

York. The defendants are all citizens of states other than New York. The matter in controversy exceeds the sum of \$75,000, exclusive of interest and costs.

2. The claims herein arise under § 14(a) of the Exchange Act, 15 U.S.C. § 78n(a), and Item 402 of Reg. S-K, 17 C.F.R. § 229.402, Schedule 14-A, 17 C.F.R. § 240.14a-101, and Rules of the United States Securities and Exchange Commission (the “SEC”) 14a-4 and 14a-9, 17 C.F.R. §§ 240.14a-4 and 240.14a-9, promulgated thereunder, and the laws of the State of Delaware. In addition, Internal Revenue Code (“IRC”) § 162(m) and Treas. Reg. § 1.162-27 are applicable.

3. The plaintiff brings this action directly on behalf of herself as well as derivatively in the right of and for the benefit of Occidental Petroleum Corporation, a Delaware corporation (the “Company” or “Occidental”), to recover for the false or misleading proxy statement, dated March 23, 2010, that was distributed for the annual meeting of Occidental stockholders held on May 7, 2010 (“Proxy Statement”).

4. That Proxy Statement failed to comply with SEC Regulations and Treasury Regulations governing the contents of proxy statements and otherwise misled shareholders voting on a matter relating to the Company’s incentive compensation plan, particularly as that plan purportedly provides for income tax deductibility of certain performance compensation awards to certain of the Company’s highest paid executives.

5. The Proxy Statement solicited stockholder approval for the election of the Company’s board of directors and re-approval of the material terms of the performance goals for the Section 162(m) awards under the Company’s 2005 Long-Term Incentive Plan (“LTIP”) to permit tax deductions, without adequately disclosing the material terms of the LTIP and by a false or misleading presentation of the LTIP, thereby tainting any stockholder vote in that regard,

and harming the company by way of substantial federal income tax obligations resulting from defective awards issued pursuant to the LTIP. Much of the incentive compensation awarded through the LTIP is therefore improper because the LTIP and its resulting performance grants do not comply with federal law and regulation. Each such award should be returned to Occidental.

6. This action is not a collusive one to confer jurisdiction that the court would otherwise lack. This action does not allege securities fraud or any other fraud. This is an action based on the issuance of a false or misleading Proxy Statement, a consequential tainted shareholder vote, breaches of fiduciary duties, and the economic consequential harm to the Company that flowed directly from these wrongs.

THE PARTIES

7. The plaintiff is a stockholder of the Company and was a stockholder at the time of the transactions complained of herein and has been such continuously since then.

8. Defendants Ray R. Irani, Stephen I. Chazen, Donald P. de Brier, William E. Albrecht and R. Casey Olson, are the Company's named executive officers, as defined in 17 C.F.R. § 229.402(a)(3), covered employees, as defined in IRC § 162(m)(3), and non-resident officers of the Company, as defined in 10 Del. C. § 3114(b).

9. Defendant Irani, the longtime head of Occidental, was awarded total compensation of \$52.2 million in 2009, up from \$49.9 million in 2008, according to an April 1, 2010 Wall Street Journal article on executive compensation. Defendant Irani's compensation reflects substantial value of incentive awards linked to Occidental's financial and stock performance. The \$52.2 million is reportedly in addition to \$96.5 million Mr. Irani gained last year through exercise of stock options and vesting of restricted stock awarded through long term incentive compensation programs, according to the Wall Street Journal. To the extent that

intended tax deductible performance based compensation is awarded to Mr. Irani pursuant to the LTIP – which, as set forth in detail below, is defective in this regard, those grants should be returned to the Company.

10. Defendants Spencer Abraham, John S. Chalsty, Edward P. Djerejian, John E. Feick, Carlos M. Gutierrez, Ray R. Irani, Irvin W. Maloney, Avedick B. Poladian, Rodolfo Segovia, Aziz D. Syriani, Rosemary Tomich, Walter L. Weisman, twelve in number, are all the members of the Company's board of directors ("Director Defendants"). In their capacities as directors they are each responsible as fiduciaries to the Company and its shareholders, and are vested with the obligations of providing fair corporate suffrage to the Company's shareholders.

11. Defendants Abraham, Chalsity, Poladian, and Segovia are members of the board's Executive Compensation and Human Resources Committee ("Executive Compensation Committee"), on which Mr. Abraham serves as chair. Among other responsibilities, the members of the Executive Compensation Committee, review and approve of the goals relevant to the compensation of the chief executive officer ("CEO"), evaluate the CEO's performance, and determine and approve of the CEO's compensation. Members of Occidental's Executive Compensation Committee administer Occidental's stock based incentive compensation plans.

12. Defendants Chalsity, Feick, Irani, Maloney, Segovia, Syriani, and Tomich are members of the board's Executive Committee, on which Mr. Irani serves as chair. The members of the Executive Committee exercise the powers of the board with respect to the management of the business and affairs of the Company between meetings of the board.

13. Defendants Chalsity, Djerejian, Segovia, Syriani, Tomich and Weisman are members of the board's Corporate Governance Committee, on which Ms. Tomich serves as chair. The members of the Corporate Governance Committee are responsible, *inter alia*, for

recommending candidates for election to the board and considering governance issues facing the Company, like the ones presented herein.

14. Occidental Petroleum is a corporation organized under the laws of the State of Delaware. The Company's fiscal year ends on December 31. As of May 7, 2010, Occidental had outstanding 811,960,000 shares of common stock, which are traded on the New York Stock Exchange.

WRONGFUL ACTS AND OMISSIONS

15. The defendants used the mails or the means or instrumentalities of interstate commerce in committing acts, omissions, conduct, and wrongs alleged herein.

16. The Director Defendants authorized the distribution of the 2010 Proxy Statement for the annual meeting of stockholders held on May 7, 2010. In that Proxy Statement, the directors solicited the Company's stockholders' proxies for, *inter alia*, the re-election of defendants Abraham, Chalsty, Djerejian, Feick, Gutierrez, Irani, Maloney, Poladian, Segovia, Syriani, Tomich, and Weisman, to the board of directors, the election of Mr. Stephen I. Chazen to the board of directors, the ratification of the appointment of KPMG LLP as the independent registered public accountants for the fiscal year 2010, the re-approval of material terms of performance goals for Section 162(m) awards under the LTIP to permit tax deduction, and advisory approval of the company's executive compensation philosophy and practice.

17. The Company and all the Director Defendants permitted the use of their names in the Proxy Statement to solicit proxies. All the Director Defendants are authorized beneficiaries under the LTIP.

18. With respect to the solicitation of proxies for the annual meeting of stockholders on May 7, 2010, the Proxy Statement contained materially false or misleading statements and

omitted material facts, as set forth herein. The 2010 Proxy Statement also omitted information that the SEC regulations specifically required. Notably, at the May 7, 2010 annual meeting the Company's stockholders voted not to approve Occidental's executive compensation practices, but did vote in favor of re-approval of the material terms of the performance goals in the LTIP, underscoring the false or misleading nature of the Proxy Statement with regard to the performance based compensation practices under the LTIP. As a result, the 2010 Proxy Statement rendered the stockholders unwitting agents of self-inflicted damage.

19. IRC § 162(m) subjects the Company to special treatment with respect to its compensation of Defendants Irani, Chazen, de Brier, Albrecht and Olson, whom are "covered employees" under Section 162(m)(3). In its Summary Compensation Table the 2010 Proxy Statement identifies Defendants Irani, Chazen, de Brier, Albrecht and Olson as the Company's "highest-paid executives." Whereas IRC § 162(a)(1) allows the company an income tax deduction for "a reasonable allowance for salaries or other compensation for personal services actually rendered" by its employees, IRC § 162(m) imposes restrictions on that deduction for the compensation of the Company's covered employees.

20. Specifically, the IRC § 162(m) provides that annual compensation in excess of \$1 million is not tax-deductible unless the compensation is performance-based, and the compensation is granted pursuant to a plan containing pre-established and objective criteria approved by the stockholders. Congress enacted IRC § 162(m) as part of its historic effort to regulate corporate affairs in favor of stockholders and other investors, as a counterweight to the policies of many states to regulate corporations in favor of officers, directors and other insiders. Here, Congress employed the tax code as an instrument of corporate governance. The Joint

Committee on Taxation specifically addressed the relevance of this provision of the Code in a report that expressly recognizes its role as a tool for corporate governance:

The \$1 million deduction limitation reflects corporate governance issues regarding excessive compensation, rather than issues of tax policy.

JOINT COMMITTEE ON TAXATION, REPORT OF INVESTIGATION OF ENRON CORPORATION AND RELATED ENTITIES REGARDING FEDERAL TAX AND COMPENSATION ISSUES AND POLICY

RECOMMENDATIONS, 2003 WL 25599037, n.2211 (2003), and accompanying text. The United States Treasury has promulgated regulations concerning IRC § 162(m). *See* Treas. Reg. § 1.162-27. Covered employees are the persons for whom tax-deductible compensation awards must meet the statutory standards. IRC § 162(m)(4)(A); Treas. Reg. § 1.162-27(b). The 2010 Proxy Statement identifies these employees in its Summary Compensation Table and reports their compensation for the past three years.

21. In addition to the disclosure requirements for stockholder approval under IRC § 162(m), SEC regulations require that the information identified in Item 402 of Reg. S-K also be disclosed in the Proxy Statement because it solicits stockholder re-approval of the material terms of the performance goals in a compensation plan for executive officers. *See* 17 C.F.R. § 240.14a-101 (Item 8(b)).

22. The LTIP is the Company's only plan that addresses the concerns caused by IRC § 162(m). Other than the LTIP, the Company has no means to obtain a tax deduction for compensation in excess of \$1 million per year each paid to its named executive officers. Because the LTIP does not conform to the standards of the IRC and the Treasury Regulations, the Company cannot properly take a tax deduction for LTIP compensation awards. Any such awards are voidable by operation of law.

23. Tax deductions are a matter of legislative grace and are to be construed narrowly unless the text of the statute authorizing the deduction reflects a different congressional intent. The statute at bar reflects no Congressional intent for a broad construction; to the contrary, the tax deduction for compensation must be reasonable, IRC § 162(a)(1), and IRC § 162(m) disallows that deduction for publicly held companies in excess of \$1 million to named executive officers. The exception to the disallowance is for a narrow set of programs that are properly established on objective criteria and approved by the stockholders. As set forth herein, Occidental's LTIP and its implementation of the LTIP do not meet the exacting standards of the IRC and related federal regulations.

24. To qualify for the IRC § 162(m) exception as performance based compensation, compensation must be awarded and administered by a committee composed solely of two or more "outside directors." IRC § 162(m)(4)(c)(i); Treas. Reg. § 1.162-27(e)(3)(i). An "outside director" is defined as someone who "[d]oes not receive remuneration from the publicly held corporation, either directly or indirectly, in any capacity other than as a director." Treas. Reg. § 1.162-27(e)(3)(i)(D). However, here the compensation committee consists entirely of directors who are not "outside directors" as defined by Treas. Reg. § 1.162-27(e)(3)(i) because as directors they are participants in the LTIP and therefore receive remuneration other than and in excess of reasonable director compensation from the Company.

25. The compensation the directors may award themselves under the LTIP far exceeds any reasonable amount in their capacity as directors. Accordingly, they are not "outside" directors.

26. The 2010 Proxy Statement represents that under the proposed LTIP the named executive officers' compensation would be deductible by the Company for federal income tax

purposes if the material terms of the performance goals of the LTIP were to be re-approved by the stockholders. That representation was materially false or misleading.

27. The 2010 Proxy Statement represents that “[i]n order to assure the continued possibility of obtaining deductions for such awards, the company has submitted a proposal to stockholders recommending the re-approval of material terms of the performance goals of such awards.” This statement misled stockholders to vote for re-approval of the material terms of the LTIP’s performance goals.

28. Similarly, the Proxy Statement states that the “Compensation Committee of the Board grants a subset of performance-based awards under the 2005 Long-Term Incentive Plan that are intended to comply with Section 162(m). Therefore, to comply with the IRS tax deduction regulations, Occidental is asking stockholders once again to approve the material terms set forth in the 2005 Plan of the Section 162(m) Awards (other than options or stock appreciation rights).” This statement misled stockholders to vote for re-approval of the material terms of the LTIP’s performance goals.

29. The 2010 Proxy Statement states that “if the compensation attributable to awards is not ‘performance-based’ within the meaning of Section 162(m) of the Code, Occidental may not be permitted to deduct the aggregate nonperformance-based compensation in excess of \$1,000,000...”

30. The aforesaid representations in the 2010 Proxy Statement that payments under the LTIP would be tax-deductible if the stockholders approved the LTIP was materially false or misleading.

31. The Proxy Statement is false or misleading in representing the material terms of the LTIP’s performance goals because the Proxy Statement does not contain key material terms

of the LTIP. Particularly, the Proxy Statements omits those material terms that permit Section 162(m) awards under the LTIP even where performance related to the stated goals remains uncertain and/or attainment of the goals has not, can not or will not have been achieved during the relevant fiscal year.

32. The Proxy Statement is also false or misleading in representing the material terms of the LTIP's performance goals because it does not contain other key material terms of the LTIP. In particular, the Proxy Statements omits those material terms that permit acceleration of grants from Section 162(m) awards under the LTIP if "an Eligible Person's employment with or service to the Company or to any parent or subsidiary terminates for any reason..." even where performance related to the stated goals remains outstanding.

33. The LTIP authorizes the Executive Compensation Committee to accelerate the receipt of benefits upon "a termination of employment" or "in other circumstances or upon the occurrence of other events as deemed appropriate by the committee." Because these material terms of the LTIP, which relate directly to the performance goals, permit awards where actual or probable attainment of the stated goals has not occurred, or will not occur, in the fiscal period, the LTIP itself is defective, and no award thereunder may qualify for tax deduction.

34. Treasury Regulation § 1.162-27(e)(2)(v) does not allow the income tax deduction where the covered employee would receive all or part of the compensation regardless of whether the performance goal is attained. This regulation does provide an exception where the compensation is "payable upon death, disability, or change of ownership or control." But the regulation does not provide an exception for payment upon resignation or retirement, nor does it provide an exception for payment upon occurrence of other events that are "deemed appropriate" by the Executive Compensation Committee.

35. A plan providing payment upon resignation or retirement, or upon occurrence of other events that are “deemed appropriate” by the Executive Compensation Committee, where the performance goals have not been attained in the relevant fiscal period renders the LTIP defective and non-tax-deductible.

36. Occidental’s LTIP and any Section 162(m) awards pursuant thereto are rendered non-tax deductible by virtue of the material terms of the LTIP that provide for such awards without actual or probable attainment of the stated goals within the relevant fiscal period. The Proxy Statement is false or misleading for its failure to disclose these material facts while describing the performance goals and otherwise describing the operation of the LTIP in practice.

37. The 2010 Proxy Statement was also materially false or misleading because it omitted to disclose, with specificity, the material terms and provisions under which the incentive compensation is to be paid, as required by IRC § 162 (m)(4)(C)(ii). The House Conference Report, H.R. Conf. Rep. 103-213 at *588, 1993 WL 302291 (Aug. 4, 1993), reciting the intent of Congress in passing IRC § 162 (m)(4)(C)(ii), states:

In developing standards as to whether disclosure of the terms of a plan or agreement is adequate, the Secretary [of the Treasury] should take into account the SEC rules regarding disclosure. To the extent consistent with those rules, however, disclosure should be as specific as possible.

The Treasury Regulations expressly refer to the applicability of the SEC regulations. Treas. Reg. § 1.162-27(e)(4)(v).

38. To the extent that the Treasury Regulations are supplemented by the SEC Regulations, Treas. Reg. § 1.167-27(e)(4)(v), the SEC requires that a Proxy Statement must either disclose targets or discuss how difficult it will be for the company to achieve the undisclosed target levels. 17 C.F.R. § 229.402(Instruction 4). Moreover, the Proxy Statement

must also disclose how non-GAAP target levels are calculated from the audited financial statements. 17 C.F.R. § 229.402 (Instruction 5). These omissions are unlawful under 15 U.S.C. § 78n(a). With these defects in the LTIP, the 2010 Proxy Statement is false to represent that the LTIP is intended to comply with IRC § 162(m). Consequently, awards under the LTIP are defective and improper.

39. Importantly, the LTIP itself was neither attached to, nor included within, the Proxy Statement. Rather, the Proxy Statement explains that its “description addresses only the material terms of the Performance Objectives that apply to Section 162(m) Awards under the 2005 Plan, and the description is qualified in its entirety by the full text of the 2005 Plan.”

40. These statements about the LTIP and its material terms are too subjective, vague, and uncertain, both for tax purposes and for informing the stockholders how to vote. Indeed, burying the full text of the 2005 Plan somewhere other than through its inclusion with the Proxy Statement smacks of unfair corporate suffrage. With these defects in the LTIP, it is false or misleading for that 2010 Proxy Statement to represent that the LTIP is intended to comply with IRC § 162(m). Awards under the LTIP are consequently improper.

41. The 2010 Proxy Statement omitted to disclose the material terms about the LTIP insofar as it authorizes the compensation committee to accelerate the receipt of benefits upon “a termination of employment” or “in other circumstances or upon the occurrence of other events as deemed appropriate by the committee,” even though these terms were readily available to the Director Defendants at the time that they distributed the 2010 Proxy Statement. Nor did the Proxy Statement disclose how much incentive compensations was being granted in the form of Section 162(m) awards under the LTIP where the performance goals had not been, or were substantially uncertain to be, attained in the relevant fiscal period.

42. While the Proxy Statement specifically discusses “Individual Maximum Amounts” for compensation awards, a limit on the amount of cash that may be awarded under the LTIP, this cash maximum representation in the Proxy Statement does not appear in the LTIP. Indeed, the LTIP has no maximum amount limitation for cash based awards under the LTIP.

43. For stock based awards, the LTIP sets a maximum limit valued in excess of \$200 million per year. This maximum award under the LTIP for stock based awards is too high to qualify as reasonable compensation, which is a prerequisite to sustaining a deduction under IRC 162(a)(1). Corporate executive compensation is not tax deductible unless it meets the requirements of both IRC §§ 162(a)(1) and (m)(4). Treas. Reg. § 1.162-27(a). It is also too high to be a realistic maximum for performance based compensation as required by Treas. Reg. § 1.162-27(e)(4)(i). As a practical matter it is so high that it is the same as not having a maximum award limit at all. This high, unrealistic, illusory maximum renders awards under the LTIP defective, improper and non-tax-deductible.

44. The LTIP, according to its terms, is designed to ensure that the performance awards are tax-deductible under IRC § 162(m). Without the disclosure of the material terms by which awards may be granted and even accelerated irrespective the attainment of the performance goals, stockholders did not have the ability to assess whether the incentive awards would be earned for genuine performance based accomplishments, and thereby be qualified for tax deduction. Nor did the 2010 Proxy Statement make such disclosures. Without this knowledge the stockholders could not make a fair and informed assessment for themselves before their decision on how to vote.

45. The 2010 Proxy Statement represents that the LTIP is intended to comply with the requirements of IRC § 162(m) for performance-based compensation. That representation is false

or misleading in that the LTIP has so many defects that it cannot so comply. The represented intention to comply is illusory. Those defects include (a) the vagueness and lack of objectivity of its performance goals, (b) the possibility of paying bonuses, in whole or in part, if a named executive officer retires or resigns during a performance period, or where otherwise deemed appropriate by the Executive Compensation Committee, before he earns the compensation, and (c) the possibility of paying bonuses, in whole or in part, if a named executive officer does not attain or will not attain the goal during the relevant fiscal period. This compensation must be earned in order for the LTIP to qualify for tax deductibility. The LTIP's terms create a defect that nullifies the tax deductible characteristics of awards granted thereunder.

46. All the defendants were negligent in soliciting proxies and including their names in the 2010 Proxy Statement with material omissions concerning the terms and provisions of the performance goals of the LTIP.

47. But to the extent that this complaint seeks declaratory and injunctive relief, it is unnecessary that the court find that the defendants were negligent.

48. Defendants' acts have caused injury to the plaintiff directly and also to the Company.

DERIVATIVE CLAIMS AND DEMAND EXCUSAL

49. Plaintiff has not made any demand on the Company's board of directors to institute this action against the Director Defendants because none is required for a direct claim seeking redress for wrongs to fair corporate suffrage and because the self dealing and other wrongful acts of the Director Defendants renders any demand requirement as futile.

50. The entire board is either interested in the transactions and events alleged herein, or it otherwise lacks independence.

51. Even in the absence of a traditionally interested (or non-independent) board, demand is excused under the facts at bar, as described in ¶¶ 8-13, 15 – 50, *supra*.

52. The demand requirement and its exceptions are to encourage intra-corporate resolution of disputes and to obtain the business judgment of the board on whether the litigation is in the best interest of the corporation and its shareholders. Where, however, a stockholder sues the board of directors over an act that is not a decision concerning the management of the business and affairs of the corporation, the business judgment rule does not apply. Delaware law excuses demand whenever the challenged act of the board is not the product of a valid exercise of business judgment, regardless of whether a majority of the board is disinterested and independent.

53. The board's conduct concerning the misrepresentations in and omissions from the Proxy Statement are not matters of business judgment, and they are not protected by the business judgment rule, for the following reasons:

(a) When, for the stockholders' annual meeting, a corporate board solicits stockholders' votes for directors and for the approval of the actions of the board and its committees, the board owes the stockholders a statutory and fiduciary duty of full and fair disclosure, meaning that all material facts must be fully and fairly disclosed, and no material facts may be omitted. This duty of disclosure is a thing apart from the duty and authority to deal with the business and property of the corporation. Courts give deference to a corporate board of directors as to questions of management of the corporation's business, but not as to questions of the board's performance of its disclosure duties, for three reasons. First, a board's decision, even in good faith, to misstate or to omit a material fact cannot be defended on the grounds that reasonable persons could differ on the subject. Second, although courts may not be well suited to

making business decisions, courts are well suited to deciding questions concerning the quality of, and circumstances surrounding, disclosures. Third, allegations that a Proxy Statement has materially false or misleading representations and omissions could raise issues as to the honesty and good faith of the directors.

(b) As with Delaware law, under federal policy, there is no need for prior demand on the board of directors with respect to the claim of misrepresentations and omissions in the 2010 Proxy Statement.

(c) At bar, the 2010 Proxy Statement contains materially false or misleading statements and omissions concerning the tax deductibility of payments under the LTIP and the standards and variables used for determining awards under the LTIP and the amounts of those awards.

54. Payments under the LTIP will not be tax deductible and therefore will constitute waste, which is egregious misconduct not protected by the business judgment rule, and it excuses pre-suit demand.

55. The maximum awards per person under the 2010 Plan are so great that they not only constitute waste, but they shock the conscience.

FIRST CLAIM FOR RELIEF
(Against All Defendants)

56. Paragraphs 1 through 55 state a direct claim for relief for making materially false or misleading statements to the stockholders in the 2010 Proxy Statement. As such, no pre-suit demand on the board is required.

57. The acts of the defendants have injured the plaintiff directly by providing materially false information and omissions that the SEC Regulations and the Treasury

Regulations specifically require in Proxy Statements seeking stockholder approval of a tax-deductible compensation plan. Mere money is inadequate as a remedy. Instead, injunctive relief in the form of corrective disclosures is required to ameliorate the injury. In the alternative, remedial action to conform the material terms of the LTIP to the requirements for tax deductibility under Section 162(m) may be required.

58. The court should require the defendants to distribute to its stockholders either corrected disclosures for 2010 or a restated LTIP, to conduct a new vote, and to suspend the LTIP until such amelioration is completed.

59. As an alternative, the previously awarded LTIP grants should be returned to Occidental.

SECOND CLAIM FOR RELIEF
(On Behalf of the Company Against
All Director Defendants)

60. Paragraphs 1 through 59 state a claim for relief as a stockholder's derivative action on behalf of Occidental.

61. The acts of the Company's directors in distributing the false or misleading 2010 Proxy Statement and in failing to seek informed stockholder approval of the material terms of the performance goals of the LTIP, with objective criteria, has injured the Company by interfering with the sort of proper governance on Occidental's behalf that flows from a free and informed exercise of stockholders' right to vote for compensation plans.

62. The Director Defendants' authorization of payment of non-tax deductible compensation awards under the LTIP to the named executive officers, and the named executives officers' acceptance of the same, is irrational and constitutes waste and a breach of their fiduciary

duties to Occidental, including the duty of care and the duty of loyalty, to otherwise maximize tax benefits.

63. The Director Defendants' authorization of payment of non-tax deductible compensation awards under the LTIP to the named executive officers constitutes unjust enrichment to each of the named executive officers and injures the Company by causing it to lose tax benefits. An equitable accounting and reimbursement of the value of those tax benefits, or return of the compensation, will be required to redress the injury caused by non-tax-deductible payments under the LTIP.

64. The Director Defendants' authorization of payment of excessive compensation under the LTIP, as herein alleged, is irrational, constitutes waste, and unjustly enriches the named executive officers. As such, LTIP grants caused and will continue to cause injury to the Company. An injunction against such payments is necessary to prevent those injuries.

65. The acts of the named executive officers and the directors in distributing the false or misleading 2010 Proxy Statement, including their names in it, authorizing the acceptance and the payment of non-tax-deductible compensation under the LTIP and of excessive and non-tax-deductible compensation, and the acts of the Director Defendants in failing to seek informed stockholder approval of the material terms of the performance goals of the LTIP, with objective criteria, constitutes breaches of the Director Defendants' respective duties of loyalty to and care for the Company and its stockholders.

PRAYER FOR RELIEF

WHEREFORE, plaintiff prays for the following relief:

- A. An injunction requiring correction of the false statements in the 2010 Proxy Statement or restatement of the LTIP in order for it to conform to the requirements of Section 162(m);
- B. An injunction requiring a new stockholder vote on the LTIP with reasonable awards that are objectively determined;
- C. An injunction against payments under the LTIP to the named executive officers;
- D. An equitable accounting with disgorgement in favor of the Company for the losses that it has and will sustain by virtue of the conduct alleged herein;
- E. Awarding plaintiff the costs and disbursements of this action, including reasonable accountants', experts', and attorneys' fees; and
- F. Granting such other, further relief, whether similar or different, including monetary recovery, as this Court may deem just and proper.

JURY DEMAND

Plaintiff demands a trial by jury.

DATED: May 10, 2010

BIGGS and BATTAGLIA

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VERIFICATION

I, **RUBY RESNIK**, under penalties of perjury, hereby do declare that I am the plaintiff in the foregoing complaint, that I have read the complaint, and that the facts therein are true to my own knowledge, except as to matters stated therein to be alleged upon information and belief, and as to those matters, I believe them to be true and correct to the best of my knowledge, information and belief.

Dated: Dobbs Ferry, New York
May 13, 2010



RUBY RESNIK