

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

Civil No. 08-SC-5348 (ADM/JSM)

THOMAS J. PETTERS; PETTERS
COMPANY, INC., PCI; PETTERS GROUP
WORLDWIDE, LLC; DEANNA COLEMAN
aka DEANNA MUNSON; ROBERT WHITE;
JAMES WEHMHOFF; LARRY REYNOLDS
dba NATIONWIDE INTERNATIONAL
RESOURCES aka NIR; MICHAEL CATAIN
dba ENCHANTED FAMILY BUYING
COMPANY; FRANK E. VENNES JR. dba
METRO GEM FINANCE, METRO GEM
INC., GRACE OFFERINGS OF FLORIDA,
LLC, METRO PROPERTY FINANCING,
LLC, 38 E. ROBINSON, LLC, 55 E. PINE,
LLC, ORLANDO RENTAL POOL, LLC, 100
PINE STREET PROPERTY, LLC, ORANGE
STREET TOWER, LLC, CORNERSTONE
RENTAL POOL, LLC, 2 SOUTH ORANGE
AVENUE, LLC, HOPE COMMONS, LLC,
METRO GOLD, INC;

Defendants,

**OBJECTION TO THE RECEIVER’S MOTION TO AMEND
AND CLARIFY THE PRELIMINARY INJUNCTION
AND RECEIVERSHIP ORDER**

Acorn Capital Group, LLC (“Acorn”) submits this objection to the Receiver’s Motion to Amend and Clarify the Preliminary Injunction and Receivership Order (the “Motion”). Acorn is a creditor of PAC Funding, LLC (“PAC Funding”) and has a security interest in the inventory, accounts, and trademarks of, Polaroid Corp. and Polaroid Consumer Electronics, LLC (with Polaroid Corp., “Polaroid”). Acorn’s security

interest covers the inventory, accounts receivable, and trademarks of Polaroid. The Motion and the underlying receiver orders fail to establish a *prima facie* case for extending the receiver orders to Polaroid and adversely impact Acorn's property rights in violation of the United States Constitution. Acorn will soon be filing a motion to intervene and to obtain relief from the stay imposed by the Court's receiver orders. Thus, even if the Court were to grant the relief sought in the Motion, Acorn will request that the Court address the underlying fundamental question of whether Polaroid should be subject to the receivership at all. Therefore, this objection will not address in detail the issues that will be raised in Acorn's motion, but rather is intended to provide the Court background to support Acorn's appearance in these cases.

Pursuant to a credit agreement by and among Acorn and PAC Funding (the "Credit Agreement") dated November 1, 2004, Acorn loaned PAC Funding in excess of \$270 million. The proceeds of the loan to PAC Funding were directed to and used by both PAC Funding and by Polaroid. To induce the extension of credit and to secure the amounts borrowed under the Credit Agreement, Polaroid granted Acorn a security interest in Polaroid's inventory, accounts receivable and U.S., Mexican and Canadian trademarks (pursuant to an executed and delivered Security Agreement). After the PAC Funding loan went into default under the terms of the Credit Agreement and Security Agreement, Acorn exercised its rights under Minn. Stat. § 336.9-607 and notified Polaroid's account debtors to make payments directly to Acorn. Notwithstanding Acorn's rights as a secured lender, Polaroid sent its account debtors its own letters stating

that the account debtors should not make payments to Acorn because Mr. Kelley was appointed as receiver of Polaroid pursuant to the Court's order dated October 6, 2008.

Because Acorn has interests that will be impaired absent intervention, Acorn has standing to intervene in this lawsuit for the limited purpose of requesting the Court to clarify, modify or lift the stay imposed by the Court's receiver orders. Absent such a limited intervention, Acorn stands to suffer substantial economic and financial injury, because it will be unable to realize on or protect its interest in its collateral, which consists, *inter alia*, of Polaroid's inventory, accounts receivable, trademarks, and all proceeds (including cash proceeds) thereof.

Once permitted to intervene, Acorn intends to seek relief from the Court's receiver orders to exclude Polaroid from the scope of the receivership based on the United States' failure to establish, or even allege, a *prima facie* case for appointing a receiver of Polaroid. Acorn will further request the Court to modify the receiver orders to permit Acorn to enforce its Article 9 rights and remedies against Polaroid, while reserving Acorn's rights against the other Petters entities which are obligors or guarantors under the Credit Agreement. Acorn has a constitutionally protected property right as a secured creditor, which is being impaired by the stay. As such, the stay must be modified to comply with the Fifth Amendment's prohibition against deprivation of property without due process and just compensation.¹ Acorn will also request the Court to lift the stay

¹ See *In re Townley*, 256 B.R. 697, 700 (Bankr. D.N.J. 2000) ("The right of a secured creditor to the value of its collateral is a property right protected by the Fifth Amendment."); *In re Briggs Transp. Co.*, 780 F.2d 1339, 1342 (8th Cir. 1985) (protecting secured creditor's Fifth Amendment property rights); *In re Holly's, Inc.*, 140 B.R. 643, 686 (Bankr. W.D. Mich. 1992) (same); *Louisville Joint Stock Land Bank v. Radford*, 295 U.S. 555, 589 (1935) ("The bankruptcy power, like the other great substantive powers of Congress, is subject to the Fifth Amendment."); see also *United States v. Security Indus. Bank*, 459 U.S. 70, 75 (1982) ("[T]he bankruptcy power is subject to the Fifth Amendment's prohibition against taking private property without compensation.").

imposed by the Court's receiver order under the three prong test articulated in *SEC v. Wencke*, 622 F.2d 1363 (9th Cir. 1980) and *SEC v. Wencke*, 742 F.2d 1230 (9th Cir. 1984).

Dated: November 25, 2008

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