

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY  
Complaint no: 02-3598 (WJM)  
Judge William J. Martini, U.S.D.J.**

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**FIRST AMENDED  
CIVIL RICO CASE STATEMENT**

In conformance with Loc. Rule 16.1(b)(4) and Appendix O

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***YEARS OF RACKETEERING ACTIVITIES AND STILL GOING...***

Compelling evidence of bribery, forgery, intimidation of witnesses, tampering with Court dockets, extortion, perjury, mail/wire frauds, Obstruction of Justice, fraud in the sale of bankruptcy assets, embezzlement of estate funds, and other such racketeering acts.

**Plaintiff:**  
Ramkrishna S. Tare, *Pro Se*

**RACKETEER DEFENDANTS:**  
Fleet/Bank of America  
Louis T. DeLucia, Esq.  
Gary N. Marks, Esq.  
Norris McLaughlin Marcus, P.A.  
Buchanan Ingersoll, P.C.  
Steven Kartzman, Esq.  
Mellinger, Sanders & Kartzman, LLC  
Richard Napierkowski  
Networking Technologies and Integration, Inc.  
Precision E-Consulting, LLC  
*and* Richard Honig, Esq.

*“[The RICO Statute has] a congressional objective of encouraging civil litigation not merely to compensate victims but also to turn them into private attorneys general, supplementing Government efforts by undertaking litigation in the public good.”*

Rotella v. Wood et al. 528 U.S. 549 (2000)

All recovery above \$36 Million, to Plaintiff, will be donated by Plaintiff towards the formation of a non-profit organization, managed by Court-appointed fiduciaries, to help those in litigation with National Banks get adequate legal support.

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## COLOPHON

- Instructions in the case statement, as specified in Loc. Rule 16.1(b)(4) and Appendix O, are repeated in **bold**.
- Paragraph numbers from Appendix O are retained, and are suffixed with the term “Section,” as in:  
**Section 2. List each defendant and state the alleged misconduct and basis of liability of each defendant.**
- **Bold** text is used, for case statement instructions (as shown above), for headings/sub-headings, and for stronger emphasis, even beyond that provided by underlining.
- Underlined text indicates emphasis, subsection titles, or citations of case law.
- Definitions are provided at the beginning of the case statement, starting from the next page, and are *italicized*, when referenced.
- `Courier Font` is used for quoting statutes and verbatim quotes and statements.

## DISCLAIMER

There are no allegations made or implied, directly or indirectly, in the complaint or the case statement, against the current bankruptcy trustee of Plaintiff, Robert Wasserman, Esq.

## DEFINITIONS

The terms used throughout the case statement and the associated racketeering acts are defined below. Some definitions themselves rely upon other definitions. Within the case statement and the description of the racketeering acts, definitions are *italicized*, where referenced.

***Benefits from Fleet to Marks:*** This refers to the *Fees and Earnings* that Marks and his professionals, and particularly Honig, earned, lawfully and unlawfully, through Fleet’s support or from Fleet, either from the estate or from other sources, directly, or indirectly through the Norris Firm, in which he is a partner, inuring to him or to one of his partners, including but not limited to Robert G. Marcus and Richard Norris. Such benefits include, but are not limited to, about \$1 Million in administration fees for him

and his professionals from the bankruptcy estate, with the support of Fleet, in return for creating impediments in, and obstructing the pursuit of claims against Fleet, and credit negotiations business from Fleet to the Norris Firm. It also includes fees for representing Fleet in at least one District Court action even while WebSci and Plaintiff are both in acrimonious litigation with Fleet and additional *Fees and Earnings* to his partner Robert G. Marcus through Connexus Financial Partners, and favorable credit terms to the Norris Firm through \$1 Million in credit line from Fleet. Marks also derived benefits by jointly participating with Fleet in the numerous racketeering acts of Marks, and/or by Fleet knowingly and willfully allowing Marks to further them.

***Common Plan:*** This refers to the common plan of the *Fleet-RICO Enterprise*, which enabled the Fleet-RICO Enterprise and RICO-Members to target and victimize Plaintiff through RICO violations.

The common plan was to let Fleet take over the business and property of Plaintiff, valued at \$30 Million at the time credit was extended by Fleet and Plaintiff was asked to be the guarantor, without litigating on the merits, any claims that Plaintiff or his business had against Fleet. The common plan also included the self-enrichment of non-Fleet Defendants, such as Fleet's attorneys, bankruptcy trustees, their attorneys, accountants and other professionals.

This common plan, which was targeted towards Plaintiff, is also part of the *Nationwide Racketeering Scheme* of the *Fleet-RICO Enterprise*.

***Common Purpose :*** While the *Common Plan* is targeted specifically towards victim, this term refers to the collective common purpose of the *Usual Activities of the Enterprise* through their association in the enterprise.

For example, Fleet's expected purpose would be to maximize profits and revenues,



through the extension and collection of credit and the offering of other financial services to its customers, with the assistance of outside professionals but in accordance with applicable laws and rules.

The expected purpose of non-Fleet members would be to maximize their income and profit, in accordance with applicable laws and rules of professional conduct, through the offering of professional services to Fleet, to other members of the association-in-fact enterprise, to other outside non-RICO entities, and/or to government agencies such as the Office of the United States Trustee Program.

This common purpose can be achieved either through lawful or through unlawful means of conducting and implementing the *Usual Activities of the Enterprise*. The unlawful means of conducting and implementing the *Usual Activities of the Enterprise* is accomplished through a pattern of racketeering activities. It is this unlawful means of accomplishing the common purpose that gives rise to RICO violations.

Because of the dual possibility of lawful and unlawful means of accomplishing the common purpose of the enterprise, if the pattern of racketeering activities of the *Fleet-RICO Enterprise* were taken out of the equation, the enterprise would still survive, providing the necessary element required to distinguish a pattern of racketeering activities from the enterprise itself.

***Corrupt Offer:*** This refers to the act of offering, conferring, agreeing to confer, any benefit, as the term “benefit” is defined under N.J.S.A. 2C:27-1, or anything of value, directly and/or indirectly, to a *Government Official* (as defined herein) and/or to any professional who had a duty of fidelity to Fleet’s adversary or customer, whether the benefit inures to the *Government Official* and/or professional directly, or another person, such as his law firm, or employer, or a firm operated by his partner. This

benefit or something of value would be as *Fees And Earnings* (as defined herein), to influence him in the performance of his official duties, and/or his duty of fidelity, to commit a violation of his official duties and/or duty of fidelity, to do or omit to do, to act or forbear to act, as prohibited under RICO bribery predicate acts and/or relevant state bribery statutes.

Such RICO bribery predicate acts specifically include, but are not limited to those prohibited under 18 U.S.C. § 201 (Bribery of public officials and witnesses), 18 U.S.C. § 153(6), and N.J.S.A. 2C:21-10 (Commercial Bribery and breach of Duty to Act Disinterestedly).

***Fees And Earnings***: This refers to the enrichment, or potential enrichment, of non-Fleet *RICO-Members* of the *Fleet-RICO Enterprise*, through the offering, or the promise to offer, by Fleet, directly, or through other members of the Fleet-RICO Enterprise, business or potential business, in the form of, inter alia:

- Fees in representing Fleet either in litigations or in other legal matters, such as negotiating credit transactions and/or renewals.
- Savings through easy access to credit on more favorable terms than terms offered to other customers by Fleet.
- Uncontested high administration fees in bankruptcy proceedings.
- Fees earned as liquidating agents, court appointed receivers, fiscal agents, and/or officers.
- Fees earned by representing adversaries of Fleet.
- Earnings derived from ongoing sales of assets, belonging to bankruptcy estates, including assets which are sold using the scandalous *Lower-But-Better-Bid* system.

Fees and earnings can and are derived through both lawful and unlawful means.

Unlawful means of earnings, are through a pattern of racketeering activities, and include, inter alia:

- Embezzlement of bankruptcy estate funds.
- Sale of assets in foreclosure and bankruptcy proceedings to insiders and/or through fraudulent means.
- Fees earned in representing adversaries by concealing conflict of interests.
- Conversely, fees earned in representing Fleet while also representing adversaries of Fleet.
- Profits from the sale of bankruptcy assets to insiders by influencing the Court to accept bids based upon the scandalous *Lower-But-Better-Bid* system prevalent in the Bankruptcy Court involving *RICO-Members*.
- Charging exorbitantly high rates for providing professional services provided to bankruptcy estates, with only *RICO-Members* controlling the court proceedings. Such exorbitant rates include the billing of between \$175.00 to \$250.00 per hour, for taking computer backups.
- Hiring out of state consultants to perform services, redundantly, and repeatedly, when the services were already performed and when local expertise for such mundane tasks is easily available.

The unlawful means of deriving fees and earnings is possible only because of the existence of the pattern of racketeering activities, as all racketeering acts required to perpetuate such schemes are related to meet common goals, such as the ones defined under the *Common Plan* and the *Nationwide Racketeering Scheme*.

***Fleet-RICO Enterprise***: The Association-In-Fact RICO enterprise as defined under Section 6 of this case statement.

**FRB:** Federal Reserve Board.

**GAO:** General Accounting Office.

**Government Official:** This term is used in the Case Statement to represent any one, or combinations thereof, of the various titles associated with the position of a bankruptcy trustee, rent receiver, fiscal agent, or any Court appointed fiduciary, as used in different criminal statutes, including but not limited to the following:

Fiduciary, as that term is defined under N.J.S.A. 2C:20-1(b).

Any person, as that term is generically applicable and used under 18 U.S.C. § 152(6).

Public Official, as that term is defined under 18 U.S.C. § 201(a)(1). A bankruptcy trustee and/or the U. S. Trustee is a person acting for or on behalf of the United States Trustee Program, which is part of the Department of Justice, which is a department of the government.

Person who has been selected to be a Public Official, as that term is defined under 18 U.S.C. § 201(a)(2), as a bankruptcy trustee is someone who is nominated or appointed to be a public official, as the term Public Official is defined under 18 U.S.C. § 201(a)(1).

**Judicial Proceedings And Official Investigations :** This refers to all past and current, litigations, proceedings, inquiries and/or investigations before any court, department or agency of the United States or a State Court, which involve matters, directly or indirectly related to the disputes between any of the Defendants, Plaintiff and other parties in interest, including any pending or other actions, with Fleet, to be described by other Plaintiffs who may chose to join this action, inter alia :

- Claims already pending, brought recently, or to be brought, in the litigation in the District Court of New Jersey.

- State Court litigation in the Middlesex County Superior Court with Plaintiff and Fleet as parties along with others.
- See Appendix A-108 through A-116: Investigations and Inquiries initiated by government agencies, such as, the Securities Exchange Commission (SEC), the Office of the Comptroller of the Currency (OCC), the Federal Reserve Board, the House Committee on Energy and Commerce, the House Committee on Banking, the Senate Banking Committee, and/or Senate Judiciary Committee to whom these racketeering acts have been reported to, or will shortly be reported to.

When used with reference to wrongdoings against parties other than Plaintiff, the term includes and/or refers to those proceedings in which they are a party in interest.

***Legally Accountable:*** This means that a person is legally accountable and/or liable for an offense of another person for reasons provided under N.J.S.A. 2C:2-6. Additionally, legal accountability also arises out of other reasons, such as:

- Acting with the kind of culpability that is sufficient for the commission of the offense, the person or entity causes another person to engage in such conduct.
- The entity or person is made accountable for the conduct of such other person by the code, by the law defining the offense, or by professional rules.
- The entity or person is an accomplice of such person by soliciting the other person to commit the offense, aiding or abetting the offense, has a legal duty to prevent the offense but fails to do so, or the entity or person is expressly declared by law to establish complicity.
- The entity or person is engaged in a conspiracy with such person.

***Lower-But-Better-Bid:*** This refers to a scandalous practice in the Bankruptcy Court, which, upon information and belief, allows trustees to improperly influence the Court

into accepting a lower bid from parties favored by trustees, who are *RICO-Members*, on frivolous grounds that it is a better bid, even when a much higher bid is available from bona fide buyers. There has not been any coherent explanation as to why higher bids are downgraded and rejected. **This is also facilitated by using motions to expedite the sale of assets, with the use of Time-Shortening Orders, to ensure that there are few, if any, competitive bids in the first place.** There is also a total disregard to post-sale motions and practices, for example, to evaluate if the terms and conditions characterizing the bid as a better-bid were indeed fulfilled, and particularly so, when a higher bid is still pending.

***Mailed:*** The term “Mailed” refers to the act of mailing any document in a manner and for the purpose that is prohibited under the Predicate Act of Mail Fraud: 18 U.S.C. § 1341.

***Nationwide Racketeering Scheme:*** This term refers to the nationwide racketeering scheme, spanning multiple states, of the *Fleet-RICO Enterprise*, to defraud customers and guarantors of Fleet, and cause injury to their business and property, through a pattern of racketeering activities. The *Common Plan* targeted towards Plaintiff, which caused injury to Plaintiff’s business and property, is actually a part of this larger pattern that constitutes a nationwide racketeering scheme. Upon information and belief, over the years, thousands of innocent business customers and consumers alike, have been victimized through RICO violations.

***OCC:*** Office of the Comptroller of the Currency.

***RICO-Members :*** All individuals, partnerships, corporations, associations, or other legal entities, associated in fact with the *Fleet-RICO Enterprise*, as defined under Section 6.

***Sham 9019 Settlement:*** This term refers to sham settlement agreements entered between Fleet and bankruptcy trustees, under the guise of Rule 9019 of the bankruptcy code,

and using the improper influence over the Bankruptcy Court. A Rule 9019 settlement requires the application of the “TMT Trailer Standard” set by the Supreme Court in In re: Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414 (1968). The trustee is expected to provide a detail record of the claims to be settled. Upon information and belief, there have been several incidents in the Bankruptcy Court, of approval of settlements proposed by RICO-Members, in the absence of any record provided by the trustee to justify the settlement.

As an example, trustee Marks entered into a settlement with Fleet providing only the document at Appendix A-431 in support of the settlement. Not a single claim was listed or described. The summary of the terms and conditions of the Rule 9019 settlement agreement, between Marks and Fleet, is listed below: (See Stipulation of Settlement at Appendix A-423):

<b>Consideration Offered by Fleet</b>	<b>Consideration Offered to Fleet, a disputed Creditor</b>	<b>Consideration Offered to Marks and his professionals:</b>	<b>Consideration Offered to the Buchanan Firm</b>	<b>Consideration Offered to Undisputed Creditors</b>
Nothing!	Transfer of substantially all of the assets of the estate to Fleet.  Attempted Settlement/Transfer of certain meritorious claims of WebSci against Fleet.  Allowing the Fleet Proof of Claim of about \$5.9 Million by the trustee.	Unopposed payment of more than \$1 Million in bankruptcy administration fees to Marks and professionals hired by him.	Almost \$1.5 Million in legal/professional fees.	A total of not more than \$50,000.00 to be paid to all undisputed creditors.  Plaintiff offered to pay this sum himself, as part of the liquidation plan. Yet Judge Gambardella ruled against him, <u>ignoring</u> this offer in her ruling, confirming the improper influence over the Bankruptcy Court by RICO-Members.

***Usual Activities of the Enterprise:*** The usual activities of the *Fleet-RICO Enterprise* consist of those activities, which are expected from an association consisting of a major financial institution, attorneys, bankruptcy trustees, accountants, and other such professionals. These activities are mostly connected, directly or indirectly, with the business of credit transactions and other financial services offered by a financial institution, and more specifically a Bank Holding Company, as defined under the Gramm-Leach-Bliley Act. These activities include those which occur before, during, and after the consummation of credit transactions, inter alia:

- The marketing and sale of credit and other financial instruments through representations made to the potential customer, using mail and wire communication.
- The legal representation, by attorneys, of Fleet and its customers, during negotiations leading to the consummation of the transaction.
- The ongoing administration during the term of the agreement, usually a credit agreement.
- The resolution of any disputes arising during the term of the agreement, directly, or through attorneys representing Fleet and/or adversaries of Fleet.
- The initiation of litigation, if the dispute cannot be resolved.
- Professional services provided, including those by attorneys and accountants, during the litigation, to Fleet or to adversaries of Fleet.
- Conducting of foreclosure sale of assets, if required.
- The filing of bankruptcy and the retention of professionals, such as accountants and attorneys, by the customer and by Fleet.
- Numerous activities during bankruptcy proceedings, which involve Fleet, the



customer of Fleet, and different professionals, such as non-RICO members of the enterprise. Such activities include, inter alia:

- Sale of assets under Rule 363, 365 of the Bankruptcy Code, or under plans of liquidation.
  - Settlement agreements under Rule 9019 of the Bankruptcy Code.
  - Use of cash collateral to continue the operations of the debtor.
  - Payment of fees for administration of the bankruptcy estate and for professionals retained by the trustee.
  - Filing of Operating Reports on a monthly basis.
  - Closing the bankruptcy, either through a Plan of Liquidation or through a Plan of Reorganization.
- Post-bankruptcy or post-settlement issues and representations of different parties by attorneys and/or accountants.
  - Any other activity that is usually associated with credit and/or financial transactions.

The performance of the usual activities through racketeering acts means gives rise to RICO violations.

**Response to each section of this RICO case statement is assumed to be augmented by information presented in other sections of the case statement as well as that in the First Amended Complaint, even if not explicitly stated elsewhere.**

**Section 1. State whether the unlawful conduct is in violation of 18 U.S.C. §1962(a), (b), (c) and/or (d).**

1. The complaint asserts violations of 18 U.S.C. §1962(c).

**Section 2. List each defendant and state the alleged misconduct and basis of liability of each defendant.**

**Defendants**

2. Defendant(s) FleetBoston Financial Corp. and/or Fleet Bank are jointly referred to as “Fleet.” Upon information and belief, Fleet has merged with Bank of America with Bank of America remaining as the surviving entity. Plaintiff has filed a separate motion to substitute or add Bank of America as a defendant. References to Fleet in the Complaint and the case statement, therefore, refer to FleetBoston Financial Corp., Fleet Bank, and/or Bank of America and/or any other surviving entity to be added later, upon further discovery.
3. Defendant Buchanan Ingersoll, P.C. (“Buchanan Firm”) is a law firm with an office located at 700 Alexander Park, Suite 300, Princeton, New Jersey 08540 with its corporate offices in Pennsylvania, located at One Oxford Center, 301 Grant Street, 20<sup>th</sup> Floor, Pittsburg, PA 15219.
4. Defendant Louis T. DeLucia, Esq. (“DeLucia”) is a partner in the Buchanan Firm.
5. Defendant Norris McLaughlin & Marcus, P.A. (“Norris Firm”) is a law firm, located at 721 Route 202-206, Bridgewater, NJ 08807.
6. Defendant Gary N. Marks, Esq. (“Marks”) is the bankruptcy trustee of the WebSci bankruptcy estate. Marks is also a Director and Partner in the Norris Firm.
7. Defendant Mellinger, Sanders and Kartzman, LLC (“Mellinger Firm”) is a law firm,

located at 101 Gibraltar Drive, Morris Plains, New Jersey 07950.

8. Defendant Steven Kartzman, Esq. (“Kartzman”), is a partner in the Mellinger Firm, and was the trustee of Plaintiff’s personal bankruptcy estate until his services were terminated.
9. Defendant Richard Honig, Esq. (“Honig”) is an associate at the law firm of Hellring Lindeman Goldstein and Siegal (“Hellring Firm”), which is located at One Gateway Center, 8<sup>th</sup> Floor, Newark, New Jersey 07102. The Hellring Firm was hired by Marks to be his counsel. Honig is the main attorney from the Hellring Firm, who has provided legal services to Marks.
10. Defendant Networking Technologies & Integration Inc. (“Networking Technologies”) is a computer consulting firm, located at 50 Boright Avenue, Kenilworth, NJ 07033.
11. Defendant Precision E-Consulting, LLC. (“E-Precision”) is a computer consulting firm, represented by it and Marks to be located at 3162 Johnson Ferry Road, Suite 260-807, Marietta, GA 30062.
12. Each defendant satisfies the definition of a “person” within the meaning of 18 U.S.C. §§ 1961(3), 1962(c).

### **The alleged misconduct and basis of liability of Defendants**

#### **Background**

13. Plaintiff, Ramkrishna S. Tare, is the founder and is/was the sole shareholder of WebSci Technologies, Inc. (“WebSci”), a technology and software consulting company, located in New Jersey. Plaintiff’s educational training is in engineering and software. Plaintiff has a Bachelor’s degree in Electrical Engineering from the Indian Institute of Technology, India and a Master’s degree in Computer Science, from the New Jersey Institute of Technology.

14. In addition to its office in New Jersey, WebSci has/had offices in Russia, Romania and India. Plaintiff through his fluency in multiple foreign languages, including several Indian languages, Russian and basic reading/writing abilities in French, managed these offices, which were set up for developing software and recruiting software professionals to provide consulting services in the United States.
15. WebSci was always a profitable company, for more than a decade, until its credit relationship with Fleet began. Plaintiff himself had never been sued personally or had sued any party, at any time, for any reason whatsoever, until the instant litigation.
16. The instant litigation arises from the extension of credit of \$5 Million to WebSci in the year 2000. WebSci was profitable and had earned about \$14 Million in annual revenues around the time Fleet offered this credit to it. At around that time, Plaintiff's net worth was set to \$30 Million by Fleet. In addition to signing the credit agreement as the sole shareholder and officer of WebSci, Plaintiff was lured into signing the credit agreement as a guarantor.
17. Within four months after the credit agreement was consummated, Fleet put the credit in default even though almost the entire proceeds from the credit agreement was recirculated back into an affiliate of Fleet, through a coercive and impermissible Tying Agreement that has become the focus of regulatory investigations (See Appendix A-108 thru A-116). Claims based upon the violation of the Anti-Tying Statute (12 U.S.C. § 1972 et seq.) and numerous other claims have been filed separately, as part of this very complaint.
18. The act of putting the credit in default prematurely was exacerbated when Fleet fraudulently declared WebSci insolvent within four months of certifying it as a very healthy financial company. Fleet used accounting professionals and provided them with

false information or concealed information that Fleet had acquired when it audited WebSci to extend credit. The false declaration of insolvency was made possible by assigning a value of **ZERO** to all of WebSci's overseas offices (Appendix A-332 thru A-335) and Intellectual Property in which Millions were invested.

19. Fleet did so, despite having audited WebSci on multiple occasions and acknowledged the existence of WebSci's overseas offices after having reviewed their registration information (See Appendix A-332 thru A-335) and having taken a demonstration of its software product, as a result of its R&D efforts involving Millions of dollars. Even an internal report, maintained by Fleet, produced during discovery in the State Court litigation, acknowledged the existence of overseas offices (See Appendix A-35 thru A-38). Specifically, Fleet acknowledged, see Appendix A-36:

"The Company is headquartered in New Jersey with software development offices in India and Russia. There are approximately 225 employees worldwide, mostly software technicians/developers."

20. WebSci's Ensiva software, in which Plaintiff had also invested personally, was later estimated to have a value in "Multiple Million" dollars by the professional retained by bankruptcy trustee Gary Marks, himself a *RICO-Member*. That valuation itself was performed under fraudulent circumstances, to provide an underestimated value (See description of Racketeering Acts XXVI, XXVII, and XXVIII).

21. In the State Court litigation, Fleet fraudulently declared WebSci insolvent, and did so just the day after WebSci's attorneys had disclosed<sup>1</sup> that they all along had a conflict of interest with Fleet (See Appendix A-43). Upon information and belief, the conflict was strengthened through additional *Corrupt Offers*.

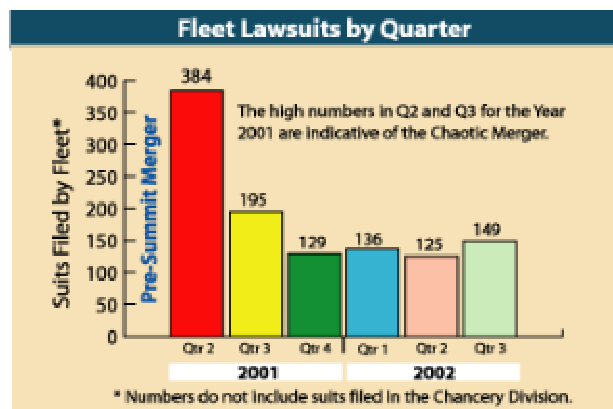
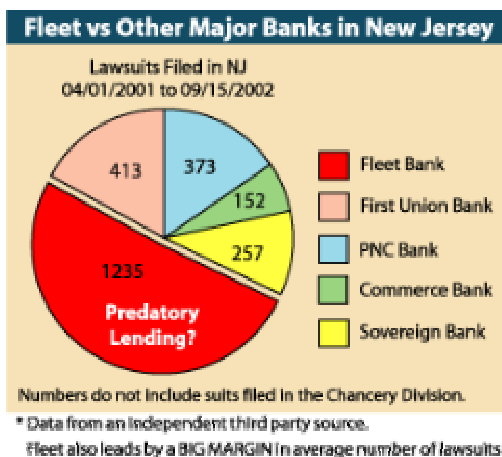
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<sup>1</sup> This is an example of the relationship between two racketeering activities here, which gives rise to a pattern.

22. From the beginning of the State Court litigation, initiated under the circumstances described above, the abuses that Plaintiff was subjected to, as a guarantor, sole shareholder, as CEO of WebSci, and in other capacities, by *RICO-Members*, through RICO violations and the associated pattern of racketeering activities including acts of bribery and specifically the bribery of adversary attorneys, forgery, extortionate means of collecting credit, improper influence over courts, tampering with Federal evidence and docket sheets, were so unreal that Plaintiff believed that these acts could not possibly have constituted just one isolated criminal episode.

23. This experience led Plaintiff to research the litigation data on Fleet from the Automated Case Management System (ACMS) of the New Jersey Courts and get names of hundreds of victims of the *Fleet-RICO Enterprise*. Further contacts with other victims of the *RICO-Members* of the *Fleet-RICO Enterprise* provided startling details on the pattern of racketeering activities, which has resulted in, and continues to cause injury to, not only Plaintiff, but hundreds, and upon information and belief, thousands of other customers and guarantors.

24. The basic analysis by Plaintiff of litigation data of major banks in New Jersey, provided the following results:



- Fleet had the largest number of lawsuits filed by any bank in New Jersey.
- Fleet had the largest number of lawsuits per branch among all major banks in New Jersey.
- The number of lawsuits filed by Fleet immediately after the merger with Summit had increased several fold.

**25. In the first quarter of 2004, the number of lawsuits filed by Fleet, on a per branch basis, as compared to other banks in New Jersey, continues to be the highest.**

26. This shocking statistics motivated Plaintiff to investigate further, by contacting tens of victims, and enabled Plaintiff to identify an overwhelming pattern of bribery, extortion, obstruction of justice, forgery, extortionate means of collecting the extension of credit, mail and wire fraud schemes to defraud customers and guarantors, improper influence over the Bankruptcy Court, and other improper and criminal acts, which have resulted in the victimization of hundreds of customers and guarantors over the past several years and this victimization continues.

**27. Among the most abusive tactics utilized by Fleet, which Plaintiff confirmed from conversations with many victims, was the bribery of adversary attorneys and bankruptcy trustees.** Albeit it involves criminal penalties, it is practiced by Fleet, directly or through other RICO-Members, with total disregard to possible consequences. Plaintiff, therefore, after having been victimized through such acts of bribery, took upon himself to study RICO and pursue this complaint on a Pro Se basis. This was also necessitated because Fleet and RICO-Members had deprived Plaintiff of the Millions in the bankruptcy estate which were available to pursue claims against Fleet.

28. The conversations with tens of victims of Fleet, led plaintiff to identify the **Course of Conduct** that the *Fleet-RICO Enterprise* uses to further its racketeering activities and which has resulted in RICO violations causing economic injury to hundreds, and possibly thousands, over the past few years.

### **Course of Conduct**

29. This course of conduct is described below briefly. It is supported by the Racketeering Acts described under Section 5, and other specific facts presented in other sections, and provides additional background information to understand the RICO violations:

### **Bribery**

30. Fleet has an internal system to identify conflicts. As an example, see Appendix A-39 thru A-40 of an internal form used by Fleet to identify conflicts. Rather than using the system to avoid conflicts, Fleet uses it to improperly influence conflicted attorneys, to participate in the conduct of the affairs of the RICO enterprise or have them conspire to do so.

31. If an attorney, who is not a member of the *Fleet-RICO Enterprise*, represents an adversary, attempts are made through other members or by Fleet directly, through the offering of *Fees And Earnings*, to make them members of the *Fleet-RICO Enterprise*. Senior members of the enterprise, such as Louis T. DeLucia, Esq. direct such unlawful activities of bribery by the RICO Enterprise.

32. Once made members of the RICO enterprise, the professionals, under the influence of Fleet, or second-tier members, who also conduct the affair of the RICO enterprise, breach their duties of fidelity to Fleet's adversaries, or do or omit to do, their official acts/duties, under the color of official rights, for example, as attorneys of Fleet's adversaries, trustees, receivers, and/or other court appointed officers (See Racketeering



Act I, II, III, IV, V, VI, XI, XII, XIII, XIV, XIX, XX, XXI, XXVI, XXVII, XXVIII).

33. The racketeering activities breed numerous litigations, which in turn allow the enterprise to increase its membership through bribery of new members, through the induction of new professional by the offering of *Fees And Earnings*.

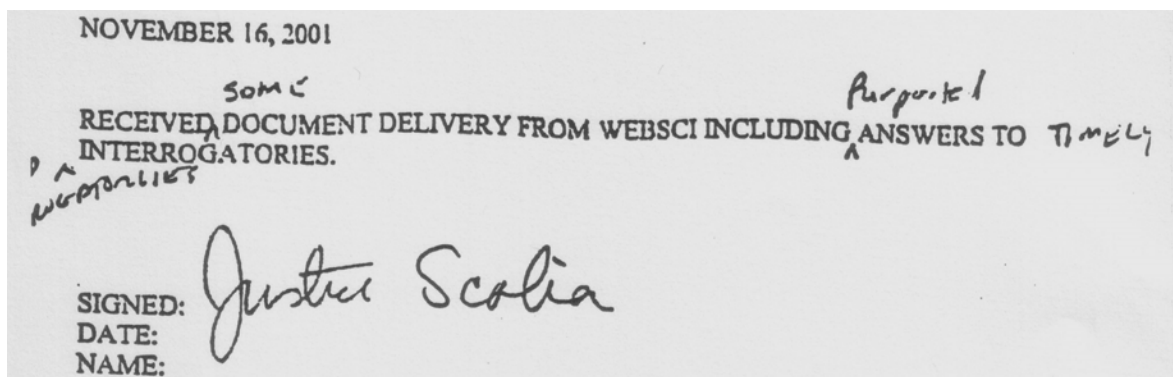
### **Forgery**

34. *RICO-Members* do not hesitate to indulge even in flagrant acts of forgery, of significant material importance, involving contracts, and even consent orders. Specific acts of forgery are presented in the Racketeering Acts described under Section 5. For example, the Buchanan Firm, through defendant DeLucia, forged the signature of Plaintiff, in a consent order which Plaintiff had never seen before and which was never discussed with Plaintiff (See Racketeering Acts VII, VIII and IX).

35. *RICO-Member* Fleet makes customers sign credit agreements without Fleet's signatures and then sign them later, if and only when it suits them, against a pre-written date. The customer gets to retain contracts without Fleet's signature. As an example, Appendix A-388 has a contract, between Fleet and a customer, Mr. Andrescavage, without Fleet's signature, closing costs, or details required by law, on which Fleet obtained a default judgment by asserting a false claim (See racketeering acts described at the end of sections 5(a), 5(b) and 5(c). Also see contract used by Fleet to get a default judgment against Mr. Andrescavage at Appendix A-388, which has no signature by Fleet, no closing costs, etc.).

36. *RICO-Members* also affix/forged signatures of respected and well-known Public Officials, in an act of jest/mockery and intimidation, intended to pass the message that they can get away with virtually anything. As an example, the signature of Justice Scalia as affixed/forged by DeLucia, an attorney of Fleet, is shown below, along with

some unwarranted comments inserted by DeLucia, in the letter that the employee gave him to sign, to acknowledge receipt of the documents (See Appendix A-67):



**Forgery of the Signature of a Supreme Court Justice by Louis T. DeLucia**

### **Fraudulently Declaring Companies Insolvent to Gain Complete Control**

37. *RICO-Members* are able to further most of their racketeering activities because an extension of credit by Fleet, almost always, includes collateralization of the borrower's assets, with added purported protection from guarantors, usually principal(s) of the business.
38. Fleet, through the use of other *RICO-Members*, who are retained as professionals, purportedly to evaluate the financial condition of the company, declares the company to be insolvent, using fraudulent techniques. The fraudulent techniques include the undervaluation of assets or denying the existence of the very assets, which were used as collateral and/or to value the company, to extend the credit in the first place.
39. After the act of fraudulently declaring a company insolvent is completed, *RICO-Members* acquire complete control of the company, its assets and even the assets of the guarantor. They then resort to numerous acts of threats and other racketeering activities, to cause injury to the business and property of the customer and guarantor and distribute the proceeds of the liquidation or foreclosure that eventually takes place,

among *RICO-Members* (See Racketeering Acts XVII, XVIII, XXVI, XXVII, XXVIII).

40. *RICO-Members* have successfully taken control of other businesses through Fleet, using such fraudulent declarations of insolvency. For example, Pennsylvania Gear Corp., another \$25+ Million company was put into default within months of the signing of its credit agreement, and was declared to be insolvent. Attempts to declare insolvency were also made on Langan Engineering, another multi-million dollar corporation. Plaintiff has spoken to tens of customers who have lamented on how their businesses were unlawfully taken over by Fleet and the proceeds distributed among *RICO-Members*.

#### **Extortion and Extortionate Means of Collecting Credit**

41. With respect to the violations of extortionate means of collecting credit, Defendants collectively exercise their overwhelming economic, market, and litigation power, compounded with illegal litigation strategies, involving hundreds of attorneys, and improper influence over certain courts, to obtain businesses and properties of victims like Plaintiff, induced by the wrongful use of threats and fear, in violation of the Hobb's Act and other racketeering statutes (See Racketeering Acts XXII).

42. As some of the debts alleged by Fleet are themselves unlawful, the mere act of collecting it, without the use of fear or intimidation, rises to an act of racketeering.<sup>2</sup> For example, credit was extended to another victim of the Fleet-RICO Enterprise, Edward Andrescavage, in flagrant violation of Truth in Lending Act (TILA) and Real Estate Settlement Procedures Act (RESPA), and then his property was "obtained" by Fleet through a pattern of racketeering activities, as described at the end of Section 5(c).

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<sup>2</sup> See *United States v. Eufrazio*, 935 F.2d 553, 577 (3d Cir. 1991).

43. Among the wrongful use of threats and fear are the knowingly false accusations of fraud and fraudulent conveyances made on customers, guarantors, and even their respective contractors and family members, who are unaccustomed to litigations and false allegations of fraud. Subpoenas and summon are sent, intentionally, at late hours, and at the place of residence of the principals, to intimidate families, particularly those with children. While the practice itself is a confirmed fact, upon information and belief, Louis T. DeLucia and Todd Chasin are the persons responsible on behalf of the Buchanan Firm, to conduct such affairs of the *Fleet-RICO Enterprise*. As late as last week, Fleet, through the Buchanan Firm, sent a demand for about \$400.00 to Ms. Natalie Coumeau, asserted that the payment be made within 10 days, providing no basis for the 10 days period, and further threatened to impose lien on her personal property and even called her residence as late as 10 pm (See Appendix A-450).

44. *RICO-Members* also resort to threats, and then actually carry out such threats, through unlawful acts. Such threats include the threat to “teach a lesson,” the threat to “put through hell,” threats to withhold payroll of the principal of the business or their employees, threats to shut the business of a victim down, threats to lower the credit amount already approved, threats to prematurely put the credit in default, threats to refuse to allow a business to use its own cash, and threats to freeze the release of child support monies deducted from the principal’s pay check. These threats are usually intended to coerce victims into involuntarily entering a settlement or a forbearance agreement with Fleet, on terms and conditions dictated solely by Fleet and/or *RICO-Members*. Among the hundreds affected by such threats and who were economically injured by such acts, include, Edward Andrescavage, Mark Krantz, Isidor Farash, Craig Stranahan, Sherry Balance, Jim Genes of Omega Electricals, and medical practitioners

such as Dr. Ruby and Dr. Elamir Magdy. For example, Ms. Balance was threatened to be “put through hell” by attorneys for Fleet, if she filed for bankruptcy.

### **Obstruction of Justice and Official Proceedings**

45. Fleet and other *RICO-Members* also continuously obstruct, or endeavor to obstruct justice. Such means to obstruct justice include, inter alia:

- The bribing of adversary attorneys, bankruptcy trustees, court appointed receivers, fiscal agents, and other professionals, through the offer or promise to offer, of *Fees And Earnings*, during and/or after the litigation with Fleet. Fleet then uses the bribed entities and professionals to create impediments in the pursuit of claims against Fleet or other *RICO-Members* (See Racketeering Acts I, II, III, IV, V, VI, XI, XII, XIII, XIV, XV, XXVI, XXVII, XXVIII).
- **Tampering with official documents and even Docket Sheets of Federal Courts through the improper influence over certain courts (See Racketeering Acts V, VI, XVII and XVIII).**
- The malicious filing of vexatious lawsuits corruptly through corrupt persuasion of attorneys who are *RICO-Members*. The vexatious lawsuits typically consist of frivolous and knowingly false claims against business customers and consumers, in an effort to run the customers out of their resources to pursue meritorious claims against Fleet (See Racketeering Act XXXIV).
- The filing of frivolous and knowingly false claims against contractors and employees of business customers, and subsequently coercing favorable testimony from them, induced by the wrongful use of fear, through acts of intimidation. This is a commonly used vehicle by Fleet, to obstruct justice, knowing that employees and contractors would rather comply with Fleet’s demands, even if they are

improper, than risk been harassed in litigation which is unconnected to them. This in turn provides Fleet a mechanism to coerce testimony that is often untrue but favorable to Fleet.

- Depriving customers, through unlawful and corrupt means, access to their own financial resources, which they need, to litigate their claims against Fleet.
- Tampering with evidence and witnesses (See Racketeering Act XV and XXIX).
- Flagrantly indulging in acts of forgery (See Racketeering Act VII, VIII, and IX).
- Pulling down websites, which provide information to the public on the racketeering activities of the *Fleet-RICO Enterprise*.

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### Retaliation as a Means to Obstruct Justice

46. *RICO-Members* resort to retaliatory actions, directly, and/or corruptly and/or through corrupt persuasion of other *RICO-Members*, intended to obstruct justice. Such retaliatory actions are based upon the types of legal actions, taken or intended to be taken by adversaries of the RICO Enterprise. The following is a non-exclusive list of retaliatory actions against Plaintiff, by *RICO-Members*, tied directly to his attempts to seek justice through the Court System and/or regulatory agencies:

Action taken by Plaintiff	Retaliatory Act by <i>RICO-Members</i>	Timing
Informed Boston Associates, an accounting firm hired by Fleet to audit WebSci, that if Fleet does not resolve the securities discrepancies, then Plaintiff would complaint to the SEC.	Started the vexatious state court litigation with false allegations of fraudulent conveyances and unjust enrichment, against Plaintiff and others. All these allegations were never proven and which Fleet voluntarily dismissed and/or wish to dismiss now having completed their act of harassment.	Within a week after Plaintiff informed Fleet's accountant.
Filed the RICO Case Statement, in March 2003, in the instant proceeding.	Marks initiated the Shutdown of WebSci by illegally taking possession of Plaintiff's personal property, legal pleadings, evidence, and intruding upon Plaintiff's privacy in flagrant violation of his Fourth Amendment Rights.	Within one week of the filing of the RICO Case Statement.
Filed counter-claims with evidence of <u>serious crimes</u> committed by Marks and Fleet, in an adversary proceeding filed in the Bankruptcy Court.	Marks and Fleet entered into the <i>Sham 9019 Settlement</i> , in an attempt to white-wash each other's crimes, using the improper influence over Judge Gambardella.	Within four days of the filing of the claims by Plaintiff.
Filing of a motion to dismiss Marks as the trustee.	Marks continued deducting Child-Support monies from Plaintiff's salary but using one frivolous excuse or another did not distribute the same for over six months.	A week after the motion to dismiss Marks was filed.

## **Scheme to Defraud through Mail and Wire Frauds**

47. *RICO-Members* have also *Mailed* and continue to do so, agreements, sales material, documents, pleadings, electronic filings in Court systems, and other such material. Such *Mailed* material includes those for the purpose of executing schemes to defraud with the intent to obtain property and business, and to deprive customers, guarantors and other victims the intangible right of honest services.<sup>3</sup> Such schemes are executed by means, such as those involving the making of false pretenses, promises or representations in the extension of credit or concealment of conflict of interests with attorneys and trustees, in violation of 18 U.S.C. § 1341. False pretenses, promises or representations include falsification of the period, amount and/or purpose for which credit is extended, the level of QOS (Quality of Service) to be offered, the false assurance of adherence to compliance of applicable rules and laws, false representations of the magnitude of conflict of interests with adversary attorneys/trustees/fiscal agents, and false promises to unwary and naïve homeowners of paid vacation trips to lure them into drawing home-equity lines of credit (see end of Section 5(c) of this case statement describing the victimization of Mr. Andrescavage through the offer of a trip to Hawaii which was never materialized).

48. *RICO-Members* also transmit documents, through wire communication, in the form of electronic mails, faxes, and electronic filing of pleadings, to execute schemes to defraud and to obtain property and business of victims, by means of false pretenses, promises or representations, in violation of 18 U.S.C. § 1343.

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<sup>3</sup> Congress expressly included this in the definition of “scheme or artifice to defraud” in 1988 in response to the Supreme Court’s decisions in *McNally v. United States*, 483 U.S. 350 (1987) and *Carpenter v. United States*, 484 U.S. 19 (1987). See 18 U.S.C. § 1346.



49. Defendants, and particularly Fleet, operated and continue to operate, from different states, specifically New Jersey, Pennsylvania, Rhode Island, and Massachusetts, during relevant times, specifically with respect to communication with Plaintiff, and named victims, making interstate communication very likely in all of the mail and wire frauds. With the merger with Bank of America, the effect on interstate commerce will only increase several fold.
50. See description of Racketeering Acts III, XXXI, XXXII, and XXXIII under Sections 5(a), 5(b), and 5(c) for examples of mail and wire fraud acts.

### **Use of Mailing Tricks to Obstruct Justice**

51. Defendants, and particularly attorneys of the Buchanan Firm, intentionally send mail at an incorrect address so that their victims do not receive it in time and thereby get a default judgment.
52. Defendants, also resort to tricks such as stamping envelopes but not putting them in the mail for a few days so victims of the *Fleet-RICO Enterprise* receive them late, are unable to prove it, and are sometimes simply not aware of their rights and/or the right to have sufficient time to review them, particularly in their Pro Se capacities.
53. Such acts, intended to create impediments in the pursuit of claims against Fleet or defenses against frivolous claims brought by Fleet, are in violation of the omnibus provision of obstruction of justice statute under 18 U.S.C. 1503, as they are performed by Fleet's attorneys under the corrupt influence of *Fees and Earnings* from Fleet.
54. As these acts are performed in violation of their legal duties by attorneys of Fleet, such acts can be classified to be performed under the "corrupt persuasion" of Fleet, with the intent to impede or obstruct the due administration of justice, in violation of 18 U.S.C. § 1512.

### **Fraudulent Concealment of Evidence**

55. Defendants, as part of the *Nationwide Racketeering Scheme*, also resort to intentional spoliation of evidence, withholding of evidence, preventing witness testimony through corrupt practices, and other such acts, to obstruct justice, through direct and indirect fraudulent tactics of concealment of evidence (See Racketeering Act XXIX)
56. Fleet has also resorted to mass-scale destruction of documents related to banking and securities transactions (See Appendix A-70 thru A-73) to conceal evidence of its illegal activities from regulatory agencies, customers and guarantors (Racketeering Act XVI).

### **Improper Influence over the Bankruptcy Court<sup>4</sup>**

57. The improper influence over the Bankruptcy Court is no defense for Defendants to commit RICO violations. The improper influence over the bankruptcy court has enabled *RICO-Members* to escape Plaintiff's pursuit of these claims until now. **No court has approved the RICO violations nor have these claims been litigated on the merits at any time, in any court.**
58. The improper influence that RICO Members hold over the Bankruptcy Court is leveraged through types of activities, which in addition to meeting the elements of fraud in bankruptcy, is also used to obstruct justice. A representative list of misconduct perpetrated through the improper influence over the Bankruptcy Court, as experienced by Plaintiff, and based upon communication with other debtors, includes, *inter alia*:

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<sup>4</sup> See United States v. Maloney, 71 F.3d 645, 661 (7<sup>th</sup> Cir. 1995) involving a corrupt Federal Judge who was found guilty for fixing cases by accepting bribes and also sharing the bribes with other judges.

- **Forcing Victims into and/or to Stay in Bankruptcy**

The crimes committed in bankruptcy proceedings, as described in this case statement, are no coincidence. The bankruptcy platform is ideal for *RICO-Members* because certain *RICO-Members* are also Bankruptcy trustees and Fleet corruptly or through corrupt persuasion can induce them to perform certain tasks, in violation of their fiduciary and/or duty of fidelity, under the color of official rights. Trustee Marks and Kartzman have abused the bankruptcy platform, under the color of official rights, as part of the pattern of racketeering activities leading to the RICO violations (Racketeering Acts I thru VI, XI thru XV, XXVI thru XXVIII are some examples of how Fleet induced trustees to obstruct justice).

- **Violation of Civil Rights and Denial of Due Process of Law**

Civil Rights violations in the Bankruptcy Court includes the act of putting unconstitutional restraints on Plaintiff, with respect to communication with outside attorneys, about the trustee's misconduct. The denial of due process is also furthered through multiple and capricious adjournments of hearings, whose outcome could be adverse to *RICO-Members*.

Scheduling of hearings or motions filed in the Bankruptcy Court, adverse to RICO Members, are controlled by RICO Members through their influence over the Bankruptcy Court, to blunt the outcome of the hearing. For example, the cross-claims and joinder filed by Plaintiff, which involved the crimes of the trustee, was first granted a time-shortening order by Judge Gambardella (See Appendix A-449) and then adjourned at least four times only to have them dismissed without prejudice leaving Plaintiff with a delay of four months to pursue his claims, by this act alone. Motions and hearings to seek the voluntary dismissal of his Chapter 7

bankruptcy petition was also delayed by more than four months, and then denied, even while Plaintiff was willing to pay all undisputed creditors and litigate his claims against the only undisputed creditor: RICO-Member Fleet.

- **Violation of Court Orders and Perjury, with Impunity, by RICO Members**

RICO Members, who are bankruptcy trustees, are also allowed to flagrantly violate Court orders, and repeatedly perjure, and with impunity. This renders rulings in favor of parties adverse to *RICO-Members*, moot, in bankruptcy proceedings, as the Court Orders, at least in Judge Gambardella's court, themselves are violated, by RICO-Members, with impunity (Racketeering Act XXVI, XXVII, and XXVIII).

- **Tampering of the Bankruptcy Court Docket**

RICO Members exert sufficient influence over the Bankruptcy Court to be able to tamper with the docket sheets themselves. There is incontrovertible evidence of tampering with the Bankruptcy Docket Sheet, on multiple occasions, each one of significant material importance, in order to conceal and disguise certain frauds. At least one act of tampering with the docket sheet involves the deletion of an entire document, of significant material importance, evidencing fraud by the trustee. This could not have been possible without the improper influence of *RICO-Members* over the Bankruptcy Court (See Racketeering Acts V, VI, XVII, and XVIII for details). **Fleet uses corrupt tactics to induce trustees into performing acts with the intent to obstruct justice.**

- **Sham Settlement Agreements under the guise of Rule 9019 of the Bankruptcy Code**

RICO Members and trustees use the bankruptcy forum to enter into sham settlement agreements under the guise of Rule 9019 of the bankruptcy code. Such sham

settlements, then allow the trustee to liquidate the estate and sell valuable assets to insiders, at ridiculous prices, using the scandalous *Lower-But-Better-Bid* practice of selling assets. This in turn helps Fleet evade confronting any litigation on the merits. The *Sham 9019 Settlement* entered into between Fleet and Trustee Marks (See Appendix A-423 and A-431 of documents filed by Marks in support of settlement approved by the Court) provides an insight into the anatomy of such sham settlements entered through the improper influence of *RICO Members* over the Bankruptcy Court.

- **Liquidation before Plan of Liquidation is Approved**

Plaintiff was opposing Fleet's plan of liquidation which was purportedly to be filed pursuant to the Rule 9019 Settlement in which the trustee was to be the liquidating agent. Even before the Plan was approved, the trustee had liquidated virtually all of the assets of the estate in New Jersey with the exception of the intellectual property and overseas assets for which he had assigned a value of zero.

- **Attempts to obstruct Proceedings not within the Court's Jurisdiction**

Though Plaintiff's rights are protected in the Liquidation Plan and the *Sham 9019 Settlement*, the attempts to obstruct proceedings in other courts was obvious. Bankruptcy Proceedings usually involve litigations, which are started prior to the filing of bankruptcy, and therefore are pending in non-bankruptcy forums. Claims also arise out of post-petition conduct of creditors and trustees that have no effect on the distribution of proceeds from the litigation on bankruptcy proceedings and/or are not within the Bankruptcy Court jurisdiction. For example, claims arising of the Fair Debt Collection Practices Act (FDCPA), arising out of post-petition misconduct towards a debtor, are not within the jurisdiction of the Bankruptcy

Court. The improper influence over the Bankruptcy Court is used to delay the pursuit of such claims and to frustrate debtors, through capricious adjournments lasting over months, of hearings and/or the outcome of the hearings, that affect the pursuit of non-bankruptcy claims against *RICO-Members* in other forums.

- **Knowing disregard to Conflict of Interest vis-à-vis Fleet**

Judge Gambardella refused to address the issue of conflict of interest even when compelling evidence was presented to the Court, even dismissing action without prejudice on grounds that it be brought in another forum/court. The only relief available, is upon writing to the Executive Office of the U. S. Trustee or filing a complaint in District Court (See Racketeering Acts XI thru XV as example of racketeering acts committed by Kartzman even as Fleet continued to offer him litigation business before, during and after Kartzman's term as a bankruptcy trustee).

- **Sale of Bankruptcy Assets to Insiders through the *Lower-But-Better-Bid* System.**

The influence that *RICO-Members* have over the Bankruptcy Court also involves the sale of Bankruptcy Assets using the scandalous *Lower-But-Better-Bid* system to sell bankruptcy assets to insiders, while effectively barring non-insiders from bidding. Beyond Plaintiff's own experience, Plaintiff has spoken to at least two other debtors who were victimized by this scandalous practice. There is evidence of this practice, beyond the WebSci bankruptcy, involving the same RICO-Member and trustee, Gary N. Marks, the same Judge Rosemary Gambardella, and the bankruptcy estate of Progressive Healthcare of Hudson Country, LP. The experience voiced by the debtor there echoes the corrupt practices experienced by

Plaintiff in the same court (See Racketeering Acts XVII and XVIII).

- **Flagrant violation of Federal Rules of Evidence and allowing pleadings filed at the last minute.**

RICO-Members were allowed to flagrantly violate the Federal Rules of Evidence. Testimony was presented by Marks, for example, in the hearing on the plan of liquidation even though it was not scheduled and report was presented which was in violation of a court order and not announced before. Pleadings were allowed to be filed by Fleet literally minutes before the hearing. For example, the Third Amended Plan of Liquidation was presented to Plaintiff, who was present only in his Pro Se capacity, about five minutes before the hearing. Plaintiff objected to it to Judge Gambardella but it was to no avail. And he was expected to provide arguments to oppose it by reading it in a few minutes.

**59. The numerous wrongdoings in the bankruptcy court have never been ruled upon by any court at any time. The more the criminal wrongdoings uncovered in the bankruptcy court, the more are the efforts to obstruct and create impediments in the pursuit of claims in the District Court action.**

60. The course of conduct, described in the foregoing, is representative of the pattern of racketeering activities of the *Fleet-RICO Enterprise*. It is a non-exclusive list and through discovery, additional types of racketeering activities should be uncovered.

**The misconduct and basis of liability, of each defendant, is described below. It is further elaborated under Section 5: Description of the Racketeering Acts.**

**Furthermore, Section 16 describes the direct causal relationship between the economic injury to Plaintiff and the RICO violation.**

**The current section also includes a discussion on the participation in the Operation or Management of the Fleet-RICO Enterprise by the Defendants. This information is requested separately under Section 13(c) but is consolidated here along with the related information on the misconduct and basis of liability of defendants.**

#### **General Statement on Basis of Liability and the Operation or Management Test**

61. All defendants have actually committed at least two substantive RICO predicate acts listed under 18 U.S.C. § 1961 and as evidenced from the racketeering acts described under Sections 5(a), 5(b) and 5(c).

62. Additionally, some defendants have also conspired with other defendants in committing other multiple predicate acts and thereby conspired to operate or manage<sup>5</sup> the affairs of the Fleet-RICO Enterprise. For example, the Mellinger Firm and Kartzman accepted bribes from Fleet by accepting litigation business even while Kartzman was Plaintiff's trustee in litigation with Fleet. However, Richard Napierkowski conspired with them to make this act of bribery possible. He knew that there was a conflict of interest. He knew that it would be criminally fatal to do so. Yet he knowingly and willfully agreed to the completion of that predicate act.

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<sup>5</sup> See U.S. v. Antar, 53 F.3d 568, 581 (3d cir. 1995). RICO Conspiracy requirement was loosened further in this circuit under Smith v. Berg 247 F.3d 532 (2001).



63. Additionally, some defendants have also conspired with other defendants in committing multiple non-Predicate acts, which were nonetheless unlawful ones and should be liable for such conspiracy also under the Third Circuit's recent ruling under *Smith v. Berg*.
64. All defendants are fully knowledgeable of the corrupt enterprise's activities and existence and knew each other and have interacted with each other as part of the *Usual Activities of the Enterprise* even prior to the controversy involving Plaintiff.
65. For the purpose of §§ 1509, 1512, and any other predicate acts, to meet the nexus requirement, if one is needed, Plaintiff asserts that all defendants, at all material times, were fully aware of the *Judicial Proceedings and Official Investigations* through pleadings submitted by Plaintiff, through discussions and written communication with Plaintiff. All defendants knew that the entire bankruptcy proceeding was primarily centered around Plaintiff and debtor WebSci wanting to pursue their claims against Fleet, while *RICO-Members* endeavoring to create impediments in their pursuit.

### **Misconduct and basis of liability of Fleet**

#### **Participation in the Operation or Management of the *Fleet-RICO Enterprise***

66. The parent corporation, FleetBoston (recently acquired by Bank of America), directly, and indirectly through its subsidiaries, and more specifically Fleet Bank, and officers such as Gary Michael, Esq. and Richard Napierkowski, conduct the affairs of the Fleet-RICO Enterprise, as more fully described later in the racketeering acts themselves. The subsidiaries and the officers, themselves, also conduct the affairs of the enterprise or at the minimum participate in the conduct of the affairs of the RICO Enterprise.
67. Plaintiff had, at material times, informed members of the Fleet Board of Directors and other officers at the Fleet Headquarters about the racketeering activities.
68. Defendant Fleet committed mail and wire frauds to lure Plaintiff into signing a credit

and guarantor agreement, as part of a scheme or artifact, which was intended to defraud plaintiff of his business and property. The agreements presented to Plaintiff involved violations of several Banking and Securities laws, which were illegally concealed from Plaintiff, to obstruct justice (Racketeering Acts XXXI, XXXII, and XXXIII)

69. Subsequently, Fleet obstructed the pursuit of *Judicial and Official Proceedings* by concealing these violations from Federal Authorities, by intentionally not filing the required Federal Form U-1 (Appendix A-68). The filing of this form, and/or presentation to Plaintiff of the same, particularly in his capacity as a guarantor, would have alerted Plaintiff and Federal Regulatory agencies of the unlawful extension of credit.

70. At the very start of the State Court litigation, Fleet, in an effort to avoid the adjudication, on the merits, of claims belonging to Plaintiff and WebSci, bribed Plaintiff's and WebSci's attorneys, the Pellettieri Firm, by offering them *Fees and Earnings*. Upon information and belief, Fleet directed the bribery of the Pellettieri Firm through the Buchanan Firm, and more specifically through DeLucia (Racketeering Act X).

71. To obstruct justice, Fleet, knowingly and willfully, filed false and frivolous claims against Plaintiff and WebSci to divert their resources from pursuing meritorious claims against Fleet (See Racketeering Act XXXIV).

72. Fleet also corruptly persuaded the Buchanan Firm to file a vexatious lawsuit with frivolous unsubstantiated claims, against Avergent Inc., a contractor of WebSci, fully knowing that the claims were false and were intended solely to intimidate the company's principals and to secure false testimony, induced by the wrongful use of fear. The Fiscal Agent who worked for Fleet, and subsequently audited the financial

affairs of Avergent, did not find a penny in misappropriated funds. Later Fleet and the Buchanan Firm, after abusing all defendants, voluntarily moved to dismiss the claims against Avergent, without winning any relief whatsoever, other than having met their improper objectives.

73. Fleet also directed its other subsidiaries and affiliates, and more specifically Summit Financial Services Group and/or Quick & Reilly, along with Fleet Bank, to destroy brokerage and banking records. During discovery in litigation, evidence was discovered of Fleet having illegally destroyed original documents of its numerous customers' loan and brokerage accounts, to obstruct pending and unknown *Judicial and Official Proceedings* (Racketeering Act XVI).

74. When WebSci filed for bankruptcy protection, Fleet forced Plaintiff to file for bankruptcy (Appendix A-243). Fleet then bribed Marks, directly, or indirectly through the Norris Firm, through the offer of *Fees And Earnings*. Fleet then directed the Norris Firm to influence Marks into committing racketeering acts by offering the Norris Firm and its partners, and specifically Robert G. Marcus, additional business opportunities (Racketeering Act XXIV and XXV).

75. Fleet also directed DeLucia, through the Buchanan Firm, to further bribe Kartzman by making Kartzman's firm *Corrupt Offers* even while Kartzman was a trustee of the bankruptcy estate of Plaintiff which was in litigation with Fleet. The acts of bribery, of Marks and Kartzman, were intended to influence and induce them, to do or omit to do, their official duties as bankruptcy trustees and take certain improper actions under the Color of Official Rights. These acts of bribery are described in detail under Racketeering Acts XI, XXIV, and XXV. The numerous acts of Marks and Kartzman, influenced through bribery, are explained with specificity, in the description of

Racketeering Acts I, II, III, IV, V, VI, XII, XIII, XIV, XXVI, XXVII and XXVIII.

76. Fleet controls the distribution of litigation business among *RICO-Members* as well as other non-members, which involves thousands of litigations on an annual basis. Fleet through the control over the distribution of this litigation business among *RICO-Members*, exercises significant control over the *Fees and Earnings* of *RICO-Members*. This control allows it to conduct the affairs of the *Fleet-RICO Enterprise*, through an ascertainable command structure, headed by it, and conducted further through second-tier *RICO-Members* like the Buchanan Firm, DeLucia, and the Norris Firm.

77. Fleet's conduct and participation in the conduct of the affairs of the *Fleet-RICO Enterprise* is amplified further in the *Complaint* as well as in the description of the numerous racketeering acts committed by Fleet.

78. Fleet has the maximum liability as it is the head of the *Fleet-RICO Enterprise* and has conducted the affairs of the enterprise, to the detriment of Plaintiff, for the longest period among all other defendants. Furthermore, Fleet could have mitigated the injury to plaintiff to a very large extent had it not extended credit under the unlawful circumstances and conditions which it did. This in turn would have eliminated the involvement of other defendants with Plaintiff and his business. Fleet could have also mitigated the injury to plaintiff, substantially, through its control over other defendants.

### **Misconduct and basis of liability of the Buchanan Firm and DeLucia**

#### **Participation in the Operation or Management of the *Fleet-RICO Enterprise***

79. The Buchanan Firm, along with its senior attorneys, like DeLucia and Chasin, is among the second-tier "persons" in the "ascertainable structure" forming the chain of command, just below Fleet, of the association-in-fact *Fleet-RICO Enterprise*.

80. The Buchanan Firm and DeLucia participated in the conduct of the affairs of the *Fleet-*

*RICO Enterprise* by knowingly implementing decisions, as directed by Fleet, and also by conducting some of the affairs of the enterprise, by directing lower-rung *RICO-Members* such as Kartzman and the Mellinger Firm, to commit racketeering acts, induced and/or influenced by bribery, through *Corrupt Offers* by Fleet.

81. DeLucia and the Buchanan Firm were specifically assigned by Fleet to the task of directing the affairs of the enterprise as it related to obstructing Justice through the making of *Corrupt Offers* to attorneys and trustees. Here are some examples:

- DeLucia corruptly persuaded Kartzman and Wyskowski with the intent to obstruct justice by inducing them into taking certain improper actions under the color of official rights. See Racketeering Acts XII, XIII, XIV, and XV.
- DeLucia and the Buchanan Firm, directed the Pellettieri Firm to conceal the conflict of interest vis-à-vis Fleet until an opportune moment was found by the Buchanan Firm to implement Fleet's decision to gain control over the property and business of Plaintiff (See Racketeering Act X).
- DeLucia contacted other attorneys retained by Plaintiff and endeavored, often successfully, to offer them litigation and/or other business on behalf of Fleet to improperly induce them into taking actions adverse to Plaintiff.
- Upon information and belief, DeLucia, through the Buchanan Firm, also attempted, and succeeded in his attempt, to bribe other attorneys retained by Plaintiff, and did this to implement Fleet's directions, using his broad discretion.

82. Defendant Louis T. DeLucia, Esq., further participated in the conduct of the affairs of the Fleet-RICO Enterprise, by committing a crime in Bankruptcy proceedings, when DeLucia, willfully and knowingly, using his broad discretion, forged the signature of Plaintiff in a consent order filed electronically. The material impact of the forgery was

to take control away from Plaintiff in filing pleadings in the Bankruptcy Court (See RICO Predicate Acts VII, VIII and IX).

83. Furthermore, DeLucia participated in the conduct of the affairs of the *Fleet-RICO Enterprise*, when he threatened an employee of WebSci, who was sent to the Buchanan Firm to deliver documents, as part of the discovery process in litigation. DeLucia harassed the employee by threatening to call the F.B.I. for no bona fide reason other than to intimidate him. In furtherance of this act of harassment and intimidation, DeLucia forged/affixed the signature of Supreme Court Justice Scalia on a document that the employee presented to DeLucia, to acknowledge receipt of the documents delivered (See Appendix A-67).

84. Defendants Buchanan Firm and Louis T. DeLucia intimidated and harassed a witness and informant, Ms. Heather Brown, a licensed securities broker, who certified that Fleet's brokerage system had serious trading problems, which could have affected customers, other than WebSci (See Racketeering Act XXIX).

85. Upon information and belief, DeLucia also directs the affairs of the enterprise, to gain unauthorized access to adversary's personal and private information, by breaking into their personal computers, through the retention of overseas professional hackers.

86. Upon information and belief, DeLucia also has attorneys of Fleet's adversaries, after they have been bribed through *Fees And Earnings*, contact the adversary by phone and then conference DeLucia to hear in the conversation and/or have the conversation recorded and then played back to DeLucia.

87. DeLucia also directs litigation practices through "mail tricks" to obstruct justice by not mailing pleadings to adversaries in order to get default judgments or by stamping envelopes with pleadings, holding them back, and then mailing them much later so that

adversaries receive them late but cannot prove the last receipt. The post-bankruptcy motions in the State Court litigation were driven by such practice.

88. The Buchanan Firm, through DeLucia and its other attorneys, on behalf of Fleet, corruptly directed the affairs of the enterprise related to the control over the WebSci bankruptcy estate through Marks, who in turn directed the activities of other professionals such as E-Precision and Networking Technologies, as explained more fully in the description of the different Racketeering Acts. This further evidences that the Buchanan Firm and DeLucia form part of the second-tier, in the multi-tiered chain of command in the *Fleet-RICO Enterprise*.

89. The description of Racketeering Acts VII, VIII, IX, X, XI, XII, XIII, XIV, XV, XVI, XXII, XXIX, and XXX committed by the Buchanan Firm and DeLucia provides additional evidence that they conducted and/or participated in the conduct of the affairs of the *Fleet-RICO Enterprise*.

90. **As DeLucia is a Partner in the Buchanan Firm, the Buchanan Firm is also Legally Accountable, and therefore further liable, for the conduct of DeLucia.** The Buchanan Firm had a legal duty to prevent the commission of DeLucia's offenses, but not only failed to do so, but actually participated in directing his activities as it continued to receive *Corrupt Offers* from Fleet. The Buchanan Firm thereby increased its joint liability with DeLucia.

91. The Buchanan Firm is also liable under the newer provisions of the Sarbanes-Oxley Act and specifically the section which is codified under obstruction of Justice at 18 U.S.C. § 1512.

92. Defendants Buchanan Firm and DeLucia also agreed to commit or aid in committing multiple racketeering acts with other defendants, and particularly Fleet, as they

“adopted the goal of furthering or facilitating the criminal endeavor of the other defendants”<sup>6</sup> to meet the larger goal of the *National Racketeering Scheme* and is therefore also liable under RICO conspiracy statute 1962(d).

### **Misconduct and basis of liability of Gary N. Marks**

#### **Participation in the Operation or Management of the *Fleet-RICO Enterprise***

93. Defendant Marks is an attorney, and a bankruptcy trustee of the WebSci estate, and an individual, associated in fact, with the *Fleet-RICO Enterprise*.

94. Marks participated in the conduct of the affairs of the *Fleet-RICO Enterprise* by implementing decisions of Fleet, DeLucia, and the Norris Firm, using his broad discretion. Marks also conducted the affairs of the *Fleet-RICO Enterprise* by directing the racketeering acts of E-Precision, Networking Technologies, and other professionals hired by him, as part of the affairs of the RICO enterprise.

95. When Marks was appointed trustee of the WebSci estate, the estate had Millions in cash, receivables, real estate, disputed securities portfolio, overseas assets, and Intellectual Property worth tens of Millions of dollars, and possibly hundreds, based upon the value embedded in the Ensiva software.

96. Marks prolonged the WebSci bankruptcy, for the sole purpose of unjustly enriching himself and his professionals, by plundering the estate, through Fees And Earnings, with Fleet’s support. There was no other purpose for prolonging the bankruptcy proceedings. He did not attempt to file a plan of reorganization, even once. Marks and his professionals billed or, will end up billing, in excess of a Million dollars in Professional Fees for purportedly administering the WebSci bankruptcy.

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<sup>6</sup> Salinas v. United States, 522 U.S. 52, 65 (1997)



97. Marks knowingly implemented Fleet's decision to shut the operations of WebSci, by exercising his broad discretion in carrying out Fleet's instructions. At the time Marks initiated the shutdown of WebSci, WebSci was billing consulting fees in excess of \$200,000.00 per month (See Appendix A-352 providing information of billing in April 2003, the month in which Marks initiated shutdown of WebSci) and had invested Millions in a software product. This software product, according to the consultant hired by Marks, was valued in the Millions during the time Marks was a trustee of the WebSci estate. Marks did not approach the Bankruptcy Court seeking relief, to continue the operations of WebSci, such as the use of the cash collateral, that Fleet was asserting its rights to.

98. Marks also violated several criminal statutes during the shutdown of WebSci, as he took over the property of Plaintiff, through the use of professionals not retained with a prior Court Order and/or without a warrant. In doing so, Marks corruptly and/or through corrupt persuasion, and/or by engaging in misleading conduct, obstructed justice, either directly or with the intent to influence his professionals to do so, in violation of 18 U.S.C. § 1503, 1512. (See Racketeering Acts XIX, XX, and XXI).

99. Marks knowingly, under the direction of DeLucia and Fleet, concealed a very important report, involving the valuation of the intellectual property of the estate, in which Millions were invested. Marks concealed this report from all parties except Fleet, DeLucia, and the Buchanan Firm. This report was itself a result of a flagrant violation of a Court Order. Marks controlled the timing of the release of the report to other parties, doing so only minutes before his testimony. To cover up the violation of the Court Order, Marks perjured. When compelling evidence was presented to the Bankruptcy Court, of the violation of the Court Order, and subsequent perjury, the

Bankruptcy Court confirmed the influence of Marks over it, through its inability to take any action adverse to the trustee (Racketeering Act: XXVI, XXVII, and XXVIII).

100. Marks controlled the scope of the work to be performed by the consultant, E-Precision, and particularly the scope of services which violated the order of the Bankruptcy Court. This racketeering act was intended to declare WebSci insolvent and involved the fraudulent valuation of WebSci's IP, which was worth tens, if not hundreds of Millions of Dollars until Marks and Fleet, in collusion decided to sabotage its progress. Marks' actions were intended to obstruct justice, as he supported Fleet in the cancellation of the WebSci shares, in an endeavor to create impediments and obstructions in the pursuit of *Judicial Proceedings and Official Investigations* (Racketeering Act XXVI, XXVII and XXVIII).

101. Marks directed the racketeering activities, and/or participated in their direction, knowing fully that they were part of a pattern through which the affairs of the enterprise were been conducted, at the highest level, by Fleet. Marks knew each entity in the command chain, and did so even before he was appointed trustee of the WebSci estate, and was aware that his role was carved out in the ascertainable structure of the *Fleet-RICO Enterprise*. Marks was well versed with Fleet management as Fleet had an ongoing business relationship with Marks' firm as well as with Marks' partner Robert G. Marcus.

102. Defendant Marks committed numerous racketeering acts, for which he is directly liable, including, inter alia:

- Fraudulently understating the conflict of interest he had with Fleet vis-à-vis the Norris Firm, and then accepting bribes from Fleet, directly or indirectly through the Norris Firm, in the form of *Fees and Earnings*, such as conducting seminars for

- Fleet (Racketeering Act XXIII). The Norris Firm stands accused of concealing such conflict of interest in yet another lawsuit filed against it (See another complaint filed against the Norris Firm at Appendix A-441).
- Shutting down the operations of WebSci on the basis that Fleet refused to provide use of the estate cash and, among other frivolous reasons, that Plaintiff had initiated litigation against Fleet (See Appendix A-184, ¶3). Marks accepted Fleet's refusal to use the cash collateral, without contesting Fleet's Proof of Claim, and/or without himself approaching the Bankruptcy Court to seek any relief to continue the operations (See Racketeering Acts XIX, XX, and XXI for details).
  - Corruptly and/or through Corrupt Persuasion of Fleet obstructing and impeding the pursuit of *Judicial Proceedings And Official Investigations* by taking illegal possessions of Plaintiff's personal belongings and material needed to pursue claims against Defendant as described under Racketeering Acts XIII, XIV and XV.
  - **Corruptly and/or through Corrupt Persuasion of Fleet obstructing *Judicial Proceedings And Official Investigations* by moving to voluntarily dismiss claims of the WebSci against Fleet (See Appendix A-274 thru A-281).**
  - Corruptly and/or through obstructing *Judicial Proceedings And Official Investigations* by making fraudulent representations in justifying the abandonment of certain claims against Fleet (See Racketeering Acts I, II, III and IV).
  - **Tampering with the Bankruptcy Court docket**, to delete an entire document from the docket, which evidenced his fraudulent misrepresentation (See Racketeering Acts V and VI). Also, deleting<sup>7</sup> certain pages from a document filed

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<sup>7</sup> Or not submitting all the pages to the Court and specifically deleting those with materially significant information.

- by him, to conceal the contractual terms of a bankruptcy sale, the proceeds of which were unaccounted for a long period of time (See Racketeering Acts XVII and XVIII).
- **Violating a Court Order, perjuring,** and preventing testimony of a potential witness, in a scheme to provide a value of zero to an asset worth Millions of dollars (See Racketeering Acts XXVI, XXVII and XXVIII).
  - **Embezzling estate funds** until the embezzlement was detected and publicized (See Racketeering Act XVIII). Beyond the embezzlement aspect, this racketeering act resulted in depriving Plaintiff of his right to purchase the AT&T contract for which he was willing to pay a higher price. That liability alone, for Marks, is in the Millions.
  - Entering into the *Sham 9019 Settlement* with Fleet by making fraudulent misrepresentation using the Bankruptcy Court's ignorance and rubber-stamping approach to approving *RICO-Members'* motions.
  - Participating in the scandalous *Lower-But-Better-Bid* system in the Bankruptcy Court for sale of assets to insiders (See Racketeering Acts XVII and XVIII).
  - Initiating about eight adversary proceedings (See Appendix A-296), and doing so immediately after entering into the *Sham 9019 Settlement* agreement with Fleet through the improper influence over the Bankruptcy Court. The eight proceedings were commenced to increase his *Fees And Earning*, with Fleet's blanket approval. Marks' official explanation for his decision to settle the Fleet litigation was that the estate lacked funds to litigate them, while Marks had no hesitation to commence about 8 other litigations on behalf of the estate, all of which involved minimum amounts in dispute, in comparison with the Fleet matters which he was only too

eager to dismiss voluntarily (See Appendix A-274 thru A-281), abandon (See Appendix A-313), and/or settle (See Appendix A-423).

103. Marks' misconduct is detailed in the *Complaint* and in the description of Racketeering Acts I, II, III, IV, V, VI, XVII, XVIII, XIX, XX, XXI, XXII, XXIII, XXIV, XXV, XXVI, XXVII, and XXVIII and provides compelling evidence of his role in the direction of the affairs of the *Fleet-RICO Enterprise*.

104. Marks is also liable under RICO conspiracy as he conspired with other defendants, like Fleet, to agree to commit or aid in the commission of multiple racketeering acts. Such racketeering acts include those involved in the shutdown of WebSci and the numerous acts to obstruct justice by creating impediment in the pursuit of *Judicial Proceedings and Official Investigations*. Marks thereby conspired to violate the provisions under 18 U.S.C. § 1962(c) and is therefore also liable under 18 U.S.C. § 1962(d).

105. Marks' liability arises not only through his position as a trustee but also in his individual position as an attorney, and as an individual who embezzled funds for his own benefit through criminal means. Accordingly, Marks' liability extends beyond any protection that he may seek using the bond in bankruptcy proceeding.

106. Marks, though a professional attorney, is not a "person" outside the chain of command and based upon the foregoing facts presented, and the Racketeering Acts committed by him, adequately satisfies the operation and management test clarified under *Reves* ( See *Reves v. Ernst & Young*, 507 U.S. 170, 113 S. Ct. 1162 (1993)) as well as under the RICO conspiracy provision under 18 U.S.C. § 1962(d).

## Misconduct and basis of liability of Richard Honig

### Participation in the Operation or Management of the *Fleet-RICO Enterprise*

107. Defendant Honig is an attorney, and an individual, associated in fact, with the *Fleet-RICO Enterprise*. He represents Marks in the WebSci bankruptcy proceedings. Honig is among the lowest-rung participant in the conduct of the affairs of the *Fleet-RICO Enterprise*.

108. As an attorney of Marks, a bankruptcy trustee, Honig had a fiduciary and legal duty to parties in interest in the WebSci bankruptcy and was required to report Marks' racketeering activities or be *Legally Accountable*<sup>8</sup> for them, himself. Instead, Honig not only concealed, supported and even defended Marks' racketeering activities but himself committed racketeering acts.

109. Honig, for example, aggressively pursued, on behalf of Marks, the sale of the AT&T contract to the buyer proposed by Marks, even though a higher bid was made by Plaintiff, on grounds that the monies would be paid within a week. He should have known and did know of the months that followed in which the sale receipts were unaccounted for, either as receivables or as receipts, until Plaintiff noticed the fraud.

110. Honig did not merely play the role of an outside professional who participated in the affairs of the Enterprise but has participated in the conduct of the affairs of the *Fleet-RICO Enterprise*, by knowingly implementing decisions from upper-tiered *RICO-Members* like Fleet and DeLucia, and used his own broad discretion in doing so.

111. The knowing implementation of decisions of Marks and Fleet, by Honig, includes the commission of the following racketeering acts:

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<sup>8</sup> See United States v. Cueto, 151 F.3d 620 (7<sup>th</sup> Cir. 1998) for a discussion on RICO liability of an attorney, and specifically for obstructing justice.

- a) Making multiple fraudulent misrepresentations to the Court, on behalf of Marks, in documents and pleadings *Mailed* by him, filed with the Court and accessed by others through wire communication (For example, see Racketeering Acts I thru IV)
- b) **Tampering with the Bankruptcy Court docket, by deleting a document, from the docket entries, which are viewable online through PACER. The deleted document evidenced his fraudulent misrepresentation to the Court. It was Honig who tampered with the Bankruptcy Court docket while removing a document evidencing his own fraud, because it was he who filed it in the first place. (See Racketeering Acts V and VI). THIS IS A SERIOUS FEDERAL CRIME THAT UNDERMINES THE INTEGRITY OF THE FEDERAL COURT SYSTEM.**
- c) Willfully and knowingly allowing Marks to violate a Court order, to perjure, and to prevent testimony, and then participating in the conspiracy to conceal it (See Racketeering Acts XXVI, XXVII and XXVIII).
- d) Knowingly and willfully concealing the conflict of interest that Marks has with Fleet, and/or the ongoing changes in the conflict as Fleet continued to bribe Marks, directly and indirectly, by offering or promising to offer, *Fees And Earnings*, to the Norris Firm and its partners.
- e) Knowingly and willfully supporting and even frivolously defending the ongoing racketeering activities of Marks, as described throughout this Case Statement and more specifically in the description of the different racketeering acts. Honig supported and defended Marks' activities, despite been fully aware, as an attorney of Marks, that he himself shared liability for Marks' fraudulent actions,

specifically those performed with his explicit knowledge.

112. Honig, as a Bankruptcy Attorney and trustee who has worked for decades in the field, could easily foresee the injury that his actions would cause. For example, failure to litigate claims against Fleet would result in Fleet “obtaining” control over Plaintiff’s business and property, a logical conclusion that Honig could and did easily foresee.
113. Based upon the facts presented in the foregoing, Honig played a significant role in the direction and/or participation in the direction of the affairs of the *Fleet-RICO Enterprise*. Accordingly, Honig adequately meets the Reves Test for the operation or management of a RICO enterprise, as formulated by the Supreme Court in Reves v. Ernst & Young, 507 U.S. 170 (1993).
114. Honig and Marks are also liable under 18 U.S.C. § 1519, though not a RICO Predicate Act but nonetheless has serious criminal penalties in light of the recently enacted Sarbanes-Oxley Act and specifically because the provisions under § 1519 were enacted precisely for the same reason that Marks and Honig have committed and Fleet conspired with Marks to commit (See Racketeering Acts I thru VI for details).
115. At the minimum, Honig conspired with Marks to commit multiple predicate acts as he “adopted the goal of furthering or facilitating the criminal endeavor” of Marks and other defendants (See Salinas v. United States, 522 U.S. 52, 65 (1997) and Smith v. Berg 247 F.3d 532 (2001)). This includes all the racketeering acts associated with the filing of pleadings, with false statements, on behalf of Marks, or tampering with the Bankruptcy Court docket. Honig is, therefore, also liable under 18 U.S.C. § 1962(d) for RICO conspiracy.



## **Misconduct and basis of liability of Kartzman and the Mellinger Firm**

### **Participation in the Operation or Management of the *Fleet-RICO Enterprise***

116. At material times, Kartzman was a trustee of Plaintiff's individual Chapter 7 bankruptcy and thereby a *Government Official* (see definition).
117. Kartzman, in his position as a *Government Official*, accepted bribes in the form of *Corrupt Offers* from Fleet, directly or inuring to and/or through his law firm, the Mellinger Firm (See Racketeering Act XI)
118. Kartzman also influenced his associate Wyskowski to write a fraudulent certification favoring Fleet (See Racketeering Act XII).
119. Kartzman and the Mellinger Firm accepted *Corrupt Offer* from Fleet, before, after and while Kartzman was a trustee of Plaintiff's personal bankruptcy estate.
120. The alleged misconduct of Kartzman, is described in detail under Racketeering Acts XI, XII, XIII, XIV, and XV which specifically shows the flagrant acts in violation of his duties undertaken by him under the influence of bribery.
121. Kartzman's conduct was targeted towards Plaintiff. Kartzman participated in the conduct of the affairs of the Fleet-RICO Enterprise when he directed his associate Wyskowski to write a certification favorable to Fleet before the 341(a) meeting, without every having contacted debtor Plaintiff, by phone, in person or through any other means (See Racketeering Acts XI and XII).
122. Kartzman implemented Fleet's decisions using his broad discretion. He could have acted disinterestedly as the subsequent trustee, Mr. Wasserman (**See Appendix A-297 thru A-305 evidencing a diagonally opposite approach of the unbiased trustee, Mr Wasserman, compared to the conduct of Kartzman and Marks**), who was appointed after Kartzman's termination did, but Kartzman chose not to do so, driven by

the greed of more *Corrupt Offers* from Fleet, which he illegally sought and did get.

123. Kartzman mostly participated in the conduct of the affairs of the RICO-Enterprise, as a third-tier member, taking directions from the second-tier RICO member Louis T. DeLucia or through senior members of the Mellinger Firm. However, at other times, Kartzman himself operated at the second-tier level, taking direct instructions from Fleet and implementing them himself (such as tampering with Federal Evidence) or by directing his associate Wyskowski as she participated in the affairs of the *Fleet-RICO Enterprise*.

124. The Mellinger Firm participated in the conduct of the affairs of the Fleet-RICO Enterprise, by directing Kartzman, as it received the direct benefits of the *Corrupt Offers* from Fleet.

125. As Kartzman is a partner in the Mellinger Firm, the Mellinger Firm is also *Legally Accountable*, and therefore liable, for the conduct of Kartzman. The Mellinger Firm had a legal duty to prevent the commission of Kartzman's offenses, but not only failed to do so, but itself participated in the conduct of the affairs of the enterprise, thereby increasing its joint liability with Kartzman.

126. At the minimum, Kartzman and the Mellinger Firm conspired with Fleet to commit multiple predicate acts as they "adopted the goal of furthering or facilitating the criminal endeavor" of Fleet and other defendants in the enterprise (See Salinas v. United States, 522 U.S. 52, 65 (1997)). This includes the participation and/or actual commission of all the racketeering acts associated with the obstruction of justice undertaken by Kartzman, including the redaction of the 341(a) meeting tape recording, the adverse writing and continuous delays in the pursuit of claims against Fleet even as he was receiving litigation business from Fleet, and other acts flagrantly committed

under the direction of Fleet, through DeLucia. Kartzman and the Mellinger Firm are, therefore, also liable under 18 U.S.C. § 1962(d) for RICO conspiracy for having conspired to violate the provisions under 18 U.S.C. § 1962(c).

### **Misconduct and basis of liability of the Norris Firm**

#### **Participation in the Operation or Management of the *Fleet-RICO Enterprise***

127. Defendant Norris Firm, a law firm in which Marks is a Partner and Director, is associated in fact with the *Fleet-RICO Enterprise*, and has a solid business relationship with Fleet, including the following (See Appendix A-203 thru A-207):

- a) Admitted representation of Fleet in credit transactions, the magnitude of which was, willfully and knowingly, understated.
- b) Representation of Fleet in certain legal matters, involving credit transactions with Fleet's customers.
- c) Management by Fleet of the firm's trust accounts.
- d) A credit line with Fleet during material times valued over \$1 Million.
- e) Fleet owns a substantial interest, in an investment banking firm, Connexus Financial Partners, in which one of the partners of the Norris Firm, Robert G. Marcus, is a General Manager and himself a significant investor.

128. The Norris Firm fraudulently misrepresented the conflict of interest it had with Fleet when Marks was appointed a trustee of the WebSci estate. The Norris Firm fraudulently concealed, bribes accepted by it, directly and indirectly, through *Fees And Earnings*, which occurred during Marks' appointment as a trustee of the WebSci estate (Racketeering Act XXIII).

129. **The Norris Firm is involved in a pattern of racketeering, of its own, involving fraud and fraudulent conveyances of its client, even beyond the racketeering**

**activities conducted by Fleet in managing the affairs of the *Fleet-RICO Enterprise*. This is evident from the complaint filed by the Morganroths (See Appendix A-255) and the subsequent Third Circuit's Precedential Opinion holding it liable for aiding and abetting in the fraud of its client (See Morganroths v. Norris McLaughlin Marcus 331 F.3d 406 (3d Cir. 2003)).**

130. In that complaint, filed by the Morganroths, the Norris Firm directly aided and abetted in the transfer of, among other assets, about 430 acres of prime land in New Jersey for \$10.00, as a fraudulent conveyance to get assets out of reach of creditors of their client, John DeLorean. John DeLorean, upon information and belief, was himself indicted of RICO charges.

131. The Norris Firm, consisting of tens of attorneys, knew or should have known, specifically after having a nationwide negative publicity generated by the Third Circuit ruling against it, that it could be held liable for aiding and abetting in the fraud of its client. Yet it chose to ignore the adverse ruling against it and continued its pattern of racketeering activities involving fraud and fraudulent conveyances.

132. **In yet another act of deceiving its own client, the Norris Firm's attorneys fraudulently included a party in a will prepared for an aging client, and did so against the wishes of the client, and then concealed the conflict of interest (See complaint filed by the Estate against the Norris Firm at Appendix A-441).**

133. The Norris Firm participated in the operation or management of the *Fleet-RICO Enterprise* by playing a part in directing the affairs of the *Fleet-RICO Enterprise* through Marks, who under the Color of Official Rights, as a Bankruptcy Trustee, was easily influenced to do or not to do, acts which favored Fleet, an important client of the Norris Firm.

134. The Norris Firm, at all material times, knowingly implemented the decisions of Fleet, through Marks, using its broad discretion, even as it could fully foresee the injury to Plaintiff as a result of the actions, which it directed Marks to take, including steps to impede and obstruct justice and specifically the pursuit of claims against Fleet.
135. Plaintiff, at material times, had communicated with Richard Norris, Esq., the senior partner of the firm, and virtually all other members of the firm, through email, informing them of Marks' racketeering acts and demanding that action be taken to prevent the injury to Plaintiff. Mr. Norris and the other attorneys ignored Plaintiff's request, further evidencing that the Norris Firm was willfully and knowingly directing Marks' racketeering activities and cannot feign ignorance.
136. Details on the racketeering activities which were committed, or jointly committed by the Norris Firm, through Marks, are described under Racketeering Acts I, II, III, IV, V, VI, XIX, XX, XXI, XXIII, XXIV, XXV.
137. The Norris Firm, as a second-tier *RICO-Member* of the *Fleet-RICO Enterprise*, directed the affairs of the Enterprise through Marks and therefore adequately meets the requirements for RICO Liability.
138. As Marks is a Partner and Director in the Norris Firm, the Norris Firm is also legally accountable, and therefore liable, for the conduct of Marks. The Norris Firm had a legal duty to prevent the commission of Marks' offenses, but not only failed to do so, but actually participated in directing his activities as it continued to receive *Corrupt Offers* from Fleet. The Norris Firm thereby further increased its joint liability with Marks.
139. At the minimum, the Norris Firm conspired with Fleet to commit multiple predicate acts as they "adopted the goal of furthering or facilitating the criminal endeavor" of Fleet and other defendants in the enterprise (See Salinas v. United States, 522 U.S. 52,

65 (1997)). This includes the participation and/or actual commission of all the racketeering acts associated with creating impediments in the pursuit of claims against Fleet, undertaken by Marks, as the Norris Firm was itself representing Fleet in negotiating credit transactions as well as in litigation in the District Court of New Jersey. The Norris Firm is, therefore, also liable under 18 U.S.C. § 1962(d) for RICO conspiracy for having conspired to violate the provisions under 18 U.S.C. § 1962(c).

### **Misconduct and basis of liability of Richard Napierkowski**

#### **Participation in the Operation or Management of the *Fleet-RICO Enterprise***

140. At material times, Napierkowski was an officer of Fleet, and managed, along with other officers, the Managed Asset Division which substantially conducted the litigation between Fleet and Plaintiff. Upon information and belief, Napierkowski is now an officer of Bank of America.

141. Napierkowski implemented decisions of Fleet, and more specifically those involved in the commission of racketeering acts VII, VIII, IX, X, XI, XII, XIII, XIV, XV, XVI, XXII, XXVI, XXVII, XXVIII, XXIX, XXX, XXXI, XXXII, and XXXIII, as part of the Fleet-RICO Enterprise using his broad discretion. He could have chosen to act ethically and lawfully but he chose not to do so.

142. Many of the racketeering acts committed by Fleet were implemented through him. These racketeering acts are described in the supplement detailing individual racketeering acts, under Section 5(a), 5(b) and 5(c) of this case statement.

143. At material times, Napierkowski also conducted the affairs of the Fleet-RICO Enterprise on behalf of Fleet by directing DeLucia and others in the tier below him, in the multi-tiered ascertainable structure, of the Fleet-RICO Enterprise.

144. Napierkowski implemented Fleet's decision to bribe several *RICO-Members*, on behalf of Fleet, by making *Corrupt Offers*.

145. Napierkowski's conduct was part of the *Common Plan*, to the extent that it targeted Plaintiff and furthermore, was part of the larger *National Racketeering Scheme*.

146. Upon information and belief, Napierkowski is treated to golf outings and other social benefits from law firms who are *RICO-Members* as he makes *Corrupt Offers*, on behalf of Fleet.

### **Misconduct and basis of liability of Networking Technologies**

#### **Participation in the Operation or Management of the *Fleet-RICO Enterprise***

147. Networking Technologies and Integration, Inc. ("Networking Technologies") is a company that Marks hired, to perform certain tasks when he abruptly decided to shut the operations of WebSci. Marks did so without a court order, and took certain illegal actions, and actually committed certain RICO Predicate Acts and/or conspired with Marks and/or Fleet to violate the provisions under subsection 1962(c).

148. Networking Technologies, improperly, along with Marks, charged the estate exorbitant fees for taking computer backups, for example, at the rate of \$175.00 per hour.

149. Networking Technologies was fully aware that WebSci is in bankruptcy proceedings and that to perform any task, it would need prior approval from the Court. It was aware of this legal duty but failed to abide by it. It then corruptly, under the offer of hourly rate of \$175.00 to \$250.00, performed mundane but criminal and unlawful tasks, including the violation of Plaintiff's privacy, and taking possession of Plaintiff's personal assets.

150. Other unlawful acts that Networking Technologies committed directly, include the

violation of the Privacy Protection Act (PPA) codified at 18 U.S.C. § 2000aa, and the Electronic Communications Privacy Act (ECPA), codified at 18 U.S.C. § 2701. These acts, by themselves, are not substantive RICO Predicate Acts. However, they were performed corruptly with the intention of obstructing justice and creating impediments in the pursuit of Judicial Proceedings and Official Investigations and therefore qualify as RICO predicate acts under 18 U.S.C. §§ 1503, 1512 (See Racketeering Acts XIX, XX, and XXI).

151. In addition to committing the racketeering acts, Networking Technologies conspired with Fleet to commit multiple predicate acts as it “adopted the goal of furthering or facilitating the criminal endeavor” of Marks and Fleet and other defendants in the enterprise (See Salinas v. United States, 522 U.S. 52, 65 (1997)). This includes the participation and/or actual commission of all the racketeering acts associated with creating impediments in the pursuit of claims against Fleet, by dismantling and taking possession of all soft pleadings on Plaintiff’s computer, and invading his privacy, without a warrant or a court order. Networking Technologies, is, therefore, also liable under 18 U.S.C. § 1962(d) for RICO conspiracy for having conspired to violate the provisions under 18 U.S.C. § 1962(c).

**Misconduct and basis of liability of E-Precision**

**Participation in the Operation or Management of the *Fleet-RICO Enterprise***

152. E-Precision is the company that Marks retained to perform the same services that Networking Technologies had already performed.

153. E-Precision proposed to charge exorbitant rates of \$120.00 per hour to take computer backups even though these backups were taken and completed by Networking Technologies already and there was no reason to repeat them as not one byte had



changed since then.

154. E-Precision is an out of state firm, purportedly located in Georgia, that was retained by Marks to perform certain tasks when clearly the same tasks could have been performed by consultants in New Jersey, even arguendo the purported tasks of taking backups were not already completed, which they were.

155. **The scope of services to be performed by E-Precision was reduced after Plaintiff vehemently argued with Judge Gambardella, on the issues of rate and scope of services, and directly accused parties that there must be kickbacks involved for repeating a task, at exorbitant rates, and that too from an out-of-state consultant.**

156. The scope of services to be performed by E-Precision did not include providing any opinion on the Ensiva software.

157. E-Precision was aware of the scope of services to be provided, and the scope of the services which were specifically excluded, and had a legal obligation to abide by it. It failed to do so, corruptly persuaded by the exorbitant rates it was getting paid. Yet, Marks and E-Precision conspired to perform the services, which were explicitly and specifically excluded from the order. Through the performance of these services, Marks and E-Precision compiled a report, fraudulently representing the status and value of Ensiva, the software product of debtor **and Plaintiff.**

158. This report was concealed from all parties, except Fleet, until the hearing on the plan of liquidation and was provided to non-RICO-Parties only minutes before the testimony of Marks.

159. While performing a task not covered under the order may not independently be a racketeering task, it becomes one because E-Precision committed it as a corrupt endeavor to impede and obstruct the due administration of Justice in violation of 18

U.S.C. § 1503 as more fully described under Racketeering Acts XXVI, XXVII and XXVIII.

160. E-Precision did not conduct the affairs of the Fleet-RICO Enterprise. E-Precision participated in the conduct of the affairs. In the alternate, E-Precision conspired with Marks, and upon information and belief with Fleet, to violate the provisions under subsection 1962(c) and is therefore liable under subsection 1962(d) as it willfully and knowingly “adopted the goal of furthering or facilitating the criminal endeavor” of Marks and Fleet.

**Section 3. List the alleged wrongdoers, other than the defendants listed above, and state the alleged misconduct of each wrongdoer.**

**Non-Defendant Wrongdoers**

161. Barbara Wyskowski, Esq., (“Wyskowski”) is also an associate or a partner in the Mellinger Firm and performed services for Kartzman and/or the Mellinger Firm.

162. Gregory Reed is a law firm, located in New Jersey, which represents Fleet in litigation.

163. Mattleman, Weinroth & Miller is a law firm located at 401 Route 70 East, in Cherry Hill, New Jersey.

164. Mayer, Brown, Rowe & Maw is a law firm located 1675 Broadway, NY 10019.

165. Pellettieri, Rabstein and Altman (“Pellettieri Firm”) is a law firm located at 100 Nassau Park Boulevard, CN 5301, Princeton, New Jersey 08543-5301.

166. Richard Norris, Esq. is a named partner in the Norris Firm.

167. Robert G. Marcus, Esq. is a partner in the Norris Firm who manages the firm of Connexus Financial Partners in which he and Fleet are both substantial investors.

168. Todd Chasin, Esq., Flavio Kumoves and other attorneys of the Buchanan Firm.

169. There may be other co-conspirators, wrongdoers, aiders and abettors, who may be identified after discovery has taken place.

**Alleged Misconduct of non-Defendant Wrongdoers**

170. Richard Norris, Esq. is a named partner in the Norris Firm. At all material times, Richard Norris was kept informed about the activities of Defendants, and more specifically Marks, as they relate to a pattern of racketeering activities of the *Fleet-RICO Enterprise*. Richard Norris refused to take any remedial action, despite the availability of evidence of Marks' illegal activities, and did so to preserve and further the Norris Firm's business relationship with Fleet and its membership in the *Fleet-RICO Enterprise*.

171. Robert G. Marcus, Esq. was provided, upon information and belief, additional *Corrupt Offers* to influence Marks as he participated in the conduct of the affairs of the *Fleet-RICO Enterprise*.

172. Todd Chasin, Flavio Komuves and other attorneys participated, as associates, partners or employees of the Buchanan Firm, as it represented Fleet. Their individual role in the management and operation of the *Fleet-RICO Enterprise* could be ascertained during discovery and they may be added as defendants themselves if they meet the *Reves* test (*Reves v. Ernst & Young*, 507 U.S. 170, 113 S. Ct. 1162 (1993)) or they may be added as defendants for RICO conspiracy under subsection 1962(d).

173. Gregory Reed is a law firm which represents Fleet in litigation, and like the Buchanan Firm, is part of the *Fleet-RICO Enterprise*, as it participates in similar activities related to the conduct of the affairs of the enterprise. Gregory Reed was made *Corrupt Offers* to illegally and improperly influence the litigation involving Fleet and A&P Diversified Technologies, another former customer of Fleet.

174. The Pellettieri Firm was made *Corrupt Offers* by Fleet, and subsequently was influenced into violating its duty of fidelity<sup>9</sup> to both Plaintiff and WebSci, by concealing the conflict of interest it maintained with Fleet, even as it represented Plaintiff and WebSci as their attorneys. In furtherance of this act of bribery, the Pellettieri Firm purposefully timed the disclosure of their conflict with Fleet, to do the most possible damage to Plaintiff, leaving Plaintiff without representation, one week before a critical motion was to be filed by Fleet (Appendix A-43). This pattern of conduct was not only conspiratorial but was an effective means to impede and obstruct justice, and more specifically, the pursuit of claims that Plaintiff and WebSci had against Fleet.

175. The law firm of Mattleman, Weinroth & Miller, through RICO violations, caused injury to the property of Mr. Andrescavage, another victim of Fleet's pattern of racketeering activities, as explained further at the end of Section 5(c). The law firm did this by obstruction of justice and extortion, involving a series of unlawful acts, to obtain his property, in violation of the Hobb's Act.

176. Judge Rosemary Gambardella's inability to restrain the racketeering acts, due to the improper influence of RICO Members on her, driven by their overwhelming economic, legal and possibly political powers, or due to her Judicial Incompetence, or a combination of these factors, encouraged the racketeering acts during Bankruptcy Proceedings. The improper influence of the RICO Members on the Bankruptcy Court is listed under Section 2 of this case statement.

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<sup>9</sup> Commercial Bribery under 18 U.S.C. § 2C:21-10

**Section 4. List the alleged victims & state how each victim was allegedly injured.**

**Injury to Plaintiff**

177. Alleged Injury to Plaintiff and the direct causal relationship is discussed in detail under Sections 15 and 16 of this case statement, which describes the economic injury to Plaintiff and the direct causal connection of the injury to the RICO violation.

178. In addition, numerous parties had invested in the Ensiva software and the overseas offices, after Fleet and Marks, in collusion, decided to initiate the shutdown of the overseas offices as well as that of WebSci. These parties, including Plaintiff, were expecting huge returns from their investments, which was sabotaged by *RICO-Members* in an attempt to improperly prove that WebSci is insolvent, in an endeavor to obstruct justice.

179. **The injuries caused to these parties, including Plaintiff, were direct, independent, and were above and beyond, those caused to and/or through WebSci.**

**Injury to Other Customers and/or Guarantors**

180. Edward Andrescavage was injured in his property, through a pattern of racketeering activities by RICO members, as Fleet obtained his property in violation of the Hobb's Act and/or N.J.S.A. 2C:20-5: Theft by Extortion, by demanding in excess of \$112,000.00 for a credit that did not exceed \$15,000.00 to all creditors, by Fleet's own admission later.

181. Sherry Balance was injured in her business, Ken-Mar Finance, through a pattern of racketeering activities, directly resulting in economic damages alone, according to her, exceeding \$5 Million. Additionally, she has also suffered severe emotional distress which was an intervening step towards further economic losses.

182. Isidor Farash was injured, personally and in his business, Farash and Robbins, by

Fleet. He and his business suffered this economic injury through a pattern of racketeering acts, including extortionate means of collecting credit. Fleet committed this RICO predicate act, by inducing fear, through intimidation and threat of severing his credit, if he did not provide Fleet with additional collateral, above and beyond that provided in the credit agreement. Fleet subsequently made good on its various threats to render Farash's life impossible, by the filing of frivolous claims of Fraud against Farash personally, while supplying no details of how this alleged "fraud" was said to have occurred. These false accusations were maliciously made and intended to obstruct justice, as they caused impediments in the pursuit of Farash's own meritorious claims against Fleet, by diverting his limited resources toward defending the frivolous claims.

183. Marks Krantz was injured in his business, A&P Diversified Technologies, Inc., through racketeering activities, by Fleet, the Buchanan Firm, and other members of the *Fleet-RICO Enterprise* not listed herein. The pattern of racketeering activities include the bribery of rent receiver and/or his law firm through *Corrupt Offers*, and involved, once again, the Buchanan Firm and Louis T. DeLucia, Esq. as he directed these racketeering activities.

184. The entire Stranahan family from Pennsylvania was injured in its business through racketeering activities of Fleet and other members of the *Fleet-RICO Enterprise*, which included the making of *Corrupt Offers* to the Stranhan's attorneys, making frivolous allegations of fraud against them to obstruct justice, and making threats as Fleet obtained their property in violation of the Hobb's Act and other RICO Predicate statutes.

185. The law firm of Morganroth and Morganroth was a victim of racketeering activities by members of the Norris Firm, as more fully stated in their complaint (Appendix A-

255 thru A-266). Members of the Norris Firm defrauded creditors, like the Morganroths, through mail and wire fraud, misrepresenting the status of their client's assets, and then fraudulently transferring Millions of Dollars from the estate of their client, through sham transactions, beyond the reach of creditors.

186. Plaintiff has spoken to numerous other victims but does not have the time or the resources, at this time, to detail the conduct or the participation in the conduct of the affairs of the Fleet-RICO Enterprise, of *RICO-Members*, through a pattern of racketeering activities, which resulted in economic injury to these victims.

**Sections 5(a), 5(b), 5(c): Racketeering Acts are described in a Separate Appendix**

The description of each racketeering act is discussed separately in the Appendix. A separate appendix is provided to facilitate joinders by other victims.

**Plaintiff has attempted to plead with specificity to the best of his ability. Racketeering Acts XIX, XX and XXI allege how Marks obstructed justice by taking Plaintiff's computer, hard disk, pleadings, and other evidence, both soft and hard copies, in an attempt to create impediments in the pursuit of claims against Fleet.**

See New England Data Servs., Inc. v. Becher, 829 F.2d 286 (1<sup>st</sup> Cir. 1987) relaxing the pleading requirements because information needed is likely to be in the control of defendants.

**Other RICO Predicate Acts Committed by *RICO-Members***

187. The non-exclusive list presented in the foregoing is representative of the RICO predicate acts of members of the Fleet-RICO Enterprise but it is not a complete list.

188. Plaintiff reserves the right to supplement this RICO case statement with additional Racketeering Acts.

**Victim:** Edward Andrescavage

**Comments:**

Based upon discussion with Edward Andrescavage

189. This is a typical example of how Fleet and *RICO-Members* victimize unsuspecting homeowners by luring them into the extension of credit only to have their entire life-time savings taken away within a short time and the equity in their home stripped away.

190. The formalized casting of this misconduct, as a pattern of racketeering activities will be presented shortly by Mr. Andrescavage, in his Amended Joinder application:

- Sometimes in November 1999, Mr. Andrescavage was lured into a Home Equity credit line by Summit (See contract relied upon by Fleet at Appendix A-388 thru A-393). Summit subsequently was merged with Fleet. Among the false pretenses and misrepresentations *Mailed* to him, in luring him into entering into a home equity line of credit was an offer of a trip to Hawaii (Appendix A-394). The Trip never materialized and was a scam to lure him into signing the Home Equity line.
- In addition, based upon the circumstances leading to the purported signing of the agreement, as represented to Plaintiff by Mr. Andrescavage, it is clear that Fleet also flagrantly violated provisions under TILA (Truth in Lending Act) and RESPA (Real Estate Settlement Procedures Act). For example, there was no accounting provided of closing costs, there was no time provided for attorney review, and the



contract was never signed by Summit and most of the entries were left blank (See Home Equity Credit Line contract, at Appendix A-388, relied upon by Fleet to seek the default judgment).

- The Home Equity line was never drawn upon by Mr. Andrescavage. He recollects, drawing some funds, but not from Fleet's Home Equity line. In any event, Mr. Andrescavage did not withdraw more than \$15,000.00 from the entire home-equity line of credit, from all lines put together, from all creditors.
- On or around June 8, 2001, a complaint was filed against Mr. Andrescavage demanding a sum of \$112,576.19 (See Appendix A-398) and which relies upon a false certification without any evidence of how the debt was incurred (Appendix A-395) because it was never incurred. The complaint was purportedly delivered to someone at his home but he claims to have never received it. As a former truck driver, even if he had received it, he had little or no resources to litigate a big bank or have the understanding of what was demanded from him through a legal complaint without any letters or other information demanding any payment, prior to filing a lawsuit.
- Under these circumstances, on or around April 22, 2002, Fleet got a default judgment against Mr. Andrescavage for \$112,576.19 plus some additional fees (Appendix A-402).
- Fleet evicted Mr. Andrescavage from his home through police cars, sheriff's cars, and other law enforcement officers brought in to intimidate him into leaving his house that he had occupied for decades, in which he had raised his family, and has relied upon as his shelter for the remaining part of his life. This incident appears to be similar to Marks evicting Plaintiff from WebSci, though Marks' misconduct was

even more egregious because Marks brought private consultants without a warrant or prior court approval.

- Later Plaintiff informed Mr. Andrescavage of the OCC. Mr. Andrescavage wrote to the OCC and to the Bank demanding an explanation and accounting of monies owed by him which was represented in the complaint.
- **In a letter dated February 13, 2003, Fleet wrote to Mr. Andrescavage, informing him, that the amount owed by him was \$0.00 (See Appendix A-404).** Indeed that was the correct accounting because Mr. Andrescavage had signed the Home Equity Line but not borrowed from Fleet on that line.
- After he received the truthful information, he demanded that his house be returned to him.
- Fleet responded, in a letter dated May 29, 2003 (Appendix A-405), now claiming that he owed \$17,932.88 but that Fleet would settle the account for \$12,553.00. All this against a background that Fleet evicted Mr. Andrescavage by claiming that he owed in excess of \$112,576.19.
- Mr. Andrescavage then wrote to certain members of the Board of Directors of Fleet. In response, he was told, through correspondence dated July 3, 2003 (Appendix A-406), that the letter from Fleet indicating that he owed \$0.00 was sent in error.
- In a correspondence dated July 31, 2003, after Mr. Andrescavage was already evicted from his house on the basis that he owed Fleet \$112,576.19, Fleet sent yet another letter now claiming that he actually owed \$18,254.65 but that Fleet would negotiate with him to settle for less (See Appendix A-407).
- To date, Mr. Andrescavage has neither received any accounting of how Fleet could have demanded and got a judgment of \$112,576.19 nor the correct basis of the

actual amounts owed by him, if any, and/or as alleged.

- Mr. Andrescavage was virtually homeless for some time but has managed to get some accommodation recently.
- During this entire criminal episode, there were numerous racketeering acts of mail fraud, wire fraud, extortionate means of collecting credit, obstruction of justice and other predicate acts.

191. The facts presented about Andrescavage, is indicative of the economic injury, caused by *RICO-Members*, through a pattern of racketeering activities, to those who are unfamiliar with litigation procedures.

**Plaintiff has spoken to tens of such victims but does not have the resources to help each individual with their situation but hopes that once the RICO action is publicized, other victims could also be compensated, through class certification.**

**Victims:** Sherry Balance and Ken-Mar Finance.

**Comments:**

Based upon discussion with Sherry Balance:

192. Upon information and belief, she will be filing a Joinder Application shortly listing multiple RICO Predicate Acts committed by Fleet. As she is from out of state, Jurisdiction of this Court in this RICO complaint is further enhanced. For a summary of her allegations, please see her correspondence at Appendix A-411.

**Victim:** Mark Krantz

**Comments:**

Based upon discussion with Mark Krantz:

193. Fleet was involved in bribing the law firm of Gregory Reed and/or the Buchanan Firm in the litigation involving Fleet and A&P Technologies, a firm, owned partly or fully by Mr. Krantz.

194. The law firm of Gregory Reed was representing a rent receiver in a litigation adverse to Fleet. Fleet offered *Fees and Earnings* to the firm while the firm also represented the rent receiver.

195. Mr. Krantz sent an email recently to Plaintiff listing some of the misconduct of Fleet (See Appendix A-416).

196. The pattern of racketeering appears to be conducted by DeLucia for the Buchanan Firm, on behalf of Fleet.

**Victim:** Isidor Farash

**Comments:**

Based upon discussion with Isidor Farash:

197. See description of Racketeering Acts XXXV and XXXVI for details.

**Victim:** Kyle Stranhan, Craig Stranhan, family members and Pennsylvania Gear Corp.

**Comments:**

Based upon discussion with Craig Stranahan:

198. The Stranahans owned a family-operated business which was valued in excess of \$25 Million before the credit relationship started with Fleet.

199. The business was started several decades ago and had significant Defense Contracts.

200. Fleet committed numerous acts of mail and wire fraud, by making false representations to induce the company and its shareholders into certain transactions as part of a scheme to defraud the shareholders and to take over their business and property.

201. **Fleet also bribed the attorneys retained by the Stranahans**, midcourse in the litigation, by offering them *Fees And Earnings*, even while they were representing

Fleet.

202. Fleet resorted to the use of threats and intimidation to obtain the property and business of the Stranahans.

203. Fleet made numerous frivolous allegations against the Stranahans to obstruct justice as it prevented the Stranahans from using their resources to pursue the legitimate claims they had against Fleet.

204. See Appendix A-408 for letter from Mr. Craig Stranahan, specifically the criminal act of bribing attorneys, midcourse, during litigation.

**Victim:** Natalie Comeau

**Comments:**

205. Natalie Comeau was harassed continuously by Defendants Fleet and Marks as they continued to refuse to pay her child support monies for over a period of six months.

206. As a working single mother, she had no choice but to file a lawsuit in a Pro Se capacity which she did only to have defendants make fraudulent representations to the Courts.

207. Ultimately, unable to sustain the stress of the abuses, and unqualified to pursue tens of attorneys, she was unsuccessful in her efforts to litigate her claims. More specifically because the Court ruled that she had no standing.

208. Later she was asked by the Buchanan Firm to pay the cost of the appeal she had filed.

209. Buchanan Ingersoll, in violation of the Federal Debt Collection Practices Act, harassed her on several occasions, each occasion constituting a racketeering act, as described under Racketeering Act XXXIV. These racketeering acts are in addition to other racketeering acts that Defendants committed to harass her, which are not described here but will be added by her, in a separate joinder to be filed.

## **Hundreds of Other Victims**

210. Plaintiff has spoken to hundreds of victims of Fleet and has confirmed that the pattern of racketeering activities, which contributed to the objectives of the criminal schemes and the *Common Plan*, was and is a part of the *Nationwide Racketeering Scheme* of the *Fleet-RICO Enterprise*.

### **Section 5(d). State whether there has been a criminal conviction in regard to the predicate acts.**

211. Plaintiff is not aware of any criminal convictions at this time in regard to the predicate acts. Part of the reason is the fraudulent concealment of evidence of the criminal conduct through the pattern of racketeering activities. Filing of criminal complaints are avoided and/or obstructed by the bribery of adversary attorneys by RICO-Members.

### **Section 5(e). State whether civil litigation has resulted in a judgment in regard to the predicate acts.**

212. Due to a continued pattern of obstruction of justice by Defendants, as factually evidenced in the foregoing statements, there has not been a single claim, which has been litigated on the merits for there to be a judgment.

213. There have been numerous regulatory investigations and subsequent penalties fined by regulatory agencies against Fleet.

214. Among the regulatory fines imposed upon Fleet, in the recent past, are:

- a) A fine of \$59.4 Million for improper trading of securities, imposed by the SEC.

This is the very allegation that Plaintiff has repeatedly asserted against Fleet on numerous occasions and did provide evidence of the same to the SEC (See Appendix A-420).

b) A fine of \$140 Million for improper trading of Mutual Funds paid by Fleet (See Appendix A-418)

c) Numerous investigations into Fleet's violations of Anti-Tying Statutes by the SEC, the GAO, the Federal Reserve Board and other regulatory agencies (See Appendix A-108 thru A-116).

215. Additionally, there were also bribery charges filed against Fleet officers in other countries, and more specifically in countries in South America (See Appendix A-417).

216. The Norris Firm was found to be potentially liable for participating, aiding and abetting in the fraud and fraudulent conveyances of its client (See Morganroths v. Norris McLaughlin Marcus, 331 F.3d 406 (3d Cir. 2003)). The Norris Firm was involved in fraudulent transfers of the assets of its clients, including more than four hundred acres of prime land in New Jersey for \$10.00 (see Appendix A-255 thru A-266, ¶12). Such conduct evidences that members of the RICO Enterprise are birds with the same proverbial feathers.

**Section 5(f). Describe how the predicate acts form a "pattern of racketeering activity"**

217. The predicate acts form a pattern of racketeering activities because, among the elements evidencing a pattern, include the following:

- There were, and continue to be, a number of racketeering acts.
- The racketeering acts were of diverse types, beyond the garden-variety of mail and wire frauds.
- The racketeering acts were related and had a nexus to the *Common Plan and Nationwide Racketeering Scheme*.
- The racketeering acts involved multiple schemes or criminal episodes, conducted through an ascertainable command structure of the *Fleet-RICO Enterprise*.
- The racketeering acts, described under Section 5(a), 5(b) and 5(c), with the exception of acts XXXV and XXXVI, were targeted towards Plaintiff. The racketeering acts, described as they relate to other victims, were targeted towards those victims.
- The racketeering acts were not sporadic or isolated unlawful activities, but continued over several years, still continue, and there is a definite threat of continuity in the future.

These elements, are discussed individually, in detail below:

**Number of Racketeering Acts**

218. Plaintiff has described with specificity and evidence, more than 36 non-exclusive racketeering acts. In addition to Plaintiff suffering injury to his business and property from violation of Section 1962 of Title 18, there are other victims, from New Jersey, Pennsylvania, North Carolina, and other states, who suffered injury to their business and property as a result of other similar patterns of racketeering acts, which formed part of a larger pattern of racketeering activities. Upon information and belief, there are



numerous victims of the Fleet-RICO Enterprise and possibly of the corrupt practices in the bankruptcy court. But these victims neither have the resources or the academic background to pursue RICO claims against the Defendants.

### **Diverse Racketeering Acts**

219. As evidenced by the racketeering acts described under Section 5, these acts are not just garden-variety racketeering acts of mail and wire frauds, but include the more serious and flagrant acts of bribery, forgery, witness intimidation, bankruptcy fraud, embezzlement of estate funds, and other such criminal acts, covering not less than 12 different types of RICO Predicate Acts, including, 18 U.S.C. §§ 152, 153, 201, 894, 1341, 1343, 1503, 1512, 1951 and N.J.S.A. 2C:21-3, 2C:21-4, 2C:21-10, and 2C:21-13.

### **Relationship and Nexus to the Affairs of the Enterprise**

220. The different predicate acts are related to each other as they are intended to meet the objectives of the *Common Plan* targeted towards Plaintiff and the *Nationwide Racketeering Scheme* of the Fleet-RICO Enterprise targeted towards other victims. They are also related, by the nature of their activities, to the *Common Purpose* of the *Fleet-RICO Enterprise* but differ in that they are implemented through racketeering acts. The racketeering acts are related to such *Common Purpose* activities, of the *Fleet-RICO Enterprise*, as extension of credit, duties of a trustee, activities of attorneys, collection of credit, legal representation of a bank, administration of bankruptcy proceedings, and sale of assets. They do not involve racketeering acts unrelated to the *Common Purpose* of the enterprise, such as murder for hire, dealing in narcotics, or sexual exploitation. Such a relationship between each other and the nexus of the racketeering acts to the *Common Purpose* of the *Fleet-RICO Enterprise* provides “the

external organizing principle that renders them a [pattern].”<sup>10</sup>

### **Multiple Criminal Episodes**

221. The pattern of racketeering activities, described herein, includes a description of multiple criminal episodes, involving the commission of a diverse set of RICO predicate acts. In addition to Plaintiff, many others have been victimized by the commission of similar criminal episodes, involving *RICO-Members*, in schemes to take over the business and property of Fleet’s customers/guarantors of credit transactions.

### **Targeted towards Victims**

222. All the racketeering acts, with the exception of acts XXXV and XXXVI, described in detail under sections 5(a), 5(b) and 5(c), were targeted towards Plaintiff, and were part of the *Common Plan* to cause injury to his business and property, and to benefit the RICO-Enterprise. Other racketeering acts, affecting other victims, were also targeted specifically towards them, to meet the objectives of the *Nationwide Racketeering Scheme* of the enterprise, targeting victims, especially identified by *RICO-Members*.

### **Continuity and the Threat of Continuity in the Future**

223. The predicate acts did not provide a closed-ended continuity over a few months. On the contrary, Defendants conducted and/or participated in the conduct of the affairs of the enterprise, through a pattern of racketeering activity, which extended over several years and continue to do so, providing an open-ended continuity. The first predicate act alleged by Plaintiff, took place in the year 2000. The last racketeering act alleged occurred about two months before the filing of this case statement. Mr. Andrescavage and Ms. Balance, suffered from injury to their business and property, from predicate acts which began almost 4 years back. The Enterprise itself came into existence no later

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<sup>10</sup> United States v. Maloney, 71 F.3d 645, 661 (7<sup>th</sup> Cir. 1995).

than the year 1999. Upon information and belief, the pattern of racketeering activities started almost a decade back and has continued relentlessly. It is only now, through the research and substantial data-mining exercise of Plaintiff, has the pattern of racketeering been discovered with compelling evidence.

224. **A recent review of the litigation statistics of Fleet, in the state of New Jersey, provides that the filing of a disproportionately large number of lawsuits in comparison to other banks, on a per branch basis, continues. The number of lawsuits filed by Fleet in the first quarter of 2004, on a per branch basis, is still about twice that of its nearest competitor, Wachovia Bank, based upon ACMS (Automated Case Management System).**

225. Though some members of the Enterprise may change, the Enterprise itself has a continuity. The continuity and the threat of continuity of structure and personality of the Enterprise is evident from the fact that the structure, its personality and memberships, have all survived multiple mergers/acquisitions of the most dominant and controlling member, in the hierarchical and ascertainable structure of the *Fleet-RICO Enterprise*: Summit, which morphed into Fleet, and has, or will shortly be, metamorphosed further into Bank of America.

226. **The predicate acts are increasingly becoming a regular way of conducting Defendant's ongoing business and even surpassing their own standard of criminal activity as Defendants now are able to wield control on Federal Dockets, bribe bankruptcy trustees flagrantly, violate Court orders, and perjure with impunity.**

227. The threat of continuity exists, because, among other reasons, there is no evidence of any remedial actions taken individually by any of the Defendants or collectively by the *Fleet-RICO Enterprise*.

228. Plaintiff is in constant touch with other victims and has confirmed that other criminal episodes or schemes, which affected these victims, continue unabated. The letters included in the Appendix at A-388 thru A-416 confirms the continuity of the racketeering activities beyond those which have affected Plaintiff.
229. The nature of the affairs of the *Fleet-RICO Enterprise* is tied to the common requirements of individuals and businesses: The need to access credit at all times which is not a sporadic requirement. This encourages not only an ongoing continuity but with the merger with Bank of America, the threat of continuity is strengthened even further with the increased financial power of the member that primarily conducts the affairs of the enterprise: Fleet (and now or shortly to be Bank of America). The actors at Fleet who direct the activities of the RICO enterprise will continue to operate, albeit under the new name of Bank of America.
230. The Third Circuit Opinion against the Norris Firm, (See Morganroths v. Norris McLaughlin Marcus, 331 F.3d 406 (3d Cir. 2003)), involving flagrant fraudulent conveyances by attorneys of the law firm as well as yet another pending lawsuit (Appendix A-441) against the Norris Firm, involving the concealing of conflict of interest, evidences unlawful activities, which are increasingly becoming part of the regular business of RICO-Members.
231. The number of lawsuits filed by Fleet in the first quarter of 2004, on a per branch basis, is still the highest among all banks in New Jersey, based upon the latest analysis of the data by Plaintiff. This provide further evidence that there is an open-ended continuity to the RICO violations.

**Section 5(g). State whether the alleged predicate acts relate to each other as part of a common plan. If so, describe in detail.**

232. The alleged predicate acts relate to each other and are part of the *Common Plan* as described below:

**Common Plan**

233. The common plan was to take over the business and property of Plaintiff without litigating any claims, on the merits, against Fleet, and to distribute the proceeds among RICO-Members, including Fleet. It is more fully described under the definition of the term *Common Plan*. The objectives of the *Common Plan* were finally accomplished. To corroborate the success of the *Common Plan*, the following summarized financial information provides further evidence:

- a) Plaintiff's net worth was valued at the time credit was extended, by Fleet, at about \$30 Million (See Appendix A-12. More documentation is available) and is now almost zero.

Plaintiff's business, which was valued by Fleet at \$30 Million, prior to the extension of credit alleged to be \$5 Million, with allegations of a loan default made within months of extending the credit, has now been fraudulently valued by Fleet at below \$3 Million, and is being liquidated with the proceeds distributed almost entirely between Fleet and *RICO-Members*, **under the Sham 9019 Settlement entered between the trustee and Fleet.**

**All this was accomplished without having any claims of WebSci or Plaintiff litigated on the merits.**

**Relationship Between the Predicate Acts as Part of the Common Plan**

234. The initial mail and wire frauds were part of a scheme, involving false pretenses and representations, intended to lure Plaintiff into signing a guarantor agreement and a

credit transaction, which would provide control, to the RICO-Enterprise over the business and property of Plaintiff. Luring Plaintiff into entering into a credit and guarantor agreement, provided the foundation to *RICO-Members* to commit other racketeering acts, which followed. However, there are a number of racketeering acts committed, even beyond those arising out of the credit and/or guarantor agreements, and which affected Plaintiff directly.

235. Once the credit transaction was consummated, barely four months later, the credit was put into default, and the scheme to obstruct and impede the pursuit of *Judicial Proceedings And Official Investigations* was started, through the racketeering acts of bribery, by offering *Fees and Earnings* to attorneys retained by Plaintiff, the Pellettieri Firm. This scheme was successful and was part of the *Common Plan* to obtain Plaintiff's "property," in the form of control over Plaintiff's business, while providing *Fees and Earnings* to non-RICO Members: The Pellettieri Firm and the Buchanan Firm.

236. The actions of the *RICO-Members*, during the State Court litigation, included intimidation and harassment of witnesses, and employees, such as Ms. Brown and Mr. Patil, and was part of the *Common Plan* during this time to obstruct and impede the pursuit of *Judicial Proceedings and Official Investigations*.

237. The series of racketeering acts, until July 2002, led to WebSci and Plaintiff's bankruptcies.

238. More *RICO-Members* participated in the conduct of the affairs of the *Fleet-RICO Enterprise* after WebSci and Plaintiff had filed for bankruptcy. Initially, the schemes through the pattern of racketeering acts were intended to obstruct and impede the pursuit of *Judicial Proceedings And Official Investigations*, by unlawfully and

criminally influencing bankruptcy trustees Kartzman and Marks, through *Corrupt Offers* of bribery, who, under color of official rights and/or as *Government Officials*, were induced to do, or omit to do, their official acts/duties solely to benefit the *Fleet-RICO Enterprise* and *RICO-Members*.

239. The additional racketeering acts committed in bankruptcy, such as bribery, extortionate means of collecting an unlawful debt, preventing a witness's testimony, embezzlement of estate funds, and numerous other bankruptcy frauds, were also related to the *Common Plan* to enrich non-Fleet *RICO-Members*, to allow Fleet to obtain property and business of Plaintiff, without the need to have any claims against Fleet, litigated on the merits, and do this by continually creating impediments and obstructions to the pursuit of *Judicial Proceedings and Official Investigations*.

240. Defendants were able to commit and conceal the racketeering acts, by virtue of their position in the enterprise and in coordination with other defendants who commit other racketeering acts, in relationship to each other, to meet the objectives of the *Common Plan*. This is facilitated because the very "officials" such as trustees like Kartzman and Marks, whose legal, official and fiduciary responsibilities include the pursuit of claims against Fleet or reporting crimes committed by Fleet or other *RICO-Members* are themselves *RICO-Members*. For example, Fleet made unlawful threats of taking control over the business and property of Plaintiff and was able to carry this threat because Marks, the bankruptcy trustee, successfully obstructed justice and the pursuit of *Judicial and Official Proceedings*, by sabotaging claims against Fleet. Marks' misconduct, influenced through Fleet, prevented such acts of threats and extortionate means of collecting credit from been reported or litigated.

241. Defendants are able to conceal their crimes through their influence over certain

Courts, like certain bankruptcy courts, like Judge Gambardella, who issued an order restraining Plaintiff from communicating about the trustee to other attorneys, other than for the purpose of seeking legal advise.

242. The predicate acts committed by Defendants are necessary for the successful execution of the schemes to meet the objectives of the *Common Plan*. The benefits derived by the Defendants and the *Fleet-RICO Enterprise*, are tied to the relationship among the racketeering acts. For example, trustees delay the pursuit of claims against Fleet for months, often through their influence over the bankruptcy courts in getting indiscriminate adjournments, before finally abandoning the claims or entering into sham settlements with Fleet. This benefits Fleet as it is able to take over the business and property of customers and guarantors without having to litigate the customers/guarantors' claims.

243. Fleet knows that the longer the litigation is delayed, the more difficult it is for adversaries to have the resources to litigate Fleet. In the process, trustees benefit by extending the bankruptcy proceedings and thereby increasing their bankruptcy administration fees.

244. The predicate acts, also form a pattern, as the nature of activities involved, are directly related to, and are a part of, the *Common Purpose* of the affairs of the *Fleet-RICO Enterprise*, as explained under section 5 (f) of this case statement, forming a sufficient nexus between the racketeering activities and the affairs of the enterprise. For example, in addition to their role as trustees, in bankruptcies involving conflicts of interest vis-à-vis Fleet, trustees also represent Fleet in other legitimate non-conflicting litigations, as part of the affairs of the *Fleet-RICO Enterprise*.



**Section 6. State whether the existence of an "enterprise" is alleged within the meaning of 18 U.S.C. §1961(4).**

**If so, for each such enterprise, provide the following information**

- a. State the names of the individuals, partnerships, corporations, associations or other legal entities, which allegedly constitute the enterprise;**
- b. Describe the structure, purpose, function and course of conduct of the enterprise;**
- c. State whether any defendants are employees, officers or directors of the alleged enterprise;**
- d. State whether any defendants are associated with the alleged enterprise;**
- e. State whether you are alleging that the defendants are individuals or entities separate from the alleged enterprise, or that the defendants are the enterprise itself, or members of the enterprise; and**
- f. If any defendants are alleged to be the enterprise itself, or members of the enterprise, explain whether such defendants are perpetrators, passive instruments, or victims of the alleged racketeering activity.**

245. The *Fleet-RICO Enterprise* exists as an association-in-fact enterprise and will be referred to as the *Fleet-RICO Enterprise*. Additional information about this enterprise is provided below:

**Section 6(a). State the names of the individuals, partnerships, corporations, associations or other legal entities, which allegedly constitute the enterprise.**

246. The *Fleet-RICO Enterprise* consists of multiple entities/members. Among the members of the enterprise are:

- Fleet or Bank of America, as successor in interest to Fleet, a legal entity.
- Certain officers, employees and in-house counsel of Fleet, such as MAD<sup>11</sup> officer Richard Napierkowski and Gary Michael, Esq.
- Louis T. DeLucia, Esq. an attorney at the Buchanan Firm.

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<sup>11</sup> MAD is the internal acronym at Fleet for Managed Asset Division which is managed, among others, by Napierkowski. The division is responsible for the management of assets after Fleet puts loans into default.

- Todd Chasin, Esq., an attorney of the Buchanan Firm.
- Flavio Komuves, Esq. an attorney of the Buchanan Firm.
- The Norris Firm, a legal entity.
- Richard Norris, Esq. an individual.
- Gary N. Marks, Esq. an individual.
- The Buchanan Firm, a legal entity.
- Richard Honig, Esq., an individual.
- Steven Kartzman, Esq. an individual.
- The Mellinger Firm, a legal entity.
- Barbara Wyskowski, Esq. an individual.
- Precision E-Consulting, Inc. , a legal entity.
- Networking Technologies & Integration Inc. , a legal entity.
- Connexus Financial Partners, a legal entity.
- Pellettieri, Rabstein and Altman, a legal entity.
- Gregory Reed, a legal entity.
- Mattleman, Weinroth & Miller, a legal entity.
- Many other law firms and their attorneys who are given easy access to credit, and/or tens of litigations, each year to pursue, on behalf of Fleet, even when they have a conflict of interest, such as the law firms of Gregory Reed, the Norris Firm, the Buchanan Firm, and the Mellinger Firm.

247. These entities, along with others, form an “association in fact” enterprise, as an ongoing organization, through formal and informal relationships. Through their activities in the enterprise, they function as a continuing unit, though the membership of the enterprise may change, as new trustees and adversary attorneys are conflicted, to

assert improper influence, through unlawful acts initiated through *Corrupt Offers* of bribery. Notwithstanding such additions and/or changes in membership of the enterprise, the enterprise functions as a continuing unit and an ongoing association-in-fact organization.

248. While members, who constitute the enterprise, conduct or participate in the conduct of the affairs of the enterprise, and are a part of it, the members also have an existence, separate and distinct from the enterprise, for example, as attorneys, trustees, or professionals, practicing through their firms, on businesses unrelated to the conduct of the affairs of the *Fleet-RICO Enterprise* and/or unrelated to the *Common Plan* or the *National Racketeering Scheme*.

**Section 6(b). Describe the structure, purpose, function and course of conduct of the enterprise.**

249. The affairs of the enterprise are conducted mainly by Fleet as the main controlling entity in the ascertainable structure of the *Fleet-RICO Enterprise*. Fleet uses its dominant economic power and ability to provide *Fees and Earnings* to other RICO-Members, in inducing and influencing them, to participate in the conduct of the affairs of the *Fleet-RICO Enterprise*. Several of the larger law firms, and those associated in fact with the enterprise over a longer period, participate with more control, in the direction of the affairs than newer members. For example, the Buchanan Firm actively conducts, and not merely participates, in the conduct of the affairs of the Enterprise. The Buchanan Firm, through its senior attorneys, Louis T. DeLucia and Todd Chasin, Esq., initiates the offer of bribery through *Fees And Earnings* to trustees and adversary attorneys. New racketeering acts are then initiated and completed with the awareness and active participation of other *RICO-Members*.

250. The enterprise has an ascertainable structure separate and apart from the pattern of racketeering activity in which the Defendants engage. Fleet is the head of the command-chain, which is followed by more senior, larger and influential law firms, like the Buchanan Firm. Such firms form the second-level in the multi-tiered control structure. Lower-rung members of the enterprise include the professionals retained by trustees, such as Honig, E-Precision and Networking Technologies. Such low-rung professionals do not conduct, but rather participate in the conduct of the affairs of the Enterprise, like Defendant Honig, and/or conspire to do so, like E-Precision and Networking Technologies, and could be additionally liable under RICO conspiracy 18 U.S.C. § 1962(d).

251. The purpose of the Enterprise is as described under the definition of the term *Common Purpose*.

252. The *Common Plan* as it victimized Plaintiff is explained under Section 5(g).

253. The function of the *Fleet-RICO Enterprise* encompasses, other than racketeering activities, those activities that creditors, attorneys, and other professionals provide as part of their ongoing business activities such as those defined under the term *Usual Activities of the Enterprise*.

254. Defendants' control and participation in the *Fleet-RICO Enterprise* is necessary for the successful operation of Defendants' scheme. For example, if a trustee who was not a member of the *Fleet-RICO Enterprise* was appointed a trustee to the WebSci Bankruptcy, then Defendants' scheme to acquire Plaintiff's business and/or property and/or to cause injury to Plaintiff's business and property would not have succeeded. When Trustee Wasserman, the bankruptcy trustee who replaced Kartzman, and who is not a member of the *Fleet-RICO Enterprise*, was appointed as trustee to Plaintiff's

bankruptcy estate, he strived to abandon claims of Plaintiff so that Plaintiff could litigate them on the merits against Fleet (See Mr. Wasserman's letters as examples of a non-RICO-Member's ethical conduct and attempts to pursue claims against Fleet, at Appendix A-239 thru A-242, A-297 thru A-305). **Also see Section 20 for a comparison of the different approaches to the same issues in bankruptcy administration between Mr. Robert Wasserman, a non-RICO member, and the current trustee of Plaintiff's bankruptcy and Marks/Kartzman, who are RICO-Members and were bribed through Fees and Earnings by Fleet.**

255. Members of the *Fleet-RICO Enterprise* are aware of each other's presence, identity and roles in the enterprise and share a *Common Purpose*. The awareness of each other facilitates and makes possible the system required for the functioning of the enterprise. For example, Fleet and the Buchanan Firm, were aware of Kartzman and knew him, when Kartzman was assigned,<sup>12</sup> as trustee to Plaintiff's bankruptcy estate. This awareness and knowledge, prompted DeLucia and the Buchanan Firm to immediately contact Kartzman's associate, Ms. Wyskowski, and get a certification in support of Fleet, with false and damaging statements detrimental to Plaintiff, without ever communicating with Plaintiff. Similarly Fleet and the Norris Firm had an existing business relationship, beyond been aware of each other, as part of the association through the *Fleet-RICO Enterprise* which enabled them to further the *Common Purpose*. In the absence of the existing relationship, the racketeering acts, involving Marks and Fleet, would have been difficult to implement jointly.

256. The *Fleet-RICO Enterprise* functions as a continuing unit in the form of an ongoing

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<sup>12</sup> Upon information and belief, the appointment of Kartzman to Plaintiff's bankruptcy was orchestrated by RICO-Members.

organization to meet the objectives of the *National Racketeering Scheme*.

257. The constituent members of the *Fleet-RICO Enterprise* are aware that, unless they agreed to act and acted as an association-in-fact enterprise, their *Fees and Earnings* would be significantly affected and Fleet would be required to litigate claims of adversaries, on the merits, in a conflict-free environment, without any obstructions or impediments. This provides additional motivation for *RICO-Members* to cooperate with each other, through the commission of racketeering acts, to further the *Nationwide Racketeering Scheme* of obtaining mutual material benefits.

258. The *Fleet-RICO Enterprise* continues actively to disguise the nature and extent of Defendants' wrongdoing and to conceal Defendants' participation in the conduct of the affairs of the Enterprise in order to avoid and/or minimize their mutual exposure to criminal penalties and civil damages. **For example, Marks' perjury and violation of a Court order, with flagrant criminal intent, which should, under the applicable statute and sentencing guidelines, result in his imprisonment for at least 5 years, possibly more, was defended by Fleet providing frivolous arguments, because it was Fleet that had directly benefited from the perjury and violation of the court order.**

259. The *Common Plan* which victimized Plaintiff, is part of the *Nationwide Racketeering Scheme* of the *Fleet-RICO Enterprise*, to take over the property and business of its customers and/or guarantors, and to enrich *RICO-Members*, through a course of conduct that is described in detail under Section 2, Subsection: **Course of Conduct**.

**Section 6(c). State whether any defendants are employees, officers or directors of the alleged enterprise.**

260. The alleged enterprise is not a legal entity and therefore does not have any formal employees, officers or directors, in the formal sense. The alleged enterprise is an association in fact enterprise with members themselves as individuals, corporations or partnerships, or employees of corporations or partnerships, which may themselves be members of the *Fleet-RICO Enterprise*.

**Section 6(d). State whether any defendants are associated with the alleged enterprise.**

261. All the Defendants are associated with the *Fleet-RICO Enterprise* as the enterprise is an association-in-fact enterprise.

262. Each defendant has committed and/or conspired to commit several RICO racketeering acts as part of the pattern of racketeering activities and conducted or participated in the conduct of the affairs of the *Fleet-RICO Enterprise*.

**Section 6(e). State whether you are alleging that the defendants are individuals or entities separate from the alleged enterprise, or that the defendants are the enterprise itself, or members of the enterprise.**

263. The Defendants are members of the association-in-fact enterprise, and also have an existence separate and distinct from the Enterprise. The Defendants are not the enterprise itself.

**Section 6(f). If any defendants are alleged to be the enterprise itself, or members of the enterprise, explain whether such defendants are perpetrators, passive instruments, or victims of the alleged racketeering activity.**

264. The Enterprise and the Defendants are separate. Defendants are members of the association-in-fact enterprise and are perpetrators. See RICO Predicate Acts under Section 5 to see how each defendant actually committed and/or conspired to commit RICO Predicate Acts which form a pattern of racketeering activities.

**Section 7. State and describe in detail whether you are alleging that the pattern of racketeering activity and the enterprise are separate or have merged into one entity.**

265. The pattern of racketeering activity is separate from the enterprise.

266. *RICO-Members* also perform other activities, as part of the *Fleet-RICO Enterprise*, which are separate from those associated with the pattern of racketeering activities. This is clear from understanding the definition of the terms *Common Purpose* and *Usual Activities of the Enterprise*. For example, the Norris Firm conducts seminars for Fleet. This activity, by itself, independently, is not a racketeering act. Similarly, non-Fleet *RICO-Members* represent Fleet in legal matters which are separate from the representations that are involved with the pattern of racketeering activities of the *Fleet-RICO Enterprise*. Non-Fleet *RICO-Members* also represent each other. For example, Honig represents Marks and the Norris Firm possibly represents other trustees or Honig, a trustee himself in other bankruptcy proceedings, represents other trustees. These are examples of activities of the Fleet-RICO Enterprise: One RICO-Member providing services to another. **Such a mix of legitimate, legal, sometimes incestuous, and improper relationships, in addition to the pattern of racketeering activities, among the *RICO-Members*, makes the existence of the RICO enterprise possible, beyond the pattern of racketeering activities.**



267. The financial power of Fleet, the unlawful influence over trustees, the trustees' control over assets and claims of the bankruptcy estates, Fleet's control over providing litigation business, involving hundreds of litigations, to trustees and attorneys, and executing illegal schemes in collusion with each other, all provide proof that the associations between members of the enterprise were, and are, regularly and repeatedly utilized to make possible the pattern of racketeering activity. **The enterprise is not made possible because of the existence of the pattern or racketeering activities. Rather, the pattern of racketeering activities is facilitated because of the existence of the enterprise. Therefore, if the pattern of racketeering acts were to be removed from the equation, the *Fleet-RICO Enterprise* would still survive but without the enterprise, the pattern of racketeering activities would not be possible. The *Fleet-RICO Enterprise* is therefore an essential element of the RICO violation and is distinctly separate from the pattern of racketeering activities.**

268. The *Fleet-RICO Enterprise* has a structure that is distinct from that inherent in the pattern of racketeering activities, though at times, it may overlap. The affairs of the Fleet-RICO Enterprise are conducted, mainly, by Fleet with other *RICO-Members* participating in the conduct of the affairs of this Enterprise. The precise nature of the structure and the distinction between the structure as it relates to the RICO enterprise and the pattern, can be further identified after discovery.

269. Furthermore, the pattern of racketeering activity is also used to influence and control the conduct of the entities within the enterprise as well as the enterprise and the affairs of the enterprise.

270. Though the pattern of racketeering activity and the enterprise are separate, the pattern advances the goals of the enterprise and benefits/enriches its members.

**Section 8. Describe the alleged relationship between the activities of the enterprise and the pattern of racketeering activity. Discuss how the racketeering activity differs from the usual and daily activities of the enterprise, if at all.**

**Activities of the Enterprise**

271. The activities of the Fleet-RICO Enterprise are defined under the term *Usual Activities of the Enterprise*.

**Pattern of Racketeering Activities**

272. The racketeering activities of the *Fleet-RICO Enterprise* include acts of bribery, forgery, extortion, extortionate means of collecting credit, bankruptcy fraud, Mail and Wire fraud, Obstruction of Justice, Witness tampering, and other such acts as more fully described in the Racketeering Acts under Section 5. The reasons why the racketeering acts constitute a pattern are set forth under section 5(f) of this case statement.

**Relationship and Difference between the Activities of the Enterprise and the Pattern**

273. The nature of activities involved in the pattern of racketeering activities is related to the nature of the *Usual Activities of the Enterprise*. The relationship and difference of the usual activities of the *Fleet-RICO Enterprise* with that of the pattern of racketeering activities can be aptly understood by comparing the *Fleet-RICO Enterprise* to a RICO pharmaceutical enterprise. The usual activities of this hypothetical pharmaceutical enterprise would be the manufacture of legitimate drugs, but the pattern of racketeering activities would involve the production and distribution of narcotics and other illegal substances. Such a RICO enterprise could use the same “machinery” to create legitimate drugs as well as to create illegal substances. Additionally, it would leverage a

large part of its large sales force, which distributes legitimate drugs to also sell narcotics and illegal substances.

274. Similarly, the *Fleet-RICO Enterprise* uses the same attorneys and other professionals, who are involved in lawful *Usual Activities of the Enterprise* but who also conduct or participate in the conduct of the affairs of the *Fleet-RICO Enterprise* through a pattern of racketeering activities. The mutual association, the existing relationships, the implicit and explicit agreements among *RICO-Members*, and other such factors, serve as the “machinery” to further the pattern.

275. The nature of the racketeering acts, which constitutes a pattern are based upon the usual activities of the enterprise, but implemented and commissioned through, knowing and willful violations of criminal statutes. For example, the usual activities of the enterprise would allow Fleet to offer *Fees And Earnings* opportunities to Kartzman. However, knowingly and willfully doing so, through *Corrupt Offers*, while Kartzman is a trustee of a debtor who is in litigation with Fleet, and then inducing Kartzman to do, or omit to do, his official duties/acts or influence him into other acts, under color of official rights, incontrovertibly constitutes a racketeering act. **The numerous racketeering acts form a pattern for reasons explained under Section 5(f) of this case statement.**

276. The unlawful activities of members of the enterprise, at times, also extend to non-Fleet transactions, as evidenced by the fraudulent conveyances made by the Norris Firm. See complaint filed by the Morganroths against the Norris Firm (Appendix A-255).

**Section 9. Describe what benefits, if any, the alleged enterprise receives from the alleged pattern of racketeering.**

277. The *Fleet-RICO Enterprise* is an association-in-fact enterprise. The *Fleet-RICO Enterprise* benefits from the alleged pattern of racketeering activities because it enables the enterprise and its members to succeed in the commission of racketeering acts in the guise of its normal course of business activities. This, in turn strengthens the “association” aspect of the enterprise lowering the “cost of success” for every endeavor of the enterprise and its members. The pattern of racketeering activities also provides professional success to the activities of the enterprise, and subsequently to *RICO-Members*. Fleet and attorneys who represent it are allowed to extinguish claims against Fleet without ever having to address their merits. In return, *RICO-Members*, who provide professional services, get fully paid for their services because Fleet and other *RICO-Members* support the payments of exorbitant fees, and never question the need, rate, amount billed, justification, or QOS (Quality Of Service) provided. The “cost of success,” as a result of the overwhelming influence of the enterprise, to *RICO-Members*, is virtually zero.

278. Throughout the WebSci bankruptcy proceedings, *RICO-Members* questioned Plaintiff’s standing to oppose any motion filed by *RICO-Members* asserting that Kartzman and Marks were the only active entities in the proceedings to provide any opposition to Fleet. Both Marks and Kartzman are active members of the RICO enterprise. This benefited Fleet in getting all its motions in bankruptcy proceedings, in the WebSci bankruptcy, getting approved, virtually unopposed, while non-Fleet *RICO-Members* benefited in receiving payment of fees in bankruptcy administration, with full support from Fleet, such as \$1 Million in administration fees to Marks, Honig and others, and payments at the rate of between \$175.00 to \$250.00 per hours to take

computer backups (See Appendix A-366 for invoice submitted by the consultant) and repeat the same task again with another consultant, from out of state, without any need to do so. **The approval by the Bankruptcy Court provides incontrovertible evidence of the improper influence over the Court by the *RICO-Members*.**

279. The increased financial success of each member of the enterprise, is used to widen the improper influence that the enterprise can exert using the collective power derived from the strength of its individual members. As described under the subsection “Improper Influence over the Bankruptcy Court” under Section 2, this influence has now flagrantly spread to even the Federal Courts and allows *RICO-Members* to perjure, to violate court orders and tamper with Court docket sheets with complete impunity, thus far.

280. The benefits, to the enterprise and its members, are secured at the expense of the victims of the schemes: Customers and Guarantors of Fleet.

281. As an example, the summary of benefits to the *Fleet-RICO Enterprise* and *RICO-Members* resulting from injury to Plaintiff, which will help further strengthen the association among RICO members, is factually presented below:

- Plaintiff’s net worth was valued at the time credit was extended, by Fleet, at about \$30 Million and is now almost zero.
- Plaintiff’s business, which was valued by Fleet in tens of Millions, prior to the extension of credit alleged to be \$5 Million, with allegations of a loan default made within months of extending the credit, has now been fraudulently valued by Fleet at below \$3 Million, and is being liquidated with the proceeds distributed entirely between Fleet and *RICO-Members*, under the *Sham 9019 Settlement*.
- Fleet will get all the assets of the WebSci estate without litigating, so far, any of the

claims of the estate against Fleet, on the merits.

- The Buchanan Firm has already billed or will bill no less than \$1.5 Million in legal fees to Fleet.
- The Norris Firm and the Mellinger Firm has received additional business from Fleet.
- Marks, Honig, and his professionals have received and/or will receive more than \$1 Million in professional fees for doing virtually nothing with the Bankruptcy Estate other than to continually obstruct Plaintiff's efforts to litigate his claims against Fleet.

282. **The ability to conceal the transfer of funds among *RICO*-Members, by adjusting fees in different proceedings, is facilitated through other contractual relationships that exist among them, through incestuous legal representations and other business relationships.**

283. It is unclear who else is bribed in such matters, but the flagrancy of such corrupt activities leave little doubt that such activities are not inadvertent mistakes.

**Section 10. Describe the effect of the activities of the enterprise on interstate or foreign commerce.**

284. The impact of the Fleet-Enterprise upon interstate commerce is incontrovertible. Fleet conducts its business in multiple states and countries. With its acquisition by Bank of America, the number of states and countries in which the affairs of the Enterprise could be conducted will only increase. The RICO predicate acts described in this case statement took place in multiple states. The different members, themselves, operate in multiple states. The Norris Firm and the Buchanan Firm, operate in multiple states. Put together, the Fleet-Enterprise clearly has a substantial impact upon interstate and foreign commerce.

**Section 11. If the complaint alleges a violation of 18 U.S.C. §1962(a), provide the following information:**

**a. State who received the income derived from the pattern of racketeering activity or through the collection of an unlawful debt; and**

**b. Describe the use or investment of such income.**

285. The complaint does not allege a violation of 18 U.S.C. § 1962(a).

**Section 12. If the complaint alleges a violation of 18 U.S.C. §1962(b), describe in detail the acquisition or maintenance of any interest in or control of the alleged enterprise.**

286. Defendants did acquire control over WebSci, a legal entity, which qualifies as an Enterprise, as that term is defined under 18 U.S.C. § 1961(4), and did so through a pattern of racketeering activities, and/or through the collection of an unlawful debt. However, since the damage claims arising out of this RICO violation would overlap with the damage claim under RICO violation under 18 U.S.C. § 1962(c), Plaintiff is not expounding on this specific violation at this time, but reserves the right to do so in the future. If plaintiff chooses to do so at a later time, Plaintiff will rely upon the same pattern of racketeering activities as described herein for RICO violation under 18 U.S.C. § 1962(c).

**Section 13. If the complaint alleges a violation of 18 U.S.C. §1962(c), provide the following information:**

**Section 13(a). State who is employed by or associated with the enterprise; and**

287. See Section 6 (a) and Section 6(c) for a list of Defendants and others associated with the association-in-fact enterprise: *Fleet-RICO Enterprise*. In addition to those listed in the aforementioned sections, there are other bankruptcy trustees, rent receivers, fiscal agents, and other attorneys, who are associated with the *Fleet-RICO Enterprise*. A precise and complete list can only be compiled after further discovery.

**Section 13(b). State whether the same entity is both the liable "person" and the**

**"enterprise" under §1962(c).**

288. No. The liable persons, Defendants, are different from the *Fleet-RICO Enterprise*.

**Section 13(c). Describe specifically how the defendant(s) participated in the operation or management of the enterprise.**

289. Plaintiff incorporates responses to Sections §§ 5, 8, 6(a) - (e), here, by reference.

Specifically, Section 2 specifically describes the participation in the Operation and Management of the RICO Enterprise, by each Defendant along with their misconduct and basis of liability. Additionally, the following information is offered:

290. All Defendants have not just committed sufficient racketeering acts, to be liable under RICO violations, but have knowingly implemented decisions made collusively with other *RICO-Members*, and have used their broad discretion in conducting or participating in the conduct of the affairs of the *Fleet-RICO Enterprise*.

291. While Fleet has largely conducted the affairs of the enterprise, so has the Buchanan Firm and DeLucia, although to a lesser extent. Other named Defendants have mostly participated in the conduct of the affairs of the enterprise.

292. All Defendants could foresee the injury to be caused to Plaintiff as a direct result of both their individual racketeering act as well as the compounded injury caused due to the pattern of racketeering activities.

**Section 14. If the complaint alleges a violation of 18 U.S.C. §1962(d), describe in detail the alleged conspiracy.**

293. The complaint also alleges RICO conspiracy involving certain defendants, who in addition to actually conducting or participating in the conduct of the affairs of the *Fleet-RICO Enterprise* under 18 U.S.C. § 1962(c), and actually committing predicate acts, as explained in the foregoing, also conspired with other *RICO-Members* to commit other RICO predicate acts and thereby became additionally liable under the provisions



under 18 U.S.C. § 1962(d).

294. The defendant conspirators are also alleged to be direct defendants under 18 U.S.C. § 1962(c). **The conspiracy claims under subsection 1962(d) are brought in addition and/or in the alternative to the substantive RICO violation under subsection 1962(c).**

295. The defendants under the provisions of 18 U.S.C. § 1962(d) include the Norris Firm, the Mellinger Firm, and the Buchanan Firm who are also defendants under 18 U.S.C. § 1962(c).

296. The defendants alleged to be conspirators are all law firms which are themselves *RICO-Members* and had implicit and/or explicit agreement with other *RICO-Members* who are partners in their firm that the partner will commit two or more racketeering acts constituting a pattern in return for Fleet's *Corrupt Offers*.

297. Accordingly, the Mellinger Firm is also liable, in addition and/or in the alternative, under RICO conspiracy statute, for conspiring and/or agreeing to Kartzman committing two or more racketeering acts as explained under Section 5(a), 5(b) and 5(c).

298. The Norris Firm is also liable, in addition and/or in the alternative, under RICO conspiracy statute, for conspiring and/or agreeing to Marks committing two or more racketeering acts as explained in the description of Racketeering Acts under Section 5(a), 5(b) and 5(c).

299. The Buchanan Firm is also liable, in addition and/or in the alternative, under RICO conspiracy statute, for conspiring and/or agreeing to DeLucia committing two or more racketeering acts as explained in the description of Racketeering Acts under Section 5(a), 5(b) and 5(c).

300. The three alleged conspirators had knowledge of the independent wrong by the

primary actors who committed the predicate acts, as these actors included those who were partners/employees<sup>13</sup> of the firm, and the conspirators are therefore *Legally Accountable*. These firms also provided substantial assistance, to the primary actors, in the achievement of the RICO violations under subsection 1962(c).

### **Section 15. Describe the alleged injury to business or property.**

#### Economic Loss

301. Plaintiff is alleging injury flowing to him directly and not only as a shareholder of WebSci. Additionally, Plaintiff is asserting that Plaintiff's loss of shareholder status of WebSci, itself was caused by the RICO defendants, through fraud and RICO violations. Defendants also controlled WebSci at material times, including during the time Plaintiff was a shareholder. During material times, Marks also, through a pattern of racketeering activities, refused to pursue corporate claims against Fleet, despite Plaintiff's continued demands that he do so. **But for the Defendants' RICO violations and/or other fraudulent misconduct, Plaintiff would have continued to remain a shareholder of WebSci.** There are direct injuries to Plaintiff from these racketeering activities, which are described with specificity, under Sections 5(a), 5(b), and 5(c), related to the obstruction of justice statutes.

302. **The need to filing for bankruptcy was itself caused by the racketeering activities of defendants Fleet, DeLucia, Napierkowski and the Buchanan Firm. Therefore, and because there were racketeering activities during the bankruptcy itself, events in bankruptcy cannot be held as a defense, by Defendants, to the RICO violations.**

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<sup>13</sup> Additional entities may be liable under 18 U.S.C. § 1964 for acts of entities' employees under the doctrine of respondeat superior and agency principles. Brady v. Dairy Fresh Products, Co. 974 F.2d 1149 (1992 CA9 Cal).

303. Plaintiff is the founder and was the sole shareholder of WebSci Technologies, Inc. and in accordance with the interpretation of “business and property” under 18 U.S.C. § 1964, his property and business included the house in which he resided, the WebSci business, including all its assets, R&D in which Plaintiff had also invested personally, overseas offices of WebSci in which Plaintiff had also invested personally, and any other assets which fall within the definition of business and property, as applicable to RICO.

304. Plaintiff’s net worth was estimated by Fleet to be around \$30 Million (See Appendix A-12) around the time the racketeering activities of Defendant Fleet started. Based upon investments, made in global infrastructure and R&D, **including those made personally by Plaintiff**, Plaintiff’s net worth was expected to increase exponentially, if the pattern of racketeering activities had not commenced. Plaintiff’s net worth, at this time, as a direct result of injuries suffered in his business or property by reason of a violation of section 1962, by Defendants, is almost zero. **As a result of the RICO violations, Plaintiff economic injury through the loss of these assets alone, is valued in tens of Millions of Dollars.**

305. Plaintiff had invested significant personal funds in the development of the Ensiva software, above and beyond those invested through WebSci. The software’s core concept was sufficiently impressive to have impressed Corporations like Microsoft. After review of the design documents, Microsoft invited Plaintiff, at its own expense, to come to Seattle and meet its CEO, Mr. Bill Gates, at the time of the inception of the product. According to Marks’ own evaluator, who was himself retained to do the evaluation under improper circumstances, involving violation of a Court Order, here are some comments (The Report Starts at Appendix A-376):

“..The Ensiva product under development by WebSci Technologies was indeed technically intriguing, unique and possibly ahead of its time...” (See first bullet point on page 3 of report, at Appendix A-378).

“...we think there is no other product out there, which combines Ensiva’s breadth of functionality and level of integration, (and possibly its price point),...” (See Appendix A-378, page 3, 3<sup>rd</sup> bullet point).

“...Based on the product documentation, manuals, and promotional materials found, we believe the Ensiva product to be quite unique and technically intriguing. It has seems to be many functional and technical strengths which could make a good selling proposition. It encompasses a huge functional breadth and complexity...” (See report at Appendix A-384, starting at bottom of page 9).

“Given the right marketing approach and the right buyer, the rights to the product could have been sold for multiple million dollars – back in 2002.” (See report at Appendix A-378, approximately in the middle of the page).

306. As indicated in the report of E-Precision, the purported consultant hired by Marks, the rights to the product could have been sold for “multiple million dollars - back in 2002.” This is the time period during which the entire finances of WebSci were controlled by Fleet, first through the Fiscal Agent, who was actually retained by Fleet, but more importantly, by Marks in the later part of 2002. Fleet and Marks set a value of zero to the product, without any due diligence, at materially important times, and specifically to declare WebSci insolvent.

307. The success of the Ensiva product should have increased the net worth of Plaintiff to Several Hundred Million Dollars as it was targeted to be the one-stop solution for all Internet Publishing needs and was on track to be the product for Internet Publishing just as Google has become synonymous with Internet searching. **Plaintiff suffered economic injury as a result of the sabotaging of Ensiva by Defendants, and this injury is in the Hundreds of Millions of Dollars.**

308. Plaintiff had also built overseas offices in Romania, Russia and India, including investments from his own personal funds, all of which were indiscriminately abandoned by Marks and Fleet, under the direction of Fleet, as it conducted the affairs of the enterprise, through the Buchanan Firm. See Appendix A-333 thru A-336 of evidence that the overseas offices were registered. This evidence was constantly provided to Fleet and Marks. Fleet, at material times, set a value of zero to these offices, to fraudulently declare WebSci to be insolvent. The tangible and intangible value associated with the overseas offices was in the Millions. The injury caused to Plaintiff as a result of the indiscriminate abandonment of these offices, through RICO violations, is in the Millions.

309. The economic injury to Plaintiff in his business and property stems from injury caused to his business and property, before the filing of the bankruptcy as well as after the filing of the bankruptcy. This injury to business and property of Plaintiff, as a result of the RICO violations, goes beyond the damage to and/through WebSci.

310. Plaintiff's damages, as a result of the racketeering activities, is also derived from other racketeering acts, as part of the RICO violation. For example, Plaintiff was deprived of the right to purchase the AT&T contract, during the bankruptcy, through a pattern of racketeering activities. **Plaintiff has significant experience in running a consulting business, and the RICO violations and the associated racketeering activities, which were used to deprive Plaintiff of the right to purchase the AT&T contract, caused economic injury valued in the Millions.**

311. Additionally, Plaintiff was "injured in his property," as he lost his personal property, such as his house, as a direct and/or proximate cause of the RICO violations by Defendants. **Plaintiff lost his life insurance coverage as he was unable to pay the**

**premium, as his income was almost zero for 6 months through RICO violations.**

312. Plaintiff is also seeking injury for personal injuries which may be intervening steps in the infliction of economic harm.

313. Plaintiff is also seeking damage compensation for the substantial expenses incurred in investigating RICO violations. **The injuries to Plaintiff, in his business and property, listed herein, are non-exclusive.**

**Section 16. Describe the direct causal relationship between the alleged injury and the violation of the RICO statute.**

**Direct Causal Relationship**

314. There was a direct causal relationship between the injury caused to Plaintiff's business and property and the RICO violation(s), as described in further detail, below:

315. The mail and wire fraud racketeering acts, led to the signing of the credit and guarantor agreements, because Plaintiff relied upon the false pretenses and representations in signing the guarantor and credit agreements. For example, if Fleet had correctly represented that form U-1 (Appendix A-68 thru A-69) had to be signed, and/or had disclosed Fleet's true intent of extending credit, the truthful representations would have allowed Plaintiff to know and understand the illegality of the transaction, thereby eliminating the possibility of Plaintiff signing a credit transaction and more specifically, the guarantor agreement, all of which were clearly in violation of the law. It is the signing of the credit and guarantor agreements, which allowed *RICO-Members* to commit additional racketeering acts, and which led to the loss of Plaintiff's business and property.

316. **Additionally, the numerous acts of obstruction of justice caused direct damage to Plaintiff because Plaintiff was also a co-plaintiff in some of the same claims that**

**WebSci had filed against Fleet in the District Court complaint. They had a direct “relationship in time, causation and logic” to Plaintiff’s claims, and defendants’ actions in obstructing justice had a “natural and probable effect”<sup>14</sup> on interfering with Plaintiff’s own claims against Fleet.**

317. The numerous acts of obstruction of justice allowed Fleet to take control over the business and property of Plaintiff without litigating claims of Plaintiff and/or his business against Fleet.

318. Racketeering Acts of tampering with the Bankruptcy Court docket prevented, upon information and belief, government agencies and other attorneys, whom Plaintiff had provided information about the racketeering activities of the *RICO-Members* from confirming the veracity of Plaintiff’s claim, until it was learned much later by Plaintiff that the docket sheet had been tampered with by Marks and Honig. This, upon information and belief, caused attorneys who reviewed the Bankruptcy Docket to question Plaintiff’s version of the facts. **Such tampering of the Bankruptcy Court docket also, upon information and belief, shocked and overwhelmed them, by the sheer magnitude of the influence of the *Fleet-RICO Enterprise* over even Federal Courts and thereby not be involved in representing Plaintiff on a contingency basis, given the flagrancy of the criminal activities and the influence over the Bankruptcy Court. The same was true when evidence of false filing of Operating Reports, under Penalty of Perjury, was presented. Attorneys, upon information and belief, are flabbergasted and intimidated by the magnitude of the criminal activities and scope of conspiracy involving the Bankruptcy Court.**

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<sup>14</sup> See U.S. v. Aguilar 515 U.S. 593

319. This lack of adequate legal representation was detrimental to Plaintiff as he had to pursue his claims on a Pro Se basis, resulting in an inability to present adequate legal arguments despite the overwhelming factual support. This lack of adequate representation, compounded by the influence over the Bankruptcy court, resulted in several adverse rulings and/or denial of due process in the Bankruptcy Court contributing to the RICO-Enterprise taking control of his business and property through a pattern of racketeering activities.

320. Racketeering Acts to voluntarily dismiss the claims against Fleet and then to abandon them, directly resulted in Fleet taking control over the business and property of Plaintiff, due to the failure of Marks and Honig to promptly litigate WebSci claims against Fleet by using the resources available with the Bankruptcy estate. If these claims were litigated in a timely manner, without Marks and Honig first moving to voluntarily dismiss them (See Appendix A-274 thru A-281) and then making fraudulent misrepresentations to abandon them, then WebSci **and Plaintiff** would have been able to win the litigation, generating tens of Millions of dollars, possibly more, in surplus to Plaintiff. Since these very claims were also brought by Plaintiff as a co-plaintiff, individually, the win would have directly resulted in **prompt** benefits to Plaintiff thereby mitigating subsequent losses, including but not limited to his business, house and R&D investments, beyond reasons of surplus generation and beyond reasons benefiting WebSci alone.

321. The numerous acts of bribery through *Corrupt Offers* allowed the *Fleet-RICO Enterprise* to exert improper influence over those who had a duty of fidelity or fiduciary duties under Color of Official Rights and/or as duly appointed *Government Officials*. This influence was used to prevent Plaintiff from promptly adjudicating his



claims against Fleet. Justice delayed resulted in significant denial of justice resulting in the loss of Plaintiff's property and business.

322. The racketeering acts of fraud in bankruptcy by Marks resulted, among other losses, in depriving Plaintiff of the ability to purchase the AT&T Contract, despite making a higher bid. This resulted in losses of Millions of dollars to Plaintiff, who with his prior experience extending over a decade in owning and running a Multi-Million dollar consulting business, could have easily earned tens of Millions of dollars in the future with the AT&T contract as the starting point, even if, arguendo, other racketeering acts were not committed. Even if potential earnings were not to be considered for damage claims, the instant value of the contract, based upon the Discounted Cash Flow method for contract valuation, would support a damage claim in the Millions. Marks is liable, based upon these racketeering acts alone, for Millions of dollars, without even trebling the damages.

323. The racketeering acts of unlawfully taking possession of Plaintiff's property, including legal material, affected Plaintiff's ability to litigate his claims, both in bankruptcy proceedings as well as in other Courts. This was as a result of Plaintiff been deprived of his rights to access evidence and pleadings, as well as the inability to communicate with other victims, as a result of information and property unlawfully taken over by Marks. This is an example of injury to Plaintiff beyond that resulting from injury to him as shareholder of WebSci.

324. Numerous racketeering acts by the Norris Firm and Marks, such as Mail and Wire fraud in fraudulently understating the conflict of interest vis-à-vis Fleet, allowed Marks to survive dismissal as trustee of the WebSci bankruptcy estate and participate in the conduct of the affairs of the *Fleet-RICO Enterprise*. Marks survived the motion to

dismiss him based upon the fraudulent disclosure of conflict of interest vis-à-vis Fleet at the time of his retention, and also the subsequent concealment of additional conflicts, arising out of bribery of the Norris Firm, which arose later. Marks was able to commit the other racketeering acts, described herein, as a result of his continued retention as a trustee of WebSci. This continued retention allowed Marks to commit additional racketeering acts, which in turned caused numerous other damages.

325. The racketeering act of intimidating the witness, Ms. Heather Brown, allowed Fleet to intimidate, and thereby prevent her from further analysis of Fleet's regulatory violations. The additional evidence of Fleet's improper execution of trades, would have helped Plaintiff in furthering his claims against Fleet, mitigating the possibility of Fleet taking over Plaintiff's business and property.

326. The filing of false and/or inaccurate and incorrect claims in both the WebSci and Plaintiff's bankruptcies by Fleet and the Buchanan Firm, allowed the RICO-Enterprise to take control over the assets of both the bankruptcy estates. Fleet knew that Plaintiff's bankruptcy estate did not have as much funds as the WebSci estate to litigate the claims against Fleet and therefore a disinterested trustee of Plaintiff's personal bankruptcy estate would abandon these claims, giving control over them to Plaintiff. Fleet also knew that Plaintiff was attempting to have his bankruptcy dismissed voluntarily. The filing of the false proof of claim was used by Fleet to coerce Plaintiff to remain in bankruptcy and then make *Corrupt Offers* to Kartzman to obstruct and impede the pursuit of the claims against Fleet. The resulting delay in the pursuit of claims caused direct economic injury to Plaintiff.

327. The facts and arguments presented in the foregoing, provides adequate justification that there was a direct injury resulting from the RICO violation(s). **Additional**

**discovery would be required to provide more specifics on assigning damages arising out of each racketeering act, and then based upon other elements of the RICO violation, to apportion it to each defendant.**

328. While Plaintiff suffered injury as a result of each individual predicate act, the injury was compounded and further exacerbated, beyond mere aggregation, as a result of the pattern of racketeering activities and the associated RICO violations, as the predicate acts were related and committed over a continuous period, specifically targeted at Plaintiff, and the injury flowed continuously as each related predicate act was committed by different Defendants and members of the *Fleet-RICO Enterprise*, as part of a *Common Plan* consisting of multiple schemes and/or criminal episodes. The compounded effect of different damages run into Hundreds of Millions of Dollars.

#### **Foreseeability of the Injury**

329. Defendants, at all material times, were able to foresee the damages that would be caused by their pattern of racketeering activities to defendant. For example, defendant Marks and Honig knew that by making fraudulent misrepresentation to the Bankruptcy Court about the WebSci claims, the claims against Fleet would not be litigated and therefore WebSci and Plaintiff would not be able to recover from Fleet, resulting in losses to Plaintiff. Litigating claims against Fleet would have directly resulted in gains to Plaintiff because, among other things, Plaintiff was a guarantor. Furthermore, Defendants Marks and Honig could foresee that successful litigation against Fleet would generate surplus that would directly benefit Plaintiff.

330. Defendants knew of the existence of the Ensiva product but did not perform any evaluation until the very last minute, almost towards the end of the bankruptcy, when all overseas operations were shut down, and concealed the result of the evaluation until

minutes before Marks' testimony. Defendants could easily foresee that stopping the operations of the overseas offices as well as the local office in the U.S. would result in severe and irreversible damage to the Ensiva product and its potential. Marks, a trustee who has admitted to having no knowledge or expertise in technology, first put a value of zero on Ensiva and then moved to bring in an evaluator, under fraudulent circumstances to falsely provide a value of zero to the product. Marks intentionally made no efforts to value the product during relevant and material times so that Fleet could assign a value of zero to it to declare WebSci insolvent.

331. Defendants knew that Plaintiff had invested directly, and through funds borrowed from friends/relatives, in Ensiva and overseas offices. In at least one pleading submitted to the Bankruptcy Court, Fleet had acknowledged that Plaintiff had paid for the development of Ensiva. With this knowledge, Defendants could foresee the loss to Plaintiff, for example, from losing these invested funds, from Defendants' abrupt termination of the operations of WebSci.

332. The damages caused to Plaintiff actually translated into benefits to Defendants and were the direct motivation for Defendants, confirming the disregard by Defendants to the foreseeable injury. For example, not pursuing claims against Fleet, caused injury to Plaintiff, but directly benefited Fleet. Further, the litigation fees which should have been spent on pursuing the litigation, using attorneys with expertise in banking laws, was used by other *RICO-Members* to be distributed among themselves through *Fees and Earnings*.

### **Relationship to non-RICO claims**

333. Any losses from non-RICO claims, are separate and independent of RICO claims.

The delay in the pursuit of non-RICO claims was itself caused by the RICO violation.

Furthermore, non-RICO claims do not allege injury caused as a result of the combination of each non-RICO claim.

334. RICO claims allege injury as a result of the pattern of racketeering activities, including the exacerbated effect of the combined injury caused by each racketeering act, and other elements of RICO, which is the source of the treble damages award under RICO.

335. Plaintiff is seeking punitive damages, separately, through non-RICO claims, filed in the First Amended Complaint.

336. Plaintiff is also seeking compensation for infliction of emotional distress but has plead this injury separately under non-RICO claims raised in the First Amended Complaint.

### **Section 17. List the damages sustained by reason of the violation of §1962, indicating the amount for which each defendant is allegedly liable.**

337. With respect to damages, Plaintiff seeks payment for the injuries and damages described above. The damages are subject to trebling pursuant to 18 U.S.C. §1964(c) and easily exceeds \$243 Million. This damage amount is based upon the lowest possible valuation, as a direct and/or proximate cause of injury to Plaintiff, from Defendants' actions and inaction affecting the final success of Ensiva. Upon further discovery, and based upon expert testimony, if required, the damages could easily be proven to be in Hundreds of Millions of Dollars.

338. Plaintiff has not precisely apportioned the damages at this time, but expects that while Fleet would be liable for the maximum percentage of the damages sustained, as a result of its dominant role in the structure of the *Fleet-RICO Enterprise*, with participation in the maximum number of racketeering acts, many of extremely serious nature, spread over the maximum amount of time.

339. **Gary Marks, Esq., should be liable, individually, for not less than \$30 Million** as he participated in the conduct of the affairs of the Enterprise, and conducted some of the affairs of the Enterprise, in different capacities, as a trustee, as an attorney, and as an individual who embezzled and/or attempted to embezzle funds from the bankruptcy estate.

340. The precise amount of liability to be apportioned to different Defendants, separately, will be provided after additional discovery and/or upon request of the Court.

341. In addition to monetary liability, Plaintiff will seek, through appropriate law enforcement authorities and/or this Court, the permanent disbarment, and criminal sanctions, including maximum years of imprisonment for Gary N. Marks, Esq., Richard Honig, and attorneys of the Buchanan Firm, including Louis T. DeLucia, Esq. and Todd Chasin, Esq.

**Section 18. List all other Federal causes of action, if any, and provide the relevant statute numbers.**

342. A list of Federal causes of action against Fleet, as alleged in the Complaint, include:

- Violation of the Anti-Tying Act 12 U.S.C. § 1972 et seq.
- Violation of the Anti-Trust Act (15 U.S.C. §§ 1-7)
- Federal RICO (18 U.S.C. § 1961 et seq.)
- Violation of the “Comparable Transactions” Statute (12 U.S.C. § 371c-1)

- Violation of the WARN Act (29 U.S.C. § 2101 et seq.)
- Violation of the FDCPA (15 U.S.C. 1601 et seq.)
- Violation of RESPA and TILA (15 U.S.C. §§ 1631 et seq.) in relation to victim Edward Andrescavage.
- Numerous violations under Title 18, which form the basis of the RICO Predicate Acts, including 18 U.S.C. §§ 152, 153, 201, 894, 1341, 1343, 1503, 1512, and 1951.

**Section 19. List all pendent state claims, if any.**

343. Pendent state claims against Fleet by Plaintiff include those raised in the *Complaint*, such as:

State Criminal Statutes of Bribery, Common Law Fraud, Fraud upon the Court, Unjust Enrichment, Aiding and Abetting the Commission of Fraud, Breach of Fiduciary Duty, Breach of the Covenant of Good Faith and Fair Dealing, Consumer Fraud Act, Infliction of Emotional Distress, and Violations of provisions under the U.C.C., Fraud related to public records and recordable instruments, fraud in insolvency, falsifying or tampering with records and other such state law claims.

Some of the Federal RICO Predicate Acts are also covered by N.J. State Criminal Laws, including but not limited to the following:

2C:28-5: Tampering with witness and informants; retaliation against them.

2C:2-6: Liability for conduct of another; complicity.

2C:21-4: Falsifying or tampering with records

2C:21-7.3: False representation

2C:27-2: Bribery in official matters

2C:28-2: False swearing.

2C:28-3: Unsworn falsification to authorities

2C:28-5: Tampering with witness and informants; retaliation against them.

**Section 20. Provide any additional information that you feel would be helpful to the Court in processing your RICO claim.**

**First Amended Complaint**

344. Plaintiff refers the Court to the First Amended Complaint for additional information related to this RICO case statement.

345. The following information is also offered.

**Comparison between Bankruptcy Trustees: RICO-Member v. Non-Member**

346. The following is a table indicating the performance of Bankruptcy Trustees (Marks and Kartzman), who are RICO Members vis-à-vis Mr. Robert Wasserman who is not a member of the RICO enterprise. **It is important to note that Mr. Wasserman is the country's First Chapter 7 trustee when the trustee program was first initiated.**

<b>Issue</b>	<b>Marks and Kartzman's conduct and mode of operation (RICO Members)</b>	<b>Wasserman's Conduct and Mode of Operation (non-RICO trustee)</b>
Pursuit of Claims against Fleet	<i>Marks:</i> First moved to dismiss them voluntarily. Then abandoned some and finally purportedly settled some more. <i>Kartzman:</i> A puppet who merely followed DeLucia's directions. Neither pursued them nor abandoned them with the basic objective to impede and obstruct their pursuit.	Continuously strived to pursue them or abandon them so that Plaintiff could pursue them.
Sale of Estate Assets	<i>Marks:</i> Moved to expeditiously sell all the assets with time-shortening orders with buyers recommended by him. <i>Kartzman:</i> Was terminated prior to any sale.	Wasserman: Retained a real estate broker who diligently showed the property to potential buyers and chose the best deal available. Sale took place over a period of several months ensuring the best sale price under the circumstances.
Post-Sale Accounting of Estate Assets.	<i>Marks:</i> Sale proceeds disappeared from the books for several months until embezzlement was noticed by Plaintiff. <i>Kartzman:</i> Was terminated prior to any sale.	No such financial improprieties of any kind.
Cancellation of WebSci shares.	<i>Marks:</i> Supported Fleet. <i>Kartzman:</i> Was terminated before he could support Fleet.	Vehemently opposed it on legal and equitable ground, even though he had no personal interest in the outcome, one way or the other.



Voluntary Dismissal of Plaintiff's Bankruptcy Petition.	<i>Marks and Kartzman</i> : Opposed it to keep Plaintiff in bankruptcy control.	Supported the dismissal of the bankruptcy petition so that Plaintiff could pay all undisputed creditors and litigate his claims against Fleet.
Scheduling and ruling by the Bankruptcy Court of their motions.	Expedited hearings granted and quick <b>rubber-stamping</b> of all motions.  Motions that would adversely affect Plaintiff were adjourned systematically and continuously.	Continued adjournments for months together. Motions to abandon shares of WebSci, motion to dismiss Plaintiff's bankruptcy, all supported or initiated by Mr. Wasserman were ruled after Judge Gambardella sat on them for months together.

**Criminal RICO and/or Government Civil RICO to Obtain Equitable Relief**

347. The purpose of Civil RICO is, as the Supreme Court aptly stated in Rotella v. Wood, 528 U.S. 549 (2000) "...not merely to compensate victims but to turn them into prosecutors, private attorneys general, dedicated to eliminating racketeering activities."

348. Accordingly, Plaintiff intends to approach appropriate law enforcement agencies to demand the filing of Criminal RICO charges, against Defendants, and especially against Gary N. Marks, as Plaintiff has provided sufficient evidence for a Jury to find the RICO violation(s) to be proven "beyond a reasonable doubt" and not merely by "a preponderance of evidence."

349. If the government wishes to seek equitable relief for the hundreds of victims of Fleet, through Civil RICO, then only the "preponderance of evidence" standard is required.<sup>15</sup>

**Equitable Tolling of the Statute to Compensate Hundreds of Victims of Fleet**

350. The hundreds of victims of the *Fleet-RICO Enterprise*, over the past few years, have been systematically and actively misled by Defendants, and particularly Fleet. While this is not an issue for Plaintiff as he has brought the RICO claim substantially before

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<sup>15</sup> See United States v. Local 560 of International Brotherhood of Teamsters, 780 F.2d 267, 279 (3d. Cir. 1995).

the four years statute of limitation could run out, this is an issue for those victims who have suffered injury to their business and property but despite their reasonable diligence could not have been able to uncover the reasonable facts.

351. Plaintiff believes that he can produce additional evidence, beyond that which has been publicized, to prove that fraudulent concealment did take place, through spoliation of documents/evidence and other wrongful conduct.

352. This act of fraudulent concealment is an effective and permissible basis for equitably tolling the RICO statute of limitations.<sup>16</sup> Accordingly, any action that is brought separately by any regulatory or law enforcement agency, should be able to secure compensation for the thousands victimized, even where the pattern of racketeering activities may have commenced as early as 1995.

353. Against this background, Fleet's potential liability would run into Hundreds of Millions of dollars and those of other Defendants would be in tens of Millions of dollars.

## CONCLUSION

*"[The RICO Statute has a] congressional objective of encouraging civil litigation not merely to compensate victims but also to turn them into private attorneys general, supplementing Government efforts by undertaking litigation in the public good."*

Rotella v. Wood et al. 528 U.S. 549 (2000)

**The RICO violations, and the associated abuses, of the *Fleet-RICO Enterprise* have affected thousands of innocent people. It is time to put an end to these abuses.**

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<sup>16</sup> Forbes v. Eagleson, 228 F.3d at 486-88 (2000)

## CERTIFICATE OF SERVICE

I hereby certify that on or before July 1, 2004, a true and correct copy of all the pleadings and documents in support of the Notice of Motion to Join New Defendants, to file the First Amended RICO case statement, and to file a Supplemental Pleading to Plead the RICO Claims, and other associated documents, appendix, and pleadings, were sent to the parties listed below, directly or to attorneys representing them.

\_\_\_\_\_  
**Ramkrishna S. Tare**

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