CV 11 0038

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y

★ JAN 05 2011 ★

LONG ISLAND OFFICE

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**BANK OF AMERICA, N.A., individually and as successor to LaSalle Bank, National Association, a national banking association,**

**Plaintiff,** (S.F.)

**v.**

**NEW YORK MERCHANTS PROTECTIVE CO., INC., a New York Corporation; NEW YORK MERCHANTS ALARM RESPONSE INC., a Delaware Corporation; and NY MERCH PROT CO., INC., a Delaware Corporation,**

**Defendants.**

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**Case No.** HURLEY, J. LINDSAY, M

## COMPLAINT

Plaintiff Bank of America, N.A. ("Plaintiff"), individually and as successor by merger to LaSalle Bank, National Association ("LaSalle Bank"), by and through its undersigned attorneys, for its Complaint against defendants New York Merchants Protective Co., Inc. (the "Borrower"), New York Merchants Alarm Response Inc. ("NY Alarm Response"), and NY Merch Prot Co., Inc. ("NY Merch Prot," and together with NY Alarm, the "Affiliate Guarantors," and each individually an "Affiliate Guarantor"; the Affiliate Guarantors, together with the Borrower, the "Defendants," and each individually a "Defendant"), alleges as follows:

## NATURE OF THE ACTION

1. This Complaint is brought against Defendants: (a) to collect amounts owing under a promissory note and loan agreement to Plaintiff by the Borrower, a New York corporation controlled by Mark Fischer ("Fischer") and Wayne M. Wahrsager ("Wahrsager") (collectively, the "Principals"); (b) to collect amounts owing from the Affiliate Guarantors under their absolute

and unconditional guaranties of Borrower's obligations to Plaintiff, and (c) to obtain the appointment of a Receiver to take possession, control, manage and operate Defendants' businesses as a result of the Principals' fraudulent, harmful and uncooperative conduct, as more fully set forth below.

2. Defendants are in the business of providing central station monitoring and/or similar services for security alarm and/or similar equipment or devices to residential and commercial customers on both a retail and wholesale basis. They share management, employees and technology, as well as office space in Freeport, New York. Wahrsager and Fischer are the principals of and control each of the companies.

3. As detailed more fully below, the Borrower has defaulted on its monetary and other obligations to Plaintiff under the applicable loan documents. Plaintiff is presently owed approximately $19,282,130.64, exclusive of interest, attorneys' fees and expenses, in connection with a $17,500,000.00 revolving loan made by Plaintiff to the Borrower and an overdraft in an amount not greater than $1,541,596.96 resulting from a check-kiting scheme perpetrated by Borrower and one or both of the Principals. Pursuant to the express terms of the governing loan agreement, the Affiliate Guarantors and the Borrower are each "Obligors" and their assets are pledged as security for the Borrower's obligations. Pursuant to their respective Affiliate Guaranties, defined below, each of the Affiliate Guarantors also is liable to Plaintiff for the full amount of the Borrower's obligations.

4. The Borrower, under the active direction of Wahrsager, perpetrated a fraudulent check-kiting scheme in Freeport, New York, in order to artificially inflate the balance of the Borrower's deposit accounts with Plaintiff and create an artificial source of funding. After Plaintiff discovered the check-kiting scheme, subsequent reconciliation of the Borrower's

deposit account showed that more than one hundred kited checks exceeding $30 million had been deposited into the Borrower's accounts, and the scheme resulted in an overdraft exceeding $1.44 million. Despite Wahrsager's admission that he engaged in this fraudulent conduct and Fischer's subsequent representation that Wahrsager would be removed from control of the Defendants' operations, Wahrsager nevertheless remains in day to day control of the Defendants.

5. Further, in order to hide losses that the Borrower had begun to incur as its business declined, the Borrower made false representations to Plaintiff about its financial condition, namely, artificially inflating its recurring monthly revenue (or "RMR") in Borrowing Base Certificates that it was required to deliver to Plaintiff, on a monthly basis, under the governing loan agreement. The submission of these false and misleading Borrowing Base Certificates allowed the Borrower to maintain an aggregate principal balance on the Revolving Loans that was more than twice the lending limit set by the loan agreement.

6. At all times relevant hereto, the Borrower produced financial information to Plaintiff that was intentionally unreliable because the Borrower (a) did not bother to review the underlying data before sending information to Plaintiff and (b) failed to and continues to fail to properly maintain its books and records as required under applicable law and under the applicable loan documents.

7. Despite the Borrower's failure to meet its current obligations, its defaults under the loan documents and its fraudulent conduct, Plaintiff, in its sole discretion and without any obligation to continue to do so, has continued to fund, under the provisions of its loan documents, certain expenses (including but not limited to payroll and other expenses in the ordinary course of business) in order to preserve Plaintiff's collateral, maximize Plaintiff's recovery from collateralized assets and, importantly, to avoid a shutdown of the Borrower's

operations, which would have a devastating impact on third parties who rely on the Borrower's security monitoring services on a 24-hour basis. Plaintiff is under no obligation to fund these expenses. As set forth below, this voluntary process cannot continue without the installation of a Receiver. Without a Receiver, Plaintiff faces irreparable damage and the continued loss in value of its collateral, and innocent third parties are threatened with irreparable damage as well.

## PARTIES, JURISDICTION AND VENUE

8. Plaintiff is a national banking association chartered under the laws of the United States, with its principal place of business in Charlotte, North Carolina. Accordingly, Plaintiff is a citizen of North Carolina. Effective October 17, 2008, by virtue of a merger, Plaintiff is the successor in interest to LaSalle Bank with respect to the indebtedness that is the subject matter of this Complaint.

9. Borrower is a New York corporation controlled by the Principals with its principal place of business at 75 West Merrick Road, Freeport, New York.

10. NY Alarm Response is a Delaware corporation controlled by the Principals with its principal place of business at 75 West Merrick Road, Freeport, New York.

11. NY Merch Prot is a Delaware corporation controlled by the Principals with its principal place of business at 75 West Merrick Road, Freeport, New York.

12. The Borrower, NY Alarm Response, NY Merch Prot, and their affiliates share management, employees and technology, as well as office space in Freeport, New York. Wahrsager and Fischer are the principals of and control each of the companies. Their affiliates (and the Borrower's subsidiaries) include NationWide Digital Monitoring Co. Inc. d/b/a Smith & Wesson Security Services, and SeniorCare 911 LLC.

13. The amount in controversy, exclusive of interest and costs, exceeds the sum or value of $75,000.00.

14. This Court has jurisdiction over the subject matter of this controversy pursuant to 28 U.S.C. § 1332(a)(1).

15. This Court has jurisdiction over the Borrower in that the Borrower is incorporated in New York and has its principal place of business in Freeport, New York.

16. This Court has jurisdiction over the Affiliate Guarantors in that the Affiliate Guarantors have their principal place of business in Freeport, New York.

17. Venue is proper in the Eastern District of New York in that the Defendants have their principal place of business in Freeport, New York.

## COMMON ALLEGATIONS

### The Loan Agreement and Guaranties

18. Plaintiff, the Borrower, the Principals, and the Affiliate Guarantors are parties to that certain Loan and Security Agreement dated as of January 31, 2006 (as amended, restated, supplemented or modified from time to time, the "Loan Agreement")[1]

19. Pursuant to the terms of the Loan Agreement, Plaintiff made loans to the Borrower in the total principal amount of $17,500,000, evidenced by that certain Replacement Revolving Note dated as of August 23, 2007 (the "Replacement Revolving Note").

20. Pursuant to Section 3.1(a)(vii) of the Loan Agreement, each of the Affiliate Guarantors executed and delivered to Plaintiff a Continuing Unconditional Guaranty dated January 31, 2006 (together, the "Affiliate Guaranties," and each individually an "Affiliate Guaranty").

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[1] Capitalized terms used but not otherwise defined herein have the meaning attributed to them in the Loan Agreement.

21. Pursuant to the terms of the Affiliate Guaranties, each of the Affiliate Guarantors unconditionally and absolutely guaranteed the payment in full, promptly on demand, of any and all indebtedness, obligations and liabilities of every kind and nature of the Borrower to Plaintiff.

22. Pursuant to Section 5.1 of the Loan Agreement, as security for the payment and performance of the Borrower's Obligations, as defined, to Plaintiff, each of the Defendants, as Obligors under the Loan Agreement, granted Plaintiff a security interest in and to all of its assets.

**The Fraudulent Check-Kiting Scheme**

23. Starting in February 2010, the Borrower, under the active direction of Wahrsager, began "kiting" checks mostly between the Borrower's deposit account at Plaintiff's facility in Freeport, New York (the "Primary Account") and an unauthorized deposit account controlled by the Principals with Signature Bank (the "Signature Account"). In a typical kiting transaction, the Borrower would write a check on the Signature Account for which insufficient funds existed and deposit the check into the Primary Account. By taking advantage of the delay inherent in bank reconciliation of deposits (and a bank's not uncommon practice of honoring checks on the basis of uncollected balances), the Borrower was able to inflate the flow of cash into the Primary Account, creating the appearance of additional cash flow where none actually existed, and thereby allowing transfers to the Signature Account and vendors, among others, and allowing checks to be paid that otherwise would have been returned.

24. Based on a review of the Primary Account statements, during the period from February 2010 through the end of August 2010, the Borrower deposited, into the Primary Account, more than one hundred checks in an aggregate amount exceeding $30 million that were later dishonored and returned, including several checks drawn on the Signature Account after such account was closed on July 16, 2010. The Borrower has admitted that this fraudulent

check-kiting scheme was implemented with full knowledge that there were insufficient funds to pay the checks deposited into the Primary Account.

25. On or about August 30, 2010, Plaintiff discovered the check-kiting fraud and determined that the Borrower's Primary Account was significantly overdrawn. Since that time, in accordance with Sections 5.6 and 11.4 of the Loan Agreement and Article 9 of the Uniform Commercial Code, in order to preserve its collateral, and in addition to the overdraft created by the check-kiting fraud, Plaintiff, in its sole discretion (and without any obligation to continue to do so), has continued to fund the Borrower's ordinary course of business withdrawals from the Primary Account (the "Protective Advances") subject to the amount of (i) the overdraft relating to the check-kiting fraud and (ii) the Protective Advances not exceeding approximately $1.54 million in the aggregate. All such Protective Advances, as well as the overdraft relating to the check-kiting fraud, constitute "Bank Product Obligations" under Section 1.1 of the Loan Agreement and are part of the Borrower's Obligations to Plaintiff, as defined.

**The Borrower's Fraudulent Borrowing Base Misrepresentations**

26. The Borrower's principal assets consist of individual contracts for the provision of its monitoring services to its residential and commercial customers. The customers include individuals, private companies, and public entities such as municipalities, hospitals and schools in New York.

27. As the Borrower's revenue is principally comprised of periodic payments by parties to the Borrower's service contracts, Plaintiff and the Borrower agreed at pp. 3-4, and 12 of the Loan Agreement that the aggregate principal balance of all loans outstanding at any time under the Loan Agreement would be limited in amount to the lesser of $17,500,000.00, or the "Borrowing Base Amount," a dollar amount calculated as a function of the Borrower's current RMR (recurring monthly revenue).

28. Pursuant to Section 7.9 of the Loan Agreement, the Borrower, on a monthly basis, certified and represented the accuracy of the Borrowing Base Amount, including in certificates dated July 31, 2010 (the "July Borrowing Base Certificate") and August 31, 2010 (the "August Borrowing Base Certificate"). The calculations set forth in the July and August Borrowing Base Certificates reflected a Borrowing Base Amount in excess of $17,500,000.00. Wahrsager delivered these Borrowing Base Certificates to Plaintiff by email.

29. Following the discovery of the Borrower's check-kiting scheme, and in connection with discussions regarding a possible forbearance agreement premised upon the sale of the Borrower's business as a going concern, Plaintiff urged the Borrower to engage a third-party consultant to assist the Borrower in getting its books and records in order and to otherwise provide independent oversight of the Borrower's financial affairs. The Borrower retained the financial consulting firm of Getzler Henrich & Associates LLC ("Getzler") to re-examine the Borrower's RMR (recurring monthly revenue), among other things. Getzler discovered that the Borrower's eligible RMR was substantially lower than the Borrower had represented to Plaintiff and, as a result, the outstanding loans as of September 30, 2010 exceeded the Revolving Loan Availability, as defined, by more than $8 million on a $17.5 million facility.

30. The Borrower significantly overstated and misrepresented its RMR, in at least the July and August Borrowing Base Certificates, in order to artificially inflate the Borrowing Base Amount in the certificates. This accounting gimmickry allowed the Borrower to borrow far in excess of its Revolving Loan Availability. This conduct was intentional, constituted fraud with respect to the Borrower's Obligations, as defined, under the Loan Agreement, and likely pre-dated July 2010.

**Failure to Maintain Accurate Books and Records**

31. During the course of its investigation, Getzler also determined that the Borrower had failed to maintain adequate books and records; the records the Borrower did maintain were entirely unreliable. Using data supplied by the Principals, Getzler concluded that the Borrower's master list of RMR—containing details of over 40,000 customer relationships—may have been "fatally flawed".

**Failure to Remove Wahrsager From Control**

32. Following the discovery of the check kiting scheme, Fischer, on behalf of the Borrower, stated that he would cause the removal of Wahrsager, an admitted fraudfeasor, from the day to day cash management operations of the Borrower. Nevertheless, Wahrsager is still in control of the operations and cash flow of the company. Indeed, and most egregiously, he continues to sign checks on the Borrower's accounts.

33. On October 30, 2010, the Borrower terminated Getzler's services, claiming they were too costly, leaving the Borrower without critically needed independent oversight.

**Notices of Default and Demand for Payment**

34. On September 10, 2010, after discovering the check-kiting scheme, Plaintiff sent the Borrower a Notice of Default outlining the existence and continuation of numerous specific known defaults under the loan documents (the "Initial Known Defaults") and inviting the Borrower to sit down for a business persons meeting.

35. On October 27, 2010, following discovery of the fraudulently-prepared Borrowing Base Certificates, Plaintiff sent the Borrower a second Notice of Default reiterating the existence and continuation of the Initial Known Defaults, as well as certain additional specific known defaults under the loan documents.

36. On October 28, 2010, Plaintiff sent the Borrower a Notice of Intent to Accelerate and to Begin to Exercise Remedies stating its intention to accelerate the Borrower's payment obligations if the parties did not promptly reach a mutually agreeable resolution. The parties failed to reach a mutually agreeable resolution.

37. On November 3, 2010, Plaintiff sent the Borrower a Notice of Imposition of Default Rate and Acceleration of Obligations (the "Acceleration Notice"). The Acceleration Notice declared immediately due and payable all of the Borrower's Obligations under the Loan Agreement, instituted the default rate of interest thereunder, and informed the Borrower of Plaintiff's intention to make protective advances subject to the amount of (i) such protective advances and (ii) the overdraft relating to the check-kiting fraud not exceeding approximately $1.54 million in the aggregate. Plaintiff increased this limit to $1,541,596.96, pursuant to an Addendum to Notice of Imposition of Default Rate and Acceleration of Obligations.

38. On November 15, 2010, Plaintiff notified the Borrower of the occurrence of an Event of Default, as defined, under that certain ISDA Master Agreement dated as of February 28, 2006, by and between Plaintiff and the Borrower (the "Master Agreement"), and, as a result of the Event of Default, declared an Early Termination Date, as defined under the Master Agreement, and terminated all transactions under the Master Agreement (the "Early Termination Notice"). On November 17, 2010, Plaintiff notified the Borrower that the Borrower owed Plaintiff $89,800.00 on account of the termination of the transactions under the Master Agreement (the "Calculation Statement") and demanded immediate payment thereof from the Borrower. The Borrower's liability under the Master Agreement constitutes a "Hedging Obligation" under Section 1.1 of the Loan Agreement and is part of the Borrower's Obligations to Plaintiff, as defined.

39. On November 18, 2010, Plaintiff brought suit against the Principals, as guarantors of the Borrower's Obligations, as defined. That action is entitled *Bank of America, N.A. v. Mark Fischer and Wayne M. Wahrsager*, No. 10-cv-07449 (N.D. Ill.).

40. On December 20, 2010, Plaintiff demanded payment in full from each of the Defendants by sending them a Notice of Demand for Payment (the "Payment Demand").

**Outstanding Amount under the Loan Agreement**

41. As of (and continuing after) December 20, 2010, the Borrower owed Plaintiff approximately $19,282,130.64. This amount consists of $17,500,000.00 in principal advances under the Loan Agreement, $256,169.64 in accrued and unpaid interest thereon through December 20, 2010, and $1,436,054.14 in (a) the overdraft caused by the Borrower's check-kiting scheme and (b) Protective Advances, which may thereafter increase to an amount not exceeding $1,541,596.96 in the aggregate from time to time. Interest at the Default Rate is accruing daily on the foregoing amounts.

42. The amount owing also includes $89,906.86 for Hedging Obligations, as defined, resulting from the early termination of the Master Agreement. Interest is accruing daily on the Hedging Obligations at the Applicable Rate set forth in the Master Agreement.

**Emergency Need for the Appointment of a Receiver**

43. Plaintiff seeks the appointment of a receiver to take possession of, manage and control the Defendants' business. As set forth in paragraphs 23 – 30 above, the Borrower, under the active direction of the Principals, has engaged in fraudulent conduct, including a more than $30 million check kiting scheme and a more than $8 million borrowing base fraud. The Principals, who have shown that they are untrustworthy, remain in control of Plaintiff's collateral with no oversight at all.

44. Defendants have a negative cash flow. Defendants are unable to fund their payroll and ongoing obligations to critical vendors without the continued voluntary infusion of cash from Plaintiff.

45. If Plaintiff stopped making voluntary Protective Advances, Defendants would be unable to service their monitoring contracts. Such a failure would leave the Defendants' customers without protection monitoring, causing them to scramble for other coverage and terminate their contracts. The results would be catastrophic and would result in a total loss of Plaintiff's collateral. Recovery of anything other than nominal value is dependent upon selling the collateral on a going concern basis.

46. To date, the Defendants continue to incur ordinary course business expenses, including payroll obligations and obligations to critical third-party vendors in excess of their combined revenue. Given this cash flow crisis, the Defendants' assets -- Plaintiff's collateral -- are at substantial risk of dissipation and are in imminent danger of being lost, concealed, injured, diminished in value, or squandered, and the Defendants are in danger of suddenly ceasing operations. Such a failure of the Defendants' business would irreparably harm Plaintiff.

47. Plaintiff's willingness to continue funding was dependent upon the Defendants' utmost cooperation, but the Borrower, Wahrsager and Fischer refused to cooperate with Plaintiff after Plaintiff filed suit against Wahrsager and Fischer on their guaranties. Despite the fact that the Borrower persists in seeking additional funding from Plaintiff, its Principals refuse to return phone calls, voice mail, or emails, instead leaving critical communications about cash flow needs to a marketing manager rather than a financial officer of the Borrower.

48. On December 31, 2010, Plaintiff's fears about leaving the Borrower without oversight were confirmed when Eric Wahrsager, who resigned the day before, admitted, in a

letter to Plaintiff's counsel, that the Borrower's assets were "quickly dwindling" and further conceded that "over the past several months, the assets of [the Borrower] have severely deteriorated and are continuing to deteriorate at a rapid pace."

49. Plaintiff, which cannot continue funding the Borrower unless appropriate oversight is put in place, will be irreparably harmed if a receiver is not appointed over Defendants.

50. The harm to Plaintiff if a receiver is not appointed far outweighs any potential harm to Defendants from the appointment of a receiver. No prior application for similar relief has been made.

51. The interest of innocent third parties, including individuals, companies, municipalities, hospitals and schools, all of whom rely on 24-hour a day protective monitoring, favors appointment of a receiver.

52. With more than $19 million due, owing and in default, Plaintiff has a probability of success on the merits.

**COUNT I:**
**For Breach of the Loan Agreement (Against the Borrower)**

53. Plaintiff restates and realleges paragraphs 1-52 as if fully set forth in this paragraph.

54. The Borrower received the Payment Demand on or shortly after December 20, 2010.

55. Despite receiving the Payment Demand, the Borrower has failed to pay any of the amounts due and owing to Plaintiff as set forth above.

56. As a result of its failure to pay the amounts due and owing, the Borrower has defaulted on its obligations under the Replacement Revolving Note.

57. Under the terms of Section 12.19 of the Loan Agreement, the Borrower is responsible for paying all costs of collection, including reasonable attorney's fees and court costs, incurred or paid by Plaintiff in collecting the Revolving Replacement Note or any part thereof.

58. All conditions precedent to maintenance of this action have been met.

**COUNT II:**
**For Collection Under Guaranty (Against NY Alarm Response)**

59. Plaintiff restates and realleges paragraphs 1-52 as if fully set forth in this paragraph.

60. Under the express terms of its Affiliate Guaranty, NY Alarm Response is required to satisfy all of the Borrower's indebtedness owing to Plaintiff, including all of the Borrower's Obligations under the Loan Agreement, without limitation, including the aggregate amounts set forth above.

61. NY Alarm Response received the Payment Demand on or shortly after December 20, 2010.

62. Despite receiving the Payment Demand, NY Alarm Response has failed to pay any of the amounts due and owing to Plaintiff as set forth above.

63. NY Alarm Response's failure to pay upon demand constitutes a breach of its Affiliate Guaranty.

64. Pursuant to the express terms of its Affiliate Guaranty, NY Alarm Response also is personally liable for the payment of all costs, legal expenses and attorneys' fees of every kind, with interest. Plaintiff has incurred, and will continue to incur, significant expenses, including attorneys' fees, in enforcing the NY Alarm Response Guaranty and in connection with this proceeding.

65. All conditions precedent to the maintenance of this action have been met.

**COUNT III:**
**Breach of Guaranty (Against NY Merch Prot)**

66. Plaintiff restates and realleges paragraphs 1-52 as if fully set forth in this paragraph.

67. Under the express terms of its Affiliate Guaranty, NY Merch Prot is required to satisfy all of the Borrower's indebtedness owing to Plaintiff, including all of the Borrower's Obligations under the Loan Agreement, without limitation, including the aggregate amounts set forth above.

68. NY Merch Prot received the Payment Demand on or shortly after December 20, 2010.

69. Despite receiving the Payment Demand, NY Merch Prot has failed to pay any of the amounts due and owing to Plaintiff as set forth above.

70. NY Merch Prot's failure to pay upon demand constitutes a breach of its Affiliate Guaranty.

71. Pursuant to the express terms of its Affiliate Guaranty, NY Merch Prot also is personally liable for the payment of all costs, legal expenses and attorneys' fees of every kind, with interest. Plaintiff has incurred, and will continue to incur, significant expenses, including attorneys' fees, in enforcing the NY Merch Prot Guaranty and in connection with this proceeding.

72. All conditions precedent to the maintenance of this action have been met.

WHEREFORE, Plaintiff Bank of America, N.A., prays for:

(a) the entry of judgment in favor of Plaintiff and against Defendants New York Merchants Protective Co., Inc., New York Merchants Alarm Response Inc., and NY Merch Prot

Co., Inc., and each of them, in the amount of $19,282,130.64, plus any additional Protective Advances through the date of judgment, plus all accruing *per diem* interest amounts through the date of judgment and thereafter at the maximum post-judgment rate provided by applicable law, plus all costs of collection (including, without limitation, attorneys' fees),

(b) temporary and permanent equitable relief including, but not limited to, the appointment of a Receiver to take possession, manage and control the business of New York Merchants Protective Co., Inc., New York Merchants Alarm Response Inc., NY Merch Prot Co., Inc., pending sale of the business or until further order of Court, and

(c) for such other and further relief to Plaintiff as this Court deems just, proper, and equitable under the circumstances.

Dated: New York, New York
January 5, 2011

MAYER BROWN LLP

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JS 44 (Rev. 12/07)

# CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**
Bank of America, N.A.

**DEFENDANTS**
New York Merchants Protective Co., Inc., New York Merchants Alarm Response Inc., and NY Merch Prot Co., Inc.

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IN CLERK'S OFFICE
US DISTRICT COURT E.D.N.Y.
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(b) County of Residence of First Listed Plaintiff Mecklenburg, NC
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)
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HURLEY, J.
LINDSAY, M.

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

☐ 1 U.S. Government Plaintiff
☐ 3 Federal Question (U.S. Government Not a Party)
☐ 2 U.S. Government Defendant
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant) (For Diversity Cases Only)

| | PTF | DEF | | PTF | DEF |
|---|---|---|---|---|---|
| Citizen of This State | ☐ 1 | ☒ 1 | Incorporated or Principal Place of Business In This State | ☐ 4 | ☐ 4 |
| Citizen of Another State | ☐ 2 | ☐ 2 | Incorporated and Principal Place of Business In Another State | ☒ 5 | ☐ 5 |
| Citizen or Subject of a Foreign Country | ☐ 3 | ☐ 3 | Foreign Nation | ☐ 6 | ☐ 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

**CONTRACT**
☐ 110 Insurance
☐ 120 Marine
☐ 130 Miller Act
☐ 140 Negotiable Instrument
☐ 150 Recovery of Overpayment & Enforcement of Judgment
☐ 151 Medicare Act
☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
☐ 153 Recovery of Overpayment of Veteran's Benefits
☐ 160 Stockholders' Suits
☒ 190 Other Contract
☐ 195 Contract Product Liability
☐ 196 Franchise

**REAL PROPERTY**
☐ 210 Land Condemnation
☐ 220 Foreclosure
☐ 230 Rent Lease & Ejectment
☐ 240 Torts to Land
☐ 245 Tort Product Liability
☐ 290 All Other Real Property

**TORTS**
PERSONAL INJURY
☐ 310 Airplane
☐ 315 Airplane Product Liability
☐ 320 Assault, Libel & Slander
☐ 330 Federal Employers' Liability
☐ 340 Marine
☐ 345 Marine Product Liability
☐ 350 Motor Vehicle
☐ 355 Motor Vehicle Product Liability
☐ 360 Other Personal Injury

PERSONAL INJURY
☐ 362 Personal Injury - Med. Malpractice
☐ 365 Personal Injury - Product Liability
☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
☐ 370 Other Fraud
☐ 371 Truth in Lending
☐ 380 Other Personal Property Damage
☐ 385 Property Damage Product Liability

**CIVIL RIGHTS**
☐ 441 Voting
☐ 442 Employment
☐ 443 Housing/ Accommodations
☐ 444 Welfare
☐ 445 Amer. w/Disabilities - Employment
☐ 446 Amer. w/Disabilities - Other
☐ 440 Other Civil Rights

**PRISONER PETITIONS**
☐ 510 Motions to Vacate Sentence
Habeas Corpus:
☐ 530 General
☐ 535 Death Penalty
☐ 540 Mandamus & Other
☐ 550 Civil Rights
☐ 555 Prison Condition

**FORFEITURE/PENALTY**
☐ 610 Agriculture
☐ 620 Other Food & Drug
☐ 625 Drug Related Seizure of Property 21 USC 881
☐ 630 Liquor Laws
☐ 640 R.R. & Truck
☐ 650 Airline Regs.
☐ 660 Occupational Safety/Health
☐ 690 Other

**LABOR**
☐ 710 Fair Labor Standards Act
☐ 720 Labor/Mgmt. Relations
☐ 730 Labor/Mgmt.Reporting & Disclosure Act
☐ 740 Railway Labor Act
☐ 790 Other Labor Litigation
☐ 791 Empl. Ret. Inc. Security Act

**IMMIGRATION**
☐ 462 Naturalization Application
☐ 463 Habeas Corpus - Alien Detainee
☐ 465 Other Immigration Actions

**BANKRUPTCY**
☐ 422 Appeal 28 USC 158
☐ 423 Withdrawal 28 USC 157

**PROPERTY RIGHTS**
☐ 820 Copyrights
☐ 830 Patent
☐ 840 Trademark

**SOCIAL SECURITY**
☐ 861 HIA (1395ff)
☐ 862 Black Lung (923)
☐ 863 DIWC/DIWW (405(g))
☐ 864 SSID Title XVI
☐ 865 RSI (405(g))

**FEDERAL TAX SUITS**
☐ 870 Taxes (U.S. Plaintiff or Defendant)
☐ 871 IRS—Third Party 26 USC 7609

**OTHER STATUTES**
☐ 400 State Reapportionment
☐ 410 Antitrust
☐ 430 Banks and Banking
☐ 450 Commerce
☐ 460 Deportation
☐ 470 Racketeer Influenced and Corrupt Organizations
☐ 480 Consumer Credit
☐ 490 Cable/Sat TV
☐ 810 Selective Service
☐ 850 Securities/Commodities/ Exchange
☐ 875 Customer Challenge 12 USC 3410
☐ 890 Other Statutory Actions
☐ 891 Agricultural Acts
☐ 892 Economic Stabilization Act
☐ 893 Environmental Matters
☐ 894 Energy Allocation Act
☐ 895 Freedom of Information Act
☐ 900Appeal of Fee Determination Under Equal Access to Justice
☐ 950 Constitutionality of State Statutes

**V. ORIGIN** (Place an "X" in One Box Only)

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (**Do not cite jurisdictional statutes unless diversity**):
28 U.S.C. § 1332(A)(1)

Brief description of cause:
Breach of Loan Agreement, Breach of Guaranty, Collection Under Guaranty

**VII. REQUESTED IN COMPLAINT:**
☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
DEMAND $ 19,282,130.64
CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☒ No

**VIII. RELATED CASE(S) IF ANY** (See instructions): JUDGE ______ DOCKET NUMBER ______

DATE 01/05/2011
SIGNATURE OF ATTORNEY OF RECORD

**FOR OFFICE USE ONLY**

RECEIPT # ______ AMOUNT ______ APPLYING IFP ______ JUDGE ______ MAG. JUDGE ______

**ARBITRATION CERTIFICATION**

I,___________________________, counsel for ______________________________ do hereby certify pursuant to the Local Arbitration Rule 83.10 that to the best of my knowledge and belief the damages recoverable in the above captioned civil action exceed the sum of $150,000 exclusive of interest and costs. ______________Relief other than monetary damages is sought.

**DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1**

Identify any parent corporation and any publicly held corporation that owns 10% or more or its stocks:
Bank of America Corporation

**RELATED CASE STATEMENT (SECTION VIII)**

**All cases that are arguably related pursuant to Division of Business Rule 50.3.1 should be listed in Section VIII on the front of this form. Rule 50.3.1 (a) provides that "A civil case is "related" to another civil case for purposes of this guideline when, because of the similarity of facts and legal issues or because the cases arise from the same transactions or events, a substantial saving of judicial resources is likely to result from assigning both cases to the same judge and magistrate judge."**

**NY-E DIVISION OF BUSINESS RULE 50.1(d)(2)**

1.) Is the civil action being filed in the Eastern District removed from a New York State Court located in Nassau or Suffolk County: No

2.) If you answered "no" above:

a) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in Nassau or Suffolk County? Yes

b) Did the events of omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? Yes

If your answer to question 2 (b) is "No," does the defendant (or a majority of the defendants, if there is more than one) reside in Nassau or Suffolk County, or, in an interpleader action, does the claimant (or a majority of the claimants, if there is more than one) reside in Nassau or Suffolk County?____________________

(Note: A corporation shall be considered a resident of the County in which it has the most significant contacts).

**BAR ADMISSION**

I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.

Yes ☑ No ☐

Are you currently the subject of any disciplinary action (s) in this or any other state or federal court?

Yes ☐ (If yes, please explain) No ☑

Please provide your E-MAIL address and bar code below. Your bar code consists of the initials of your first and last name and the last four digits of your social security number or any other four digit number registered by the attorney with the Clerk of Court. (This information must be provided pursuant to local rule 11.1(b) of the civil rules).

**Attorney Bar Code:** JA-9945

**E-MAIL Address:** jatamian@mayerbrown.com

Electronic filing procedures were adopted by the Court in Administrative Order No. 97-12, "In re: Electronic Filing Procedures (ECF)." Electronic filing became mandatory in Administrative Order 2004-08, "In re: Electronic Case Filing." Electronic service of all papers is now routine.

I certify the accuracy of all information provided above.

**Signature:** Jean-Marie Atamian