

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

IN RE THE WALT DISNEY COMPANY ) CONSOLIDATED  
 DERIVATIVE LITIGATION ) C.A. No. 15452

102

ANSWER

Defendant Michael Mr. Ovitz, for himself alone, answers plaintiffs' complaint as follows:

1. Mr. Ovitz lacks sufficient information and belief to admit or deny the allegations of paragraph 1 and on that basis denies them.
  
2. Mr. Ovitz admits that plaintiffs bring this action derivatively (but not that they have a right to do so). Mr. Ovitz also admits that he served as President of Disney for 15 months, not 14, that his employment agreement with Disney (the "OEA") was adopted by Disney, and that he received a "Non-Fault Termination" upon leaving Disney, which entitled him to certain severance benefits. Mr. Ovitz denies each and every remaining allegation of paragraph 2.
  
3. Mr. Ovitz admits that Michael Eisner is the Chief Executive Officer of Disney and that Mr. Eisner was a long-time personal friend of Mr. Ovitz when Mr. Ovitz started at Disney. Mr. Ovitz admits that Irwin Russell was Chairman of the Compensation Committee of the Disney Board at that time. Based on information and belief, Mr. Ovitz admits that Mr. Russell and Mr. Eisner were friends. Mr. Ovitz lacks sufficient information and belief to admit or deny the remaining allegations in this paragraph, and on that basis denies them.
  
4. Paragraph 4 contains legal conclusions that require no response. To the extent a response is required, Mr. Ovitz admits that the Disney Board appointed him as President, and he

lacks sufficient information and belief to admit or deny the remaining allegations of paragraph 4 and on that basis denies them.

5. Paragraph 5 contains legal conclusions that require no response. Mr. Ovitz lacks sufficient information and belief to admit or deny the remaining allegations of paragraph 5 and on that basis denies them.

6. Paragraph 6 contains legal conclusions that require no response. To the extent a response is required, Mr. Ovitz lacks sufficient information and belief to admit or deny the allegations regarding the Disney directors and on that basis denies them. Mr. Ovitz denies each and every remaining allegation in paragraph 6.

7. Mr. Ovitz lacks sufficient information and belief to admit or deny the allegations of paragraph 7 and on that basis denies them.

8. Mr. Ovitz admits that he started serving as Disney's President on October 1, 1995, and that the OEA was dated as of that date, although it was not executed until on or about December 12, 1995. Mr. Ovitz denies each and every remaining allegation.

9. Paragraph 9 contains legal conclusions that require no response. To the extent that a response is required, Mr. Ovitz admits that he was neither an officer or director of Disney prior to October 1, 1995. Mr. Ovitz admits that he was an officer of Disney at the time the OEA was actually executed, but Mr. Ovitz denies that he was a director of Disney at that time. Mr. Ovitz denies each and every remaining allegation.

10. Mr. Ovitz admits that, at one point in time, he negotiated with Sony regarding a position as a senior executive. Mr. Ovitz also admits that he sent a note to Mr. Eisner on or

about October 8, 1996 in which he sought permission from Disney to explore other opportunities. Mr. Ovitz denies each and every remaining allegation.

11. Paragraph 11 mostly purports to quote portions of certain notes and requires no response as the documents speak for themselves, and Mr. Ovitz denies the allegations in this paragraph of the complaint to the extent that they purport to quote inaccurately or incompletely from the documents. Mr. Ovitz denies the remaining allegations of paragraph 11.

12. Paragraph 12 contains legal conclusions that require no response. To the extent a response is required, Mr. Ovitz denies the allegations of paragraph 12.

13. Paragraph 13 contains legal conclusions that require no response. To the extent a response is required, Mr. Ovitz lacks sufficient information and belief to admit or deny the allegations of paragraph 12 relating to the actions or knowledge of Disney's Board and on that basis denies them. Mr. Ovitz denies each and every other allegation in this paragraph.

14. Mr. Ovitz lacks sufficient information and belief to admit or deny the allegations of paragraph 14 and on that basis denies them.

15. Mr. Ovitz admits the allegations of paragraph 15.

16. Mr. Ovitz admits the allegations of paragraph 16.

17. Mr. Ovitz admits the allegations of paragraph 17(a). Mr. Ovitz admits that he founded and served as Chairman of Creative Artists Agency, a firm of talent agents, prior to working at Disney and that he had not previously served as an officer of a publicly-traded

company. Mr. Ovitz denies each and every remaining allegation of paragraph 17 and its subparagraphs.

18. Mr. Ovitz admits the title Stephen Bollenbach held at Disney. Mr. Ovitz lacks sufficient information and belief to admit or deny the allegations regarding the tenure of Mr. Bollenbach's service at Disney, and denies them on that basis.

19. Mr. Ovitz admits the allegations of paragraph 19.

20. Mr. Ovitz admits the allegations of paragraph 20.

21. Based on information and belief, Mr. Ovitz admits the allegations of paragraph 21.

22. Paragraph 22 contains a definition that requires no response.

23. Paragraph 23 contains a definition that requires no response.

24. Paragraph 24 contains legal conclusions that require no response.

25. Mr. Ovitz admits the allegations of paragraph 25.

26. Mr. Ovitz admits that he headed CAA prior to coming to Disney. Mr. Ovitz denies each and every remaining allegation of paragraph 26.

27. Based on information and belief, Mr. Ovitz admits that Frank Wells died in 1994 and that Jeffrey Katzenberg and Richard Frank left Disney in 1994 and 1995, respectively. Mr. Ovitz lacks sufficient information and belief to admit or deny the remaining allegations and denies them on that basis.

28. Paragraph 28 only contains legal and factual conclusions that require no response.

29. Mr. Ovitz admits that he and his wife had been friends with Mr. Eisner and his wife for many years before Mr. Ovitz came to Disney. Mr. Ovitz admits that Eisner sent him a letter in October 1996 in which Eisner stated it was important for the two to keep their friendship intact, and that Mr. Ovitz sent a letter to Eisner in which he referred to Mr. Eisner as his best friend. Mr. Ovitz denies each and every remaining allegation of paragraph 29.

30. Mr. Ovitz lacks sufficient information and belief to admit or deny the allegations of paragraph 30 and on that basis denies them.

31. Mr. Ovitz admits that Eisner sent him a letter on or about August 14, 1995 that set forth the proposed principal terms for his employment with Disney. Mr. Ovitz lacks sufficient information and belief to admit or deny the remaining allegations of paragraph 31 and on that basis denies them.

32. Mr. Ovitz admits that, in the letter referenced in ¶31, Mr. Eisner stated that Mr. Ovitz's hiring was subject to the formal approval of Disney's Board and its Compensation Committee. Mr. Ovitz lacks sufficient information and belief to admit or deny the remaining allegations of paragraph 32 and on that basis denies them.

33. Mr. Ovitz lacks sufficient information and belief to admit or deny the allegations of paragraph 33 and on that basis denies them.

34. Mr. Ovitz lacks sufficient information and belief to admit or deny the allegations of paragraph 34 and on that basis denies them.

35. Mr. Ovitz lacks sufficient information and belief to admit or deny the allegations of paragraph 35 and on that basis denies them.

36. Based on information and belief, Mr. Ovitz admits that the Compensation Committee for Disney met on or about September 26, 1995, and that its members at the time consisted of its Chairman, Defendant Russell, and Defendants Lozano, Poitier, and Watson. Mr. Ovitz lacks sufficient information and belief to admit or deny the allegations as to the substance of what was discussed at that meeting, and on that basis denies those allegations. Mr. Ovitz denies each and every remaining allegation in paragraph 36.

37. Mr. Ovitz lacks sufficient information and belief to admit or deny the allegations of paragraph 37 and on that basis denies them.

38. Based on information and belief, Mr. Ovitz admits that the minutes of Disney's Compensation Committee Meeting for September 26, 1995 were produced to the plaintiff as described in paragraph 38. Mr. Ovitz lacks sufficient information and belief to admit or deny the amount of time the Committee spent on each matter recorded in the minutes and denies such allegations on that basis.

39. Mr. Ovitz lacks sufficient information and belief to admit or deny the amount of time Disney's Compensation Committee spent on each matter recorded in the minutes of its September 26, 1995 meeting and denies such allegations on that basis. Mr. Ovitz denies each and every remaining allegation in paragraph 39.

40. Mr. Ovitz admits that a draft version of the OEA was prepared by Disney and sent to Mr. Ovitz's lawyers on September 23, 1995. Mr. Ovitz lacks sufficient information and belief to admit or deny the remaining allegations of paragraph 40 and on that basis denies them.

41. Based on information and belief, Mr. Ovitz admits that Disney's Compensation Committee received a summary of the terms of the OEA at or prior to its September 26, 1995 meeting and that this summary indicates that Mr. Ovitz was to receive options to purchase five million shares of Disney stock but did not explicitly state the option price. Mr. Ovitz denies each and every remaining allegation in paragraph 41.

42. Mr. Ovitz lacks sufficient information and belief to admit or deny the allegations of paragraph 42 and on that basis denies them.

43. Mr. Ovitz lacks sufficient information and belief to admit or deny the allegations of paragraph 43 and on that basis denies them.

44. Mr. Ovitz lacks sufficient information and belief to admit or deny the allegations of paragraph 44 and on that basis denies them.

45. Mr. Ovitz lacks sufficient information and belief to admit or deny the allegations of paragraph 45 and on that basis denies them.

46. Based on information and belief, Mr. Ovitz admits that Disney's Compensation Committee approved the terms of the OEA at its September 26, 1995 meeting. Mr. Ovitz also admits, based on information and belief, that the Compensation Committee was informed that further negotiations would take place and that the details of his stock option grant would be delayed until the final contract details were resolved. Based on information and belief, Mr. Ovitz admits that the resolution approved the terms and conditions of the OEA "subject to such reasonable further negotiations within the framework of the terms and conditions described in

Exhibit C . . . as may be approved by the Chief Executive Officer of the Walt Disney Company.”  
Mr. Ovitz denies each and every remaining allegation in paragraph 46.

47. Based on information and belief, Mr. Ovitz admits that a meeting of Disney’s Board took place on September 26, 1995, that elected Mr. Ovitz to become Disney’s president effective October 1, 1995. Mr. Ovitz lacks sufficient information and belief to admit or deny the remaining allegations of paragraph 47 and on that basis denies them.

48. Based on information and belief, Mr. Ovitz denies that the discussion of Mr. Russell’s compensation in the September 26, 1995 Board minutes comprised one page of the minutes. Based on information and belief, Mr. Ovitz admits the remaining allegations of paragraph 48.

49. Mr. Ovitz lacks sufficient information and belief to admit or deny the allegations of paragraph 49 and on that basis denies them.

50. Mr. Ovitz lacks sufficient information and belief to admit or deny the allegations of paragraph 50 and on that basis denies them.

51. Mr. Ovitz admits that he began service as Disney’s President on October 1, 1995 and that the OEA is dated as of that date. Mr. Ovitz admits the OEA was not executed on that date. Mr. Ovitz denies each and every remaining allegation in paragraph 46.

52. Mr. Ovitz admits that drafts of the OEA dated October 3, 1995, October 10, 1995, October 16, 1995, and October 20, 1995 were circulated between his and Disney’s lawyers. Mr. Ovitz admits that the OEA was executed on of about December 12, 1995. Mr. Ovitz also admits that the OEA was expressly between himself and “The Walt Disney Corporation, a Delaware Corporation.” Mr. Ovitz denies each and every remaining allegation in paragraph 52.



53. Based on information and belief, Mr. Ovitz admits that the Stock Option Agreement he received in connection with the OEA was executed by Mr. Eisner on April 2, 1996. Mr. Ovitz admits that he countersigned the agreement on November 15, 1996. Mr. Ovitz denies each and every remaining allegation in paragraph 53.

54. Mr. Ovitz denies each and every allegation of paragraph 54.

55. Mr. Ovitz admits that the exercise price for the stock options he received as part of the OEA was set to equal the market price as of October 16, 1995. Mr. Ovitz denies each and every remaining allegation in paragraph 55.

56. Based on information and belief, Mr. Ovitz admits the allegations of paragraph 56.

57. Mr. Ovitz lacks sufficient information and belief to admit or deny the allegations of paragraph 57 and on that basis denies them.

58. Mr. Ovitz denies each and every allegation of paragraph 58.

59. Mr. Ovitz admits that the OEA had a five-year term that ran from October 1, 1995 through September 30, 2000. Mr. Ovitz admits that the text of the agreement called for him to devote his full time and best efforts to Disney, subject to certain exceptions. Mr. Ovitz admits that, under the OEA, his annual salary was set at \$1 million, he was eligible for an annual bonus of unspecified amount, and he was entitled to receive three million "A" options if he served the full-term of the contract, at an exercise price set to Disney's stock price on October 16, 1995. Mr. Ovitz denies each and every remaining allegation in paragraph 59.

60. Mr. Ovitz denies each and every allegation of paragraph 60.

61. Mr. Ovitz denies each and every allegation of paragraph 61.

62. Mr. Ovitz admits that the size of his annual bonus was uncertain under the OEA. Mr. Ovitz admits that the OEA required a lump sum payment in the amount of \$7.5 million, discounted at a rate connected to Disney's borrowing costs, be made to him for each year remaining on his contract in case of a Non-Fault Termination. Mr. Ovitz denies each and every remaining allegation in paragraph 62.

63. Mr. Ovitz admits the allegations of paragraph 63.

64. Mr. Ovitz admits that, under the OEA, if he were to receive a Non-Fault Termination, he would receive as many A Options as he would if he served the full duration of the OEA. Mr. Ovitz denies each and every remaining allegation in paragraph 64.

65. Mr. Ovitz denies each and every allegation in paragraph 65.

66. Mr. Ovitz admits that the OEA provided for him to receive two million additional options if, at the end of the initial term of the OEA, he signed a new contract with Disney. Mr. Ovitz denies each and every remaining allegation in paragraph 66.

67. Mr. Ovitz denies each and every allegation in paragraph 67.

68. Mr. Ovitz denies that he had a financial incentive to leave Disney as soon as possible after entering his contract there. Mr. Ovitz lacks sufficient information and belief to admit or deny the remaining allegations of paragraph 68 and on that basis denies them.

69. Mr. Ovitz denies each and every allegation in paragraph 69.

70. Mr. Ovitz lacks sufficient information and belief to admit or deny the allegations of paragraph 70 and on that basis denies them.

71. Mr. Ovitz lacks sufficient information and belief to admit or deny the allegations of paragraph 71 and on that basis denies them.

72. Mr. Ovitz lacks information and belief sufficient to admit or deny the allegations of paragraph 72 relating to the reasons that Mr. Bollenbach left Disney. Mr. Ovitz further states that the document at issue speaks for itself, and Mr. Ovitz denies the allegations in this paragraph of the complaint to the extent that it purports to quote inaccurately or incompletely from any quoted documents. Mr. Ovitz denies each of the remaining allegations of paragraph 72.

73. Mr. Ovitz lacks sufficient information and belief to admit or deny the allegations of paragraph 73 and on that basis denies them.

74. Mr. Ovitz lacks sufficient information and belief to admit or deny whether he made the comment attributed to him in this paragraph, and on that basis denies such allegations. Mr. Ovitz denies each and every remaining allegation in paragraph 74.

75. Mr. Ovitz lacks sufficient information and belief to admit or deny the allegations of paragraph 75 referring to the Wall Street Journal article and on that basis denies them. Mr. Ovitz denies each and every remaining allegation in paragraph 75.

76. Mr. Ovitz lacks sufficient information and belief to admit or deny the allegations of paragraph 76 and on that basis denies them.

77. Mr. Ovitz admits that he wrote the note quoted in paragraph 77. Mr. Ovitz also admits that he would not have received the Non-Fault Payment if he voluntarily resigned from Disney without Disney's permission. Mr. Ovitz denies each and every remaining allegation in paragraph 77.

78. Mr. Ovitz denies each and every allegation in paragraph 78.

79. Mr. Ovitz denies each and every allegation in paragraph 79.

80. Based on information and belief, Mr. Ovitz admits that he received the note quoted in paragraph 80. However, Plaintiffs' quotation of the note is misleading by using ellipses in place of the following text: "[achieving a win-win situation and keeping our friendship together] will be assured for both of us if we remain honest and reasonable and direct."

81. Mr. Ovitz denies each and every allegation in paragraph 81.

82. Mr. Ovitz admits that he received a letter from Mr. Eisner on or about October 16, 1996 in which Mr. Eisner included a note written to Mr. Idei of Sony. Mr. Ovitz admits that the statement "I am sure we are now both protected 'every way to and from Sunday,'" was part of the letter from Eisner, but Plaintiffs' cite the text out of context and in a misleading fashion. Mr. Ovitz denies each and every remaining allegation in paragraph 82.

83. Mr. Ovitz admits that he conducted negotiations with Sony and that he negotiated with Mr. Idei and other high ranking Sony officials, but Mr. Ovitz lacks sufficient information and belief to admit or deny the remaining allegations in paragraph 83.

84. Mr. Ovitz admits that he conducted negotiations with Sony regarding a leadership position in its entertainment business. Mr. Ovitz lacks sufficient information and belief to admit or deny the allegations regarding documents from Sony and Rosenman & Colin, and on that basis denies them. Mr. Ovitz denies each and every remaining allegation in paragraph 84.

85. Mr. Ovitz admits that he met with Mr. Eisner and Mr. Litvack, at Mr. Eisner's apartment, on or about December 11, 1996, to finalize the terms of his departure from Disney. Mr. Ovitz also admits that he received a letter dated December 12, 1996 from Mr. Litvack with the terms described in paragraph 85. Mr. Ovitz further admits that his departure from Disney was publicly reported on December 12, 1996. Mr. Ovitz denies each and every remaining allegation in paragraph 85.

86. Mr. Ovitz admits that he received a letter from Mr. Litvack dated December 27, 1996 that superseded the letter Mr. Litvack sent to him on December 12, 1996. Mr. Ovitz denies each and every remaining allegation in paragraph 86.

87. Mr. Ovitz admits the allegations of paragraph 87.

88. Paragraph 88 contains legal conclusions that require no response. To the extent a response is required, Mr. Ovitz lacks sufficient information and belief to admit or deny the allegations of paragraph 88 and on that basis denies them.

89. Paragraph 89 contains legal conclusions that require no response. To the extent a response is required, based on information and belief, Mr. Ovitz admits that the Disney Bylaws include the quoted text in paragraph 89. Mr. Ovitz denies each and every remaining allegation in paragraph 89.

90. Paragraph 90 purports to quote the transcript of an oral argument before the Delaware Supreme Court and requires no response.

91. Mr. Ovitz lacks sufficient information and belief to admit or deny the allegations of paragraph 91 and on that basis denies them.

92. Mr. Ovitz lacks sufficient information and belief to admit or deny the allegations of paragraph 92 and on that basis denies them.

93. Paragraph 93 contains legal conclusions that require no response. To the extent a response is required, Mr. Ovitz lacks sufficient information and belief to admit or deny the allegations of paragraph 93 and on that basis denies them.

94. Paragraph 94 contains legal conclusions that require no response. To the extent a response is required, Mr. Ovitz lacks sufficient information and belief to admit or deny the allegations of paragraph 94 and on that basis denies them.

95. Paragraph 95 contains legal conclusions that require no response. To the extent a response is required, Mr. Ovitz admits that his departure from Disney was publicly reported on December 12, 1996. Mr. Ovitz lacks sufficient information and belief to admit or deny the remaining allegations of paragraph 95 and on that basis denies them.

96. Mr. Ovitz admits that his departure from Disney was changed from January 31, 1997 to December 27, 1996. Mr. Ovitz lacks sufficient information and belief to admit or deny the remaining allegations of paragraph 96 and on that basis denies them.

97. Paragraph 97 contains legal conclusions that require no response. To the extent a response is required, Mr. Ovitz admits that the legal documentation signed on or about December 27, 1996 relating to his Non-Fault Termination included a general release of claims, subject to certain exceptions, by Mr. Ovitz of claims against Disney and, inter alia, its officers and directors. Mr. Ovitz denies each and every remaining allegation of paragraph 97.

98. Paragraph 98 contains legal conclusions that require no response. Mr. Ovitz admits that he was an officer and director of Disney from January 1996 until his departure from Disney on December 27, 1996. Mr. Ovitz denies each and every remaining allegation of paragraph 98.

99. Mr. Ovitz denies each and every allegation of paragraph 99.

100. Paragraph 100 contains legal conclusions that require no response. To the extent a response is required, Mr. Ovitz denies each and every allegation of paragraph 100.

101. Mr. Ovitz admits that his departure from his post as Disney's President was treated as a "Non-Fault Termination," so that his options to purchase three million shares of Disney common stock became immediately exercisable. Mr. Ovitz further admits that the options were priced at the market price of Disney common stock on October 16, 1995. Mr. Ovitz denies each and every remaining allegation of paragraph 101.

102. Mr. Ovitz lacks sufficient information and belief to admit or deny the allegations of paragraph 102 and on that basis denies them.

103. Mr. Ovitz admits that he received a "Contract Termination Payment" and that he received a "Non-Fault Payment" calculated as set forth in paragraph 103. Mr. Ovitz denies each and every remaining allegation of paragraph 103.

104. Mr. Ovitz denies each and every allegation of paragraph 104.

105. Mr. Ovitz denies that the payments to him exceeded \$140 million in value. Mr. Ovitz lacks sufficient information and belief to admit or deny the remaining allegations of paragraph 105 and on that basis denies them.

106A. Paragraph 106A contains legal conclusions that require no response. To the extent a response is required, Mr. Ovitz admits that a majority of the Disney Board members at the time the action was commenced were members of the board during his term of service at Disney. Mr. Ovitz denies each and every remaining allegation of paragraph 106A.

106B. Paragraph 106B contains legal conclusions that require no response. To the extent a response is required, Mr. Ovitz denies each and every allegation of paragraph 106B.

106C. Paragraph 106C contains legal conclusions that require no response. Mr. Ovitz lacks sufficient information and belief to admit or deny the remaining allegations of paragraph 106C and on that basis denies them.

106D. Paragraph 106D contains legal conclusions that require no response. To the extent a response is required, Mr. Ovitz denies each and every allegation of paragraph 106D.

106E. Paragraph 106E contains legal conclusions that require no response. To the extent a response is required, Mr. Ovitz denies each and every allegation of paragraph 106E.

106F. Paragraph 106F contains legal conclusions that require no response. Mr. Ovitz lacks sufficient information and belief to admit or deny the remaining allegations of paragraph 106F and on that basis denies them.



106G. Paragraph 106G contains legal conclusions that require no response. To the extent a response is required, Mr. Ovitz denies each and every allegation of paragraph 106G.

106H. Paragraph 106H contains legal conclusions that require no response. To the extent a response is required, Mr. Ovitz denies each and every allegation of paragraph 106H.

107. Mr. Ovitz repeats and realleges his responses to paragraphs 1 through 106H as if fully set forth herein in response to paragraph 107.

108. Paragraph 108 contains legal conclusions that require no response. To the extent a response is required, Mr. Ovitz lacks sufficient information and belief to admit or deny the remaining allegations of paragraph 108 and on that basis denies them.

109. Paragraph 109 contains legal conclusions that require no response. To the extent a response is required, Mr. Ovitz lacks sufficient information and belief to admit or deny the remaining allegations of paragraph 109 and on that basis denies them.

110. Paragraph 110 contains legal conclusions that require no response. To the extent a response is required, Mr. Ovitz denies each and every allegation of paragraph 110.

111. Paragraph 111 contains legal conclusions that require no response. To the extent a response is required, Mr. Ovitz denies each and every allegation of paragraph 111.

112. Mr. Ovitz repeats and realleges his responses to paragraphs 1 through 111 as if fully set forth herein in response to paragraph 112.

113. Paragraph 113 contains legal conclusions that require no response. To the extent a response is required, Mr. Ovitz denies each and every allegation of paragraph 113.

114. Paragraph 114 contains legal conclusions that require no response. To the extent a response is required, Mr. Ovitz denies each and every allegation of paragraph 114.

115. Mr. Ovitz repeats and realleges his responses to paragraphs 1 through 114 as if fully set forth herein in response to paragraph 115.

116. Paragraph 116 contains legal conclusions that require no response. To the extent a response is required, Mr. Ovitz lacks sufficient information and belief to admit or deny the remaining allegations of paragraph 116 and on that basis denies them.

117. Paragraph 117 contains legal conclusions that require no response. To the extent a response is required, Mr. Ovitz denies each and every allegation of paragraph 117.

118. Paragraph 118 contains legal conclusions that require no response. To the extent a response is required, Mr. Ovitz denies each and every allegation of paragraph 118.

119. Paragraph 119 contains legal conclusions that require no response. To the extent a response is required, Mr. Ovitz denies each and every allegation of paragraph 119.

120. Paragraph 120 contains legal conclusions that require no response. To the extent a response is required, Mr. Ovitz lacks sufficient information and belief to admit or deny the remaining allegations of paragraph 120 and on that basis denies them.

121. Paragraph 121 contains legal conclusions that require no response. To the extent a response is required, Mr. Ovitz denies each and every allegation of paragraph 121.

122. Paragraph 122 contains legal conclusions that require no response. To the extent a response is required, Mr. Ovitz denies each and every allegation of paragraph 122.

## AFFIRMATIVE DEFENSES

1. Plaintiffs have failed to make pre-suit demand upon the Disney Board of Directors as required by Chancery Court Rule 23.1 in order to pursue their claim.

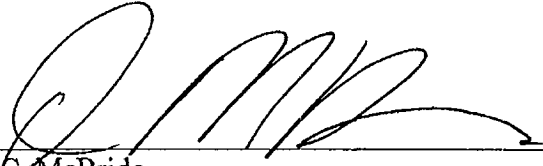
2. Prior to institution of this action, and for valuable consideration, nominal defendant Disney released Mr. Ovitz from all claims related to his tenure at Disney. As such, derivative plaintiffs' claims are barred.

3. On October 16, 1995, the Compensation Committee of nominal defendant Disney approved the terms of the OEA subject to "such reasonable further negotiations...as may be approved by the Chief Executive Officer of the Walt Disney Company." As such, Disney has waived its right to bring suit against Mr. Ovitz for breaching his duties based on any changes made to the terms of his employment that were approved by Mr. Eisner. Derivative plaintiffs' claims are barred.

4. Nominal defendant Disney negotiated a compensation package to induce Mr. Ovitz to relinquish his position at Creative Artists Agency. It is now equitably estopped from claiming Mr. Ovitz breached his fiduciary duties by accepting that compensation package. As such, derivative plaintiffs' claim relating to Mr. Ovitz's negotiation of the OEA is barred.

5. Nominal defendant Disney agreed with Mr. Ovitz to treat his departure from his position as President of Disney as a Non-Fault Termination to induce him to relinquish his post. It is now equitably estopped from claiming Mr. Ovitz breached his fiduciary duties by agreeing

to that treatment. As such, derivative plaintiffs' claim relating to Mr. Ovitz's departure from Disney is barred.



---

David C. McBride  
YOUNG CONAWAY STARGATT & TAYLOR, LLP  
The Brandywine Building  
1000 West Street, 17th Floor  
P.O. Box 391  
Wilmington, Delaware 19899-0391  
(302) 571-6639  
Attorneys for Michael S. Ovitz

OF COUNSEL:

Mark H. Epstein  
Jason L. Haas  
MUNGER, TOLLES & OLSON  
355 South Grand Avenue  
Los Angeles, CA 90071  
(213) 683-9100

Dated: April 1, 2003

**CERTIFICATE OF SERVICE**

I, David C. McBride, Esquire, hereby certify that on April 1, 2003, I caused two copies of the foregoing document to be served upon the following attorneys of record:

BY HAND DELIVERY

Joel Friedlander, Esquire  
Bouchard Margules & Friedlander  
222 Delaware Avenue, Suite 1102  
Wilmington, DE 19801

R. Franklin Balotti, Esquire  
Richards, Layton & Finger, P.A.  
One Rodney Square  
Wilmington, DE 19801

Joseph A. Rosenthal, Esquire  
Rosenthal, Monhait, Gross & Goddess, P.A.  
Mellon Bank Center, Suite 1401  
Wilmington, DE 19801



David C. McBride