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February 9, 2016

**VIA ECF AND  
FEDERAL EXPRESS**

Honorable Jed S. Rakoff  
United States District Judge  
United States Courthouse  
500 Pearl Street, Room 1340  
New York, New York 10007

Re: **Paul Traub's Fraud on the Court and Vanishing Court Records in Dreier Cases**

To The Honorable Justice Jed S. Rakoff:

This firm is counsel for Steven ("Laser") Haas, a whistleblower,<sup>1</sup> who comes to this court to inform it of Bankruptcy Frauds and Frauds on the Court perpetrated by Paul Traub ("Traub"), and by parties associated with Traub's former law of firm, Traub Bonacquist & Fox ("TBF"), which was acquired<sup>2</sup> by Marc Dreier's law firm, Dreier LLP in 2006.

On December 7, 2015, counsel submitted a Corrected Notice of Appearance in Case No. 09-CR-085 (JSR) (the "NOA"), and, after analyzing the matters stated therein, it was readily apparent that a more comprehensive submission is in order. As this firm attempted to assist its client to provide documentary proof from the Public Access Court Electronic Records ("PACER") system, counsel witnessed an occurrence never seen before: vanishing PACER docket entries.

This office has spent months verifying the allegations of Laser against nationally significant and important entities and persons. In each and every instance counsel has not been able to find any fault with Laser's documentation or conclusions.

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<sup>1</sup> The word "*whistleblower*" used herein, is utilized under the actual statute applicable to knowledge before, during and after the fact (specifically 18 USC §4, Misprision of a Felony), in that Laser has "knowledge of commission of a felony cognizable by a court of the United States," and, as such, is reporting the evidence by this letter to proper authorities, given that it directly impacts the Dreier assets available for his victims.

<sup>2</sup> See Complaint by Receiver of Tom Petters Ponzi scheme against Paul Traub, dated June 2012: [http://petters-fraud.com/June2012\\_DKelley\\_PaulTraub\\_Complaint\\_Lawsuit\\_PettersFraud.pdf](http://petters-fraud.com/June2012_DKelley_PaulTraub_Complaint_Lawsuit_PettersFraud.pdf)

The ghosting of records requires prompt attention so as to halt the additional destruction and obstruction of justice.<sup>3</sup>

It would appear from the evidence that Traub is a racketeering lackey for, at least Goldman Sachs and Bain Capital's partnership to deliberately destroy the eToys public company and, by bankruptcy schemes and Fraud, to devour the eToys.com bankruptcy estate.

These issues are germane to this Court's Marc Dreier related cases because Traub's former TBF law firm was "*acquired*" by Dreier LLP in 2006 and yet, a mere \$60,000.00 payment from Traub was clawed back to the Marc Dreier federal case fiduciaries.

There is indisputable proof demonstrating that there was a *Bankruptcy Ring* (described hereinafter) that contained Traub, TBF, Tom Petters and Dreier LLP.

The docket records are vanishing apparently because the federal agents and agencies of justice that originally corroborated the extraordinary magnitude of the racketeering surrounding Traub, are failing and even now assisting Frauds on the Court in cases related to Dreier.

**Exhibit 1** to this letter is the Tom Petters' Ponzi Complaint brought by the Court-appointed Receiver of the Petters Ponzi Case in June 2012<sup>4</sup>, against Paul Traub, which specifically states, at paragraph 3: "In 2006, Traub, Bonacquist & Fox LLP was acquired by Dreier L.L.P." ¶3.

The Petters' Receiver's Complaint goes on to state:

"Traub was the founding member and managing partner of Traub, Bonacquist & Fox, LLP, a New York based law firm specializing in bankruptcy and business reorganization matters. There Traub represented creditors in the eToys.com bankruptcy. In 2005, his [Traub's] representation came under scrutiny when the U.S. Trustee and another party accused his law firm of a conflict of interest, non-disclosure of certain business relationships, and other misconduct. The U.S. Trustee ultimately settled with Traub's law firm, and the court approved."

Furthermore, and of no small consequence, paragraph "3" goes on to state that:

"Although the court approved the settlement, the judge commented that the failure to disclose the serious conflicts present in Traub's case would in the future lead to sanctions."<sup>5</sup>

However, this threat of future sanctions by the eToys Bankruptcy Court was mere window-dressing. The Petters Ponzi Complaint against Traub has ramifications directly linked to the Marc

<sup>3</sup> The missing PACER documents are demonstrated hereafter by computer images of the PACER system.

<sup>4</sup> Kelley, as Receiver, et al. v. Traub, [http://petters-fraud.com/June2012\\_DKelley\\_PaulTraub\\_Complaint\\_Lawsuit\\_PettersFraud.pdf](http://petters-fraud.com/June2012_DKelley_PaulTraub_Complaint_Lawsuit_PettersFraud.pdf)

<sup>5</sup> See In re eToys, Inc., 331 B.R. 176 (Bank. D. Del. 2005).



Dreier Ponzi Case by, at the minimum, the Fingerhut Bankruptcy Case and the related entities of UBid, RedTag and Enable Holdings.<sup>6</sup>

Upon information and belief, the following entities were listed as being located at 655 Third Avenue, New York, which was the home office of TBF that had been “acquired” by Dreier LLP. Being that there are issues of Minnesota federal prosecutors being directly linked to the Petters Ponzi and the Fingerhut related entities and the fact that Fingerhut was not seized by those conflicted offices, then, perhaps, this court’s Marc Dreier related cases may have a claim against Fingerhut, UBid, Enable Holdings and other entities that were defrauded by Traub and related parties.

This picture of evidence that has not yet vanished, at the minimum grants this Court the right to ask questions.

Asking questions of racketeers is how their untenable house of cards will fall.

FORM 3 UNITED STATES SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

INITIAL STATEMENT OF BENEFICIAL OWNERSHIP OF SECURITIES

Filed pursuant to Section 16(a) of the Securities Exchange Act of 1934 or Section 30(a) of the Investment Company Act of 1940

|   |   |   |  |  |
|---|---|---|--|--|
| 1. Name and Address of Reporting Person:<br>Traub Paul                  |   | 2. Date of Event:<br>Reporting Person's Month/Day/Year:<br>02/07  | 3. Issuer Name and Ticker or Trading Symbol:<br>UBid.com Holdings, Inc. [UBHI] | 5. If Amendment, Date of Original Filing (Month/Day/Year): |
| Last: (Print)<br>655 THIRD AVENUE<br>21ST FLOOR<br>NEW YORK<br>NY 10017 | Relationship of Reporting Person to Issuer (Check all that apply):<br><input checked="" type="checkbox"/> Director<br><input type="checkbox"/> 10% Owner<br><input type="checkbox"/> Other (specify):<br>Other (specify): | 6. If Amendment, Date of Original Filing (Month/Day/Year):<br><input checked="" type="checkbox"/> Initial<br><input type="checkbox"/> Corrected<br><input type="checkbox"/> Other (specify):<br>Form filed by Non-Individual Reporting Person |  |  |

| 1. Title of Security (See 4.) | 2. Amount of Securities Beneficially Owned (in: a.) | 3. Domestic Form Owned (2 or 3) (in: b.) | 4. Value of Interest Beneficially Owned (in: \$) |
|-------------------------------|---|--|--|
| Common Stock                  | 22,500  | D  |  |

| 1. Title of Derivative Security (in: a.) | 2. Date Expiration (in: b.) | 3. The and amount of Securities (in: c.) | 4. Value of |
|--|-----------------------------|--|-------------|
|--|-----------------------------|--|-------------|

In paragraph 5 of the Petters Ponzi’s Complaint it states that Traub “controlled” Tom Petters. Traub’s *control* of Petters continued until 2008 when everything began to fall apart when everyone in the nationwide Enterprise of Ponzi Schemes realized that one of their bosses could not obtain absolute control of the Department of Justice.

<sup>6</sup> Upon information and belief, Traub and his firm were acquired by Dreier LLP while Traub was also a partner with Petters in Polaroid, UBid, Fingerhut and other companies, potentially doing hundreds of millions of dollars of business annually, during 2006, 2007 and 2008, prior to the arrest of Tom Petters in September 2008, and Marc Dreier’s arrest in December 2008; and there is a staunch refusal to investigate this. The Petters Ponzi has clearly been downplayed by the Minnesota Department of Justice, to be no more than a \$3.7 Billion Ponzi scheme despite the fact that it has been demonstrated to be at least \$40 Billion in material adverse harm. (Petters Ponzi Polaroid complaint states that the losses were in excess of \$40 Billion. [http://petters-fraud.com/a\\_40\\_billion\\_stobner\\_seavermotion\\_suing\\_jp\\_morgan\\_denotes\\_pettersponzi.pdf](http://petters-fraud.com/a_40_billion_stobner_seavermotion_suing_jp_morgan_denotes_pettersponzi.pdf)) This downplay is plausibly due to the fact that the Minnesota Department of Justice is directly connected to the Petters Ponzi. This may also explain why, after Traub reorganized the ownership of Fingerhut, Inc. just several weeks before the FBI raided Petters, that Goldman Sachs and Bain Capital quickly infused \$50 Million Dollars into Fingerhut to avoid it being taken in by the Petters’ Receiver. Hence, the (willfully blind) authorities apparently decided to not seize Fingerhut and related companies such as UBid, or RedTag, etc.

As a result, in March 2008 panic ensued resulting in the shutdown of The Public Corruption Task Force and reported threats against career Federal Prosecutors to keep silent on the reasons why.<sup>7</sup>

An additional \$100 Million fraud occurred when Ritchie Capital was victimized by a Polaroid investment scheme, which was almost immediately compounded by the Fingerhut \$50 Million rushed cash infusion from Goldman, Sachs and Bain Capital. Speciously, Polaroid was seized and sold in a sham auction proceeding to Gordon Brothers, which then arranged for Traub to be a co-principal; but Fingerhut was never seized by the authorities.

In September 2008 the FBI raided and arrested Petters along with another dozen facilitators and cohorts. Then Dreier was arrested and Bernie Madoff's son rushed to confess his Ponzi in December 2008.

In paragraph "6" of the Petters Ponzi Complaint against Traub, it states:

"Traub knew of the fraud, or willingly ignored it, and accepted substantial payments and gifts from the scheme, including payments in excess of \$726,000 directly from Petters' personal accounts. In total, the Receiver seeks disgorgement of more than \$803,966.00 in fraudulent transfers from the Receivership Estate to Traub".

This shows the problem glaringly displayed. How is it that a Federal fiduciary can make notes of the fact that Traub "*knew*" or "*willingly ignored*" a Ponzi scheme was transpiring, then the fiduciary goes out and slaps the wrist of Traub, and only sought to claw back \$804,000.00, when it is documented that Traub benefited from the Petters Ponzi scheme by more than \$2.4 million dollars, for his aiding and abetting. This was just a cost of doing "*bizness*" for the rackets; because corruption and cover ups are constantly blowing in the wind.

Minnesota Assistant United States Attorney James Lackner was the former head of the DoJ Criminal Division during the same time Laser was trying to blow the whistle about Traub's simultaneous partnership with Marc Dreier and Tom Petters.

James Lackner's brother, Marty, was part of the Lancelot Billion dollar feeder-fund to the Tom Petters Ponzi; but Tom Petters failed to admit this fact during his trial.

On August 2, 2009, the Pioneer Press, Twin Cities' publication, published article titled, appropriately, "What did the money man know?"<sup>8</sup> – that revealed the following facts:

#### "A TRAGIC TURN

The Bell case took a tragic turn in June with revelations that a Bell associate named Martin Lackner had committed suicide. Sources say Lackner, 48, had helped bring investors to Lancelot earlier in the fund's genesis. There's no record he was charged with any crime. His wife, Diana, and three children survived him.

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<sup>8</sup> [http://www.twincities.com/alllistings/ci\\_12969455](http://www.twincities.com/alllistings/ci_12969455)



Martin Lackner is also the brother of Jim Lackner, an assistant U.S. attorney in the Minneapolis office. Jim Lackner declined comment. A spokesman for the U.S. attorney's office said Jim Lackner never worked on the Petters or Bell cases. When the U.S. attorney's office learned about Martin Lackner and his relationship to Jim, it notified defense attorneys for both Petters and Bell, he said<sup>9</sup>.

- As for “What did the money man know,” there are many flabbergasting questions that perturb the conscience.
- When did the Minnesota authorities know Marty Lackner was involved in Tom Petters Ponzi?
- At what point in time did Minnesota inform Washington, D.C., of this particular fact?
- How is it that the prosecution of Tom Petters was allowed to be in the venue of Minnesota?
- Was the untimely demise of Marty, really a suicide?<sup>9</sup>
- Why is it that the Petters Ponzi is always being downplayed by the authorities, who have touted it to be, only, a \$3.7 Billion Ponzi Scheme when Michael Catain confessed to laundering \$10 Billion Dollars and Larry (“Reservitz”) Reynolds admitted to another money laundering of \$12 Billion Dollars for Petters Ponzi while Reservitz was in Witness Protection Program?
- Why has Tom Petters never revealed to an Appellate Court the facts of Traub, Lackner and Larry (“Reservitz”) Reynolds, in spite of the fact that Laser begged Tom Petters’ family and counsel to state those facts publically?
- Why is the Prosecutor’s office, which has personnel directly linked to the case, controlling the Courts to prevent Tom Petters from seeking a new trial?

### **Disappearing PACER Docket Filings Includes Entire Cosmetics Plus case**

As previously discussed in the NOA of December 7, 2015, upon information and belief, Traub has perpetrated a fraud on this Court cases by paying the Dreier LLP bankruptcy case Trustee an mere \$60,000.00 payment from the *eToys v. Goldman Sachs* New York Supreme Court case 601805/2002.

At the minimum, Traub alone owes at least \$1.2 million to the Marc Dreier cases victims. Then there are additional assets secreted by TBF’s former associates: Susan Balaschak, Frederick Rosner, Steven Fox, Maura Russell, Michael Fox, Mark Minuti and Barry Gold, who are all part of the criminal conspiracy to defraud many estates by a Bankruptcy Ring.

Significantly, as stated by the Third Circuit, the Bankruptcy Code and Rules were modified precisely for the sake of preventing attorney fraud caused by failure to disclose conflicts. The Court

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<sup>9</sup> Facts such as these are looming allegations of Laser, which, by their nature, counsel may only ask, but on which I cannot opine.

noted that in Bankruptcy Cases disclosure of conflicts of interest and the necessity of court approval of professional persons, is due to what Congress correctly noted was perhaps the most tempting aspect of bankruptcy practitioners' large case endeavors to devour estates as their own ATM cash machines.

Notably, the *Arkansas Court*<sup>10</sup> recognized the Congressional intent to prevent such conduct by stating:

“It is significant that Congress chose to place the requirement of court approval for the employment of an attorney, accountant, or other professional by the creditors committee directly in the Bankruptcy Code in 1978. 11 U.S.C. Sec. 1103 (a). The legislative history makes clear that the 1978 Code was designed to eliminate the abuses and detrimental practices that had been found to prevail. Among such practices was the cronyism of the ‘bankruptcy ring’ and attorney control of bankruptcy cases. In fact, the House Report noted that ‘[i]n practice ... the bankruptcy system operates more for the benefit of attorneys than for the benefit of creditors.’ H.R. No. 595, 95th Cong., 2d Sess. 92, reprinted in 1978 U.S. Code Cong. & Ad. News 5787, 5963, 6053.”

“As detailed in the House Report, the official committee of unsecured creditors whose function was (and still is) to negotiate with the debtor in possession in the formulation of a plan was elected by the unsecured creditors, much as the trustee was elected in a liquidation case. Although the members of the committee are not compensated, *the counsel to the creditors’ committee is paid, and, as described by the Report, ‘it is a lucrative position.’*” (Emphasis added.)

### **The eToys Action Against Goldman Sachs Creates a Massive Looming Catastrophe**

Perhaps the single most important aspect of the eToys bankruptcy case racketeering ring was its cause of action against Goldman Sachs, the lead underwriter in eToys IPO. Goldman could not, under any circumstances afford lose this case which would have had massive ripples in the IPO industry which is one of the most profitable aspects of Investment income, in the Trillions of Dollars annually. Thus, in essence, Goldman had to stack the deck.

Goldman Sachs managed to conceal alliances of counsel so that Goldman Sachs actually sued itself in the New York Supreme Court; this is demonstrated by connecting the dots between Morris Nichols Arshat & Tunnell (“MNAT”), the eToys court-approved Debtor’s counsel, which was secretly counsel for Goldman Sachs.<sup>11</sup>

<sup>10</sup> *In re Arkansas*, 798 F.2d 645, 649 (1986)

<sup>11</sup> MNAT has since confessed the fact that the firm failed to disclose its simultaneous representation of Goldman Sachs in the Delaware Bankruptcy case of Finova (#01-705) while MNAT was representing eToys in case 01-706. It is interesting that both of these cases were filed by MNAT on the same day.



MNAT hand-picked TBF to be the party to sue Goldman Sachs on behalf of the Estate. This was a clear attempt to conceal from the eToys estate the fact that Goldman Sachs was suing Goldman Sachs, and this assured the demise of the eToys public company. The New York Court of Appeals found that eToys had stated a cause of action against Goldman Sachs, by alleging, among other things, breach of fiduciary duty because:

“a cause of action for breach of fiduciary duty may survive, for pleading purposes, where the complaining party sets forth allegations that, apart from the terms of the Contract [the underwriting contract] the underwriter and issuer created a relationship of higher trust than would arise from the underwriting agreement alone.”<sup>12</sup>

The backdrop to this action was egregious: Goldman Sachs, found to be a fiduciary for eToys, underpriced the eToys IPO stock at \$20/share, and bet on the price hitting \$80/share, when it actually hit \$85/share.

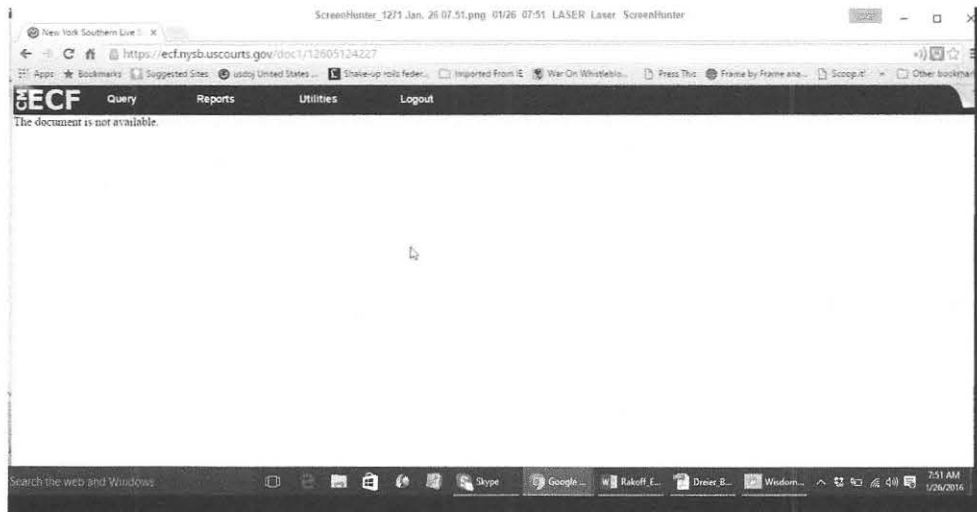
Arguably, given the solid evidence at hand, if Laser was reinstated in his chair as head of eToys, he could settle the eToys v. Goldman Sachs New York Supreme Court litigation for \$300 million or more. This is germane to the Marc Dreier cases because Traub fraudulently utilized Dreier in the eToys v. Goldman, Sachs case.



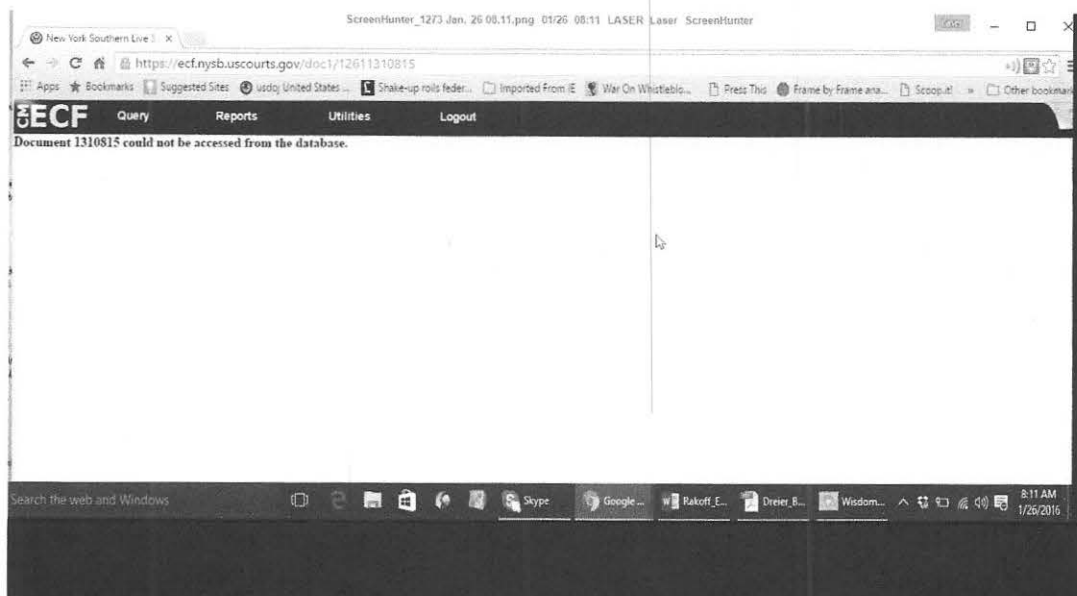
<sup>12</sup> EBC I, Inc. f/k/a eTOYS, Inc. etc. v. Goldman, Sachs & Co., 5 NY3d 11, 20, 799 NYS2d 170 (June 7, 2005). This case was dismissed by the Appellate Division after Goldman made a Motion for summary judgment, 91 AD 3d 211, 936 NYS2d 92 (1<sup>st</sup> Dept. 2011), but then the Court of Appeals again granted eTOYS' Motion for leave to appeal by motion no. 2012-656, on Sept. 6, 2012, and granted the Motion by Securities Industry and Financial Markets Association for leave to file a brief amicus curiae on the appeal, 21 NY3d 896, 965 NYS2d 783 (April 25, 2013). This Case was settled within sixty days of the date the Court of Appeals agreed to hear the case for pennies on the dollar without any precedential value. It is indisputable that the Court of Appeals was going to overturn the Appellate Division since why would it grant the Motion to Appeal by eTOYS if the Appellate Division had already dismissed the action? This is the most pernicious result of this Case. Even if the Court of Appeals sought to modify the Decision of the First Department, the risk was too enormous that the Court of Appeals could rewrite the books on Underwriting to find that client's may be owed a fiduciary duty by an Underwriter. The parties settled that month, before the Court of Appeals could hear the case.

After TBF was acquired by Dreier LLP (as shown above) Traub also defrauded the Dreier LLP Bankruptcy Case by erroneously testifying concerning the *Cosmetics Plus* Case owners, the Bartoshs were entitled to be compensated for \$300,000.00; in which an appeal was filed on January 26, 2016.

Unfortunately, at the present time, I am unable to properly document the extent of the fraud on this court's related cases, such as the *Cosmetics Plus Group Ltd.*, (Case # 01-14471) (SDNY Bank.) since the entire PACER docket record has evaporated from public view in *Cosmetics Plus*. Upon any query be either counsel or client, from different locations across the country, into the PACER docket filings, of the *Cosmetics Plus* case, the following results appear:



Additionally, in the *Cosmetics Plus* case, upon accessing the PACER "Text" field, within a docket filing, the response is similarly truculent, shown by this additional example stating "could not be accessed from the database":





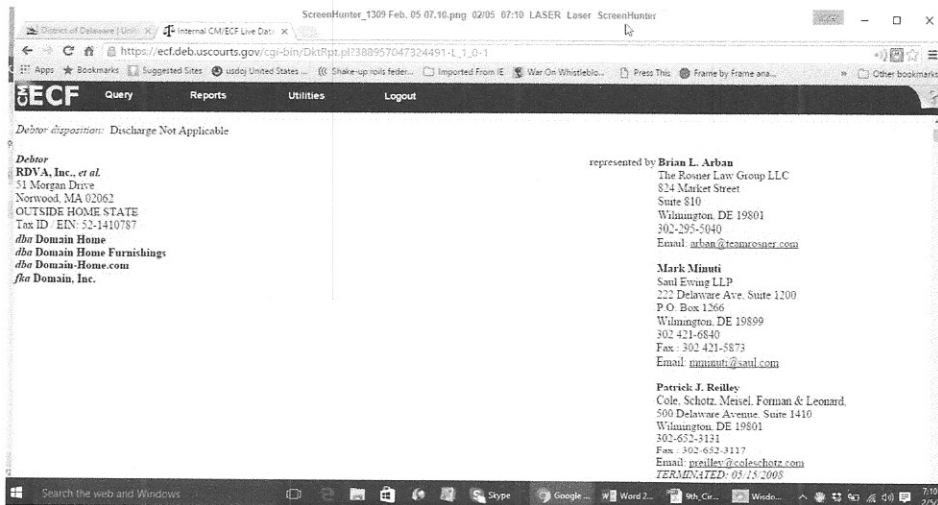
Though *Cosmetics Plus* docket items are unavailable, *some* documents were copied by Laser prior to redaction.

Another example of PACER docket manipulation is the Delaware Bankruptcy case RDVA/ Domain Home Furnishings (case 08-10132). In this case Mark Minuti who is counsel for Barry Gold in the eToys Bankruptcy case; and thus, he is disguised counsel for Barry Gold in eToys, who is also partners in Asset Disposition Advisers, LLC (“ADA”), formed in April 2001, prior to the appointment of Barry Gold as CEO of eToys.

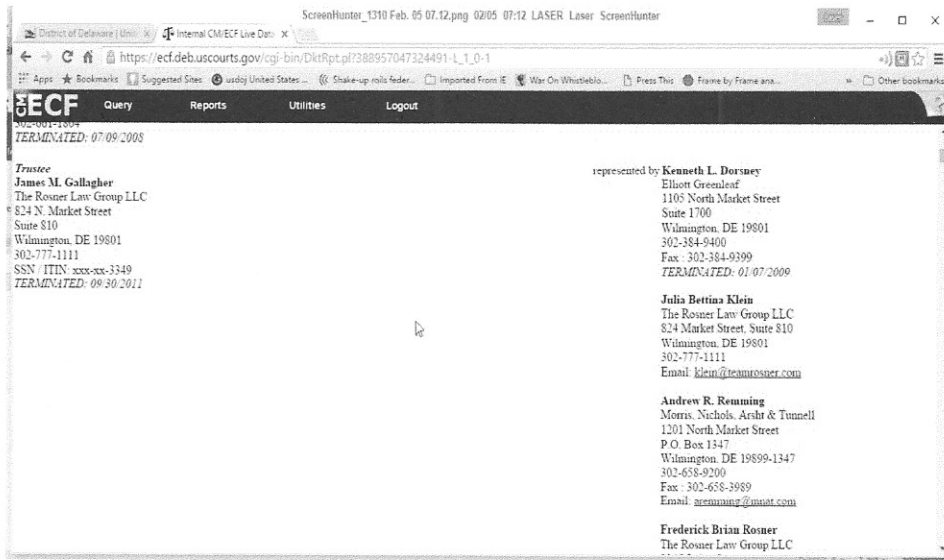
In the RDVA case, Minuti was co-counsel with Dreier LLP, who filed the RDVA bankruptcy case 08-10132, in 2008. Then, Frederick Rosner, another of Traub’s TBF disguised local counsel in Delaware, marched the eToys case around, from one firm to another, all the way back to Frederick Rosner opening his new firm: Rosner Law Group.

Rosner’s firm is speciously listed as counsel for RDVA, Debtor, *while simultaneously being listed as counsel for the Creditors and the Trustee of RDVA*. This item is so ridiculous, the bad faith, the abandonment of oversight, the breach of all Bankruptcy protections for creditors; and this Docket will likely “*be corrected*” as soon as they become aware of this letter pointing out the facts.

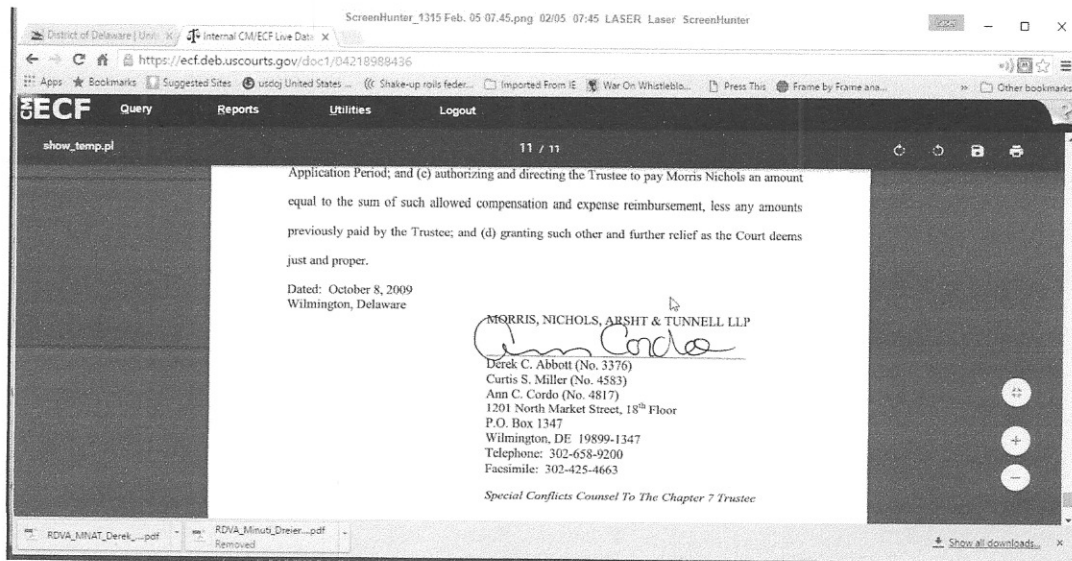
Hence, out of an abundance of caution, the following is proof on the PACER docket sheet today of the Rosner Law Group and Mark Minuti (Barry Gold’s attorney – and thus Traub’s attorney, as they are partners in ADA) for RDVA.



Below is the Docket sheet demonstrating that Rosner is also counsel for the Trustee with MNAT:



The following picture appears to be the result of somebody paying attention to the fact that there is a need for special conflicts' counsel. This possibly explains why the RDVA PACER docket filings have not yet vanished from the record. However, there is still a Fraud on the Court transpiring since MNAT is Traub's partner in Goldman Sachs' and Bain Capital's crimes. Specifically, the signature shown is that of Derek C. Abbott, who is a well-established participant in the eToys fraud.



Furthermore, there are Dreier LLP bankruptcy cases existing while Traub was a partner of Dreier LLP that are also vanishing, apparently to hide Traub's false testimony and claims. This includes the KB bankruptcy (Bank. DE 04-10120), and many more, including Zainy Brainy (Bank. DE 01-01749), FAO Schwartz (Bank. DE 03-10119), Kitchen Inc. (Bank. DE 04-11701), NWL Holdings (Bank. DE 08-12847), and The Big Party Corporation bankruptcy (Bank. DE 00-02852), which all must be independently reviewed.



As shown at the hotlink below to the Delaware Bankruptcy Court Opinion in eToys<sup>13</sup> (or at the reported citation) which discusses the infection of the entire case with conflicts of interest and fiduciary violations. Though many of the abuses of discretion, breaches of fiduciary duties and manifest duplicity are recited by the Court, and, when these massive, endemic violations are recognized, the Court inexplicitly erects an artificial barrier around Traub, Barry Gold and MNAT.

Both the US Trustee and the Delaware Bankruptcy went out of their way to avoid properly seeking disqualification of those parties who admitted that they failed to disclose conflicts of interest in a Bankruptcy proceeding.

Rather, faced with the “smiling, damned villain,”<sup>14</sup> the Court, without any basis or reason, then determines that it would ignore the Fraud on the Court—and allowed the case to remain infected until its closing in 2015.

The Court even manages to determine that [whistleblower] Laser and his company, CLI’s claims are moot, even after the Opinion acknowledges the retention Orders of CLI, and then the Court acted against its own opinion, saying: that it “*shouldn’t punish plaintiff and reward conflicted attorneys.*”

It is a simple choice, though a hard one, because when the truth comes out, the heavens may fall. The fact remains that an untenable stack of cards has been built unfathomably high for the continuous protection of Goldman Sachs’ and Bain Capital’s frauds in many Courts.

Had the Delaware Bankruptcy Court or any other agency having Oversight actually performed their fiduciary duty, perhaps the massive Ponzi Schemes, like Marc Dreier, Tom Petters and Allen Stanford (Tagg and Mitt Romney Solamere entity involved), they might have been mitigated or stopped completely.<sup>15</sup> Also, perhaps Marty Lachner and others might still be alive today.

Counsel awaits this Court’s further instruction on unraveling the massive crimes and corruption involving missing vast amounts of money from many Dreier related cases, especially since these parties are powerful enough to make PACER docket records vanish.

Yet, the clear manipulations in the Dreier related cases can be reversed since Fraud on the Court has no statute of limitations, and, there are, as it is well known, honest Trustees, and parties, who seek Justice.

Hopefully these extraordinary manipulations and iniquities described herein will move the Court to action, the substance of which is of course left to Your Honor’s discretion.

Given the indisputable connection now shown between MNAT, TBF, Dreier, Petters, Goldman Sachs and Bain Capital, which took years to untangle, due to the willful blindness of

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<sup>13</sup> eToys Opinion <http://www.deb.uscourts.gov/sites/default/files/opinions/judge-mary-f.walrath/etoysmnatfees.pdf> *In re eToys*, 331 BR 176 (Bank. DE 2005).

<sup>14</sup> Spoken by Hamlet after having just encountered the ghost of his father, who was, as he tells his son, poisoned by his own brother Claudius. Hamlet, Act 1, Scene 5, 105-109.

<sup>15</sup> Also, according to Laser, perhaps, Marty Lackner, Michael Sesseyoff and John (“Jack”) Wheeler, might be alive today.

numerous Federal Authorities, perhaps this Court can now assist in righting those wrongs which in the Dreier cases.

The facts and circumstances substantiated herein, and to which this Honorable Court is referred concern such enormous degrees of reprehensible conduct that shakes the conscience. But these crimes are, at bottom, nothing more than human weakness; and that can't be killed, even with a gun. Nevertheless, the facts are now put before a Court with the hope of a remedy.

I believe that the following quote may perhaps encapsulate some of the aspects of the depravity of these Cases.

As stated by **King Claudius**:

O, my offense is rank, it smells to heaven,  
It hath the primal eldest curse upon't—  
A brother's murder. Pray can I not,  
Though inclination be as sharp as will.<sup>16</sup>

It is readily apparent that the cui bono is for Goldman Sachs and Bain Capital and its significant executives and owner. We believe that the hubris of the parties has reached the realm that will not tolerate the existence of a racketeering enterprise, that conducted a pattern that has remained unrepentant, and unremorsefully perpetrated intentional fraud on the Courts.

Sincerely,



David H. Relkin

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<sup>16</sup> The reference to the fear of God that has been put into King Claudius by the drama Hamlet produced at court. As Hamlet had hoped, the play—which recreated Claudius's fratricide—caught Claudius's conscience. In this soliloquy, Claudius confesses the deed and recoils at its smell. It is "rank" (that is, "rancid"); indeed, so rank that the vile odor wafts to heaven. Thus, Claudius is reminded that his crime is the same as Cain's, a crime marked by the "primal eldest curse." Unfortunately for Claudius, although his inclination to repent is as "sharp as will" (a powerful desire), yet he is unable to pray for forgiveness, because of his inestimable wealth and unwillingness to forfeit these ungodly gains. Hamlet, Act 3, Scene 3, 36-39.



**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

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Douglas A. Kelley, in his capacity as the court-appointed Receiver of Thomas Joseph Petters; Petters Company Inc., aka PCI; Petters Group Worldwide, LLC; Deanna Coleman aka Deanna Munson; Robert White; James Wehmhoff; Larry Reynolds, and/or dba Nationwide International Resources aka NIR; Michael Catain, and/or dba Enchanted Family Buying Company,

Court File No. \_\_\_\_\_

**JURY TRIAL DEMANDED**

**COMPLAINT**

Plaintiff,

vs.

Paul Traub,

Defendant.

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Douglas A. Kelley (the “Plaintiff” or “Receiver”), in his capacity as the court-appointed Receiver of the above captioned individuals and entities, by and through his legal counsel, Fruth, Jamison & Elsass, PLLC, brings this Complaint against Defendant Paul Traub (“Defendant” or “Traub”), to recover \$803,966.00 transferred to Defendant by Thomas J. Petters (“Petters”) in the form of cash and an equity interest in EBP Select Holdings, LLC (“EBP”), a company owned and controlled by Petters. These assets were transferred to Defendant in furtherance of a multi-billion dollar Ponzi scheme. Plaintiff, based on actual knowledge and upon information and belief, states and alleges as follows:

## INTRODUCTION

1. From the early 1990's, Petters ran what became a \$3.8 billion Ponzi scheme, until one of his lieutenants revealed the fraud to federal law enforcement officials.

Relying upon stolen money and a pyramid of lies, he appeared to amass a vast financial empire. Petters' businesses survived not because of their financial success, but rather because they were supported with massive amounts of stolen money. In order to keep the Ponzi scheme going, Petters needed an ever-increasing supply of new investor money to pay interest to previous investors, run his front of businesses, and to replace the money he was siphoning off for himself, his close friends and business partners.

2. To pull off this massive fraud, Petters created a public aura of financial success to ensure a ready supply of new investors and to allay any suspicions of established investors. He gave lavishly from this pool of stolen money to universities and other charitable causes, and paid exorbitant sums of money to surround himself with executives, partners and friends who helped create the essential air of success and wealth required to sustain the fraud, as well as the expertise to maintain it.

3. Defendant Paul Traub was one of these people. Traub was the founding member and managing partner of Traub, Bonacquist & Fox, LLP, a New York based law firm specializing in bankruptcy and business reorganization matters. There Traub represented creditors in the eToys.com bankruptcy. In 2005, his representation came under scrutiny when the U.S. Trustee and another party accused his law firm of a conflict of interest, non-disclosure of certain business relationships, and other misconduct. The U.S. Trustee ultimately settled with Traub's law firm, and the court approved. Although



the court approved the settlement, the judge commented that the failure to disclose the serious conflicts present in Traub's case would in the future lead to sanctions.<sup>1</sup> In 2006, Traub, Bonacquist & Fox, LLP was acquired by Dreier L.L.P. Traub became a partner at the firm and co-chair of the firm's Bankruptcy and Business Reorganization group. In 2008 the Dreier firm was found to be involved in a fraudulent scheme to sell fictitious promissory notes to hedge funds and other investors. The firm dissolved in the wake of the fraud and Traub turned his attention to Asset Disposition Advisors ("ADA"), a consulting firm he founded with another infamous businessman, Barry Gold. The consulting firm advised retailers on the sale of distressed assets.

4. At the same time Traub was working for Dreier L.L.P and ADA, Traub was also working for Petters as a "Strategic Partner." According to his May 9, 2005 consulting agreement with Petters, Traub was to provide "consulting services in assessment of new business opportunities, consult on key business issues, operational challenges and strategy, acquisition negotiation and integration, and the capital needs of the organization." For this part-time work, Traub was to be paid an astonishing \$125,000 per month (\$1.5 million annually). A copy of the consulting agreement is attached hereto as Exhibit A.

5. Petters considered Traub part of his close network of advisors and consultants and, consequently, Traub possessed considerable control over Petters. He leveraged his position with Petters to receive massive amounts of money and other gifts.

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<sup>1</sup> See *In re eToys, Inc.*, 331 B.R. 176 (Bkrtcy. D. Del. 2005).

From August 2005 through May 2008, Traub received directly, and sometimes secretly, from Petters more than \$2.46 million dollars.<sup>2</sup> These funds were from the proceeds of the ongoing Ponzi scheme. In return, Traub promoted Petters as a skilled businessman and “assist[ed] Tom by acting as a ‘filter’ between the portfolio companies, Petters personnel and third parties.” Further, Traub claimed to have assisted Petters by “leverage[ing] [his] rolodex to create new opportunities and negotiate and implement those objectives” on behalf of Petters. In essence, Traub gave Petters business credibility and access to new potential victims for his fraudulent schemes.

6. Traub knew of the fraud, or willingly ignored it, and accepted substantial payments and gifts from the scheme, including payments in excess of \$726,000 directly from Petters’ personal accounts. In total, the Receiver seeks disgorgement of more than \$803,966.00 in fraudulent transfers from the Receivership Estate to Traub.

#### **NATURE OF THE PROCEEDING**

7. On October 3, 2008, pursuant to 18 U.S.C. § 1345, the United States District Court of the District of Minnesota placed Petters, Petters Company, Inc. (“PCI”), Petters Group Worldwide (“PGW”), and various affiliated entities, among others, in receivership in civil litigation commenced by the United States of America (Court File No. 08-CV-5348) (the “Receivership Action”).

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<sup>2</sup> \$1,658,333.39 was paid to Traub through Petters Group Worldwide, LLC (“PGW”), a company wholly owned by Petters. On October 11, 2008, PWG petitioned for Chapter 11 bankruptcy. Kelley, as Trustee of PGW, is seeking return of these payments in a separate adversary proceeding against Traub currently pending in the United States Bankruptcy Court for the District of Minnesota. *See Douglas A. Kelley, et al. v. Paul Traub*, Adv. No. 10-04404.

8. By Order of the United States District Court of the District of Minnesota in the Receivership Action dated October 6, 2008, as subsequently amended and restated on December 8, 2008, the United States District Court of the District of Minnesota duly appointed Douglas A. Kelley, Esq. as the equity receiver of multiple entities owned and/or controlled by Petters, including PCI, PGW, and numerous other Petters-related entities (collectively, the “Receivership Estate”).

9. As the court-appointed Receiver, Kelley serves as an agent of the United States District Court for the District of Minnesota and in that capacity possesses exclusive custody, control and possession of the property, assets and estates of the Receivership Estate.

10. The Receiver brings this action against Defendant to recover fraudulent transfers of property by the Receivership Estate to Defendant.

11. The Receiver seeks to recover such transfers and preserve the property of the Receivership Estate for the benefit of individuals and organizations defrauded by the massive Ponzi scheme.

### **THE PARTIES**

12. Plaintiff Douglas A. Kelley, was appointed Receiver of the Receivership Estate on October 6, 2008, as amended in that certain Second Amended Order for Entry of Preliminary Injunction, Appointment of Receiver, and Other Equitable Relief (the “Receivership Order”), dated December 8, 2008, (Court File No. 08-CV-5348) [Docket No. 127]. Pursuant to the Receivership Order, the Court vests the Receiver with the full power of an equity Receiver and requires the Receiver to “[t]ake exclusive immediate



custody, control, and possession of all property, assets, and estates belonging to or in the possession, custody, or under the control of Defendants, wherever situated.” Receivership Order at 13. “The Receiver shall have full power to . . . sue for, collect, receive, take in possession . . . all assets of Defendants.” *Id.*

13. Defendant Paul Traub is a resident of the State of New Jersey, residing at 31 Old Farms Road, Woodcliff Lake, New Jersey 07677.

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

14. The Receiver has the capacity to commence this action pursuant to 28 U.S.C. § 754, 28 U.S.C. § 1692 and the Receivership Order.

15. The Court has ancillary jurisdiction over this action as it is instituted by a federal equity receiver to execute his duties as set forth in the Receivership Order and pursuant to 18 U.S.C. § 1345. This action seeks to accomplish the ends sought by the civil case in which Kelley was appointed as Receiver, *United States v. Petters, et al.*, 08-cv-5348 (D. Minn.).

16. Jurisdiction of this action is also based upon 28 U.S.C. § 1332 in that there is complete diversity between the Plaintiff and Defendant, and the amount in controversy exceeds \$75,000 exclusive of interest and costs.

17. Venue in this district is proper under 28 U.S.C. § 1391(b) because a substantial part of the events and transfers giving rise to Plaintiff’s claims occurred in Minnesota.

18. Venue for this action is also proper in this District because i) this action is ancillary to the United States’ proceedings pending in this District; ii) the Receiver was

appointed in this District; and iii) the Receivership Estate made all of the transfers at issue in this action from this District.

## **STATEMENT OF FACTS**

### **THE PONZI SCHEME**

19. This proceeding arises from a massive fraud and Ponzi scheme designed and orchestrated principally by Petters, Deanna Coleman aka Deanna Munson, Robert White, James Wehmhoff, Larry Reynolds (collectively, the “Receivership Individuals”) and business organizations that they operated (the “Ponzi Scheme”).

20. Petters operated the Ponzi scheme with the assistance of other individuals within certain Petters organizations, including the Receivership Individuals, from approximately 1993 through the date of his arrest by federal agents on October 3, 2008.

21. Commencing in or about 2001 and continuing to in or about September 2008, Petters, through various entities that he controlled, including PCI and PGW, and with the assistance of others, laundered what is estimated to be an amount in excess of \$40 billion.

22. On December 1, 2008, Petters was indicted by a Federal Grand Jury in the District of Minnesota that charged him with 20 separate counts of mail and wire fraud, money laundering and conspiracy to commit mail and wire fraud and money laundering in connection with the perpetration of the Ponzi Scheme.

23. On December 2, 2009, a jury in the United States District Court of the District of Minnesota found Petters guilty of all 20 counts charged in the Indictment.

24. At various times during the course of the Ponzi Scheme, Petters was assisted in the operation of the scheme by numerous individuals, including, but not limited to, Coleman, Reynolds and Wehmhoff (collectively, Petters' "Associates").

25. In 2008, Coleman, Reynolds and Wehmhoff each pleaded guilty to various crimes directly arising from, and connected to, the perpetration of the Ponzi Scheme and their affiliation with Petters and entities that he owned and operated to further the Ponzi Scheme.

26. The scheme orchestrated by the Receivership Individuals, through a multitude of entities owned and operated by Petters, was a common species of fraud with the nefarious trademark of a Ponzi Scheme. Petters, through a number of his entities and in concert with his Associates, would repay initial investors not with the fruits of their investment, but with false profits harvested from funds obtained from other investors.

27. Petters and his Associates, through PCI, PGW and a multitude of shell companies intended that the payments to early investors would induce ongoing, repeated and more widespread investment in the Ponzi Scheme and thereby further perpetrate and extend the life of the fraud.

28. To obtain investors in the Ponzi Scheme, Petters, his Associates, PCI and its agents and PGW and its agents, made numerous false statements, false representations and material omissions to fraudulently induce investors to provide PCI and PGW with billions of dollars.



29. Petters portrayed to investors that the funds were to be used to purchase merchandise which would then be sold to retailers at a profit. Instead, Petters, his Associates, PCI, PGW and others would divert the funds to other purposes.

30. Funds received by PCI, PGW, and Petters from lenders were not used to purchase electronic goods as represented, but instead were used to repay other investors their principal and interest, to purchase and/or support other business operations owned or controlled by Petters, to finance Petters' extravagant lifestyle and were otherwise paid, as income, to the other Receivership Individuals and to Defendant.

31. As part of the Ponzi scheme and in furtherance of it, on multiple occasions Petters or his Associates caused the proceeds of the Ponzi scheme to be transferred to Petters' controlled businesses, including but not limited to PCI, PGW and their subsidiaries or affiliates, to enable those businesses to make payroll and to pay employee bonuses, consulting fees and commissions and to make loans, gifts or other incentives to employees, directors, officers, consultants, relatives and friends. Petters or his Associates also transferred Ponzi scheme money to Petters personal accounts to finance a lavish lifestyle and to make payments directly to individuals, including enormous sums to Defendant. These transfers were made with the intent to defraud and to further the Ponzi scheme.

32. The aggregate amount of funds transferred by Petters and PGW to Defendant is at least \$2,462,299. Of this amount, \$1,658,333 was paid to Defendant through PGW accounts. These transfers are being sought through a separate proceeding initiated by Kelley as Trustee of PGW in the United States Bankruptcy Court for the

District of Minnesota, *Douglas A. Kelley, et al. v. Paul Traub*, Adv. No. 10-04404. The allegations of that adversary complaint are incorporated herein by reference. The Receiver in this action seeks to recover transfers to Defendant from Petters' personal accounts and from the Receivership Estate in the amount of \$726,000.00, as well as a transfer of interest in EBP to Defendant from the Receivership Estate, believed to be worth approximately \$77,966.00 (collectively, the "Fraudulent Transfers").

33. Because Petters was perpetrating a Ponzi Scheme, and all of his income was derived from proceeds of the fraudulent Ponzi Scheme, all of the Fraudulent Transfers to Defendant were made with the actual intent to hinder, delay or defraud Petters' creditors.

34. Petters' Fraudulent Transfers to Defendant were intended, among other things, to create the appearance of success and a continuing profitable enterprise on behalf of PCI, PGW or the other multitude of entities created by Petters and the other Receivership Individuals.

35. 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 Receiver has acted diligently to discover facts constituting the fraud alleged in this Complaint.

38. Any temporal limitations, statutory or otherwise, on the Receiver'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 the Receivership Individuals, in fraudulently and intentionally concealing the fraud, or the adverse domination of PCI, PGW, and other entities by Petters, or his Associates, until the appointment of the Receiver.

### **THE FRAUDULENT TRANSFERS**

39. As part of the Ponzi scheme and in furtherance of it, on multiple occasions Petters, or Petters and his Associates, caused monies from PCI – the proceeds of the Ponzi scheme – to be transferred to Petters or 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 to Petters so that he could directly pay such sums to employees, directors, and officers and consultants for such purposes. These transfers were made with the intent to defraud and to further 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 Receivership Estates, which the Defendant claims created an obligation



incurred by the Receivership Estates (the “Obligations”), 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, on or about June 5, 2006, Defendant received and deposited a check from Petters’ Northern Trust Bank account in the amount of \$225,000.00. *See* copy of check attached hereto as Exhibit B.

42. On or about May 8, 2008, Defendant received and deposited a check from Petters’ Crown Bank account in the amount of \$501,000.00. *See* copy of check attached hereto as Exhibit C.

43. Additionally, on or about May 15, 2007, Defendant received a 0.7353% interest in EBP Select Holdings, LLC (“EBP”) from Petters. EBP is a Delaware limited liability company. EBP holds shares of Bluestem Brands, Inc. f/k/a Fingerhut Direct Marketing, Inc. (“Bluestem”) and uBid.Com Holdings, Inc. (“uBid”), additional entities owned and controlled by Petters. The Receiver estimates the value of this transfer at \$77,966.00.

44. Petters was insolvent on the dates of any Obligations and on the dates the Fraudulent Transfers were made, or the Fraudulent Transfers left Petters and the Receivership Estates with an unreasonably small amount of capital with which to operate. At the time of any Fraudulent Transfers, Petters, PGW and Petters’ other affiliates owed hundreds of millions of dollars to as much as \$3.8 billion to creditors and possessed fraudulently pledged and vastly insufficient assets to repay their debts.

45. Defendant was legal counsel to Petters, PCI and PGW, a managing partner in PGW, a uBid board member, and a member of Petters' inner circle a/k/a the "Dream Team" and a "Strategic Partner." In these roles, Defendant served as a close and trusted advisor of Petters. Consequently, Defendant had special knowledge or access to information regarding the Ponzi Scheme, was a control person of PGW and its affiliates, and an insider within the meaning of Minn. Stat § 513.41(7).

46. By virtue of Defendant's close relationship with Petters and his participation in the Ponzi scheme, Defendant was able to exert influence over the Receivership Estates and attain these Fraudulent Transfers.

47. The Fraudulent Transfers are disproportionately large relative to Defendant's salary, work duties and performance, 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 his loyalty to the Ponzi scheme.

48. Although the 2005 consulting agreement purported to pay Defendant \$125,000 per month, the agreement did not provide for a bonus. Nevertheless, Defendant received an additional \$225,000 from Petters over and above the \$1.5 million he received from PGW.

49. Notably, the \$225,000 payment to Defendant was not made by PGW, the company that purportedly employed Defendant, but rather was made directly by Petters, using his own personal checking account. It is believed that this payment came from Petters directly in order to avoid detection by other PGW employees and management,

conceal Defendant's relationship with Petters, and maintain the fraud. For instance, on the same day that Petters wrote the \$225,000 check to Defendant, a deposit of equal amount was made by PGW into Petters' personal account, presumably to cover the payment to Defendant.

50. In October 2006, Traub executed a new consulting agreement with PGW. Under that agreement, Traub's services became even less defined. According to the new arrangement, Traub was to "deliver consulting services by way of making introductions or for general strategic advice as requested by Tom Petters." A copy of the agreement is attached hereto as Exhibit D. The consulting agreement reduced Traub's compensation to \$10,416 per month (\$125,000 annually). However, a discretionary bonus was now available to Traub and was to be measured by "network introductions, dollar savings, [and] projects that result in significant upside for the company." In 2007, Traub received a \$501,000 bonus from Petters, which was paid in the first quarter of 2008. The bonus was more than four times the stated salary of \$125,000 annually. Again, the payment did not come from PGW, the entity he contracted with, but rather from Petters directly. Like the previous payment, it is believed that this payment was made from Petters directly to avoid detection by other PGW employees and management, conceal Defendant's relationship with Petters, and maintain the fraud.

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

52. Defendant knew, or should have known, that the Fraudulent Transfers he received from Petters were not made in the ordinary course of business or through an arm's-length transaction.

53. Defendant received and accepted the Fraudulent 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.

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

55. Any Obligations and the Fraudulent 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, and convey that Petters, PCI and PGW were trustworthy, impressive and profitable.

56. 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.

57. During the course of this adversary proceeding, the Receiver may learn (through discovery or otherwise) of additional transfers made to Defendant. The Receiver intends to avoid and recover all transfers made by the Receivership Estates of an interest of Receivership Estates in property and to or for the benefit of the Defendant or any other transferee. Similarly, the Receiver intends to avoid any Obligations made by the



Receivership Estates. The Receiver reserves the right to amend this original Complaint to include: (i) further information regarding the Fraudulent Transfers, (ii) additional transfers, (iii) modifications or revisions to Defendant's name, (iv) additional defendants, or (v) additional causes of action, that may become known to the Receiver 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 — FRAUDULENT TRANSFERS**

#### **Insider Transfers - Minn. Stat. §§ 513.45(b) and 513.47 or Other Governing Fraudulent Transfer Laws**

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

59. Defendant is an "insider" within the meaning of Minn. Stat. § 513.41(7).

60. The Fraudulent Transfers were made to an insider for an antecedent debt, the Receivership Estates were insolvent at the time, and the insider had reasonable cause to believe the Receivership Estates were insolvent.

61. As a result of the foregoing, the Receiver is entitled to judgment pursuant to 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 Fraudulent Transfers free and clear from any claimed interest of Defendant, (b) directing that any Obligations and the Fraudulent Transfers be set aside, (c) recovering such Fraudulent Transfers or the

value thereof from Defendant for the benefit of the Receivership, and (d) recovering pre-judgment and post-judgment interest, attorneys' fees and costs from Defendant.

## **COUNT II – FRAUDULENT TRANSFERS**

### **Actual Fraud - Minn. Stat. §§ 513.44(a)(1) and 513.47 or Other Governing Fraudulent Transfer Laws**

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

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

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

65. As a result of the foregoing, the Receiver is entitled to judgment pursuant to 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 Fraudulent Transfers free and clear from any claimed interest of Defendant, (b) directing that any Obligations and the Fraudulent Transfers be set aside, (c) recovering such Fraudulent Transfers in the value thereof from Defendant for the benefit of the Receivership, and (d) recovering pre-judgment and post-judgment interest, attorneys' fees and costs from Defendant.

**COUNT III – FRAUDULENT TRANSFERS**

**Constructive Fraud - Minn. Stat. §§ 513.44(a)(2)(i) and 513.47 or Other Governing  
Fraudulent Transfer Laws**

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

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

68. Petters and PGW received less than a reasonably equivalent value in exchange for the Fraudulent Transfers and Obligations.

69. As a result of the foregoing, the Receiver is entitled to judgment pursuant to 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 Fraudulent Transfers free and clear from any claimed interest of Defendant, (b) directing that any Obligations and the Fraudulent Transfers be set aside, (c) recovering such Fraudulent Transfers or the value thereof from Defendant for the benefit of the Receivership, and (d) recovering prejudgment and post-judgment interest, attorneys' fees and costs from Defendant.

**COUNT IV – FRAUDULENT TRANSFERS**

**Constructive Fraud - Minn. Stat. §§ 513.44(a)(2)(ii) and 513.47 or Other Governing Fraudulent Transfer Laws**

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

71. At all times material hereto and at the time of the Fraudulent Transfers and Obligations, Petters intended to incur, or believed that he would incur, debts that would be beyond his ability to pay as the debts matured.

72. Petters received less than a reasonably equivalent value in exchange for the Fraudulent Transfers and Obligations.

73. As a result of the foregoing, the Receiver is entitled to judgment pursuant to 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 Fraudulent Transfers free and clear from any claimed interest of Defendant, (b) directing that any Obligations and the Fraudulent Transfers be set aside, (c) recovering such Fraudulent Transfers or the value thereof from Defendant for the benefit of the Receivership, and (d) recovering pre-judgment and post-judgment interest, attorneys' fees and costs from Defendant.

**COUNT V – FRAUDULENT TRANSFERS**

**Constructive Fraud - Minn. Stat. §§ 513.45(a) and 513.47 or Other Governing Fraudulent Transfer Laws**

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



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

76. Petters received less than a reasonably equivalent value in exchange for the Fraudulent Transfers and Obligations.

77. As a result of the foregoing, the Receiver is entitled to judgment pursuant to 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 Fraudulent Transfers free and clear from any claimed interest of Defendant, (b) directing that any Obligations and the Fraudulent Transfers be set aside, (c) recovering such Fraudulent Transfers or the value thereof from Defendant for the benefit of the Receivership, and (d) recovering pre-judgment and post-judgment interest, attorneys' fees and costs from Defendant.

#### **COUNT VI – UNJUST ENRICHMENT/EQUITABLE DISGORGEMENT**

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

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

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

81. Defendant knowingly accepted the benefit.

82. Defendant received the Fraudulent Transfers from Petters knowing that the funds were derived from the Ponzi scheme, and Defendant was unjustly enriched through his receipt of the Fraudulent Transfers to the detriment of the Receivership, and in equity and good conscience must be required to repay the proceeds received.

83. Defendant would be unjustly enriched to the extent he is allowed to retain the Fraudulent Transfers received during his participation in the Ponzi scheme.

69. Defendant must, therefore, in equity be required to disgorge all proceeds and assets received through the operation of the Ponzi scheme, so as to allow the Receiver to distribute in equity any such ill-gotten gains among all innocent investors and creditors of the Receivership.

70. Defendant's acceptance and retention of the benefit is inequitable and violates principles of justice, equity and good conscience.

### **PRAYER FOR RELIEF**

WHEREFORE, the Receiver respectfully requests this Court enter judgment in favor of Plaintiff and against Defendant as follows:

A. Count I (Insider Transfers): pursuant to 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 Fraudulent Transfers free and clear from any claimed interest of Defendant, (b) directing that any Obligations and the Transfers be set aside, (c) recovering such Fraudulent Transfers or the value thereof from Defendant

for the benefit of the Receivership, and (d) recovering pre-judgment and post-judgment interest, attorneys' fees and costs from Defendant.

B. Count II (Fraudulent Transfers – Actual Fraud): pursuant to 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 Fraudulent Transfers free and clear from any claimed interest of Defendant, (b) directing that any Obligations and the Fraudulent Transfers be set aside, (c) recovering such Fraudulent Transfers or the value thereof from Defendant for the benefit of the Receivership, and (d) recovering pre-judgment and post-judgment interest, attorneys' fees and costs from Defendant.

C. Count III (Fraudulent Transfers - Constructive Fraud): pursuant to 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 Fraudulent Transfers free and clear from any claimed interest of Defendant, (b) directing that any Obligations and the Fraudulent Transfers be set aside, (c) recovering such Fraudulent Transfers or the value thereof from Defendant for the benefit of the Receivership, and (d) recovering prejudgment and post-judgment interest, attorneys' fees and costs from Defendant.

D. Count IV (Fraudulent Transfers - Constructive Fraud): pursuant to 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 Fraudulent Transfers free and clear from any claimed interest

of Defendant, (b) directing that the Fraudulent Transfers be set aside, (c) recovering such Transfers or the value thereof from Defendant for the benefit of the Receivership, and (d) recovering pre-judgment and post-judgment interest, attorneys' fees and costs from Defendant.

E. On Count V (Fraudulent Transfers - Constructive Fraud): pursuant to 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 Fraudulent Transfers free and clear from any claimed interest of Defendant, (b) directing that any Obligations and the Fraudulent Transfers be set aside, (c) recovering such Fraudulent Transfers or the value thereof from Defendant for the benefit of the Receivership, and (d) recovering pre-judgment and post-judgment interest, attorneys' fees and costs from Defendant.

F. Count VI (Unjust Enrichment/Equitable Disgorgement): declaring and ordering that the Receiver shall recover the Fraudulent 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 Receivership; and that Defendant shall be liable to the Receivership in an amount equal to the Fraudulent Transfers and shall be required to disgorge the same for the equitable distribution to all investors of the Receivership.

G. On all Claims for Relief, establishment of a constructive trust over the proceeds of the Fraudulent Transfers in favor of the Receiver for the benefit of the Receivership;



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

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

DATED: June 5, 2012

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