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Advanced Voice Data Solutions, Inc.	:	Court of Common Pleas
	:	Philadelphia County
	:	
	:	May TERM, 2016
Plaintiff,	:	No.: 03722
	:	
v.	:	
	:	
Berkeley Point Capital, LLC	:	
	:	
	:	
And,	:	
	:	
Oppenheimer Multifamily Housing & Healthcare Finance, Inc.	:	
	:	
	:	
And,	:	
	:	
Oppenheimer & Co. Inc.	:	
	:	
	:	
Defendants.	:	

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## **PLAINTIFF'S FIRST AMENDED COMPLAINT**

### **PARTIES**

1. Plaintiff, Advanced Voice Data Solutions, Inc., is a corporation authorized to conduct business in Pennsylvania with a principal place of business at the above address.
2. Defendant, Berkeley Point Capital, LLC, is a corporation authorized to conduct business in Pennsylvania with a principal place of at the above address and regularly conducts business in Philadelphia, County, Pennsylvania.
3. Defendant, Oppenheimer Multifamily Housing & Healthcare Finance, Inc., is a corporation authorized to conduct business in Pennsylvania with a principal place of at the above address and regularly conducts business in Philadelphia, County, Pennsylvania.
4. Defendant, Oppenheimer & Co. Inc., is a corporation authorized to conduct business in Pennsylvania with a principal place of at the above address and regularly conducts business in Philadelphia, County, Pennsylvania.
5. At all times relevant herein, Defendants were the agents, servants, workmen and/or employees of one another acting within the course and scope of their employment.
6. At all times relevant herein, Defendants acted by agents, servants, workmen and/or employees acting within the course and scope of their employment including David Aberra then and at all relevant times being the Information Technology Coordinator of Defendant, Berkeley Point Capital, LLC, who at all times relevant herein had authority to contract on behalf of all Defendants.
7. At all times relevant herein, Defendants acted by agents, servants, workmen and/or employees acting within the course and scope of their employment including James J. Moore, III, then and at all relevant times being the President of Oppenheimer Multifamily Housing & Healthcare Finance, Inc., and Joseph A. Funk then and at all relevant times being the chief operating officer of Oppenheimer Multifamily Housing & Healthcare Finance, Inc., who at all relevant times had authority to contract on behalf of all Defendants.
8. Oppenheimer Multifamily Housing & Healthcare Finance, Inc., is and was at all relevant times herein a wholly owned subsidiary of Oppenheimer & Co., Inc.

9. At all times relevant herein, and in addition to any business locations previously identified in the within Complaint or Amended Complaint, Defendants owned, occupied, leased, controlled and/or maintained two office locations from which they conducted the business of multifamily lender/servicer (mortgage lending and servicing) located at 1180 Welsh Road, Suite 210, North Wales, PA 19454, and at a second location located at 2500 Northwinds Parkway, Alpharetta, GA 30009; and, upon information and belief, Defendants intended to merge their businesses.

**COUNT I**  
**BREACH OF CONTRACT**

10. Plaintiff hereby incorporates paragraphs 1-9 herein by reference as though more fully set forth at length.
11. On or about November 24, 2015, and in anticipation of the merger by, among and between the Defendants, the parties entered into a contract for installation of inter alia telephone lines, computer lines, cable lines, electrical outlets, server cabinets, air conditioners, data racks and other items at Defendants' business location located at 1180 Welsh Road, Suite 210, North Wales, PA 19454, and at a second location located at 2500 Northwinds Parkway, Alpharetta, GA 30009, in exchange for which Defendants were to pay Plaintiff \$54,024.00, exclusive of tax and other incidental costs, said contract being in full force and effect at all times relevant. The terms of the work were negotiated between Shaun Nolan on behalf of Plaintiff and David Aberra on behalf of all Defendants, and Mr. Aberra was aware of, approved of and requested all work to be done by Plaintiff as were James J. Moore, III and Joseph A. Funk. A copy of the Statement of Work is attached hereto as Exhibit "A", and Mr. Aberra, Mr. Moore and Mr. Funk were the contact persons for Plaintiff insofar as the products supplied and the services performed by Plaintiff.
12. There was an offer and acceptance of the contract, both orally and in writing. See Exhibit "B".

13. On or about December 8, 2015 Plaintiff completed work pursuant to the terms of the contract.
14. Specifically, Plaintiff installed telephone lines, computer lines, cable lines, electrical outlets, server cabinets, air conditioners, data racks and other items at Defendants' business location located at 1180 Welsh Road, Suite 210, North Wales, PA 19454, and at a second location located at 2500 Northwinds Parkway, Alpharetta, GA 30009 as stated aforesaid.
15. Thereafter, Plaintiff requested timely payment in accordance with the terms of the contract.
16. Defendants initially agreed to pay under its contractual obligations, but subsequently on or about December 8, 2015 breached and refused to pay and continue to refuse to pay, and thereafter David Aberra told Plaintiff that Defendants did not intend to pay Plaintiff for the work that Plaintiff had performed.
17. Plaintiff performed the contractual obligations theretofore under its portion of the contract.
18. Defendants acted unreasonably through its agents, servants, workmen and/or employees in not paying for services performed by Plaintiff.
19. Plaintiff detrimentally relied on Defendants' assertions to the extent that Plaintiff forewent other opportunities to seek work elsewhere, all to the loss of additional income to Plaintiff, far in excess of an additional \$50,000.
20. Defendants have failed to meet the terms of the contract by not paying the agreed to sums, and Defendants have continued to be in breach.
21. As a result of Defendants' failure to pay the aforesaid sums, in breach of said contract, Plaintiff has suffered damages, including contractual damages, as well as incidental and consequential damages, and has been forced to incur attorney's fees and legal expenses in an effort to collect payment outlined in the contract said sums that are now past due.

**WHEREFORE**, Plaintiff, Advanced Voice Data Solutions, Inc., demands:

Damages from the Defendants in an amount in excess of FIFTY THOUSAND

(\$50,000.00) DOLLARS, exclusive of interest, costs and attorney's fees.

**COUNT II**  
**UNJUST ENRICHMENT**

22. Plaintiff incorporates by reference paragraphs 1 through 21, inclusive, of the First Amended Complaint as if fully set forth herein.
23. As a result of the conduct described above, Defendants have been unjustly enriched at the expense of Plaintiff.
24. Defendants have acknowledged their unjust enrichment, to the detriment of Plaintiff, yet still refuse to honor the terms of the contacts and still refuse to pay for the products and services provided by Plaintiff. See Exhibit "C".
25. Defendants should be required to disgorge all monies, profits and gains which it has obtained or will unjustly obtain in the future at the expense of Plaintiff, and a constructive trust should be imposed thereon for the benefit of Plaintiff.

**WHEREFORE**, Plaintiff, Advanced Voice Data Solutions, Inc., demands:

Damages from the Defendants in an amount in excess of FIFTY THOUSAND (\$50,000.00) DOLLARS, exclusive of interest, costs and attorney's fees.

**COUNT III**  
**CONVERSION**

26. Plaintiff incorporates by reference paragraphs 1 through 25, inclusive, of the First Amended Complaint as if fully set forth herein.
27. Plaintiff has requested that the items and property identified herein which were delivered and installed by Plaintiff be returned to Plaintiff.
28. Defendants have taken Plaintiff's property belonging to Plaintiff, and converted the same to their own use, and have refused to return the property to Plaintiff.

**WHEREFORE**, Plaintiff, Advanced Voice Data Solutions, Inc., demands:

Damages from the Defendants in an amount in excess of FIFTY THOUSAND (\$50,000.00) DOLLARS, exclusive of interest, costs and attorney's fees.

BY: \_\_\_\_\_  
STUART A. CARPEY, ESQUIRE  
Attorney for Plaintiff