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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

DAVID B. VILLANO III, as borrower and all other individuals similarly situated, DAVID B. VILLANO, JR., as guarantor and all other individuals similarly situated

Plaintiffs

vs.

TD BANK, formerly, COMMERCE BANK, NA, DANAHER CORPORATION and NMTC, INC., d/b/a MATCO TOOLS, Fictitious banking entities XYZ COMPANIES 1-20, and JOHN DOES, fictitious persons, 1-100,

Defendants

Civil Action No.

**VERIFIED COMPLAINT  
AND JURY DEMAND**

This action is brought on behalf of Plaintiffs David B. Villano III, as borrower ("Son Villano") and David B. Villano, Jr., as guarantor ("Dad Villano") against Defendants Commerce Bank NA, now known as TD Bank NA (hereinafter "TD Bank" or "TD") NMTC, INC., d/b/a Matco Tools ("Matco") and its parent company Defendant Danaher Corporation (or, collectively "Defendants") for fraudulent acts and omissions committed by Defendants, individually and in concert, in connection with a Small Business Administration ("SBA") loan made by TD that was used to finance Plaintiff David B. Villano III's Matco Tools distributorship.

## SUMMARY OF THE ACTION

1. This case is about fraud and collusion between a franchise company and a bank and involved a scheme which caused significant economic injury to Plaintiffs and other individual SBA franchise loan borrowers and guarantors, as well as all American taxpayers.

2. The precise scheme involved the use of **inflated and fraudulently-premised three year income projections** provided by Matco, to the SBA Lender, Commerce Bank (now TD Bank), which were accepted by TD despite its knowledge their use violated FTC franchise/income representation regulations.

3. The scheme was participated in by both Matco and TD in order to take advantage of unsophisticated borrowers and guarantors such as the Plaintiffs in order to have them sign and enter into SBA loans that had an unreasonably high failure rate.

4. Plaintiffs and others similarly situated were purposefully kept in the dark by Matco and TD as to strong likelihood that their franchise business would fail and that they would not have the ability to repay their SBA loan through their Matco business, which in turn would lead to a default.

5. The use of an **undisclosed** three year income projection by a franchise company is a flagrant violation of long-established Federal Trade Commission (FTC) franchise sales disclosure regulations.

6. Matco and TD were at all times aware of FTC Rules and that franchisors could not make income representations to their franchisees unless the income representations were made in franchise disclosure documents.

7. However, Matco, with TD turning a blind eye to its actions, participated in a scheme to make an end-run around these representations and advised TD in writing “not to share” these representations with franchisees. (See ¶ 67, *infra* and Exhibit C attached)

8. The “secret” nature of these income representations, to the extent they were shared with TD and other SBA lenders but not franchisees, was carefully designed to insulate Matco from subsequent legal action, if and when the franchisee/distributor later failed in its business.

9. The result was that **Plaintiffs were led to believe that TD and other SBA lenders were working with Matco in good faith to ascertain whether the loan was proper and could be repaid. This could not have been further from the truth.**

10. According to the most recent SBA loan performance list for Matco franchise loans made between 2001 and 2010, thirty-seven and one third percent (37.3%) of the Matco SBA loans failed. (See ¶65 *infra* and Exhibit F attached).

11. TD at all times had complete access to empirical data and related studies prepared by the SBA, which made clear that a Matco investment was a bad one, but chose to ignore the them. Indeed, despite their knowledge of these astonishing failure rates, TD and Matco, separately and in concert with each other, continued to conspire to finance Matco franchise ventures.

12. Both TD and Matco profited from the making of bad loans despite the fact that they were fully apprised of Matco’s astonishingly high SBA franchise loan failure rate. Thus Matco and TD were at all relevant times incentivized to perpetuate this scheme, even in the face of an extraordinarily high loan failure rate, as they both stood to benefit at the expense of franchisee loan borrowers, loan guarantors and taxpayers.

13. TD profited specifically through its collection of loan origination fees as well as interest on the loan principal, which is collected from borrowers while these improper loans are still “current.” In the event of loan failure, TD and other banks pass along the risk of loss along when these loans inevitably fail, as the bank is essentially “bailed out” by the American taxpayer.

14. Indeed, according to the Federal Deposit Insurance Corporation (FDIC), the SBA backs a certain portion of the loan — “as much as 90 percent.” See <http://www.fdic.gov/consumers/consumer/news/cnwin1011/smallbusiness.html>.

15. Matco, the franchisor, likewise profited both through the sale of a new franchise to Plaintiff David B. Villano III and others similarly situated upon the making of the doomed loan, and having its franchised distributors sell tool products for two (2) to three (3) years in a designated route, before ultimately failing.

16. Concerned only with their own profit, Matco and TD continued to engage in this deceptive scheme to approve loans that never should have been approved because they knew that they could pass along any risk of loss associated with any SBA franchise failure.

17. Ultimately, the Defendants’ motive and ability to perpetuate this scheme was facilitated by a lackadaisical, sloppy and self-serving SBA lending culture that willingly participated in, or in some cases turned a blind eye to, franchisors such as Matco making a mockery of FTC regulations and flagrantly making illegal income projections.

18. As set forth above, this lending culture also insured that it would be insulated from any harm in the event these misguided loans went bad, as only the failed debtor/franchisee, the guarantor and the United States taxpayer would be left to bear the loss – not Matco/Danaher or TD.

19. Thus, sadly the only “losers” in this carefully devised scheme were Plaintiffs and other unsuspecting Matco franchisee borrowers and guarantors, all of whom suffered severe financial losses when the borrowers’ Matco franchised businesses failed.

20. Plaintiffs and others similarly situated have sustained significant monetary damages at the hands of Matco and TD’s fraud and deceit are entitled to any and all economic relief provided under state or federal law, including punitive damages.

### **THE PARTIES**

21. Plaintiff, David B. Villano, Jr (“Dad Villano” or “Plaintiff”), was, at all relevant times, an adult individual, residing at 310 Concord Avenue Oceanside NY 11572.

22. Plaintiff David B. Villano III (“Son Villano”), was, at all relevant times, an individual residing in New York, New York.

23. Defendant TD Bank, at the relevant times involved herein, maintained an office for the processing of SBA loans at One Royal Road, Flemington, New Jersey.

24. Defendant Danaher Corporation (“Danaher”) is a Delaware Corporation listed on the New York Stock Exchange with a principal place of business located at 2099 Pennsylvania Avenue, Washington D.C. 20006.

25. Defendant Matco is a Delaware Corporation with a principal place of business located at 4403 Allen Road, Stow, Ohio 44224.

26. Matco is a manufacturer and distributor of automotive hand tools and service equipment and operates as a wholly-owned subsidiary of Defendant Danaher.

27. Fictitious banking entities XYZ Companies 1-20 and John Does 1-100, fictitious persons, are currently unknown to Plaintiffs but, upon information and belief, took part in the fraudulent acts and omissions committed by the named Defendants herein.

## **JURISDICTION AND VENUE**

28. Diversity jurisdiction exists pursuant to 28 U.S.C. § 1332(a). Plaintiffs are residents of the State of New York and Defendant TD, upon information and belief, is headquartered in Ontario, Canada and has its executive offices in Portland, Maine but conducted SBA loan business at its office located in Flemington, New Jersey.

29. Matco is a Delaware Corporation that conducts business in the State of New Jersey.

30. Plaintiffs' claims involve matters of national or interstate interest.

31. Defendants Matco, TD and Danaher are subject to personal jurisdiction in New Jersey as all Defendants do considerable business in and from the State.

32. Venue is proper in this district pursuant to 28 U.S.C. § 1391 as a substantial part of the events giving rise to the claims occurred in this District.

## **CLASS-WIDE ALLEGATIONS**

33. Pursuant to Federal Rules of Civil Procedure 23(a) and (b), Plaintiff brings this action on behalf of themselves and the Class of similarly situated persons defined as:

### **Nationwide Class ("The Class"):**

34. All current and former Matco franchisees/SBA loan borrowers and their guarantors who received loans from TD Bank that were knowingly approved based upon the above-stated false income projection made by Matco.

35. Plaintiff also bring this action on behalf of the following Sub-classes:

### **Borrower Sub-Class:**

All current and former Matco franchisees and loan borrowers who received SBA loans from TD Bank and/or other banking institutions that are currently unknown in connection

with the purchase of a Matco franchise, which loans were knowingly approved based upon false income projections made by Matco.

**Guarantor Sub-Class:**

Guarantors of loans taken by Matco franchisees and loan borrowers who received SBA loans from TD Bank and/or other banking institutions that are currently unknown in connection with the purchase of a Matco franchise, which loans were knowingly approved based upon false income projections made by Matco.

36. Excluded from the Class and both Sub-Classes are the officers, directors, affiliates, and employees of Defendants and their respective legal representatives, heirs, successors and assigns. Plaintiffs reserve the right to amend the definition of Class and Subclass upon discovery and the receipt of further information.

**Rule 23(a)**

37. **Numerosity:** Members of the Class and the Sub-Classes are so numerous that their individual joinder is impractical. The precise identities, number and addresses of members of the Class and both Sub-Classes are unknown to Plaintiffs, but may and should be known with proper and full discovery from Defendants, third parties, and their respective records.

38. **Existence of Common Questions of Fact and Law:** There is a well-defined commonality and community of interest in the questions of fact and law affecting the members of the Class and the Sub-Classes. Common questions of fact and law include but are not limited to:

- a. Whether Matco conspired with TD and other SBA lenders to violate FTC franchise regulations by utilizing secret three year income projections in order to make SBA loans available for prospective Matco franchisees;

- b. Whether Matco conspired with TD and other SBA lenders to fraudulently induce borrowers and guarantors such as the plaintiffs and those similarly situated to enter into SBA loan agreements;
- c. Whether TD knowingly failed to consider actual success and failure rates of Matco franchisees prior to granting the subject loans;
- d. Whether TD failed to consider statistics provided by the SBA as to loan failure rates for Matco franchises
- e. Whether Plaintiffs and others similarly situated were induced by to the collective efforts of Matco and TD to enter into loans that were exceedingly likely to fail, all to their detriment.
- f. Whether TD and Defendants profited off of the alleged fraudulent scheme to induce prospective Matco franchisees to enter into loan agreements.
- g. Whether Plaintiffs, the Class, and both Sub-Classes are entitled to compensatory, trebled, statutory, and/or punitive damages based on Defendants' fraudulent and illegal conduct or practices.
- h. Whether Plaintiffs, the Class, and both Sub-Classes are entitled to any other equitable relief.

39. **Typicality**: Plaintiffs' claims are at all times typical and relevant to the claims of the Class and the Sub-Classes. Plaintiffs' claims have a common origin and share common bases. Plaintiffs' claims originate from the same illegal and wrongful practices of Defendants, and Defendants act in the same way toward Plaintiffs, the Class members, and the Sub-Class members. If brought and prosecuted individually, the claims of each Class member and Sub-



Class member would necessarily require proof of the same material and substantive facts, rely upon the same remedial theories, and seek the same relief.

40. **Adequacy**: Plaintiffs are adequate representatives of the Class and the Sub-Classes because Plaintiffs' interests do not conflict with the interests of the members of the Classes Plaintiffs seeks to represent. Plaintiffs have retained competent counsel, and intend to prosecute this action vigorously. Plaintiffs' counsel will fairly and adequately protect the interests of the members of the Class and the Sub-Classes.

41. **Superiority**: This lawsuit may be maintained as a class action under Federal Rule of Civil Procedure 23(b)(3) because questions of fact and law common to the Class and the Sub-Classes predominate over the questions affecting only individual members of the classes, and a class action is superior to other available means for the fair and efficient adjudication of this dispute. The damages suffered by each individual class member may be disproportionate to the burden and expense of individual prosecution of complex and extensive litigation to proscribe Defendants' conduct and practices. Additionally, effective redress for each and every Class member and Sub-Class member against Defendants may be limited or even impossible where serial, duplicate, or concurrent litigation occurs arising from these disputes. Even if individual members of the classes could afford or justify the prosecution of their separate claims, such an approach would compound judicial inefficiencies, and could lead to incongruous and conflicting judgments against Defendants.

## **BACKGROUND FACTS**

### **1. Son Villano's Interest in a Matco Franchise**

42. In 2004, Plaintiff Son Villano became interested in purchasing a Matco Tools mobile tool sales franchise route in Long Island, New York.

43. Dad Villano had been a Matco Tools distributor since the 1980s and currently owns an operating route in Brooklyn, New York. Upon learning of Son Villano's interest in purchasing a route, Dad Villano agreed to help Son Villano finance the purchase.

44. Son Villano did not have the requisite capital to purchase a Matco Tools franchise and needed to borrow one hundred and three thousand dollars (\$103,000) in order to finance the purchase and pay Matco for franchise tool inventory, a truck and initial working capital.

## **2. Matco's Arrangement of "Financing Opportunity" for Plaintiffs with TD**

45. Upon learning of Son Villano's need to finance a portion of the franchise investment, Matco franchise sales and district managers immediately and specifically referred Son Villano to Defendant TD for the purpose of obtaining SBA financing for use in connection with the purchase of the Matco franchise.

46. A prospective franchisee such as Son Villano without the liquid funds to finance the entire purchase cannot buy a Matco franchise and, more importantly, cannot enter into a franchise contract with Matco until after they have been approved by and entered into a loan agreement with a third-party bank such as Defendant TD.

47. Thus, having the appropriate financing in place and establishing a preceding contractual relationship with an SBA lender such as Defendant TD **was at all times a pre-condition** to the commencement of any relationship between Matco and its franchisees.

48. After completing the necessary loan application and accompanying documentation, the Matco managers took the paperwork to the TD's SBA processing office in Flemington, New Jersey.

## **3. Inducement of Plaintiffs into Loan Agreement and Purposeful Concealment of Inflated Financials**

49. On June 23, 2004, TD approved the loan to Son Villano for \$103,000, which, as is the nature of SBA loans, was expressly conditioned upon the personal guaranty of Dad Villano (See Exhibit A attached).

50. On July 23, 2004, Dad Villano signed a required personal guarantee at a TD facility located in Medford, New York (See Exhibit B attached).

51. **At the time of approval, neither Son Villano nor Dad Villano were given any opportunity to review documents supplied by Matco to TD and were not aware that TD's approval was principally based upon a three (3) year income projection given to TD by Matco in violation of FTC franchise sales regulations.** However, Plaintiffs at all times believed that TD was making the loan based upon documents received from Matco that it deemed to be accurate representations related to a Matco investment.

52. Upon information and belief, Defendant TD was expressly cautioned in a form letter that was authored by Matco franchise sales manager Brian Maira, and which accompanied Son Villano's loan application in 2004, *not to disclose* the existence of the three year income projection to Son Villano or any other Matco SBA loan applicant. (Attached hereto as Exhibit C is a copy of the Matco Form Letter which, upon information and belief, was re-dated for use in connection with SBA loans in 2005).

53. This practice of not allowing a franchise loan applicant to see the three year income projection being submitted to an SBA lender had, upon information and belief, been institutionalized and followed by Matco as early as 1999 as is indicated in the June 20, 2011 Certification of Matco's former National Sales Manager. (See attached Exhibit D, ¶¶18 – 19).

54. Matco's upper management knew that it could not formally make earnings representations or income projections to distributor candidates/SBA loan applicants unless such

income projections were expressly set forth in Item 19 of Matco's Uniform Franchise Offering Circular ("UFOC"). (See attached Exhibit D, ¶ 9).

55. Matco's Item 19, furthermore, prohibited the making of such income claims by specifically providing: "Matco does not furnish or authorize its salespersons to furnish **any oral or written information** concerning the actual or potential sales, costs, income or profits of a Matco Distributorship." (See attached Exhibit E, Item 19 of Matco's UFOC *emphasis added*).

56. Upon further information and belief, Matco avoided making any income representations in Item 19 of its UFOC in order to avoid liability in the event of the highly certain financial failure of the SBA franchised applicant; however Matco developed an alternative scheme of providing inflated and inaccurate financial representations to third-party lenders for the purpose of facilitating loans, without which the route could not be sold.

#### **4. Matco's Circumvention of FTC Regulations and TD's Tacit Cooperation with Matco's Scheme.**

57. Understanding their need to convince third-party lenders to loan money to prospective franchisees who could otherwise not afford a franchise, Matco's upper management and its then corporate and outside legal counsel, upon information and belief, devised a scheme to secretly make income projections to TD and other SBA lenders that would only be disclosed to the SBA lender, in order to satisfy SBA lending criteria, but would not be shown to the distributor applicant in order to avoid liability in the future in the event of the failure of the applicant's Matco distributorship. *See Exhibit D at ¶¶ 9 – 17.*

58. The methodology was to supply the SBA lenders, like Defendant TD Bank, with a "Three Year Annual Business Projection" for the applicant based upon "paid sales averages" in the particular region in which the distributor applicant was located ("Three Year Projection"). *See Exhibit D at ¶ 10 and Exhibit B at ¶ 2.*

59. Matco also provided two other documents to the bank: “The Applicant’s Business Cash Flow Estimate and Initial Capital Requirements” and “a recapitulation of Sources and Uses of Funds.” See Exhibit C, ¶¶ B and C.

60. The existence of the Three Year Projection was temporarily concealed because Matco did not want to find itself facing its own income representations in the event of any future lawsuit brought by a distributor who failed as a Matco franchisee.

61. Upon information and belief, Defendant TD, as an SBA lender and its representatives, were privy to SBA loan data on the success or failure of particular businesses, like Matco, whose franchisees had applied for SBA loans in the past.

62. Upon further information and belief, Defendant TD, as an SBA lender knew in or about September 2002 that the SBA’s Office of Inspector General had issued a report entitled “SBA’s Experience With Defaulted Franchise Loans” which found that “loans *identified by* [the] *SBA as franchise* loans that originated from FY 1991 through FY 2000 . . . performed worse than non-franchised loans.”

63. Moreover, upon information and belief, at the time TD approved the \$103,000 loan to Son Villano, TD had access to and was aware of available “SBA loan performance list” data which indicated an unacceptably high failure rate of all Matco SBA financed distributors (over 30%).

64. Defendant TD, for its own financial gain, not only chose to ignore, but to participate in the deceptive scheme developed by Matco, which violated multiple FTC franchise sale regulations.

65. As set forth above, Matco’s SBA franchisee failure rate has been documented as being over 37.3% - according to the current “SBA loan performance list”, which reports loan

performance data for SBA loans made between October 2000 through September 2010 (See Exhibit F attached).

66. Neither Dad Villano, nor his son, were ever told of, or given a copy of, the other two Matco prepared documents set forth in Brian Maira's form letter, namely, "The Applicant's Business Cash Flow Estimate and Initial Capital Requirements" and "a recapitulation of Sources and Uses of Funds." *See* Exhibit C.

67. Despite not sharing any of these documents with Plaintiffs or other franchisee loan applicants similarly situated, Matco, delivered to the SBA lender the Three Year Projection along with the three other documents, a written cover letter that would **specifically advise** Defendant TD and other SBA lenders that it could not show these documents to the prospective franchise. The cover letter further advised the lender, however, that it could use all three documents to qualify and approve the Matco Tools distributorship SBA loan. (*See* Exhibit C).

68. It was only after Matco's relationship with "national" SBA lenders ended, in large part to distributor/franchisee loan failures, that Matco charged its five regional franchise sales managers to develop relationships with "Regional" SBA lenders such as Defendant TD. *See* Exhibit G attached, the Declaration of Matco's former Franchise Sales Manager who developed Matco's relationship with Defendant TD in 2004 at ¶ 8.

69. In addition to Defendant TD, Matco developed SBA lending relationships with the following "Regional" lenders after "National" lenders, The Associates and GECC (General Electric Capital Corporation), stopped making SBA loans due to Matco's high failure rate: PNC Bank, Comerica Bank of California, BB&T Bank in Virginia & North Carolina and Bank of America in Atlanta covering the southern states. (*See* Exhibit G at ¶ 9).

70. Upon information and belief, Matco's then Vice President of Sales, Tim Gilmore, created financial incentives to Matco's franchise sales managers and district managers by paying a two hundred dollar (\$200) bonus to its franchise sales managers, (and an additional one thousand dollars (\$1000) to each District Manager) for each SBA transaction that was processed through a regional SBA lender such as defendant TD.

71. The extra compensation was paid, upon information and belief, because Matco believed providing bonuses to its managers to find outside SBA financing sources was worth the price as opposed to absorbing anticipated distributor losses that it would sustain when Matco extended its own financing to potential franchised distributors (*See Exhibit G at ¶ 5*).

#### **5. Defendants' Knowledge of the Requirements of FTC Rule 436**

72. FTC Rule 436 prohibits the making of income representations in the sale of a franchise unless it is set forth in Item 19 of the Uniform Franchise Offering Circular (UFOC) or its successor, the Franchisor Disclosure Document (FDD).

73. In all of Matco's franchise disclosure documents through 2006 (then called UFOCs), Item 19 specifically provided that neither Matco, nor any of its agents or salespersons were permitted to make income representations. *See Exhibit E*.

74. After 2007, in Item 19 UFOCs and later Federal Disclosure Documents ("FDDs"), Matco made "Financial Performance Representations" specific income representations in terms of "Top 1/3", "Middle 1/3" and "Bottom 1/3" financial performance representations. (*See attached Exhibit H Item 19 of the 2007 Matco FDD*).

75. Neither in its older UFOC format, nor in its newer FDD format, did Matco ever make a **three year income projection of the kind** it submitted to Defendant TD. (*See Exhibits E and H*).

76. Defendant TD, as a seasoned and sophisticated SBA lender, is charged with knowledge of, or should have known of, FTC Rule 436's prohibitions regarding the making of income representations.

77. Defendant TD, as a seasoned and sophisticated SBA lender, is charged under federal and state specific laws with knowledge of the loan performance list prepared by the SBA and made available to its SBA lenders which would have indicated in 2004 the high failure rate of Matco SBA loans.

78. Beginning in the summer of 2006, Son Villano began to struggle to make his SBA loan payments as the variable interest rate on the loan had steadily increased and had become too high for Son Villano, as he was not making the amount of money that Matco had set forth in the secret three year income projection supplied to TD only.

79. In an effort to try and alleviate Son Villano's debt, Dad Villano withdrew \$85,417.59 from his Washington Mutual savings account, for the specific purpose of paying off Son Villano's SBA loan balance with Defendant TD because Dad Villano, a guarantor on the loan, did not want his credit rating ruined if his son had trouble making loan payments (*See Exhibit I attached*).

80. Due to the continuing poor performance of his Matco franchise, Son Villano has never been able to fully repay Dad Villano for the loan he used to pay-off the SBA loan.

81. In and around 2010, Son Villano stopped operating his Matco franchised distributorship because of poor financial results.

82. Defendant TD's complicit use of Matco's Three Year Projection in violation of FTC franchise sales regulations, and its further failure to advise Son Villano and Dad Villano of the existence of the Three Year Projection constituted common law fraud and collusion with



Matco but, most importantly, deceptive trade practices in violation of both the New Jersey Consumer Fraud Act and the New York Deceptive Acts and Practices Act.

## COUNT I

### **FRAUD AND CIVIL CONSPIRACY (On Behalf of Plaintiffs as to All Defendants)**

83. Plaintiff repeats and re-alleges each and every allegation contained in the foregoing paragraphs of this Complaint as if set forth in full.

84. Beginning in 1998, Matco upper management, and its then corporate and outside legal counsel, devised a scheme to secretly make income projections to TD and other SBA lenders that would only be disclosed to the SBA lender and not to prospective franchisees, in an effort to avoid future liability upon the failure of the applicant's Matco franchise/distributorship.

**85. Despite not directly receiving these projections from Matco, borrowers/prospective franchisees such as Plaintiffs at all times relied upon TD and other SBA lenders' purported good faith analysis in analyzing their business opportunity prior to approving any loan.**

86. TD and, upon information and belief other SBA lenders were complicit in Matco's fraudulent scheme, as they at all times had at access to empirical evidence which apprised them of the extraordinarily high failure rate of such loans in connection with franchise investments, particularly Matco franchise investments.

87. Specifically, Matco supplied Defendant TD and other SBA lenders with a "Three Year Annual Business Projection" for the applicant based upon "paid sales averages" in the particular region in which the distributor applicant was located.

88. Along with the “Three Year Annual Business Projection” Matco also supplied SBA lenders like Defendant TD, with “The Applicant’s Business Cash Flow Estimate and Initial Capital Requirements” and “a recapitulation of Sources and Uses of Funds.”

89. In addition to providing these improper earning projections, Matco further supplied Defendant TD with a letter that specifically prohibited TD from disclosing the supplying of this information to Plaintiff, his son or any other Matco SBA loan applicant.

90. TD was at all relevant times aware that FTC regulations precluded Matco and other franchisors from making income representations; however, it continued to accept these financial representations and “relied” upon the same, despite the inconsistent data that suggested that these representations were drastically inflated, inaccurate, and did not represent the actual success and, more importantly, failure rates of Matco franchisees.

91. Upon information and belief, Matco knew at the time of making the three year business projections that these projections were deceptive as they included sales figures for all franchised distributors. For instance, these projections included sales figures reported by more established Matco distributors in regions different from that of Plaintiff Son Villano who did not have the same inventory, truck and other loan indebtedness that a new start-up distributor like Son Villano had.

92. Furthermore, upon information and belief, Danaher, as the parent company to Matco, knew that Matco was making deceptive and fraudulent three year income presentations to regional lenders like TD as part of the process used to obtain new Matco franchised distributors.

93. Matco and TD purposefully concealed the income projections from Dad Villano his son as TD profited through loan origination fees and interest collected while the loans were current; and Matco and Danaher profited through the sale of a franchise, initial inventory and

from having its franchised distributors sell tool products for 2 to 3 years in a designated route before the franchise failed.

94. Since Matco instructed Son Villano and Dad Villano as guarantor, to obtain an SBA loan from TD, Plaintiffs had no reason to believe that Matco would provide, or that TD would consider, anything other than legitimate financial material in order to process and obtain an SBA loan and relied upon Defendants' collective representations and actions to their financial detriment.

95. As a result of Plaintiffs' reasonable reliance on Matco and TD's fraudulent and secret scheme prior to, and after obtaining SBA financing and purchasing a Matco franchised distributorship, Dad Villano has been damaged in an amount to be proven at trial.

**WHEREFORE**, Plaintiffs demand judgment against Defendants Matco and TD in an Order:

- (a) Awarding compensatory, consequential and expectation damages, as appropriate;
- (b) Awarding punitive damages;
- (c) An award of its reasonable attorney's fees, interest, and costs; and
- (d) Such other relief as this Court finds reasonable and proper.

## **COUNT II**

### **VIOLATION OF THE NEW JERSEY CONSUMER FRAUD ACT (On Behalf of All Plaintiffs As to Defendant TD)**

96. Plaintiffs repeat and re-allege each and every allegation contained in the foregoing paragraphs of this Complaint as if set forth in full.

97. The New Jersey Consumer Fraud Act ("CFA") provides in pertinent part:

“The act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing, concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale \* \* \* or with the subsequent performance of such person as aforesaid, whether or not any person has in fact been misled, deceived or damaged thereby, is declared to be an unlawful practice. *N.J.S.A.* § 56:8-2.”

98. Plaintiff is a “person” entitled to seek the protection under the CFA. *See N.J.S.A.* §§ 56:8-1 *et seq.*

99. To violate the CFA, a seller must commit an “unlawful practice” as defined in the legislation. Unlawful practices fall into three general categories: affirmative acts, knowing omissions, and regulations violations. The first two are found in the language of *N.J.S.A.* § 56:8-2, and the third is based on regulations enacted under *N.J.S.A.* § 56:8-4. A practice can be deemed unlawful even if no person was in fact misled or deceived thereby.

100. Under the CFA, the term “advertisement” shall include “the attempt directly or indirectly by publication, dissemination, solicitation, endorsement or circulation in any other way to induce directly or indirectly any person to enter or not enter into any obligation or acquire any title or interest in any merchandise or to increase the consumption thereof or to make any loan.” *N.J.S.A.* § 56:8-1(a).

101. TD is a seller of “services” as contemplated by the CFA.

102. As alleged with specificity in the Complaint, Defendant TD engaged in deceptive acts and practices in their relationship with Plaintiff for which Plaintiff has suffered an ascertainable loss.

103. As alleged with specificity above, Defendant TD, in agreeing to issue an SBA loan to Son Villano, which Dad Villano guaranteed as a condition for the loan, considered three

year income representations that were provided by Matco, but were never disclosed to either Plaintiff or his son.

104. These three year income representations were grossly inflated for what a new start-up distributor like Son Villano would expect to make in his first two to three years in business.

105. Defendant TD knew or should have known that these financial representations were drastically inflated and false as Matco distributors actually had a 30% and over failure rate on SBA loans on TD at all times had access to this information.

106. Additionally, Matco specifically instructed Defendant TD, and Defendant TD specifically agreed not to disclose these secret earning projections to Dad Villano, Son Villano or any other potential Matco SBA financed franchisees.

107. TD's conduct and complicity in considering three year earnings projections, which TD knew or should have known were improper in terms of FTC franchise disclosure regulations and unrepresentative of the conditions that would affect a heavily indebted new Matco franchisee, and in ultimately approving the SBA loan, was an unconscionable commercial practice.

108. TD's commission of unfair or deceptive acts and/or prohibited practices under the CFA has caused Plaintiffs to suffer an ascertainable loss including but not limited to economic harm.

109. Plaintiffs have been damaged and are entitled to recovery from TD, in an amount to be determined at trial plus treble damages and attorneys' fees and costs.

**WHEREFORE**, Plaintiffs demand that judgment be entered against Defendant TD  
Ordering:

- a. An award of monetary damages, as appropriate;
- b. An award of its reasonable attorney's fees, interest, and costs;
- c. Treble Damages pursuant to *N.J.S.A. 56:8-19*; and
- d. Such other relief as this Court finds reasonable and proper.

### **COUNT III**

#### **NEW YORK DECEPTIVE ACTS AND PRACTICES ACT N.Y. GEN. BUS. LAW §§ 349 *et seq.* (On Behalf of Plaintiffs As to Defendant TD)**

110. Plaintiffs repeat and re-allege each and every allegation contained in the foregoing paragraphs of this Complaint as if set forth in full.

111. New York State General Business Law § 349 prohibit deceptive business practices, stating: "Deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state are hereby declared unlawful."

112. Residents and consumers of the State of New York, like Plaintiffs, have standing to seek relief under this statute.

113. Defendant TD engaged in a deceptive and misleading act by its complicity with Matco to secretly use the three year income representations to justify the granting of the SBA financing along with explicit instructions not to share the three year projections with Dad Villano or his son.

114. The three year income projections were severely unrepresentative and overinflated as they were the averages for all Matco franchise distributors in a certain geographic area, and not just new, heavily indebted distributors, such as Plaintiff Dad Villano's son.

115. The three year earnings projections were material in TD issuing an SBA loan to Son Villano, which was guaranteed by Dad Villano, even though TD knew or should have

known that these numbers were unreliable as Matco distributors had at the time of the loan in 2004 at least a 30% failure rate with the SBA.

116. Plaintiff Dad Villano has been injured by TD's deceptive and materially misleading lending practices as Son Villano's Matco franchised distributorship ultimately failed causing Dad Villano to sustain loss, which TD knew or should have known was based on fraudulent and inflated income representations supplied by Matco.

117. Insofar as it is determined that TD acted willfully and knowingly, Plaintiffs are entitled to recover treble the actual damages incurred from TD's willful and knowing deceptive and materially misleading act.

**WHEREFORE**, Plaintiffs demand that judgment be entered against Defendant TD Ordering:

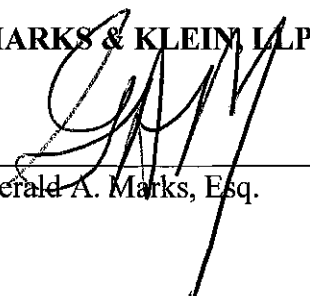
- a. An award of monetary damages, as appropriate;
- b. An award of its reasonable attorney's fees, interest, and costs;
- c. Treble Damages; and
- d. Such other relief as this Court finds reasonable and proper.

#### **DEMAND FOR TRIAL BY JURY**

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs demand a trial by jury on all issues herein to which they may be entitled to a jury.

**MARKS & KLEIN LLP**

By:

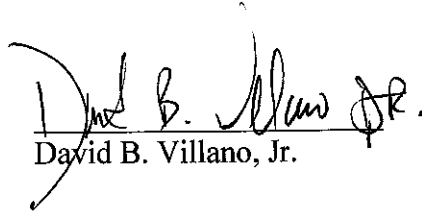
  
\_\_\_\_\_  
Gerald A. Marks, Esq.

**CERTIFICATION**

I, David B. Villano, Jr, of full legal age, hereby certifies as follows:

All of the statements in the factual allegations contained in this Complaint are true and accurate to the best of my knowledge. I understand that if any of the statements made herein are willfully false, I am subject to punishment.

November 14<sup>th</sup> 2011

  
David B. Villano, Jr.



# **EXHIBIT A**



Thomas Thompson  
Vice President

June 23, 2004

David B. Villano, III  
310 Conodrd Ave.  
Oceanside, NY 11572

Dear Mr. Villano:

We are pleased to advise you that Commerce Bank, N.A. has approved your request for a SBA guaranteed Commercial Loan as more fully set forth in the various loan documents to be executed by the Borrower and the Guarantor(s) named below, subject to the fulfillment of the following terms and conditions:

**BORROWER:** David B. Villano, III

**GUARANTOR(S):** The unlimited, unconditional Guaranty of Payment and Performance of David B. Villano, Jr.

**AGENCY GUARANTOR:** United States Small Business Administration (85% Guaranty)

**LOAN ALLOCATION:**

USE OF PROCEEDS	LOAN PROCEEDS	BORROWER'S INJECTION	MATCO TOOLS	TOTAL
Truck	\$ 40,000	\$	\$	\$ 40,000
Inventory	33,000		10,000	43,000
Working Capital (soft costs)	30,000	10,000		40,000
<b>TOTAL</b>	<b>\$103,000</b>	<b>\$10,000</b>	<b>\$10,000</b>	<b>\$123,000</b>

**CAPITAL INJECTION:** Prior to closing, Borrower is required to document the source of capital injection and provide proof that the capital injection was made. Acceptable documentation includes but is not limited to copies of bank statements, brokerage account statements, gift letters, settlement statements, canceled checks, and certification of deposit into an attorney's trust account.

**INTEREST RATE:** The Loan shall bear interest at the floating interest rate of 2.0% per annum in excess of the Wall Street Prime Rate (4.0% as of 6/23/04), adjusted calendar quarterly.

**TERM:** 10 years

One Royal Road  
Flemington, New Jersey 08822  
908-237-4708  
Fax: 908-237-4787  
thompson@yesbank.com

**PAYMENT TERMS:**

The Loan shall be payable in 119 consecutive monthly payments of approximately \$1,143.51, principal and interest, based on a 10-year amortization schedule; and one (1) final payment of all outstanding principal plus accrued interest then due. Said monthly payments shall be due on the first day of each month. The Bank may adjust the payment amount annually, as needed to amortize the outstanding principal balance over the remaining term of the loan.

**FEES:** There shall be a Packaging Fee in the amount of \$1,000.00 paid by Borrower to Bank which shall be non-refundable and due upon acceptance of the commitment letter. In addition, there will be a fee charged by the Small Business Administration on the guaranteed portion of this loan in the amount of \$875.50, payable at time of settlement.

**SECURITY:**

The Loans shall be evidenced by a Note and Loan Agreement and shall be secured by the following:

1. A second lien security interest on all personal property and assets of borrower including but not limited to accounts, accounts receivable, inventory, goods, machinery, equipment, furniture, fixtures, chattel paper, instruments, documents, merchandise, supplies, general intangibles, money, securities, contract rights and proceeds including insurance proceeds and products thereof, now owned or hereafter acquired, subject to a 1<sup>st</sup> lien held by Matco Tools.

Each Collateral Owner hereby authorizes Bank to file any financing statement covering the above referenced Collateral or an amendment that adds collateral covered by the financing statement or an amendment that adds a Collateral Owner to a financing statement, in each case whether or not a collateral owner's signature appears thereon.

2. Title to truck
3. Assignment of life insurance in the amount of the loan on David B. Villano, III.

**CONDITIONS TO CLOSING:**

1. Bank shall be in receipt of an Entity Status Search of Borrower, performed by a company designated by the Bank. The cost of the search shall be borne by the Borrower and must evidence that the registered entity is in good standing in the state of formation. Further, Bank shall be in receipt of all entity formation documentation prior to settlement.
2. Bank shall be in receipt of public record searches, completed in all jurisdictions deemed appropriate, the cost of which is to be borne by the Borrower.
3. Pursuant to federal regulations, Bank is required to evaluate whether the collateral to be pledged as security for the Loan is in a special flood hazard area.
4. Bank or its counsel may require such documentation, exhibits, certifications, inspection or impose such additional conditions as shall be deemed appropriate to consummate the Loan.
5. The Borrower will furnish, annually to the Bank, within one hundred and twenty (120) days after the close of each fiscal year, income and expense statements together with a balance sheet in a form satisfactory to the Bank. Further, personal financial statements will be required annually for the Guarantor(s). Bank will additionally be provided with signed income tax returns each year from the Borrower and Guarantor(s).

- 6. The commitment will be contingent upon approval of a guaranty by the United States Small Business Administration, with said guaranty being acceptable to Bank. If the approval is not granted, all terms and conditions outlined in this letter will be rendered null and void.

**ENGAGEMENT OF LEGAL COUNSEL:**

The Bank's counsel shall be responsible for the examination, review and receipt of all documentation necessary to the closing of the Loans. All fees charged by the Bank's counsel in connection with this transaction shall be borne by the Borrower. Such fees shall be in accordance with the New York Court Rules of Professional Conduct. We are required to provide you with a good faith estimate of the charge which you will be expected to pay to Bank's counsel for the services rendered on behalf of the Bank in connection with the loans. Such good faith estimate is \$500.00 together with such reasonable expenses as shall be incurred by counsel in consummating this transaction.

The Bank is required by New York law to make the following disclosure:

THE INTERESTS OF THE BORROWER AND THE BANK ARE OR MAY BE DIFFERENT AND MAY CONFLICT. THE BANK'S ATTORNEY REPRESENTS ONLY THE BANK AND NOT THE BORROWER. THE BORROWER IS THEREFORE ADVISED TO EMPLOY AN ATTORNEY OF THE BORROWER'S CHOICE, LICENSED TO PRACTICE LAW IN THE STATE OF NEW YORK TO REPRESENT THE INTERESTS OF THE BORROWER.

**LOCATION OF CLOSING:**

Consummation of the transaction herein contemplated shall be held at the offices of the Bank, One Royal Rd., Flemington, N.J.

**COMMITMENT EXPIRATION:**

This Commitment will be in effect for one hundred and eighty (180) days providing it is accepted by the Borrower within ten (10) days from the date hereof. If the terms of this Commitment are acceptable, Borrower, all Guarantors and all Collateral Owners shall execute this letter. The executed letter shall be returned to Bank along with a check in the amount of \$1,000.00 to cover the cost of the non-refundable packaging fee.

Very truly yours,



Thomas Thompson  
Vice President

Accepted and agreed to be legally bound:

**BORROWER/COLLATERAL OWNER/GUARANTORS:**

By: David B. Villano III  
David B. Villano, III

David B. Villano Jr.  
David B. Villano, Jr.

6/28/04  
Date

6/28/04  
Date

# **EXHIBIT B**



## UNCONDITIONAL GUARANTEE

SBA Loan #	PLP 75705740-06
SBA Loan Name	David B. Villano, III
Guarantor	David B. Villano, Jr.
Borrower	David B. Villano, III
Lender	Commerce Bank, N.A.
Date	July 23, 2004
Note Amount	\$103,000.00

## 1. GUARANTEE:

Guarantor unconditionally guarantees payment to Lender of all amounts owing under the Note. This Guarantee remains in effect until the Note is paid in full. Guarantor must pay all amounts due under the Note when Lender makes written demand upon Guarantor. Lender is not required to seek payment from any other source before demanding payment from Guarantor.

## 2. NOTE:

The "Note" is the promissory note dated July 23, 2004 in the principal amount of One Hundred Three Thousand & 00/100 Dollars, from Borrower to Lender. It includes any assumption, renewal, substitution, or replacement of the Note, and multiple notes under a line of credit.

## 3. DEFINITIONS:

"Collateral" means any property taken as security for payment of the Note or for any guarantee of the Note.

"Loan" means the loan evidenced by the Note.

"Loan Documents" means the documents related to the Loan signed by Borrower, Guarantor or any other guarantor, or anyone who pledges Collateral.

"SBA" means the Small Business Administration, an Agency of the United States of America.

## 4. LENDER'S GENERAL POWERS:

Lender may take any of the following actions at any time, without notice, without Guarantor's consent, and without making demand upon Guarantor:

- A. Modify the terms of the Note or any other Loan Document except to increase the amounts due under the Note;
- B. Refrain from taking any action on the Note, the Collateral, or any guarantee;
- C. Release any Borrower or any guarantor of the Note;
- D. Compromise or settle with the Borrower or any guarantor of the Note;
- E. Substitute or release any of the Collateral, whether or not Lender receives anything in return;

- F. Foreclose upon or otherwise obtain, and dispose of, any Collateral at public or private sale, with or without advertisement;
- G. Bid or buy at any sale of Collateral by Lender or any other lienholder, at any price Lender chooses; and
- H. Exercise any rights it has, including those in the Note and other Loan Documents.

These actions will not release or reduce the obligations of Guarantor or create any rights or claims against Lender.

#### 5. FEDERAL LAW:

When SBA is the holder, the Note and this Guarantee will be construed and enforced under federal law, including SBA regulations. Lender or SBA may use state or local procedures for filing papers, recording documents, giving notice, foreclosing liens, and other purposes. By using such procedures, SBA does not waive any federal immunity from state or local control, penalty, tax, or liability. As to this Guarantee, Guarantor may not claim or assert any local or state law against SBA to deny any obligation, defeat any claim of SBA, or preempt federal law.

#### 6. RIGHTS, NOTICES, AND DEFENSES THAT GUARANTOR WAIVES:

To the extent permitted by law,

##### A. Guarantor waives all rights to:

- 1) Require presentment, protest, or demand upon Borrower;
- 2) Redeem any Collateral before or after Lender disposes of it;
- 3) Have any disposition of Collateral advertised; and
- 4) Require a valuation of Collateral before or after Lender disposes of it.

##### B. Guarantor waives any notice of:

- 1) Any default under the Note;
- 2) Presentment, dishonor, protest, or demand;
- 3) Execution of the Note;
- 4) Any action or inaction on the Note or Collateral, such as disbursements, payment, nonpayment, acceleration, intent to accelerate, assignment, collection activity, and incurring enforcement expenses;
- 5) Any change in the financial condition or business operations of Borrower or any guarantor;
- 6) Any changes in the terms of the Note or other Loan Documents, except increases in the amounts due under the Note; and
- 7) The time or place of any sale or other disposition of Collateral.

##### C. Guarantor waives defenses based upon any claim that:

- 1) Lender failed to obtain any guarantee;
- 2) Lender failed to obtain, perfect, or maintain a security interest in any property offered or taken as Collateral;
- 3) Lender or others improperly valued or inspected the Collateral;
- 4) The Collateral changed in value, or was neglected, lost, destroyed, or underinsured;
- 5) Lender impaired the Collateral;
- 6) Lender did not dispose of any of the Collateral;
- 7) Lender did not conduct a commercially reasonable sale;
- 8) Lender did not obtain the fair market value of the Collateral;
- 9) Lender did not make or perfect a claim upon the death or disability of Borrower or any guarantor of the Note;
- 10) The financial condition of Borrower or any guarantor was overstated or has adversely changed;
- 11) Lender made errors or omissions in Loan Documents or administration of the Loan;
- 12) Lender did not seek payment from the Borrower, any other guarantors, or any Collateral before demanding payment from Guarantor;
- 13) Lender impaired Guarantor's suretyship rights;
- 14) Lender modified the Note terms, other than to increase amounts due under the Note. If Lender modifies the Note to increase the amounts due under the Note without Guarantor's consent, Guarantor will not be liable for the increased amounts and related interest and expenses, but remains liable for all other amounts;
- 15) Borrower has avoided liability on the Note; or
- 16) Lender has taken an action allowed under the Note, this Guarantee, or other Loan Documents.

**DUTIES AS TO COLLATERAL:**

Guarantor will preserve the Collateral pledged by Guarantor to secure this Guarantee. Lender has no duty to preserve or dispose of any Collateral.

**8. SUCCESSORS AND ASSIGNS:**

Under this Guarantee, Guarantor includes heirs and successors, and Lender includes its successors and assigns.

**9. GENERAL PROVISIONS:**

- A. **ENFORCEMENT EXPENSES.** Guarantor promises to pay all expenses Lender incurs to enforce this Guarantee, including, but not limited to, attorney's fees and costs.
- B. **SBA NOT A CO-GUARANTOR.** Guarantor's liability will continue even if SBA pays Lender. SBA is not a co-guarantor with Guarantor. Guarantor has no right of contribution from SBA.
- C. **SUBROGATION RIGHTS.** Guarantor has no subrogation rights as to the Note or the Collateral until the Note is paid in full.
- D. **JOINT AND SEVERAL LIABILITY.** All individuals and entities signing as Guarantor are jointly and severally liable.
- E. **DOCUMENT SIGNING.** Guarantor must sign all documents necessary at any time to comply with the Loan Documents and to enable Lender to acquire, perfect, or maintain Lender's liens on Collateral.
- F. **FINANCIAL STATEMENTS.** Guarantor must give Lender financial statements as Lender requires.
- G. **LENDER'S RIGHTS CUMULATIVE, NOT WAIVED.** Lender may exercise any of its rights separately or together, as many times as it chooses. Lender may delay or forgo enforcing any of its rights without losing or impairing any of them.
- H. **ORAL STATEMENTS NOT BINDING.** Guarantor may not use an oral statement to contradict or alter the written terms of the Note or this Guarantee, or to raise a defense to this Guarantee.
- I. **SEVERABILITY.** If any part of this Guarantee is found to be unenforceable, all other parts will remain in effect.
- J. **CONSIDERATION.** The consideration for this Guarantee is the Loan or any accommodation by Lender as to the Loan.

**10. STATE-SPECIFIC PROVISIONS:**



11. GUARANTOR ACKNOWLEDGEMENT OF TERMS:

Guarantor acknowledges that Guarantor has read and understands the significance of all terms of the Note and this Guarantee, including all waivers.

THIS UNCONDITIONAL GUARANTEE IS GIVEN UNDER SEAL AND IT IS INTENDED THAT THIS UNCONDITIONAL GUARANTEE IS AND SHALL CONSTITUTE AND HAVE THE EFFECT OF A SEALED INSTRUMENT ACCORDING TO LAW.

GUARANTOR NAME(S) AND SIGNATURE(S):

By signing below, each individual or entity becomes obligated as Guarantor under this Guarantee.

GUARANTOR:

x David B. Villano, Jr. (Seal)

Signed, acknowledged and delivered in the presence of:

x Kelly Miller  
Witness Kelly Miller

x \_\_\_\_\_  
Witness

# **EXHIBIT C**



A DANAHER COMPANY

---

2595 Fixler Road  
Wadsworth, Ohio 44281  
Office: (330) 334-6313  
Fax: (330) 334-2128  
Mobile: (440) 773-4043  
e-mail:  
[bryan.maira@matcotools.com](mailto:bryan.maira@matcotools.com)  
web: [www.matcotools.com](http://www.matcotools.com)

Bryan Maira  
Franchise Sales Manager

June 9, 2005

Name  
Bank  
Address  
City, State

Dear,

Enclosed is a Business plan for name the loan applicants, including the following:

- A) Enclosure 1 is the Applicants Personal Cash Flow Estimate,
- B) Enclosure 2 is the Applicants Business Cash Flow Estimate and Initial Capital Requirments,
- C) Enclosure 3 is a recapitulation of Sources and Uses of Funds,
- D) Enclosure 4 is a Three Year Annual Business Projection.

Enclosure 1 was prepared by the Applicant. Enclosure 2, 3 & 4 were prepared by Matco, based on the figures provided to Matco by the Applicant. Enclosure 4 was prepared by Matco based on information obtained from existing franchised distributors, nationwide.

Please be advised that Matco has not provided the information in Enclosure 4 to the Applicant. In accordance with federal law and certain state laws, if Matco desires to provide any projections or estimates of income, revenue, or profits to a prospective franchised distributor that information must be presented in a format specified or permitted as part of the Franchise Offering Circular provided to the Applicant. **ACCORDINGLY, ENCLOSURE 4 IS PROVIDED FOR THE LENDING INSTITUTION'S REVIEW AND EVALUATION OF THE APPLICANT AND IS NOT TO BE COMMUNICATED OR FURNISHED BY YOU, THE LENDING INSTITUTION, TO THE APPLICANT.**

Sincerely,

Bryan Maira  
Franchise Sales Manager

# **EXHIBIT D**

## **CERTIFICATION OF KENNETH METZGAR**

1. I am making this Certification with respect to the knowledge I have about the use of three year income projections by Matco in connection with obtaining SBA and other loan financing for prospective Matco Tool distributors.
2. I make this declaration based upon my personal knowledge.
3. I have been involved with Matco Tools for approximately twenty-five (25) years from 1982 to 2007.
4. From 1982 to 1988 I became a Matco Tool distributor in Texas selling Matco tools from a Matco van to mechanics in my designated route.
5. Because of my success as a tool distributor, I was asked by Matco management in 1989 to become a District Manager (DM) and developed a very successful district in which I supervised at least 19 distributors in my assigned district.
6. I held the position of DM until the end of 1997 when I was promoted by Matco management to serve as Matco's Eastern Franchise Sales Manager (FSM). I held this position for one year until 1999, and was again promoted the position of National Franchise Sales Manager, a position I occupied until sometime in 2001.
7. I could have remained as National Franchise Sales Manager but it would have required me to relocate to Matco corporate headquarters in Stow, Ohio. I chose instead to move into one of the five (5) Matco regions, namely the Central States Region as the Region Manager. I held this position within the organization for approximately 1 ½ years. Upon leaving this position I became the Southern Sates Region Franchise Sales Manager and remained in this position until July 07. The final five months of employment with Matco I held the position of Market Development Manager for the Southwest Region.

8. Matco's ongoing strategy was that of growing their sales force and realized it could only do so if it was able to provide financing for the distributor candidates. Matco's upper management pursued a strategy of developing a national lender finance program utilizing The Associates based out of Dallas, Tx. The loans processed through this lender were SBA backed loans. The Associates wanted to develop a "cookie cutter" loan package for submission to the SBA for loan approval. The loan package contained many support documents. Included in the support documents was a required "Three Year Annual Business Projection", which is standard in all SBA loans.
9. Matco upper management knew that it could not make earnings or income representations to distributor candidates as Item 19 of the UFOC (uniform franchise Offering Circular) prohibited the making of such income claims.
10. Matco's upper management through discussions held with The Associates developed a methodology to make income projections for the applicant based on distributor purchase averages within the region that the distributor candidate was located. At the time the total start-up cost to enter the franchise was in a range of approximately \$125 - 150k.
11. Matco also provided two other documents to the bank; "The Applicant's Business Cash Flow Estimate and Initial Capital Requirements" and "a recapitulation of Sources and Uses of Funds".
12. The prospective tool distributor would not be supplied with a copy of the three year projection nor was the prospective distributor told that such a projection was being submitted to the lender as a basis for the bank making a loan.
13. Nor was the prospective distributor told, or given a copy of, the two other Matco prepared documents set forth in paragraph 13 above.

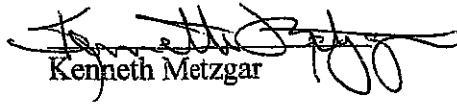
14. Matco, however, would deliver to the bank along with the three year projection and two other documents, a written cover letter (see Exhibit A attached ), that would advise the lending institution that it could not show the three years projection and two other documents to the prospective distributor but that the bank could use the three documents for its own purposes to qualify and approve the Matco Tools distributorship purchase loan.
15. Matco's attorney, Frank DiCaudo, and other members of senior Matco management, wanted to insure that such a methodology was proper and within the requirements of FTC franchise disclosure requirements so they turned to outside franchise legal counsel for an opinion as to the propriety of the methodology.
16. Outside legal counsel at that time was the law firm of Piper Rudnick, LLP., and the attorney most involved from that firm was Mark Hersch or (possibly Kersch).
17. I had personal discussions with both Frank DiCaudo and counsel from Piper Rudnick about the methodology, but it was only when the methodology of providing the lending institution with a three year income projection had been approved by Piper Rudnick as being proper was it implemented by Matco in connection with its franchise sales and, in particular, SBA loan financing to prospective Matco Tool distributors.
18. At first it was The Associates in Dallas Texas, which later became Citi Group, to which the three year projections were supplied.
19. Approximately two years after the inception of this loan program The Associates was acquired by Citi Group. Upon acquisition an audit of all loans was completed by Citi Group internal auditors. It was after completion of this loan audit process that I received a call from The Associates informing me that they would not be able to close any more

loans after the end of the year 2001. The Associates were beginning to have some loan payment issues with a few borrowers and it was my understanding that the new owners felt this type of loan (a new business start-up) to bear too much risk for their portfolio. They also indicated that it was not uncommon for a lending institution to grow a particular loan package to a certain size and then cap or end that program.

20. Sometime during the 4<sup>th</sup> Quarter of 2000 I was contacted by GE Capital regarding their interest in working with Matco to provide a national loan program utilizing SBA guaranteed loans. During the 1<sup>st</sup> Quarter of 2001, we began having conversation and meetings with GE concerning the implementation of this program. By mid-year this national loan program was introduced to the field management team for use. Matco distributor loans were then submitted to GE Capital for approximately the next two year period. Once GE began noticing an unacceptable loan failure rate they similarly refused to process any more Matco distributor loans. Based on the experience that was encountered with The Associates management at Matco had decided that the GE financing would most likely come to an end. During the time that GE was processing loan packages a new objective was launched to seek out other national and regional lenders. During the time between Associates & GE, I had conversations and contacts with other lending institutions including B of A, BB&T, and others in an attempt to secure other sources of financing. There were others in management with Matco that had meetings with other regional lenders and as a result we were able to access loan funding through Commerce Bank in the northeast and Comerica Bank in California.



21. During the period that Richard Dayton was National Franchise Sales Manger, senior management began having serious talks and discussions with outside counsel regarding the necessity of having income representations in the UFOC as part of Item 19.
22. Finally, in time for the 2007 UFOC, a three tier income representation was placed in the Item 19 of the UFOC thereby eliminating the need to provide regional three year income projections to SBA lenders without the knowledge of the prospective distributor.
23. I declare that the foregoing certification is true and correct.

  
Kenneth Metzgar

Dated: June 20, 2011

**EXHIBIT E**

Provision	Section in Distributorship Agreement	Summary
u. Dispute resolution by arbitration or mediation	Article 12	Except for certain claims, all disputes must be arbitrated in Summit County, Ohio
v. Choice of forum	Article 12.9	Litigation must be in Summit County, Ohio (See Note below)
w. Choice of law	Article 13.3	Governing law will be the laws of the State of Ohio (See Note below)

The following states have statutes which may supersede the Distributorship Agreement in your relationship with Matco including the areas of termination and renewal of your Distributorship: Arkansas [Ark. Code Sections 4-72-201 to 4-72-210]; California [Bus. & Prof. Code Sections 20000 to 20043]; Connecticut [Gen. Stat. Sections 42-133e to 42-133h]; Delaware [Code Sections 2551 to 2556]; Hawaii [Rev. Stat. Section 482E-6]; Illinois [815 ILCS 705/1-44]; Indiana [Stat. Sections 23-2.5-1 and 23-2-2.7]; Iowa [Code Sections 523H.1 to 523H.17]; Michigan [Stat. Section 19.854(27)]; Minnesota [Stat. Section 80C.14]; Mississippi [Code Sections 75-24-51 to 75-24-61]; Missouri [Rev. Stat. Sections 407.400 to 407.410]; Nebraska [Rev. Stat. Sections 87-401 to 87-410]; New Jersey [Rev. Stat. Section 56:10-1 to 56:10-12]; South Dakota [Codified Laws Section 37-5A-51]; Virginia [Code 13.1-557 through 13.1-574]; Washington [Code Section 19.100.180]; and Wisconsin [Stat. Section 135.01 to 135.07]. These and other states may have court decisions which may supersede the provisions of the Distributorship Agreement in your relationship with Matco including the areas of termination and renewal of your Distributorship. Provisions of the Distributorship Agreement giving Matco the right to terminate in the event of your bankruptcy may not be enforceable under federal bankruptcy law (11 U.S.C. Sec. 101, *et seq.*).

#### Notes

1. If a state law requires any modifications to these provisions of the Distributorship Agreement, those modifications will be found in Exhibit H, the state-specific Addendum to the Distributorship Agreement.
2. In addition to the provisions noted in the chart above, the Distributorship Agreement contains a number of provisions that may affect your legal rights, including a mutual waiver of a jury trial, mutual waiver of punitive or exemplary damages, and limitations on when claims may be raised. See the Distributorship Agreement Article 12. We recommend that you carefully review all of these provisions, and all of the contracts, with a lawyer.

#### **(18) PUBLIC FIGURES**

Matco does not use any public figure to promote the Distributorships.

#### **(19) EARNINGS CLAIMS**

Matco does not furnish or authorize its salespersons to furnish any oral or written information concerning the actual or potential sales, costs, income or profits of a Matco® Distributorship. Actual results vary from unit to unit and Matco cannot estimate the results of any particular Distributorship.

**EXHIBIT F**

# 25 Worst Franchises to Buy, 2011

Posted Tue, 2011/05/17 - 02:16 by [BMM](#) ([www.bluemaumau.com](http://www.bluemaumau.com))



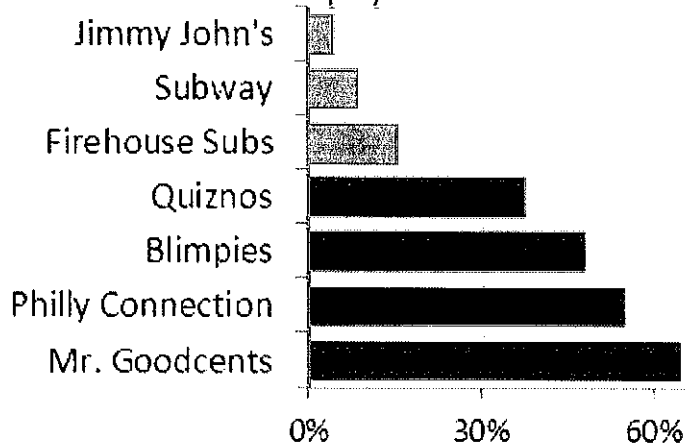
The scattered remains of a just shuttered Quiznos franchise in Kentucky, one among many shuttered across the country. Photo taken Friday by bmm

LEXINGTON, Ky. — Some of the perennial worst franchises to buy — hoagie sandwich shops, ice cream stops, and auto repair garages — dominate this year's list. The recession has only helped their failure rates climb.

Once again the Small Business Administration has given its banking list to Blue MauMau. We are publishing it to help inform franchise investment decisions. Taken straight from an [SBA loan performance list](#) covering the years from 2001 to 2010, it's the same list that the agency provides loan officers of its most trusted lenders and banks throughout the country.

## Sandwich Franchise Compared

Failure % to pay back SBA loans



Source: SBA, May 2011. The higher the loan default, the riskier it is.

Many of these worst concepts are no strangers to Blue MauMau, where lawsuits between franchisors and franchisees have been reported on such brands as Atlanta Bread, Quiznos, or franchising conglomerate Kahala's Blimpie and Cold Stone Creamery. In fact, brands of diversified franchising firms seem to lose their focus, appearing frequently in the worst list. For example, Marble Slab Creamery and The Athlete's Foot of franchising conglomerate NexCen Brands appear in the worst performing brands. (The loan disbursements for The Athlete's Foot are too few to appear in our top 25 list, but its failure rate is 12th worst among the full 580 franchising brands listed.) The stressed-out store owners from these brands often create public forums, sharing information on all sorts of problems in their systems.

Business media often bless these concepts as good buys, either oblivious to the financial struggles of owner-operators or uncaring. For example, with a 71 percent failure rate, the hole in one of worst is Golf Etc of America. The franchisor displays proudly on its web page the accolades of the media and franchise sellers. "Fox News Small Business Center's 'Franchise King' [Cleveland-based franchise broker Joel Libava] recommends Golf, Etc. franchises," it declares.

### How to use this list

This list is a quick filter of loan risk, of what franchise brands to navigate around and what looks less risky. For example, with a 48 percent failure rate on SBA loans in 2008, Mr. Goodcents Sub had the dubious honor of having the worst record. This year it is ranked second, but its failure rate has climbed to 64.3 percent. Compare that to another sub chain, Jimmy John's, which has only 4 percent in defaults.

Loan officers and franchise buyers realize that there are thousands of franchise opportunities to buy from, so why mess with the riskiest? Unless there is a miraculous reason why concepts with high failure rates are great investments, franchise buyers may want to move on to other brands with lower failure rates.

Each franchise brand listed has Small Business Administration backed loans with at least 50 disbursements, a substantial number. Using larger figures filters out many of the smaller franchise systems.

These are the worst franchise brands, where franchise owners struggled more than others to pay back their SBA loans. To put it another way, this group is in the lowest performing quintile (20%) by loan failure rate of major franchise brands on the SBA list.

So here it is: **The list of 25 of the worst franchise investments, ranked from worst to bad**, from the viewpoint of being a lender of SBA loans and wanting to ensure the best chance of having the loan repaid by franchisee borrowers.

<b>Worst SBA Loan Performance among Franchises</b>					
<b>25 brands with 50 or more loan disbursements. Disbursement \$ x 1,000</b>					
<b>Rank</b>	<b>Franchise Brand</b>	<b>Failure%</b>	<b>Disb#</b>	<b>Disb\$</b>	<b>Chgoff%</b>
1	GOLF ETC. OF AMERICA	71.1%	90	\$12,482	28.3%
2	MR. GOODCENTS SUBS AND PASTA	64.3%	56	\$7,641	26.8%
3	PHILLY CONNECTION	54.7%	64	\$7,517	35.1%
4	COTTMAN TRANSMISSION	53.9%	165	\$20,014	23.8%
5	DREAM DINNERS	53.0%	66	\$7,454	24.9%
6	MY GYM	52.9%	51	\$7,993	23.4%
7	ALL TUNE AND LUBE	51.2%	84	\$8,784	24.8%
8	CARVEL ICE CREAM	50.0%	80	\$16,181	27.2%
9	BEEF O'BRADY'S	49.0%	100	\$31,814	17.8%
10	TACO DEL MAR	48.6%	74	\$10,277	20.8%
11	ATLANTA BREAD COMPANY	48.5%	66	\$32,846	15.3%
12	BLIMPIE	47.9%	165	\$26,321	20.9%
13	PETLAND	44.4%	99	\$44,259	17.6%
14	HUNTINGTON LEARNING CENTER	44.0%	141	\$29,909	16.5%
15	CORNWELL QUALITY TOOL COMPANY, INC	42.4%	59	\$3,124	24.8%
16	FAST FRAME	42.0%	69	\$6,707	18.1%
17	PLANET BEACH	40.6%	256	\$51,970	15.6%
18	KABLOOM	40.4%	52	\$7,282	16.7%
19	BUDGET BLINDS	40.3%	62	\$5,608	9.4%
20	MARBLE SLAB CREAMERY	40.1%	157	\$30,903	15.6%

21	JUICE IT UP	38.9%	54	\$7,710	17.8%
22	FOX'S PIZZA DEN	38.5%	91	\$6,383	15.4%
23	MATCO TOOLS (RENT TOOLS)	37.3%	927	\$28,837	16.7%
24	QUIZNOS SUBS	37.3%	110	\$13,968	8.5%
25	COLD STONE CREAMERY, INC.	37.0%	797	\$178,347	14.3%



**EXHIBIT G**

## DECLARATION

Charles "Chuck" Bergen declares as follows:

1. I was a Matco Tools manager and employee for 10+ years until December 31, 2008 and have intimate knowledge of all Matco distributor recruiting practices and procedures.
2. I started on January 12, 1998 as District Manager (DM).
3. Shortly after, I was asked to become a Franchise Sales Specialist (FSS) and head up the Recruit the Completion Program (RTC).
4. I was told not to put any of the RTC information on a company owned computer so the company could not be charged with Torturous Interference. I had to make and keep my own data bases up for my records.
5. I still have all copies of the program guidelines and lists of the many hundreds of competitive managers and distributors I recruited.
6. Matco experienced great growth with the RTC program all over the east coast where they never had brand recognition before. Big changes occurred in PA, NJ, NY, VA, NC, SC, GA, and Fl.
7. I was averaging approximately one million per year in signing bonuses to competitors.
8. In 2004, my duties changed and I was required to obtain outside financing programs for recruited distributors as The Associates & GECC , which were previous Matco franchisee lenders stopped providing financing Matco due to losses.
9. This is when I established different lending sources for Matco regions. I established programs with :
  - Commerce Bank (now TD Bank)
  - PNC Bank
  - Comerica Bank out of California
  - BB&T Bank in Virginia & North Carolina.
  - Bank of America in Atlanta (covering the southern states).
10. I was paid \$200.00 for each SBA deal that went through the region. Each District Manager was paid an additional \$1000.00 per start for outside financing. Matco believed the bonusing of its managers to find outside financing sources was worth the price as opposed to absorbing the many distributor losses.

9. I was paid \$200.00 by Matco for each SBA deal that closed on behalf of a new Matco distributor. Each District Manager was also paid an additional \$1,000.00 per distributor that obtained outside financing (not from Matco) to finance the purchase of the initial inventory. Matco believed the bonusing of its managers to find outside financing sources was worth the price as opposed to absorbing the many distributor losses.
10. As of the date of this Declaration, from my understating and knowledge, Matco distributors no longer have access to SBA lenders for the purchase of a Matco franchise. I also understand that many of the distributors in the North East Region are currently financed primarily by home equity loans (HELOC) and that the balance of any amounts needed to be financed are financed directly by Matco because the lending sources have dried up due to the high failure rate of those Matco loans.
11. During the time I was employed by Matco, I also worked as the Franchise Sales Manager for the North East Region and was responsible for all recruiting activity.
12. In my capacity as Franchise Sales Manager, I became fully aware of the numerous distributor abuses that were developed by upper Matco management and have identified the following nine practices that account for the large failure and turnover rate among Matco distributors:

**i. Inflated List of Calls**

The "List of Calls", or number of potential tool buying customers surveyed and developed by Matco District and Market Development Managers, sold to the distributor is inflated and inaccurate. It often includes customers that have little or no chance of ever buying tools from the distributor and, more importantly, qualifying for PSA (Purchase Security Agreement) financing which finances necessary "big ticket" and big distributor profit items such as tool boxes and diagnostic equipment.

**ii. Churning of List of Calls**

Lists of Calls or territories that have failed before are re-sold time and again by DMs to unsuspecting prospects to ensure that Matco keeps a distributor in the territory regardless of their ability to be successful and the company's knowledge that the territory is unlikely to support a successful route. In addition approval of a new applicant is also based upon Matco's self-interest in terms of PSA exposure in the route, meaning that the more Matco financed PSA debt outstanding, the lower the standards will be for distributor qualification.

**iii. Deceptive Distributor Rides**

The prospective distributor is taken on two "check rides" with distributors that have a much better or "established" route than the "cold" or churned route the new prospect will receive.

**iv. Under-Estimate of Distributor Expenses**

Up and through 2007, the expenses Matco distributors were estimated to incur were all "low balled". All expense and cost estimates were provided to recruits by Matco. This would include, but not be limited to under estimating bad debt, warranty return costs etc. Only after 2008, did the expenses become more realistic as is evident from the difference in the 2008 estimated expenses costs from the 2007 estimated cost sheets attached to this declaration (see attached estimated costs sheets)

**v. District Manager conflicts of interest**

An inherent and undisclosed conflict of interest exists between district managers (DMs) and distributors because although DMs are represented to distributors as "business coaches" and "partners", they are paid commissions on tools sold to distributors. If distributors don't buy, DMs, whose compensation was based, in large part, on distributor tool purchases, don't earn their sales commissions. Accordingly, distributors are subject to aggressive sales tactics used to sell more and more tools to distributors regardless of their ability to re-sell the tools.

**vi. No Room to Grow- Over Penetration**

The List of Calls given to a distributor will shrink over time. Matco locates too many distributors too close to each other and consequently when the natural reduction in customers occurs the distributor has no place to go to replace these lost customers.

**vii. Credit Hypocrisy**

Matco will extend credit to mechanics to purchase large purchase items from the distributors such as diagnostic equipment, but will not extend that credit to mechanics that do not have Social Security numbers or other proper worker documentation. Yet Matco expects the distributor to extend his own credit and guaranty on PSA "gold card" purchases to those mechanics who do not have Social Security numbers or other proper worker documentation.

**viii. Non-Supervision/Assistance — Diluted District Manager Supervision**

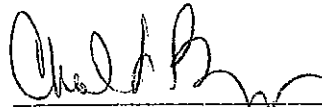
There are not enough managers per dealer to provide meaningful business assistance which should include sales assistance to business reviews.

**ix. Usurping New Customers**

When a new customer is located in a specific territory, the customer is often not given to the distributor but used by Matco to create new Lists of Calls so that Matco can use the new shop as part of a new List of calls to create an another route and sell an initial inventory to a new distributor.

13. In addition, new Matco recruits were never told during the recruiting process that they would have non-sales duties that would include performing warranty repairs; collection of PSA monies for Matco; and repossession of PSA equipment where the customer failed to keep current.
14. Finally, upper Matco management would turn a "blind eye" to making of income representations by FSSs and DMs.
15. The usual manner in which this occurred through year 2007 was by telling a distributor prospect that "Matco does not permit us to make income representations, but why would you want to join Matco unless you can make more than you are presently earning". The clear message sent was an income representation that the prospect will earn at least what he was earning in his present job and likely much more.

I declare that the above statements are true this 15th day of December, 2009.



Charles "Chuck" Bergen

# **EXHIBIT H**

## Notes

1. If a state law requires any modifications to these provisions of the Distributorship Agreement, those modifications will be found in Exhibit H, the State-Specific Disclosures and State-Specific Amendments to the Distributorship Agreement.

2. In addition to the provisions noted in the chart above, the Distributorship Agreement contains a number of provisions that may affect your legal rights, including a mutual waiver of a jury trial, mutual waiver of punitive or exemplary damages, and limitations on when claims may be raised. See the Distributorship Agreement Article 12. We recommend that you carefully review all of these provisions, and all of the contracts, with a lawyer.

### **(18) PUBLIC FIGURES**

Matco does not use any public figure to promote the Distributorships.

### **(19) FINANCIAL PERFORMANCE REPRESENTATIONS**

The FTC's Franchise Rule permits a franchisor to provide information about the actual or potential financial performance of its franchised and/or franchisor-owned outlets, if there is a reasonable basis for the information, and if the information is included in the disclosure document. Financial performance information that differs from that included in Item 19 may be given only if: (1) a franchisor provides the actual records of an existing outlet you are considering buying; or (2) a franchisor supplements the information provided in this Item 19, for example, by providing information about possible performance at a particular location or under particular circumstances.

Presented below are certain operating results from 978 Matco Distributors in 2007. The chart reflects certain average gross revenue figures, referred to as "Average Total Completed Business," for the Matco Distributors, which includes the revenue from the sales of Matco Products and other products. The information is segregated into thirds, based on Total Completed Business. The information in the chart is explained below. Please read carefully all of the information in this Item 19, and all of the notes following the data, in conjunction with your review of the historical data.

Average Total Completed Business -- 2007

<u>Top 1/3</u>		<u>Middle 1/3</u>		<u>Bottom 1/3</u>	
<b>\$424,375</b>		<b>\$289,798</b>		<b>\$199,714</b>	
No. of Distributors Above Average	122	No. of Distributors Above Average	166	No. of Distributors Above Average	181
No. of Distributors Below Average	204	No. of Distributors Below Average	160	No. of Distributors Below Average	145

Notes

1. The charts reflect the operating data for 978 Matco Distributors in the United States that were in business for all of 2007, and that reported sales for at least 48 weeks during 2007. Matco is not providing, and this chart does not reflect, information regarding Distributors who started during 2007, or those who left the system or stopped selling Matco products during 2007. Each grouping of Distributors (Top 1/3, Middle 1/3 and Bottom 1/3) include 326 Distributors.
2. The terminology, "Average Total Completed Business," as used in this chart means the total cash or revenue a Distributor received during 2007 including sales tax collected, from the sale of all products and services. This includes revenue from the sale of Matco Products and products acquired from third parties. The revenue received by the Distributors is comprised of cash sales, Time Payment collections from previous sales, credits received by the Distributor from the sale of PSA (Purchase Security Agreements, which are installment contracts; see Item 10 above), cash received based on monthly invoices and customers (usually products sold to a shop or business, and not an individual), and rebates based on timely payments for products (see note 3 below). The average is comprised by adding the total business for all Distributors in the group, and dividing that number by the number of Distributors in the group. This does not include any Volume Payment to Terms bonus, or rebate, payments.
3. The data in the chart is obtained from the Distributors through the MDDBS system (see Item 11). As Distributors purchase products from Matco, they also report on sales made and revenue received. A weekly sales report is generated if the Distributor places an order to purchase products in a given week. Therefore, the information in the chart is based solely on data received from the Distributors through MDDBS. These figures have not been reviewed or audited by Matco.
4. Substantiation of the data used in preparing the materials in this Item 19 will be made available to you upon reasonable request.
5. Actual results vary from Matco Distributorship to Matco Distributorship. Your sales, revenue and income will be affected by a variety of factors, including your sales and marketing skills; your frequency of visits to actual and potential customers; efforts to collect on unpaid invoices or installment contracts; retail prices you charge for products; discounts you may offer; prevailing economic or market conditions; demographics; interest rates; your capitalization level; the amount and terms of any financing that you may secure; and your business and management skills.
6. Other than revenue figures above, the chart does not include any estimate of, or specific or historic data regarding, costs, expenses or debts that a Distributor has incurred, or may in the future incur. We cannot



# **EXHIBIT I**

## Your Platinum Checking Detail Information

**DAVID VILLANO**  
**JOANNE VILLANO**
**Account Number: 067-033971-4**  
**Washington Mutual Bank, FA**

Renting? Do you have Renter's Insurance? Protect yourself and your personal property with reasonable-cost Renter's Insurance. It's good to have and easy to get. Just visit the Washington Mutual Insurance Services, Inc.'s web site at [www.wamuins.com](http://www.wamuins.com) or call 1-866-720-3213.

### Your Account at a Glance

<table border="0" style="width: 100%;"> <tr> <td style="width: 60%;"><b>Beginning Balance</b></td> <td style="text-align: right;"><b>\$1,084.27</b></td> </tr> <tr> <td>Checks Paid</td> <td style="text-align: right;">-\$1,585.86</td> </tr> <tr> <td>Other Withdrawals</td> <td style="text-align: right;">-\$88,865.86</td> </tr> <tr> <td>Deposits</td> <td style="text-align: right;">+\$89,937.71</td> </tr> <tr> <td><b>Ending Balance</b></td> <td style="text-align: right;"><b>\$570.26</b></td> </tr> </table> <table border="0" style="width: 100%;"> <tr> <td style="width: 60%;"><b>Platinum Relationship</b></td> <td></td> </tr> <tr> <td>Average Balance</td> <td style="text-align: right;"><b>\$213,247.46</b></td> </tr> <tr> <td colspan="2" style="font-size: small;">(the prior calendar month's average combined daily ending balance of the Platinum Checking and all linked deposit accounts + the prior calendar month's end of month balance of any other linked account)</td> </tr> <tr> <td>End of Month Balance</td> <td style="text-align: right;"><b>\$213,674.27</b></td> </tr> <tr> <td colspan="2" style="font-size: small;">(Platinum Checking and all linked accounts -- prior calendar month's end of month's balance)</td> </tr> </table>	<b>Beginning Balance</b>	<b>\$1,084.27</b>	Checks Paid	-\$1,585.86	Other Withdrawals	-\$88,865.86	Deposits	+\$89,937.71	<b>Ending Balance</b>	<b>\$570.26</b>	<b>Platinum Relationship</b>		Average Balance	<b>\$213,247.46</b>	(the prior calendar month's average combined daily ending balance of the Platinum Checking and all linked deposit accounts + the prior calendar month's end of month balance of any other linked account)		End of Month Balance	<b>\$213,674.27</b>	(Platinum Checking and all linked accounts -- prior calendar month's end of month's balance)		<table border="0" style="width: 100%;"> <tr> <td>Interest Earned</td> <td style="text-align: right;">\$0.12</td> </tr> <tr> <td>Annual Percentage Yield Earned</td> <td style="text-align: right;">0.15%</td> </tr> <tr> <td>YTD Interest Paid</td> <td style="text-align: right;">\$0.13</td> </tr> <tr> <td>YTD Interest Withheld</td> <td style="text-align: right;">\$0.00</td> </tr> </table>	Interest Earned	\$0.12	Annual Percentage Yield Earned	0.15%	YTD Interest Paid	\$0.13	YTD Interest Withheld	\$0.00
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YTD Interest Withheld	\$0.00																												

Date	Description	Withdrawals (-)	Deposits (+)
07/26	Customer Deposit		\$500.00 ✓
07/26	HSN CHECKPAYMT 1039	\$180.20	
08/02	Customer Deposit		\$500.00 ✓
08/02	Customer Deposit		\$3,000.00 ✓
08/02	Customer Withdrawal	\$2,986.00	
08/02	QVC 46	\$42.33	
08/07	KEYSPAN 47	\$31.74	
08/07	LIPA 48	\$163.00	
08/14	Transfer Deposit		\$85,417.59 ✓
08/14	Plat Rel Bonus Program Discontinued		\$0.11
08/14	Interest Payment		
08/14	Enrolled In Plat Rel Bonus Program		\$500.00 ✓
08/14	Customer Deposit		
08/14	DOMESTIC OUTGOING WIRE	\$85,417.59	
08/14	FEE: OUTGOING DOMESTIC WIRE	\$25.00	
08/18	Interest Payment		\$0.01
08/18	Qualified For Rel Bonus Int On Plat Svgs		
08/18	Service Charge	\$20.00	
08/18	Refund Service Charge		\$20.00

### Checks Paid

\*Indicates check out of sequence

Check Number	Date	Amount Paid	Check Number	Date	Amount Paid
1035	08/07	\$16.00	1041	08/07	\$8.00
1040*	08/01	\$25.00	1042	08/09	\$1,536.86

Calendar Year-To-Date Overdraft/Non-Sufficient Funds Charges  
 (excluding any charges which have been waived or refunded):

Overdraft charges	\$0.00
Non-Sufficient Funds charges	\$0.00

Your Overdraft Limit as of the statement end date: \$1,000.00  
 Please note that this may be changed at any time without notice (see reverse for more information).  
 As of the statement end date, the fee for any Non-Sufficient Funds transaction, whether paid or returned, was \$30.00 per transaction.

### Your Platinum Savings Detail Information

**DAVID VILLANO**      Account Number: 357-620220-9  
**JOANNE VILLANO**

#### Your Account at a Glance

<b>Beginning Balance</b>	<b>\$200,076.60</b>	Interest Earned	\$654.19
Other Withdrawals	-\$85,417.59	Annual Percentage Yield Earned	4.71%
Deposits	+\$699.69	YTD Interest Paid	\$730.79
<b>Ending Balance</b>	<b>\$115,358.70</b>	YTD Interest Withheld	\$0.00

Date	Description	Withdrawals (-)	Deposits (+)
07/24	Customer Deposit		\$45.50
07/24	0.25% Plat Rel Bonus Added To Base Int Rate		
08/14	Transfer Withdrawal	\$85,417.59	
08/14	Plat Rel Bonus Program Discontinued		
08/14	0.00% Plat Rel Bonus Added To Base Int Rate		
08/18	Interest Payment		\$654.19

As of the statement end date, the fee for any Non-Sufficient Funds transaction, whether paid or returned, was \$30.00 per transaction.

### Your Promotional Certificate Of Deposit Detail Information

**DAVID VILLANO**      Account Number: 067-1947525-2  
**JOANNE VILLANO**

**Current Term Information**  
 Beginning of Term: 06/07/2006      Term: 12 Months      Maturity Date: 06/07/2007

#### Your Account at a Glance

<b>Beginning Balance</b>	<b>\$12,148.10</b>	Interest Rate	5.13%
Withdrawals	\$0.00	YTD Interest Paid	\$105.62
Deposits	+\$52.93	YTD Interest Withheld	\$0.00
<b>Ending Balance</b>	<b>\$12,201.03</b>		



P.O. BOX 2437  
CHATSWORTH, CA 91313-2437**This Statement Covers**From: 07/22/06  
Through: 08/18/06**Need assistance?**To reach us anytime,  
call 1-800-788-7000  
or visit us at [wamu.com](http://wamu.com)DAVID VILLANO  
310 CONCORD AVE  
OCEANSIDE NY 11572-5400

Effective September 30, 2006, the fee for any transaction paid (Overdraft Charge) or returned (Non-Sufficient Funds Charge) when there are insufficient funds to cover the transaction will be \$32.00 each, with a maximum of \$160.00 per day.

**Summary of All Accounts Included in This Statement**

Product Name	Account Number	Term	Maturity Date	APY	Balance As of 08/18/06
Platinum Checking	067-033971-4			0.15%	\$570.26
Platinum Savings	357-620220-9			4.50%	\$115,358.70
Platinum Promotional Certificate Of Deposit	067-1947525-2	12 Months	06/07/2007	5.25%	\$12,201.03
<b>Total Deposit Balance:</b>					<b>\$128,129.99</b>

**Total Deposit Balance:**

Deposits at Washington Mutual are FDIC Insured.

.1\$(gt'5HA930-

**Commerce  
"Bank**

DATE 9/05/06

DAVID B. VILLANO III 310  
CONCORD AVENUE  
OCEANSIDE, NY 11572

Your Loan: 1361512930  
Property Address: N/A

Dear Customer:

Your loan was "Paid in Full" on August 14, 2006.

If we can be of further assistance, please contact the  
Collateral Customer Service at 1-888-751-9000, Ext. 237-2913.

Very truly yours,

Commerce Bank, N.A.

By: *[Signature]*  
Loan Service Representative  
Collateral Department

1701 Route 70 East  
Cherry Hill, NJ 08034-5400  
aa8nS1-9000