

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
WEST PALM DIVISION  
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IN RE:

PALM BEACH FINANCE PARTNERS, L.P.,  
PALM BEACH FINANCE II, L.P.,  
Debtors.

CASE NO. 09-36379-PGH  
CASE NO. 09-36396-PGH  
(Jointly Administered)

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BARRY E. MUKAMAL, IN HIS CAPACITY  
AS LIQUIDATING TRUSTEE OF THE PALM  
PALM BEACH FINANCE PARTNERS  
LIQUIDATING TRUST AND PALM BEACH  
FINANCE II LIQUIDATING TRUST;  
Plaintiff,

Adv. Case No.

v.

GENERAL ELECTRIC CAPITAL  
CORPORATION;  
Defendant.  
\_\_\_\_\_

**COMPLAINT**

Barry E. Mukamal, in his capacity as liquidating trustee (“*Liquidating Trustee*”) of the Palm Beach Finance Partners Liquidating Trust and the Palm Beach Finance II Liquidating Trust (collectively, “*Palm Beach Liquidating Trusts*”), sues General Electric Capital Corporation (“*GECC*”).

In support, the Liquidating Trustee alleges:

**I. JURISDICTION, VENUE AND STANDING**

1. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§157 and 1334.
2. Venue in this Court is proper pursuant to 28 U.S.C. §§1408 and 1409.
3. The Liquidating Trustee has standing to bring this action on behalf of the Palm Beach Liquidating Trusts for damages suffered by Palm Beach Finance Partners, L.P. (“*PBF I*”) and Palm Beach Finance Partners II, L.P. (“*PBF II*,” and together with PBF I, “*Palm Beach Funds*”).

## II. INTRODUCTION

4. Thomas Petters (“*Petters*”) and his co-conspirators (“*Petters Conspirators*”) conspired to commit and committed the third largest financial fraud in U.S. history. This continuing fraudulent enterprise and conspiracy (“*Conspiracy*”) in large part took the form of a *ponzi scheme* and operated from no later than 1995 until September 2008.

5. In 1998, with other private lenders having previously financed Petters and the Conspiracy, GECC agreed to provide Petters a \$50 Million revolving line.

6. At all material times, GECC was an extremely sophisticated commercial lender. By the Fall of 2000, GECC discovered the Conspiracy, including that Petters and certain of the Petters Conspirators were engaged in a conspiracy to defraud their lenders.

7. Nevertheless, GECC agreed to keep silent and not disclose its knowledge to anyone outside GECC including: (i) law enforcement; (ii) Petters’ legal counsel (with whom it interacted); (iii) other lenders of Petters’ business operations (which it knew to exist); or (iv) other business relationships of Petters (which it knew to exist). GECC failed to act as a responsible and moral corporate citizen or correct its false Recommendation Letter (defined below).

8. Instead, GECC elected to join, encourage, aid, abet, facilitate and otherwise substantially assist the Conspiracy, and also went on to defraud the Palm Beach Funds, in order to benefit itself to the detriment of all others. GECC did so for the simplest of reasons... *greed and self-interest*. GECC demanded payment of approximately \$45 Million knowing: (i) this was more than what it was truly owed; and (ii) these monies came from new, defrauded investors. GECC accepted these payments in an atypical and unusual manner in violation of its own Code of Conduct.

9. GECC knowingly joined the Conspiracy and its conspiratorial objective of operating a fraudulent enterprise, including paying old lenders with monies raised from new ones rather than from legitimate business operations, and concealing this from defrauded lenders (“*Conspiratorial Objective*”).

10. GECC’s actions and inactions facilitated the Conspiracy to metastasize into the third largest financial fraud in U.S. history.

11. The Palm Beach Funds’ financed Petters’ business operations from late 2002 through 2008. In September 2008, when the Conspiracy was exposed (“*Implosion of the Conspiracy*”), the Palm Beach Funds were among the largest victims, suffering losses exceeding \$1 Billion.

### III. PARTIES

12. GECC is a corporation organized under the laws of the State of Delaware with its principal place of business in Connecticut. GECC performs significant business in the State of Florida and in the Southern District of Florida.

13. GECC is one of the most sophisticated commercial lenders in the world, and touts that its capabilities far exceed that of a mere “banker.” In 2011, GECC employed over 50,000 individuals in over 50 countries, owning assets with a value exceeding \$580 billion.

14. The Palm Beach Funds were Delaware limited partnerships whose principal place of business was located in Palm Beach County, Florida. The Palm Beach Funds were formed specifically in 2002 and 2004 respectively to provide financing to Petters and his affiliates. To facilitate this, the Palm Beach Funds created PBFP Holdings, LLC (“*Holdings*”).

15. On November 30, 2009 (“*Petition Date*”), the Palm Beach Funds filed voluntary petitions under Chapter 11 of the Bankruptcy Code. Pursuant to a confirmed liquidating plan (“*Plan*”), the Liquidating Trustee was appointed Liquidating Trustee for the Palm Beach Liquidating Trusts and all

claims and causes of action held by the Palm Beach Funds are reserved, preserved and retained by the Palm Beach Liquidating Trusts.

#### IV. OTHER SIGNIFICANT PERSONS

16. Three relevant GECC employees were Paul Feehan (“**Feehan**”), Richard Menczynski (“**Menczynski**”) and John (Jack) Morrone (“**Morrone**”). Menczynski was a GECC Assistant Vice President, and primary account manager (*i.e.* the primary face of GECC) for the GECC–Petters relationship from 1999 through September 2000, when he joined Petters as a senior executive. Morrone then took over as the primary account manager. In 2000, Feehan was GECC’s Senior Vice President of Risk and Underwriting and the Petters relationship fell within his responsibility.

17. From no later than 1995 through September 2008, Petters orchestrated the Conspiracy. In the criminal action *U.S.A. v. Thomas J. Petters*, Case No. 08-364, U.S. District Court for the District of Minnesota (“**Petters Criminal Trial**”), Petters was convicted of money laundering and other crimes related to the Conspiracy and sentenced to fifty years in prison.

18. Petters Company, Inc. (“**PCI**”) is a Minnesota corporation owned by Petters. Petters Group Worldwide, LLC (“**PGW**”) is a Delaware limited liability company also owned by Petters. Both PCI and PGW pled guilty to felonies related to their roles in the Conspiracy. Petters Capital, Inc. (“**Petters Capital**”) is a Minnesota corporation owned by PCI and controlled by Petters.

19. RedtagBiz, Inc., f/k/a Redtagoutlet.com, Inc. (“**RedTag**”), was another Petters controlled entity, in the online retail business. RedTag merged with PGW in January 2006.

20. PCI, Petters Capital and PGW are debtors in bankruptcy cases pending in Bankruptcy Court in Minnesota, Case No. 08-45257.

21. Frank Vennes and his affiliate entities including Metro Gem, Inc. (“**Vennes**”) were lenders to PCI and served as the communications middleman and servicing agent for and between the Palm Beach Funds and Petters (and other of Petters’ affiliates).

## V. INTERNAL POLICIES

22. Upon information and belief, GECC maintains internal policies, procedures, guidelines and/or practices (“**Internal Policies**”) which govern its employees’ conduct.

23. GECC also maintains a Code of Conduct, entitled “*Integrity: The Spirit and the Letter of Our Commitment*” (“**Integrity Policies**”). The Integrity Policies apply to GECC and its employees.

24. According to the Integrity Policies which were in force in June 2005 (and upon information and belief are substantially similar to those in place in 2000 and 2003) (emphasis added):

***All GE employees must comply not only with the letter of these policies, but also their spirit.***

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***GE will conduct business only with reputable customers involved in legitimate business activities, with funds derived from legitimate sources.*** Each GE business is required to implement risk-based ‘Know Your Customer’ due diligence procedures calibrated to the risk in question, ***and to take reasonable steps to prevent and detect unacceptable and suspicious forms of payment.***

25. According to the Integrity Policies which were in force in February 2004 (and upon information and belief are substantially similar to those in place in 2000 and 2003) (emphasis added):

People who are involved in criminal activity (for example, ... fraud) may try to “launder” the proceeds of their crimes to ... make those proceeds appear legitimate.

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Each GE business is required to ... ***take reasonable steps to ensure that the company does not accept forms of payment that have been identified as means of laundering money.***

The February 2004 Integrity Policies continue, under “Core Requirements” (emphasis added):

Follow your business’ “Know Your Customer” procedure. Each business has a due diligence process, tailored to its particular business environment, to obtain enough information and documentation about prospective customers, joint venture partners and

*affiliates to ensure that they are involved in legitimate business activities and that their funds come from legitimate sources.*

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Learn to identify and carefully watch for warning signs that may indicate money laundering or other illegal activities or violations of GE policies. *If you encounter a warning sign, raise your concerns with company legal counsel and be sure to resolve your concern promptly before proceeding further with the transaction. Resolution should include management review and should be well documented.*

## VI. FACTUAL BACKGROUND

### 1. The Petters Business and the Fraudulent Conspiracy

#### *a. The Purported Petters Business Strategy*

26. By 1995, Petters began raising money by offering promissory notes to lenders. Petters represented that the monies borrowed would finance so-called “purchase order financing” transactions.

27. Petters claimed to arrange for the sale and delivery of overstock consumer electronics (“*Merchandise*”) from manufacturers or suppliers (“*Suppliers*”) to certain “big box” retailers such as Costco, Sam’s Club and B.J.’s Wholesale Club (“*Retailers*”). The financing would allow Petters to pay the Suppliers while he awaited payment from Retailers.

28. PCI was the primary Petters-affiliated entity which arranged these purchase order financing transactions. Single purpose entities (“*SPE*”) affiliated with PCI were formed to handle loans for particular lenders. Each lender would lend to a dedicated SPE in order to have a senior, properly perfected security interest in the Merchandise financed. UCC-1 financing statements were often filed.

29. Petters typically provided the lender with a series of documents to document the transaction, including bills of sale from a Supplier, purchase orders from a Retailer and bills of lading reflecting delivery of the Merchandise (“*Support Documents*”).

#### *b. Petters’ Conspiracy*

30. Petters’ business operation was a fraudulent enterprise and conspiracy that operated as a *ponzi* scheme and as an exercise in money laundering. The Merchandise was virtually non-existent.

The Retailers were not purchasing the Merchandise and the Suppliers were co-conspirators. Lenders were repaid from monies sourced from other defrauded lenders. Petters engaged in some real transactions, but none remotely to the extent represented. Because fabricated purchase orders were a key element to the scheme, Petters demanded that lenders not contact Retailers directly.

## 2. GECC's Business Relationship with Petters and His Affiliates

### a. GECC Meets and Performs Due Diligence on Petters

31. In 1997, GECC began to communicate with Petters about financing his operations. GECC and Petters contemplated that an SPE (Petters Capital) would be formed to borrow \$50 Million from GECC on a revolving basis.

32. GECC considered the deal and Petters' industry each to be unusual. GECC hired a national investigatory firm, Kroll, to investigate Petters and prepare a report ("**Kroll Report**").

33. The Kroll Report revealed Petters had a history of criminal and civil problems including: (i) arrest warrants for forgery and bad checks; and (ii) lying to a court and being found to have acted in "bad faith." The Kroll Report, coupled with the deal risks, caused GECC to consider the deal to be of heightened risk. To militate the risk of fraud, GECC imposed "*additional controls*."

34. GECC required the Merchandise purchased by Petters: (i) be "*pre-sold*" to Retailers; and (ii) serve as GECC's specific collateral. Its Chief Risk Officer stressed "*due diligence on financings is NOT optional*" and GECC must perform its own due diligence "*and not rely 100% on borrower.*"

35. The "*additional controls*" were considered inadequate by Catharine Midkiff ("**Midkiff**"), then GECC's Senior Vice President of Risk and Underwriting. After summoning Petters to Chicago to confront him with the Kroll Report, she handwrote on a deal memorandum (emphasis added):

I wish to establish *clearly and on the record that I do not support this transaction*. I believe that the *additional controls* will largely prevent the opportunity for GE Capital's money to be used improperly but *I do not approve of being in business with a person who has previously demonstrated a lack of integrity*.

***b. GECC Closes a \$50 Million Line of Credit with Petters Capital, as a Lender and Profit Participant***

36. Despite GECC's concerns and Midkiff's objection, GECC closed a credit agreement with Petters Capital on March 26, 1998 with a three year term. GECC believed it could obtain a high rate of return and control the risk that Petters would commit fraud. Pursuant to the transaction:

- a) GECC would make funds available to an SPE (Petters Capital) under a \$50 Million revolving line of credit ("***Petters Capital Line***");
- b) The funds advanced could only be used to buy Merchandise;
- c) The Petters Capital Line was to be repaid from the sale of the Merchandise;
- d) GECC would approve draws on a transaction-by-transaction basis with GECC having complete discretion whether to fund;
- e) GECC would only consider deals in which Petters had already purchased and pre-sold Merchandise at an acceptable profit level;
- f) Petters Capital would be required to submit a due diligence package including copies of the Support Documents;
- g) GECC required that Retailers pay direct to a GECC controlled lockbox or blocked account for which Petters would have no signature authority ("***Lockbox***") to ensure that GECC maintained "full cash controls" and Petters none;
- h) GECC would receive various forms of compensation, including: (i) interest; (ii) profit sharing "***Success Fees***;" (iii) inventory loan fees; (iv) collateral monitoring fees; and (v) fees for non-use of available funds;
- i) Petters Capital was prohibited from borrowing monies from other lenders absent a written subordination agreement executed by GECC; and
- j) Petters Capital was prohibited from financing the purchase of any Merchandise with any lender other than GECC.

37. At the time, a \$50 Million line of credit was significant and substantial to GECC. Had Petters Capital failed to pay, "*that would have been a big loss to GE Capital.*"

38. Each Success Fee was contingent upon the profitability of a given transaction, typically equaling 10% of the profit for each transaction, with Petters Capital receiving the balance.

39. The profit-sharing arrangement (among other things) rendered GECC not merely a lender, but a *de facto* Petters Capital ‘business partner,’ as it held a pecuniary interest to the extent Petters Capital turned a profit from its deals. Upon information and belief, the lure of the Success Fee influenced GECC to overrule Midkiff.

40. On March 10, 1998, GECC filed a UCC-1 (“*GECC Financing Statement*”) with the Minnesota Secretary of State to perfect its security interest in the assets of Petters Capital.

*c. GECC Enters Into a \$55 Million Line of Credit with RedTag*

41. In 1999, GECC provided a \$55 million line of credit to RedTag (“*RedTag Line*”), increasing GECC’s aggregate potential financial exposure to Petters-related companies to \$105 Million.

*d. GECC’s Exit Plan if Petters Capital Did Not Pay*

42. GECC understood it was not making a loan to Petters Capital for general operations or working capital. Rather, the monies would fund a specific flip of Merchandise.

43. GECC did not obtain income tax returns, periodic updated financial statements or operating data from Petters Capital and did not look for payment from Petters Capital’s operations or earnings. In the event of default, GECC would look for payment exclusively from the collateral it financed (“*Exit Plan*”). The collateral consisted of the Merchandise, and once sold to a Retailer, the receivable owed by that Retailer to Petters Capital. GECC also received a personal guaranty from Petters and a pledge of the Petters Capital stock.

**3. GECC and Petters / Petters Capital Developed an Unusually Close and Special Relationship, and GECC Took Extraordinary Steps to Assist Petters Capital’s Business**

44. Over time, GECC and Petters (and Petters Capital), developed an unusually close and special relationship, far closer than “arms-length.”

45. *First*, the parties had the Success Fee arrangement.

46. *Second*, on January 4, 2000, GECC issued a Recommendation Letter on GECC's letterhead praising Petters and Petters Capital, in their personal and business capacities ("**Recommendation Letter**"). A copy is attached as Exhibit 1.

47. The Recommendation Letter was an extraordinary departure from the vanilla form of "*reference letter*" typically issued by GECC to a borrower's specific vendor attesting to the mere existence of a relationship without commentary or hyperbole.

48. The Recommendation Letter characterizes Petters Capital as an "*excellent customer*" who has "*performed well.*" "Excellent" status was exclusive to - - and created for - - Petters Capital, because according to GECC, "*There's no characterization that we use to say some customers are good, some are bad, and some are excellent. It just doesn't exist.*" Upon information and belief, this characterization was created by Petters who provided GECC the verbiage he wanted in the Recommendation Letter and GECC obliged.

49. The Recommendation Letter represents (emphasis added):

On a personal level, I have known Petters for a little over two years ***and have found him to be of high character and possessing strong moral values.***

This statement was atypical and extraordinary, as GECC and its employees do not provide personal character references for customers or vouch for their ethos. Upon information and belief, Petters prepared this phrase and GECC obliged.

50. GECC ordinarily issues reference letters addressed only to a specified individual or company. GECC issued the Recommendation Letter "*To whom it may concern.*" Thus, GECC sanctioned that Petters and Petters Capital would use the Recommendation Letter as a blank check, to impress *anyone* with their excellent relationship with, and glowing personal and moral assessments from, one of the most respected and powerful financial services companies in the world. Knowing

Petters financed his operations from private investors, GECC understood the Recommendation Letter would be disseminated to third parties, including future lenders.

51. *Third*, although a key “*additional control*” was the Lockbox, GECC permitted Petters Capital to ignore this and allowed Petters Capital to retain full cash controls with GECC having none. Upon information and belief, GECC did not document this change in violation of its Internal Policies and industry standards.

52. *Fourth*, as discussed below relative to the First Investors, GECC permitted Petters Capital to buy Merchandise financed by other lenders in contravention of its loan agreement and upon information and belief without a signed written waiver. GECC also did not enforce other material provisions of its loan agreement, again without proper documentation.

53. *Fifth*, GECC deviated from its standard procedures for verifying its collateral, communicating through Petters and Petters Capital rather than directly with the Retailer (Costco), as per the May 3, 2000 Verification (defined below). Until then, GECC had performed little of the requisite due diligence on each deal, instead trusting Petters.

54. *Sixth*, Petters and Menczynski had an unusual and close relationship. Menczynski helped underwrite the Petters Capital Line and then in 1998 when the line was approved left GECC to join a bank. Upon information and belief, Petters Capital then took few draws. According to Menczynski, in 1999 Petters asked GECC to re-hire him. GECC complied and offered him a position. Petters contemporaneously recommended to Menczynski that he accept, which Menczynski did, serving as Petters Capital’s primary account manager with a title promotion. Petters Capital then ramped up its draws, with GECC performing little of the requisite due diligence. In September 2000, Menczynski left GECC to become RedTag’s interim Chief Financial Officer. Petters provided Menczynski a substantial

salary increase and the down payment on a home. Menczynski went on to become RedTag's Chief Operating Officer. Petters showered Menczynski with enormous bonuses and benefits.

55. *Seventh*, Petters gave at least one GECC employee a gift with a value in excess of the limits prescribed by GECC's Internal Policies ("**Improper Gift**") and GECC took no action.

56. *Eighth*, in May 2000, Petters wrote to Michael Gaudino (Feehan's superior) that he considered the relationship special. After referencing his attendance at GECC's invitation at the John F. Welch Leadership Development Center in Crotonville, New York, Petters noted he had "*over \$105,000,000.00 in finance facilities with GE[CC]. We look for this to continue to grow aggressively in the very near future.*" Petters expressed his "*thanks to the group at GE[CC] here in Minneapolis and Chicago (whom we have our day to day contact) many things have been achieved that simply could have never happened if these folks had not gone the extra mile.*" He glowed that GECC executives "*nurtured this relationship in a way that Jack Welch himself should be very proud.*"

#### **4. The Deal "Changes"**

57. At some point in or about 1999, the deal "changed." Initially, GECC funded the purchase of Merchandise, Petters Capital was prohibited from financing the purchase of Merchandise from other lenders and Petters Capital was prohibited from borrowing monies for any other purpose absent a subordination agreement.

58. Now, GECC understood that Petters Capital would borrow monies from private investors at high rates of interest ("**First Investors**") to purchase Merchandise which was then flipped to a particular Retailer, thereby generating a receivable. GECC would then advance funds to pay the First Investors. GECC's sole collateral would be the receivable owed by the Retailer to Petters Capital ("**Deal Change**"). GECC did not require a subordination agreement.

59. GECC did not document the Deal Change by an amendment to the credit agreement, (upon information and belief) in violation of applicable industry standards and its Internal Policies.

## 5. GECC Discovers the Conspiracy

### *a. The May 3, 2000 Verification Form*

60. The line balance grew to tens of millions of dollars and payments slowed, contra to how the Petters Capital Line was supposed to work. GECC became suspicious and nervous.

61. By May 2000, Costco was the Retailer for almost all GECC deals. GECC, with tens of millions of dollars of financial exposure, sought to verify with Costco that the purchase orders it issued to Petters Capital - and which served as GECC's only collateral and repayment source - were legitimate and that Costco truly owed over \$52 million to Petters Capital.

62. To eliminate the possibility of customer wrongdoing, GECC's operating procedure was to send the verification directly to Costco and receive the executed version directly back from Costco. According to GECC, "*it's the right way to do it.*"

63. However, on May 3, 2000, GECC sent a verification form ("***May 3, 2000 Verification Form***") the wrong way, directly to Petters Capital. Petters caused Costco's signature to be forged and returned the form to GECC.

### *b. The June 23, 2000 Agreement*

64. By June 2000, GECC was owed over \$40 Million and began to lament its failure to enforce the Lockbox. Feehan (Midkiff's successor) spoke with Petters by telephone on June 23, 2000. He insisted - - and Petters agreed - - that Petters Capital would endorse and forward to GECC every future payment check from Retailers on all GECC financed deals and not deposit these checks into a Petters Capital account ("***June 23, 2000 Agreement***").

65. In early July 2000, when Petters Capital requested an approximate \$1.67 Million advance to fund a Costco deal, GECC's internal approval restated the June 23, 2000 Agreement and required that Petters be reminded of this agreement prior to funding.

66. Petters Capital never complied. Starting days later and continuing for weeks, Petters Capital issued a series of multi million dollar checks to GECC from its own bank account. GECC accepted these payments without explanation as to where were the Costco checks.

*c. GECC's Suspicions Explode and GECC Wants Out*

67. GECC, growing more anxious, repeatedly hounded Petters -- perhaps a "baker's dozen" times per week -- why Costco was not paying. Petters offered a series of non-credible excuses, steadfastly representing that Costco had accepted the Merchandise but was just not paying. According to Feehan, Petters' excuses:

[F]rankly became a continuous refrain of, The check's in the mail or I'll pay you next Tuesday. It was always an excuse.

GECC found these excuses "more and more hard to accept" and did not believe him. The account became "more stressful to management."

68. To create a record of the facts, GECC transcribed voice messages that Petters left for GECC ("**Transcribed Voicemails**"). This is a common practice of GECC "if a customer relationship becomes troublesome." After transcribed, Feehan reviewed the transcription for accuracy.

69. By September 2000, Petters Capital and GECC discussed ending the Petters Capital Line. On October 9, 2000 the parties signed a letter agreement ("**October 9, 2000 Agreement**"). If Petters Capital paid GECC \$45,891,229.62 ("**Final Payment**") by October 27, 2000, then Petters Capital's debt would be satisfied and the line terminated. The Final Payment had several components, including: (i) principal; (ii) interest; (iii) certain fees; and (iv) the Success Fee. GECC calculated a Success Fee in the amount of \$400,695.63 based on the Support Documents ("**Final Success Fee**").

*d. GECC Calls Costco*

70. While waiting for the Final Payment to arrive on Friday October 27, 2000, on or about Tuesday October 24<sup>th</sup> GECC's suspicions compelled it to contact Costco directly to find out straight from the proverbial horse's mouth if the Costco purchase orders were real ("**October 24, 2000 Verification**"). A copy is attached as Exhibit 2.

71. GECC believed that Petters Capital was an SPE with no employees, no business operations and one asset class: a receivable due from Costco pursuant to a discrete set of purchase orders. The pledge of Petters Capital stock had value only to the extent of the Costco receivable.

72. Unlike the May 3, 2000 Verification, this time GECC issued the October 24, 2000 Verification "*the right way*" under GECC's procedures: to Costco directly. By this time, all the purchase orders were past their respective due dates, and if real, should already have been paid.

73. In response, Costco called GECC and said it had not issued *any* of the purchase orders ("**Bogus Costco POs**"). When asked to explain what else GECC did to verify the Bogus Costco POs after speaking with Costco, GECC testified:

I'm not sure what else I could have done...And I'm trying to tell you I didn't do anything else because I couldn't understand what else to do. There was no other steps to verify other than calling Costco.

74. GECC found the blunt revelation that it loaned Petters Capital approximately \$45 Million backed by fake receivables to be "*sort of shocking.*" GECC was "*taken aback by this information.*"

75. Costco immediately confronted Petters who in turn called Feehan. Petters was infuriated, and shouted obscenities, demanding that GECC never again contact Costco about Petters. According to Feehan, Petters: "*was just very adamant that I stay the hell away from Costco.*"

76. By October 24, 2000, GECC understood that Petters and Petters Capital were operating a fraudulent enterprise, the Support Documents had been fabricated and the May 3, 2000 Verification

Form had been forged. GECC understood the reason Petters Capital had violated the June 23, 2000 Agreement was because payments did not originate from Costco. Rather, the millions of dollars GECC received after June 23, 2000 (and before) had originated elsewhere.

77. Given the Deal Change, GECC knew the First Investors had also been defrauded since their monies had not been used to buy Merchandise.

78. After his bombshell telephone calls with Costco and then Petters, faced with an extraordinary situation, Feehan sought advice from both his Chicago-based superior and GECC's Chief Credit Officer (and perhaps other executives in Connecticut) to craft GECC's strategy.

79. No GECC employee prepared any notes or documents to memorialize these discussions or who participated. This was contrary to industry standards, the Integrity Policies and (upon information and belief) the Internal Policies.

80. No GECC employee prepared any notes or documents to memorialize the conversation with Costco. This was contrary to industry standards, the Integrity Policies and (upon information and belief) the Internal Policies. As GECC (through Feehan) testified:

Q: Did you do anything to document your call with Costco?

A: Not that I'm aware of.

Q: Did you do anything to document your call with Petters after Costco's call?

A: No, I didn't write a memo of any sort.

Q: Did you do anything to document your internal meeting you had with your superiors?

A: No, I don't believe so.

81. Upon information and belief, the decision not to memorialize the details of: (i) the conversation with Costco, (ii) the follow-up conversation with Petters or (iii) the internal all-hands-on-deck meeting, was purposeful and strategic so that, if necessary, GECC could shield its conduct and decisions from being scrutinized in the future. When questioned under oath during its Rule 2004 Examination about the details of the internal meeting, GECC (through Feehan with emphasis added) conveniently contended: "*I'm having trouble remembering anything about those conversations.*"

82. At the time, GECC had an ombuds hotline available for GECC employees to report possible “integrity” concerns. GECC did not utilize this hotline. Upon information and belief, this violated GECC’s Integrity Policies and Internal Policies.

83. If the Costco receivable were real, GECC had the right to demand payment direct from Costco. GECC never did so. If Merchandise had been acquired with the monies advanced by the First Investors, GECC had the right to inspect and replevy it. GECC never did so.

84. GECC had the right to declare a default and publicly initiate litigation, given that at least one of many events of default was the fact that the Costco receivable did not exist. GECC did not file any legal action or otherwise attempt to exercise any of its contractual or Article 9 remedies.

85. While: (i) Feehan considered October 24, 2000 to be a “*pretty alarming day*,” (ii) GECC used legal counsel in connection with the October 9, 2000 Agreement (and Petters Capital used its own outside legal counsel); and (iii) the Integrity Policies *required* GECC to consult with company legal counsel when there is a “*warning sign*” of “*money laundering*” or “*illegal activity*,” Feehan claimed to be unable to recall whether anyone at GECC consulted with counsel to help determine how to proceed.

86. GECC understood Petters Capital had no assets, income or operations. Petters Capital had nothing to offer GECC from legitimate operations. When asked if it knew of an avenue of recovery other than a Costco receivable, GECC (through Feehan) testified: “*Not that I’m aware of.*”

87. Petters and Petters Capital were desperate to prevent GECC from communicating again with Costco - - or anyone - - about its discovery. According to Deanna Coleman, ensuring GECC did not go public was a “*top priority*” for the Petters Conspirators who believed that if GECC got paid, it would go away and keep quiet. GECC understood this. Therefore, Petters Capital told GECC that it would pay off the Petters Capital Line from *monies to be raised in the future from new investors*. This was contrary to the Exit Plan, the June 23, 2000 Agreement, the GECC Integrity Policies and (upon

information and belief) GECC's Internal Policies and industry practice. GECC agreed to take monies sourced in this manner without concern for whether adequate disclosure was made to the new investors and without confirming the source of funds was lawful and not the proceeds of fraud.

88. According to Feehan: "*And it became sort of switched, then, from a Costco will - - I'll collect from Costco and pay you off, to, I will get new investors and we'll raise the money and pay you off independent of the Costco receipts.*"

89. GECC understood that: (i) none of the monies raised from the First Investors were used to buy Merchandise; (ii) no Merchandise existed; (iii) all monies advanced by GECC were used to pay the First Investors; (iv) the Bogus Costco POs were fake; (v) the Support Documents were fake; (vi) the May 3, 2000 Verification Form was forged; (vii) Petters and Petters Capital failed to comply with the June 23, 2000 Agreement; (viii) the only source of monies Petters Capital could come up with to pay GECC was monies to be raised from new investors ("*Second Investors*") to whom GECC knew Petters Capital could offer no real collateral; and (ix) GECC believed at the time that the source of repayment to the Second Investors would be the Bogus Costco POs, which Costco told GECC (from the horse's mouth) were nonexistent.

90. Thus, GECC had actual knowledge Petters and Petters Capital were running a fraudulent enterprise and engaged in money laundering. GECC had actual knowledge of the Conspiracy.

*e. The Final Payment*

91. From October 2000 to December 2000, Petters paid GECC the Final Payment in an atypical and improper manner contrary to the ordinary course and applicable industry standards.

92. *First*, Petters made clear to GECC that he was scrambling to get the money.

93. *Second*, these payments were issued by PCI, a non-obligor on the Petters Capital Line.

94. *Third*, Petters called Feehan purportedly with his banker, “*Gary Anderson.*” “*Gary Anderson*” confirmed that Petters had \$20 Million on deposit. Petters then provided GECC with four checks in the amount of \$5 Million each. The checks bounced when GECC first deposited them, making Feehan “*wonder who Gary Anderson was.*”

95. *Fourth*, the payments were in whole dollar amounts with no correlation to the amounts owed or collateral financed.

96. *Fifth*, the payments were contrary to the Exit Plan.

97. *Sixth*, GECC knew the source of repayment to the Second Investors (the Bogus Costco POs) did not exist. Thus, the Second Investors were being cheated as part of an expansion of the fraud and they would rely on false Support Documents to support their expectation of payment from Costco.

98. *Seventh*, knowing there were no profits, GECC insisted on getting 100% of the mythical Final Success Fee and keeping 100% of its historical Success Fees. By demanding and taking the Final Success Fee to which it knew it had no lawful entitlement, GECC extracted its piece of the Conspiracy.

99. *Eighth*, GECC took the Final Payment in violation of its Integrity Policies, (upon information and belief) its Internal Policies and industry standards.

100. By taking the Final Payment, taking the Final Success Fee, not correcting the Recommendation Letter and, among other things, failing to properly document the surrounding circumstances, GECC not only demonstrated its joinder in the Conspiracy, but encouraged and facilitated its continuation and growth.

101. GECC knowingly acted in agreement with Petters to further the Conspiratorial Objective. GECC was not an honest creditor collecting a lawful debt.

*f. Evidence of the Conspiracy Piles On*

102. By the Fall of 2000, “*although RedTag was not connected to Petters Capital,*” due to the issues with Petters Capital, GECC suspended financing RedTag deals.

103. In December 2000, after the Final Payment, Petters sought to draw on the RedTag Line. Petters told GECC the monies would be used to buy merchandise from a Petters affiliate.

104. Believing that Petters was perpetrating a scheme to defraud its lenders by raising funds from later lenders to repay earlier ones, GECC questioned whether the RedTag advance request was intended not to fund a real deal but rather for: GECC to fund Petters → to pay the Second Investors → which had paid GECC → which had paid the First Investors → whose monies were not used to buy Merchandise (*i.e.*, a continuation of the fraud). Feehan confronted Petters: “*And how do I know that I’m not just financing the guy who just refinanced me three weeks ago?*”

105. Petters responded that the Second Investors had recently been paid because Costco had just paid the Bogus Costco POs. Petters offered to provide copies of the Costco checks to prove this. GECC played along. After all, “*over the years GE Capital had asked for copies of third party payments from Petters, but [GECC] had never received anything prior to this offer.*” Petters sent GECC copies of the checks across state lines via facsimile.

106. Without Petters knowledge, GECC called the bank to confirm if the Costco checks were as fake as the Bogus Costco POs. The bank told GECC that the checks had indeed been issued by Costco to Petters Capital, but in a tiny fraction of the represented amounts. Thus, GECC learned Petters doctored every check (“*Fraudulent Checks*”).

107. GECC confronted Petters (as recounted by Feehan; emphasis added):

- A. A few hours later he called, and he said, Okay. So tell me again what’s going on. And I said, Look, I called the bank and the amounts that were represented on these checks that you faxed us, they said that was not the amount that cleared for those checks. And then he said, Well, they must have made a mistake. And I

said, Well, I find it hard to believe that a bank, whose sole job in a day is to balance the books, cash in, cash out, I find it hard to believe that they would have made, I don't know how many checks it was, a dozen, ten. They made twelve mistakes, all on your account in the space of one month. They have one job in their—how they operate their business. I just find that hard to believe. *In fact, I don't believe it. And he said, Well, Paul, why all the mistrust? And I said, Well, because, Tom, there's been two times I have tried to independently verify what you've told me. Once with Costco and now with the bank, and both times the answer has been contrary to what you've said or represented in the case of the checks.*

Q. How did he react to that?

A. *He said, well I can prove to you that we—this amount—these amounts cleared our bank. And I said okay, the only way you can prove that to me is if I get a bank statement showing that these amounts were actually deposited and cleared your bank for those amounts on your bank statement; I want to talk to your banker and get that.*

Q. And what does he respond to that?

A. *He said okay, let me just make sure I understand. So you want me to get my bank statements and get them to you? And I said no, Tom, I don't want you to get involved at all; I want the bank statements directly from the bank.*

Q. And what does he do?

A. He said why all the mistrust and I can't believe you guys are doing this. And this is—I'm going to have to go back and figure this out and see if I can get you something and I'll call you later.

108. Unable to “figure” anything out, Petters abandoned the effort to draw the RedTag Line, paid GECC the outstanding balance and moved on to continue his fraud with other investors comfortable GECC would keep quiet.

109. Although Feehan reported the Fraudulent Checks to his supervisor, GECC did not “well document” or memorialize what occurred nor (upon information and belief) consult with company legal counsel, all contrary to the Integrity Policies, and upon information and belief, GECC’s Internal Policies and industry practices. Upon information and belief, the decision not to document adequately what occurred was purposeful and strategic. GECC did not contact law enforcement, Costco, the bank or anyone else of the details of these events.

## 6. GECC Joined the Conspiracy

110. In October 2000, GECC joined the Conspiracy and agreed to the Conspiratorial Objective. When the Petters Capital Line exceeded \$45 Million, and GECC discovered that Petters and Petters Capital were perpetrating a fraud, Petters requested that GECC keep mum. In exchange, Petters would get GECC the Final Payment - - including the unearned Final Success Fee - - from new defrauded investors, *i.e.*, Petters would expand the fraud by duping new lenders to pay GECC. GECC and Petters agreed to this arrangement and GECC and Petters agreed to the Conspiratorial Objective.

111. On October 26, 2000, Petters left Feehan the following voice message (emphasis added):

Hey Paul,

Tom Petters. Listen, I called you just to tell you something. Thanks for your straight shooting with me and thank you for your *undaunting support* and all the good things coming. *I know that you know, on the street people say things about companies and talk about people and things, unsureness and scaring people or whatever. But I tell you what, I'll make you look like a hero*, I promise you, on the Petters [Capital] situation and the redtag situation. Thanks for believing in me, thanks for watching out for us and I'll do the same for you and I just wanted to tell you that...

112. Demonstrating its agreement, GECC never told Petters that these statements were in any way inaccurate or that GECC disagreed or had a problem with them.

113. Petters and Petters Capital agreed with GECC that once GECC received the Final Payment including the Final Success Fee: (i) GECC would consider the matter closed; (ii) GECC would “*stay the hell away from Costco*;” (iii) GECC would provide “*undaunting support*” by “*watching out*” for Petters and not informing any “*people*” “*on the street*” or creating any “*unsureness*” about the GECC Bogus Costco POs; and (iv) Petters would make Feehan “*look like a hero*” for getting the Final Payment even though Petters Capital had no assets or legitimate operations.

114. According to GECC, Petters said: “*I’ll just have investors pay you out, and you guys will be on your way...*” GECC did not document the source of monies to pay it or inquire if the new investors also knew of the Conspiracy.

115. GECC never communicated again with Costco about Petters and otherwise kept silent about the Conspiracy and Petters paid GECC the Final Payment including the Final Success Fee from defrauded, new lenders.

116. GECC never corrected the Recommendation Letter or asked to whom it had been shared. Upon information and belief, GECC’s inaction ran counter to its Internal Policies and industry standards. However, to correct would violate GECC’s tacit agreement to remain silent. Therefore, GECC permitted the Recommendation Letter to remain uncorrected in the public domain, reasonably expecting Petters to continue to exploit GECC’s good name to vouch for his legitimacy in furtherance of the Conspiracy.

117. Today, Feehan the “*hero*” is a Senior Managing Director for GECC.

**7. The Palm Beach Funds Lend, GECC Substantially Assists and Acts in Furtherance of its Role as a Co-Conspirator, Causing the Palm Beach Funds Damages**

***a. Petters Uses the Petters-GECC Relationship to Entice the Palm Beach Funds***

118. In 2002, Vennes introduced the principals of the general partner of the Palm Beach Funds to Petters. Petters used his former relationship with GECC as a strategic selling point, representing to the Palm Beach Funds through Vennes and Vennes’ Minnesota legal counsel, that the GECC-Petters business relationship ended: (i) profitably for both sides; (ii) with appropriate and ordinary documentation; and (iii) because GECC wanted to be Petters’ sole lender but Petters refused.

119. The Recommendation Letter was shared by Petters with Vennes. Vennes in turn waxed poetic about the successful Petters-GECC relationship as a part of his efforts to convince the Palm Beach Funds to lend to Petters. Vennes’ representations to the Palm Beach Funds in regards to Petters’

“*excellent*” relationship with GECC were influenced by the Recommendation Letter. The Palm Beach Funds, through its agent, justifiably relied upon these representations.

120. These representations were false and Petters and GECC knew them to be when made.

121. As a further demonstration of trustworthiness and strength of investment, and to entice the Palm Beach Funds to raise monies and lend, in October 2002, Petters stated that Petters Capital, *the identical SPE that served as GECC’s “borrower,”* would serve the same role for the Palm Beach Funds.

122. The Palm Beach Funds accepted and Holdings filed a UCC-1 in the Minnesota public records against debtor Petters Capital (“*PBF Financing Statement*”).

***b. GECC Knowingly Substantially Assists, Aids, Abets, Encourages and Facilitates the Palm Beach Funds’ Investments in the Conspiracy***

123. Beginning in November 2002 (first PBF I and then later PBF II), the Palm Beach Funds decided to lend to Petters, by financing Petters Capital.

124. The Palm Beach Funds filed the PBF Financing Statement to ensure its first position lien in the collateral it financed. However, the Palm Beach Funds discovered that the GECC Financing Statement (filed in Minnesota in 1998) was still in effect. Therefore, the Palm Beach Funds realized its security interest would be behind GECC’s lien.

125. The Palm Beach Funds would not have done meaningful business with Petters or Petters Capital with a second lien position. Thus, it required that the GECC Financing Statement be terminated.

126. On December 23, 2002, the Palm Beach Funds’ counsel sent an email communication to Vennes’ counsel stating in part as follows (emphasis added):

***First and most important***, there is a UCC-1 for Petters Capital, Inc. in favor of General Electric Capital, Inc. [sic] encumbering essentially all assets of Petters Capital, Inc. It was filed on March 10, 1998. ***It must be cancelled and satisfied of record.***

127. When Petters did nothing, on February 4, 2003, the Palm Beach Funds’ counsel emailed again (emphasis added):

I have also attached in PDF format the results of a UCC search we had done in December 2002. ***Please note that a first priority security interest is shown in favor of GECC. As you will note, I first brought this prior lien to your attention by e-mail on December 23, 2002, but have not yet received proof that the prior security interest has been released or terminated. The importance of this issue should be self evident, as PBFP Holdings and PBFP Funding can make no loans to Petters Capital unless they are assured of having a first priority security interest.***

128. Had Petters been unable to terminate the GECC Financing Statement, that would have been a major red flag to the Palm Beach Funds and their professionals that something was suspect, particularly given the representations regarding Petters' relationship with GECC.

129. Petters needed the GECC Financing Statement to be quickly and quietly terminated. Although GECC had provided Petters Capital with a UCC-3 termination at the close of 2000, upon information and belief Petters misplaced it.

130. Over the next few weeks, Petters communicated with GECC to get the GECC Financing Statement released. On February 20, 2003, Menczynski wrote to his former GECC colleague, Morrone ("***February 20, 2003 Communication***"):

Jack,

Attached are the two UCC filings against Petters Capital, Inc. Any help in getting these terminated would be greatly appreciated. If you have any questions, my phone number is 952-974-8213.

Thanks,

Rich

Menczynski attached the Minnesota GECC Financing Statement and a similar one filed in California.

131. GECC had to figure out what to do given its actual knowledge: (i) of the Conspiracy; (ii) that Petters Capital was a Conspirator; (iii) of its own conduct relative to the Conspiracy; (iv) that it had provided Petters Capital in 2000 with a financing statement termination; and (v) that Petters wanted another termination to induce a new lender to finance Petters Capital, a known fraudulent operation.

132. Given, among other things, the PBF Financing Statement's public filing, GECC had constructive knowledge, implied actual notice and (upon information and belief) actual knowledge, that if it agreed to Petters' request, Petters Capital's new lender would be the Palm Beach Funds.

133. On March 3, 2003, GECC (through Morrone) -- knowing that a refusal to assist in terminating the GECC Financing Statement would arouse suspicions as to what had occurred in the Fall of 2000 and the circumstances under which GECC took the Final Payment as well as run counter to GECC's tacit agreement not to disclose what it learned -- sent an "*urgent*" communication to Petters and Petters Capital, through Menczynski, copying GECC Vice President Leanne Manning, consenting to the termination of both the GECC Financing Statement and the California GECC financing statement ("*March 3, 2003 Communication*");

Rich –

Hope all is well with you in Minnesota.

Please accept this fax correspondence as GE Capital's consent to terminate the UCC-1 Financing Statements attached hereto. ...

Petters Capital can use this consent to terminate to file an "Amendment" for each financing statement – terminating the financing.

Please feel free to call if you have any questions.

Regards,

Jack Morrone

134. Through the March 3, 2003 Communication, and other interactions between GECC and Petters and Petters Capital, GECC appointed Petters Capital as its agent to terminate GECC's UCC-1 for the purpose of knowingly and substantially assisting and expanding the fraud.

135. On March 5, 2003, Petters and Petters Capital acted upon its agency relationship with GECC and GECC's authorization, and filed a UCC-3 financing statement termination ("*GECC Financing Statement Termination*") in Minnesota.

136. GECC maintained no documents to memorialize or discuss the circumstances surrounding the GECC Financing Statement Termination. GECC's files omit any reference to this event, other than copies of the March 20 and February 3, 2003 Communications. GECC (including Marrone) each purport to be unaware of any related "*oral communications.*"

137. Under all of the facts and circumstances, each of the February 20, 2003 Communication, the March 3, 2003 Communication, the appointment of Petters Capital as GECC's agent to terminate GECC's UCC-1, and the filing of the GECC Financing Statement Termination were neither routine, ordinary, in good faith, appropriate nor customary and GECC's actions were in knowing assistance to the Conspiracy.

***c. Relying on the GECC Financing Statement Termination, the Palm Beach Funds Lent to Petters Capital and Were Defrauded of Over \$1 Billion***

138. Relying on the GECC Financing Statement Termination, the Palm Beach Funds, beginning with PBF I and later with PBF II, each through Holdings, financed Petters' business operations through Petters Capital continuously, from the later of the filing of the GECC Financing Statement Termination and their respective inceptions, to the Implosion of the Conspiracy.

139. During this time period, Petters, Petters Capital and other of the Petters Conspirators made numerous and continuous representations to the Palm Beach Funds or their agents that: (i) the purchase order financing transactions were legitimate; (ii) the funds provided by the Palm Beach Funds were used to buy Merchandise; and (iii) Petters' operations consisted of legitimate business activities with Retailers including Costco.

140. Upon information and belief, from 2002 through 2008, GECC had continuous, actual knowledge that Petters and his affiliated business were expanding, and doing more business with lenders and third parties.

141. GECC knew recipients would reasonably rely upon the veracity of the Recommendation Letter. Moreover, GECC found additional facts in the future which further demonstrated the Recommendation Letter to be false and misleading.

142. GECC never: (i) requested a list of persons to whom the Recommendation Letter would be or were actually sent; (ii) corrected the letter; or (iii) demanded that Petters stop using the letter.

***d. The Implosion of the Conspiracy***

143. On September 24, 2008, government authorities executed search warrants at Petters' business operation, resulting in the exposure of the Conspiracy.

**8. Other Items Related to GECC and the Petters Fraudulent Scheme**

***a. The Petters Conspirators, including GECC's, Fraudulent Concealment***

144. Had the Palm Beach Funds known that the Petters Conspirators were engaged in a fraudulent enterprise, they would have: (i) ceased lending; and (ii) contacted law enforcement.

145. Had GECC refused to cause the filing of the GECC Financing Statement Termination or disclosed to the Palm Beach Funds that any of the Petters Conspirators were perpetrating a fraud, or any related facts, such as: (i) the Bogus Costco POs; (ii) the Fraudulent Checks; (iii) the falsity of the Recommendation Letter; (iv) the forged May 3, 2003 Verification; (v) the fake Support Documents; or (vi) that GECC was paid from the Second Investors rather than from the proceeds of legitimate business transactions; then the Palm Beach Funds would have ceased lending.

146. The Petters Conspirators, including GECC, fraudulently concealed the existence of the Conspiracy as well as GECC's role, from the Palm Beach Funds. GECC's actions to delay discovery included, but were not limited to, causing the filing of the GECC Financing Statement Termination and not correcting the Recommendation Letter.

147. Each of the Petters Conspirators' concealment of the Conspiracy, including that of GECC, was part of an effort to enable the Conspiracy to continue to survive.

148. The Palm Beach Funds did not learn of the Conspiracy, or the facts giving rise to the Conspiracy, until after the Implosion of the Conspiracy. The Palm Beach Funds did not learn of GECC's role until the Petters Criminal Trial in 2009.

***b. GECC Acted with Malicious Intent, and Its Conduct was Outrageous***

149. GECC acted with malicious intent and evil motive, and its conduct was reprehensible, outrageous, demonstrating a high degree of moral turpitude and wanton dishonesty. GECC's actions were intentional, and calculated to benefit itself knowing that by doing so, others would be damaged and harmed in its stead.

***c. GECC Had an Extraordinary Financial Motivation for the Conspiracy to Continue***

150. Once GECC discovered the Conspiracy, it knew that if the Conspiracy were revealed, it had no chance to get the Final Payment. However, GECC was in a "catch-22" because remaining silent meant not correcting the false Recommendation Letter and getting paid from new cheated investors.

151. GECC had an extraordinary economic motivation to authorize Petters and Petters Capital to terminate the GECC Financing Statement. Otherwise, GECC knew that it would be at risk of not retaining the Final Payment and the payments on the RedTag Line and its reputation would be harmed.

***d. GECC Had No Duty of Confidentiality Preventing Disclosure of the Fraud***

152. There was no contractual duty of disclosure preventing GECC from disclosing its knowledge of the Conspiracy to the Palm Beach Funds, regulators, governmental entities or authorities or other third parties or from correcting the Recommendation Letter.

*e. GECC's Special Knowledge*

153. GECC's knowledge of the Conspiracy was not readily ascertainable, was peculiarly in GECC's possession and constituted special knowledge to which the Palm Beach Funds lacked access.

**VII. COUNTS**

**COUNT 1 - CIVIL CONSPIRACY TO COMMIT FRAUD**

154. Plaintiff re-alleges paragraphs 1 through 153.

155. The Conspiracy was a continuing fraud against many lenders, including the Palm Beach Funds.

156. Petters and Petters Capital knowingly communicated false and fraudulent information to the Palm Beach Funds to induce them to fund. These fraudulent representations, including that Petters' business was a lawful and profitable enterprise, were continuously made from 2002 through 2008. In reality, the Petters Conspirators were perpetrating a *ponzi* scheme. The Palm Beach Funds each relied on these misrepresentations to their detriment, causing damages.

157. On or about October 24, 2000, GECC obtained actual knowledge of the Conspiracy and the Conspiratorial Objective. Shortly thereafter, GECC entered into an agreement with Petters and Petters Capital, tacit if not explicit, for GECC to join and further the Conspiracy and the Conspiratorial Objective.

158. GECC would remain silent about its discovery of the Conspiracy and assist in its continued fraudulent concealment. Petters would cause GECC to be paid from new, defrauded lenders rather than from the proceeds of legitimate operations. GECC would receive not only the monies which were owed to it (*i.e.*, principal, interest and certain fees), but also additional monies which were not: the unearned Final Success Fee.

159. GECC knowingly assisted, furthered, encouraged and concealed the Conspiracy, by, among other things:

- a) Failing to retract or correct the Recommendation Letter;
- b) Knowingly permitting its name to be used in furtherance of the Conspiracy;
- c) Demanding and accepting the entire Final Payment (including the Final Success Fee) in an atypical and improper manner;
- d) Failing to disclose the Conspiracy to anyone, including but not limited to the First Investors, the Second Investors, law enforcement and Costco;
- e) Failing to take legal or other public action against Petters or Petters Capital;
- f) Deferring any actions based on Petters and Petters Capital's representations that GECC would get paid the Final Payment;
- g) Releasing the Petters Capital stock pledge;
- h) Failing to advise anyone, including law enforcement, Costco, the payor bank for the Fraudulent Checks or other lenders about the Fraudulent Checks;
- i) Knowingly paving the way for the Palm Beach Funds to use the same SPE that GECC had used in its dealings with Petters (a known vehicle of fraud);
- j) Causing the termination of the GECC Financing Statement in 2003;
- k) Authorizing Petters Capital to act as its agent for purposes of terminating the GECC Financing Statement; and
- l) Violating its Integrity Policies, Internal Policies and industry standards.

160. GECC engaged in these and other acts and joined the Conspiracy so it could get paid and then retain what it received. GECC concealed the Conspiracy from the public, other lenders, banks

and law enforcement, and otherwise avoided any public disclosure of the Conspiracy. GECC had an extraordinary economic motivation for this, in excess of \$45 Million.

161. As a result of the Conspiracy, and GECC's joinder thereof, and the overt acts committed by Petters and Petters Capital - - and GECC - - in furtherance of the Conspiracy, the Palm Beach Funds were damaged in excess of \$1 billion.

162. After joining the Conspiracy, GECC never withdrew or abandoned, or acted inconsistent with or disavowed, or acted to defeat, the Conspiracy or the Conspiratorial Objective.

### **COUNT 2 - AIDING AND ABETTING FRAUD**

163. Plaintiff re-alleges paragraphs 1 through 153.

164. By March 3, 2003, GECC knew that Petters and Petters Capital were seeking to defraud the new lenders to Petters Capital, the Palm Beach Funds. Petters requested that GECC terminate the GECC Financing Statement, explicitly communicating that "*any help ... would be greatly appreciated.*" GECC knew that Petters required this financing statement termination so he could borrow monies through Petters Capital, an entity known by GECC to be a fraudulent vehicle.

165. GECC knew that the new lender to Petters Capital, the Palm Beach Funds (first, PBF I) was to be defrauded through this request. Alternatively, the Palm Beach Funds were within a class of persons GECC knew were to be defrauded, *i.e.*, lenders to Petters Capital.

166. GECC had an extraordinary economic motivation to substantially assist the fraud. Aside from jeopardizing its ability to retain the Final Payment including the Final Success Fee, exposure of the fraud and GECC's role would reveal publicly GECC's participation in the Conspiracy and tarnish its public image.

167. GECC substantially assisted, aided, abetted, encouraged, concealed and facilitated the fraud upon the Palm Beach Funds by:

- a) Failing to retract or correct the Recommendation Letter;
- b) Knowingly permitting its name to be used in furtherance of the Conspiracy;
- c) Demanding and accepting the entire Final Payment (including the Final Success Fee) in an atypical and improper manner;
- d) Failing to disclose the Conspiracy to anyone, including but not limited to the First Investors, the Second Investors, law enforcement and Costco;
- e) Failing to take legal or other public action against Petters or Petters Capital;
- f) Deferring any actions based on Petters and Petters Capital's representations that GECC would get paid the Final Payment;
- g) Releasing the Petters Capital stock pledge;
- h) Failing to advise anyone, including law enforcement, Costco, the payor bank for the Fraudulent Checks or other lenders about the Fraudulent Checks;
- i) Knowingly paving the way for the Palm Beach Funds to use the same SPE that GECC had used in its dealings with Petters (a known vehicle of fraud);
- j) Causing the termination of the GECC Financing Statement in 2003;
- k) Authorizing Petters Capital to act as its agent for purposes of terminating the GECC Financing Statement; and
- l) Violating its Integrity Policies, Internal Policies and industry standards.

168. GECC's substantial assistance was intended to aid the primary fraud.

169. GECC had a duty to disclose the truth to the Palm Beach Funds. This is based on, among other things (i) its special relationship with Petters and Petters Capital, and ability to control Petters Capital, the vehicle through which the Palm Beach Funds were defrauded; (ii) its communications to the Palm Beach Funds, through the Recommendation Letter and the GECC Financing Statement

Termination, which were known to be inaccurate, incomplete or misleading; (iii) its special knowledge of the Conspiracy, and the material facts supporting this knowledge, to which the Palm Beach Funds did not have access and was neither readily ascertainable nor readily available.

170. GECC's substantial assistance was a substantial factor in furthering the fraud upon the Palm Beach Funds.

171. As a result, the Palm Beach Funds suffered over \$1 Billion in damages.

### **COUNT 3 - FRAUD BY OMISSION**

172. Plaintiff re-alleges paragraphs 1 through 153.

173. GECC had a duty to disclose that the Recommendation Letter was incomplete, false or misleading, and to correct it. GECC was obligated to make a complete and accurate disclosure. GECC failed to do so. The representations were material.

174. The Palm Beach Fund, through their agent, justifiably relied upon the Recommendation Letter to their detriment and as a result the Palm Beach Funds were damaged.

175. GECC understood that its knowledge of the Conspiracy and Petters' fraud were material to the Palm Beach Funds and that the Palm Beach Funds would not lend to Petters or Petters Capital if they knew the truth.

176. GECC knew that the Palm Beach Funds would not lend to Petters or Petters Capital if they knew the truth.

177. GECC, and the Petters Conspirators, actively concealed and delayed the discovery by the Palm Beach Funds of GECC's negligence.

178. As a result, the Palm Beach Funds suffered over \$1 Billion in damages.

### **COUNT 4 - FRAUDULENT MISREPRESENTATION**

179. Plaintiff re-alleges paragraphs 1 through 153.

180. Given that there was no “*excellent*” customer status at GECC, GECC knew that the Recommendation Letter was false.

181. GECC intended that the Recommendation Letter reach and influence a class of persons, *i.e.*, lenders to Petters and Petters Capital, of which the Palm Beach Funds were members.

182. Given the content of the Kroll Report as well as Midkiff’s fervent view that Petters lacked personal integrity, GECC knew that the Recommendation Letter was false.

183. Given the discovery of the fraud, including the forged May 3, 2000 Verification, phony Support Documents, Bogus Costco PO’s, invented “*Gary Anderson*,” and Fraudulent Checks, GECC knew that the Recommendation Letter was false.

184. The Palm Beach Fund, through their agent, justifiably relied upon the material Recommendation Letter to their detriment and as a result the Palm Beach Funds were damaged.

185. As a result, the Palm Beach Funds suffered over \$1 Billion in damages.

**COUNT 5 - NEGLIGENT MISREPRESENTATION**

186. Plaintiff re-alleges paragraphs 1 through 153.

187. GECC intended that the Recommendation Letter reach and influence a class of persons, *i.e.*, lenders to Petters and Petters Capital, of which the Palm Beach Funds were members.

188. Given that there was no “*excellent*” customer status at GECC, GECC knew that the Recommendation Letter was false, should have known it was false or was without knowledge of its truth or falsity.

189. Given the content of the Kroll Report as well as Midkiff’s fervent view that Petters lacked personal integrity, GECC knew that the Recommendation Letter was false, should have known it was false or was without knowledge of its truth or falsity.

190. Given the discovery of the fraud, including the forged May 3, 2000 Verification, phony Support Documents, Bogus Costco PO's, invented "*Gary Anderson*," and Fraudulent Checks, GECC knew that the Recommendation Letter was false, should have known that it was false or was without knowledge of its truth or falsity.

191. GECC was negligent in issuing the Recommendation Letter.

192. GECC was negligent in not correcting the Recommendation Letter.

193. GECC intended to induce reliance by recipients of the Recommendation Letter, which was issued "*To whom it may concern*."

194. The Palm Beach Fund, through their agent, justifiably relied upon the material Recommendation Letter to their detriment and as a result the Palm Beach Funds were damaged.

195. As a result, the Palm Beach Funds suffered over \$1 Billion in damages.

#### **COUNT 6 - FRAUD**

196. Plaintiff re-alleges paragraphs 1 through 153.

197. GECC had a special relationship with Petters and Petters Capital.

198. GECC knew that the GECC Financing Statement Termination would serve to further the Conspiracy and fraud.

199. GECC knew that the GECC Financing Statement Termination would be utilized to defraud future lenders of Petters Capital.

200. GECC knew that the new lender to Petters Capital, the Palm Beach Funds (first, PBF I) was to be defrauded. Alternatively, the Palm Beach Funds were within a class of persons GECC knew were to be defrauded, *i.e.*, lenders to Petters Capital.

201. GECC appointed Petters Capital as its agent to terminate the GECC Financing Statement.

202. GECC knowingly placed its agent (Petters Capital) in a position to commit fraud upon the Palm Beach Funds and its agent did so while acting within the granted scope of authority. Accordingly, GECC is liable for the acts done pursuant to that agency.

203. GECC had the ability to control Petters Capital, and thwart its efforts to defraud the Palm Beach Funds, as the Palm Beach Funds would not have lent to Petters Capital absent GECC authorizing the termination of the GECC Financing Statement.

204. As a result, the Palm Beach Funds suffered over \$1 Billion in damages.

#### **COUNT 7 - NEGLIGENCE**

205. Plaintiff re-alleges paragraphs 1 through 153.

206. GECC had a special relationship with Petters and Petters Capital.

207. GECC knew that the new lender to Petters Capital, the Palm Beach Funds (first, PBF I) was to be defrauded. Alternatively, the Palm Beach Funds were within a class of persons GECC knew were to be defrauded, *i.e.*, lenders to Petters Capital.

208. GECC owed a duty of care to protect the Palm Beach Funds from being defrauded and victimized by Petters and Petters Capital.

209. GECC breached this duty by knowingly placing its agent (Petters Capital) in a position to commit fraud upon the Palm Beach Funds (via the GECC Financing Statement Termination) and its agent did so while acting within the granted scope of authority.

210. GECC had the ability to control Petters Capital, and thwart its efforts to defraud the Palm Beach Funds by refusing to appoint Petters Capital as its agent to terminate the GECC Financing Statement.

211. GECC further had the continuing ability to control Petters and Petters Capital by disclosing to law enforcement, the public, Petters Capital's or Costco's banks, or the Palm Beach Funds GECC's knowledge of the fraud.

212. GECC had the continuing ability to control Petters and Petters Capital by correcting the Recommendation Letter.

213. As a result of GECC's breach of its duty, the Palm Beach Funds suffered over \$1 Billion in damages.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff requests that this Court, with respect to Counts 1 through 7:

- (a) Enter judgment in favor of Plaintiff, on behalf of the Liquidating Trusts, and against GECC and award Plaintiff compensatory damages in an amount to be determined at trial;
- (b) To the extent applicable, award punitive damages in an amount to be determined at trial appropriate to the severity of GECC's conduct and financial capacity to pay;
- (c) Award prejudgment interest to the extent allowed under applicable law or statute;
- (d) Award Plaintiff's reasonable attorney's fees and costs to the extent allowed under applicable law or statute; and

[REMAINDER OF PLEADING INTENTIONALLY LEFT BLANK]

(e) Grant such further relief this Court deems just and proper.

s/ Michael S. Budwick  
Michael S. Budwick, Esquire  
Florida Bar No. 938777  
[mbudwick@melandrussin.com](mailto:mbudwick@melandrussin.com)  
Solomon B. Genet, Esquire  
Florida Bar No. 617911  
[sgenet@melandrussin.com](mailto:sgenet@melandrussin.com)  
MELAND RUSSIN & BUDWICK, P.A.  
3200 Southeast Financial Center  
200 South Biscayne Boulevard  
Miami, Florida 33131  
Telephone: (305) 358-6363  
Telecopy: (305) 358-1221

Attorneys for Plaintiff

JAN. 4. 2000 5:31PM

GE CAPITAL CORE GROUP 1144

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**GE Capital**

*Commercial Finance  
A unit of General Electric Capital Corporation  
10 South LaSalle Street, Suite 2800, Chicago, IL 60603  
312 419-0985*

January 4, 2000

Via Facsimile: (612) 975-2295

To Whom It May Concern:

I am writing this letter for the purpose of a personal and business reference on Mr. Thomas J. Petters. Petters Capital, Inc. ("Petters") and General Electric Capital Corporation ("GE Capital") closed a \$50.0MM Senior Secured Revolving Credit Facility on March 26, 1998. During this time, the transactions under the Credit Facility have performed well and Petters continues as an excellent customer.

On a personal level, I have known Mr. Petters for a little over two years and have found him to be of high character and possessing strong moral values.

Sincerely,

Richard L. Menczynski  
Assistant Vice President

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PCI-SW-065-002032  
PCI\_S\_GE\_000060526

EXHIBIT 1



**GE Capital**

October 23, 2000

Commercial Finance  
 A unit of General Electric Capital Corporation  
 10 S. LaSalle Street, Suite 2800, Chicago, IL 60603  
 312 419-0985

Bob Pugmire  
 Executive Vice President - GMM  
 National Distributors - Costco Companies, Inc.  
 999 Lake Drive  
 Issaquah, WA 98027

Dear Mr. Pugmire:

For auditing purposes, please advise whether the items listed below, sold to you by Petters Company, Inc./Petters Capital, Inc. are currently unpaid in your accounts payable system. If any of the items have been settled either partially or fully as of October 23, 2000, please note the date of settlement, the amount of the settlement and the nature of the settlement (whether by check/wire transfer, credit memo, etc.) under the Remarks section below.

When complete, please sign and return promptly via fax to (312) 419-5957.

Purchase Order Number	Purchase Order Date	Invoice Date	Invoice Due Date	Invoice Amount	Remarks
00-198017	6/1/00	6/19/00	8/19/00	\$6,476,883.60	
00-198143	6/2/00	6/26/00	8/26/00	4,976,000.00	
00-198166	6/2/00	6/26/00	8/26/00	3,827,862.00	
00-198210	6/5/00	6/26/00	8/26/00	4,092,135.33	
00-198211	6/5/00	6/26/00	8/26/00	2,483,195.45	
00-198618	6/14/00	7/4/00	9/4/00	2,154,282.00	
00-199505	7/24/00	8/13/00	10/13/00	2,701,627.20	
00-199193	7/18/00	8/9/00	10/9/00	2,807,382.00	
00-199501	7/24/00	8/13/00	10/13/00	6,637,059.00	
00-199592	7/26/00	8/17/00	10/17/00	6,206,200.00	
00-199605	7/26/00	8/20/00	10/20/00	6,249,683.20	
00-199801	8/7/00	8/11/00	10/11/00	1,431,828.00	
00-199982	8/9/00	8/18/00	10/18/00	7,425,749.80	
00-199917	8/9/00	8/18/00	10/18/00	2,149,357.00	

The information above agrees with National Distributors - Costco Companies, Inc.'s records as of October 23, 2000, unless otherwise noted.

Signed By: \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_

If you have any questions, feel free to call Jack Morrone at (312) 419-5578.

Thank you for your assistance.

Regards,

  
 Jack F. Morrone  
 Associate  
 GE Capital Commercial Finance, Inc.

DOJ00007

EXHIBIT 2