

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

AGDP HOLDING INC., *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 25-11446 (MFW)

(Jointly Administered)

AGDP HOLDING INC., *et al.*,

Plaintiff,

v.

Adv. Proc. No. 25-51803 (MFW)

TVT Capital Source LLC, White Star  
Funding, Inc d/b/a TVT Cap, Insta Funding  
LLC, and Pinnacle Business Funding LLC,

Defendants.

**ANSWER, AFFIRMATIVE DEFENSES, AND COUNTERCLAIMS OF TVT CAPITAL  
SOURCE LLC, INSTA FUNDING LLC, AND PINNACLE BUSINESS FUNDING LLC**

TVT Capital Source LLC (“TVT”), Insta Funding LLC (“Insta Funding”), and Pinnacle Business Funding LLC (“Pinnacle”, and collectively with TVT and Insta Funding, the “Defendants”), by and through their counsel, Porzio, Bromberg & Newman P.C., respectfully submit this answer, affirmative defenses, and counterclaims to the First Amended Complaint (the “Complaint”) filed by Avant Gardner, LLC, AGDP Holding Inc., EZ Festivals, LLC, Made Event, LLC, and Reynard Productions, LLC (collectively “Plaintiffs” or “Debtors” or “Avant Gardner”). Defendants, by way of Answer to the Complaint, state as follows:

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<sup>1</sup> The Debtors in these chapter 11 cases, together with the last four digits of the Debtors' federal tax identification number, are AGDP Holding Inc. (6504); Avant Gardner, LLC (6504); AG Management Pool LLC (9962); EZ Festivals LLC (8854); Made Event LLC (6272); and Reynard Productions, LLC (5431). The Debtors' service address is 140 Stewart Ave, Brooklyn, NY 11237, Attn: General Counsel.



**NATURE OF THE ADVERSARY PROCEEDING**

1. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 1 of the Complaint and therefore deny those allegations.

2. Defendants admit that there were agreements between the Defendants and Avant Gardner. The agreements speak for themselves, and the Defendants deny any characterization, paraphrase, or legal conclusion statement inconsistent with their terms. Defendants deny the remaining allegations set forth in paragraph 2 of the Complaint.

3. Defendants admit that there were agreements between the Defendants and Avant Gardner. The agreements speak for themselves, and the Defendants deny any characterization, paraphrase, or legal conclusion statement inconsistent with their terms. Defendants deny the remaining allegations set forth in paragraph 3 of the Complaint.

4. Defendants admit that under any relevant agreements with Avant Gardner, TVT collected monies through a TVT lockbox, but deny the remaining allegations set forth in paragraph 4 of the Complaint.

5. Defendants admit that there were agreements between the Defendants and Avant Gardner. The agreements speak for themselves, and the Defendants deny any characterization, paraphrase, or legal conclusion statement inconsistent with their terms. Defendants deny the remaining allegations set forth in paragraph 5 of the Complaint.

6. Paragraph 6 contains legal conclusions which do not require a response. To the extent a response is deemed necessary, Defendants deny the allegations set forth in paragraph 6 of the Complaint.

7. Defendants deny the allegations set forth in paragraph 7 of the Complaint.

8. Defendants deny the allegations set forth in paragraph 8 of the Complaint.

**JURISDICTION AND VENUE**

9. Paragraph 9 contains legal conclusions which do not require a response.
10. Paragraph 10 contains legal conclusions which do not require a response.
11. Paragraph 11 contains legal conclusions which do not require a response.
12. Paragraph 12 contains legal conclusions which do not require a response.

**PARTIES**

13. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 13 of the Complaint and therefore deny those allegations.

14. TVT admits that it is incorporated in Utah, has offices in Utah, and has employees in Utah. TVT also admits that it has offices in New York and Florida. TVT denies the balance of the allegations in paragraph 14 of the Complaint.

15. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 15 of the Complaint and therefore deny those allegations.

16. Insta Funding admits that it is incorporated in Connecticut, and has offices in Connecticut, Florida, New York and Utah. Insta Funding denies the balance of the allegations in paragraph 16 of the Complaint.

17. Pinnacle admits that it is incorporated in Maryland, and has offices in Maryland and New York. Pinnacle denies the balance of the allegations in paragraph 17 of the Complaint.

**FACTUAL BACKGROUND**

18. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 18 of the Complaint and therefore deny those allegations.

19. Defendants admit that the Kevin Ng article entitled *Brooklyn Mirage Teases Big Changes & New Design for 2025* was published in December 2024. The document speaks for itself, and the Defendants deny any characterization, paraphrase or legal conclusion inconsistent with its terms.

20. Defendants admit that there were agreements between the Defendants and Avant Gardner, but deny the remaining allegations set forth in paragraph 20 of the Complaint, including as to the characterization of the agreements.

21. Defendants admit that there were agreements between the Defendants and Avant Gardner, but deny the remaining allegations set forth in paragraph 21 of the Complaint, including as to the characterization of the agreements.

**A. TVT and TVT Cap Financings**

**1. The January TVT Loan Agreement**

22. TVT admits the allegations set forth in paragraph 22 of the Complaint.

23. TVT admits an agreement was entered between TVT and Avant Gardner on January 16, 2025. The document speaks for itself, and the Defendants deny any characterization, paraphrase, or legal conclusion statement inconsistent with its terms. TVT denies the balance of the allegations set forth in paragraph 23 of the Complaint.

24. TVT admits an agreement was entered between TVT and Avant Gardner on January 16, 2025. The document speaks for itself, and the Defendants deny any characterization,

paraphrase, or legal conclusion inconsistent with its terms. TVT denies the balance of allegations set forth in paragraph 24 of the Complaint.

25. TVT admits an agreement was entered between TVT and Avant Gardner on January 16, 2025. The document speaks for itself, and the Defendants deny any characterization, paraphrase, or legal conclusion inconsistent with its terms. TVT denies the balance of allegations set forth in paragraph 25 of the Complaint.

26. TVT admits an agreement was entered between TVT and Avant Gardner on January 16, 2025. The document speaks for itself, and the Defendants deny any characterization, paraphrase, or legal conclusion inconsistent with its terms. TVT denies the balance of allegations set forth in paragraph 26 of the Complaint.

## **2. The *Three* February TVT and TVT Cap Cash Advance Agreements**

27. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 27 of the Complaint and therefore deny those allegations.

28. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 28 of the Complaint and therefore deny those allegations.

29. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 29 of the Complaint and therefore deny those allegations.

30. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 30 of the Complaint and therefore deny those allegations.

31. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 31 of the Complaint and therefore deny those allegations.

32. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 32 of the Complaint and therefore deny those allegations.

33. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 33 of the Complaint and therefore deny those allegations.

34. TVT admits an agreement was entered between TVT and Avant Gardner on February 4, 2025. The document speaks for itself, and the Defendants deny any characterization, paraphrase, or legal conclusion inconsistent with its terms. TVT denies the balance of the allegations set forth in paragraph 34 of the Complaint.

35. TVT admits an agreement was entered between TVT and Avant Gardner on February 4, 2025. The document speaks for itself, and the Defendants deny any characterization, paraphrase, or legal conclusion inconsistent with its terms. TVT denies the balance of the allegations set forth in paragraph 35 of the Complaint.

36. TVT admits an agreement was entered between TVT and Avant Gardner on February 4, 2025. The document speaks for itself, and the Defendants deny any characterization, paraphrase, or legal conclusion inconsistent with its terms. TVT denies the balance of the allegations set forth in paragraph 36 of the Complaint.

37. TVT admits an agreement was entered between TVT and Avant Gardner on February 4, 2025. The document speaks for itself, and the Defendants deny any characterization,

paraphrase, or legal conclusion inconsistent with its terms. TVT denies the balance of the allegations set forth in paragraph 37 of the Complaint.

38. TVT admits an agreement was entered between TVT and Avant Gardner on February 4, 2025. The document speaks for itself, and the Defendants deny any characterization, paraphrase, or legal conclusion inconsistent with its terms. TVT denies the balance of the allegations set forth in paragraph 38 of the Complaint.

39. TVT denies the allegations set forth in paragraph 39 of the Complaint.

40. TVT admits that an agreement was entered into between Avant Gardner and TVT on February 25, 2025. The document speaks for itself, and the Defendants deny any characterization, paraphrase, or legal conclusion inconsistent with its terms. TVT denies the balance of the allegations set forth in paragraph 40 of the Complaint.

41. TVT admits that an agreement was entered into between Avant Gardner and TVT on February 25, 2025. The document speaks for itself, and the Defendants deny any characterization, paraphrase, or legal conclusion inconsistent with its terms. TVT denies the balance of the allegations set forth in paragraph 41 of the Complaint.

42. TVT admits that an agreement was entered into between Avant Gardner and TVT on February 25, 2025. The document speaks for itself, and the Defendants deny any characterization, paraphrase, or legal conclusion inconsistent with its terms. TVT denies the balance of the allegations set forth in paragraph 42 of the Complaint.

43. TVT admits that an agreement was entered into between Avant Gardner and TVT on February 25, 2025. The document speaks for itself, and the Defendants deny any characterization, paraphrase, or legal conclusion inconsistent with its terms. TVT denies the balance of the allegations set forth in paragraph 43 of the Complaint.

44. TVT admits that an agreement was entered into between Avant Gardner and TVT on February 25, 2025. The document speaks for itself, and the Defendants deny any characterization, paraphrase, or legal conclusion inconsistent with its terms. TVT denies the balance of the allegations set forth in paragraph 44 of the Complaint.

**3. The March TVT Cap Cash Advance Agreement and the March TVT Loan Agreement**

45. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 45 of the Complaint and therefore deny those allegations.

46. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 46 of the Complaint and therefore deny those allegations.

47. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 47 of the Complaint and therefore deny those allegations.

48. TVT admits that an agreement was entered into between Avant Gardner and TVT on March 13, 2025. The document speaks for itself, and the Defendants deny any characterization, paraphrase, or legal conclusion inconsistent with its terms. TVT denies the balance of the allegations set forth in paragraph 48 of the Complaint.

49. TVT admits that an agreement was entered into between Avant Gardner and TVT on March 13, 2025. The document speaks for itself, and the Defendants deny any characterization, paraphrase, or legal conclusion inconsistent with its terms. TVT denies the balance of the allegations set forth in paragraph 49 of the Complaint.

50. TVT admits that an agreement was entered into between Avant Gardner and TVT on March 13, 2025. The document speaks for itself, and the Defendants deny any characterization, paraphrase, or legal conclusion inconsistent with its terms. TVT denies the balance of the allegations set forth in paragraph 50 of the Complaint.



51. TVT denies the allegations set forth in paragraph 51 of the Complaint.

**B. Pinnacle Financing**

52. Pinnacle admits that an agreement was entered into between Avant Gardner and Pinnacle on February 19, 2025. The document speaks for itself, and the Defendants deny any characterization, paraphrase, or legal conclusion inconsistent with its terms.

53. Pinnacle admits that an agreement was entered into between Avant Gardner and Pinnacle on February 19, 2025. The document speaks for itself, and the Defendants deny any characterization, paraphrase, or legal conclusion inconsistent with its terms. Pinnacle denies the balance of the allegations set forth in paragraph 53 of the Complaint.

54. Pinnacle admits that an agreement was entered into between Avant Gardner and Pinnacle on February 19, 2025. The document speaks for itself, and the Defendants deny any characterization, paraphrase, or legal conclusion inconsistent with its terms.

55. Pinnacle denies the allegations in set forth in paragraph 55 of the Complaint.

**C. Insta Funding Financing**

56. Insta Funding admits that an agreement was entered into between Avant Gardner and Insta Funding on April 1, 2025. The document speaks for itself, and the Defendants deny any characterization, paraphrase, or legal conclusion inconsistent with its terms.

57. Insta Funding admits that an agreement was entered into between Avant Gardner and Insta Funding on April 1, 2025. The document speaks for itself, and the Defendants deny any characterization, paraphrase, or legal conclusion inconsistent with its terms.

58. Insta Funding admits that an agreement was entered into between Avant Gardner and Insta Funding on April 1, 2025. The document speaks for itself, and the Defendants deny any

characterization, paraphrase, or legal conclusion inconsistent with its terms. Insta Funding denies the balance of the allegations set forth in paragraph 58 of the Complaint.

59. Insta Funding admits that on or about July 24, 2025, Insta Funding initiated a lawsuit against Avant Gardner. The lawsuit and documents therein speak for themselves, and the Defendants deny any characterization, paraphrase, or legal conclusion inconsistent with their terms.

60. Insta Funding admits that on or about July 24, 2025, Insta Funding initiated a lawsuit against Avant Gardner. The lawsuit and documents therein speak for themselves, and the Defendants deny any characterization, paraphrase, or legal conclusion inconsistent with their terms.

61. Insta Funding admits that on or about July 24, 2025, Insta Funding initiated a lawsuit against Avant Gardner. The lawsuit and documents therein speak for themselves, and the Defendants deny any characterization, paraphrase, or legal conclusion inconsistent with their terms.

62. Insta Funding admits that it pursued certain rights and remedies pursuant to its lawsuit initiated against Avant Gardner on or about July 24, 2025. Insta Funding denies receipt of \$1,000,000 on July 27, 2025. Insta Funding denies the balance of the allegations set forth in paragraph 62 of the Complaint.

#### **D. Avant Gardner's Chapter 11 Filings**

63. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 63 of the Complaint and therefore deny those allegations.

64. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 64 of the Complaint and therefore deny those allegations.

65. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 65 of the Complaint and therefore deny those allegations.

66. Paragraph 66 contains legal conclusions which do not require a response. To the extent a response is deemed necessary, Defendants admit the allegations set forth in paragraph 66 of the Complaint.

#### **E. Preferential Transfers**

67. Defendants admit that they collected \$2,103,900 and that such monies were transferred to the various Defendants. Defendants deny the balance of the allegations set forth in in paragraph 67 of the Complaint.

68. Paragraph 68 contains legal conclusions which do not require a response. To the extent a response is deemed necessary, Defendants deny the allegations set forth in paragraph 68 of the Complaint.

69. Insta Funding admits that it filed a UCC-1 statement. Paragraph 69 contains legal conclusions which do not require a response. To the extent a response is deemed necessary, Defendants deny the balance of the allegations set forth in paragraph 69 of the Complaint.

#### **F. Fraudulent Transfers**

70. Paragraph 70 contains legal conclusions which do not require a response. To the extent a response is deemed necessary, Defendants deny the allegations set forth in paragraph 70 of the Complaint.

71. Defendants deny the allegations set forth in paragraph 71 of the Complaint.

**G. Defendants' Failure to Perfect Their Purported Security Interests**

72. Defendants deny the allegations set forth in paragraph 72 of the Complaint.

73. Insta Funding admits that it filed a UCC-1. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 73 of the Complaint and therefore deny those allegations.

74. Paragraph 74 contains legal conclusions which do not require a response. To the extent a response is deemed necessary, Defendants deny the allegations set forth in paragraph 74 of the Complaint.

75. Paragraph 75 contains legal conclusions which do not require a response. To the extent a response is deemed necessary, Defendants deny the allegations set forth in paragraph 75 of the Complaint.

76. Paragraph 76 contains legal conclusions which do not require a response. To the extent a response is deemed necessary, Defendants deny the allegations set forth in paragraph 76 of the Complaint.

77. Defendants deny the allegations set forth in paragraph 77 of the Complaint.

**CLAIMS FOR RELIEF**

**COUNT I**

**AVOIDANCE OF UNPERFECTED SECURITY INTERESTS AND WRONGFUL  
TRANSFERS (STRONG-ARM)  
(11 U.S.C. § 544, UCC § 9-301)**

78. Defendants hereby reallege and incorporate by reference all of their responses contained in the foregoing paragraphs as if fully set forth herein.

79. Defendants admit that Avant Gardner transacted with the Defendants prior to the Petition Date, as further described in the relevant agreements pertaining thereto. The agreements speak for themselves, and the Defendants deny any characterization, paraphrase, or legal conclusion inconsistent with their terms.

80. Defendants deny the allegations set forth in paragraph 80 of the Complaint.

81. Insta Funding admits that it filed a UCC-1. Paragraph 81 contains legal conclusions which do not require a response. To the extent a response is deemed necessary, Defendants deny the balance of the allegations set forth in paragraph 81 of the Complaint.

82. Defendants admit the allegations set forth in paragraph 82 of the Complaint insofar as the Debtors have an outstanding contract balance of \$11,389,949 owed to the Defendants and their co-defendant, exclusive of any legal fees, default charges, or other incremental amounts. Defendants deny any characterization, paraphrase, or legal conclusion inferred in paragraph 82.

83. Defendants deny the allegations set forth in paragraph 83 of the Complaint.

**COUNT II**

**AVOIDANCE OF PREFERENTIAL TRANSFERS  
(11 U.S.C. § 547(B))**

84. Defendants hereby reallege and incorporate by reference all of their responses contained in the foregoing paragraphs as if fully set forth herein.

85. Paragraph 85 contains legal conclusions which do not require a response. To the extent a response is deemed necessary, Defendants admit the allegations set forth in paragraph 85 of the Complaint.

86. Defendants admit that Avant Gardner transacted with the Defendants prior to the Petition Date, as further described in the relevant agreements pertaining thereto. The agreements speak for themselves, and the Defendants deny any characterization, paraphrase, or legal conclusion inconsistent with their terms.

87. Defendants deny the allegations set forth in paragraph 87 of the Complaint.

88. Insta Funding admits that it filed a UCC-1. Paragraph 88 contains legal conclusions which do not require a response. To the extent a response is deemed necessary, Defendants deny the balance of the allegations set forth in paragraph 88 of the Complaint.

89. Defendants deny the allegation set forth in paragraph 89 of the Complaint.

90. Insta Funding admits that it filed a UCC-1.

91. Insta Funding admits the date Insta Funding procured a prejudgment attachment set forth in paragraph 91 of the Complaint.

92. Insta Funding admits the allegations set forth in paragraph 92 of the Complaint.

93. Paragraph 93 contains legal conclusions which do not require a response. To the extent a response is deemed necessary, Defendants deny the balance of the allegations set forth in paragraph 93 of the Complaint.

94. Paragraph 94 contains a legal conclusion which does not require a response.

95. Insta Funding denies the allegations set forth in paragraph 95 of the Complaint.

96. Insta Funding admits that it purchased certain assets of the Debtors, and denies the balance of the allegations set forth in paragraph 96 of the Complaint.

97. Defendants deny the allegation set forth in paragraph 97 of the Complaint.

**COUNT III**  
**DISALLOWANCE OF CLAIMS BASED USURY LAW**  
**(11 U.S.C. § 502(b)(1))**

98. Defendants hereby reallege and incorporate by reference all of their responses contained in the foregoing paragraphs as if fully set forth herein.

99. Paragraph 99 contains legal conclusions which do not require a response. To the extent a response is deemed necessary, Defendants deny the balance of the allegations set forth in paragraph 99 of the Complaint.

100. TVT admits an agreement was entered between TVT and Avant Gardner on January 16, 2025. The document speaks for itself, and the Defendants deny any characterization, paraphrase, or legal conclusion inconsistent with its terms. Paragraph 100 also contains legal conclusions which do not require a response.

101. TVT denies the allegation set forth in paragraph 101 of the Complaint.

102. Paragraph 102 contains a legal conclusion which does not require a response.

103. The agreements speak for themselves, and the Defendants deny any characterization, paraphrase, or legal conclusion inconsistent with their terms.

104. Paragraph 104 contains a legal conclusion which does not require a response.

105. The agreements speak for themselves, and the Defendants deny any characterization, paraphrase, or legal conclusion inconsistent with their terms.

106. Defendants deny the allegations set forth in paragraph 106 of the Complaint.

107. Paragraph 107 contains a legal conclusion which does not require a response, however, to the extent necessary, TVT refers to the referenced documents as to the terms and conditions alleged in paragraph 107. The Defendants are without sufficient knowledge or

information sufficient to form a belief as to the truth of the allegations in paragraph 107 relating to the TVT Cap Cash Advance Agreement.

108. Paragraph 108 contains a legal conclusion which does not require a response.

109. Paragraph 109 contains a legal conclusion which does not require a response.

110. TVT refers to the referenced document as to the terms and conditions alleged in paragraph 110 of the Complaint. The Defendants are without sufficient knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 110 relating to the TVT Cap Cash Advance Agreement.

111. TVT denies the allegations set forth in paragraph 111 of the Complaint. The Defendants are without sufficient knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 111 relating to the TVT Cap Cash Advance Agreement.

112. Paragraph 112 contains a legal conclusion which does not require a response. The agreements speak for themselves, and the Defendants deny any characterization, paraphrase, or legal conclusion inconsistent with their terms.

113. Defendants deny the allegations set forth in paragraph 113 of the Complaint.

114. Paragraph 114 contains a legal conclusion which does not require a response. The agreements speak for themselves, and the Defendants deny any characterization, paraphrase, or legal conclusion inconsistent with their terms.

**COUNT IV**  
**AVOIDANCE OF CONSTRUCTIVE FRAUDULENT TRANSFER**  
**(11 U.S.C. § 548(a)(1)(B))**

115. Defendants hereby reallege and incorporate by reference all of their responses contained in the foregoing paragraphs as if fully set forth herein.

116. Defendants deny the allegations set forth in paragraph 116 of the Complaint.



117. Defendants deny the allegations set forth in paragraph 117 of the Complaint.

118. Defendants deny the allegations set forth in paragraph 118 of the Complaint.

**COUNT V**  
**DECLARATORY JUDGMENT**  
**(BANKRUPTCY RULE 7001(1))**

119. Defendants hereby reallege and incorporate by reference all of their responses contained in the foregoing paragraphs as if fully set forth herein.

120. Defendants deny the allegations set forth in paragraph 120 of the Complaint.

121. Defendants deny the allegations set forth in paragraph 121 of the Complaint.

122. Defendants deny the allegations set forth in paragraph 122 of the Complaint.

123. Defendants deny the allegations set forth in paragraph 123 of the Complaint.

124. Defendants deny the allegations set forth in paragraph 124 of the Complaint.

125. Defendants deny the allegations that Plaintiffs are entitled to relief set forth in paragraph 125 of the Complaint.

**AFFIRMATIVE DEFENSES**

**FIRST AFFIRMATIVE DEFENSE  
(Failure to State a Claim)**

The Complaint fails to state a claim upon which relief can be granted as to each count alleged therein.

**SECOND AFFIRMATIVE DEFENSE  
(Waiver)**

The Plaintiffs waived any right to challenge the validity or enforceability of the relevant agreements by accepting the proceeds, making payments under the agreements, executing security documents and redirection letters, and representing that they would continue to make payments. The Plaintiffs are estopped from now claiming the agreements are invalid or unenforceable.

**THIRD AFFIRMATIVE DEFENSE  
(Validity of Choice of Law Provisions)**

The relevant agreements contain valid choice of law provisions selecting the governing law of various jurisdictions. These provisions are enforceable and should be applied to determine the validity of the agreements and the applicability of usury laws.

**FOURTH AFFIRMATIVE DEFENSE  
(Estoppel)**

The Plaintiffs are estopped from challenging the validity of the relevant agreements because they accepted the benefit of \$11,000,000, made payments totaling \$3,789,972 under the agreements, executed irrevocable redirection letters, represented that the agreements were valid and enforceable, and the Defendants relied on these representations to their detriment.

**FIFTH AFFIRMATIVE DEFENSE**  
**(Unclean Hands)**

The Plaintiffs' claims should be barred by the doctrine of unclean hands because the Plaintiffs obtained the funding from the Defendants through fraudulent misrepresentations, never intended to repay the Defendants, engaged in illegal permitting activity, have interfered with the Defendants' property rights post-petition, and have used funds belonging to the Defendants in operations without requisite Court authorization.

**SIXTH AFFIRMATIVE DEFENSE**  
**(Laches)**

The Plaintiffs delayed unreasonably in asserting their claims, and this delay has prejudiced the Defendants.

**SEVENTH AFFIRMATIVE DEFENSE**  
**(Bad Faith Bankruptcy Filing)**

The Plaintiffs' bankruptcy filing was made in bad faith as part of a scheme to avoid legitimate obligations to the Defendants, benefit Axar at the expense of the Defendants, interfere with Insta Funding's prejudgment attachment, and obtain an unfair advantage over creditors. The Court should consider the bad faith nature of the bankruptcy filing in evaluating the Plaintiffs' claims.

**EIGHTH AFFIRMATIVE DEFENSE**  
**(Failure to Join Necessary Parties)**

The Complaint must be dismissed for failure to join all necessary parties.

**NINTH AFFIRMATIVE DEFENSE**  
**(Ordinary Course of Business)**

To the extent any transfers are deemed avoidable preferences under 11 U.S.C. § 547(b), such transfers were made in the ordinary course of business or financial affairs of the Debtors and

Defendants, and were made according to ordinary business terms, and therefore are protected from avoidance under 11 U.S.C. § 547(c)(2).

**TENTH AFFIRMATIVE DEFENSE  
(Contemporaneous Exchange for New Value)**

To the extent any transfers are deemed avoidable, such transfers were intended by the Debtors and Defendants to be contemporaneous exchanges for new value given to the Debtors, and therefore are protected from avoidance under 11 U.S.C. § 547(c)(1).

**ELEVENTH AFFIRMATIVE DEFENSE  
(New Value Defense)**

To the extent any transfers are deemed avoidable preferences, Defendants provided new value to the Debtors after receiving such transfers, and therefore such transfers are protected from avoidance to the extent of such new value under 11 U.S.C. § 547(c)(4).

**TWELFTH AFFIRMATIVE DEFENSE  
(Good Faith)**

The Defendants acted in good faith in entering into and performing under the agreements. The Defendants had no knowledge of any alleged insolvency, financial distress, or fraudulent intent of the Plaintiffs. The Defendants relied on the Plaintiffs' representations regarding their financial condition, construction project, and ability to repay. Accordingly, the Defendants are entitled to the protections afforded to good faith transferees.

**THIRTEENTH AFFIRMATIVE DEFENSE  
(Reservation of Rights)**

Defendants reserve the right to assert additional affirmative defenses as may be revealed through discovery or as may otherwise become available.

### **COUNTERCLAIMS**

Pursuant to Fed. R. Civ. P. 13 and Fed. R. Bankr. P. 7013, Defendants assert the following counterclaims against Plaintiffs.

### **PRELIMINARY STATEMENT**

The Complaint is a transparent attempt to avoid legitimate business obligations through misuse of the bankruptcy process. The Plaintiffs induced the Defendants (and their co-defendant) to collectively provide \$11,000,000 to the Plaintiffs through a systematic pattern of fraudulent misrepresentations regarding their construction project, financial condition, regulatory compliance, and ability to repay. The Plaintiffs concealed material facts including their default with their senior lender, illegal permitting activity, and plans to file bankruptcy. The Plaintiffs never intended to repay the Defendants; instead, they intended to use the Defendants' funds for the benefit of their senior lender, Axar Capital Management ("Axar"), as part of a scheme to take over the Debtors' operations.

### **FACTUAL ALLEGATIONS**

1. Prior to the Petition Date, Avant Gardner executed a term sheet with TVT on January 7, 2025, whereby TVT outlined a proposed financing structure for Avant Gardner in the amount of \$11,000,000, which would be disbursed in separate tranches subject to various terms, conditions and approvals.

2. The term sheet identified that the “use of funds” will be “[c]onstruction costs, working capital, and general corporate purposes, unless otherwise agreed in writing.”

3. The term sheet also provided, *inter alia*, that the financing would be contingent upon:

- a. “Financial review confirming ongoing financial stability and performance of [Avant Gardner].”
- b. “Satisfactory status updates on the construction project demonstrating progress.”

4. Pursuant to the term sheet, Avant Gardner entered into various agreements with Defendants, including:

- a. Agreement between Avant Gardner and TVT on January 16, 2025, whereby TVT transferred \$3,000,000 to Avant Gardner pursuant to the terms thereof;
- b. Agreement between Avant Gardner and TVT on February 4, 2025, whereby TVT transferred \$500,000 to Avant Gardner pursuant to the terms thereof;
- c. Agreement between Avant Gardner and TVT on February 25, 2025, whereby TVT transferred \$750,000 to Avant Gardner pursuant to the terms thereof;
- d. Agreement between Avant Gardner and TVT on March 13, 2025, whereby TVT transferred \$1,000,000 to Avant Gardner pursuant to the terms thereof;
- e. Agreement between Avant Gardner and Pinnacle on February 19, 2025, whereby Pinnacle transferred \$1,000,000 to Avant Gardner pursuant to the terms thereof; and
- f. Agreement between Avant Gardner and Insta Funding on April 1, 2025, whereby Insta Funding transferred \$3,000,000 to Avant Gardner pursuant to the terms thereof (collectively, (a) through (f) will be referred to as the “Agreements”).

5. The Defendants’ dealings with Avant Gardner as related to the Agreements were largely through Josh Wyatt, who was hired in or about October 2024 as the Plaintiffs’ CEO.

6. Upon information and belief, Mr. Wyatt was hired by Axar, the Debtors’ senior lender.

7. The Defendants were advised that the Debtors’ senior lender was “involved” with the Plaintiffs’ business.

8. Upon information and belief, no representative of the Plaintiff interviewed Josh Wyatt; all parties who interviewed Mr. Wyatt were affiliated with, or under the control of, Axar.

9. Upon information and belief, Axar intended to hire Gary Richards (“DJ Destructo”) as CEO at the time, who is known to have close ties with Axar’s CEO, Andrew Axelrod.

10. The Plaintiffs informed the Defendants that Axar was refusing to provide the Plaintiffs with any further capital, such that the Plaintiffs required the funding from the Defendants for a construction / renovation project.

11. Upon information and belief, Axar wanted to enter into the Agreements with the Defendants as part of a larger plan to, *inter alia*, drive out Jurgen “Billy” Bildstein from the business and take over operations.

12. The Plaintiffs advised the Defendants that their construction project would only take a few months, and that the Brooklyn Mirage would be open by April 2025.

13. The Plaintiffs advised the Defendants that the construction project was simply a renovation, and not a whole-scale tear-down / rebuild.

14. The Plaintiffs provided the Defendants with budgets regarding the construction project contemporaneous with the execution of the Term Sheet that the Plaintiffs knew were inaccurate, impossible, and/or false.

15. The Plaintiffs led the Defendants to believe that Axar consented to the Term Sheet and the subsequent tranches of financing from the Defendants.

16. The Plaintiffs specifically represented that the receivables purchased by the Defendants were unencumbered and were being sold free and clear to the Defendants.

17. The Plaintiffs represented to the Defendants that they had the wherewithal to pay all amounts due and owing pursuant to the Defendants’ Agreements described herein.

18. The Plaintiffs did not inform the Defendants that they were in default with their senior lender at the time of execution of the Term Sheet and the subsequent Agreements.

19. The Plaintiffs did not inform the Defendants that they were engaging in negotiations with various vendors at the time of execution of the Term Sheet and the subsequent Agreements.

20. Upon information and belief, the Plaintiffs were engaging in illegal activity relating to city permitting associated with the building and construction.

21. The Plaintiffs did not inform the Defendants that there were illegal permits and other regulatory violations related to the building and the construction project.

22. The Plaintiffs did not inform the Defendants at any relevant time that they were considering a bankruptcy or restructuring.

23. The Plaintiffs did not inform the Defendants at any relevant time that they had hired restructuring counsel.

24. Upon information and belief, Mr. Wyatt believed that Axar was running Plaintiffs' business for its own benefit.

25. Once Josh Wyatt was fired by Axar, his replacement, Alec Ifshin, represented to the Defendants that the Plaintiffs would continue to make payments to the Defendants under the relevant Agreements. He also represented that the Brooklyn Mirage was on target to open, and that they were simply waiting on a regulator to finalize the construction project.

26. Pursuant to the relevant Agreements, the Plaintiffs' food and beverage sales were to be transferred to a lockbox controlled and/or possessed by one or more of the Defendants. The



funds were transferred to the lockbox by Billfold<sup>2</sup> pursuant to a redirection letter that the Plaintiffs executed and agreed was irrevocable without the consent of Defendants.

27. Pursuant to the relevant Agreements, once collected, one or more of the Defendants would withhold Avant Gardner's weekly payments and deposit any remaining funds to Avant Gardner's account(s).

28. TVT had the requisite authority to collect such funds and then distribute to the other Defendants as applicable.

29. After execution of the relevant Agreements, the food and beverage receivables belonging to the Defendants were never transferred directly to the Plaintiffs or any Plaintiff account. In other words, the Plaintiffs never had control of the proceeds received for such receivables.

30. Some or all of the Defendants were also entitled to freeze certain Plaintiff accounts upon a default under the relevant Agreements.

31. On or about July 28, 2025, Insta Funding secured a prejudgment attachment of all of the Plaintiffs' bank accounts at JP Morgan Chase.

32. Post-petition, the Plaintiffs admitted that they interfered with the Defendants' lockbox account, and instructed Billfold to remit all net sales directly to the Plaintiffs, all without requisite Court authority.

33. The Plaintiffs also interfered with Insta Funding's prejudgment lien. Notwithstanding the Plaintiffs' representations to the Defendants that the purchased receivables were unencumbered, the Plaintiffs' Prepetition Term Loan Lenders (the Defendants understand

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<sup>2</sup> Upon information and belief, Billfold is a technology company that provides a point-of-sale (POS) and cashless payment solution specifically for the live entertainment industry.

this to be Axar) allegedly “exercised their rights under a deposit account control agreement (“DACA”) and instructed the Bank to release the hold on the Debtors’ Bank Accounts.” The Plaintiffs do not identify whether this activity occurred pre or post-petition.

34. The Plaintiffs unilaterally determined that they would “segregate and restrict the amount that was in their Bank Accounts when the Insta Funding prejudgment lien attached.” The Debtors do not identify how much is in this account.

35. The Debtors also unilaterally determined that “Insta Funding’s prejudgment lien would not extend to any amounts that enter the Bank Accounts after the Petition Date due to the automatic stay under 11 U.S.C. § 362.” The Debtors made these determinations and took consistent actions notwithstanding the filing of this lawsuit, wherein they’ve asked this Court to determine, and put at issue (among other things), the following:

- a. Whether the Agreements at issue were true sale or loans;
- b. Whether the Defendants properly perfected their interests in the receivables at issue; and
- c. Whether the receivables at issue are even property of the estate pursuant to section 541 of the Bankruptcy Code.

36. None of the issues in paragraph 35 above have been decided by the Bankruptcy Court.

37. The Plaintiffs also unilaterally rescinded their receivables redirection letter to Billfold (which remits the funds to the TVT lockbox account) after the Petition Date.

38. The Plaintiffs unilaterally decided to segregate in a separate Bank Account and restrict any amounts received due to “certain” food and beverage sales pending the outcome of this litigation, without seeking Court authorization and without first determining whether such action amounts to proper “adequate protection.”

39. The Plaintiffs have not stated which food and beverage sales are being held and which ones are being used in operations.

40. Upon information and belief, the rescission of the receivables redirection letter was done at the direction of Axar.

41. Upon information and belief, some of the funds that the Plaintiffs allegedly segregated as adequate protection for the benefit of the Defendants have been illegally used in Debtor operations.

42. Upon information and belief, certain proceeds from food and beverage sales have been illegally used in Debtor operations.

43. The Plaintiffs have provided no accounting of the funds purportedly being held for the benefit of the Defendants.

44. The Plaintiffs never intended to repay the amounts funded by the Defendants.

45. The Plaintiffs intended that the amounts funded by the Defendants would be used for the benefit of Axar.

46. The Defendants and their co-defendant transferred no less than \$11,000,000 to the Debtors. The Defendants have been repaid \$3,789,972, leaving a principal balance of \$7,210,028.

47. The Plaintiffs intend for the remaining principal balance to be used for the benefit of Axar.

**COUNT I**  
**Fraudulent Inducement**

48. Defendants repeat and reallege the preceding paragraphs.

49. Prior to the petition date, Defendants entered into various agreements to provide financing to Plaintiffs for its construction budget.

50. Upon information and belief, Plaintiffs knowingly misrepresented several material facts in order to induce Defendants to provide the aforementioned financing.

51. Defendants did in fact rely upon those misrepresentations in the decision to provide funding to Plaintiffs.

52. Defendants suffered harm as a result of their reliance upon Plaintiffs' misrepresentations.

WHEREFORE, Defendants request judgment for all damages arising from Plaintiffs' fraudulent inducement, plus interest, costs, and attorneys' fees.

**COUNT II**  
**Common Law Fraud**

53. Defendants repeat and reallege the preceding paragraphs.

54. Upon information and belief, Plaintiffs knowingly made misrepresentations as to material facts in their discussions with Defendants.

55. These misrepresentations were made with the intention of inducing Defendants to provide financing for the Plaintiffs' construction projects.

56. Defendants justifiably relied on the representations in providing the requested funds.

57. Defendants suffered damages as a result of Plaintiffs' misrepresentations.

58. Defendants damages were proximately caused by the knowing misrepresentations made by Plaintiffs.

WHEREFORE, Defendants request judgment for all damages arising from Plaintiffs' Common Law fraud, plus interest, costs, and attorneys' fees.

**COUNT III**  
**Post-Petition Breach of Contract**

59. Defendants repeat and reallege the preceding paragraphs.

60. Prior to the Petition Date, Debtors entered into the Agreements with the Defendants.

61. Under certain of the Agreements, Plaintiffs were obligated to direct third parties to remit certain proceeds of receivables to an account controlled and possessed by TVT.

62. After the Petition Date, Plaintiffs breached the Agreements by redirecting proceeds of receivables contrary to the terms of the relevant Agreements.

63. Plaintiffs redirected the proceeds without obtaining Defendants' consent or a Court order authorizing such action.

64. Plaintiffs have also used such proceeds without obtaining Defendants' consent or a Court order authorizing such use.

65. As a direct and proximate result, Defendants have suffered damages, including loss of value, interest, and enforcement costs, in an amount to be proven at trial.

WHEREFORE, Defendants request judgment for all damages arising from Plaintiffs' post-petition breach, plus interest, costs, and attorneys' fees.

**COUNT IV**  
**Unauthorized Use of Assets That Were Not Property of the Estates or, in the Alternative,  
Unauthorized Use of Cash Collateral  
(11 U.S.C. §§ 363(c)(2) and 541)**

66. Defendants repeat and reallege the preceding paragraphs.

67. At all times pertinent hereto, certain receivables of the Plaintiffs were owned by Defendants.

68. Such receivables did not constitute property of the estates.

69. At no time were Plaintiffs authorized to use proceeds of receivables that were owned by Defendants.

70. Plaintiffs' use and/or diversion of such receivables precluded Defendants' rightful possession of such property.

71. Alternatively, Defendants hold a valid perfected security interest in the collateral as described in the Agreements

72. Plaintiffs knowingly used such collateral to fund payroll and operating expenses without Defendants' consent and without a Court order under 11 U.S.C. § 363(c)(2).

73. Plaintiffs' actions were willful, knowing, and in disregard of Defendants' rights.

74. Defendants are entitled to turnover of, or compensation for, the misappropriated receivables or, in the alternative, pursuant to 11 U.S.C. § 363(e), Defendants are entitled to adequate protection, including replacement liens and/or immediate turnover of misused funds.

WHEREFORE, Defendants request judgment (a) declaring that Plaintiffs' post-petition use of the Defendants' property was unauthorized; (b) compelling turnover of the Defendants' property; (c) granting Defendants replacement liens or other adequate protection; and (d) awarding damages and attorneys' fees.

**COUNT V**  
**Conversion**

75. Defendants repeat and reallege the preceding paragraphs.

76. Plaintiffs wrongfully exercised dominion and control over specific, identifiable property of Defendants, including through the diversion of such property for unauthorized purposes.

77. Such acts constitute conversion under relevant and applicable law.

78. Defendants have been damaged thereby in an amount to be determined at trial.

WHEREFORE, Defendants demand judgment for compensatory damages, punitive damages where appropriate, and such other relief as the Court deems just and proper.

**COUNT VI**  
**Civil Conspiracy**

79. Defendants repeat and reallege the preceding paragraphs.

80. Upon information and belief, Plaintiffs, together with Axar Capital Management LLC, acted in concert to deprive Defendants of their property.

81. Plaintiffs and Axar took said action as part of a broader scheme to defraud Defendants of the money Defendants are entitled to under their Agreements with Plaintiffs.

82. Defendants suffered monetary damages as a result of Plaintiffs' and Axar's interference with Defendants' property.

WHEREFORE, Defendants demand judgment for compensatory damages, punitive damages where appropriate, and such other relief as the Court deems just and proper.

**COUNT VII**  
**Unjust Enrichment**

83. Defendants repeat and reallege the preceding paragraphs.

84. Defendants conferred a benefit upon Plaintiffs in the form of funding for various construction projects contemplated by Plaintiffs.

85. Plaintiffs accepted the funds and used them for the agreed upon purposes.

86. As a result, Plaintiffs were able to rebuild a significant portion of their properties.

87. Defendants have not received fair compensation for the benefit conferred upon and accepted by Plaintiffs.

88. It would be unjust to allow Plaintiffs to accept the funding without providing fair compensation to Defendants.

WHEREFORE, Defendants demand judgment for compensatory damages, punitive damages where appropriate, and such other relief as the Court deems just and proper.

**PRAYER FOR RELIEF**

Defendants respectfully request that this Court:

- a. Dismiss Plaintiffs' Complaint with prejudice;
- b. Enter judgment in favor of Defendants on all Counterclaims;
- c. Award compensatory damages, replacement liens, or other appropriate relief;
- d. Award Defendants their costs and reasonable attorneys' fees;
- e. Allow Defendants an administrative claim in the Plaintiffs' bankruptcy cases based on any post-petition misconduct; and
- f. Grant such other and further relief as is just and proper.

**JURY DEMAND AND LOCAL RULE 7008-1 STATEMENT**

Defendants consent to the entry of final orders or judgment by this Court to the extent it is determined that the Court has constitutional authority to enter such final orders.

To the extent permitted by law, Defendant demands a trial by jury on all issues so triable.

October 13, 2025

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