

the introductory paragraph of the Complaint, and further answer the Complaint as follows:

1. Defendants deny the allegations of paragraph 1 of the Complaint. To the contrary, the Defendants have not engaged in any breaches of any fiduciary duties, or in any acts of fraud, conversion, waste of corporate assets or breaches of contract, and the Plaintiffs have suffered no damages, and no irreparable injury, as a result of any actions of the Defendants. Instead, it is the Defendants who are the victims of substantial wrongful acts by the Plaintiffs, including pervasive breaches of the representations and warranties that the Plaintiffs made to the Defendants in connection with the transaction described in the Asset Purchase Agreement (“APA”), and breaches of contracts, including the employment agreement executed by Eugenio Postorivo (“Postorivo”). By reason of the Plaintiffs’ breaches, the Defendants have been damaged in an amount believed to be in excess of \$11 million. Defendants’ claims against the Plaintiffs are set forth in the separate case of KEE Action Sports Holdings, Inc., et al. v. Eugenio Postorivo, et al., Civil Action No. 07C-05-062 PLA, originally filed in the Superior Court of the State of Delaware in and for New Castle County, and recently consolidated with the present case.

THE PARTIES

2. Admitted on information and belief.

3. Defendants admit that KEE Action Sports Holdings, Inc. formerly was known as “AJ Acquisition Holdings, Inc.,” and is a Delaware corporation with a principal place of business at 570 Mantua Boulevard, Sewell, New Jersey 08080.

Defendants deny that KEE Action Sports Holdings, Inc. is a plaintiff in this action, that KEE Action Sports Holdings, Inc. has authorized plaintiff Postorivo or any of the plaintiffs herein to represent it or otherwise act on its behalf in connection with the claims herein, that KEE Action Sports Holdings, Inc. has waived any conflict of interest with respect to Blank Rome LLP, or that Blank Rome LLP has been retained by or otherwise represents KEE Action Sports Holdings, Inc. By way of further answer, KEE Action Sports Holdings, Inc. denies that plaintiff Postorivo has standing to or otherwise is capable of asserting any derivative claims on behalf of KEE Action Sports Holdings, Inc.

4. Admitted on information and belief.

5. Admitted on information and belief.

6. Admitted on information and belief.

7. Admitted on information and belief.

8. Admitted.

9. Admitted.

10. Admitted.

11. Admitted.

12. Admitted.

13. Admitted.

14. Defendants admit that Dombrowski is a resident of the State of New Jersey, that he has a law degree, that he is a managing director at Alvarez & Marsal North America, LLC and that he is a director and officer of KEE Action Sports, LLC.

In all other respects, Defendants deny the allegations of paragraph 14 of the Complaint, including, without limitation, the allegation that Dombrowski has a license to practice law. By way of further answer, Dombrowski has placed himself on “inactive” status in those jurisdictions in which he has been admitted to practice law.

15. Defendants admit that Leffel is a resident of the State of New York, and is an officer and director of KEE Action Sports, LLC. In all other respects, Defendants deny the allegations of paragraph 15 of the Complaint.

16. Admitted.

JURISDICTION

17. Admitted.

18. Admitted.

19. Admitted.

20. Defendants deny that the Plaintiffs have stated any viable causes of action against the Defendants and further deny that the Plaintiffs have no adequate remedy at law. Defendants admit the remaining allegations of paragraph 20 of the Complaint.

FACTUAL BACKGROUND

21. Admitted on information and belief.

22. Defendants admit only that Postorivo founded and ran the business known as National Paintball Supply, Inc. (“NPS”). Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 22 of the Complaint.

23. Defendants admit only that, by 2006, NPS sold its products nationwide. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 23 of the Complaint.

24. Admitted on information and belief.

25. Defendants admit only that, by 2006, NPS sold its products on a wholesale basis to paintball dealers and distributors throughout the world. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 25 of the Complaint.

26. Admitted on information and belief.

27. Upon information and belief, Defendants admit only that NPS generated more than \$110 million in revenues in 2004. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 27 of the Complaint. By way of further answer, by mid-2006, NPS had become seriously overextended, was substantially in debt, was in default of the financial covenants in its debt obligations, was experiencing significant financial pressure, and was faced with the prospect of insolvency.

28. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 28 of the Complaint.

29. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 29 of the Complaint. Defendants deny that Mr. Postorivo had a “first class” reputation in the paintball industry.

30. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 30 of the Complaint.

31. Defendants admit only that Postorivo's personal involvement in the day-to-day operation of the business of NPS was thought to be an important factor in the continued success of that business. That is the reason that, after the transaction represented by the APA, the Defendants sought to retain the services of Postorivo through an Employment Agreement between Postorivo and defendant KEE Action Sports, LLC. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 31 of the Complaint.

32. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 32 of the Complaint.

33. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 33 of the Complaint.

34. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 34 of the Complaint, except that Defendants did find that at closing a number of vendors had not been timely paid and there was concern that such vendors would either go out of business or not continue to do business with the Company. By way of further answer, Postorivo has not abided by the commitments he made to the Defendants in his Employment Agreement, or in connection with the representations and warranties set forth in the APA.

35. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 35 of the Complaint.

36. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 36 of the Complaint.

37. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 37 of the Complaint.

38. Defendants admit only that the Plaintiffs did acquire and/or own certain intellectual property rights. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 38 of the Complaint.

39. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 39 of the Complaint.

40. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 40 of the Complaint.

41. Defendants admit only that Diablo, BT Paintball and paintballsolutions.com are brands of NPS, and that certain other NPS brands have been referenced on various Internet websites. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations of paragraph 41 of the Complaint.

42. Defendants deny the allegation in paragraph 42 that “[i]f NPS did not have it, no one did.” To the contrary, there were numerous products not carried by NPS at the time of the Transaction, including without limitation Tippmann, Kingman, Hybrid, Crossfire and other products that customers call for by name. Defendants are

without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 42 of the Complaint.

43. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 43 of the Complaint.

44. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 44 of the Complaint. By way of further answer, Postorivo did not demonstrate the hands-on, involved conduct described in paragraph 44 of the Complaint after he assumed the position of President of KEE Action Sports, LLC following the transaction set forth in the APA. To the contrary, Defendants have been advised that for the two years prior to the transaction, Mr. Postorivo was frequently absent from work for long stretches and would not work more than 4 or 5 hours on the days that he did show up to work.

45. Defendants deny that Postorivo was frozen out of the Defendant businesses, and deny that Postorivo's value, reputation and goodwill is such that the paintball supply industry cannot survive without Postorivo's continuing involvement. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 45 of the Complaint. By way of further answer, Defendants have been informed and therefore believe that Mr. Postorivo's attendance at work for the two years preceding the transaction was sporadic, and that if any damage may be shown to have arisen from his absence from work, such damage was caused by his absence from work prior to the closing of the transaction, and not after.

46. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 46 of the Complaint.

47. Defendants admit only that the Employment Agreement between Postorivo and KEE Action Sports, LLC is a written document whose terms speak for themselves. Defendants deny that Postorivo used his best efforts after the transaction to persuade employees to stay and not move to competing businesses, or that he achieved great success in this regard. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 47 of the Complaint.

48. Defendants admit on information and belief only that NPS had more than 150 employees and generated more than \$110 million in revenues in 2004. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 48 of the Complaint. By way of further answer, by mid-2006, NPS had become seriously overextended, was substantially in debt, was in default of the financial covenants in its debt obligations, was experiencing significant financial pressure, and was faced with the prospect of insolvency. Upon information and belief, Postorivo was unaware of the magnitude of the cash losses in a number of areas.

49. Defendants admit only (a) that from 2004 to 2006, NPS experienced a significant market downturn and had a significant dispute with one of its major suppliers; and (b) that NPS's litigation with this supplier has recently resulted in a significant award of damages in favor of NPS or its corporate successor. Defendants are

without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 49 of the Complaint. By way of further answer, by mid-2006, NPS had become seriously overextended, was substantially in debt, was in default of the financial covenants in its debt obligations, was experiencing significant financial pressure, and was faced with the prospect of insolvency.

50. Defendants admit only that, in November 2006, substantially all of the assets of NPS and certain related companies were combined with substantially all of the assets of Pursuit Marketing, Inc., and that these assets were purchased by the Defendants in the transaction set forth in the APA with the backing of a venture capital firm. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 50 of the Complaint.

51. Defendants admit only (a) that a copy of a press release regarding the transaction is attached to the Complaint as Exhibit “A”; and (b) that the details of the transaction at issue are set forth in the APA and related documents, which are written documents that speak for themselves. Defendants deny the remaining allegations of paragraph 51 of the Complaint.

52. Defendants admit only (a) that Postorivo was engaged to be the President of KEE Action Sports, LLC after the transaction; and (b) that the terms of Postorivo’s employment by KEE Action Sports, LLC are set forth in the Employment Agreement, which is a written document that speaks for itself. Defendants deny the remaining allegations of paragraph 52 of the Complaint. By way of further answer, although the Defendants intended for Postorivo to be an important and active member of

the management team following the transaction, in fact Postorivo utterly failed to discharge his duties as President of KEE Action Sports, LLC, was repeatedly absent from the workplace without explanation or permission, refused to handle the duties and responsibilities given to him by the board of directors and the CEO, and, to the contrary, took actions that were in direct violation of his duties and obligations to his employer and contrary to its interests.

53. Defendants deny the allegations of paragraph 53 of the Complaint. By way of further answer, although the Defendants intended for Postorivo to be an important and active member of the management team following the transaction, and indeed assigned him significant tasks, in fact Postorivo failed to discharge his duties as President of KEE Action Sports, LLC, was repeatedly absent from the workplace without explanation or permission, refused to handle the duties and responsibilities given to him by the Chief Executive Officer, regularly engaged in personal business on Company time, which, at times, was in direct conflict with the best interests of the Company, and, to the contrary, took actions that were in direct violation of his duties and obligations to his employer and contrary to its interests. By way of further answer, Postorivo's confusion about the intended scope of duties is evident by the fact that he attached a copy of his employment agreement *without* the first amendment to his Verified Complaint filed in this Court on May 30, 2007 and his complaint filed in the action captioned, *Postorivo v. KEE Action Sports, LLC. f/k/a AJ Intermediate Holdings, LLC*, C.A. No. C-50-07 (N.J. Super. Ct. Ch. Div., Gloucester Co., filed May 31, 2007). This omission was significant, in that the amendment to the

employment agreement contained a key provision upon which Defendants insisted before completing the transaction: *that Postorivo report to the Chief Executive Officer of the Company.*

54. Defendants admit only that Postorivo agreed to sell substantially all of the assets of NPS and related companies to the Defendants. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 54 of the Complaint. By way of further answer, Postorivo was undoubtedly motivated to sell substantially all of the assets of NPS because, in connection with this transaction, Postorivo (a) would receive approximately \$10 million in gross proceeds from the sale of the NPS Corporate Headquarters; (b) would be released from approximately \$19 million in personal guarantees that he had given to NPS's bank to secure NPS's financing, which loans by NPS were in default immediately before the transaction; and (c) was given a \$500,000 line of credit (the entire amount of which was drawn in December 2006) to be used to fund NPS's prosecution of the "Procaps Litigation," which was a significant asset of NPS that was not transferred to the Defendants in the transaction.

55. Defendants admit only that the benefits accruing to Postorivo in connection with the transaction, and the obligations that he assumed in that transaction, are set forth in the APA and related documents, including the Employment Agreement, which are written documents that speak for themselves. Defendants deny the remaining allegations of paragraph 55 of the Complaint, which Mr. Postorivo stated at various

times could be worth nearly \$30 million. Indeed, in his complaint, Mr. Postorivo refers to the arbitration award he was granted as a “very significant monetary award”.

56. Admitted.

57. Defendants admit only that the assets that were sold in connection with the transaction are set forth in the APA and related documents, which are written documents that speak for themselves. Defendants deny the remaining allegations of paragraph 57 of the Complaint. Defendants specifically deny that they assumed “all NPS/Postorivo customer and vendor relationships,” as there were specific assets and liabilities, including vendor relationships, that were excluded from the transaction. By way of further answer, in the APA Postorivo and the Plaintiffs made certain representations and warranties with respect to, among other things, the value of the inventories being purchased in the transaction and the value of the liabilities being assumed in the transaction. In the months following the closing of the transaction, the Defendants have discovered an alarming array of violations of Plaintiffs’ representations and warranties, including intentional misrepresentations regarding product inventories and undisclosed liabilities, such as undisclosed purchase orders and costs relating to manufacturing operations abroad. At least one of the misrepresentations, relating to undisclosed liabilities in excess of \$1 million, was admitted to be known by the Plaintiff at a Board meeting in January, memorialized in the Board Minutes which were then agreed to by the Plaintiff in March. The losses to the Defendants caused by these violations exceed, and may to found to substantially exceed, \$11 million.

58. Defendants admit only that the specific terms of the transaction, including the Defendants' discharge of NPS's outstanding debt obligations, the release of Postorivo from any personal liability on that debt obligation, and the issuance of any stock to NPS or Postorivo, are set forth in the APA and related documents, which are written documents that speak for themselves. Defendants deny the remaining allegations of paragraph 58 of the Complaint. By way of further answer, Plaintiff did not pay vendors in anticipation of the Transaction such that there were a significant number of accounts payable that were substantially past due with vendors that were critical to the survival of the Company

59. Defendants admit only that the specific terms of the transaction, including the Defendants' discharge of NPS's outstanding debt obligations and the release of Postorivo from any personal liability on that debt obligation, are set forth in the APA and related documents, which are written documents that speak for themselves. Defendants deny the remaining allegations of paragraph 59 of the Complaint. By way of further answer, in addition to discharging all of NPS's outstanding debt obligations, and obtaining the release of Postorivo from any personal liability on the approximately \$19 million of NPS's debt obligation, refinancing was obtained only after Defendants arranged for tens of millions of dollars of new capital to be contributed into the reorganized operating entities and with the addition of substantially all of the assets of another entity, Pursuit Marketing Inc., which was roughly equivalent in size to NPS. By way of further answer, after the closing, Sellers' material breaches of the APA required

on two separate occasions that Defendants make significant additional equity contributions to the business.

60. Defendants admit only that the specific terms of the transaction are set forth in the APA and related documents, which are written documents that speak for themselves. Defendants deny the remaining allegations of paragraph 60 of the Complaint. By way of further answer, Defendants incorporate their answer to paragraph number 59 as if fully set forth.

61. Admitted.

62. Admitted.

63. Admitted.

64. Defendants admit only that the APA, including its Section 11.6, is a written document that speaks for itself. Defendants deny the remaining allegations of paragraph 64 of the Complaint.

65. Defendants admit only that the APA, including its Section 11.6, is a written document that speaks for itself. Defendants deny the remaining allegations of paragraph 65 of the Complaint.

66. Defendants admit only that the APA, including its Section 11.6, as well as the Postorivo Pledge Agreement and the NPS Pledge Agreement, are written documents that speak for themselves. Defendants deny the remaining allegations of paragraph 66 of the Complaint.

67. Admitted.

68. Defendants admit only that the Employment Agreement is a written document that speaks for itself. Defendants deny the remaining allegations of paragraph 68 of the Complaint.

69. Defendants admit only that the terms of Postorivo's employment by KEE Action Sports, LLC are set forth in the Employment Agreement, which is a written document that speaks for itself. Defendants deny the remaining allegations of paragraph 69 of the Complaint. Defendants admit only that the terms of Postorivo's bonus compensation arrangement with KEE Action Sports, LLC are set forth in the Employment Agreement, which is a written document that speaks for itself. Defendants deny the remaining allegations of Paragraph 69 of the Complaint.

70. Defendants admit only that the Employment Agreement, as modified, is a written document that speaks for itself. Defendants deny the remaining allegations of paragraph 70 of the Complaint. By way of further answer, Defendants specifically deny that Postorivo was to perform the same duties he had pre-transaction. To the contrary, his role fundamentally changed from owning a business and being accountable to no one, to having to report to a Chief Executive Officer.

71. Defendants admit only that the Restricted Stock Agreement and the First Amended Employment Agreement are written documents that speak for themselves. Defendants deny the remaining allegations of paragraph 71 of the Complaint.

72. Defendants admit only that the terms of Postorivo's bonus compensation arrangement with KEE Action Sports, LLC are set forth in the

Employment Agreement, which is a written document that speaks for itself. Defendants deny the remaining allegations of paragraph 72 of the Complaint.

73. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 73 of the Complaint.

74. Defendants admit only that Postorivo's Employment Agreement, including its paragraph 1.1, is a written document that speaks for itself. Defendants deny the remaining allegations of paragraph 74 of the Complaint.

75. Defendants deny the allegations of paragraph 75 of the Complaint. By way of further answer, and to the contrary, following the closing of the transaction Postorivo utterly failed to discharge his duties as President of KEE Action Sports, LLC, was repeatedly absent from the workplace without explanation or permission, refused to handle the duties and responsibilities given to him by the board of directors and the CEO, and, to the contrary, took actions that were in direct violation of his duties and obligations to his employer and contrary to its interests.

76. Defendants deny the allegations of paragraph 76 of the Complaint. To the contrary, after the transaction Postorivo was repeatedly asked and encouraged to be involved in ongoing relationships with the company's vendors, but Postorivo refused to become involved, repeatedly absented himself from the workplace without explanation, and failed to complete tasks assigned to him or to respond to requests for his assistance.

77. Defendants deny the allegations of paragraph 77 of the Complaint. To the contrary, after the transaction Postorivo was repeatedly asked and

encouraged to be involved in all aspects of the business, including sales, marketing, research and development, vendor relationships and internal meetings, but Postorivo refused to become involved, repeatedly absented himself from the workplace without explanation, and failed to complete tasks assigned to him or to respond to requests for his assistance.

78. Defendants deny the allegations of paragraph 78 of the Complaint.

79. Defendants deny the allegations of paragraph 79 of the Complaint. To the contrary, after the transaction, far from being isolated from the business, Postorivo was repeatedly asked and encouraged to be involved in all aspects of the business, including sales, marketing, research and development, vendor relationships and internal meetings, but it was Postorivo who withdrew from the business, refused to become involved, repeatedly absented himself from the workplace without explanation, and failed to complete tasks assigned to him or to respond to requests for his assistance.

80. Defendants deny the allegations of paragraph 80 of the Complaint, except that they admit that most if not all of the integral NPS employees remained with the company post-closing, and that the retention of these employees was due, in part, to the efforts of Postorivo. By way of further answer, Defendants incorporate by reference herein their answer to paragraph 47.

81. Defendants deny the allegations of paragraph 81 of the Complaint. By way of further answer, and to the contrary, following the closing of the transaction Postorivo was repeatedly asked and encouraged to be involved in all aspects

of the business, but he utterly failed to discharge his duties as President of KEE Action Sports, LLC, was repeatedly absent from the workplace without explanation or permission, refused to handle the duties and responsibilities given to him by the board of directors and the CEO, and, to the contrary, took actions that were in direct violation of his duties and obligations to his employer and contrary to its interests.

82. Admitted.

83. Admitted.

84. Defendants deny the allegations of paragraph 84 of the Complaint. To the contrary, the Defendants discovered after the transaction that significant amounts of inventory included in the Acquired Assets and recorded in the companies' records and financial statements were obsolete, slow-moving or altogether unsaleable, defective, and, in some instances, non-existent. Substantial quantities of inventory were not saleable in the ordinary course of business, and there are extensive quantities of inventory that were not "reasonable in the present circumstances." Nearly 70% of the total inventory was affected, requiring a write-off representing nearly 40% of the total inventory value. Plaintiffs had actual notice of these inventory problems, for these conditions were not latent, but readily apparent and, in many cases, self-evident given the type of product involved.

85. Defendants admit that the Plaintiffs responded in writing to the notice of indemnification on April 17 and May 4, 2007 (which are writings that speak for themselves), and that a copy of the May 4, 2007 letter is attached to the Complaint as

Exhibit “E”. Defendants deny the remaining allegations of paragraph 85 of the Complaint.

86. Defendants deny the allegations of paragraph 86 of the Complaint. To the contrary, the deliberately-inflated inventory values that Postorivo and the Plaintiffs certified to the Defendants as being accurate and correct were intended to deceive the Defendants, and have caused the Defendants to receive in the transaction substantially less than the value for which they bargained and upon which the aggregate Transaction Price was based.

87. Defendants deny the allegations of paragraph 87 of the Complaint. To the contrary, the deliberately-inflated inventory values that Postorivo and the Plaintiffs certified to the Defendants as being accurate and correct were intended to deceive the Defendants, and have caused the Defendants to receive in the transaction substantially less than the value for which they bargained and upon which the aggregate Transaction Price was based.

88. Defendants deny the allegations of paragraph 88 of the Complaint.

89. Defendants deny the allegations of paragraph 89 of the Complaint.

90. Admitted.

91. Defendants admit only that, on May 4, 2007, they brought an action against the Plaintiffs in the Superior Court of the State of Delaware in and for New Castle County, and that a copy of the Complaint filed in the Superior Court is

attached to the present Complaint as Exhibit “F”. Defendants deny the remaining allegations of paragraph 91 of the Complaint.

92. Admitted.

93. Defendants admit only (a) that on May 2 and 3, 2007, pursuant to the by-laws of the respective entities and pursuant to the Stockholders’ Agreement of November 17, 2006, Postorivo was removed as a member of the board of directors of KEE Action Sports Holdings, Inc. and of KEE Action Sports, LLC; and (b) that a copy of termination notice and resolutions is attached to the Complaint as Exhibit “G”.

Defendants deny the remaining allegations of paragraph 93 of the Complaint.

94. Defendants deny the allegations of paragraph 94 of the Complaint.

95. Defendants admit only (a) that on May 4, 2007, the board of directors of KEE Action Sports, LLC terminated the Employment Agreement between Postorivo and KEE Action Sports, LLC, for cause; and (b) that a copy of the letter informing Postorivo of this decision is attached to the Complaint as Exhibit “H”.

Defendants deny the remaining allegations of paragraph 95 of the Complaint.

96. Defendants admit only that the Employment Agreement, including its Section 5.2(a), is a written document that speaks for itself. Defendants deny the remaining allegations of paragraph 96 of the Complaint.

97. Defendants admit only that the Employment Agreement, including its Section 5.2(a), is a written document that speaks for itself. Defendants deny the remaining allegations of paragraph 97 of the Complaint.

98. Defendants admit only that the Employment Agreement, including its Section 5.2(b), is a written document that speaks for itself. Defendants deny the remaining allegations of paragraph 98 of the Complaint.

99. Defendants admit only (a) that, at the time that Postorivo's employment was terminated for cause, none of his rights to any stock had vested, and (b) that the Employment Agreement, including its Section 3.3, is a written document that speaks for itself. The remaining allegations of paragraph 99 of the Complaint constitute conclusions of law as to which no responsive pleading is required. If and to the extent that a responsive pleading is deemed to be required, Defendants deny the remaining allegations of paragraph 99 of the Complaint.

100. The allegations of paragraph 100 of the Complaint refer to a written document that speaks for itself. By way of further answer, the allegations of paragraph 100 of the Complaint constitute conclusions of law as to which no responsive pleading is required.

101. The allegations of paragraph 101 of the Complaint constitute conclusions of law as to which no responsive pleading is required. If and to the extent that a responsive pleading is deemed to be required, Defendants deny the allegations of paragraph 101 of the Complaint. By way of further answer, in light of Plaintiffs' allegations regarding the financial performance of the Company (which Defendants deny), Defendants believe and therefore allege that there was no basis upon which Postorivo reasonably could have believed that he would receive a performance bonus.

102. Defendants admit only that the Employment Agreement, including its Section 7.3, is a written document that speaks for itself. Defendants deny the remaining allegations of paragraph 102 of the Complaint.

103. Defendants admit only that the Employment Agreement, including its Section 7.9, is a written document that speaks for itself. Defendants deny the remaining allegations of paragraph 103 of the Complaint.

104. Defendants admit only that the Employment Termination Notice is a written document that speaks for itself. Defendants deny the remaining allegations of paragraph 104 of the Complaint.

105. Defendants admit only that the Employment Termination Notice is a written document that speaks for itself. Defendants deny the remaining allegations of paragraph 105 of the Complaint.

106. The allegations of paragraph 106 of the Complaint constitute conclusions of law as to which no responsive pleading is required. If and to the extent that a responsive pleading is deemed to be required, Defendants deny the allegations of paragraph 106 of the Complaint.

107. The allegations of paragraph 107 of the Complaint constitute conclusions of law as to which no responsive pleading is required. If and to the extent that a responsive pleading is deemed to be required, Defendants deny the allegations of paragraph 107 of the Complaint.

108. The allegations of paragraph 108 of the Complaint constitute conclusions of law as to which no responsive pleading is required. If and to the extent

that a responsive pleading is deemed to be required, Defendants deny the allegations of paragraph 108 of the Complaint.

109. The allegations of paragraph 109 of the Complaint constitute conclusions of law as to which no responsive pleading is required. If and to the extent that a responsive pleading is deemed to be required, Defendants deny the allegations of paragraph 109 of the Complaint.

110. Defendants deny the allegations of paragraph 110 of the Complaint.

111. Defendants deny the allegations of paragraph 111 of the Complaint.

112. Defendants admit only (a) that on May 14, 2007, pursuant to the Pledge Agreement dated November 17, 2006 and pursuant to the Restricted Stock Agreement, as amended, KEE Action Sports Holdings, Inc. exercised its rights (i) to cancel 250,000 shares of Unvested Shares of its Voting Common Stock previously issued to Postorivo, (ii) to transfer to itself 125,000 shares of its Voting Common Stock previously issued to Postorivo, and (iii) to transfer to itself 100,000 shares of its Series B Junior Preferred Stock that had previously been issued to PBS Holding Group, Inc., in the event that such shares had been assigned to Postorivo; and (b) that the documentation evidencing these transactions is attached to the Complaint as Exhibit "I". Defendants deny the remaining allegations of paragraph 112 of the Complaint.

113. Defendants deny the allegations of paragraph 113 of the Complaint. To the contrary, because Postorivo had utterly failed to discharge his duties

as President of KEE Action Sports, LLC, was repeatedly absent from the workplace without explanation or permission, refused to handle the duties and responsibilities given to him by the board of directors and the chairman, and, to the contrary, took actions that were in direct violation of his duties and obligations to his employer and contrary to its interests, the Defendants properly exercised their rights under the applicable written agreements (to which Postorivo had willingly agreed, in arms-length negotiations) to terminate Postorivo's employment as President of KEE Action Sports, LLC, to remove him as a member of the board of directors of KEE Action Sports Holdings, Inc. and of KEE Action Sports, LLC, and to transfer away from Postorivo his stock holdings in KEE Action Sports Holdings, Inc.

114. Defendants admit only that the APA is a written document that speaks for itself. Defendants deny the remaining allegations of paragraph 114 of the Complaint.

115. Defendants admit only that the APA, including its Section 1.3, is a written document that speaks for itself. Defendants deny the remaining allegations of paragraph 115 of the Complaint.

116. The allegations of paragraph 116 of the Complaint constitute conclusions of law as to which no responsive pleading is required. If and to the extent that a responsive pleading is deemed to be required, Defendants deny the allegations of paragraph 116 of the Complaint.

117. Defendants admit only (a) that the APA grants to KEE Action Sports, LLC an option to purchase from NPS (or its successor), under specified

circumstances, all of NPS's rights in an arbitration dispute known as the "Procaps Litigation"; and (b) that the terms of this option are set forth in the APA, which is a written document that speaks for itself. Defendants deny the remaining allegations of paragraph 117 of the Complaint.

118. Admitted on information and belief.

119. Defendants deny the allegations of paragraph 119 of the Complaint.

120. Defendants deny the allegations of paragraph 120 of the Complaint.

121. The allegations of paragraph 121 of the Complaint constitute conclusions of law as to which no responsive pleading is required. If and to the extent that a responsive pleading is deemed to be required, the Defendants deny the allegations of paragraph 121 of the Complaint. By way of further answer, because Postorivo is not currently a shareholder, director or officer of KEE Action Sports Holdings, Inc., Postorivo does not have standing to assert any derivative claims on behalf of KEE Action Sports Holdings, Inc.

122. The allegations of paragraph 122 of the Complaint constitute conclusions of law as to which no responsive pleading is required. If and to the extent that a responsive pleading is deemed to be required, the Defendants deny the allegations of paragraph 122 of the Complaint.

123. Defendants deny the allegations of paragraph 123 of the Complaint.

COUNT I
BREACH OF FIDUCIARY DUTY

124. Defendants incorporate herein by reference paragraphs 1 through 123 of this Answer as though fully set forth herein. Defendants answer this Count of the First Amended Verified Complaint solely to the extent that it is asserted by Plaintiffs in their individual capacities. To the extent that Plaintiffs seek to assert this Count derivatively on behalf of KEE Action Sports Holdings, Inc., Defendants have moved to dismiss any such derivative claims, and incorporate herein by reference the motion to dismiss such derivative claims filed simultaneously with this Answer.

125. The allegations of paragraph 125 of the Complaint constitute conclusions of law as to which no responsive pleading is required. If and to the extent that a responsive pleading is deemed to be required, the Defendants deny the allegations of paragraph 125 of the Complaint.

126. Defendants deny the allegations of paragraph 126 of the Complaint. To the contrary, the Defendants have not diverted or wasted the assets of KEE Action Sports Holdings, Inc.; have acted properly and within their rights in terminating Postorivo's employment for cause, removing Postorivo as a director and causing the transfer of Postorivo's common and preferred stock; and have asserted legitimate and meritorious indemnification claims against Postorivo.

127. Defendants deny the allegations of paragraph 127 of the Complaint. To the contrary, none of the Defendants, including Dombrowski or Leffel, has engaged in any breaches of fiduciary duty, and no actions of any of the Defendants have caused any harm to KEE Action Sports Holdings, Inc. or to its stockholders.

COUNT II
CONVERSION

128. Defendants incorporate herein by reference paragraphs 1 through 127 of this Answer as though fully set forth herein. Defendants answer this Count of the First Amended Verified Complaint solely to the extent that it is asserted by Plaintiffs in their individual capacities. To the extent that Plaintiffs seek to assert this Count derivatively on behalf of KEE Action Sports Holdings, Inc., Defendants have moved to dismiss any such derivative claims, and incorporate herein by reference the motion to dismiss such derivative claims filed simultaneously with this Answer.

129. Defendants deny the allegations of paragraph 129 of the Complaint.

130. Defendants deny the allegations of paragraph 130 of the Complaint.

131. Defendants deny the allegations of paragraph 131 of the Complaint.

COUNT III
FRAUD

132. Defendants incorporate herein by reference paragraphs 1 through 131 of this Answer as though fully set forth herein. Defendants answer this Count of the First Amended Verified Complaint solely to the extent that it is asserted by Plaintiffs in their individual capacities. To the extent that Plaintiffs seek to assert this Count derivatively on behalf of KEE Action Sports Holdings, Inc., Defendants have moved to

dismiss any such derivative claims, and incorporate herein by reference the motion to dismiss such derivative claims filed simultaneously with this Answer.

133. Defendants deny the allegations of paragraph 133 of the Complaint, including all of its subparagraphs.

134. Defendants deny the allegations of paragraph 134 of the Complaint.

135. Defendants deny the allegations of paragraph 135 of the Complaint.

136. Defendants deny the allegations of paragraph 136 of the Complaint.

COUNT IV
WASTE OF CORPORATE ASSETS

137-143. Count IV of the Complaint can be and therefore presumably is asserted solely as a derivative claim. Defendants are not answering the allegations of Count IV of the Complaint because they have filed a motion to dismiss any derivative claims asserted by the Plaintiffs.

COUNT V
AIDING AND ABETTING

144. Defendants incorporate herein by reference paragraphs 1 through 143 of this Answer as though fully set forth herein. Defendants answer this Count of the First Amended Verified Complaint solely to the extent that it is asserted by Plaintiffs in their individual capacities. To the extent that Plaintiffs seek to assert this Count derivatively on behalf of KEE Action Sports Holdings, Inc., Defendants have moved to

dismiss any such derivative claims, and incorporate herein by reference the motion to dismiss such derivative claims filed simultaneously with this Answer.

145. Defendants deny the allegations of paragraph 145 of the Complaint.

146. Defendants deny the allegations of paragraph 146 of the Complaint.

COUNT VI
CIVIL CONSPIRACY

147. Defendants incorporate herein by reference paragraphs 1 through 146 of this Answer as though fully set forth herein. Defendants answer this Count of the First Amended Verified Complaint solely to the extent that it is asserted by Plaintiffs in their individual capacities. To the extent that Plaintiffs seek to assert this Count derivatively on behalf of KEE Action Sports Holdings, Inc., Defendants have moved to dismiss any such derivative claims, and incorporate herein by reference the motion to dismiss such derivative claims filed simultaneously with this Answer.

148. Defendants deny the allegations of paragraph 148 of the Complaint.

149. Defendants deny the allegations of paragraph 149 of the Complaint.

COUNT VII
BREACH OF CONTRACT/SPECIFIC PERFORMANCE

150. Defendants incorporate herein by reference paragraphs 1 through 149 of this Answer as though fully set forth herein. Defendants answer this Count of the

First Amended Verified Complaint solely to the extent that it is asserted by Plaintiffs in their individual capacities. To the extent that Plaintiffs seek to assert this Count derivatively on behalf of KEE Action Sports Holdings, Inc., Defendants have moved to dismiss any such derivative claims, and incorporate herein by reference the motion to dismiss such derivative claims filed simultaneously with this Answer.

151. The allegations of paragraph 151 of the Complaint constitute conclusions of law as to which no responsive pleading is required. If and to the extent that a responsive pleading is deemed to be required, the Defendants deny the allegations of paragraph 151 of the Complaint.

152. The allegations of paragraph 152 of the Complaint constitute conclusions of law as to which no responsive pleading is required. If and to the extent that a responsive pleading is deemed to be required, the Defendants deny the allegations of paragraph 152 of the Complaint.

153. Defendants deny the allegations of paragraph 153 of the Complaint.

154. Defendants deny the allegations of paragraph 154 of the Complaint.

155. Defendants deny the allegations of paragraph 155 of the Complaint.

156. Defendants deny the allegations of paragraph 156 of the Complaint.

157. Defendants deny the allegations of paragraph 157 of the Complaint.

COUNT VIII
BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING

158. Defendants incorporate herein by reference paragraphs 1 through 157 of this Answer as though fully set forth herein. Defendants answer this Count of the First Amended Verified Complaint solely to the extent that it is asserted by Plaintiffs in their individual capacities. To the extent that Plaintiffs seek to assert this Count derivatively on behalf of KEE Action Sports Holdings, Inc., Defendants have moved to dismiss any such derivative claims, and incorporate herein by reference the motion to dismiss such derivative claims filed simultaneously with this Answer.

159. The allegations of paragraph 159 of the Complaint constitute conclusions of law as to which no responsive pleading is required. If and to the extent that a responsive pleading is deemed to be required, the Defendants deny the allegations of paragraph 159 of the Complaint.

160. The allegations of paragraph 160 of the Complaint constitute conclusions of law as to which no responsive pleading is required. If and to the extent that a responsive pleading is deemed to be required, the Defendants deny the allegations of paragraph 160 of the Complaint.

161. The allegations of paragraph 161 of the Complaint constitute conclusions of law as to which no responsive pleading is required. If and to the extent that a responsive pleading is deemed to be required, the Defendants deny the allegations of paragraph 161 of the Complaint.

162. Defendants deny the allegations of paragraph 162 of the Complaint.

163. Defendants deny the allegations of paragraph 163 of the Complaint.

164. Defendants deny the allegations of paragraph 164 of the Complaint.

165. Defendants deny the allegations of paragraph 165 of the Complaint.

166. Defendants deny the allegations of paragraph 166 of the Complaint.

COUNT IX
DECLARATORY JUDGMENT

167. Defendants incorporate herein by reference paragraphs 1 through 166 of this Answer as though fully set forth herein. Defendants answer this Count of the First Amended Verified Complaint solely to the extent that it is asserted by Plaintiffs in their individual capacities. To the extent that Plaintiffs seek to assert this Count derivatively on behalf of KEE Action Sports Holdings, Inc., Defendants have moved to dismiss any such derivative claims, and incorporate herein by reference the motion to dismiss such derivative claims filed simultaneously with this Answer.

168. Defendants deny the allegations of paragraph 168 of the Complaint.

169. Defendants deny the allegations of paragraph 169 of the Complaint, and further deny that the Plaintiffs are entitled to any of the relief they seek in paragraph 169 and its subparagraphs.

COUNT X
PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF

170. Defendants incorporate herein by reference paragraphs 1 through 169 of this Answer as though fully set forth herein. Defendants answer this Count of the First Amended Verified Complaint solely to the extent that it is asserted by Plaintiffs in their individual capacities. To the extent that Plaintiffs seek to assert this Count derivatively on behalf of KEE Action Sports Holdings, Inc., Defendants have moved to dismiss any such derivative claims, and incorporate herein by reference the motion to dismiss such derivative claims filed simultaneously with this Answer.

171. Defendants deny the allegations of paragraph 171 of the Complaint.

172. Defendants deny the allegations of paragraph 172 of the Complaint.

173. Defendants deny the allegations of paragraph 173 of the Complaint.

174. The allegations of paragraph 174 of the Complaint constitute conclusions of law as to which no responsive pleading is required. If and to the extent that a responsive pleading is deemed to be required, the Defendants deny the allegations of paragraph 174 of the Complaint.

175. Defendants deny the allegations of paragraph 175 of the Complaint, and further deny that the Plaintiffs are entitled to any of the relief they seek in paragraph 175 and its subparagraphs.

176. Defendants deny the allegations of paragraph 176 of the Complaint.

COUNT XI
CLAIM UNDER 8 DEL. C. §225 FOR
DECLARATORY AND INJUNCTIVE RELIEF

177. Defendants incorporate herein by reference paragraphs 1 through 176 of this Answer as though fully set forth herein. Defendants answer this Count of the First Amended Verified Complaint solely to the extent that it is asserted by Plaintiffs in their individual capacities. To the extent that Plaintiffs seek to assert this Count derivatively on behalf of KEE Action Sports Holdings, Inc., Defendants have moved to dismiss any such derivative claims, and incorporate herein by reference the motion to dismiss such derivative claims filed simultaneously with this Answer.

178. Admitted.

179. Defendants admit only that on May 2 and 3, 2007, pursuant to the by-laws of the respective entities and pursuant to the Stockholders' Agreement of November 17, 2006, Postorivo was removed as a member of the board of directors of KEE Action Sports Holdings, Inc. and of KEE Action Sports, LLC. Defendants deny the remaining allegations of paragraph 179 of the Complaint.

180. Defendants deny the allegations of paragraph 180 of the Complaint.

181. The allegations of paragraph 181 of the Complaint constitute conclusions of law as to which no responsive pleading is required. If and to the extent that a responsive pleading is deemed to be required, the Defendants deny the allegations of paragraph 181 of the Complaint.

182. Defendants deny the allegations of paragraph 182 of the Complaint, and further deny that the Plaintiffs are entitled to any of the relief they seek in paragraph 182 and its subparagraphs.

COUNT XII
BREACH OF CONTRACT, DECLARATORY
AND INJUNCTIVE RELIEF WITH
RESPECT TO THE PROCAPS LITIGATION

183. Defendants incorporate herein by reference paragraphs 1 through 182 of this Answer as though fully set forth herein. Defendants answer this Count of the First Amended Verified Complaint solely to the extent that it is asserted by Plaintiffs in their individual capacities. To the extent that Plaintiffs seek to assert this Count derivatively on behalf of KEE Action Sports Holdings, Inc., Defendants have moved to dismiss any such derivative claims, and incorporate herein by reference the motion to dismiss such derivative claims filed simultaneously with this Answer.

184. Admitted on information and belief.

185. Defendants deny the allegations of paragraph 185 of the Complaint.

186. Defendants admit only that the APA, including its Section 1.6, is a written document that speaks for itself. Defendants deny the remaining allegations of paragraph 186 of the Complaint.

187. Defendants admit only that the APA, including its Section 12.5, is a written document that speaks for itself. Defendants deny the remaining allegations of paragraph 187 of the Complaint.

188. Defendants deny the allegations of paragraph 188 of the Complaint.

189. Defendants deny the allegations of paragraph 189 of the Complaint.

190. Defendants deny the allegations of paragraph 190 of the Complaint.

191. Defendants deny the allegations of paragraph 191 of the Complaint, and further deny that the Plaintiffs are entitled to any of the relief they seek in paragraph 191.

COUNT XIII
BREACH OF THE EMPLOYMENT AGREEMENT

192. Defendants incorporate herein by reference paragraphs 1 through 191 of this Answer as though fully set forth herein.

193. Defendants deny the allegations of paragraph 193 of the Complaint.

194. Defendants deny the allegations of paragraph 194 of the Complaint.

195. Defendants deny the allegations of paragraph 195 of the Complaint.

196. Defendants deny the allegations of paragraph 196 of the Complaint.

197. Defendants admit only that the Employment Agreement, including its Section 7, is a written document that speaks for itself. Defendants deny the remaining allegations of paragraph 197 of the Complaint.

198. Defendants deny the allegations of paragraph 198 of the Complaint.

199. Defendants deny the allegations of paragraph 199 of the Complaint.

200. Defendants deny the allegations of paragraph 200 of the Complaint.

201. Defendants deny the allegations of paragraph 201 of the Complaint.

202. Defendants deny the allegations of paragraph 202 of the Complaint.

203. Defendants deny the allegations of paragraph 203 of the Complaint.

WHEREFORE, the Defendants respectfully request that this Honorable Court enter judgment in their favor and against the Plaintiffs, dismissing all the Counts of the First Amended Verified Complaint with prejudice and awarding the Defendants their costs and such other relief as the Court deems appropriate.

FIRST ADDITIONAL DEFENSE

None of the Plaintiffs has stated a claim against any of the Defendants upon which relief can be granted.

SECOND ADDITIONAL DEFENSE

Because plaintiff Postorivo is not currently a shareholder, director or officer of defendant KEE Action Sports Holdings, Inc., Postorivo does not have standing to assert any derivative claims on behalf of KEE Action Sports Holdings, Inc.

THIRD ADDITIONAL DEFENSE

The Plaintiffs' conduct is barred, in whole or in part, by their own wrongful, inequitable conduct and unclean hands.

FOURTH ADDITIONAL DEFENSE

The Plaintiffs' claims are barred, in whole or in part, by the doctrines of waiver or estoppel.

FIFTH ADDITIONAL DEFENSE

The Plaintiffs' claims are barred, in whole or in part, by the Plaintiffs' failure to mitigate any damages they allegedly have suffered.

SIXTH ADDITIONAL DEFENSE

The Plaintiffs are not entitled to the relief they seek because Plaintiffs' claims are the result of bad faith.

SEVENTH ADDITIONAL DEFENSE

The Plaintiffs' claims are barred, in whole or in part, by the Defendants' right of setoff and recoupment in connection with the Complaint that the Defendants initially filed against the Plaintiffs in the Delaware Superior Court, now consolidated

with the present action.

EIGHTH ADDITIONAL DEFENSE

The Plaintiffs' claims are barred, in whole or in part, by Plaintiffs' own fraud.

NINTH ADDITIONAL DEFENSE

The Plaintiffs' claims are barred, in whole or in part, due to Plaintiffs' own material breaches of their obligations under the Asset Purchase Agreement and related transaction documents.

TENTH ADDITIONAL DEFENSE

The Plaintiffs ratified the conduct alleged of the Defendants in the Complaint.

ELEVENTH ADDITIONAL DEFENSE

Plaintiffs' claims are barred in whole or in part by Plaintiff Postorivo's own breaches of fiduciary duty.

TWELFTH ADDITIONAL DEFENSE

Liability against Defendants Leffel and Dombrowski is barred in whole or part under 8 Del. C. § 102(b)(7).

THIRTEENTH ADDITIONAL DEFENSE

Plaintiffs' claims are barred in whole or in part by 8 Del. C. § 141(e).

FOURTEENTH ADDITIONAL DEFENSE

Plaintiff Postorivo is not an adequate derivative plaintiff.

FIFTEENTH ADDITIONAL DEFENSE

Defendants Leffel and Dombrowski did not owe any fiduciary duties to Plaintiffs in connection with the actions that are the subject of the Complaint.

SIXTEENTH ADDITIONAL DEFENSE

Liability against Defendants Leffel and Dombrowski is barred in whole or part under Section 5 of the Stockholders' Agreement by and among AJ Acquisition Holdings, Inc. and the Other Signatories Hereto Dated as of November 17, 2006.

WHEREFORE, the Defendants respectfully request that this Honorable Court enter judgment in their favor and against the Plaintiffs, dismissing all the Counts of the First Amended Verified Complaint with prejudice and awarding the Defendants their costs and such other relief as the Court deems appropriate.

COUNTERCLAIM

KEE Action Sports Holdings, Inc. and KEE Action Sports, LLC v. Eugenio Postorivo and PBS Holding Group, Inc.

KEE Action Sports Holdings, Inc. and KEE Action Sports, LLC (together, “KEE Action Sports”) allege the following in support of their counterclaim against Eugenio Postorivo (“Postorivo”) and PBS Holding Group, Inc. (“NPS”)¹:

1. NPS recently obtained a \$9.6 million arbitration award in connection with the Procaps Litigation, which award is subject to an option (the “Option”) held by Counterclaim Plaintiff KEE Action Sports, LLC under the APA. The Option was a key element of the consideration bargained for by the Buyers in the Transaction, and is an important component of the Buyers’ post-Transaction business plan. KEE Action Sports, LLC has timely exercised the Option in accordance with the APA. NPS, through Postorivo, however, has refused to comply with its obligations under the APA’s Option provisions. As a direct and proximate result of NPS’ ongoing breach, KEE Action Sports, LLC (and KEE Action Sports Holdings, Inc., as its sole shareholder) has been deprived of the benefits conferred upon it by the Option and is losing or will lose valuable business opportunities if NPS and Postorivo are not promptly required to comply with the Option. Accordingly, by this counterclaim, KEE Action Sports seeks relief in the form of (a) a declaration of its rights under the Option and (b) mandatory injunctive relief requiring

¹ The nomenclature used in this Counterclaim is the same as that used in the APA and by the KEE Action Sports entities in their indemnification complaint originally filed in the Delaware Superior Court but now consolidated with this action.

that NPS and Postorivo promptly perform under the Option.

The Parties.

2. Counterclaim Plaintiff KEE Action Sports, LLC is a Delaware limited liability company with a principal place of business at 570 Mantua Blvd., Sewell, New Jersey. KEE Action Sports, LLC formerly was known as “AJ Intermediate Holdings, LLC”, which changed its name by Certificate of Amendment filed with the Delaware Secretary of State on February 2, 2007.

3. Counterclaim Plaintiff KEE Action Sports Holdings, Inc. is a Delaware corporation with a principal place of business at 570 Mantua Blvd., Sewell, New Jersey. It is the sole member of KEE Action Sports, LLC. KEE Action Sports Holdings, Inc. formerly was known as “AJ Acquisition Holdings, Inc.”, which changed its name by Certificate of Amendment filed with the Delaware Secretary of State on February 2, 2007.

4. Counterclaim Defendant Postorivo is an individual residing at 329 Breakneck Road, Sewell, New Jersey. Postorivo was and is the President, CEO and sole stockholder of NPS, a Delaware corporation. Postorivo is sued in his individual capacity and in his capacity as President, CEO and sole stockholder of NPS.

5. Counterclaim Defendant NPS, now known as PBS Holding Group, Inc., is a Delaware corporation. Upon information and belief, NPS is controlled exclusively by its President, CEO and sole shareholder, Postorivo.

The Transaction.

6. Under the terms of the APA, KEE Action Sports and two other entities acquired substantially all of the assets of NPS, Paintball 2 X-tremes, Inc. (now known as PBS Holding Group X-tremes, Inc.), Empire Sports, LLC (now known as PBS Holding Group 1, LLC), and Kings View Associates Limited. Postorivo was the founder, sole stockholder, President and CEO of these companies, which sold or distributed products in the paintball industry.

7. The Transaction presented a significant upside for Postorivo in that NPS was, at the time of the Transaction, experiencing financial pressure and operating with a significant debt burden. As a result of its financial difficulties, NPS was in default on a loan facility it maintained with PNC Bank. The loan facility had approximately \$19 million outstanding and was personally guaranteed by Postorivo. Had the Transaction not been consummated, and given the financial performance and future prospects of the NPS businesses at the time, PNC Bank reasonably could have called the loan extended to NPS and exercised its guarantee provided by Postorivo.

8. In addition to releasing Postorivo from approximately \$19 million in personal guaranty obligations, Postorivo also received other significant financial benefits, including:

- approximately \$10 million in gross proceeds in connection with the sale of the NPS Corporate Headquarters to Spirit Finance Corporation (which in turn leased the building to KEE Action Sports I, LLC);

- 10% of the fully diluted common stock of KEE Action Sports Holdings, Inc. (which was believed to have significant future value) and the right to be assigned \$5 million in junior preferred stock; and
- employment as President of the entity that acquired substantially all of the assets of NPS under a five-year contract providing an annual salary of not less than \$400,000, an opportunity to earn an annual incentive bonus equal to 125% of base salary and certain other benefits.

9. Additionally, the Transaction consideration included a non-revolving line of credit up to an aggregate principal amount of \$500,000 (the entire amount of which was drawn in December 2006), the sole purpose of which was to fund NPS' prosecution of the Procaps Litigation. This benefited Postorivo because the Procaps Litigation remained a significant asset of NPS, of which Postorivo was and is the sole shareholder.

10. Hand in hand with the credit facility, KEE Action Sports LLC received an Option to purchase all of NPS' rights in and to any settlement, judgment or arbitrator's award with respect to the Procaps Litigation. In connection with the Option, the APA provides that "NPS shall promptly forward to [KEE Action Sports LLC] all filings served or made by any party to the Procaps Litigation and all other information relating to the Procaps Litigation that is reasonably requested by [KEE Action Sports LLC] . . ." (APA, Section 1.6(e)). The APA also provided that "the Sellers shall not assign or otherwise encumber the Procaps Litigation Proceeds, nor take any other action that could impair the rights of [KEE Action Sports LLC] under this Section 1.6 without the prior written

consent of [KEE Action Sports LLC], which it may withhold in its sole discretion.” *Id.*, Section 1.6(d).

The Procaps Litigation.

11. The Procaps Litigation was the only potentially significant asset retained by NPS as an Excluded Asset under Section 1.2(e) of the APA. Section 1.2(e) expressly conditions NPS’ interest in the Procaps Litigation on the Option described in Section 1.6 of the APA.

12. The Procaps Litigation² in fact involves two actions, one an arbitration proceeding initiated by NPS against a Canadian limited partnership called Paintball, L.P. (“Paintball”) before the International Centre for Dispute Resolution of the American Arbitration Association (AAA). The arbitration charged that Paintball had wrongfully terminated a series of lucrative distribution contracts granting NPS the exclusive right to sell throughout the United States and Europe certain paintballs and goggles supplied by Paintball.

13. The \$9.6 million arbitration award at issue in this counterclaim arises from that arbitration.

The Option.

14. The Option was and is a very important component of the Transaction, and plays a key role in the Buyers’ post-Transaction business plan. The purpose of the

² The Procaps Litigation is defined in the APA at Section 1.3(b)(viii) as “(A) National Paintball Supply, Inc. v. Paintball, L.P., AAA No.: 50 181 T 00252 05; and (B) National Paintball Supply, Inc. v. Imperial Capital Corporation (U.S.D.C. for the District of New Jersey) Civil Action No. 1:06-cv-1544 (JBS).” Procaps, Paintball, L.P. and Imperial Capital Corporation are affiliated entities.

Option from the Buyers' point of view is to facilitate the acquisition of the Procaps business before Procaps – which, upon information and belief, is in dire financial straights – goes into bankruptcy. Timing is critical: if the Buyers are prevented from executing on this plan vis-à-vis the Option prior to Procaps going into bankruptcy, any acquisition of the Procaps business will be complicated or conceivably could be prevented altogether by the constraints and limitations presented by bankruptcy and, in particular, Procaps' creditors.

15. Under the APA, Plaintiff KEE Action Sports, LLC has the Option to purchase, or cause one or more of its subsidiaries to purchase, all of NPS' rights in and to any Procaps Settlement or Procaps Judgment (as those terms are defined therein) for a purchase price equal to the Procaps fair market value.³ (APA, Section 1.6(a).) "Fair market value" is determined by a process set out in the APA, which is described separately below.

16. The Option must be exercised by written notice to NPS not later than 90 calendar days after the entry of "any" full, final and non-appealable judgment on or

³ The APA describes the Option as follows:

(a) NPS hereby grants to Buyer Parent [KEE Action Sports, LLC] the option, exercisable by written notice to NPS (the "Exercise Notice") not later than (i) 90 calendar days after the entry of any full, final and non-appealable judgment on or arbitrator's award in respect of the Procaps Litigation (a "Procaps Judgment") or (ii) 30 calendar days after a binding written agreement among the parties to the Procaps Litigation to settle the Procaps Litigation (a "Procaps Agreement" and, together with any Procaps Judgment, a "Procaps Settlement"), to purchase (or to cause one or more of its subsidiaries to purchase) all of NPS's rights in and to the Procaps Settlement for a purchase price equal to the Procaps FMV (as defined below). NPS shall have a period of 60 calendar days following any Procaps Judgment to negotiate a Procaps Settlement; provided, however, that NPS shall not enter into any Procaps Settlement unless it shall have first received the written consent of Buyer Parent to any terms of such Procaps Settlement providing for any non-cash consideration or performance by any party thereto.

(APA § 1.6 (a).)

arbitrator's award in the Procaps Litigation or 30 calendar days after a binding written agreement among the parties to settle the Procaps Litigation. (*Id.*) (emphasis added).

17. NPS also has 60 calendar days following any Procaps Judgment to negotiate a Procaps Settlement; however, it cannot enter into any such Settlement without first receiving written consent of KEE Action Sports LLC to any terms of such Settlement that provides for any non-cash consideration or performance by any party thereto. (*Id.*)

18. NPS is required to provide to KEE Action Sports, LLC "all filings served or made by any party to the Procaps Litigation and all other information relating to the Procaps Litigation" that is reasonably requested by KEE Action Sports, LLC, subject to reasonable restrictions required to preserve NPS' attorney-client privilege. *Id.* at Section 1.6(e.)

19. None of the Sellers are permitted to assign or otherwise encumber the Procaps Litigation Proceeds, nor take any action that could impair the rights of KEE Action Sports, LLC without its prior written consent, which it may withhold at its sole discretion. (*Id.* at Section 1.6(d).)

20. The Sellers – including Postorivo and NPS – acknowledged in signing the APA that irreparable damage would occur in the event that any provisions of Section 1.6(d) were not performed in accordance with their specific terms or otherwise breached, and that an aggrieved party "shall be entitled to injunctive relieve to prevent breaches of these provisions and to enforce specifically the terms hereof." (*Id.* at Section 1.6(d)).

Determination of “Fair Market Value” For Purposes of the Option.

21. If NPS disputes KEE Action Sports, LLC’s determination of the fair market value of the arbitration award, the APA requires a prompt response:

In the event the Stockholder disputes the value determined by the board of directors of the Buyer Parent, the Stockholder shall provide written notice to the Buyer Parent (“Appraisal Notice”) within 5 business days of the Stockholder’s receipt of the Exercise Notice . . .

(APA § 1.6 (b).)

22. Following the Appraisal Notice, the APA requires that NPS and KEE Action Sports, LLC “work together . . . in good faith to agree upon a[n] independent third party appraiser to engage for the purpose of determining the Procaps FMV.” (APA

§ 1.6(b).)

23. The parties have ten days from the Appraisal Notice to agree on a single appraiser, after which the APA provides a mechanism for breaking the deadlock:

In the event the parties are unable to agree upon an independent third party appraiser within ten business days of the Buyer Parent’s receipt of the Appraisal Notice, Stockholder, on the one hand, and Buyers, on the other, shall each designate a nationally recognized appraisal firm with experience in the valuation of businesses, each of which shall be independent of both the Stockholder and the Buyers, and the firms so selected shall select a third such independent firm, all of such appraisers shall determine the Procaps FMV, and the average of such appraisals shall be deemed to be the Procaps FMV.

(APA § 1.6 (b).)

24. The Option provisions of the APA require a prompt closing following an Exercise Notice:

(c) The closing of any exercise of the option contemplated by this Section 1.6 shall occur on a date to be agreed upon by NPS and the Buyer Parent that shall not be more than fifteen business days nor less

than three business days after the date of the Exercise Notice.

(APA § 1.6 (c).)

NPS' and Postorivo's Ongoing Violation of the Option.

25. On April 27, 2007, the arbitrator in the Procaps Litigation issued an award in favor of NPS and against Procaps in the approximate amount of \$9.6 million.

26. On April 30, 2007, counsel for KEE Action Sports, acting only on information and belief, demanded in writing that NPS comply with the disclosure requirements of Section 1.6(e) of the APA and provide a copy of any decision or arbitration award in the Procaps Litigation. A true and correct copy of the April 30 letter is attached hereto as Exhibit A. Neither NPS nor Postorivo responded to the April 30 letter.

27. E-mails were sent from counsel for KEE Action Sports to counsel for NPS and Postorivo on May 9 and May 14, 2007 (the latter communication also being sent by mail) again requesting information about the rumored arbitration award, and advising that the continued failure to provide such information was a breach of the APA. Neither NPS nor Postorivo responded to the May 9 or May 14 requests for information.

28. On May 15, 2007, a letter was sent by counsel for KEE Action Sports to counsel for NPS and Postorivo warning that if any effort was made to place money, assets, consideration or other value obtained from the Procaps Litigation beyond the reach of KEE Action Sports, that action would be deemed an improper or fraudulent conveyance, or illegal dividend or payment. A true and correct copy of the May 15, 2007 letter is attached hereto as Exhibit B.

29. Notwithstanding the requirements of APA Section 1.6(e) and counsel's repeated requests for information, counsel for NPS and Postorivo did not provide the arbitrator's award until May 24, 2007. A true and correct copy of the May 24, 2007 transmittal letter is attached as Exhibit C.

30. On May 31, 2007, counsel for KEE Action Sports sent a letter to counsel for NPS and Postorivo requesting the latter's agreement to provide prompt information (within 24 hours) of any settlement of the Procaps Litigation award. A true and correct copy of the May 31, 2007 letter is attached hereto as Exhibit D. Neither NPS nor Postorivo responded to the May 31, 2007 letter, nor have they otherwise agreed to provide prompt information regarding any settlement.

31. Before the 60-day negotiation period ended, by letter dated June 20, 2007, counsel for NPS and Postorivo preemptively notified KEE Action Sports that they will refuse to honor their contractual obligations under the Option provisions of the APA, ostensibly because, in the Sellers' view, the Option "has not begun to run" due to the fact that other litigation involving Procaps has not yet been resolved. A true and correct copy of the June 20, 2007 letter is attached hereto as Exhibit E.

32. NPS' and Postorivo's contention that the Option "has not begun to run" is contrary to the plain terms of the APA and is otherwise unsupported. APA Section 1.6(a) provides that the Option can be exercised with respect to "any" arbitration award. Further, the provision is disjunctive, in that it provides an Option as to *either* an arbitrator's award *or* a full, final and non-appealable judgment. The April 27, 2007 arbitration award triggered KEE Action Sports, LLC's Option, which Option was timely

and properly exercised.

33. On June 27, 2007, as required by the APA, KEE Action Sports delivered a written Exercise Notice to counsel for Postorivo and NPS. A true and correct copy of the Exercise Notice is attached hereto as Exhibit F. The Exercise Notice complied with the APA, which requires:

The Exercise Notice shall state the Procaps FMV [fair market value], as determined by the board of directors of the Buyer Parent, together with a brief description of the factors considered by the board of the Buyer Parent in making its determination.

(APA § 1.6 (b).)

34. NPS and Postorivo rejected the Exercise Notice by letter dated June 29, 2007, again on the premise that the Option had not yet begun to run and the value determined by the board was too low. A true and correct copy of the June 29, 2007 letter is attached hereto as Exhibit G.

35. KEE Action Sports delivered the Exercise Notice on June 27, 2007. The closing of the exercise of the Option should occur no later than 15 business days from that date, that is, by July 19, 2007. NPS and Postorivo's conduct has placed that deadline in serious doubt.

36. NPS and Postorivo's breaches of their contractual duties of disclosure with regard to the Procaps Litigation and their possible settlement threaten KEE Action Sports with irreparable loss of the benefit of their bargain. In light of NPS and Postorivo's effective repudiation of the Option provisions of the APA, unless the Court intervenes, KEE Action Sports likely will be deprived of its rights to the fair market value of the Procaps arbitration award and the prompt exercise of the Option. Given NPS and

Postorivo's prior conduct, the potential value of the Procaps arbitrator's award is likely to be irretrievably lost and KEE Action Sports irreparably harmed. Should Procaps institute bankruptcy proceedings before the exercise of the Option is closed, KEE Action Sports will not be in a position to assert its rights as a creditor. Should Procaps institute bankruptcy proceedings before the preference period runs, the award may become a mere unsecured liability.

COUNT I
DECLARATORY JUDGMENT

37. KEE Action Sports incorporates by reference the allegations in the paragraphs above.

38. The APA is a lawful and enforceable contract.

39. The APA provides that KEE Action Sports, LLC may, within 90 days after the entry of any arbitrator's award or final judgment in the Procaps Litigation, exercise the Option to purchase all of NPS' rights in and to the award or judgment.

40. The Option became exercisable as to the April 27, 2007 arbitrator's award in the amount of \$9.6 million in *National Paintball Supply, Inc. v. Paintball, L.P.*, AAA No.: 50 181 T 00252 05, and was duly and validly exercised by KEE Action Sports, on June 27, 2007.

41. KEE Action Sports is entitled to an Order declaring that the Option has been duly and validly exercised with respect to the arbitrator's award in *National Paintball Supply, Inc. v. Paintball, L.P.*, AAA No.: 50 181 T 00252 05.

COUNT II
MANDATORY INJUNCTIVE RELIEF

42. KEE Action Sports incorporate by reference the allegations in the paragraphs above.

43. The APA is a lawful and enforceable contract.

44. Under Section 1.6 of the APA, NPS and is obligated to forward to KEE Action Sports, LLC all filings and all information reasonably sought relating to the Procaps Litigation.

45. KEE Action Sports has requested information relating to the Procaps Litigation and demanded that NPS and Postorivo honor the obligation to provide filings and other information.

46. NPS and Postorivo have breached the APA by refusing to provide KEE Action Sports, LLC with information relating to the Procaps Litigation, including information regarding negotiations for the compromise and settlement of the arbitrator's award in *National Paintball Supply, Inc. v. Paintball, L.P.*, AAA No.: 50 181 T 00252 05. NPS and Postorivo's breaches threaten to imminently and irreparably damage or destroy both the cash and non-cash value of the arbitrator's award and of KEE Action Sports' Option.

47. KEE Action Sports and NPS and Postorivo share a common interest in the Procaps Litigation and the settlement and compromise of the Procaps arbitration award. Because of their common interest, no restrictions on information disclosed to KEE Action Sports are required to preserve the attorney-client privilege.

48. Furthermore, the parties are engaged in costly litigation in this and other

jurisdictions and KEE Action Sports Holdings has asserted claims against the Sellers for substantial money damages. The likelihood that NPS and Postorivo will impair or dispose of cash proceeds from the Procaps Litigation, or that they will unduly compromise the cash or non-cash value of the arbitration award, threatens imminent and irreparable harm to KEE Action Sports. Any cash proceeds should be preserved until the parties' respective rights are determined, including the Buyers' right to indemnification as alleged in this matter. Any potential non-cash proceeds or benefits are likely to be dissipated or lost if KEE Action Sports' rights are not protected.

49. The APA requires NPS to work in good faith with KEE Action Sports to agree upon an independent third-party appraiser to engage for the purpose of determining the fair market value of the Procaps arbitration award and, if after ten days the parties are in good faith unable to agree, to designate a nationally recognized appraisal firm with experience in the valuation of businesses, independent of both Postorivo and KEE Action Sports, to take part in the process of determining the fair market value of the Procaps arbitration award. NPS and Postorivo deny their obligations to cooperate in that process.

50. KEE Action Sports has no adequate remedy at law. In addition, under Section 1.6(d) of the APA, NPS and Postorivo have consented to injunctive relief to enforce the Option and specific performance to address its breaches of the APA.

51. KEE Action Sports is therefore entitled to an Order compelling NPS and Postorivo to provide all information in their possession, custody or control reasonably requested at any time by KEE Action Sports under the APA or that is otherwise material to the Procaps Litigation or the Procaps arbitration award, without regard to issues of

attorney-client privilege.

52. KEE Action Sports also is entitled to an Order prohibiting NPS and Postorivo from compromising, settling or accepting any proceeds from the Procaps arbitration award or otherwise from the Procaps Litigation without KEE Action Sports' consent.

53. KEE Action Sports is further entitled to an Order requiring NPS and Postorivo to place any proceeds that have been received by them in connection with the Procaps arbitration award or otherwise from the Procaps Litigation in escrow until the closing of KEE Action Sports.

54. Finally, KEE Action Sports is entitled to an Order requiring the Sellers to cooperate in good faith and without delay in the process provided for in the APA for determining the fair market value of the Procaps arbitration award.

WHEREFORE, Counterclaim Plaintiffs KEE Action Sports Holdings, Inc. and KEE Action Sports, LLC respectfully request that the Court enter an Order granting judgment in their favor and against the Sellers and:

A. Declaring that KEE Action Sports, LLC has duly and validly exercised the Option with respect to the arbitrator's award in *National Paintball Supply, Inc. v. Paintball, L.P.*, AAA No.: 50 181 T 00252 05;

B. Granting temporary, preliminary and permanent injunctive relief compelling NPS and Postorivo to promptly provide to KEE Action Sports all information and filings in their possession, custody or control reasonably requested at any time by KEE Action Sports under Section 1.6 of the APA, or that is otherwise material to the

Procaps Litigation or the Procaps arbitration award, without regard to issues of attorney-client privilege;

C. Enjoining NPS and Postorivo from compromising, settling or accepting any proceeds from the Procaps arbitration award or otherwise from the Procaps Litigation without the consent of KEE Action Sports;

D. Ordering NPS and Postorivo to place in escrow any proceeds that have been received by them or any affiliated entity in connection with the Procaps arbitration award or otherwise from the Procaps Litigation until the closing of KEE Action Sports' exercise of the Option;

E. Ordering NPS and Postorivo to cooperate in good faith and without delay in the process provided by the APA for determining the fair market value of the Procaps arbitration award;

- F. Awarding KEE Action Sports the costs of this consolidated action, including attorneys' fees; and
- G. Granting such other and further relief as the Court deems just and proper.

**MONTGOMERY, McCRACKEN, WALKER
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