

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

NOVUS CAPITAL FUNDING II LLC,

Plaintiff,

-against-

CUBE BUSINESS SOLUTIONS LLC,
MILLENNIUM SUPPLY CHAIN
SOLUTIONS, L.L.C., and KENNETH
PETERSON,

Defendants.

Index No.:

Date Filed: December 8, 2023

SUMMONS

Plaintiff's Place of Business:
7 Elmwood Drive, Suite 301
New City, NY 10956

Plaintiff designates Nassau County as
the place of trial. The basis of venue
is by Agreement pursuant to CPLR §
501.

TO THE ABOVE-NAMED DEFENDANTS;

YOU ARE HEREBY SUMMONED to appear in the Supreme Court of the State of New York, County of Nassau at the office of the Clerk of said county at 100 Supreme Court Drive, Mineola, NY 11501, and to answer the Complaint in this action and serve a copy of your Answer, or, if the Complaint is not served with the Summons, to serve a Notice of Appearance, on the Plaintiff's attorney within 20 days after the service of this Summons, exclusive of the day of service; or within 30 days after the service is complete if this Summons is not personally delivered to you within the State of New York; and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Complaint.

Dated: December 8, 2023
New York, NY



David J. Austin, Esq.

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Attorneys for Plaintiff

To:

CUBE BUSINESS SOLUTIONS LLC

6250 Mountain Ct

Trussville, AL 35173-5115

MILLENIUM SUPPLY CHAIN SOLUTIONS, L.L.C.

6250 Mountain Ct

Trussville, AL 35173-5115

KENNETH PETERSON

6250 Mountain Ct

Trussville, AL 35173-5115

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Date Filed: December 8, 2023

COMPLAINT

Plaintiff's Place of Business:
7 Elmwood Drive, Suite 301
New City, NY 10956

Plaintiff designates Nassau County as
the place of trial. The basis of venue is
by Agreement pursuant to CPLR §
501.

Plaintiff Novus Capital Funding II LLC ("Novus Capital" or "Plaintiff"), by and through
its attorneys, Austin LLP, as and for its Complaint, alleges upon information and belief as follows:

INTRODUCTION

1. This is an action to recover debts owed to Novus Capital by Cube Business
Solutions LLC, Millenium Supply Chain Solutions, L.L.C. ("Cube Business Solutions") and
Kenneth Peterson ("Mr. Peterson") (collectively "Defendants").

2. Upon information and belief, Cube Business Solutions LLC, Millenium Supply
Chain Solutions, L.L.C. is in the business of providing commercial products and services.

3. Mr. Peterson, on behalf of himself doing business under the name Cube Business
Solutions LLC, Millenium Supply Chain Solutions, L.L.C., approached Novus Capital for funding
to help expand Cube Business Solutions's business.

4. On or about July 26, 2023, Novus Capital provided \$80,000.00 in funding to Cube
Business Solutions in exchange for the right to \$119,920.00 of Cube Business Solutions's future
revenue.

5. Under a Revenue Purchase Agreement (the “RPA”), Cube Business Solutions promised and covenanted to pay a portion of its future revenue to Novus Capital until the full amount of Novus Capital’s interest in Cube Business Solutions’s future revenue satisfied. A true and correct copy of the RPA is attached as **Exhibit A**.

6. Novus Capital fulfilled its obligation under the RPA by providing the purchase price of the purchased revenue to Cube Business Solutions, as required by the RPA.

7. Pursuant to the RPA, Cube Business Solutions agreed and was obligated to deliver to Novus Capital a 12% share of its future revenue daily (M-F) until the purchase price was paid in full. **Exhibit A** at pg. 1.

8. In addition, Kenneth Peterson signed a personal guarantee of performance under the RPA.

9. Pursuant to the RPA, the personal guarantee of performance provides that in the event of Cube Business Solutions’s default under any of the terms of the RPA, including blocking payments or depositing its revenue, including accounts-receivable, into a bank account other than the one provided to Novus Capital, Novus Capital may enforce its rights against the personal guarantor, in this case Mr. Peterson, without first seeking recourse from Cube Business Solutions. **Exhibit A** at pgs. 16-18.

10. Initially, Cube Business Solutions met its obligations under the RPA and deposited its revenue into the account it provided to Novus Capital for payment of the future revenue Novus Capital purchased and from which Novus Capital was authorized to debit payment.

11. However, within months after Novus Capital transferred payment to Cube Business Solutions for its future revenue, Cube Business Solutions began diverting its revenue from the account provided and ceased making payments to Novus Capital.

12. Cube Business Solutions refuses to remit the agreed percentage of its revenue to Novus Capital, has been withholding the revenue it sold to Novus Capital, and has refused to continue performance under the terms of the RPA.

13. During the course of the agreement, the unremitted sums become due and payable to Novus Capital in full as required by Novus Capital or pursuant to the terms of the RPA in the event of any action constituting a default or breach of any covenants or warranties contained in the RPA. Any outstanding balance owed by Cube Business Solutions at the time of default became immediately due and payable to Novus Capital.

14. Cube Business Solutions defaulted under the terms of the RPA by breaching its representations and warranties to Novus Capital.

15. Cube Business Solutions has refused to remit payment for the revenue purchased by Novus Capital pursuant to the RPA, despite due demand therefore.

16. At present there remains a balance due of \$45,462.88, plus fees as provided by the RPA, in addition to costs and attorney's fees. As such, Defendants Cube Business Solutions and Mr. Peterson are in default of the RPA.

17. Pursuant to the RPA, in the event of a default, Novus Capital is entitled to recover a refund of the \$119,920.00 revenue purchase amount from Cube Business Solutions and Mr. Peterson less any amounts paid. **Exhibit A** at Paragraphs 27-30.

18. Of the \$119,920.00 of revenue purchased, Cube Business Solutions has delivered a total of \$74,457.12 of the revenue purchased to Novus Capital prior to default, leaving a revenue purchased balance of \$45,462.88.

19. Pursuant to the RPA, Novus Capital is entitled to collect fees related to Cube Business Solutions's actions regarding the designated account from which ACH debit payments were to be made. **Exhibit A** at Paragraphs 17-19, 29 and Rider 2.

20. Cube Business Solutions incurred \$15,552.75 in Fees, itemized as follows:

- a) Non-Sufficient Fund (NSF) Fees - \$550.00; and
- b) Default Fee - \$15,002.75.

Exhibit A at Paragraphs 17-19, 29 and Rider 2.

21. The total amount due at the time of default is the remaining unpaid revenue purchased balance of \$45,462.88 and the Fee amount of \$15,552.75. Therefore, the total amount due at the time of default is \$61,015.63.

22. In the event of a default, Novus Capital is also entitled to costs and interest. **Exhibit A** at Paragraph 29.

23. Thus, Defendants Cube Business Solutions and Mr. Peterson are liable to Novus Capital in the amount of \$61,015.63, pursuant to the RPA, interest from December 7, 2023, the date of default, plus costs and attorney's fees.

24. Accordingly, Cube Business Solutions and Mr. Peterson have forced Novus Capital to bring this action to obtain a Judgment against Cube Business Solutions and Mr. Peterson.

PARTIES, JURISDICTION AND VENUE

25. Plaintiff Novus Capital Funding II LLC is a limited liability company organized and existing under the laws of the State of New York and registered to do business in the State of New York. Novus Capital Funding II LLC's principal place of business is 7 Elmwood Drive, Suite 301, New City, NY 10956.

26. At all times relevant to this action, Novus Capital has been engaged in the business of purchasing future revenue, *e.g.*, accounts-receivable, from small and medium-sized businesses across the United States.

27. Upon information and belief, Defendant Cube Business Solutions LLC, Millenium Supply Chain Solutions, L.L.C. is, and at all times relevant to this action has been, a limited liability companies having a principal place of business at 6250 Mountain Ct, Trussville, AL 35173-5115.

28. Upon information and belief, Defendant Kenneth Peterson is, and at all times relevant to this action has, resided at 6250 Mountain Ct, Trussville, AL 35173-5115, and is the owner or at least co-owner of Cube Business Solutions LLC, Millenium Supply Chain Solutions, L.L.C..

29. Pursuant to the RPA, Defendants Cube Business Solutions LLC, Millenium Supply Chain Solutions, L.L.C. and Kenneth Peterson agreed to accept service of process by certified mail and email, as the RPA at **Exhibit A** provides, "Seller further agrees that the mailing by certified mail to the Seller's address(es) shown on page 1 of this Agreement or the emailing to the email address(es) shown on page 1 of this Agreement of any process required by any such court will constitute valid and lawful service of process against each Seller, without the necessity for service by any other means provided by statute or rule of court, but without invalidating service performed in accordance with such other provisions. Seller agrees that the service of such process and any legal papers served subsequently thereafter shall be deemed complete upon such mailing or transmission of such email irrespective of whether such mailing or email is actually received by each Seller and/or Guarantor." **Exhibit A** at Paragraph 7, pg.17.

30. Defendants agreed to submit to the jurisdiction of any court in the State of New York including without limitation, Nassau County and have waived any and all objections to jurisdiction and venue as per the terms of the RPA by and between the parties.

31. This Court has jurisdiction as the RPA at **Exhibit A** provides, “Governing Law, Venue and Jurisdiction. This Agreement shall be governed by and construed exclusively in accordance with the laws of the State of New York, without regards to any applicable principles of conflicts of law. Any lawsuit, action or proceeding arising out of or in connection with this Agreement shall be instituted exclusively in any court sitting in New York State, (the “Acceptable Forums”). The parties agree that the Acceptable Forums are convenient and submit to the jurisdiction of the Acceptable Forums and waive any and all objections to inconvenience of the jurisdiction or venue. Should a proceeding be initiated in any other forum, each of the parties to this Agreement irrevocably waives any right to oppose any motion or application made by any other party to transfer such proceeding to an Acceptable Forum. Seller and its Guarantor(s) acknowledge and agree that the Purchase Price is being paid and received by Seller in New York, that the Specified Percentage of the Future Receipts are being delivered to NCF in New York, and that the transaction contemplated in this Agreement was negotiated, and is being carried out, in New York. Seller and its Guarantor(s) acknowledge and agree that New York has a reasonable relationship to this transaction.” **Exhibit A** at Paragraph 43.

32. This Court has jurisdiction over Defendant Cube Business Solutions LLC, Millenium Supply Chain Solutions, L.L.C., as the limited liability companies is a party to the RPA.

33. This Court has jurisdiction over Defendant Kenneth Peterson, as guarantor of the RPA.

34. Venue is also proper in Nassau County as the RPA at **Exhibit A** provides, “Governing Law, Venue and Jurisdiction. This Agreement shall be governed by and construed exclusively in accordance with the laws of the State of New York, without regards to any applicable principles of conflicts of law. Any lawsuit, action or proceeding arising out of or in connection with this Agreement shall be instituted exclusively in any court sitting in New York State, (the “Acceptable Forums”). The parties agree that the Acceptable Forums are convenient and submit to the jurisdiction of the Acceptable Forums and waive any and all objections to inconvenience of the jurisdiction or venue. Should a proceeding be initiated in any other forum, each of the parties to this Agreement irrevocably waives any right to oppose any motion or application made by any other party to transfer such proceeding to an Acceptable Forum. Seller and its Guarantor(s) acknowledge and agree that the Purchase Price is being paid and received by Seller in New York, that the Specified Percentage of the Future Receipts are being delivered to NCF in New York, and that the transaction contemplated in this Agreement was negotiated, and is being carried out, in New York. Seller and its Guarantor(s) acknowledge and agree that New York has a reasonable relationship to this transaction.” **Exhibit A** at Paragraph 43.

35. Venue is proper in Nassau County as to Defendant Cube Business Solutions LLC, Millenium Supply Chain Solutions, L.L.C., as the limited liability companies is a party to the RPA.

36. Venue is proper in Nassau County as to Defendant Kenneth Peterson, as guarantor of the RPA.

BACKGROUND

I. Novus Capital is a Sales-Based Financing Provide

37. Novus Capital is in the business of providing commercial financing to businesses in exchange for a percentage of the businesses’ future revenue. These funding transactions are

defined under New York statute as “sales-based financing.” (NY Fin. Rules, 23 NYCRR § 600.1(ah); *see also* Financial Services Law § 801(j).)

38. Traditionally, these sales and purchase transactions have been referred to as “merchant cash advances” or “revenue purchase agreements.”

39. Under a revenue purchase agreement, Novus Capital purchases the right to a certain percentage of a business’s future revenue in exchange for an advance, lump-sum payment to the business. The business then remits periodic payments to Novus Capital, drawn from the business’s actual revenue, *e.g.*, accounts receivable, until the purchased amount is satisfied.

40. Structured in this manner, a revenue purchase agreement is not a loan, but rather a purchase of a portion of a business’s future revenue and is a form of factoring that is common in the financial services industry.

II. Cube Business Solutions’s Agreements with Novus Capital

41. On or around July 26, 2023, Mr. Peterson applied to Novus Capital Funding II LLC for funding in an amount of approximately \$80,000.00. Mr. Peterson represented that he was seeking funding to expand Cube Business Solutions.

42. Novus Capital agreed to provide Cube Business Solutions funding pursuant to the RPA at **Exhibit A**, which is dated July 26, 2023.

43. Under the RPA, Cube Business Solutions agreed to sell, assign, and transfer to Novus Capital Funding II LLC its right, title, and interest in \$119,920.00 of its future revenue in exchange for a purchase price of \$80,000.00.

44. The RPA provided that Novus Capital shall have all rights and be entitled to all benefits afforded to a secured creditor under the UCC or otherwise at law, and Cube Business

Solutions agreed that Novus Capital may file any instruments or financing statements as a secured party necessary or desirable to perfect, protect, and preserve its security interests.

45. Pursuant to the RPA, Novus Capital duly filed a UCC Financing Statement.

III. Cube Business Solutions's Breaches of the RPA and Notice of Breach

46. Within months of the revenue purchase, Cube Business Solutions breached the RPA by failing to remit payments to Novus Capital as provided for in the RPA at **Exhibit A**.

47. Upon information and belief, both prior to and after breaching the RPA, Cube Business Solutions continued to collect, and continues to collect, revenue, in at least the form of accounts receivable.

48. Novus Capital made several demands for payment by telephone and email. However, Cube Business Solutions and Mr. Peterson failed to respond.

49. Cube Business Solutions did not respond to Novus Capital's demands for payment and requesting payment as provided by the RPA.

50. After default, Novus Capital periodically mailed notices to Cube Business Solutions and Mr. Peterson reflecting the current balance due and demanding payment of same ("Statements of Account").

51. Cube Business Solutions and Mr. Peterson received and accepted these Statements of Account without timely objection, protest or dispute.

AS AND FOR A FIRST CAUSE OF ACTION

(Breach of Contract)

52. Novus Capital repeats and realleges each of the allegations above as if fully set forth herein.

53. Cube Business Solutions and Novus Capital entered into the RPA at **Exhibit A**, which is a valid and binding contract between the parties.

54. Under the RPA Cube Business Solutions expressly agreed to sell, assign, and transfer to Novus Capital \$119,920.00 in future revenue for the purchase price of \$80,000.00, the amount of which was paid by Novus Capital to Cube Business Solutions.

55. Novus Capital performed all of its obligations under the RPA.

56. Cube Business Solutions breached its obligations under the RPA by failing to pay amounts due under the RPA. Specifically, Cube Business Solutions stopped making its payments to Novus Capital under the RPA.

57. On information and belief, Cube Business Solutions diverted its revenue from Cube Business Solutions's bank account designated for ACH withdrawals, and/or simultaneously used multiple bank accounts or credit card processors to process its receipts.

58. Moreover, on or about December 7, 2023, Novus Capital received an R16 - Account Frozen response to the ACH payment scheduled on Cube Business Solutions's bank account designated for ACH withdrawals, thus blocking Novus Capital from merchant's bank account.

59. Pursuant to the RPA, in the event of a default, Novus Capital is entitled to recover a refund of the \$119,920.00 revenue purchase amount from Cube Business Solutions and Mr. Peterson less any amounts paid. **Exhibit A** at Paragraphs 27-30.

60. At present there remains a balance due of \$45,462.88, plus fees as provided by the RPA, in addition to costs and attorney's fees. As such, Defendants Cube Business Solutions and Mr. Peterson are in default of the RPA.

61. Of the \$119,920.00 of revenue purchased, Cube Business Solutions have delivered a total of \$74,457.12 of the revenue to Novus Capital prior to default, leaving a purchased revenue balance of \$45,462.88.

62. The total amount due at the time of default is the remaining unpaid purchased revenue balance of \$45,462.88 and the Fee amount of \$15,552.75. Therefore, the total amount due at the time of default is \$61,015.63.

63. Pursuant to the RPA, Novus Capital is entitled to collect fees related to Cube Business Solutions's actions regarding the designated account from which ACH debit payments were to be made. **Exhibit A** at Paragraphs 17-19, 29 and Rider 2.

64. Cube Business Solutions incurred \$15,552.75 in Fees, itemized as follows:

- a) Non-Sufficient Fund (NSF) Fees - \$550.00; and
- b) Default Fee - \$15,002.75.

Exhibit A at Paragraphs 17-19, 29 and Rider 2.

65. As a result of Cube Business Solutions's numerous breaches of the RPA, Novus Capital has been damaged, pursuant to the RPA, in the amount of at least \$45,462.88, fees in the amount of \$15,552.75, interest from December 7, 2023, the date of default, plus costs, and attorneys' fees.

66. Accordingly, Novus Capital is entitled to an order and judgment holding Cube Business Solutions liable for the sum of \$61,015.63, plus interest, costs, and attorneys' fees incurred in this action.

AS AND FOR A SECOND CAUSE OF ACTION

(Breach of Guaranty)

67. Novus Capital repeats and realleges each of the allegations above as if fully set forth herein.

68. In connection with the RPA at **Exhibit A**, Mr. Peterson entered into a guaranty under which he personally guaranteed the performance of all Cube Business Solutions's

obligations under the RPA should Cube Business Solutions commit an event of default. **Exhibit A** at pg. pgs. 16-18.

69. Upon information and belief, and as further disclosed herein, Cube Business Solutions has committed at least one event of default.

70. Mr. Peterson further agreed to pay all costs and attorneys' fees in connection with any proceeding properly commenced by Novus Capital to enforce its rights under the RPA.

71. Mr. Peterson expressly waived any and all rights to require Novus Capital to proceed against Cube Business Solutions before taking action against him.

72. Novus Capital has duly performed all conditions on its part to be performed under the RPA.

73. Despite Cube Business Solutions's default, Mr. Peterson has failed to honor the guaranty agreements.

74. Mr. Peterson breached his obligations under the RPA by failing to guarantee the amounts due under the RPA.

75. As a result of Mr. Peterson's numerous breaches of the RPA, Novus Capital has been damaged, pursuant to the RPA, in the amount of at least \$45,462.88, fees in the amount of \$15,552.75, interest from December 7, 2023, the date of default, plus costs, and attorneys' fees.

76. Accordingly, Novus Capital is entitled to an order and judgment holding Mr. Peterson personally liable for the sum of \$61,015.63, plus interest, costs, and attorneys' fees incurred in this action.

AS AND FOR A THIRD CAUSE OF ACTION

(Costs and Attorney's Fees)

77. Novus Capital repeats and realleges each of the allegations above as if fully set forth herein.

78. The RPA at **Exhibit A** provides that in addition to all payments owed under the RPA, Cube Business Solutions agreed to pay, and Mr. Peterson agreed to guarantee, all costs associated with a default and the enforcement of remedies thereof, including but not limited to, court costs, fees and disbursements and attorney's fees. **Exhibit A** at Paragraph 29.

79. Novus Capital has incurred and continues to incur expenses including attorney's fees, which cannot be finally determined at this date, but which will be capable of determination as such time as judgment may be entered herein.

80. By reason of the foregoing, Defendants Cube Business Solutions and Mr. Peterson are jointly and severally liable to Novus Capital for Novus Capital's expenses in regard to this action, including costs, disbursements and attorney's fees, in such amount as may be determined.

WHEREFORE, Plaintiff Novus Capital Funding II LLC respectfully requests that this Court enter judgment in its favor as follows:

(a) On the FIRST CAUSE OF ACTION against Cube Business Solutions LLC, Millenium Supply Chain Solutions, L.L.C. awarding damages in the amount of \$61,015.63, plus interest, plus interest from December 7, 2023, the date of default;

(b) On the SECOND CAUSE OF ACTION against Kenneth Peterson awarding damages in the amount of \$61,015.63, plus interest from December 7, 2023, the date of default;

(c) On the THIRD CAUSE OF ACTION against Cube Business Solutions LLC, Millenium Supply Chain Solutions, L.L.C. and Kenneth Peterson awarding Novus Capital Funding II LLC's costs and attorneys' fees; and

(d) Directing Cube Business Solutions LLC, Millenium Supply Chain Solutions, L.L.C. and Kenneth Peterson to satisfy any judgment made against them, including interest, fees, costs, and attorneys' fees; and

(e) For such other and further relief as the Court shall deem just and equitable.

Dated: December 8, 2023
New York, NY



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Pursuant to 22 NYCRR 130-1.1, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information and belief and reasonable inquiry, the contentions contained in the annexed document are not frivolous.

Dated: December 8, 2023
New York, NY


David J. Austin, Esq.

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NOTICE OF ELECTRONIC FILING
(Mandatory Case)
(Uniform Rule § 202.5-bb)

You have received this Notice because:

- 1) The Plaintiff/Petitioner, whose name is listed above, has filed this case using the New York State Courts E-filing system (“NYSCEF”), and
- 2) You are a Defendant/Respondent (a party) in this case.

• **If you are represented by an attorney:**

Give this Notice to your attorney. (Attorneys: see “Information for Attorneys” pg. 2).

• **If you are not represented by an attorney:**

You will be served with all documents in paper and you must serve and file your documents in paper, unless you choose to participate in e-filing.

If you choose to participate in e-filing, you must have access to a computer and a scanner or other device to convert documents into electronic format, a connection to the internet, and an e-mail address to receive service of documents.

The **benefits of participating in e-filing** include:

- serving and filing your documents electronically
- free access to view and print your e-filed documents
- limiting your number of trips to the courthouse
- paying any court fees on-line (credit card needed)

To register for e-filing or for more information about how e-filing works:

- visit: www.nycourts.gov/efile-unrepresented or
- contact the Clerk's Office or Help Center at the court where the case was filed. Court contact information can be found at www.nycourts.gov

To find legal information to help you represent yourself visit www.nycourthelp.gov

**Information for Attorneys
(E-filing is Mandatory for Attorneys)**

An attorney representing a party who is served with this notice must either consent or decline consent to electronic filing and service through NYSCEF for this case.

Attorneys registered with NYSCEF may record their consent electronically in the manner provided at the NYSCEF site. Attorneys not registered with NYSCEF but intending to participate in e-filing must first create a NYSCEF account and obtain a user ID and password prior to recording their consent by going to www.nycourts.gov/efile.

Attorneys declining to consent must file with the court and serve on all parties of record a declination of consent.

For additional information about electronic filing and to create a NYSCEF account, visit the NYSCEF website at www.nycourts.gov/efile or contact the NYSCEF Resource Center (phone: 646-386-3033; e-mail: efile@nycourts.gov).

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