

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In re

**Jointly Administered under  
Case No. 08-45257**

Petters Company, Inc., et al.,

Court File No. 08-45257

Debtors.

Court File Nos.:

(includes:

Petters Group Worldwide, LLC;

08-45258 (GFK)

PC Funding, LLC;

08-45326 (GFK)

Thousand Lakes, LLC;

08-45327 (GFK)

SPF Funding, LLC;

08-45328 (GFK)

PL Ltd., Inc.;

08-45329 (GFK)

Edge One LLC;

08-45330 (GFK)

MGC Finance, Inc.;

08-45331 (GFK)

PAC Funding, LLC;

08-45371 (GFK)

Palm Beach Finance Holdings, Inc.)

08-45392 (GFK)

Chapter 11 Cases  
Judge Gregory F. Kishel

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Douglas A. Kelley, in his capacity as the  
court-appointed Chapter 11 Trustee of  
Debtors Petters Company, Inc. and  
Petters Group Worldwide, LLC,

Plaintiffs,

vs.

ADV. NO. \_\_\_\_\_

Mary Lynn Jeffries,

Defendant.

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**COMPLAINT**

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Douglas A. Kelley, in his capacity as the court-appointed Chapter 11 Trustee of Petters Company, Inc. and Petters Group Worldwide, LLC, by and through his legal counsel, Fruth, Jamison & Elsass, PLLC, as and for his Complaint against Defendant Mary Lynn Jeffries, states and alleges as follows:

### **PARTIES**

1. Plaintiff Petters Company, Inc. (“PCI” or the “Debtor”) is a corporation organized under the laws of the State of Minnesota.
2. Plaintiff Petters Group Worldwide, LLC (“PGW” or the “Debtor”) is a limited liability company organized under the laws of the State of Delaware.
3. PCI and PGW (collectively, “Debtors”) are, and at all times relevant herein were, wholly owned by Thomas Joseph Petters, an individual and citizen of the State of Minnesota (“Petters”).
4. Defendant Mary Lynn Jeffries (“Jeffries” or “Defendant”) is a resident of the State of Minnesota, residing at 18767 Bearpath Trail, Eden Prairie, Minnesota.

### **PROCEDURAL BACKGROUND**

5. On October 3, 2008, pursuant to 18 U.S.C. § 1345, the United States District Court of the District of Minnesota (the “District Court”) placed, among others, Thomas J. Petters, PCI and PGW into receivership in civil litigation commenced by the United States of America against, among others, Petters, PCI, PGW and others (Civil File No. 08-5348) (the “Receivership Action”).
6. By Order of the District Court in the Receivership Action dated October 6, 2008, as subsequently amended and restated on December 8, 2008, the District Court

appointed Douglas A. Kelley, Esq. (“Kelley”) as equity receiver (the “Receiver”) of any affiliates, subsidiaries, divisions, successors, or assigns owned 100% or controlled by Petters, including PCI and PGW.

7. As the court-appointed Receiver, Kelley serves as an agent of the District Court and in that capacity had exclusive custody, control and possession of the property, assets and estates of PCI and PGW.

8. On October 11, 2008 (the “Petition Date”), PCI and PGW, at the Receiver’s direction, filed separate petitions for relief under Chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in Court File No. 08-45257.

9. On October 22, 2008 this Court ordered the above-captioned Bankruptcy cases to be administratively consolidated as *In re Petters Company, Inc., et al.*, under case number 08-45257.

10. On February 26, 2009, this Court approved the appointment by the Office of the United States Trustee for the District of Minnesota of Kelley (the “Trustee”) as the Chapter 11 Trustee for all Chapter 11 debtors in this jointly administered matter, which specifically included appointing Kelley as the Chapter 11 Trustee of PCI and PGW.

### **JURISDICTION, VENUE AND STANDING**

11. This Court has subject matter jurisdiction of this adversary proceeding pursuant to 28 U.S.C. §§ 157 and 1334. The claims asserted herein arise under the Bankruptcy Code and are related to cases pending before this Court pursuant to the Bankruptcy Code.

12. This adversary proceeding is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2)(A), (B), (C), (E), (F), (H) and (O).

13. Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

14. The Trustee has standing to assert the claims herein pursuant to Sections 323, 544, 548, 550 and 1106 of the Bankruptcy Code.

### **NATURE OF PROCEEDING**

15. The Trustee brings this adversary proceeding against the Defendant pursuant to Sections 105(a), 542, 544, 548, 550(a), 551 and 1106 of the Bankruptcy Code, the Minnesota Fraudulent Transfer Act, Minn. Stat. §§ 513.41-51, and if the Court should determine that this action is governed by the laws of other states, the fraudulent transfer laws of such other states and other applicable law, to recover fraudulent transfers, damages and disgorgement, prevent unjust enrichment and to impose a constructive trust, in connection with transfers of property by PCI and PGW to Defendant.

16. Defendant is an initial transferee of the fraudulent or other avoidable transfers alleged in this Complaint, or a person for whose benefit such transfers were made, or an immediate or mediate transferee of any initial transferee of such transfers.

### **FACTUAL BACKGROUND**

#### **THE PETTERS PONZI SCHEME**

17. This adversary proceeding arises from a massive fraud and Ponzi scheme designed and orchestrated principally by Petters, and business organizations that he directly or indirectly owned and controlled.

18. Petters operated the Ponzi scheme with the assistance of other individuals within certain Petters organizations from approximately 1993 through the date of his arrest by federal agents on October 3, 2008. Petters, through various entities that he controlled, including PCI and PGW, laundered what is estimated to be an amount in excess of \$40 billion.

19. On December 1, 2008, Petters, PCI and PGW indicted by a Federal Grand Jury in the District of Minnesota (the "Indictment") (Criminal No. 08-364) [Docket No. 196]. The Indictment charged Petters, PCI and PGW with mail and wire fraud, conspiracy to commit mail and wire fraud, conspiracy to commit money laundering, and charged Petters alone with money laundering, all in connection with the perpetration of and resulting from Petters', PCI's and PGW's participation in the Ponzi scheme. On June 3, 2009, the government filed a Superseding Indictment (the "Superseding Indictment") (Criminal No. 08-364) [Docket No. 79], charging Petters, PCI and PGW with wire and mail fraud, conspiracy to commit mail and wire fraud and money laundering conspiracy and charging Petters alone with money laundering, all in connection with Petters', PCI's and PGW's participation in the Ponzi scheme.

20. A jury in the United States District Court of the District of Minnesota found Petters guilty of all 20 counts charged in the Superseding Indictment on December 3, 2009. On April 8, 2010, Judge Richard H. Kyle sentenced Petters to 50 years in prison for his crimes.

21. At various times during the course of the Ponzi scheme, Petters was assisted in the operation of the scheme by numerous individuals and conspirators (the

“Associates”), including Deanna Coleman (“Coleman”), Robert White (“White”), Larry Reynolds (“Reynolds”), Michael Catain (“Catain”) and James Wehmhoff (“Wehmhoff”), each of whom has pled guilty to crimes related to the Ponzi scheme.

22. Petters and his Associates orchestrated a fraud commonly known as a Ponzi scheme. Petters, through a multitude of entities and with the assistance of his Associates, induced investors into financing the purchase of non-existent electronic equipment secured by fabricated purchase orders or otherwise providing financing for fabricated or misrepresented purposes. Petters then took the funds invested by later investors and repaid earlier investors, not with the earnings or proceeds from the fabricated business purposes for which the financing purportedly was obtained but with funds obtained from the subsequent investors.

23. Petters, through PCI, PGW and a multitude of companies through which he operated, intended that the payments to early investors would induce ongoing, repeated, greater and more widespread investment in the Ponzi scheme and thereby further perpetrate and extend the life of the fraud.

24. Petters and his Associates told investors that funds paid to PCI or certain of its subsidiaries or affiliates were to be used to purchase products, when in reality the funds were being funneled to PCI and PGW, or other entities formed by Petters, in order to pay early investors with funds received from later investors.

25. To obtain investors in the Ponzi scheme, Petters portrayed PCI as a middleman that purchased consumer electronic goods or other goods from wholesalers and resold the merchandise to large, “big box” retailers such as Costco, Sam’s Club and

B.J.'s. PCI, through Petters and his Associates, intentionally fabricated the documents to recruit investors into the Ponzi scheme. Petters and his Associates prepared and utilized fabricated documents that were represented to investors to be equipment purchase orders and related documents. The fabricated documents included, but are not limited to, (1) purchase orders from PCI to suppliers purportedly ordering electronic goods, and (2) purchase orders from retailers to PCI purportedly ordering electronic goods for purchase from PCI. The purchase orders and the related documents were entirely fictitious.

26. The fictitious merchandise was evidenced by fabricated equipment purchase orders in which the investors would purportedly acquire a security interest.

27. The high rates of return that were promised to investors promoted two essential goals of the Ponzi scheme: (1) to entice investors to invest without employing reasonable due diligence in Petters, PCI and PGW; and (2) to extend the life of the fraud and to enable Petters, PCI, and their subsidiaries and affiliates to pay other earlier investors in the fraudulent scheme.

28. PCI would show a "profit" on each transaction because PCI's fabricated purchase order from the big box retailer for the merchandise was always for an amount greater than the amount of PCI's fabricated purchase order to its supplier for the same nonexistent merchandise. Petters and his Associates, through PCI, created fictitious profits at will on each and every transaction by simply writing in the appropriate quantity and price information on the two sets of purchase orders to "produce" the necessary funds.

29. Because the transactions described in the fictitious purchase orders in fact did not exist, the only way PCI was able to transfer sufficient funds to investors was by money obtained from other investors through the operation, control and management of the Ponzi scheme by Petters and his Associates. Repayment of the principal and interest in the form of false profits to these investors comprised a Ponzi scheme because they were primarily, if not exclusively, from funds invested by other PCI investors.

30. Petters' businesses and business ventures, including PGW, subsidiaries and related entities of PGW, were insolvent at all time relevant herein, or had unreasonably small operating capital, and received infusions of monies that were the proceeds of the Ponzi scheme in order to operate.

31. In addition to using the money obtained from later investors to repay earlier investors, Petters used the new investments to prop up PGW and other business that perpetually lost money, fund his extravagant lifestyle, make millions of dollars in charitable donations and pay exorbitant bonuses and other payments to employees, consultants and friends to enhance his credibility and lure additional investors into the Ponzi scheme.

32. Petters, or Petters and his Associates, made payments or caused payments which were derived from the Ponzi scheme to be made to directors, officers, employees consultants, friends and others.

33. Petters, or Petters and his Associates, completely controlled and exercised adverse domination over PCI, PGW and other entities at all times relevant herein and until the Receiver was appointed and placed in control of these entities.

34. Petters, as the owner, officer and director of PCI and PGW, was a fiduciary of those entities and had a duty to disclose the fraudulent activities alleged in this Complaint. Petters, in violation of his fiduciary duty, did not disclose the fraudulent activities to most current or prospective investors and most other creditors of PCI, PGW, or other related entities.

35. Petters, or Petters and his Associates, fraudulently and intentionally concealed the ongoing fraud in an effort to hinder and delay authorities and most current and prospective investors and most other creditors of PCI, PGW, and other entities from discovering the fraud.

36. The concealment of the fraud, whether by Petters' silence, by the fraudulent intentional concealment of the facts constituting the fraud, or by the adverse domination of PCI, PGW, and other entities by Petters and his Associates, prevented authorities and most creditors and investors from discovering the ongoing fraud until the Receiver was appointed and placed in control of the entities and was able to discover facts constituting the fraud alleged in this Complaint.

37. The Trustee has acted diligently to discover facts constituting the fraud alleged in this Complaint.

38. Any temporal limitations, statutory or otherwise, on the Trustee's ability to bring the causes of action set forth below are tolled by, among other things, Petters' breach of fiduciary duty in failing to disclose the fraud, the actions of Petters, or Petters and his Associates, in fraudulently and intentionally concealing the fraud, or the adverse

domination of PCI, PGW, and other debtor entities by Petters, or Petters and his Associates, until the appointment of the Receiver.

### **FRAUDULENT TRANSFERS TO DEFENDANT**

39. As part of the Ponzi scheme, on multiple occasions Petters, or Petters and his Associates, caused monies from PCI – the proceeds of the Ponzi scheme – to be transferred to Petters’ controlled businesses, including but not limited to PGW and its subsidiaries or affiliates, to enable those businesses to make payroll and to pay bonuses, severance payments, commissions or other incentives to employees, directors and officers and consultants, or directly to such employees, directors, and officers and consultants for such purposes. These Transfers were made with the intent to defraud and to sustain the Ponzi scheme.

40. To the extent that an employment contract, bonus plan or agreement, incentive plan or agreement, or other compensation plan or agreement existed between the Defendant and the Debtors, which the Defendant claims created an obligation incurred by the Debtors (the “Obligations”) prior to the Petition Date, the Defendant gave nothing of value or provided value that was less than reasonably equivalent in exchange for the Obligations.

41. During the course of the Ponzi scheme, and prior to the Petition Date, Defendant payments totaling \$3,200,000 (the “Transfers”) in fraudulently obtained funds from the Debtors. The Transfers to the Defendant are as follows:

<b>Date</b>	<b>PGW</b>	<b>PCI</b>
February 8, 2006	\$700,000	
December 26, 2006		\$1,000,000
December 14, 2007		\$1,000,000
April 16, 2007	\$500,000	
<b>TOTAL</b>	<b>\$1,200,000</b>	<b>\$2,000,000</b>

42. Of the Transfers, \$2,500,000 was transferred to Defendant during the two years prior to the Petition Date (the “Two-Year Transfers”).

43. The Debtors were insolvent on the dates of any Obligations and on the dates the Transfers were made, or the Debtors were left with an unreasonably small amount of capital to operate.

44. Defendant was the President and Chief Operating Officer of PGW and, consequently, had special knowledge or access to information regarding the Ponzi scheme, was a control person of PGW, and an insider within the meaning of Section 101(31) of the Bankruptcy Code. By virtue of her close relationship with the Debtors and her participation in the Ponzi scheme, Defendant was able to exert influence over the Debtors and attain these excessive Transfers.

45. The Transfers are disproportionately large relative to Defendant’s salary and were not a result of arm’s length transactions, or made in furtherance of a legitimate business purpose, but rather were gratuitous, were made in furtherance of the fraud, and paid to Defendant to reward her loyalty to the Ponzi scheme.

46. The Transfers to Defendant exceeded the market value of equivalent types of payments for equivalent performance during the relevant time period.

47. Defendant received and accepted the Transfers despite the unreasonable amounts of the payments and failed to exercise reasonable due diligence with respect to the source and amount of the payments.

48. Defendant knew or should have known that she was benefiting from fraudulent activity, or at a minimum, failed to exercise reasonable due diligence with respect to Petters and PCI in connection with the Ponzi scheme. Defendant ignored numerous indicia of fraud from the general manner in which Petters and PCI operated.

49. Any Obligations and the Transfers to Defendant, and to employees, directors, officers and consultants, were made as part of the Ponzi scheme to impress existing and future investors, add credibility to the massive Ponzi scheme, convey that Petters, PCI and PGW were trustworthy, impressive and profitable.

50. To the extent that any of the recovery counts may be inconsistent with each other, they are to be treated as being pled in the alternative.

51. During the course of this adversary proceeding, the Trustee may learn (through discovery or otherwise) of additional transfers made to Defendant. Trustee intends to avoid and recover all transfers made by the Debtor of an interest of the Debtor in property and to or for the benefit of the Defendant or any other transferee. Similarly, the Trustee intends to avoid any Obligations made by the Debtor. The Trustee reserves the right to amend this original Complaint as to include: (i) further information regarding the Transfers, (ii) additional Transfers, (iii) modifications or revisions to Defendant's

name, (iv) additional defendants, or (v) additional causes of action (i.e., but not exclusively, 11 U.S.C. §542, §544, §545, § 547, §548 and §549), that may become known to the Trustee at any time during this adversary proceeding, through formal discovery or otherwise, and for the amendments or additional causes of action to relate back to this original Complaint.

### **COUNT I – TURNOVER AND ACCOUNTING**

#### **11 U.S.C. § 542**

52. The Trustee realleges and incorporates by reference the preceding paragraphs of the Complaint as if fully set forth herein.

53. The Transfers constitute property of the estate to be recovered and administered by the Trustee pursuant to Section 541 of the Bankruptcy Code.

54. As a result of the foregoing, pursuant to Section 542 of the Bankruptcy Code, the Trustee is entitled to the immediate payment and turnover from Defendant of any and all Transfers made by PCI and PGW, directly or indirectly, to Defendant.

55. As a result of the foregoing, pursuant to Section 542 of the Bankruptcy Code, the Trustee is also entitled to an accounting of all such Transfers received by Defendant from PCI and PGW, directly or indirectly.

### **COUNT II – FRAUDULENT TRANSFERS**

#### **Actual Fraud - 11 U.S.C. §§ 548(a)(1)(A), 550(a), 551 and 1106**

56. The Trustee realleges and incorporates by reference the preceding paragraphs of the Complaint as if fully set forth herein.

57. The Two-Year Transfers were made on or within two years before the Petition Date.

58. The Two-Year Transfers represent transfers that were made or obligations that were incurred with actual intent to hinder, delay or defraud a creditor to which the Debtor was or became indebted on or after the date of the Fraudulent Transfers.

59. The Two-Year Transfers were made to or for the benefit of Defendant in furtherance of a fraudulent investment Ponzi scheme.

60. To the extent that Defendant is not an initial transferee of the Two-Year Transfers, she is an immediate or mediate transferee of the initial transferee of the Two-Year Transfers, and upon information and belief cannot satisfy her burden that she took the Two-Year Transfers for value and in good faith and without knowledge of the voidability of the Two-Year Transfers, or is the individual for whose benefit such Two-Year Transfers were made.

61. As a result of the foregoing, the Trustee is entitled to judgment pursuant to Bankruptcy Code §§ 548(a)(1)(A), 550(a), 551 and 1106: (a) avoiding and preserving the Two Year Transfers free and clear from any claimed interest of Defendant, (b) directing that the Two Year Transfers be set aside, (c) recovering such Two-Year Transfers, or the value thereof from Defendant for the benefit of the estates of PCI and PGW, and (d) recovering pre-judgment and post-judgment interests, attorneys' fees and costs from Defendant.

### **COUNT III – FRAUDULENT TRANSFERS**

#### **Constructive Fraud – 11 U.S.C. §§ 548(a)(1)(B), 550(a), 551 and 1106**

62. The Trustee realleges and incorporates by reference the preceding paragraphs of the Complaint as if fully set forth herein.

63. The Two-Year Transfers were made on or within two years before the Petition Date.

64. At all times material hereto, the Debtor: (a) was insolvent on the dates the Two Year Transfers were made or became insolvent as a result of the Two-Year Transfers, and/or (b) was engaged in businesses or transactions, or was about to engage in businesses or transactions, for which the property remaining with the Debtor after the Two-Year Transfers were effectuated constituted unreasonably small capital, and/or (c) at the time of the Two-Year Transfers, intended to incur, or believed that it would incur, debts that would be beyond its ability to pay as the debts matured.

65. The Debtor received less than a reasonably equivalent value in exchange for the Two-Year Transfers.

66. To the extent that Defendant is not an initial transferee of the Two-Year Transfers, she is an immediate or mediate transferee of the initial transferee of the Two-Year Transfers, and upon information and belief cannot satisfy her burden that she took the Two-Year Transfers for value and in good faith and without knowledge of the voidability of the Two-Year Transfers, or is the individual for whose benefit such Two-Year Transfers were made.

67. As a result of the foregoing, the Trustee is entitled to judgment pursuant to Bankruptcy Code §§ 548(a)(1)(B), 550(a), 551 and 1106: (a) avoiding and preserving the Two-Year Transfers free and clear from any claimed interest of Defendant, (b) directing that the Two Year Transfers be set aside, (c) recovering such Two-Year Transfers or the value thereof from Defendant for the benefit of the estates of PCI and PGW, and (d) recovering pre-judgment and post-judgment interest, attorneys' fees and costs from Defendant.

#### **COUNT IV – FRAUDULENT TRANSFERS**

##### **Insider Transfers – 11 U.S.C. §§ 548(a)(1)(B)(ii)(IV), 550(a), 551 and 1106**

68. The Trustee realleges and incorporates by reference the preceding paragraphs of the Complaint as if fully set forth herein.

69. The Two-Year Transfers were made and any Obligations incurred to or for the benefit of Defendant.

70. Defendant is an “insider” within the meaning of Section 101(31) of the Bankruptcy Code.

71. An employment contract or other such agreement existed between Defendant and Debtor at the time the Two-Year Transfers and any Obligations were made.

72. The Debtor received less than a reasonably equivalent value in exchange for the Two-Year Transfers that were made and any Obligations that were incurred.

73. The Two-Year Transfers made and any Obligations incurred were not in the ordinary course of business.

74. To the extent that Defendant is not an initial transferee of the Two-Year Transfers, she is an immediate or mediate transferee of the initial transferee of the Two-Year Transfers, and upon information and belief cannot satisfy her burden that she took the Two-Year Transfers for value and in good faith and without knowledge of the voidability of the Two-Year Transfers, or is the individual for whose benefit such Two-Year Transfers were made.

75. As a result of the foregoing, the Trustee is entitled to judgment pursuant to Bankruptcy Code §§ 548(a)(1)(B)(ii)(IV), 550(a), 551 and 1106: (a) avoiding and preserving the Two-Year Transfers free and clear from any claimed interest of Defendant, (b) directing that the Two-Year Transfers be set aside, (c) recovering such Two-Year Transfers or the value thereof from Defendant for the benefit of the estates of PCI and PGW, and (d) recovering pre-judgment and post-judgment interest, attorneys' fees and costs from Defendant.

#### **COUNT V – FRAUDULENT TRANSFERS**

##### **Insider Transfers - 11 U.S.C. §§ 544(b), 550(a), 551 and 1106 & Minn. Stat. §§ 513.45(b) and 513.47 or Other Governing Fraudulent Transfer Laws**

76. The Trustee realleges and incorporates by reference the preceding paragraphs of the Complaint as if fully set forth herein.

77. At all times material hereto, there was and is at least one or more creditors who held and who holds unsecured claims against the Debtor that were and are allowable under Bankruptcy Code § 502 or that were and are not allowable only under Bankruptcy

Code § 502(e). The Transfers and Obligations are avoidable under applicable non-bankruptcy law by a creditor holding an unsecured claim in the bankruptcy case.

78. Defendant is an “insider” within the meaning of Minn. Stat. § 513.41(7).

79. The Transfers were made to an insider for an antecedent debt, the Debtor was insolvent at the time, and the insider had reasonable cause to believe the Debtor was insolvent.

80. To the extent that Defendant is not an initial transferee of the Transfers, she is a subsequent transferee of the initial transferee of the Transfers, and upon information and belief cannot satisfy her burden that she took the Transfers for value and in good faith, or is the individual for whose benefit such Transfers were made.

81. As a result of the foregoing, the Trustee is entitled to judgment pursuant to Bankruptcy Code §§ 544(b), 550(a), 551 and 1106, Minn. Stat. §§ 513.45(b)(1) and 513.47, and if the Court should determine that this action is governed by the laws of other states, the fraudulent transfer laws of such other states: (a) avoiding any Obligations and avoiding and preserving the Transfers free and clear from any claimed interest of Defendant, (b) directing that any Obligations and the Transfers be set aside, (c) recovering such Transfers or the value thereof from Defendant for the benefit of the bankruptcy estates of PCI and PGW, and (d) recovering pre-judgment and post-judgment interest, attorneys’ fees and costs from Defendant.

## COUNT VI – FRAUDULENT TRANSFERS

### **Actual Fraud - 11 U.S.C. §§ 544(b), 550(a), 551 and 1106 & Minn. Stat. §§ 513.44(a)(1) and 513.47 or Other Governing Fraudulent Transfer Laws**

82. The Trustee realleges and incorporates by reference the preceding paragraphs of the Complaint as if fully set forth herein.

83. At all times material hereto, there was and is at least one creditor who held and who holds unsecured claims against the Debtor that were and are allowable under Bankruptcy Code § 502 or that were and are not allowable only under Bankruptcy Code § 502(e). The Transfers and Obligations are avoidable under applicable nonbankruptcy law by a creditor holding an unsecured claim in the bankruptcy case.

84. The Transfers or Obligations were made or incurred with actual intent to hinder, delay or defraud a creditor to which the Debtor was or became indebted on or after the date of the Transfers.

85. The Transfers or Obligations were made to or for the benefit of Defendant in furtherance of a fraudulent investment scheme.

86. To the extent that Defendant is not an initial transferee of the Transfers, she is a subsequent transferee of the initial transferee of the Transfers, and upon information and belief cannot satisfy her burden that she took the Transfers for value and in good faith, or is the individual for whose benefit such Transfers were made.

87. As a result of the foregoing, the Trustee is entitled to judgment pursuant to Bankruptcy Code §§ 544(b), 550(a), 551 and 1106, Minn. Stat. §§ 513.44(a)(1) and 513.47, and if the Court should determine that this action is governed by the laws of other

states, the fraudulent transfer laws of such other states: (a) avoiding any Obligations and avoiding and preserving the Transfers free and clear from any claimed interest of Defendant, (b) directing that any Obligations and the Transfers be set aside, (c) recovering such Transfers in the value thereof from Defendant for the benefit of the bankruptcy estates of PCI and PGW, and (d) recovering pre-judgment and post-judgment interest, attorneys' fees and costs from Defendant.

### **COUNT VII – FRAUDULENT TRANSFERS**

#### **Constructive Fraud - 11 U.S.C. §§ 544(b), 550(a), 551 and 1106 & Minn. Stat. §§ 513.44(a)(2)(i) and 513.47 or Other Governing Fraudulent Transfer Laws**

88. The Trustee realleges and incorporates by reference the preceding paragraphs of the Complaint as if fully set forth herein.

89. At all times material hereto, there was and is at least one creditor who held and who holds unsecured claims against the Debtor that were and are allowable under Bankruptcy Code § 502 or that were and are not allowable only under Bankruptcy Code § 502(e). The Transfers and Obligations are avoidable under applicable nonbankruptcy law by a creditor holding an unsecured claim in the Bankruptcy Cases.

90. At all times material hereto, the Debtor was engaged in businesses or transactions, or was about to engage in businesses or transactions, for which the property remaining with the Debtor after the Transfers and Obligations were effectuated constituted unreasonably small capital.

91. The Debtor received less than a reasonably equivalent value in exchange for the Transfers and Obligations.

92. To the extent that Defendant is not an initial transferee of the Transfers, she is a subsequent transferee of the initial transferee of the Transfers, and upon information and belief cannot satisfy her burden that she took the Transfers for value and in good faith, or is the individual for whose benefit such Transfers were made.

93. As a result of the foregoing, the Trustee is entitled to judgment pursuant to Bankruptcy Code §§ 544(b), 550(a), 551 and 1106, Minn. Stat. §§ 513.44(a)(2)(i) and 513.47, and if the Court should determine that this action is governed by the laws of other states, the fraudulent transfer laws of such other states: (a) avoiding any Obligations and avoiding the Transfers free and clear from any claimed interest of Defendant, (b) directing that any Obligations and the Transfers be set aside, (c) recovering such Transfers or the value thereof from Defendant for the benefit of the bankruptcy estates of PCI and PGW, and (d) recovering prejudgment and post-judgment interest, attorneys' fees and costs from Defendant.

### **COUNT VIII – FRAUDULENT TRANSFERS**

#### **Constructive Fraud - 11 U.S.C. §§ 544(b), 550(a), 551 and 1106 & Minn. Stat. §§ 513.44(a)(2)(ii) and 513.47 or Other Governing Fraudulent Transfer Laws**

94. The Trustee realleges and incorporates by reference the preceding paragraphs of the Complaint as if fully set forth herein.

95. At all times material hereto, there was and is at least one creditor who held and who holds unsecured claims against the Debtor that were and are allowable under Bankruptcy Code § 502 or that were and are not allowable only under Bankruptcy Code

§ 502(e). The Transfers and Obligations are avoidable under applicable non-bankruptcy law by a creditor holding an unsecured claim in the Bankruptcy Cases.

96. At all times material hereto, the Debtor, at the time of the Transfers and Obligations, intended to incur, or believed that it would incur, debts that would be beyond its ability to pay as the debts matured.

97. The Debtor received less than a reasonably equivalent value in exchange for the Transfers and Obligations.

98. To the extent that Defendant is not an initial transferee of the Transfers, she is a subsequent transferee of the initial transferee of the Transfers, and upon information and belief, cannot satisfy her burden that she took the Transfers for value and in good faith, or is the entity or individual whose benefit such Transfers were made.

99. As a result of the foregoing, the Trustee is entitled to judgment pursuant to Bankruptcy Code §§ 544(b), 550(a), 551 and 1106, Minn. Stat. §§ 513.44(a)(2)(ii) and 513.47, and if the Court should determine that this action is governed by the laws of other states, the fraudulent transfer laws of such other states: (a) avoiding any Obligations and avoiding and preserving the Transfers free and clear from any claimed interest of Defendant, (b) directing that any Obligations and the Transfers be set aside, (c) recovering such Transfers or the value thereof from Defendant for the benefit of the bankruptcy estates of PCI and PGW, and (d) recovering pre-judgment and post-judgment interest, attorneys' fees and costs from Defendant.

## COUNT IX – FRAUDULENT TRANSFERS

### **Constructive Fraud - 11 U.S.C. §§ 544(b), 550(a), 551 and 1106 & Minn. Stat. §§ 513.45(a) and 513.47 or Other Governing Fraudulent Transfer Laws**

100. The Trustee realleges and incorporates by reference the preceding paragraphs of the Complaint as if fully set forth herein.

101. At all times material hereto, there was and is at least one creditor who held and who holds unsecured claims against the Debtor that were and are allowable under Bankruptcy Code § 502 or that were and are not allowable only under Bankruptcy Code § 502(e). The Transfers are avoidable under applicable non-bankruptcy law by a creditor holding an unsecured claim in the Bankruptcy Cases.

102. At all times material hereto, the Debtor, at the time of the Transfers and Obligations, was insolvent or, in the alternative, the Debtor became insolvent as a result of the Transfers.

103. The Debtor received less than a reasonably equivalent value in exchange for the Transfers and Obligations.

104. To the extent that Defendant is not an initial transferee of the Transfers, she is a subsequent transferee of the initial transferee of the Transfers, and upon information and belief, cannot satisfy her burden that she took the Transfers for value and in good faith, or is the individual for whose benefit such Transfers occurred.

105. As a result of the foregoing, the Trustee is entitled to judgment pursuant to Bankruptcy Code §§ 544(b), 550(a), 551 and 1106, Minn. Stat. §§ 513.45(a) and 513.47, and if the Court should determine that this action is governed by the laws of other states,

the fraudulent transfer laws of such other states: (a) avoiding and Obligations and avoiding and preserving the Transfers free and clear from any claimed interest of Defendant, (b) directing that any Obligations and the Transfers be set aside, (c) recovering such Transfers or the value thereof from Defendant for the benefit of the bankruptcy estates of PCI and PGW, and (d) recovering pre-judgment and post-judgment interest, attorneys' fees and costs from Defendant.

**COUNT X – UNJUST ENRICHMENT/EQUITABLE DISGORGEMENT**

106. The Trustee realleges and incorporates by reference the preceding paragraphs of the Complaint as if fully set forth herein.

107. At all times relevant hereto, all funds received by Defendant were part and parcel of the Ponzi scheme and were derived from monies fraudulently obtained by Petters and PCI and from other investors or participants in the Ponzi scheme.

108. Defendant, as the recipient of fraudulently obtained proceeds of the Ponzi scheme, has no rightful or legitimate claim to such monies.

109. Defendant knowingly received monies from the Debtors and those monies were derived from the Ponzi scheme, and she was unjustly enriched through her receipt of the fraudulently obtained monies to the detriment of the PCI and PGW estates, and in equity and good conscience must be required to repay the proceeds received.

110. Defendant would be unjustly enriched to the extent she is allowed to retain the monies and proceeds received during its participation in the Ponzi scheme.

111. Defendant must, therefore, in equity be required to disgorge all proceeds received through the operation of the Ponzi scheme, so as to allow the Trustee to

distribute in equity any such ill-gotten gains among all innocent investors and creditors of PCI and PGW.

**COUNT XI – DISALLOWANCE**

**11 U.S.C. § 502(b) and (d)**

112. The Trustee realleges and incorporates by reference the preceding paragraphs of the Complaint as if fully set forth herein.

113. To the extent that Defendant asserts she is entitled to any claim in these Bankruptcy Cases, directly on his own account or indirectly by virtue of any other agreement with Petters, PCI, PGW or any of their affiliates, such claim is unenforceable against the Debtors or the property of the Debtors under any agreement or applicable law and should be disallowed under 11 U.S.C. § 502(b).

114. Further, any claim of an entity from which property is recoverable under 11 U.S.C. § 550 or held by a transferee of a transfer that is avoided under 11 U.S.C. §§ 544 or 548 shall be disallowed by the Court unless such entity or transferee has paid the amount, or turned over any such property, for which such entity or transferee is liable.

115. As a result of the foregoing, to the extent that Defendant asserts she is entitled to any claim in these Bankruptcy Cases, directly on her own account or indirectly by virtue of any other agreement with Petters, PCI, PGW or any of their affiliates, all such claims are and should be in all things disallowed.

**WHEREFORE**, the Trustee respectfully requests this Court enter judgment in favor of Plaintiffs and against Defendant as follows:

A. Count I (Turnover and Accounting): pursuant to Sections 541, 542, 550(a) and 551 of the Bankruptcy Code: (a) that the property that was the subject of the Transfers be immediately delivered and turned over to the Trustee, and (b) for an accounting by Defendant of the property that was the subject of the Transfers or the value of such property.

B. Count II (Fraudulent Transfers - Actual Fraud): pursuant to 11 U.S.C. §§ 548(a)(1)(A), 550(a), 551 and 1106: (a) avoiding and preserving the Two-Year Transfers free and clear from any claimed interest of Defendant, (b) directing that the Two-Year Transfers be set aside, (c) recovering such Two-Year Transfers in the amount of \$2,500,000 or the value thereof from Defendant for the benefit of the estates of PCI and PGW, and (d) recovering pre-judgment and post-judgment interests, attorneys' fees and costs from Defendant.

C. Count III (Fraudulent Transfers - Constructive Fraud): pursuant to 11 U.S.C. §§ 548(a)(1)(B), 550(a), 551 and 1106: (a) avoiding and preserving the Two-Year Transfers free and clear from any claimed interest of Defendant, (b) directing that the Two-Year Transfers be set aside, (c) recovering such Two-Year Transfers in the amount of \$2,500,000 or the value thereof from Defendant for the benefit of the estates of PCI and PGW,

and (d) recovering pre-judgment and post-judgment interest, attorneys' fees and costs from Defendant.

D. Count IV (Insider Transfers): pursuant to 11 U.S.C. §§ 548(a)(1)(B)(ii)(IV), 550(a), 551 and 1106, and if the Court should determine that this action is governed by the laws of other states, the fraudulent transfer laws of such other states: (a) avoiding and preserving the Two-Year Transfers free and clear from any claimed interest of Defendant, (b) directing that the Two-Year Transfers be set aside, (c) recovering such Two-Year Transfers in the amount of \$2,500,000 or the value thereof from Defendant for the benefit of the estates of PCI and PGW, and (d) recovering pre-judgment and post-judgment interests, attorneys' fees and costs from Defendant.

E. Count V (Insider Transfers): pursuant to 11 U.S.C. §§ 544(b), 550(a), 551 and 1106, Minn. Stat. §§ 513.45(b) and 513.47, and if the Court should determine that this action is governed by the laws of other states, the fraudulent transfer laws of such other states: (a) avoiding any Obligations and avoiding and preserving the Transfers free and clear from any claimed interest of Defendant, (b) directing that any Obligations and the Transfers be set aside, (c) recovering such Transfers in the amount of \$3,200,000 or the value thereof from Defendant for the benefit of the bankruptcy estates of PCI and PGW, and (d) recovering pre-judgment and post-judgment interest, attorneys' fees and costs from Defendant.

F. Count VI (Fraudulent Transfers – Actual Fraud): pursuant to 11 U.S.C. §§ 544(b), 550, 551 and 1106, Minn. Stat. §§ 513.44(a)(1) and 513.47, and if the Court should determine that this action is governed by the laws of other states, the fraudulent transfer laws of such other states: (a) avoiding any Obligations and avoiding and preserving the Transfers free and clear from any claimed interest of Defendant, (b) directing that any Obligations and the Transfers be set aside, (c) recovering such Transfers in the amount of \$3,200,000 or the value thereof from Defendant for the benefit of the bankruptcy estates of PCI and PGW, and (d) recovering pre-judgment and post-judgment interest, attorneys’ fees and costs from Defendant.

G. Count VII (Fraudulent Transfers - Constructive Fraud): pursuant to 11 U.S.C. §§ 544(b), 550, 551 and 1106, Minn. Stat. §§ 513.44(a)(2)(i) and 513.47, and if the Court should determine that this action is governed by the laws of other states, the fraudulent transfer laws of such other states: (a) avoiding any Obligations and avoiding and preserving the Transfers free and clear from any claimed interest of Defendant, (b) directing that any Obligations and the Transfers be set aside, (c) recovering such Transfers in the amount of \$3,200,000 or the value thereof from Defendant for the benefit of the bankruptcy estates of PCI and PGW, and (d) recovering prejudgment and post-judgment interest, attorneys’ fees and costs from Defendant.

H. Count VIII (Fraudulent Transfers - Constructive Fraud):  
pursuant to 11 U.S.C. §§ 544(b), 550, 551 and 1106, Minn. Stat.  
§§ 513.44(a)(2)(ii) and 513.47, and if the Court should determine that this  
action is governed by the laws of other states, the fraudulent transfer laws of  
such other states: (a) avoiding and preserving the Transfers free and clear  
from any claimed interest of Defendant, (b) directing that the Transfers be  
set aside, (c) recovering such Transfers in the amount of \$3,200,000 or the  
value thereof from Defendant for the benefit of the bankruptcy estates of PCI  
and PGW, and (d) recovering pre-judgment and post-judgment interest,  
attorneys' fees and costs from Defendant.

I. On Count IX (Fraudulent Transfers - Constructive Fraud):  
pursuant to 11 U.S.C. §§ 544(b), 550, 551 and 1106, Minn. Stat.  
§§ 513.45(a) and 513.47, and if the Court should determine that this action is  
governed by the laws of other states, the fraudulent transfer laws of such  
other states: (a) avoiding and preserving the Transfers free and clear from  
any claimed interest of Defendant, (b) directing that any Obligations and the  
Transfers be set aside, (c) recovering such Transfers in the amount of  
\$3,200,000 or the value thereof from Defendant for the benefit of the  
bankruptcy estates of PCI and PGW, and (d) recovering pre-judgment and  
post-judgment interest, attorneys' fees and costs from Defendant.

J. Count XI (Unjust Enrichment/Equitable Disgorgement):  
declaring and ordering that the Trustee shall recover the Transfers and any

other monies received by Defendant, directly or indirectly, from the fraud perpetrated through the Ponzi scheme, or the value thereof, for the benefit of the bankruptcy estate of the Debtor; and that Defendant shall be liable to the bankruptcy estate of the Debtor in an amount equal to all monies received and shall be required to disgorge the same for the equitable distribution to all creditors of PCI and PGW.

K. Count XII (Disallowance): pursuant to 11 U.S.C. § 502(b) and (d): declaring and ordering that, to the extent that Defendant asserts she is entitled to any claim in these Bankruptcy Cases, directly on her own account or indirectly by virtue of any other agreement with Petters, PCI, PGW or any of their affiliates, all such claims are in all things disallowed;

L. On all Claims for Relief, establishment of a constructive trust over the proceeds of the transfers in favor of the Trustee for the benefit of PCI's and PGW's estates;

M. Awarding the Trustee all applicable interest (including pre-judgment and post-judgment interest), attorneys' fees, costs and disbursements in this action; and

N. Granting the Trustee such other, further and different relief as the Court deems just, proper and equitable.

DATED: October 8, 2010

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