

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

SCHEDULE TO

Tender Offer Statement under Section 14(d)(1) or 13(e)(1)
of the Securities Exchange Act of 1934
(Amendment No. 3)

PORTEC RAIL PRODUCTS, INC.

(Name of Subject Company (issuer))

FOSTER THOMAS COMPANY

(offeror)

a wholly-owned subsidiary of

L.B. FOSTER COMPANY

(parent of offeror)

(Names of Filing Persons (identifying status as offeror, issuer or other person))

Common Stock, \$1.00 par value per share
(Title of Class of Securities)

736212101

(CUSIP Number of Class of Securities)

David Voltz
L.B. Foster Company
415 Holiday Drive
Pittsburgh, Pennsylvania 15220
(412)-928-3417

*(Name, address, and telephone numbers of person authorized
to receive notices and communications on behalf of filing persons)*

with a copy to:

Lewis U. Davis, Jr., Esq.
Buchanan Ingersoll & Rooney PC
One Oxford Centre
301 Grant Street, 20th Floor
Pittsburgh, PA 15219
(412) 562-8800

Calculation of Filing Fee

Transaction valuation*
\$114,067,450

Amount of Filing Fee**
\$8,133

* Estimated for purposes of calculating the amount of the filing fee only, in accordance with Rule 0-11 under the Securities Exchange Act of 1934, as amended (the "Exchange Act"). The calculation of the transaction valuation assumes a purchase price of \$11.71 per share and the purchase of 9,741,029 shares of Portec common stock, which is represented by (i) 9,602,029 outstanding shares of common stock; and (ii) 139,000 shares of common stock that were issuable with respect to all outstanding options, in each case as provided by Portec, as of the most recent practicable date.

** The amount of the filing fee was calculated in accordance with Section 14(g)(3) of the Exchange Act, and equals \$71.30 per million dollars of the transaction valuation amount.

Check the box if any part of the fee is offset as provided by Rule 0-11(a)(2) and identify the filing with which the offsetting fee was previously paid. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

Amount Previously Paid: \$8,133
Form or Registration No.: Schedule TO-T

Filing Party: L.B. Foster Company and Foster Thomas Company
Date Filed: February 26, 2010

Check the box if the filing relates solely to preliminary communications made before the commencement of a tender offer.

Check the appropriate boxes below to designate any transactions to which the statement relates:

third-party tender offer subject to Rule 14d-1.

- issuer tender offer subject to Rule 13e-4.
- going-private transaction subject to Rule 13e-3.
- amendment to Schedule 13D under Rule 13d-2.

Check the following box if the filing is a final amendment reporting the results of the tender offer:

This Amendment No. 3 (“Amendment No. 3”) amends and supplements the Tender Offer Statement on Schedule TO, as amended (as originally filed with the Securities and Exchange Commission on February 26, 2010 and as amended by Amendment No. 1 thereto filed with the SEC on March 1, 2010, and as further amended by Amendment No. 2 thereto filed with the SEC on March 3, 2010, the “Schedule TO”) by (i) Foster Thomas Company, a West Virginia corporation (the “Purchaser”) and a wholly-owned subsidiary of L.B. Foster Company, a Pennsylvania corporation (“Parent”), and (ii) Parent. The Schedule TO relates to the offer by the Purchaser to purchase all of the outstanding shares of common stock, par value \$1.00 per share (the “Shares”), of Portec Rail Products, Inc., a West Virginia corporation (“Portec”), at a purchase price of \$11.71 per Share, net to the seller in cash, without interest thereon and less any applicable withholding or stock transfer taxes, upon the terms and subject to the conditions set forth in the Offer to Purchase dated February 26, 2010 (which, together with any amendments and supplements thereto, collectively constitute the “Offer to Purchase”) and in the related Letter of Transmittal, copies of which are filed with the Schedule TO as Exhibits (a)(1)(A) and (a)(1)(B), respectively. Capitalized terms used and not otherwise defined in this Amendment No. 3 have the meanings assigned to such terms in the Schedule TO or the Offer to Purchase. This Amendment No. 3 is being filed on behalf of the Purchaser and Parent. Pursuant to General Instruction F to Schedule TO, the information contained in the Offer to Purchase, including all schedules and annexes thereto, is hereby expressly incorporated by reference in answers to Items 1 through 11 of the Schedule TO and is supplemented by the information specifically provided for herein.

Item 11. Additional Information.

Items 5 and 11 of the Schedule TO are amended and supplemented to include the following:

The following paragraph is added to the end of Section 10 – “Background of the Offer; Past Contacts or Negotiations with Portec” of the Offer to Purchase:

“Effective March 5, 2010, L.B. Foster voluntarily withdrew and re-filed its HSR Act filing. This withdrawal and re-filing is being undertaken in order to provide the Antitrust Division with additional time to review the information submitted by L.B. Foster and Portec.”

Item 11 of the Schedule TO is further amended and supplemented to include the following:

The following paragraph replaces the former second paragraph of Section 15 – “Legal Matters; Required Regulatory Approvals” – “Federal Antitrust Laws” of the Offer to Purchase:

“Under the HSR Act, the purchase of Shares in the Offer may not be completed until the expiration of a 15-calendar-day waiting period following the filing of certain required information and documentary material concerning the Offer with the FTC and the Antitrust Division, unless the waiting period is earlier terminated by the FTC and the Antitrust Division. The Company filed a Premerger Notification and Report Form with respect to the Offer and the Merger on February 19, 2010, pursuant to the requirements of the HSR Act. L.B. Foster filed a Premerger Notification and Report Form with respect to the Offer and the Merger with the FTC and the Antitrust Division on February 19, 2010, pursuant to the requirements of the HSR Act. L.B. Foster voluntarily withdrew and re-filed its Notification and Report Form effective March 5, 2010 in order to provide the Antitrust Division with additional time to review the information submitted by L.B. Foster and the Company. As a result, the waiting period applicable to the purchase of Shares pursuant to the Offer and Merger is scheduled to expire at 11:59 p.m., Eastern Time, on March 22, 2010 unless earlier terminated by the FTC and the Antitrust Division, or the Antitrust Division makes a request for additional information or documentary material prior to that time. If, within the 15-calendar-day waiting period, the Antitrust Division makes such a request for additional information or documentary material, the waiting period with respect to the Offer and the Merger would be extended for an additional period of ten calendar days following the date of L.B. Foster’s substantial compliance with that request. Only one extension of the waiting period pursuant to a request for additional information is authorized by the HSR Act rules. After that time, the waiting period could be extended only by court order or with L.B. Foster’s consent. The Antitrust Division may terminate the additional ten calendar-day waiting period before its expiration. In practice, complying with a request for additional information or documentary material can take a significant period of time.”

Item 11 (a)(5) of the Schedule TO is hereby amended and supplemented by adding the following paragraphs:

“On March 3, 2010, L.B. Foster and Purchaser were served with a lawsuit related to the Offer and the Merger which was filed on March 2, 2010 in the Court of Common Pleas of Allegheny County, Pennsylvania, and captioned *Scott Phillips v. Portec Rail Products, Inc., et al.* The action is brought by Scott Phillips, who claims to be a stockholder of Portec, on his own behalf and on behalf of all others similarly situated, and seeks certification as a class action on behalf of all public stockholders of Portec. The lawsuit names Portec, each of Portec’s directors, L.B. Foster and Purchaser as defendants. The lawsuit alleges, among other things, that Portec’s directors breached their fiduciary duties and that L.B. Foster and Purchaser aided and abetted such alleged breaches of fiduciary duties. Based on these allegations, the lawsuit seeks, among other relief, injunctive relief enjoining the defendants from consummating the Offer and the Merger. It also purports to seek recovery of the costs of the action, including reasonable attorney’s fees. A copy of the Complaint is filed as Exhibit (a)(5)(E) to the Schedule TO and is incorporated herein by reference.

On March 4, 2010, Portec was served with a lawsuit related to the Offer and the Merger which was filed on March 3, 2010 in the Circuit Court of Kanawha County, West Virginia, and captioned *Josh Furman v. Marshall Reynolds, et al.*, against Portec, each of Portec’s directors, L.B. Foster and Purchaser on behalf of a purported class of public stockholders of Portec. L.B. Foster and Purchaser have not yet been served in connection with the lawsuit. The complaint alleges that the director defendants breached their fiduciary duties in connection with the Offer and the Merger and that L.B. Foster and Purchaser aided and abetted such alleged breaches of fiduciary duties. Based on these allegations, the plaintiffs seek, among other relief, certification as a class action on behalf of all public Portec stockholders, preliminary and permanent injunctive relief against the Offer and the Merger, and the costs and expenses of the action, including reasonable allowance for attorneys’ and experts’ fees and expenses. A copy of the complaint is filed as Exhibit (a)(5)(F) hereto, and is incorporated herein by reference.

Also on March 4, 2010, Portec was served with a lawsuit related to the Offer and the Merger which was filed on February 24, 2010 in the Court of Common Pleas of Allegheny County, Pennsylvania, and captioned *Richard S. Gesoff v. Marshall T. Reynolds, et al.* The action is brought by Richard S. Gesoff, who claims to be a stockholder of Portec, on his own behalf and on behalf of all others similarly situated, and seeks certification as a class action on behalf of all public Portec stockholders, except the defendants and their affiliates. The lawsuit names Portec, each of Portec’s directors, L.B. Foster and Purchaser as defendants. L.B. Foster and Purchaser have not yet been served in connection with the lawsuit. The lawsuit alleges, among other things, that Portec’s directors breached their fiduciary duties and that L.B. Foster and Purchaser aided and abetted such alleged breaches of fiduciary duties. Based on these allegations, the lawsuit seeks, among other relief, injunctive relief enjoining the defendants from consummating the Offer and the Merger. It also purports to seek recovery of the costs of the action, including reasonable attorney’s fees. A copy of the Complaint is filed as Exhibit (a)(5)(G) to the Schedule TO and is incorporated herein by reference.”

Item 12. Exhibits.

Exhibit	Exhibit Name
(a)(5)(E)	Complaint captioned <i>Scott Phillips v. Portec Rail Products, Inc., et al.</i> , filed in the Court of Common Pleas of Allegheny County, Pennsylvania
(a)(5)(F)	Complaint captioned <i>Josh Furman v. Marshall Reynolds, et al.</i> , filed in the Circuit Court of Kanawha County, West Virginia
(a)(5)(G)	Complaint captioned <i>Richard S. Gesoff v. Marshall T. Reynolds, et al.</i> , filed in the Court of Common Pleas of Allegheny County, Pennsylvania

SIGNATURE

After due inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

L.B. FOSTER COMPANY

Date: March 5, 2010

By: /s/ Stan L. Hasselbusch

Name: Stan L. Hasselbusch

Title: President and CEO

FOSTER THOMAS COMPANY

Date: March 5, 2010

By: /s/ Stan L. Hasselbusch

Name: Stan L. Hasselbusch

Title: President & CEO

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(a)(5)(E)	Complaint captioned <i>Scott Phillips v. Portec Rail Products, Inc., et al.</i> , filed in the Court of Common Pleas of Allegheny County, Pennsylvania
(a)(5)(F)	Complaint captioned <i>Josh Furman v. Marshall Reynolds, et al.</i> , filed in the Circuit Court of Kanawha County, West Virginia
(a)(5)(G)	Complaint captioned <i>Richard S. Gesoff v. Marshall T. Reynolds, et al.</i> , filed in the Court of Common Pleas of Allegheny County, Pennsylvania

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

SCOTT PHILLIPS, individually and on behalf of all others similarly situated,

Plaintiffs,

vs.

PORTEC RAIL PRODUCTS, INC., MARSHALL T. REYNOLDS, JOHN S. COOPER, KIRBY J. TAYLOR, DOUGLAS V. REYNOLDS, A. MICHAEL PERRY, NEAL W. SCAGGS, PHILIP SHELL, DANIEL P. HARRINGTON, PHILIP E. CLINE, THOMAS W. WRIGHT, LOUIS J. AKERS, L.B. FOSTER CO., and FOSTER THOMAS CO.,

Defendants

) CIVIL DIVISION
) Case No.GD 10-3982
) Code:
) TYPE OF PLEADING
) CLASS ACTION COMPLAINT
) JURY TRIAL DEMANDED
) Counsel of Record for this Party:
) Alfred G. Yates Jr., Esquire
) Pa. ID No. 17419
) Gerald L. Rutledge, Esquire
) Pa. ID No. 62027
) LAW OFFICE OF ALFRED G. YATES JR.
) 429 Forbes Avenue
) 519 Allegheny Building
) Pittsburgh, PA 15219
) Telephone: (412) 391-5164
) Facsimile: (412) 471-1033
) yateslaw@aol.com

[additional counsel appear on signature page]

(STAMP)

**IN THE COURT OF COMMON PLEAS OF
ALLEGHENY COUNTY, PENNSYLVANIA**

SCOTT PHILLIPS, individually and on behalf of all others similarly situated,)	
	)	CIVIL DIVISION
Plaintiffs,)	
	)	Case No. GD 10-3982
vs.)	
)	
PORTEC RAIL PRODUCTS, INC.,)	
MARSHALL T. REYNOLDS, JOHN S.	)	<u>CLASS ACTION COMPLAINT</u>
COOPER, KIRBY J. TAYLOR, DOUGLAS)	
V. REYNOLDS, A. MICHAEL PERRY,	)	<u>JURY TRIAL DEMANDED</u>
NEAL W. SCAGGS, PHILIP SHELL,)	
DANIEL P. HARRINGTON, PHILIP E.)	
CLINE, THOMAS W. WRIGHT, LOUIS J.)	
AKERS, L.B. FOSTER CO., and FOSTER)	
THOMAS CO.,)	
)	
Defendants)	

Plaintiff, Scott Phillips, by his attorneys, alleges upon information and belief, except for his own acts, which are alleged on knowledge, as follows:

INTRODUCTION

1. Plaintiff brings this action on behalf of the public stockholders of Portec Rail Products, Inc. (“Portec” or the “Company”) against Defendants, Portec and its Board of Directors (the “Board”) seeking equitable relief for their breaches of fiduciary duty and other violations of state law arising out of their attempt to sell the Company to Defendants L.B. Foster Co. and its wholly owned acquisition subsidiary Foster Thomas Co. (collectively “L.B. Foster”). Under the terms of the merger agreement, L.B. Foster will commence a tender offer in which the Company’s stockholders will receive \$11.71 in cash for each share of common stock owned, implying a total value of approximately

\$112 million (the “Proposed Transaction”). This tender offer will remain open for only twenty (20) business days after its commencement, and may be followed by a short-form cash out merger without a shareholder vote.

JURISDICTION AND VENUE

2. This court has jurisdiction over this action as Defendant Portec headquartered in this state.

3. Venue is proper in this District because many of the acts and practices complained of herein occurred in substantial part in this District. In addition, Portec maintains its headquarters in this District.

PARTIES

4. Plaintiff, Scott Phillips, is and has been at all relevant times, the owner of shares of common stock of Portec.

5. Defendant Portec is an international company that manufactures, supplies and distributes a broad range of rail products, rail anchors, rail spikes, railway friction management products and systems, rail joins, railway wayside data collection and data management systems and freight car securement systems. Portec is incorporated in West Virginia but is headquartered at 900 Old Freeport Road, Pittsburgh, Pennsylvania. 15238.

6. Defendant Marshall T. Reynolds (“Reynolds”) has served as the Chairman of the Board since 1997.

7. Defendant John S. Cooper (“Cooper”) has served as a director since December 1997.

8. Defendant Kirby J. Taylor (“Taylor”) has served as a director since December 1997.
9. Defendant Douglas V. Reynolds (“Reynolds”) has served as a director since January 1998.
10. Defendant A. Michael Perry (“Perry”) has served as a director since April 2004.
11. Defendant Neal W. Scaggs (“Scaggs”) has served as a director since January 1998.
12. Defendant Philip (Todd) Shell (“Shell”) has served as a director since September 2005.
13. Defendant Daniel P. Harrington (“Harrington”) has served as a director since January 1998.
14. Defendant Philip E. Cline (“Cline”) has served as a director since January 1998.
15. Defendant Thomas W. Wright (“Wright”) has served as a director since April 2004.
16. Defendant Louis J. Akers (“Akers”) has served as a director since June 2008.

17. Defendants referenced in 6 through 16 are collectively referred to as “Individual Defendants” and/or the “Portec Board.” The Individual Defendants as officers and/or directors of Portec, have a fiduciary relationship with Plaintiff and other public shareholders of Portec and owe them the highest obligations of good faith, fair dealing, loyalty and due care.

18. Defendant L.B. Foster is a manufacturer, fabricator and distributor of products and services for the rail, construction, energy, utility and recreation markets. The company is incorporated in the Commonwealth of Pennsylvania and headquartered at 415 Holiday Drive, Pittsburgh, Pennsylvania 15220.

19. Defendant Foster Thomas Company is a wholly owned subsidiary of L.B. Foster, incorporated in West Virginia.

INDIVIDUAL DEFENDANTS' FIDUCIARY DUTIES

20. By reason of Individual Defendants' positions with the Company as officers and/or directors, they are in a fiduciary relationship with Plaintiffs and the other public shareholders of Portec and owe them, as well as the Company, a duty of highest good faith, fair dealing, loyalty and full, candid and adequate disclosure.

21. Where the officers and/or Directors of a publicly traded corporation undertake a transaction that will result in either: (i) a change in corporate control; (ii) a break up of the corporation's assets; or (iii) sale of the corporation, the Directors have an affirmative fiduciary obligation to obtain the highest value reasonably available for the corporation's shareholders, and if such transaction will result in a change of corporate control, the shareholders are entitled to receive a significant premium. To diligently comply with their fiduciary duties, the Directors and/or officers may not take any action that:

- a. adversely affects the value provided to the corporation's shareholders;
- b. favors themselves or will discourage or inhibit alternative offers to purchase control of the corporation or its assets;
- c. contractually prohibits them from complying with their fiduciary duties;

- d. will otherwise adversely affect their duty to search and secure the best value reasonably available under the circumstances for the corporation's shareholders; and/or
- e. will provide the Directors and/or officers with preferential treatment at the expense of, or separate from, the public shareholders.

22. In accordance with their duties of loyalty and good faith, the Individual Defendants, as Directors and/or officers of Portec, are obligated to refrain from:

- a. participating in any transaction where the directors or officers' loyalties are divided;
- b. participating in any transaction where the directors or officers receive, or are entitled to receive, a personal financial benefit not equally shared by the public shareholders of the corporation; and/or
- c. unjustly enriching themselves at the expense or to the detriment of the public shareholders.

23. Plaintiffs allege herein that the Individual Defendants, separately and together, in connection with the Proposed Transaction are knowingly or recklessly violating their fiduciary duties, including their duties of loyalty, good faith and independence owed to Plaintiffs and other public shareholders of Portec, or are aiding and abetting others in violating those duties.

CONSPIRACY, AIDING AND ABETTING AND CONCERTED ACTION

24. In committing the wrongful acts alleged herein, each of the Defendants has pursued, or joined in the pursuit of, a common course of conduct, and acted in concert with and conspired with one another, in furtherance of their common plan or

design. In addition to the wrongful conduct herein alleged as giving rise to primary liability, the Defendants further aided, abetted and/or assisted each other in breach of their respective duties as herein alleged.

25. During all relevant times hereto, the Defendants, and each of them, initiated a course of conduct which was designed to and did: (i) permit L.B. Foster to attempt to eliminate the public shareholders' equity interest in Portec pursuant to a defective sales process, and (ii) permit L.B. Foster to buy the Company for an unfair price. In furtherance of this plan, conspiracy and course of conduct, Defendants, and each of them, took the actions as set forth herein.

26. Each of the Defendants herein aided and abetted and rendered substantial assistance in the wrongs complained of herein. In taking such actions, as particularized herein, to substantially assist the commission of the wrongdoing complained of, each Defendant acted with knowledge of the primary wrongdoing, substantially assisted the accomplishment of that wrongdoing, and was aware of his or her overall contribution to, and furtherance of, the wrongdoing. The Defendants' acts of aiding and abetting included, *inter alia*, the acts each of them are alleged to have committed in furtherance of the conspiracy, common enterprise and common course of conduct complained of herein.

CLASS ACTION ALLEGATIONS

27. Plaintiffs bring this action on their own behalf and as a class action on behalf of all owners of Portec common stock and their successors in interest, except Defendants and their affiliates (the "Class").

28. This action is properly maintainable as a class action for the following reasons:

- a. the Class is so numerous that joinder of all members is impracticable. As of October 31, 2009, Portec had approximately 9.6 million shares outstanding.
- b. questions of law and fact are common to the Class, including, inter alia, the following:
 - i. Have the Individual Defendants breached their fiduciary duties owed by them to Plaintiffs and the others members of the Class;
 - ii. Are the Individual Defendants, in connection with the Proposed Transaction, pursuing a course of conduct that is in violation of their fiduciary duties;
 - iii. Have Portec and L.B. Foster aided and abetted the Individual Defendants' breaches of fiduciary duty; and
 - iv. Is the Class entitled to injunctive relief or damages as a result of Defendants' wrongful conduct.
- c. Plaintiff is committed to prosecuting this action and has retained competent counsel experienced in litigation of this nature.
- d. Plaintiff's claims are typical of those of the other members of the Class.
- e. Plaintiff has no interests that are adverse to the Class.
- f. The prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications for individual members of the Class and of establishing incompatible standards of conduct for Defendants.

- g. Conflicting adjudications for individual members of the Class might as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests

SUBSTANTIVE ALLEGATIONS

29. On February 17, 2010, Portec and L.B. Foster announced that they had entered into an agreement whereby L.B. Foster would acquire all of Portec's outstanding shares of common stock for \$11.71, in a deal valued at approximately \$112 million. The Proposed Transaction, expected to close before the end of the second quarter 2010, is subject to satisfaction of certain conditions, including antitrust clearance and least 65% of Portec's outstanding shares being tendered.

30. The consideration being offered to Portec shareholders in the Proposed Transaction is unfair and does not provide adequate consideration based on the Company's current and future prospects. On October 29, 2009, the Company announced its 2009 Third Quarter and Nine Month Operating Results. The Company had net income of \$2,023,000 million for the three months ended September 30, 2009 and over \$5,362,000 for the nine months ended September 30, 2009. Additionally, the Company announced net sales for the three and nine months ended September 30, 2009 of \$24.3 million and \$73 million respectively. The Company also showed a strong balance sheet, with current assets exceeding total liabilities, and strong cash flow from operations.

31. Discussing the Company's positive financial results, C.E.O. and President Richard J. Jarosinski, stated:

“We are pleased with our financial performance in what continues to be a very challenging economic climate for our industry. We believe that the overall diversification in our markets and product groups continue to help soften the impact on our business from the global economic downturn. Lower traffic volumes continue to be reported by the North American Class 1 heavy-haul railroads. These customers continue to represent a large portion of our sales, and they continue to invest in our products and services. We have also achieved sales levels from new markets for some of our products due to our efforts to continue global expansion of our products and services.”

Mr. Jarosinski continued, “Our friction management product group, which has the most significant worldwide product exposure and offers multiple operational savings for both heavy-haul freight and passenger service, continues to grow despite the economic downturn. Sales of North American Class 1 gage face and top of rail friction control solutions were the catalyst for this growth while the remainder of our diversified friction management markets and solutions continue to expand into new markets. Our efforts have resulted in a second North American Class 1 customer making a major expansion in the use of our top of rail friction control solutions. Our wayside data management systems, provided by Salient Systems, have also had growth for the quarter and year to date periods. We began the year with a healthy backlog for our wayside data management systems and received a substantial number of new orders early this year, which helped to pave the way for the financial results posted thus far for Salient Systems.

Similar to our friction management product group, the North American Class 1 heavy-haul railroads invested in our wayside data management systems in preparation for higher traffic volumes when economic conditions improve. Additionally, product sales from areas outside the North American market have contributed to Salient Systems’ results. Our track component product group continues to be challenged by lower traffic volume and fewer railcar loadings in North America. We are pleased that some of our past efforts within this product group have positioned us for better financial performance, which has yielded a lower cost structure on some products. Our load securement product group has had a challenging year, as the market for new railcars being built has declined considerably in 2009. We are encouraged by the products within this product group, which was strengthened by the Vulcan Chain product line acquisition and now offers a platform for future growth. Our non-core material handling business in the United Kingdom has had a difficult year with very challenging economic conditions. We are optimistic, however, that our product line and engineering talent in this product group will allow us to capitalize on new order opportunities.”

Mr. Jarosinski concluded, “Despite the economic challenges we continue to face, we still believe that there are opportunities for our products and services in our established markets and in new markets. We have some product groups such as friction management and wayside data management systems that have demonstrated their ability to assist our customers in reducing operating expenses by extending asset life and reducing fuel costs. Our global customer base recognizes this and we believe that they will continue to invest in this technology. We will continue to focus on global expansion of our products and services by organic growth and strategic and accretive acquisitions. We are pleased with our balance sheet, favorable debt to equity ratio and operating cash flow. We believe that we are well-positioned to achieve higher levels of operating performance when favorable economic conditions return to our industry.”

32. Despite the general performance of rail stocks in general during 2009, Portec’s results demonstrated the Company’s strength and value going forward.

33. The inadequacy of the offer price is also demonstrated by the fact that Portec stock was trading at \$11.24 as recently as February 1, 2010, and at least one analyst set a target price for Portec stock at \$12 per share.

34. During 2009 Portec expanded substantially and successfully into the Chinese rail market. The Friction Management product group increased its market presence through a significant increase in Chinese market sales in 2009 from the prior year for the train-mounted Kelsan LCF(TM) Solid-Stick lubrication products and HPF(TM) Solid -Stick tread friction modifier while new orders were also received for friction management wayside application systems that included both gage face lubrication and the KELTRACK(R) top of rail friction control product.

35. Another 2009 milestone achievement for Portec is Salient Systems’ entrance into the Chinese market by receiving orders from Shenhua Energy Company Limited for new WILD systems that include optional Weigh-in-Motion (WIM) and

Hunting Truck Detection (HTD) capabilities as well as orders for the Rail Stress Monitor (RSM) product. These systems are to be installed on a coal carrying heavy-haul rail line

36. Portec's expansion in the Chinese market has continued this year. On January 11, 2010, the Company announced that it had increased its expansion into China, having received new customer orders for its Fault Detection and Friction Management Product Groups. The Company already had a steadily growing presence in China for its Friction Management products and now has penetrated the Chinese market with its Fault Detection product group.

37. Mr. Jarosinski recognized the potential for Portec's increased presence in the Chinese rail market this January 11, 2010 press release, stating:

"These orders for a variety of our products reflect the success of our efforts to enter the expanding Chinese rail infrastructure system. Our dedicated employees, along with our sales agents in China, have worked diligently to understand this unique customer base of our Chinese business partners. We have focused our efforts on participating in key industry forums and in-country tradeshows and in the publication of research papers and promotion of customer visits to North America. All of these activities have resulted in significant progress towards making Portec Rail Products, Inc. a meaningful brand name in the Chinese rail system marketplace, which we hope will continue to grow in stature as our products and services become more widely used." Mr. Jarosinski continued, "The Chinese rail service market offers significant growth potential in both heavy-haul freight and passenger service. It has been recently announced that the Chinese will be spending a new record of \$120.6 billion in rail expansion efforts this year. It also has been reported that the period from 2010 to 2012 will be a key period for the rail modernization effort in China according to the Ministry of Railways. Rail transportation investment includes major capacity expansions for some of the country's existing coal railways as well as the planned construction of several new coal railways by companies such as Shenhua Energy Company Limited. In addition, major expansion is also set for high speed passenger rail service lines. Our growth in China's rail industry should position us well as China continues to expand and modernize its railways. We are focused and dedicated to increasing the use of both our friction management and wayside data collection systems in China and other key international markets."

(emphasis added).

38. Thus, it is essential to note that the Portec has continued to perform well and has continued to grow in spite of the global recession and its impact on the rail market. Clearly, Portec's value as an ongoing business is greater than the consideration to be paid in the Proposed Transaction. As such, the Proposed Transaction is inadequate to Portec's shareholders and represents a significant discount to the Company's actual and intrinsic value.

39. Moreover, the Company agreed to enter into the Proposed Transaction without conducting a formal market check to seek other potential acquirers. The Company provided shareholders with no information indicating that it was considering a potential strategic transaction such as this and gives no indication that it sought other bidders.

40. The Proposed Transaction is wrought with onerous and preclusive deal protection devices that operate conjunctively to make the Proposed Transaction a *fait d'accompli* and ensure that no competing offers will emerge for the Company.

41. By way of example, §5.3 of the Merger Agreement includes a "no solicitation" provision barring the Board and any Company personnel from seeking out any other strategic alternatives. Despite the fact that they have locked up the Company and bound it to not solicit alternative bids, the Merger Agreement provides other ways that guarantee the only suitor will be L.B. Foster.

42. Pursuant to §5.3(c) of the Merger Agreement, should an unsolicited bidder arrive on the scene, the Company must notify L.B. Foster of the bidder's offer. Thereafter, should the Board determine that the unsolicited offer is superior, under

§5.3(d), Portec must notify L.B. Foster of the offer within 24 hours and give L.B. Foster the identity of the party making the superior offer.

43. In addition, the Merger Agreement provides that a termination fee of \$3,373,000 million must be paid to L.B. Foster if the Company decides to pursue said other offer, thereby essentially requiring that the alternate bidder agree to pay a naked premium for the right to provide the shareholders with a superior offer.

44. Ultimately, the preclusive deal protection provisions illegally restrain the Company's ability to solicit or engage in negotiations with any third party regarding a proposal to acquire all or a significant interest in the Company. The circumstances under which the Board may respond to an unsolicited written bona fide proposal for an alternative acquisition that constitutes or would reasonably be expected to constitute a superior proposal are too narrowly circumscribed to provide an effective "fiduciary out" under the circumstances. Likewise, these provisions also foreclose any likely alternate bidder from providing the needed market check of L.B. Foster's inadequate offer price.

45. Portec has also granted L.B. Foster a "top-up" option to bring L.B. Foster's ownership of the Company's stock up to one share more than 90%.

46. Accordingly, Plaintiffs seek injunctive and other equitable relief to prevent the irreparable injury that Company shareholders will continue to suffer absent judicial intervention.

CLAIM FOR RELIEF

COUNT I

**Breach of Fiduciary Duty
(Against All Individual Defendants)**

47. Plaintiffs repeat all previous allegations as if set forth in full herein.

48. As Directors of Portec, the Individual Defendants stand in a fiduciary relationship to Plaintiffs and the other public stockholders of the Company and owe them the highest fiduciary obligations of loyalty and care.

49. As discussed herein, the Individual Defendants have breached their fiduciary duties to Portec shareholders by failing to engage in an honest and fair sale process.

50. As a result of the Individual Defendants' breaches of their fiduciary duties, Plaintiffs and the Class will suffer irreparable injury in that they have not and will not receive their fair portion of the value of Portec's assets.

51. Unless enjoined by this Court, the Individual Defendants will continue to breach their fiduciary duties owed to Plaintiffs and the Class, and may consummate the Proposed Transaction, to the irreparable harm of the Class.

52. Plaintiffs and the Class have no adequate remedy at law.

COUNT II

Aiding and Abetting (Against Portec and L.B. Foster)

53. Plaintiffs repeat all previous allegations as if set forth in full herein.

54. As alleged in more detail above, Portec and L.B. Foster are well aware that the Individual Defendants have breached their fiduciary duties. Defendants Portec and L.B. Foster aided and abetted the Individual Defendants' breaches of fiduciary duties.

55. As a result, Plaintiffs and the Class members are being harmed.

56. Plaintiffs and the Class have no adequate remedy at law.

WHEREFORE, Plaintiffs demand judgment against Defendants jointly and severally, as follows:

(A) declaring this action to be a class action and certifying Plaintiffs as Class representatives and their counsel as Class counsel;

(B) enjoining, preliminarily and permanently, the Proposed Transaction;

(C) in the event that the transaction is consummated prior to the entry of this Court's final judgment, rescinding it or awarding Plaintiffs and the Class rescissory damages;

(D) directing that Defendants account to Plaintiffs and the other members of the Class for all damages caused by them and account for all profits and any special benefits obtained as a result of their breaches of their fiduciary duties;

(E) awarding Plaintiffs the costs of this action, including a reasonable allowance for the fees and expenses of Plaintiff's attorneys and experts; and

(F) granting Plaintiffs and the other members of the Class such further relief as the Court deems just and proper.

JURY DEMAND

Plaintiff demands a trial by jury.

The amount in controversy is in excess of the jurisdiction of the Board of Arbitrators.

Dated: March 2, 2010

Respectfully submitted,
LAW OFFICE OF ALFRED G. YATES, JR., P.C.

/s/ ALFRED G. YATES, JR.
Alfred G. Yates, Jr. (PA I.D. No. 17419)

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FINKELSTEIN THOMPSON LLP

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Elizabeth K. Tripodi
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Telephone: (202) 337-8000
Facsimile: (202) 337-8090

VERIFICATION

I, Scott Phillips, the undersigned, certify and declare that I have read the foregoing complaint and know its contents. I am a party to this action. The matters stated in the document described above are true to my own knowledge and belief except as to those matters stated on information and belief, and as to those matters I believe them to be true. I hereby declare under penalty of perjury that the foregoing is true and correct.

DATE: 3/1/10

/s/ SCOTT PHILLIPS

Scott Phillips

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

FILED
2010 MAR -3 PM 2:41
CATHY S. GATSON, CLERK
KANAWHA COUNTY CIRCUIT COURT

**JOSH FURMAN, individually,
and on behalf of all others similarly situated,**

Plaintiff,

V.

CIVIL ACTION NO. 10-C-400 Webster

**MARSHALL REYNOLDS, JOHN COOPER,
PHILIP CLINE, DANIEL HARRINGTON,
DOUGLAS REYNOLDS, NEAL SCAGGS,
A. MICHAEL PERRY, THOMAS WRIGHT,
PHILLIP SHELL, LOUIS AKERS, KIRBY TAYLOR,
PORTEC RAIL PRODUCTS, INC., L. B. FOSTER COMPANY,
and FOSTER THOMAS COMPANY,**

Defendants.

CLASS ACTION COMPLAINT

Plaintiff Josh Furman, by his attorneys, alleges upon information and belief, except for his own acts, which are alleged on knowledge, as follows:

1. Plaintiff brings this action on behalf of the public stockholders of Portec Rail Products, Inc. ("Portec" or the "Company") against Defendants, Portec and its Board of Directors seeking equitable relief for their breaches of fiduciary duty and other violations of state law arising out a proposed transaction in which Defendants L. B. Foster Company and Foster Thomas Company (collectively "L. B. Foster") seek to acquire all the outstanding shares of the Company through a cash tender offer by means of an unfair process and for an unfair price of \$11.71 for each share of Portec common stock (the "Proposed Transaction"). The Proposed Transaction is valued at approximately \$112 million.

JURISDICTION AND VENUE

2. Jurisdiction and venue of this action are proper with this Court because Portec is a corporation organized and existing under the laws of the State of West Virginia with its principal corporate offices in the Commonwealth of Pennsylvania, with no office or place of business in this State, and this Court is the circuit court of the county in which the seat of state government is located, where the cause of action grows out of the rights of stockholders with respect to corporate management.

PARTIES

3. Plaintiff is, and has been at all relevant times, the owner of shares of common stock of Portec.

4. Portec is a corporation organized and existing under the laws of the State of West Virginia. It maintains its principal corporate offices at 900 Old Freeport Road, Pittsburgh, Pennsylvania 15238, and engages in the manufacture, supply, and distribution of various rail products in the United States and internationally.

5. Defendant Marshall Reynolds (“M. Reynolds”) has been the Chairman of the Board of the Company since 1997.

6. Defendant John Cooper (“Cooper”) has been the Vice Chairman of the Board of the Company since 2006.

7. Defendant Philip Cline (“Cline”) has been a director of the Company since 1998.

8. Defendant Daniel Harrington (“Harrington”) has been a director of the Company since 1998.

9. Defendant Douglas Reynolds (“D. Reynolds”) has been a director of the Company since 1998.

10. Defendant Neal Scaggs (“Scaggs”) has been a director of the Company since 1998.

11. Defendant A. Michael Perry (“Perry”) has been a director of the Company since 2004.

12. Defendant Thomas Wright (“Wright”) has been a director of the Company since 2004.

13. Defendant Phillip Shell (“Shell”) has been a director of the Company since 2005.

14. Defendant Louis Akers (“Akers”) has been a director of the Company since 2008.

15. Defendant Kirby Taylor (“Taylor”) has been a director of the Company since 1997.

16. Defendants referenced in ¶¶ 4 through 14 are collectively referred to as Individual Defendants and/or the Portec Board. The Individual Defendants as officers and/or directors of Portec, have a fiduciary relationship with Plaintiff and other public shareholders of Portec and owe them the highest obligations of good faith, fair dealing, loyalty and due care.

17. Defendant L. B. Foster Company is a Pennsylvania corporation with its headquarters located in Pennsylvania that engages in the manufacture, fabrication, and distribution of products and services for the rail, construction, energy, and utility markets in the United States.

18. Defendant Foster Thomas Company is a West Virginia corporation wholly owned by L. B. Foster Company that was created for the purposes of effectuating the Proposed Transaction.

INDIVIDUAL DEFENDANTS' FIDUCIARY DUTIES

19. As provided by Article 8 of the West Virginia Business Corporation Act (effective in October 1, 2002) by reason of Individual Defendants' positions with the Company as officers and/or directors, they are in a fiduciary relationship with Plaintiff and the other public shareholders of Portec and owe them, as well as the Company, a duty of highest good faith, fair dealing, loyalty and full, candid and adequate disclosure, as well as a duty to maximize shareholder value.

20. Where the officers and/or Directors of a publicly traded corporation undertake a transaction that will result in either: (i) a change in corporate control; (ii) a break up of the corporation's assets; or (iii) sale of the corporation, the Directors have an affirmative fiduciary obligation to obtain the highest value reasonably available for the corporation's shareholders, and if such transaction will result in a change of corporate control, the shareholders are entitled to receive a significant premium. To diligently comply with their fiduciary duties, the Directors and/or officers may not take any action that:

(a) adversely affects the value provided to the corporation's shareholders;

(b) favors themselves or will discourage or inhibit alternative offers to purchase control of the corporation or its assets;

(c) contractually prohibits them from complying with their fiduciary duties;

(d) will otherwise adversely affect their duty to search and secure the best value reasonably available under the circumstances for the corporation's shareholders; and/or

(e) will provide the Directors and/or officers with preferential treatment at the expense of, or separate from, the public shareholders.

21. In accordance with their duties of loyalty and good faith, the Individual Defendants, as Directors and/or officers of Portec, are obligated to refrain from:

(a) participating in any transaction where the directors or officers' loyalties are divided;

(b) participating in any transaction where the directors or officers receive, or are entitled to receive, a personal financial benefit not equally shared by the public shareholders of the corporation; and/or

(c) unjustly enriching themselves at the expense or to the detriment of the public shareholders.

22. Plaintiff alleges herein that the Individual Defendants, separately and together, in connection with the Proposed Transaction are knowingly or recklessly violating their fiduciary duties, including their duties of loyalty, good faith and independence owed to Plaintiff and other public shareholders of Portec, or are aiding and abetting others in violating those duties.

23. Defendants also owe the Company's stockholders a duty of candor, which includes the disclosure of all material facts concerning the Proposed Transaction and, particularly, the fairness of the price offered for the stockholders' equity interest. Defendants are knowingly or recklessly breaching their fiduciary duties of candor by failing to disclose all material information concerning the Proposed Transaction, and/or aiding and abetting other Defendants' breaches.

CONSPIRACY, AIDING AND ABETTING AND CONCERTED ACTION

24. In committing the wrongful acts alleged herein, each of the Defendants has pursued, or joined in the pursuit of, a common course of conduct, and acted in concert with and conspired with one another, in furtherance of their common plan or design. In addition to the

wrongful conduct herein alleged as giving rise to primary liability, the Defendants further aided and abetted and/or assisted each other in breach of their respective duties as herein alleged.

25. During all relevant times hereto, the Defendants, and each of them, initiated a course of conduct which was designed to and did: (i) permit L. B. Foster to attempt to eliminate the public shareholders' equity interest in Portec pursuant to a defective sales process, and (ii) permit L. B. Foster to buy the Company for an unfair price. In furtherance of this plan, conspiracy and course of conduct, Defendants, and each of them, took the actions as set forth herein.

26. Each of the Defendants herein aided and abetted and rendered substantial assistance in the wrongs complained of herein. In taking such actions, as particularized herein, to substantially assist the commission of the wrongdoing complained of, each Defendant acted with knowledge of the primary wrongdoing, substantially assisted the accomplishment of that wrongdoing, and was aware of his or her overall contribution to, and furtherance of, the wrongdoing. The Defendants' acts of aiding and abetting included, *inter alia*, the acts each of them are alleged to have committed in furtherance of the conspiracy, common enterprise and common course of conduct complained of herein.

CLASS ACTION ALLEGATIONS

27. Plaintiff brings this action on its own behalf and as a class action on behalf of all owners of Portec common stock and their successors in interest, except Defendants and their affiliates (the "Class").

28. This action is properly maintainable as a class action for the following reasons:

(a) the Class is so numerous that joinder of all members is impracticable. As of February 22, 2010, Portec has approximately 9.60 million shares outstanding.

(b) questions of law and fact are common to the Class, including, *inter alia*, the following:

- (i) Have the Individual Defendants breached their fiduciary duties owed by them to Plaintiff and the others members of the Class;
- (ii) Are the Individual Defendants, in connection with the Proposed Transaction of Portec by L. B. Foster, pursuing a course of conduct that does not maximize Portec's value in violation of their fiduciary duties;
- (iii) Have the Individual Defendants misrepresented and omitted material facts in violation of their fiduciary duties owed by them to Plaintiff and the other members of the Class;
- (iv) Have Portec and L. B. Foster aided and abetted the Individual Defendants' breaches of fiduciary duty; and
- (v) Is the Class entitled to injunctive relief or damages as a result of Defendants' wrongful conduct.

(c) Plaintiff is committed to prosecuting this action and have retained competent counsel experienced in litigation of this nature.

(d) Plaintiff's claims are typical of those of the other members of the Class.

(e) Plaintiff has no interests that are adverse to the Class.

(f) The prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications for individual members of the Class and of establishing incompatible standards of conduct for Defendants.

(g) Conflicting adjudications for individual members of the Class might as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

SUBSTANTIVE ALLEGATIONS

29. The rail products market in which Portec operates is poised for substantial growth. On April 16, 2009, President Obama called for spending at least \$13 billion to launch a “new era” of high-speed passenger rail transportation. As stated in a Wall Street Journal article, <http://online.wsj.com/article/SB123989461947625407.html?mod=djempersonal>, this will provide “a potentially rich new market for rail equipment makers.” Besides allocating \$8 billion in stimulus funds for high-speed rail, Mr. Obama said he would seek to budget \$5 billion more over the next five years. As described in the Wall Street Journal article,

Analyst Jim Lucas of Janney Montgomery Scott said higher U.S. spending on passenger rail *could benefit a wide range of U.S. companies. Among them:* Harsco Corp., which makes rail right-of-way equipment; *Portec Rail Products Inc., which makes rail spikes and joints;* and Wabtec Corp., which makes passenger-train locomotives and other transit-related parts.

30. On November 16, 2009, Forbes magazine listed the Company as one of the 200 Best Small Companies. In the press release announcing the achievement, Richard Jarosinski, the Company’s President and Chief Executive Officer, commented on the Company’s current

success and how the Company is well positioned to achieve even higher levels of operating performance when favorable economic conditions return to the rail industry:

PITTSBURGH, Nov. 16 /PRNewswire-FirstCall/ — Portec Rail Products, Inc. (Nasdaq: PRPX) was recently named to the Forbes magazine listing of the 200 Best Small Companies. Forbes states that candidates must have annual revenue between \$5 million and \$750 million, be publicly-traded for at least one year and have a stock price no lower than \$5. Rankings are based on earnings growth, sales growth and return on equity in the past 12 months and over the last five years.

Mr. Richard Jarosinski, President and Chief Executive Officer, stated, ***“We are pleased to once again be part of this list of exceptional performers, especially in what continues to be a very challenging economic climate for our industry. We believe that the overall diversification in our markets and product groups as well as providing quality products and solutions have been keys to our success. Our dedication to developing and applying new technology and innovation to the offerings that we provide the rail industry is driving the results that allow this type of recognition.*** Our friction management product group, and in particular our Total Friction Management(TM) program, which offers multiple operational savings for both heavy-haul freight and passenger service, are examples of the new technology and innovation that we are providing to increase asset life, operating ratio and bottom-line performance for our customers. Friction management continues to grow despite the economic downturn, and our efforts have resulted in a second North American Class 1 customer making a major expansion in the use of our top of rail friction control solutions. Additionally, our wayside data management and health monitoring products provided by Salient Systems, which are improving customer metrics such as train velocity, asset life and safety are further examples of our commitment to technology and innovation. ***We believe that our commitment to the development of multiple solutions for the success of the rail industry will position Portec Rail to achieve higher levels of operating performance when favorable economic conditions return to our industry.”***

31. On January 11, 2010, the Company announced that it entered into a significant contract with China that expands its presence in the Chinese rail market. As stated in the press release announcing the contract:

Portec Rail Products, Inc. Announces Significant Breakthrough in China for Strategic Product Groups

PITTSBURGH, Jan 11, 2010 (GlobeNewswire via COMTEX) — Portec Rail Products, Inc. (Nasdaq:PRPX) today announced that it has increased its expansion into China, as the company recently received new customer orders for its Fault Detection and Friction Management product groups from China. ***Portec Rail has had a steadily-growing presence in China for its Friction Management products, and has now penetrated the Chinese market with its Fault Detection product group.***

32. As further stated in the press release, the Chinese market provides tremendous growth opportunity for Portec, as China has recently announced that it will be spending ***\$120.6 billion in rail expansion efforts this year.***

Portec Rail is a leader in the North American heavy-haul rail freight markets for friction management with its Total Friction Management(TM) program and Salient Systems' Class I dominance in Wheel Impact Load Detector (WILD) systems. ***The company is focused on matching this expertise to the Chinese market, which provides tremendous growth opportunity for Portec Rail.***

* * *

Mr. Richard Jarosinski, President and Chief Executive Officer, stated, "These orders for a variety of our products reflect the success of our efforts to enter the expanding Chinese rail infrastructure system. Our dedicated employees, along with our sales agents in China, have worked diligently to understand this unique customer base of our Chinese business partners. We have focused our efforts on participating in key industry forums and in-country tradeshow and in the publication of research papers and promotion of customer visits to North America. All of these activities have resulted in significant progress towards making Portec Rail Products, Inc. a meaningful brand name in the Chinese rail system marketplace, which we hope will continue to grow in stature as our products and services become more widely used." Mr. Jarosinski continued, "The Chinese rail service market offers significant growth potential in both heavy-haul freight and passenger service. It has been recently announced that the Chinese will be spending a new record of \$120.6 billion in rail expansion efforts this year. It also has been reported that the period from 2010 to 2012 will be a key period for the rail modernization effort in China according to the Ministry of Railways. Rail transportation investment includes major capacity expansions for some of the country's existing coal railways as well as the planned construction of several new coal railways by companies such as Shenhua Energy Company Limited. In addition, major expansion is also set for high speed passenger rail service lines. Our growth in China's rail industry should

position us well as China continues to expand and modernize its railways. We are focused and dedicated to increasing the use of both our friction management and wayside data collection systems in China and other key international markets.”

33. Despite its promise and poise for growth, the Company agreed to enter into the Proposed Transaction. In a press release dated February 17, 2010, the Company announced that it had entered into a merger agreement with L. B. Foster, stating:

PITTSBURGH, PA, -February 17, 2010 - L. B. Foster Company (“L. B. Foster”, NASDAQ: FSTR) and Portec Rail Products, Inc. (“Portec”, NASDAQ: PRPX), both headquartered in Pittsburgh, PA, today jointly announced the signing of an Agreement and Plan of Merger (“Merger Agreement”), under which L. B. Foster will make, through its wholly owned acquisition subsidiary, a cash tender offer to acquire all of Portec’s outstanding shares of common stock for \$11.71 per share.

34. The Proposed Transaction price is a mere 4% premium over the price the Company’s shares traded at the day before the announcement of the Proposed Transaction. This is a paltry amount to offer for the entire equity stake of any company, but is doubly offensive because it fails to account for Portec’s burgeoning prospects.

35. Given the Company’s recent performance and future prospects, the consideration shareholders are to receive is inadequate. Further, at least one Wall Street analyst had a price target of \$12.00 per share before the Proposed Transaction was announced. Accordingly, L. B. Foster is picking up Portec at the most opportune time, at a time when Portec is poised for growth and its stock price is trading at a huge discount to its intrinsic value.

36. In addition, of February 17, 2010, the Company filed a Form 8-K with the United States Securities and Exchange Commission (“SEC”) wherein it disclosed the operating Agreement and Plan of Merger for the Proposed Transaction (the “Merger Agreement”). As part of the Merger Agreement, Defendants agreed to certain onerous and preclusive deal protection

devices that operate conjunctively to make the Proposed Transaction a *fait d'accompli* and ensure that no competing offers will emerge for the Company.

37. By way of example, §5.3 of the Merger Agreement includes a “no solicitation” provision barring the Board and any Company personnel from attempting to procure a price in excess of the amount offered by L. B. Foster. Despite the fact that they have locked up the Company and bound it to not solicit alternative bids, the Merger Agreement provides other ways that guarantee the only suitor will be L. B. Foster.

38. Pursuant to §5.3 of the Merger Agreement, should an unsolicited bidder arrive on the scene, the Company must notify L. B. Foster of the bidder’s offer. Thereafter, pursuant to section §8.1(g) of the Merger Agreement, should the Board determine that the unsolicited offer is superior, L. B. Foster is granted five days to amend the terms of the Merger Agreement to make a counter-offer that only needs to be at least as favorable to the Company’s shareholders as the unsolicited offer. L. B. Foster is able to match the unsolicited offer because it is granted unfettered access to the unsolicited offer, in its entirety, eliminating any leverage that the Company has in receiving the unsolicited offer.

39. In other words, the Merger Agreement gives L. B. Foster access to any rival bidder’s information and allows L. B. Foster a free right to top any superior offer. Accordingly, no rival bidder is likely to emerge and act as a stalking horse for L. B. Foster, because the Merger Agreement unfairly assures that any “auction” will favor L. B. Foster and piggy-back upon the due diligence of the foreclosed second bidder.

40. In addition, should the other bidder come unsolicited and overcome the “last look,” the Merger Agreement provides that a termination fee of \$3,373,000 must be paid to L. B. Foster by Portec if the Company decides to pursue said other offer, thereby essentially requiring

that the alternate bidder agree to pay a naked premium for the right to provide the shareholders with a superior offer.

41. Finally, L. B. Foster is also the beneficiary of a “Top-Up” provision that ensures that L. B. Foster gains the shares necessary to effectuate a short-form merger. Pursuant to the Merger Agreement, if L. B. Foster receives 90% of the shares outstanding through its tender offer, it can effect a short-form merger. In the event L. B. Foster fails to acquire the 90% required, the Merger Agreement also contains a “Top-Up” provision that grants L. B. Foster an option to purchase additional shares from the Company in order to reach the 90% threshold required to effectuate a short-form merger. The “Top-Up” provision essentially renders the tender offer *a fait accompli* and eliminates the possibility that any alternate bidder can mount a serious challenge to L. B. Foster’s first-in position.

42. Ultimately, these preclusive deal protection provisions illegally restrain the Company’s ability to solicit or engage in negotiations with any third party regarding a proposal to acquire all or a significant interest in the Company. The circumstances under which the Board may respond to an unsolicited written bona fide proposal for an alternative acquisition that constitutes or would reasonably be expected to constitute a superior proposal are too narrowly circumscribed to provide an effective “fiduciary out” under the circumstances. Likewise, these provisions, coupled with the “Top-Up” provision, also foreclose any likely alternate bidder from providing the needed market check of L. B. Foster’s inadequate offer price.

43. In connection with the Proposed Transaction, certain members of Portec’s directors and executive officers, who collectively own approximately 30.47% of Portec’s common stock, have entered into voting agreements to vote in favor of the Proposed Transaction

with L. B. Foster. Accordingly, 30.47% of Portec's common stock is already "locked up" in favor of the Proposed Transaction.

44. Accordingly, Plaintiff seeks injunctive and other equitable relief to prevent the irreparable injury that Company shareholders will continue to suffer absent judicial intervention.

CLAIM FOR RELIEF

COUNT I

**Breach of Fiduciary Duty — Failure to Maximize Shareholder Value
(Against All Individual Defendants)**

45. Plaintiff repeats all previous allegations as if set forth in full herein.

46. As Directors of Portec, the Individual Defendants stand in a fiduciary relationship to Plaintiff and the other public stockholders of the Company and owe them the highest fiduciary obligations of loyalty and care. The Individual Defendants' recommendation of the Proposed Transaction will result in change of control of the Company which imposes heightened fiduciary responsibilities to maximize Portec's value for the benefit of the stockholders and requires enhanced scrutiny by the Court.

47. As discussed herein, the Individual Defendants have breached their fiduciary duties to Portec shareholders by failing to engage in an honest and fair sale process.

48. As a result of the Individual Defendants' breaches of their fiduciary duties, Plaintiff and the Class will suffer irreparable injury in that they have not and will not receive their fair portion of the value of Portec's assets and will be prevented from benefiting from a value-maximizing transaction.

49. Unless enjoined by this Court, the Individual Defendants will continue to breach their fiduciary duties owed to Plaintiff and the Class, and may consummate the Proposed Transaction, to the irreparable harm of the Class.

50. Plaintiff and the Class have no adequate remedy at law.

COUNT II
Aiding and Abetting
(Against Portec and L. B. Foster)

51. Plaintiff repeats all previous allegations as if set forth in full herein.

52. As alleged in more detail above, Portec and L. B. Foster are well aware that the Individual Defendants have not sought to obtain the best available transaction for the Company's public shareholders. Defendants Portec and L. B. Foster aided and abetted the Individual Defendants' breaches of fiduciary duties.

53. As a result, Plaintiff and the Class members are being harmed.

54. Plaintiff and the Class have no adequate remedy at law.

WHEREFORE, Plaintiff demands judgment against Defendants jointly and severally, as follows:

(A) declaring this action to be a class action and certifying Plaintiff as the Class representatives and his counsel as Class counsel;

(B) enjoining, preliminarily and permanently, the Proposed Transaction;

(C) in the event that the transaction is consummated prior to the entry of this Court's final judgment, rescinding it or awarding Plaintiff and the Class rescissory damages;

(D) directing that Defendants account to Plaintiff and the other members of the Class for all damages caused by them and account for all profits and any special benefits obtained as a result of their breaches of their fiduciary duties;

- (E) awarding Plaintiff the costs of this action, including a reasonable allowance for the fees and expenses of Plaintiff's attorneys and experts; and
(F) granting Plaintiff and the other members of the Class such further relief as the Court deems just and proper.

PLAINTIFF JOSH FURMAN REQUESTS A TRIAL BY JURY.

**JOSH FURMAN
By Counsel**

/s/ Jeffrey V. Mehalic

Jeffrey V. Mehalic (WV State Bar No. 2519)
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Eric M. Andersen
LEVI & KORSINSKY, LLP
30 Broad Street, 15th Floor
New York, New York 10004
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Fax: (212) 363-7171

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

RICHARD S. GESOFF,)	
)	
Plaintiff,	)	CIVIL DIVISION
V.)	
	)	No. GD-10-3562
MARSHALL T. REYNOLDS, JOHN S.)	
COOPER, LOUIS J. AKERS, PHILIP E.)	
CLINE, DANIEL P. HARRINGTON, A.)	
MICHAEL PERRY, DOUGLAS V.	)	JURY TRIAL DEMANDED
REYNOLDS, NEAL W. SCAGGS, PHILIP)	
TODD SHELL, KIRBY J. TAYLOR, THOMAS)	
W. WRIGHT, L.B. FOSTER COMPANY,)	
FOSTER THOMAS COMPANY and)	
PORTEC RAIL PRODUCTS, INC.)	
	)	CLASS ACTION
Defendants.)	

NOTICE TO DEFEND

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE OR KNOW A LAWYER, THEN YOU SHOULD GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP:

LAWYER REFERRAL SERVICE
 THE ALLEGHENY COUNTY BAR ASSOCIATION
 400 KOPPERS BUILDING
 436 SEVENTH AVENUE
 PITTSBURGH, PENNSYLVANIA 15219
 TELEPHONE: 412-261-0518



IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

RICHARD S. GESOFF,)	
)	
Plaintiff,	)	CIVIL ACTION
)	
V.	)	No. GD-10-3562
)	
MARSHALL T. REYNOLDS, JOHN S.)	
COOPER, LOUIS J. AKERS, PHILIP E.)	
CLINE, DANIEL P. HARRINGTON, A.)	
MICHAEL PERRY, DOUGLAS V.)	
REYNOLDS, NEAL W. SCAGGS, PHILIP)	
TODD SHELL, KIRBY J. TAYLOR,	)	CLASS ACTION
THOMAS W. WRIGHT, L.B. FOSTER)	
COMPANY. FOSTER THOMAS COMPANY	)	JURY TRIAL DEMANDED
and PORTEC RAIL PRODUCTS, INC.)	
)	
Defendants.)	

CLASS ACTION COMPLAINT

Plaintiff, for his complaint against Defendants, alleges upon personal knowledge as to himself, and upon information and belief as to all other allegations herein, as follows:

NATURE OF THE ACTION

1. This is a class action on behalf of the shareholders of Portec Rail Products Inc. (“Portec” or the “Company”) against members of the Company’s Board of Directors (the “Board”) for breaches of fiduciary duty arising out of the Board’s decision to sell the Company to Foster Thomas Company (“Foster Thomas”), a wholly owned subsidiary of L.B. Foster Company (“L.B. Foster”), pursuant to a definitive Agreement and Plan of Merger (the “Merger Agreement”), dated as of February 16, 2010, and approved by the Board. Foster Thomas and L.B. Foster are also sued as aiders and abettors. Pursuant to the Merger Agreement, Foster Thomas will make a cash tender offer to acquire all of the



Company's outstanding shares of common stock for \$11.71 per share ("Tender Offer") followed by a merger ("Merger") in which shares held by non-tendering shareholders will be converted into the right to obtain \$11.71 per share. The Merger transaction was announced in a press release issued before the market opened on February 17, 2010. This action seeks to enjoin both the Tender Offer and the Merger.

2. The Merger is at an inadequate price and is the result of Defendants' failure to maximize shareholder value in the transaction.

3. Portec is a recognized leader in providing rail freight and transit operators with innovative engineering, products, services, and solutions. Through its Portec Rail Group, comprised of Coronet Rail, Ltd., Kelsan Technologies Corporation, and Salient Systems, Portec has several manufacturing and distribution facilities in North America and the United Kingdom, supplying rail customers around the world.

4. Portec was incorporated in West Virginia in 1997, and, through its predecessors, has served the railroad industry since 1906 by manufacturing, supplying and distributing a broad range of rail products, including rail joints, rail anchors, rail spikes, railway friction management products and systems, railway wayside data collection and data management systems and freight car securemen systems. The Company also manufactures material handling equipment for industries outside the rail transportation sector at its United Kingdom operation.

5. Portec operates through four global business segments, consisting of Railway Maintenance Products Division ("RMP"), Shipping Systems Division, Portec Rail Nova Scotia Company, and Portec Rail Products (UK) Ltd.

6. RMP, the Company's largest business segment, provides track component and friction management products and services to railroad transit systems and railroad contractors. RMP is a major supplier of rail joints in the North American market. With respect to friction management products, the Company is the North American market leader.

7. Portec has enjoyed very significant recent success and can expect to continue to do so. Thus, Portec has expended substantial resources in successfully developing its business and expanding its operations overseas. For example, on January 11, 2010, the Company announced a "significant breakthrough" into the Chinese market with respect to its Fault Detection and Friction Management product groups. Portec has had a steadily growing presence in the burgeoning Chinese market, and newly received customer orders for its Fault Detection and Friction Management product groups have enhanced that position. The Press Release quoted Mr. Richard Jarosinski, President and CEO of Portec, as stating:

We have focused our efforts on participating in key industry forums and in-country tradeshows and in the publication of research papers and promotion of customer visits to North America. *All of these activities have resulted in significant progress towards making Portec Rail Products, Inc. a meaningful brand name in the Chinese rail system marketplace, which we hope will continue to grow in stature as our products and services become more widely used.... The Chinese rail service market offers significant growth potential in both heavy-haul freight and passenger service. It has recently been announced that the Chinese will be spending a record \$120.6 billion in rail expansion efforts this year. It has also been reported that the period from 2010 to 2012 will be a key period for the rail modernization effort in China according to the Ministry of Railways.* Rail transportation investment includes major capacity expansions for some of the country's existing coal railways as well as the planned

construction of several new coal railways by companies such as Shenhua Energy Company Limited. In addition, major expansion is also set for high speed passenger rail service lines. *Our growth in China's rail industry should position us well as China continues to expand and modernize its railways. We are focused and dedicated to increasing the use of both our friction management and wayside data collection systems in China and other key international markets.*” (emphasis added)

8. Further, President Barack Obama has said that railroad investment will be a cornerstone of his transportation policies, given the environmental benefits and improved mobility that would come from reducing the number of motor vehicles traveling the nation's roads. The sum of \$8 billion has been earmarked in the economic- recovery act to improve passenger railroads.

9. Another \$1.5 billion in discretionary spending is expected to finance many future rail projects. President Obama has also said that he would seek to budget \$5 billion over the next five years for high-speed rail projects and to set up a national infrastructure bank to finance regional projects such as rail improvements.

10. According to Robert Szabo, who is the Executive Director and Counsel for 7 Consumers United for Rail Equity: “All the trend lines point toward more freight on the freight railroads.” Thus, the immediate future holds unprecedented levels of rail expenditures in America and China (at least). As a recognized leader in the rail industry in North America and Europe, and with a profitable and growing presence in the exploding Chinese market, the Company is poised to make significant profits in the future.

11. Stan Hasselbusch, L.B. Foster's President and CEO, recognized the importance of Portec to the future of L.B. Foster's business during a conference call (the

“Conference Call”) with securities analysts held the day after the announcement of the Merger transaction. In his opening remarks, Mr. Hasselbusch stated that the Portec “acquisition will give us a solid entry into the service sector, which is imperative to the future — in the future of rail products supply.”

12. The market responded to the Merger by pushing the share price of L.B. Foster from \$26.55 to \$30.08, or over 13%, during the six trading days following the announcement of the Merger transaction, resulting in an increase in its market capitalization of about \$38 million. On the other hand, Portec’s shares increased by only about \$.47, or about 4%, and its capitalization increased by only \$4 million, about 11% of L.B. Foster’s capitalization increase. This substantial increase in the share price and capitalization of the acquiring company suggests that the market believes that L.B. Foster “got the better of the bargain” and that Portec shares were undervalued in the Merger transaction. Indeed, on the Conference Call, James Bank, an analyst representing Sidoti & Company, stated L.B. Foster “probably got the better deal.”

13. This increase in the L.B. Foster’s market price reflects the fact that, if the Merger is consummated, L.B. Foster’s projected 2010 earnings will increase by the \$8 million of 2010 earnings currently projected for the Company by an analyst that is posted on marketwatch.com, less interest that L. B. Foster would have earned on the cash it is paying for Portec. In addition, David Sauder, L. B. Foster’s Vice President of Global Business Development, said during the Conference Call that L.B. Foster “... looked at a lot of efficiencies and synergies from...combining two public companies.” In response to a question at the Conference Call as to the “scope of efficiencies and synergies” resulting from the transaction, Mr. Hasselbusch stated that “we think that there’s opportunities

across the board.” Multiplying just the \$8 million projected earnings figure by L.B. Foster’s current 15x price earnings ratio results in an increase in L.B. Foster’s market capitalization of \$120 million.

14. The Board should have known that when the market assessed the valuation of the merged company that it would apply at least the same current 15X estimated price earnings multiple that L.B. Foster’s trades for today, which would result in L.B. Foster’s market capitalization increasing by \$120 million, more than the entire cost of the acquisition of Portec.

15. Plaintiff alleges that he and the other public shareholders of Portec are entitled to seek to enjoin the Merger or, alternatively, to rescind the transaction and/or recover damages in the event that the transaction is consummated.

THE PARTIES

16. Plaintiff Richard S. Gesoff has been, at all times relevant to the action, and continues to be, the owner of shares of Portec common stock. He currently owns 22,162 Portec shares in an IRA account held for his benefit. Mr. Gesoff’s address is 39 Cohawney Road, Scarsdale, New York.

17. Defendant Portec is a West Virginia corporation with principal executive offices located at 900 Old Freeport Road, Pittsburgh, Pennsylvania. It has about 9,600,000 shares of common stock issued and outstanding.

18. Defendant L.B. Foster is a Pennsylvania corporation with its principal executive office located at 415 Holiday Drive, Pittsburgh, Pennsylvania.

19. Defendant Foster Thomas is a West Virginia corporation and wholly owned subsidiary of Defendant L.B. Foster.

20. Defendant Marshall T. Reynolds (“Reynolds”) has been chairman of the board of Portec since 1997.
21. Defendant John S. Cooper (“Cooper”) has been vice chairman of the Board of Directors of Portec since 1997.
22. Defendant Louis J. Akers (“Akers”) has been a director of Portec since 2008.
23. Defendant Philip E. Cline (“Cline”) has been a director of Portec since 1998.
24. Defendant Daniel P. Harrington (“Harrington”) has been a director of Portec since 1998.
25. Defendant A. Michael Perry (“Perry”) has been a director of Portec since 2004.
26. Defendant Douglas V. Reynolds (“D. Reynolds”) has been a director of Portec since 1998.
27. Defendant Neal W. Scaggs (“Scaggs”) has been a director of Portec since 1998.
28. Defendant Philip Todd Shell (“Shell”) has been a director of Portec since 2005.
29. Defendant Kirby J. Taylor (“Taylor”) has been a director of Portec since 1997. He also serves as the corporate secretary.
30. Defendant Thomas W. Wright (“Wright”) has been a director of Portec since 2004.

31. Defendants M. T. Reynolds, Cooper, Akers, Cline, Harrington, D. Reynolds, Scaggs, Shell, Taylor and Wright are collectively referred to as the “Individual Defendants.”

32. As directors of Portec, each of the Individual Defendants has the highest fiduciary duties of good faith, loyalty, fair dealing, due care, and candor to Plaintiff and the other members of the class.

33. The Individual Defendants, by reason of their corporate directorships, are fiduciaries to and for the Company’s shareholders, which fiduciary relationship requires them to exercise their best judgment, and to act in a prudent manner and in the best interests of the Company’s shareholders.

34. Each of the Individual Defendants herein is sued individually, as a conspirator and aider and abettor, as well as in his capacity as director of the Company, and the liability of each arises from the fact that he has engaged in all or part of the unlawful acts, plans, schemes, or transactions complained of herein.

CLASS ACTION ALLEGATIONS

35. Plaintiff brings this action on his own behalf and as a class action, on behalf of all shareholders of the Company (except the Defendants herein and any person, firm, trust, corporation, or other entity related to or affiliated with any of the Defendants) and their successors in interest, who are or will be threatened with injury arising from Defendants’ actions as more fully described herein (the “Class”).

36. This action is properly maintainable as a class action.

37. The Class is so numerous that joinder of all members is impracticable. Members of the Class have owned, in the aggregate, material amounts of the Company’s

stock. While the exact number of Class members is unknown to Plaintiff at this time, and can be ascertained only through appropriate discovery, Plaintiff believes that the Class is comprised of hundreds of members. Class members own millions of shares of Portec common stock.

38. There are questions of law and fact which are common to the Class and which predominate over any questions affecting only individual members of the Class, including the following: (a) whether Defendants have engaged in a scheme or course of conduct constituting a breach of their fiduciary and other common law duties owed by them to Plaintiff and the other members of the Class, including the duties of good faith, loyalty, fair dealing, and due care; (b) whether the Individual Defendants have maximized shareholder value in connection with the Merger; and (c) whether the Class is entitled to injunctive relief or damages as a result of Defendants' wrongful conduct, and if the Class is entitled to damages, the proper measure of their damages.

39. Defendants have acted in a manner that affects Plaintiff and all members of the Class, alike, thereby making appropriate injunctive relief and/or corresponding declaratory relief with respect to the Class as a whole.

40. Plaintiff has no conflict of interest in the maintenance of this action as a class action. Accordingly, Plaintiff is an adequate representative of the Class and will fairly and adequately protect and represent the interests of the Class. Plaintiff is committed to prosecuting this action and has retained competent counsel experienced in litigation of this nature. The claims of Plaintiff are typical of the claims of the other members of the Class, and Plaintiff has the same interests as the other members of the Class.

41. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual members of the Class, which would establish incompatible standards of conduct for Defendants, or adjudications with respect to individual members of the Class which would, as a practical matter, be dispositive of the interests of other members or substantially impair or impede their ability to protect their interests.

SUBSTANTIVE ALLEGATIONS

42. The Individual Defendants have breached their fiduciary duties by reason of the acts and transactions complained of herein, including their decision to sell the Company before the market fully realized the benefits to the Company of their expansion plan described above and their decision allow the Company to be acquired by L.B. Foster and Foster Thomas without making the requisite effort to obtain the best offer possible.

43. Plaintiff and other members of the Class have been and will be damaged in that they have not and will not receive their fair proportion of the value of Portec assets and business and have been and will be prevented from obtaining a fair and adequate price for their shares of Portec common stock.

44. The terms of the Merger are wrongful, unfair, and harmful to the Class. The Individual Defendants, realizing the enormous benefit to L.B. Foster of its acquisition of the Company described above, should have insisted on a substantial premium to the Company's market price. Moreover, the Individual Defendants should have insisted that the Company's public shareholders be given the option of exchanging their Company shares for cash or for L.B. Foster stock, thereby allowing the Class to share in the benefits inuring to L.B. Foster by reason of the proposed Merger.

45. By virtue of the foregoing actions of the Individual Defendants, Plaintiff and the Class have been damaged in that they have been prevented from obtaining a fair price for their shares.

COUNT I

For Breach of Fiduciary Duties By the Individual Defendants

46. Plaintiff incorporates each and every allegation set forth above as if fully set forth herein.

47. The Individual Defendants have thus violated their fiduciary duties by entering into a transaction with L.B. Foster and Foster Thomas without regard to the fairness of the transaction to Portec shareholders or the maximization of shareholder value.

48. As alleged herein, the Individual Defendants have breached their duties of loyalty and care owed to the shareholders of Portec in failing to obtain the highest possible price for Portec in the transaction.

49. Unless enjoined by this Court, the Individual Defendants will continue to breach their fiduciary duties owed to Plaintiff and the members of the Class and may consummate the Merger, to the irreparable harm of the members of the Class.

50. Plaintiff and the members of the Class have no adequate remedy at law.

COUNT II

For Aiding and Abetting by Defendants Foster Thomas and L.B. Foster

51. Plaintiff incorporates each and every allegation set forth above as if fully set forth herein.

52. Foster Thomas and L.B. Foster are sued herein as aiders and abettors of the breaches of fiduciary duty as alleged above.

53. As direct participants in the Merger, Foster Thomas and L.B. Foster knew, or should have known of, and in fact actively encouraged and participated in the breach of fiduciary duties alleged herein. Foster Thomas and L.B. Foster aided and abetted the breaches of fiduciary duty committed by the Individual Defendants to the detriment of Portec's shareholders. Indeed, the Merger could not take place without the active participation of Foster Thomas and L.B. Foster. Furthermore, L.B. Foster and its shareholders are the intended beneficiaries of the wrongs complained of and would be unjustly enriched absent relief in this action.

54. Plaintiff and members of the Class have no adequate remedy at law.

WHEREFORE, Plaintiff and members of the Class demand judgment against Defendants, jointly and severally, as follows;

A. Declaring that this action is properly maintainable as a class action and certifying Plaintiff as the representative of the Class;

B. Declaring that Defendants have committed a gross abuse of trust and have breached (or aided and abetted such breach of) their fiduciary and other duties owed to Plaintiff and members of the Class;

C. Preliminarily and permanently enjoining Defendants and their agents, employees and all persons acting under, in concert with, or for them, from proceeding with, consummating, or closing the Merger;

D. In the event that the Merger is consummated, rescinding it and setting it aside;

E. Awarding compensatory damages against Defendants, individually and severally, in an amount to be determined at trial, together with pre-judgment and post-judgment interest at the maximum rate allowable by law, arising from the Merger;

F. Awarding Plaintiff his costs and disbursements and reasonable allowances for fees of Plaintiff's counsel and experts; and

G. Granting Plaintiff and the Class such other and further relief as the Court may deem just and proper.

JURY TRIAL DEMANDED.

Dated: February 24, 2010

/s/ John C. Evans /DJM

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