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7 Proposed Special Litigation Counsel for Plaintiff  
Official Committee of Creditors Holding  
8 Unsecured Claims

9 UNITED STATES BANKRUPTCY COURT  
10 CENTRAL DISTRICT OF CALIFORNIA  
11 SAN FERNANDO VALLEY DIVISION

12	In re:	)	Lead Case No.: 1:12-bk-17469-VK
13	GAMMA MEDICA-IDEAS (USA), INC.,	)	(Jointly Administered with:
14	Debtor and Debtor in Possession.	)	1:12-bk-17474-VK
15	<hr/>	)	(Gamma Medica-Ideas, Inc.);
16	In re	)	1:12-bk-17475-VK
17	GAMMA MEDICA-IDEAS, INC.,	)	(Advanced Molecular Imaging LLC);
18	Debtor and Debtor in Possession.	)	1:12-bk-17479-VK
19	<hr/>	)	(Advanced Molecular Imaging, Inc.); and
20	In re	)	1:12-bk-17483-VK
21	ADVANCED MOLECULAR IMAGING LLC,	)	(Industrial Digital Imaging, Inc.)
22	Debtor and Debtor in Possession.	)	Chapter 11 Cases
23	<hr/>	)	Adversary No. 1:12-ap-01447-VK
24	In re	)	<b>FIRST AMENDED COMPLAINT</b>
25	ADVANCED MOLECULAR IMAGING, INC.,	)	
26	<hr/>	)	
27	Debtor and Debtor in Possession.	)	

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1 In re  
2 INDUSTRIAL DIGITAL IMAGING,  
3 INC.,  
4 Debtor and Debtor in  
Possession.

5 THE OFFICIAL COMMITTEE OF  
6 CREDITORS HOLDING UNSECURED  
7 CLAIMS OF: GAMMA MEDICA-IDEAS  
8 (USA), INC., a California corporation;  
9 ADVANCED MOLECULAR IMAGING  
10 LLC, a Delaware limited liability company,  
11 GAMMA MEDICA-IDEAS, INC., a Delaware  
12 corporation, ADVANCED MOLECULAR  
13 IMAGING, INC., a Delaware corporation; and  
14 INDUSTRIAL DIGITAL IMAGING, INC., a  
15 Delaware corporation,

11 Plaintiff,

12 vs.

13 CAPITAL RESOURCE PARTNERS V, L.P.,  
14 a Delaware limited partnership; BIRCH HILL  
15 PARTNERS LLC, a New Hampshire limited  
16 liability company; PSILOS GROUP  
17 PARTNERS III, LP, a Delaware limited  
18 partnership; PSILOS GROUP PARTNERS  
19 IIIA, LP, a Delaware limited partnership;  
20 PSILOS GROUP PARTNERS IIIB, LP, a  
21 Delaware limited partnership; PSILOS  
22 GROUP PARTNERS IIIC, LP, a Delaware  
23 limited partnership; JAMES CALANDRA, an  
24 individual; ROBERT C. AMMERMAN, an  
25 individual; DAVID EICHLER, an individual;  
26 and ALVIN WAXMAN, an individual

21 Defendants.

23 Plaintiff, the Official Committee of Creditors Holding Unsecured Claims appointed in the  
24 bankruptcy cases of Gamma Medica-Ideas (USA). Inc., Gamma Medica-Ideas, Inc., Advanced  
25 Molecular Imaging LLC, Advanced Molecular Imaging, Inc., and Industrial Digital Imaging, Inc.,  
26 hereby complains as follows:  
27  
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**BACKGROUND FACTS**

**A. Statement of Parties, Jurisdiction and Venue**

1  
2  
3 1. Plaintiff is the Official Committee of Creditors Holding Unsecured Claims of  
4 chapter 11 Debtor Gamma Medica Ideas (USA), Inc. and related entities (“Plaintiff”). Gamma  
5 Medica-Ideas (USA), Inc. is a California corporation whose principal place of business is in  
6 Northridge, California. The related chapter 11 debtor entities are Advanced Molecular Imaging  
7 LLC, a Delaware limited liability company; Gamma Medica-Ideas, Inc., a Delaware corporation;  
8 Advanced Molecular Imaging, Inc., a Delaware corporation, and Industrial Digital Imaging, Inc., a  
9 Delaware corporation (collectively “Debtors” unless specified otherwise). At all relevant times,  
10 none of the Debtors had office space in the United States outside of Los Angeles County  
11 California, and all of the administrative, manufacturing and sales functions in the United States  
12 originated in Los Angeles County, California.

13 2. The Debtors commenced their bankruptcy cases by filing voluntary petitions under  
14 chapter 11 of the Bankruptcy Code on August 20, 2012 (the “Petition Date”) in the United States  
15 Bankruptcy Court for the Central District of California (the “Bankruptcy Court”). The Debtors  
16 continue to operate their business, manage their financial affairs and operate their bankruptcy  
17 estates as debtors in possession.

18 3. Plaintiff was formed by the Office of the United States Trustee on September 6,  
19 2012, and consists of the following members: SII Nano Technology USA Inc. (“SIINT”), Bradley  
20 E. Patt, and Endicott Interconnect Technologies, Inc.

21 4. Plaintiff is informed and believes that Defendant Capital Resource Partners V, L.P.  
22 (“CRP”) is a Delaware limited partnership whose principal place of business is in Boston,  
23 Massachusetts.

24 5. Plaintiff is informed and believes that Defendant Birch Hill Partners LLC (“Birch  
25 Hill”) is a New Hampshire limited liability company whose principal place of business is in  
26 Hanover, New Hampshire.

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1           6.       Plaintiff is informed and believes that Defendant Psilos Group Partners III, LP is a  
2 Delaware limited partnership; Defendant Psilos Group Partners IIIA, LP is a Delaware limited  
3 partnership; Defendant Psilos Group Partners IIIB, LP is a Delaware limited partnership; and  
4 Defendant Psilos Group Partners IIIC, LP is a Delaware limited partnership. The principal place  
5 of business for each Psilos entity is in New York, New York. The Psilos entities will be  
6 collectively referred to as “Psilos” (collectively, Psilos and CRP shall be referred to herein as the  
7 “Pre-Petition Lenders”).

8           7.       Plaintiff is informed and believes that Defendant James Calandra is an individual  
9 who resides in New Hampshire, and that Calandra is a member of Birch Hill.

10          8.       Plaintiff is informed and believes that Defendant Robert C. Ammerman is an  
11 individual who resides in the Boston, Massachusetts area, and that Ammerman is a partner at CRP  
12 and/or a member of a related limited liability company or limited partnership that controls CRP.

13          9.       Plaintiff is informed and believes that Defendant David Eichler is an individual  
14 who resides in the New York, New York area, that Eichler is a partner at Psilos and/or a member  
15 of a related limited liability company or limited partnership that controls Psilos.

16          10.       Plaintiff is informed and believes that Defendant Alvin Waxman is an individual  
17 who resides in the New York, New York area, and that Waxman is a partner at Psilos and/or a  
18 member of a related limited liability company or limited partnership that controls Psilos.

19          11.       Plaintiff is informed and believes that Defendants formed a joint enterprise with  
20 respect to Debtors as described in this Complaint and that each Defendant took actions in  
21 furtherance of the objectives of the joint enterprise, such that each Defendant is liable for the  
22 conduct of the other Defendants as an agent of the other Defendants.

23       **B.       Bankruptcy Court Order Authorization to Sue on Behalf of Gamma Medica**

24          12.       On the Petition Date, the Debtors filed their motion for use of cash collateral and  
25 for post-petition financing (the “DIP Motion”). On October 16, 2012, the Bankruptcy Court  
26 entered an order approving the DIP Motion (“Final DIP Order”).

27          13.       Pursuant to Paragraph 27 of the Final DIP Order, the Bankruptcy Court authorized  
28 Plaintiff to act on behalf of the Debtors’ bankruptcy estates to pursue claims against the pre-

1 petition lenders including the Pre-Petition Lenders and their respective shareholders, affiliates,  
2 agents, attorneys, officers, directors and employees, so long as Plaintiff gives written notice of its  
3 intention to file a complaint within 60 days of the Final DIP Order and to file the complaint within  
4 70 days of the Final DIP Order (which dates would be extended to the extent the Pre-Petition  
5 Lenders failed to file proofs of claim within ten (10) business days of the entry of the Final DIP  
6 Order). Plaintiff served the written notice on December 14, 2012 and has filed its Complaint on  
7 December 24, 2012 within the respective deadlines.

8 14. By way of the Final DIP Order, the Bankruptcy Court has already ruled that the  
9 Committee has standing to bring these claims on behalf of each of the Debtors.

10 15. The claims alleged here are state law claims and are non-core. Plaintiff is entitled  
11 to a jury trial and seeks a jury trial on these claims.

12 **C. Corporate and Financial Structure of Gamma Medica**

13 16. The Debtors' business, is in essence, as follows: one or more of the Debtors  
14 provides (i) pre-clinical imaging systems for pharmaceutical companies to use for drug  
15 development and testing, and (ii) clinical imaging systems for health care providers to screen for  
16 breast cancer. The Debtors' molecular breast imaging ("MBI") is allegedly the first commercially  
17 available, FDA-approved system on the market.

18 17. The Debtors' corporate structure is as follows: There is a limited liability company  
19 that is a parent holding company called Advanced Molecular Imaging LLC ("AMI LLC"). That  
20 entity owns all of the equity ownership in three subsidiaries, Industrial Digital Imaging Inc.  
21 ("IDI"), Advanced Molecular Imaging Inc. ("AMI Inc.") and Gamma Medica-Ideas, Inc.  
22 ("Gamma Holdco"). AMI LLC owns no other assets.

23 18. Gamma Holdco is the sole shareholder of Gamma Medica-Ideas (USA), Inc.  
24 ("Gamma USA"), Gamma Medica-Ideas (Canada), Inc. ("Gamma Canada") and Gamma Medica-  
25 Ideas (Norway) as ("Gamma Norway"). Gamma USA is the primary domestic operating entity.  
26 Gamma Norway runs an industrial division that develops radiation detector systems and creates  
27 data systems used in satellite space missions and commercial products.

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1 19. The ownership of parent company AMI LLC is as follows: Psilos owns  
2 approximately 43%, CRP owns approximately 20.5% and the rest is owned by many other  
3 members of AMI LLC.

4 20. Gamma Holdco, Gamma USA, IDI and AMI Inc. are borrowers on (i) a senior  
5 secured revolver loan provided by Bridge Bank, NA of approximately \$3.0 million, which CRP  
6 has purchased, and (ii) various tranches of subordinated allegedly secured debt of approximately  
7 \$7.7 million owed to CRP, \$1.1 million owed to Psilos, and \$94,000 owed to Steven Lee. The  
8 subordinated allegedly secured debt held by CRP is hereinafter referred to as the CRP  
9 Subordinated Debt. The alleged secured debt held by Psilos is hereinafter referred to as the Psilos  
10 Subordinated Debt.

11 21. Gamma Medica has approximately \$12.6 million of unsecured debt of which  
12 SIINT holds the majority. SIINT manufactures some of the imaging equipment for Gamma  
13 Medica also has served as its Japanese distributor for certain of its business lines.

14 22. During 2011 and 2012, Gamma USA's board included two directors appointed by  
15 Psilos (David Eichler and Alvin Waxman) and one allocated to CRP (Robert Ammerman). At  
16 various points during 2011 and 2012, there may have been other board members of Gamma USA.

17 23. Plaintiff is informed and believes that Gamma USA's Board did not routinely have  
18 separate board meetings from the board meetings of the other Debtors, which also did not hold  
19 regular board meetings. Psilos, CRP and Calandra ran the Debtors on an informal basis. The  
20 Debtors have few, if any, minutes of board meetings and rarely passed corporation resolutions.  
21 The Debtors' board of directors or managers did not take votes of disinterested directors on  
22 material actions in connection with the Debtors' governance. In fact, most corporate action was  
23 taken by Psilos and CRP in disregard of applicable law.

24 **D. Psilos and CRP Take Over Control of Gamma Medica and Drive Gamma Medica**  
25 **Into Bankruptcy**

26 24. During the Summer of 2010 and thereafter, Debtors were experiencing cash flow  
27 problems. After receiving new financing, the valuations of Debtors ranged from \$45.5 million to  
28 \$49.5 million.

1           25.     By the end of February 2011, Debtors determined that they needed to raise  
2 additional capital. Gamma USA's CEO Bradley Patt and Psilos began communicating with  
3 investment banks and also considered a possible preferred stock equity raise.

4           26.     At the urging of CRP, Psilos instructed Patt on June 1, 2011 to hire James Calandra  
5 of the restructuring firm Birch Hill to access and recommend improvements to the financial  
6 management of Debtors. Psilos did not provide the names of any other restructuring firms and  
7 insisted that Debtors retain Calandra through Birch Hill. CRP insisted that Psilos cause the  
8 Debtors to engage Calandra. No other alternatives were presented to board members, and the  
9 disinterested board members were not fully informed of Calandra's close relationship with CRP.  
10 These non-disclosures proved to be of critical importance given the breaches of duty of loyalty  
11 further described herein.

12           27.     Plaintiff is informed and believes that Calandra served as the agent of CRP and at  
13 times also served as the agent of Psilos. Calandra assumed many of the senior management roles  
14 for each of the Debtors, and had a direct line of communication with both Psilos and CRP. CRP  
15 also had regular communications with Psilos regarding the day-to-day management of Debtors.  
16 Psilos and CRP used Calandra to take control over the day-to-day operations of the Debtors.  
17 Calandra did not similarly communicate with other board members.

18           28.     The Debtors continued to lose money after Calandra was employed by the Debtors.  
19 During the Summer of 2011, Psilos issued a term sheet to provide \$6.0 million in financing to the  
20 Debtors conditioned on Calandra and Psilos having a greater role in running the business.

21           29.     On approximately August 11, 2011, Eichler informed Patt that Psilos' new \$6.0  
22 million financing was conditioned on the following management changes:

23           a.       A new Executive Committee would manage the Debtors consisting of  
24 Waxman (Psilos), Eichler (Psilos), Calandra (Birch Hill) and Patt.

25           b.       Calandra would be appointed CFO and report directly to the Executive  
26 Committee, and would be President and CEO of the pre-clinical imaging division.

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1 c. Patt would be President and CEO of only the clinical business.

2 In practice, Psilos, with the knowledge, consent or acquiescence of CRP, would make all  
3 management decisions thereafter.

4 30. Even though the Debtors needed the funds and its board agreed to the management  
5 changes, Psilos reneged on its agreement to provide the financing for the business during the Fall  
6 of 2011. However, Psilos and CRP refused to permit the Debtors to seek financing from any other  
7 source. Neither Psilos nor CRP agreed to advance funds sufficient for the Debtors to operate  
8 successfully.

9 31. Eventually, Psilos, CRP and Calandra caused Patt to be removed as CEO. At the  
10 direction of Psilos and CRP, the Debtors then retained Calandra as CEO.

11 32. In October 2011, Psilos informed SIINT (Gamma Medica's largest unsecured  
12 creditor) that Psilos would not provide new financing unless SIINT agreed to substantially  
13 discount the amount of its unsecured debt. Psilos also threatened to force the Debtors into  
14 bankruptcy unless the unsecured creditors agreed to discount the amounts that they were owed.

15 33. In late 2011, Psilos, CRP and Calandra caused the Debtors to retain the investment  
16 banking firm Houlihan Lokey ("HL") to locate a potential buyer for the pre-clinical business. In  
17 or about January of 2012, HL was retained to locate a buyer for the clinical business. While HL  
18 was engaged, Psilos was collaborating with CRP in an effort to cause a foreclosure on the assets of  
19 the Debtors so that Psilos could acquire the Debtors' assets.

20 34. Plaintiff is informed and believes that the Debtors received significant serious  
21 inquiries for the acquisition of the clinical molecular breast imaging division, but the clinical  
22 business was not sold due to Psilos' failure to cooperate in connection with any sale. Indeed,  
23 Calandra and Psilos caused the sale process to fail, and thereby virtually ensured that Debtors  
24 would file chapter 11 bankruptcy petitions, so that Psilos and/or CRP could then acquire the  
25 Debtors' businesses for substantially less than their actual value.

26 35. Plaintiff is informed and believes that Calandra also conspired with CRP to enable  
27 CRP to take control of the bankruptcy process and to ensure that the bankruptcy was run for the  
28 purpose of CRP being repaid its loan obligations.





1 value of the assets of the Debtors so that any foreclosure sale or liquidation sale would be more  
2 likely to cover their secured debt.

3 40. Plaintiff is informed and believes that Defendants Waxman and Eichler served on  
4 the Gamma USA board and the boards of other Debtors as agents of Psilos to protect its financial  
5 interest in Debtors. Waxman and Eichler acted within the course and scope of their employment  
6 at Psilos in connection with their service as board members, and took actions on the boards in  
7 accordance with the interests of Psilos. As such, Psilos is liable for the breach of fiduciary duty by  
8 its agents Waxman and Eichler under the doctrine of *respondeat superior*, which is separate from  
9 its direct lender liability.

10 41. Plaintiff is informed and believes that Psilos also aided and abetted Waxman and  
11 Eichler in their breach of fiduciary duty to Debtors. Psilos knew that the conduct of Waxman and  
12 Eichler constituted a breach of fiduciary duty, and knew that Waxman and Eichler were acting in  
13 the interests of Psilos, and not Debtors. Moreover, because Waxman and Eichler are partners in  
14 Psilos and/or members of a related controlling LLC or limited partnership, their conduct and  
15 knowledge is imputed to Psilos. Psilos gave substantial assistance or encouragement to Waxman  
16 and Eichler to serve as board members and to protect Psilos' interests by compensating them for  
17 their work on behalf of Debtors.

18 42. Plaintiff is informed and believes that Defendants Ammerman, CRP, and other  
19 defendants to be named, breached their fiduciary duty by the following conduct:

- 20 a. Preferring the interests of CRP as a subordinated debt holder over the  
21 interests of Debtors;
- 22 b. Causing Debtors to be run for the purpose of having CRP's debts repaid;
- 23 c. Failing to maximize the value of Debtors as an enterprise; and
- 24 d. Taking actions to the detriment of the unsecured creditors, including  
25 without limitation, causing the Debtors to increase their unsecured trade credit to maximize the  
26 value of the assets of the Debtors so that any foreclosure sale or liquidation sale would be more  
27 likely to cover their secured debt.
- 28

1           43. Plaintiff is informed and believes that Defendant Ammerman served on the Gamma  
2 USA board and the boards of other Debtors as an agent of CRP to protect its financial interest in  
3 Debtors. Ammerman acted within the course and scope of his employment at CRP in connection  
4 with his service as a board member, and took actions on the boards in accordance with the  
5 interests of CRP. As such, CRP is liable for the breach of fiduciary duty by its agent Ammerman  
6 under the doctrine of *respondeat superior*, which is separate from its direct lender liability.

7           44. Plaintiff is informed and believes that CRP also aided and abetted Ammerman in  
8 his breach of fiduciary duty to Debtors. CRP knew that the conduct of Ammerman constituted a  
9 breach of fiduciary duty, and that Ammerman was acting at all times in the interests of CRP, and  
10 not Debtors. Moreover, because Ammerman was a partner in CRP and/or a member of a related  
11 controlling LLC or limited partnership, his conduct and knowledge is imputed to CRP. CRP gave  
12 substantial assistance or encouragement to Ammerman to serve as a board member and to protect  
13 CRP's interests by compensating him for his work on behalf of Debtors.

14           45. Plaintiff is informed and believes that Defendant Calandra breached his fiduciary  
15 duty by the following conduct:

- 16           a. Preferring the personal interest of Calandra over the interests of Debtors;  
17           b. Preferring the interests of CRP and Psilos over the interests of Debtors;  
18           c. Failing to maximize the value of Debtors as an enterprise; and  
19           d. Taking actions in the bankruptcy cases to further his personal interests and  
20 the interests of CRP and Psilos.

21           46. Plaintiff is informed and believes that Defendant Calandra served on the Gamma  
22 USA board and the boards of other Debtors. He also was CFO and then CEO of Gamma USA.  
23 Calandra was the agent of Birch Hill in rendering his services to Debtors. Calandra acted within  
24 the course and scope of his employment at Birch Hill in connection with his service as a board  
25 member and officer, and took actions in accordance with the interests of Birch Hill. As such,  
26 Birch Hill is liable for the breach of fiduciary duty by Calandra under the doctrine of *respondeat*  
27 *superior*.

28

1 47. Plaintiff is informed and believes that Birch Hill aided and abetted Calandra in his  
2 breach of fiduciary duty to Debtors. Birch Hill knew that the conduct of Calandra constituted a  
3 breach of fiduciary duty, and that Calandra was acting at all times in the interests of Birch Hill,  
4 and not Debtors. Moreover, Calandra was a partner in Birch Hill so that his conduct and  
5 knowledge is imputed to Birch Hill. Birch Hill gave substantial assistance or encouragement to  
6 Calandra to serve as a board member and to protect Birch Hill's interests by compensating him for  
7 his work on behalf of Debtors.

8 48. Plaintiff is informed and believes that the management decisions made by each of  
9 the Defendants were not made in good faith and involved conflicts of interest between Debtors  
10 and each of the Defendants, such that none of the Defendants is insulated by the business  
11 judgment rule.

12 49. As a result of these breaches of fiduciary duty, Plaintiff is entitled to recover  
13 compensatory damages in an amount to be proven at trial.

14 50. Plaintiff is informed and believes that the conduct of each of the Defendants was  
15 malicious, fraudulent and oppressive, such that Plaintiff seeks an award of punitive damages  
16 against each of them.

17 **SECOND CLAIM FOR RELIEF**

18 **FOR NEGLIGENCE**

19 **(against all Defendants)**

20 51. Plaintiffs incorporate the allegations contained in Paragraphs 1 to 35 of this  
21 Complaint.

22 52. As a director and in the case of Calandra as an officer as well, each individual  
23 Defendant owed a duty of care to the Debtors and their shareholders.

24 53. Plaintiff is informed and believes that Defendants Waxman and Eichler breached  
25 their duty of care by the following conduct:

26 a. Failing to supervise Calandra in his role as CFO and CEO of Gamma USA  
27 and as an officer of other Debtors;

28

1           b.       Preferring the interests of Psilos as a subordinated debt holder over the  
2 interests of Debtors;

3           c.       Taking actions to enable Psilos to purchase at least part of Debtors'  
4 businesses;

5           d.       Failing to maximize the value of the corporation as an enterprise; and

6           e.       Taking actions to the detriment of the unsecured creditors.

7       54.       Plaintiff is informed and believes that Defendants Waxman and Eichler served on  
8 the Gamma USA board and the boards of other Debtors as agents of Psilos to protect its financial  
9 interest in Debtors. Waxman and Eichler acted within the course and scope of their employment  
10 at Psilos in connection with their service as board members, and took actions on the board in  
11 accordance with the interests of Psilos. As such, Psilos is liable for the breach of duty of care by  
12 Waxman and Eichler under the doctrine of *respondeat superior*.

13       55.       Plaintiff is informed and believes that Defendant Ammerman breached his duty of  
14 care by the following conduct:

15           a.       Failing to supervise Calandra in his role as CFO and CEO of Gamma USA  
16 and as an officer of other Debtors;

17           b.       Preferring the interests of CRP as a subordinated debt holder over the  
18 interests of Debtors;

19           c.       Taking actions to enable Psilos and/or CRP to purchase at least part of  
20 Debtors' businesses;

21           d.       Causing Debtors to be run for the purpose of having CRP's debts repaid;  
22 and

23           e.       Failing to maximize the value of Debtors as an enterprise.

24       56.       Plaintiff is informed and believes that Defendant Ammerman served on the Gamma  
25 USA board and the boards of other Debtors. He was also as an agent of CRP to protect its  
26 financial interest in Debtors. Ammerman acted within the course and scope of his employment at  
27 CRP in connection with his service as a board member, and took actions on the board in  
28

1 accordance with the interests of CRP. As such, CRP is liable for the breach of duty of care by  
2 Ammerman under the doctrine of *respondeat superior*.

3 57. Plaintiff is informed and believes that Defendant Calandra breached his duty of  
4 care by the following conduct:

- 5 a. Preferring the personal interest of Calandra over the interest of Debtors;
- 6 b. Preferring the interests of CRP and Psilos over the interests of Debtors;
- 7 c. Failing to maximize the value of the Debtors;
- 8 d. Taking actions to the detriment of the unsecured creditors; and
- 9 e. Taking actions in the bankruptcy cases to further his personal interests and  
10 the interests of CRP and Psilos.

11 58. Plaintiff is informed and believes that Defendant Calandra served on the Gamma  
12 USA board and the boards of other Debtors. He was also CFO and then CEO of Gamma USA and  
13 an officer of other Debtors. Calandra was the agent of Birch Hill in rendering his services to  
14 Debtors. Calandra acted within the course and scope of his employment at Birch Hill, and took  
15 actions in accordance with the interests of Birch Hill. As such, Birch Hill is liable for the breach  
16 of duty of care by Calandra under the doctrine of *respondeat superior*.

17 59. As a result of the breaches of duty of care alleged above, Plaintiff is entitled to  
18 recovery compensatory damages from each Defendant in an amount to be proven at trial.

19 **THIRD CLAIM FOR RELIEF**  
20 **FOR BREACH OF IMPLIED COVENANT**  
21 **OF GOOD FAITH AND FAIR DEALING**  
22 **(against Psilos and CRP)**

23 60. Plaintiffs incorporate the allegations contained in Paragraphs 1 to 35 and 37 to 50  
24 of this Complaint.

25 61. Psilos had a contractual relationship with Debtors based on loan and security  
26 agreements pursuant to which Psilos had loaned approximately \$1.1 million to Gamma USA as of  
27 August 2012. Psilos was also a preferred Series A shareholder by contract with Gamma Medica.  
28







1 California Constitution and any other applicable law, and there is no exemption under California  
2 law or other applicable law which permits CRP and Psilos to charge the interest that each charged.

3 79. Based upon the inequitable conduct by CRP and Psilos against the Debtors,  
4 Plaintiff is entitled to cancellation of indebtedness to the maximum extent permitted by law, as  
5 well as the return of interest and principle paid by the Debtors.

6 **DEMAND FOR JURY TRIAL**

7 80. Plaintiff hereby requests trial by jury. Pursuant to LR 9015-2, Plaintiff does not  
8 consent to a jury trial conducted by the Bankruptcy Court; rather it shall file a motion to withdraw  
9 the reference to the United States District Court for the Central District of California.

10 **PRAYER FOR RELIEF**

11 Plaintiff prays for judgment against Defendants as follows:

- 12 1. Compensatory damages, and such other determinations of rights as are necessary,
- 13 as to the first, second, third, fourth and fifth claims;
- 14 2. Cancelation of indebtedness and recovery of interest and principle to the maximum
- 15 extent permitted by law;
- 16 3. Punitive damages as to the first claim;
- 17 4. Reasonable attorneys' fees and costs of suit; and
- 18 5. Any further relief this Court deems appropriate.

19 DATED: January 8, 2013 KINSELLA WEITZMAN ISER  
20 KUMP & ALDISERT LLP

21  
22  
23 By:           /s/ Gregory J. Aldisert            
24 Gregory J. Aldisert  
25 Proposed Special Counsel for Plaintiff  
26 Official Committee of Creditors Holding  
27 Unsecured Claims of: Gamma Medica (USA) Inc.,  
28 Advanced Molecular Imaging LLC, Gamma  
Medica-Ideas, Inc., Advanced Molecular Imaging,  
Inc. and Industrial Digital Imaging, Inc.

## PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is: 808 Wilshire Boulevard, 3<sup>rd</sup> Floor, Santa Monica, CA 90401

A true and correct copy of the foregoing document entitled (*specify*): **FIRST AMENDED COMPLAINT; NOTICE OF WITHDRAWAL RE COMPLAINT FILED AS "THIRD PARTY COMPLAINT" (DOCKET NUMBER 2); NOTICE OF ERRATA RE COMPLAINT (DOCKET NUMBER 1)** will be served or was served in the manner stated below:

1. **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF)**: Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) \_\_\_\_\_, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

Service information continued on attached page

2. **SERVED BY UNITED STATES MAIL**:

On (*date*) January 9, 2013, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Capital Resource Partners V., L.P.  
c/o Robert C. Ammerman  
CRP Partners V, L.L.C.  
85 Merrimac Street, Suite 200  
Boston, MA 02114

Birch Hill Partners, LLC  
c/o CT Corporation System  
155 Federal Street # 700  
Boston, MA 02110-1727

Psilos Group Partners III, L.P.  
c/o Corporation Service Company  
2711 Centerville Rd., Suite 400  
Wilmington, DE 19808

Psilos Group Partners IIIA, L.P.  
c/o Corporation Service Company  
2711 Centerville Rd., Suite 400  
Wilmington, DE 19808

Psilos Group Partners IIIB, L.P.  
c/o Corporation Service Company  
2711 Centerville Rd., Suite 400  
Wilmington, DE 19808

Psilos Group Partners IIIC, L.P.  
c/o Corporation Service Company  
2711 Centerville Rd., Suite 400  
Wilmington, DE 19808

Robert C. Ammerman  
CRP Partners V, L.L.C.  
85 Merrimac Street, Suite 200  
Boston, MA 02114

James Calandra  
Birch Hill Partners, LLC  
Two Capital Plaza 5<sup>th</sup> Floor  
Concord, NH 03301

David Eichler  
Psilos Group Partners III, L.P.  
140 Broadway, 51st Floor  
New York, NY 10005

Alvin Waxman  
Psilos Group Partners III, L.P.  
140 Broadway, 51st Floor  
New York, NY 10005

Service information continued on attached page

**3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL** (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (date) January 9, 2013, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Hon. Victoria S. Kaufman  
United States Bankruptcy Court  
21041 Burbank Blvd., Suite 354  
Woodland Hills, CA 91367 (Via Overnight)

Service information continued on attached page

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

January 9, 2013  
*Date*

Lynn K. Rutherford  
*Printed Name*

/s/ Lynn K. Rutherford  
*Signature*

**Complaint/Summons:**

[1:12-ap-01447-VK Official Committee of Creditors Holding Unsecured v. CAPITAL RESOURCE PARTNERS V, L.P. et al](#)

Type: ap

Office: 1 (San Fernando Valley) Judge: VK

Lead Case: 1-12-bk-17469

**U.S. Bankruptcy Court****Central District Of California**

## Notice of Electronic Filing

The following transaction was received from Gregory J Aldisert entered on 1/9/2013 at 11:46 AM PST and filed on 1/9/2013

**Case Name:** Official Committee of Creditors Holding Unsecured v. CAPITAL RESOURCE PARTNERS V, L.P. et al

**Case Number:** [1:12-ap-01447-VK](#)

**Document Number:** [10](#)

**Docket Text:**

Amended Complaint *FIRST AMENDED COMPLAINT* by Gregory J Aldisert on behalf of Official Committee of Creditors Holding Unsecured Claims against Robert Ammerman, Birch Hill Partners, LLC, CAPITAL RESOURCE PARTNERS V, L.P., James Calandra, David Eichler, PSILOS GROUP PARTNERS III, LP, PSILOS GROUP PARTNERS IIIA, LP, PSILOS GROUP PARTNERS IIIB, LP, Psilos Group Managers, LLC, Alvin Waxman. (RE: related document(s)[1] Adversary case 1:12-ap-01447. Complaint by Official Committee of Creditors Holding Unsecured Claims against CAPITAL RESOURCE PARTNERS V, L.P., Psilos Group Managers, LLC, Birch Hill Partners, LLC, James Calandra, Robert Ammerman, David Eichler, Alvin Waxman, PSILOS GROUP PARTNERS III, LP, PSILOS GROUP PARTNERS IIIB, LP, PSILOS GROUP PARTNERS IIIA, LP. Fee Amount \$293 . filed by 3rd Party Plaintiff Official Committee of Creditors Holding Unsecured Claims, Plaintiff Official Committee of Creditors Holding Unsecured Claims). (Aldisert, Gregory)

The following document(s) are associated with this transaction:

**Document description:**Main Document

**Original filename:**C:\Users\LRutherford\Desktop\Gamma Summons and FAC\FIRST AMENDED COMPLAINT.pdf

**Electronic document Stamp:**

[STAMP bkecfStamp\_ID=1106918562 [Date=1/9/2013] [FileNumber=61298068-0] [a84b5913a19b0aed1c675488f1cfa3ec71018181c9c01c81f8f5460111f9eec77818e64a93011e833302098a423430dc0af9204c0060c47184a166389a4d4ba6]]

**1:12-ap-01447-VK Notice will be electronically mailed to:**

Gregory J Aldisert on behalf of Plaintiff Official Committee of Creditors Holding Unsecured Claims  
galdisert@kwikalaw.com, lrutherford@kwikalaw.com

United States Trustee (SV)  
ustpreion16.wh.ecf@usdoj.gov

**1:12-ap-01447-VK Notice will not be electronically mailed to:**

Robert Ammerman

,

Birch Hill Partners, LLC  
c/o Hemar, Rousso & Heald, LLP  
15910 Ventura Blvd., 12th Floor  
Encino, CA 91436

CAPITAL RESOURCE PARTNERS V, L.P.  
c/o MARSHALL F. GOLDBERG  
GLASS & GOLDBERG  
21700 Oxnard Street, Suite 430  
Woodland Hills, CA 91367

James Calandra

,

David Eichler

,

Official Committee of Creditors Holding Unsecured Claims  
808 Wilshire Boulevard  
Third Floor  
Santa Monica, CA 90401

PSILOS GROUP PARTNERS III, LP

,

PSILOS GROUP PARTNERS IIIA, LP

,

PSILOS GROUP PARTNERS IIIB, LP

,

Psilos Group Managers, LLC  
140 Broadway, 51st Floor  
New York, NY 10005

Alvin Waxman

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