

**IN THE SUPERIOR COURT OF WASHINGTON
IN AND FOR THE COUNTY OF KING**

DOUGLAS PROUDLOVE, individually
and on behalf of all others similarly situated,

Plaintiff,

v.

SEED CONSULTING, LLC, doing
business as SEED CAPITAL, CORP.,
ERIK GANTZ, KEVIN TUSSY, and
DOES 1-10,

Defendants.

No. 20-2-09220-7 SEA

**ANSWER TO FIRST AMENDED CLASS
ACTION COMPLAINT**

Defendants Erik Gantz (“Gantz”) and Kevin Tussy (“Tussy,” and collectively with Gantz, “Defendants”), by and through their attorneys of record, the law firm of Marquis Aurbach Coffing and the law firm of Mix Sanders Thompson, hereby answer Plaintiff’s First Amended Class Action Complaint (“Complaint”) as follows:

ANSWER TO FIRST AMENDED CLASS
ACTION COMPLAINT

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Mix Sanders Thompson, PLLC
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Seattle, WA 98101
Tel: 206-521-5989
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1 **I. INTRODUCTION**

2 1.1. In answering Paragraph 1.1 of Plaintiff’s Complaint, Defendants are without
3 knowledge or information sufficient to form a belief as to the truth of the allegations contained
4 therein, and therefore, deny the same.

5 1.2. In answering Paragraph 1.2 of Plaintiff’s Complaint, Defendants are without
6 knowledge or information sufficient to form a belief as to the truth of the allegations contained
7 therein, and therefore, deny the same.

8 1.3. In answering Paragraph 1.3 of Plaintiff’s Complaint, Gantz admits that Seed
9 Consulting, LLC (“Seed”)¹ assisted Mr. Proudlove in opening multiple credit cards and that
10 Seed charged Mr. Proudlove \$3,495 for its services, and Defendants are without knowledge or
11 information sufficient to form a belief as to the truth of the remainder of the allegations
12 contained therein, and therefore, deny the same.

13 1.4. In answering Paragraph 1.4 of Plaintiff’s Complaint, Defendants deny the factual
14 allegations therein, and the remainder of the Paragraph constitutes statements of law to which
15 no response is required.

16 1.5. In answering Paragraph 1.5 of Plaintiff’s Complaint, Defendants deny the
17 allegations therein.

18 _____
19
20 ¹ Paragraph 3.10 of Plaintiff’s Complaint states that all references to “Seed Capital” are intended to refer
21 “to all Defendants, or any of them individually.” Defendants’ answers to Plaintiff’s allegations are given
22 solely on their own behalf, and not on behalf of Seed, and thus any reference within this Answer to
23 “Seed” refers solely to Seed Consulting, LLC, and not to Erik Gantz or Kevin Tussy.

1 **II. JURISDICTION AND VENUE**

2 2.1. In answering Paragraph 2.1 of Plaintiff's Complaint, Defendants take no position
3 as to whether this Court has jurisdiction over Seed, but deny that this Court has jurisdiction over
4 the Defendants.

5 2.2. In answering Paragraph 2.2 of Plaintiff's Complaint, Defendants deny the
6 allegations therein.

7 2.3. In answering Paragraph 2.3 of Plaintiff's Complaint, Defendants deny that they
8 or Seed promoted services in the State of Washington; deny that Defendants contracted to
9 provide services to Mr. Proudlove or other proposed class members in the State of Washington,
10 and are without knowledge or information sufficient to form a belief as to the truth of the
11 remainder of the allegations contained therein, and therefore, deny the same.

12 2.4. In answering Paragraph 2.4 of Plaintiff's Complaint, Defendants deny the
13 allegations therein.

14 2.5. In answering Paragraph 2.5 of Plaintiff's Complaint, Defendants deny that they
15 or Seed promoted services in King County, do business in King County, or entered into any
16 agreement with Mr. Proudlove in King County, and Defendants are without knowledge or
17 information sufficient to form a belief as to the truth of the remainder of the allegations
18 contained therein, and therefore, deny the same.

19 **III. Parties**

20 3.1. In answering Paragraph 3.1 of Plaintiff's Complaint, Defendants are without
21 knowledge or information sufficient to form a belief as to the truth of the allegations contained
22 therein, and therefore, deny the same.

1 3.2. In answering Paragraph 3.2 of Plaintiff's Complaint, Defendants deny that Seed
2 is a corporation, but admit that Seed is a limited liability company registered under the laws of
3 the State of Nevada.

4 3.3. In answering Paragraph 3.3 of Plaintiff's Complaint, Defendants admit the
5 allegations therein.

6 3.4. In answering Paragraph 3.4 of Plaintiff's Complaint, Defendants admit that Seed
7 consulted with clients and helped its clients obtain credit lines, but deny the remainder of the
8 allegations therein.

9 3.5. In answering Paragraph 3.5 of Plaintiff's Complaint, Defendants admit that Erik
10 Gantz was a co-founder of Seed, and that he created and implemented policies and practices in
11 his capacity as an officer of Seed, and deny the remainder of the allegations therein.

12 3.6. In answering Paragraph 3.6 of Plaintiff's Complaint, Defendants deny the
13 allegations therein.

14 3.7. In answering Paragraph 3.7 of Plaintiff's Complaint, Defendants admit that
15 Kevin Tussy was a co-founder of Seed, and that he created and implemented policies and
16 practices in his capacity as Seed's Chief Technical Officer, and deny the remainder of the
17 allegations therein.

18 3.8. In answering Paragraph 3.8 of Plaintiff's Complaint, Defendants deny the
19 allegations therein.

20 3.9. In answering Paragraph 3.9 of Plaintiff's Complaint, the paragraph contains no
21 factual allegations to which any response is required.

1 4.7. In answering Paragraph 4.7 of Plaintiff's Complaint, Defendants are without
2 knowledge or information sufficient to form a belief as to the truth of the allegations contained
3 therein, and therefore, deny the same.

4 4.8. In answering Paragraph 4.8 of Plaintiff's Complaint, Defendants are without
5 knowledge or information sufficient to form a belief as to the truth of the allegations contained
6 therein, and therefore, deny the same.

7 4.9. In answering Paragraph 4.9 of Plaintiff's Complaint, Defendants deny that Mr.
8 Proudlove met with a representative of the Defendants or Seed at any event in Seattle, and are
9 without knowledge or information sufficient to form a belief as to the truth of the allegations
10 contained therein, and therefore, deny the same.

11 4.10. In answering Paragraph 4.10 of Plaintiff's Complaint, Defendants are without
12 knowledge or information sufficient to form a belief as to the truth of the allegations contained
13 therein, and therefore, deny the same.

14 4.11. In answering Paragraph 4.11 of Plaintiff's Complaint, Defendants are without
15 knowledge or information sufficient to form a belief as to the truth of the allegations contained
16 therein, and therefore, deny the same.

17 4.12. In answering Paragraph 4.12 of Plaintiff's Complaint, Defendants are unable to
18 discern the entirety of the contents of the document attached to the Complaint as Exhibit A due
19 to portions of that document being unintelligible, and on those grounds are unable to admit or
20 deny the allegations contained therein.

21 4.13. In answering Paragraph 4.13 of Plaintiff's Complaint, Defendants admit the
22 allegations contained therein.

1 4.14. In answering Paragraph 4.14 of Plaintiff's Complaint, Defendants aver that the
2 document attached to the Complaint as Exhibit A speaks for itself, and deny the allegations
3 contained therein.

4 4.15. In answering Paragraph 4.15 of Plaintiff's Complaint, Defendants admit the
5 allegations pertaining to ¶ 3.4 of the document attached to the Complaint as Exhibit A, but
6 Defendants are unable to discern the entirety of the contents of the document attached to the
7 Complaint as Exhibit A due to portions of that document being unintelligible, and on those
8 grounds are unable to admit or deny the remainder of the allegations contained therein.

9 4.16. In answering Paragraph 4.16 of Plaintiff's Complaint, Defendants are unable to
10 discern the entirety of the contents of the document attached to the Complaint as Exhibit A due
11 to portions of that document being unintelligible, and on those grounds are unable to admit or
12 deny the allegations contained therein.

13 4.17. In answering Paragraph 4.17 of Plaintiff's Complaint, Defendants deny that they
14 had Mr. Proudlove complete a broad certification and release purporting to authorize Seed
15 Capital to apply for credit accounts in his name, process and endorse documents regarding those
16 accounts and "open an email account for application correspondence to Seed Capital," and are
17 without knowledge or information sufficient to form a belief as to the truth of the remainder of
18 the allegations contained therein, and therefore, deny the same.

19 4.18. In answering Paragraph 4.18 of Plaintiff's Complaint, Defendants deny that Mr.
20 Proudlove had any interaction with anyone "from" the Defendants, and are without knowledge
21 or information sufficient to form a belief as to the truth of the remainder of the allegations
22 contained therein, and therefore, deny the same.

1 4.19. In answering Paragraph 4.19 of Plaintiff's Complaint, Gantz admits that Seed
2 charged \$3,495 to a credit card held by Mr. Proudlove, and are without knowledge or
3 information sufficient to form a belief as to the truth of the remainder of the allegations
4 contained therein, and therefore, deny the same.

5 4.20. In answering Paragraph 4.20 of Plaintiff's Complaint, Defendants are without
6 knowledge or information sufficient to form a belief as to the truth of the allegations contained
7 therein, and therefore, deny the same.

8 4.21. In answering Paragraph 4.21 of Plaintiff's Complaint, Defendants are without
9 knowledge or information sufficient to form a belief as to the truth of the allegations contained
10 therein, and therefore, deny the same.

11 4.22. In answering Paragraph 4.22 of Plaintiff's Complaint, Defendants are without
12 knowledge or information sufficient to form a belief as to the truth of the allegations contained
13 therein, and therefore, deny the same.

14 4.23. In answering Paragraph 4.23 of Plaintiff's Complaint, Defendants deny the
15 allegations therein.

16 4.24. In answering Paragraph 4.24 of Plaintiff's Complaint, Defendants deny the
17 allegations therein.

18 4.25. In answering Paragraph 4.25 of Plaintiff's Complaint, Defendants are without
19 knowledge or information sufficient to form a belief as to the truth of the allegations contained
20 therein, and therefore, deny the same.

1 **V. CLASS ACTION ALLEGATIONS**

2 5.1. In answering Paragraph 5.1 of Plaintiff’s Complaint, the paragraph contains no
3 factual allegations to which any response is required.

4 5.2. In answering Paragraph 5.2 of Plaintiff’s Complaint, Defendants deny the
5 allegations contained therein.

6 5.3. In answering Paragraph 5.3 of Plaintiff’s Complaint, Defendants deny the
7 allegations contained therein.

8 5.3.1. In answering Paragraph 5.3.1 through 5.3.13 of Plaintiff’s Complaint, the
9 paragraphs contain no factual allegations to which any response is required.

10 5.4. In answering Paragraph 5.4 of Plaintiff’s Complaint, Defendants deny the
11 allegations contained therein.

12 5.5. In answering Paragraph 5.5 of Plaintiff’s Complaint, Defendants are without
13 knowledge or information sufficient to form a belief as to the truth of the allegations contained
14 therein, and therefore, deny the same.

15 5.6. In answering Paragraph 5.6 of Plaintiff’s Complaint, Defendants deny the
16 allegations contained therein.

17 5.7. In answering Paragraph 5.7 of Plaintiff’s Complaint, Defendants deny the
18 allegations contained therein.

19 **VI. FIRST CAUSE OF ACTION**

20 6.1. In answering Paragraph 6.1 of Plaintiff’s Complaint, Defendants repeat and
21 incorporate all responses to the preceding paragraphs.

1 6.2. In answering Paragraph 6.2 of Plaintiff’s Complaint, Defendants admit that they
2 and Seed are “persons” within the meaning of the Washington Consumer Protection Act, but
3 deny the remainder of the allegations contained therein.

4 6.3. In answering Paragraph 6.3 of Plaintiff’s Complaint, Defendants deny the
5 allegations contained therein.

6 6.4. In answering Paragraph 6.4 of Plaintiff’s Complaint, Defendants deny that they
7 procured any extensions of credit for Mr. Proudlove, and are without knowledge or information
8 sufficient to form a belief as to the truth of the remainder of the allegations contained therein,
9 and therefore, deny the same.

10 6.5. In answering Paragraph 6.5 of Plaintiff’s Complaint, Defendants are without
11 knowledge or information sufficient to form a belief as to the truth of the allegations contained
12 therein, and therefore, deny the same.

13 6.6. In answering Paragraph 6.6 of Plaintiff’s Complaint, the paragraph contains no
14 factual allegations to which any response is required.

15 6.7. In answering Paragraph 6.7 of Plaintiff’s Complaint, Defendants deny the
16 allegations contained therein.

17 6.7.1. In answering Paragraph of Plaintiff’s Complaint, Defendants deny that
18 they prepared or submitted any credit card applications on Mr. Proudlove’s behalf, and deny
19 that Seed overstated Mr. Proudlove’s income on credit card applications that it prepared and
20 submitted on Mr. Proudlove’s behalf.

21 6.7.2. In answering Paragraph 6.7.2 of Plaintiff’s Complaint, Gantz admits that
22 Seed charged Mr. Proudlove \$3,495, but the Defendants deny that they charged Mr. Proudlove

1 anything, and are without knowledge or information sufficient to form a belief as to the truth of
2 the remainder of the allegations contained therein, and therefore, deny the same.

3 6.8. In answering Paragraph 6.8 of Plaintiff's Complaint, Defendants deny that they
4 violate the CSOA or that they have any written agreement to provide to "buyers," and are
5 without knowledge or information sufficient to form a belief as to the truth of the remainder of
6 the allegations contained therein, and therefore, deny the same.

7 6.9. In answering Paragraph 6.9 of Plaintiff's Complaint, Defendants deny that they
8 violate the CSOA or that they have "buyers" sign a form agreement, and are without knowledge
9 or information sufficient to form a belief as to the truth of the remainder of the allegations
10 contained therein, and therefore, deny the same.

11 6.9.1 In answering Paragraph 6.9.1 of Plaintiff's Complaint, Defendants deny
12 the factual allegations therein, and the remainder of the paragraph contains no factual
13 allegations to which any response is required.

14 6.9.2 In answering Paragraph 6.9.2 of Plaintiff's Complaint, Defendants deny
15 the factual allegations therein, and the remainder of the paragraph contains no factual
16 allegations to which any response is required.

17 6.9.3 In answering Paragraph 6.9.3 of Plaintiff's Complaint, Defendants deny
18 the factual allegations contained therein, and the remainder of the paragraph contains no factual
19 allegations to which any response is required.

20 6.9.4 In answering Paragraph 6.9.4 of Plaintiff's Complaint, Defendants deny
21 the factual allegations contained therein; are unable to discern the entirety of the contents of the
22 document attached to the Complaint as Exhibit A due to portions of that document being

1 unintelligible, and on those grounds are unable to admit or deny the allegation that the
2 “Agreement discloses nothing about any bond or trust account;” and the remainder of the
3 paragraph contains no factual allegations to which any response is required.

4 6.9.5 In answering Paragraph 6.9.5 of Plaintiff’s Complaint, Defendants deny
5 that they have a “form Agreement,” are unable to discern the entirety of the contents of the
6 document attached to the Complaint as Exhibit A due to portions of that document being
7 unintelligible, and on those grounds are unable to admit or deny the remainder of the factual
8 allegations contained therein; and the remainder of the paragraph contains no factual allegations
9 to which any response is required.

10 6.10. In answering Paragraph 6.10 of Plaintiff’s Complaint, Defendants deny the
11 allegations contained therein.

12 6.11. In answering Paragraph 6.11 of Plaintiff’s Complaint, Defendants deny the
13 allegations contained therein.

14 6.12. In answering Paragraph 6.12 of Plaintiff’s Complaint, Defendants deny the
15 allegations contained therein.

16 6.13. In answering Paragraph 6.13 of Plaintiff’s Complaint, Defendants deny the
17 allegations contained therein.

18 6.14. In answering Paragraph 6.14 of Plaintiff’s Complaint, Defendants deny the
19 allegations contained therein.

20 6.15. In answering Paragraph 6.15 of Plaintiff’s Complaint, Defendants deny the
21 allegations contained therein.

1 **VII SECOND CAUSE OF ACTION**

2 7.1. In answering Paragraph 7.1 of Plaintiff's Complaint, Defendants repeat and
3 incorporate all responses to the preceding paragraphs.

4 7.2. In answering Paragraph 7.2 of Plaintiff's Complaint, the paragraph contains no
5 factual allegations to which any response is required.

6 7.3. In answering Paragraph 7.3 of Plaintiff's Complaint, Defendants are without
7 knowledge or information sufficient to form a belief as to the truth of the allegations contained
8 therein, and therefore, deny the same.

9 7.4. In answering Paragraph 7.4 of Plaintiff's Complaint, deny the allegations
10 contained therein.

11 7.4.1 In answering Paragraph 7.4.1 of Plaintiff's Complaint, Defendants deny
12 the allegations contained therein,

13 7.4.2 In answering Paragraph 7.4.2 of Plaintiff's Complaint, Defendants admit
14 that Seed charged its customers services fees that constituted "thousands of dollars," but deny
15 the remainder of the allegations contained therein.

16 7.4.3 In answering Paragraph 7.4.3 of Plaintiff's Complaint, Defendants deny
17 the allegations contained therein.

18 7.4.4 In answering Paragraph 7.4.4 of Plaintiff's Complaint, Defendants deny
19 the allegations contained therein.

20 7.5. In answering Paragraph 7.5 of Plaintiff's Complaint, Defendants deny the
21 allegations contained therein.

1 8. The laws cited in Plaintiff's Complaint do not apply to the Defendants.

2 9. The laws cited in Plaintiff's Complaint do not apply to any transactions
3 involving the Defendants.

4 10. Defendants did not knowingly violate any state or federal statute or regulation.

5 11. Defendants' non-disclosures, if any, were not intentional.

6 12. Defendants owed no duty to Plaintiff to make additional disclosures.

7 13. Plaintiff is not equitably entitled to obtain any money from Defendants.

8 14. Defendants did not make any false statements.

9 15. Plaintiff did not suffer any damages.

10 16. Plaintiff's damages, if any, were not caused by Defendants.

11 17. Plaintiff's damages, if any, were caused by Plaintiff.

12 18. Plaintiff's damages, if any, were not foreseeable.

13 19. Plaintiff's damages, if any, are subject to setoff.

14 20. Plaintiff knowingly requested Seed's services.

15 21. Plaintiff gave prior express and informed consent to Seed for its services.

16 22. Plaintiff's claims are barred by the applicable statute of limitations.

17 23. Defendants' conduct was not oppressive nor made or committed with malice,
18 oppression, or fraud.

19 24. Plaintiff's Complaint fails to set forth any facts which would constitute a basis
20 for any claim for punitive or exemplary damages as against the Defendants.

1 25. The types of claims alleged by Plaintiff on behalf of himself and the alleged class
2 members are predominated by individual questions, and accordingly are not appropriate for
3 class treatment.

4 26. The claims alleged by Plaintiff are neither common to, nor typical of, those, if
5 any, pertaining to the alleged class Plaintiff purports to represent.

6 27. Plaintiff has not shown and cannot show that class treatment of the alleged
7 claims alleged herein would be superior to other methods of adjudicating the controversy.

8 28. Plaintiff and/or Plaintiff's counsel are inadequate representatives of any alleged
9 class of persons they purport to represent.

10 29. Plaintiff does not belong to any class of protected persons.

11 30. Each of Plaintiff's claims are barred in whole or in part because Plaintiff and
12 each putative class member has failed to mitigate or reasonably attempt to mitigate his or her
13 damages, if any.

14 31. Each of Plaintiff's claims are barred in whole or in part because any recovery
15 from Defendant would result in Plaintiff's or a putative class member's unjust enrichment.

16 32. Plaintiff's claims have been waived.

17 33. Defendants' acts were not misleading in any material way.

18 34. Defendants committed no deceptive acts directed at customers.

19 35. Defendants have not made any false or misleading statements in a commercial
20 setting.

21 36. Defendants have not used any similar identical name likely to confuse, cause
22 mistake, or deceive an appreciable number of reasonable customers.

1 37. There is no danger of public confusion, infringement of good will, or damage of
2 reputation among Plaintiff's customers by use of the corporate form.

3 38. The Seed entity is not directed and controlled by answering Defendants as
4 relevant to Plaintiff's allegations.

5 39. The Seed entity was not under capitalized.

6 40. The Defendants had no intent to defraud Plaintiff.

7 41. There has been no commingling of funds between Seed and the Defendants.

8 42. Justice does not require the corporate fiction to be disregarded.

9 43. All possible affirmative defenses may not have been alleged herein, in so far as
10 sufficient facts were not available after a reasonable inquiry upon the filing of this Defendant's
11 Answer to Plaintiff's Complaint; therefore, this Defendant reserves the right to amend its
12 answer to allege additional affirmative defenses if subsequent investigations so warrant

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Defendants pray as follows:

- 15 1. That class certification be denied;
- 16 2. That Plaintiff take nothing by way of his complaint and that the same be
17 dismissed with prejudice;
- 18 3. For an award of reasonable attorney fees and costs of suit; and
- 19 4. For any further relief as the Court deems to be just and proper.

20 Dated this 20th day of May, 2021.

MIX SANDERS THOMPSON, PLLC

s/Michael G. Sanders

Michael G. Sanders, WSBA No. 33881
Attorney for Defendants Erik Gantz and Kevin
Tussy

s/Collin M. Jayne

Terry A. Coffing, NSBA #4949
Collin M. Jayne, NSBA #13899
Counsel Pro Hac Vice for Defendants Gantz and Tussy

1
2 **CERTIFICATE OF SERVICE**

3 I, Kelly Lee certify that on May 20, 2021, I caused to be served a true and correct copy
4 of the foregoing ANSWER TO FIRST AMENDED CLASS ACTION COMPLAINT via the
5 method indicated below and addressed to the following:

6 *Attorneys for Plaintiff*
7 Beth E. Terrell
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16 I certify under penalty of perjury under the laws of the state of Washington that the
17 foregoing is true and correct.

18 s/Kelly Lee
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