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, EMAK WORLDWIDE, INC., a Delaware corporation, and CROWN EMAK PARTNERS, LLC, a Delaware limited liability company, Defendants.	)	C.A. No. _____

VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs Donald A. Kurz and Sems Diversified Value LP (collectively, "Plaintiffs"), for their complaint against defendants James L. Holbrook, Jr., Stephen P. Robeck, Howard D. Bland, Jeffrey S. Deutschman, Jordan H. Rednor, EMAK Worldwide, Inc. ("EMAK" or the "Company"), and Crown EMAK Partners, LLC ("Crown") (collectively, "Defendants"), make the following allegations upon personal knowledge as to themselves and their own actions and, where indicated, upon personal observation, and upon information and belief as to all other matters:

NATURE OF THE ACTION

1. This is an action to redress a crude effort to thwart a consent solicitation. EMAK has failed under its current management. Its share price dropped from over $10 to less than $1 in less than four-and-a-half years, and its common stock is now delisted and deregistered. Plaintiff Donald A. Kurz, a former Chief Executive Officer of EMAK, and its largest common stockholder for more than a decade, has led an effort to remove EMAK's CEO

and its Chairman. Knowing that they could not hope to persuade outside common stockholders to support them, EMAK's incumbents stuffed the ballot box.

2. The bulk of EMAK's diminished enterprise value rests in its preferred stock, which carries a $25 million liquidation preference, but has no entitlement to dividends, no ability to force a liquidity event, and – until last week – no power to effect the election of a majority of the directors. On October 19, 2009, one week after the initiation of a consent solicitation, and moments before the Board set a record date for that solicitation, EMAK's Board approved an exchange transaction whereby the holder of its preferred stock, Crown, was granted new preferred stock that carries the new right to vote with the common stock on an as-converted basis. In short, the preferred stockholder now holds a 28% blocking position that makes it virtually impossible for the consent solicitation to succeed.

3. Kurz was recently appointed to EMAK's Board and was privy to the sham process by which the Board took this extraordinary action over his vehement objection. The Board approved the exchange transaction at a meeting called on less than 24-hours notice. The Board did not obtain any analysis of how the exchange transaction would affect the pending consent solicitation. The Board did not obtain any analysis from Delaware counsel. Its outside counsel asserted, without support or serious analysis, that the exchange transaction was protected by the business judgment rule. The Board obtained no analysis of the fairness of the transaction. EMAK and its common stockholders are receiving nothing in exchange for the grant of enhanced voting power to the preferred stock, as well as the grant of an increased liquidation preference and interest penalties for delayed payment. Additionally, the materials provided to the Board failed to disclose that the exchange transaction contains a stealth poison pill. It confers on the

preferred stockholder the right to redeem its security if Kurz and his affiliates buy additional shares of common stock.

4. The stated justification for the exchange transaction is pretextual. EMAK asserted in a press release that the exchange would "better align the interests of Crown with all Common stockholders." That is untrue, since Crown continues to own a security with a $25 million liquidation preference, no dividend, and a conversion price that is far out-of-the-money. In reality, the exchange grants Crown enhanced power to pursue and impose its own interests on EMAK and the common stockholders. It now has the pivotal, decisive voice in who will constitute the entirety of the Board of Directors, which it can use to force a desired restructuring of its security to the detriment of the common stock.

5. Absent preliminary and permanent injunctive relief, common stockholders who prefer a Board of Directors devoted to increasing the value of EMAK and its common stock can no longer elect a new board majority in a consent solicitation.

THE PARTIES

6. Plaintiff Donald A. Kurz is a former Chairman and Chief Executive Officer of EMAK, a current director of EMAK, and has been its single largest common stockholder for more than a decade. He currently owns 1,420,272 shares of common stock.

7. Plaintiff Sems Diversified Value LP, a limited partnership duly authorized and existing under the laws of the State of Delaware, has been a common stockholder of EMAK at all relevant times. It currently owns 124,284 shares of common stock.

8. Defendants James L. Holbrook, Jr., Stephen P. Robeck, Howard D. Bland, Jeffrey S. Deutschman and Jordan H. Rednor (collectively, the "Director Defendants") are each

directors of EMAK. Holbrook is the Chief Executive Officer of EMAK. Robeck is EMAK's Chairman.

9. Defendant Crown EMAK Partners, LLC ("Crown"), a Delaware limited liability company, is EMAK's sole preferred stockholder. Crown is an affiliate of Crown Capital Group, an investment firm founded by Peter Ackerman, a former senior investment banker at Drexel Burnham Lambert. Director Defendant Jeffrey S. Deutschman is a Managing Director of Crown Capital Group and was Crown's designee on the EMAK Board at the time of the challenged exchange transaction.

10. Nominal defendant EMAK, a Delaware corporation with its principal place of business in Los Angeles, is a parent company of a family of marketing services agencies. Its common stock has been delisted from the NASDAQ Global Market Stock Exchange and deregistered by the Securities and Exchange Commission.

FACTUAL BACKGROUND

The Old Preferred Stock

11. EMAK's Certificate of Incorporation authorizes the issuance of blank check preferred stock. On or about March 29, 2000, EMAK and Crown entered into a Securities Purchase Agreement, pursuant to which EMAK issued to Crown 25,000 shares of Series A Series Senior Cumulative Participating Convertible Preferred Stock (the "Series A Preferred Stock"). Kurz negotiated the agreement on behalf of EMAK, with Jeffrey Deutschman and Peter Ackerman negotiating on behalf of Crown. A fundamental principle that Kurz insisted upon was that the common stockholders, not the preferred holder, would control the election of a supermajority of EMAK's board of directors.

12. On December 30, 2004, EMAK and Crown entered into an Exchange Agreement pursuant to which EMAK issued to Crown 25,000 shares of newly designated Series AA Senior Cumulative Participating Convertible Preferred Stock (the "Series AA Preferred Stock") in exchange for the cancellation of the 25,000 shares of Series A Preferred Stock. The purpose of the exchange transaction was to eliminate Crown's participation in the payment of cash dividends on the common stock, and replace it with a new provision that the conversion price (initially set at $14.75 per share) would be reduced if EMAK declared or paid any cash dividend on the common stock. The exchange transaction was approved by EMAK's common stockholders at the subsequent annual meeting.

13. The Series A Preferred Stock (and the Series AA Preferred Stock) carried a liquidation preference of $1,000 per share, or $25 million in total. That liquidation preference represented approximately 22% of EMAK's enterprise value as of the date when the Series A Preferred Stock was originally issued.

14. Crown had no ability to trigger the payment of the liquidation preference or otherwise create a liquidity event, other than by converting the Series A Preferred Stock (or, subsequently, the Series AA Preferred Stock) into common stock.

15. Crown could "put" the Series A Preferred Stock (or, subsequently, the Series AA Preferred Stock) to EMAK upon a "Change of Control," which was narrowly defined. The acquisition by anyone other than Crown and its affiliates of securities representing 50% or more of the combined voting power of EMAK's equity securities would trigger a "Change of Control," as would the acquisition of 20% of the voting power by anyone other than Crown, Donald Kurz, Stephen Robeck or their respective affiliates.

16. Holders of Series A Preferred Stock (and, subsequently, Series AA Preferred Stock) possessed the right to elect two members of EMAK's Board of Directors, and the right to elect a maximum of three directors if certain events arose. The common stock could always elect a supermajority of the directors.

17. On June 30, 2006, EMAK entered into an Exchange and Extension Agreement with Crown providing that: (a) the conversion price of the Series AA Preferred Stock would be reduced from $14.75 per share of common stock to $9 per share; (b) the 6% cumulative perpetual dividend on the $25 million face value of the Series AA Preferred Stock ($1.5 million per annum) would be permanently eliminated; (c) holders of the Series AA Preferred Stock would elect two directors, except that they could elect three directors (i) if the number of common stock directors exceeds seven or (ii) in situations involving a potential Change of Control at a time when the total number of directors exceeds eight; and (d) common stock warrants held by Crown due to expire on March 29 and June 20, 2010 would be extended until March 29 and June 20, 2012. At the Company's next annual meeting, the Company's common stockholders approved an amendment to the Certificate of Designation of the Company's Series AA Preferred Stock in order to permit the closing of the transaction. A copy of the Amended and Restated Certificate of Designation for the Series AA Preferred Stock is attached hereto as Exhibit A.

18. Given Crown's limited voting rights as the sole holder of Series A Preferred Stock (and, later, Series AA Preferred Stock), and Crown's inability to force a liquidity event, or even collect dividends, Crown exercised no control over the business and affairs of the Company. Even when mismanagement of EMAK in the post-Kurz era drove down the enterprise value of EMAK to a level that approximated the liquidation preference for the Series

AA Preferred Stock, Crown could not force EMAK to embark on policies that would allow Crown to realize its liquidation preference.

The Precipitous Decline of EMAK Following Kurz's Departure as CEO

19. Kurz was the Chairman, President and CEO of EMAK for most of the six years prior to his departure in May 2005. During his tenure, Kurz led the Company's initial public offering and managed the Company in a manner that caused its share price to significantly outperform major market averages and the S&P 500 Advertising index.

20. Following Kurz's departure, the current leadership ran the Company aground. Its share price dropped from over $10 per share to less than $1 per share, and its enterprise value dropped from $100 million to under $25 million. The Company's common stock was delisted from the NASDAQ Global Market Stock Exchange and deregistered by the Securities and Exchange Commission. The Company recently lost its two largest clients, Burger King and MillersCoors.

21. During this period of decline, Kurz remained the single largest holder of EMAK common stock. Kurz made numerous overtures to the Board to take EMAK private, which the Board rebuffed. Kurz also communicated with Board members about Company strategy and leadership. His warnings fell on deaf ears.

22. Recognizing the danger to their incumbency that Kurz posed, in 2008, the Board granted voting restricted stock to employees, as opposed to the consistent past practice of granting only stock options or restricted stock units that had no voting power until they fully vested. The grant of 925,000 shares of unvested restricted stock to Company employees in 2008 diluted stockholders by approximately 15% and placed additional voting power in the hands of

CEO James Holbrook (a recipient of 225,000 shares of unvested restricted stock) and employees who owe their jobs to him.

23. Shortly thereafter, Holbrook told investor Lloyd Sems in words or substance that, as a consequence of the stock grant, "now it will be that much harder for Don [Kurz] to do anything with the company." At the subsequent annual meeting of stockholders, Sems pressed the Board to explain the basis and justification for granting employees 15% of the vote and equity in unvested voting stock without performance benchmarks. The Board and management could not point to any external or reasoned analysis that supported the grant.

24. The unprecedented grant of voting unvested restricted stock was not the product of reasoned Board deliberation. On April 6, 2009, Director Defendant Jeffrey Deutschman told Kurz that he had voted for the stock grant thinking that he was approving the grant of non-voting stock options.

Kurz Announces His Intention to Seek the Removal of Directors

25. On April 13, 2009, Kurz sent a letter to the Board of Directors, in which he stated that he led a shareholder group that owned approximately 2.6 million shares of common stock (approximately 37% of the total outstanding), and he demanded on their behalf that the Board terminate Jim Holbrook as CEO and Stephen Robeck as Chairman. Kurz wrote:

> Let me be perfectly clear about my intentions going forward. There is one – and only one – alternative that is acceptable to my shareholder group, and I believe the vast majority of outside shareholders. That is to terminate the current Chairman and the CEO….
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> …
>
> I am demanding that the Board terminate Robeck and Holbrook immediately. I will then work with the Board to modify the plans I have developed for the buyout and get the Company focused and right-sized to ensure immediate profitability. I will also bring in outside capital as needed. I will work closely with the preferred shareholder to develop a plan to allow him to exit his investment at the earliest possible time at the best possible valuation.

> If the Board chooses not to execute my proposal, I, along with my fellow shareholders, will seek to remove all the common shareholder representatives on the Board as soon as possible….

A copy of the letter is attached hereto as Exhibit B.

26. On June 9, 2009, the Board appointed Kurz as a director. Kurz did not run a slate of nominees in opposition to the incumbents at the June 9, 2009 annual meeting of stockholders, because he had been working in good faith with the Board on a potential buyout at the time in early 2009 when advance notice of nominations had been due.

27. On August 18, 2009, EMAK stockholder Take Back EMAK, LLC submitted a notice of special meeting of stockholders for the purpose of removing incumbent directors James Holbrook, Stephen Robeck and Jordan Rednor and electing in their place Philip S. Kleweno, Michael A. Konig and Lloyd M. Sems. Over Kurz's objection, the Board rejected the notice as invalid. Had the Board allowed a special meeting to go forward, it is a virtual certainty that the incumbents would have been replaced, given the number of shares supporting the insurgent slate, the plurality vote requirement at a special meeting, and the continuing decline in EMAK's fortunes under the leadership of the incumbents.

The Incumbents Curry Favor With Crown

28. After rejoining the Board, Kurz continued his efforts to spark buyout discussions, as one means of addressing the problems for common stockholders of illiquidity and a low valuation for their shares. Kurz's plan had been to facilitate a premium offer to the common stockholders that would also give Crown an opportunity to redeem its Series AA Preferred Stock and be fully paid off. The Board, however, was never interested in relinquishing control. To keep control, the incumbent directors needed to form an alliance with Crown.

29. Kurz advised his fellow directors in a September 13, 2009 letter that he viewed Crown as being confronted with the "very-real dilemma of being stuck in a no-yielding instrument with no ability to force liquidity." In his capacity as a common stockholder, Kurz proposed to Crown on September 8, 2009 that its Series AA Preferred Stock be converted into an interest-bearing note, subject to stockholder approval.

30. Any effort by Kurz to deal with Crown on an arms-length basis was undermined by the incumbents' desire to turn Crown from a dissatisfied investor into an ally for purposes of retaining control.

31. For example, in a July 21, 2009 email that CEO James Holbrook sent to all other Board members, including Crown designee Jeffrey Deutschman, Holbrook wrote that the current capital structure for EMAK "cannot be a growth engine for additional businesses," prevented EMAK from having "access to investment capital" and deterred people from accepting employment with EMAK. Holbrook wrote that Crown "is not going to quiet down, go away, give us an extension, or be happy with the status quo." Holbrook proposed going forward with negotiations to break up the Company and allocate certain businesses to Crown. Holbrook commented about an "extension" even though there is no maturity for the Series AA Preferred Stock, and Crown's common stock warrants were far out-of-the-money.

32. On August 17, Holbrook floated a new concept to all directors respecting Crown – the conversion of the Series AA Preferred Stock into approximately 60% of the common stock. Holbrook noted that an advantage of equity conversion, rather than a break-up of the Company, is that it did not require approval by the common stockholders.

33. Kurz wrote in an August 19 email to his fellow directors (other than Deutschman) that he could not understand why the CEO would float a new proposal to Crown without input

from the rest of the Board and why he would do so in a manner that "suggests Crown has more power than they actually do and that their investment is at risk if we do not break up the Company now." Kurz wrote that the existing capital structure was not a problem or an impediment to growth, and that it was incomprehensible why the CEO would advise Crown that it was. Kurz's email of August 19, which attaches Holbrook's email of July 21, is attached hereto as to Exhibit C.

34. In a September 7 letter to the Board, Holbrook wrote: "The EMAK board absolutely must give Peter [Ackerman of Crown] what he deserves, in order to have something for the rest of us. We must convert, or support a rights offering, or restructure the preferred. We absolutely cannot survive without Peter on our side."

35. As Kurz elaborated in his September 13, 2009 letter to the Board of Directors, Holbrook had adopted the view put forward by Crown that Crown controlled the Company, even though a supermajority of the Board was elected by the common stockholders and Crown had no ability to force payment of its liquidity preference. Kurz's September 13, 2009 letter is attached hereto as Exhibit D.

The Board Responds to a Massively Supported Consent Solicitation By Granting Crown the Power to Defeat It

36. On October 12, 2009, Take Back EMAK, LLC delivered to EMAK a written consent to resolutions removing incumbent directors James L. Holbrook, Jr. Stephen P. Robeck and Jordan H. Rednor and appointing in their place Phillip S. Kleweno, Michael A. Konig and Lloyd M. Sems.

37. Two weeks earlier, Take Back EMAK, LLC, Trinad Capital Master Fund, Ltd., Sems Diversified Value, LP, Robert J. Farina, Samuel G. Konig, Micheal A. Konig, Mitchell H. Kurz and Donald A. Kurz had joined in filing a shareholder derivative complaint against certain

current and former directors of EMAK in Superior Court of the State of California for the County of Los Angeles, Central District (the "California Action"). The complaint alleged that the plaintiffs in the California Action "collectively represent more than a third of the total outstanding common shares."

38. The prospect of a consent solicitation initially supported by more than one third of the common stockholders posed a mortal threat to the continued incumbency of Holbrook, Robeck and Rednor. On information and belief, Holbrook, Robeck and EMAK General Counsel Teresa Tormey control voting of a total of 1,220,000 common shares. There were 7,047,435 common shares outstanding as of September 30, 2009, meaning that consents for 3,513,718 shares would constitute a majority. The co-plaintiffs in the California Action and their supporters own 2,769,357 common shares, approximately 39% of the common stock then-outstanding. This means that the insurgents would need to solicit consents from 754,361 additional shares to reach a majority and prevail. That number is roughly 25% of the approximately 3,000,000 common shares not owned by either the co-plaintiffs in the California Action and their supporters or by Holbrook, Robeck or Tormey.

39. On Sunday, October 18, 2009, Kurz received an email from Tormey, purportedly acting at the request of Robeck, notifying the Board of a special telephonic Board meeting to be held the following morning at 8:30 a.m. The stated purposes of the special meeting were (i) to consider a proposed exchange of Crown's Series AA Preferred Stock for a new Series B Preferred Stock, (ii) to confirm that Deutschman would continue to serve as a director until the next annual meeting if the exchange was approved, and (iii) to set a record for the consent solicitation initiated by Take Back EMAK, LLC. Attached to the email were (a) a memo describing the proposed exchange (attached hereto as Exhibit E), (b) an execution copy of the

Exchange Agreement (attached hereto as Exhibit F), and (c) a copy of the Certificate of Designation for the Series B Preferred Stock (attached hereto as Exhibit G). Kurz had no prior notice of the special meeting or of the proposed exchange with Crown.

40. The attached one-page memo respecting the proposed exchange, authored by Christopher J. Austin, Esquire, of Ropes & Gray LLP, stated that the "only substantive change in the New Preferred would be that Crown will vote with the common on all matters on an as converted basis unless and until there is a change of control." The memo did not mention the extent of the voting power dilution to the common stock. The memo did not discuss the effect of the exchange on the just-initiated consent solicitation. The memo did not provide any legal analysis for how the directors should evaluate the merits of the exchange or how their decision would be reviewed under Delaware law. The memo did not state what the common stockholders would receive in exchange for providing new voting power to Crown. The only stated justification for the exchange was the clause "in order to better align the interests of Crown and the common stockholders." The memo did not disclose any urgency for consideration of the exchange.

41. The unstated reality of the proposed exchange was that it delivered a knock-out blow to the just-commenced consent solicitation. The voting power granted to Crown dramatically altered the electoral landscape. Crown could vote approximately 2.8 million shares, which represents approximately 28% of the total voting power of approximately 9,847,000 shares. The exchange diluted the percentage of the vote owned by the insurgents and their supporters from approximately 39% to 28%. It increased the percentage of the vote owned by senior management (Holbrook, Robeck and Tormey) and Crown from approximately 17% to 41%. In order for the insurgents to now obtain consents from a majority (approximately

4,923,500 shares), they need to solicit consents for approximately 2,154,500 shares, in addition to the 2,769,357 common shares already in hand. That necessary solicitation of approximately 2,154,500 shares represents a daunting 70% of the shares not owned by either the co-plaintiffs in the California Action and their supporters or by Crown, Holbrook, Robeck or Tormey. Prior to the exchange, the insurgents only needed to solicit consents from 25% of the available shares.

42. There are numerous reasons why it is virtually impossible to obtain consents from approximately 70% of the shares that are theoretically up for grabs. Among other things, there are limited institutional holdings of EMAK shares, and the shares have little value and little liquidity. The shares are widely dispersed among public holders who have little incentive to study the consent materials and return a consent card. Additionally, the substantial number of votes of EMAK employees are now virtually impossible to obtain. Employees will avoid the risk of retribution from casting a vote against the current CEO and the current Chairman so long as the insurgents need a massive amount of additional votes from unknown sources.

43. There can be no question that the votes granted by the incumbents to Crown are not available to the insurgents. The incumbents' willingness to grant decisive voting power to Crown reflects their willingness to enter into a future recapitalization that will benefit Crown at the expense of the common stockholders. As discussed above, the incumbents have been currying favor with Crown for months by publicizing their interest in pursuing Crown's agenda of restructuring the preferred stock without requiring the approval of the common stockholders.

44. Additionally, it is not feasible for the insurgents to "outbid" the incumbents in terms of buying support from Crown. The consent solicitation is not predicated on an acquisition offer that would allow Crown to exit its investment, and the current distressed state of EMAKs condition makes it infeasible to arrange an acquisition on terms that are attractive to both Crown

and the common stockholders. Unless enjoined, the exchange orchestrated by the incumbents and Crown reflects an alliance between them that will remain in place for the duration of the consent solicitation.

45. Moreover, the exchange contains a new stealth poison pill. Although nowhere mentioned in the memo, the exchange also eliminates a valuable protection for Kurz and makes it impossible for him or anyone associated with him to buy additional shares of EMAK common stock. Unlike all prior versions of Crown's preferred stock dating back to the original negotiation in 2000, the Certificate of Designation for the new Series B Preferred Stock does not contain an exclusion in the definition of "Change of Control" for the acquisition or ownership of a 20% block by Kurz or his affiliates. Since Kurz and his family already own more than 1,540,000 common shares, and others aligned with him own many more, they are at risk of triggering a redemption right by Crown if they purchase additional shares.

46. The Board was not provided with a redline of the Certificate of Designation to highlight that change. Nor was there any discussion in the memo of why Crown was granted a new power to claim a Change of Control, or why Kurz or his affiliates were now limited in buying additional shares.

47. The memo mentions other changes that are beneficial to Crown. The accumulated dividend is now added to the liquidation preference, and the redemption payment will now accrue interest if not paid when due upon a Change of Control.

48. The memo makes no effort to explain how granting voting power to Crown can possibly "better align the interests of Crown and the common stockholders." The opposite is true. Crown's interests are fundamentally different from the interests of common stockholders. Because the conversion price for the preferred stock is far out of the money ($9 conversion price

when shares trade at less than $1), Crown's interest is to trigger its $25+ million liquidation preference, or force a restructuring that would provide a clearer exit. Holders of common stock would like to pursue business strategies designed to increase the value of their shares, since all stock appreciation up to the $9 conversion price is enjoyed by the common stock. Granting a pivotal controlling voting interest to Crown allows Crown to impose strategies adverse to the interests of the common stock.

49. On Sunday, October 18, Kurz sent emails to EMAK's outside counsel (Christopher Austin) and General Counsel (Tracy Tormey) asking for any emails, notes, and analysis that supported the proposed exchange, and information about when the concept was first discussed. Neither of them responded. Kurz's emails are attached hereto as Exhibit H.

50. After consulting with counsel, Kurz drafted an email that he sent to the Board on Sunday evening outlining his concerns that approval of the exchange would constitute a breach of the duty of care, the duty of loyalty and the *Blasius* doctrine. Kurz's email is attached hereto as Exhibit I.

51. At the Board meeting the following morning, Christopher Austin provided an oral summary of his memorandum from the previous day. He noted Kurz's memo of Sunday evening, but did not respond to the concern that the exchange was an improper interference with the common stockholders' franchise rights. He said that the exchange would be protected by the business judgment rule if the Board thinks it is in the common shareholders' best interests.

52. Kurz asked a series of questions. When asked why the exchange was being presented with virtually no prior notice and no background analysis, Tormey said that it had been under consideration for a while and had been mentioned at the last board meeting on September 9. Kurz vehemently stated that he had no recollection of any such discussion and that he

absolutely would have objected had it been raised. In fact, the exchange had not been discussed at the last board meeting or at any other time when Kurz was present. When pressed by Kurz on the minimal notice for consideration of the exchange, the only response was that it was convenient to adopt the exchange on the same date that the Board was considering the appropriate record date for the consent solicitation.

53. Kurz asked if Delaware counsel had been consulted and provided an opinion on the exchange, given that Kurz himself had spoken with Delaware counsel the previous day and had been told that the transaction would constitute a breach of fiduciary duty. Austin responded that he was confident that the transaction fell within the business judgment rule.

54. When Kurz asked for background analyses, a fairness opinion from an investment bank, and a redline of the new Certificate of Designation, he was told that there were no supporting documents other than Austin's memo circulated the prior day.

55. Kurz received no response when he asked for the rationale in eliminating the provision exempting Kurz and his affiliates from the 20% trigger for a Change of Control. The elimination of that exemption – which was not flagged in any of the written materials provided by management to the Board – could only have been designed to deter Kurz or any of his co-plaintiffs in the California Action from buying any additional shares that could be counted in support of the consent solicitation.

56. The incumbents' motivations were made clear by their selection of a record date for the consent solicitation. Kurz proposed a motion that a record date be set for the consent solicitation prior to the effective date on the preferred exchange, to remove any claim that the exchange was being implemented in order to impede the consent solicitation. No one seconded Kurz's motion.

57. Kurz asked again for any backup analysis, a redline, and more time to read the legal documents. He was rebuffed.

58. All directors other than Kurz voted in favor of the preferred stock exchange. All directors other than Kurz voted to set the record date for the consent solicitation for October 22, 2009, just after the consummation of the exchange.

EMAK Issues a False and Misleading Press Release Regarding the Exchange

59. Later on October 19, EMAK issued a press release stating that its Board had agreed to consummate an exchange for Crown Series AA Preferred Stock "in order to better align the interests of Crown with all Common stockholders." The press release also states that Crown "has surrendered its right to appoint its own members to EMAK's board[.]" CEO Holbrook is quoted as follows: "This transaction levels the playing field for all of our stockholders and gives Crown an equal voice in governance." The press release is attached hereto as Exhibit J.

60. Those statements are false and reflect the pretextual justification for the exchange. As discussed above, the exchange does nothing to align the interests of Crown with the common stockholders, given that Crown's security has a $25 million liquidation preference triggered by a Change of Control and a conversion price of $9 per share that is far out-of-the-money. Nor does the exchange "level[] the playing field," give Crown an "equal voice" or involve the "surrender" of Crown's voting power. The exchange makes it impossible for holders of common stock to act by written consent to remove the incumbent CEO and Chairman. Stockholders who prefer a Board of Directors devoted to increasing the value of EMAK and its common stock cannot succeed. Crown now has the pivotal, decisive voice in who will constitute the entirety of the Board of Directors. The incumbents ensured their own continued incumbency by empowering

Crown to demand the restructuring of their preferred stock as the price for their support in the election of all directors.

61. The true purpose for the exchange was to place a decisive blocking position in the hands of Crown immediately prior to the record date of the consent solicitation. The press release fails to disclose that purpose and effect and fails to disclose that the exchange operates as a stealth poison pill, by removing the Change of Control exemption applicable to Kurz and his affiliates for their ownership and purchase of any shares up to a 50% threshold.

Irreparable Injury

62. The effect of granting as-converted voting rights to Crown immediately prior to the record date of the consent solicitation is to place an insuperable impediment upon the consent solicitation, and to empower Crown to demand the restructuring of the economic features of its preferred stock. Not only is this grant of voting power important in itself, its chilling effect on uncommitted common stockholders, especially EMAK employees, means that if the voting of the preferred stock is not enjoined during the consent solicitation, the consent solicitation cannot succeed. The resulting injury to plaintiffs and the common stockholders of EMAK is impossible to quantify.

COUNT I
(Breach of Fiduciary Duty of Loyalty)

63. Plaintiffs repeat and reallege each and every allegation above as if set forth in full herein.

64. At all relevant times, the Director Defendants were fiduciaries owing a duty of loyalty to all of the holders of common stock. This duty includes the obligation to refrain from impeding the effective exercise of the stockholder franchise absent compelling justification. This duty also includes the obligation to refrain from acting for the sole or primary purpose of

entrenchment. The duty of loyalty also includes the obligation not to act in the interests of a holder of preferred stock to the detriment of the interests of EMAK and its holders of common stock.

65. By acting to delay establishment of a record date for the consent solicitation, and using that time to effectuate a transaction that is designed to entrench the directors subject to removal by holders of common stock, and to enhance the power and leverage of Crown over the business and affairs of EMAK, the Director Defendants have breached their duty of loyalty.

66. The Director Defendants' breaches of fiduciary duty have caused and are continuing to cause harm to Plaintiffs and the holders of common stock by depriving them of the full and fair opportunity to exercise their consent rights to remove and replace three of the incumbent directors of EMAK. Plaintiffs have no adequate remedy at law.

COUNT II
(Breach of Fiduciary Duty of Care)

67. Plaintiffs repeat and reallege each and every allegation above as if set forth in full herein.

68. The Director Defendants owe the Plaintiffs and all holders of common stock the utmost fiduciary duty of care. This duty includes the obligation to gather all information reasonably available prior to approving a transaction affecting corporate control.

69. By approving the exchange of Crown's preferred stock without any discussion or analysis of its effect on the just-initiated consent solicitation, or on Crown's power to influence any future stockholder vote, or any legal analysis from Delaware counsel, or any financial analysis of the benefit conferred on Crown, or even an itemization of the changes to the security effected by the exchange, the Director Defendants breached their duty of care.

70. The Director Defendants' breaches of fiduciary duty have caused and are continuing to cause harm to Plaintiffs and the holders of common stock by depriving them of the full and fair opportunity to exercise their consent rights to remove and replace three of the incumbent directors of EMAK. Plaintiffs have no adequate remedy at law.

COUNT III
(Aiding and Abetting Breaches of Fiduciary Duty)

71. Plaintiffs repeat and reallege each and every allegation above as if set forth in full herein.

72. The Director Defendants have breached their fiduciary duties to EMAK and its holders of common stock.

73. Crown has aided and abetted the Director Defendants in their breach of fiduciary duties. Through their dealings with the Director Defendants, and the participation of their designee on the EMAK Board, Crown knew that the eleventh-hour exchange served the personal interests of the Director Defendants and that it was implemented for the benefit of Crown at the expense of EMAK and its common stockholders in order to defeat the consent solicitation and maintain the incumbency of the directors elected by the common stock.

74. Plaintiffs have no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand judgment and preliminary and permanent injunctive relief and declarative relief as follows:

(a) an order rescinding the exchange of the Series AA Preferred Stock for Series B Preferred Stock;

(b) an order preliminarily and permanently enjoining EMAK, its officers, directors, employees, agents and servants, and all persons who act in concert or participation with them

who receive actual notice thereof, from treating the Series B Preferred Stock issued to Crown as validly issued for purposes of voting or exercising rights of consent;

(c) a declaration that the Director Defendants have breached their fiduciary duties of care and loyalty by implementing the exchange transaction and by selecting a post-exchange record date for the consent solicitation;

(d) a declaration that Crown has aided and abetted the Director Defendants' breaches of fiduciary duty;

(e) an award to Plaintiffs of the costs of pursuing this action, including, but not limited to, Plaintiffs' attorneys' fees and expenses and experts' fees; and

(f) an award of such other and further relief as the Court deems just and proper.

/s/ Joel Friedlander
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