

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:	Jointly Administered under Case No. 08-46617
Polaroid Corporation, et al.,	Court Files No.'s:
Debtors.	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,

-vs.-

ADV. No. 09-4032

Ritchie Capital Management, L.L.C.,
as administrative and collateral agent,
Ritchie Special Credit Investments, Ltd.,
Rhone Holdings II, Ltd., Yorkville
Investments I, L.L.C., and Ritchie Capital
Structure Arbitrage Trading, Ltd.,

Defendants.

DEFENDANTS' ANSWER AND COUNTERCLAIMS

COME NOW Defendants Ritchie Capital Management, L.L.C. (“Ritchie Capital”), Ritchie Special Credit Investments, Ltd., Rhone Holdings II. Ltd, Yorkville Investments I, L.L.C., and Ritchie Capital Structure Arbitrage Trading, Ltd., (together, “Defendants” and, together save for Ritchie Capital, “Ritchie Lenders”), and submit their Answer to the Plaintiff’s Complaint (the “Complaint”) and Counterclaims. Any allegation not specifically admitted is denied. Defendants state as follows:

PARTIES

1. The allegations in Paragraph 1 of the Complaint are admitted.
2. Defendants admit that Polaroid is a Delaware corporation. The remaining allegations of the first sentence of Paragraph 2 state a legal conclusion, which is for the Court to reach and therefore no response is required. To the extent that the allegations of the second sentence of Paragraph 2 state legal conclusions, such conclusions are for the Court to reach and therefore no response is required. To the extent that a response is required, Defendants lack knowledge and information sufficient to form a belief as to the allegations of the second sentence of Paragraph 2, and therefore deny the allegations.
3. The Defendants have no direct knowledge of the allegations in Paragraph 3 of the Complaint, but believe such allegations are true.
4. The allegations in Paragraph 4 of the Complaint are admitted.
5. Defendants admit that Ritchie Capital is a limited liability company organized under the laws of the State of Delaware. The term “hedge fund” is vague and ambiguous, and therefore Defendants deny the allegation concerning “hedge fund.” Defendants deny the remaining allegations of Paragraph 5.

6. Defendants admit that Ritchie Special Credit Investments, Ltd. is a Cayman Islands exempted company, but deny that the listed address is the proper, legal address for that entity.

7. Defendants admit that Rhone Holdings II. Ltd. is a Cayman Islands exempted company, but deny that the listed address is the proper, legal address for that entity.

8. Defendants admit that Rhone Holdings II. Ltd. is a Cayman Islands exempted company, but deny that the listed address is the proper, legal address for that entity. Defendants also note that the allegations of Paragraph 8 appear to reiterate the allegations of Paragraph 7.

9. The Defendants deny the allegations in Paragraph 9 of the Complaint.

10. Defendants admit that Ritchie Capital Structure Arbitrage Trading, Ltd. is a Cayman Islands exempted company, but deny that the listed address is the proper, legal address for that entity.

JURISDICTION AND VENUE

11. The allegations of Paragraph 11 state legal conclusions, which are for the Court to reach and thus no response is required.

12. The allegations of Paragraph 12 state legal conclusions, which are for the Court to reach and thus no response is required.

13. The allegations of Paragraph 13 state legal conclusions, which are for the Court to reach and thus no response is required.

NATURE OF THE ADVERSARY PROCEEDING

14. Defendants admit that the fraud perpetrated by Thomas J. Petters underlies these proceedings, but otherwise deny the allegations of Paragraph 14. Defendants further aver that Plaintiff's allegations that Ritchie Capital engaged in "orchestrated efforts . . . to cover substantial investment losses and prefer its individual interests at the expense of Polaroid" and

others are not only untrue, but are an irresponsible, malicious attempt to disparage Ritchie Capital.

15. Defendants admit that the Ritchie Lenders advanced sums to Thomas J. Petters (“Petters”) and companies owned and controlled by him, as follows: (i) in February 2008, pursuant to promissory notes (“February Notes”) signed by Petters Group Worldwide, LLC (“PGW”) and Petters, individually, (ii) in March 2008, pursuant to promissory notes (“March Notes”) signed by Petters Company, Inc. (“PCI”) and Petters, individually, and (iii) in May 2008, pursuant to promissory notes (“May Notes”) signed by PGW, PCI and Petters, individually, and that the aggregate amount initially advanced under the February Notes, the March Notes and the May Notes (together, “Notes”) was equal to \$189,000,000,¹ but otherwise deny the allegations of Paragraph 15.

16. Defendants admit that Ritchie Capital serves as administrative agent for the Ritchie Lenders, and in certain contexts also serves as collateral agent for the Ritchie Lenders, and has certain authority to act on behalf of the Ritchie Lenders, but otherwise deny the allegations of Paragraph 16.

17. Defendants admit that the funds they provided to PGW were not subject to any restrictions on their use under the governing agreements, but otherwise deny the allegations of Paragraph 17.

18. Defendants admit that they granted several extensions of the maturity dates under the Notes, and that, as of October 11, 2008, the total principal and interest outstanding under all of the Notes (including the Transferred Notes) was at least \$260,000,000. The allegations of Paragraph 18 otherwise purport to characterize the Notes, which speak for

¹ On February 19, 2008, two of the Ritchie Lenders sold an aggregate of \$25,000,000 of the February Notes (the “Transferred Notes”) to an unaffiliated third party.

themselves, and therefore no response is required. Defendants deny such allegations to the extent inconsistent with the Notes.

19. Defendants deny the allegations of Paragraph 19. Defendants further aver that Plaintiff's allegations that Defendants "orchestrated a series of transactions . . . to shore up, conceal and cover millions of dollars in losses" are not only untrue, but are an irresponsible, malicious attempt to disparage Ritchie Capital. Plaintiff identifies no fact or other good faith basis to support the sweeping, conclusory statements contained in Paragraph 19 regarding Defendants' actions and motives, and those statements are utterly false.

20. Defendants admit that Polaroid is an operating company that has brand value and revenues, but lack knowledge and information sufficient to form a belief as to the remaining allegations of Paragraph 20, and therefore deny the allegations.

21. Defendants deny the allegations of Paragraph 21. Defendants further aver that Plaintiff's allegations concerning attempts to "extract value" through "overreaching agreements" are not only untrue, but are an irresponsible and malicious attempt to disparage Ritchie Capital. Plaintiff identifies no fact or other good faith basis to support the sweeping, conclusory statements contained in Paragraph 21 regarding Defendants' actions and motives, and those statements are utterly false.

22. The Defendants deny the allegations in Paragraph 22 of the Complaint. Plaintiff's malicious attempt to create the false impression that Defendants engaged in a fraudulent scheme is irresponsible and unconscionable because there is absolutely no basis for such an allegation.

23. The Defendants deny the allegations in Paragraph 23 of the Complaint. Plaintiff's malicious attempt to create the false impression that Defendants engaged in a

fraudulent scheme is irresponsible and unconscionable because there is absolutely no basis for such an allegation.

24. The Defendants deny the allegations in Paragraph 24 of the Complaint. Plaintiff's malicious attempt to create the false impression that Defendants engaged in a fraudulent scheme is irresponsible and unconscionable because there is absolutely no basis for such an allegation.

25. Defendants admit the allegations of the first, second and third sentences of Paragraph 25. Defendants admit that PGW was named in an indictment filed on December 1, 2008, but aver that, in such indictment, PGW was not identified as a party to any of the transactions that form the basis of the fraud charges, and aver further that the only transaction in which PGW was identified was pleaded in support of a money laundering charge that named Petters, individually, as a defendant, but *not* PGW. Defendants are without knowledge and information sufficient to form a belief as to the remaining allegations of the fourth sentence of Paragraph 25, and therefore deny the allegations. Defendants admit the allegations of the fifth sentence of Paragraph 25.

26. Defendants admit that Polaroid seeks "avoidance and recovery of liens and other assets," and "the disallowance, re-characterization and/or the subordination of claims," but deny that Polaroid is entitled to such relief. Defendants deny the remaining allegations of Paragraph 26.

27. Defendants deny the allegations of Paragraph 27. Defendants further aver that Plaintiff's malicious attempt to create the false impression that Defendants engaged in fraud is irresponsible and unconscionable because there is absolutely no basis for such an allegation.

FACTUAL BACKGROUND

The Ritchie Capital Investments

28. Defendants admit that they entered into the Note Purchase Agreement attached as Exhibit A-1 with Thomas J. Petters and PGW. The remaining allegations of Paragraph 28 purport to characterize certain agreements, which speak for themselves, and therefore no response is required. To the extent that a response is required, Defendants deny the allegations. Defendants further aver that they are in no way affiliated with Ark Discovery II, LP, and the agreement attached as Exhibit A-2 is irrelevant to the loans at issue.

29. Defendants deny that Ritchie Capital purchased any of the February Notes. The remaining allegations of the first, second and third sentences of Paragraph 29 purport to characterize the Note Purchase Agreements and the February Notes, which speak for themselves, and therefore no response is required. Defendants deny that the February Notes were only “papered” as obligations of PGW and Thomas J. Petters, and deny the remaining allegations of the fourth sentence of Paragraph 29. Defendants further aver that at least \$25,000,000 in proceeds was wired directly to a PGW bank account, and that the proceeds of all of the Notes represented funds received in respect of loans and under no circumstances do such proceeds constitute “invested capital.”

30. Defendants admit that Yorkville Investments I, L.L.C. and Ritchie Capital Structure Arbitrage Trading, Ltd. purchased the May Notes, and that PGW, PCI and Thomas J. Petters are the obligors under the May Notes. The remaining allegations of Paragraph 30 purport to characterize the May Notes, which speak for themselves, and therefore no response is required.

31. The allegations of the first sentence of Paragraph 31 purport to characterize certain agreements, which speak for themselves and therefore no response is required.

Defendants are without knowledge or information sufficient to form a belief as to the remaining allegations of Paragraph 31, and therefore deny the allegations. Defendants further aver that they have sought information from Plaintiff and its receiver, Douglas Kelley, regarding the entities that received the Defendants' funds, but have to date received no information responsive to the requests.

32. The allegations in Paragraph 32 of the Complaint are admitted.

33. Defendants admit that the maturity dates on some, but not all, of the Notes were extended several times, and at one point many of the loans were due on August 31, 2008. Defendants deny the remaining allegations of Paragraph 33.

34. Defendants admit that all of the Notes (other than the single Note that was paid off in June 2008) were technically in default as of August 31, 2008, but further aver that they did not act upon that default so as to accelerate the obligations under the Notes and related agreements, and that on September 19, 2008, they entered into an agreement that formally extended the due dates on the February Notes and the May Notes to December 19, 2008. Defendants otherwise deny the allegations of Paragraph 34.

Ritchie Capital Collateralization

35. Defendants admit that, on September 19, 2008, they entered into an agreement titled Extension and Amendment Agreement with Petters, PCI and PGW ("Extension Agreement") to extend the due dates for payment under the February Notes and the May Notes in exchange for security interests to secure the February Notes and the May Notes, and that certain Polaroid assets were pledged as security. Defendants deny the remaining allegations of Paragraph 35, and specifically aver that they did not "discover at some point on or about" September 19, 2008 that the loans to PGW and Petters "were in serious jeopardy."

36. Defendants admit that, on September 19, 2008, they entered into the Extension Agreement with PGW, PCI and Petters. The remaining allegations of Paragraph 36 purport to characterize the Extension Agreement, which speaks for itself, and thus no response is required.

37. To the extent that the allegations of Paragraph 37 purport to characterize the Extension Agreement, such agreement speaks for itself, and thus no response is required. Defendants otherwise deny the allegations of Paragraph 37.

38. Defendants admit that they and Polaroid entered into an agreement titled Trademark Security Agreement dated September 19, 2008 (“Trademark Agreement”), and that such agreement was contemplated by the Extension Agreement. To the extent that the allegations of Paragraph 38 purport to characterize those agreements, those agreements speak for themselves, and thus no response is required. Defendants deny the remaining allegations of Paragraph 38.

39. Defendants admit that Ritchie Capital serves as administrative agent for the Ritchie Lenders, and serves as collateral agent for the Ritchie Lenders under the Trademark Agreement, and in those capacities has certain authority to act for the Ritchie Lenders. The allegations of Paragraph 39 otherwise state legal conclusions, which are for the Court to reach, and thus no response is required.

40. To the extent that the allegations of the first sentence of Paragraph 40 purport to characterize the Trademark Agreement, such agreement speaks for itself, and therefore no response is required. Defendants otherwise deny the allegations of the first sentence of Paragraph 40, and aver that the security pledged to Ritchie was, among other things, in exchange for an *extension* of the maturity dates for the February Notes and the May Notes,

which is the equivalent of a new loan and thus not an “antecedent” debt. Defendants admit the allegations of the second sentence of Paragraph 40.

41. Defendants deny the allegations of the first sentence of Paragraph 41. To the extent that the allegations of the second sentence of Paragraph 41 purport to characterize the terms of the Trademark Agreement, such agreement speaks for itself, and no response is required. The allegations of the third sentence of Paragraph 41 do not allege any facts, but rather purport to self-define a term used in the Complaint, and thus no response is required. Defendants deny the remaining allegations of Paragraph 41.

42. The Defendants deny the allegations in Paragraph 42 of the Complaint.

43. The allegations in Paragraph 43 of the Complaint are admitted.

44. The Defendants deny the allegations in Paragraph 44 of the Complaint. Plaintiff’s malicious attempt to create the false impression that Defendants engaged in a fraudulent scheme is irresponsible and unconscionable because there is absolutely no basis for such an allegation.

45. Defendants admit that, on September 26, 2008, Ritchie Capital declared that the February Notes and May Notes were in default. Defendants deny the remaining allegations of Paragraph 45.

46. The Defendants deny the allegations in Paragraph 46 of the Complaint. Defendants further aver that the Trademark Security Agreement contained numerous carveouts to provide Polaroid with ample flexibility to obtain working capital and other financing necessary for business operations (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). The Trademark Security Agreement in no way burdened Polaroid or impaired its ability to obtain financing.

The Receivership

47. The allegations in Paragraph 47 of the Complaint are admitted.

48. The allegations of Paragraph 48 purport to characterize a court order, which speaks for itself, and thus no response is required.

49. Defendants admit that the receiver, purporting to act under authority of a court order, placed PGW and PCI into bankruptcy. Defendants deny the remaining allegations of Paragraph 49.

50. The allegations of Paragraph 50 purport to characterize a federal indictment, which speaks for itself, and thus no response is required.

51. The Defendants deny the allegations in Paragraph 51 of the Complaint. Plaintiff's malicious attempt to create the false impression that Defendants engaged in a fraudulent scheme is irresponsible and unconscionable because there is absolutely no basis for such an allegation.

COUNT I – FRAUDULENT TRANSFERS

Actual Fraud - 11 U.S.C. §§ 548(a)(1)(A), 550, 551 and 1107

52. Defendants incorporate their answers to the preceding paragraphs of the Complaint as if set forth fully herein, and no response is necessary to the allegations in Paragraph 52 of the Complaint.

53. The Defendants deny the allegations in Paragraph 53 of the Complaint.

54. The Defendants deny the allegations in Paragraph 54 of the Complaint. Plaintiff's malicious attempt to create the false impression that Defendants engaged in a fraudulent scheme is irresponsible and unconscionable because there is absolutely no basis for such an allegation.

55. The Defendants deny the allegations in Paragraph 55 of the Complaint.

56. The Defendants deny the allegations in Paragraph 56 of the Complaint.

COUNT II – FRAUDULENT TRANSFERS

Constructive Fraud - 11 U.S.C. §§ 548(a)(1)(B), 550(a), 551 and 1107

57. Defendants incorporate their answers to the preceding paragraphs of the Complaint as if set forth fully herein, and no response is necessary to the allegations in Paragraph 57 of the Complaint.

58. The Defendants deny the allegations in Paragraph 58 of the Complaint.

59. The Defendants deny the allegations in Paragraph 59 of the Complaint.

60. The Defendants deny the allegations in Paragraph 60 of the Complaint.

61. The Defendants deny the allegations in Paragraph 61 of the Complaint.

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

62. Defendants incorporate their answers to the preceding paragraphs of the Complaint as if set forth fully herein, and no response is necessary to the allegations in Paragraph 62 of the Complaint.

63. The Defendants deny the allegations in Paragraph 63 of the Complaint.

64. The Defendants deny the allegations in Paragraph 64 of the Complaint.

65. The Defendants deny the allegations in Paragraph 65 of the Complaint.

66. The Defendants deny the allegations in Paragraph 66 of the Complaint.

67. The Defendants deny the allegations in Paragraph 67 of the Complaint.

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

68. Defendants incorporate their answers to the preceding paragraphs of the Complaint as if set forth fully herein, and no response is necessary to the allegations in Paragraph 68 of the Complaint.

69. The Defendants deny the allegations in Paragraph 69 of the Complaint.

70. The Defendants deny the allegations in Paragraph 70 of the Complaint.

71. The Defendants deny the allegations in Paragraph 71 of the Complaint.

72. The Defendants deny the allegations in Paragraph 72 of the Complaint.

73. The Defendants deny the allegations in Paragraph 73 of the Complaint.

COUNT V – PREFERENTIAL TRANSFER

11 U.S.C. §§ 547, 550, 551 and 1107

74. Defendants incorporate their answers to the preceding paragraphs of the Complaint as if set forth fully herein, and no response is necessary to the allegations in Paragraph 74 of the Complaint.

75. The Defendants deny the allegations in Paragraph 75 of the Complaint. Defendants further aver that the “Transfers” referred to in Paragraph 75 of the Complaint were in no way made on account of an “antecedent debt” of Polaroid because: (a) the relevant debt was owed by PGW, PCI and Petters, and thus was not even “debt” of Polaroid; and (b) the Transfers provided security in connection with an *extension* of the maturity date of the February Notes and the May Notes, which are in effect new loans and thus new value, and therefore none of the secured debt in question is “antecedent” debt.

76. The Defendants deny the allegations in Paragraph 76 of the Complaint.

77. The allegations in Paragraph 77 of the Complaint are admitted.
78. The Defendants deny the allegations in Paragraph 78 of the Complaint.
79. The Defendants deny the allegations in Paragraph 79 of the Complaint.

COUNT VI – DISALLOWANCE

11 U.S.C. § 502(b) and (d)

80. Defendants incorporate their answers to the preceding paragraphs of the Complaint as if set forth fully herein, and no response is necessary to the allegations in Paragraph 80 of the Complaint.

81. The Defendants deny the allegations in Paragraph 81 of the Complaint.
82. The Defendants deny the allegations in Paragraph 82 of the Complaint.
83. The Defendants deny the allegations in Paragraph 83 of the Complaint.

COUNT VII – LIEN AVOIDANCE

(11 U.S.C. § 506(d))

84. Defendants incorporate their answers to the preceding paragraphs of the Complaint as if set forth fully herein, and no response is necessary to the allegations in Paragraph 84 of the Complaint.

85. The Defendants deny the allegations in Paragraph 85 of the Complaint.
86. The Defendants deny the allegations in Paragraph 86 of the Complaint.

COUNT VIII – EQUITABLE SUBORDINATION

11 U.S.C. § 510(c)

87. Defendants incorporate their answers to the preceding paragraphs of the Complaint as if set forth fully herein, and no response is necessary to the allegations in Paragraph 87 of the Complaint.

88. The allegations of the first sentence of Paragraph 88 state legal conclusions, which are for the Court to reach, and therefore no response is required. Defendants deny the remaining allegations of Paragraph 88.

89. The Defendants deny the allegations in Paragraph 89 of the Complaint. Plaintiff's allegations that Defendants acted "knowingly, purposefully and systematically," and "participate[d]" in acts with Petters, to harm Polaroid are baseless and irresponsible, and represent malicious attempts to disparage Ritchie Capital. Defendants further aver that the Trademark Security Agreement contained numerous carveouts to provide Polaroid with ample flexibility to obtain working capital and other financing necessary for business operations (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). The Trademark Security Agreement in no way burdened Polaroid or impaired its ability to obtain financing.

90. The Defendants deny the allegations in Paragraph 90 of the Complaint.

91. The Defendants deny the allegations in Paragraph 91 of the Complaint.

COUNT IX – RECHARACTERIZATION

11 U.S.C. § 105

92. Defendants incorporate their answers to the preceding paragraphs of the Complaint as if set forth fully herein, and no response is necessary to the allegations of Paragraph 92 of the Complaint.

93. To the extent that the allegations of Paragraph 93 purport to characterize promissory notes or other documents, such documents speak for themselves, and no response is required. Defendants specifically deny that the promissory notes were in any way a "capital investment," and otherwise deny the remaining allegations of Paragraph 93.

94. The Defendants deny the allegations in Paragraph 94 of the Complaint.

95. The Defendants deny the allegations in Paragraph 95 of the Complaint.

COUNT X – DECLARATORY AND OTHER RELIEF

11 U.S.C. § 105

96. Defendants incorporate their answers to the preceding paragraphs of the Complaint as if set forth fully herein, and no response is necessary to the allegations of Paragraph 96 of the Complaint.

97. The Defendants deny the allegations in Paragraph 97 of the Complaint. Plaintiff's malicious attempt to create the false impression that Defendants engaged in a fraudulent scheme is irresponsible and unconscionable because there is absolutely no basis for such an allegation.

98. The Defendants deny the allegations in Paragraph 98 of the Complaint.

99. The Defendants deny the allegations in Paragraph 99 of the Complaint.

100. The Defendants deny the allegations in Paragraph 100 of the Complaint.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Plaintiff's Complaint is barred for failure to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiff's Complaint is barred by the doctrines of unclean hands and *in pari delicto*.

THIRD AFFIRMATIVE DEFENSE

Plaintiff's Complaint is barred by the doctrines of waiver and estoppel.

FOURTH AFFIRMATIVE DEFENSE

The grant of the security interests were not preferential as to Ritchie because they were made in exchange for new value, contemporaneously given.

FIFTH AFFIRMATIVE DEFENSE

Polaroid was not insolvent at the time the transfers and obligations which are the subject of this Complaint were made.

SIXTH AFFIRMATIVE DEFENSE

Polaroid did not receive less than a reasonably equivalent value in exchange for the transfers and obligations which are the subject of this Complaint.

SEVENTH AFFIRMATIVE DEFENSE

The transfers and obligations which are the subject of this Complaint were not made with actual intent to hinder, delay, or defraud any entity to which the Plaintiff was indebted, or became indebted, on or after the date that such transfers were made or such obligations were incurred.

EIGHTH AFFIRMATIVE DEFENSE

The Defendants gave value for the transfers and obligations which are the subject of this Complaint and received such interests in good faith and have a lien on, and may retain their interests in, such transfers and may enforce such obligations incurred.

WHEREFORE, Ritchie respectfully requests that the Complaint be dismissed with prejudice, and that Ritchie be awarded all of its attorney fees and costs incurred in this matter, and for such other further relief as is just and equitable.

COUNTERCLAIMS

Ritchie Capital Management, L.L.C. (“Ritchie Capital”), as administrative agent and collateral agent, Ritchie Special Credit Investments, Ltd., Rhone Holdings II. Ltd., Yorkville Investments I, L.L.C., and Ritchie Capital Structure Arbitrage Trading, Ltd. (together “Ritchie”

or, exclusive of Ritchie Capital, “Ritchie Lenders”), for their counterclaims against Polaroid Corporation (“Polaroid”), state as follows:

1. Ritchie asserts these Counterclaims to vindicate the following valid, enforceable security interests: (i) security interests in and liens on Polaroid brand trademarks in Brazil, China and India; (ii) a pledge of two secured promissory notes evidencing loans made by Petters Capital, LLC (“Petters Capital”) to Polaroid, which notes are secured by substantially all of the assets of Polaroid; (iii) a pledge of one unsecured promissory note evidencing a loan made by Petters Capital to Polaroid; (iv) a pledge of one unsecured promissory note evidencing a loan made by Thomas Petters, Inc. (“TPI”) to Polaroid Consumer Electronics, LLC; (v) a pledge of one secured promissory note evidencing a loan made by Petters Company, Inc. (“PCI”) to Polaroid, which note is secured by substantially all of the assets of Polaroid; and (vi) a pledge of one unsecured promissory note evidencing a loan made by PCI to Polaroid Consumer Electronics, LLC. These security interests provided collateral security for the loans extended to Petters Group Worldwide, LLC (“PGW”) and Petters. Further, the claims on the promissory notes which are subject to these security interests constitute valid and enforceable obligations of Polaroid (and Polaroid Consumer Electronics, LLC).

2. The Complaint attacks certain of Ritchie’s security interests by irresponsibly suggesting, among other things, that Ritchie was aware of the fraudulent scheme perpetrated by Petters and tried to salvage its own loans at the expense of other creditors. Such suggestions and implications are not merely false, they are a malicious attempt to damage Ritchie’s reputation. The implication that Ritchie was aware of the fraudulent scheme is irresponsible and disingenuous for a number of reasons, but most notably because Mary Jeffries, Polaroid’s current CEO (“Jeffries”), actively participated in the negotiations that led to, and had direct

knowledge of, the transactions Polaroid now seeks to avoid, and yet Jeffries never suggested to Ritchie that the transactions were fraudulent or otherwise suspect.

3. Indeed, Jeffries was the President and Chief Operating Officer (“COO”) of PGW in February 2008 when the loans to PGW and Petters were originally made by the Ritchie Lenders, and was involved in negotiating the terms and conditions of the February Notes. Jeffries also was aware of, and participated in, the negotiations between Ritchie and PGW in August and September that led to the granting of the security interests to Ritchie that Polaroid now finds it convenient to attack. During the months in which the security arrangements were being negotiated, Jeffries was CEO of Polaroid (having assumed that post in April 2008) and remained an executive at PGW. At least once during the negotiations, Jeffries interjected to request that any extension of the loans entail a lower interest rate. Therefore, if Petters or PGW had engaged in fraudulent activity with respect to the Ritchie loans, Jeffries would have known, or should have known, about such fraudulent activity. Furthermore, based upon the course of events to date, the practice of Douglas Kelley, receiver for Polaroid and Trustee and receiver for PGW (“Kelley”), is to remove anyone from the employ of any of the companies under his control who had any knowledge of, involvement with, or connection to, fraudulent activity. Jeffries remains CEO of Polaroid with Kelley’s approval. In fact, Kelley has even permitted Jeffries to retain a \$1,000,000 bonus received in late 2007 for her work at PGW, but has forced others complicit in Petters’ fraudulent scheme to return their bonuses. These facts evidence that no fraud occurred with respect to the Ritchie loans.

4. For the same reasons, it is unreasonable and inappropriate for Polaroid to imply that the Ritchie entities, outside parties with no previous business relationship with Petters or any of his companies, were aware of any fraud with respect to the Ritchie loans, or the larger

Ponzi scheme allegedly perpetrated by Petters, when Jeffries herself presumably was unaware of such fraud *while serving as President and COO of PGW and CEO of Polaroid*. Accordingly, there is absolutely no basis to claim or suggest any fraudulent behavior or intent on the part of Ritchie, whether related to the original loans, the negotiation and execution of the security arrangements, or otherwise, nor any basis to assert that Ritchie knew of any fraud.

5. The Ritchie Lenders in fact received the above-described security interests and, with respect to the promissory notes, became the beneficiary of the claims subject to such security interests pursuant to standard, commercial negotiations. In this regard, Ritchie had absolutely *no* knowledge, or reason to suspect, that any fraud was being conducted by PCI, PGW or any other any other company controlled by Petters. Moreover, the extension of the February Notes and the May Notes, which was agreed to by Ritchie in exchange for the grant of the security interests in the Polaroid trademarks, provided substantial benefit to Polaroid by, among other things, preventing PGW, Polaroid's parent company, from defaulting under its obligations to the Ritchie Lenders. PGW served as a critical capital funding source for Polaroid, and thus a PGW default would seriously threaten the financial health of Polaroid.

Parties

6. Ritchie Special Credit Investments, Ltd. ("Special Credit") is a Cayman Islands company and its principal place of business is in the Cayman Islands.

7. Rhone Holdings II. Ltd. ("Rhone") is a Cayman Islands company and its principal place of business is in the Cayman Islands.

8. Yorkville Investment I, L.L.C. ("Yorkville") is a Delaware limited liability company and its principal place of business is in the State of Illinois.

9. Ritchie Capital Structure Arbitrage Trading, Ltd. (“Capital Structure”) is a Cayman Islands company and its principal place of business is in the Cayman Islands.

10. Ritchie Capital Management, L.L.C. is a Delaware limited liability company and its principal place of business is in Lisle, Illinois. Ritchie Capital serves as administrative agent for each of Special Credit, Rhone, Yorkville and Capital Structure, and in that capacity has certain authority to act on behalf of those entities with respect to the transactions at issue.

11. Polaroid Corporation is a Delaware corporation and, upon information and belief, its principal place of business is in the State of Minnesota.

Ritchie Lends Money To PGW Under The February Notes And The May Notes

12. In early 2008, Petters approached Thane Ritchie, founder and CEO of Ritchie Capital, about obtaining a bridge loan for 90 days while PGW, his main holding company and Polaroid’s parent company, was in the process of negotiating a major transaction. Petters showed Ritchie an independent evaluation of Polaroid performed by a reputable, nationally-known valuation firm, and said that he was in negotiations to sell the North American Polaroid trademark to a retail distribution company for a purchase price of over \$330 million plus incentives. Petters indicated that PGW wanted to borrow at least \$100 million to bridge this sale. PGW offered a 20% fee (in the form of interest) for the short-term, 90 day bridge loan. This touched off discussions between executives at both Ritchie and PGW. Among the PGW executives involved was Mary Jeffries, who then served as President and COO of PGW. Ritchie was interested in providing the requested financing because PGW was a holding company for Polaroid and a number of other operating businesses, and Petters, at the time, was a well-reputed business man.

13. Following negotiations, in February 2008 the parties executed a series of promissory notes (“February Notes,” attached as Exhibit A), as follows²: (i) a \$31,000,000 note payable to Special Credit dated February 1, 2008; (ii) a \$31,000,000 note payable to Special Credit dated February 4, 2008; (iii) a \$13,000,000 note payable to Yorkville dated February 5, 2008; (iv) a \$4,000,000 note payable to Special Credit dated February 7, 2008; (v) a \$12,000,000 note payable to Rhone dated February 7, 2008; (vi) a \$5,000,000 note payable to Yorkville dated February 15, 2008; (vii) a \$9,000,000 note payable to Special Credit dated February 19, 2008; and (viii) a \$16,000,000 note payable to Rhone dated February 19, 2008. The notes described in clauses (iv), (v) and (vi) each had a 30 day maturity, and the balance of such notes each had a 90-day maturity. Each of the February Notes was signed by PGW and Petters (in his individual capacity), as joint and several obligors.

14. Under common practice, unsecured, short-term notes to non-investment grade borrowers like the February Notes carry a high annual rate of interest, so as to provide the lender with an appropriate return on the short-term loan, in view of the high degree of risk taken by the lender. For example, a 90-day loan bearing an 80% per annum interest rate would provide a 20% return to the lender – precisely the “fee” Petters and PGW proposed to Thane Ritchie when Petters first approached Ritchie regarding the loans at issue. But a 90-day loan bearing interest at a 10% annual rate would in effect provide a return of 2.5% to the lender; a non-investment grade borrower would never be able to obtain such a favorable rate on a loan of any duration. In addition, Petters and PGW knew that a short-term lender takes the risk of a long term loan without a long duration payoff and therefore it is reasonable and appropriate to

² As part of the February loan transactions, the parties also executed the following promissory notes: (i) a \$16,000,000 note payable to Rhone dated February 4, 2008, and (ii) a \$9,000,000 note payable to Special Credit dated February 4, 2008. On February 19, 2008, these two promissory notes were sold to an unaffiliated third party.

charge an appropriate premium for taking such risk. Often such premiums are paid in the form of up-front lender fees. The loans provided by Ritchie also carried no additional fees, and thus Petters was saving on standard financing fees. Accordingly, consistent with these principles, the February Notes carried a high annual rate of interest.

15. In early May 2008, Petters asked Thane Ritchie if he was interested in providing further financing. After discussions, on May 9, 2008 two additional promissory notes (“May Notes,” attached as Exhibit B) were executed: a \$4,000,000 note payable to Yorkville and an \$8,000,000 note payable to Capital Structure. Each of the May Notes was due on May 30, 2008, and was signed by PGW, PCI and Petters, individually, as obligors. As with the February Notes, and again consistent with common practice for short-term unsecured notes without substantial up-front fees, the May Notes carried a high rate of interest.

16. Contrary to Polaroid’s allegations, the loans advanced by the Ritchie Lenders were not in fact loans to PCI and merely “papered” as PGW obligations; the loans were irrefutably made to PGW (and Petters). Ritchie negotiated with representatives of PGW (including Jeffries) and advanced the monies on the basis that it was loaning money to a company that had several operating subsidiaries, most notably Polaroid; in fact, in early February 2008, executives of PGW and Polaroid (including Jeffries) provided Ritchie with extensive diligence materials relating to Polaroid, in order to convince Ritchie to make loans to PGW. PCI, by contrast, is a shell company with no operating subsidiaries. Indeed, PCI was not a party to any of the February Notes, and was a party to the May Notes only because, in May 2008, Ritchie required that additional, not replacement or substitute, obligors be obligated on the new loans that Petters sought in May 2008.

17. Additionally, in early February 2008 when the loans were being negotiated, Ritchie intended to obtain, and PGW intended to provide, security for the February Notes using either the stock or the assets of Polaroid. As discussed above, at this time, PGW and Polaroid provided Ritchie with extensive financial and operating information concerning Polaroid, with the involvement of Mary Jeffries. However, the stock and assets of Polaroid were already encumbered by liens securing loans Polaroid owed to J.P. Morgan, which had lent substantial sums to Polaroid in connection with Petters' acquisition of Polaroid, and also provided working capital for Polaroid. Accordingly, Ritchie informed PGW that the Ritchie Lenders would make the loans requested by PGW at such time as the JP Morgan loans were repaid in full and the Ritchie Lenders could take a first priority security interest in Polaroid assets, something that Ritchie was told would occur imminently. When the repayment of such JP Morgan loans was delayed, for reasons that Petters did not disclose to Ritchie, Petters offered to be a co-obligor (with PGW) on the loans in order to induce the Ritchie Lenders to make unsecured loans for the benefit of PGW. After extensive negotiation, the Ritchie Lenders agreed to this arrangement, with the understanding that Petters would remain individually obligated on the loans until the Ritchie Lenders were granted a first priority pledge of the equity of Polaroid. Such pledge was never delivered.

18. Polaroid's heavy reliance on allegations that the funds supplied under the February Notes and the May Notes were wired to a PCI bank account is misplaced and irrelevant.³ Ritchie's initial lending relationship was, and was always intended to be, with PGW. The February Notes and the May Notes and related agreements are valid, enforceable contracts with PGW – Polaroid cannot in good faith contend otherwise. PGW received value

³ Nor are the allegations entirely true. At least \$25,000,000 of the initial proceeds were wired to a PGW bank account.

under the February Notes and May Notes, including providing funds for PGW to use for general business purposes, without restriction. Moreover, there was no reason to believe that anything was improper – in situations involving common ownership, it is common, indeed typical, for the funds borrowed by one entity from an outside source to be used for intercompany advances between and among affiliated entities, as decided and directed by the borrower. Simply put, under the circumstances attendant to the PGW loans, the holder of the bank account to which the loan proceeds are wired is irrelevant for purposes of establishing the identity of the borrower or disproving that the borrower received value for the loan.

PGW's Requests To Extend The Due Dates Led To The Pledge Of Security For The February Notes And The May Notes

19. In May 2008, as the February Notes were coming due, Petters informed Ritchie that, as a result of the growing global credit crisis, the retail distribution company that was seeking to acquire Polaroid assets was having difficulty obtaining sufficient financing to consummate a transaction. Petters, however, informed Ritchie that he was negotiating another potential transaction, a deal to sell Polaroid assets to an Indian technology venture. It was at this point that Ritchie agreed, after reviewing a term sheet for such transaction provided by Petters and as requested by Petters, to extend the February Notes to late July/early August. In mid-July 2008, as the extended maturity dates approached, and no transaction had been completed, Petters again asked Ritchie for further extensions of the final maturity of the February Notes. Ritchie agreed to extend the maturity date of the February Notes again, to August 31, 2008. At the time of these extensions (late July 2008), however, Ritchie stated that it would not agree to any further extensions without receiving some form of collateral security to secure the obligations of PGW to the Ritchie Lenders under the extended loans.

20. In early August 2008, as the extended maturity date approached, Petters asked Ritchie for yet another extension. At this point, Ritchie required security in connection with granting a further extension. This sparked negotiations between representatives of Ritchie and representatives of PGW, including Tom Petters, David Baer, PGW's General Counsel ("Baer"), and Simon Root, PGW's outside corporate counsel ("Root"). Jeffries, Polaroid's CEO, was aware of these negotiations, having asked, at least once, that the extensions include a reduction in the interest rate on the February Notes and the May Notes. Negotiations stretched from early August 2008 through and including September 19, 2008, and culminated in the execution of several agreements on September 19, 2008 that extended the maturity dates on the February Notes and the May Notes and granted Ritchie security interests in certain Polaroid intellectual property and in promissory notes that Polaroid and Polaroid Consumer Electronics, LLC had made in favor of Petters Capital, TPI and PCI.

21. The agreement to extend the maturity dates reached between Ritchie and Petters, PGW and PCI is called the Extension and Amendment Agreement, dated September 19, 2008 ("Extension Agreement," attached hereto as Exhibit C). The Extension Agreement extended the maturity date of the February Notes and the May Notes to December 19, 2008, and amended a variety of the terms of the note purchase agreement governing those notes. In exchange for these extensions, Petters and PGW agreed to cause various agreements to be effected to grant the following collateral security to Ritchie for the obligations of PGW and Petters under the February Notes and the obligations of PGW, PCI and Petters under the May Notes: (a) security interests in Polaroid's Brazil, China and India trademarks; and (b) liens in a number of promissory notes issued by Polaroid and Polaroid Consumer Electronics LLC and held by Petters Capital, PCI and TPI. The Extension Agreement and the security agreements

were the product of extensive arms-length negotiations carried out over almost two months with Baer and Root, who were under the supervision of Petters and Jeffries. At no time during these negotiations was Ritchie aware of any fraudulent activity or scheme, nor did Ritchie have any reason to suspect fraud.

22. The grant of a security interest in Polaroid's Brazil, China and India Polaroid trademarks was effected pursuant to the Trademark Security Agreement dated September 19, 2008 between Ritchie and Polaroid ("Trademark Agreement," attached hereto as Exhibit D). Pursuant to the Trademark Agreement, Polaroid granted Ritchie a security interest in all of the trademarks owned by Polaroid in Brazil, India and China, including a portion of any proceeds realized from their license or sale.

23. With respect to the liens in the Polaroid promissory notes, the Extension Agreement called for the execution of two separate agreements: a Security Agreement among PCI, TPI and Ritchie ("PCI Security Agreement," attached as Exhibit E); and a Security and Intercreditor Agreement between Petters Capital and Ritchie ("PC Security Agreement," attached as Exhibit F).

24. The PCI Security Agreement was executed on September 19, 2008. Pursuant to that agreement, Ritchie received a pledge of, and thus has a lien on, the following promissory notes (attached hereto as Exhibit G): (a) Amended and Restated Unsecured Subordinated Term Note, in the original amount of \$10,005,000 and dated April 28, 2005, as amended and restated as of September 11, 2008, issued by Polaroid Consumer Electronics, LLC in favor of TPI; (b) Amended and Restated Unsecured Subordinated Term Note, in the original amount of \$8,982,645 and dated March 31, 2005, as amended and restated as of September 11, 2008, issued by Polaroid Consumer Electronics, LLC in favor of PCI; and (c) Amended and Restated

Secured Subordinated Term Note, in the original amount of \$20,000,000 and dated April 24, 2007, as amended and restated as of September 11, 2008, issued by Polaroid in favor of PCI (“PCI Secured Note”). The PCI Secured Note is secured by a lien on substantially all of the assets of Polaroid pursuant to the Third Amended and Restated Pledge and Security Agreement, dated September 11, 2008, by and among Polaroid, as grantor, and Petters Capital and PCI as secured parties (the “Intercompany Note Security Agreement”).

25. The PC Security Agreement was executed on September 26, 2008. Pursuant to the PC Security Agreement, Ritchie received a pledge of, and thus has a lien on, the following promissory notes (attached as Exhibit H): (a) Senior Subordinated Note, unsecured and in the original principal amount of \$125,000,000, dated April 27, 2005, as amended and restated as of September 11, 2008, issued by Polaroid Corporation in favor of Petters Capital; (b) Promissory Note, secured and in the original principal amount of \$5,000,000, dated November 5, 2007, as amended and restated as of September 11, 2008, issued by Polaroid Corporation in favor of Petters Capital (“PC Secured Note I”); and (c) Promissory Note, secured and in the original principal amount of \$5,000,000, dated November 12, 2007, as amended and restated as of September 11, 2008, issued by Polaroid Corporation in favor of Petters Capital (“PC Secured Note II”). The PC Secured Note I and PC Secured Note II are secured by the assets of Polaroid pursuant to the Intercompany Note Security Agreement.

26. Each of the notes described above in which Ritchie has liens pursuant to the pledges made under the terms of the Extension Agreement and agreements related thereto are valid and should be enforced according to their terms, and the liens and security interests granted to secure such notes are also valid and enforceable.

27. Polaroid received benefits in exchange for its grant of the security interests in the foreign trademarks, and those benefits constituted reasonably equivalent value for the trademarks transferred. Without limitation, those benefits included 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 the Ritchie Lenders by Polaroid enabled PGW to avoid default, which would have placed considerable financial strain on Polaroid, and generally de-stabilized Polaroid. Furthermore, Ritchie ensured that 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. The transactions contemplated by the Trademark Agreement provided significant benefits to Polaroid and in no material manner burdened Polaroid or impaired its ability to obtain financing.

28. Additionally, on September 19, 2008, Ritchie believed that Polaroid was solvent, and had no reason to believe it was insolvent on that date. On information and belief, Polaroid was not in fact insolvent on September 19, 2008, and the security interests granted by Polaroid on that date did not render it insolvent. In addition, on information and belief, based upon current financial information provided by Polaroid to prospective bidders for its assets, the fair value of Polaroid's assets exceeds its liabilities even as of the date hereof and has been continuously true since September 19, 2008.

The FBI Raids The Offices Of Petters and PCI; Douglas Kelley Is Appointed Receiver For PGW And Polaroid; Kelley Places PGW, And Later Polaroid, Into Bankruptcy

29. On September 24, 2008, agents from the Federal Bureau of Investigation ("FBI") and other federal and state agencies raided the home of Petters and the offices of PCI.

The agents were executing a search warrant obtained in connection with an investigation into a massive Ponzi scheme, now estimated to be as large as \$3,000,000,000. As revealed by the affidavit submitted by agent Timothy Bisswurm of the FBI in support of the search warrant (“FBI Affidavit,” attached as Exhibit I), the investigation centered on a scheme whereby Petters, through PCI and its subsidiaries, induced investors into providing loans for purported bulk purchases of merchandise that investors were told would later be sold to “big box” retailers such as Circuit City. In fact, most, or all, of those transactions were fictitious, and no merchandise was in fact bought or sold. Petters and his accomplices generated fake purchase orders and forged other documents to dupe the investors into thinking the transactions were real. Importantly, the FBI Affidavit, and thus the investigation, focused on Petters and PCI – the affidavit contains no mention of PGW.

30. Following the raid, Petters stepped away from all of his corporate positions, including his roles as CEO and director at PCI and PGW. Naturally, Ritchie and other creditors wanted information immediately about the status of the Petters entities and their assets. With Petters stepping away, Kelley, a Minneapolis attorney, stepped forward and claimed that he had been retained by Petters as a representative of PCI and PGW, and asked that all inquires be directed to him. Ritchie made numerous efforts to obtain information from Kelley, but Kelley refused to supply any substantive information.

31. Ritchie’s inability to obtain information about PCI and PGW from Kelley, who did not indicate what legal authority he had with respect to the companies, created great concern about what would happen to the companies while they were left rudderless by the departure of their sole owner and top executive. Shortly after the raid, Ritchie filed suit against PGW, PCI and Petters in state court in Cook County, Illinois (“Illinois Action”) to recover the amounts due

on the February Notes and the May Notes. The suit was filed in Illinois because (i) Ritchie is headquartered in a Chicago suburb and therefore the loans under the Notes had been made in Illinois, and (ii) PGW, PCI and Petters had consented in the Extension Agreement and in the February Notes and the May Notes to the jurisdiction of the courts of the State of Illinois for the enforcement of the Extension Agreement and such notes. Also on September 29, 2008, Ritchie obtained a temporary restraining order (“TRO”), which froze the assets of Petters, PGW and PCI. With persisting uncertainty regarding who was in charge at PCI and PGW, and growing concern that Polaroid and the other operating businesses of PGW would be irreparably harmed in the absence of active leadership at their parent company, on October 3, 2008 Ritchie sought and obtained an amendment to the TRO in the Illinois Action that appointed a receiver to take control of both PCI and PGW.

32. Unbeknownst to Ritchie, after having learned about the Illinois Action and the TRO, on October 2, 2008, the United States District Attorney for the District of Minnesota filed a complaint in the United States District Court for the District of Minnesota alleging violations of 18 U.S.C. § 1345 (“Minnesota Action”). The action was filed under seal, and thus was not known to Ritchie or, on information and belief, to any other creditors of PGW and PCI. Ritchie informed Kelley of the receiver appointed by the Illinois court on the afternoon of Friday, October 3, 2008. On October 5, 2008, a Sunday, a stipulation was entered into by Petters and the United States Attorney for the appointment of Kelley as receiver for PGW and PCI. On October 6, 2008, without notice to Ritchie or any creditors, the United States Attorney moved to appoint a receiver for PGW and PCI in the Minnesota Action. The District Court granted the request that day and entered an order (“Receivership Order”) appointing Kelley as receiver for PCI and PGW. The filings and transcripts from the proceedings in the Minnesota Action, which

were made public after Kelley was appointed receiver, contain no indication that the District Court was made aware that the Illinois court had appointed a receiver for PGW and PCI three days earlier in the Illinois Action.

33. Ritchie intervened in the Minnesota Action to oppose the appointment of Kelley as receiver for PCI and PGW because a receiver had already been appointed for those entities in the Illinois action, and Supreme Court precedent clearly states that, in such situations, the appointment later in time should give way to the earlier appointment. The District Court denied the motion. In light of the actions by the District Court, the judge in the Illinois Action allowed the TRO to expire on October 10, 2008, and the receivership in the Illinois Action ended. The very next day, Kelley placed PCI and PGW into bankruptcy.

34. Amendments to the Receivership Order named Kelley as receiver for Polaroid as well. The bankruptcy of PGW removed Polaroid's primary source of funding and, on information and belief, the PGW bankruptcy was one factor that led Kelley to place Polaroid into bankruptcy.

**The Polaroid Complaint Wrongly Insinuates That Ritchie Was Aware Of The Petters
Fraud Prior To The FBI Raid On September 24, 2008**

35. The Complaint is rife with allegations that irresponsibly insinuate that Ritchie had knowledge of, or worse, involvement in, the fraud perpetrated by Petters. For instance, in Paragraph 19 of its Complaint, Polaroid alleges that "literally days before or after the Ponzi scheme collapsed" Ritchie and Petters "orchestrated . . . transactions targeted at securing the value of Polaroid . . . in a final-hour attempt to shore-up, conceal and cover millions of dollars in losses." Similarly, in Paragraph 23, Polaroid alleges that the security interests and note pledges Ritchie received "were made on the eve of bankruptcy in furtherance of the fraudulent scheme." And, in Paragraph 89, Polaroid claims that Ritchie "used the leverage and the

position they had with Thomas J. Petters for their own benefit” just before the Ponzi scheme collapsed, and that Ritchie “knowingly, purposely and systematically subjected Polaroid and its assets to liens . . . for which Polaroid obtained no or inadequate value.”

36. These allegations are baseless, irresponsible and malicious. Polaroid does not, because it cannot, directly allege that Ritchie was complicit in the fraud committed by Petters. Polaroid does not, because it cannot, allege that Ritchie was aware of the fraud committed by Petters – or even suggest any means by which Ritchie could have been made aware of a fraud that, based on information to date, was unknown to all but a few people within the Petters-owned companies and their accomplices. Ritchie notes that none of Jeffries, Baer or Root, the PGW and Polaroid representatives that were primarily responsible for negotiating the Notes and the security arrangements finalized in September 2008, have been cited as being aware of or complicit in any of the fraudulent activity surrounding Petters and his companies. If such persons were not involved in, or aware of, such fraudulent activity, certainly Ritchie could not have been aware of such fraudulent activity. Through the allegations of the Complaint, Polaroid nonetheless created the false impression that Ritchie was aware of, or even involved in, the fraud. For instance, Polaroid placed the collapse of the Ponzi scheme close in time to the Extension Agreement and associated pledges of security to insinuate Ritchie’s knowledge and a causal effect. Moreover, Polaroid used terms like “orchestrated” to describe common and reasonable commercial transactions such as obtaining security in exchange for an extension on previously unsecured loans that the borrower had been unable to repay at original maturity and on at least two additional extended maturity dates, “conceal” to describe typical efforts any lender would use to preserve the value of unsecured, overdue loans, and “in furtherance of the fraudulent scheme” when there is no allegation of Ritchie’s involvement or basis therefor.

Several media outlets were misled by the false impressions created by the Complaint, and incorrectly reported that Ritchie had been implicated in, and had abetted, the Petters fraud. Polaroid must have intended such an inaccurate impression be received by the media and the public at large, because Polaroid's officers who participated in the negotiations know that the security arrangements (*e.g.*, the transfers of value to Ritchie) were the product of extensive negotiations and were supported by adequate consideration, and none of Polaroid's or PGW's representatives ever told Ritchie that the transactions were in any way fraudulent. The incorrect media reports have forced Ritchie to take special actions, in the midst of one of the most difficult investment and economic environments in memory, to reassure its investors, lenders and counterparties, that it had absolutely no involvement in the fraud.

37. Ritchie has grave concerns that the Polaroid Complaint is representative of the manner in which this proceeding (and, for that matter, the related bankruptcy proceedings) will be conducted. Ritchie's loans and security interests are legal, valid and enforceable. The allegations of the Polaroid Complaint, which seek to portray Ritchie as a party to Petters's fraud, are wholly devoid of merit.

COUNT I

Declaratory Relief Regarding Ritchie's Security Interests In Polaroid Trademarks

38. Ritchie incorporates the preceding paragraphs of the Counterclaims as if set forth fully herein.

39. Pursuant to Sections 501 and 502 of the Bankruptcy Code and Bankruptcy Rule 3003(c)(2), Ritchie asserts this counterclaim to determine the extent and validity of its security interests in the Polaroid Brazil, China and India trademarks, because such security interests have been disputed by Polaroid.

40. Pursuant to the Trademark Security Agreement entered into with Polaroid, Ritchie was granted security interests in the Polaroid Brazil, China and India trademarks.

41. Polaroid received fair value for the security interests granted to Ritchie because, as recited in the Trademark Security Agreement, the grant of such security interests was a condition precedent to the extension of the maturity dates of February Notes and the May Notes contemplated by the Extension Agreement, and among other things, such extension was necessary to prevent PGW, Polaroid's parent company and primary source of funding, from lapsing into default.

42. On information and belief, Polaroid was not insolvent on September 19, 2008, the date that the Trademark Security Agreement was entered.

43. Accordingly, Ritchie's security interests in the Polaroid Brazil, China and India trademarks are valid and enforceable, and Ritchie is entitled to the full benefit of those secured interests in these bankruptcy proceedings.

COUNT II

Declaratory Relief Regarding Ritchie's Security Interests In Pledged Promissory Notes

44. Ritchie incorporates the preceding paragraphs of the Counterclaims as if set forth fully herein.

45. Pursuant to the PC Security Agreement with Petters Capital and the PCI Security Agreement with PCI and TPI, Ritchie received a pledge of certain promissory notes issued by Polaroid and Polaroid Consumer Electronics, LLC and held by Petters Capital, PCI and TPI.

46. Petters Capital, PCI and TPI received fair value for the pledge of the promissory notes to Ritchie because, as recited in the PC Security Agreement and the PCI Security

Agreement, the pledge of such notes was a condition precedent to the extension of the maturity dates of the February Notes and the May Notes contemplated by the Extension Agreement, and among other things, such extension was necessary to prevent Petters and PGW, the owners of the pledgors, from lapsing into default.

47. Under the PC Security Agreement, the following promissory notes, which evidence obligations of Polaroid owed to Petters Capital, were pledged to Ritchie: (a) Senior Subordinated Note, unsecured and in the original principal amount of \$125,000,000, dated April 27, 2005, as amended and restated as of September 11, 2008, issued by Polaroid Corporation in favor of Petters Capital; (b) Promissory Note, secured and in the original principal amount of \$5,000,000, dated November 5, 2007, as amended and restated as of September 11, 2008, issued by Polaroid Corporation in favor of Petters Capital (“PC Secured Note I”); and (c) Promissory Note, secured and in the original principal amount of \$5,000,000, dated November 12, 2007, as amended and restated as of September 11, 2008, issued by Polaroid Corporation in favor of Petters Capital (“PC Secured Note II”).

48. The PC Secured Note I and the PC Secured Note II are secured by assets of Polaroid pursuant to the Intercompany Note Security Agreement.

49. Under the PCI Security Agreement, the following promissory notes, which evidence obligations of Polaroid, or its subsidiary, owed to PCI or TPI, were pledged to Ritchie: (a) Amended and Restated Unsecured Subordinated Term Note, in the original amount of \$10,005,000 and dated April 28, 2005, as amended and restated as of September 11, 2008, issued by Polaroid Consumer Electronics, LLC in favor of TPI; (b) Amended and Restated Unsecured Subordinated Term Note, in the original amount of \$8,982,645 and dated March 31, 2005, as amended and restated as of September 11, 2008, issued by Polaroid Consumer

Electronics, LLC in favor of PCI; and (c) Amended and Restated Secured Subordinated Term Note, in the original amount of \$20,00,000 and dated April 27, 2007, as amended and restated as of September 11, 2008, issued by Polaroid in favor of PCI (“PCI Secured Note”).

50. The PCI Secured Note is secured by assets of Polaroid pursuant to the Intercompany Note Security Agreement.

51. Ritchie’s liens in the notes pledged under the PC Security Agreement and the PCI Security Agreement are valid and enforceable, and the security interests in Polaroid’s assets under the PCI Secured Note I, PCI Secured Note II and PCI Secured Note are likewise valid and enforceable, and Ritchie is entitled to the full benefit of those secured interests in these bankruptcy proceedings.

52. The notes pledged under the PC Security Agreement and the PCI Security Agreement, and the security interests granted to secure such notes, are valid claims and liens enforceable against Polaroid (and its pertinent subsidiaries) in accordance with their terms.

WHEREFORE, Ritchie respectfully requests that the Court enter judgment in favor of Ritchie and against the Plaintiffs with respect to Ritchie’s Counterclaims, as follows:

1. On Count I of the Counterclaims, adjudicating that Ritchie has a valid and perfected security interest in the Polaroid Brazil, China, and India trademarks.

2. On Count II of the Counterclaims, adjudicating (i) that Ritchie has a valid and perfected security interest in (a) the promissory notes pledged under the PC Security Agreement and the PCI Security Agreement, and (b) the assets of Polaroid under the Intercompany Note Security Agreement that grants a security interest to secure the PCI secured Note I, the PCI Secured Note II and the PCI Secured Note, and (ii) that the notes pledged under the PC Security Agreement and the PCI Security Agreement, and the security interests granted to secure such

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:	Jointly Administered under Case No. 08-46617
Polaroid Corporation, et al.,	Court Files No.'s:
Debtors.	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,

-vs.-

ADV. No. 09-4032

Ritchie Capital Management, L.L.C.,
as administrative and collateral agent,
Ritchie Special Credit Investments, Ltd.,
Rhone Holdings II, Ltd., Yorkville
Investments I, L.L.C., and Ritchie Capital
Structure Arbitrage Trading, Ltd.,

Defendants.

UNSWORN CERTIFICATE OF SERVICE

I hereby certify that on March 11, 2009, I caused the following documents:

Defendants' Answer and Counterclaim

to be filed electronically with the Clerk of Court through ECF, and that ECF will send an e-notice of the electronic filing to the following:

- Daniel C. Beck dbeck@winthrop.com, tcooke@winthrop.com
- Theresa H. Dykoschak tdykoschak@faegre.com
- James A. Lodoen jlodoen@lindquist.com, gluessenheide@lindquist.com
- Michael Rosow mrosow@winthrop.com, jahlers@winthrop.com
- George H Singer gsinger@lindquist.com, lnorton@lindquist.com

I further certify that I caused a copy of the foregoing documents to be mailed by first class mail, postage paid, to the following non-ECF participants:

N/A

Dated: March 11, 2009

/e/ Stephanie Wood

Stephanie Wood
100 South Fifth Street, Suite 2500
Minneapolis, MN 55402
(612) 332-1030