

(the "Board"); that, as of October 1, 1995, the Board consisted of defendants Eisner, Bollenbach, Disney, Gold, Litvack, Nunis, Poitier, Russell, Stern, Walker, Watson and Wilson, as well as non-defendant outside directors Reveta F. Bowers, Ignacio E. Lozano, Jr., and former Senator George J. Mitchell; that, as of January 6, 1997, the Board consists of defendants Eisner, Disney, Gold, Litvack, Nunis, Poitier, Russell, Stern, Walker, Watson and Wilson, as well as non-defendant outside directors Bowers, Lozano, Mitchell, Father Leo J. O'Donovan and Thomas S. Murphy.

2. Denied, except that to the extent that paragraph 2 purports to summarize the allegations of the Complaint, this defendant respectfully refers the Court to the Complaint for a description of its contents.

3. Denied.

4. Denied, except to admit that, as of October 1, 1995, Mr. Ovitz and the Company entered into an employment agreement (the "Employment Agreement"), and respectfully refer the Court to the Employment Agreement for an accurate and complete description of its contents; and that, prior to his employment by Disney, Mr. Ovitz had not been an executive officer of a public corporation.

5. Paragraph 5 of the Complaint states conclusions of law as to which no responsive pleading is required. To the extent that paragraph 5 does not state conclusions of law, the balance of the allegations is denied.

6. Paragraph 6 of the Complaint states conclusions of law as to which no responsive pleading is required. To the extent that paragraph 6 does not state conclusions of law, the balance of the allegations is denied, except to admit that plaintiffs purport to sue on behalf of the Company and seek the relief specified in the Complaint.

7. Mr. Ovitz is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 7 of the Complaint.

8. The first sentence of paragraph 8 is admitted. Mr. Ovitz admits that the business of Disney is described in certain of the Company's SEC filings and respectfully refers the Court to the referenced SEC filings for an accurate and complete description of their contents.

9. Denied, except to admit that Mr. Eisner is Chief Executive Officer and Chairman of the Board of Disney and highly respected at Disney; that he has served in these capacities since 1984; and that Disney's profits have increased during Mr. Eisner's tenure.

10. Denied, except to admit that Mr. Ovitz served as President of Disney from October 1995 through December 1996; that Mr. Ovitz was a director of Disney from January 22, 1996 through December 27, 1996; that prior to his employment at Disney, Mr. Ovitz was a founder, chairman and majority owner of Creative Artists Agency ("CAA") and a leading entrepreneur in the entertainment industry; and that on December 12, 1996, Disney announced that Mr. Ovitz would leave the Company effective January 31, 1997.

11. Denied, except to admit that Mr. Bollenbach is a former Senior Executive Vice President and Chief Financial Officer of Disney and a former director of Disney; that he served as an officer of Disney between May 1995 and February 1996 and as a director of Disney between April 1995 and February 1996; and that Mr. Bollenbach was paid a salary by Disney and received a discretionary annual bonus during his tenure with the Company.

12. Denied, except to admit that, as of October 1, 1995, the Board included defendants Eisner, Bollenbach, Disney, Gold, Litvack, Nunis, Poitier, Russell,

Stern, Walker, Watson and Wilson; and that these directors were a majority of the Board as of that date.

13. Denied, except to admit that, as of January 6, 1997, the Board includes defendants Eisner, Disney, Gold, Litvack, Nunis, Poitier, Russell, Stern, Walker, Watson and Wilson; and that these directors constitute a majority of the Board.

14. Denied, except to admit that, as of October 1, 1995, Mr. Ovitz and the Company entered into the Employment Agreement.

15. Denied, except to admit that Mr. Ovitz did not join the Board until after his employment with the Company commenced in October 1995.

16. Denied, except to admit that Mr. Bollenbach left the Company during Mr. Ovitz's tenure.

17. Paragraph 17 of the Complaint states conclusions of law as to which no responsive pleading is required. To the extent that paragraph 17 does not state conclusions of law, the balance of the allegations is denied, except to admit that the individual defendants are or were directors of Disney at various times; to deny that Mr. Ovitz was a director of Disney at the time Disney committed to the Employment Agreement; and to deny that he acted on behalf of Disney in connection with his compensation arrangements.

18. Paragraph 18 of the Complaint states conclusions of law as to which no responsive pleading is required. To the extent that paragraph 18 does not state conclusions of law, the balance of the allegations is denied.

19. Denied, except to admit that Mr. Ovitz and Disney entered into the Employment Agreement dated as of October 1, 1995; that Mr. Ovitz assumed the position of President; that Mr. Ovitz co-founded and served as chairman of CAA, a leading talent agency, from 1975 until 1995; that Mr. Eisner participated in the decision and supported the

hiring of Mr. Ovitz; and that Mr. Eisner and Mr. Ovitz knew one another for many years prior to Mr. Ovitz's employment with the Company, and that Mr. Ovitz's knowledge of Mr. Eisner was a factor in his decision to join Disney.

20. Denied, except to admit that during Mr. Ovitz's tenure with CAA, CAA was considered to be one of Hollywood's leading talent agencies; that Mr. Ovitz had been referred to as "Hollywood's most powerful man"; and that Mr. Ovitz did not have prior experience as an officer of a public corporation or of a company engaged in the theme park business.

21. Denied, except to admit that, as of October 1, 1995, Mr. Ovitz and the Company entered into the Employment Agreement and respectfully refer the Court to the Employment Agreement for an accurate and complete description of its contents.

22. Denied.

23. Denied, except to admit that Disney's former President, Frank G. Wells, tragically died in a helicopter crash in April 1994; and that Jeffrey Katzenberg, former Chairman of The Walt Disney Studios, left the Company in August 1994.

24. Denied, except to admit that Richard Frank, former Chairman of Walt Disney Television and Telecommunications, left the Company in March 1995 and respectfully refer the court to the referenced reports for an accurate and complete description of their contents.

25. Denied, except to admit that Mr. Bollenbach became the Company's Senior Executive Vice President and Chief Financial Officer in May 1995 and was elected to the Board in April 1995; and that Mr. Bollenbach left the Company in February 1996.

26. Denied, except to admit that, as of October 1, 1995, Mr. Ovitz and the Company entered into the Employment Agreement and respectfully refer the Court to the Employment Agreement for an accurate and complete description of its contents.

27. Denied, except to admit that, as of October 1, 1995, Mr. Ovitz and the Company entered into the Employment Agreement and respectfully refer the Court to the Employment Agreement for an accurate and complete description of its contents; and that Mr. Ovitz was subsequently nominated to serve and elected as a director of the Company.

28. Denied, except to admit that, as of October 1, 1995, Mr. Ovitz and the Company entered into the Employment Agreement and respectfully refer the Court to the Employment Agreement for an accurate and complete description of its contents.

29. Denied, except to admit that, as of October 1, 1995, Mr. Ovitz and the Company entered into the Employment Agreement and respectfully refer the Court to the Employment Agreement for an accurate and complete description of its contents.

30. Denied. Defendant respectfully refers the Court to the referenced article for an accurate and complete description of its contents.

31. Denied. Defendant respectfully refers the Court to the referenced articles for an accurate and complete description of their contents.

32. Denied, and affirmatively alleges that discussions regarding alternative employment occurred with the Company's consent.

33. Denied, except to admit that Mr. Ovitz met with Mr. Eisner prior to December 12 to discuss Mr. Ovitz's departure from the Company.

34. Denied, except to admit that subsequent to discussions between Mr. Ovitz and Mr. Eisner, the Company, on December 12, 1996, announced that Mr. Ovitz would leave the Company effective January 31, 1997; that Mr. Ovitz served as Disney's President

from October 1995 until December 27, 1996; and respectfully refer the Court to the referenced announcement for an accurate and complete description of its contents.

35. Denied, except to admit that, as of October 1, 1995, Mr. Ovitz and the Company entered into the Employment Agreement and respectfully refer the Court to the Employment Agreement for an accurate and complete description of its contents.

36. Denied, except to admit that, as of October 1, 1995, Mr. Ovitz and the Company entered into the Employment Agreement and respectfully refer the Court to the Employment Agreement for an accurate and complete description of its contents.

37. Paragraph 37 of the Complaint states conclusions of law as to which no responsive pleading is required. To the extent that paragraph 37 does not state conclusions of law, the balance of the allegations is denied.

38. Paragraph 38 of the Complaint states conclusions of law as to which no responsive pleading is required. To the extent that paragraph 38 does not state conclusions of law, the balance of the allegations is denied, except to admit that, as of October 1, 1995, Mr. Ovitz and the Company entered into the Employment Agreement and respectfully refer the Court to the Employment Agreement for an accurate and complete description of its contents.

39. Denied, except to admit that, as of October 1, 1995, Mr. Ovitz and the Company entered into the Employment Agreement and respectfully refer the court to the Employment Agreement for an accurate and complete description of its contents; and that on October 16, 1995, the closing price of Disney common stock was 56 7/8.

40. Denied. Defendant respectfully refers the Court to the Employment Agreement for an accurate and complete description of its contents.

41. Paragraph 41 of the Complaint states conclusions of law as to which no responsive pleading is required. To the extent that paragraph 41 does not state conclusions of law, the balance of the allegations is denied.

42. Denied. Defendant respectfully refers the Court to the Employment Agreement and the referenced reports for an accurate and complete description of their contents.

43. Denied. Defendant respectfully refers the Court to the referenced report for an accurate and complete description of its contents.

44. Denied, except to admit that he was entitled to the amounts and the vesting of options provided in the Employment Agreement.

45. Denied, except to admit that Mr. Ovitz was entitled to the amounts and the vesting of options provided in the Employment Agreement, and to admit that the Company's dividend declared for the fourth fiscal quarter of 1996 is approximately \$0.11 per share and respectfully refer the Court to the referenced article for an accurate and complete description of its contents.

46. Denied, except to respectfully refer the Court to the referenced articles for an accurate and complete description of their contents.

47. Denied, except to respectfully refer the Court to the referenced article for an accurate and complete description of its contents.

48. Denied, except to respectfully refer the Court to the referenced article for an accurate and complete description of its contents.

49. Denied.

50. The defendant admits that plaintiffs purport to bring this action derivatively on behalf of Disney and that the Company is named as a nominal defendant.

51. Paragraph 51 of the Complaint states conclusions of law as to which no responsive pleading is required.

52. Paragraph 52 of the Complaint states conclusions of law as to which no responsive pleading is required. To the extent that paragraph 52 does not state conclusions of law, the balance of the allegations is denied.

53. Paragraph 53 of the Complaint (including each of its subparagraphs) states conclusions of law as to which no responsive pleading is required. To the extent that paragraph 53 (and each of its subparagraphs) does not state conclusions of law, the balance of the allegations is denied, except to admit:

(a) that Mr. Eisner had known Mr. Ovitz for many years prior to Mr. Ovitz's employment with the Company; that Mr. Eisner participated in and supported the decision to hire Mr. Ovitz as Disney's President; that Mr. Eisner discussed with Mr. Ovitz the termination of his employment from the Company before it was announced, and respectfully refer the Court to the referenced announcement for an accurate and complete description of its contents;

(b) that, as provided in the Employment Agreement, Ovitz received cash, and options to acquire Disney stock vested, upon the termination of his employment with the Company in December 1996;

(c) that Mr. Roy E. Disney is Vice Chairman of the Board of Disney and Chairman of Walt Disney Feature Animation; that, in his capacity as Chairman of Feature Animation, Mr. Disney reports to Mr. Eisner; that in 1995 Mr. Disney was paid \$350,000 in salary and \$550,000 in bonuses; and that in 1995 Mr. Disney was granted 200,000 options to purchase Disney common stock; and that the terms and conditions of the

Employment Agreement were approved by the Compensation Committee of the Board exercising the authority granted to it by the full Board;

(d) that Mr. Gold is the President and Chief Executive Officer of Shamrock Holdings, Inc., which is engaged in real estate development and the making of investments; that during Disney's fiscal year ending September 30, 1996, each non-employee director received a retainer fee based upon an annualized amount of \$30,000, together with a fee of \$1000 per board or committee meeting attended; and that each non-employee director receives an automatic grant, on March 1 of each year, of options to purchase 2000 shares of Disney common stock, and that each option grant, vesting in equal installments over five years and having a ten year term, permits the holder to purchase shares at their fair market value on the date of grant; and that the terms and conditions of the Employment Agreement were approved by the Compensation Committee of the Board exercising the authority granted to it by the full Board;

(e) that Mr. Litvack has been Senior Executive Vice President and Chief of Corporate Operations of the Company since August 1994, in which capacity he reports to Mr. Eisner directly; that, prior to serving in this capacity, he was Senior Vice President-General Counsel from April 1991 through June 1992 and Executive Vice President-Law and Human Resources from June 1992 to August 1994; that Mr. Litvack received a salary of \$647,115 and a bonus of \$1.6 million in fiscal year 1995; and that the terms and conditions of the Employment Agreement were approved by the Compensation Committee of the Board exercising the authority granted to it by the full Board;

(f) that Mr. Nunis is the Chairman of Walt Disney Attractions, which encompasses the Company's theme parks and resorts; that Mr. Nunis reports directly to Mr. Eisner; that Mr. Nunis receives a salary and a bonus from the Company as

compensation for services as an employee; and that the terms and conditions of the Employment Agreement were approved by the Compensation Committee of the Board exercising the authority granted to it by the full Board;

(g) that Mr. Poitier is an award-winning actor; that Mr. Poitier is currently a CE client; that during Disney's fiscal year ending September 30, 1996, each non-employee director received a retainer fee based upon an annualized amount of \$30,000, together with a fee of \$1000 per board or committee meeting attended; and that each non-employee director receives an automatic grant, on March 1 of each year, of options to purchase 2000 shares of Disney common stock, and that each option grant, vesting in equal installments over five years and having a ten year term, permits the holder to purchase shares at their fair market value on the date of grant; and that the terms and conditions of the Employment Agreement were approved by the Compensation Committee of the Board exercising the authority granted to it by the full Board;

(h) that Mr. Russell is an attorney who, over the years, has represented Mr. Eisner personally; that during Disney's fiscal year ending September 30, 1996, each non-employee director received a retainer fee based upon an annualized amount of \$30,000, together with a fee of \$1000 per board or committee meeting attended; and that each non-employee director receives an automatic grant, on March 1 of each year, of options to purchase 2000 shares of Disney common stock, and that each option grant, vesting in equal installments over five years and having a ten year term, permits the holder to purchase shares at their fair market value on the date of grant; and that the terms and conditions of the Employment Agreement were approved by the Compensation Committee of the Board exercising the authority granted to it by the full Board; and that Mr. Russell received a

payment of \$250,000 from the Company for services rendered by him in connection with the Employment Agreement;

(i) that Mr. Stern is a practicing architect and is a Senior Partner and founder of Robert A.M. Stern Architects of New York; that Mr. Stern was the architect of the Yacht and Beach Club hotels, the Boardwalk Inn and the Casting Center at the Walt Disney World Resort and the Newport Bay Club and the Cheyenne Hotel at Disneyland Paris and the Feature Animation Building at the Company's headquarters in Burbank, California; that Mr. Stern's company received a fee from the Company for services that it rendered; that during Disney's fiscal year ending September 30, 1996, each non-employee director received a retainer fee based upon an annualized amount of \$30,000, together with a fee of \$1000 per board or committee meeting attended; and that each non-employee director receives an automatic grant, on March 1 of each year, of options to purchase 2000 shares of Disney common stock, and that each option grant, vesting in equal installments over five years and having a ten year term, permits the holder to purchase shares at their fair market value on the date of grant; and that the terms and conditions of the Employment Agreement were approved by the Compensation Committee of the Board exercising the authority granted to it by the full Board;

(j) that Mr. Walker was a senior executive of the company for more than 25 years until 1983, serving as President from 1971 to 1977 and Chairman of the Board and Chief Executive Officer from 1980 to 1983; that from 1984 through 1989 Mr. Walker provided consulting and other services to the Company and received compensation therefor; that during Disney's fiscal year ending September 30, 1996, each non-employee director received a retainer fee based upon an annualized amount of \$30,000, together with a fee of \$1000 per board or committee meeting attended; and that each non-employee director

receives an automatic grant, on March 1 of each year, of options to purchase 2000 shares of Disney common stock, and that each option grant, vesting in equal installments over five years and having a ten year term, permits the holder to purchase shares at their fair market value on the date of grant; and that the terms and conditions of the Employment Agreement were approved by the Compensation Committee of the Board exercising the authority granted to it by the full Board;

(k) that Mr. Watson served as Chairman of the Executive Committee of the Board since 1984 and was Chairman of the Board of Disney from May 1983 to September 1984; that Mr. Watson has been Vice Chairman of the Board of The Irvine Company since 1986; that during Disney's fiscal year ending September 30, 1996, each non-employee director received a retainer fee based upon an annualized amount of \$30,000, together with a fee of \$1000 per board or committee meeting attended; and that each non-employee director receives an automatic grant, on March 1 of each year, of options to purchase 2000 shares of Disney common stock, and that each option grant, vesting in equal installments over five years and having a ten year term, permits the holder to purchase shares at their fair market value on the date of grant; and that the terms and conditions of the Employment Agreement were approved by the Compensation Committee of the Board exercising the authority granted to it by the full Board;

(l) that Mr. Wilson is Co-Chairman of the Board of Northwest Airlines Corporation; that Mr. Wilson was Executive Vice President and Chief Financial Officer of the Company from July 1985 through December 1989; that during Disney's fiscal year ending September 30, 1996, each non-employee director received a retainer fee based upon an annualized amount of \$30,000, together with a fee of \$1000 per board or committee meeting attended; and that each non-employee director receives an automatic grant, on

March 1 of each year, of options to purchase 2000 shares of Disney common stock, and that each option grant, vesting in equal installments over five years and having a ten year term, permits the holder to purchase shares at their fair market value on the date of grant; and that the terms and conditions of the Employment Agreement were approved by the Compensation Committee of the Board exercising the authority granted to it by the full Board.

54. Paragraph 54 of the Complaint (including each of its subparagraphs) states conclusions of law as to which no responsive pleading is required. To the extent that paragraph 54 (and each of its subparagraphs) does not state conclusions of law, the balance of the allegations is denied, except to admit that Messrs. Eisner and Ovitz are friends; that Mr. Eisner participated in and supported the decision to hire Mr. Ovitz; that during Disney's fiscal year ending September 30, 1996, each non-employee director received a retainer fee based upon an annualized amount of \$30,000, together with a fee of \$1000 per board or committee meeting attended; and that each non-employee director receives an automatic grant, on March 1 of each year, of options to purchase 2000 shares of Disney common stock, and that each option grant, vesting in equal installments over five years and having a ten year term, permits the holder to purchase shares at their fair market value on the date of grant.

55. Mr. Ovitz incorporates by reference as though fully set forth herein each of the foregoing paragraphs of his Answer.

56. The defendant admits that plaintiffs purport to bring this claim derivatively on behalf of Disney against all of the individual defendants.

57. Denied.

58. Denied.

59. Denied.

60. Denied.

61. Mr. Ovitz incorporates by reference as though fully set forth herein each of the foregoing paragraphs of his Answer.

62. The defendant admits that plaintiffs purport to bring this Claim derivatively on behalf of Disney against defendants Ovitz and Eisner.

63. Denied.

64. Paragraph 64 of the Complaint states conclusions of law as to which no responsive pleading is required. To the extent that paragraph 64 does not state conclusions of law, the balance of the allegations is denied, except to admit that Mr. Eisner discussed with Mr. Ovitz his termination of employment before it was announced, and that, as provided in the Employment Agreement, Mr. Ovitz received cash, and options to acquire Disney stock vested, upon the termination of his employment with the Company in December 1996.

65. Denied, except to admit that as provided in the Employment Agreement, Mr. Ovitz received cash, and options to acquire Disney stock vested, upon the termination of his employment with the Company.

66. Denied.

67. Paragraph 67 of the Complaint states conclusions of law as to which no responsive pleading is required. To the extent that paragraph 67 does not state conclusions of law, the balance of the allegations is denied.

68. Mr. Ovitz incorporates by reference as though fully set forth herein each of the foregoing paragraphs of his Answer.

69. The defendant admits that plaintiffs purport to bring this claim derivatively on behalf of Disney against all of the individual defendants.

70. Paragraph 70 of the Complaint states conclusions of law as to which no responsive pleading is required.

71. Denied.

72. Denied.

73. Denied.

74. Denied.

75. Denied.

76. Paragraph 76 of the Complaint states conclusions of law as to which no responsive pleading is required. To the extent that paragraph 76 does not state conclusions of law, the balance of the allegations is denied.

77. Paragraph 77 of the Complaint states conclusions of law as to which no responsive pleading is required. To the extent that paragraph 77 does not state conclusions of law, the balance of the allegations is denied.

78. Mr. Ovitz incorporates by reference as though fully set forth herein each of the foregoing paragraphs of his Answer.

79. The defendant admits that plaintiffs purport to bring this claim derivatively on behalf of Disney against all of the individual defendants.

80. Denied.

81. Denied.

82. Denied.

83. Denied.

84. Paragraph 84 of the Complaint states conclusions of law as to which no responsive pleading is required. To the extent that paragraph 84 does not state conclusions of law, the balance of the allegations is denied.

85. Mr. Ovitz incorporates by reference as though fully set forth herein each of the foregoing paragraphs of his Answer.

86. The defendant admits that plaintiffs purport to bring this claim derivatively on behalf of Disney against all of the individual defendants.

87. Denied.

88. Denied.

89. Denied.

90. Paragraph 90 of the Complaint states conclusions of law as to which no responsive pleading is required. To the extent that paragraph 90 does not state conclusions of law, the balance of the allegations is denied.

FIRST AFFIRMATIVE DEFENSE

Mr. Ovitz did not act in the capacity of a Disney officer or director in the negotiation of the Employment Agreement or in connection with Disney's actions in fulfillment of that agreement.

SECOND AFFIRMATIVE DEFENSE

If the Employment Agreement or the Company's fulfillment of that agreement is deemed to constitute a transaction between the Company and an officer or director, Del. Gen. Corp. Law § 144, 8 Del. C. § 144, precludes any action to repudiate or rescind that agreement or its fulfillment.

THIRD AFFIRMATIVE DEFENSE

The Complaint fails to state a claim upon which relief may be granted.

FOURTH AFFIRMATIVE DEFENSE

In causing Disney to enter into and fulfill the obligations of the Employment Agreement, the directors acted on an informed basis, in good faith and in the honest belief

that their actions were in the best interests of the stockholders of Disney. Their actions are therefore protected by the business judgment rule, and not subject to challenge through litigation.

FIFTH AFFIRMATIVE DEFENSE

The claims asserted or sought to be asserted in the Complaint are barred for failure to comply with Court of Chancery Rule 23.1.

SIXTH AFFIRMATIVE DEFENSE

The claims asserted against Mr. Ovitz are barred by the doctrine of laches.

SEVENTH AFFIRMATIVE DEFENSE

The claims asserted against Mr. Ovitz are barred by the defense of estoppel.

EIGHTH AFFIRMATIVE DEFENSE

Pursuant to Del. Gen. Corp. Law § 327, 8 Del. Co. § 327, plaintiffs lack standing to assert any claim arising out of conduct that occurred prior to their ownership of Disney stock.

NINTH AFFIRMATIVE DEFENSE

Mr. Ovitz presently has insufficient knowledge or information upon which to form a belief as to the availability of additional, but as yet unalleged, affirmative defenses. Therefore, Mr. Ovitz reserves the right to assert additional affirmative defenses.

Therefore, Mr. Ovitz respectfully requests that the Court enter judgment against plaintiffs dismissing the Complaint, awarding him his costs and attorneys' fees, and awarding such other and further relief as is just and appropriate.

YOUNG, CONAWAY, STARGATT & TAYLOR



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Dated: January 28, 1997

CERTIFICATE OF SERVICE

I, David C. McBride, Esquire, hereby certify that copies of the foregoing document were caused to be served on January 28, 1997 upon the following counsel of record:

By Hand Delivery

Joseph A. Rosenthal, Esquire
Rosenthal, Monhait, Gross & Goddess
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A handwritten signature in black ink, appearing to be 'DM', written over a horizontal line.

David C. McBride