

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re

**JOINTLY ADMINISTERED UNDER
CASE NO. 08-46617:**

POLAROID CORPORATION, ET AL.,

08-46617 (GFK)

Debtors.

(includes:

Polaroid Holding Company;

08-46621 (GFK)

Polaroid Consumer Electronics, LLC;

08-46620 (GFK)

Polaroid Capital, LLC;

08-46623 (GFK)

Polaroid Latin America I Corporation;

08-46624 (GFK)

Polaroid Asia Pacific LLC;

08-46625 (GFK)

Polaroid International Holding LLC;

08-46626 (GFK)

Polaroid New Bedford Real Estate, LLC;

08-46627 (GFK)

Polaroid Norwood Real Estate, LLC;

08-46628 (GFK)

Polaroid Waltham Real Estate, LLC)

08-46629 (GFK)

Chapter 11 Cases
Judge Gregory F. Kishel

Polaroid Corporation and
Polaroid Consumer Electronics, LLC,

Plaintiffs,

ADV. No. 09-04031

-vs.-

Acorn Capital Group, LLC, as lender and as
Administrative and collateral agent,

Defendant.

**ANSWER, AFFIRMATIVE DEFENSES, AND
COUNTERCLAIM**

Defendant Acorn Capital Group, LLC (“Acorn”), for its Answer, Affirmative Defenses, and Counterclaim to the Complaint of Plaintiff Polaroid Corporation (“PC”) and Polaroid Consumer Electronics, LLC (“PCE”) (collectively, “Polaroid,” “Plaintiffs” or “Debtors”), states and alleges as follows:

INTRODUCTION

The Debtors’ Adversary Complaint constitutes a reprehensible attempt to disparage and malign Acorn with false, baseless, and utterly unfounded allegations of fraud and improper dealings. Nothing could be further from the truth, and the Debtors know it. Their claims are ultimately nothing more than dressed up hyperbole, inflammatory rhetoric, and irresponsible and skewed conjecture. Indeed, the Debtors’ constant reference to allegations and claims made based “upon information and belief” is, in essence, an admission that they do not have any specific facts or evidence to support their assertions. Ultimately, the Adversary Complaint is nothing more than an illegitimate vehicle the Debtors have employed as part of their actions to steamroll the sale of their prime assets free and clear of Acorn’s legitimate liens.

In fact, Acorn is a reputable and well respected business that provides legitimate, short-term financing options to a variety of entities, including the Debtors. Acorn did nothing wrong or inappropriate with respect to the transactions that are at issue in this adversary proceeding and, try as they might, the Debtors will not be able to demonstrate the contrary. Indeed, to this date, the Debtors have yet to produce any evidence to establish they were engaged in the fraudulent schemes that Thomas J. Petters has been accused of perpetrating with respect to other entities. As a matter of fact, it is quite telling that the Receiver for the Debtors has not removed any of their employees in the aftermath of the Petters scandal—not even Mary Jeffries, Polaroid’s chief executive officer, who was directly and intimately involved in seeking and securing funding from Acorn for the Debtors’ operations. It is apparent that the Receiver has not removed any of

Polaroid's personnel because he is satisfied these transactions that Mary Jeffries and others initiated, negotiated, and entered into on behalf of Polaroid did not, in fact, involve fraud or improper dealings.

Undeterred by the facts, the Debtors have nonetheless made strident claims of fraud and other intentional acts, while failing to even attempt to meet their burden to plead such claims with the requisite specificity and particularity of supporting facts. Rather than alleging specific facts, the Debtors have pleaded their claims by selectively and conspicuously ignoring the material, undisputed facts that are well known to them and evidence that is well within their possession that conclusively refutes the very claims they have asserted against Acorn, such as the undisputed fact that Acorn wired sums totaling approximately \$25 million directly to PC and/or PCE. These funds were requested by PC and PCE's senior management, including Mary Jeffries, who represented to Acorn the funds would be used for PC and PCE's ongoing operations. These funds as well as other benefits provided are properly and lawfully secured by Acorn's legitimate liens in Debtors' assets.

Moreover, while making outrageous allegations to the contrary, Debtors' Adversary Complaint fails to come forth with any specific facts that would rebut the uncontroverted evidence that, at all relevant times herein, Acorn acted in good faith and without knowledge of any fraudulent or otherwise improper activities on the part of Debtors. The Debtors appeared to act honestly and in good faith at the time they sought financing, and Acorn dealt with them in kind. Lest there otherwise be any doubt given the outrageous after-the-fact claims the Debtors now make to the contrary based "upon information and belief," Acorn must emphatically assert that it acted at all times with the utmost good faith in its dealings with the Debtors, and it neither

knew nor had any reason to know that the Debtors were engaged in any fraudulent dealings which the Debtors now summarily and incredibly claim they engaged in.

Acorn prays this Court to hold the Debtors to account by dismissing the scurrilous claims the Debtors have asserted against Acorn in the Adversary Complaint in their entirety, and declaring Acorn's liens in the Debtors' assets to be valid and enforceable in accordance with the terms expressly negotiated and agreed to by the Debtors and to the fullest extent permitted by law.

ANSWER

Acorn denies each and every allegation, matter and thing alleged in Plaintiffs' Complaint, unless hereinafter specifically admitted or otherwise qualified.

Plaintiffs' Complaint makes repeated references to various written documents that speak for themselves and Plaintiffs accompany those references with their own characterizations of those documents which, to the extent they differ from the content of those documents, are denied.

Unless otherwise stated, this Answer will incorporate and reference the abbreviations used in the Complaint.

PARTIES

1. Acorn admits the allegations in Paragraph 1 of the Complaint.
2. Acorn lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 2 of the Complaint, and therefore puts Polaroid to strict proof thereof.
3. Acorn lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 3 of the Complaint, and therefore puts Polaroid to strict proof thereof.
4. Acorn lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 4 of the Complaint, and therefore puts Polaroid to strict proof thereof.

5. Acorn admits Petters Group Worldwide, LLC is a debtor in the bankruptcy case identified in Paragraph 5 of the Complaint, and lacks sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 5 of the Complaint and therefore puts Polaroid to strict proof thereof.

6. Acorn admits it is a limited liability company that was duly organized and exists under the laws of the State of Delaware, and that its principal place of business is located at Two Greenwich Office Park, Greenwich, Connecticut 06831, and otherwise denies the remaining allegations in Paragraph 6 of the Complaint and therefore puts Polaroid to strict proof thereof.

JURISDICTION

7. The allegations in Paragraph 7 of the Complaint constitute legal conclusions to which no response is required.

8. The allegations in Paragraph 8 of the Complaint constitute legal conclusions to which no response is required.

9. The allegations in Paragraph 9 of the Complaint constitute legal conclusions to which no response is required.

NATURE OF THE ADVERSARY PROCEEDING

10. Acorn categorically and emphatically denies the allegations in Paragraph 10 of the Complaint as these claims relate to Acorn, and therefore puts Polaroid to strict proof thereof. The Debtors' allegations of "orchestrated efforts of Acorn Capital to cover substantial losses and prefer its individual interests at the expense of Polaroid, its creditors and other stakeholders" is completely false and, frankly, utterly absurd as allegations are directly contradicted by, *inter alia*, the Debtors' own actions at the time they actively sought funding from Acorn through their senior management, including Mary Jeffries, who successfully secured approximately \$25,000,000 that was wired directly to PC and PCE. The Debtors have no evidence to support

their scurrilous claims, and have alleged no specific facts that, even if true, would show Acorn engaged in any such “orchestrated efforts” to engage in a cover up of losses in order to secure unwarranted advantages to itself.

11. In response to Paragraph 11 of the Complaint, Acorn admits it made investment commitments of at least \$300 million over the course of several years through PAC Funding, LLC, that Acorn has served as administrative agent and collateral agent for investors with respect to transactions with PAC Funding, and that the investment transactions between Acorn and PAC Funding were established to finance the purchase of electronic equipment and other goods. Acorn denies the remaining allegations in Paragraph 11 of the Complaint, including the Debtors’ outrageous and wholly unfounded claim that Acorn participated in and “orchestrated a plan” that was perpetrated “in an attempt to shore up, conceal and cover millions of dollars in losses.” These allegations are pure fiction that bear no relationship whatsoever to the facts and the truth, and Acorn therefore puts Polaroid to strict proof thereof.

12. Acorn lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 12 of the Complaint ,and therefore puts Polaroid to strict proof thereof.

13. Acorn denies the allegations in Paragraph 13 of the Complaint, including the preposterous allegations that Acorn took any action “to keep the Petters empire afloat” or did anything that sought to unfairly or improperly “extract value from Polaroid and its assets,” and therefore puts Polaroid to strict proof thereof. These allegations border on bizarre given the extent to which the Debtors’ senior management, including Mary Jeffries who remains as Polaroid’s chief executive officer yet today, actively sought funding from Acorn for the Debtors’ operations and negotiated the terms for such financing, including the terms by which the financing would be secured.

14. Acorn denies the allegations in Paragraph 14 of the Complaint and therefore puts Polaroid to strict proof thereof. Acorn states affirmatively and categorically that it did not make any such demands and did not take any actions “in furtherance of efforts to perpetrate the fraudulent scheme” of which Thomas J. Petters now stands accused. Likewise, the Debtors’ claims that the Debtors’ entered into agreements and incurred obligations “for which Polaroid received no or inadequate consideration” is disingenuous to say the least given the substantial benefits received by the Debtors by and through Acorn, including, *inter alia*, \$25,000,000 in funds wired directly by Acorn to PC and PCE for which Acorn is most certainly and fairly entitled to security. The absurdity of these allegations by the Debtors is exposed by virtue of the utter void of any specific factual allegations in Paragraph 14 or elsewhere in the Debtors’ Adversary Complaint to support their irresponsible allegations and claims.

15. Acorn denies the allegations in Paragraph 15 of the Complaint and therefore puts Polaroid to strict proof thereof. In particular, the Debtors’ incredible allegations that Acorn engaged in a “fraudulent scheme” and inflicted “substantial injury to the Polaroid companies and their creditors,” and that the Debtors entered in these transactions for “no or less than fair value,” are simply ridiculous in light of the facts that are well known to the Debtors and which the Debtors apparently choose to intentionally ignore and leave out of the allegations, including the uncontroverted fact that Acorn wired \$25,000,000 directly to PC and PCE for their operations.

16. Acorn denies the allegations in Paragraph 16 of the Complaint and therefore puts Polaroid to strict proof thereof. There is no evidence, nor have the Debtors been able to allege any specific facts, that could establish that Acorn “inequitably extracted value from Polaroid.” On the contrary, if the Debtors are successful in invalidating the legitimate obligations they owe to Acorn, then it would be they—the Debtors themselves—who will have inequitably extracted

value from Acorn, including, *inter alia*, the net \$10,000,000 of funds that Acorn wired to PC and PCE which the Debtors have yet to repay.

17. Acorn admits the allegations regarding Mr. Petters' arrest and indictment, and denies the remaining allegations in Paragraph 17 of the Complaint and therefore puts Polaroid to strict proof thereof, particularly with respect to the Debtors' insinuation that Acorn participated in any way in the fraud that is alleged to "involve a financial web of transactions flowing across the Petters' empire."

18. The allegations in Paragraph 18 of the Complaint that constitute a summary of the relief sought by Polaroid in this adversary proceeding and other proceedings are legal conclusions to which no response is required, and Acorn denies all other allegations in Paragraph 18 of the Complaint and therefore puts Polaroid to strict proof thereof.

19. Acorn denies the allegations in Paragraph 19 of the Complaint, which is essentially a summary of the claims asserted and the relief sought by the Debtors in this adversary proceeding, and therefore puts Polaroid to strict proof thereof. For the reasons which have been stated above and will be further addressed hereafter, the Debtors' claims are wholly without merit and the relief they seek herein should be denied in all respects.

FACTUAL BACKGROUND
Acorn Capital/PAC Funding Credit Transactions

20. Acorn admits that it entered into a credit transaction with PAC Funding on or about November 1, 2004, and asserts the terms of the credit transaction referred to in Paragraph 20 of the Complaint are set forth in the credit agreement and related documentation which speak for themselves.

21. Acorn asserts that the terms and conditions of the Credit Agreement and other documents, agreements and instruments delivered by PAC Funding to Acorn referred to in

Paragraph 21 of the Complaint speak for themselves, and that Exhibit A of the Complaint appears to be a true and correct copy of the Credit Agreement, and Acorn denies all remaining allegations contained in Paragraph 21 of the Complaint to the extent those allegations conflict with said documentation and therefore puts Polaroid to strict proof thereof.

22. Acorn asserts that the Credit Agreement and other Loan Documents and the personal guaranty of Thomas J. Petters referred to in Paragraph 22 of the Complaint speak for themselves, and that Exhibits B and C appear to be true and correct copies of the PAC Funding security agreement and the Petters' guaranty, and Acorn denies all remaining allegations contained in Paragraph 22 of the Complaint to the extent those allegations conflict with said documentation and therefore puts Polaroid to strict proof thereof.

23. Acorn admits that PAC Funding and Acorn amended the Credit Agreement on or about December 22, 2005, that this First Amendment referred to in Paragraph 23 of the Complaint speaks for itself, and that Exhibit D appears to be a true and correct copy of the First Amendment, and Acorn denies all remaining allegations contained in Paragraph 23 of the Complaint to the extent those allegations conflict with said documentation and therefore puts Polaroid to strict proof thereof.

24. Acorn admits that PAC Funding and Acorn further amended the Credit Agreement on or about September 6, 2006, that the Second Amendment referred to in Paragraph 24 of the Complaint speaks for itself, and that Exhibit E appears to be a true and correct copy of the Second Amendment, and Acorn denies all remaining allegations contained in Paragraph 24 of the Complaint to the extent those allegations conflict with said documentation and therefore puts Polaroid to strict proof thereof.

25. Acorn admits that PAC Funding and Acorn further amended the Credit Agreement on or about November 14, 2006, that the November Letter Agreement Amendment referred to in Paragraph 25 of the Complaint speaks for itself, and that Exhibit F appears to be a true a correct copy of the November Letter Agreement Amendment, and Acorn denies all remaining allegations contained in Paragraph 25 of the Complaint to the extent those allegations conflict with said documentation and therefore puts Polaroid to strict proof thereof.

26. Acorn admits that PAC Funding and Acorn further amended the Credit Agreement on or about December 26, 2006, that the December Letter Agreement Amendment referred to in Paragraph 26 of the Complaint speaks for itself, and that Exhibit G appears to be a true and correct copy of the December Letter Agreement Amendment, and Acorn denies all remaining allegations contained in Paragraph 26 of the Complaint to the extent those allegations conflict with said documentation and therefore puts Polaroid to strict proof thereof.

27. Acorn admits that PAC Funding and Acorn further amended the Credit Agreement and that the Third Amendment referred to in Paragraph 27 of the Complaint speaks for itself, and that Exhibit H appears to be a true and correct copy of the Third Amendment, and Acorn denies all remaining allegations contained in Paragraph 27 of the Complaint to the extent those allegations conflict with said documentation and therefore puts Polaroid to strict proof thereof.

28. Acorn admits that PAC Funding and Acorn further amended the Credit Agreement on or about October 29, 2007, that the Fourth Amendment referred to in Paragraph 28 of the Complaint speaks for itself, and that Exhibit I appears to be a true and correct copy of the Fourth Amendment, and Acorn denies all remaining allegations contained in

Paragraph 28 of the Complaint to the extent those allegations conflict with said documentation and therefore puts Polaroid to strict proof thereof.

29. In response to Paragraph 29 of the Complaint, Acorn admits that Polaroid was not a party to the agreements or amendments referred to in Paragraphs 21-28 and attached as Exhibits A-I of the Complaint.

Discovery of Fraud
(February 29, 2008)

30. Acorn admits that at some point prior to February 29, 2008, PAC Funding had failed to comply with certain terms of the Credit Agreement, as amended, and denies the remaining allegations in Paragraph 30 of the Complaint and therefore puts Polaroid to strict proof thereof. In particular, Acorn denies the allegations that the Debtors make “[u]pon information and belief” that Acorn had reason to believe there were any “potential fraudulent misrepresentations by PAC Funding and/or Thomas J. Petters” with respect to the accounts receivable and other assets that served as collateral, which is simply false and contrary to the uncontroverted facts showing that, *inter alia*, Acorn took reasonable steps to regularly and independently verify the status and character of PAC Funding’s representations.

31. Acorn admits that it entered into a Forbearance Agreement with PAC Funding and Thomas J. Petters on or about February 29, 2008, that the Forbearance Agreement referred to in Paragraph 31 of the Complaint speaks for itself and indicates that PAC Funding had failed to comply with certain terms of the Credit Agreement, as amended, and that Exhibit J appears to be a true and correct copy of the Forbearance Agreement, and Acorn denies all remaining allegations contained in Paragraph 31 of the Complaint to the extent those allegations conflict with said documentation and therefore puts Polaroid to strict proof thereof.

32. Acorn asserts that the Forbearance Agreement speaks for itself and admits that it took reasonable and appropriate steps under the circumstances to negotiate for collateral exchanges to update security for the financing it was providing and to request verification of the collateral, and denies any allegations in Paragraph 32 of the Complaint to the extent those allegations conflict with the terms of the Forbearance Agreement and to the extent puts Polaroid to strict proof thereof. Acorn must take issue with the Debtors' cynical attempt to recast responsible and conventional business practices on the part of Acorn into some nefarious and sinister plan to engage in a fraudulent scheme. Noticeably absent from the Debtors' allegations are any specific facts or evidence to establish these terms were not fully negotiated and fairly bargained for by the parties and that Acorn's actions were not entirely appropriate given the circumstances at the time.

33. Acorn asserts that the Forbearance Agreement speaks for itself, that Polaroid executed and delivered a Promissory Note in the principal amount of \$15 million which reflected an equivalent amount of funds that Acorn wired directly to Polaroid, and that Exhibit K appears to be a true and correct copy of the Original Polaroid Note, and denies all other allegations in Paragraph 33 of the Complaint to the extent those allegations conflict with said documentation and therefore puts Polaroid to strict proof thereof.

34. Acorn admits that Polaroid executed the PAC Funding/Polaroid Security Agreement and the Acorn Capital/Polaroid Security Agreement, that Exhibits L and M appear to be true and correct copies of the PAC Funding/Polaroid Security Agreement and Acorn Capital/Polaroid Security Agreement, respectively, the terms of which speak for themselves, and that Acorn filed financing statements reflecting the security interests granted by Polaroid pursuant to the Acorn Capital/Polaroid Security Agreement, and denies any allegations in

Paragraph 34 of the Complaint to the extent those allegations conflict with the terms of said documentation and therefore puts Polaroid to strict proof thereof.

(April 9, 2008)

35. Acorn admits that Polaroid remitted funds that were reasonably equivalent in value to the consideration Polaroid had received, and denies the remaining allegations in Paragraph 35 of the Complaint and therefore puts Polaroid to strict proof thereof. Conspicuously, the Debtors omit any mention and intentionally ignore material facts and evidence of which they are well aware, *inter alia*, that the funds transferred by the Debtors to PAC Funding were to repay to Acorn the approximately \$15,000,000 that Acorn had previously wired directly to PC and PCE.

(April 18, 2008)

36. Acorn admits that Polaroid delivered to PAC Funding a Promissory Note with a principal amount of \$10 million on or about April 18, 2008, which corresponded with approximately \$10 million of funds wired directly by Acorn to Polaroid, and that Exhibit N appears to be a true and correct copy of that Promissory Note, and Acorn denies the remaining allegations in Paragraph 36 of the Complaint and therefore puts Polaroid to strict proof thereof. Again, conspicuously, the Debtors omit any mention and intentionally ignore material facts and evidence of which they are well aware, *inter alia*, that the \$10,000,000 promissory note issued in April corresponded with \$10,000,000 that Acorn wired directly to PC and PCE.

37. Acorn admits that the documents referred to as the Amended and Restated Acorn Capital/Polaroid Security Agreement and the Amended and Restated PAC Funding/Polaroid Security Agreement speak for themselves, and that Exhibits O and P appear to be true and correct copies of the Amended and Restated Acorn Capital/Polaroid Security Agreement and the Amended and Restated PAC Funding/Polaroid Security Agreement, respectively, and Acorn

denies the remaining allegations in Paragraph 37 of the Complaint to the extent those allegations conflict with the terms of said documentation and therefore puts Polaroid to strict proof thereof. While parsing the terms and obligations set forth in these agreements, notably absent from the Debtors' allegations are any specific facts or evidence to establish these terms were not fully negotiated and fairly bargained for by the parties and entirely appropriate given the circumstances at the time when these agreements were made.

(May 12, 2008)

38. Acorn denies the allegations in Paragraph 38 of the Complaint, and therefore puts Polaroid to strict proof thereof. Once again, Acorn must point out that, while heavy with insinuation and conjecture, the Debtors' allegations are devoid of any specific facts or evidence to establish that Acorn acted improperly in any way in its dealings with the Debtors, or that Acorn's actions in obtaining adequate and appropriate security were in any way inappropriate.

39. Acorn denies the allegations in Paragraph 39 of the Complaint, and therefore puts Polaroid to strict proof thereof. In particular, Acorn denies the Debtors' allegations, which the Debtors once again vaguely based "upon information and belief," that Acorn "leveraged" information and "its position with Thomas J. Petters" to improperly extract value from the Debtors "for which no or inadequate corresponding benefit was conferred." These allegations are particularly galling since the Debtors provide no specific facts or evidence to establish the terms agreed to by the interested parties were not fully negotiated, fairly bargained for, and entirely appropriate under the circumstances that existed at the time.

40. Acorn admits that PAC Funding and Acorn entered into a Fifth Amendment to the Credit Agreement, that the terms of the Fifth Amendment speak for themselves, and that Exhibit Q appears to be a true and correct copy of the Fifth Amendment, and denies the

remaining allegations in Paragraph 40 of the Complaint and therefore puts Polaroid to strict proof thereof.

41. Acorn admits that Polaroid and Acorn entered into the Second Amended and Restated Acorn Capital/Polaroid Security Agreement, that the terms of said agreement speak for themselves, and that Exhibits R and S appear to be a true and correct copies of the Second Amended and Restated Acorn Capital/Polaroid Security Agreement and the Grant of Security Interest in Trademarks, respectively, and Acorn denies the remaining allegations in Paragraph 41 of the Complaint and therefore puts Polaroid to strict proof thereof.

42. Acorn admits that Polaroid entered into the First Amendment to Promissory Note and Security Agreement, and that Exhibit T appears to be a true and correct copy of the First Amendment to the Promissory Note and Security Agreement, and Acorn denies the remaining allegations in Paragraph 42 of the Complaint and therefore puts Polaroid to strict proof thereof.

43. Acorn asserts that the terms of the Fifth Amendment, the Second Amended and Restated Acorn Capital/Polaroid Agreement, the Trademark Assignment, and the First Amendment to Promissory Note and Security Agreement all speak for themselves, and Acorn denies the remaining allegations in Paragraph 43 of the Complaint and therefore puts Polaroid to strict proof thereof. In particular, Acorn demands the Debtors produce evidence to support their improper claim that these agreements “inappropriately attempt to set forth a comprehensive compelled structure” that constitute “fraudulent transfers.”

44. Acorn denies the allegations in Paragraph 44 of the Complaint and therefore puts Polaroid to strict proof thereof. The Debtors’ allegation that “Polaroid received no or inadequate benefit” is directly contradicted by the unrebutted evidence which shows, *inter alia*, that Acorn wired \$25,000,000 directly to PC and PCE.

45. Acorn denies the allegations in Paragraph 44 of the Complaint and therefore puts Polaroid to strict proof thereof. In particular, Acorn puts the Debtors to strict proof of the false allegations the Debtors have made, again relying solely upon “information and belief” rather than specific facts and evidence, that these “transactions were part and parcel of a continuing scheme and conspiracy to defraud legitimate creditors and investors of Polaroid” and “designed to extract value from Polaroid for the exclusive benefit of Acorn Capital and its investors at the expense of Polaroid, its creditors and other constituencies.” The Debtors’ claims lack the specificity required under the rules, and are utterly untenable based on the true facts that are well know to them.

46. Acorn admits that on or about August 12, 2008, Acorn declared a default and accelerated all amounts due in connection with the various loans and other agreements with PAC Funding and that Exhibit U appears to be a true and correct copy of the Notice of Default and Demand Letter delivered by Acorn to PAC Funding, and Acorn denies the remaining allegations in Paragraph 46 of the Complaint and therefore puts Polaroid to strict proof thereof. Yet again, the Debtors have made allegations based “upon information and belief,” rather than specific facts and evidence, asserting that Acorn’s actions to enforce its legitimate interests and rights were “part and parcel of the fraudulent transactions.” The Debtors’ claims lack the specificity required under the rules, and are utterly untenable based on the true facts that are well know to them.

47. Acorn denies the allegations in Paragraph 47 of the Complaint and therefore puts Polaroid to strict proof thereof.

The Receivership

48. Upon information and belief, Acorn admits the summary of events alleged in Paragraph 48 of the Complaint is generally accurate.

49. Upon information and belief, Acorn admits the summary of events alleged in Paragraph 49 of the Complaint is generally accurate.

50. Upon information and belief, Acorn admits the summary of events alleged in Paragraph 50 of the Complaint is generally accurate.

51. Upon information and belief, Acorn admits the summary of events alleged in Paragraph 51 of the Complaint is generally accurate.

52. Acorn denies the allegations in Paragraph 52 of the Complaint and therefore puts Polaroid to strict proof thereof. Notwithstanding the Debtors' bald allegations, the transactions at issue were not "part and parcel of a continuing fraudulent investment scheme and conspiracy," and the transactions and the associated obligations were not "the result of inequitable conduct on the part of Acorn Capital." Here again, the Debtors have made broad allegations and claims of wrongdoing without providing any specific facts or describing any particular evidence to support their outrageous claims. The fact that they have failed to provide any such support for these allegations demonstrates they have no such evidence.

COUNT I – FRAUDULENT TRANSFERS
Actual Fraud – 11 U.S.C. §§ 548(a)(1)(A), 550, 551 and 1107

53. No response is required to paragraph 53 of the Complaint.

54. Acorn denies the allegations in Paragraph 54 of the Complaint and therefore puts Polaroid on strict proof thereof which, as of this date, they have failed to produce to either Acorn or the Court.

55. Acorn denies the allegations in Paragraph 55 of the Complaint and therefore puts Polaroid on strict proof thereof which, as of this date, they have failed to produce to either Acorn or the Court.

56. Acorn denies the allegations in Paragraph 56 of the Complaint and therefore puts Polaroid on strict proof thereof which, as of this date, they have failed to produce to either Acorn or the Court.

57. Acorn denies the allegations and the relief sought in Paragraph 57 of the Complaint and therefore puts Polaroid on strict proof thereof which, as of this date, they have failed to produce to either Acorn or the Court. As stated above, the undisputed and un rebutted evidence establishes that Acorn acted at all times with the utmost good faith in its dealings with the Debtors, and it neither knew nor had any reason to know that the Debtors were engaged in any fraudulent dealings which the Debtors now summarily and incredibly claim they engaged in.

COUNT II – FRAUDULENT
Constructive Fraud – 11 U.S.C. §§ 548(a)(1)(B), 550(a), 551 and 1107

58. No response is required to paragraph 58 of the Complaint.

59. Acorn denies the allegations in Paragraph 59 of the Complaint and therefore puts Polaroid to strict proof thereof which, as of this date, they have failed to produce to either Acorn or the Court. Specifically, the Debtors have yet to proffer any facts or evidence to establish insolvency at the relevant points in time.

60. Acorn denies the allegations in Paragraph 60 of the Complaint and therefore puts Polaroid to strict proof thereof which, as of this date, they have failed to produce to either Acorn or the Court. Indeed, these allegations fly in the face of the un rebutted facts showing the substantial value and benefits Polaroid received, including, *inter alia*, the undisputed fact that Acorn wired sums totaling approximately \$25 million directly to PC and/or PCE.

61. Acorn denies the allegations in Paragraph 61 of the Complaint and therefore puts Polaroid to strict proof thereof. As stated above, the undisputed and un rebutted evidence establishes that Acorn acted at all times with the utmost good faith in its dealings with the

Debtors, and it neither knew nor had any reason to know that the Debtors were engaged in any fraudulent dealings which the Debtors now summarily and incredibly claim they engaged in.

62. Acorn denies the allegations and the relief sought in Paragraph 62 of the Complaint and therefore puts Polaroid to strict proof thereof.

COUNT III – FRAUDULENT TRANSFERS
Actual Fraud - 11 U.S.C. §§ 544(b), 550(a), 551 and 1107 & Minn. Stat. § 513.41 et seq.
or Other Governing Fraudulent Transfer Laws

63. No response is required to paragraph 63 of the Complaint.

64. Acorn denies the allegations in Paragraph 64 of the Complaint and therefore puts Polaroid to strict proof thereof.

65. Acorn denies the allegations in Paragraph 65 of the Complaint and therefore puts Polaroid to strict proof thereof which, as of this date, they have failed to produce to either Acorn or the Court.

66. Acorn denies the allegations in Paragraph 66 of the Complaint and therefore puts Polaroid to strict proof thereof which, as of this date, they have failed to produce to either Acorn or the Court.

67. Acorn denies the allegations in Paragraph 67 of the Complaint and therefore puts Polaroid to strict proof thereof which, as of this date, they have failed to produce to either Acorn or the Court.

68. Acorn denies the allegations and relief sought in Paragraph 68 of the Complaint and therefore puts Polaroid to strict proof thereof.

COUNT IV – FRAUDULENT TRANSFERS
Constructive Fraud - 11 U.S.C. §§ 544(b), 550(a), 551 and 1107 & Minn. Stat. § 513.41
et seq. or Other Governing Fraudulent Transfer Laws

69. No response is required to paragraph 69 of the Complaint.

70. Acorn denies the allegations in Paragraph 70 of the Complaint and therefore puts Polaroid to strict proof thereof.

71. Acorn denies the allegations in Paragraph 71 of the Complaint and therefore puts Polaroid to strict proof thereof which, as of this date, they have failed to produce to either Acorn or the Court.

72. Acorn denies the allegations in Paragraph 72 of the Complaint and therefore puts Polaroid to strict proof thereof which, as of this date, they have failed to produce to either Acorn or the Court.

73. Acorn denies the allegations in Paragraph 73 of the Complaint and therefore puts Polaroid to strict proof thereof which, as of this date, they have failed to produce to either Acorn or the Court.

74. Acorn denies the allegations and relief sought in Paragraph 74 of the Complaint and therefore puts Polaroid to strict proof thereof.

COUNT V – FRAUDULENT TRANSFERS
Insider Fraud - 11 U.S.C. §§ 544(b), 550(a), 551 and 1107 & Minn. Stat. § 513.41 et seq.
or Other Governing Fraudulent Transfer Laws

75. No response is required to paragraph 75 of the Complaint.

76. Acorn denies the allegations in Paragraph 76 of the Complaint and therefore puts Polaroid to strict proof thereof which, as of this date, they have failed to produce to either Acorn or the Court.

77. Acorn denies the allegations in Paragraph 77 of the Complaint and therefore puts Polaroid to strict proof thereof which, as of this date, they have failed to produce to either Acorn or the Court.

78. Acorn denies the allegations in Paragraph 78 of the Complaint and therefore puts Polaroid to strict proof thereof which, as of this date, they have failed to produce to either Acorn or the Court.

79. Acorn denies the allegations in Paragraph 79 of the Complaint and therefore puts Polaroid to strict proof thereof which, as of this date, they have failed to produce to either Acorn or the Court.

80. Acorn denies the allegations in Paragraph 80 of the Complaint and therefore puts Polaroid to strict proof thereof which, as of this date, they have failed to produce to either Acorn or the Court. Specifically, the Debtors have yet to proffer any facts or evidence to establish insolvency at the relevant points in time.

81. Acorn denies the allegations in Paragraph 81 of the Complaint and therefore puts Polaroid to strict proof thereof which, as of this date, they have failed to produce to either Acorn or the Court.

82. Acorn denies the allegations in Paragraph 82 of the Complaint and therefore puts Polaroid to strict proof thereof which, as of this date, they have failed to produce to either Acorn or the Court. As stated above, the undisputed and un rebutted evidence establishes that Acorn acted at all times with the utmost good faith in its dealings with the Debtors, and it neither knew nor had any reason to know that the Debtors were engaged in any fraudulent dealings which the Debtors now summarily and incredibly claim they engaged in.

83. Acorn denies the allegations and relief sought in Paragraph 83 of the Complaint and therefore puts Polaroid to strict proof thereof.

COUNT VI – PREFERENTIAL TRANSFER
11 U.S.C. §§ 547, 550, 551 and 1107

84. No response is required to paragraph 84 of the Complaint.

85. Acorn denies the allegations in Paragraph 85 of the Complaint and therefore puts Polaroid to strict proof thereof which, as of this date, they have failed to produce to either Acorn or the Court.

86. Acorn denies the allegations in Paragraph 86 of the Complaint and therefore puts Polaroid to strict proof thereof which, as of this date, they have failed to produce to either Acorn or the Court.

87. Acorn denies the allegations in Paragraph 87 of the Complaint and therefore puts Polaroid to strict proof thereof which, as of this date, they have failed to produce to either Acorn or the Court.

88. Acorn denies the allegations in Paragraph 88 of the Complaint and therefore puts Polaroid to strict proof thereof which, as of this date, they have failed to produce to either Acorn or the Court.

89. Acorn denies the allegations in Paragraph 89 of the Complaint and therefore puts Polaroid to strict proof thereof which, as of this date, they have failed to produce to either Acorn or the Court.

90. Acorn denies the allegations in Paragraph 90 of the Complaint and therefore puts Polaroid to strict proof thereof which, as of this date, they have failed to produce to either Acorn or the Court.

91. Acorn denies the allegations in Paragraph 91 of the Complaint and therefore puts Polaroid to strict proof thereof. which, as of this date, they have failed to produce to either Acorn or the Court.

92. Acorn denies the allegations and relief sought in Paragraph 92 of the Complaint and therefore puts Polaroid to strict proof thereof.

COUNT VII – DISALLOWANCE
11 U.S.C. § 502(b) and (d)

93. No response is required to paragraph 93 of the Complaint.

94. Acorn denies the allegations in Paragraph 94 of the Complaint and therefore puts Polaroid to strict proof thereof which, as of this date, they have failed to produce to either Acorn or the Court.

95. Acorn denies the allegations in Paragraph 95 of the Complaint and therefore puts Polaroid to strict proof thereof which, as of this date, they have failed to produce to either Acorn or the Court.

96. Acorn denies the allegations and relief sought in Paragraph 96 of the Complaint and therefore puts Polaroid to strict proof thereof.

COUNT VIII – LIEN AVOIDANCE
11 U.S.C. § 506(d)

97. No response is required to paragraph 97 of the Complaint.

98. Acorn denies the allegations in Paragraph 98 of the Complaint and therefore puts Polaroid to strict proof thereof which, as of this date, they have failed to produce to either Acorn or the Court.

99. Acorn denies the allegations and relief sought in Paragraph 99 of the Complaint and therefore puts Polaroid to strict proof thereof.

COUNT IX – EQUITABLE SUBORDINATION
11 U.S.C. § 510(c)

100. No response is required to paragraph 100 of the Complaint.

101. Acorn denies the allegations in Paragraph 101 of the Complaint and therefore puts Polaroid to strict proof thereof which, as of this date, they have failed to produce to either Acorn or the Court.

102. Acorn denies the allegations in Paragraph 102 of the Complaint and therefore puts Polaroid to strict proof thereof which, as of this date, they have failed to produce to either Acorn or the Court.

103. Acorn denies the allegations and relief sought in Paragraph 103 of the Complaint and therefore puts Polaroid to strict proof thereof.

104. Acorn denies the allegations and relief sought in Paragraph 104 of the Complaint and therefore puts Polaroid to strict proof thereof.

COUNT X – RECHARACTERIZATION
11 U.S.C. § 105

105. No response is required to paragraph 105 of the Complaint.

106. Acorn denies the allegations in Paragraph 106 of the Complaint and therefore puts Polaroid to strict proof thereof.

107. Acorn denies the allegations and relief sought in Paragraph 107 of the Complaint and therefore puts Polaroid to strict proof thereof.

108. Acorn denies the allegations and relief sought in Paragraph 108 of the Complaint and therefore puts Polaroid to strict proof thereof.

COUNT XI – DECLARATORY AND OTHER RELIEF
11 U.S.C. § 105

109. No response is required to paragraph 109 of the Complaint.

110. Acorn denies the allegations in Paragraph 110 of the Complaint and therefore puts Polaroid to strict proof thereof which, as of this date, they have failed to produce to either Acorn or the Court.

111. Acorn denies the allegations in Paragraph 111 of the Complaint and therefore puts Polaroid to strict proof thereof.

112. Acorn denies the allegations and relief sought in Paragraph 112 of the Complaint and therefore puts Polaroid to strict proof thereof.

113. Acorn denies the allegations and relief sought in Paragraph 113 of the Complaint and therefore puts Polaroid to strict proof thereof.

AFFIRMATIVE DEFENSES

Acorn, as and for its affirmative defenses to Polaroid's Complaint hereby states and asserts as follows:

1. Polaroid's Complaint fails to state claims and/or causes of action for which relief may be granted.

2. Polaroid's Complaint fails to plead fraud and other alleged intentional acts with particularity.

3. Acorn acted at all relevant times herein in good faith and without knowledge or notice of any alleged fraud on the part of the Debtors.

4. Polaroid's claims are barred to the extent the transfers at issue involved a contemporaneous exchanges for new value.

5. Polaroid's claims are barred to the extent the transfers at issue were made in the ordinary course of business.

6. Polaroid's claims may be barred by the doctrines of laches, estoppel and/or waiver.

7. Polaroid's claims are barred by the doctrine of unclean hands.

8. Polaroid's claims are barred because Polaroid was not insolvent at the time the transfers and obligations were made.

9. Polaroid's claims are barred because it received a reasonably equivalent value in exchange for the transfers and obligations that were made.

10. Polaroid's claims are barred because there was neither constructive fraud, nor was there any actual intent to hinder, delay, or defraud any entity to which Polaroid was indebted, or became indebted, at the time the transfers and obligations were made.

11. Polaroid's claims are barred because Acorn gave value for the transfers and obligations at issue in this matter and received such interest in good faith and have a lien on, and may retain its interest in, such transfers and may enforce such obligations.

12. Polaroid has failed to establish a bona fide dispute.

13. Acorn reserves the right to raise additional affirmative defenses and/or supplement those asserted herein, as discovery in this matter proceeds.

COUNTERCLAIM

Acorn, as and for its Counterclaim for declaratory relief against Polaroid, hereby states and asserts as follows:

1. As will be further demonstrated below, Acorn has a valid and enforceable lien in the Debtors' assets, as established by Acorn's direct interest in PC's and PCE's U.S. Inventory, U.S. Accounts and North American Trademarks, and Acorn's indirect interest in PAC's lien on PC's and PCE's assets.

2. As set forth in Acorn's Answer and Affirmative Defenses above, the Debtors have failed to allege any specific facts or describe any evidence which would constitute a legitimate basis to invalidate or otherwise bar Acorn's rights, interests, and liens in the Debtors' assets.

3. On November 1, 2004, PAC Funding and Acorn entered into a credit agreement, as subsequently amended on December 14, 2005, September 6, 2006, January 19, 2007, October 29, 2007, and May 12, 2008, whereby Acorn agreed to make revolving loans to PAC up to a

\$300 million commitment (“PAC Credit Agreement”). A true and correct copy of the PAC Credit Agreement is attached hereto as Exhibit 1.

4. Also on November 1, 2004, PAC and Acorn entered into a security agreement (“PAC Security Agreement”) pursuant to which PAC granted Acorn a first priority security interest in PAC’s assets, which secured the full amount of PAC’s debt to Acorn. A true and correct copy of the PAC Security Agreement is attached hereto as Exhibit 2.

5. Acorn perfected its security interest in PAC’s assets by filing UCC Financing Statements with the Delaware Department of State on February 28, 2005, and on March 3, 2005, true and correct copies of which are attached hereto as Exhibit 3. Specifically, PAC’s assets include all Accounts; all Investment Property; all Contract Rights, Commercial Tort Claims, cash, Chattel Paper (whether Tangible or Electronic), Deposit Accounts, Equipment, General Intangibles (including Payment Intangibles and Software), Goods, Health-Care-Insurance Receivables, Instruments (including any Promissory Notes), Inventory, Letter of Credit Rights and all Supporting Obligations; all Documents; and all Proceeds or products of any and all of the foregoing.

6. In connection with the PAC Credit Agreement and PAC Security Agreement, PAC and Acorn entered into two separate blocked account agreements with Crown Bank and Associated Bank to perfect Acorn’s security interest in those accounts (“Blocked Account Agreements”). True and correct copies of the Blocked Account Agreements are attached hereto as Exhibit 4.

7. On March 4, 2008, Acorn made a \$15 million advance pursuant to the PAC Credit Agreement. A true and correct copy of the wire detail is attached hereto as Exhibit 5.

8. As requested by PAC, Acorn wired these funds directly to Polaroid Consumer Electronics, LLC.

9. Acorn, PAC, PCE, Polaroid Corporation and certain Petters companies documented this transaction.

10. PC and PCE executed a \$15 million promissory note in favor of PAC. A true and correct copy of this promissory note is attached hereto as Exhibit 6.

11. PC and PCE granted PAC a security interest in PC's and PCE's U.S. Inventory and Accounts. A true and correct copy of this security agreement is attached hereto as Exhibit 7.

12. PAC perfected its security interest in PC's and PCE's U.S. Inventory and Accounts by filing a UCC Financing Statement with the Delaware Department of State on February 29, 2008, true and correct copies of which are attached hereto as Exhibit 8.

13. PC and PCE granted Acorn a security interest in PC's and PCE's U.S. Inventory and Accounts. A true and correct copy of this security agreement is attached hereto as Exhibit 9.

14. Acorn perfected its security interest in PC's and PCE's U.S. Inventory and Accounts by filing UCC Financing Statement with the Delaware Department of State on February 29, 2008, true and correct copies of which are attached hereto as Exhibit 10.

15. Petters Company, Inc., Petters Company, LLC, Petters Capital, LLC, Thomas Petters, Inc. (collectively, "Creditor"), PAC, and Acorn entered into a subordination agreement subordinating the Creditor's secured claims in PC's and PCE's assets to Acorn's security interest in PC's and PCE's assets ("Subordination Agreement"). A true and correct copy of the Subordination Agreement is attached hereto as Exhibit 11.

16. Pursuant to the terms of the Subordination Agreement, PAC agreed that it would "not, without the prior written consent of [Acorn], exercise any rights of PAC Funding as a

secured party, with respect to the enforcement of its rights as a secured party, until all of the Obligations have been indefeasibly satisfied in full.”

17. PAC and Acorn also entered into a limited forbearance agreement on February 29, 2008 (“Forbearance Agreement”), pursuant to which Acorn agreed to forbear from exercising its remedies under the PAC Credit Agreement and the PAC Security Agreement. A true and correct copy of the Forbearance Agreement is attached hereto as Exhibit 12.

18. Pursuant to the terms of the Forbearance Agreement, Acorn permitted PAC to access over \$20 million being held pursuant to the Blocked Account Agreements.

19. On April 18, 2008, Acorn made a \$10 million advance pursuant to the PAC Credit Agreement. A true and correct copy of the wire detail is attached hereto as Exhibit 13.

20. Again, as requested by PAC, Acorn wired these funds directly to PCE.

21. Acorn, PAC, PC, PCE and certain Petters companies documented this transaction.

22. PC and PCE executed a \$10 million promissory note in favor of PAC. A true and correct copy of this promissory note is attached hereto as Exhibit 14.

23. PC and PCE granted PAC a security interest in PC’s and PCE’s U.S. Inventory and Accounts. A true and correct copy of this security agreement is attached hereto as Exhibit 15.

24. PC and PCE granted Acorn a security interest in PC’s and PCE’s U.S. Inventory and Accounts. A true and correct copy of this security agreement is attached hereto as Exhibit 16.

25. In connection with the fifth amendment to the PAC Credit Agreement, on May 12, 2008, PC, PCE and Acorn entered into a Second Amended and Restated Security Agreement (“Polaroid Security Agreement”). Pursuant to the terms of the Polaroid Security

Agreement, PC and PCE absolutely and unconditionally guaranteed the payment of all amounts owing to Acorn pursuant to the PAC Credit Agreement. A true and correct copy of this security agreement is attached hereto as Exhibit 17.

26. Acorn perfected its security interest in PC's and PCE's U.S., Canadian, and Mexican Trademarks by filing UCC Financing Statements with the Delaware Department of State on May 13, 2008, true and correct copies of which are attached hereto as Exhibit 18, and by filing a Notice of Recordation of Assignment Document with the United States Patent and Trademark Office on May 14, 2008, a true and correct copy of which is attached hereto as Exhibit 19.

27. In addition to PC's and PCE's U.S. Inventory and Accounts already pledged to Acorn, the Polaroid Security Agreement granted Acorn a security interest in PC's and PCE's U.S., Canadian, and Mexican Trademarks (collectively, "North American Trademarks").

28. In return, Acorn agreed to modify its prior agreements with PAC, PC and PCE to permit PC and PCE to pledge its assets as collateral for a credit facility for working capital.

29. Based on the foregoing, Acorn is entitled to a declaratory judgment from this Court that Acorn has a valid and enforceable lien in Debtors' assets, derived from Acorn's direct interest in PC's and PCE's U.S. Inventory, U.S. Accounts and North American Trademarks, and Acorn's indirect interest in PAC's lien on PC's and PCE's assets.

PRAYER FOR RELIEF

WHEREFORE, Acorn requests that this Court enter judgment in its favor and against Plaintiffs as follows:

1. Dismissing Polaroid's Complaint with prejudice in all respects;
2. Granting Acorn the declaratory relief sought in its Counterclaim in all respects;

3. Awarding Acorn its costs and expenses incurred in this action, including but not limited to recovery of its reasonable attorneys' fees; and

4. For such other and further relief as the Court may deem just and reasonable.

Dated: March 16, 2009

WINTHROP & WEINSTINE, P.A.

By: s/ Michael A. Rosow

Daniel C. Beck, #192053

Thomas H. Boyd, #0200517

Michael A. Rosow, #317998

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(612) 604-6400

Attorneys for Acorn Capital Group, LLC

4365885v2

**IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

**Jointly Administered under
Case No. 08-46617**

In re:

Polaroid Corporation, et al.,

Debtors.

Court File Nos.:

08-46617 (GFK)

(includes:

Polaroid Holding Company;

08-46621 (GFK)

Polaroid Consumer Electronics, LLC;

08-46620 (GFK)

Polaroid Capital, LLC;

08-46623 (GFK)

Polaroid Latin America I Corporation;

08-46624 (GFK)

Polaroid Asia Pacific LLC;

08-46625 (GFK)

Polaroid International Holding LLC;

08-46626 (GFK)

Polaroid New Bedford Real Estate, LLC;

08-46627 (GFK)

Polaroid Norwood Real Estate, LLC;

08-46628 (GFK)

Polaroid Waltham Real Estate, LLC)

08-46629 (GFK)

Chapter 11 Cases

Judge Gregory F. Kishel

Polaroid Corporation,

Plaintiff,

Chapter 11

ADV. No. 09-04031

vs.

Judge Gregory F. Kishel

Acorn Capital Group, LLC, as Lender and
Administrative and Collateral Agent,

Defendant.

CERTIFICATE OF SERVICE

I hereby certify that on March 16, 2009, I caused the foregoing **ANSWER, AFFIRMATIVE DEFENSES, AND COUNTERCLAIM** to be filed electronically with the Clerk of Court through ECF, and that ECF will send an e-notice of electronic filing to the following persons:

- Theresa H. Dykoschak tdykoschak@faegre.com
- James A. Lodoen jlodoen@lindquist.com, gluessenheide@lindquist.com
- George H Singer gsinger@lindquist.com, lnorton@lindquist.com

I further certify that there are no manual recipients.

Dated: March 16, 2009

WINTHROP & WEINSTINE, P.A.

By: s/ Michael A. Rosow

Daniel C. Beck, #192053

Thomas H. Boyd, #0200517

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