

STATE OF MINNESOTA  
COUNTY OF DAKOTA

DISTRICT COURT  
FIRST JUDICIAL DISTRICT  
Other: Civil

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

Court File No. \_\_\_\_\_

Plaintiffs,

vs.

**COMPLAINT**

Restaurant Technologies, Inc., Jeffery R.  
Keisel, John C. Rutherford, Jonathon O.  
Grad, Philip A. Clough, Robert E. Weil  
and John Does 1 – 5,

**RECEIVED**

JUL 22 2009

Defendants.

DAKOTA COUNTY  
DISTRICT COURT

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**INTRODUCTION**

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

wrongful conduct recently peaked in connection with an effort to wipe out the interests of RTI common shareholders through a merger/recapitalization process which was flawed, tainted, and unfair. Defendants' conduct caused millions of dollars of damage to the class of common shareholders of RTI.

### **THE PARTIES**

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

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

3. Plaintiff Jack Ayers ("Ayers") is a holder of 9,667 shares of common stock of RTI for which he paid nearly \$50,000. Defendants now assert that Ayers' investment in RTI is worthless. Ayers' current principal residence is in Tucson, Arizona. (Collectively, Tate, Shuster and Ayers will be called "Plaintiffs" or "Class Representatives".)

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

5. Defendant Jeffery R. Keisel (“Keisel”) is currently the Chief Executive Officer of RTI and has served in that position since 2005. Keisel, on information and belief, currently resides in Shoreview, Minnesota.

6. Defendant Robert E. Weil (“Weil”) is currently the Chief Financial Officer of RTI and has held that position since 2007. Weil, on information and belief, currently resides in Minneapolis, Minnesota.

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

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

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

10. Defendants John Does 1 -5 conspired with, assisted and engaged in the wrongful conduct asserted herein which has sought to deprive Plaintiffs and the putative class of their rights.

### **JURISDICTION AND VENUE**

11. The wrongful conduct engaged in by the Defendants took place in the State of Minnesota and, for the most part, in Dakota County. This Court has jurisdiction over the subject matter of this action and venue is proper since the wrongful conduct took place primarily at the corporate headquarters of RTI which is located in Eagan, Minnesota in Dakota County.

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

### **CLASS ALLEGATIONS**

13. Plaintiffs bring this action pursuant to Rule 23 of the Minnesota Rules of Civil Procedure on behalf of a class of common shareholders consisting of persons and entities who purchased or otherwise acquired common stock in RTI or enjoyed the right to purchase such stock and who held the stock or the rights during all times relevant to the wrongdoing described

below. Approximately \$15 million in common stock in RTI was sold between 1999 and 2001 at various prices including \$5 a share, \$15 a share and \$19 a share. Approximately 1.6 million shares of RTI common stock were outstanding at the time of a recently completed merger/recapitalization process which was tainted by material misrepresentations and omissions of material fact.

14. Excluded from the class are Defendants, current officers and directors of RTI, members of their immediate family and their legal representatives, heirs, successors and assigns, Parthenon and ABS.

15. The members of the class are believed to exceed 150 people or entities holding approximately 1.6 million shares in RTI or rights to purchase such shares and, therefore, are so numerous that joinder of the members is impracticable.

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

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

- a. Whether the Individual Defendants violated their duty of loyalty to RTI by (i) having RTI pay for the preferred shareholders' legal counsel, (ii) upstreaming money to a Parthenon affiliate in connection with a recent merger/recapitalization, (iii) failing to negotiate a reduction in the interest rate being paid to the preferred shareholders, (iv) failing to consider various means to capitalize RTI, and (v) unnecessarily employing preferred stock offerings in 2005, 2008 and 2009 which benefitted Parthenon and ABS to the detriment of the RTI common shareholders;

- b. Whether the Individual Defendants violated their duty to RTI common shareholders by failing to consummate an initial public offering in 2006 which would have generated over \$30 per share for common shareholders of RTI;
- c. Whether Defendants Keisel and Weil failed to provide complete and accurate information to the RTI Board of Directors which would have permitted the RTI Board to exercise reasonable business judgment in the management of the business;
- d. Whether a recent recapitalization/merger was tainted as a result of self-dealing including having RTI commit to pay an affiliate of Defendant Rutherford's company (Parthenon) millions of dollars in "management services" fees;
- e. Whether proxy materials recently used in a recapitalization/merger and supplemental information provided to RTI common shareholders during the merger process were false and misleading by failing to disclose material facts including the true value of RTI and whether in light of a vote in which less than 41% of the RTI common shareholders approved the merger/recapitalization, the merger/recapitalization should be declared void in accordance with the terms of the proxy materials;
- f. Whether Defendant RTI's recapitalization/merger process was entirely fair;
- g. Whether the director Defendants performed their duties and obtained the best possible price for RTI common shareholders;
- h. Whether Defendants conspired to violate the rights of class members;
- i. Whether Defendants Rutherford and Cough in conjunction with their affiliation with Parthenon and ABS have been unjustly enriched and should be required to disgorge any monies wrongfully obtained at the expense of RTI shareholders;
- j. Whether Defendant Rutherford and Defendant Clough tortiously interfered with Defendant Keisel and Weil's efforts to meet their fiduciary obligations to RTI common shareholders; and
- k. Whether Defendants Keisel and Weil violated their duty of care in carrying out their responsibilities as officers of RTI.

18. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Further, as the damages suffered by individual members of the class may be relatively small, the expense of

individual litigation makes it impossible for the members of the class to individually address the wrongs done to them.

**THE COMPANY – ITS HISTORY, FINANCING AND PROSPECTS**

19. In 1999, RTI was spun off from a company called MVE Holdings, Inc. The essential business activity of RTI is to provide bulk cooking oil management to restaurants through a unique distribution device which permits it to not only supply the cooking oil efficiently, but to also pick up used oil (“yellow grease”) and recycle it. RTI enjoys contracts with McDonald’s, McCormick & Schmick’s, Chili’s and numerous other high volume users of cooking oils.

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

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

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

21. Until very recently, RTI’s prospects were repeatedly touted by Defendant Keisel. For example, on May 2, 2006 he wrote to RTI shareholders that “2005 was both a significant growth year and foundation year for our company. . . . Our sales growth was stronger in 2005 with penetration continuing with McDonald’s, White Castle, and Fuddrucker’s, McCormick &

Schmidt's plus others . . . 2005 was a good year for RTI and we look forward to a strong 2006." Subsequently, in his year end 2006 letter to RTI shareholders, Defendant Keisel repeated the same mantra, "In summary, 2006 was another record for RTI and a year in which our focus on profitability has yielded significant results . . . 2006 was a year we are proud of as evidenced by our growth and profitability gains . . . we are optimistic about both our short term and long term prospects." Again in 2007, Defendant Keisel wrote to RTI shareholders stating "We are making strides in taking advantage of the zero trans fat oil market . . . We have made numerous improvements in how we manage our business."

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

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

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

23. In RTI's 2001 A-1 preferred stock offering, Parthenon, in which Defendant Rutherford is a founder, invested heavily. Parthenon subsequently invested more money in later

offerings. Additionally, ABS, in which Defendant Clough is an officer, invested in the A-3 preferred stock offering in 2004 and additional monies in later offerings. In making these investments, Defendants Rutherford and Clough, on behalf of Parthenon and ABS, insisted on receiving enormous interest/dividend payments which ranged from 20% – 30% annually. They also took over control of RTI.

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

25. In taking control of the RTI Board, one of the individuals Defendant Rutherford selected to serve as Parthenon’s “representative” was Drew Sawyer who, in November 2005, when asked about protecting the interests of RTI common shareholders, candidly stated “F\*\*\* the common.” Another individual who filled a “Parthenon seat” on the RTI Board was Jack Grunwald. Although Grunwald was originally selected to fill a “Parthenon seat” in 2001, in early 2009, the Defendants instead appointed Grunwald as a purportedly “independent” director

allegedly obliged to protect the interests of RTI common shareholders in connection with a merger/recapitalization. However, this merger/recapitalization was actually designed to wipe out the interests of common shareholders to the benefit of Defendants Rutherford, Grad and Clough's companies.

26. The preferred stock offerings generated many benefits for Parthenon (Defendant Rutherford and Grad) and ABS (Defendant Clough) including the ability to control the RTI Board of Directors and management of RTI. The additional benefit was that the preferred offerings had huge financial benefits including interest/dividend rates ranging from 20% to 30% a year. This benefit allegedly "accreted" so that by the time the tainted recapitalization/merge process took place in 2009, the \$19 million raised in the A-1 preferred stock offering during 2001 had purportedly increased to a value of \$86 million or more than 400% in seven years. Despite the fact the preferred stock offerings which took place in 2005, 2008 and 2009 were not in RTI's interests, the Individual Defendants orchestrated those offerings without arm's-length negotiations or input from the common shareholders for the benefit of Parthenon and ABS.

27. The annualized return being "accreted" on the preferred stock was so enormous that Parthenon and ABS, working through Defendants Rutherford, Clough and Grad, repeatedly elected to not have RTI pursue courses of action which would have been in the financial interests of RTI and the RTI common shareholders. Defendants Rutherford, Clough and Grad interfered with the duty which Defendants Keisel and Weil owed RTI and engaged in a course of conduct designed to usurp RTI's corporate opportunities for the benefit of Parthenon and ABS. For example, in 2006, RTI considered an initial public offering. Defendants Rutherford, Grad and Clough scuttled this initial public offering in an effort to maximize the egregious return on the investment made by Parthenon and ABS and did not even advise the RTI Board of their activities

surrounding the initial public offering. On information and belief, had the initial public offering taken place in 2006, common shareholders of RTI would have received in excess of \$30 per share for their RTI common stock based upon an enterprise valuation of over \$400 million for RTI. However, given the enormous rates of return which Parthenon and ABS investments were “accreting,” Defendants Rutherford, Clough and Grad elected not to proceed with a promising initial public offering. Despite having attended numerous meetings with numerous investment banking firms, Defendant Keisel did not even inform the RTI Board of the possibility of conducting an initial public offering which would have paid the RTI common shareholders more than \$30 a share. By scuttling this initial public offering, these Defendants ensured that additional value would “accrete” to Parthenon and ABS, thereby allowing Parthenon and ABS to receive a greater interest in the company’s prospects.

28. In 2006, when considering an initial public offering, one investment banking firm placed a high end enterprise value on RTI of over \$500 million. In 2008, Defendants sought to put RTI up for sale and again obtained an enterprise value from an investment banking firm of over \$350 million for RTI. The proposed sale was never consummated purportedly because of a change in the credit markets. As the credit markets stabilized and loosened, Defendants elected to squeeze out the common shareholders of RTI by recapitalizing and merging the company employing a flawed “valuation” suggesting that the enterprise value of RTI was only \$140 million. At an informational meeting concerning the merger/recapitalization, Defendant Grad went so far as to misrepresent RTI’s enterprise value by stating that it was now less than \$100 million. The recapitalization/merger of RTI was implemented through a distribution of proxy materials, supplementary materials and oral statements which were false and misleading. The impact of the recapitalization/merger was to upstream all of the company’s prospects to a few

preferred shareholders, primarily, Defendants Clough, Grad and Rutherford's companies, Parthenon and ABS.

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

29. Defendant Keisel wrote a letter in January 2009 in which he acknowledged that RTI officers and directors owed fiduciary duties to all shareholders, including common shareholders. Fiduciary duties owed to RTI common shareholders include a duty of candor, a duty of care and a duty of loyalty.

30. Beginning in 2005, Defendant Keisel began a process of eliminating members of the RTI management team in violation of his duty of care. Ultimately, the President and Chief Financial Officer who had founded RTI were replaced. Simultaneously, Defendants Rutherford and Clough ensured that Defendant Keisel did the bidding of Parthenon and ABS irrespective of the interests of the RTI common shareholders. For example, on June 26, 2006, Defendant Keisel received a lengthy memo from a Minneapolis law firm setting forth steps to be taken to conduct an IPO. However, at the direction of Defendants Rutherford and Clough, Defendant Keisel never brought this information to the RTI Board. Instead, at the insistence and direction of Defendant Rutherford, Keisel scuttled the opportunity based upon concerns raised by Defendant Rutherford about how much money Parthenon and ABS would receive in a secondary offering. In scuttling this opportunity Defendant Clough breached his duties to RTI by putting the interests of ABS ahead of RTI while Defendant Rutherford interfered with efforts by RTI officers and directors to meet their fiduciary obligations to RTI shareholders. Defendant Keisel breached his duties by failing to even bring up the initial public offering opportunity to the RTI Board despite having attended numerous meetings with numerous investment banking firms about the possibility of an IPO.

31. Defendant Keisel recklessly began a process of increasing the sales and marketing activities of RTI to build orders knowing that the creation of a large order backlog would require RTI to obtain additional, overly expensive funding from Parthenon and ABS thereby diminishing or eliminating the value of the RTI common stock. Keisel's efforts led to high Sales, General and Administrative ("SGA") expenses which ultimately caused RTI to suffer serious cash flow problems and, as expected, to obtain costly additional financing from Parthenon and ABS. Defendant Keisel's mismanagement was so destructive to the interests of RTI common shareholders that, in February 2008, one RTI Director finally wrote that it was necessary for RTI to "became cash-flow self sufficient," that "new installs . . . be limited to cash plus equipment financing," that it was necessary to "cut the growth rate of the company" to avoid "bankruptcy" and that "all stakeholders cannot bear more onerous accumulating preferred equity." The Defendants, including Keisel, ignored this director and continued to operate RTI for the interests of Parthenon and ABS by not cutting expenses for months while conducting more preferred stock offerings in which Parthenon and ABS invested in order to further enhance their position in the company's prospects. At no time did Defendants Keisel or Weil attempt to renegotiate terms with holders of preferred stock nor did they seriously consider a mechanism to obtain less expensive capital. If the valuation employed in the 2009 proxy materials is found to be fair, Defendants Keisel and Weil's reckless management caused a 200% decline in RTI's enterprise value over a two year period while RTI's revenue and earnings were increasing.

32. In order to try to ensure that RTI would have no future obligation to the RTI common shareholders, in December 2008, Defendant Keisel, working with other Defendants, attempted to convince the RTI common shareholders to "forfeit their shares" by wrongfully telling RTI common shareholders that their common shares were worthless. At the time, the

Defendants were contemplating recapitalizing RTI and knew the elimination of the RTI common shareholders would have the impact of upstreaming even more of the company's assets and prospects to Parthenon and ABS.

33. When RTI common shareholders uniformly refused to "forfeit" their shares in December 2008, the Defendants implemented another scheme designed to recapitalize and merge RTI in a manner designed to eliminate the common shareholder interests altogether. On May 14, 2009, the company issued proxy materials designed to recapitalize and merge RTI. The recapitalization/merger scheme called for common shareholders to "release" any claims they had against the Defendants, Parthenon and ABS in exchange for a conversion of their stock interest. The Defendants placed a de minimis value of .13¢ per share on RTI common stock. The effort to obtain a "release" of claims came only a few months after Defendants agreed to have RTI's monies spent to increase their own officer and director insurance coverage, a tacit admission that they understood the exposure associated with the activities they had engaged in.

34. The May 14, 2009 proxy materials distributed by Defendants were false and misleading in many ways including the following:

- a. The proxy materials included a valuation done by Robert W. Baird indicating that RTI had an enterprise value of only \$140 million. The proxy materials did not reveal that Robert W. Baird was paid \$250,000 to issue the opinion, that it had a history of working with Defendants Clough and Rutherford's companies, that it issued the opinion within six days of the receipt of financial information from the company and that Defendants Weil and Keisel had given Robert W. Baird a set of assumptions that they knew were incorrect and would lead to a low valuation of the company.
- b. The proxy materials did not disclose that less than one year earlier, the company had received a valuation from William Blair & Company of more than twice that provided by Robert W. Baird and that, in 2006, Robert W. Baird itself had estimated a value of over \$500 million for RTI based upon less revenue and less earnings than that experienced by the company in 2008.

- c. The proxy materials did not disclose that, in prior valuations, investment banking firms, including Robert W. Baird, had used multiples as high as 12 times EBITDA, whereas, Robert W. Baird used a multiple of only eight times EBITDA in developing its fairness opinion.
- d. The proxy materials, including supplementary material put out by Defendant Keisel, did not reveal positive changes which had taken place at RTI during 2009 including changes to a contract with McDonald's, a major contract the company had entered into with Jack in the Box and the recovery of the commodity price of "yellow grease".
- e. The proxy materials stated that the approval of the recapitalization/merger was conditioned upon no more than 10% of common shareholders voting against the merger; however, the Defendants subsequently and unilaterally changed that condition when nearly 40% of the common shareholders voted against the merger/recapitalization.
- f. The proxy materials indicated that Defendant Keisel would receive certain equity interest in the merged company, but provided no detail regarding the amount of that interest.
- g. Although the proxy materials disclosed the identity of the professionals that the "independent committee" relied upon to evaluate the fairness of the merger/recapitalization, the proxy materials did not disclose that the professionals relied upon by that committee were not, in fact, independent.
- h. While the proxy materials disclosed that there was self-dealing conduct in the form of a contract with Parthenon in which it would potentially receive millions of dollars for purported "management services," the proxy did not explain the need for, or reasonableness of, any contract with Parthenon.
- i. The proxy materials required shareholders voting for the merger to "release" claims against the Defendants as well as Parthenon and ABS, but did not explain the reason such a release was appropriate or necessary.

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

36. In connection with the proxy solicitation, Defendant Keisel sent out supplementary information to RTI shareholders on June 9, 2009 which was false and misleading. For example, Keisel "urged" RTI shareholders to read an attached letter from a law firm stating

that it was “appropriate” to obtain releases, that there was “no such thing” as an IPO in 2006, that it was “customary” for fairness opinions to be rendered in a “short time period” and that RTI’s proxy materials had included “all material information.” All of these statements were false. At the time Defendant Keisel provided this supplemental information, he knew he had participated in an initial public offering process in 2006, he knew that changes in RTI’s contract with McDonald’s had taken place and not been disclosed, that the impact of a proposed contract with Jack in the Box had not been disclosed, and that a rebound in the commodity price of yellow grease was occurring which improved RTI’s cash position, making the proxy materials distributed to shareholders on May 14, 2009 in which he described the company as heading towards “bankruptcy,” completely false and misleading.

37. In connection with the vote on the proposed merger/recapitalization, Defendants also held an informational meeting for RTI shareholders on June 3, 2009. At the meeting, Defendant Grad stated that although Robert W. Baird had not provided a range in a fair price to be offered and paid for RTI, Robert W. Baird “would say” that the price offered for RTI was fair because the “real value” of RTI was only between \$80 and \$100 million dollars, and thus, the shareholders were getting more than the company was worth. This representation to shareholders was a material misrepresentation that affected the “total mix” of information presented to shareholders. No valuation of RTI has ever been as low as \$80 million dollars, and Defendant Grad misrepresented RTI’s value in order to induce RTI shareholders into falsely believing that they were getting a good deal through the merger/recapitalization process.

38. Besides the false and misleading proxy materials which Defendants distributed, the recapitalization/merger process was unfair and flawed in other respects. In the proxy materials, Defendants claimed to have appointed an “independent” committee of the RTI Board

to evaluate the reasonableness of the recapitalization/merger. However, the “independent committee” consisted of three members, all of whom held preferred stock in RTI and were not “independent.” In fact, one member of the so-called “independent” committee had been a “Parthenon representative” on the Board for nearly seven years until just one month before the merger/recapitalization when he suddenly was appointed and anointed as “independent.” Another member of the so-called “independent committee” was Defendant Keisel, who had been promised certain benefits as a result of the recapitalization/merger, held preferred stock and was not “independent.” Additionally, the so-called “independent committee” did not have access to independent financial and legal advice, and its actions were tainted by the absence of the aid of independent professionals. One of the law firms that provided advice to the so-called “independent committee” was Parthenon’s own counsel, who actually drafted the materials for the merger/recapitalization while simultaneously drafting the Management Services Contract for Parthenon. Further, while the Defendants had the fairness opinion from Robert W. Baird by April 16, 2009, they held it and elected not to mail out voluminous proxy materials until May 14, 2009, a month later, and then set a very short deadline for a shareholders meeting, namely, June 12, 2009. Defendants knew that such a short time period would not permit RTI shareholders the opportunity to review and understand the complicated proposed recapitalization/merger which required nearly 200 pages to explain.

39. On May 22, 2009, Plaintiffs Tate and Ayers requested additional books and records which were referred to in the proxy materials; however, RTI did not produce those materials promptly as required by Delaware law, making the effort to analyze the fairness of the recapitalization/merger impossible. For example, despite the books and records request on May 22, 2009, RTI did not produce copies of its own financial statements until June 3, 2009, did

not produce copies of its own Board minutes until June 5, 2009 and waited until June 10, 2009 (two days before the shareholder vote and one day after Keisel had put out supplementary information stating there had never been consideration of an IPO) to produce over 300 pages of information about the initial public offering discussions RTI had engaged in during 2006. While the information ultimately produced showed the recapitalization/merger to be grossly unfair, and the proxy materials to be, at best, misleading, the information was not produced in a timely manner allowing RTI common shareholders, many of whom had already mailed their proxy to RTI prior to the production of the materials, to properly inform themselves so that they could exercise their rights. Requests to postpone the vote were declined by Defendants because of alleged "pressure" from RTI lenders. When Plaintiffs asked to talk to RTI lenders about delaying the vote, Defendants would not allow Plaintiffs to speak to the lenders.

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

**COUNT I**  
**(Breach of Fiduciary Duty – Loyalty)**  
**(All Individual Defendants)**

41. Plaintiffs restate and reallege Paragraphs 1 through 40 above.

42. As directors and officers of RTI, the Individual Defendants owed fiduciary duties to RTI's shareholders, including a duty of loyalty that required the Individual Defendants to elevate the interests of RTI's shareholders above their own personal and financial interests.

43. Defendants Grad, Keisel, Weil, Rutherford and Clough violated their fiduciary duties to RTI's common shareholders by engaging in actions designed to reduce and/or eliminate the value and ownership interests of the RTI common shareholders and those possessing rights to obtain such shares for the benefit of their own personal and financial interests. Such violations include:

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

44. Through these acts of self-dealing, these Defendants upstreamed RTI's prospects to the preferred shareholders, specifically, Defendants Grad, Rutherford and Clough's companies

Parthenon and ABS. Furthermore, Defendants diluted the relative rights and value of the common shareholders in order to increase the rights and value of their own, direct or indirect, interest in RTI.

45. Through these acts, these Defendants have damaged the Plaintiffs in excess of \$100,000.

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

46. Plaintiffs restate and reallege Paragraphs 1 through 45 above.

47. As directors and officers of RTI, the Individual Defendants owed a duty to inform themselves of all material information reasonably available to them prior to making any business decision. Upon informing themselves of all material information, Defendants must exercise their care in making their business decision and not place RTI at risk to satisfy the interests of one class of shareholders.

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

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

in the merger/recapitalization. Alternatively, these Defendants oversaw an enormous decline in RTI's purported value through their own reckless conduct.

50. Defendants knew or should have known that they could not reasonably rely upon the statements of individuals and entities with a conflict of interest. Furthermore, Defendants knew that the "independent" committee appointed by the Board contained similar conflicts of interest and engaged in similar self-dealing, therefore preventing that committee from presenting competent, fair, accurate or honest advice.

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

52. As a result of Defendants' breach of their duty of care, Plaintiffs have suffered damages in excess of \$100,000.

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

53. Plaintiffs restate and reallege Paragraphs 1 through 52 above.

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

55. In violation of this duty of candor, Defendants withheld, suppressed or misrepresented significant material information pertaining to RTI, including, but not limited to, significant and irreconcilable conflicts of interests of certain directors and officers, as well as the role these conflicted directors and officers were taking in RTI; material financial information,

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

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

57. As a result of Defendants' breach of their duty of candor, Plaintiffs have suffered damages in excess of \$100,000.

**COUNT IV**  
**(Tortious Interference)**  
**(As to Defendants Rutherford, Clough and Grad)**

58. Plaintiffs restate and reallege Paragraphs 1 through 57 above.

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

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

61. Defendants Rutherford, Grad and Clough wrongfully and unjustifiably interfered with Plaintiffs' expectations of these economic advantages and benefits by scuttling, preventing and/or hindering the consummation of the aforementioned transactions and by coercing

Defendants Keisel and Weil and other RTI Board members into a recapitalization/merger process that effectively wiped out the interests of the RTI common shareholders.

62. In the absence of Defendants' wrongful and unjustifiable conduct, it would have been reasonably probable that the aforementioned transactions would have taken place and/or Plaintiffs would continue to enjoy the full value of their ownership rights in RTI. Instead, Defendants Rutherford, Clough and Grad insisted that, in order to continue to enjoy the benefits of RTI ownership, Plaintiffs were required to release them from the wrongful conduct they had engaged in. Due to these Defendants' conduct, Plaintiffs are no longer able to enjoy this prospective economic advantage.

63. As a result of Defendants' wrongful and unjustifiable interference with Plaintiffs' economic advantages and benefits and interference with the requirement that Defendants Keisel and Weil meet their fiduciary obligation, Plaintiffs have suffered damages in excess of \$100,000.

**COUNT V**  
**(Unjust Enrichment)**  
**(Defendants Rutherford, Grad and Clough)**

64. Plaintiffs restate and reallege Paragraphs 1 through 63 above.

65. As a result of the above stated actions, Defendants Rutherford, Grad and Clough through their companies Parthenon and ABS, have and will receive certain valuable rights and interests from the Plaintiffs, including a greater percentage of the total ownership, control, management and value of RTI.

66. Defendants were not entitled to the benefits they received from the Plaintiffs since any benefits are the direct result of their own wrongful conduct.

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

68. The facts and circumstances of this case are such that it would be unfair, unjust, and unconscionable to permit the Defendants, by and through their interests in Parthenon and ABS Capital, to retain the benefits conferred upon them.

69. Plaintiffs are entitled to damages in excess of \$100,000 in order to avoid having Defendants unjustly enriched.

**COUNT VI**  
**(Conspiracy)**  
**(All Defendants and John Does)**

70. Plaintiffs restate and reallege Paragraphs 1 through 69 above.

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

72. As a result of the Defendants' conspiracy, Plaintiffs have suffered damages in excess of \$100,000.

**COUNT VII**  
**(Declaratory Judgment)**  
**(As to Defendant RTI)**

73. Plaintiffs restate and reallege Paragraphs 1 through 72 above.

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

75. The merger/recapitalization process engaged in by Defendant RTI and orchestrated by the Individual Defendants included numerous false or misleading statements and/or material omissions. These false or misleading statements and/or material omissions prevented the Plaintiffs from making a fully-informed decision and tainted the merger process with badges of fraud and other wrongful conduct.

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

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

**COUNT VIII**  
**(Entire Fairness)**  
**(As to All Defendants)**

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

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

80. The merger in question was timed in order to effectuate Defendants' goal of obtaining full control of RTI through a freeze-out merger at a depressed price. Defendants knew that the price of yellow grease fluctuates and has the potential to be extremely valuable in the future because of its relation to biofuels and other uses, and that its value was temporarily depressed when they effectuated the merger. Defendants also knew that RTI would survive the current economic downturn with enormous potential, and that they could take advantage of the current market by obtaining full control of RTI for a substantially lower price than would otherwise be required. Defendants' wrongful conduct deprived RTI common shareholders of any potential benefit, or any benefit at all, of their RTI investment.

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

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

- a. The lack of an independent relationship between Parthenon, ABS, RTI, and the company that issued a fairness opinion in support of the merger/recapitalization;
- b. The lack of independence present on the alleged "independent" committee, for the directors appointed to that committee were either (1) not independent or (2) were controlled by interested parties or other interested directors who were members of the special committee;
- c. The "independent" committee lacked independent legal counsel, and the counsel relied upon by the committee was not obtained or hired by the independent committee, but instead by other interested parties. In fact, the legal counsel obtained and relied upon by the independent committee in assessing the merger/recapitalization was Parthenon's counsel;
- d. The fairness opinion disclosed to shareholders in pre-merger/recapitalization proxy materials did not rely upon objective assessments of the earnings or future prospects of RTI and ignored prior valuations.

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

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

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

86. Therefore, the merger/recapitalization cannot withstand scrutiny under the entire fairness standard. As a result, Plaintiffs have suffered damages in excess of \$100,000.

**PRAYER FOR RELIEF**

1. Finding that there are common issues of fact and law, that the individuals comprising the class are numerous, that Plaintiffs' claims are typical of the claims of the putative class, that the class representatives will protect the interests of the class and then certifying the class pursuant to Rule 23 of the Minnesota Rules of Civil Procedure.
2. Entering a declaratory judgment that the merger/recapitalization process was unfair, should be declared void and rescinded.
3. An award of actual and consequential damages against Defendants, individually and jointly, of more than \$100,000.
4. Granting such other and further relief as the Court may deem just or appropriate.

Dated: July 17, 2009

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

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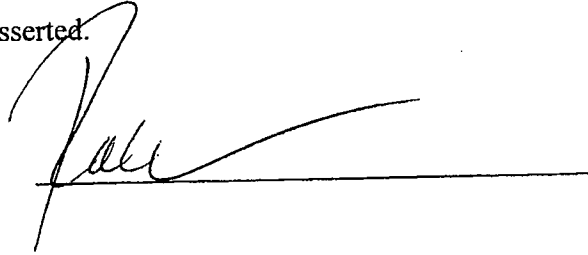
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**ACKNOWLEDGEMENT**

The undersigned hereby acknowledges that costs, disbursements and reasonable attorney and witness fees may be awarded pursuant to Minn. Stat. § 549.211, to the parties against whom the allegations in the Reply to Counterclaim are asserted.

A handwritten signature in black ink, appearing to be "P. K. K.", is written over a solid horizontal line.