



**HIMMELSTEIN
& ADKINS**

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**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

Fin Cap, Inc. d/b/a Blueacorn,

Plaintiff,

v.

Capital Plus Financial, LLC,

Defendant.

Case No.

**APPLICATION FOR
CONFIRMATION OF
ARBITRATION AWARD**

Plaintiff alleges the following:

1. Fin Cap, Inc. d/b/a Blueacorn (“Blueacorn”) is a Wyoming corporation that does business in Arizona.
2. Capital Plus Financial, LLC (“CPF”) is a Texas limited liability company that conducts business in interstate commerce, including with Blueacorn in Arizona.
3. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332 because there is complete diversity of citizenship between the parties and the amount in controversy exceeds \$75,000.00.

1 4. Venue is proper in this Court under 28 U.S.C. § 1391 because
2 Blueacorn transacts business in this district, a substantial part of the events giving
3 rise to the claim occurred in this district, including the arbitration proceeding for
4 which confirmation of an award is requested herein.

5 5. Blueacorn and CPF entered into a Lender Service Provider Agreement
6 (“LSPA”) in connection with the Paycheck Protection Program (“PPP”).

7 6. Under the LSPA, Blueacorn was responsible for identifying loan
8 applicants, documenting and evaluating loan applications, and transmitting
9 proposed loans to the Small Business Administration (“SBA”) for approval.

10 7. CPF received fees from the SBA upon making the loans and was
11 obligated to pay Blueacorn a share of these fees.

12 8. On March 21, 2023, Blueacorn filed a Demand for Arbitration against
13 CPF with the American Arbitration Association, AAA Case No. 01-23-0001-1748
14 (“Arbitration”) related to CPF's failure to pay the fees.

15 9. The Arbitrator issued a Confidential Final Award (“Award”) in the
16 Arbitration on April 29, 2024. A copy of the Award is attached as **Exhibit 1** (*FILED*
17 *UNDER SEAL*).

18 10. A portion of funds has been paid and resolved between CPF and
19 Blueacorn.

20 11. However, as recognized in paragraphs 60-62 of the Award, CPF
21 continues to hold \$19,796,022.81 in a liability reserve (“Liability Reserve”) that the
22 Arbitrator determined “is now payable.”

23 12. The Arbitrator stated that these amounts should be paid to a third-party
24 vendor, PayNerd, LLC, “absent evidence that PayNerd acknowledges the amounts
25 may instead be paid to Blueacorn or a final determination in a proceeding to which
26 PayNerd is a party ruling that Blueacorn is entitled to the funds.”

PRAYER FOR RELIEF

WHEREFORE, Blueacorn respectfully requests that this Court:

- A. Issue an Order pursuant to 9 U.S.C. § 9 confirming the Arbitration Award attached as Exhibit 1 (under seal) and issue a corresponding Judgment pursuant to 9 U.S.C. § 13;
- B. Award Blueacorn its costs and attorneys' fees incurred in this action; and
- C. Grant such other and further relief as the Court deems just and proper.

DATED: April 3, 2025.

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By: /s/ Ben J. Himmelstein
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EXHIBIT 1

(filed under seal)