

and conducted and participated in the conduct of Heartland's affairs, directly and indirectly, through a pattern of racketeering activity in violation of Ind. Code § 35-45-6-2.

255. The pattern of racketeering activity engaged in by the defendants involves numerous predicate acts constituting fraud in violation of Ind. Code § 35-43-5-4(8) and (9) and theft in violation of Ind. Code § 35-43-4-2.

256. The above-named defendants conspired to violate Ind. Code § 35-45-6-2 and are therefore liable as conspirators.

257. As a direct result of the defendants' violation of Ind. Code § 35-45-6-2(3), plaintiff has suffered damage to its business and property.

Count VII-Violation of Ind. Code § 35-45-6-2(1)

258. Plaintiff brings this claim against defendants Payne, Danker, Smith, Brooks-Kiefer, the Heartland Alter Ego Entities, and John Does 1 through 20.

259. Plaintiff incorporates paragraphs 1 through 258 as if fully repeated herein.

260. A primary purpose of the transfers of the assets of Heartland to offshore accounts, persons, or entities was to enable the above-named defendants to acquire or establish enterprises inside and outside the United States with the assets of Heartland and thereby to conceal Heartland's assets and place them outside the reach of Heartland's creditors. Upon information and belief, another purpose of the transfers to offshore accounts, persons, or entities was to evade the payment of taxes.

261. Plaintiff does not currently have knowledge of the identity of the ultimate transferees of transfers of Heartland's assets (John Does 1 through 20 described in paragraph ___ above). However, upon information and belief, those transfers have been used to establish and/or acquire

offshore business enterprises which plaintiff denominates for purposes of this count as the Heartland Offshore Enterprise. The Heartland Offshore Enterprise is an enterprise as defined by Ind. Code § 35-45-6-1.

262. The above-named defendants knowingly or intentionally received proceeds directly or indirectly derived from a pattern of racketeering activity and used or invested such proceeds to acquire an interest in property or to establish or operated the Heartland Offshore Enterprise, all in violation of Ind. Code § 35-45-6-2(a).

263. The above-named defendants conspired to violate Ind. Code § 35-45-6-2 and are therefore liable as conspirators.

264. As a direct result of defendants' violation of Ind. Code § 35-45-6-2(1), plaintiff has suffered damage to its business and property.

Count VIII - Violation of Ind. Code § 35-45-6-2(2)

265. Plaintiff brings this claim against defendants Payne, Danker, Smith, Brooks-Kiefer, the Heartland Alter Ego Entities and John Does 1 through 20.

266. Plaintiff incorporates paragraphs 1 through 265 as if fully repeated herein.

267. A primary purpose of the transfers of the assets of Heartland to offshore accounts, persons, or entities was to enable the above-named defendants to acquire or establish trading enterprises outside the United States with the assets of Heartland and thereby to conceal Heartland's assets and place them outside the reach of Heartland's creditors. Upon information and belief, another purpose of the transfers to offshore accounts, persons, or entities was to evade the payment of taxes.

268. Plaintiff does not currently have knowledge of the identity of the ultimate

transferee(s) of the assets of Heartland (John Does 1 through 20 described in paragraph 38 above). However, upon information and belief, those transfers have been used to establish and/or acquire offshore business enterprises which plaintiff denominates for purposes of this count as the Heartland Offshore Enterprise. The Heartland Offshore Enterprise is an enterprise as defined by Ind. Code § 35-45-6-1 which is engaged in, or the activities of which affect interstate or foreign commerce.

269. The above-named defendants, through a pattern of racketeering activity, knowingly or intentionally acquired or maintained, directly or indirectly, an interest in or control of property of the Heartland Offshore Enterprise, all in violation of Ind. Code § 35-45-6-2(2).

270. The above-named defendants conspired to violate Ind. Code § 35-45-6-2 and are therefore liable as conspirators.

271. As a direct result of defendants' violation of Ind. Code § 35-45-6-2(2), plaintiff has suffered damage to its business and property. .

Count IX - Civil Action By Crime Victim

272. Plaintiff brings this claim against defendants Payne, Danker, Smith, Brooks-Kiefer, the Heartland Alter Ego Entities and John Does 1 through 20.

273. Plaintiff incorporates paragraphs 1 through 272 as if fully repeated herein.

274. Defendants intentionally misappropriated the personal property of Heartland by ordering, receiving, and disposing of the funds transferred to each of them in the transactions referred to above, including but not limited to those alleged in paragraphs 42 through 208.

275. Defendants have conducted or participated directly or indirectly in the commission of criminal acts in violation of Ind. Code § 35-43, which have caused pecuniary loss to Heartland including:

- (a) Theft in violation of Ind. Code § 35-43-4-2;
- (b) Fraud in violation of Ind. Code § 35-43-5-4(8) and (9);
- (c) Deception by knowingly or intentionally making false or misleading written statements with the intent to obtain property in violation of Ind. Code § 35-43-5-3(a) (2);
- (d) Deception by misapplying entrusted property in a manner that the Defendant knew was unlawful or involved substantial risk of loss or detriment to either the owner of the property or to a person for whose benefit the property was entrusted in violation of Ind. Code § 35-43-5-3(a)(3);
- (e) Deception by knowingly and intentionally misrepresenting the identity of a person or another person in violation of Ind. Code § 35-43-5-3(a)(6);
- (f) Criminal mischief by recklessly, knowingly, or intentionally damaging property of another person without the other person's consent and/or causing another to suffer pecuniary loss by deception or by expression of intention to injure another person or to damage the property or to impair the rights of another person in violation of Ind. Code § 35-43-1-2; and
- (g) Criminal conversion by knowingly or intentionally exerting unauthorized control over property of the Plaintiffs, in violation of Ind. Code § 35-43-4-3.

276. By reason of the foregoing, Heartland has suffered pecuniary loss of at least \$29 million and is entitled to recover an amount not to exceed three (3) times its actual damages, the costs of this action, reasonable attorney's fees, travel expenses, compensation for time, expenses to compensate agents and employees, and all reasonable costs of collection, all as provided by Ind. Code § 34-4-30-1.

Count X - Conversion

277. Plaintiff brings this claim against the defendants Payne, Danker, Smith, Brooks-Kiefer and the Heartland Alter Ego Entities.

278. Plaintiff incorporates paragraph 1 through 277 as is fully repeated herein.

279. Defendants, and each of them, conspired to knowingly and intentionally exert unauthorized control over the property of Heartland in an amount of at least \$29 million in violation of Ind. Code § 35-43-4-3.

280. Defendants, and each of them, engaged in a scheme to exert unauthorized control over, and did exert unauthorized control over the property of Heartland in an amount of at least \$29 million in violation of Ind. Code § 35-43-4-3.

281. By reason of the acts of the foregoing defendants, Heartland has suffered pecuniary loss of at least \$29 million and each defendant is jointly and severally liable to Heartland in that amount.

Count XI - Breach of Fiduciary Duty to Heartland

282. Plaintiff brings this claim against Payne, Danker, Smith and Brooks-Kiefer.

283. Plaintiff incorporates paragraphs 1 through 281 as if fully repeated herein.

284. As officers and directors of Heartland and/or related entities, Payne, Danker, Smith and Brooks-Kiefer owed to Heartland and/or related entities a duty of utmost loyalty, including a duty not to act on behalf of persons or entities with interests adverse to those of Heartland.

285. Payne, Danker, Smith and Brooks-Kiefer breached their fiduciary duties to Heartland by advancing their own personal interests, and the interests of certain Heartland Alter Ego Entities and other persons and entities over the interests of Heartland.

286. Heartland has been damaged by the defendants' breaches of their fiduciary duties in an amount to be proved at trial.

287. The defendants' conduct was the result of malice, fraud, gross negligence, and/or oppressiveness, and the public interest would be served by an award of punitive damages to punish defendants and to deter like conduct.

Count XII - Breach of Fiduciary Duty to Heartland

288. Plaintiff brings this claim against Payne, Danker, and Smith.

289. Plaintiff incorporates paragraphs 1 through 288 as if fully repeated herein.

290. As attorneys for Heartland, the defendants owed to Heartland a duty of utmost loyalty, including a duty not to act on behalf of persons or entities with interests adverse to those of Heartland's.

291. The defendants breached their fiduciary duties to Heartland by advancing the

interests of themselves over the interests of Heartland.

292. Heartland has been damaged by the defendants' breaches of their fiduciary duties in an amount to be proved at trial.

293. The defendants' conduct was the result of malice, fraud, gross negligence, and/or oppressiveness, and the public interest would be served by an award of punitive damages to punish defendants and to deter like conduct.

Count XIII - Fraud

294. Plaintiff brings this claim against Payne, Danker, Smith and Brooks-Kiefer

295. Plaintiff incorporates paragraphs 1 through 294 as if fully repeated herein.

296. The defendants had a duty to Heartland and to its creditors and investors not to mislead or to make material misstatements regarding the financial condition of Heartland or to conceal its assets, and to make a full and complete disclosure of all material facts within their knowledge relating to financial transactions involving Heartland and the Heartland Alter Ego Entities.

297. The defendants knowingly and intentionally, and with intent to deceive, made numerous false representations regarding the financial condition of Heartland.

298. The actions of Defendants have subjected Heartland to potential legal liability and regulatory penalties and Heartland has been damaged thereby.

299. The defendants' conduct was the result of malice, fraud, gross negligence, and/or oppressiveness, and the public interest would be served by an award of punitive damages to punish defendants and to deter like conduct.

Count XV - Attorney Malpractice

300. Plaintiff brings this claim against Payne, Danker and Smith.

301. Plaintiff incorporates paragraphs 1 through 300 as if fully repeated herein.

302. As Heartland's attorneys, defendants owed Heartland a duty to act in the interests of Heartland and to exercise the knowledge, skill and ability ordinarily possessed and exercised by members of the legal profession similarly situated.

303. Defendants breached their duties to Heartland and were thus negligent by their actions as set forth above, by facilitating, directing and /or participating in the fraudulent scheme to systematically withdraw assets from Heartland and/or failing to discover and prevent such loss.

304. The acts of defendants in facilitating transactions that resulted in the commingling of Heartland funds, the defrauding of investors and the loss of Heartland's assets constituted legal malpractice.

305. The defendants' breach of their duties to Heartland proximately caused Heartland to suffer damages in an amount no less than \$29 million.

306. The defendants' conduct was the result of malice, fraud, gross negligence, and/or oppressiveness, and the public interest would be served by an award of punitive damages to punish defendants and to deter like conduct.

Count XVI - Fraudulent Transfers Pursuant to the Indiana Uniform Fraudulent Transfers Act (Indiana UFTA) §,§ 32-2-7-14 and 15

307. Plaintiff brings this claim against Payne, Danker, Smith, Brooks-Kiefer, Heartland Alter Ego Entities and John Does 1 through 20.

308. Plaintiff herein incorporates paragraphs 1 through 307 as if fully repeated herein.

309. Each transfer of assets referred to above to all defendants referenced was made

with actual intent to hinder, delay or defraud Heartland's creditors; and by reason of the foregoing, each and all said transfers are voidable as fraudulent transfers pursuant to § 14(1) of the Indiana Uniform Fraudulent Transfer Act ("UFTA").

310. Each transfer of assets referred to above to all defendants referenced was made for less than a reasonably equivalent value and

- a. Heartland was engaged or was about to engage in a business or a transaction for which the remaining assets of Heartland were unreasonably small in relation to the business or transaction; or
- b. Heartland intended to incur or believed or reasonably should have believed that Heartland would incur debts beyond Heartland's ability to pay as the debts became due;

and by reason of the foregoing, each and all said transfers are voidable as fraudulent transfers pursuant to § 14(2)(A) and (B) of the Indiana UFTA.

311. Each transfer of assets to all Defendants referenced was made for less than a reasonably equivalent value and

while Heartland was insolvent; or

- b. Heartland became insolvent as a result of each and all of the transfers;

and by reason of the foregoing, each and all said transfers are voidable as fraudulent transfers pursuant to § 15(1) and (2)(A) and (B) of the Indiana UFTA.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the following relief:

1. Pursuant to Counts I through IV, three times the amount of its damages to be proved at trial, costs of this action, attorney fees, all as provided by 18 U.S.C. § 1964, and all other proper relief.

2. Pursuant to Counts V through VIII, three times the amount of its damages to be proved at trial, costs of this action, attorney fees, and punitive damages, all as provided by Ind. Code § 34-430.5-5(b), and all other proper relief.

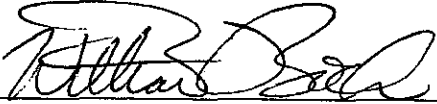
3. Pursuant to Count IX, three times the amount of its damages to be proved at trial, costs of this action, attorney fees, travel expenses, compensation for time, expenses to compensate, agents and employees, and all reasonable costs of collection, all as provided by Ind. Code § 34-4-30-1, and all other proper relief.

4. Pursuant to Counts X through XV, the amount of its damages to be proved at trial, punitive damages, costs of this action, its attorney fees, and all other proper relief.

5. Pursuant to Count XVI, a declaration by the Court that the referenced transfers were fraudulent transfers pursuant to Ind. Code § 32-2-7-14 and 15, entry of an order for the return of all such property or the value thereof, costs of this action, and all other proper relief.

Respectfully submitted,

KROGER, GARDIS & REGAS, L.L.P.

By  _____

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