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Case No. 7840-VCL

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE: THE ORCHARD ENTERPRISES, INC. STOCKHOLDER LITIGATION	))	CONSOLIDATED C.A. NO. 7840-VCL

ANSWER OF DEFENDANTS MICHAEL DONAHUE, DAVID ALTSCHUL, VIET DINH, JOEL STRAKA AND NATHAN PECK TO THE CONSOLIDATED VERIFIED CLASS ACTION COMPLAINT

Defendants Michael Donahue, David Altschul, Viet Dinh, Joel Straka and Nathan Peck (the "Special Committee Defendants"), by and through their undersigned counsel hereby respond to the Consolidated Verified Class Action Complaint (the "Complaint").

GENERAL DENIAL

Except as otherwise expressly recognized herein, the Special Committee Defendants deny each and every allegation contained in the Complaint. The Special Committee Defendants state that the headings throughout the Complaint do not constitute well-pleaded allegations of fact and, therefore, require no response. To the extent a response is required, the allegations of the headings in the Complaint are denied. The Special Committee Defendants expressly reserve the right to seek to amend and/or supplement their Answer as may be necessary.

RESPONSE TO SPECIFIC ALLEGATIONS

AND NOW, incorporating the foregoing, the Special Committee Defendants state as follows in response to the specific allegations set forth in the Complaint:

NATURE OF THE ACTION

1. This is a class action brought on behalf of the former public common shareholders of The Orchard Enterprises, Inc. ("Orchard" or the "Company") who owned Orchard common stock between March 16, 2010 and July 29, 2010 (the "Class Period") seeking damages as a result of Orchard's board of directors (the "Individual Defendants" herein) agreement to sell Orchard to its majority owner, Dimensional Associates, LLC ("Dimensional") on terms that improperly favored Dimensional and were unfair to the Company's minority shareholders (the "Going-Private Merger" or "Merger"). This action seeks damages for the Defendants' breaches of

fiduciary duties, as well as the remedy of quasi-appraisal based on the Company's misrepresentations and material omissions in the Proxy for the Going-Private Merger.

ANSWER: The allegations of Paragraph 1 contain Plaintiffs' characterization of the nature of the allegations and purported claims in the Complaint to which no responsive pleading is required. To the extent a responsive pleading is deemed required, the allegations of Paragraph 1 are denied, except that Special Committee Defendants admit that Plaintiffs purport to bring this action on behalf of the former holders of common stock of The Orchard Enterprises, Inc. ("The Orchard" or the "Company") and admit that the Company was acquired by Dimensional Associates, LLC ("Dimensional") through an agreement approved by the Board of Directors of the Company (the "Merger").

2. The underpriced Going-Private Merger was foisted on Orchard's public shareholders because Dimensional, which held a controlling interest in Orchard, forced the transaction. In late 2008, Dimensional informed the Board that it was interested in a sale of the Company or a Going-Private transaction. From that point until the Going-Private Merger was announced Dimensional inappropriately dominated the process to sell the Company and refused to in good faith negotiate a fair value for its preferred shares to a third-party. Dimensional demanded that any transaction credit it with a $25 million preferred stock liquidation preference to the exclusion of the Company's minority stockholders – even though the preference was not triggered by a going-private transaction.

ANSWER: The allegations in the first sentence of Paragraph 2 contain legal conclusions to which no responsive pleading is required. To the extent a responsive pleading is deemed required, the allegations in the first sentence of Paragraph 2 are denied. The allegations in the second sentence of Paragraph 2 are admitted. The allegations in the third and fourth sentences of Paragraph 2 are denied.

3. Neither the Company, its directors, or its so-called "independent" Special Committee questioned Dimensional's improper demand to be credited with $25 million for a liquidation preference that was not even triggered by the Going Private Merger under the terms of the preferred stock Certificate of Designations. Instead, the Individual Defendants abandoned their fiduciary duties by acquiescing to Dimensional's improper demand. As a result, the Company was strong-armed into accepting Dimensional's unfair price, of $2.05 per share – much less than half of the $4.67 per share price that this Court has held was fair value for Orchard's common stock.

ANSWER: The allegations in the first sentence of Paragraph 3 are denied. The allegations in the second sentence of Paragraph 3 contain legal conclusions to which no responsive pleading is required. To the extent a responsive pleading is deemed required, the allegations in the second sentence of Paragraph 3 are denied. The allegations in the third sentence of Paragraph 3 are denied, except that Special Committee Defendants admit that the consideration offered in the Merger was $2.05 per share of common stock and that, in an appraisal action arising out of the Merger, the Court of Chancery found that the "fair value" of the Company's common stock was $4.67 per share.

4. To justify Dimensional's grossly unfair price, the Board formed a Special Committee which retained a financial advisor that manipulated its fairness opinion and Discounted Cash Flow ("DCF") calculations by using an artificially inflated discount rate to come up with a scenario where it could falsely show that the Going-Private Merger price was fair. But this fairness opinion relied on an artificially low value of Orchard common stock, by improperly crediting Dimensional with a $25 million liquidation preference and using an artificially inflated discount rate that is inconsistent with generally accepted valuation techniques. The Special Committee violated their fiduciary duties to the Company's minority shareholders by rubber- stamping this flagrant manipulation of the Company's value, accepting the fairness opinion, and approving the Going Private Merger.

ANSWER: The allegations in the first and second sentences of Paragraph 4 are denied. The allegations in the third sentence of Paragraph 4 contain legal conclusions to which no responsive pleading is required. To the extent a responsive pleading is deemed required, the allegations in the third sentence of Paragraph 4 are denied.

5. Even worse, the Defendants deprived the Class of their appraisal rights through affirmative misrepresentations and material omissions in the Proxy Statement for the Merger. The Proxy repeatedly misrepresented that Dimensional was entitled to the $25 million value of the liquidation preference:

- The Proxy's "Notice of Annual Meeting" represented that "Dimensional Associates" had a "right to a liquidation preference" of the first $25 million of "the merger consideration that our common stockholders would otherwise receive" under the original "Certificate of Designations" of the Preferred Stock; and

- The Proxy later stated (at 31) about "The Orchard's contractual obligation to pay this liquidation preference" that "[w]hen calculating the value of the common equity of

The Orchard by comparison to other public companies, this ongoing liability must be accounted for."

But these statements were false, because Dimensional was not entitled to the $25 million liquidation preference in a Going Private Merger under the Certificate of Designations, and thus there was no basis for allocating the value of the preference to Dimensional.

ANSWER: The allegations in Paragraph 5 contain legal conclusions to which no responsive pleading is required. To the extent a responsive pleading is deemed required, the allegations in Paragraph 5 are denied.

6. Indeed, this Court held that Dimensional was not entitled to the liquidation preference in holding that that the Going-Private Merger price of $2.05 was unfair compared to the fair value of $4.67 in a recently decided appraisal action. *See In re Orchard Enterprises, Inc.*, C.A. No. 5713–CS, 2012 WL 2923305 (Del.Ch., Jul. 18, 2012). Dimensional's price was not even close to being fair – the Court found that the fair value was *more than double* the Going-Private Merger price. This gives overwhelming evidence that the Going Private Merger did not satisfy the entire fairness standard, and that the Class is entitled to a quasi-appraisal remedy based on being deprived of fair disclosure in the Proxy Statement.

ANSWER: The allegations in the first sentence of Paragraph 6 are denied, except that Special Committee Defendants admit that, in an appraisal action arising out of the Merger, the Court of Chancery found that the "fair value" of the Company's common stock was $4.67 per share and respectfully refer to the Court's opinion in *In re Orchard Enterprises, Inc.*, 2012 WL 2923305 (Del. Ch. July 18, 2012) for its complete content. The allegations in the second sentence of Paragraph 6 are denied. The allegations in the third sentence of Paragraph 6 contain legal conclusions to which no responsive pleading is required. To the extent a responsive pleading is deemed required, the allegations in the third sentence of Paragraph 6 are denied.

THE PARTIES

7. Plaintiff Loeb Arbitrage Management, LP, (doing business as Loeb Capital Management), is or was the investment manager and authorized agent of to act on behalf of other named plaintiffs listed below in this action that are investment funds, i.e., LLT Limited; Loeb Marathon LP; Institutional Benchmark Series (Master Feeder) Limited; and the Loeb Arbitrage Fund.

ANSWER: The Special Committee Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 7, and on that basis deny those allegations.

8. Loeb Offshore Management LP (doing business as Loeb Capital Management) is or was the investment manager and authorized agent of to act on behalf of other named plaintiffs listed below in this action that are investment funds, i.e., Loeb Marathon Offshore Fund, Ltd. and Loeb Offshore Fund, Ltd.

ANSWER: The Special Committee Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 8, and on that basis deny those allegations.

9. Plaintiff Loeb Arbitrage Fund is an investment fund that held over 250,000 shares of Orchard common stock prior to the Going Private Merger and during the Class Period. Its investment manager and authorized agent is Loeb Capital.

ANSWER: The Special Committee Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 9, and on that basis deny those allegations.

10. Plaintiff LLT Limited is an investment fund that held shares of Orchard common stock prior to the Going Private Merger and during the Class Period. Its investment manager and authorized agent is Loeb Capital.

ANSWER: The Special Committee Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 10, and on that basis deny those allegations.

11. Plaintiff Loeb Marathon Fund LP, is an investment fund that held shares of Orchard common stock prior to the Going Private Merger and during the Class Period. Its investment manager and authorized agent is Loeb Capital.

ANSWER: The Special Committee Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 11, and on that basis deny those allegations.

12. Plaintiff Institutional Benchmark Series (Master Feeder) Limited, is an investment fund that held shares of Orchard common stock prior to the Going Private Merger and during the Class Period. Its investment manager and authorized agent is Loeb Capital.

ANSWER: The Special Committee Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 12, and on that basis deny those allegations.

13. Plaintiff Loeb Marathon Offshore Fund, Ltd. is an investment fund that held shares of Orchard common stock prior to the Going Private Merger and during the Class Period. Its investment manager and authorized agent is Loeb Capital.

ANSWER: The Special Committee Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 13, and on that basis deny those allegations.

14. Plaintiff Loeb Offshore Fund, Ltd. is an investment fund that held shares of Orchard common stock prior to the Going Private Merger and during the Class Period. Its investment manager and authorized agent is Loeb Capital. Together, the plaintiffs are hereinafter referred to as "Plaintiffs" or the "Loeb Funds."

ANSWER: The Special Committee Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of Paragraph 14, and on that basis deny those allegations. The allegations of the second sentence of Paragraph 14 do not require a responsive pleading.

15. Defendant Orchard is a Delaware corporation, which is a global leader in digital media services. Orchard controls and distributes more than 2.1 million music and audio recordings and approximately 5,000 titles of video programming through digital stores, such as Amazon, eMusic, Hulu, iTunes, Rhapsody and YouTube, and mobile carriers, such as Orange, Telefonica, Verizon and 3, worldwide. Orchard generates income by making these music and audio recordings and videos available for purchase and use at online stores and through marketing and promotional campaigns, film, advertising, gaming and television licensing and other related services. As of 2010, Orchard's core business, reflecting 90% of revenues, was derived from the retail sale (through digital stores) and other exploitation of its controlled, licensed music catalogue.

ANSWER: The allegations of Paragraph 15 are admitted.

16. Defendant Dimensional Associates, LLC ("Dimensional") is a New York limited liability company and is a private equity affiliate of JDS Capital, L.P. Dimensional was the controlling stockholder of Orchard owning approximately 42% of the Company's outstanding common stock, 99% of the Company's outstanding Series A Preferred Stock - representing an aggregate of approximately 53% of the Company's voting stock- of Orchard's outstanding capital stock.

ANSWER: The allegations in the first sentence of Paragraph 16 are admitted. The allegations in the second sentence of Paragraph 16 are denied, except that Special Committee Defendants admit that, prior to the Merger, Dimensional owned approximately 42% of the Company's common stock and 99% of the Company's Series A Preferred Stock, representing 53% of the voting power of the Company's outstanding capital stock.

17. Defendant Daniel Stein ("Stein") had been a director of the Company since 2009. Stein had also served as the interim CEO of Orchard from September 2009 through October 27, 2009. Defendant Stein also is the CEO of Dimensional.

ANSWER: The allegations of the first and second sentences of Paragraph 17 are denied, except that Special Committee Defendants admit that Mr. Navin had been a director of the Company since November 2007 and that he was appointed Interim Chief Executive Officer in September 2009, effective October 1, 2009, and resigned from that position on October 27, 2009. The Special Committee Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations of the third sentence of Paragraph 17, and on that basis deny those allegations.

18. Defendant Michael Donahue ("Donahue") was Chairman of the Board of Orchard. He has served as a member of Board since November 2007 and became Chairman of the Board in June 2008.

ANSWER: The allegations of Paragraph 18 are admitted.

19. Defendant Bradley Navin ("Navin") served as Chief Executive Officer and a member of the Board. He was Interim Chief Executive Officer, Executive Vice President, General Manager of Orchard effective October 27, 2009. He has been Executive Vice President and General Manager of the Company since April 2008.

ANSWER: The allegations of Paragraph 19 are denied, except that Special Committee Defendants admit that Mr. Navin had served as Executive Vice President and General Manager of the Company since April 2008, was appointed as Interim Chief Executive Officer effective October 27, 2009, and was elected by the board of directors as Chief Executive Officer and a director on February 18, 2010.

20. Defendant David Altschul ("Altschul") had been a director of the Company since 2006.

ANSWER: The allegations of Paragraph 20 are admitted.

21. Defendant Viet Dinh ("Dinh") had been a director of the Company since 2007.

ANSWER: The allegations of Paragraph 21 are admitted.

22. Defendant Joel Straka ("Straka") had been a director of the Company since 2008.

ANSWER: The allegations of Paragraph 22 are admitted.

23. Defendant Nathan Peck ("Peck") had been a director of the Company since 2007.

ANSWER: The allegations of Paragraph 23 are denied, except that Special Committee Defendants admit that Mr. Peck had been a director of the Company since June 2008.

24. Defendants Donahue, Navin, Altschul, Stein, Dinh, Straka and Peck are collectively referred to as the "Individual Defendants" and/or the "Orchard Board." The Individual Defendants as officers and/or directors of Orchard, have a fiduciary relationship with Plaintiff and other former public shareholders of Orchard and owe them the highest obligations of good faith, fair dealing, loyalty and due care.

ANSWER: The allegations of the first sentence of Paragraph 24 do not require a responsive pleading. The allegations of the second sentence of Paragraph 24 state legal conclusions as to which no responsive pleading is required. To the extent a responsive pleading is deemed required, the allegations in the second sentence of Paragraph 24 are denied.

THE GOING-PRIVATE MERGER

25. Orchard controlled and distributed digital music and video programming of its licensed music catalogue, through hundreds of digital stores (e.g., Amazon, eMusic, Hulu, iTunes, Rhapsody, YouTube) and mobile carriers (e.g., China Mobile, Orange, Telefonica, Verizon) worldwide.

ANSWER: The allegations of Paragraph 25 are admitted.

26. Until Dimensional, a private equity firm, bought out the Company's common stockholders in the Going-Private Merger, Orchard was publicly traded on the NASDAQ.

ANSWER: The allegations of Paragraph 26 are admitted.

27. Orchard's capital structure before the Going-Private Merger consisted of (i) common stock, which was 42.5% owned by Dimensional, and (ii) preferred stock, which was essentially wholly owned by Dimensional. Dimensional had 53% of the voting power of Orchard's outstanding capital stock, because the preferred stock could vote on an as-converted basis. As such, Dimensional had control over the Company.

ANSWER: The allegations in the first and second sentences of Paragraph 27 are admitted. The allegations in the third sentence of Paragraph 27 contain legal conclusions to which no responsive pleading is required. To the extent a responsive pleading is deemed required, the allegations in the third sentence of Paragraph 27 are denied.

28. Dimensional improperly used this controlling interest in Orchard to force the Going Private Merger at a grossly unfair price of $2.05 per share.

ANSWER: The allegations of Paragraph 28 are denied, except that Special Committee Defendants admit that the consideration offered in the Merger was $2.05 per share of common stock.

29. On November 12, 2008, Stein, who is Dimensional's CEO and also a member of Orchard's board, contacted Donahue to inform him that Dimensional wanted to solicit parties interested in either acquiring Orchard or participating in the acquisition by Dimensional of all of the outstanding common stock not then owned by Dimensional.

ANSWER: The allegations of Paragraph 29 are admitted.

30. As a result of this discussion, the Board decided to appoint a special committee consisting of four so-called "independent" directors: Donahue, Dinh, Peck and Straka. The special committee held its first meeting on November 25, 2008 wherein it engaged Patterson

Belknap Webb & Tyler LLP ("Patterson Belknap") to act as its legal adviser and appointed Donahue to serve as its Chairman.

ANSWER: The allegations of the first sentence of Paragraph 30 are denied, except that Special Committee Defendants admit that the Board appointed a special committee consisting of four independent directors: Donahue, Dinh, Peck and Straka. The allegations in the second sentence of Paragraph 30 are admitted.

31. Despite the formation of this nominal special committee, the Board inappropriately allowed Dimensional to control the potential sale process.

ANSWER: The allegations of Paragraph 31 are denied.

32. Between November 2008 and March 2009, Dimensional contacted potential strategic and financial buyers. Although the Company asserts that it entered into non-disclosure agreements with eleven contacted potential buyers and conducted eight face-to-face business diligence meetings, the Company disclosed that this process resulted in no "credible" offers.

ANSWER: The allegations of the first sentence of Paragraph 32 are admitted. The allegations of the second sentence of Paragraph 32 are denied, except that Special Committee Defendants admit that the Company entered into non−disclosure agreements with eleven potential buyers, and management conducted eight face−to−face business diligence meetings but none of these discussions produced any credible offers.

33. Because the Company allowed Dimensional, an interested, controlling, party in the Going-Private Merger, to run the process, it is unclear what Dimensional determined to be a "credible" offer and what premium Dimensional was requiring of the potential bidders to cash Dimensional out of its preferred shares.

ANSWER: The allegations of Paragraph 33 are denied.

34. On October 9, 2009, Stein, who was now CEO of both Orchard and Dimensional, contacted Donahue, Altschul, Dinh, Peck and Straka individually to inform them that, as part of its regular, ongoing review of its investments, Dimensional was considering making a proposal for a going private transaction to buy the outstanding shares of capital stock of Orchard not already owned by Dimensional.

ANSWER: The allegations of Paragraph 34 are denied, except Special Committee Defendants admit that, on October 9, 2009, Mr. Stein, the Company's Chief Executive Officer at the time, contacted Donahue, Altschul, Dinh, Peck and Straka individually to inform them that, as part of its regular, ongoing review of its investments, Dimensional was considering making a proposal for a going private transaction to buy the outstanding shares of capital stock of the Company not already owned by Dimensional.

35. On October 19, 2009, the board of directors decided to form a new special committee to review and evaluate the Dimensional proposal comprised of the so-called "independent" directors. The special committee now consisted of Donahue, Altschul, Straka, Dinh and Peck.

ANSWER: The allegations of the first sentence of Paragraph 35 are denied, except that Special Committee Defendants admit that, at a meeting held on October 19, 2009, the Board decided to form a special committee comprised of the independent directors to review and evaluate the Dimensional proposal (the "Special Committee"). The allegations of the second sentence of Paragraph 35 are admitted.

36. The special committee held its first meeting on October 22, 2009 and resolved to engage Patterson Belknap as its legal adviser and to appoint Donahue to serve as its Chairman.

ANSWER: The allegations of Paragraph 36 are admitted.

37. On October 28, 2009, the special committee engaged Fesnak and Associates, LLP ("Fesnak"), to be the financial advisor to the special committee. Fesnak was retained, in part, because of its competitive fee structure.

ANSWER: The allegations of the first sentence of Paragraph 37 are admitted. The allegations of the second sentence of Paragraph 37 are denied, except that Special Committee Defendants admit that Fesnak was recommended to the Special Committee because of its competitive fee structure, reputation as a respected valuation firm and its independence from the Company and Dimensional.

38. On October 30, 2009, Orchard announced the resignation of Stein as Interim CEO and the appointment of Defendant Navin as Interim CEO. Orchard also disclosed in this filing that Dimensional had made a proposal to acquire the Company at the proposed price of $1.68 to $1.84 per share.

ANSWER: The allegations of the first sentence of Paragraph 38 are admitted. The allegations of the second sentence of Paragraph 38 are denied, except that Special Committee Defendants admit that the Company also disclosed receipt of the Dimensional proposal and the increase in the proposed price offered by Dimensional from $1.68 to $1.84 per share of common stock.

39. Despite this cosmetic move to have Mr. Stein of Dimensional step aside, Dimensional controlled the sales process by preventing Orchard from negotiating any third party bid that did not offer to pay Dimensional a $25 million liquidation preference to the exclusion of minority shareholders. Ultimately, Orchard rejected certain third party offers on this ground, and was unable to attract a third party bid that Dimensional deemed acceptable. Dimensional used this as an opportunity to improperly seize the benefit of the liquidation preference through the Going Private Merger.

ANSWER: The allegations of the first and second sentence of Paragraph 39 are denied, except that Special Committee Defendants admit that Dimensional indicated at various times that certain third party offers were unacceptable because they did not contemplate a purchase of the Series A convertible preferred stock at its full liquidation value. The allegations of the third sentence of Paragraph 39 are denied.

40. On November 3, 2009, the special committee was contacted by a minority stockholder requesting information about the special committee's process and seeking direction about how to propose an alternative transaction. On November 18, 2009, the minority stockholder submitted to the special committee a written indication of interest to lead a group of investors in (1) the acquisition of all of the outstanding shares of our common stock (including those held by Dimensional and its affiliates) for cash consideration in the range of $2.36 to $2.84 per share, (2) the acquisition of all of the outstanding shares of our Series A convertible preferred stock (including those held by Dimensional and its affiliates) for a combination of cash and equity in the surviving entity, and (3) a possible concurrent combination with one or more third party entities in our industry.

ANSWER: The allegations of Paragraph 40 are admitted.

41. Evidence of Dimensional's control over the sales process is reflected in the special committee's determination that the minority shareholder should negotiate directly with Dimensional to determine whether it would sell its position in the Series A convertible preferred stock as proposed in the minority shareholder's offer.

ANSWER: The allegations of Paragraph 41 are denied, except that Special Committee Defendants admit that, given the necessity of Dimensional's agreement to the success of the minority stockholder's proposed transaction, the Special Committee requested that the minority stockholder contact Dimensional directly to determine whether it would sell its position in the Series A convertible preferred stock as proposed.

42. At this point, Defendant Stein of Dimensional informed the minority shareholder that the offer was not acceptable to Dimensional due to the fact that it did not contemplate a purchase of Dimensional's shares of the preferred stock at their full liquidation value. The special committee did nothing to address Dimensional's actions to prevent the successful negotiation of this, or any other, negotiated third party offer.

ANSWER: The allegations of the first sentence of Paragraph 42 are denied, except that Special Committee Defendants admit that the Special Committee was advised by Mr. Stein that he had informed the minority stockholder that its proposal was not acceptable to Dimensional due to the fact that (1) it did not contemplate the purchase of Dimensional's Series A convertible preferred stock at its full liquidation value and (2) the consideration offered by the minority stockholder was a combination of cash, a promissory note and equity interests in the surviving entity, which would involve the assumption by Dimensional of unacceptable additional completion and investment risk. The allegations of the second sentence of Paragraph 42 are denied.

43. Although Dimensional claimed it wanted to participate in selling the Company to a third party bidder, it demanded that any buyer pay it the $25 million liquidation preference *before* valuing Orchard's common stock. *See In re Orchard Enterprises, Inc.*, 2012 WL 2923305 at *4.

ANSWER: The Special Committee Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 43, and on that basis deny those allegations.

44. Accordingly, on December 11, 2009, the special committee received a letter from the minority shareholder withdrawing its proposal to acquire Orchard. According to the letter, Dimensional was unwilling to accept terms presented and made a counter offer that was "neither economically viable nor with solid financial justification."

ANSWER: The Special Committee Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations of the first sentence of Paragraph 44, and on that basis deny those allegations, except that Special Committee Defendants admit that, on December 11, 2009, the Special Committee received a letter from the minority shareholder withdrawing its proposal to acquire the Company. The allegations of the second sentence of Paragraph 44 are admitted.

45. The rejection of this bid turned the focus of the process to Dimensional's request for a going private transaction. On January 13, 2010, Donahue contacted Stein and asked him to raise his price to $2.10 per share. Stein acknowledged that Dimensional had offered $2.10 per share on December 18, 2009 but he stated that the offer at the time was contingent on, among other things, having a simple majority vote condition. Stein called Donahue later that day to state that Dimensional would be willing to raise its offer to $2.05 per share, with a majority of the minority vote condition and the "go-shop" provision, and that it represented Dimensional's best and final offer.

ANSWER: The allegations of the first sentence of Paragraph 45 are denied. The allegations of the second, third and fourth sentences of Paragraph 45 are admitted.

46. Dimensional's offer was based on allocating $25 million of Orchard's equity value to Dimensional's Series A Preferred Stock under the liquidation preference in the Certificate of Designations. But importantly, the Certificate of Designations did not provide for the liquidation preference to be triggered by the going-private transaction with Orchard's controlling shareholder. Rather, the Certificate only provided for the preference to be paid upon (i) the liquidation or dissolution of the Company; (ii) a sale of all or substantially all of the Company's assets; or (iii) a change of control transaction with a third party. The Going Private Merger proposed by Dimensional met none of these three preference-triggering event. Accordingly, Dimensional's offer of $2.05 per share based on the preference was grossly unfair, and substantially undervalued Orchard's common stock.

ANSWER: The Special Committee Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations of the first sentence of Paragraph 46, and on that basis deny those allegations. The allegations of the second, third and fourth sentences of Paragraph 46 contain legal conclusions to which no responsive pleading is required. To the extent a responsive pleading is deemed required, the allegations in the second, third and fourth sentences of Paragraph 46 are denied. The allegations of the fifth sentence of Paragraph 46 are denied.

47. On January 14, 2010, the special committee held a meeting to discuss the terms and conditions proposed by Dimensional and authorized and directed Patterson Belknap to negotiate the terms and conditions of a merger agreement with Dimensional based on the material terms agreed to in principle by the parties.

ANSWER: The allegations of Paragraph 47 are admitted.

48. On the afternoon of March 15, 2010, Orchard, Dimensional and The Orchard Merger Sub, Inc., a wholly owned subsidiary of Dimensional, executed the merger agreement.

ANSWER: The allegations of Paragraph 48 are admitted.

49. Based on Orchard's Proxy Disclosures and related sources, at no point did Orchard or the Special Committee challenge Dimensional's assertion that it should be credited with the $25 million liquidation preference in the Going Private Merger. Rather, the Special Committee simply acquiesced in, and adopted, Dimensional's position that it should be credited with the $25 million preference, and only be required to pay consideration in the Going Private Merger constituting the total value of the Orchard minus the $25 million liquidation preference amount. In doing so, Orchard and the Special Committee abandoned their fiduciary duties to the Company's minority shareholders.

ANSWER: The allegations of the first and second sentences of Paragraph 49 are denied. The allegations of the third sentence of Paragraph 49 state legal conclusions as to which no responsive pleading is required. To the extent that a responsive pleading is deemed required, the allegations of the third sentence of Paragraph 49 are denied.

50. On March 16, 2010, the Company announced that it had entered into a merger agreement with Dimensional, stating:

> New York- March 16, 2010 - The Orchard, a global leader in music and video distribution and comprehensive digital strategy, announced today that it has entered into a definitive merger agreement with Dimensional Associates, LLC, a private equity affiliate of JDS Capital, L.P. Dimensional currently owns approximately 42% of the Company's outstanding common stock and 99% of the Company's outstanding Series A Preferred Stock, representing an aggregate of approximately 53% of the Company's voting securities.
>
> Following the unanimous recommendation and approval of a Special Committee of independent and disinterested directors, the Board of Directors of The Orchard (other than Daniel C. Stein, who abstained from voting on the matter due to his position as an executive of Dimensional Associates) has approved the merger agreement and is recommending to The Orchard's stockholders that they adopt and approve the merger agreement. Under the terms of the merger agreement, Dimensional Associates will acquire all of the common stock of The Orchard not currently owned by it or its affiliates for $2.05 per share and stockholders will also receive a contingent right to receive additional consideration, under certain circumstances post-closing if Dimensional Associates or any of its affiliates enters into a commitment to sell at least 80% of The Orchard's voting securities or assets within six months of the consummation of the merger.

ANSWER: The allegations of Paragraph 50 are denied, except that Special Committee Defendants admit that, on March 16, 2010, the Company issued a press release announcing the execution of the merger agreement and the Special Committee Defendants refer to that document for its complete content.

51. The Defendants' offer price of $2.05 per share undervalued the Company's common stock, and was fundamentally unfair due to Dimensional's improper influence over the pricing process, and due to the fact that the special committee hired a financial advisor, Fesnak, that tailored its financial valuation to make Dimensional's Going-Private Merger price appear fair. Among other things, Fesnak's fairness analysis included an unsupported 20% discount rate that significantly undervalued the Company based on improper factors such as adjusting the Industry Risk Premium, Equity Risk Premium, and applying a Company-Specific Risk Premium to the proper discount rate for the Company's value.

ANSWER: The allegations of the first sentence of Paragraph 51 are denied, except that Special Committee Defendants admit that the consideration offered in the Merger

was $2.05 per share of common stock and that the Special Committee retained Fesnak as its financial advisor in connection with the Merger. The allegations of the second sentence of Paragraph 51 are denied, except that Special Committee Defendants admit that Fesnak used a 20% discount rate in its analysis.

52. Fesnak's unsupported financial analysis included several serious errors that the Special Committee should have – but did not – address. For example, Fesnak deducted a $25 million liquidation preference from the Company's enterprise value because Dimensional *could* demand the preference as a precondition to a third party transaction. However, the liquidation preference is payable only if one of the triggering events under the Certificate of Designations occurs, events that involve the end of Orchard's existence as a going concern, specifically:

> (i) a "voluntary or involuntary liquidation, dissolution, or winding up" of Orchard; (ii) "the sale or exclusive license of all or substantially all of [Orchard's] assets or intellectual property," in which case the company is required to liquidate, dissolve and wind up" as soon as possible thereafter; and (iii) a "Change of Control" transaction "in which the stockholders of [Orchard] will receive consideration from an unrelated third party."

See In re Orchard Enterprises, Inc., 2012 WL 2923305 at *3.

ANSWER: The allegations of the first sentence of Paragraph 52 are denied. The allegations of the second sentence of Paragraph 52 are denied, except that Special Committee Defendants admit that Fesnak subtracted approximately $24.99 million, representing the liquidation preference of the Series A convertible preferred stock, in calculating the residual value of the common stock. The allegations of the third sentence of Paragraph 52 state legal conclusions to which no responsive pleading is required. To the extent a responsive pleading is deemed required, the allegations in the third sentence of Paragraph 52 are denied, except that Special Committee Defendants admit that Paragraph 52 selectively quotes from *In re Orchard Enterprises, Inc.*, 2012 WL 2923305, at *3 and respectfully refer to that opinion for its complete content.

53. Thus, the liquidation preference could only be triggered upon "unpredictable events" including "dissolution, or liquidation." *See In re Orchard Enterprises, Inc.*, 2012 WL 2923305, at * 1. However, the Going-Private Merger was not an event triggering the payment of the liquidation preference, "as a matter of law." *See id.*

ANSWER: The allegations of Paragraph 53 state legal conclusions to which no responsive pleading is required. To the extent a responsive pleading is deemed required, the allegations of Paragraph 53 are denied, except that Special Committee Defendants admit that Paragraph 53 selectively quotes from *In re Orchard Enterprises, Inc.*, 2012 WL 2923305, at *1, and respectfully refer to that opinion for its complete content.

54. The Certificate of Designations, known to Dimensional and all Defendants, sets forth the rights and preferences of the preferred stock. The inclusion of the $25 million liquidation preference from the enterprise value of the Company was plainly inappropriate, and part of Defendants' attempt to both avoid cashing out common stock holders of the Company at a fair price and disclosing the fair price of the common stock. *See In re Orchard Enterprises, Inc.*, 2012 WL 2923305, at *6.

ANSWER: The allegations of the first sentence of Paragraph 54 are denied, except that Special Committee Defendants admit the Certificate of Designations sets forth certain rights and preferences of the Series A convertible preferred stock. The allegations of the second sentence of Paragraph 54 are denied.

55. The Going-Private Merger transaction "was not an event triggering the payment of the liquidation preference, as the Proxy Statement made clear." *See In re Orchard Enterprises, Inc.*, 2012 WL 2923305, at *6. This fact did not stop Defendants from using the liquidation preference as a discount in its valuation of the Company's common stock.

ANSWER: The allegations of the first sentence of Paragraph 55 state legal conclusions to which no responsive pleading is required. To the extent a responsive pleading is deemed required, the allegations of the first sentence of Paragraph 55 are denied, except that Special Committee Defendants admit that Paragraph 55 selectively quotes from *In re Orchard Enterprises, Inc.*, 2012 WL 2923305, at *6, and respectfully refer to that opinion for its complete content. The allegations of the second sentence of Paragraph 55 are denied, except that Special

Committee Defendants admit that Fesnak subtracted approximately $24.99 million, representing the liquidation preference of the Series A convertible preferred stock, in calculating the residual value of the common stock.

56. Further, the comparable companies and comparable transactions analyses performed by Fesnak were not reliable because "not one of the eight comparables chosen by Fesnak was really similar to Orchard." *See In re Orchard Enterprises, Inc.*, 2012 WL 2923305, at *10.

ANSWER: The allegations of Paragraph 56 are denied, except that Special Committee Defendants admit that Paragraph 56 selectively quotes from *In re Orchard Enterprises, Inc.*, 2012 WL 2923305, at *10, and respectfully refer to that opinion for its complete content.

57. Finally, the DCF, "based on the notion that the corporation's value equals the present value of its future cash flows" *In re Orchard Enterps. Inc.*, 2012 WL 2923305, at *1, which should be the exclusive analysis to value the Company, was performed using an inappropriate discount rate. Despite the fact that Orchard had experienced management, under the control of Dimensional, Fesnak added 1% to the discount rate. In fact, Fesnak added this percentage to the discount rate after choosing to give almost no weight to the aggressive case, and 90% weight to the base case. "Fesnak therefore dealt with projection risk already through weighting the projections." *See In re Orchard Enterprises, Inc.*, 2012 WL 2923305 at *21. Thus the addition to the discount rate served no purpose other than to improperly deflate the valuation of the Company for the benefit of Dimensional to the detriment of the Class.

ANSWER: The allegations of Paragraph 57 are denied, except that Special Committee Defendants admit that Paragraph 57 selectively quotes from *In re Orchard Enterprises, Inc.*, 2012 WL 2923305, at *1, *21, and respectfully refer to that opinion for its complete content.

58. After modifying Fesnak's valuation model, the Court in *In re Orchard Enterprises, Inc.* applied a discount rate of 15.3% and arrived at a value of $4.67 per share for Orchard as of the date of the Going-Private Merger, which is more than double the price (or an additional $2.62 per share) the Individual Defendants agreed to in the Going-Private Merger.

ANSWER: The allegations of Paragraph 58 are denied, except that Special Committee Defendants admit that the Court of Chancery applied a discount rate of 15.3% and

arrived at a value of $4.67 per share of common stock as of the date of the Merger and respectfully refer to the Court's opinion in *In re Orchard Enterprises, Inc.*, 2012 WL 2923305 for its complete content.

59. Shortly before the Going Private Merger was adopted, on June 25, 2010, Orchard received a new indication of interest from the same "Bidder B" that made an offer in November 2009. This indication of interest valued the Company at $40,990.000, which was again higher than the offer price from Dimensional for the Company's outstanding minority common stock. Yet – subject to Dimensional's overwhelming and improper influence – Orchard rejected this offer even though it would have provided greater consideration to Orchard's minority stockholders. In short, Orchard would not accept anything that Dimensional would not permit it to accept.

ANSWER: The allegations of the first and second sentences of Paragraph 59 are denied, except that Special Committee Defendants admit that, on June 25, 2010, the minority stockholder referred to as "Bidder B" submitted to the Special Committee a revised unsolicited written indication of interest to lead a group of investors in the acquisition of all of the outstanding shares of our common stock and Series A convertible preferred stock for $40,990,000 in cash. The allegations of the third sentence of Paragraph 59 are denied, except that Special Committee Defendants admit that the Special Committee determined that the proposal from "Bidder B" had no financing and lacked sufficient information for the Special Committee to make a determination that it constituted or was reasonably likely to lead to a "superior proposal" in accordance with the merger agreement. The allegations of the fourth sentence of Paragraph 59 are denied.

60. Due to Defendants' fiduciary breaches, the Class was damaged in that it obtained less than half of the Company's value in the Going-Private Merger.

ANSWER: The allegations of Paragraph 60 state legal conclusions as to which no responsive pleading is required. To the extent that a responsive pleading is deemed required, the allegations of Paragraph 60 are denied.

THE GOING PRIVATE MERGER IS SUBJECT TO ENTIRE FAIRNESS BECAUSE IT

INVOLVED ORCHARD'S CONTROLLING SHAREHOLDER DIMENSIONAL

61. Dimensional was the controlling stockholder of Orchard prior to the Going-Private Merger owning approximately 42% of the Company's outstanding common stock and 99% of the Company's outstanding Series A Preferred Stock, representing an aggregate of approximately 53% of the Company's voting securities.

ANSWER: The allegations of Paragraph 61 are denied, except that Special Committee Defendants admit that, prior to the Merger, Dimensional owned approximately 42% of the Company's common stock and 99% of the Company's Series A Preferred Stock, representing 53% of the voting power of the Company's outstanding capital stock.

62. Also, Defendant Stein, a director of the Company and its former Interim CEO, serves as chief executive officer of Dimensional.

ANSWER: The allegations of Paragraph 62 are denied, except that Special Committee Defendants admit that Mr. Stein was a director of the Company and its former Interim Chief Executive Officer.

63. As stated in the Company's 2010 Annual Report filed with the Securities and Exchange Commission on March 25, 2010:

> *Our majority stockholder, Dimensional Associates, LLC, or Dimensional, has significant influence on all stockholder votes and has effective control over the outcome of actions requiring the approval of our stockholders.*
>
> Dimensional beneficially owns shares of our capital stock representing approximately 54% of the outstanding voting power of our capital stock. *Dimensional thus has the ability to exert substantial influence or actual control over our management policies and strategic focus, could control the outcome of almost any matter submitted to our stockholders and has the ability to elect or remove all of our directors.* (emphasis added) There is a risk that the interests of Dimensional will not be consistent with the interests of other holders of our common stock.
>
> Dimensional has significant control over our business and significant transactions . . . (emphasis added)

ANSWER: The allegations of Paragraph 63 are denied, except that Special Committee Defendants admit that, on March 25, 2010, the Company filed its 2010 Annual Report with the Securities and Exchange Commission and the Special Committee Defendants refer to that document for its complete content.

64. As the controlling stockholder, Dimensional had the power and is exercising such power to enable it to acquire the Company's common stock and to dictate terms that are contrary to the Company's minority shareholders' best interests and do not reflect the fair value of Orchard's common stock.

ANSWER: The allegations of Paragraph 64 state legal conclusions as to which no responsive pleading is required. To the extent a responsive pleading is deemed required, the allegations of Paragraph 64 are denied.

65. As such, the transaction is subject to the exacting entire fairness standard under which the Defendants must establish both fair price and fair dealing.

ANSWER: The allegations of Paragraph 65 state legal conclusions as to which no responsive pleading is required. To the extent a responsive pleading is deemed required, the allegations of Paragraph 65 are denied.

THE ORCHARD'S 'S PROXY STATEMENT MISLED SHAREHOLDERS ABOUT THE LIQUIDATION PREFERENCE AND THE FAIR VALUE OF ITS COMMON STOCK

66. Orchard's Proxy contained major material misstatements about the liquidation preference and the fair price for the Going Private Merger, which interfered with Plaintiff's and the Class's evaluation and exercise of their appraisal rights, and therefore warrant a quasi- appraisal remedy.

ANSWER: The allegations of Paragraph 66 state legal conclusions as to which no responsive pleading is required. To the extent a responsive pleading is deemed required, the allegations of Paragraph 66 are denied.

67. *First*, Orchard repeatedly misrepresented in its Proxy Statement that the $25 million liquidation preference was required to be credited to Dimensional in allocating the value of the Orchard and determining the fair price of the Company's common stock.

ANSWER: The allegations of Paragraph 67 are denied.

68. For example, Orchard misstated the liquidation preference on the Proxy's opening "Notice of Annual Meeting." It stated that under the existing "Certificate of Designations" for the Series A Preferred Stock at the time of the Proxy Statement, "Dimensional Associates" had a "right to a liquidation preference" of the first $25 million of "the merger consideration that our common stockholders would otherwise receive" in the Going Private Merger.

ANSWER: The allegations of the first sentence of Paragraph 68 are denied. The allegations of the second sentence of Paragraph 68 are denied, except that Special Committee Defendants admit that Paragraph 68 selectively quotes from the Company's definitive proxy statement and refer to that document for its complete content.

69. Accordingly, Orchard proposed that stockholders vote for a proposed amendment to the Certificate of Designations to permit the Going Private Merger to occur without actually paying the $25 million liquidation preference to Dimensional first. Instead, the Merger would go forward based on crediting Dimensional with $25 million and have it pay the remaining value of the Company to Orchard's common stockholders at $2.05 per share.

ANSWER: The allegations of Paragraph 69 are denied, except that Special Committee Defendants admit that the Company proposed an amendment to the Certificate of Designations to provide that the holders of the Series A convertible preferred stock could consent to the non-application of its liquidation preference so that the Merger could go forward as contemplated by the merger agreement and that the consideration offered in the Merger was $2.05 per share of common stock.

70. This statement was misleading to Orchard's shareholders because it represented that the $25 million liquidation was triggered by the Going Private Merger under the existing Certificate of Designations when in fact, it was not. A going private transaction was not a preference-triggering event under the Certificate. Thus, the Proxy Statement induced the Class into believing th Dimensional was currently entitled to the $25 million liquidation preference pursuant to the Merger, when in fact it was not. Further, it induced shareholders into believing that approving the Merger would not affect their rights to fair value, since Orchard was representing that the common stockholders could not have received the $25 million that Orchard was crediting to Dimensional pursuant to the Merger.

ANSWER: The allegations of the first and second sentences of Paragraph 70 state legal conclusions as to which no responsive pleading is required. To the extent a

responsive pleading is deemed required, the allegations of the first and second sentences of Paragraph 70 are denied. The allegations of the third and fourth sentences of Paragraph 70 are denied.

71. In addition, the Proxy Statement also misrepresented the liquidation preference as $25 million that must be allocated to Dimensional. In particular, the Proxy Statement asserted (at 31) with respect to "Orchard's contractual obligation to pay this liquidation preference" that "[w]hen calculating the value of the common equity of The Orchard by comparison to other public companies, this ongoing liability must be accounted for." Accordingly, this statement also led investors to believe that the $25 million preference must be credited to Dimensional.

ANSWER: The allegations of the first and third sentences of Paragraph 71 are denied. The allegations of the second sentence of Paragraph 71 are denied, except that Special Committee Defendants admit that Paragraph 71 selectively quotes from the Company's definitive proxy statement and refer to that document for its complete content.

72. But this statement was false because Dimensional was not entitled to the $25 million liquidation preference in a Going Private Merger under the Certificate of Designations, and thus there was no basis for allocating the value of the preference to Dimensional.

ANSWER: The allegations of Paragraph 72 state legal conclusions as to which no responsive pleading is required. To the extent a responsive pleading is deemed required, the allegations of Paragraph 72 are denied.

73. *Second*, the Proxy Statement misstated that the $2.05 Merger consideration was fair value for the Company's common stock. In particular, the Proxy failed to disclose that the $2.05 could only be fair if the $25 million liquidation preference was first allocated entirely to Dimensional. Further, it failed to disclose that the $2.05 price fundamentally under-valued Orchard's fair value, or that if the liquidation preference was properly treated as not being triggered by the Merger, then the fair value of Orchard's stock would be $4.67 per share.

ANSWER: The allegations of Paragraph 73 are denied.

74. *Third,* the Proxy Statement failed to disclose that the fairness opinion rendered by Fesnak departed from generally accepted valuation techniques by improperly inflating Orchard's discount rate in its Discounted Cash Flow analysis ("DCF") from 16% to 20%, and thereby grossly understating Orchard's value. The Proxy did not disclose Fesnak's

improper reliance on discredited 3.3% industry risk premium ("IRP") that inflated the discount rate by 2.5% because it departed from the contemporaneous 0.8% IRP rate by purporting to average in IRP numbers from several prior years that were not applicable to the Merger. Nor did it disclose the material fact that Fesnak had inflated the Equity Risk Premium ("ERP") of the Company by 1.5% by using the Historical Equity Risk Premium of 6.7% instead of the more-recently accepted Supply- Side Equity Risk Premium, which happened to be just 5.2%. And it also did not disclose Fesnak's improper reliance on an entirely subjective "company-specific risk premium" of 1% to inflate the discount rate that Fesnak relied upon in calculating the DCF to compute the Orchard's value and thus, the purported fair value of Orchard common stock.

ANSWER: The allegations of Paragraph 74 state legal conclusions as to which no responsive pleading is required. To the extent a responsive pleading is deemed required, the allegations of Paragraph 74 are denied.

75. Defendants' misstatement of these facts concerning the liquidation preference and Orchard's fair value violated Defendants' fiduciary duty of accurate disclosure of all material facts, and interfered with the Class's evaluation of their appraisal rights, by giving the Class a false impression of Dimensional's entitlement to the liquidation preference and as to the Company's fair value.

ANSWER: The allegations of Paragraph 75 state legal conclusions as to which no responsive pleading is required. To the extent a responsive pleading is deemed required, the allegations of Paragraph 75 are denied.

76. Orchard misled its minority shareholders that the cash merger consideration of $2.05 per share was the fair market price for the common stock and that Dimensional should be credited with the $25 million liquidation preference.

ANSWER: The allegations of Paragraph 76 are denied.

77. Accordingly, the Defendants interfered with the Class's ability to make an informed decision as to their appraisal rights and/or whether to vote for the Going Private Merger. whether to accept the tender offer price.

ANSWER: The allegations of Paragraph 77 are denied.

78. Therefore, a majority of the minority shareholders voted in favor of the Going- Private Merger relying on false, misleading, and inadequate disclosures.

ANSWER: The allegations of Paragraph 78 are denied.

CLASS ACTION ALLEGATIONS

79. Plaintiff brings this action on his own behalf and as a class action, pursuant to Rule 23 of the Rules of the Court of Chancery, on behalf of all former shareholders of the Company (except the defendants herein and any person, firm, trust, corporation, or other entity related to or affiliated with any of the defendants) and their successors in interest, who were injured as a result of defendants' actions as more fully described herein (the "Class").

ANSWER: The allegations of Paragraph 79 state legal conclusions as to which no responsive pleading is required. To the extent a responsive pleading is deemed required, the allegations of Paragraph 79 are denied.

80. This action is properly maintainable as a class action.

ANSWER: The allegations of Paragraph 80 state legal conclusions as to which no responsive pleading is required. To the extent a responsive pleading is deemed required, the allegations of Paragraph 80 are denied.

81. The Class is so numerous that joinder of all members is impracticable. There were approximately 2.5 million shares of Orchard common stock outstanding prior to the Going- Private Merger that were not owned by Dimensional.

ANSWER: The allegations of Paragraph 81 state legal conclusions as to which no responsive pleading is required. To the extent a responsive pleading is deemed required, the allegations of Paragraph 81 are denied.

82. There are questions of law and fact which are common to the Class including, *inter alia,* whether defendants have breached their fiduciary and other common law duties owed by them to plaintiff and other members of the Class, including whether defendants made material and adequate disclosures to the Class prior to the Going-Private Merger.

ANSWER: The allegations of Paragraph 82 state legal conclusions as to which no responsive pleading is required. To the extent a responsive pleading is deemed required, the allegations of Paragraph 82 are denied.

83. Plaintiff is committed to prosecuting this action and has retained competent counsel experienced in litigation of this nature. Plaintiff's claims are typical of the claims of the other members of the Class and Plaintiff has the same interests as the other members of the Class as all members of the Class consist of minority shareholders in the Company's common stock. Accordingly, Plaintiff is an adequate representative of the Class and will fairly and adequately protect the interests of the Class.

ANSWER: The allegations of Paragraph 83 state legal conclusions as to which no responsive pleading is required. To the extent a responsive pleading is deemed required, the allegations of Paragraph 83 are denied.

84. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual members of the Class, which would establish incompatible standards of conduct for defendants, or adjudications with respect to individual members of the Class which would, as a practical matter, be dispositive of the interests of other members or substantially impair or impede their ability to protect their interests.

ANSWER: The allegations of Paragraph 84 state legal conclusions as to which no responsive pleading is required. To the extent a responsive pleading is deemed required, the allegations of Paragraph 84 are denied.

CAUSES OF ACTION

COUNT I
Breach of Fiduciary Duties Against the Individual Defendants

85. Plaintiff incorporates each and every allegation set forth above as if fully set forth herein.

ANSWER: The Special Committee Defendants repeat and re-allege each and every response contained in the foregoing paragraphs as if fully set forth herein.

86. The Individual Defendants in violation of their fiduciary duties of care, and loyalty, approved the Going-Private Merger, although it is not entirely fair to the Company's public shareholders.

ANSWER: The allegations of Paragraph 86 state legal conclusions as to which no responsive pleading is required. To the extent a responsive pleading is deemed required, the allegations of Paragraph 86 are denied.

87. By pursuing transactions which are not entirely fair to the Company's public shareholders, the Individual Defendants have violated their fiduciary duties to the public shareholders.

ANSWER: The allegations of Paragraph 87 are denied.

COUNT II
Breach of Fiduciary Duties Against Dimensional and Stein

88. Plaintiff incorporates each and every allegation set forth above as if fully set forth herein.

ANSWER: The Special Committee Defendants are not named as defendants in Count II. However, the Special Committee Defendants will answer the allegations contained in Count II to the extent they are relevant to claims in Count I and Count III. The Special Committee Defendants repeat and re-allege each and every response contained in the foregoing paragraphs as if fully set forth herein.

89. As a controlling shareholder of Orchard, Dimensional owed the Company's shareholders, at all relevant times, a duty of entire fairness, a duty of loyalty and a duty not to misuse its own control of the Company for its own ends. And as a director of Orchard, Mr. Stein had the same duties. By virtue of the acts set forth above, Dimensional and Mr. Stein have breached such duties and injured the Class directly.

ANSWER: The allegations of Paragraph 89 state legal conclusions as to which no responsive pleading is required. To the extent a responsive pleading is deemed required, the allegations of Paragraph 89 are denied.

90. Dimensional and Mr. Stein, in trying to sell the Company on terms favorable only to its interests, as opposed to the Company's shareholders, breached the fiduciary duties it owed by misusing its control of the Company for its own ends.

ANSWER: The allegations of Paragraph 90 are denied.

91. The merger agreement and the Going-Private Merger was a product of self-dealing, and unfair pricing, as Dimensional, an interested party to the transaction, dictated the terms and process of the valuation of the Company's common stock.

ANSWER: The allegations of Paragraph 91 are denied.

COUNT III
Quasi-Appraisal Claim Against All Defendants

92. Plaintiffs incorporate each and every allegation set forth above as if fully set forth herein.

ANSWER: The Special Committee Defendants repeat and re-allege each and every response contained in the foregoing paragraphs as if fully set forth herein.

93. Orchard failed to adequately disclose the fair price of the Company's common stock to its shareholders and misrepresented the true value of the Company in the Proxy Statement, and misrepresented the nature and applicability of the preferred stock liquidation preference.

ANSWER: The allegations of Paragraph 93 are denied.

94. The Proxy Statement was materially false and misleading with respect to the fair price of the common stock and the applicability and nature of the liquidation preference and caused the Class to cash out their shares at an unfair, and inadequate price. It also failed to disclose material information concerning the liquidation preference, the fair value of Orchard's common stock, and Fesnak's analysis of the fairness of the transaction.

ANSWER: The allegations of Paragraph 94 are denied.

95. Dimensional, through its control of the Company, and the Individual Defendants, rejected offers from potential buyers without explanation to its shareholders, as to whether these offers included a fair price of the Company's common stock.

ANSWER: The allegations of Paragraph 95 are denied.

96. Although the liquidation preference was not triggered by the Going-Private Merger, Defendants improperly valued the common stock by discounting the liquidation preference from the Company's overall enterprise value.

ANSWER: The allegations of Paragraph 96 are denied.

97. Defendants falsely stated to shareholders that the Company was contractually obligated to include the liquidation preference in its calculations.

ANSWER: The allegations of Paragraph 97 are denied.

98. Defendants' false disclosures wrongfully deprived minority shareholders of the statutory remedy of appraisal.

ANSWER: The allegations of Paragraph 98 are denied.

99. By virtue of the acts sets forth above, minority shareholders are entitled to a quasi- appraisal remedy.

ANSWER: The allegations of Paragraph 99 state legal conclusions as to which no responsive pleading is required. To the extent a responsive pleading is deemed required, the allegations of Paragraph 99 are denied.

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a claim against the Special Committee Defendants upon which relief can be granted because, among other things: (i) Plaintiffs fail to allege any breach of fiduciary duty on the part of the Special Committee Defendants; and (ii) Plaintiffs' claim for "quasi-appraisal" does not state a cognizable cause of action.

SECOND AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred, in whole or in part, by 8 *Del C.* § 102(b)(7) and Article VII, Section 1 of the Company's Amended and Restated Certificate of Incorporation.

THIRD AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred, in whole or in part, by 8 *Del C.* § 141(e) because the Special Committee Defendants relied at all times on the advice of expert financial and legal counsel selected with reasonable care on behalf of the Company.

FOURTH AFFIRMATIVE DEFENSE

At all relevant times, the Special Committee Defendants disclosed all material information consistent with their duties under Delaware law.

FIFTH AFFIRMATIVE DEFENSE

Plaintiffs lack standing to pursue the claims because Plaintiffs are no longer stockholders of the Company.

SIXTH AFFIRMATIVE DEFENSE

The Special Committee Defendants affirmatively raise and reserve all applicable equitable defenses.

EIGHTH AFFIRMATIVE DEFENSE

The Special Committee Defendants hereby adopt and incorporate by reference any and all other defenses asserted, or that may hereafter be asserted, by any other defendant to the extent such defenses may be applicable to them.

NINTH AFFIRMATIVE DEFENSE

The Complaint does not describe the claims made against the Special Committee Defendants with sufficient particularity to allow the Special Committee Defendants to determine all of their defenses, and the Special Committee Defendants therefore lack sufficient knowledge or information to form a belief as to the existence and availability of additional affirmative defenses. As such, the Special Committee Defendants reserve the right to assert additional affirmative defenses as they discover them through discovery or other investigation.

DEMAND FOR RELIEF

WHEREFORE, the Special Committee Defendants respectfully request that the Court:

(1) enter a judgment in favor of Special Committee Defendants in all respects against Plaintiffs and dismiss the Complaint with prejudice;

(2) award the Special Committee Defendants all of their attorneys' fees and expenses; and

(3) grant such other and further relief as the Court deems just and proper.

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Bradley D. Sorrels

William M. Lafferty (#2755)
Bradley D. Sorrels (#5233)
1201 N. Market Street
Wilmington, Delaware 19801
(302) 658-9200
Attorneys for Defendants Michael Donahue, David Altschul, Viet Dinh, Joel Straka and Nathan Peck

December 5, 2012

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on December 6, 2012, the foregoing was caused to be served upon the following counsel of record via LexisNexis File and Serve:

James P. McEvilly, III (#4807)
FARUQI & FARUQI, LLP
20 Montchanin Road, Suite 145
Wilmington, DE 19807
302-482-3182

Philip Trainer, Jr. (#2788)
Toni-Ann Platia (#5051)
ASHBY & GEDDES
500 Delaware Ave., 8th Floor
P.O. Box 1150
Wilmington, DE 19899

/s/ Bradley D. Sorrels
Bradley D. Sorrels (#5233)

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