

STATE OF MINNESOTA

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DISTRICT COURT

COUNTY OF HENNEPIN

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FOURTH JUDICIAL DISTRICT

BY \_\_\_\_\_ DEPUTY  
IN THE DISTRICT  
COURT ADMINISTRATOR

Case Type: Other Civil  
(Consumer Protection)

State of Minnesota by its Attorney General,  
Lori Swanson,

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

Plaintiff,

vs.

**COMPLAINT**

National Arbitration Forum, Inc.,  
National Arbitration Forum, LLC, and  
Dispute Management Services, LLC, d/b/a  
Forthright,

Defendants.

The State of Minnesota, by its Attorney General, Lori Swanson, for its Complaint against defendants National Arbitration Forum, Inc., National Arbitration Forum, LLC, and Dispute Management Services, LLC, d/b/a Forthright (collectively, "National Arbitration Forum," "Forum," or "Defendants"), alleges as follows:

**INTRODUCTION**

1. Just about every American has a credit card. The credit card companies often require—deep in the fine print of the consumer agreement—that the consumer forfeit his or her right to have any dispute resolved by a judge or jury. Instead, the agreements often require that any disputes be resolved exclusively through a private system of binding arbitration—and frequently through the National Arbitration Forum. The Forum represents to the public, the courts, and consumers that it is independent, operates like an impartial court system, and is not affiliated with any party. The consumer does not know that the Forum works alongside creditors

behind the scenes—against the interests of consumers—to convince creditors to place mandatory pre-dispute arbitration clauses in their customer agreements and to appoint the Forum as the arbitrator of any disputes that may arise in the future. The Forum does this so that creditors will file arbitration claims against consumers in the Forum, thereby generating revenue for it.

2. The consumer also does not know—and the Forum hides from the public—that the Forum is financially affiliated with a New York hedge fund group that owns one of the country’s major debt collection enterprises. Beginning in 2006 and through 2007, Accretive, LLC (a family of New York hedge funds under the control of an investment manager named J. Michael Cline and his associates), engineered two transactions. In the first transaction, Accretive formed several private equity funds under the name “Agora” (meaning “Forum” in Greek), which in turn invested \$42 million in the National Arbitration Forum and obtained governance rights in it. In the second transaction, three of the country’s largest debt collection law firms (Mann Bracken of Georgia, Wolpoff & Abramson of the District of Columbia, and Eskanos & Adler of California) merged into one large national law firm called Mann Bracken, LLP. Accretive then formed and funded (partly using federal money from the U.S. Small Business Administration) a debt collection agency called Axiant, LLC, which acquired the assets and collections operations of Mann Bracken.

3. Through these transactions, the Accretive hedge fund group simultaneously took control of one of the country’s largest debt collectors and became affiliated with the Forum, the country’s largest debt collection arbitration company. In 2006, the Forum processed 214,000 consumer debt collection arbitration claims, of which 125,000—or nearly 60 percent—were filed by the law firms listed above. The Forum conceals its affiliations with the collections industry

through extensive affirmative representations, material omissions, and layers of complex and opaque corporate structuring.

4. Consumers also do not know that—despite representing to the public that it has “no relationship with any party” and does not “counsel our users”—the Forum works closely with creditors behind the scenes to: (1) encourage them to file arbitration claims as an alternative way to collect debt from consumers; (2) draft arbitration clauses, advise creditors on arbitration legal trends, and in some cases, help them draft claims to be filed against consumers; and (3) refer them to debt collection law firms, which then file arbitration claims against consumers in the Forum. In soliciting creditors to use its arbitration services, the Forum makes representations that align itself against consumers, including, for example, that “[t]he customer does not know what to expect from Arbitration and is more willing to pay,” that consumers “ask you to explain what arbitration is then basically hand you the money,” and that “[y]ou [the creditor] have all the leverage [in arbitration] and the customer really has no choice but to take care of the account.”

5. Through its conduct, the National Arbitration Forum has violated Minnesota’s statutory prohibitions against consumer fraud, deceptive trade practices, and false advertising.

### **PARTIES**

6. Lori Swanson, the Attorney General of the State of Minnesota, is authorized under Minn. Stat. Ch. 8, including Minn. Stat. §§ 8.01, 8.31, and 8.32, and under §§ 325F.67 and 325F.70, and has common law authority, including *parens patriae* authority, to bring this action on behalf of the State of Minnesota and its citizens to enforce Minnesota law.

7. National Arbitration Forum, Inc. (“NAF, Inc.”) is a privately held, for-profit Minnesota corporation. NAF, Inc.’s registered address and principal place of operations is 6465

Wayzata Boulevard, St. Louis Park, MN 55426. NAF, Inc. is the holder of the assumed name “National Arbitration Forum” and also does business under the names “National Arbitration Forum” and “Forum.”

8. National Arbitration Forum, LLC (“NAF, LLC”) is a privately held, for-profit Delaware limited liability company. NAF, LLC’s registered address and principal place of operations is the same as NAF, Inc’s: 6465 Wayzata Boulevard, St. Louis Park, MN 55426. NAF, LLC’s registered agent is Michael Kelly. NAF, LLC also does business under the name “National Arbitration Forum.”

9. Dispute Management Services, LLC, d/b/a Forthright (“Forthright”) is a privately held, for-profit Delaware limited liability company. Forthright’s registered address and principal place of operations is the same as NAF, Inc.’s and NAF, LLC’s: 6465 Wayzata Boulevard, St. Louis Park, MN 55426. Forthright’s registered agent is the same as NAF, LLC’s: Michael Kelly.

### **JURISDICTION**

10. This Court has jurisdiction over the subject matter of this action pursuant to Minn. Stat. §§ 8.01, 8.31, 8.32, subd. 2(a), 325F.67, and 325F.70 (2008).

11. This Court has personal jurisdiction over the National Arbitration Forum because the Forum does business in Minnesota, has agents and property in Minnesota, and has committed acts in Minnesota causing injury to consumers.

### **VENUE**

12. Venue in Hennepin County is proper under Minn. Stat. § 542.09 (2008) because the National Arbitration Forum resides, and the cause of action arose, in part, in Hennepin County.

## FACTUAL BACKGROUND

### I. The National Arbitration Forum.

13. The National Arbitration Forum—headquartered in St. Louis Park, Minnesota—is comprised of three companies that effectively operate as one: defendants NAF, Inc., NAF, LLC, and Forthright.

14. The Forum is the nation’s largest provider of consumer debt collection arbitrations. Most of the arbitrations conducted by the Forum involve claims by credit card companies, debt buyers, and other creditors against ordinary consumers.

15. Credit card and other companies often place language in the fine print of their customer agreements that requires consumers to arbitrate any future disputes—often in the Forum—thereby causing consumers to forfeit the right to have the dispute resolved by a judge or jury. When a company with a predispute mandatory arbitration clause in its customer agreement decides that the consumer owes a debt that cannot be collected through other means, it may initiate a consumer collection arbitration in the Forum, or it may sell the debt to a third party, who may initiate arbitration in the Forum. Regardless, these companies are often represented by outside debt collection law firms.

16. National credit card companies are some of the most prolific users of the National Arbitration Forum. Examples of credit card companies that have used the Forum to process consumer debt collection arbitrations under predispute mandatory arbitration clauses include MBNA/Bank of America, JP MorganChase, Citigroup, Discover Card, Deutsche Financial, and American Express, among others. Increasingly in recent years—in part as a result of the Forum’s aggressive outreach to creditors—other industries have used the Forum’s services to bring claims against ordinary consumers, including, for example, mortgage lenders, retailers who

lend money to consumers to buy their products, debt buyers, and cell phone companies. As set forth below, the Forum has actively encouraged credit card and other companies to place mandatory arbitration clauses in their customer agreements and has actively encouraged business clients to steer arbitration filings to the Forum.

17. The Forum is intimately involved in the arbitration process. Arbitrations conducted by the Forum are governed by a Code of Procedure (the “Code”)—a Code drafted by the Forum. Under the Code, the Forum purports to act like a clerk of court and coordinates the arbitration process. The National Arbitration Forum dictates and controls the arbitration process. For example, the Forum handles important aspects of the arbitration process, including scheduling of hearings, selection of the arbitrator (unless the parties otherwise agree), and dismissal of claims or responses. The Forum charges fees to consumers to participate in arbitration. As described below, it markets to and assists companies in ways that would not be tolerated if done by a court of law.

18. The Forum claims that it has been appointed as the arbitrator in “hundreds of millions of contracts.” The Forum resolves important claims that affect the lives of ordinary citizens. In 2006, it processed over 200,000 consumer collection arbitration claims. Its arbitration practices have been sharply criticized by consumer groups and consumers and have been the subject of numerous exposes and reports. One of the Forum’s officers, Edward Anderson, claimed to the hedge fund managers who eventually acquired an interest in it that: “The FORUM is one of a kind; there is no competitor nor is there likely to be one....The barriers to entry border on being insurmountable....”

## II. The National Arbitration Forum Promotes Itself as Independent, Neutral, and Not Affiliated with any Business that Uses Its Services.

19. In its marketing efforts and elsewhere, the National Arbitration Forum has deliberately created the widespread—but false—perception that it is not affiliated with or beholden to companies that use its services.

20. These claims are placed conspicuously on multiple websites associated with the National Arbitration Forum, including [www.adrforum.com](http://www.adrforum.com), [www.forthrightsolutions.com](http://www.forthrightsolutions.com), and [www.arbitrationanswers.com](http://www.arbitrationanswers.com). The Forum’s false representations are also prominently displayed in other forms of advertisements, public statements, and elsewhere.

21. The following is a typical representation of independence and neutrality found on the National Arbitration Forum’s website:

Q: Is the FORUM affiliated with credit card companies or other businesses that use pre-dispute arbitration agreements?

A: **No. The FORUM is an independent administrator of alternative dispute resolution services....** The FORUM administers cases and ensures the cases proceed quickly and smoothly according [to] the rules of the arbitration or mediation agreement. Our dispute resolution processes are designed to provide both parties with an equal opportunity to prevail. **We are not beholden to any company or individual that utilizes our services.**” (Emphasis added.)

22. Similar claims of the National Arbitration Forum’s independence and neutrality abound on its website and elsewhere:

- **“Impartiality and integrity. The FORUM is independent and neutral. It is not affiliated with any party.”** (Emphasis added.)
- **“Our Statement of Principles illustrates how the FORUM, as a neutral administrator of arbitration proceedings, provides due process and remains neutral and fair.”** (Emphasis added.)
- **“PRINCIPLE 4. INDEPENDENT ADMINISTRATION. An arbitration should be administered by someone other than the arbitrator or the parties themselves.”** (Emphasis added.)

- “The FORUM has **no contracts with any party** to any arbitration....” (Emphasis added.)
- “The FORUM...[has] no relationship with any party who uses our services.”
- “Administrative Independence. Staff members of the National Arbitration Forum operate in a manner **analogous to court clerks and administrators**. They are **independent** of any party and have **no relationship of any type** with any arbitrating party....” (Emphasis added.)
- “**As one of the world’s largest neutral administrators of arbitration services**, The Forum is setting a new standard for civil dispute resolution within the American justice system.” (Emphasis added.)

23. In addition, the National Arbitration Forum claims that it is not affiliated or aligned with, owned by, and does not counsel any company that files an arbitration claim in the National Arbitration Forum:

- “**The FORUM is not affiliated with any party**. The FORUM is compensated on a case-by-case basis only for doing the work associated with administering mediations, arbitrations and other ADR proceedings.” (Emphasis added.)
- “Who is the National Arbitration Forum? **The FORUM is not a party to an arbitration claim and is not affiliated with or owned by any party who files a claim with the FORUM.**” (Emphasis added.)
- “As a **neutral** arbitration administrator, the Forum has no exclusive client relationships. **We do not contract with, represent or counsel our users, whether they are businesses or individuals.**” (Emphasis added.)
- “**Far from being aligned with lenders and other business parties**, the NAF and its affiliated arbitrators provide **neutral** and unbiased dispute resolution services.” (Emphasis added.) (Written comments submitted by NAF, LLC’s managing director to the Federal Trade Commission dated August 13, 2007.)

24. Similarly, the National Arbitration Forum claims that it does not receive any money from any source, except for the fees paid for its arbitration services:

- “**The FORUM receives no funds from any source**, other than fees paid for dispute resolution services.” (Emphasis added.)

- “Q: Why does the FORUM charge fees for its arbitration services? A: **The FORUM’s revenue is derived solely from the fees we charge for our administrative services.** There are different fees for filing cases, commencing cases, arranging hearings, and processing requests and arbitration decisions. **We have no other source of revenue and we have no relationship with any party who uses our services.**” (Emphasis added.)

25. Furthermore, building on its claims of independence and neutrality, the National Arbitration Forum asserts that arbitration in the Forum is similar to or better than court:

- “One of the FORUM’s dispute resolution services, arbitration, **is procedurally very similar to court.**” (Emphasis added.)
- “The core due process procedures that exist in FORUM arbitrations are identical or substantially similar to the due process procedures available in judicial and administrative law dispute resolution systems.... These arbitral procedures provide **truly excellent due process protections, and meet or exceed the rights parties would have in any court or before an administrative law judge.**” (Emphasis added.)
- “Alternative dispute resolution (ADR) is a **more efficient, predictable and amicable way to resolve conflicts and achieve legal decisions without the expense and inconvenience of going to court.**” (Emphasis added.)
- “**The FORUM resolves disputes in a manner that is faster, simpler, and less expensive** than traditional courtroom litigation.” (Emphasis added.)

### III. The National Arbitration Forum Is Affiliated with One of the Country’s Major Debt Collection Enterprises.

26. There are a number of companies described in this Complaint that are not parties to the lawsuit. Their affiliation with the Forum, however—which began with discussions in 2006—plays an integral role in the violations alleged herein. These companies—Accretive, Agora, and Axiant—were all organized by an investment manager named J. Michael Cline of New York City.

27. *Accretive* is a family of private equity funds based in New York City that operates under the control of Cline and his associates. A number of the Accretive entities were originally organized in 1999.

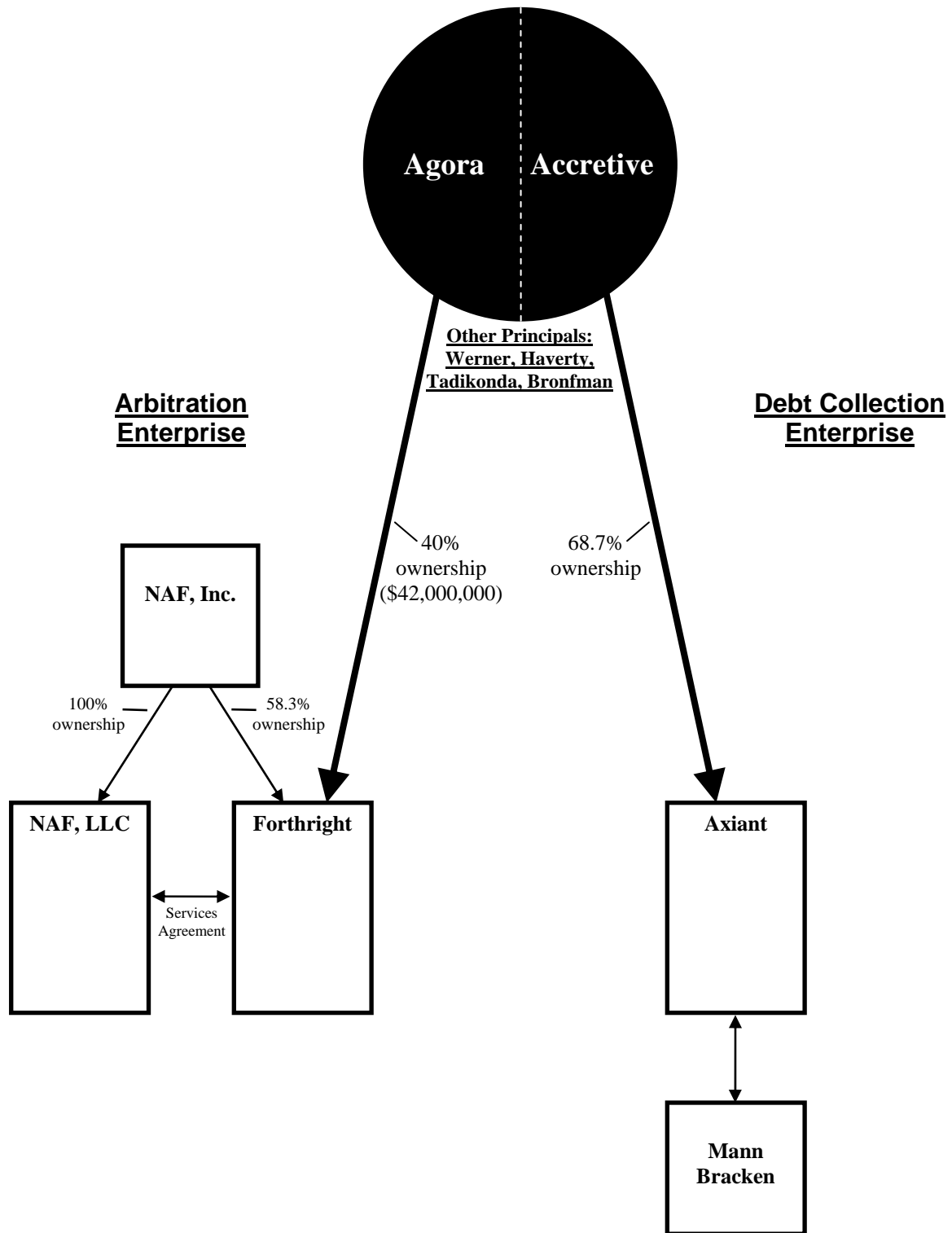
28. *Agora* is a family of private equity funds based in New York City that was created by Cline and his associates through the Accretive network. The Agora entities were formed in 2007 to acquire significant financial interests in the National Arbitration Forum.

29. *Axiant* is a debt collection agency in which Accretive has majority ownership and which was created by Accretive to acquire the assets of three large national debt collection law firms (Mann Bracken (based in Atlanta, Georgia), Wolpoff & Abramson (based in the District of Columbia), and Eskanos & Adler (based in California)), which eventually all merged into Mann Bracken.

30. Accretive, Agora, Axiant, the Forum, and Mann Bracken form a complex web of companies that compose some of the largest debt collectors and arbitrators of consumer credit card debt in the country. In 2006, the National Arbitration Forum arbitrated over 200,000 claims involving credit card and other debt issued by national banks and large corporations; in almost 60 percent of those cases, the banks, or the funds that purchased the consumer debt, were represented by Mann Bracken or Wolpoff & Abramson.

31. One document setting forth the business plan for Accretive's investment in the Forum describes the goal as placing the Forum "at the center of a broad arbitration ecosystem." These ties, which are further described below, are depicted in the following chart:

**New York  
Hedge Fund Enterprise  
(J. Michael Cline)**



**A. The New York Hedge Fund Group Plans for the National Arbitration Forum to “Si[t] at the Center of a Broad Arbitration Ecosystem.”**

32. Beginning in 2006 and through 2007, there were a series of meetings involving Accretive (the family of New York private equity funds under control of Cline and his associates), the National Arbitration Forum, and three large national law firms: Mann Bracken, Wolpoff & Abramson, and Eskanos & Adler. As a result of these meetings, Accretive formed several equity funds under the name Agora, which in turn invested \$42 million in the National Arbitration Forum and obtained governance rights in it. The three large national debt collection law firms then merged into Mann Bracken, which in turn sold its assets and collections operations to Axiant, a company formed and owned by Accretive. These transactions are further described below.

33. In June 2006, principals of Accretive, LLC met in Minnesota with Edward Anderson and Michael Kelly, officers of the National Arbitration Forum. Accretive told the Forum that it was “excited by the range of expansion opportunities” presented by a potential financial relationship between the fund and the Forum. In particular, the Accretive principals told the Forum that a relationship between Accretive and the Forum “could catalyze [a] major transformation in many of the biggest legal sub-markets.” Among other things, Accretive promised the Forum that it could provide it with “[i]ntroduction to legal collections individuals” and stated that “we believe Accretive would be a great partner to help NAF become a billion-dollar company.” An e-mail following up on the meeting was sent to the Forum from an Accretive e-mail address.

34. Thereafter, on August 28, 2006, J. Michael Cline—the managing member of Accretive, LLC—presented Forum executive Edward Anderson with a formal outline of a proposed “equity transaction” between Accretive, LLC and the Forum. The proposal—which is

on Accretive letterhead—states that, “We [Accretive] have spent considerable time researching the legal collections and arbitration markets and are very impressed by the NAF and the unique position you have created in the industry....We believe Accretive would make an ideal partner for the NAF team and that we can help significantly accelerate the creation of value for NAF.” Under the proposal, Cline’s company—Accretive, LLC—would acquire a 40 percent ownership interest in the Forum and the right to appoint two members to its board of directors. Accretive promised to play an “active role in landing new customers” and to “leverage [the] Accretive network for introductions” and set forth a plan in which:

- “NAF becomes the primary venue for resolution of high-volume, low-ticket disputes”
- “In established markets, such as credit card, NAF exploits clause placements and becomes the preferred collections tactic where speed and cost are critical considerations. Arbitration should capture at least 50% of the volume currently placed in litigation”
- “In new industries, such as healthcare, NAF Procedures are used early and consistently as the standard method for resolving payment disputes. By playing a prominent role, NAF fundamentally shapes the collections players and tactics that emerge in these industries”
- “NAF sits at the center of a broad arbitration ecosystem, giving rise to a range of specialist firms that serve as sources of cases or as post-award processors”
- “Arbitration expands to become a comprehensive, alternative legal system.”

(Excerpts from the August 2006 proposal are attached as Exhibit 1) (*See* Complaint Exhibits at 001-003).

35. Accretive also promised to “launch” the Forum into new lines of business, such as arbitration of health care disputes between patients and hospitals, through Accretive Health, which provides collection services to hospitals.

**B. The National Arbitration Forum Was Divided into Three Entities that Effectively Operate as One in Order to Camouflage the Significance of the Hedge Fund Ownership.**

36. The Forum—aided by principals of Accretive—thereafter went to great lengths to concoct an elaborate corporate structure that conceals—but does not legitimize—the affiliations that undermine its claims of independence and neutrality.

37. For example, for most of its existence, defendant NAF, Inc. operated as a stand-alone company. As part of the transaction between the Forum and Accretive, both companies created new companies that would conceal the affiliation between them. The Forum formed Forthright, and Accretive formed Agora. As a result, at no time is Accretive publicly disclosed as an owner of the Forum.

38. Under the scheme, defendant Forthright purports to be the arbitration processing/marketing company and another defendant company, NAF, LLC, purports to retain the arbitrators. The third defendant (NAF, Inc.) has an ownership interest in the other two defendants.

39. In fact, the three defendants—NAF, Inc., NAF, LLC, and Forthright—effectively operate as one enterprise. As set forth below, NAF, Inc. and Forthright directly profit from the arbitrations conducted by the enterprise. The companies are closely interconnected, having, among other things, a common venture, common ownership, the same office space, common executive leadership, and the same registered agent. NAF, LLC and Forthright are also linked by an extensive Services Agreement (one which was required by the Accretive principals).

40. **Common office space.** As noted above, the three defendant corporations share office space at 6465 Wayzata Boulevard, St. Louis Park, MN 55426.

41. **Common ownership, officers, and directors.** NAF, Inc. owns 100 percent of NAF, LLC and 58.3 percent of Forthright. The three companies have key principals in common.

For example:

- Michael Kelly is the CEO of NAF, Inc., the CEO of Forthright, and the registered agent of both NAF, LLC and Forthright.
- Edward Anderson is Chairman, CFO, a director and a shareholder of NAF, Inc. and Chairman, Executive Vice President, a director and a board member of Forthright.
- Roger Haydock is an officer, director, and shareholder of NAF, Inc. and the sole officer and a director of NAF, LLC.
- Edwin Sisam is a director and shareholder of NAF, Inc. and a director of NAF, LLC.
- Keith Kim is a director and shareholder of NAF, Inc. and a director of Forthright.
- William Franke is a director and shareholder of NAF, Inc. and a director of Forthright.

42. **Services Agreement.** Forthright and NAF, LLC entered into a Services Agreement dated June 27, 2007. A Restated Services Agreement, which amended the original, is dated July 1, 2007. The hedge fund managers helped to write the Services Agreement. Under the Restated Services Agreement, Forthright controls most aspects of the arbitration administration, including:

- *Finance and accounting.* Forthright performs all necessary bookkeeping and accounting services for NAF, LLC, including payroll, purchasing, financial reporting, billing, and collections.
- *Operational assistance and support.* Forthright provides the personnel, facilities, and equipment to perform all management and administrative functions of NAF, LLC.
- *Information technology.* Forthright provides and maintains all necessary IT systems necessary to support arbitrations.

- *Management consulting.* Forthright provides senior executive management services required by NAF, LLC, including strategic planning for business growth, business development, and acquisitions.
- *Marketing consulting.* Forthright provides all marketing resources, materials, and services for NAF, LLC.
- *Human resources administration.* Forthright provides all recruiting, interviewing, hiring, employment administration, labor contract negotiations and administration, and fringe benefits administration.
- *Legal and tax consulting.* Forthright provides all legal and tax consulting and coordinates all legal services.
- *Intellectual property.* Forthright provides all software, applications, databases, web products, trade secrets, trademarks, know how, and other proprietary information necessary for arbitrations.

43. The Services Agreement is for an initial period of five years and is automatically extended for subsequent five year periods (unless cancelled pursuant to its terms). NAF, LLC pays Forthright a substantial fee for its services. The fee is broken down into two parts: a monthly seven-figure fee and a “success fee” based on a formula related to the amount of revenue received by NAF, LLC. Thus, Forthright profits directly from the arbitrations conducted by the Forum (and so do the Accretive principals, as described below). One of the Accretive principals described the payments from NAF, LLC to Forthright under the Services Agreement this way: “95% of revenue [goes to Forthright] after direct-arbitrator (mediator) costs.”

44. Many of those now working for Forthright have the same duties as when they worked for NAF, Inc. This is by design. Forthright states on its website that it “handles all arbitrations and mediation transaction processing and claims administration” for the Forum. The Forum states on its website that Forthright “serves as the exclusive provider of all necessary services to optimize the process and the administration of National Arbitration Forum arbitration and mediation claims.” The Forum’s internal announcement regarding the “restructuring” stated

that “current work will remain unchanged.” For example, the job duties of the former in-house legal counsel to the National Arbitration Forum, who became the in-house legal counsel to Forthright, remained the same: “[Y]ou may have noticed that our company name and email address has changed as Forthright is now the authorized administrator for National Arbitration Forum. My job duties and other contact information remain the same.” The Forum delayed issuing a news release about the creation of Forthright for about a year—and only did so after a reporter began to ask questions about the identity of the Forum’s investors.

**C. Agora/Accretive Buys Into Forthright.**

45. As set forth below, Accretive, LLC—in addition to having Agora purchase a significant stake in the Forum—also created and is the majority owner of a major debt collection enterprise called Axiant, LLC—which it purchased along with the partners of the Mann Bracken, LLP law firm, one of the country’s largest debt collection law firms.

46. In 2006, Forum executives recognized the problems that would arise if Accretive’s investment in the Forum—and its ties to the Mann Bracken law firm—became public. Indeed, Forum executives emphasized that if there was the risk of public knowledge of the affiliation between the Forum and Accretive/Mann Bracken, the transaction should be unwound. As noted by Forum executive Michael Kelly on November 20, 2006:

I cannot overstate our concern over the Mann Bracken relationship. Although I do not have any solutions off the top of my head, we should certainly plan for unwinding any deal in the event shared ownership becomes an acute issue.

(Attached as Exhibit 2 is a copy of Kelly’s November 20, 2006 e-mail) (*See* Compl. Exs. at 004).

47. Kelly also proposed the “formation of a new fund [Agora] as the investment vehicle (no public information connecting Accretive with the fund that ultimately acquires and holds the minority interest in the Forum).” (*See* Exhibit 2 at 004.)

48. In order to conceal the conflicts inherent with the Accretive/Forum transaction, J. Michael Cline formed several new entities called “Agora.”

49. As set forth below, through a series of agreements, Agora purchased a 40 percent interest in defendant Forthright. As a result of this ownership and the Services Agreement between NAF, LLC and Forthright, Agora (and the Accretive principals) profits directly from the arbitrations conducted by the Forum.

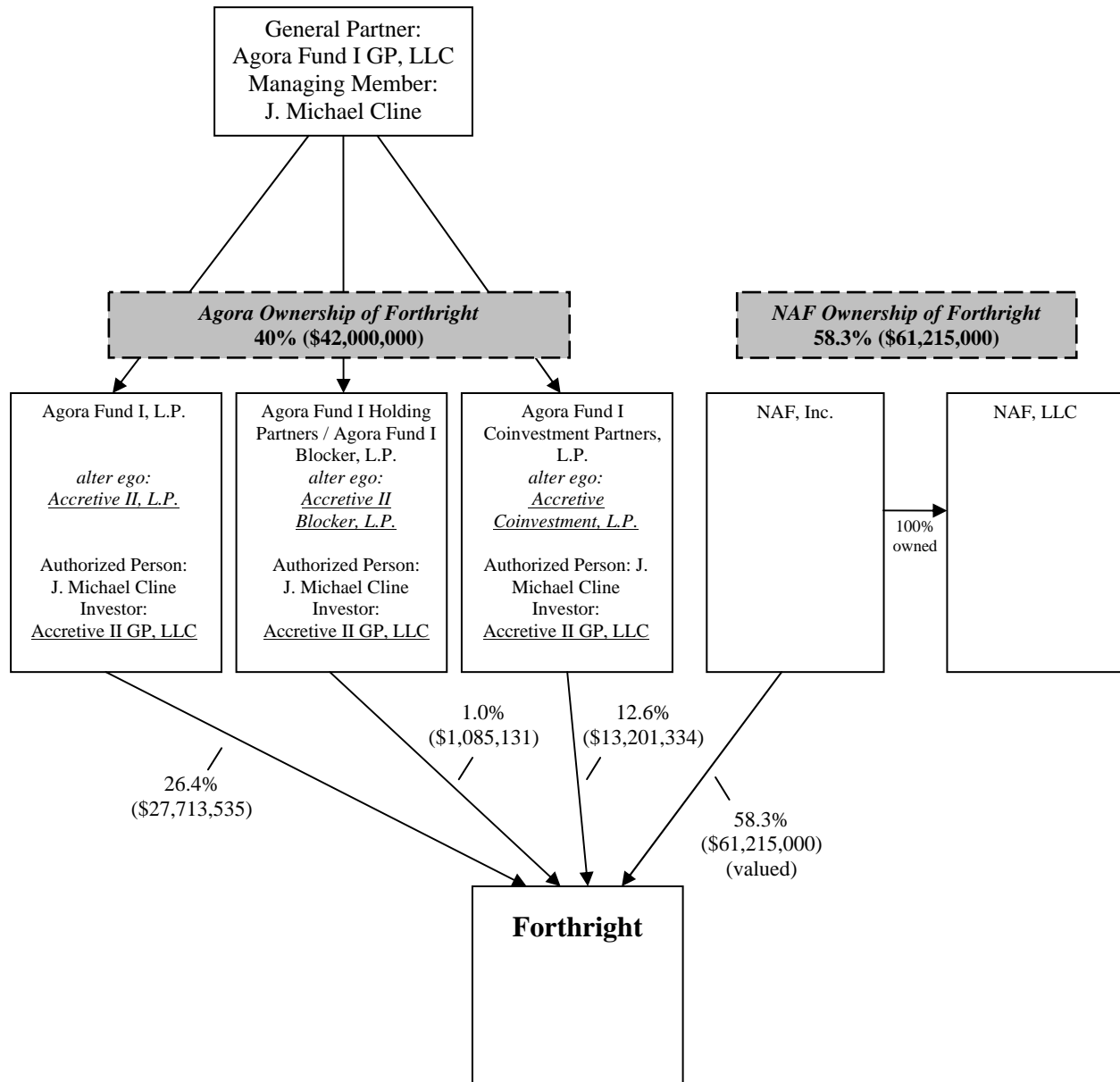
50. The first written agreement executed by the parties was a letter of intent signed on January 15, 2007 by Cline through which the yet-to-be-created “Agora Funds” was to buy a 40 percent ownership interest in the yet-to-be-created defendant Forthright. (Forthright was not created until June 2007.) A few weeks after the letter of intent was signed, Cline formed several Delaware companies bearing the Agora name. Beginning with the initial letter of intent, Agora began to dictate important terms of the Forum’s operations. For example, Agora required at paragraph B(5) of the letter of intent that defendants NAF, LLC and Forthright enter into a services agreement “upon terms satisfactory to the Company [NAF, Inc.], Newco [Forthright] and the Investor [Agora].” As set forth above, NAF, LLC and Forthright entered into the Services Agreement on June 27, 2007. Through the Services Agreement, Forthright—and hence, Agora as an owner—profits from the arbitrations conducted by the Forum.

51. As part of the due diligence for the transaction, Defendants provided Agora with detailed information about virtually every aspect of its arbitration business, including but not limited to information about mandatory arbitration clause placement trends, claim volume and

revenue trends, customer calls, revenue, finances, personnel, judgment trends, arbitrator credentials, court rulings, and the like. Thus, even during the run-up to the transaction, the Agora/Accretive principals became privy to intimate and detailed information about virtually all the “ins and outs” of the Forum’s arbitration services.

52. The transaction was consummated in June 2007. On June 27, 2007, three Agora entities entered into a Unit Purchase Agreement with NAF, Inc. and Forthright through which the Agora entities acquired 40 percent—or 400,000 Class A units—of Forthright for \$42,000,000. These purchases were made by Agora Fund I, LP (263,938 Class A units at \$27,713,535); Agora Fund I Coinvestment Partners, LP (125,727 Class A units at \$13,201,334); and Agora Fund I Holding Partners (10,335 Class A units at \$1,085,131). The following chart depicting Agora’s ownership in Forthright:

**Details of Forthright's Ownership**



53. The Unit Purchase Agreement is signed by NAF, Inc. through Edward Anderson as Chairman and CFO and by Forthright through Michael Kelly as CEO. As noted above, Kelly and Anderson have overlapping roles with both organizations. Kelly is also CEO of NAF, Inc., which owns 100 percent of NAF, LLC, and the registered agent of NAF, LLC. Anderson is Chairman and an officer and director of Forthright.

54. Cline—the head of Accretive—signed the Unit Purchase Agreement as managing member of Agora Fund I GP, LLC—the general partner of all three Agora entities: Agora Fund I, LP, Agora Fund I Coinvestment Partners, LP, Agora Fund I Holding Partners. The three Agora entities, along with the general partner, Agora Fund I GP, LLC, were all formed by Cline in the State of Delaware on February 2, 2007—two weeks after the initial letter of intent was signed. The address for Agora Fund I GP, LLC is listed as 55 East 59th Street, 22nd Floor, New York, NY 10022, which was the address for Accretive.

55. On the same day they entered into the Unit Purchase Agreement, Agora and NAF, Inc./Forthright entered into an Investors Agreement.

56. The Investors Agreement identifies the investors in each of the Agora funds. (A redacted copy of this schedule is attached as Exhibit 3; it is redacted to delete the names of third-party investors who are not currently identified as having links to the debt collection enterprise described herein.) The chart of investors lists behind each Agora entity a functional Accretive *alter ego*:

- Agora Fund I, LP = Accretive II, LP
- Agora Fund I Coinvestment Partners, LP = Accretive II Coinvestment, LP
- Agora Fund I Blocker LP = Accretive II Blocker, LP

57. Like the Agora funds, each of the Accretive entities was formed in the State of Delaware by Cline. Each listed an address at 55 East 59<sup>th</sup> Street, 22<sup>nd</sup> floor, in New York City—the address of Agora. Each has the same general partner: Accretive II GP, LLC, a Delaware LLC, also formed by Cline and of which Cline is the managing member.

58. As shown in Exhibit 3, Accretive II GP, LLC—the general partner of each Accretive *alter ego*—invests in each Agora fund. Other investors in Agora Fund I Coinvestment

Partners, LP include JMC Holdings, LP and Edgar Bronfman, Jr. Bronfman is a general partner of Accretive, LLC. The “JMC” in JMC Holdings, LP stands for “J. Michael Cline.”

59. Agora and Accretive share common office space and common principals, partners, and/or members, including but not limited to Cline, Werner, Jay Haverty, and Madhu Tadikonda, all of whom are or were affiliated with Accretive, LLC, the Delaware limited liability company formed by Cline. Cline is Accretive LLC’s managing partner, Werner is a general partner, Tadikonda is or was a principal, and Haverty is or was an associate. Tellingly—and consistent with reality—e-mails provided by the National Arbitration Forum sometimes conflate Agora and Accretive, referring to the Agora principals, partners, and/or members as the “Accretive folks.” Similarly, e-mails exchanged between Agora and the Forum about Forum business are sometimes sent to or from an Accretive e-mail address.

**D. The Accretive Principals Participate in the Operations of Forthright.**

60. Prior to the consummation of the transaction with the Forum, the Accretive principals made clear to the Forum that “[o]ur investors have entrusted us with their funds on an assumption that we maintain a high level of governance oversight over our portfolio companies.”

61. To that end, among other documents, NAF, Inc. and the three Agora entities (through Cline) executed an Amended and Restated Limited Liability Company Agreement of Forthright (the “LLC Agreement”) on June 27, 2007. Among other things, the LLC Agreement at paragraph 5.5 gives the Class A Units—(i.e., the ones held by Agora Funds)—the right to appoint two members of Forthright’s five-person governing board.

62. Also on June 27, 2007, Agora exercised this right, appointing Cline and his associate, Werner, to the Forthright board. Cline and Werner served on Forthright’s board from

June 27, 2007 to April 22, 2008. Two other Agora/Accretive principals—Tadikonda and Haverty—joined Cline and Werner in Forthright board meetings.

63. The Agora/Accretive principals have been substantially involved in Forthright’s operations. At the January 15, 2008 board meeting, for example, Tadikonda agreed to provide Forthright CEO Kelly with resumes for potential chief financial and chief operating officers. At the same meeting, it was agreed that Werner would assist Kelly in “examin[ing] and review[ing] the current sales process, and review[ing] the strategy the company is using with each account.”

64. Similarly, at the March 4, 2008 Forthright board meeting—again attended by Messrs. Cline, Werner, Tadikonda, and Haverty—the participants discussed “methods to increase the number of large batch claims being processed by arbitrators, and changes in the process that would provide filers access to working capital.” The participants also discussed “various opportunities to go after debt (issuer, debt buyer, and filer all present opportunities to steer claims into arbitration)[.]”

65. Cline and Werner departed from the board in April 2008, around the time that a reporter began to ask questions about the affiliations between Defendants, Accretive, and Axiant. The departure was one of form rather than substance. As set forth in this Complaint, Agora/Accretive is far from a passive investor in Forthright; to the contrary, it has been active in its operations.

66. Cline, Werner, and other Agora/Accretive principals continued to be involved in key activities of the Forum’s daily operations after Cline and Werner departed from the governing board. For example, in the spring of 2009 the Agora/Accretive principals developed a “Forthright—Accretive Priorities Focus.” Among other things, Accretive was to help the Forum find “new growth opportunities,” such as “expansion of arbitration services” into the service and

confirmation of arbitration filings and potential “small claims court administration for debt buyers.” (A copy of the document is attached as Exhibit 4) (*See* Compl. Exs. at 006).

67. Also this year, the Forum has informed Cline and Werner of personnel decisions, Accretive principals have helped the Forum to identify and interview a business development officer, and the Agora/Accretive principals have helped the Forum craft bids for new arbitration business.

68. In 2008, after Cline and Werner left the board, the Agora/Accretive principals also helped craft the Forum’s responses to media inquiries about its arbitration practices. This year, they helped the Forum devise “talking points” and a plan to lobby members of Congress on how to kill or weaken the proposed federal Arbitration Fairness Act, which would restrict the placement of mandatory arbitration clauses in “take-it-or-leave-it” consumer agreements—clauses from which the Forum and the Agora/Accretive principals derive substantial revenue.

69. In addition, Agora/Accretive has requested Forthright to submit to it detailed periodic reports about key aspects of its operations. Accretive has requested similar reports to be submitted by Mann Bracken about Axiant. As shown below, this relationship with Agora/Accretive ties the Forum to the debt collection industry. As a result, the Forum is not the independent and neutral arbitration company that it claims to be.

**E. The Hedge Fund Group Run by Cline, Werner, and Associates, Along with the Partners of the Mann Bracken Law Firm, Own Axiant—One of the Country’s Largest Debt Collection Enterprises.**

70. As set forth below, the Accretive funds—run by Cline, Werner, *et al.*—own the majority interest in Axiant, LLC, one of the country’s major debt collection enterprises. As further set forth below, principals of the Mann Bracken law firm own the remainder of Axiant, a Delaware LLC with headquarters in Georgia.

71. Accretive, LLC states on its website that “Axiant’s customers include many of the nation’s largest financial institutions and consumer debt purchasers.” One consultant has described Accretive’s acquisition of Axiant this way:

Legal restrictions have typically prohibited the buying and selling of law firms between parties other than attorneys. These barriers have limited M&A activity in the collections law firm segment until very recently.

In 2007, new ground was broken. A private equity fund in New York, Accretive LLC, effectively acquired the non-legal capabilities of three collection law firms: Mann Bracken, Atlanta, Georgia, Wolpoff & Abramson, Rockville, Maryland, and Eskanos & Adler, PC, Concord, California.

Today, this group of companies, now called “Axiant”, promises to become the largest and perhaps most profitable in the collection law firm industry. It boasts of blue chip customers, excellent margins, and high revenue growth rates, in addition to a wide national attorney network.

72. Mann Bracken described its relationship with Axiant in papers filed with state regulators as follows:

In November 2006, [Mann Bracken] contributed the majority of its assets and liabilities related to its telephone collections services operations, including non-attorney personnel, to Axiant, LLC, formerly known as MB Solutions, LLC, which was a newly formed and wholly owned subsidiary of [Mann Bracken].

73. The law firm that represented Mann Bracken in connection with the transaction with Axiant describes the relationship between Axiant, Accretive, LLC and Mann Bracken this way:

HortenCC represented Mann Bracken, LLC, one of the country’s largest collections law firms, in the formation of Axiant, LLC, a joint venture debt collection business owned by the Mann Bracken partners and Accretive, LLC, a New York hedge fund. The transaction required the development of a complex legal structure to comply with the regulatory requirements to which law firms and collection agencies are subject. The transaction was a first in the legal industry in that it allowed the Mann Bracken partners to monetize their ownership interests in the law firm.

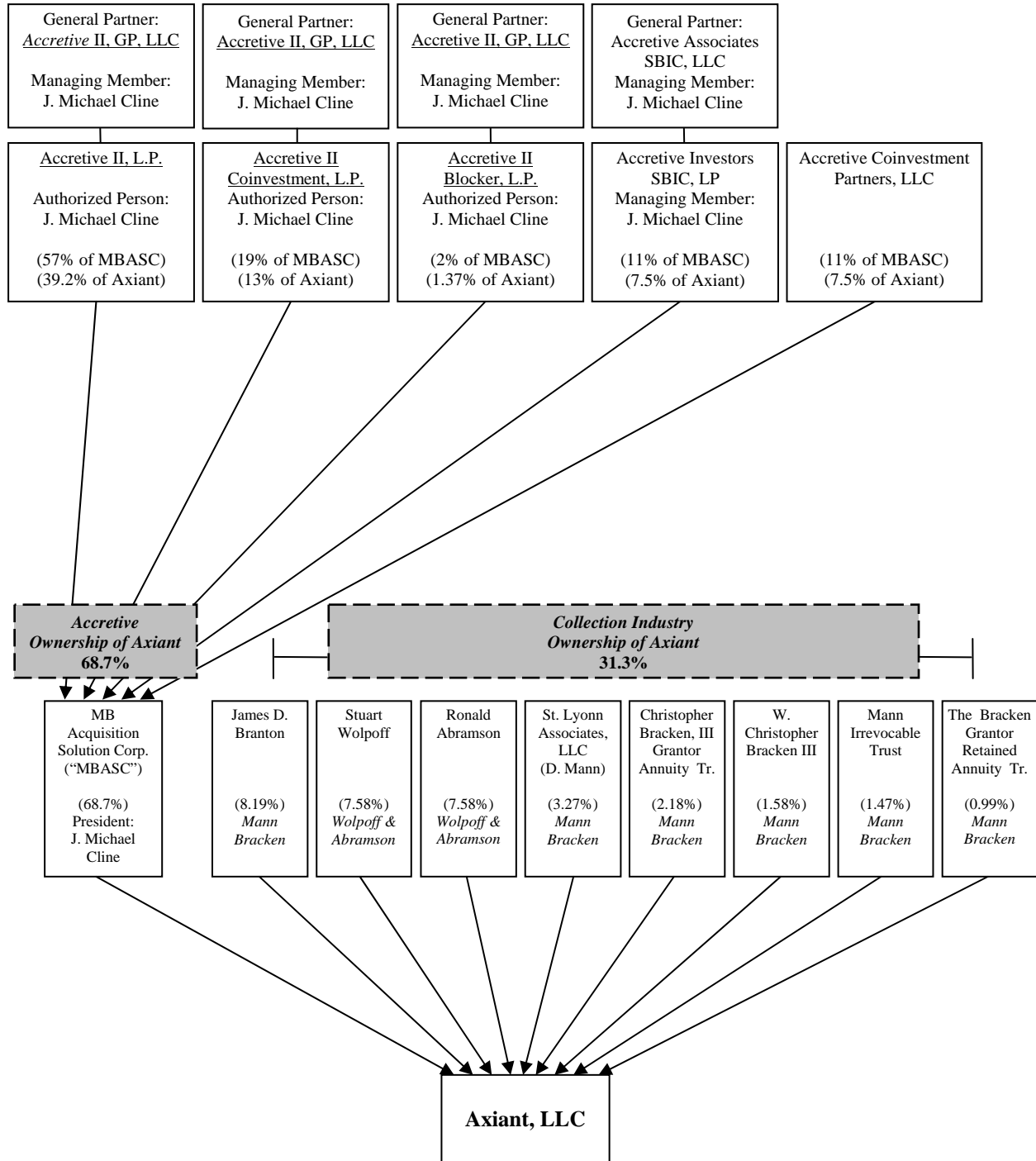
74. In filings submitted to state regulators, Axiant has stated that the Accretive group owns 68.7 percent of Axiant. The Accretive group invests in Axiant by owning and investing in a company called MB Acquisition Solution Corporation, of which Cline is President and Accretive, LLC's general counsel is Secretary. (Attached as Exhibit 5 (*See* Compl. Exs. at 007) is a chart filed by Axiant with state regulators outlining the Axiant ownership structure. It is redacted to delete Employer Identification and Social Security numbers.) Exhibit 5 lists major owners of MB Acquisition Solution Corporation—and hence, Axiant—as Accretive II, LP (the *alter ego* for Agora Fund I, LP) with 39.2 percent of Axiant; Accretive II Coinvestment, LP (the *alter ego* for Agora Fund I Coinvestment Partners, LP) with 13 percent of Axiant; and Accretive II Blocker, LP (the *alter ego* for Agora Fund I Blocker LP) with 1.37 percent of Axiant.

75. Other Accretive entities own the remainder of MB Acquisition Solution Corporation. For example, as of October, 2008, Accretive Investors SBIC, LP reported owning 7.5% of Axiant. (*See* Exhibit 5 at 007.) Accretive Investors SBIC, LP is a Small Business Investment Company—a privately owned investment fund authorized by the federal Small Business Administration (“SBA”) to issue government financing to small businesses. In fiscal year 2004 Accretive Investors SBIC, LP obtained approval from the SBA to issue \$100,500,000.00 in financing through the SBA's Small Business Investment Corporation program. In February 2009, Accretive Investors SBIC, LP sought approval from the SBA to provide additional “equity financing” to Axiant, LLC for purposes of operating capital and debt repurchase. The SBA's approval for the financing was required under federal conflict of interest regulations because Accretive is affiliated with Axiant. Through the investment, the federal government effectively distributed money to help fund the debt collection enterprise.

76. Axiant has told regulators that a variety of individuals and entities affiliated with the Mann Bracken law firm—one of the country’s largest debt collection law firms and a filer of arbitration claims in the Forum—own the remaining 31.3 percent of the company. As shown in the chart below and Exhibit 5, numerous individuals connected to Mann Bracken and its predecessor law firms have ownership stakes in Axiant, including: James D. Branton (8.19%); Stuart Wolpoff (7.58%); Ronald Abramson (7.58%); Christopher Bracken, III Grantor Annuity Trust (2.18%); and W. Christopher Bracken III (1.58%). Each of these individuals are principals, partners, and/or members of Mann Bracken or its predecessors.

77. The following chart depicts this ownership structure:

## Details of Axiant's Ownership



78. Members of Accretive's inner circle also sit on Axiant's board of directors. For example, Jeff Rodek, a senior advisor with Accretive, LLC, states on his resume that he is a

member of Axiant's board of directors. In addition, an unrelated company on whose board of directors Cline served states that Cline is or has been a director of Axiant.

79. Thus, the same Agora/Accretive principals who are involved with the Forum's arbitration business are simultaneously involved in Axiant's debt collection business.

**F. Axiant and the Mann Bracken Law Firm Work Together to Collect Debt from Consumers and File Arbitration Claims in the Forum.**

80. As noted above, Mann Bracken, LLP, a Delaware limited liability partnership with headquarters now in Maryland, was formed through a merger of three of the nation's top five collection law firms: Mann Bracken, LLC, Eskanos & Adler, PC, and Wolpoff & Abramson, LLP. In 2006 there were just over 214,000 consumer debt collection arbitration claims filed in the Forum; Mann Bracken and Wolpoff & Abramson filed over 125,000, or 58 percent, of those claims.

81. Mann Bracken has been at the forefront of promoting mandatory binding arbitration as a means of collecting debt from consumers. It claims that: "In 2001, we pioneered the use of arbitration in collection matters...." It has also stated that: "Mann Bracken is a recognized leader in national arbitration collections. The use of this alternative dispute resolution can be an effective and efficient means for a creditor or debt buyer to resolve matters whereby before the only alternative was legal."

82. Mann Bracken and Axiant work in tandem to fulfill a common purpose and joint mission. Axiant's website states that it offers "capabilities ranging from call center collections to national arbitration...through our strategic relationship with Mann Bracken, LLP...." It further states that its "strategic relationship with market-leading law firm, Mann Bracken LLP, enables Axiant to facilitate collections and recovery services to top issuers of an investors in debt products." It states that its clients are "market leading issuers of – and investors in – debt

products and portfolios” and that “Mann Bracken LLP and Axiant work in concert to serve our common clients.” Under a section of its website itemizing its services, Axiant states that: “Axiant, in cooperation with Mann Bracken, LLP, a nationwide provider of legal collections and creditor’s rights services” provides “national arbitration services through Mann Bracken, LLP.”

83. Mann Bracken’s website is substantially similar to Axiant’s. On its website, Mann Bracken states that it has a “strategic relationship” with Axiant to collect debt from consumers and that Mann Bracken is “exclusively dedicated to providing services in concert with Axiant, LLC.” Mann Bracken further indicates on its website that it is “[p]owered by Axiant” and is “able to tap into ‘onlyAxiant’ capabilities....” Further, Mann Bracken states that “Mann Bracken, LLP, in cooperating with its servicing partner, Axiant LLC, provides a broad range of financial services, legal collections and recovery management solutions for its clients,” including “[n]ational arbitration filing and management services.”

84. Mann Bracken has agreements with Axiant in which Mann Bracken receives management and professional services from Axiant and in turn provides “arbitration services” to Axiant. Mann Bracken described its agreements with Axiant in papers filed with state regulators:

Subsequent to the contribution of assets and liabilities [to Axiant], [Mann Bracken] sold a majority and controlling interest in Axiant, LLC to outside investors. As such, to continue operations [Mann Bracken] has entered into an administrative services agreement whereby [Mann Bracken] receives certain management and professional services and leases office space and equipment from Axiant, LLC. Additionally, [Mann Bracken] has entered into a legal services retainer agreement with Axiant, LLC, whereby [Mann Bracken] provides arbitration and collection litigation services to Axiant, LLC.

85. Axiant and Mann Bracken are connected in numerous other ways. For instance, Mann Bracken and Axiant post joint job openings. In current job postings, Axiant/Mann Bracken describe Axiant as “one of the nation’s premier debt collection and recovery

management organizations” and that that its capabilities range “from call center collections to national arbitration.”

**G. The National Arbitration Forum Hides Its Financial Ties to the Debt Collection Industry.**

86. Concerned about exposure of its financial ties to the Accretive, the National Arbitration Forum conceals the relationship—a relationship that is at odds with the Forum’s representations of independence, neutrality, similarity to a court, and lack of ties to parties that appear before it.

87. The Forum conceals these ties through the elaborate corporate structures described above, through its affirmative representations, and through its material omissions. As noted above, an e-mail from Forum executive Michael Kelly in November, 2006 emphasized that there should be “no public information” connecting Accretive with Agora and, hence, the Forum. Similarly, in 2008, when these ties came close to being uncovered by a reporter, the Forum discussed how to spin the press. The Director of Marketing for Forthright prepared a “key messages” document containing the following misleading talking points:

Is there any relationship between Accretive and Forthright (between Accretive and the National Arbitration Forum)?

Roger [Haydock]:

This question is more appropriately directed to Mike Kelly, CEO of Forthright.

Mike [Kelly]:

No. (Follow up question - is there any relationship between Michael Cline - or insert other name that could be associated with Accretive and us in some way - and Forthright?) Questions about Accretive should be directed to the representatives from Accretive. (I’m not thrilled with this approach - but we can discuss.)

88. The National Arbitration Forum and Agora/Accretive consulted one another on how to respond to a question from a reporter about whether Accretive has an investment stake in

Forthright. Initially, the Director of Marketing for Forthright suggested that they respond by saying that Accretive had no stake in Forthright: “Since he asks if Accretive, LLC has an investment stake in Forthright Solutions[,] I believe our answer would be that Accretive, LLC does not.” Ultimately the National Arbitration Forum gave the reporter an incomplete and misleading answer, layered in lawyer-speak:

Following its spin-out from the FORUM, interested investors acquired a non-controlling, passive, minority position in Forthright. These several investors are primarily high net-worth individuals and endowments of major academic institutions. None of these minority investors has any control over the operations of the company. Confidentiality provisions prevent us from disclosing further information about them.

89. Agora/Accretive’s investment in Forthright has never been publicly disclosed. By not disclosing these ties, Defendants have engaged in material omissions.

90. Similarly, in 2008 the Forum worked with the Chamber of Commerce and others on “independent reports” criticizing a report by Public Citizen that questioned the integrity of the Forum’s arbitration practices. The Forum described the reports as “an independent effort” even though the Forum was involved in that effort:

- “Our role will be very background and not at all featured. This is a good thing as it will be best if no administrators are associated with ... [the report] and if the Chamber (and the Arbitration Coalition of industry supporters) are front and center on this.”
- “[W]e need to be sure (although I also want to make sure [Forum executives] know[] how much work you all put into this and that it wouldn’t be possible without you) that we are clear that this was an independent effort.”

#### **IV. The National Arbitration Forum Steers Corporations to Use the Forum’s Services and Provides Assistance to Them—Even Though It Represents to Consumers and the Public that It is Neutral and Independent.**

91. Despite representing to the public that it is independent and neutral and does not “contract with, represent or counsel our users,” the National Arbitration Forum works alongside

creditors—and against the interests of consumers—to convince the creditors to include mandatory predispute arbitration clauses in their customer agreements and then file claims against consumers in the Forum. The Forum aggressively promotes its arbitration services to corporations as a collections tool, but conceals this from consumers. In some cases, the Forum assists businesses in drafting mandatory arbitration clauses, helps them in making arbitration claims, counsels them on legal trends affecting arbitration, and refers them to debt collection law firms, including Mann Bracken. With an already-dominant position in the consumer credit card arbitration market, the Forum has discussed with Accretive how to “go after” new lines of business—and pays commissions to executives who help to expand its arbitration services into new sectors of the economy, such as health care or auto financing.

**A. The National Arbitration Forum Actively Solicits Companies to Steer Arbitration Business To It.**

92. The National Arbitration Forum earns revenue when it convinces companies to place mandatory predispute arbitration agreements in their customer agreements and then to appoint the Forum to arbitrate any future disputes. The Forum actively tries to persuade corporations to include provisions in their consumer agreements that require binding arbitration of disputes in the National Arbitration Forum, thereby stripping consumers of their right to have a court resolve any disputes. The Forum employs a Vice President of Clause Placement and clause placement executives, who are partially compensated on a commission basis for convincing companies to place clauses in their customer agreements requiring arbitration of any disputes in the Forum. The Forum also employs a Vice President of Filer Business Development and business development executives, who similarly are partially compensated on a commission basis for convincing clients to file arbitration claims in the Forum. Bonuses are also paid for getting companies in new industries like health care and auto financing to file claims in the

Forum. This is part of the Forum's business plan of expanding its arbitration dominance beyond the credit card sector to other forms of consumer debt.

93. Solicitations by the Forum take many forms, including e-mail messages, PowerPoint presentations, and in-person meetings.

94. The National Arbitration Forum's solicitations to corporations often characterize the Forum's arbitration services as a collections tool:

- "[M]any credit card issuers are using arbitration as a collection tool for both pre-charge off and post-charge off debt." (E-mail to bank.)
- "The Arbitration Alternative: Using FORUM Arbitration in Collections." (PowerPoint presentation to bank.)
- "How is arbitration currently used as a part of the collections cycle?" (PowerPoint presentation to bank.)
- "How can arbitration benefit the collections?" (PowerPoint presentation to bank.)
- "Using Arbitration for Collections & Recovery - Why It's Effective." (PowerPoint presentation to retail financing company.)

95. The National Arbitration Forum's solicitations also claim that the Forum's arbitration services provide an efficient and less costly way to collect debts:

- "With filing fees starting at \$25, FORUM arbitration can be a quicker, more cost effective way to resolve collection disputes than traditional litigation." (E-mail to bank.)
- "Finally, as I'm sure you are aware, more and more of the largest card issuers are using arbitration as an efficient, cost-effective tool to resolve disputes, including collection disputes." (E-mail to bank.)
- "[Benefits of arbitration include a] marked increase in recovery rates over existing collection efforts." (PowerPoint presentation to bank.)
- "Arbitration can save up to 66% of your collection costs. Arbitration can save your money and your time collecting delinquent accounts. Sixty-six percent, according to *Corporate Cashflow*. Saving the money you've been spending on court costs, attorney fees, and discovery." (Advertisement.)

96. Moreover, the National Arbitration Forum’s solicitations emphasize the coercive power that an arbitration clause has over consumers. For example, a PowerPoint presentation to one financial services company contains a table entitled “Reactions to Arbitration As Told By Customer Service Representatives” and features the following observations about arbitration:

- “The customer does not know what to expect from Arbitration and is more willing to pay”
- “They [customers] ask you to explain what Arbitration is then basically hand you the money”
- “You have all the leverage and the customer really has little choice but to take care of this account”

97. As noted above, the Forum’s attempts to convince businesses to require that consumers forfeit their right to go to court is so persuasive that the Forum has even employed a Vice President of Clause Placement. The Forum describes “clause placement” as follows:

Clause Placement (CP) is a unique sales function that acquires new filing prospects by placing FORUM solutions [i.e., what is already productized] into contracts in strategically valuable territories from sales-driven marketing leads.

98. Further, as noted above, during Forthright board meetings, the members discussed “methods to increase the number of large batch claims being processed by arbitrators, and changes in the process that would provide filers access to working capital,” as well as “various opportunities to go after debt (issuer, debt buyer, and filer all present opportunities to steer claims into arbitration)[.]”

**B. The National Arbitration Forum Assists Corporations in Drafting Mandatory Arbitration Clauses and Claims for Arbitration.**

99. Beyond solicitations, the National Arbitration Forum sometimes assists businesses in drafting the mandatory arbitration clauses that appear in consumer agreements and that result in business being generated for the Forum. The National Arbitration Forum

distributes drafting guides to corporations interested in including mandatory arbitration clauses into their consumer agreements. These guides provide information on the National Arbitration Forum, arbitration in general, drafting tips, and sample language, among other things.

100. One such guide distributed by the National Arbitration Forum is entitled “Drafting Mediation and Arbitration Clauses - Practical Tips and Sample Language.” In this guide, the National Arbitration Forum advises corporations that mandatory arbitration clauses should be included in all consumer agreements, because consumers are unlikely to agree to arbitration once a dispute arises:

The most effective way for parties to make sure that disputes will be mediated or arbitrated, rather than litigated, is by agreeing to do so at the outset of their relationship, before disputes arise. As a number of commentators have noted, it is unlikely that parties will agree to alternative dispute resolution (ADR) after a dispute arises. At that stage, one party or the other will perceive that litigation offers some advantage, an advantage they will not choose to relinquish by agreeing to ADR....

By including a pre-dispute mediation and arbitration clause in contracts, parties can be assured that future disputes will be routed into efficient, fair, effective forums—mediation and arbitration—rather than the lawsuit system.

101. In addition, the National Arbitration Forum’s drafting guides contain sample arbitration clauses for businesses to insert in their consumer agreements. For example, one “Standard Arbitration Clause” of the Forum reads as follows:

The parties agree that any claim or dispute between them or against any agent, employee, successor, or assign of the other, whether related to this agreement or otherwise, and any claim or dispute related to this agreement or the relationship or duties contemplated under this contract, including the validity of this arbitration clause, shall be resolved by binding arbitration by the National Arbitration Forum, under the Code of Procedure then in effect. Any award of the arbitrator(s) may be entered as a judgment in any court having jurisdiction. In the event a court having jurisdiction finds any portion of this agreement unenforceable, that portion shall not be effective and the remainder of the agreement shall remain effective. Information may be obtained and claims may be filed at any office of the National Arbitration Forum, at [www.adrforum.com](http://www.adrforum.com), or by mail at P.O. Box 50191,

Minneapolis, MN 55405. This agreement shall be governed by and interpreted under the Federal Arbitration Act, 9 U.S.C. Sections 1-16.

102. This and other sample arbitration clauses are made available by the National Arbitration Forum for corporations to insert into their consumer agreements.

103. The National Arbitration Forum also distributes “Arbitration Starter Kits” to corporations. In these kits, the Forum recommends that corporations include mandatory arbitration clauses in their agreements. The kits advise businesses to “Place a simple clause—an arbitration clause—in every contract.”

104. In addition, the Starter Kits advise businesses that a mandatory arbitration clause will allow them to “take control of collections”:

The National Arbitration Forum’s uniform Code of Procedure ensures that awards are fast, affordable, predictable and fair—wherever the dispute or claim arises—using the same rules and procedures for every case, every time. Starting with a simple clause—an arbitration clause—in your contracts, you take control of collections and claims...without a lawyer...from your own office.

105. The Starter Kits also emphasize the role that mandatory arbitration clauses have on managing the risks of collections, quoting the corporate counsel for Deutsche Financial Services, who states: “We will not extend credit without an arbitration agreement. It’s the only way to control the costs and manage the risks of lending and collection.”

106. Moreover, the National Arbitration Forum offers direct assistance to corporations to draft mandatory arbitration clauses for their consumer agreements:

- “[I]f your organization is looking to revise its existing arbitration clause or is not yet using arbitration as a legal remedy, I would be more than happy to provide you with drafting tips and sample language as well as answer any questions you may have about the arbitration process.” (E-mail to bank.)
- “Has [bank] considered using arbitration as a legal remedy? If so, I would be more than happy to provide you with best practices and answer any questions you may have about the arbitration process.” (E-mail to bank.)

**C. The National Arbitration Forum Provides Other Assistance to Companies.**

107. The National Arbitration Forum sometimes offers assistance to companies in preparing arbitration claims—i.e., the equivalent of a summons and complaint in a court of law.

108. For example, in some cases, the National Arbitration Forum provides an Electronic Filer Liaison, who prepares draft claim forms for businesses or their lawyers. One such Liaison sent the following e-mail to a debt collection law firm regarding a claim for purchased Discover Card accounts:

I have attached the initial draft of the claim form you will use on your purchased [D]iscover accounts. Please review this and make any changes necessary. Once we have agreed on the form and you have given approval I will set up this profile on our end. I will be sending you initial drafts for your other accounts shortly.

109. The referenced attachment includes a draft arbitration claim and notice of arbitration regarding an alleged credit card debt to be filed in the National Arbitration Forum.

110. The National Arbitration Forum has also counseled companies on legal trends affecting arbitration. For example, in an e-mail to a bank, Forthright informs the bank that it provides periodic updates on case law and legislative issues to businesses who use the Forum:

I would appreciate receiving a copy of the arbitration clause for our records as we maintain a database of clauses in which FORUM is named. These are separated by industry and cross-referenced with case law and legislative updates that we are tracking. Should we notice a change that might impact the application of the clause, we can provide relevant information should you need to react.

111. The National Arbitration Forum also refers companies to debt collection law firms, including Mann Bracken. For example, in a PowerPoint presentation to a retailer's finance company, the Forum provides contact information for so-called "Arbitration Representatives," which includes contact information for the debt collection law firms Mann Bracken and Wolpoff & Abramson.

112. In short, the National Arbitration Forum reaches out to, and in some cases actively assists, the very corporations that may bring collection arbitrations against consumers—outreach that is at odds with the Forum’s public image of independence, neutrality, similarity to a court, and lack of ties to parties that appear before it and that is not in the best interests of ordinary consumers. Defendants’ failure to disclose these ties is also a material omission.

**COUNT I  
PREVENTION OF CONSUMER FRAUD ACT**

113. Plaintiff re-alleges all prior paragraphs of this Complaint.

114. Minn. Stat. § 325F.69, subdivision 1 (2008) provides:

The act, use, or employment by any person of any fraud, false pretense, false promise, misrepresentation, misleading statement or deceptive practice, with the intent that others rely thereon in connection with the sale of any merchandise, whether or not any person has in fact been misled, deceived, or damaged thereby, is enjoined as provided in section 325F.70.

115. The term “merchandise” within the meaning of Minn. Stat. § 325F.69 includes services. *See* Minn. Stat. § 325F.68, subd. 2 (2008).

116. Defendants’ conduct described above constitutes multiple, separate violations of Minn. Stat. § 325F.69, subd. 1. Defendants have engaged in deceptive and fraudulent practices, and have made false and misleading statements, with the intent that other rely thereon in connection with the sale of Defendants’ services. By failing to disclose and omitting material facts, Defendants have further engaged in deceptive and fraudulent practices in violation of the Consumer Fraud Act.

**COUNT II  
UNIFORM DECEPTIVE TRADE PRACTICES ACT**

117. Plaintiff re-alleges all prior paragraphs of this Complaint.

118. Minn. Stat. § 325D.44, subdivision 1 (2008) provides, in part:

A person engages in a deceptive trade practice when, in the course of business, vocation, or occupation, the person:

(5) represents that goods or services have...characteristics...benefits...that they do not have...

(7) represents that goods or services are of a particular standard, quality, or grade...if they are of another;...

(9) advertises goods or services with intent not to sell them as advertised...

(13) engages in any other conduct which similarly creates a likelihood of confusion or of misunderstanding.

119. Defendants' conduct described above constitutes multiple, separate violations of Minn. Stat. § 325D.44, subd. 1. Defendants have engaged in deceptive practices by representing that services have characteristics and benefits that they do not have; representing that services are of a particular standard, quality, or grade when they are of another; advertising services with intent not to sell them as advertised; and engaging in other conduct which similarly creates a likelihood of confusion or of misunderstanding. By failing to disclose and omitting material facts, Defendants have further engaged in deceptive and fraudulent practices in violation of the Uniform Deceptive Trade Practices Act.

**COUNT III  
FALSE STATEMENTS IN ADVERTISING ACT**

120. Plaintiff re-alleges all prior paragraphs of this Complaint.

121. Minn. Stat. § 325F.67 (2008) provides, in part, that:

Any person, firm, corporation, or association who, with intent to sell or in anywise dispose of merchandise, securities, service, or anything offered by such person, firm, corporation, or association, directly or indirectly, to the public, for sale or distribution, or with intent to increase the consumption thereof, or to induce the public in any manner to enter into any obligation relating thereto, or to acquire title thereto, or any interest therein, makes, publishes, disseminates, circulates, or places before the public, or causes, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in this state, in a newspaper or other publication, or in the form of a book, notice, handbill, poster,

bill, label, price tag, circular, pamphlet, program, or letter, or over any radio or television station, or in any other way, an advertisement of any sort regarding merchandise, securities, service, or anything so offered to the public for use, consumption, purchase, or sale, which advertisement contains any material assertion, representation, or statement of fact which is untrue, deceptive, or misleading, shall, whether or not pecuniary or other specific damage to any person occurs as a direct result thereof, be guilty of a misdemeanor, and any such act is declared to be a public nuisance and may be enjoined as such.

122. Defendants' conduct described above constitutes multiple, separate violations of Minn. Stat. § 325F.67. Defendants have placed before the public statements that are untrue, deceptive, and misleading, with intent to sell or increase the consumption of services. By failing to disclose and omitting material facts, Defendants have further made deceptive and fraudulent public statements in violation of the False Statements in Advertising Act.

### **RELIEF**

WHEREFORE, the State of Minnesota, by its Attorney General, Lori Swanson, respectfully asks this Court to award judgment against Defendants as follows:

1. Declaring that Defendants' acts described in this Complaint constitute multiple, separate violations of Minn. Stat. §§ 325F.69, subd. 1; 325D.44, subd. 1; and 325F.67;
2. Enjoining Defendants' and their employees, officers, directors, agents, successors, assignees, affiliates, merged or acquired predecessors, parent or controlling entities, subsidiaries, and all other persons acting in concert or participation with them, from engaging in deceptive practices, or making false or misleading statements, in violation of Minn. Stat. §§ 325F.69, subd. 1; 325D.44, subd. 1; and 325F.67;
3. Awarding judgment against Defendants for civil penalties pursuant to Minn. Stat. §§ 8.31, subd. 3, for each separate violation of Minn. Stat. §§ 325F.69, subd. 1; 325D.44, subd. 1; and 325F.67;

4. Awarding Plaintiff its costs, including costs of investigation and attorneys' fees, as authorized by Minn. Stat. § 8.31, subd. 3a; and

5. Granting such further relief as provided by law and/or as the Court deems appropriate and just.

Dated: July 14, 2009

Respectfully submitted,

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