

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Michael Tate, Joseph Shuster, Lyle
Evanson and John Ayers, individually
and on behalf of all other individuals
similarly situated,

Civil File No. 09-cv-02076 (MJD/JJG)

Plaintiffs,

vs.

FIRST AMENDED COMPLAINT

Restaurant Technologies, Inc., Parthenon
Capital LLC, Jeffery R. Kiesel, John C.
Rutherford, Jonathan O. Grad, Zachary
F. Sadek, Philip A. Clough and Robert E.
Weil,

Defendants.

INTRODUCTION

This Complaint is brought as a class action by and on behalf of holders of common stock, certain preferred stock and holders of options in Restaurant Technologies, Inc. (“RTI”), a company with its headquarters in Eagan, Minnesota. The action is brought against certain individuals who serve as officers and directors of RTI as well as RTI and Parthenon Capital LLC (“Parthenon”). As set forth below, the above-named Individual Defendants breached certain fiduciary obligations owed to RTI common shareholders by engaging in wrongful conduct including usurping corporate opportunities in violation of well-established duties of loyalty. Further, these Individual Defendants violated well-established duties of candor by misrepresenting and omitting certain facts in connection with a recent merger/recapitalization scheme and repeatedly failing to exercise due care in the operation of RTI. To the extent these Individual Defendants did not violate these duties directly, certain Defendants engaged in

conduct designed to interfere with the ability of other Defendants to carry out their fiduciary obligations, others committed fraudulent acts and still another converted equity in RTI properly belonging to the putative class. Defendants' wrongful conduct recently peaked in connection with an effort to wipe out the interests of RTI common shareholders, cram down the interests of certain preferred shareholders and eviscerate the rights of option holders through a merger/recapitalization process which was flawed, tainted, and unfair. Defendants' conduct caused millions of dollars of damage to the putative class.

THE PARTIES

1. Plaintiff Michael Tate ("Tate") is a former member of the Board of Directors of RTI and is a common shareholder. Tate directly holds 67,282 shares of common stock in RTI for which he paid nearly \$400,000 and, at the time of the merger/reorganization, held certain options in RTI. Defendants now assert that Tate's investment in RTI is worthless. Tate is a Minnesota resident residing in Plymouth, Minnesota.

2. Plaintiff Joseph Shuster ("Shuster") is a former member of the Board of Directors of RTI and is a common shareholder. Shuster holds 82,500 shares of common stock of RTI for which he paid nearly \$500,000 and is the beneficial owner of other shares held by his spouse. Defendants now assert that Shuster's investment in RTI is worthless. Shuster is a Minnesota resident residing in New Prague, Minnesota.

3. Plaintiff John Ayers ("Ayers") is a holder of 9,667 shares of common stock of RTI for which he paid nearly \$50,000. Defendants now assert that Ayers' investment in RTI is worthless. Ayers' current principal residence is in Tucson, Arizona.

4. Plaintiff Lyle Evanson ("Evanson") is a holder of 9,608 shares of common stock in RTI for which he paid approximately \$137,000 and 3,114 shares of RTI Series A preferred

stock for which he paid \$59,166. In connection with the merger/recapitalization, Evanson is waiting to receive shares in the reorganized entity for the preferred stock he holds. Evanson is a resident of the State of Washington, residing at 1109 S.E. Chelsa Avenue, Vancouver, Washington. (Collectively, Tate, Shuster, Ayers and Evanson will be called “Plaintiffs” or “Class Representatives”.)

5. Defendant Restaurant Technologies, Inc. (“RTI”) is a Delaware corporation with its principal place of business and headquarters located at 3711 Kennebec Drive, Eagan, Minnesota. RTI’s main business is to provide bulk cooking oil to numerous fast food restaurants.

6. Defendant Jeffery R. Kiesel (“Kiesel”) is currently the Chief Executive Officer of RTI and has served in that position since 2005. Kiesel, on information and belief, currently resides in Shoreview, Minnesota. As set forth below, Kiesel breached his fiduciary duties in purporting to manage RTI by engaging in, among other things, self-dealing and fraudulent conduct.

7. Defendant Robert E. Weil (“Weil”) is currently the Chief Financial Officer of RTI and has held that position since 2007. Weil, on information and belief, currently resides in Minneapolis, Minnesota. As set forth below, Weil breached his fiduciary duties in purporting to manage RTI by, among other things, engaging in self-dealing conduct.

8. Defendant Philip A. Clough (“Clough”) is a director of RTI and has held that position since 2005. Clough is also an officer of ABS Capital Partners, an entity which, along with its affiliates ABS Capital Partners IV L.P., ABS Capital Partners, IV Offshore L.P., and ABS Capital Partners IV Special Offshore L.P. (collectively, “ABS”) holds preferred stock in RTI. Clough, on information and belief, offices at 400 East Pratt Street, Baltimore, Maryland.

9. Defendant John C. Rutherford (“Rutherford”) became a director of RTI in 2009. Prior to becoming a Director, Defendant Rutherford advised people that he “called the shots” at RTI. Rutherford is a founder of Parthenon Capital LLC and its affiliate entities including PCIP Investors, J&A Founders Fund, Parthenon Investors L.P., Parthenon Investment II and PCap L.P. Parthenon Capital LLC holds mostly preferred stock in RTI. Rutherford, on information and belief, offices at 265 Franklin Street, Boston, Massachusetts.

10. Defendant Zachary F. Sadek (“Sadek”) became a director of RTI in 2007. Sadek is a Vice President of Defendant Parthenon Capital LLC and, on information and belief, offices at 265 Franklin Street, Boston, Massachusetts.

11. Defendant Jonathan O. Grad (“Grad”) became a director of RTI in 2006. Grad is a managing partner of Parthenon and, on information and belief, offices at 265 Franklin Street, Boston, Massachusetts (jointly, Rutherford, Grad, Sadek, Clough, Weil and Kiesel may be identified as the “Individual Defendants”).

12. Defendant Parthenon Capital LLC (“Parthenon”) is a private equity firm with offices in Boston, Massachusetts and San Francisco, California. Defendant Parthenon has a number of affiliates and funds that invested money in RTI as set forth in Paragraph 9 above. In connection with its investment in RTI, Parthenon obtained certain rights, including the right to designate members of the RTI Board. Parthenon was a controlling shareholder at all times relevant to the Complaint and its designees to the RTI Board, including Defendants Rutherford, Grad and Sadek, acted in Parthenon’s interest, not in the interest of the putative class to whom they owed certain duties.

JURISDICTION AND VENUE

13. The wrongful conduct engaged in by the Defendants took place in the State of Minnesota and, for the most part, in Dakota County. After the filing of the original lawsuit in Dakota County, Minnesota, Defendants removed the case to this Court pursuant to the Class Action Fairness Act, 28 U.S.C. § 1332(d). This Court now has jurisdiction over the subject matter of this action and venue is proper since the wrongful conduct took place primarily at the corporate headquarters of RTI which is located in Eagan, Minnesota in Dakota County.

14. RTI is incorporated in Delaware, but is headquartered in Minnesota. The claims asserted herein arise out of and pursuant to well-established violations of Minnesota and Delaware common law. These violations include breaches of fiduciary obligation involving the requirement that officers and directors be candid and forthright in their communications with shareholders and the duty of loyalty prohibiting officers and directors from engaging in self-dealing conduct through, for example, usurping corporate opportunities and looting RTI for their own purposes. Additionally, certain Defendants tortiously interfered with the ability of others to carry out their fiduciary obligations while others engaged in fraudulent conduct. Finally, the unfair merger process which involved self-dealing and the issuance of fraudulent and misleading offering materials by the Defendants was orchestrated out of the company's headquarters.

CLASS ALLEGATIONS

15. Plaintiffs bring this action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of a class consisting of non-insider persons and entities who purchased or otherwise acquired common or Series A preferred stock in RTI or enjoyed the right to purchase such stock through the issuance of options and who held the stock or the rights during all times relevant to the wrongdoing described below. Approximately \$15 to \$20 million in common

stock in RTI was sold between 1999 and 2001 at various prices including \$5 a share, \$15 a share and \$19 a share. Approximately 1.6 million shares of RTI common stock were outstanding at the time of a recently completed merger/recapitalization process which was tainted by material misrepresentations and omissions of material fact. Approximately \$65 million in preferred stock in RTI was sold between 2001 and 2005 at various prices in four separate Series A preferred stock offerings. Approximately 2.8 million shares of RTI Series A preferred stock was outstanding at the time of the recently completed merger/recapitalization with much of it held by individuals and entities excluded from the class. At the time of the merger/recapitalization, there were approximately 770,000 outstanding options held by approximately 300 people with exercise prices ranging from \$5 to \$32.

16. Excluded from the class are Defendants, current officers and directors of RTI, members of their immediate family and their legal representatives, financial representatives, heirs, successors and assigns, Parthenon and ABS and their affiliates as well as holders of Series B-1 and B-2 preferred stock.

17. The members of the class are believed to exceed 400 people or entities who held shares in RTI or rights to purchase such shares and, therefore, are so numerous that joinder of the members is impracticable.

18. Plaintiffs' claims are typical of the claims of the members of the class, because, collectively, Plaintiffs are holders of common stock, preferred stock and options in RTI. Plaintiffs will fairly and adequately protect the interests of the class and have retained counsel who are experienced and competent in class actions and securities litigation. Plaintiffs have no interests that conflict with the interests of the class.

19. Common questions of law and fact exist as to all members of the class and predominate over any questions solely affecting individual members of the class. Among the questions of law and fact common to the class are:

- a. Whether the Individual Defendants violated their duty of loyalty to RTI by (i) having RTI pay for Parthenon's legal counsel, (ii) upstreaming money to a Parthenon affiliate in connection with a recent merger/recapitalization, (iii) failing to negotiate a reduction in the accretion rate being received by the preferred shareholders, (iv) failing to consider various means to capitalize RTI, and (v) unnecessarily employing preferred stock offerings in 2005, 2008 and 2009 to the benefit of Defendant Parthenon and ABS and to the detriment of the putative class;
- b. Whether the Individual Defendants violated their duty to RTI shareholders and option holders by failing to consummate an initial public offering in 2006 or 2007 which would have generated over \$30 per share for common shareholders of RTI or a sale in 2008 which would have generated at least \$25 million for RTI common shareholders;
- c. Whether Defendants Kiesel and Weil failed to provide complete and accurate information to the RTI Board of Directors which would have permitted the RTI Board to exercise reasonable business judgment in the management of the business;
- d. Whether a recent recapitalization/merger was tainted as a result of self-dealing including having RTI commit to pay Defendant Parthenon millions of dollars in "management services" fees;
- e. Whether proxy materials recently used in a recapitalization/merger and supplemental information provided to RTI common shareholders during the merger process were false and misleading by failing to disclose material facts including the true value of RTI and whether in light of a vote in which less than 41% of the RTI common shareholders approved the merger/recapitalization, the merger/recapitalization should be declared void in accordance with the terms of the proxy materials;
- f. Whether Defendant RTI's recapitalization/merger process was unfair;
- g. Whether the director Defendants performed their duties and obtained the best possible price for RTI common shareholders;
- h. Whether Defendants conspired to violate the rights of class members;
- i. Whether Defendant Parthenon and ABS have been unjustly enriched and should be required to disgorge any monies wrongfully obtained at the expense of RTI shareholders;

- j. Whether Defendant Rutherford and Defendant Clough tortiously interfered with Defendant Kiesel and Weil's efforts to meet their fiduciary obligations to RTI common shareholders;
- k. Whether Defendants Kiesel and Weil violated their duty of care in carrying out their responsibilities as officers of RTI;
- l. Whether the purchase of B-1 and B-2 preferred stock by Parthenon utilized inside information which needed to be provided to all RTI shareholders and whether such purchases were done as part of a scheme to convert RTI equity and seize RTI's prospects; and
- m. Whether Defendants Sadek and Kiesel engaged in misrepresentations in connection with the merger/recapitalization.

20. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Further, as the damages suffered by individual members of the class may be relatively small, the expense of individual litigation makes it impossible for the members of the class to individually address the wrongs done to them.

21. In asserting these causes of actions, certain claims may be characterized as derivative as the wrongful conduct may have injured RTI directly and the putative class indirectly. Given the nature of the claims and the make up of the RTI Board of Directors, demand would be futile. Since the inception of the action, none of the Defendants have taken any action to investigate possible claims.

THE COMPANY – ITS HISTORY, FINANCING AND PROSPECTS

22. In 1999, RTI was spun off from a company called MVE Holdings, Inc. The essential business activity of RTI is to provide bulk cooking oil management to restaurants through a unique distribution device which permits it to not only supply the cooking oil efficiently, but to also pick up used oil ("yellow grease") and recycle it. RTI enjoys contracts

with McDonald's, McCormick & Schmick's, Chili's and numerous other high volume users of cooking oils.

23. RTI's revenue stream and earnings have increased dramatically over the years as set forth below:

<u>Year</u>	<u>Reported Revenue</u> (Millions)	<u>EBITDA</u> (Earnings Before Interest, Taxes and Depreciation) (Millions)
2004	79.7	1.1
2005	100.6	2.9
2006	135.3	8.3
2007	188.2	10.4
2008	261.6	11.5

In 2006, given the company's national account contracts and growth pattern, one investment banking firm estimated that the company's enterprise value could be over \$500 million. After that estimate, RTI's revenues and earnings continued to increase.

24. Until very recently, RTI's prospects were repeatedly touted by Defendant Kiesel. For example, on May 2, 2006 he wrote to RTI shareholders that "2005 was both a significant growth year and foundation year for our company. . . . Our sales growth was stronger in 2005 with penetration continuing with McDonald's, White Castle, and Fuddrucker's, McCormick & Schmick's plus others . . . 2005 was a good year for RTI and we look forward to a strong 2006." Subsequently, in his year end 2006 letter to RTI shareholders, Defendant Kiesel repeated the same mantra, "In summary, 2006 was another record for RTI and a year in which our focus on profitability has yielded significant results . . . 2006 was a year we are proud of as evidenced by our growth and profitability gains . . . we are optimistic about both our short term and long term prospects." Again in 2007, Defendant Kiesel wrote to RTI shareholders stating "We are making strides in taking advantage of the zero trans fat oil market . . . We have made numerous

improvements in how we manage our business.” At the end of calendar 2006, Defendant RTI had an appraisal performed showing that RTI’s common stock was worth \$25.57 per share. At the end of 2007, Defendant RTI had still another appraisal done showing that its common stock was worth \$21.20 per share. In May 2008, Defendant Weil advised a member of the RTI Board of Directors that the RTI common stock should be valued at \$24.00 per share.

Based upon the appraisals and Defendant Kiesel’s statements, including his statement in 2007 that both management and the Board were “focused on maximizing the returns to all our shareholders,” none of the Plaintiffs nor the putative class had reason to suspect that Defendant Kiesel, in coordination with the other Defendants, would engage in a scheme designed to wipe out the interests of RTI’s common shareholders through a course of conduct involving fraud and deceit.

25. In order to finance the build out of its distribution network, after receiving investments from Plaintiffs as well as the putative class members, RTI engaged in a series of preferred stock offerings including:

<u>Year</u>	<u>Preferred Stock</u>	<u>Amount Raised</u>
2001	A-1	19 million
2002	A-2	5.5 million
2004	A-3	25 million
2005	A-4	10 million
2008	B-1	9 million
2009	B-2	7.9 million

26. In RTI’s 2001 A-1 preferred stock offering, Parthenon, in which Defendant Rutherford is a founder and Defendants Grad and Sadek are officers, invested heavily. Parthenon subsequently invested more money in later offerings. Additionally, ABS, in which Defendant Clough is an officer, invested in the A-3 preferred stock offering in 2004 and additional monies in later offerings. In making these investments, Defendants Rutherford, Grad,

Sadek and Clough, on behalf of Parthenon and ABS, insisted on receiving enormous accretion rates which ranged from 20% – 30% annually. They also took over control of RTI by designating a majority of the RTI Board of Directors in connection with the A-3 preferred stock offering in 2004.

27. When Parthenon originally invested in RTI in 2001, it misrepresented its intentions by suggesting that it was committed to “building successful partnerships” while “preserving the company’s independence and culture” and not engaging in “day to day control.” These statements were false. Beginning in 2001, Parthenon, through Defendant Rutherford, began to place its own representatives on the RTI Board and, by the end of 2004, Parthenon and ABS controlled a majority interest on the Board of RTI. In 2005, despite RTI’s growth and prospects, Defendant Kiesel was brought in with Parthenon’s blessing to assume day to day control of RTI and, over time, Defendant Kiesel ousted the officers and employees of RTI who had originally founded the company and who expressed concerns or disagreed with Defendant Parthenon’s representatives on the RTI Board. During 2007, when Plaintiffs Tate and Shuster attempted to approach the RTI Board with questions and concerns, they were told to talk to Defendant Rutherford who candidly told Plaintiffs that he “called the shots” regarding RTI despite the fact that he did not even serve on the RTI Board at the time nor was he an officer of RTI.

28. In taking control of the RTI Board, one of the individuals Defendant Parthenon selected to serve as Parthenon’s “representative” on the RTI Board was Drew Sawyer who, in November 2005, when discussing RTI common stock, candidly stated “F*** the common.” Another individual who filled a “Parthenon seat” on the RTI Board was Jack Grunwald. Although Grunwald was originally selected to fill a “Parthenon seat” in 2001, in early 2009, the

Defendants instead appointed Grunwald as a purportedly “independent” director allegedly obliged to protect the interests of RTI common shareholders in connection with a merger/recapitalization. However, this merger/recapitalization was actually designed to wipe out the interests of common shareholders, option holders and to cram down the interests of certain holders of preferred stock to the benefit of Defendants Rutherford, Sadek, Grad and Clough’s companies. Grunwald admitted that from the time of his appointment as a representative of the common shareholders in January 2009 until the closing of the merger/recapitalization in June 2009, he could not recall taking any specific action that benefited RTI common shareholders.

29. The preferred stock offerings generated many benefits for Parthenon (Defendant Rutherford and Grad) and ABS (Defendant Clough) including the ability to control the RTI Board of Directors and management of RTI. The additional benefit was that the preferred offerings had huge financial benefits including accretion rates ranging from 20% to 30% a year, which rates could be realized if RTI went through a liquidation, dissolution, winding up or change in control. This benefit allegedly “accreted” so that by the time the tainted recapitalization/merger process took place in 2009, the \$19 million raised in the Series A-1 preferred stock offering during 2001 had purportedly increased to a value of \$86 million or more than 400% in seven years. These accreted values were provided as a liquidation preference which, according to Defendant Kiesel in a letter to RTI common shareholders in 2007, would only be triggered “[i]n the event of an IPO, liquidation, sale or merger”

30. The preferred stock offerings which took place in 2005 (Series A-4), 2008 (Series B-1) and 2009 (Series B-2) were not in RTI’s interests. Rather, the Individual Defendants orchestrated those offerings without arm’s-length negotiations or input from the common shareholders for the benefit of Parthenon and ABS. An internal memorandum

generated by ABS which was written in connection with the Series A-4 offering notes “That is, they [Parthenon] are seeking to protect their overall economics rather than pricing the [RTI] security at a fair market value” According to the former Chief Financial Officer of RTI, Defendant Parthenon “blocked” consideration of other financing alternatives. Again, in 2008, while exercising control of RTI, Defendants Rutherford, Grad and Sadek caused RTI to engage in still another round of preferred stock financing, the Series B-1 offering. These Defendants, while sitting on both sides of the transaction, agreed to have Parthenon purchase the majority of the Series B-1 financing with the understanding that a sale of RTI was going to take place, that the anticipated sale price was going to be in the \$300 million range and that they could impose, by virtue of their position as a controlling shareholder of RTI, an accretion rate in excess of 25% on the financing which would effectively wipe out an anticipated multimillion dollar return to RTI common shareholders and also diminish the anticipated return to be received by holders of preferred Series A stock. Defendants imposed this financing on RTI at a time when one member of the RTI Board described the terms of the financing as “onerous” and detrimental to the interests of non-insider RTI shareholders. Defendants also chose to do the attempted sale rather than the IPO because it was more beneficial to Defendant Parthenon.

31. The annualized return being “accreted” on the preferred stock was so enormous that Parthenon and ABS, working through Defendants Rutherford, Sadek, Clough and Grad, repeatedly elected to not have RTI pursue courses of action which would have been in the financial interests of RTI and the RTI common shareholders. Defendants Rutherford, Sadek, Clough and Grad interfered with the duty which Defendants Kiesel and Weil owed RTI and engaged in a course of conduct designed to usurp RTI’s corporate opportunities for the benefit of Parthenon and ABS. Parthenon representatives on the RTI Board acknowledged that RTI could

obtain less expensive equity financing from outside third parties, however, declined to do so because Parthenon's equity interest in RTI would be diluted and Parthenon might lose control over RTI. For example, in 2006, 2007 and 2008, RTI considered an initial public offering. Defendants Sadek, Rutherford, Grad and Clough scuttled this initial public offering opportunity in an effort to maximize the egregious return on the investment made by Parthenon and ABS. On information and belief, had an initial public offering taken place, common shareholders of RTI would have received in excess of \$30 per share for their RTI common stock based upon an enterprise valuation at the time of over \$400 million for RTI. However, given the enormous rates at which Parthenon's and ABS's preferred stock investments were "accreting," Defendants Rutherford, Clough and Grad elected not to proceed with a promising initial public offering. Despite having attended numerous meetings with numerous investment banking firms in 2006, Defendant Kiesel did not even inform all RTI Board members of the meetings regarding an IPO, an IPO which would have paid the RTI common shareholders more than \$30 a share. By scuttling this initial public offering, these Defendants ensured that additional value would "accrete" to Parthenon and ABS, thereby allowing Parthenon and ABS to obtain a greater interest in the company's prospects.

32. In 2006, when considering an initial public offering, one investment banking firm placed a high end enterprise value on RTI of over \$500 million. In 2008, Defendants sought to put RTI up for sale and again obtained an enterprise value from an investment banking firm of over \$350 million for RTI. In 2008, Defendants elected a sale, rather than an IPO because a sale would generate a greater rate of return for Defendant Parthenon. In late 2008, an arm's-length offer to purchase RTI was received by RTI placing a value of approximately \$300 million on RTI. The proposed sale was never consummated purportedly because of a change in the credit

markets. However, during the worst part of the credit crisis, Defendant Sadek told other insiders that nothing about the RTI business had fundamentally changed and that Parthenon estimated that even a forced sale at that difficult economic time would generate well over \$200 million.

33. As the credit markets stabilized and loosened, Defendants elected to squeeze out the common shareholders of RTI, cram down preferred shareholders and eliminate outstanding options by recapitalizing and merging the company employing a flawed “valuation” suggesting that the enterprise value of RTI was only \$140 million. Knowing such a valuation would squeeze out and cram down other RTI shareholders and that Defendants could purchase a greater ownership interest in RTI for less than its actual value, Defendants created still another onerous preferred stock offering – the Series B-2 preferred stock offering – and Defendant Parthenon purchased Series B-2 preferred stock in a transaction designed to provide even greater ownership interest in the recapitalized entity. Like the Series B-1 preferred stock offering, the Series B-2 preferred stock offering was not conducted at arm’s-length and RTI received less than fair value from Defendant Parthenon for its B-2 shares all to the detriment of putative class members.

34. The recapitalization/merger of RTI was implemented through a distribution of proxy materials, supplementary materials and statements which were false and misleading. The impact of the recapitalization/merger was to upstream the company’s prospects to a few preferred shareholders, primarily, Defendants Clough, Sadek, Grad and Rutherford’s companies, Parthenon and ABS.

**MISMANAGEMENT, GROSS NEGLIGENCE AND
BREACHES OF FIDUCIARY OBLIGATION**

35. Defendant Kiesel wrote a letter in January 2009 in which he acknowledged that RTI officers and directors owed fiduciary duties to all shareholders, including common

shareholders. Fiduciary duties owed to RTI common shareholders include a duty of candor, a duty of care and a duty of loyalty.

36. Beginning in 2005, Defendant Kiesel began a process of eliminating members of the RTI management team in violation of his duty of care. Ultimately, the President and Chief Financial Officer who had founded RTI were replaced and the Controller and the Vice President of Sales left as well. Simultaneously, Defendants Rutherford and Clough ensured that Defendants Kiesel and Weil did the bidding of Parthenon and ABS irrespective of the interests of the RTI common shareholders. Parthenon representatives on the RTI Board controlled the Compensation Committee and oversaw and set Defendants Kiesel and Weil's remuneration. For example, on June 26, 2006, Defendant Kiesel received a lengthy memo from Dorsey & Whitney setting forth steps to be taken to conduct an IPO. However, Defendant Kiesel never brought this information to all members of the RTI Board. Instead, Defendant Kiesel scuttled the opportunity based upon concerns raised by other Defendants about how much money Parthenon and ABS would receive in a secondary offering. In scuttling this opportunity, Defendant Clough breached his duties to RTI by putting the interests of ABS ahead of RTI while Defendant Rutherford interfered with efforts by RTI officers and directors to meet their fiduciary obligations to RTI shareholders. Defendant Kiesel breached his duties by failing to even bring up with the Board the numerous meetings he had held with investment banking firms.

37. Thereafter, Defendant Kiesel recklessly began a process of increasing the sales and marketing activities of RTI to build orders knowing that the creation of a large order backlog would require RTI to obtain additional, overly expensive funding from Parthenon and ABS thereby diminishing or eliminating the value of the RTI common stock. Kiesel's efforts led to high Sales, General and Administrative ("SGA") expenses which ultimately caused RTI to suffer

serious cash flow problems and, as expected, to obtain costly additional financing from Parthenon and ABS. Defendant Kiesel's mismanagement was so destructive to the interests of RTI shareholders that, in February 2008, one RTI Director finally wrote that it was necessary for RTI to "became cash-flow self sufficient," that "new installs . . . be limited to cash plus equipment financing," that it was necessary to "cut the growth rate of the company" to avoid "bankruptcy" and that "all stakeholders cannot bear more onerous accumulating preferred equity." The Defendants, including Kiesel, ignored this director and continued to operate RTI for the interests of Parthenon and ABS by not cutting SG&A expenses for months while conducting still another preferred stock offering in which Parthenon and ABS invested in order to further enhance their position in the company's prospects. At no time did Defendants Kiesel or Weil attempt to renegotiate terms with holders of preferred stock nor did they consider a mechanism to obtain less expensive capital. If the \$140 million valuation employed in the 2009 proxy materials is found to be fair, Defendants Kiesel and Weil's reckless management caused a 200% decline in RTI's enterprise value over a two year period at a time when RTI's revenue and earnings were increasing. The warning signs of Defendant Kiesel's inability to manage RTI go back to at least 2007 when shareholders advised the RTI Board of Defendant Kiesel's poor decision making. By the end of 2007, Parthenon representatives on the RTI Board noted that their confidence in Defendant Kiesel had been "undermined" because of a series of mistakes made by Defendant Kiesel which they stated were "predictable" and "preventable." They further observed that Defendant Kiesel was not "knowledgeable about the details of the company." Parthenon representatives also suggested that Defendant Weil was not an "A player." Further evidence of Defendant Kiesel's management failures were presented to RTI Board members by former CEO Paul Plooster in early 2008. By February of 2008, the Parthenon Investment

Committee was told of a “potential need to replace CEO Jeff Kiesel if we don’t sell” RTI. By the fall of 2008, Parthenon representatives on the Board again noted Defendant Kiesel’s weaknesses and the need to replace him. Defendant Parthenon recognized that Defendants Kiesel and Weil appeared incapable of managing the RTI business and insisted on the retention of outside experts to assist in the management of RTI at a cost of hundreds of thousands of dollars. Ultimately, Defendants Grad, Sadek and Rutherford sought to retain a Chief Operating Officer to take over Defendant Kiesel’s duties and responsibilities as they had identified Defendant Kiesel as a “principal risk” to RTI’s success.

38. In an attempt to ensure that RTI would have no future obligation to the RTI common shareholders, in December 2008, Defendant Kiesel, working with other Defendants, attempted to convince the RTI common shareholders to “forfeit their shares” by wrongfully telling RTI common shareholders that their common shares were worthless. At the time, the Defendants were contemplating recapitalizing RTI and knew the elimination of the RTI common shareholders would have the impact of upstreaming even more of the company’s equity and prospects to Parthenon and ABS.

39. In response to Defendant Kiesel’s letter, neither Defendant Parthenon nor ABS “forfeited” their RTI common shares. When other RTI common shareholders uniformly refused to “forfeit” their shares in December 2008, the Defendants implemented another scheme designed to recapitalize and merge RTI in a manner designed to eliminate the common shareholder interests altogether. On May 14, 2009, the company issued proxy materials which described a merger/recapitalization process. The process described in the proxy, despite it not being an event triggering liquidation preferences, utilized accreted values of preferred stock holdings to divide up RTI’s equity. In addition to providing RTI common shareholders a mere

.13¢ per share value, the recapitalization/merger scheme required common shareholders to “release” any claims they had against the Defendants, Parthenon and ABS if they sought to retain an equity interest in the recapitalized entity.

40. Defendants knew that the process they were engaged in was improper. When the merger/recapitalization was initially discussed in late 2008, Defendant Parthenon acknowledged that to recapitalize RTI they would have to arrange a “negotiated settlement with common.” However, instead of attempting such a negotiation, they chose to engage in an improper process to wipe out the interests of shareholders while simultaneously increasing their director and officer insurance coverage in the hope that such a “negotiated settlement” would be paid by others in the likely event that no common shareholder would “release” claims.

41. In drafting the proxy materials in early May 2009, Defendant Sadek insisted that positive information about RTI be deleted. On May 4, 2009, in reviewing a Dorsey & Whitney draft of the proxy materials, Defendant Sadek told Dorsey & Whitney that certain positive information about RTI should be deleted. Items deleted included, for example, that the company was “positioned” for “continued strong revenue growth and improvements in profitability” and that RTI’s equipment was a “compelling value for customers.” The May 14, 2009 proxy materials distributed by Defendants were false and misleading in many ways including the following:

- a. The proxy materials included a valuation created by Defendant Sadek indicating that RTI had an enterprise value of only \$140 million. The proxy materials did not reveal that Robert W. Baird was paid \$250,000 to issue a fairness opinion concerning Defendant Sadek’s valuation, that Robert W. Baird had a history of working with ABS and Parthenon, that it issued the opinion within six days of the receipt of financial information from the company and that Defendants Weil and Kiesel had given Robert W. Baird a set of assumptions that they knew were incorrect and were designed to support this artificially low valuation of the company manufactured by Defendant Sadek.

- b. The proxy materials did not disclose that less than one year earlier, the company had received a valuation from William Blair & Company of more than twice the \$140 million number manufactured by Defendant Sadek and that, in 2006, Robert W. Baird itself had estimated a value of over \$500 million for RTI based upon less revenue and less earnings than that experienced by the company in 2008.
- c. The proxy materials did not disclose that, in prior valuations, investment banking firms, including Robert W. Baird, had used multiples as high as 12 times forward looking EBITDA, whereas, Defendant Sadek had used a multiple of less than eight times trailing EBITDA.
- d. The proxy materials, including supplementary material distributed by Defendant Kiesel, did not reveal positive changes which were taking place at RTI during 2009 including changes in pricing from a contract with McDonald's, a new major contract the company had entered into with Jack in the Box, an imminent contract with Burger King, the recovery of the commodity price of "yellow grease" or the cost savings program the company had implemented which was projected to enhance RTI's bottom line by millions of dollars.
- e. The proxy materials stated that the approval of the recapitalization/merger was conditioned upon no more than 10% of common shareholders voting against the merger. However, the Defendants subsequently and unilaterally waived that condition after the vote when nearly 40% of the common shareholders voted against the merger/recapitalization. The proxy materials did not disclose the belated claimed ability to waive the condition.
- f. The proxy materials indicated that Defendant Kiesel would receive certain equity interest in the merged company, but provided no details regarding the amount of that interest, much less, the fact that Defendants Kiesel and Sadek had negotiated an arrangement whereby Defendant Kiesel was likely to receive millions of dollars through stock options.
- g. Although the proxy materials disclosed the identity of the professionals that the "independent committee" relied upon to evaluate the fairness of the merger/recapitalization, the proxy materials did not disclose that the professionals relied upon by that committee were not, in fact, independent.
- h. While the proxy materials disclosed that there was self-dealing conduct in the form of a contract with Parthenon in which it would potentially receive millions of dollars for purported "management services," the proxy did not explain the need for, or reasonableness of, any contract with Parthenon.

- i. The proxy materials required shareholders voting for the merger to “release” claims against the Defendants as well as Parthenon and ABS, but did not explain the reason such a release was appropriate or necessary.
- j. The proxy materials indicated that all execution packets were to be received by June 12, 2009, but the proxy materials did not state that, for certain insiders, that requirement would be ignored as confusion over the merger/recapitalization resulted in several RTI directors providing incomplete materials by June 12, 2009.
- k. The proxy materials did not reveal that Defendant Parthenon was seeking the retention of a new Chief Operating Officer for RTI specifically because Defendant Parthenon had lost confidence in Defendant Kiesel.
- l. The proxy materials also did not disclose that the merger/recapitalization being proposed was not a liquidation event entitling the holders of certain preferred stock to liquidation preferences and to accreted values.
- m. The proxy materials employed the wrong version of the Delaware appraisal statute and did not inform RTI shareholders of their rights.

These omissions and misrepresentations concerned information that a reasonable shareholder would consider important when deciding how to vote, and materially affected the total mix of information available to shareholders.

42. In connection with the proxy solicitation, Defendant Kiesel sent out supplementary information to RTI shareholders on June 9, 2009 which was false and misleading and which Defendant Parthenon’s counsel assisted in drafting. For example, Kiesel “urged” RTI shareholders to read an attached letter from Dorsey & Whitney stating that it was “appropriate” to obtain releases, that there was “no such thing” as a potential IPO in 2006, that it was “customary” for fairness opinions to be rendered in a “short time period” and that RTI’s proxy materials had included “all material information.” All of these statements were false. The letter also stated that the Special Committee had performed certain work which they did not in fact perform. At the time Defendant Kiesel provided this supplemental information, he knew he had actively sought to commence an initial public offering process in 2006; he knew that changes in

RTI's contract with McDonald's were taking place and had not been disclosed; that the impact of a proposed contract with Jack in the Box had not been disclosed; that RTI was about to enter into a contract with Burger King; and that a rebound in the commodity price of yellow grease was occurring which improved RTI's cash position, making the proxy materials distributed to shareholders on May 14, 2009 in which he described the company as facing a potential "bankruptcy," completely false and misleading. Defendant Kiesel also knew that the lead member of the law firm whose letter was attached owned B-1 stock and had a pecuniary interest in ensuring that the merger/reorganization occurred.

43. In connection with the vote on the proposed merger/recapitalization, Defendants also held an informational meeting for RTI shareholders on June 3, 2009. Defendant Kiesel knew that the PowerPoint presentation he gave to shareholders attending the meeting was false and misleading because Defendant Sadek had instructed him to remove a number of slides which painted a promising picture of RTI. At the informational meeting, Defendant Grad stated that although Robert W. Baird had not provided a range in a fair price to be offered and paid for RTI, Robert W. Baird "would say" that the price offered for RTI was fair because the "real value" of RTI was only between \$80 and \$100 million dollars, and thus, the shareholders were getting more than the company was worth. No valuation of RTI has ever been as low as \$80 million dollars, and Defendant Grad misrepresented RTI's value in order to induce RTI shareholders into falsely believing that they were getting a good deal through the merger/recapitalization process. In fact, while Defendant Grad was making this misrepresentation, his colleague at Parthenon and fellow RTI director, Defendant Sadek, had created internal exit models suggesting that the value of RTI was much higher than the \$140 million being put forward to RTI shareholders. On April 17, 2009, Defendant Sadek had written to Defendant Grad and others sending a spreadsheet

employing an enterprise value range for a December 31, 2010 exit from RTI which went as high as \$350 million.

44. Besides the false and misleading proxy materials which Defendants distributed, the recapitalization/merger process was unfair and flawed in other respects. In the proxy materials, Defendants claimed to have appointed an “independent” committee of the RTI Board to evaluate the reasonableness of the recapitalization/merger. However, the “independent” committee consisted of only three members, all of whom held preferred stock in RTI and were not “independent.” In fact, one member of the so-called “independent” committee – John Grunewald – had been a “Parthenon representative” on the Board for nearly seven years until just one month before the merger/recapitalization when he suddenly was appointed as “independent.” Another member of the so-called “independent committee” was Defendant Kiesel, who, because he had been promised certain benefits if the recapitalization/merger was completed and held preferred stock was not “independent.” Prior to the creation of the Special Committee, Defendant Kiesel had been given an undisclosed incentive in the form of a substantial interest in stock options to get the merger/recapitalization accomplished, namely, he was promised to receive 35% to 40% of all outstanding stock options in the new management incentive plan which, under different exit scenarios projected by Defendant Sadek, would be worth millions of dollars. The third member of the Special Committee was Kenneth Larson (“Larson”). Just prior to the formation of the Special Committee on March 7, 2009, Larson had received an email from Defendant Grad in which Defendant Grad stated he had “very little sympathy for common shareholders.” In response, rather than being an advocate for RTI common shareholders, Larson stated that his “main concern is not to do anything that might cause a problem.”

45. Additionally, the so-called “independent committee” did not have access to independent financial and legal advice, and its actions were tainted by the absence of the aid of independent professionals. The lead transaction attorney from Dorsey & Whitney assisting the Special Committee held Series B-1 preferred stock in RTI and the transactional work surrounding the merger/recapitalization promised to enrich his firm by hundreds of thousands of dollars. Further, Robert W. Baird, the purported independent financial consultant, had been instructed by Kiesel to not opine about the fairness of the transaction to RTI shareholders and was simultaneously working with ABS and Defendant Parthenon on other projects.

46. At the first meeting of the Special Committee on April 1, 2009, four Dorsey & Whitney attorneys attended and presented the Special Committee with a timeline for approving the transaction. The three person Special Committee met for a total of three hours over four days, negotiated no benefits for the putative class, capitulated to Defendant Parthenon’s request for hundreds of thousands of dollars of management fees and did not question the legality of the transaction, much less the fairness of the allocation of limited equity in the transaction based upon Defendant Sadek’s low valuation. While the Defendants received an opinion from Robert W. Baird by April 16, 2009, they held it and elected not to mail out voluminous proxy materials and the Robert W. Baird opinion until May 14, 2009, a month later, and then set a very short deadline for a shareholders meeting, namely, June 12, 2009. Defendants knew that such a short time period would not permit RTI shareholders the opportunity to review and understand the complicated proposed recapitalization/merger which required nearly 200 pages to explain. However, in order for Defendant Parthenon to convert its Series B-2 stock at 100% of value plus a 30% accretion rate into the new entity, the ultimate closing of the merger/recapitalization transaction had to occur before July 1, 2009.

47. On May 22, 2009, Plaintiffs Tate and Ayers requested additional books and records which were referred to in the proxy materials; however, RTI did not produce those materials promptly as required by Delaware law, making the effort to analyze the fairness of the recapitalization/merger impossible. For example, despite the books and records request on May 22, 2009, RTI did not produce copies of its own financial statements until June 3, 2009, did not produce copies of its own Board minutes until June 5, 2009 and waited until June 10, 2009 – which was only two days before the shareholder vote and one day after Defendant Kiesel had put out supplementary information stating there had never been consideration of an IPO – to produce over 300 pages of information about the initial public offering discussions RTI had engaged in during 2006. While the information ultimately produced showed the recapitalization/merger to be grossly unfair, and the proxy materials to be, at best, misleading, the information was not produced in a timely manner allowing RTI shareholders, many of whom had already mailed their proxy to RTI, to properly inform themselves so that they could exercise their rights. Requests to postpone the vote were declined by Defendants because of alleged “pressure” from RTI lenders. When Plaintiffs asked to talk to RTI lenders about delaying the vote, Defendants would not allow Plaintiffs to speak to the lenders.

48. Those holding options in RTI were not even given the right to convert their RTI shares, did not receive the proxy materials and were merely advised in late May 2009 that their options were being terminated. In writing to option holders, Defendant Kiesel indicated that “after the recapitalization process is complete, the possibility of a new stock option plan will be considered” and then described the plan as “much more limited” than the one currently in place. Defendant Kiesel did not advise current option holders that the plan which was being proposed

to be implemented after the reorganization granted Defendant Kiesel and Defendant Weil over 70% of all options to be issued in the future.

49. At the time of the vote, Defendants ignored the very condition they had placed in the proxy materials, namely that if 10% of the common shareholders voted against the merger/recapitalization, the merger/recapitalization would not go through. In fact, approximately 550,000 shares of RTI common stock, nearly 40% of the total outstanding shares, voted against the merger, while less than a majority of outstanding common stock voted for the merger/recapitalization. Subsequently received proxies which were not counted and were deliberately and improperly disregarded by RTI, showed that an additional 100,000 votes against the merger had been mailed in, meaning that a clear majority of the RTI common shareholders had expressed their disapproval and had voted against the merger. Despite the language in the proxy materials prohibiting the merger/recapitalization from taking place under such circumstances, Defendants went through with the merger/recapitalization and closing on June 24, 2009 after arbitrarily “waiving” that condition on June 16, 2009.

COUNT I
(Breach of Fiduciary Duty – Loyalty)
(All Individual Defendants and Defendant Parthenon)

50. Plaintiffs restate and reallege Paragraphs 1 through 49 above.

51. As directors and officers of RTI, the Individual Defendants owed fiduciary duties to RTI’s shareholders, including a duty of loyalty that required the Individual Defendants to elevate the interests of RTI’s shareholders above their own personal and financial interests. As a controlling shareholder, Defendant Parthenon also owed such duties to other RTI shareholders.

52. Defendants Grad, Kiesel, Weil, Rutherford, Sadek, Clough and Parthenon violated their fiduciary duties to RTI’s shareholders by engaging in actions designed to reduce

and/or eliminate the value and ownership interests of the RTI shareholders and those possessing rights to obtain such shares for the benefit of their own personal and financial interests and for the benefit of Defendant Parthenon. Such violations include:

- a. Providing Defendant Parthenon, a “management services” contract with a potential value of over \$5 million.
- b. Having RTI pay for Defendant Parthenon’s legal services.
- c. Insuring that each Individual Defendant, directly or indirectly, would receive a significant interest in the newly recapitalized entity with an enterprise value which would guarantee a significant return on investment.
- d. Failing to obtain the best possible price for RTI in the recapitalization/merger.
- e. Failing to ensure independence and fairness in the RTI recapitalization/merger.
- f. Failing to make appropriate disclosures in the proxy materials and other information distributed to shareholders before the vote on the merger/recapitalization.
- g. Failing to follow the voting process which was articulated in the proxy materials.
- h. Mistreating the merger/recapitalization as a liquidation event and then employing liquidation preferences in the merger/recapitalization process.

53. Through these acts of self-dealing, these Defendants upstreamed RTI’s prospects to Defendant Parthenon and ABS. Furthermore, Defendants diluted the voting rights and economic value of other shareholders in order to increase the rights and value of their own, direct or indirect, interest in RTI.

54. Through these acts, these Defendants have damaged the Plaintiffs and the Class.

COUNT II
(Breach of Fiduciary Duty – Care)
(All Individual Defendants)

55. Plaintiffs restate and reallege Paragraphs 1 through 54 above.

56. As directors and officers of RTI, the Individual Defendants owed a duty to inform themselves of all material information reasonably available to them prior to making any business decision. Upon informing themselves of all material information, Defendants must exercise care in making their business decision and not place RTI at risk to satisfy the interests of one class of shareholders over another. Drew Sawyer's earlier statement reflecting contempt for common shareholders was essentially repeated by Defendant Grad in 2009 when, as a member of the RTI Board of Directors, he candidly wrote that he had "very little sympathy" for common shareholders. Further, Defendants Grad, Rutherford, Sadek and Clough as outside directors had a duty to supervise the conduct of those operating the business, including, Defendants Kiesel and Weil. They failed in this duty by repeatedly acknowledging, in private communications, that Defendants Kiesel and Weil were not up to the task of running RTI, but then took no affirmative action to remove them.

57. The Individual Defendants failed to reasonably inform themselves of key material information pertaining to RTI and instead unreasonably and unjustifiably relied upon the self-serving statements of interested parties, including other Defendants, who had irreconcilable conflicts of interest and were engaged in self-dealing and acting in their own self-interest.

58. Defendants' failure to adhere to their duty of care includes, but is not limited to, their failure to comply with well-established precedent requiring them to obtain the best possible price in the recapitalization/merger of RTI. Defendants were either not actively engaged in the merger/recapitalization or were interested parties who benefitted from the transaction. Defendants failed to perform a market check or auction. Ultimately, Defendants' violation of their duty of care resulted in their failure to obtain the best available price for RTI's shareholders in the merger/recapitalization. Alternatively, these Defendants oversaw an enormous decline in

RTI's purported value through their own reckless conduct. Further, Defendants Grad, Rutherford, Sadek and Clough failed to supervise Defendants Kiesel and Weil's improvident decision making and waste of assets.

59. Defendants knew or should have known that they could not reasonably rely upon the statements of individuals and entities with a conflict of interest. Furthermore, Defendants knew that the purportedly "independent" committee contained similar conflicts of interest and had engaged in similar self-dealing, therefore preventing that committee from presenting competent, fair, accurate or honest advice about the fairness of the merger/recapitalization.

60. By engaging in these actions, Defendants failed to discharge their duties in good faith or in a manner reasonably believed to be in the best interests of the corporation. Defendants also failed to act with the requisite care an ordinary prudent person in a like position would have exercised under similar circumstances.

61. As a result of Defendants' breach of their duty of care, Plaintiffs and the Class have suffered damages.

COUNT III
(Breach of Fiduciary Duty – Candor)
(All Individual Defendants)

62. Plaintiffs restate and reallege Paragraphs 1 through 61 above.

63. As directors and officers of RTI, Defendants were under a duty of candor and were obligated to disclose all material facts concerning RTI to other directors and officers and to the shareholders.

64. In violation of this duty of candor, Defendants withheld, suppressed or misrepresented significant material information pertaining to RTI, including, but not limited to, significant and irreconcilable conflicts of interests of certain directors and officers, as well as the

role these conflicted directors and officers were taking in RTI; material financial information, including information pertaining to a potential acquisition of RTI by third parties and information concerning a potential initial public offering; material information pertaining to RTI's contracts and commodity pricing which directly impacted the advisability of the June 2009 recapitalization/merger; the true value of RTI and known or obvious acts of self-dealing by one or more of the other officers and directors.

65. By engaging in these acts, the Individual Defendants misled Plaintiffs and the putative class as to the true nature of the merger/recapitalization and value of Plaintiffs' shares in RTI.

66. As a result of Defendants' breach of their duty of candor, Plaintiffs and the putative class have suffered damages.

COUNT IV
(Conversion)
(As to Defendant Parthenon)

67. Plaintiffs restate and reallege Paragraphs 1 through 66 above.

68. Defendant Parthenon or its affiliates, purchased 122,388 shares of Series B-1 preferred stock and 206,031 shares of Series B-2 preferred stock. In purchasing the Series B-1 and B-2 preferred stock, Defendant Parthenon knew it could not obtain the accreted values in the absence of a liquidation event and knew that the merger/recapitalization was not a liquidation event. In executing the merger/recapitalization, Defendant Parthenon and the individual Defendants affiliated with Defendant Parthenon set the conversion rate of their holdings in Series B-1 and B-2 preferred stock at 100% of their investment plus their accreted values and controlled the proposed allocation of RTI's equity and the merger/recapitalization. Defendant Parthenon's actions had the impact of improperly upstreaming equity from Series A preferred shareholders

and RTI common shareholders to Defendant Parthenon. Further, Defendant Parthenon, acting through Defendant Sadek, negotiated for itself potentially millions of dollars in “management fees” in connection with the merger/recapitalization in less than an arm’s-length transaction and received reimbursement from RTI for legal costs it was incurring for its own interest.

69. In advance of the merger/recapitalization, the percentage of RTI ownership held by Defendant Parthenon constituted approximately 45% of the total outstanding shares in RTI. As a result of the merger/recapitalization, the percentage of RTI ownership held by Defendant Parthenon increased to nearly 63%, largely as a result of the decision to convert Series B-1 and B-2 stock at 100% of its accreted value. This increase in equity ownership was achieved on the backs of other RTI shareholders who were wiped out and crammed down.

70. As a result of the conversion of RTI equity by Defendant Parthenon, the putative class has been injured by more than \$100,000.

COUNT V
(Misrepresentation)
(As to Defendants Kiesel and Sadek)

71. Plaintiffs restate and reallege Paragraphs 1 through 70 above.

72. The concept for a merger/recapitalization designed to cram down the interests of certain RTI preferred shareholders, wipe out common shareholders and eliminate existing stock options originated in November 2008. In December 2008, Defendant Kiesel, with the consent of others, including Defendant Sadek, sent a letter to RTI common shareholders suggesting that their common shares were worthless and they could forfeit their shares to RTI at a tax loss. Beyond shocking numerous RTI common shareholders through a letter suggesting their investment was suddenly worthless, Defendant Kiesel’s effort to eliminate the common

shareholders' capital investment in RTI failed. Not even Defendant Parthenon or ABS forfeited their common share holdings in response to Defendant Kiesel's letter.

73. At the end of December 2008, Defendant Parthenon purchased Series B-2 preferred stock which had a right to convert into any newly created entity at a 100% value provided the conversion occurred prior to July 1, 2009. Defendant Sadek then led negotiations with lenders in which he agreed to complete a merger/recapitalization employing a value of \$140 million, that Defendant Parthenon would receive potentially millions of dollars in management services fees and that RTI common shareholders would be wiped out or would be required to sign releases if they wanted to maintain an interest in the newly recapitalized company. After the negotiations with the lenders concluded, in order to insure Defendants Kiesel and Weil's full support for the merger/recapitalization, Defendant Sadek also negotiated a management incentive plan in which Defendants Kiesel and Weil would get nearly 60% of all of the stock options to be set aside for RTI management and employees in the recapitalized entity. Under Defendant Sadek's own calculation, this would be potentially worth millions of dollars to Defendant Kiesel when Defendant Parthenon executed an exit strategy and either sold RTI or engaged in an initial public offering. All of Defendant Sadek's negotiations with lenders as well as his negotiations with Defendant Kiesel was done in advance of the formation of any Special Committee to assess the wisdom, much less the fairness, of any merger/recapitalization.

74. When the Special Committee was finally created on April 1, 2009, Defendant Kiesel took charge of its activities. Against the advice of attorneys from Dorsey & Whitney who told Defendant Kiesel to select a financial advisor who was truly independent, he retained Robert W. Baird who was, at the time, working with Defendant Sadek and ABS on other projects. Defendant Kiesel made sure the engagement agreement with Robert W. Baird would not include

any analysis of the fairness of the transaction to various classes of shareholders, but would merely opine on whether Defendant Sadek's \$140 million valuation was fair "to the company."

75. During the limited discussions and meetings with the Special Committee, Defendant Kiesel made sure that not one material change in the transaction which Defendant Sadek had negotiated with the lenders took place. The Special Committee approved the transaction without dissent after "meeting" for a cumulative total of three hours.

76. When the proxy materials were being finalized for mailing to RTI shareholders, Defendant Sadek oversaw the removal of material information which portrayed the company in a positive light. Defendant Sadek also insisted on the creation of tables employing "accretive" values despite the fact the merger/recapitalization was not a liquidation event giving rise to such values. Subsequently, when a PowerPoint presentation was being developed for the shareholder informational meeting, Defendants Sadek and Kiesel removed slides portraying the company in a positive light, including its EBITDA upside potential, its anticipated year-end 2009 EBITDA run rate, its costs savings program which was on pace to generate millions of dollars of additional cash for RTI and the new contracts which the company had, and was about to enter into. These actions had the impact of upstreaming to Defendant Parthenon greater equity while providing future remuneration to Defendant Kiesel. Defendants Kiesel and Sadek knew that what they were portraying to shareholders was not accurate. Defendant Sadek had been running numerous exit scenarios for others at Parthenon showing that RTI may be sold within 18 months for more than twice his \$140 million valuation which would generate a significant return for Defendant Parthenon. Similarly, while Defendant Kiesel was portraying a mere \$204 million of estimated revenue for RTI in 2009 to shareholders in the proxy materials, he was writing to others

suggesting that RTI sales for 2009 would be \$250 million and that year over year EBITDA was growing at a 25% rate.

77. Defendants Sadek and Kiesel acted either negligently or with intent to defraud the putative class damaging the putative class.

COUNT VI
(Tortious Interference)
(As to Defendants Rutherford, Clough, Sadek and Grad)

78. Plaintiffs restate and reallege Paragraphs 1 through 77 above.

79. As shareholders of RTI common stock, Plaintiffs held a reasonable expectation of enjoying the benefits of ownership in RTI, including, but not limited to, a reasonable expectation that RTI officers (Defendants Kiesel and Weil) would meet their fiduciary obligations.

80. Defendants Rutherford, Clough and Grad knew of Plaintiffs' expectation to enjoy the economic advantages and benefits attendant to ownership of shares of RTI, including the 2006-2007 initial public offering discussions and the possible 2008 sale of RTI.

81. Defendants Rutherford, Grad and Clough wrongfully and unjustifiably interfered with Plaintiffs' expectations of these economic advantages and benefits by scuttling, preventing and/or hindering the consummation of the aforementioned transactions and by coercing Defendants Kiesel and Weil and other RTI Board members into a recapitalization/merger process that effectively wiped out the interests of the putative class. These Defendants put the interests of Defendant Parthenon and ABS ahead of the interests of RTI or its other shareholders and required others to engage in wrongful activities designed to effectuate the interests of Defendant Parthenon and ABS.

82. In the absence of Defendants' wrongful and unjustifiable conduct, it would have been reasonably probable that the aforementioned transactions could not have taken place and

Plaintiffs would continue to enjoy the full value of their ownership rights in RTI. Instead, Defendants Rutherford, Sadek, Clough and Grad insisted that, in order to continue to enjoy the benefits of RTI ownership, Plaintiffs were required to release them from the wrongful conduct they had engaged in. Due to these Defendants' conduct, Plaintiffs are no longer able to enjoy this prospective economic advantage.

83. As a result of Defendants' wrongful and unjustifiable interference with Plaintiffs' economic advantages and benefits and interference with the requirement that Defendants Kiesel and Weil meet their fiduciary obligation, Plaintiffs and the Class have suffered damages.

COUNT VII
(Unjust Enrichment)
(Defendant Parthenon)

84. Plaintiffs restate and reallege Paragraphs 1 through 83 above.

85. As a result of the above stated actions, Defendant Parthenon has received certain valuable rights and interests from the Plaintiffs, including a greater percentage of the total ownership, control, management and value of RTI.

86. Defendant Parthenon was not entitled to the benefits it received from the Plaintiffs since any benefits are the direct result of the wrongful conduct of other individual Defendants.

87. Defendants knowingly and willingly accepted the benefits conferred upon them.

88. The facts and circumstances of this case are such that it would be unfair, unjust, and unconscionable to permit Defendant Parthenon, to retain the benefits conferred upon it.

89. Plaintiffs and the Class are entitled to damages in order to avoid having Defendants unjustly enriched.

COUNT VIII
(Conspiracy)
(All Defendants)

90. Plaintiffs restate and reallege Paragraphs 1 through 89 above.

91. Defendants, along with others not yet named, entered into a combination among one another with the object and purpose of facilitating, among other things, breaches of their fiduciary duties, tortious interference with Plaintiffs' economic advantages and fraud. There was no lawful purpose for this combination; rather, the purpose of this combination was to engage in the unlawful breaches of their fiduciary duties, tortious interference with Plaintiffs' actual and perspective rights and economic advantages and fraud.

92. As a result of the Defendants' conspiracy, Plaintiffs and the Class have suffered damages.

COUNT IX
(Declaratory Judgment)
(As to Defendant RTI)

93. Plaintiffs restate and reallege Paragraphs 1 through 92 above.

94. Pursuant to both Delaware and Minnesota law, and in accordance with the common law, this Court has the legal and equitable authority to grant specific relief to address misleading and wrongful actions committed in relation to a merger, including the power to rescind a fraudulent or wrongfully completed merger.

95. The merger/recapitalization process engaged in by Defendant RTI and orchestrated by the Individual Defendants included numerous false or misleading statements and/or material omissions. These false or misleading statements and/or material omissions prevented the Plaintiffs from making a fully-informed decision and tainted the merger process

with badges of fraud and other wrongful conduct, including self-dealing conduct. Further, the merger/recapitalization was misrepresented as an event triggering liquidation preferences.

96. A real and justiciable controversy exists between the parties regarding the effect of the merger/recapitalization as it involves definite and concrete assertions of rights that emanate from a legal source, involve a genuine conflict in tangible interests between two parties with adverse interests, and is capable of specific resolution by judgment rather than presenting hypothetical facts that would form an advisory opinion.

97. Due to Defendants' actions, Plaintiffs are entitled to a declaratory judgment determining and declaring that the merger between RTI and RTI Sub 123, Inc. completed on or about June 24, 2009, as a part of the aforementioned merger/recapitalization, is null and void and without any effect. Plaintiffs and the Class are further entitled to a declaratory judgment determining and declaring that their shares in RTI are to be reinstated and returned upon the return/cancellation of any consideration such shareholder may have received in connection with the merger/cancellation.

COUNT X
(Entire Fairness)
(As to All Defendants)

98. Plaintiffs restate and reallege Paragraphs 1 through 97 above.

99. Defendants have violated the standards of fair dealing and fair price required by the entire fairness standard.

100. The merger in question was timed in order to effectuate Defendants' goal of obtaining full control of RTI through a freeze-out merger at a depressed price. Defendants knew that the price of yellow grease fluctuates and has the potential to be extremely valuable in the future because of its relation to biofuels and other uses, and that its value was temporarily

depressed when they effectuated the merger. Defendants also knew that after the economic downturn, RTI would continue on with enormous potential, and that they could take advantage of the current market by obtaining full control of RTI for a substantially lower price than would otherwise be required. Defendants' wrongful conduct deprived RTI shareholders of any potential benefit, or any benefit at all, of their RTI investment.

101. The merger/recapitalization was initiated, structured, and negotiated inappropriately. There was no apparent negotiation for price to be paid in the freeze-out merger. The structure of the merger/recapitalization was specifically designed to deprive shareholders of standing to bring a derivative suit. Specifically, it was required that any shareholder who maintained ownership of their shares sign a release of the company and its other shareholders. The merger/recapitalization was also structured to give a controlling interest and additional equity to certain shareholders, officers, and directors. The structure was therefore unfair and was tainted with fraud.

102. The merger/recapitalization was inappropriately described to RTI shareholders, who were not given enough information, or who were given inaccurate, false or confusing information, upon which to base their decision about how to vote in the merger/recapitalization. The proxy materials contained misstatements and omissions which materially altered the total mix of information available to shareholders. These misrepresentations and omissions include, but are not limited to:

- a. The lack of an independent relationship between Parthenon, ABS, RTI, and Robert W. Baird, the company that issued a fairness opinion;
- b. The lack of independence present on the alleged "independent" committee, for the directors appointed to that committee were either (1) not independent or (2) were controlled by interested parties;

- c. The “independent’ committee lacked independent legal counsel, and the counsel relied upon by the committee was not obtained or hired by the independent committee, but instead by other interested parties. In fact, the legal counsel obtained and relied upon by the independent committee in assessing the merger/recapitalization was conflicted;
- d. The fairness opinion disclosed to shareholders in pre-merger/recapitalization proxy materials did not rely upon objective assessments of the earnings or future prospects of RTI, ignored prior valuations and did not opine about the fairness of the transaction to classes of shareholders.
- e. The failure to provide the correct Delaware statute outlining appraisal rights.

103. The RTI Board accepted the terms of the merger/recapitalization without performing a market check, and did not have a sufficient body of evidence upon which to base an assessment of whether the single price offered was the best price available.

104. The merger/recapitalization lacked the oversight of disinterested parties.

105. The price offered and paid for RTI shares in the merger/recapitalization was unfair. The price offered was materially below what RTI is actually worth. In coming to an assumed, non-negotiated price for the merger/recapitalization, the market value of RTI was not assessed, considered, or explored; the future prospects of RTI were deliberately and materially disregarded; and the earnings and assets of RTI were depressed or unaccounted for.

106. Therefore, the merger/recapitalization cannot withstand scrutiny under the entire fairness standard. As a result, Plaintiffs and the Class have suffered damages.

PRAYER FOR RELIEF

1. Finding that there are common issues of fact and law, that the individuals comprising the class are numerous, that Plaintiffs’ claims are typical of the claims of the putative class, that the class representatives will protect the interests of the class and then certifying the class pursuant to Rule 23 of the Federal Rules of Civil Procedure.

2. Entering a declaratory judgment that the merger/recapitalization process was unfair, should be declared void and rescinded.
3. An award of actual and consequential damages against Defendants, individually and jointly, of more than \$100,000.
4. Granting such other and further relief as the Court may deem just or appropriate.

Dated: March 23, 2010

**ANTHONY OSTLUND BAER
& LOUWAGIE, P.A.**

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