



IN THE COURT OF CHANCERY FOR THE STATE OF DELAWARE

MCG CAPITAL CORPORATION, for Itself
and in the right and for the benefit of Jenzabar,
Inc.,

Plaintiff,

v.

ROBERT A. MAGINN, JR., LING CHAI,
JAMISON BARR, JOSEPH SAN MIGUEL,
DANIEL QUINN MILLS, and JENZABAR,
INC.,

Defendants.

and

JENZABAR, INC.,

Nominal Defendant.

C.A. No. 4521-CC

JENZABAR, INC.,

Plaintiff-in-Counterclaim,

v.

MCG CAPITAL CORPORATION,

Defendant-in-Counterclaim.

**ANSWER AND VERIFIED COUNTERCLAIMS
OF DEFENDANT JENZABAR, INC.**

Defendant Jenzabar, Inc. (“Jenzabar” or the “Company”), hereby answers the Verified Complaint (the “Complaint”) of MCG Capital Corporation (“MCG”) and asserts its counterclaims against MCG, as follows:

INTRODUCTION

The introductory paragraphs to the Complaint contain a broad summary and characterization of MCG's factual allegations and legal conclusions, to which no response is required. To the extent any response is required, Jenzabar denies the allegations contained in the Complaint's introductory paragraphs.

PARTIES

1. Jenzabar lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1 of the Complaint and therefore denies them.

2. Jenzabar admits the allegations contained in paragraph 2 of the Complaint.

3. Jenzabar admits the allegations contained in paragraph 3 of the Complaint.

4. Jenzabar admits the allegations contained in paragraph 4 of the Complaint.

5. Jenzabar admits the allegations contained in paragraph 5 of the Complaint.

6. Jenzabar admits that Mr. San Miguel is a member of Jenzabar's Board of Directors and that he is on the Company's Compensation Committee, but otherwise denies the allegations contained in paragraph 6 of the Complaint.

7. Jenzabar admits the allegations contained in paragraph 7 of the Complaint.

8. Jenzabar admits the allegations contained in paragraph 8 of the Complaint.

9. MCG's interpretation of Section 7.9 of the Preferred Stock and Warrant Purchase Agreement ("PSWPA") contained in paragraph 9 of the Complaint states a conclusion of law to which no response is required. To the extent any response is required, Jenzabar denies the allegations contained in paragraph 9 of the Complaint.

10. MCG's interpretation of Section 5.7 of the Fourth Amended and Restated Stockholders Agreement ("Stockholders Agreement") contained in paragraph 10 of the

Complaint states a conclusion of law to which no response is required. To the extent any response is required, Jenzabar denies the allegations contained in paragraph 10 of the Complaint.

BACKGROUND

11. Jenzabar admits that on June 30, 2004, MCG invested \$5,000,000 in Jenzabar and received 5,000 shares of Senior Preferred Stock, 109,800 shares of Subordinated Preferred Stock, and warrants to purchase 5,879,150 shares of Common Stock of Jenzabar. The remaining allegations contained in paragraph 11 of the Complaint state conclusions of law concerning MCG's interpretations of the PSWPA to which no response is required. To the extent any response is required, Jenzabar denies the remaining allegations contained in paragraph 11 of the Complaint.

12. Jenzabar denies the allegations contained in paragraph 12 of the Complaint.

13. Jenzabar denies the allegations contained in paragraph 13 of the Complaint.

14. MCG's interpretation of Section 3.3 of the PSWPA contained in paragraph 14 of the Complaint states a conclusion of law to which no response is required. To the extent any response is required, Jenzabar denies the allegations contained in paragraph 14 of the Complaint.

15. MCG's interpretation of Section 5.12 of the PSWPA contained in paragraph 15 of the Complaint states a conclusion of law to which no response is required. To the extent any response is required, Jenzabar denies the allegations contained in paragraph 15 of the Complaint.

16. MCG's interpretation of Article V, Section 1.A of the Fifth Amended and Restated Certificate of Incorporation of Jenzabar, Inc. ("Jenzabar Charter") and the PSWPA contained in paragraph 16 of the Complaint states a conclusion of law to which no response is required. To the extent any response is required, Jenzabar denies the allegations contained in paragraph 16 of the Complaint.

17. MCG's interpretation of Article V, Section A.4 of the Jenzabar Charter contained in paragraph 17 of the Complaint states a conclusion of law to which no response is required. To the extent any response is required, Jenzabar denies the allegations contained in paragraph 17 of the Complaint.

18. MCG's interpretation of Section 5.11 of the PSWPA contained in paragraph 18 of the Complaint states a conclusion of law to which no response is required. To the extent any response is required, Jenzabar denies the allegations contained in paragraph 18 of the Complaint.

19. MCG's interpretation of Sections 5.11(g) and 5.12 of the PSWPA contained in paragraph 19 of the Complaint states a conclusion of law to which no response is required. To the extent any response is required, Jenzabar denies the allegations contained in paragraph 19 of the Complaint.

20. Jenzabar admits the allegations contained in paragraph 20 of the Complaint.

21. Jenzabar admits that by March 17, 2006, Jenzabar had paid off the Term Loan A and Term Loan B notes, pursuant to a payoff letter, dated March 15, 2006, and a disbursement letter, dated March 16, 2006.

22. MCG's interpretation of Section 4.2 of the Stockholders Agreement contained in paragraph 22 of the Complaint states a conclusion of law to which no response is required. To the extent any response is required, Jenzabar denies the allegations contained in paragraph 22 of the Complaint.

23. Jenzabar denies the characterization of Dr. Mills and Dr. San Miguel's status as "purported" Independent Directors, but otherwise admits the allegations contained in paragraph 23 of the Complaint.

24. Jenzabar admits the allegations contained in paragraph 24 of the Complaint.

25. Jenzabar admits that Defendant Maginn's compensation from Jenzabar has included a salary and bonuses. Jenzabar otherwise denies the allegations contained in paragraph 25 of the Complaint.

26. Jenzabar admits that a lawyer representing Defendants Maginn and Chai once made a presentation on their behalf to the Compensation Committee. Jenzabar otherwise denies the allegations contained in paragraph 26 of the Complaint.

27. Jenzabar denies the allegations contained in paragraph 27 of the Complaint.

28. Jenzabar denies the allegations contained in paragraph 28 of the Complaint.

29. Jenzabar denies the allegations contained in paragraph 29 of the Complaint.

30. Jenzabar admits that Defendants Maginn and Chai hold 7,727,472 shares of Jenzabar common stock, and further admits that they hold options to purchase 4,033,448 shares of Jenzabar common stock. Jenzabar otherwise denies the allegations contained in paragraph 30 of the Complaint.

31. Jenzabar denies the allegations contained in paragraph 31 of the Complaint.

32. Jenzabar denies the allegations contained in paragraph 32 of the Complaint.

33. Jenzabar admits that Mr. Maginn was a student in a class Dr. Mills taught at the Harvard Business School in the early 1980s and otherwise denies the allegations contained in paragraph 33 of the Complaint.

34. Jenzabar denies the allegations contained in paragraph 34 of the Complaint.

35. Jenzabar admits that Dr. San Miguel and Dr. Mills each receive \$50,000 per year for their service on the Board, \$25,000 per year for their service on the Compensation Committee, and \$25,000 per year for their service on the Audit Committee, which compensation

was approved by the unanimous written consent of the Board, including MCG's board designee. Jenzabar otherwise denies the allegations contained in paragraph 35 of the Complaint.

36. MCG's interpretation of Sections 1.1 and 5.12(h) of the PSWPA contained in paragraph 36 of the Complaint states a conclusion of law to which no response is required. To the extent any response is required, Jenzabar denies the allegations contained in paragraph 36 of the Complaint.

37. The allegations contained in paragraph 37 of the Complaint are vague, ambiguous, and imprecise, and Jenzabar therefore denies them.

38. MCG's interpretation of Article V, Section A.1.(b)(x) of the Jenzabar Charter contained in paragraph 38 of the Complaint states a conclusion of law to which no response is required. To the extent any response is required, Jenzabar denies the allegations contained in paragraph 38 of the Complaint.

39. The allegations contained in paragraph 39 of the Complaint are vague, ambiguous, and imprecise, and Jenzabar therefore denies them.

40. Jenzabar denies the allegations contained in paragraph 40 of the Complaint.

41. Jenzabar admits that at the invitation of Mr. Barr, Christopher Austin, a partner in the law firm of Ropes & Gray, attended the December 18, 2008 meeting of the Compensation Committee. Jenzabar admits that Mr. Austin was engaged to represent Jenzabar earlier in 2008, but denies that Mr. Maginn ever retained Mr. Austin. Jenzabar otherwise denies the allegations contained in Paragraph 41 of the Complaint.

42. Jenzabar admits that at various times Malekian had suggested that the Compensation Committee retain counsel. Jenzabar otherwise denies the allegations contained in paragraph 42 of the Complaint.

43. Jenzabar admits that, after discussion and deliberation, the Compensation Committee decided to receive advice from Mr. Austin, with Malekian objecting. Jenzabar otherwise denies the allegations contained in paragraph 43 of the Complaint.

44. Jenzabar admits that the Compensation Committee recommended that Mr. Maginn's salary be increased to \$450,000 per year and that Ms. Chai's salary be increased to \$380,000, and further avers that Malekian abstained from voting on that recommendation. Jenzabar otherwise denies the allegations contained in paragraph 44 of the Complaint.

45. Jenzabar admits that Malekian stated generally that he believed that MCG would take the position that it had the right to consent to any increase in salary, but further answers that Malekian did not vote to oppose the Committee's recommendation to increase salary. Jenzabar admits that Malekian suggested that the Committee consult with counsel, and, further answering, states that the Committee did, in fact, consult with counsel. Jenzabar denies that MCG's view of its rights is justified, appropriate, or correct, and otherwise denies the allegations contained in paragraph 45 of the Complaint.

46. Jenzabar denies the allegations contained in paragraph 46 of the Complaint.

47. Paragraph 47 of the Complaint contains conclusions of law to which no response is required. To the extent any response is required, Jenzabar denies the allegations contained in paragraph 47 of the Complaint.

48. Jenzabar admits that bonuses were paid to Mr. Maginn and Ms. Chai in December 2008, but otherwise denies the allegations contained in paragraph 48 of the Complaint.

49. Jenzabar denies the allegations contained in paragraph 49 of the Complaint.

50. Jenzabar denies the allegations contained in paragraph 50 of the Complaint.

51. Jenzabar denies the allegations contained in paragraph 51 of the Complaint.

52. Jenzabar lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 52 of the Complaint and therefore denies them.

53. Jenzabar denies the allegations contained in paragraph 53 of the Complaint.

54. Jenzabar admits that Jenzabar paid a properly authorized bonus in the amount of \$750,000 to Mr. Maginn but otherwise denies the allegations contained in paragraph 54 of the Complaint.

55. Jenzabar admits that the \$750,000 bonus to Mr. Maginn has not been rescinded but otherwise denies the allegations contained in paragraph 55 of the Complaint, and Jenzabar specifically denies that there was any justification or basis for rescinding any payments.

56. Jenzabar denies the allegations contained in paragraph 56 of the Complaint.

57. Jenzabar lacks knowledge or information sufficient to admit or deny the allegations contained in paragraph 57 of the Complaint and therefore denies them.

58. Jenzabar denies the allegations contained in paragraph 58 of the Complaint.

59. Jenzabar denies the allegations contained in paragraph 59 of the Complaint.

60. The facts alleged in paragraph 60 of the Complaint relate solely to a claim dismissed by the opinion of this Court dated May 5, 2010 and as such no responsive pleading is required. To the extent any response is required, Jenzabar denies the allegations contained in paragraph 60 of the Complaint.

61. The facts alleged in paragraph 61 of the Complaint relate solely to a claim dismissed by the opinion of this Court dated May 5, 2010 and as such no responsive pleading is required. To the extent any response is required, Jenzabar denies the allegations contained in paragraph 61 of the Complaint.

62. The facts alleged in paragraph 62 of the Complaint relate solely to a claim dismissed by the opinion of this Court dated May 5, 2010 and as such no responsive pleading is required. To the extent any response is required, Jenzabar denies the allegations contained in paragraph 62 of the Complaint.

63. The facts alleged in paragraph 63 of the Complaint relate solely to a claim dismissed by the opinion of this Court dated May 5, 2010 and as such no responsive pleading is required. To the extent any response is required, Jenzabar denies the allegations contained in paragraph 63 of the Complaint.

64. The facts alleged in paragraph 64 of the Complaint relate solely to a claim dismissed by the opinion of this Court dated May 5, 2010 and as such no responsive pleading is required. To the extent any response is required, Jenzabar denies the allegations contained in paragraph 64 of the Complaint.

65. The facts alleged in paragraph 65 of the Complaint relate solely to a claim dismissed by the opinion of this Court dated May 5, 2010 and as such no responsive pleading is required. To the extent any response is required, Jenzabar denies the allegations contained in paragraph 65 of the Complaint.

66. The facts alleged in paragraph 66 of the Complaint relate solely to a claim dismissed by the opinion of this Court dated May 5, 2010 and as such no responsive pleading is required. To the extent any response is required, Jenzabar denies the allegations contained in paragraph 66 of the Complaint.

67. The facts alleged in paragraph 67 of the Complaint relate solely to a claim dismissed by the opinion of this Court dated May 5, 2010 and as such no responsive pleading is

required. To the extent any response is required, Jenzabar denies the allegations contained in paragraph 67 of the Complaint.

68. The facts alleged in paragraph 68 of the Complaint relate solely to a claim dismissed by the opinion of this Court dated May 5, 2010 and as such no responsive pleading is required. To the extent any response is required, Jenzabar denies the allegations contained in paragraph 68 of the Complaint.

69. The facts alleged in paragraph 69 of the Complaint relate solely to a claim dismissed by the opinion of this Court dated May 5, 2010 and as such no responsive pleading is required. To the extent any response is required, Jenzabar denies the allegations contained in paragraph 69 of the Complaint.

70. Jenzabar denies the allegations contained in paragraph 70 of the Complaint.

71. Jenzabar admits that the Notice of Repurchase includes the language partially quoted by MCG, but paragraph 71 omits significant portions of the Notice of Repurchase. Jenzabar respectfully refers the Court to the Notice of Repurchase for a complete and accurate statement of its contents. To the extent paragraph 71 purports to characterize the contents of that document, Jenzabar denies MCG's characterization.

72. Jenzabar admits that a copy of the document attached to the Complaint as Exhibit 4 was delivered to MCG via certified mail. Jenzabar otherwise lacks knowledge and information sufficient to admit or deny the allegations contained in paragraph 72 of the Complaint, and Jenzabar therefore denies them.

73. Jenzabar admits the allegations contained in paragraph 73 of the Complaint, and further refers the Court to Jenzabar's Repurchase Notice for a complete and accurate statement of its contents.

74. MCG's interpretation of Section 5.12 of the PSWPA contained in paragraph 74 states a conclusion of law to which no response is required. To the extent any response is required, Jenzabar denies the allegations contained in paragraph 74 of the Complaint.

75. MCG's interpretation of Article V, Sections A.4(e) and A.5 of the Jenzabar Charter contained in paragraph 75 of the Complaint states a conclusion of law to which no response is required. To the extent any response is required, Jenzabar denies the allegations contained in paragraph 75 of the Complaint.

76. Paragraph 76 of the Complaint contains conclusions of law to which no response is required. To the extent any response is required, Jenzabar denies the allegations contained in paragraph 76 of the Complaint.

77. Paragraph 77 of the Complaint contains conclusions of law to which no response is required. To the extent any response is required, Jenzabar denies the allegations contained in paragraph 77 of the Complaint.

78. MCG's interpretation of Article V, Sections A.4(e) of the Jenzabar Charter contained in paragraph 78 of the Complaint states a conclusion of law to which no response is required. To the extent any response is required, Jenzabar denies the allegations contained in paragraph 78 of the Complaint.

79. Jenzabar denies the allegations contained in paragraph 79 of the Complaint.

80. Paragraph 80 of the Complaint contains conclusions of law to which no response is required. To the extent any response is required, Jenzabar denies the allegations contained in paragraph 80 of the Complaint.

81. Paragraph 81 of the Complaint contains conclusions of law to which no response is required. To the extent any response is required, Jenzabar denies the allegations contained in

paragraph 81 of the Complaint, and states that MCG cannot fairly represent Jenzabar's interest while simultaneously pursuing a direct action against the Company.

82. The allegations contained in paragraph 82 of the Complaint are vague, ambiguous, and imprecise, and Jenzabar therefore denies them.

83. Jenzabar admits that MCG made no demand on the Board. The remainder of paragraph 83 of the Complaint contains conclusions of law to which no response is required. To the extent any response is required, Jenzabar denies the allegations contained in paragraph 83 of the Complaint.

84. Jenzabar admits that Jenzabar's Board of Directors consists of five individuals and that Defendants Maginn, Chai, San Miguel and Mills are members of the Board. Jenzabar denies the other allegations contained in paragraph 84 of the Complaint.

85. Jenzabar denies the allegations contained in paragraph 85 of the Complaint.

86. Jenzabar denies the allegations contained in paragraph 86 of the Complaint.

87. Jenzabar admits that Mr. Maginn was a student in one class that Dr. Mills taught at Harvard Business School in the early 1980s. Jenzabar otherwise denies the allegations contained in paragraph 87 of the Complaint.

CAUSES OF ACTION

COUNT ONE

(Breach of Contract)

88. Jenzabar repeats, realleges, and incorporates by reference Paragraphs 1 through 87 above.

89. Jenzabar denies the allegations contained in paragraph 89 of the Complaint.

90. Jenzabar denies the allegations contained in paragraph 90 of the Complaint.

91. Jenzabar denies the allegations contained in paragraph 91 of the Complaint.

COUNT TWO

(Breach of Charter)

92. Jenzabar repeats, realleges, and incorporates by reference Paragraphs 1 through 91 above.

93. Jenzabar denies the allegations contained in paragraph 93 of the Complaint.

94. Jenzabar denies the allegations contained in paragraph 94 of the Complaint.

95. Jenzabar denies the allegations contained in paragraph 95 of the Complaint.

COUNT THREE

(Aiding and Abetting Breach of Contract Against Defendants Maginn, Chai, and Barr)

96. Jenzabar repeats, realleges, and incorporates by reference Paragraphs 1 through 95 above.

97. The allegations contained in paragraph 97 of the Complaint relate to a claim dismissed by the opinion of this Court dated May 5, 2010 and as such no responsive pleading is required. Paragraph 97 of the Complaint contains conclusions of law to which no response is required. To the extent any response is required, Jenzabar denies the allegations contained in paragraph 97 of the Complaint.

98. The allegations contained in paragraph 98 of the Complaint relate to a claim dismissed by the opinion of this Court dated May 5, 2010 and as such no responsive pleading is required. To the extent any response is required, Jenzabar denies the allegations contained in paragraph 98 of the Complaint.

99. The allegations contained in paragraph 99 of the Complaint relate to a claim dismissed by the opinion of this Court dated May 5, 2010 and as such no responsive pleading is required. To the extent any response is required, Jenzabar denies the allegations contained in paragraph 99 of the Complaint.

100. The allegations contained in paragraph 100 of the Complaint relate to a claim dismissed by the opinion of this Court dated May 5, 2010 and as such no responsive pleading is required. To the extent any response is required, Jenzabar denies the allegations contained in paragraph 100 of the Complaint.

COUNT FOUR

(Aiding and Abetting Breach of Charter Against Defendants Maginn, Chai and Barr)

101. Jenzabar repeats, realleges, and incorporates by reference Paragraphs 1 through 100 above.

102. The allegations contained in paragraph 102 of the Complaint relate to a claim dismissed by the opinion of this Court dated May 5, 2010 and as such no responsive pleading is required. Paragraph 102 of the Complaint contains conclusions of law to which no response is required. To the extent any response is required, Jenzabar denies the allegations contained in paragraph 102 of the Complaint.

103. The allegations contained in paragraph 103 of the Complaint relate to a claim dismissed by the opinion of this Court dated May 5, 2010 and as such no responsive pleading is required. To the extent any response is required, Jenzabar denies the allegations contained in paragraph 103 of the Complaint.

104. The allegations contained in paragraph 104 of the Complaint relate to a claim dismissed by the opinion of this Court dated May 5, 2010 and as such no responsive pleading is required. To the extent any response is required, Jenzabar denies the allegations contained in paragraph 104 of the Complaint.

105. The allegations contained in paragraph 105 of the Complaint relate to a claim dismissed by the opinion of this Court dated May 5, 2010 and as such no responsive pleading is

required. To the extent any response is required, Jenzabar denies the allegations contained in paragraph 105 of the Complaint.

COUNT FIVE

(Breach of Fiduciary Duty Against All Individual Defendants)

106. Jenzabar repeats, realleges, and incorporates by reference Paragraphs 1 through 105 above.

107. Paragraph 107 of the Complaint contains conclusions of law to which no response is required. To the extent any response is required, Jenzabar admits the allegations contained in paragraph 107 of the Complaint.

108. The allegations contained in paragraph 108 of the Complaint relate to claims dismissed by the opinion of this Court dated May 5, 2010 and as such no responsive pleading is required. To the extent any response is required, Jenzabar denies the allegations contained in paragraph 108 of the Complaint.

109. The allegations contained in paragraph 109 of the Complaint relate to claims dismissed by the opinion of this Court dated May 5, 2010 and as such no responsive pleading is required. To the extent any response is required, Jenzabar denies the allegations contained in paragraph 109 of the Complaint.

COUNT SIX

(Unjust Enrichment Against Defendants Maginn and Chai)

110. Jenzabar repeats, realleges, and incorporates by reference Paragraphs 1 through 109 above.

111. This count does not assert a claim against Jenzabar, and thus no response is required. To the extent that any response is required, Jenzabar denies the allegations contained in paragraph 111 of the Complaint.

112. This count does not assert a claim against Jenzabar, and thus no response is required. To the extent that any response is required, Jenzabar denies the allegations contained in paragraph 112 of the Complaint.

113. This count does not assert a claim against Jenzabar, and thus no response is required. To the extent that any response is required, Jenzabar denies the allegations contained in paragraph 113 of the Complaint.

COUNT SEVEN

(Accounting)

114. Jenzabar repeats, realleges, and incorporates by reference Paragraphs 1 through 113 above.

115. The allegations contained in paragraph 115 of the Complaint are treated as having been included in the prayer for relief pursuant to the opinion of this Court dated May 5, 2010 and as such no responsive pleading is required. Paragraph 115 of the Complaint contains conclusions of law to which no response is required. To the extent any response is required, Jenzabar denies the allegations contained in paragraph 115 of the Complaint.

116. The allegations contained in paragraph 116 of the Complaint are treated as having been included in the prayer for relief pursuant to the opinion of this Court dated May 5, 2010 and as such no responsive pleading is required. To the extent any response is required, Jenzabar denies the allegations contained in paragraph 116 of the Complaint.

117. The allegations contained in paragraph 117 of the Complaint are treated as having been included in the prayer for relief pursuant to the opinion of this Court dated May 5, 2010 and as such no responsive pleading is required. To the extent any response is required, Jenzabar denies the allegations contained in paragraph 117 of the Complaint.

118. The allegations contained in paragraph 118 of the Complaint are treated as having been included in the prayer for relief pursuant to the opinion of this Court dated May 5, 2010 and as such no responsive pleading is required. To the extent any response is required, Jenzabar denies the allegations contained in paragraph 118 of the Complaint.

119. The allegations contained in paragraph 119 of the Complaint are treated as having been included in the prayer for relief pursuant to the opinion of this Court dated May 5, 2010 and as such no responsive pleading is required. To the extent any response is required, Jenzabar denies the allegations contained in paragraph 119 of the Complaint.

COUNT EIGHT

(Rescission)

120. Jenzabar repeats, realleges, and incorporates by reference Paragraphs 1 through 119 above.

121. The allegations contained in paragraph 121 of the Complaint are treated as having been included in the prayer for relief pursuant to the opinion of this Court dated May 5, 2010 and as such no responsive pleading is required. To the extent any response is required, Jenzabar denies the allegations contained in paragraph 121 of the Complaint.

122. The allegations contained in paragraph 122 of the Complaint are treated as having been included in the prayer for relief pursuant to the opinion of this Court dated May 5, 2010 and as such no responsive pleading is required. To the extent any response is required, Jenzabar denies the allegations contained in paragraph 122 of the Complaint.

123. The allegations contained in paragraph 123 of the Complaint are treated as having been included in the prayer for relief pursuant to the opinion of this Court dated May 5, 2010 and as such no responsive pleading is required. To the extent any response is required, Jenzabar denies the allegations contained in paragraph 123 of the Complaint.

124. The allegations contained in paragraph 124 of the Complaint are treated as having been included in the prayer for relief pursuant to the opinion of this Court dated May 5, 2010 and as such no responsive pleading is required. To the extent any response is required, Jenzabar denies the allegations contained in paragraph 124 of the Complaint.

125. The allegations contained in paragraph 125 of the Complaint are treated as having been included in the prayer for relief pursuant to the opinion of this Court dated May 5, 2010 and as such no responsive pleading is required. To the extent any response is required, Jenzabar denies the allegations contained in paragraph 125 of the Complaint.

COUNT NINE

(Declaratory Judgment Under Delaware Declaratory Judgment Act)

126. Jenzabar repeats, realleges, and incorporates by reference Paragraphs 1 through 125 above.

127. Paragraph 127 of the Complaint contains conclusions of law to which no response is required. To the extent any response is required, Jenzabar admits the allegations contained in paragraph 127 of the Complaint.

128. MCG's interpretation of Sections 1.1 and 5.12(h) of the PSWPA contained in paragraph 128 of the Complaint states a conclusion of law to which no response is required. To the extent any response is required, Jenzabar denies the allegations contained in paragraph 128 of the Complaint.

129. The allegations contained in paragraph 129 of the Complaint are vague, ambiguous, and imprecise, and Jenzabar therefore denies them.

130. Paragraph 130 of the Complaint contains a request for specific relief from the Court, such that no response is required from Jenzabar. To the extent any response is required, Jenzabar denies the allegations contained in paragraph 130 of the Complaint.

COUNT TEN

(Declaratory Judgment Under Delaware Declaratory Judgment Act)

131. Jenzabar repeats, realleges, and incorporates by reference Paragraphs 1 through 130 above.

132. Paragraph 132 of the Complaint contains conclusions of law to which no response is required. To the extent any response is required, Jenzabar admits the allegations contained in paragraph 132 of the Complaint.

133. MCG's interpretation of Article V, Section A.1(b)(x) of the Jenzabar Charter contained in paragraph 133 of the Complaint states a conclusion of law to which no response is required. To the extent any response is required, Jenzabar denies the allegations contained in paragraph 133 of the Complaint.

134. The allegations contained in paragraph 134 of the Complaint are vague, ambiguous, and imprecise, and Jenzabar therefore denies them.

135. Paragraph 135 of the Complaint contains a request for specific relief from the Court, such that no response is required from Jenzabar. To the extent a response from Jenzabar may be required, Jenzabar denies that MCG has any right to the requested relief.

COUNT ELEVEN

(Declaratory Judgment Under Delaware Declaratory Judgment Act)

136. Jenzabar repeats, realleges, and incorporates by reference Paragraphs 1 through 135 above.

137. Paragraph 137 of the Complaint contains conclusions of law to which no response is required. To the extent any response is required, Jenzabar admits the allegations contained in paragraph 137 of the Complaint.

138. MCG's interpretation of Article V, Section A.4(e) of the Jenzabar Charter contained in paragraph 138 states a conclusion of law to which no response is required. To the extent any response is required, Jenzabar denies the allegations contained in paragraph 138 of the Complaint.

139. MCG's interpretation of Article V, Section A.5 of the Jenzabar Charter contained in paragraph 139 of the Complaint states a conclusion of law to which no response is required. To the extent any response is required, Jenzabar denies the allegations contained in paragraph 139 of the Complaint.

140. Paragraph 140 of the Complaint contains a request for specific relief from the Court, such that no response is required from Jenzabar. To the extent any response is required, Jenzabar denies that MCG has any right to the requested relief, and Jenzabar further avers that Jenzabar is entitled to a declaratory judgment that Jenzabar has validly repurchased MCG's Senior Preferred Stock, and that MCG has put its warrants.

COUNT TWELVE

(Rescission of Unauthorized Compensation)

141. Jenzabar repeats, realleges, and incorporates by reference Paragraphs 1 through 140 above.

142. Jenzabar denies the allegations contained in paragraph 142 of the Complaint.

143. Jenzabar admits that five directors were present during the Board meeting in question and that two of the three disinterested directors present voted to authorize the payment of a \$750,000 bonus to Mr. Maginn. The remainder of paragraph 143 of the Complaint contains conclusions of law to which no response is required. To the extent any response is required, Jenzabar denies the allegations contained in paragraph 143 of the Complaint.

144. Jenzabar denies the allegations contained in paragraph 144 of the Complaint.

145. Jenzabar admits that Jenzabar paid a properly authorized bonus in the amount of \$750,000 to Mr. Maginn but otherwise denies the allegations contained in paragraph 145 of the Complaint.

146. Paragraph 146 of the Complaint requests specific relief from the Court, such that no response is required from Jenzabar. To the extent a response from Jenzabar may be required, Jenzabar denies that MCG has any right to the requested relief.

AFFIRMATIVE DEFENSES

First Affirmative Defense

The Complaint fails to state a claim on which relief can be granted.

Second Affirmative Defense

MCG's claims are barred in whole or in part for lack of standing.

Third Affirmative Defense

MCG's claims are barred in whole or in part by the doctrine of unclean hands.

Fourth Affirmative Defense

MCG's claims are barred in whole or in part by the doctrine of waiver.

Fifth Affirmative Defense

MCG's claims are barred in whole or in part by the doctrine of estoppel.

Sixth Affirmative Defense

MCG's claims against the individual director defendants are barred in whole or in part by Article VIII of Jenzabar's Charter and 8 *Del. C.* 102(b)(7).

Seventh Affirmative Defense

MCG's derivative claims are barred in whole or in part by Court of Chancery Rule 23.1 and because MCG is not an adequate representative plaintiff.

Eighth Affirmative Defense

MCG's claims are barred because it lacks standing to assert some or all of the claims in its Complaint.

Reservation of Defenses

To the extent Jenzabar has not pleaded certain defenses, it reserves the right to add additional defenses pending further investigation and discovery.

VERIFIED COUNTERCLAIMS

Plaintiff-in-Counterclaim Jenzabar, Inc. asserts the following counterclaims against MCG Capital Corporation.

INTRODUCTION

1. MCG describes itself as a “business development company” that offers “capital and advisory solutions” to high-growth companies. See <http://www.mcgcapiatal.com/index.htm>. Throughout its marketing, MCG touts itself as a “strong, dependable capital partner” (id.; <http://www.mcgcapiatal.com/investment.htm>) that supposedly will “assist these [high-growth] companies in prioritizing opportunities and managing risks with a focus on long-term value creation.” <http://www.mcgcapiatal.com/solutions.htm>. MCG proclaims that it can offer its portfolio companies “superior knowledge and insight based on experience and data,” id., and promises to be a “reliable and sophisticated” partner “in good times and in bad.” <http://www.mcgcapiatal.com/about.htm>.

2. MCG’s words sound noble indeed, but its conduct toward Jenzabar tells an entirely different story: a story of outright deception, unbridled greed, excessive fees, and oppressive interference with management at every opportunity, to unjustly enrich MCG and its management by pumping up its quarterly public financials, and all at the expense of long term growth and value creation.

3. On June 30, 2004, MCG invested \$35 million in Jenzabar. Most of that investment, amounting to \$30 million, was in the form of loans. Jenzabar was soon able to secure a credit facility at far more attractive rates and paid back the \$30 million less than two years later, in March 2006. MCG was rewarded handsomely for that relatively short-term loan,

receiving interest totaling \$5.8 million, but it nevertheless extracted from Jenzabar an additional \$2 million as a “prepayment penalty.”

4. The balance of MCG’s investment, approximately \$5 million, was made in exchange for senior preferred stock (the “Senior Preferred Stock”), warrants to purchase Jenzabar common stock (the “Jenzabar Warrants”), and Subordinated Preferred Stock. Almost immediately after Jenzabar paid off the loans to MCG in March 2006, MCG began exerting enormous, and wrongful, pressure on Jenzabar to repurchase MCG’s Senior Preferred Stock and the Jenzabar Warrants at a large and unjustified premium.

5. MCG has been unabashedly blunt about its intentions and strategy. MCG’s then-CEO, Bryan Mitchell, complained to Jenzabar that MCG “was stuck” and “couldn’t get out” of Jenzabar. Mitchell vowed that MCG would be Jenzabar’s “biggest pain in the a** until you pay me off.” This, apparently, is how MCG fulfills its promise to “focus on long-term value creation.”

6. Unfortunately, Mitchell’s warning was no empty threat. Since virtually the day of its investment, MCG has breached its contractual obligations, acted in bad faith, and engaged in oppressive and unfair dealings towards Jenzabar, all with the aim of forcing the Company to buy out MCG at an inflated price.

7. Consistent with Mitchell’s vow, and in violation of its obligations under the Stockholders Agreement, MCG opposed and actively obstructed Jenzabar’s attempts to seat independent directors to its Board.

8. At the same time that MCG was exerting enormous pressure on Jenzabar and its management to force a buy-out, MCG was funneling confidential Company information directly

to third parties in a secret effort to negotiate a sale of the Company or change of control that would most benefit MCG.

9. Most recently, MCG has repeatedly refused to participate in good faith in the contractually mandated process by which Jenzabar could redeem the Jenzabar Warrants at fair market value.

10. MCG's unfair and oppressive conduct is surely driven in part by simple avarice, but there is more at work. Over the past several years, MCG has steadily marked up the stated balance sheet value of its Jenzabar Warrants as reported in its public filings with the Securities and Exchange Commission ("SEC"). These markups in the value of the Jenzabar Warrants have been a material, and sometimes a primary, contributor to the unrealized gains that MCG includes in its reported quarterly and annual earnings. The valuations publicly reported by MCG, however, significantly overstated the value of the Jenzabar Warrants.

11. Shortly after it executed the Purchase Agreement on June 30, 2004, MCG reported the fair value of its investment in Jenzabar as \$6,526,000. MCG attributed \$422,000 of that value to the Jenzabar Warrants.

12. Since July 2004, however, MCG has steadily marked up the value of the Jenzabar Warrants. MCG's SEC filings from the first quarter of 2009 – the last quarterly SEC filing prior to its filing of this suit against Jenzabar – reported the value of the Jenzabar Warrants as \$21,674,000 – an increase of more than \$21 million in less than five years on an initial investment of \$422,000.

13. In effect, MCG states in its public SEC filings that the value of the Jenzabar Warrants increased by *more than 5,130%* over less than 5 years. During that same time period,

however, Jenzabar's audited financials show an increase in revenues and earnings of only approximately 1%.

14. Because MCG has grossly inflated and overstated the value of the Jenzabar Warrants in its SEC filings, MCG is desperate to avoid a redemption at the contractually mandated fair market value, or its wrongful inflation will become apparent to its shareholders, the market, and regulators. MCG's management team, in particular, who have received handsome bonuses based upon their overvaluing of the Jenzabar Warrants, have made clear that they will use any means necessary to extract an excessive overpayment for the Jenzabar Warrants.

15. By these Counterclaims, Jenzabar seeks to put an end to MCG's oppressive, unfair, and wrongful conduct and recover damages for the substantial harm it has caused Jenzabar.

THE PARTIES

16. Plaintiff-in-Counterclaim Jenzabar is a private Delaware corporation with a principal place of business in Boston, Massachusetts. Jenzabar provides various enterprise software solutions and related services to institutions of higher education. Robert A. Maginn, Jr. ("Mr. Maginn"), Jenzabar's Chairman and CEO, and Ling Chai ("Ms. Chai"), Jenzabar's Chief Operating Officer and a member of the Board, founded the Company together in 1998.

17. Defendant MCG is a Delaware corporation with a principal place of business in Arlington, Virginia. MCG is a publicly traded business development company (NASDAQ: MCGC) that invests in small- to mid-sized U.S. companies.

THE FACTS

MCG's Initial Investment in Jenzabar

18. On or around June 30, 2004, pursuant to the terms of several different agreements executed as of that date between Jenzabar, MCG, and other stakeholders in the Company, MCG invested a total of \$35,000,000 in Jenzabar.

19. As part of its investment, and pursuant to a Credit Facility Agreement between Jenzabar and MCG, MCG extended two loans to the Company: a senior secured term loan in the amount of \$20,000,000 ("Term Loan A"); and a senior subordinated term loan in the amount of \$10,000,000 ("Term Loan B").

20. Separately, under the terms of the Preferred Stock and Warrant Purchase Agreement (the "PSWPA") between Jenzabar and MCG, MCG purchased a \$5,000,000 equity stake in the Company, which was divided among 5,000 shares of Senior Preferred Stock, 109,800 shares of Subordinated Preferred Stock, and 5,879,150 Jenzabar Warrants. According to its own public filings issued shortly after the investment, MCG valued the Jenzabar Warrants at \$422,000.

21. Also in connection with MCG's investment, Jenzabar, MCG, and each of Jenzabar's other stockholders, executed the Fourth Amended and Restated Stockholders Agreement ("Stockholders Agreement"). By its terms, the Stockholders Agreement granted MCG the limited right to designate two individuals for appointment to Jenzabar's Board (the "Senior Investor Designated Directors") as long as the Term Loan A and Term Loan B notes remained outstanding. If MCG no longer held any portion of the Term Loan A Note and the Term Loan B Note, it could only designate one director. See Stockholders Agreement, Section 4.2(a)(i).

22. Jenzabar's By-Laws and the Stockholders Agreement provided that the Board would consist initially of five directors: two designees of Mr. Maginn and Ms. Chai, referred to as the "Founder Designated Directors," the Senior Investor Designated Directors, and an Independent Director. Once the Term Loan A and Term Loan B were paid off, MCG would be entitled to seat only one Senior Investor Designated Director, and a second Independent Director would be seated. Stockholders Agreement, § 4.2(a)(iii).

23. The Stockholders Agreement provided that the two Independent Directors were to be nominated by the Founder Designated Directors, with the consent of the Senior Investor Designated Director(s). The Stockholders Agreement expressly provided that "the Senior Investor Designated Directors' approval of Independent Director candidates recommended by the Founder Designated Directors will not be unreasonably withheld or delayed." Id.

**MCG Obstructs Jenzabar's Legitimate Business Objectives
In Order To Force Jenzabar To Buy Out MCG At An Exorbitant Multiple**

24. Paul Fireman ("Fireman"), the founder and former chairman of Reebok International, served as Independent Director of Jenzabar until June 29, 2004, when he resigned in connection with MCG's investment in Jenzabar.

25. Upon the closing of its investment, MCG designated Third-Party Defendant Malekian, as well as MCG's then Chief Executive Officer, Bryan Mitchell ("Mitchell"), to serve as the Senior Investor Designated Directors on Jenzabar's Board.

26. Mitchell had formerly been Chairman of MCG's Board of Directors as well as its CEO. After it came to light that Mitchell had falsified his academic credentials, claiming to have received a college degree when in fact he had not, Mitchell was removed from his position as MCG's Chairman. MCG's decision to appoint Mitchell to the Jenzabar's Board was

embarrassing and harmful to the Company, given that Jenzabar's clients are colleges and universities, for whom academic fraud is a serious offense.

27. Mr. Maginn and Ms. Chai, who had served on Jenzabar's Board since founding the Company, were the Founder Designated Directors.

28. Thus, as of the middle of 2004, Jenzabar's Board was comprised of Jenzabar's two founders, and two MCG officers, with the fifth seat on the Board remaining vacant. Almost immediately, MCG began seeking to exploit this situation to its benefit.

29. In January 2005, Jenzabar's Board considered and approved a growth-oriented budget initiative that would allow the Company to increase its investment in marketing and business development, to allow Jenzabar to compete more effectively in the marketplace. Mitchell and Malekian stated that they supported the budget initiative in their capacity as Jenzabar directors, because it was in the best interests of the Company. The growth-oriented budget would make it difficult for Jenzabar to meet certain ratios that were required by covenants in the MCG Credit Agreement, however, and Mitchell and Malekian refused, in their capacity as officers of MCG, to agree to waive those covenants, so that MCG could use the covenants as leverage over Jenzabar.

30. Partially as a result of these unreasonable restrictions, in May of 2005, Jenzabar began exploring options to refinance its existing debt with MCG in order to reduce its overall cost of capital and free the Company to operate under less onerous financial covenants than those imposed by MCG.

31. Mitchell and Malekian then began actively encouraging and participating in Board discussions regarding the refinancing, and repeatedly pushed for a quick deal. At the

same time, however, they were negotiating, on MCG's behalf, an intercreditor agreement with Wells Fargo Foothill ("WFF"), Jenzabar's anticipated refinancing lender.

32. While playing these dual roles as Board members and MCG representatives, Mitchell and Malekian then sought to extract even greater value from Jenzabar by pressuring the Company to buy out MCG's entire equity position at an exorbitant multiple of its fair value. In or around June 2005, Mitchell and Malekian suggested that Mr. Maginn should vote with them to have Jenzabar pay \$12 million to buy back the equity for which MCG had paid \$5 million just the year before. Although Mr. Maginn communicated this offer to his management team, everyone agreed that such a buy-out was outrageous and not in Jenzabar's best interest at the time.

33. On June 30, 2005, a year after its investment, MCG's public filings valued the Jenzabar Warrants at approximately \$2.6 million – an increase of more than 600% over the reported initial value.

34. In September 2005, MCG's filings showed a value for the Jenzabar Warrants of approximately \$7.7 million – an increase of nearly 300% in just one quarter, and an increase of more than 1,800% over the initial value.

35. In late September, Mitchell and Malekian continued to press Jenzabar to completely buy out MCG's holdings. They began to insist that the number of Jenzabar Warrants held by MCG had increased from 5.9 million to 11.2 million – despite the fact that there had occurred no events that would have triggered MCG's anti-dilution rights.

36. As the pressure from MCG mounted, Mitchell and Malekian continued to exploit the Board's two-on-two make-up to MCG's benefit, apparently hoping they could extort a lucrative deal from Mr. Maginn and Ms. Chai. On November 18, 2005, barely fifteen minutes

into a Board meeting at which several non-directors were present, Mitchell unilaterally converted the meeting into an immediate “executive session,” and asked everyone but the four directors to immediately leave the room.

37. Mitchell then declared that he and Malekian were terminating their former support of the growth-oriented budget the Board had approved in January. Mitchell and Malekian, with the knowledge, support, and encouragement of MCG, made their message clear: Mitchell and Malekian would disrupt and interfere with the management of Jenzabar until the Company bought out MCG at the inflated price it demanded.

38. Mitchell and Malekian dangled a carrot from this stick. They suggested to Mr. Maginn and Ms. Chai that their compensation could be increased if, but only if, Jenzabar acceded to MCG’s buy-out demands. The year before, after Jenzabar believed that the terms of MCG’s investment had been finalized and just shortly before the closing, MCG forced last-minute changes to the employment agreements for Mr. Maginn and Ms. Chai, significantly reducing the performance bonuses that they could realize. Mr. Maginn and Ms. Chai acceded to these changes because they believed that the MCG investment was in the Company’s larger interest, and, further, because MCG’s senior management assured them that the bonus formula set out in the employment agreements was a “floor, not a ceiling,” and that the Board would have the discretion to adjust the formula.

39. Despite these prior assurances, Mitchell vowed to oppose any increase in management compensation, even to the point of litigation, until the Company bought out MCG. He exhorted Mr. Maginn and Ms. Chai to “worry about themselves,” and pointed out that if they “took him out,” they could run the Company as they wished, and pay themselves what they wanted.

40. Mr. Maginn and Ms. Chai steadfastly refused MCG's threats and enticements, believing that MCG's proposed buy-out was not in the best interests of Jenzabar's shareholders.

MCG Wrongfully Blocks The Appointment Of Independent Directors To Perpetuate Its Control And Create Deadlock on Jenzabar's Board

41. Eventually, rather than buy out MCG's equity at the excessive premiums Mitchell and Malekian were demanding, Jenzabar sought to reduce MCG's control and free the Company to operate under less restrictive covenants.

42. On or around March 17, 2006, Jenzabar refinanced its debt through a credit facility funded by WFF, and used the proceeds to pay off the Term Loan A and Term Loan B notes in full, including pre-payment penalties of more than \$2 million.

43. Under the terms of the operative documents, once these notes were paid, MCG was entitled to seat only a single Senior Investor Designated Director. Following the refinancing, therefore, Jenzabar immediately requested that MCG identify which of its designated directors would be removed from the Jenzabar Board.

44. Simultaneously, the Company communicated to MCG the Founder Designated Directors' recommendation that Joseph San Miguel ("Dr. San Miguel") and D. Quinn Mills ("Dr. Mills"), two members of the Company's Advisory Board, be seated as Independent Directors, filling the two vacant seats left by Fireman and MCG's imminently departing designee.

45. For nearly six weeks, however, MCG did not respond. Jenzabar's counsel repeatedly followed up, demanding that MCG acknowledge its duty to remove one of its designated directors, identify who would remain on the Board, and respond to Mr. Maginn and Ms. Chai's proposal of Dr. Mills and Dr. San Miguel as Independent Directors.

46. Finally, on April 26, 2006, Malekian tendered his resignation from Jenzabar's Board, leaving Mitchell as MCG's designee. Mitchell, however, remained silent as to the appointment of the Independent Directors.

47. Mitchell was nonetheless particularly vocal with Mr. Maginn regarding MCG's resolve to force a buy-out, notwithstanding Malekian's departure. Indeed, Mitchell expressly promised to Mr. Maginn what had previously been only implied: that his involvement with Jenzabar and its Board would be exclusively directed at creating problems for Jenzabar until it bought out MCG.

48. Specifically, over lunch with Mr. Maginn in Washington, D.C., Mitchell promised "to be the biggest pain in your a**" until MCG was "paid off."

49. MCG's demands had increased by this time, however: Mitchell demanded \$20,000,000 for MCG's stock and warrants. Mitchell even offered to finance the repurchase for Jenzabar, but only on usurious terms set by MCG. Mr. Maginn once again declined Mitchell's offer.

50. By June 2006, MCG's public filings reflected a value for the Jenzabar Warrants of approximately \$8.2 million. Mitchell's buy out demand was 50% higher than even MCG's grossly inflated valuation of its holdings in Jenzabar.

51. By July 2006, Mitchell still had not responded to the Founder Designated Directors' recommended appointees, notwithstanding his contractual duty as MCG's designee not to unreasonably withhold or delay approval. Hoping to force an end to MCG's obstructionism, Jenzabar invited Dr. San Miguel to the July 20, 2006 Board meeting, and demanded that Mitchell respond, at least with respect to Dr. San Miguel. Without any reasonable ground to object to Dr. San Miguel's qualifications, Mitchell ultimately agreed to his

selection as a Jenzabar Director, such that all of the requirements of the Stockholders Agreement were satisfied.

52. Then, on or around August 24, 2006, Mitchell suddenly resigned from MCG, reportedly because he had taken interest-free personal “loans” from MCG. By September 14, 2006, MCG informed Jenzabar that, as a result of Mitchell’s resignation, Malekian would serve as MCG’s Senior Investor Designated Director. MCG announced that Steven Tunney (“Tunney”), Mitchell’s former colleague, would replace him as MCG’s CEO.

53. Mitchell’s departure did not change MCG’s commitment to being “the biggest pain in [Jenzabar’s] a**”; Mitchell simply handed the baton to Tunney. In November 2006, Jenzabar sent MCG a thoughtful written proposal, offering to repurchase MCG’s entire stake in the Company (including both preferred stock and warrants) for a price of \$12 million. Tunney sent a one-line letter in response. It said only: “Please don’t waste my time.”

54. Malekian likewise stepped into the obstructionist role that Mitchell had played, denying the validity of the appointment of Dr. San Miguel and delaying any action on the seating of Dr. Mills.

55. At the February 16, 2007 Board Meeting, Mr. Maginn reminded the Board that the Founder Designated Directors had recommended the Independent Directors nearly a year earlier, that Mitchell, as Senior Investor Designated Director, had already approved Dr. San Miguel, and that MCG was contractually bound, through its Senior Investor Designated Director, not to unreasonably withhold or delay his approval of Dr. Mills.

56. In response, Malekian stated that, notwithstanding Mitchell’s prior approval of Dr. San Miguel, Malekian intended to “reserve his right” to meet Dr. San Miguel and form his own opinion. Malekian justified this further delay by stating that he “wanted time to reflect,”

that he needed “more information,” and wanted to “spend more time” with the proposed candidates. He did not, however, assert any substantive objection to the formal seating of Dr. San Miguel or the appointment of Dr. Mills.

57. Moreover, notwithstanding his claim to want to spend more time with Dr. San Miguel and Dr. Mills, and learn more about them, Malekian never reached out to either individual to request a meeting, and never requested any additional information regarding their respective backgrounds. Malekian’s only interactions with Dr. San Miguel and Dr. Mills prior to their appointment took place at Board meetings, during which, on at least one occasion, Malekian actually tried to talk Dr. Mills out of serving as Independent Director.

58. Meanwhile, MCG continued to use the independent director issue for leverage. Soon after the February 16, 2007 meeting, Samuel Rubenstein (“Rubenstein”), MCG’s Executive Vice President and General Counsel, insisted, without any authority, that MCG had an unqualified right to consent to the appointment of the Independent Directors.

59. For several months MCG continued to unreasonably interfere and delay in approving the appointment and seating of the Independent Directors. At a Board meeting on September 28, 2007, after receiving the opinion of Company counsel, the Board determined that all steps necessary to appoint Dr. San Miguel as an Independent Director had occurred as of the July 2006 Board meeting, and that it would be appropriate for the Board to ratify and give effect to Dr. San Miguel’s appointment during the current meeting.

60. Malekian opposed seating Dr. San Miguel, warning ominously that Jenzabar’s effort to seat Independent Directors on the Board would put the Company “at odds with MCG.”

61. Later the same day, Rubenstein, MCG’s General Counsel, contacted Jenzabar’s General Counsel, Jamison Barr (“Mr. Barr”), and effectively demanded that the Company

rescind its ratification of Dr. San Miguel's appointment. Rubenstein threatened that the Board's action had "inflamed MCG" and that things were "going to get out of control." He then boasted about how aggressively MCG would litigate any dispute with Jenzabar.

MCG Grossly Overvalues The Jenzabar Warrants, And Demands To Be Repurchased

62. Wary of MCG's threats of litigation, Jenzabar cautiously proceeded to use its Independent Director to explore, among other things, a means of resolving the difficulties with MCG.

63. The immediate priority was to appoint a special committee that could evaluate potential opportunities to simplify the Company's capital structure by removing the complexity created by MCG's layered equity interest. Management expected that such a restructuring would increase shareholder value by simplifying the number and classes of shares the Company had outstanding, because the complex capital structure was proving a deterrent to potentially valuable strategic business combinations.

64. On November 27, 2007, the Board appointed Dr. San Miguel to serve as an independent special committee of one to evaluate any opportunities the Company had to simplify its capital structure and increase shareholder value, including, potentially, a consideration of MCG's stated interest in being redeemed.

65. MCG continued vehemently to oppose the seating of Dr. San Miguel as an Independent Director, apparently because MCG perceived that the presence of Independent Directors on the Board would remove MCG's leverage over Mr. Maginn and Ms. Chai, particularly with respect to their compensation. Indeed, during a conference call with Mr. Barr, Rubenstein openly admitted to Mr. Barr that MCG would continue to oppose any Independent Directors because if MCG relented and Independent Directors were seated, Jenzabar would no longer feel any pressure to respond to MCG's buy-out demands.

66. MCG therefore refused to participate in any discussions with Dr. San Miguel so as not to validate his appointment.

67. MCG also began using the execution of the formal consents as additional leverage for their proposals, demanding concessions from Jenzabar in exchange for routine signatures on documents.

68. By December 2007, MCG's public filings reflected a valuation of approximately \$26 million for the Jenzabar Warrants – three times higher than they had been valued only a year before, and *more than 6,000% higher than the initial valuation.*

MCG Misuses Jenzabar's Confidential Information

69. Only in April 2008 did Jenzabar eventually succeed in convincing MCG and its controlled director-designee to drop its opposition to seating Dr. San Miguel and Dr. Mills, largely because MCG belatedly realized that Jenzabar could not properly and fairly consider its buy-out demands in the absence of outside Independent Directors. Once Dr. Mills was seated, the Board re-constituted the Special Committee, which had previously consisted only of Dr. San Miguel, to include Dr. Mills as well.

70. At an April 2008 Board meeting, the Board established an Audit Committee and a Compensation Committee, as required in the Stockholders Agreement, and prepared to appoint Dr. San Miguel and Dr. Mills, respectively, to serve as each committee's chairman.

71. In the midst of that April 2008 Board meeting, upon the establishment of these committees but before the Board could appoint the chairs, Malekian demanded that the Board suspend its meeting. Upon information and belief, Malekian immediately contacted Rubenstein, MCG's General Counsel, to inform him that the Board had formed Compensation and Audit Committees. Rubenstein promptly called Mr. Barr, berated him and Jenzabar for forming these Committees, and threatened to file unspecified – and unjustified – legal action.

72. Consequently, the appointments of Dr. San Miguel and Dr. Mills to serve as chairmen of the Audit Committee and Compensation Committee, respectively, were delayed until the Board could hold its next meeting.

73. MCG, through Malekian, immediately began putting intense pressure on the Independent Directors to accept MCG's buy-out proposals. Malekian repeatedly contacted the Independent Directors, and spent hours on the phone trying to convince them that MCG's outrageous proposals represented a good deal for Jenzabar.

74. By June 30, 2008, MCG had written up the value of the Jenzabar Warrants to approximately \$28.3 million – an increase of *more than 6,700%* over the original reported value. In its September 30, 2008 Form 10-Q, MCG reported yet another increase in the value of the Jenzabar Warrants, to \$29.8 million, at the same time that financial markets everywhere were experiencing precipitous declines.

75. It quickly became apparent to the Independent Directors that MCG's only proposal for simplifying the Company's capital structure involved buying MCG out at an exorbitant multiple based on highly inflated and questionable valuations of the Company's common stock – valuations that were far higher than the valuations prepared every year by Jenzabar's independent auditors and other independent valuations done for prior redemptions of common stock. The Independent Directors could not, in the best interests of Jenzabar's shareholders, recommend MCG's proposals to the Company.

76. Malekian nonetheless persisted, insisting that MCG's valuation was correct. For support, Malekian claimed that a private equity firm had stated that it was willing to purchase Jenzabar at a particularly high multiple of EBITDA.

77. Jenzabar had never authorized MCG or Malekian to provide Jenzabar's financial information to this private equity firm. To the contrary, Jenzabar's Board had resolved on February 16, 2007 that Mr. Maginn and Ms. Chai "act as the Company's primary and only authorized agent and representative in all discussions and communications" (emphasis supplied) with any third party regarding either a new financing arrangement or a potential acquisition or sale of Company assets.

78. Upon information and belief, MCG, through Malekian and others, had approached private equity firms and other third parties and provided Jenzabar's confidential financial information, in violation of the nondisclosure obligations contained in the PSWPA.

79. Upon information and belief, MCG, through Malekian and others, continued to make other unauthorized disclosures of Jenzabar confidential financial information to other third parties, including other private equity firms, at least one of which owned a competitor of Jenzabar - thereby potentially compromising Jenzabar's competitive position and potentially jeopardizing Jenzabar's relationships with current and potential customers.

**MCG Refuses In Bad Faith To Participate
In The Contractually Mandated Process To Value The Jenzabar Warrants**

80. In November 2007, Jenzabar sent MCG written notice that it intended to repurchase the Senior Preferred Stock if it could secure financing that provided the Company with sufficient liquidity to make the repurchase.

81. In September 2008, pursuant to the terms of the Charter and PSWPA, Jenzabar repurchased a portion of MCG's Senior Preferred Stock. MCG neither received nor insisted upon formal notice in connection with that transaction. Rather, in accordance with the parties' longstanding course of dealing, which was memorialized expressly in writings between Jenzabar

and MCG, Jenzabar provided notice of the repurchase by electronic mail less than 30 days prior to redemption.

82. In March 2009, Jenzabar sent MCG written notice that it intended to repurchase the Senior Preferred Stock from MCG at the highest possible price specified in the PSWPA.

83. Under the terms of the PSWPA, Jenzabar's repurchase of the Senior Preferred Stock forced MCG to make a choice: MCG could put the Jenzabar Warrants to the Company, at fair market value, or it could continue to hold the Jenzabar Warrants, but without any of the special voting rights that MCG had used to interfere with Jenzabar's business.

84. Faced with this choice, MCG chose a third option: following through on its longstanding threats, MCG sued Jenzabar, all of its directors (except for Malekian, MCG's employee and designee), and even its general counsel. Solely for *in terrorem* effect, MCG argued eleven different ways that Jenzabar's independent Compensation Committee and Board should not have authorized an annual salary increase of about 4% to Mr. Maginn and Ms. Chai, nor awarded performance bonuses – this at the same time that MCG reported in its public filings that the value of its investment in Jenzabar had increased more than 450% since the initial investment, and the value of the Jenzabar Warrants had increased more than 5,000%.

85. In addition, in an effort to avoid a neutral and fair valuation of its Jenzabar Warrants, MCG sought a declaration that Jenzabar's notice of repurchase was invalid.

86. In accordance with the process outlined in the PSWPA, however, Jenzabar began the valuation process, appointing KPMG, an independent, internationally recognized valuation firm, as Independent Appraiser.

87. MCG refused to appoint an Independent Appraiser. MCG also asked this Court to enjoin the valuation process, claiming that if the independent valuation proceeded, MCG would

suffer “irreparable harm” – no doubt a recognition that an impartial valuation process would reveal that MCG had grossly overstated the value of the Jenzabar Warrants in its SEC filings.

88. After this Court denied MCG’s request for an injunction to stop the contractual valuation process, MCG reluctantly appointed an appraiser. Instead of appointing an independent, nationally recognized firm, as required by the PSWPA, however, MCG appointed Stout Risius Ross (“SRR”), a small firm to whom MCG had sent a considerable volume of business. Indeed, SRR later admitted to Jenzabar that they had conducted valuations of Jenzabar and other companies for MCG in the past.

89. Not surprisingly, MCG’s handpicked valuation firm came up with a valuation that was far from independent. To the contrary, SRR’s valuation was explicitly based upon questionable assumptions dictated by MCG – including the assumption that MCG would prevail on its claims in this case. MCG actively, and improperly, controlled and interfered with the valuation process, in violation of the PSWPA.

90. The PSWPA provided for KPMG and SRR to agree on a third Independent Appraiser within ten days, but MCG and SRR dragged out the process for weeks, which grew into months.

91. The PSWPA required that the third Independent Appraiser was to be an independent, nationally-recognized valuation firm. KPMG proposed two of the Big Four firms, PricewaterhouseCoopers and Deloitte. At MCG’s instigation, SRR claimed, astonishingly, that these premier firms were unqualified to conduct the appraisal. It proposed investment banks – no doubt hoping that such firms would institutionally be more likely to assign higher values than pure valuation experts.

92. One of the firms SRR recommended was Duff & Phelps, and in mid-October it was agreed that KPMG would contact Duff & Phelps to get information about their capabilities, which Duff & Phelps provided. KPMG then agreed that Duff & Phelps would be a suitable third Independent Appraiser

93. Duff & Phelps itself determined that the professionals with its valuation services team were the most experienced and qualified to perform a valuation of the sort contemplated by the PSWPA.

94. SRR apparently wanted to dictate the individual within Duff & Phelps who would perform the valuation work – despite the fact that the PSWPA directs the first two appraisers to select a “firm,” not an individual. When SRR realized that Duff & Phelps itself would choose the professionals most qualified to perform the valuation, and that those individuals were from Duff & Phelps valuation team, rather than investment bankers, SRR quickly reneged on its prior recommendation of Duff & Phelps.

95. Jenzabar has also learned that Duff & Phelps previously had been hired by MCG to provide investment banking services and had actively been soliciting MCG for significant volumes of valuation work.

96. In summary, MCG, directly and through SRR, has effectively blocked and abandoned the independent valuation process, to prevent a fair and unbiased valuation that would reveal MCG’s deliberate overvaluation of the Jenzabar Warrants in its public filings.

MCG Has Significantly Overstated The Number Of Jenzabar Warrants It Holds

97. The valuation process described above is one step in the process of determining the price that Jenzabar must pay MCG upon a put of the Jenzabar Warrants (the “Warrant Put Exercise Price”). Once the Company Fair Market Value is determined by the Independent Appraisers, the Warrant Put Exercise Price must be determined.

98. Section 1.1 of the PSWPA defines the Warrant Put Exercise Price:

“Put Exercise Price” means, with respect to any Shares to be purchased by the Company as of the date of the relevant Warrant Put Notice, the amount that would be distributable on account of such Shares assuming that, as of the date of such Warrant Put Notice, a Company Sale (as defined in the definition of Company Fair Market Value) has occurred with cash proceeds to the Company in an amount equal to the Company Fair Market Value. Such distribution will be net of any amount that would be payable by the holder of such Shares in connection with the exercise or conversion of Shares constituting warrants, options, convertible securities or other rights to acquire capital stock of the Company. For the avoidance of doubt, the determination of the amount that would be distributable on account of such Shares will reflect the following assumptions: (A) the Company’s Indebtedness, including all interest accrued thereon, will be deducted in calculating the Put Exercise Price as if the Company were not being liquidated, and (B) the aggregate Liquidation Value of all Preferred Stock outstanding as of the date of the Warrant Put Notice shall be deducted to the extent such amounts are not deducted in the calculation of Company Fair Market Value.

99. To determine the Warrant Put Exercise Price, it is necessary to first determine the number of Jenzabar Warrants held by MCG. When it invested in Jenzabar on June 30, 2004, MCG was issued 5,879,150 Jenzabar Warrants, pursuant to the PSWPA.

100. Section 5.9 of PSWPA enumerates certain particular transactions or events that will trigger anti-dilution adjustments in the number of Jenzabar Warrants or the exercise price, such as the sale of the company, the payment of a dividend, the issuance of additional Common Stock, or the exercise of certain options defined as Excluded Securities in the PSWPA, which includes essentially all options and warrants of Jenzabar that were outstanding as of June 30, 2004.

101. Apart from the exercise of a small number of options by employees and others, for which MCG has received the required additional warrants, no other transactions or events that trigger anti-dilution adjustments have occurred.

102. MCG nevertheless takes the position that, for purposes of calculating the Warrant Put Exercise Price, MCG holds approximately 11 million Jenzabar Warrants – nearly 5 million

more than MCG actually holds, and despite the fact that nothing has happened to trigger any further anti-dilution adjustments.

COUNT I
Declaratory Judgment
(Validity of Preferred Stock Repurchase)

103. Jenzabar repeats and incorporates the allegations set forth in paragraphs 1 through 102 of this Counterclaim as though fully set forth herein.

104. Jenzabar provided MCG with written notice of repurchase of the Senior Preferred Stock, in accordance with the terms of the PSWPA.

105. Jenzabar completed the repurchase of the Senior Preferred Stock on April 29, 2009 (the “April 2009 Repurchase”). Because MCG refused to participate in the closing or to deliver the stock certificate, Jenzabar paid \$6.2 million, the maximum amount Jenzabar could owe to MCG, to a paying agent for the benefit of MCG.

106. MCG has denied that the notice of repurchase was valid or that the repurchase was effective.

107. Nevertheless, on April 21, 2009, MCG gave notice of its intent to put the Jenzabar Warrants, in the event that this Court found that the repurchase was valid.

108. There exists an actual and justiciable controversy as to the effectiveness of the repurchase.

109. Jenzabar is entitled to a declaration that the Senior Preferred Stock previously owned by MCG was repurchased by Jenzabar, effective April 29, 2009, and that MCG has exercised the Warrant Put.

COUNT II
Declaratory Judgment
(Repurchase Price For Senior Preferred Stock)

110. Jenzabar repeats and incorporates the allegations set forth in paragraphs 1 through 109 of this Counterclaim as though fully set forth herein.

111. Article V, Section 1, Subsection A.4. of Jenzabar's Charter prescribes the manner and price by which Jenzabar can or must repurchase the Senior Preferred Stock from MCG.

112. Subsection A.4(a) requires Jenzabar to repurchase MCG's Senior Preferred Stock upon the occurrence of any of several specified events, including a "refinancing of the Corporation that provides sufficient liquidity for the Corporation to repurchase the Senior Preferred Stock pursuant to this Section A.4(a)." Subsection A.4(a)(iv) (a "Mandatory Repurchase"). The repurchase price for a Mandatory Repurchase is the original purchase price for the Senior Preferred Stock plus all accrued and unpaid dividends as of the date of the repurchase.

113. Subsection A.4(b) permits Jenzabar to repurchase the Senior Preferred Stock, so long as there are no amounts outstanding under the credit agreement with MCG (an "Optional Repurchase"). The repurchase price for an Optional Repurchase is the original purchase price for the stock, plus all accrued and unpaid dividends, plus the net present value of all dividends through June 30, 2010.

114. When Jenzabar made the April 2009 Repurchase, Jenzabar paid \$6.2 million to a paying agent for the benefit of MCG. This amount was calculated on the assumption that the April 2009 Repurchase was an Optional Repurchase under Subsection A.4(b). In other words, Jenzabar paid MCG the maximum amount that could possibly be due for the Senior Preferred Stock, in order to avoid any argument from MCG about the amount of the Repurchase Price.

115. Prior to the April 2009 Repurchase, Jenzabar had engaged in a “refinancing of the Corporation that provides sufficient liquidity for the Corporation to repurchase the Senior Preferred Stock.” such that the April 2009 Repurchase could be treated as a Mandatory Repurchase.

116. If the April 2009 Repurchase is treated as a Mandatory Repurchase, the applicable repurchase price would be approximately \$5.7 million rather than the \$6.2 million that Jenzabar paid to MCG.

117. There exists an actual and justiciable controversy as to whether the April 2009 Repurchase was a Mandatory Repurchase or an Optional Repurchase, and thus as to the applicable repurchase price.

118. Jenzabar is entitled to a declaration that the April 2009 Repurchase is properly treated as a Mandatory Repurchase, such that the applicable repurchase price was \$5,743,279.11.

COUNT III
Declaratory Judgment
(Number of Warrants)

119. Jenzabar repeats and incorporates the allegations set forth in paragraphs 1 through 118 of this Counterclaim as though fully set forth herein.

120. On June 30, 2004, MCG was issued 5,879,150 Jenzabar Warrants, pursuant to the PSWPA.

121. As a result of the exercise of 453,000 Excluded Securities, MCG today holds only 6,039,820 Jenzabar Warrants.

122. MCG has informed Jenzabar, however, that it believes that it holds approximately 11 million Jenzabar Warrants for purposes of calculating the Warrant Put Exercise Price.

123. There exists an actual and justiciable controversy as to the number of Jenzabar Warrants MCG holds.

124. Accordingly, Jenzabar is entitled to a declaration that MCG holds 6,039,820 Jenzabar Warrants.

COUNT IV
Declaratory Judgment
(Company Valuation and Warrant Put Exercise Price)

125. Jenzabar repeats and incorporates the allegations set forth in paragraphs 1 through 124 of this Counterclaim as though fully set forth herein.

126. KPMG determined that Company Fair Market Value within the meaning of the PSWPA is \$95.5 million

127. As a consequence of MCG's bad faith interference with the process of selecting a third appraiser, MCG has forfeited its right to participate in the valuation process and the Court should recognize KPMG's valuation as the only valid determination of Company Fair Market Value.

128. Accordingly, Jenzabar is entitled to a declaration that, for purposes of determining the Warrant Put Exercise Price, the Company Fair Market Value is \$95.5 million (or such other amount as the Court may determine after a trial).

129. Accordingly, given this Company Fair Market Value, Jenzabar is entitled to a declaration that the Warrant Put Exercise Price, as calculated in accordance with the PSWPA, is \$4,501,249.35 (or such other amount as the Court may determine after trial).

COUNT V
Breach of Contract by MCG
(Stockholders Agreement)

130. Jenzabar repeats and incorporates the allegations set forth in paragraphs 1 through 129 of this Counterclaim as though fully set forth herein.

131. As a party to the Stockholders Agreement, MCG accepted all the rights, duties, and obligations set forth therein with respect to the Senior Investor.

132. The Stockholders Agreement required that Independent Directors be selected by the mutual agreement of the Founder Designated Directors and the Senior Investor Designated Director, and did not provide MCG, as Senior Investor with any right to withhold consent to the appointment of Independent Directors.

133. MCG breached the Stockholders Agreement by actively participating in and causing Malekian, as the Senior Investor Designated Director, to unreasonably withhold and delay his approval of the Independent Director candidates recommended by Mr. Maginn and Ms. Chai. MCG's interference in this process was undertaken solely to advance its own interests and to attempt to force Jenzabar to buy out MCG's interest in Jenzabar at an unreasonable valuation and constituted a breach of the express terms of the Stockholders Agreement.

134. As a result of MCG's breach, Jenzabar has suffered damages in an amount to be determined at trial.

COUNT VI
Breach of Contract by MCG
(Preferred Stock And Warrant Purchase Agreement)

135. Jenzabar repeats and incorporates the allegations set forth in paragraphs 1 through 134 of this Counterclaim as though fully set forth herein.

136. In accordance with the terms of the PSWPA, MCG was required to "treat as confidential all written, non-public information delivered to the Purchaser pursuant to this Agreement including information concerning the performance, operations, assets, structure and business plans of the Company." PSWPA, Article 7.16(b).

137. MCG breached the PSWPA by, among other things, receiving confidential information concerning the performance, operations, assets and business plans of the Company, either from Malekian or directly from the Company, and by distributing that confidential Company information to third parties with whom MCG secretly and without authorization from

Jenzabar sought to negotiate the sale of Jenzabar assets, including, on information and belief, third parties who are or hold interests in Jenzabar competitors.

138. As a result of MCG's breach, Jenzabar has suffered and continues to suffer damages in an amount to be determined at trial.

COUNT VII
(Breach Of The Covenant Of Good Faith And Fair Dealing)

139. Jenzabar repeats and incorporates the allegations set forth in paragraphs 1 through 138 of this Counterclaim as though fully set forth herein.

140. The PSWPA, like all contracts under Delaware law, contains an implied covenant of good faith and fair dealing.

141. The PSWPA provides that, in the event that a third Independent Appraiser is to be selected under Section 1.1 of the PSWPA, the selection of the third Independent Appraiser is to be made by the Independent Appraisers selected by the parties, not by the parties themselves, and that such selection is to occur within five days of the determination that a third Independent Appraiser is to be retained.

142. The implied covenant of good faith and fair dealing thus requires MCG, among other things, to refrain from interfering with or delaying the selection of a third Independent Appraiser under the PSWPA by influencing, or attempting to influence, its Independent Appraiser, SRR, with respect to SRR's selection, with KPMG, of the third Independent Appraiser.

143. Upon information and belief, MCG has improperly influenced, and continues to improperly influence, SRR with respect to SRR's selection of the third Independent Appraiser by determining which appraisers, if any, SRR may propose or select as the third Independent Appraiser, and by causing or encouraging SRR to delay the process of selecting a third

Independent Appraiser, all for the purpose of preventing a prompt final determination of Company Fair Market value and the put exercise price. MCG's conduct regarding the selection of the third Independent Appraiser constitutes a breach of the implied covenant of good faith and fair dealing.

144. As a direct and proximate result of MCG's breach of the implied covenant of good faith and fair dealing, Jenzabar has suffered injury, including monetary damages, in an amount to be proven at trial.

COUNT VIII
Unjust Enrichment

145. Jenzabar repeats and incorporates the allegations set forth in paragraphs 1 through 144 of this Counterclaim as though fully set forth herein.

146. In connection with the April 2009 Repurchase, Jenzabar paid \$6.2 million to MCG to repurchase the Senior Preferred Stock.

147. Because Jenzabar had undergone a refinancing that provided sufficient liquidity to repurchase the Senior Preferred Stock, the April 2009 Repurchase could have been treated as a Mandatory Repurchase.

148. By paying MCG a repurchase price of \$6.2 million, Jenzabar paid MCG nearly \$500,000 more than MCG was entitled to receive if the April 2009 Repurchase were treated as a Mandatory Repurchase.

149. MCG has been unjustly enriched, and Jenzabar has been damaged, in the amount of this overpayment.

150. To remedy MCG's unjust enrichment, the Court should order MCG to refund to Jenzabar the amount of the overpayment, plus interest, or such other amount as determined at trial.

PRAYERS FOR RELIEF

WHEREFORE, Jenzabar hereby requests that this Court:

- A. Enter judgment in favor of Jenzabar and against MCG on all counts, in an amount to be determined at trial;
- B. Award Jenzabar damages in an amount to be determined at trial, plus interest;
- C. Declare that the Senior Preferred Stock held by MCG was validly and properly repurchased by Jenzabar effective April 29, 2009;
- D. Declare that MCG, as a consequence of its willful misconduct bad faith interference with the valuation process, has forfeited its right to participate, such that KPMG's valuation is the only valid determination of Company Fair Market Value;
- E. Declare that MCG holds 6,039,820 Jenzabar Warrants;
- F. Declare that the Warrant Put Exercise Price is \$4,501,249.35
- G. Declare that the April 2009 Repurchase was a Mandatory Repurchase and that the applicable repurchase price under Subsection A.4(a) is \$5,743.279.11; and
- H. Grant Jenzabar such other and further relief as the Court deems just and proper.

Of Counsel:

Edward J. Naughton
Steven M. Veenema
Brown Rudnick LLP
One Financial Center
Boston, MA 02111
Phone: (617) 856-8200
Fax: (617) 856-8201

Attorneys for Jenzabar, Inc.

/s/ Catherine G. Dearlove # 3328
Catherine G. Dearlove (#3328)
Geoffrey G. Grivner (#4711)
Thomas A. Uebler (#5074)
Richards, Layton & Finger, P.A.
One Rodney Square
920 North King Street
Wilmington, DE 19801
Phone: (302) 651-7700
Fax: (302) 651-7701

Attorneys for Jenzabar, Inc.

DATED: June 25, 2010