

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

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

POLAROID CORPORATION, ET AL.,

Debtors.

08-46617 (GFK)

(includes:

Polaroid Holding Company;
Polaroid Consumer Electronics, LLC;
Polaroid Capital, LLC;
Polaroid Latin America I Corporation;
Polaroid Asia Pacific LLC;
Polaroid International Holding LLC;
Polaroid New Bedford Real Estate, LLC;
Polaroid Norwood Real Estate, LLC;
Polaroid Waltham Real Estate, LLC)

08-46621 (GFK)
08-46620 (GFK)
08-46623-(GFK)
08-46624 (GFK)
08-46625 (GFK)
08-46626 (GFK)
08-46627 (GFK)
08-46628 (GFK)
08-46629 (GFK)

Chapter 11 Cases
Judge Gregory F. Kishel

Polaroid Corporation,

Plaintiff,

-vs-

ADV. No. 09-04031

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

Defendant.

**NOTICE OF MOTION AND THE OFFICIAL COMMITTEE OF
UNSECURED CREDITORS' MOTION TO INTERVENE IN THE DEBTORS'
ADVERSARY PROCEEDING AGAINST ACORN CAPITAL GROUP, LLC**

The Official Committee of Unsecured Creditors (the "Committee") in the chapter 11 cases of the above-captioned debtors and debtors-in-possession (collectively, the "Debtors") hereby files this Motion to Intervene (the "Motion") in the above-captioned adversary proceeding brought by Polaroid Corporation ("Polaroid" or "Debtor") (the "Adversary

Proceeding”) pursuant to section 1109(b) of title 11 of the United States Code (the “Bankruptcy Code”) and Rule 24 of the Federal Rules of Civil Procedure as incorporated by Rule 7024 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”). In support of its Motion, the Committee, by and through its undersigned proposed counsel, respectfully states as follows:

Notice and Hearing

1. The Court will hold a hearing on this Motion on **March 3, 2009 at 2:00 p.m. CST** before the Honorable Gregory F. Kishel, United States Bankruptcy Judge, in Courtroom 2A of the United States Courthouse, 316 N. Robert Street, St. Paul, Minnesota.

2. Any response to the Motion must be filed and delivered no later than **February 26, 2009**, which is three (3) days before the time set for the hearing (excluding Saturdays, Sundays and holidays), or filed and served by mail not later than **February 20, 2009**, which is seven (7) days before the time set for the hearing (excluding Saturdays, Sundays and holidays). **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

Jurisdiction

3. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding.

Background

4. On December 17, 2008 (the “Petition Date”), Debtors filed their voluntary petitions under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Minnesota. The Debtors continue to operate their businesses and manage their property as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

5. On January 8, 2009 the Office of the United States Trustee appointed the Committee in these bankruptcy cases.

6. On February 12, 2009, Polaroid initiated an adversary proceeding by filing a complaint (the “Adversary Complaint”) captioned *Polaroid Corp. v. Acorn Capital Group, LLC*, Adv. No. 09-04031 against Acorn Capital Group, LLC, as lender and as administrative and collateral agent (“Acorn”).

7. In the Adversary Complaint, Polaroid alleges that Acorn entered into a credit agreement (the “Credit Agreement”) with PAC Funding, LLC, a wholly-owned subsidiary of Petters Company, Inc. (“PCI”). PCI is an entity owned and formerly controlled by Thomas J. Petters. (Adversary Complaint at ¶ 20.) Polaroid alleges that pursuant to the Credit Agreement (as amended), Acorn agreed to make loans to PAC Funding, Inc. of up to \$300,000,000. (*Id.* at ¶¶ 21-28.) Polaroid was not a party to the credit agreement or any of the amendments. (*Id.* at ¶ 29.) Acorn, PAC Funding and Mr. Petters entered into a Forbearance Agreement thereafter due to defaults under the Credit Agreement. (*Id.* at ¶ 31.) Polaroid further alleges that under the terms of the Forbearance Agreement, Acorn required Mr. Petters to cause Polaroid to deliver a promissory note in the amount of \$15,000,000 in favor of PAC Funding with an interest note of 14.5% per annum, as a condition precedent to the Acorn forbearance. (*Id.* at ¶ 33.) According to the Adversary Complaint, Acorn caused Polaroid to deliver a security agreement in favor of PAC Funding in connection with the promissory note whereby Debtors Polaroid and Polaroid Consumer Electronics, LLC pledged and granted PAC Funding a security interest in all of their respective inventory and accounts located in the United States and other related proceeds. (*Id.* at ¶ 34.) Polaroid alleges that this security interest was subordinated to the lien purportedly granted

by Polaroid to Acorn pursuant to a separate security agreement. (*Id.*) Polaroid claims that it received no or inadequate benefit in exchange for the transactions.

8. Additionally, Polaroid claims that the documents executed and delivered by Thomas J. Petters on behalf of Polaroid to Acorn prior to or in connection with the PAC Funding transaction were part of a continuing scheme and conspiracy to defraud legitimate creditors and investors of Polaroid. The transactions were designed to extract value from Polaroid for the exclusive benefit of Acorn and its investors and at the expense of Polaroid, its creditors, and other constituencies. (*Id.* at ¶ 46.)

9. Polaroid seeks the avoidance and recovery of liens and other assets of Polaroid fraudulently and preferentially transferred at the direction of Acorn and Thomas J. Petters. (*Id.* at ¶ 18.)

Request for Relief

10. Pursuant to section 1109(b) of the Bankruptcy Code and Rule 7024 of the Bankruptcy Rules, the Committee requests the Court enter an order granting the Committee permission to intervene in the Adversary Proceeding.

Basis for Relief

11. The Committee has a direct interest in the outcome of the Adversary Proceeding. The outcome of the Adversary Proceeding will directly impact the financial interests of the unsecured creditors of the Debtors. Indeed, the characterization and amount of the Ritchie Group's claims will directly affect the unsecured creditors' recovery.

12. Moreover, it is possible, and perhaps likely, that the Committee eventually will direct and control the prosecution of the Adversary Proceeding. As the Court knows, the Debtors have filed a motion seeking, among other things, the approval of auction and bidding procedures to sell substantially all of their assets. Following the sale of those assets, the Committee anticipates that it may seek, perhaps through confirmation of a plan of liquidation, to implement a mechanism by which the Committee would prosecute any remaining litigation on behalf of the Debtors, including the Adversary Proceeding.

WHEREFORE, the Committee respectfully requests that the Court enter an order allowing the Committee to intervene in the Adversary Proceeding, *Polaroid Corp. v. Acorn Capital Group, LLC*, Adv. No. 09-04031, and to raise, appear, and be heard on any issue arising therein, and further requests such other relief as this Court may deem just and proper.

Dated: February 17, 2009

Respectfully submitted,

The Official Committee of Unsecured
Creditors of Polaroid Corporation, et al., and
its Affiliated Debtors

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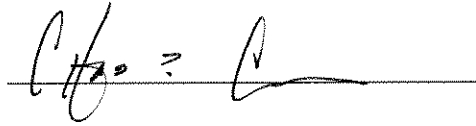
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PROPOSED ATTORNEYS FOR THE
OFFICIAL COMMITTEE OF UNSECURED
CREDITORS

VERIFICATION

I, Chad E. Cooley, the Chair of the Official Committee of Unsecured Creditors, have reviewed the foregoing Motion to Intervene and declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information, and belief.

Dated: February 17, 2009

A handwritten signature in black ink, appearing to read "Chad E. Cooley", is written over a horizontal line. The signature is stylized and cursive.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

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

POLAROID CORPORATION, ET AL.,

Debtors.

08-46617 (GFK)

(includes:

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Chapter 11 Cases
Judge Gregory F. Kishel

Polaroid Corporation,

Plaintiff,

-vs-

ADV. No. 09-04031

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

Defendant.

**MEMORANDUM OF LAW IN SUPPORT OF THE MOTION OF THE OFFICIAL
COMMITTEE OF UNSECURED CREDITORS' TO INTERVENE IN THE DEBTORS'
ADVERSARY PROCEEDING AGAINST ACORN CAPITAL GROUP, LLC**

The Official Committee of Unsecured Creditors (the "Committee") in the chapter 11 cases of the above-captioned debtors and debtors-in-possession (collectively, the "Debtors") hereby submits this Memorandum of Law in support of its Motion to Intervene in the Debtors' Adversary Proceeding against Acorn Capital Group, LLC (the "Motion").

Background

1. The Background is stated in the Motion. Capitalized terms used herein and not otherwise defined have the meanings given to them in the Motion.

Basis for Relief

2. Pursuant to sections 1109(b) of the Bankruptcy Code and Rule 7024 of the Bankruptcy Rules, the Committee requests the Court enter an order granting the Committee permission to intervene in the Adversary Proceeding.

3. The Committee has a right to appear and be heard in the Adversary Proceeding pursuant to section 1109(b) of the Bankruptcy Code. That section states that “[a] party in interest, including...a creditors' committee...may raise and may appear and be heard on any issue in a case under this chapter.” 11 U.S.C. §1109(b).

4. Courts have interpreted section 1109(b) to give a creditors committee, as a party in interest, an absolute right to intervene in adversary cases.

5. For instance, the Court of Appeals for the Second Circuit has held that pursuant to Fed. R. Civ. P. 24 and section 1109(b) of the Bankruptcy Code a party in interest, such as a creditor’s committee, has an unconditional right to intervene in an adversary proceeding under chapter 11. *In re Caldor Corp.*, 303 F.3d 161, 176 (2d Cir. 2002) (rejecting argument that section 1109(b) limits party in interest’s right to intervene to a “case”, not to an adversary proceeding). Likewise, the Court of Appeals for the Third Circuit has held that section 1109(b) affords a creditors’ committee with an unconditional right to intervene in adversary proceedings initiated by a debtor-in-possession. *See In re Marin Motor Oil, Inc.*, 689 F.2d 445, 454-55 (3d Cir. 1982) (holding that the “language of [section 1109(b)] would seem clearly to favor the

position espoused by the [Creditors'] Committee" that the provision allows for an absolute right to intervene in an adversary proceeding in a chapter 11 case).¹

6. Additionally, Rule 7024 of the Bankruptcy Rules, which applies to adversary proceedings, incorporates Rule 24 of the Federal Rule of Civil Procedure. Rule 24 states that "the court must permit anyone to intervene who . . . is given an unconditional right to intervene by a federal statute." Fed. R. Civ. P. 24(a)(1).

7. Section 1109(b) of the Bankruptcy Code is such a statute that "give[s] an unconditional right to intervene." Fed. R. Civ. P. 24(a)(1); *See* 11 U.S.C. §1109(b) (providing that a committee "may raise and may appear and be heard on any issue" in a chapter 11 case).

WHEREFORE, the Committee respectfully requests that the Court enter an order allowing the Committee to intervene in the *Polaroid Corp. v. Acorn Capital Group, LLC*, Adv. No. 09-04031, and to raise, appear, and be heard on any issue arising therein, and further requests such other relief as this Court may deem just and proper.

¹ Other courts, however, have held that section 1109(b) affords a party in interest with an unconditional right to intervene only in a "case," which does not include an adversary proceeding. *See e.g., Fuel Oil Supply & Terminating v. Gulf Oil Corp.*, 762 F.2d 1283, 1287 (5th Cir. 1985). These cases hold that a party in interest may intervene in an adversary proceeding only if it can show that the party has an interest in the property or transaction which is the subject of the action, the disposition of the action may impede his ability to protect that interest and the applicant's interest is not adequately represented by existing parties. *See e.g., Fuel Oil Supply*, 762 F.2d at 1287 (citing Fed. R. Civ. P. 24(a)(2)). Even under this more restrictive standard, the Committee should be allowed to intervene in the Adversary Proceeding. The Committee clearly has an interest in the subject of the action, the amount and characterization of the Ritchie Group's claims, and particularly given that the Committee may well control the direction and prosecution of the Adversary Proceeding, its interest would not be adequately protected if it could not participate immediately in the litigation.

Dated: February 17, 2009

Respectfully submitted,

The Official Committee of Unsecured
Creditors of Polaroid Corporation, et al., and
its Affiliated Debtors

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PROPOSED ATTORNEYS FOR THE
OFFICIAL COMMITTEE OF UNSECURED
CREDITORS

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

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Court File No. 08-46617

Debtors.

Court File Nos:

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Chapter 11 Cases
Judge Gregory F. Kishel

Polaroid Corporation,

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ADV. No. 09-04031

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

Defendants.

UNSWORN CERTIFICATE OF SERVICE

Brenda Walz of the City of Minneapolis, County of Hennepin, State of Minnesota, declare under penalty of perjury that on February 17, 2009, she served the following documents by first class mail postage prepaid to each entity named below at the address stated below for each entity:

1. Notice Of Motion And The Official Committee Of Unsecured Creditors' Motion To Intervene In The Debtors' Adversary Proceeding Against Acorn Capital Group, LLC

2. Memorandum Of Law In Support Of The Motion Of The Official Committee Of Unsecured Creditors' To Intervene In The Debtors' Adversary Proceeding Against Acorn Capital Group, LLC;
3. Certificate of Service; and
4. Order Granting The Motion Of The Official Committee Of Unsecured Creditors To Intervene In The Debtors' Adversary Proceeding Against Acorn Capital Group, LLC

upon: Lindquist & Vennum P.L.L.P.
Attn: James A. Lodoen and George H. Singer
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Acorn Capital Group, LLC
2 Greenwich Office Park
Greenwich, CT 06831

/e/ Brenda Walz

fb.us.3674038.01

UNITED STATES BANKRUPTCY COURT
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Chapter 11 Cases
Judge Gregory F. Kishel

Polaroid Corporation,

Plaintiff,

-vs-

ADV. No. 09-04031

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

Defendant.

**ORDER GRANTING THE OFFICIAL COMMITTEE OF UNSECURED
CREDITORS' MOTION TO INTERVENE IN THE DEBTORS'
ADVERSARY PROCEEDING AGAINST ACORN CAPITAL GROUP, LLC**

This matter coming before the Court upon the Motion of the Official Committee of Unsecured Creditors to Intervene in the Debtors' Adversary Proceeding Against Acorn Capital Group, LLC (the "Motion"), filed by the Official Committee of Unsecured Creditors (the

“Committee”); the Court having reviewed the Motion and found that cause exists entitling the Committee to the relief requested.

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED.
2. Pursuant to section 1109(b) of the Bankruptcy Code and Bankruptcy Rule 7024, the Committee is authorized to intervene in the adversary proceeding captioned *Polaroid Corp. v. Acorn Capital Group, LLC*, Adv. No. 09-04031.
3. The Committee is authorized and empowered to take all actions necessary to implement the relief granted in this Order
4. This Court shall retain jurisdiction over any and all matters arising from the interpretation or implementation of this Order.

Dated: _____, 2009

Gregory F. Kishel
United States Bankruptcy Judge