

AARON M. MAY (State Bar No. 207751)  
[Aaron.May@halpernmay.com](mailto:Aaron.May@halpernmay.com)  
JOEL MALLORD (State Bar No. 302764)  
[Joel.Mallord@halpernmay.com](mailto:Joel.Mallord@halpernmay.com)  
HALPERN MAY YBARRA GELBERG LLP  
550 South Hope Street, Suite 2330  
Los Angeles, CA 90071  
Telephone: (213) 402-1900

Attorneys for Defendant  
NATIONAL MERCHANT CENTER, INC.

**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

THOMAS W. MCNAMARA, as the  
Court-Appointed Receiver for True Count  
Staffing Inc., Prime Consulting LLC, TAS  
2019 LLC, First Priority LLC, and  
Horizon Consultants LLC, and their  
successors, assigns, affiliates, or  
subsidiaries,

Plaintiff,

v.

NATIONAL MERCHANT CENTER,  
INC., et al.

Defendants.

NATIONAL MERCHANT CENTER,  
INC.,

Counter-Claimant,

v.

THOMAS W. MCNAMARA, as the  
Court-Appointed Receiver for True Count  
Staffing Inc., d/b/a SL Account  
Management, Prime Consulting LLC,  
d/b/a Financial Preparation Services, TAS  
2019 LLC d/b/a Trusted Account Services,  
First Priority LLC, and Horizon  
Consultants LLC, and their successors,  
assigns, affiliates, or subsidiaries,

Counter-Defendant.

CASE NO. 8:21-cv-01122-MWF (KS)

**DEFENDANT NATIONAL  
MERCHANT CENTER'S ANSWER  
TO THE FIRST AMENDED  
COMPLAINT AND  
COUNTERCLAIMS**

**DEMAND FOR JURY TRIAL**

1 Defendant National Merchant Center, Inc. (“Defendant”), hereby answers the  
2 First Amended Complaint (“FAC”) filed by Receiver Thomas W. McNamara  
3 (“Plaintiff” or “Receiver”). Except as expressly admitted herein, NMC denies any  
4 and all allegations set forth in the FAC. NMC further answers the numbered  
5 paragraphs in the FAC as follows:

6 **AS TO THE OVERVIEW**

7 1. NMC admits that, in 2019, the CFPB sued several companies that  
8 provided services related to student loans. NMC lacks knowledge or information  
9 sufficient to form a belief as to the truth of the remaining allegations set forth in  
10 Paragraph 1 of the FAC, and, on that basis, denies those allegations.

11 2. NMC admits that it provided payment processing services to several of  
12 the companies in its capacity as an Independent Sales Organization. NMC admits  
13 that Defendant Jimmy Lai and his company, Defendant Swift Payments, were  
14 NMC’s primary point of contact with the companies. Except as expressly so  
15 admitted, NMC denies the allegations set forth in Paragraph 2 of the FAC.

16 3. NMC admits that in its role as an Independent Sales Organization, its  
17 services included assisting merchants (including the companies sued by the CFPB  
18 with which it contracted) to have the ability to process consumer payments through  
19 credit card networks. Except as expressly so admitted, NMC denies the allegations  
20 set forth in Paragraph 3 of the FAC.

21 4. NMC denies the allegations set forth in Paragraph 4 of the FAC.

22 5. NMC denies the allegations set forth in Paragraph 5 of the FAC.

23 6. NMC admits the allegations set forth in Paragraph 6 of the FAC that the  
24 Court ordered a freeze of all the assets belonging to certain companies and their  
25 principals and appointed Plaintiff as the Receiver for companies that met certain  
26 criteria. Except as expressly so admitted, NMC denies the allegations set forth in  
27 Paragraph 6 of the FAC.

28 7. NMC denies the allegations set forth in Paragraph 7 of the FAC.

1 8. NMC denies the allegation that the declaration submitted to the Court  
2 by Jimmy Lai was false. NMC lacks knowledge or information sufficient to form a  
3 belief as to the truth of the remaining allegations set forth in Paragraph 8 of the FAC,  
4 and, on that basis, denies those allegations.

5 9. NMC denies the allegations set forth in Paragraph 9 of the FAC.

6 **AS TO PARTIES**

7 10. NMC admits the allegations set forth in Paragraph 10 of the FAC.

8 11. NMC admits the allegations set forth in Paragraph 11 of the FAC.

9 12. NMC admits that Shih-Hao Lai aka Jimmy Lai is an individual who  
10 resides in Santa Ana, California. Except as expressly so admitted, NMC denies the  
11 allegations set forth in Paragraph 12 of the FAC.

12 13. NMC admits the allegations set forth in Paragraph 13 of the FAC.

13 14. NMC lacks knowledge or information sufficient to form a belief as to  
14 the truth of the allegations set forth in Paragraph 14 of the FAC, and, on that basis,  
15 denies those allegations.

16 15. NMC denies the allegations set forth in Paragraph 15 of the FAC.

17 **AS TO JURISDICTION AND VENUE**

18 16. NMC admits that the Court has jurisdiction over this action. The  
19 remainder of Paragraph 16 of the FAC asserts legal conclusions to which no  
20 response is required. To the extent that a response is required, NMC denies the  
21 allegations set forth in Paragraph 16 of the FAC.

22 17. NMC admits that venue is proper in this District. The remainder of  
23 Paragraph 17 of the FAC asserts legal conclusions to which no response is required.  
24 To the extent that a response is required, NMC denies the allegations set forth in  
25 Paragraph 17 of the FAC.

26 18. NMC admits that the Court may exercise personal jurisdiction over  
27 NMC in this action. The remainder of Paragraph 18 of the FAC asserts legal  
28 conclusions to which no response is required. To the extent that a response is

1 required, NMC denies the allegations set forth in Paragraph 18 of the FAC.

2 **AS TO ALLEGATIONS**

3 19. NMC denies the allegation that it was aware that the SLAM Owners ran a  
4 fraudulent student loan debt relief scam. NMC lacks knowledge or information  
5 sufficient to form a belief as to the truth of the remaining allegations set forth in  
6 Paragraph 19 of the FAC, and, on that basis, denies those allegations.

7 20. NMC denies the allegation that it was aware that the SLAM Owners ran a  
8 fraudulent student loan debt relief scam. NMC denies the allegation that it was  
9 aware the SLAM Owners utilized a number of companies as a common enterprise to  
10 run a scam. NMC lacks knowledge or information sufficient to form a belief as to  
11 the truth of the remaining allegations set forth in Paragraph 20 of the FAC, and, on  
12 that basis, denies those allegations.

13 21. NMC denies the allegation that it knew the SLAM Owners put Consumer  
14 Advocacy Center Inc., d/b/a Premier Student Loan Center (“CAC”) into a bogus  
15 bankruptcy to avoid regulatory filings before the CFPB’s lawsuit was filed. NMC  
16 lacks knowledge or information sufficient to form a belief as to the truth of the  
17 remaining allegations set forth in Paragraph 21 of the FAC, and, on that basis, denies  
18 those allegations.

19 22. NMC admits that soon after the CFPB’s suit was filed, the Receiver was  
20 appointed and began his investigation of the SLAM Owners’ business. NMC lacks  
21 knowledge or information sufficient to form a belief as to the truth of the remaining  
22 allegations set forth in Paragraph 22 of the FAC, and, on that basis, denies those  
23 allegations.

24 23. NMC lacks knowledge or information sufficient to form a belief as to the  
25 truth of the allegations set forth in Paragraph 23 of the FAC, and, on that basis,  
26 denies those allegations.

27 24. NMC lacks knowledge or information sufficient to form a belief as to the  
28 truth of the allegations set forth in Paragraph 24 of the FAC, and, on that basis,

1 denies those allegations.

2 25. NMC admits the allegations set forth in Paragraph 25 of the FAC.

3 26. NMC admits that the allegations set forth in Paragraph 26 of the FAC  
4 quote from the Wall Street Journal article. NMC lacks knowledge or information  
5 sufficient to form a belief as to the truth of the remaining allegations set forth in  
6 Paragraph 26 of the FAC, and, on that basis, denies those allegations.

7 27. NMC admits that the allegations set forth in Paragraph 27 of the FAC  
8 quote from the Wall Street Journal article. NMC lacks knowledge or information  
9 sufficient to form a belief as to the truth of the remaining allegations set forth in  
10 Paragraph 27 of the FAC, and, on that basis, denies those allegations.

11 28. NMC admits that the allegations set forth in Paragraph 28 of the FAC  
12 quote from the Wall Street Journal article. NMC lacks knowledge or information  
13 sufficient to form a belief as to the truth of the remaining allegations set forth in  
14 Paragraph 28 of the FAC, and, on that basis, denies those allegations.

15 29. NMC lacks knowledge or information sufficient to form a belief as to the  
16 truth of the allegations set forth in Paragraph 29 of the FAC, and, on that basis,  
17 denies those allegations.

18 30. NMC lacks knowledge or information sufficient to form a belief as to the  
19 truth of the allegations set forth in Paragraph 30 of the FAC, and, on that basis,  
20 denies those allegations.

21 31. NMC lacks knowledge or information sufficient to form a belief as to the  
22 truth of the allegations set forth in Paragraph 31 of the FAC, and, on that basis,  
23 denies those allegations.

24 32. NMC lacks knowledge or information sufficient to form a belief as to the  
25 truth of the allegations set forth in Paragraph 32 of the FAC, and, on that basis,  
26 denies those allegations.

27 33. Paragraph 33 of the FAC asserts legal conclusions to which no response  
28 is required. To the extent that a response is required, NMC denies the allegations set

1 forth in Paragraph 33 of the FAC.

2 34. Paragraph 34 of the FAC asserts legal conclusions to which no response  
3 is required. To the extent that a response is required, NMC lacks knowledge or  
4 information sufficient to form a belief as to the truth of the allegations set forth in  
5 Paragraph 34 of the FAC, and, on that basis, denies those allegations.

6 35. NMC lacks knowledge or information sufficient to form a belief as to the  
7 truth of the allegations set forth in Paragraph 35 of the FAC, and, on that basis,  
8 denies those allegations.

9 36. Paragraph 36 of the FAC asserts legal conclusions to which no response  
10 is required. NMC admits that CFR § 310.4(a)(5) sets forth an escrow exception, but  
11 denies the Receiver's characterization of that section to the extent it employs  
12 different language than that of the regulation itself.

13 37. NMC lacks knowledge or information sufficient to form a belief as to the  
14 truth of the allegations set forth in Paragraph 37 of the FAC, and, on that basis,  
15 denies those allegations.

16 38. NMC denies the allegation that the alleged conduct in Paragraph 38 of  
17 the FAC was with its knowledge and assistance. NMC lacks knowledge or  
18 information sufficient to form a belief as to the truth of the remaining allegations set  
19 forth in Paragraph 38 of the FAC, and, on that basis, denies those allegations.

20 39. NMC lacks knowledge or information sufficient to form a belief as to the  
21 truth of the allegations set forth in Paragraph 39 of the FAC, and, on that basis,  
22 denies those allegations.

23 40. NMC denies the allegations set forth in Paragraph 40 of the FAC.

24 41. NMC denies the allegation that it provided substantial assistance to the  
25 SLAM Companies. NMC lacks knowledge or information sufficient to form a belief  
26 as to the truth of the remaining allegations set forth in Paragraph 41 of the FAC, and,  
27 on that basis, denies those allegations.

28 42. NMC denies the allegations set forth in Paragraph 42 of the FAC.

1 43. NMC denies the allegations set forth in Paragraph 43 of the FAC.

2 44. NMC denies the allegations set forth in Paragraph 44 of the FAC.

3 45. NMC admits the allegations set forth in the first two sentences of  
4 Paragraph 45 of the FAC. Except as expressly so admitted, NMC denies the  
5 allegations set forth in Paragraph 45 of the FAC.

6 46. NMC denies the allegation that it assumed financial liability for  
7 consumer chargebacks on the accounts in its merchant portfolio. NMC admits the  
8 remaining allegations set forth in Paragraph 46 of the FAC.

9 47. NMC denies the allegation that it employed the Lai Defendants at all  
10 times relevant to the Complaint. NMC admits the remaining allegations set forth in  
11 Paragraph 47 of the FAC.

12 48. NMC admits the allegations set forth in Paragraph 48 of the FAC.

13 49. NMC denies the allegations set forth in Paragraph 49 of the FAC.

14 50. NMC admits the allegations set forth in Paragraph 50 alleging that under  
15 its agreement with First Data, NMC's responsibilities included performing a credit  
16 review and site inspection for each merchant application. Except as expressly so  
17 admitted, NMC denies the allegations set forth in Paragraph 50 of the FAC.

18 51. NMC denies the allegation set forth in Paragraph 51 of the FAC.

19 52. NMC admits the allegations set forth in the first sentence of Paragraph 52  
20 of the FAC. NMC admits the allegation that factoring is forbidden by the credit card  
21 associations. Except as expressly so admitted, NMC denies the allegations set forth  
22 in Paragraph 52 of the FAC.

23 53. NMC admits the allegations set forth in Paragraph 53 of the FAC.

24 54. NMC denies the allegations set forth in Paragraph 54 of the FAC.

25 55. NMC denies the allegations set forth in Paragraph 55 of the FAC.

26 56. NMC denies the allegations set forth in Paragraph 56 of the FAC.

27 57. NMC denies the allegations set forth in Paragraph 57 of the FAC.

28 58. NMC denies the allegations set forth in the first sentence of Paragraph 58

1 of the FAC. NMC lacks knowledge or information sufficient to form a belief as to  
2 the truth of the remaining allegations set forth in Paragraph 58 of the FAC, and, on  
3 that basis, denies those allegations.

4 59. NMC admits the allegations set forth in the second and third sentences of  
5 Paragraph 59 of the FAC. Except as expressly so admitted, NMC denies the  
6 allegations set forth in Paragraph 59 of the FAC.

7 60. NMC admits the allegations set forth in the first sentence of Paragraph 60  
8 of the FAC. NMC lacks knowledge or information sufficient to form a belief as to  
9 the truth of the remaining allegations set forth in Paragraph 60 of the FAC, and, on  
10 that basis, denies those allegations.

11 61. NMC admits that Maverick was aware of Wen's probation in November  
12 2018. Except as expressly so admitted, NMC denies the allegations set forth in  
13 Paragraph 61 of the FAC.

14 62. NMC denies the allegations set forth in Paragraph 62 of the FAC.

15 63. NMC denies the allegations set forth in Paragraph 63 of the FAC.

16 64. NMC denies the allegations set forth in Paragraph 64 of the FAC.

17 65. NMC denies the allegations set forth in the last sentence of Paragraph 65  
18 of the FAC. NMC admits the remaining allegations set forth in Paragraph 65 of the  
19 FAC.

20 66. NMC denies the allegations set forth in Paragraph 66 of the FAC.

21 67. NMC admits the allegation that the relationship between Lai and  
22 Thompson dated back before NMC began working with the SLAM Parties. Except  
23 as expressly so admitted, NMC denies the allegations set forth in Paragraph 67 of the  
24 FAC.

25 68. NMC admits the allegations that, on August 8, 2017, Swift Payments  
26 entered into an Independent Contractor Agreement with NMC and that this was  
27 approximately the same time NMC began providing payment processing services for  
28 CAC. Except as expressly so admitted, NMC denies the allegations set forth in



1 Paragraph 68 of the FAC.

2 69. NMC admits the allegation that, on April 29, 2019, Lai entered into a  
3 consulting agreement with NMC. NMC lacks knowledge or information sufficient  
4 to form a belief as to the truth of the allegations set forth in last sentence of  
5 Paragraph 69 of the FAC, and, on that basis, denies those allegations. Except as  
6 expressly so admitted, NMC denies the allegations set forth in Paragraph 69 of the  
7 FAC.

8 70. NMC admits the allegation that the Lai Defendants were compensated for  
9 generating business for NMC. Except as expressly so admitted, NMC denies the  
10 allegations set forth in Paragraph 70 of the FAC.

11 71. NMC admits the allegation that the SLAM Owners complained to the Lai  
12 Defendants about NMC increasing CAC's reserve account balances. Except as  
13 expressly so admitted, NMC denies the allegations set forth in Paragraph 71 of the  
14 FAC.

15 72. NMC admits that the quotations in Paragraph 72 of the FAC are  
16 quotations from emails. Except as expressly so admitted, NMC denies the  
17 allegations set forth in Paragraph 72 of the FAC.

18 73. NMC admits that the quotations in Paragraph 73 of the FAC are  
19 quotations from emails. Except as expressly so admitted, NMC denies the  
20 allegations set forth in Paragraph 73 of the FAC.

21 74. NMC admits the allegation that, in February 2018, it accepted an  
22 application from a new entity established by the SLAM Owners. Except as  
23 expressly so admitted, NMC denies the allegations set forth in Paragraph 74 of the  
24 FAC.

25 75. NMC admits the allegation that Thompson brought to the SLAM  
26 Owners' attention a number of consumer complaints. Except as expressly so  
27 admitted, NMC denies the allegations set forth in Paragraph 75 of the FAC.

28 76. NMC admits that the quotation in Paragraph 76 of the FAC is a quotation

1 from a consumer complaint. Except as expressly so admitted, NMC denies the  
2 allegations set forth in Paragraph 76 of the FAC.

3 77. NMC admits that the quotation in Paragraph 77 of the FAC is a quotation  
4 from a consumer complaint. Except as expressly so admitted, NMC denies the  
5 allegations set forth in Paragraph 77 of the FAC.

6 78. NMC denies the allegations set forth in Paragraph 78 of the FAC.

7 79. NMC admits the allegation that Thompson requested an attestation from  
8 one of the SLAM Owners. NMC admits that the quotations in Paragraph 79 of the  
9 FAC are quotations from an email from Thompson. Except as expressly so  
10 admitted, NMC denies the allegations set forth in Paragraph 79 of the FAC.

11 80. NMC admits the allegation that Kaine Wen provided an Attestation of  
12 Compliance to Thompson. NMC admits that the quotations in Paragraph 80 of the  
13 FAC are quotations from Wen's Attestation of Compliance. Except as expressly so  
14 admitted, NMC denies the allegations set forth in Paragraph 80 of the FAC.

15 81. NMC denies the allegations set forth in Paragraph 81 of the FAC.

16 82. NMC denies the allegations set forth in Paragraph 82 of the FAC.

17 83. NMC admits the allegation that on or about September 10, 2018, the  
18 CFPB issued a Civil Investigative Demand to CAC. Except as expressly so  
19 admitted, NMC denies the allegations set forth in Paragraph 83 of the FAC.

20 84. NMC lacks knowledge or information sufficient to form a belief as to the  
21 truth of the remaining allegations set forth in Paragraph 84 of the FAC, and, on that  
22 basis, denies those allegations.

23 85. NMC denies the allegations set forth in Paragraph 85 of the FAC.

24 86. NMC admits the allegation that when Horizon's NMC application was  
25 finalized on December 10, 2018, it contained Hu's name and personal information.  
26 NMC lacks knowledge or information sufficient to form a belief as to the truth of the  
27 remaining allegations set forth in Paragraph 86 of the FAC, and, on that basis, denies  
28 those allegations.

1 87. NMC lacks knowledge or information sufficient to form a belief as to the  
2 truth of the allegations set forth in the first two sentences of Paragraph 87 of the  
3 FAC, and, on that basis, denies those allegations. NMC admits the allegation that it  
4 approved the application. Except as expressly so admitted, NMC denies the  
5 allegations set forth in Paragraph 87 of the FAC.

6 88. NMC denies the allegations set forth in Paragraph 88 of the FAC.

7 89. NMC lacks knowledge or information sufficient to form a belief as to the  
8 truth of the allegations set forth in Paragraph 89 of the FAC, and, on that basis,  
9 denies those allegations.

10 90. NMC admits that the quotations in Paragraph 90 of the FAC are  
11 quotations from emails. Except as expressly so admitted, NMC denies the  
12 allegations set forth in Paragraph 90 of the FAC.

13 91. NMC denies the allegations set forth in Paragraph 91 of the FAC.

14 92. NMC lacks knowledge or information sufficient to form a belief as to the  
15 truth of the allegations set forth in Paragraph 92 of the FAC, and, on that basis,  
16 denies those allegations.

17 93. NMC lacks knowledge or information sufficient to form a belief as to the  
18 truth of the allegations set forth in Paragraph 93 of the FAC, and, on that basis,  
19 denies those allegations.

20 94. NMC lacks knowledge or information sufficient to form a belief as to the  
21 truth of the allegations set forth in Paragraph 94 of the FAC, and, on that basis,  
22 denies those allegations.

23 95. NMC denies the allegation set forth in Paragraph 95 of the FAC that the  
24 SLAM Owners agreed to NMC's plan. NMC lacks knowledge or information  
25 sufficient to form a belief as to the truth of the remaining allegations set forth in  
26 Paragraph 95 of the FAC, and, on that basis, denies those allegations.

27 96. NMC admits that the quotations in Paragraph 96 of the FAC are  
28 quotations from emails. Except as expressly so admitted, NMC denies the

1 allegations set forth in Paragraph 96 of the FAC.

2 97. NMC admits that the quotations in Paragraph 97 of the FAC are  
3 quotations from emails. Except as expressly so admitted, NMC denies the  
4 allegations set forth in Paragraph 97 of the FAC.

5 98. NMC denies the allegations set forth in Paragraph 98 of the FAC.

6 99. NMC denies the allegations set forth in Paragraph 99 of the FAC.

7 100. NMC denies the allegation set forth in Paragraph 100 of the FAC that it  
8 provided substantial aid and assistance to the SLAM Companies. NMC lacks  
9 knowledge or information sufficient to form a belief as to the truth of the remaining  
10 allegations set forth in Paragraph 100 of the FAC, and, on that basis, denies those  
11 allegations.

12 101. NMC denies the allegations set forth in Paragraph 101 of the FAC.

13 102. NMC admits the allegations set forth in Paragraph 102 of the FAC  
14 alleging that TAS would be an independent escrow company and that it would hold  
15 the advance fees paid by consumers until the requirements for disbursement were met.  
16 Except as expressly so admitted, NMC denies the allegations set forth in Paragraph  
17 102 of the FAC.

18 103. NMC denies the allegations set forth in Paragraph 103 of the FAC.

19 104. NMC denies the allegations set forth in Paragraph 104 of the FAC.

20 105. NMC denies the allegations set forth in Paragraph 105 of the FAC.

21 106. NMC denies the allegations set forth in Paragraph 106 of the FAC  
22 alleging that it lied on the SLAM Owners' behalf and that it knew that the corporate  
23 office was nothing more than a mail drop. NMC lacks knowledge or information  
24 sufficient to form a belief as to the truth of the remaining allegations set forth in  
25 Paragraph 106 of the FAC, and, on that basis, denies those allegations.

26 107. NMC denies the allegations set forth in Paragraph 107 of the FAC.

27 108. NMC admits the allegation that a revised TAS application was submitted  
28 to it on or around July 1, 2019. Except as expressly so admitted, NMC denies the

1 allegations set forth in Paragraph 108 of the FAC.

2 109. NMC admits that the quotations in Paragraph 109 of the FAC are  
3 quotations from emails. Except as expressly so admitted, NMC denies the  
4 allegations set forth in Paragraph 109 of the FAC.

5 110. NMC admits the allegation set forth in Paragraph 110 that John  
6 Thompson reviewed and provided comments on a TAS vendor agreement. NMC  
7 admits that the quotation in Paragraph 110 is a quotation from one comment. Except  
8 as expressly so admitted, NMC denies the allegations set forth in Paragraph 110 of  
9 the FAC.

10 111. NMC denies the allegations set forth in Paragraph 111 of the FAC.

11 112. NMC denies the allegations set forth in Paragraph 112 of the FAC.

12 113. NMC admits the allegation that the Lai Defendants purchased a 51%  
13 interest in TAS. Except as expressly so admitted, NMC denies the allegations set  
14 forth in Paragraph 113 of the FAC.

15 114. NMC lacks knowledge or information sufficient to form a belief as to the  
16 truth of the allegations set forth in Paragraph 114 of the FAC, and, on that basis,  
17 denies those allegations.

18 115. NMC denies the allegations set forth in the first sentence of Paragraph  
19 115 of the FAC. NMC lacks knowledge or information sufficient to form a belief as  
20 to the truth of the remaining allegations set forth in Paragraph 115 of the FAC, and,  
21 on that basis, denies those allegations.

22 116. NMC admits the allegations set forth in the second sentence of Paragraph  
23 116 of the FAC. Except as expressly so admitted, NMC denies the allegations set  
24 forth in Paragraph 116 of the FAC.

25 117. NMC admits the allegations set forth in Paragraph 117 of the FAC that  
26 over the course of October, TAS consumers transacted another \$2,000,000 in  
27 transactions using NMC's payment processing access. Except as expressly so  
28 admitted, NMC denies the allegations set forth in Paragraph 117 of the FAC.

1 118. NMC lacks knowledge or information sufficient to form a belief as to the  
2 truth of the allegation set forth in Paragraph 118 of the FAC that CAC and the  
3 SLAM Parties ran a fraudulent student debt relief operation, and, on that basis,  
4 denies those allegations. NMC admits the remaining allegations set forth in  
5 Paragraph 118 of the FAC.

6 119. NMC admits the allegations set forth in Paragraph 119 of the FAC.

7 120. NMC denies the allegations set forth in Paragraph 120 of the FAC.

8 121. NMC denies the allegations set forth in Paragraph 121 of the FAC.

9 122. NMC admits that the quotations in Paragraph 122 of the FAC are  
10 quotations from Lai's declaration. Except as expressly so admitted, NMC denies the  
11 allegations set forth in Paragraph 122 of the FAC.

12 123. NMC admits that the quotations in Paragraph 123 of the FAC are  
13 quotations from Lai's declaration. Except as expressly so admitted, NMC denies the  
14 allegations set forth in Paragraph 123 of the FAC.

15 124. NMC admits that the quotations in Paragraph 124 of the FAC are  
16 quotations from emails. Except as expressly so admitted, NMC denies the  
17 allegations set forth in Paragraph 124 of the FAC.

18 125. NMC denies the allegations set forth in Paragraph 125 of the FAC.

19 126. NMC admits the allegations set forth in Paragraph 126 of the FAC.

20 127. NMC denies the allegation set forth in Paragraph 127 that Lai  
21 acknowledged perjury. NMC admits the remaining allegations set forth in Paragraph  
22 127 of the FAC.

23 128. NMC denies the allegations set forth in Paragraph 128 of the FAC.

24 129. NMC denies the allegation set forth in Paragraph 129 of the FAC that it  
25 was notified that Horizon was to be a Receivership Defendant no later than October  
26 24, 2019. NMC admits the remaining allegations set forth in Paragraph 129 of the  
27 FAC.

28 130. NMC admits the allegation set forth in Paragraph 130 of the FAC that, on

1 October 28, 2019, it instructed First Data to make five separate \$99,999 transfers  
2 from Horizon's reserve account directly to NMC's own account. Except as expressly  
3 so admitted, NMC denies the allegations set forth in Paragraph 130 of the FAC.

4 131. NMC admits the allegations set forth in Paragraph 131 of the FAC.

5 132. NMC admits the allegations set forth in the first sentence of Paragraph  
6 132 of the FAC. NMC lacks knowledge or information sufficient to form a belief as  
7 to the truth of the remaining allegations set forth in Paragraph 132 of the FAC, and,  
8 on that basis, denies those allegations.

9 133. NMC admits the allegations set forth in the second sentence of Paragraph  
10 133 of the FAC. NMC admits the allegation that on November 1, 2019, NMC  
11 submitted a supplemental declaration to the Receiver declaring the amount of  
12 Horizon reserve funds remaining. Except as expressly so admitted, NMC denies the  
13 allegations set forth in Paragraph 133 of the FAC.

14 134. NMC denies the allegations set forth in Paragraph 134 of the FAC.

15 135. NMC denies the allegation set forth in Paragraph 135 of the FAC that it  
16 improperly took reserve funds. NMC lacks knowledge or information sufficient to  
17 form a belief as to the truth of the remaining allegations set forth in Paragraph 135 of  
18 the FAC, and, on that basis, denies those allegations.

19 136. NMC denies the allegation set forth in Paragraph 136 of the FAC that it  
20 was unable to provide any legitimate business explanation for the withdrawals.  
21 NMC admits the remaining allegations set forth in Paragraph 136 of the FAC.

22 137. NMC denies the allegations set forth in Footnote 6. NMC admits the  
23 remaining allegations set forth in Paragraph 137 of the FAC.

24 138. NMC admits the allegations set forth in Paragraph 138 of the FAC.

25 139. NMC admits the allegations set forth in Paragraph 139 of the FAC.

26 140. NMC denies the allegations set forth in Paragraph 140 of the FAC.

27 **AS TO COUNT I**

28 141. Answering Paragraph 141 of the Complaint, Davis incorporates by

1 reference Paragraphs 1 through 140 above.

2 142. NMC denies the allegations set forth in Paragraph 142 of the FAC.

3 143. NMC denies the allegations set forth in Paragraph 143 of the FAC.

4 144. NMC denies the allegations set forth in Paragraph 144 of the FAC.

5 145. NMC denies the allegations set forth in Paragraph 145 of the FAC.

6 146. NMC denies the allegations set forth in Paragraph 146 of the FAC.

7 147. NMC denies the allegations set forth in Paragraph 147 of the FAC.

8 **AS TO COUNT II**

9 148. Answering Paragraph 148 of the Complaint, Davis incorporates by  
10 reference Paragraphs 1 through 147 above.

11 149. NMC denies the allegations set forth in Paragraph 149 of the FAC.

12 150. NMC denies the allegations set forth in Paragraph 150 of the FAC.

13 151. NMC denies the allegations set forth in Paragraph 151 of the FAC.

14 152. NMC denies the allegations set forth in Paragraph 152 of the FAC.

15 153. NMC denies the allegations set forth in Paragraph 153 of the FAC.

16 154. NMC denies the allegations set forth in Paragraph 154 of the FAC.

17 155. NMC denies the allegations set forth in Paragraph 155 of the FAC.

18 156. NMC denies the allegations set forth in Paragraph 156 of the FAC.

19 **AS TO COUNT III**

20 157. Answering Paragraph 157 of the Complaint, Davis incorporates by  
21 reference Paragraphs 1 through 156 above.

22 158. NMC denies the allegations set forth in Paragraph 158 of the FAC.

23 159. NMC denies the allegations set forth in Paragraph 159 of the FAC.

24 160. NMC denies the allegations set forth in Paragraph 160 of the FAC.

25 161. NMC denies the allegations set forth in Paragraph 161 of the FAC.

26 162. NMC denies the allegations set forth in Paragraph 162 of the FAC.

27 **AS TO COUNT IV**

28 163. Answering Paragraph 163 of the Complaint, Davis incorporates by



1 reference Paragraphs 1 through 162 above.

2 164. NMC denies the allegations set forth in Paragraph 164 of the FAC.

3 165. NMC denies the allegations set forth in Paragraph 165 of the FAC.

4 166. NMC denies the allegations set forth in Paragraph 166 of the FAC.

5 167. NMC denies the allegations set forth in Paragraph 167 of the FAC.

6 168. NMC denies the allegations set forth in Paragraph 168 of the FAC.

7 169. NMC denies the allegations set forth in Paragraph 169 of the FAC.

8 170. NMC denies the allegations set forth in Paragraph 170 of the FAC.

9 171. NMC denies the allegations set forth in Paragraph 171 of the FAC.

10 **AS TO COUNT V**

11 172. Answering Paragraph 172 of the Complaint, Davis incorporates by  
12 reference Paragraphs 1 through 171 above.

13 173. NMC admits the allegations set forth in Paragraph 173 of the FAC.

14 174. NMC denies the allegations set forth in Paragraph 174 of the FAC.

15 175. NMC denies the allegations set forth in Paragraph 175 of the FAC.

16 176. NMC denies the allegations set forth in Paragraph 176 of the FAC.

17 **AS TO COUNT VI**

18 177. Answering Paragraph 177 of the Complaint, Davis incorporates by  
19 reference Paragraphs 1 through 176 above.

20 178. NMC denies the allegations set forth in Paragraph 178 of the FAC.

21 **ANSWER TO PRAYER FOR RELIEF**

22 NMC denies the allegations set forth in the Receiver's Prayer for Relief and  
23 denies that the Receiver is entitled to the judgment it seeks in the Prayer for Relief, or  
24 to any relief at all.

25  
26 **AFFIRMATIVE DEFENSES**

27 Without in any way admitting any of the allegations of the FAC, and without  
28 assuming any burdens of proof that NMC would not otherwise have, NMC asserts the

1 affirmative defenses listed below.

2 FIRST AFFIRMATIVE DEFENSE

3 (Breach of Covenant Not to Sue)

4 The Receiver's claims are barred, in whole or in part, because they violate the  
5 Receiver's agreement not to sue NMC for matters related to the alleged retention of  
6 the Horizon funds.

7 SECOND AFFIRMATIVE DEFENSE

8 (Setoff)

9 NMC is entitled to set off against any sum awarded to Plaintiff any and all sum  
10 that is owed to NMC by the Receivership Entities.

11 THIRD AFFIRMATIVE DEFENSE

12 (Statute of Limitations and Repose)

13 The Receiver's claims are barred to the extent the Complaint was filed after the  
14 expiration of any applicable statute of limitations, statute of repose, or other applicable  
15 time bar.

16 FOURTH AFFIRMATIVE DEFENSE

17 (Estoppel)

18 The Receiver is estopped, by reason of his conduct and actions or those of the  
19 Receivership Entities, from asserting the claims alleged against NMC.

20 FIFTH AFFIRMATIVE DEFENSE

21 (Waiver)

22 The Receiver has waived the right, by reason of his conduct and actions or those  
23 of the Receivership Entities, to assert the claims alleged against NMC.

24 SIXTH AFFIRMATIVE DEFENSE

25 (Consent)

26 The Receiver's claims are barred by reason of the express and/or implied  
27 consent by the Receiver or the Receivership Entities to NMC's acts.

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SEVENTH AFFIRMATIVE DEFENSE

(Unclean Hands and *In Pari Delicto*)

By reason of his conduct and actions or those of the Receivership Entities, the Receiver’s claims are barred by the doctrines of unclean hands and *in pari delicto*.

EIGHTH AFFIRMATIVE DEFENSE

(Contributory Negligence / Comparative Negligence)

The Receiver’s claims are barred, or awardable damages must be reduced to the extent that, the negligence of the Receiver, the Receivership Entities, or any other person or entity contributed to the damages allegedly suffered by the Receivership Entities.

NINTH AFFIRMATIVE DEFENSE

(Limitation of Liability)

The Receiver’s claims for damages are limited by the Receivership Entities’ contracts with NMC.

RESERVATION OF AFFIRMATIVE DEFENSES

NMC presently has insufficient knowledge or information upon which to form a belief whether it may have additional affirmative defenses. On that basis, NMC reserves the right to amend this Answer to assert additional affirmative defenses in the event discovery indicates that additional affirmative defenses are appropriate.

WHEREFORE, NMC demands judgment against Plaintiff as follows:

- A. That Plaintiff take nothing by its FAC;
- B. That NMC is not required to pay the Plaintiff anything;
- C. That no injunctions be entered against NMC;
- D. That the FAC be dismissed in its entirety, with prejudice;
- E. That NMC be awarded costs incurred by this action, including reasonable attorneys’ fees; and
- F. That NMC be awarded such other and further relief as the Court deems just and proper.

**COUNTERCLAIMS**

1  
2 Defendant National Merchant Center, Inc. (“NMC” or “Defendant”) hereby  
3 counterclaims against the Receiver Thomas W. McNamara, in his capacity as the  
4 Court-Appointed Receiver for True Count Staffing Inc., d/b/a SL Account  
5 Management; Prime Consulting LLC, d/b/a Financial Preparation Services; TAS  
6 2019 LLC d/b/a Trusted Account Services; First Priority LLC; and Horizon  
7 Consultants LLC.

8 **NATURE OF COUNTERCLAIMS AND JURISDICTION**

9 1. National Merchant Center, Inc. brings counterclaims against the  
10 Receiver in his capacity as Receiver for True Count Staffing, Inc. and TAS 2019 LLC  
11 for, among other things, breach of contract and indemnification.

12 2. The Court has subject-matter jurisdiction over the counterclaims under  
13 28 U.S.C. § 1367(a).

14 **THE PARTIES**

15 3. Defendant-Counterclaimant National Merchant Center, Inc. (“NMC”) is  
16 a California corporation with its offices located at 18300 Von Karman Avenue Suite  
17 850, Irvine, California 92612. NMC is in the business of providing merchant credit  
18 card processing services to businesses that accept credit cards.

19 4. Plaintiff Thomas W. McNamara was appointed Receiver in the case of  
20 *Bureau of Consumer Financial Protection, et al. v. Consumer Advocacy Center Inc., et*  
21 *al.*, Case No. SACV 19-1998-MWF (KSx) (C.D.Cal.). The Receivership Entities  
22 include True Count Staffing, Inc. and TAS 2019 LLC.

23 5. True Count Staffing, Inc., (“True Count”) at all relevant times herein  
24 was doing business as Premier Student Loan Center and SL Account Mgmt, and at all  
25 times mentioned herein was a California corporation with offices located at 88 Hughes  
26 Parkway #210, Irvine, CA 92618.

27 6. TAS 2019 LLC (“TAS”), at all relevant times herein was doing  
28 business as Trusted Account Services, Trusted Account Services Maintenance, Trusted

1 Account Services East, and Trusted Account Services West, and all times mentioned  
2 herein was Wyoming Limited Liability Company, with offices located at 2614 El  
3 Capitan Ave, Arcadia CA 91106 and 30 N. Gould Street Ste R, Sheridan Wyoming,  
4 82801.

5 7. NMC is informed and believes, and upon such information and belief  
6 alleges, that Counter-Defendants named herein as Roes 1 through 20 are in some  
7 manner responsible for the events and wrongful conduct described herein, and are  
8 liable to NMC for the damages they have incurred. The true names and capacities of  
9 said Counter-Defendants, whether individual, corporate, associate or otherwise, are  
10 unknown to NMC, who therefore sue said Counter-Defendants as such fictitious  
11 names, and NMC will amend this Counterclaim to show their true names and  
12 capacities when same have been ascertained.

13 **FACTS**

14 8. On or about February 20, 2018, NMC entered into a merchant  
15 processing agreement (“MPA”) with True Count dba Premier Student Loan Center, a  
16 true and correct copy of which is attached hereto as Exhibit “A” and incorporated by  
17 this reference (“True Count Contract 1”).

18 9. On or about February 20, 2018, NMC entered into a contract with True  
19 Count dba SL Account Mgmt, a true and correct copy of which is attached hereto as  
20 Exhibit “B” and incorporated by this reference (“True Count Contract 2”).

21 10. Both True Count Contract 1 and True Count Contract 2 provide, among  
22 other things: that NMC shall be the exclusive credit card processing company for an  
23 initial term of three (3) years; and that if NMC terminates the account because of an  
24 Event of Default, NMC is entitled to an early termination fee as set forth in Section  
25 A.3 of Part III of the accompanying Program Guide establishing the terms and  
26 conditions of the contract.

1           11.       True Count Contract 1 and True Count Contract 2 define “Event of  
2 Default” to include, among other things, “a material adverse change in your business,  
3 financial condition, or business prospects.”

4           12.       On or about October 24, 2019, NMC terminated True Count Contract 1  
5 and True Count Contract 2 after the Receiver in this case served an order to freeze  
6 True Count’s assets, which constituted an Event of Default under the contracts.

7           13.       Pursuant to True Count Contract 1 and True Count Contract 2, NMC  
8 had the right to so terminate the accounts and collect its early termination fee in the  
9 amounts \$176,802.96 for True Count Contract 1 and \$907,501.69 for True Count  
10 Contract 2, respectively.

11           14.       True Count Contract 1 and True Count Contract 2 further stated, in  
12 Section 27 of the Program Guide, that True Count is obligated to indemnify and hold  
13 harmless NMC “from and against all losses, liabilities, damages, and expenses . . .  
14 arising out of [True Count’s] or [its] employees’ or [its] agents’ negligence or willful  
15 misconduct, in connection with Card transactions or otherwise arising from your  
16 provision of goods and services to Cardholders.”

17           15.       On or about July 1, 2019, NMC entered into a merchant processing  
18 agreement (“MPA”) with TAS dba Trusted Account Services, a true and correct copy  
19 of which is attached hereto as Exhibit “C” and incorporated by this reference (“TAS  
20 Contract 1”).

21           16.       On or about September 19, 2019, NMC entered into a merchant  
22 processing agreement (“MPA”) with TAS dba Trusted Account Services East, a true  
23 and correct copy of which is attached hereto as Exhibit “D” and incorporated by this  
24 reference (“TAS Contract 2”).

25           17.       On or about September 19, 2019, NMC entered into a merchant  
26 processing agreement (“MPA”) with TAS dba Trusted Account Services West, a true  
27 and correct copy of which is attached hereto as Exhibit “E” and incorporated by this  
28 reference (“TAS Contract 3”).

1           18.       On or about September 19, 2019, NMC entered into a merchant  
2 processing agreement (“MPA”) with TAS dba Trusted Account Services Maintenance,  
3 a true and correct copy of which is attached hereto as Exhibit “F” and incorporated by  
4 this reference (“TAS Contract 4”).

5           19.       TAS Contract 1, TAS Contract 2, TAS Contract 3 and TAS Contract 4  
6 all provide, among other things: that NMC shall be the exclusive credit card processing  
7 company for an initial term of three (3) years; and that if NMC terminates the account  
8 because of an Event of Default, NMC is entitled to an early termination fee as set forth  
9 in Section A.3 of Part III of the accompanying Program Guide establishing the terms  
10 and conditions of the contract.

11           20.       TAS Contract 1, TAS Contract 2, TAS Contract 3, and TAS Contract 4  
12 define “Event of Default” to include, among other things, “a material adverse change  
13 in your business, financial condition, or business prospects.”

14           21.       TAS Contract 1, TAS Contract 2, TAS Contract 3, and TAS Contract 4  
15 further stated, in Section 27 of the Program Guide, that True Count is obligated to  
16 indemnify and hold harmless NMC “from and against all losses, liabilities, damages,  
17 and expenses . . . arising out of [True Count’s] or [its] employees’ or [its] agents’  
18 negligence or willful misconduct, in connection with Card transactions or otherwise  
19 arising from your provision of goods and services to Cardholders.”

20           22.       Additionally, TAS Contract 1, TAS Contract 2, TAS Contract 3, and  
21 TAS Contract 4 state in Section 20 of the Program Guide that TAS is responsible for  
22 reimbursing NMC for all transactions it submits that are charged back.

23           23.       On or about November 12, 2019, NMC terminated TAS Contract 1,  
24 TAS Contract 2, TAS Contract 3 and TAS Contract after the Receiver in this case  
25 served an order to freeze True Count’s assets, an Event of Default under the contracts.

26           24.       Pursuant to TAS Contract 1, TAS Contract 2, TAS Contract 3, and TAS  
27 Contract 4, NMC had the right to so terminate the accounts and collect its early  
28 termination fee in the amounts \$523,889.62 for TAS Contract 1, \$1,802,858.95 for

1 TAS Contract 2, \$422,507.91 for TAS Contract 3, and \$614,259.36 for TAS Contract  
2 4, respectively.

3 25. On or about May 18, 2020, NMC sent invoices to TAS for the ETFs in  
4 the amount of \$523,889.62 for TAS Contract 1, \$1,802,858.95 for TAS Contract 2,  
5 \$422,507.91 for TAS Contract 3, and \$614,259.36 for TAS Contract 4, respectively  
6 ("Invoices"). A true and correct copy of the Invoices are collectively attached hereto as  
7 Exhibit "G" and incorporated herein by reference.

8 26. After termination of the TAS accounts, NMC continued to receive  
9 chargebacks from customers of TAS, honoring all of said chargebacks in the amount of  
10 \$218,896.56. TAS has not reimbursed NMC for those chargebacks.

11 27. NMC asked if the Receiver would reimburse NMC for the chargebacks  
12 given that the chargebacks were for TAS's customers, but the Receiver refused the  
13 request.

14 **COUNT 1**

15 **BREACH OF CONTRACT**

16 **(Against the Receiver for True Count)**

17 28. NMC repeats and re-alleges each and every allegation set forth in  
18 paragraphs 1 through 27 above, inclusive, and incorporates them by this reference.

19 29. NMC has performed all obligations on its part to be performed under  
20 True Count Contract 1 and True Count Contract 2. By reason of the True Count's  
21 default resulting in early termination of the Agreement by NMC, True Count owes to  
22 NMC an early termination fee in the amount of \$1,084,304.65 as well as all legally  
23 recoverable costs and interest.

24 30. True Count further represented to NMC in Section 21 of the Program  
25 Guide that each transaction under True Count Contract 1 and True Count Contract 2  
26 would be bona fide, authorized, and not fraudulent. The Receiver has alleged that True  
27 Count repeatedly engaged in fraudulent transactions, thus breaching the contracts. This  
28



1 is an additional basis on which True Count is liable for the early termination fee in the  
2 amount of \$1,084,304.65 as well as all legally recoverable costs and interest.

3 31. Further, NMC has incurred, and continues to incur, substantial expenses  
4 arising out of True Count's negligence or willful misconduct in connection with its  
5 card transactions and provision of goods and services. Such expenses include, but are  
6 not limited to, legal fees and expenses related to the CFPB case against True Count and  
7 in defending against the Receiver's action against NMC. True Count is required by  
8 contract to indemnify NMC for these expenses and any further losses, liabilities,  
9 damages, or expenses arising from these cases, and has failed to do so, breaching its  
10 contracts. This breach has resulted, and will continue to result, in damages to NMC in  
11 an increasing amount to be determined at trial.

12 **COUNT 2**

13 **DECLARATORY RELIEF**

14 **(Against the Receiver for True Count)**

15 32. NMC repeats and re-alleges each and every allegation set forth in  
16 paragraphs 1 through 27 above, inclusive, and incorporates them by reference herein.

17 33. True Count has, among other things, breached its agreements with NMC  
18 triggering NMC's right to terminate the agreements and seek an Early Termination Fee  
19 under Section A.3 of Part III of the Program Guide.

20 34. An actual, present and justiciable controversy has arisen between NMC  
21 and True Count regarding their respective rights and responsibilities under the True  
22 Count contracts.

23 35. NMC seeks a Declaratory Judgment from this Court that it had the right  
24 to terminate True Count's contracts under the terms and conditions thereof, and, further,  
25 that it now possesses the right to seek an Early Termination Fee from True Count under  
26 the Agreement.

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**COUNT 3**  
**BREACH OF CONTRACT**  
**(Against the Receiver for TAS)**

36. NMC repeats and re-alleges each and every allegation set forth in paragraphs 1 through 27 above, inclusive, and incorporates them by this reference.

37. NMC has performed all obligations on its part to be performed under TAS Contract 1, TAS Contract 2, TAS Contract 3, and TAS Contract 4.

38. By reason of the TAS’s default resulting in early termination of the Agreement by NMC, TAS is liable to NMC for \$3,363,616.84, as well as all legally recoverable costs and interest.

39. TAS further represented to NMC in Section 21 of the Program Guide that each transaction under TAS Contract 1, TAS Contract 2, TAS Contract 3, and TAS Contract 4 would be bona fide, authorized, and not fraudulent. The Receiver has alleged that TAS repeatedly engaged in fraudulent transactions, thus breaching the contracts. This is an additional basis on which TAS is liable for the early termination fee in the amount of \$3,363,616.84 as well as all legally recoverable costs and interest.

40. TAS further breached its agreement to reimburse NMC for chargebacks incurred under TAS Contract 1, TAS Contract 2, TAS Contract 3, and TAS Contract 4. This breach has resulted in damages in the amount of \$218,896.56.

41. Further, NMC has incurred, and continues to incur, substantial expenses arising out of TAS’s negligence or willful misconduct in connection with its card transactions and provision of goods and services. Such expenses include, but are not limited to, legal fees and expenses related to the CFPB case against TAS and in defending against the Receiver’s action against NMC. TAS is required by contract to indemnify NMC for these expenses and any further losses, liabilities, damages, or expenses arising from these cases, and has failed to do so. This breach has resulted, and will continue to result, in damages to NMC in an increasing amount to be determined at trial.

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**COUNT 4**

**ACCOUNT STATED**

**(Against the Receiver for TAS)**

42. NMC repeats and re-alleges each and every allegation set forth in paragraphs 1 through 27 above, inclusive, and incorporates them by this reference.

43. NMC and TAS had valid agreements (TAS Contracts 1-4) between them under which NMC would provide services to TAS in exchange for a fee as provided in the contracts.

44. After the agreements were terminated by NMC due to default by TAS, NMC sent TAS invoices stating the amount owed as \$523,889.62 for TAS Contract 1, \$1,802,858.95 for TAS Contract 2, \$422,507.91 for TAS Contract 3, and \$614,259.36 for TAS Contract 4, respectively. See Exhibit "G".

45. TAS has not disputed the amount due as stated in the invoice.

46. No amount owed by TAS has been paid since the transmittal of the invoice to TAS by NMC.

47. Plaintiff is therefore entitled to damages from TAS in the amount of \$3,363,616.84.

**COUNT 5**

**OPEN BOOK ACCOUNT**

**(Against the Receiver for TAS)**

48. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 27 above, inclusive, and incorporates them by this reference.

49. In the past four (4) years, TAS has become indebted to NMC in the amount of \$3,363,616.84., on an open book account, pursuant to the TAS contracts between the parties.

50. No amount has been paid by TAS.

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**COUNT 6**  
**DECLARATORY RELIEF**  
**(Against the Receiver for TAS)**

51. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 27 above, inclusive, and incorporates them by reference herein.

52. NMC has claimed that TAS has, among other things, breached its agreements with NMC triggering NMC's right to terminate TAS under the Agreement and seek an Early Termination Fee from Cross-Defendants under Section A.3 of Part III of the Program Guide.

53. An actual, present and justiciable controversy has arisen between NMC and TAS regarding their respective rights and responsibilities under the TAS contracts.

54. NMC seeks a Declaratory Judgment from this Court that it had the right to terminate TAS' contracts under the terms and conditions thereof, and, further, that it now possesses the right to seek an Early Termination Fee from TAS under the Agreement.

**COUNT 7**  
**(EQUITABLE INDEMNIFICATION)**  
**(Against Receiver for True Count and TAS)**

55. NMC re-alleges and incorporates by this reference each and every allegation set forth in paragraphs 1 through 27 as if fully set forth herein.

56. At all relevant times herein, True Count and TAS utilized NMC's services to perform credit card processing.

57. The principal action in this case alleges, among other things, conduct entitling True Count and TAS to compensatory damages against NMC.

58. NMC contends that it is not liable for events and occurrences described in the FAC.

59. NMC further contends that allegations complained of by Plaintiff was the fault of True Count and TAS, and their officers, employees, and agents alone.



