

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

Kenneth David Aronoff)
)
Plaintiff,)
)
v.)
)
Joseph A. DiBruno, Jr.,)
Joseph A. DiBruno, Sr.,)
Nicholas A. DiBruno,)
Lela L. DiBruno,)
K.B. Records. Inc.,)
William E. Winters, and)
Jack D. Jones, Jr.)

Defendants.

No. 1:04-cv-1126-JDT-WTL

FILED
U.S. DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION
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FIRST AMENDED COMPLAINT

Plaintiff, Kenneth David Aronoff, by counsel, for his Complaint against Defendants, Joseph A. DiBruno, Jr., Joseph A. DiBruno, Sr., Nicholas A. DiBruno, Lela L. DiBruno (collectively “the DiBrunos” or “the DiBruno Defendants”), K. B. Records, Inc., William E. Winters and Jack D. Jones, Jr. states:

Nature of the Action

1. Joseph A. DiBruno, Jr., and Joseph A. DiBruno, Sr. are a father and son team of con artists. They were assisted in some of their fraudulent endeavors by family members and co-conspirators Nicholas A. DiBruno and Lela L. DiBruno and others. They have bilked scores of people in more than a dozen states out of millions of dollars. They have formed dozens of “corporations” under Florida and North Carolina law and have lured innocent investors into entrusting them with their money as an “investment” in one or more of these so-called “companies,” many of which were mere shell entities, existing on paper only, with no business,

no employees, no assets, no bank accounts and no real or other property. Trusting individuals have learned with shock that funds they thought were going into real companies have disappeared into the DiBrunos' pockets or have been diverted to other companies controlled by the DiBrunos which then collapsed, with the investors losing everything.

2. Aronoff, a citizen of Indiana, is one of those individuals. He brings this action against the DiBrunos for the fraudulent solicitation and sale in Indiana of worthless securities, violating both federal and Indiana securities law, for the conversion of funds Aronoff sent to be invested in International Food Tech Inc. ("IFT"), for fraud, theft and for violations of RICO centering on the DiBrunos operation of at least two RICO enterprises, IFT, K. B. Records, and/or Kolur Blynd Records, Inc., through a pattern of racketeering activity consisting of multiple acts of mail and wire fraud.

Jurisdiction and Venue

3. This Court has original jurisdiction over the federal law claims under 28 U.S.C. § 1331, 28 U.S.C. § 1965(a) for the RICO claims and for federal securities fraud, and supplemental jurisdiction over the state-law claims, which arise out of the same occurrences of the federal law claims, under 28 U.S.C. § 1367(a). This Court also has jurisdiction over this case under 28 U.S.C. § 1332, as the parties are completely diverse in citizenship and the amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.

4. Venue is proper in the Southern District of Indiana pursuant to 28 U.S.C. § 1391 and 18 U.S.C. § 1965 because the substantial part of the transaction and events complained of herein occurred in this district and Plaintiff resides in this district.

Parties

5. Plaintiff, Kenneth David Aronoff ("Aronoff"), is a citizen of Indiana residing in Bloomington, Indiana. He is not an experienced investor.

6. Defendant Joseph A. DiBruno Junior (“DiBruno Junior”) is an individual and citizen of the state of North Carolina residing at 107 Westwood Drive in Belmont, North Carolina.

7. Defendant Joseph A. DiBruno Senior (“DiBruno Senior”) is an individual and a citizen either of North Carolina or Florida and presently resides in a house at 1207 South Point Road in Belmont, North Carolina, which he has rented for approximately one year. He also has an address and occasionally travels to Florida where he either rents or owns property at 1010 34th Avenue, Vero Beach, Florida. He is the father of DiBruno Junior and of Nicholas A. DiBruno

8. Defendant Nicholas A. DiBruno (“Nick”) is an individual and a citizen of North Carolina residing at 184 Reese Wilson Road, Belmont, North Carolina. He is the brother of DiBruno Junior and, since the inception of K. B. Records he has been its Vice President, a Director, as well as a shareholder. (Exhibit S; DiB 1663 and DiB 1673)

9. Defendant Lela L. DiBruno (“Lela”) is an individual and a citizen of North Carolina, residing at 107 Westwood Drive, Belmont, North Carolina. She is the President, and on information and belief, the sole Director and shareholder of First Intertech, Inc.

10. Kolor Blynd Records, Inc., is a corporation organized and existing under the law of North Carolina. It has its principal place of business at 107 Westwood Drive in Belmont, North Carolina. It was incorporated on July 23, 2001, with DiBruno Junior as its registered agent.

11. Defendant K. B. Records, Inc., (“K. B. Records”) is also a corporation organized and existing under the law of North Carolina, with its principal place of business at the same address, 107 Westwood Drive, Belmont, North Carolina. It was incorporated on December 16, 2002. (See, Articles of Incorporation for both corporations printed from the web site of the

North Carolina Department of the Secretary of State, attached as Exhibit A.) On information and belief the two corporations are alter egos of each other and the names were used interchangeably by DiBruno Junior. K. B. Records was used as a vehicle to defraud people and its corporate veil should be pierced and its shareholders held liable for its debts. Its shareholders are Joseph A. DiBruno, Jr., Nicholas A. DiBruno and Glenn A. Tabor III.

12. International Food Tech Inc. (“IFT”) is a corporation organized and existing under the laws of North Carolina with its current principal place of business at 1207 South Point Road in Belmont, North Carolina. Its Articles of Incorporation were prepared on April 22, 2003, and were filed with the North Carolina Department of the Secretary of State on April 23, 2003. (See, Report of the North Carolina Department of the Secretary of State, attached as Exhibit B.)

13. Although articles of incorporation were filed for IFT, it has no by-laws and there have been no meetings of the board of directors, nor are there any minutes of the board of directors. In fact, IFT has never had a board of directors. IFT has no assets, no employees, no bank account,¹ no records (except for a 2-page Articles of Incorporation) and no business or source of revenue. On information and belief, Aronoff is the only “shareholder” of IFT as it was formed by DiBruno Junior as part of a scheme to defraud Aronoff. The scheme involved the DiBrunos diverting all the money Aronoff sent as an investment in IFT to another of their companies for their own use while issuing and mailing “shares” of worthless IFT stock to Aronoff.

14. William E. Winters (“Winters”) is a citizen of North Carolina, residing at 105 Raymond Street, Belmont, North Carolina. He received over \$20,000 in funds from K. B.

¹ IFT had a bank account for about three weeks in April and May 2004 (see below ¶¶86–91).

Records most or all of which were fraudulent transfers, including funds wrongly taken from Aronoff.

15. Jack D. Jones, Jr., (“Jones”) is a citizen of North Carolina. He received over \$35,000 from K. B. Records, most or all of which were fraudulent transfers, including funds wrongly taken from Aronoff.

Background

History of the DiBrunos’ Fraudulent Activities: The National Gas and Power Scam

16. DiBruno Senior was born on February 21, either in 1930 or 1934. His son, DiBruno Junior, is 35 years old and was born on November 11, 1968.

17. Sometime after 1983, DiBruno Senior incorporated and was the sole shareholder of two Florida corporations: Farm Maid Corporation (“Farm Maid”) and Genesis Ozonics, Inc. (“Genesis”).

18. On November 21, 1983, DiBruno Senior caused Brewer Alcohol Fuel Corporation (“Brewer”), a corporation he controlled, to merge with a North Carolina corporation, National Gas and Power Company, Inc. (“NGP”). DiBruno Senior was the principal shareholder of NGP.

19. At the time of the merger, Brewer also acquired Farm Maid and Genesis from DiBruno Senior. Upon completion of the merger, Brewer’s name was changed to NGP.

20. Over the next four years DiBruno Senior, acting in concert with others, fraudulently sold over 5 million shares of NGP to about 190 unsuspecting investors in 16 states.

21. In 1989 the United States Securities and Exchange Commission (“SEC”) filed suit against DiBruno Senior, NGP and others in federal court in the Western District of North

Carolina seeking an injunction, an accounting and disgorgement. *Securities and Exchange Commission v. NGP and DiBruno*, Case No. 89-207-M. (“*SEC v. DiBruno*”).

22. On July 15, 1991, the federal court entered judgment against DiBruno Senior² and entered a Permanent Injunction barring him forever from selling securities in violation of the federal securities laws. The court retained jurisdiction to enforce its judgment and the injunction. (A copy of the Final Judgment of Permanent Injunction and Other Equitable Relief Against National Gas and Power Company and Joseph A. DiBruno, July 15, 1991, in *SEC v. DiBruno* is attached as Exhibit C.)

23. As the federal court found in entering judgment against DiBruno: “None of the corporations [Brewer, NGP, Farm Maid or Genesis] at the time of the merger had any substantial assets, nor were they doing any business which generated income on a regular basis.” (Exhibit D, “Findings of Fact and Conclusion of Law,” July 15, 1991, in *SEC v. DiBruno* at p. 4, ¶ 14.)

24. The federal court also found: “From late 1983 through at least July 1987, NGP and DiBruno sold 5.5 million shares of NGP’s common stock to more than 100 individuals residing in 16 states.” (*Id.* at pp. 18-19, ¶ 4.)

25. The sales of NGP stock generated cash which went to DiBruno and was never recorded on NGP’s books as capital. (*Id.* at p. 7, ¶ 31.)

26. Several investors in NGP transferred road equipment, antique dolls, antique cars, televisions and other personal property to DiBruno in payment for shares in NGP. None of these assets were reflected on the books and records of NGP and DiBruno refused to answer any questions about these transactions, invoking the Fifth Amendment privilege in federal court. (*Id.* at p. 8, ¶ 32.)

² The case caption identifies the defendant as Joseph A. DiBruno and it is assumed this is the father and not the son.

27. In fact, the federal court found that “DiBruno [Senior] converted the monies and property paid by investors for stock of NGP.” (*Id.* at p. ¶ 44)

28. In one of the more egregious examples documented by the government, DiBruno Senior had 500,000 shares of NGP improperly issued to his secretary who thought it was a “mistake” as “she had not requested any stock nor could she pay for the stock.” (*Id.* at p. 7, ¶ 28.) He had her sign over the shares and he then sold them to 25 people, but none of the money from those sales ever reached NGP. (*Id.*)

29. In fraudulently selling NGP stock, DiBruno Senior made false representations to investors in NGP, including that NGP owned plants for recycling of garbage, when in fact, NGP never owned a recycling plant. (*Id.* at p. 11, ¶ 49.)

30. DiBruno also made false statements to NGP investors that Farm Maid, a subsidiary of NGP, had a chocolate drink, “KoKo Sip,” that was to be distributed by a company whose market covered seven states. In fact, the federal court found that representation was false; there was no contract for such distribution. (*Id.* at pp. 11-12, ¶ 54.)

31. Newsletters to NGP shareholders made numerous false statements about NGP’s financial condition, including as the federal court found, one “that claimed a stockholders’ equity of \$1,778,035 when, in fact NGP was insolvent.” (*Id.* at p. 13, ¶ 61.)

32. In its judgment against DiBruno Senior, the federal court found that he made sales of NGP stock which “violated the registration and anti-fraud provisions of the federal securities law ... namely Section 5(a), 5(c) and 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.” (*Id.* at p. 18.)

33. As the court stated: “NGP and DiBruno knew that NGP was insolvent, yet investors were not provided truthful information concerning NGP either at the time they bought the stock, nor at any time thereafter.” (*Id.* at p. 23.)

34. In addition, the federal court determined that “the conduct of DiBruno was knowing and intentional.” (*Id.* at p. 26.)

35. DiBruno Senior appealed that judgment to the Fourth Circuit Court of Appeals, but lost when the Court of Appeals affirmed the judgment against DiBruno Senior on September 3, 1992. (*See*, Exhibit E attached.) Approximately six months later, on February 24, 1993, the SEC reopened the case of *SEC v. Joseph DiBruno* seeking disgorgement and on August 25, 1994, after a hearing, the SEC won a disgorgement order against DiBruno Senior in the amount of \$508,279. (A copy of the Court’s docket sheet is attached as Exhibit F.)

The Conviction for Failure to Pay Income Taxes

36. During the time he was promoting NGP and defrauding investors, state authorities in North Carolina filed charges against DiBruno Senior and in 1987 he was convicted of not filing tax returns and/or not paying taxes for 11 years. The criminal case numbers for the court in Belmont, North Carolina, are 1986 CR 018509 through 018519.

**DiBruno Senior’s Numerous Companies;
Other Known Fraudulent Activity**

37. Apparently undeterred by the actions of the federal authorities, in October 1994 DiBruno Senior incorporated “Golden Jersey Products Inc.” in Florida and later began promoting a milk substitute named “Replace” supposedly for the “cholesterol-conscious.” It was to be made apparently with non-fat milk and a mixture containing oat flour.

38. By mid-1999, Golden Jersey was set to launch “Immuno-C,” a “colostrum-based chewable, tangerine flavored product,” together with three new specialty ice creams with

Replace. However, during the next two years the IRS filed a federal tax lien against Golden Jersey and it was dissolved by the state of Florida and ceased to exist.

39. The DiBrunos used Golden Jersey as a vehicle to defraud investors in the late 1990's. By 2000, investors in Golden Jersey had sued DiBruno Senior alleging he had defrauded them when they invested in Golden Jersey.

40. Meanwhile, in the 1990s, there were several other corporations in Florida for which DiBruno Senior was either the president, the registered agent or a director. Each of these corporations was dissolved by the state of Florida during the 1990s for failure to file annual reports. These corporations were:

Vero Dispersion Machines Inc. (dissolved 1997; reinstated and dissolved again in 2000)

U.S. Dairy Corp. (dissolved 1995)

Platinum Records Distributing, Corp. (dissolved 1997)

The \$1,000,000 IRS Tax Liens

41. In 2000, the Internal Revenue Service filed a lien for almost \$1 million against DiBruno Senior in North Carolina. Within months, the property at 107 Westwood Drive in Belmont, North Carolina, was transferred from a "Joseph DiBruno" to "Lela DiBruno," on information and belief, the transfer was for no consideration.

42. In April 2001, the IRS filed a tax lien for almost \$50,000 in Florida against DiBruno Senior and Golden Jersey Products.

DiBruno Junior's Parade of Companies

43. In July 2001, DiBruno Junior acting, on information and belief, in concert with his father, DiBruno Senior, incorporated six new companies:

DiKari Enterprises, Inc.

DiKari Entertainment, Inc.

J.N.E. Group, Inc.

KBM Publishing, Inc.

Kolur Blynd Publishing, Inc.

Kolur Blynd Records, Inc.

44. The next month, August 2001, DiBruno Junior also incorporated in North Carolina, a company called “Buck Wild Hunting Gear, Inc.”

DiBruno Brothers Mining – The “Knights of Malta”

45. In September 2001, DiBruno Junior incorporated in North Carolina, on information and belief acting in concert with his father, DiBruno Senior, a company they named DiBruno Brothers Mining, Inc.

46. The DiBrunos, on information and belief, working with an individual who styles himself as “Sir Cecil David Hallman, Minister of Finance of the Knights of Malta, O.S.J.” (“Hallman”), have used this company to defraud at least two investors, Locke Holland, Jr., and Cynthia Dimmette, both of Matthews, North Carolina, of \$450,000.

47. The DiBrunos had Hallman create correspondence on impressive and official looking letterhead of the “Knights of Malta, Sovereign Order of the Hospitallers of St. John of Jerusalem, O.S.J.” Hallman concluded his letters with: “Gods’[sic] Humble Servant” or “Gods [sic] humble Servant” and signed them as “Minister of Finance,” stamping his letters with official-looking seals. (See, Exhibit T, DiB 1208, 1264 and 1266.)

48. Hallman addressed DiBruno Junior as “Assistant To The deputy [sic] Minister of Finance, Knights of Malta, O.S.J.” and DiBruno Junior used correspondence from Hallman to portray their venture as one bringing “hope and nurishment [sic] to millions of children around

the world.” (See, Exhibit T, letters from Hallman to DiBruno, one dated March 26, 2002, DiB 1264, and that of May 22, 2002, DiB 1266.)

49. Of course, none of this is true. As the Securities and Exchange Commission recently determined in sanctioning Hallman: “Cecil David ‘Bear’ Hallman is not now, and has never been a member” of the Knights of Malta. (See, Exhibit U, SEC “Order Making Findings and Proposing Sanctions by Default,” June 9, 2004, in SEC Admin. Proceeding File No. 3-11463.)

The International Senatorial Committee for the United Nations

50. On October 30, 2001, DiBruno Junior incorporated yet another corporation, at least his ninth of the year. This one was called the “International Senatorial Committee for the United Nations.” He worked with Hallman and another accomplice who styled himself the Counsel to the President of the “World Council of Peoples for the United Nations,” but was not able to correctly spell his street address, listing it as “211 Dag Hammerschold [sic] Blvd” in New York. (See, Exhibit T, DiB 1255.)

51. The DiBrunos may also have created other corporations. At some point, DiBruno Junior figured out that if he had someone else sign the preprinted incorporation form and used a commercial service to act as Resident Agent, then neither of the DiBrunos’ names would appear in the public records. (See, for example, Exhibit B, the Articles of Incorporation for IFT and Exhibit V, the Articles of Incorporation of First Intertech Corp., a corporation formed on April 30, 2004, and used by Lela DiBruno and DiBruno Junior to divert funds intended for IFT to family members including \$16,500 to DiBruno Senior, \$5,000 to Nick DiBruno, \$35,000 to DiBruno Junior, and \$7,000 to Lela herself.)

I.B.D. Group, Inc.:
The South Carolina Scam

52. In 2002 or earlier, DiBruno Junior and his brother Nicholas DiBruno allegedly formed a company named “I.B.D. Group, Inc.” (“IBD”) “to defraud, *inter alia*, citizens of the State of South Carolina.” (See, Exhibit G, Complaint in *Wells v. I.B.D. Group, Inc., et al.*, Court of Common Pleas of South Carolina, Fifteenth Judicial Circuit Georgetown County, Case No. 2002 CP 22945, ¶ 2) (hereafter “*Wells v. I.B.D.*”).

53. DiBruno Junior and his brother, Nick DiBruno, allegedly solicited Wells for an investment in IBD “and received substantial sums from [Wells] for an investment in shares of IBD.” (*Id.* ¶ 6.)

54. They also allegedly “failed to advise [Wells] of the risky nature of the [investment in IBD], failed to properly capitalize IBD, ... and omitted material facts concerning the investment” (*Id.* ¶ 8.)

55. On November 14, 2003, the Court entered judgment against DiBruno Junior in the sum of \$74,500. (See, Exhibit H, Judgment in a Civil Case, November 14, 2003.)

The Fraud Against Aronoff

DiBruno Junior Solicits Aronoff to “Invest” in IFT:
The First Investment

56. Aronoff first met DiBruno Junior in mid-March 2003 while he was in Charlotte, North Carolina, on business.

57. Shortly thereafter, beginning on or about April 1, 2003, DiBruno Junior using the telephone in interstate commerce on multiple occasions and the U.S. Mail, solicited Aronoff to invest in IFT and, in the course of a series of telephone calls, stated that:

- a.) IFT was an existing company which had been started by his father, DiBruno Senior;
- b.) IFT had developed and was currently selling a flavored milk product containing the sucralose sweetener "Splenda".
- c.) IFT's product was the only one of its kind, a milk product containing Splenda, and was healthier than sugar-sweetened products like chocolate milk.
- d.) Not only was the product intended for sale in schools throughout the United States, IFT already had some contracts with schools in place for the purchase of this product.
- e.) His father was a nutritional scientist and a consultant to United Nations food programs and had high-level contacts in government. Therefore he could get things "pushed thru" faster with regard to sales of IFT's product into schools among other places.
- f.) His father, DiBruno Senior, had developed numerous successful products over the years, and DiBruno Junior and others had made millions in his father's companies.
- g.) Aronoff would make a large return on his investment.
- h.) The investment was a sure thing and there was zero risk to Aronoff.
- i.) There was a time consideration and the money needed to be sent very soon or Aronoff would lose his chance to be involved.

- j.) DiBruno Junior, his brother and his father, DiBruno Senior, were investors in IFT and they were allowing some close friends of theirs to become investors.
- k.) DiBruno Junior personally guaranteed Aronoff's investment, and said that if for any reason the investment fell through, he would reimburse Aronoff his principal amount out of his own pocket if necessary.

58. The statements set out in the preceding paragraph were false when DiBruno Junior made each of them and DiBruno Junior knew they were false. He made each of those fraudulent statements to induce Aronoff to purchase shares of IFT.

59. Multiple interstate telephone calls between DiBruno Junior and Aronoff in the course of which DiBruno Junior made the fraudulent representations detailed above before Aronoff made his first investment, occurred on at least the following dates: March 19, 28 and 30; April 6, 18 and 21, 2003. On most of those days there was more than one call.

60. In reliance on the representations made by DiBruno Junior and in response to his telephone solicitations, including phone calls DiBruno Junior made from out of state to Aronoff at his home in Indiana on April 21, 2003, Aronoff sent DiBruno Junior a letter and a check for \$100,000 made payable to "International Food Technologies, Inc." for an investment in IFT.

(Exhibit I is a copy of the letter and check.³)

61. At the time DiBruno Junior solicited Aronoff to invest in IFT, and Aronoff sent in his initial check for \$100,000, IFT did not even exist. DiBruno Junior did not inform Aronoff of this fact and Aronoff believed and relied on each of the representations made by DiBruno Junior,

³ Since this is a public filing, the following have been redacted: (1) the ten digit account numbers on the copies of the checks, and (2) the private home telephone and fax numbers on the letters. Upon request, that information will be made available to the Court, or to the DiBrunos upon the entry of a Protective Order.

including the representation that he was investing in an actual, existing company as described by DiBruno Junior and that his funds would be invested in and used for that company.

62. DiBruno Junior filed Articles of Incorporation for IFT with the North Carolina Department of the Secretary of State on April 23, 2003, the day after he received Aronoff's check for \$100,000 payable to "International Food Technologies, Inc." which had been delivered to him by Federal Express on April 22. (*See*, Exhibit B.)

Aronoff's Investment is Stolen

63. Despite incorporating IFT, DiBruno Junior, following the earlier example of his father which the SEC and the federal court had condemned in *SEC v. DiBruno* and, on information and belief, working in concert with his father and with Nick and Lela DiBruno, did not deposit Aronoff's \$100,000 check to any bank account of IFT. Rather, DiBruno Junior diverted the funds by endorsing the check and depositing it to a bank account of K. B. Records, thus converting the funds to the benefit of another corporation or for DiBruno Junior's and DiBruno Senior's own use. (Exhibit J is a copy of the front and reverse of the check.) In fact, within a week DiBruno Junior personally took over \$11,000 in cash from the account and Lela took \$6,500.

64. None of the funds were ever used for the benefit of IFT nor did the funds ever appear on the capital account of IFT. In fact, IFT has never had a capital account or any business or financial books or records of any type other than the bare bones Articles of Incorporation.

65. On information and belief, IFT had no bank account in 2003. It had one only for a month in 2004 which the DiBrunos looted and closed when Aronoff's counsel demanded to see IFT's books and records. It has never had any assets or employees or any business and is a shell

corporation used by the DiBrunos as a vehicle to defraud and to steal money from Aronoff and possibly others.

66. On May 5, 2003, DiBruno Junior, as president of IFT, issued and signed a stock certificate for 50,000 shares of IFT and mailed them to Aronoff through the U.S. Mail on or about the same date. (Exhibit K is a copy of the stock certificate.)

67. On May 9, 2003, DiBruno Junior, on information and belief working in concert with his father and Nick DiBruno, issued 100,000 shares of IFT and signed the stock certificate. Using the U.S. Mail, he mailed that certificate to Aronoff in Indiana on or about the same date. (Exhibit L is a copy of the stock certificate.)

68. On the same date, May 9, 2003, DiBruno Junior, on information and belief working in concert with his father and Nick DiBruno, prepared a stock certificate of IFT for 450,000 shares, signing it as "President." He mailed this to Aronoff on or about the same date. (Exhibit M is a copy of the stock certificate.)

The Second Investment

69. In the course of a series of interstate telephone calls which occurred at least on April 22 and 30, and on May 8, 9, 11 and 12, 2003, DiBruno made additional fraudulent express representations to Aronoff about IFT in order to induce Aronoff to make further investments in IFT. DiBruno Junior said that:

- a.) There was now an opportunity to invest more money in IFT as more shares had "become available."
- b.) IFT was doing very well and the return on the investment would be even greater than he originally told Aronoff in April.
- c.) IFT's product was now being sold to prisons in three states.

- d.) DiBruno Junior had already invested money in IFT and was now investing another \$400,000 dollars of his own money to buy 400,000 additional shares.
- e.) He reiterated that if the investment fell through, then he would personally guarantee Aronoff's investment, and reimburse Aronoff his principal amount out of his own pocket.
- f.) When asked about a competing product Aronoff had found information about on the internet, DiBruno Junior reiterated that his father has many high-level contacts and that competing products would not pose a threat.

70. The statements set out in the foregoing paragraph were false when DiBruno Junior made each of them and DiBruno Junior made each of them knowing they were false. He made each of those fraudulent statements to induce Aronoff to purchase shares of IFT.

71. On May 12, 2003, in reliance on the representations described above and in response to solicitations and representations by DiBruno Junior, Aronoff sent a letter and a second check for \$100,000 payable to "International Food Technologies, Inc." (Exhibit N is a copy of the letter and check.)

72. As he had with the first check from Aronoff, DiBruno Junior, on information and belief working in concert with his father and Nick and Lela DiBruno, diverted this check and deposited it to the account of K. B. Records (Exhibit O is a copy of the front and reverse of the check.)

73. As with the first check, the DiBrunos immediately begin withdrawing thousands of dollars in cash from the account. None of the funds was ever used for the benefit of IFT nor did they ever appear on the capital account of IFT. In fact, according to the DiBrunos' own

lawyer, IFT has never had a capital account or any business or financial books or records of any type other than a bare bones, preprinted form Articles of Incorporation. (See, Exhibit B.)

The Final Investment

74. In the course of a series of further interstate telephone calls, which occurred at least on May 21, June 6, 20, 29, and 30, and July 1, 2, 4, 9, 10, 17, 19, and 23, 2003, DiBruno Junior made the following additional false representations to Aronoff to induce Aronoff to invest further sums in IFT:

- a.) There was an additional opportunity to invest in IFT as more shares had “become available.”
- b.) IFT was continuing to be successful and the returns are expected to be very high. The return on the investment was now expected to be about 400%.
- c.) He wanted Aronoff to send more money as an investment in IFT and *since* IFT was going to be bought out very soon, the money would need to be sent soon in order to take advantage of this opportunity;
- d.) This buyout of IFT was already arranged and was "guaranteed." It was a "done deal". His father had set a very high price for the company and the buyer had agreed to pay that price.
- e.) He reiterated that if the investment fell through, then he would personally guarantee Aronoff's investment, and reimburse Aronoff his principal amount out of his own pocket.

75. In reliance on the representations described above and in response to these additional interstate telephone solicitations between DiBruno in North Carolina to Aronoff in

Indiana and other states, on July 24, 2003, Aronoff prepared and sent to DiBruno Junior a letter and a check for \$250,000 payable to “International Food Tech, Inc.” (Exhibit P is a copy of the letter and check.)

76. As he had with the first two checks he received from Aronoff, DiBruno Junior diverted that check and deposited it the account of K. B. Records, on information and belief working in concert with his father and Nick and Lela DiBruno. (Exhibit Q is a copy of the front and reverse of the check.) As with the first two checks, none of the funds were ever used for the benefit of IFT nor did they ever appear on the capital account of IFT. In fact, according to the DiBrunos’ own lawyer, IFT has never had a capital account or any business or financial books or records of any type other than a bare bones, preprinted form Articles of Incorporation.

77. On August 8, 2003, DiBruno Junior incorporated yet another corporation “J&G Timepieces, Inc.,” and listed himself as its registered agent.

78. On August 15, 2003, DiBruno Junior, on information and belief working in concert with his father, prepared a certificate for 250,000 shares of IFT issued to Aronoff and mailed that certificate to Aronoff in Indiana on or about the same date. (Exhibit R is a copy of the letter and check.)

79. On information and belief, IFT is a shell corporation with no assets, no employees, no sources of revenue and no operations, business or financial books or records of any type other than the bare bones Certificate of Incorporation, and a bank account that was open for three weeks in 2004. It is a vehicle which the Defendants used and are using to defraud Aronoff.

The Looting of K. B. Records in 2003

80. Although K. B. Records did have an office and employees, it had no business income and the DiBrunos used it as a piggy bank, drawing cash, including from funds stolen

from Aronoff, at will from its bank account. The DiBrunos wrote themselves literally dozens of checks payable to them personally for thousands upon thousands of dollars.

81. In addition, they drew cash on ATMs up to \$900 per day including over \$8,000 in May 2003 alone.

82. Although Aronoff at this point does not have a complete picture of this looting, it is believed to exceed \$250,000 in cash to the DiBrunos between April 24 and September 30, 2003.

83. The DiBrunos also purchased expensive jewelry and/or watches with K. B. Records funds, more than \$35,000 between April and September 2003

84. More than \$20,000 was transferred to William E. Winters, most or all of which were fraudulent transfers under North Carolina and Indiana law.

85. More than \$35,000 was transferred to Jack D. Jones, Jr., most or all of which were fraudulent transfers under North Carolina and Indiana law.

IFT's Bank Account – And Its Brief Life

86. Ironically, DiBruno Junior did at one point open a bank account for IFT. On April 30, 2004, almost a year after he began stealing funds from Aronoff, he opened an account for IFT at First Gaston Bank and funded it with just over \$60,000. (Exhibit W, Account Opening Form and Account Statement for April 2004; FGB 000005–10 and 000022–23.)

87. True to form, the DiBrunos promptly began looting this account, with \$40,000 going out in a short period in checks made out personally to Lela, DiBruno Junior, Wendy DiBruno and wire transfers to “Dairene International,” a Florida company DiBruno Senior is involved with.

88. On May 5th, just five days after he opened this account, DiBruno Junior received a letter from counsel for Aronoff demanding access to all of the books and records of IFT.

(Exhibit X, Letter dated May 3, 2004, from Paul Donahue to Joseph A. DiBruno, Jr.)

89. On May 10th, just 3 business days after receiving the letter demanding access to IFT's book and records, DiBruno Junior working in concert with Lela DiBruno, withdrew all remaining funds and closed IFT's account. Lela DiBruno then took those funds and, after keeping \$500 in cash, used the remaining funds to open an account at the First Gaston Bank for a company named "First Intertech Corp." They set this up so that only Lela's name appeared in connection with the account and she had the exclusive power to write checks on the account.

(Exhibit Y, Account Opening Form and related documents FGB 000055-60.)

90. However, the very next day, May 11, the DiBrunos received a check for \$118,375 intended for and made payable to "International Food Tech," the very company Aronoff thought he was investing in and the company whose only bank account had just been closed the day before. Undaunted, DiBruno Junior signed the check and Lela deposited it to the account that had just been opened for First Intertech Corp. (Exhibit Z.)

91. Beginning the next day, May 12, Lela signed a flurry of checks drawn on the First Intertech account payable personally to DiBruno Junior, DiBruno Senior and several payable to herself. Within 30 days Lela had handed out \$63,500, almost one-half of the funds originally intended for IFT, to DiBruno family members in checks made out to them personally which they cashed.

COUNT I

Racketeer Influenced and Corrupt Organizations Act (“RICO”) (Section 1962(c): Operation of an Enterprise Through a Pattern of Racketeering Activity)

92. Aronoff repeats and realleges the allegations above as though fully set forth herein.

93. At all relevant times, the DiBrunos were “persons” within the meaning of RICO, 18 U.S.C. § 1961(3), each capable of holding a legal or beneficial interest in property.

94. At all relevant times, K. B Records, IFT, or, in the alternative, an association of IFT and K. B. Records were an “enterprise” within the meaning of RICO, 18 U.S.C. § 1961(4), that engaged in activities affecting interstate commerce. IFT and K. B. Records engaged in activities affecting interstate commerce by accepting funds transferred to them from other states and, in the case of K. B. Records by operating offices, being engaged in the music production and distribution business in the United States. Some of the products or services of K. B. Records, found their way across state lines.

95. DiBruno Junior, DiBruno Senior and Nick and Lela DiBruno devised a scheme and/or artifice to defraud Aronoff or to obtain money or property from Aronoff by means of false or fraudulent pretenses, representations, or promises. DiBruno Junior, DiBruno Senior and Nick and Lela DiBruno each participated in this scheme and/or artifice to defraud with the specific intent of diverting the funds sent by Aronoff and defrauding Aronoff.

96. As detailed above, as part of their scheme, the DiBrunos used interstate telephone and the U.S. Mail in furtherance of their scheme or artifice to defraud Aronoff.

97. Between April and August 2003 the Defendants mailed through the U.S. Mail at least three pieces of correspondence including stock certificates. All of which were created or sent or induced by the Defendants’ scheme to defraud Aronoff. Each of these mailings was an

act of mail fraud in violation of 18 U.S.C. §1341. On information and belief, the dates of such mailings are on or about : April 21, 2003; May 12, 2003; and July 24, 2003.

98. As a result, the DiBrunos engaged in numerous acts of mail fraud over a several month period resulting in the commission of a continuous “pattern” of racketeering activity within the meaning of 18 U.S.C. § 1961(5). As demonstrated above, the various acts of racketeering activity by the DiBrunos has extended more than 10 years and threatens to continue.

99. Each act of mail fraud caused separate and distinct harm to Aronoff.

100. Aronoff has suffered the loss of property, including at least \$450,000 in funds obtained by the Defendants through their fraud.

101. Pursuant to 18 U.S.C. § 1964(c), Aronoff is entitled to treble damages and attorneys’ fees.

WHEREFORE, Plaintiff Aronoff respectfully prays for judgment against the DiBruno Defendants, DiBruno Junior, DiBruno Senior and Nick and Lela DiBruno, jointly and severally, and for relief as follows:

- A. The sum of \$450,000 in actual damages, trebled to \$1,350,000 under RICO;
- B. Reasonable attorneys’ fees and costs; and
- C. Such other relief as the Court deems just and proper.

COUNT II

Racketeer Influenced and Corrupt Organizations Act (“RICO”) **(For Conspiracy)**

102. Aronoff repeats and realleges the allegations above as though fully set forth herein.

103. Upon information and belief, the DiBrunos conspired with each other by agreeing to conduct, and/or participate in the conduct of, IFT's and K. B. Records's affairs through a pattern of racketeering activity in violation of 18 U.S.C. § 1962(c).

104. Upon information and belief, DiBruno Junior, DiBruno Senior, Nick and Lela each knowingly agreed to become part of the conspiracy.

105. Upon information and belief, DiBruno Junior, DiBruno Senior, Nick and Lela each agreed that one or more people would commit at least two predicate acts and furtherance of the pattern of racketeering activity.

106. As a result of the racketeering activity, Aronoff has suffered loss of property including at least \$450,000 in funds fraudulently obtained and converted to the use of the DiBrunos and/or K. B. Records

107. Pursuant to U.S.C. 1964(c), Aronoff is entitled to treble damages and attorneys' fees.

WHEREFORE, Plaintiff Aronoff respectfully prays for judgment against the DiBruno Defendants jointly and severally, and for relief as follows:

- A. The sum of \$450,000 in actual damages, trebled to \$1,350,000 under RICO;
- B. Reasonable attorneys' fees and costs; and
- C. Such other relief as the Court deems just and proper.

COUNT III

Racketeer Influenced and Corrupt Organizations Act ("RICO") **(Section 1962(a): Use of Income from Racketeering Activity)**

108. Aronoff repeats and realleges the allegations above as though fully set forth herein.

109. At all relevant times, K. B. Records, DiBruno Junior, DiBruno Senior, Nick and Lela were “persons” within the meaning of RICO, 18 U.S.C. § 1961(3), each capable of holding a legal or beneficial interest in property.

110. As a result of a pattern of racketeering activity, K. B. Records, received income, which, upon information and belief, K. B. Records, the DiBrunos knowingly used in operating the K. B. Records, enterprise in violation of 18 U.S.C. § 1962(a). Specifically, K. B. Records, and the DiBrunos used some of the fraudulently obtained funds from Aronoff to hire employees to work for K. B. Records, to pay K. B. Records’s bills, and otherwise were expended for the benefit of K. B. Records, so it would continue to operate as a business.

111. K. B. Records and the DiBrunos’ use of the fraudulently obtained income in operating the IFT/K. B. Records, enterprise directly harmed Aronoff because the use allowed the K. B. Records, enterprise to continue operating to continue to fraudulently obtain funds destined for IFT and to divert them to K. B. Records.

112. As a result of K. B. Records, the DiBrunos’ use or investment of the income derived from a pattern of racketeering activity, Aronoff has suffered the loss of property, including at least \$450,000.

113. Pursuant to 18 U.S.C. § 1964(c), Aronoff is entitled to treble damages and attorneys’ fees.

WHEREFORE, Plaintiff Aronoff respectfully prays for judgment against the DiBruno Defendants jointly and severally, and for relief as follows:

- A. The sum of \$450,000 in actual damages, trebled to \$1,350,000 under RICO;
- B. Reasonable attorneys’ fees and costs; and
- C. Such other relief as the Court deems just and proper.

COUNT IV
Conversion

114. Aronoff repeats and realleges the allegations above as though fully set forth herein.

115. Aronoff has ownership rights in the funds which he sent by check to DiBruno Junior payable to the order of IFT.

116. Aronoff has absolute and unconditional right to the immediate possession of the \$450,000.

117. In November 2003, Aronoff made a demand for possession. K. B. Records and the DiBrunos have all refused to return the \$450,000 to Aronoff.

WHEREFORE, Plaintiff Aronoff respectfully prays for judgment against the DiBruno Defendants jointly and severally and for relief as follows:

A. For a judgment against and an order requiring DiBruno Junior and DiBruno Senior turn over all of the funds in their possession, custody or control, including in the accounts of any company they control which Aronoff sent totaling \$450,000;

B. For judgment against Defendants K. B. Records in the amount of \$450,000 plus interest;

C. Punitive damages, including his attorneys' fees; and

D. Such other relief such as the Court deems just and proper.

COUNT V
Civil Conspiracy

118. Aronoff repeats and realleges the allegations above as though fully set forth herein.

119. On information and belief, Defendants K. B. Records, DiBruno Junior, DiBruno Senior, Nick and Lela entered into an agreement to fraudulently obtain funds from Aronoff and to divert those funds to their own use.

120. On information and belief, Defendants, K. B. Records, DiBruno Junior, DiBruno Senior, Nick and Lela each took overt actions pursuant to and in furtherance of the common scheme that injured Aronoff.

121. Aronoff has suffered damages of at least \$450,000 in funds which were fraudulently obtained from him.

WHEREFORE, Plaintiff Aronoff respectfully prays for judgment against the DiBruno Defendants, and K. B. Records jointly and severally and for relief as follows:

- A. Damages in the amount of \$450,000;
- B. For his attorney's fees and costs;
- C. For \$1,000,000 in punitive damages; and
- D. Other such relief as the Court deems just and proper.

COUNT VI
Securities Fraud
(Violation of Rule 10b-5)

122. Aronoff repeats and realleges the allegations above as though fully set forth herein.

123. Defendants, and each of them, carried out a plan, scheme and course of conduct which was intended to and did: (i) deceive Aronoff, as alleged herein; (ii) cause Aronoff to reasonably rely on the representations stated above, and (iii) cause Aronoff, to purchase worthless securities. In furtherance of this unlawful scheme, plan and course of conduct, defendants, and each of them, took the actions set forth herein.

124. Defendants: (a) employed devices, schemes, and artifices to defraud; (b) made untrue statements of material fact and/or omitted to state material facts necessary to make the statements not misleading; and (c) engaged in acts, practices, and a course of business which operated as a fraud and deceit upon Aronoff in violation of §10(b) of the Securities Exchange Act and Rule 10b-5.

125. The statements made by defendants were materially false and misleading because at the time they were made, the defendants knew, or with conscious or deliberate recklessness ignored, but failed to disclose, the matters set forth herein.

126. In ignorance of the falsity of the statements made by DiBruno Junior, working at all times in concert with his father, DiBruno Senior, and relying directly on defendants or indirectly on the false and misleading statements made by defendants, Aronoff acquired shares in IFT which are worthless and was damaged thereby.

127. Had Aronoff known of the true facts, including the financial condition, defalcation and the lack of business prospects and even existence of IFT, Aronoff would not have purchased or otherwise acquired the shares in IFT. Hence, Aronoff was damaged by defendants' violations of §10(b) and Rule 10b-5.

WHEREFORE, Plaintiff Aronoff respectfully prays for judgment against the Defendants jointly and severally and for relief as follows:

- A. Damages in the amount of \$450,000;
- B. For his attorney's fees and costs;
- C. For \$1,000,000 in punitive damages; and
- D. Other such relief as the Court deems just and proper.

Count VII
Violation of the Indiana Securities Act

128. Aronoff repeats and realleges the allegations above as though fully set forth herein.

129. The conduct describe above constitutes violations of the Indiana Securities Act.

130. By letter dated May 3, 2004, Aronoff has elected to rescind the transactions and has tendered to the Defendants the return of the 850,000 shares in IFT which he received from the Defendants, by offering to return those shares to the Defendants.

WHEREFORE, Plaintiff Aronoff respectfully prays for judgment against the Defendants jointly and severally and for relief as follows:

- A. Damages in the amount of \$450,000;
- B. For his attorney's fees and costs as provided in the Act;
- C. For interest at the statutory rate as provided in the Act;
- D. For \$1,000,000 in punitive damages; and
- E. Other such relief as the Court deems just and proper.

Count VIII
For Equitable Relief – Rescission

131. Aronoff repeats and realleges the allegations above as though fully set forth herein.

132. The sale of the securities of IFT by the Defendants was fraudulent.

133. Aronoff elects to rescind the contracts for the purchase of the shares of IFT and seeks the equitable remedy of restitution of the consideration paid.

134. The assets of IFT and of the DiBrunos, which are alter egos of each other, are in danger of dissipation and the DiBrunos may further dissipate whatever remains of the funds sent by Aronoff.

WHEREFORE, Plaintiff Aronoff respectfully prays for the entry of a judgment against the Defendants jointly and severally, and as follows:

- A. The sum of \$450,000 in actual damages;
- B. Reasonable attorneys' fees and costs;
- C. For interest from the date of investment; and
- C. Such other relief as the Court deems just and proper.

Count IX
For Breach of Contract

135. Aronoff repeats and realleges the allegations above as though fully set forth herein.

136. DiBruno Junior promised he would personally guarantee that Aronoff would get his investment back. Aronoff has made demand upon DiBruno Junior for repayment, but DiBruno Junior has failed and refused to pay back the \$450,000.

WHEREFORE, Plaintiff Aronoff respectfully prays for the entry of a judgment against Joseph A. DiBruno Junior as follows:

- A. The sum of \$450,000 in actual damages;
- B. Reasonable attorneys' fees and costs; and
- C. Such other relief as the Court deems just and proper.

Count X
For Breach of Fiduciary Duty

137. Aronoff repeats and realleges the allegations above as though fully set forth herein.

138. The Defendants breached their fiduciary duty to Aronoff and to IFT by taking advantage of their position of trust, by failing to exercise reasonable care as officers, directors, and/or incorporators, by failing to adequately capitalize IFT, by failing to safeguard and preserve

assets and funds of IFT, by failing to provide accounting and financial statements, and by failing to advise Aronoff of material facts during the course of their relationship.

139. As a result of the DiBrunos violation of duties owed Aronoff and standards of conduct they were bound to adhere to, Aronoff has been damaged.

WHEREFORE, Plaintiff Aronoff respectfully prays for the entry of a judgment against the DiBruno Defendants jointly and severally as follows:

- A. The sum of \$450,000 in actual damages;
- B. Reasonable attorneys' fees and costs;
- C. For punitive damages of one million dollars; and
- D. Such other relief as the Court deems just and proper.

Count XI
Constructive Trust

140. Aronoff repeats and realleges the allegations above as though fully set forth herein.

141. All funds which DiBruno Junior received from Aronoff should be deemed to be subject to or a part of a constructive trust.

142. The Defendants and anyone who is acting or has acted in concert with them or who has received any of the funds or benefited in any way from their disposition, should be required return to Aronoff the greater of: the initial amount of such funds which is \$450,000 or the current value of all assets and matters of value which have been derived from such funds.

WHEREFORE, Plaintiff Aronoff respectfully prays for the entry of a judgment against all Defendants jointly and severally as follows:

- A. The sum of \$450,000 in actual damages or such greater value as is proved;
- B. Reasonable attorneys' fees and costs; and

C. Such other relief as the Court deems just and proper.

Count XII
Fraudulent Transfer

143. Aronoff repeats and realleges the allegations above as though fully set forth herein.

144. Under the Uniform Fraudulent Transfer Act which is in effect in Indiana and in North Carolina (Indiana Code §32-18-2 *et seq.*; N.C. Gen. Stat. § 39 – 23.1 *et seq.*), a transfer made or obligation incurred by a debtor is fraudulent as a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation with intent to hinder, delay or defraud any creditor of the debtor.

145. Under the Uniform Fraudulent Transfer Act a transfer made or obligation incurred by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonable equivalent value in exchange for the transfer or obligation, and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.

146. Also, Under the Act, a transfer made by a debtor is avoidable as to a creditor whose claim arose before the transfer was made if the transfer is made to a insider for an antecedent debt, the debtor was insolvent at that time and the insider had reasonable cause to believe that the debtor was insolvent.

147. Upon information and belief, DiBruno Junior, DiBruno Senior, Nick DiBruno, Lela DiBruno and K. B. Records have all made fraudulent transfers to each other, to Winters and to Jones, and to other unknown third parties in violation of the Uniform Fraudulent Transfer Act.

148. K. B. Records is vicariously liable for DiBruno Junior's violation of the Uniform Fraudulent Transfer Act under the doctrine of respondents superior.

149. As a result of DiBruno Junior's, DiBruno Senior's, Nick DiBruno's and K. B. Records's violations of the Uniform Fraudulent Transfer Act, Aronoff is entitled to recover judgment from such Defendants, jointly and severally, for the value of the assets transferred or the amount necessary to satisfy Aronoff's claims, whichever is less, in accordance with the Act.

WHEREFORE, Plaintiff Aronoff prays for judgment against all Defendants jointly and severally in the amount of \$450,000 plus interest and costs and attorneys fees, or in the alternative for judgment against each Defendant in the total amount each received directly or indirectly from the funds Anonoff initially sent to DiBruno Junior, and for interest and costs and attorneys fees.

Count XIII
Piercing the Corporate Veil

150. Aronoff repeats and realleges the allegations above as though fully set forth herein.

151. K. B. Records was used as a vehicle to defraud people and its corporate status should be ignored and its veil pierced to hold its shareholders liable.

152. K. B. Records co-mingled funds of various parties including stolen funds, paid personal bills of its shareholders and others, disbursed cash for no consideration to the DiBrunos, Winters, Jones and others.

153. K. B. Records did not follow corporate formalities and to allow the corporate shield to stand would be to do an injustice and perpetrate a fraud.

WHEREFORE, Plaintiff Aronoff prays for judgment jointly and severally against DiBruno Junior and Nick DiBruno jointly and severally in the amount of \$450,000 plus interest and costs and for his attorney's fees.

Kenneth David Aronoff

By: 
One of the Attorneys for Plaintiff

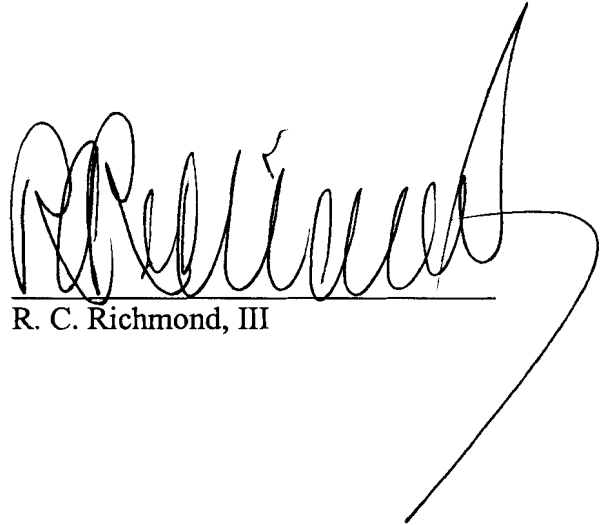
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing has been served this 31st day of August, 2004, by first-class United States mail, postage prepaid, upon the following counsel of record:

William L. O'Connor
Dann Pecar Newman & Kleiman
2300 One American Square
Indianapolis, IN 46282

A handwritten signature in black ink, appearing to read "R. C. Richmond, III", is written over a horizontal line. A long, sweeping flourish extends from the end of the signature down and to the right.

R. C. Richmond, III