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7 **IN THE UNITED STATES BANKRUPTCY COURT**
8 **FOR THE DISTRICT OF ARIZONA**

9 **In Re:**

Chapter 11

10 **BBZ RESOURCE MANAGEMENT, INC., a**
11 **Wyoming corporation,**
12 **Debtor.**

Case No. 2:09-bk-14825-CGC

13 **KIDZ IDZ, INC., a Pennsylvania**
14 **corporation; MICHAEL POULS, an**
15 **individual,**

Adv. No. 2:09-ap-00922-CGC

16 **Plaintiffs and Counterclaim Defendants,**

AMENDED ANSWER,
17 **COUNTERCLAIMS, AND THIRD-**
18 **PARTY COMPLAINT OF BBZ**
19 **RESOURCE MANAGEMENT, INC.**

20 **v.**

21 **BBZ RESOURCE MANAGEMENT, Inc.,**
22 **an Arizona corporation; BBZ RESOURCE**
23 **MANAGEMENT, a Wyoming corporation;**
24 **TROY WARREN and JANE DOE**
25 **WARREN, husband and wife; JUSTIN**
26 **ELENBURG and JANE DOE ELENBURG,**
27 **husband and wife; DAVID DOMM and**
28 **JANE DOE DOMM, husband and wife;**
DOE DEFENDANTS I-X,

Defendants and Counterclaim Plaintiff;

1 **BBZ RESOURCE MANAGEMENT, Inc., a**
2 **Wyoming corporation;**

3 **Third Party Plaintiff,**

4 **v.**

5 **TERRIE ADAMS, an individual; CHERYL**
6 **ANDERSON, an individual; MIKE**
7 **ASGHARI, an individual; FRANK**
8 **BERTALLI, an individual; JEFF BRODER,**
9 **an individual; DAVE CLARKE, an**
10 **individual; JOEL COHEN, an individual;**
11 **PAUL COHEN, an individual; RAMON**
12 **DAVIS, an individual; RON DIFRANCO, an**
13 **individual; MARK ELIE, an individual;**
14 **WALTER ELLIS, an individual; TIM**
15 **EVERSWICK, an individual; NOAH**
16 **EWING, an individual; SAM FUCHS, an**
17 **individual; MONTHLY FREE GAS, LLC, a**
18 **Georgia limited liability company; MATT**
19 **GAGLIONE, an individual; TIMOTHY**
20 **GROLLIMUND, an individual; WESLEY**
21 **GUMERINGER, an individual; JAMES**
22 **HEADLEY, an individual; ALAN**
23 **HEFFNER, an individual; PAUL HOPPER,**
24 **an individual; BRIAN HUSSEY, an**
25 **individual; BEN JONES, an individual;**
26 **SANDY KARTZMAN, an individual;**
27 **DOUG KAUFFMAN, an individual;**
28 **ROGER KEALEY, an individual; DAVID**
KEHAS, an individual; AIMEE KING, an
individual; HOWARD KOPELSON, an
individual; BILL KOSLOSKEY, an
individual; TIM LABELLA, an individual;
TRACY LANE, an individual; PATRICK
LAPAGE, an individual; BRUCE LAROSE,
an individual; PATTY LAROSE, an
individual; JAMES LEE, an individual;
ROB LOWE, an individual; RON LOWRY,
an individual; MARK LUCAS, an
individual; JENNY LUSK, an individual;
SHANNON MARTIN, an individual;
WILLIAM MAY, an individual; PATRICK

1 MCGLIN, an individual; GALE
2 MCTIERNAN, an individual; JOSEPH
3 MELENDEZ, an individual; HEATHER
4 MILSZTAJN, an individual; TIM
5 MITCHELL, an individual; DON
6 MORIARTY, an individual; DEB NILES, an
7 individual; RAMIRO NOBRE, an
8 individual; IVIE O'BRIEN, an individual;
9 MAX PATTON, an individual; STEPHEN
10 PETRILLO, an individual; MICHAEL
11 PETRUSKA, an individual; TRACY
12 PICANSO, an individual; ROBERT
13 PUBLIK, an individual; GEORGIA RASA,
14 an individual; KEVIN REILLY, an
15 individual; JASON ROBINSON, an
16 individual; KEN ROSARIO, an individual;
17 SANDEEP SAROHA, an individual; KURT
18 SCHAEFER, an individual; LUTZ
19 SCHMIDT, an individual; GREGG
20 SHOEWALTER, an individual; ANGELA
21 SMITH, an individual; MARK SMITH, an
22 individual; LARRY STAATS, an individual;
23 RICHARD STEARNS, an individual;
24 LINDA STREUR, an individual; JOSEPH
25 TALERICO, an individual; PAT
26 TALERICO, an individual; AMERICAN
27 SALES INDUSTRIES, INC., a Florida
28 corporation; DOUGLAS THAYER, an
individual; TOM KELLEY, an individual;
TK ENTERPRIZES, LLC, a Washington
limited liability company; DAVID
TRIVILINO, an individual; DENNIS
VALO, an individual; HARRY VAN EPPS,
an individual; PAULA VIDAD, an
individual; JASON WALTERS, an
individual; SAM WEIR, an individual; SUE
WILSON, an individual; DAVID WOOD, an
individual; TOM WOODARD, an
individual; MAC POTOKAR, an individual;
KENT RINI, an individual; LAUREN
BUZINSKI, an individual; AAA AMERICA
DIRECT, INC., a Florida corporation;
MICHAEL HOLLMAN, an individual;
KAREN HOLLMAN, an individual;

1 **KAREN KAMMAN, an individual;**
2 **SUMMERLAND CONSULTING GROUP,**
3 **INC., an Arizona corporation; K&E**
4 **INTERNATIONAL, INC., a Florida**
5 **corporation; DIVERSIFIED**
6 **AUTOMOTIVE CONCEPTS, INC., a New**
7 **York corporation; SHERYL POULS, an**
8 **individual married to Plaintiff Michael**
9 **Pouls; CUSTOMER LOYALTY**
10 **INTERNATIONAL, LLC, a Pennsylvania**
11 **limited liability company; and DOE**
12 **PARTIES I-XCIX,**
13 **Third-Party Defendants.**

11 **AMENDED ANSWER, COUNTERCLAIMS, AND THIRD-PARTY COMPLAINT**
12 **OF BBZ RESOURCE MANAGEMENT, INC.**

13 BBZ Resource Management, Inc. (“BBZ”), a Wyoming corporation, debtor and
14 debtor-in-possession in the above-captioned Chapter 11 case, and defendant, counterclaim
15 plaintiff and third-party plaintiff in the above-captioned adversary proceeding, responds,
16 alleges and states as follows:

17 **ANSWER**

18 BBZ responds to the Verified Complaint of plaintiffs Kidz IDz, Inc. (“Kidz IDz”)
19 and Michael Pouls (“Pouls”) as follows:

20 1. BBZ lacks information sufficient to form a belief as to the truth of the
21 allegations contained in paragraph 1, and therefore denies the same.

22 2. BBZ lacks information sufficient to form a belief as to the truth of the
23 allegations contained in paragraph 2, and therefore denies the same.

24 3. BBZ admits that it is a Wyoming corporation doing business in Maricopa
25 County, Arizona, and denies the remaining allegations contained in paragraph 3.
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1 15. Denied.

2 16. BBZ lacks information sufficient to form a belief as to the truth of the
3 allegations contained in paragraph 16, and therefore denies the same.

4 17. The allegations contained in paragraph 17 refer to the Second Agreement
5 identified in paragraph 24 (and a copy of which is appended to the Verified Complaint as
6 exhibit A), which agreement speaks for itself.

7 18. The allegations contained in paragraph 18 refer to a prior agreement between
8 BBZ and Plaintiffs, which agreement speaks for itself.

9 19. BBZ admits that Pouls and/or Kidz IDz purchased rebate certificates from
10 BBZ at or about the time that the Second Agreement was signed. BBZ lacks information
11 sufficient to form a belief as to the truth of the remaining allegations contained in paragraph
12 19 and therefore denies the same.

13 20. BBZ admits that a meeting occurred between its representatives and Pouls in
14 Las Vegas in or about mid-March 2009. BBZ generally denies the allegations in paragraph
15 20 concerning supposed representations, promises and warranties made at that meeting.

16 21. BBZ lacks information sufficient to form a belief as to the truth of the
17 allegations contained in paragraph 21, and therefore denies the same.

18 22. Denied.

19 23. BBZ admits that in March 2009 it engaged in discussions and negotiations
20 with Pouls and/or Kidz IDz concerning a novation of their original agreement. BBZ denies
21 the balance of the allegations contained in paragraph 23.

22 24. BBZ lacks information sufficient to form a belief as to the truth of the
23 allegations contained in paragraph 24 concerning Pouls' reliance upon alleged
24 representations of BBZ's representatives, and therefore denies the same. BBZ admits that
25 the document appended to the Verified Complaint as Exhibit A is a true and complete copy
26 of the Second Agreement identified in paragraph 24. The remaining allegations in
27 paragraph 24 comprise: a) characterizations of the provisions of the Second Agreement,
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1 which speaks for itself; and b) allegations concerning BBZ's alleged breach of the Second
2 Agreement, which BBZ denies.

3 25. BBZ admits that Pouls and/or Kidz IDz made its contractually required
4 \$450,000 payment to BBZ on or about April 1, 2009, and denies the remaining allegations
5 contained in paragraph 25.

6 26. BBZ lacks information sufficient to form a belief as to the truth of the
7 allegations contained in paragraph 26, and therefore denies the same.

8 27. Denied.

9 28. BBZ lacks information sufficient to form a belief as to the truth of the
10 allegations contained in paragraph 28, and therefore denies the same.

11 29. BBZ lacks information sufficient to form a belief as to the truth of the
12 allegations contained in paragraph 29 concerning Pouls' reliance upon alleged
13 representations of BBZ's representatives, and therefore denies the same. BBZ denies the
14 remaining allegations contained in paragraph 29.

15 30. BBZ lacks information sufficient to form a belief as to the truth of the
16 allegations contained in paragraph 30 concerning brokers' communications with Pouls.
17 BBZ admits that in response to an inquiry by Pouls, it provided Pouls with a copy of an
18 existing insurance policy, the terms of which speak for themselves. BBZ further admits that
19 upon Pouls' request it provided Pouls with a draft form of indemnification agreement for
20 use with brokers, resellers and clients. BBZ denied the remaining allegations contained in
21 paragraph 30.

22 31. BBZ lacks information sufficient to form a belief as to the truth of the
23 allegations contained in paragraph 31 concerning Pouls' reliance upon alleged
24 representations of BBZ's representatives, and therefore denies the same. BBZ denies the
25 remaining allegations contained in paragraph 31.

26 32. BBZ admits that its representative disclosed to Pouls that it had received
27 assurances from investors that they would invest in or make loans to BBZ based largely
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1 upon the existence, and Pouls' personal guaranty, of the Second Agreement. BBZ denies
2 the remaining allegations contained in paragraph 32.

3 33. BBZ lacks information sufficient to form a belief as to the truth of the
4 allegations contained in paragraph 33 concerning Pouls' reliance upon alleged
5 representations of BBZ's representatives, and therefore denies the same. BBZ denies the
6 remaining allegations contained in paragraph 33.

7 34. Admitted.

8 35. BBZ lacks information sufficient to form a belief as to the truth of the
9 allegations contained in paragraph 35 concerning Pouls' reliance upon alleged
10 representations of BBZ's representatives, and therefore denies the same. BBZ denies the
11 remaining allegations contained in paragraph 35.

12 36. BBZ lacks information sufficient to form a belief as to the truth of the
13 allegations contained in paragraph 36, and therefore denies the same.

14 37. BBZ lacks information sufficient to form a belief as to the truth of the
15 allegations contained in paragraph 37 concerning Pouls' reliance upon alleged
16 representations of BBZ's representatives, and therefore denies the same. BBZ denies the
17 remaining allegations contained in paragraph 37.

18 38. Denied.

19 39. BBZ lacks information sufficient to form a belief as to the truth of the
20 allegations contained in paragraph 39 concerning Pouls' reliance upon alleged
21 representations of BBZ's representatives, and therefore denies the same. BBZ denies the
22 remaining allegations contained in paragraph 39.

23 40. BBZ admits that sales of BBZ rebate certificates fell in or about April 2009,
24 but affirmatively alleges that this was due largely, if not wholly, to the wrongful conduct of
25 Pouls and/or Kidz IDz, as set forth in BBZ's counterclaims below. BBZ denies the
26 remaining allegations contained in paragraph 40.

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1 41. BBZ admits that Pouls and/or Kidz IDz paid its contractually required
2 minimum payment of \$450,000 to BBZ on or about May 1, 2009. BBZ denies the
3 remaining allegations contained in paragraph 41.

4 42. BBZ admits that its representative, Pouls and others participated in a
5 telephone conference in early May 2009. To the extent that BBZ has denied alleged
6 representations, promises and warranties above, it likewise denies that any such
7 representations, promises and warranties were “confirmed” in the course of that telephone
8 conference. BBZ denies the remaining allegations contained in paragraph 42.

9 43. BBZ lacks information sufficient to form a belief as to the truth of the
10 allegations contained in paragraph 43 concerning Pouls’ reliance upon alleged
11 representations of BBZ’s representatives, and therefore denies the same. BBZ denies the
12 remaining allegations contained in paragraph 43.

13 44. BBZ lacks information sufficient to form a belief as to what effect, if any, that
14 the events alleged in paragraph 44 to have occurred has on Pouls, and therefore denies the
15 same. As to the specific events or facts alleged to have occurred in the subparagraphs of
16 paragraph 44, BBZ responds as follows, and denies any allegations not specifically
17 admitted below:

- 18 a. BBZ lacks information sufficient to form a belief as to the truth of the
19 allegations contained in subparagraph (a), and therefore denies the same;
- 20 b. BBZ lacks information sufficient to form a belief as to the truth of the
21 allegations contained in subparagraph (b), and therefore denies the same;
- 22 c. BBZ admits that some gift cards scheduled for delivery in April 2009 were
23 not delivered until May 2009; affirmatively alleges that this was due to a
24 default by a contractor to BBZ and that Pouls and Kidz IDz were and are
25 aware of such default; and denies the remaining allegations contained in
26 subparagraph (c);

- 1 d. BBZ lacks information sufficient to form a belief as to the truth of the
- 2 allegations contained in subparagraph (d), and therefore denies the same;
- 3 e. BBZ lacks information sufficient to form a belief as to the truth of the
- 4 allegations contained in subparagraph (e), and therefore denies the same;
- 5 f. BBZ lacks information sufficient to form a belief as to the truth of the
- 6 allegations contained in subparagraph (e), and therefore denies the same.

7 45. BBZ lacks information sufficient to form a belief as to the truth of the
8 allegations contained in paragraph 45, and therefore denies the same.

9 46. Denied.

10 47. BBZ admits that its representatives, Pouls and others participated in a
11 telephone conference in late May 2009. The balance of the allegations contained in
12 paragraph 47 consist of characterizations of the specific statements made by parties on that
13 telephone conference, and BBZ therefore denies the same.

14 48. BBZ admits that it has failed to provide certain information requested by
15 Pouls and/or Kidz IDz; affirmatively denies that it has any obligation to provide such
16 information due, among other things, to the prior breach of Pouls and/or Kidz IDz as set
17 forth below; and denies the remaining allegations contained in paragraph 48.

18 49. BBZ admits that there was an email communication from Troy Warren to
19 Michael Pouls at or about the time alleged in paragraph 49; affirmatively alleges that
20 paragraph 49 excerpts and characterizes that written communication which speaks for itself;
21 and denies the remaining allegations contained in paragraph 49.

22 50. BBZ lacks information sufficient to form a belief as to the truth of the
23 allegations contained in paragraph 50, and therefore denies the same.

24 51. BBZ admits that Pouls and/or Kidz IDz failed and refused to pay the
25 contractually required \$450,000 payment due June 1, 2009 and denies the remaining
26 allegations contained in paragraph 51.

27 52. Denied.

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- 1 66. Denied.
- 2 67. Denied.
- 3 68. Denied.
- 4 69. Denied.
- 5 70. Denied.
- 6 71. Denied.
- 7 72. Denied.
- 8 73. Denied.

9 WHEREFORE, BBZ requests that this Court a) deny Plaintiffs’ request for a
10 judgment rescinding the Second Agreement; b) deny Plaintiffs’ requests for awards of
11 damages and costs; c) award BBZ its costs incurred herein; d) award BBZ its reasonable
12 attorney’s fees pursuant to the Second Agreement and/or A.R.S. § 12-341.01; and e) award
13 BBZ such other or further relief as the Court deems just.

14 **COUNT THREE**
15 **(Common Law Fraud—Warren, Elenburg and Domm)**

16 As Count Three is not asserted against BBZ, it makes no response to this Count.

17 **COUNT FOUR**
18 **(Negligent Misrepresentation—Warren, Elenburg and Domm)**

19 As Count Four is not asserted against BBZ, it makes no response to this Count.

20 **COUNT FIVE**
21 **(Breach of Contract—BBZ)**

- 22 97. BBZ incorporates by reference its responses in the foregoing paragraphs.
- 23 98. Denied.
- 24 99. Denied.
- 25 100. Denied.
- 26 101. Denied.

27 WHEREFORE, BBZ requests that this Court a) deny Plaintiffs’ requests for awards
28 of damages and costs; b) award BBZ its costs incurred herein; c) award BBZ its reasonable

1 attorney's fees pursuant to the Second Agreement and/or A.R.S. § 12-341.01; and d) award
2 BBZ such other or further relief as the Court deems just.

3 **COUNT SIX**
4 **(Breach of the Covenant of Good Faith and Fair Dealing—BBZ)**

5 102. BBZ incorporates by reference its responses in the foregoing paragraphs.

6 103. Denied.

7 104. Denied.

8 105. Denied.

9 WHEREFORE, BBZ requests that this Court a) deny Plaintiffs' requests for awards
10 of damages and costs; b) award BBZ its costs incurred herein; c) award BBZ its reasonable
11 attorney's fees pursuant to the Second Agreement and/or A.R.S. § 12-341.01; and d) award
12 BBZ such other or further relief as the Court deems just.

13 **COUNT SEVEN**
14 **(Breach of Fiduciary Duty—Warren, Elenburg and Domm)**

15 As Count Seven is not asserted against BBZ, it makes no response to this Count.

16 **COUNT EIGHT**
17 **(Defamation—Warren)**

18 As Count Eight is not asserted against BBZ, it makes no response to this Count.

19 **COUNT NINE**
20 **(Aiding and Abetting—Elenburg and Domm)**

21 As Count Nine is not asserted against BBZ, it makes no response to this Count.

22 **COUNT TEN**
23 **(Constructive Trust—BBZ & BBZ II)**

24 132. BBZ incorporates by reference its responses in the foregoing paragraphs.

25 133. BBZ admits that Pouls and/or Kidz IDz paid contractually owed sums of
26 money to BBZ pursuant to the Second Agreement. BBZ denies the remaining allegations
27 contained in paragraph 133.

28 134. Denied.

1 135. Denied.

2 136. BBZ denies the existence of BBZ II and the remaining allegations contained
3 in paragraph 136.

4 WHEREFORE, BBZ requests that this Court a) deny Plaintiffs' requests for an order
5 imposing a constructive trust; b) deny Plaintiffs' request for an award of costs; c) award
6 BBZ its costs incurred herein; d) award BBZ its reasonable attorney's fees pursuant to the
7 Second Agreement and/or A.R.S. § 12-341.01; and e) award BBZ such other or further
8 relief as the Court deems just.

9 **COUNT ELEVEN**
10 **(Successor Liability—BBZ II)**

11 137. BBZ incorporates by reference its responses in the foregoing paragraphs.

12 138. Denied.

13 139. To the extent that BBZ denies the existence of BBZ II, it denies the
14 allegations contained in paragraph 139.

15 140. Denied.

16 141. Denied.

17 142. To the extent that BBZ denies the existence of BBZ II, it denies the
18 allegations contained in paragraph 142.

19 143. Denied.

20 144. Denied.

21 145. Denied.

22 WHEREFORE, BBZ requests that this Court a) deny Plaintiffs' requests for awards
23 of damages and costs; b) award BBZ its costs incurred herein; c) award BBZ its reasonable
24 attorney's fees pursuant to the Second Agreement and/or A.R.S. § 12-341.01; and d) award
25 BBZ such other or further relief as the Court deems just.

26 **COUNT TWELVE**
27 **(Appointment of as [sic] Receiver—BBZ)**
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1 BBZ affirmatively alleges that the filing of its Chapter 11 petition effectively moots
2 Count Twelve, and therefore makes no specific response to that Count.

3 **AFFIRMATIVE DEFENSES**

4 For and as its affirmative defenses, BBZ alleges as follows:

5 A. Plaintiffs' Verified Complaint, and each of the Counts therein, fail to state a
6 claim upon which relief may be granted.

7 B. To the extent that the Court finds that BBZ's conduct otherwise would
8 constitute a breach of the Second Agreement, such breach was excused by the prior breach
9 of Pouls and/or Kidz IDz.

10 C. Plaintiffs' claims are not actionable under one or more of the doctrines of a)
11 waiver; b) estoppel; c) release; d) unclean hands; e) novation; and/or f) accord and
12 satisfaction.

13 D. Plaintiffs' damages claims, even if meritorious, are subject to offsetting
14 damages claims of BBZ, as set forth below.

15 E. BBZ has not yet had the opportunity to conduct discovery in this matter, and
16 therefore reserves the right to assert additional affirmative defenses as the same may be
17 supported by information obtained in discovery.

18
19 **COUNTERCLAIMS**

20 For and as its counterclaims against Pouls and Kidz IDz, BBZ alleges as follows:

21 **JURISDICTION, PARTIES AND VENUE**

22 1. BBZ is informed and believes that Kidz IDz is a Pennsylvania corporation.
23 Kidz IDz is one of the Plaintiffs herein. Kidz IDz entered into the Second Agreement (as
24 defined in the Verified Complaint) with BBZ in Maricopa County, Arizona. As more fully
25 set forth below, BBZ also is informed and believes that Kidz IDz committed torts or other
26 wrongful acts, engaged in a conspiracy to commit torts or other wrongful acts, and/or aided
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1 and abetted others in committing torts or other wrongful acts that caused injury to BBZ in
2 Maricopa County, Arizona.

3 2. BBZ is informed and believes that Pouls is a married man residing in or
4 around Gladwyne, Pennsylvania. Pouls is one of the Plaintiffs herein. Pouls entered into a
5 personal guarantee of Kidz IDz' performance of the Second Agreement with BBZ in
6 Maricopa County, Arizona. As more fully set forth below, BBZ also is informed and
7 believes that Pouls committed torts or other wrongful acts, engaged in a conspiracy to
8 commit torts or other wrongful acts, and/or aided and abetted others in committing torts or
9 other wrongful acts that caused injury to BBZ in Maricopa County, Arizona. BBZ further
10 is informed and believes that with regard to all relevant acts alleged herein, Pouls was
11 acting for and on behalf of his marital estate.

12 3. BBZ is a Chapter 11 debtor-in-possession in the above-captioned Chapter 11
13 case, and one of the defendants in the above-referenced adversary proceeding, which was
14 removed to this Court pursuant to 28 U.S.C. § 1441 on or about August 11, 2009.

15 4. This Court has jurisdiction over BBZ's counterclaims as core matters
16 pursuant to one or more of the subdivisions of 28 U.S.C. § 157(b)(2). Venue of this
17 adversary proceeding and, specifically, of BBZ's counterclaims, is appropriate pursuant to
18 28 U.S.C. § 1409.

19 GENERAL ALLEGATIONS

20 Overview of BBZ's Business

21 5. Prior to filing its Chapter 11 case, BBZ conducted two, connected types of
22 businesses. First, starting in late July 2008, BBZ sold rebate certificates through a broker
23 network to businesses that offer these certificates as marketing incentives to their customers
24 (the "Rebate Certificate Program"). Second, starting in December 2008, BBZ began to sell
25 consumer data that it collected through the Rebate Certificate Program and other means.
26 (the "Data Mining Business").
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1 6. BBZ did business under the trade names “Incentive International,”
2 “ClaimYourGas.com,” “ClaimYourGroceries.com,” “gasandgrocerydepot.com,”
3 “claimyourmerchandise.com” and “claimyourrx.com”.

4 The Rebate Certificate Business

5 7. Through a network of brokers that entered into contracts with the company,
6 BBZ sold rebate certificates that entitled the holder—upon satisfying certain
7 requirements—to redeem the certificates through BBZ for Visa® gift cards. Businesses
8 that purchased these rebate certificates from BBZ’s brokers offered them as incentives in
9 loyalty programs and other promotional efforts.

10 8. BBZ’s rebate certificates, like other “redeemable” items, had an associated
11 “breakage” rate; or, in other words, depending on the requirements for redemption, varying
12 percentages of the holders of certificates ultimately would qualify to receive the full
13 redemption value. As BBZ developed and refined its Rebate Certificate Program, it
14 adjusted the redemption requirements for the rebate certificates to attain and maintain an
15 acceptable breakage rate that would facilitate the solvency and profitability of its business.
16 Maintaining a predictable and suitable breakage rate was crucial to BBZ’s ability to honor
17 the qualifying redemption requests that it received and, consequently, to the success of
18 BBZ’s business.

19 9. To redeem a rebate certificate, BBZ required consumers to a) register the
20 certificates online through the use of a proprietary personal identification number (“PIN”);
21 b) answer survey questions about their household’s demographics and consumer behavior;
22 c) download monthly vouchers for portions of the overall redemption value of the
23 certificate; d) accumulate purchase receipts; and e) mail in the monthly vouchers with a
24 specified dollar-value of receipts. Once the consumer registered the certificate and
25 answered the survey questions, for each month that they subsequently mailed in vouchers
26 and receipts they were entitled to a \$25 gift card. For example, in order for a consumer that
27 properly registered and activated a rebate certificate bearing a face value of \$100 to receive
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1 the entire redeemable value, each month for four months the consumer would have to
2 download and print a voucher and mail it to BBZ by a specified deadline accompanied by
3 \$100 of qualifying receipts to receive the full value of the rebate certificate. Over the time
4 that BBZ operated its Rebate Certificate Business, additional steps were added to the
5 registration and redemption process in order to manage the breakage rate to levels
6 consistent with BBZ's business plan. At each stage of this registration and redemption
7 process, the breakage rate increased as a diminishing percentage of the consumers who
8 initially received a certificate sought or qualified for gift cards.

9 10. Early in BBZ's administration of the Rebate Certificate Program, BBZ
10 allowed consumers who had registered their certificates to immediately download and print
11 all the vouchers necessary to redeem their certificates. This resulted in an unexpectedly and
12 unacceptably low breakage rate. BBZ corrected this issue by requiring certificate holders to
13 return to BBZ's website monthly to download individual vouchers. Similarly, at later
14 points in time, BBZ added steps to the registration and activation process to reach an
15 acceptable breakage rate. By the time of Pouls' and Kidz IDz' June 1, 2009 breach, as
16 described below, BBZ had more or less perfected the program and reached optimal,
17 profitable breakage rates.

18 11. As a result of the breakage rate inherent to the Rebate Certificate Business,
19 BBZ was able to offer rebate certificates to its brokers and their business customers for a
20 price significantly below the face value of the rebate certificates. In fact, BBZ was able to
21 sell any denomination of rebate certificate—up to the maximum \$600 denomination—to its
22 brokers for \$3.00 to \$6.00. The brokers, in turn, would sell each rebate certificate to their
23 resellers and business customers for an average of \$9.00 to \$15.00.

24 12. Despite these almost unbelievably low selling prices, the combination of the
25 breakage rate and the additional revenue generated by the Rebate Certificate Business
26 providing consumer data to BBZ's Data Mining Business made BBZ's overall business a
27 viable enterprise that BBZ had every reason to believe would provide the revenue necessary
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1 to honor its obligation to consumers to provide the promised gift cards and still be
2 profitable for BBZ’s owners.

3 13. BBZ managed the distribution and redemption of the rebate certificates by
4 identifying each certificate that it sold with a unique PIN, and in fact essentially selling the
5 PIN to its brokers and resellers in place of a formal rebate certificate. BBZ always
6 maintained a “one-to-one” relationship between a PIN and its associated rebate certificate.
7 This system allowed BBZ to protect against fraud, to monitor its breakage rate, and to
8 administer its database of consumers and their associated data.

9 The Data Mining Business

10 14. BBZ's Data Mining Business consisted of two main components: survey
11 questions and purchase data from receipts. During certificate registration, consumers
12 voluntarily provided contact and demographic information, and answered a set of survey
13 questions designed to assess the consumer's interest in various products or services. This
14 information was very valuable to businesses seeking to increase their customer base
15 because it allowed them to target marketing efforts toward people who have already
16 expressed interest.

17 15. In the second component, BBZ took the consumers' contact and demographic
18 information and matched it up to the actual purchase data gleaned from those consumers’
19 purchase receipts provided with the vouchers they sent in to receive their gift cards.
20 Through a process of optical character recognition (“OCR”), the receipts were scanned and
21 the purchase data was matched to the demographic information previously provided in the
22 registration and customer survey portions of the rebate certificate redemption process. At
23 every stage of the redemption process, the data obtained has value—but that value increases
24 as it becomes more robust through the addition of more and more actual purchase data.

25 16. BBZ had contracts with various companies that paid to receive the contact
26 information of interested consumers, and was on the verge of obtaining more, even larger
27 contracts. Also, BBZ was in serious negotiations with a major grocery store chain as well
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1 as a large grocery data analysis company to monetize large quantities of BBZ's purchase
2 data at the time BBZ's operations were effectively shut down by Pouls' and Kidz IDz'
3 actions.

4 **BBZ's Relationship with Pouls and Kidz IDz**

5 The First Agreement

6 17. In late 2008 and into early 2009, BBZ's Rebate Certificate Business began to
7 grow rapidly as it increased its network of brokers and those brokers increased their sales
8 volumes of rebate certificates. Starting in early 2009, BBZ began exploring relocating its
9 physical facilities and expanding its staff to accommodate its rapidly growing business, and
10 raising additional capital to fund this growth. BBZ determined that in order to secure new
11 investment and a lease on a larger physical facility, it needed to enter into a relationship
12 with a credible strategic partner that would ensure predictable, "bankable" cash flow and
13 profitability for BBZ's business.

14 18. In January 2009, BBZ met with Pouls to discuss the possibility of Pouls
15 and/or his company, Kidz IDz, becoming BBZ's broker of rebate certificates for use in
16 charitable fund raising programs and other distribution channels that Kidz IDz had
17 developed. Pouls was introduced to BBZ by two of BBZ's existing brokers, Doug Thayer
18 and Kurt Schaefer. BBZ and Pouls continued to negotiate a business relationship
19 throughout January and into February 2009, culminating in the execution of a "Revised
20 Second Agreement" on February 13, 2009 (the "First Agreement").

21 19. The First Agreement was executed by BBZ as Supplier, Kidz IDz as
22 Purchaser, and Pouls as a personal guarantor of Kidz IDz performance of the First
23 Agreement. The First Agreement made Kidz IDz BBZ's exclusive distributor of rebate
24 certificates for certain specified distribution channels specified in Section 2.4 of the First
25 Agreement. The First Agreement had a 122-month term commencing February 13, 2009,
26 which automatically would be renewed for an additional five-year term if Kidz IDz did not
27 "opt out" of this extension. The First Agreement provided for Kidz IDz to purchase "dual-
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1 PIN sets” associated with paired gas and grocery rebate certificates—each in \$300
2 denominations. Kidz IDz was obligated to purchase a minimum of 3 million dual-PIN sets
3 in the initial year of the First Agreement, and in increasing annual amounts during the
4 remaining term of the contract for a total of 57,317,907 dual-PIN sets. Each dual-PIN set
5 during the initial term of the First Agreement was to be sold for \$2.75, making the total
6 purchase commitment under the First Agreement worth over \$157 million in revenue to
7 BBZ. Kidz IDz was obligated to remit monthly payments for its purchases, in an amount
8 no less than 5% of its then-applicable annual purchase obligation. BBZ granted Kidz IDz
9 the exclusive right to market its rebate certificates through specified distribution channels.
10 Kidz IDz covenanted not to purchase competing products from any other source during the
11 term of the First Agreement.

12 20. The First Agreement further provided that Kidz IDz would take over the
13 management of BBZ’s existing broker network starting March 1, 2009. The First
14 Agreement required that BBZ’s brokers continue to purchase rebate certificates directly
15 from BBZ at pricing of \$4.00 per gas certificate and \$5.00 per grocery certificate; BBZ
16 would then be obligated to issue payments or credits to Kidz IDz in the amount of \$1.25 per
17 gas certificate and \$1.75 per grocery certificate purchased by BBZ’s brokers. This
18 management arrangement was separate from Kidz IDz purchase obligation.

19 21. Kidz IDz and Pouls breached the First Agreement on or about March 1, 2009.
20 As set forth above, the First Agreement required Kidz IDz to purchase at least 150,000
21 dual-PIN sets each month, *in addition* to PINs ordered by the broker network. On or about
22 March 1, 2009, Kidz IDz refused to make its scheduled payment, arguing that its purchase
23 obligation *included* broker sales, and because the brokers had already purchased more than
24 150,000 PINs, Kidz IDz need not buy any. Pouls and Kidz IDz failed to honor their
25 contractual commitment in this regard.

26 22. BBZ is informed and believes that no later than March 1, 2009, Pouls and
27 Kidz IDz, having been exposed to the lucrative potential of BBZ’s Rebate Certificate
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1 Business during the brief term of the First Agreement, formulated an intention to usurp that
2 business from BBZ.

3 The Second Agreement

4 23. Following Kidz IDz' breach of the First Agreement by failing to remit its
5 minimum purchase payment for February 2009, BBZ, Pouls, and Kidz IDz discussed Kidz
6 IDz' breach and ultimately negotiated to modify the business relationship they had
7 memorialized in the First Agreement.

8 24. These discussions and negotiations led to the execution of an "Exclusive Non-
9 Direct Mail Marketing Agreement," which was signed on or about April 15, 2009, but dated
10 as effective January 15, 2009 (the "Second Agreement").

11 25. BBZ is informed and believes that the Second Agreement was drafted by
12 Pouls' and/or Kidz IDz' attorney, and any ambiguity therein therefore should be construed
13 against Pouls' and/or Kidz IDz.

14 26. BBZ further is informed and believes that Pouls and Kidz IDz did not
15 negotiate the Second Agreement in good faith, but instead did so never intending to fully
16 perform under the Second Agreement and intending instead to use the relationship
17 preserved by entering into the Second Agreement to usurp BBZ's Rebate Certificate
18 Business.

19 27. By way of the Second Agreement, BBZ expanded Kidz IDz' role to be its
20 exclusive, non-direct mail marketing representative for rebate certificates. Under the
21 Second Agreement, Kidz IDz became BBZ's distributor of rebate certificates through all
22 non-direct-mail channels, including through BBZ's existing broker network.

23 28. The Second Agreement continued to allow Kidz IDz to manage the broker
24 network. However, each broker was instructed that he or she must continue ordering
25 certificates from BBZ, not from Kidz IDz.

26 29. The Second Agreement notes that BBZ's "existing broker network and
27 resellers . . . are presently averaging sales in excess of 100,000 Certificates monthly."
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1 30. The Second Agreement increased Kidz IDz' purchase price of rebate
2 certificates to \$3.00, and the term of Kidz IDz' minimum purchase obligation to fifteen
3 years. The annual minimum purchase obligations of Kidz IDz for the first ten years of the
4 Second Agreement's term remained the same as was provided in the First Agreement, and
5 each successive year of the Second Agreement's term increased the minimum purchase
6 commitment, bringing the total purchase commitment over fifteen years to 114,895,930
7 certificates, or nearly \$345 million.

8 31. As with the First Agreement, Pouls executed a personal guaranty of the
9 Second Agreement obligating him to "guarantee[] the performance of [Kidz IDz] in the
10 same degree and to the same extent as [Kidz IDz] is obligated thereunder" (the "Personal
11 Guaranty").

12 BBZ's Reliance upon the Second Agreement

13 32. As noted above, one of BBZ's primary motivations in entering into a business
14 relationship with Kidz IDz and Pouls was to be able to demonstrate a predictable,
15 "bankable" cash flow to third parties such as investors, lenders, and/or lessors of larger
16 space for BBZ's growing business.

17 33. In the course of negotiating his and his company's business relationship with
18 BBZ, Pouls repeatedly questioned the sufficiency of BBZ's staffing and resources to
19 administer the increased volume of business that he represented would flow from his and
20 his company's involvement. On multiple occasions, Pouls emphasized the importance of
21 BBZ increasing its staffing and facility size to accommodate the expected increase in rebate
22 certificate sales.

23 34. In reliance on Pouls' representations regarding the increase in sales he would
24 create and his insistence that BBZ obtain a substantially larger office, BBZ entered into a
25 five year lease commencing March 16, 2009, for a 40,000 square foot office building, with
26 the option to expand into an additional 56,000 square feet. Under the lease, BBZ paid a
27 \$50,000 security deposit and approximately \$25,000 per month in rent. Rent payments
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1 were to increase annually such that over the first three years of the lease, BBZ would owe
2 \$1,383, 170.07, at which time BBZ had the option of paying an additional \$250,000 to
3 cancel the lease and avoid the final two years.

4 35. Also in reliance on Pouls' representations regarding the increase in sales he
5 would create and his insistence that BBZ's then-existing staff was inadequate, BBZ steadily
6 increased its number of employees, doubling in the first month of the relationship, and
7 reaching over 100 by May 2009. This staffing expansion increased BBZ's salary
8 obligations by approximately \$115,000 each month.

9 36. In addition, in late April, BBZ entered into a Consulting Agreement, the terms
10 of which were reduced to writing on May 15, 2009, whereby the consultants would seek
11 investors for BBZ. By May 13, 2009, the consultants had created a detailed Growth Capital
12 Funding Request package seeking \$45,000,000 in investment within thirty days, with the
13 Second Agreement and Pouls' personal guaranty as security. By mid May, the consultants
14 had verbal commitments from multiple investors prepared to invest a combined total of
15 \$30,000,000 to \$45,000,000 immediately upon receipt of a financial statement from Pouls
16 verifying his assets, which Pouls had already agreed to provide. BBZ relied on Kidz IDz'
17 and Pouls' performance under the Second Agreement, and on Pouls' production of the
18 promised financial statement, in order to secure the investment necessary to comply with
19 the Second Agreement's bond requirement and to fund the expansion Pouls insisted was
20 necessary to accommodate the increase in sales he represented he would create.

21 37. Prior to BBZ entering into the Second Agreement, BBZ had experienced
22 significant growth in the sales volume of its broker network. For example, in January,
23 BBZ's brokers sold 97,719 certificates, generating \$506,383 in revenue to BBZ, net of
24 commissions and other compensation to the brokers. In February this volume increased to
25 121,537 certificates for \$645,543 in net revenue to BBZ. Finally, in March this volume
26 increased to 147,275 certificates for \$701,072 in net revenue to BBZ. Pouls and Kidz IDz
27 not only represented to BBZ that they could increase BBZ's certificate sales by virtue of
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1 Kidz IDz' minimum purchase obligation, but also by its management of BBZ's broker
2 network. BBZ relied upon this representation in agreeing to the fee arrangement contained
3 in the Second Agreement and in turning over management of its broker network to Kidz
4 IDz and/or Pouls.

5 Kidz IDz' and Pouls' Breaches of the Second Agreement and Other Wrongful Acts

6 38. All, or nearly all of BBZ's brokers signed strict confidentiality agreements and
7 covenants not to compete, requiring them to safeguard proprietary information and
8 forbidding them from entering the rebate certificate business in any capacity with any other
9 company. Pouls was aware of these agreements.

10 39. Paragraph 4(c) of the Second Agreement requires brokers to order all
11 certificates through BBZ. This contract provision is crucial to BBZ's ability to track
12 purchases, provide customer service, ensure timely shipment, perform statistical analysis,
13 etc. Perhaps more importantly, the provision was to prevent Kidz IDz from stealing the
14 program's breakage. If brokers order through Kidz IDz, it could sell an unlimited number
15 of certificates, but only purchase a PIN from BBZ when the certificate is activated. Given
16 that only about 30% of certificates are activated, Kidz IDz could pay BBZ merely 30% of
17 the revenue it receives, but leave BBZ facing the gift card liability associated with 100%
18 certificate activation. Not only would such an arrangement create unjust profits for Kidz
19 IDz, it would virtually guarantee BBZ's inability to fulfill the program by decreasing
20 revenue while increasing liability.

21 40. In late March, Pouls and Kidz IDz (the "Pouls Parties") designed their own
22 certificate, a process which BBZ approved under the understanding that BBZ PINs would
23 later be printed on the certificates. Unbeknownst to BBZ, the Pouls Parties instead created
24 their own ten-digit PIN (BBZ PINs have eight digits) and printed that PIN on certificates,
25 allowing the Pouls Parties to sell certificates without purchasing BBZ PINs until the
26 certificate was activated by a consumer. On May 27, 2009, the Pouls Parties' computer
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1 programmer admitted to BBZ that the Pouls Parties' certificates were not assigned a BBZ
2 PIN until they were activated by a consumer.

3 41. In late April 2009, the Pouls Parties promoted and/or signed up dozens of new
4 brokers, which promotion is an indication of a desire and ability to sell large quantities of
5 certificates and do so as a full time job. None of those brokers placed a single order for
6 certificates with BBZ.

7 42. On or about April 10, 2009 at least one BBZ broker was asked by Pouls to
8 leave BBZ and sell Kidz IDz packages instead of BBZ rebate certificates.

9 43. In the latter half of April 2009, Pouls travelled by car from Pennsylvania to
10 Florida twice to visit BBZ's top-selling broker, American Sales Industries, Inc., run by Pat
11 and Joey Talerico (collectively "Talericos"). As BBZ's top broker, the Talericos ordered
12 and sold tens of thousands of certificates each month prior to the involvement of the Pouls
13 Parties, but ordered only about 4,000 in April and about 2,500 in May.

14 44. Without BBZ's knowledge or consent, on or before April 30, 2009 Kidz IDz
15 purchased a \$5,000,000 Errors and Omissions insurance policy "providing coverage for
16 [Kidz IDz], [its] subcontractors, and [its] customers in the event that BBZ (*or a future*
17 *provider*) fails to fulfill" the rebate certificate program obligations. (emphasis added). In
18 early to mid May, 2009, Pouls informed BBZ about the policy, stating that it had cost
19 \$154,000. The policy information page lists the premium as \$47,791.

20 45. When asked why Kidz IDz had purchased the policy, Pouls stated that the
21 Talericos committed to ordering 100,000 certificates per month if the policy were obtained
22 and they were named as additional insureds to protect them in the event BBZ were unable
23 to meet program requirements. In response, BBZ explained that it didn't see why such a
24 policy was necessary given the requirement in the Second Agreement that BBZ obtain a
25 \$100,000,000 security bond to guarantee program fulfillment, and the fact that investors
26 were standing by to loan tens of millions of dollars for the bond the minute Pouls provided
27 his financial statement verifying his net worth. Nonetheless, BBZ informed Pouls that it
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1 would reimburse Kidz IDz for the policy as soon as the investor funds were obtained. The
2 Pouls Parties expressed no interest in this offer.

3 46. On or around May 16, 2009, BBZ discovered that the Talericos had placed
4 few, if any certificate orders with BBZ. When confronted, Pouls explained that the insurer
5 required that the Talericos order certificates directly through the Pouls Parties rather than
6 through BBZ. Pouls admitted that the Talericos and several other brokers had ordered
7 directly through the Pouls Parties as early as mid April. BBZ informed the Pouls Parties
8 that this was a direct violation of paragraph 4(c) of the Second Agreement, which requires
9 brokers to order directly through BBZ. BBZ also explained to the Pouls Parties the
10 significance of this breach and the resulting urgency that the Pouls Parties immediately
11 resume strict performance of the Agreement. Contrary to allegations by the Pouls parties,
12 BBZ never consented to, ratified, or waived this breach.

13 47. Around the same time that BBZ notified the Pouls Parties of the breach, Pouls
14 and Kidz IDz officer Jeff Broder contacted at least one broker asking him to begin ordering
15 certificates directly through the Pouls Parties rather through than BBZ, in direct violation of
16 the Second Agreement. There was no mention of Kidz IDz' insurance policy or the
17 possibility of this broker becoming a named insured.

18 48. Certificate sales plunged from nearly 150,000 in March to below 45,000 in
19 April and about 50,000 in May.

20 49. On May 20, 2009 Pouls sent a letter to BBZ brokers announcing an alliance
21 between "Customer Loyalty International, a division of Kidz-IDz," and BBZ's top broker,
22 American Sales Industries, Inc. run by the Talericos. The letter presents information
23 "which should help [the brokers] make a decision regarding [their] participation in this New
24 Incentive Program," including a copy of Kidz IDz' insurance policy and a promise of
25 protection "from any wrong-doing by the Rebate Provider." The letter does not mention
26 BBZ as the rebate provider or as having any part in the "New Incentive Program."
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1 50. The May 20th letter states that Kidz IDz' \$5,000,000 insurance policy "insures
2 [the broker's] company, [the broker's] clients, and the end consumer." BBZ is informed and
3 believes that the policy does not insure the end consumer in any way, that it in fact only
4 covers named insureds, and that the only protection it provides is to indemnify named
5 insureds from claims brought by victims of wrong-doing by the rebate provider.

6 51. On May 26, 2009 BBZ reiterated to the Pouls Parties that they were in breach
7 of the agreement and suggested a modification to the contract which solve the current
8 problems. On May 28, 2009 Pouls responded that he was considering BBZ's proposal but
9 could not decide until BBZ made its weekly payment due under the Second Agreement.
10 Pouls also stated that he and his attorney had "come up with a plan that [they] believe will
11 enable [BBZ] to secure the investor and to move [its] business forward" but that he would
12 not reveal the plan or discuss moving forward until BBZ "beg[a]n the process of negotiating
13 with [him] in good faith" by making its weekly payment.

14 52. On May 28, 2009, BBZ made its weekly payment. On May 29, 2009, BBZ
15 asked Pouls whether he was considering not making his contractually obligated payment
16 due in only 3 days; Pouls responded and his attorney reiterated that non-payment "had not
17 even crossed their minds." On June 1, 2009, the Pouls Parties refused to make their
18 monthly \$450,000 payment.

19 53. Despite the Pouls Parties' material breaches, BBZ continued to attempt to
20 negotiate in good faith, offering solutions to cure the breaches and describing BBZ's many
21 impending business opportunities. The Pouls Parties made no moves to cure their breaches
22 and instead demanded a detailed description of BBZ's business model and copies of
23 communications between BBZ and state agencies. Given the confidential nature of this
24 information and BBZ's suspicions that the Pouls Parties were already in the process of
25 starting their own rebate certificate business using BBZ's proprietary information and
26 broker network, BBZ refused to respond to such demands.

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1 54. On June 8, 2009 BBZ sent official notice to the Pouls Parties of their various
2 breaches, giving until June 15, 2009 to cure. In response, the Pouls Parties immediately
3 began contacting BBZ's brokers, business clients, and the media citing false "facts" about
4 BBZ's business model, intentions, and principals . BBZ learned at a later date that the Pouls
5 Parties' defamatory comments and publications began much earlier than June 8, perhaps as
6 soon as mere weeks after signing the First Agreement.

7 55. Also on June 8, 2009 BBZ received a communication from broker Doug
8 Thayer stating that Pouls had said he was "moving on and taking [BBZ's] broker network
9 with him" and that Pouls had no response when asked how he planned to take BBZ's
10 brokers to a new company given that they had all signed non compete agreements with
11 BBZ. Thayer did not specify when Pouls made these statements, but it must have occurred
12 on or before June 8, 2009.

13 56. On June 9, 2009, Pouls held a conference call with BBZ's brokers reiterating
14 his previous offer to join him in his new rebate certificate business, vowing to "destroy"
15 BBZ, and describing exactly how to resign from affiliation with BBZ. Nearly all of BBZ's
16 brokers resigned within days, many of them using the exact same letter to do so. This letter
17 was drafted by the Pouls Parties and/or their agents.

18 57. On June 10, 2009, *after* all of the events thus far described, the Pouls Parties
19 terminated the Second Agreement through their attorney.

20 58. On June 11, 2009, Pouls told brokers that his new certificate program, using
21 the rebate fulfillment company My Free Travel (Incentive Travel Services, Inc.), would be
22 fully operational by June 19, 2009. Around the same time Pouls stated that he began
23 negotiating with My Free Travel on May 10, 2009, a full month before terminating the
24 Second Agreement with BBZ.

25 59. Pouls, Kidz IDz, and Customer Loyalty International, LLC ("CLI") are
26 currently operating a new rebate certificate company using My Free Travel as the rebate
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1 fulfillment company. This company does not do data mining and instead relies solely on
2 certificate sales and breakage to be able to fulfill its certificate program requirements.

3 60. After the Second Agreement was terminated, Pouls, Kidz IDz, and CLI
4 continued using BBZ's trademarks including videos, logos, gift card images, and certificate
5 images on its websites, including www.customerloyaltyinternational.com, and elsewhere.

6 61. BBZ is informed and believes that all Brokers herein named as third-party
7 defendants began working with Pouls, Kidz IDz and/or CLI in the new competing rebate
8 certificate business either before or immediately after the Second Agreement was
9 terminated, and continue to do so to this day.

10 62. BBZ is informed and believes that almost from inception of the relationship,
11 the Pouls Parties formulated a plan, and began execution of such plan, to misappropriate
12 BBZ's proprietary information, duplicate BBZ's program, convince BBZ's brokers to violate
13 their non-compete agreements by joining the Pouls Parties in their competing enterprise,
14 unjustly profit from the relationship by stealing breakage, sabotage BBZ's ability to
15 continue its certificate program thereby eliminating competition for the new company,
16 destroy the reputation and good will of BBZ and its principals, and only perform under the
17 relevant contracts for as long as necessary to accomplish these goals.

18 **COUNT ONE**
19 **(Breach of Contract—Kidz IDz)**

20 63. BBZ incorporates by reference its allegations in the foregoing paragraphs.

21 64. The Second Agreement constituted a valid, binding contract between Kidz
22 IDz and BBZ.

23 65. The Second Agreement contains a legally implied covenant of good faith and
24 fair dealing.

25 66. By its conduct described above, Kidz IDz materially breached the Second
26 Agreement.

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1 wrongfully take advantage of the goodwill and consumer recognition of BBZ's products
2 and services.

3 101. Pouls' and Kidz IDz' violations of the Lanham Act have damaged BBZ in an
4 amount to be determined at trial.

5 **COUNT SEVEN**
6 **(Civil Conspiracy—Pouls & Kidz IDz)**

7 102. BBZ incorporates by reference its allegations in the foregoing paragraphs.

8 103. BBZ is informed and believes that Pouls, Kidz IDz, CLI, one or more of the
9 Brokers, and one or more of the Doe Parties (named in BBZ's Third-Party Complaint,
10 below) entered into one or more agreements to commit one or more of the torts, breaches
11 and/or other wrongful acts complained of in BBZ's Counterclaims and/or Third-Party
12 Complaint.

13 104. As participants in a civil conspiracy, Pouls and Kidz IDz are charged with
14 joint and several liability for the wrongful acts of their co-conspirators.

15 105. BBZ has been damaged by the civil conspiracy or conspiracies in which Pouls
16 and Kidz IDz participated in an amount to be determined at trial.

17 **COUNT EIGHT**
18 **(Aiding & Abetting—Pouls & Kidz IDz)**

19 106. BBZ incorporates by reference its allegations in the foregoing paragraphs.

20 107. BBZ is informed and believes that Pouls and/or Kidz IDz directed,
21 participated in, substantially assisted, and/or aided and abetted each other, one or more of
22 the Brokers, CLI, and/or one or more of the Doe Parties (named in BBZ's Third-Party
23 Complaint, below) in, the commission of one or more of the torts, breaches and/or other
24 wrongful acts complained of in BBZ's Counterclaims and/or Third-Party Complaint.

25 108. Having aided and abetted the wrongful conduct of others, Pouls and Kidz IDz
26 are charged with joint and several liability for that wrongful conduct.

27 109. BBZ has been damaged by the wrongful conduct that Pouls and Kidz IDz
28 aided and abetted in an amount to be determined at trial.

1 **COUNT NINE**
2 **(Punitive Damages—Pouls & Kidz IDz)**

3 110. BBZ incorporates by reference its allegations in the foregoing paragraphs.

4 111. BBZ is informed and believes that Pouls and Kidz IDz engaged in the conduct
5 complained of herein with an “evil mind guiding an evil hand,” or in the alternative, with
6 willful and wanton disregard for the legal rights of others.

7 112. Pouls’ and Kidz IDz’ reprehensible conduct merits the award of punitive
8 damages as a deterrent to future such conduct.

9 113. BBZ is entitled to an award of punitive damages in an amount to be
10 determined at trial.

11 **THIRD-PARTY COMPLAINT**

12 For and as its third-party claims under Federal Rule of Bankruptcy Procedure 7014,
13 BBZ alleges as follows:

14 **PARTIES, JURISDICTION AND VENUE**

15 1. Each of the parties listed on the attached Exhibit “A” (each, a “Broker”), is an
16 individual or entity that contracted with BBZ to broker, sell, or resell BBZ rebate
17 certificates. In the alternative, each of the Brokers is an individual or entity with which
18 BBZ had a non-contractual business relationship. As more fully set forth above, each of the
19 Brokers breached its contract with BBZ, committed tortious or otherwise wrongful acts,
20 engaged in a civil conspiracy to commit wrongful acts, and/or aided and abetted others in
21 committing wrongful acts causing injury to BBZ in Maricopa County, Arizona.

22 2. BBZ is informed and believes that Customer Loyalty International, LLC
23 (“CLI”) is a Pennsylvania limited liability corporation. BBZ also is informed and believes
24 that CLI is owned and/or controlled by Pouls and/or by an entity owned or controlled by
25 Pouls. As more fully set forth above, BBZ further is informed and believes that CLI
26 committed tortious or otherwise wrongful acts, engaged in a civil conspiracy to commit
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1 wrongful acts, and/or aided and abetted others in committing wrongful acts causing injury
2 to BBZ in Maricopa County, Arizona.

3 3. BBZ is informed and believes that Sheryl Pouls is the wife of Plaintiff
4 Michael Pouls, and is an individual residing in or around Bryn Mawr, Pennsylvania. BBZ
5 further is informed and believes that Michael and Sheryl Pouls share a marital estate
6 consisting of various items of real and personal property. As alleged above, BBZ is
7 informed and believes that the various wrongful acts of Michael Pouls specified above were
8 undertaken for the benefit of the marital estate that he shares with Sheryl Pouls.

9 4. BBZ is a Chapter 11 debtor-in-possession in the above-captioned Chapter 11
10 case, and one of the defendants in the above-referenced adversary proceeding, which was
11 removed to this Court pursuant to 28 U.S.C. § 1441 on or about August 11, 2009.

12 5. This Court has jurisdiction over BBZ's third-party claims as core matters
13 pursuant to one or more of the subdivisions of 28 U.S.C. § 157(b)(2). In the alternative, this
14 Court has jurisdiction over BBZ's third-party claims as non-core matters that arise out of or
15 are related to this Chapter 11 case. BBZ's Third-Party Complaint arises out of the same
16 facts and circumstances predicated the Verified Complaint and Counterclaims in the
17 proceeding. Venue of this adversary proceeding and, specifically, of BBZ's third-party
18 claims, is appropriate pursuant to 28 U.S.C. § 1409.

19 **GENERAL ALLEGATIONS**

20 6. BBZ incorporates by reference all of the foregoing allegations in both this
21 Third-Party Complaint and the Counterclaims set forth above.

22 7. On February 25, 2009, Pouls registered the tradename Customer Loyalty
23 International in Pennsylvania. Pouls used this tradename in connection with the rebate
24 certificate program in which he was involved with BBZ.

25 8. At some point before the Second Agreement was terminated, the Pouls Parties
26 and/or Customer Loyalty International began replacing BBZ's "Incentive International"
27 logo on promotional materials with a Customer Loyalty International logo.
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1 9. On May 20, 2009 Pouls sent a letter to the Brokers announcing that
2 "Customer Loyalty International, a division of Kidz IDz, has teamed up with American
3 Sales Industries" (BBZ's top broker) to create a "New Incentive Program." The letter did
4 not include BBZ as involved in this new program.

5 10. On June 12, 2009 the Pouls Parties converted the tradename to Customer
6 Loyalty International, LLC.

7 11. After the Second Agreement was terminated and the Brokers began working
8 with the new rebate certificate program, Pouls, Kidz IDz, CLI, and the Brokers continued
9 using BBZ's trademarks including videos, logos, gift card images, and certificate images.
10 The following websites are among the many that continued using the intellectual property:
11 customerloyaltyinternational.com, www.loyaltyproductionsinternational.com,
12 minneapolisfreegascertificates.com, fundraisingandincentives.com, www.publicatlarge.us,
13 and www.fuel-promos.com. Many of these parties' sites continue to use BBZ's trademarks.

14 12. BBZ is informed and believes that the Brokers and CLI entered into
15 agreements with the Pouls Parties to commit the contract breaches herein described.

16 13. Many if not all of the Brokers, while still affiliated with BBZ, assisted in
17 creating and distributing promotional materials, coordinating telephone conferences, and
18 organizing gatherings for the purpose of facilitating the Pouls Parties' contract breaches
19 herein described.

20 14. BBZ is informed and believes that using their experience and intimate
21 knowledge of BBZ's business, the Brokers furnished information, provided ideas, and
22 generally assisted the Pouls Parties to formulate and carry out a plan to breach the Second
23 Agreement, usurp BBZ's business opportunities, bankrupt the company, and create a new
24 rebate certificate program using BBZ's proprietary information.

25 15. BBZ is informed and believes that using its position within BBZ's
26 organization and its access to confidential information, CLI furnished information, provided
27 ideas, and generally assisted the Pouls Parties to formulate and carry out a plan to breach
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1 the Second Agreement, usurp BBZ's business opportunities, bankrupt the company, and
2 create a new rebate certificate program using BBZ's proprietary information.

3
4 **COUNT ONE**
5 **(Breach of Contract—Brokers)**

6 16. BBZ incorporates by reference its allegations in the foregoing paragraphs.

7 17. All or nearly all of BBZ's Brokers willingly signed a valid non-compete
8 agreement prohibiting them from involvement in any other rebate certificate program in the
9 United States, Canada, and Puerto Rico for six months after affiliate termination. This
10 agreement placed no requirements on BBZ, but was signed in consideration of the
11 opportunity to become affiliated with the company, and therefore could not be rendered
12 invalid by any act or omission by BBZ.

13 18. All or nearly all of BBZ's Brokers willingly signed a valid non-disclosure
14 agreement prohibiting them from disclosing BBZ's trade secrets, confidential information,
15 and proprietary data including business methods, pricing structures, financial data, and
16 customer lists. This confidentiality requirement exists in perpetuity. This agreement placed
17 no requirements on BBZ, but was signed in consideration of the opportunity to become
18 affiliated with the company, and therefore could not be rendered invalid by any act or
19 omission by BBZ.

20 19. All or nearly all of BBZ's Brokers orally agreed to maintain confidentiality
21 and abstain from competition with BBZ, under the same terms as the written agreements
22 described above.

23 20. These agreements constituted valid, binding contracts between the Brokers
24 and BBZ.

25 21. These agreements contain a legally implied covenant of good faith and fair
26 dealing.

1 43. CLI's use of the images, testimonials and other content from BBZ's
2 advertising and websites has violated BBZ's common-law trademark rights.

3 44. BBZ has been damaged by CLI's use of the images, testimonials and other
4 content from BBZ's advertising and websites in an amount to be determined at trial.

5 **COUNT SIX**
6 **(Lanham Act—CLI)**

7 45. BBZ incorporates by reference its allegations in the foregoing paragraphs.

8 46. The images, testimonials, and other content from BBZ's advertising and
9 websites constitute "trade dress" for purposes of Section 43(a) of the Lanham Act (15
10 U.S.C. § 1125(a)).

11 47. As set forth above, BBZ is informed and believes that CLI has used images,
12 testimonials, and other proprietary content from BBZ's advertising and websites for its
13 pecuniary benefit and without BBZ's consent.

14 48. CLI's use of the images, testimonials and other content from BBZ's
15 advertising and websites created a likelihood of confusing consumers as to the source of the
16 products and services offered by CLI.

17 49. CLI's use of the images, testimonials, and other content from BBZ's websites
18 co-opted the "look and feel" of BBZ's websites.

19 50. BBZ is informed and believes that CLI's use of the images, testimonials, and
20 other content from BBZ's websites was intentional and designed to wrongfully take
21 advantage of the goodwill and consumer recognition of BBZ's products and services.

22 51. CLI's violations of the Lanham Act have damaged BBZ in an amount to be
23 determined at trial.

24 **COUNT SEVEN**
25 **(Liability of Marital Estate—Sheryl Pouls)**

26 52. BBZ incorporates by reference its allegations in the foregoing paragraphs.
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EXHIBIT A
List of Brokers

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1. Terrie Adams, an individual
 2. Cheryl Anderson, an individual
 3. Mike Asghari, an individual
 4. Frank Bertalli, an individual
 5. Jeff Broder, an individual
 6. Dave Clarke, an individual
 7. Joel Cohen, an individual
 8. Paul Cohen, an individual
 9. Ramon Davis, an individual
 10. Ron DiFranco, an individual
 11. Mark Elie, an individual
 12. Walter Ellis, an individual
 13. Tim Everswick, an individual
 14. Noah Ewing, an individual
 15. Sam Fuchs, an individual
 16. Monthly Free Gas, LLC, a Georgia limited liability company
 17. Matt Gaglione, an individual
 18. Timothy Grollimund, an individual
 19. Wesley Gumeringer, an individual
 20. James Headley, an individual
 21. Alan Heffner, an individual
 22. Paul Hopper, an individual
 23. Brian Hussey, an individual
 24. Ben Jones, an individual
 25. Sandy Kartzman, an individual
 26. Doug Kauffman, an individual
 27. Roger Kealey, an individual
 28. David Kehas, an individual
 29. Aimee King, an individual
 30. Howard Kopelson, an individual
 31. Bill Kosloskey, an individual
 32. Tim Labella, an individual
 33. Tracy Lane, an individual
 34. Patrick LaPage, an individual
 35. Bruce LaRose, an individual
 36. Patty LaRose, an individual
 37. James Lee, an individual
 38. Rob Lowe, an individual
 39. Ron Lowry, an individual
 40. Mark Lucas, an individual
 41. Jenny Lusk, an individual
 42. Shannon Martin, an individual

- 1 43. William May, an individual
- 2 44. Patrick McGlin, an individual
- 3 45. Gale McTiernan, an individual
- 4 46. Joseph Melendez, an individual
- 5 47. Heather Milsztajn, an individual
- 6 48. Tim Mitchell, an individual
- 7 49. Don Moriarty, an individual
- 8 50. Deb Niles, an individual
- 9 51. Ramiro Nobre, an individual
- 10 52. Ivie O'Brien, an individual
- 11 53. Max Patton, an individual
- 12 54. Stephen Petrillo, an individual
- 13 55. Michael Petruska, an individual
- 14 56. Tracy Picanso, an individual
- 15 57. Robert Publik, an individual
- 16 58. Georgia Rasa, an individual
- 17 59. Kevin Reilly, an individual
- 18 60. Jason Robinson, an individual
- 19 61. Ken Rosario, an individual
- 20 62. Sandeep Saroha, an individual
- 21 63. Kurt Schaefer, an individual
- 22 64. Lutz Schmidt, an individual
- 23 65. Gregg Shoewalter, an individual
- 24 66. Angela Smith, an individual
- 25 67. Mark Smith, an individual
- 26 68. Larry Staats, an individual
- 27 69. Richard Stearns, an individual
- 28 70. Linda Streur, an individual
71. Joseph Talerico, an individual
72. Pat Talerico, an individual
73. American Sales Industries, Inc., a Florida corporation
74. Douglas Thayer, an individual
75. Tom Kelley, an individual;
76. TK Enterprizes, LLC, a Washington limited liability company;
77. David Trivilino, an individual;
78. Dennis Valo, an individual;
79. Harry Van Epps, an individual;
80. Paula Vidad, an individual;
81. Jason Walters, an individual;
82. Sam Weir, an individual;
83. Sue Wilson, an individual;
84. David Wood, an individual;
85. Tom Woodard, an individual;
86. Mac Potokar, an individual;

- 1 87. Kent Rini, an individual;
- 2 88. Lauren Buzinski, an individual;
- 3 89. AAA America Direct, Inc., a Florida corporation;
- 4 90. Michael Hollman, an individual;
- 5 91. Karen Hollman, an individual;
- 6 92. Karen Kamman, an individual;
- 7 93. Summerland Consulting Group, Inc., an Arizona corporation;
- 8 94. K&E International, Inc., a Florida corporation;
- 9 95. Diversified Automotive Concepts, Inc.; a New York corporation

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