Tr. at 38:22-24, which was regarded as a "classic 'pump and dump' scam."[16] Glass later told the story of his experiences at Sterling Foster to a filmmaker who created the 2000 movie *Boiler Room* based on Glass's story. *See* Glass Tr. at 39:7-25.

720. From 2002 to 2007, Glass ran a securities trading company that he founded called Jasper Capital LLC. *See* Glass Tr. at 39:4; Ex. 440 at 1-2. In February 2007, Glass was indicted in U.S. District Court for the Southern District of New York and charged with committing securities fraud and conspiracy to commit securities fraud in violation of 15 U.S.C. §§ 78j(b) and 78ff and 18 U.S.C. § 371, respectively. Ex. 440 at 1-8. Prosecutors alleged that Glass had participated

[16] Joe Hagan, *The Sucker Wears a Wire*, N.Y. Mag. (Oct. 29, 2007), Ex. 441 at 4-5.

in a "massive insider trading scheme[]," [17] that was reported on as "an elaborate trading and bribery ring that is being billed as one of the biggest insider trading cases since the Ivan Boesky scandal of the late-1980s." [18]

721. In December 2008, Glass pled guilty and was sentenced to three years of probation and ordered to forfeit $2.7 million to the government. *See* Glass Tr. at 260:10-16; Ex. 440 at 23, 27. Glass was also barred for life by the Securities and Exchange Commission from working in the securities industry. *See* Glass Tr. at 261:15-19; Ex. 440 at 29; Ex. 440 at 32.

722. In April 2009, five months after pleading guilty, Glass opened Yellowstone Capital LLC. *See* Glass Tr. at 28:2-30:5. During the first five years of Yellowstone's existence, Glass was its majority owner, Managing Member, and Chief Financial Officer. *See* Glass Tr. at 29:8-13 (majority owner), 29:25-30:5 (CFO); Stern Tr. at 37:10-13 (majority owner); Ex. 409 at 1 ("Managing Member"); Ex. 414 at 2 (same).

723. By late 2014, Yellowstone realized that outside investors were reluctant to commit money to Yellowstone as long as Glass held a visible role in its management, due to his history and reputation, so Yellowstone arranged for an

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[17] Press Release, U.S. Att'y S.D.N.Y., UBS Executive and Former Morgan Stanley Lawyer Among 13 Charged in Massive Insider Trading Schemes (Mar. 1, 2007), Ex. 440 at 12.

[18] Liz Moyer, *A Big Splash on Wall Street*, Forbes (Mar. 2, 2007), Ex. 441 at 20; *see also* Jenny Anderson, *13 Charged in Insider Trading Ring*, N.Y. Times (Mar. 2, 2007), Ex. 441 at 27; *2 Plead Guilty to Insider Trading*, L.A. Times (Feb. 28, 2008), Ex. 441 at 30.

investor to buy out Glass's ownership share and purportedly removed him from his management role as CFO. *See* Reece Tr. at 91:24- 92:3; McNeil Tr. at 35:16-21. Yellowstone did not replace Glass as CFO thereafter, however, and Glass remained Yellowstone's *de facto* CFO until at least May 2021. *See infra* ¶¶ 733-745.

724. In December 2014 and January 2015, Glass sold his share to an entity called Barnes Asset Management, LLC ("BAM"), *see* Glass Tr. at 51:24-52:6; Stern Tr. at 34:24-35:14, and purportedly resigned as CFO, *see* Glass Tr. at 29:25-30:5. Glass later admitted that Yellowstone's new owner "did not want [Glass's] name anywhere near the company." Glass Strike Tr. at 603:1-13.

725. But Glass remained intimately involved in Yellowstone's operations.

726. From 2015 to 2017, Glass was personally involved in Yellowstone MCA deals, either as a Funder, Glass Tr. at 97:16-99:10 (discussing Ex. 321), through his company Arch Capital, which brokered and invested in individual Yellowstone's MCAs, Glass Tr. at 104:10-105:14 (discussing Ex. 317), 105:22-109:20 (discussing Ex. 316), 121:15-25; *see also* Dahan Tr. at 152:15-19; S. Davis Tr. at 257:7-16; and through Nevada Factoring LLC and Slice Capital, which he owned jointly with Stern and Reece and which was managed by Maczuga, and which also invested in individual Yellowstone MCAs, Glass Tr. at 115:5-14, 117:8-120:23 (discussing Ex. 423); Maczuga Tr. at 54:17-56:20; S. Davis Tr. at 260:18-261:2 *see also* Yagecic II Tr. at 93:12-94:22 (discussing Ex. 301); Maczuga Tr. at 61:13-22, 63:10-19.

727. During this period, Glass continued to appear at Yellowstone offices, and Stern regularly flew to Florida to visit Glass. *See* Stern Tr. at 85:22-86:21.

728. Glass also continued to participate in the onboarding and training of new Funders. One former Yellowstone Funder testified that Glass met with him before he started in March 2015 to explain the PNL and how Funders are compensated. Saffer Tr. at 31:12-22; *see* Ex. 454.

729. In 2017, Glass repurchased an ownership stake in Yellowstone through a "management buyout," or "MBO," in which Glass, Stern, and Reece bought BAM's controlling stake in Yellowstone. *See* Glass Strike Tr. at 919:15-21; Reece Tr. at 30:22-24; Mazcuga Tr. at 70:16-19; *see also* Glass Tr. at 34:23-35:7.

730. Glass was architect of the management buyout, as he later testified:

> ***I allowed*** Isaac and Jeff to come in with me on the deal because I was convinced that they would bring value to ***my deal***. . . . Had either of those people brought other parties to the table, passive investors, I would have thrown them out of the deal. . . . I was not looking for passive investors. I would not have allowed [them].

Glass Strike Tr. at 578:20-579:12 (emphasis added); *see also* Ex. 418 (Purchase Agreement).

731. On paper, Glass configured his share of Yellowstone to be purchased by a trust organized for the benefit of his son, who was at the time a minor. *See* Glass Tr. at 52:25-53:21. But the equity is in effect controlled and owned by Glass. As he later testified, "***I repurchased shares*** [in Yellowstone] ***through my son's trust*** in May of '17." Glass Strike Tr. at 565:2-3 (emphasis added); *accord* Reece Tr. at 30:11-24, 50:8-10. The trustee of the trust that holds Glass's share of Yellowstone is Carlos Jimenez, a long-time subordinate of Glass and employee of Yellowstone,

Arch Capital—and now Delta Bridge. *See* Glass Tr. at 55:14-60:12, 204:10-17; Ex. 51 at 1.

732. Stern testified that after the buyout, Glass was involved in Yellowstone management "through me [Stern]," Yellowstone's CEO. Stern Tr. at 87:16-18. Glass spoke with Stern on a "[p]robably daily" basis concerning "everything" about Yellowstone's business, including "corporate policy and rules concerning the merchant cash advances." Stern Tr. at 87:16-89:8.

733. As *de facto* CFO, Glass was "in charge of finances," and Yellowstone co-CEO Maczuga reported to Glass concerning financial matters at the company. Maczuga Tr. at 369:4-21, 374:3-7. Reece testified that Glass "typically had to sign off on policies applicable to Yellowstone's Funders and its MCA agreements," and that he was often one of the primary drafters of those policies, and the announcements implementing them. Reece Tr. at 160:19-161:20 (discussing Ex. 260).

734. Glass, together with Stern, made the decisions about the compensation that Yellowstone paid to its senior management, including Maczuga, Reece, and Serebro. *See* Ex. 367 at 8-10.

735. Glass was also involved in supervising compensation of Yellowstone's Funders and Sales Reps. In June 2017, Reece referred a Yellowstone Sales Rep to Glass to address a question about sales commissions. *See* Ex. 310. The Sales Rep asked, "[W]hy is Glass answering this question?" to which Glass responded, "I wrote the new commission policy (and the old one)." *Id.*; *see also* McNeil Tr. at 63:14-

64:15; S. Davis Tr. at 105:4-6, 267:19-271:9 (Glass responsible for deciding Steve Davis's "book limit," which set the amount of money he was approved by Yellowstone to lend); Ex. 258 (Yellowstone employee telling Respondent Davis to "[S]peak to Glass" about his book limit, not Stern, who was also copied on the email); Ex. 188 (Funder asking Yellowstone management, including Glass, for a book limit increase); *c.f.*, Ex. 357 at 4-8 (Glass overruling the rest of management on granting a policy exception to a Funder, in the management group chat). Glass also supervised Yellowstone's preparation of Funders' PNL reports, which determined their compensation. *See* McNeil Tr. at 60:5-61:22; Yagecic II Tr. at 86:10-87:23 (testifying about comments left by Glass in Yagecic's May 2016 PNL); Ex. 290 (email from Glass sending a Funder his PNL in 2018). In January 2019, Glass participated in a meeting with Stern, Reece, and others, about potential changes to Yellowstone's system for compensating Funders. *See* Ex. 204.

736. As a *de facto* officer "at the top of the company," Glass ran Yellowstone, along with Stern, and the two of them "made decisions" for managing the company. Reece Tr. at 50:18-23; *see also* Maczuga Tr. at 74:12-75:17; Dahan Tr. at 35:2-6, 47:4-9; Ehrlich Tr. at 29:4-14, 61:16-62:4; McNeil Tr. at 65:6-20, 197:11-16; Miller Aff. ¶ 14; Schwartz Tr. at 89:3-21; Williams Tr. at 52:7-54:14, 215:23-217:7, 222:15-224:8; Worch Tr. at 24:21-28:12, 62:2-24.

737. As testified by Steve Davis, Glass had "the largest say in the [Yellowstone] company," such that "if David Glass said something to Isaac [Stern], Isaac was going to change his tune." S. Davis Tr. at 268:5-10; *see also id.* at 99:21-

100:9, 101:24-102:16; Yagecic I Tr. at 94:25-95:12 ("[T]he whole company pretty much reported to him [Glass]."); *id.* at 50:20-23; McNeil Tr. at 198:2-7; Williams Tr. at 215:17-216:5; Ex. 296; Ex. 260.

738. As a top officer, Glass held the authority to terminate high-level personnel. In August 2018, Glass fired Steve Davis, Yellowstone's top Funder. *See* Stern Tr. at 104:19-25. In doing so, Glass spoke about Yellowstone in the first person, saying, "Steve, you've killed ***us*** and ***we're*** done with you." Glass Tr. at 225:11-15 (emphasis added); *see also* Ex. 252; Ex. 236; Glass Tr. at 226:6-24 (Glass fired Funder Mark Worch); Ex. 286 (Glass involved in termination of Funder Desmond Miller).

739. Respondents continued, however, to conceal Glass's role as an officer, both from Yellowstone's lenders and from company personnel. When asked under oath why he did not "put [his] name" on the company after the management buyout and become a member of its board, Glass responded, "Because we're still dealing with institution such as YESCO [Yellowstone's lender] and credit. I cannot be formally involved . . . . It's bad optics." Glass Strike Tr. at 617:23-618:9; *see also* Ex. 262.

740. In September 2019, Reece texted Glass in advance of a meeting to address the topic of MCA payment Reconciliation and wrote, "Give me a ring so Isaac [Stern] and I can be your voice in the group." Ex. 365 at 2. Glass complained, "[We] are a target because of a 12-year-old insider trading plea," and Reece responded, "Right. Let's keep you off the calls. Work through us." *Id.*; *see also* Ex.

376 (Reece texting Glass a screenshot of an email and adding, "[D]idnt want to copy you on the email"); Ex. 354 at 2-3 (Glass drafting company policy statement to be communicated through other officers); Ex. 356 at 4 (same).

741. Working behind the scenes, Glass served as the architect behind Yellowstone's dealings, including designing the purported "asset sale" between Yellowstone and Delta Bridge. *Supra* ¶ 667. Glass described his role by testifying, "It was my idea. I negotiated it," and, "There's nobody that would [know] more about [the deal], including the buyer." Glass Strike Tr. at 567:14-24.

742. After the "asset sale", Glass has continued to communicate frequently with Maczuga, Carlos Jimenez, and other Delta Bridge personnel about their management of the purportedly new Delta Bridge entity. *See supra* ¶ 674; *see generally*, *e.g.*, Ex. 342; Ex. 339 at 4-8.

743. Glass further demonstrated his intimate involvement in Yellowstone affairs in July 2021, when he appeared as the sole witness on Stern's behalf in an arbitration between Stern and a former Yellowstone investor. *See supra* ¶ 600 n.13; *see also* Ex. 458 ¶ 28 (Final Award, *Strike PCH, LLC v. Stern*, Mar. 30, 2022).

744. As compensation for his *de facto* officer role, Glass has from 2014 through at least 2022 received money pursuant to an "agreement with Isaac [Stern] to share in his compensation" from Yellowstone. Glass Tr. at 245:7-247:8. Glass testified that he and Stern divided Stern's compensation on a "probably 50/50" basis, but that he is unaware of how much he has received from Stern in Yellowstone income over the years. Glass Tr. at 246:4-247:14.

745. During the NYAG's investigation, Yellowstone, Stern, and Reece admitted Glass's *de facto* officer role through their attorney, who stated as follows:

> The documentary and testimonial record contains hundreds (perhaps even thousands) of instances of [Glass's] participation in critical discussions and playing an instrumental role in Yellowstone's corporate decision-making, throughout the entirety of relevant time period. As you have seen in your investigation, he frequently was consulted regarding key strategic issues that implicated not only corporate decision-making but also critical legal matters. These communications took place not just with Mr. Stern, but also with virtually every key member of Yellowstone's management, often without Mr. Stern's participation.

Ex. 448 at 2 (Letter from Yellowstone Counsel to NYAG, May 12, 2023).

2. Isaac Stern

746. Stern is liable for the repeated and persistent fraud and illegality committed by Respondents through Yellowstone, including the Yellowstone Entities.

747. Stern co-founded Yellowstone in 2009 and has been its CEO since that time. *Supra* ¶ 88.

748. Stern has been involved in and aware of Yellowstone's fraud and illegality, as shown by the facts set forth above and shown in the evidence filed herewith, including the following.

749. Stern regularly discussed and formulated Respondents' policies and practices for its MCA business during frequent discussions—by text message, email, and in person—with the other Officer Respondents, including Stern, Reece, Maczuga, and Serebro. *See, e.g.*, *supra* ¶¶ 184, 192, 207, 218, 229-232, 294, 326, 340, 460, 554, 668; Stern Tr. at 91:7-94:12.

750. As Yellowstone's "hands-on boss," Schwartz Tr. at 82:23-83:8, "touching every part of the business," Worch Tr. at 99:25-100:5, Stern "ran the floor" on which its Funders and Sales Reps worked, Dahan Tr. at 172:23-173:3, supervised its Funders, Dahan Tr. at 164:2-7; Ehrlich Tr. at 58:23-25, and served as Yellowstone's voice in communicating Yellowstone policy and practice to the company's Funders and other personnel, including through quarterly meetings, Reece Tr. at 143:12-144:7, and on a "day-to-day basis," Melnikoff Tr. at 72:13-15.

751. Stern was "very familiar with reconciliation," Stern Tr. at 292:12-13, and personally supervised and closely monitored Respondents' responses to merchants' requests for payment reconciliation, Yagecic I Tr. at 193:21-194:2.

752. Stern participated in discussions among Yellowstone management about how to handle specific Reconciliation requests. *See supra* ¶ 229.

753. Stern was aware that Yellowstone, through its contract-generating software, instructed Funders that their Specified Percentages "must be 25%," regardless of how that percentage related to the Daily Amount and to a merchant's revenue. *Supra* ¶¶ 218-220, 222-223.

754. Stern was aware that Yellowstone exercised no oversight of representations made by its Funders to merchants during Funding Calls. *Supra* ¶ 340.

755. Stern was aware that Yellowstone took no measures to prevent Funders from planning MCAs to be set to finite repayment terms, and that "[t]he

Yellowstone model as a whole allowed funders the freedom to price deals in any way they wanted." *Supra* ¶ 136; Stern Tr. at 256:6-264:13 (discussing Exs. 247, 248).

756. Stern was aware that Yellowstone fraudulently processed merchants' Reconciliation requests so as to avoid refunds by treating funds received by merchants from other MCA companies as revenue. *Supra* ¶ 269.

757. Stern was indifferent to the results of the Reconciliation process Yellowstone eventually established and whether it actually resulted in any refunds to merchants, *see supra* ¶ 213, but nonetheless testified that in his view Yellowstone had an "effective[], adequately functioning reconciliation program," Stern Tr. at 295:12-16.

758. Stern instructed Yellowstone personnel to add to Yellowstone's MCA agreements the Fixed Payment Addendum including a Discretionary Reconciliation Clause. *Supra* ¶ 196.

759. Stern was aware that merchants did not understand Specified Percentages and commonly mistook them for interest rates. *Supra* ¶ 326.

760. Stern was aware that Yellowstone discouraged Funders from issuing refunds to merchants by decreasing their compensation as a result. *Supra* ¶¶ 292-294.

761. Stern, together with Glass, maintained Yellowstone's policy of overcollecting payments beyond the total repayment amounts stated in Respondents' agreements and using such amounts as slush funds for charging fees to the merchants. *Supra* ¶¶ 544-545, 554.

762. Merchants were instructed to make payments to Yellowstone at Stern's attention. *E.g.*, Ex. 428.

763. Stern was personally involved in Yellowstone's sales and marketing efforts. *Supra* ¶ 456.

764. Stern has made enough money issuing fraudulent and illegal loans that he will "never [have to] work again for his entire life." *Supra* ¶ 697. Whatever large sum that amounts to, Stern has in fact made at least double, upon information and belief, having shared half with Respondent Glass through their "50/50" compensation sharing arrangement. Glass Tr. at 246:4-247:14; *supra* ¶ 744.

3. Jeffrey Reece

765. Reece is liable for the repeated and persistent fraud and illegality committed by Respondents through Yellowstone, including the Yellowstone Entities.

766. Reece joined Yellowstone as an officer in 2015 and is its president and co-owner. *See* Reece Tr. at 30:11-13, 33:6-20, 36:19-37:3, 39:19-21; Stern Tr. at 28:23-29:3.

767. Reece has been involved in and aware of Yellowstone's fraud and illegality, as shown by the facts set forth above and shown in the evidence filed herewith, including the following.

768. Reece regularly discussed and formulated Respondents' policies and practices for its MCA business during frequent discussions—by text message, email, and in person—with the other Officer Respondents, including Glass, Stern,

Maczuga, and Serebro. *See* Stern Tr. at 91:7-94:12; *see, e.g.*, *supra* ¶¶ 192, 218-222, 229-232, 269, 282, 294, 508, 545, 551, 554.

769. Reece supervised Yellowstone's Funders, Dahan Tr. at 174:6-13, actively communicated company policy and rules to Yellowstone personnel, Reece Tr. at 137:18-22, and in January 2020 worked with Maczuga to create a "master rule book" of Yellowstone policies for its personnel, Reece Tr. at 144:25-146:16; *see* Ex. 407 (master rule book).

770. Reece supervised Yellowstone's creation of its Contract Generator, Reece Tr. at 57:16-58:3, through which Yellowstone set default Specified Percentages for its MCAs, *supra* ¶¶ 218-222, and stated that Specified Percentages "must be 25%," regardless of how that percentage related to the Daily Amount and to a merchants' revenue, *supra* ¶ 223.

771. Reece was aware that Yellowstone took no measures to ensure that the Daily Amounts in its agreements were calculated as good-faith estimates of Specified Percentages of merchants' revenue, took no measures to do so himself, and denied that such calculations were even possible. *See* Reece Tr. at 194:25-195:21.

772. Despite his role in communicating company policies to Yellowstone's personnel, *see* Reece Tr. at 136:17-137:22, Reece took no measures to ensure that Funders determined Daily Amounts based on good-faith Specified Percentage calculations and was aware that Yellowstone created no guidelines for how such determinations should be made, *see* Reece Tr. at 62:25-63:7, 159:4-20, 189:21-190:5.

773. Reece was aware that Yellowstone treated the Specified Percentages stated on its agreements as "an upper limit, like a ceiling, on what [it] could collect from the merchant each day," *see* Reece Tr. at 205:7-13, instead of a precise benchmark to which its Daily Amounts should be set at the outset.

774. Reece was aware that Yellowstone stated Specified Percentages in its agreements as high as 49%, although he was not aware of any business reason for doing so. *See* Reece Tr. at 72:14-18, 74:11-14.

775. Reece was aware that Yellowstone exercised no oversight of how Funders underwrote Yellowstone MCAs and determined their terms, including the Daily Amount and Specified Percentage. *See* Reece Tr. at 62:25-63:7, 159:4-20, 189:21-190:5.

776. Reece was aware that the only time that Yellowstone used its Specified Percentages was during Reconciliation. *See* Reece Tr. at 74:15-75:3.

777. Reece was aware that Yellowstone's imposition of higher Specified Percentages made it less likely that merchants would qualify for refunds as the result of Reconciliation. *See* Reece Tr. at 205:25-206:5.

778. Reece participated in discussions among Yellowstone management about how to handle specific Reconciliation requests. *See supra* ¶ 229.

779. Reece was involved in Yellowstone's decision to fraudulently process merchants' Reconciliation requests so as to avoid refunds by treating funds received by merchants from other MCA companies as revenue. *See supra* ¶¶ 269, 272.

780. Reece was aware that Respondents' Reconciliation clauses provided merchants with no relief for sudden, recent revenue drops but only on an averaged basis over the entire transaction. *See supra* ¶ 282.

781. Reece was aware that Yellowstone discouraged Funders from issuing refunds to merchants by decreasing their compensation as a result. *See* Reece Tr. at 210:14-211:13.

782. Reece was aware that Yellowstone exercised no oversight on representations made by its Funders to merchants during Funding Calls. *See supra* ¶ 340; Reece Tr. at 184:13-19.

783. Reece jointly supervised and participated in Respondents' practice of overcollecting payments beyond the total repayment amounts stated in Respondents' agreements and using such amounts as slush funds for charging fees to the merchants. *See supra* ¶¶ 544-545, 554.

4. Bart Maczuga

784. Maczuga is liable for the repeated and persistent fraud and illegality committed by Respondents through both Yellowstone, including its Subsidiaries, and Delta Bridge.

785. Maczuga joined Yellowstone in 2011, began working as a Funder for Yellowstone in 2012, was ranked as one of its top Funders in 2016 through 2019, and was promoted to its co-CEO in 2019. Maczuga Tr. at 39:7-17, 45:8, 45:19-21; Ex. 54. In May 2021 Maczuga became CEO and majority owner of Delta Bridge. Maczuga Tr. at 28:17-19; Ex. 52.

786. Maczuga has been involved in and aware of Yellowstone's and Delta Bridge's fraud and illegality, as shown by the facts set forth above and shown in the evidence filed herewith, including the following.

787. Maczuga has regularly discussed and formulated Respondents' policies and practices for its MCA business during frequent discussions—by text message, email, and in person—with the other Officer Respondents, including Glass, Stern, Reece, and Serebro. *See* Stern Tr. at 91:7-94:12; *see, e.g.*, *supra* ¶¶ 229-232, 269, 340, 359, 460.

788. Maczuga was a hands-on supervisor at Yellowstone and periodically held meetings at which he gathered Respondents' personnel to discuss company policy and make announcements, *see* Reece Tr. at 143:12-144:8, Stern Tr. at 116:15-117:2, and in January 2020 worked with Reece to create a "master rule book" of Yellowstone policies concerning its MCA transactions, *see* Reece Tr. at 144:25-146:16; Maczuga Tr. at 187:14-190:23; *see also* Ex. 407 (master rule book).

789. Maczuga was aware that by setting its Specified Percentages as high as 49%, Yellowstone and Delta Bridge were choosing "unrealistic" percentages that were not connected to merchants' actual revenue and thereby making it difficult for merchants to obtain refunds through payment reconciliation. *See supra* ¶¶ 206, 208-209, 236, 237.

790. Maczuga was involved in Yellowstone's decision to fraudulently process merchants' Reconciliation requests so as to avoid refunds by treating funds received by merchants from other MCA companies as revenue. *See supra* ¶ 269.

791. While working as a Funder, Maczuga did not use Specified Percentages to determine merchants' Daily Amounts. *See supra* ¶¶ 138, 143, 147.

792. Maczuga was aware that Yellowstone and Delta Bridge took no measures to ensure that the Daily Amounts in their agreements were calculated as good-faith estimates of Specified Percentages of merchants' revenue, and he took no such measures himself, despite his role in crafting company policies and communicating them to Yellowstone's and Delta Bridge's personnel. *See supra* ¶¶ 136-138.

793. Maczuga was aware that merchants did not understand Specified Percentages and commonly mistook them for interest rates. *See* Ex. 374 at 7 (Maczuga writing to Stern and Glass: "Ppl still think the 15-25% on page one is an interest rate.").

794. While Maczuga was working as a Funder, no money was ever refunded to a merchant as the result of a Reconciliation in connection with a transaction he worked on. *See supra* ¶ 191.

795. Maczuga was aware that Yellowstone issued almost no Reconciliation refunds in practice. Maczuga Tr. at 233:12-234:21.

796. Maczuga participated in discussions among Yellowstone management about how to handle specific Reconciliation requests. *See supra* ¶ 229.

797. Maczuga was aware that Yellowstone discouraged Funders from issuing refunds to merchants by decreasing their compensation as a result. *See supra* ¶¶ 291-293.

798. Maczuga was aware that Yellowstone exercised no oversight on representations made by its Funders to merchants during Funding Calls. *See* Ex. 374 at 7 (Maczuga writing to Glass and Stern: "Ppl are saying whatever the fuck they want" on Funding Calls).

799. Maczuga participated in Respondents' practice of overcollecting payments beyond the total repayment amounts stated in Respondents' agreements, and directly overcollected payments from merchants while working as a Funder. *See supra* ¶¶ 545, 551.

5. Vadim Serebro

800. Serebro is liable for the repeated and persistent fraud and illegality committed by Respondents through both Yellowstone and Delta Bridge.

801. Serebro joined Yellowstone in April 2013, *see* Ex. 50, and in 2018 became its General Counsel, *see* Serebro Tr. at 19:22-20:3, a position he still holds to this day, *see* Stern Tr. at 17:8-11. In May 2021 Serebro also became co-owner, general counsel, and Chief Strategy Officer of Delta Bridge. *See supra* ¶¶ 94-95.

802. Serebro has been involved in and aware of Yellowstone's and Delta Bridge's fraud and illegality, as shown by the facts set forth above and shown in the evidence filed herewith, including the following.

803. Serebro has been deeply involved in Respondents' business and shaping their corporate policy. *See, e.g.*, Maczuga Tr. at 329:6-15 (involved in negotiating APA); Serebro Tr. at 51:25-52:17 (chief strategy officer title); Reece Tr. at 161:3-15 (Serebro drafted Yellowstone policies), 233:21-234:5 (Serebro oversaw

HR); Ex. 133 at 1 (Serebro reviewed Delta Bridge financials); Ex. 141 at 5-8; Ex. 139 at 1-3; Ex. 194 at 1; Ex. 255; Ex. 231 at 1; *supra* ¶¶ 220, 229, 544.

804. Serebro has supervised and has been personally involved in Yellowstone's and Delta Bridge's drafting of their MCA agreements. *See* Serebro Tr. at 39:18-25, 49:15-19.

805. Serebro instructed Yellowstone personnel to add to Yellowstone's MCA agreements the Fixed Payment Addendum, which included an illusory Discretionary Reconciliation Clause. *See supra* ¶ 196.

806. Serebro participated in discussions among Yellowstone management about how to handle specific Reconciliation requests. *See supra* ¶ 229.

807. Serebro instructed that Yellowstone's Contract Generator set 25% as the default Specified Percentage in Respondents' MCA agreements. *See* McNeil Tr. at 175:25-176:15; Yagecic II Tr. at 143:15-145:4, 160:19-23.

808. Serebro was aware that by setting its Specified Percentages as high as 49%, Respondents were choosing unrealistic percentages that were not connected to merchants' actual revenue and thereby making it difficult for merchants to obtain refunds through payment Reconciliation. *See* Saffer Tr. at 234:20-238:22.

809. Serebro dismissed complaints that Delta Bridge's Specified Percentages were unrealistically high, telling one Funder "not to worry about those types of things." Saffer Tr. at 187:24-188:5.

810. Until at least 2020, Serebro personally invested in Yellowstone's MCAs through his company VS Ventures, viewing them as a profitable "opportunity for investment." Serebro Tr. at 62:25-63:3; *see supra* ¶ 96; *see also*, *e.g.*, Ex. 234.

811. In making such investments, Serebro took no measures to determine whether Daily Amounts stated in the MCA agreements were good-faith estimates of Specified Percentages of the merchants' future revenue, Serebro Tr. at 130:24-133:18, and he repeatedly invested in MCAs managed by Funders who have admitted that they made no such calculations when setting Daily Amounts, *see id.* at 103:13-107:7; *see, e.g.*, Ex. 234 at 1 (investing in MCA funded by former Funder McNeil); *id.* at 3 (and former Funder Dahan); *id.* at 6 (and Respondent Maczuga); *id.* at 9 (and former Funder Saffer); *see also supra* ¶¶ 138-147.

812. Serebro personally authorized Yellowstone's Funders to fraudulently overcollect payments from merchants—from which overcollected amounts Yellowstone collected purported "fees" as they wished—by as much as 51 days after the transactions were paid in full by merchants. *See supra* ¶ 544.

813. As general counsel of Yellowstone, and as owner and controlling officer of Max Recovery since 2017, Serebro has played a central role in managing collections for Yellowstone and Delta Bridge. *See* Serebro Tr. at 19:22-20:14, 68:17-69:17, 74:11-21.

814. Serebro has been personally involved in collecting on Respondents' agreements by contacting merchants and demanding that they pay their MCA-related debt and threatening them with litigation if they failed to do so. *E.g.*, Israel

Aff. ¶ 23 (Serebro directly contacted merchant to collect on MCA debt); Ex. 426 (same).

815. Through his receipt of profits from Max Recovery, Serebro has benefited personally when merchants default on their MCAs. *See* Serebro Tr. at 69:18-70:4, 74:22-75:11.

816. As a result of his dual role, Serebro has benefitted financially whether Delta Bridge and Yellowstone's deals with merchants succeeded (as general counsel and part owner of Delta Bridge and Yellowstone) or whether they failed (as owner of Max Recovery). *See, e.g.*, *supra* ¶¶ 487-489 (describing deal where Serebro invested $750 and then won a judgment including $5,000 in "Attorney's Fees" and also earned a contingency).

817. Serebro has filed many affidavits and complaints in New York State Supreme Court, repeatedly and as a matter of practice, that falsely stated to the courts that Yellowstone collected payments based on Specified Percentages of merchants' revenue. *See supra* ¶¶ 471-472.

B. <u>Funder Respondents</u>

818. Each Funder Respondent—including Aaron Davis, Steve Davis, Bart Maczuga, Matthew Melnikoff, Mark Sanders, and David Singfer—has worked directly in effecting Respondents' fraudulent and illegal MCA transactions, including by promoting, underwriting, planning, negotiating, investing in, organizing others' investments in, issuing, and collecting upon the transactions; and referring merchants to Serebro and Respondents' other attorneys for fraudulent

legal proceedings in connection with them, as set forth herein and as shown by the evidence filed herewith.

819. Through such conduct, each Funder Respondent has participated in repeated and persistent fraud and illegality, in violation of Executive Law § 63(12).

820. As a result, each Funder Respondent is jointly and severally individually liable for all repeated or persistent fraud or illegality conducted by Respondents in connection with transactions of Yellowstone and/or Delta Bridge that he has managed or has participated in as Funder or investor.

FIRST CAUSE OF ACTION AGAINST ALL RESPONDENTS PURSUANT TO EXECUTIVE LAW § 63(12): ILLEGAL ACTS IN THE FORM OF USURY

821. Petitioner repeats and re-alleges the preceding paragraphs as if fully set forth herein.

822. Executive Law § 63(12) provides for relief upon petition by the NYAG "whenever any person shall engage in repeated fraudulent or illegal acts or otherwise demonstrate persistent fraud or illegality in the carrying on, conducting or transaction of business."

823. As set forth above, Respondents have engaged in usury in violation of General Obligations Law § 5-501(1) by repeatedly and persistently charging, taking, or receiving money as interest on the loan of money at rates far exceeding the maximum permissible rate of 16% prescribed in Banking Law § 14-a(1).

824. Accordingly, Respondents have engaged in repeated and persistent illegality in violation of Executive Law § 63(12).

SECOND CAUSE OF ACTION AGAINST ALL RESPONDENTS PURSUANT TO EXECUTIVE LAW § 63(12): ILLEGAL ACTS IN THE FORM OF CRIMINAL USURY

825. Petitioner repeats and re-alleges the preceding paragraphs as if fully set forth herein.

826. Executive Law § 63(12) provides for relief upon petition by the NYAG "whenever any person shall engage in repeated fraudulent or illegal acts or otherwise demonstrate persistent fraud or illegality in the carrying on, conducting or transaction of business."

827. As set forth above, Respondents have engaged in criminal usury in violation of Penal Law § 190.40 by repeatedly, persistently, and knowingly charging, taking, or receiving money as interest on loans at rates exceeding 25% per annum, or the equivalent rate for periods a longer or shorter than a year, without being authorized or permitted by law to do so.

828. Accordingly, Respondents have engaged in repeated and persistent illegality in violation of Executive Law § 63(12).

THIRD CAUSE OF ACTION AGAINST ALL RESPONDENTS PURSUANT TO EXECUTIVE LAW § 63(12): ILLEGAL ACTS IN THE FORM OF ENGAGING IN THE BUSINESS OF MAKING HIGH-INTEREST LOANS WITHOUT A LICENSE IN VIOLATION OF BANKING LAW §§ 340 AND 356

829. Petitioner repeats and re-alleges the preceding paragraphs as if fully set forth herein.

830. Executive Law § 63(12) provides for relief upon petition by the NYAG "whenever any person shall engage in repeated fraudulent or illegal acts or

otherwise demonstrate persistent fraud or illegality in the carrying on, conducting or transaction of business."

831. Under Banking Law § 340 it is unlawful for a person or entity to "engage in the business of making loans . . . in a principal amount of fifty thousand dollars or less for business and commercial loans, and charge . . . a greater rate of interest than the lender would be permitted by law to charge if [it] were not a licensee hereunder except as authorized by [Banking Law Article IX] and without first obtaining a license from the superintendent."

832. Under Banking Law § 356 it is unlawful for a person or entity, "other than a licensee under [Banking Law Article IX]," to "charge . . . interest . . . greater than [it] would be permitted by law to charge if it were not a licensee hereunder upon a loan not exceeding the maximum amounts prescribed" in Banking Law § 340.

833. As set forth herein, Respondents have repeatedly and persistently engaged in the business of making business and commercial loans in New York in principal amounts of fifty thousand dollars or less.

834. In making such loans, Respondents have charged interest at rates above the maximum interest rate a lender is permitted to charge without a license, which is 16% pursuant to General Obligations Law § 5-501(1) and Banking Law § 14-a(1).

835. Respondents have not obtained licenses from the Department of Financial Services or the Superintendent of Banking allowing them to engage in the business of making loans or charging interests in excess of statutory amounts.

836. Accordingly, Respondents have engaged in repeated and persistent illegality in violation of Executive Law § 63(12).

FOURTH CAUSE OF ACTION AGAINST ALL RESPONDENTS PURSUANT TO EXECUTIVE LAW § 63(12): FRAUD

837. Petitioner repeats and re-alleges the preceding paragraphs as if fully set forth herein.

838. Executive Law § 63(12) provides for relief upon petition by the NYAG "whenever any person shall engage in repeated fraudulent or illegal acts or otherwise demonstrate persistent fraud or illegality in the carrying on, conducting or transaction of business."

839. Executive Law § 63(12) defines "fraud" to include "any device, scheme or artifice to defraud and any deception, misrepresentation, concealment, suppression, false pretense, [or] false promise."

840. As set forth above, Respondents have repeatedly and persistently engaged in fraud by, *inter alia*:

- Misrepresenting to merchants the nature of their loans as purchases of merchants' revenue;
- Misrepresenting that their merchant agreements are enforceable when in fact they are usurious loans, and thus void under New York law;
- Falsely advertising that Yellowstone's MCAs require no collateral and no personal guarantee;

- Falsely promoting their transactions as having flexible repayment plans;
- Misrepresenting to merchants that they will provide them with "lines of credit" and other financial products that Respondents do not in fact provide;
- Falsely representing to merchants that the Daily Amounts stated in Respondents' agreements are calculated in good faith based on "Specified Percentages" of the merchants' revenue;
- Manipulating the Specified Percentages stated in their agreements to make it virtually impossible for merchants to obtain a Reconciliation of past payments or Adjustment of future payments based on the Specified Percentage, despite declining revenue;
- Falsely representing that they will adjust merchants' future payments based on Specified Percentages of merchants' revenue;
- Fraudulently continuing to debit merchants' bank accounts after they were fully paid off, and misrepresenting to merchants the total amounts collected, and the remaining balance;
- Short-changing merchants on their funded amounts and overcharging them on fees deducted from the advances;
- Misrepresenting the basis of the fees Respondents deduct from MCAs;
- Obtaining judgments in New York State Supreme Court based on affidavits and complaints that falsely state that Respondents collect payments from merchants based on Specified Percentages of merchants' receipts, thereby concealing from courts the fact that their transactions are in fact usurious loans; and
- Obtaining judgments in New York State Supreme Court based on false affidavits that misrepresent the facts of merchants' purported defaults.

841. As set forth above, Respondents have repeatedly and persistently engaged in fraud in the form of unconscionability by, *inter alia*:

- Preying on financially desperate merchants;
- Making it likely, if not certain, that merchants would default on their agreements, even on "Day One" of the agreements, *supra* ¶ 369;

- Printing agreements in tiny, illegible type, *e.g.*, Ex. 105 at 2; Ex. 89 at 2;

- Concealing from merchants the amounts of their fees until after the agreements are signed;

- Misrepresenting the fundamental nature of their MCAs;

- Requiring merchants to repay the transactions at fixed amounts, finite terms, and sky-high interest rates;

- Requiring secured, guaranteed repayment rights that Respondents may exercise in the instance of bankruptcy or inability to pay;

- Requiring merchants and guarantors to sign confessions of judgment, enabling Respondents to immediately obtain and execute judgments against them;

- Requiring that when a merchant obtains a new MCA to Refinance a prior MCA, the total Payback Amount of the prior advance is deducted from the new MCA principal, including all interest that would have been paid over time;

- Requiring merchants to provide Respondents with "right to enter, without notice, the premises of [merchant's] business" and "access to [merchant's] employees and records and all other items of property located at the [merchant's] place of business," Delta Bridge Exemplar at 7 § 19(s); Yellowstone 2020 Exemplar at 8 § 21(s);

- Requiring merchants to assign Respondents the lease of merchants' business premises, Delta Bridge Exemplar at 9 § 26(e);

- Requiring merchants to provide Respondents the log-in information to their bank accounts, *e.g.*, Ex. 111 at 3 § 8, 20; Yellowstone 2018 Exemplar at 9;

- Requiring merchants and guarantors to pay Respondents' attorneys' fees in the event of litigation in which Respondents are successful but not imposing corresponding requirements on Respondents, Delta Bridge Exemplar at 9 § 26(d); Yellowstone 2020 Exemplar at 10 § 29; and

- Requiring merchants to "irrevocably" appoint Respondents as "attorney[s]-in-fact" with "power of attorney" over merchants' finances,

e.g., Delta Bridge Exemplar at 9 § 28; Yellowstone 2020 Exemplar at 10 § 32.

842. Accordingly, Respondents have engaged in repeated and persistent fraud in violation of Executive Law § 63(12).

FIFTH CAUSE OF ACTION AGAINST ALL RESPONDENTS PURSUANT TO EXECUTIVE LAW § 63(12): DECEPTIVE ACTS AND PRACTICES IN VIOLATION OF GENERAL BUSINESS LAW § 349

843. Petitioner repeats and re-alleges the preceding paragraphs as if fully set forth herein.

844. GBL § 349(a) declares unlawful "deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in [New York]."

845. GBL § 349(b) authorizes the NYAG to bring an action for an injunction, restitution, and penalties whenever the NYAG has reason to believe that any person, firm, corporation, association, or agent or employee thereof, has engaged in deceptive acts and practices in this state.

846. As set forth above, Respondents have repeatedly and persistently engaged in deceptive acts and practices by, *inter alia*:

- Misrepresenting to merchants the nature of their loans as purchases of merchants' revenue;
- Misrepresenting that their merchant agreements are enforceable when in fact they are usurious loans, and thus void under New York law;
- Falsely advertising that Yellowstone's MCAs require no collateral and no personal guarantee;

- Falsely promoting their transactions as having flexible repayment plans;
- Misrepresenting to merchants that they will provide them with "lines of credit" and other financial products that Respondents do not in fact provide;
- Falsely representing to merchants that the Daily Amounts stated in Respondents' agreements are calculated in good faith based on "Specified Percentages" of the merchants' revenue;
- Manipulating the Specified Percentages stated in their agreements to make it virtually impossible for merchants to obtain a Reconciliation of past payments or Adjustment of future payments based on the Specified Percentage, despite declining revenue;
- Falsely representing that they will adjust merchants' future payments based on Specified Percentages of merchants' revenue;
- Steering merchants to Adjustments of their payment amounts, when they are entitled to Reconciliation;
- Misrepresenting the total amounts Respondents will collect from merchants' bank accounts over time, then "overcollecting" Daily Amounts in excess of the stated total amounts;
- Short-changing merchants on their funded amounts and overcharging them on fees deducted from the advances;
- Misrepresenting the basis of the fees Respondents deduct from MCAs;
- Obtaining judgments in New York State Supreme Court based on affidavits and complaints that falsely state that Respondents collect payments from merchants based on Specified Percentages of merchants' receipts, thereby concealing from courts the fact that their transactions are in fact usurious loans; and
- Obtaining judgments in New York State Supreme Court based on false affidavits that misrepresent the facts of merchants' purported defaults.

847. Accordingly, Respondents have engaged in deceptive acts and practices in violation of GBL § 349.

SIXTH CAUSE OF ACTION AGAINST DELTA BRIDGE FUNDING LLC: VOIDABLE TRANSFER PURSUANT TO THE UNIFORM VOIDABLE TRANSACTIONS ACT

848. Petitioner repeats and re-alleges the preceding paragraphs as if fully set forth herein.

849. The Uniform Voidable Transactions Act ("UVTA") provides that:

> A transfer . . . is voidable as to a creditor, whether the creditor's claim arose before or after the transfer was made . . ., if the debtor made the transfer . . . (1) with actual intent to hinder, delay or defraud any creditor of the debtor; or (2) without receiving a reasonably equivalent value in exchange for the transfer . . ., and the debtor: . . . (ii) intended to incur, or believed or reasonably should have believed that the debtor would incur, debts beyond the debtor's ability to pay as they became due.

N.Y. Debt. & Cred. Law ("DCL") § 273; N.J. Stat. Ann. § 25:2-25.

850. The UVTA also provides that:

> A transfer made . . . by a debtor is voidable as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.

DCL § 274(a); N.J. Stat. Ann. § 25:2-27.

851. As set forth above, Yellowstone transferred substantially all of its assets to Delta Bridge on May 21, 2021. *Supra* ¶¶ 597-615.

852. Yellowstone did not receive equivalent value in exchange for the assets it transferred to Delta Bridge. *Supra* ¶¶ 680-685.

853. At the time of the asset transfer, Yellowstone management was aware that the company was approaching insolvency and facing liabilities far beyond its

ability to pay, including liabilities that management valued at $2 billion if its MCAs were determined to be loans. *Supra* ¶¶ 654-659.

854. At the time of the asset transfer, the NYAG was investigating claims against Yellowstone including usury, and the State of New Jersey had filed a lawsuit against Yellowstone that included claims of usury. Yellowstone was also facing myriad other lawsuits. *Supra* ¶¶ 114, 655-656.

855. At the time of the asset transfer, Yellowstone had just resolved (less than one month prior) a lawsuit by the FTC, incurring a liability of $9,837,000 to the FTC. *Supra* ¶ 655.

856. Yellowstone management admitted that Yellowstone transferred its assets with intent to avoid its liabilities. *Supra* ¶¶ 660-666.

857. Delta Bridge, the recipient of Yellowstone's assets, is 70% owned by Yellowstone insiders, including majority-owner Respondent Maczuga, as well as Respondent Serebro and Robin Spence. *Supra* ¶¶ 573-575.

858. Yellowstone retained significant control of the assets, including by prohibiting Delta Bridge from transferring or licensing them to anybody else, and by holding a security interest that allowed Yellowstone to take control of Delta Bridge, including if Delta Bridge missed a single payment. *Supra* ¶¶ 677-679.

859. The asset transfer from Yellowstone to Delta Bridge was undisclosed except as strictly necessary to effect the transfer. *Supra* ¶¶ 632-635.

860. Accordingly, the transfer of assets from Respondent Yellowstone Capital LLC to Respondent Delta Bridge Funding LLC is voidable under the UVTA,

and Petitioner is entitled to judgment, to the extent necessary to satisfy the Petitioner's claims against Yellowstone: (i) setting aside the transfer; (ii) disregarding the transfer and allowing Petitioner to attach or levy execution upon property conveyed and proceeds therefrom; and (iii) awarding the value of the property, including interest or appreciation. *See* DCL § 276; N.J. Stat. Ann. § 25:2-29.

REQUEST FOR RELIEF

WHEREFORE, the People of the State of New York respectfully request that the Court issue an order and judgment:

a. Permanently enjoining Respondents; their agents, trustees, employees, successors, heirs, and assigns; and any other person under their direction or control, whether acting individually or in concert with others, or through any corporate or other entity or device through which one or more of them may now or hereafter act or conduct business, from engaging in the fraudulent and illegal practices alleged herein, including but not limited to (*i*) misrepresenting the nature of the products and services they provide; (*ii*) issuing, selling, or servicing loans under the guise that they are Merchant Cash Advances or any non-loan transaction; (*iii*) violating New York Banking Law §§ 340 and 356; (*iv*) misrepresenting the amounts of funds that Respondents will provide to merchants, fees that Respondents will charge and the basis for such fees, and the amounts of payments that Respondents will collect;

b. Permanently enjoining David Glass from participating in the business of advertising, marketing, soliciting, brokering, underwriting, consulting on,

offering, servicing, or collecting on merchant cash advances, purchases of receivables or receipts or revenue, factoring, loans, or any other type of business financing, including by receiving compensation or other financial benefit from or participating in such activities;

c. Enjoining Respondents from involvement in the Merchant Cash Advance business for an appropriate length of time of no less than ten years;

d. Ordering Respondents to cease all collection of payments or other moneys related to their Merchant Cash Advances pending the hearing of this Petition;

e. Ordering the rescission of each agreement entered into between Respondents and any merchant in connection with the issuance of a Merchant Cash Advance, including all riders, amendments, appendices, attachments, or other forms or papers appended thereto, and all agreements between merchants and Respondents (or agents or representatives of Respondents) memorializing purported debts of merchants and/or imposing obligations of merchants with respect to Respondents' Merchant Cash Advances, including agreements of settlement;

f. Ordering Respondents to file papers in court sufficient to obtain vacatur of all court judgments issued in their favor and against merchants and/or their guarantors concerning purported defaults or breaches of Merchant Cash Advance transactions by merchants, or settlement agreements with merchants, including judgments issued based on the filing of a confession of judgment and

based on filing of a complaint, by all courts of this State that have issued such judgments, in papers acceptable to Petitioner;

g. Staying all marshals, sheriffs, and collections agents who hold executions under such judgments from executing or collecting upon them;

h. Ordering Respondents to apply for dismissal of all pending court proceedings filed on their behalf against merchants and/or their guarantors concerning purported defaults or breaches of MCA transactions by merchants;

i. Ordering Respondents to take measures sufficient to terminate all liens or security interests related to their MCAs;

j. Ordering Respondents to provide an accounting to Petitioner of their collections concerning MCAs including but not limited to: a list of names and addresses of each merchant from whom Respondents collected or received monies since 2013 in connection with MCAs; a complete history, including dates, amounts, and sources, of all monies collected or received by Respondents from all such merchants (whether through Daily Amounts, fees, execution of judgments, or any other avenue), as well as all moneys provided by Respondents to such merchants; a complete history, including dates, amounts, and sources, of all fees collected or received by Respondents from all such merchants, including the type and basis of the fee; and copies of all MCA agreements and/or judgments purportedly providing for such collection;

k. Ordering Respondents to pay full restitution and damages as to all merchants that have entered into agreements with Respondents for MCAs,

including those not identified at the time of the order, with such an award providing for (*i*) the refund of all interest collected by Respondents, whether directly or through intermediaries, from each payment made by merchants or their guarantors in connection with MCAs; (*ii*) the refund of all moneys collected by Respondents pursuant to their fraudulently obtained court judgments; (*iii*) the refund of all moneys collected by Respondents as fraudulent fees; (*iv*) the refund of all moneys overcollected by Respondents beyond the total collection amounts represented; (*v*) damages for losses caused by Respondents' conduct; and (*vi*) such affirmative action as may be necessary to ensure that the monetary relief is effectively delivered to such merchants and guarantors;

l. Ordering Respondents to pay a civil penalty of $5,000 for each fraudulent MCA transaction pursuant to GBL § 350-d;

m. Ordering Respondents to disgorge all profits from the fraudulent and illegal practices alleged herein;

n. Awarding to Petitioner, pursuant to New York Civil Practice Law and Rules § 8303(a)(6), costs in the amount of $2,000 against each Respondent;

o. Pursuant to the UVTA, setting aside the asset transfer between Yellowstone and Delta Bridge to the extent necessary to satisfy the judgment against Yellowstone; allowing satisfaction of the judgment against Yellowstone from the transferred assets and all of Delta Bridge's proceeds attributable thereto, directly from the funds of Delta Bridge; and awarding, up to the amount of the judgment against Yellowstone, the value of the transferred assets and Delta

Bridge's proceeds attributable thereto, including interest or appreciation, to the maximum extent allowed by law; and

p. Granting such other and further relief as the Court deems just and proper.

Dated: March 5, 2024
New York, New York

Respectfully submitted,

LETITIA JAMES
Attorney General of the State of New York
Attorney for Petitioner

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Of counsel:

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LAURA J. LEVINE, Deputy Bureau Chief

VERIFICATION

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

Adam J. Riff, being duly sworn, deposes and says:

I am an Assistant Attorney General in the office of Letitia James, Attorney General of the State of New York, assigned to the Bureau of Consumer Frauds and Protection. I am duly authorized to make this verification.

I have read the foregoing petition and know the contents thereof, which are to my knowledge true, except as to matters therein stated to be alleged on information and belief, and as to those matters, I believe them to be true. The grounds for my beliefs as to all matters stated upon information and belief are investigatory materials contained in the files of the Bureau of Consumer Frauds and Protection in the New York State Office of the Attorney General.

The reason this verification is not made by Petitioner is that Petitioner is a body politic, and the Attorney General of the State of New York is the Petitioner's duly authorized representative.

Adam J. Riff

Sworn to before me this
4th day of March, 2024

KRISTIN LILIANA MANZUR
Notary Public, State of New York
Qualified in Richmond County
No. 01MA6318068
Commission Expires January 20, 2027

NOTARY PUBLIC