IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

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| BERINGER COMMERCE, INC., d/b/a BLUE ACORN, iCi,<br><br>Plaintiff,<br><br>vs.<br><br>FIN CAP, INC., d/b/a "BLUEACORN.CO," BLUE ACORN PPP, LLC, BLUE OAK FOREST, LLC, MICHAEL S. COTA, JAMES FLORES, STEPHANIE HOCKRIDGE REIS, and NATHAN REIS,<br><br>Defendants. | Civil Action No. 5:21-cv-251-BO |

**DECLARATION OF NOAH SPIRAKUS**

I, Noah Spirakus, declare pursuant to 28 U.S.C. § 1746 as follows:

1. I am currently employed by Fin Cap, Inc., Blueacorn PPP, LLC and Blue Oak Forest, LLC (collectively, "Blueacorn PPP") as Chief Technology Officer. I make this Declaration in support of the Blueacorn PPP's opposition to the Motion for Preliminary Injunction filed Plaintiff Beringer Commerce, Inc. d/b/a Blue Acorn iCi ("BCI"). This Declaration is based upon my personal knowledge. Each of the following statements is true and correct to the best of my own knowledge.

2. Blueacorn PPP was created specifically in response to the problem small business owners were experiencing at the start of the Covid-19 pandemic accessing Paycheck Protection Program ("PPP") loan funds through a bank. Blueacorn PPP itself is not a lender. Instead, Blueacorn PPP is a lender service provider that utilizes technology to work with community lenders as their online processing and support platform. As of June 9, 2021, Blueacorn PPP had

successfully processed over $15 billion in PPP loans for 966,000 small business customers. These small business customers served by Blueacorn PPP tend to be independent contractors (for example, barbers, hair stylists, Uber drivers, independent consultants, and realtors) rather than larger businesses with on-call lawyers, accountants, and access to private banking at big banks such as Bank of America or Chase.

3. For customers who have applied for and obtained PPP loans through Blueacorn PPP, their average annual gross income is $41,000, their average PPP loan amount is approximately $16,000, and approximately 81% of the customers are non-caucasian owned businesses or contractors, who historically have had limited access to traditional banking.

4. The PPP loan program at Blueacorn PPP consisted of three separate phases. The first phase involved marketing to millions of potential applicants to make them aware of the PPP loan program and assist with their PPP loan applications, and to get those applicants connected with our borrower portal. The second phase involved closing out PPP loans that had been successfully applied for and obtaining funding for those loans. This second phase was to end on June 30, 2021 as PPP loans no longer have funding available from the Federal Reserve. While this deadline has just been recently extended by the Federal Reserve until July 30, 2021, Blueacorn PPP currently only has less than 1,000 borrowers for which it is still trying to secure PPP loan funding. The third phase is the loan forgiveness phase (which will last two years after July 30, 2021) during which Blueacorn PPP will work exclusively with borrowers who already have a PPP loan to assist them in applying for loan forgiveness. Blueacorn PPP is no longer engaging in any marketing activities for new PPP customers.

5. For the services they provided in connection with the PPP loan program, Blueacorn PPP was paid a commission from the community lenders that partnered with Blueacorn PPP. The

commission paid to Blueacorn PPP was a percentage of the commission paid to the community lenders by the Small Business Administration. The involvement of Blueacorn PPP in the PPP loan process did not add to any costs incurred by the federal government.

6. The "Blueacorn" name was chosen by me in April 2020. At that time, as we were starting the platform to assist potential customers with the PPP loan program, I was a subscriber of a meal delivery service called "Blue Apron" and I was impressed with the catchiness of that name. In seeking to identify names for a domain name we could use in connection with the PPP loan program, and based on my familiarity with "Blue Apron" and popular contemporary names like mailchimp, Cash App, Duolingo, Dollar Tree, UpWork, and Airbnb, I looked for a name that paired a color and an object, animal, or thing. I looked for a name to pair with the word "blue" and randomly came upon the word "acorn" and determined that the domain name "blueacorn.co" was available for registration. I tried hundreds of different combinations looking for an open domain name before finding "blueacorn.co". I personally registered that domain name in April 2020.

7. Regarding the Blueacorn PPP logo design, I am very fond of the color blue. I was also eager to use a shade of blue in the Blueacorn PPP logo design that was similar to the one I used for several years at my prior company, Prospectify.

8. The choice to use all lowercase letters in the Blueacorn PPP logo design is based in part on the current fad of startups, as well as established companies changing their names in branding, to us all lowercase. The desire was to identify with our target market and conform to current trends. Also, while working for my previous company, AngelList, I came to learn and witness significant confusion within the company and in the market due to the mix of lowercase and capital letters in the name. I decided to follow industry trends and make Blueacorn PPP easier

to manage and remain consistent by simply keeping the name one word and all lowercase. This is in line with what Amazon, Facebook, Flickr, Intel, Citibank, Macy's, BP, Vitamin Water, and Xerox all have done in their branding.

9. I had no intention of copying the BCI logo and design, and was not even aware of it at the time I selected the format for the Blueacorn PPP logo design. I certainly had no intention of selecting this design to trade off of the BCI logo design, as Blueacorn PPP was targeting an entirely different customer market and was in a completely different line of business.

10. Prior to this lawsuit, I have had no contact with BCI or any of its representatives.

11. Beginning in 2021, Blueacorn PPP utilized several affiliates to market their services. These affiliates were independent third-party companies that advertised to generate customer leads to Blueacorn PPP. These affiliates were required to have Blueacorn PPP review their marketing messages and materials. However, in the midst of the incredible rush to process millions of PPP loan applications, some affiliates used advertisements or promotional videos were published that were not authorized by Blueacorn PPP.

12. One of these affiliates posted a promotional video on YouTube that included a "blue acorn" logo that is referenced in the Verified Complaint filed by BCI without prior knowledge of, or approval by, Blueacorn PPP. To the best of my knowledge, this affiliate-generated YouTube video is the only place where the BCI "blue acorn" logo appeared in connection with any advertising, marketing or promotional materials of Blueacorn PPP.

13. For example, the BCI "blue acorn" logo does not appear on the website of Blueacorn PPP or, to the best of my knowledge, on any other marketing or promotional materials generated or created by Blueacorn PPP or its affiliates.

14. Since the filing of the Verified Complaint, Blueacorn PPP has instructed the affiliate to remove the BCI "blue acorn" logo from the YouTube promotional video and have also specifically addressed with their affiliates the prohibited use of non-company authorized logos.

15. Because of existing deadlines associated with the PPP loan program, as of May 31, 2021: (a) no further PPP loan applications were being accepted by Blueacorn PPP; and (b) Blueacorn PPP has ceased all outside marketing activities for PPP loans. The newly extended cutoff date for Federal Reserve funding of approved PPP loans is now July 30, 2021.

16. Except for 1,000 borrowers that Blueacorn PPP will continue to work with up to the July 30, 2021 deadline, Blueacorn PPP has transitioned into the loan forgiveness phase. In that phase, any borrower who qualifies to have its PPP loan forgiven will be required to submit an application and supporting documentation. The Blueacorn PPP Defendants intend to set up an outbound phone program to contact all of the borrowers personally – as well as continue to accept loan forgiveness applications through their existing customer support team which now exceeds 400 people. During the loan forgiveness phase, Blueacorn PPP will be working exclusively with current customers, and will not be seeking any new PPP loan customers.

17. As the PPP loan program's lending component has wound down over the past several weeks, the volume of contacts received by the Blueacorn PPP Defendants has begun to recede. At one point, there were 27,000 individual customer inquiry tickets submitted to the Blueacorn PPP Defendants on a daily basis. That number has decreased by more than 75% as the lending component of the PPP loan program approached the initial June 30, 2021 deadline and Blueacorn PPP has ceased marketing activities.

18. At the beginning of our involvement with the PPP loan program in 2020, our services were being provided through two previous entities named Out of Box Innovations, LLC

and Body Politix, LLC. In October 2020, a new entity named Fin Cap, Inc. was created. In connection with the creation of Fin Cap, Inc., there was a change in the ownership structure and management of the business. First, Michael S. Cota and James Flores who have been named as defendants were bought out earlier this year, and no longer have any role as owners or managers of the business of Blueacorn PPP. Second, Stephanie Hockridge Reis and Nathan Reis (also named as defendants) were removed from any management role with Blueacorn PPP, but they remain as minority members of an entity named Blueacorn PPP, LLC. Blueacorn PPP, LLC is the 100% member of Blue Oak Forest, LLC, which in turn now owns 100% of the shares of Fin Cap, Inc.

19. Following the corporate reorganization and installation of a new management team earlier this year, Blueacorn PPP implemented new fraud prevention programs beginning in March 2021 in an effort to better protect taxpayer funds over the remaining life of the PPP loan program. As a result of these new fraud protection programs, a number of customers of Blueacorn PPP have expressed frustration as individual PPP loan applications have been reviewed, and in some cases rejected, because they did not meet the PPP loan program regulations. In short, Blueacorn PPP acknowledges that there have been frustrations and concerns expressed by its independent contractor and small business PPP loan applicants, but Blueacorn PPP has worked diligently to respond quickly and appropriately while adding more customer service resources.

20. Discontinuing the use of the "Blueacorn" name immediately will cause a significant hardship at a crucial time in the life of the PPP loan program. As Blueacorn PPP moves into the loan forgiveness stage of the PPP loan program, existing customers who have already applied for and received PPP loans will need to be in contact with Blueacorn PPP to apply for loan forgiveness. In turn, Blueacorn PPP has an ongoing obligation to work with these customers in submitting their applications for loan forgiveness. To the extent Blueacorn PPP is required to immediately

discontinue the use of the "Blueacorn" name on their website, customers will experience difficulties locating Blueacorn PPP online. As a result, hundreds of thousands of customers of Blueacorn PPP who need assistance with their applications for loan forgiveness suddenly will think Blueacorn PPP has disappeared and abandoned them, and they will not know how to contact the right parties.

21. This is likely to result in the exact opposite of what BCI is seeking to achieve in this lawsuit. To the extent existing customers are no longer able to locate Blueacorn PPP through the existing website, BCI will end up receiving an increase in the number of unwanted inquiries rather than a decrease.

22. Since the start of their involvement in the PPP loan program, Blueacorn PPP has encouraged customers to contact us by text message, by email or through the borrower portal. At one point we considered establishing a call center, but decided against doing that because customer contacts by telephone were fraught with risks associated with fraud and theft of customer's personal information. Given the prevalence of fraud associated with the PPP loan program in general, Blueacorn PPP elected to use more secure means of communications with customers for the protection of all parties involved in the PPP loan process. Once the PPP loan program moves into the loan forgiveness stage, the level of incoming communications will be dramatically reduced. As referenced above, Blueacorn PPP will be initiating telephone contacts with all of their existing customers to support their loan forgiveness application process, and customers will thereafter be able to monitor that process through our borrower portal.

23. In an effort to address the concerns raised in BCI Complaint in this action, Blueacorn PPP:

a. Has discontinued any use of the BCI "blue acorn" logo on the one YouTube advertising piece created by one of our marketing affiliates. As discussed above, the use of the BCI "blue acorn" logo on the YouTube video was not authorized by Blueacorn PPP, and is the only place I am aware of where that "blue acorn" logo appeared in connection with Blueacorn PPP;

b. Has placed a prominent disclaimer on the very top of our website and in customer communications stating "Our company is not affiliated with Blue Acorn ICI. Please do not contact Blue Acorn ICI in connection with your PPP loan. For inquiries related to your PPP loan, please contact our customer support team" with the "contact our customer support team" wording hyperlinking directly to our customer support page; and

c. Has continued to maintain on our website contact information explaining how customers can obtain status updates and request support.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED this the 2 day of July, 2021.

DocuSigned by:

Noah Spirakus

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