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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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W.B. DAVID & CO., INC.,

Plaintiffs,

-against -

COMPLAINT AND DEMAND FOR TRIAL BY JURY

DE BEERS CENTENARY AG., DE BEERS CONSOLIDATED MINES, LTD., DE BEERS SOCIETÉ ANONYMÉ, THE DIAMOND TRADING COMPANY, DE BEERS LV LTD., DIAMDEL SA, DIAMDEL NV, GARY RALFE, GARETH PENNY, NICKY F. OPPENHEIMER, JONATHON OPPENHEIMER, ALAN CAMPBELL, DEREK PALMER, STEPHEN LUSSIER, J. WALTER THOMPSON USA INC., J. WALTER THOMPSON COMPANY, DIANE WARGA-ARIAS, D. NAVINCHANDRA & CO., E.M.A. DIAMOND MANUFACTURING LIMITED, R.T. DIAMOND PVT. LTD., RICHOLD SA, S.VINODKUMAR & CO., SHREE RAMKRISHNA EXPORT, SUNDIAMOND BVBA, VENUS JEWEL, DALUMI DIAMONDS LTD., AMC BVBA, A. SCHWARTZ & SONS DIAMONDS LTD., ARJAV DIAMONDS NV, ASIAN STAR CO. LTD., ASTRA DIAMOND MANUFACTURERS LTD., B. VIJAYKUMAR & CO., BHAVANI GEMS, BLUE STAR, C. MAHENDRA EXPORTS, CLASSIC DIAMONDS (INDIA) LTD., D.D. MANUFACTURING NV, DALI DIAMONDS COMPANY NV LTD.,

DE TOLEDO DIAMONDS LTD., DIAMANTHANDEL A.SPIRA BVBA, DIAROUGH NV., DILIPKUMAR V. LAKHI, DIGICO HOLDINGS LTD., DIMEXON DIAMONDS LTD., DYNAMIC DIAMOND CORP., E.F.D. LTD., , EUROSTAR DIAMOND TRADERS NV, FABRIKANT & SALANT GROUP LTD., FESTDIAM CUTTING WORKS/(PTY) LTD., FRUCHTER GAD DIAMONDS LTD., GEMBEL EUROPEAN SALES NV, HASENFELD-STEIN, INC., INTER GEMS-CLAES NV, J.B. DIAMONDS, JULIUS KLEIN DIAMONDS LLC, K. GIRDHARLAL, KGK ENTERPRISES, K.P. SANGHVI & SONS, KARP IMPEX LTD., L.I.D. LTD., DILIP KUMAR V. LAKHI GROUP, LAXMI DIAMOND, LAZARE KAPLAN INTERNATIONAL INC., LILI DIAMONDS, LIVINGSTONES, LOUIS GLICK & CO., M. SURESH & CO., MAHENDRA BROTHERS, MICHAEL WERDIGER, INC., MOHIT DIAMONDS IMPEX PVT. LTD., MOTI GANZ, NAVIN GEMS, OVERSEAS DIAMONDS NV, KOTHARI & CO., PREMIER GEM CORP., PREMIER DIAMOND CUTTING LTD., RAND PRECISION CUT DIAMONDS (PTY) LTD., RATILAL BECHARLAL & SONS, ROSY BLUE INC., ROSY BLUE NV (INDIA) PVT. LTD., SANGHAVI EXPORTS, SCHACHTER & NAMDAR POLISHING WORKS LTD., SHEETAL MANUFACTURING CO., SHRENUJ & COMPANY, LTD., SMOLENSK STATE UNITARY CO. KRISTAL PRODUCTION CORP., STAR DIAMOND GROUP (SDG) BV, SUASHISH DIAMONDS LTD., SUPERGEMS HOLDINGS LTD., SURESH BROTHERS, TACHE COMPANY NV, TASAKI SHINJU CO. LTD., TRAU BROS. NV, PLUCZENIK DIAMOND CO. NV, VIJAYDIMON BVBA, YAHALOMEI ESPEKA INTERNATIONAL LTD., YERUSHALMI BROTHERS DIAMOND LTD., [OTHER SIGHTHOLDERS] and JOHN DOES 1 – 84,

Defendants.

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Plaintiff, by its attorneys, Heller, Horowitz & Feit, P.C., as and for its Complaint against the Defendants, alleges as follows:

INTRODUCTION

1. Plaintiff is suing the De Beers diamond cartel, and those acting in concert with it, to recover damages under the federal and state antitrust laws, the Racketeering Influenced and Corrupt Organizations Act("RICO") and applicable state common law, based, among others, on, Defendants' flagrant, anticompetitive, monopolistic, and patently corrupt, behavior, in connection with Defendants' illegal implementation of its Supplier of Choice initiative concerning the sale and distribution of rough diamonds, and Defendants' theft of Plaintiff's proprietary "Leading Jewelers of the World" marketing plan, which cost Plaintiff millions of dollars to develop and implement. Plaintiff also seeks redress for fraud, other tortious conduct and breaches of contract committed by Defendants.

2. For over a century, the De Beers cartel, a brazen and unrepentant monopolist, has dominated the market for rough diamonds in the United States and worldwide. De Beers has controlled as much as 80% of the world diamond supply, and currently controls approximately 50% of the world diamond supply, and an even greater percentage of the world's supply of two carat and larger rough diamonds, while maintaining monopoly power over the rough diamond industry. The United States of America (the "U.S.") is the world's largest market for diamonds, representing approximately 50% of the world's annual purchases. De Beers spends in excess of $100,000,000 annually advertising in the U.S. through the J. Walter Thompson Defendants.

3. Over the years, including presently, De Beers has used its monopoly power, among other things, to illegally and artificially restrain trade and increase the price of diamonds by controlling diamond inventory, artificially limiting the supply of diamonds to be sold, limiting to a small select group those who can purchase and sell De Beers diamonds (Sightholders) and falsely advertising the alleged scarcity of diamonds.

4. De Beers has shamelessly and arrogantly publicized its illegal monopolistic behavior. For example, at a gathering of Harvard alumni on October 17, 1999, De Beers' Chairman, Defendant Oppenheimer, went so far as to boast about De Beers' illegal, monopolistic behavior, stating that De Beers "like [sic.] to think of itself as the world's . . . longest running monopoly . . . [and seeks] to manage the diamond market, to control supply, to manage prices and to act collusively with our partners in the business."

5. De Beers has also illegally exercised its monopoly power by first requiring, and now "strongly recommending" (because the European Commission will no longer let them "require"), that purchasers of rough diamonds use one of approximately six select diamond brokers to represent the purchasers with respect to their purchase of diamonds from De Beers, despite the fact that these brokers really act on behalf of De Beers and have a much stronger interest in promoting the interests of De Beers than in serving their diamond merchant clients. In fact, upon information and belief, the largest of these brokers, I. Hennig & Co., is owned by the Oppenheimer family (De Beers' principal owner), or a trust created by the Oppenheimer family.

6. Since in or about 1945, principals of De Beers, including, currently, Defendants Ralfe, Penny and Oppenheimer, have been unable and/or unwilling to enter the U.S., due

to an outstanding U.S. indictment against De Beers for U.S. criminal antitrust violations which would lead to their arrest and/or service of legal process upon their arrival here, and to continue the subterfuge that De Beers does not conduct business directly in the U.S.

7. Plaintiff, a diamond manufacturer and former De Beers Sightholder, is one of several victims of De Beers' new Supplier of Choice ("SOC") initiative, whereby De Beers purported to apply certain so-called objective criteria in selecting which diamantaires would be De Beers Sightholders permitted to purchase rough diamonds directly from De Beers. Instead, De Beers subjectively and premeditatedly decreed which diamantaires would retain or obtain Sights and remain or become Sightholders, and significantly lessened competition by reducing the total number of Sightholders by approximately 20% to 30%. Now, there are only 84 Sightholders.

8. Most egregiously, under SOC, De Beers eliminated approximately 50% of its prior U.S. Sightholders (5 out of 10, all in New York), while adding only one new U.S. Sightholder, even though the U.S. accounts for approximately 50% of the diamond market.

9. Upon information and belief, Plaintiff (and others) was rejected, purportedly under SOC, not because it did not meet the so-called SOC criteria, and not because Plaintiff was not among the best of the applicants, but because De Beers, in its insatiable greed, wanted to eliminate Plaintiff (and others) as a Sightholder in order to: (a) further increase its already dominant U.S. and global market power; (b) increase its downstream, vertical, monopoly power by gaining further control over retail sales of diamonds; (c) increase its control of rough diamonds sold through the secondary market; (d) increase its overall profits and markups on diamonds; and (e) steal Plaintiff's Leading Jewelers of the World program.

10. In particular, De Beers has targeted U.S. diamantaires who manufacture and distribute two carat and larger rough diamonds ("2+ carat" stones or diamonds), which are in the greatest shortage, which are key to De Beers' aspirations to sell diamonds and of which De Beers controls a disproportionate amount of the world's supply.

11. The entire SOC program is anticompetitive and illegal under U.S., New York State and probably European antitrust and unfair competition laws, since rather than increasing competition for diamonds, it has decreased competition and effectively precluded former Sightholders, including Plaintiff, from obtaining sufficient numbers of rough diamonds to remain competitive. This is particularly true because De Beers has utilized its monopoly power to force (De Beers would say "encourage") Sightholders to begin "branding" intitatives, which requires longer term commitments between De Beers and its Sightholders and further reduces supply available to non-Sightholders, and because De Beers remains the only source of sufficient size to meet the demands of brand creation.

12. SOC is the vehicle utilized by De Beers for its nefarious and illegal plan to squeeze out niche rough diamond manufacturers and distributors as Sightholders in order to further consolidate the rough diamond market in the hands of fewer diamantaires, in order to gain further control over the entire Rough Diamond Market – including, in particular, the 2+ carat Rough Diamond Market over which De Beers has even greater control – and charge supra-competitive prices for its rough diamonds. By making diamond marketing and branding an important aspect of SOC, De Beers has utilized its market power to force more of the burden of diamond advertising on

the Sightholders, while, at the same time, dramatically increasing rough diamond prices by at least 20% in 2003, and 8%, so far, in 2004 with further price increase planned.

13. The European Commission (the "EC") has recently re-opened an investigation of SOC in light of evidence that SOC is being implemented in violation of European anti-monopoly laws.

14. Furthermore, De Beers, with the assistance of JWT, breached its agreements with Plaintiff as well as Plaintiff's trust and confidence by misappropriating Plaintiff's Leading Jewelers of the World ("LJW" or "Leading Jewelers") program, which was developed and implemented by Plaintiff as a marketing initiative whereby jewelers became associated with LJW in order to enhance their sales and marketing power. Plaintiff developed LJW with the encouragement of De Beers, in accordance with De Beers' plan to increase demand for diamonds through marketing, and in reliance on De Beers' and JWT's agreements to keep this initiative confidential. Plaintiff spent millions of dollars, and substantial time, effort and creative energy, developing LJW, which was misappropriated by De Beers and implemented by De Beers in Japan, where De Beers created a carbon copy of LJW – "Diamond Masters of Japan" (f/k/a "Leading Jewelers of Japan") – despite express understandings that LJW belonged to Plaintiff.

15. In addition to stealing LJW, De Beers' termination of Plaintiff's Sight has precluded Plaintiff from continuing meaningful utilization of LJW, since Plaintiff no longer has the product to support LJW and to persuade other jewelers to participate, and precluded Plaintiff from successfully expanding LJW into the Far East, which De Beers knew Plaintiff was in the process of doing.

MONETARY DAMAGES, INJUNCTIVE RELIEF AND ATTACHMENT OF DE BEERS' U.S. ASSETS

16. By virtue of Defendants' illegal anticompetitive and other wrongful conduct, Plaintiff has been damaged in an amount reasonably believed to be not less than $50 million, of which not less than $30 million should be trebled pursuant to the U.S. antitrust laws, plus Plaintiff should be awarded punitive damages in an amount not less than $100 million in light of Defendants' malicious, nefarious and willful conduct.

17. Plaintiff also seeks preliminary and permanent injunctive relief and attachment of the De Beers Defendants' assets in the U.S. Such assets include but are not limited to:

(i) any and all intellectual property rights any De Beers Defendants, or others on their behalves, may hold in the "Forevermark" (*i.e.*, "  "), the phrase "A Diamond is Forever," the name "Diamond Trade Centre" or "Diamond Trade Center," the acronym "DTC," the phrase "Supplier of Choice," the acronym "SOC," the name "Sightholder," the phrase "DTC Sightholder," the name "Diamond Trading Company," the name "De Beers," the name "De Beers Group," the name "De Beers LV," the name "Rapid Worlds," the name "De Beers LVMH," the name "Sightholder to America's Jewelers," the name "Diamond Masters," any other similar names, phrases or acronyms and any other intellectual property rights De Beers may hold in the U.S.;

(ii) any legal or equitable rights or interests any of the De Beers Defendants, or others on their behalves, may have in the websites www.adiamondisforever.com, www.debeersgroup.com, www.forevermark.com, www.dps.org, www.jwt.com, and/or www.ihennig.com; and

(iii) any legal or equitable ownership interests any of the De Beers Defendants, or others on their behalves, may have in I. Hennig & Co. (USA) Ltd., I. Hennig & Co. Ltd., J. Walter Thompson USA Inc., J. Walter Thompson Company, Diamond Promotion Service, Diamond Information Centre, Rapid Worlds Ltd., and De Beers LV; AND

(iv) any and all accounts receivable, contractual rights and other intangibles belonging to, or claimed by De Beers, against, with or in relation to, persons or entities, including current sightholders, who can be found in, and/or do business in, the U.S.

JURISDICTION AND VENUE

18. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 1337, 15 U.S.C. § 78aa and 18 U.S.C. § 1664. This Court has supplemental subject matter jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1367.

19. Venue is proper in this District pursuant to 28 U.S.C. § 1391 and 15 U.S.C. §§ 15, 22 and 26. The interstate trade and commerce involved and affected by the alleged violations of the antitrust, unfair competition and RICO laws was and is carried on in substantial part within this District. The acts complained of have had substantial anticompetitive effects in this District, and a substantial part of the events giving rise to the claims occurred in this District. Venue is also proper here pursuant to 15 U.S.C. § 78aa in that, *inter alia*, the Defendants transmitted the materially false and fraudulent information from and into this District, and Defendants otherwise engaged in acts relating to the claimed violations in this District.

20. Each Defendant transacts business, resides and/or otherwise can be found in this District. The state law claims are based on wrongful conduct that was committed in whole or in part in this District. Plaintiff maintains its principal place of business in, and was injured in, this District.

DEFINITIONS

21. The following are definitions of certain terms as used in this Complaint:

A. **Branding**: The process of giving a diamond, a jewelry store or an association of jewelers a brand-name that differentiates the inherent values in the diamond product or service versus competing generic, non-branded, commodity diamonds or services. In theory, branding of De Beers diamonds increases the value of, and demand for, these diamonds as opposed to non-branded "generic" diamonds.

B. **Broker**: A person or entity that acts as a go-between the manufacturer and the seller, a division of De Beers known as the Diamond Trading Company. A Broker usually receives from the buyer a commission of 1% of purchases.

C. **Diamantaire**: A diamond dealer, including manufacturers, wholesalers and rough distributors.

D. **Manufacturer**: A person or entity that treats, cuts and polishes the rough diamonds. The manufacturer puts the stones in the commonly recognized form as sold to the general public by retailers.

E. **Rough**: Untreated, unpolished and uncut diamonds, as they are found in mines, which have been prepared for sale to the trade.

F. **Sight**: A Sight occurs when Sightholders are invited to DTC in London to purchase a certain amount of rough stones from DTC. There are 10 Sights per year at DTC in London.

G. **Sightholder**: A diamond manufacturer or rough dealer, permitted by De Beers to purchase rough from DTC at each of the 10 annual Sights. Sightholders are considered to have a Sight.

H. **Stone**: The diamond.

THE PARTIES

22. Plaintiff W.B. David & Co., Inc. ("W.B. David"), a diamond manufacturer, is a corporation duly organized pursuant to the laws of the State of New York, with its main office located in the City and State of New York. Plaintiff has been in the diamond business since 1940, and was a De Beers Sightholder for over 30 years, from 1969 through the wrongful termination of its Sight in 2003 allegedly under De Beers' illegal Supplier of Choice program. Prior to the wrongful termination of its Sight, Plaintiff serviced approximately 2,500 accounts, of which 850 were then active, with a volume ranging between $10,000 and more than $500,000 in annual diamond purchases from Plaintiff.

23. Defendant De Beers Centenary AG. ("De Beers AG"), is, upon information and belief, a corporation organized and existing under the laws of Switzerland.

24. Defendant De Beers Consolidated Mines Limited ("De Beers Consolidated") is, upon information and belief, a corporation organized and existing under the laws of the Republic of South Africa.

25. Defendant De Beers Société Anonymé ("De Beers SA") is, upon information and belief, a corporation organized and existing under the laws of the Grand Duchy of Luxembourg. De Beers SA is the holding company of De Beers AG and De Beers Consolidated.

26. Defendant The Diamond Trading Company ("DTC"), is located in London, and it is the rough diamond sales and marketing division of De Beers. DTC, formerly known as the Central Selling Organization ("CSO"), currently sorts and values about 50% of the world's annual

supply of rough diamonds ("DTC, De Beers SA, De Beers AG and De Beers Consolidated, are collectively referred to herein as "De Beers").

27. Defendant Diamdel SA is, upon information and belief, a wholly owned subsidiary of De Beers, incorporated and located in Johannesburg, South Africa.

28. Defendant Diamdel NV is, upon information and belief, a wholly owned subsidiary of De Beers, incorporated and located in Antwerp, Belgium. Upon information and belief, in addition to Diamdel SA and Diamdel NV, Diamdels are also located in Israel, Luzerne, Hong Kong and India. Each Diamdel sells, at a premium, De Beers rough diamonds to non-Sightholder manufacturers. (Diamdel SA, Diamdel NV and the other Diamdels are collectively referred to herein as "Diamdel" or "Diamdels").

29. Defendant Gary Ralfe is the current Managing Director of De Beers.

30. Defendant Gareth Penny is the sales and marketing director of DTC, and the architect of De Beers' SOC initiative. Effective July 1, 2004, Penny will become the Managing Director of DTC.

31. Defendant Nicky F. Oppenheimer is the Chairman of the Board of De Beers.

32. Defendant Jonathon Oppenheimer is a director of De Beers Consolidated, and Head of Producer Relations of De Beers. Effective July 1, 2004, he will become the Managing Director of De Beers Consolidated

33. Defendant Alan Campbell is, upon information and belief, an officer of De Beers and the individual in charge of implementing SOC.

34. Defendant Derek Palmer is, upon information and belief, the Global Communications Director and the South East Asia Marketing Director for DTC.

35. Defendant Stephen Lussier is, upon information and belief, the Marketing Director of DTC (Defendants Ralfe, Penny, Nicky Oppenheimer, Jonathon Oppenheimer, Campbell, Palmer and Lussier are collectively referred to herein as the "Individual Defendants," and, collectively with De Beers and Diamdel as the "De Beers Defendants").

36. Defendant J. Walter Thompson U.S.A. Inc. is, upon information and belief, a corporation organized under the laws of the State of Delaware, with its main office located in the City and State of New York.

37. Defendant J. Walter Thompson Company, is, upon information and belief, a corporation organized under the laws of the State of Delaware, with its main office located in the City and State of New York (J. Walter Thompson Company and J. Walter Thompson U.S.A. Inc. are together referred to herein as "JWT"). JWT handles all of De Beers' advertising in the U.S., and, on behalf of De Beers, operates the Diamond Information Centre ("DIC") and the Diamond Promotion Service ("DPS"), JWT's public relations division of its diamond marketing group and a diamond promotion, marketing and education service, respectively. DTC is supported worldwide by JWT. Upon information and belief, JWT also is the U.S. alter ego of De Beers.

38. Defendant Diane Warga-Arias ("Arias"), upon information and belief, resides in the U.S., and does business in the City and State of New York. Upon information and belief, Defendant Arias maintains an office at, and is an employee of, a consultant to, and/or an agent of, JWT.

39. Defendant D. Navinchandra & Co. is, upon information and belief, a DTC Sightholder with an office located in India and a marketing affiliate located in the City and State of New York.

40. Defendant E.M.A. Diamond Manufacturing Limited is, upon information and belief, a DTC Sightholder with an office located in New York, New York.

41. Defendant R.T. Diamond Pvt. Ltd. is, upon information and belief, a DTC Sightholder located in India.

42. Defendant Richold SA is, upon information and belief, a DTC Sightholder located in Switzerland.

43. Defendant S. Vinodkumar & Co. is, upon information and belief, a DTC Sightholder located in India.

44. Defendant Shree Ramkrishna Export is upon information and belief, a DTC Sightholder with an office located in New York, New York.

45. Defendant Sundiamond BVBA is, upon information and belief, a DTC Sightholder with an office located in New York, New York.

46. Defendant Venus Jewel is, upon information and belief, a DTC Sightholder with an office located in New York, New York.

47. Defendant A. Dalumi Diamonds Ltd., known in the U.S. as Dalumi Diamond Corp. is, upon information and belief, a DTC Sightholder with an office located in New York, New York.

48. Defendant AMC BVBA is, upon information and belief, a DTC Sightholder located in Belgium.

49. Defendant A. Schwartz & Sons Diamonds Ltd. is, upon information and belief, a DTC Sightholder with an office located in New York, New York.

50. Defendant Arjav Diamonds NV is, upon information and belief, a DTC Sightholder located in Belgium.

51. Defendant Asian Star Co. Ltd. is, upon information and belief, a DTC Sightholder with an office located in New York, New York.

52. Defendant Astra Diamond Manufacturers Ltd. is, upon information and belief, a DTC Sightholder with an office located in New York, New York.

53. Defendant B. Vijaykumar & Co. is, upon information and belief, a DTC Sightholder with an office located in New York, New York.

54. Defendant Bhavani Gems is, upon information and belief, a DTC Sightholder with an office located in New York, New York.

55. Defendant Blue Star is, upon information and belief, a DTC Sightholder with an office located in New York, New York.

56. Defendant C. Mahendra Exports is, upon information and belief, a DTC Sightholder with an office located in New York, New York.

57. Defendant Classic Diamonds (India) Ltd. is, upon information and belief, a DTC Sightholder with an office located in New York, New York.

58. Defendant D.D. Manufacturing NV is, upon information and belief, a DTC Sightholder with an office located in New York, New York.

59. Defendant Dali Diamonds Company NV Ltd. is, upon information and belief, a DTC Sightholder located in Belgium.

60. Defendant De Toledo Diamonds Ltd. is, upon information and belief, a DTC Sightholder located in Israel.

61. Defendant Diamanthandel A.Spira BVBA is, upon information and belief, a DTC Sightholder with an office located in Belgium.

62. Defendant Diarough NV is, upon information and belief, a DTC Sightholder located in Belgium.

63. Defendant Dilipkumar V. Lakhi, known in the U.S. as Vishinda Inc., is, upon information and belief, a DTC Sightholder with an office located in New York, New York.

64. Defendant Digico Holdings Ltd. (Diminco-Gitanjali Group) is, upon information and belief, a DTC Sightholder located in Hong Kong.

65. Defendant Dimexon Diamonds Ltd. is, upon information and belief, a DTC Sightholder located in India.

66. Defendant Dynamic Diamond Corp. ("Dynamic"), is, upon information and belief, a DTC Sightholder with its principal office in the City and State of New York.

67. Defendant E.F.D. Ltd., known in the U.S. as E.F.D. (USA) Inc. is, upon information and belief, a DTC Sightholder with an office located in New York, New York.

68. Defendant Eurostar Diamond Traders NV, known in the U.S. as Eurostar Belgium Inc. is, upon information and belief, a DTC Sightholder with an office located in New York, New York.

69. Defendant Fabrikant & Salant Group Ltd. is, upon information and belief, a DTC Sightholder with an office located in New York, New York.

70. Defendant Festdiam Cutting Works (PTY) Ltd. is, upon information and belief, a DTC Sightholder located in South Africa.

71. Defendant Fruchter Gad Diamonds Ltd. is, upon information and belief, a DTC Sightholder located in Israel.

72. Defendant Gembel European Sales NV is, upon information and belief, a DTC Sightholder located in Belgium.

73. Defendant Hasenfeld-Stein, Inc. is, upon information and belief, a DTC Sightholder with an office located in New York, New York.

74. Defendant Inter Gems-Claes NV is, upon information and belief, a DTC Sightholder with an office located in Belgium.

75. Defendant J.B. Diamonds is, upon information and belief, a DTC Sightholder with an office located in New York, New York.

76. Defendant Julius Klein Diamonds LLC is, upon information and belief, a DTC Sightholder with offices located in New York, New York and Los Angeles, California.

77. Defendant K. Girdharlal is, upon information and belief, a DTC Sightholder with an office located in New York, New York.

78. Defendant KGK Enterprises is, upon information and belief, a DTC Sightholder located in India.

79. Defendant K.P. Sanghvi & Sons, is, upon information and belief, a DTC Sightholder with an office located in New York, New York.

80. Defendant Karp Impex Ltd., known in the U.S. as Karp Impex PVT Ltd. U.S.A. is, upon information and belief, a DTC Sightholder with an office located in New York, New York.

81. Defendant L.I.D. Ltd. is, upon information and belief, a DTC Sightholder with an office located in New York, New York.

82. Defendant Dilip Kumar V. Lakhi Group is, upon information and belief, a DTC Sightholder with an office located in New York, New York.

83. Defendant Laxmi Diamond is, upon information and belief, a DTC Sightholder located in India.

84. Defendant Lazare Kaplan International Inc. is, upon information and belief, a DTC Sightholder with an office located in New York, New York.

85. Defendant Lili Diamonds, known in the U.S. as Lili Diamonds – U.S.A., is, upon information and belief, a DTC Sightholder located in New York, New York.

86. Defendant Livingstones is, upon information and belief, a DTC Sightholder located in India.

87. Defendant Louis Glick & Co. is, upon information and belief, a DTC Sightholder with an office located in New York, New York.

88. Defendant M. Suresh & Co. is, upon information and belief, a DTC Sightholder with an office located in New York, New York.

89. Defendant Mahendra Brothers is, upon information and belief, a DTC Sightholder with an office located in New York, New York.

90. Defendant Michael Werdiger, Inc. is, upon information and belief, a DTC Sightholder with an office located in New York, New York.

91. Defendant Mohit Diamonds Impex Pvt. Ltd. is, upon information and belief, a DTC Sightholder located in India.

92. Defendant Moti Ganz is, upon information and belief, a DTC Sightholder with an office located in Chicago, Illinois.

93. Defendant Navin Gems is, upon information and belief, a DTC Sightholder with an office located in India and a marketing representative located in the City and State of New York.

94. Defendant Overseas Diamonds NV is, upon information and belief, a DTC Sightholder with an office located in Belgium.

95. Defendant P.D. Kothari & Co. is, upon information and belief, a DTC Sightholder with an office located in New York, New York.

96. Defendant Premier Gem Corp. is, upon information and belief, a DTC Sightholder located in New York, New York.

97. Defendant Premier Diamond Cutting Ltd. is, upon information and belief, a DTC Sightholder located in Thailand.

98. Defendant Rand Precision Cut Diamonds (PTY) Ltd. is, upon information and belief, a DTC Sightholder with an office located in New York, New York.

99. Defendant Ratilal Becharlal & Sons is, upon information and belief, a DTC Sightholder located in India.

100. Defendant Rosy Blue Inc. is, upon information and belief, a DTC Sightholder with an office located in New York, New York.

101. Defendant Rosy Blue NV (India) Pvt. Ltd. is, upon information and belief, a DTC Sightholder located in India.

102. Defendant Sanghavi Exports is, upon information and belief, a DTC Sightholder with an office located in New York, New York.

103. Defendant Schachter & Namdar Polishing Works Ltd., known in the U.S. as Leo Schacter Diamonds, L.L.C. is, upon information and belief, a DTC Sightholder with an office located in New York, New York.

104. Defendant Sheetal Manufacturing Co. is, upon information and belief, a DTC Sightholder located in India.

105. Defendant Shrenuj & Company, Ltd. is, upon information and belief, a DTC Sightholder located in India.

106. Defendant Smolensk State Unitary Co. Kristal Production Corp. is, upon information and belief, a DTC Sightholder in Russia.

107. Defendant Star Diamond Group (SDG) BV is, upon information and belief, a DTC Sightholder with an office located in New York, New York.

108. Defendant Suashish Diamonds Ltd. is, upon information and belief, a DTC Sightholder located in India.

109. Defendant Supergems Holdings Ltd., known in the U.S. as Supergems U.S.A. Inc., is, upon information and belief, a DTC Sightholder with an office located in the U.S.

110. Defendant Suresh Brothers is, upon information and belief, a DTC Sightholder in India.

111. Defendant Tache Company NV is, upon information and belief, a DTC Sightholder with an office located in New York, New York.

112. Defendant Tasaki Shinju Co. Ltd. is, upon information and belief, a DTC Sightholder located in Tokyo.

113. Defendant Trau Bros. NV is, upon information and belief, a DTC Sightholder with an office located in New York, New York.

114. Defendant Pluczenik Diamond Co. NV is, upon information and belief, a DTC Sightholder with an office located in New York, New York.

115. Defendant Vijaydimon BVBA is, upon information and belief, a DTC Sightholder located in Belgium.

116. Defendant Yahalomei Espeka International Ltd. is, upon information and belief, a DTC Sightholder with an office located in New York, New York.

117. Defendant Yerushalmi Brothers Diamond Ltd., is, upon information and belief, a DTC Sightholder with an office located in New York, New York. (the above-named DTC Sightholders, are collectively referred to herein as the "Sightholder Defendants").

118. Defendants John Does 1 - 84 are accountants of the Sightholder Defendants. These accountants are currently unknown to Plaintiff.

BACKGROUND

THE DE BEERS MONOPOLY

Brief History of the De Beers Cartel

119. For over a century, De Beers has dominated the market for rough diamonds, controlling as much as 80% of the rough diamond market worldwide. Currently, De Beers controls, through its own mines and agreements with owners of other mines, approximately 50% of the world's diamonds, and an even larger percentage of 2+ carat diamonds, and retains monopoly power over the rough diamond market due to, among other things, the fragmented nature of the entities that control the remaining, approximately 50% of the rough diamonds.

120. In 2003 alone, De Beers sold $5.52 billion worth of rough diamonds, and used its market dominance to raise the price of its rough three times during the year, creating, according to De Beers, an approximately 10% hike in its rough prices from the beginning of the year; although, the real increase in the price of rough diamonds was likely at least 20%. De Beers also increased rough diamond prices by 3% in January 2004, and by 5% in March, 2004, and, upon information and belief, intends to further raise rough diamond prices later this year.

121. The United States is the world's largest market for diamonds, representing approximately 50% of the world's annual diamond purchases.

122. Through the last century, and presently, De Beers has illegally used its monopoly power to, among other things, artificially limit the supply of diamonds (through, upon information and belief, among other things, the inclusion of "quota" clauses in agreements with producers); artificially inflate the price and value of diamonds; falsely advertise that diamonds are scarce when they are not; wrongfully limit the number of diamantaires that could purchase De Beers rough; make diamonds available only to De Beers Sightholders 10 times a year at Sights in London; and require, and now strongly urge in a manner akin to requiring, Sightholders to act through, and compensate, one of a very select group of brokers who are inherently conflicted due to their ties to De Beers and to other Sightholders competing for the same stones.

123. On October 17, 1999, before a group of Harvard alumni, De Beers Chairman, Defendant Oppenheimer, arrogantly boasted about De Beers' illegal monopolistic behavior stating that De Beers:

> like[s] to think of itself as the world's . . . longest running monopoly . . . [and seeks] to manage the diamond market, to control supply, to manage prices and to act collusively with our partners in business.

124. In fact, JWT, De Beers' advertising agency and U.S. alter ego, states on its website that it "learned that DTC's competition often comes not from another diamond company, but from another luxury item . . . ."

125. With respect to De Beers' claims that diamonds are scarce, in February, 2001, the television news program "60 Minutes" reported as follows:

> Diamonds may or may not be forever. They may or may not be a girl's best friend. But one thing diamonds definitely are not is rare, and that happens

> to be one of the best kept secrets of the century. In fact, if diamonds were subject to the usual laws of supply and demand, that ring on your finger or in your dreams probably wouldn't be worth more than a couple of hundred dollars.
>
> The fact that it happens to be worth a lot more is entirely due to one company. It's called De Beers, the most enduring cartel in history. And the way it controls the price of diamonds makes OPEC look like free marketers.

126. Since in or about 1945, principals of De Beers, including Individual Defendants, have been unable and/or unwilling to enter the U.S. due to, among other things, an outstanding federal indictment against De Beers for its illegal monopolistic conduct and the likelihood of being arrested and/or served with legal process upon entering the U.S.

127. Nevertheless, De Beers maintains a major presence in the U.S., and has conducted, and continues to conduct, substantial business in the U.S., selling its rough diamonds at its London Sights to, among others, U.S. rough diamond manufacturer and dealer Sightholders for finishing and sale in the U.S., and spending in excess of $100 million annually on print, television, internet and other U.S. advertising, through JWT, including DPS and DIC, and through the brokers.

De Beers Launders Money to U.S. Jewelers Through U.S. Sightholders

128. De Beers has gone so far as to use its market power and domination to launder money through Sightholders from De Beers to U.S. jewelers, so that De Beers principals could avoid entering the U.S.

129. Thus, commencing in or about 2001, De Beers, through certain Sightholders, provided U.S. retail diamond jewelers with questionnaires for the jewelers to fill out concerning planned diamond promotions by the jewelers. The jewelers, again by way of specific Sightholders, returned the completed questionnaires to De Beers, and De Beers then selected certain jewelers' marketing proposals for which it would provide financing.

130. Jewelers to which De Beers chose to, and did, supply financial support for diamond promotions included, among others, Helzberg Diamonds, Zales Corp. and Sterling Jewelers – all of these jewelers being large, well recognized, jewelers.

131. Upon information and belief, in, at the very least, 2001 and 2002, De Beers provided millions of dollars to, among others, Helzberg, Zales and Sterling by first delivering the funds to, and laundering the funds through, the Sightholders of whom these jewelers were clients, and having the Sightholders deliver the funds to the jewelers.

132. To further cover-up De Beers' U.S. money laundering, upon information and belief, the retail diamond jewelers who received marketing related financial support from De Beers invoiced the Sightholders, and not De Beers, for the monies the jewelers were promised by De Beers.

133. Upon information and belief, by laundering the funds for financial support of U.S. retail jewelers through Sightholders De Beers sought to conceal the fact that it was actually doing business in the U.S.

The Diamond Trading Company – DeBeers' Central Selling Organization

134. DTC is, and has been for many years, De Beers' sales and marketing division, through which De Beers sells and markets its rough diamonds. DTC sells the rough to its clients, the Sightholders, at 10 Sights which take place throughout the year in London.

135. According to one of the De Beers websites, www.debeersgroup.com, DTC "sources its rough diamonds from De Beers' own group of mines in Africa, and through agreements with other mining companies. The DTC currently sorts and values about two thirds of the world's annual supply of rough diamonds by value."

136. De Beers selects the amount, size and quality of the rough diamonds that it makes available to the Sightholders at each DTC Sight.

137. Upon information and belief, De Beers limits the supply of diamonds available to Sightholders in order to maintain control over the diamond market and keep diamond prices artificially high.

Diamdel – De Beers' Wholly Owned Subsidiary Through Which De Beers Further Conducts its Illegal Monopolistic Conduct

138. Diamdels worldwide, as wholly owned subsidiaries of De Beers, report directly to De Beers' Board of Directors.

139. At, or prior to, each Sight, Diamdel is allocated by De Beers a portion of the rough stones that are being made available at that Sight. Over the course of a year, upon information and belief, Diamdel routinely receives from DTC approximately 10% of the rough diamonds that DTC makes available for sale per Sight.

140. Diamdel is DTC's largest so-called client, and, as such (as well as being a wholly owned subsidiary of De Beers), Diamdel does not need, nor use, a broker. Thus, Diamdel pays no 1% broker fee and, thereby, has an automatic 1% profit advantage over most Sightholders.

141. As with other Sightholders, upon information and belief, Diamdel receives its allocation of diamonds from DTC at each DTC Sight.

142. In addition to the rough diamonds it receives directly from De Beers, Diamdel also actively buys rough diamonds on the open market, further increasing De Beers' monopoly power and market control.

143. Even though Diamdel is guaranteed a portion of rough diamonds at each Sight, De Beers purports not to consider Diamdel a Sightholder (although relatively recently De Beers claimed that Diamdel *was* a Sightholder) and De Beers has not required, and does not require, Diamdel to meet the Sightholder/Supplier of Choice requirements and standards.

144. Diamdel sells the rough diamonds it receives from DTC to the "secondary market" (*i.e.*, non-sightholder rough diamond manufacturers and distributors) at a premium over the price of the rough diamonds sold directly to Sightholders by DTC. Thus, De Beers, through its illegal acts, not only limits the number of Sightholders and the quantities of diamonds the Sightholders may buy, but also by means of Diamdel, further controls the Rough Diamond Market while subjecting those excluded from holding Sights to a surcharge for the "privilege" of being afforded a source of supply.

145. In or about June, 2003, Defendant Penny stated that De Beers was considering an increase of Diamdel's annual rough diamond supply to $500 million. In or about November, 2003, Defendant Ralfe reiterated this point, stating that it was "De Beers hope and intention in 2004 to increase to $500 million annually the DTC's supply of rough diamonds to Diamdel in support of the 'secondary market.'"

146. Upon information and belief, De Beers does not intend to increase to $500 million the supply of rough diamonds available to Diamdel through DTC.

147. Upon information and belief, De Beers said that it would increase Diamdel's diamonds to buy some time to put SOC into effect, and keep quiet those diamantaires that illegally lost their Sightholder status under SOC, by making these former clients *think* that they could get from Diamdel the rough diamonds they previously would have received from DTC.

148. While purporting to sell rough diamonds on an arms-length basis into the market place, in reality, Diamdel sells 2+ carat rough diamonds in the U.S. to non-Sightholder rough diamond manufacturers and dealers who have been hand-picked by Jacob Banda, the president of the New York Diamond Dealers Club.

149. Upon information and belief, notwithstanding De Beers' claims of a shortage of large rough diamonds, in exchange for Banda and/or the Diamond Dealers Club refraining from commencing litigation against, among others, DTC and Diamdel, Diamdel agreed to provide $250,000 worth of rough diamonds per Sight – all of which are 2+ carat stones – ten times per year, to each of ten specific U.S. rough diamond manufacturers and dealers chosen and listed by Banda.

150. Upon information and belief, Banda receives a 1% commission on all rough diamonds purchased by the ten U.S. rough diamond manufacturers and dealers on Banda's list.

151. Because Diamdel does not enter into agreements with its clients, it can cease selling to any particular client or clients at any time.

152. By using Diamdel to both distribute rough diamonds, in particular to pre-selected U.S. diamond dealers and manufacturers, and to purchase additional rough diamonds on the market, De Beers has violated its own SOC criteria, gained further control of the distribution of rough diamonds, increased its profit margin on rough diamonds and illegally strengthened its already dominant market position and monopoly power.

The Broker System Utilized by De Beers to Illegally Conduct Business in the U.S. and to Further Dominate and Control the Industry

153. As part of the Sight process, until very recently (as detailed below), Sightholders were required by De Beers to, and for practical purposes still must, use one of approximately six specific diamond brokers to act as a go-between rough diamond purchasers, including Plaintiff, and De Beers (specifically, DTC). The brokers, among other things, communicate to DTC requests by clients for certain product, communicate DTC decisions to the clients, offer opinions and guidance regarding Sight applications and offer opinions and guidance regarding clients' entire relationships with De Beers. The brokers usually receive a commission of 1% of the sales from the purchaser. The brokers are I. Hennig & Company ("Hennig") (Plaintiff's broker), Bonas & Company, Ltd., W. Nagel International Diamond Brokers, H. Goldie International Brokers, Gerald Rothschild and Jack Morgan.

154. When merchandise is shipped from DTC to the U.S., it is shipped by DTC directly to the clients, but invoices and other relevant documents are sent "care of" the brokers to the DTC or Diamdel client. This is done in order to facilitate the illusion, and maintain the façade, that De Beers is not operating in the U.S.

155. These brokers are "DTC Accredited Brokers," and, as such, are controlled by the DTC, since DTC sets the criteria necessary to become "DTC Accredited."

156. Sightholders use one of these "DTC Accredited Brokers" to purchase diamonds from De Beers. Although these brokers, including Hennig, are compensated by, and purportedly act on behalf of, the purchaser, in reality, the brokers maintain *de facto* affiliation with, and allegiance to, De Beers. This is so because, upon information and belief, the brokers also represent the interests of De Beers *vis a vis* the Sightholders, and because De Beers decides who is a "DTC Accredited Broker," a position that no broker wants to jeopardize.

157. In fact, the DTC brokers are part of DTC's marketing system, constantly looking to bring in new Sightholders to benefit themselves and DTC, to the detriment of their other clients.

158. Each DTC broker, including Hennig – the largest of the brokers – also has conflicting loyalties because it represents several Sightholder clients, each of whom may want the same product, and because the brokers introduce new clients to De Beers that also compete for the same product and for Sightholder status.

159. Because a broker's clients are all competing for access to the artificially

limited supply of diamonds, and because, theoretically, a broker's job is to convince DTC to allocate diamonds sought by each of its clients, each broker has an inherent conflict of interest. The DTC broker system is, thus, fundamentally and fatally flawed.

160. Currently, in order to comply with EC requirements, DTC now purports not to require, but still strongly encourages, the use of a broker. For practical purposes, however, purchasers of rough diamonds must still use a broker to act as a go-between, between the purchasers and DTC, and, with the exception of the few Sightholders located in South Africa, virtually all Sightholders still use brokers.

161. Faxes or communications made by DTC to U.S. Sightholders are routinely made by DTC from the offices of the brokers in a further attempt to cover up DTC's U.S. conduct.

162. Upon information and belief, Hennig is owned and supported by the Oppenheimer family, a fact which was never disclosed to Plaintiff, which has owned and operated De Beers for over a century. When asked in or about 2000 by author Matthew Hart whether the Oppenheimer family owned Hennig, Defendant Nicky Oppenheimer responded "[i]t could indeed."

163. Upon information and belief, the building in which Hennig previously maintained its main offices, which is contiguous to De Beer's London headquarters, has recently been refurbished and occupied by a private investment vehicle of the Oppenheimer family.

164. Use of this broker system is another manner in which De Beers illegally maintains control over the rough diamond market.

U.S. Advertising/JWT – De Beers' U.S. Alter-Ego

165. For the past several years, De Beers has spent, and continues to spend, in excess of $100 million annually in U.S. advertising.

166. JWT handles all of De Beers advertising in the U.S. and worldwide it has been De Beers' exclusive advertising agency since in or about mid-1995 and it has advertised on behalf of De Beers since 1965.

167. De Beers diamond advertisements have appeared, and continue to appear on a regular basis, in scores of U.S. publications including, among others, *Newsweek*, *Vanity Fair*, *In Style*, *People*, *Town & Country*, *the New Yorker*, *Vogue*, *Architectural Digest* and *Harper's Bazaar*.

168. De Beers also advertises regularly on television in the United States and maintains U.S. accessible internet sites including, among others, www.adiamondisforever.com, www.debeersgroup.com, www.dps.org (through Defendant JWT) (the Diamond Promotion Service), www.forevermark.com, and www.dtc.biz (which is purportedly only for "members of the jewellry industry in the UK").

169. De Beers further directly does business in the U.S. by means of the website, adiamondisforever.com, which is sponsored by DTC and expressly states on its home page that "This site is for U.S. Residents." It also states in its "Privacy Policy" section that it is protected by U.S. copyright laws.

170. Furthermore, the Hennig website and the JWT global website each have entire sections devoted to De Beers.

The Diamond Information Centre and The Diamond

Promotion Service Operated by JWT on Behalf of DTC

171. JWT is far more than just a De Beers advertising agency. It is in reality the U.S. alter ego of De Beers. Thus, among others, it operates in the U.S. on behalf of DTC, the Diamond Information Centre and the Diamond Promotion Service, which promotes diamonds on behalf of De Beers.

172. As described at www.canada.forevermark.com, DIC is a "multi-faceted media relations organization and special events group. DIC has been responsible for many glittering and celebrity-studded shows and presentations . . . ," it "promotes creativity in diamond jewelry design through . . . competitions including the Diamonds International Awards, the most prestigious international jewelry competition."

173. This DIC Canadian website also states, under the heading "WHO WE ARE" "WHAT IS THE DIC," that "[t]he Diamond Information Centre is sponsored by the Diamond Trading Company, the world's leading diamond sales and marketing company."

174. Practically every internet page concerning the DIC, contains the phrase "A DIAMOND IS FOREVER," which is synonymous with De Beers, De Beers own "Forevermark" (*i.e.*, "  ") and/or the name "De Beers."

175. Practically all current De Beers U.S. advertisements contain the phrase "A Diamond is Forever" and the Forevermark.

176. DPS is a department of JWT, with its executive office in New York City. DPS provides marketing, merchandising and education support to the jewelry industry on behalf

of DTC. The DPS website is accessible only with a password which can be obtained only by those in the jewelry industry.

177. Upon information and belief, Defendant Arias, in addition to her other consulting services, manages the DPS education program.

178. The homepage of the DPS website contains the phrase "A DIAMOND IS FOREVER" beneath the Forevermark, thus, proclaiming its affiliation with De Beers. It also gives a U.S. "1-800" phone number which connects to DPS in New York City.

179. Through DPS and DIC, JWT does far more than just advertise or market diamonds on behalf of De Beers. It rather acts as an alter ego, branch or agent of De Beers.

180. DPS, on its website, states that DIC "is our public relations arm," and DPS works hand-in-hand with the DIC, on behalf of DTC, to "supply consumers and the media with all the information they could possibly want and need about diamonds and the diamond industry."

181. As further stated on the DPS website, the DIC: (1) adorns celebrities with diamonds at award shows such as the Academy Awards, Cannes, the MTV awards, movie premiers and in movies and in TV shows such as "Friends," "Sex and the City," "Will and Grace," "Moulin Rouge" and others; (2) provides jewelry for magazine covers or fashion editorials; "from W to Brides to Vanity Fair, chances are that the jewelry was provided by the DIC;" (3) "collaborates with leading fashion designers like . . . Ralph Lauren, Patricia Field, Badgley Mishka and Vera Wang to accessorize their runway collections with diamonds;" and (4) runs "glittering [celebrity studded] diamond events and exhibitions around the globe," including galas

in "Cannes, the Academy Awards, Sundance, [and] . . . the American Museum of Natural History. . . ."

182. De Beers diamond related products can be ordered directly from DPS in New York. These items include: 4Cs (clarity, carat weight, color, cut) Art Collections, 4Cs Signs, diamond quality brochures, diamond quality pyramid and related materials, starter kits, education programs, displays, slides/transparencies, numerous CD-ROM programs, etc.

183. The DPS website contains an entire section which discusses SOC, and even has a downloadable 24 page brochure entitled "Vision and Growth *A Guide to Supplier of Choice and Diamond Marketing*." The cover page of this brochure contains the Forevermark of De Beers, the word "SIGHTHOLDER" and the name "DIAMOND TRADING COMPANY."

184. Commencing on July 29, 2003, DPS held a two day conference in Cancun, Mexico which DPS described as a "very special event," and an "exclusive event . . . designed to further the dialogue between DPS and some of the finest independent jewelers in the country [the U.S]."

185. Upon information and belief, at this conference, DPS gave an update on DTC's plans for SOC, briefings on special JWT programs for "A Diamond is Forever" and discussed other related matters, including, but not limited to, making purchases from SOC Sightholders as a preferred supplier.

186. Recent JWT advertisements for DTC even tout purported advantages of purchasing diamonds from DTC Sightholders.

187. Upon information and belief, the conference was held outside of the U.S. to enable De Beers representatives to avoid entering the U.S., and, thus, continue De Beers' charade that it does not conduct business in the U.S.

188. Upon information and belief, in 2003 alone, DTC spent approximately $180 million on industry advertising.

189. JWT, through, among others, DTC and DPS, aids, abets and participates in De Beers' market domination, and De Beers' illegal actual and attempted use of its monopoly power to control both the upstream and downstream diamond markets.

De Beers' Anti-Competitive, Monopolistic and Fraudulent Supplier of Choice Program

De Beers Initial SOC Plan is Rejected by the European Commission

190. On or about July 12, 2000, De Beers announced, with great fanfare, its new "Supplier of Choice" initiative, describing it in its press release headline as a "BOLD NEW STRATEGY TO DRIVE DEMAND FOR DIAMOND JEWELLERY AND LEAD INDUSTRIAL TRANSFORMATION." The purpose of SOC purportedly was to increase market demand for diamonds in general and to increase demand for De Beers diamonds in particular.

191. The Supplier of Choice program created a new set of purportedly "objective" criteria for the selection of Sightholders. It also required Sightholders to follow a set of "Best Practice Principles," developed by De Beers as part of the Supplier of Choice program.

192. On or about May 3, 2001, DTC applied to the EC for "negative clearance" or, alternatively, for an exemption under the EC Treaty in respect of DTC's SOC initiative.

193. On or about July 25, 2001, the EC opened proceedings against DTC and issued a statement of objections to DTC regarding SOC.

194. The main objections raised by the EC were that, based on the way the criteria would be applied and the contractual commitments of Sightholders once made Suppliers of Choice, implementation of SOC would enable De Beers to restrict the commercial behavior of its clients and would constitute an abuse of dominant market position.

De Beers' Revised SOC Plan

195. De Beers then made numerous purported revisions to the SOC program, including, *inter alia*, claimed revised criteria, revised Sightholder profiles, revised policy statements, revised conditions of sale, a transition period for prior Sightholders not selected as Suppliers of Choice and dispute resolution procedures.

196. On or about November 9, 2002, the EC issued Notice of its intent "to adopt a favorable position" in respect of the revised SOC initiative, but, before doing so, "invite[ed] all interested parties to submit any observations they might have...."

197. On or about January 16, 2003, the DTC announced the EC's confirmation that it "had adopted a favourable position on the DTC's Supplier of Choice strategy." The EC reserved its right to reopen its examination of SOC, based on its concern that De Beers could use SOC to artificially reduce the supply of diamonds and drive up prices.

198. In its January 16, 2003 Media Release, DTC described Supplier of Choice as "the DTC's strategy to drive consumer demand for diamond jewellery . . . . [through] a set of objective and pro-competitive criteria -- which emphasize distribution efficiency and effective marketing -- that determine how the DTC identifies its clients and supplies rough diamonds to them."

199. The six key so-called "objective" criteria upon which DTC purported to rely in selecting and supplying Sightholders were: (1) financial standing; (2) market position; (3) distribution abilities; (4) marketing strengths; (5) technical and manufacturing ability and (6) compliance with the DTC Best Practice Principles and other standards.

De Beers Illegally Implements SOC in an Opaque and Unfair Manner

200. In or about January 2003, DTC distributed to rough diamond purchasers its "Supplier of Choice – Sightholder Pack" (the "SOC Pack").

201. DTC's cover letter to the SOC Pack (the "SOC Cover Letter") -- dated January 20, 2003, signed by Defendant Nicky Oppenheimer as Chairman and Defendant Gary Ralfe as Managing Director and sent to Plaintiff c/o Hennig -- stated that:

> These documents set forth, amongst other things, the *objective criteria* that form the foundation of eligibility and supply decisions under Supplier of Choice along with the mechanisms that are intended to promote the efficiency and fairness of the process. *We have no doubt* that the principles and processes described here will result in greater confidence, transparency and certainty in our business relationships. Importantly, they will ensure that existing and potential clients of the Diamond Trading Company *all have the same opportunity*. (Emphasis supplied).

202. Upon information and belief, the SOC Cover Letter was a "form letter" sent by DTC, care of the brokers, to all prospective Suppliers of Choice.

203. Upon information and belief, the Individual Defendants knew that the SOC cover letter was false when sent, because they knew at the time that, contrary to the SOC Cover Letter, the SOC and its so-called criteria were not "objective," "transparent" or "fair," and that SOC did not give all "the same opportunity."

204. By letter from DTC dated June 3, 2003, Plaintiff was formally advised that it "did not qualify as a Sightholder under Supplier of Choice," and that it would lose its Sight after a transitional six month period (*i.e.*, after December, 2003).

205. On or about January 13, 2004, De Beers officially and publicly released its list of Sightholders selected under SOC, although the list of Sightholders had been generally known within the industry since June, 2003. The list contained 84 Sightholders, down from, upon information and belief, between approximately 100 to 120 Sightholders in 2003.

206. The new Sightholder list, as noted in the November, 2003 issue of the industry publication *New York Diamonds*, "clearly was weighted in favor of the Indian diamond industry."

207. By reducing the Sightholder list by between 20% and 30%, De Beers, in fact, substantially decreased U.S. and worldwide competition in the diamond industry.

208. Despite the facts that at least 50% of De Beers sales are in the U.S., the majority of the chosen SOC Sightholders were not U.S. Sightholders, virtually decimating the U.S. diamond manufacturing industry.

209. De Beers eliminated approximately 50% of its prior U.S. Sightholders (5 of 10), while adding only one new one – Defendant Dynamic Diamond Corp. ("Dynamic") -- which, upon information and belief, based on its actual business, could not possibly have better met the purportedly objective SOC criteria than, among others, Plaintiff.

210. The net loss of approximately 50% of the U.S. Sightholders, as well as the addition of unqualified Sightholders, has decreased competition in the U.S. to an even greater extent than it has in the rest of the world.

The Illegal Anti-Competitive Effects of SOC

211. The illegal anticompetitive effect of SOC was emphasized by European Union ("EU") Parliament Member Richard Corbett, who, in addressing the EC on November 18, 2003, questioned De Beers' discretionary power under SOC, asking, specifically, questions such as:

- "Is the commission aware of the deep concerns expressed by the diamond industry concerning . . . SOC?"
- "Does it [the EC] agree that this system is entirely at De Beers' discretion and is based on *selection criteria, which are both opaque and subjective*?" (Emphasis supplied).
- "Is it [the EC] aware that one third of De Beers core customers have been removed thus far under SOC, *leaving diamonds in fewer hands and generally reducing competition and supply*?" (Emphasis supplied).

- "Will the Commission now reopen its investigation into SOC before it becomes fully operational at the end of the year?"

212. The illegal anticompetitive effect of SOC on the secondary market, specifically, was also emphasized in a December, 2003 letter written to the EC by Jacqueline Foster, another EU Member of Parliament, in which Ms. Foster urged the EC to take immediate steps to stop De Beers from "destroying" the secondary market by limiting access to rough diamond supplies. She specifically noted, among other things, that De Beers was seizing control of the secondary market through its subsidiary Diamdel, and queried as follows:

> [W]hat steps does the EC intend to take to prevent De Beers from drastically reducing competition by effectively destroying the secondary market for the independent supply of rough diamonds to non-sightholders, in particular given that: the vast majority of desirable rough diamonds are sold by De Beers/Diamond Trading Company (DTC) to strictly controlled sightholders for manufacture; that former sightholders which were pure dealers and independent suppliers of rough diamonds to the secondary market have been eliminated under the Supplier of Choice selection procedure; and that De Beers intends to take control of the distribution of rough diamonds to the secondary market through its subsidiary Diamdel?

213. In fact, the EC has received numerous other formal and informal complaints regarding the anticompetitive effect of SOC, and several articles have been written by industry journalists to the same effect.

214. In a July 23, 2003 article in the well- known industry publication *Rapaport Diamond Report*, Martin Rapaport wrote that:

> [the DTC] has created a situation whereby unregulated application of its . . . [SOC] initiative has the potential to *seriously damage existing free rough and polished diamond markets*. The absence of reasonable regulations on DTC activities is a clear and present danger to the free diamond markets. (Emphasis supplied).
>
> * * *
>
> [under SOC] the DTC can corner the market on larger, better-quality rough and at the same time, its sightholder clients can corner the market on larger, better-quality polished.
>
> * * *
>
> In the worst case scenario, Diamdel is simply a way for the DTC to control small players, bribe big ones and spy on the free market . . . . *The idea that Diamdel . . . [was] designed to help the industry is laughable.* (Emphasis supplied).
>
> * * *
>
> *Something [about Diamdel] stinks here*. (Emphasis supplied).

215. By letter to the EC dated July 31, 2003, the Diamond Club West Coast, Inc., a well known diamond industry organization, complained that:

> The Supplier of Choice program, the elimination of so many previously loyal sightholders and the series of agreements between De Beers and its remaining sightholders will have a variety of negative effects on the diamond industry in the United States and around the world. By drastically reducing the

> number of sightholders and, potentially, arranging to buy a significant portion of the rough diamond production from Russia, De Beers threatens the existence of diamond manufacturers, rough dealers, and dealers and wholesalers of polished diamonds both in the United States and in Europe.
>
> * * *
>
> With the program's [SOC's] emphasis on large chain operations and guaranteeing them supplies of diamonds, the potential anti-competitive effects on the small retailers and the dealers who historically have served them is of great concern. Indeed, it appears from our perspective that the Supplier of Choice program and the agreements with the remaining sightholders could be used as a mechanism to allocate customers and markets among the participants.

216. Well known industry journalist, and industry expert, Chaim Even-Zohar noted in an article dated September 18, 2003 that "there is little doubt that a serious anti-trust case against De Beers can still be made" regarding SOC.

217. In a November 2003 article in *JCK*, another industry publication, the author concluded that De Beers "has more power over sightholders than ever . . . ."

218. In an article in *Business Day (Johannesburg)*, dated February 11, 2004, the author, Emma Muller, quoted a prominent European jewelry dealer as stating that: 'De Beers is aggressively approaching retailers to buy from their Sightholders,' and 'it seems to me their [De Beers'] power has actually increased at the very time their market share [of rough diamonds] has decreased from their point of view, a remarkable success.'

219. In light of several complaints it has received concerning SOC, the EC recently reopened its examination of SOC. As reported on March 12, 2004 in *Rapaport News*,

> The EC has reopened the De Beers .... SOC investigation requesting to see the questionnaires sightholders were compelled to fill out in their applications.... The move comes after the EC allegedly received information that the . . . DTC is involved in practices which lead to restrictions of competition in the diamond market.

220. Even more recently, Victoria Gemelsky, in an article in the March 16, 2004 edition of the National Jeweler, noted Martin Rapaport's observation during a speaking engagement "that while De Beers' market share may have declined, it still controls a disproportionate amount of two-carat-plus supplies." The article then noted that:

> By funneling these goods into a sightholder network of 84 companies who have a limited amount of customers, the speculation is that De Beers might constrain the amount of large diamonds available to the retail community.

221. The same article quoted well known industry commentator and consultant Charles Wyndham, who stated that 'Supplier of Choice has saved and strengthened De Beers' monopolistic control over distribution at exactly the time that its market share has plummeted.' The article further noted that:

> Wyndham echoes the idea that De Beers' clients now have less control over their operations than in the past: '[Sightholders] certainly have less choice as they are forced to go down a path mapped and monitored every step of the way by De Beers.'

De Beers Joins With LVMH to Further Its Downstream Monopoly Power – De Beers' Warped Implementation of SOC was Further Designed to Ensure This

Goal as Well as the Success of the Planned De Beers/LVMH Boutiques in the U.S.

222. In 2001, De Beers established De Beers LV, a joint venture, known as "Rapid Worlds Ltd.," between De Beers and Defendant LVMH, the world's leading and largest luxury goods company.

223. The joint venture was approved by the EC in July, 2001.

224. In December, 2002, De Beers LV opened its flagship store in London and in September, 2003, it opened three boutiques in Tokyo. All four stores operate under the De Beers name.

225. De Beers, De Beers LV and LVMH are planning to open additional boutique stores in New York and Los Angeles in Autumn, 2004.

226. De Beers LV is another step taken by De Beers, with the substantial assistance of LVMH, to vertically integrate itself in the market and further increase its market control by opening up and operating its own retail stores in the U.S. and elsewhere to sell diamonds.

227. De Beers LV has further decreased diamond availability worldwide, and will even further decrease diamond availability in the U.S. when De Beers' U.S. stores open, since the De Beers stores have, and will purchase and sell, a significant amount of diamonds in the U.S. once they open here.

228. Upon information and belief, despite De Beers' claim that De Beers LV purchases its diamonds on the open market and receives no special treatment from De Beers, De

Beers sold to De Beers LV at well below market value, the "Centenary" stone for use in promoting the De Beers LV retail stores.

229. As well known industry commentator Chaim Even-Zohar noted in a June 12, 2003 article, the only way De Beers LV can succeed in generating the profit margins it expects, is by "maintaining some type of control over the higher end of the large goods market. To *retain that control, the top end needs fewer players*." (Emphasis supplied). Mr. Zohar further stated that the only way De Beers could reach its stated plan to grow the diamond market by 50% by 2012 (a jewelry market of nearly $90 billion), is from "price increases and price increases and price increases. This isn't so easy in a competitive market. But it is certainly manageable in the better goods, if there are *as few players as possible* in that segment." (Emphasis supplied).

230. The "price increases and price increases and price increases" referred to by Mr. Zohar began in January 2003 and since then De Beers has hiked rough diamond prices by 18% with the stated intent to again increase prices later this year.

231. In other words, De Beers, among other things, implemented SOC and reduced the number of Sightholders, in particular Sightholders with niche, independent jeweler, clients that seek 2+ carat stones, and not jewelry store chain clients, to enable De Beers to further control the market, and to increase the likelihood of success of the De Beers boutiques. This has seriously and negatively affected, *inter alia,* U.S. diamond manufacturers and distributors, and explains, in part, why the number of U.S. Sightholders was decreased so substantially and disproportionately.

De Beers Agreement With Alrosa – De Beers Increases Its Rough Diamond Market Control

232. In 2002, De Beers and Alrosa Company Limited ("Alrosa") – upon information and belief, the exclusive producer of rough diamonds in Russia – entered into an agreement pursuant to which, for a period of five years, Alrosa will annually sell to De Beers approximately $800 million of rough diamonds, which represents about 50% of Alrosa's annual production (the "Alrosa Agreement").

233. According to DTC spokesperson Lynette Hori, in 2003, De Beers purchased $634 million of rough diamonds from Alrosa.

234. The EC has indicated its concern that this Alrosa Agreement may be violative of European anti-competition laws, and is currently reviewing the Alrosa Agreement and De Beers' relationship with Alrosa.

235. While not necessary to sustain Plaintiff's claims, by virtue of its 2003 purchase of rough diamonds from Alrosa, the De Beers cartel has grown even more powerful and gained even further market control. If the Alrosa agreement/relationship is approved, De Beers' already overwhelming domination of the diamond market will be even further increased.

U.S. Department of Justice Indictment Against De Beers Defendants

236. In light of, among other things, outstanding U.S DOJ indictments against De Beers for price fixing, since in or about 1942, principals of De Beers have been unable to enter

the U.S. without being subject to, among other things, immediate arrest and/or service of legal process.

237. According to published reports, De Beers is currently negotiating with the DOJ to resolve the outstanding indictments and antitrust claims against it. Upon information and belief, to legally gain access to the U.S., De Beers is expected soon to plead guilty to these charges.

238. Upon information and belief, De Beers Defendants, additionally, are anxious to gain legal entry into the U.S. so that De Beers can open its De Beers LV stores in New York and Los Angeles.

239. As discussed above, the opening of the De Beers stores in the U.S. will enhance De Beers' overall market domination and control, substantially increase De Beers' "downstream" market control, diminish the availability of diamonds to the rest of the industry and decrease competition in the diamond market both upstream and downstream.

240. Upon information and belief, De Beers is also anxious to gain legal access to the U.S. so that it can better oversee the flow of its diamonds into, and the sale of its diamonds in, the U.S. This will also make it easier for De Beers to maintain its dominant position in the diamond industry, since about 50% of its diamonds are sold here.

PLAINTIFF, A 35+ YEAR SIGHTHOLDER AND INDUSTRY LEADER, IS WRONGFULLY AND ILLEGALLY DEPRIVED OF ITS SIGHT - DE BEERS AND JWT ALSO STEAL PLAINTIFF'S "LEADING JEWELERS OF THE WORLD" INITIATIVE

Brief Background of Plaintiff

241. Until its Sight was illegally terminated, from 1969 through the implementation of SOC last year, Plaintiff was a De Beers Sightholder that purchased, through Hennig, rough diamonds from De Beers at Sights which took place 10 times per year in London. At these Sights, De Beers used its market dominance and monopoly power to determine the amount and quality of diamonds it made available to Plaintiff, and to other Sightholders.

242. Until the end of 2003, Plaintiff received virtually all of its rough diamonds from De Beers.

243. At all relevant times, Plaintiff met, indeed exceeded, all of the criteria necessary for retaining its Sight.

Plaintiff Develops Leading Jewelers of the World With the Strong Encouragement of, and Accolades From, De Beers Defendants

Plaintiff Introduces LJW to De Beers Defendants and JWT-Both of Whom Agree to Complete Confidentiality

244. Prior to the implementation of SOC, Plaintiff served approximately 2,500 U.S. accounts, of which 850 were active and annually purchased from Plaintiff between $10,000 and more than $500,000 worth of diamonds.

245. In or about July 2000, DTC made a presentation to Sightholders in which DTC strongly urged Sightholders to take initiatives and develop marketing programs to increase diamond "branding" and customer demand.

246. In accordance with De Beers' directive to increase diamond demand and branding, and with the active encouragement of De Beers, at great time and expense, Plaintiff developed its pioneering "Leading Jewelers of the World" marketing initiative ("LJW" or "Leading Jewelers").

247. The concept of Leading Jewelers was first divulged to De Beers, through DTC, on or about October 31, 2000. It was further outlined by Plaintiff in a December 3, 2000 memorandum to Defendant Penney.

248. As then explained by Plaintiff, the objective of LJW was to extend to premier independent jewelers the opportunity to become members of LJW.

249. In order to become LJW members, as explained in the memorandum, jewelers would be required to participate in Plaintiff's marketing programs, purchase from Plaintiff at least $200,000 per year of diamonds, engage in above average promotion and advertising, have strong financial resources and continue to improve marketing skills and product knowledge through training programs offered by Plaintiff.

250. The memorandum also noted that in exchange for joining, these premier independent jewelers would increase their efficiencies and business opportunities through name recognition, the opportunity to purchase diamonds from a DTC Sightholder and would also receive advertising dollars.

251. The success of the program, thus, was dependent on Plaintiff remaining a Sightholder.

252. It was at all times understood and agreed between Plaintiff and Defendants that the information being provided Defendants concerning LJW was confidential, and was Plaintiff's propriety product and marketing plan, developed by Plaintiff at the instance and request of Defendants in order for Plaintiff to maintain its position as a Sightholder.

Plaintiff Retains Arias and JWT - The Glowing Phoenix Report

253. In or about February or March, 2001, after receiving a project management proposal from Defendant Arias, Plaintiff hired Defendant Arias to act as Plaintiff's project coordinator for LJW. Ms. Arias was an independent contractor who also did promotion work for, and maintained an office at, DPS in New York.

254. As part of research and development of Leading Jewelers, Plaintiff engaged JWT to research and prepare a confidential report on how the public would react to LJW. The confidential project was entitled "Project Phoenix."

255. On or about April 20, 2001, JWT issued to Plaintiff the Project Phoenix Concept Study – Qualitative Research Report, regarding LJW (the "Phoenix Report"). A copy of the Phoenix Report was also sent to DTC.

256. The Phoenix Report was overwhelmingly complimentary of LJW, stating, *inter alia*, that:

- "[T]he idea of an elite alliance of luxury jewelry establishments has great appeal for premium diamond jewelry purchasers;"
- "[T]hese respondents were experienced [NYC] DJ [diamond jewelry] buyers . . . One could say that Manhattan provides a 'torture test' for the concept -- if

it is appealing here, it should be even more so in areas where there is less of a choice of jewelry retailers;"

- "An overwhelming majority of the participants expressed interest in checking out an LJW store in the future;"

- "Perhaps the Leading Jewelers of the World is most attractive because it provides a standard of excellence implying a code of conduct consumers can trust;" and

- Respondents stated that the initiative was "a great idea," "sounds great," "gives you a standard" and that "it would be a service above and beyond call of duty."

Plaintiff's Two Day Confidential Presentation of LJW to DTC – Arias Participates Purportedly on Behalf of Plaintiff

257. On May 2, 2001 and May 3, 2001, representatives of Plaintiff, Walter David, Sheldon David and Jeffrey David, made a major, detailed, confidential presentation to DTC in London regarding LJW.

258. On May 2, 2001, in addition to the three Plaintiff representatives, the presentation was attended by at least five DTC representatives, including Defendant Penny, and two brokers, from, and the managing director of, Hennig.

259. On May 3, 2001, Plaintiffs finished the presentation which was attended by the same Plaintiff representatives, DTC's head of U.S. marketing, Liz Lynch, and DTC's employee Mike Aggett (both of whom also attended the first day), the two Hennig brokers, Ms. Arias and two other individuals who worked with her.

260. During this presentation, Plaintiff described LJW, for example, as follows:

A. The group would be a network of the finest independent jewelers and the group name would serve as a trust-mark for consumers identifying these jewelers as among the best and the most trustworthy;

B. There would be standards of excellence/eligibility requirements including active participation in and promotion of the prestige of diamond jewelry, superior inventory of outstanding quality, design and craftsmanship, a "luxe" store environment, Five Star service and active involvement in charities and the community.

C. Members of LJW would be required to invest 7.5% of annual diamond sales to marketing and advertising of which diamond advertising must be at least 60%, alternatively, members must invest 6% of annual diamond sales to diamond marketing and advertising;

D. Members of LJW would be required to purchase $300,000 of loose diamonds from Plaintiff, plus other purchases.

261. Plaintiff furnished DTC and its representatives with a complete package, setting forth in complete detail, its presentation to DTC.

262. DTC was impressed with LJW and strongly encouraged Plaintiff to continue to develop, and then implement, LJW.

263. At this point, Plaintiff had expended in excess of $1 million in developing LJW.

Arias, Purportedly on Behalf of Plaintiff, Unveils LJW to the Industry

264. On May 31, 2001, during a reception at Bally's Hotel in Las Vegas, Plaintiff unveiled LJW to a group of high-level retail jewelers. Also in attendance at the reception were trade press and bankers.

265. At this reception, Defendant Arias, on behalf of Plaintiff, made an oral presentation and handed out LJW brochures that explained the program benefits and criteria and

contained an application. The pamphlet described in detail the LJW program, including the information previously presented to DTC in May, 2001.

266. Benefits to members described in the brochure included exclusive access to limited edition diamond jewelry, exclusive LJW trust-marks on all advertising, a toll-free consumer referral line, a website and national advertising.

267. From June, 2001 forward, Plaintiff routinely kept the De Beers Defendants and JWT apprised, in detail, of Plaintiff's continuing development and progress regarding LJW.

Furtherance of Plaintiff's LJW Initiative;
Presentations and Encouragement by De Beers

268. On January 15, 2002, at a Sight in London, JWT made a presentation soliciting Sightholders to retain JWT to work on their marketing initiatives. At this presentation, JWT assured the attendees, including Plaintiff, that the initiatives would remain confidential.

269. As part of De Beers' express desire for its Sightholders to develop their own marketing initiatives, at this time, on behalf of De Beers, JWT also set up a separate division – the Market Transformation Group ("MTG") – to work with Sightholders in developing marketing initiatives. Upon information and belief, MTG was set up and overseen by Defendant Lennox.

270. At meetings in New York with JWT on January 28, 2002 and February 15, 2002, which were attended by S. Lynn Diamond (Executive Director of DPS), Richard Lennox (Senior Partner and Director in Charge of the De Beers account) and Sheryl Silberg (the MTG "key

contact"), Plaintiff again confidentially outlined the Leading Jewelers program, including the activities Plaintiff had undertaken in support of LJW.

271. By letter dated February 22, 2002, JWT advised Plaintiff that it did not want to participate in developing Leading Jewelers, purportedly because the project required organizational structure not yet in place, and was not within JWT's skill sets. A copy of this letter was sent by JWT to Lynn Diamond, the executive director of DPS.

272. On April 25, 2002, at an American Gem Society conclave in Vancouver, Plaintiff made a full Power Point confidential presentation to DTC regarding LJW. Among others, this presentation was attended by top DTC marketing people, including Defendant Lussier and Louis Prior (Plaintiff's key Account Manager at DTC), a Hennig representative and four Plaintiff representatives.

273. At this time, upon information and belief, Plaintiff's LJW initiative was in the top 10% of all Sightholder developed marketing/branding programs, and DTC, therefore, provided Plaintiff with an allocation of specific diamonds in order to support LJW.

274. At the April 25, 2002 presentation, DTC representatives, in particular Defendant Lussier, told Plaintiff that LJW was "wonderful," and DTC encouraged Plaintiff to continue moving forward with it.

275. LJW was put together in accordance with DTC's desire, and request to Sightholders, to formulate initiatives designed to make demand for diamonds market driven and not supply driven, and to develop a concept of "branded" member jewelry stores.

276. On October 10, 2002, at the year end business review meeting in London with DTC, Plaintiff made another complete, confidential, presentation of LJW.

277. This meeting was attended by, among others, Walter David, Sheldon David, Hennig representatives and six people from De Beers, including, Defendants Ralfe and Penny, and two other De Beers executives.

278. At the end of the presentation, Defendant Ralfe enthusiastically stated that LJW was "what supplier of choice is all about."

279. From then on, with the strong endorsement of De Beers, Plaintiff continued to work on LJW, and continued to make confidential presentations to DTC during the Sights in London, and to sign up jewelers as LJW members.

280. During the entire time Plaintiff was developing and implementing LJW, at the instance, request and encouragement of Defendants. Defendants well knew that LJW could only work if Plaintiff remained a Sightholder under SOC.

281. When Plaintiff's Sight was wrongfully terminated, Plaintiff lost its ability to attract jewelers to LJW, and lost the approximately $2 million it invested in developing and implementing SOC.

282. Upon information and belief, among other reasons, Plaintiff was not selected as a Sightholder under SOC, because De Beers wanted the LJW program for itself.

Plaintiff Applies for a Sight Under SOC, More Than Satisfies the SOC Criteria in All Respects, yet Still is Wrongfully Deprived of its Sight

283. On or about January 21, 2003, Plaintiff received, care of Henning, the SOC Pack. On or about that same day, by e-mail from Hennig, Plaintiff received its copy of the Diamond Trading Sightholder Profile 2002. The cover letter attached to the e-mail was from Defendant Penny.

284. Defendant Penny's cover letter falsely represented that "[i]n deciding which applicants will qualify for Supplier of Choice trading arrangements, we will consider the information you provide, the information provided by other applicants and the Sightholder Considerations."

285. DTC required profiles to be e-mailed no later than March 3, 2003.

286. In reliance on, among other things, the representations made by Defendants Ralfe and Penny that the SOC qualifications would be fairly and objectively applied, Plaintiff submitted a detailed Profile explaining why it should be chosen as a "Supplier of Choice" and continue as a Sightholder.

287. In its Profile, Plaintiff gave great detail regarding Plaintiff's history, financial strength, market position (which included several pages discussing LJW), distribution ability (including the fact that it sold to 842 customers in 2002, 89% of which were repeat customers from 2001, and LJW's enhancement of Plaintiff's distribution abilities), marketing ability (approximately $1.75 million spent on advertising in 2002), etc.

288. By letter dated June 3, 2003, and signed by Defendants Nicky Oppenheimer and Ralfe (the "Rejection Letter"), Plaintiff was officially notified that it had not been selected as a Sightholder under SOC, and that it would lose its Sight as of the end of the year (although, prior to receiving the Rejection Letter, Plaintiff had already been notified by Hennig that

Plaintiff had not been selected as an SOC Sightholder). A separate letter was sent by Defendant Penny containing information regarding the six month so-called "transition period," whereby Plaintiff would retain its Sight until the end of 2003.

289. The Rejection Letter, which, upon information and belief, was a form letter sent to all rejected applicants, stated that "constraints on the availability of supply were a key factor in the process leading to our decisions."

290. The deceitfulness of De Beers' contention that "constraints on the availability of supply were a key factor..." is demonstrated by the fact, among others, that, upon information and belief, De Beers' rough diamond sales have *increased* since the implementation of SOC (as well as by Diamdel's deal with Banda to provide 2+ carat diamonds to ten U.S. diamantaires).

291. The so-called "constraints on the availability of supply," even if, *arguendo,* true, played no part in DTC's rejection of Plaintiff as a Sightholder, since, upon information and belief, De Beers had predetermined Plaintiff's fate, and such so-called "constraints" were not identified by DTC in the Sightholder Pack as being a consideration relevant to DTC's selection of Sightholders under SOC. In fact, the SOC criteria were unfair on their face because, among other reasons, each SOC applicant was permitted to apply for different maximum amounts of rough diamonds, thus, prejudicing those applicants who were permitted to apply for lesser maximum amounts of rough diamonds than the amounts of rough for which other applicants were permitted to apply.

292. Upon information and belief, DTC also skewed its computer model used to evaluate SOC criteria to satisfy its predetermined decision to exclude Plaintiff (and others) from being Sightholders under SOC.

293. The Rejection Letter further misrepresented that "by introducing a more transparent system for appointing and supplying our customers, in close dialogue with the European Commission, we have committed ourselves to applying that system in a fair and objective manner."

294. The selection process was not "transparent," "fair" or "objective." De Beers failed to apply the SOC criteria in such manner and failed to comply with its own stated criteria and standards in deciding which diamantaires would be selected as Sightholders under SOC.

295. Indeed, the computer model used by De Beers to evaluate so-called SOC criteria was entirely opaque, and De Beers still has not disclosed how the model was utilized.

296. Plaintiff (and others) had its Sight terminated not because it did not meet the criteria established for becoming a Supplier of Choice, not because of a purported shortage of rough diamond availability and not because others scored higher under SOC. Rather, De Beers decreed Plaintiff's elimination as a Sightholder because De Beers wants fewer Sightholders, and further monopolistic control over the diamond market, including the "downstream" market in order to, among other things: (1) further artificially increase the price of diamonds; (2) maximize the profits it can make at its current and planned retail stores; and (3) preclude Plaintiff's implementation of its LJW program and to steal the LJW program from Plaintiff.

Plaintiff Explains to DTC why the Scores Given Plaintiff on Each of the Purported DTC Criteria Were Invalid and Incorrect, and, Accordingly, that DTC Wrongfully Rejected Plaintiff as a Supplier of Choice

297. Plaintiff more than satisfied the so-called SOC criteria, and is, indeed, eminently more qualified than others who were selected as Sightholders under SOC.

298. Plaintiff learned through Hennig Plaintiff's score in regard to each of the purported SOC criteria. Plaintiff's scores demonstrate that the selection process was inherently flawed, unfair and totally subjective and arbitrary – contrary to DTC's claims of fairness and objectivity.

299. Shocked and outraged at its purported scores and rejection under SOC, Plaintiff scheduled a meeting with DTC for July 8, 2003 (the "July 8 Meeting"), at DTC's London headquarters, to demonstrate to DTC that the scores given Plaintiff as to each of the criteria were in error.

300. The July 8 Meeting was attended by, among others, Walter David and Sheldon David on behalf of Plaintiff, three Hennig representatives and Defendants Penny, Ralfe, Campbell and one other De Beers representative.

301. During this meeting, Plaintiff reviewed in detail the so-called SOC criteria and demonstrated in respect of each of the criteria that Plaintiff should have scored in the top quartile and, thereby, retained its Sight. These criteria and Plaintiff's satisfaction of them are demonstrated below.

(A) *Financial Strength and Reliability*

302. The first purported criterion was "Financial Strength and Reliability." This criterion was described in the SOC Pack as follows:

> "Applicant must demonstrate *sufficient strength and reliability* in the gem industry to enable DTC to have confidence in its ongoing ability to purchase manufacture and distribute rough diamonds in the quantities and mixes offered by DTC." (Emphasis added).

303. DTC scored Plaintiff in the fourth quartile in this category, claiming that the reason for this score was Plaintiff's low profit margin.

304. Plaintiff should have received a very high score in this category for the following reasons, among others, each of which was explained to DTC at the July 8 Meeting:

A. Plaintiff had been a DTC Sightholder for over 35 years, and had always purchased all rough diamonds made available to it by De Beers, even when Plaintiff did not want some of the product;

B. Plaintiff fully paid, without problem, for every single rough diamond purchase it ever made, by advance cash payment (as required by DTC). This was so, even when Plaintiff's Sight was substantially increased;

C. In addition to Plaintiff's 35 year track record, Plaintiff has shown an ability to invest substantial amounts of money in downstream marketing, including the over $2 million invested in LJW, which Plaintiff could not have done if it lacked substantial financial "strength and reliability;" and

D. Profit margin is irrelevant to whether or not a client has sufficient financial "strength and reliability" for De Beers' purposes because, among other reasons:

- A client could choose to accept lower profit margins to gain a greater sales volume or for some other reason that has nothing to do with its ability to continue to purchase and sell diamonds.

- In the diamond industry, profit margin is irrelevant since diamantaires routinely use different methodologies to determine their profits and losses.

- In the diamond industry, standards with respect to financial statements, profits and losses differ substantially from country to country. Profit margin cannot be fairly and objectively used in light of the different reporting laws from country to country.

- The SOC criteria make no mention of profit margin playing any part, let alone a most significant part, in evaluating financial "strength and reliability."

305. Based on its knowledge of the industry and the business of other Sightholders, Plaintiff is certain that, had this criterion been properly and objectively applied, Plaintiff would have scored among the best of the applicants.

306. The illegitimacy and specious nature of De Beers' claim that the purported profit margin criterion played a significant part in Plaintiff's low rating for this so-called criterion is confirmed by the fact that (as noted by columnist Zohar in the October 13, 2003 issue of "Diamond Intelligence Brief"), based on its agreement with the British government, *DTC* is assessed at 2% of its turnover, and, therefore, DTC itself could not qualify as a sightholder under SOC.

307. As Mr. Zohar further stated in the above article, "[i]f the arrangement works well for the DTC, it is sheer hypocrisy to penalize a sight applicant on that score."

308. Upon information and belief, Diamdel operates under margins similar to those of DTC, which would disqualify Diamdel as a Sightholder under SOC, if the criterion purportedly fairly applied by DTC with respect to Plaintiff and other SOC applicants were also applied to Diamdel.

309. Upon information and belief, other current Sightholders, with the assistance of their accountants, the John Doe Defendants, reported false financial information in their applications,

yet De Beers intentionally failed to conduct any due diligence in respect of such applications, because it had already predetermined which entities it wanted as SOC Sightholders, making the truth with respect to financials irrelevant to De Beers.

310. Again, as stated by Mr. Zohar:

> To put it bluntly: if one reports to the government and *accurately reflect* [sic.] the audited results of a company in the DTC sightholder profile, one puts one's sight allocation or sightholder status in jeopardy. *Financial Standing and Reliability will give one guaranteed failing scores.*"

311. The introduction to the Eligibility Requirements section of the SOC Pack, expressly stated that "Criteria 2-5 [to the exclusion of Criterion 1] are particularly relevant . . . ," and, prior to Plaintiff's submission of its SOC application, Plaintiff was told by Hennig that Alan Campbell of De Beers had represented that financial statements (Criterion 1) were merely a "tick-mark" in the application process.

312. The claimed de-emphasis of this criterion makes absolute sense in light of the well-known facts that differing standards apply to financials, depending on the resident country of the diamantaire, and that financials likely are not an accurate reflection of the true financial position and abilities of many diamantaires.

313. Yet, despite its representations to the contrary, De Beers apparently, and misleadingly, purported to give great weight to this phony criterion as a justification for its exclusion of certain diamantaires (such as Plaintiff) as Sightholders purportedly under SOC.

314. Upon information and belief, Plaintiff was accorded a low score for this criterion because, *inter alia*, De Beers needed to rationalize its nefarious monopolistic purpose of

decreasing the number of U.S. Sightholders to give it even greater control over the horizontal and vertical rough diamond market, especially the 2+ carat rough sub-market, and to better position itself in the market, and, thus, enhance the profitability and likelihood of success of the De Beers stores it intends to open in the U.S., and to eliminate Plaintiff as a strong player in the market.

315. Upon information and belief, De Beers also premeditatedly gave Plaintiff a low score for this criterion, because it was in the process of wrongfully expropriating LJW for its own use in the Far East, and, therefore, wanted to minimize the effectiveness of Plaintiff's LJW program and position as a strong player in the market and a top U.S. diamond manufacturer and distributor, to push Plaintiff out of the picture and to conceal from Plaintiff, for as long as possible, the fact that it had stolen LJW.

(B) ***Market Position***

316. The second purported criterion was "Market Position." DTC scored Plaintiff in the fourth quartile as to this criterion, as well.

317. Based on its actual market position, Plaintiff should have scored in the first quartile on this criterion.

318. As explained by Plaintiff during the July 8 Meeting:

A. This score makes no sense since Plaintiff scored a 2 (second quartile) in distribution. Without an ample market, Plaintiff could not possibly have distributed its product as well as it did. This contradiction shows an inherent flaw in the scoring process;

B. The purported reasons De Beers provided for Plaintiff's low score were invalid. Plaintiff has been a leader in the U.S. market since it purchased American Diamond Syndicate in 1974, and was the first to establish, and continue to have, a specific niche – the independent U.S. retailer. In

addition, several independent buying groups have submitted presentations to DTC under Plaintiff's umbrella;

C. Plaintiff's business and its efficacy have been long established, and, prior to rejecting Plaintiff, De Beers consistently recognized Plaintiff's strong market position;

D. Indicative of Plaintiff's strong market position, Plaintiff was known as the "Sightholder to America's Jewelers" based on which Plaintiff built its substantial U.S. customer base;

E. LJW, which received effusive praise, support and encouragement from De Beers, creates incremental demand for all diamonds at the retail level by uniting retail jewelers under LJW and, thus, branding (a major goal of DTC) these jewelers as "Leading Jewelers of the World," and branding "The Ultimate Jewelry Buying Experience;"

F. De Beers enthusiastically supported LJW and its specific principles to the extent of even copying and implementing the initiative itself in the Far East (in gross violation of Plaintiff's rights);

G. Because, among other things, of Plaintiff's strong market position, De Beers chose Plaintiff to manufacture and distribute, in larger percentage than any other manufacturer, De Beers Limited Edition Millennium Diamonds, and selected Plaintiff's principal, Sheldon David, to be a member of the U.S. Carat Club. Sheldon also was selected as a member of the AGS Board of Managers and has been selected to speak about the industry to retailer groups;

H. Plaintiff has aligned several of the finest independent jewelers as part of LJW;

I. Matt Lopez of DTC asked Plaintiff to organize a group of upscale jewelers to bring to London to work with and submit proposals to DTC for participation in DTC flagship programs. Plaintiff did this, putting together two groups of upscale independent jewelers; however, DTC cancelled a scheduled meeting with Plaintiff and the jewelers selected by Plaintiff almost immediately upon terminating Plaintiff's Sight, and, instead, invited these same jewelers to meet with DTC in Cancun, for the very same purpose, but to the exclusion of Plaintiff;

J. No one other than Plaintiff can make the above claims concerning market position;

K. Plaintiff's goods are not "generic." In fact, DTC has allocated specific niche goods to Plaintiff, including the De Beers Limited Edition Millennium Diamonds (which was only given to a very limited number of Sightholders worldwide) and the Select Large Gem, which was one of De Beers' most sought after items; and

L. DTC expressly recognized that the upscale independent jeweler was the most appropriate outlet for Plaintiff's goods received from DTC, and that Plaintiff had the market to distribute the goods most efficiently.

319. Under any objectively applied marketing criteria, Plaintiff would have, and should have, scored in the highest quartile in this category.

320. Upon information and belief, Plaintiff was accorded a low score for this criterion because, *inter alia*, De Beers needed to rationalize its nefarious monopolistic purpose of decreasing the number of U.S. Sightholders to give it even greater control over the horizontal and vertical rough diamond market, especially the 2+ carat rough sub-market, and to better position itself in the market, and, thus, enhance the profitability and likelihood of success of the De Beers stores it intends to open in the U.S., and to eliminate Plaintiff as a strong player in the market.

321. Upon information and belief, De Beers also premeditatedly gave Plaintiff a low score for this criterion, because it was in the process of wrongfully expropriating LJW for its own use in the Far East, and, therefore, wanted to minimize the effectiveness of Plaintiff's LJW program and position as a strong player in the market and a top U.S. diamond manufacturer and distributor, to push Plaintiff out of the picture and to conceal from Plaintiff, for as long as possible, the fact that it had stolen LJW.

(C) *Distribution*

322. Plaintiff scored a "2" (second quartile) in this category.

323. DTC claimed that it viewed LJW as a "small proposition," and that it would remain so.

324. As explained to DTC at the July 8 Meeting, Plaintiff should have scored a "1" (first quartile) as to this criterion:

A. LJW is not a small proposition, as was routinely recognized by DTC prior to its elimination of Plaintiff as a Sightholder. DTC gave LJW accolades until it decided to remove Plaintiff as a Sightholder.

B. LJW is poised to grow substantially and take off – as De Beers recognized by pirating the LJW program for its own use in Japan to the exclusion of Plaintiff. LJW has become the focus of Plaintiff's business, producing the largest and fastest growth;

C. DTC ignored Plaintiff's other distribution programs including the development of a diamond reference guide in conjunction with the Diamond Council of America, and several training programs developed by Plaintiff; and

D. Plaintiff's distribution channels, in conjunction with LJW, when viewed objectively, squarely place Plaintiff in the first quartile.

325. DTC's claim that LJW will remain a "small proposition" is a self-fulfilling prophecy engineered by DTC to further justify its rejection of Plaintiff. By rejecting Plaintiff as a Sightholder, DTC has assured the failure of LJW just as it was gaining steam. Plaintiff's loss of its Sight precludes it from having the strong market position and sufficient product to satisfy present and future LJW members.

326. This criterion was not evaluated fairly and objectively with respect to Plaintiff. If it had been, Plaintiff would have scored a "1" here as well.

327. Upon information and belief, Plaintiff was accorded a low score for this criterion because, *inter alia*, De Beers needed to rationalize its nefarious monopolistic purpose of decreasing the number of U.S. Sightholders to give it even greater control over the horizontal and vertical rough diamond market, especially the 2+ carat rough sub-market, and to better position itself in the market, and, thus, enhance the profitability and likelihood of success of the De Beers stores it intends to open in the U.S., and to eliminate Plaintiff as a strong player in the market.

328. Upon information and belief, De Beers also premeditatedly gave Plaintiff a low score for this criterion, because it was in the process of wrongfully expropriating LJW for its own use in the Far East, and, therefore, wanted to minimize the effectiveness of Plaintiff's LJW program and position as a strong player in the market and a top U.S. diamond manufacturer and distributor, to push Plaintiff out of the picture and to conceal from Plaintiff, for as long as possible, the fact that it had stolen LJW.

(D) *Technical Manufacturing Ability*

329. Plaintiff received a "3" (third quartile) in this category.

330. This criterion was not evaluated fairly and objectively with respect to Plaintiff. If it had been, Plaintiff would have scored higher here.

331. As detailed by Plaintiff at the July 8 Meeting:

A. Plaintiff is very much at a loss concerning how DTC could possibly have fairly analyzed this factor, since, to the best of Plaintiff's knowledge, all DTC did was to have one person (who, upon information and belief, had little, if any, experience with 2+ carat stones), briefly visit Plaintiff's factory which was insufficient for DTC to determine Plaintiff's technical ability, because Plaintiff consistently provided the finest quality diamonds,

and, the "appearance" of a factory alone could not possibly adequately show or effect true technical ability;

B. In any event, there are no problems of any sort at the factory; it is in good shape and operating well;

C. Plaintiff can handle, and has handled, a wide variety of rough diamonds and can adjust, and has adjusted, its manufacturing to accommodate whatever rough product it receives which was proven by, among other things, Plaintiff's continuous purchases, without rejection, of DTC rough diamonds over many years;

D. Plaintiff's superior technical ability is demonstrated by the fact that the limited edition De Beers Millennium Diamonds produced by Plaintiff, were produced with the finest make and were the least rejected of those produced by the other manufacturers;

E. Based on the above, and based on Plaintiff's experience and knowledge of the industry, Plaintiff should have received a higher score in this category.

332. Upon information and belief, DTC never even made a good faith attempt to evaluate Plaintiff's true technical ability, since, for the reasons detailed above, it needed to eliminate Sightholders in the U.S. to further its already dominant market position, and it, therefore, had predetermined to reject Plaintiff as an SOC Sightholder.

333. The method utilized by DTC to evaluate technical ability – a brief visit to Plaintiff's factory by one person – was inherently subjective. The methodology used by De Beers was further woefully deficient for the reasons, among others, that different people see the same things differently and, upon information and belief, different individuals were sent to inspect the factories of various applicants; the "inspection" was not based on actual production data and the "inspection" could not have been sufficient in light of the very brief amount of time spent by the DTC representative.

334. DTC's purported reason for giving Plaintiff a 3 in this category was that although Plaintiff's technical expertise was good, it was not as good as that of other applicants. DTC provided Plaintiff with no further details regarding how it reached that conclusion, and, upon information and belief, DTC simply made this up as a purported rationale for the predetermined decision to eliminate Plaintiff as a Sightholder.

335. In fact, the approach used by DTC to evaluate manufacturing facilities and technical ability gave DTC *carte blanche* to give whatever score it wanted in this category since it was not based on any fair, objective, criteria.

336. Based on Plaintiff's actual business history and track record, if SOC were fairly and objectively implemented Plaintiff should have, and would have, been ranked higher on all of the remaining criteria as well.

337. Upon information and belief, Plaintiff was accorded a low score for this criterion because, *inter alia*, De Beers needed to rationalize its nefarious monopolistic purpose of decreasing the number of U.S. Sightholders to give it even greater control over the horizontal and vertical rough diamond market, especially the 2+ carat rough sub-market, and to better position itself in the market, and, thus, enhance the profitability and likelihood of success of the De Beers stores it intends to open in the U.S., and to eliminate Plaintiff as a strong player in the market.

338. Upon information and belief, De Beers also premeditatedly gave Plaintiff a low score for this criterion, because it was in the process of wrongfully expropriating LJW for its own use in the Far East, and, therefore, wanted to minimize the effectiveness of Plaintiff's LJW program and position as a strong player in the market and a top U.S. diamond manufacturer and

distributor, to push Plaintiff out of the picture and to conceal from Plaintiff, for as long as possible, the fact that it had stolen LJW.

De Beers' Response – False Representation that Plaintiff had Already Been Accorded a Second Review When None had Taken Place in Further Demonstration of the Phony Nature of the SOC Process

339. During the July 8 Meeting, Defendant Ralfe stated at least three times that DTC had already conducted a second review of Plaintiff's application, and that DTC's decision denying a Sight to Plaintiff would stand.

340. At the end of the Meeting, Defendant Ralfe stated that, in preparation for the July 8 Meeting, "we" had already had a careful look at Plaintiff's application and regretted that there was no good reason to reverse the decision regarding Plaintiff.

341. In truth, as of July 8, 2003, DTC had not reviewed Plaintiff's SOC application for a second time.

342. This was confirmed by Defendant Ralfe in a July 11, 2003 letter he sent to Plaintiff (through Hennig), which stated that

> . . . I gave you an incorrect account of the status of the review of your assessment by mistakenly telling you that a second review had occurred in your case. We had not, in fact, received an indication of your concerns in advance of the meeting and had not, therefore, instigated an inquiry.

343. Upon information and belief, Defendants Ralfe and Penny, and the other DTC representatives attending the July 8 Meeting, were well aware at the time of the Meeting that no actual second review had in fact taken place.

344. Defendant Ralfe said on July 8 that there already had been a second review because, upon information and belief, De Beers had a closed mind with respect to Plaintiff and was of the predisposed view that nothing Plaintiff could say would convince De Beers to change its decision and the entire hearing and purported inquiry, allegedly under the SOC process, was but a charade – similar to all other aspects of the SOC process.

345. Upon information and belief, after the July 8 Meeting, DTC thought better of simply giving Plaintiff the "back of the hand" and, in order to make things *seem* fair, objective and legitimate, even though DTC still had no intention of returning Plaintiff to Sightholder status, Defendant Ralfe purported to retract his July 8 statement and intentionally misled Plaintiff by advising Plaintiff that a second review had not yet taken place, and that Plaintiff's application was being reviewed.

346. Then, by letter dated August 26, 2003, and signed by Defendant Ralfe, in what was a *fait accompli*, DTC formally advised Plaintiff (again through Hennig) that it was adhering to its decision to deny Plaintiff Sightholder status under SOC.

347. Again, DTC claimed that the decision was based on a purported lack of product, and simply reiterated, in different words, its contrived justifications for denying Plaintiff Sightholder status under SOC – to wit: that it scored too low on Financial Criterion; regarding Market Position, Plaintiff's goods were generic; regarding Distribution, LJW was then a minor

portion of Plaintiff's business, but that Plaintiff scored relatively well on distribution as compared to other applicants; that other competitors were better in Marketing; that Hwyel James had visited Plaintiff's factory in Israel to assess Plaintiff's manufacturing capabilities; and that Plaintiff scored marginally below average, and worse than others.

348. In short, rather than give specific responses to the points and questions raised by Plaintiff at the July 8 Meeting, DTC regurgitated its contrived reasons for excluding Plaintiff under SOC. No real explanation was given. No legitimate explanation exists.

349. Upon information and belief, De Beers' premeditated, contrived and baseless rejection of Plaintiff as an SOC Sightholder was done in furtherance of De Beers' goal of monopolizing the U.S. Rough Diamond Market by, among other things, eliminating Plaintiff, and other niche rough diamond dealers and manufacturers.

The Overall Illegality of DTC's Rejection of Plaintiff as an SOC Sightholder – Ulterior Monopolistic Motives, Knowing Acceptance of False Financials, Lack of Due Diligence; and Theft of LJW

350. Prior to SOC, Plaintiff was ranked among the best of the Sightholders, and Plaintiff's business has only gotten better.

351. Plaintiff should have been ranked in the first quartile for the SOC Criteria.

352. Had SOC been fairly and objectively implemented, and had Plaintiff's long industry experience (including 35+ years as a Sightholder), business expertise and other qualifications been properly considered, Plaintiff would have continued as a Sightholder under SOC.

353. Other industry "players" were "shocked" that Plaintiff was not selected as an SOC Sightholder.

354. Plaintiff was rejected under SOC not because Plaintiff did not meet the so-called SOC criteria, and not because Plaintiff was not among the best of the applicants, but because De Beers, in its insatiable avarice, decreed the elimination of Plaintiff (and others) as a Sightholder to: (a) further increase its overall market power; (b) increase its downstream, vertical, monopoly power by gaining further control over retail sales of diamonds; (c) increase overall profits and markups on diamonds; (d) increase the product available to De Beers in its current and future De Beers retail stores, while decreasing the product available to others in the industry; (e) optimize the chances of success, and profits to be made, in its current and future De Beers retail stores worldwide and in the U.S.; (f) increase its market power through its Diamdel subsidiary, which, with the smaller Sightholder list, realized more market power than ever before; and (g) steal Plaintiff's LJW program.

355. Upon information and belief, each of the Sightholder Defendants, with the assistance of the brokers and the John Doe Defendants, submitted to DTC false financial and other information in their applications, in order to enable them to obtain or retain Sights under SOC while precluding Plaintiff and other former Sightholders from retaining their Sights because De Beers had predetermined to eliminate them from retaining Sights under SOC.

356. Upon information and belief, De Beers intentionally failed to conduct any due diligence to determine if the information submitted by SOC applicants was accurate or fabricated.

357. Upon information and belief, De Beers did not conduct due diligence because: (a) it already knew that financial information given by many of the current Sightholders was fabricated; and (b) *bona fide* due diligence was meaningless because De Beers had predetermined

which prior Sightholders it intended to exclude from SOC and which entities it intended to include in SOC as Sightholders.

358. De Beers' failure to conduct due diligence and its failure to fairly and objectively apply the SOC criteria, demonstrates that the SOC application process was inherently flawed, applied illegally, constituted a farce used to further strengthen the De Beers cartel by increasing De Beers' market domination and monopoly power both horizontally and vertically and was and is otherwise intended to satisfy De Beers' insatiable greed, exemplified by its theft of Plaintiff's LJW program.

De Beers Steals Leading Jewelers of the World

359. Approximately one month after Plaintiff was advised that it was not being retained as a Sightholder, Plaintiff learned that De Beers, with JWT, had "created" a marketing initiative initially called "Leading Jewelers of Japan," which had changed its name to "Diamond Masters of Japan" ("Diamond Masters").

360. Diamond Masters was promoted as a new DTC "franchise network of excellent diamond jewelry shops."

361. Upon information and belief, Diamond Masters, which was "created" after Plaintiff had confidentially provided JWT and De Beers with its detailed plans for Leading Jewelers, is a virtual carbon copy of LJW which was illegally and improperly misappropriated from Plaintiff by De Beers and JWT in violation of both the oral agreements of confidentiality among Plaintiff, De Beers and JWT and of the express confidentiality provision in the SOC Pack.

362. Several significant facets of Diamond Masters are strikingly identical or similar to LJW. Among these are the following:

A. Diamond Masters was initially called "Leading Jewelers of Japan"— a blatant, arrogant and unabashed copy of Plaintiff's "Leading Jewelers of the World;"

B. DTC identifies Diamond Masters as a "network of excellent jewelry stores." LJW identified itself as "a network of the finest independent jewelers;"

C. Member jewelers in both Diamond Masters and LJW are required to contribute significant sums of money toward network advertising;

D. Both Diamond Masters and LJW seek 100 members;

E. Both Diamond Masters and LJW are run by their own independent Board of Directors;

F. Both Diamond Masters and LJW require that certain training and educational courses be taken;

G. Both Diamond Masters and LJW offer virtually the same business advantages to participants including: recognition as a high quality diamond retail shop; use of a group logo and related trademarks; participation in marketing, advertising and education programs; group branding; access to enhanced supply opportunities; and exclusive access to certain product;

H. Both require strong financial resources;

I. Both require a top marketing and sales environment; and, of course,

J. Both provide for the purchase of diamonds.

363. Upon information and belief, DTC introduced Diamond Masters to Sightholders at a marketing presentation in London in or about June, 2003.

364. DTC's introduction of Diamond Masters occurred approximately 2-1/2 years after Plaintiff first confidentially introduced Leading Jewelers to DTC and JWT, approximately 1-1/2 years after JWT advised Plaintiff that it would not be able to assist Plaintiff with developing LJW,

approximately 1 month after Plaintiff last made a confidential presentation to DTC regarding LJW and less than one month after Plaintiff was formally notified that it had not been retained as a Sightholder under SOC.

365. The timing of the unveiling of Diamond Masters, less than one month after Plaintiff was officially rejected under SOC – and after Plaintiff had confidentially provided De Beers with every last detail of LJW during an over 2 year period – was no coincidence. DTC intentionally denied Plaintiff a Sight under SOC with malice aforethought because it at all times planned to steal Plaintiff's LJW program and utilize LJW for its own advantage.

366. Upon information and belief, among other reasons, De Beers did not want Plaintiff to be a Sightholder under SOC because it wanted to avoid conflict and competition with Diamond Masters which De Beers had illegally stolen directly from LJW.

367. Upon information and belief, JWT and Arias were and are direct participants in implementing and marketing Diamond Masters and in stealing the program from Plaintiff.

368. Upon information and belief, JWT chose not to assist Plaintiff in the development of LJW, because, it and De Beers had decided to steal the LJW marketing plan for themselves, to the exclusion of Plaintiff.

369. LJW was and is Plaintiff's proprietary marketing program, created solely as a function of Plaintiff's work product. De Beers, JWT and Arias illegally and unfairly stole and misappropriated the entire LJW plan and structure for their own selfish benefit and aggrandizement to the exclusion of Plaintiffs.

RELEVANT MARKETS

370. Rough diamonds are the product dimension of a relevant market. The geographic dimension of this market is the U.S. (the "Rough Diamond Market"). Two-plus (2+) carat rough diamonds constitute a sub-market of the Rough Diamond Market, and references herein to the Rough Diamond Market include and incorporate the market for 2+ carat diamonds.

371. Polished diamonds are the product dimension of a relevant market. The geographic dimension of this market is the U.S. (the "Polished Diamond Market").

372. Diamond jewelry is the product dimension of a relevant market. The geographic dimension of this market is the U.S. (the "Diamond Jewelry Market", and collectively with the Rough Diamond Market and the Polished Diamond Market, the "Markets").

373. Rough diamonds are unique items that are sold to U.S. rough diamond manufacturers and distributors primarily on the wholesale level.

374. Polished diamonds are unique items primarily sold to retail jewelers by rough diamond manufacturers and distributors.

375. Diamond jewelry is a unique item primarily sold by retail jewelers to consumers.

376. Diamonds in general have a special standing with U.S. consumers and in the overall jewelry market. For example, they are the stones most commonly, indeed, almost exclusively, used and accepted by the U.S. consumer for engagement rings.

377. For U.S. diamond manufacturers and distributors, there currently are no suitable substitutes for rough diamonds.

378. Similarly, there currently are no suitable substitutes for polished diamonds for jewelers and diamond jewelry for consumers.

379. Rough diamonds are a distinct product.

380. Polished diamonds are a distinct product.

381. Diamond jewelry is a distinct product.

COUNT I

VIOLATION OF SHERMAN ACT SECTION 2 MONOPOLIZATION (Against the De Beers Defendants)

382. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 381 with the same force and effect as if set forth in full herein.

383. In violation of Section 2 of the Sherman Act, 15 U.S.C. § 2 ("Section 2"), the De Beers Defendants, acting alone and in combination, have monopolized the Rough Diamond Market, by possessing and maintaining a monopoly in the Rough Diamond Market through predatory, exclusionary and anticompetitive means and actions other than those that are honestly and legitimately industrial.

384. The monopolization of the Rough Diamond Market has been effected by the means and overt acts set forth herein.

385. The De Beers Defendants intended and intend by their actions to:

A. Control the supply and price of rough diamonds in the wholesale Rough Diamond Market;

B. Control the supply and price of diamonds in the downstream Polished Diamond Market and Diamond Jewelry Market;

C. Eliminate, reduce, limit and foreclose actual and potential competition in the Rough Diamond Market;

D. Exclude and foreclose other persons or entities from participating in or entering the Rough Diamond Market; and

E. Injure and eliminate competition in the Rough Diamond Market.

386. As a result of the conduct alleged herein, the De Beers Defendants control price and supply, have, are able to and continue to exclude competitors and competition and have, are able to and continue to charge supra-competitive prices while selling to only a select few.

387. These acts of monopolization have had, and are likely to continue to have, among others, the following anticompetitive effects in the U.S.:

A. Actual and potential competition in the Rough Diamond and Polished Diamond Markets has been restrained, suppressed and eliminated;

B. Rough diamond manufacturers and distributors, including Plaintiff, have paid, and are likely to pay, artificially inflated prices;

C. Rough diamond manufacturers and distributors, including Plaintiff, have been excluded, and will likely continue to be excluded, from being able to purchase sufficient amounts of rough diamonds;

D. Retailers in the Polished Diamond Market who purchase rough diamonds from the diamond manufacturers and distributors have paid, and are likely to pay, artificially inflated prices;

E. Customers of the retailers in the Diamond Jewelry Market have paid higher retail prices for diamond jewelry and have been deprived of the benefit of free, open, competitive and unrestrained diamond Markets;

F. Actual and potential competitors of the De Beers Defendants and the Sightholder Defendants have been injured in their business and property;

G. Rough diamond manufacturers and distributors, including Plaintiff, have been injured in their business and property; and

H. Instead of free, open and competitive markets, a monopoly in the Rough Diamond Market has been established, maintained, furthered and enhanced.

388. As a result of the De Beers Defendants' violations of Sections 2, Plaintiff has been injured in its business and property in an amount to be determined at trial, but reasonably believed to be, not less than $30 million, prior to trebling.

389. Such violations of Section 2 and the effects thereof are continuing and will continue unless injunctive relief is granted.

390. Plaintiff has no adequate remedy at law.

COUNT II

VIOLATION OF SHERMAN ACT SECTION 2 ATTEMPT TO MONOPOLIZE (Against the De Beers Defendants)

391. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 391 with the same force and effect as if set forth in full herein.

392. In violation of Section 2, the De Beers Defendants have knowingly, intentionally and with specific intent to do so, alone and in combination, attempted to monopolize the Rough Diamond Market.

393. The De Beers Defendants' attempts to monopolize the Rough Diamond Market has been effected by, among others, the means and overt acts set forth above.

394. The De Beers Defendants intended and intend by their actions to:

A. Control the supply and price of rough diamonds in the wholesale Rough Diamond Market;

B. Control the supply and price of diamonds in the downstream, Polished Diamond Market and the Diamond Jewelry Market;

C. Eliminate, reduce, limit and foreclose actual and potential competition in the Rough Diamond Market;

D. Exclude and foreclose other persons or entities from participating in or entering the Rough Diamond Market; and

E. Injure and eliminate competition in the Rough Diamond Market.

395. As a result of the conduct alleged herein, the De Beers Defendants control such a substantial share of the Rough Diamond Market and exercise power in this market to such a substantial degree that, when coupled with the De Beers Defendants' predatory and exclusionary conduct, a dangerous likelihood existed and exists that De Beers would and will monopolize the Rough Diamond Market.

396. These attempts to monopolize have had, and are likely to have, among other things, the following effects:

A. Actual and potential competition in the Rough Diamond Market has been and will be restrained, suppressed and eliminated;

B. Rough diamond manufacturers and distributors, including Plaintiff, have paid, and are likely to pay, artificially inflated prices;

C. Rough diamond manufacturers and distributors, including Plaintiff, have been excluded, and will likely continue to be excluded, from being able to purchase sufficient amounts of rough diamonds;

D. Retailers in the Polished Diamond Market who purchase diamonds from rough diamond manufacturers and distributors have paid, and are likely to pay, artificially inflated prices;

E. Customers of the retailers in the Diamond Jewelry Market have paid, and are likely to pay, higher prices for diamond jewelry and have been deprived of the benefit of free, open, competitive and unrestrained diamond Markets;

F. Actual and potential competitors of the De Beers Defendants and the Sightholder Defendants have been injured in their business and property;

G. Rough diamond manufacturers and distributors, including Plaintiff, have been injured in their business and property; and

H. Instead of free, open and competitive markets, a monopoly in the Rough Diamond Market has been established, maintained, furthered and enhanced.

397. As a result of the De Beers Defendants' violations of Section 2, Plaintiff has been injured in an amount to be determined at trial, but reasonably believed to be not less than $30 million, prior to trebling.

398. Such violations of Section 2 and the effects thereof are continuing and will continue unless injunctive relief is granted.

399. Plaintiff has no adequate remedy at law.

COUNT III

VIOLATION OF SHERMAN ACT SECTION 2 MONOPOLY LEVERAGING (Against the De Beers Defendants)

400. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 401 with the same force and effect as if set forth in full herein.

401. In violation of Section 2 of the Sherman Act, the De Beers Defendants, alone and in combination, have used their monopoly power in the Rough Diamond Market to gain a competitive advantage in the Polished Diamond Market and the Diamond Jewelry Market.

402. The De Beers Defendants intended and intend by these actions to:

A. Control the supply and price of rough diamonds in the wholesale Rough Diamond Market;

B. Control the supply and price of diamonds in the downstream Polished Diamond Market and Diamond Jewelry Market;

C. Eliminate, reduce, limit and foreclose actual and potential competition in the Markets;

D. Exclude and foreclose other persons or entities from participating in or entering the Markets; and

E. Injure and eliminate competition in these Markets.

403. As a result of the conduct alleged herein, the De Beers Defendants knowingly, intentionally and unfairly have gained, and will gain, a competitive advantage in the Markets alleged herein.

404. These acts of monopoly leveraging have had, and are likely to have, among other things, the following effects:

A. Actual and potential competition in the Markets has been restrained, suppressed and eliminated;

B. Rough diamond manufacturers and distributors, including Plaintiff, have paid, and are likely to pay, artificially inflated prices;

C. Rough diamond manufacturers and distributors, including Plaintiff, have been excluded, and will likely continue to be excluded, from being able to purchase sufficient amounts of rough diamonds;

D. Retailers in the Polished Diamond Market who purchase diamonds from the diamond manufacturers have paid, and are likely to pay, artificially inflated prices;

E. Customers of the retailers in the Diamond Jewelry Market have paid, and are likely to pay, higher prices for all retail diamond jewelry and have been and will be deprived of the benefit of free, open, competitive and unrestrained diamond Markets;

F. Actual and potential competitors of the De Beers Defendants and the Sightholder Defendants have been injured in their business and property;

G. Rough diamond manufacturers and distributors, including Plaintiff and polished diamond retailers, have been injured in their business and property; and

H. Instead of free, open and competitive Markets, a monopoly in the Rough Diamond Market has been established, maintained, furthered and enhanced, and the De Beers Defendants are illegal attempting to leverage their monopoly power in the Rough Diamond Market to illegally restrain trade in the Polished Diamond Market and the Diamond Jewelry Market.

405. As a result of the De Beers Defendants' foregoing violations of Section 2, Plaintiff has been and/or reasonably anticipates being, injured in its business and property in an amount to be determined at trial, but reasonably believed to be not less than $30 million, prior to trebling.

406. Such violations of Section 2 and the effects thereof are continuing and will continue unless injunctive relief is granted.

407. Plaintiff has no adequate remedy at law.

COUNT IV

VIOLATION OF SHERMAN ACT SECTION 2
CONSPIRACY TO MONOPOLIZE

(Against the De Beers Defendants)

408. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 407 with the same force and effect as if set forth in full herein.

409. In violation of Section 2 of the Sherman Act, the De Beers Defendants each have willfully, knowingly, intentionally and with specific intent to do so, combined and conspired with one another to monopolize the Rough Diamond Market.

410. The combination and conspiracy to monopolize the Rough Diamond Market has been effectuated by, among other things, the means and the overt acts set forth above.

411. The De Beers Defendants intended and intend by these actions to:

A. Control the supply and price of rough diamonds in the wholesale Rough Diamond Market;

B. Control the supply and price of diamonds in the downstream, Polished Diamond and Diamond Jewelry Markets;

C. Eliminate, reduce, limit and foreclose actual and potential competition in the Rough Diamond Market;

D. Exclude and foreclose other persons or entities from participating in or entering the Rough Diamond Market; and

E. Injure and eliminate competition in the Rough Diamond Market.

412. As a result of the conduct alleged herein, the De Beers Defendants have controlled and continue to control price, have and are able to exclude competitors and competition and have and are able to charge supra-competitive prices in the Rough Diamond Market.

413. The combination and conspiracy to monopolize has had, and is likely to have, among other things, the following effects:

A. Actual and potential competition in the Rough Diamond Market has been restrained, suppressed and eliminated;

B. Rough diamond manufacturers and distributors, including Plaintiff, have paid, and are likely to pay, artificially inflated prices;

C. Rough diamond manufacturers and distributors, including Plaintiff, have been excluded, and will likely continue to be excluded, from being able to purchase sufficient amounts of rough diamonds;

D. Retailers in the Polished Diamond Market, who purchase diamonds from the diamond manufacturers and distributors, have paid, and are likely to pay, artificially inflated prices;

E. Customers of the retailers in the Diamond Jewelry Market have paid, and are likely to pay, higher prices for all retail diamond jewelry and have been deprived of the benefit of free, open, competitive and unrestrained diamond Markets;

F. Actual and potential competitors of the De Beers Defendants have been injured in their business and property;

G. Rough diamond manufacturers and distributors, including Plaintiff, have been injured in their business and property; and

H. Instead of free, open and competitive Markets, a monopoly in the Rough Market has been established, maintained, furthered and enhanced.

414. As a result of the De Beers Defendants' conspiracy to monopolize in Violation of Section 2, Plaintiff has been injured in its business and property in an amount to be determined at trial, but reasonably believed to be not less than $30 million, prior to trebling.

415. Such violations of Section 2 and the effects thereof are continuing and will continue unless injunctive relief is granted.

416. Plaintiff has no adequate remedy at law.

COUNT V

VIOLATION OF SHERMAN ACT SECTIONS 1 AND 2
COMBINATION AND CONSPIRACY
TO MONOPOLIZE AND RESTRAIN TRADE
(Against the De Beers Defendants and Diamdel)

417. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 416 with the same force and effect as if set forth in full herein.

418. In violation of Sections 1 and 2 of the Sherman Act (15 U.S.C. §§ 1 and 2) the De Beers Defendants and Diamdel have willfully, knowingly, intentionally and with specific intent to do so, combined and conspired with one another to monopolize and restrain trade in the Rough Diamond Market.

419. The combination and conspiracy to monopolize and restrain trade in the Rough Diamond Market has been effectuated by, among other things, the means and the overt acts set forth above.

420. The De Beers Defendants and Diamdel intended and intend by these actions to:

A. Control the supply and price of rough diamonds in the wholesale Rough Diamond Market;

B. Control the supply and price of diamonds in the downstream, Polished Diamond and Diamond Jewelry Markets;

C. Eliminate, reduce, limit and foreclose actual and potential competition in the Rough Diamond Market;

D. Exclude and foreclose other persons or entities from participating in or entering the Rough Diamond Market; and

E. Injure and eliminate competition in the Rough Diamond Market.

421. As a result of the conduct alleged herein, the De Beers Defendants and

Diamdel have controlled and continue to control price, have and are able to exclude competitors and competition and have and are able to charge supra-competitive prices in the Rough Diamond Market.

422. The combination and conspiracy to monopolize and restrain trade has had, and is likely to have, among other things, the following effects:

A. Actual and potential competition in the Rough Diamond Market has been restrained, suppressed and eliminated;

B. Rough diamond manufacturers and distributors, including Plaintiff, have paid, and are likely to pay, artificially inflated prices;

C. Rough diamond manufacturers and distributors, including Plaintiff, have been excluded, and will likely continue to be excluded, from being able to purchase sufficient amounts of rough diamonds;

D. Retailers in the Polished Diamond Market who purchase diamonds from the diamond manufacturers and distributors have paid, and are likely to pay, artificially inflated prices;

E. Customers of the retailers in the Diamond Jewelry Market have paid, and are likely to pay, higher prices for all retail diamond jewelry and have been deprived of the benefit of free, open, competitive and unrestrained diamond Markets;

F. Actual and potential competitors of the De Beers Defendants and the Sightholder Defendants have been injured in their business and property;

G. Rough diamond manufacturers and distributors, including Plaintiff, have been injured in their business and property; and

H. Instead of free, open and competitive Markets, a monopoly and restraint of trade in the Rough Diamond Market has been established, maintained, furthered and enhanced.

423. As a result of the De Beers Defendants' and Diamdel's conspiracy to monopolize and restrain trade in violation of Sections 1 and 2, Plaintiff has been injured in its business

and property in an amount to be determined at trial, but reasonably believed to be not less than $30 million, prior to trebling.

424. Such violations of Sections 1 and 2 and the effects thereof are continuing and will continue unless injunctive relief is granted.

425. Plaintiff has no adequate remedy at law.

COUNT VI

VIOLATION OF SHERMAN ACT SECTION 1 COMBINATION AND CONSPIRACY TO RESTRAIN TRADE (Against the De Beers Defendants and the Sightholder Defendants)

426. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 425 with the same force and effect as if set forth in full herein.

427. In violation of Section 1 of the Sherman Act, the De Beers Defendants and the Sightholder Defendants have willfully, knowingly, intentionally and with specific intent to do so, combined and conspired with one another to restrain trade in the Rough Diamond Market.

428. The combination and conspiracy to restrain trade in the Rough Diamond Market has been effectuated by, among other things, the means and the overt acts set forth above.

429. The De Beers Defendants and the Sightholder Defendants intended and intend by these actions to:

A. Control the supply and price of rough diamonds in the Rough Diamond Market;

B. Control the supply and price of diamonds in the downstream, Polished Diamond Market;

C. Eliminate, reduce, limit and foreclose actual and potential competition in the Rough Diamond and Polished Diamond Markets;

D. Exclude and foreclose other persons or entities from participating in or entering the Rough Diamond and Polished Diamond Markets; and

E. Injure and eliminate competition in the Rough Diamond and Polished Diamond Markets.

430. As a result of the conduct alleged herein, the De Beers Defendants and the Sightholder Defendants have controlled and continue to control price, have and are able to exclude competitors and competition and have and are able to charge supra-competitive prices in the Rough Diamond and Polished Diamond Markets.

431. The combination and conspiracy to restrain trade has had, and is likely to have, among other things, the following effects:

A. Actual and potential competition in the Rough Diamond and Polished Diamond Markets has been restrained, suppressed and eliminated;

B. Rough diamond manufacturers and distributors, who purchase rough diamonds, including Plaintiff, have paid, and are likely to pay, artificially inflated prices;

C. Rough diamond manufacturers and distributors, including Plaintiff, have been excluded, and will likely continue to be excluded, from being able to purchase sufficient amounts of rough diamonds;

D. Retailers who purchase diamonds in the Polished Diamond Market from diamond manufacturers and distributors have paid, and are likely to pay, artificially inflated prices;

E. Customers of the retailers in the Diamond Jewelry Market have paid, and are likely to pay, higher prices for all retail diamond jewelry and have been deprived of the benefit of free, open, competitive and unrestrained diamond Markets;

F. Actual and potential competitors of the De Beers Defendants and the Sightholder Defendants have been injured in their business and property;

G. Diamond manufacturers and distributors, including Plaintiff, have been injured in their business and property; and

H. Instead of free, open and competitive Markets, trade has been illegally restrained, in the Rough Diamond and Polished Diamond Markets.

432. As a result of the De Beers Defendants' and the Sightholder Defendants' illegal anti-competitive conduct in violation of Section 1, Plaintiff has been injured in its business and property in an amount to be determined at trial, but reasonably believed to be not less than $30 million, prior to trebling.

433. Such violations of Section 1 and the effects thereof are continuing and will continue unless injunctive relief is granted.

434. Plaintiff has no adequate remedy at law.

COUNT VII

VIOLATION OF SHERMAN ACT SECTION 1 COMBINATION AND CONSPIRACY TO RESTRAIN TRADE (Against the De Beers Defendants and JWT)

435. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 434 with the same force and effect as if set forth in full herein.

436. In violation of Section 1 of the Sherman Act, the De Beers Defendants and JWT have willfully, knowingly, intentionally and with specific intent to do so, combined and

conspired with one another to restrain trade in the Rough Diamond Market and the Polished Diamond Market.

437. The combination and conspiracy to restrain the trade in the Rough Diamond Market and the Polished Diamond Market has been effectuated by, among other things, the means and the overt acts set forth above.

438. The De Beers Defendants and JWT intended and intend by these actions to:

A. Control the supply and price of rough diamonds in the Rough Diamond Market;

B. Control the supply and price of diamonds in the downstream, Polished Diamond Market;

C. Eliminate, reduce, limit and foreclose actual and potential competition in the Rough Diamond and Polished Diamond Markets;

D. Exclude and foreclose other persons or entities from participating in or entering the these markets; and

E. Injure and eliminate competition in these markets.

439. As a result of the conduct alleged herein, the De Beers Defendants and JWT have controlled and continue to control price, have and are able to exclude competitors and competition and have and are able to charge supra-competitive prices in the Rough Diamond and Polished Diamond Markets.

440. The combination and conspiracy to restrain trade has had, and is likely to have, among other things, the following effects:

A. Actual and potential competition in the Rough Diamond and Polished Diamond Markets has been restrained, suppressed and eliminated;

B. Rough diamond manufacturers and distributors who purchase rough diamonds in the Rough Diamond Market, including Plaintiff, have paid, and are likely to pay, artificially inflated prices;

C. Rough diamond manufacturers and distributors, including Plaintiff, have been excluded, and will likely continue to be excluded, from being able to purchase sufficient amounts of rough diamonds;

D. Retailers who purchase diamonds in the Polished Diamond Market from the diamond manufacturers and distributors have paid, and are likely to pay, artificially inflated prices;

E. Customers of the retailers in the Diamond Jewelry Market have paid, and are likely to pay, higher prices for all retail diamond jewelry and have been deprived of the benefit of free, open, competitive and unrestrained diamond Markets;

F. Actual and potential competitors of the De Beers Defendants and the Sightholder Defendants have been injured in their business and property;

G. Diamond manufacturers and distributors, including Plaintiff, have been injured in their business and property; and

H. Instead of free, open and competitive Markets, trade has illegally been restrained in the Rough Diamond and Polished Diamond Markets.

441. As a result of the De Beers Defendants' and JWT's illegal anti-competitive conduct in violation of Section 1, Plaintiff has been injured in its business and property in an amount to be determined at trial, but reasonably believed to be not less than $30 million, prior to trebling.

442. Such violations of Section 1 and the effects thereof are continuing and will continue unless injunctive relief is granted.

443. Plaintiff has no adequate remedy at law.

COUNT VIII

VIOLATION OF SHERMAN ACT SECTION 1

COMBINATION AND CONSPIRACY TO RESTRAIN TRADE
(Against the De Beers Defendants, Diamdel, JWT and the Sightholder Defendants)

444. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 443 with the same force and effect as if set forth in full herein.

445. In violation of Section 1 of the Sherman Act, the De Beers Defendants, Diamdel, JWT and the Sightholder Defendants (collectively, the "Conspirators") have willfully, knowingly, intentionally and with specific intent to do so, combined and conspired with one another to restrain trade in the Rough Diamond and the Polished Diamond Markets.

446. The combination and conspiracy to restrain trade in the Rough Diamond Market and the Polished Diamond Markets has been effectuated by, among other things, the means and the overt acts set forth above.

447. The Conspirators intended and intend by these actions to:

A. Control the supply and price of rough diamonds in the Rough Diamond Market;

B. Control the supply and price of diamonds in the downstream, Polished Diamond Market;

C. Eliminate, reduce, limit and foreclose actual and potential competition in the Rough Diamond and Polished Diamond Markets;

D. Exclude and foreclose other persons or entities from participating in or entering the Rough Diamond and Polished Diamond Markets; and

E. Injure and eliminate competition in the Rough Diamond and Polished Diamond Markets.

448. As a result of the conduct alleged herein, the Conspirators have controlled and continue to control price, have and are able to exclude competitors and competition and have and are able to charge supra-competitive prices in the Rough Diamond and Polished Diamond Markets.

449. The combination and conspiracy to restrain trade has had, and is likely to have, among other things, the following effects:

A. Actual and potential competition in the Rough Diamond and Polished Diamond Markets has been restrained, suppressed and eliminated;

B. Rough diamond manufacturers and distributors who purchase rough diamonds in the Rough Diamond Market, including Plaintiff, have paid, and are likely to pay, artificially inflated prices;

C. Rough diamond manufacturers and distributors, including Plaintiff, have been excluded, and will likely continue to be excluded, from being able to purchase sufficient amounts of rough diamonds;

D. Retailers who purchase diamonds from the diamond manufacturers in the Polished Diamond Market have paid, and are likely to pay, artificially inflated prices;

E. Customers of the retailers in the Diamond Jewelry Market have paid, and are likely to pay, higher prices for all retail diamond jewelry and have been deprived of the benefit of free, open, competitive and unrestrained diamond Markets;

F. Actual and potential competitors of the De Beers Defendants have been injured in their business and property;

G. Rough diamond manufacturers and distributors, including Plaintiff, have been injured in their business and property; and

H. Instead of free, open and competitive Markets, trade has been illegally restrained in the Rough Diamond and Polished Diamond Markets.

450. As a result of the Conspirators' illegal anti-competitive conduct in violation of Section 1, Plaintiff has been injured in its business and property in an amount to be determined at trial, but reasonably believed to be not less than $30 million, prior to trebling.

451. Such violations of Section 1 and the effects thereof are continuing and will continue unless injunctive relief is granted.

452. Plaintiff has no adequate remedy at law.

COUNT IX

VIOLATION OF SHERMAN ACT SECTION 2
AIDING AND ABETTING MONOPOLIZATION AND ATTEMPT TO MONOPOLIZE
(Against Diamdel, JWT, the Sightholder Defendants and the John Doe Defendants)

453. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 452 with the same force and effect as if set forth in full herein.

454. For the reasons set forth above, the De Beers Defendants have violated Section 2 of the Sherman Act.

455. For the reasons set forth above, and, among other things, by virtue of their direct involvement with De Beers and the public information available to them, in the event such entities are not co-conspirators, alternatively, each of Diamdel, JWT, the Sightholder Defendants and the John Doe Defendants (collectively, the "Aiders and Abettors") were well aware of the De Beers Defendants' illegal activity in violation of Section 2.

456. By virtue of, among others, their activities as set forth above, each of the Aiders and Abettors offered substantial assistance to the De Beers Defendants in, among other things, their illegal attempts to monopolize and actual monopolization in violation of Section 2.

457. The Aiders and Abettors' assistance to the De Beers Defendants' illegal attempted and actual monopolization of the Rough Diamond Market has been effectuated by, among other things, the means and the overt acts set forth above.

458. The Aiders and Abettors intended and intend by these actions to aid and abet De Beers to:

A. Control the supply and price of rough diamonds in the Rough Diamond Market;
B. Control the supply and price of diamonds in the downstream, Polished Diamond Market;

C. Eliminate, reduce, limit and foreclose actual and potential competition in the Rough Diamond and Polished Diamond Markets;

D. Exclude and foreclose other persons or entities from participating in or entering the Rough Diamond and Polished Diamond Markets; and

E. Injure and eliminate competition in the Rough Diamond and Polished Diamond Markets.

459. As a result of the conduct alleged herein, the Aiders and Abettors have substantially assisted the De Beers Defendants to, among other things, control price, exclude competitors and competition and charge supra-competitive prices in the Rough Diamond and Polished Diamond Markets.

460. The aiding and abetting of De Beers' actual and attempted monopolization has had, and is likely to have, among other things, the following effects:

A. Actual and potential competition in the Rough Diamond and Polished Diamond Markets has been restrained, suppressed and eliminated;

B. Rough diamond manufacturers and distributors who purchase rough diamonds, including Plaintiff, have paid, and are likely to pay, artificially inflated prices;

C. Rough diamond manufacturers and distributors, including Plaintiff, have been excluded, and will likely continue to be excluded, from being able to purchase sufficient amounts of rough diamonds;

D. Retailers who purchase diamonds from the diamond manufacturers in the Polished Diamond Market have paid, and are likely to pay, artificially inflated prices;

E. Customers of the retailers in the Diamond Jewelry Market have paid, and are likely to pay, higher prices for all retail merchandise and have been deprived of the benefit of free, open, competitive and unrestrained diamond Markets;

F. Actual and potential competitors of the De Beers Defendants and Sightholder Defendants have been injured in their business and property;

G. Rough diamond manufacturers and distributors, including Plaintiff, have been injured in their business and property; and

H. Instead of free, open and competitive markets, a monopoly in the Rough Diamond Market has been established, maintained, furthered and enhanced.

461. As a result of the Aiders and Abettors' substantial assistance to the De Beers Defendants actual and attempted monopolization in violation of Section 2, Plaintiff has been injured in its business and property in an amount to be determined at trial, but reasonably believed to be not less than $30 million, prior to trebling.

462. Such violations and the effects thereof are continuing and will continue unless injunctive relief is granted.

463. Plaintiff has no adequate remedy at law.

COUNT X

VIOLATION OF WILSON TARIFF ACT COMBINATION AND CONSPIRACY TO RESTRAIN TRADE (Against the De Beers Defendants and Diamdel)

464. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 463 with the same force and effect as if set forth in full herein.

465. The De Beers Defendants are engaged in importing rough diamonds into the U.S. from foreign countries, including, but not limited to, South Africa, Great Britain and Russia.

466. For the reasons set forth above with respect to the De Beers Defendants' and Diamdel's violations of Section 1 of the Sherman Act, which are expressly incorporated herein, the De Beers Defendants and Diamdel have willfully, knowingly, intentionally and with specific intent to do so, combined and conspired with each other to restrain the lawful trade and to increase the market price of rough diamonds in violation of the Wilson Tariff Act, 15 U.S.C. § 8, *et. seq.* (the "Wilson Act").

467. As a result of the De Beers Defendants' and Diamdel's violations of the Wilson Act, Plaintiff has been injured in its business and property in the amount of $30 million, prior to trebling.

468. Such violations of the Wilson Act and the effects thereof are continuing and will continue unless injunctive relief is granted.

469. Plaintiff has no adequate remedy at law.

COUNT XI

VIOLATION OF WILSON TARIFF ACT
COMBINATION AND CONSPIRACY TO RESTRAIN TRADE
(Against the De Beers Defendants and JWT)

470. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 469 with the same force and effect as if set forth in full herein.

471. The De Beers Defendants are engaged in importing rough diamonds into the U.S. from foreign countries, including, but not limited to, South Africa, Great Britain and Russia.

472. For the reasons set forth above with respect to the De Beers Defendants' and JWT's violations of Section 1 of the Sherman Act, which are expressly incorporated herein, the De Beers Defendants and JWT have willfully, knowingly, intentionally and with specific intent to do so, combined and conspired with each other to restrain the lawful trade in and to increase the market price of, rough diamonds in violation of the Wilson Act.

473. As a result of the De Beers Defendants' and JWT's violations of the Wilson Act, Plaintiff has been injured in its business and property in the amount of $30 million, prior to trebling.

474. Such violations of the Wilson Act and the effects thereof are continuing and will continue unless injunctive relief is granted.

475. Plaintiff has no adequate remedy at law.

COUNT XII

VIOLATION OF WILSON TARIFF ACT
COMBINATION AND CONSPIRACY TO RESTRAIN TRADE
(Against the De Beers Defendants and the Sightholder Defendants)

476. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 475 with the same force and effect as if set forth in full herein.

477. The De Beers Defendants are engaged in importing rough diamonds into the U.S. from foreign countries, including, but not limited to, South Africa, Great Britain and Russia.

478. For the reasons set forth above with respect to the De Beers Defendants' and the Sightholder Defendants' violations of Section 1 of the Sherman Act, which are expressly incorporated herein, the De Beers Defendants and the Sightholder Defendants have willfully, knowingly, intentionally and with specific intent to do so, combined and conspired with each other to restrain the lawful trade and to increase the market price of rough diamonds in violation of the Wilson Act.

479. As a result of the De Beers Defendants' and the Sightholder Defendants' violations of the Wilson Act, Plaintiff has been injured in its business and property in the amount of $30 million, prior to trebling.

480. Such violations of the Wilson Act and the effects thereof are continuing and will continue unless injunctive relief is granted.

481. Plaintiff has no adequate remedy at law.

COUNT XIII

VIOLATION OF WILSON TARIFF ACT
COMBINATION AND CONSPIRACY TO RESTRAIN TRADE
(Against the De Beers Defendants, JWT and the Sightholder Defendants)

482. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 481 with the same force and effect as if set forth in full herein.

483. The De Beers Defendants are engaged in importing rough diamonds into the U.S. from foreign countries, including, but not limited to, South Africa, Great Britain and Russia.

484. For the reasons set forth above with respect to the De Beers Defendants', JWT's and the Sightholder Defendants' violations of Section 1 of the Sherman Act, which are expressly incorporated herein, these Defendants have willfully, knowingly, intentionally and with specific intent to do so, combined and conspired with each other to restrain the lawful trade and to increase the market price of rough diamonds in violation of the Wilson Act.

485. As a result of such Defendants' violations of the Wilson Act, Plaintiff has been injured in its business and property in the amount of $30 million, prior to trebling.

486. Such violations of the Wilson Act and the effects thereof are continuing and will continue unless injunctive relief is granted.

487. Plaintiff has no adequate remedy at law.

COUNT XIV

VIOLATION OF RICO SECTIONS 1962(A), (B) and (C)
(Against the De Beers Defendants, Diamdel, JWT and the Sightholder Defendants)

488. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 487 with the same force and effect as if set forth in full herein.

489. Each of the De Beers Defendants, Diamdel, JWT and the Sightholder Defendants (the "RICO Defendants") is a "person" as defined in Section 1961(3) of the Racketeering Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. 1961(3).

490. At all relevant times, the RICO Defendants were associated with an "enterprise" as that term is defined in section 1961(4) of RICO, 18 U.S.C. 1961(4), which was engaged in, and the activities of which affected, interstate commerce. For purposes of this claim under Section 1962(a) - (c) of RICO, 18 U.S.C. 1962, the enterprise alleged is the association in fact among the RICO Defendants (the "Enterprise").

491. In violation of RICO Sections 1962(a) - (c), the RICO Defendants maintained, directly and indirectly, an interest in, and control of, the Enterprise through a pattern of racketeering activity.

492. The RICO Defendants engaged in the above referenced violations of RICO Section 1962 through a pattern of racketeering activity as defined in RICO Sections 1961(1)(A) and (B) and 1961(5), in that the acts were related to each other as part of a single scheme to defraud Plaintiff and violate the U.S. and New York State antitrust laws, continued over a substantial period of time (many years), and continue to this day.

493. The racketeering activity in which the Rico Defendants engaged, through the use of U.S. mails and interstate wire communications for the purpose of executing their scheme was and is the activity alleged above, which includes, but is not limited to:

A. The illegal rigging of the SOC selection process;

B. The scheme and/or artifice to defraud Plaintiff and others with regard to SOC;

C. The illegal money laundering in violation of 18 U.S.C. 1956; and

D. The theft of Plaintiff's LJW program.

494. The RICO Defendants used the mail and interstate wires in furtherance of their RICO violations as follows:

A. Using the mail and interstate wires, directly, and through their agents and representatives, to send the SOC Packs and related correspondence and communications in furtherance of their scheme to rig the SOC process and defraud Plaintiff and others;

B. Using the mail and interstate wires, directly, and through their agents and representatives to deliver and launder money into and through the U.S. and U.S. intermediaries; and

C. Using the mail and interstate wires, directly, and through their agents and representatives to implement and further the theft of LJW.

495. As a direct and proximate result of the RICO Defendants' violations of RICO Sections 1962(a) - (c), Plaintiff has been injured in its business and property in an amount to be determined at trial, but reasonably believed to be not less than $30 million, before trebling.

COUNT XV

RICO SECTION 1962(D) CONSPIRACY CLAIM
(Against the De Beers Defendants, Diamdel, JWT and the Sightholder Defendants)

496. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 495 with the same force and effect as if set forth in full herein.

497. The RICO Defendants conspired to violate RICO Sections 1962(a) – (c) in violation of RICO Section 1962(d), 18 U.S.C. 1962(d), in that, as detailed above, they agreed to maintain, directly and indirectly, an interest in, and control of, the Enterprise, through a pattern of racketeering activity.

498. As a direct and proximate result of the RICO Defendants' violation of RICO Section 1962(d), Plaintiff has been injured in his business and property in an amount to be determined at trial, but reasonably believed to be not less than $30 million, before trebling.

COUNT XVI

VIOLATION OF DONNELLY ACT COMBINATION AND CONSPIRACY TO MONOPOLIZE AND RESTRAIN TRADE
(Against the De Beers Defendants and Diamdel)

499. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 498 with the same force and effect as if set forth in full herein.

500. In violation of the Donnelly Antitrust Act, General Business Law § 340 (the "Donnelly Act"), the De Beers Defendants and Diamdel have willfully, knowingly, intentionally and with specific intent to do so, combined and conspired with one another to monopolize and restrain trade in the Rough Diamond Market.

501. The combination and conspiracy to monopolize and restrain trade in the Rough Diamond Market has been effectuated by, among other things, the means and the overt acts set forth above.

502. The De Beers Defendants and Diamdel intended and intend by these actions to:

A. Control the supply and price of rough diamonds in the Rough Diamond Market;

B. Control the supply and price of diamonds in the downstream, Polished Diamond Market;

C. Eliminate, reduce, limit and foreclose actual and potential competition in the Rough Diamond and Polished Diamond Markets;

D. Exclude and foreclose other persons or entities from participating in or entering the Rough Diamond and Polished Diamond Markets; and

E. Injure and eliminate competition in the Rough Diamond and Polished Diamond Markets.

503. As a result of the conduct alleged herein, the De Beers Defendants and Diamdel have controlled and continue to control price, have and are able to exclude competitors and competition and have and are able to charge supra-competitive prices in the Rough Diamond and Polished Diamond Markets.

504. The combination and conspiracy to monopolize and restrain trade has had, and is likely to have, among other things, the following effects:

A. Actual and potential competition in the Rough Diamond and Polished Diamond Markets has been restrained, suppressed and eliminated;

B. Rough diamond manufacturers and distributors who purchase rough diamonds in the Rough Diamond Market, including Plaintiff, have paid, and are likely to pay, artificially inflated prices;

C. Rough diamond manufacturers and distributors, including Plaintiff, have been excluded, and will likely continue to be excluded, from being able to purchase sufficient amounts of rough diamonds;

D. Retailers who purchase diamonds from the diamond manufacturers in the Polished Diamond Market have paid, and are likely to pay, artificially inflated prices;

E. Customers of the retailers in the Diamond Jewelry Market have paid, and are likely to pay, higher prices for all diamond jewelry and have been deprived of the benefit of free, open, competitive and unrestrained diamond Markets;

F. Actual and potential competitors of the De Beers Defendants and the Sightholder Defendants have been injured in their business and property;

G. Rough diamond manufacturers and distributors, including Plaintiff, have been injured in their business and property; and

H. Instead of free, open and competitive Markets, trade has been illegally restrained and a monopoly in the Rough Diamond and Polished Diamond Markets has been established, maintained, furthered and enhanced.

505. As a result of the De Beers Defendants' and Diamdel's conspiracy to monopolize and illegally restrain trade in violation of the Donnelly Act, Plaintiff has been injured in its business and property in an amount to be determined at trial, but reasonably believed to be not less than $30 million, prior to trebling.

506. Such violations and the effects thereof are continuing and will continue unless injunctive relief is granted.

507. Plaintiff has no adequate remedy at law.

COUNT XVII

VIOLATION OF DONNELLY ACT COMBINATION AND CONSPIRACY TO MONOPOLIZE AND RESTRAIN TRADE

(Against the De Beers Defendants and the Sightholder Defendants)

508. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 507 with the same force and effect as if set forth in full herein.

509. In violation of the Donnelly Act, the De Beers Defendants and the Sightholder Defendants have willfully, knowingly, intentionally and with specific intent to do so, combined and conspired with one another to monopolize and restrain trade in the Rough Diamond and Polished Diamond Markets.

510. The combination and conspiracy to monopolize the Rough Diamond and Polished Diamond Markets has been effectuated by, among other things, the means and the overt acts set forth above.

511. The De Beers Defendants and Sightholder Defendants intended and intend by these actions to:

A. Control the supply and price of rough diamonds in the Rough Diamond Market;

B. Control the supply and price of diamonds in the downstream, Polished Diamond Market;

C. Eliminate, reduce, limit and foreclose actual and potential competition in the Rough Diamond and Polished Diamond Markets;

D. Exclude and foreclose other persons or entities from participating in or entering the Rough Diamond and Polished Diamond Markets; and

E. Injure and eliminate competition in the Rough Diamond and Polished Diamond Markets.

512. As a result of the conduct alleged herein, the De Beers Defendants and the Sightholder Defendants have controlled and continue to control price, have and are able to exclude competitors and competition and have and are able to charge supra-competitive prices in the Rough Diamond and Polished Diamond Markets.

513. The combination and conspiracy to monopolize and restrain trade has had, and is likely to have, among other things, the following effects:

A. Actual and potential competition in the Rough Diamond and Polished Diamond Markets has been restrained, suppressed and eliminated;

B. Rough diamond manufacturers and distributors who purchase rough diamonds in the Rough Diamond Market, including Plaintiff, have paid, and are likely to pay, artificially inflated prices;

C. Rough diamond manufacturers and distributors, including Plaintiff, have been excluded, and will likely continue to be excluded, from being able to purchase sufficient amounts of rough diamonds;

D. Retailers who purchase diamonds from the diamond manufacturers in the Polished Diamond Market have paid, and are likely to pay, artificially inflated prices;

E. Customers of the retailers in the Diamond Jewelry Market have paid, and are likely to pay, higher prices for all retail merchandise and have been deprived of the benefit of free, open, competitive and unrestrained diamond Markets;

F. Actual and potential competitors of the De Beers Defendants and the Sightholder Defendants have been injured in their business and property;

G. Rough diamond manufacturers and distributors, including Plaintiff, have been injured in their business and property; and

H. Instead of free, open and competitive Markets, trade has been illegally restrained and a monopoly in the Rough Diamond and Polished Diamond Markets has been established, maintained, furthered and enhanced.

514. As a result of the De Beers Defendants' and the Sightholder Defendants' conspiracy to monopolize and restrain trade in violation of the Donnelly Act, Plaintiff has been injured in its business and property in an amount to be determined at trial, but reasonably believed to be not less than $30 million, prior to trebling.

515. Such violations and the effects thereof are continuing and will continue unless injunctive relief is granted.

516. Plaintiff has no adequate remedy at law.

COUNT XVIII

VIOLATION OF DONNELLY ACT COMBINATION AND CONSPIRACY TO MONOPOLIZE AND RESTRAIN TRADE

(Against the De Beers Defendants and Defendant JWT)

517. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 516 with the same force and effect as if set forth in full herein.

518. In violation of the Donnelly Act, the De Beers Defendants and JWT have willfully, knowingly, intentionally and with specific intent to do so, combined and conspired with one another to monopolize and restrain trade in the Rough Diamond and Polished Diamond Markets.

519. The combination and conspiracy to monopolize and restrain trade in the Rough Diamond and Polished Diamond Markets has been effectuated by, among other things, the means and the overt acts set forth above.

520. The De Beers Defendants and JWT intended and intend by these actions to:

A. Control the supply and price of rough diamonds in the Rough Diamond Market;

B. Control the supply and price of diamonds in the downstream, Polished Diamond Market;

C. Eliminate, reduce, limit and foreclose actual and potential competition in the Rough Diamond and Polished Diamond Markets;

D. Exclude and foreclose other persons or entities from participating in or entering the Rough Diamond and Polished Diamond Markets; and

E. Injure and eliminate competition in the Rough Diamond and Polished Diamond Markets.

521. As a result of the conduct alleged herein, the De Beers Defendants and JWT have controlled and continue to control price, have and are able to exclude competitors and competition and have and are able to charge supra-competitive prices in the Rough Diamond and Polished Diamond Markets.

522. The combination and conspiracy to monopolize and restrain trade has had, and is likely to have, among other things, the following effects:

A. Actual and potential competition in the Rough Diamond and Polished Diamond Markets has been restrained, suppressed and eliminated;

B. Rough diamond manufacturers and distributors who purchase rough diamonds in the Rough Diamond Market, including Plaintiff, have paid, and are likely to pay, artificially inflated prices;

C. Rough diamond manufacturers and distributors, including Plaintiff, have been excluded, and will likely continue to be excluded, from being able to purchase sufficient amounts of rough diamonds;

D. Retailers who purchase diamonds from the diamond manufacturers in the Polished Diamond Market have paid, and are likely to pay, artificially inflated prices;

E. Customers of the retailers in the Diamond Jewelry Market have paid, and are likely to pay, higher prices for all retail merchandise and have been deprived of the benefit of free, open, competitive and unrestrained diamond Markets

F. Actual and potential competitors of the De Beers Defendants have been injured in their business and property;

G. Rough diamond manufacturers, including Plaintiff, have been injured in their business and property; and

H. Instead of free, open and competitive Markets, a monopoly in the Rough Diamond and Polished Diamond Markets trade has been illegally restrained and a monopoly has been established, maintained, furthered and enhanced.

523. As a result of the De Beers Defendants' and JWT's combination and conspiracy to monopolize and illegally restrain trade in violation of the Donnelly Act, Plaintiff has been injured in its business and property in an amount to be determined at trial, but reasonably believed to be not less than $30 million, prior to trebling.

524. Such violations and the effects thereof are continuing and will continue unless injunctive relief is granted.

525. Plaintiff has no adequate remedy at law.

COUNT XIX

VIOLATION OF DONNELLY ACT COMBINATION AND CONSPIRACY TO MONOPOLIZE AND RESTRAIN TRADE

(Against the De Beers Defendants Diamdel, JWT and the Sightholder Defendants)

526. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 525 with the same force and effect as if set forth in full herein.

527. In violation of the Donnelly Act, the Conspirators have willfully, knowingly, intentionally and with specific intent to do so, combined and conspired with one another to monopolize and restrain trade in the Rough Diamond Market and Polished Diamond Market.

528. The combination and conspiracy to monopolize and restrain trade in the Rough Diamond Market and Polished Diamond Market has been effectuated by, among other things, the means and the overt acts set forth above.

529. The Conspirators intended and intend by these actions to:

A. Control the supply and price of rough diamonds in the Rough Diamond Market;

B. Control the supply and price of diamonds in the downstream Polished Diamond Market;

C. Eliminate, reduce, limit and foreclose actual and potential competition in the Rough Diamond and Polished Diamond Markets;

D. Exclude and foreclose other persons or entities from participating in or entering the Rough Diamond and Polished Diamond Markets; and

E. Injure and eliminate competition in the Rough Diamond and Polished Diamond Markets.

530. As a result of the conduct alleged herein, the Conspirators have controlled and continue to control price, have and are able to exclude competitors and competition and have and are able to charge supra-competitive prices in the Relevant Markets.

531. The combination and conspiracy to monopolize and restrain trade has had, and is likely to have, among other things, the following effects:

A. Actual and potential competition in the Rough Diamond and Polished Diamond Markets has been restrained, suppressed and eliminated;

B. Diamond manufacturers and distributors who purchase rough diamonds in the Rough Diamond Market, including Plaintiff, have paid, and are likely to pay, artificially inflated prices;

C. Diamond manufacturers and distributors, including Plaintiff, have been excluded, and will likely continue to be excluded, from being able to purchase sufficient amounts of rough diamonds;

D. Retailers who purchase diamonds from the diamond manufacturers and distributors in the Polished Diamond Market have paid, and are likely to pay, artificially inflated prices;

E. Customers of the retailers in the Diamond Jewelry Market have paid, and are likely to pay, higher prices for all retail diamond jewelry and have been deprived of the benefit of free, open, competitive and unrestrained diamond Markets;

F. Actual and potential competitors of the De Beers Defendants and Sightholder Defendants have been injured in their business and property;

G. Diamond manufacturers and distributors, including Plaintiff, have been injured in their business and property; and

H. Instead of free, open and competitive Markets, trade has been illegally restrained and a monopoly in the Rough Diamond and Polished Diamond Markets has been established and maintained.

532. As a result of the Conspirators' conspiracy to illegally restrain trade and monopolize in violation of the Donnelly Act, Plaintiff has been injured in its business and property in an amount to be determined at trial, but reasonably believed to be not less than $30 million, prior to trebling.

533. Such violations and the effects thereof are continuing and will continue unless injunctive relief is granted.

534. Plaintiff has no adequate remedy at law.

COUNT XX

VIOLATION OF DONNELLY ACT
AIDING AND ABETTING ATTEMPT TO MONOPOLIZE AND RESTRAIN TRADE
(Against Diamdel, JWT, the Sightholder Defendants and the John Doe Defendants)

535. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 534 with the same force and effect as if set forth in full herein.

536. For the reasons set forth above, the De Beers Defendants have violated the Donnelly Act.

537. For the reasons set forth above, and, among other things, by virtue of their direct involvement with De Beers and the publicly information available to them, in the event they are not co-conspirators, alternatively, each of the Aiders and Abettors was well aware of De Beers' illegal activity in violation of the Donnelly Act and aided and abetted such illegal conduct.

538. By virtue of, among others, their activities as set forth above, each of the Aiders and Abettors offered substantial assistance to De Beers in, among other things, De Beers' illegal attempts to restrain trade and monopolize and actual restraint of trade and monopolization in violation of the Donnelly Act.

539. The Aiders and Abettors' assistance to De Beers in its illegal attempted and actual restraint of trade and monopolization of the Rough Diamond and Polished Diamond Markets has been effectuated by, among other things, the means and the overt acts set forth above.

540. The Aiders and Abettors intended and intend by these actions to aid and abet De Beers to:

A. Control the supply and price of rough diamonds in the Rough Diamond Market;

B. Control the supply and price of diamonds in the downstream, Polished Diamond Market;

C. Eliminate, reduce, limit and foreclose actual and potential competition in the Rough Diamond and Polished Diamond Markets;

D. Exclude and foreclose other persons or entities from participating in or entering the Rough Diamond and Polished Diamond Markets; and

E. Injure and eliminate competition in the Rough Diamond and Polished Diamond Markets.

541. As a result of the conduct alleged herein, the Aiders and Abettors have substantially assisted the De Beers Defendants to, among other things, control price, exclude competitors and competition and charge supra-competitive prices in the Rough Diamond and Polished Diamond Markets.

542. The aiding and abetting of De Beers' actual and attempted monopolization and restrain of trade has had, and is likely to have, among other things, the following effects:

A. Actual and potential competition in the Rough Diamond and Polished Diamond Markets has been restrained, suppressed and eliminated;

B. Diamond manufacturers and distributors who purchase rough diamonds in the Rough Diamond Market, including Plaintiff, have paid, and are likely to pay, artificially inflated prices;

C. Diamond manufacturers, including Plaintiff, have been excluded, and will likely continue to be excluded, from being able to purchase sufficient amounts of rough diamonds;

D. Retailers who purchase diamonds from the diamond manufacturers and distributors in the Polished Diamond Market have paid, and are likely to pay, artificially inflated prices;

E. Customers of the retailers in the Diamond Jewelry Market have paid, and are likely to pay, higher prices for all retail merchandise and have been deprived of the benefit of free, open, competitive and unrestrained diamond Markets;

F. Actual and potential competitors of the De Beers Defendants have been injured in their business and property;

G. Diamond manufacturers and distributors, including Plaintiff, have been injured in their business and property; and

H. Instead of free, open and competitive Markets, trade has been restrained and a monopoly in the Rough Diamond and Polished Diamond Markets has been established, maintained, furthered and enhanced.

543. As a result of the Aiders and Abettors' substantial assistance to the De Beers Defendants' actual and attempted illegal restraint of trade and monopolization in violation of the Donnelly Act, Plaintiff has been injured in its business and property in an amount to be determined at trial, but reasonably believed to be not less than $30 million, prior to trebling.

544. Such violations and the effects thereof are continuing and will continue unless injunctive relief is granted.

545. Plaintiff has no adequate remedy at law.

COUNT XXI

FRAUD
(Against the De Beers Defendants)

546. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 545 with the same force and effect as if set forth in full herein.

547. The De Beers Defendants delivered to Plaintiff (and others), via Hennig, the SOC Pack, Diamond Trading Sightholder Profile 2002 and cover letter signed by Defendant Penny (the "Application Cover Letter") (collectively, the "SOC Application Materials"), with the intent and purpose of inducing Plaintiff (and others) to complete and submit the SOC application.

548. Upon information and belief, for the reasons set forth in this Complaint, the De Beers Defendants, despite their numerous representations to the contrary, did not, at the time the

SOC Application Materials were sent, intend to consider the information submitted by Plaintiff and other applicants in their SOC applications in determining which applicants would be Sightholders under SOC.

549. Upon information and belief, contrary to their express representations made at or about the time the SOC Application Materials were distributed, the De Beers Defendants did not intend to apply the SOC Criteria fairly, objectively and transparently in selecting Sightholders, and, instead, intended to, and did, disregard the SOC Criteria and/or apply these criteria in an unfair, subjective and opaque manner as a rationale for their predetermined decision to eliminate Plaintiff and others as Sightholders.

550. Upon information and belief, the De Beers Defendants knowingly made the foregoing false statements in order to induce Plaintiff (and others) into believing that Sightholders under SOC would be selected based on fair, objective, criteria, to induce applicants, including Plaintiff, to apply for Sights and to create the appearance of compliance with anticompetition laws, even though such laws were not being followed by the De Beers Defendants.

551. In reliance on the De Beers Defendants' knowingly false and fraudulent representations, Plaintiff, at great expense, completed its SOC Pack and applied for a Sight under SOC.

552. By virtue of the De Beers Defendants' false and fraudulent conduct, Plaintiffs have been damaged in an amount to be determined at trial, but reasonably believed to be not less than $30 million.

553. Because the De Beers Defendants' fraudulent conduct was wanton, willful and in reckless disregard for the well being of Plaintiff, Plaintiff is entitled to punitive damages in an amount to be determined at trial, but not less than $100 million.

COUNT XXII

AIDING AND ABETTING FRAUD
(Against Diamdel JWT, the Sightholder Defendants, Arias and the John Doe Defendants)

554. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 553 with the same force and effect as if set forth in full herein.

555. The Aiders and Abettors and Arias (together, the "Fraud Aiders and Abettors") aided and abetted the De Beers Defendants' aforementioned fraud.

556. As detailed herein, Defendant JWT provided substantial aid and assistance to the De Beers Defendants' fraud regarding SOC, including, but not limited to:

A. Operating DIC on behalf of De Beers and DPS as its own department;

B. Making available a downloadable 24 page brochure guide to SOC on the DPS website;

C. Holding, through DPS, conferences explaining SOC;

D. Supplying all of De Beers' SOC advertising;

E. Creating the "Market Transformation Group" purportedly to work with Sightholders in preparing marketing initiatives, an essential aspect of SOC;

F. Assisting Plaintiff in initial studies regarding LJW but then refusing to assist Plaintiff in developing and implementing LJW, while helping other SOC applicants in developing marketing programs;

G. Upon information and belief, assisting the De Beers Defendants in misappropriating Plaintiff's LJW initiative for De Beers' own use, which, in part, explains the motivation for De Beers rejection of Plaintiff under SOC; and

H. Upon information and belief, acting as an arm of, and/or agent for, De Beers in the U.S. regarding all aspects of De Beers' U.S. business, including SOC.

557. Defendant Arias also provided substantial aid to the De Beers Defendants' fraud by, among other things, participating as an independent contractor hired by Plaintiff, in the development and presentation of LJW, while, at the same time, acting as an employee, consultant and/or agent of JWT and DPS, and then, upon information and belief, assisting the De Beers Defendants in their theft of the LJW program for their own use.

558. The Sightholder Defendants and the John Doe Defendants also provided substantial aid to the fraud by, upon information and belief, intentionally preparing and delivering false and fraudulent financial information in the Sightholder Defendants' SOC applications in order to provide a justification for DTC selecting the Sightholder Defendants as Sightholders under SOC, while rejecting other more suitable applicants, such as Plaintiff.

559. Upon information and belief, for all of the reasons set forth in this Complaint, among others, the Fraud Aiders and Abettors, at all relevant times, were aware of the De Beers Defendants' fraudulent conduct.

560. By virtue of the Fraud Aiders and Abettors' substantial aiding and abetting of the De Beers Defendants' fraudulent conduct, Plaintiff has been damaged in an amount to be determined at trial, but reasonably believed to be not less than $30 million.

561. Because the Fraud Aiders and Abettors' conduct in substantially aiding and abetting the De Beers Defendants' fraud, was wanton, willful and in reckless disregard for the well being of Plaintiff, Plaintiff is entitled to punitive damages in an amount to be determined at trial, but not less than $50 million.

COUNT XXIII

FRAUD
(Against the De Beers Defendants and JWT)

562. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 561 with the same force and effect as if set forth in full herein.

563. Upon information and belief, the De Beers Defendants and JWT, despite their numerous representations to the contrary, did not intend to keep confidential Plaintiff's LJW marketing initiative.

564. Upon information and belief, the De Beers Defendants encouraged Plaintiff to continue to work on LJW, and to continue making presentations to De Beers and JWT regarding the specific details of the LJW marketing initiative, in order to glean as much work product and information as possible from Plaintiffs so that De Beers and JWT could then utilize the LJW plan to develop Diamond Masters of Japan and other similar marketing initiatives for their own use.

565. Upon information and belief, the De Beers Defendants and JWT knowingly and intentionally made the false representations regarding LJW in order to induce Plaintiff to continue to expend money to develop LJW and to disclose all of the material details of LJW to De Beers and

JWT so that De Beers and JWT could misappropriate and capitalize on Plaintiff's LJW marketing program for its own selfish use to the exclusion of Plaintiff.

566. Plaintiff relied on the De Beers Defendants' accolades, encouragement and promise of confidentiality in continuing to develop LJW at great expense and in disclosing to De Beers and JWT every last detail of LJW.

567. In reliance on the De Beers Defendants' knowingly false and fraudulent representations, Plaintiff, at great expense, completed its SOC Pack and applied for a Sight under SOC.

568. By virtue of the De Beers Defendants' and JWT's false and fraudulent representations, Plaintiff has been damaged in an amount to be determined at trial, but reasonably believed to be not less than $30 million.

569. Because the De Beers Defendants' and JWT's fraudulent conduct was wanton, willful and in reckless disregard for the well being of Plaintiff, Plaintiff is entitled to punitive damages in an amount to be determined at trial, but not less than $100 million.

COUNT XXIV

AIDING AND ABETTING FRAUD
(Against Defendants JWT and Arias)

570. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 569 with the same force and effect as if set forth in full herein.

571. Alternatively, by virtue of their aforementioned conduct in participating in the De Beers Defendants' fraud regarding LJW, Defendant JWT provided substantial aid and assistance in regard to such fraudulent conduct.

572. By virtue of her aforementioned conduct, Defendant Arias also provided substantial aid and assistance to the De Beers Defendants' fraud regarding LJW.

573. Due to JWT's and Arias' aiding and abetting of the De Beers Defendants' fraud concerning LJW, Plaintiff has been damaged in an amount to be determined at trial, but reasonably believed to be not less than $20 million.

574. Because the conduct of Defendants JWT and Arias in substantially aiding and abetting the De Beers Defendants' fraud, was wanton, willful and in reckless disregard for the well being of Plaintiff, Plaintiff is entitled to punitive damages in an amount to be determined at trial, but not less than $50 million.

COUNT XXV

MISAPPROPRIATION OF TRADE SECRET
(Against the De Beers Defendants)

575. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 574 with the same force and effect as if set forth in full herein.

576. Plaintiff's LJW initiative was, at all relevant times, a proprietary marketing program which was Plaintiff's trade secret.

577. LJW was designed by Plaintiff, *inter alia*, to enhance Plaintiff's ability to sell diamonds to independent jewelers and to compete for a Sight under SOC.

578. Plaintiff introduced the LJW marketing plan to the De Beers Defendants with the express understanding and agreement by the De Beers Defendants, that the information being disclosed by Plaintiff to the De Beers Defendants was Plaintiff's proprietary information and that it would be kept confidential, in all respects, by the De Beers Defendants.

579. The De Beers Defendants breached their duty and agreement to keep all aspects of LJW confidential by copying LJW and using the LJW plan to "create" Diamond Masters of Japan."

580. Plaintiff expended in excess of $2 million and substantial time in developing and implementing LJW, with the encouragement of the De Beers Defendants.

581. In addition to its out-of-pocket expenses, Plaintiff lost additional funds by virtue of the De Beers Defendants' use of the LJW plan to create Diamond Masters of Japan in a market Plaintiff was actively targeting for LJW, and by virtue of the significant hours of man power put into developing and implementing LJW.

582. Due to the De Beers Defendants' misappropriation, Plaintiff has been damaged in an amount to be determined at trial, but reasonably believed to be not less than $20 million.

583. Because the De Beers Defendants' misappropriation of the LJW initiative was wanton, willful, in bad faith and in reckless disregard for Plaintiff's well being, Plaintiff is entitled to punitive damages in an amount to be determined at trial, but not less than $100 million.

COUNT XXVI

AIDING AND ABETTING MISAPPROPRIATION OF TRADE SECRET
(Against Defendants JWT and Arias)

584. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 583 with the same force and effect as if set forth in full herein.

585. Defendants JWT and Arias were, at all relevant times, well aware of the express details of Plaintiff's LJW initiative.

586. Plaintiff made several presentations to JWT regarding the specific details of LJW. Arias, as an independent contractor, hired by Plaintiff, directly participated in the development and preparation of LJW.

587. Because JWT, through, *inter alia*, DIC, DPS and MTG, was acting on behalf of, as an agent for and/or as an arm of the De Beers Defendants, and in particular DTC, upon information and belief, JWT shared with the De Beers Defendants all information provided to JWT regarding LJW.

588. Upon information and belief, Defendant Arias, who maintained an office at DPS, and also, upon information and belief, acted on behalf of, or as an agent for, JWT and the De Beers Defendants, in particular DTC, shared with the De Beers Defendants all information she retained regarding LJW.

589. As DTC's advertising and marketing arm, upon information and belief, JWT was and is instrumental in "developing" and implementing Diamond Masters of Japan.

590. Upon information and belief, JWT and Arias substantially aided and abetted the De Beers Defendants in their misappropriation of the LJW initiative and in the "development" and implementation of Diamond Masters of Japan.

591. By virtue of JWT's and Arias' wrongful conduct, Plaintiff has been damaged in an amount to be determined at trial, but reasonably believed to be not less than $20 million.

592. Because JWT's and Arias' aiding and abetting the De Beers Defendants in misappropriating the LJW initiative was intentional, wanton, willful, in bad faith and in reckless disregard for the well being of Plaintiff, Plaintiff is entitled to punitive damages in an amount to be determined at trial, but not less than $50 million.

COUNT XXVII

UNFAIR COMPETITION
(Against the De Beers Defendants)

593. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 594 with the same force and effect as if set forth in full herein.

594. By misappropriating the LJW initiative, the De Beers Defendants have utilized Plaintiff's time, effort and substantial economic investment for their own benefit.

595. The De Beers Defendants have utilized Plaintiff's LJW plan without Plaintiff's authorization to do so, to the economic benefit of the De Beers Defendants and to the substantial economic detriment of Plaintiff.

596. Diamond Masters of Japan is so similar, indeed virtually identical, to LJW that consumers are likely to confuse the two and/or to consider them to be related programs.

597. Upon information and belief, the De Beers Defendants' misappropriation of LJW and Plaintiff's labor and expenditures regarding LJW was intentional and in bad faith.

598. By virtue of the De Beers Defendants' bad faith misappropriation, the De Beers Defendants have unfairly competed, and continue to unfairly compete, with Plaintiff.

599. By virtue of the De Beers Defendants' unfair competition, Plaintiff has been damaged in an amount to be determined at trial, but reasonably believed to be not less than $20 million.

600. Because the De Beers Defendants unfairly competed with Plaintiff in bad faith and in wanton, willful and reckless disregard for the well being of Plaintiff, Plaintiff is entitled to punitive damages in an amount to be determined at trial, but not less than $100 million.

601. The De Beers Defendants' unfair competition and the effects thereof are continuing and will continue unless injunctive relief is granted.

602. Plaintiff has no adequate remedy at law.

COUNT XXVIII

AIDING AND ABETTING UNFAIR COMPETITION
(Against Defendants JWT and Arias)

603. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 602 with the same force and effect as if set forth in full herein.

604. Defendants JWT and Arias, at all relevant times, were well aware of the specific details of LJW.

605. Upon information and belief, JWT and Arias shared their knowledge of the LJW details with each other and with the De Beers Defendants.

606. Upon information and belief, JWT and Arias directly participated in the "development" and implementation of Diamond Masters of Japan.

607. Upon information and belief, JWT and Arias knowingly utilized and copied the LJW initiative in participating with the De Beers Defendants in "developing" and implementing Diamond Masters of Japan.

608. In light of the above, JWT and Arias provided substantial aid and assistance to the De Beers Defendants' unfair competition with Plaintiff.

609. By virtue of JWT's and Arias' substantially aiding and abetting the De Beers Defendants' unfair competition, Plaintiff has been damaged in an amount to be determined at trial, but reasonably believed to be not less than $20 million.

610. Because JWT's and Arias' aiding and abetting the De Beers Defendants' unfair competition was in bad faith, wanton, willful and in reckless disregard for the well being of Plaintiff, Plaintiff is entitled to punitive damages in an amount to be determined at trial, but not less than $50 million.

COUNT XXVIX

ACCOUNTING
(Against De Beers)

611. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 610 with the same force and effect as if set forth in full herein.

612. Because Plaintiff's misappropriation damages and unfair competition damages depend, in part, upon the profits made by De Beers from its wrongful conduct, Plaintiff is entitled to an accounting as to all such profits made by De Beers.

613. Plaintiff has no adequate remedy at law.

COUNT XXX

BREACH OF CONTRACT
(Against De Beers)

614. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 613 with the same force and effect as if set forth in full herein.

615. The SOC Pack expressly represented and warranted that: "[T]he information supplied in response to the Profile will be treated as confidential (as the Profile itself make clear)."

616. In reliance on such representation and warranty, Plaintiff submitted its SOC application, which included, among other things, detailed information regarding Plaintiff's LJW program.

617. Plaintiff complied with all of the terms and conditions of the SOC Pack upon submission of its application.

618. The "confidentiality" provision in the SOC Pack was a material provision therein.

619. De Beers breached the confidentiality provision by utilizing the information provided by Plaintiff regarding LJW for its own benefit and to create Diamond Masters of Japan.

620. De Beers further breached the provisions of the SOC Pack by failing to apply the SOC criteria as therein stated and promised.

621. By virtue of De Beers' breaches of the SOC Pack, Plaintiff has been damaged in an amount to be determined at trial, but reasonably believed to be not less than $50 million.

COUNT XXXI

BREACH OF CONTRACT
(Against De Beers and JWT)

622. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 621 with the same force and effect as if set forth in full herein.

623. In exchange for Plaintiff divulging to the De Beers Defendants and JWT the express details of the LJW initiative, De Beers and JWT each agreed to keep this information confidential.

624. Plaintiff complied with all of its obligations under these agreements.

625. By, among other things, using the confidential information, provided by Plaintiff regarding LJW, to create Diamond Masters of Japan, De Beers and JWT have breached their agreements with Plaintiff to keep such information confidential.

626. By virtue of De Beers' and JWT's breaches of their confidentiality agreements, Plaintiff has been damaged in an amount to be determined at trial, but reasonably believed to be not less than, $20 million.

COUNT XXXII

TORTIOUS INTERFERENCE WITH BUSINESS RELATIONSHIPS
(Against the De Beers Defendants)

627. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 626 with the same force and effect as if set forth in full herein.

628. By virtue of illegally denying Plaintiff a Sight and misappropriating LJW, the De Beers Defendants have intentionally and maliciously interfered with Plaintiff's current business relationships and agreements with its diamond retailer clients.

629. With knowledge of these business relationships and agreements, the De Beers Defendants intentionally and maliciously interfered with these agreements and relationships with the intent of injuring Plaintiff in its business and property.

630. The De Beers Defendants' interference with Plaintiff's business relationships and agreements was done through improper and unlawful means designed to harm Plaintiff and enhance De Beers' already dominant market position.

631. The De Beers Defendants' tortious interference, has substantially, and possibly irreparably, damaged Plaintiff's reputation, goodwill and ability to compete in the market, and Plaintiff has lost significant business.

632. By virtue of the De Beers Defendants' tortious interference, Plaintiff has been damaged in an amount to be determined at trial, but reasonably believed to be not less than $50 million.

633. Because the De Beers Defendants' tortious interference was in bad faith, wanton, willful and in reckless disregard for the well being of Plaintiff, Plaintiff is entitled to punitive damages in an amount to be determined at trial, but not less than $100 million.

634. The De Beers Defendants' tortious interference and the effects thereof are continuing and will continue unless injunctive relief is granted.

635. Plaintiff has no adequate remedy at law.

COUNT XXXIII

TORTIOUS INTERFERENCE WITH PROSPECTIVE BUSINESS RELATIONSHIPS
(Against the De Beers Defendants)

636. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 635 with the same force and effect as if set forth in full herein.

637. By virtue of illegally denying Plaintiff a Sight and misappropriating LJW, the De Beers Defendants have intentionally and maliciously interfered with Plaintiff's prospective business relationships with diamond retailers.

638. Plaintiff had a reasonable expectation of economic advantage and gain from these prospective business relationships, but has been unable to consummate the relationships and provide the necessary product, because of the De Beers Defendants' illegal and improper rejection of Plaintiff as a Sightholder under SOC and misappropriation of LJW.

639. With knowledge of these prospective business relationships, the De Beers Defendants intentionally and maliciously interfered with these relationships with the intent of injuring Plaintiff in its business and property.

640. The De Beers Defendants' interference with Plaintiff's prospective business relationships was done through improper and unlawful means designed to harm Plaintiff and enhance De Beers' already dominant market position.

641. The De Beers Defendants' tortious interference has substantially, and possibly irreparably, damaged Plaintiff's reputation, goodwill and ability to compete in the market, and Plaintiff has lost significant actual and potential business.

642. By virtue of the De Beers Defendants' tortious interference with prospective business relationships, Plaintiff has been damaged in an amount to be determined at trial, but reasonably believed to be not less than $50 million.

643. Because the De Beers Defendants' tortious interference was in bad faith, wanton, willful and in reckless disregard for the well being of Plaintiff, Plaintiff is entitled to punitive damages in an amount to be determined at trial, but not less than $100 million.

644. The De Beers Defendants' tortious interference and the effects thereof are continuing and will continue unless injunctive relief is granted.

645. Plaintiff has no adequate remedy at law.

COUNT XXXIV

UNJUST ENRICHMENT
(Against De Beers)

646. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 645 with the same force and effect as if set forth in full herein.

647. Plaintiff's development of LJW provided a substantial benefit to De Beers, because De Beers used it to create and implement Diamond Masters of Japan.

648. Upon information and belief, De Beers intends to replicate Plaintiff's LJW program elsewhere as well for its own selfish benefit to the exclusion of Plaintiff.

649. By failing to compensate Plaintiff's time spent and expense incurred in developing the LJW initiative, and by retaining for itself the profits from such venture, De Beers has been unjustly enriched.

650. Plaintiff is entitled to recover from De Beers adequate compensation for the benefit Plaintiff's creation and development of LJW conferred upon De Beers in an amount to be determined at trial, but reasonably believed to be not less than $20 million.

COUNT XXXV

DEFAMATION
(Against the De Beers Defendants)

651. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 650 with the same force and effect as if set forth in full herein.

652. The De Beers Defendants have made false statements to industry members, analysts and reporters to the effect that Plaintiff was not suitable to be a Sightholder under SOC and that Plaintiff did not satisfactorily meet the so-called SOC criteria.

653. The De Beers Defendants have publicized these false and defamatory statements with knowledge of their falsity, or with reckless disregard for their falsity.

654. The De Beers Defendants made these false statements with the intent to harm Plaintiff and Plaintiff's position as a significant manufacturer and distributor in the Rough Diamond Market.

655. These false and defamatory statements have caused Plaintiff irreparable damage to its goodwill, reputation and ability to compete in the diamond market.

656. By virtue of the De Beers Defendants' defamatory statements, Plaintiff has been damaged in an amount to be determined at trial, but reasonably believed to be not less than $50 million.

657. Because the false and defamatory statements were made in bad faith and in wanton, willful and reckless disregard for their truth or falsity, Plaintiff is entitled to punitive damages in an amount to be determined at trial, but not less than $100 million.

658. The De Beers Defendants' defamation and the effects thereof are continuing and will continue unless injunctive relief is granted.

659. Plaintiff has no adequate remedy at law.

COUNT XXXVI

BREACH OF FIDUCIARY DUTY
(Against Defendant Arias)

660. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 659 with the same force and effect as if set forth in full herein.

661. Defendant Arias was retained by Plaintiff as Plaintiff's general contractor/project manager to assist Plaintiff in the implementation and presentation of LJW.

662. As Plaintiff's general contractor/project manager, Defendant Arias had an obligation, at all times, to act in the best interests of Plaintiff and had a special fiduciary relationship with Plaintiff.

663. At all relevant times, Arias also was obligated to JWT and De Beers by virtue of her position as an agent, employee and/or consultant of DPS.

664. As Plaintiff's general contractor/project manager and consultant regarding LJW, at all relevant times, Arias has had a fiduciary duty of the utmost good faith and loyalty to act in the best interest of Plaintiff.

665. By virtue of her inherent conflicts of interest and, upon information and belief, her sharing of all aspects of Plaintiff's confidential, proprietary, LJW program with De Beers and JWT, Arias has breached her fiduciary duty of utmost good faith and loyalty to Plaintiff and has thereby damaged Plaintiff in its business and property.

666. By virtue of Arias' breach of fiduciary duty, Plaintiff has been damaged in an amount to be determined at trial, but reasonably believed to be not less than $20 million.

667. Because Arias' misconduct was wanton, willful and in reckless disregard for the well being of Plaintiff, Plaintiff is entitled to punitive damages in an amount to be determined at trial, but not less than $50 million.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury of all issues triable of right to a jury pursuant to F.R.C.P. 38.

PRAYER FOR RELIEF

WHEREFORE, it is respectfully requested that the Court grant Plaintiff the following relief:

A. On Counts I through XX, compensatory damages in an amount to be determined at trial, but reasonably believed to be not less than $30 million, prior to trebling, plus injunctive relief;

B. On Counts XXI and XXII, compensatory damages in an amount to be determined at trial, but reasonably believed to be not less than $30 million, plus punitive damages in an amount to be determined at trial not less than $100 million on Count XXI, and punitive damages in an amount to be determined at trial, but not less than $50 million on Count XXII;

C. On Counts XXIII - XXVIII, compensatory damages in an amount to be determined at trial, but reasonably believed to be not less than $20 million, plus punitive damages in an amount to be determined at trial not less than $100 million on Counts XXIII, XXV and XXVII, and punitive damages in an amount to be determined at trial, but not less than $50 million on Counts XXIV, XXVI and XXVIII;

D. On Count XXVIX, an accounting;

E. On Count XXX, compensatory damages in an amount to be determined at trial, but reasonably believed to be not less than $50 million;

F. On Count XXXI, compensatory damages in an amount to be determined at trial, but reasonably believed to be not less than $20 million;

G. On Counts XXXII and XXXIII, compensatory damages in an amount to be determined at trial, but reasonably believed to be not less than $50 million, plus punitive damages in amount to be determined at trial, but not less than $100 million, plus injunctive relief;

H. On Count XXV, compensatory damages in an amount to be determined at trial, but reasonably believed to be not less than $20 million;

I. On Count XXXVI, compensatory damages in an amount to be determined at trial, but reasonably believed to be not less than $50 million, plus punitive damages in an amount to be determined at trial, but not less than $100 million and injunctive relief;

J. On Count XXXVII, compensatory damages in an amount to be determined at trial, but reasonably believed to be not less than $20 million, plus punitive damages in an amount to be determined at trial, but not less than $50 million;

K. Statutory interest on all compensatory and consequential damages;

L. In addition to the aforementioned preliminary and permanent injunctive relief, an attachment against property and other assets in the U.S. in which any of the De Beers Defendants has any legal or equitable interest, including, but not limited to, on attachment upon:

(i) any and all intellectual property rights any of the DeBeers Defendants, or others on their behalves, may hold in the "Forevermark" (*i.e.*, "  "), the phrase "A Diamond is Forever," the name "Diamond Trade Centre," or "Diamond Trade Center," the acronym "DTC," the phrase "Supplier of Choice," the acronym "SOC," the name "Sightholder," the phrase "DTC Sightholder," the name "Diamond Trading Company," the name "De Beers," the name "De Beers Group," the name "De Beers LV," the name "Rapid Worlds," the name "De Beers LVMH," the name "Sightholder to America's Jewelers," the name "Diamond Masters," any other similar names, phrases or acronyms and any other intellectual property rights De Beers may hold in the U.S.;

(ii) any and all legal or equitable rights or interests any of the De Beers Defendants or others on their behalves, may have in any U.S. internet websites, including, but not limited to,

www.adiamondisforever.com, www.debeersgroup.com, www.forevermark.com, www.dps.org, www.jwt.com and www.ihennig.com.

(iii) any and all legal or equitable ownership interests any of the De Beers Defendants, or others on their behalves, may have in I. Hennig & Co. (USA) Ltd., I. Hennig & Co. Ltd., J. Walter Thompson USA Inc., J. Walter Thompson Company, Diamond Promotion Service, Diamond Information Centre, Diamond Information Center, Rapid Worlds Ltd. and De Beers LV;

M. Plaintiff's costs and reasonable attorney's fees; and

N. Such other and further relief as the Court deems just and proper.

Dated: New York, New York
July 1, 2004

HELLER, HOROWITZ & FEIT, P.C.

By:_____
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