

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re Application of HERMITAGE : No. M19-116 (LTS)
CAPITAL MANAGEMENT LIMITED : Part 1 (Misc. Division)
for Judicial Assistance to Conduct :
Discovery for Use in a Foreign Proceeding :

U.S. DISTRICT COURT
S.D.N.Y.

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DECLARATION OF NEIL MICKLETHWAITE

I, Neil Micklethwaite, pursuant to 28 U.S.C. §1746, declare as follows:

1. I am a solicitor admitted to practice law in England and Wales and am a principal in the international law firm of Brown Rudnick LLP. I am outside litigation counsel to Hermitage Capital Management Limited (“Hermitage”). I am responsible for advising Hermitage and its founder and Chief Executive Officer, William Browder, with respect to several civil and criminal actions involving Hermitage, its executives, and its Russian counsel which are currently pending or threatened in Russia.

2. Hermitage is an investment advisory firm. In its work, Hermitage primarily advised the Hermitage Fund, a Russia-dedicated investment fund, for which one of the world’s leading banks, HSBC – HSBC Private Bank (Guernsey) Limited (“HSBC”) – served as the trustee. Until 2006, the Hermitage Fund was the largest foreign portfolio investor in Russia. *See* Exhibit 1.

3. Upon information and belief, in 2007, Hermitage, its employees, and four Moscow-based law firms became the victims of a series of official and private actions that form part of a major criminal conspiracy (the “Criminal Enterprise”).

4. As discussed below, my information and belief about the existence and criminal nature of this conspiracy is based upon my detailed review of a significant number of source materials that have been recovered by HSBC and Hermitage during the course of a two-year investigation that they have undertaken with the assistance of their senior officers, staff, and internal and outside counsel. I can confirm that all relevant documents recovered from the Russian proceedings were translated into English upon discovery in order to allow me to fully assess them. Hermitage undertook the investigation in order to aid it in defending and prosecuting various civil and criminal proceedings that HSBC and Hermitage's lawyers and executives are litigating in Russia. The investigation also builds upon Hermitage's prior investment-related investigative work in Russia as an investment advisor. This investigation is ongoing.

5. The purpose of this declaration is to convey certain aspects of my personal knowledge of the related pending litigations, to describe certain information that I have learned from certain source documents about the conspiracy as outside litigation counsel for Hermitage, and to explain why Hermitage requires discovery of additional information within this jurisdiction in order to prove the extent of this conspiracy in the ongoing criminal and civil proceedings it is litigating and defending in Russia. In this declaration, I disclose only the knowledge or information Hermitage has previously shared (or is preparing to share) with Russian, United Kingdom, Cypriot, Guernsey, and British Virgin Islands ("BVI") law enforcement and regulatory authorities, or has disclosed in the pending BVI or Russian proceedings. Hermitage expressly preserves its attorney-client and work product privileges with respect to its communications with counsel and the trial preparation efforts of counsel. Thus, where I make reference to a

“belief” or subjective understanding of Hermitage, I refer to a belief or understanding that Hermitage has since made publicly known, including through its communications to law enforcement authorities or assertions in pending judicial proceedings. I do not thereby disclose any privileged communications between Hermitage and its counsel or any of my own privileged legal or factual analysis or mental impressions. Likewise, when I refer to my own “information and belief” or subjective understandings, I refer to beliefs that I have previously formed based on my review of specific documents and that have been or imminently will be conveyed to law enforcement authorities or asserted in the pending judicial proceedings that form the basis of Hermitage’s Application—not my own privileged legal or factual analysis or mental impressions. For ease of reference, I have organized the declaration as follows:

- I. Declaration Summary (¶¶ 6 – 21)
- II. Hermitage Background (¶¶ 22 – 25)
- III. Theft Of The Hermitage Companies And Fraudulent Court Judgments (¶¶ 26 – 47)
- IV. Hermitage Criminal Complaints And Retaliation From The Russian Interior Ministry (¶¶ 48 – 55)
- V. Theft Of Taxes Previously Paid By The Hermitage Companies (¶¶ 56 – 64)
- VI. Further Criminal Complaints And Further Retaliation From The Russian Interior Ministry (¶¶ 65 – 70)
- VII. Approach By Renaissance Officers After Hermitage Made The Criminal Complaints In December 2007 (¶¶ 71 – 81)
- VIII. Possible Connection Of Renaissance Officers and Affiliated Entities To The Fraud Against Hermitage (¶¶ 82 – 96)
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- USB, And Other Suspected Members Of The Criminal Enterprise (¶¶ 111 – 121)
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- XIII. Role Of New York Banks In Receiving The Laundered Proceeds Of The Frauds Against Hermitage And At The Former Rengaz Subsidiaries (¶¶ 127 – 135)
- XIV. The Pending Or Threatened Proceedings In Which Hermitage Will Employ The Discovery It Obtains In This Jurisdiction (¶¶ 136 – 158)
- XV. Conclusion (¶¶ 159 – 161)

I. DECLARATION SUMMARY

6. As described in greater detail below, upon information and belief formed through my review of certain documents gathered during Hermitage’s investigation, the Criminal Enterprise of which Hermitage became a victim consists of various individuals and entities, most but not all of whom are located in Russia. First, it appears that the Criminal Enterprise includes senior officers within the Russian Interior Ministry, including Lieutenant Colonel Artem Kuznetsov and Major Pavel Karpov; senior officers of the Russian Federal Security Service (the FSB, a successor organization to the KGB), including Viktor Voronin, I.A. Kuvaldin and Denis Vasiliev of the Economic Counter Espionage Department of the FSB (Department “K”); senior officers of the Russian Tax Bureaus Nos. 25 and 28 in Moscow including E.I. Khimina and Sergey Zchemchuzhnikov, head and deputy head respectively of Tax Bureau No 25, and O.G. Stepanova and Olga Tsymai, head of Tax Bureau and head of Department of Tax Bureau No 28; and certain Russian court judges, including judges Kuznetsov, Alexeev, and Orlova of the St. Petersburg Arbitration Court. The Criminal Enterprise also appears to

have included at different times the following individuals and entities: certain current and former senior executives of various Russian businesses, including the Russian bank, OOO Commercial Bank “Universalny Bank Sberzheniy” (Universal Savings Bank or “USB”), and its beneficial owner, Dmitry Klyuyev; certain of USB’s other shareholders and directors; and numerous private individuals in Russia, some of whom have previous criminal convictions.

7. The criminal conspiracy unfolded in multiple steps. The first overt act in the conspiracy was the seizure of corporate records from Hermitage’s Moscow office and the office of Hermitage’s local law firm. The seizure occurred in June 2007 during a raid by officers of the Russian Interior Ministry. It appears likely that thereafter, during the latter part of 2007, the seized original records were used to fraudulently re-register three of the Hermitage Fund’s Russian investment companies (together, the “Hermitage Companies”) from HSBC, as the Fund’s trustee, to members of the Criminal Enterprise. Subsequently, three members of the Criminal Enterprise – each with previous criminal convictions – fraudulently replaced HSBC executives as the directors of the Hermitage Companies.

8. The Criminal Enterprise then forged contracts, dating from 2005, in order to create approximately U.S. \$1 billion worth of fictitious financial liabilities against the stolen Hermitage Companies. These documents would have been impossible to prepare without access to the corporate records and financial documentation seized from Hermitage and its lawyers during the June 2007 raids by the Russian Interior Ministry. These liabilities were subsequently officially recognized by Russian courts in a number of judgments handed down between July 2007 and December 2007.

9. Even before all three judgments came into force, the Criminal Enterprise applied, on December 24, 2007, to the Russian tax authorities for a fraudulent refund of U.S. \$230 million in taxes that had been paid by the Hermitage Companies to the Russian government in 2006. This refund request was granted immediately. Two days later, the equivalent of U.S. \$230 million was paid by the Russian Treasury into bank accounts at two small Russian banks, including USB in Moscow, that had been opened by the Criminal Enterprise. The funds were subsequently converted into U.S. dollars. The funds were ultimately routed through two banks located in New York, Citibank, N.A. and J.P. Morgan Chase Bank (together, the “New York Banks”), to accounts that upon information and belief are controlled by members of the Criminal Enterprise.

10. The fraudulent rebate of U.S. \$230 million was authorized by Russian tax officials despite the fact that HSBC and Hermitage had filed comprehensive criminal complaints with Russian law enforcement authorities alerting them to the misappropriation of the Hermitage Companies, fabrication of fictitious liabilities against them, and the sham court judgments three weeks before the fraudulent tax refund request was filed by the Criminal Enterprise.

11. Following the fraudulent tax refund, in June and July 2008, the Criminal Enterprise (in apparent collusion with members of the Russian tax authorities) filed petitions with Russian courts to liquidate and bankrupt the stolen Hermitage Companies. If these steps are fully implemented, essential evidence relating to the transfer of funds and the ultimate beneficiaries of the fraud will be destroyed. As discussed in greater detail below, HSBC and Hermitage are now challenging these petitions in Russia.

12. While the fraudulent activity described above was being undertaken, certain government officials, who are also members of the Criminal Enterprise, sought to conceal the fraud by intimidating key individuals connected with Hermitage who have knowledge of the conspiracy. These individuals include William Browder (the founder and Chief Executive Officer of Hermitage), Ivan Cherkasov (an officer of Hermitage and General Director of Kameya LLC, an investment company owned by a client of Hermitage), other key Hermitage executives, and the lawyers representing and advising Hermitage and HSBC in Russia. The intimidation is being applied in the form of criminal cases which were filed against those Hermitage-connected individuals. Hermitage believes these cases have been fabricated.

13. As part of these criminal proceedings, Sergey Magnitskiy, a legal adviser with a U.S.-owned law firm in Moscow, Firestone Duncan, who was advising HSBC and Hermitage, was arrested in Moscow on November 24, 2008. Mr. Magnitskiy was refused bail and placed in pre-trial detention that, as of the date of this declaration, has lasted almost nine months. The arrest took place shortly after Mr. Magnitskiy testified by means of witness statements as to the involvement of Russian Interior Ministry officials in the seizure of corporate documents of the Hermitage Companies. (Hermitage has subsequently learned that Lt. Colonel Kuznetsov, the Interior Ministry official named by Mr. Magnitskiy in his witness statement and in the HSBC/Hermitage criminal complaints for his role in the fraud, has been made an official member of the investigation team in the case against Mr. Magnitskiy). Five additional lawyers who were representing the Hermitage parties in Russia have also been intimidated by way of searches or summonses to appear for questioning as witnesses. Directing such tactics against a party's counsel is

a violation of Russian law. This campaign has placed Hermitage's Russian counsel in fear for their lives, rendering it difficult or impossible for many of them to perform their professional obligations to HSBC and Hermitage.

14. In addition, members of the Criminal Enterprise within the Russian Interior Ministry, including Lt. Colonel Kuznetsov, have initiated criminal proceedings against two of Hermitage's Russian lawyers, Eduard Khayretdinov and Vladimir Pastukhov. Messrs. Khayretdinov and Pastukhov have been protecting the interests of HSBC and Hermitage in Russia by participating in the conduct of Hermitage's investigation and by representing Hermitage in various civil and criminal matters in an effort to protect them against the conspiracy.

15. Hermitage is actively taking steps to protect its interests in both the criminal and civil proceedings. Through various civil proceedings, Hermitage and HSBC continue to seek the recovery of the misappropriated Hermitage Companies. They also seek to prevent the Criminal Enterprise from bankrupting and liquidating the Hermitage Companies, in an endeavour to prevent the destruction of essential evidence in Russia. Hermitage's and HSBC's efforts have so far met with some success. For example, in July 2008, they obtained the appointment of a Receiver for a company registered in the British Virgin Islands (BVI), Boily Systems Limited ("Boily Systems"), which had represented itself in Russia as the new owner of the misappropriated Hermitage Companies. The Receiver, appointed by the High Court of the British Virgin Islands, has in turn filed several lawsuits and criminal complaints in Russia that seek to preserve those assets that were misappropriated from HSBC and the Hermitage Fund.

16. As a result of the conspiracy, Hermitage now seeks discovery for use in two civil proceedings and two criminal proceedings. The actions include the following:

- 1) Case Number 1: An action against Pluton and Boily Systems to nullify the fraudulent sales transaction with respect to the stolen Hermitage Companies (Mahaon, Parfenion, Rilend) in the Tatarstan Republic Arbitration Court. Case Number A65-7299/09; Exhibit 2.
- 2) Case Number 2: An action against Boily Systems and Moscow Tax Bureau No. 13 to vindicate the legal rights of Hermitage to the stolen Hermitage Companies in the Moscow Region Arbitration Court. Case Number A41-8992/09; Exhibit 3.
- 3) Case Number 3: Criminal charges against Hermitage attorney, Eduard Khayretdinov, authorized in the Simonovsky District Court of Moscow for the alleged use of false powers of attorney. Case Number 360138; Exhibits 4 & 5.
- 4) Case Number 4: Criminal case opened against Viktor Markelov (as purported director of stolen Hermitage Companies) and other unidentified individuals in the Tverskoi District Court of Moscow and the Vakhitovsky District Court in Kazan for the fraud and theft of U.S. \$230 million from the Russian Treasury. Defendant Markelov gave false statements alleging involvement of the attorney for Hermitage and his clients (Hermitage and HSBC) in the very fraud of which they have been victims. Upon information and belief, formal charges are imminent. Case Number 242972; Exhibits 6 - 9.

17. These Russian legal actions are the foreign legal proceedings (“Case Numbers 1 – 4”) for which Hermitage now seeks discovery pursuant to 28 U.S.C. §1782. Further details on Case Numbers 1 through 4 are provided in Section XIV, *infra*.

18. Hermitage seeks discovery in this jurisdiction of documents and testimony essential to determining the scope of the conspiracy and its beneficiaries. Specifically, Hermitage seeks the following records:

- 1) records held by the New York Banks which would help Hermitage identify the ultimate beneficiaries of the fraudulent tax refunds; and
- 2) documents and testimony from RenCap Securities Inc. (“RenCap”), a New York-based broker dealer registered with the U.S. Securities & Exchange Commission, which may help establish that a strikingly similar tax refund fraud involving RenCap’s former “cousin” companies (Rengaz and the “Rengaz Subsidiaries”) was perpetrated a year earlier by some of the same individuals and banks who later used the same techniques against Hermitage. Identifying the perpetrators of both frauds will provide Applicant Hermitage with important evidence that it is the victim, not the perpetrator, of a fraud that cost the Russian Treasury \$230 million.

19. The information and documents Hermitage seeks from RenCap and the New York Banks are critical to the Russian actions and are found uniquely in the possession of the named business entities located within this Court’s jurisdiction. Neither the Russian judicial system nor any of the courts in particular has displayed any hostility

to the use of discovery obtained in the United States with the aid of the federal district courts.

20. Despite the sensitive nature of the conspiracy Hermitage has alleged, which includes the participation of certain Russian government officials, no tribunal in the Foreign Proceedings has displayed opposition to the discovery of evidence that would establish the existence of the conspiracy – whether that evidence comes from within or outside of Russia. Further, Hermitage has not circumvented any Russian discovery rules or restrictions on the gather of proof in seeking assistance from the United States, nor does the request follow on the heels of an unsuccessful effort to obtain the same or similar discovery in any of the pending proceedings.

21. Hermitage’s goals in prosecuting and defending the actions are to: (1) recover the Hermitage Companies from the Russian Criminal Enterprise, and (2) defend against criminal proceedings which were instigated by Russian Interior Ministry officers who are members of the Criminal Enterprise and which target Hermitage, Hermitage executives, and the lawyers who have represented HSBC and Hermitage in exposing and combating the fraud in Russia. The documents and information will also be used to file amended criminal complaints in relation to the frauds that took place in Russia and will allow the authorities to bring the perpetrators to justice.

II. HERMITAGE BACKGROUND

22. Hermitage was founded in April 1996 to provide Western investors access to the Russian stock market. The primary fund that Hermitage advised, the Hermitage Fund, invested mainly in the Russian oil and gas sector. It was extremely successful. The fund grew in size from U.S. \$25 million in 1996 to more than U.S. \$4 billion by the end

of 2005. The fund was also one of the largest taxpayers in Russia, paying more than U.S. \$350 million in 2006 to the Russian government and making it a larger taxpayer than Gazprombank (one of the top five largest banks), Aeroflot (the largest Russian airline) and Gaz Auto (the largest Russian auto producer).

23. Over that same period, Hermitage's executives reached the conclusion that corruption inside the large state-owned companies in Russia had become so extreme and threatened minority shareholder rights to such a degree that it was impossible to ignore. As a result, Hermitage and its CEO, William Browder, became anti-corruption, shareholder-rights activists.

24. In its work, Hermitage conducted ongoing and in-depth forensic research into the various forms of corruption at large Russian state-controlled companies. The firm would then share its findings with major international and Russian mass media in an effort to prompt change. The companies where Hermitage was outspoken as a shareholder activist included Gazprom (state-controlled gas monopoly), Sberbank (Russia's largest bank), Unified Energy Systems (electricity monopoly) and Surgutneftegaz (one of the largest Russian oil producers). Over ten years, more than 1,000 articles reporting on Hermitage's anti-corruption work were published in newspapers and magazines including The New York Times, The Wall Street Journal, Business Week and the Financial Times. Business schools from Harvard, Stanford and the University of Chicago have published case studies on Hermitage's shareholder activism. The results of Hermitage's work have included the dismissal of corrupt senior executives, the exposure of numerous corrupt schemes, and the passage of new laws and regulations protecting minority shareholder rights at Russian companies.

25. This investment approach contributed materially to the positive investment returns of the Hermitage Fund. As discussed below, however, it also created a number of high-level enemies for both Hermitage and Mr. Browder within the Russian government and the Russian private sector. Hermitage has been subject to politically-directed persecution by Russian authorities in retaliation for its wide ranging whistleblowing regarding Russian corruption. *See* “Allegations of politically-motivated abuses of the criminal justice system in Council of Europe member states,” (provisional version adopted by the Council of Europe Parliamentary Assembly Committee on Legal Affairs and Human Rights, June 23, 2009), by Special Rapporteur Sabine Leutheusser-Schnarrenberger, 87-91.¹ Hermitage’s first indication that it and its executives would become targets came on November 13, 2005, when, after living in Russia for nearly ten years, Hermitage CEO William Browder was abruptly denied entry into the country. He was simultaneously declared a “threat to national security” by the Russian government. Following this, Mr. Browder relocated Hermitage’s operations to London.

III. THEFT OF THE HERMITAGE COMPANIES AND FRAUDULENT COURT JUDGMENTS

26. Mr. Browder immediately attempted to restore his Russian visa. He ultimately reapplied. Rather than receiving a new visa, however, on February 17, 2007, Mr. Browder learned that staff at Hermitage’s office had received a phone call from Artem Kuznetsov, a Lieutenant Colonel in the Tax Crimes Division of the Moscow Interior Ministry, requesting an informal meeting. When asked for the specific purpose of the meeting, Lieutenant Colonel Kuznetsov replied, “As far as I understand, [the head of your firm] sent in an application requesting permission to enter the territory of the

¹ The report is available at http://assembly.coe.int/CommitteeDocs/2009/20090623_abusesJUR_E.pdf.

Russian Federation. ... I just wanted to drop by, discuss, if it would be possible, just to go over the gist of the questions we had for you.”

27. Lt. Col. Kuznetsov stressed that it “was up to Hermitage” to agree to the informal meeting he was proposing. To avoid being targeted with requests for bribes, Hermitage has a policy of never having informal meetings with members of Russian law enforcement agencies. Thus, Hermitage asked for the questions to be produced officially in writing. Lt. Col. Kuznetsov refused. Interpreting Lt. Col. Kuznetsov’s insistence on an informal approach as an attempt to extort money in return for a positive report on Mr. Browder’s visa application, Hermitage did not agree to meet with him.

28. Less than four months later, on June 4, 2007, the same Lt. Col. Kuznetsov led 25 officers from the Moscow branch of the Russian Interior Ministry in a raid on the Hermitage Moscow office. The officers removed Hermitage’s computer server, virtually all of its computers, and dozens of boxes of confidential financial documents and records. Following the raid of Hermitage’s offices, Lt. Col. Kuznetsov joined 25 officers in an ongoing raid on the offices of Firestone Duncan. The officers seized all of the original statutory and financial documents of the Hermitage Companies and removed Firestone Duncan’s computer server, numerous computers and attorney-client privileged documents relating to all of Firestone Duncan’s clients. Enough material was seized to fill two vans.

29. The official justification for the raid of the two offices was an investigation that had been opened into an investment company called Kameya LLC (“Kameya”), which was owned by an international client of Hermitage. It was never explained why records and documents for over 20 companies unrelated to Kameya

(including the Hermitage Companies) were taken by the Interior Ministry officers during the raid. The documents were then kept in the custody of Major Karpov of the Moscow branch of the Interior Ministry.

30. Moscow court records state that the investigation of the Kameya case was instituted by Lt. Col. Kuznetsov of the Moscow Branch of the Russian Interior Ministry—the same officer who had led the raid on the offices of Hermitage and its outside counsel. In addition to being sanctioned by senior officials in the Moscow branch of the Interior Ministry, court records showed that the Kameya case was initiated in a report written by A.I. Kuvaldin, Captain of Federal Security Service (the FSB, the successor to the KGB). His report was authorized for investigation by Viktor Voronin, the Head of the Economic Counter Espionage Department of the Russian Federal Security Service.

31. The investigation alleged that Mr. Cherkasov, as general director of Kameya, was guilty of tax underpayment on the basis that the company had misapplied the terms of the Russia-Cyprus Tax Treaty and therefore owed U.S. \$44 million in unpaid taxes.

32. Hermitage was unaware that any tax claims or questions had been raised by the tax authorities who had been auditing Kameya for several years. In accordance with the tax law in Russia, the only agency which is entitled to initiate/raise a tax claim against a company is the Tax Authority. The Tax Authority will typically only raise such a claim following an audit.

33. As soon as Hermitage became aware of the allegations, its Russian lawyers wrote to the Russian Ministry of Finance, the Russian Federal Tax Service, and

Moscow Tax Bureau No. 7 (the office that processed Kameya's tax returns). Each of these authorities confirmed that Kameya had applied the correct tax rate. The Moscow Tax Bureau No. 7 stated that Kameya did not owe any taxes and even stated that it had discovered that Kameya had actually overpaid approximately U.S. \$140,000 in taxes. Hermitage was perplexed as to why the Interior Ministry officers, in the absence of any claim by the Tax Authority, would initiate and pursue a case in complete disregard of both the available evidence and established procedure.

34. In the early part of this year, yet another full audit of Kameya was carried out. Once again, the Tax Authority confirmed that absolutely no violations had occurred. The result of this audit was communicated by letter to the investigators leading this case in Russia and a formal request that the case be dropped was made. However, the case was not dropped. The ongoing case against Mr. Cherkasov and Kameya appears to be a political weapon (as with the case against Mr. Browder set out at ¶¶ 50 – 51 below) for bringing continued, sustained pressure to bear on Mr. Browder and Hermitage. To this end, despite the groundless nature of the allegations, the investigators have, in breach of a significant number of established procedures, continued to pursue the case against Mr. Cherkasov and, on April 3, 2008, issued an international search order for Mr. Cherkasov while simultaneously requesting that the Russian National Interpol Bureau declare an Interpol search for him.

35. In the months after the raid on its offices in June 2007, however, the full extent of the conspiracy was not yet clear. This situation changed with a series of events that occurred during the remainder of 2007 and into 2008.

36. In October 2007, Hermitage received a telephone call from a bailiff who requested information about one of the Hermitage Companies. When Hermitage's lawyers at Firestone Duncan checked the statutory addresses of the Hermitage Companies for correspondence, they found notices from the St. Petersburg Arbitration Court. These notices stated that the Hermitage Companies had been the subject of recent legal proceedings initiated by an unknown company called Logos Plus.

37. At the time, Hermitage believed that the Hermitage Companies were still controlled by HSBC as trustee of the Hermitage Fund.

38. Neither Hermitage nor HSBC had ever been notified of any lawsuit or legal proceedings in St. Petersburg, and as a result, neither Hermitage nor HSBC had ever appeared in court to defend the Hermitage Companies.

39. Furthermore, the Hermitage Companies had never conducted any business with the named plaintiff, Logos Plus.

40. Nevertheless, a number of forged and back-dated contracts between the Hermitage Companies and Logos Plus were created by the Criminal Enterprise and filed with the St. Petersburg Arbitration Court. These contracts defied logic, purporting to require Logos Plus (which had total capital at the time of just U.S. \$300) to pay the Hermitage Companies approximately U.S. \$500 million to buy Gazprom shares. Because the Gazprom shares had nearly doubled in value since the contract was allegedly signed, and as a result of the Hermitage Companies having failed to deliver the stock allegedly due under the contract, Logos Plus claimed the Hermitage Companies owed it U.S. \$371 million in lost profits. Significantly, the contracts contained confidential information about the Hermitage Companies which could only have been gleaned from the corporate,

statutory and financial files seized by the Russian Interior Ministry in its June 2007 office raids. This information included bank account information, information on assets and holdings, custodian banks, and the addresses of registration and incorporation of the Hermitage Companies.

41. The court documents show that three unknown lawyers – Andrei Pavlov, Julia Mayorova and Ekaterina Maltseva – had appeared in the St. Petersburg Arbitration Court on behalf of the Hermitage Companies. Hermitage and HSBC had no prior knowledge of or acquaintance with these lawyers, had never hired or appointed them, and have never authorized or ratified their appointments as attorneys or agents of any kind. In short, these were not Hermitage’s or HSBC’s counsel. Nonetheless, these attorneys stated to the court that they were appearing and acting on behalf of the Hermitage Companies, acknowledged the validity of the Logos Plus contracts, raised no defense to the fake claims, and conceded full liability. As a result, Judges Kuznetsov, Alexeev, and Orlova awarded Logos Plus U.S. \$371 million in damages in the various proceedings.

42. A review of the court documents revealed numerous deficiencies and problems with the St. Petersburg judgments. According to court records, for example, original documents were not produced and examined as evidence. The judges nevertheless accepted the claims and did not verify the validity of copy documents or the authority of the persons submitting them. The person who submitted the claims on behalf of Logos Plus was an unknown individual who used a stolen passport. The same individual was a signatory to the forged contracts. All powers of attorney submitted to the court were from unauthorized persons and were not duly verified. The forged contracts that formed the basis of the dispute were littered with mistakes (*e.g.*, referencing bank

accounts that had not yet been opened) and inaccuracies (using addresses that were incorrect as of the relevant time). Thus, while the forged contracts showed the forgers' familiarity with the inside information gleaned from confidential corporate files seized by the Interior Ministry during their June 2007 raids, the forgers clumsily and mistakenly applied this inside information in a way that betrayed their lack of genuine knowledge of, or connection to, Hermitage.

43. Precisely the same fraudulent procedures had been repeated against the Hermitage Companies before arbitration courts in Moscow and the Tatarstan Republic in November 2007. The plaintiffs were unknown shell companies similar to Logos Plus named Instar and Grand Aktive. Indeed, the forged contracts used as the basis for the claims were essentially identical across the cases except that the parties to the contracts and the figures had been changed.

44. In some of the cases, lawyers acting for the plaintiff shell companies submitted as evidence unique, non-public financial statements for the Hermitage Companies that were seized by the Interior Ministry in its June 2007 raids of Hermitage and Firestone Duncan. In addition, Andrei Pavlov, one of the attorneys purporting to act for the Hermitage Companies in the sham St. Petersburg proceedings, appeared as counsel for the plaintiff, Grand Aktive (*i.e.*, in opposition to the Hermitage Companies), in the Tatarstan Republic proceedings.

45. Ultimately, Russian courts in St. Petersburg, Moscow and Kazan rendered U.S. \$973 million in fraudulently-obtained judgments against the Hermitage Companies.

46. A review of Russian corporate registry documents reflecting the status of the Hermitage Companies disclosed that the Hermitage Companies had been stolen from

HSBC and re-registered in the name of Pluton, a Russian shell company wholly-owned by Viktor Markelov, a Russian man who had been convicted of manslaughter in 2001. Pluton had then registered new charters for the stolen Hermitage Companies. Furthermore, the excerpts from the Russian corporate registry showed that the HSBC executives, who had served as directors of the Hermitage Companies, had been replaced by Mr. Markelov and two other Russian individuals, Mr. Khlebnikov and Mr. Kurochkin, both of whom also had criminal convictions.

47. Four items would have been necessary to change the ownership of the Hermitage Companies in the Russian corporate registrar: the corporate stamps, the official charters of the companies, the original tax certificates, and the original corporate registration certificates. Each of these items for the Hermitage Companies was seized by Lieutenant Colonel Kuznetsov in the office raids of June 4, 2007. They have not been returned and continue to remain in the custody of Major Pavel Karpov of the Russian Interior Ministry.

IV. HERMITAGE CRIMINAL COMPLAINTS AND RETALIATION FROM THE RUSSIAN INTERIOR MINISTRY

48. Soon after discovering the theft of the Hermitage Companies and the multi-million dollar claims against them, in late October 2007, two of the Russian lawyers representing Hermitage (and HSBC as the Hermitage Fund trustee), Vladimir Pastukhov and Eduard Khayretdinov, drafted a criminal complaint setting forth all the details of the fraud and specifically naming Lieutenant Colonel Kuznetsov and Major Karpov as key involved individuals. On December 3 and 10, 2007, Hermitage and HSBC filed a total of six criminal complaints with the Russian General Prosecutor's

Office, the Russian State Investigative Committee, and the Internal Affairs Department of the Russian Interior Ministry.

49. The official reaction to these complaints was disappointing. One of the complaints was handed to Major Karpov of the Moscow Interior Ministry to investigate further, despite the fact that he was named within as a key suspect. One was rejected because “no crime had been committed.” Three more of the complaints were dismissed or ignored. The final complaint was forwarded to a Major Rassokhov from the Major Crimes Department in the Russian State Investigative Committee, who opened an official investigation in February 2008. Upon information and belief, the first people Major Rassokhov interviewed in the course of his investigation were Lieutenant Colonel Kuznetsov and Major Karpov.

50. The Interior Ministry moved swiftly to retaliate against Hermitage’s complaints and the Rassokhov investigation. Less than one month after Major Rassokhov opened his investigation, Major Karpov (who, as set out above, had custody of the original documents of the Hermitage Companies and was the target of the HSBC/Hermitage criminal complaints) and a group of high-ranking officers from the Interior Ministry travelled from Moscow to Kalmykia (a region in Southern Russia) to put pressure on the local Interior Ministry in the Russian republic of Kalmykia to open up a criminal proceeding against Mr. Browder.

51. The charges against Mr. Browder allege that he had submitted tax declarations in 2001 containing inaccurate statements on behalf of two Hermitage Fund companies, Dalnaya Step and Saturn Investments, which were owned by HSBC and for which he had then been a director.

52. These criminal proceedings, as with the proceedings against Mr. Cherkasov, are without merit and have been opened and pursued in disregard to both the available evidence and established criminal procedure. The proceedings were opened four years after the statute of limitations for the examination of tax declarations had expired (the statute of limitations with respect to 2001 expired in 2004) and, as in the proceedings against Mr. Cherkasov, in the absence of any tax claims having been initiated by the relevant government tax authority. During the course of one day, February 27, 2008, as a result of the political pressure being applied by the Interior Ministry officers, the Kalmyk investigators opened the two cases against Mr. Browder, merged them into one case, issued an accusation against Mr. Browder and issued a domestic search order for him, actions that would normally take a matter of weeks when following correct procedure. Both companies, Dalnaya Step and Saturn Investments (see ¶ 49), have been fully audited by the Kalmyk tax authorities following which it was confirmed that both companies had applied all tax benefits lawfully and appropriately with no tax claims outstanding against either company. Nonetheless, the case has proceeded. Mr. Browder has not been duly notified of the proceedings and his lawyers have been unlawfully denied access to the investigation. Despite these facts, the case was quickly elevated to the highest level of law enforcement in Russia, the Investigative Department of the Russian Interior Ministry. On April 8, 2008, an instruction was issued by an officer in the Federal Interior Ministry to issue an international search notice for Mr. Browder if necessary.

53. Upon information and belief, these proceedings against Mr. Browder are politically motivated, unfounded, and are being used to pressure him to halt his

investigation into the tax refund fraud and to prevent the public disclosure of the results of that investigation.

54. In March 2008, in apparent retaliation for the HSBC/Hermitage criminal complaints, Major Karpov advanced the Kameya investigation that had originally been used as the official basis for the raids and seizure of corporate records of the Hermitage Companies, which were used in the fraud. Major Karpov issued charges against Mr. Cherkasov alleging an underpayment of taxes (*see* ¶¶ 31 – 34 above). However, Major Karpov’s charges cited tax rates that do not exist in the Russian Tax Code and contradicted formal conclusions of local tax authorities who, based on comprehensive audits of Kameya’s operations, repeatedly found that it was fully compliant with all tax requirements.

55. On November 24, 2008, Sergei Magnitskiy was arrested in relation to the Kalmyk proceedings. This is despite the fact that Mr. Magnitskiy had no formal relationship to the Kalmyk companies in 2001. Court records show that the petition for his detention that was filed by the Interior Ministry was submitted to the court after the deadline prescribed by statute had passed. Nonetheless, the judge approved the petition and sanctioned his continued detention, which has now extended for a period of nearly nine months, refusing Mr. Magnitskiy bail. Before his arrest, Mr. Magnitskiy had sworn out several witness statements regarding what he had discovered about the Criminal Enterprise’s theft of the Hermitage Companies and the involvement of Lt. Col. Kuznetsov and Major Karpov. A month after Mr. Magnitskiy gave his witness statement, Lt. Col. Kuznetsov joined the Interior Ministry’s investigation team. Two weeks later, the team carried out Mr. Magnitskiy’s arrest.

V. THEFT OF TAXES PREVIOUSLY PAID BY THE HERMITAGE COMPANIES

56. In June 2008, Hermitage received information from the Moscow Company Registration Office that certain elements of the Criminal Enterprise had opened accounts for the stolen Hermitage Companies at two very small Russian banks, Universal Savings Bank (“USB”) and Intercommerz Bank (“Intercommerz”). The Criminal Enterprise had opened these accounts in December 2007 (six months after they had stolen the Hermitage Companies).

57. As a result of both banks being so small (USB had U.S. \$1.5 million of capital and Intercommerz had U.S. \$10.5 million), any significant movements of cash into the banks were easily discernible from the monthly deposit disclosure reports required of Russian banks. Shortly after the Criminal Enterprise opened accounts for the stolen Hermitage Companies at the banks, U.S. \$230 million flowed into these banks, causing their deposits to spike to a level many times higher than the banks’ historical average. This unusual spike in deposits was approximately equal to the amount of taxes that Hermitage had paid to the Russian government on behalf of the Hermitage Companies in 2006.

58. The fraudulent court judgments from St. Petersburg, Moscow, and the Tatarstan Republic, disclose that the ultimate judgments were cumulatively equal in size to the profit that the Hermitage Companies had earned from investments in 2006 (U.S. \$973 million). This gave rise to suspicion that members of the Criminal Enterprise, having represented themselves as directors of the Hermitage Companies, could have filed fraudulent amended tax returns claiming that the Hermitage Companies’ income was

fully offset by those court judgments and so U.S. \$230 million of paid income tax should be duly returned.

59. According to records from the Kazan investigation (see discussion on Case No. 4, *infra* at ¶¶ 153-158), the Criminal Enterprise had indeed falsely claimed that the U.S. \$230 million of taxes that were paid by the Hermitage Companies in 2006 should be refunded. The tax refund applications totaling U.S. \$230 million were checked and approved by officials, including E.I. Khimina and Sergey Zchemchuzhnikov, the head and deputy head, respectively, of Moscow Tax Bureau No 25, and O.G. Stepanova and Olga Tsymai, the head of the Tax Bureau and of the Department, respectively, of Moscow Tax Bureau No 28 (where the companies had been transferred by the Criminal Enterprise shortly prior to the tax refund application). The requisite approvals were made in the space of two days in December 2007. According to court records, before approving the tax refund applications, the responsible Moscow tax officials had requested the Moscow Interior Ministry to question the persons applying for the tax refunds and the parties who were awarded the multi-million judgments (directors of Instar, Grand Aktive and Logos Plus), and received confirmation from the Moscow Interior Ministry that the parties were legitimate. This was in spite of the fact that Hermitage had filed six criminal complaints three weeks earlier with the three heads of the Russian law enforcement agencies. The 255-page complaints described the theft of the companies, the fraudulent appointment of directors to Hermitage Companies, the phony court judgments, and the false identity of the director of Logos Plus (in one of the complaints had been forwarded to the Moscow Interior Ministry for investigation). The money from the tax refunds was transferred to the newly opened accounts at USB and Intercommerz, subsequently

converted into dollars, and ultimately routed through New York Banks to accounts which upon information and belief are linked to members of the Criminal Enterprise.

60. Following the theft of U.S. \$230 million from the Russian Treasury, the Criminal Enterprise attempted to liquidate the Hermitage Companies. This was done by re-registering the three Hermitage Companies from Moscow to the city of Novochoerkassk in southern Russia, where further changes to the corporate registry were entered. Specifically, the registry now showed the newly-registered BVI (British Virgin Islands) entity Boily Systems as being the owner of the Hermitage Companies. In addition, Alexander Smetanin, a vocational skills instructor in Novochoerkassk, was listed as the owner of Boily Systems, and Rimma Starova, a 70-year old pensioner, was listed as the sole director.

61. In March 2008, a month after Viktor Markelov transferred the stolen Hermitage Companies to Mr. Smetanin of Boily Systems, Mr. Smetanin issued a resolution to liquidate the Hermitage Companies due to the “inexpediency of continuing with their commercial operations.” HSBC and Hermitage learned of the decision to liquidate the companies in June 2008 when it was entered into public records, and immediately thereafter initiated legal actions in Russian and BVI courts to stop the liquidation.

62. As a result of Hermitage’s actions, the Russian arbitration courts have granted an injunction, prohibiting any further changes to the corporate registry relating to liquidation until after full hearings. Arbitration Court of Moscow Region, Court Injunctions 004921, 004922, 005083.

63. In addition, in July 2008, the BVI High Court issued an injunction prohibiting Boily Systems from any dealings with the three Hermitage Companies. *Glendora Holdings Ltd. v. Boily Systems Ltd.*, BVIHCV No 2008/0198 (July 24, 2008) (umbrella order). The BVI High Court also appointed a Receiver to Boily Systems. The Receiver revoked powers of attorney that had been issued by Boily Systems to Mr. Smetanin and his associates. In December 2008, the Supreme Court of the BVI ruled against Boily Systems and recognized HSBC as the lawful owner of the three Hermitage Companies. *Glendora Holdings Ltd. v. Boily Systems Ltd.*, BVIHCV No 2008/0198 (Dec 11, 2008) (order).

64. Despite these court rulings in Russia and the BVI, the Criminal Enterprise has filed bankruptcy petitions in Russia for the Hermitage Companies, which, if successful, will result in the companies' ultimate liquidation and the destruction of documents relating to the Criminal Enterprise and the fraud. Although these petitions have been approved, HSBC and Hermitage are now appealing to higher courts in Russia. Further, only months after the Criminal Enterprise laundered part of the U.S. \$230 million refund through USB (one of the two small Russian banks that initially received the refund), they applied to liquidate USB itself. The Central Bank of Russia granted the request in 2008.

VI. FURTHER CRIMINAL COMPLAINTS AND FURTHER RETALIATION FROM THE RUSSIAN INTERIOR MINISTRY

65. At the end of July 2008, following their discovery of the fraudulent tax refund request made by the Criminal Enterprise, HSBC and Hermitage filed seven more criminal complaints with the Russian General Prosecutor's Office, the Ministry of the Interior, the Federal Audit Chamber, the Federal Tax Service, the Russian Finance

Ministry, the Federal Security Service (FSB), and the Russian State Investigative Committee. These complaints were based upon the results of Hermitage's investigation into what by that time Hermitage had come to realize was a massive tax fraud against the Russian Treasury. The complaints also provided the details Hermitage had uncovered (many of which are set forth in this declaration) as to how the stolen Hermitage Companies had been misused. Because of Hermitage's experience with the first round of its criminal complaints, and in the hope that some measure of public knowledge and scrutiny would prevent further retaliation, Hermitage shared some of the results of its investigations with The New York Times and the Russian daily business newspaper, Vedomosti. Both newspapers undertook their own investigations and later published comprehensive articles setting forth details of the Criminal Enterprise's fraud.

66. The second round of criminal complaints caused a second retaliatory response from the government-affiliated members of the Criminal Enterprise. A new criminal case was opened in the city of Kazan (Case No. 4, see *infra* at ¶¶ 153-158) which appears, based on the details of the Hermitage investigation discussed below, to have been an attempt to frame Hermitage, HSBC, and their lawyers for orchestrating the very fraud that was the subject of Hermitage's own criminal complaints. Viktor Markelov, the convicted felon who was the registered owner of the company that took control of the three re-registered Hermitage Companies, gave statements against Eduard Khayretdinov, the lawyer acting for Hermitage and HSBC.

67. Upon information and belief, the Criminal Enterprise, as part of its plan to implicate Mr. Khayretdinov, dispatched two men on August 18, 2008, from Moscow to London. The men brought a package with them which, upon their arrival in London, they

deposited with DHL, Lambeth, for delivery to the Moscow offices of Eduard Khayretdinov. A London Metropolitan Police investigation found that the two men listed the return address of Hermitage's London office on the package before depositing it at the DHL Lambeth Depot for delivery to Moscow.

68. The package arrived at the offices of Mr. Khayretdinov at 4:56 pm on August 20, 2008. Less than ninety minutes later, four Interior Ministry officers raided the office. The officers immediately seized the still-unopened package which, according to a summary description made by the attending Interior Ministry officers, contained confidential files relating to the stolen Hermitage Companies.

69. Meanwhile, certain members of the Criminal Enterprise managed to take control of the Rassokhov investigation mentioned above at paragraph 49. Lt. Colonel Kuznetsov was appointed to the investigation team despite the fact that he was a central suspect.

70. In addition, Lt. Colonel Kuznetsov initiated criminal proceedings against two of Hermitage's Russian lawyers, Vladimir Pastukhov and Eduard Khayretdinov. Charges have been brought against Eduard Khayretdinov (*i.e.* Case Number 3). Incredibly, the investigation alleges that Messrs. Pastukhov and Khayretdinov could not properly rely on powers of attorney issued by HSBC because HSBC had been removed (albeit unlawfully) from the registry of the Hermitage Companies. According to this theory, Hermitage's attorneys had falsely represented that they were counsel for the Hermitage Companies. The investigators assert that the only parties that could issue valid powers of attorney were the listed owners of the companies – *i.e.*, those members of the Criminal Enterprise who stole the Hermitage Companies and fraudulently installed

themselves as their new directors. The investigation apparently relies on testimony from Viktor Markelov, the convicted felon and member of the Criminal Enterprise whom the criminal complaints filed by HSBC/Hermitage implicated in the theft of the Hermitage Companies.

VII. APPROACH BY RENAISSANCE OFFICERS AFTER HERMITAGE MADE THE CRIMINAL COMPLAINTS IN DECEMBER 2007

71. On Thursday November 29, 2007 (five months after Lt. Col. Kuznetsov's initial raid), Mr. Khayretdinov notified Major Karpov of the Interior Ministry that Hermitage and HSBC had discovered details about the Hermitage Companies being stolen and the fraudulent court judgments being awarded against them. Mr. Khayretdinov stated that Hermitage and HSBC would shortly be filing a criminal complaint about the matter. The following day (Friday), Mr. Browder received a telephone call from Igor Sagiryan, then President of Moscow-based Renaissance Capital. Renaissance Capital is an affiliate of Renaissance Capital Holdings Limited and its Group of companies ("Renaissance").

72. Having reviewed the transcript of this call, it appears unusual for a number of reasons. Firstly, Mr. Browder had only previously met Mr. Sagiryan many years earlier, and the two men had not spoken since. Furthermore, there did not appear to be any business reason for the call, as Hermitage had only a minor historical commercial relationship with Renaissance Capital as a client of its Russian stock brokerage business. Finally, the timing of the call – the day after Hermitage's lawyer had notified the Interior Ministry of its pending complaint – was inherently suspicious.

73. During the course of the conversation, Mr. Sagiryan explained that he was aware of all of Hermitage's problems in Russia. It is not clear how he would be aware of this information, as the only people who could have known about the problems during this time period were senior executives at Hermitage, its lawyers, and the members of the Criminal Enterprise who had orchestrated the fraud. Mr. Sagiryan was not associated with Hermitage, nor was he a lawyer. During this call, Mr. Sagiryan expressed an urgent interest in meeting with Mr. Browder. Mr. Browder agreed to meet in ten days time, upon his return from a planned business trip abroad.

74. On Monday, December 3, 2007, the first working day after Mr. Sagiryan's call to Mr. Browder, Jamison Firestone, the Managing Partner of Firestone Duncan (Hermitage's outside counsel), also received a call from Mr. Sagiryan in which a meeting was set up for the following day at Mr. Sagiryan's office at Renaissance Capital. I have reviewed Jamison Firestone's witness statement describing this meeting, which confirms that Mr. Firestone had never met Mr. Sagiryan before. During the course of the meeting, Mr. Sagiryan made it clear that he was fully aware of the situation facing Hermitage. He said his knowledge was based on reports that his contacts in the Federal Security Service (FSB) had prepared for him. He urged Mr. Firestone to persuade Mr. Browder and Hermitage to allow Mr. Sagiryan to facilitate the liquidation of the stolen Hermitage Companies. He told Mr. Firestone that the Hermitage situation was supervised at the highest level of the government and that President Putin held regular meetings to receive updates on its progress. He also claimed that the FSB controls the Hermitage investigation.

75. In the meeting, Mr. Sagiryan also suggested that someone from Firestone Duncan meet with his contact at the FSB (the successor organization to the Russian KGB). On December 6, 2007, Jamison Firestone's partner, Andrei Sandakov, went to the FSB headquarters to meet with Denis Vasiliev, from the Economic Counter Espionage Department of the FSB (Department "K"). I have reviewed the witness statement of Mr. Sandakov. Mr. Vasiliev told Mr. Sandakov that the FSB "were contacted by their friends at Renaissance Capital, who were very concerned about the theft of the Hermitage Companies." Mr. Vasiliev suggested to Mr. Sandakov that Firestone Duncan file a criminal complaint with the FSB. This was an unusual recommendation in light of the fact that the FSB is an intelligence-gathering organization and is not a law enforcement body. Mr. Vasiliev also revealed to Mr. Sandakov that the FSB was supervising the Kameya investigation, the original investigation which had been used as a pretext to raid Firestone Duncan's office and to seize Hermitage's corporate documents in June 2007. The apparent links between the FSB, Kameya investigation, and Renaissance Capital suggests that Renaissance Capital was in some way connected to the FSB and others who were involved in orchestrating the fraud.

76. The meeting between Mr. Sagiryan and Mr. Browder was arranged for December 11, 2007, at the Dorchester Hotel in London (see above ¶ 71). On December 10, 2007, Mr. Browder received a telephone call from Stephen Jennings, who at the time was the Chief Executive Officer of RenCap (RenCap is the entity from whom Hermitage now seeks discovery) and the main shareholder of Renaissance Capital. (As of the date of this declaration, Mr. Jennings serves as the CEO of the Renaissance Group and is no longer CEO of RenCap itself.)

77. I have reviewed the transcript of this call. Mr. Jennings encouraged Mr. Browder to keep an open mind at the forthcoming meeting with Mr. Sagiryan, but emphasized that he did not want to mention Mr. Sagiryan's name on the telephone. Although Mr. Browder asked Mr. Jennings what the meeting was about, Mr. Jennings would not expand on what Mr. Sagiryan wanted to discuss.

78. Upon information and belief, the December 11, 2007, meeting between Messrs. Browder and Sagiryan went forward as planned. At the meeting, Mr. Sagiryan stated that he was fully aware of the theft of the Hermitage Companies and all of the legal problems that Hermitage was experiencing in Russia. Mr. Sagiryan said that he thought that Renaissance Capital would be able to help and suggested that he could arrange for the stolen Hermitage Companies to be liquidated.

79. Mr. Sagiryan's comments to Mr. Browder indicate that he was extremely desirous of obtaining Hermitage's agreement to the liquidation of the stolen Hermitage Companies. Mr. Sagiryan said that Renaissance Capital had experience in liquidating its own companies and that doing so gets rid of problems.

80. When Mr. Browder asked how liquidating a company would address Hermitage's specific issues, Mr. Sagiryan said that once a company is liquidated there are no more records, so no more investigations can take place. Mr. Browder and Hermitage saw no logic in his proposals and so declined the proposal from Mr. Sagiryan.

81. Approximately two weeks after Mr. Browder met with Mr. Sagiryan, the Russian Treasury paid U.S. \$230 million to the Criminal Enterprise's accounts at USB and Intercommerz. As discussed in more detail below, these funds were channeled through Raiffeissen Bank correspondent accounts held with the New York Banks.

VIII. POSSIBLE CONNECTION OF RENAISSANCE OFFICERS AND AFFILIATED ENTITIES TO THE FRAUD AGAINST HERMITAGE

82. The public records of the Central Bank of Russia appear to reveal how USB served as the conduit for laundering the fraudulent U.S. \$230 million tax refund in December 2007, and show that there were two additional spikes in deposits at USB that appear to be unusual. These previous spikes appeared in January 2007 and March 2007, approximately a year before the fraud against the stolen Hermitage Companies occurred. The spikes in deposits appeared to coincide with the opening of accounts held at USB by two entities, Selen Securities LLC and Financial Investments LLC. Large amounts of money flowed through USB shortly after the new accounts were opened. Within two months of the opening of the first account, USB deposits increased by U.S. \$38 million; within one month of the opening of the second account, USB deposits increased by U.S. \$59 million.

83. Selen Securities LLC and Financial Investments LLC were formerly wholly-owned investment subsidiaries of Rengaz Holdings Limited (“Rengaz”) held via a Cyprus holding company. Rengaz was a company created and managed by Renaissance to provide non-Russian investors with access to local shares of Gazprom, Russia’s large, state-controlled gas monopoly.

84. RenCap Securities is Renaissance’s New York-based broker-dealer. It is registered with the U.S. Securities and Exchange Commission (“SEC”) and is a member of the Securities Investor Protection Corporation and the Financial Industry Regulatory Authority. Upon information and belief, U.S. investors and investment funds with U.S. investors, clients of RenCap, purchased shares in Rengaz. Specifically, 13-F filings made

by U.S.-based investment managers that are available on the SEC's website disclose holdings of Rengaz that, upon information and belief, were supported with information and investor communications from the office of RenCap Securities in New York.

85. Selen Securities LLC and Financial Investments LLC (together, the "Rengaz Subsidiaries") were the local investment holding companies of Rengaz and were registered in Russia. As such, they were required to pay, *inter alia*, Russian tax on capital gains at the rate of 24%. In January 2006, the Rengaz Subsidiaries were sold to a Cyprus-based company, Connery Holdings Limited. Five days later, Connery in turn sold them to Connery's parent company registered in the BVI, Jets Ventures Holdings Limited. Later in 2006, the former Rengaz Subsidiaries were sold to Russian individuals.

86. Upon information and belief, the spike in deposits in the accounts of the former Rengaz Subsidiaries at USB in January and March 2007 could be connected to a possible tax refund as had been the case of the misappropriated Hermitage Companies at USB in December 2007. Some of the audited financial statements that Renaissance (or RenCap) distributed to their U.S. and other international clients showed that Rengaz's Subsidiaries had paid U.S. \$108 million in capital gains taxes in 2006. However, the former Rengaz Subsidiaries' filings with the Russian State Statistics Committee showed a tax payment of just U.S. \$1.1 million in 2006. Upon information and belief following a review of the two sets of financial statements, the Rengaz Subsidiaries had, in fact, paid the full U.S. \$108 million in early 2006, and then, as former Rengaz Subsidiaries, received a tax refund in late 2006 of approximately U.S. \$106.9 million, leaving a net payment of approximately U.S. \$1.1 million to the Russian Treasury.

87. It appeared from these documents, press reports, and other documents listed below that many techniques had been used to facilitate a tax refund fraud at the former Rengaz Subsidiaries similar to the ones that were used a year later against the misappropriated Hermitage Companies. According to the Moscow and the Tatarstan Republic arbitration courts (the same courts used in the fraud against Hermitage) the two former Rengaz Subsidiaries had been sued in April 2006 by shell companies (Megacell LLC, Poleta LLC and Optim-Service LLC), over the alleged non-delivery of Sberbank and Unified Energy System shares, which had risen in value. These lawsuits were based on the same type of contracts which were used a year later in the tax rebate fraud against the stolen Hermitage Companies.

88. Notably, the Rengaz 2005 and 2006 audited financial statements and offering memoranda showed that Rengaz was organized for the sole purpose of owning Gazprom shares for its U.S. and other investors. As such, Rengaz should never have owned any shares of Sberbank and Unified Energy Systems, suggesting that the Rengaz contracts presented in court, like the contracts submitted in courts against Hermitage companies a year later, were fraudulent.

89. The cases against the former Rengaz Subsidiaries indicate that the stock sales giving rise to the alleged liabilities against the former Rengaz Subsidiaries were structured to include three types of agreements: “Framework Agreements,” “Sales and Purchase Agreements” and “Cancellation Agreements.” These agreements were in exactly the same form as the agreements used to obtain the fraudulent judgments against the stolen Hermitage Companies a year later.

90. The court also showed that in each case the defense counsel for the former Rengaz Subsidiaries conceded the claims to the plaintiff in court by saying, “Hereby, the defendant accepts the claims and doesn’t have any objections.” In each case, the judge responded by saying, “the acceptance of the claim by the defendant releases the plaintiff from the requirement from proving the case.” This confession of liability without raising any defenses was identical to the litigation strategy of the purported “counsel” that appeared in court to “represent” the misappropriated Hermitage Companies and whose confessions of judgment resulted in U.S. \$973 million in fraudulently-obtained judgments against the stolen Hermitage Companies a year later. In the former Rengaz Subsidiaries’ cases, the confessions yielded awards of U.S. \$525 million against the two former Rengaz Subsidiaries (U.S. \$421 million to Poleta LLC against Financial Investments LLC, and U.S. \$104 million to Megacell LLC against Selen Securities LLC).

91. Records from the Russian EGRUL database disclose that a Mr. Alexei Sheshenia was the beneficial owner of Poleta LLC, the company that won a U.S. \$425 million claim against Financial Investments LLC (one of the two former Rengaz Subsidiaries) in the Tatarstan Republic Arbitration Court in April 2006. Mr. Sheshenia is the same individual who served as the owner and director of Grand Aktive, the company that obtained the fraudulent U.S. \$575 million judgment more than a year later, on November 13, 2007 in the Tatarstan Republic Arbitration Court against Parfenion, one of the stolen Hermitage Companies. In the proceeding, Viktor Markelov, a fraudulent owner of the stolen Hermitage Companies, purported to represent Parfenion and admitted full liability (*see* ¶¶ 41 through 46, *supra*). Like Mr. Markelov, the man who fraudulently re-

registered the Hermitage Companies, Mr. Sheshenia had previously been charged with manslaughter.

92. A case against another former Rengaz Subsidiary showed another common player in the Rengaz and Hermitage cases: Gennady Plaksin. Optim-Service LLC, the plaintiff in an U.S. \$80 million claim against a former Rengaz Subsidiary (Selen Securities LLC) in the Moscow arbitration court in April 2006 (a lawsuit that was never brought to fruition because the plaintiff failed to appear in court), was beneficially owned by Gennady Plaksin. The same Mr. Plaksin was also the owner and director of Instar LLC, the company which sued Rilend (another stolen Hermitage Company) in Moscow for U.S. \$322 million more than a year later, in October 2007 (*see* ¶ 43 above). Furthermore, Mr. Plaksin is the Chairman of the board of USB, the bank which upon information and belief accumulated the fraudulent tax refunds from the former Rengaz Subsidiaries and from the misappropriated Hermitage Companies.

93. Another case indicated that Poleta LLC, the plaintiff which won a U.S. \$421 million award against a former Rengaz Subsidiary (Financial Investments LLC) in the Tatarstan Republic Arbitration Court, was represented by the lawyer Andrei Pavlov of the Moscow law firm “Technology of the Law” in April 2006. This was the same Andrei Pavlov who represented Grand Aktive, the company that sued the stolen Hermitage Company Parfenion in the same Tatarstan Republic Arbitration Court in October 2007. In that case, as discussed above, a U.S. \$575 million fraudulent judgment was issued against the Hermitage Company (it was subsequently overturned by Hermitage’s real counsel). In yet another link between the judgments against the misappropriated Hermitage Companies and the former Rengaz Subsidiaries, the same

Andrei Pavlov also purported to act as a defense lawyer for one of the stolen Hermitage Companies (Rilend) in the St. Petersburg Arbitration Court where he raised no defense and admitted full liability.

94. Upon information and belief based on financial reporting filed with Goskomstat, the Russian State Statistics Committee, the former Rengaz Subsidiaries used U.S. \$419 million of court judgments to create losses to offset U.S. \$419 million of real profit those companies had genuinely earned. This appeared to be the same method used to create the “revised” net profit at the stolen Hermitage Companies, which was later used to apply for and receive a fraudulent tax refund.

95. Records held at EGRUL (the Russian registration chamber) indicate that on February 6, 2006, the former Rengaz Subsidiaries had re-registered their tax bases to Moscow Tax Bureaus Nos. 25 and 28. These were the same Tax Bureaus where the stolen Hermitage Companies had been re-registered before those companies were fraudulently awarded a U.S. \$230 million tax refund.

96. On information and belief, the former Rengaz Subsidiaries both had accounts with USB: the account of Financial Investments LLC was opened in December 2006, and that of Selen Securities LLC in March of 2007. Shortly after the accounts were opened, there were spikes in the USB’s deposits of approximately U.S. \$38 million in January 2007 and a further U.S. \$59 million in April 2007. USB was the same bank at which the Criminal Enterprise later opened accounts for two of the stolen Hermitage Companies and into which fraudulent tax refund monies were received.

97. On information and belief, U.S. \$106.9 million tax refund to the former Rengaz Subsidiaries was paid from the Tax Ministry's account at the Central Bank of Russia between December 2006 and April 2007.

**IX. SIMILARITIES BETWEEN THE TAX REFUND FRAUDS
AGAINST HERMITAGE AND AT THE FORMER RENGAZ
SUBSIDIARIES**

98. Upon information and belief, the tax refund fraud involving the former Rengaz Subsidiaries in 2006 was almost a mirror image of the tax refund fraud perpetrated against the misappropriated Hermitage Companies in 2007. *See* Exhibit 10, attached for demonstrative purposes. Specifically, the two crimes share the following similarities:

- 1) both tax refund frauds relied on fake securities transactions with shell companies as the basis for breach of contract lawsuits claiming lost profit for failure to deliver securities which subsequently appreciated in value;
- 2) the "Framework Agreements", the "Sales and Purchase Agreements" and "Cancellation Agreements" that were part of the evidentiary basis of the lawsuits were essentially identical documents, with only the names of the parties changed;
- 3) both tax refund frauds relied on the same two courts in Moscow and Kazan (out of eighty-one possible courts) to procure judgments against the stolen Hermitage Companies and the former Rengaz Subsidiaries;
- 4) in both tax refund frauds the defense lawyers simply accepted full liability for the plaintiffs' claims without raising defenses;
- 5) the court judgments in both frauds were used to offset historical profits and thereafter to form the basis for amended tax returns and tax refund requests;
- 6) the tax refunds in both cases were processed by the same tax bureaus in Moscow (Nos. 25 and 28), out of fifty tax bureaus in the region of Moscow, and in both frauds the companies claiming the refunds were deliberately moved from previous locations to the jurisdiction of Tax Bureaus Nos. 25 and 28; and

- 7) once the tax refund was fraudulently reclaimed, both the stolen Hermitage Companies and one of the Rengaz Subsidiaries were re-registered to the Russian city of Novocherkassk and submitted for liquidation.

99. Upon information and belief, both schemes appear to have been perpetrated by members of the same Criminal Enterprise, including, *inter alia*:

- 1) In both frauds, USB, a bank with capital of only U.S. \$1.3 million, was used to accumulate the fraudulent tax refunds worth hundreds of millions of dollars;
- 2) Gennady Plaksin, Chairman of USB, was owner and director of Optim-Service (company that sued former Rengaz subsidiary Selen Securities) and the owner and director of Instar (shell company that sued the stolen Hermitage Company in Moscow);
- 3) Alexei Sheshenia, who in the past had been charged with manslaughter, was the owner and director of Prioritet-M (100% owner of Poleta, shell company that sued former Rengaz subsidiary Financial Investments) and the owner and general director of Grand Aktive (shell company that sued the stolen Hermitage Company in the Tatarstan Republic);
- 4) Andrei Pavlov, appeared as the plaintiff's lawyer in court proceedings in both the Hermitage and Rengaz sets of cases, and additionally even appeared as a defense lawyer for one of the Hermitage Companies; and
- 5) Officials from Moscow Tax Bureaus No 25 and 28 approved the amended tax declarations eliminating profits submitted by fraudulent directors of the stolen Hermitage Companies and by directors of former Rengaz Subsidiaries and approved their fraudulent applications for multi-million tax refunds.

100. Due to the presence of so many striking similarities, it is apparent that the Criminal Enterprise, comprising, *inter alia*, certain officials from Moscow Tax Bureaus Nos. 25 and 28 and officers connected to USB who, upon information and belief, have been involved in the fraud against the Hermitage Companies in 2007, had executed an almost identical scheme involving the former Rengaz Subsidiaries in 2006 – one year before the fraud against the Hermitage Companies.

**X. POSSIBLE CONNECTION OF RENAISSANCE OFFICERS AND
AFFILIATED ENTITIES TO THE TAX REFUND FRAUD AT THE
FORMER RENGAZ SUBSIDIARIES**

101. In 2008, when the suspicious tax refunds involving the former Rengaz Subsidiaries were featured in the media, Renaissance's representative stated that the Rengaz Subsidiaries "were sold as shell companies to individuals for purposes of liquidation." (Business Week, November 6, 2008). In the course of Hermitage's investigation, undertaken in order to defend itself, its executives and its lawyers from the ongoing fraud and criminal actions in Russia and to identify the perpetrators of the fraud, four questions arose about whether certain individuals connected to Renaissance could have been involved in the very similar previous fraud at the former Rengaz Subsidiaries.

102. The first question relates to the timing of the apparent creation of the former Rengaz Subsidiaries' fictitious liabilities. According to court documents, on November 1, 2005, three months before Renaissance arranged for the sale of the Rengaz Subsidiaries (the sale took place on January 25, 2006), Ms. Lydia Anisimova, appointed by Renaissance as the General Director of Financial Investments LLC, signed a sales and purchase agreement claiming that Financial Investments LLC was selling Sberbank shares, which it did not own. This was one of the key documents used in the creation of the fraudulently-procured court judgments against the former Rengaz Subsidiaries. If these documents were created by Renaissance-appointed Rengaz officials before the sale of the Rengaz subsidiaries, then the logical conclusion is that certain Rengaz officials were involved in the fraud.

103. The second question relates to the buyers of the Rengaz Subsidiaries. The Rengaz Subsidiaries were sold to corporate structures which appear to have had, or have, significant connections to certain of Renaissance's former and current executives. In particular, on January 25, 2006, after the Rengaz Subsidiaries paid U.S. \$108 million of taxes as required under Russian law, Rengaz sold the two companies to a Cypriot company called Connery Holdings Limited ("Connery"). Bruce Gardner, a founding partner of Renaissance Capital, was a director of Connery until April 15, 2002. Richard Olphert, one of the three largest shareholders of Renaissance Capital and a former Managing Director and Head of Merchant Banking at Renaissance Capital, was a director of Connery from April 15, 2002 to December 6, 2004.

104. Five days later, on January 30, 2006, Connery, in turn, sold the same former Rengaz Subsidiaries to its 100% parent company, Jets Ventures Holding Limited ("Jets Ventures"). Jets Ventures is incorporated in the BVI and was the owner of the former Rengaz Subsidiaries in April 2006 – at the time when the fraudulently-obtained court judgments against them were issued.

105. There is a reasonable probability that Renaissance is related to both Jets Ventures and Connery. Stephen Jennings, the largest shareholder of Renaissance, Chairman of the Renaissance Group and former Chief Executive Officer of RenCap Securities served as a director of Jets Ventures' subsidiary, Caldierra Holding Limited, from August 1, 2003 until August 26, 2003 and as director of another Jets Ventures subsidiary, Fantley Enterprises Limited, from May 24, 2002 until August 26, 2003. Richard Olphert, a major Renaissance shareholder and former Head of Merchant Banking of Renaissance Capital, served as director of Jets Ventures' subsidiary, Fantley

Enterprises Limited, from May 24, 2002 until April 26, 2005, and has been a director of another Jets Ventures' subsidiary, Caldierra Holding Limited, at least up until July 2008, and possibly is still in this position. If evidence becomes available showing that Renaissance or its executives were owners or directors or had effective control of Jets Ventures, given that the tax rebate fraud occurred after Renaissance transferred the Rengaz Subsidiaries to Jets Ventures, a logical conclusion is that those individuals or entities would be implicated in the tax rebate fraud.

106. The third question relates to the commercial and economic rationale for the sale of the Rengaz Subsidiaries. At the beginning of 2006, the Rengaz Subsidiaries were dormant companies, with no operating business and apparently only legacy obligations from other Rengaz-related entities. Their sole asset appeared to be a U.S. \$329 million note payable from a Cypriot company owned by a Rengaz-related entity. In addition to this illiquid asset, on information and belief, the Rengaz Subsidiaries should have carried at least a multimillion dollar dividend withholding tax liability. Therefore, the price paid for the purchase of the subsidiaries, U.S. \$329 million, did not appear to take into account either this multimillion dollar liability, the illiquidity of the assets, or the creditworthiness of the counterparty of the note payable. It is hard to understand how an arms length buyer would have paid \$329 million for a shell company with a lower net asset value than the purchase price. A related question is whether there is any economic rationale under which an arms-length buyer would have accepted a note payable of U.S. \$329 million from an offshore shell company without some type of security.

107. A fourth question is raised by the absence of any dividend withholding tax provisions in any of the audited financial statements of the Rengaz Subsidiaries. Neither

the 2005 nor the 2006 financial statements of Rengaz state a dividend withholding tax liability. However, all Russian companies having Cypriot parent companies have an obligation to pay either 5% or 10% dividend withholding tax when they distribute dividends to their Cypriot shareholders. Rengaz's failure to report a dividend withholding tax liability for the Subsidiaries raises the question of whether Rengaz ever intended to pay a dividend withholding tax. This is particularly true given the mechanics of the fraud at the former Rengaz Subsidiaries, as discussed above: fake liabilities were created at the former Subsidiaries using fraudulently obtained court judgments which eliminated profits, allowing the former Rengaz Subsidiaries to avoid distributing profits, apply for a substantial tax refund, and ultimately avoid dividend withholding taxes. Therefore, given the mechanics of the fraud, the question arises of whether the managers of Rengaz knew from the date of the preparation of the audited 2005 accounts for Rengaz that they would not pay a dividend withholding tax in the future, and if so, whether they envisaged any way other than the tax refund through court judgments as a strategy for eliminating future profits and thereby avoiding the dividend withholding tax.

108. Finally, Hermitage is unaware of any action taken by Renaissance when the apparent tax refund fraud at the former Rengaz Subsidiaries was revealed. When Hermitage discovered the frauds against the Hermitage Companies, Hermitage, along with the Hermitage Fund's trustee, HSBC, filed complaints with the Russian General Prosecutor, the Russian State Investigative Committee, and the Internal Affairs Department of the Interior Ministry. Hermitage also immediately alerted the Russian tax authorities where the companies were registered to the fact that they had been stolen. Hermitage then filed appeals and reversed all five of the fraudulently obtained judgments

in the arbitration courts where they had been obtained. When Hermitage learned that the companies had been stolen in order to siphon tax money through fraudulent refunds, it filed further criminal complaints with the Russian Interior Ministry, the General Prosecutor, the Russian State Investigative Committee, the Central Bank of Russia, the Finance Ministry, the Federal Tax Service and the Russian Audit Chamber. Hermitage also wrote to all 19 members of the President's Anti-Corruption Committee. Finally, Hermitage complained to the criminal authorities in Guernsey and Cyprus where the Hermitage holding companies were registered.

109. RenCap Securities is headquartered in Manhattan and may be found in this jurisdiction. There is a reasonable probability that RenCap will be able to provide substantial evidence that may illuminate the scope of the fraud and the role of Renaissance's current and former executives and affiliates in its conception and execution. This evidence includes the following:

1. Documents and testimony regarding Rengaz finances from 2004 to 2006, including specifically:
 - (a) information received from the Rengaz Subsidiaries and Renaissance Capital in order to prepare disclosures to U.S. investors for their IRS reporting (PFIC statements, K-1 forms, or analogous disclosures);
 - (b) audits of Rengaz or its Subsidiaries, and the complete audit file and workings;
 - (c) interim and audited financial statements for Rengaz or its Subsidiaries;
 - (d) calculations of or correspondence regarding Rengaz's net asset value, including but not limited to correspondence with Customs House;
 - (e) reports from the Rengaz administrator, Customs House; and
 - (f) disclosures to the London Stock Exchange or Bermuda Stock Exchange regarding net asset value, tax calculations, or restructuring of Rengaz.
2. Documents and testimony relating to the sale of the Rengaz Subsidiaries and the restructuring of Rengaz, including specifically:
 - (a) documents containing or relating to internal justifications, investor communications, financial modeling, valuations, invoicing for restructuring fees paid and explanations of the work done, and the Restructuring Report of Rengaz issued in 2006;

- (b) testimony regarding the business justification for the sale of the Rengaz Subsidiaries and the restructuring of Rengaz; and
 - (c) documents relating to the appointment and tenure of the directors of the Rengaz Subsidiaries.
3. Documents and testimony relating to RenCap's investor communications between 2004 and 2006, including specifically:
- (a) a list of all US Rengaz investors; and
 - (b) marketing materials, offering memoranda, and information RenCap provided to investors with regard to Rengaz, including but not limited to Rengaz Subsidiaries' tax payments and tax calculations of Rengaz's investments, and the sale of the Rengaz Subsidiaries and the restructuring of Rengaz.
4. Documents and testimony relating to the following communications:
- (a) visa support records given by RenCap to Dmitri Klyuyev, Andrei Pavlov, Pavel Karpov, Julia Mayorova, Artem Kuznetsov and Interior Ministry officers and FSB officers for travel to the United States; and
 - (b) communications RenCap's former CEO, Stephen Jennings, had with Renaissance Capital president, Igor Sagiryan, or other Renaissance or RenCap executives regarding: (a) the November 30, 2007 phone call from Sagiryan to William Browder, CEO of Hermitage; (b) the December 10, 2007 phone call from Jennings to Browder; and (c) the December 11, 2007 meeting in London between Sagiryan and Browder.

110. This information is of critical importance to the Foreign Proceedings, Case Numbers 1 through 4. By assisting Hermitage in identifying the parties which perpetrated the tax refund fraud and establishing that Hermitage has been a victim—not a perpetrator—of a sophisticated conspiracy, it will aid Hermitage in recovering the Hermitage Companies and help Hermitage defend itself, its executives, and its Russian counsel in the criminal cases. It will also allow Hermitage to file amended criminal complaints in relation to the frauds that took place in Russia and assist the authorities in bringing the perpetrators to justice.

**XI. FURTHER CORROBORATION OF AN ESTABLISHED
WORKING RELATIONSHIP BETWEEN CERTAIN CURRENT
AND FORMER OFFICERS OF RENAISSANCE, USB AND OTHER
SUSPECTED MEMBERS OF THE CRIMINAL ENTERPRISE**

111. Records from a recent Russian court case outline the details of another large-scale fraud which, like the tax refund fraud against the misappropriated Hermitage Companies and the tax refund fraud at the former Rengaz Subsidiaries, involved USB, the small Russian bank with a mere U.S. \$1.3 million capital, no individual depositors, and reported annual profits of less than U.S. \$200,000. The case highlights the expertise of Dmitri Klyuyev, the beneficial owner of USB, in using court judgments to procure tax refunds. This same expertise was subsequently used in the fraud involving the former Rengaz Subsidiaries and, a year later, in the fraud against Hermitage Companies.

112. On July 12, 2006, the Presnensky Court in Moscow convicted several individuals for their roles in a fraud at Mikhailovsky GOK, a large iron ore plant in Russia. Among those convicted for fraudulently freezing the shares of Mikhailovsky GOK worth US\$1.6 billion in order to economically coerce the controlling shareholder from proceeding with a sale were the CEO and Chief Accountant of USB, and a man named Dmitri Klyuyev.

113. Russian media reports identify Mr. Klyuyev as the beneficial owner of USB. The Russian Interior Ministry charged Mr. Klyuyev and his associates, together with Oleg Kiselov, then serving as the President of Renaissance Capital, of executing the fraud. Mr. Klyuyev received a suspended sentence and was fined 40,000 roubles. Based on press reports, Mr. Kiselov fled Russia and lived in exile in London for two years until 2008, when charges against him were dropped.

114. Public media also reported that the case was investigated by Major Karpov. This is the same Major Karpov whom Hermitage's and HSBC's criminal complaints implicated for his role in the seizure of the Hermitage corporate documents, which were then used to steal the Hermitage Companies prior to the tax refund fraud.

115. Upon information and belief, witness statements and other court documents describe Mr. Klyuyev's close working relationship with Renaissance Capital, and set out Mr. Klyuyev's expertise in utilizing the same specific technique that was used against the former Rengaz Subsidiaries and Hermitage Companies: the collection of fraudulent tax refunds based on sham court proceedings. Specifically, Yury Sagaydak, then Deputy CEO of Renaissance Financial Products (a sister company to Renaissance Capital), testified that Renaissance Capital had engaged Mr. Klyuyev as a "consultant on matters of tax legislation and the organization of claims for overpaid taxes through the judicial procedure."

116. The testimony describes Mr. Klyuyev's working relationship with Renaissance Capital and his close contact with the firm's executive leadership, including the CEO of RenCap at the time of the tax refund fraud against former Rengaz subsidiaries, Stephen Jennings. In particular, according to the testimony of Yulia Lisitsina, personal assistant of Mr. Kiselov, President of Renaissance Capital at the time, Mr. Klyuyev "was a [business] partner of the company [Renaissance Capital] and had regular dealings with Kiselov, Stephen Jennings and Yury Sagaydak."

117. Upon information and belief, many of the individuals Mr. Klyuyev relied upon in executing the Mikhailovsky GOK fraud re-appear in the frauds at the former Rengaz Subsidiaries in 2006 and against Hermitage Companies in 2007.

118. Gennady Plaksin, the former Chairman of USB and a plaintiff in the sham court proceedings against the Hermitage Companies and the former Rengaz Subsidiaries, had, upon information and belief, executed documents prepared by Mr. Klyuyev's organization that formed the basis of the Mikhailovsky GOK fraud.

119. Upon information and belief, Andrei Pavlov, the lawyer who appeared throughout the Rengaz and Hermitage court proceedings, prepared the court filing that initially froze the shares in Mikhailovsky GOK—an essential part of that fraud. Court documents list Mr. Pavlov as sharing the same office as Mr. Klyuyev.

120. Finally, USB itself played a central role in the Mikhailovsky GOK fraud, where it issued a bank guarantee to a fraudulent share purchase agreement, the default of which was the trigger for the freezing of shares and the overall fraud.

121. Upon information and belief, the criminal methods described in the Mikhailovsky GOK court documents are antecedents to the later schemes against Rengaz and Hermitage. In particular, a fabricated share purchase agreement with a shell company validated through sham Russian court proceedings (apparently facilitated throughout by the lawyer, Mr. Pavlov) formed the basis for the Mikhailovsky GOK fraud.

XII. EVIDENCE OF FURTHER WORKING RELATIONSHIP BETWEEN RENAISSANCE AND USB RELATED INDIVIDUALS AFTER USB EXECUTIVES WERE IMPLICATED IN THE MIKHAILOVSKY GOK FRAUD

122. Russian EGRUL records show that after Dmitri Klyuyev and USB executives were convicted in the Mikhailovsky GOK fraud case, Renaissance and/or its affiliates and executives continued doing business with USB shareholders and executives.

123. Renaissance Capital should have been aware of the criminal allegations

against USB in relation to Mikhailovsky GOK fraud no later than November 28, 2005, when the then-Chairman of Renaissance Capital, Oleg Kiselov, was issued a Russian arrest warrant for his alleged collusion with Dmitri Klyuyev in the Mikhailovsky GOK fraud. Furthermore, according to the Mikhailovsky GOK court documents, Stephen Jennings, then-Renaissance Capital CEO and CEO of RenCap, was interviewed by the Russian Interior Ministry about the Mikhailovsky GOK case and on information and belief was made aware of USB's involvement in the fraud. Finally, in July 2006, the court verdict found Mr. Klyuyev and his two colleagues from USB guilty. In spite of USB's involvement in the Mikhailovsky GOK fraud, in late 2006 Renaissance-related entities sold a large number of their former Gazprom-holding companies to shareholders and directors of USB.

124. According to EGRUL records, Rodon Securities LLC was sold from Renaissance structures on November 28, 2006 to Gennady Plaksin, the Chairman of USB. As discussed above, Plaksin was also the plaintiff in the fake lawsuit against the stolen Hermitage Company Rilend in October 2007, the plaintiff in the fake lawsuits against the former Rengaz Subsidiary Selen Securities LLC in April 2006, and was involved in the execution of documents in the Mikhailovsky GOK fraud.

125. According to EGRUL records, Renaissance sold its Gazprom structure, Nevits Securities LLC, to Arkady Plaksin, related to Gennady Plaksin, chairman of USB, on October 26, 2006.

126. The same records indicate that Renaissance sold at least five additional companies to directors and shareholders of USB after July 12, 2006: Gefest Securities LLC (October 16, 2006), Gemera Securities LLC (December 25, 2006), Danaya

Securities LLC (July 25, 2006), Index Securities LLC (October 16, 2006) and Patara Securities LLC (November 14, 2006).

**XIII. ROLE OF NEW YORK BANKS IN RECEIVING THE
LAUNDERED PROCEEDS OF THE FRAUD AGAINST
HERMITAGE AND THE RENGAZ FRAUD**

127. Upon information and belief based upon records from Case No. 4, (*see* ¶¶ 153-158, *infra*) the fraudulent tax refunds were paid to the Criminal Enterprise through the accounts at USB and Intercommerz bank, where these funds were converted into U.S. dollars. The sole holder of U.S. dollar correspondent accounts for both USB (Account #70-55.061.527) and Intercommerz (Account #70-55.079.669) was Raiffeissen Zentralbank Oesterreich Bank AG Austria (“Raiffeissen”).

128. Upon information and belief, Raiffeissen processes all U.S. dollar transfers and payments through its correspondent accounts in the United States. Raiffeissen’s U.S. dollar correspondent accounts are with the New York Banks: Citibank, N.A. (Account #10920871) and J.P. Morgan Chase Bank New York (Account #544702991). The New York Banks clear U.S. dollar payments through their correspondent accounts with the Federal Reserve System (ABA or Fedwire) or CHIPS (Clearing House Interbank Processing System) New York.

129. In total, upon information and belief, up to U.S. \$230 million was wired through the New York Banks in connection with the fraud against the misappropriated Hermitage Companies. Further, the similarities in fraud schemes suggest that up to U.S. \$108 million was wired through the New York Banks in connection with the fraud at the former Rengaz Subsidiaries. *See* Exhibit 11, attached for demonstrative purposes.

130. Discovery from the New York Banks will show the origin and destination of the illicit proceeds of the two frauds and would ultimately lead to the identification of the members of the Criminal Enterprise who benefited from the fraud against Hermitage and the fraud at the former Rengaz Subsidiaries.

131. Upon information and belief based upon public records from the Central Bank of Russia, there were several additional months when USB experienced an unusual spike in deposits, namely November and December 2006; February 2007; and March and April 2008. These are in addition to the surges in deposits that relate to the apparent former Rengaz Subsidiaries tax refund fraud (January and March 2007) and the tax refund fraud against the misappropriated Hermitage Companies (December 2007). Given the central role USB has played in the tax refund frauds, and the absence of any significant retail or commercial business to explain these deposits, it is possible that these additional spikes relate to other fraudulent tax refunds lost to the Russian Treasury. Upon information and belief, almost any spike in deposits may evidence illicit activity. This is because USB had only U.S. \$1.3 million in capital, making it difficult if not impossible for USB to perform normal commercial banking functions on any scale. It is also possible that these amounts were converted into dollars and routed through the New York Banks. A review of any transfer made from USB through the New York Banks during these periods will allow Hermitage to identify the beneficiaries of these frauds.

132. This will in turn assist Hermitage in proving the retaliatory nature of the criminal cases brought against itself and its counsel in Russia and having those criminal cases dismissed. This information will also allow Hermitage to prove that the individuals who are seeking to liquidate the stolen Hermitage Companies are members of the

Criminal Enterprise and to argue that, taking these facts into account, the Russian courts should suspend the bankruptcy process.

133. Finally, the information will allow Hermitage to file amended criminal complaints in relation to the frauds that took place in Russia and allow the authorities to bring the perpetrators to justice.

134. Citibank, N.A. New York, is a major international bank, now a subsidiary of Citigroup, headquartered in New York. Citibank, N.A. can be found at 399 Park Avenue, New York, New York 10022.

135. J.P. Morgan Chase Bank, New York, is a financial institution headquartered in New York. J.P. Morgan Chase Bank can be found at 270 Park Avenue, New York, New York, 10017.

XIV. THE PENDING OR THREATENED PROCEEDINGS IN WHICH HERMITAGE WILL EMPLOY THE DISCOVERY IT OBTAINS IN THIS JURISDICTION

136. Hermitage is interested in at least a dozen pending or threatened Russian proceedings in which Hermitage or HSBC must prove some elements of the tax refund fraud using, in part, the discovery it hopes to cull from this jurisdiction. Four cases in particular are vital to Hermitage's interests, and in each of those cases Hermitage must prove elements of its claims or defenses using documents it can only obtain in this jurisdiction. Those four cases are described in greater detail below.

Case Number 1 to Nullify the Sale of Hermitage Companies

137. Civil case (Case Number 1) was filed by Applicant, via Glendora Holdings, Kone Holdings, against Pluton and Boily Systems with the Moscow Region Arbitration Court. The lawsuit was accepted on October 1, 2008. Immediately,

Applicant sought and was granted an injunction to prohibit any changes to the Corporate Registry database with respect to the concurrent liquidation proceedings on October 20, 2008 by the Moscow Region Arbitration Court. Then, on February 2, 2009, this case was transferred to the Tatarstan Republic Arbitration Court. A preliminary hearing took place on July 14, 2009 and the next hearing date is scheduled for August 13, 2009. Original case number A41-18613/08; New case number A65-7299/2009; Exhibit 2.

138. Pluton claims that on July 31, 2007, Viktor Markelov, sole owner of Pluton, signed a sales and purchase agreement to purchase the Hermitage Companies from Kone Holdings and Glendora Holdings. Markelov alleges the agreement was made with Mr. Gasanov, alleged representative of Kone Holdings and Glendora Holdings. Kone Holdings and Glendora Holdings never had representatives in Russia, never authorized Gasanov or anyone else to sell the Hermitage companies, nor have any knowledge of a Mr. Gasanov. Similarly, Hermitage never authorized or entered into the sales and purchase agreement with Markelov and Pluton and seeks to recognize it as null and void.

139. Hermitage will assert *inter alia* that the alleged sales and purchase agreement is legally invalid because, among other things, the power of attorney purportedly issued to Mr. Gasanov by Kone Holdings and Glendora Holdings does not meet the requirements of the law (did not state where it was drawn, was not apostilled for use in Russia as a foreign jurisdiction in respect to Kone Holdings and Glendora Holdings) and is therefore invalid. Further, Pluton never paid Kone Holdings and Glendora Holdings any purchasing fee.

140. Moreover, it became known to Hermitage that Viktor Markelov attended a court proceeding in Tatarstan Republic Arbitration Court on July 30, 2007 (i.e. one day prior to the purported date of the sales and purchase agreement) where the court, per Markelov's application, transferred to Markelov 100% shares in the Hermitage Companies pursuant to a Cessation Agreement (also void and disputed by Hermitage). Hermitage believes it is unexplainable why Viktor Markelov who on his (fraudulent) application received the court ruling to transfer the Hermitage Companies to Pluton on July 30, 2007, would enter into a transaction to purchase those same companies from the same parties (Kone Holdings and Glendora Holdings) on the following day, July 31, 2007.

141. Upon discovery of the Tatarstan Republic Arbitration Court ruling of July 30, 2007, Hermitage appealed the ruling as having been filed by unauthorized persons and succeeded to overturn the ruling in September 2008.

142. In sum, Hermitage was not aware of the sales and purchase agreement with Markelov of Pluton, the agreement was signed by unauthorized persons and the transaction never took place, and this agreement must be recognized as null and void.

143. As a secondary issue to this case and the primary claim in Case Number 2 (see below ¶¶ 144 - 148), Hermitage learned that on February 8, 2008, Pluton transferred 100% shares in the stolen re-registered Hermitage Companies to a BVI-registered Boily Systems Ltd., which since then was entered into the Corporate Registry database as owner of the re-registered Hermitage Companies. A representative of Boily Systems in Russia, Alexander Smetanin, who signed the transfer on Boily Systems' behalf did not have authority to do so, as his power of attorney was not duly verified. Pluton did not

have rightful ownership of the re-registered Hermitage Companies at the time of the transfer and therefore the second transfer to Boily Systems must be recognized as null and void as well.

Case Number 2 to Clear Obstruction to Corporate Control of Hermitage Companies and Vindicate Lawful Ownership

144. Civil case (Case Number 2) was filed by Hermitage, via Glendora Holdings, Kone Holdings, against Boily Systems and Moscow Region Tax Bureau 13 in the Moscow Region Arbitration Court on March 20, 2009. As stated above (see ¶ 7), a second fraudulent re-registration of the re-registered Hermitage Companies took place on February 8, 2008. The hearing is scheduled for August 18, 2009. Case Number: A41-8992/09; Exhibit 3.

145. Applicant seeks to recognize the 100% shares in Rilend, Parfenion and Mahaon (re-registered Hermitage Companies) belong to Kone Holdings and Glendora Holdings as their lawful owners. Applicant must eliminate the obstruction to re-registered Hermitage Companies by reinstating the lawful owners in the Corporate Registry database and reversing the (fraudulent) changes made initially by Viktor Markelov in September 2007, and a second time by Boily Systems in February 2008.

146. The basis for the claim is that the documents required by Russian law to apply for changes to the Corporate Registry database had been in custody of the Moscow Interior Ministry since June 4, 2007, and therefore no persons could have lawfully requested for any changes in the database to be made in September 2007.

147. As noted above, Applicant never authorized anyone to enter into a sales and purchase agreement with Pluton on July 31, 2007 or any other date, and therefore

that agreement is null and void. The subsequent agreement between Pluton and Boily Systems to transfer the re-registered Hermitage Companies to Boily Systems is consequently null and void.

148. In sum, Applicant requests to recognize Kone Holdings and Glendora Holdings as the direct and lawful owners of the Hermitage Companies and reinstate their names in the Corporate Registry database as such. To do so, requires Applicant to successfully establish the existence of a conspiracy, and the intent, motive, and means to engage in such acts. Evidence of the bank accounts used to transfer fraudulently refunded money, which was refunded as a result of the offset income from court judgments rendered while Viktor Markelov was unlawful owner, directly relates to prosecution in both Case Numbers 1 and 2. Further, evidence of the Rengaz fraud scheme, as requested in this application, establishes a similar occurrence and circumstantial evidence of the means by which the transaction in Case Numbers 1 and 2 took place. Any and all evidence establishing or leading to information concerning improper actions by Russian officials, and other unlawful acts are relevant to these proceedings.

Case Number 3 Against Attorney for Re-registered Hermitage Companies

149. In addition to the civil proceedings, criminal proceedings are underway in which an attorney for Applicant has been wrongfully targeted with allegations of crimes, including use of false powers of attorney. Applicant and its attorneys are also being framed for the execution of the very crime that their client has been a victim of (theft of re-registered Hermitage Companies and subsequent theft of U.S. \$230 million from the

Russian Treasury), the same crimes that the Applicant discovered and reported to the Russian authorities.

150. Case Number 360138 (Case Number 3) was brought against Eduard Khayretdinov for relying on allegedly false powers of attorney in the Simonovsky District Court of Moscow. On May 5, 2008, Lt. Col. Kuznetsov of the Moscow Interior Ministry approved a report by his subordinate alleging that attorneys for HSBC and Hermitage, Eduard Khayretdinov and Vladimir Pastukhov, knowingly relied on false powers of attorney from HSBC directors. On November 26, 2008, Simonovsky District Court approved a petition to open a criminal investigation with respect to Eduard Khayretdinov.² *See* Nov. 26, 2008 Decision, Exhibit 5. On February 26, 2009, a charge for the use of false power of attorney was issued against Eduard Khayretdinov and the case remains in pre-trial. *See* Ruling, Exhibit 4.

151. The charge contradicts the sworn Affidavits from HSBC directors who confirmed that they lawfully issued powers of attorney to Eduard Khayretdinov. The charge relies on the assumption that Viktor Markelov of Pluton LLC was in a position to legally represent the stolen Hermitage Companies because his name was entered in the Corporate Registry database as sole owner of the Hermitage Companies, and ignores the official change of the seal in effect immediately after the illegal raid.

152. During preparation for a pre-trial to this case, Viktor Markelov gave a statement alleging that he acted to re-register the Hermitage Companies and to arrange fraudulent and collusive lawsuits against the re-registered Hermitage Companies in 2007,

² A similar case alleging a false power of attorney was apparently opened on April 2, 2009 with respect to Vladimir Pastukhov, however, no written documents are available at present.

but only under an instruction from Mr. Gasanov,³ who in turn allegedly communicated with lawyer Eduard Khayretdinov, representing the interests of the Hermitage Companies. *See* Exhibit 5, p. 4; *See also* Interrogation of Viktor Markelov, May 20, 2008, p. 219, Exhibit 8. The case therefore contains a statement framing Eduard Khayretdinov in the very fraud of which his clients have been victims. This false statement was challenged by Hermitage, HSBC directors and Eduard Khayretdinov in appeals filed with the Russian General Prosecutor Office and as part of the proceedings with the Simonovsky District Court of Moscow.

Case Number 4 Against Applicant and Applicant's Attorneys

153. Criminal case (Case 4) was opened against Viktor Markelov and unidentified persons for the fraud and theft of U.S. \$230 million from the Russian Treasury in the Tverskoi District Court of Moscow and the Vakhitovsky District Court of Kazan. *See* Exhibit 6.

154. The case was originally opened on June 18, 2008 by Kazan Interior Ministry and later merged with case No 243027. Notably, prior to the case being opened, Applicant had submitted a criminal complaint alleging the fraud and naming Viktor Markelov as perpetrator. Hermitage's complaint was filed prior to the investigation of Case Number 4. Ironically, the authorities responsible for investigating Hermitage's complaint ultimately dismissed it based upon their finding that the fraud did not happen, even though Case Number 4, which is based upon the exact opposite conclusion—that the fraud *did* take place—remains open.

³ Kone Holdings and Glendora Holdings never had representatives in Russia, never authorized Mr. Gasanov or anyone else to sell the Hermitage companies, nor had any knowledge of a Mr. Gasanov. *See* ¶ 138. Mr. Gasanov died October 1, 2007. Thus, the single allegation relied upon by Viktor Markelov cannot be corroborated.

155. The ruling to institute Case Number 4 and advance it to trial indicates the officers running the investigation believe they have sufficient information to charge Viktor Markelov and other unidentified persons for conspiring to create indebtedness for the legal entities by deceit. In May 2009, charges were brought against Viktor Markelov, treating him as an official director of the re-registered Hermitage Companies. *See* Exhibit 6. The originally-filed complaint against “other” unidentified individuals remains open, and Hermitage believes the targeted individuals have now been identified by the Russian authorities.

156. A search was conducted on August 20, 2008 in the law office of Eduard Khayretdinov and all other lawyers for Applicant in Russia. *See* Ruling Authorizing Search, Aug. 11, 2008, Exhibit 7. In addition, attorneys were issued with summonses for questioning as witnesses in breach of the local law. According to court records, Investigator Urzhumtsev of the Tatarstan Interior Ministry petitioned to the Vakhitovsky District Court of Kazan that “instruments of crime” may be found in the lawyers’ office. Shortly prior to the search of Khayretdinov’s office, a suspicious and unexpected parcel was delivered and seized while still unopened by police during the search which apparently contained confidential files of the Hermitage Companies and other documents, possibly forgeries.

157. Moreover, during pre-trial, Viktor Markelov gave a statement alleging that he received instructions to re-register the Hermitage Companies and arrange for collusive lawsuits against them from a Mr. Gasanov who allegedly communicated with Eduard Khayretdinov, representing owners of the Hermitage Companies. *See* Exhibits 8 & 9. As noted above, (*see* ¶ 152) this false statement was challenged by Hermitage, HSBC

directors and Eduard Khayretdinov in appeals filed with the Russian General Prosecutor Office.

158. In May 2009, formal charges were brought against Viktor Markelov, with the prosecutor treating Markelov as a director of the re-registered Hermitage Companies. Applicant believes formal charges against itself and its attorneys are imminent because the case remains open, Markelov gave statements implicating Applicant, and official searches and summons of Applicant's attorneys have been issued and conducted. Applicant's defense relies upon proving the existence of the entire conspiracy. In doing so, Hermitage will establish that the statements Viktor Markelov gave during pre-trial are attempts to frame the victims of the fraud: HSBC and Hermitage and their attorneys.

XV. CONCLUSION

159. Upon information and belief, the Criminal Enterprise has to date been successful in executing a massive fraud in Russia facilitated by the theft of the three Hermitage Companies in 2007. The illicit proceeds of the fraudulent activity have been channeled through U.S. banks. On each occasion that Hermitage has brought this fraud to the attention of Russian law enforcement authorities, the complaints have been ignored and the Criminal Enterprise has retaliated by having its members who occupy senior law enforcement positions in Russia raise fictitious claims against Hermitage or its lawyers and advisers. In the meantime, Hermitage believes members of the Criminal Enterprise have led the efforts to facilitate the payment of fraudulent tax refunds and have sought to liquidate the Hermitage Companies. The successful liquidation of the Hermitage Companies would thwart any attempt to investigate the fraud effectively.

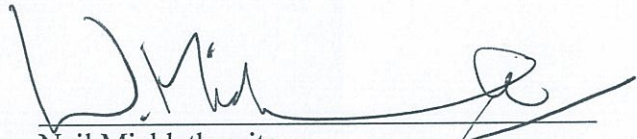
160. RenCap, which Hermitage believes is a key repository of evidence documenting certain parts of the fraud, can be found in this jurisdiction. RenCap Securities, Inc. is a registered business in the state of New York. Its principal executive office is located at 780 Third Avenue, New York, New York, and its registered agent is C T Corporation System, 111 Eighth Avenue, New York, New York 10011. RenCap Securities is engaged in systematic and continuous activities in the Southern District of New York and resides or is found in this Court's jurisdiction. Until recently, its Chief Executive Officer was Stephen Jennings, who is also a major shareholder in RenCap's parent company, Renaissance, and CEO of the Renaissance Group.

161. In addition, the account records held by the New York Banks will, upon information and belief, assist in the identification of the origins and ultimate beneficiaries of the frauds and the identities of other members of the Russian Criminal Enterprise. Ultimately, these materials will be central to both the defense of the Hermitage executives and lawyers and to the successful recovery of the misappropriated Hermitage Companies by their lawful owners through the Foreign Proceedings.

WHEREFORE, I respectfully request the Court grant Applicant's application in its entirety.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

London, England
Dated: July 27, 2009



Neil Micklethwaite

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