



of equitable interests in future property rights, and (iii) it has been established for more than two centuries in North Carolina that usury laws do not apply to advances of money where the principal or a portion thereof is put at risk. *See Charles S. Riley & Co v. W.T. Sears & Co.*, 154 N.C. 509, 70 S.E. 997 (1911); *Carter v. Brand*, 1 N.C. 255 (1800). Therefore, pursuant to N.C.R. Civ. P. 12(b)(6), Plaintiffs' First Cause of Action must be dismissed.

### **THIRD DEFENSE**

Plaintiffs' Second Cause of Action under the Consumer Finance Act fails to state a claim upon which relief can be granted because, inter alia, (i) the transaction described in the Complaint does not impose upon Plaintiff an absolute obligation to repay at least the principal amount of the money advanced to Plaintiff and therefore is not a loan, (ii) usury laws apply only to loans, not bona fide purchases of property, (iii) the State Banking Commission has no jurisdiction over the sale and assignment of equitable interests in the proceeds of personal injury claims, and (iv) it has been established for more than two centuries in North Carolina that usury laws do not apply to advances of money where the principal or a portion thereof is put at risk. *See Charles S. Riley & Co. v. W.T. Sears & Co.*, 154 N.C. 509, 70 S.E. 997(1911); *Carter v. Brand*, 1 N.C. 255 (1800). Therefore, pursuant to N.C.R. Civ. P. 12(b)(6), Plaintiffs' Second Cause of Action must be dismissed.

### **FOURTH DEFENSE**

Plaintiffs' Complaint fails to state a claim upon which relief can be granted because the application of the usury laws or the Consumer Finance Act to the transaction described in the Complaint, *i.e.*, an "advance" in which the principal is at risk and there is not an absolute obligation to repay the principal, is in direct conflict with other statutes of the State of North Carolina including, but not necessarily limited to, N.C. Gen. Stat. § 53-166, N.C. Gen. Stat. § 24-

9 and § 1-540.3. Therefore, pursuant to N.C.R. Civ. P. 12(b)(6), Plaintiffs' Complaint must be dismissed.

#### **FIFTH DEFENSE**

Plaintiffs' Complaint fails to state a claim upon which relief can be granted because Section 18 of the North Carolina State Constitution guarantees that "every person for an injury done to him in his lands, goods, person, or reputation shall have remedy by due course of law; and right and justice shall be administered without favor, denial or delay." Attorneys in North Carolina are not required to pay the costs and expenses necessary to the pursuit of legal claims. Attorneys in North Carolina are ethically forbidden from loaning money to their clients for personal and household expenses. Insurance companies are not required to advance money to persons injured by their insureds even in cases where liability is admitted, although they can. *See* N.C. Gen. Stat. § 1-540.3. Profit-driven insurance companies have no incentive to make the legal process quick or efficient for those whom their insureds have injured. Although their insureds may be at fault, insurance companies have greatly unequal bargaining strength and can force injured persons to accede to the financial pressure and either not pursue their claims or settle them for less than fair value. *See, e.g., Hicks v. Albertson*, 284 N.C. 236, 239, 200 S.E.2d 40, 42 (NC 1973). For these reasons, *inter alia*, pursuant to N.C.R. Civ. P. 12(b)(6), Plaintiffs' Second Cause of Action must be dismissed.

#### **SIXTH DEFENSE**

Plaintiffs' Third Cause of Action for unfair and deceptive trade practices fails to state a claim upon which relief can be granted because, *inter alia*, (i) Plaintiffs were referred to Legal Bucks by their attorneys, (ii) Plaintiffs contacted the Company and requested financial assistance on more than one occasion, (iii) Plaintiffs entered into agreements with Legal Bucks at arms

length and with the advice of counsel, (iv) Legal Bucks purchased and Plaintiffs sold and assigned an equitable interest in the prospective proceeds of their legal claims and not the claims themselves, (v) the price paid by Plaintiffs to preserve and protect their assets and/or to preserve their well-being while they awaited resolution of their claims, and thereby transfer a portion of the risk of loss to Legal Bucks, was controlled by the open market, and (vi) the terms of the transaction were clear, express and unambiguous. Therefore, pursuant to N.C.R. Civ. P. 12(b)(6), Plaintiffs' Third Cause of Action must be dismissed.

### **SEVENTH DEFENSE**

Plaintiffs' Fourth Cause of Action for a constructive trust fails to state a claim upon which relief can be granted because, *inter alia*, (i) Plaintiffs were referred to Legal Bucks by their attorneys, (ii) Plaintiffs contacted the Company and requested financial assistance, (iii) Plaintiffs entered into an agreement with Legal Bucks at arms length and with advice of counsel, (iv) Legal Bucks purchased and Plaintiffs sold and assigned an equitable interest in the prospective proceeds of their legal claims and not the claims themselves, (v) the price paid by Plaintiffs to preserve and protect their assets and/or to preserve their well-being while they awaited resolution of their claims, and thereby transfer a portion of the risk of loss to Legal Bucks, was controlled by the open market, (vi) the terms of the transaction were clear, express and unambiguous, (vii) Plaintiffs' attorneys assumed no duties to Legal Bucks other than the ministerial duties of conveying information and disbursing proceeds to the Company in the event of a recovery, (viii) the North Carolina State Bar expressly permitted Plaintiffs' attorneys to provide confidential information to Legal Bucks and remit payment to the Company in the event of a recovery (*see* 2000 FEO 4), and (ix) if plaintiff has a claim against defendants, which is denied, plaintiff has an adequate remedy at law and an equitable remedy such as constructive

trust is not available. Therefore, pursuant to N.C.R. Civ. P. 12(b)(6), Plaintiffs' Fourth Cause of Action must be dismissed.

#### **EIGHTH DEFENSE**

Plaintiffs' Sixth Cause of Action for rescission and restitution fails to state a claim upon which relief can be granted because, *inter alia*, (i) Plaintiffs were referred to Legal Bucks by their attorneys, (ii) Plaintiffs contacted the Company and requested financial assistance, (iii) Plaintiffs entered into an agreement with Legal Bucks at arms length, (iv) Legal Bucks purchased and Plaintiffs sold and assigned an equitable interest in the prospective proceeds of their legal claims and not the claims themselves, (v) the price paid by Plaintiffs to preserve and protect their assets and/or to preserve their well-being while they awaited resolution of their claims, and thereby transfer a portion of the risk of loss to Legal Bucks, was controlled by the open market, and (vi) the terms of the transaction were clear, express and unambiguous, and (viii) North Carolina law allowed and encouraged Plaintiffs to avoid or minimize damages caused by the defendants' conduct in the underlying legal claims. Therefore, pursuant to N.C.R. Civ. P. 12(b)(6), Plaintiffs' Sixth Cause of Action must be dismissed.

#### **NINTH DEFENSE**

Plaintiffs' Sixth Cause of Action for a judgment declaring the Company's business to be illegal fails to state a claim upon which relief can be granted because, *inter alia*, (i) Plaintiffs were referred to Legal Bucks by their attorneys, (ii) Plaintiffs contacted the Company and requested financial assistance, (iii) Plaintiffs entered into agreements with Legal Bucks at arms length and with advice of counsel, (iv) Legal Bucks purchased and Plaintiffs sold and assigned an equitable interest in the prospective proceeds of Plaintiffs' legal claims and not the claims themselves and North Carolina law permits equitable assignments of proceeds. *Charlotte-*

*Mecklenburg Hospital Authority v. First of Georgia Ins. Co.*, 340 N.C. 88, 455 S.E.2d 655 (1995); *N.C. Baptist Hospitals, Inc. v. Mitchell*, 323 N.C. 528, 374 S.E.2d 844 (1988); *Alaimo Family Chiropractic v. Allstate Ins. Co.*, 155 N.C. App. 194, 574 S.E.2d 496 (2002), *disc. rev. denied*, 356 N.C. 667, 577 S.E.2d 108 (2003), (v) the price paid by Plaintiffs to preserve and protect their assets and/or to preserve their well-being, and thereby transfer a portion of the risk of loss to Legal Bucks, was controlled by the open market, (vi) the terms of the transaction were clear, express and unambiguous, (vii) Plaintiffs' attorneys assumed no duties to Legal Bucks other than the ministerial duties of conveying information and disbursing proceeds to the Company in the event of a recovery, (viii) the North Carolina State Bar expressly permitted Plaintiffs' attorneys to provide confidential information to Legal Bucks and remit payment to the Company in the event of a recovery (*see* 2000 FE0 4), (ix) the transaction described in the Complaint does not impose upon Plaintiffs an absolute obligation to repay at least the principal amount of the money advanced to Plaintiff and therefore is not a loan, (x) usury laws apply only to loans, not bona fide purchases of equitable interests in future property rights, and (xi) it has been established for more than two centuries in North Carolina that usury laws do not apply to advances of money where the principal or a portion thereof is put at risk. *See Charles S. Riley & Co. v. W.T. Sears & Co.*, 154 N.C. 509, 70 S.E. 997 (1911); *Carter v. Brand*, 1 N.C. 255 (1800). Therefore, pursuant to N.C.R. Civ. P. 12(b)(6), Plaintiffs' Sixth Cause of Action must be dismissed.

#### **TENTH DEFENSE**

Some or all of Plaintiffs' as well as those of the putative class claims are barred by the applicable statutes of limitation.

### **ELEVENTH DEFENSE**

Plaintiffs come into this Court with unclean hands and are therefore barred from any recovery.

### **TWELFTH DEFENSE**

The Defendants move the Court pursuant to Rules 12(b) of the Rules of Civil 75-16.1 to dismiss Plaintiffs' claim for attorney fees, because the Plaintiffs never made any offer to resolve the matter prior to filing the complaint, and the Defendants therefore never made an unwarranted refusal to fully resolve the matter constituting the basis of such suit as required by N.C.G.S. § 75-16.1. Therefore, Plaintiffs' prayer for attorney's fees pursuant to N.C.G.S. § 75-16.1 must be dismissed. Plaintiffs further move pursuant to Rule 11 of the Rules of Civil Procedure for sanctions and attorneys fees because Plaintiffs never had any basis in law or fact for alleging any entitlement to attorney's fees pursuant to N.C.G.S. § 75-16.1.

### **THIRTEENTH DEFENSE**

Responding to the correspondingly numbered paragraphs of the Complaint, Legal Bucks and the Tarts allege and aver as follows:

### **INTRODUCTION**

Plaintiffs' "Introduction" violates Rule 10 of the North Carolina Rules of Civil Procedure because all averments of a claim must be made in numbered paragraphs. It is admitted that Plaintiffs accepted litigation funding advances from Legal Bucks and LBFund and that a panel of the North Carolina Court of Appeals rendered an opinion in the case of *Odell v. Legal Bucks, LLC*, et al., \_\_\_ N.C. App. \_\_\_, 665 S.E.2d 767 (2008), *disc. rev. denied*, 363 N.C. 258, 676 S.E.2d 905 (2009), which speaks for itself. Except as admitted, denied. It is specifically denied that the transactions at issue constituted loans as defined by the North Carolina statutes, or even

by the erroneous opinion of the Court of Appeals. It is also specifically denied that the opinion of one panel of the Court of Appeals in the *Odell* case either correctly states the law of North Carolina as it has been for more than 200 years or correctly interprets the statute that it purports to apply.

1. It is admitted upon information and belief that Alexander L. Lee is a citizen and resident of Danville, Virginia. It is admitted that Mr. Lee entered into contracts with Legal Bucks and LBFund on or about December 22, 2007 in the amount of \$10,000.00; January 24, 2008 in the amount of \$2000.00, February 29, 2008 in the amount of \$5,000.00; and August 29, 2008 in the amount of \$6,000.00. These defendants lack sufficient information to form a belief as to the truth of the remaining allegations and therefore deny the same.

2. It is admitted upon information and belief that Plaintiff Joe Brown is a citizen and resident of Mecklenburg County, NC. It is admitted that Plaintiff Brown entered into contracts with Legal Bucks and LB Fund on or about May 9, 2005 in the amount of \$10,000.00, May 25, 2005 in the amount of \$5,000.00 and January 30 2007 in the amount of \$5,000.00. It is further admitted that Legal Bucks and LB Fund recovered \$42,885.00 on the investment on or about March 3, 2007. Except as admitted, denied.

3. It is admitted upon information and belief that Plaintiff Mark Thompson is a citizen and resident of Beckley, West Virginia. It is admitted that Plaintiff Thompson entered into contracts with Legal Bucks and LBFund I on or about August 29, 2006 for \$15,000.00 and January 20, 2007 for \$5,000.00 and that \$30,760.00 was recovered on the investment on or about March 22, 2007. Except as admitted, denied.

4, Admitted

5. It is admitted that Defendant LBFund I is a North Carolina limited liability company that provides funding for litigation financing. Except as admitted, denied.

6. It is admitted that Defendant J. Keith Tart is a citizen and resident of Forsyth County, North Carolina and is an officer and manager of Legal Bucks and an officer LBFund I and that Mr. Tart manages the activities of Legal Bucks. Except as admitted, denied.

7. It is admitted that Defendant Lynn D. Tart is a citizen and resident of Forsyth County, North Carolina, is an officer of Legal Bucks and participates to a limited extent in the management of Legal Bucks. Except as admitted, denied.

8. It is admitted that Defendant Logan Financial Network, Inc is a North Carolina corporation. Except as admitted, denied.

9. It is admitted that Defendant Philip L. Smith is a citizen and resident of Forsyth County, North Carolina and manages LBFund I. Except as admitted, denied.

10. It is admitted that Defendant Virginia Smith is a citizen and resident of Forsyth County, North Carolina and performs bookkeeping services for LBFund I. Except as admitted, denied.

#### **FACTUAL ALLEGATIONS**

1. It is admitted that Legal Bucks is in the litigation funding business and has made litigation funding advances to the Plaintiffs and others. Except as admitted, denied. It is specifically denied that the advances made by Legal Bucks to plaintiffs and members of the putative class are loans that are subject to the Consumer Finance Act, N.C.G.S. § 24-1.1 or any other usury statute.

2. It is admitted that each advance that Legal Bucks made to Plaintiffs was a purchase of an interest in their potential recovery in the underlying action. Except as admitted, denied.

3. Denied as to Plaintiff Thompson and multiple members of the putative class.

4. It is admitted that the contracts at issue speak for themselves. Except as admitted, denied.

5. It is admitted that neither defendants nor Plaintiff's counsel in the underlying litigation- who acknowledged in writing that, in their opinion, the transaction at issue was legal or probably legal – erroneously told plaintiffs that the transaction was illegal under the law as it then existed and had existed in North Carolina for 200 years before the panel of the Court of Appeals rendered its opinion in the *Odell* case.

6. Admitted.

7. It is admitted that Plaintiffs on one side and Legal Bucks and LBFund on the other voluntarily and at arms length entered into the written contracts at issue, which speak for themselves. Except as admitted, denied.

8. It is admitted that other injured persons have voluntarily and at arms length sold and assigned to Legal Bucks and LB Fund the rights to prospective proceeds of various legal claims for money damages pursuant to written contracts which speak for themselves. Except as admitted, denied. It is specifically denied that Legal Bucks' customers constitute a certifiable class.

9. It is admitted that, when they considered when and whether to settle their underlying claims, Plaintiffs had to consider all liens on the potential proceeds of the settlement, including the lien arising from their contracts with Legal Bucks and LB Fund as well as medical liens and contingent fees due to their attorneys. Except as admitted, denied.

10. It is admitted that, as a result of their contracts with plaintiffs, Legal Bucks and LB Fund had a pecuniary interest in the successful resolution of Plaintiffs' underlying claims. Except as admitted, denied.

11. It is admitted that Legal Bucks and LB Fund had a right to a portion of the proceeds of the underlying litigation in accordance with the terms of their respective contracts with Plaintiffs. Except as admitted, denied.

12. It is admitted that when Legal Bucks and LB Fund customers resolved their underlying claims, they were contractually bound to pay the amount owed pursuant to the contracts that they entered into voluntarily and at arms length, although these amounts were frequently negotiated and compromised. Except as admitted denied.

13. It is admitted that Legal Bucks and LB Fund customers who have either made payments pursuant to their contracts or lost their cases entirely number in the hundreds. Except as admitted, denied. It is specifically denied that Legal Bucks and LB Fund customers constitute a certifiable class.

14. It is admitted that approximately 430 individuals have pending personal injury actions and open contracts with Legal Bucks and LB Fund. Except as admitted, denied. It is specifically denied that Legal Bucks and LB Fund customers constitute a certifiable class.

15. It is admitted that these defendants have no business or personal relationship with Plaintiffs other than the transactions at issue herein and that Legal Bucks and LB Fund have no business or personal relationship with most of their clients other than the purchase, sale and assignment transactions that constitute their line of business. Except as admitted, denied. It is specifically denied that Legal Bucks and LB Fund customers constitute a certifiable class.

16. Denied.

17. Denied.

18. Denied.

19. Denied.

20. It is admitted that Plaintiffs purport to bring this case as a class action pursuant to Rule 23 N.C.R. Civ. Pro., otherwise the allegations in paragraph 20 are denied. It is expressly denied that this case meets the requirements for class certification under Rule 23.

21. These Defendants deny that the “class” Plaintiff purports to define in paragraph 21 meets the requirements for class certification under Rule 23 of the North Carolina Rules of Civil Procedure.

22. It is admitted that Legal Bucks and LB Fund customers who have made payment in some amount, lost their cases entirely, or have pending claims number in the hundreds. Except as admitted, denied. It is expressly denied that this case meets the requirements for class certification under Rule 23 of the North Carolina Rules of Civil Procedure.

23. The allegations in paragraph 23 are denied. It is expressly denied that there are any questions of fact and law common to any Legal Bucks and LB Fund customers, past or present; that business practices constitute usury, violate the Consumer Finance Act, and constitute unfair and deceptive trade practices; and that defendants have violated any state banking regulations or the public policy of this state.

24. Denied.

25. Denied.

26. It is admitted that there is a case entitled: Odell v. Legal Bucks, LLC, et al. Rockingham County Case No. 05 CVS 999 currently pending. Except as admitted, denied.

**FIRST CAUSE OF ACTION – USURY**

27. Defendants reassert their responses to paragraphs 1-26 and incorporate them as if set forth herein.

28. Denied.

29. Denied.

30. Denied.

**SECOND CAUSE OF ACTION – CONSUMER FINANCE ACT**

31. Defendants reassert their responses to paragraphs 1-30 and incorporate them as if set forth herein.

32. Defendants admit that neither Legal Bucks nor LB Fund is licensed by the State Banking Commission, because the Commission does not have jurisdiction over nonrecourse funding. It is expressly denied that Legal Bucks and LB Fund make loans or that their business practices are governed by Chapters 24 or 53 of the General Statutes. Except as expressly admitted, denied.

33. Denied.

34. Denied.

**THIRD CAUSE OF ACTION – UNFAIR AND DECEPTIVE TRADE PRACTICES**

35. Defendants reassert their responses to paragraphs 1-34 and incorporate them as if set forth herein.

36. Admitted.

37. Denied.

**FOURTH CAUSE OF ACTION – CONSTRUCTIVE TRUST**

38. Defendants reassert their responses to paragraphs 1-37 and incorporate them as if set forth herein.

39. Denied.

**FIFTH CAUSE OF ACTION – DECLARATORY JUDGMENT**

40. Defendants reassert their responses to paragraphs 1-39 and incorporate them as if set forth herein.

41. Denied.

**SIXTH CAUSE OF ACTION – RESCISSION/RESTITUTION**

42. Defendants reassert their responses to paragraphs 1-41 and incorporate them as if set forth herein.

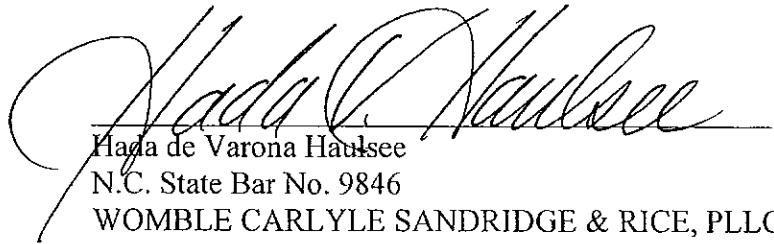
43. Denied.

44. Denied.

WHEREFORE, Legal Bucks and the Tarts pray the Court:

1. That this action be dismissed;
2. That Plaintiffs have and recover nothing of these defendants;
3. That the costs of this action be taxed against the Plaintiffs;
4. That defendants recover attorney's fees pursuant to Rule 11 N.C. Rules Civ. Pro. and N.C. Gen. Stat. § 75-16 by reason of Plaintiff's frivolous claim for attorney fees;
5. For such other and further relief as the Court may deem just and proper.

Respectfully submitted, this the 4 day of September, 2009.



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J. Keith Tart and Lynn D. Tart

**CERTIFICATE OF SERVICE**

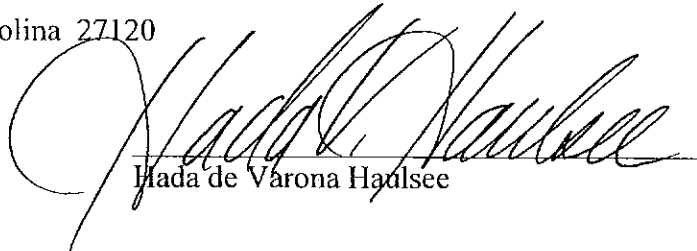
The undersigned attorney hereby certifies that on the 4 day of September, 2009, she served a copy of the foregoing Answer on counsel in this matter by placing said copy in a postpaid envelope and by depositing said envelope in the United States mail.

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