IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

DONALD A. KURZ and SEMS DIVERSIFIED VALUE, LP,

Plaintiffs,

v.

JAMES L. HOLBROOK, JR., STEPHEN P. ROBECK, HOWARD D. BLAND, JEFFREY S. DEUTSCHMAN, JORDAN H. REDNOR, JASON ACKERMAN, EMAK WORLDWIDE, INC., a Delaware corporation, and CROWN EMAK PARTNERS, LLC, a Delaware limited liability company,

Defendants.

C.A. No. 5019-VCL

CROWN EMAK PARTNERS, LLC, a Delaware Limited Liability Company,

Counterclaim and Third Party Plaintiff,

v.

DONALD A. KURZ, SEMS DIVERSIFIED VALUE, LP, LLOYD M. SEMS, PHILIP S. KLEWENO, MICHAEL KONIG, and TAKE BACK EMAK, LLC, a California limited liability Company,

Counterclaim and Third Party Defendants.

ANSWER OF DEFENDANTS CROWN EMAK PARTNERS, LLC, JEFFREY S. DEUTSCHMAN AND JASON ACKERMAN TO THE THIRD AMENDED COMPLAINT AND VERIFIED COUNTERCLAIM AND THIRD PARTY CLAIM OF CROWN EMAK PARTNERS, LLC

Defendant Crown EMAK Partners, LLC ("Crown"), Jeffrey S. Deutschman and Jason Ackerman (collectively, the "Crown Defendants") respectfully respond to the allegations of the

Third Amended and Supplemental Complaint (the "TASC") in this action upon knowledge, information and belief. Any allegation of the TASC not expressly admitted herein is denied.

I. ANSWER

1. Admitted that the stock price dropped, although it had been as high as approximately $30 at one time and is now trading for around $1.00 per share in a thin market and that the stock is delisted. The allegation that EMAK's stock is "deregistered" is denied as stated; on or about October 10, 2008, EMAK filed a Form 15 with the SEC, and thus admitted that EMAK no longer has to file reports with the SEC. Denied that this is a result of current management. Crown believes that the basic causes for the Company's troubles lie with Mr. Kurz, who mismanaged the business during his tenure in multiple ways. Admitted that Mr. Kurz has led lengthy efforts to oust the CEO of the Company. The remainder of this paragraph is denied.

2. The first sentence is denied as stated and the Crown Defendants respectfully refer to the Certificate of Designation of the Series AA preferred for the terms thereof. The second sentence is denied, but admitted that (i) at an October 19, 2009 meeting the Board approved the Exchange Transaction and thereafter set a record date for the Kurz/Take Back EMAK, LLC ("TBE") consent solicitation; and (ii) Kurz/TBE delivered their first consent on October 12, 2009, but denied that constituted an "initiation" of the solicitation. Mr. Kurz's privilege log in this action shows it was "initiated" in approximately July 2009. The remainder of the paragraph is denied.

3. The first sentence is admitted to the extent it alleges that Kurz was appointed to the board in June 2009 and that he voted against the Exchange Transaction. The second sentence is admitted. To the extent that the fourth sentence means that Delaware counsel was not

consulted on the transaction by the Company, that is admitted. The fifth sentence is admitted to the extent that it alleges that counsel was not familiar with *Blasius* and informed the board that business judgment review would apply to the transaction. In addition, as Mr. Kurz previously asserted in his briefing on the preliminary injunction motion, counsel told the board that it should look to the best interests of the Company and all its stockholders. The next sentence is ambiguous, but if it means that no fairness opinion was obtained, it is admitted. The remainder of the paragraph is denied.

4. The first sentence is denied. The second sentence is admitted. The final two sentences are denied as stated and the Crown Defendants respectfully refer to the certificate of designation of the Series AA preferred for the terms thereof.

5. Denied as stated, but admitted that on December 3, 2009, EMAK's board agreed to rescind the Exchange Transaction.

6. Denied as stated, but admitted that the Court record was unsealed, that press releases were issued by certain participants and that two proxy advisory firms issued recommendations.

7. Denied, except as follows. Admitted that Crown pursued a consent solicitation and that Mr. Robeck resigned from the board. The Crown Defendants respectfully refer you to Crown's consents and Mr. Robeck's full resignation letter for the terms thereof.

8. Denied as stated. Admitted that: (i) Mr. Kurz asked to meet with the non-Crown directors; (ii) the board, after receiving advice from its Delaware counsel, Morris Nichols Arsht & Tunnell, LLP, did not take the actions demanded by Mr. Kurz to manipulate the corporate machinery to favor Mr. Kurz's consent solicitation; and (iii) Crown delivered its certified consents, including a consent voting its own shares, and consents voting the shares of, among

other common stockholders, Mr. Robeck, Mr. Holbrook, certain members of the Company's management (some of whom had been previously informed that their employment would be terminated) on Friday, December 18, 2009. Crown further affirmatively states that Mr. Kurz's recommendations were self-interested because he is seeking to become CEO of the Company with a high salary and that his demand that the board deliberately thwart the will of the shareholders during a consent solicitation constituted a breach of fiduciary duty on his part.

9. Denied, and specifically deny that the consents delivered by Mr. Kurz that are attached to the complaint represented a valid vote of a majority of the stockholders as of any date. Indeed, the just-delivered Broadridge proxy shows that, even if you ignore the timing of the delivery and the insurgents' failure to obtain a proxy from the stockholders of record, they never even obtained 50% of the vote.

10. Admitted, although the Crown Defendants' counsel has seen various numbers for the shares of stock held by Mr. Kurz. While the Crown Defendants believe that he holds approximately 1.42 million shares of common stock, they defer to the Company's stock records for the precise total.

11. Admitted upon information and belief, but respectfully defer to the Company's stock records for the precise number of shares held by Sems Diversified.

12. Admitted.

13. Admitted, but deny the characterization of Mr. Jason Ackerman's service at Crown Capital.

14. Admitted, except deny that the stock was "deregistered," for the reasons previously stated.

15. The first two sentences are admitted. The third sentence is denied as stated. While Mr. Kurz participated in the negotiations, the principal negotiator for the Company was its counsel. The last sentence is denied.

16. Admitted.

17. The first sentence is admitted. The Crown Defendants believe that the second sentence is approximately correct and therefore admit it.

18. Denied.

19. Denied as stated. The Crown Defendants respectfully refer to Crown's brief on the motion for a preliminary injunction (the "Crown Answering Brief") to explain how the put provision operates.

20. The first sentence is admitted, and the Crown Defendants respectfully refer to the cited instruments for their precise provisions. The remainder of this paragraph is denied.

21. Admitted that the stockholders subsequently approved this transaction. Denied as stated and the Crown Defendants respectfully refer to the certificate of designation of the Series AA preferred stock for the terms thereof.

22. Denied.

23. The first sentence is denied. The sentences discussing Mr. Holbrook's testimony fail to give page references and fail to provide the context for the quotes and therefore are denied as stated; the Crown Defendants respectfully refer to Mr. Holbrook's deposition for the complete contents thereof. The final sentence is denied, although admitted that such a purported valuation exists; denied that it used any consistent and reliable valuation methodology.

24. The first sentence is admitted. The second sentence is denied, except admitted that Mr. Kurz was the Company's CEO at the time of the IPO. The Crown Defendants believe

that EMAK originally did well despite Mr. Kurz's management, not because of it. Specifically, EMAK enjoyed a number of very good years because of the Pokeman craze, but once that passed Mr. Kurz's management deficiencies began to take their toll. Among other things, in the years prior to his forced departure, Mr. Kurz repeatedly missed budget targets that he had told the board that the Company should meet easily, failed to integrate properly various acquisitions he made, and, in general, was not a successful chief executive. If plaintiffs' quote the final sentence properly (the Crown Defendants respectfully refer to the report for its contents), the Crown Defendants believe that it demonstrates that neither Mr. Kurz nor the author of the report appreciate how long it can take to fix the mistakes of prior management, particularly if those mistakes included keeping the company in a declining, low-multiple business (such as EMAK's products business).

25. It was Mr. Kurz, the decline in the promotional products business and customer concentration that ran the Company aground. Admitted that the share price and enterprise value dropped, and that the enterprise value is probably less than $25 million today. Admitted that the shares were delisted, but deny as stated that they were deregistered. Admitted that the Company lost Burger King and MillerCoors as clients, but note that it has gained other clients that have made up for MillerCoors. The final sentence is denied as stated, and the Crown Defendants respectfully refer to the cited report for its terms. By way of further response, the cited report ignores the preferred stock in its calculation, thereby making the statement meaningless. The remainder of the paragraph is denied.

26. Admitted that Mr. Kurz ran a losing proxy fight, unsuccessfully tried to drum up offers for the Company, wrote numerous vituperative letters to the directors and in general made

it difficult for the Company in as many ways as he could. None was productive. The remainder of this paragraph is denied.

27. The first sentence is denied, although admitted that RSU's were issued to the employees but denied that all the Company's RSU's immediately vest. The second sentence is denied, although admitted that the numbers given are approximately correct.

28. The first sentence concerns matters over which the Crown Defendants have no first-hand information, but is denied based upon their belief. The second and third sentences are denied.

29. Denied. By way of further response, Mr. Deutschman would have preferred that the Company grant stock options instead of RSU's, but deferred to his fellow directors' conclusion that the RSU's were preferable, and respectfully refer to the documents in question for their terms.

30. Denied as stated, and the Crown Defendants refer to Exhibit B for the terms thereof.

31. The first sentence is denied as stated. The documents produced in this litigation show that Mr. Kurz was offered the position in May, not June, and he took his seat in June. The second sentence is denied. The documents produced in this action show that Mr. Kurz was not working in good faith.

32. Denied, except admitted that the "notice" referred to in the first sentence was submitted. By way of further response, the second sentence is deceptive because it fails to explain that Mr. Kurz told the Board he was not working with TBE and was not aware the notice was coming. These statements were untrue.

33. The first sentence is denied, although admitted that Crown thought that Mr. Kurz was working with it and the Board. The second sentence is denied. The proposal that Crown rejected was not the proposal that the parties had been working on but a new proposal that Mr. Kurz played a prominent role in putting forward. Denied also that Mr. Kurz was thereafter "frozen out." As discussed in the Crown Answering Brief, Mr. Kurz continually received reports from Company counsel during the time he claims to have been "frozen out," and just as continually forward them on to the counsel he shared with TBE. In addition, in early September, Mr. Kurz made an offer to Crown to pay off Crown in full (through cash and a secured note) in return for the immediate firing of Mr. Holbrook and Mr. Kurz's being placed in position as CEO (with a large compensation package). The last sentence is denied.

34. The first sentence is denied as stated, and the Crown Defendants respectfully refer to the documents for the terms thereof. The remainder of the paragraph is denied. By way of further response, the Crown Defendants respectfully refer to the response to paragraph 33 above and to Mr. Peter Ackerman's affidavit filed with the Crown Answering Brief.

35. Denied. By way of further response, the Company continually dealt with Crown on an arms-length basis and the Crown Defendants do not believe that any of the directors of EMAK except for Mr. Kurz particularly wanted to remain on the Board during this time, but continued to serve out of a sense of duty.

36. Denied as stated and the Crown Defendants respectfully refer to the full e-mails for the terms thereof., though admitted that Crown believed, and continues to believe, that the current capital structure of EMAK is harming the Company, preventing growth, and is bad for all shareholders.

37. Denied as stated, and the Crown Defendants respectfully refer to the documents for the terms thereof.

38. Denied as stated and the Crown Defendants respectfully refer to the documents for the terms thereof, except admitted that in Exhibit C Mr. Kurz stated that the "Company's capital structure is not a problem and is not an impediment to growth." By way of further response, in his April 13, 2009 letter (written only four months previously), Mr. Kurz told the Board that the Company had "a broken capital structure that has virtually no chance to recover." And, as previously admitted by Mr. Kurz, less than three weeks after the August 19, 2009 e-mail, he made a proposal to Crown to pay off Crown's preferred in full. On December 18, 2009, TBE (of which Mr. Kurz was then a member) said in a press release: "We will immediately sit down with Crown Capital and discuss alternative structures for their investment" (emphasis added). If the capital structure of EMAK was "not a problem," there was no valid reason to propose changes or discuss alternatives.

39. Denied as stated, and the Crown Defendants respectfully refer to the letter for the full terms thereof.

40. Denied as stated and the Crown Defendants respectfully refer to Exhibit D for the terms thereof.

41. Denied. The Crown Defendants respectfully refer to the documents for the full terms thereof.

42. Denied.

43. Denied as stated, and the Crown Defendants respectfully refer to the TBE consents for their contents.

44. Denied, except admitted that such an action was filed and the Crown Defendants refer to the California complaint for the terms thereof.

45. Denied.

46. Denied as stated, and the Crown Defendants respectfully refer to the referenced documents for the terms thereof.

47. Denied as stated, and the Crown Defendants respectfully refer to the two-page memorandum for the terms thereof.

48. Denied.

49. Denied. By way of further response, Crown has been informed that the Counterclaim Defendants (as defined) attempted to obtain the votes of employees through promises and implicit threats.

50. Denied. By way of further response, Crown was never contacted by anyone regarding supporting the Kurz/TBE slate, though Crown would not have voted for the Kurz/TBE slate if it was committed to placing Mr. Kurz in position as CEO. Crown believed then and continues to believe today that such an event would be a disaster for the Company. To the extent, however, that TBE was anything more than a vehicle for Mr. Kurz's desire to regain his position as EMAK's CEO and receive a large paycheck, Crown would have been willing to talk with it to see if a mutually agreeable resolution could have been reached.

51. Denied. By way of further response, Mr. Kurz's proposal memorialized in his September 8, 2009 e-mail to Crown demonstrates the falsity of these allegations. Indeed, that proposal shows that he not only was trying to "out bid" the Company, but did so. The terms he offered to Crown would have been much better for it than the Series B Preferred that Crown

received in the Exchange Transaction. The fact that Crown turned Mr. Kurz down demonstrates that Crown was not seeking bids – it was Mr. Kurz who was trying to bid.

52. Denied. By way of further response, the Crown Defendants respectfully refer to the Crown Answering Brief, which demonstrates plaintiffs' misunderstanding of the provision in the Series B discussed here.

53. The first sentence is denied, although admitted that the Board was not given a redline. The second sentence is denied because it relies on a factually incorrect assertion.

54. Denied and the Crown Defendants respectfully refer to the document for the terms thereof.

55. Denied, although admitted that the memorandum does not explain all of these things. By way of further response, this paragraph demonstrates Mr. Kurz's continuing inability to understand that while the common and preferred have different interests, they do have a joint interest in enhancing the Company's value. In addition, having the preferred vote with the common tends to encourage holders of the two classes of stock to cooperate. It therefore does tend to "align the interests of Crown and the common shareholders" in a concrete and important way. Unfortunately, Mr. Kurz is not, and has not been, interested all the shareholders; his behavior demonstrates that he is interested in maximizing value for himself only, first and primarily by getting a high paying job.

56. Denied as stated, and the Crown Defendants refer to the documents for the terms thereof.

57. Denied as stated, but admitted that Mr. Kurz sent Exhibit I to the Board. The Crown Defendants respectfully refer to e-mail for its complete contents

58. The first sentence is admitted. The second sentence is denied. The grammar of the third sentence got twisted but a common sense interpretation of the words is admitted. The final sentence is denied as stated; Mr. Austin has testified that he did not review Mr. Kurz's e-mail until just before the Board meeting, though the complaint in fairness should have noted that Mr. Austin was on vacation at that time, and was not aware of *Blasius*.

59. The first two sentences are admitted. The third sentence is admitted except it is not clear to Crown that Mr. Kurz was "vehement." The remainder of the paragraph is denied.

60. The first sentence is denied, although admitted that Mr. Kurz asked such a question. Admitted that Mr. Austin stated that he believed the standard of review was the business judgment rule, but whether that came in response to this question by Mr. Kurz is not known by Crown and therefore denied, though it appears not to be material.

61. Denied, although admitted that there was no "background analysis," fairness opinion or redline, although the board had discussed the general topic for many months.

62. Denied, and the Crown Defendants respectfully refer to the Crown Answering Brief for an explanation as to why the conclusions of this paragraph are simply incorrect.

63. Admitted that Mr. Kurz made such a motion. Admitted that the bylaws allow the Board not to set a record date for a consent solicitation, in which case the record date is the date of delivery of the first consent. But the Board did not have the legal power to set the record date for a date before the Board meeting, as Mr. Kurz demanded. Otherwise denied.

64. The Crown Defendants do not know whether this statement is correct from the chronological view it advances, but admitted that Mr. Kurz made such statements. The second sentence is denied.

65. The first sentence is admitted. The second sentence is denied, although admitted that the Board set the record date for October 22, 2009.

66. Admitted and the Crown Defendants refer to Exhibit J for the full text thereof.

67. Denied.

68. Denied. By way of further response, the terms of the Exchange Transaction had been substantively agreed to before October 12, 2009, when the TBE/Kurz consent was delivered.

69. The first sentence is admitted. The remaining sentences are denied, although the Crown Defendants respectfully refer to Exhibit K for the terms thereof, and to the response to paragraph 68.

70. The first sentence is denied, although admitted on information and belief that approximately 250,000 shares became vested in November 2009. The second sentence is admitted and, by way of further response, the principle applies to Mr. Kurz just as it applies to the other directors. The third sentence is denied.

71. Denied.

72. The first two sentences are admitted. The third sentence is denied, except admitted that the second set of materials was dated November 24, 2009, which was after Plaintiffs served their opening brief (but note that the brief was served only a few minutes before midnight on November 23, 2009) and that TBE delivered the first written consent on October 12, 2009. The final sentence appears to have been garbled and is therefore denied.

73. Denied.

74. Denied.

75. Denied.

76. Denied.

77. Denied as stated, and the Crown Defendants respectfully refer to the "solicitation materials" for their complete contents. Admitted Mr. Deutschman was reappointed to the Board.

78. Denied. By way of further response, the Crown Defendants respectfully refer to the prior answer dealing with Crown's voting intent.

79. Denied. By way of further response, Mr. Kurz was well aware of what he incorrectly calls the "Kurz-exclusion" because he raised it in the initial complaint in this action, and in any event, his claims in that regard are wrong, as was explained in the Crown Answering Brief.

80. Denied and the Crown Defendants respectfully refer to the Crown Answering Brief.

81. Admitted only that: (i) Mr. Rednor wondered about Mr. Kurz's claim; (ii) Mr. Austin regarded Mr. Kurz's e-mail to contain "hyperbole"; and (iii) Delaware counsel was not consulted about the Exchange Transaction. The remainder of this paragraph is denied.

82. The first sentence is denied. The remainder of the paragraph is denied as stated, and the Crown Defendants respectfully refer to the documents for the terms thereof.

83. Denied, and the Crown Defendants respectfully refer to the full statements on the referenced documents for the terms thereof.

84. The first sentence is denied. By way of further response, the Crown Defendants note the inconsistency between this allegation and the allegations later in the TASC about Crown's consent solicitation. Both cannot be correct. The second sentence is admitted, except for whatever comment the exclamation mark was meant to impart. The third sentence is denied.

85. Denied as stated. Admitted that Crown received a right to escalating interest after a change of control, and that such interest had value, but denied that it was necessarily more valuable than what it had been before – which was a claim to interest at the legal rate, which in some jurisdictions is considerable. Admitted that the certainty of an interest rate had some value, but that is value to both parties.

86. Denied.

87. This paragraph restates paragraph 6 and Crown accordingly restates its response to that paragraph.

88. Admitted that Crown sought consents to amend the bylaws to shrink the board to three members, two of whom are currently Crown designees, Mr. Deutschman and Jason Ackerman; and Crown's consent is attached to the TASC as Exhibit N. The Crown Defendants respectfully refer to the document. The references to Section 141 of the DGCL are denied as stated, and the Crown Defendants respectfully refer to the statute. The remainder of this paragraph is denied.

89. Admitted that Mr. Robeck signed a consent in favor of Crown's consent solicitation after he resigned from the board on December 10, 2009. The Crown Defendants respectfully refer to the text of Mr. Robeck's resignation letter, attached as Exhibit O to the TASC, for the terms thereof. The remainder of this paragraph is denied.

90. Denied, and the Crown Defendants respectfully refer to the documents for the terms thereof. The Crown Defendants specifically deny that the board could set a record date of December 31, 2009. By way of further response, the Crown Defendants respectfully refer to their response to paragraph 95.

91. Denied as stated, and the Crown Defendants respectfully refer to the e-mail for the terms thereof.

92. The first sentence is denied as stated, and the Crown Defendants respectfully refer to the e-mail for the terms thereof. By way of further response, the Crown Defendants state that Crown requested the Company to hire IVS Associates, Inc. because it is generally recognized as the pre-eminent national inspector of elections, and if Mr. Kurz made a similar request as well, Crown agreed with him.

93. The Crown Defendants lack information sufficient to form a belief as to the allegations of this paragraph, but currently accept these statements as being essentially correct and respectfully refer to Exhibit P for the contents thereof.

94. Denied as stated. Admitted that Mr. Deutschman received the document.

95. The first sentence is admitted. The remainder of the paragraph is denied. Rather, while various directors voted for various resolutions in this regard, Mr. Kurz voted against setting a December 16, 2009 record date. However, a majority of the board concluded, based upon advice from its Delaware counsel, that there were two competing consent solicitations and that the shareholders should be permitted to decide which one would prevail without board interference.

96. The first and second sentences are admitted on information and belief to the extent that they allege that the non-Crown designees met on December 17, 2009 for approximately 30 minutes. The remainder of the paragraph is denied. By way of further response, the Crown Defendants state that the Company did not improperly interfere with Crown's consent solicitation as Mr. Kurz demanded.

97. Denied as stated. Crown submitted its certified consents, representing a majority of the outstanding shares entitled to vote thereon, on Friday, December 18, 2009. The consenting stockholders knew what they were doing when approving the resolutions; the Crown consents indicate clearly on their face the purpose and effect of the proposed resolutions would have upon the composition of the Board. Among the consents in favor of the bylaw amendment that were delivered were those signed by Messrs. Robeck and Holbrook and various members of the Crown management team, as well as by Gruber McBain. Furthermore, Crown is in the process of obtaining the consents of Heartland. Together, Gruber McBain and Heartland are the Company's only two significant institutional common stockholders. Crown did not first inform Mr. Kurz that it was delivering its consents, but Mr. Kurz knew that Crown had delivered its first consent and notice on December 11, 2009, and well knew that Crown would deliver all its consents once it had a majority. Further, Mr. Kurz and the other directors were informed by the Company of Crown's delivery the following business day.

98. Denied, except admitted that the Counterclaim Defendants claim that they submitted sufficient consents and that they did not obtain an omnibus proxy from DTC, nor did they have DTC execute their consents, nor did they request the Company to obtain an omnibus proxy. Specifically denied that the Company had any duty to obtain such a proxy for the Counterclaim Defendants and specifically note that it did not obtain one for Crown.

99. Denied. By way of further response, Crown has no intention of unilaterally imposing a restructuring plan on the Company, and if it attempted such a thing, it is denied that Mr. Kurz could not seek adequate equitable relief (assuming there were a basis for him to do so) at that time. The purpose of Crown's consent was not to let Crown impose a restructuring on the Company but to keep Mr. Kurz and his group from gaining control of the Company, which

Crown (and a large group of the common stockholders) believes would cause the Company irreparable harm.

100. Denied that demand is or was futile.

101. This paragraph requires no response.

102. This paragraph contains legal conclusions to which no responsive pleading is required.

103. This paragraph contains legal conclusions to which no responsive pleading is required.

104. This paragraph contains legal conclusions to which no responsive pleading is required.

105. Admitted that Mr. Jason Ackerman was not on the board at the time of the alleged wrong and therefore can under no circumstances be held liable. Otherwise denied.

106. Denied, although admitted that the Company incurred attorneys' fees in defense of this matter. Denied that plaintiffs' attorneys' fees are the responsibility of the Company since plaintiffs brought their complaint as a direct, not derivative, claim in pursuit of their own interests. Further, denied that Mr. Kurz's "success" benefited the Company in any way. The Crown Defendants further state that in his prior briefs Mr. Kurz asserted that the Series B stock gave Crown "control" that it did not have before, and when Mr. Kurz finally understood the point that Mr. Deutschman made in his deposition, and that Crown explained at greater length in the Crown Answering Brief, that the Series AA indeed allowed Crown to pursue precisely the type of consent solicitation it has now pursued, Mr. Kurz denied it could be successful. In other words, Mr. Kurz's challenge to the Exchange Transaction was almost entirely based upon erroneous assumptions on his part. Crown believed at the time of the Exchange Transaction, and

continues to believe now, that it was acting in good faith. In seeking to overturn the Exchange Transaction, plaintiffs pursued their own interests to the harm of the Company and its shareholders. They are not entitled to seek attorneys' fees.

107. This paragraph requires no response.

108. Denied.

109. This paragraph requires no response.

110. Denied.

111. Denied.

112. Denied. By way of further response, the Series A Preferred Stock Securities Purchase Agreement, of which Mr. Kurz claims he was the principal negotiator nine years ago, entitled Crown to be paid its expenses, including legal fees, in connection with its investment. Crown's legal expenses were thereafter paid throughout and following Mr. Kurz's tenure as EMAK's CEO. When asked about this at the December 3, 2009 board meeting, Mr. Kurz claimed not to remember. The Company has reaffirmed this obligation on numerous occasions.

113. This paragraph requires no response.

114. Denied.

115. Denied.

116. Denied.

117. This paragraph requires no response.

118. Denied.

II. AFFIRMATIVE DEFENSES

First Affirmative Defense

119. Plaintiffs and the Counterclaim Defendants made materially misleading statements and omitted material information in the disclosures they provided to the stockholders and, therefore even if they had delivered a sufficient number of valid consents, those consents are invalid.

Second Affirmative Defense

120. Plaintiffs' attempt to manipulate the corporate machinery to prevent Crown's consent from becoming effective constitutes unclean hands and bars them from relief.

Third Affirmative Defense

121. Plaintiffs' purported election of directors was invalid because even if they delivered sufficient consents to achieve a majority (which they did not) there were no board seats to fill. Crown's consents had already been delivered to the Company, and since it received a majority vote, it was effective and amended the bylaws to reduce the size of the board to three. At the time plaintiffs' consents were delivered, there were five sitting directors. Plaintiffs' consents would then have operated to remove two of those (Messrs. Holbrook and Radnor), leaving three sitting directors (Messrs. Kurz, Deutschman and Ackerman). Since there were no open board seats, Counterclaim Defendants Sems, Kleweno and Koenig were not – and could not be – elected to the board.

Fourth Affirmative Defense

122. Plaintiffs failed to obtain the valid consents of a holder of a majority of the shares held of record as of the record date.

Fifth Affirmative Defense

123. Plaintiffs' claims regarding Crown's consents are barred by the doctrine of independent legal significance in that §§ 109 and 141(b) of the Delaware General Corporation Law permit both resolutions enacted pursuant to Crown's consents.

Sixth Affirmative Defense

124. The TASC fails to state a claim for relief against Crown or Jason Ackerman.

Seventh Affirmative Defense

125. The purportedly derivative claims of the TASC are barred because plaintiffs have not complied with Court of Chancery Rule 23.1(b).

Eighth Affirmative Defense

126. Kurz is not an adequate derivative plaintiff because he has a disabling self-interest in the outcome of this action, which is not shared by the Company or the stockholders in general.

III. COUNTERCLAIM AND THIRD PARTY CLAIM

127. This Counterclaim and Third Party Claim seeks a declaration pursuant to 8 *Del. C.* § 225 that: (i) Crown's consents were valid and the two resolutions amending EMAK's bylaws adopted by these consents validly (a) reduced the size of the board to three directors and (b) establish a process to determine the composition of the board, if necessary; and (ii) under no circumstances were third party defendants Lloyd M. Sems, Philip S. Kleweno and Michael Konig (the nominees of Mr. Kurz and TBE) elected to the board of EMAK. The Counterclaim and Third Party Claim is brought against Mr. Kurz, Sems Diversified Value ("SDV"), Take Back EMAK, LLC ("TBE") and Messrs. Sems, Kleweno and Konig (collectively, the "Counterclaim Defendants").

128. Jurisdiction over Messrs. Sems, Kleweno and Konig is proper under 8 *Del. C.* § 225 since this claim contests their right to serve as directors of EMAK. TBE is a California limited liability corporation. According to Exhibit Q of the TASC, Messrs. Kurz and Sems are currently the "Managing Members" of TBE, which upon information and belief exists solely to help the other counterclaim defendants take control of EMAK, and give Mr. Kurz a high paying job. A central part of TBE's strategy has been for Mr. Kurz and SDV to litigate in this Court and, upon information and belief, TBE has participated in that effort and has taken action in Delaware or has affected parties in Delaware. TBE is named as a defendant herein so that it is bound by any determination of this Court and may not seek to re-litigate these questions elsewhere.

129. On Friday, December 18, 2009, Crown delivered its consents to the Company along with the certification required by the Company's bylaws. On Wednesday, December 23, 2009, IVS Associates issued a Final Report signed by Creighton D. Dunlap and William A. Marsh, its principal officers, certifying that Crown had delivered valid consents totaling 50.89% of the Company's outstanding stock. Messrs. Dunlop and Marsh have served as inspectors of election for decades, have testified in the Court of Chancery previously, and are believed by the Crown Defendants to be the two most prominent independent inspectors of election in the United States (and perhaps the world) today. Mr. Kurz said that he demanded that the Company retain nationally recognized independent inspectors of election (Crown made the same request) and no firm could fit that description better than IVS.

130. The consents delivered by Crown were, under Delaware law, valid upon delivery to the Company. Thus, upon delivery, the Company's bylaws were amended (i) to shrink the

size of the board to three directors, and (ii) require the CEO to call a special stockholder meeting to elect the successor board (subject to the reduction of the number of directors by resignation).

131. Plaintiffs assert in the TASC that Crown's consents should not count because the Board had an affirmative duty to manipulate the corporate machinery to keep Crown's consents from becoming effective until after Kurz/TBE were able to deliver their own consents. Plaintiffs fail to inform the Court that the Company's Delaware counsel asked Mr. Kurz at a Board meeting if his counsel had any case law supporting his view, that the board has such an affirmative duty, and Mr. Kurz never provided any. Delaware counsel also informed the Board that it was his view that the directors should not take sides as directors in the competing consent solicitations but should instead allow the stockholders to decide.

132. Mr. Kurz had a direct material interest in seeking to interfere with Crown's consent because he wants to become the Company's CEO and, upon information and belief, has an understanding that he will receive significant compensation for serving in that position. In trying to persuade the board to take steps to protect the Kurz/TBE consent, Mr. Kurz violated his fiduciary duty of loyalty to the Company and disqualified himself from serving as a fiduciary in this action.

133. In addition, Mr. Kurz's demands on the board, which were made for the sole purpose of interfering with the franchise rights of the stockholders supporting Crown, would have constituted actionable entrenchment on the part of the board. The board's actions in rejecting Mr. Kurz's demands were proper and lawful. Mr. Kurz's demands were not.

134. Nor is Mr. Kurz correct that it would be proper to manipulate the corporate machinery to "save" the common stockholders from Crown -- and presumably from themselves, given that, as of the date of this pleading, approximately 60% of the Company's stockholders

entitled to vote thereon, including Heartland and Gruber McBain, have executed consents in favor of the bylaw amendments or have indicated their intention to do so and are in the process or giving that consent. Excluding the shares owned by Crown and the Kurz/TBE group, approximately 69% of the shares held by the other stockholders executed (or are in the process of executing) consents in favor of the Crown proposals. Mr. Kurz's claims about protecting the common holders from Crown were thus a subterfuge. His real interest continues to be to gain a paycheck, not protect other stockholders.

135. In contrast to Crown's consents, the consents delivered by Mr. Kurz and TBE were both facially and substantively invalid despite the Counterclaim Defendants' certification that the vote count was sufficient. Upon information and belief, even though Mr. Kurz, TBE and the TBE group had retained a highly experienced proxy firm, D.F. King ("King"), they made no attempt to obtain an omnibus proxy from DTC for their beneficial consents nor did they ask the Company to obtain one. In addition, they could have done what Crown did in its consent solicitation – have the brokerages holding the stock instruct DTC to execute a consent for each beneficial holder. That takes time and effort, but given the limited number of beneficial holders who voted for the Counterclaim Defendants' slate (apparently less than 30), it could have been done. But it was not.

136. King is a capable proxy soliciting firm. It is one of the handful of nationally known proxy firms and it has engaged in consent solicitations in the past. It knows that one needs either record holders to sign consents/proxies or provide an omnibus proxy that allows the banks and brokerages to vote their clients' stock. Yet, not only did Mr. Kurz/TBE fail to obtain such record holder authorizations, but they provide no explanation for their failure.

137. Counterclaim Defendants insinuate that it was somehow the Company's fault that they failed to obtain this and that the Company somehow had a duty to obtain an omnibus proxy for the Kurz/TBE slate. They provide no legal support for that insinuation. If it is true, however, then Mr. Kurz as a director would have had a duty to ensure that this was done for both his consent solicitation and for Crown's. He did neither. In addition, plaintiffs fail to explain why they never asked the Company to obtain such a proxy or even check on whether one had been obtained. This is particularly noteworthy since Counterclaim Defendants had previously made a § 220 request of the Company. Upon information and belief, while they received a CEDE breakdown, they did not receive a copy of an omnibus proxy (which, in form, is a CEDE breakdown with formal proxy language). Upon information and belief, they complained to the Company about not receiving other stock list materials but they never complained about not receiving a copy of the omnibus proxy, even though they had not received one.

138. Thus, although Counterclaim Defendants or their agent, King, knew that they needed a proxy from DTC, they failed to do anything at all to obtain one themselves or do anything to make sure that one was obtained by someone else. The failure by the Counterclaim Defendants to take any of these elemental steps may not be laid at the feet of the Company. It was either a deliberate decision by them or represents the sort of conduct for which the counterclaim defendants must hold themselves responsible.

139. In addition, an omnibus proxy, or consents, signed by DTC/CEDE are an absolutely key part of any stockholder vote under Delaware law in which DTC or another depository is a record holder. Without either a proxy or signed consent, the vast majority of beneficial holders' votes in any stockholder vote will not be valid. Counterclaim Defendants say that rule should be ignored here – that Broadridge proxies that identify DTC as the record holder

should be sufficient – but such a rule would reverse decades of settled law and open up Delaware corporations to the difficulties Counterclaim Defendants' proposed new rule would present. One such difficulty is that not all banks and brokers listed on the Broadridge proxies hold the listed stock through DTC, even if they have a DTC account number. Indeed, the Broadridge proxy delivered does not state that DTC is the record holder of any shares -- it lists brokerage houses and what appears on information and belief to be the DTC account number through which those brokerage houses hold their shares. If omnibus proxies are not required – if the scant information provided to the Company here is enough – it will not be possible to know if a bank or brokerage is voting shares held of record, held through another custodian or held through DTC. To put it another way, the current system might seem cumbersome at times, and it requires specialized knowledge during proxy solicitations (and appraisal proceeding), but it works.[1] The rule advanced by Counterclaim Defendants is not only a novelty, it is unlikely to work as a practical matter.

140. IVF did not count the Kurz/TBE Broadridge proxy because there was no omnibus proxy to provide the necessary authority for it, and therefore IVS found that the Kurz/TBE slate had not prevailed. That conclusion is correct under settled law. In addition, IVS noted that the Broadridge proxy certified and submitted by the Kurz/TBE faction was for the wrong record date. For some reason, Broadridge used October 12th rather than October 22nd as the record date. That is significant for at least two reasons. First, without an omnibus proxy, it cannot be ascertained whether the total number of shares for each account in the Broadridge proxy was correct as of the record date. Second, when a Broadridge proxy is dated before the actual record

[1] *See*, *e.g.*, *Dirienzo v. Steel Partners Holding, L.P.*, 2009 WL 4652944, Chandler, C. (Del. Ch.) (disqualifying appraisal demand brought by beneficial holders).

date, it is entirely possible that some of the consents signed by the ultimate beneficial holders were signed before the record date and, thus, are older than the 60-day limit provided by the DGCL. Since such beneficial holder cards are not received by the Company or seen by the inspector of election (and might not even be seen by the party soliciting the consents), there is no certain way to ensure that some consents are not invalid for being over 60 days old.

141. Furthermore, a new Broadridge Client Proxy, generated using the October 22, 2009 record date, shows that the Kurz/TBE slate did not receive a majority of the beneficial holders' votes. Rather, it reflects that the Kurz/TBE slate received only approximately 48.6% of the vote. Thus, even if their failure to obtain the record holders' vote were not fatal, they have not prevailed because they don't even have a majority vote.

142. In addition to the foregoing, the Kurz/TBE consent solicitation was tainted by material misrepresentations or omissions. Based upon the information available, among other things:

(a) Counterclaim Defendants failed to inform the stockholders that they had retained counsel challenging the Exchange Transaction on a contingent basis, that counsel intended to seek a fee in this case even though it was not brought as a derivative suit originally, and that Mr. Kurz would support that request. No mention was made that such a fee would be sought until the Second Amended Complaint was filed on December 21, 2009, after Mr. Kurz/TBE delivered their consents and the amount of money sought will almost certainly be highly material to the Company;

(b) Counterclaim Defendants failed to inform the stockholders of the size of the severance payment to which Mr. Holbrook would be entitled if he were terminated;

(c) Counterclaim Defendants failed to inform the stockholders of the $25 million payment that would be owed to Crown upon the occurrence of the "change of control" resulting from the election of the Kurz/TBE slate; and

(d) Counterclaim Defendants failed to inform the stockholders of the circumstances surrounding Mr. Kurz's resignation as the Company's CEO.

143. Even if the Kurz/TBE consents otherwise prevailed, and even if Counterclaim Defendants are correct in the novel proposition that a bylaw cannot set up a mechanism for removing directors, the Kurz/TBE slate still cannot be seated. TBE's consents and Crown's consents each consist of two separate resolutions. The first resolution of the Kurz/TBE consent purports to remove three directors. The second resolution then purports to elect TBE's three nominees to the resulting vacancies. The first resolution of Crown's consent amends the Bylaws to shrink the Board to three directors. The second Crown resolution provides the mechanism for the succession of the directors by way of a special meeting (if necessary). Counterclaim Defendants' beef with the Crown consent is that, they say, Crown cannot indirectly remove directors elected by the common stockholders. That is, Counterclaim Defendants do not contend that the first resolution is invalid; Crown and the other consenting stockholders undoubtedly have the right to amend the bylaws fixing the size of the board. Rather, Counterclaim Defendants take issue with the proposition that directors occupying the seats being shrunk out of existence can be removed by operation of Crown's bylaw amendment.

144. But if Counterclaim Defendants are correct that the Kurz/TBE consents commanded a valid majority of the common stock, then plaintiffs did the job themselves. In such a case, Messrs. Holbrook and Rednor would have been removed from the board by the first resolution in the Kurz/TBE consents. By operation of that resolution (again, assuming *arguendo* that the Kurz/TBE consent had obtained the requisite vote), there would then be only three directors of the Board and no vacancies -- thereby rendering moot any argument that Crown's bylaw amendments improperly curtailed the term of any director (and obviating any need for a special meeting). Since there would be no vacancies, the second of the Kurz/TBE resolutions would necessary fail: put simply, since the Crown consent was delivered and the resolution amending the bylaws to shrink the board to three became effective first, even if Counterclaim Defendants' consents were valid and their arguments under Section 141 of the DGCL were meritorious, Counterclaim Defendants' nominees cannot be elected because there are no board positions into which to elect them.

145. Furthermore, a challenge to the second of the Crown resolutions is presently unripe. No special meeting has been called (nor is it clear whether one will ever be necessary).

WHEREFORE, defendant Crown EMAK respectfully requests that the Court dismiss the TASC and enter a judgment in its favor and against the Counterclaim Defendants declaring that (1) Crown's consent is effective, and (2) the Kurz/TBE consent is not effective and that none of counterclaim defendants Sims, Kleweno and Konig were validly elected to the board, and award Crown EMAK such other relief as may be just, including its reasonable attorneys' fees and costs incurred in this action.

ASHBY & GEDDES

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