



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

RED OAK FUND, L.P.,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 8559-VCN
)	
DIGIRAD CORPORATION, JEFFREY E.)	
EBERWEIN, CHARLES M. GILLMAN,)	
JOHN M. CLIMACO, JAMES B. HAWKINS,)	
and JOHN W. SAYWARD,)	
)	
Defendants.)	

ANSWER TO VERIFIED COMPLAINT PURSUANT TO 8 DEL. C. § 225

Defendants Digirad Corporation (“Digirad” or the “Company”), Jeffrey E. Eberwein, Charles M. Gillman, John Climaco, James B. Hawkins, and John W. Sayward (collectively, the Individual Defendants, and together with Digirad, the “Digirad Parties” or “Defendants”), by and through their undersigned counsel, hereby answer the Verified Complaint (the “Complaint”) of Plaintiff The Red Oak Fund, L.P. (“Red Oak” or “Plaintiff”) as follows:

Complaint Paragraph 1: This action is brought pursuant to Section 225 of the Delaware General Corporation Law for a declaration that the election of directors conducted at the May 3, 2013 annual meeting of Digirad Corporation (“Digirad”) was invalid and that the results of that election are null and void. Additionally, Plaintiff seeks entry of an order compelling Digirad to hold a meeting and a new election of directors as soon as practicable.

1. Defendants deny the allegations contained in Paragraph 1 of the Complaint, except Defendants admit that Plaintiff purports to bring the above-captioned action pursuant to 8 *Del. C.* § 225 and that Plaintiff seeks the relief described in Paragraph 1. Defendants deny that Plaintiff is entitled to the relief it seeks and respectfully refer the Court to 8 *Del. C.* § 225 for its full and complete contents.

Complaint Paragraph 2: Digirad’s management made improper and illegal disclosures about non-public interim proxy voting tabulations to certain shareholders in order to sway their votes in a close contested election. Digirad’s management also made material misrepresentations in

connection with the election, attempted to vote non-voting Digirad treasury shares in their own favor and concealed damaging information about the company's poor financial performance until one business day after the annual meeting. After all these improper and inequitable machinations to influence the vote, Digirad's management ostensibly prevailed in a close election by a vote of approximately 40% - 34% of all shares, with approximately 25% abstaining. The validity and integrity of the corporate election process was destroyed and a new election should be ordered to protect Digirad's shareholders franchise rights and their entitlement to a valid corporate election.

2. Defendants deny the allegations contained in Paragraph 2 of the Complaint, except Defendants admit that Digirad's Form 10-Q was filed on May 6, 2013, nine days before it was required to be filed, and that Digirad's incumbent directors prevailed in the proxy election by a vote of approximately 40% - 34% of all shares, with approximately 25% not voting.

Complaint Paragraph 3: Red Oak is a Delaware limited partnership having its principal place of business in New York, New York. At the time of the May 2013 election, Red Oak beneficially owned 1,041,619 shares of Digirad's common stock, or about 5.4% of the company's voting shares.

3. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 3 of the Complaint, and therefore deny those allegations.

Complaint Paragraph 4: Digirad is a Delaware corporation with its principal place of business in Poway, California. Digirad is what is commonly referred to as a microcap company, meaning its market capitalization is at the small end of the spectrum of publicly traded companies.

4. Defendants deny the allegations contained in Paragraph 4 of the Complaint, but admit that Digirad is a Delaware corporation with its principal place of business in Poway, California and that its market capitalization is approximately \$44.26 million, which some investors use to refer to Digirad as a "microcap company."

Complaint Paragraph 5: Jeffrey E. Eberwein is the chairman of the board of directors of Digirad. Eberwein ostensibly was re-elected to the board of directors on May 3, 2013, to serve until the annual meeting and election of shareholders in 2014.

5. Defendants deny the allegations contained in Paragraph 5 of the Complaint, except admit that Jeffrey E. Eberwein is the chairman of the board of directors of Digirad and that he was re-elected to the board of directors on May 3, 2013 to serve until the annual meeting of stockholders and election of directors in 2014.

Complaint Paragraph 6: Charles M. Gillman is a member of the board of directors of Digirad. Gillman ostensibly was re-elected to the board of directors on May 3, 2013, to serve until the annual meeting and election of shareholders in 2014.

6. Defendants deny the allegations contained in Paragraph 6 of the Complaint, except admit that Charles M. Gillman is a member of the board of directors of Digirad and was re-elected to the board of directors on May 3, 2013 to serve until the annual meeting of stockholders and election of directors in 2014.

Complaint Paragraph 7: John M. Climaco is a member of the board of directors of Digirad. Climaco ostensibly was re-elected to the board of directors on May 3, 2013, to serve until the annual meeting and election of shareholders in 2014.

7. Defendants deny the allegations contained in Paragraph 7 of the Complaint, except admit that John M. Climaco is a member of the board of directors of Digirad and was re-elected to the board of directors on May 3, 2013 to serve until the annual meeting of stockholders and election of directors in 2014.

Complaint Paragraph 8: James B. Hawkins is a member of the board of directors of Digirad. Hawkins ostensibly was re-elected to the board of directors on May 3, 2013, to serve until the annual meeting and election of shareholders in 2014.

8. Defendants deny the allegations contained in Paragraph 8 of the Complaint, except admit that James B. Hawkins is a member of the board of directors of Digirad and was re-elected to the board of directors on May 3, 2013 to serve until the annual meeting of stockholders and election of directors in 2014.

Complaint Paragraph 9: John W. Sayward is a member of the board of directors of Digirad. Sayward ostensibly was re-elected to the board of directors on May 3, 2013, to serve until the annual meeting and election of shareholders in 2014.

9. Defendants deny the allegations contained in Paragraph 9 of the Complaint, except admit that John W. Sayward is a member of the board of directors of Digirad and was re-elected to the board of directors on May 3, 2013 to serve until the annual meeting of stockholders and election of directors in 2014.

Complaint Paragraph 10: This Court has subject matter jurisdiction over this action pursuant to 8 Del. C. § 225(a).

10. Defendants state that the allegations contained in Paragraph 10 of the Complaint state legal conclusions as to which no responsive pleading is required. To the extent a response is deemed necessary, Defendants deny the allegations contained in Paragraph 10 of the Complaint.

Complaint Paragraph 11: The individual defendants are proper party defendants because they claim directorships on Digirad's board of directors, over which this Court exercises *in rem* jurisdiction.

11. Defendants state that the allegations contained in Paragraph 11 of the Complaint state legal conclusions as to which no responsive pleading is required. To the extent a response is deemed necessary, Defendants deny the allegations contained in Paragraph 11 of the Complaint.

Complaint Paragraph 12: Red Oak initially invested in Digirad in 2008 and has been a Digirad shareholder continuously since 2011. Red Oak notified Digirad in November 2011 that it was not satisfied with the performance of Digirad's board of directors and with various corporate governance and compensation practices of Digirad. Red Oak nominated an alternative slate of directors in connection with Digirad's annual meeting and election of shareholders in 2012.

12. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in the first sentence of Paragraph 12 of the Complaint. Defendants admit the allegations contained in the second and third sentences of Paragraph 12 of the Complaint.

Complaint Paragraph 13: In response, Digirad agreed to adopt certain changes in its corporate governance standards and compensation practices to bring greater transparency and other

benefits for shareholders. As a result of these commitments by Digirad's board, Red Oak agreed it would not nominate an alternative slate of directors for the 2012 annual meeting and election of directors but specifically reserved the right to nominate an alternative slate of directors in 2013. Red Oak also required that Digirad hold its 2013 annual meeting for the election of directors one which Red Oak could contest if it felt it necessary to do so — not later than May 5, 2013. Digirad agreed to all of these terms on June 29, 2012.

13. Defendants deny the allegations contained in Paragraph 13 of the Complaint, except Defendants admit that on June 29, 2012, Digirad entered into a letter agreement with Red Oak and its affiliates in which it agreed (a) not to increase the size of its Board of Directors while certain provisions of the Letter Agreement are in effect; (b) to hold its 2013 Annual Meeting of Stockholders no later than May 5, 2013; (c) to undertake certain governance and compensation changes; and (d) to provide Red Oak with certain observer rights if the Company adopts a net operating loss stockholder rights plan. The Company also agreed to (a) adjust its policies and practices with respect to non-employee director compensation; (b) continue its existing moratorium, through the 2013 Annual Meeting, on grants of restricted stock units and other similar equity interests; and (c) limit, through the 2013 Annual Meeting, grants of stock options to an aggregate of no more than 1.5% of the Company's common stock outstanding as of June 1, 2012 (except that any inducement or one-time grants to new employees are excluded from such limit). Defendants respectfully refer the Court to the June 29, 2012 letter agreement for its full and complete contents.

Complaint Paragraph 14: After continued poor performance, Red Oak determined thereafter that the shareholder value could be improved with an alternative slate of more effective and experienced directors. Red Oak informed Digirad in February 2013 that it would nominate five directors to run in opposition to the management board's five nominees in the 2013 annual meeting and election of directors scheduled for May 3, 2013.

14. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in the first sentence of Paragraph 14 of the Complaint,

except deny that Digirad suffered “continued poor performance.” Defendants admit the allegations contained in the second sentence of Paragraph 14 of the Complaint.

Complaint Paragraph 15: Pursuant to SEC regulations, on or about March 15, 2013, Digirad issued a preliminary proxy statement urging Digirad shareholders to vote for five individuals, all of whom were then currently on the board (“the Management Slate”). Similarly, Red Oak issued a preliminary proxy statement on or about March 29, 2013. The preliminary proxy statement solicited Digirad shareholders to vote for five new nominees for the Digirad board, only one of which was affiliated with Red Oak itself (“the Red Oak Nominees”).

15. Defendants deny the allegations contained in the first sentence of Paragraph 15 of the Complaint, except admit that on or about March 15, 2013, Digirad filed preliminary proxy materials with the SEC, and respectfully refer the Court to the Digirad preliminary proxy statement for its full and complete contents. Defendants deny the allegations contained in the second sentence of Paragraph 15 of the Complaint, except admit that on or about March 29, 2013, Red Oak filed preliminary proxy materials with the SEC, and respectfully refer the Court to the Red Oak preliminary proxy statement for its full and complete contents. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in the third sentence of Paragraph 15 of the Complaint, except respectfully refer the Court to the Red Oak preliminary proxy statement for its full and complete contents.

Complaint Paragraph 16: On April 4, 2013, Digirad issued its definitive proxy statement. The final proxy statement again urged Digirad shareholders to vote for the Management Slate.

16. Defendants admit the allegations contained in Paragraph 16 of the Complaint and respectfully refer the Court to the Digirad definitive proxy statement for its full and complete contents.

Complaint Paragraph 17: On April 10, 2013, Red Oak issued its definitive proxy statement soliciting Digirad shareholders to vote for the Red Oak Nominees. Red Oak intentionally issued its definitive proxy statement after Digirad had issued its own so that Red Oak’s final proxy statement would be able to comment on the accuracy and content of Digirad’s proxy statement. As a natural consequence of this series of disclosures, supporters of the Management Slate were able to start returning their proxy instructions approximately one week before supporters of the Red Oak Nominees were able to return their proxy instructions. Of course, by the time of the

annual meeting itself, both sides would have ample opportunity to cast their votes. But it was inescapable that *initial returns* of proxy instructions would necessarily be weighted toward Management Slate shareholders who had received proxy instructions from Digirad well in advance of when Red Oak mailed its proxy materials to shareholders.

17. Defendants admit that Red Oak issued its definitive proxy statement on April 10, 2013. Defendants lack knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations contained in Paragraph 17 of the Complaint and respectfully refer the Court to the Red Oak definitive proxy statement for its full and complete contents.

Complaint Paragraph 18: One mechanism proxy solicitors use to monitor the preliminary returns of proxies cast by a corporation's shareholders is to review preliminary tabulations prepared by Broadridge Financial Services, Inc. ("Broadridge"). Broadridge receives instructions from beneficial owners of a company's stock regarding how they wish their custodian to vote their shares in a contested election and then summarizes those votes for the contestants. These tabulations — which are preliminary in nature and subject to change until voting is complete — are provided daily by Broadridge after a proxy contestant issues its definitive proxy statement pursuant to Securities and Exchange Commission requirements. Broadridge's reports are not public documents, but are provided only to the election contestants.

18. Defendants admit the allegations contained in Paragraph 18 of the Complaint.

Complaint Paragraph 19: For this reason, it is illegal for election contestants to publicize interim voting results or otherwise try to influence shareholder voters by claiming to know the results of an election. Indeed, Delaware fiduciary duty law and the federal securities law prohibit false or misleading statements in a proxy statement or other communication made in connection with soliciting a stockholder action. In fact, Rule 14a-9(a) promulgated under Section 14(a) of the Securities Exchange Act (17 C.F.R. 240.14a-9) provides express examples of what may be misleading within the meaning of this section and states that [c]laims made prior to a meeting regarding the results of a solicitation may violate Section 14(a) and Rule 14a-9.

19. Defendants state that the allegations contained in Paragraph 19 of the Complaint state a legal conclusion as to which no responsive pleading is required. To the extent a response is deemed necessary, Defendants deny the allegations contained in Paragraph 19 of the Complaint.

Complaint Paragraph 20: The impropriety of an election contestant claiming to know the results of an election before votes are final is widely understood in the industry. As shown below, Digirad’s directors were acutely aware of this prohibition — yet flagrantly violated it to fatally undermine the validity of the Digirad election.

20. Defendants deny the allegations contained in Paragraph 20 of the Complaint.

Complaint Paragraph 21: The potential for abusing preliminary voting returns is especially strong in the context of microcap companies like Digirad. Microcap companies generally receive little or no market research or other investment coverage. The primary or only source of information about a microcap company other than publicly-filed periodic reports is often the company’s management personnel. Access to those personnel is particularly important for a shareholder to be able to monitor its investment in a microcap company.

21. Defendants deny the allegations contained in Paragraph 21 of the Complaint.

Complaint Paragraph 22: For this reason, a contested election in a microcap company makes a shareholder face a difficult choice that may have little to do with the merits of the differing slates themselves. Management’s ability to control the flow of information to shareholders is a powerful tool to incentivize shareholders to vote for management. If a shareholder visibly opposes management or current directors who ultimately prevail in a contested election, that shareholder risks alienating the only people who can provide information about its investment.

22. Defendants deny the allegations contained in Paragraph 22 of the Complaint.

Complaint Paragraph 23: Accordingly, management’s contention that an election is a foregone conclusion — especially when purportedly based on confidential, non-public preliminary proxy returns — is a powerful incentive to dissuade shareholders from voting against a microcap company’s management’s slate, or at a minimum to abstain from voting. For this reason such statements manipulate the corporate machinery and interfere the stockholder franchise.

23. Defendants deny the allegations contained in Paragraph 23 of the Complaint.

Complaint Paragraph 24: Digirad is precisely such a microcap company. It is the subject of little or no market research. Access to the company’s management is critical for any shareholder who wishes to actively monitor its investment. Any claim by management that it will inescapably win an election — based on information not available to shareholders — is a powerful incentive to unfairly pressure shareholders to vote in favor of management or risk being excluded from access to management in the future.

24. Defendants deny the allegations contained in Paragraph 24 of the Complaint.

Complaint Paragraph 25: According to Digirad's definitive proxy statement of April 4, 2013, there were 19,266,685 outstanding shares of Digirad eligible to vote in the May 2013 annual meeting of shareholders. This figure excludes the company's treasury shares. Treasury shares are ineligible to vote in an annual meeting.

25. Defendants admit the allegations contained in Paragraph 25 of the Complaint, except respectfully refer the Court to Digirad's definitive proxy statement for its full and complete contents.

Complaint Paragraph 26: Digirad held approximately 1 million shares of treasury stock in an account at Raymond James & Co. ("Raymond James"). This account holding these treasury shares was not known to the general public. In early April 2013, Digirad's management returned a proxy card to Broadridge. Digirad's proxy card instructed Raymond James to vote the treasury shares for which it was custodian in favor of the Management Slate. Digirad did so with knowledge that the treasury shares were not eligible to vote at the annual meeting. Digirad did so with the hope and intention that the treasury shares nevertheless would be counted at the annual meeting and would help elect the Management Slate. Digirad also did so in order to artificially inflate the preliminary voting results it would improperly release to certain shareholders in order to influence their voting decisions, as further discussed below.

26. Defendants deny the allegations contained in Paragraph 26 of the Complaint, except admit that Digirad held approximately 1 million shares of treasury stock in an account at Raymond James & Co.

Complaint Paragraph 27: On about April 8, Red Oak's proxy solicitor obtained from Digirad's proxy solicitor (InvestorCom, Inc.) a list of Digirad's shareholders that indicated there were 20,169,852 outstanding common shares of Digirad stock. Red Oak's proxy solicitor inquired why this list showed more outstanding shares than were reflected in Digirad's public filings, and whether the difference was attributable to treasury shares. Digirad's proxy solicitor confirmed that the list included roughly 1 million shares of treasury stock. Digirad's proxy solicitor, however, refused to disclose the custodian or custodians where those treasury shares were held (which plaintiff now knows to be Raymond James). Such secretive behavior was unusual for a proxy solicitor even in a contested election of directors.

27. Defendants deny the allegations contained in Paragraph 27 of the Complaint.

Complaint Paragraph 28: On April 17, 2013, Broadridge reported a sudden increase in votes cast by Raymond James of more than 1 million votes — or about 5% of all Digirad’s shares. Suspiciously, all of these sudden votes were cast in favor of Digirad’s recommendations on all agenda items, including the election of directors. Unknown to the public at that time, most or all of the shares attributed to Raymond James were Digirad treasury shares held at Raymond James, and which Digirad’s incumbent managers had wrongfully instructed Raymond James to cast in favor of the Management Slate.

28. Defendants deny the allegations contained in Paragraph 28 of the Complaint, except admit that a Broadridge report dated on or about April 17, 2013 reported approximately one million votes cast by Raymond James in favor of Digirad’s nominees, which information was not disclosed to the public, and which votes were later ascertained by Digirad and Red Oak to be treasury shares. Defendants respectfully refer the Court to the Broadridge reports for their full and complete contents.

Complaint Paragraph 29: In fact, when Digirad refused to reveal to Red Oak’s proxy solicitor the name of the custodian holding Digirad’s treasury shares, as noted above, Digirad had *already* given improper instructions to that custodian (Raymond James) to vote those treasury shares in favor of the Management Slate.

29. Defendants deny the allegations contained in Paragraph 29 of the Complaint.

Complaint Paragraph 30: The annual meeting of Digirad was held as scheduled on May 3, 2013. The election results were tabulated by an Inspector of Elections. Digirad did not disclose to the Inspector of Elections that it had submitted ineligible treasury shares. Nevertheless, the inspector determined there was an overvote and conducted his own investigation to determine why.

30. Defendants admit the allegations in the first and second sentences of Paragraph 30 of the Complaint. Defendants deny the allegations in the third and fourth sentences of Paragraph 30 of the Complaint, except respectfully refer the Court to the report of the Inspector of Elections for its full and complete contents.

Complaint Paragraph 31: The inspector determined that the company attempted to vote 1,073,641 treasury shares held by Raymond James even though such shares are ineligible to vote. The Inspector of Elections then excluded the treasury shares before certifying the results of the election on or about May 8, 2013.

31. Defendants deny the allegations contained in Paragraph 31 of the Complaint, except admit that all treasury shares were excluded from the results of the election.

Complaint Paragraph 32: The fact that the management board attempted to violate the law and attempted to vote non-voting shares in their favor was material to investors. Digirad never disclosed to shareholders its attempt to manipulate the company's treasury shares in favor of the Management Slate. As noted, Digirad then wrongfully used the preliminary voting results — which were inflated by the non-voting treasury shares — to pressure shareholders to vote for the Management Slate.

32. Defendants deny the allegations contained in Paragraph 32 of the Complaint. To the extent that Paragraph 32 states a legal conclusion, no responsive pleading is required.

Complaint Paragraph 33: The results certified by the inspector of elections indicated a close election. About 40% of the shares voted were cast in favor of the management board members. About 34% of the shares voted were cast in favor of the Red Oak Nominees. Approximately 25% of the shares abstained. As a result, the Management Slate ostensibly prevailed in the election of directors.

33. Defendants deny the allegations contained in Paragraph 33 of the Complaint, except admit that the Inspector of Elections certified that the management nominees were elected to serve as Digirad's directors, receiving approximately 7.8 million votes, with the Red Oak nominees receiving approximately 6.65 million votes, and respectfully refer the Court to the report of the Inspector of Elections for its full and complete contents.

Complaint Paragraph 34: Multiple representatives of the Management Slate, including its proxy solicitor InvestorCom, repeatedly represented to shareholders that management was assured of winning the election and maintaining its power over the company. The Management Slate made these repeated misrepresentations in order to influence the outcome of the election by dissuading shareholders from voting for the Red Oak Nominees. For the reasons discussed above, these claims about the ultimate outcome of the solicitation were illegal, violated the individual defendants' fiduciary duties, and eviscerated the integrity of the Digirad election process.

34. Defendants deny the allegations contained in Paragraph 34 of the Complaint. To the extent that Paragraph 34 states a legal conclusion, no responsive pleading is required.

Complaint Paragraph 35: For example, on or about April 26, 2013, the third largest Digirad shareholder, Somerset Capital Partners LP (“Somerset”), spoke by telephone with Digirad’s president, Defendant Jeffrey Eberwein. Mr. Eberwein urged Somerset to vote Somerset’s shares in support of the Management Slate. In doing so, Eberwein strongly and repeatedly claimed that the Management Slate would no doubt win the election, with or without Somerset’s votes. Mr. Eberwein nevertheless encouraged Somerset to align with the winning side by casting its votes for the Management Slate. Somerset did not do so.

35. Defendants deny the allegations contained in Paragraph 35 of the Complaint, except admit that Jeffrey Eberwein had a conversation with Ross Taylor of Somerset Capital Partners LP (“Somerset”) on or about April 26, 2013 and that Somerset did not vote for the Digirad nominees.

Complaint Paragraph 36: Mr. Eberwein predicted the outcome of the election purportedly based on the non-public preliminary tabulations of votes that had already been cast by shareholders and to which he was privy. He explained that he received voting summaries daily and that he knew which shareholders had voted and who they voted for. Eberwein described the outcome in such terms as it’s not even close, and we have this sewn up and it’s a landslide. He also told Somerset the range of actual votes already cast, and claimed that the Management Slate *already* had received the votes of more than 40% of the company’s total outstanding common shares.

36. Defendants deny the allegations contained in Paragraph 36 of the Complaint.

Complaint Paragraph 37: Such predictions and assertions based on non-public proxy returns were particularly wrongful in this case for two reasons. First, the Management Slate had sent its definitive proxy statement, and had begun soliciting votes, about a week before Red Oak did so. Thus it was natural — and both contestants knew and expected — that the earliest preliminary proxy returns would be weighted towards the Management Slate. It is precisely for that reason that an election contestant may not use preliminary non-public information to predict the final outcome in an effort to sway shareholder voters.

37. Defendants deny the allegations contained in Paragraph 37 of the Complaint, except admit that the Digirad proxy statement was sent approximately a week before the Red Oak definitive proxy statement. To the extent that Paragraph 37 states a legal conclusion, no responsive pleading is required.

Complaint Paragraph 38: Second, the earliest preliminary proxy returns included Digirad’s unlawful attempt to vote the company’s treasury shares in management’s favor. Thus, Digirad

aggravated its improper predictions by relying on a large amount of treasury shares that Digirad had itself voted but knew to be ineligible.

38. Defendants deny the allegations contained in Paragraph 38 of the Complaint.

Complaint Paragraph 39: Other representatives of Digirad made similar misrepresentations to manipulate the corporate machinery and try to influence shareholders to vote for the Management Slate or, at a minimum, to abstain from voting. Upon information and belief, one or more representatives of InvestorCom purported to give various Digirad shareholders explicit information about the preliminary results of the election.

39. Defendants deny the allegations contained in Paragraph 39 of the Complaint.

Complaint Paragraph 40: The Management Slate had full knowledge that it was prohibited from making claims about the results of the proxy solicitation prior to the meeting and that doing so would impeach the integrity of the election. In an April 29, 2013 email to Red Oak that was copied to Mr. Eberwein, Digirad's Chief Financial Officer purported to warn Red Oak that making statements to investors about the status of the preliminary vote would constitute predictions about the results of the solicitation, in clear violation of Rule 14a-9. Red Oak should refrain from making these or similar statements to the stockholders for the duration of the solicitation. Digirad's management was thus fully aware of the requirements for a valid corporate election *at the very time that Eberwein and the Management Slate were doing precisely what they knew to be improper and what they knew would taint the election.*

40. Defendants deny the allegations contained in Paragraph 40 of the Complaint, except admit that Digirad's Chief Financial Officer sent an email to Red Oak on or about April 29, 2013 that was copied to Jeffrey Eberwein stating that Red Oak should refrain from making statements to stockholders regarding predictions about the results of the election, and respectfully refer the Court to the April 29, 2013 email for its full and complete contents. To the extent that Paragraph 40 states a legal conclusion, no responsive pleading is required.

Complaint Paragraph 41: On May 6, 2013 — one business day after the annual meeting — Digirad filed its Form 10-Q with the Securities and Exchange Commission, which provided information about Digirad's financial performance for the first quarter of 2013, ending March 31, 2013. The Form 10-Q revealed that the company's net revenues declined compared to the year prior. Compared to one year earlier, the company's net losses and net losses per share nearly doubled.

41. Defendants deny the allegations contained in Paragraph 41 of the Complaint, except admit that Digirad filed its first quarter Form 10-Q on May 6, 2013, nine days before it was required to be filed, and respectfully refer the Court to the May 6, 2013 Form 10-Q for its full and complete contents.

Complaint Paragraph 42: The severe decline in the company's financial performance was material to shareholders. The fundamental dispute in the contested election of directors concerned the Management Slate's poor stewardship of the company and its failure to maximize shareholder value. The Form 10-Q that management purposefully delayed until one business day after the annual meeting reflected management's most recent poor performance in an election that centered on exactly that performance.

42. Defendants deny the allegations contained in Paragraph 42 of the Complaint, and respectfully refer the Court to the May 6, 2013 Form 10-Q for its full and complete contents. To the extent that Paragraph 42 states a legal conclusion, no responsive pleading is required.

Complaint Paragraph 43: Digirad's management knew of the company's poor financial performance well in advance of the May 3 annual meeting and election of directors. The Form 10-Q would have required audit committee review and approval before being issued, which must have occurred prior to the May 3 annual meeting. Management intentionally delayed disclosure of the poor financial performance to shareholders until immediately *after* the meeting. Management concealed the company's poor performance from shareholders in order to promote its chances for re-election at the May 3 annual meeting.

43. Defendants deny the allegations contained in Paragraph 43 of the Complaint.

Complaint Paragraph 44: Despite all the trickery, machinations, material misrepresentations and material omissions described above, the election of directors was very close. Among all shares eligible to vote, the Management Slate ostensibly prevailed by 40-34%, with a substantial number of shares abstaining. Among shares actually voted at the meeting, the Management Slate won by only about 54-46%. Each of the activities described above, separately and in accumulation, prevented a valid election from being held on May 3, 2013.

44. Defendants deny the allegations contained in Paragraph 44 of the Complaint, except admit that in the election, the Digirad nominees prevailed by approximately 40% - 34%, and respectfully refer the Court to the report of the Inspector of Elections for its full

and complete contents. To the extent that Paragraph 44 states a legal conclusion, no responsive pleading is required.

COUNT I

Complaint Paragraph 45: Red Oak incorporates the allegations above.

45. Defendants repeat and reallege each and every response in Paragraphs 1 through 44 as if fully set forth herein.

Complaint Paragraph 46: The election process by which the Management Slate was elected was marred by the individual defendants' breaches of fiduciary duties and inequitable conduct. The election lacked validity and integrity due to Digirad's improper attempts to influence shareholders through false and otherwise improper representations regarding the interim voting of proxies prior to the annual meeting. But for the individual defendants misrepresentations, omissions and improper conduct — all in violation of the fiduciary duties — the Management Slate would not have been elected.

46. Defendants state that the allegations contained in Paragraph 46 of the Complaint state legal conclusions as to which no responsive pleading is required. To the extent a response is deemed necessary, Defendants deny the allegations contained in Paragraph 46 of the Complaint.

Complaint Paragraph 47: The results of the May 3, 2013 annual meeting should be voided because Digirad shareholders were denied their right to a valid corporate election of directors and to full and complete disclosure in connection therewith.

47. Defendants state that the allegations contained in Paragraph 47 of the Complaint state legal conclusions as to which no responsive pleading is required. To the extent a response is deemed necessary, Defendants deny the allegations contained in Paragraph 47 of the Complaint.

Complaint Paragraph 48: Plaintiff has no adequate remedy at law.

48. Defendants state that the allegations contained in Paragraph 48 of the Complaint state legal conclusions as to which no responsive pleading is required. To the extent a

response is deemed necessary, Defendants deny the allegations contained in Paragraph 48 of the Complaint.

COUNT II

Complaint Paragraph 49: Red Oak incorporates the allegations above.

49. Defendants repeat and reallege each and every response in Paragraphs 1 through 48 as if fully set forth herein.

Complaint Paragraph 50: The annual meeting at which the Management Slate was elected was highly tainted by the defendants material misrepresentations and omissions and their improper attempts to influence shareholders through false and otherwise improper representations regarding the interim voting of proxies prior to the annual meeting. But for these misrepresentations, omissions and improper conduct, the Management Slate would not have been elected.

50. Defendants state that the allegations contained in Paragraph 50 of the Complaint state legal conclusions as to which no responsive pleading is required. To the extent a response is deemed necessary, Defendants deny the allegations contained in Paragraph 50 of the Complaint.

Complaint Paragraph 51: Digirad should be ordered to hold a new annual meeting as soon as practicable to ensure that Digirad shareholders are given a fair election.

51. Defendants state that the allegations contained in Paragraph 51 of the Complaint state legal conclusions as to which no responsive pleading is required. To the extent a response is deemed necessary, Defendants deny the allegations contained in Paragraph 51 of the Complaint.

Complaint Paragraph 52: Plaintiff has no adequate remedy at law.

52. Defendants state that the allegations contained in Paragraph 52 of the Complaint state legal conclusions as to which no responsive pleading is required. To the extent a response is deemed necessary, Defendants deny the allegations contained in Paragraph 52 of the Complaint.

AFFIRMATIVE DEFENSES

1. The Complaint fails, in whole or in part, to state a claim upon which relief may be granted.

2. The claims in the Complaint are barred in whole or in part by the equitable doctrines of laches, waiver, acquiescence, ratification, and/or estoppel. Specifically with respect to the laches defense, Red Oak was aware as early as April 8, 2013 of the basis for the claims in this action. Despite this knowledge, Red Oak did not seek this Court's intervention before the May 3, 2013 Election. Instead, Red Oak awaited the outcome and filed its lawsuit only after the Management Slate was certified on May 10, 2013. Red Oak should not be allowed to profit from this delay.

3. The claims in the Complaint are barred by the doctrine of unclean hands. Among other things, Red Oak has engaged in a series of securities law violations that each constitutes a valid unclean hands defense.

(a) First, Red Oak has violated the disclosure rules promulgated under Section 14(a) of the Exchange Act. Congress and the SEC have designed an extensive regulatory structure governing proxy solicitations, which is designed to ensure that proxy contests be held in a fair and orderly manner so that stockholders may make an informed decision as to how they will vote their shares. Section 14(a) of the Exchange Act provides that it shall be unlawful for any person to solicit proxies in contravention of the rules and regulations prohibited by the SEC.

Under the SEC's proxy rules, Red Oak was required to provide the disclosures mandated by SEC Rule 14-101, also known as Schedule 14A. These regulations protect shareholders by requiring full disclosure of interested parties, solicitation costs and other material information.

Rule 14a-3, with certain exceptions not applicable here, requires that before the commencement of a proxy solicitation, a written proxy statement containing the information specified in Schedule 14A be filed with the SEC and distributed to each person solicited in connection with any solicitation governed by Section 14(a) of the Exchange Act. Among other things, the proxy statement must contain the information required by Schedule 14A, including: (i) certain information as to the persons making such solicitation; (ii) information as to the interest of such persons in the company, including, but not limited to, information as to share ownership of company securities; (iii) information as to the voting securities of the company and the holders thereof; (iv) financial information with respect to the aforementioned transactions; and (v) whether the proxy is revocable. Each shareholder must be furnished with a written proxy statement.

A key requirement of Schedule 14A is the disclosure of all “participants” in the proxy process, a term that is broadly defined to include:

(iii) Any committee or group which solicits proxies, any member of such committee or group, and any person whether or not named as a member who, acting alone or with one or more persons, directly or indirectly takes the initiative, or engages, in organizing, directing or arranging for the financing of any such committee or group;

(iv) Any person who finances or joins with another to finance the solicitation of proxies, except persons who contribute not more than \$500 and who are not otherwise participants.

(v) Any person who lends money or furnishes credit or enters into any other arrangements, pursuant to any contract or understanding with a participant, for the purpose of financing or otherwise inducing the purchase, sale, holding or voting of securities of the registrant by any participant or other persons, in support of or in opposition to a participant; except that such terms do not include a bank, broker or dealer who, in the ordinary course of business, lends money or executes orders for the purchase or sale of securities and who is not otherwise a participant; and

(vi) Any person who solicits proxies.

SEC Rule 14-101 Item 4, instruction 3(iii)-(vi). Similarly, Items 4(b)(2) and 5(b)(1) of Schedule 14A require disclosure of each “participant” in a proxy solicitation and detailed information regarding those participants.

In making solicitations for shareholder proxies, and its solicitation against execution of proxies voting in favor of the slate of candidates for the Board of Directors, proposed by the existing Directors of the Company, Red Oak was at all times working with Somerset. Red Oak’s failure to disclose the identity of Somerset in a Schedule 14A filed with the SEC is a material violation of the federal securities laws.

(b) Second, Red Oak has violated the disclosure rules promulgated under Section 13(d) of the Exchange Act. Section 13(d) of the 1934 Act, and the rules and regulations promulgated thereunder, require that any person, or any group of persons, acting for the purpose of acquiring, holding, or voting a corporation’s securities must file a statement with the SEC within 10 days after acquiring beneficial ownership of more than 5% of any class of the corporation’s voting securities. That statement, known as a Schedule 13D, must set forth the reporting persons’ background, identity, residence, citizenship, and the nature and amount of their beneficial ownership.

A Schedule 13D must also report the source and amount of funds used to purchase the beneficially owned securities. If the purchasers’ purpose is to obtain control of the corporation, their Schedule 13D must set forth their plans or proposals for any major change in the corporation’s structure. In addition, a Schedule 13D must report the purchasers’ agreements, arrangements, or understandings concerning the corporation’s securities.

Red Oak and Somerset each own more than five percent of the outstanding shares of the common stock of Digirad. Red Oak and Somerset are members of a group within the

meaning of Rule 13d-5(b)(1) promulgated under the Exchange Act, because, upon information and belief, they have entered into an agreement to use their shares of common stock for the purpose of acquiring, holding, or voting Digirad's shares of common stock and for other undisclosed purposes, and had a statutory obligation to file a Schedule 13D within 10 days of reaching that agreement. Although Red Oak filed a Schedule 13D, such Schedule 13D did not disclose that Somerset was part of their group, and thus is in violation of Section 13(d).

(c) Third, Red Oak is in violation of Rule 14a-9 promulgated under the Securities Exchange Act. During the voting period, Red Oak made definitive and misleading statements to other stockholders about the results of the proxy solicitations. When Digirad's management learned of these predictions, they asked Red Oak to refrain, but Red Oak continued to make specific representations to other stockholders regarding the results of the proxy solicitations. This violation represents a third, separate basis for an unclean hands defense to the Complaint.

(d) Fourth, Red Oak violated Section 13(d) of the Securities Exchange Act because it neglected to file a Schedule 13D within ten days after becoming the beneficial owner of five percent or more of Digirad common stock. Red Oak became a beneficial owner of five percent or more on January 29, 2013, but did not file its Schedule 13D until March 18, 2013. This omission acts a fourth, separate bar to the Complaint because of Red Oak's unclean hands.

4. The claims in the Complaint are barred by Red Oak's bad faith. Among other things, during the proxy campaign, Red Oak worked in conjunction with Somerset to make false statements regarding Digirad's management to induce a stockholder holding approximately 5% of the outstanding shares to change its vote at the last minute and vote for the Red Oak nominees. Red Oak should not be allowed to benefit from these bad faith deeds.

PRAYER FOR RELIEF

Defendants respectfully request that the Court enter judgment in their favor and that Defendants be awarded all further relief to which they may show themselves duly entitled, including attorneys' fees and costs.

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Dated: June 17, 2013

CERTIFICATE OF SERVICE

I, John M. Seaman, hereby certify that on June 17, 2013, I served a true and correct copy of the foregoing *Answer to Verified Complaint Pursuant to 8 Del. C. § 225* upon the following counsel through File & ServXpress:

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