



**IN THE COURT OF CHANCERY FOR THE STATE OF DELAWARE**

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BANK OF AMERICA, N.A. as Master Trustee of )	)	
ACF MASTER TRUST, )	)	
	)	
Plaintiff, )	)	C.A. No.:
	)	
v. )	)	
	)	
STEEL PARTNERS II (OFFSHORE) LTD., STEEL )	)	
PARTNERS II (ONSHORE) LP, STEEL )	)	
PARTNERS II MASTER FUND L.P., STEEL )	)	
PARTNERS II, L.P., STEEL PARTNERS II GP LLC, )	)	
WGL CAPITAL CORP., STEEL PARTNERS LLC, )	)	
WEBFINANCIAL, L.P., and )	)	
WARREN G. LICHTENSTEIN, )	)	
	)	
Defendants. )	)	
_____ )		

**VERIFIED COMPLAINT**

Plaintiff Bank of America, N.A. as Master Trustee of ACF Master Trust (“ACF” or “Plaintiff”), by its attorneys, Asbhy & Geddes, alleges for its Verified Complaint the following upon knowledge, information and belief:

**NATURE OF THE CASE**

1. Steel Partners hedge fund, which is managed by Warren Lichtenstein, lost approximately 43% of its assets on a net basis in the first 11 months of 2008. As a result 38% of Steel’s investors, including plaintiff, have demanded to have their interests in the fund redeemed, as is their right. Rather than pay such redeeming holders in cash or in kind (as provided for in the applicable documents), Steel has instead responded to the crisis created by its mismanagement of the fund by suspending its redemptions. But unlike other hedge funds that have invoked such suspensions (some of whom have also

waived or reduced their fees in an effort to aid investors), Steel has taken the unprecedented step of unilaterally reorganizing the Steel fund, permanently locking in investors' capital as well as fat fees for Steel for years to come. Indeed, under Mr. Lichtenstein's scheme, investors who were entitled to withdraw capital directly from the hedge fund they invested in based upon the actual value of the funds investments, will have their redemption rights eliminated. Instead, investors will be left on their own to find buyers for newly issued units in a Lichtenstein-controlled public partnership in an uncertain market as their sole means of recouping their investments. In stark contrast, the scheme provides Mr. Lichtenstein with locked up permanent capital from which to draw fees for his exclusive benefit. None of this is what was promised by Mr. Lichtenstein and Steel when they took investors' money.

2. The investors in the Steel fund only learned of the reorganization through a rambling New Year's Eve letter from Mr. Lichtenstein. In that letter, Mr. Lichtenstein informed investors that he was transforming their investment in the fund, but provided them none of the documentation showing what actually would be done. Mr. Lichtenstein finished his letter by quoting a bit of doggerel from the founder of the Mary Kay cosmetics empire, informing investors that "Life is full of stumbling blocks or stepping stones. It all depends on which you choose, with one you win and one you lose."

3. Mr. Lichtenstein apparently decided to turn the stumbling blocks of his poor performance and the rampant withdrawals from the fund into a path to perpetual fees and possible other profits by using people who entrusted him with their money as his unwilling stepping stones. He has created a scenario in which he is guaranteed to

win and they will lose, not only by assuring himself an ongoing stream of fees for many years to come, but also by creating for himself an opportunity to buy their interest in the former fund “on the cheap” in the market. He also particularly made sure that he is the only one who gets to choose whether to win or lose; his investors are being forced into the new scheme whether they like it or not.

4. Prior to the recent changes Steel received an annual management fee of between 1 and 1.5% of assets under management and an annual incentive fee of 20% of investor profits. The incentive fee is subject to a “high water mark” so that no incentive fee is earned unless, during the life of an investor’s holdings in the fund, that investor has had profits on which no incentive fee has been paid.

5. Although the detailed economics and operations of hedge funds can be quite complex, this case is relatively simple. Steel and its manager promised investors that illiquid investments would not constitute more than 25% of the funds assets. However, in the New Year’s Eve letter Mr. Lichtenstein informed his investors that, in fact, rather than keeping that promise, the fund had “illiquid and in many cases control position in our portfolio companies which makes it difficult and in some instances impossible, to sell assets and businesses quickly.” Further, although the fund’s investors had been promised that they would be entitled to participate in the “quarterly or annual liquidity provisions that give our Partners the ability to withdraw capital,” the New Year’s Eve letter informed investors that “clearly, stable capital is needed to successfully carry out our mission” and that the current structure severely limits Steel’s ability to successfully execute our investment strategy. Lichtenstein’s plan to get stable

capital was simple — change the legal structure of his funds to eliminate the ability to withdraw.

6. In other words, having tied up a substantial portion of the fund's capital in illiquid investments by pursuing an investment strategy that was forbidden to it, the fund now was unable or unwilling to honor redemption requests. Instead, the fund informed investors that it was invoking provisions of the fund documents that purport to allow it to delay such requests until a more opportune time presents itself. Even that excuse was a sham though, for although the fund's documents allow for delayed redemption under certain circumstances, they do not contemplate the transformation of the hedge fund into a vehicle in which withdrawal is impossible.

7. The mechanism for this transformation was the deposit of all the fund's assets into a virtual shell company (which recently deregistered from SEC reporting, indicating that it had fewer than 200 stockholders) whose shares would ultimately be handed out to investors. Thus, those investors, who had gone into their investment with Mr. Lichtenstein with the assurance that they would be able to redeem their investment in the fund based on the direct value of Steel's investments in the market, were having their rights cut off. Instead, investors will have to obtain whatever value they can salvage by selling the stock of the new public company in the market for such shares, if any.

8. And Steel's fees will not disappear. Indeed, Defendants will now increase their management fee to 2% of the company's market capitalization and in addition are implementing a 20% incentive fee through options in the new company, so as to extend

for a decade or more their opportunity to profit by reaching and exceeding the “high water mark.”

9. Thus, that new public company will have locked up capital, heavy fees, no obligation to pay out any distribution and no incentive to do so, as any reduction in capital would reduce the new fees that Mr. Lichtenstein has carved out for himself. None of that can be expected to enhance the trading value of the new shares. Indeed, Mr. Lichtenstein, who will be in control of the new company, is the only logical buyer for the shares of his investors who are seeking a way out of their investment. The new “stepping stone” structure will allow him to prey on his investors on the way out, buying their shares at pennies on the dollar. And although Mr. Lichtenstein went out of his way to inform investors that the new company “will NOT be a closed-end fund” (as such funds notoriously trade at a discount to the value of this investment) it certainly looks, feels and smells like one. Interestingly, no reason is given in the letter as to why it will not be a closed-end fund. In fact, if it is a closed-end fund it would have to register as such under the Investment Company Act of 1940 before the transaction purportedly done before January 1, 2009 could take place or be in violation of the Act.

10. To add insult to injury, although the New Year’s Eve letter stated that the transaction was subject to “confirmation by the Master Fund on or before June 30, 2009,” thus implying that some vote of investors would follow, in fact the transfer of all of the fund’s assets into the public company has already occurred and Steel’s new management contract is already in place. Thus, the only “confirmation” established in the documents was the decision by Mr. Lichtenstein, in his sole discretion, as to whether he desired to abandon the transaction.

11. It is this state of affairs from which Plaintiff seeks relief, including, among other things, the return of its original \$15 million investment, the reversal of the New Year's Eve transaction and the replacement of Mr. Lichtenstein by a Court appointed Custodian.

### **PARTIES**

12. Plaintiff Bank of America, N.A. as Master Trustee of ACF Master Trust ("Plaintiff") is federally chartered banking institution. The ACF Master Trust ("ACF") is an employee benefit plan subject to Title I of ERISA for employees of ACF Industries, an entity affiliated with Carl C. Icahn.

13. Defendant Steel Partners II (Offshore) Ltd. (the "Fund") is a Cayman Islands exempted company in which ACF is an investor.

14. Defendant Steel Partners II (Onshore) LP (the "Domestic Partnership") is a Delaware limited partnership in which the Fund is an investor.

15. Defendant Steel Partners II Master Fund L.P. (the "Master Fund") is a Cayman Islands exempted limited partnership in which the Domestic Partnership is the sole limited partner.

16. Defendant Steel Partners II, L.P. ("SP II") is a Delaware limited partnership in which the Master Fund is the sole limited partner.

17. Defendant Steel Partners II GP LLC (the "General Partner") is a Delaware limited liability company managed by Warren G. Lichtenstein ("Lichtenstein") which serves as the general partner of each of the Domestic Partnership, the Master Fund and SP II. In addition, the General Partner is to serve as the general partner of defendant WebFinancial L.P.

18. Defendant WGL Capital Corp. (the “Investment Advisor”) is a Colorado corporation beneficially owned and controlled by Lichtenstein which serves as the investment advisor of each of the Fund and the Domestic Partnership.

19. Defendant Steel Partners LLC (the “Investment Manager” and together with the Fund, the Domestic Partnership, the Master Fund, SP II, the General Partner and the Investment Advisor are sometimes referred to herein as “Steel”) is a Delaware limited liability company managed and controlled by Lichtenstein which serves as the investment manager of the Domestic Partnership, the Master Fund and SP II. In addition, the Investment Manager is to serve as the investment manager of defendant WebFinancial L.P.

20. Defendant WebFinancial L.P. (“WebFinancial”) is a Delaware limited partnership.

21. Defendant Warren G. Lichtenstein is an individual who manages and controls Steel Partners L.L.C. as well as, on information and belief, many of the other Steel defendants.

## **FACTUAL BACKGROUND**

### **The “Bait”**

22. On or about July 1, 2005 ACF invested \$15 million in Steel Partners Offshore Fund, Ltd, which subsequently changed its name to Steel Partners II (Offshore) Ltd. (the “Fund”).

23. ACF made its investment in the Fund in reliance on the Confidential Private Placement Memorandum as revised by agreement of the parties by a PPM

dated July 2005 (the “PPM”), that defendants provided to ACF specifically for the purpose of assisting ACF in connection with the investment of ACF in the Fund.

24. In investing in the Fund, ACF believed the statements in the PPM which, among other things, described it essentially as a hedge fund that would invest in a broad range of securities. In describing its investment objectives and strategy, the Fund stated in its PPM that “The Company seeks to realize substantial capital appreciation by investing primarily in the securities of small capitalization (or small-cap) companies that the Investment Advisor believes are selling at a discount to their intrinsic value or that otherwise exhibit a potential for above-average returns...”

25. The PPM goes on to state that “Additionally, the Company engages in a broad range of investment and special investment opportunities including, without limitation, risk arbitrage transactions.”

26. The PPM assures investors that “Illiquid Investments and Special Situation Investments will not compromise more than 25% of the Company’s net assets, determined at the time of investment or commitment to invest. For purposes of calculating the 25% guideline, existing Illiquid Investments and Special Situation Investments will be valued at cost.”

27. The PPM emphasized the broad range of Steel’s possible investment opportunities as follows:

The Company defines small-capitalization to include those that typically have market capitalizations of US \$2 billion or less. Such companies are comparable to the companies listed in The Russell 2000© Value Index. As of the date of this [PPM], the market capitalizations of companies in this index range from US\$1 million to over \$US 3 billion. **There are over 6,000 publicly-traded companies in this market**

**segment**, many of which have long-term records of growth and profitability. [emphasis added]

28. Relying on the above language, as well as other provisions of the PPM and related agreements, ACF made its \$15 million investment in the Fund, believing it had an interest in a hedge fund that would fully comply with the responsibilities it had undertaken as a fiduciary to its investors.

29. Since the time ACF made its investment in the Fund, the PPM has been amended several times. However, the amended PPMs continue to identify the Fund's objectives to include investing in a "broad range of investment and special situation investment opportunities[.]" Indeed, diversification is stressed throughout the latest PPM, dated February 2008, which states that "the Investment Advisor seeks to diversify the assets of the Company" and although noting that "there is a risk that the Company will from time to time have significant concentration and therefore excess exposure to a particular issuer, security, industry sector or geographic region," the Fund continues to be subject to the specific limitation that it will not have more than 25% of its portfolio in illiquid assets.

30. Diversification is not the only characteristic of the Fund that is promised in its governing documents. The PPM provides for the right of redemption. While redemptions may be suspended in certain situations, it is clear that all redemptions are to be made in cash or portfolio securities of the Fund. "Payment upon redemption shall be in cash, in portfolio securities of the Company (valued at fair market value), or in a combination of cash and portfolio securities as the Investment Advisor may select in its sole and absolute discretion."

31. Thus, the only permissible methods of redemption are: 1) cash; or 2) the distribution of the securities held in the **Fund's** portfolio.

32. Believing the representations made in the PPM and its amendments, ACF continued to hold its position in the Fund.

33. On or about January 3, 2008, Lichtenstein sent a letter on Steel Partners LLC letterhead addressed to "Dear Investor". Among other things, the January 3<sup>rd</sup> letter stated that "At some point in 2008 the [Fund] will redeem its interest in the Onshore Feeder [Steel Partners II (Onshore) LP] and will subscribe for an identical amount in the Master Fund [Steel Partners II Master Fund L.P.] in order [to] complete the implementation of the master/feeder structure." The Fund never did such a redemption or subscription. Based upon subsequent events, as described below, plaintiff believes that the Fund redemption/subscription was not consummated because the defendants did not want to provide plaintiff, or other Fund investors, with voting rights under which they might block the transaction defendants were secretly planning and which was ultimately consummated, as more fully described below.

34. On or about December 9, 2008, Lichtenstein sent a letter on Steel Partners LLC letterhead addressed "To All Our Partners" in which he admitted that the Fund was not in compliance with its obligations. Specifically, the Dec. 9<sup>th</sup> letter states:

As I reflect upon our Partnership's history, it has become apparent to me that given our long-term investment horizon and the liquidity provisions in our Limited Partnership Agreement, the structure under which we currently operate is flawed, and is no longer appropriate.

The December 9<sup>th</sup> letter goes on to reveal that the Fund had "significant pending withdrawal requests for December 31, 2008" and further stated that "Ideally, we would like to be able to continue to meet all withdrawal requests with cash...[but] due to the

inherent characteristics of our Relationship/Active Value strategy, that is simply not possible at this point in time.”

35. The December 9<sup>th</sup> letter indicates that the Fund had engaged Credit Suisse to advise it on, among other things, how to “provide liquidity to those who have requested it[.]” Importantly, the December 9<sup>th</sup> letter provided a specific timetable, announcing that, “We expect to have an appropriate solution ready by **mid-January 2009**, and we will then immediately begin the process of engaging our investors with the objective of finalizing our plan by **mid-February**. Of course, unanticipated events may occur which could delay the implementation of our plan, but we will use all our resources to provide you with a fully transparent plan on a timely basis.” [emphasis added]

36. Plaintiff relied to its detriment on the assurances set forth in the December 9, 2008 letter.

37. At the time Lichtenstein sent his December 9, 2008 letter Lichtenstein and the other Steel defendants knew or should have known that the statements contained therein were false.

38. On December 24, 2008, Lichtenstein spoke with Carl Icahn and his representatives about his plans for the Fund and how to satisfy the redemption requests. During that conversation, Lichtenstein stated that he was working on a proposed plan to solve the issues and assured Icahn that there would be advance notice of the proposed plan and meetings with investors in early January, that disclosure documents would be sent to investors in mid-January and that no action

would be taken to implement the plan until February at the earliest. Plaintiff relied on Lichtenstein's statements to its detriment.

### The "Switch"

39. In a move that was anything but "transparent", and in blatant disregard of the PPM and their obligations as fiduciaries to their investors, the defendants revealed their illicit plan in a rambling letter sent by Lichtenstein near the close of business on New Year's Eve (December 31, 2008). Part marketing gibberish, and filled with what are apparently meant to be motivational tidbits, Lichtenstein's New Year's Eve letter even quotes a rhyme from Mary Kay Ash, the founder of Mary Kay Cosmetics, Inc.: "Life is full of stumbling blocks or stepping stones. It all depends on which you choose, one you win and one you lose."

40. But even lipstick can't dress up Lichtenstein's ugly plan. In an apparent attempt to provide himself with a "stepping stone" while creating "stumbling blocks" for the very investors who relied upon his representations, Lichtenstein's New Year's Eve letter reveals that he and the other defendants have pulled off a classic "bait and switch" by stripping investors of what they had purchased and replacing it with something entirely different, in violation of the fund's governing documents. In a bit of hocus pocus the letter explains that the transaction "is subject to ... confirmation by the Master Fund on or before June 30, 2009."

41. In fact, as of December 31, 2008, the Fund had already transferred all of its investments to a non-SEC reporting "public" shell company (with minimal assets and few investors) and entered into the documents that would provide an ongoing stream of fees to Steel. The only "confirmation" needed under the documents was that Warren

Lichtenstein not change his mind and decide to undo the transaction. All this had been done without the knowledge or consent of investors — indeed it was explicitly contrary to the express representations Lichtenstein made only days before — and the only remaining material step necessary to complete the scheme was the distribution of the new company stock to the former Fund investors, thus stripping them of all of their rights as investors in the Fund and replacing those rights with the ones Mr. Lichtenstein had unilaterally determined to provide them in the new company.

42. Specifically, ACF, as well as all other investors in the Fund who had invested their money in a hedge fund, were notified that their investment would be switched to an “ownership interest in a single company which will soon become a reporting company under the Securities Exchange Act of 1934” with the “goal” of having it listed on a securities exchange. The newly formed company, WebFinancial, LP, is described in the New Year’s Eve letter as a “diversified operating/holding company” with interests in “industrial products, energy, aerospace and defense, banking and insurance and food & beverage[.]” The new company is purported to be a spinoff of WebFinancial Corporation, a “publicly traded financial holding company whose primary assets are cash and WebBank, a Utah Industrial Loan Company[.]” Prior to the transaction complained of herein, WebFinancial Corporation was 85% owned by Steel Partners II L.P.

43. This bait and switch which was performed without any notice to investors, much less an opportunity for such investors to vote on the proposed transaction, strips investors of their interest in the Fund with all of the attendant rights specifically set forth in the PPM and related documents and instead substitutes an ownership interest in a

“diversified operating/holding company” — a far cry from what they bought — and hardly the type of transaction that should be countenanced from a fiduciary such as Mr. Lichtenstein. And the new company will be subject to regulatory regimes such as the Investment Company Act of 1940 (the “1940 Act”) from which the Fund was exempt. As a result, in order to avoid registration under the 1940 Act, if that is even possible, the new company, a limited partnership, will be required to limit its investment activities in ways that deeply change the character of its activities — and as a result will be nothing like the investment entity that the Fund’s investors originally invested in. If the new company is required to be registered under the 1940 Act, the partnership would be treated as a corporation for U.S. income tax purposes and subject to a corporate level tax.

44. The plan hatched by Lichtenstein is impermissible. By Lichtenstein’s own admissions, the Fund had requests for redemptions in December 2008 that could not be met entirely with cash. Thus, the only permissible choices available under the Fund’s governing documents were: to make redemptions by issuing portfolio securities of the Fund; to make redemptions in a combination of cash or portfolio securities of the Fund; or to suspend redemption rights until the day such distributions can be made. That procedure is plainly spelled out in the Fund documents. The decision to abandon that procedure in favor of one that Mr. Lichtenstein, having accepted billions in investor money, now believes to be necessary as he pursues “a strategy [that] requires a long term investment horizon” and “stable capital” is in clear violation of the rights of investors.

45. Lichtenstein, with the aid and assistance of the other defendants, chose to ignore the mandates of the Fund. Instead, the Defendants formulated a plan unauthorized by the Fund's governing documents and which is inconsistent with their representations to investors when Steel Partners was soliciting funds. Consequently, Plaintiff, and other investors in the Fund, will be left with an entity with locked in capital. As a result, ACF and other investors will NOT be able to take out the actual value of their investment through withdrawal, but rather will be forced to obtain liquidity by selling this new security they have been saddled with to other people on the open market, which open market in fact does not exist at this time and may never exist. For this and other reasons, Lichtenstein's plan (the exchange transaction) is unauthorized and impermissible.

46. Violating the redemption clause is only one of numerous violations and breaches committed by the defendants. As mentioned above, defendants have admittedly violated their covenant not to allow more than 25% of the Fund's net assets to be comprised of Illiquid Investments and Special Situation Investments, which provides as follows: "Illiquid Investments and Special Situation Investments will not compromise more than 25% of the Company's net assets, determined at the time of investment or commitment to invest. For purposes of calculating the 25% guideline, existing Illiquid Investments and Special situation Investments will be valued at cost." But by his own admission Mr. Lichtenstein has for many years pursued a strategy of control positions in violation of the 25% requirement. For example, the December 9 letter expressly states as follows: "As you all know, and as has been repeated in all of our letters to our Partners, we are usually the largest shareholder in virtually every

company in which we invest and we often have non-public information and may be subject to other restrictions which may limit our ability to buy or sell.” (The addition of the mantra “As you all know” in this letter is a transparent attempt to skirt the breach of the PPM and related documents by shifting responsibility for Steel’s breach onto the very investors whom Steel was obligated to protect.) Similarly, Defendants violated their explicit representation that the Fund would withdraw from the Domestic Partnership and invest directly in the Master Fund, as described more fully in paragraph 33 above.

47. Defendants’ fraud not only breaches their obligations, but also seeks to avoid the legal consequences of their violations. By the end of 2008 the Fund had requests for redemption that could not be met with cash. According to Lichtenstein’s New Year’s Eve letter, they had received withdrawal notices for approximately 38% of the Fund’s assets under management (and possibly would have had more if investors were not subject to lock-up restrictions). In his earlier letter of December 9, 2008, Lichtenstein admitted that the Fund was illiquid. Thus, Lichtenstein and the Steel defendants have not only violated the express language of the Fund documents, but in so doing, have grossly and/or fraudulently mismanaged the affairs of the Fund, have abused the trust of their investors and, in general have been derelict in their duties.

48. Furthermore, even while unfolding their plan, defendants attempted to hide the finality of their actions. The New Year’s Eve letter was not accompanied by any of the underlying documents effectuating the transaction which Lichtenstein had already orchestrated and consummated – those documents were only provided in response to a New Year’s Eve demand by ACF that it be provided with the applicable

documents immediately. Although the New Year's Eve letter described a process whereby the Fund will be "conducting multiple meetings with our investors to discuss the benefits of the Exchange and will provide a more detailed presentation about timing and next steps", thereby indicating that the transaction was not complete, and although Lichtenstein had assured Carl Icahn in a conversation only days earlier that no action to implement the plan would be taken until mid-February, at the earliest, ACF's New Year's Day review of those documents confirmed ACF's worst fear – that the deed was in fact already done.

49. A press release issued by the defendants on December 31, 2008, also misled plaintiff, and the public at large, about the status of the deal. The press release states that the "Exchange transaction is subject to confirmation by Steel Partners II Master Fund L.P. on or before June 30, 2009."

50. There is no confirmation process or other review of the transaction provided for in the documents. The exchange transaction has been consummated. Rather, the Master Fund has simply reserved for itself the ability to unwind the transaction by June 30, 2009, if, in its unilateral and unfettered determination, it chooses to do so.

51. Furthermore, despite defendants' assertions to the contrary, the exchange transaction does not provide investors with liquidity. Even assuming, *arguendo*, that defendants successfully achieve their purported goal of having WebFinancial registered and listed on a major stock exchange, this is a far cry from providing liquidity. The breadth of any trading market for this new company, with limited outstanding units and market value, is speculative at best.

52. As outlined above, the exchange transaction is fundamentally flawed for the most basic of reasons – it strips investors in Lichtenstein’s hedge fund of their holdings and instead gives them ownership of a newly formed Delaware operating/holding company that is of dubious value and liquidity.

53. The transaction, however, is not without benefit to Lichtenstein personally. The exchange transaction locks up investors capital permanently, thereby ensuring Lichtenstein’s affiliates a 2% management fee for multiple years (which fee would no longer be subject to the possibility of reduction due to investor withdraws of capital) while at the same time retaining defendants’ ability to pursue their potential for an incentive fee for a decade or more.

54. The December 31, 2008 letter makes much of the fact that a Special Committee of the Board of WebFinancial Corporation, assisted by an investment banker, was engaged to protect the stockholders of WebFinancial Corporation. Glaringly, there is no mention of any independent committee or independent investment banker passing upon the fairness of such transaction from the point of view of the Fund investors in this Lichtenstein self-dealing transaction, and on information and belief no such protections for fund investors were obtained.

## **COUNT I**

### Fraud and Civil Conspiracy (Equitable Rescission of Plaintiff’s Initial Investment)

55. Plaintiff incorporates the allegations of paragraphs 1 through 54 above as if the same were fully set forth herein.

56. Upon information and belief, the Defendants knowingly, and with the intent to defraud, made or caused to be made misrepresentations and omissions of material

fact, or such misrepresentations and omissions of material fact were made on defendants' behalf, including but not limited to:

a. Repeated statements in the original PPM and the amended PPMs that investors were purchasing and would own an interest in an investment vehicle that would engage in a broad range of small cap investment and special situation investment opportunities including, without limitation, risk arbitrage transactions.

b. Repeated statements in various PPMs that Illiquid Investments and Special Situation Investments would not comprise more than 25% of the company's net assets.

c. The Steel Defendants and Lichtenstein's representation in the January 3, 2008 letter that at some point in 2008 the Fund will redeem its interest in the Onshore Feeder and will subscribe for an identical amount in the Master Fund.

d. The Steel Defendants and Lichtenstein's representations in the December 9, 2008 letter of a materially false time line and similarly false notice to investors. Specifically, that they would have a potential solution by mid-January 2009, which proposed solution would then be presented to the investors with the objective of finalizing the plan by mid-February.

e. Lichtenstein's false statements, on his individual behalf and on the behalf of the Steel Defendants, made on December 24, 2008 that defendants would have a proposed plan by mid-January 2009 which would then be presented to investors and that no action would be taken to implement the plan until February at the earliest.

f. The defendant's statement in its December 31, 2008 letter and press release that the exchange transaction is subject to confirmation by Steel Partners II Master Fund, L.P. on or before June 30, 2009.

g. The Steel Defendants and Lichtenstein's statement in the December 31, 2009 letter that the exchange transaction will maximize value of the portfolio for all and provide liquidity to those who have requested it.

57. Those misrepresentations and/or omissions were false and misleading at the time they were made.

58. Upon information and belief, Defendants or others acting on their behalf made those misrepresentations and/or omissions, or caused them to be made, with knowledge of their falsity or recklessly without regard for their truthfulness, with the intent to deceive Plaintiff, and with the intent to induce Plaintiff to invest in the Fund and to remain an investor in the Fund. In addition by their conduct the Defendants engaged in a civil conspiracy to defraud their investors, including Plaintiff.

59. Plaintiff reasonably relied to its detriment on the Defendants' misrepresentations in choosing to invest in the Fund in 2005 and to remain an investor therein.

**WHEREFORE**, Plaintiff requests that this Court enter judgment declaring the investment in the Fund made by ACF on or about July 1, 2005 in the amount of \$15 million and the transactions consummated pursuant thereto to be rescinded and void *ab initio*, award Plaintiff restitution, including costs and attorneys' fees and grant Plaintiff such further relief as the Court may deem just and equitable.

## **COUNT II**

### Equitable Rescission (Exchange Agreement)

60. Plaintiff incorporates the allegations or paragraphs 1 through 59 above as if the same were fully set forth herein.

61. Should this Court determine that the relief requested in Count I will not be granted, Plaintiff, in the alternative, requests that the exchange agreement announced in the December 31, 2008 letter from Warrant G. Lichtenstein be rescinded.

**WHEREFORE**, Plaintiff, in the alternative, requests that this court enter judgment declaring the Exchange Agreement By and Among Steel Partners II Master Fund L.P., WebFinancial L.P., Steel Partners LLC and Steel Partners II GP LLC, dated January 1, 2009, and the transactions consummated pursuant thereto to be rescinded and void *ab initio*, award Plaintiffs restitution, including costs and attorneys' fees, and grant Plaintiffs such further relief as the Court may deem just and equitable.

## **COUNT III**

### Appointment of Receiver/Custodian

62. Plaintiff incorporates the allegations or paragraphs 1 through 61 above as if the same were fully set forth herein.

63. As of December 2008 defendant Steel Partners II (Offshore) Ltd. had received requests by approximately 38% of investors (by capital) for redemption. Those redemptions could not be met and the company was illiquid. Thus, Lichtenstein and the Steel defendants have not only violated the express language of the Fund documents, but in so doing, have grossly and/or fraudulently mismanaged the affairs of the Fund,

have abused the trust of their investors and, in general have been derelict in their duties.

64. Defendants' actions in consummating the exchange transaction, as set forth more fully above, were nothing more than a thinly veiled and illicit attempt to avoid the consequences of their actions. Accordingly, Should the court determine that the relief requested above will not be granted, Plaintiff, in the alternative, requests that the Court appoint a receiver/custodian to manage the affairs of defendants WebFinancial L.P. and Steel Partners II (Offshore) Ltd. and that the management fees and incentive allocations of Steel and its affiliates be eliminated or substantially reduced.

**WHEREFORE**, in the alternative to the relief requested above, Plaintiff requests that this Court appoint a receiver/custodian who shall have exclusive and broad authority to manage the affairs of WebFinancial L.P. and Steel Partners II (Offshore) Ltd.

#### **COUNT IV**

##### Fraud – Damages (corporate defendants)

65. Plaintiff incorporates the allegations of paragraphs 1 through 64 above as if the same were fully set forth herein.

66. Should this Court determine that the relief requested above will not be granted, Plaintiff, in the alternative, requests monetary damages as a result of Defendants' fraudulent conduct as described in paragraphs 1 through 64, in an amount to be determined at trial.

**WHEREFORE**, in the alternative to the relief requested above, Plaintiff requests that this Court award damages in the amount of the loss it suffered as a result of

defendants' fraudulent conduct, as well as attorney's fees and costs, and grant Plaintiff such further relief as the Court may deem just and equitable.

### **COUNT V**

#### Fraud – Damages (Warren G. Lichtenstein)

67. Plaintiff incorporates the allegations of paragraphs 1 through 66 above as if the same were fully set forth herein.

68. In addition to the relief requested in Count IV above, and in the alternative to the relief requested in Counts I through III above, Plaintiff requests monetary damages from Warren G. Lichtenstein as a result of his fraudulent statements and conduct as described in paragraphs 1 through , in an amount to be determined at trial.

**WHEREFORE**, in addition to the relief requested in Count IV above, and in the alternative to the relief requested in Counts I through III above, Plaintiff requests that this Court award damages from Warren G. Lichtenstein, in the amount of the loss it suffered as a result of Lichtenstein's fraudulent conduct, as well as attorney's fees and costs and grant Plaintiff such further relief as the Court may deem just and equitable.

### **COUNT VI**

#### Breach of Contract

69. Plaintiff incorporates the allegations of paragraphs 1 through 68 above as if the same were fully set forth herein.

70. Defendants' conduct, as described more fully above, has resulted in their breach the governing documents of the Fund including, but not limited to, the PPM.

71. Plaintiff has been harmed by defendants' breach.

**WHEREFORE**, Plaintiff requests that this Court award damages in the amount of the loss it suffered as well as attorney's fees and costs and grant Plaintiff such further relief as the Court may deem just and equitable.

**COUNT VII**

Negligent Misrepresentation

72. Plaintiff incorporates the allegations of paragraphs 1 through 71 above as if the same were fully set forth herein.

73. Defendants provided false information to plaintiff, as outlined more fully above.

74. Plaintiff has been harmed by defendants' actions.

**WHEREFORE**, Plaintiff requests that this Court award damages in the amount of the loss it suffered as well as attorney's fees and costs and grant Plaintiff such further relief as the Court may deem just and equitable.

ASHBY & GEDDES

*/s/Stephen E. Jenkins (#2152)*

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