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21 Attorneys for Plaintiff

22 UNITED STATES DISTRICT COURT

23 DISTRICT OF ARIZONA

24 The CIT Group/Equipment Financing,  
25 Inc.,

26 Plaintiff,

27 v.

28 Kronos, Inc., a Wisconsin corporation;  
Kronos Aktiengesellschaft, a German  
corporation; Heinz Sommer; Volker  
Kronseider; and Gregory Podlucky,

Defendants.

Case No.

**COMPLAINT**

(JURY TRIAL DEMANDED)

Plaintiff alleges:

**INTRODUCTION**

1. This lawsuit grows out of the misrepresentations, suppressions, acts and omissions that induced The CIT Group/Equipment Financing, Inc. ("CIT") to pay approximately \$145 million for bottling equipment to be leased to Le-Nature's, Inc. ("Le-Nature's"), the purchase price of which was grossly inflated. As a result of defendants' fraudulent scheme, CIT paid in excess of \$74 million more than the true cost of the equipment and

1 suffered, along with four participating financial institutions (collectively the  
2 “Participants”), losses in excess of \$120 million.

3 2. As explained more fully below, in 2005 the bottling equipment was purchased and  
4 leased to Le-Nature’s, a manufacturer of non-carbonated beverages, for use in its new  
5 production facility located in Phoenix, Arizona (the “Le-Nature’s Transaction”). The  
6 bottling equipment was sold, manufactured and installed by Krones, Inc. (“Krones U.S.”)  
7 and its German parent company Krones Aktiengesellschaft (“Krones A.G.”) (Krones U.S.  
8 and Krones A.G. are, where appropriate, referred to collectively herein as “Krones”). Le-  
9 Nature’s, Krones and the individual defendants conspired to induce CIT to make an  
10 investment through, among other things, false oral and written representations and  
11 assurances. Le-Nature’s, Gregory Podlucky, Krones, Heinz Sommer and Volker  
12 Kronseder also failed to disclose and suppressed material facts about, among other things,  
13 the true purchase price of the leased equipment and the condition of Le-Nature’s,  
14 including its current and projected operating capabilities, its sales levels, and its  
15 management. (Krones and Messrs. Podlucky, Sommer and Kronseder are referred to  
16 collectively herein as the “Defendants”).

17 3. CIT was told orally and in writing that the purchase price for all four lines of  
18 bottling equipment for Le-Nature’s’ new Phoenix facility (the “Phoenix Facility”) was in  
19 excess of \$180 million, with the corresponding purchase price for the approximately three  
20 lines purchased by CIT being \$145 million. In fact, the true total purchase price  
21 negotiated between Le-Nature’s and Krones, which price was kept secret from CIT, the  
22 Participants and others, was approximately \$90 million.

23 4. Having received funds far in excess of the actual purchase price for the bottling  
24 equipment, Krones paid all or part of the excess funds to Podlucky, who in turn used the  
25 funds for personal gain and the benefit of his co-conspirators. In addition to their  
26 misrepresentations regarding the purchase price of the bottling equipment, the Defendants  
27 took affirmative steps to keep their conspiracy with Le-Nature’s secret and to prevent CIT  
28 and the Participants from uncovering the fraudulent activity.

1           5. The affirmative acts taken by the Defendants included, among other things: (i)  
2 making numerous false and misleading statements to CIT regarding the purchase price of  
3 the bottling equipment and existence of alleged equipment deposits held by Kronos; (ii)  
4 providing fictitious documents reflecting the inflated purchase price of the bottling  
5 equipment and existence of alleged equipment deposits held by Kronos; (iii) telling CIT  
6 that funds paid to Kronos for the purchase of bottling equipment had not been improperly  
7 funneled to Le-Nature's when such funds were, in fact, paid by Kronos to Le-Nature's;  
8 (iv) confirming as accurate invoices for bottling equipment that were in fact fictitious; and  
9 (v) making false and misleading statements intended to thwart CIT's efforts to confirm  
10 that it was paying the correct purchase price and to determine if a fraud was being  
11 perpetrated upon CIT.

12           6. Kronos received substantial compensation and financial benefits as a result of its  
13 participation in the fraudulent scheme with Le-Nature's. These benefits included, among  
14 other things, the ability to sell hundreds of millions of dollars of new bottling equipment  
15 and services to Le-Nature's. This included sales related to Le-Nature's facility in Latrobe,  
16 Pennsylvania, the Phoenix Facility and a new facility that Le-Nature's attempted to  
17 construct in 2006 in the southeastern United States. The sales to Le-Nature's, which  
18 represented a significant increase in Kronos' yearly sales in the United States, further  
19 raised Kronos' profile in the bottling industry and provided Kronos with a significant  
20 competitive advantage over its peers.

21           7. In late 2006, Le-Nature's ceased making lease payments and ceased business  
22 operations after it was forced into an involuntary bankruptcy. Through the bankruptcy  
23 proceeding it was discovered that Le-Nature's had been used as a vehicle to perpetrate  
24 numerous frauds, including those involving CIT, that netted Podlucky and his co-  
25 conspirators hundreds of millions of dollars. Podlucky, other principals of Le-Nature's  
26 and their co-conspirators are under criminal investigation. To date, one co-conspirator has  
27 pled guilty to four felony counts under federal criminal law, including bank fraud, wire  
28 fraud, conspiracy to defraud, and filing of a false corporate tax return.

1 8. After the filing of the Le-Nature's bankruptcy, CIT and the Participants, following  
2 an extensive investigation, learned for the first time that they had been misled with respect  
3 to the true purchase price of the bottling equipment. Since that time, CIT's investigation  
4 has uncovered new details regarding the nature, size and scope of the fraudulent scheme,  
5 as well as the specific fraudulent acts committed by each of the Defendants. The bottling  
6 equipment has been sold at auction, netting approximately \$18 million, representing  
7 approximately 12.5% of the inflated purchase price paid by CIT.

8 **PARTIES**

9 9. Plaintiff is incorporated under the laws of the State of Delaware with its principal  
10 place of business in Livingston, New Jersey.

11 10. Kronos A.G. is incorporated under the laws of Germany and maintains its  
12 principal offices in Neutraubling, Germany. Kronos A.G. is a world leader in the  
13 manufacture of packaging and bottling line systems as well as beer brew house systems,  
14 IT solutions and warehouse logistics systems. Kronos A.G.'s marketing material states  
15 that the company has facilities strategically located around the globe, including the United  
16 States, to sell its products, including the sale of the bottling equipment installed in the  
17 Phoenix Facility.

18 11. Kronos U.S. is incorporated under the laws of the State of Wisconsin. Kronos  
19 U.S. is a wholly-owned subsidiary of Kronos A.G. and exclusively markets, sells and  
20 installs Kronos A.G. products and services in the United States. As reflected in its  
21 marketing materials, Kronos U.S. is the "United States headquarters" for Kronos A.G. and  
22 is located in Franklin, Wisconsin.

23 12. On information and belief, Volker Kronseder is a resident of Germany. He serves  
24 as the President and as a director of Kronos U.S. in the United States and is the Chairman  
25 of the Executive Board and Chief Executive Officer of Kronos A.G. On information and  
26 belief, Kronseder, individually or through family holdings, owns approximately 53% of  
27 the outstanding stock of Kronos A.G.

28 13. On information and belief, Heinz Sommer is a citizen and resident of the

1 Commonwealth of Pennsylvania. At all relevant times, he served as the President of  
2 Kronos, U.S.

3 14. On information and belief, Gregory Podlucky is a citizen and resident of the  
4 Commonwealth of Pennsylvania. At all relevant times, he served as the CEO of Le-  
5 Nature's.

### 6 JURISDICTION

7 15. This Court has jurisdiction over the subject matter of this action pursuant to 28  
8 U.S.C. §§ 1331 and 1332.

9 16. This Court has personal jurisdiction over Kronos U.S. by virtue of its being  
10 registered to do business in, and employing a dedicated sales representative for, the State  
11 of Arizona. Furthermore, upon information and belief, on a continuous basis since at least  
12 1992, Kronos U.S. has engaged in substantial and not isolated activities within the State of  
13 Arizona, including the sale and installation of equipment at Le-Nature's Phoenix Facility,  
14 and knowingly receiving money for the sale, installation or service of equipment in  
15 Arizona. Furthermore, Kronos U.S., through its employees, agents and principals, was a  
16 knowing and active participant in the fraudulent scheme to defraud financial institutions,  
17 as described more fully herein, which scheme, in part, intentionally targeted financial  
18 institutions in Arizona, including CIT and one of the Participants, National Bank of  
19 Arizona ("NBA").

20 17. This Court has personal jurisdiction over Kronos A.G. by virtue of Kronos A.G.,  
21 through its employees, agents and principals, knowingly and actively participating in the  
22 fraudulent scheme to defraud financial institutions, as described more fully herein, which  
23 scheme intentionally targeted financial institutions in Arizona, including CIT and NBA.  
24 Kronos A.G. representatives placed and accepted telephone calls with representatives of  
25 CIT, who were located in Phoenix, Arizona, for purposes of securing the purchase of  
26 bottling equipment by CIT and the Participants, and to thwart CIT's efforts to confirm that  
27 it was paying the correct purchase price and to determine if a fraud was being perpetrated  
28 in connection with the sale of the bottling equipment. Furthermore, jurisdiction over

1 Kroner A.G. is appropriate by virtue of the activities of its wholly-owned and controlled  
2 subsidiary Kroner U.S. as described herein. Upon information and belief, Kroner A.G.  
3 directs and controls the business activities of Kroner U.S. in the United States. The two  
4 Kroner entities regularly share personnel, including officers and directors. Kroner A.G.  
5 manufactures all or nearly all of the equipment and products it sells through its subsidiary,  
6 Kroner U.S., in the United States, including in Arizona. Kroner A.G. personnel were also  
7 utilized in sales consultations and installing the equipment in Phoenix Facility.

8 18. This Court has personal jurisdiction over Defendant Volker Kronseder  
9 (“Kronseder”) by virtue of his knowing and active participation in the scheme to defraud  
10 financial institutions, as described more fully herein, which scheme intentionally targeted  
11 financial institutions in Arizona, including CIT and NBA. On information and belief,  
12 Kronseder regularly travels to the United States to oversee the operations of Kroner and to  
13 assist in the marketing and selling of Kroner’s products, including attending trade shows  
14 and meeting with potential and current customers. In 2004, Kronseder met with  
15 representatives of CIT in the United States to, in part, secure CIT’s purchase of the  
16 bottling equipment to be leased to Le-Nature’s. Kronseder further placed telephone calls  
17 to representatives of CIT, who were located in Phoenix, Arizona, for purposes of securing  
18 the purchase of the Le-Nature’s bottling equipment by CIT, and to thwart CIT’s efforts to  
19 confirm that it was paying the correct purchase price and to determine if a fraud was being  
20 perpetrated in connection with the sale of the bottling equipment. Furthermore,  
21 Kronseder, at all relevant times, served as an executive and a director of Kroner U.S. and  
22 as Chairman and Chief Executive Officer of Kroner A.G. On information and belief,  
23 Kronseder was personally aware of, consented to and participated in the activities of  
24 Kroner U.S. and Kroner A.G. described herein, including paragraphs 16 and 17 above.

25 19. This Court has personal jurisdiction over Defendant Heinz Sommer (“Sommer”)  
26 by virtue of his serving, at all relevant times, as the President of Kroner U.S. Sommer  
27 directed and was aware of, consented to and participated in the activities of Kroner U.S.  
28 described herein, including paragraphs 16 and 17 above. Sommer was a knowing and

1 active participant in the scheme to defraud financial institutions, as described more fully  
2 herein, which scheme intentionally targeted financial institutions in Arizona, including  
3 CIT and NBA. Furthermore, as described herein, Sommer met with representatives of  
4 CIT in Arizona and spoke by telephone with representatives of CIT in Arizona with the  
5 intention to defraud CIT and the Participants.

6 20. This Court has personal jurisdiction over Gregory Podlucky by virtue of his  
7 serving, at all relevant times, as the CEO of Le-Nature's and using Le-Nature's as a  
8 vehicle to perpetrate a massive fraud, including the fraud committed against CIT in  
9 Arizona. Podlucky was a knowing and active participant in the scheme to defraud  
10 financial institutions in Arizona, including CIT and NBA. Furthermore, Podlucky met  
11 with representatives of CIT in Arizona in person and by telephone, and sent fraudulent  
12 information into Arizona by electronic mail and facsimile with the intention to defraud  
13 CIT and the Participants.

## 14 **FACTUAL BACKGROUND**

### 15 **A. The Le-Nature's Transaction**

16 21. Prior to its collapse, Le-Nature's developed, produced, and marketed non-  
17 carbonated alternative beverages, such as water and iced teas, under the Le\*Nature's  
18 brand name. From 1998 through 2004, Le-Nature's appeared to have experienced  
19 explosive growth, as supported by audited financial statements issued by several  
20 internationally recognized accounting firms, with sound fundamentals and established  
21 relationships with some of the nation's largest lending institutions. This growth had been  
22 described by the company as having been driven and supported by ongoing product  
23 development initiatives, continual sales and marketing efforts, and substantial investments  
24 in fixed assets. Le-Nature's' claims regarding its financial performance, which were  
25 supported by its auditors, have since been proven false.

26 22. In early 2004, purportedly in order to keep pace with growing demand, Le-  
27 Nature's represented to investors the need to open a new four-line bottling plant in the  
28 southwestern U.S.

1           23. Le-Nature's stated that growing transportation costs associated with shipping  
2 product to this region from its bottling plant in Latrobe, Pennsylvania, were reducing its  
3 ability to remain cost competitive and meet demand. To resolve these purported  
4 problems, Le-Nature's began construction of the Phoenix Facility, a \$250 million,  
5 500,000 square foot facility in Phoenix, Arizona that was to include four bottling lines  
6 capable of producing 80 million cases of product and over one billion bottles annually.

7           24. Le-Nature's sought approximately \$190 million in financing to purchase from  
8 Kronen four fully installed lines of bottling equipment for the Phoenix Facility.

9           25. On August 27, 2004, Kronen and Le-Nature's entered into a Project Management  
10 Agreement (the "PMA") pursuant to which Kronen agreed to sell to Le-Nature's and  
11 install at the Phoenix Facility the four lines of bottling equipment. The specific  
12 equipment was detailed in attachments to the PMA.

13           26. According to its audited financial statements, Le-Nature's had deposited nearly  
14 \$90 million with vendors to secure delivery of critical equipment for the Phoenix Facility.  
15 On numerous occasions from November 2004 through August 2005, Le-Nature's and  
16 Kronen represented to CIT and the Participants that approximately \$80 million of this  
17 amount was being held by Kronen as deposits for the Phoenix Facility bottling equipment.  
18 By way of example, representations regarding the purported deposits were made in  
19 writing through the documents described in Paragraphs 35, 60, 69, 70, and 71 below.

20           27. In the fourth quarter of 2004, Le-Nature's approached CIT and Marshall  
21 Investments Corp. ("Marshall"), with whom it had a prior relationship, and suggested that  
22 CIT and Marshall should collaborate to arrange financing for four bottling lines for the  
23 Phoenix Facility.

24           28. CIT and Marshall eventually determined in January 2005 that they would be able  
25 to arrange funding for the purchase of three bottling lines and certain ancillary equipment  
26 (the "Leased Equipment"). Le-Nature's authorized CIT and Marshall to secure financing  
27 for the three bottling lines and agreed to assume responsibility for funding the remaining  
28 fourth bottling line.



1           29. The financing structure for the Leased Equipment, which structure was driven by  
2 Le-Nature's, was to be a lease financing for approximately \$145 million.

3           30. In general terms, financing for the Leased Equipment was arranged as follows: (i)  
4 CIT purchased the Leased Equipment from Kronos for \$145 million; (ii) CIT then entered  
5 into an agreement whereby CIT leased the Leased Equipment to Le-Nature's for use at the  
6 Phoenix Facility (the "Le-Nature's Equipment Lease"); (iii) CIT sold to the Participants  
7 interests in the Le-Nature's Equipment Lease; and (iv) CIT served as the administrative  
8 agent responsible for administration of the Le-Nature's Equipment Lease under terms of  
9 a participation agreement with the Participants.

10          31. From November 2004 until the closing on the Le-Nature's Transaction, CIT paid  
11 approximately \$39 million in progress payment financing that was allegedly used to  
12 satisfy progress payments owed to Kronos under the PMA provided to CIT. Most of these  
13 funds were paid directly to Kronos. The progress financings were eventually folded into  
14 the Le-Nature's Transaction when it closed in April 2005.

15          32. In response to specific questions by CIT to Kronos, Kronos represented to CIT  
16 during the telephone conversation described in Paragraph 67 below, that no part of the  
17 \$39 million had been paid back to Le-Nature's by Kronos.

18          33. In connection with financing for the Leased Equipment, Le-Nature's assigned to  
19 CIT certain rights and interests in the PMA (the "PMA Assignment"). Kronos was aware  
20 of, consented to, and performed under the PMA Assignment. Kronos' performance under  
21 the PMA Assignment included, among other things, accepting payments from CIT,  
22 participating in meetings with CIT, directing invoices to CIT and transferring title of the  
23 Leased Equipment to CIT.

24          34. Pursuant to the agreement with Le-Nature's and Kronos, as reflected in the PMA  
25 and PMA Assignment, CIT was required to pay Kronos directly for the Leased Equipment  
26 and legal title for the Leased Equipment passed directly from Kronos to CIT.

27          35. Prior to executing the PMA Assignment, CIT was provided with what was  
28 represented to be a copy of the PMA executed by Kronos and Le-Nature's (the "CIT

1 PMA”). The CIT PMA identified the Leased Equipment being sold and reflected that the  
2 total contract price for manufacture and installation of all four bottling lines was  
3 approximately \$180 million, with, by extrapolation, the three lines of Leased Equipment  
4 being purchased by CIT having a purchase price of approximately \$145 million.

5 36. CIT has since learned that the CIT PMA was fraudulent and did not reflect the  
6 true purchase price of the Leased Equipment. The CIT PMA had a stated purchase price  
7 of approximately \$180 million, while the actual PMA executed by Kronos and Le-  
8 Nature’s, and kept secret from CIT and the Participants, had a stated purchase price of  
9 approximately \$90 million.

#### 10 **B. Le-Nature’s Syndication**

11 37. From January to April 2005, Marshall and CIT, sought to sell participation  
12 interests in the Le-Nature’s Equipment Lease. Their efforts included soliciting financial  
13 institutions, developing and distributing an offering memorandum, and arranging  
14 meetings between prospective participants and Le-Nature’s.

15 38. Le-Nature’s and the Defendants were aware that CIT and Marshall were engaged  
16 in a national effort to sell participation interests in the Le-Nature’s Equipment Lease. The  
17 Defendants were specifically aware that these efforts were being directed to NBA in  
18 Arizona.

19 39. During the financing process, representatives from Kronos U.S. and Kronos A.G.,  
20 as well as Messrs. Sommer and Kronseder, personally met with representatives of CIT in  
21 the United States to facilitate CIT’s purchase and financing of the Leased Equipment.  
22 One such meeting occurred in late 2004 at a dinner in Chicago hosted by Kronos to honor  
23 Podlucky and Le-Nature’s. During the dinner, which included several senior executives  
24 of CIT, Le-Nature’s and Kronos, CIT’s efforts to finance the purchase of the Leased  
25 Equipment through selling participation interests to financial institutions were discussed  
26 and/or made known to Kronos.

27 40. By the conclusion of the financing effort in April 2005, eleven financial  
28 institutions were interested in purchasing either participation interests, or sub-participation

1 interests from a Participant, ranging from \$500,000 to \$50 million. On April 15, 2005,  
2 Le-Nature's, Marshall, CIT and the Participants executed a series of agreements necessary  
3 to formalize the Le-Nature's Equipment Lease and the Le-Nature's Transaction (the  
4 "Closing Documents").

5 41. As reflected in the Closing Documents, CIT was a co-arranger of the Le-Nature's  
6 Transaction and the Administrative Agent. As Administrative Agent, CIT was  
7 responsible for administration of the lease documents and agreed to bill and collect all  
8 amounts due, remit to the Participants their pro-rata shares of all collections, hold the  
9 collateral for the loan and title to the Leased Equipment, ensure the equipment was  
10 properly insured, perform periodic inspections, and, if necessary in an event of default,  
11 liquidate the Leased Equipment.

12 42. In the four months following the April 15, 2005 closing, CIT paid to Kronos by  
13 wire transfer approximately \$100 million, representing the balance of the cost of  
14 purchasing and installing the Leased Equipment.

15 43. By August 2005, all of the Leased Equipment had been delivered and installed by  
16 Kronos at the Phoenix Facility. Under the Closing Documents, this event triggered Le-  
17 Nature's' obligation to commence making lease payments on the Leased Equipment.

18 44. From August 2005 through approximately October 2006, Le-Nature's paid CIT  
19 its monthly lease payments by checks mailed using the United States Postal Service.

20 45. From August 2005 through October 2006, CIT distributed to Participants their  
21 pro rata share of the Le-Nature's lease payments it received.

22 46. From August 2005 through approximately October 2006, CIT also received from  
23 Le-Nature's via electronic mail, the documentation required by the reporting covenants  
24 contained in the Closing Documents. This included, among other things, the production  
25 to CIT of Le-Nature's' quarterly financial statements.

### 26 **C. Tip Investigation**

27 47. On or about March 16, 2005, prior to the closing of the Le-Nature's Transaction,  
28 CIT received a call from an individual who stated that CIT may have received false

1 information regarding the purchase price of the Leased Equipment. Following Le-  
2 Nature's' collapse, CIT learned that the caller had an affiliation with Kronos that enabled  
3 him to obtain extensive knowledge regarding Kronos' internal operations and the Le-  
4 Nature's Transaction. Specifically, the caller had access to Kronos' internal documents  
5 and information regarding the Le-Nature's Transaction, including pricing, deposits or lack  
6 thereof, and the amount and type of equipment being sold.

7 48. As a result of having access to this information, the caller believed that Le-  
8 Nature's was perpetrating a fraud by inflating the purchase price of the equipment, a  
9 belief the caller brought to the attention of Kronos. When his concerns were ignored by  
10 Kronos, the caller contacted CIT.

11 49. The caller suggested to CIT that the true cost of the bottling equipment for all  
12 four lines was approximately \$90 million, about one-half of the \$180 million represented  
13 by Le-Nature's and Kronos. When asked for facts supporting his allegations, the caller  
14 faxed to CIT a two-page spreadsheet that identified the Kronos' equipment for one  
15 bottling line (the "Tip Spreadsheet"). For each piece of equipment, the spreadsheet  
16 identified the configured list price, discounts and selling price to Le-Nature's.

17 50. CIT compared the information on the Tip Spreadsheet with equipment pricing  
18 information given to CIT by Le-Nature's and Kronos. This analysis indicated that the  
19 amount CIT was being asked to pay for the Leased Equipment was significantly higher  
20 than the amount reflected on the Tip Spreadsheet.

21 51. Based on its preliminary analysis, CIT was concerned that Le-Nature's was  
22 attempting to over-finance the Leased Equipment by providing false information to CIT  
23 and the Participants regarding the true purchase price that had been negotiated with  
24 Kronos. Over the course of the next several weeks, CIT attempted to determine the  
25 validity of the caller's accusations.

26 52. On or about March 17, 2005, Tom Magrath from CIT called Sommer, then  
27 President at Kronos U.S., to investigate the caller's allegations. Magrath told Sommer  
28 that CIT was performing an interim funding audit and needed his help reconciling the

1 purchase price for the Leased Equipment. After the call, Magrath faxed a copy of a  
2 funding request for \$25 million for the Leased Equipment to Sommer and solicited his  
3 comments. Sommer did not dispute the accuracy of the initial funding request and  
4 concealed the true cost of the equipment, causing CIT to believe that the amount being  
5 charged for the Leased Equipment was accurate.

6 53. On or about March 18, 2005, several CIT employees, at the direction of Magrath,  
7 held an unscheduled meeting at CIT's Tempe, Arizona office with Messrs. Podlucky and  
8 Sommer who were in Arizona touring the Phoenix Facility. The meeting began with  
9 Podlucky being told that CIT needed to meet with him privately to discuss matters related  
10 to the financing for the Leased Equipment.

11 54. Podlucky was escorted to a conference room where he met with Magrath. When  
12 directly confronted about possible double financing of the Leased Equipment, Podlucky  
13 stated that CIT was not paying more than the true cost of the installed equipment.  
14 Podlucky further stated that he would pull together the appropriate people at Le-Nature's  
15 and Krones in order to compile for CIT an itemized list of the installed cost of the Le-  
16 Nature's Equipment. Podlucky stated that he would have the detailed list to CIT by  
17 Tuesday, March 22, 2005.

18 55. While Podlucky was in the meeting described in paragraph 54, other  
19 representatives of CIT escorted Sommer to a separate conference room to discuss the  
20 purchase price of the Leased Equipment. Sommer was presented with a \$13.8 million  
21 invoice/statement from Krones (on Krones letterhead). Sommer stated that he was  
22 familiar with the invoice, but that if CIT wanted more detail about it, they would need to  
23 ask his assistant at Krones.

24 56. CIT discussed with Sommer the total contract price for the Leased Equipment.  
25 Relying on the Tip Spreadsheet, CIT asked Sommer if a \$90 million purchase price for the  
26 bottling equipment was accurate. Sommer stated that \$90M was not the total cost of the  
27 project because, among other things, the Le-Nature's plant was a turn-key contract and the  
28 PMA included "soft costs" such as engineering, design, and installation.

1           57. Prior to the conclusion of the meeting, Sommer was shown the Tip Spreadsheet  
2 and was asked to explain why the pricing was different from the prices provided to CIT.  
3 Sommer stated that the equipment configuration reflected by the Tip Spreadsheet was for  
4 a different and smaller bottling plant that Le-Nature's had considered building in Las  
5 Vegas. Sommer explained that the contemplated Las Vegas plant would have used  
6 smaller models of the same equipment and was to be configured differently from the  
7 Phoenix Facility. Sommer also stated that the information on the Tip Spreadsheet had no  
8 relation to the purchase price for the Leased Equipment that was being financed for the  
9 Phoenix Facility.

10           58. Following the meeting in CIT's Tempe office, Podlucky emailed CIT stating that  
11 he was "very perplexed at the recent meeting" because CIT's questions evidenced a  
12 fundamental misunderstanding regarding the turn-key nature of the Phoenix Facility.  
13 According to Podlucky, the confusion was based on CIT being "unaware of the all-in  
14 costs included in the equipment schedules as well as the progress payment percentages.  
15 This is a turnkey purchase not a straight purchase of a single line to be installed in an  
16 existing operation. In addition, I deal with the Germans directly and not with Milwaukee  
17 personnel." Podlucky suggested a conference call on the following Monday (March 21)  
18 to resolve the misunderstanding.

19           59. In the evening of March 21, Podlucky emailed CIT and stated that a full  
20 reconciliation of all costs associated with each piece of equipment was being prepared and  
21 would include all change orders to date. Podlucky also stated to Magrath that Le-Nature's  
22 was not receiving a discount from Krones on the purchase price for the bottling  
23 equipment.

24           60. On or about March 22, 2005, Podlucky faxed to Magrath a specification sheet  
25 identifying each piece of Leased Equipment for production line 1, which showed a total  
26 cost of approximately \$46.1 Million. The last page of the specification sheet was signed  
27 by representatives of Le-Nature's, and on behalf of Krones by Sommer and Pat Carroll, a  
28 Krones employee.

1           61. After sending the fax identified in paragraph 60, Podlucky and Magrath  
2 participated in a telephone discussion. During the call, Podlucky stated that Sommer and  
3 another representative of Kronos were in his office assisting in the development of the  
4 specification sheets.

5           62. On or about March 23, 2005, Podlucky had a telephone conversation with  
6 Magrath in which he stated that the specification sheets for all four production lines were  
7 being prepared by two Le-Nature's and two Kronos people, including Podlucky and  
8 Sommer. Podlucky also stated that this was the first time a line item breakdown had been  
9 created by the two companies. Podlucky noted that the two companies had not previously  
10 created a line item breakdown because they had been looking at the purchase and  
11 installation of the Leased Equipment as a total project.

12           63. On or about March 24, Magrath telephoned Podlucky, faxed to him a copy of the  
13 Tip Spreadsheet and asked him to provide an explanation for the document. Within a few  
14 minutes, Podlucky called Magrath to deny having prior knowledge of the Tip Spreadsheet,  
15 and to note that the sheet must be referring to the previously proposed Las Vegas facility.  
16 Podlucky also stated that the pricing reflected on the Tip Spreadsheet bore no relation to  
17 the Leased Equipment for the Phoenix Facility because of the difference in size and  
18 configuration of the two facilities. Podlucky's explanation for the Tip Spreadsheet was  
19 nearly identical to the explanation provided by Sommer on March 18, 2005.

20           64. On or about March 24, 2005, Roy Keller, then President of CIT, was in Arizona  
21 and spoke by telephone with Kronseder who was in his office at Kronos A.G. in Germany.  
22 The purpose of the call was to further investigate possible wrongdoing by Le-Nature's and  
23 to confirm the purchase price for the Leased Equipment. Kronseder told Keller that a  
24 confidentiality agreement between Kronos and Le-Nature's prevented him from  
25 responding in detail to CIT's questions.

26           65. During the March 24 call, Kronseder did confirm to Keller that Kronos, A.G. had  
27 already shipped over \$100 Million of equipment to the United States for installation at the  
28 Phoenix Facility. Kronseder further stated that the \$100 million figure represented the

1 price Kronos A.G. was charging Kronos U.S. for the Leased Equipment, and that CIT  
2 would need to speak with Sommer to confirm the purchase price being charged to Le-  
3 Nature's or CIT.

4 66. As a result of the conversation with Kronseder, CIT was led to believe that the  
5 \$100 million figure cited by Kronseder did not include the mark-up that was to be charged  
6 by Kronos U.S. or reflect the substantial soft costs associated with the design and  
7 installation of the Leased Equipment at the Phoenix Facility.

8 67. Shortly after the telephone conversation with Kronseder, on March 24, 2005,  
9 Keller called Sommer. During the conversation, Sommer confirmed that: (i) the total  
10 purchase price for the Leased Equipment was approximately \$185 million; (ii) the  
11 purchase price for the Leased Equipment to be paid by CIT included a mark-up over the  
12 amount Kronos, A.G. charged Kronos U.S.; (iii) he had been in Podlucky's office during  
13 the March 22 telephone call; (iv) he had helped compile the information reflected on the  
14 specification sheet and had signed the specification sheet provided to CIT; (v) Podlucky's  
15 earlier statement that this was the first time such specification sheets were prepared was  
16 accurate; (vi) Kronos had received an \$11.5 million down payment from Le-Nature's; and  
17 (vii) Kronos had not paid any funds received for the Leased Equipment back to Le-  
18 Nature's.

19 68. Despite asking Kronos directly whether funds were remitted over to Le-Nature's  
20 and being told no, CIT has since learned that Kronos had in fact repaid to Le-Nature's  
21 approximately \$5 million of the \$11.5 million down payment.

22 69. On or about March 28, 2005, Podlucky faxed to CIT specification sheets for all  
23 four bottling lines. The specifications identified each piece of Leased Equipment by  
24 production line and indicated the corresponding purchase price being charged by Kronos.  
25 The specification sheets were signed by Podlucky and on information and belief by  
26 Rainulf Diepold, the Chief Financial Officer for Kronos A.G. The purchase prices  
27 reflected on the specification sheets were consistent with the purchase price reflected in  
28 the CIT PMA.



1           70. Also on March 28, CIT received a letter addressed from Sommer to Keller,  
2 referring to the Tip Spreadsheet that had been sent to Sommer on March 24, 2005. In his  
3 letter, Sommer states that, “[a]fter reviewing the SAP Quote # and layout #, we have come  
4 to the conclusion that this calculation was generated for a different bottling project.” This  
5 explanation was consistent with the prior statements of Sommer and Podlucky that a  
6 purchase price for the Leased Equipment of approximately \$90 million was for the  
7 previously proposed Las Vegas facility.

8           71. On March 29, 2005, Magrath spoke to Rainulf Diepold who verified the accuracy  
9 of Kronen invoice No. 339374, which reflected a demand for payment of \$13.9 Million  
10 and was signed by Diepold. Magrath further confirmed the accuracy of the Line 1  
11 specification sheet that was signed by Diepold and had been forwarded to CIT by  
12 Podlucky.

13           72. As a result of its investigation, as well as the statements and documentation  
14 provided by Le-Nature’s and Kronen, CIT concluded that the caller’s allegations were  
15 unfounded. Thereafter, CIT and the Participants proceeded with the Le-Nature’s  
16 transaction.

17           73. CIT has since learned that many of the statements, documentation and  
18 representations provided by the Defendants identified above were knowingly false.

19           **D. Excess Funds**

20           74. From April 15 through August 5, 2005, CIT periodically received draw request  
21 certificates requesting that CIT make required installment payments to Kronen for the  
22 Leased Equipment. The draw requests were signed by Podlucky and served to verify that  
23 the Leased Equipment had been shipped to and installed at the Phoenix Facility by  
24 Kronen, and accepted by Le-Nature’s. Collectively, for this time period, the draw requests  
25 totaled approximately \$100 million (the “Purchase Price Fundings”).

26           75. Podlucky had represented to CIT that Le-Nature’s had placed with Kronen  
27 deposits equal to the total dollar value of the first two installment payments, out of a total  
28 of five, for each of the bottling lines.

1 76. On or about April 10, 2005, Podlucky proposed that CIT pay directly to Le-  
2 Nature's the first two installment payments for each bottling line and to have Krones draw  
3 down on the alleged deposits to satisfy the amounts owed under the CIT PMA. Podlucky  
4 supported this request by arguing that if CIT made the installment payments directly to  
5 Krones, these payments, when combined with the alleged deposits, would result in Krones  
6 receiving funds in excess of the amounts required under the CIT PMA (the "Excess  
7 Funds").

8 77. CIT refused Podlucky's request and instead insisted that all monies for the  
9 Leased Equipment be paid directly to Krones.

10 78. On or about April 29, 2005, CIT received a document that had been executed by  
11 Podlucky and Sommer. The agreement stated that certain Purchase Price Fundings would  
12 include amounts owed Krones as well as Excess Funds (the "Excess Funds Agreement").  
13 The Excess Funds Agreement provided that CIT would indicate for each subsequent  
14 payment under the PMA that portion of the payment that constituted Excess Funds (i.e.  
15 amounts related to the alleged deposits) and that such amount could be remitted by Krones  
16 to Le-Nature's.

17 79. Consistent with the Excess Funds Agreement, for each subsequent payment made  
18 by CIT to Krones, the wire transfer was accompanied by a letter identifying the  
19 installment for which the payment was made and the amount designated as Excess Funds.  
20 Krones in turn remitted the Excess Funds back to Le-Nature's. The total amount of the  
21 Excess Funds paid by CIT to Krones, and then paid by Krones to Le-Nature's, purportedly  
22 as a return of deposits, approximated \$60 million.

23 80. In fact, the Excess Funds represented in part the amounts by which CIT was  
24 overcharged for the Leased Equipment and did not result from purported deposits made  
25 by Le-Nature's. It was later learned that the overcharging was an integral part of the  
26 scheme to defraud perpetrated by Podlucky and his co-conspirators, including Krones.

### 27 **E. Krones' Knowledge**

28 81. Throughout the course of the Le-Nature's Transaction and the tip investigation,

1 CIT labored under the perception that Kronos was a company with integrity whose  
2 interest in ferreting out a possible fraud by Le-Nature's was equal to that of CIT.

3 82. CIT has since learned that Kronos was aware of Le-Nature's fraudulent activities  
4 as early as 2004 and conspired with Le-Nature's through 2006 to further their joint  
5 fraudulent enterprise. In addition to the facts stated above, CIT has learned that:

- 6 (a) In November 2004, Kronseder was attending an industry trade show in  
7 Chicago when he was told by the caller identified in paragraph 47 that Le-  
8 Nature's was seeking to double finance the Leased Equipment. Specifically,  
9 he was told that Le-Nature's was representing to the financial markets, which  
10 included CIT and the Participants, that Kronos was charging \$180 million for  
11 the Leased Equipment, when in fact Kronos was charging only \$90 million.  
12 Kronseder was further told that Le-Nature's was informing the investment  
13 community, including CIT, that Kronos held approximately \$80 million in  
14 deposits for the Leased Equipment, when in fact Kronos held no deposits.
- 15 (b) After being informed of the fraud at the industry trade show, Kronseder met  
16 with Sommer to discuss the allegations. Following this meeting, the two  
17 continued, as evidenced in part by the preceding paragraphs, to vouch for the  
18 accuracy of the Le-Nature's transaction and to further advance the fraudulent  
19 scheme.
- 20 (c) During the industry trade show referenced in paragraph 82 (a) and (b),  
21 Kronos hosted the dinner honoring Podlucky and Le-Nature's that is  
22 described in paragraph 39. Prior to the dinner, Kronseder and Sommer, on  
23 information and belief, at the request of Podlucky, informed all Kronos  
24 employees in attendance that they could not discuss with the CIT  
25 representatives the specific financial terms of the arrangement between  
26 Kronos and Le-Nature's for the sale of the Leased Equipment. The Kronos  
27 employees abided by this directive, which was given in furtherance of the  
28 fraudulent scheme and to prevent CIT from discovering the fraudulent  
scheme.
- (d) Prior to and during the course of the Le-Nature's efforts to finance the  
bottling equipment for the Phoenix Facility, senior members of Kronos U.S.  
and Kronos A.G., including a controller, head of sales and a senior technician,  
were told on numerous occasions by the caller identified in paragraph 47, that  
Le-Nature's was seeking to perpetrate a fraud by double financing the Leased  
Equipment. The information provided to these individuals was consistent  
with the statements made to Kronseder described in paragraph 82 (a).
- (e) In or about June 2004, Kronos was provided with documentation via e-mail,  
by the caller identified in paragraph 47, indicating that Le-Nature's was  
representing to the financial markets, including CIT, that Kronos was  
charging approximately \$180 million for all four bottling lines, when in fact  
the true charges were approximately \$90 million. The e-mail message  
contained two attachments, an internal Kronos document reflecting a  
purchase price of \$11 million for certain specified bottling equipment and a  
second document, purportedly from Kronos, showing essentially the same  
bottling equipment at approximately double the purchase price.

- 1 (f) In or about October 2004, Krones was again provided with the documents  
2 described in Paragraph 82(e) by the caller identified in paragraph 47, along  
3 with an e-mail warning Krones that Le-Nature's appeared to be perpetrating a  
4 "scam" by providing to the financial markets, including CIT, documents  
5 indicating that Krones was charging approximately \$180 million for the  
6 Leased Equipment, when it in fact was not.
- 7 (g) In furtherance of the conspiracy, and in part in response to the events  
8 described in Paragraphs 82 (a)-(f), Sommer and Krones required all Krones  
9 employees having knowledge of the equipment sale to Le-Nature's to execute  
10 a confidentiality agreement precluding them from discussing the terms of the  
11 company's relationship with Le-Nature's.
- 12 (h) On information and belief, at least one individual who was asked to execute  
13 the confidentiality agreement informed Krones' primary outside legal counsel  
14 that they could not execute the confidentiality agreement without noting on  
15 the document their knowledge regarding the fraud by Le-Nature's in  
16 connection with the Leased Equipment. The counsel serves as a member of  
17 the Board of Directors for Krones U.S. and as the company's Secretary. On  
18 information and belief, the counsel conveyed the allegations of fraud to  
19 Sommer and others at Krones.
- 20 (i) Beginning in 2004 and continuing through at least August 2005, Krones was  
21 funneling back to Le-Nature's millions of dollars in funds that had been paid  
22 to Krones by various financial institutions, including CIT, in connection with  
23 equipment purchases for Le-Nature's. The financial institutions, including  
24 CIT, were not always told of the payments back to Le-Nature's, and on at  
25 least one occasion involving CIT, were lied to regarding those payments.
- 26 (j) On information and belief, in the Spring of 2005, the controller for Krones  
27 U.S. informed Sommer that he was uncomfortable with the Le-Nature's  
28 Transaction and that he would no longer "sign-off on" or approve any aspects  
of the Le-Nature's Transaction. The controller's action was motivated by,  
among other things, the payments described in paragraph 82(i), the  
information described in Paragraph 82(e) and concerns expressed by his  
subordinates inside Krones.

83. In 2006, representatives from Krones were working with Le-Nature's to  
dismantle one of the three installed bottling lines in the Phoenix Facility that had been  
financed by CIT. When questioned regarding this activity by a maintenance supervisor  
employed by Le-Nature's, the representative from Krones stated that the bottling line was  
being transported, at the direction of Podlucky, to a new facility Le-Nature's had  
constructed in the southeastern United States.

84. Krones knew that the line being dismantled had been financed by CIT and was in  
fact owned by CIT, on behalf of itself and the Participants. Krones further knew the  
equipment was subject to CIT's valid UCC filings. Krones did not inform CIT of its

1 activities or seek permission to remove the equipment from the Phoenix Facility. On  
2 information and belief, Kroner took affirmative steps to conceal its activities and Le-  
3 Nature's anticipated sale of the equipment to a third party.

4 85. At that time, Kroner knew its statements regarding the equipment were false, as  
5 Le-Nature's had not acquired or constructed a facility in the southeastern United States.  
6 On information and belief, Kroner was aware that, at that time, Le-Nature's was only in  
7 the preliminary stages of planning for a southeastern facility and that Le-Nature's was in  
8 discussions with CIT regarding the financing of a second lease transaction involving the  
9 purchase of approximately \$180 million of new Kroner's equipment.

10 86. On information and belief, throughout 2006 Kroner was conspiring with Le-  
11 Nature's to continue their fraudulent enterprise by repeating in the southeastern United  
12 States their success of over-financing the Leased Equipment. Had Le-Nature's not been  
13 forced into bankruptcy, Le-Nature's and Kroner would likely have succeeded in this  
14 fraudulent endeavor.

15 87. In response to numerous inquiries from CIT concerning suspicions of over-  
16 financing by Le-Nature's and the accuracy of the Leased Equipment purchase price, the  
17 Defendants failed to provide CIT with information regarding the true purchase price of the  
18 Leased Equipment or the repayment of monies back to Le-Nature's. Instead, the  
19 Defendants provided CIT with false and misleading information in an attempt to cover-up  
20 the fraudulent scheme.

21 88. Each of the aforementioned misrepresentations were made by Kroner through its  
22 agents and/or employees (including, but not limited to those by Kroneder), who were  
23 acting within the line and scope of their employment and with the intent to benefit such  
24 employer or principal.

#### 25 **F. Le-Nature's Collapse**

26 89. On November 1, 2006, a group of Le-Nature's unsecured creditors forced the  
27 company into an involuntary bankruptcy following the public revelation that Le-Nature's  
28 had committed a massive fraud by grossly inflating its sales to be over \$275 million

1 annually when, in reality, they were as little as \$32 million. The massive revenue  
2 misinformation, which was accompanied by overstated and false profit reports, had gone  
3 on for years; Le-Nature's had long been reporting sales numbers that had no relation  
4 whatsoever to actual results.

5 90. Following the bankruptcy and Le-Nature's default under the Le-Nature's  
6 Equipment Lease, CIT took possession of and sold the Leased Equipment.

7 91. During the course of CIT's efforts to identify the Leased Equipment and prepare  
8 for its sale, CIT uncovered certain documents located at the Phoenix Facility that suggest  
9 the purchase price for the Leased Equipment charged by Kronos was grossly overstated.  
10 These documents indicated that instead of the entire project cost being approximately  
11 \$180 million as had been represented to CIT and the Participants by the Defendants and  
12 Le-Nature's, the true contract price, after change orders, was only about \$99 million.

### 13 COUNT I

#### 14 **Civil Conspiracy**

15 92. CIT adopts and incorporates the allegations set forth in the preceding paragraphs  
16 of this Complaint as if fully set forth herein.

17 93. As early as 2004, the Defendants had entered into an agreement with Le-Nature's  
18 for the unlawful purpose of engaging in the fraud, civil RICO, negligent  
19 misrepresentations and fraudulent suppressions described herein. Among other things, the  
20 object of the conspiracy was to defraud financial institutions by engaging in the actions  
21 described in the preceding paragraphs so as to allow the Defendants to: (i) secure  
22 financing for the Leased Equipment for amounts far in excess of the Leased Equipment's  
23 true purchase price; (ii) induce financial institutions to purchase equipment from Kronos  
24 for prices far in excess of the equipment's true purchase price; (iii) divert funds to Le-  
25 Nature's that were paid to Kronos by financial institutions, with the knowledge and  
26 cooperation of Kronos; and (iv) maintain the fraudulent enterprise by using the diverted  
27 and improperly obtained funds to mask Le-Nature's' true financial condition and enrich  
28 the conspirators.



1 of this Complaint as if fully set forth herein.

2 99. CIT is a “person” within the meaning of 18 U.S.C. § 1961(3).

3 100. Defendants are “persons” within the meaning of 18 U.S.C. § 1961(3).

4 101. Defendants Kronos, Inc., Kronos Aktiengesellschaft, Heinz Sommer and Volker  
5 Kronseder and their employees, together with Le-Nature's and Gregory Podlucky are a  
6 group of corporations and individuals associated in fact so as to form an “enterprise” for  
7 the purpose of defrauding various victims and for other illicit purposes (hereinafter “the  
8 Association”) within the meaning of 18 U.S.C. § 1961(4).

9 102. Defendants were associated with the Association, and participated, directly or  
10 indirectly, in the conduct of the affairs of the Association through a pattern of racketeering  
11 activity as described herein, in violation of 18 U.S.C. § 1962 (c).

12 103. Defendants conducted and participated in the affairs of the Association in order  
13 to engage in a pattern of racketeering with three illegal aims:

14 (a) to fraudulently obtain money by committing various frauds;

15 (b) to defraud CIT, the Participants and others and, in turn, unlawfully enrich  
16 themselves; and

17 (c) to corruptly conceal the racketeering activity from CIT and the Participants  
18 and law enforcement authorities by filing false documents.

19 104. The pattern of racketeering activity engaged in by Defendants consisted of  
20 numerous violations of the federal mail and wire fraud statutes, 18 U.S.C. §§ 1341 and  
21 1343, and tampering with and intimidating witnesses in violation of 18 U.S.C. § 1512(b)  
22 and (c), as outlined herein.

23 105. The pattern of racketeering activity engaged in by Defendants began in or about  
24 2004 and continued to in or about October 2006. All of the predicate acts of racketeering  
25 activity outlined herein are related to the same or similar purposes, results and  
26 participants, and have the same goals, namely the enrichment of the Defendants at the  
27 expense of CIT, the Participants and others, and have the same methods of commission  
28 and are otherwise inter-related by distinguishing characteristics, and are not isolated  
incidents.



**THE RICO PATTERN**

1  
2       106. Between in or about 2004 throughout in or about 2006, Defendants and others  
3 engaged in a scheme and artifice to defraud CIT and others by making false and  
4 fraudulent representations. It was the plan and purpose of the scheme to, among other  
5 things: personally enrich the Defendants and provide substantial compensation to Krones  
6 by, among other things, the sale of equipment and financing of equipment for Le-Nature's.  
7 The scheme involved financial institutions, such as CIT and the Participants, purchasing  
8 hundreds of millions of dollars worth of bottling equipment from Krones, which  
9 equipment was in turn leased to Le-Nature's in exchange for monthly rent payments.

10       107. Unbeknownst to their victims, Le-Nature's and the Defendants provided false  
11 and misleading information regarding the purchase price of the bottling equipment. With  
12 regard to the Phoenix Facility and proposed southeast facility, CIT and the Participants,  
13 and other financial institutions, were told orally and in writing that the purchase price for  
14 all of the bottling equipment was in excess of \$180 million. In fact, the true purchase  
15 price negotiated between Le-Nature's and Krones, which price was kept secret from CIT  
16 and the Participants and others, was approximately \$90 million. Similarly, with regard to  
17 Le-Nature's planned southeast facility, the Defendants told CIT and other financial  
18 institutions that the purchase price for the bottling equipment was substantially higher  
19 than the true purchase price. With regard to the Phoenix Facility and planned southeast  
20 facility, CIT, the Participants and other financial institutions were harmed in amounts in  
21 excess of approximately \$120 million.

22       108. From in or about 2004 through in or about 2006, Defendants knowingly devised  
23 a scheme or artifice to defraud, and obtain money and property by means of false and  
24 fraudulent pretenses, representations or promises, and defraud CIT, the Participants and  
25 others and for the purpose of executing such scheme and artifice or attempting to do so,  
26 knowingly caused to deliver by mail or commercial interstate carrier, according to the  
27 direction thereon, and caused to be transmitted by means of interstate wire  
28 communication, writings, signs and signals more specifically set forth below, each

1 mailing and interstate wire communication constituting a separate act of racketeering  
2 (“RICO Act”):

3 RICO Act 1 April – September 2005 Kronos knowingly accepted wire transfers from  
4 CIT totaling approximately \$100 million,  
5 claiming that the payments represented the  
6 balance of the cost of purchasing and installing  
7 the Leased Equipment.

8 RICO Act 2 April 15 - 20, 2005 CIT received by wire transfer approximately \$24  
9 million from Participants and in turn wired  
10 approximately \$7 million to Kronos for the  
11 purchase of the Leased Equipment.

12 RICO Act 3 April 29, 2005 CIT received by wire transfer approximately \$6  
13 million from Participants and in turn wired  
14 approximately \$11 million to Kronos for the  
15 purchase of the Leased Equipment.

16 RICO Act 4 May 6, 2005 CIT received by wire transfer approximately \$12  
17 million from Participants and in turn wired  
18 approximately \$18 million to Kronos for the  
19 purchase of the Leased Equipment.

20 RICO Act 5 May 13, 2005 CIT received by wire transfer approximately \$4  
21 million from Participants and in turn wired  
22 approximately \$7 million to Kronos for the  
23 purchase of the Leased Equipment.

24 RICO Act 6 May 26, 2005 CIT received by wire transfer approximately \$4  
25 million from Participants and in turn wired  
26 approximately \$7 million to Kronos for the  
27 purchase of the Leased Equipment.

28 RICO Act 7 June 22, 2005 CIT received by wire transfer approximately \$19  
million from Participants and in turn wired  
approximately \$19 million to Kronos for the  
purchase of the Leased Equipment.

RICO Act 8 July 27, 2005 CIT received by wire transfer approximately \$16  
million from Participants and in turn wired  
approximately \$16 million to Kronos for the  
purchase of the Leased Equipment.

RICO Act 9 August 5, 2005 CIT received by wire transfer approximately \$15  
million from Participants and in turn wired  
approximately \$15 million to Kronos for the  
purchase of the Leased Equipment.

RICO Act 10 August 2005 –  
October 2006 Le-Nature’s paid monthly lease payments to CIT  
via checks mailed using the United States Postal  
Service.

1	RICO Act 12	August 2005 – October 2006	Via electronic mail, Le-Nature's sent documentation required under the Closing Documents to CIT, including Le-Nature's purported quarterly statements.
2			
3			
4	RICO Act 13	March 2005	Via electronic mail to CIT, Podlucky stated that he is "perplexed" about CIT's concerns over apparent pricing discrepancies, and that CIT is misinterpreting the pricing.
5			
6	RICO Act 14	March 21, 2005	Via electronic mail to CIT, Podlucky stated that a full reconciliation of all costs for the project was being prepared and would include all change orders. Podlucky also indicated that he was not receiving a discount from Krones on the price for the bottling equipment.
7			
8			
9			
10	RICO Act 15	March 22, 2005	Via facsimile to Magrath, Defendants sent a specification sheet ostensibly identifying each piece of Leased Equipment for line 1, showing a total cost of approximately \$46.1 million.
11			
12	RICO Act 16	March 24, 2005	Kronseder spoke by telephone with Roy Keller of CIT and stated that the value of equipment already shipped to Krones, Inc. was \$100 million but that this amount reflected the intercompany price and not the price Krones, Inc. would charge CIT.
13			
14			
15			
16	RICO Act 17	Various times prior to March 24, 2005	Krones wired to Le-Nature's portions of an \$11.6 down payment totaling approximately \$5 million. The funds were originally wired from CIT to Krones, and Krones represented that the funds were not being remitted to Le-Natures.
17			
18			
19	RICO Act 18	March 24, 2005	Sommer spoke with CIT by telephone and stated that: (i) the total price of the equipment was \$185 million; (ii) the price of the equipment included a "mark-up" over the amount Krones, Inc. is invoiced by Krones A.G.; (iii) he had been in Podlucky's office during the March 22 telephone call; (iv) he had helped compile the specification sheets provided to CIT; (v) Podlucky's statements that this was the first time specification sheets were prepared was accurate; (vi) Krones had received an \$11.5 million down payment from Le-Nature's; and (viii) Krones had not paid any funds received for the Leased Equipment back to Le-Nature's.
20			
21			
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24			
25			
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27	RICO Act 19	March 28, 2005	Via facsimile to CIT, Podlucky sent specification sheets for all four bottling lines, ostensibly identifying each piece of Leased
28			

1			Equipment and the corresponding purchase price being charged by Krones, which according to the
2			sheets, were consistent with the purchase price
3			of the CIT PMA. The sheets were signed by
4	RICO Act 20	March 28, 2005	Podlucky, and Rainulf Diepold.
5			Via letter from Sommer to Keller, Sommer
6			claimed that the information provided on the Tip
7	RICO Act 21	April 15 –	Spreadsheet was actually information for a
8		August 5, 2005	bottling project different from the Arizona
9			project.
10			Via United States mails and/or wire, CIT
11	RICO Act 22	April 29, 2005	periodically received draw request certificates
12			and Krones' invoices requesting that CIT make
13			installment payments to Krones for the Leased
14			Equipment. Collectively, the draw requests
15			totaled approximately \$100 million.
16			Via United States mails and/or wire, Le-Nature's
17	RICO Act 23	December –	and Krones presented CIT with an Excess Funds
18		February, 2005	Agreement, directing CIT to indicate which
19			portions of future payments under the PMA
20			constituted Excess Funds. Consistent with this
21			Excess Funds Agreement, each subsequent wire
22			transfer of payments was accompanied with a
23			letter identifying the Excess Funds. Such
24			Excess Funds were remitted by Krones to Le-
25			Nature's. The total amount of such remittances
26			was approximately \$60 million.
27			AIG sent to Krones via wire transfer or U.S.
28			Mail \$26 million representing installment
			payments for the funding and purchase of
			bottling equipment for the planned southeast
			facility.
	RICO Act 24	December 29 and	Krones paid to Le-Nature's via wire transfer or
		February 3, 2005	U.S. Mail approximately \$20 million of the \$26
			million payments identified in RICO Act 23,
			instead of using such funds for the manufacture
			and purchase of bottling equipment.
	RICO Act 25	February 3, 2005	Krones and Le-Nature's transferred by wire
			communications approximately \$11 million
			from an account controlled by Krones to an
			account maintained at S&T Bank, in Indiana,
			Pa., instead of using such funds for the purchase
			and manufacture of bottling equipment.
	These mail and wire transmissions were all undertaken with the specific intent to be part		

1 of and in furtherance of the frauds perpetrated upon CIT as described in paragraphs 98 -  
2 110, and in Count III, and are all in violation of 18 U.S.C. §§ 1341, 1343.

3 109. By virtue of the aforementioned ongoing scheme and artifice to defraud, the  
4 Defendants have violated the provisions of 18 U.S.C. § 1962(c).

5 110. By reason of the Defendants' violation of 18 U.S.C. § 1962(c), the Defendants  
6 have directly and proximately caused injury and financial loss to CIT in its business and  
7 property.

8 WHEREFORE, CIT prays for the following relief against the Defendants:

9 (1) A Judgment against the Defendants, jointly and severally, for the full amount of  
10 compensatory and punitive damages proven at trial, restitution, disgorgement of profits,  
11 treble damages, plus all pre-judgment and post-judgment interest allowed by law until the  
12 judgment is paid in full;

13 (2) A judgment against the Defendants, jointly and severally, for the costs, attorney's  
14 fees and other expenses incurred in this action; and

15 (3) Such other relief as the Court deems proper.

16 **COUNT III**

17 **Fraud**

18 111. CIT adopts and incorporates the allegations set forth in the preceding paragraphs  
19 of this Complaint as if fully set forth herein.

20 112. In reasonable reliance on the fraudulent and material representations described  
21 in the preceding paragraphs (the "Representations") that were made by the Defendants  
22 and their co-conspirator Le-Nature's, CIT and the Participants entered into the Le-  
23 Nature's Transaction and have been substantially and proximately damaged as a result.

24 113. CIT and the Participants rightfully relied upon the Representations made by the  
25 Defendants and their co-conspirator Le-Nature's.

26 114. The Representations, as it turned out, were false. Had CIT and the Participants  
27 known that the Representations above were false, they would have never entered into the  
28 Le-Nature's Transaction.

1 115. The Defendants knew that the Representations were false or were made  
2 recklessly with the intent that CIT and the Participants would rely thereon.

3 116. Each of these Representations was material and CIT and the Participants relied  
4 to their detriment on each Representation in deciding to enter into the Le-Nature's  
5 Transaction and by continuing to perform under the Closing Documents.

6 117. CIT and the Participants have been damaged by the Representations and have  
7 lost large sums of money as a result of their reliance upon those Representations.

8 118. The conduct of the Defendants was so reckless, willful, wanton and outrageous  
9 as to require an award of punitive damages.

10 119. CIT is entitled to recover its attorneys' fees incurred in this action, pursuant to  
11 A.R.S. § 12-341.01 and other applicable law.

12 WHEREFORE, CIT prays for the following relief against the Defendants:

13 (1) A judgment against the Defendants, jointly and severally, for the full amount of  
14 compensatory and punitive damages proven at trial, plus all pre-judgment and post-  
15 judgment interest allowed by law until the judgment is paid in full;

16 (2) A judgment against the Defendants, jointly and severally, for the costs, attorney's  
17 fees and other expenses incurred in this action; and

18 (3) Such other relief as the Court deems proper.

19 **COUNT IV**

20 **Negligent Misrepresentations**

21 120. CIT adopts and incorporates the allegations set forth in the preceding paragraphs  
22 of this Complaint as if fully set forth herein.

23 121. In reasonable reliance on the Representations that were made by the Defendants  
24 and their co-conspirator Le-Nature's, CIT and the Participants entered into the Le-  
25 Nature's Transaction and have been substantially and proximately damaged as a result.

26 122. The Representations, as it turned out, were false. Had CIT and the Participants  
27 known at that time they were made that Representations above were false, they would  
28 have never entered into the Le-Nature's Transaction.



1 this Complaint as if fully set forth herein.

2 132. As fully explained above, the Defendants were aware of material information  
3 and failed to disclose such material information to CIT and the Participants including, but  
4 not limited to, information related to: (i) the true purchase price of the Leased Equipment;  
5 (ii) Le-Nature's fraudulent scheme to double finance the Leased Equipment; (iii) the  
6 repayment of funds to Le-Nature's that Kronos had received from CIT and the  
7 Participants; (iv) the falsity of the specifications sheets provided to CIT and the  
8 Participants; (v) the true financial condition, operations, procedures and sales of Le-  
9 Nature's; and (vi) the absence of any equipment deposits held by Kronos.

10 133. Further, the Defendants had a duty to disclose such material information to CIT  
11 because, among other reasons: (i) of their superior knowledge; (ii) CIT could not have  
12 obtained the material information in the exercise of reasonable care and due diligence;  
13 (iii) their superior position to obtain such information; (iv) the particular circumstances  
14 alleged above; (v) the relation of the parties; (vi) the Defendants knew or should have  
15 known that CIT and the Participants were entering into the Le-Nature's Transaction under  
16 a mistake as to the facts; (vii) customs of the trade; and (viii) the Defendants made partial  
17 representations/disclosures that misled CIT as fully detailed above.

18 134. Once the Defendants made such representations, they were under a duty to  
19 provide all material information so that there would be a full and fair disclosure. For  
20 instance (and this is only one example from above), they had the duty to inform CIT of, or  
21 alternatively had the duty to correct, the assurances, false statements and partial  
22 disclosures regarding the purchase price of the Leased Equipment. Further, they had such  
23 a duty to disclose because they made the misrepresentations alleged above. The  
24 Defendants failed in this duty with the purpose of inducing CIT and the Participants to  
25 enter into the Le-Nature's Transaction.

26 135. Such undisclosed information was material and CIT and the Participants  
27 reasonably relied upon it (or upon the absence of it) when acting and refraining from  
28 acting. The Defendants intentionally and in bad faith suppressed such facts or recklessly,



1 negligently or innocently failed to disclose such material facts.

2 136. As a result, CIT and the Participants have suffered damages.

3 137. The conduct of the Defendants was so reckless, willful, wanton and outrageous  
4 as to require an award of punitive damages.

5 138. CIT is entitled to recover its attorneys' fees incurred in this action, pursuant to  
6 A.R.S. § 12-341.01 and other applicable law.

7 WHEREFORE, CIT prays for the following relief against the Defendants:

8 (1) A judgment against the Defendants, jointly and severally, for the full amount of  
9 compensatory and punitive damages proven at trial, plus all pre-judgment and post-  
10 judgment interest allowed by law until the judgment is paid in full;

11 (2) A judgment against the Defendants, jointly and severally, for the costs, attorney's  
12 fees and other expenses incurred in this action; and

13 (3) Such other relief as the Court deems proper.

14 **COUNT VI**

15 **Unjust Enrichment**

16 139. CIT adopts and incorporates the allegations set forth in preceding paragraphs of  
17 this Complaint as if fully set forth herein.

18 140. As a direct result of the actions described in the preceding paragraphs that were  
19 committed by the Defendants and their co-conspirator Le-Nature's, CIT and the  
20 Participants have been impoverished.

21 141. Defendants retained benefits as a result of the improper, fraudulent and  
22 negligent activities described above. The retention of those benefits was unjust as the  
23 Defendants engaged in unconscionable conduct for which there is no justification.

24 142. CIT and the Participants are without a remedy at law to rectify their  
25 impoverishment, which occurred as a direct result of Defendants' enrichment and  
26 improper conduct for which there is no justification.

27 WHEREFORE, CIT prays for the following relief against the Defendants:

28 (1) A judgment against the Defendants, jointly and severally, for the full amount of

1 compensatory damages proven at trial, including quantum meruit damages, plus all pre-  
2 judgment and post-judgment interest allowed by law until the judgment is paid in full;

3 (2) A judgment against the Defendants, jointly and severally, for the costs, attorney's  
4 fees and other expenses incurred in this action; and

5 (3) Such other relief as the Court deems proper.

6 **COUNT VII**

7 **Unlawful Acts**

8 143. CIT adopts and incorporates the allegations set forth in preceding paragraphs of  
9 this Complaint as if fully set forth herein.

10 144. Defendants, by their actions set out above, have engaged in a pattern of unlawful  
11 activity as defined by A.R.S. § 13-2301(D)(4), in that they engaged in acts that: (1) are  
12 chargeable or indictable under the laws of the State of Arizona; (2) would be punishable  
13 by imprisonment for more than one year under the laws of the State of Arizona; (3) were  
14 committed for financial gain; and (4) include (without limitation) (a) forgery as defined by  
15 A.R.S. § 13-2002, which is a class 4 felony, (b) theft of property with a value of more  
16 than \$25,000, which is a class 2 felony, (c) participating in a criminal syndicate as defined  
17 by A.R.S. § 13-2308, which is a class 2 felony, and (d) pursuant to a scheme or artifice to  
18 defraud, knowingly obtaining any benefit by means of false or fraudulent pretenses,  
19 representations, promises or material omissions as defined by A.R.S. § 13-2310, which is  
20 a class 2 felony (collectively, the "Unlawful Acts").

21 145. CIT and the Participants sustained reasonably foreseeable injury to their person,  
22 business and property by the Defendants' pattern of Unlawful Acts.

23 146. Sommer, Kronseder and Podlucky each respectively authorized, requested,  
24 commanded, ratified and/or recklessly tolerated the unlawful conduct of the other  
25 Defendants.

26 147. CIT and the Participants are entitled to recover up to treble damages, plus costs  
27 and attorneys' fees, including pre-judgment interest on the non-trebled portion of the  
28 damages.

1 WHEREFORE, CIT prays for the following relief against the Defendants:

2 (1) A judgment against the Defendants, jointly and severally, for the full amount of  
3 damages proven at trial, trebled, plus all pre-judgment and post-judgment interest allowed  
4 by law until the judgment is paid in full;

5 (2) A judgment against the Defendants, jointly and severally, for the costs, attorney's  
6 fees and other expenses incurred in this action; and

7 (3) Such other relief as the Court deems proper.

8 **DEMAND FOR JURY TRIAL**

9 Pursuant to Rule 38 of the Federal Rules of Civil Procedure, plaintiff hereby demands  
10 a trial by jury on all issues.

11 DATED: October 23, 2008.

12 FENNEMORE CRAIG, P.C.

13

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