53. Notwithstanding being first identified in August 2015, the Contract Management Significant Deficiency remained un-remediated throughout fiscal year 2016 and thereafter. The Board, Audit Committee, Vendetti, and Zaleski recklessly failed to take necessary, appropriate, and timely action to remediate the Contract Management Significant Deficiency, and instead permitted such reckless practices underlying the deficiency to continue throughout FYE 2016. As a result, the Board, Audit Committee, Vendetti, and Zaleski did not possess complete and accurate information regarding the Company's universe of customer contracts, including information critical to properly accounting for such contracts.

V. Secured Loans And Legal Requirements Related To Annual Audit.

54. Prior to filing for bankruptcy relief, the Company was party to two secured debt facilities: (i) an ABL Credit Agreement dated as of April 15, 2014 (the "**ABL Loan**"), and (ii) a Term Loan Credit Agreement dated as of April 15, 2014 (the "**Term Loan**") (collectively, the ABL Loan and Term Loan are referred to hereafter as the "**Secured Loans**").

55. As of the Company's bankruptcy filings, the Company's outstanding obligations under the Secured Loans totaled approximately $490 million. At all relevant times, the Company was compliant with its payment obligations under the Secured Loans.

56. The Secured Loans contained covenants requiring the Company to provide its secured lenders with its annual report on Form 10-K, including its annual consolidated audited financial statements for each fiscal year, within 90 days of the end of each fiscal year.

57. With respect to fiscal year 2016, the Company was obligated to provide its annual report on Form 10-K and audited financial statements no later than August 29, 2016. PSG's failure to timely provide its annual report and audited financial statements on or before August 29, 2016 would result in a default, which, if uncured for thirty (30) days after the Company received written notice of the default, would result in an event of default under the Secured

Loans. A default would permit the secured lenders to accelerate the debt, and refuse to extend new revolving borrowings relied upon by the Company for the liquidity necessary for day-to-day operations of the Company's business.

58. Additionally, as a reporting company under the Securities Exchange Act of 1934, the Company was obligated to file its annual report on Form 10-K, including its audited financial statements, within seventy-five (75) days of the end of its May 31, 2016 fiscal year, or August 15, 2016. To the extent that the Company would be unable to timely file its annual report on Form 10-K, including its audited financial statements, on or before August 15, 2016, the Company could obtain a fifteen (15) day extension of the deadline by filing a notification of late filing on Form 12b-25.

59. In each fiscal year from 2009 through 2015, the Company was able to timely complete its annual audit, including the audit of its consolidated financial statements, and, in respect of fiscal year 2015, was able to timely file its annual report on Form 10-K, including its consolidated audited financial statements.

60. As a registered public accounting firm, KPMG was obligated to conduct the Company's annual audit in accordance with Generally Accepted Auditing Standards ("**GAAS**"), the standards set forth by the PCAOB, and U.S. securities laws, including Section 10A of the Securities Exchange Act of 1934 ("**Section 10A**").

61. Section 10A(b) provides, among other things, that if, "in the course of conducting an audit," an accountant becomes aware of a possible "illegal act (whether or not perceived to have a material effect on the financial statements of the issuer)," the accountant must assure that the audit committee is "adequately informed" of the illegal act, unless the illegal act is "clearly

inconsequential." Section 10A defines an "illegal act" as "an act or omission that violates any law, or any rule or regulation."

62. The Code of Federal Regulations provides that "[n]o director or officer of an issuer shall, directly or indirectly: (1) [m]ake or cause to be made a materially false or misleading statement to an accountant in connection with; or (2) [o]mit to state, or cause another person to omit to state, any material fact necessary in order to make statements made, in light of the circumstances under which such statements were made, not misleading, to an accountant in connection with: (i) [a]ny audit, review or examination of the financial statements of the issuer required to be made pursuant to this subpart; or (ii) [t]he preparation or filing of any document or report required to be filed with the Commission pursuant to this subpart or otherwise."

63. Under Section 10A, an auditor that suspects it has been misled in the course of an audit must follow the protocols set forth therein, including investigate whether an "illegal act" is likely to have occurred and its effect on the financial statements. If the auditor concludes that the act has a material effect on the financial statements, and that the company has failed to take "timely and appropriate remedial action," the auditor must report such conclusions to the company's board. In addition to Section 10A, the PCAOB and GAAS provide guidance on an auditor's responsibilities similar to Section 10A in material respects.

VI. <u>The FYE 2016 Audit</u>.

64. Beginning in December 2015, the Company was involved with or the subject of, among other things, numerous allegations, governmental investigations/inquiries, and securities fraud lawsuits that, collectively, increased the risk assessment of the FYE 2016 Audit and caused KMPG to substantially increase the level and degree of testing during the FYE 2016 Audit and to apply increased scrutiny to the Company's responses to audit inquiries.

65. For example, on or about June 12, 2015 and December 24, 2015, the Company's former chairman and chief executive officer, W. Graeme Roustan, sent the Company letters in which he alleged, among other things, that he had evidence that the Company was engaged in what he considered to be improper sales practices, including pressuring its retailers to move sales orders forward into earlier quarters and offering "extreme discounting" in an effort by the Company to make quarterly revenue and sales projections.

66. In addition, on January 13, 2016, the Company announced its financial results for the quarter ended November 30, 2016 ("**Q2 2016**"), reporting a decrease of 11% year-over-year in total revenues ($153 million), a decrease of 19% year-over-year in adjusted gross profit ($50.6 million), a decrease of 18.1% year-over-year in EBITDA ($15.3 million), and a net loss of $4.5 million; but, nonetheless, PSG projected for the next quarter ended February 29, 2016 ("**Q3 2016**"): "Adjusted Net Income to range between $0.66 and $0.69 per share, . . . [and that] our businesses will outpace the growth of the markets we serve, resulting in revenue gains and increased profitability . . . ."

67. However, fewer than eight weeks later, on March 8, 2016, the Company reported that it was substantially reducing projected earnings for Q3 2016 by 80%, from the previously announced between $0.66 and $0.69 per diluted share, to between $0.12 and $0.14 per diluted share.

68. As a result of this announcement, the trading price of PSG's common stock dropped from approximately $8.66 per share to $2.91 per share.

69. On March 13, 2016, five days after the announcement of the revised Q3 2016 earnings guidance, a putative securities fraud class action complaint was filed in the United States District Court for the Central District of California against PSG, Kevin Davis, the

Company's CEO, Amir Rosenthal, the Company's President of Brands and former CFO, and Defendant Vendetti, the Company's CFO, alleging violations of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934, 15 U.S.C. § 78a *et seq*., and Rule 10b-5 of the Securities and Exchange Commission.

70. On April 14, 2016, the Company disclosed its consolidated financial results for Q3 2016, reporting a decrease in year-over-year total revenues of 8% (to $126.1 million) and adjusted EBITDA of negative $11 million (down from positive $14.6 million year-over-year). The Company also reported a net loss of $188.1 million that included a non-cash impairment of $145.1 million related to the Company's $330 million acquisition of Easton in 2014.

71. A second putative class action complaint was filed on May 13, 2016, this time in the United States District Court for the Southern District of New York, asserting the same causes of action as the first complaint. In connection with the filing of this class action complaint, the first class action filed in California was voluntarily dismissed without prejudice.

72. As a result of the Q3 2016 results, between March and May 2016, a series of governmental investigations involving PSG commenced, including:

(a) a Financial Industry Regulatory Authority (FINRA) investigation into the trading of PSG common stock prior to and during the announcement of the Company's revised Q3 2016 earnings;

(b) an Ontario Securities Commission investigation into the Company's revenue forecasts and revised Q3 2016 earnings; and

(c) a U.S. Securities and Exchange Commission ("**<u>SEC</u>**") investigation into the Company's revised Q3 2016 earnings report, forecasts and revisions.

73. On or about March 22, 2016, the Company announced that it had terminated then-CEO Kevin Davis, effective immediately, because the Board had lost confidence in his leadership as a result of the Company's Q3 2016 substantial earnings miss.

74. On the day he was terminated, Davis re-set his Company-issued cell phone to original factory settings, thus deleting stored text messages, telephone logs, voice mails, e-mails, and other data. Immediately after re-setting his phone, Davis informed the Company of his conduct and worked with the Company to retrieve the deleted data. Not all data was retrieved.

75. Although the Company advised the KPMG Audit Team that Davis had been terminated, it did not immediately inform KPMG that Davis had deleted the contents of his cell phone. It was not until nearly three months later, on or about June 8, 2016, that the Company informed KPMG that Davis had deleted the contents of his Company-issued cell phone. Upon information and belief, the decision by Company representatives to delay promptly notifying the KPMG Audit Team of Davis's conduct and the remedial steps taken contributed to the KPMG Audit Team's concern that PSG management was dilatory in providing the KPMG Audit Team with relevant information for its consideration.

76. As a result of the foregoing events, KPMG increased the risk assessment with respect to the FYE 2016 Audit, which resulted in KPMG increasing the level and degree of testing during the FYE 2016 Audit, and applying increased scrutiny to PSG's responses to audit inquiries.

77. Vendetti and Zaleski interpreted the KPMG Audit Team's increased testing and scrutiny negatively, internally ascribing to the KPMG Audit Team and its interactions with PSG management negative attributes such as "agitated", "stressed" and "dark".

78. For example, despite being informed in May 2016, in connection with planning and scoping the FYE 2016 Audit, that KPMG had increased the risk assessment with respect to the FYE 2016 Audit, principally as a result of the Company's Q3 2016 earnings forecast miss, Zaleski interpreted the increased sample sizes and enhanced scrutiny as indicating that the KPMG Audit Team was stressed and agitated and the "audit environment" was different in a negative way than in previous years.

79. Vendetti similarly interpreted the increased sampling and elevated scrutiny as meaning that KPMG had "take[n] a very negative approach to how we have managed the business which creates an interesting dynamic."

80. In internal communications, Vendetti further described David Wilson as "think[ing] very little of PSG management."

81. Zaleski also stated in internal communications that, upon receiving news of potential irregularities in PSG's accounting, finance, or sales practices, David Wilson was prone to going to "a very dark place too fast," and that the Company, in the eyes of the KPMG Audit Team, was "guilty until proven innocent."

82. As a result of their interpretation of the KPMG Audit team's behavior, Vendetti and Zaleski, upon information and belief, became increasingly hesitant to share information with KPMG that Vendetti and/or Zaleski believed the KPMG Audit Team would, in their view, overreact or react negatively.

VII. Easton Entered Into Two Non-Standard-Term Contracts With Dunham's Sports That Resulted In Improper Recognition Of Revenue.

83. Dunham's Sports ("**Dunham's**") was a long-time customer of Easton. Dunham's was one of Easton's largest customers and typically a focus of any audit. Zaleski and Vendetti were aware of this fact throughout the FYE 2016 Audit period.

84. Over the course of time, Dunham's entered into three discrete contractual relationships with Easton. The first was a standard form Easton contract that contained shipping and payment terms consistent with internal PSG policy.

85. The other two relationships involved non-standard-term contracts that ultimately resulted in the improper recognition of revenue, its later correction, and substantial discussion between the KPMG Audit Team on the one hand, and Vendetti and/or Zaleski on the other.

86. The first non-standard-term contract was a consignment arrangement (the "**Dunham's Consignment (PBS) Arrangement**") entered into in or around 2014. The Dunham's Consignment (PBS) Arrangement was also referred to as a "pay-by-scan" or "PBS" arrangement. The Dunham's Consignment (PBS) Arrangement was not formally documented; rather, it was agreed to orally.

87. Pursuant to the oral Dunham's Consignment (PBS) Arrangement, Easton would agree to ship product to Dunham's; the product would remain as inventory on Easton's books with no immediate transfer of title; Dunham's would pay Easton for the product as it was sold through to retail customers; and Easton would recognize revenue only once product was sold through to retail customers.

88. On or about August 25, 2015, Easton entered into a second non-standard-term contract with Dunham's (the "**Dunham's Guaranteed Sale Contract**"). The Dunham's Guaranteed Sale Contract was memorialized pursuant to a two-page contract. It was not on an Easton or PSG form or letterhead; rather, it was a Dunham's program documented on a Dunham's form.

89. The first page of the Dunham's Guaranteed Sale Contract was entitled "Dunham's Sports Over & Above Agreement"; the second page was a form entitled "Guarantee Sale

Worksheet." The Dunham's Guaranteed Sale Contract provided that "if 60% of the bats [we]re not sold by August 1, 2016 … Dunham's ha[d] the right to return the unsold product."

90. The Dunham's Guaranteed Sale Contract was entered into on Easton's behalf by Ryan Weller, an Easton sales representative, with the knowledge of Robert Diebold, Easton's Vice President of Sales.

91. PSG's corporate policy at the time, as communicated to KPMG, prohibited customer returns (other than for a defective product).

92. Due to what KPMG found to be the Company's significantly deficient contract management practices, a copy of the Dunham's Guaranteed Sale Contract was not provided to the Company's corporate finance or accounting staff at the time the contract was entered into; rather, it was maintained in Easton's facility in Van Nuys, California. Moreover, the Dunham's Guaranteed Sale Contract was not provided by the Easton sales office to the Easton accounting staff or reviewed by that staff prior to invoicing. As a result, the Company's finance and accounting staff did not know how to properly account for transactions under the agreement.

93. As a result, neither the Company's corporate finance department nor the Easton accounting staff knew the terms of the Dunham's Guaranteed Sale Contract and the proper accounting for shipments under that agreement.

94. Goods were shipped in 2015 pursuant to both the oral Dunham's Consignment (PBS) Arrangement (under invoice 97833092) and the Dunham's Guaranteed Sale Contract (under invoice 97833086). In both instances, the product shipped was incorrectly accounted for as arising under the PSG standard-term contract (*i.e.*, revenue was improperly recognized at a date before title irrevocably passed from PSG).

95. In March 2016, the Company became aware that it had improperly accounted for approximately $200,000 in revenue arising from shipments made pursuant to the oral Dunham's Consignment (PBS) Arrangement. At that time, Ricky Helland, Easton's Director of Finance, approved a manual journal entry to the Company's general ledger (also referred to as a "sales cut-off entry") to correct for approximately $200,000 in revenue that was previously improperly recognized because the product had been shipped pursuant to the Dunham's Consignment (PBS) Arrangement, and Dunham's had yet to report any of that product as sold. This manual journal entry was entered effective as of February 29, 2016, the final day of Q3 2016. Zaleski approved the manual journal entry and reported the accounting correction to Vendetti. Despite knowledge of this accounting error resulting from discovery of an improper contract term, neither Vendetti nor Zaleski took timely or adequate action at this time to remediate what KPMG found to be the Company's deficient contract management processes and controls.

96. In April 2016, as part of closing Q3 2016, the KPMG Audit Team asked Zaleski about the $200,000 manual journal entry. It was this inquiry that resulted in Zaleski disclosing to KPMG the existence of the oral Dunham's Consignment (PBS) Arrangement. Zaleski only discovered the Dunham's Consignment (PBS) Arrangement herself when she was informed by Ricky Helland at the time the manual journal entry was made. Nonetheless, in response to KPMG's inquiry regarding the overall Dunham's receivable of $2.2 million and what component represented consignment shipments that might be improperly accounted for, Zaleski assured the KPMG Audit Team that other than the $200,000 represented by the manual journal entry, the balance represented shipments made pursuant to a standard-term contract. This assurance was reckless when made, as Zaleski had no basis on which to give such an assurance. After KPMG requested confirmation from Vendetti, Helland confirmed Zaleski's assurance on behalf of PSG

finance. In fact, these assurances were inaccurate as over twenty percent (20%) of the remaining Dunham's receivable related to product shipped pursuant to a different non-standard-term contract—the Dunham's Guaranteed Sale Contract. At the time these assurances were given to KPMG, neither Vendetti nor Zaleski were aware of the existence of the Dunham's Guaranteed Sale Contract.

97. In April 2016, also as part of closing Q3 2016, KPMG informed Company management and the Audit Committee of three significant deficiencies, all relating to the Company's contract management controls. Specifically, KPMG informed PSG management and the Audit Committee that the Company's processes for reviewing customer contracts, identifying terms and conditions, and monitoring customer credit limits were, according to KPMG, significantly deficient. KPMG further informed Company management and the Audit Committee that it was planning to test for the aforementioned deficiencies in connection with the FYE 2016 Audit.

98. Subsequently, in or about May 2016, in connection with planning and scoping the FYE 2016 Audit, KPMG advised Vendetti that it was planning to evaluate and test the Company's control deficiencies, including, specifically, the significant deficiencies identified by KPMG in respect of the Company's contract management controls.

99. On May 2 and 3, 2016, in connection with the FYE 2016 Audit, KPMG sent the Company sample invoice requests for revenue testing. Included among the requested invoices was invoice 97833086—the Dunham's Guaranteed Sale Contract transaction from November 2015.

100. On information and belief, near or around this time, KPMG had numerous conversations with Vendetti and Zaleski, as well as Alex Byrne, the Company's Internal Audit

Manager, about PSG's application of revenue recognition in respect of Dunham's, and the fact that it may not be appropriate because of the undocumented, informal Dunham's Consignment (PBS) Arrangement.

101. On May 3, 2016, Ryan Weller, the Easton sales representative who entered into the Dunham's Guaranteed Sale Contract, sent Stephanie Maghakian, a member of the Easton accounting staff, an email with the subject line "Dunham's guaranteed sale invoices," and advised Maghakian of the terms of the Dunham's Guaranteed Sale Contract and the fact that Dunham's was now exercising its right of return. Maghakian forwarded the e-mail to Ricky Helland.

102. In or around May 16, 2016, Helland informed both Vendetti and Zaleski about the Dunham's Guaranteed Sale Contract and its material terms, and provided them with a copy of the agreement. Over the next several weeks, Vendetti and Zaleski engaged in a number of conversations and meetings with Easton personnel regarding the Dunham's Guaranteed Sale Contract. Following these meetings, Vendetti directed Zaleski to correct the accounting treatment of previously recognized revenue associated with product shipped under the agreement. Zaleski, in turn, directed Helland to make a manual journal entry reversing the previously recognized revenue in the amount of $421,000. The manual journal entry was entered on June 22, 2016.

103. Neither Vendetti nor Zaleski informed KPMG of the Dunham's Guaranteed Sale Contract or right of return thereunder at any time between May and June 2016, or corrected the prior erroneous representations regarding the Dunham's accounts receivable balance made the previous month. Upon information and belief, this is because Vendetti and Zaleski recklessly determined that the Dunham's right of return under its non-standard contract did not need to be

disclosed to KPMG absent a specific request from KPMG, notwithstanding the numerous general requests from KPMG that otherwise covered and/or implicated the Dunham's Guaranteed Sale Contract. Given the scrupulous nature of KPMG's audit, Vendetti and Zaleski knew or should have known that KPMG would likely have needed this information in order to complete the FYE 2016 Audit. Vendetti and Zaleski were grossly negligent and reckless in making these decisions.

104. Vendetti and Zaleski also failed to take timely and adequate action to remediate what KPMG found to be contract management deficiencies, which contributed to the Company's finance department being unaware of the Dunham's Guaranteed Sale Contract in the first place.

105. At the same time that Vendetti and Zaleski were dealing with the Dunham's Guaranteed Sale Contract at Easton, a large return at the Combat business segment occurred. Specifically, on June 8, 2016, George Tadros, Combat's Interim Director of Finance, sent Shelley Filocamo, PSG's Director of Supply Chain Finance, an email, copying Zaleski, and informed both of a potentially large return at Combat in respect of customer Academy Sports + Outdoors ("**Academy**"). Pursuant to Academy's agreement with Combat, Combat agreed to accept returns from Academy "up to a 70% sell through number."

106. Combat represented an immaterial portion of the Company's business, less than approximately 2% of the Company's gross revenue. Easton, by contrast, typically comprised approximately 30% of the Company's gross revenue.

107. Combat's contribution to revenue was so immaterial, in fact, that KPMG did not include any sampling or analysis of this business segment within the scope of the FYE 2016 Audit.

108. Zaleski and Vendetti were in possession of information evidencing, and had knowledge of, returns and rights of return at Combat as early as February and March 2016, respectively.

109. Nevertheless, following the Academy return, on or about June 12, 2016, Vendetti determined to conduct an internal audit of the Combat segment. Commencing on June 20, 2016, Alex Byrne, at Vendetti's direction, conducted a two-day field audit on-site at Combat's offices in Kent, Washington. Byrne analyzed Combat customer contracts, sales and cash receipts, and quarterly analyses, and discussed the same with members of the Combat sales team.

110. Byrne completed the audit by mid-July. Through the audit, Byrne discovered the existence of four Combat customers with non-standard-term contracts containing guaranteed rights-of-return. One of the Combat customers with guaranteed return rights was Dunham's.

111. These four contracts were entered into in contravention of stated Company policy and had resulted in improper revenue recognition by the Company. Thereafter, Byrne engaged in an extensive sampling regimen to ensure that no other non-standard-term contracts existed at Combat.

112. In or around mid-July, Byrne advised both Vendetti and Zaleski of his findings regarding his internal audit and the rights of return at Combat. Vendetti and Zaleski did not immediately inform KPMG of the existence of these non-standard-term contracts at Combat, including the Dunham's right-of-return agreement. Upon information and belief, Vendetti did not immediately inform KPMG of non-standard-term contracts at Combat out of his subjective concern that KPMG would, in his view, overreact.

113. On or about July 26, 2016, in an in-person meeting between Vendetti and KPMG lead audit partner, David Wilson, Vendetti informed Wilson of the results of the Combat internal

audit. During this meeting, Vendetti informed Wilson that the internal audit had uncovered non-standard-term contracts involving guaranteed rights of return for four different customers, each of which had initially been improperly accounted for and later corrected. One of the four customers included Dunham's.

114. Vendetti further informed Wilson of the sampling protocol employed by Byrne to ensure that no additional non-standard-term contracts existed, or if they did, did not result in improper accounting treatment.

115. Vendetti and Wilson agreed that the issue of the non-standard-term contracts uncovered in the Combat internal audit should be brought to the attention of the Audit Committee meeting scheduled for later that day.

116. During this meeting, Vendetti did not inform Wilson of the existence of the Dunham's Guaranteed Sale Contract at Easton that also involved a guaranteed right of return.

117. At the Audit Committee meeting later that day, attended by Vendetti, Zaleski, Alex Byrne, and David Wilson, among others, Byrne provided the Audit Committee with his findings in respect of the Combat audit, including the right of return issues.

118. Neither Vendetti, Zaleski, nor Byrne, discussed the existence of the Dunham's Guaranteed Sale Contract between Easton and Dunham's at this Audit Committee meeting.

119. The Audit Committee's response to the Combat audit results was grossly deficient. In the wake of the Combat audit results, the Audit Committee failed to take reasonable action to ensure that no similar issues existed anywhere else within the Company. On information and belief, the Audit Committee made no inquiry as to whether similar non-standard contracts might exist at other divisions of the Company, including at Easton, which also manufactured and sold baseball equipment, shared many customers with Combat, but comprised

a substantially larger percentage of the Company's revenue. Nor did the Audit Committee insist that Vendetti or Zaleski make appropriate inquiry or investigation to ensure that no such similar non-standard contracts existed at other divisions of the Company. This failure of basic oversight was particularly reckless given: (i) the late stage of the FYE 2016 Audit process and the proximity to the Company's annual report filing deadline of August 15, 2016; and (ii) the fact that the existence of similar contracts or issues at Easton (which comprised almost 30% of the Company's yearly gross revenue) would likely be materially relevant to the FYE 2016 Audit. Moreover, the Audit Committee's failure to ensure a full and complete analysis of the issue was particularly egregious given the context of the FYE 2016 Audit, including the allegations made by the Company's former chairman and CEO regarding overly-aggressive sales practices, the Company's missed Q3 earnings forecast and subsequent impairment at Easton, and the multiple government investigations and class action lawsuits then pending.

120. Later in the Audit Committee meeting, Vendetti presented "the timeline of key dates until the filing of the 10-K" and "discussed the additional resources the Company [was] adding to meet the audit requirements."

121. According to presentation materials prepared in connection with the Audit Committee meeting, the Company was targeting August 9, 2016 as the "tentative 10K filing" date; the statutory deadline to file their annual report was August 15, 2016.

122. Zaleski then presented "the key open items for the audit…," including inventory, revenue recognition, impairments, and accounts receivable and allowance for doubtful accounts. With respect to all but one outstanding item, Zaleski projected completion by the following week. As for the final item, accounts receivable and allowance for doubtful accounts, Zaleski

reported that information previously provided to KPMG in response to sample requests was under review and that PSG was "waiting to hear from KPMG on testing procedures."

123. Vendetti and Zaleski had numerous opportunities to inform the KPMG Audit Team of the Dunham's Guaranteed Sale Contract. For example, at approximately the same time that Vendetti and Zaleski were learning the results of the Combat audit, including that Dunham's had a right of return under an agreement with Combat (in addition to the previously-known Dunham's Guaranteed Sale Contract at Easton), the KPMG Audit Team was inquiring about the Company's accounts receivable aging, allowance for doubtful accounts, and bad debt reserves.

124. On June 29, 2016, approximately one week after Zaleski ordered Helland to reverse revenue previously and erroneously recognized under the Dunham's Guaranteed Sale Contract, Zaleski sent Vendetti an email with the subject line "AR File," attaching an accounts receivables aging and reserve report, which, among other things, removed the portion of the outstanding Dunham's receivable associated with the Dunham's Guaranteed Sale Contract, since that amount had already been reversed and was accounted for in a separate sales reserve. On July 11, 2016, Zaleski sent to the KPMG Audit Team this report, which stated in relevant part:

> Based on risk profile of the customer [Dunham's], the reserve was calculated to be 75 percent. The company has adjusted the reserve to zero as the past due balances are reserved in the sales reserves.

125. According to Zaleski:

> The past due balances, there was a reserve booked in sales reserve. So there was a reserve booked for consignment inventory and also guaranteed sales…. At the time when I wrote the document, I was simply stating that we didn't need the reserve for bad debt, but we did, you know, have a reserve in the sales reserves.

126. In a separate email to Vendetti on or about July 11, 2016, Zaleski explained that the Dunham's sales reserves referenced in the report included the two Dunham's transactions reversed on June 22, 2016: (i) invoice 97833086 in the amount of $502,140.00, entered into

under the Dunham's Guaranteed Sale Contract; and (ii) invoice 97833092 in the amount of $11,260.00, entered into under the Dunham's Consignment (PBS) Arrangement. Neither Vendetti nor Zaleski disclosed this more detailed information to the KPMG Audit Team.

127. Zaleski subsequently sent a revised report to the KPMG Audit Team, which changed the description of the Dunham's account as follows:

> The past due balances are driven by a consignment program with the customer. The orders were entered by customer services as regular orders as opposed to consignment orders. Therefore, invoices were posted to the customer account. The company recorded a journal entry to reverse the revenue and cost of goods sold that posted and also properly state inventory on accounts receivable.

128. This statement was inaccurate and misleading because it did not include the existence of the Dunham's Guaranteed Sale Contract and resulting accounting issues. Zaleski purports to have forgotten about the existence of the Dunham's Guaranteed Sale Contract at the time of the communication, but concedes that, at a minimum, she improperly conflated the accounting issues under that contract with those arising from the Dunham's Consignment (PBS) Arrangement, and that this conflation rendered the statement misleading. Zaleski acknowledges that she was aware of the Dunham's Guaranteed Sale Contract at Easton at this time, and that an accurate description would have included a statement that "500,000 of the accounts receivable had been reversed as a result of a journal entry because of the guaranteed sale that was discovered for Dunham's at Easton."

129. As another example, on July 14, 2016, KPMG Audit Team member James Holland sent an email to Matt Herring, the Company's Accounting Manager, copying Zaleski, and John Siegal, the Company's Assistant Controller, stating:

> One of the takeaways from the meeting was to have a discussion on obtaining evidence of collectability for invoices that haven't been fully paid. The attached summaries of Grizzly, Dunham, and Olympia are reports we reviewed in Q3 to finalize our quarterly procedures.

130. Despite knowing that Holland was inquiring about the collectability of invoices outstanding as of Q3 2016, Zaleski failed to disclose to Holland that a large portion of the Dunham's receivable at Easton that was outstanding at the end of Q3 2016 was reversed on June 22, 2016, and effective as of May 31, 2016, due to the exercise by Dunham's of its right of return under the Dunham's Guaranteed Sale Contract.

131. As yet another example, in early July, David Wilson inquired of Zaleski regarding the Company's return policy, specifically a provision of the policy that read: "If a right of return exists but it is normal with industry practice." Wilson's question read: "Not sure what this is trying to say. I thought the company did not grant the right of return?" On July 6, 2016, Zaleski responded to Wilson's question by advising Wilson that PSG did not grant a right of return "as a normal practice". In this same inquiry, Wilson further stated that KPMG needed to understand company policy regarding returns and whether any return rights were being granted apart from an infrequent customer accommodation. Zaleski responded by stating that the section of the policy Wilson was commenting on referred only to defective allowances; other returns were handled on a customer-by-customer basis. At this time, Zaleski failed to disclose to Wilson the existence of the Dunham's Guaranteed Sale Contract with Easton. Zaleski failed to disclose this information based on her subjective view that she was responding to "policy comments" only, and it was not necessary to identify any "exceptions . . . for each aspect of the policy."

132. Two days after the July 26, 2016 Audit Committee meeting, on July 28, 2016, Vendetti and Alex Byrne met with David Wilson and Peter Blessing, KPMG's internal forensic accounting expert, to further discuss the Combat internal audit conducted by Byrne.

133. During this meeting, Byrne presented in detail how the non-standard-term contracts had been uncovered, as well as the additional steps taken by Byrne to satisfy himself that no additional like-contracts existed.

134. During the meeting, Wilson inquired as to whether any of the four Combat customers with rights of return, including Dunham's, were also customers of Easton, and, if so, whether there was a risk of similar non-standard-term contracts at Easton.

135. Vendetti confirmed that there were overlapping customers between Combat and Easton, but that the two divisions operated entirely separately from one another (*e.g.*, different employees, sales staffs), and there was no reason to believe that anything that occurred between Combat and its customers could occur between Easton and its customers.

136. Despite this inquiry from Wilson and Blessing, Vendetti did not disclose the existence of the Dunham's Guaranteed Sale Contract at Easton previously discovered internally in May 2016.

137. Following the July 28, 2016 meeting and despite Vendetti's assertion that no similar issues could exist at Easton, the KPMG Audit Team requested additional materials from Zaleski related to crossover customers, expressly stating that the additional requests were designed "to understand whether or not these things could be happening at Easton." Specifically, on July 29, 2016, KPMG Audit Team member Matthew Warden sent Matt Herring, a PSG accounting employee, an email, copying Vendetti, Zaleski, and Wilson, and attaching a request for an updated analysis of crossover customers of Easton and Combat.

138. On August 2, 2016, Peter Blessing (KPMG) forwarded to Alex Byrne an email from Julie Zaleski and asked Byrne specifically for data regarding fiscal year 2016 sales by

Easton to the three common customers that were flagged in Byrne's Combat audit (Dunham's, Academy, and D-Bat Inc.).

139. Also on August 2, 2016, Byrne sent Zaleski and Helland an email, alerting them to follow-up questions from KPMG regarding Dunham's, Academy and any other customers with non-standard-term contracts involving guaranteed rights of return.

140. On August 3, 2016, the Company, in response to KPMG's direct inquiries, provided the KPMG Audit Team with additional general ledger information regarding manual journal entries related to Dunham's, but with no specific explanation of those entries.

141. Upon reviewing the additional general ledger information, KPMG Audit Team member James Holland noticed a manual journal entry titled "Dunham RTV [return to vendor]." Holland immediately made inquiries of the Company's finance team regarding the Dunham's June 22, 2016 manual journal entry and return.

142. During this time period, Vendetti stated that "we were at a point where everything with Dave [Wilson] was very tense."

143. Upon information and belief, throughout this time period, Vendetti was concerned that the Company would not be able to satisfy KPMG's audit requests timely such that the FYE 2016 Audit could be satisfactorily completed and the Company's annual report and audited financial statements filed with the SEC on or before August 15, 2016.

144. In one internal e-mail exchange on August 2, 2016, Vendetti informed the PSG accounting staff that failing to get KPMG all requested information that day risked the timely completion of the FYE 2016 Audit and would be a "disaster" for the Company.

145. Recognizing that the follow-up inquiries regarding Dunham's accounts with Easton would lead KPMG to discover the Dunham's Guaranteed Sale Contract, Vendetti and

Zaleski considered disclosing the information to KPMG in a memorandum in which the transactions under the Dunham's Guaranteed Sale Contract would be characterized as being part of the Dunham's Consignment (PBS) Arrangement.

146. In a series of internal e-mails on August 4, 2016, Helland, Zaleski and Vendetti exchanged copies of drafts describing the relationship between Dunham's and Easton as one of consignment.

147. Upon information and belief, Vendetti and Zaleski (and Helland) engaged in this internal exercise because the consignment relationship between Dunham's and Easton had already been disclosed to KPMG in April 2016, and they believed that explaining the June 22, 2016 manual journal entry as part of that relationship would be less likely to raise "red flags" for KPMG that, in turn, would prompt demands for additional sampling. Upon information and belief, Vendetti and Zaleski made these decisions under the belief that the KPMG Audit Team would overreact in a negative way to the disclosure of the Dunham's Guaranteed Sale Contract and insist upon additional testing and other measures that could have made completing the FYE 2016 Audit in a timely fashion uncertain. Ultimately, they concluded that the "consignment" explanation would not pass muster and decided that the disclosure had to accurately describe the guaranteed return feature.

148. Accordingly, in the late afternoon of August 4, 2016, after previously advising David Wilson and KPMG that there were no right of return issues at Easton, Vendetti and Zaleski approached Wilson and informed him about the Dunham's Guaranteed Sale Contract and right of return at Easton, and that Easton's Vice President of Sales, Robert Diebold, was aware of the Dunham's Guaranteed Sale Contract at the time that it was entered into in August 2015.

149. Despite this disclosure, Vendetti and Zaleski nonetheless failed to disclose that they had been were aware of the Dunham's Guaranteed Sale Contract as early as May 2016.

150. Wilson informed Vendetti that the Dunham's Guaranteed Sale Contract was a "significant issue" because "Easton [was] a much bigger operation than Combat," and because Diebold was a senior member of the sales group and one of senior management responsible for signing representation letters that were submitted to KPMG on a quarterly basis.

151. The following day, August 5, 2016, the Audit Committee convened an emergency meeting, which was attended by, among others, Wilson and Peter Blessing, of KPMG (both telephonically), Vendetti, and each member of the Audit Committee, and an attorney from the Company's outside counsel, Paul Weiss.

152. At this meeting, Vendetti informed the Audit Committee of the Dunham's Guaranteed Sale Contract at Easton, how the agreement was originally discovered, when the initial accounting treatment was originally corrected, and steps taken to ensure that no other such contracts existed.

153. Upon information and belief, the disclosure to the Audit Committee of when the existence of the Dunham's Guaranteed Sale Contract was discovered was the first time the KPMG Audit Team understood the length of time between discovery and disclosure.

154. On behalf of KPMG, Wilson informed the Audit Committee that the existence and late disclosure of the Dunham's Guaranteed Sale Contract raised certain issues, including (a) whether there were other such contracts with customers at Easton, (b) the integrity of the Easton sales executive who had previously signed management representations letters expressly verifying the opposite, and (c) the steps necessary to satisfy KPMG that the issue was not one that could impact the veracity of the Company's financial statements.

155. Wilson then raised the question regarding steps to be taken by the Audit Committee to confirm whether Easton entered into other such contracts that had not been disclosed to KPMG and about the reliability of the management representation letters that had been provided by Easton's former Vice President of Sales.

156. It was suggested by the Audit Committee that corporate counsel, Paul Weiss, could conduct interviews of Easton's sales personnel and obtain affidavits from them about their sales practices. Wilson agreed such information would be useful, but also "suggested that the Audit Committee consider retaining an independent counsel to review the entire situation." At this time, KPMG was not demanding a full internal investigation and the retention of independent outside counsel.

157. On August 6, 2016, Wilson approached Vendetti in his Exeter, New Hampshire office to specifically discuss the timing between knowledge of the Dunham's Guaranteed Sale Contract and disclosure to KPMG.

158. Vendetti acknowledged that he and the Company's finance team (including Zaleski) were aware of the Dunham's Guaranteed Sale Contract by no later than June 2016, when the manual journal entry correcting and reversing improperly recognized revenue was made.

159. Wilson specifically asked Vendetti why he had not disclosed the existence of the Dunham's Guaranteed Sale Contract earlier, such as when the disclosures regarding the Combat contracts were made. Vendetti responded by saying that he thought that the Dunham's Guaranteed Sale Contract was immaterial and that KPMG would overreact in a negative way to the information.

160. As a result of this revelation following the months of earlier inquiries, Wilson believed that Vendetti and Zaleski had intentionally misrepresented information to KPMG. This, in turn, caused the KPMG Audit Team to lose faith in management's integrity and their representations, which are required as part of the conclusion of the audit process.

161. Wilson and Howard Meltzer, KPMG's securities regulation partner, discussed these issues with Defendants Dea and McDonell on a call later that evening.

162. Following the call, Defendant McDonell asked Vendetti why he had not disclosed the Dunham's Guaranteed Sale Contract to KPMG earlier. Vendetti told McDonell: "[L]ook, I found it, I fixed the situation, that was it, I didn't think I had to take it to these people." This was all the inquiry made by the Audit Committee of the Company's employees. None of the Audit Committee members interviewed Vendetti, Zaleski, Helland, or Byrne to determine the complete picture of the disclosure of the Dunham's Guaranteed Sale Contract in order to determine what, if any, remedial measures were required.

163. The failure to timely and adequately remediate what KPMG found to be the Contract Management Significant Deficiency made it so that no one within the Company could provide KPMG with a credible representation that all of Easton's contracts had been properly reviewed and accounted for.

164. Vendetti and Zaleski failed to timely and appropriately disclose the existence of the Dunham's Guaranteed Sale Contract despite knowing that Dunham's was one of Easton's largest customers and, as such, virtually certain to be a focal point of audit sampling.

165. Vendetti and Zaleski failed to timely and appropriately disclose the Dunham's Guaranteed Sale Contract despite knowing that that contract resulted in initial erroneous

recognition of revenue, later corrected by a manual journal entry, and such manual journal entry would be subject to follow-up inquiry by KPMG if identified in sampling.

166. In reckless disregard for the interests of the Company, Vendetti and Zaleski made the unilateral determination that the Dunham's Guaranteed Sale Contract did not need to be disclosed to the KPMG Audit Team because, in their view, KPMG would react negatively to the disclosure.

167. Vendetti's and Zaleski's decision to not timely disclose the Dunham's Guaranteed Sale Contract to KPMG was reckless and grossly negligent, particularly in the context of the FYE 2016 Audit, as Vendetti and Zaleski were aware, prior to and throughout the FYE 2016 Audit, both that KPMG was focused on what it found to be deficiencies in the Company's contract management controls, and that the Dunham's Guaranteed Sale Contract and the circumstances in which it was entered into were material to the Company's contract management controls and the issues on which KPMG was focused. KPMG had identified the Contract Management Significant Deficiency as early as August 2015, and, in connection with KPMG's interim review of PSG's Q3 2016 close, KPMG identified three significant deficiencies, all of which related to PSG's contract management (*i.e.*, PSG's processes for reviewing customer contracts, identifying terms and conditions, and monitoring customer credit limits were significantly deficient), and informed PSG management that it was planning to test for such deficiencies through the FYE 2016 Audit. Indeed, KPMG's audit plan for the FYE 2016 Audit included a planned evaluation of PSG's control deficiencies.

168. Upon information and belief, Vendetti and Zaleski also failed to disclose to, and/or withheld from, the KPMG Audit Team the existence of the Dunham's Guaranteed Sale Contract because they were concerned that such disclosure could potentially result in the KPMG

Audit Team insisting upon further testing or other measures to ensure no other similar contracts existed and that this might delay or prevent the timely completion of the FYE 2016 Audit.

169. As a result, and in reckless disregard of their responsibilities to the Company, Vendetti and Zaleski risked withholding the existence of the Dunham's Guaranteed Sale Contract in the hope that the KPGM Audit Team would fail to ask the "right" question of the Company's accounting staff that would lead to the discovery of that contract as part of the FYE 2016 Audit.

170. Ultimately the KPMG Audit Team did ask the "right" question regarding Dunham's, but even then Vendetti and Zaleski scrambled to come up with a response that they hoped would obfuscate the true nature of the agreement so as not to jeopardize the timely completion of the FYE 2016 Audit.

171. When Vendetti and Zaleski finally disclosed the actual agreement to the KPMG Audit Team just days before the FYE 2016 Audit was scheduled to be completed, the late disclosure and the explanations given caused the KPMG Audit Team to conclude that Vendetti and Zaleski had intentionally misled them in the hopes of concealing the Dunham's Guaranteed Sale Contract's existence. This caused KPMG to question Vendetti's and Zaleski's integrity, and resulted in KPMG demanding that the Audit Committee conduct an independent investigation into Vendetti's and Zaleski's integrity and the potential for the existence of other such contracts that could in theory materially impact the accuracy of the Company's financial statements. KPMG insisted that this investigation be completed before KPMG would issue its audit report in respect of the FYE 2016 Audit.

172. Following the August 6, 2016 telephone conversation between McDonell and Dea, on the one hand, and Wilson and Meltzer, on the other, Audit Committee members

McDonell, Dea, and Jacobi directed Paul Weiss to prepare a written explanation of the Dunham's issue to be delivered to KPMG at the scheduled August 8, 2016 Audit Committee meeting, as well as a work plan to provide additional information to convince KPMG that there was no issue that materially impacted the veracity of the Company's financial statements.

173. Paul Weiss prepared both documents on August 6 and 7, 2016. The work plan developed by Paul Weiss outlined a series of actions to be completed by no later than August 11, 2016.

174. Neither document was delivered to KPMG at the August 8, 2016 Audit Committee meeting. Instead, at the start of the meeting, KPMG informed the Audit Committee that it would not complete the FYE 2016 Audit without the completion of an internal investigation, conducted by independent outside counsel, into the events surrounding the disclosure of the Dunham's Guaranteed Sale Contract at Easton, including a review of management's integrity with respect to the timing of the disclosure to KPMG.

175. The Audit Committee members responded by initially arguing that the Dunham's Guaranteed Sale Contract was immaterial in amount and that Vendetti's failure to disclose it earlier was at worst a mistake in judgment that should not be a basis for KPMG's insistence on an internal investigation that could delay the timely completion of the FYE 2016 Audit and the filing of the Company's annual report and audited financial statements.

176. KPMG refused to alter its stance and the Audit Committee, at the conclusion of the August 8, 2016 meeting, agreed to retain independent outside counsel to conduct the independent investigation demanded by KPMG (the "**Audit Committee Investigation**"). At the time it agreed to conduct the Audit Committee Investigation, the Audit Committee knew (i) that the deadline for filing the Company's annual report on Form 10-K, including is consolidated

audited financial statements, was August 15, 2016, (ii) that failure to make a timely filing of the annual report would result in a default under the Company's Secured Loans, and (iii) that such a default, would, if not cured within any applicable grace period or extensions otherwise negotiated with its lenders, necessitate the Company filing for bankruptcy.

177. At a meeting of the full Board convened later that day, the Board adopted the recommendation of the Audit Committee with regard to the necessity to conduct an internal investigation as demanded by KPMG.

178. In addition, at the time the Audit Committee and the full Board agreed to conduct the Audit Committee Investigation as a precondition to KPMG completing the FYE 2016 Audit, the Audit Committee members believed that there was no systemic problem with its customer contracts and that its financial statements then under review were in all respects materially accurate. This view was communicated by the Audit Committee to the full Board.

179. As of the time the Audit Committee and full Board agreed to conduct the Audit Committee Investigation, PSG remained a robust operating business. At the time, PSG's common stock was trading at approximately $3.40 per share, implying a market capitalization for PSG's stock of approximately $150,000,000. And, the Company was in good standing with its secured lenders.

180. Despite KPMG's assertion that it had lost faith in management integrity due to the manner in which Vendetti and Zaleski addressed disclosure of the Dunham's Guaranteed Sale Contract, neither the Audit Committee nor the full Board (i) removed Vendetti or Zaleski from their respective positions, (ii) interviewed them in any comprehensive way, or (iii) took any measures to install new personnel that KPMG had experience and faith in, such as former CFO Amir Rosenthal, to execute necessary management representation letters.

181. Moreover, the Audit Committee did not engage in interviews of more than one law firm to secure a firm that would commit to completing the Audit Committee Investigation in a timely manner. Rather, based solely on the recommendation of its Canadian corporate counsel, Stikeman Elliott LLP, the Audit Committee retained Richards Kibbe & Orbe LLP ("**RKO**") on August 10, 2016 in connection with the Audit Committee Investigation. The Audit Committee decided to retain RKO despite the fact that RKO refused to commit to completing the Audit Committee Investigation in a timeframe that would allow the Company to address KPMG's concerns, secure a completed audit, timely file its annual report and audited financial statements, and thereby remain in compliance with its Secured Loans. Indeed, there were discussions regarding whether RKO would accelerate the work plan to accommodate the company's needs to secure KPMG's sign-off on the audit in a timely fashion. RKO decided not to accelerate the work. Thereafter, despite the looming regulatory deadline and the concomitant impact a delay in filing could have on the Company's Secured Loans, neither the Board nor the Audit Committee took any action to ensure that RKO would complete the investigation in a timely manner. Instead, the Board and Audit Committee ignored its fiduciary duty to the company and immediately "threw in the towel" and determined to file for bankruptcy relief, notwithstanding that the Company was otherwise healthy and profitable, and had not previously contemplated filing for bankruptcy.

182. On August 11, 2016, the day after retaining RKO, the Company asked Sagard, its largest shareholder, whether it was interested in "taking the Company private." Sagard indicated that it would "in a heartbeat." The Company thereafter immediately commenced negotiations with Sagard for the purchase of the Company's operating business as a going concern.

183. On August 11, 2016, the Company retained Alvarez & Marsal North America, LLC to assist the Company in preparing for a bankruptcy filing.

184. On August 15, 2016, the Company announced that it would not be filing its fiscal year 2016 annual report and audited financial statements on or before the original August 15, 2016 deadline, or an extended August 29, 2016 deadline. The Company attributed this failure to the decision to conduct the Audit Committee Investigation.

185. On August 19, 2016, the Company retained Centerview Partners LLC as investment banker to market the Company's assets for sale and provide restructuring advice. Centerview focused its initial efforts on negotiating a sale of the Company to, and purchase agreement with, Sagard, which was completed no later than mid-September, 2016.

186. On or around August 25, 2016, the Board considered slowing down or stopping RKO's investigation altogether in light of the decision to file for bankruptcy. The Board decided not to end RKO's investigation at the time because that would require public disclosure.

187. On or about August 29, 2016, the Company announced that it had entered into amendments to the Secured Loans, pursuant to which the Company was granted a 60-day extension (*i.e.*, until October 28, 2016) to provide the Company's fiscal year 2016 annual report and consolidated audited financial statements, the failure of which would result in an immediate event of default under the Secured Loans.

188. Internal investigations like the one demanded by KPMG are not an infrequent occurrence for publicly-traded companies and are routinely conducted and completed under extremely tight deadlines.

189. Despite PSG receiving a 60-day extension from its lenders, neither the Audit Committee nor the Board took any steps to ensure the timely completion of the Audit Committee

Investigation so that the FYE 2016 Audit could be completed, the annual report filed, and the Secured Loan default avoided. Indeed, as of August 29, 2016, the Audit Committee Investigation had not yet materially progressed. For example, neither Vendetti nor Zaleski (nor Helland, Byrne, or Tadros) had been interviewed at that time in connection with the investigation.

190. At the time that KPMG demanded that an investigation take place, no one within the Company believed that there was any material problem with the Company's customer contracts or the accuracy of the Company's financial statements. Rather, all of the Company's officers and Board members believed that KPMG was overreacting to the circumstances surrounding the disclosure of the Dunham's Guaranteed Sale Contract.

191. Despite this belief, instead of ensuring that the Audit Committee Investigation was completed in a timely manner, the decision was made to immediately plan for a bankruptcy filing and the sale of the Company's business.

192. Upon information and belief, the internal investigation conducted by RKO was never intended by the Audit Committee or the Board to be completed in a timeframe that would allow for the completion of the FYE 2016 Audit, the filing of the Company's annual report and audited financial statements, and the avoidance of a Secured Loan default.

193. The over $6 million dollars expended by the Company on the investigation amounted to a waste of corporate assets.

194. In fact, much of the critical investigatory work undertaken by RKO, including the interviews of relevant witnesses, was not performed until after the Company had filed for bankruptcy protection, entered into a stalking horse agreement for the sale of the Company's operating business, participated in a bankruptcy-run auction process, and signed a definitive

agreement with the ultimate buyer of the Company's operating business. For example, none of Vendetti, Zaleski, Helland, Byrne, or Tadros was interviewed until February 2017, months after the purpose of the investigation was rendered meaningless by subsequent events.

195. The members of both the Audit Committee and the full Board consciously chose to disregard their fiduciary responsibilities of loyalty and good faith to the Company and its shareholders by failing to perform duties that were incumbent upon them and necessary for the continuing health and viability of the Company. The Audit Committee and Board knowingly chose to steer the Company down a path that was designed to lead to the Company filing for bankruptcy, despite the fact that the Company was in good financial health at the time. Specifically, both the Audit Committee and the Board failed to ensure or even attempt to ensure that the Audit Committee Investigation and, in turn, the FYE 2016 Audit was timely completed. This failure resulted in the FYE 2016 Audit remaining uncompleted and the Company's annual report and financial statements unfiled as of October 28, 2016. Accordingly, an immediate event of default occurred under the Secured Loans as of October 28, 2016.

196. As a result, on October 31, 2016, the Company and all of its U.S. and Canadian subsidiaries filed voluntary petitions for relief under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the "**Bankruptcy Court**"), and commenced creditor protection proceedings under the Companies' Creditors Arrangement Act in the Ontario Superior Court of Justice (Commercial List) (the "**Canadian Court**").

197. According to the Company, the "most significant[]" cause of its bankruptcy filings was its failure to "file [its] Annual Report, including [its] annual audited financial statements for the fiscal year ended May 31, 2016, by the required filing date. . . ."

198. Also on October 31, 2016, the Company entered into a "stalking horse" asset purchase agreement (the "**Purchase Agreement**") with 9938982 Canada Inc. (the "**Purchaser**"), an acquisition entity co-owned by Sagard and Fairfax Financial Holdings Limited, pursuant to which the Purchaser agreed to purchase substantially all of the Company's assets for aggregate gross consideration of approximately $575,000,000, subject to certain adjustments, set-offs, and/or reductions (including with respect to certain capitalized lease obligations). After repayment of the Company's funded debt and unsecured liabilities, the purchase price agreed to represented substantially less than the Company's pre-bankruptcy market capitalization and the total enterprise value of the Company.

199. On February 6, 2017, the Bankruptcy Court and Canadian Court entered orders approving the sale of substantially all of the Company's assets to the Purchaser pursuant to the Purchase Agreement (as modified, amended, and/or supplemented), which sale closed effective as of February 28, 2017. As of that date, the Company substantially ceased all business operations.

200. On or about March 27, 2017, RKO conveyed an oral report to the Audit Committee, attended by KPMG, summarizing the results and conclusions from its investigation to date, and announcing that no further investigation would be conducted as the purpose was mooted by the sale.

201. On March 27, 2017, KPMG resigned as the Company's auditor pursuant to a letter written in conformance with Section 10A of the Securities Exchange Act of 1934. KPMG identified as reasons for its withdrawal: (1) potential illegal acts by PSG officers and/or Board members; (2) an inadequate investigation by RKO; and (3) failure to remediate the issues raised by KPMG.

202. On December 20, 2017, the Bankruptcy Court and Canadian Court entered orders confirming the Company's Chapter 11 Plan.

203. On December 21, 2017, the Plan went effective, PSG and the Trust were established, all of the Company's remaining assets were vested jointly in PSG and the Trust, and the Trustee was appointed Litigation Representative for PSG and the Trust, with all of the rights, powers, and interests as set forth in the Confirmation Order, the Plan, and the Liquidation Trust Agreement.

204. As a direct and proximate result of the breaches of duty by the defendants, PSG incurred substantial damages including:

(a) over $6 million in costs, fees, and expenses incurred in conducting the useless and unnecessary Audit Committee Investigation;

(b) over $62 million in costs, fees, and expenses arising from the Company's unnecessary bankruptcy filings in the U.S. and Canada; and

(c) substantial damages arising from the forced distressed sale of the Company's assets for substantially less than the intrinsic value of such assets.

FIRST CAUSE OF ACTION

(Breach of Fiduciary Duty of Care – Defendants Vendetti, as CFO of PSG and the PSG Subsidiaries, and Zaleski, as Controller and Treasurer of PSG and the PSG Subsidiaries)

205. Plaintiff repeats and realleges the foregoing paragraphs, which are incorporated by reference as if fully set forth herein.

206. As officers of PSG and the PSG Subsidiaries, Defendants Vendetti and Zaleski owed fiduciary duties of care to PSG and the PSG Subsidiaries.

207. Defendants Vendetti and/or Zaleski breached their fiduciary duties to PSG and the PSG Subsidiaries, and acted grossly negligent and with reckless disregard for the interests of the Company when, among other things:

(a) Vendetti and Zaleski failed to disclose to, and/or withheld from, KPMG the existence of the Dunham's Guaranteed Sale Contract in May 2016 after being informed of the same by Ricky Helland and meeting and discussing the issue with Helland;

(b) Vendetti and Zaleski failed to disclose to, and/or withheld from, KPMG the existence of the Dunham's Guaranteed Sale Contract in June 2016 after Zaleski ordered Rickey Helland to reverse the Dunham's November 25, 2015 transaction through a manual journal entry on June 22, 2016 because of the right of return attributes under the Dunham's Guaranteed Sale Contract;

(c) Vendetti and Zaleski failed to disclose to, and/or withheld from, KPMG the existence of the Dunham's Guaranteed Sale Contract in June 2016 after being informed in connection with the Combat internal audit that Dunham's also had a right of return under a customer agreement with Combat;

(d) Vendetti and Zaleski failed to disclose to, and/or withheld from, KPMG the existence of the Dunham's Guaranteed Sale Contract in July 2016 after informing KPMG of the Dunham's right of return at Combat;

(e) Zaleski failed to disclose to, and/or withheld from, KPMG the existence of the Dunham's Guaranteed Sale Contract in July 2016 after David Wilson inquired about the Company's return policy and whether the Company was granting any rights of return other than customer accommodations;

(f) Vendetti failed to disclose to, and/or withheld from, KPMG the existence of the Dunham's Guaranteed Sale Contract on July 28, 2016 after David Wilson asked Vendetti whether any customers of Easton, including Dunham's, had a right of return or similar attribute;

(g) Vendetti and Zaleski failed to disclose to, and/or withheld from, KPMG the existence of the Dunham's Guaranteed Sale Contract between July 28, 2016 and August 4, 2016, despite repeated inquiries from KPMG regarding whether any crossover customers between Easton and Combat (including Dunham's) had a right of return or similar attribute at Easton; and

(h) Vendetti and Zaleski repeatedly failed to correct the erroneous representations made to KPMG in April 2016 that, except for the $200,000 that was reversed in March 2016, the accounts receivable balance attributable to Dunham's represented standard-term contract sales with no right of return attribute, notwithstanding that Vendetti and Zaleski knew by no later than May 2016 that such representations were erroneous.

208. Vendetti and Zaleski failed to consider that KPMG would have required timely disclosure of the Dunham's Guaranteed Sale Contract in order to complete the FYE 2016 Audit, and that withholding this information from KPMG could raise concerns regarding management integrity if the issue were to be subsequently discovered. Vendetti and Zaleski also failed to

consider that it would have been in the best interests of the Company to disclose this information to KPMG as soon as practicable so as to avoid any delays in completion of the FYE 2016 Audit.

209. An ordinarily careful and prudent CFO and Controller under similar circumstances, including with the knowledge that KPMG was conducting a more detailed and rigorous FYE 2016 Audit, would have known that they had a duty to disclose the existence of the Dunham's Guaranteed Sale Contract to KPMG as soon as they became aware of such agreement.

210. But for Vendetti's and Zaleski's failure to timely disclose and forthrightly answer KPMG's questions regarding non-standard-term contracts at Easton, KPMG would not have required the Company to conduct an independent investigation of management integrity.

211. But for Vendetti's and Zaleski's breaches of fiduciary duty, the Company would have been able to timely file its annual report on Form 10-K, including its consolidated audited financial statements either on or before August 15, 2016, or within any extensions reasonably obtainable, timely provide the same to the secured lenders under the Secured Loans, and, thus, would not have filed for bankruptcy protection or sold its operating business.

212. Prior to Vendetti's and Zaleski's breaches of fiduciary duty, the Company was experiencing no liquidity issues that would have led it to bankruptcy; was not contemplating filing for bankruptcy; had not retained any restructuring professionals; and was not in default under any of the Company's Secured Loans.

213. Vendetti's and Zaleski's breaches of their fiduciary duties resulted in damages to PSG, the PSG Subsidiaries, and their businesses and prospects as set forth herein, in an amount to be determined at trial.

SECOND CAUSE OF ACTION

(Breach of Fiduciary Duty of Loyalty and Good Faith – Defendants Vendetti, as CFO of PSG and the PSG Subsidiaries, and Zaleski, as Controller and Treasurer of PSG and the PSG Subsidiaries)

214. Plaintiff repeats and realleges the foregoing paragraphs, which are incorporated by reference as if fully set forth herein.

215. As officers of PSG and the PSG Subsidiaries, Defendants Vendetti and Zaleski owed fiduciary duties of care to PSG and the PSG Subsidiaries.

216. Vendetti and Zaleski breached their fiduciary duties to PSG and the PSG Subsidiaries, and acted with conscious disregard for their duties and not in the best interests of the Company, when, among other things:

(a) Vendetti and Zaleski failed to disclose to, and/or withheld from, KPMG the existence of the Dunham's Guaranteed Sale Contract in May 2016 after being informed of the same by Ricky Helland and meeting and discussing the issue with Helland;

(b) Vendetti and Zaleski failed to disclose to, and/or withheld from, KPMG the existence of the Dunham's Guaranteed Sale Contract in June 2016 after Zaleski ordered Rickey Helland to reverse the Dunham's November 25, 2015 transaction through a manual journal entry on June 22, 2016 because of the right of return attributes under the Dunham's Guaranteed Sale Contract;

(c) Vendetti and Zaleski failed to disclose to, and/or withheld from, KPMG the existence of the Dunham's Guaranteed Sale Contract in June 2016 after being informed in connection with the Combat internal audit that

Dunham's also had a right of return under a customer agreement with Combat;

(d) Vendetti and Zaleski failed to disclose to, and/or withheld from, KPMG the existence of the Dunham's Guaranteed Sale Contract in July 2016 after informing KPMG of the Dunham's right of return at Combat;

(e) Zaleski failed to disclose to, and/or withheld from, KPMG the existence of the Dunham's Guaranteed Sale Contract in July 2016 after David Wilson inquired about the Company's return policy and whether the Company was granting any rights of return other than customer accommodations;

(f) Vendetti failed to disclose to, and/or withheld from, KPMG the existence of the Dunham's Guaranteed Sale Contract on July 28, 2016 after David Wilson asked Vendetti whether any customers of Easton, including Dunham's, had a right of return or similar attribute;

(g) Vendetti and Zaleski failed to disclose to, and/or withheld from, KPMG the existence of the Dunham's Guaranteed Sale Contract between July 28, 2016 and August 4, 2016, despite repeated inquiries from KPMG regarding whether any crossover customers between Easton and Combat (including Dunham's) had a right of return or similar attribute at Easton; and

(h) Vendetti and Zaleski repeatedly failed to correct the erroneous representations made to KPMG in April 2016 that, except for the $200,000 that was reversed in March 2016, the accounts receivable balance attributable to Dunham's represented ordinary retail sales with no right of return attribute, notwithstanding that Vendetti and Zaleski knew by no later than May 2016 that such representations were erroneous.

217. Vendetti and Zaleski failed to consider that KPMG would have required timely disclosure of the Dunham's Guaranteed Sale Contract in order to complete the FYE 2016 Audit, and that withholding this information from KPMG could raise concerns regarding management integrity if the issue were to be subsequently discovered. Vendetti and Zaleski also failed to consider that it would have been in the best interests of the Company to disclose this information to KPMG as soon as practicable so as to avoid any delays in completion of the FYE 2016 Audit.

218. An ordinarily careful and prudent CFO and Controller under similar circumstances, including with the knowledge that KPMG was conducting a more detailed and rigorous FYE 2016 Audit, would have known that they had a duty to disclose the existence of the Dunham's Guaranteed Sale Contract to KPMG as soon as they became aware of such agreement.

219. But for Vendetti's and Zaleski's failure to timely disclose and forthrightly answer KPMG's questions regarding non-standard-term contracts at Easton, KPMG would not have required the Company to conduct an independent investigation of management integrity.

220. But for Vendetti's and Zaleski's breaches of fiduciary duty, the Company would have been able to timely file its annual report on Form 10-K, including its consolidated audited financial statements either on or before August 15, 2016, or within any extensions reasonably obtainable, timely provide the same to the secured lenders under the Secured Loans, and, thus, would not have filed for bankruptcy protection or sold its operating business.

221. Prior to Vendetti's and Zaleski's breaches of fiduciary duty, the Company was experiencing no liquidity issues that would have led it to bankruptcy; was not contemplating

filing for bankruptcy; had not retained any restructuring professionals; and was not in default under any of the Company's Secured Loans.

222. Vendetti's and Zaleski's breaches of their fiduciary duties resulted in damages to the Company and its business and prospects as set forth herein, in an amount to be determined at trial.

THIRD CAUSE OF ACTION

(Breach of Fiduciary Duty and Duty of Care – British Columbia Business Corporations Act Section 142 – Defendants Vendetti, as CFO of PSG, and Zaleski, as Controller and Treasurer of PSG)

223. Plaintiff repeats and realleges the foregoing paragraphs, which are incorporated by reference as if fully set forth herein.

224. As officers of PSG, Defendants Vendetti and Zaleski owed fiduciary duties to PSG pursuant to Section 142 of the British Columbia Business Corporations Act ("**BCBCA**") and an obligation to satisfy their duties of care in tort owed to PSG under the common law of British Columbia by, pursuant to Section 142 of the BCBCA, exercising care, diligence and skill that a reasonably prudent individual would exercise in comparable circumstances.

225. Defendants Vendetti and/or Zaleski breached their fiduciary duties and acted grossly negligent and with reckless disregard for the interests of the Company when, among other things:

(a) Vendetti and Zaleski failed to disclose to, and/or withheld from, KPMG the existence of the Dunham's Guaranteed Sale Contract in May 2016 after being informed of the same by Ricky Helland and meeting and discussing the issue with Helland;

(b) Vendetti and Zaleski failed to disclose to, and/or withheld from, KPMG the existence of the Dunham's Guaranteed Sale Contract in June 2016 after Zaleski ordered Ricky Helland to reverse the Dunham's November 25, 2015 transaction through a manual journal entry on June 22, 2016 because of the right of return attributes under the Dunham's Guaranteed Sale Contract;

(c) Vendetti and Zaleski failed to disclose to, and/or withheld from, KPMG the existence of the Dunham's Guaranteed Sale Contract in June 2016 after being informed in connection with the Combat internal audit that Dunham's also had a right of return under a customer agreement with Combat;

(d) Vendetti and Zaleski failed to disclose to, and/or withheld from, KPMG the existence of the Dunham's Guaranteed Sale Contract in July 2016 after informing KPMG of the Dunham's right of return at Combat;

(e) Zaleski failed to disclose to, and/or withheld from, KPMG the existence of the Dunham's Guaranteed Sale Contract in July 2016 after David Wilson inquired about the Company's return policy and whether the Company was granting any rights of return other than customer accommodations;

(f) Vendetti failed to disclose to, and/or withheld from, KPMG the existence of the Dunham's Guaranteed Sale Contract on July 28, 2016 after David Wilson asked Vendetti whether any customers of Easton, including Dunham's, had a right of return or similar attribute;

(g) Vendetti and Zaleski failed to disclose to, and/or withheld from, KPMG the existence of the Dunham's Guaranteed Sale Contract between July 28, 2016 and August 4, 2016, despite repeated inquiries from KPMG regarding whether any crossover customers between Easton and Combat (including Dunham's) had a right of return or similar attribute at Easton; and

(h) Vendetti and Zaleski repeatedly failed to correct the erroneous representations made to KPMG in April 2016 that, except for the $200,000 that was reversed in March 2016, the accounts receivable balance attributable to Dunham's represented standard-term contract sales with no right of return attribute, notwithstanding that Vendetti and Zaleski knew by no later than May 2016 that such representations were erroneous.

226. Vendetti and Zaleski failed to consider that KPMG would have required timely disclosure of the Dunham's Guaranteed Sale Contract in order to complete the FYE 2016 Audit, and that withholding this information from KPMG could raise concerns regarding management integrity if the issue were to be subsequently discovered. Vendetti and Zaleski also failed to consider that it would have been in the best interests of the Company to disclose this information to KPMG as soon as practicable so as to avoid any delays in completion of the FYE 2016 Audit.

227. An ordinarily careful and prudent CFO and Controller under similar circumstances, including with the knowledge that KPMG was conducting a more detailed and rigorous FYE 2016 Audit, would have disclosed the existence of the Dunham's Guaranteed Sale Contract to KPMG as soon as they became aware of such agreement.

228. But for Vendetti's and Zaleski's failure to timely disclose and forthrightly answer KPMG's questions regarding non-standard-term contracts at Easton, KPMG would not have required the Company to conduct an independent investigation of management integrity.

229. But for Vendetti's and Zaleski's breaches of fiduciary duty, the Company would have been able to timely file its annual report on Form 10-K, including its consolidated audited financial statements either on or before August 15, 2016, or within any extensions reasonably obtainable, timely provide the same to the secured lenders under the Secured Loans, and, thus, would not have filed for bankruptcy protection or sold its operating business.

230. Prior to Vendetti's and Zaleski's breaches of fiduciary duty, the Company was experiencing no liquidity issues that would have led it to bankruptcy; was not contemplating filing for bankruptcy; had not retained any restructuring professionals; and was not in default under any of the Company's Secured Loans.

231. Vendetti's and Zaleski's breaches of their fiduciary duties and duties of care prescribed by Section 142 of the BCBCA resulted in damages to PSG and its business and prospects as set forth herein, in an amount to be determined at trial.

FOURTH CAUSE OF ACTION

(Breach of Fiduciary Duty of Loyalty and Good Faith – Defendants Barsa, Dea, Jacobi, Mannelly, McDonell, and Nicholson, as Directors of PSG, and with respect to Dea, Mannelly, and McDonell, as members of the Audit Committee)

232. Plaintiff repeats and realleges the foregoing paragraphs, which are incorporated by reference as if fully set forth herein.

233. Defendants Barsa, Dea, Jacobi, Mannelly, McDonell, and Nicholson owed fiduciary duties of loyalty and good faith to PSG as directors of PSG and, with respect to Dea, Mannelly, and McDonell, also as members of the Audit Committee.

234. As alleged herein, Defendants Barsa, Dea, Jacobi, Mannelly, McDonell, and Nicholson breached their fiduciary duties when, among other things:

(a) The members of the Audit Committee and, subsequently, the full Board acceded to KPMG's demand for the Audit Committee Investigation as a precondition to completion of the FYE 2016 Audit, but thereafter completely abdicated their duties to ensure the timely completion of the Audit Committee Investigation and, in turn, the FYE 2016 Audit;

(b) Neither the Audit Committee nor the full Board removed Vendetti or Zaleski from their respective positions, despite KPMG's assertion that it had lost faith in management integrity due to the manner in which Vendetti and Zaleski addressed disclosure of the Dunham's Guaranteed Sale Contract;

(c) Neither the Audit Committee nor the full Board interviewed Vendetti or Zaleski in any comprehensive way, or took any measures to install new personnel that KPMG had experience and faith in to execute necessary management representation letters;

(d) Neither the Audit Committee nor the full Board retained a law firm with both the experience and resources necessary to complete the Audit Committee Investigation in a timely manner; rather, based solely on the recommendation of Canadian corporate counsel Stikeman Elliott LLP, the Audit Committee determined to retain RKO to conduct the Audit Committee Investigation, despite the fact that RKO refused to commit to completing the Audit Committee Investigation in a timeframe that would allow the Company to address KPMG's concerns, secure a completed FYE 2016 Audit, timely file its annual report, and remain in compliance with the financial covenants under the Secured Loans; and

(e) The Audit Committee and the Board thereafter failed to take reasonable steps to ensure that the Audit Committee Investigation was timely completed so that the FYE 2016 Audit could be timely completed, the annual report filed, and a Secured Loan default avoided.

235. As alleged herein, but for the breaches of fiduciary duty of Defendants Barsa, Dea, Jacobi, Mannelly, McDonell, and Nicholson, the Audit Committee and Board would have been able to ensure the timely completion of the Audit Committee Investigation; the Company would have been able to timely complete the FYE 2016 Audit; the Company would have been able to timely file its annual report on Form 10-K, including its consolidated audited financial statements, on or before October 28, 2016 and would have been able to provide the same to their secured lenders; and, as a result, the Company would not have needed to file their bankruptcy cases in October 2018; and, instead, would have been able to avoid filing their bankruptcy cases and continue operating as a going concern.

236. Barsa's, Dea's, Jacobi's, Mannelly's, McDonell's, and Nicholson's breaches of their fiduciary duties resulted in damages to PSG, the PSG Subsidiaries, and their businesses and prospects as set forth herein, in an amount to be determined at trial.

<u>FIFTH CAUSE OF ACTION</u>

(Breach of Fiduciary Duty and Duty of Care – British Columbia Business Corporations Act Section 142 – Defendants Barsa, Dea, Jacobi, Mannelly, McDonell, and Nicholson, as Directors of PSG, and with respect to Dea, Mannelly, and McDonell, as members of the Audit Committee)

237. Plaintiff repeats and realleges the foregoing paragraphs, which are incorporated by reference as if fully set forth herein.

238. Defendants Barsa, Dea, Jacobi, Mannelly, McDonell, and Nicholson owed fiduciary duties to PSG, as directors of PSG and, with respect to Dea, Mannelly, and McDonell,

also as members of the Audit Committee, pursuant to Section 142 of the BCBCA and an obligation to satisfy their duties of care in tort owed to PSG under the common law of British Columbia by, pursuant to Section 142 of the BCBCA, exercising diligence and skill that a reasonably prudent individual would exercise in comparable circumstances.

239. As alleged herein, Defendants Barsa, Dea, Jacobi, Mannelly, McDonell, and Nicholson breached their fiduciary duties and duties of care owed to the Company when, among other things:

(a) The members of the Board and Audit Committee failed to timely or adequately remediate, or ensure the timely or adequate remediation of, what KPMG found to be the Contract Management Significant Deficiency, or otherwise ensure that the Company's contract management function adequately identified the material terms of the Company's customer contracts, to ensure that the Company's finance function was able to adequately monitor and account for the same.

(b) The members of the Board and Audit Committee failed to adequately oversee the FYE 2016 Audit, and failed to take reasonable steps to ensure the timely completion of the FYE 2016 Audit, including, without limitation, after being advised of the Combat audit results at the July 26, 2016 Audit Committee meeting, failing to inquire as to, or instruct the Company's management to investigate, whether any contracts with rights of return or similar attributes existed at Easton or any of the Company's other divisions.

(c) The members of the Audit Committee and, subsequently, the full Board acceded to KPMG's demand for the Audit Committee Investigation as a precondition to completion of the FYE 2016 Audit, but thereafter completely abdicated their duties to ensure the timely completion of the Audit Committee Investigation and, in turn, the FYE 2016 Audit;

(d) Neither the Audit Committee nor the full Board removed Vendetti or Zaleski from their respective positions, despite KPMG's assertion that it had lost faith in management integrity due to the manner in which Vendetti and Zaleski addressed disclosure of the Dunham's Guaranteed Sale Contract;

(e) Neither the Audit Committee nor the full Board interviewed Vendetti or Zaleski in any comprehensive way, or took any measures to install new personnel that KPMG had experience and faith in to execute necessary management representation letters;

(f) Neither the Audit Committee nor the full Board retained a law firm with both the experience and resources necessary to complete the Audit Committee Investigation in a timely manner; rather, based solely on the recommendation of Canadian corporate counsel Stikeman Elliott LLP, the Audit Committee determined to retain RKO to conduct the Audit Committee Investigation, despite the fact that RKO refused to commit to completing the Audit Committee Investigation in a timeframe that would allow the Company to address KPMG's concerns, secure a completed

FYE 2016 Audit, timely file its annual report, and remain in compliance with the financial covenants under the Secured Loans; and

(g) The Audit Committee and the Board thereafter failed to take reasonable steps to ensure that the Audit Committee Investigation was timely completed so that the FYE 2016 Audit could be timely completed, the annual report filed, and a Secured Loan default avoided.

240. As alleged herein, but for the breaches of fiduciary duties and duties of care of Defendants Barsa, Dea, Jacobi, Mannelly, McDonell, and Nicholson, the Audit Committee and Board would have been able to ensure the timely completion of the Audit Committee Investigation; the Company would have been able to timely complete the FYE 2016 Audit; the Company would have been able to timely file its annual report on Form 10-K, including its consolidated audited financial statements, on or before October 28, 2016 and would have been able to provide the same to their secured lenders; and, as a result, the Company would not have needed to file their bankruptcy cases in October 2018; and, instead, would have been able to avoid filing their bankruptcy cases and continue operating as a going concern.

241. Barsa's, Dea's, Jacobi's, Mannelly's, McDonell's, and Nicholson's breaches of their fiduciary duties and duties of care resulted in damages to PSG, the PSG Subsidiaries, and their businesses and prospects as set forth herein, in an amount to be determined at trial.

SIXTH CAUSE OF ACTION

(Corporate Waste – Defendants Barsa, Dea, Jacobi, Mannelly, McDonell, and Nicholson, as Directors of PSG, and with respect to Dea, Mannelly, and McDonell, as members of the Audit Committee)

242. Plaintiff repeats and realleges the foregoing paragraphs, which are incorporated by reference as if fully set forth herein.

243. Defendants Barsa, Dea, Jacobi, Mannelly, McDonell, and Nicholson owed fiduciary duties of loyalty and good faith to PSG as directors of PSG and, with respect to Dea, Mannelly, and McDonell, also as members of the Audit Committee.

244. As alleged herein, Defendants Barsa, Dea, Jacobi, Mannelly, McDonell, and Nicholson breached their duties when, among other things:

(a) The members of the Audit Committee and, subsequently, the full Board acceded to KPMG's demand for the Audit Committee Investigation as a precondition to completion of the FYE 2016 Audit, but thereafter completely abdicated their duties to ensure the timely completion of the Audit Committee Investigation and, in turn, the FYE 2016 Audit;

(b) Neither the Audit Committee nor the full Board removed Vendetti or Zaleski from their respective positions, despite KPMG's assertion that it had lost faith in management integrity due to the manner in which Vendetti and Zaleski addressed disclosure of the Dunham's Guaranteed Sale Contract;

(c) Neither the Audit Committee nor the full Board interviewed Vendetti or Zaleski in any comprehensive way, or took any measures to install new personnel that KPMG had experience and faith in to execute necessary management representation letters;

(d) Neither the Audit Committee nor the full Board retained a law firm with both the experience and resources necessary to complete the Audit Committee Investigation in a timely manner; rather, based solely on the recommendation of Canadian corporate counsel Stikeman Elliott LLP, the

Audit Committee determined to retain RKO to conduct the Audit Committee Investigation, despite the fact that RKO refused to commit to completing the Audit Committee Investigation in a timeframe that would allow the Company to address KPMG's concerns, secure a completed FYE 2016 Audit, timely file its annual report, and remain in compliance with the financial covenants under the Secured Loans; and

(e) The Audit Committee and the Board thereafter failed to take reasonable steps to ensure that the Audit Committee Investigation was timely completed so that the FYE 2016 Audit could be timely completed, the annual report filed, and a Secured Loan default avoided.

245. The Company received nothing of value from the Audit Committee Investigation. The substance of the Audit Committee Investigation was not completed until long after the Company determined to file for bankruptcy relief, negotiated a stalking horse agreement for the sale of its assets, conducted a sale process for such assets, sought approval of the sale of its assets to the stalking horse purchaser, and, thereafter, ceased material operations. Accordingly, the Audit Committee Investigation served no corporate purpose and was beyond the bounds of reasonable business judgment.

246. Through these and other wrongful actions alleged herein, Barsa, Dea, Jacobi, Mannelly, McDonell, and Nicholson wasted corporate assets by egregiously and irrationally squandering millions of dollars on a useless and unnecessary Audit Committee Investigation at a time when the Board had already decided to pursue bankruptcy and a sale of substantially all of the Company's assets, and had no intention of completing the FYE 2016 Audit.

247. Barsa's, Dea's, Jacobi's, Mannelly's, McDonell's, and Nicholson's waste of corporate assets resulted in damages to the Company and its business and prospects as set forth herein, in an amount to be determined at trial.

ATTORNEYS' FEES AND COSTS

248. To the extent allowable by applicable law, Plaintiff requests that the Court award reasonable attorneys' fees and costs.

JURY TRIAL

249. Plaintiff demands a jury trial on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, by reason of the foregoing, Plaintiff requests that the Court grant the following relief:

(a) On Count I, entering judgment against Defendants Vendetti and Zaleski, finding that Defendants breached their fiduciary duties of care to the Company, and awarding damages as a result of such conduct in an amount to be determined at trial.

(b) On Count II, entering judgment against Defendants Vendetti and Zaleski, finding that Defendants breached their fiduciary duties of loyalty and good faith to the Company, and awarding damages as a result of such conduct in an amount to be determined at trial.

(c) On Count III, entering judgment against Defendants Vendetti and Zaleski, finding that Defendants breached their fiduciary duties and duties of care owed to the Company pursuant to Section 142 of the BCBCA, and awarding damages as a result of such conduct in an amount to be determined at trial.

(d) On Count IV, entering judgment against Defendants Barsa, Dea, Jacobi, Mannelly, McDonell, and Nicholson, finding that Defendants breached their fiduciary duties of loyalty and good faith to the Company, and awarding damages as a result of such conduct in an amount to be determined at trial.

(e) On Count V, entering judgment against Defendants Barsa, Dea, Jacobi, Mannelly, McDonell, and Nicholson, finding that Defendants breached their fiduciary duties and duties of care owed to the Company pursuant to Section 142 of the BCBCA, and awarding damages as a result of such conduct in an amount to be determined at trial.

(f) On Count VI, entering judgment against Defendants Barsa, Dea, Jacobi, Mannelly, McDonell, and Nicholson, finding that Defendants committed corporate waste, and awarding damages as a result of such conduct in an amount to be determined at trial.

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Dated: November 22, 2019

HOGAN MCDANIEL

/s/ Garvan McDaniel

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