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acting as Special Representative of the Debtors and
their estates under 11 U.S.C. § 1123(b)(3)(B)

**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
(RIVERSIDE DIVISION)**

In re:

PROTRON DIGITAL CORPORATION,
Debtor.

This Document Relates To:

IN RE: PROTON DIGITAL
CORPORATION.

IN RE: SPECTRONIQ DIGITAL,
INC.

BOTH ACTIONS

YA HSIN INDUSTRIAL CO., LTD,
acting on behalf of the Debtors and their
estates as their Special Representative,

Plaintiff,

vs.

Case No. 6:08-bk-16778-MJ
Chapter 11 [Jointly Administered with
Case No. 6:08-bk-16779 MJ]

**[PROPOSED] CONSOLIDATED AND
AMENDED COMPLAINT FOR:**

- 1. Legal Malpractice;**
- 2. Breach of Fiduciary Duty;**
- 3. Aiding and Abetting Breach of
Fiduciary Duty;**
- 4. Avoidance and Recovery of
Preferences;**
- 5. Avoidance and Recovery of
Fraudulent Conveyances (Actual
Fraud);**

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CITRON & DEUTSCH, a California Professional Corporation; RICHARD CITRON, an individual; ECOFF, LAW & SALOMONS, LLP, a California limited liability partnership; GARY SALOMONS, an individual; SPECTRONIQ TRADEMARK HOLDINGS, LLC, a California limited liability partnership; LEO CHEN an individual, and DOES 1-10, Inclusive.

Defendants.

- 6. **Avoidance and Recovery of Fraudulent Conveyances (Constructive Fraud); and**
- 7. **Unfair Competition (Violation of Cal. Bus. & Prof. Code § 17200 *et seq.*)**

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INTRODUCTION

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2 1. This lawsuit arises from a concerted, attorney-conceived and driven plan to
3 systematically and surreptitiously loot over \$12 million in cash (and inventory) from
4 debtor Protron Digital Corporation (“Protron”) -- a distributor of LCD TVs and related
5 consumer electronics -- at a time when Protron was insolvent and owed at minimum \$78
6 million (and as much as \$116 million) to its primary secured creditor, plaintiff Ya Hsin
7 Industrial Co., Ltd. (“Ya Hsin”), which manufactured Protron’s consumer electronics.
8 Attorney Richard Citron and his law firm, Citron & Deutsch LLP, together with
9 attorney Gary Salomons and his former law firm, Ecoff, Law & Salomons, LLP
10 (collectively, the “Attorney Defendants”), conspired with defendant Leo Chen
11 (“Chen”), who was Protron’s director, President and controlling shareholder, to
12 effectuate the illegal cash and inventory transfers at the expense and to the detriment of
13 their joint client, Protron, as well as Ya Hsin and Protron’s other secured and unsecured
14 creditors.

15 2. To better hide, facilitate and then later re-characterize the illegal cash and
16 inventory transfers as ostensibly legitimate inter-company transfers, the Attorney
17 Defendants funneled the majority of the purloined cash through Citron & Deutsch client
18 trust accounts to Mr. Chen and his affiliated shell companies. These affiliated
19 companies included debtor Spectroniq Digital, Inc., Spectroniq Trademark Holding,
20 LLC (both of which the Attorney Defendants jointly and concurrently represented), and
21 Mandary Technology Limited (which, on information and belief, Chen and the Attorney
22 Defendants controlled). The Defendants also funneled Protron cash to individual
23 “consultants,” Richard Traweek and William Bradham, who were joint investors with
24 Richard Citron and Chen in the Spectroniq-related ventures that directly competed with
25 Protron, in which Richard Citron had at least a 3% ownership interest (directly or
26 indirectly), and which he and the other Attorney Defendants concurrently and jointly
27 represented.

28 3. The elaborate effort and byzantine plans undertaken and implemented by
the Attorney Defendants, in collusion with Chen, to steal Protron’s cash and inventory

1 went into high gear when it became clear that Ya Hsin was going to seek to enforce its
2 secured collateral agreements upon non-payment of Protron’s debt. The scheme
3 involved the creation of bogus promissory notes and corporate minutes drawn up after
4 the fact and back-dated to create a paper record of supposed arms-length dealings that in
5 fact were self-dealing and collusive, and the manipulation of the various Spectroniq-
6 related and Mandary shell companies to strip Protron of its assets while paying
7 exorbitant sums to the Defendants and their cohorts, including payment against a bogus
8 unsecured \$6.9 million “loan” to Chen ahead of Protron’s secured creditors, and
9 siphoning Protron money into the Defendants’ other business ventures.

10 4. In this way, the Attorney Defendants could continue to reap large fees for
11 continued litigation and corporate work from dwindling Protron funds that should have
12 been used for Protron and its non-insider creditors. In doing so, Chen and the Attorney
13 Defendants aided, abetted and substantially assisted each other in effectuating the illicit
14 fund and inventory transfers with full knowledge of their joint purpose to prefer
15 themselves over other non-insider creditors of Protron, all calculated towards achieving
16 their joint unlawful objective to hinder, delay and defraud Ya Hsin and other litigant
17 creditors into settling cheaply or abandoning their meritorious claims, and preventing
18 the collection of the sums owed to them.

19 5. The Attorney Defendants’ misconduct in this case is particularly egregious
20 when viewed in the context of Protron’s insolvency at the time of the fraudulent and
21 preferential transfers. Under the California Trust Fund Doctrine, upon Protron’s
22 insolvency, the fiduciary duty of the Attorney Defendants’ joint clients, Chen and
23 Protron, shifted from Protron’s shareholders to Ya Hsin and Protron’s other secured and
24 unsecured creditors. This created a non-waivable conflict of interest that required the
25 Attorney Defendants’ immediate withdrawal. Rather than doing what their professional
26 responsibilities required them to do, the Attorney Defendants instead conspired with
27 Chen to rob Protron for their own benefit while carrying out a plan with bogus
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1 companies and back-dated documents intending to further hinder, delay and defraud
2 Proton’s creditors.

3 6. Chen and the Attorney Defendants operated and controlled Protron (and
4 Spectroniq) for their own individual profit and benefit and in conscious disregard for the
5 rights of Protron and its creditors. While Protron was undercapitalized, insolvent, and
6 unable to pay its creditors, the Defendants brazenly helped themselves to its available
7 cash and inventory, which they converted into “loan repayments” and “fees.” All of this
8 constituted serious breaches of each Defendants’ fiduciary duties owed to Protron. By
9 orchestrating cash and inventory transfers that harmed Protron and were irremediably
10 infected with non-waivable conflicts of interest and self-dealing, the Attorney
11 Defendants’ conduct fell far below the standard of care expected of lawyers licensed to
12 practice law in this State.

13 7. This lawsuit seeks to recover from the Defendants the over \$12 million in
14 Protron funds that were illicitly siphoned through and to them and to their cohorts based
15 on claims for (1) Legal Malpractice; (2) Breach of Fiduciary Duty; (3) Aiding and
16 Abetting Breach of Fiduciary Duty; (4) Avoidance and Recovery of Preferences; (5)
17 Avoidance and Recovery of Fraudulent Conveyances (Actual Fraud); (6) Avoidance
18 and Recovery of Fraudulent Conveyances (Constructive Fraud); and (7) Unfair
19 Competition. This lawsuit also seeks disgorgement of the attorneys’ fees paid to the
20 Attorney Defendants in connection with their conflicted representation of Protron and
21 debtor Spectroniq Digital Inc. (“Spectroniq” and, with Protron collectively, the
22 “Debtors”), in an amount believed to be in excess of \$750,000, together with pre-
23 judgment interest, attorneys’ fees and costs of suit incurred in this action under the
24 applicable retainer agreements at issue in this litigation (which contain prevailing party
25 attorneys’ fee and cost provisions), and such other and further relief as may be
26 appropriate based upon the evidence at trial.

PARTIES

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8. Plaintiff Ya Hsin is a corporation organized and existing under the laws of the Country of Taiwan, Republic of China. Ya Hsin conducted business in California and the United States, both directly and through its subsidiary Ya Hsin Industries USA, Inc., a California corporation. As more fully explained in Paragraphs 19 and 20, below (“Standing”), Ya Hsin asserts the claims herein in the name and on behalf of the estates of Debtors Protron and Spectroniq.

9. Defendant Richard Citron (“Citron”) is an attorney licensed to practice law in the State of California who resides in the Central District of California. Citron was legal counsel for both Debtors until his termination in 2008. Citron also served as legal counsel for Chen, Traweek, Spectroniq TH, and Spectroniq 3-D, and, on information and belief, Mandary as well. Citron, either individually or indirectly through the Citron Family Trust, also was a minority shareholder of Spectroniq, which he formed. On information and belief, Citron (either individually or indirectly through the Citron Family Trust) may also have been a minority shareholder of Spectroniq TH and SpectronIQ 3-D, as well as other entities relating to Chen that are unknown to Plaintiff at this time.

10. Defendant Citron & Deutsch (“C&D”) is a professional law corporation residing in the Central District of California. Until C&D’s termination in 2008, C&D acted as legal counsel for both Protron and Spectroniq while also serving as legal counsel for the Debtors’ former and controlling shareholder, Leo Chen, and his “consultants” Richard Traweek (“Traweek”) and William Bradham (“Bradham”). In addition C&D was retained as legal counsel for defendant Spectroniq Trademark Holding, LLC (“Spectroniq TH”) after its formation in October 2006, as well as Spectroniq 3-D, Inc. (“Spectroniq 3-D”), which was formed in July 2007, and Mandary, a Hong Kong limited liability company that Chen acquired with the Attorney Defendants’ assistance, in or about July 2007. Because Citron was employed by C&D and Citron was a C&D partner at all relevant times, and, on information and belief, the

1 active participation of these other partners at C&D at all relevant times, C&D and its
2 current and former partners were and are directly and vicariously responsible, to the
3 extent of their assets, for the acts and omissions of Citron and the other attorneys
4 employed by C&D whose actions contributed to or assisted the violations set forth
5 hereinafter.

6 11. Defendant Gary Salomons (“Salomons”) is an attorney licensed to practice
7 law in the State of California who resides in the Central District of California. Until
8 Salomons’ termination in 2008, Salomons was legal counsel for both Debtors, and also
9 formerly was counsel for Chen and possibly Bradham and Traweek as well.

10 12. Defendant Ecoff, Law & Salomons LLP (“ELS”) at all relevant times was
11 a limited liability law partnership residing in the Central District of California. Until
12 ELS’ termination in 2008, ELS was legal counsel for both Debtors. ELS also formerly
13 was counsel for Chen, and possibly Bradham, Traweek, as well as Spectroniq TH and,
14 on information and belief, Mandary as well. Because Salomons was employed by ELS
15 and Solomons was an ELS partner at all relevant times, and, on information and belief,
16 the active participation of these other partners at ELS at all relevant times, ELS and its
17 former partners were and are directly and vicariously responsible, to the extent of their
18 assets, for the acts and omissions of Salomons and the other attorneys employed by ELS
19 whose actions contributed to or assisted the violations set forth hereinafter.

20 13. Defendant Spectroniq TH is a limited liability company residing in the
21 Central District of California. Plaintiff is informed and believes that Chen was a
22 majority shareholder, director and officer of Spectroniq TH. Also on information and
23 belief, Plaintiff alleges that Citron, Traweek and Bradham also were shareholders of
24 Spectroniq TH.

25 14. Plaintiff does not know the true names and capacities of the Doe
26 Defendants 1-10 and, therefore, sues such Defendants by such fictitious names. Each of
27 the fictitiously-named Defendants was responsible in some manner for the occurrences
28 and misconduct herein alleged, and that Plaintiff’s damages as herein alleged were

1 proximately caused by the conduct of such Defendants. The Doe Defendants 1-10 are
2 persons or entities who, directly or indirectly, participated in the transactions at issue
3 and aided and abetted and conspired to cause or caused the primary violations alleged
4 herein. These persons or entities proximately caused damages to Plaintiff as alleged
5 herein, but Plaintiff presently does not know their names and identities. Once the true
6 names and identities of such fictitious Defendants are discovered, Plaintiff will seek
7 leave to amend this Consolidated and Amended Complaint to assert the Doe
8 Defendants’ true names, capacities and conduct. Each of the Doe Defendants is liable
9 for the harm suffered by Plaintiffs as set forth herein, or their inclusion in this action is
10 otherwise necessary for the granting for affective relief by this Court. (The Doe
11 Defendants and the other Defendants hereafter sometimes are referred to collectively as
12 “Defendants.”)

13 **AGENCY, ALTER EGO, AND JOINT ENTERPRISE ALLEGATIONS**

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15 15. As alleged above, Chen and Citron (either directly or through the Citron
16 Family Trust), as well as Traweck and Bradham, are shareholders of Spectroniq TH.
17 Citron also prepared the formation documents for Spectroniq TH and acted as its outside
18 General Counsel at all relevant times. No actual corporate formalities were ever
19 followed in connection with Spectroniq TH’s operations, but, rather, all records of
20 supposed meetings of the Board, to the extent any were ever prepared, were papered
21 together with after-the-fact minutes memorializing fictional meetings that never actual
22 occurred, and which were backdated and prepared for the sole purpose of perpetuating
23 the fraudulent transfers of Proton’s cash and inventory for the benefit of the Defendants
24 and their cohorts, as more specifically alleged below. At all times, Spectroniq TH
25 lacked sufficient capital in relation to its likely, indeed inevitable liabilities vis-à-vis
26 Protron. Spectroniq TH was formed and utilized as a mere shell and conduit for Chen,
27 Citron (and the other Attorney Defendants) to facilitate their common scheme to loot
28 Protron for their own benefit at the expense and to the detriment of Protron and its

1 secured and unsecured creditors. Chen and Citron (with the knowing and active
2 assistance of the other Attorney Defendants) completely dominated and controlled
3 Spectroniq TH as their instrumentality to launder cash fraudulently transferred from
4 Protron, in flagrant violation of their fiduciary duties and professional responsibilities
5 owed to Protron in particular.

6 16. For these reasons, and such other facts as may be adduced at or before trial,
7 Chen and Citron are the alter egos of Spectroniq TH for purposes of the claims asserted
8 in this Consolidated and Amended Complaint, in that (1) there is such unity of interest
9 and ownership that the separate personalities of Spectroniq TH, on the one hand, and
10 Chen and Citron, on the other hand, no longer exist, and (2) that failure to disregard
11 their separate identities would result in fraud or injustice.

12 17. Each of the Defendants, moreover, was an agent, partner, joint venturer,
13 co-conspirator or alter ego of each of the remaining Defendants and, in doing the acts
14 hereinafter alleged, was acting within the scope of its authority as such and with the
15 permission and consent of each of the remaining Defendants as part of a common and
16 joint enterprise designed to strip Protron of its assets for their benefit at the expense of
17 Protron and its secured and unsecured creditors.

18 18. Every Defendant, and each of them, instigated, encouraged, promoted,
19 aided and abetted, and/or rendered substantial assistance to the wrongdoing alleged
20 herein, with knowledge of the wrong and the role that each Defendant played in it.
21 Every Defendant, and each of them, conspired to commit that wrongdoing which is
22 alleged herein to have been intentional, with knowledge of the wrongful purpose of the
23 wrongdoing, actively participating in the wrongdoing, failing to stop or prevent the
24 wrongdoing from occurring or continuing, and/or actively participating in the
25 concealment and non-disclosure of the wrongdoing, all in breach of their respective
26 fiduciary duties and professional responsibilities owed to Protron.

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STANDING

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19. On June 6, 2008 (the “Petition Date”), the Debtors voluntarily filed petitions for relief under Chapter 11 of Title 11 of the United States Code (the “Chapter 11 Cases”). Prior to the filing of the Chapter 11 Cases, the Debtors were engaged in significant litigation with Ya Hsin, their largest creditor. Ya Hsin obtained a series of orders granting Ya Hsin provisional relief in the state court action Ya Hsin was pursuing against the Debtors that culminated with the appointment of the Douglas Wilson Companies as equity receiver (the “Receiver”) in March 2008. (Douglas Wilson was appointed as a receiver several months earlier over Spectroniq, but only on a limited basis initially until March 2008 when he became the full equity receiver for both Debtors.) After his appointment, the Receiver determined that the Debtors had effectively ceased most business activities and that the most significant non-cash assets of the Debtors’ Estates were potential avoidance actions against the Debtors’ former insider, Chen, and other related claims against Chen and the Attorney Defendants. To preserve the Debtors’ ability to recover such transfers as preferences, the Receiver filed the Chapter 11 Cases on the Petition Date.

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20. In accordance with the terms of the Joint Chapter 11 Plan of Liquidation (the “Plan”), which was based upon a settlement agreement between the Receiver, acting for the Debtors, Ya Hsin, as Protron’s primary secured creditor, and the unsecured creditors’ committee, and which was approved by Order of the above-captioned Bankruptcy Court on September 4, 2009, Ya Hsin was appointed as the Special Representative of the estates of Debtors under 11 U.S.C. § 1123(b)(3)(B). As such, Ya Hsin stands in the shoes of the Debtors with respect to any claims they could properly make in their individual capacities both in and outside bankruptcy, and asserts the claims herein on behalf of the Debtors and their estates under the Plan as their court-appointed Special Representative pursuant to 11 U.S.C. § 1123(b)(3)(B).

JURISDICTION

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21. As noted in Paragraphs 19 and 20, above, Plaintiff is authorized to bring this action on behalf of the Debtors and their estates pursuant to the Plan and 11 U.S.C. § 1123(b)(3)(B). This Court has jurisdiction over the subject matter of this Complaint under 28 U.S.C. §§ 1334 and 1409. This is a core proceeding under 28 U.S.C. § 157(b)(2)(A), (B), (F), (H), (K) and (O).

VENUE

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22. Venue is proper in the Central District under 28 U.S.C. § 1409.

COMMON ALLEGATIONS

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23. Protron is a California corporation formerly headquartered in Ontario, San Bernardino County, California. Before bankruptcy protection, Protron sold consumer electronics throughout California and nationally under the “Protron” mark, including flat panel LCD televisions, DVD players and speaker systems. Ya Hsin was Protron’s primary supplier for these consumer electronics. From the commencement of the relationship with Ya Hsin in 2005 through mid-2006, Protron sold over \$300 million in Ya Hsin-manufactured consumer electronics to major retailers such as Sears, Target and Best Buy. An auspicious beginning indeed, it presented a golden opportunity that Chen, aided and abetted by the Attorney Defendants, wished to turn to their mutual advantage and that of their cohorts at the expense of Protron and its creditors.

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A. In The Face Of Protron’s Mushrooming Debt Pre-Bankruptcy, Chen And The Attorney Defendants Orchestrated A Series Of Preferential And Fraudulent Transfers To Loot Protron For Their Own Benefit.

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24. By mid-2006, Protron had over \$50 million worth of inventory it obtained from Ya Hsin, and admittedly owed Ya Hsin over \$78 million. During this time period, Protron was a defendant in a trademark infringement lawsuit filed in the Central District of California by Proton Corporation, which also manufactured LCD televisions (U.S.D.C. Case No. CV 05-1017-RGK (OPx) [the “Proton Trademark Action”]). As a

1 result of the settlement of the Proton Trademark Action, Debtor Protron promised to
2 stop using the “Protron” mark for its LCD television products, and began using a new
3 mark - “SpectronIQ” - for the marketing and sale of Protron’s new inventory
4 commencing in the Fall of 2006.

5 25. Chen also caused Protron to retain Citron and his firm, C&D, to
6 incorporate in California two new entities using the “Spectroniq” name (sometimes
7 spelled “SpectronIQ”): Debtor Spectroniq, formed on August 24, 2006, and Spectroniq
8 TH, formed on October 13, 2006. The funds used to pay Citron for the incorporation
9 and set up Spectroniq and Spectroniq TH came from Protron, directly or indirectly.
10 These two entities ostensibly were formed in response to the Proton Trademark Action
11 for the purpose of selling Protron consumer electronics manufactured by Ya Hsin under
12 the new “SpectronIQ” mark. Both Chen and Citron, either individually or through the
13 Citron Family Trust, were shareholders of Spectroniq and Spectroniq TH and also, on
14 information and belief, Spectroniq TH, with the Citron and C&D acting as Spectroniq’s
15 and Spectroniq TH’s de facto outside General Counsel.

16 26. But Chen and Citron also had a key ulterior motive in setting up Spectroniq
17 and Spectroniq TH, which became apparent later, as the Defendants began ramping up
18 their scheme to make preferential and fraudulent transfers to themselves and their
19 cohorts, Bradham and Traweek. Both entities were created and operated with funds
20 from Protron, yet, under the instruction and guidance of Citron and his firm, C&D (later
21 in consultation with Salomons and ELS), they were used as mere conduits and
22 instrumentalities for Chen and his cohorts, following the Attorney Defendants’ active
23 oversight and directions as the master puppeteers behind the scenes, to launder and
24 sequester millions in Protron’s cash and inventory. Their purpose was to keep any
25 benefits generated from Protron for themselves, and to make it exceedingly difficult if
26 not impossible for Ya Hsin and Protron’s other creditors to attach and take possession of
27 that cash and secured collateral once Protron stopped making payments to Ya Hsin and
28 Protron’s other creditors.

1 27. Becoming progressively concerned about Protron’s mushrooming account
2 payable and its non-payment for goods shipped, despite its continuous sales of Ya Hsin-
3 manufactured products, Ya Hsin arranged for a meeting with Chen to address the
4 situation on April 11, 2007. At that meeting, Ya Hsin representatives presented Chen
5 with records indicating that Protron owed to Ya Hsin at least \$116 million. As the
6 meeting concluded, Chen admitted in writing that Protron owed at least \$78 million to
7 Ya Hsin, while Chen disputed the other \$40 million. A true and correct copy of the
8 meeting minutes signed by all of the meeting attendants (including Chen) is attached
9 hereto as Exhibit A (the “\$78 Million Debt Admission”), together with an English
10 translation. Chen provided to Ya Hsin’s representatives an accounting spreadsheet
11 generated from Protron’s accounting system that detailed the admitted \$78 million in
12 debt owed to Ya Hsin, which was sent in electronic format to Ya Hsin the next day. A
13 true and correct copy of that Protron business record (the “\$78 Million Debt
14 Spreadsheet”) is attached hereto as Exhibit B.

15 28. Shortly after the April 11, 2007 meeting, on information and belief, Chen
16 contacted Citron (as well as Traweek and Bradham) to report on what happened during
17 his meeting with Ya Hsin on April 11, 2007, and to seek guidance on how best to
18 hinder, delay and defraud Ya Hsin and Protron’s other non-insider creditors so Chen,
19 the Attorney Defendants and their other cohorts would have time to carry out their plan
20 to loot Protron’s substantial cash and inventory.

21 29. At the April 11, 2007 meeting, for example, Chen agreed to permit Ya
22 Hsin’s accountants to audit Protron’s books to determine the basis for the more than \$38
23 million discrepancy between what Chen admitted Protron owed (approximately \$78
24 million) and the amount Ya Hsin claimed it was owed (approximately \$116 million).
25 However, after Chen consulted with Citron and his other cohorts, when Ya Hsin’s
26 accountants from Taiwan arrived at Protron’s office on April 16, 2007, Chen refused to
27 permit them to enter Protron’s premises or to conduct any review of Protron’s
28 accounting records relating to the \$38 million in discrepancies.

30. Citron had been actively working with Chen during the months leading up to the April 11, 2007 meeting to effectuate a series of large monthly cash transfers to Traweck and Bradham, who purports to be Spectroniq officers and shareholders, and to Spectroniq (of which Citron also was a shareholder and outside General Counsel), in preparation for the wholesale looting of the company which was about to begin.

31. Thus, by way of example and without limitation, the following fund transfers were made in the months leading up to the April 11, 2007 meeting:

2007 0110	Protron pays Traweck \$50,000
2007 0119	Protron pays Citron \$40,000
2007 0215	Protron pays Citron \$44,793
2007 0301	Protron transfers \$50,000 to Traweck
2007 0312	Protron transfers \$90,000 to Spectroniq
2007 0318	Protron pays Citron \$48,945.
2007 0321	Protron transfers \$750,000 to Spectroniq
2007 0330	Protron transfers \$50,000 and \$50,000 (twice) to Traweck.
2007 0404	Protron transfers \$50,000 to Spectroniq

32. Then, commencing on April 12, 2012 - the very next day after Chen's April 11, 2012 meeting with Ya Hsin – Chen begins a series of Protron fund transfers under the supervision and guidance of Citron and C&D (and, on information and belief, Salomon and ELS as well) that are breathtaking in their rapacity, audacity and mendacity. By way of example and not limitation, the following fund transfers

1 occurred before Ya Hsin notified Chen (on May 16, 2007) of its intent to seek writs of
 2 attachment and possession regarding Protron’s cash and inventory securing Ya Hsin’s
 3 debt:

2007 0413	Protron transfers \$1,000,000 and \$60,000 to C&D
2007 0417	Protron transfers \$8,408 to ELS
2007 0420	Protron transfers \$300,000 to Spectroniq
2007 0507	Protron transfers \$1,000,000 to Spectroniq
2007 0509	Protron transfers \$60,000 to Traweek
2007 0510	Protron moves \$6,000,000 to a new Protron account at American Continental Bank
2007 0514	Protron transfers \$54,395.50 to Citron

33. On May 7, 2007 Ya Hsin (on its own behalf) filed a lawsuit in San Bernardino County Superior Court (Rancho Cucamonga) against Protron and others (“Contract Action”). Ya Hsin did not give Chen notice of the lawsuit at that time, however. Instead, on May 16, 2007, Ya Hsin served its lawsuit in the Contract Action on Protron and, simultaneously, gave ex parte notice that it would be seeking certain provisional relief at a hearing the following morning.

34. On May 16, 2007 and May 17, 2007 (the ex parte hearing dates), Protron collectively transferred more than \$8,969,000.00 to C&D, as follows:

2007 0516	Protron transfers \$2,674,000 to C&D
2007 0516	Protron transfers \$15,000 to Citron @ Manufacturer’s Bank
2007	Protron transfers \$6,000,000 and \$280,000 to C&D from

1	0517	American Continental Bank Business Money Market and Regular Business accounts, respectively.
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2
3
4 35. The Court in the Contract Action did not grant ex parte attachments or
5 writs of possession at the May 17, 2007 hearing, and instead put the matter over for
6 hearing on July 2, 2007 after full briefing. At the July 2, 2007 hearing, the Court
7 granted Ya Hsin's motion and issued a \$56 million writ of attachment and \$22 million
8 writ of possession and turnover order (which corresponded to Chen's admission of a
9 debt owed by Protron to Ya Hsin of at least \$78 million [\$56 million + \$22 million =
10 \$78 million]). Due to the Fourth of July holiday, the actual writs did not issue until July
11 6, 2007.

12 36. Between the time they received notice of Ya Hsin's Contract Action (on
13 May 16, 2012) and the time that the writs actually issued (on July 6, 2012), Chen, with
14 the active and knowing assistance and instructions by the Attorney Defendants, caused
15 Protron to transfer more than \$8.3 million, through C&D and Spectroniq primarily, for
16 the benefit of Chen, the Attorney Defendants, Traweek and Bradham – all to the
17 disadvantage of Protron and its legitimate creditors, including Ya Hsin. By way of
18 example and not limitation, these transfers included the following:

19	2007 0521	Citron transfers \$6,969,000 back to Protron
20	2007 0604	Protron transfers \$40,000 to Bradham's wife, Mariya Zhelvokova
21	2007 0607	Protron transfers \$386,000 to Traweek
22	2007 0608	Protron transfers \$450,231.91 to Bradham's wife, Mariya Zheluokova.
23	2007 0608	Protron transfers \$1,221,000 to WillFly Int'l Trading
24	2007 0613	Protron transfers \$2,052,336.80 to Spectroniq TH

1	2007 0615	Protron transfers \$25,030 to Chen
2		
3	2007 0618	Protron transfers \$2,000,000 to Chen
4		
5	2007 0619	Protron transfers \$700,000 to Chen
6		
7	2007 0620	Protron transfers \$670,000 to Chen
8		
9	2007 0621	Citron transfers \$1,813,589.17 (from Spectroniq) & \$840,000 (from Chen) to Protron
10		
11	2007 0622	Protron transfers \$800,000 to Chen
12		
13	2007 0627	Protron transfers \$900,000 to Chen
14		
15	2007 0627	Protron transfers \$950,000 to Chen
16		
17	2007 0628	Spectroniq transfers \$1,221,000 to C&D
18		
19	2007 0629	C&D transfers \$1,221,000 to Protron
20		
21	2007 0629	Protron transfers \$1,575,323,75 to Chen

37. As revealed in emails obtained from C&D as a result of turn-over orders entered by Judge Meredith Jury of the United States Bankruptcy Court in this litigation, Citron and his firm (C&D), with the knowledge, consent, support and ratification of Salomons and ELS (both tacit and explicit), orchestrated the various fund transfers made by Chen and Protron back and forth between the themselves, their related shell entities and cohorts. As of the date of this Complaint, Salomons and ELS, who are also subject to the turn-over orders of Judge Meredith Jury, have still not turned over all of their records to Plaintiff for review.

B. Chen And The Attorney Defendants Set Up A Series Of Shell Companies To Facilitate Their Plan To Divert Protron Assets For Their Personal Benefit.

1 38. In an improper, and unfortunately successful, effort to effectuate their plan
2 to systematically loot Protron in derogation of Protron’s interests and the rights of
3 Protron’s creditors, Chen and the Attorney Defendants erected and manipulated a series
4 of shell companies that were designed to create the appearance of legitimate businesses
5 dealing at arms-length. In reality, however, these companies were mere conduits owned
6 and/or controlled by the Chen and the Attorney Defendants for the purpose of
7 laundering Protron funds, stealing Protron inventory, and funneling the proceeds into
8 their own pockets and other speculative business ventures for their personal benefit. In
9 doing so, the Attorney Defendants were fully aware, or were utterly reckless in not
10 knowing of their role as part of an overarching scheme at the time that they provided the
11 guidance and assistance to Chen to implement the fraudulent and preferential transfers
12 of Protron assets at issue. In doing so, the Attorney Defendants were professionally
13 negligent at the very least and breached their fiduciary duties to Protron (and
14 Spectroniq) and their creditors

15 39. For example, while Spectroniq and Spectroniq TH were ostensibly erected
16 to deal with Protron’s prohibition from using the “Protron” mark, Chen and the
17 Attorney Defendants in actuality used both companies to siphon and sequester cash and
18 inventory from Protron in various ways soon after Chen’s April 11th meeting with Ya
19 Hsin, and continuing thereafter both before and after Ya Hsin’s writs of attachment and
20 possession issued on July 7, 2007, including, without limitation, the following instances
21 of misconduct:

- 22 a. *In furtherance of their scheme to improperly divert Protron assets*, from
23 February through June 2007, they used a total of approximately \$3.2
24 million of Protron’s cash to purchase consumer electronics goods from a
25 supplier in China under the “SpectronIQ” brand name for delivery to
26 Spectroniq, thereby improperly diverting Protron funds for the benefit of
27 Spectroniq without any consideration being returned to or received by
28 Protron. In connection with this improper cash diversion scheme, Citron

1 told Salomons on May 18th (day after the May 17th Ya Hsin ex parte
2 hearing on its writ applications) that Protron had paid \$2 million to a
3 Chinese supplier to supply \$3 million worth of new TVs *for Spectroniq*,
4 and that they had tried to cover this up on Protron's books by showing this
5 \$2 million expense as a "repayment" to Chen of his bogus, created-after-
6 the-fact \$6.9 million "inventory" loan.

7
8 b. *In furtherance of their scheme to improperly divert Protron assets*, Chen,
9 acting in concert with the Citron and C&D, caused Protron to transfer
10 \$840,000 to Spectroniq (comprised of a transfer of \$90,000 on March 12,
11 2007 and \$750,000 on March 21, 2007), supposedly constituting Protron's
12 100% equity interest in Spectroniq. They then immediately caused
13 Spectroniq to transfer the same funds to Kerner Optical Research and
14 Development (KORD) (a now-bankrupt Lucasfilm spinoff that attempted
15 to develop 3-D cameras for 3-D television sets). KORD was a speculative
16 business venture in which Chen, Bradham, Traweek, and Citron were
17 investing together, with the first \$90,000 representing Chen, Bradham,
18 Traweek and Citron's equity investment in KORD, while the other
19 \$750,000 supposedly served as a "loan" from Spectroniq to KORD. None
20 of these activities benefited Protron. Proper conflict of interest waivers
21 were never requested or obtained. In fact, at Citron's express instruction,
22 the other Attorney Defendants conspired to go out of their way to hide this
23 material fact at all costs. Salomons knew Citron/Chen took \$890,000 from
24 Protron to fund KORD as a loan, through Spectroniq as a mere shell.
25 Citron told Salomons the day after the Ya Hsin ex parte hearing (on May
26 18, 2007) that \$890,000 of Protron cash was moved from Protron to
27 Spectroniq in March 2007 and that all of the funds were then transferred to
28 KORD. Citron then warned Salomons: "**We** do not want, under any

1 circumstances, for KORD to get caught up in this litigation.” (Emphasis
2 added.) Salomons and ELS, in concert with Citron & C&D, therefore was
3 on notice of the non-waivable conflict of interest arising from his
4 concurrent representation of Spectroniq, Chen, and Protron, and the use of
5 Protron funds funnelled through Spectroniq to pay for the individual
6 investments of Citron, Bradham and Traweek into Kord. Yet Salomons
7 (and his firm, ELS, and Citron and C&D) did not withdraw from the
8 representation as they were required to do, but instead facilitated and
9 covered up the illicit fund transfers in concert with Chen, Citron and C&D.

10
11 c. *In furtherance of their scheme to improperly divert Protron assets*, after Ya
12 Hsin filed suit and while its multiple writ applications were pending, Chen,
13 acting in concert with the Attorney Defendants, undertook additional acts
14 in an attempt to cover up the fact that Spectroniq was a wholly-owned
15 subsidiary of Protron, and to steal ownership of Spectroniq from Protron.
16 They attempted to accomplish this theft of Spectroniq’s ownership under
17 the direction of the Citron and C&D by causing Protron to transfer more
18 than \$840,000 directly to Chen, then directing Chen to wire \$840,000 to
19 C&D, to later be directed by Citron back to Protron on June 21, 2007, for
20 the purported purpose of funding Chen’s acquisition from Protron of its
21 100% equity interest in Spectroniq. Citron (either directly or through the
22 Citron Family Trust) obtained a minority interest in Spectroniq as part of
23 this ruse, while Chen, Traweek, Bradham and others shared the other
24 equity interests of Spectroniq as designed by Citron and C&D.

25 d. *In furtherance of their scheme to improperly divert Protron assets*, Citron
26 and the Attorney Defendants “created” a Trademark License Agreement
27 (the “License Agreement”), which was prepared by Citron in June 2007
28 and then fraudulently backdated to October 13, 2006, in an effort to justify

1 exorbitant fund transfers by Protron to Spectroniq TH (totaling more than
2 \$2,288,190.22) in June 2007 to ostensibly license the use of the
3 “SpectronIQ” trademark. Chen signed this fraudulent Trademark License
4 Agreement for both Protron and Spectroniq, which identified C&D as
5 counsel for Spectroniq TH. But Salomons was also consulted by Citron
6 specifically on this issue, and concurred and facilitated the transfers of
7 \$2,288,190.22 to Spectroniq TH as supposed “royalty” payments under the
8 License Agreement. But the “SpectronIQ” trademark, if it had value or
9 good will at all, was in fact already wholly owned by Protron through its
10 100% equity ownership of Spectroniq. Citron and Chen knowingly and
11 purposely used Protron funds to pay Citron to register the “SpectronIQ”
12 trademark with the U.S. Patent and Trademark Office on or about
13 Spetember 6, 2006, for the benefit of Spectroniq. But through the
14 fraudulent conduct of Chen, at the instruction and guidance of Citron and
15 C&D (with the knowledge of and support from Salomons and his former
16 firm, ELS), they attempted to fraudulently separate Protron from
17 Spectroniq, giving them the opportunity to move over \$2.2 million in cash
18 away from Protron and out of reach of Protron’s legitimate creditors, such
19 as Ya Hsin. This arrangement was simply another way to siphon away
20 Protron’s cash into a nominally separate entity so that the money could not
21 be readily seized in Ya Hsin’s attachment proceedings, all of which were
22 designed to cause Protron serious financial harm, to further hinder, delay
23 and defraud Protron creditors, and was performed in serious breach of
24 their fiduciary duties owed to Protron and its creditors at the time.

25 e. *In furtherance of their scheme to improperly divert Protron assets*, Chen,
26 with the Attorney Defendants’ knowing and active assistance, acquired a
27 Hong Kong shell company - Mandary (HK Co.) - whose name they later
28 changed to Mandary Technology Limited (“Mandary”), through which

1 Chen funneled at least an additional \$2.1 million Chen stole from Protron
2 as a purported “loan” by Mandary to Spectroniq. They manufactured this
3 sham “loan” structure such that, through Mandary, Chen (with the
4 knowing assistance of the Attorney Defendants) could assert a purported
5 priority security interest over all assets of Spectroniq, thereby keeping the
6 inventory and other assets of Spectroniq out of reach of Protron’s
7 legitimate creditors. While Citron and C&D prepared the bogus corporate
8 documents necessary to “paper” a purported perfected security interest in
9 Mandary’s favor (with respect to consumer electronic goods purchased
10 with Chen-supplied funds purloined from Protron), Salomons was a
11 knowing and active participant in the scheme. On July 5, 2007 – after
12 Chen/Citron had already removed over \$12 million from Protron – Citron
13 asks Salomons the following: “Leo plans to loan XXX \$\$ to SDI from his
14 6.9M. We will make up a promissory note and minutes. I don’t think he
15 should personally make an LC to the supplier in China, and this is the plan
16 as of this minute. Your thoughts!” Salomons responds telling Citron he
17 would call him right back. The very next day, Chen wired \$1.1 million to
18 Spectroniq from a Hong Kong bank account controlled by Chen. On July
19 27, 2007, Chen wires another \$1.0 million to Spectroniq from the same
20 Hong Kong account. Salomons and ELS, therefore, knew full well that the
21 \$2.1 million “loan” from Hong Kong into Spectroniq in July 2007 was
22 from Chen (i.e., from the funds Chen took from Protron), but they
23 continued to fully assist Chen, Citron and C&D in the cover-up of this fact
24 by maintaining that the \$2.1 million fund actually came from Mandary HK
25 - a company with which Chen purportedly had no relations. This entire
26 strategy was designed to cause Protron serious financial harm, to further
27 hinder, delay and defraud Protron's creditors, and was performed in serious
28

1 breach of their fiduciary duties owed to Protron and its creditors at the
2 time.

3 f. *Finally, in furtherance of their scheme to improperly divert Protron assets,*
4 *after Ya Hsin filed suit and while its multiple writ applications were*
5 *pending, and contrary to Protron’s best interests but to benefit themselves,*
6 *Chen, the Attorney Defendants, Traweek and Bradham developed,*
7 *orchestrated and implemented a plan that was comprised of the following:*

8 (1) To have all employees at Protron quit simultaneously and
9 work as independent contractors, in disregard of Protron’s interests, all for
10 the benefit of Spectroniq (both of which were concurrent, joint clients of
11 the Attorney Defendants);

12 (2) To take control of Protron’s books and records so as to hide
13 the payment of KORD-related legal fees and expenses (i.e., personal
14 Citron, Chen, Traweek and Bradham business venture fees and expenses)
15 with Protron funds;

16 (3) To intentionally alter and spoliage critical, material evidence in
17 the face of ongoing litigation by, for example, instructing Protron
18 employees to delete all relevant emails;

19 (4) To obtain advance retainers of \$500,000 for Citron and C&D
20 and another \$200,000 for Salomons and ELS of Protron cash for legal
21 services that, in fact, caused material harm to Protron’s interests rather
22 than protecting and advancing them;

23 (5) To fabricate a purported “promissory note” in the amount of
24 \$6.9 million from Protron to Chen (signed for Protron by Chen, of course),
25 for the equivalent value of “inventory” supposedly contributed by Chen to
26 Protron when the company was formed, when no such inventory actually
27 was ever provided and no accounting basis for such inventory ever existed
28 in Protron’s official books and records;

1 (6) To cancel the original stock certificates that showed that
2 Protron owned 100% of Spectroniq's and Spectroniq TH's stock to show
3 that Chen (or his Trust) owned their stock (with Citron, Traweek and
4 Bradham gaining as secret minority shareholder interests), when Protron
5 was the true and proper 100% owner of Spectroniq and Spectroniq TH and
6 received nothing in reality when Chen took all of the Spectroniq shares
7 from Protron for the benefit of Chen, Citron, Bradham and Traweek;

8 (7) To make up corporate minutes, corporate resolutions,
9 promissory note(s), and then backdate them, in an effort to legitimize
10 inter-company transfers between Protron, on the one hand, and the
11 Defendants and/or other shame entities, when in fact they were designed to
12 loot Protron for the benefit of Chen and the Attorney Defendants;

13 (8) To make up corporate minutes and resolutions, and then
14 backdate them, in an effort to authorize the \$500,000 in advance legal fees
15 paid by Protron to Citron and C&D and \$200,000 paid by Protron to
16 Salomons and ELS, when their legal services were in actuality assisting
17 their own personal interests which were adverse to Protron's interests;

18 (9) To transfer more than \$2,288,190 to Spectroniq TH (and
19 create bogus, backdated minutes authorizing the transfer), even though
20 Protron received no benefit from the transfer, and the entire basis for the
21 transfer - that it was required under the Spectroniq/Protron License
22 Agreement - was fallacious because that Agreement was backdated and
23 created merely as an attempt to cover-up the taking by Chen of over \$2.2
24 million from Protron for no consideration;

25 (10) To make up corporate minutes and bills of sale, and then
26 backdate them, purporting to authorize and effectuate the "sale" of all of
27 Protron's non-inventory assets to Spectroniq for only \$20,000 to \$50,000,
28 which bore no relation to the actual value of such assets and essentially

1 purported to justify the conversion of that property without adequate
2 consideration;

3 (11) To move Protron inventory between warehouses in a game of
4 “cat and mouse” so as to liquidate as much of such inventory as possible
5 before Ya Hsin could seize it, and pocket the sale proceeds in the
6 meantime;

7 (12) To manufacture inflated and invented credits and offsets to the
8 \$116 million in debt Protron owed to Ya Hsin, in order to keep more
9 Protron cash and assets free from Ya Hsin liens and attachment efforts,
10 thereby allowing Defendants time to continue their looting of Protron
11 assets; and

12 (13) To make up an “Advisor Agreement Between Protron Digital
13 Corporation And Leo Chen And Richard Traweck and William Bradham,”
14 together with a purported “Amendment 1 to Advisor Agreement,” between
15 Protron and Traweck, and, further, to then backdate them and support
16 them with made up corporate minutes that also were backdated, in an
17 effort to justify past and prospective exorbitant fees paid by Protron to
18 Traweck and Bradham, not for services provided to Protron, but for
19 services that were inimical to Protron’s interests, including but not limited
20 to Spectroniq’s competing business, the Mandary house of cards, and the
21 KORD investment pursued by Citron, Chen, Bradham and Traweck with
22 Protron money bearing absolutely no benefit to Protron.

23 40. These actions by the Attorney Defendants, in concert with Chen, Traweck
24 and Bradham and their conspirators, involved, in summary, the suppression and
25 spoliation of key, material evidence (old and contemporaneous emails) and the creation
26 and fabrication of other evidence (backdated corporate minutes and promissory notes),
27 and the funneling of cash through C&D (and possibly the Citron Family Trust
28 accounts), via Spectroniq, Spectroniq TH and Mandary, as shell companies and cash

1 conduits for the scheme, all in an elaborate effort to strip Protron of its assets in
2 derogation of its interests and the interests of its creditors, and to the benefit of the
3 Defendants and other corrupt insiders including Traweek and Bradham.

4 41. The payment of exorbitant “advisory” fees to Traweek and Bradham, in
5 connection with the Spectroniq 3-D or KORD projects or otherwise, the payment of fees
6 to the Attorney Defendants for legal work and counseling that harmed the interests of
7 Protron and its non-insider creditors, and the granting of security interests to Mandary in
8 which Chen and the Attorney Defendants participated had no rational business purpose
9 and were so one-sided that no business person of ordinary sound judgment could believe
10 that Protron received adequate consideration or reasonably equivalent value in exchange
11 for the payments and/or transfers. All of this constituted egregious corporate waste and
12 preferential and fraudulent transfers for which Chen and the Attorney Defendants are
13 now liable.

14 **C. Protron Was Insolvent During The Transfer Period Between**
15 **March 31, 2007 And August 31, 2007.**

16 42. The transfers identified in Paragraphs 31, 32, 34 and 36, above, that were
17 made on or after March 31, 2011 -- and the machinations undertaken by the Defendants
18 to orchestrate and camouflage them -- were made at a time that Protron was insolvent
19 and owed to secured creditor Ya Hsin at least \$78 million and as much as \$116 million,
20 exclusive of additional millions of dollars Protron owed to its other secured and
21 unsecured creditors, including but not limited to its primary bank, Sinopac, and its
22 warehouses.

23 43. For purposes of the United States Bankruptcy Code’s fraudulent and
24 preferential transfer provisions, and analogous state law fraudulent conveyance statutes
25 and related common law torts, three tests are typically used to determine whether a
26 debtor is insolvent at the time of disputed transfers: (1) an adjusted balance sheet test
27 (the “Balance Sheet Test”) to determine whether the sum of a debtor’s debts exceeds the
28 value of its property (assets), at fair valuation; (2) an inability to pay debts as they

1 become due test (the “Cash Flow Test”) to determine whether a debtor has incurred
 2 debts that were beyond its ability to pay as the debts matured; and (3) an insufficient
 3 capital or assets test (the “Inadequate Capital Test,” also sometimes called the “Capital
 4 Adequacy Test”) to determine whether a debtor incurred debts that were beyond its
 5 ability to pay as the debts matured. As demonstrated by Protron’s own internally-
 6 prepared and accountant-reviewed financial statements, between March 31, 2007 and
 7 August 31, 2007, Protron was demonstrably insolvent under the Balance Sheet Test, the
 8 Cash Flow Test, and the Inadequate Capital Test.

9 **1. Protron Was Insolvent Under The Balance Sheet Test**
 10 **During The Transfer Period.**

11 44. The Balance Sheet Test, which seeks to determine whether the Debtor was
 12 insolvent at the time of the transfers or as a result of such transfers, is reflected in
 13 Bankruptcy Code sections 548(a)(1)(B)(ii)(I) and 101(32), which define insolvency as a
 14 financial condition such that the sum of a Company’s debts is greater than all of such
 15 Company’s property at a fair valuation, exclusive of any property fraudulently
 16 transferred. Under the Balance Sheet Test, as the name implies, courts have made the
 17 insolvency determination simply by reviewing and analyzing a corporation’s balance
 18 sheets placed into evidence.

19 45. Set forth below is a summary of Protron’s Balance Sheets for the periods
 20 ending March 31, 2007 and August 31, 2007 (*i.e.*, the Transfer Period):

Protron Digital Corporation		
Balance Sheet		
(In thousands)		
	Mar 31, 2007	Aug 31, 2007
ASSETS:		
Cash	1,909	386
Inventory, net	33,078	10,362
Accounts Receivable, net	47,088	21,208

Other Assets	3,145	15,851
Fixed Assets	160	200
Long Term Invest	840	0
Total Assets:	86,220	48,007
LIABILITIES:		
Accounts Payable	87,662	75,510
Other Current	14,500	5,677
Total Liabilities:	102,162	81,187
EQUITY:		
Stock	10	10
Retained Earnings	(15,952)	(33,190)
Total Equity:	(15,942)	(33,180)
Total Liab & Equity:	86,220	48,007

These two Balance Sheets (attached hereto as Exhibit C and Exhibit D, respectively, show that Protron’s liabilities substantially exceeded its assets during the Transfer Period.

a. Even Taking At Face Value The Attorney-Induced, Inflated And Manufactured Credits And Offsets Supposedly Owed To Protron, Protron Still Was Insolvent During The Transfer Period.

46. In an effort to cordon off as much Protron cash and inventory as they could from the liens and impending collection efforts of Ya Hsin and Protron’s other creditors -- and thereby keep as much of Protron’s assets available as possible to plunder for themselves and their cohorts -- the Attorney Defendants instructed Chen and Protron personnel to create as many bogus credits and offets to Ya Hsin’s \$116 million debt as they possibly could do on a rush basis. To that end, the Defendants, working overtime with Protron personnel, cobbled together approximately \$100.8 million in supposed offsets and credits owed to Protron by Ya Hsin, as follows:

- a. \$8 million offset claim due Protron for Ya Hsin’s failure to enter proper credits under the “Protron Special Sales Application”;

- b. \$7.5 million offset claim due Protron for “lost profits” as a result of the various “Protron Special Sales Application” related sales;
- c. \$7.1 million offset claim due Protron as “Spare Part Allowance”;
- d. \$200,000 offset claim due Protron for alleged increase in shipping costs;
- e. \$196,000 offset claim due Protron for alleged import duty increases;
- f. \$4 million offset claim due Protron for alleged increased storage charges for returned/defective goods;
- g. \$1.6 million and \$6.8 million offset claims due Protron for alleged customer returns;
- h. \$18.8 million offset claim due Protron for alleged licenselicense payments;
- i. \$28 million offset claim due Protron for alleged “spare parts”; and
- j. \$18.6 million offset claim due Protron for alleged “price protection/product substitution/customer charge back”.

47. These offset and credit claims, totaling \$100.8 million, were not recorded on Protron’s official Balance Sheets or other contemporaneous financial records. They did not report these credits to Protron’s lenders, including Sinopac. That is because such credits and offsets were grossly inflated or otherwise invented. The Superior Court in the Contract Action properly rejected these claimed offsets and credits because they lacked evidential support, especially given Chen’s written admission at the April 11, 2007 meeting with Ya Hsin representatives that the company owed to Ya Hsin at least \$78 million. The \$100.8 million in supposed offsets and credits was the result of the Attorney Defendants’ rear guard effort to countermand Chen’s earlier, unscripted admission regarding the minimum \$78 million debt owed to Ya Hsin.

48. Even if the highly inflated and bogus \$100.8 million offset and credit claim were taken at face value, however -- which was uniformly rejected by the Superior Court in the Contract Action, by the Receiver both before and during the Bankruptcy Cases, and by the Bankruptcy Court in approving the Plan (which recognized Ya Hsin’s debt at over \$115 million) -- Protron still would remain substantially indebted to Ya

1 Hsin by at least \$15 million as of June 2007. Consequently, Protron was
2 unquestionably insolvent under the Balance Sheet Test even if the grossly-exaggerated
3 and invented offset and credit claims were accepted *in toto* – which Plaintiff specifically
4 reject.

5 **2. Protron Was Insolvent Under The Cash Flow Test During**
6 **The Transfer Period.**

7 49. The Cash Flow Test under Bankruptcy Code section 548(a)(1)(B)(ii)(III)
8 defines a form of financial distress where a company incurs debts that would be beyond
9 its to pay as they matured. The Cash flow test also is reflected in California
10 Corporations Code §501, which states that a corporation is insolvent when it is “likely
11 to be unable to meet is liabilities...as they mature.” Here, Protron consistently failed
12 during the Transfer Period to make regular payments on the two most important debt
13 obligations at the core of its business: (i) Protron’s admitted multi-million-dollar debt
14 owed to its primary supplier of its consumer electronic goods, Ya Hsin, and (ii) its past-
15 due debt owed to its warehouse lessor, where its consumer electronic goods were stored
16 and where shipments to customers were made.

17 50. In particular, besides not paying its debts owed to its consumer electronics
18 supplier, Ya Hsin, Protron also stopped paying its two key warehouses – Brighten
19 Freight, Inc. (“BFI”) and LightHouse Logistics (“LL”) during the period of time on and
20 after April 2007. BFI’s “Detail Aging Report” printed on March 14, 2008 show old
21 invoices to Protron unpaid as early as March 1, 2007, which left a final unpaid balance
22 of \$71,000. In addition, LL formally noticed Protron through legal counsel on August
23 31, 2007 of its intent to sell Protron goods held at LL for \$385,000 to offset accrued and
24 unpaid storage and carrier charges in excess of \$533,000. Given Protron’s inability to
25 pay Ya Hsin (its primary supplier at the time) and subsequent failure to pay its
26 warehouseurs during the Transfer Period, Protron was equitably insolvent because it was
27 unable to pay trade debts as they came due during the Transfer Period.
28

1 **3. Protron Was Insolvent Under The Inadequate Capital Test**
2 **During The Transfer Period.**

3 51. The Inadequate Capital Test under Bankruptcy Code section
4 548(a)(1)(B)(ii)(II) applies when a company has unreasonably small capital to conduct
5 future business in the ordinary course.

6 52. Protron lacked reasonably adequate capital to sustain its business
7 operations during the Transfer Period. With no new products coming into its
8 operations, its remaining revenue and income were generated entirely from the sale of
9 its dwindling consumer electronic goods in inventory, which were not being replaced by
10 Ya Hsin from at least April 11, 2007 going forward.

11 53. During the Transfer Period, Protron also lost its credit line with Bank
12 Sinopac, and was left without any alternative lines of credit or other access to cash from
13 secured or unsecured loans. There is also no evidence of any additional equity
14 contributions made to Protron during the Transfer Period, either by existing
15 shareholders or new investors of Protron.

16 54. As a result, as Ya Hsin cut off supplies of new consumer electronic goods
17 to Protron, Protron was without new capital to sustain its operations as its cash flow
18 from operations was immediately and irreparably squeezed as it continued to liquidate
19 its then on-hand inventory, and lacked sufficient capital or credit to replenish its
20 inventory though alternative suppliers. At all times during Transfer Period, the
21 inadequacy of Protron's capital -- exacerbated by the illicit transfers by Chen and the
22 Attorney Defendants of Protron cash and inventory for their benefit and the benefit of
23 their cohorts (primarily Traweek and Bradham) -- by necessity was destined to result in
24 Protron's financial collapse.

25 **D. The Defendants Knew Or Were Reckless In Not Knowing That**
26 **Protron Was Insolvent During The Transfer Period.**

27 55. Chen and the Attorney Defendants knew that Protron was insolvent during
28 the Transfer Period, yet they nevertheless orchestrated the systematic looting of Protron

1 to hinder, delay and thwart Ya Hsin's prospective recoupment efforts and the rights of
2 Protron's other secured and unsecured creditors. Chen and the Attorney Defendants had
3 copies of Protron's March 31, 2007 and August 31, 2007 Balance Sheets that showed
4 that Protron's liabilities vastly exceeded its assets. They knew, or were reckless in not
5 knowing, that:

- 6 a. Ya Hsin had stopped shipping goods to Protron on or before April 11, 2007
7 and, from that point forth, Protron's inventory value depleted from \$33
8 million as of March 31, 2007 to \$10.4 million by August 31, 2007;
- 9 b. By April 11, 2007 (the beginning of the Transfer Period), Protron (through
10 its CEO and controlling shareholder Chen) had admitted to Ya Hsin in
11 writing that it owed Ya Hsin over \$78,000,000 (as shown in Exhibit A
12 hereto);
- 13 c. Protron had little or no trade credits with any other supplier of consumer
14 electronic goods sufficient to continue sales in a volume large enough to
15 pay down its debt to Ya Hsin and continue to pay its other debts as they
16 came due; and
- 17 d. No credible evidence existed to substantiate anything near the
18 approximately \$100.8 million in offset and credit claims by Protron given
19 Protron's own written admission on April 11, 2007 that it owed Ya Hsin
20 \$78 million, and even if the offset and credit claims fabricated by Chen and
21 his staff pursuant to the Attorney Defendants' instructions were taken *in*
22 *toto* at face value, Protron still was insolvent during the Transfer Period
23 (and even before and certainly after that time).

24 56. Chen's and the Attorney Defendants' knowledge of Protron's insolvency
25 during the Transfer Period also is evidenced by their retention of and consultation with
26 bankruptcy counsel at Hennigan, Bennett & Dorman LLP during the Transfer Period, in
27
28

1 an effort to plan a strategy to drain the company of available cash while still positioning
2 it for a chapter 11 restructuring.

3 **E. Chen And The Attorney Defendants Owed Statutory and**
4 **Fiduciary Duties To Preserve, Not Plunder, Protron’s Assets**
5 **For The Benefit Of Protron And Its Secured And Unsecured**
6 **Creditors.**

7 57. Protron is a California Corporation and the fiduciary duties of Chen, as its
8 President and Director, and the fiduciary duties of Chen’s and Protron’s California
9 lawyers (the Attorney Defendants), are governed by California law.

10 58. In California, corporate directors and officers owe a fiduciary duty to the
11 corporation and its shareholders and, now as set out by statute, must serve “in good
12 faith, in a manner such director believes to be in the best interests of the corporation and
13 its shareholders.” (Corp. Code, § 309, subd. (a).) This duty -- generally to act with
14 honesty, loyalty, and good faith -- is derived from the common law. As directors and
15 officers of Protron and Spectroniq, Chen (and Traweek and Bradham, with Citron and
16 C&D, serving as outside legal counsel for Protron and Spectroniq) owed the
17 corporations fiduciary duties of good faith, loyalty and disclosure and to refrain from
18 self-dealing and other conflicts of interest. They also had a duty to avoid wasting and
19 mismanaging corporate assets.

20 59. At all relevant times, Chen, as an officer and director of Protron, owed
21 fiduciary and statutory duties to Protron not to make distributions of corporate assets
22 with a dishonest or fraudulent purpose, not to make false financial statements, to make
23 proper book entries, and not to falsify corporate or regulatory documents. The Attorney
24 Defendants, as counsel to Protron, owed it a duty not to aid and abet Chen’s breaches of
25 his fiduciary and statutory duties in those regards.

26 60. It is true that a California corporation’s directors and officers owe no
27 fiduciary duty to creditors under California law until the corporation becomes insolvent.
28 Once a corporation becomes insolvent, however, the scope of a director’s or officer’s

1 fiduciary duty expands from the corporation itself and shifts from its shareholders to its
2 creditors. The fiduciary duty of an officer and director of an insolvent California
3 corporation is to not divert, dissipate or unduly risk assets necessary to satisfy claims
4 against the corporation by its secured and unsecured creditors. This is the rule under
5 California’s so-called “Trust Fund Doctrine,” which provides that all of the assets of a
6 corporation, immediately on its becoming insolvent, become a trust fund for the benefit
7 of all of its creditors.

8 61. Accordingly, the directors and officers of an insolvent corporation - such as
9 Chen and, on information and belief, Citron & C&D as well acting as outside general
10 counsel for Protron - become fiduciaries to the corporation’s creditors - such as Ya Hsin
11 - requiring officers and directors of the insolvent corporation to protect its available
12 cash, inventory on hand, and other assets needed to satisfy its creditor claims. Recovery
13 for breaching this fiduciary duty applies in cases where the directors or officers of an
14 insolvent corporation have failed to meet their fiduciary asset-protection duties,
15 *especially when they divert assets of the corporation for their own benefit* or the benefit
16 of other insiders or preferred creditors.

17 62. The Attorney Defendants, for their part, were duty bound to refrain from
18 advising, aiding, or abetting Chen, both individually and as the President and a director
19 of Protron (which they also concurrently represented), from transferring, hiding, or
20 dissipating Protron’s cash and other assets in an improper effort to thwart the rights of
21 Protron’s creditors, including Ya Hsin as Protron’s primary, senior secured creditor.
22 An attorney has clear-cut ethical responsibilities to not counsel an officer or director
23 client of an insolvent corporation to hide assets or divert assets to his or her own
24 personal use or benefit at the expense of the corporation’s creditors under Rule 3-210 of
25 California Rules of Professional Conduct (“A member shall not advise the violation of
26 any law, rule or ruling of a tribunal unless the member believes in good faith that such
27 law, rule, or ruling is invalid. A member may take appropriate steps in good faith to test
28 the validity of a new law, rule, or ruling of a tribunal”).)

1 63. Thus, for example, the Attorney Defendants were required to refrain from
2 advising, aiding or abetting fund and other asset transfers and dissipations by Chen that
3 harmed Protron and violated the California Uniform Fraudulent Transfer Act, codified
4 at California Civil Code § 3439 *et seq.*, California Business and Professions Code §§
5 6106 and 6128, California Penal Code §§154, 155, and 531, and California
6 Corporations Code §§ 2253, 2254 and 2255.

7 64. The California Uniform Fraudulent Transfer Act (“CUFTA”) provides, in
8 pertinent part, as follows:

9 “A transfer made or an obligation incurred by a debtor is fraudulent
10 as to a creditor, whether the creditor’s claim arose before or after the
11 transfer was made or the obligation incurred, if the debtor made the
12 transfer or incurred the obligation as follows:

13 (a) with actual intent to hinder, delay, or defraud any creditor
14 of the debtor,

15 (b) without receiving a reasonably equivalent value in
16 exchange for the transfer or obligation, and the debtor:

17 (1) was engaged or was about to engage in a business or
18 a transaction for which the remaining assets of the debtor were
19 unreasonably small in relation to the business transaction; or

20 (2) intended to incur, or believed or reasonably should
21 have believed that he or she would incur, debts beyond his or her
22 ability to pay as they become due.”

23 65. The California The Legislative Committee Comments on these provisions
24 (Cal. Civ. Code Ann. § 3439.04 (West) (Legislative Committee Comment - Assembly,
25 1986 Addition) notes several “badges of fraud” from which an inference of fraudulent
26 intent may be drawn, including, with particular pertinence to the facts of this case,
27 whether the transfer was to an insider; whether the transfers were concealed; whether
28 the debtor was sued or threatened with suit before the transfers were made; whether the

1 transfers were of substantially all the debtor’s assets; whether the debtor removed or
2 concealed assets; whether the value of the consideration received by the debtor was not
3 reasonably equivalent to the value of the asset transferred; whether the debtor was
4 insolvent or became insolvent shortly after the transfers were made; and so on.

5 66. All of these “badges of fraud” identified under the Legislative Committee
6 Comments to CUFTA (California Civil Code § 3439.04) and corresponding federal and
7 California state common law were readily apparent under the circumstances
8 surrounding the illicit fund and inventory transfers that occurred here, as alleged herein.
9 All of these “badges of fraud” should have alerted the Attorney Defendants that their
10 advice to Chen, Protron, Spectroniq, Spectroniq TH, Mandary, Traweek and Bradham
11 had crossed the line from aggressive advocacy into the impermissible facilitation of
12 fraudulent transfers and conveyances designed to hinder, delay and defraud legitimate
13 creditors of an insolvent company.

14 67. In addition to the CUFTA, the California Penal Code criminalizes various
15 activities designed to hinder the exercise of creditor rights.

16 68. For example, Penal Code § 154 provides, in pertinent part, as follows:
17 “Every debtor who fraudulently removes his property or effects out of
18 this state or fraudulently sells, conveys, assigns, or conceals his
19 property with the intent to defraud, hinder, or delay his creditors of
20 their rights, claims, or demands, is punishable by imprisonment in a
21 county jail not exceeding one year, or a fine not exceeding \$ 1,000, or
22 both. If the property so removed or sold or conveyed...consists of a
23 stock in trade or a part thereof, of a value exceeding \$ 100, the offense
24 is a felony and punishable as such.”

25 69. In addition, Section 155 of the Penal Code provides as follows:
26 “Every person against whom an action is pending, or against whom a
27 judgment has been rendered for the recovery of any personal
28 property, who fraudulently conceals, sells or disposes of such

1 property, with intent to hinder, delay, or defraud the person bringing
2 such action or recovery of such judgment, or with such intent
3 removes such property beyond the limits of the county in which it
4 may be at the time of the commencement of such action or the
5 rendering of such judgment, is punishable as provided in Section
6 154.”

7 70. To the same end, Penal Code § 531 states:

8 “Every person who is a party to any fraudulent conveyance of lands,
9 tenements, or hereditaments, goods or chattels, or any right or interest
10 issuing out of the same, or to any bond, suit, judgment, or execution,
11 contract or conveyance, had, made, or contrived with intent to deceive
12 and defraud others, or to defeat, hinder or delay creditors or others, of
13 their just debts, damages, or demands; or who, being a party as
14 aforesaid, at any time wittingly and willingly puts in uses, avows,
15 maintains, justifies or defends the same, or any of them, as true, and
16 done, had or made in good faith or upon good consideration, or aliens,
17 assigns, or sells any of the lands, tenements, hereditaments, goods or
18 chattels, or other things before mentioned, to him or them conveys as
19 aforesaid, or any part thereof, is guilty of a misdemeanor.”

20 71. Section 8 of the Penal Code provides that “whenever, by any of the
21 provisions of this code, an intent to defraud is required in order to constitute an offense,
22 it is sufficient if an intent appears to defraud any person, association, or body politic or
23 corporate, whatever.” (*See* Cal. Pen. Code § 8.)

24 72. The California Corporations Code also prohibits the implementation of
25 corporate transactions through backdated minutes and bogus promissory notes designed
26 to hinder, delay or defraud corporate creditors.

27 73. Corporations Code § 2253, for example, provides as follows:
28

1 “Any director of a stock corporation, domestic or foreign, who
2 concurs in any vote or act of the directors of the corporation or any of
3 them, knowingly and with dishonest or fraudulent purpose, to make
4 any dividend or distribution of assets except in the cases and in the
5 manner allowed by law, either with the design of defrauding creditors
6 or shareholders or of giving a false appearance to the value of the
7 stock and thereby defrauding subscribers or purchasers, is guilty of a
8 misdemeanor, punishable by a fine of not more than one thousand
9 dollars (\$1,000) or imprisonment for not more than one year or both.”

10 74. Corporations Code § 2254 similarly provides as follows:

11 “Every director, officer or agent of any corporation, domestic or
12 foreign, is guilty of a felony (a) who knowingly concurs in making,
13 publishing or posting either generally or privately to the shareholders
14 or other persons (1) any written report, exhibit, statement of its affairs
15 or pecuniary condition or notice containing any material statement
16 which is false, or (2) any untrue or willfully or fraudulently
17 exaggerated report, prospectus, account, statement of operations,
18 values, business, profits, expenditures or prospects, or (3) any other
19 paper or document intend to produce or give, or having a tendency to
20 produce or give, the shares of stock in such corporation a greater
21 value or a less apparent or market value than they really possess, or
22 (b) who refuses to make any book entry or post any notice required by
23 the law in manner required by law.”

24 75. To similar effect, Corporations Code § 2255 provides as follows:

25 “(a) Every director, officer or agent of any corporation, domestic or
26 foreign, who knowingly receives or acquires possession of any
27 property of the corporation, otherwise than in payment of a just
28 demand, and, with intent to defraud, omits to make, or to cause or

1 direct to be made, a full and true entry thereof in the books or
2 accounts of the corporation is guilty of a public offense.

3 (b) Every director, officer, agent or shareholder of any corporation,
4 domestic or foreign, who, with intent to defraud, destroys, alters,
5 mutilates or falsifies any of the books, papers, writings or securities
6 belonging to the corporation or makes or concurs in omitting to make
7 any material entry in any book of accounts or other record or
8 document kept by the corporation is guilty of a public offense.”

9 76. The California Business and Professions Code also bars attorney assistance
10 in schemes to defraud creditors. Section 6128, for example, provides that an attorney is
11 guilty of a misdemeanor when he or she is “guilty of any deceit or collusion, or consents
12 to any deceit or collusion, with intent to deceive the court or any party.”

13 77. These provisions - California Civil Code § 3439 *et seq.*, California
14 Business and Professions Code §§ 6106 and 6128, California Penal Code §§ 8, 154,
15 155, and 531, and California Corporations Code §§ 2253, 2254 and 2255 - individually
16 and taken together, and in combination with analogous provisions of common law and
17 the United States Bankruptcy Code relating to fraudulent and preferential transfers, all
18 should have been borne firmly in mind by the Attorney Defendants when they
19 orchestrated, facilitated and attempted to cover up the illicit fund and inventory transfers
20 as alleged herein. To the extent that the Attorney Defendants did consider these
21 provisions of law and the consequences arising from them under the circumstances
22 present here, but proceeded with their active encouragement and orchestration of the
23 illicit transfers notwithstanding, the Attorney Defendants were at the very least
24 professionally negligent and breached their fiduciary duties to Protron.

25 **FIRST CAUSE OF ACTION**

26 **(For Legal Malpractice Against The Attorney Defendants)**

27 78. Plaintiff realleges and incorporates by reference the allegations contained
28 in paragraphs 1 through 77, above, as though fully set forth herein.

1 79. During the Transfer Period (and afterwards), the Attorney Defendants
2 concurrently and jointly represented Chen, Protron, Spectroniq, Spectroniq TH, and
3 possibly Mandary, Traweek and Bradham. In representing Protron, the Attorney
4 Defendants owed a professional duty to use such skill, prudence, and diligence as other
5 members of his profession commonly possess and exercise under the circumstances in
6 the performance of the tasks which they undertake. This duty encompasses both a
7 knowledge of law and an obligation of diligent research and informed judgment.

8 80. In their capacity as attorneys for Protron, the Attorney Defendants - as
9 California attorneys - were subject to various rules and statutes that govern the
10 professional conduct of attorneys vis-à-vis their clients under California law.

11 81. Rule 3-310 of the California Rules of Professional Conduct, for example,
12 entitled “Avoiding the Representation of Adverse Interests,” provides, in pertinent part,
13 in Subsections (B) and (C), as follows:

14 “(B) A member shall not accept or continue representation of a client
15 without providing written disclosure to the client where: (1) The
16 member has a legal, business, financial, professional, or personal
17 relationship with a party or witness in the same matter; or (2) The
18 member knows or reasonably should know that: (a) the member
19 previously had a legal, business, financial, professional, or personal
20 relationship with a party or witness in the same matter; and (b) the
21 previous relationship would substantially affect the member’s
22 representation

23 “(C) A member shall not, without the informed written consent of each
24 client: (1) Accept representation of more than one client in a matter in
25 which the interests of the clients potentially conflict; or (2) Accept or
26 continue representation of more than one client in a matter in which
27 the interests of the clients actually conflict”
28

1 “(A) In representing an organization, a member shall conform his or
2 her representation to the concept that the client is the organization
3 itself, acting through its highest authorized officer, employee, body, or
4 constituent overseeing the particular engagement. . . .

5 * * *

6 (D) In dealing with an organization’s directors, officers, employees,
7 members, shareholders, or other constituents, a member shall explain
8 the identity of the client for whom the member acts, whenever it is or
9 becomes apparent that the organization’s interests are or may become
10 adverse to those of the constituent(s) with whom the member is
11 dealing. The member shall not mislead such a constituent into
12 believing that the constituent may communicate confidential
13 information to the member in a way that will not be used in the
14 organization’s interest if that is or becomes adverse to the constituent.

15 (E) A member representing an organization may also represent any of
16 its directors, officers, employees, members, shareholders, or other
17 constituents, subject to the provisions of rule 3-310. If the
18 organization’s consent to the dual representation is required by rule 3-
19 310, the consent shall be given by an appropriate constituent of the
20 organization other than the individual or constituent who is to be
21 represented, or by the shareholder(s) or organization members.”

22 85. Rule 3-700(B) of the California Rules of Professional Conduct, entitled
23 “Mandatory Withdrawal,” provides in pertinent part that “[A] member representing a
24 client in other matters shall withdraw from employment, if: . . . (2) The member knows
25 or should know that continued employment will result in violation of these rules or of
26 the State Bar Act”

27 86. Rule 3-210 of California Rules of Professional Conduct provides that “A
28 member shall not advise the violation of any law, rule or ruling of a tribunal unless the

1 member believes in good faith that such law, rule, or ruling is invalid. A member may
2 take appropriate steps in good faith to test the validity of a new law, rule, or ruling of a
3 tribunal.”

4 87. To the extent that the Attorney Defendants’ conduct previously alleged
5 related to the transactions described herein was not knowingly improper and, rather, was
6 based on ignorance, a lack of supervision, a lack of experience, or a lack of due
7 diligence, it was below the standard of care by attorneys in this area and beyond who
8 regularly represent public companies.

9 88. In that regard, the Attorney Defendants breached their duty to the Debtors,
10 and to Protron in particular, by failing to exercise reasonable care and skill in
11 performing legal services and giving deficient and defective legal advice, by failing to
12 give proper and correct advice, and by otherwise acting negligently and carelessly as
13 alleged previously in Paragraphs 39 through 41, as further elaborated in the following
14 matters and respects:

- 15 a. Advising, aiding and abetting Chen’s transfer and hiding of Protron cash
16 and other assets for the benefit of Chen, themselves, and other insiders
17 (such as Traweek and Bradham) so as to strip Protron of its assets in
18 derogation of its interests and the interests of its secured and unsecured
19 creditors, in violation of Business and Professions Code Section 6128,
20 Civil Code Section 3539 *et seq.*, Penal Code Sections 154 and 531, and
21 California Rules of Professional Conduct, Rule 3-210 (advising illegal
22 conduct);
- 23 b. Failing to provide full and accurate advice to the Debtors and Chen as to
24 their fiduciary duties, in particular their duty to always put the best
25 interests of the companies ahead of Chen’s interests or the interests of
26 other insiders or affiliated persons or entities, including Traweek and
27 Bradham, and their duties to avoid waste and mismanagement of corporate
28 assets;

1 c. Creating the Bradham and Traweek Advisory Agreement and Amendment
2 1 to the Advisory Agreement, and then backdating them and creating
3 bogus, backdated Protron corporate minutes after the fact to support them,
4 when the exorbitant fees paid by Protron under that Agreement and
5 Amendment were for services that harmed Protron’s interests and the
6 interests of its secured and unsecured creditors, in violation of the
7 California Rules of Professional Conduct relating to conflicts of interest
8 (Rule 3-310), client business dealings (Rule 3-300), attorney withdrawal
9 (Rule 3-700), representation of an organization (Rule 3-600) and advising
10 illegal conduct (Rule 3-210);

11 d. Creating the \$6.9 million Protron promissory note to Chen (together with
12 bogus, backdated corporate minutes to support it) based upon Chen’s
13 supposed supply of inventory to Protron valued at that amount, when they
14 knew there was no evidence or accounting records to account for such
15 historical inventory, apart from Chen’s unsupported “say so,” without
16 withdrawing from the concurrent representation of Protron and advising
17 Chen that Protron was required to have disinterested, independent counsel,
18 given that Protron was harmed by the loss of Protron funds transferred to
19 repay the Chen “loan” that were required to be preserved for the benefit of
20 Protron’s secured creditors, even if the “loan” were legitimate (which it
21 was not), because the Attorney Defendants should have known or were
22 reckless in their ignorance that an insider’s debt cannot be preferred over
23 the debts of an insolvent company’s secured creditors under these
24 circumstances;

25 e. Making up corporate minutes and bills of sale, and then backdating them,
26 purporting to authorize and effectuate the “sale” of all of Protron’s non-
27 inventory assets to Spectroniq for only \$20,000 to \$50,000, which bore no
28

1 relation to the actual value of Protron’s non-inventory assets and
2 essentially purported to justify the conversion of such property without
3 adequate consideration, without withdrawing from the concurrent
4 representation of Protron and advising Chen that Protron was required to
5 have disinterested, independent counsel;

6 f. Cancelling the original stock certificates that showed that Protron owned
7 100% of Spectroniq’s and Spectroniq TH’s stock to show that Chen (or his
8 personal Trust) owned their stock (with Citron, Traweek and Bradham
9 gaining secret minority shareholder interests), when Protron did, in
10 derogation of Protron’s interests, without withdrawing from the
11 representation and advising Protron to seek disinterested, independent
12 counsel;

13 g. Making up corporate minutes, resolutions, and a promissory note, and then
14 backdating them, in an effort to substantiate inter-company transfers
15 between Protron and Spectroniq as legitimate, when in fact they were
16 designed to loot Protron for the benefit of Chen and the Attorney
17 Defendants, in violation of Rule 3-310 (conflicts of interest), Rule 3-600
18 (advising an organization), and Rule 3-700 (attorney withdrawal);

19 h. Assisting in the acquisition and use of Mandary as a shell corporation to
20 obtain Protron cash funneled through C&D’s client trust account, to Chen,
21 and then to Mandary, to then “loan” back to Spectroniq in order for the
22 Attorney Defendants to justify giving Mandary a U.C.C. first priority
23 security interest in all of Spectroniq inventory actually purchased with
24 Protron money, in violation of the California Rules of Professional
25 Conduct relating to conflicts of interest (Rule 3-310), client business
26 dealings (Rule 3-300), attorney withdrawal (Rule 3-700), representation of
27 an organization (Rule 3-600) and advising illegal conduct (Rule 3-210);
28

- 1 i. Failing to provide full and accurate advice as to the obligations of the
2 Debtors and their conflicted Board of Directors under California corporate
3 law, by aiding and abetting breaches of fiduciary duty by Chen, and by
4 failing to advise the Debtors of claims against Chen and their other
5 directors;
- 6 j. Failing to advise against, and instead facilitating and participating in the
7 fund transfers during the Transfer Period when they knew or should have
8 known that Protron was insolvent, thereby aiding and abetting Chen's and
9 their own breaches of fiduciary duty to Ya Hsin, as Protron's primary
10 secured creditor, and Protron's other secured and unsecured creditors,
11 under California's Trust Fund Doctrine;
- 12 k. Failing to inform the Debtors or Chen that they had a non-waivable conflict
13 of interest due to the fiduciary obligations owned by Protron, triggered by
14 its insolvency, to Ya Hsin as Protron's primary secured creditor under
15 California's Trust Fund Doctrine, failing to advise them of the risks and
16 liability that would arise from the fund transfers, but instead encouraging
17 and actively assisting them, and not withdrawing from the conflicted, joint
18 representation, all in violation of Rule 3-310 (conflicts of interest), Rule 3-
19 600 (advising an organization), and Rule 3-700 (attorney withdrawal);
- 20 l. Failing to take steps to insure that the Debtors were represented by
21 separate, independent, and unconflicted counsel, in derogation of Rule 3-
22 310 of the California Rules of Professional Conduct, and other applicable
23 fiduciary and professional obligations imposed under California law;
- 24 m. Permitting and facilitating fund transfers to Spectroniq for the personal
25 benefit of Citron, who was a shareholder of Spectroniq (and possibly also
26 Spectroniq TH), to the detriment of Protron and its primary secured
27 creditor, Ya Hsin (to which Chen and Citron, as Protron's outside general
28 counsel, owed fiduciary duties under the Trust Fund Doctrine), in violation

1 of the California Rules of Professional Conduct relating to conflicts of
2 interest (Rule 3-310), client business dealings (Rule 3-300), attorney
3 withdrawal (Rule 3-700), representation of an organization (Rule 3-600)
4 and advising illegal conduct (Rule 3-210);

- 5 n. Failing to satisfy the duty of candor required of them, to act at all times in
6 good faith, in an honest and fair manner, with truthfulness and honesty,
7 disclosing all material facts and avoiding making negligent or intentional
8 misrepresentations by affirmative statement and by willfully omitting to
9 disclose facts material to the illicit cash and inventory transfers; and
10 o. Other miscellaneous but serious misconduct in breach of their legal duties
11 owed to the Debtors to be proven at the time of trial.

12 89. As a direct and proximate result of the failure of the Attorney Defendants
13 to exercise proper care and skill as alleged herein, the Debtors were damaged including
14 and not limited to:

- 15 a. At least \$12 million for the illicit cash transfers from Protron;
16 b. The attorneys' fees paid by the Debtors to the Attorney Defendants, which
17 Debtors believe to be in excess of \$750,000, which the Attorney
18 Defendants should be ordered to account for and disgorge;
19 c. Attorneys' fees and costs of suit incurred in prosecuting this litigation as
20 provided for in the prevailing party attorneys' fee provision in the
21 applicable retainer agreements between Protron and Spectroniq, on the one
22 hand, and the Attorney Defendants, on the other hand, and
23 d. Other damages in an amount to be proven at trial.

24 **SECOND CAUSE OF ACTION**

25 **(For Breach Of Fiduciary Duty Against Chen And The Attorney Defendants)**

26 90. Plaintiff realleges and incorporates by reference the allegations contained
27 in paragraphs 1 through 77, and paragraph 88, above, as though fully set forth herein.
28

1 91. By virtue of the attorney-client relationship that existed between the
2 Debtors and the Attorney Defendants and by virtue of the Debtors having placed
3 confidence in the honesty, fidelity, and integrity of Attorney Defendants, a confidential
4 relationship existed between the Debtors, on the one hand, and the Attorney Defendants,
5 on the other hand. Accordingly, the Attorney Defendants owed to Proton fiduciary
6 duties based on the Rules of Professional Conduct which, together with statutes and
7 general principles relating to other fiduciary relationships, required the Attorney
8 Defendants to act in their dealings with Protron with the utmost good faith, trust,
9 confidence, and candor. These duties required the Attorney Defendants to deal with
10 Protron with the highest degree of honesty and loyalty, to and advance and protect the
11 best interests of Protron at all times, without any disabling conflicts of interest with
12 other clients or self-dealing of any kind.

13 92. Thus, by way of amplification and illustration, the Attorney Defendants’
14 fiduciary duty of care required them to ensure, when advising and assisting Protron, that
15 they first had exercised reasonable diligence to research and investigate the facts and
16 law, to explore the client’s objectives and goals, and to undertake reasonable efforts to
17 ensure that their legal advice was competently designed to achieve their client’s
18 objectives and goals in light of the relevant facts and law.

19 93. The Attorney Defendants’ fiduciary of loyalty required them, in their
20 dealings with Protron, not to put their personal or professional interests ahead of or in
21 conflict with Protron, or to use their position of trust for their own personal advantage or
22 to benefit their client-insiders at the expense of their client. The duty of loyalty,
23 sometimes called the “duty of fidelity,” is a very high and stringent one. The Attorney
24 Defendants were obligated to protect Protron in every possible, legitimate way, and it
25 was a violation of their fiduciary duty of loyalty to assume a position adverse or
26 antagonistic to Protron without its free and intelligent consent given after full
27 knowledge of all the facts and circumstances, by a person authorized to give such
28 consent under the circumstances.

1 94. The Attorney Defendants' fiduciary duty of good faith required them, in
2 their dealings with Protron, to act at all times in good faith, in an honest and fair
3 manner, with scrupulousness and candor, disclosing any facts or circumstances that
4 might be material to the interests of the Debtors regarding the subject matter of the
5 representation.

6 95. Under the Trust Fund Doctrine, as soon as Protron was insolvent, Chen (as
7 a Protron Director and Executive Officer) and Protron both owed a fiduciary duty to Ya
8 Hsin, as Protron's primary secured creditor, not to dissipate Protron's remaining cash
9 for the benefit of Chen and other insiders and their affiliates. Chen's interest in
10 receiving the fund transfers at that point directly conflicted with Protron's interests. It
11 was improper for the Attorney Defendants to represent both Protron and Chen
12 simultaneously, because Chen could not waive his own conflict of interest vis-à-vis
13 Protron and Ya Hsin (to which both Protron and Chen owed duties under the Trust Fund
14 Doctrine). This is so because once a conflict has arisen between a corporation and one
15 or more of its officers, directors or shareholders, counsel for the company may not
16 simultaneously represent the corporation and the adverse officer, director or
17 shareholder. Chen's fiduciary duty to Protron under the Trust Fund Doctrine required
18 him to preserve Protron's assets for the benefit of legitimate Protron creditors, including
19 Ya Hsin.

20 96. Chen breached his fiduciary duty to Protron authorizing and facilitating
21 transfers of Protron cash in excess of \$12 million to himself, the Attorney Defendants,
22 Bradham, Traweek and other insiders and affiliates at the expense of and to the
23 detriment of Protron and its secured and unsecured creditors. The Attorney Defendants
24 were ethically precluded from jointly representing both an insolvent corporation
25 (Protron) and its insider director (Chen) in advising and assisting in fund transfers from
26 the insolvent corporation to the insider director at the expense and to the detriment of
27 the insolvent corporation's creditors. It was improper for the Attorney Defendants to
28 represent both Protron and Chen simultaneously, because Chen could not waive his own

1 conflict of interest vis-à-vis Protron and Ya Hsin (to which both Protron and Chen owed
2 duties under the Trust Fund Doctrine). Under the Trust Fund Doctrine, once the
3 corporation becomes insolvent, the fiduciary duties of the insider director shifted from
4 the corporation per se and its shareholders to the corporation's creditors.

5 97. The Attorney Defendants' dual representation of the insider director and
6 the insolvent corporation, regarding fund transfers to the insider director that hindered,
7 delayed or impeded a creditor's rights, as happened here, presented a insuperable
8 conflict of interest that could not be waived by either Protron or Chen. The Attorney
9 Defendants were required to withdraw of the representation, which they failed to do,
10 because of the benefits that each of them looked to gain through assisting the adverse
11 corporate insiders against the interests of the insolvent Protron and its creditors.

12 98. The Attorney Defendants breached their fiduciary duties to Protron by
13 engaging in the acts and omission alleged in detail in Paragraphs 38, 39, 40, 41 and 88,
14 above.

15 99. As a direct and proximate result of the fiduciary breaches of Chen and the
16 Attorney Defendants, Protron was damaged in at least the following amounts:

- 17 a. At least \$12 million for the illicit cash transfers from Protron;
 - 18 b. The attorneys' fees paid by the Debtors to the Attorney Defendants, which
19 Debtors believe to be in excess of \$750,000, which the Attorney
20 Defendants should be ordered to account for and disgorge;
 - 21 c. Attorneys' fees and costs of suit incurred in prosecuting this litigation as
22 provided for in the prevailing party attorneys' fee provision in the
23 applicable retainer agreements between Protron and Spectroniq, on the one
24 hand, and the Attorney Defendants, on the other hand, and and
 - 25 d. Other damages in an amount to be proven at trial.
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THIRD CAUSE OF ACTION

(For Aiding And Abetting Breaches Of Fiduciary Duty Against The Attorney Defendants)

100. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 77, and paragraph 88, above, as though fully set forth herein.

101. During all relevant times, a fiduciary relationship existed between Protron and Chen. This relationship arose from Chen's status as a controlling shareholder and former officer and director of Protron. Upon the Debtors' insolvency, Chen, Traweek and Bradham also owed a fiduciary duty to the Debtors' creditors under the Trust Fund Doctrine not to engage in self-dealing, preferential treatment of insider creditors, or diversion or dissipation of the Debtor's assets.

102. Chen breached his fiduciary duties owed to Protron by causing Protron to make the various transfers identified in Paragraphs 31, 32, 34 and 36, above, that were made on or after March 31, 2011 -- and by engaging in the machinations undertaken by the Attorney Defendants to orchestrate and camouflage them -- at a time Protron was insolvent and by promoting Chen's, Traweek's, Bradham's, Spectroniq TH's, and Mandary's self-interest above the interests of Protron (and Spectroniq).

103. The Attorney Defendants knew or were reckless in not knowing that Chen's decision to cause Protron to make the Transfers were a breach of their fiduciary duties to Protron, but they not only did not advise him against doing so, they actively encouraged and facilitated the fund and asset transfers, giving specific directions and orchestrating the timing, manner and documentation required to execute them. The Attorney Defendants aided and abetted Chen's, Traweek's and Bradham's breaches of their fiduciary duties by, among other things, giving substantial assistance to Chen in accomplishing their breach of their fiduciary duties by allowing the C&D trust account to be used to hide the Debtors' funds from their creditors and for failing to advise Chen, Traweek and Bradham regarding their fiduciary duties to the Debtors' creditors and the

1 proper discharges of such duties, as previously alleged in Paragraphs 38, 39, 40, 41 and
2 88, above.

3 104. As a proximate result of these breaches, the Debtors have been damaged in
4 an amount to be proven at trial, which includes, but is not limited to, the following:

- 5 a. At least \$12 million for the illicit cash transfers from Protron;
- 6 b. The attorneys' fees paid by the Debtors to Attorney Defendants related to
7 the Chen Transfers, Spectroniq TH Transfers and Traweek Transfers,
8 including fees, which Debtors believe to be in excess of \$750,000, which
9 the Attorney Defendants should be ordered to account for and disgorge;
10 and
- 11 c. Other damages in an amount to be proven at trial.

12 **FOURTH CAUSE OF ACTION**

13 **(For Avoidance And Recovery Of Preferential Transfers Under 11 U.S.C. §§ 547**
14 **and 550 Against Spectroniq TH and Chen [and Citron as their Alter Egos])**

15 105. Plaintiff realleges and incorporates by reference the allegations contained
16 in paragraphs 1 through 77, above, as though fully set forth herein.

17 106. On or within one year prior to the Petition Date, Protron transferred funds
18 to Spectroniq TH in the total amount of at least \$2,288,190.22 including:

19

20 DATE	AMOUNT
21 06/13/2007	\$2,052,336.80
22 01/08/2007	\$235,853.42
23 Total	\$2,288,190.22

24 107. Spectroniq TH was a creditor of Protron at time the Spectroniq TH
25 Transfers were made.

26 108. At the time the transfers were made, Plaintiff Spectroniq TH was an insider
27 of Protron pursuant to 11 U.S.C. § 101(31) insofar as it was Protron's affiliate.
28

1 109. Spectroniq TH has asserted that the Spectroniq TH Transfers were made
2 for the benefit of Spectroniq TH on account of an alleged antecedent debt owed by
3 Protron before such transfers were made.

4 110. The Spectroniq TH Transfers were made while Protron was insolvent under
5 the Balance Sheet Test, the Cash Flow Test, and/or the Inadequate Capital Test, as
6 previously alleged.

7 111. The Spectroniq TH Transfers enabled it to receive more than it would have
8 received if:

- 9 (i) Protron’s chapter 11 case were a case under chapter 7,
- 10 (ii) the Spectroniq TH Transfers had not been made, and
- 11 (iii) Spectroniq TH received payment of the debt to the extent provided
12 under the Bankruptcy Code.

13 112. As a result of the foregoing and pursuant to the Plan, Plaintiff, on behalf of
14 the Debtors and their estates, is entitled to avoid and set aside the Spectroniq TH
15 Transfers under §547 of the Bankruptcy Code.

16 113. Pursuant to §550 of the Bankruptcy Code and the Plan, Plaintiff is entitled
17 to recover the Spectroniq TH Transfers, together with the interest thereon at the legal
18 rate, from Spectroniq TH for the benefit of the Debtors and their estates.

19 114. Because, as alleged at the outset, Citron and Chen are Spectroniq TH’s
20 alter egos, Plaintiff is also entitled to recover the Spectroniq TH Transfers from Chen
21 and Citron individually.

22 115. On or within one year prior to the Petition Date, Chen caused Protron to
23 make transfers of monies to Chen in the total amount of at least \$7,700,490.63 (the
24 “Chen Transfers”), including:

Date	Amount
2/7/2007	\$5,336.63
5/24/07	\$74,800.25
6/15/2007	\$25,030.00

1	6/18/2007	\$2,000,000.00
2	6/19/2007	\$700,000.00
3	6/20/2007	\$670,000.00
4	6/21/2007	\$800,000.00
5	6/22/2007	\$900,000.00
6	6/27/2007	\$950,000.00
7	6/29/2007	\$1,575,323.75
8		Total \$7,700,490.63

9 116. Plaintiff is informed and believes and based thereon alleges that Chen was
10 a creditor of Protron at the time the Chen Transfers were made. At the time the
11 transfers were made, Chen was an insider of Protron pursuant to 11 U.S.C. § 101(31)
12 insofar as he was Protron’s president, controlling shareholder, and in control of its day-
13 to-day operations.

14 117. Plaintiff is informed and believes and on that basis alleges that Chen has
15 asserted that the Chen Transfers were made for the benefit of Chen on account of an
16 alleged antecedent debt owed by Protron before such transfers were made (i.e., the
17 supposed \$6.9 million inventory promissory note concocted by the Attorney
18 Defendants).

19 118. The Chen Transfers were made while Protron was insolvent.

20 119. The Chen Transfers enabled Chen to receive more than he would have
21 received if: (i) Protron’s chapter 11 case were a case under chapter 7, (ii) the Chen
22 Transfers had not been made, and (iii) Chen received payment of the debt to the extent
23 provided under the Bankruptcy Code.

24 120. As a result of the foregoing and pursuant to the Plan, Plaintiff, on behalf of
25 the Debtors and their estates, is entitled to avoid and set aside the Chen Transfers under
26 section 547 of the Bankruptcy Code.

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1 121. Pursuant to section 550 of the Bankruptcy Code and the Plan, Plaintiff is
2 entitled to recover the Chen Transfers, together with the interest thereon at the legal
3 rate, from Chen for the benefit of the Debtors and their estates.

4 **FIFTH CAUSE OF ACTION**

5 **(Avoidance Of Fraudulent Transfers Against Spectroniq TH and Leo Chen [and**
6 **Citron as Spectroniq TH's Alter Ego] - Actual Fraud- Under 11 U.S.C. § 548 and**
7 **California Civil Code§ 3439.04)**

8 122. Plaintiff realleges and incorporates by reference the allegations contained
9 in paragraphs 1 through 77, above, as though fully set forth herein.

10 123. The Spectroniq TH Transfers were made with an actual intent to hinder,
11 delay, or defraud Ya Hsin and other Protron creditors.

12 124. Defendants Chen and Spectroniq TH were the entities for whose benefit the
13 transfers were made and/or the immediate or mediate transferee of the Chen Transfers
14 and the Spectroniq TH Transfers for the benefit of the other Defendants.

15 125. Chen, in concert with the Attorney Defendants, engaged in a complicated
16 scheme to defraud, hinder and delay Protron's secured and unsecured creditors at a time
17 when Protron was insolvent under either the Balance Sheet Test, the Cash Flow Test,
18 and/or the Capital Adequacy Test, as previously alleged.

19 126. At the time of the Chen Transfers and the Spectroniq TH Transfers, the
20 Debtors were engaged in business or a transaction, or were about to engage in business
21 or a transaction, for which the property remaining with Debtors following its loss of the
22 value of cash that was transferred, was an unreasonably small capital.

23 127. At the time of the Chen Transfers and the Spectroniq TH Transfers, the
24 Debtors intended to incur, or believed that they would incur, debts that would be beyond
25 their ability to pay as such debts matured.

26 128. The transfers to Chen cannot be justified on the basis of a supposed prior
27 \$6 million promissory note by Protron to Chen for inventory supposed given to Protron
28 by Chen at the time Protron was formed because there no such inventory was in fact

1 supplied and there is no accounting basis for it. The \$6.9 million promissory was
2 created after the fact by Citron and C&D, with the knowledge and consent of the other
3 Attorney Defendants, and fraudulently backdated in a fruitless attempt to justify the
4 fraudulent Chen transfers. In all events, as a matter of law an insider of an insolvent
5 corporation - such as Chen, as a Director of Protron during the Transfer Period - cannot
6 pay himself ahead of the corporation's secured creditor (i.e., Ya Hsin), even if the
7 insider's debt was valid, which is hardly the case here. Such a transfer constitutes illicit
8 defalcation. Thus, Protron did not receive reasonably equivalent value for the Chen
9 Transfers because Chen was acting in bad faith, in derogation of Protron's and Ya
10 Hsin's rights and interests, the transfers were collusive and not arms-length, and the
11 supposed debt used to justify them cannot be substantiated and lacks any accounting
12 basis.

13 129. The Spectroniq TH Transfers cannot be justified as payments to Spectroniq
14 TH on account of the License Agreement because the License Agreement provides that
15 payments pursuant to its terms are to be made to Spectroniq, not to Spectroniq TH.
16 Moreover, the "SpectronIQ" mark had no value and no good will associated with it or, if
17 it had any value attached at all, such value belong to Protron before Chen (in
18 consultation with Citron and C&D) transferred any such value away from Protron to
19 Debtor Spectroniq without providing for any fair consideration back to Protron. The
20 License Agreement, which was prepared in June 2007 and fraudulently backdated to
21 October 13, 2006, was merely a pretext to funnel additional funds to Chen, and gin up
22 fees for the Attorney Defendants, while creating the false appearance of legitimate,
23 arms-length business dealings and removing cash from the immediate reach of Ya Hsin
24 in its attachment proceedings. Thus, Protron did not receive reasonably equivalent
25 value from Spectroniq TH in exchange for the Spectroniq TH transfers because the
26 Spectroniq trademark could not justify the exorbitant license fees paid on a fair market
27 value basis, the agreement was collusive and the opposite of arms-length, and the
28 transferee, Spectroniq TH, was acting in bad faith as Chen's instrumentality, as

1 Spectroniq, not Spectroniq TH, was the licensor under the Licence Agreement, and the
2 license fees that were paid were funneled eventually to Chen or for the benefit of Chen’s
3 other cohorts.

4 130. By reason of the foregoing, the Chen Transfers and the Spectroniq TH
5 Transfers are subject to avoidance and recovery under 11 U.S.C. §§ 548, 550, California
6 Civil Code § 3439.07 and other related statutes.

7 131. Citron is liable for the fraudulent Spectroniq TH transfers also as
8 Spectroniq TH’s alter ego.

9 **SIXTH CAUSE OF ACTION**

10 **(For Avoidance Of Fraudulent Transfers Against Spectroniq TH and Leo Chen**
11 **[and Citron as Spectroniq TH’s Alter Ego] – Constructive Fraud – Under 11**
12 **U.S.C. §§ 548 and California Civil Code § 3439.04)**

13 132. Plaintiff realleges and incorporates by reference the allegations contained
14 in paragraphs 1 through 77, above, as though fully set forth herein.

15 133. The Spectroniq TH Transfers were made with an actual intent to hinder,
16 delay, or defraud Plaintiff as a creditor in an effort to shield Protron’s monies from the
17 claims of Plaintiff, which was a creditor of Protron at the time of the Spectroniq TH
18 Transfers.

19 134. Chen, in concert with the Attorney Defendants, engaged in a complicated
20 scheme to intentionally, willfully, fraudulently and maliciously, with specific intent, to
21 defraud, hinder and delay Ya Hsin’s rights as a secured creditor at a time when Protron
22 was insolvent under either the Balance Sheet Test, the Cash Flow Test, or the
23 Inadequate Capital Test.

24 135. At the time of the Chen Transfers and the Spectroniq TH Transfers, the
25 Debtors were engaged in business or a transaction, or were about to engage in business
26 or a transaction, for which the property remaining with Debtors following its loss of the
27 value of cash that was transferred, was an unreasonably small capital.
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1 136. At the time of the Chen Transfers and the Spectroniq TH Transfers, the
2 Debtors intended to incur, or believed that they would incur, debts that would be
3 beyond their ability to pay as such debts matured.

4 137. The transfers to Chen cannot be justified on the basis of a supposed prior
5 \$6.9 million promissory note by Protron to Chen for inventory supposedly given to
6 Protron by Chen at the time Protron was formed because no such inventory was in fact
7 supplied and there is no credible business record evidencing it, Protron's Balance Sheet
8 do not reflect it, and there is no accounting basis for it. The \$6.9 million promissory
9 was created after the fact by Citron, with the knowledge and consent of the other
10 Attorney Defendants, and fraudulently backdated in a fruitless attempt to justify the
11 fraudulent Chen transfers.

12 138. In all events, as a matter of law an insider of an insolvent corporation -
13 such as Chen, as a Director of Protron during the Transfer Period - cannot pay himself
14 ahead of the corporation's secured creditor (i.e., Ya Hsin), even if the insider's debt was
15 valid, which is hardly the case here. Such a transfer constitutes illicit defalcation by the
16 insider. Thus, Protron did not receive reasonably equivalent value for the Chen
17 Transfers because Chen was acting in bad faith, in derogation of Protron's rights and
18 interests and the rights and interests of Protron's legitimate secured (and unsecured)
19 creditors, the transfers were collusive and not arms-length, and the supposed debt used
20 to justify them cannot be substantiated and lacks any accounting basis.

21 139. As to the Spectroniq TH transfers, they cannot be justified as payments to
22 Spectroniq TH on account of the License Agreement because the License Agreement
23 provides that payments pursuant to its terms are to be made to Spectroniq, not to
24 Spectroniq TH. Moreover, the "SpectronIQ" mark had no value and no good will
25 associated with it or, if it had any value attached at all, such value belong to Protron
26 before Chen (in consultation with Citron and C&D) transferred any such value away
27 from Protron to Debtor Spectroniq without providing for any fair consideration back to
28 Protron. The License Agreement, which was prepared in June 2007 and fraudulently

1 backdated to October 13, 2006, was merely a pretext to funnel additional funds to Chen
2 and gin up fees for the Attorney Defendants, while creating the false appearance of
3 legitimate, arms-length business dealings and removing cash from the immediate reach
4 of Ya Hsin in its attachment proceedings. Thus, Protron did not receive reasonably
5 equivalent value from Spectroniq TH in exchange for the Spectroniq TH transfers
6 because the Spectroniq trademark could not justify the exorbitant license fees paid on a
7 fair market value basis, the agreement was collusive and the opposite of arms-length,
8 and the transferee, Spectroniq TH, was acting in bad faith as Chen’s instrumentality, as
9 Spectroniq, not Spectroniq TH, was the licensor under the License Agreement, and the
10 license fees that were paid were funneled to Chen.

11 140. By reason of the the Spectroniq TH are subject to avoidance and recovery
12 under 11 U.S.C. §§ 548, 550, California Civil Code§ 3439.07 and other related statutes.

13 141. Citron is liable for the fraudulent Spectroniq TH transfers also as
14 Spectroniq TH’s alter ego.

15 **SEVENTH CAUSE OF ACTION**

16 **(For Violation Of Cal. Bus. & Prof. Code § 17200 *et seq.*)**

17 142. Plaintiff realleges and incorporates by reference the allegations contained
18 in paragraphs 1 through 77, above, as though fully set forth herein.

19 143. The California Unfair Competition Act, set forth in California Business and
20 Professions Code §17200 *et seq.*, prohibits acts of unfair competition, which include
21 “any unlawful, unfair or fraudulent business act or practice” Section 17200
22 imposes strict liability for violations and does not require proof that Defendants
23 intended to injure anyone. Section 17200 borrows violations of other laws and treats
24 those transgressions, when committed as a business activity, as “unlawful” business
25 practices. Thus, the “unlawful” practices prohibited by Section 17200 are any practices
26 forbidden by law, be it civil or criminal, federal, state, or municipal, statutory,
27 regulatory, or court-made. Such “unlawful” business practices are independently
28 actionable under Section 17200 and subject to the distinct remedies provided hereunder.

1 144. The activities by Chen and the Attorney Defendants, and each of them, in
2 engaging in fraudulent and preferential transfers of property, breaching their fiduciary
3 duties of good faith, care, and loyalty as well as their statutory duties to Protron and its
4 creditors, and specifically violating California Uniform Fraudulent Transfer Act,
5 codified at California Civil Code § 3439 *et seq.*, California Business and Professions
6 Code §§ 6106 and 6128, California Penal Code §§154, 155, and 531, and California
7 Corporations Code §§ 2253, 2254 and 2255, as well as the related breaches by the
8 Attorney Defendants of California Rules of Professional Conduct §§ 3-300, 3-210, 3-
9 310, and 3-700, were unlawful.

10 145. These acts were also unfair because they constituted fiduciary breaches that
11 violated the trust and confidence Protron reposed in Chen, as its director, and the
12 Attorney Defendants, as its counsel. These acts were also fraudulent because they were
13 designed to prefer the bogus \$6.9 million promissory note supposed owed to insider
14 Chen at the expense of Protron and its creditors, in an illicit effort to hinder, delay and
15 defraud Protron's creditors, to whom Protron and Chen owed fiduciary duties under the
16 California Trust Fund Doctrine.

17 146. All of said Defendants' conduct thus constituted violations of California
18 Business and Professions Code § 17200.

19 147. Before, during and after the Transfer Period, the Attorney Defendants were
20 rendering services for Protron and receiving compensation for these services. At the
21 same time, these Defendants have been violating both their fiduciary, professional, and
22 statutory duties owed to Protron and its creditors, as more particularly alleged in
23 Paragraphs 87 and 97 above.

24 148. Protron is entitled to a return of this compensation, as restitution and
25 disgorgement pursuant to § 17203 of the California Business and Professions Code, as
26 made applicable by 11 U.S.C. §§541 and 544(a) and (b).

27 149. As a result of the Defendants' unlawful, unfair and fraudulent conduct
28 performed in furtherance of the Defendants' joint venture enterprise designed to loot

1 Protron for their own benefit, Defendants have been unjustly enriched in an amount as
2 yet is unascertained, but which includes approximately \$12 million in preferential and
3 fraudulent transfers and at least \$750,000 in attorneys' fees, all of which will be
4 determined according to proof at trial.

5 150. Accordingly, Chen and the Attorney Defendants are each required to
6 disgorge to Plaintiff for the benefit of Protron and the other creditors of the Debtors'
7 estates, all illicit profits, fees, and other compensation derived from these schemes.
8 They must each also restore to Plaintiff all property, or the fair market value of said
9 property they may have individually received, in an amount to be proven at trial, with
10 interest thereon to the fullest extent permitted by law. Interest should be paid by the
11 Defendants on all such illicitly-obtained sums from the time that such sums were
12 purloined until the present.

13 **PRAYER**

14 WHEREFORE, Plaintiff, on behalf of the Debtors and their estates under the Plan
15 and 11 U.S.C. § 1123(b)(3)(B), prays for judgment as follows:

16 **ON THE FIRST CAUSE OF ACTION**

17 **(Against The Attorney Defendants)**

- 18 1. For compensatory damages according to proof at trial, including but not limited to
19 the approximately \$12 million in illicit fund transfers alleged herein;
20 2. For an accounting and disgorgement by the Attorney Defendants of the attorneys'
21 fees paid to them by the Debtors in an amount of at least \$750,000, according to
22 proof at trial;
23 3. For pre-judgment interest and costs of suit, according to proof; and
24 4. For reasonable attorneys' fees under the applicable prevailing party attorneys' fee
25 provision in the parties' engagement agreements.
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ON THE SECOND CAUSE OF ACTION

(Against Chen And The Attorney Defendants)

1. For compensatory damages according to proof at trial, including but not limited to the approximately \$12 million in illicit fund transfers alleged herein;
2. For an accounting and disgorgement by the Attorney Defendants of the attorneys' fees paid to them by the Debtors in an amount of at least \$750,000, according to proof at trial;
3. For pre-judgment interest and costs of suit, according to proof; and
4. For reasonable attorneys' fees under the applicable prevailing party attorneys' fee provision in the parties' engagement agreements.

ON THE THIRD CAUSE OF ACTION

(Against The Attorney Defendants)

1. For compensatory damages according to proof at trial, including but not limited to the approximately \$12 million in illicit fund transfers alleged herein;
2. For disgorgement by the Attorney Defendants of the attorneys' fees paid to them by the Debtors in an amount of at least \$750,000 according to proof at trial; and
3. For pre-judgment interest and costs of suit, according to proof.

ON THE FOURTH CLAIM FOR RELIEF

(Against Spectroniq TH and Chen, and Citron as Spectroniq TH's Alter Ego)

1. Avoiding the Spectroniq TH Transfers and the Chen Transfers pursuant to 11 U.S.C. Sections 548 and 550, as well as California Civil Code Sections 3439.04, 3439.05, 3439.07 and 11 U.S.C. Section 544, and order the return of such transfers or the value thereof;
2. Ordering Spectroniq TH to pay at least \$2,288,190.22 representing the amount of the Spectroniq TH Transfers;
3. Ordering Chen to pay to Protron at least \$7,700,490.63 representing the amount of the Chen Transfers; and
4. For pre-judgment interest and costs of suit, according to proof.

1 **ON THE FIFTH CLAIM FOR RELIEF**

2 **(Against Spectroniq TH and Chen, and Citron as Spectroniq TH’s Alter Ego)**

- 3 1. For avoidance of all of the illicit transfers alleged herein in an amount of
4 approximately \$12 million pursuant to 11 U.S.C. Sections 548 and 550, as well as
5 California Civil Code Sections 3439.04, 3439.05, 3439.07 and 11 U.S.C. Section
6 544, and order the return of such transfers or the value thereof; and
7 2. For pre-judgment interest and costs of suit, according to proof.

8 **ON THE SIXTH CLAIM FOR RELIEF**

9 **(Against Spectroniq TH and Chen, and Citron as Spectroniq TH’s Alter Ego)**

- 10 1. For avoidance of all of the illicit transfers alleged herein in an amount of
11 approximately \$12 million pursuant to 11 U.S.C. Sections 548 and 550, as well as
12 California Civil Code Sections 3439.04, 3439.05, 3439.07 and 11 U.S.C. Section
13 544, and order the return of such transfers or the value thereof; and
14 2. For pre-judgment interest and costs of suit, according to proof.

15 **ON THE SIXTH CLAIM FOR RELIEF**

16 **(Against Chen and the Attorney Defendants)**

- 17 1. For an accounting, restitution and disgorgement by Defendants of all ill-gotten
18 gains, earnings, profits, compensation and benefits; and
19 2. For pre-judgment interest and costs of suit, according to proof.

20 **ON ALL CLAIMS FOR RELIEF**

- 21 1. For such other and further relief as the Court deems just and proper.
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Law Offices of Mark Anchor Albert
Los Angeles, California

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DEMAND FOR JURY TRIAL

In accordance with F.R.Civ.P. 38(b), made applicable in the U.S. Bankruptcy Court by virtue of Rule 9015 of the F.R.Bankr.P, Plaintiff demands a trial by jury of all claims set forth herein that are triable by a jury, apart from any claims or parts of claims sounding in equity or core claims under United States Bankruptcy law, which Plaintiff requests be tried by the Bankruptcy Court.

DATED: September 9, 2020

LAW OFFICES OF MARK ANCHOR ALBERT



By: _____

Mark Anchor Albert
Attorneys for Ya Hsin Industrial Co., Ltd., acting as the
Special Representative of Debtors Protron Digital
Corporation and Spectroniq Digital, Inc., and their estates
under 11 U.S.C. § 1123(b)(3)(B)