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09-21745

4 Attorney for Plaintiffs,
5 STEAPHAN WEIR, CHAD NEEDY MICHAEL D'AMBROSE, LIAM WEIR, & LAYNE
6 BEDNAR AND ALL SHAREHOLDERS OF SMART SMS CORP. SIMILARLY SITUATED

7 UNITED STATES DISTRICT COURT
8 FOR THE SOUTHERN DISTRICT OF FLORIDA

CIV-UNGARO

MAGISTRATE JUDGE
SIMONTON

9 STEAPHAN WEIR, individually, CHAD
10 NEEDY, individually, MICHAEL
11 D'AMBROSE, individually, LIAM WEIR,
12 individually, and LAYNE BEDNAR,
13 individually, on behalf of themselves and all
14 shareholders of Smart SMS Corp., a Florida
15 corporation, similarly situated

Case No.:

COMPLAINT FOR:

- 1. INJUNCTIVE RELIEF
- 2. CONSPIRACY TO COMMIT VIOLATIONS OF SECURITIES LAWS
- 3. LENDER LIABILITY
- 4. BREACH OF FIDUCIARY DUTY
- 5. COMMON LAW FRAUD AND DURESS
- 6. TORTIOUS INTERFERENCE
- 7. NEGLIGENT RETENTION
- 8. USURY

Plaintiffs,

v.

DEMAND FOR JURY TRIAL

14 SCOTT A. STAGG, individually, and as a
15 director of Smart SMS Corp., and Stagg
16 Capital Group, LLC, et al., STAGG CAPITAL
17 GROUP, LLC, a Delaware corporation,
18 DISTRESSED HIGH YIELD TRADING
19 OPPORTUNITIES FUND, LTD., a British
20 Virgin Islands company, SV SPECIAL
21 SITUATIONS FUND, LLC, a Delaware
22 Corporation, SV SPECIAL SITUATIONS
23 MASTER FUND LTD, a British Virgin
24 Islands company, AMIR KHAN, individually,
25 and as a director of Smart SMS Corp. and
26 Stagg Capital Group, LLC, et al., BRIAN
27 TRAINOR, individually, as an officer of
28 Smart SMS Corp., and an employee of Stagg
Capital Group, LLC, et al., and DOES 1 to 50,
Inclusive,

Defendants.

FILED by ATS D.C.

JUN 24 2009

STEVEN M. LARIMORE
CLERK U. S. DIST. CT.
S. D. of FLA. - MIAMI

COMPLAINT

Plaintiffs Steaphan Weir, Chad Needy, Michael D'Ambrose, Liam Weir, and Layne Bednar, individually, and for and on behalf of all of the shareholders of Smart SMS Corp., a

1 Florida corporation, similarly situated, by and through their undersigned attorney, submit this
2 Complaint (the "Complaint") against the Defendants named herein, and allege as follows:

3 **I. JURISDICTION**

4 1. Jurisdiction of this Court is invoked under a federal question pursuant to 28 U.S.C.
5 § 1331, 15 USCA § 78 j(b), and CFR § 240.10b-5.

6 2. This Court has jurisdiction over this action pursuant to 28 U.S.C § 1332(a)(2) in
7 that Plaintiffs and Defendants are citizens of different states and the matter in controversy
8 exceeds \$75,000, exclusive of interest and costs.

9 3. This Court has supplemental jurisdiction over Plaintiffs state law claims pursuant
10 to 28 U.S.C § 1367(a).

11 4. This Court has jurisdiction to render the injunctive relief sought by Plaintiffs
12 pursuant to 28 U.S.C § 2201.

13 **II. STANDING AND VENUE**

14 5. As shareholders of Smart SMS Corp., a Florida public corporation with over 150
15 shareholders whose shares are traded on the "Pink Sheets" ("Smart"), Plaintiffs have standing to
16 sue Defendants.

17 6. Venue is proper in this district because a substantial portion of the transactions and
18 wrongs complained of herein occurred in this district, in that Smart, as a Florida corporation,
19 borrowed money from and sold and issued shares to the Defendants. The claims arose in this
20 district. Smart is incorporated in the district and the defendants have conducted business in this
21 district.

22
23 **III. PARTIES TO THE ACTION**

24 **A. Plaintiffs**

25 7. Plaintiff Steaphan Weir is sui juris, a resident of Los Angeles, California, a
26 common shareholder of Smart, with over 10% of the issued and outstanding shares of Smart, and
27 a director and chief executive officer of Smart. ("Weir" or "Plaintiffs").
28

1 8. Plaintiff Chad Needy is sui juris, a resident of Chicago, Illinois, and is a
2 substantial shareholder of the common shares of Smart. (“Needy” or “Plaintiffs”).

3 9. Plaintiff Michael D’Ambrose is sui juris, a resident of Chicago, Illinois, and a
4 substantial shareholder of the common shares of Smart. (“D’Ambrose” or “Plaintiffs”).

5 10. Plaintiff Liam Weir is sui juris, a resident of Los Angeles County, California, and
6 is a substantial shareholder of the common shares of Smart. (“Liam” or “Plaintiffs”).

7 11. Plaintiff Layne Bednar is sui juris, a resident of Los Angeles County, California, is
8 Chief Operating Officer of Smart, and is a substantial shareholder of the common shares of
9 Smart. (“Bednar” or “Plaintiffs”).

10 **B. Defendants**

11 12. Plaintiffs are informed and believe and thereon allege that Defendant Stagg Capital
12 Group, LLC (“Stagg Capital”) is a Delaware corporation with its principal office in Greenwich,
13 Connecticut. Stagg Capital, LLC is a lender to Smart.

14 13. Plaintiffs are informed and believe and thereon allege that Defendant Distressed
15 High Yield Trading Opportunities Fund, Ltd. (the “High Yield Fund”) is a British Virgin Islands
16 company with its principal office in Greenwich, Connecticut. High Yield Fund is a lender to
17 Smart, and is the owner of more than 10% of the issued and outstanding common shares of
18 Smart.

19 14. Plaintiffs are informed and believe and thereon allege that Defendant SV Special
20 Situations Fund, LLC (“SV Fund”) is a Delaware corporation with its principal office in
21 Greenwich, Connecticut. SV Fund is a lender to Smart.

22 15. Plaintiffs are informed and believe and thereon allege that Defendant SV Special
23 Situations Master Fund, Ltd. (the “Master Fund”), is a British Virgin Islands company with its
24 principal office in Greenwich, Connecticut. Master Fund is a lender to Smart and is a substantial
25 shareholder of the common shares of Smart.

26 16. Plaintiffs are informed and believe and thereon allege that Defendant Scott A.
27 Stagg, an individual, (“Stagg”), resides or resided at all material times related hereto, in White
28 Plains, New York, and acted as a managing director of the High Yield Fund, the Master Fund,

1 SV Fund, and Stagg Capital, as well as a controlling director of Smart. Stagg is a lender to
2 Smart and is a substantial shareholder of the common shares of Smart.

3 17. Plaintiffs are informed and believe and thereon allege that Defendant Amir Khan,
4 an individual, ("Khan"), resides or resided at all material times related hereto, in Wilton,
5 Connecticut, and acted as portfolio manager and director of the High Yield Fund, the Master
6 Fund, SV Fund, and Stagg Capital, as well as a director of Smart. Khan is a lender to Smart and
7 is a substantial shareholder of the common shares of Smart.

8 18. Plaintiffs are informed and believe and thereon allege that Defendant Brian F.
9 Trainor, an individual, ("Trainor"), resides or resided at all material times related hereto, in
10 White Plains, New York, and acted as an agent of the High Yield Fund, the Master Fund, SV
11 Fund, and Stagg Capital, and is an officer of Smart

12 19. All Defendants collectively are hereinafter referred to as "Defendants". Plaintiffs
13 are informed and believe and thereon allege that at all times herein mentioned, DOES 1 through
14 50, inclusive, and each of them, were agents of Defendants, and of each other, and were, at all
15 times herein mentioned, acting within the course and scope of such agency.

16 **C. Corporate Entity**

17 20. The effected corporate entity is Smart SMS Corp., a public company incorporated
18 in Florida, headquartered in Los Angeles, California. Smart stock is traded nationally on the
19 "Pink Sheets" under the symbol "STMC.PK" and is therefore subject to federal and state
20 securities laws.

21

22 **IV. FACTUAL BACKGROUND AND ALLEGATIONS COMMON TO ALL CLAIMS**
23 **FOR RELIEF**

24 **A. Stagg Capital, High Yield Fund, SV Fund, Master Fund, Stagg and Khan**
25 **("Defendant Lenders").**

26

27 21. The causes alleged herein concern Smart, of which the Plaintiffs are shareholders
28 and of which the Defendants are lenders and control shareholders.

1 22. As shareholders of Smart, Plaintiffs bring this action against the Smart lenders
2 shareholders and directors named as Defendants herein for breach of the federal securities laws,
3 breach of fiduciary duty, common law fraud and duress, tortious interference, lender liability,
4 negligent retention, and usury.

5 23. This Complaint involves the unlawful actions of greedy and self-serving hedge
6 fund managers who loaned funds to a small public company at usurious and commercially
7 unreasonable rates, acquired a significant ownership interest in Smart, assumed control of
8 Smart's board, and guided Smart towards financial ruin through a series of nefarious and foolish
9 acts that could lead to only one result: the insolvency of Smart and the destruction of any
10 shareholder value.

11 24. While it is not unusual for lenders to assume one or more positions on the board of
12 directors of a debtor corporation to which they advance funds, the Defendants have misbehaved
13 in a manner demonstrating a complete disregard for their fiduciary duties, committing gross
14 negligence contrary to the business judgment rule.

15 25. These predator Defendants have acted in bad faith and have overreached their
16 relationship with the debtor, Smart, by using the debt owed by Smart to Defendants, plus a
17 majority of the director positions, as a means to assume complete control over the daily
18 operations and management of Smart and thereby to assume absolute control over all of Smart's
19 assets, representing collateral for their debt, and preventing Smart from operating independently
20 to earn money to pay off the debt to them and increase shareholder value.

21 26. Specifically, the Defendants have: (a) dictated how the money loaned would be
22 spent by Smart; (b) defined how Smart would operate all aspects of its business; (c) assumed the
23 role of hiring, maintaining and terminating employees; (d) forestalled and interfered with any
24 attempts by Smart to obtain other sources of funding; (e) created a constant state of need in
25 Smart so that Smart would be required to plead for more funding, and then only lending
26 additional funds under egregious terms, only from Defendants; (f) assumed management roles
27 beyond the scope of their authority as directors; (g) installed an officer in Smart and its wholly
28 owned subsidiaries, Defendant Trainor, loyal not to Smart, but to the Defendants who worked

1 from the offices of the Defendants; (h) granted exclusive control and knowledge of confidential
2 financial information in Smart's books and records to Defendant Trainor; (i) cut off Smart's
3 officers and management team from supervising or even communicating with Smart's wholly-
4 owned subsidiaries; (j) charged egregious rates of interest and demanded unjust and inequitable
5 amounts of stock and warrants in consideration for making loans; (k) forced Smart to expend
6 Smart's resources on Defendants Stagg and Khan's personal aims and preferences, and (l)
7 managed Smart's affairs in a grossly negligent manner, impeding any reasonable chance of
8 success by Smart.

9
10 **B. Lending Events**

11 27. From the period August 6, 2007 to March 2009, the Defendants advanced funds to
12 Smart totaling approximately \$26 million, less than \$2 million of which was ever available to
13 Smart for its operations. The other \$25-plus million went for acquisitions, loan repayments to
14 Defendants, loans to other companies, and operating capital for Smart's subsidiaries.

15 28. The first two notes were issued on August 6, 2007. At that time, Smart and
16 Defendants executed a Securities Purchase Agreement ("SPA"). Pursuant to the SPA, the first
17 two promissory notes were executed between Smart and Defendant High Yield Fund. These and
18 subsequent loans were represented by promissory notes. Their principal amount, interest rate,
19 additional consideration involved in the loans, market value of stock issued, effective interest
20 rates, and related material facts are listed in chronological order herein below:

21 29. On August 6, 2007, the High Yield Fund loaned Smart pursuant to two promissory
22 notes, each for \$6,500,000, a total of \$13,000,000, at a rate of 15% interest. As required, Smart
23 issued 13,000,000 shares of Smart common stock with a then-market value of \$0.64 per share for
24 a total value of \$8,320,000, which is an effective annual interest rate of 47%.

25 30. On October 12, 2007, the Master Fund loaned Smart \$675,000 pursuant to a
26 promissory note, at a rate of 15% percent interest. Smart issued 675,000 shares of common stock
27 with a then-market value of \$1.10 per share for a total market value \$742,500, which is an
28 effective annual interest rate of 67%.

1 31. On November 14, 2007, the following notes were entered into by Smart: (a) the
2 Master Fund loaned to Smart \$7,000,000; (b) Stagg loaned Smart \$3,000,000; and (c) Khan
3 loaned Smart \$1,000,000. Each of these three notes carried a 15% interest rate. As required,
4 Smart issued a total of 11,000,000 shares of common stock to these Defendants with a then-
5 market value of \$2.75 per share for a total market value \$30,250,000, which is an effective
6 annual interest rate of 144%.

7 32. Pursuant to the loan terms, commencing on or about August 31, 2007, and through
8 the beginning of July 2008, Smart repaid a significant portion of their debt, repaying to
9 Defendants over \$6,000,000 during an eleven-month period.

10 33. On July 17, 2008, Defendants sent a default notice to Smart after Smart failed to
11 make a debt repayment due two weeks earlier. Exhaustive efforts by Smart ensued with the
12 Defendants to prevent foreclosure.

13 34. On August 28, 2008, the Defendants waived defaults under the notes and the SPA
14 through January 1, 2009 pursuant to a Note Exchange Agreement. Smart and Defendant Lenders
15 amended the Note Exchange Agreement on November 3, 2008, to provide the following: (a) a
16 waiver extension until December 31, 2009; (b) a reduction of the regular interest rate of 15% to
17 2.5% until December 31, 2009, and (c) the issuance to the Defendants of penny warrants for each
18 dollar loaned to acquire additional shares of common stock, amounting to 26,000,000 shares for
19 \$260,000, for such shares then valued at \$0.64 per share.

20 35. On October 20, 2008, the Master Fund loaned Smart \$176,000, pursuant to a
21 promissory note, at a rate of 2.5% percent annual interest. That note provided that Smart must
22 issue 176,000 shares of its common stock to the Master Fund with a then-market value of \$0.51
23 per share for a total market value of \$89,760, which is an effective annual interest rate of 28%.

24 36. On December 16, 2008, the Defendants loaned Smart \$350,000, pursuant to a
25 promissory note, payable within two weeks, with interest of \$10,000, for an effective annual
26 interest rate of 66.8%. Smart repaid that loan with the unreasonable rate of interest by the due
27 date.

28

1 37. At the time of the December 16, 2008, loan, Smart had access to other lending
2 sources from third parties at rates more favorable to Smart. However, the Defendants would not
3 allow Smart to obtain lending from these third parties in preference to Defendant's lending
4 facilities.

5 38. On or about March 2009, the expenditures mandated by Defendants Khan and
6 Stagg as lenders and controlling members of Smart's three person Board of Directors,
7 necessitated that Smart obtain additional capital. Defendant Lenders advanced a loan of
8 \$500,000 to Smart, and due to urgent need, it was agreed that a note be exchanged at a later time.
9 Defendants Stagg and Khan presented the proposed terms of the loan, which Smart's
10 management deemed wholly unreasonable and unacceptable. Those terms would have granted to
11 the Defendants warrants to purchase over 26,000,000 shares of common stock at \$0.01 per share
12 if Smart failed to pay the note within 120 days. The 26,000,000 share figure was based on the
13 total outstanding debt of Smart to all of the Defendants on a share for dollar owed basis. In sum,
14 the Defendants sought to impose on Smart terms that would grant them twice the ownership
15 interest in Smart for a loan of only \$500,000 and the payment on the warrants of only about
16 \$260,000. In the end, the Defendants would have been able to control over 64% of the total
17 outstanding shares of Smart had those terms been accepted by Smart management.

18
19 **C. Lender Control and Harm**

20 39. Pursuant to the SPA, Defendants nominated two directors to the Smart board.
21 Smart agreed to use its best efforts to get them elected. Defendants Khan and Stagg were thus
22 nominated and appointed to the Smart board.

23 40. During the periods August 6, 2007 to August 18, 2008 and March 31, 2009 to the
24 present, Defendants Stagg and Khan controlled the board of directors and thus the management
25 of Smart by having two of the three seats on the board. In addition, when Defendant Stagg
26 resigned from the board on August 18, 2008, of Smart, he left Defendant Khan with de facto veto
27 power over the board of two remaining directors. On March 31, 2009, Stagg was reinstated as a
28

1 director and, as a condition of lending much needed operating capital to Smart, was designated
2 Chair. This, again, afforded Defendants Stagg and Khan board control of Smart.

3 41. On August 3, 2007, pursuant to the SPA, Smart purchased all of the stock of an
4 Illinois corporation, Kevlertech, Inc. ("Kevlertech") for \$12,000,000 from the funds loaned by
5 the High Yield Fund.

6 42. On or about August 4, 2007, Defendants Stagg and Khan directed Smart to allow
7 Kevlertech's prior owner, Ahmed Shaaban ("Shaaban"), to continue running Kevlertech with no
8 oversight or involvement allowed by Smart of its wholly-owned subsidiary, despite Shaaban
9 having no written or formal management or consulting agreement and without Shaaban being an
10 officer of Kevlertech or Smart. Defendants Stagg and Khan permitted Shaaban, and not
11 Kevlertech's management, to maintain sole control over all bank accounts of Kevlertech, and be
12 the sole signatory on such bank accounts.

13 43. During July, 2008, Smart became aware of gross mismanagement at Kevlertech
14 and an attempt by Shaaban to re-route business clients and consultants of Kevlertech to a directly
15 competing company, in contravention of the Kevlertech stock purchase agreement.

16 44. This gross mismanagement, which significantly devalued Kevlertech, was brought
17 to the attention of Defendants Stagg and Khan by Smart. Presented by Smart with a proposed
18 management restructuring of Kevlertech, Defendants Stagg and Khan stalled, and in the interim
19 the Kevlertech subsidiary suffered extensive damage to its operations, revenue, employee
20 retention, reputation, and value.

21 45. During the period from January 2007 to August 2007, Smart engaged in
22 negotiations for a joint venture with a Washington-based company, RBA International, Inc.
23 ("RBA"). Between August 2007 and November 2007, Smart and RBA changed the nature of the
24 negotiations to contemplate the acquisition of RBA by merger into a Smart subsidiary, coming to
25 an agreement on deal terms, including RBA executing a convertible promissory note for
26 \$500,000 in favor of Smart.

27 46. On or about December 21, 2007, Defendants Khan and Stagg met with RBA
28 management without the knowledge or approval of Smart or its Chief Executive Officer Weir,

1 and significantly renegotiated the deal under terms far less favorable to Smart. Such less
2 favorable terms would involve the consumption of much of Smart's operating capital. On this
3 occasion, Defendant Khan used, in addition to his own signature as a director of Smart, the
4 digital signature of Weir without Weir's prior consent or approval. Weir and Smart strenuously
5 advised against all of these actions of the Defendants Stagg and Khan.

6 47. Defendants Khan and Stagg caused Smart, through their power as lenders and
7 directors, following their renegotiation of terms with RBA to have Smart: (a) lend over
8 \$2,000,000 to RBA; (b) align Smart's business activities with RBA, and (c) spend extensive
9 sums in preparation for a merger, all of which consumed the majority of Smart's operating
10 capital, leading to the inevitable need for additional funds from Defendants. Smart protested and
11 advised against all of these actions of the Defendants.

12 48. On December 15, 2008, and numerous times thereafter, Weir informed Defendants
13 Stagg and Khan of opportunities Weir had for obtaining equity investment in Smart. Defendants
14 Stagg and Khan would not allow Weir to pursue any equity investment unless he obtained the
15 investment based upon a stock price that was well above the current or average thirty-day market
16 price of Smart stock, making equity financing impossible.

17 49. On or about February 20, 2009, Smart desired to terminate Frank Eckard
18 ("Eckard"), president of one of its subsidiaries, Columbia Card Services International, LLC
19 ("CCSI"), citing many valid reasons to justify a for-cause termination. Instead, Defendants
20 Stagg and Khan assumed direct and sole management of the CCSI operations.

21 50. In fact, Defendant Khan threatened to terminate the Smart management team and
22 to ensure they would "never work again" if they interfered with the new management reporting
23 structure at CCSI or terminated its president. Defendants Khan and Stagg forced Smart over
24 Smart's strenuous objections to keep Eckard and allow him to negotiate crucial agreements for
25 CCSI with no supervision.

26 51. Shortly after this occurred, Smart discovered that Eckard was a convicted felon in
27 connection with financial crimes, used an alias, and had provided a false social security number
28

1 on his employment application with CCSI. Finally, after being confronted with the forgoing
2 information, Defendants Khan and Stagg agreed to fire Eckard.

3 52. On March 11, 2009, Defendants Stagg and Khan agreed that Defendant Khan, a
4 director but not an officer of Smart or CCSI, would take over negotiations with a potential
5 vendor of CCSI, involving the purchase of \$3,000,000 of substandard equipment, even though
6 the product had been shown by Smart management to be inferior, more costly than competitors,
7 and actually posed a liability risk to Smart. Defendants Khan and Stagg continue to pursue this
8 transaction to date, and continue to oversee directly the operations of Smart and its subsidiaries.

9 53. Other actions taken by Defendants Stagg and Khan caused a drain of Smart's
10 resources and the resources of its subsidiaries. These actions included, among others, (a) hiring
11 unnecessary new employees, (b) retaining employees who offered no value and who drained
12 corporate resources and (c) entering into objectionable contracts to commit more of Smart's
13 capital.

14
15 **D. Misuse of Smart's Capital and Stock Resources**

16 54. Defendants Stagg and Khan committed Smart to other arrangements that drained
17 Smart's bank accounts and diluted existing shareholders of their value in Smart common stock.

18 55. For example, since shortly after the Defendants initially funded Smart, Defendants
19 Stagg and Khan directed the use and misuse of Smart's resources, both cash and stock, to
20 compensate, over a significant period, unqualified and non-vetted ghost employees over
21 \$350,000 (because of romantic relationships with Defendants Stagg and Khan), who never
22 performed services for any Smart company, Defendants engaged in pie-in-the-sky business
23 opportunities and took other actions that could only result in driving Smart towards financial
24 distress. As Smart directors, Defendants Stagg and Khan had on-demand access to the financials
25 of Smart, which at all times were being reviewed by accountants and auditors in connection with
26 the preparation of SEC disclosure documents. For example, on January 24, 2009, and thereafter,
27 Defendant Stagg demanded and received at least weekly from Smart management, cash needs
28

1 and cash flow reports, giving Defendants Stagg and Khan access to the financial status and needs
2 of Smart and its subsidiaries.

3 56. Defendants Stagg and Khan were well-aware of the adverse impact of their
4 activities and decisions on Smart's finances.

5 57. Defendants Stagg and Khan also drained Smart's resources at the subsidiary level.
6 For example, on or about May 15, 2009, Defendant Khan cooperated with a manager at
7 Kevlertech to have Smart pay that manager an additional \$9,000 more per month than previously
8 agreed. No contract was executed to evidence this additional compensation, and no increase in
9 duties and obligations were expected of the manager.

10
11 **E. Hostile and Unauthorized Takeover**

12 58. Defendants Stagg and Khan engaged in several acts over the course of their tenure
13 as Smart directors and lenders that were motivated not by profit, but rather by a desire to control
14 and take over Smart. These acts only bled Smart and destroyed shareholder value.

15 59. In one example, in May 2009, Defendant Stagg stated that Smart should not worry
16 about other investors and shareholders because such investors and shareholders would "be
17 screwed anyway". This sentiment was expressed on numerous other occasions by Defendants
18 Stagg and Khan to CEO Weir.

19 60. Against the wishes of Smart's management, Defendants Khan and Stagg injected
20 into Smart, their own "Director of Finance", Defendant Trainor. However, Defendant Trainor,
21 did not and in fact could not act in the best interests of Smart because (a) he worked from
22 Defendants offices, (b) he had and used an email reflecting employment by Defendants and (c)
23 he acted in the interests of and at the direction of Defendants Khan and Stagg, contrary to the
24 interests of Smart and its shareholders.

25 61. Despite Defendant Trainor having a compromised duty of loyalty and fidelity to
26 Smart, Smart's management was obligated to provide Defendant Trainor with access to Smart's
27 books and records while Defendant Trainor served as an agent for Defendant's Stagg and Khan.
28 While Smart allowed Defendant Trainor access to documents and to participate in audit activities

1 solely because of the insistence of Defendants Khan and Stagg, Smart insisted that a Smart board
2 resolution be adopted to effect the appointment of Defendant Trainor as Chief Financial Officer
3 of Smart. Defendants Stagg and Khan refused to adopt such a board resolution.

4 62. Actions demonstrating the true intent of Defendants include, among others, the
5 following:

6 63. On or about May 15, 2009, Defendants Khan and Stagg traveled to Chicago,
7 Illinois to meet with the principal employees of Smart's subsidiary, Kevlertech, without the
8 knowledge or approval of Smart. Following this trip, no Kevlertech employees would cooperate
9 with Smart management and there was almost a complete cessation of contact between
10 Kevlertech and Smart. Prior to this date, Smart's management provided management, human
11 resources, benefits, insurance, information technology, legal, and operational support to
12 Kevlertech to ensure the smooth operations of the Kevlertech subsidiary.

13 64. In mid-May 2009, Smart notified Defendants Khan and Stagg that further capital
14 was required due to the expenditures and redirection of Smart funds mandated by Defendants
15 Khan and Stagg. No funds were provided, and invoices for Smart went unpaid, and continue to
16 be past due. This occurred despite Defendants Stagg and Khan on numerous occasions
17 representing to Smart's management that Defendants would fund Smart whenever the need
18 arose.

19 65. On May 28, 2009, Defendants Khan and Stagg called a Smart board meeting, at
20 which the board, at the objection of director Weir: (a) appointed Defendant Trainor as the "sole
21 officer" with exclusive signing authority over all Smart and subsidiaries bank accounts; (b)
22 decided to fund only subsidiaries of Smart, but not Smart itself, leaving no operating capital for
23 Smart; (c) appointed new presidents of the subsidiaries to report directly to Smart's board only
24 and thereby bypass Smart's management, and (d) mandated that Smart's CEO Weir, COO Layne
25 Bednar, and Executive Vice President and General Counsel Peter Godwin, have no involvement
26 with the operations of and offer no assistance to Smart subsidiaries.

27 66. At the May 28, 2009 board meeting, Defendant Stagg stated that Smart should be
28 bankrupted to void its contracts. Defendant Stagg stated that Smart would not have any funding

1 to pay employees, asserting in those pre-drafted minutes submitted to the board meeting, that
2 past owed salaries and future salaries and severances were “meaningless”, including employees
3 with contracts. In the board meeting, Stagg stated “let me put my lender cap on for a minute”
4 when speaking of bankrupting Smart and holding all contracts meaningless.

5 67. On June 10, 2009, Defendant Stagg as Chairman of the Board of Smart sent a
6 letter to an employee of Smart who maintained the corporate records demanding that all Smart
7 files be sent to Defendants at their Connecticut offices. This threatening letter was made to a
8 loyal employee of Smart, Patricia Vasquez, who had not been paid a salary for several weeks. In
9 an email to Smart, Defendant Khan advised that Smart’s CEO “and his crew” should not
10 interfere with this operation to obtain all of Smart’s books and records. Defendant Trainor called
11 Vasquez and threatened her with non-payment of wages owed to her and legal action against her
12 if she did not comply with Defendant Stagg’s letter. As a result, Defendants possess virtually all
13 of Smart’s original books, records and documents, while Smart’s management have virtually
14 none.

15 68. On June 11, 2009, Defendant Trainor was informed by Smart Executive Vice
16 President for legal matters and General Counsel Godwin that the past due payroll of Smart would
17 need to be paid to avoid labor complaints, and that Defendant Trainor was the only person
18 capable of doing so. Defendant Trainor’s response was that he was not an officer of Smart and
19 therefore could do nothing, despite the fact that Defendant Trainor was and continues to be the
20 “sole officer” authorized by the Smart board resolution adopted on May 28, 2009, by Defendants
21 Stagg and Khan to control Smart’s bank accounts as the only signer on the accounts.

22 69. On June 15, 2009, Weir and Godwin discovered that, apparently, on June 11,
23 2009, Defendants Stagg and Khan held an illegal board meeting at their offices in Greenwich,
24 Connecticut, which Weir had no ability to attend due to an emergency life threatening surgery.
25 Weir and Godwin had no indication that board resolutions had been adopted and enacted, until
26 Godwin contacted Defendant Stagg on an unrelated matter. This action reinforced the total
27 control of Defendants Stagg and Khan over Smart
28

1 to make any untrue statement of a material fact or to omit to state a material fact necessary in
2 order to make the statements made, not misleading, or (c) to engage in any act, practice, or
3 course of business which operates or would operate as a fraud or deceit upon any person, in
4 connection with the purchase or sale of any security.”

5 80. Defendants Stagg and Khan acted at all times with the intent to make loans to
6 Smart as a means to take over control of Smart, render Smart insolvent, and then assume
7 ownership of Smart’s subsidiaries, all to the damage of the Plaintiffs.

8 81. During the period August 6, 2007, to date, Plaintiffs purchased and sold Smart
9 stock in reliance on Defendants providing Smart with funding to carry out its business plan, at
10 interest rates and on terms which were commercially reasonable as represented to management
11 of Smart.

12 82. Instead of acting as lenders to Smart, Defendants engaged in a scheme and course
13 of business to take over control of Smart by: (a) dictating to Smart as to how the borrowed funds
14 could be used; (b) requiring expenditures by Smart which necessitated Smart’s constant
15 requirement for more funds and Defendants acquisition of more Smart shares thereby; (c) taking
16 over control of the boards of Smart and its subsidiaries; (d) using their role as lender to
17 materially dilute shareholder value, culminating in a failed attempt to acquire control of 65% of
18 Smart’s common stock by making a loan of \$500,000 to Smart, a proposal vehemently objected
19 to by Smart management; (e) intentionally leading Smart toward insolvency, by preventing
20 Smart from paying its outstanding obligations to vendors, employees, and others by taking over
21 and freezing all Smart bank accounts; (f) hiring unqualified people, retaining them despite their
22 harm to Smart and its subsidiaries, and requiring Smart to make questionable payments for
23 purposes personal to Defendants; (g) preventing Smart from obtaining alternative financing on
24 better terms, and (h) using this scheme or artifice to defraud Plaintiffs by working toward
25 stripping away from the parent company, Smart, Smart’s subsidiaries.

26 83. Defendants intentional plan was to make fraudulent misrepresentations to Smart
27 management regarding their lender-debtor relationship, use Smart as their alter egos as they
28

1 acquired more and more control of Smart, use Smart as a means to acquire ownership of Smart's
2 subsidiaries, and then bankrupt Smart and destroy all of Plaintiff value in Smart common stock.

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4
5 **THIRD CLAIM FOR RELIEF**

6 **(Lender Liability)**

7 **(Against All Defendant Lenders)**

8 84. Plaintiffs repeat and reallege each of the allegations set forth in Paragraphs 1
9 through 71 hereinabove, as if fully set forth herein, and further allege:

10 85. Defendants have, since the time of the first loan to Smart, systematically assumed
11 control over Smart operations and all of its assets to the detriment of Smart and its shareholders.

12 86. Smart's management team continues to strive to operate its business with as little
13 interference from Defendants as possible in the best interests of Smart and its shareholders while
14 attempting to acknowledge the roles of Defendants Stagg and Khan as conflicted directors to
15 avoid further harm to Smart. Although considerable efforts have been made and continue to be
16 made by Smart management not to acquiesce to Defendants interference in daily operations and
17 finances, Defendants inappropriate actions have made this an impossibility and they have exerted
18 substantial and ultimately total control to the grave detriment of Smart, its subsidiaries, and its
19 shareholders.

20 87. Defendants have exerted such total control as to become an "alter ego" of Smart,
21 which is now simply an instrumentality of the Defendants.

22 88. Defendants have significant involvement in and direction over the daily operations
23 of Smart and its subsidiaries; in many cases, requiring that employees report directly and only to
24 Defendants and demanding to participate in all but the most insubstantial meetings and phone
25 calls dealing with Smart business.

26 89. Over time, Defendants have increased their inappropriate and unsanctioned
27 involvement in Smart and its subsidiaries, eventually requiring, as a result of the May 28, 2009
28 board resolution, that Smart management surrender control of its operations to Defendants Khan

1 and Stagg and Defendants agent, Defendant Trainor, who was authorized as the "sole officer" to
2 control Smart and its subsidiaries.

3 90. Defendants have used the threat of loan acceleration and foreclosure, in addition to
4 their control of the Smart board of directors, to direct all activities of Smart on a daily and
5 continuing basis. Defendants not only hold veto power over all expenditures and all business
6 decisions, but they have also have controlled and continue to control Smart's business at all
7 levels.

8 91. Defendants, through their control over the daily operations of Smart and its
9 employees and finances, have pushed Smart into a position where Smart required additional
10 financing from Defendants. Defendants were the only source of funding available due to the
11 extent of control exerted and the precarious state to which they have brought Smart. This
12 situation has allowed Defendants to offer further funding under egregious terms, which, had they
13 been accepted by Smart, would have effected significant dilution of all shareholders investments
14 and given Defendants ownership constituting absolute control of Smart's assets, as if they had
15 foreclosed on Smart.

16 92. Defendant Lenders have materially precluded the ability of Smart to operate a
17 successful business and remain solvent. This relationship has only worsened since the inception
18 of the relationship as debtor and lender.

19 **FOURTH CLAIM FOR RELIEF**

20 **(Breach of Fiduciary Duty)**

21 **(Against Defendants Stagg, Khan and Trainor)**

22 93. Plaintiffs repeat and reallege each of the allegations set forth in Paragraphs 1
23 through 71 hereinabove, as if fully set forth herein, and further allege:

24 94. Defendants Stagg, Khan and Trainor owe a fiduciary duty to Plaintiffs and Smart
25 due to Defendants Khan and Stagg's positions as controlling board members of Smart.

26 95. Defendants Khan, Stagg and Trainor, plus the other Defendants, as lenders to
27 Smart, have exercised complete and absolute dominance over Smart, and thereby owe a separate
28 fiduciary duty to Smart and its shareholders.

1 96. Defendants agent, Defendant Trainor, also has a fiduciary duty as designated "sole
2 officer" to Smart and its shareholders. Defendant Trainor has breached this fiduciary duty by
3 acting in the interests of the Defendants and against the interests of Smart and its shareholders.

4 97. Defendants have acted contrary to the duties owed by a fiduciary, causing Smart to
5 expend resources for Defendants self-serving and unnecessary Smart operations, injurious
6 negotiation results, acting despite conflicts of interest, protecting the interests of Defendants
7 instead of Smart, and contrary to the financial interests of Smart and its shareholders.

8 98. Defendants actions have caused Smart and its subsidiaries significant financial and
9 operational harm and have finally caused, by intent and design, a potential insolvency situation
10 in Smart, in anticipation of taking, with little resistance, the entirety of the assets of Smart from
11 its shareholders.

12
13 **FIFTH CLAIM FOR RELIEF**

14 **(Common Law Fraud and Duress)**

15 **(Against Defendants Stagg and Khan)**

16 99. Plaintiffs repeat and reallege each of the allegations set forth in Paragraphs 1
17 through 71 hereinabove, as if fully set forth herein, and further allege:

18 100. Defendants Khan and Stagg intentionally misled Smart to believe that Defendants
19 would provide additional funds for Smart operations, while intentionally driving Smart toward
20 near insolvency by asserting more and more control over Smart, and eventually assuming actual
21 control of Smart and its subsidiaries.

22 101. Through fraud and duress, Defendants Khan and Stagg induced and demanded
23 Smart to retain unnecessary and wasteful employees, enter into harmful business arrangements,
24 and expend resources in a manner detrimental to the best interests of Smart, its subsidiaries and
25 its shareholders.

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SIXTH CLAIM FOR RELIEF

(Tortious Interference)

(Against Defendants Stagg, Khan and Trainor)

102. Plaintiffs repeat and reallege each of the allegations set forth in Paragraphs 1 through 71 hereinabove, as if fully set forth herein, and further allege:

103. Defendants intentionally and willfully interfered with the relationships among Smart and its actual or prospective vendors and customers.

104. Defendants have interfered with the appropriate election and appointment of Smart and its subsidiaries directors and officers, to appoint conflicted individuals to serve on the boards and as management.

105. These officers and directors do not and cannot maintain a high degree of individual loyalty to Smart and its respective subsidiaries. These circumstances have led to the Defendants Lenders assuming near absolute control of Smart, and thereby forcing Smart to abandon its relationships with business partners, vendors, customers and employees, or adversely impacting them.

106. Defendants have thereby tortiously interfered with Smart's business.

SEVENTH CLAIM FOR RELIEF

(Negligent Retention)

(Against Defendants Stagg and Khan)

107. Plaintiffs repeat and reallege each of the allegations set forth in Paragraphs 1 through 71 hereinabove, as if fully set forth herein, and further allege:

108. Defendants Stagg and Khan have caused Smart to retain employees who they knew to be unnecessary, unsuitable, unqualified, excessively paid and/or could not act in the best interests of Smart or its subsidiaries.

1 **EIGHTH CLAIM FOR RELIEF**

2 **(Usury)**

3 **(Against All Defendants Except Trainor)**

4 109. Plaintiffs repeat and reallege each of the allegations set forth in Paragraphs 1
5 through 71 hereinabove, as if fully set forth herein, and further allege:

6 110. Defendants have at the outset of the lender-debtor relationship, committed usury
7 by offering loans to Smart with terms which were commercially unreasonable and egregious, and
8 meant to force Smart into eventual foreclosure and/or insolvency, while unjustly enriching
9 themselves through the terms of the lending.

10 111. Defendants, through receiving stock as consideration for making loans to Smart,
11 have caused the effective interest payment on all loans made by Defendants to be far greater than
12 commercially viable limits and to be egregious. By way of example, the two promissory notes of
13 August 6, 2007, totaling \$13,000,000 from High Yield Fund were accompanied by issuance of
14 13,000,000 shares of Smart common stock at a value of \$0.64 per share as consideration to
15 Defendants for making the loan, an aggregate value of \$8,320,000, in addition to the original rate
16 of interest charged of 15% per annum. The aggregate value of the stock as consideration to
17 lender for making the loan in addition to 15% per annum brings the effective interest rate during
18 the period from signing to maturity, to 47%.

19 112. Another example of usurious lending terms involved the Master Fund loan to
20 Smart of \$350,000 with a maturity of two weeks, charging \$10,000 interest. The effective rate of
21 interest of this loan was 68% per annum, which is usurious and egregious.

22
23 **PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiffs pray for a final judgment against Defendants as follows:

25 1. For preliminary and permanent injunctive relief enjoining Defendants, their
26 officers, agents, servants, employees, attorneys, and all persons in active concert or participation
27 with them, who receive actual notice, from directing or otherwise interfering in the operations of
28 Smart and its subsidiaries;

1 2. For preliminary and permanent injunctive relief enjoining Defendants, their
2 officers, agents, servants, employees, attorneys, and all persons in active concert or participation
3 with them, who receive actual notice, from exercising any control over the management,
4 operation and governance of Smart and its subsidiaries;

5 3. For preliminary and permanent injunctive relief enjoining Defendants, their
6 officers, agents, servants, employees and attorneys, and all persons in active concert or
7 participation with them, who receive actual notice, from exercising any right of board seat
8 nomination under the SPA;

9 4. As to all Defendants, for an award of general damages in an amount in excess of
10 \$75,000, exclusive of interest and costs, consisting of the aggregate difference in stock value of
11 Smart from August 6, 2007, to the present;


12 5. As to all Defendants, for punitive or exemplary damages in an amount to be
13 established at trial;

14 6. As to all Defendants, for attorneys' fees and costs of suit as provided by statute or
15 otherwise;

16 7. A trial by jury; and

17 8. For such other and further relief as the district court shall deem just, equitable and
18 proper.

19
20 DATED: June 23, 2009

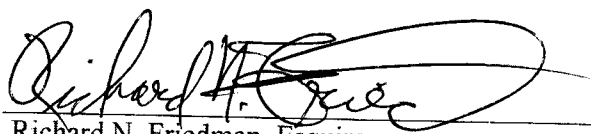
21 By: 
22 Richard N. Friedman, Esquire
23 Attorney for Plaintiffs
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DEMAND FOR JURY TRIAL

In accordance with the Federal Rules of Civil Procedure Rule 38 and Local Rule 38-1,
Plaintiffs hereby demand trial by jury.

DATED: June 23, 2009

By: 
Richard N. Friedman, Esquire
Attorney for Plaintiffs

JS 44 (Rev. 2/08)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.) **NOTICE: Attorneys MUST file case in e-File.**

I. (a) PLAINTIFFS
 Stephan Weir, Chad Needy, Michael D'Ambrose, Liam Weir, Layne Bednar and all shareholders of Smart SMS Corp., a Florida corporation
(b) County of Residence of First Listed Plaintiff Los Angeles
 (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)
 Richard N. Friedman, Esquire
 8925 S.W. 148th Street, Suite 200
 Miami, Florida 33176

DEFENDANTS
 Scott A. Stagg, Stagg Capital Group, LLC, Distressed High Yield Trading Opportunities Fund, Ltd., SV Special Situations Master
 County of Residence of First Listed Defendant Westchester
 (IN U.S. PLAINTIFF CASES ONLY)
 NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT LAND INVOLVED.

09-21745
FILED BY 703 D.C.
JUN 24 2009
 STEVEN M. ARMORE, CLERK U.S. DIST. CT.
 AMIR KHAN, BR/12 ST. PETERSBURG MIAMI

CIV-UNGARO
MAGISTRATE JUDGE
SIMONTON

(d) Check County Where Action Arose: MIAMI-DADE MONROE BROWARD PALM BEACH MARTIN ST. LUCIE INDIAN RIVER OKEECHOBEE HIGHLANDS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
 1 U.S. Government Plaintiff
 2 U.S. Government Defendant
 3 Federal Question (U.S. Government Not a Party)
 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input checked="" type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

09-CV-21745 - Ungaro / Simonton

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input checked="" type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations & Disclosure Act <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus-Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input checked="" type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS		
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities Employment <input type="checkbox"/> 446 Amer. w/Disabilities Other <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN (Place an "X" in One Box Only)
 1 Original Proceeding 2 Removed from State Court 3 Re-filed (see VI below) 4 Reinstated or Reopened 5 Transferred from another district (specify) 6 Multidistrict Litigation 7 Appeal to District Judge from Magistrate Judgment

VI. RELATED/RE-FILED CASE(S). (See instructions second page):
 a) Re-filed Case YES NO b) Related Cases YES NO
 JUDGE _____ DOCKET NUMBER _____

VII. CAUSE OF ACTION
 Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity):
 28 U.S.C § 1332(a)(2); 15 USCA §78j(b), CFR§240.10b-5. Defendants have committed fraud on and breached their fiduciary trust to shareholders of a public company
 LENGTH OF TRIAL via 10 days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ OVER \$ 75,000 CHECK YES only if demanded in complaint: **JURY DEMAND:** Yes No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE
 SIGNATURE OF ATTORNEY OF RECORD: Richard N. Friedman DATE: June 24, 2009

FOR OFFICE USE ONLY
 AMOUNT \$ 350.00 RECEIPT # 1003494
06/24/09