

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

RITCHIE CAPITAL MANAGEMENT, L.L.C.,
as administrative and collateral agent,
RITCHIE SPECIAL CREDIT
INVESTMENTS, LTD., RHONE HOLDINGS
II. LTD., YORKVILLE INVESTMENTS I,
LLC, and RITCHIE CAPITAL STRUCTURE
ARBITRAGE TRADING, LTD.,

Plaintiffs,

-vs.-

MARY JEFFRIES, an individual, and
CAMILLE CHEE-AWAI, an individual,

Defendants.

Case Number:

Judge:

Magistrate Judge:

VERIFIED COMPLAINT FOR VIOLATIONS OF
RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT (RICO),
COMMON LAW FRAUD AND TORTIOUS INTERFERENCE

I.
Statement of the Case

Whoever commits a fraud is guilty not only of the particular
injury to him who he deceives, but of the diminution of that
confidence which constitutes not only the ease but the existence of
society. Samuel Johnson (1709-84)

1. This case involves a fraudulent scheme by a number of persons who conspired to
deprive the Plaintiffs, investment funds and their manager, of the benefits of valuable security
interests in one of the world's most-recognized companies, Polaroid Corporation ("Polaroid").
Plaintiffs loaned over \$100 million to Polaroid's parent company, Petters Group Worldwide,
LLC ("PGW"), in exchange for security interests in Polaroid, which defendant Camille Chee-

Awai (“Chee-Awai”) told Plaintiffs on February 3, 2008, had an estimated value of \$779 million. After Plaintiffs made the loans, however, Defendants and their co-conspirators schemed to defraud Plaintiffs out of the benefit of those security interests. The fraud was carried out through various unlawful acts, including wire fraud and perjury. The unlawful acts of the conspiracy continued and are continuing even though the principal conspirator, Thomas J. Petters (“Petters”), the owner of PGW, was arrested in connection with a fraud involving another entity he owned, Petters Company, Inc. (“PCI”). All companies Petters once controlled are now under receivership and/or in bankruptcy.

2. From the first call on January 31, 2008 from an investment banker employed by PGW to the CEO of Plaintiff Ritchie Capital Management, L.L.C. (“RCM”), Defendants and their co-conspirators promised Plaintiffs a security interest in Polaroid. In fact, Polaroid’s operations and prospects were emphasized in most, if not all, of the numerous telephone calls and meetings between RCM’s CEO and Defendants and their co-conspirators.

3. PGW promised to grant Plaintiffs the security interests in Polaroid on February 1, 2008, when Plaintiffs loaned PGW \$31 million to enable Polaroid, PGW’s wholly-owned subsidiary, to repay an existing loan from JPMorgan Chase & Co. (“JPMorgan”), which existing loan was secured by a lien over Polaroid’s stock and assets. Petters and Defendants, Mary Jeffries (“Jeffries”) and Chee-Awai (with Jeffries, collectively, “Defendants”), purportedly acting on behalf of PGW, promised that after the JPMorgan loan was repaid and its liens released, Plaintiffs would step into the shoes of JPMorgan as Polaroid’s senior security holder. Defendants and Petters agreed to provide additional security by giving Petters’s personal guarantee of payment of Plaintiffs’ loans. Defendants specifically represented that Petters’s personal guarantee was to remain in place only until JPMorgan’s lien on Polaroid was released

and Polaroid's stock certificates were delivered to Plaintiffs. Based on these representations by Defendants and their co-conspirators, one of the Plaintiff investment funds wired \$31 million on February 1, 2008.

4. After one of Plaintiffs' funds wired the initial \$31 million to pay JPMorgan, Defendants and their co-conspirators initiated a scheme to deprive Plaintiffs of the benefits of their security interests in Polaroid. From the inception of that scheme through September 2008, Defendants and their co-conspirators staged a series of meetings, telephone conferences, presentations and other conduct designed to mislead Plaintiffs into believing that their loans continued to be amply secured by Polaroid. At the same time, however, Defendants and their co-conspirators were also pledging Polaroid's assets to third parties in connection with other obligations of various Petters companies. On September 19, 2008, over seven months after promising Plaintiffs their security interest in Polaroid, PGW and Polaroid finally executed documents memorializing the grant to Plaintiffs of security interests in a portion of Polaroid's assets.

5. Just five days later, on September 24, 2008, federal authorities executed a search warrant at Petters's office and elsewhere based on an affidavit accusing Petters and others of operating a nationwide Ponzi scheme through Petters's other company, PCI. On September 29, 2008, Petters resigned from his companies, and Plaintiffs obtained from the Circuit Court of Cook County, Illinois a temporary restraining order freezing the assets of Petters, PGW and PCI. On October 3, 2008, Plaintiffs obtained an amended order from the Illinois court appointing a receiver over the assets of Petters, PGW and PCI.

6. Meanwhile in Minnesota, on or about September 27, 2008, Petters retained an attorney, Douglas Kelley ("Kelley"), to represent his companies. Thereafter and continuing

during the week of September 29, 2008, Kelley, acting as Petters's chief legal counsel, assumed complete control over PGW and Petters's other companies. In this position, Kelley intentionally ignored the orders Plaintiffs had previously obtained in Illinois and, *inter alia*, refused to recognize the receiver appointed by the Illinois court, even barring this receiver from PGW's offices, and obtained from Petters a proxy transferring Petters's rights as sole shareholder in PGW and his other companies to Kelley's law partner, Steven Wolter. On October 6, 2008, the United States District Court in Minnesota issued an Order that placed Petters's companies into receivership and named Kelley as receiver of Petters, PGW and PCI. On information and belief, the district court granted Kelley's receivership motion without Kelley having disclosed that the Cook County Court had already appointed a receiver.

7. As Receiver, Kelley placed PGW and PCI into bankruptcy and became Trustee over those companies' bankruptcy estates. Kelley has irreconcilable conflicts of interest arising from his obligations as the attorney, Receiver and Trustee for PCI and PGW. For example, rather than act on behalf of PGW's bankruptcy estate as Trustee, Kelley has taken steps to assure that PGW's assets are forfeited over to the Government in a forfeiture action.

8. In his capacity as attorney, Receiver and/or Trustee, Kelley terminated many of the individuals employed by Petters's companies. Kelley, however, did not terminate Defendant Jeffries from her position as Polaroid's Chief Executive Officer. Thus, Kelley enabled Jeffries to continue the conspiracy to deprive Plaintiffs of the benefits of their security interests in Polaroid. With Kelley's cooperation, Jeffries placed Polaroid into bankruptcy where she initiated the filing of an adversary complaint in the bankruptcy proceeding in a wrongful attempt to invalidate Plaintiffs' security interests. Then, Jeffries falsely stated under oath in the bankruptcy proceeding that Plaintiffs' loans to PGW had been made solely to benefit and aid Petters's

fraudulent activities rather than to benefit PGW and Polaroid. As a result, the bankruptcy court refused to recognize Plaintiffs' security interests in Polaroid and allowed the Polaroid bankruptcy estate to sell Polaroid's assets in a fire sale inevitably at a fraction of their true value.

9. This Complaint is verified by A.R. Thane Ritchie ("Thane Ritchie"), RCM's Chief Executive Officer and is based on his first-hand knowledge of the detailed negotiations in 2008 with Petters's companies' employees and executives including, but not limited to, Petters, Jeffries, Chee-Awai and PGW's in-house legal counsel and co-conspirator, David A. Baer ("Baer").

## **II. Jurisdiction and Venue**

10. This Court has subject matter jurisdiction over this action pursuant to 18 U.S.C. § 1964 and 28 U.S.C. § 1331.

11. Venue is proper under 28 U.S.C. § 1391(b) because Illinois is where a substantial part of the relevant events occurred, where performance of the promissory note given in exchange for Plaintiffs' \$31 million loan and signed by Petters and PGW occurred, and where the damages occurred. Moreover, the promissory note states, "This Note is being delivered in, and shall be governed by, the laws of the State of Illinois and the Borrower consents to the jurisdiction of the courts in the State of Illinois." See *Friedman v. Revenue Management of NY*, 38 F.3d 668, 671 (2nd Cir. 1994); *Consolidated Ins. Co. v. Vanderwoude*, 876 F. Supp. 198, 202 (N.D. Ind. 1995). In this case, Defendants and their co-conspirators purposely contacted Plaintiffs and transacted business in Illinois, the contract was made in Illinois, Plaintiffs wired the funds loaned to PGW from Illinois, and Plaintiffs' injury occurred in Illinois. As a result, a substantial part of the relevant events occurred in Illinois.

12. Moreover, Section 1965(b) of the RICO statute, 18 U.S.C. 1965(b), provides that process can be served in “any judicial district in the United States” when required by the “ends of justice.”

13. Courts have held that such “nationwide service of process” provisions also confer personal jurisdiction over defendants in any judicial district so long as the defendant has minimum contacts within the United States.

14. The conduct of the Defendants and their co-conspirators described herein was in or affected interstate commerce.

### **III. The Parties**

15. Plaintiff Ritchie Capital Management, L.L.C. is a Delaware limited liability company with its principal office in Lisle, Illinois. RCM’s CEO is Mr. Thane Ritchie. Thane Ritchie attended Wheaton College. Mr. Ritchie’s grandfather is the pastor of a Baptist church. Thane Ritchie is also a former member of the U.S. bobsled team and former All-American football player at Wheaton College. He later played briefly for the Pittsburgh Steelers and the Chicago Bears. Since 1994, Thane Ritchie has worked to build a successful investment management firm, RCM, which has managed over \$2 billion in assets. Mr. Ritchie’s philanthropic activities include providing major support for the Special Olympics and World Vision, a Christian humanitarian organization that works with children, families and their communities worldwide to combat poverty and injustice.

16. Co-Plaintiffs, Ritchie Special Credit Investments, Ltd., Rhone Holdings II. Ltd., and Ritchie Capital Structure Arbitrage Trading, Ltd., are Cayman Island exempted companies that invest in securities of for-profit corporations operating in the United States and abroad. Yorkville Investments I, L.L.C. is a Delaware limited liability company that invests in securities

of for-profit companies operating in the United States and abroad and has its principal U.S. place of business in Illinois. Ritchie Special Credit Investments, Ltd., Rhone Holdings II. Ltd., Yorkville Investments I, L.L.C., and Ritchie Capital Structure Arbitrage Trading, Ltd. (collectively, the “Plaintiff Funds”) have appointed RCM as their administrative agent in connection with such parties’ loans to PGW. The Plaintiff Funds and RCM are, collectively, referred to herein as “Ritchie” or “Plaintiffs.”

17. Defendant Mary Jeffries is a resident of the State of Minnesota. Jeffries joined PGW in 2004 as Chief Operating Officer and, from 2006 until October 2008, was PGW’s President and Chief Operating Officer. During 2005, Jeffries served as Chief Operating Officer of PCI, the vehicle through which Petters operated the PCI Ponzi scheme. Beginning in at least February 2008 and continuing thereafter, Jeffries conspired with Petters, Defendant Chee-Awai and others in the scheme to deprive Plaintiffs of their security interests in Polaroid for which Plaintiffs bargained in good faith and for which Plaintiffs paid valuable consideration. In or about April 2008, Jeffries was named as Polaroid’s Chief Executive Officer. Jeffries has used her position to continue the scheme to deprive Plaintiffs of their security interests in Polaroid.

18. Defendant Camille Chee-Awai is a resident of the State of Florida. During the relevant time period, Chee-Awai was the CEO of Petters Capital, LLC, another entity owned and controlled by Petters. She participated in negotiating the substantial loans from Plaintiffs and took part in the scheme to deprive Plaintiffs of their security interests in Polaroid for which Plaintiffs bargained in good faith and for which Plaintiffs paid valuable consideration.

#### **IV. Co-Conspirators and Other Persons**

19. Thomas J. Petters, a co-conspirator, is an individual who resides in Minnesota. Prior to his arrest on October 3, 2008, Petters was the sole owner and CEO of PCI, PGW, Petters

Capital, LLC, Thomas Petters, Inc. and all of their respective direct and indirect subsidiaries. Prior to forming PCI and PGW, Petters was convicted of one or more felonies in state court. Petters succeeded in expunging his criminal record, thereby concealing his prior illegal conduct. Petters's criminal conduct was unknown to Plaintiffs until after Petters was arrested in 2008 and his prior criminal activity was made public.

20. David Baer, a co-conspirator, is a resident of the State of Minnesota. During the relevant time period, Baer was PGW's Chief Legal Officer. Baer also participated in negotiating the Plaintiffs' loans and took part in the scheme to deprive Plaintiffs of their security interests in Polaroid for which Plaintiffs bargained in good faith and for which Plaintiffs paid valuable consideration.

21. PCI, a co-conspirator, is a Minnesota corporation with offices in Minnetonka, Minnesota. Petters used PCI to sell the promissory notes at the heart of his fraudulent activities. The offices of Petters, PGW and PCI are located in the same suite in a Minnetonka, Minnesota office building. On October 2, 2008, PCI was placed into receivership in United States District Court for the District of Minnesota (the "Receivership Action"). At Kelley's direction, PCI filed for bankruptcy protection in the United States Bankruptcy Court for the District of Minnesota on October 11, 2008.

22. PGW, a co-conspirator, is a Delaware limited liability company with its principal place of business in Minnetonka, Minnesota. PGW served as an umbrella company used by Petters to oversee a group of approximately 60 companies in which Petters invested. On October 6, 2008, the Receivership Action was expanded to include PGW, and PGW was placed into receivership in the United States District Court for the District of Minnesota. Five days

later, on October 11, 2008, Kelley caused PGW to file for bankruptcy protection in the United States Bankruptcy Court for the District of Minnesota.

23. Polaroid Corporation and Polaroid Consumer Electronics LLC, co-conspirators, are Delaware limited liability companies with their principal place of business in Minnetonka, Minnesota (collectively, "Polaroid"). PGW acquired control of 100% of the outstanding shares of Polaroid in or about April, 2005. On December 18, 2008, at the direction of Kelley, Polaroid filed for bankruptcy protection in the United States Bankruptcy Court for the District of Minnesota.

24. Polaroid Holding Company ("PHC"), a co-conspirator, is a Delaware corporation that is owned by PGW and serves as the holding company for Polaroid. PHC was included in the Polaroid bankruptcy.

25. Douglas A. Kelley, a co-conspirator, is a Minnesota lawyer and principal at the law firm of Kelley & Wolter, PC located in Minneapolis, Minnesota. Kelley, a former Assistant U.S. Attorney who unsuccessfully ran in the Republican primary for Governor of the State of Minnesota in 1990, is the Receiver over the assets of Petters, PGW, PCI and other related companies. He also serves as the Trustee in the PGW and PCI bankruptcy proceedings.

26. Steven Wolter ("Wolter"), a co-conspirator, is a Minnesota lawyer and another principal at Kelley & Wolter, PC. Wolter holds an Irrevocable Proxy from Petters, dated October 5, 2008, giving Wolter control over the equity capital of all Petters-owned companies, including Polaroid. On information and belief, Wolter agreed to cooperate with Jeffries and Kelley to deprive Plaintiffs of their security interests in Polaroid.

27. Michael O'Shaughnessy ("O'Shaughnessy"), a co-conspirator, is a resident of the State of Minnesota. During the relevant time period, O'Shaughnessy was an advisor to Petters, Polaroid and/or PGW who participated in negotiations over Plaintiffs' loans.

28. JPMorgan Chase & Co. is a global financial services firm with assets of \$2 trillion and operations in more than 60 countries. In 2002, JPMorgan's equity unit, One Equity Partners LLC ("OEP"), acquired control of Polaroid, helping it to emerge from its earlier bankruptcy. OEP and the other owners of Polaroid sold 100% of Polaroid to PGW in April 2005 for \$426 million. PGW borrowed a portion of the funds used to purchase Polaroid from JPMorgan. At or about that time, JPMorgan also provided Polaroid with an asset-based loan credit facility secured by Polaroid's stock and assets.

29. Pursuant to the Order of the United States District Court for the District of Minnesota, Plaintiffs are enjoined from bringing this action directly against Petters, PCI, PGW and other defendants in the Receivership Action without the permission of that Court.

30. The Defendants herein acted in their individual capacities and for their own personal gain in agreeing with Petters to achieve an unlawful purpose and committing acts in furtherance of their objectives. The automatic stay provisions of section 362 of the Bankruptcy Code do not apply to the officers or employees of PCI, PGW or Polaroid. The relief sought in this complaint will not result in any harm to those debtors.

## V.

### Factual Allegations Common to All Claims

#### A. *Plaintiffs' \$31 million loan to PGW.*

31. In January 2008, Defendants and their co-conspirators sought to induce Plaintiffs to loan PGW funds to bridge Polaroid's capital requirements in anticipation of a sale of certain Polaroid assets then being negotiated. To identify potential lenders, one or more of the

conspirators contacted and sought the assistance of a number of investment bankers and investment funds about this “opportunity.”

32. On Thursday, January 31, 2008 at 4:34 PM, RCM’s Thane Ritchie received an email from George Johnson, Senior Vice President/Sales of Capital Financial Advisors, LLC, a Chicago-based investment banking firm raising money for Petters, which stated:

Hi Thane,

I have an opportunity that you might have interest in . . . do you guys participate in short term secured financing deals? ***The note would be secured by the assets of a company with value far exceeding the value of the note.***

Let me know ASAP.

George [Emphasis added]

A copy of this email is attached as Exhibit A.

33. Later that day, at 8:08 PM, Thane Ritchie responded by email to Mr. Johnson expressing his interest and inquired “what kind of assets? Company?” (Exhibit A.)

34. Mr. Johnson responded to Mr. Ritchie the next day Friday, February 1, 2008, at 1:27 PM with an email stating:

We have to move fast . . . I will send you a term sheet . . . 90 day loan (20% interest . . . 80% annualized . . . backed by the entire Polaroid corporation. (Exhibit A.)

35. Later that same Friday February 1, 2008, Johnson initiated a conference call between Thane Ritchie and Petters, Jeffries and Baer. On this call, Petters prefaced PGW’s urgent need for cash by stating that PGW was seeking a short-term loan of approximately \$120 million, secured by Polaroid assets, to bridge the sale of certain Polaroid North American trademarks and licenses. It was made clear by Petters, Jeffries and Baer that PGW was seeking the loans for the benefit of Polaroid, PGW’s wholly-owned subsidiary.

36. Petters stressed that the value of Polaroid's North American trademarks and licenses alone exceeded \$330 million and represented that the proposed purchaser of those assets was a well-known publicly traded brand management company that licensed and marketed a portfolio of consumer brands.

37. Petters stated that he would not normally have a problem obtaining financing for a valuable asset like Polaroid but that JPMorgan held Polaroid's assets and stock as security for an asset-based loan that provided Polaroid with a line of revolving credit. Petters and Jeffries stated that PGW needed \$31 million that day to pay off JPMorgan so that JPMorgan would release its lien, permitting PGW to cause Polaroid to pledge its assets to Plaintiffs as collateral for the requested loans. Defendants Jeffries and co-conspirator Baer participated in the conference call and did not contradict Petters's statements made during the call.

38. Thane Ritchie expressed interest in lending the \$31 million to PGW, but only on the condition that Polaroid was pledged. Petters knew that Thane Ritchie would not agree to loan the funds unless Polaroid was pledged because of Petters's prior dealing with Thane Ritchie in or about 2005 when Petters sought financing from Plaintiffs for PGW's Polaroid acquisition.<sup>1</sup> As he had done in or about 2005, Thane Ritchie insisted to Petters and Jeffries that any loan be secured by Polaroid. During this February 1, 2008 conference call, Petters offered to be available at any time to discuss the deal, and he put Jeffries and Baer at Thane Ritchie's disposal to assist in Plaintiffs' due diligence efforts.

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<sup>1</sup> Although Mr. Ritchie and Petters had in 2005 discussed the possibility of a loan to Petters to finance PGW's acquisition of Polaroid, no such loans were made and, prior to the loans made in February 2008, no transaction had ever occurred between any Petters company and Mr. Ritchie or any of his affiliated investment funds.

39. RCM's President, John Kermath, understood Thane Ritchie's insistence to Petters that the loans were contingent on the grant of a security interest in Polaroid. Mr. Kermath states that:

3. In connection with RCM's funds' loans to PGW, I can attest that RCM and its funds were interested exclusively in Polaroid Corporation (Polaroid). As President of RCM, I understood at all times that the loans to PGW were about Polaroid. Specifically, in discussing how the original \$31 million would be secured, the discussion was always about Polaroid and, in effect, that the loan would be secured by Polaroid.

4. In making the various loans to PGW in February 2008 and after, my colleagues and I worked with Tom Petters and his team, including Mary Jeffries ("Jeffries"), Camille Chee-Awai ("Chee-Awai") and David Baer ("Baer").

5. RCM was shown documents – dated January 30, 2008 -- by Petters and his team that Polaroid was valued in excess of \$700 million and that, in February 2008 when Ritchie first began providing substantial loans, that Ritchie was in fact over-collateralized because Polaroid was valued for far more than the sum of the loans made by Ritchie's funds. Indeed, as President of RCM, I continued to monitor Polaroid's value after February 2008.

6. At no time until the FBI raid on Petters and his companies in or around September 2008 was I aware that Petters allegedly operated a Ponzi scheme in PCI.

Affidavit of John Kermath, attached hereto as Exhibit B.

40. As promised by Petters in the conference call, from February 1, 2008 through February 19, 2008, Defendants and their co-conspirators transmitted documents and information in interstate commerce, including by email and telephone, calculated to induce and did in fact induce Plaintiffs to loan PGW \$31 million and other substantial sums of money.

41. At 4:37 PM on Friday, February 1, 2008, PGW's Defendant Chee-Awai sent an email at Jeffries's direction with the subject "Petters POL Due Diligence Info" to Thane Ritchie, with copies to Jeffries, Baer and Petters, as well as to two individuals at an investment banking firm Calibrax, LLP, stating:

Thane,

Subsequent to [Calibrax's] Mike Clofine's request, please see the attached information on Polaroid. The information includes the following:

- A) Draft of Polaroid's 2006 audited financial statements
- B) Last financial report sent to JPM[organ] reflection financial performance as of Nov 30 2007
- C) Brand valuation prepared by Duff and Phelps
- D) Summary of historical financials and capital structure of Polaroid. . . .

Let me know if you need additional information.

Thanks for your support.

Camille

A copy of Chee-Awai's February 1, 2008 email with attachments is attached hereto Exhibit C to this Complaint.

42. Based on and in reliance upon the representations of the Petters team that (i) Polaroid would be pledged as security for the \$31 million loan, (ii) Polaroid had more than sufficient value as collateral and (iii) the \$31 million would be used to pay off in full the JPMorgan loans to Polaroid, on February 1, 2008, one of the Plaintiff Funds agreed to loan PGW the \$31 million. As it was already late on Friday, Petters said that he was unable to arrange the pay off of the JPMorgan loan and obtain a release of JPMorgan's liens on that day. Therefore, Petters agreed to personally guarantee Plaintiffs' loan until JPMorgan was paid off and released its liens on Polaroid's stock and assets. Based on wire transfer information supplied by PGW, on February 1, 2008, Plaintiffs wired the \$31 million for the use of PGW to an M&I Bank account specified in writing by PGW.

43. At Jeffries's direction, Chee-Awai sent RCM additional information concerning Polaroid's capital structure in two emails dated February 3, 2008, at 9:28 AM and 10:30 AM

stating that JPMorgan's liens were "over collateralized." Based on this information, Jeffries urged Thane Ritchie to release Petters' personal guaranties, implying that even with JPMorgan's lien securing the approximately \$31 million of indebtedness remaining outstanding, Plaintiffs' loans were secured by Polaroid which provided ample collateral. Plaintiffs, however, relying on Petters's promise that the Plaintiffs would essentially step into JPMorgan's shoes with security interests in Polaroid, refused to release Petters's guarantees until Plaintiffs received formal documentation (i) indicating that the JPMorgan loan had been paid off in full and (ii) reflecting Plaintiffs' lien on Polaroid.

44. Under Illinois law, oral agreements to create a security interest are valid where documents relating to the transaction evidence the intent of the parties to create such an interest. The oral promises of the Defendants and their conspirators, as well as the documents surrounding the transactions provided to Plaintiffs at the time the \$31 million loan was made, evidenced an intent to create a security interest in Polaroid's stock and assets in exchange for Plaintiffs' \$31 million loan to PGW, and in fact Plaintiffs relied on such promise when making such loan.

**B. *Petters's Respected Reputation in the Business Community.***

45. Based upon the apparent success of Petters's business empire, Plaintiffs had good reason to feel secured by the Polaroid collateral that had been promised by Petters. Beginning in or about 1988, Petters launched his career as a "diverter," a middleman that locates hard-to-get consumer goods and resells them at a profit to retailers. By at least 1995, Petters's diverting business was purportedly operated through PCI. In or about 1999, Petters formed two separate companies, PGW and Thomas Petters, Inc. ("TPI"), which served as the holding companies for the various valuable and legitimate businesses Petters acquired over the years. Petters enjoyed a

stellar reputation as a businessman and philanthropist. Petters's PCI business appeared to be highly successful, and PGW was recognized as "a leader in creating, developing and investing in companies that manufacture, procure and market merchandising solutions in key growth markets." Petters's, PGW's, and TPI's global portfolio of companies grew to include Polaroid, Master Craft, Sun Country Airlines, Petters Aviation, Petters Real Estate, as well as holding major stakes in companies like Fingerhut and uBid.com. PGW also had licensing agreements with companies such as Emerson and Sunbeam.

46. Petters used his wealth to buy influence in social and political circles. Petters contributed millions of dollars to educational institutions, including donating \$10 million to Miami University (Ohio) to establish, ironically, the "John T. Petters Center for Leadership, Ethics and Skills Development." Petters was also a frequent contributor to local political campaigns, including the 2006 U.S. Senate campaign of Minnesota's senior Senator, Amy Klobuchar, as well as her earlier successful campaign for the office of Hennepin County, Minnesota District Attorney.

47. Petters was highly regarded for his business and philanthropic activities. On February 8, 2008, a Private Banker at Northern Trust Company wrote a letter "To Whom It May Concern" stating, in pertinent part, that Petters "has and continues to maintain his banking relationship with Northern Trust at the highest standard." Indeed, on September 24, 2008, the same day the federal Search Warrant was executed, a Minneapolis television station KTSP posted on its website the following information extolling the virtues of Tom Petters:

**Activities:** Board of Trustees at the College of St. Benedict, St. Joseph; Board of Trustees at Rollins College in Winter Park, Florida; and Business Advisory Council and Board of Visitors for Miami University in Oxford, Ohio.

**Awards:** Corporate Leader of the Year in 2001 by the Juvenile Diabetes Research Foundation, Distinguished Humanitarian Award

in 2003 by B'nai B'rith, and Big Brothers and Big Sisters Odyssey Awards 2005.

**Achievements:** Establishing the John T. Petters Foundation and providing endowments at select universities, allowing Petters to take a tragic situation of losing his son and creating a positive experience for students around the country which he hopes will live on beyond his life and the life of his companies. Endowments at universities throughout the United States: College of St. Benedict, \$5.3 million to create the Thomas J. Petters Center for Global Education; College of St. Benedict, \$2 million for the Petters Auditorium; St. John's University, \$1.5 million for the Retreat Center; Miami University, \$10 million to establish the John T. Petters Center for Leadership, Ethics and Skills development in the Richard T. Farmer School of Business; Miami University, \$4 million to create the Jennifer Petters Chair in Asian Business; and Rollins, \$12 million to create two new faculty chairs in International Business.

48. As described herein, Petters and others were later indicted and charged with using PCI to orchestrate a massive Ponzi scheme. Petters's criminal trial on these charges began on October 26, 2009.

49. Prior to September 24, 2008, the date on which the FBI search warrants were executed, Plaintiffs had no reason to suspect that any of the monies loaned to PGW were used to support a Ponzi scheme being conducted at PCI.

**C. *The Conspiracy to Deprive Plaintiffs of the Benefits of Polaroid's Stock and Assets.***

50. In early 2008, the global credit crisis caused Petters and the defendants to experience difficulty in obtaining additional financing. By early February 2008, this lack of new capital led Petters to use Polaroid to attract additional money. Knowing that Polaroid had been pledged to Plaintiffs, Defendants engaged in an elaborate scheme to delay and deprive Plaintiffs of the benefits flowing from their bargained-for security interests in Polaroid so that they might obtain additional funds from other lenders by fraudulently re-pledging the Polaroid assets.

51. PGW's efforts to raise money purportedly using Polaroid's assets as collateral was summarized in an email dated February 3, 2008 sent by Chee-Awai to Jeffries, subject: "FW: Amount So Far...", which set forth the amounts "potentially tabled after my discussion with Mike Clofine." It shows nine separate sources of funds for Petters's enterprises with a "low" total of \$190 million and "high" total of \$290 million. An executive of one of the funding sources listed in Chee-Awai's email, Interlachen Capital Group, testified about this fundraising effort at Petters's criminal trial. According to the witness, Interlachen believed that if it had provided the funding to PGW, Interlachen would have been secured by Polaroid intellectual property.

52. After the initial \$31 million loan made on February 1, 2008, Plaintiffs made additional loans in reliance on the value of Polaroid as represented by the Defendants and their co-conspirators, and on the Defendants' and their co-conspirators' assurances that Plaintiffs' loans were more than adequately collateralized by Polaroid. By February 19, 2008, the Plaintiffs and related funds had loaned PGW over \$100 million. Jeffries, based on the representations of Polaroid's value, continued to urge Plaintiffs to release Petters from his personal guarantees. The Petters team, however, stonewalled Plaintiffs about the release by JPMorgan of its liens over Polaroid.

53. On Saturday February 9, 2008 at 3:46 PM, Kenneth A. Rosenblum, an attorney for Plaintiffs, sent an email to Simon J. Root (PGW's outside counsel) and Baer, with copies to other Plaintiffs and PGW representatives, stating:

At your earliest convenience, please forward the following  
(soft copies preferable to the extent they exist):

1. All closing documents for the recently paid down JPM[organ]/Polaroid loan.
2. Petters/Polaroid subordinated notes.

Also, have you conducted a lien search on the Polaroid entities recently?

Thanks in advance.

A copy of this email is attached as Exhibit D.

54. Later on February 9, 2008, Simon Root sent an email at 4:57 PM to Baer, Chee-Awai and O'Shaughnessy asking "Was the JPM[organ] loan paid off on Friday?" Baer forwarded this email to Jeffries at 7:29 PM that night. At 9:48 PM that evening Jeffries emailed Robert McDonough at Polaroid and Thomas Beaudoin asking "Did the loan get paid off. I know we have till Tues. Thanks. Mary."

55. McDonough replied on Sunday at 21:08 GMT stating as follows:

The JPM[organ] revolver has not been paid off yet. We are still waiting for direction from PGW that Tom's additional financing has been received and is available to fund Polaroid before we notify JPM[organ].

56. Petters's team later admitted that the JPMorgan loan had been repaid. On February 15, 2008 at 12:02 PM, O'Shaughnessy sent an email to Michael J. Legamaro, an attorney for the Plaintiffs, and Simon Root, with copies to Baer, Chee-Awai and certain other Plaintiffs' representatives, stating that:

To this point I can say with certainty that *the PG* [Petters's personal guaranty] *was intended to only serve as a bridge* until we could legally make available "Polaroid" *as JPMorgan held a lien. As this is no longer the case*, the PG is no longer required. [Emphasis added]

A copy of O'Shaughnessy's email is attached hereto as Exhibit E. Thus, the \$31 million Plaintiffs loaned to PGW on February was used to repay the \$31 million obligation by Polaroid to JPMorgan.

57. Moreover, on information and belief, on February 14, 2008, JPMorgan sent a “payoff letter” to PGW confirming that, upon receipt by JPMorgan of the amount specified in such letter, JPMorgan’s liens on the Polaroid stock and assets would be automatically released. On information and belief, the specified payoff amount was delivered to JPMorgan on or about February 14, 2008, and JPMorgan’s liens on Polaroid were accordingly released. Additionally, also on information and belief, JPMorgan returned Polaroid’s stock certificates on or about February 15, 2008. The stock was returned to Polaroid Holding Company, a wholly-owned subsidiary of PGW that was the registered holder of 100% of the capital stock of Polaroid. Thus, as of at least February 15, 2008, Plaintiffs should have succeeded to JPMorgan’s lien on Polaroid.

58. Almost immediately thereafter, Defendants began a game of “keep away” in connection with the Plaintiffs’ bargained-for interests. On February 19, 2008, Plaintiffs entered into the Note Purchase Agreement with Petters and PGW covering Plaintiffs’ \$31 million loan and other loans made by Plaintiffs and related investment funds. Although the JPMorgan lien on the Polaroid stock and assets had been released, Petters remained personally obligated on the loans. In addition to PGW’s promise to grant a security interest in Polaroid as collateral for Plaintiffs’ loans, the note evidencing Plaintiffs’ \$31 million loan to PGW also contained the following clause:

This Note is guaranteed personally by Thomas J. Petters, the owner of all of the issued and outstanding stock of the Borrower; provided, however, that the parties shall endeavor, as soon as reasonably practicable, to secure this Note (along with all other Notes of this tranche, *pari passu*) by a pledge of 100% of the capital stock of Polaroid Holding Company, LLC and the capital stock of its one hundred percent subsidiary the Polaroid Corporation (collectively, the “Polaroid Companies”).

59. Unbeknownst to Plaintiffs, Petters and Defendants had no intention to “endeavor” to pledge to Plaintiffs the capital stock of Polaroid Holding Company, LLC or Polaroid Corporation.

**D. *Defendants Execute their Scheme to Defraud Plaintiffs.***

60. Having delayed perfection of Plaintiffs’ security interest in Polaroid, Petters and the Defendants were able to, in effect, fraudulently re-pledge those assets to raise additional capital or stave off other creditors. One example of Petters’s and Defendants’ fraud is the so-called Acorn security interest. Unknown to Plaintiffs, PGW granted another entity, Acorn Capital Group LLC (“Acorn”), a lien on many of Polaroid’s assets on or about February 29, 2008 as security for a loan Acorn made to another of Petters’s companies. On information and belief, on or about May 12, 2008, PGW granted Acorn a security interest in additional Polaroid assets, including the North American trademarks. This grant of security to Acorn demonstrates Petters’s and Defendants’ fraud; they used Plaintiffs’ funds to release JPMorgan’s liens against Polaroid and then re-pledged Polaroid assets to different lenders.

61. In or about April 2008, Jeffries knew that PGW’s financial condition was deteriorating rapidly. On Sunday, April 13, 2008 at 1:47 PM, Jeffries sent the following email to Petters outlining the disastrous conditions at Polaroid:

Subject: Messages with Mike re Polaroid.

Goal is to stop the Chaos, reunite the team, stabilize Polaroid, secure financing and monetize (get some of TJP money off the table!)

STOP THE LOSSES by continuation of the restructuring, cutting cost and change the LCD strategy to a TRUE direct with factory or retailer

TABLE BMA MIGRATION. We were driving to a business model that was not effective, split the teams in a senseless way, was too expensive, was not accomplishing goal of a true direct model (up to 55 people and we still had much of risk)

SLOW [the earlier transaction to sell Polaroid's North American trademarks] (DONE)

GET the business financed...need ABL

ENGAGE WORLD CLASS ASSISTANCE in creative monetization strategies QUICKLY-working with Tissman at Rothschild this week-driving to a meeting with broader group following week when Philippe in town and also biased to supporting Mike if there is a deal to be had

Finalize organization and responsibilities/accountabilities and drive toward hiring a CEO and a Licensing Expert.

EXECUTE

Hope that helps, this is what I will be driving.

Thanks

Mary

Jeffries, of course, did not convey her dire warnings to Plaintiffs, despite being fully aware that the Plaintiffs were relying on the Polaroid assets for repayment of their loans to PGW made in February 2008, all of which were due in full in May 2008. Further, although Jeffries's email shows that PGW "slowed" the original sale of Polaroid's North American trademarks, in a telephone call on or about May 1, 2008, Petters intentionally mislead Plaintiffs by stating to Thane Ritchie that the brand management company wanted to withdraw from the transaction due to the growing global credit crisis.

62. Approximately two weeks later, on Thursday, April 24, 2008, Baer sent an email to Petters, Deanna Coleman, Chee-Awai, and certain other PGW and Polaroid employees. Baer's email stated:

I just wanted to remind you all that the first Ritchie Note becomes due one week from today – NEXT THURSDAY, May 1, 2008 for \$31M and notes follow quickly after that on a daily basis. A detailed schedule with interest calculation is attached.

[Another investor] has stated very clearly that they want their \$25M plus interest and Ritchie, I understand, expects another \$25M - \$50M repaid.

Are we prepared to handle these repayments? Should we be

working on these matters now? How would you like me to assist?

David

63. Although Defendants and their co-conspirators, including Petters, were acutely aware of PGW's precarious financial situation, they continued to represent that the Polaroid assets had enormous value.

64. Specifically, in or about May 2008, Jeffries and Chee-Awai began to oversee a massive effort to demonstrate the value of Polaroid. Jeffries began working with the Dean of the School of Business at Miami University (Ohio), to develop innovative methodologies to show Polaroid's value. In June and July 2008, Jeffries and Chee-Awai worked with investment managers and financial analysts to prepare a presentation package for potential investors in Polaroid. Jeffries proposed that the collateral to be offered in those presentations would include Polaroid's assets. Documents produced by Jeffries for this presentation package demonstrated that Polaroid's value exceeded \$1 billion.

65. The material for this presentation also emphasized pending plans to use the Polaroid trademarks in connection with a new "zero ink" printing technology called Zink as well as the potential to license Polaroid's trademarks. Defendants and their co-conspirators also discussed with Plaintiffs the potential sale of Polaroid's trademarks in India to a group of investors referred to by Defendants as the "Spice Group."

66. Based on the representations of the value of Polaroid's assets, in May 2008 Plaintiffs agreed to extend the due dates on the Notes to late July/early August and PGW succeeded in obtaining additional loans from two of the Plaintiff Funds. Most importantly, Jeffries, Chee-Awai and others confirmed that the additional loans obtained in May 2008 would be used for PGW's ongoing working capital needs.

67. On June 20, 2008, Petters and his team, including Defendants, their co-conspirators O'Shaughnessy, Baer and others, made a series of presentations to Plaintiffs' representatives at PGW's headquarters in Minneapolis, Minnesota. Petters and his team communicated to Plaintiffs the agenda and purpose of this meeting via an email dated June 19, 2008 and various telephone calls. The presentations made by Defendants and their co-conspirators to Plaintiffs on June 20, 2008 included discussions about Polaroid's international trademark licensing and the launch of a Polaroid/Zink strategy. These presentations were made to give Plaintiffs further assurances as to the adequacy of the Plaintiffs' interest in Polaroid as security for their loans and Plaintiffs relied on such representations in subsequent negotiations with Petters and PGW over extensions of the due dates of Plaintiffs' loans to PGW.

68. In late July 2008, Jeffries continued to prepare presentations seeking funds using Polaroid's assets and had already contacted several potential lenders. On July 29, 2008, Jeffries emailed the investment banking group assisting her with the presentations, explaining that the purpose of the fundraising was to benefit PGW and touting the prospects of licensing Polaroid's trademarks. Jeffries's email states, in part, as follows:

Tom Petters has \$400M+ invested (equity, debt and accrued interest) in Polaroid Holding Company and wants to free up some of this capital as quickly as possible for other PGW business needs.

\* \* \*

We just returned from India and had successful discussions with a group from India to license the Polaroid brand and pay \$200M upfront fee and 3% royalty above \$1B in sales. KPMG was hired while we were in India to complete a review of the transaction and also to lay out a timetable to close on a deal.

**E. *Plaintiffs Exercised Due Diligence to Assure the Protection of Their Investments.***

69. By mid-July 2008, the India trademark deal and other deals being discussed by Petters had not been completed, and Petters asked Plaintiffs for additional extensions on the loans. Before agreeing to any further extensions, Plaintiffs made further efforts to confirm that Polaroid's assets provided ample additional collateral and they continued to conduct extensive due diligence.

70. Petters and Jeffries failed to finalize the sale of the Indian trademark to the Spice Group as promised, and in late July 2008, RCM sent one of its employees to PGW's office to verify the security of Plaintiffs' loans.

71. While at PGW's offices, RCM's employee met with the Defendants as well as Deanna Coleman concerning the security of Plaintiffs' loans. Deanna Coleman is the FBI informant that brought the PCI Ponzi scheme to the attention of the authorities (and whose office was next to Jeffries and across the hall from the offices of Petters and Baer). In the course of his meetings, RCM's employee asked these executives what turned out to be embarrassing questions regarding, among other things, certain spreadsheets provided by one of Petters's executives purporting to show that Plaintiffs' loans could be secured by PCI's receivables in addition to the Polaroid security interests they had already acquired.

72. As a result of the RCM employee's interviews, Petters sent an email on August 1, 2008 to the RCM employee, Deanna Coleman, David Baer, Jim Wehmhoff and Thane Ritchie stating

I spoke to Deanna this morning we asked that she not send any information on PCI transactions since you [i.e. Plaintiffs] are not using this as a form of collateral.

73. Petters made this statement to further assure Plaintiffs that Plaintiffs' loans collateralized by Polaroid had nothing to do with PCI.

74. On August 12, 2008, Acorn filed suit to foreclose on a Petters's personal guarantee securing the obligation to Acorn, alleging that Petters's companies had defaulted on their obligations to Acorn. The suit alleged that Acorn held security interests in Polaroid. When Thane Ritchie learned of the Acorn suit, he immediately demanded to know why Acorn was alleging an interest in Polaroid when Petters and Defendants had repeatedly told Thane Ritchie that no one other than the Plaintiffs would be secured by Polaroid. In response, Petters denied that Acorn had any legitimate security interest in Polaroid.

75. In early August 2008, as the extended maturity date on the notes evidencing PGW's obligations to Plaintiffs (the "Notes") approached, Petters asked Plaintiffs for another extension. In response, Plaintiffs demanded that PGW and Polaroid memorialize that Plaintiffs' loans to PGW were secured by Polaroid and conducted additional due diligence and investigations to confirm the adequacy of the collateral for their loans.<sup>2</sup> For several weeks Plaintiffs negotiated over terms with Petters, Jeffries, Baer, and PGW's outside counsel, Simon Root. Jeffries made the presentation on Polaroid's value and urged that there be a reduction in the interest rate on the Notes to emphasize the fact that such Notes were over-collateralized and adequately secured by Polaroid's remaining unencumbered assets.

76. On September 19, 2008, Plaintiffs finally agreed to extend the maturity dates on the Notes and the parties executed an Extension and Amendment Agreement. This agreement extended the maturity dates on the Notes in exchange for an agreement that memorialized Plaintiffs' interests in some of Polaroid's assets and also provided for the pledge to Plaintiffs of

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<sup>2</sup> Plaintiffs submit that RCM's investigation into their security interests in the summer of 2008 prompted Deanna Coleman to become an informant to the FBI. Thus, the due diligence exercised by Plaintiffs' employees directly led to the collapse and exposure of Petters's fraudulent activities at PCI.

certain intercompany notes made by Polaroid in favor of Petters Capital, LLC, Thomas Petters, Inc. and PCI.

77. The logic of the September 19, 2008 Polaroid trademark agreement is simple: despite the clear intention of the parties months earlier to secure Plaintiffs' loans with Polaroid assets and upon learning that Petters and Defendants may have nonetheless "shopped" Polaroid to Acorn and other prospective lenders even after Ritchie had provided the funds to pay off the JPMorgan indebtedness, Plaintiffs chose the most prudent path to protect their investment. In addition to taking security interests in some notes issued by Polaroid, Ritchie, based on the enormous value of Polaroid, agreed to retain as security a prized portion of Polaroid's assets—its trademarks in Brazil, India and China—and thereby formally memorialized the valuable collateral security interests for Plaintiffs' loans while avoiding any costly confrontation with Acorn or other lenders who believed they had a lien on other Polaroid assets.

78. The Extension Agreement extended the maturity date of the Notes to December 19, 2008, and amended a variety of the terms of the note purchase agreement governing those Notes. The Trademark Security Agreement and one of the intercompany note pledge agreements were executed simultaneously with the execution of the Extension Agreement, and the parties agreed to execute (and did execute) a second intercompany note pledge agreement (the terms of which had been agreed to on September 19, 2008) was executed on September 26, 2008. These agreements resulted in the perfection of security interests, in favor of Plaintiffs, in the following collateral, as security for the Notes: (a) Polaroid's Brazil, China and India trademarks; and (b) intercompany promissory notes, in an aggregate principal exceeding \$170 million, issued by Polaroid and Polaroid Consumer Electronics LLC in favor of Petters Capital, LLC, PCI and Thomas Petters, Inc.

79. Polaroid received ample benefit in exchange for its grant of security interests from the moment in February 2008 when the Plaintiffs wired the first \$31 million to PGW. Such benefits continued through September 2008, and those benefits constituted reasonably equivalent value for the granted security interests. Without limitation, those benefits included: (i) providing the funds used to repay the JPMorgan loan in February 2008; (ii) providing funds to, on information and belief, repay some or all of Polaroid's obligation to Acorn; and (iii) maintaining the stability of Petters and PGW, the sole owners of Polaroid, which was essential for the stability of Polaroid. For example, PGW was an important source of financing for Polaroid. The security interests granted to Plaintiffs by Polaroid enabled PGW to negotiate an extension of the loans from Plaintiffs and thus avoid default on the Notes (and, in turn, to avoid various cross-defaults on other indebtedness), which would have placed considerable financial strain on PGW and Polaroid, its wholly-owned subsidiary, and such defaults would have served to de-stabilize Polaroid and its business. Furthermore, Plaintiffs ensured that the terms of the security agreements permitted Polaroid the flexibility it requested to obtain working capital, and specifically permitted Polaroid to incur up to \$75 million of working capital loans and to use all of its assets to secure such loans.

80. The Notes, the Extension Agreement and the Trademark Security Agreement include choice of law and venue provisions specifying that the agreements shall be governed under the laws of Illinois and that any disputes arising thereunder shall be resolved in the courts in Illinois.

81. From February 2008 through September 2008, Plaintiffs believed, based on the data and information provided by Defendants and their co-conspirators, that Polaroid was solvent, and had no reason to believe it was insolvent at any time. Indeed, in her sworn

testimony given at the hearing to approve the fire-sale of Polaroid, Jeffries conceded that during the summer of 2008, Polaroid had received an offer of \$200 million for its India trademarks, and that the offered amount reflected the fair value of those assets at that time.

**F. *Petters and His PCI Business Are Implicated in a Massive Fraud Scheme.***

82. Unbeknownst to Plaintiffs at the time, on September 19, 2008, Judge Ann D. Montgomery, United States District Judge for the District of Minnesota, authorized the issuance of a Search Warrant for Petters, PCI and others.

83. On September 24, 2008, federal authorities executed these Search Warrants on Petters and others. On October 2, 2008 a federal warrant was issued for Petters's arrest. Petters was arrested on October 3, 2008 and charged with operating a massive fraud and Ponzi scheme at PCI, the second largest such scheme uncovered to date in United States history, second only to that of Bernard Madoff. Petters was considered a flight risk and was therefore denied bail and remains in custody today.

84. On December 1, 2008 the Grand Jury indicted Thomas J. Petters, PCI and PGW (a copy of the Indictment is attached as Exhibit F) in connection with the PCI Ponzi scheme. It is clear from the facts alleged in the Indictment that the fraud alleged in this instant Complaint constitutes a scheme separate and apart from the alleged PCI Ponzi scheme outlined in the Indictment.

85. According to the Indictment, funds obtained by Petters and his companies to purportedly make wholesale purchases of merchandise were instead used to: (i) make "lulling payments" to investors; (ii) reward individuals who participated in the scheme; (iii) fund other Petters businesses; and, (iv) fund "Petters's extravagant lifestyle."<sup>3</sup> While the indictment names

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<sup>3</sup> The FBI's affidavit supporting this search warrant states that Petters lifestyle costs are estimated as \$266,000 a month; \$3,192,000 a year.

PGW as a defendant, it does not allege that any of the legitimate companies owned by PGW, such as Polaroid, were involved in Petters's criminal activities. Petters's criminal trial began on October 27, 2009.

**G. *Petters Engages Kelley as Corporate Counsel and Petters's Empire is Placed Into Receivership and Bankruptcy.***

86. On Wednesday, September 24, 2008, members of Plaintiffs' business team traveled to Minneapolis to meet with PGW's management to discuss strategies to monetize Polaroid's and other PGW companies' assets, which they had been led to believe had significant value. Upon their arrival, Plaintiffs' team learned that the FBI had executed the Search Warrant on PCI earlier that morning, and they reported the raid to Thane Ritchie. Thane Ritchie contacted Petters that day. Petters told Ritchie that there had been no wrongdoing, that the authorities would find no evidence of wrongdoing and that he was confident about the future of the companies. Thane Ritchie was concerned about the protection of PGW's companies and Plaintiffs' creditors' rights and continued to communicate with Petters during the remainder of the week. Thane Ritchie became increasingly concerned that Petters was so distracted by the investigation that his companies were not being effectively managed. On or about September 27, 2008, Thane Ritchie proposed that Petters engage William Procida ("Procida"), an experienced workout specialist, to manage PGW to protect the value of PGW and Polaroid. Petters agreed to hire Procida.

87. Petters had good reason to be distracted by the events as they unfolded following the FBI raid. On or about September 25, 2008, Baer resigned as PGW's general counsel. Baer's assistant also resigned, as did PGW's outside counsel. With the flight of corporate counsel in the midst of his legal crisis, Petters needed new counsel to represent his companies. Petters was referred to Kelley. On Friday, September 26, 2008, Petters and his personal attorney met with

Kelley for an hour and a half over lunch to discuss retaining Kelley to represent Petters's companies. Kelley accepted the engagement.

88. The next day, Saturday, September 27, 2008, Kelley entered into negotiations with the U.S. Attorney over the disposition of the assets of Petters's companies. According to Kelley, the Government stated that it would delay a forfeiture action against Petters's companies if Kelley could assure the Government that Kelley would have substantial control of those companies. Later that same Saturday, Kelley met with Petters and his personal attorney to discuss turning control of Petters's companies over to Kelley. Petters tentatively agreed and Kelley informed the U.S. Attorney of Petters's agreement.

89. The following day, Sunday September 28, 2008, Kelley again met with Petters and his lawyer. Petters agreed to relinquish control of his companies to Kelley, which enabled a continuation of the fraud that had begun over six months earlier – the deliberate and illegal attempt to deprive Plaintiffs of their valid security interests in Polaroid assets.

90. On September 29, 2008, Petters resigned his positions with PCI and PGW, and Kelley assumed control over Petters's companies as corporate counsel. At around the same time, the Plaintiffs filed an action in the State of Illinois Circuit Court of Cook County (the "Illinois Action") to enforce their rights against PCI and PGW. Thane Ritchie and Procida promptly flew to Minnesota and met that day with Kelley to advise Kelley of the filing of the Illinois Action and discuss a process to preserve the assets of PCI and PGW for the benefit of their creditors. Plaintiffs obtained an order in the Illinois Action freezing the assets of PCI and PGW. A copy of this Order was served on Kelley on September 30, 2008. Kelley ignored this Order.

91. On October 2, 2008, federal authorities filed a Complaint for Permanent Injunction and Other Equitable Relief against the following individuals and entities:

1. Thomas Joseph Petters dba Petters Company Inc., PCI;
2. Deanna Coleman aka Deanna Munson;
3. Robert White;
4. James Wehmhoff;
5. Larry Reynolds dba  
Nationwide International Resources  
aka NIR;
6. Michael Catain dba Enchanted Buying Company;
7. Frank E. Vennes Jr. dba Metro Gem Finance,  
Metro Gem Inc.,  
Grace Offerings of Florida LLC,  
Metro Property Financing LLC,  
38 E. Robinson, LLC,  
55 E. Pine LLC,  
Orlando Rental Pool, LLC,  
100 Pine Street Property, LLC,  
Orange Street Tower, LLC,  
2 South Orange Avenue, LLC,  
Hope Commons, LLC,  
Metro Gold, Inc.,

Notably, this Complaint did not name or seek any relief against PGW or Polaroid.

92. With its Complaint for Permanent Injunction and Other Equitable Relief, the Government filed an *ex parte* Motion for Temporary Restraining Order, which was granted in an order dated October 3, 2008 (the “October 3, 2008 Order”) and which froze all of Petters’s and PCI’s assets.

93. The October 3, 2008 Order expressly excluded from its scope Polaroid and other PGW-operated companies by stating:

IT IS FURTHER ORDERED THAT nothing in this Temporary Restraining Order shall be construed to restrain the assets of Polaroid Corporation and its subsidiaries, Polaroid Holding Company and its subsidiaries, Zink Imaging, Inc., Zink Imaging, LLC, MN Airlines LLC dba Sun Country Airlines, Petters Aviation, LLC, MN Airline Holdings, Inc., Petters Aircraft Leasing, LLC, and/or Southwest Aviation, Inc. [at p 5].

The October 3, 2008 Order set a hearing for October 10, 2008 to consider the *ex parte* TRO affecting PCI.

94. On October 3, 2008, an order was entered in the Illinois Action appointing Procida as Receiver over PCI's and PGW's assets (the "Illinois Receivership Order").

95. After learning of Procida's appointment as Receiver by the Illinois Court, Kelley immediately moved to block Plaintiffs and assert undisputed control over the most-valuable assets of PGW and its operating companies, primarily Polaroid. Over the weekend of October 4 and 5, 2008, Petters and Kelley ignored the Illinois Receivership Order and engineered (i) Petters's transfer of control over all of Petters's companies to Kelley's law partner, Steven Wolter, by an Irrevocable Proxy, dated October 5, 2008; (ii) the filing of a First and Second Amended Complaint in the Federal Receivership Action, which now added to its scope PGW and its affiliates and their assets; and (iii) a Stipulation purportedly signed by the U.S. Attorney and Petters's attorney on October 5, 2008, authorizing the entry of a Preliminary Injunction freezing all of Petters's, PGW's and PCI's assets as well as Kelley's appointment as Receiver.

96. Despite the existence of the Illinois Court's asset-freeze order and the Illinois Receivership Order, the Government's Amended Complaints filed on October 6, 2008 asserted that *ex parte* relief was necessary to secure assets in the hands of "Defendants" in order to prevent irreparable harm, but failed to disclose that a Receiver had already been appointed in the Illinois Action, that Petters was in jail, and that Petters's assets, including PCI and PGW, were already under Kelley's control.

97. On October 6, 2008, the Government and Petters, personally, presented a Stipulation to the United States District Court Judge in the federal receivership action entering a preliminary injunction freezing PGW's assets and appointing Kelley Receiver over PCI and PGW. The Stipulation, which approved the form of the receivership order authorizing Kelley to file a petition for bankruptcy relief for PGW, was not signed by PGW or any of the other Petters

entities. There is no evidence that the Amended Complaint or Stipulation were served on PGW or any of its operating companies before the receiver was appointed. The October 6, 2008 order approving the Stipulation was apparently obtained *ex parte* without a written motion or a supporting affidavit and without the Court being informed that on October 3, 2008, Procida had been appointed by an Illinois State Court as Receiver for PGW and PCI.

98. The entire process of Kelley's October 6, 2008 appointment as Receiver was highly irregular and denied PGW the benefit of any independent counsel. *See, e.g.*, Affidavit of Garrett M. Vail, attached as Exhibit G.

99. PCI and PGW filed voluntary bankruptcy petitions in the United States Bankruptcy Court in Minnesota on October 11, 2008. Kelley was later named trustee over PCI's and PGW's bankruptcy estates.

100. Thus, by October 11, 2008, Kelley had established complete control over the Petters empire, including all of the valuable assets in Polaroid. In his control position, Kelley has been able to hire numerous attorneys, accountants and other professionals in the Minneapolis, Minnesota area. Among those professionals is his law partner, Steven Wolter. Wolter serves as Kelley's and ultimately Petters's "alter ego" by virtue of the Irrevocable Proxy dated October 5, 2008 granted by Petters to Wolter over the voting stock of all companies owned by Petters.

101. Rather than fulfilling his fiduciary obligations to the Petters companies he represented as attorney or his fiduciary obligations to PGW as its bankruptcy Trustee, Kelley cooperated with the Government's forfeiture plans. This cooperation, coupled with the apparent secrecy of the court proceedings, dictates the inference that Kelley has multiple conflicts of interest that have harmed PGW creditors like Plaintiffs. Kelley's cooperation with the threatened

forfeiture of legitimate PGW assets raises multiple conflicts of interest arising from Kelley's obligations as PCI's and PGW's attorney, PCI's and PGW's Bankruptcy Trustee, and as Receiver for Petters, PCI, PGW and others including Deanna Coleman, who testified at Petters's trial that she received millions of dollars from Petters's fraud scheme. Kelley cannot fulfill his duty as Receiver to ensure that PGW's assets are available for forfeiture and simultaneously fulfill his fiduciary duty as Trustee for PGW to oppose forfeiture on behalf of PGW's creditors. Moreover, by acting as PCI's Receiver and attempting to remove assets from the PGW estate to benefit victims of Petters' fraud at PCI (most of which victims are not otherwise legitimate creditors of PGW, as are Plaintiffs), Kelley cannot at the same time faithfully fulfill his statutory and fiduciary duties to PGW's creditors in his capacity as PGW's Trustee.

**H. *Jeffries is Retained to Operate Polaroid after Petters's Companies Are Placed into Receivership and Bankruptcy, and She Continues Her Fraudulent Conduct.***

102. In the Receivership and Bankruptcy proceedings, Kelley has ignored the fraud alleged in this Complaint and has apparently protected Jeffries and Chee-Awai and disregarded the harm they have caused to Plaintiffs. Petters purchased the concurrence and connivance of Defendants by, among other things, paying Defendants and their co-conspirators millions of dollars in bonuses to ensure their continued cooperation. Indeed, Jeffries's \$1 million bonus, as well as bonuses paid to others, is described in an affidavit sworn to by FBI special agent Eileen Rice as part of the "dissipation of assets" received through the PCI Ponzi scheme. In his position as bankruptcy trustee for PCI, Kelley should presumably claw back these bonuses. Jeffries, however, in exchange for her cooperation with Kelley's plans to forfeit PGW's assets to the Government, has received undeserved praise from Kelley and has been allowed by Kelley to retain the multi-million dollar bonuses she received from Petters. What's more, Kelley has paid all of Jeffries's legal fees from receivership assets.

103. Further, although Kelley terminated most of Petters's companies' employees, he retained Jeffries—the very individual who had conspired to deprive Plaintiffs of their security interests in Polaroid throughout the spring and summer of 2008—as Polaroid's CEO. By her own admission, Jeffries served as COO of PCI in 2005—the same period of time that the Government contends that PCI ran a \$3 billion Ponzi scheme. In view of Jeffries' executive position at PCI at a time when it had no business other than the diverting business that is now alleged to have been a fraudulent, non-existent business, it is nothing short of stunning that Kelley (i) allowed Jeffries to continue to be employed at ANY business over which he had control (let alone as CEO of Polaroid, the most valuable asset remaining in the Petters empire), and (ii) has not called for an investigation of Jeffries as a participant in the PCI Ponzi scheme.

104. On information and belief, Jeffries' and Chee-Awai's ability to conceal or escape the consequences of their fraudulent conduct described herein is the direct result of their agreement to cooperate with Kelley's efforts to turn over all of Petters's companies assets to the Government in a forfeiture action by claiming that PGW's operating companies such as Polaroid were purchased with funds derived from the PCI Ponzi scheme.

105. On information and belief, Jeffries' cooperated with Kelley to include false and misleading information in the List of Creditors Holding 20 Largest Unsecured Claims that were filed with PCI's and PGW's bankruptcy petitions. In the List of Creditors for PCI, which Kelley declared under penalty of perjury as true and correct, the Plaintiffs' loans to PGW were listed as "CONTINGENT, UNLIQUIDATED, DISPUTED" claims against PCI. The PGW List of Creditors listed no creditors at all, stating only that "Debtor is currently compiling a list of creditors and will supplement when that information becomes available."

106. Jeffries's false statement in the relevant bankruptcy filings—i.e., that Plaintiffs made no loans to PGW but only to PCI—has proximately caused millions of dollars in damage to Plaintiffs.

107. As stated by RCM's John Kermath:

7. When Receiver Douglas Kelley ("Kelley") filed bankruptcy petitions for PCI and PGW in October 2008, Kelley incorrectly asserted under oath that all of RCM's funds' loans were made to PCI, not PGW. Kelley's October 2008 sworn affidavit was not and is not correct. Indeed, Kelley's incorrect statement was made after Kelley (and Jeffries) incorrectly claimed – just one day before filing bankruptcy – that his "primary objective for the time being is to manage the companies under receivership in a manner geared towards maximizing the return for all of the affected creditors." Despite such misleading statements to PGW's largest creditor, Kelley incorrectly stated under oath one day later that RCM and its funds had loaned no money to PGW.

8. I knew that Kelley's inaccurate statement – in essence, alleging that RCM and its funds had willingly supported Petters's Ponzi scheme in PCI – would have serious and harmful consequences to RCM and its funds. Indeed, RCM wrote Kelley both before and immediately after Kelley's bankruptcy filing and set forth that RCM and its funds had loaned substantial sums to PGW. Despite such communication, Kelley incorrectly attested that no RCM loans were made to PGW but only to PCI. These communications about the loans to PGW were made specifically with Kelley and others.

9. Kelley's incorrect bankruptcy filing – i.e. his statement that RCM funds made no loans to PGW but only to PCI – has caused millions of dollars in damage to RCM and its funds. Specifically, I submit that a substantial lender to the RCM funds relied on Kelley's incorrect statement and, as a result, demanded early repayment of credit and, in effect, accelerated RCM's obligations. Such withdrawal and acceleration damaged RCM and its funds in an amount currently calculated in excess of \$100 million. Kelley's and Jeffries's misconduct has caused these ongoing damages.

Affidavit of John Kermath, Exhibit B.

108. On December 18, 2008, Kelley and Jeffries placed Polaroid into bankruptcy. In a fraudulent effort to void Plaintiffs' security interests in Polaroid, Jeffries falsely stated under oath

to the bankruptcy court that all funds from Plaintiffs' loans went to the PCI Ponzi scheme. This was yet another overt act in Defendants' scheme, hatched in February 2008 after Plaintiffs made their loans to Petters and PGW, to deprive Plaintiffs of their security interests in Polaroid.

109. On information and belief, Polaroid was not, in fact, in need of bankruptcy protection. In fact, Jeffries admitted in the press that "Our [Polaroid's] operations are strong and during this process Polaroid will ship products to our retail partners, work with our suppliers and contract manufacturers to fulfill retailer demand." Rather, Jeffries's and Kelley's sole purpose in placing Polaroid into bankruptcy was a bad faith attempt to void Plaintiffs' (and others') security interests in Polaroid, based on the false assertion that Plaintiffs' loans were not made for the benefit of Polaroid. The filing of the bankruptcy petition was also specifically timed so as to place the Plaintiffs' September 19, 2008 security interest within the 90-day bankruptcy preference period.

110. On February 12, 2009 Polaroid filed an adversary complaint (the "Polaroid Complaint") in the United States Bankruptcy Court for the District of Minnesota captioned *In re: Polaroid Corporation, et al, Debtors and Polaroid Corporation, Plaintiff, vs. Ritchie Capital Management, LLC, et al, Defendants*.

111. The Bankruptcy Court then allowed an auction sale of Polaroid's assets and has thus far refused to recognize Plaintiffs' security interest in Polaroid. The basis for the Bankruptcy Court allowing the sale of Polaroid's assets to go forward in a "363 sale" is found in verified statement of Jeffries, who swore under oath that the Polaroid Complaint truthfully alleges that "Ritchie invested at least \$146 million into PCI as part of the fraudulent Ponzi scheme . . . ," and that "at no time did Ritchie invest in, or advance any funds to Polaroid or to PGW for that matter."

112. The statements from the Polaroid Complaint verified by Jeffries are false, and Jeffries knew such statements were false. For instance, as a participant in the February 1, 2008 conference and as the COO of PGW, Jeffries knew that the \$31 million loaned to PGW by Plaintiffs was intended to be used – and was in fact used – to satisfy Polaroid’s obligation to JPMorgan. Jeffries, in fact, had urged Plaintiffs to release Petters’s personal guarantees and also stated that Plaintiffs were “over-collateralized” by their security interests in Polaroid’s assets, and Jeffries herself therefore knew at the time that such security interests were a key component of the deal agreed to in February 2008.

113. Moreover, Jeffries knew in February 2008 that the Plaintiffs’ loans were made to PGW for the purpose of enabling Polaroid, its wholly-owned subsidiary, to pay an obligation to JPMorgan that encumbered Polaroid’s assets. Indeed, in her February 10, 2008 email, Jeffries asked whether the JPMorgan obligations had been repaid. The response to Jeffries email from McDonough advised that: “We are still awaiting direction *from PGW* that Tom’s additional financing has been received...” (Emphasis added.) It is, therefore, clear from McDonough’s email that PGW was controlling the funds from Plaintiffs that would be used to pay off JPMorgan.

114. Jeffries’s false statements in the Polaroid Complaint have caused significant harm to the Plaintiffs because, among other things, the Polaroid assets that were provided as security to the Plaintiffs have now been sold through the bankruptcy process, without Plaintiffs being afforded the ability to use the value of their security interests in Polaroid to “credit bid” or to otherwise assert their right in Polaroid’s assets. Plaintiffs were denied the right to credit bid for the Polaroid assets primarily due to the allegations and statements contained in the Polaroid Complaint, which Jeffries knew to be false. Jeffries was the source of such false allegations and

statements, which were made in furtherance of the continuing conspiracy commenced in February 2008 and which was permitted to continue, and encouraged, by Kelley and Wolter after Petters was arrested.

115. The Bankruptcy Court overseeing the Polaroid estate permitted the fire sale of Polaroid's assets in April 2009, free and clear of Plaintiffs' liens, for approximately \$88 million, even though the Defendants represented to the Ritchie executives in February 2008 that Polaroid was worth between \$779 million and \$2 billion. The Bankruptcy Court's actions permitting such fire sale to occur were based on the allegations in the Polaroid Complaint that falsely imply that Plaintiffs were complicit in the PCI Ponzi scheme. The Polaroid Complaint is based on Jeffries's assertions that the liens were not proper and were voidable because those liens were based on monies loaned by Ritchie that did not benefit Polaroid but instead were part of the PCI Ponzi scheme. Jeffries knows that these assertions are false. Such falsehoods continue to cause damages that, to date, exceed \$100 million.

**COUNT I**  
**RICO Section 1962(a)**

116. Plaintiffs re-allege each and every allegation set forth in paragraphs 1 – 115 above, and hereby incorporates same by reference, as if all were set forth fully herein.

117. This Count is against Defendants Mary Jeffries and Camille Chee-Awai.

118. The Petters's companies constitute an enterprise engaged in and whose activities affect interstate commerce. The Petters's companies, and PGW in particular, constitute or constituted legitimate businesses that have been infiltrated by criminal activity through a pattern of racketeering activity.

119. Defendants used and invested income that was derived from a pattern of racketeering activity in an interstate enterprise. As alleged in this Complaint, Defendants used

the representation that Plaintiffs' loans would be adequately secured with Polaroid as collateral and would be used for legitimate business activities of PGW and its operating companies, including Polaroid, to fraudulently raise funds for PGW, PCI and unknown other entities under the Petters's company umbrella.

120. Defendants committed the following acts as part of a pattern of racketeering activity in violation of 18 U.S.C. § 1961(5) to facilitate their conspiracy as follows:

(a) Jeffries and Chee-Awai transmitted or caused to be transmitted by telephone and email in interstate commerce in violation of 18 U.S.C § 1343 (wire fraud) the following information and documents in furtherance of the RICO conspiracy:

1. Information soliciting interest in loaning funds to PGW secured by Polaroid in emails dated January 31, 2008 and February 1, 2008 from Johnson to Thane Ritchie.
2. Wire transfer information directing Ritchie to deposit funds in accounts other than PGW accounts sent by facsimile on February 1, 2008 or communicated by telephone on or about that date.
3. Information related to the solicitation of funds from Plaintiffs during the February 1, 2008 telephone conference between Ritchie, Petters and Jeffries.
4. Information related to the value of Polaroid assets in emails from Chee-Awai to Thane Ritchie on February 1 and 3, 2008.
5. Multiple additional interstate telephone and email communications concerning the Defendants' representations of value of Polaroid as collateral for Plaintiffs' loans and the use of Plaintiffs' loans made through September 2008.

(b) Jeffries submitted false and misleading information to the United States Bankruptcy Court for the District of Minnesota in violation of 18 U.S.C § 1343 (wire fraud) by stating in the Consolidated Reply filed with that Bankruptcy Court, in pertinent part, that "Ritchie invested at least \$146 million in PCI" and that "at no time did Ritchie invest in, or advance any funds to Polaroid or to PGW for that matter."

121. Plaintiffs loaned millions of dollars to the enterprise and extended the maturity dates of such loans based on Defendants' representations. Defendants and their co-conspirators used and invested funds obtained from Plaintiffs through Defendants' racketeering activity in the operations of the Petters companies enterprise and denied Plaintiffs the benefits of the interests granted Plaintiffs in Polaroid.

122. As a direct and proximate result of Defendants' racketeering activities and violations of 18 U.S.C. § 1962(a), Plaintiffs have been injured in their business and property in that the Defendants conduct caused Plaintiffs to lose the valuable Polaroid security interests for which they bargained in good faith and for which ample consideration was paid.

WHEREFORE, Plaintiffs request that this Court enter judgment against Defendants as follows:

- a. That the Court enter a judgment in favor of the Plaintiffs, Ritchie Capital Management, L.L.C.; Ritchie Special Credit Investments, Ltd.; Rhone Holdings II. Ltd.; Yorkville Investments I, LLC; and Ritchie Capital Structure Arbitrage Trading, Ltd., and against the Defendants, Mary Jeffries and Camille Chee-Awai;
- b. That the Court award the Plaintiffs an amount equal to three times their damages pursuant to RICO laws;
- c. That the Court award Plaintiffs their attorneys' fees and costs in bringing this action; and
- d. For such other and further relief as the Court deems just.

**COUNT II**  
**RICO Section 1962(c)**

123. Plaintiffs re-allege each and every allegation set forth in paragraphs 1 – 115 above, and hereby incorporates same by reference, as if all were set forth fully herein.

124. This Count is against Defendants Mary Jeffries and Camille Chee-Awai.

125. The Petters's companies constitute an enterprise engaged in and whose activities affect interstate commerce. The Petters's companies, and PGW in particular, do constitute or did constitute legitimate businesses that have been infiltrated by criminal activity through a pattern of racketeering activity. Defendants were employed by or associated with the enterprise.

126. Defendants agreed to and did conduct and participate in the conduct of the enterprise's affairs through a pattern of racketeering activity and for the unlawful purpose of intentionally defrauding Plaintiff. As alleged in this Complaint, Defendants used the representation that Plaintiffs' loans would be adequately secured with Polaroid as collateral and would be used for legitimate business activities of PGW and its operating companies, including Polaroid, to fraudulently raise funds for PGW, PCI and unknown other entities under the Petters's company umbrella.

127. Pursuant to and in furtherance of their fraudulent scheme, Defendants committed multiple acts of fraud as part of a pattern of racketeering activity in violation of 18 U.S.C. § 1961(5) to facilitate the unlawful scheme described in this Complaint and the PCI Ponzi scheme, including the following:

(a) Jeffries and Chee-Awai transmitted or caused to be transmitted by telephone and email in interstate commerce in violation of 18 U.S.C § 1343 (wire fraud) the following information and documents in furtherance of the RICO conspiracy:

1. Information soliciting interest in loaning funds to PGW secured by Polaroid in emails dated January 31, 2008 and February 1, 2008 from Johnson to Thane Ritchie.
2. Wire transfer information directing Ritchie to deposit funds in accounts other than PGW accounts sent by facsimile on February 1, 2008 or communicated by telephone on or about that date.
3. Information related to the solicitation of funds from Plaintiffs during the February 1, 2008 telephone conference between Ritchie, Petters and Jeffries.

4. Information related to the value of Polaroid assets in emails from Chee-Awai to Thane Ritchie on February 1 and 3, 2008.
5. Multiple additional interstate telephone and email communications concerning the Defendants' representations of value of Polaroid as collateral for Plaintiffs' loans and the use of Plaintiffs' loans made through September 2008.

(b) Jeffries submitted false and misleading information to the United States Bankruptcy Court for the District of Minnesota in violation of 18 U.S.C § 1343 (wire fraud) by stating in the Consolidated Reply filed with that Bankruptcy Court, in pertinent part, that "Ritchie invested at least \$146 million in PCI" and that "at no time did Ritchie invest in, or advance any funds to Polaroid or to PGW for that matter."

128. Plaintiffs loaned millions of dollars to the enterprise and extended the maturity dates of such loans based on Defendants' representations.

129. Defendants have directly and indirectly conducted and participated in the conduct of the enterprise's affairs through the pattern of racketeering and activity described above, in violation of 18 U.S.C. § 1962(c).

130. As a direct and proximate result of Defendants' racketeering activities and violations of 18 U.S.C. § 1962(c), Plaintiffs have been injured in their business and property in that the Defendants conduct caused Plaintiffs to lose the valuable security interests in Polaroid's assets for which they bargained in good faith and for which ample consideration was paid.

**WHEREFORE**, Plaintiffs request that this Court enter judgment against Defendants as follows:

- a. That the Court enter a judgment in favor of the Plaintiffs, Ritchie Capital Management, L.L.C.; Ritchie Special Credit Investments, Ltd.; Rhone Holdings II. Ltd.; Yorkville Investments I, LLC; and Ritchie Capital Structure Arbitrage Trading, Ltd., and against the Defendants, Mary Jeffries and Camille Chee-Awai;
- b. That the Court award the Plaintiffs an amount equal to three times their damages pursuant to RICO laws;

- c. That the Court award Plaintiffs their attorneys' fees and costs in bringing this action; and
- d. For such other and further relief as the Court deems just.

**COUNT III**  
**RICO Section 1962(d)**

131. Plaintiffs re-allege each and every allegation set forth in paragraphs 1 – 115 above, and hereby incorporates same by reference, as if all were set forth fully herein.

132. This Count is against Defendants Mary Jeffries and Camille Chee-Awai.

133. As set forth above, the Count III Defendants agreed and conspired to violate 18 U.S.C. §§ 1962(a) (b) and (c).

134. Defendants have intentionally conspired with each other and their co-conspirators and agreed to directly and indirectly use or invest income that is derived from a pattern of racketeering activity in an interstate enterprise, acquire or maintain interests in the enterprise through a pattern of racketeering activity, and conduct and participated in the conduct of the affairs of the enterprise through a pattern of racketeering activity.

135. Defendants knew that each of the following predicate acts were part of a pattern of racketeering activity and agreed to the commission of those acts to further the schemes described above:

(a) Jeffries and Chee-Awai transmitted or caused to be transmitted by telephone and email in interstate commerce in violation of 18 U.S.C § 1343 (wire fraud) the following information and documents in furtherance of the RICO conspiracy:

1. Information soliciting interest in loaning funds to PGW secured by Polaroid in emails dated January 31, 2008 and February 1, 2008 from Johnson to Thane Ritchie.
2. Wire transfer information directing Ritchie to deposit funds in accounts other than PGW accounts sent by facsimile on

February 1, 2008 or communicated by telephone on or about that date.

3. Information related to the solicitation of funds from Plaintiffs during the February 1, 2008 telephone conference between Ritchie, Petters and Jeffries.
4. Information related to the value of Polaroid assets in emails from Chee-Awai to Thane Ritchie on February 1 and 3, 2008.
5. Multiple additional interstate telephone and email communications concerning the Defendants' representations of value of Polaroid as collateral for Plaintiffs' loans and the use of Plaintiffs' loans made through September 2008.

(b) Jeffries submitted false and misleading information to the United States Bankruptcy Court for the District of Minnesota in violation of 18 U.S.C. § 1343 (wire fraud) by stating in the Consolidated Reply filed with that Bankruptcy Court, in pertinent part, that "Ritchie invested at least \$146 million in PCI" and that "at no time did Ritchie invest in, or advance any funds to Polaroid or to PGW for that matter."

136. That conduct constitutes a conspiracy to violate 18 U.S.C. §§ 1962(a) and (c), in violation of 18 U.S.C. § 1962(d).

137. Plaintiffs loaned millions of dollars to the enterprise and extended the maturity dates of such loans based on Defendants' representations. As a direct and proximate result of Defendants' conspiracy, the overt acts taken in furtherance of that conspiracy, and violations of 18 U.S.C. § 1962(d), Plaintiffs have been injured in their business and property in that the Defendants conduct caused Plaintiffs to lose the valuable Polaroid security interests for which they bargained in good faith and for which ample consideration was paid.

**WHEREFORE**, Plaintiffs request that this Court enter judgment against Defendants as follows:

- a. That the Court enter a judgment in favor of the Plaintiffs, Ritchie Capital Management, L.L.C.; Ritchie Special Credit Investments, Ltd.; Rhone Holdings II. Ltd.; Yorkville Investments

I, LLC; and Ritchie Capital Structure Arbitrage Trading, Ltd., and against the Defendants, Mary Jeffries and Camille Chee-Awai;

b. That the Court award the Plaintiffs an amount equal to three times their damages pursuant to RICO laws;

c. That the Court award Plaintiffs their attorneys' fees and costs in bringing this action; and

d. For such other and further relief as the Court deems just.

**COUNT IV**  
**Common law fraud**

138. Plaintiffs re-allege each and every allegation set forth in paragraphs 1 – 115 above, and hereby incorporates same by reference, as if all were set forth fully herein.

139. This Count is against Defendants Mary Jeffries and Camille Chee-Awai.

140. During the course of the conduct described herein Defendants agreed to grant Plaintiffs a senior security interest in Polaroid in exchange for loans to benefit Polaroid. Plaintiffs relied on Defendants' representations in loaning PGW substantial amounts of money. Notwithstanding these agreements, Defendants' and their co-conspirators' schemed to deprive Plaintiffs of the benefits of those security interests in Polaroid by fraudulently concealing (i) the release of JPMorgan's liens and the return of Polaroid's stock certificates from JPMorgan; (ii) Defendants' and their co-conspirators' plans to pledge and the pledge of Polaroid as collateral to obtain from third parties funds and other benefits for Polaroid, PGW and/or PCI; and (iii) the use of any of the proceeds of Plaintiffs' loans to PGW in connection with the PCI Ponzi Scheme.

141. Despite this unlawful scheme and additional pledges of Polaroid as collateral to third parties, Defendants and their co-conspirators continued to represent to the Plaintiffs that the Plaintiffs' loans were adequately secured by Polaroid.

142. If Defendants had revealed that Polaroid was being encumbered by additional third-party liens Plaintiffs would have declared their loans to PGW in default and foreclosed on

their security interests in Polaroid. However, in reliance on Defendants' and their co-conspirators' representations to the Plaintiffs that the Plaintiffs' loans were adequately secured by Polaroid, Plaintiffs granted additional extensions on the loans.

143. As a direct and proximate result of Defendants' fraudulent conduct, Plaintiffs have suffered injury by being denied the benefits of their security interests in Polaroid by, *inter alia*, being prevented from foreclosing on their security interests in Polaroid and being prevented from using their security interests in Polaroid to "credit bid" for Polaroid in the Polaroid bankruptcy proceeding auction.

**WHEREFORE**, Plaintiffs request that this Court enter judgment against Defendants as follows:

- a. That the Court enter a judgment in favor of the Plaintiffs, Ritchie Capital Management, L.L.C.; Ritchie Special Credit Investments, Ltd.; Rhone Holdings II. Ltd.; Yorkville Investments I, LLC; and Ritchie Capital Structure Arbitrage Trading, Ltd., and against the Defendants, Mary Jeffries and Camille Chee-Awai;
- b. That the Court award the Plaintiffs compensatory damages in an amount to be established at trial;
- c. That the Court award the Plaintiffs reasonable punitive damages in an amount to be determined at trial;
- d. That the Court award Plaintiffs their attorneys' fees and costs in bringing this action; and
- e. For such other and further relief as the Court deems just.

#### **COUNT V**

#### **Tortious Interference With Contract**

144. Plaintiffs re-allege each and every allegation set forth in paragraphs 1 – 115 above, and hereby incorporates same by reference, as if all were set forth fully herein.

145. This Count is against Defendants Mary Jeffries and Camille Chee-Awai.

146. Plaintiffs entered into a valid and enforceable contract with Petters to invest millions into PGW in exchange for a security interest in PGW's most valuable asset, Polaroid.

147. Defendants were aware of the contractual relations between Plaintiffs and Petters and PGW.

148. Defendants intentionally and unjustifiably induced a breach of the contract by Petters and PGW. Indeed, these defendants acted outside any qualified privilege and acted solely for their own gain and to harm the Plaintiffs' interests. Defendants' conduct was not undertaken to further PGW's interests.

149. The wrongful conduct of Defendants caused a subsequent breach of the contract by Petters and PGW.

150. As a direct and proximate result of Defendants' tortious interference with Plaintiffs' contract with Petters, Plaintiffs have been injured in their business and property in that the Defendants conduct caused Plaintiffs to lose the valuable security interests in Polaroid's assets for which they bargained in good faith and for which ample consideration was paid.

**WHEREFORE**, Plaintiffs requests that this Court enter judgment against Defendants as follows:

- a. That the Court enter a judgment in favor of the Plaintiffs, Ritchie Capital Management, L.L.C.; Ritchie Special Credit Investments Ltd.; Rhone Holdings II, Ltd.; Yorkville Investments I, LLC; and Ritchie Capital Structure Arbitrage Trading, Ltd., and against the Defendants, Mary Jeffries and Camille Chee-Awai;
- b. That the Court award the Plaintiffs compensatory damages in an amount to be established at trial;
- c. That the Court award the Plaintiffs reasonable punitive damages in an amount to be determined at trial;
- d. That the Court award Plaintiffs their attorneys' fees and costs in bringing this action; and

e. For such other and further relief as the Court deems just.

Dated: November 18, 2009

RITCHIE CAPITAL MANAGEMENT, L.L.C.,  
ET AL,

/s/ Thomas C. Cronin  
Atty. Reg. No. 6204065

/s/ John T. Cusack  
Atty. Reg. No. 0564214

/s/ Steven S. Shonder  
Atty. Reg. No. 6238090

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