

UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE

AMERICAN EXPRESS TRAVEL RELATED	:	Case No.
SERVICES COMPANY, INC., a New York	:	
Corporation,	:	
	:	
Plaintiff,	:	
v.	:	<b><u>COMPLAINT</u></b>
	:	
MICHAEL D. TANGREDI, MICHAEL G.	:	
TANGREDI, a/k/a MICHAEL SANTANIELLO,	:	
MINC CONCEPTS, an unincorporated entity,	:	
M. TANGREDI RESTAURANTS, INC.,	:	
and John Does 1 through 10.,	:	
Defendants.	:	
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Plaintiff, American Express Travel Related Services Company, Inc. (“American Express”), as and for its complaint herein against defendants Michael D. Tangredi, Michael G. Tangredi, a/k/a/ Michael Santaniello, Minc Concepts, an unincorporated entity, M. Tangredi Restaurants, Inc., and John Does 1 through 10, hereby alleges as follows:

**A. NATURE OF THE ACTION**

1. This is an action for non-payment of \$1,145,955.65 in fraudulent credit card charges. Starting in late May 2008, one or more of the defendants engaged in a conspiracy and scheme to defraud American Express by using a fraudulently obtained American Express card to run fifteen charges, each in the amount of between \$28,750 to \$98,750, through American Express merchant accounts established and controlled by one or more of the defendants, even though no goods or services were sold. Through this fraud, defendants illegally obtained \$1,145,955.65 in cash from American Express, no portion of which has been repaid.

**B. JURISDICTION AND VENUE**

2. Jurisdiction of this action is predicated upon 28 U.S.C. § 1332 in that the plaintiff and the defendants are citizens of different states and the amount in controversy exceeds \$75,000, exclusive of costs and interest.

3. Venue is proper in this district in that defendants reside or have their principal place of business in this district, and because the causes of action alleged against defendants arose in this district.

**C. THE PARTIES**

4. At all relevant times hereinafter mentioned, plaintiff American Express is and was a corporation organized and existing under the laws of the State of New York, whose principal place of business is located at American Express Tower, World Financial Center, New York, New York 10285.

5. On information and belief, at all relevant times hereinafter mentioned, defendant Michael D. Tangredi (“Tangredi”) is and was a natural person and a citizen and resident of the State of Tennessee whose business address is 2323 Elliston Place, Nashville, Tennessee. Upon further information and belief, Tangredi is the president and controlling shareholder of defendant M. Tangredi Restaurants, Inc. Tangredi owns and operates three restaurants in Nashville named Tangredi’s Italian Kitchen (located on Elliston Place), T’s Tuscan Bar & Grill (located in Hillsboro Village), and the newly opened Michael T’s (located at 1919 Division Street).

6. On information and belief, at all relevant times hereinafter mentioned, defendant Michael G. Tangredi, a/k/a/ Michael Santaniello (“Tangredi Jr.”) is and was a natural person and a citizen and resident of the State of Tennessee whose address is 2325 Elliston Place, Apt. 104, Nashville, Tennessee. Upon further information and belief, Tangredi Jr. is the 18 year old son of

Tangredi, and an officer, shareholder, or employee of his father's company, M. Tangredi Restaurants, Inc.

7. On information and belief, at all relevant times hereinafter mentioned, Minc Concepts ("Minc") was and is an unincorporated entity owned, controlled, and operated by Tangredi and Tangredi Jr. that was used by them to perpetrate a fraud on American Express.

8. On information and belief, at all relevant times hereinafter mentioned, M. Tangredi Restaurants, Inc. ("Tangredi Inc.") was and is a corporation organized and existing under the laws of the State of Tennessee with its principal place of business located at 2323 Elliston Place, Nashville, Tennessee 37203. On further information and belief, the owners, controlling shareholders, and officers of Tangredi Inc. are Tangredi, his wife Marie Tangredi, and Tangredi Jr.

9. John Does 1 through 10 are persons whose names are not presently known to plaintiff who conspired with or participated with the named defendants in their scheme to defraud plaintiff.

### **FACTS COMMON TO ALL CLAIMS**

#### **A. The Merchant Accounts**

10. Tangredi Inc., as the operator of restaurants, has been an American Express merchant since 2006 which accepts the American Express card. As an American Express merchant, it receives payment from American Express through electronic transmission to a bank account controlled by Tangredi for each of the charges that it processes and electronically transmits to American Express. The person responsible for the Tangredi Inc. merchant account is Tangredi.

11. Minc, the unincorporated entity operated by Tangredi and/or Tangredi Jr., became an American Express merchant authorized to accept the American Express card on June 8, 2008.. It too receives payment from American Express through electronic transmission to a bank account controlled by Tangredi or Tangredi Jr. for each of the charges that it processes and electronically transmits to American Express.

12. Tangredi and/or Tangredi Jr., acting in the name of Minc, applied to become an American Express merchant over the internet by stating that Minc operates a bar or a nightclub. On information and belief, no such bar or nightclub exists. The Minc merchant account was opened by American Express on June 8, 2008, one day before defendants began running their fictitious charges through it.

13. The address given for Minc on the application to American Express was the home address of Tangredi Jr., 2325 Elliston Place, Apt. 104, Nashville, Tennessee, which is right next door to one of Tangredi's restaurants, Tangredi's Italian Kitchen.

14. The name of the authorized signer for the Minc merchant account given to American Express was "Michael Santaniello," which, on information and belief, is a fictitious name used by Tangredi and/or Tangredi Jr. to perpetrate a fraud on American Express. On information and belief, the name "Santaniello" is the maiden name of Tangredi's wife, Maria Tangredi (Tangredi Jr.'s mother). American Express has conducted a name search for "Michael Santaniello" and has determined that no such person exists in the State of Tennessee.

15. On information and belief, Minc was formed and used by Tangredi and/or Tangredi Jr. to perpetrate a fraud on American Express. In addition to using the Tangredi Inc. merchant account to run their fictitious charges, Tangredi and/or Tangredi Jr. formed a fictitious

entity named Minc, run in the name of a fictitious person named Michael Santaniello, and misled American Express into opening a merchant account for Minc through false statements.

**B. The Cardmember Account**

16. Tangredi and/or Tangredi Jr. applied for an American Express charge card over the internet in the name of Laura Lightfoot (“Lightfoot”), who was an employee of one of the Tangredi restaurants and who was duped by the Tangredis into having her name and credit information used so that a credit card could be issued to perpetrate their fraud. As a result, the fraudulent charges were billed to Lightfoot instead of to defendants.

17. Several American Express charge cards were issued, including one in the name of Lightfoot (Account No. 3717-081390-92000) and a supplemental card in the name of Tangredi Jr. (Account No. 3717-081390-92018) (The “Tangredi Amex Charge Card”). It was the latter card that was used for the fraud. A number of other supplemental cards under the Lightfoot account were also issued in the name of Tangredi and Tangredi’s wife, Maria Tangredi.

**C. The Fraudulent Charges**

18. On May 17, 22, and 30, 2008, three charges for \$32,500, \$74,500, and \$28,750 respectively (totaling \$135,750) were made by one or more of the defendants on the Tangredi Amex Charge Card for which the American Express merchant was Tangredi Inc. Tangredi and/or Tangredi Jr. processed the charges through the Tangredi Inc. merchant account, and Tangredi Inc. received payment of \$135,750 from American Express for the charges. These charges were fictitious in that nothing was bought or sold for the amounts in question. The sole purpose of the charges was to have American Express pay money to the Tangredis, which they never repaid. As stated in the American Express monthly statement, Tangredi and/or Tangredi

Jr. used the name "M. Tangredi's Restau[rant]" to describe the charges processed through the Tangredi Inc. merchant account.

19. Beginning on June 9, 2008, and continuing through June 27, 2008, twelve charges totaling \$1,011,171.92 were made by one or more of the defendants on the Tangredi Amex Charge Card for which the American Express merchant was Minc. The charges were for the following amounts:

- (a) 6/9/08-- \$97,500.00
- (b) 6/10/08--\$98,500.00
- (c) 6/13/-8-- \$68,500.00
- (d) 6/15/08--\$80,000.00
- (e) 6/17/08--\$89,750.00
- (f) 6/18/08--\$69,540.00
- (g) 6/18/08--\$89,625.00
- (h) 6/18/08--\$97,500.00
- (i) 6/25/08--\$39,500.00
- (j) 6/27/08--\$98,750.00
- (k) 6/27/08--\$87,456.92
- (l) 6/27/08--\$94,550.00

20. Tangredi and/or Tangredi Jr. processed the above-listed charges through the Minc merchant account, and received payment of \$1,011,171.92 from American Express for the charges. The above charges were fictitious in that nothing was bought or sold. The sole purpose of the charges was to have American Express pay money to the Tangredis, which they never repaid. As stated in the American Express monthly statement, Tangredi and/or Tangredi Jr. used the name "M. Tangredi's Restau[rant]" to describe the charges processed through the Minc merchant account.

21. In late June 2008, American Express attempted to reverse the payments that it had made to defendants' bank accounts for the fictitious charges run through the merchant accounts of Tangredi Inc. and Minc, but defendants withdrew the money from their accounts and secreted

it so that American Express could not be repaid (except for \$975.27, which American Express applied to the debit balance). Defendants also did not pay any portion of the amounts set forth on the statements that were sent by American Express for the fraudulent charges made on the Tangredi Amex Charge Card.

22. The total amount owed to American Express by the defendants for their fraudulent credit card charges amounts to \$1,145,955.65 (\$1,011,171.92 for the fictitious charges run through the Minc merchant account and \$135,750 for the fictitious charges run through the Tangredi Inc. merchant account, less the nominal recovery of \$975.27 and several nominal charges under \$5).

23. None of the above described charges made on the Tangredi Amex Charge Card for which the merchant was either Tangredi Inc. or Minc was for the *bona fide* sale of goods or services. Instead, the sole purpose of the charges was to generate cash for defendants through fraudulent means.

24. Defendants' fraudulent credit card use violated various state and federal criminal statutes, including, without limitation: (i) 18 U.S.C. § 1029, which prohibits fraud in connection with the use of credit cards; and (ii) Tenn. Code Ann. § 39-14-118, entitled "Credit or debit cards; unauthorized use or possession," which prohibits credit card fraud.

#### **D. The Merchant Agreement**

25. Acceptance of the American Express card by merchant accounts such as Tangredi Inc. or Minc is governed by an agreement entitled "Terms and Conditions for American Express Card Acceptance" (the "Merchant Agreement").

26. The Merchant Agreement prohibits use of the American Express card to obtain cash where there is no bona fide sale of goods or services. The Merchant Agreement states in paragraph 2(e) as follows:

Prohibited Use. You must not accept the Card for . . .(viii) amounts that do not represent bona fide sales of goods or services at your Establishments, e.g. purchases at your Establishments by your owners (or their family members) or employees contrived for cash flow purposes. . .

27. In flagrant violation of the Merchant Agreement's prohibition against use of the American Express card to obtain cash, Tangredi and/or Tangredi Jr. used the Tangredi Amex Charge Card to make three charges in May 2008 totaling \$135,750 on the American Express merchant account of Tangredi Inc., and twelve charges in June 2008 totaling \$1,011,171.92 on the American Express merchant account of the fictitious entity Minc. All of the charges, even those made on the merchant account of Minc, appear on the monthly statement as having been made at "M. Tangredi's Restau[rant]."

28. The practice of using an American Express merchant account to run charges made by an owner or family member of an owner, without any bona fide sale of goods or services, is known as "factoring." It enabled the Tangredis to obtain \$1,145,955.65 in cash from American Express, even though no bona fide sale of goods or services was made. Repayment never was made to American Express.

**FIRST CLAIM FOR RELIEF**  
(Fraud)

29. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 28 of this complaint with the same force and effect as if set forth fully at length herein.

30. Tangredi and/or Tangredi Jr. used the Tangredi Amex Charge Card to make three charges in May 2008 totaling \$135,750 on the American Express merchant account of Tangredi Inc., and twelve charges in June 2008 totaling \$1,011,171.92 on the American Express merchant account of the fictitious entity Minc. As stated in the American Express monthly statement, Tangredi and/or Tangredi Jr. used the name “M. Tangredi’s Restau[rant]” to describe the charges processed through both the Tangredi Inc. and Minc merchant accounts. None of those charges was for the bona fide sale or purchase of goods or services. Rather, the sole purpose of those charges was to fraudulently obtain cash from American Express in the total amount of \$1,145,955.65, no portion of which has been repaid.

31. As part of their conspiracy and scheme to defraud, Tangredi and/or Tangredi Jr. fraudulently obtained an American Express charge card under the account of Laura Lightfoot so that the statements for defendants’ fraudulent charges would be billed to her. They also formed a fictitious entity by the name of Minc and submitted an application to American Express for Minc to be granted an American Express merchant account on the pretext that Minc was a real entity when it was not.

32. In furtherance of their conspiracy and scheme to defraud, Tangredi and/or Tangredi Jr. misled American Express into opening a merchant account for Minc by making materially false and misleading statements. For example, they represented to American Express that Minc is operated by “Michael Santaniello” when no such person exists in the State of Tennessee.

33. In addition, each time that Tangredi and/or Tangredi Jr. used the Tangredi Amex Charge Card to charge amounts through the Tangredi Inc. or Minc merchant accounts, and each time that Tangredi and/or Tangredi Jr. caused Tangredi Inc. or Minc to accept and process such

charges by transmitting the transaction information, the defendants misrepresented to American Express that they had engaged in a *bona fide* business transaction. Defendants omitted the fact that none of the charges was for the *bona fide* sale or purchase of goods or services.

34. The aforesaid misrepresentations and omissions of the defendants were materially false and misleading in that defendants knew that the transactions in question were not *bona fide* and that the defendants were in fact engaging in fraudulent and illegal credit card factoring without the knowledge, permission, or consent of American Express.

35. The aforesaid misrepresentations and omissions were intentional, deliberate, and were made with the purpose of defrauding American Express, with full knowledge on the part of the defendants that the same were false and misleading.

36. American Express reasonably relied to its detriment on the defendants' misrepresentations and omissions.

37. The conduct of the defendants was willful, wanton, malicious, and intentional.

38. In addition, upon information and belief, the defendants' fraudulent conduct violated various state and Federal criminal statutes, including, without limitation: (i) 18 U.S.C. § 1029, which prohibits fraud in connection with the use of credit cards; and (ii) Tenn. Code Ann. § 39-14-118, entitled "Credit or debit cards; unauthorized use or possession," which prohibits credit card fraud.

39. As a direct and proximate result of defendants' fraud, American Express suffered damages of no less than \$1,145,955.65.

40. By reason of the foregoing, American Express is entitled to judgment against defendants in the sum of \$1,145,955.65, plus interest and court costs, and punitive damages in an amount to be determined by the Court.

**SECOND CLAIM FOR RELIEF**  
(Conversion)

41. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 40 of this complaint with the same force and effect as if set forth fully at length herein.

42. By virtue of the conduct described above, the defendants misappropriated, converted, and obtained possession of \$1,145,955.65 in cash from American Express to which they had no right and to which American Express has an immediate and superior possessory right.

43. American Express duly demanded that the defendants repay the money wrongfully obtained by them, but the defendants have failed and refused to comply with this demand and to turn over possession of the funds wrongfully converted.

44. By reason of the foregoing, American Express is entitled to judgment against defendants in the sum of \$1,145,955.65, plus interest and court costs.

**THIRD CLAIM FOR RELIEF**  
(Non-Payment of Credit Card Charges)

45. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 44 of this complaint with the same force and effect as if set forth fully at length herein.

46. Tangredi Jr., by making charges on the American Express charge card issued to him, is liable for the charges made on his card.

47. As set forth in the monthly account statements issued by American Express, Tangredi Jr. owes American Express \$1,145,955.65 for the charges made to the Tangredi Amex Charge Card.

48. Despite due demand, Tangredi Jr. has failed and refused to pay American Express any portion of the aforesaid amount.

49. As a direct and proximate result of the foregoing, American Express is entitled to judgment against Tangredi Jr. in the amount of \$1,145,955.65, plus interest and court costs.

**FOURTH CLAIM FOR RELIEF**  
(Unjust Enrichment)

50. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 49 of this complaint with the same force and effect as if set forth fully at length herein.

51. Upon information and belief, defendants Tangredi and/or Tangredi Inc. benefited from all of the charges made to the Tangredi Amex Charge Card account such that it would be unjust and unfair for them to retain such benefits without paying American Express due compensation therefor.

52. As a direct and proximate result of the foregoing, Tangredi and/or Tangredi Inc. have been unjustly enriched in the amount of \$1,145,955.65.

53. By reason of the foregoing, American Express is entitled to judgment against Tangredi and/or Tangredi Jr. in the sum of \$1,145,955.65, plus interest thereon.

**FIFTH CLAIM FOR RELIEF**  
(Breach of Merchant Agreement)

54. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 53 of this complaint with the same force and effect as if set forth fully at length herein.

55. Pursuant to the terms of the Merchant Agreement between American Express and Tangredi Inc., and between American Express and Minc, it is a prohibited practice for a merchant such as Tangredi Inc. and Minc to accept charges on the American Express card for cash, or for any amounts which do not represent a *bona fide* sale of goods or services.

56. Tangredi Inc. and Minc materially breached the Merchant Agreement by the 15 charges that were made on their merchant accounts on the Tangredi Amex Charge Card, none of which represented a *bona fide* sale of goods or services.

57. Minc is an unincorporated entity which, on information and belief, is owned, controlled and operated by Tangredi and Tangredi, Jr., who have used Minc to perpetrate a fraud against American Express. Accordingly, Tangredi and/or Tangredi Jr. are liable to American Express for the debt owed by Minc for breach of the Minc Merchant Agreement.

58. Similarly, Tangredi and/or Tangredi Jr. have used Tangredi Inc. to perpetrate a fraud against American Express and, on information and belief, have failed to comply with corporate formalities for Tangredi Inc. Accordingly, the corporate veil should be pierced and Tangredi and/or Tangredi Jr. should be found liable to American Express for the debt owed by Tangredi Inc. for breach of the Merchant Agreement.

59. As a direct and proximate result of the material breach of the Merchant Agreement by Tangredi Inc. and Minc, American Express has sustained damages of \$1,145,955.65, plus interest.

60. By reason of the foregoing, American Express is entitled to judgment against Tangredi, Tangredi Jr., Tangredi Inc. and Minc for breach of the Merchant Agreement in the sum of \$1,145,955.65, plus interest and court costs.

**WHEREFORE**, Plaintiff American Express Travel Related Services Company, Inc. prays for judgment as follows:

A. On the first claim for fraud, judgment against defendants in the amount of \$1,145,955.65, plus interest and court costs.

B. On the second claim for conversion, judgment against defendants in the amount of \$1,145,955.65, plus interest and court costs.

C. On the third claim for non-payment of credit card charges, for judgment against Tangredi Jr. in the amount of \$1,145,955.65, plus interest and court costs.

D. On the fourth claim for unjust enrichment, judgment against defendants in the amount of \$1,145,955.65, plus interest and court costs.

E. On the fifth claim for breach of the merchant agreement, judgment against defendants in the amount of \$1,145,955.65, plus interest and court costs.

F. An award of punitive damages.

G. Plaintiff's attorneys' fees and expenses incurred in connection with this action.

H. For such other and further relief as the court deems just and equitable.

Dated: November 26, 2008

**NEAL & HARWELL, PLC**

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