UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
www.flsb.uscourts.gov

In re:	Chapter 7
CERTIFIED, INC.; GLOBAL BULLION TRADING GROUP, INC.; and WJS FUNDING, INC.	Case Nos.: 09-33115-RAM; 09-33124-RAM; and 09-33128-RAM
Debtors.	JOINTLY ADMINISTERED

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SONEET KAPILA, Chapter 7 Trustee for the jointly administered bankruptcy estates of Certified, Inc.; Global Bullion Trading Group, Inc.; and WJS Funding, Inc.,	Adv. Pro. No. 11-02725-RAM
Plaintiff,	
v.	
ODL SECURITIES, INC., a Delaware corporation; ODL SECURITIES LIMITED, a foreign corporation; ODL GROUP LIMITED, a foreign corporation; FOREX CAPITAL MARKETS, LLC, a Delaware limited liability company; FXCM SECURITIES, LLC, a Delaware limited liability company; FXCM SECURITIES LIMITED, a foreign corporation; FXCM INC., a Delaware corporation; and FXCM HOLDINGS, LLC, a Delaware limited liability company,	
Defendants.	

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SECOND AMENDED COMPLAINT TO AVOID AND RECOVER PREFERENTIAL AND FRAUDULENT TRANSFERS AND FOR DAMAGES

Plaintiff, Soneet Kapila, as Chapter 7 Trustee (hereinafter referred to as "Plaintiff" or "Trustee") for the jointly administered bankruptcy estates of Certified, Inc. ("Certified"), Global Bullion Trading Group, Inc. ("Global Bullion") and WJS Funding, Inc. ("WJS Funding") (collectively the "Debtors"), pursuant to Sections 542, 544, 547, 548, and 550(a) of Title 11 of

the United States Code (the "Bankruptcy Code"), the federal Racketeer Influenced and Corrupt Organizations Act (18 U.S.C. §§ 1961 *et seq*.) (the "RICO Act" or "RICO"), and Sections 726.101 *et seq*. of the Florida Statutes, and Fed. R. Bankr. P. 7001, hereby sues Defendants, ODL Securities, Inc., a Delaware corporation ("ODL-US"); ODL Securities Limited, a foreign corporation ("ODL-UK"); ODL Group Limited, a foreign corporation (ODL-US, ODL-UK, and ODL Group Limited, collectively referred to as "ODL"); Forex Capital Markets, LLC, a Delaware limited liability company; FXCM Securities LLC, a Delaware limited liability company; FXCM Securities Limited, a foreign corporation ("FXCM-UK"); FXCM Holdings, LLC, a Delaware limited liability company; and FXCM Inc., a Delaware corporation (Forex Capital Markets, LLC, FXCM Securities, LLC, FXCM-UK, FXCM Holdings, LLC, and FXCM Inc., collectively, "FXCM") (FXCM and ODL collectively, the "Defendants"), to avoid and recover damages for preferential and fraudulent transfers made to or for the benefit of Defendants, for state common law claims, for violation of the RICO Act, and for other violations as noted herein. As grounds therefor, Plaintiff alleges the following:

PRELIMINARY STATEMENT

1. This litigation arises from Defendants' role as prime broker and clearing broker – and as a vital promoter and advocate – for the Debtors. Certain, but not all, of the Debtors' insiders operated a Ponzi scheme through the Debtors in which massive trading losses were camouflaged from customers by the creation of false account statements and misrepresentations about the Debtors' past financial performance. The Debtors conducted substantially all of their precious metals trading through Defendants and, since at least 2005, paid Defendants millions of dollars in fees.

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2. Although, during the course of their relationship, Defendants clearly knew, were on inquiry notice of, or should have known of the fraud conducted by the culpable Debtor insiders through the Debtors, Defendants nonetheless continued to provide lucrative prime brokerage and clearing services to the Debtors, which the culpable Debtor insiders needed to perpetuate their fraud. Among other things, the culpable Debtor insiders transferred cash into margin accounts with Defendants, which was an integral facet of the scheme concocted by certain, but not all, of the Debtors' insiders. Absent new infusions of cash, the Debtors' trading losses would have stopped, the trading accounts would have been closed, and the scheme would have come to an end.

3. Defendants' course of conduct with respect to the Debtors – the continued provision of prime brokerage and clearing services in the face of facts indicative of a fraudulent Ponzi scheme – cannot support an assertion of good faith by Defendants. Significantly, although Defendants knew the Debtors' actual trading performance showed massive losses, Defendants acted inconsistently with that knowledge by actively promoting the Debtors' businesses and soliciting new customers for them based on claims of massive gains. The Defendants were in a position to put a stop to the Ponzi scheme that was being operated through the Debtors but, either through gross negligence or a willful choice, failed to take any action and instead continued their lucrative relationship with the Debtors and their culpable insiders by doing nothing. Importantly, there were innocent Debtor insiders who, with the proper warning from Defendants, were in positions to take action to stop the culpable Debtor insiders from abusing their positions and acting to the detriment of the Debtors' otherwise legitimate business.

4. In addition to Defendants' self-serving promotion of the investment scheme operated through the Debtors, Defendants also engaged in dishonest trade execution practices

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whereby they created and deployed automated computer algorithms in Defendants' back-end software to improperly profit from customers such as the Debtors.

PARTIES, JURISDICTION AND VENUE

THE PARTIES

Plaintiff

5. On October 26, 2009 (the "Petition Date"), the Debtors each separately filed voluntary petitions for relief under the Bankruptcy Code in the Miami Division of the United States Bankruptcy Court for the Southern District of Florida.

6. On October 28, 2009, each of the Debtors jointly filed a Verified Emergency Motion for Order Appointing a Chapter 11 Trustee, which relief, after notice and hearing, was granted. Plaintiff was then appointed as the Chapter 11 trustee. Soon thereafter, upon the request of each of the Debtors, the Court entered an Order allowing the joint administration of the Debtors' cases. Subsequently, the Debtors' cases were converted to cases under Chapter 7 of the Bankruptcy Code ("Chapter 7").

7. Plaintiff is the duly appointed and acting Chapter 7 trustee for the Debtors' jointly administered bankruptcy estates.

8. In February 2012 and March 2012, multiple creditors of the Debtors' bankruptcy estates unconditionally and irrevocably assigned to the Debtors' estates the right to prosecute all claims the assigning individuals have or might have had against Defendants in connection with their business dealings with the Debtors and Defendants.

9. In accordance with 11 U.S.C. §§ 541(a)(7) and 704(1), all of the claims unconditionally and irrevocably assigned to the Debtors' bankruptcy estates by the creditors/individual claimholders are now deemed "property of the estate[s]" acquired after the

commencement of the jointly-administered bankruptcy cases, which the Trustee is authorized to "collect and reduce to money" on behalf of the estates.

10. Because those assigned claims are now property of the estates, the Trustee is prosecuting this action on behalf of the Debtors as well as on behalf of the individual claimholders whose claims now belong to the estates.

11. As assignee, the Trustee stands in the shoes of the assigning creditors, thereby assuming all rights and interests that the assigning creditors have in the causes of action set forth herein and becoming subject to all defenses that could have been asserted against the assigning creditors, not the Debtors.

Defendants

12. ODL-US is a Delaware corporation with its principal place of business located in Chicago, IL. At all times material hereto, ODL-US was authorized to conduct business in, did conduct business in, and had minimum contacts with, the State of Florida.

13. ODL-UK is a foreign corporation with its principal place of business located in London, England. At all times material hereto, ODL-UK was authorized to conduct business in, did conduct business in, and had minimum contacts with, the State of Florida. ODL-UK's contacts with the United States, including those with the State of Florida, were continuous and systematic; and ODL-UK purposefully availed itself of the privilege of conducting activities within this forum. Specifically, ODL-UK engaged in the following activities, *inter alia*, in the United States, including in the State of Florida:

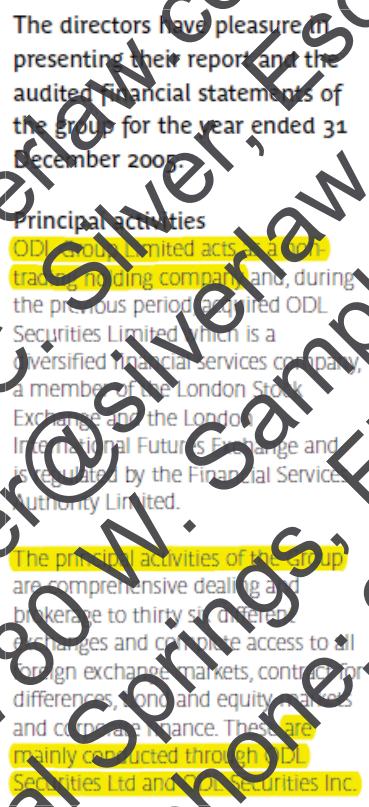
a. Solicited clients through its agents Andrew Riddell, Joint Head of Commodities at ODL ("Riddell"), Adele James, a Fund Manager at ODL ("James"), Christopher Laird, Head of Sales at ODL ("Laird"), and others;

b. Maintained a branch, office, or place of business;

c. Maintained bank accounts at Wachovia Bank N.A., into which it directed its clients to transfer their funds;

d. Maintained a web site accessible to, targeted at, and for the use of, its U.S.-based clients, including those in the State of Florida.

14. ODL Group Limited is a foreign corporation with its principal place of business located in London, England. At all times material hereto, ODL Group Limited conducted its principal activities through ODL-US and ODL-UK. According to its own audited Financial Statements for the year ending December 31, 2005:



The directors have pleasure in presenting their report and the audited financial statements of the group for the year ended 31 December 2005.

Principal activities

ODL Group Limited acts as a non-trading holding company and, during the previous period, acquired ODL Securities Limited which is a diversified financial services company, a member of the London Stock Exchange and the London International Futures Exchange and is regulated by the Financial Services Authority Limited.

The principal activities of the group are comprehensive dealing and brokerage to thirty six different exchanges and corporate access to all foreign exchange markets, contracts for differences, bond and equity markets and corporate finance. These are mainly conducted through ODL Securities Ltd and ODL Securities Inc.

(Highlighting added for emphasis). By conducting its principal activities through ODL-US and ODL-UK, ODL Group Limited was consequently authorized to conduct business in, did conduct business in, and had minimum contacts with, the State of Florida. Moreover, ODL Group Limited's contacts with the United States, including those with the State of Florida, were

continuous and systematic; and ODL Group Limited purposefully availed itself of the privilege of conducting activities within this forum.

15. Forex Capital Markets, LLC is a limited liability company organized and existing under the laws of the State of Delaware with its principal place of business located in New York, NY. Forex Capital Markets, LLC – which is jointly owned by FXCM Holdings, LLC and FXCM Inc. – is authorized to conduct business in, did conduct business in, and has had minimum contacts with, the State of Florida.

16. FXCM Securities, LLC is a Delaware limited liability company with its principal place of business located in New York, NY. FXCM Securities, LLC is authorized to conduct business in, did conduct business in, and has had minimum contacts with, the State of Florida.

17. FXCM-UK is a foreign corporation with its principal place of business located in London, England; and is the entity formerly known as ODL-UK. As the successor entity to ODL-UK, FXCM-UK was, at all times material hereto, authorized to conduct business in, did conduct business in, and has had minimum contacts with, the State of Florida. FXCM-UK's contacts with the United States, including those with the State of Florida, were continuous and systematic; and FXCM-UK purposefully availed itself of the privilege of conducting activities within this forum. Specifically, FXCM-UK engaged in the following activities, *inter alia*, in the United States, including in the State of Florida:

a. Solicited clients through Riddell, James, Laird, and others;

b. Maintained a branch, office, or place of business;

c. Maintained bank accounts at Wachovia Bank N.A., into which it directed its clients to transfer their funds; and

d. Maintained a web site accessible to, targeted at, and for the use of, its U.S.-based clients, including those in the State of Florida.

18. FXCM Inc. is a Delaware corporation with its principal place of business located in New York, NY. FXCM Inc. is authorized to conduct business in, did conduct business in, and has had minimum contacts with, the State of Florida.

19. FXCM Holdings, LLC is a Delaware limited liability company with its principal place of business located in New York, NY. FXCM Holdings, LLC is authorized to conduct business in, did conduct business in, and has had minimum contacts with, the State of Florida.

20. Upon information and belief, FXCM acquired ODL-US's entire business operations in or around January 2009. According to published reports, ODL sold its U.S. business to FXCM in January 2009 to avoid being required to hold up to $30 million of capital to operate in the U.S. ODL had previously been fined for regulatory breaches by the National Futures Association.

21. Similarly, upon information and belief, FXCM acquired ODL-UK's entire business operations as part of an acquisition of ODL Group Limited in or around June 2010. ODL Group Limited is currently owned by FXCM.

22. As such, all of ODL's business operations, both domestically and abroad, have been purchased by, acquired by, and merged into FXCM, with FXCM carrying forward those business operations and all interests related thereto as the successor-in-interest entity to ODL. In a press release announcing the merger, FXCM stated: "*The combined companies will operate as one of the largest non-bank forex brokers globally servicing over 200,000 live trading accounts with combined client assets in excess of U.S. $800,000 million.*"

23. FXCM expressly or impliedly assumed the obligations of ODL; the transaction as described above was a *de facto* merger; and FXCM treated the ODL customer accounts as a mere continuation of ODL's business simply under the FXCM brand name. Upon information and

belief, the transactions were instigated by ODL's inability to meet increased U.S. regulatory requirements.

24. Commenting on the acquisition, Drew Niv, CEO of FXCM, said in a published report: "*For several years, FXCM has been working towards becoming a major player in Europe. The deal with ODL will provide us with a great opportunity to achieve this. We believe FXCM will be the only retail forex firm with a truly global footprint. In an industry in which size and scale are important, this is a major advantage.*"

25. ODL's former employees are now employees of FXCM. The continuity of management, personnel, and client accounts support a finding of a *de facto* merger. In fact, ODL's website, www.odlmarkets.com, confirms this continuation of its business as part of FXCM by stating that ODL has "*changed our name*" and "*is a member under the FXCM Inc. group of companies,*" *to wit*:

26. FXCM's description of its company history on its website is no different. FXCM states that "Forex Capital Markets (FXCM)" was founded in 1999 specializing in forex trading and that in 2010 FXCM was listed on the New York Stock Exchange. In so describing its history, FXCM itself does not distinguish between its own separate legal entities, instead referring generically to itself as FXCM, *to wit*:

OUR COMPANY TIMELINE	
1999	Forex Capital Markets (FXCM) founded specializing in forex trading
2001	FXCM becomes a Futures Commission Merchant
2003	Forex Capital Markets Ltd. becomes FSA regulated, opens UK office FXCM launches DailyFX.com
2007	FXCM crosses 100,000 account threshold
2008	FXCM opens offices in France and Australia
2009	Forex Capital Markets Ltd. begins offering CFD Trading FXCM opens office in Dubai
2010	FXCM is listed on the New York Stock Exchange (NYSE), ticker symbol "FXCM"

FXCM Inc., a publicly traded company listed on the New York Stock Exchange (NYSE:FXCM), is a holding company and its sole asset is a controlling equity interest in FXCM Holdings, LLC. Forex Capital Markets, LLC ("FXCM LLC") is a direct operating subsidiary of FXCM Holdings, LLC. All references on this site to "FXCM" refer to FXCM Inc. and its consolidated subsidiaries, including FXCM Holdings, LLC and Forex Capital Markets, LLC.

See http://www.fxcm.com/company-history.jsp (Highlighting and underlining added for emphasis).

27. Based on the way in which FXCM operates and based on FXCM's own acknowledgement of its various legal entities as functionally being one, Defendants are all proper defendants in this action.

JURISDICTION AND VENUE

28. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 157(a) and 1334(b).

29. The claims for avoidance and recovery of preferential and fraudulent transfers are core proceedings and, therefore, this Court is authorized to hear and determine all matters regarding this case pursuant to 28 U.S.C. §§ 157(b)(2)(A), (F), (H), and (O).

30. The claims for common law causes of action and for violations of the RICO Act are non-core proceedings as to which the Trustee consents to the entry of final orders and judgments by this Court.

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

GENERAL FACTUAL ALLEGATIONS

THE DEBTORS' HISTORICAL BACKGROUND

32. Prior to the Petition Date, the Debtors engaged in legitimate business activities, including contracting with third parties to purchase and sell precious metals on behalf of domestic and international investors, some of which were purchases of spot transactions traded on the London bullion markets. The Debtors operated for the purpose of selling spot transactions in gold, silver, palladium, and platinum through leveraged transactions. The Debtors worked with entities regulated by the Commodities Futures Trading Commission and the National Futures Association, as well as other third parties such as vendors.

33. Certified was incorporated on August 7, 1992.

34. On December 26, 1995, the Schlecht Group, Inc. ("Schlecht Group") was incorporated and operated and captured customers for a number of years. The company then changed its name from Schlecht Group to Global Bullion on March 21, 2003.

35. On November 8, 2002, WJS Funding was incorporated. WJS Funding owned and registered the fictitious name Capital Asset Management ("CAM") and continually conducted separate business under that fictitious name until the Petition Date.

36. Global Bullion offered its customers the option to finance their purchases of gold and other precious metals through CAM. Further, WJS Funding also used CAM as the clearinghouse for margin purchases of precious metals by its own customers.

37. In 2007, Certified registered to conduct business under two fictitious names: (i) Certified Clearing and (ii) International Bullion Brokerage Services. Certified Clearing took over the role of CAM in 2008 to serve as the "new" clearinghouse for all margin purchases of precious metals by Certified and/or Global Bullion customers.

38. In October 2008, Global Bullion shifted some or all of its existing customers to Certified. Global Bullion sent letters to customers to inform them that their accounts would be converted to Certified accounts by the end of October 2008.

39. From October 2008 until the Petition Date, in essence, Certified followed the same business model as WJS Funding and Global Bullion.

40. Certain, but not all, of the Debtors' insiders acted to the detriment of the Debtors' otherwise legitimate business by conducting a Ponzi scheme through the Debtors in which only a small portion of the funds that the Debtors collected from customers were invested in precious metals and the remainder was used to pay older investors and to benefit the culpable Debtor insiders.

41. As a result of the culpable Debtor insiders' conduct, the Debtors were forced to file for bankruptcy.

42. Arthur Schlecht ("Schlecht") primarily controlled the Debtors and, at all material times, Schlecht acted against the Debtors best interests. The Debtors lives were extended through the Defendants' actionable conduct; and because of their extended life, Schlecht was able to continue his fraud through the Debtors, harming the Debtors, and was able to continue to dissipate, divert, and deplete their assets, without any corresponding benefit to the Debtors.

43. Frederick Gomer ("Gomer") also primarily controlled the Debtors and, at all material times, he acted against the Debtors best interests. The Debtors lives were extended through the Defendants' actionable conduct; and because of their extended life, Gomer, together with Schlecht, was able to continue his fraud through the Debtors, harming the Debtors, and was

able to continue to dissipate, divert, and deplete their assets, without any corresponding benefit to the Debtors.[1]

44. Although Gomer and Schlecht, as culpable Debtor insiders, primarily controlled the Debtors, they did not solely own or control each of the Debtors. Gomer and Schlecht, together with other culpable Debtor insiders, owed a fiduciary duty to the Debtors and breached that duty.

45. Certain officers of the Debtors were not complicit in Schlecht and Gomer's misconduct towards the Debtors, had decision-making authority on behalf of the Debtors, and exercised actual authority to legally bind the Debtors.

FXCM'S HISTORICAL BACKGROUND

46. FXCM is a self-proclaimed global online provider of off-exchange foreign exchange (Forex) trading and related services to retail, institutional, and individual customers worldwide.

47. The Forex market is a worldwide, off-exchange financial market for the trading of currencies and precious metals, including spot transactions, which began in the 1970s and is currently the largest and most liquid financial market in the world.

48. According to published reports, FXCM is the largest and fastest growing retail, online, over-the-counter, Forex dealer in the United States. In 2005, FXCM had over 55,000 retail accounts. By 2006, FXCM had over 78,000 accounts trading through its platforms; and, in 2007 and 2008, that number increased to over 100,000 accounts trading. In 2009, FXCM continued to grow its accounts trading, which increased to more than 150,000. Upon information and belief, FXCM had, as of September 30, 2010, over 174,000 accounts trading

[1] Schlecht and Gomer deny that they acted against the Debtors' best interests or conducted a fraud through the Debtors.

through its platforms from over 180 countries, with an average of over 6,700,000 trades executed each month.

THE MULTI-LAYERED RELATIONSHIP BETWEEN THE DEBTORS AND DEFENDANTS

49. Prior to the Petition Date, some or all of the Debtors had been investment clients of ODL since as far back as 2004. In 2004, WJS Funding entered into a written customer agreement and opened an account with ODL for the purposes of trading in the Forex market and investing through ODL.

50. Similarly, in June 2007, Certified entered into a written customer agreement and opened an account with ODL through which Certified invested in precious metals.

51. In 2009, ODL drafted Board resolutions for WJS Funding to transfer to Certified ownership of WJS Funding's ODL accounts.

52. In addition to investing their own corporate funds as clients of ODL, the Debtors also entered into written agreements with ODL to serve as "Introducing Brokers" for ODL by soliciting funds from the Debtors' customers and prospective customers and channeling those funds to ODL. ODL created a link on its own website to refer customers to the Debtors. ODL served as a financial service provider ready, willing, and able to initiate and execute the necessary exchange-based transactions, interbank funds transfers, and credit extensions required to effectuate the Debtors' customers' investments.

53. ODL did not conduct appropriate due diligence of the Debtors before conducting business with them. For example, the written agreements entered into between the Debtors and ODL were replete with material factual errors and omissions made by the culpable Debtor insiders – all of which ODL should have been aware were errors and omissions and on which ODL should have received clarification or correction before ODL accepted any funds from the Debtors.

54. Some of the information required to establish a new ODL customer account for the Debtors was left blank, some of the information relied upon by ODL was unresponsive to ODL's new client questionnaires, and some of the information outright contradicted the requirements a client had to satisfy to open a new account with ODL.

55. Similarly, ODL ignored and failed to investigate the extent to which Schlecht, one of the Debtors' principals, dominated the Debtor entities and how his influence might detract from the legitimacy of the Debtors' operations. Prior to the Debtors' involvement with Defendants, Schlecht had a long and troubled history with the National Futures Association ("NFA"). Schlecht had been suspended by the NFA, was the subject of nine reparations cases before the NFA, and ultimately withdrew his membership from that self-regulatory body in 2002. He also was permanently enjoined from practicing within the jurisdiction of the Commodity Futures Trading Commission, yet still his presence loomed large over the Debtors – something that ODL appears to have ignored or blatantly disregarded.

56. Despite the glaring irregularities, factual incongruities, and material omissions from the Debtors' new account paperwork – as well as the looming presence of Schlecht, the industry rogue – ODL opened all of the accounts anyway. ODL intentionally ignored these "red flags" in its own documentation and account opening processes so ODL could generate additional fees from the funds invested by the Debtors and their customers.

DEFENDANTS RECEIVED SEVERAL MILLION DOLLARS IN TRANSFERS FROM THE DEBTORS AND ASSISTED THE CULPABLE DEBTOR INSIDERS IN MISAPPROPRIATING FUNDS

57. From January 2005 until the Petition Date, the Debtors sent to Defendants, by wire transmission or otherwise, approximately $18 million dollars as summarized in the chart attached hereto as **Exhibit "A."** Those payments are referred to herein as the "Transfers."

58. At all times material hereto, Defendants knowingly accepted the funds they received from the Debtors and fully understood their relationship with, and obligations to, the Debtors and their customers.

59. In violation of those obligations, ODL created a rebate account (the "Rebate Account") into which ODL deposited over $2 million of funds that ODL had received from the Debtors. The Rebate Account was created by ODL as a "personal piggy-bank" for Schlecht and certain, but not all, of the Debtors' former principals as a reward for the increased fees ODL was able to generate from the Debtors' expanding volume of business.

60. To fund the Rebate Account, ODL artificially created an additional spread for each precious metal transaction conducted on behalf of the Debtors' customers – funds that should have instead been credited back to the Debtors' customer accounts. ODL communicated in detail with the culpable Debtor insiders to ensure that both ODL and the culpable Debtor insiders benefited from those spreads – all at the expense of the Debtors and the Debtors' customers.

61. For example, during the summer of 2008, when gold was trading at approximately $900 per ounce, silver was trading at approximately $17 per ounce, and crude oil was trading at approximately $130 per barrel, the culpable Debtor insiders and ODL conspired to charge artificial spreads of $6.00 per ounce of gold, $0.20 per ounce of silver, and $0.80 per barrel of oil. Those artificial spreads represented unwarranted profits of 67 basis points per ounce of gold, 117 basis points per ounce of silver, and 62 basis points per barrel of oil.

62. Attached hereto as **Composite Exhibit "B"** is a set of June 26, 2008 electronic mail exchanges that took place between Christopher Laird of ODL Securities and some of the

culpable Debtor insiders (Kent Jurney, Fred Gomer, and Arthur Schlecht) in which they discuss, *inter alia*:

(a) The artificial spreads to be charged to institutional and individual investors, which were based not on the value of the investments being made but rather "*on the other spreads we have in place*,"

(b) The fact that some investors were instructed to send their investment funds directly to ODL, rather than to the Debtors,

(c) Not only Mr. Laird's cooperation in this scheme to defraud "*some non-oil[,] gold[, and] silver punters*" but also Ms. James' participation as well the participation, upon information and belief, of Max Hedayati, former Director and Senior Corporate Dealer at ODL Securities, and

(d) Their goal of creating a scheme of artificial spreads that work "*to . . . best advantage to all*" participants in the scheme, though not to the best advantage of the Debtors or the Debtors' customers.

63. During the remainder of 2008, silver fell to as low as approximately $9 per ounce and oil plummeted to as low as approximately $45 per barrel. At those prices, the culpable Debtor insiders and ODL were utilizing the artificial spreads to charge 222 basis points per ounce of silver and 177 basis points per barrel of oil. Those funds were improperly diverted from the Debtors to ODL and the culpable Debtor insiders.

64. ODL also paid royalties to the culpable Debtor insiders for the benefit of Schlecht and others.

65. ODL allowed Certified, as an institutional client and account holder, to improperly use Certified's customer assets to further benefit the culpable Debtor insiders. Specifically, ODL permitted the culpable Debtor insiders to use customer funds to subsidize and/or collateralize their own non-customer transactions with ODL, including making their own leveraged purchases, many of which were juxtaposed to positions taken in Certified's customer accounts.

66. At all times material hereto, ODL was aware of the role it played in the misapplication and misappropriation of the funds it received from the Debtors, yet ODL continued its actions because an ever-expanding roster of customers for Certified meant an ever-increasing amount of fees ODL could generate in clearing those Certified-funneled funds.

DEFENDANTS LEGITIMIZED AND PROMOTED CERTIFIED

67. While this scheme between ODL and the culpable Debtor insiders generated ill-gotten fees for Defendants, the Debtors themselves, as well as the Debtors' customers, are the victim. ODL supplied the strength of its well-respected name to foster the culpable Debtor insiders' efforts in soliciting funds to further their fraud. Likewise, while Certified was being used to conduct a Ponzi scheme, ODL held Certified out to the public as being a well-respected business partner of ODL's that was in the business of selling precious metals to domestic and international customers – not simply just a business partner, but in certain parts of the world, the exclusive business partner. Customers lost millions of dollars based on and in reliance upon the *seriatim* false and misleading statements by ODL.

68. Riddell, James, and Hedayati went so far as to actively solicit customers for Certified.

69. One egregious example of this is in June 2008, when Certified and ODL jointly held an investment symposium in Caracas, Venezuela to lure additional customers to invest funds through Certified and ODL. Riddell, James, and Hedayati all participated on behalf of ODL.

70. At that symposium, potential customers were encouraged to invest with Certified due in no small part to its long-standing, close working relationship with ODL, as the following PowerPoint slide from that presentation demonstrates:

(Highlighting added for emphasis).

71. ODL and its agents emphasized to the potential customers that:

(a) ODL and Certified's relationship was strong;

(b) ODL and Certified had been working with one another for nearly a decade;

(c) ODL and Certified's relationship was an exclusive one; and

(d) Certified was ODL's representative in Venezuela.

72. In fact, advertisements for the investment symposium touted not only that ODL supported Certified and its efforts there but that the event, and everything that took place at that event, was "*powered by ODL Securities*." *See*, **Exhibit "C"** hereto.

73. In the process of providing the fuel that "powered" Certified's engine, ODL represented to the investing public there was no separation between ODL-US and ODL-UK; and that their agents were all one-and-the-same. As many of the advertisements for the June 2008 investment symposium demonstrate, ODL either generically advertised itself as "ODL Securities" (without evidencing any distinction between ODL-US and ODL-UK) or specifically advertised that ODL representatives based in London were in fact working on behalf of the United States-based entity, ODL Securities, Inc. ***See*, Exhibit "D"**, *to wit*:

74. The above-cited representation that Mr. Riddell and Mr. Hedayati were working on behalf of ODL's United States-based brokerage firm is just one of the many advertisements and invitations used by ODL to lure in additional investors to attend the June 2008 investment symposium. *See*, **Composite Exhibit "D"** hereto.

75. In the United States and abroad, Riddell, James, Hedayati and others from ODL, including Laird, engaged in additional customer solicitations and otherwise held Certified out to the public as its agent, thereby lending credibility to Certified that "powered" Certified's ability to expand its roster of customers and add to the number of creditors who have filed claims against the Debtors' joint bankruptcy estate. Attached hereto as **Exhibit "E"** is a matrix detailing all of the claims that have been filed against the Debtors' joint bankruptcy estates.

76. ODL used its respected name to promote Certified and attested to the legitimacy of Certified's business to lure in additional customers – something on which the culpable Debtor insiders relied and would not have been able to do on their own – at a time when Certified's financial solvency was questionable and ODL either knew or should have known that its relationship with Certified was littered with "red flags." ODL failed to investigate or take action in response to those "red flags," though, and instead continued to promote Certified, thereby fueling the growth of the Ponzi scheme being operated through Certified.

77. In essence, ODL's facilitation and promotion of the Ponzi scheme operated by the culpable Debtor insiders has caused the Debtors' insolvency to deepen in that it has exposed the Debtors to far more creditors in their joint bankruptcy estate than the number to which the Debtors would have otherwise been exposed had ODL acted upon any of the many warning sirens being sounded in its purposely-deaf ear (such as by warning the Debtors' innocent decision-making insiders). With ODL's vital assistance, the Debtors were able to continue their

business operations and the culpable Debtor insiders were able to continue dissipating assets that would otherwise have been available to satisfy a much smaller group of creditors. ODL's assistance also allowed the culpable Debtor insiders to mislead additional customers to trust their funds with the Debtors and Defendants in an investment scheme that ultimately cost the Debtors millions of dollars – all so that ODL could generate additional ill-gotten fees from the Debtors and their customers.

THE DEFENDANTS' KNEW OF, AND FAILED TO INVESTIGATE OR HALT, THE CULPABLE DEBTOR INSIDERS' FRAUDULENT ACTIVITY

78. ODL either knew of, was on inquiry notice of, acquiesced in, or should have known that the culpable Debtor insiders were perpetrating a fraudulent scheme during the course of Defendants' relationship with the Debtors. Despite numerous facts which, at a minimum, placed Defendants on inquiry notice of the culpable Debtor insiders' fraud, Defendants failed to investigate further and, to the contrary, continued to assist those culpable insiders in perpetrating their fraudulent scheme so that Defendants would continue to earn millions of dollars in fees by, among other things, providing margin credit to the Debtors as they continued to suffer massive trading losses. A number of the facts that at a minimum put Defendants on inquiry notice of the Debtor insiders' fraud are set forth below.

The Defendants Knew that the Debtors Were Losing Substantial Amounts of Money

79. As noted above, the Debtors began trading through ODL as early as 2004. From January 2005 until the Petition Date, the Debtors suffered approximately $4.6 million in trading losses in their ODL accounts. The Debtors' trading losses, as reflected in Exhibit "A" hereto, were readily apparent in ODL's records.

80. ODL was aware that the Debtors' massive losses occurred in highly leveraged margin accounts, and ODL continued to allow those accounts to be heavily leveraged.

81. Moreover, despite knowing that the Debtors' investments were suffering such heavy losses, ODL continued to promote Certified's business to potential customers – touting Certified's financial strength and touting Certified as ODL's exclusive representative in Venezuela. ODL thereby solicited fresh cash from potential customers despite its direct knowledge of the failing performance of the Debtor's investments.

The Defendants Knew or Were on Inquiry Notice that the Culpable Debtor Insiders Were Reporting Fraudulent Returns to Customers and Potential Customers

82. Not only did Defendants know that the Debtors were losing substantial sums of money, Defendants also knew or were on inquiry notice of the fraudulent returns that the culpable Debtor insiders were communicating to their customers and potential customers at the same time.

83. At investment symposiums and advertising pitches like the June 2008 Venezuelan symposium identified above, ODL representatives listened to, and participated in, sales pitches in which the culpable Debtor insiders overstated and outright misrepresented Certified's financial strength, as well as the returns customers could receive if they invested funds with the Debtors, in an effort to lure customers to entrust additional funds with the Debtors and, in turn, Defendants.

84. Despite its knowledge of the Debtors' investment losses and consequential financial instability, Defendants did nothing to investigate the stark inconsistencies between the information it had and the information presented to Certified's customers and potential customers. Instead, Defendants continued to prop up Certified as its successful business partner and continued to promote Certified to unwitting customers as if the culpable Debtor insiders were not controlling and harming it.

The Defendants Knew or Were on Inquiry Notice that the Debtors Were Operating Without the Hallmarks of Security Required to Sustain their Brokerage Business

85. As a result of the self-purported closeness and duration of the relationship between Defendants and Certified, Defendants knew, or were on inquiry notice, that the culpable Debtor insiders caused Certified to not keep separate records, bank accounts, or accounting for any of its alleged financing or brokerage clearing activities.

86. The culpable Debtor insiders made use of a collective "omnibus" account structure as part of Certified's business for transactional and operational purposes. In such an account, the funds supplied by each customer, along with the equity and market values of each customer's individual "positions," were commingled with that of all of the other customers, no matter what metal was being purchased or sold by any of the customers. Since the precious metal holdings and related market values concerning the "positions" of each such customer existed only as a function of the Debtors' internal bookkeeping, the culpable Debtor insiders were essentially making fairly unrestricted use of investor funds throughout the time that these assets purportedly were being "held" within each of the customers' "accounts." In this regard, the culpable Debtor insiders used the same bank account as their personal treasury to use at their leisure for any purpose and to pay for operational expenses, including hefty commissions, salaries, and fees to themselves – something about which ODL either knew or was constructively aware yet self-servingly ignored.

87. Despite being aware of Certified's slipshod documentation and comingling of information and funds – and the dangers concomitant therewith – ODL did nothing to investigate why this was the case, allowed the Certified accounts to be overleveraged, and failed to set any working capital or net capital requirements for Certified.

88. Defendants' repeated failures to diligently investigate or take any meaningful action with respect to the numerous "red flags" of fraud and concern surrounding the activities conducted through the Debtors constituted either gross negligence or willful misconduct. Indeed, it appears Defendants' conduct was in large part willful. As a result, the culpable Debtor insiders were able to act and to continue to act to the detriment of the Debtors and the Debtors' customers.

FXCM, AS ODL'S SUCCESSOR-IN-INTEREST, IS LIABLE FOR ALL OF ODL'S ACTS AND OMISSIONS

89. As noted above, all of ODL's business operations, both domestically and abroad, have been purchased, acquired, and merged into FXCM, with FXCM carrying forward those business operations and all interests related thereto as the successor entity to ODL.

90. As ODL's successor-in-interest, FXCM is liable for all of ODL's acts and omissions.

DEFENDANTS' RIGGED TRADING PLATFORM

91. As if Defendants' self-serving promotion of the investment scheme the culpable Debtor insiders perpetuated through the Debtors were not egregious enough, an equally sinister scheme perpetrated by the Defendants further evidences the length to which the Defendants have gone to advance their own pecuniary interest to the grave detriment of the Debtors, the Debtors' customers, and countless other customers who have fallen victim to the Defendants' crooked business activities.

92. Defendants, collectively with one another as well as with middleware/software companies and individual programmers – some of whom are employees of Defendants – created and deployed automated computer algorithms in Defendants' back-end software that allowed

Defendants to implement various dishonest trade execution practices and manipulate settings in Defendants' trading platform to the detriment of Defendants' customers.

93. Specifically, Defendants and their conspiratorial cohorts were able to deliberately and willfully engage in dishonest trade execution practices including slippage, re-quotes, and server delays – all for the purpose of gaining profits at the expense of Defendants' customers (such as the Debtors) – which turned their customers' profitable trades into less profitable trades or complete losses.

94. Defendants provided financial incentives to the middleware/software companies and individual programmers to steer customers to Defendants' rigged trading platform; and those middleware/software companies and individual programmers knew Defendants were utilizing dishonest trade execution practices.

95. The overarching purpose of Defendants' plan was to improperly profit from customers opening trading accounts with Defendants. Defendants themselves accomplished this goal by manipulating customer transactions, accepting funds for foreign currency trading, and misappropriating those funds, or the proceeds derived therefrom, through the dishonest trade execution practices described above. Additionally, the middleware/software companies and individual programmers played their role by creating software systems necessary to enable and empower Defendants to engage in dishonest trade execution practices and then sharing in the illicit profits gained thereby.

96. In October 2011, the details of Defendants' rigged trading platform were detailed in an Order issued by the Secretary of the Commodity Futures Trading Commission ("CFTC") – one of the self-regulatory agencies responsible for monitoring and disciplining FXCM's business

activities. Attached hereto as part of **Composite Exhibit "F"** is a copy of CFTC Order, dated October 3, 2011.

97. According to the CFTC's findings:

> *From at least June 18, 2008 until December 17, 2010 ("relevant period"), FXCM failed to supervise diligently its officers', employees', and agents' handling of customer accounts that traded on FXCM's trading platforms with respect to slippage (i.e., the change in price between order placement and execution) on market orders and margin liquidation orders, in violation of Regulation 166.3, 17 C.F.R. § 166.3 (2011). As a result, on numerous occasions, FXCM's customers did not receive the benefit of positive price slippage (i.e., slippage in a customer's favor); however, they did suffer from negative slippage (i.e., slippage not in a customer's favor) on market orders and margin liquidation orders. Due, in part, to the large volume of transactions on FXCM's trading platforms, this conduct deprived more than 57,000 FXCM customers of (and, consequently, benefited FXCM by) approximately $8,261,937.*
>
> * * *
>
> *The general mechanics of how market orders and slippage on market orders worked during the relevant period on FXCM's trading platforms are as follows:*
>
> *i. FXCM received bid/ask prices from a number of liquidity providers and displayed the best bid/ask prices (plus a markup for FXCM) on the trading platforms to customers.*
>
> *ii. Customers decided to place a market order with the intent of receiving the displayed price, with the possibility that price slippage might occur during the execution of the order.*
>
> *iii. When FXCM received a customer's order, it made an offsetting trade with one of its liquidity providers.*
>
> *iv. If the price received by FXCM in its offsetting trade –*
>
> • *equaled the bid/ask price originally requested by the customer, then the customer received the order at the requested price;*

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> *• was worse than the bid/ask price at the time that FXCM received the order from the customer – i.e., the price slipped negatively against the customer while the trade was executed – then the customer received the order at the worse price; or*
>
> *• was better than the bid/ask price at the time that FXCM received the order from the customer – i.e., the price slipped positively for the customer while the trade was executed – then the customer still received the order at the original requested price and FXCM kept the difference between the original requested price and the better price of its offsetting trade.*
>
> * * *
>
> *Based on the foregoing, the Commission finds that FXCM violated Regulation 166.3, 17 C.F.R. §§ 166.3 (2011); Section 4q of [the Commodity Exchange Act, as amended by the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, Title XIII (the CFTC Reauthorization Act of 2008, §§ 13101-13204, 122 Stat. 1651 (enacted June 18, 2008)], to be codified at 7 U.S.C. 6q; and Regulation 1.35, 17 C.F.R. § 1.35 (2011).*

98. To avoid being the subject of an administrative proceeding before the CFTC based on the conduct described above, FXCM consented, *inter alia*, to paying restitution in the amount of $8,261,937 and a civil monetary penalty of $6,000,000.

99. As a corollary to the October 3, 2011 CFTC Order, Commissioner Scott D. O'Malia of the CFTC issued a statement in which he offered his concurrence with the Order and expanded upon some of the CFTC's findings. Attached hereto as part of Composite Exhibit "F" is a copy of Commissioner Scott D. O'Malia's Concurring Statement.

100. In his Concurring Statement, Commissioner O'Malia added the following:

> *As stated in the Order, the violations of the Commodity Exchange Act (the "CEA") and the regulations thereunder are rooted in FXCM's failure to supervise and a failure to produce records in response to Commission requests under the CEA. * * **

> *The platforms and their protocols should not be immune for the imputation of scienter. The FXCM officers, employees and agents tasked with establishing, monitoring and maintaining those platforms failed to establish a system that would prevent what amounted to a systematic deprivation of the best execution available.*

101. Defendants have expended great efforts in separating customers – both large and small, both individual and corporate – from their funds through the use of intentionally unscrupulous methods that have ensnared the Debtors and the Debtors' customers.

102. Plaintiff has duly performed all of his duties and obligations, and any conditions precedent to Plaintiff bringing this action have occurred, have been performed, or else have been excused or waived.

103. To enforce his rights, Plaintiff has retained undersigned counsel and is obligated to pay counsel a reasonable fee for its services, for which Defendants are liable as a result of their bad faith and otherwise.

COUNT I – ACTION TO AVOID PREFERENTIAL TRANSFERS PURSUANT TO 11 U.S.C. §§ 547(b)
[AGAINST ALL DEFENDANTS]

Plaintiff re-alleges, and adopts by reference herein, Paragraphs 1 - 103 above, and further alleges:

104. Attached hereto as Exhibit "A" is a chart itemizing all of the Transfers from the Debtors to Defendants. Included within the Transfers are a number of payments that were made within 90 days prior to the Petition Date (the "Preference Payments").

105. The Preference Payments to Defendants referenced hereinabove and reflected on the attached Exhibit "A" were property of the Debtors.

106. As itemized on the attached Exhibit "A" and incorporated herein, each of the Preference Payments to Defendants was made within 90 days prior to the Petition Date.

107. The Preference Payments to Defendants were made to or for the benefit of Defendants as creditors of the Debtors.

108. Each of the Preference Payments to Defendants was made for or on account of an antecedent debt owed by the Debtors to Defendants, as itemized on the attached Exhibit "A," before each such transfer was made.

109. At each time a Preference Payment was made to Defendants, the Debtors were insolvent, as the total value of all of the Debtors' assets on the date that each of the Preference Payments to Defendants were made was less than the sum of the Debtors' liabilities.

WHEREFORE, Plaintiff demands entry of a judgment against Defendants:

(a) avoiding all or part of the Preference Payments to Defendants under 11 U.S.C. § 547(b);

(b) disallowing any claim that Defendants might have against the Debtors until such time as, pursuant to 11 U.S.C. §§ 502(d), Defendants repay to the bankruptcy estate the Preference Payments made to Defendants; and

(c) awarding any other relief this Court deems just and proper.

COUNT II – ACTION TO AVOID AND RECOVER FRAUDULENT TRANSFERS PURSUANT TO 11 U.S.C. §§ 548(a)(1)(A) and 550(a)
[AGAINST ALL DEFENDANTS]

Plaintiff re-alleges, and adopts by reference herein, Paragraphs 1 - 103 above, and further alleges:

110. This is an action by Plaintiff against Defendants, pursuant to 11 U.S.C. §§ 548(a)(1)(A) and 550(a), to avoid and recover all or part of the Transfers, reflected on the attached Exhibit "A," as fraudulent transfers made by the Debtors to Defendants.

111. The Transfers constituted transfers of the interest in property of the particular Debtor listed in Exhibit "A" and were made by such Debtor to or for the benefit of Defendants.

112. Each Transfer that was made was made without the transferor receiving reasonably equivalent value in exchange for the transfer or obligation.

113. Plaintiff can avoid the Transfers as a property interest of the particular Debtors listed in Exhibit "A" that is voidable by a creditor holding an unsecured claim.

114. At the time each of the Transfers occurred, a creditor holding an unsecured claim existed that could have avoided the Transfers as evidenced by the proofs of claim filed in the Debtors' jointly administered bankruptcy cases.

115. To the extent the Transfers occurred within two (2) years prior to the Petition Date (the "Two Year Transfers"), such transfers were made by the particular Debtors listed in Exhibit "A" to Defendants with the actual intent to hinder or delay an entity to which Debtors were, or became on or after the date such transfers were made, indebted.

116. Pursuant to Section 550(a) of the Bankruptcy Code, to the extent that all or part of the Two Year Transfers are avoided under 548(a)(1)(A) of the Bankruptcy Code, Plaintiff is entitled to recover such Two Year Transfers or the value of such property from Defendants for whose benefit such transfers were made, or as an immediate or mediate transferee of an initial transferee of such transfers.

WHEREFORE, Plaintiff demands entry of a judgment against Defendants:

(a) declaring, pursuant to 11 U.S.C. § 548(a)(1)(A), the above-referenced payments to Defendants to have been fraudulent transfers;

(b) avoiding, under 11 U.S.C. § 548(a)(1)(A), all or part of the Two Year Transfers to Defendants;

(c) ordering a monetary award, under 11 U.S.C. § 550(a), against Defendants in the amount(s) of the avoided Two Year Transfers together with accrued prejudgment interest;

(d) ordering the payment of all costs and expenses incurred by the Trustee in regard to this action;

(e) disallowing any claim that Defendants might have against the Debtors' bankruptcy estates until such time as, pursuant to 11 U.S.C. §§ 502(d), Defendants repay to the bankruptcy estates the Two Year Transfers made to Defendants; and

(f) awarding any other relief this Court deems just and proper.

COUNT III – ACTION TO AVOID AND RECOVER FRAUDULENT TRANSFERS PURSUANT TO 11 U.S.C. §§ 548(a)(1)(B) and 550(a)
[AGAINST ALL DEFENDANTS]

Plaintiff re-alleges, and adopts by reference herein, Paragraphs 1 - 103 above, and further alleges:

117. This is an action by Plaintiff against Defendants, pursuant to 11 U.S.C. §§ 548(a)(1)(B) and 550(a), to avoid and recover all or part of the Transfers, reflected on the attached Exhibit "A," as fraudulent transfers made by the Debtors to Defendants.

118. The Transfers constituted transfers of the interest in property of the particular Debtor listed in Exhibit "A" and were made by such Debtor to or for the benefit of Defendants.

119. Each Transfer that was made was made without the transferor receiving reasonably equivalent value in exchange for the transfer or obligation.

120. Plaintiff can avoid the Transfers as a property interest of the particular Debtors listed in Exhibit "A" that is voidable by a creditor holding an unsecured claim.

121. At the time each of the Transfers occurred, a creditor holding an unsecured claim existed that could have avoided the Transfers as evidenced by the proofs of claim filed in the Debtors' jointly administered bankruptcy cases.

122. To the extent the Transfers occurred within two (2) years prior to the Petition Date (the "Two Year Transfers"), the particular Debtor received less than reasonably equivalent value in exchange for such transfers, and such Debtor:

(i) was insolvent on the date that such transfers were made or became insolvent as a result of such transfers;

(ii) was engaged in business or a transaction, or was about to engage in business or a transaction, for which any property remaining with the debtor was an unreasonably small capital; or

(iii) intended to incur, or believed that the debtor would incur, debts that would be beyond the debtor's ability to pay as such debts matured.

123. Pursuant to Section 550(a) of the Bankruptcy Code, to the extent that all or part of the Two Year Transfers are avoided under 548(a)(1)(B) of the Bankruptcy Code, Plaintiff is entitled to recover such Two Year Transfers or the value of such property from Defendants for whose benefit such transfers were made, or as an immediate or mediate transferee of an initial transferee of such transfers.

WHEREFORE, Plaintiff demands entry of a judgment against Defendants:

(a) declaring, pursuant to 11 U.S.C. § 548(a)(1)(B), the above-referenced payments to Defendants to have been fraudulent transfers;

(b) avoiding, under 11 U.S.C. § 548(a)(1)(B), all or part of the Two Year Transfers to Defendants;

(c) ordering a monetary award, under 11 U.S.C. § 550(a), against Defendants in the amount(s) of the avoided Two Year Transfers together with accrued prejudgment interest;

(d) ordering the payment of all costs and expenses incurred by the Trustee in regard to this action;

(e) disallowing any claim that Defendants might have against the Debtors' bankruptcy estates until such time as, pursuant to 11 U.S.C. §§ 502(d), Defendants repay to the bankruptcy estates the Two Year Transfers made to Defendants; and

(f) awarding any other relief this Court deems just and proper.

COUNT IV – ACTION TO AVOID AND RECOVER FRAUDULENT TRANSFERS PURSUANT TO 11 U.S.C. §§ 544(b) and 550(a) and FLA. STAT. § 726.105(1)(a)
[AGAINST ALL DEFENDANTS]

Plaintiff re-alleges, and adopts by reference herein, Paragraphs 1 - 103 above, and further alleges:

124. This is an action by Plaintiff against Defendants, pursuant to 11 U.S.C. §§ 544(b) and 550(a) and pursuant to Fla. Stat. § 726.105(1)(a), to avoid and recover all or part of the Transfers, reflected on the attached Exhibit "A," as fraudulent transfers made by the Debtors to Defendants.

125. The Transfers constituted transfers of the interest in property of the particular Debtor listed in Exhibit "A" and were made by such Debtor to or for the benefit of Defendants.

126. Each Transfer that was made was made without the transferor receiving reasonably equivalent value in exchange for the transfer or obligation.

127. Plaintiff can avoid the Transfers as a property interest of the particular Debtors listed in Exhibit "A" that is voidable by a creditor holding an unsecured claim.

128. At the time each of the Transfers occurred, a creditor holding an unsecured claim existed that could have avoided the Transfers as evidenced by the proofs of claim filed in the Debtors' jointly administered bankruptcy cases.

129. To the extent the Transfers occurred within four (4) years prior to the Petition Date (the "Four Year Transfers"), such Four Year Transfers were made by the particular Debtors listed in Exhibit "A" to Defendants with the actual intent to hinder or delay an entity to which Debtors were, or became on or after the date such transfers were made, indebted.

130. Pursuant to Section 550(a) of the Bankruptcy Code, to the extent that all or part of the Four Year Transfers are avoided under 544(b) of the Bankruptcy Code and/or under Fla. Stat.

§ 726.105(1)(a), Plaintiff is entitled to recover such Four Year Transfers or the value of such property from Defendants for whose benefit such transfers were made, or as an immediate or mediate transferee of an initial transferee of such transfers.

WHEREFORE, Plaintiff demands entry of a judgment against Defendants:

(a) declaring, pursuant to Fla. Stat. § 726.105(1)(a), the above-referenced payments to Defendants to have been fraudulent transfers;

(b) avoiding, under 11 U.S.C. §§ 544(b) and Fla. Stat. §§ 726.105(1)(a) and 726.108(1), all or part of the Four Year Transfers to Defendants;

(c) ordering a monetary award, under 11 U.S.C. §550(a), against Defendants in the amount(s) of the avoided Four Year Transfers together with accrued prejudgment interest;

(d) ordering the payment of all costs and expenses incurred by the Trustee in regard to this action;

(e) disallowing any claim that Defendants might have against the Debtors' bankruptcy estates until such time as, pursuant to 11 U.S.C. §§ 502(d), Defendants repay to the bankruptcy estates the Four Year Transfers made to Defendants; and

(f) awarding any other relief this Court deems just and proper.

COUNT V – ACTION TO AVOID AND RECOVER FRAUDULENT TRANSFERS PURSUANT TO 11 U.S.C. §§ 544(b) and 550(a) and FLA. STAT. § 726.105(1)(b)
[AGAINST ALL DEFENDANTS]

Plaintiff re-alleges, and adopts by reference herein, Paragraphs 1 - 103 above, and further alleges:

131. This is an action by Plaintiff against Defendants, pursuant to 11 U.S.C. §§ 544(b) and 550(a) and pursuant to Fla. Stat. § 726.105(1)(b), to avoid and recover all or part of the Transfers, reflected on the attached Exhibit "A," as fraudulent transfers made by the Debtors to Defendants.

132. The Transfers constituted transfers of the interest in property of the particular Debtor listed in Exhibit "A" and were made by such Debtor to or for the benefit of Defendants.

133. Each Transfer that was made was made without the transferor receiving reasonably equivalent value in exchange for the transfer or obligation.

134. Plaintiff can avoid the Transfers as a property interest of the particular Debtors listed in Exhibit "A" that is voidable by a creditor holding an unsecured claim.

135. At the time each of the Transfers occurred, a creditor holding an unsecured claim existed that could have avoided the Transfers as evidenced by the proofs of claim filed in the Debtors' jointly administered bankruptcy cases.

136. To the extent the Transfers occurred within four (4) years prior to the Petition Date (the "Four Year Transfers"), the particular Debtor received less than reasonably equivalent value in exchange for such transfers, and such Debtor:

(i) was engaged in business or a transaction, or was about to engage in business or a transaction, for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or

(ii) intended to incur, or believed that the debtor would incur, debts that would be beyond the debtor's ability to pay as such debts became due.

137. Pursuant to Section 550(a) of the Bankruptcy Code, to the extent that all or part of the Four Year Transfers are avoided under 544(b) of the Bankruptcy Code and/or under Fla. Stat. § 726.105(1)(b), Plaintiff is entitled to recover such Four Year Transfers or the value of such property from Defendants for whose benefit such transfers were made, or as an immediate or mediate transferee of an initial transferee of such transfers.

WHEREFORE, Plaintiff demands entry of a judgment against Defendants:

(a) declaring, pursuant to Fla. Stat. § 726.105(1)(b), the above-referenced payments to Defendants to have been fraudulent transfers;

(b) avoiding, under 11 U.S.C. §§ 544(b) and Fla. Stat. §§ 726.105(1)(b) and 726.108(1), all or part of the Four Year Transfers to Defendants;

(c) ordering a monetary award, under 11 U.S.C. § 550(a), against Defendants in the amount(s) of the avoided Four Year Transfers together with accrued prejudgment interest;

(d) ordering the payment of all costs and expenses incurred by the Trustee in regard to this action;

(e) disallowing any claim that Defendants might have against the Debtors' bankruptcy estates until such time as, pursuant to 11 U.S.C. §§ 502(d), Defendants repay to the bankruptcy estates the Four Year Transfers made to Defendants; and

(f) awarding any other relief this Court deems just and proper.

COUNT VI – ACTION TO AVOID AND RECOVER FRAUDULENT TRANSFERS PURSUANT TO 11 U.S.C. §§ 544(b) and 550(a) and FLA. STAT. § 726.106(1)
[AGAINST ALL DEFENDANTS]

Plaintiff re-alleges, and adopts by reference herein, Paragraphs 1 - 103 above, and further alleges:

138. This is an action by Plaintiff against Defendants, pursuant to 11 U.S.C. §§ 544(b) and 550(a) and pursuant to Fla. Stat. § 726.106(1), to avoid and recover all or part of the Transfers, reflected on the attached Exhibit "A," as fraudulent transfers made by the Debtors to Defendants.

139. The Transfers constituted transfers of the interest in property of the particular Debtor listed in Exhibit "A" and were made by such Debtor to or for the benefit of Defendants.

140. Each Transfer that was made was made without the transferor receiving reasonably equivalent value in exchange for the transfer or obligation.

141. Plaintiff can avoid the Transfers as a property interest of the particular Debtors listed in Exhibit "A" that is voidable by a creditor holding an unsecured claim.

142. At the time each of the Transfers occurred, a creditor holding an unsecured claim existed that could have avoided the Transfers as evidenced by the proofs of claim filed in the Debtors' jointly administered bankruptcy cases.

143. To the extent the Transfers occurred within four (4) years prior to the Petition Date (the "Four Year Transfers"), such Four Year Transfers were made by the particular Debtors listed in Exhibit "A" to Defendants without receiving reasonably equivalent value in exchange for such transfers.

144. Debtors were insolvent at the time(s) of the Four Year Transfers to Defendants or became insolvent as a result thereof.

145. Pursuant to Section 550(a) of the Bankruptcy Code, to the extent that all or part of the Four Year Transfers are avoided under 544(b) of the Bankruptcy Code and/or under Fla. Stat. § 726.106(1), Plaintiff is entitled to recover such Four Year Transfers or the value of such property from Defendants for whose benefit such transfers were made, or as an immediate or mediate transferee of an initial transferee of such transfers.

WHEREFORE, Plaintiff demands entry of a judgment against Defendants:

(a) declaring, pursuant to Fla. Stat. § 726.106(1), the above-referenced payments to Defendants to have been fraudulent transfers;

(b) avoiding, under 11 U.S.C. §§ 544(b) and Fla. Stat. §§ 726.106(1), all or part of the Four Year Transfers to Defendants;

(c) ordering a monetary award, under 11 U.S.C. § 550(a), against Defendants in the amount(s) of the avoided Four Year Transfers together with accrued prejudgment interest;

(d) ordering the payment of all costs and expenses incurred by the Trustee in regard to this action;

(e) disallowing any claim that Defendants might have against the Debtors' bankruptcy estates until such time as, pursuant to 11 U.S.C. §§ 502(d), Defendants repay to the bankruptcy estates the Four Year Transfers made to Defendants; and

(f) awarding any other relief this Court deems just and proper.

COUNT VII – ACTION FOR TURNOVER OF PROPERTY TO THE ESTATE PURSUANT TO 11 U.S.C. § 542
[AGAINST ALL DEFENDANTS]

Plaintiff re-alleges, and adopts by reference herein, Paragraphs 1 - 103 above, and further alleges:

146. This is an action by Plaintiff against Defendants, pursuant to 11 U.S.C. § 542(e), for turnover of property to the Debtors' bankruptcy estate.

147. Pursuant to 11 U.S.C. § 541(a), the commencement of a bankruptcy case creates an estate comprised of all of a debtor's interests in property, subject to administration for the benefit of that debtor's creditors.

148. The Trustee has the right to all documents in Defendants' possession, custody, or control which relate to any and all accounts held by any of the Debtors or their principals or agents at ODL, as such documentation is deemed property of the Debtors' joint bankruptcy estate pursuant to 11 U.S.C. § 541(a).

149. Upon information and belief, Defendants have many physical and/or electronic documents in their possession, custody, or control that relate to the Debtors' property or financial affairs, including those which relate to accounts held by the Debtors at ODL.

150. The documents in Defendants' possession, custody, or control are vital to the administration of the Debtors' joint bankruptcy estate and prosecution of this and other litigation.

151. Pursuant to 11 U.S.C. § 542(e), Defendants are required to deliver to the Trustee any and all documents in their possession, custody, or control which are related to the Debtors' property or financial affairs, including those which relate to any and all accounts held by any of the Debtors or their principals or agents at ODL.

WHEREFORE, Plaintiff demands entry of a judgment against Defendants jointly and severally, including an order from this Court commanding Defendants to deliver to the Trustee, without undue delay, any and all physically or electronically recorded information, including books, documents, records, and papers, relating to the Debtors' property or financial affairs and relating to any and all accounts held by any of the Debtors at ODL.

COUNT VIII – BREACH OF FIDUCIARY DUTIES
[AGAINST ALL DEFENDANTS]

Plaintiff re-alleges, and adopts by reference herein, Paragraphs 1 – 103 above, and further alleges:

152. The commercial relationship between Debtors and Defendants went well beyond the typical brokerage firm/clearinghouse arms-length or debtor-creditor relationship. From the onset of their relationship, when Defendants assumed responsibility for many of Debtors' needs, a relationship of deep trust, dependence, confidence, counsel and reliance was place in and existed with Defendants by Debtors, such that a fiduciary relationship was established. Developing this fiduciary relationship was consistent with the personal marketing made to Debtors by Defendants' officers and agents, combined with Defendants' printed public advertising about its "close relationship" with Debtors.

153. Defendants were not only aware of Debtors' reliance, dependency upon, and trust in Defendants; Defendants were consistently involved themselves and assisted Debtors'

principals and Debtors with their financial matters, including those described above and by including themselves (*i.e.*, Defendants' selves) in the relationship with Debtors' customers. Defendants acted as far more than a mere clearinghouse for Debtors' customer funds.

154. Examples of the depth and dependency of the relationship between Debtors and Defendants, which went well beyond the typical brokerage firm/clearinghouse relationship and for which Defendants both counseled Debtors and received additional fees, include but are not limited to:

(a) engaging in the promotion of the Debtors and soliciting potential customers on behalf of the Debtors;

(b) drafting corporate resolutions for the Debtors to use in the operation of their business; and

(c) the special treatment the Defendants gave the Debtors and their principals, including payments to the Rebate Account.

155. Defendants breached their fiduciary duty to Debtors by disregarding standard practices and procedures and by ignoring the "red flags" about the conduct of the culpable Debtor insiders acting through the Debtors.

156. As a result of the foregoing breaches of fiduciary duty committed against Debtors by Defendants, Debtors have suffered actual and special damages.

157. Debtors seek an award of damages, including punitive damages, against Defendants based on Defendants' willful and malicious conduct against Debtors, orchestrated for a period of approximately four years. This course of conduct comprised not just a single instance of willful and malicious conduct, but as stated above, constituted an ongoing and systematic pattern of acts, any one of which would independently support an award of punitive damages and the cumulative effect of which demonstrates egregious and outrageous behavior.

WHEREFORE, Plaintiff demands entry of a judgment against Defendants jointly and

severally for an amount within the jurisdictional limits of this court, including an award of interest, costs, and such other relief as this Court deems just and appropriate. Plaintiff reserves the right to seek leave of court to assess punitive damages against Defendants jointly and severally.

COUNT IX – UNJUST ENRICHMENT
[AGAINST ALL DEFENDANTS]

Plaintiff re-alleges, and adopts by reference herein, Paragraphs 1 - 103 above, and further alleges:

158. The Debtors conferred a benefit upon Defendants by making the Transfers that are the subjects of Counts I - VI of the Second Amended Complaint, as stated above.

159. Defendants knowingly and voluntarily accepted and retained the benefits conferred by Debtors with respect to such transfers.

160. The circumstances are such that it would be inequitable and unjust for Defendants to retain the benefit conferred by Debtors without paying the Trustee the value thereof.

161. Defendants have been unjustly enriched at the expense of Debtors' bankruptcy estates.

162. The Trustee is entitled to the return of those amounts by which Defendants were unjustly enriched, through disgorgement or another appropriate remedy.

WHEREFORE, Plaintiff demands entry of a judgment against Defendants jointly and severally for an amount within the jurisdictional limits of this court, including an award of interest, costs, and such other relief as this Court deems just and appropriate.

COUNT X – AIDING AND ABETTING BREACH OF FIDUCIARY DUTIES
[AGAINST ALL DEFENDANTS]

Plaintiff re-alleges, and adopts by reference herein, Paragraphs 1 - 103 above, and further alleges:

163. At all material times, the culpable Debtor insiders were certain, but not all, of the officers and directors of the Debtors; and as such, each owed the debtor-entities a fiduciary obligation to discharge his duties in good faith, with the care that an ordinarily prudent officer or director in a like position would exercise and in a manner reasonably believed to be in the Debtors' best financial interests.

164. The culpable Debtor insiders breached the fiduciary duties they owed to the Debtors by exhibiting a willful, reckless and/or grossly negligent disregard for the best financial interests of the Debtors by misappropriating, for their own personal benefit and with no legitimate or justifiable business purpose, funds that rightfully belonged to the Debtors and/or the Debtors' customers.

165. The culpable Debtor insiders' breach of the fiduciary duties they owed to the Debtors actually and proximately caused financial injury to the Debtors.

166. Defendants had actual and/or constructive knowledge and rendered substantial assistance in regard to the culpable Debtor insiders' breach of their fiduciary duties to the Debtors by ignoring their own internal policies and procedures and by violating regulations within the financial services industry, the "know your customer rules," and other prudent and sound practices and procedures within the financial services industry, as more fully identified above, to generate and obtain substantial fee income and other business advantages.

167. Further, Defendants aided and abetted the culpable Debtor insiders in breaching the fiduciary duties they owed to the Debtors by improperly paying royalties to the Debtors for

the culpable Debtor insiders' benefit and creating the Rebate Account into which ODL deposited funds that rightfully should have flowed back to the Debtors' customers instead of being used as a "personal piggy-bank" by the culpable Debtor insiders.

168. ODL artificially created an additional spread for each metal transaction brought to ODL by the Debtors – funds that should have instead been credited back to the Debtors' customer accounts.

169. ODL allowed Certified, as an institutional client and account holder, to improperly use customer assets to further benefit the culpable Debtor insiders. Specifically, ODL permitted Certified and/or the culpable Debtor insiders to use customer funds to subsidize and/or collateralize their own non-customer transactions with ODL, including making their own leveraged purchases, many of which were juxtaposed to positions taken in Certified's customer accounts – all while ODL was aware of the impropriety of such use.

170. As a result of the foregoing, Defendants are liable for all damages directly and proximately caused to the Debtors through the acts and omissions of the culpable Debtor insiders.

WHEREFORE, Plaintiff demands entry of a judgment against Defendants jointly and severally for an amount within the jurisdictional limits of this court, including an award of interest, costs, and such other relief as this Court deems just and appropriate. Plaintiff reserves the right to seek leave of court to assess punitive damages against Defendants jointly and severally.

COUNT XI – AIDING AND ABETTING CONVERSION
[AGAINST ALL DEFENDANTS]

Plaintiff re-alleges, and adopts by reference herein, Paragraphs 1 - 103 above, and further alleges:

171. The culpable Debtor insiders asserted dominion and control over the property of the Debtors by misappropriating for their personal use and benefit Debtor funds from the accounts maintained by Defendants.

172. Defendants had actual and/or constructive knowledge of the culpable Debtor insiders' acts in misappropriating the funds of the Debtors by virtue of the transactions which occurred during the financial services relationship among the Debtors, the culpable Debtor insiders, and Defendants.

173. Defendants rendered substantial assistance to the culpable Debtor insiders in converting the Debtors' funds by ignoring their own internal policies and procedures, and by violating regulations within the financial services industry, the "know your customer rules," and other prudent and sound practices and procedures within the financial services industry, as more fully identified above.

174. Further, Defendants aided and abetted the culpable Debtor insiders in their conversion of customer funds by paying royalties and creating the Rebate Account into which ODL deposited funds that rightfully should have flowed back to the Debtors' customers instead of being used as a "personal piggy-bank" by the culpable Debtor insiders.

175. ODL artificially created an additional spread for each metal transaction brought to ODL by the Debtors – funds that should have instead been credited back to the Debtors' customer accounts.

176. ODL allowed Certified, as an institutional client and account holder, to improperly use customer assets to further benefit the culpable Debtor insiders. Specifically, ODL permitted Certified and/or the culpable Debtor insiders to use customer funds to subsidize and/or collateralize their own non-customer transactions with ODL, including making their own leveraged purchases, many of which were juxtaposed to positions taken in Certified's customer accounts – all while ODL was aware of the impropriety of such use.

177. As a result of the foregoing, Defendants are liable for all damages directly and proximately caused to the Debtors through the acts and omissions of the culpable Debtor insiders.

WHEREFORE, Plaintiff demands entry of a judgment against Defendants jointly and severally for an amount within the jurisdictional limits of this court, including an award of interest, costs, and such other relief as this Court deems just and appropriate. Plaintiff reserves the right to seek leave of court to assess punitive damages against Defendants jointly and severally.

COUNT XII – NEGLIGENCE AND WIRE TRANSFER LIABILITY
[AGAINST ALL DEFENDANTS]

Plaintiff re-alleges, and adopts by reference herein, Paragraphs 1 - 103 above, and further alleges:

178. This is an action seeking damages based upon negligence and wire transfer liability relating to wrongful and improper wire transfers of the Debtors' funds on account with Defendants, which were conducted by Defendants.

179. At all times material hereto, the culpable Debtor insiders (by themselves and through others upon their direction) authorized and directed via wire instructions several wire

transfers of the Debtors' funds on account with Defendants totaling millions of dollars (the "Wire Transfers").

180. Pursuant to applicable law, including but not limited to Chapter 670 of the Florida Statutes, Defendants owed a duty of care to the Debtors to correctly and prudently process the Wire Transfers, subject to commercially reasonable security procedures.

181. Defendants breached their duty of care to the Debtors by violating their own internal policies and procedures and by violating regulations within the financial services industry, the "know your customer" rules, and other prudent and sound practices and procedures within the financial services industry, as more fully identified above.

182. Defendants further breached their duty of care by lacking good faith in processing and/or effectuating the Wire Transfers based upon their actual and/or constructive knowledge of suspicious activities relating to the accounts the Debtors maintained with Defendants.

183. In effectuating the Wire Transfers, Defendants ignored ongoing suspicious activities within the Debtors' accounts and obvious "red flags" that required that the funds comprising the Wire Transfers remain with Defendants pending, among other things, full notification and disclosure of those illegal activities to the appropriate criminal authorities.

184. Notably, Defendants knew about the suspicious activities and other material "red flags" prior to their decision to process the Wire Transfers, which thereby caused the funds to be transferred into, out of, and between the Debtors' accounts with Defendants for an improper purpose and to third parties, where they were thereafter dissipated and were further converted.

185. As a direct and proximate result of the above-cited breaches, the Debtors have suffered damages in the amount of the value of the funds comprising the improper Wire Transfers.

WHEREFORE, Plaintiff demands entry of a judgment against Defendants jointly and severally for an amount within the jurisdictional limits of this court, including an award of interest, costs, and such other relief as this Court deems just and appropriate. Plaintiff reserves the right to seek leave of court to assess punitive damages against Defendants jointly and severally.

COUNT XIII – NEGLIGENT RETENTION AND SUPERVISION
[AGAINST ALL DEFENDANTS]

Plaintiff re-alleges, and adopts by reference herein, Paragraphs 1 – 103 above, and further alleges:

186. This is an action seeking damages based upon Defendants' negligent retention and/or supervision of its management and/or employees, including but not limited to, those employees and agents of Defendants who were responsible for creating the rigged trading platform described above.

187. At all times material hereto, Defendants knew or should have known that their employees, agents and others were engaging in activities and permitting transactions that were improper and perhaps illegal, including but not limited to:

(a) creating the rigged trading platform identified in great detail in Composite Exhibit "F" hereto;

(b) ignoring Defendants' own internal policies and procedures;

(c) violating regulations within the financial services industry, the "know your customer rules" and other prudent and sound practices and procedures within the financial services industry;

(d) creating the Rebate Account that permitted the culpable Debtor insiders to pilfer more than $2 million that rightfully should have flowed to the Debtors and their customers;

(e) making material misrepresentations regarding the safety, security, and ultimate disposition of certain of Debtors' funds;

(f) failing to conduct proper due diligence regarding the source and use of Debtors' funds;

(g) failing to adhere to the requirements regarding the use of Debtors' accounts and the funds therein; and

(h) permitting and actually assisting the culpable Debtor insiders in their improper use and control of the Debtors' funds.

188. Defendants had a duty to take steps to prevent or rectify the improper activities and conduct of their employees and agents and to safeguard the funds in the Debtors' accounts. Such steps could have included:

(a) increasing supervision of those officers, employees and agents tasked with establishing, monitoring and maintaining Defendants' trading platforms;

(b) ensuring that rudimentary due diligence and "know your customer" policies were conducted with respect to the funds going into and out of the Debtors' funds;

(c) suspending or terminating at an earlier date the employment of those officers, employees and agents tasked with establishing, monitoring and maintaining Defendants' rigged trading platforms;

(d) requiring additional authorization for the wire transfer of the Debtors' funds; and

(e) advising customers, including those solicited at the June 2008 Venezuelan investment symposium described above, that Defendants did not endorse the culpable Debtor insiders' business activities.

189. Rather than discharge its duties to Debtors, Defendants turned a blind eye to, or failed to exercise reasonable means to discover and correct active misconduct and negligence on the part of their employees, agents, and others and instead permitted them to:

(a) create Defendants' rigged trading platforms;

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(b) overlook the fact that there were no systems in place to prevent the problem of asymmetrical slippage on market orders and market liquidation orders;

(c) pay royalties and create a Rebate Account that essentially robbed the Debtors and innocent customers of millions of dollars; and

(d) substantially assist the culpable Debtor insiders in their Ponzi scheme.

190. As a direct and proximate result of the negligent retention and/or supervision of their employees, agents and others by Defendants, the Debtors suffered damages for which Defendants are liable.

WHEREFORE, Plaintiff demands entry of a judgment against Defendants jointly and severally for an amount within the jurisdictional limits of this court, including an award of interest, costs, and such other relief as this Court deems just and appropriate. Plaintiff reserves the right to seek leave of court to assess punitive damages against Defendants jointly and severally.

COUNT XIV – VIOLATION OF CIVIL RICO (18 U.S.C. § 1962(c))
[AGAINST ALL DEFENDANTS]

Plaintiff re-alleges, and adopts by reference herein, Paragraphs 1 - 103 above, and further alleges:

191. This cause of action asserts claims against Defendants for violations of 18 U.S.C. § 1962(c) for conducting the affairs of an unlawful enterprise (the "RICO Enterprise") through the pattern of racketeering activity described herein.

192. At times material hereto, Plaintiff and Defendants were each a "person" as that term is defined in 18 U.S.C. § 1961(3).

193. At times material hereto, Plaintiff was and is a "person injured in his or her business or property by reason of a violation of" RICO within the meaning of 18 U.S.C. § 1964(c).

194. At times material hereto, Defendants were, and are, each a "person" who conducted the affairs of the RICO Enterprise through the pattern of racketeering activity described herein. While Defendants participated in the RICO Enterprise, they each had an existence separate and distinct from the enterprise. Further, the RICO Enterprise is separate and distinct from the "pattern of racketeering activity" in which Defendants have engaged.

195. At times material hereto, Defendants were associated with, operated and/or controlled the RICO Enterprise, and Defendants participated in the operation and management of the affairs of the RICO Enterprise through a variety of actions. Defendants' participation in the RICO Enterprise is necessary for the successful operation of Defendants' scheme.

THE RICO ENTERPRISE

196. Section 1961(4) of the RICO Act defines an "enterprise" as "any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity."

197. The following persons, and others presently unknown, have been members of and constitute an "enterprise" within the meaning of RICO:

(a) Defendants;

(b) A group of middleware/software companies, and individual programmers, that assisted Defendants in the development of its client-side trading platform and in the development of modifications to its back-end software used to communicate with client-side trading platforms; and

(c) Introducing brokers to whom Defendants have paid commissions.

198. The RICO Enterprise is an association-in-fact within the meaning of 18 U.S.C. § 1961(4) and constitutes a group of "persons" associated together for the common purpose of employing the multiple deceptive, abusive, and fraudulent acts described herein.

199. Defendants, collectively with one another as well as with the middleware/software companies and individual programmers – some of whom are employees of Defendants – created and deployed automated computer algorithms in Defendants' back-end software that allowed Defendants to implement various dishonest trade execution practices and manipulate settings in Defendants' trading platform to the detriment of Defendants' customers.

200. Specifically, Defendants and their conspiratorial cohorts were able to deliberately and willfully transact dishonest trade execution practices including slippage, re-quotes, and server delays – all for the purpose of gaining profits at the expense of Defendants' customers (such as the Debtors) which turned their customers' profitable trades into less profitable trades or complete losses.

201. Defendants provided financial incentives to the middleware/software companies and individual programmers involved in the RICO Enterprise to steer customers to Defendants' rigged trading platform; and those middleware/software companies and individual programmers knew Defendants were utilizing dishonest trade execution practices.

202. Likewise, numerous introducing brokers participated in the RICO Enterprise by steering customers to Defendants' rigged trading platform and were paid commissions or other fees by Defendants for their efforts.

203. The RICO Enterprise was, and is, an ongoing enterprise that engaged in, and whose activities affect, interstate commerce by, among other things, marketing, advertising,

selling or providing a Forex trading platform to numerous entities and individuals throughout the United States.

204. The overarching purpose of the RICO Enterprise was for each of its members to profit from customers opening trading accounts with Defendants. Defendants themselves accomplished this goal by manipulating customer transactions accepting funds for foreign currency trading, and misappropriating those funds, or the proceeds derived therefrom, through the dishonest trade execution practices described above. Additionally, the middleware/software companies and individual programmers accomplished the RICO Enterprise's goal by creating software systems necessary to enable and empower Defendants to engage in dishonest trade execution practices and then sharing in the illicit profits gained thereby. Lastly, the introducing brokers furthered the goal of the RICO Enterprise by recommending, in exchange for compensation, that customers use Defendants' services and trading platform.

THE RICO PREDICATE ACTS

205. Section 1961(1) of RICO provides that "racketeering activity" is, among other things:

(a) Any act indictable under any of the provisions of 18 U.S.C. § 1341 (mail fraud);

(b) Any act indictable under any of the provisions of 18 U.S.C. § 1343 (wire fraud);

(c) Any act indictable under any of the provisions of 18 U.S.C. § 1957 (engaging in monetary transactions in property derived from specified unlawful activity); and

(d) Any offense involving fraud connected with a case under Title 11 (*e.g.*, the U.S. Bankruptcy Code)

206. As set forth below and throughout this Second Amended Complaint, Defendants have engaged in the affairs of the RICO Enterprise through multiple acts which serve as the predicate for Plaintiff's RICO claim.

Mail Fraud

207. Defendants, in violation of 18 U.S.C. § 1341, placed in post offices or official depositories of the United States Postal Service matter and things to be delivered by Postal Service, caused matters and things to be delivered by commercial interstate carrier, and received matters and things from the Postal Service or commercial interstate carriers, including but not limited to: (a) matters and things relating to their uniform deceptive national/international advertising and marketing campaign, and (b) Client Agreements, to be mailed to Defendants at their respective places of business, which included false information aimed at perpetrating their scheme to defraud customers such as false information about the actual risks attendant with trading on Defendants' rigged trading platform.

208. Defendants' misrepresentations and acts were knowing and intentional and were made with the intent to create and manage its scheme to defraud and manipulate customers by accepting funds for foreign currency trading and misappropriating or manipulating the amounts traded.

209. Additionally, in violation of 18 U.S.C. § 1341, Defendants conducted exchanges, payments, and monetary transfers using the U.S. Mail concerning the receipt and distribution of the proceeds of Defendants' improper conversion of the Debtors' funds and those of the Debtors' customers.

Wire Fraud

210. Defendants, in violation of 18 U.S.C. § 1343, transmitted and received by wire, internet connection, or other electronic media, matters and things relating to their uniform deceptive national/international advertising and marketing campaign, including advertising programs, promotions, seminars, press releases and advertising within its web site.

211. Defendants' misrepresentations and acts were knowing and intentional and were made with the intent to create and manage its scheme to defraud and manipulate customers by accepting funds for foreign currency trading and misappropriating or manipulating the amounts traded.

212. Additionally, in violation of 18 U.S.C. § 1343, Defendants conducted exchanges, payments, and monetary transfers using the wires concerning the receipt and distribution of the proceeds of Defendants' improper conversion of the Debtors' funds and those of the Debtors' customers.

Monetary Transactions in Property Derived from Specified Unlawful Activity

213. Defendants, in violation of 18 U.S.C. § 1957:

(a) knowingly engaged in monetary transactions in criminally derived property of a value greater than $10,000 which was derived from specified unlawful activity; and

(b) were engaged in the withdrawal, transfer or exchange, in or affecting interstate or foreign commerce, of funds or a monetary instrument by, through, or to a financial institution.

214. Specifically, Defendants knowingly accepted and exchanged fraudulent transfers of the interest in property of the particular Debtor listed in Exhibit "A," which were made by such Debtor to or for the benefit of Defendants using either the U.S. Postal Service or wire transfers, or both.

215. Defendants and the Debtors are all "financial institutions," as that term is defined in 18 U.S.C. § 1956(c)(6), 31 U.S.C. § 5312(a)(2), and the rules promulgated thereunder.

Fraud Connected with a Case under Title 11

216. Defendants, in violation of the Bankruptcy Code, enacted and participated in a fraud by knowingly accepting and exchanging fraudulent transfers of the interest in property of the particular Debtor listed in Exhibit "A," which were made by such Debtor to or for the benefit of Defendants using either the U.S. Postal Service or wire transfers, or both, with the actual intent to hinder, delay, or defraud an entity to which Debtors were, or became on or after the date such transfers were made, indebted.

THE PATTERN OF RACKETEERING ACTIVITY

217. As set forth herein, Defendants have engaged in a "pattern of racketeering activity," as defined in 18 U.S.C. § 1961(5), by committing or conspiring to commit at least two acts of racketeering activity, described above, within the past ten years.

218. Defendants have engaged in a scheme to defraud consumers, including the Debtors and others, through fraudulent misrepresentations, knowing concealments, suppressions and omissions of material fact in their Client Agreements, marketing materials, creation of the rigged trading platform described above, dissemination of information on their website, dissemination of information at investment seminars, and with the use of the United States Mail or interstate/international telecommunication systems for the purpose of executing their scheme.

219. Defendants' racketeering activities amount to a common course of conduct intended to deceive and harm customers such as the Debtors. Each such racketeering activity is related, has a similar purpose, involves the same or similar participants, and has similar results affecting similar victims, including the Debtors.

220. Plaintiff's injuries were directly and proximately caused by Defendants' racketeering activity.

221. Plaintiff has standing to sue Defendants under 18 U.S.C. § 1964(c) and to recover compensatory damages, treble damages, and the costs of this suit, including an award of reasonable attorneys' fees.

WHEREFORE, Plaintiff demands entry of a judgment against Defendants jointly and severally for an amount within the jurisdictional limits of this court, including an award of interest and costs. Plaintiff reserves the right to seek leave of court to assess punitive damages against Defendants jointly and severally.

COUNT XV – VIOLATION OF CIVIL RICO (18 U.S.C. § 1962(d))
[AGAINST ALL DEFENDANTS]

Plaintiff re-alleges, and adopts by reference herein, Paragraphs 1 – 193 and 194 – 221 above, and further alleges:

222. This cause of action asserts a claim against Defendants for violations of 18 U.S.C. § 1962(d) for conspiring to violate the other provisions of the RICO Act.

223. Defendants conspired with one another, as well as other individuals and entities, to perpetrate unlawful acts which violated the RICO Act upon Plaintiff or to perpetrate a lawful act by unlawful means, *to wit*: they made multiple misrepresentations of fact to the Debtors in an effort to extract from the Debtors unnecessary fees, undisclosed charges, and improperly protected investment capital to boost the total fees they could generate – all of which put Defendants' own pecuniary interest ahead of the Debtors' welfare and economic safety.

224. In furtherance of their conspiracy, Defendants made to the Debtors, or agreed to have someone make on their behalf, the false statements of fact detailed above.

225. Defendants have both agreed to the overall objective of the conspiracy and have agreed to commit at least two predicate acts in furtherance of the conspiracy.

226. As described above, Defendants objectively manifested, through words or actions, their agreement to participate in the conduct of the affairs of the RICO Enterprise through a pattern of racketeering activity.

227. As a direct and proximate result of Defendants' conspiracy, Plaintiff has suffered damage.

WHEREFORE, Plaintiff demands entry of a judgment against Defendants jointly and severally for an amount within the jurisdictional limits of this court, including an award of interest and costs. Plaintiff reserves the right to seek leave of court to assess punitive damages against Defendants jointly and severally.

COUNT XVI - CIVIL CONSPIRACY
[AGAINST ALL DEFENDANTS]

Plaintiff re-alleges, and adopts by reference herein, Paragraphs 1 - 103 above, and further alleges:

228. Defendants conspired with one another, as well as other individuals and entities, to perpetrate an unlawful act upon Plaintiff or to perpetrate a lawful act by unlawful means, *to wit*: they made multiple misrepresentations of fact to the Debtors in an effort to extract from the Debtors unnecessary fees, undisclosed charges, and improperly protected investment capital to boost the total fees they could generate - all of which put Defendants' own pecuniary interest ahead of the Debtors' welfare and economic safety.

229. In furtherance of their conspiracy, Defendants made to the Debtors, or agreed to have someone make on their behalf, the false statements of fact detailed above.

230. As a direct and proximate result of Defendants' conspiracy, Plaintiff has suffered damage.

WHEREFORE, Plaintiff demands entry of a judgment against Defendants jointly and severally for an amount within the jurisdictional limits of this court, including an award of interest and costs. Plaintiff reserves the right to seek leave of court to assess punitive damages against Defendants jointly and severally.

COUNT XVII – BREACH OF CONTRACT
[AGAINST ALL DEFENDANTS]

Plaintiff re-alleges, and adopts by reference herein, Paragraphs 1 - 103 above, and further alleges:

231. Certified entered into a written agreement with ODL (the "Agreement") to trade on Defendants' Forex trading platform.

232. Plaintiff has fully performed all of his/its obligations under the Agreement, except to the extent that such performance has been excused, prevented, hindered, frustrated and/or rendered useless by the acts and omissions of Defendants.

233. As described above, Defendants have failed to fully perform their obligations under the Agreement.

234. In the Agreement, Defendants note that they strictly forbid any form of manipulation of their prices, execution and trading platforms. Through their deceptive and manipulative trading practices, Defendants have failed to fully perform this obligation under the contract and have thus breached the Agreement.

235. As a direct and proximate result of Defendants' breach of the Agreement, Plaintiff has suffered damages.

WHEREFORE, Plaintiff demands entry of a judgment against Defendants jointly and severally for an amount within the jurisdictional limits of this court, including an award of interest and costs. Plaintiff reserves the right to seek leave of court to assess punitive damages against Defendants jointly and severally.

COUNT XVIII – BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING
[AGAINST ALL DEFENDANTS]

Plaintiff re-alleges, and adopts by reference herein, Paragraphs 1 - 103 above, and further alleges:

236. A covenant of good faith and fair dealing in the course of the contract performance is implicit in all contracts.

237. The purpose of the implied covenant of good faith is to further an agreement by protecting the promise against a breach of the reasonable expectations and inferences otherwise derived from the agreement. The covenant of good faith and fair dealing protects the bargained-for terms of the agreement.

238. Certified entered into a written agreement with ODL (the "Agreement") to trade on Defendants' Forex trading platform.

239. The bargained-for terms of the Agreement included an agreement made by Defendants to engage in good faith practices on its trading platform and to present a reliable trading platform where consumers, such as the Debtors, can execute trades, free of manipulation and deception by Defendants.

240. In contravention of these bargained-for terms, Defendants engaged in various unscrupulous acts with a purpose of defrauding their customers by accepting funding for foreign

currency trading and misappropriating or manipulating the amounts invested, while hiding behind auspices of a "disclaimer" buried inside lengthy computer-generated Agreement.

241. By reason of Defendants' above-described conduct, Defendants have breached the covenant of good faith and fair dealing, which has caused Plaintiff substantial harm.

242. Plaintiff has fully performed all of his/its obligations under the Agreement, except to the extent that such performance has been excused, prevented, hindered, frustrated and/or rendered useless by the acts and omissions of Defendants.

243. As a direct and proximate result of Defendants' breach of the Agreement, Plaintiff has suffered damages.

WHEREFORE, Plaintiff demands entry of a judgment against Defendants jointly and severally for an amount within the jurisdictional limits of this court, including an award of interest and costs. Plaintiff reserves the right to seek leave of court to assess punitive damages against Defendants jointly and severally.

RESERVATION OF RIGHTS

Plaintiff reserves his right to further amend this Second Amended Complaint, upon completion of his investigation and discovery, to assert any additional claims for relief against Defendants as may be warranted under the circumstances and as allowed by law.

Respectfully submitted,

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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a copy of the foregoing was electronically filed with the Clerk of Court on this 3rd day of April 2012 by using the CM/ECF system. We further certify that the foregoing document is being served this day on all counsel of record on the below Service List in the manner specified thereon, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel who are not authorized to receive electronic notices.

/s/ Jason S. Miller
JASON S. MILLER

KAPILA v. ODL SECURITIES, ET AL.
CASE NOS.: 09-33115-RAM; 09-33124-RAM; and 09-33128-RAM (JOINTLY ADMINISTERED)
ADVERSARY PROCEEDING NO.: 11-02725-RAM

SERVICE LIST FOR ADVERSARY PROCEEDING NO. 11-02725-RAM

Electronic Mail Notice List
The following is the list of parties/counsel who are currently on the list to receive e-mail notice/service for this case.

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Manual Notice List
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